Parakou Shipping Pte Ltd (in liquidation) *v* Liu Cheng Chan and others [2015] SGHC 96

Case Number	: Suit No 434 of 2014 (Summons Nos 6150, 6151, 6152 of 2014 and 1482 of 2015)
Decision Date	: 13 April 2015
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Kenneth Lim, Fay Fong Shi-Ting, Edward Kwok and Chua Xin Ying (Allen & Gledhill LLP) for the plaintiff; Wong Tjen Wee and Senthil Dayalan (Eldan Law LLP) for the first and second defendants; Siraj Omar and Premalatha Silwaraju (Premier Law LLC) for the third and fourth defendants; Sim Chong and Loo Chieh Ling, Kate (JLC Advisors LLP) for the fifth and sixth defendants.
Parties	: Parakou Shipping Pte Ltd (in liquidation) — Liu Cheng Chan and others

Civil Procedure – Mareva injunctions

13 April 2015 Judgment reserved.

Choo Han Teck J:

1 The plaintiff, Parakou Shipping Pte Ltd, is a shipping company that went into liquidation. The first and second defendants used to be directors of the plaintiff, and the third and fourth defendants took over the plaintiff from them on 22 December 2008. The fifth and sixth defendants are companies owned by the first, second and third defendants. The plaintiff's claim against the first to fourth defendants is for breach of fiduciary duties which have caused loss and damage to the plaintiff. The plaintiff also claims that the defendants are liable to account to the plaintiff for any loss of profits caused by the sale of vessels and the "transfer" of the ship management agreements, previously controlled by the plaintiff.

2 I had previously granted the plaintiff's application for a Mareva injunction order over the defendants' assets on 21 November 2014 ("the Order"), with my reasons set out in *Parakou Shipping Pte Ltd v Liu Cheng Chan and others* [2014] SGHC 244. Later that day, I granted a stay of the Order as the defendants had indicated that they would apply for a variation of the said Order. They proceeded to do so on 10 December 2014 under Summons Nos 6150, 6151, and 6152 of 2014. The three summonses essentially make the same application but on behalf of different defendants –which is to set aside and discharge the Order, or in the alternative, that the terms of the Order be set aside, save that:

(a) the first and second defendants are prohibited, whether by themselves, or their servants or agents, from disposing of or dealing with or diminishing the value of or further encumbering the following assets, pending the ultimate determination of this action, including any appeal therefrom:

(i) the property at 2G Bishopsgate, Singapore 249993; and

(ii) the property at 9 Temasek Boulevard, #32-01 to #32-03, Suntec Tower Two, Singapore 038989; and

(b) the fifth defendant be prohibited, whether by itself, its servants or agents, from removing from Singapore or in any way disposing of or dealing with or diminishing the value of the sum of $635,000 held in JLC Advisors LLP's clients' account, pending the ultimate determination of this action, including any appeal therefrom.

3 The thrust of the defendants' argument for setting aside the Order is that their assets, set out in their undertakings to the court, are sufficient to meet the plaintiff's claim which is about S$24m, as stated in their statement of claim. Counsel argued that a Mareva injunction, as a draconian measure, should be used sparingly, and should not be ordered now that the defendants have provided adequate security.

4 On 31 March 2015, the plaintiff applied by Summons No 1482 of 2015 ("SUM 1482/2015") to increase the limit of the Mareva injunction to include the "first, second and third defendants' 100% shareholding in the sixth defendant, which have been diminished, including but not limited to the value of the sixth defendant's assets." By 31 July 2014, the shareholding of the defendants in the sixth defendant had been transferred to Parakou Tankers Inc ("PTI") for no consideration. A proposed merger between PTI and a third party is currently being carried out in the United States, and will result in the dissipation of the defendants' shares, now in PTI. Further, the plaintiff argues that "the merged entity will…hold the benefit of the 12 ship management agreements, through PTI's ownership of the sixth defendant." The ship management contracts are currently held by the sixth defendant.

5 I adjourned the matter after the last hearing (26 March 2015) to consider the submissions of counsel and directed them to return on 13 April 2015 for my decision. In the interim, the plaintiff's solicitors wrote a letter addressed to the Registrar for my attention. That letter contained further submissions on the applications. This practice of sending further submissions is gaining currency, but in my view, ought to stop. When the deadline for submissions as directed by the court has passed, no counsel should submit any further argument (or any matter) without the leave of court. True to form, the third and fourth defendants' solicitors submitted further reply arguments dated 10 April 2015 in response.

6 Turning to the merit of the applications before me, I am of the view that the defendants' conduct on the whole has not been satisfactorily explained. They seem to be carrying out transactions that appear to dissipate their assets under the guise of corporate restructuring – previously in the form of vessels, and now in the form of share transfers. I am unable to accept that the share transfers and proposed merger are merely part of a corporate restructuring process. Nonetheless, since the purpose of a Mareva injunction is merely to preserve sufficient assets so that judgment obtained against the defendants for the plaintiff's claim would not be rendered nugatory by the dissipation of assets. In the light of this purpose, I find the properties set out in the undertakings to be sufficient, at present, to satisfy the plaintiff's claim. The defendants have collectively identified and provided undertakings in respect of assets with an unencumbered value of S$51.1m. I accept that this is more than double the liquidated claim amount, and there is no evidence to show specifically that the Bishopsgate property, the Suntec property, and the amount in the client account are at risk of being dissipated.

7 The plaintiff is worried because its claim for unliquidated damages exceeds the security provided, and, therefore, asks to increase the limit of the Order. Its claim for unliquidated damages is made under the claim for an account of profits. In its submissions, it states that the defendants ought to furnish additional security in the amount of US$131m. But it does not seek to increase the limit in the Order by this sum. Further, this figure is unsubstantiated by any independent valuation. The defendants, in response, claim that the ship management agreements have actually been generating losses since they were transferred to the sixth defendant. That does not explain why a

company suffering from such great losses is involved in what appears to be a very valuable merger transaction. I am sceptical of the defendants' assertion that the sixth defendant is a loss-making company. But since no independent valuation of the sixth defendant's profits from the ship management agreements has been given to the court, I am unable to increase the limit in the Mareva injunction pursuant to the plaintiff's summons. This may be one of the issues for trial. We cannot lose sight of the fact that this is only an interlocutory application.

8 The plaintiff has not sought to enjoin the proposed merger from proceeding, which I think is probably right. This merger will inevitably result in the dissipation of the first, second, and third defendants' shares in the sixth defendant which have since been transferred to PTI. But, a Mareva injunction should be distinguished from an injunction to preserve assets which belong to the plaintiff in equity. The plaintiff in this case, merely has a monetary claim for an account of profits and loss and damage suffered as a result of the alleged breach of fiduciary duties. The plaintiff neither has a proprietary claim over the first, second, and third defendants' shares, nor over the ship management contracts. In fact, even after the proposed merger is carried out, the ship management contracts will remain in the sixth defendant, and there is no evidence to show that they will be transferred to the merged entity.

9 For the reasons set out above, I dismiss the plaintiff's application in SUM 1482/2015 and allow the defendants' applications in Summons 6150, 6151, and 6152 of 2014. I would ordinarily have ordered costs to be in the cause for a matter like this, but in view of matters which have not fully been explained or proved concerning the conduct of the defendants, I reserve costs to the trial judge.

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