IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 115

Suit 789/97, SIC No 9328/97

Between

Trade Alliance (S) Pte Ltd

… *Plaintiff*

And

Sujinder Electronics (Imp & Exp) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Trade Alliance (S) Pte Ltd v Sujinder Electronics (Imp & Exp) Pte Ltd

[1998] SGHC 115

Suit 789/97, SIC No 9328/97
Lee Seiu Kin JC
16 April 1998

Judgment:

1 In this summons the Defendants applied to set aside an injunction obtained by the Plaintiffs on 23 April 1997 prohibiting the Defendants, their servants and agents from removing any of their assets out of the jurisdiction or from dealing with them up to the value of US$252,192.50. There was also a further order for the Defendants, through their officers, to inform the Plaintiffs of all their assets. After hearing the parties on 8 January 1998, I discharged the injunction with costs. The Plaintiffs have appealed and I now give my grounds of decision.

2 The Plaintiffs are a company in the business of marketing and trading of watches, consumer electronics and general trading. They claim against the Defendants on a dishonoured cheque, alternatively for a debt owed in respect of goods sold and delivered. The total amount of this debt outstanding is US$252,192.50.

3 The Defendants are a company in the business of buying and selling electronic goods. They operate out of a unit at 77 High Street #02-01, High Street Plaza.

This is also the registered address of the company. The paid-up capital is $200,000. The company has 2 directors, namely, Manjit Kaur ("Manjit") and Balbir Chand ("Balbir"). However, according to Manjit, who filed an affidavit on 12 December 1997 in support of this summons, Balbir, who was her brother-in-law, was a "sleeping shareholder" and did not participate in the affairs of the company. She deposed that the company was actually run by her together with her husband, Tommy Lal ("Tommy"). This was not contradicted by the Plaintiffs; in fact this is corroborated in paragraph 10 of the affidavit of Prakash Rao ("Rao") filed on 22 April 1997 on behalf of the Plaintiffs. He deposed that he had never met Balbir and had only dealt with Tommy, who was introduced to him as the Manager of the Defendants, and with Manjit.

Rao’s account of the facts

4 The circumstances giving rise to this dispute, as related by Rao, are as follows. On 28 October 1996, Tommy and Rao agreed upon the sale by the Plaintiffs to the Defendants of 375 units of air-conditioners at a total cost of US$331,788.75. The goods would be delivered at the port of Singapore by 9 November 1996. The Plaintiffs would prepare 3 Delivery Orders to enable the Defendants to take delivery of the goods. The Defendants was to pay US$20,000 upon confirmation and the balance by a cheque post-dated to 13 November 1996. However the Defendants did not send the cheque for US$20,000 with the confirmation. When Rao contacted him about this, Tommy proposed to make out the post-dated cheque for the full price, to which Rao agreed. On 29 October the Defendants issued a cheque in favour of the Plaintiffs for US$331,788.75 post-dated to 13 November 1996.

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5 On 13 November, the Plaintiffs deposited the cheque at their bank. However they were informed on 14 November that it had been dishonoured because the drawer had instructed the bank to stop payment on the cheque. Rao deposed that he checked with Tommy who told him that this was because the Defendants did not have the necessary funds as the buyers he had lined up for the goods had cancelled their orders. He therefore had to find new buyers before he

could obtain the funds to pay the Plaintiffs. As the payment was not made, the Plaintiffs did not release the Delivery Orders to the Defendants.

6 Thereafter Rao demanded payment from Tommy "on a regular basis" and Tommy kept asking for time to make full payment, assuring him that the Plaintiffs would be paid. Around 30 November, Tommy requested for the release of 125 units because he had managed to sell them to certain parties. He said that the Plaintiffs would be paid within 7 to 10 days of delivery. The cost of these was US$110,596.25. Rao said that he was reassured by Tommy’s statements and in order to foster good relationship, he released one Delivery Order for 125 units. On 12 December the Defendants paid the Plaintiffs US$79,596.25. When Rao asked Tommy about the balance, Tommy explained that he had sold the goods to 2 parties and one of them had not paid yet. Tommy said that this would be done shortly and assured Rao that the Defendants would pay the Plaintiffs as soon as they received the money from the buyer. Rao continued to press Tommy for payment of the balance, and Tommy kept assuring him that full payment would be made.

7 On 20 December Tommy requested the release of the balance 250 units. He assured Rao that the Defendants were making their best efforts to sell the 250

units and it was likely that the Plaintiffs would receive full payment upon their sale. Based on these assurances, Rao released the remaining units.

8 Between 20 December 1996 and 8 January 1997, Rao telephoned and visited Tommy regularly to press for payment of the outstanding amount. On each occasion, Tommy or Manjit would assure him that the Defendants would pay in due course. The other employees of the Plaintiffs also took turns to telephone Tommy and visit him to demand payment.

9 On 9 January, Rao visited Tommy at his office at High Street Plaza. Tommy told him that his earlier buyers had backed out of the deal due to a crash in the prices of air-conditioners. He said he was trying to find other buyers and asked for more time, promising that the Defendants would make full payment by end January. From 10 to 16 January, Rao and his staff continued to press Tommy for payment.

10 On 17 January, Rao visited Tommy at the latter's office. This ended in a heated argument between them. Tommy offered to return the 250 units and Rao said he would consider the proposal. On 20 January Rao returned to Tommy's office and said he agreed to the return of the 250 units. However Tommy said that he was in the process of finalising the sale of the 250 units. Rao said that Tommy fleetingly showed him a document which appeared to be a set of Delivery Instructions to his freight forwarders. However it only related to 125 units. So he asked Tommy to return the other 125 units. Tommy refused and became angry. He said that the Defendants were not obliged to return the goods as they had already bought them, but he promised to make payment at the earliest time possible.

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11 One or two days later, Tommy told Rao that the Defendants had managed to find a buyer for the remaining 125 units. He said the Plaintiffs would make payment shortly. However from 21 January until 11 February, Rao visited Tommy regularly but could not receive any payment. Tommy kept saying that he was awaiting payment from his buyers. He also tried to reassure Rao by saying that he had certain debts due from his clients in respect of other goods sold. Those buyers had refused to accept delivery because the market prices had fallen and Tommy was still negotiating with them to settle the matters.

12 In view of the delays, Rao sent the Defendants a letter of demand on 6 February. On 7 February Rao visited Tommy at his office to try to persuade him to hand over the Defendants' stocks which the Plaintiffs would sell at market price. Tommy refused to do this.

13 On 12 February, Rao went with his employee, one Kumar, to the warehouse where the Defendants stored their goods. He found out that the last set of air-conditioners was shipped out on 21 January. He was also told that the Defendants had no other goods of substantial value at the warehouse. Concerned about this, Rao and Kumar went to see Tommy immediately. Tommy again told them that the

Defendants were still waiting for payment from their buyers. Rao again asked Tommy to give the Plaintiffs other goods they may have, but Tommy flatly refused.

14 On 13 February Rao went to see Tommy again. Tommy told him that he had received news from his buyers that some money was being paid to the Defendants and they would be able to pay the Plaintiffs a sum of US$150,000

on 18 February. But when Rao asked Tommy for a post-dated cheque for this amount he refused and insisted that Rao returned on 18 February to collect the cheque.

15 What the Plaintiffs claim happened next is found in paragraph 42 of the affidavit of Rao filed on 22 April 1997 in support of the injunction:

"On 17 February 1997, Mr Kumar and I went to see Tommy at about 4 pm to ensure that payment would indeed be made the next day. Tommy and Manjit were in the office. When Tommy saw us outside the office glass door, he looked upset. He waved us away, telling us to come back the next day. When we entered the office premises, Tommy became furious and surged forward. He also tried to hit us. His wife however managed to intervene and stopped him from assaulting us. Mr Kumar then told him that we only wanted his assurance that we would be paid the next day. Tommy and Manjit looked nervous at this suggestion. They then told us to come back the next day to collect a cheque. In order not to aggravate an already tense situation, we left."

16 On 18 February, Rao returned to the Defendants' office to collect the cheque. To his surprise, he found the premises locked. He asked people in the neighbouring units about Tommy and Manjit but could not find out anything. Rao went back to the premises regularly between 19 and 25 February, but found it locked each time. He observed that the office furniture was still there and there were some cartons inside. However when he went on 3 March, he saw that the premises was empty. He inquired with some of the neighbours and were told that Tommy and Manjit had been imprisoned.

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17 Rao and Kumar checked and found that Manjit was imprisoned since 17 February. But they were unable to trace a prisoner by the name of Tommy. Since then Rao had gone to the premises on a periodical basis and had found it locked.

18 The Plaintiffs filed a writ on 22 April 1997 to claim the outstanding sum of $252,192.50 and at the same time took out an application for the injunction and an order for the Defendants, through their officers, to inform the Plaintiffs of all their assets. This was granted *ex parte* by Lim Teong Qwee, JC on 23 April 1997. On 6 May, the Plaintiffs obtained judgment in default of appearance. On 6 June the Plaintiffs applied for leave to obtain an order of committal against Manjit and Balbir for their failure to comply with the order to disclose the assets of the Defendants. Leave was granted by Warren Khoo, J on 25 June. Subsequently an order for committal was made against Manjit and Balbir on 8 August 1997 by Selvam, J, but I do not need to go further into the details of this as it is not germane to the proceedings before me.

Manjit's account of the facts

19 The Defendants' application to set aside the injunction is supported by the affidavit of Manjit filed on 12 December 1997. She did not dispute Rao's account of the facts, save in one crucial aspect, viz., the events of 17 February 1997. Manjit explained that since early 1996, she, Tommy and the Defendants had been under investigation by the Commercial Affairs Department following a complaint by a business associate of the Defendants. As a result of this investigation, she and Tommy were charged in the Subordinate Court on 17 February 1997. They pleaded guilty to the charges. She was sentenced to 6 months imprisonment while Tommy was sentenced to 16 months. She exhibited a letter signed by the Director of Prisons certifying that she was admitted to

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Prison on 17 February 1997 and discharged on 18 June 1997. She said that both she and Tommy were at the Subordinate Courts at 2.30 p.m. on 17 February 1997 in connection with the charges. They had remained there throughout until they were taken to prison later in the day.

Contradictory Accounts of Events of 17 February 1997

20 I asked counsel for the parties whether it was possible that Rao was mistaken as to the exact date of the events at the premises of the Defendants he said had happened on 17 February 1997. Counsel for the Defendants said that the account in Rao's affidavit was made with such detail and precision that there was no way he could have been mistaken as to the date. I would agree with him. Firstly throughout Rao's affidavit, wherever he was not sure of the exact date, he had said so, e.g. he used the phrase "on or about" or "around" before the date in, *inter alia*, paragraphs 16, 23, 26, 28, 29, 32. In paragraph 35, he described the day as "One or two days after 20 January 1997…". But elsewhere, he had stated the dates with precision, e.g. paragraphs 38, 39 and 41. In paragraph 41, he deposed that he went to see Tommy on 13 February and was told by Tommy that the Defendants would be able to pay the Plaintiffs at 10.30 a.m. on 18 February. Tommy refused to give a post-dated cheque but told him to return on that day to collect the cheque from him. Paragraph 42 begins with this sentence:

"On 17 February 1997, Mr Kumar and I went to see Tommy at about 4 pm to ensure that payment would indeed by made the next day."

This shows that Rao was certain that it was one day before the date that Tommy had asked him to collect the money, i.e., 18 February. I also do not see any

possibility of the time he had given, i.e., 4 pm, being several hours off. In any case this was not explained by Rao in any affidavit in reply.

21 I see no reason to doubt the assertion by Manjit that she was in court at 2.30 p.m. on 17 February. The Plaintiffs agree that she was imprisoned and indeed Rao had deposed that he subsequently found out that Manjit was imprisoned since

17 February 1997. Manjit had exhibited the certificate of the Director of Prisons in this respect. The only issue may have been whether she was there after the incident

related by Rao, i.e. after 4.00 pm. The court can take judicial notice of the fact that proceedings in the Subordinate Courts, if they commence in the afternoon, normally begin at 2.30 p.m. or earlier. If the events had happened as related by Rao, this would mean that the proceedings was not scheduled to commence until, at the earliest, 4.30 p.m. This is a highly remote possibility, especially given that there was a possibility of imprisonment.

22 Counsel for the Plaintiffs, Mr Choo, could not offer any explanation except to say that the 17 February incident was not material to the decision of the learned Judicial Commissioner in granting the *ex parte* injunction. He submited that this was only one example of many events and the main factor was the Defendants' constant evasion of payment. Counsel also explained that he was at a disadvantage because he was only given the file the previous day as the solicitor in charge was on compassionate leave. On this point, counsel for the Defendants pointed out that the notice of this application was served on 17

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December 1997 and that the solicitor in charge had ample time to check this point with the Plaintiffs.

23 In the circumstances, I concluded that Rao's version, i.e., that the incident took place on 17 February 1997 could not have been correct. As he was quite accurate as to the date and time of the events, it follows that his version cannot be

believed. If the Plaintiffs had wilfully misrepresented a material fact, this alone would be sufficient ground for the court to discharge the injunction. Mr Choo rightly concedes this, although he submitted that this was not established.

24 I should add that, although Mr Choo did not submit on this, I have considered the possibility that Rao could have been mistaken and that Manjit was in fact absent on the afternoon of 17 February. However, looking at Rao's affidavit, he could not have been mistaken about Manjit's presence. Not only was he unequivocal about Manjit being present in the office, he even said that she stopped Tommy from assaulting him and Kumar.

Grounds for injunction

25 Mr Choo submitted that even if Rao had been wrong in respect of the events of 17 February, on the assumption that it was not wilful, it was not material to the decision of the learned Judicial Commissioner to grant the *ex parte* injunction. It becomes necessary to consider what are the facts material to that decision.

26 In paragraphs 49 to 52 of his affidavit, Rao gave the following reasons for believing that the Defendants will remove their assets from Singapore:

Tommy and Manjit had continually assured the Plaintiffs that they would pay up in the near future. They had given the impression that they intended to keep the company as a going concern. As a result, the Plaintiffs had delayed commencing legal action against the Defendants.

Tommy and Manjit had misled the Plaintiffs about their true intentions.

On the afternoon of 17 February, when Tommy told him that the Plaintiffs would be paid the following day, he must have known that the Defendants would be vacating their premises shortly. This was evidence of fraudulent conduct.

Rao feared that unless restrained by injunction, there is a real risk that the Defendants will dissipate their assets before trial to frustrate any judgment obtained by the Plaintiffs.

27 In my view sub-paragraph (i) accurately summarised the factual matrix bearing on the grant of the injunction. Essentially, Rao had portrayed the situation as one whereby he had taken Tommy at his word and fulfilled his part of the contract, i.e. delivery of the 375 units at the port. However Tommy kept fending off payment until he had secured buyers and payment for the goods. Rao was caught in a situation where, on the one hand he wanted the contract to be carried out and on the other hand he was worried about the credit-worthiness of the Defendants.

28 Sub-paragraph (ii) is a conclusion that is predicated upon the truth of the 17 February incident. If not for that, this situation would be no different from the numerous commercial dealings whereby a seller has misjudged the credit-worthiness of a buyer. While I agree that in many cases the buyer may have had

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no intention to pay at the outset, the mere fact that Tommy had been promising but unable to pay does not prove that he had no intention to do so from the start. There must be as many, if not more, cases where the debtor had every intention to pay but was unable to do so when payment became due. There must be something more, and this was provided by the 17 February incident where, according to the Plaintiffs, Tommy and Manjit did a disappearing act after an encounter in which Tommy appeared upset, nervous and tense, became furious and tried to hit Rao and Kumar, and told them to return the following day to collect the cheque. But in truth, the reason they had "disappeared" was because they were imprisoned.

29 For the same reason, sub-paragraph (iv) is also predicated on the 17 February incident. Therefore, remove that incident and the only ground that the Plaintiffs have for the injunction would be that the Defendants did not pay their debts despite Tommy’s continual assurance to Rao that they would do so.

The law

30 The *Mareva* jurisdiction arises from section 4(8) of the Civil Law Act — see *Art Trend Ltd v. Blue Dolphin (Pte) Ltd* [1983] 1 MLJ 25. This provision states:

"A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made."

31 In determining whether an injunction should be ordered, the court will have regard to the circumstances surrounding the case before it and make such order as it deems to be just or convenient. While there is no strict requirement that

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must be fulfilled, the *Mareva* jurisdiction is normally involved only where there is a danger that the debtor may dissipate his assets or put it out of reach of the creditor. In *Mareva Compania Naviera SA v. International Bulk Carriers SA* [1980] 1 All ER 213, Lord Denning MR, said, at p 215b:

"If it appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets."

32 It is necessary to state grounds for the belief that there is a risk of dissipation - see *Chan Choy Keen Collin v. PUB* [1997] 1 SLR 604, in which the Court of Appeal stated at p 611F:

"19 On the material before us, there was no ‘solid evidence’ of any conduct on the third defendant’s part which suggests that there was a risk of dissipation occurring, let alone a real risk. *In Barclay-Johnson v. Yuill* [1980] 3 All ER 190, Sir Robert Megarry VC said, at p 194:

… the heart and core of the Mareva injunction is the risk of the defendant removing his assets from the jurisdiction and so stultifying any judgment given by the courts in the action. If there is no real risk of this, such an injunction should be refused; if there is a real risk, then if the other requirements are satisfied the injunction ought to be granted …"

33 The *Mareva* jurisdiction is not intended for the purpose of improving the position of a claimant in an insolvency - see *Bekhor & Co. v. Bilton* [1981] 1 Q.B. 923. Business people routinely make decisions as to the risks involved in any undertaking. Credit is given or not given according to a party’s assessment

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of the standing of the other side. If this judgment is wrong, then the creditor has recourse to the law - he can obtain judgment against the debtor and enforce it. Failure to pay, even if it is persistent, does not entitle the creditor to invoke the *Mareva* jurisdiction. There must be evidence that the defendant is about to or there is a real risk that that he may dissipate his assets. The courts have sometimes taken a broad approach as to what constitutes such risk. Thus in *Third Chandris v Unimarine* [1979] 2 All ER 972 at p 984, the English Court of Appeal held that a company registered in a safe haven could be presumed to carry a real risk of dissipation of assets if it did not pay its debts. In *Amixco Asia Pte Ltd v Bank Negara Indonesia 1946* [1992] 1 SLR 703, the Court of Appeal found a real likelihood that the defendant company would dissipate its assets from a pattern of dishonest conduct on the part of some of the defendants.

34 In the present case, the crime committed by Manjit and Tommy does not appear to be related to the transaction in dispute. Neither do the Plaintiffs allege that it is. There is therefore no pattern of dishonest conduct from which it can be inferred that the Defendants would be likely to dissipate their assets.

Contempt of Court

35 The Plaintiffs submit that the Defendants, through their officers, i.e. Manjit, are in contempt of court by Manjit's failure to comply with paragraph 2 of the *ex parte* Order of Court of 23 April 1997 requiring the Defendants to disclose their assets. After several attempts at personal service this order was served by way of substituted service, through advertisement in the Straits Times and posting at the notice board of the Supreme Court. The advertisement was published on 4 August. I should add that on 8 and 11 July, the order was served personally on, respectively, Balbir and Goh Ho Lye, a secretary of the

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Defendants. On 8 August the Plaintiffs applied for and obtained an order of committal against Manjit and Balbir. According to Manjit, she was imprisoned from 17 February to 18 June. Tommy was not due to be released until 7 January 1998. As Balbir was not involved in the affairs of the company, there was nobody to run the company during their incarceration. She said that the injunction was served on her while she was in prison. Apart from the fact that it was impossible to do anything from prison, she was also totally depressed at the time. Since her release, she had found it impossible to obtain in time the information required because the documents were in a mess. This was because the Commercial Affairs Department had seized all documents of the Defendants and upon their return they were in a "total mess". Also, Tommy was not available to assist her in unravelling the documents.

36 Those contempt proceedings are not before me and they have been adjourned pending the disposition of this appeal. What concerns me is whether I should refuse to act at the instance of the Defendants in the circumstances. Counsel for the Plaintiffs contend that where a contemnor had not been purged of his contempt, the court must refuse any application on his instance until he is purged of his contempt. Counsel cited *Young v Jackman* (1986) 7 NSWLR 97, where Young, J, analysed the authorities on the subject and concluded that the court had no discretion to hear a contemnor until he is purged of his contempt. Whatever be the state of the law at that time, the Court of Appeal in *Lee Kuan Yew v Tang Liang Hong & Anor* [1997] 3 SLR 489 has since pronounced on this matter and has declared that there is such a discretion. The Court of Appeal cited with approval the judgment of Lord Bridge in *X Ltd v Morgan Grampian (Publishers) Ltd [1991]* 1 AC 1 at p.46 where His Lordship said that a more flexible approach "*better accords with contemporary judicial attitudes to the*

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importance of ensuring procedural justice". Lord Oliver said, at p.51, that one instance where a court would hear a contemnor would be as follows:

"… where the appeal is grounded on an alleged lack of jurisdiction to make the order at all, it would seem, in general, right that the contemnor should be heard."

37 The circumstances of the present case clearly require the court to hear the contemnor's application. The Defendants are in contempt of an order of court which, on the view that I have taken, the Plaintiffs were not entitled to obtain. Furthermore, I am satisfied by the explanation given by Manjit as to why the Defendants were not able to comply with the disclosure order.

Conclusion

38 Accordingly, I found that the Plaintiffs have not made out a case that there was a risk that the Defendants would dissipate their assets so as to frustrate any judgment obtained against them. This was because, on the evidence before me, I found that the crucial element of the Plaintiff's grounds, ie, the incident of 17 February 1997, could not have occurred. Therefore the order of court made on 22 April 1997 must be discharged.

Lee Seiu Kin

JUDICIAL COMMISIONER

Singapore

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