IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 95

Originating Claim No 623 of 2024 (Summonses Nos 3555 and 3645 of 2024)

Between

(1) Xu Xiangrong
(2) Shanghai Changzhou International Freight Transport Agency Co Ltd

… *Claimants*

And

(1) Fu Xianwei
(2) Quan An International Pte Ltd
(3) Acrux Shipping Pte Ltd
(4) Fuxing Shipping Pte Ltd
(5) Weicheng Shipping Pte Ltd
(6) Weiye Shipping Pte Ltd
(7) Yuanzhi Shipping Pte Ltd
(8) Pengcheng Shipping Pte Ltd
(9) Peaceful Rich Sea Holding Limited

… *Defendants*

JUDGMENT

[Civil Procedure — Service — Dispensation of personal service]
[Conflict of laws — Choice of jurisdiction]
[Injunctions — Mareva injunction — Setting aside]

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Xu Xiangrong and another
v
Fu Xianwei and others

[2025] SGHC 95

General Division of the High Court — Originating Claim No 623 of 2024
(Summonses Nos 3555 and 3645 of 2024)
Tan Siong Thye SJ
11 March 2025

22 May 2025 Judgment reserved

Tan Siong Thye SJ:

Introduction

1 The defendants apply to set aside the worldwide freezing order and the order to dispense with the personal service on the first defendant which were earlier granted on an *ex parte* basis. The defendants also apply for an order that Singapore courts do not have any jurisdiction on the ground of *forum non conveniens*. The defendants' summonses in relation to HC/OC 623/2024 ("OC 623") are as follows:

(a) In HC/SUM 3555/2024 ("SUM 3555"), the defendants apply to set aside the worldwide freezing order (also known as a worldwide Mareva injunction) that the court granted on 16 August 2024 ("Worldwide Mareva"), and, in the alternative, to vary the Worldwide Mareva and set aside the ancillary disclosure orders granted.

(b) In HC/SUM 3645/2024 ("SUM 3645"), the defendants apply to set aside HC/ORC 5678/2024 which granted the claimants the dispensation of personal service of the originating process on the first defendant, Mr Fu Xianwei ("Mr Fu"). The defendants also seek a declaration that the Singapore courts have no jurisdiction over Mr Fu and, in the alternative, a *forum non conveniens* stay for the action against Mr Fu. Further, the defendants also apply for a stay of proceedings against the second to ninth defendants on the ground of *forum non conveniens*.

2 After considering the parties' submissions, I partially allow SUM 3555 to the extent of setting aside some ancillary disclosure orders, but otherwise dismiss both SUM 3555 and SUM 3645.

Background

The parties

3 The first claimant, Mr Xu Xiangrong ("Mr Xu"), and Mr Fu are both Chinese nationals.[1] Mr Fu travelled regularly between China and Singapore.[2]

4 The second claimant, Shanghai Changzhou International Freight Transport Agency Co Ltd ("Changzhou") is a company incorporated in Shanghai, China.[3] Mr Xu is the Legal Representative and Executive Director of Changzhou.[4]

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1 Fu Xianwei ("Fu")'s 5th affidavit at para 77.

2 Xu Xiangrong ("Xu")'s 3rd affidavit at para 39(c).

3 Xu's 1st affidavit at para 2.

4 Xu's 1st affidavit at para 2.

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5 The second to eighth defendants are companies incorporated in Singapore.[5] The ninth defendant is a company incorporated in Hong Kong.[6]

The parties' cases in OC 623

The claimants' case

6 Mr Fu and Mr Xu entered into a Shareholders' Cooperation Agreement, dated 1 April 2014 (the "Shareholders' Agreement").[7] Mr Xu was a Deputy General Manager who conducted ship operations and logistics transportation operations in Pacific Glory Shipping Pte Ltd ("PGS PL"), a company incorporated in the British Virgin Islands ("BVI"), and other "associated companies".[8] Mr Xu considers the group of companies as the "Pacific Glory Group". This group is in the business of ship operations, chartering, management, and investment.[9] Mr Fu and Mr Xu respectively contributed US$4.25 million and US$750,000 to the Pacific Glory Group in return for an 85% interest and 15% interest in the group, respectively.[10] Mr Fu is the Chairman and CEO of the Pacific Glory Group and he has full control over the group's financial affairs, while Mr Xu oversaw the group's operations and represented the group in signing all agreements and contracts.[11] The consolidated financial accounts of the Pacific Glory Group were to be provided to Mr Fu and Mr Xu at least every half a year in a timely manner.[12]

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5 Xu's 1st affidavit at paras 6(b)–(e).

6 Xu's 1st affidavit at para 6(e)(v).

7 Xu's 1st affidavit at para 8, Tab 10.

8 Xu's 1st affidavit at para 9(c).

9 Xu's 1st affidavit at para 6(a).

10 Xu's 1st affidavit at para 9(a).

11 Xu's 1st affidavit at paras 9(b)–(c).

12 Xu's 1st affidavit at para 9(d).

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7 The duration of the Shareholders' Agreement was for 10 years, from 1 January 2014 to 31 December 2023, unless terminated.[13] Upon the termination of the joint venture, the parties are to liquidate the joint venture in accordance with the agreed proportions, seal the financial accounts and distribute book surpluses or losses according to the proportions of the parties' interests.[14]

8 On 1 January 2016, Mr Fu and Mr Xu entered into a Supplementary Agreement (the "Supplementary Agreement"), which revised certain terms in the Shareholders' Agreement.[15] Mr Xu's interest was revised to 10% in 2014, but was increased to 15% from 2015 onwards.[16] Mr Xu was further entitled, from 2016 onwards, to a 10% incentive from the Pacific Glory Group's profits before dividends were paid out under the Shareholders' Agreement.[17] The 10% incentive would replace payment of bonuses but would be cumulative with the dividends. Therefore, Mr Xu was entitled to 23.5% of the net profits of the Pacific Glory Group, being the sum of 10% of the net profit as an incentive, plus an additional 13.5% of the net profit, being 15% of the remaining 90% of the net profit, as dividends.[18]

9 Mr Fu and Mr Xu incorporated other companies which were treated as part of the Pacific Glory Group, even though these other companies were not subsidiaries of PGS PL.[19] Mr Fu and Mr Xu had an understanding that the Shareholders' Agreement and the Supplementary Agreement (collectively

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13 Xu's 1st affidavit at para 9(f).

14 Xu's 1st affidavit at para 9(h).

15 Xu's 1st affidavit at para 10.

16 Xu's 1st affidavit at para 10(a).

17 Xu's 1st affidavit at para 10(b).

18 Xu's 1st affidavit at para 10(c).

19 Xu's 1st affidavit at para 12.

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referred to as the "Agreements") would apply to these associated companies. Even though some of the companies are legally held by other individuals, these companies are ultimately beneficially owned by Mr Fu and Mr Xu.[20] These companies include, among others, the second claimant and the second to ninth defendants.[21]

10 In addition to the Pacific Glory Group's ordinary business, Mr Xu, Mr Fu, their close business partners, family members and employees participated in an investment scheme relating to vessels.[22] Under this scheme, each investor ("Vessel Investor") contributes to the purchase price of a vessel (the "Trust Vessel"), which would be held under a single ship owning company incorporated for that purpose (the "Trust Company").[23] Each Vessel Investor would have a beneficial interest in the Trust Vessel proportionate to the purchase price contributed.[24] The beneficial interest entitles the Vessel Investor to receive a proportionate share of the profits generated from the voyages and sales proceeds upon the Trust Vessel's sale. A Certificate of Share Acquisition would be issued to each Vessel Investor to reflect and record their beneficial ownership in the Trust Vessels.[25] Mr Xu has a beneficial interest in nine Trust Vessels. Seven of these Trust Vessels – MV Acrux (formerly MV V Glory), MV V Rich, MV Regulus (formerly MV Magnolia), MV Leo I (formerly MV V Honor), MV Noble, MV V Pacific and MV Champ Star – were owned or are

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20 Xu's 1st affidavit at para 16.

21 Xu's 1st affidavit at para 15.

22 Xu's 1st affidavit at para 26.

23 Xu's 1st affidavit at para 26(a).

24 Xu's 1st affidavit at para 26(c).

25 Statement of Claim ("SOC") at para 18.

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still presently owned by the third to the ninth defendants.[26] Two Trust Vessels – the MV Bon Voyage and MV Costas – were owned by companies which are not a party to these proceedings and had been sold.

11 In 2022, Mr Xu had a dispute with Mr Fu over the distribution of profits made by the Pacific Glory Group and under the vessel purchase arrangements for the Trust Vessels.[27] Mr Xu conducted his own investigations and discovered that Mr Fu might have used the Pacific Glory Group's money as part of his personal contributions in the purchase of the Trust Vessels.[28] Mr Fu and Mr Xu had heated discussions in early 2024 on this matter.[29] Mr Fu then called Mr Xu into his office on 24 May 2024 and terminated Mr Xu's positions and functions in the Pacific Glory Group.[30]

12 The claims in OC 623 can be classified into four broad categories: (a) breach of the Shareholders' Agreement and Supplementary Agreement (the "Shareholders' Agreement Claims"); (b) failure to distribute the sales proceeds and/or profits generated by the Trust Vessels (the "Trust Vessels Claims"); (c) unauthorised transfers from Changzhou (the "Unauthorised Transfer Claims") and (d) application for a Mareva injunction in support of foreign proceedings under s 4(10A) of the Civil Law Act 1909 (2020 Rev Ed) (the "Civil Law Act") (the "s 4(10A) Claim"). I shall now elaborate on each of the claims.

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26 SOC at para 20.

27 Xu's 1st affidavit at para 40.

28 Xu's 1st affidavit at para 41.

29 Xu's 1st affidavit at para 43.

30 Xu's 1st affidavit at para 44.

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(1) Shareholders' Agreement Claims

13 Mr Xu alleges that he did not receive his dividends, bonuses and incentives for the financial years 2021 to 2023 as Mr Fu refused, neglected and/or failed to cause the Pacific Glory Group to distribute incentives and dividends pursuant to the Agreements.[31] Further, Mr Xu alleges that Mr Fu had misappropriated funds belonging to the Pacific Glory Group and used them as his personal contributions to the purchase price of the Trust Vessels.

14 In the premises, Mr Xu's claims against Mr Fu for breach of the express terms in the Agreements are as follows: (a) for his failure to discharge his duties as Chairman and General Manager; (b) for damaging the interests of the Pacific Glory Group; (c) for failing to provide truthful and accurate financial information of the Pacific Glory Group; (d) for failing to distribute the Pacific Glory Group's profits to Mr Xu; and (e) for failing to liquidate the Pacific Glory Group's assets for distribution upon termination of the Agreements.[32] Mr Xu also claims against Mr Fu for breaches of fiduciary duty stemming from a relationship of trust and confidence under the Agreements and breach of an implied term to act honestly and in good faith.

(2) Trust Vessels Claims

15 Mr Xu alleges that he did not receive the distributions he was entitled to as a Vessel Investor.[33] Further, Mr Xu alleges that he did not receive the sales proceeds from the sale of two Trust Vessels owned by the third defendant,

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31 SOC at paras 4–10; Claimants' Written Submissions ("CWS") at paras 10–12.

32 SOC at para 27; Prayer 1(a) of the SOC.

33 SOC at paras 47–52; CWS at para 13.

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Acrux Shipping Pte Ltd ("Acrux"), and the fourth defendant, Fuxing Shipping Pte Ltd ("Fuxing"), respectively.

16 In the premises, Mr Xu claims against Acrux and Fuxing for breach of trust, seeking a declaration that the beneficial interest in the two Trust Vessels is held for Mr Xu and an account and payment of profits.[34] Mr Xu is also claiming against Mr Fu for dishonest assistance in the third to ninth defendants' breach of trust in failing to distribute profits and sales proceeds generated by the Trust Vessels to Mr Xu.[35] Mr Xu also claims that, in failing to direct or cause the third to ninth defendants to distribute profits and sales proceeds, Mr Fu had breached his fiduciary duty and/or the implied terms of the Agreements to act honestly and in good faith.[36]

(3) Unauthorised Transfer Claims

17 Mr Xu alleges that Changzhou had entered into a series of sham transfers to the second defendant, Quan An International Pte Ltd ("Quan An") and to third parties, which Mr Xu was not aware of and did not approve of, without legitimate commercial purpose.[37] Mr Xu claims that as Legal Representative and Executive Director of Changzhou, transfers of funds out of Changzhou's bank account had to be approved by him. However, Ms Fu Fen, the cousin of Mr Fu, controlled Changzhou's bank account and effected the transfers without his approval as she had the log-in password to the Internet banking account, the company stamp and the financial department stamp as well as Mr Xu's personal

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34 Prayers 4 and 5 of the SOC.

35 Prayer 1(b) of the SOC.

36 SOC at para 52.

37 SOC at paras 33–46; CWS at paras 16–18.

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stamp, which were entrusted to her to process documents and contracts approved by Mr Xu.[38]

18 In the premises, Changzhou claims against Quan An for the return of sums based on legal title in relation to the unauthorised transfers from Changzhou's bank account to Quan An's bank account.[39] Further, or alternatively, Changzhou also seeks restitution in respect of the unauthorised transactions,[40] and damages from Mr Fu and Quan An for conspiracy in relation to the unauthorised transfers from Changzhou to Quan An and from Changzhou to third parties.[41]

(4) Section 4(10A) Claim

19 The claimants seek a declaration that the third to ninth defendants hold the respective Trust Vessels and profits and sales proceeds generated by such Trust Vessels on trust for Mr Fu in proportion to Mr Fu's contributions to the purchase price of the respective Trust Vessels, with the quantum of Mr Fu's contributions to be determined.[42] This is sought in conjunction with a worldwide freezing order in aid of the Chinese proceedings (as defined in [25] below) over assets which are held on trust or as nominee by the third to ninth defendants on behalf of Mr Fu.[43] More generally, the claimants seek a worldwide freezing order over Mr Fu's assets in aid of the Chinese proceedings.[44]

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38 Xu's 5th affidavit at para 41.

39 Prayers 3(a) of the SOC; CWS at para 16.

40 Prayer 2(c) of the SOC.

41 Prayers 2(a), 2(b), 3(b) of the SOC.

42 Prayer 6a of the SOC.

43 Prayer 6(b) of the SOC.

44 Prayer 1(d) of the SOC.

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The defendants' case

20 The defendants are contesting the proceedings on the basis that the Singapore courts lack jurisdiction or should not exercise jurisdiction. Thus, they have only filed a defence contesting jurisdiction (a "Defence (Jurisdiction)"), and a substantive defence on the merits of the case has yet to be filed. However, from Mr Fu's affidavits filed in support of the applications to stay the proceedings and to set aside the Worldwide Mareva, the broad contours of the defendants' case on the merits can be ascertained.

21 Mr Fu contests the Shareholders' Agreement Claims on two discernible grounds. First, he casts some doubts on the Agreements' validity. He claims that the parties had agreed orally in 2014 for Mr Xu to invest RMB 3 million in PGS PL in exchange for 10% of the shares in PGS PL.[45] It was later agreed that Mr Xu's shareholding would be increased to 15% and that Mr Xu's total capital contribution would be increased to US$750,000, by converting the future bonuses Mr Xu would receive into capital contribution. The Shareholders' Agreement and Supplementary Agreement were drafted by Mr Xu in 2016 and only signed in the same year.[46] Mr Xu requested Mr Fu to sign the Agreements, who did so without reading the Agreements in detail because he trusted Mr Xu.

22 Second, Mr Fu asserts that the Agreements were meant only to confer an interest in PGS PL itself and not the other companies.[47] The existence of the "Pacific Glory Group" as a legal entity is contested, as Mr Fu says that it is merely a trade name for his other companies.[48] The Agreements came to an end

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45 Fu's 4th affidavit at para 12.

46 Fu's 4th affidavit at para 15.

47 Fu's 4th affidavit at paras 13–14; 103.

48 Fu's 4th affidavit at para 100.

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in 2020 upon PGS PL's liquidation.[49] Mr Xu, losing confidence in the company's profitability, proposed the dissolution and liquidation of PGS PL. Mr Fu agreed to Mr Xu's request to refund his investments and to exit PGS PL as an investor. On 24 January 2020, PGS PL was liquidated by Mr Xu and his investment of US$750,000 was returned. Mr Xu thereafter remained in Changzhou as Deputy General Manager only as an employee and assisted in the operation of the other companies in the same capacity.

23 Mr Fu contests Mr Xu's claim of beneficial interest in respect of all the Trust Vessels.[50] Mr Fu accepts Mr Xu's general description of the investment scheme. However, Mr Fu asserts that Mr Xu did not contribute to the purchase price of the Trust Vessels and therefore does not have an interest.

24 Mr Fu denies that the money transactions from Changzhou to Quan An and to third parties were unauthorised.[51] Mr Fu alleges that Changzhou's business model required it to source for shippers with cargo to be shipped out of China, while Quan An sourced for suitable vessels. Changzhou would contract with shippers and collect freight and other charges, and in turn, contract with Quan An and pay freight and other charges to Quan An. The money transfers out to Quan An and to third parties were pursuant to legitimate business operations.

The Chinese proceedings

25 On 5 July 2024, Mr Xu commenced proceedings in China against Mr Fu in the Shanghai Maritime Court (the "Chinese proceedings"). Mr Xu sought

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49 Fu's 4th affidavit at paras 25–28.

50 Fu's 4th affidavit at paras 52–65.

51 Fu's 4th affidavit at paras 82–98.

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several reliefs, including an order for bonuses and dividends, distribution of the company's surplus reserves, net profit and surplus value of the Trust Vessels purchased, liquidation of partnership property and a penalty based on the one-year loan market quoted rate.[52] On 21 August 2024, Mr Fu took out a Jurisdictional Objection to the Chinese proceedings, arguing that the Shanghai Maritime Court was not the appropriate court and that foreign or other Chinese courts would be more suitable venues for litigation.[53] In reply, Mr Xu filed a Defence to Jurisdictional Objection on 27 August 2024.[54]

26 On 27 September 2024, the Shanghai Maritime Court rejected the Jurisdictional Objection, affirming its jurisdiction over the dispute.[55] On appeal, the Shanghai Higher People's Court on 22 November 2024 affirmed the Shanghai Maritime Court's decision.[56] However, in the appeal, Mr Xu dropped many of the reliefs prayed for, such as the claims relating to the bonuses, dividends and distribution of surplus reserves, and restricted his application only to the liquidation of the Trust Vessels and the distribution of monies according to the agreed proportions. This may be because the Shanghai Maritime Court did not have the subject matter jurisdiction to hear the Shareholders' Agreement Claims.

27 Further, Mr Xu applied for an asset preservation order on 5 July 2024 concomitantly to freeze US$39 million of Mr Fu's assets.[57] However, Mr Xu eventually revised his application to freeze only assets worth up to

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52 Fu's 5th affidavit at pp 40–47.

53 Xu's 5th affidavit at pp 820–833.

54 Fu's 5th affidavit at pp 58–61.

55 Fu's 5th affidavit at FX-44, pp 67–69.

56 Fu's 5th affidavit at FX-45, pp 77–80.

57 Fu's 4th affidavit at FX-36, pp 683–684.

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RMB 10 million.[58] Mr Xu had to furnish an insurance bond for the asset preservation order for the sum of RMB 10 million.[59] After the Shanghai Maritime Court granted the freezing order for RMB 10 million, Mr Fu topped up the sums in the frozen Chinese bank account to RMB 10 million so as to satisfy the freezing order applied for. He then obtained the lifting of the Chinese asset preservation order on his bank account and properties.[60]

Procedural history

28 I shall now deal with the procedural history of the case, which is relevant as Mr Fu has sought to set aside service of the originating process.

29 On 15 August 2024, the claimants took out an originating claim and an *ex parte* summons for the Worldwide Mareva. On the same day, the claimants sought an urgent hearing before the duty judge to hear the *ex parte* application for the Worldwide Mareva. The court heard the claimants' applications the next day on 16 August 2024. The court was satisfied that the requirements for granting a Mareva injunction were met. Therefore, the Worldwide Mareva injunction was granted to the claimants, and permission was also granted for the Worldwide Mareva to be served via WeChat on the defendants.

30 The defendants entered a notice of intention to contest via their solicitors, JLex LLC ("JLex"), on 23 August 2024. On 28 August 2024, the defendants took out a summons for extension of time, HC/SUM 2451/2024, for more time to comply with the ancillary disclosure orders made in conjunction with the Worldwide Mareva. This application was heard on 29 August 2024 and

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58 Fu's 4th affidavit at FX-36, pp 686–687.

59 Fu's 4th affidavit at FX-36.

60 Fu's 4th affidavit at FX-37, pp 693–694.

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the court granted the defendants two more weeks to comply with the ancillary disclosure orders.

31 On 13 September 2024, the claimants took out the Statement of Claim and served it on the second to ninth defendants. In response, on 10 October 2024, the second to ninth defendants entered a Defence (Jurisdiction), pleading that the action should be stayed *vis-à-vis* the second to ninth defendants on the grounds of *forum non conveniens*. Notably, Mr Fu did not enter a Defence (Jurisdiction) at that time as he had yet to be personally served with the originating processes.

32 On 17 October 2024, the claimants applied *ex parte* for an order to dispense with personal service on Mr Fu of the Originating Claim and the Statement of Claim, and for permission to effect service by emailing a copy of the Originating Claim to JLex. The assistant registrar ("AR") granted the application on 30 October 2024. Mr Fu then entered a Defence (Jurisdiction) on 22 November 2024, in which he argued that (a) service of the process was improper and that the Singapore courts have no jurisdiction as no service out application was made; and (b) China, not Singapore, was the most appropriate forum for the action.

33 The present applications, SUM 3555 and SUM 3645, were then taken out on 6 December 2024 and 13 December 2024 respectively (see [1] above).

The parties' cases in SUM 3555 and SUM 3645

The defendants' case

34 The defendants' case in these applications can be broadly summarised as follows.

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(a) First, the order to allow the claimants to dispense with personal service on Mr Fu was defective and should be set aside as permission for service out of jurisdiction was neither applied for nor granted.[61] Mr Fu is a foreign defendant and, therefore, permission for service out was necessary before jurisdiction could be established over him.

(b) Second, the appropriate forum for this dispute is China, not Singapore. Therefore, the court should grant a declaration that it has no jurisdiction over Mr Fu on the premise that the order for dispensation of personal service is set aside, or alternatively, stay the action against Mr Fu for *forum non conveniens*.[62] Concomitantly, proceedings against the second to ninth defendants should be stayed because the same factors pointing to China as the appropriate forum are applicable.[63]

(c) Third, the Worldwide Mareva should be set aside. If the court has no *in personam* jurisdiction over Mr Fu, the Worldwide Mareva cannot be premised on s 4(10) of the Civil Law Act.[64] Further, an injunction in support of foreign proceedings under s 4(10A) of the Civil Law Act should not be granted.[65] In any event, there is no good arguable case on the merits or real risk of dissipation, and Mr Xu failed to provide full and frank disclosure.[66]

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61 Defendants' Written Submissions ("DWS") at paras 90–111.

62 DWS at paras 112–121.

63 DWS at paras 122–126.

64 DWS at paras 130–158.

65 DWS at paras 159–208.

66 DWS at paras 209–307.

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(d) Fourth, if the Worldwide Mareva is not set aside, the court should nonetheless vary the terms of the injunction and set aside the ancillary disclosure orders.[67] Further, the court should order the claimants to fortify their undertaking as to damages.[68]

The claimants' case

35 The claimants contest the defendants on every issue.

(a) First, the order for dispensation of personal service should not be set aside.[69] The order for dispensation of personal service was not defective as permission to serve out of jurisdiction was not a prerequisite for personal service to be dispensed with.

(b) Second, Singapore is the appropriate forum for the claims.[70] Therefore, proceedings should not be stayed.

(c) Third, the Worldwide Mareva should not be set aside.[71] There is a good arguable case and a real risk of dissipation. While Mr Xu had neglected to disclose the freezing order made in the Chinese proceedings, it was inadvertent and not material. Further, even if the court orders a stay or finds that it has no jurisdiction over Mr Fu, the Worldwide Mareva can still be sustained under s 4(10A) of the Civil Law Act in support of foreign proceedings.

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67 DWS at paras 323–341.

68 DWS at paras 308–322.

69 CWS at paras 48–55.

70 CWS at paras 56–75.

71 CWS at paras 5–38.

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(d) Fourth, the terms of the injunction should not be varied, and the ancillary disclosure orders should stand. There is no basis for a fortification order as the defendants have not proved any estimated losses.[72]

Issues to be determined

36 The issues that arise for my determination are:

(a) Whether the dispensation of personal service order should be set aside;

(b) Whether Singapore is the appropriate forum to hear the disputes;

(c) Whether the Worldwide Mareva should be set aside;

(d) Whether fortification should be ordered and whether the terms of the Worldwide Mareva, including the ancillary disclosure orders, should be varied.

Issue 1: Whether the dispensation of personal service order should be set aside

37 The first issue is whether the originating papers were properly served on Mr Fu. The defendants argue that the dispensation of personal service order should be set aside as no permission to serve out of jurisdiction was obtained. Therefore, the originating papers were not properly served on Mr Fu. The claimants, on the other hand, argue that the dispensation of personal service was properly obtained.

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[72] CWS at paras 39–47.

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38 On a preliminary observation, the defendants, in their written submissions, had initially construed the AR's order to be one of *substituted service*, not *dispensation of personal service*.[73] However, during oral submissions, counsel for the defendants amended his case, rightly, to be in relation to dispensation of personal service. This is correct as substituted service under O 7 r 7 of the Rules of Court 2021 ("ROC 2021") is distinct from dispensation of personal service under O 7 r 1(2).

Whether permission to serve out of jurisdiction should have been obtained before dispensation of personal service

39 In my view, the ROC 2021 does *not* require a formal application for permission to serve out of jurisdiction before an order for dispensation of personal service can be granted in relation to a foreign defendant.

40 *Per* Chua Lee Ming J's decision in *Madison Pacific Trust Ltd and others v PT Dewata Wibawa and others* [2024] SGHC 184 ("*Madison Pacific*"), the court's approval for service out is only required if the originating process or court document is to be served out of Singapore (at [62]). In *Madison Pacific*, the court had dispensed with personal service of the committal papers on the third defendant, who was resident in Indonesia, and allowed ordinary service on the third defendant's solicitors situated in Singapore. The third defendant argued that the dispensation of personal service order should be set aside, as the applicants should have applied for the court's approval to serve out of Singapore (at [61]). Chua J rejected the argument and explained that the relevant documents were served in Singapore on the third defendant's solicitors and *not* on the third defendant in Indonesia. It follows, therefore, that permission to serve out of jurisdiction was not required.

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[73] DWS at paras 90–111.

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41 In the present case, the AR granted dispensation of personal service and permitted ordinary service by emailing a copy of the Originating Claim on JLex. I agree that the claimants did not have to obtain for permission for service out under O 8 r 1 of the ROC 2021 before an order for dispensation of personal service can be granted in favour of ordinary service, because the ordinary service itself was effected in Singapore *vis-à-vis* JLex.

42 However, for good order, I think the court should still consider whether Singapore would be the appropriate forum for the various disputes, when the defendant for whom dispensation for personal service was taken out is (a) not in Singapore and (b) has not submitted to jurisdiction. Counsel for the defendants sought to distinguish *Madison Pacific* from the present case on the basis that jurisdiction was not an issue in *Madison Pacific*. In that case, the third defendant was subject to an anti-suit injunction, and his breach of the anti-suit injunction formed the premise of the committal orders. The Singapore courts would undoubtedly be the appropriate forum to hear the committal proceedings. In the present case, it is important for the court to decide whether the Singapore courts are the appropriate forum to hear the various disputes.

Importance of forum considerations

43 Counsel for the defendants stressed that an application for permission to serve out of jurisdiction is a crucial control valve in considering whether to establish jurisdiction over a foreign defendant. Andrew Ang J (as he then was) emphasised that "civil jurisdiction *in personam* was founded at common law on the physical presence of the defendant within jurisdiction", and that "in the interests of international comity, the court should be slow to find jurisdiction in cases where the defendant was overseas" (*Consistel Pte Ltd and another v Farooq Nasir and another* [2009] 3 SLR(R) 665 ("*Consistel"*) at [34]). Ang J

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held that where a defendant is out of jurisdiction, a claimant must apply for permission for service out of jurisdiction before an application for substituted service within jurisdiction may be made (*Consistel* at [30]). An application for substituted service in jurisdiction without obtaining permission to serve out of jurisdiction would "circumvent the requirement for the court's careful consideration whether the Singapore court was the *forum conveniens*" and "[t]his could not have been the intention behind the enactment of the ROC" (*Consistel* at [42]). This was explained to be a "hierarchy of service which must be adhered to" (*Consistel* at [31]).

44 Counsel for the defendants argue that this concern is equally applicable to applications for dispensation of personal service, as, in the circumstances, the order for dispensation of personal service effectively operated as an order for substituted service. Counsel for the claimants sought to argue that O 7 r 1(2) was a new provision introduced only in the ROC 2021 and therefore it represented a new, more flexible paradigm to service. However, under the Rules of Court 2014, the court also had the power, under O 62 r 11, to dispense with personal service of any document on any person in an appropriate case.

45 I agree that, in view of international comity, establishing jurisdiction over a foreign defendant is one that should be exercised with circumspection, and the court should have regard to the appropriateness of Singapore as the forum.

Avoidance of prejudice to the defendant

46 Further, if the appropriateness of Singapore as the forum is not considered at the dispensation of personal service stage, a foreign defendant may be procedurally prejudiced. This prejudice stems from a foreign defendant's deprivation of an opportunity to set aside an order for service out

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of jurisdiction, despite not having submitted to the existence of jurisdiction. A foreign defendant, having entered a Defence (Jurisdiction) to contest the existence of the court's jurisdiction, should be entitled to do so, unless the foreign defendant has otherwise submitted to the court's jurisdiction. Whether Singapore is the appropriate forum to hear the disputes must be ventilated at an application for dispensation of personal service, involving a foreign defendant.

47 When personal service is dispensed with and ordinary service in Singapore is ordered and effected, the court would *ipso facto* necessarily have jurisdiction over the foreign defendant. Jurisdiction would be established by virtue of service with an originating process in Singapore in the manner prescribed by the Rules of Court 2021 as required under s 16(1)(*a*)(i) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed). If considerations of the appropriateness of Singapore as a forum were not relevant in an application for dispensation of personal service, a foreign defendant would not be able to argue that the order for dispensation of personal service was improvidently granted. He cannot argue against the existence of jurisdiction. His only recourse would be to argue against the exercise of jurisdiction and for a stay of the action. This represents a deviation from the standard practice that "any attempt by a foreign defendant to challenge the existence of the Singapore courts' jurisdiction over him will usually entail his making an application to set aside the overseas service leave order" (*Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 ("*Zoom Communications"*) at [1]).

48 I, therefore, think that a formal order for permission to serve out of jurisdiction is not needed in the dispensation of personal service on a foreign defendant in favour of ordinary service in Singapore (see [41] above). However, the court, in considering an application for such dispensation, should for good order examine whether Singapore is the appropriate forum for the action. This

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is, out of an abundance of caution, to preserve a foreign defendant's procedural right to challenge the existence of jurisdiction and in light of comity. Of course, there may be situations where this requirement is not necessary, *eg*, where a foreign defendant has submitted to the existence of the court's jurisdiction, whether expressly or impliedly. But where a foreign defendant has not submitted to the existence of the court's jurisdiction, a requirement to show that Singapore is the appropriate forum for the action provides a safeguard to ensure that the court at least has some basis for asserting jurisdiction over the foreign defendant and is not doing so gratuitously.

Whether the facts of the case justify dispensation of personal service

49 Putting aside the issue of whether Singapore is the appropriate forum for the time being, I am satisfied that the facts merit dispensation of personal service. Chua J was of the view that dispensation of personal service can be justified if "personal service can reasonably be expected to be difficult or disproportionately time-consuming and the mode of ordinary service to be employed would be as effective in ensuring that the recipient is notified of the documents" (*Madison Pacific* at [57]).

50 Personal service is traditionally seen as the most effective means of notification as it generally involves the physical delivery of documents to the recipient (*Zhang Jinhua v Yip Zhao Lin* [2024] 5 SLR 1046 ("*Zhang Jinhua"*) at [46]). It follows, therefore, that the proposed method of ordinary service must be one where there is *near certainty* that the party to be served would be notified of the proceedings. This standard of "near certainty" ought to be higher than the standard applied for substituted service, *ie*, in all reasonable probability (*Zhang Jinhua* at [48]–[49]). While the threshold is set high, I think this is eminently justified to provide only a circumscribed exception to the general regime of

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personal service and to avoid displacing substituted service as the primary alternative mode of service where personal service could not be effected. This is without in any way limiting the scope of O 7 r 1(2) in other myriad situations in which a dispensation of service order may be required.

51 In the present case, the twin requirements of (a) difficulty in effecting personal service and (b) efficacy of proposed ordinary service are met:

> (a) First, it would be difficult and disproportionately time-consuming to personally serve the claim on Mr Fu. Mr Fu had a Singapore residential address indicated in the Accounting and Corporate Regulatory Authority's records. However, the claimants' process server was informed by the occupants that there was no such person at that address, and that the owner of that address was a person unrelated to this matter.[74] A property search also reveals that the property is registered to a "Zhang Dan".[75] Mr Fu later explained that this was an address filled in by the corporate secretary and he did not know about the address.[76] I agree with the claimants that Mr Fu could not be easily located – Mr Fu stated in his 5th affidavit that he permanently resides in Zhoushan, Zhejiang Province, China.[77] However, when the Chinese courts served Mr Xu's claim in the Chinese proceedings on Mr Fu, the receipt of service dated 7 August 2024 from the Chinese courts showed that Mr Fu was served at a Shanghai address.[78] This is despite Mr Fu's averment in the Chinese proceedings that he had ceased to stay at the Shanghai

74 Xu's 3rd affidavit at para 23.

75 Xu's 3rd affidavit at Tab 4.

76 Fu's 5th affidavit at para 24.

77 Fu's 5th affidavit at paras 14.

78 Xu's 5th affidavit at para 72(d); Tab 28, p 847.

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address since 2016 and had long since moved out.[79] Further, the service of the court documents in China would have to be effected through diplomatic or consular channels, and this would typically take six to nine months.[80] This difficulty is compounded by Mr Fu's many addresses, which may complicate the service process even further. For completeness, while the claimants say that Mr Fu has applied for permanent residency in Singapore and travels between Singapore and China frequently, this is denied by Mr Fu, and there is insufficient evidence to show one way or another.[81]

(b) Second, Mr Fu was well aware of the proceedings, having entered a notice of intention to contest and having appointed solicitors to represent him in the dispute. The solicitors had already made applications in relation to the Worldwide Mareva and had appeared before the court to argue for an extension of time to comply with the ancillary disclosure orders (see [30] above). The proposed method of ordinary service, *viz*, service on Mr Fu's solicitors, would undoubtedly have led to Mr Fu being notified of the documents, as his solicitors would have had a duty to bring the documents to Mr Fu's attention. The proposed method of ordinary service, *ie,* service via the appointed solicitors, would be as efficacious as personal service.

52 However, as I have mentioned above (at [48]), an application for dispensation of personal service on a foreign defendant who has not submitted to the existence of jurisdiction should involve considerations of the

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79 Xu's 5th affidavit at para 72(d); Tab 27, p 831.

80 Xu's 3rd affidavit at para 39.

81 Fu's 5th affidavit at paras 21–25.

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appropriateness of Singapore as the forum for the dispute. Examining the supporting affidavit for the application for dispensation of personal service, the claimants had focused on the difficulty and disproportionality of personal service but did not discuss the issue of jurisdiction.[82] In the brief reasons furnished in granting the dispensation of personal service order, there was no indication that the issue of forum was considered (understandably so, given that *Madison Pacific* did not engage in an analysis of appropriate forum).

53 I now consider whether to set aside the order for dispensation of personal service. Under O 3 r 2(8)(*a*) of the ROC 2021, the court has the power to revoke any judgment or order obtained or set aside anything arising from an *ex parte* application, if it is in the interests of justice to do so.

54 In my view, whether to exercise this power to set aside the order for dispensation of service is predicated on whether Singapore is the appropriate forum for the claims. If Singapore is the appropriate forum, it would not be in the interests of justice to set aside the dispensation of personal service order and require the claimants to formally seek the court's permission to serve out of jurisdiction. This would be circuitous, needlessly complicate and prolong proceedings, and would not be in line with the ideals of achieving expeditious proceedings and fair and practical results encapsulated in O 3 r 1(2) of the ROC 2021. However, if I find that Singapore is *not* the appropriate forum, I would be minded to grant a declaration to that effect and set aside the dispensation of personal service order.

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82 See Xu's 3rd affidavit.

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Issue 2: Whether Singapore is the appropriate forum for the action

55 I shall now consider whether Singapore is the appropriate forum for these proceedings. In this analysis, there are four distinct categories of claims to which different considerations may apply: (a) the Shareholders' Agreement Claims; (b) the Trust Vessels Claims; (c) the Unauthorised Transfer Claims; and (d) the s 4(10A) Claim (see [12] above). The procedural posture of the defendants also varies; Mr Fu, being a foreign defendant, is challenging the dispensation of personal service order, while the second to ninth defendants do not contest personal service but rather are arguing for a *forum non conveniens* stay. Each distinct claim should be assessed separately as "claims may be good in some parts but bad in others, in which case [the claimant] will be only allowed to proceed in respect of the good parts" (*Man Diesel & Turbo SE and another v IM Skaugen SE and another* [2020] 1 SLR 327 ("*Man Diesel*") at [67]).

56 I shall first consider whether there is a good arguable case that an exclusive jurisdiction clause in the Shareholders' Agreement indicates that Singapore is *not* the forum to hear the disputes.

Whether there is a valid exclusive jurisdiction clause

57 The Shareholders' Agreement between Mr Fu and Mr Xu was drafted in Chinese. Article 11 stipulates that if parties are unable to reach an agreement through negotiation, the parties shall submit the matter to the local arbitration committee for arbitration, or bring a lawsuit in the local "人民法院" in accordance with the law ("Article 11").[83] Parties dispute the appropriate translation of "人民法院". The defendants argue that "人民法院" means "*local*

[83] Xu's 1st affidavit at Tab 10, pp 149–157

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people's court" and this refers to the Chinese people's courts.[84] The claimants, on the other hand, opine that "人民法院" means "*local civil court*" and submit that this is *not* a reference to the Chinese courts.[85]

58 The parties' cases in the current proceedings are diametrically opposite to their stances taken before the Shanghai Maritime Court. At the Shanghai Maritime Court, Mr Xu had relied on Article 11 to argue that the term means "local people's court" and this refers to the people's court in Shanghai, as the contract was signed in Shanghai, home addresses of the parties were in Shanghai and the contact address for the Pacific Glory Group was in Shanghai.[86] However, in this instant case Mr Xu seeks to impugn Article 11's validity. On the other hand, at the Shanghai Maritime Court, Mr Fu had argued that the Hong Kong courts have jurisdiction over the shareholders' dispute, not the Chinese courts.[87] In this instant case, however, Mr Fu now takes the position that Article 11 is an exclusive jurisdiction clause in favour of Chinese courts. Since both parties have taken contradictory positions throughout the course of this dispute, I do not think that it should weigh against either party's current position in the present proceedings.

Whether Article 11 is a valid exclusive jurisdiction clause

59 I shall now consider whether there is a good arguable case that Article 11 is a valid exclusive jurisdiction clause in favour of the Chinese courts.

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84 Fu's 4th affidavit at Tab 10, p 156.

85 Xu's 1st affidavit at Tab 10, p 152.

86 Fu's 5th affidavit at pp 58–61.

87 Xu's 5th affidavit at pp 826–827.

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(1) Applicable law

60 The defendants have to show that there is a good arguable case that the clause constitutes an exclusive jurisdiction agreement that governs the dispute in question (*Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 ("*Vinmar"*) at [41]). The Court of Appeal in *Vinmar* provided useful guidance on what constitutes a good arguable case:

> 44 The "good arguable case" test is a recurring requirement in the principles governing several interlocutory applications. The test does not necessarily bear the same meaning in all of these applications. Its content depends on the context. In an [Exclusive Jurisdiction Clause] Application, the context is that the applicant is inviting the court not to exercise its otherwise valid jurisdiction over the dispute. In the circumstances, a relatively robust test is apposite, albeit it must require less than the test of a balance of probabilities given the interlocutory nature of the application.
>
> 45 In our judgment, to establish a "good arguable case" that a jurisdiction agreement governs the dispute in an [Exclusive Jurisdiction Clause] Application, the applicant must have *the better of the argument*, on the evidence before the court, that the agreement exists and applies to the dispute. This formulation reflects that the threshold is more than a mere *prima facie* case, but is different from the standard of a balance of probabilities given the limits inherent in the stage at which the application is being heard. In our view, it is not necessary […] that the applicant must have a "much better argument" on the existence and applicability of the jurisdiction agreement. Such a test would impose too high a standard of proof on the applicant. […]
>
> 46 In addition, we affirm our holding in [*Bradley Lomas Electrolok Ltd and another v Colt Ventilation East Asia Pte Ltd and others* [1999] 3 SLR(R) 1156] that in determining whether the applicant has established a good arguable case, the court may grapple with questions of law but should not delve into contested factual issues.
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> [emphasis in original]

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(2) My analysis

61 In this case the contracting parties, namely Mr Xu and Mr Fu, clearly intended to have Article 11 in the Shareholders' Agreement as the exclusive jurisdiction clause. The central issue in Article 11, however, is which is the jurisdiction which they have contracted to resolve their disputes. This issue of jurisdiction in Article 11 is ambiguous. As I have mentioned above at [58], when the parties were before the Shanghai Maritime Court, Mr Xu asserted that Article 11 states that the Chinese courts have jurisdiction while Mr Fu argued that the Chinese courts do not have jurisdiction. In the present case the parties took the opposite arguments. In my view, the defendants have not made out a good arguable case that Article 11 is a valid exclusive jurisdiction clause in favour of the Chinese courts. Article 11 is uncertain and ambiguous, thus it is difficult to ascertain the intention of the parties as to their intended jurisdiction to handle their disputes.

62 The claimants' expert, Mr Li Hongdeng ("Mr Li"), referred to two cases where the Chinese courts had found the terms "local people's court" and "people's court in Changsha" to be uncertain, declining to enforce the clause as a result.[88] Mr Li's evidence is that "[i]t is the mainstream view that jurisdictional clauses providing for "local people's court" are too uncertain and are invalid", as it is not possible to point to the exact court that the parties have chosen.[89] Mr Li relies on two statutory provisions – Article 30 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law and Article 35 of the Civil Procedure Law:[90]

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88 Li Hongdeng ("Li")'s expert report at paras 19–20.

89 Li 's expert report at para 19.

90 Li's expert report at para 17.

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> Article 30 Where the people's court with jurisdiction can be determined in accordance with a jurisdiction agreement at the time of litigation, the relevant agreement shall prevail; if the people's court with jurisdiction cannot be determined, the jurisdiction shall be determined in accordance with the relevant provisions of the Civil Procedure Law. Where a jurisdiction agreement stipulates the jurisdiction of not less than two people's courts in the places actually related to a dispute, the plaintiff may file a lawsuit with one of such people's courts.
>
> Article 35 The litigants of a contract dispute or other property rights dispute may agree in writing on selection of the People's Court at the location of the Defendant's domicile, place of performance of contract, place of execution of contract, address of the Plaintiff, location of the subject matter, etc. or a venue which has actual connection with the dispute to be the People's Court which has jurisdiction, but shall not violate the provisions hereof on grade jurisdiction and exclusive jurisdiction.

63 Mr Li stated that since it is not possible to determine the "people's court with jurisdiction" under Article 30, the Chinese courts would decline to enforce the clause and apply the default statutory law on jurisdiction.

64 The following are some of the responses from the defendants' expert, Ms Xue Jiang ("Ms Xue"), to Mr Li's report:

(a) The term "local people's court" is certain insofar as it is a reference to the people's court of China.[91]

(b) Ms Xue argued that the two cases Mr Li cited did not pertain to a dispute resolution clause framed in similar terms as the current one.[92] Both Articles 30 and 35 apply to choices between "people's courts".[93] Therefore, Articles 30 and 35 apply only to an intranational choice of

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91 Xue Jiang ("Xue")'s expert report at paras 23–24.

92 Xue's expert report at para 32.

93 Xue's expert report at para 31.

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court clause between multiple people's courts under the Chinese court system, as opposed to an international choice of court clause between the courts of two states.[94].

65 I am not convinced that the Chinese cases can be distinguished from the present one. Even though those cases relate to an intranational choice between multiple Chinese people's courts, as opposed to an international choice between the courts of two states as in the present case, these two cases are still a useful indicator of the Chinese courts' stance towards a clause containing the same wording.

66 Therefore, even if the phrase "local people's courts" were interpreted to mean the Chinese courts, the defendants have not shown a good arguable case as to the validity of Article 11 as an exclusive jurisdiction clause.

Whether Singapore is the natural forum for the claims

67 I shall now consider whether Singapore is the natural forum for the four claims, *viz*, the Shareholders' Agreement Claims, the Trusts Vessel Claims, the Unauthorised Transfer Claims and the s 4(10A) Claim.

68 The parties agree that the two-stage test enunciated in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 (the "*Spiliada* test") applies. The first stage of the *Spiliada* test involves a consideration of whether Singapore is the appropriate forum for the dispute. This involves the identification of the connecting factors that establishes Singapore as the natural forum to deal with the dispute of the parties. The second stage comes into play only when Singapore is not found to be the appropriate forum, then the court will consider

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94 Xue's expert report at paras 27, 30.

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whether substantial justice can be obtained in the foreign *prima facie* natural forum (*Halsbury's Laws of Singapore – Conflict of Laws* vol 6(2) (LexisNexis Singapore, 2023 Reissue) ("*Halsbury's Laws"*) at para 75.111).

69 In relation to Mr Fu, the first stage is to ascertain whether Singapore is the appropriate forum for the dispute. In this case, the burden of proof to show that Singapore is the appropriate forum is on the claimants (*Zoom Communications* at [72]).

70 In relation to the second to ninth defendants, the first stage is whether, *prima facie*, there is another available forum that is clearly or distinctly more appropriate for the case to be tried. The burden of proof of showing that Singapore is not the appropriate forum is on the second to ninth defendants (*Zoom Communications* at [72]).

71 In the first stage of the *Spiliada* analysis, the court will have to consider the factors connecting the dispute with the competing jurisdictions. Five non-exhaustive connecting factors are: (a) personal connections of the parties and witnesses; (b) connections to relevant events and transactions; (c) governing law; (d) other proceedings (*lis alibi pendens*); and (e) the shape of the litigation (*JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO Minerals"*) at [42]; *Best Soar Ltd v Praxis Energy Agents Pte Ltd* [2018] 3 SLR 423 ("*Best Soar*") at [16]). This list of relevant indicators, while useful, should not be applied in a mechanistic manner, as the weight to be ascribed to a particular connecting factor would depend on all circumstances of the case (*Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 at [71]).

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72 I shall now consider the various claims made by the claimants and ascertain the appropriate forum for the disputes.

Shareholders' Agreement Claims

73 The claim-specific connecting factors in relation to the Shareholders' Agreement Claims tilt in favour of Singapore.

(1) Personal Connections of Parties and Witnesses

74 The personal connections of parties and witnesses, on the balance, tilt in favour of Singapore as the second to eighth defendants are Singapore-registered companies. Mr Fu travelled between China and Singapore frequently. Being parties to the suit, Mr Fu and Mr Xu will be amenable to testify in either China or Singapore. The main issue is the convenience and compellability of the potential non-party witnesses to the dispute.

75 Mr Xu argues that there are at least 17 Singapore-registered companies within the Pacific Glory Group and these companies would be required to register one director and secretary ordinarily resident in Singapore.[95] These directors and secretaries would be compellable to give evidence. Further, the Singapore-registered companies had engaged the same corporate secretarial firm to prepare their accounts and tax filings and representatives from this corporate secretarial firm may be required to give evidence.[96] Moreover, the Singapore-registered companies will have bank accounts in Singapore, and these will facilitate tracing of the defendants' assets. Conversely, Mr Fu argues that the employees of the companies that Mr Xu alleges to be part of the Pacific

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95 Xu's 5th affidavit at paras 86–88.

96 Xu's 5th affidavit at para 87.

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Glory Group would be relevant in determining the application and scope of the Shareholders' Agreement. Further, two ex-employees with whom Mr Xu had conversations with, namely Ms Luo Xuemeng and Ms Li Li, may be relevant to the proceedings.[97] Mr Xu had based his allegations of misappropriation on these conversations and, therefore, their evidence would be relevant.[98]

76 The convenience of witnesses is a neutral factor given that China is situated relatively close to Singapore, and it would not be prohibitively inconvenient for witnesses to travel between the jurisdictions. Further, there is no evidence that evidence via video link was not an option.

77 Next, I shall deal with the issue of compellability of witnesses. I agree with Mr Xu that the compellability of employees associated with Mr Fu's companies is not relevant, as employers will generally be able to procure the attendance of their employees.[99] I take Mr Xu's point that the testimony of the corporate director and secretary of the Singapore-registered companies ordinarily resident in Singapore may be relevant in so far as it would go to establish the operations of the Singapore-registered companies. This is notwithstanding that the operations, secretarial services and corporate finances were based in China. Representatives from the corporate secretarial firm engaged by the Singapore-registered companies may be relevant.[100] It may be foreseeable that the corporate director, secretary and representatives of the corporate secretarial firm will have to be compelled to give evidence against Mr Fu, who is alleged to be the ultimate beneficial owner of these companies.

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97 Fu's 5th affidavit at para 61.

98 Xu's 1st affidavit at para 41.

99 CWS at para 65(e).

100 CWS at para 73(f)(iii).

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78 Mr Fu, on the other hand, has provided no evidence that the ex-employees would have to be compelled. The burden of proof to show that a foreign witness would be unwilling to testify is on the party who seeks to rely on the witness compellability factor (*Raffles Education Corp Ltd and others v Shantanu Prakash and another* [2020] SGHC 83 at [78]). I do not think this is proven for the ex-employees.

(2) Connection to relevant events and transactions

79 One important consideration is where the trial could be held at the least expense and inconvenience (*Best Soar* at [19]). In oral submissions, counsel for the defendants pointed out that the documents were all in Chinese. The language of the documents is a relevant factor if it involves translation costs (*Halsbury's Laws* at para 75.107). In my view, this could present some degree of additional expenses for both parties. Additionally, if there are disputes over the documents' translation (as was the case in this application before me over Article 11), that would compound the inconvenience associated with Singapore as the forum. But this cannot be the final deciding factor that China is the natural forum.

80 Another consideration under this factor is the availability of documents. The claimants argue that the Singapore-registered companies belonging to the Pacific Glory Group would be required to keep proper records under the Companies Act 1967 (2020 Rev Ed) ("Singapore Companies Act"), and that this would be relevant to prove the financials of the relevant companies.[101] The defendants' position during the hearing is that the documents are based in China, reiterating that it is the common position between parties that the companies are but shell companies. It is trite that the physical availability of documents is a

101 CWS at para 73(e)(iv).

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neutral factor as documents can easily be transported across jurisdictions (*Man Diesel* at [150]). The Singapore Companies Act obliges the companies to keep the necessary records. Therefore, the second to eighth defendants, which are Singapore-registered companies, have to maintain the relevant records in compliance with the Singapore Companies Act. These records may be relevant to the parties and thus subject to the disclosure regime.

81 There were also banking transactions conducted by the defendants in Singapore. When the defendants failed to disclose banking information, the claimants took out HC/SUM 3308/2024 ("SUM 3308") to order the banks in which the defendants have accounts in Singapore to produce the relevant documents. This supports the connection between the instant dispute and Singapore. The defendants actively partook in this application, although SUM 3308 was between the claimants and the specified banks. The banks were prepared to comply with the orders of the court. However, the defendants, although they were not parties in the application, intervened and sought to stay the action until the outcome of the *inter partes* hearing of SUM 3555 and SUM 3645.

(3) Governing Law

82 The defendants argue that Chinese law governs the Shareholders' Agreement.[102] The established approach in determining the governing law of the contract was expounded by the Court of Appeal in *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 (at [36], citing *Overseas Union Insurance Ltd v Turegum Insurance Co* [2001] 2 SLR(R) 285 at [82])):

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102 DWS at para 119(c).

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> There are three stages in determining the governing law of a contract. The first stage is to examine the contract itself to determine whether it states expressly what the governing law should be. In the absence of an express provision one moves to the second stage which is to see whether the intention of the parties as to the governing law can be inferred from the circumstances. If this cannot be done, the third stage is to determine with which system of law the contract has its most close and real connection. That system would be taken, objectively, as the governing or proper law of the contract. […]

83 The Shareholders' Agreement states the Chinese law to be the governing law of the Shareholders' Agreement. It is stated as follows:

> In accordance with the laws of the People's Republic of China, and based on principles of fairness, justice, equality, mutual benefit, mutual respect, support, joint entrepreneurship, and reciprocity, [Mr Fu] and [Mr Xu] hereby establish this shareholders' partnership agreement as follows.

84 Weighing the relevant factors, some of the factors seem to indicate that China may be the natural forum, and some factors indicate that Singapore is the natural forum. Overall, I am satisfied that Singapore is the *prima facie* natural forum for the Shareholders' Agreement Claims.

Trust Vessels Claims

85 In my assessment, the claim-specific connecting factors in relation to Trust Vessels Claims tilt in favour of Singapore.

(1) Personal Connections of Parties and Witnesses

86 The parties to the Trust Vessel Claims are Mr Xu, Mr Fu for dishonest assistance in the breach of trust by the second to ninth defendants, and Acrux (the third defendant) and Fuxing (the fourth defendant) for breach of trust. In my view, the circumstances surrounding the Trust Vessel Claims in relation to the parties and witnesses are substantially similar to that of the Shareholders'

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Agreement Claims (at [74]–[78] above). The defendants submit that additional witnesses that may be relevant would be other Vessel Investors and that all of them are resident in China.[103] However, for the reasons canvassed above (at [78]), Mr Fu has not shown that these Vessel Investors (many of whom would be employees) would not be willing to testify, and the inconvenience associated with travelling from China to Singapore in the modern day and age is not significant. Therefore, I am satisfied that, just as I found in relation to the Shareholders' Agreement Claims, this factor weighed in favour of Singapore due to the compellability of the director and corporate secretary ordinarily resident in Singapore as well as the corporate secretarial firm.

(2) Connection to relevant events and transactions

87 I am of the view that the same connecting factors relevant to the documents canvassed at [79]–[81] above apply here. The Certificate of Share Acquisition is in Chinese and entered into by investors in China. However, the third to eighth defendants are required to keep proper records under Singapore law, which may go to show the inflow of funds and the beneficial interest that Mr Xu has in the Trust Vessels.

(3) Governing Law

88 My view is that the governing law of the trusts is Singapore law. The claimants argue that Singapore law governs the trusts as parties had chosen Singapore as the place of incorporation for the third to eighth defendants to hold the Trust Vessels.[104] Further, the claimants note that there is little dispute over

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103 DWS at para 77.

104 CWS at paras 69(b)–(d).

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the existence and terms of the trusts.[105] The key issues of the dispute are factual, relating to Mr Xu's beneficial interests in the Trust Vessels and the profit and sales generated by the Trust Vessels that Mr Xu is seeking an account of. The defendants submit that the law governing the trusts should be Chinese law as the Singapore-registered companies are essentially shell companies and operations are run out of China. The agreements and arrangements in relation to the investments were also made in China.[106]

89 I agree with the claimants that the governing law of the trusts should be Singapore law. In determining the governing law of the trusts, the court first considers whether the parties had made an express or implied choice of law. If there is no such choice, the court will then ascertain the law with which the trusts have the closest connection, which would then be the governing law (*Trisuryo Garuda Nusa Pte Ltd v SKP Pradiksi (North) Sdn Bhd and another and another appeal* [2017] 2 SLR 814 ("*Trisuryo*") at [41]). In this case, there is no express choice of law to govern the trust.

90 The Trust Companies were incorporated in Singapore for the purpose of holding the Trust Vessels on trust for the beneficiaries. This, in my view, is an implied choice of Singapore law to govern the trusts. In *Trisuryo*, the parties had incorporated a special purpose vehicle to hold the shares and deliberately chose Singapore to be the jurisdiction in which the company would be constituted. In the Court of Appeal's view, it would be "highly implausible that parties would have intended to create a company incorporated under the laws of Singapore for the sole purpose of holding [the shares], but intended at the same time that such holding should be governed by the laws of another jurisdiction"

105 CWS at para 69(e).

106 DWS at para 119(i).

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(at [87]). I note that the Court of Appeal in *Trisuryo* also took into consideration the fact that Indonesian law did not contain the concept of a trust (at [88]). However, in the present case, neither the claimants nor the defendants submitted on whether Chinese law recognises the concept of a trust.

91 Further, in *Baker, Michael A (executor of the estate of Chantal Burnison, deceased) v BCS Business Consulting Services Pte Ltd and others* [2020] 4 SLR 85, the Singapore International Commercial Court cited *Halsbury's Laws of Singapore* affirmatively and held (at [206]) that "[w]here a trustee is a corporate vehicle specially incorporated for a particular purpose, it may be inferred that the law of the place of incorporation was intended as the governing law for the trust". I agree. The fact that the second to eighth defendants are incorporated in Singapore is sufficient to ground a finding that there was an implied choice of Singapore law to govern the trusts. For the ninth defendant, which is incorporated in Hong Kong, Hong Kong law would govern the trust formed over the Trust Vessels.

(4) *Lis Alibi Pendens*

92 The defendants argued that the Chinese proceedings in relation to the liquidation of the Trust Vessels count as *lis alibi pendens* in favour of China.[107] Mr Fu mentions that there is a pending Chinese proceeding in relation to the Trust Vessels Claims. Counsel for the claimants assures the court at the hearing that if the court found that it has jurisdiction over all the claims, Mr Xu would discontinue the Chinese proceedings and proceed in Singapore. This factor is therefore moot.

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[107] DWS at para 119(k).

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93 Assessing the relevant factors, I am satisfied that Singapore is the *prima facie* natural forum for the Trust Vessels Claim. The governing law of the trusts is Singapore law, and there are relevant witnesses in Singapore.

Unauthorised Transfer Claims

94 The Unauthorised Transfer Claims have two categories: (a) the conspiracy claims which encompass both Mr Fu and Quan An; and (b) the claims based on legal title and unjust enrichment which are solely directed at Quan An.

(1) Personal Connections of Parties and Witnesses

95 Changzhou is claiming against Mr Fu for conspiracy and against Quan An for conspiracy, unjust enrichment and proprietary claim. Quan An is incorporated in Singapore but Changzhou is incorporated in China. The claimants argue that evidence as to the operations of Quan An is important and Quan An's resident director(s) would be compellable to give evidence in the Singapore courts.[108] In contrast, the defendants argue that evidence from the third-party shippers would be relevant to show that Changzhou entered into legitimate transactions with numerous third parties in China.[109] On balance, this factor is neutral.

(2) Connection to relevant events and transactions

96 In my view, the connection to relevant events and transactions tilts in favour of China as the forum. While some of the transactions alleged to be unauthorised transfers were between Changzhou and Quan An, a Singapore-

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108 CWS at para 65(a).

109 Fu's 5th affidavit at paras 74–75.

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incorporated company, other transactions took place between Changzhou and third parties based in China and therefore bore no relation to Singapore at all. Similarly, all documents (*eg* fixture notes) and contracts appear to be concluded in Chinese.

(3) Governing law

97 Under the double actionability rule, Chinese law is relevant to the claim in conspiracy while the governing law of the legal title and unjust enrichment claims is Singapore law.

(A) CONSPIRACY CLAIMS

98 For the conspiracy claims, the general principle is that the place where a tort was committed ought *prima facie* to be the natural forum for that tortious claim (*JIO Minerals* at [106]; *Best Soar* at [20]; *Rickshaw Investments Ltd and another v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 ("*Rickshaw Investments*") at [39]). The *Albaforth* principle (as the Court of Appeal termed it in *Rickshaw Investments*) is premised on the consideration that it would be just and reasonable for the defendant to answer for his wrongdoing in the jurisdiction the alleged tort was committed in (*Cordoba Shipping Co Ltd v National State Bank, Elizabeth, New Jersey (The Albaforth)* [1984] 2 Lloyd's Rep 91 at 96, as cited in *Rickshaw Investments* at [39]).

99 Changzhou's cause of action against Mr Fu and Quan An is premised on the tort of conspiracy. The defendants argue that the acts that Changzhou alleges to be part of this conspiracy took place in China and, therefore, the place of the tort is China.[110]

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110 DWS at para 119(p).

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100 In construing the place of the tort, the court will apply the "substance of the tort" test and examine the series of events constituting the elements of the tort to determine, in substance, where the cause of action arose (*EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings"*) at [53]). For the tort of conspiracy, the key factors in determining the substance of the tort are "the identity, importance and location of the conspirators, the locations where any agreements or combinations took place, the nature and places of the concerted acts or means, the location of the plaintiff and the places where the plaintiff suffered losses" (*EFT Holdings* at [53]).

101 Examining Changzhou's pleaded case in relation to conspiracy, the place of the tort should be China. Changzhou's case is that Mr Fu's cousin, Ms Fu Fen, controlled Changzhou's finances as she had the log-in password for Internet banking, as well as the company stamp and finance department stamp required to authorise transfer from Changzhou.[111] This is despite an understanding that Mr Xu would have to first approve any transfer from Changzhou. Mr Xu discovered a series of transfers made without his knowledge or approval to Quan An and to a series of third parties. Mr Xu claims that Ms Fu Fen and/or other employees in the finance department carried out these transfers from Changzhou under the instructions or in concert with Mr Fu who had full control over the Pacific Glory Group's financial affairs, for no legitimate purpose.[112] Further, Quan An, having received the funds, was also a conspirator.[113]

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111 SOC at para 33.

112 SOC at paras 40, 40–46.

113 SOC at para 41(b).

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102 The alleged conspirators, *ie*, Ms Fu Fen, the unnamed finance department employees, and Mr Fu himself, are predominantly based in China, even though Quan An is incorporated in Singapore. The purported agreement among the alleged conspirators would also likely be made in China. The concerted acts, *viz*, the purported unauthorised transfers, would have taken place from Changzhou's bank accounts. Changzhou is incorporated in China and its purported losses would have been suffered in China. One relevant connection to Singapore would be that the transfers from Changzhou to Quan An was received in Quan An's Singapore bank accounts. Nonetheless, on balance, the factors leant in favour of China as where the tort was in substance alleged to have been committed.

103 Therefore, the place of the tort is China and China would be *prima facie* the natural forum for the claims in conspiracy.

104 Further, by the double actionability rule, the tort of conspiracy must also be actionable in China under Chinese law. The defendant argues that this should weigh in favour of the Chinese courts as the natural forum.[114] Whether the double actionability rule should be considered in the determination of natural forum has been subject to some controversy. In *Shen Sophie v Xia Wei Ping and others* [2023] 3 SLR 1092 ("*Shen Sophie*"), Goh Yihan JC (as he then was) undertook a survey of the relevant cases and found that the High Court authorities in Singapore seemingly pointed in both directions (at [67]–[74]). Goh JC followed the broad approach espoused by Vinodh Coomaraswamy J in *IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123, where Coomaraswamy J was of the view that the double

[114] DWS at paras 119(n)–(p).

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actionability rule was relevant in determining the governing law of the tortious claim as part of the natural forum inquiry (*Shen Sophie* at [67]).

105 There appears to be two strands of reasoning as to the relevance of the place of the tort in determining the natural forum of the dispute. The first is premised on the *Albaforth* principle that it would be just and reasonable for the defendant to answer for his wrongdoing in the court in which jurisdiction the alleged tort was committed in (*per Rickshaw Investments* at [39]; *JIO Minerals* at [106]; see [98]–[103] above). The second is grounded on the need to show actionability at the place of the tort under the double actionability rule, which may require the courts to consider questions of foreign law that may be best resolved in their native courts (*per JIO Minerals* at [88]–[96]; *Shen Sophie* at [67]). The question, then, is whether both strands of reasoning can be applied in the same case, which may arguably give rise to overemphasis on the place of the tort. In *JIO Minerals*, the Court of Appeal applied both the *Albaforth* principle as well as the double actionability rule. Regardless, the courts should bear in mind *not* to mechanistically rely on the place of the tort and must holistically weigh all other connecting factors in determining the natural forum of the dispute.

(B) CLAIM BASED ON LEGAL TITLE AND UNJUST ENRICHMENT

106 For completeness, even though parties did not submit on the governing law of the claim on unjust enrichment and legal title, I turn to briefly consider the *prima facie* governing law for those claims. Generally, a claim based on unjust enrichment is governed by the law of the place where the enrichment occurred as that would be the place where the claim has the closest connection (*CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 ("*CIMB Bank*") at [58]). This is not a strict rule, for instance, a pre-existing relationship

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between parties that may justify giving weight to the law that governed the relationship (*CIMB Bank* at [59]). In the present case, Singapore is the location where Quan An was allegedly unjustly enriched as a result of the transfers from Changzhou. This is sufficient, in my view, to ground Singapore as the *prima facie* governing law over the unjust enrichment claim.

107 Further, the Court of Appeal in *CIMB Bank* also affirmed Rule 230 of *Dicey, Morris and Collins on The Conflict of Laws* (Sweet & Maxwell, 14th Ed, 2006), which suggests that the proper law of the obligation that does not arise in connection with a contract or a transaction concerning an immovable (land) should be the law of the country where the enrichment occurs (at [31]). Without the benefit of submissions on this point, I preliminarily view the proper law of Quan An's proprietary claim to be Singapore law.

Overall Shape of the Litigation

108 In the assessment of the overall shape of the litigation, all the claims in this case should be brought in one jurisdiction. One consideration under this factor is whether there would be fragmentation of the litigation as a result of complex litigation involving multiple issues and multiple parties (*Halsbury's Laws* at para 75.110). Fragmentation of the litigation may lead to increased costs and inefficiencies, especially where the underlying factual matrix is common among claims, with the same witnesses and factual issues to be determined. In this case, I am satisfied that this concern of fragmentation should apply in its full rigour.

109 The key witnesses in these claims, namely Mr Fu, Mr Xu, and Ms Fu Fen, are common. Further, broadly speaking, these claims pertain to the internal financial management of the defendant companies. The central plank of Mr Xu's claim for breach of trust and dishonest assistance in the distribution of

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profits is on the premise of Mr Fu's misappropriation. Mr Xu has alleged that Mr Fu misappropriated funds from the Pacific Glory Group, sought to quantify these misappropriated funds, claimed a 23.5% interest in these funds and calculated his share of the Pacific Glory Group's voyage profits attributable to his share of the misappropriated funds on top of his personal contributions.[115] The defendants also argue that Mr Xu had claimed that a portion of his own share of the Trust Vessels was paid for by the Pacific Glory Group's dividends.[116] I think that the issues surrounding the Shareholders' Agreement – whether Mr Xu is entitled to dividends and whether Mr Fu had misappropriated funds – are inextricably intertwined with the Trust Vessel Claims and the quantification thereof and it is not wise to separate the two.

110 Mr Xu asserts that Mr Fu has substantial assets in the bank accounts in Singapore. Mr Fu also has shares in Singapore-registered companies. He is also the Chief Executive Officer of PGS Shipping Pte Ltd, a Singapore-registered company.[117] Mr Fu admits that he has beneficial interests in vessels that are owned by Singapore-registered companies. According to Mr Xu, prior to the commencement of the present case, Mr Fu came to Singapore regularly. Mr Xu alleges that Mr Fu told him that Mr Fu has applied for permanent residence in Singapore. This was denied by Mr Fu.

111 On balance, Singapore is the appropriate forum for the overall dispute. Therefore, it is not necessary to consider the second stage of the *Spiliada* test, which would only be operative when the court is of the view that Singapore is not the appropriate forum.

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115 Schedule IV of Xu's 1st affidavit.

116 DWS at para 119(l); Xu's 1st affidavit at Tab 20, pp 570–572.

117 Xu's 1st affidavit at para 91(c)(i).

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112 For completeness, I am satisfied that Singapore would be the natural forum for the s 4(10A) Claim, since the claimants are seeking to invoke the court's power under s 4(10A) of the Civil Law Act to grant a Mareva injunction in support of the Chinese proceedings. There are sufficient connecting factors with Singapore, *viz*, the incorporation of the second to eighth defendants in Singapore and Mr Fu's bank account in Singapore. However, I do not think that the s 4(10A) Claim is relevant anymore, given that Mr Xu has agreed to discontinue the Chinese proceedings in favour of the Singapore proceedings.

Summary

113 I decline to set aside the dispensation of service order as I am satisfied that Singapore is the natural forum for the dispute. Further, I do not order a stay *vis-à-vis* the second to ninth defendants.

Issue 3: Whether the Worldwide Mareva should be set aside

114 I shall now consider whether the Worldwide Mareva should be set aside. Having found that the court has jurisdiction over all three categories of substantive claims and is the natural forum for the dispute, I do not need to turn to the arguments on s 4(10A) of the Civil Law Act as the Worldwide Mareva can be justified under s 4(10) in support of Singapore proceedings.

115 It is trite that a Mareva injunction should only be granted when there is a good arguable case on the merits of the claim and there is a real risk a judgment may not be satisfied because of dissipation of assets (*Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [36]). The only issues left for my determination would then be: (a) whether the claimants have a good arguable case; (b) whether there is a real risk of dissipation of the defendants' assets; and

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(c) whether there is failure to provide full and frank disclosure at the *ex parte* hearing.

Whether there is a good arguable case

116 The defendants argue that the claimants have not established a good arguable case in respect of at least several parts of their pleaded case.[118] The defendants, unfortunately, have not sought to particularise exactly which heads of claim lack a good arguable case, besides pointing to the Trust Vessels Claims, and that Mr Xu did not have *locus standi* to commence an action on behalf of Changzhou.[119] For completeness, I shall examine all of the claimants' pleaded claims in turn.

117 In *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("*JTrust Asia*"), the Court of Appeal laid down the following guiding principles in construing whether a good arguable case is established (at [38]):

> A good arguable case is one which is more than capable of serious argument, but not necessarily one which the court considers would have a better than 50% chance of success. […] In making this assessment, the court must not try to resolve conflicts of evidence on affidavit, or to decide difficult questions of law which call for detailed argument and mature consideration […] But the court will examine the apparent strength or weakness of the respective cases to decide whether the plaintiff's case, on the merits, is sufficiently strong to reach this threshold. […]

The Shareholders' Agreement Claims

118 I think that the claimants have established a good arguable case.

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118 DWS at para 304.

119 DWS at para 304–307.

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119 First, in relation to the claim for distribution of dividends, while the defendants' case is that the Shareholders' Agreement only applies to PGS PL, the claimants have produced some evidence in support of their proposition that other companies are included. The Shareholders' Agreement refers to Mr Xu joining PGS PL, *including other associated companies*. The claimants have produced evidence suggesting that the dividends distributed to Mr Xu and Mr Fu had always been based on the Pacific Glory Group's consolidated financials.[120] The claimants refer to the two ships – MV Talbot and MV Liberator – which income had been included in calculating the profits of Pacific Glory Group for distribution in 2021.[121] Income and expenditure statements relating to these two ships show that the receivables of these two ships had been paid to other companies, such as Quan An, Shanghai Yaozhou International Freight Transport Agency Co Ltd ("Yaozhou"), and Yao Yang Pte Ltd ("Yao Yang").[122] The claimants' case is that this indicates that these companies fall within the definition of "associated companies" as their profits were calculated together in the Pacific Glory Group.

120 Further, the claimants point towards a joint operations management platform software known as the X86 system, which manages the operations, contracts and payments of various companies.[123] The claimants have exhibited screenshots showing the companies under the X86 System, which form the Pacific Glory Group.[124] Transcripts of two conversations between Mr Fu and Mr Xu dated 25 January 2022 and 29 November 2022 are also annexed, in

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120 CWS at para 12.

121 Xu's 5th affidavit at para 14 and at p 171.

122 Xu's 5th affidavit at Tabs 2 and 3.

123 Xu's 1st affidavit at para 13.

124 Xu's 1st affidavit at Tab 12.

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which Mr Fu referred to their arrangement as a partnership and that Mr Xu had joined the enterprise as a shareholder.[125] In the transcripts, they quarrelled over the company's funds and the dividends and bonuses. Mr Fu's response to Mr Xu's allegations that Mr Fu was misappropriating company money and not distributing dividends was *not* to deny Mr Xu's stake, but rather to dispute the figures.[126]

121 Turning to examine the defendants' case, Mr Fu claims that the Shareholders' Agreement only related to PGS PL and not to a group of companies.[127] Mr Fu further asserts that Mr Xu terminated the partnership in 2020, thereafter staying only as Deputy General Manager solely as an employee and had received a refund of his investment.[128] In support of his assertions, Mr Fu annexed bank slips purportedly showing refunds of Mr Xu's investment of US$750,000.[129] Mr Xu denies receiving any of those funds as those payments were credited to companies in the UK and the US, whose corporate search records do not disclose any links to Mr Xu.[130] I note that the payment slips' dates are also inconsistent – the first receipt of US$200,000 was dated 23 March 2020; while the other payments were made a year later in January 2021.[131]

122 Assessing the available evidence, Mr Xu has adduced some contemporaneous documentary evidence that the Pacific Glory Group had operated as a consolidated entity, and that in 2022, Mr Fu had still treated the

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125 Xu's 5th affidavit at Tabs 4A and 4B.

126 Xu's 5th affidavit at pp 301–302; p 332.

127 Fu's 4th affidavit at para 103.

128 Fu's 4th affidavit at paras 27–28.

129 Fu's 4th affidavit at para 27, FX-12.

130 Xu's 5th affidavit at paras 21–22, Tabs 5(1)–5(3).

131 Fu's 4th affidavit at FX-12.

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partnership as subsisting, contrary to Mr Fu's assertions. This suffices, in my view, to establish that Mr Xu has a good arguable case for the claim in dividends.

123 Second, in relation to the claim for misappropriation of funds, Mr Xu does not have any direct evidence. Instead, Mr Xu relies on the Pacific Glory Group's unaccounted profit and unpaid dividends.[132] This, along with Mr Fu's inability to provide evidence to show how he had sufficient funds to make such large investments into the Trust Vessels,[133] forms the premise of Mr Xu's claim against Mr Fu. Mr Fu, in response, says that his contributions towards the purchase price of the Trust Vessels came from his own funds as well as personal loans, and did not use the company's funds.[134] However, he does not provide any documentary evidence in support of these loans.

124 In my assessment, this suffices to establish that Mr Xu has a good arguable case for the claim in misappropriation. While the burden of proof is on Mr Xu, inherently, Mr Xu's case at trial would probably have to rely on adverse inferences to be drawn against Mr Fu and/or more detailed financial statements as to the Pacific Glory Group's finances. The circumstances of the case as noted by Mr Xu are sufficient to ground a good arguable case.

The Trust Vessels Claims

125 The defendants' case is that Mr Xu did not produce any certificates of share acquisition, and the records of those companies do not show that Mr Xu

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132 Xu's 5th affidavit at para 34.

133 Xu's 5th affidavit at paras 33–35.

134 Fu's 4th affidavit at para 102.

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had any beneficial interest.[135] Mr Xu only had three of the Certificates of Share Acquisition for the MV Costas, MV Magnola and MV Bon Voyage.[136] Mr Fu contests Mr Xu's beneficial interest in all nine Trust Vessels.[137] The draft certificates exhibited by Mr Xu are just initial drafts and were eventually superseded by finalised certificates.[138]

126 The claimants, on the other hand, explain that there was a recurring dispute between Mr Fu and Mr Xu as to whether Mr Xu should be allowed to acquire more than 10% of the beneficial interest.[139] Mr Fu, at the meeting on 29 November 2022, did confirm that Mr Xu had 10% interest in several Trust Vessels, but refused to allow Mr Xu to invest more.[140] The Excel sheet sent by Ms Li Li also recorded Mr Xu's beneficial interest as 10% in those six Trust Vessels, and this excel sheet was obtained after Mr Fu had asked Mr Xu to follow up with the finance department for information on his beneficial interests.[141] Further, Mr Xu noted that he had been receiving "distributions from the profits generated by the Remaining Trust Vessels", such as MV Acrux, MV Leo I and MV Noble, and has exhibited distribution confirmation slips in support along with WeChat messages with finance department employees confirming receipt of investment funds and distribution of profits.[142]

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135 DWS at paras 305–306.

136 Fu's 4th affidavit at para 54.

137 Fu's 4th affidavit at paras 56–66.

138 Fu's 4th affidavit at para 49.

139 Xu's 5th affidavit at para 29.

140 Xu's 5th affidavit at para 29.

141 Xu's 5th affidavit at para 28.

142 Xu's 5th affidavit at para 30.

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127 In my view, Mr Xu has shown a good arguable case that he had invested monies in the Trust Vessels not recorded on the formal Certificates of Share Acquisition and a consistent course of conduct in distributing monies to him. Therefore, he has proven a good arguable case of a beneficial interest in nine of the Trust Vessels and that he should be entitled to funds from the sale of MV Acrux and MV V Rich and that Mr Fu had dishonestly assisted in the breach of trust by the second to ninth defendants in failing to continue paying him his share of the profits.

The Unauthorised Transfer Claims

128 The defendants argue that Mr Xu did not have *locus standi* to commence the action on behalf of Changzhou as Changzhou was beneficially owned by Mr Fu.[143] I do not think there is any merit to this assertion. As the claimants point out, even the defendants' own expert, Ms Xue, is of the view that Mr Xu, as the legal representative of Changzhou, can represent Changzhou in litigation.[144] Ms Xue caveats her opinion by saying that a legal representative of Changzhou will face difficulties and challenges once Mr Fu commences legal proceedings to be recognised instead as the legal representative.[145] In my view, the claimants are right to mention that in the absence of any such proceedings by Mr Fu, Ms Xue is essentially admitting that Mr Xu is entitled to commence legal proceedings on behalf of Changzhou. Therefore, I do not think that the defendants' argument on *locus standi* holds any water.

129 Moving next to the merits of the Unauthorised Transfer Claims, the claimants' case in conspiracy is outlined at [101] above.

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143 DWS at para 307.

144 Xue's expert report at para 42.

145 Xue's expert report at para 43.

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130 The defendants explain that these transfers from Changzhou to third parties in China are arms-length transfers to suppliers, customers and other third parties.[146] The defendants have exhibited supporting documents showing payments for cargo lashing materials and electronic invoices had been issued with taxes paid on those invoices.[147] The claimants say that the defendants have failed to account for why the transfers were effected in short succession between 7 June 2024 and 12 June 2024. This was shortly after Mr Xu had, on 7 June 2024, instructed the bank to stop two transfers of US$ from Changzhou to accounts outside China, and warned Ms Fu Fen of the consequences of moving monies to overseas accounts.[148]

131 The defendants explain that the transfers from Changzhou to Quan An were payments made in the ordinary course of business.[149] For the total payment of US$9,907,120.33, the defendants point out that eight payments were made in 2021, three were made in 2022 and two were made on 5 March 2024, before Mr Xu was terminated. Further, there was no attempt to hide the payments from Mr Xu as his own evidence is that he did receive text messages from the bank for each transfer but did not read them.[150] Mr Xu also had full access to office records to check the system. The defendants also annex a Master Fixture Note between Changzhou and Quan An dated 1 March 2021, arguing that the transfers were for the payment of freight and demurrage.[151] Further fixture notes

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146 DWS at paras 242–246; Fu's 4th affidavit at paras 97–98.

147 Fu's 4th affidavit at Tab FX-33.

148 Xu's 5th affidavit at para 45.

149 DWS at paras 222–241.

150 Xu's 1st affidavit at para 50.

151 Fu's 4th affidavit at FX-26.

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for some of the underlying transactions have also been provided.[152] For the payment of US$979,400 on 27 May 2024, the defendants likewise claim that it is pursuant to a Debit Note from Quan An to Changzhou and the underlying transactions are eight fixture notes between Changzhou and various shippers.[153]

132 The claimants say that these are all shams.[154] In support of their allegation, the claimants produced other contemporaneous documents purportedly showing inconsistencies between these defendants' debit notes. Some of these inconsistencies, as detailed by the claimants, are as follows:

(a) The debit note dated 28 March 2021 stated that freight was paid by Changzhou to Quan An to charter the MV Good Hope. However, a Letter of Intention dated 2 March 2021 showed that MV Good Hope was chartered by Noble Miracle International Limited ("Noble Miracle"), and freight was paid to PGSHPG Pte Ltd. Changzhou and Quan An were not involved in the transaction.[155]

(b) The debit note dated 3 May 2021 stated that freight was paid by Changzhou to Quan An to charter the MV Oceana Sky. However, pursuant to an email recap dated 10 May 2021, MV Oceana Sky was chartered by Pacific Glory Shipping Pte Ltd, a Singapore-incorporated company ("PGS Pte Ltd"). For avoidance of doubt, this is a separate legal entity from the identically-named entity incorporated in the BVI at

152 Fu's 4th affidavit at paras 85–93.

153 Fu's 4th affidavit at paras 94–96.

154 Xu's 5th affidavit at para 42.

155 Xu's 5th affidavit at para 42(a).

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[6] above. Quan An was not the charterer, would not be involved in the shipment and there was no reason for payments to be made.[156]

(c) The debit note dated 8 August 2021 stated that freight was paid by Changzhou to Quan An to charter MV Christina Ocean from Shanghai to Dammam, Saudi Arabia. However, contemporaneous communications via WeChat in the MV Christina Ocean working group showed that the ship left Karachi, Pakistan on 7 October 2021 and proceeded to Qasim, Pakistan for its next port to load rice.[157]

133 The claimants have made out a good arguable case. I agree with the claimants that the RMB transfers from Changzhou to third parties conveniently coincide with Mr Xu's termination and this suggests an ulterior motive. Further, I agree with the claimants that there appears to be some inconsistencies between the defendants' debit notes and the documentary evidence produced by the claimants. This dispute over whether the documents are authentic or sham is for the trial court to resolve. Bearing in mind not to delve into conflicts of evidence on affidavit at an interlocutory stage, I am satisfied that the claimants do have a case which is more than capable of serious argument.

Whether there is a real risk of dissipation

134 The claimants argue that there is a real risk of dissipation. The claimants accept that general references to dishonesty will not suffice; the dishonesty must be closely connected to the real risk of dissipation, such as forged or sham documents. The claimants' case is premised on past dishonest transfers and more proximate transfers shortly before the Worldwide Mareva. The past

156 Xu's 5th affidavit at para 42(b).

157 Xu's 5th affidavit at para 42(c).

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dishonest transfers are relied on in support of an allegation of dishonesty while the transfers shortly before the Worldwide Mareva are directly relied on to show real risk of dissipation.

Past dishonest transfers

135 The claimants refer to a laundry list of past dishonest transfers, arguing that Mr Fu had previously engaged in sham transactions and therefore should be seen as dishonest, giving rise to a real risk of dissipation.[158] The defendants dispute the relevance of these transfers, arguing that these transfers were pursuant to legitimate business operations and were made some time before Mr Xu's employment was terminated on 24 May 2024. The defendants also submit that Mr Xu's claims are *in personam* claims against Mr Fu and not against the companies. Instances where funds are moved between companies owned by Mr Fu do not show dissipation of Mr Fu's personal assets to avoid any judgment against him.[159]

136 The transfers that the claimants are relying on to allege dishonesty are:

(a) The RMB transfers from Changzhou to third parties. For the reasons set out at [130]–[133] above, I think there is a good arguable case that the RMB transfers were unauthorised.

(b) The unauthorised transfers of sums from Changzhou to Quan An. For the reasons set out at [130]–[133] above, I think there is a good arguable case that the transfers from Changzhou to Quan An are unauthorised.

158 CWS at para 22.

159 DWS at paras 216–220.

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(c) The sale of the two Trust Vessels (MV Acrux and MV V Rich) by Acrux (the third defendant) and Fuxing (the fourth defendant), respectively. The claimants say that the two Trust Vessels had been transferred to unknown third parties in total disregard of the trusts. MV Acrux was transferred from Acrux to Tinxiu Shipping International Limited ("Tinxiu") on 13 June 2024. MV V Rich was sold on 18 June 2024 for US$18,850,000, and the sales proceeds are unaccounted for.[160] The defendants explain that the transfer to Tinxiu was only for operational reasons and not a sale, and that Tinxiu was formerly known as Noble Miracle, the shares of which are held by one of the employees, Dai Xifan, as a nominee.[161] It remains held on trust. The sale of MV V Rich was in the ordinary course of business, and that the Memorandum of Agreement was dated 24 April 2024, predating the dispute with Mr Xu.[162] After MV V Rich's sale, part of the sales proceeds was paid to brokers and other parties with beneficial interests and used to pay off expenses, and US$11,525,959.50 in the fourth defendant's bank account is attributed to this sale.[163] At the interlocutory proceedings, it is difficult to ascertain which version is the truth. This is for the trial court to determine.

(d) The transfer of the sum of US$1,164,048 from PGS Pte Ltd to the seventh defendant, Yuanzhi Shipping Pte Ltd ("Yuanzhi") on what appears to be fictitious or sham documents. The claimants say that Yuanzhi does not own a vessel named MV Ruby nor is there evidence

160 Xu's 1st affidavit at paras 59, 64(b).

161 Fu's 4th affidavit at para 61.

162 Fu's 4th affidavit at para 64; Fu's 1st affidavit at para 39, FXW-4.

163 Fu 1st affidavit at para 38, FXW-5.

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that Yuanzhi had chartered the vessel from another party.[164] The defendants explain that Yuanzhi had chartered MV Ruby on behalf of PGS Pte Ltd as Yuanzhi, as a single ship owning company, is more trusted.[165] The defendants produce a set of bills of lading pertaining to the MV Ruby, but did not produce any documents directly showing that Yuanzhi had chartered MV Ruby.[166] Similarly, it is for the trial court to ascertain which version is the truth.

(e) The transfer of US$1,352,132.50 from the eighth defendant, Pengcheng Shipping Pte Ltd ("Pengcheng") to Yaozhou on what appears to be fictitious or sham documents. The claimants argue that the fixture note and invoice suggesting that Pengcheng had chartered MV NS Qingdao to Yaozhou are shams, and that the defendants are unable to produce any documents relating to the charter or the voyage.[167] Pengcheng must first have chartered the vessel from the shipowner, but there is no evidence of this charter. The defendants' reply is simply that it is natural for neither Pengcheng nor Yaozhou to be shown on the bill of lading which would only show the shipper or consignee, not the charterer or disponent owner.[168]

(f) The transfer of the entire shareholding in three vessel owning companies (Acrux; the fifth defendant, Weicheng Shipping Pte Ltd; and the sixth defendant, Weiye Shipping Pte Ltd ("Weiye")) to Luck Holding Group Ltd ("Luck Holding"), a company incorporated in the

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164 Xu's 1st affidavit at para 65(c).

165 Fu's 4th affidavit at para 110.

166 Fu's 4th affidavit at paras 113–114.

167 Xu's 4th affidavit at para 48.

168 Fu's 4th affidavit at paras 115–116.

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Marshall Islands, in or around June 2023.[169] The claimants submit that Luck Holding is held by Ms Fu Wei Er, Mr Fu's sister, who is not an employee of the Pacific Glory Group. Luck Holding is not part of the Pacific Glory Group. The defendants explain that this was part of a change in the equity structure and that Luck Holding continues to hold on to the shares as a nominee.[170] The defendants argue that the transfer occurred in June 2023 when Mr Xu and Mr Fu were not in conflict then.[171] However, Mr Xu has produced transcripts where Mr Xu and Mr Fu had a dispute over Mr Xu's beneficial interest in the Trust Vessels in 2022.[172]

(g) The transfer of monies out of the Chouzhou bank account belonging to Ocean Future Shipping Co Ltd ("Ocean Future") (a constituent Pacific Glory Group company) to Mr Fu and his father, Mr Fu Genhua.[173] Mr Xu alleges that he was asked by Ms Fu Fen to open a Chouzhou bank account for the benefit of Ocean Future to facilitate conversions of RMB to US$. Mr Xu did not control this account as Ms Fu Fen held the login details. Even though Mr Xu received text messages relating to the account transfers, he did not pay any attention to the messages. This bank account was used in 2022 and 2023 to hold monies from Ocean Future and Weiye, some of which were then paid to Mr Fu and Mr Fu Genhua. RMB 1,500,000 was paid to Mr Fu over two transfers on 25 November 2022 while RMB 7,990,000 was paid to

169 Xu's 1st affidavit at para 66.

170 Fu's 4th affidavit at para 119.

171 Fu's 4th affidavit at para 120.

172 Xu's 5th affidavit at para 49(d).

173 Xu's 1st affidavit at paras 69–70.

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> Mr Fu Genhua over six transfers from 31 May 2023 to 27 June 2023. The claimants allege that these transfers must have been orchestrated by Mr Fu as the controller of financial affairs in the Pacific Glory Group. Mr Fu explains that Mr Fu Genhua's card was used for the daily operation of the company and settlement of foreign exchange.[174] Mr Fu has not produced any evidence whatsoever that Mr Fu Genhua's card had been used for company expenses. Given the sophistication of Mr Fu's businesses and the routine transactions of large sums, it seems unlikely that Mr Fu would have to rely on his father's card for foreign exchange purposes.

More proximate transfers

137 It is necessary to explain how the claimants came into possession of the proximate transfers of the defendants. When the claimants were granted the Worldwide Mareva on an *ex parte* basis, it came with ancillary disclosure orders. The defendants failed to co-operate fully and did not comply with the disclosure obligation. They refused to disclose banking information as requested by the claimants. This caused the claimants to take out a separate application directing various banks of the defendants to produce their bank statements. The defendants applied for a stay of the application until the present case is heard and decided upon. After hearing the defendants' application, the court granted the claimants' application. The more proximate transfers were discovered from the defendants' banking documents.

138 I pause to observe a preliminary issue. The claimants annexed the bank statements to their written submissions for this hearing as opposed to adducing

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174 Fu's 4th affidavit at para 121.

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them via affidavit.[175] What the claimants should have done was to seek the court's permission to file a further affidavit on the matter. Nonetheless, the defendants had tendered a letter to the court with a draft reply affidavit by Mr Fu to explain the banking transactions alleged by the claimants.[176] At the hearing, I granted the defendants permission to file this reply affidavit. The defendants have done so.[177] Therefore, I am satisfied that the defendants were not prejudiced by this course of events.

139 The claimants argue that the following transfers reinforce the risk of dissipation:

(a) In June 2024, Quan An, upon receiving sums of monies from Changzhou in May 2024, emptied the two bank accounts held with United Overseas Bank ("UOB") by way of two transfers – a funds transfer to a "Miracle Maritime Co" in the sum of US$224,624.42 and a payment by demand draft for the sum of US$1,216,610.03. The accounts were closed thereafter.[178] The defendants explain that UOB had decided, for its own internal reasons, to close Quan An's account in Singapore, and the funds were transferred to Quan An's UOB account in China.[179] There is no evidence to support this. Had UOB decided to close Quan An's Singapore account, it would have in all likelihood informed Quan An of its intention to do so. No correspondence from UOB was produced. Further, the defendants could have exhibited the bank

175 CWS at Annexes 1–3.

176 Letter to Court dated 10 March 2025.

177 See Fu's 6th affidavit.

178 Annex 1 of CWS.

179 Fu's 6th affidavit at paras 15–16.

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statements of Quan An's Chinese UOB account to account for the transfer of funds. No such bank statement was produced.

(b) Second, after the Worldwide Mareva was granted at the *ex parte* hearing, Yuanzhi (the seventh defendant) transferred from its account the sum of US$2.95 million to Quan An's account in China on 9 September 2024, and US$4.01 million to Fuxing's account with UOB on 10 September 2024.[180] The defendants explain that the transfer of US$2.95 million to Quan An was part of its cash flow management strategy. Quan An subsequently transferred US$4.24 million to Fuxing's account maintained with Dah Sing Bank in China for a fixed deposit.[181] Further, the transfer of US$4.01 million to Fuxing was an intra-company transfer for Fuxing to repay an intra-company loan from Yao Yang previously advanced to Fuxing on 23 August 2024.[182] The defendants argue that such an internal transfer between defendant companies in the present proceedings should not be seen as a dissipation of funds.[183] However, my concern with this transfer is not that it is an internal transfer, but that it is a transfer of funds from Singapore to China. While the defendants furnished a list of fixed deposits held by Fuxing, no detailed bank statements were provided to show that the US$4.24 million is partially constituted by the transfer of US$2.95 million. The defendants have furnished a screenshot of a US$4 million transfer from Yao Yang to Fuxing to substantiate its account of a loan from Yao Yang,

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180 Annex 2 of CWS.

181 Fu's 6th affidavit at paras 17–19.

182 Fu's 6th affidavit at para 20.

183 Fu's 6th affidavit at para 21.

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but there is no evidence to show that the US$4.01 million transferred to Fuxing was then used to repay Yao Yang.

My analysis

140 The claimants rely on these transfers to make the point that Mr Fu has engaged in attempts to frustrate the enforcement of a prospective judgment against assets in China and in Singapore, by transferring assets from Chinese entities to entities in Singapore after the commencement of Chinese proceedings and vice versa when Singapore proceedings were brought. In the hearing before me, the claimants conceptualise this to be an allegation of dishonesty premised on a penchant for sham documents and obfuscating transactions. Hence, the court should draw a finding of real risk of dissipation from Mr Fu's conduct of dishonesty.

141 In *Bouvier*, the Court of Appeal set out guiding principles on how allegations of general dishonesty should interface with the requirement of real risk of dissipation, as follows:

> 94 In our judgment, a well-substantiated allegation that a defendant has acted dishonestly can and often *will*, as we have said, be relevant to whether there is a real risk that the defendant may dissipate his assets. But, we reiterate that in each case, it is incumbent on the court to examine the precise nature of the dishonesty that is alleged and the strength of the evidence relied on in support of the allegation, keeping fully in mind that the proceedings are only at an interlocutory stage and assessing, in that light, whether there is sufficient basis to find a real risk of dissipation. That alone is the justification which lies in the heart of the court's jurisdiction to grant Mareva injunctions. An allegation of dishonesty does not in itself form a substitute for an examination of the degree of risk of dissipation unless, as we have said, that allegation is of a nature or characteristic that sufficiently bears upon the risk of dissipation. […]
>
> [emphasis in original]

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142 There must be "solid evidence" to demonstrate the real risk of dissipation; bare assertions to that effect would not suffice (*Bouvier* at [36]). In this case there is evidence to show that the allegation of dishonesty and the instances of dissipation of assets are of sufficient strength and relevance such that there is a real risk of dissipation.

Whether there is failure to provide full and frank disclosure

143 It is settled law that on an *ex parte* application, an applicant must disclose all material facts within his knowledge, even if these facts may be prejudicial to the applicant's claim (*JTrust Asia* at [90]; *The "Vasiliy Golovin"* [2008] 4 SLR(R) 994 ("*Vasiliy Golovin"*) at [83]). However, the Mareva injunction is not automatically discharged as a result of an omission to disclose. The court has a discretion, notwithstanding material non-disclosure, to nonetheless continue the order (*JTrust Asia* at [90(e)]).

144 The defendants allege five instances in which this duty was breached, and argue that as a result of these breaches, the Worldwide Mareva should be set aside.

Failure to disclose application for freezing order

145 The defendants allege that the claimants failed to disclose Mr Xu's application for a freezing order in the Chinese proceedings to the sum of US$39 million, the subsequent revision to a sum of RMB 10 million, and the Chinese court's grant of the asset preservation order.[184] Mr Xu made this application on 5 July 2024, well before the *ex parte* hearing for the Worldwide Mareva on 16 August 2024, and revised the quantum of the application on 22 July 2024.

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184 DWS at para 281.

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The Shanghai Maritime Court granted the asset preservation order on 2 August 2024 and Mr Xu was notified that about RMB 1 million was frozen on 7 August 2024.[185] None of these developments were disclosed during the *ex parte* hearing on 16 August 2024.[186] The defendants further highlight that at the *ex parte* hearing the court enquired if there were any Chinese asset preservation orders. Counsel for the claimants answered that no freezing order had been granted.

146 The claimants concede that there was a non-disclosure of the Chinese freezing order and submit that the non-disclosure was not material to the merits of the Worldwide Mareva.[187] The claimants rely on the case of *Parastate Labs Inc v Wang Li* [2023] 2 SLR 376 ("*Parastate*"), where the Court of Appeal observed, on an examination of the authorities cited before it, that generally, the material non-disclosures justifying a discharge of the injunctions must have had a bearing on the merits of the application and were material facts that the claimant had sought to supress (at [24]–[25]). In my view, the non-disclosure of the Chinese asset preservation order was material. The court was interested to know at the *ex parte* hearing so as to decide whether the Singapore courts should order an additional freezing order and the limits of the order.[188]

147 The claimants submit that Mr Xu's 2nd affidavit disclosed the Chinese asset preservation order and it was open to the Court to order a further hearing or order for the Worldwide Mareva to be varied or set aside. I cannot accept this argument. The second affidavit was filed under OC 623 on 2 September 2024, three weeks after the *ex parte* Mareva hearing and after the Worldwide Mareva

185 Xu's 2nd affidavit at Tab 2.

186 DWS at para 285.

187 CWS at para 37.

188 DWS at para 282.

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was issued. The summons for the Worldwide Mareva had already concluded. The claimants cannot seriously expect the court to proactively monitor every affidavit filed in the substantive action to scour for new factual developments and, on its own accord, order a further hearing or revise a previous order in response to these developments. The court is not omniscient.

148 I am disappointed by the non-disclosure in the present case. It is incumbent on counsel to communicate with the client as to the pertinent facts to be disclosed in an *ex parte* application. It is the duty of counsel to ensure that this obligation is properly discharged (*Vasiliy Golovnin* at [88]). Nonetheless, I accept that Mr Xu neglected to inform his Singapore lawyers of the Chinese asset preservation order as he thought that the Chinese and Singapore proceedings were unrelated and did not realise that he had to inform his Singapore lawyers of the asset preservation order.[189] In *JTrust Asia,* the Court of Appeal held that whether the non-disclosure was innocent, in that the facts were not known or its relevance was not perceived, was a relevant consideration in deciding whether to discharge a Mareva injunction (at [90(d)]. Both Mr Xu and his counsel made an innocent mistake, in that counsel for the claimants were not aware of the relevant facts, and the claimants did not perceive the relevance of the facts. Further, Mr Xu did disclose the existence of the Chinese proceedings.[190]

149 I therefore do not think that this case calls for a discharge of the Worldwide Mareva. I am satisfied that there is a good arguable case, and a real risk of dissipation has been disclosed on the facts. I give Mr Xu the benefit of the doubt that the non-disclosure was innocent. Further, while the information

189 CWS at para 37(a).

190 CWS at para 37(b).

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was material at that time, since Mr Xu has agreed to discontinue the Chinese proceedings in favour of the Singapore proceedings, the Chinese asset preservation order is no longer relevant. Therefore, I do not discharge the Worldwide Mareva.

Other alleged non-disclosures

150 The defendants also refer to four other instances where the claimants had allegedly misrepresented their case or failed to disclose material information.

(1) Timing of transfers

151 During the *ex parte* hearing for the application of the Worldwide Mareva, counsel for the claimants had represented to the court that the transfer of US$10 million from Changzhou to Quan An took place immediately after notice to terminate the arrangement between parties was given.[191] However, the claimants had described these payments to have been made sometime between 2021 and 2023 in their skeletal submissions and in Mr Xu's affidavit in support of the *ex parte* application for the Worldwide Mareva. The defendants submit that this meant that the court would be belabouring under the wrong impression that this sum was paid after the alleged termination of the arrangement, which goes towards whether there was a real risk of dissipation. The claimants' representation was erroneous. The court would, nevertheless, accept that there was a real risk of dissipation as there were other supporting evidence.

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191 DWS at paras 293–296.

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(2) SMS notifications

152 The defendants argue that the claimants should have drawn the court's attention to the fact that Mr Xu would have received SMS notifications from the bank in relation to the transfers from Changzhou, as this would have gone to show whether the transfers were made surreptitiously or with the knowledge of Mr Xu.[192]

153 Mr Xu had mentioned in his affidavit that he "reviewed the text messages received on [his] mobile phones and discovered notifications from Bank of China, which was Changzhou's bank, regarding the transfer of these amounts from Changzhou's bank account to Quan An from 15 June 2021 to 5 March 2024".[193] Although this was not brought to the attention of the court, I am of the view that this omission is not sufficient to discharge the Worldwide Mareva.

(3) Description of beneficial interest

154 The defendants argue that Mr Xu should have properly stated his beneficial interest in the Trust Vessels and that Mr Xu did not draw the Court's attention to the reasons why he did not receive the Certificates of Share Acquisition for the Trust Vessels.[194]

155 The issue of Mr Xu's beneficial interest in the Trust Vessels and the dispute over the Certificates of Share Acquisition are matters to be determined

192 DWS at para 297.

193 Xu's 1st affidavit at para 49.

194 DWS at paras 298–299.

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in the substantive proceedings.[195] Therefore, the claimants cannot be said to have failed to disclose or misrepresented the facts.

(4) Translation

156 The defendants submit that Mr Xu deliberately provided an inaccurate translation of Article 11 which referred to "local civil courts" and not "local people's courts".[196] Mr Xu should have provided an accurate translation of Article 11 and drawn the court's attention to the exclusive jurisdiction clause. However, in my assessment, there is no evidence that the claimants had deliberately procured an inaccurate translation. The defendants have no basis to make this accusation.

157 Therefore, the Worldwide Mareva should not be set aside for non-disclosure of relevant facts.

Summary

158 I decline to set aside the Worldwide Mareva as I am satisfied that there is a good arguable case and a real risk of dissipation. While there were material non-disclosures, I do not think that they justified setting aside the Worldwide Mareva.

195 CWS at para 36.

196 DWS at paras 300–302.

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Issue 4: Variation of the terms of the Worldwide Mareva, disclosure orders and fortification

Whether the terms of the Worldwide Mareva should be varied

159 The defendants submit that even if the court is not minded to set aside the Worldwide Mareva, the scope and amount of the Worldwide Mareva should still be varied. The defendants identify several bases for this variation. I shall deal with them in turn.

The Chinese asset preservation order

160 The defendants argue that the Worldwide Mareva should be reduced by RMB 10 million as Mr Xu had already obtained an asset preservation order in China for the sum of RMB 10 million.[197] The claimants explain that Mr Fu's asset preservation order in China does not affect the Worldwide Mareva in the present proceedings, as the Worldwide Mareva allows for the defendants to dispose of or deal with assets so long as the total encumbered value of Mr Fu's assets remains not less than US$43,170,016.91 and RMB 13,786,455.16.[198] The amount frozen in China would count to the Worldwide Mareva.

161 I agree with the claimants. In any event, Mr Xu has agreed to discontinue the Chinese proceedings in favour of proceedings in Singapore. The asset preservation order in China would therefore fall to the side.

Disparity in the Statement of Claim and Mr Xu's affidavit

162 The defendants submit that the quantum of Mr Xu's claims have changed since the initial affidavit in support of the *ex parte* application. The

197 DWS at para 330.

198 CWS at para 40(d).

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defendants point to alleged inconsistencies – Mr Xu's initial claim to operating profits and values of the nine Trust Vessels, as outlined in Schedule IV of his supporting affidavit, was US$26,144,629.17, but this sum was quantified to be in relation to the seven Trust Vessels at US$4,241,516.26 in Schedule I of the Statement of Claim.[199] I do not think there is any merit in this. The sum of US$4,241,516.26 stated in Schedule I of the Statement of Claim relates only to voyage profits and not the sales proceeds. This relates solely to the profits aspect of the claim for dishonest assistance in the breach of trust in failing to distribute profits and sales proceeds generated. Schedule IV, in Mr Xu's first affidavit, however, also includes the alleged amounts misappropriated by Mr Fu. Mr Xu asserts a 23.5% interest in these misappropriated funds and calculates his share of the Pacific Glory Group's voyage profits attributable to his share of the misappropriated funds on top of his personal contributions. Schedule IV also includes the sales proceeds. These two calculations are not included in Schedule I. Therefore, there is no reason to vary the quantum of the Worldwide Mareva.

Whether the disclosure orders should be set aside

163 The defendants also take issue with the disclosure orders, submitting that paragraphs 6(a), 7(a) and 8 to 12 of the disclosure orders outlined in the Worldwide Mareva (the "Disputed Disclosure Orders") should be set aside.[200] In brief, the Disputed Disclosure Orders require the third to ninth defendants to inform the claimants in writing at once of:[201]

> (i) the profits which have been earned from the operation of the [Trust Vessel]; (ii) the details of the account(s) to which such

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199 DWS at para 327–328.

200 DWS at para 341.

201 See HC/ORC 4071/2024.

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> profits were paid, including the name of the account(s) holder, the name of the bank(s) with which the account(s) are held, the account(s) number, the country or countries in which the account(s) are held; and (iii) the current whereabouts of such profits including whether the profits have been paid to any person and if so the name of such person(s), the date of such payment(s), the details of the account(s) to which the profits were paid.

164 The defendants argue that the Disputed Disclosure Orders are too wide and go beyond what is ancillary to the Worldwide Mareva. The subject matter of the Disputed Disclosure Orders should more appropriately be sought through discovery instead.[202]

165 The claimants state that the disclosure of the profits and sales proceeds generated by the Trust Vessels under the Disputed Disclosure Orders is necessary to ascertain the extent and whereabouts of Mr Fu's assets to allow the claimants to police the injunction.[203]

166 I agree with the claimants that the disclosure of the Trust Vessel's profits and sales proceeds would assist in ascertaining the extent and whereabouts of Mr Fu's assets. However, I think that the Disputed Disclosure Orders as currently framed is too broad. In situations where the disclosure order has imposed obligations over and above what is necessary to police the Mareva injunction, the court should step in to attenuate the disclosure obligations (*Sea Trucks Offshore Ltd and others v Roomans, Jacobus Johannes and others* [2019] 3 SLR 836 ("*Sea Trucks"*) at [53]). A wide and extensive order for discovery at the commencement of proceedings, in conjunction with the very short period allowed for discovery, may be onerous and oppressive (*Petromar Energy Resources Pte Ltd v Glencore International AG* [1999] 1 SLR(R) 1152

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202 DWS at para 335.

203 CWS at para 42.

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at [19]). As a general rule, a defendant would be required to disclose all his assets even if the assets restrained may be limited to a certain value, and it is only when disclosure obligations go further than requiring a defendant to disclose all his assets that such obligations would be overly onerous (*Sea Trucks* at [52]–[53]).

167 In my view, the Disputed Disclosure Orders go beyond what is required to police the Worldwide Mareva. The Disputed Disclosure Orders require the disclosure of *all profits* from the Trust Vessel's operation, the details of the accounts to which such profits were paid, and *the current whereabouts* of such profits. To the extent that Mr Fu has a beneficial interest in the profits, the Disputed Disclosure Orders may assist in policing the Worldwide Mareva. However, the Disputed Disclosure Orders also encompass *all profits* (regardless of whether it is attributed to Mr Fu) and *all other payments of profits* to third parties. I also agree with the defendants that it is problematic that no relevant time period is provided.[204] This encompasses a great deal more information than what is necessary to police Mr Fu's assets and goes beyond the aim of "giv[ing] the plaintiff a snapshot of the defendant's assets at the time of disclosure" (*Bouvier* at [101]).

168 In construing whether the scope of the Disputed Disclosure Orders is appropriate, I also take into consideration two factors. First, I agree with the defendants that paragraph 5 of the Worldwide Mareva already requires the first to fourth defendants to "inform the [c]laimants in writing at once of all their assets whether in or outside Singapore and whether in their own name or not and whether solely or jointly owned, giving the value, location and details of all

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204 DWS at para 339.

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such assets".[205] Second, the fifth to ninth defendants are nominal defendants for the purposes of enforcing the Worldwide Mareva against Mr Fu's assets.[206] Disclosure of any assets beneficially owned by Mr Fu would be covered by paragraph 5 in the Worldwide Mareva. I do not think that nominal defendants ought to be subject to such onerous disclosure orders.

169 Therefore, I set aside the Disputed Disclosure Orders.

Whether fortification should be ordered

Applicable law

170 In *CPIT Investments Ltd v Qilin World Capital Ltd and another* [2017] 3 SLR 1 ("*CPIT Investments*"), Vivian Ramsey IJ outlined three requirements to be satisfied by a defendant seeking fortification of the undertaking as to damages, adopting the framework set out by the English Court of Appeal in *Energy Venture Partners Ltd v Malabu Oil and Gas Ltd* [2015] 1 WLR 2309. The three requirements are:

> 66 … [F]irst, that the court has made an intelligent estimate of the likely amount of loss which might result to a defendant by reason of the injunction; secondly, that the applicant for fortification has shown a sufficient level of risk of loss to require fortification; and, thirdly, that the contemplated loss would be caused by the grant of the injunction.

171 Ramsey IJ further distilled several principles in considering an application for fortification (*CPIT Investments* at [67]). First, the defendant must show a good arguable case that it will suffer loss in consequence of the making of the order to be protected. Second, since the assessment of loss at the interlocutory stage may be difficult in some cases, only an intelligent estimate

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205 DWS at para 340.

206 Xu's 1st affidavit at para 6(e).

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is required which should be informed and realistic but need not be entirely scientific. Third, the injunction must have been a cause without which the relevant loss would not have been suffered.

172 The Court of Appeal in *Parastate* highlighted that the "making of any such order for fortification depends on whether a *real risk of loss* could be shown by the defendant" (emphasis in original) (at [4]). However, the Court of Appeal did not discuss the degree of certainty required in quantifying the losses. Indeed, the Court of Appeal in *Parastate* had sustained and even increased the quantum required for fortification even in the absence of evidence sustaining an intelligent estimate of the likely quantum of losses.

My analysis

(1) Whether fortification should be considered in the absence of a prayer in the summons

173 The claimants object to the defendants' application for fortification, arguing that such an application should have been prayed for in their summons and that such relief should not be sought only in the affidavit.[207] While I agree that it is not ideal that the defendants did not include fortification in their prayers in SUM 3555, I am of the view that in considering an application to set aside a Mareva injunction, the court can require the claimants to fortify their undertaking as to damages even without an express prayer.

174 Further, I am satisfied that the issue of fortification was sufficiently canvassed before me. The issue of fortification was raised in Mr Fu's 4th affidavit in support of SUM 3555.[208] Mr Xu responded on the issue of

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207 CWS at para 44.

208 Fu's 4th affidavit at paras 131–134.

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fortification in his reply affidavit.[209] Both the claimants and the defendants argued on fortification in their written submissions[210] and in the hearing before me. Therefore, it would not be prejudicial to the claimants in considering the defendants' application for fortification at this juncture.

(2) Whether an intelligent estimate of the likely loss can be ascertained on the facts

175 I do not think that the evidence disclosed by the defendants is sufficient for the court to come to an intelligent estimate of the likely loss that is caused by the Worldwide Mareva.

176 The defendants did not specify the quantum of fortification sought in their supporting affidavit or written submissions. When the court asked the defendants at the hearing about the quantum of fortification, the defendants suggested the figure of US$12 million. This is premised essentially on a fall in the valuation of the Trust Vessels.[211] The defendants state that they have sustained damages because of the Worldwide Mareva, as the Trust Vessels fell in value and could not be sold.[212] Further, the Trust Vessels will depreciate over time, such that the valuation of the Trust Vessels is significantly lower than the valuation pre-injunction.[213] The defendants produce a table in their submission to illustrate that the value of the ships has fallen after the grant of the Worldwide Mareva. The table is reproduced below:

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209 Xu's 5th affidavit at paras 57–59.

210 DWS at paras 308–322; CWS at paras 44–47.

211 Fu's 4th affidavit at para 133.

212 DWS at para 317.

213 DWS at para 318.

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Vessel Name	Previous Valuation Price	Current Valuation Price
Regulus	$11,000,000.00	$9,000,000.00
Liao Fan (V Honor)	$9,700,000.00	$7,700,000.00
Leo I (V Glory)	$10,100,000.00	$8,100,000.00
Champ Star	$12,000,000.00	$9,000,000.00
V Pacific	$17,000,000.00	$16,000,000.00
V Noble	$22,000,000.00	$18,000,000.00

177 The claimants first dispute the defendants' valuation of the Trust Vessels.[214] I do not propose to delve into the dispute on valuation, since both the claimants and the defendants furnished market summary and market reports and estimated the market value from there.[215] No actual expert valuations of the ships were conducted.

178 The claimants argue that there is no basis to estimate the likely amount of loss as there is no proof of loss caused by the Worldwide Mareva. In my view, the defendants' proposed quantification of their likely losses is too simplistic and inaccurate. Taking a snapshot of the valuation of the Trust Vessels and calculating the disparity in valuation is not an appropriate way to quantify the defendants' likely losses as a result of the Worldwide Mareva, for three reasons.

(a) First, I agree with the claimants that the market price of the Trust Vessels would fluctuate according to supply and demand, which is

214 Xu's 5th affidavit at para 59(b).

215 Fu's 4th affidavit at para 134; Xu's 5th affidavit at paras 59(b)–(e).

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dependent on external factors.[216] There is no evidence that the Trust Vessels must be sold by a certain date and that the purported drop in the value of the ships was due primarily to the imposition of the Worldwide Mareva. The defendants, when facing poor market conditions, can simply opt to hold on to the Trust Vessels and sell them at the next opportune time. To crystallise and calculate the defendants' likely losses based on a snapshot in valuation price would not be accurate, as the market price of the Trust Vessels may very well rise if the market recovers.

(b) Second, I agree with the claimants that it appears that the Trust Vessels are still in operation and generating profits.[217] These profits would go to mitigate any losses that may potentially be suffered by the defendants.

(c) Third, I agree with the claimants that the defendants have not demonstrated that the contemplated loss must be caused by the grant of the injunction.[218] To the extent that the value of the Trust Vessels fall as a result of depreciation in value of assets over time, this should not be attributed to the Worldwide Mareva.

179 At this stage, I am of the view that it is simply too speculative to even preliminarily come to an estimate as to the defendants' likely losses as a result of the Worldwide Mareva.

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216 CWS at para 46(a).

217 CWS at para 46(a).

218 CWS at para 46(c).

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(3) Whether an order for fortification of the undertaking should be granted

180 Nonetheless, I think that notional fortification should be ordered in this case for two reasons.

181 First, I do not think that Mr Xu's undertaking as to damages is sufficient. The defendants submit that while Mr Xu gave an undertaking to comply with any court order for compensation, much of his assets listed to meet this undertaking are the subject matter of this dispute, *viz*, his interest in the beneficial ownership of the Trust Vessels, profits generated by the Trust Vessels, unpaid incentives and dividends from the Pacific Glory Group.[219] The only assets that are not the subject matter of the dispute are mentions of cash and other properties located in China.[220] Further, Mr Xu, as a Chinese national resident in China, has not detailed any assets within Singapore which can form the subject matter of the enforcement proceedings.[221]

182 An undertaking as to damages ought not to be merely illusory (*Parastate* at [4]). In *CHS CPO GmbH (in bankruptcy) and another v Vikas Goel and others* [2005] 3 SLR(R) 202 ("*CHS"*), Andrew Phang Boon Leong JC (as he then was) noted that (at [89(e)]):

> … [m]ore specifically, the court has to ascertain whether there are *sufficient assets* either within or outside the jurisdiction that would be readily available to satisfy any liability under the undertaking itself. This explains why fortification of undertakings is usually, albeit not invariably, granted where foreign plaintiffs are involved.
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> [emphasis in original]

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219 DWS at para 314; Xu's 1st affidavit at para 93.

220 DWS at para 315.

221 DWS at para 316.

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183 In this case, there is no evidence that the claimants have substantial assets in Singapore. While Mr Xu argues that their assets under the defendants' control would be available to satisfy any liability under the undertaking, this argument is circular. It is premised, in the first place, that Mr Xu's case would be resolved in his favour. If the court finds against Mr Xu, discharges the Worldwide Mareva and finds that Mr Fu ought to be compensated, it is not apparent what assets the claimants have to discharge their undertaking. While counsel for the claimants submitted at the hearing that Mr Xu had undisputed entitlements that could be used to satisfy any liability, counsel for the defendants submitted that all the claimants' claims are contested. Therefore, the undertaking, in my mind, is illusory.

184 Second, third parties also have beneficial interests in the Trust Vessels which may be impacted by the Worldwide Mareva. The defendants emphasise that the court should ensure that rights of these third parties are not prejudiced.[222] I agree.

185 I shall now consider whether it is appropriate to order a notional sum for fortification, even where there may not be an intelligible estimate of the losses that may occur. I think there is still some residual discretion to order fortification if it is just and equitable to do so. I take guidance from the case of *Parastate*, where the Court of Appeal affirmed an order for fortification even without evidence as to the losses that the defendant would suffer.

186 In *Parastate Labs Inc v Wang Li and others* [2023] SGHC 153, Andre Maniam J granted a Mareva injunction prohibiting the disposal of assets worldwide against the first defendant, Mr Wang. Parastate sought an injunction

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222 DWS at para 319.

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of US$5 million. However, Parastate's supporting affidavit did not detail Parastate's ability to meet the undertaking as to damages, for instance, by specifying what assets were available to meet the undertaking. Parastate's counsel suggested a range of S$30,000 to S$50,000 for the quantum of fortification to be ordered. Maniam J, dissatisfied with the claimant's evidence, ordered an injunction of only US$2.5 million with fortification of S$50,000 (at [40]).

187 On appeal, the Court of Appeal in *Parastate* allowed the appeal on the quantum of the Mareva injunction, finding that there is no discretion to reduce the quantum of an injunction for an indivisible claim where a good arguable case has been established for the entire claim and there is a real risk of dissipation (at [24]). More pertinently, the Court of Appeal then turned to consider the order of fortification. The Court of Appeal upheld the order for fortification and even ordered an increase in fortification from S$50,000 to US$100,000 to account for Parastate's unexplained non-compliance with the Supreme Court Practice Directions 2021 (at [32]). In this regard, even though the Court of Appeal noted that the order for fortification must be sensitive to the real risk of losses that may result from the injunction, and that there was *no material as to what losses that Mr Wang may suffer*, the Court of Appeal (and the High Court)'s overriding concern appeared to be to ensure that the "undertaking as to damages was not merely illusory" (at [31]–[32]).

188 I think this overriding concern is applicable here. In light of the insufficiency of the claimants' undertaking and the added concern that third party interests are at stake here, fortification is a fair requirement. I am also satisfied that the defendants face a real risk of loss as a result of the Worldwide Mareva, even though, due to the complex matrix of counterfactuals, it may be difficult to come to an intelligible estimate at this interlocutory stage. In my

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view, a fair and not prohibitive quantum of fortification that is appropriate is S$200,000, given the large sums injuncted. I am satisfied that such a sum would not be onerous and would not have the effect of "hanging an albatross around the neck of the [claimants]" (*CHS* at [123]). However, the parties request an opportunity to agree on the form of the fortification, and I agree.

Conclusion

189 In summary, my findings are as follows:

(a) The evidence justifies the dispensation of personal service. In this case Singapore is the appropriate forum. Accordingly, I decline to set aside the dispensation of personal service order.

(b) I decline to stay OC 623 as Singapore is the appropriate forum for the dispute.

(c) I decline to set aside the Worldwide Mareva as I am satisfied that the claimants have shown a good arguable case on the merits and a real risk of dissipation. The few instances of non-disclosures at the *ex parte* hearing do not justify the setting aside of the Worldwide Mareva.

(d) There is insufficient basis to vary the quantum of the Worldwide Mareva. However, I set aside the Disputed Disclosure Orders as these are too wide and onerous.

(e) The claimants are required to fortify their undertaking as to damages within four weeks from today. The claimants are to do so in a form to be agreed between parties, failing which a sum of S$200,000 is to be paid into court.

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190 Accordingly, SUM 3555 is granted in part (to the extent that the Disputed Disclosure Orders are set aside) and SUM 3645 is dismissed. Mr Xu is to discontinue the Chinese proceedings within a reasonable amount of time from this judgment or from the conclusion of any appeal arising therein and the claimants' suit is allowed to proceed in Singapore.

191 I shall hear parties on the issue of costs.

Tan Siong Thye
Senior Judge

Khng Una, Huang Peide, Ho Qi Rui Daniel and Natalie Ng Hai Qi (Helmsman LLC) for the first and second claimants;
Tan Wee Kong and Poh Ying Ying Joanna (JLex LLC) for the first to ninth defendants.

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