

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 38

HC/Suit No 1212 of 2017
(HC/Summonses No 148, 377, 435 and 436 of 2018)

Between

JTrust Asia Pte Ltd

... Plaintiff

And

- (1) Group Lease Holdings Pte Ltd
- (2) Mitsuji Konoshita
- (3) Cougar Pacific Pte Ltd
- (4) Aref Holdings Limited
- (5) Adalene Limited
- (6) Bellaven Limited
- (7) Baguera Limited

... Defendants

JUDGMENT

[Injunctions] — [Mareva injunction]

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JTrust Asia Pte Ltd
v
Group Lease Holdings Pte Ltd and others

[2018] SGHC 38

High Court — HC/Suit No 1212 of 2017 (HC/Summonses No 148, 377, 435 and 436 of 2018)

Choo Han Teck J

7 February; 21 February 2018

23 February 2018

Judgment reserved.

Choo Han Teck J:

1 The plaintiff (“JTrust Asia”) is a wholly owned subsidiary of JTrust Co Ltd (“JTrust Japan”), a company in Japan. The first defendant (“Group Lease Singapore”) is a wholly owned subsidiary of Group Lease Public Company Ltd (“Group Lease Thailand”), a company in Thailand. The second defendant (“Konoshita”) is a director of Group Lease Singapore and was previously a director of Group Lease Thailand. These are the important parties in the four applications before me. The applications are: first, the plaintiff’s application to expand a Mareva injunction granted ex parte by Senior Judge Kan Ting Chiu (“Kan SJ”) (as he then was) on 26 December 2017, against the first, second, and third defendants in this action (Suit 1212 of 2017). The plaintiff wants the injunction to be expanded into a worldwide Mareva injunction. This application is under Summons 148 of 2018. The second application is the plaintiff’s application for an order that specific conduct by the first, second, and third

defendants be prohibited under the injunction order of Kan SJ. Counsel for the plaintiff, Mr Chan Leng Sun SC, submitted that his clients were compelled to make the application because the defendants had asserted that the conduct complained of were not subject to the injunction granted by Kan SJ. An example of the dispute on this point involves the lending of money by the first defendant to its subsidiaries in Indonesia. This application is under Summons 377 of 2018. The third and fourth applications are the applications of the first and second defendants, represented by Mr Edric Pan Xingzheng, and the third defendant, represented by Mr Pillai Pradeep G, respectively, to set aside the Mareva injunction granted by Kan SJ. The fourth to seventh defendants are not involved in any of the four applications before me.

2 We begin with the suit under which the injunction order was obtained. The plaintiff is suing the defendants for, as Mr Chan says, ‘conspiracy’. The particulars are found in paragraph 31 of the statement of claim. It is there alleged that Group Lease Thailand and the defendants conspired to defraud JTrust Asia into believing that Group Lease Thailand’s “performance was better than it truly was”; and secondly, to misappropriate JTrust Asia’s investments in Group Lease Thailand for Konoshita’s benefit by lending money to the third to seventh defendants; and thirdly, concealing the fraud and misappropriation from JTrust Asia. The third assertion is unnecessary. If the first and second are proved, it is implied that there had been concealment.

3 The background to the plaintiff’s suit is as follows. By a series of written contracts, the plaintiff loaned US\$210,000,000 (and a further \$527,000,000 Thai Baht) to Group Lease Thailand. The contracts conferred onto the plaintiff the right to convert the debentures into shares in Group Lease Thailand. The first agreement was made on 20 March 2016 and the third on 1 December 2017.

4 The Securities and Exchange Commission of Thailand laid a criminal complaint against Group Lease Thailand concerning the accounts filed by it, but no charges have been brought so far. In the meantime, Group Lease Thailand transferred money to Group Lease Singapore. The Group Lease companies are all in the business of providing funds for businesses (such as those in the hire-purchase industry) in Singapore and elsewhere. Some of the money received by Group Lease Singapore was then loaned to the third to seventh defendants.

5 The plaintiff's grievance arose from a fear that Group Lease Thailand may be dishonest and, should they fail to pay interest on the debentures, the plaintiff would lose their capital (the US\$210,000,000 loan) because Group Lease Thailand may become a valueless company, with only debts from the third to seventh defendants to satisfy the plaintiff.

6 Although evidence has yet to be adduced and tested at trial the plaintiff's fears may not be unfounded; but, the problem is that the plaintiff's cause of action against the defendants here is based on a conspiracy, and it is not just a conspiracy among the defendants; it is a conspiracy by Group Lease Thailand and the defendants. Yet, strangely, Group Lease Thailand is not a party to this suit, and the money it may have lent, distributed, or disbursed, however one sees it, is its money, obtained under written agreements.

7 The complaint of the Securities and Exchange Commission of Thailand, the connections between the defendants and Group Lease Thailand, as well as Group Lease Thailand's connections with Konoshita and the company known as APF Group Co Ltd may become relevant only when tested at trial. Right now, neither Group Lease Thailand nor APF Group Co Ltd are parties to this suit. There is nothing more than the speculation that Group Lease Thailand has misappropriated the plaintiff's US\$210,000,000 – which was backed by

properly executed commercial debenture agreements. Once the money has passed to Group Lease Thailand under those agreements, there must be stronger evidence than what the plaintiff has produced, to show that there may have been misappropriation of the money. What the plaintiff presently has, is a plausible case that it may be left holding on to useless convertible debentures; but that alone is not sufficient evidence to warrant a Mareva injunction, let alone a worldwide Mareva injunction.

8 The question that I have first to decide is whether the injunction ought to have been granted in the first place. Mr Pan submitted that when the plaintiff obtained the order from Kan SJ, it did not disclose that it had already sought and obtained worldwide Mareva injunctions against the second defendant in not only the British Virgin Islands court, but also the court in Cyprus. The Cyprus injunction was obtained after Kan SJ's injunction, but that is not crucial. The point is that if there are already not one, but two worldwide Mareva injunctions, why is there a need to collect another similar order?

9 To add to the complexity of the case, Mr Eugene Thuraisingam appeared and I granted him leave to explain his presence. He said that he is acting for a company that has obtained a judgment against the plaintiff's parent company, JTrust Japan, in Mauritius. Mr Thuraisingam said that his client has also obtained a Mareva injunction from the Mauritius court against JTrust Japan. Mr Pan said that he was not aware of this fact and that it had not been previously disclosed. He denies that Mr Thuraisingam's client and his are collaborating; on the contrary, he said that Mr Thuraisingam's client had assumed that Mr Konoshita was collaborating with Mr Chan's clients against him. Mr Thuraisingam further stated that approximately US\$200 million claimed by his client involved the same fund in Suit 1212 in Singapore. Mr Chan submitted that the money in this action is unrelated to the suit in Mauritius.

10 The plaintiff's case for a Mareva injunction is based on its allegations that Group Lease Thailand and Konoshita had been dishonest in their disclosures of fact connected to JTrust Asia's agreements with Group Lease Thailand. Consequently, by distributing its funds through and to the defendants in Suit 1212, Group Lease Thailand will have dissipated all its assets and JTrust Asia will have lost its investments. That is the nub of the plaintiff's case.

11 A Mareva injunction freezes the liquidity of the enjoined entity, rendering it incapable of carrying on its business. The entity may even perish from the paralysis. It is not always easy to tell which is the innocent party in a commercial dispute until the court has heard all the evidence. That is why a Mareva injunction can have dire consequences, and must therefore not be granted unless the court is satisfied that there are sound reasons for it. Not only must the applicant show that he has a strong case, he must show that there are identifiable assets that belong to, or are due to, the applicant and that the respondent to the application has or is taking steps to place that asset out of the applicant's reach should the applicant succeed at trial.

12 From the outset, the applicant plaintiff in this suit, JTrust Asia, has not shown that it has a good arguable case against the respondents. It is not enough to make an allegation of conspiracy to defraud and misappropriate the applicant's money. The plaintiff's action is peculiar in that the defendant conspirators in this suit are not involved as parties in the commercial agreements under which the plaintiff transferred the US\$210m, part of which (US\$180m) the plaintiff is now claiming, to Group Lease Thailand.

13 Group Lease Thailand is not named as a defendant in this suit. And the defendants in this suit are not named in the plaintiff's suit against Group Lease Thailand in the legal proceedings in Thailand. It will be seen that the three

debenture agreements lie at the core of the dispute. But the validity of those agreements cannot be adjudicated in this action without Group Lease Thailand being a party.

14 Furthermore, even if it can be shown that Group Lease Thailand had transferred US\$180m to Group Lease Singapore, and then to their subsidiaries in Indonesia and elsewhere in the world, that is not in itself evidence of dissipation. First, the assets claimed are from those three debenture agreements, and as I pointed out, the other party to the agreement is not named as a defendant here. Secondly, all the parties involved are companies carrying on the business of investments, a refined way of saying they lend money to companies in need, in return for periodic payment in interests and sometimes, as in this case, with an option to purchase the borrower's (Group Lease Thailand) equity. That is likely to be the real dispute between JTrust Asia and Group Lease Thailand. That is, were their debenture agreements valid or voidable for misrepresentation or breach? That is an issue that this court has no business to determine because Group Lease Thailand is not a party to this suit. Further, the defendants as alleged conspirators are not being sued as such in Thailand.

15 By letter dated 21 February 2018, counsel for the first and second defendants sought leave to file an affidavit of Apichart Phankeasorn. They have appended a copy of the affidavit to the letter, with the request that it to be placed before me. I had given directions on submissions when the hearing adjourned and do not require further submissions or submissions disguised as affidavits. I do not require any further affidavit from any party and the affidavit of Apichart Phankeasorn is therefore totally ignored, with the fullest respect.

16 In deciding whether or not an ex parte Mareva injunction ought to be set aside on the ground of material non-disclosure, the court will naturally ask itself

whether it would have granted the order had those facts been before it at the ex parte hearing. In this case, I did not hear the ex parte application so I have to consider whether I would have granted the application had I been aware of the circumstances that I am aware of in the hearing before me. The submissions have gone beyond the issue of material non-disclosure and I thus considered the question of setting aside and the opposing question of expansion together. For the reasons above, I am of the opinion that there is no merit in granting a Mareva injunction to JTrust Asia, let alone expanding the ex parte order it obtained from Kan SJ into a worldwide Mareva injunction. Consequently, Summonses 148 and 377 are dismissed and Summonses 435 and 436 are allowed. Costs for all four summonses are reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge

Chan Leng Sun SC, Sheik Umar Bin Mohamed Bagushair, Michelle
Lee Ying-Ying and Nicolette Oon Xin Yi (Wong & Leow LLC) for
Plaintiff;

Edric Pan Xingzheng, Chia Huai Yuan, Thng Huilin Melissa and
Zheng Huaice (Dentons Rodyk & Davidson LLP) for 1st and 2nd
Defendants;

Pillai Pradeep G and Simren Kaur Sandhu (PRP Law LLC) for
3rd Defendant;

Eugene Thuraisingam and Suang Wijaya (Eugene Thuraisingam
LLP) for Non-Parties – First Global Funds Limited PCC, Weston
International Asset Recovery Company Limited, Weston Capital
Advisors Inc. and Weston International Asset Recovery
Corporation, Inc.