IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 36

Court of Appeal / Civil Appeal No 72 of 2024

Between

Continental Shipping Line Pte. Ltd.

… *Appellant*

And

Jonathan John Shipping Ltd

… *Respondent*

In the matter of Originating Application No 1152 of 2023 (Summons No 995 of 2024)

Between

Jonathan John Shipping Ltd

… *Applicant*

And

Continental Shipping Line Pte Ltd

… *Respondent*

GROUNDS OF DECISION

[Civil Procedure — Mareva injunctions]

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Steven Chong JCA (delivering the grounds of decision of the court):

1 There has been repeated judicial acknowledgement of the extraordinary power of Mareva injunctions, most notably encapsulated in their description as one of the "nuclear weapons" of civil litigation (*Bank Mellat v Nikpour* [1985] FSR 87 at 92, *per* Donaldson LJ (as he then was); *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [1]). Mareva injunctions are often obtained as a form of pre-judgment relief and on an *ex parte* basis. Where a worldwide Mareva injunction is sought, its extraterritorial reach amplifies its onerous effect, heightening its potential for abuse. It is therefore of paramount importance to bear in mind that Mareva relief is only granted in exceptional circumstances (*Bouvier* at [1] and [37]).

2 The key touchstone to warrant the grant of a Mareva injunction is the existence of a real risk that a defendant may dissipate his assets in a manner that

would frustrate the execution of a prospective judgment or arbitral award against him. This has been described as an assessment of the "risk of unjustified dealings with assets" (*JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("*JTrust*") at [64]). As is evident from the language of "unjustified" dealings, it is not the case that any dealing with the defendant's assets would demonstrate a real risk of dissipation warranting the imposition of a Mareva injunction (*Milaha Explorer Pte Ltd v Pengrui Leasing (Tianjin) Co Ltd* [2023] 1 SLR 1072 ("*Milaha Explorer*") at [32]; *Farooq Ahmad Mann (in his capacity as the private trustee in bankruptcy of Li Hua) v Xia Zheng* [2024] SGHC 182 ("*Farooq Ahmad Mann*") at [119]–[124]). Ultimately, what is established by way of risk of dissipation is a court's assessment of dispositions made in various situations that speak to, amongst other things, the defendant's dishonesty or propensity to be untruthful including a pattern of unusual or unexplained movement of funds. An example of this may be found in cases where the defendant has exhibited dishonest conduct which has a material bearing on the risk of dissipation, such as the misappropriation of assets or market manipulation and the concealment of such financial dishonesty (see, *eg*, *JTrust* at [66]–[74]).

3 However, where a defendant deals with its assets for legitimate commercial reasons, or "in the ordinary course of its business", this will not show a real risk of dissipation. For example, in *Milaha Explorer*, this court considered that it could not be inferred that the appellant's anticipated sale of its only vessel was to avoid the consequences of a prospective judgment rather than for legitimate commercial reasons and, thus, found no real risk of dissipation of assets (at [34]). The burden of proving the risk of unjustified dealings with the defendant's assets lies on the claimant and that must be

demonstrated by "solid evidence" (*Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 ("*Guan Chong*") at [18]).

4 The present appeal arose from the decision of the judge below (the "Judge") to grant a Mareva injunction over the appellant's assets. Having heard and considered the parties' arguments, we allowed the appeal on the basis that a real risk of dissipation of its assets to frustrate the enforcement of an arbitral award was not made out.

Facts

5 The appellant was Continental Shipping Line Pte Ltd, a Singapore-incorporated company in the business of chartering ships and boats with crew and freight agencies. The respondent was Jonathan John Shipping Ltd, a company incorporated in the Marshall Islands.

6 The appellant operated a liner service between Singapore and Myanmar carrying containerised cargo. On or around 23 November 2020, the appellant entered into a time charterparty with the respondent (the "Charterparty") for the MV Aegean Express (the "Vessel"). Clause 21 of the Charterparty provided that there was to be "[n]o dry docking except in case of emergency during the currency of [the] Time Charter". As a result of a significant decrease in the demand for vessels calling into Myanmar since February 2021, the Vessel was the appellant's only operating vessel in 2022.

7 On 21 February 2022, the parties purportedly agreed to an "Addendum No. 3" (the "Addendum") which extended the Charterparty for another 36 to 39 months from 1 April 2022. The appellant disputed the validity of the Addendum on the basis that it did not agree to or sign the Addendum. The

Addendum provided that no dry docking would apply during the Charterparty except in case of emergency or until the next scheduled dry dock that was due on 10 November 2022.

8 On 30 June 2022, the respondent requested the appellant to release the Vessel for dry docking purposes for an estimated duration of about 25 to 30 days. The appellant delivered the Vessel to the respondent for dry docking on 15 October 2022. However, the respondent did not redeliver the Vessel within the stipulated time (*ie*, around 14 November 2022), and instead sent multiple e-mails between 16 November 2022 and 13 January 2023 to inform the appellant of further delays in the redelivery of the Vessel.

9 On 9 January 2023, the respondent provided a "without guarantee" estimate date of redelivery of 2 February 2023. The appellant considered the respondent's failure to give any specific contractual notice of redelivery as a clear repudiatory breach of the Charterparty and terminated the Charterparty by way of a letter dated 17 January 2023. The respondent alleged that the appellant had wrongfully terminated the Charterparty and commenced arbitration proceedings in London on 1 February 2023 (the "Arbitration").

10 On 10 November 2023, the respondent applied on an *ex parte* basis in HC/OA 1152/2023 for a worldwide Mareva injunction against the appellant under s 12A of the International Arbitration Act 1994 (2020 Rev Ed) to prohibit the disposal of assets by the appellant of a sum up to US$22,573,870.33. The Judge granted the Mareva injunction application (the "Mareva Order") on 14 November 2023.

11 After the Mareva Order was granted, the appellant made several withdrawals between November 2023 and February 2024 from the enjoined bank accounts, which amounted to a total sum of S$118,197.70 (the "Withdrawals"). It was not disputed that the appellant informed the respondent of these Withdrawals shortly after they were made.

12 On 13 February 2024, the respondent applied in HC/SUM 391/2024 ("SUM 391") for additional ancillary disclosure orders and a variation of the Mareva Order. Subsequently, on 15 April 2024, the appellant applied in HC/SUM 995/2024 ("SUM 995") for the Mareva Order to be set aside. In SUM 995, the respondent relied on various reports it had obtained between January 2023 and 15 October 2024 to suggest that the setting-aside application should be dismissed on the basis that there was a real risk of dissipation.

13 The Judge dismissed SUM 995. Dissatisfied with the Judge's decision, the appellant brought the present appeal. The appellant also filed an application to admit the affidavit by one Mr Tay Choon Kwee ("Mr Tay") pursuant to s 59(5) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed), to adduce further evidence in support of the setting aside of the Mareva Order. The admissibility of Mr Tay's affidavit was contested.

The parties' cases

14 In this appeal, the appellant submitted that the Mareva Order and all orders made in SUM 391 should be set aside. Although the appellant continued to dispute whether the respondent had a good arguable case, its two main grounds of appeal were that: (a) there was no real risk of dissipation; and (b) the respondent had sought and obtained the Mareva Order in an abuse of process.

15 In response, the respondent submitted that the Judge correctly found that it had a good arguable case and that there was a real risk of dissipation of assets. In support of its argument that there was a real risk of dissipation, the respondent relied on similar factors that were raised in the proceedings below, including the nature of the appellant's assets, the appellant's cessation of operations, the nationality of the appellant's sole director and shareholder and the Withdrawals made by the appellant.

Decision below

16 The Judge found that the respondent had a good arguable case on the merits because the appellant could not definitively show that it had a lawful right of termination of the Charterparty (*Jonathan John Shipping Ltd v Continental Shipping Line Pte Ltd* [2025] SGHC 34 (the "GD") at [18]–[23]). The Judge was also satisfied that there was a real risk that the appellant's assets may be dissipated to frustrate the enforcement of an anticipated award. The existence of a real risk of dissipation could be inferred from: (a) the fact that the appellant's assets were mainly held in the form of current assets; (b) the appellant's cessation of its primary business operations of chartering vessels; and (c) the Withdrawals made by the appellant post-Mareva Order (GD at [33]–[35]). Finally, the Judge found that the facts did not disclose any abuse of process which warranted the setting aside of the Mareva Order (GD at [43]–[52]).

Issue to be determined

17 The principal question before us was whether the Mareva Order should be set aside. A claimant seeking Mareva relief must show that there is: (a) a good arguable case on the merits of the claimant's claim; and (b) a real risk that

the defendant will dissipate his assets to frustrate the enforcement of an anticipated judgment or award (*ie*, a "real risk of dissipation") (*Bouvier* at [36]). If this court found that either of these requirements was not satisfied, the Mareva injunction should be set aside.

Whether there was a real risk of dissipation

18 In our judgment, the Mareva Order should be set aside on the basis that there was no real risk of dissipation. We elaborate on the reasons for our decision below.

19 As explained above, in determining whether the real risk of dissipation requirement is satisfied, a distinction should be drawn between dealings which are unjustified and dealings which can be said to be for legitimate commercial reasons. Where the defendant's dealings can be said to be for legitimate commercial reasons, they do not give rise to a real risk of dissipation (*Milaha Explorer* at [32]). As observed in the decision of *Farooq Ahmad Mann* (at [121]), what constitutes a justified or unjustified dealing with assets must be assessed in the light of the specific circumstances of each defendant.

The appellant's cessation of its primary business

20 The Judge found that the cessation of the appellant's primary business went towards demonstrating a real risk of dissipation (GD at [33]). Although the appellant asserted before us that it had not ceased all its operations entirely, it must accept that it had at least ceased its *primary business* of chartering vessels. The appellant's primary business was "the operation of a feeder service for carriage of cargo between Singapore and Myanmar", and the Vessel was its only chartered vessel for this feeder service. On the appellant's own account,

the respondent's prolonged detention of the Vessel severely affected its business, leaving it without any shipping space to operate its lines. The appellant accepted that this meant that it had ceased its shipping and chartering operations.

21 However, a finding that the appellant had ceased its primary business operations was itself insufficient to demonstrate a real risk of dissipation (see *Guan Chong* at [22]). It is only where the defendant ceases business by selling its only asset *for no sufficient reason* that a real risk of dissipation may be inferred (see *Guan Chong* at [23]). If, on the contrary, there is a reasonable or plausible explanation for the business closure, the court should not impose a Mareva injunction simply because the defendant has ceased to carry on a business that is the subject matter of the parties' dispute (*Bugis Founder Pte Ltd v Seng Huat Coffee House Pte Ltd* [2021] 5 SLR 1308 at [27]).

22 We were of the view that the appellant had a genuine commercial reason to cease its primary business. The Vessel was the appellant's only vessel operating the liner service between Singapore and Myanmar. It was the respondent who had initiated the withdrawal of the Vessel for dry docking and had not returned it for service. There was no evidence before the court that the appellant had been looking for a reason to terminate the Charterparty or cease its primary business operations. Given that this was not a situation where there was an ostensible lack of explanation for the appellant's cessation of business which warrants suspicion, as in *Guan Chong* (at [24] and [26]), the appellant's cessation of its primary business operations did not establish or support the existence of *any* real risk of dissipation.

The liquidity of the appellant's assets

23 The Judge also found that the liquidity of the appellant's assets contributed to the finding of a real risk of dissipation (GD at [33(a)]).

24 It could not be seriously disputed that the appellant's assets were predominantly current assets, as disclosed in the affidavit of the appellant's director, Captain U Ko Ko Htoo ("Captain Htoo"), dated 30 November 2023. The nature of a company's assets is invariably shaped by the nature of its business. Given that the appellant's business involved the operation of a chartered vessel, the fact that it mostly held liquid assets was hardly surprising or remarkable. The mere ease with which the appellant's assets may be dissipated, absent any other questionable circumstances, did not sufficiently prove a real risk of dissipation. This could be distinguished from the situation in *JTrust*, where the court had found that the defendants' ultimate controller had demonstrated dishonest conduct including the mismanagement of large sums of money and market manipulation (at [66]–[74]) which, taken together with the ease with which the defendants' assets could be disposed of, led to a finding of a real risk of dissipation (at [75]). In our judgment, the liquidity of the appellant's assets in and of itself was at best a neutral factor and could not be used to demonstrate any real risk of dissipation.

The nature of the appellant's business and the nationality of the appellant's sole director and shareholder

25 On appeal, the respondent also reiterated its submissions below that: (a) the nature of the appellant's business and the existence of many associated companies; and (b) the foreign nationality of Captain Htoo demonstrated a real risk of dissipation. The Judge did not rely on these grounds in his decision and

the appellant did not refer to any of these points in its appeal. In any event, these circumstances were plainly insufficient to give rise to a real risk of dissipation.

26 The appellant's corporate structure was in place at the time the parties entered into the Charterparty and must have been known to the respondent. This was analogous to the situation in *Milaha Explorer*, where this court held that because the claimant would have known of the defendant's corporate structure at the outset and must have accepted any associated risks, the defendant's corporate structure could not be said to support a real risk of dissipation of assets (at [27]). It bore emphasis that the purpose of a Mareva injunction was not to provide security for the claimant in the event of any business risks, but to prevent the defendant's deliberate frustration of an anticipated judgment or award (*Milaha Explorer* at [29]). It could not be said that the defendant's pre-existing business structure, which the claimant was or should have been sufficiently apprised of, evidenced any unjustified dealing or risk thereof.

27 The respondent's reliance on the nationality of the appellant's sole director and shareholder was akin to clutching at straws to support an inference of a real risk of dissipation of assets to frustrate any judgment or award. As expressly stated in *Milaha Explorer* (at [30]), the foreign origin of a company or person could not in and of itself justify a real risk of dissipation.

The appellant's Withdrawals

28 The only remaining consideration was whether the Withdrawals made by the appellant supported an inference of a real risk of dissipation. The Withdrawals were disclosed pursuant to para 4 of the Mareva Order, which required the appellant to account to the respondent for the amount of money spent in the ordinary and proper course of business and was thus not considered

by the Judge when the Mareva Order was granted on 14 November 2023. In *Bouvier*, this court held that ancillary disclosure orders may only be relevant to the risk of dissipation in two narrow situations: (a) where the defendant completely refused to provide any disclosure of his assets; and (b) where the information disclosed by the defendant revealed assets "so glaringly inadequate or suspicious" such that the deficiencies could not be explained away on the basis of the urgency of the disclosure and/or accounting or valuation inaccuracies (at [104]).

29 According to the appellant, the Withdrawals were for the purposes of paying the rental of its office premises (located at Harbourfront Centre) and the salaries of its employees, which constituted payments made "in the ordinary and proper course of business".

30 The Judge held that the Withdrawals raised reasonable concerns that the appellant was factually dissipating its assets despite the Mareva Order (GD at [34]–[35]). Given that the appellant had ceased its primary business operations, the Judge found it improbable that the appellant would have kept its employees on its payroll and agreed to pay for the rent and utilities of the office premises, which appeared to be shared with a related company, including Global Green Shipping Pte Ltd ("Global") (GD at [38]–[40]).

31 We were unconvinced that these Withdrawals gave rise to a real risk of dissipation. To begin with, it was undisputed that each time that the appellant made a withdrawal to pay its staff and rent, the appellant had duly informed the respondent of the withdrawal. On 11 and 28 December 2023, the appellant informed the respondent of two withdrawals it had made from the enjoined accounts in November 2023 for payments to third-party service providers and/or

suppliers and the payment of its staff salaries. In response, the respondent requested further information and documents in support of these purported business expenses. On 16 January 2024, the appellant rejected the respondent's requests for the additional supporting documents, but informed the respondent of additional withdrawals made for the period of December 2023 to January 2024. The appellant also informed the respondent, on 7 February 2024, that it had made withdrawals for further business expenses incurred in the months of December 2023 to January 2024.

32 What was clear was that the appellant's Withdrawals were not made surreptitiously. It may well be that the appellant's understanding that it was entitled to make the Withdrawals pursuant to the exception to the Mareva Order was erroneous, but that did not mean that the Withdrawals constituted an act of dissipation to defeat or frustrate the award which the respondent may ultimately obtain against the appellant. It should be mentioned that the exception to the Mareva Order for payments in the ordinary course of business did not stipulate any limit on quantum. The limit of $7,000 was only imposed subsequently by the Judge when he made the ancillary disclosure orders and a variation of the Mareva Order pursuant to SUM 391. In any event, we were satisfied that the Withdrawals were indeed made for the payment of staff salaries and rent.

33 We disagreed with the Judge's view that, given the cessation of the appellant's primary business operations, it was improbable that the appellant would have kept its employees on its payroll and undertaken the payment of the rent and utilities. The fact that the appellant had ceased its primary business operations did not *ipso facto* mean that there was no longer any reason, commercial or otherwise, to retain the employment of its staff. The appellant had adduced evidence that the payments were in fact made to the staff for their

salaries. The question of employee retention was a business decision that the appellant was entitled to make. Captain Htoo explained that he had chosen to retain the appellant's staff in the hope of resuming the appellant's operations in the future. Since the appellant had every intention of resuming its liner operations when the situation improves in the future, we did not find it exceptional for the appellant to continue to retain and pay its employees.

34 The respondent initially suggested in the proceedings below that given the cessation of the appellant's business operations, the employees may not have been "genuine employees". However, based on the CPF records, the appellant was in fact stated as the employer of these employees. There was therefore no question that these salaries were in fact paid to the appellant's employees. The respondent also claimed that these employees must have been doing work for other companies in the group since the appellant was no longer active. In our judgment, none of these arguments could support an inference that the payments demonstrated any risk of dissipation of assets. Such a decision might not make good business sense but there was nothing dishonest or improper for the appellant to maintain its employees despite the cessation of its primary business. As we pointed out to counsel for the respondent, Ms Gaffoor, during the hearing, there was also nothing improper for the appellant as the employer to direct the employees to do work for other companies in the group.

35 It was also not unusual for the appellant to pay for the office rental and utilities. On the respondent's own case, the appellant's operations had always involved the existence of associated companies, one of which was Global. According to the appellant, Global was established to embark on "green" initiatives in the shipping industry, but as no suitable initiatives were found to be appropriate, Global did not commence operations, and therefore permitted

the appellant to take over its office premises in exchange for paying for the rent and utilities. In the proceedings below, the respondent also appeared to accept that Global was a dormant company and that it had no revenue-generating ability. Given that the appellant was the main company in the group of associated companies, and that Global never had the wherewithal to pay for the rental of the premises, we did not think that it was remarkable for the appellant to pay for the office rental and utilities especially since the appellant was actually occupying the office premises. We would stress that the situation may well be different if Global was in a financial position to pay for the rent and in operation, but the appellant volunteered to pay on behalf of Global, with the effect of reducing the appellant's assets to the prejudice of the respondent. However, as this was not the situation before us, we did not regard that the appellant's Withdrawals supported any inference of a real risk of dissipation.

36 As a final point, the Judge did not have sufficient regard to the fact that the appellant's payments for the office rental and its staff were its *modus operandi* prior to the respondent's application for the Mareva injunction. Captain Htoo had adduced evidence in the form of payroll records and Central Provident Fund ("CPF") records demonstrating that the appellant had made salary payments and CPF contributions to its employees since December 2022, even prior to the termination of the Charterparty. There was also evidence of a letter from the appellant to Global dated 1 June 2023, indicating an agreement for the appellant to pay the monthly rent and utilities of the office premises. The respondent did not produce any evidence to the contrary to suggest that the appellant had not been making such rental and staff payments prior to the Mareva Order. In short, we were satisfied that these Withdrawals were made in the ordinary course of business.

37 We should add that it appeared from the respondent's arguments during the hearing that the crux of its case was that a contingent debtor, like the appellant, must cease from incurring its usual business expenses when such expenses no longer made commercial sense from the perspective of a contingent creditor like the respondent, and that if the contingent debtor should continue to do so, that would demonstrate a real risk of dissipation of assets. In this regard, this court has previously held that a Mareva injunction is not meant to provide security for a claimant or to guard against the potential insolvency of the defendant (*Milaha Explorer* at [29]).

Conclusion

38 In our view, the Mareva injunction should be discharged as there was simply no evidence of any risk of dissipation of assets to frustrate any award which the respondent might eventually obtain against the appellant. The orders made in SUM 391, which comprise an order for the variation of the Mareva Order and ancillary disclosure orders, were also set aside. As contemplated by the first Schedule of the Mareva Order, we also ordered for an inquiry for damages sustained by the appellant as a result of the Mareva Order.

39 As the appeal was allowed on the basis that there was no real risk of dissipation, it was unnecessary to examine whether the respondent had a good arguable case on the merits or whether there was an abuse of process that warranted the discharge of the Mareva Order.

40 We have concluded based on the evidence before the Judge that no real risk of dissipation arose in the present case. We therefore did not need to consider the additional evidence, adduced in Mr Tay's affidavit, which the

appellant suggested would further support its position that the Mareva Order should be set aside.

41 We fixed the costs of the appeal and the costs below for SUM 995 and SUM 391 in the aggregate sum of $50,000 (all in) to be paid to the appellant and ordered for the respondent to refund the costs below if paid by the appellant. The usual consequential orders were to apply.

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Kwek Choon Lin Winston (Rajah & Tann Singapore LLP) for the appellant;
Nur Rafizah Binte Mohamed Abdul Gaffoor and Einson Joseph Pang Siyuan (Joseph Tan Jude Benny LLP) for the respondent.