IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 20

Civil Appeal No 30 of 2019

Between

Steep Rise Limited

… *Appellant*

And

Attorney-General

… *Respondent*

In the matter of Originating Summons No 898 of 2017
(Summons No 4614 of 2018)

In the matter of an Application made under Section 29 of the Mutual Assistance in Criminal Matters Act (Cap 190A, 2001 Rev Ed)

And

In the matter of paragraph 7(1) of the Third Schedule to the Mutual Assistance in Criminal Matters Act (Cap 190A, 2001 Rev Ed)

And

In the matter of Order 89B Rule 11 of the Rules of Court (Cap 322, R5, 2014 Rev Ed)

And

In the matter of Bank of Singapore Limited, 63 Market Street, #22-00 Bank of Singapore Centre, Singapore 048942

And

In the matter of Steep Rise Limited (British Virgin Islands

Registration Number: 1780302)

And

In the matter of Fabrice Touil (D.O.B.: 20th May 1976)

Between

Attorney-General

... Applicant

And

Steep Rise Limited

... Respondent

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Mutual legal assistance] — [Duty of full and frank disclosure]
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Tay Yong Kwang JA (delivering the grounds of decision of the court):

Introduction

1 On 22 August 2017, a Restraint Order was made by the High Court on the application of the Attorney-General ("the AG") pursuant to s 29 read with para 7(1) of the Third Schedule of the Mutual Assistance in Criminal Matters Act (Cap 190A, 2001 Rev Ed) ("MACMA"), restraining any dealing with the funds in the bank account of Steep Rise Limited ("the appellant") in the Bank of Singapore ("the BOS Account"). Subsequently, the appellant applied to the High Court to discharge the order of court. The High Court Judge ("the Judge") dismissed the application and made no order as to costs as the AG did not seek an order for costs.

2 The appellant then appealed against the Judge's decision. We dismissed the appeal and ordered the appellant to pay costs of the appeal fixed at $40,000

(inclusive of disbursements) to the AG. In the course of the arguments before us, legal issues arose as to the scope of the AG's duty of full and frank disclosure in *ex parte* applications (or applications made without notice to anyone) under the MACMA and whether there was a need to show a risk of dissipation of assets.

The Facts

3 The appellant is a company incorporated in the British Virgin Islands and is owned beneficially by Mr Fabrice Touil. Mr Touil is also the sole director of the appellant.

The investigations on VAT fraud in France

4 Sometime in 2010, the French authorities conducted investigations into Value Added Tax ("VAT") fraud and money-laundering in the French carbon stock exchange. Investigations revealed that a French company, B Concept, had committed VAT fraud by purchasing tax-free carbon emission allowances and then selling the allowances to French companies with tax included. The VAT money charged to the buyers was not paid to the French Treasury and were instead kept by B Concept. The proceeds of the VAT fraud were then laundered into bank accounts owned by companies incorporated in various countries. These bank accounts and companies were owned beneficially by Mr Touil, his siblings and other related persons identified as part of the VAT fraud, which was said to have caused the French government some €68.5m in lost tax revenue.

5 Upon discovering suspicious transfers of money into a bank account in Singapore owned by Axcel Inc, the French Ministry of Justice sent an International Request for Legal Assistance in Criminal Matters dated 17

September 2014 ("the First Request") to the AG. The First Request sought principally the AG's assistance to obtain banking documents related to the Axcel Inc account and to Mr Touil generally and requested the freezing of that account.

6 With the documents obtained pursuant to the First Request, the French authorities discovered that all the funds in the Axcel Inc account had been transferred into the appellant's BOS Account. On 28 October 2015, the French Ministry of Justice sent another International Request for Legal Assistance in Criminal Matters ("the Second Request") to the AG. In the Second Request, the French authorities similarly asked for banking documents related to the BOS Account and for the freezing of the BOS Account.

The application for the Restraint Order

7 On 8 August 2017, the AG filed an *ex parte* application in Originating Summons No 898 of 2017 ("OS 898") to restrain dealings with the funds in the BOS Account.[1] The application was made under s 29 of the MACMA which enables the court to restrain property in Singapore that may be the subject of foreign confiscation orders.

8 Based on the information obtained from the French authorities, the affidavit filed in support of OS 898 stated that the requirements for obtaining a restraint order under the MACMA were satisfied. In particular: (a) judicial proceedings within the definition of MACMA were to be instituted in France and (b) there were reasonable grounds for believing that a confiscation order may be made in the French proceedings over the funds in the BOS Account,

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1 HC/OS 898/2017 at Appellant's Core Bundle ("ACB") Vol II, p 5.

since French law allowed for the confiscation of the proceeds of fraud.[2] The affidavit in support of the application referred to two principal documents: (a) a certificate issued by the Tribunal de Grande Instance de Paris on 22 June 2017 ("the 1st Certificate"), and (b) an email from the French authorities on 26 July 2017 confirming that judicial proceedings would be commenced in August 2017.[3] The affidavit did not refer to or mention the First and Second Requests (collectively "the Requests") specifically.

9 On 22 August 2017, the Judge granted the Restraint Order. Under that order, the appellant, the Bank of Singapore and Mr Touil are restrained from dealing with all or any part of the funds deposited in the BOS Account.[4]

10 On 31 August 2017, the French authorities commenced criminal proceedings against Mr Touil in the High Court of Paris and the French Ministry of Justice issued a second certificate confirming that fact. The AG adduced this certificate in OS 898 by way of a supplementary affidavit on 11 December 2017.

Variation of the Restraint Order and discovery of the seizure

11 On 18 July 2018, the appellant applied to the High Court to vary the Restraint Order to allow the appellant to withdraw a sum of money from the BOS Account to pay for legal advice and representation.[5] In his supporting

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2 Affidavit of Lim Kok Liang, Gary (filed 8 August 2017), para 11 at ACB Vol II, pp 13–14.

3 Affidavit of Lim Kok Liang, Gary (filed 8 August 2017), paras 5(g) and 6 at ACB Vol II, pp 11–12.

4 HC/ORC 5368/2017 at ACB Vol II, p 109.

5 HC/SUM 3340/2018 at Record of Appeal ("ROA") Vol IV, pp 8–9; Letter from Allen & Gledhill LLP dated 3 August 2018, para 2 at ROA Vol IV, p 13.

affidavit, Mr Touil exhibited letters from the Singapore police evidencing that the BOS Account had already been seized under s 35 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC seizure order"). The said seizure took place one year before the AG's application for the Restraint Order.[6] Coincidentally, a report on the seizure was made to the Magistrate in the State Courts on 22 August 2017, the very day that the Judge heard the application for and granted the Restraint Order.

The application to discharge the Restraint Order

12 On 3 October 2018, the appellant applied to discharge the Restraint Order.[7] The appellant argued that the order should be discharged because the AG was in breach of his duty of full and frank disclosure. First, the AG failed to disclose that the French authorities' stated purpose for seeking the Restraint Order under the Requests was to "guarantee the effectiveness of a fine" and not to support a confiscation order that may be made in the foreign proceedings. Second, the AG also failed to disclose that any payment purportedly received by the appellant in connection with the VAT fraud and money-laundering offences was approximately €3m at most.

13 The appellant also argued that the Restraint Order ought to be discharged because it was defective and was made *ultra vires*. The appellant relied on essentially the same arguments as set out earlier. It alleged that the purpose of the Restraint Order was to satisfy a potential fine and thus was not within the scope of the MACMA and further, that the Restraint Order should not have

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6 1st Affidavit of Fabrice Touil (filed 18 July 2017), paras 11–13 at ROA Vol III (Part A), pp 27–28; Report of seized items dated 2 March 2018 at ROA Vol III (Part A), pp 47–48.

7 HC/SUM 4614/2018 at ACB Vol II, pp 111–112.

restrained more than €3m in the BOS Account. The BOS Account had more than US$8.8m. Finally, the appellant also argued that the Restraint Order should be discharged because the AG failed to demonstrate a risk of dissipation of the funds in the BOS Account. The BOS Account was already subject to the CPC seizure order at the time of the AG's application for the Restraint Order and the funds in the account were therefore under no risk of being dissipated.

The decision of the High Court

14 The Judge dismissed the appellant's application to discharge the Restraint Order. On the purpose of the Restraint Order, the Judge held that although the Requests made reference to the order being sought to "guarantee the effectiveness of [a] fine", she noted that the affidavit filed in OS 898 had referred to the 26 July 2017 email from the French authorities and deposed that there were reasonable grounds to believe that a foreign confiscation order may be made. The Judge concluded that there was no reason to doubt that the AG's application fulfilled the requirements of s 29(1)(*b*) of the MACMA.

15 The Judge noted that since French law allowed for confiscation in value of the payment received in connection with the fraud, the whole of the BOS Account would still be subject to a confiscation order in the French proceedings. There was therefore no basis to restrain the BOS Account up to a limit of €3m only.

16 For those reasons, the Judge found that there was no material non-disclosure by the AG. The Judge also held that there was no requirement in the MACMA that a risk of dissipation must be shown. On the contrary, the decision in *Re Section 22 of the Mutual Assistance in Criminal Matters Act* [2009] 1 SLR(R) 283 ("*Re Section 22*") made it clear that once the statutory requirements

under the MACMA were met, the court must make the order sought.

The Issues

17 A number of arguments were raised in the appellant's case on whether the statutory requirements for granting the Restraint Order under the MACMA were satisfied. By the time of the hearing before us, counsel for the appellant, Mr Jason Chan SC, correctly focused his attention on the main matters in dispute. These were the contentions relating to material non-disclosure in the *ex parte* application and the need to show a risk of dissipation.

18 First, Mr Jason Chan SC argued that the material fact that the AG ought to have disclosed was that the Requests referred to a second purpose for the Restraint Order, which was "to secure the effectiveness of [a] fine". Mr Jason Chan SC accepted that the Requests did allude to the possibility of a confiscation order being made but submitted that the primary purpose of the Requests was nonetheless to secure a fine. This was a slight departure from the appellant's position in its written submissions and in the hearing in the High Court, where it argued that the sole purpose of the Requests was to secure a fine in the French proceedings.

19 Second, relying on various English authorities, Mr Jason Chan SC argued that the requirement of a risk of dissipation must be analysed as part of the public interest exception under the MACMA. Where there was no risk of dissipation of the asset, the grant of a restraint order would be contrary to the public interest.

20 Ms Kristy Tan for the AG submitted that the appeal should be dismissed on the following grounds:

(a) All the requirements under the MACMA for the grant of the Restraint Order were satisfied at all material times;

(b) The AG did not breach his duty of full and frank disclosure in applying for the Restraint Order; and

(c) Even if the Restraint Order were to be discharged, a fresh order should be made on the same terms with effect from the date of discharge of the original order.

21 There were therefore two legal questions in this appeal:

(a) Did the AG breach his duty of full and frank disclosure and if so, should the Restraint Order be discharged?

(b) In the alternative, should the Restraint Order be discharged because there was no risk of dissipation of the funds in the BOS Account?

Our Decision

The duty of full and frank disclosure in MACMA applications

The scope of the AG's duty

22 We begin with the scope of the duty of full and frank disclosure in *ex parte* applications generally. These are well established principles and were comprehensively discussed in the decision of this court in *The Vasiliy Golovnin* [2008] 4 SLR(R) 994. In essence, the duty to make full and frank disclosure is to disclose all material facts, even those prejudicial to the applicant. A fact is material where it is relevant to the court's decision on whether or not to grant

the order sought, although it need not be decisive in leading to a different decision being made (at [85]).

23 As this court stated in *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah (trading as Sin Kwang Wah)* [2000] 1 SLR(R) 786 ("*Tay Long Kee Impex*") at [21], the duty requires the applicant to disclose not only material facts known to him but also "such additional facts which he would have known if he had made proper inquiries". The applicant must also disclose the defences that may reasonably be raised by the defendant, although the duty extends only to plausible defences and not fanciful or theoretical ones (see *The Vasiliy Golovnin* at [87]).

24 It is not disputed that there is a duty of full and frank disclosure on the part of the AG when he applies for a restraint order in support of a potential foreign confiscation order. It was accepted, for example, by the UK Court of Appeal in *Director of the Serious Fraud Office v A* [2007] EWCA Crim 1927 at [6], in an application under the UK statutory equivalent of s 29 of the MACMA. However, we think that the precise scope of the AG's duty of full and frank disclosure in an *ex parte* MACMA application should not be the same as that which applies in *ex parte* applications in civil matters generally.

25 In ordinary civil matters, the scope of the applicant's duty extends to making reasonable inquiries to ascertain material facts and to disclosing defences that are available to the defendant. However, in the context of applications made under the MACMA, the duty cannot apply in the same unattenuated fashion. Where the AG acts pursuant to a request for mutual legal assistance from a foreign authority, he is constrained by the information he receives from the foreign authority although he may request clarifications or further information.

26 Section 19(2) of the MACMA provides basic information to be provided by a foreign authority in any request. This includes the purpose of the request and the nature of the assistance sought, a summary of the relevant facts and laws and the status of foreign proceedings. If all requisite information under s 19(2) has been provided, it is not the AG's duty to inquire or to investigate further. The underlying investigations and any subsequent judicial proceedings are within the purview of the foreign authority and are to be carried out under its law. As this court observed in *Re Section 22* at [6], the AG has a duty to make the application to the court where a request from the foreign country satisfies all requirements of the MACMA. Failure to do so could would cause Singapore to be in breach of its international obligations to the requesting country.

27 We would therefore limit the AG's duty of full and frank disclosure to the court to a duty to disclose all material facts relating to the application that are within the AG's actual knowledge. The AG does not have a positive duty to investigate further into the facts provided by the foreign authority or to examine the strength of the case against the accused if the information provided by the foreign authority is otherwise sufficient to satisfy the MACMA requirements. If the AG is or becomes aware of any facts that might cast doubt on the application, whether before or subsequent to the hearing of the application, he should disclose that information in line with his continuing duty of full and frank disclosure.

Whether the duty was breached

28 The question here was whether the AG ought to have disclosed to the Judge that at least one of the purposes of the Requests was to secure the BOS Account for the payment of a fine if Mr Touil was convicted of the offences in the French proceedings. The appellant pointed to an identical paragraph 8.2

found in the First and Second Requests under the heading "Purpose of the Request and Assistance Requested". Paragraph 8.2 stated:

> The legal proceedings have reached a stage where it has been established that a gang of swindlers has perpetrated VAT fraud and attempted to launder the proceeds thereof by having it transit through accounts located abroad, notably Singapore. Considering the extremely high amounts involved in the "B Concept fraud" (about €40 million) it appears necessary to guarantee the financial penalty that will possibly be passed by the court which will assess the case. Only a freezing of the account pending a preventive seizure of the amounts – that obviously were used to recover the proceeds of the swindle – may guarantee the effectiveness of the fine to be passed by the court. [emphasis added in underline]

29 The above cited paragraph 8.2 was translated from the original French text by the French authorities. In the English translation, the words "financial penalty" and "fine" (underlined) were used to translate the same French term "*peine d'amende*". During the hearing, when we asked about this apparent inconsistency in translation, Ms Kristy Tan replied that the AG accepted the French term to mean a fine under our law instead of some wider financial penalty.

30 The AG did not contend that securing the payment of a fine was an acceptable purpose for seeking a restraint order. As defined in s 2 of the MACMA, a "foreign confiscation order" within the meaning of s 29(1)(*b*) means orders made by a court in a foreign country for "recovery, forfeiture or confiscation" of any payment or other reward received in connection with an offence or the value of any such payment or reward. Instead, the AG argued that even if the Requests suggested that one of the purposes for seeking a restraint order in 2014 and 2015 was to secure the payment of a fine, by the time of the application to the High Court in 2017, the purpose had changed to be solely for recovering the proceeds of fraud and of money-laundering. For this, the AG

relied on the words of the supporting affidavit in OS 898 and the 1st Certificate of the investigating French judge dated 22 June 2017.

31 In our view, the appellant was right to concede that the Requests disclosed dual purposes for seeking a restraint order, namely, to secure the effectiveness of a fine as well as that of a confiscation order and were not for the sole purpose of securing the effectiveness of a fine that may be imposed in the French criminal proceedings. Despite the said paragraph 8.2, the Requests read in their entirety alluded to the real possibility that confiscation of the proceeds of fraud and of money-laundering could be ordered. The Requests stated that under French law, both fraud and money-laundering were offences punishable with a fine and with forfeiture of the proceeds.[8] The Second Request, which sought the freezing of the BOS Account, further described the link between the BOS Account and the fraud in this way:

> As already explained in [the First Request] the funds transferred over the two accounts AXCEL INC are considered as being the direct or indirect proceeds of the swindle. As a consequence, the funds that have been transferred towards [the BOS Account] in Singapore appear as the proceeds of the swindle, which has merely been moved from the AXCEL INC account to [the BOS Account].

The Second Request then went on to explain that it was essential to obtain the appellant's banking documents in order "to trace the flows and identify the final beneficiaries of the swindle, and proceed to the freezing of its proceeds". It appears to us therefore that the restraining of dealings in the BOS Account was also to pave the way for an eventual confiscation of the proceeds of the fraud and money-laundering offences.

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8 The First French Request dated 17 September 2014, para 5.2 at ACB Vol II, p 48.

32 If both purposes remained active at the time of the application for the Restraint Order in 2017, the existence of two purposes underlying the Requests was a material fact that should be disclosed. However, we agreed with the AG that by the time of the application in 2017, the Restraint Order was sought for the sole purpose of confiscating the proceeds of fraud and of money-laundering. We based this decision on the 1st Certificate from the Tribunal de Grande Instance de Paris dated 22 June 2017 which confirmed that judicial proceedings would be instituted in France in the VAT fraud and the money-laundering case for the purpose of confiscating assets derived from the money-laundering.[9]

33 Although the appellant argued that the French authorities did not disavow their intention of restraining the BOS Account to satisfy the payment of a fine, we think that such disavowal need not be express. In the said certificate, the investigating judge stated:

> (a) that judicial proceedings were to be instituted in France in respect of the VAT fraud and the money-laundering "for the purpose of confiscating assets derived from the commission of money laundering";
>
> (b) that the French authorities in their Requests had officially asked for the freezing of the stated bank accounts to prevent any transaction to the debit of the said accounts, "the proceeds of the fraud having transited through these accounts"; and
>
> (c) that the amount of money laundered, €34m, remained unpaid and unrecovered in France.

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9 Certificate dated 22 June 2017 at ACB Vol II p 16.

In the light of these statements in the certificate, it was apparent that the French authorities were proceeding against the BOS Account on the basis that the funds in it were the proceeds of the fraud and they were seeking to confiscate those funds. The AG was therefore under no duty to inform the Judge that the initial Requests may have suggested another purpose for the Restraint Order.

34 A final point that Mr Jason Chan SC raised was that although the documents provided by the French authorities referred frequently to the total amounts in the offences being €34m, a more recent letter sent by the French Ministry of Justice on 5 December 2018 revealed that no more than €23.5m was related to the VAT fraud. Assuming that to be the correct position, the amount of €23.5m is still far higher than the restrained funds in the BOS Account, which total some US$8.8m. It would also contradict the appellant's contention (see [12] above) that any payment purportedly received by the appellant in connection with the VAT fraud and money-laundering offences was approximately €3m at most. Therefore, although the appellant had argued at the hearing in the High Court and in written submissions before us that the AG failed to disclose that the Restraint Order restrained more money in the BOS Account than was necessary, we would likewise reject that argument because the facts show otherwise.

The requirement to show a risk of dissipation

35 Turning to the issue of whether a risk of dissipation must be shown, the starting point of deliberation must be the statutory requirements for granting a restraint order under the MACMA. Upon the application of the AG under s 29(2)(*b*) read with para 7 of the Third Schedule, the court has power under para 6 of the Third Schedule to grant a restraint order under the following conditions:

> **Cases in which restraint orders and charging orders may be made**
>
> **6.**–(1) The powers conferred on the High Court by paragraph 7(1) to make a restraint order … are exercisable where –
>
> (*a*) judicial proceedings have been instituted in a prescribed foreign country;
>
> (*b*) the proceedings have not been concluded; and
>
> (*c*) either a foreign confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for believing that such an order may be made in them.
>
> (2) Those powers are also exercisable where the High Court is satisfied that judicial proceedings are to be instituted in a prescribed foreign country and that there are reasonable grounds for believing that a foreign confiscation order may be made in them.
>
> …
>
> (4) The High Court shall not make an order under paragraph 7(1) … if it is of the opinion that it is contrary to the public interest for the order to be made.

36 At the hearing before the High Court, the appellant had argued for risk of dissipation as an independent requirement apart from the matters specified in the MACMA. The Judge rejected the argument, holding that there was no such requirement in the statute to be fulfilled before a restraint order could be granted. On appeal, the appellant sought to reframe the element of risk of dissipation within the MACMA's parameters by submitting that it is part of the public interest exception set out in para 6(4) of the Third Schedule.

37 First, it is clear from the MACMA that risk of dissipation is not stated as one of the requirements to be satisfied before the High Court may grant a restraint order. There is also no indication that Parliament intended for risk of dissipation to be a factor in the court's decision whether to grant a restraint order. Both parties before us agreed that under the provisions of the United Nations Convention against Transnational Organized Crime (2000) ("the

Palermo Convention"), which was the impetus for the enactment of the MACMA, there was no suggestion of a need for risk of dissipation before a restraint order could be granted. Mr Jason Chan SC was also not able to point to any working papers of the Palermo Convention that attested to such a requirement having featured in the UN Working Group's discussions.

38 Second, the structure of the MACMA shows that once the AG makes an application for a restraint order, the court may not refuse to grant the order on the basis that there is no risk of dissipation. The appellant suggested in its written submissions that recognising the need for risk of dissipation would be consistent with the AG's powers under s 20(1)(*h*) of the MACMA. This section, which applies generally to all requests by a foreign country for Singapore's assistance under the MACMA, provides:

> **Refusal of assistance**
>
> **20.**–(1) A request by a foreign country for assistance under this Part shall be refused if, in the opinion of the Attorney-General –
>
> …
>
> (*h*) the thing requested for is of insufficient importance to the investigation or could reasonably be obtained by other means;
> …

The appellant submitted that it would be in line with the general considerations of importance and of necessity in s 20(1)(*h*) for the court to decline to grant a restraint order where there was in fact no risk of dissipation.

39 We disagreed with the appellant's contention. Section 20(1)(*h*) was highlighted by the then-Minister for Law, Professor S Jayakumar, as one of the safeguards built into the MACMA "[t]o ensure that requests are not made unnecessarily" (*Singapore Parliamentary Debates, Official Report* (22 February 2000) vol 71 at cols 985–986 (Prof S Jayakumar, Minister for Law).

This is a ground on which the AG can refuse the foreign country's request for assistance. It is not a ground on which the court can refuse to make an order if the AG has decided to make the application to the court. The necessity for assistance or otherwise is left to "the opinion of the Attorney-General", not the court's.

40 As this court observed in *Re Section 22*, the MACMA provides for two levels of checks by the Executive on the propriety of any request by a foreign country. The first is by the AG and the second is by the Minister (at [15]). Accordingly, when the AG makes an application for an order under the MACMA, there should be no reason to believe that the AG and the Minister have not discharged their duties to determine if the request is a proper one (at [15]). In the present case, that includes assessing whether the Restraint Order requested by the French authorities is "of sufficient importance to the investigation" or "could reasonably be obtained by other means" given that the BOS Account had already been seized by the police under s 35 of the CPC. It must be presumed that by contesting the appellant's application to discharge the Restraint Order, the AG had formed the opinion and still holds the opinion that the Restraint Order is necessary in spite of the CPC seizure order.

41 The authorities cited by the appellant can be distinguished. The appellant first relied on *Millington and Sutherland Williams on the Proceeds of Crime* (Mark Sutherland Williams gen ed) (OUP, 5th ed, 2018) at paragraph 2.31 that an applicant for a restraint order must satisfy the court that there is a real risk of assets being dissipated in order to obtain such relief. The passage cited an unreported decision of the English Court of Appeal in *Re AJ and DJ* (9 December 1992, Court of Appeal (Civil Division)) where the court rejected the argument that it was unnecessary to establish a risk of dissipation because this was not an express statutory requirement. As the AG has pointed out, *Re AJ and*

DJ concerned domestic restraint orders issued pursuant to domestic criminal investigations, as opposed to restraint orders issued in support of foreign investigations. It is therefore of little assistance.

42 The appellant also relied on *In re Stanford International Bank Ltd and another* [2011] Ch 33 ("*Stanford Bank*"), where the English court discharged the restraint order granted in support of US criminal proceedings on the basis that the prosecutors failed to disclose that the assets in question were already subject to a civil freezing order and that the company that owned the assets was being wound up. In Sir Andrew Morritt C's view, if these matters had been disclosed, they would have undermined the allegation in both the letter of request and the witness statement that "there was an immediate risk of dissipation of the assets of [the company] such as to warrant the grant of a restraint order" (at [93]). This view was echoed by Arden and Hughes LJJ, both of whom considered that if the matters had been disclosed, it would have been apparent to the judge that there was no risk of dissipation of the company's assets and therefore no need to make the restraint order (at [112] and [194]).

43 We note that although *Stanford Bank* was decided on material non-disclosure of circumstances that would have shown that there was no risk of dissipation, this was on the premise that English law had accepted that a risk of dissipation of assets must be shown in order to obtain restraint orders, including those in cases of mutual legal assistance. The court there appeared to have applied *Jennings v Crown Prosecution Service* [2006] 1 WLR 182 ("*Jennings*") in support of the requirement for risk of dissipation even though *Jennings* was a case involving a purely domestic restraint order. The court in *Stanford Bank* did not explain the basis for importing the same requirement into an application for a restraint order pursuant to a request from a foreign country.

44 We decline to adopt the approach in *Stanford Bank*. We think that the stand that we take is much more consonant with the terms set out in the MACMA. We also note in passing that the legislative landscape in the UK with regard to the two types of restraint orders is different from that in Singapore. Here, the MACMA deals with restraint orders in support of foreign criminal proceedings. The equivalent of a domestic restraint order in criminal proceedings is the seizure order under s 35 of the CPC. Even under s 35 of the CPC, property may be seized so long as it is suspected to have links with an offence. There is no requirement in s 35 of the CPC that the asset must be at risk of being dissipated. We hold the view that there is no need for the AG to show a risk of dissipation in an application for a restraint order under the MACMA.

45 Accordingly, there was no reason for the High Court to discharge the Restraint Order. Similarly, there was no reason for us to discharge the Restraint Order, whether on the ground of material non-disclosure or on the basis that there was no risk of dissipation shown.

Conclusion

46 For the above reasons, we dismissed the appeal and awarded costs which we fixed at $40,000, inclusive of disbursements, to be paid by the appellant to the AG.

Tay Yong Kwang Judge of Appeal	Steven Chong Judge of Appeal	Woo Bih Li Judge

Chan Tai-Hui, Jason SC, Tan Kai Liang, Daniel Seow Wei Jin, Victor Leong Hoi Seng and Lim Min Li Amanda (Allen & Gledhill LLP) for the appellant;
Kristy Tan, Kenneth Wong, Ng Kexian and Tan Ee Kuan (Attorney-General's Chambers) for the respondent.