`IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 50

Civil Appeal No 188 of 2018

Between

Bi Xiaoqiong
(in her personal capacity and as trustee of the Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust)

… *Appellant*

And

(1) China Medical Technologies, Inc (in liquidation)
(2) CMED Technologies Ltd

… *Respondents*

In the matter of Suit No 1180 of 2017
(Summons No 5689 of 2017)

Between

(1) China Medical Technologies, Inc (in liquidation)
(2) CMED Technologies Ltd

… *Plaintiffs*

And

(1) Wu Xiaodong
(2) Bi Xiaoqiong
(in her personal capacity and as trustee of the Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust)

… *Defendants*

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GROUNDS OF DECISION

[Civil Procedure] — [Mareva injunctions]

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Bi Xiaoqiong (in her personal capacity and as trustee of the Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust)
v
China Medical Technologies, Inc (in liquidation) and another

[2019] SGCA 50

Court of Appeal — Civil Appeal No 188 of 2018
Sundaresh Menon CJ, Andrew Phang Boon Leong JA, Judith Prakash JA, Tay Yong Kwang JA and Steven Chong JA
30 April 2019

30 September 2019

Judith Prakash JA (delivering the grounds of decision of the court):

Introduction

1 The injunction to restrain parties from disposing of their assets prior to the disposition of a claim against them, known variously as the freezing order and the Mareva injunction (following the eponymous case, *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980] 1 All ER 213 ("*The Mareva*")), has become firmly entrenched in our legal system as a potent tool. Particularly because of its potentially draconian effect, the precise ambit of the court's power to grant such an injunction remains, in certain circumstances, fiercely contested. In the present appeal, the central question which arose for our determination was this: does the court have the power to grant a Mareva injunction against a defendant to Singapore proceedings where, at the time the injunction is sought, the plaintiff intends to pursue foreign proceedings against

that defendant so that there is a possibility that it will be the foreign proceedings, rather than the Singapore proceedings that terminate in a judgment? At the close of the appeal hearing, we decided that provided the court otherwise had the power to grant a Mareva injunction against the particular defendant, the plaintiff's intention to pursue foreign proceedings could not negate such power.

2 Lawyers and other persons who have followed the development of case law and arguments on the question over the years would be aware that some members of this court had previously held differing views as to the extent of the court's power to grant Mareva injunctions in support of foreign court proceedings. Thus, although we gave oral grounds for our decision at the end of the appeal hearing, we set out at some length in this judgment the arguments and the reasons why this court made the determination it did.

Background facts

Parties to the dispute

3 The first respondent, China Medical Technologies, Inc ("CMT"), was incorporated in the Cayman Islands. Its wholly-owned subsidiary, CMED Technologies Ltd ("CMED"), the second respondent, was incorporated in the British Virgin Islands. CMT's principal business was developing, manufacturing and marketing advanced surgical and medical equipment in China. This business was short-lived as CMT was wound up on 27 July 2012.

4 Mr Wu Xiaodong ("Mr Wu") founded CMT and ran it until it was wound up. He was the largest shareholder of CMT, holding 23% of its issued share capital through a company called Chengxuan International Ltd.

5 The appellant is Ms Bi Xiaoqiong ("Ms Bi" or "the appellant"). She is a

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Singapore citizen. Ms Bi and Mr Wu were married in 1995. They were divorced in 2012 but Ms Bi claims that they separated in 2001 and lived apart thereafter.

6 After investigating the affairs of CMT and CMED, the liquidators of CMT ("the Liquidators") took the view that as much as US$521.8m had been fraudulently misappropriated from the respondents by members of their former management. The respondents therefore started a series of legal proceedings against these persons in both Hong Kong and Singapore. The present action, in which Mr Wu and Ms Bi are the defendants, is one such proceeding.

7 In brief, the background of the alleged fraud is as follows. Between 2005 and 2010, CMT raised capital of approximately US$631m, and had US$515m of that capital at its disposal. Between February 2007 and October 2008, the respondents entered into two transactions for the acquisition of medical technology from Supreme Well Investments Limited ("SW") for a total consideration of US$521.8m ("the Transactions"). Allegations were made subsequently that CMT's management had acted fraudulently in respect of the Transactions.

8 Their investigations led the Liquidators to the view that Mr Wu and other members of the respondents' management had procured the conclusion of the Transactions by withholding from CMT's full board of directors: (a) details of their personal interests in the Transactions; (b) the fact that the chief financial officer of CMT at the time was also the sole authorised signatory of SW's bank accounts; and (c) the fact that the medical technology sought to be acquired in the Transactions was worthless.

9 In particular, the Liquidators discovered that the respondents had acquired only patent applications through the Transactions, and that none of the

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technology acquired had the necessary regulatory approval for sale and use in China at the time. The Liquidators were also advised by experts that the technology acquired was of little value because: (a) the technology acquired in the first transaction had already been in existence for almost 30 years; and (b) the technology acquired in the second transaction did not have any clinical application, and was "inherently unsuited to use in clinical diagnosis".

10 In the circumstances, in the various lawsuits the respondents alleged that the Transactions were used as a means of "stealing US$521.8 million of purported purchase consideration, paid through a series of banking transactions involving Hong Kong bank accounts" controlled by CMT's former management. Of the total of US$521.8m, between 2006 and as late as 2011:

(a) US$355.5m was paid by the respondents via cashier orders to SW's bank accounts. The funds were later transferred from SW's bank accounts to bank accounts of various other persons and entities ("the SW Payees"), all of whom were associated with or controlled by the former management of CMT. The payment out of SW's bank accounts to the SW Payees took place, in many instances, within days of SW receiving the funds. From the SW Payees, the funds were then transferred to other persons and entities ("the Further SW Payees"), a number of whom were associated with or controlled by the former management of CMT. The Further SW Payees include Mr Wu and Ms Bi. From the Further SW Payees, the funds were often further transferred to other recipients.

(b) The balance of US$166.3m was paid to SW through other means, such as bank transfers and cheques.

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11 Mr Wu was subsequently indicted on criminal charges relating to the alleged fraud in the United States of America ("the US"). Ms Bi denied being in any way complicit in the alleged fraud. She claimed that she had no involvement in CMT and its affiliates, except in respect of a Singapore subsidiary, CMT Diagnostics (Singapore) Pte Ltd. She also denied having any knowledge of the alleged breaches of fiduciary duty or trust by the perpetrators of the fraud, or that the moneys received in her bank accounts were the proceeds of the alleged fraud.

Procedural history

The Hong Kong Proceedings

12 On 1 August 2013, CMT commenced proceedings in Hong Kong by way of High Court Action No 1417 of 2013 ("the first HK Suit") against Mr Wu and four others, claiming, *inter alia*, breach of fiduciary duties, breach of trust, conspiracy, money had and received, and knowing receipt, in respect of four specific payments made from CMT to SW. On 23 December 2016, the respondents commenced another set of proceedings in Hong Kong by way of High Court Action 3391 of 2016 ("the second HK Suit") against Mr Wu, Ms Bi and 21 other defendants. The second HK Suit was for causes of action that were similar to those pursued in the first HK Suit, but were in respect of a broader class of payments, namely, any or all payments made between November 2006 and December 2009 by the respondents and their subsidiaries to SW, its subsidiaries and/or its nominees. Ms Bi was served with the writ for the second HK Suit through her solicitors in Singapore.

13 On 11 December 2017, the Hong Kong High Court, pursuant to an application made in the second HK Suit, granted the respondents a worldwide Mareva injunction against, among others, Mr Wu and Ms Bi ("the HK

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Injunction"). The HK Injunction restrained Ms Bi from removing from Hong Kong any of her assets up to a total value of at least US$17.6m. It also provided that she was not to dispose of or deal with any of her assets, whether within or outside Hong Kong, unless she had assets with a total value of at least US$17.6m. The terms of the HK Injunction specifically identified, *inter alia*, property and bank accounts in Singapore.

The Singapore proceedings

14 On 13 December 2017, the respondents commenced this action, Suit No 1180 of 2017 ("Suit 1180"), in the High Court of Singapore. At the same time, they applied by way of Summons No 5689 of 2017 ("SUM 5689") for Mareva injunctions against Mr Wu and the appellant. The endorsement of claim in the writ of summons for Suit 1180 set out substantially the same claims and causes of action as those pursued in the second HK Suit. The Mareva injunctions sought by way of SUM 5689 were to prevent the defendants from disposing of their assets in Singapore only (*ie*, the respondents did not seek *worldwide* Mareva injunctions). In respect of the appellant, the precise order sought was to prevent her from removing her assets from Singapore or dealing with them within the country so long as the total value of her assets in Singapore was below US$17.6m. In particular, the order sought to restrain the disposal of the following assets belonging to the appellant:

(a) a property at 17 Coral Island Singapore which she holds jointly with Mr Wu ("the Coral Island Property");

(b) moneys in an account with United Overseas Bank ("UOB"), held jointly with Mr Wu;

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(c) moneys in two other UOB accounts and one account with Standard Chartered Bank, held in her own name;

(d) moneys in a UOB account in the name of WB International Holding Pte Ltd ("WB International"); and

(e) moneys in an account with Credit Suisse AG, Singapore Branch ("Credit Suisse Singapore"), in the name of Long Chart Investments Limited ("Long Chart").

15 Long Chart and WB International are alleged to be two of the Further SW Payees (see above at [10(a)]), and are defendants in the second HK Suit. The respondents claimed that the appellant controlled Long Chart and WB International for the purposes of perpetrating and concealing the fraud, and/or laundering its proceeds for her benefit. Long Chart is a company incorporated in the British Virgin Islands. It is alleged to have received at least US$3m of the stolen funds. WB International is a company incorporated in Singapore. It is alleged to have received at least US$0.5m of the stolen funds. The appellant is alleged to be the sole director and shareholder of both Long Chart and WB International. At the hearing below, the appellant's counsel accepted that the moneys in both entities "belong to [the appellant], as there is no other person who has an interest in [the] two companies".

16 The writ of summons for Suit 1180 and the papers for SUM 5689 were served on the appellant on 18 December 2017 and shortly thereafter she entered appearance to the action. The appellant thus accepted the *in personam* jurisdiction of the court and, in fact, has not thereafter sought to challenge it.

17 On 4 January 2018, the High Court granted the respondents' application for a Mareva injunction against Mr Wu in SUM 5689 on an *ex parte* basis.

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Mr Wu was unrepresented at that hearing but counsel for the appellant appeared and requested an *inter partes* hearing in so far as the appellant was concerned. The court agreed and adjourned the hearing of SUM 5689 in respect of the appellant.

18 On 20 February 2018, the respondents applied by way of Summons No 878 of 2018 ("SUM 878") to stay Suit 1180, save for the proceedings in SUM 5689, pending the final determination of the first and second HK Suits. The respondents made clear that they intended to pursue the proceedings in Hong Kong because they considered Hong Kong to be "the most appropriate forum for the dispute". The respondents sought a stay of the Singapore proceedings so as to "avoid duplicative proceedings".

Decision below

19 The respondents' applications for a stay of the proceedings and for a Mareva injunction against the appellant were heard together by the Judicial Commissioner ("the Judge") and were granted on 13 August 2018. Full reasons for this decision were set out by the Judge in *China Medical Technologies, Inc (in liquidation and another v Wu Xiaodong and another* [2018] SGHC 178 ("the Judgment").

20 In relation to the injunction application, the appellant's case was that a Singapore court had no power to grant a Mareva injunction in aid of foreign court proceedings and that, even if the court had such power, the injunction should not be granted.

21 The Judge held that the court had the power in the circumstances before her to grant a Mareva injunction. Her reasons were as follows:

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(a) It was not disputed that the respondents have a "reasonable accrued cause of action recognisable in a Singapore court", that Mr Wu and the appellant have assets in Singapore that could be subject to the injunction, and that the court has *in personam* jurisdiction over the appellant as she was properly served with the writ herein.

(b) Section 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the CLA") confers on the court the power to grant a "mandatory order or an injunction" in all cases where it is "just or convenient" to do so and as the courts have recognised that Mareva injunctions (both domestic and worldwide) fall within the ambit of "mandatory order or injunction", the ambit of s 4(10) allows the court to order a Mareva injunction even in aid of foreign court proceedings, so long as it appears just or convenient to the court that the order be made. The Judge noted the divergence of views in the High Court on the ambit of s 4(10) of the CLA, exemplified by the decisions in *Petroval SA v Stainby Overseas Ltd and others* [2008] 3 SLR(R) 856 ("*Petroval*") and *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR(R) 1000 ("*Multi-Code*"), but preferred the approach taken in *Multi-Code*.

(c) The prerequisites for the exercise of the court's power to grant a Mareva injunction are, following *Siskina (Owners of Cargo Lately Laden on Board) and others v Distos Compania Naviera SA* [1979] AC 210 ("*The Siskina*"), that the court must have *in personam* jurisdiction over the defendant and the plaintiff must have a reasonable accrued cause of action recognisable by the court.

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(d) With regard to the requirement that a plaintiff must have an "accrued cause of action against the defendant that is justiciable in a Singapore court", a claim is justiciable if "it is one for a substantive relief which the court *has* jurisdiction to grant and is a claim that *can* be tried by that court" [emphasis in original]. That the court subsequently declines to do so in favour of proceedings elsewhere does not make the cause of action non-justiciable in that court.

22 Having established that the court had the power to grant a Mareva injunction against the appellant, the Judge went on to consider whether that power ought to be exercised in the instant case. We discuss this part of the Judgment in more detail below but, briefly, the Judge held that the facts justified the grant of the injunction applied for because:

(a) The claims against the appellant were for dishonest assistance in the alleged fraud, knowing receipt of the stolen proceeds, and restitution for moneys had and received and at least claims for knowing receipt, and moneys had and received crossed the threshold of a good arguable case.

(b) There was also solid evidence to demonstrate a real risk of asset dissipation by the appellant.

(c) An injunction could be granted against the appellant to prevent her from disposing of moneys in the bank accounts held in the names of WB International and Long Chart, "as the moneys in those accounts are in truth [the appellant's] assets".

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23 The Judge allowed the respondents' application in SUM 878 to stay Suit 1180 "as it [was] not disputed that Hong Kong is the more appropriate forum for the dispute".

Issues that arose in the appeal

24 Initially, Ms Bi appealed against the Judge's decision on both applications – Civil Appeal No 188 of 2018 ("CA 188) was her appeal against the decision to issue an injunction against her while Civil Appeal No 165 of 2018 ("CA 165") was her appeal against the decision to stay the Singapore proceedings.

25 During the hearing, we indicated to counsel for the appellant, Mr Hee Theng Fong, that his position in CA 165 undermined his submissions in respect of CA 188. Mr Hee, quite correctly in our view, recognised this difficulty, and therefore sought leave to withdraw CA 165. We granted leave, and therefore shall not address the merits of the appeal in CA 165, except to explain below why we took the view that it undermined the appellant's case in CA 188.

26 In the circumstances, the following broad issues arose for our consideration:

(a) whether the High Court had the power to grant a Mareva injunction against the appellant ("the Power Issue"); and

(b) if the High Court had such power, whether the Judge should have granted the Mareva injunction against the appellant ("the Discretion Issue").

We will address these issues in turn.

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The Power Issue

27 The Power Issue required us to determine the question that we identified above as central to the present appeal (at [1]): does the court have the power to grant a Mareva injunction against a defendant to Singapore proceedings where, at the time of the application, the plaintiff has taken out foreign proceedings in respect of the same cause of action and intends to pursue its substantive remedy in the foreign court?

The parties' cases

28 The appellant asserted that the court did not have the power to grant a Mareva injunction against her. In support of this position, Mr Hee advanced two main submissions:

(a) First, the legislative intent underlying s 4(10) of the CLA was to aid in the administration of cases *in Singapore*. The Judge erred in relying on cases in which Mareva relief had been granted in aid of a *local* judgment when the present case involved a Mareva injunction in aid of an anticipated judgment from Hong Kong. The latter situation falls outside the contemplated purpose of s 4(10) of the CLA.

(b) Second, it is a pre-requisite to the exercise of the court's power to grant interlocutory relief under s 4(10) of the CLA that the plaintiff has an accrued cause of action that "*will* terminate in a judgment here" [emphasis added]. Once a case is stayed, there would no longer be any claim that *will* terminate in a judgment in Singapore.

29 The respondents contended that the court has the power to grant a Mareva injunction against the appellant because:

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(a) Section 4(10) of the CLA does not preclude the court from granting a Mareva injunction "in aid of foreign proceedings". The provision is broadly drafted, and its "legislative context evinces an intent to confer on the Court the power to make a wide and undefined range of injunctions or orders". Although Mareva injunctions were not specifically contemplated at the time that the predecessor provision to s 4(10) of the CLA was enacted, this did not stop the Singapore and English courts from invoking the equivalent provision as the basis of the court's power to grant Mareva injunctions, both domestic and worldwide.

(b) There is no additional requirement that the accrued cause of action *must* also terminate in a judgment by the court in Singapore. Even if there was a stay of proceedings in Singapore, the Singapore court retained a residual jurisdiction over the underlying cause of action that would ground the court's power to grant a Mareva injunction. That residual jurisdiction would also allow proceedings which had been stayed in Singapore to be revived later and carried forward to judgment if, for some reason, the stay was lifted.

Terminology

30 Before we begin our analysis of the Power Issue, we clarify the terminology that parties have used, and which we shall also apply in the course of the analysis. The parties have referred to the Mareva injunction that was sought by the respondents as a particular sub-category of injunctions being a "Mareva injunction in aid of foreign court proceedings". For convenience, we shall adopt this term, but make two observations about its usage.

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31 First, it must be understood that this is not a term of art. The descriptor "in aid of foreign court proceedings" must be understood in the context of the specific circumstances of the case. The relevant circumstances in the present appeal are that, as Mr Hee accepted, the respondents have a recognised cause of action against the appellant in Singapore, and that the Singapore court has *in personam* jurisdiction over her. To this we would add that the respondents have not just a *potential* cause of action, but one that has been pursued as *actual* proceedings in Singapore in the form of Suit 1180. The foreign element arises because it is clear from their stay application that the respondents intend to pursue the same cause of action against the appellant primarily in Hong Kong, through the second HK Suit. The Mareva injunction sought in Singapore is for the purpose of restraining the appellant from disposing of assets here in the hope that eventually such restraint will aid in the enforcement of any judgment that the respondents might obtain against her in Hong Kong. It is in *this* context that the Mareva injunction sought by the respondents in this case is said to be "in aid of foreign court proceedings", and it is in this context that we shall use the term.

32 Second, to say that a Mareva injunction is in aid of foreign court proceedings is simply to recognise that the intended *purpose* of the injunction is to aid in the prospective enforcement of a foreign judgment. The usage of the term does not in itself have doctrinal or juridical implications. Indeed, as we shall explain below, the power to grant such a Mareva injunction (as in the circumstances of the present appeal) is ultimately founded on, and in support of, proceedings *in Singapore*. The descriptor "in aid of foreign court proceedings" is nonetheless used to distinguish the type of Mareva injunction granted by the Judge from the more usual case where a Mareva injunction is granted in aid of proceedings which will only be pursued in Singapore.

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33 We underscore that the present case is but one set of circumstances in which a Mareva injunction sought in Singapore may be said to be in aid of foreign court proceedings. For instance, had the respondents sought a Mareva injunction without having instituted Suit 1180, it could, in our view, be said that such an application would be for a Mareva injunction in aid of foreign court proceedings. Yet that situation would engage different considerations. Whether the court has the power to grant a Mareva injunction in *those* circumstances is not the issue before us. Therefore, we do not refer to that situation when we use the term "Mareva injunction in aid of foreign court proceedings".

34 We now turn to our analysis of the Power Issue proper. Given Mr Hee's submissions on the point, two sub-issues arose for our decision. They were:

(a) whether s 4(10) of the CLA confers on the court the power to grant a Mareva injunction in aid of foreign court proceedings; and

(b) whether there is a requirement that for the court to grant a Mareva injunction under s 4(10) of the CLA, the cause of action, in support of which the Mareva injunction is sought, *will* (or must) terminate in a judgment in Singapore.

Whether section 4(10) of the CLA confers on the court the power to grant a Mareva injunction in aid of foreign court proceedings

35 The first sub-issue was essentially a matter of statutory interpretation. The principles guiding this exercise are well-established: see *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") and *Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 ("*Lam Leng Hung*"). There are three steps in this exercise (*Lam Leng Hung* at [67]):

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(a) first, ascertaining the possible interpretations of the text, as it has been enacted;

(b) second, ascertaining the legislative purpose or object of the statute; and

(c) third, comparing the possible interpretations of the text against the purposes or objects of the statute.

The text of s 4(10) of the CLA

36 We begin with the text of s 4(10) of the CLA, which reads as follows:

> ***Injunctions and receivers granted or appointed by interlocutory orders***
>
> (10) A Mandatory Order 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.

37 It was evident to us that the broad language used in s 4(10) of the CLA confers on the court a wide power to grant mandatory orders or injunctions. The only express requirements imposed by the language of s 4(10) of the CLA are that the injunction must be of an "interlocutory" nature, and that it can be made only in "cases in which it appears to the court to be just or convenient that such order should be made". As a starting point at least, s 4(10) of the CLA would appear to be broad enough to encompass Mareva injunctions in aid of foreign court proceedings (and indeed *any* injunction of an interlocutory nature).

38 Mr Hee's submission was that notwithstanding the apparently broad language used in s 4(10) of the CLA, the provision does not confer on the court the power to grant Mareva injunctions in aid of foreign court proceedings. We

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would observe that it was not entirely clear to us on what word or phrase within s 4(10) of the CLA Mr Hee was resting this interpretation. As mentioned above (at [35(a)]), the first step in the court's approach towards the purposive interpretation of statutes is to ascertain the possible *interpretations* of the text. This in turn entails an analysis of the ordinary meaning of the "words of the legislative provision" (*Tan Cheng Bock* at [38]). Put differently, an "interpretation" of a provision cannot be plucked out of the air, without being grounded in the actual words used in the provision. In the present case, we were of the view that Mr Hee's submission was best understood as a submission that the word "injunction" as used in s 4(10) of the CLA excludes injunctions in aid of foreign court proceedings.

39 We did not, however, accept that the ordinary meaning of "injunction" would naturally carry such a specific exclusion. *Black's Law Dictionary* (Bryan A. Garner, ed) (Thomson Reuters, 10th Ed, 2014) defines "injunction" as "[a] court order commanding or preventing an action" (at p 904). This seemed to us to be a fair way to put the ordinary meaning of "injunction". Although there are many different types of injunctions, they may all be described as being a court order commanding or preventing an action. There is nothing inherent in the meaning of "injunction" that requires it to be made for the purpose of supporting local proceedings only. The purpose for which an injunction is obtained is not ordinarily an element in the definition or meaning of "injunction". Consequently, we were of the view that the ordinary meaning of "injunction" would not exclude the Mareva injunction in aid of foreign court proceedings. On this interpretation, s 4(10) of the CLA would confer on the court the power to grant such an injunction.

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The legislative purpose underlying s 4(10) of the CLA

40 The main thrust of Mr Hee's submission was that the legislative purpose of s 4(10) of the CLA was confined to the improvement of the administration of civil law or cases *in Singapore*, and had nothing to do with foreign proceedings. In support of this submission, Mr Hee relied principally on a single statement by the then Attorney-General for the Straits Settlements ("the AG-SS") on the purpose of the legislation that contained the original version of s 4(10). We shall address this statement and its relevance below, but first set out the relevant legislative history.

41 Section 4(10) of the CLA may be traced back to its original enactment as s 2(8) of the Straits Settlements Ordinance No IV of 1878 ("the 1878 Ordinance"), which was based on, and largely identical to, s 25(8) of the Supreme Court of Judicature Act 1873 (c 66) (UK) ("the 1873 UK Act").

42 Section 2(8) of the 1878 Ordinance, as appears from s 2(8) of the Civil Law Bill which was passed on 7 May 1878, provided as follows:

> *Injunctions and Receivers*
>
> (8.) *A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court, in all in cases in which it shall appear to the Court to be just or convenient that such Order should be made; and any such Order may be made, either unconditionally or upon such terms and conditions as the Court shall think just*; and, if an injunction is asked, either before, or at or after, the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession, under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both, or by either of the parties, are legal or equitable.

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> [emphasis added in italics and underlined italics]

43 For the legislative intent behind the provision, Mr Hee relied on a statement by the AG-SS made in a report on the 1878 Ordinance ("the 1878 Statement"). The relevant portion of the 1878 Statement relied upon is as follows:

> The several provisions of this Ordinance [*ie*, the 1878 Ordinance] are calculated to improve the administration of Civil Law *in the Colony*, and with the Civil Procedure Ordinance will open a new era in our legal history, as in future we may expect to be relieved from much of the delay, difficulty and expense attending the very complicated and defective system of law and procedure hitherto in force. [emphasis added]

44 Mr Hee submitted that the 1878 Statement demonstrated that the legislative intent in 1878 was confined to the improvement of the administration of civil law or cases "in Singapore". Further, because s 4(10) of the CLA has remained substantially unchanged since it was enacted in the form of s 2(8) of the 1878 Ordinance, the legislative intent behind the provision too must have remained unchanged. Mr Hee pointed out that this court in *Swift-Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR(R) 629 ("*Swift-Fortune*") had observed that the legislative intent behind the provision could not have changed since 1878.

45 In *Swift-Fortune*, this court was faced with the issue of whether a Mareva injunction could be granted in support of foreign *arbitral* proceedings. The relevant provision under the relevant statute, the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA"), granted the court the same power to make orders as it has for the purpose of and in relation to an action in the court. This was understood to be a reference to s 4(10) of the CLA "as the source of statutory power for the court to grant interlocutory relief, including Mareva injunctions, in aid of foreign proceedings" (at [62]). The court therefore

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considered the scope of s 4(10) of the CLA, and made the following observations on its legislative history and the possible intent behind it (at [94]):

> 94 We have pointed out earlier that s 4(10) of the CLA has remained unchanged since it was enacted in 1878, and that therefore the *legislative intent of s 4(10) has also not changed*. The meaning of s 4(10) does not change because social or political conditions have changed. In *Pettitt v Pettitt* [1970] AC 777 at 813, Lord Upjohn said:
>
> > Nor can the meaning of a statute have changed merely by reason of a change in social outlook since the date of its enactment; it must continue to bear the meaning which upon its true construction in the light of the relevant surrounding circumstances it bore at that time.
>
> It is therefore open to argument in a future case w*hether in the context of the political and commercial conditions existing in Singapore in 1878, the legislature of the Straits Settlements had intended s 4(10) to give power to the court to grant interlocutory injunctions in aid of foreign court proceedings*, or even less likely in aid of foreign arbitral proceedings. Unlike in England where legislative and policy developments since the 1980s appeared to have influenced the courts in their interpretation of s 37(3) of the English 1981 Act (which has no equivalent in Singapore), there has been no such development in Singapore in relation to s 4(10) of the CLA as a source of statutory authority in relation to Mareva injunctions in aid of foreign proceedings until the enactment of the IAA. Given that Parliament ignored s 4(10) of the CLA entirely when it enacted the IAA to provide a new statutory framework for international arbitrations in Singapore, a court would need to know why it was necessary to enact s 12(7) of the IAA if the court had power under s 4(10) to grant Mareva relief in aid of foreign arbitrations. Perhaps it was simply a case of Parliament's attention not having been drawn to the need to provide a broader framework to deal with interim measures to assist foreign proceedings, whether court or arbitral proceedings.
>
> [emphasis added]

These observations, Mr Hee submitted, showed that this court in *Swift-Fortune* "strongly hinted" that the Singapore court does not have the power on the face of the legislation to grant a Mareva injunction in aid of foreign court proceedings.

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46 We begin our analysis by noting that in the context of the court's approach to the purposive interpretation of statutes, Mr Hee's reliance on the 1878 Statement was in effect reliance on extraneous material in an attempt to assist the court in ascertaining the meaning of the provision. Section 9A(2) of the Interpretation Act (Cap 1, 2002 Ed Rev Ed) permits the court to have regard to extraneous material in three situations. Of relevance is s 9A(2)(*b*)(ii) which permits recourse to extraneous material to ascertain the meaning of the text in question where, having deduced the ordinary meaning of the text, and considering the underlying object and purpose of the written law, such ordinary meaning is absurd or unreasonable. It appeared to us that Mr Hee's reliance on the 1878 Statement was reliance on extraneous material to "ascertain" the meaning of the text, in this case the term "injunction", on the basis that the term was "ambiguous or obscure". Although we did not think that the term "injunction" created any ambiguity (as we explained above at [39]), we nonetheless set out our reasons why we did not accept this submission.

(1) The material relied upon by Mr Hee

47 The first reason we did not accept Mr Hee's submission is that we did not agree that the 1878 Statement could be interpreted in the manner that Mr Hee suggested. Effectively, Mr Hee's case was that the observation that several provisions of the 1878 Ordinance were "calculated to improve the administration of Civil Law in the Colony" should be understood to mean that the legislative intent underlying the 1878 Ordinance, in particular s 2(8), was not to confer on the court the power to grant injunctions in aid of foreign court proceedings.

48 Mr Hee's submission, as we understood it, was premised on the idea that there is an incompatibility between (a) the administration of civil law in

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Singapore; and (b) the grant of a Mareva injunction in support of foreign court proceedings. He suggested that the grant of a Mareva injunction in support of foreign court proceedings would not be part of, or go towards, the administration of law in Singapore. But this premise is not well-founded. In the first place, the power to grant such a Mareva injunction (if it exists) would itself arise from Singapore law. Further, the court's power to grant a Mareva injunction is merely part of its *ancillary* jurisdiction that arises by virtue of *proceedings in Singapore*. It would therefore, if granted, be part of the administration of civil law in Singapore. It is true that a Mareva injunction may, as a matter of *fact*, assist an applicant in proceedings elsewhere. But that does not, in our view, change the analysis that the very basis for the grant of such a Mareva injunction would be the Singapore proceedings, and its effect would therefore be to aid in the administration of law in Singapore.

49 Further, as a matter of interpreting the extraneous material placed before us, we would add that we did not think the words "administration of Civil Law in the Colony" were intended at all to refer to the scope of the court's powers under the 1878 Ordinance or any of its provisions in particular. Those words did not, in our view, import the concept of territoriality of court orders made in Singapore. Nor did those words suggest that the AG-SS had in mind the issue of how court orders made in Singapore might be used by litigants – whether in support of Singapore proceedings or foreign court proceedings. In our view, all that was meant by the 1878 Statement was that several provisions in the 1878 Ordinance were intended to improve legal processes, or the way things were done, in the Colony. The AG-SS simply meant to say that the 1878 Ordinance would improve the efficiency of the legal system in the Colony at the time. This is borne out by the fact in the *very* sentence relied upon by Mr Hee, the AG-SS went on to state that he hoped that with the passing of the 1878 Ordinance along

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with a separate ordinance on civil procedure, there would be less "delay, difficulty and expense attending the very complicated and defective system of law and procedure hitherto in force" (above at [43]).

(2) The purpose behind s 4(10) of the CLA

50 Our second reason is more fundamental. In our view, the statement by the AG-SS does not cast light on the purpose underlying s 2(8) of the 1878 Ordinance. Although we accept that part of the purpose behind the 1878 Ordinance would have been to improve the efficiency of the legal system in the Colony at the time, that is merely the intended *outcome* of the 1878 Ordinance, and does not make clear *how* the Legislative Council for the Straits Settlements intended to achieve that outcome. In our view, that latter inquiry holds the key to determining the scope of the power that was intended to be conferred on the court by the enacting of s 2(8) of the 1878 Ordinance. Having considered the materials before us, we reached the conclusion that the legislative intent behind s 2(8) of the 1878 Ordinance was to preserve the power of the court to grant the equitable remedy of injunctions, as part of the broader aim of the 1878 Ordinance to facilitate the concurrent administration of law and equity.

51 We start with the 1878 Ordinance. The long title of the 1878 Ordinance is "An Ordinance to improve the Civil Law". Its preamble states: "Whereas it is expedient to extend to this Colony the recent improvement in the law in England, whereby Law and Equity are to be concurrently administered, and otherwise to improve the Civil Law". The preamble makes clear that the 1878 Ordinance had two aims. First, it was for the specific purpose of extending to the Straits Settlements the "recent improvements in the law in England, whereby Law and Equity are to be concurrently administered". Second, it conveyed the more general purpose of the 1878 Ordinance, which was to otherwise "improve the

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Civil Law". This conclusion is justified by the various provisions in the 1878 Ordinance. Each of the 14 sections in the 1878 Ordinance can be said to further one of these two legislative objectives.

52 Next, we note that a similar view was expressed by the AG-SS in the report relied upon by Mr Hee. In the opening paragraph of his report, the AG-SS noted that the 1878 Ordinance "introduce[d] Sections 24 and 25 of the Imperial Supreme Court of Judicature Act 1873", *ie*, the 1873 UK Act. The AG-SS went on to explain what these sections entailed:

> The Sections lay down the principles on which the Courts are to be guided *in administering Law and Equity concurrently*, and as the arrangement is to be adopted in our Court, these two governing Sections are necessary, but being matters of substantive law, they are put in a separate Ordinance, The Civil Procedure Ordinance, which was passed on the same day, is confined to matters of Procedure. [emphasis added]

53 Consequently, as much as it may be said that the overall, or general, purpose of the 1878 Ordinance was to improve civil law in the Straits Settlements, we were concerned with the more specific purpose underlying s 2(8) of the 1878 Ordinance as the predecessor provision to s 4(10) of the CLA. The importance of distinguishing between the specific purpose underlying a particular provision and the general purpose underlying the statute as a whole has been acknowledged by this court: *Lam Leng Hung* at [69]. In the present context, the general purpose of the 1878 Ordinance, *ie*, to improve the administration of the civil law of the Straits Settlements, was too vague to aid in determining the narrow question of the scope of powers conferred on the court by s 2(8) of the 1878 Ordinance. Instead, the specific purpose underlying s 2 of the 1878 Ordinance, *ie*, to facilitate the concurrent administration of the common law and equity in the courts of the Straits Settlements, was, in our view, of greater assistance.

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54 We were fortified in our views by the legislative purpose underlying ss 24 and 25 of the 1873 UK Act which were the provisions from which ss 1 and 2 of the 1878 Ordinance were adopted. Essentially, the 1873 UK Act provided for the union of various courts then in existence into a single Supreme Court of Judicature: s 3 of the 1873 UK Act. To effect this great change, the 1873 UK Act included an array of provisions to address various aspects of the establishment of this new Supreme Court of Judicature. Part II of the 1873 UK Act set out the jurisdiction of the new court while ss 24 and 25 stated the law which the court would apply and provided for the concurrent administration of the common law and equity. This was a significant aim, and was one which fell within the broader legislative purpose underlying the 1873 UK Act.

55 Section 25(8) of the 1873 UK Act was one of the instances in which the statute provided that rules of equity were to prevail over the rules of the common law. By this sub-section, the new Supreme Court of Judicature was conferred with the power to grant "a mandamus or an injunction" in appropriate cases. This was necessary and was an instance where equitable rules were expressed to prevail over the common law rules because, prior to then, the common law courts had only a very limited power to grant injunctions. As I.C.F Spry, *The Principles of Equitable Remedies: Specific Performance, Injunctions, Rectification and Equitable Damages* (Sweet & Maxwell, 8th Ed, 2010) ("Spry") notes (at pp 323–324):

> The granting of injunctions has long fallen within the inherent powers of courts of equity. Indeed, it has proved to be the most important of those powers, both because it has enabled the position of courts of equity to be maintained as against courts of law and also because the concern of equity with the *conscionability of particular behaviour of the defendant led to a need for a remedy consisting in a personal direction to him requiring him to abstain from an unconscionable setting up of rights at law or from the performance of other specified acts.*
>
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> At first the courts of common law had no power to grant injunctions, and if a plaintiff required both damages and an injunction he was generally obliged to proceed separately at law and in equity. In 1854, however, it was provided by s. 79 of the Common Law Procedure Act …
>
> [emphasis added]

56 Essentially, therefore, the injunction was a remedy fashioned by the courts of equity, and its critical feature was its ability to act *in personam* on person(s) before the court, and to restrain particular behaviour on the part of such person(s). As part of the move towards the concurrent administration of the common law and equity through the 1873 UK Act, s 25(8) was simply intended to preserve the previous position, *ie*, that the court (in its new form) would continue to have the power to grant such injunctions as it had before. Spry states that s 25(8) of the 1873 UK Act was not intended to substantively change the powers that either of the courts previously had (at pp 330–331):

> The second and preferable view, therefore, is that s. 25(8) was not concerned *to confer a power to grant injunctions where neither a court of equity nor a court of common law would previously have had that power* and that it was passed largely ex abundanti cautela. So Brett L.J. observed that "*if no court had the power of issuing an injunction before the Judicature Act, no part of the High Court has power to issue such an injunction now*"; and it has been said that it was not intended by provisions such as s. 25(8) "to depart in any way from the principles previously settled in reference to the granting of injunctions". More recently it has been stated in the House of Lords that such provisions as s. 25(8) "dealt only with procedure and had nothing to do with jurisdiction".
>
> Hence the correct analysis of these questions is based on a distinction between matters which go to the jurisdiction or powers of the court and matters which merely affect the exercise by the court of its discretion and which may lead to the formulation of rules of practice. The *actual power or jurisdiction to grant injunctions has remained the same*, since, given jurisdiction over the person of the defendant, *in courts of equity it has always been without limit*, and could indeed be exercised either in support of any legal right, or in the creation of a new equitable right, as the court thought fit in the application of equitable principles.

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[emphasis added]

57 In the light of the foregoing, there was little reason for us to conclude that s 25(8) of the 1873 UK Act was intended to limit the powers of the court to granting discrete *types* of injunctions. Instead, the intention underlying s 25(8) of the 1873 UK Act was to preserve the power of the court to grant injunctions. This is the power to restrain conduct of all kinds, and is as broad as that which the courts of equity had. Put simply, s 25(8) of the 1873 UK Act preserved, or confirmed, the court's equitable jurisdiction in respect of granting injunctions.

58 We, therefore, could not accept Mr Hee's submission that s 4(10) of the CLA, which is derived ultimately from s 25(8) of the 1873 UK Act, did not confer on the court the power to grant Mareva injunctions in support of foreign court proceedings. Indeed, to accept the argument that the provision does not confer that power on the court merely because Parliament had not contemplated that *specific type* of injunction would be to accept that the court had no power to grant *any and all* Mareva injunctions. Indeed, Mr Hee was understandably concerned to limit his submission only to Mareva injunctions in support of foreign court proceedings. But, with respect, we could not see any principled basis to distinguish the two if, as was the case, the premise of Mr Hee's submission was that Parliament had not contemplated the specific type of injunction at the time s 25(8) of the 1873 UK Act (or the local equivalent provision) was enacted. It was not until nearly 100 years after the enactment of the 1873 UK Act that the Mareva injunction emerged as a remedy that the courts could grant. Clearly the UK Parliament in enacting the 1873 UK Act would not have contemplated that a Mareva injunction, even one in support of local proceedings, was a type of injunction that the courts could grant. Yet that did not preclude Lord Denning MR in *The Mareva* (at 214) and, later, Lord Diplock in *The Siskina* (at 254) from holding that s 45(1) of the Supreme Court of

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Judicature (Consolidation) Act 1925 (c 49) (UK) ("the 1925 UK Act"), the successor provision to s 25(8) of the 1873 UK Act, conferred on the court the power to grant Mareva injunctions.

59 It must be noted that, fundamentally, the Mareva injunction is but a specific manifestation of the broader power of the court to restrain the conduct of person(s) before it. Its nature is that of an interlocutory injunction, and on that basis it falls within the scope of s 25(8) of the 1873 UK Act. There is no reason to doubt that the same intentions applied to the transplant of that provision to the Straits Settlements in the form of s 2(8) of the 1878 Ordinance, and to its incarnation as s 4(10) of the CLA in present-day Singapore. Accordingly, s 4(10) of the CLA should be read as conferring on the court the power to grant Mareva injunctions, even when sought in support of foreign proceedings. (That is of course subject to the restraints that the court places upon itself in the grant of such injunctions, which will be addressed below.) A similar view has been expressed in Philip Jeyaretnam SC and Lau Wen Jin, "The Granting of Mareva Injunctions in Support of Foreign Court Proceedings" (2016) 28 SAcLJ 503 ("*Jeyaretnam SC and Lau*") (at paras 44–46):

> 44 Moreover, it is suggested that the inquiry should not be on whether:
>
> > … in the context of the political and commercial conditions existing in Singapore in 1878, the legislature of the Straits Settlements had intended s 4(10) to give power to the court to grant interlocutory injunctions in aid of foreign court proceedings.
>
> Rather, the *inquiry should be on whether a Mareva injunction is a "Mandatory Order or an injunction" within the meaning of s 4(10)*. This is because s 4(10) provides that the court may grant a "Mandatory Order or an injunction … in all cases in which it appears to the court to be just or convenient that such order should be made". Therefore, if one acknowledges that a Mareva injunction is a "Mandatory Order or an injunction", then the decision as to whether to grant one in aid of foreign proceedings is one for the court to make if it finds it just or

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> convenient to grant the Mareva injunction for that purpose. *Seen in this light, whether the Legislature which enacted s 4(10) intended s 4(10) to extend to aiding foreign court proceedings becomes less relevant.* …
>
> 45 A future court interpreting s 4(10) of the Civil Law Act may draw inspiration from how the *Mareva injunction* simpliciter *is based on s 4(10) even though s 4(10) was enacted at a time when the Mareva injunction did not exist.* It is well known that it was Lord Denning MR in the English Court of Appeal who fashioned the Mareva injunction against foreign parties out of the words of s 45(1) of the Supreme Court of Judicature (Consolidation) Act 1925 ("the English 1925 Act") in *Mareva Compania Naviera SA v International Bulkcarriers SA*. In that case, Lord Denning asserted that s 45 of the English 1925 Act gave the court a wide general power to grant protective injunctions. However, later decisions held that the predecessor of s 45 did not confer any additional jurisdiction on the court, and that that section dealt only with procedure and had nothing to do with jurisdiction. Doubts were also expressed as to the power of the English court to grant Mareva injunctions against non-residents, and this led to the enactment of s 37(3) of the English 1981 Act to give the court express authority in this regard. On the other hand, s 4(10) of the Singapore Civil Law Act has been materially unchanged since its enactment as s 4(8) of the Civil Law Ordinance of 1926, and is materially the same as s 45(1) of the English 1925 Act, with no equivalent to s 37(3) of the English 1981 Act. Yet, that did not stop the Singapore courts from invoking s 4(10) in the 1980s as the statutory source of power to grant Mareva injunctions, which only first emerged in 1975, in court proceedings.
>
> [emphasis added]

60 For completeness, we note that the question whether s 4(10) of the CLA confers on the court the power to grant Mareva injunctions in support of foreign court proceedings was expressly left open by this court in *Swift-Fortune*. Indeed, the issue was not truly before the court then because the plaintiff there did not even have a justiciable right against the defendant (at [87]). Accordingly, even if s 4(10) of the CLA conferred on the court the power to grant a Mareva injunction in aid of foreign arbitral proceedings, the requirements for the grant of such a Mareva injunction would not have been satisfied. Further, as there was pending at the time a separate appeal in which the plaintiff had a justiciable

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cause of action in Singapore, and which therefore *truly* raised the issue of the scope of s 4(10) of the CLA, this court decided that it would not be prudent to say anything that might be interpreted as either approving or disapproving the decision from which the separate appeal arose (at [93]). This court in *Swift-Fortune* noted that there were "arguments for and against" construing s 4(10) of the CLA as conferring such a power (at [93]), and, even in the passages relied upon by Mr Hee, this court made clear that the point remained "open to argument in a future case" (at [94]). All that this court raised was that there was an argument to be made that "in the context of the political and commercial conditions existing in Singapore in 1878", the intention underlying s 4(10) of the CLA may not have been to confer on the court the power to grant Mareva injunctions in support of foreign court proceedings. We considered that argument fully in the present appeal and, for the reasons we have given, rejected it.

61 We therefore held that s 4(10) of the CLA confers on the court the power to grant Mareva injunctions, including those in support of foreign court proceedings.

Whether the cause of action, in support of which the Mareva injunction is granted, must terminate in a judgment in Singapore

62 Having established that s 4(10) of the CLA does not bar the court from granting Mareva injunctions in aid of foreign court proceedings, we now turn to consider whether the grant of such a remedy is nonetheless precluded by other restrictions upon the court's power to grant injunctions. The court's power, though broad, is subject to at least two conditions. This position is borne out by the authorities and was accepted by the parties. The first is that the court must have *in personam* jurisdiction over the defendant, and the second is that the

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plaintiff must have a reasonable accrued cause of action against the defendant in Singapore. We shall refer to these conditions as the Jurisdiction requirement and the Cause of Action requirement respectively. It was not disputed that both these requirements were satisfied on the present facts. The sole issue therefore was whether a third condition had to be met. Mr Hee submitted that indeed such a third condition existed. He expressed the third condition as a requirement that the cause of action against the defendant must also terminate in a judgment rendered by the court that issues the injunction. We shall refer to this as the Forum requirement.

63 As the Judge noted, the position on this issue is not entirely settled in Singapore given the divergence in views expressed by the High Court in *Petroval* and *Multi-Code* (see above at [21(b)]). We first consider the approaches taken in foreign jurisdictions as they provide a useful backdrop against which to analyse the local cases.

The position in England

64 The starting position may be found in the House of Lords decision in *The Siskina*. In that case both the Cause of Action requirement and the Jurisdiction requirement for the grant of Mareva injunctions were enunciated and both were found to be lacking on the facts before the House of Lords.

65 The plaintiffs were the owners of cargo shipped on board a Panamanian vessel owned by the defendant, a Panamanian company. The bills of lading issued conferred exclusive jurisdiction on the Genoese court. The defendant wrongfully discharged the plaintiffs' cargo in Cyprus. The plaintiffs had to incur additional freight to ship the cargo to its ultimate destination. After discharging its cargo, the vessel sank. The defendant's only asset was the proceeds of its

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insurance policy which were payable in London. This was the only connection with England or the English law and it was not a connection that was relevant to the plaintiffs' claim against the defendant. The plaintiffs nevertheless sought a Mareva injunction in London over the insurance proceeds, pending settlement of proceedings in Cyprus where the defendant's claim for a lien over the cargo was being disputed. The plaintiffs obtained leave to serve the writ out of jurisdiction on the defendant. The defendant applied to set aside service of the writ and to discharge the injunction.

66 The House of Lords agreed that the service should be set aside and the injunction discharged. Lord Diplock (with whom the other Law Lords agreed) situated the court's power to grant Mareva injunctions under s 45(1) of the 1925 UK Act. In the course of his judgement, he mentioned with admirable succinctness the conditions that had to be met. Lord Diplock observed in relation to s 45(1), (at 254):

> That subsection, speaking as it does of interlocutory orders, presupposes the existence of an action, actual or potential, claiming substantive relief which the High Court has jurisdiction to grant and to which the interlocutory orders referred to are but ancillary.

That passage contained both the Cause of Action and the Jurisdiction requirements. His Lordship noted that the jurisdiction of the English courts was restricted to those who could be served within the jurisdiction or, exceptionally, outside it if the facts fell within one of the connecting factors enunciated in the sub-rules of Order 11 of the Rules of the Supreme Court. On the facts of *The Siskina*, there was "nothing [in England] on which to found an action within the jurisdiction of the High Court to which a *Mareva* injunction can be attached" (at 255).

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67 Lord Diplock did consider the plaintiffs' submission that their claim fell within the sub-rule which allowed service out of jurisdiction in respect of an action which sought an injunction. The plaintiffs had submitted that that sub-rule was wide enough to include an interlocutory injunction, and it therefore did not require a substantive claim that could result in a final judgment. Lord Diplock rejected this submission in the following terms (at 256):

> The words used in sub-rule (*i*) are terms of legal art. The sub-rule speaks of "the action" in which a particular kind of relief, "an injunction" is sought. This pre-supposes the existence of a cause of action on which to found "the action." A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant *arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff* for *the enforcement of which the defendant is amenable to the jurisdiction of the court*. The right to obtain an interlocutory injunction is *merely ancillary and incidental to the pre-existing cause of action*. [emphasis added]

Lord Diplock thus made clear that an interlocutory injunction is not a cause of action in and of itself. On the facts, the plaintiffs had only a claim for an interlocutory injunction as they had "no legal or equitable right or interest in the insurance moneys" payable to the defendant which was enforceable by a final judgment of the English court (at 257).

68 To summarise, Lord Diplock held that because a Mareva injunction is an interlocutory injunction, there must in the first place be an action claiming substantive relief to which the Mareva injunction is ancillary. The court must also have *in personam* jurisdiction over the defendant. Because the plaintiffs could not obtain leave to serve the writ on the defendant (due to the lack of a substantive cause of action in England), the defendant was not amenable to the jurisdiction of the English court; *ie*, the court had no *in personam* jurisdiction over the defendant. Seen in this light, the central holding in *The Siskina* is that

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the plaintiffs could not meet either, let alone both, of the conditions accepted as needed for the grant of a Mareva injunction. The facts did not require the court to consider the possible existence of an additional third condition, that is, the Forum requirement and therefore Lord Diplock's statement at 256 that:

> … to come within [sub-rule (*i*)] the injunction sought in the action must be part of the substantive relief to which the plaintiff's cause of action entitles him; and the thing that it is sought to restrain the foreign defendant from doing in England must amount to an invasion of some legal or equitable right belonging to the plaintiff in this country and enforceable here by a final judgment for an injunction.

was *obiter*, to the extent it implied the existence of such requirement.

69 The next significant decision is *Channel Tunnel Group Ltd and another v Balfour Beatty Construction Ltd and others* [1993] 2 WLR 262 ("*Channel Tunnel*"). There, the plaintiffs had contracted with the defendants to build an underwater tunnel and, by a later variation, to construct a cooling system. Clause 67 of the contract provided for disputes to be first referred to a panel of experts, and finally to arbitration in Brussels. A dispute arose as to the amounts payable in respect of work on the variation. The defendants threatened to suspend work. The plaintiffs issued a writ in England seeking an injunction to restrain the defendants from suspending the work. The plaintiffs applied for an interim injunction and the defendants applied to stay the action in favour of arbitration. The case ended up in the House of Lords.

70 Lord Mustill, who delivered the leading judgment, first concluded that the defendants were entitled to a stay of the plaintiffs' action (at 278–279). As he took the view that the power to grant interim injunctions conferred by the arbitration statute was not intended by Parliament to apply to a foreign arbitration (at 282), he proceeded to consider the application for an interim

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injunction under s 37(1) of the Supreme Court Act 1981 (c 54) (UK). Sections 37(1) and (2) use similar language to s 25(8) of the 1873 UK Act, and s 4(10) of the CLA. In our view, nothing turns on this difference in language for the purpose of the present appeal. Lord Mustill then noted that although the terms of the provision were very wide, it was "firmly established by a long history of judicial self-denial that they are not to be taken at their face value and that their application is subject to severe constraints" (at 284). However, he rejected the defendants' submission that the "English court can never grant an injunction in support of a cause of action which the parties have agreed shall be the subject of an arbitration abroad, and a fortiori where the court has itself halted the proceedings in England" (at 285). In his view, it was sufficient to say that (at 285):

> … the doctrine of the Siskina, put at its highest, is that the right to an interlocutory injunction cannot exist in isolation, but is always incidental to and dependant on the enforcement of a substantive right, which usually although not invariably takes the shape of a cause of action. *If the underlying right itself is not subject to the jurisdiction of the English court, then that court should never exercise its power* under section 37(1) by way of interim relief. [emphasis added]

71 On that basis, it made no difference to him that in a dispute between parties there was an arbitration agreement which called for arbitration abroad. In his view, such a situation (at 286):

> … may indeed have an indirect effect on the availability of injunctive relief. Very often it happens that where there is an arbitration agreement between foreign parties the English court has jurisdiction only because the agreement stipulates that the arbitration shall be held in London, thereby justifying the inference of English law as the substantive proper law of the contract, and hence giving the court jurisdiction over the cause of action under Ord. 11, r. 1(1)(*d*)(*iii*). If the seat of the arbitration is abroad this source of jurisdiction is cut off, and the inhibitions created by the [Siskina authorities] will preclude the grant of an injunction. *Nevertheless, if the facts are such that the court has jurisdiction in some way other than the one*

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> *just described I can see no reason why the additional foreign element should make any difference to the* ***residual jurisdiction*** *of the court over the dispute*, and hence to the existence of the power to grant an injunction in support. So also in the present case. If the [defendants] had really wanted to find out as a matter of urgency whether they were entitled to carry out their threat to stop work *they might perhaps have decided that it was better to press for a speedy trial in the Commercial Court*, rather than wind up the cumbersome method of clause 67, and hence abstained from asking for a stay. In such a case there could be no doubt about the power of the court to grant an injunction. *Similarly if clause 67 had for some reason broken down and the parties had been forced to resume the action. I am unable to see why the fact that the action is temporarily, and it may very well be permanently, in abeyance should adversely affect the powers of the court*, although of course it may make all the difference to the way in which those powers should be exercised. [emphasis added in italics and bold italics]

72 Lord Mustill thus considered that although the plaintiffs' commencement of the action was a breach of the arbitration agreement, and "in this sense the [defendants] were not 'properly' before the court", that did not bring into the play the limitations on the powers of the court established by the line of cases following *The Siskina* (at 286). *Channel Tunnel* is significant because of Lord Mustill's recognition of the court's residual jurisdiction to grant interim injunctions, even when the action might have been stayed by the court.

The position in Hong Kong

73 The decision of the Privy Council on appeal from Hong Kong in *Mercedes Benz AG v Leiduck* [1996] 1 AC 284 ("*Mercedes Benz*") followed soon after *Channel Tunnel*. The plaintiff there had originally commenced civil proceedings against the defendant, a German national, in Monaco. He then started an action against the defendant in Hong Kong solely because the defendant had assets there and successfully applied *ex parte* for a Mareva injunction in that action. It was clear from the facts that neither the claim nor the defendant had any other connection with Hong Kong. The defendant applied

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for the order for service out of the jurisdiction and the grant of the injunction to be discharged. The Privy Council decided, by a majority, that that order could not be maintained. Lord Mustill delivered judgment for the majority, with Lord Nicholls of Birkenhead dissenting.

74 Lord Mustill started by distinguishing two questions. The first was whether the court had territorial jurisdiction over a foreigner, and the second was whether the court had the "power" to make the order. If territorial jurisdiction was not established, the second question would not arise (at 297–298). On the first question, Lord Mustill was of the view that there was no basis on which the plaintiff could justify service of a writ out of jurisdiction on the defendant. The first matter relied upon was that it was an action to enforce a judgment. This was not sustainable because, first, a Mareva injunction would not give the plaintiff anything to "enforce"; it merely prepared the ground for "possible execution by different means in the future", and second, there was no judgment that could be enforced yet. Specifically, at the time of the application, all the plaintiff could do was "assert his hope that a favourable judgment will at some time in the future be obtained" (at 299). The second matter relied upon was the same as that relied on in *The Siskina*, namely that it was an action seeking an injunction, and a Mareva injunction was precisely that. Lord Mustill rejected this literal reading of the rule. He observed that at the centre of powers conferred by the rules governing service of an originating process out of jurisdiction is a "proposed action or matter which will decide upon and give effect to rights". An application for a Mareva injunction "is not of this character" (at 302). Consequently, the second question posed by Lord Mustill did not arise for his consideration (at 304).

75 Lord Nicholls dissented primarily because of his differing characterisation of the nature of the Mareva injunction. He observed that

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although a Mareva injunction is normally granted in the proceedings in which judgment is being sought, it is not actually granted in aid of the cause of action asserted in the proceedings, but to facilitate the process of execution after the judgment for payment of an amount of money has been obtained. The Mareva injunction is therefore a "protective measure in respect of a prospective enforcement process" (at 306). Once that is recognised, there would be a strong case for Mareva relief being as much available in respect of an anticipated foreign judgment which would be recognised and enforceable in Hong Kong, as it is in respect of an anticipated judgment of the Hong Kong court itself. In Lord Nicholls' view, the plaintiff's "underlying cause of action is essentially irrelevant" (at 307). Therefore, his position was that the Hong Kong court would have the jurisdiction to grant Mareva injunctions in respect of "prospective foreign judgments which will be recognised and enforceable in the Hong Kong courts" (at 310). Lord Nicholls propounded a more expansive approach towards the court's power to grant Mareva injunctions rather than, as the appellant here did, an approach that would seek to limit the court's power in that regard by imposing the Forum requirement. Indeed, he rejected the Cause of Action requirement laid down in *The Siskina* and re-characterised the Mareva injunction as substantive relief in and of itself because it is sought in respect of the potential enforcement of an anticipated foreign judgment.

76 As stated above, the majority in *Mercedes Benz* held that the court must first have *in personam* jurisdiction over the defendant for it to grant a Mareva injunction. In so doing, *Mercedes Benz* went no further than *The Siskina*.

77 For completeness, we note that the position in Hong Kong has since been legislatively modified through s 21M of the High Court Ordinance (Cap 4) (HK). The statute specifically confers on the court the power to grant interim relief in support of foreign proceedings where those proceedings are capable of

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giving rise to a judgment which may be enforced in Hong Kong. The statute further specifies that the court has such a power notwithstanding that the subject matter of the proceedings would not otherwise give rise to a cause of action in Hong Kong. It would appear that this is a legislative adoption of the approach taken by Lord Nicholls in his dissent in *Mercedes Benz*.

The position in Canada

78 In *Canadian Pacific Limited v Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation* [1996] 2 RCS 495 ("*Canadian Pacific*"), the Supreme Court of Canada adopted the approach taken in *Channel Tunnel*. The issue that arose in that case was whether the court had the jurisdiction to grant an interim injunction restraining an employer from changing the work schedule of the plaintiff-employee, pending a hearing before an arbitrator. The statutory provision conferring the power on the court to grant injunctions was s 36 of the Law and Equity Act, RSBC 1979, c 224 (Can). The wording of s 36 is similar to that of s 4(10) of the CLA. The Supreme Court of Canada first held that the court retained the residual discretionary power to grant interlocutory relief such as injunctions notwithstanding the existence of a comprehensive code for settling labour disputes (at [5]).

79 The argument was raised that the court has a power to grant an interim injunction "only as an adjunct to a cause of action properly instituted in the court", and that the jurisdiction to grant interim injunctions is "ancillary to and dependant [*sic*] upon a claim for final relief to the court from which the interim relief is sought". It was not disputed that at the time the injunction was granted, there was no claim for final relief before the court (at [13]). McLachlin J (as she then was), delivering the judgment of the court, rejected this argument. She cited *Channel Tunnel* and held as follows (at [16]–[17]):

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> 16 Canadian courts since *Channel Tunnel* have applied it for the proposition that the courts have jurisdiction to grant an injunction where there is a justiciable right, *wherever that right may fall to be determined* … This accords with the more general recognition throughout Canada that *the court may grant interim relief where final relief will be granted in another forum* …
>
> 17 I conclude that the absence of a cause of action claiming final relief in the Supreme Court of British Columbia did not deprive the court of jurisdiction to grant an interim injunction.
>
> [emphasis added]

The position in Singapore

80 We now turn to consider the local decisions that have addressed this issue.

81 We begin with this court's decision in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 ("*Karaha Bodas*"). The plaintiff company in that case sought to enforce an arbitral award in Hong Kong by serving a garnishee order against a Hong Kong company known as "Petral". The plaintiff later discovered that moneys were due to Petral from its Singapore subsidiary, "PES". It then filed an originating summons in Singapore against both Petral and PES and obtained a declaration that a sum of approximately US$36m was held by PES on trust for Petral, and an order that PES repay the sum to Petral in Hong Kong. The plaintiff also obtained, *ex parte*, Mareva injunctions against Petral and PES. Subsequently, however, on the applications of Petral and PES, the High Court set aside both the originating summons and service of the same outside the jurisdiction on Petral. The Mareva injunctions were, consequently, discharged.

82 This court dismissed the plaintiff's appeals and held that the originating summons had to be set aside because the plaintiff had no legal standing to ask for the declaration it desired – it was seeking a declaration regarding the rights

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of two other parties (*ie*, PES and Petral), rather than a right it could claim for itself (at [19] and [27]). In relation to whether the court had power to grant the Mareva injunction, this court first rejected the plaintiff's submission that it was not seeking a "free-standing" Mareva injunction as its claim was for a declaration that the US$36m be held on trust. That submission was not sustainable given the finding that the plaintiff had no standing to ask for the declaration (at [32]).

83 This court then turned to consider whether it had the jurisdiction (which term the court used in the sense of "power") to grant a Mareva injunction in aid of foreign court proceedings. The plaintiff sought to convince the court that the principle established in *The Siskina*, that a Mareva injunction could be granted only where the plaintiff had a substantive claim over which the court had jurisdiction, should not be followed (at [33]). The plaintiff was unsuccessful.

84 As far as Petral, a foreign entity, was concerned, this court was satisfied that "the principle established by *The Siskina* and reiterated by *Mercedes Benz* regarding the lack of *in personam* jurisdiction over a foreign defendant where no substantive claim was made against him was a sound one", and therefore held that the principle should be adopted in Singapore (at [43]). On the facts, the court had no *in personam* jurisdiction over Petral.

85 As for PES, there was *in personam* jurisdiction as it was a Singapore entity. At the time the originating summons was filed, however, the plaintiff "had no accrued right of action against PES in Singapore or even in Hong Kong". The law therefore did not permit the plaintiff to obtain Mareva relief, as it required the plaintiff to have an existing legal or equitable right to do so, per *The Siskina* (at [44]).

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86 We make a further point about *Karaha Bodas* at this juncture. In it, this court referred (at [45]) to "the third principle established by *The Siskina* [which] was that the court had no jurisdiction to preserve assets within England in order to support the plaintiff in a claim he was making in a foreign jurisdiction" and commented that there had been considerable debate as to the extent to which this principle was still in force. That comment was likely a reference to *Channel Tunnel* and the debate it generated though the case was not named. However, this court went on to state that it had not been necessary to determine whether the Forum requirement was a necessary condition for the grant of a Mareva injunction (since the case had been disposed of on the basis of the other requirements). Clearly this court in *Karaha Bodas* did not consider citation and a detailed analysis of *Channel Tunnel* to be necessary to its decision.

87 Shortly thereafter, came the High Court decision of *Front Carriers Ltd v Atlantic & Orient Shipping Corp* [2006] 3 SLR(R) 854 ("*Front Carriers*"). The plaintiff there commenced arbitration proceedings in London against the defendant, and then started court action in Singapore in which it applied for and obtained Mareva relief against the defendant. The application was made pursuant to the IAA. The defendant applied to set aside the Mareva injunction, contending that the High Court had no jurisdiction to grant a Mareva injunction in support of foreign arbitration proceedings. The issue before the High Court was therefore strictly whether it had the power to grant Mareva injunctions in support of foreign *arbitral* proceedings.

88 The High Court Judge ("the Judge") first took the view that s 12(7) of the IAA conferred on the High Court the power to grant such a Mareva injunction (at [14]). The Judge went on to find that there was also a general power conferred on the court by s 4(10) of the CLA to grant such a Mareva injunction (at [32]). With regard to the requirements that have to be met before

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the court could grant a Mareva injunction, the Judge noted that both *The Siskina* requirements were established on the facts. The Judge found that the defendant had made itself amenable to the court's jurisdiction, and in any case would have regarded the case as a proper one for service out of jurisdiction, and also considered that the plaintiff's claim for breach of charter was one that is "plainly recognisable by the Singapore courts" (at [41] and [42]).

89 The Judge therefore framed the critical issue in relation to the grant of a Mareva injunction in support of foreign arbitral proceedings as follows (at [42]):

> To what extent should a grant of a Mareva injunction depend on whether the Singapore court is itself being asked to decide some "substantive" claim against the defendant to the order, so much so that the underlying principle in *The Siskina* is not met when the substantive dispute between the parties has been or has to be referred to arbitration abroad?

90 In this regard, it was noted that the above point was not considered in *The Siskina*, but was addressed in *Channel Tunnel*, which decision the Judge considered persuasive authority on this point. The Judge noted that in *Karaha Bodas*, the court was not asked to grant a Mareva injunction to support a pending arbitration in Hong Kong. *Karaha Bodas* was therefore distinguishable and did not stand in the way of her adopting the approach set out in *Channel Tunnel* (at [51]). The Judge concluded that, on the authority of *Channel Tunnel*, the High Court had the power to grant an interim injunction since there was a "recognisable justiciable right between the parties, even though that right [was] to be determined not by the court but by the foreign arbitral tribunal" (at [52]).

91 Although strictly speaking *Front Carriers* dealt with an application for a Mareva injunction in aid of foreign *arbitral* proceedings, it was significant for our analysis given that the Judge endorsed *Channel Tunnel* and found no bar on the power of the Singapore court to grant a Mareva injunction arising from the

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possibility that the dispute may be determined by a tribunal other than the Singapore court. As we noted above (at [72]), the critical holding in *Channel Tunnel* for the purpose of the present appeal is the recognition of the court's residual jurisdiction to grant interim injunctions, even when the action might have been stayed by the court. The rationale of *Front Carriers* therefore was that there is no requirement that the cause of action in respect of which a Mareva injunction is granted must also terminate in a judgment in the jurisdiction of the court granting the injunction.

92 We next address the decision of this court in *Swift-Fortune*. Essentially, the plaintiff applied for a Mareva injunction against the defendant in Singapore, seeking to restrain the defendant from disposing of assets pending arbitration proceedings between the parties in London. An injunction was granted on an *ex parte* basis and the defendant applied to set it aside on the ground that the court did not have the power to grant such an injunction. The central question that arose was therefore whether the Singapore court had the power to grant a Mareva injunction in support of foreign *arbitral* proceedings. The High Court held that the court had no such power.

93 On the appeal, after concluding that the IAA did not confer on the court the power to grant such a Mareva injunction, this court turned to consider the alternative statutory source for such a power, namely s 4(10) of the CLA. As we have noted above (at [60]), this court ultimately did not consider it necessary or appropriate to decide the issue. It was not necessary to decide the issue because, even if there was such a power under s 4(10) of the CLA, the facts were such that the plaintiff did not have a justiciable cause of action against the defendant, and would never have it at any time (at [87]). It was also not appropriate to decide the issue given that, at that time, there was an appeal pending from the decision in *Front Carriers*, and that appeal truly engaged the issue of the scope

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of s 4(10) of the CLA (at [93]). In the event, the appeal in *Front Carriers* was discontinued.

94 Given that the plaintiff did not have a justiciable cause of action against the defendant, it follows that this court in *Swift-Fortune* also did not have to, and indeed did not, decide the issue of whether the Forum requirement existed. It was well-established by that time that a Mareva injunction was ancillary to an existing cause of action. Consequently, it was recognised that, given the facts of the case, the decision on the appeal "will not take the law beyond *The Siskina* doctrine as applied in *Karaha Bodas*, and confirmed in [*Mercedes Benz*]" (at [92]).

95 In *Swift-Fortune*, the court did, however, undertake a fairly detailed consideration of the then existing state of the law in relation to the issue of Mareva injunctions in aid of foreign proceedings, discussing *Channel Tunnel* and *Mercedes Benz* and the impact of those cases on the *The Siskina* doctrine. It pointed out that at [45] of *Karaha Bodas* this court had appeared to recognise that the Forum requirement was a principle of English law (at [67] of *Swift-Fortune*) but noted that the court had not endorsed that view as on the facts of *Karaha Bodas* the point did not arise. It also went into the differing interpretations of s 4(10) of the CLA in *Front Carriers* and the first instance decision of *Swift-Fortune* itself where the High Court judge had obviously taken the view that the Singapore court did not have the power to grant a Mareva injunction in aid of foreign court proceedings. Being keenly aware that there was a pending appeal in *Front Carriers* on this very issue, this court considered that "it would not be prudent … to say anything that may be interpreted as either approving or disapproving it as a s 4(10) decision" (at [93]). Reading the full discussion, however, it is hard to escape the impression that in *Swift-Fortune*

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this court was more inclined to the view that s 4(10) of the CLA did not confer that power on the court.

96 Indeed, that was the view taken of *Swift-Fortune* when it fell to be considered by the High Court in *Petroval*. The plaintiff commenced proceedings in Singapore against the defendants, who had their addresses in either the British Virgin Islands or Switzerland, asserting that Singapore courts had jurisdiction because the defendants had assets in Singapore. It was also clear that the merits of the plaintiff's claim would be determined in the British Virgin Islands, and not in Singapore – the only purpose of the Singapore proceedings was to obtain the interim relief. On the plaintiff's initial *ex parte* application, the High Court issued a Mareva injunction. The defendants subsequently applied in the same court for a declaration that the court had had no power to grant the Mareva injunction, on the basis that it was a necessary condition for the granting of interlocutory relief that it should be ancillary to a claim for relief that would be granted by a Singapore court.

97 In its decision on the defendants' application, the High Court analysed *Swift-Fortune* and stated that the Court of Appeal there had been "re-affirming and applying the principles in [*The Siskina*]", one of which was that the "substantive claim must not only be justiciable in an English court but should also terminate in an English judgment". The decision in *Swift-Fortune* was understood to mean that "there was no power under [s 4(10) of the CLA] to grant the injunction in aid of foreign court proceedings and hence no power to do the same in aid of foreign arbitral proceedings" (at [13]). The High Court proceeded to consider the applicability of *Channel Tunnel*, but ultimately considered that, in *Swift-Fortune*, the "Court of Appeal was sailing with *The Siskina* … and decided not to travel the *Channel Tunnel* route" (at [15]–[16]). Further, commencing the Singapore action and then applying for a stay did not

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render the plaintiff's cause of action justiciable within the doctrine of *The Siskina* principles because it was contemplated that the Singapore court would not have any further role in the Singapore action (at [17]). Put in slightly different terms, the High Court considered that the Singapore action had "already come to an end because the plaintiff does not want the Singapore court to do anything else besides maintaining the [Mareva] relief" (at [14]). In the circumstances, the High Court held that the Singapore court had had no jurisdiction to grant the Mareva injunction sought by the plaintiff, and it was therefore set aside (at [18]).

98 Finally, we come to the High Court decision in *Multi-Code* which took a different path from *Petroval*. The plaintiffs in *Multi-Code* commenced an action in Malaysia against five defendants and obtained a worldwide Mareva injunction against the first and fourth defendants from the Malaysian court. Two days later, the plaintiffs commenced an action in Singapore against the first, third and fourth defendants for almost identical relief as that pursued in the Malaysian action and, subsequently, also obtained Mareva injunctions against them, on an *ex parte* basis. In response, those defendants applied for the Singapore proceedings to be stayed and for a discharge of the Mareva injunctions against them.

99 The High Court Judge ("the Judge") first considered the issue of a stay. He held that the plaintiffs should not have sought to maintain two sets of proceedings relating to substantially the same subject matter, and should have voluntarily applied to stay one of the actions after securing the Mareva injunctions (at [38]). On the facts, the Singapore action ought to be stayed in that both the ground of *forum non conveniens* and that of *lis alibi pendens* (at [54]) were applicable.

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100 Given that the Singapore proceedings were stayed, the Judge turned to consider whether the High Court had the jurisdiction to allow the continuation of the Mareva injunction in support of a foreign action after a stay. Significantly, it was not disputed that the defendants had been duly served with the writ, and the Singapore court thus had jurisdiction over them (at [57]). The court also found that there was a justiciable claim against the defendants, and, as the circumstances stood, there was a *prima facie* cause of action in Singapore.

101 The court therefore had to decide whether there was an additional requirement that the cause of action had to terminate in a judgment by the Singapore court (*ie*, the Forum requirement), or whether, by virtue of the action being stayed, the court no longer had the power to grant a Mareva injunction. Having considered the relevant authorities, the Judge was persuaded that *Channel Tunnel* set out "the correct principle to bear in mind for the purpose of interpreting the ambit and scope of the court's jurisdiction under s 4(10) of the CLA" to grant a Mareva injunction. In his view, that jurisdiction "would not be limited only to those substantive actions actually tried before the Singapore courts and which would therefore terminate in a Singapore judgment" (at [75]). He went on to reason as follows (at [79]):

> What was clear to me was that after I had ordered a stay of the action, the court would be regarded as retaining a ***residual*** jurisdiction over the underlying cause of action and that *per se* was sufficient to ground the court's jurisdiction to allow the continuation of the Mareva injunction provided that there was all along a substantive justiciable claim that would have been tried in the Singapore court and would have ended with a Singapore judgment had the action not been stayed. In any case, the ***residual*** jurisdiction would allow the stayed Singapore action to be revived and carried forward to judgment in the courts in Singapore if, for some reason, the stay was subsequently lifted by the Singapore court. [emphasis in original]

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102 In relation to *Petroval* specifically, the Judge found himself unable to interpret *Swift-Fortune* in the same way that *Petroval* had. In his view, the Court of Appeal in *Swift-Fortune* had left open the issue of the scope of s 4(10) of the CLA (at [88]). He declined to follow *Petroval*, expressing the view that it would not be "automatically fatal to the Mareva injunction if the action was stayed and hence, the action would not be heard in Singapore and terminate in a Singapore judgment" (at [107]). The only caveat was that the action must not have been struck out as that would bring the Singapore action to an end, and the Mareva injunction being ancillary to the substantive action would no longer be able to continue (at [112]).

Our decision

103 Having considered the approaches taken abroad and at home, we rejected Mr Hee's submission that for a Singapore court to grant a Mareva injunction the cause of action on which it is premised must also terminate in a judgment by the Singapore court. We held that only two requirements need to be fulfilled for the grant of a Mareva injunction and that there was no need to meet a third requirement, *ie*, the Forum requirement. In our view, this decision is justified in principle and is not precluded by the authorities.

(1) Principle

104 In this regard, we were of the view that the concept of the court retaining a *residual jurisdiction* over the underlying cause of action is a sound juridical basis on which to ground the court's power to grant a Mareva injunction even where a stay of that action is sought. It follows from this rationale that there ought not to be a further requirement that the cause of action in respect of which the Mareva injunction is granted must also terminate in a judgment by the court.

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105 The concept of the court's residual jurisdiction was propounded and relied upon by Lord Mustill in *Channel Tunnel*, and we found his reasoning to be highly persuasive. Lord Mustill took the view that the court retained the residual jurisdiction over the dispute because there remained the possibility that, for various reasons, the dispute might eventually make its way back to the court, notwithstanding that it was at the moment stayed. For instance, in the context of *Channel Tunnel*, notwithstanding that the defendants were looking to stay the action against them in favour of arbitration, there remained the possibility that that method of dispute resolution might break down and the parties would be forced to resume the action.

106 *Multi-Code* adopted this reasoning. The court made clear that the court's residual jurisdiction over the underlying cause of action was *per se* sufficient to ground the court's jurisdiction to allow the continuation (or grant) of the Mareva injunction. The residual jurisdiction of the court would also allow a "stayed Singapore action to be revived and carried forward to judgment in the courts in Singapore if, for some reason, the stay was subsequently lifted by the Singapore court" (at [79]).

107 We agreed with these views. An order by the court to stay an action or proceedings before it is simply an order given by the court to indicate that the proceedings will be halted for the time being. It is *temporary*, and always so. By definition, the nature of a stay implies that the court contemplates, and leaves open the possibility, that at some stage, the matter would be revived and fully dealt with. It may be dealt with by being revived and proceeding to judgment. But it may also be dealt with by being revived and eventually discontinued. Regardless of what might happen, until such time, the action remains on the court's record, and is alive though asleep. A stay cannot be permanent because that would mean that the action remains indefinitely on the court's record. If no

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further action is *ever* contemplated in the action, then the proper course is to have the proceedings discontinued or struck out.

108 Once that aspect of how a stay operates and what it implies is understood, it may be considered how that might affect the court's jurisdiction to grant a Mareva injunction. As Lord Diplock held in *The Siskina*, the Mareva injunction is but a species of interlocutory injunctions, and the court's jurisdiction to grant interlocutory injunctions is ancillary to the court's jurisdiction over the proceedings before it. When an action is stayed, the court retains its ancillary jurisdiction over the action. It therefore follows that the court must retain its jurisdiction (described as *residual jurisdiction* in *Multi-Code* and *Channel Tunnel*) to grant a Mareva injunction.

109 This is an appropriate point to explain the difficulty we had with one thread of Mr Hee's submissions and why we did not accept it. He contended that the respondents' application to stay Suit 1180 means that there *will not* be a final judgment in Singapore. Even if it were a requirement for the grant of a Mareva injunction that the action must terminate in a final judgment by the Singapore court (which we have found is not the case), Mr Hee's submission is, with respect, pure conjecture. Indeed, when pressed, Mr Hee rightly conceded that the highest he could pitch his case was that as the facts stood (as of the date of the appeal hearing), it appeared that the respondents were "seeking" or "pushing" for the dispute to be resolved finally in Hong Kong. We accept that there is clearly the possibility that no judgment will eventually be granted by the Singapore court. But Mr Hee's submission took this possibility as unmitigated fact. There was nothing on the facts, however, to dispel the possibility that, for whatever reason, Suit 1180 might be revived and carried to final judgment in Singapore. One possibility was that the respondents would eventually choose not to proceed in Hong Kong against the appellant and to

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instead pursue Suit 1180 to its conclusion. In truth therefore, Mr Hee could only say that, by reason of the stay application, Suit 1180 "might not" result in a final judgment in Singapore. He could not say with absolute certainty that Suit 1180 would not result in a Singapore judgment.

110 Indeed, the only way that Mr Hee could have persuaded us that Suit 1180 would *certainly* not result in a Singapore judgment would be to show that it had been struck out. As we mentioned above, this would also have the effect of depriving the court of its ancillary jurisdiction to grant any interlocutory injunctions given that, in the first place, the underlying cause of action would no longer be before the court. This very caveat was in fact identified in *Multi-Code*. As the Judge there observed, a stay "did not mean the end of proceedings in Singapore as a striking out would" (at [112]). Consequently, this aspect of Mr Hee's submissions did not carry him any further in persuading us that the fact that Suit 1180 was sought to be stayed should deprive us of the power to grant a Mareva injunction.

111 A second reason why we say that the approach taken in *Channel Tunnel* and *Multi-Code* is principled has to do with the recognition that a Mareva injunction in aid of foreign court proceedings is, as we have mentioned above (at [32]), ultimately still premised on, and in support of, proceedings *in Singapore*.

112 That a Mareva injunction is expressed to be "in aid of foreign court proceedings" is simply terminology and does not have implications for its juridical basis. The terminology acknowledges the reality that the plaintiff who obtains such a Mareva injunction *intends* to employ that Mareva injunction to aid in foreign court proceedings. A Mareva injunction of this nature may assist the plaintiff by ensuring that the plaintiff, if successful in the foreign court

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proceedings, would have assets in Singapore over which to enforce the foreign judgment.

113 As far as the juridical basis of such a Mareva injunction is concerned however, it is *still* premised on, and in support of, proceedings in Singapore. As we have noted above, the court's powers to grant a Mareva injunction stems, from s 4(10) of the CLA which confers on the court the power to grant interlocutory injunctions, which in turn is ancillary to the court's jurisdiction over the substantive cause of action before it. In the context of an application for a Mareva injunction before the Singapore court, what is legally relevant, to the court's *power* to grant that Mareva injunction, is that the court has jurisdiction over the substantive cause of action *before the Singapore court*.

114 Analysed in this manner, it is evident that the foreign element, in the sense that there may be foreign court proceedings in aid of which a Mareva injunction obtained in Singapore may be used does not feature in any way in the inquiry of whether the court has the power to grant the Mareva injunction. This result is eminently sound once it is recognised that the foreign element is a reference only to how the plaintiff intends to use the Mareva injunction, *after it is granted*. Put differently, the difference between an application for a Mareva injunction *simpliciter* and a Mareva injunction "in aid of foreign court proceedings" is purely that in the latter case the plaintiff has indicated that the Mareva injunction would likely be used *in a certain way*, namely, to assist in the enforcement of an anticipated foreign judgment, as opposed to assisting in the enforcement of an anticipated local judgment.

115 Seen in this light, it would be remarkable if a party's *intentions* can have any bearing whatsoever on the extent of the court's powers. Taken to its logical conclusion, it would mean that the very *existence* of the court's powers to grant

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relief would depend on what a plaintiff seeking a Mareva injunction intends to do with the injunction. We do not think that a litigant's intentions can have any such effect. Of course, we fully accept that a litigant's intentions as to how the Mareva injunction is intended to be used can have a bearing on how the court would *exercise* its power. For instance, an application which appears to be for the ulterior motive of placing pressure on the defendant would be a strong factor against the grant of a Mareva injunction. But how the court exercises its power is a separate inquiry from that as to the *existence* of the power in the first place.

116 We would also observe that this reasoning recognises the reality of international litigation as it is currently practiced. The respondents' application for a Mareva injunction in Singapore is but one aspect of their litigation strategy. At a broader level, it would appear that the respondents, at present, intend to proceed with the action in Hong Kong, while at the same time preserving the appellant's assets in Singapore so that they might have some assets over which to enforce the judgment they might obtain from the Hong Kong court. Alternatively, if the respondents were to fail in their action in Hong Kong, they may nonetheless seek to revive Suit 1180 in the hope of obtaining a judgment in Singapore. Whether the respondents succeed in reviving Suit 1180 for such a purpose would be of course subject to their overcoming the difficulties with what may be considered re-litigation; in particular, issues like estoppel or *res judicata* may need to be addressed. We cannot see how the respondents' litigation strategy can affect the court's power to grant a Mareva injunction. As we pointed out to Mr Hee at the appeal hearing, it may well be that a different litigation strategy would reveal that the application for a Mareva injunction was an abuse of the court's process – but that argument was not advanced by Mr Hee, nor indeed could we see any basis to so conclude on the present facts.

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117 That such a litigation strategy can be legitimate was acknowledged by this court in *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal* [2013] 4 SLR 1097. In the context of concurrent proceedings in various jurisdictions, it was observed that (at [36]):

> … the court is not restricted to discontinuing the local proceedings, and may, in the *appropriate circumstances*, grant a stay of proceedings instead. This might be the case where the foreign court's jurisdiction is being challenged … or where the action in Singapore is brought to obtain security by way of a *Mareva* injunction or attachment of assets (see, for example, the Singapore High Court decision of [*Multi-Code*]). [emphasis in original]

118 For completeness, we also address a submission raised by Mr Hee at the appeal hearing. The main thrust of this submission was as follows: an action *must* terminate in a final judgment in Singapore in order to support the jurisdiction of the court to grant a Mareva injunction, and that *if there is even a possibility that it may not* so terminate, then the injunction would cease to be treated as an *interlocutory* injunction, and therefore the court had no power to grant it. We did not accept this submission. The Mareva injunction is inherently an interlocutory injunction, and its character is not altered by whether final judgment is or is not obtained here. Its interlocutory nature is derived from the fact that it is sought not as the main or substantive claim in and of itself, but only as ancillary relief to a separate substantive claim. The respondents' substantive claims against the appellant appear by endorsement on the writ served on her. Their application for a Mareva injunction was made in support of these claims and, therefore, was unarguably for interlocutory relief.

119 While we did not agree that the intention of a plaintiff could change the interlocutory nature of a Mareva injunction, we considered that Mr Hee's submission, slightly recast, had some force. As noted earlier, the Singapore court cannot exercise any power to issue an injunction unless it has jurisdiction

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over a defendant. Under our law, the court has jurisdiction over all defendants who have been served with a writ. Every writ carries an endorsement of claim that explicitly purports to seek certain relief from the Singapore court. It is therefore arguable that any power of the court must, implicitly, be exercised for the purpose of preserving and protecting the jurisdiction that the court has over the defendant. Thus, in the usual case, a Mareva injunction is granted to enable the court to safeguard assets to protect the integrity of the jurisdiction it has taken over a defendant so that if the plaintiff's claim is proved, that jurisdiction will not be rendered toothless. Where, as here, it appears from the plaintiff's application to stay its own action, that the plaintiff does not in the end intend to seek relief from the Singapore court, it may be argued that the plaintiff is seeking that the Singapore court takes jurisdiction over the defendant for a collateral purpose: this purpose being to safeguard assets in Singapore in order to safeguard the exercise of the jurisdiction of a foreign court rather than to safeguard the exercise of the Singapore court's own jurisdiction. There is nothing in s 4(10) of the CLA to suggest that it ever contemplated that the Singapore court could take jurisdiction over a party, not intending to ultimately exhaust that jurisdiction in a manner that terminates in a judgment here, but as a means of securing and safeguarding the exercise of jurisdiction by a foreign court. In that situation, therefore the court should not exercise its power to grant an interlocutory injunction.

120 The argument set out above would be a strong one in circumstances where it is clear that the plaintiff has no intention of pursuing an action in Singapore at all and wants a free standing injunction (see for example the case cited in [125] below). But that is only one situation. Another situation would be where the plaintiff wants to preserve a right to pursue an action here to get access to the defendant's assets within the jurisdiction, although as a matter of

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case management, that plaintiff may decide that the claim should first be pursued elsewhere. In that regard, the stay of the Singapore action which the plaintiff applies for will be in the nature of a case management stay. The plaintiff anticipates that eventually, whether it succeeds or fails elsewhere, it will want to pursue the action here. The present case falls within the second situation and as such it cannot be contended that the respondents have a collateral purpose in seeking that the court takes jurisdiction over the appellant. Any court that finds evidence of such a collateral purpose would likely refuse to exercise its power to issue any interlocutory injunction in aid of the plaintiff.

(2) The authorities

121 As stated above, the authorities do not preclude our rejection of the Forum requirement. It would be recalled the genesis of the requirements for the grant of a Mareva injunction was *The Siskina*. There, while Lord Diplock laid out in clear terms the Jurisdiction requirement and the Cause of Action requirement, his language in relation to the Forum requirement was unclear and, in any event, *obiter*. *Channel Tunnel* rejected any suggestion that that language mandated the satisfaction of the Forum requirement. *Mercedes Benz* focused on the necessity for the court to have *in personam* jurisdiction over the defendant and emphasised that the service sub-rule allowing service out of the jurisdiction on the basis of a claim for an injunction was referring to a claim for substantive relief rather than the ancillary relief that a Mareva injunction would represent so that where the only relief asked for was such an injunction, service out of the jurisdiction would not be permitted. The case did not, and was not required to, deal with the Forum requirement. In our view, there was no unequivocal acceptance of the Forum requirements in the aforesaid authorities.

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122 Mr Hee sought to persuade us to look at the authorities differently. He first referred us to the passage from *The Siskina* where Lord Diplock stated that "the High Court has no power to grant an interlocutory injunction except in protection or assertion of some legal or equitable right *which it has jurisdiction to enforce by final judgment*" [emphasis added] (at 256). Mr Hee relied in particular on the reference to "final judgment", and submitted that Lord Diplock was, by this statement, expressing the view that it was a requirement for the grant of an interlocutory injunction such as a Mareva injunction that the cause of action must terminate in a "final judgment" by the court. But, with respect, Lord Diplock was making no such point. He was merely stating, albeit in different terms, the requirement that an interlocutory injunction must be premised on an accrued cause of action. In other words, a party has an accrued cause of action before a court if it seeks to protect or assert "some legal or equitable right which [the court] has jurisdiction to enforce by final judgment". Indeed, in *Channel Tunnel*, Lord Brown-Wilkinson took the same view of those words as we did, stating (at 342)

> I can see nothing in the language employed by Lord Diplock … which suggest that a court has to be satisfied, at the time it grants interlocutory relief, that the final order, if any, will be made by an English court. The two passages I have quoted refer to the substantive relief being relief which the English court has "jurisdiction to grant" and to rights "enforceable here" see also, at p.256F "some legal or equitable right which it has jurisdiction to enforce by final judgment." These are words which indicate that the relevant question is whether the English court has power to grant the substantive relief not whether it will in fact do so.

123 Turning to the local cases, our survey has shown that they do not follow a consistent path. At the High Court level, there are cases in both directions. At the level of this court, the situation was not settled in that, although until this case the Power Issue had not been addressed head-on, there are indications in *Karaha Bodas* and *Swift-Fortune* that the Forum requirement was an established

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principle. We note, however, that as the injunctions in *Karaha Bodas* were discharged solely on the basis of the established *Siskina* requirements, this court did not have to look *beyond* those requirements and determine whether there were further requirements. Any statement in *Karaha Bodas* which may be taken to mean that another requirement existed would have been *obiter*.

124 Before us, Mr Hee highlighted this court's statement in *Swift-Fortune* that the doctrine in *The Siskina* "contemplated that the substantive claim must not only be justiciable in an English court but *should* also terminate in an English judgment" [emphasis added] (at [62]). We accept that on its face the word "should" would suggest that it was a requirement that the claim terminate in a judgment by the court granting the Mareva injunction. There are, however, two reasons why even if that was the intended meaning at the time, we are no longer inclined to that view. First, this court in *Swift-Fortune* did not have to decide, and indeed did not decide, whether there was a Forum requirement for the grant of a Mareva injunction as the plaintiff there had no cause of action against the defendant. Secondly, the statement relied on by Mr Hee was itself premised on views expressed by this court in its earlier decision of *Karaha Bodas* at [38]. As we have pointed out (at [86] above), in *Karaha Bodas* this court did not cite *Channel Tunnel* and thus is unlikely to have considered the reasoning in *Channel Tunnel*. Having now examined *Channel Tunnel* in some depth and for the reasons given above, we have accepted that the correct position is that the Forum requirement does not exist and any suggestion in earlier authorities that it does must henceforth be disregarded.

125 Mr Hee also raised the decision of the Bahamas Court of Appeal in *Meespierson (Bahamas) Limited and others v Grupo Torras SA and another* (1999-2000) 2 ITELR 29 ("*Meespierson*"), but this too did not assist him. The precise issue before the court in *Meespierson* was whether it had the power to

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grant a *free-standing* Mareva injunction – free-standing in the sense that the application for a Mareva injunction stood alone, with no other claim for substantive relief or final judgment (*Meespierson* at 41). Consequently, the crucial issue was whether the court would adopt the requirement that a Mareva injunction must be premised on an accrued cause of action as laid down in *The Siskina*. There was no further issue of whether the cause of action had to also terminate in a judgment by the Bahamas court – indeed, that could not even have been the issue given the lack of a cause of action before the Bahamas court in the first place. The appeal before the Bahamas Court of Appeal was therefore dismissed simply on the basis that it was "settled law that a Mareva injunction will not be granted to an applicant who has no cause of action against a defendant at the time of the application" (at 48).

Our view on CA 188

126 Before moving to address the Discretion Issue, we briefly explain why we took the view that CA 165, the appeal against the Judge's decision to stay Suit 1180, undermined the appeal in CA 188 against the grant of the Mareva injunction. Mr Hee's various submissions were underpinned by the objection that Suit 1180 *would not* terminate in a final judgment in Singapore, given the respondents' preference to pursue proceedings in Hong Kong. The immediate difficulty that Mr Hee would have faced if he had pursued both CA 165 and CA 188 together is that *if* he were to succeed in CA 165 such that we lifted the stay of proceedings on Suit 1180, it would mean that Suit 1180 *would proceed* in Singapore. In the absence of the stay, we would expect that Suit 1180 would result in a final judgment in Singapore. That outcome would entirely undermine the sub-stratum of Mr Hee's submissions as to why this court did not have the power to grant a Mareva injunction – the Mareva injunction that the respondents sought would then cease to be a Mareva injunction in aid of foreign proceedings.

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When we pointed this out to Mr Hee in the course of his submissions, he readily acknowledged this difficulty, and consequently sought leave to withdraw CA 165, which we granted.

The Discretion Issue

127 Having established that this court has the power to grant the Mareva injunction sought by the respondents, we next explain why we considered that the Judge had acted appropriately in exercising that power to grant a Mareva injunction against the appellant.

The parties' cases

128 Mr Hee submitted that no Mareva injunction should have been granted against the appellant because:

(a) There was no good arguable case against her on the merits:

(i) In relation to the respondents' claim in knowing receipt, the respondents had not established that the funds in the intermediate bank accounts were not mixed and/or that the appellant's beneficial receipt of assets were traceable as representing the respondents' assets. Further, the evidence showed that the appellant had neither actual knowledge nor the requisite knowledge for a claim in knowing receipt such that it would be unconscionable for her to retain the benefit of the receipt. The circumstances under which she received the US$17.6m did not put her on notice as to their "alleged fraudulent provenance" as the appellant had previously received significant fund transfers from Mr Wu.

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(ii) There was no good arguable case in unjust enrichment against the appellant. Given that the respondents had not proved that there was no mixing of funds, the respondents had not proved that the appellant was enriched at their expense. Further, the Judge wrongly assumed that the basis of payments from the respondents to the SW Payees and then to the Further SW Payees was the same.

(iii) There was also no good arguable case in dishonest assistance against the appellant because the evidence did not show that she had knowledge of the alleged fraud, or that she intended to assist in the misappropriation of moneys from the respondents.

(b) There was no risk of dissipation of assets by the appellant because:

(i) The fact that moneys in bank accounts may be easily dissipated was insufficient to infer that the appellant would dissipate her assets.

(ii) There was no finding of dishonesty on her part that had a real and material bearing on the risk of dissipation. Her involvement was, at best, limited to her receipt of the allegedly "stolen monies". The Judge's reliance on the appellant's knowledge that she was under investigation to support the finding that the Coral Island Property and a property in the state Nevada, USA ("the Nevada Property") were put on sale to frustrate the enforcement of any potential judgment was "speculative and flawed". It was also submitted that there was

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no evidence to suggest that the appellant had taken steps to conceal her receipt of the allegedly "stolen" moneys – they were paid into accounts that were obviously hers or controlled by her.

(iii) The Judge failed to accord sufficient weight to the following facts: (a) the appellant is a Singapore citizen with business ties here; (b) the appellant had not displayed unwillingness to participate in the proceedings; and (c) the lack of urgency on the part of the respondents in seeking Mareva relief. On the last point in particular, it was submitted that there was a delay of five years between 31 December 2012, when accusations against the appellant regarding receipt of the proceeds of fraud were raised for the first time in insolvency proceedings in the USA, and 13 December 2017 when SUM 5689 was filed. The delay suggested that the respondents did not genuinely believe that there was a risk of the appellant dissipating her assets.

129 The respondents urged us to uphold the Mareva injunction because:

(a) There was a good arguable case against the appellant on the merits:

(i) In relation to knowing receipt, the appellant's inability to explain why she was in receipt of the moneys was critical. Her contention that she was not expected to make enquiries because she was receiving large sums of money was an "absurd proposition", especially when she had not produced any evidence to explain why she received *any* of those moneys.

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(ii) As for dishonest assistance, the respondents contended that the Judge should have held that there was a good arguable case on this claim as well. They submitted that the receipt by the appellant of the US$17.6m was not "passive", but constituted dishonest assistance, because she was "part of a chain of intermediaries in the continuing diversion" of the respondents' moneys to put them out of the respondents' reach.

(iii) In relation to their claim in unjust enrichment, the respondents supported the Judge's findings that there was a good arguable case of a failure of consideration for the amounts received, and that the appellant had not enunciated any applicable defence. As for the issue of whether there was enrichment because the moneys may have been mixed, the respondents submitted that this is an issue that should be resolved at trial, and in any event the appellant had not proved that there *was* mixing.

(b) There was also a real risk of asset dissipation because the attempted sales of the Coral Island Property and the Nevada Property at the very least invited "some kind of explanation", which had not been forthcoming. There was also no inordinate delay on the part of the respondents in seeking Mareva relief. Time was needed to investigate and obtain information on whether to pursue claims against the appellant.

Applicable principles

130 The requirements for the grant of a Mareva injunction are well-established, and were not disputed by the parties. As this court held in *Bouvier,*

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Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal [2015] 5 SLR 558 ("*Bouvier*") (at [36]), a plaintiff seeking a Mareva injunction would need to show: (a) that it has a good arguable case on the merits of its claim; and (b) that there is a real risk that the defendant will dissipate its assets to frustrate the enforcement of an anticipated judgment of the court.

Good arguable case on the merits

131 The respondents sought to justify their application for a Mareva injunction on three claims, namely, knowing receipt, unjust enrichment and dishonest assistance. Clearly, since all the claims related to the same sums, the respondents only needed to show a good arguable case on the merits of one claim. A good arguable case is one which is "more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent chance of success": *Bouvier* at [36]. As we were of the view that the respondents' claim in knowing receipt met this threshold, we did not have to evaluate the merits of the respondents' other claims.

132 The elements of a claim in knowing receipt are: (a) a disposal of the plaintiff's assets in breach of fiduciary duty; (b) the defendant's beneficial receipt of assets which are traceable as representing the assets of the plaintiff; and (c) the defendant's knowledge that the assets are traceable to the breach of fiduciary duty: *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 ("*Zage*") at [23]. As regards what is meant by "knowledge", in *Zage* this court adopted the test formulated by Nourse LJ in *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437 ("*Akindele*") which was that the plaintiff would have to show that the state of the defendant's knowledge of the source of the funds was such that it

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would be unconscionable to allow the defendant to retain the benefit of the receipt. Actual knowledge would, of course, satisfy this requirement. The formulation would also cover constructive knowledge.

133 The area of contention here was only with regard to what the state of the appellant's knowledge was as to the source of the assets she received. The Judge, having considered the evidence before her, concluded that the appellant did not have *actual* knowledge of breach of trust or fiduciary duty on the part of Mr Wu or the other perpetrators of the alleged fraud. The Judge found, however, that the state of the appellant's knowledge was sufficient as to make it unconscionable for her to retain the benefit of the receipt because her explanations for receipt of the moneys were not only inadequate but also full of inconsistencies. The Judge held therefore that the appellant, being unable to give a reasonable explanation as to why such large sums of money were sent to her by the various payors, must have been aware that the source of the funds was dubious. We agreed with this conclusion.

134 It was not disputed that the appellant received a total of US$17.6m from Mr Wu, or entities controlled by him, into her personal and trust accounts, as well as into accounts in the name of Long Chart and WB International. The appellant's evidence in relation to these payments amounted to the following:

(a) She was unable to give any reason for the payment of US$3m to Long Chart.

(b) In relation to the US$0.5m received by WB International, the sum "would have comprised part of the proceeds of sale of the joint ventures that Mr Wu" owed to the appellant. In particular, she referred

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to three joint ventures between herself and Mr Wu which had allegedly been sold for US$47m, US$38m and US$8.5m.

(c) In relation to the US$14.1m the appellant received in her personal accounts and trust accounts under her control, they were moneys that Mr Wu owed her pursuant to the sale of the companies that they had held together, "monies for the purchase of properties" and "monies for use towards [their] child's educational and [their] living expenses".

135 From the above it can be seen that the appellant had two main explanations for the payments made to her and her entities. The first explanation was that the moneys were sums owed to her by Mr Wu, as they were proceeds from the sale of companies or joint ventures that she and Mr Wu had held together previously. She referred in particular to three such joint ventures which were sold. These transactions were, however, concluded between 2003 and 2006. The payment to WB International was made in January 2009, and the various payments to her personal and trust accounts were made between March 2007 and July 2011. The appellant did not specify *which* payments into her accounts corresponded with the proceeds from the alleged sale of joint ventures with Mr Wu. Nor was any explanation offered as to the delay in Mr Wu transferring her share of the proceeds from these transactions. More fundamentally, there was no evidence suggesting that the appellant had any sort of arrangement or understanding with Mr Wu as to how and when she would receive her proceeds from the alleged sale of the joint ventures from him. It struck us as extremely odd that she would have been content to leave it to Mr Wu to transfer her share of the proceeds, especially given the large sums involved, in such a piecemeal fashion.

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136 The second explanation was that the moneys were paid to her for "living expenses". This included her and her child's living expenses, her child's educational expenses, and cost of purchasing real estate. As the Judge found however, these were bare assertions that were unsupported by any evidence – no details were provided of any living expenses, or of the properties allegedly purchased with these sums.

137 Underlying our rejection of both these explanations was our recognition that it is extremely uncommon, to say the least, that very substantial sums of money, running into the millions, are paid by one spouse to another spouse when they are estranged, and when there has not been an order compelling those payments or even a request for payment. The evidence suggested that Mr Wu and the appellant had lived separately from as early as 2001. There was nothing to indicate that Mr Wu made these payments under any form of court order, or even that he and the appellant had had some form of arrangement as to how much maintenance he would pay her and how often. The situation that the appellant urged us to accept was that she was simply content to wait and receive payments from Mr Wu, as and when they were made. We could not accept this version of events.

138 While the appellant tried to justify the receipt of the enormous sums of money paid to her, her explanations were unbelievable. As previously noted, they were bereft of any supporting documentation and at odds with the way that honest businesses, honest businesspeople and honest, albeit estranged, spouses behave. The appellant's stories gave the Judge and us reason to believe that she knew or suspected (with basis) more about the payments and their source than she was prepared to disclose. This was sufficient to constitute a good arguable case that the appellant had the requisite knowledge that would make it unconscionable to allow her to retain the moneys paid to her.

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139 For completeness, we address the submission that the moneys were not proven to be traceable to the funds removed from the respondents' accounts pursuant to the alleged fraud. We did not accept this submission. Whether the funds paid into the appellant's various accounts can be traced to the funds removed from the respondents' accounts pursuant to the alleged fraud, *in fact and in law*, will no doubt have to be fully explored at trial. The action is still at an interlocutory stage, and the threshold is only that the respondents must establish a good arguable case. The evidence before us is that the payments into the appellant's various accounts were generally contemporaneous with the movement of funds out of the respondents' accounts or intermediate accounts into which the proceeds of the alleged fraud were paid. In our view, this was sufficient to establish a good arguable case that the payments made into the appellant's various accounts were the funds removed from the respondents' accounts pursuant to the alleged fraud.

140 In sum, we agreed with the Judge's finding that the respondents have a good arguable case on the merits in respect of their claim in knowing receipt.

Risk of dissipation of assets

141 The second element that has to be established for the grant of a Mareva injunction is that there is a risk of dissipation of assets by the defendant. This requires some "solid evidence" and not just bare assertions to that effect: *Bouvier* at [36].

142 The respondents' primary case was that the appellant's attempts to sell the Coral Island Property and the Nevada Property for no good reason constituted solid evidence that there was a real risk of her dissipating her assets. These attempts were made at a time when the appellant was aware that proceedings were being pursued against her in Hong Kong. The unchallenged

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evidence before us was that the Liquidators had discovered on 15 November 2017 that the Coral Island Property was listed for sale. At that time, the respondents were in the midst of effecting service out of jurisdiction on the defendants to the second HK suit. Several days later, on 20 November 2017, the Liquidators discovered that the Nevada Property was listed for sale.

143 The Judge accepted that the attempted sales of the aforesaid properties constituted solid evidence of a real risk of dissipation of assets on the part of the appellant. Her reasoning was as follows:

> (a) The appellant claimed that the Coral Island Property had been listed for sale in 2015, but this was an unsubstantiated assertion. In any event, the fact that the property was listed for sale again in 2017 would merely reinforce the fact that she was trying to dispose of it. Although the appellant claimed that she intended to sell the Coral Island Property because she no longer required such a large home in Singapore, she had not explained whether she intended to obtain a substitute home for herself and her child in Singapore, or whether she already had another home.
>
> (b) As for the attempted sale of the Nevada Property, the appellant gave no explanation as to why she was looking to sell it. The Judge noted that the pending criminal investigations in the USA against Mr Wu, and that allegations had been made against the appellant in insolvency proceedings there, may have had a bearing on her decision to put the Nevada Property up for sale.

144 We agreed with the Judge's finding that there was solid evidence of a real risk of dissipation of assets on the part of the appellant. It must be noted

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that such an inquiry is an evaluative exercise best carried out by the judge at first instance. The Judge considered the evidence and made no error in principle. We therefore saw no basis on which to disturb her conclusion.

145 For completeness, we would add a further point to address a submission raised by the appellant that she personally had taken no steps to deceive the respondents. Consequently, even if she had the requisite knowledge to establish a claim in knowing receipt, she was not so dishonest as to justify the inference that there was a risk of her dissipating her assets. In this regard, we were urged to liken the appellant to Mrs Rappo in *Bouvier*. Counsel relied in particular on the following passage from *Bouvier* (at [138]):

> But, even if the respondents' case is taken at its highest, the dishonesty alleged against Mrs Rappo goes no further than her actual or imputed knowledge that she was receiving from Mr Bouvier money which was being paid out of the latter's undisclosed profits. The complaint is that she was content to receive the substantial sums that Mr Bouvier was paying her without inquiring further into the source of those payments. To put it another way, she might have known or had reason to suspect that the water supplied to her came from a tainted well, but she drank it anyway. This is not a situation where Mrs Rappo took any steps to deceive the respondents; nor is there anything to suggest that she was involved with Mr Bouvier in the perpetration of a fraudulent scheme against the respondents. It is telling that Mr Rybolovlev saw Mrs Rappo's dishonesty as stemming from (as he put it himself) her "betrayal". In our judgment, the allegations made against Mrs Rappo, even if eventually found to be true, fall far short of having a real and material bearing on the risk of her dissipating her assets.

146 With respect, the reliance on the observations cited above was misplaced. In *Bouvier*, this court was concerned with the question whether the court may draw an *inference* of a real risk of dissipation of assets simply from the fact that a good arguable case of dishonesty had been advanced against the defendant. This is an entirely different inquiry from whether the court may find that there

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is a real risk of dissipation of assets from evidence of an *actual attempt* to dissipate assets. In respect of Mrs Rappo in *Bouvier*, the plaintiffs had hinged their case on the submission that there was a good arguable case of dishonesty against Mrs Rappo, and *not* on any evidence of *actual attempts* on her part to dispose of assets (at [133]). It was in that context that this court held that Mrs Rappo having, at the most, received sums without making reasonable inquiries into the source of those payments, did not demonstrate dishonesty of a level which would justify an inference that there was a real risk of her dissipating assets.

147 The respondents' case here was entirely different. The respondents hinged their case, in relation to proving that there is a real risk of dissipation of assets by the appellant, on the evidence of her actual attempts to dispose of the properties in question. The respondents did not, on their primary case, seek to rely on the fact that they had a good arguable case against the appellant in knowing receipt to justify an inference that there was also a real risk of her dissipating assets.

Delay and abuse of process

148 Having established a good arguable case on the merits and a real risk of dissipation of assets on the part of the appellant, the respondents satisfied the requirements for the grant of a Mareva injunction. The appellant submitted that, nevertheless, the injunction should not be granted because there was inordinate delay on the part of the respondents in applying for it.

149 The primary contention was that the Liquidators had suspected, as early as in 2012, that the appellant had received funds which were proceeds of the alleged fraud. In this regard, we were referred to a statement filed by Mr Cosimo

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Borrelli, one of the joint Liquidators, before the US Bankruptcy Court. In this statement, Mr Borrelli alleged that the appellant was "deeply implicated in the misappropriation of hundreds of millions of dollars from [CMT] and received and secreted substantial funds in the United States". Consequently, the delay of five years between 2012 and 2017, when the respondents finally applied for a Mareva injunction by way of SUM 5689, showed that there was "no genuine concern of [a] risk of dissipation at all".

150 We did not accept that the facts indicated an inordinate delay on the part of the respondents in seeking the Mareva injunction as they did. As this court indicated in *Bouvier*, a delay in making an application for a Mareva injunction is to be considered under the rubric of whether, in all the circumstances, it may be said that application is an abuse of process. Delay features in this analysis because a plaintiff who is genuinely concerned that the defendant will dissipate his assets would be expected to act with urgency in seeking Mareva relief: *Bouvier* at [109]. The corollary to this is that a plaintiff who bides his time before seeking Mareva relief exposes himself to the inference that his eventual application is made for an ulterior purpose and not borne out of a genuine fear that assets would be dissipated. Whether this inference is justified of course will ultimately depend on all the circumstances, such as the length of the delay and whether the plaintiff can justify the delay.

151 That delay is to be considered under the broader rubric of abuse of process is significant, because it is instructive as to *when* the relevant period of delay would start. The appellant contended that the relevant starting date was in 2012, as that was the first time that allegations were made about the appellant's receipt of funds from the alleged fraud. If that were so, and there was a delay of five years before the respondents' application for Mareva relief, we would have been inclined to think that their application in 2017 was an abuse of process.

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152 But 2012 was not the appropriate start date by which to judge the delay, if any, on the part of the respondents. As we noted above (at [147]), the respondents based their application for Mareva relief on the basis of the appellant's attempted sales of the Coral Island Property and the Nevada Property. The respondents' very case was that it was *those* actions on the part of the appellant that alerted them to the risk of assets being dissipated, and it was therefore *those* actions which prompted the respondents to apply for Mareva relief.

153 The respondents could not be faulted for pursuing their claims in this manner, and we therefore had to analyse the respondents' course of action in this context. As noted above (at [142]), the unchallenged evidence before us was that the Liquidators had discovered on 15 November 2017 that the Coral Island Property was listed for sale, and later on 20 November 2017 discovered that the Nevada Property was listed for sale. The respondents then applied for the HK Injunction on 11 December 2017. This was promptly followed by the commencement of Suit 1180 and application by way of SUM 5689 for a Mareva injunction against the appellant. We did not think that a period of three to four weeks constituted such delay as to indicate that the respondents' application for a Mareva injunction against the appellant was an abuse of process.

154 Our difficulty with this submission was compounded by the fact the appellant did not accept that the respondents could have obtained a Mareva injunction in 2012 solely on the basis that the allegations against her indicated a real risk of dissipation of assets on her part. No doubt if the respondents had applied for a Mareva injunction prior to the attempted sale by the appellant of her properties, she would have objected on the basis that there was insufficient evidence to indicate a real risk of dissipation of assets on her part. Presumably, that is precisely why no application was taken out prior to the discovery of the

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attempted sales. The appellant cannot have it both ways by now contending that the respondents having waited are precluded from obtaining a Mareva injunction by reason of delay.

155 Accordingly, we were of the view that there was no inordinate delay on the part of the respondents such as to indicate that their application was an abuse of process.

Conclusion

156 For all the reasons above, we dismissed CA 188 and affirmed the grant of the Mareva injunction against the appellant in terms of the order granted by the Judge.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Tay Yong Kwang Judge of Appeal	Steven Chong Judge of Appeal

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Kelvin Poon Kin Mun, Nigel Desmond Pereira, Chew Xiang and Chow Jie Ying (Rajah & Tann Singapore LLP) for the respondents.

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