IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 178

Suit No 1180 of 2017

Between

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

… *Plaintiffs*

And

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

… *Defendants*

JUDGMENT

[Civil Procedure] — [Injunctions] — [Mareva injunctions] — [Court's power to grant Mareva injunction in aid of foreign court proceedings]

[Civil Procedure] — [Injunctions] — [Mareva injunctions] — [Whether there is good arguable case] — [Whether there is real risk of asset dissipation]

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v
Wu Xiaodong and another

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Audrey Lim JC
23 March, 16, 23 May 2018

13 August 2018 Judgment reserved

Audrey Lim JC:

1 This case raises the question of whether a Singapore court has the power to grant a Mareva injunction in aid of foreign court proceedings, particularly where the Singapore court has *in personam* jurisdiction over the defendant.

Background

2 The first plaintiff ("P1") is a public company incorporated in the Cayman Islands in 2004. The second plaintiff ("P2") is a wholly-owned subsidiary of P1. Around February 2007 and October 2008, P1 and P2 acquired various medical technologies ("the technologies") for US$521.8m from Supreme Well Investments Limited ("SW") and its subsidiary. P1 was subsequently wound up in July 2012. The first defendant ("Wu") was the founder, chairman, chief executive officer and director of P1, and its largest shareholder, holding around 23% of P1's shares through his controlled entity

Chengxuan International Limited ("Chengxuan").

3 After P1 was wound up, the liquidators investigated its affairs and alleged that the technologies purchased by P1 and P2 were substantially worthless and that SW was a sham entity controlled by P1's former management which included Wu and one Tsang (the former chief financial officer and director of P1). Hence, P1 and P2 claimed that they were victims of fraudulent misappropriation of some US$521.8m perpetrated by their former management and their associates, and that Wu and other directors of P1 had orchestrated and participated in the fraud ("the Fraud"). The funds transferred from P1 and P2 to SW's bank accounts were subsequently distributed to bank accounts of other parties ("SW Payees") who were apparently associated with or controlled by Wu, Tsang and/or their associates. Funds were then apparently transferred from SW Payees to bank accounts of other parties ("Further SW Payees") which included Wu and the second defendant ("Bi"). Bi married Wu in 1995 and they entered into a divorce agreement in 2012, though she claimed that they were separated since 2001.

4 On 1 August 2013, P1 commenced an action in the Hong Kong High Court (High Court Action No 1417 of 2013) ("first HK suit") against Wu and four others claiming, *inter alia*, breach of fiduciary duties, breach of trust, fraud, conspiracy, knowing receipt, dishonest assistance and money had and received.[1] On 23 December 2016, P1 and P2 commenced another action in the Hong Kong High Court (High Court Action No 3391 of 2016) ("second HK suit") against Wu and Bi and 21 others.[2] The second HK suit included claims additional to those found in the first HK suit. P1 and P2 intend to consolidate the first and

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1 Borrelli's 1st affidavit dated 13 December 2017 ("Borrelli's 1st affidavit"), p 105.

2 Borrelli's 1st affidavit, p 119.

second HK suits subsequently. The writ in the second HK suit was served on Bi's solicitors (who accepted service) on 27 November 2017.[3]

5 On 11 December 2017, the Hong Kong court granted P1 and P2 a worldwide Mareva injunction against Wu and Bi in the second HK suit ("HK injunction"), the subject of which included assets in Singapore. On 13 December 2017, P1 and P2 filed a writ in Singapore for substantially the same causes of actions and relief as in the second HK suit ("Suit 1180"), and concurrently applied for a Mareva injunction against Wu and Bi ("SUM 5689") to prevent them from disposing of their assets in Singapore (which are already the subject of the HK injunction). On 18 December 2017, Bi was served with the writ for Suit 1180, papers for SUM 5689 and the HK injunction order.[4] On 4 January 2018, the Singapore court granted the Mareva injunction (*ex parte*) against Wu in SUM 5689.

6 Before me, SUM 5689 remains to be determined against Bi. At the same time, P1 and P2 have, on 20 February 2018, applied to stay Suit 1180 (as they consider Hong Kong to be the more appropriate forum for the dispute) except for proceedings in relation to SUM 5689, pending the final determination of the first and second HK suits ("SUM 878"). Bi submits that the Singapore court has no power to grant a Mareva injunction in aid of foreign court proceedings, and even if it did, the injunction should not be granted in this case.

Court's power to grant Mareva injunction in aid of foreign court proceedings

7 P1 and P2 commenced Suit 1180 with the primary purpose of obtaining a Mareva injunction against Wu and Bi in aid of the Hong Kong proceedings.

3 Plaintiff's Further Written Submissions, para 120(a).

4 Plaintiff's Further Written Submissions, para 120(b).

Hence, they applied to stay Suit 1180 concurrently with the grant of the injunction, as they recognise Hong Kong to be the most appropriate forum for the dispute.[5] It is not disputed that they have a reasonable accrued cause of action recognisable in a Singapore court, that Wu and Bi have assets in Singapore that could be subject to the injunction, and that the court has *in personam* jurisdiction over Bi. Bi is a Singapore citizen and was properly served with the writ for Suit 1180 (see [5] above).

Section 4(10) of the Civil Law Act – the current state of the law

8 Section 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the CLA") confers on the court the power to grant "a Mandatory order or an injunction … either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made". The question is whether s 4(10) can be read to confer on the Singapore court power to grant interim relief in aid of foreign *court* proceedings, particularly where the court has *in personam* jurisdiction over the defendant and the plaintiff has a reasonable accrued cause of action recognisable by the court.

9 As a preliminary point, although some cases have interchangeably used the term "power" and "jurisdiction" in relation to s 4(10) of the CLA, the section essentially confers a "power". "Jurisdiction" should more appropriately be confined in this context to mean the court's "authority, however derived, to hear and determine a dispute brought before it" *(Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [13] and [31]). Whether the court has properly assumed jurisdiction over the defendant is an anterior question that must be determined before the court decides whether it has power to grant an injunction.

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5 Borrelli's 1st affidavit, para 12.

10 There is currently a divergence of views in the High Court on the ambit of s 4(10) of the CLA. In *Petroval SA v Stainby Overseas Ltd and others* [2008] 3 SLR(R) 856 ("*Petroval*"), the plaintiff, a foreigner, commenced an action in Singapore against the defendants who were also foreigners. The plaintiff based its jurisdiction for the Singapore action solely on O 11 r 1 of the Rules of Court (Cap 322, R5, 2006 Rev Ed), *ie*, that the defendants had assets in Singapore. It was clear that the merits of the claim would not be determined in Singapore, and that the sole purpose of commencing the Singapore action was the obtaining of interim relief. The plaintiff obtained a Mareva injunction and a stay of the Singapore action until final disposal of another action it commenced in the British Virgin Islands ("BVI"). The defendants subsequently applied for a declaration that the court had no jurisdiction to grant the Mareva injunction and for the setting aside of the writ of summons (in the Singapore suit), service of that writ, and all subsequent proceedings.

11 Tay J (as he then was) held that the court had no jurisdiction to grant a Mareva injunction in aid of foreign court proceedings. Although the claims were justiciable in Singapore as the causes of action are recognised under Singapore law, Tay J held (at [13]) that the substantive claim should also terminate in a judgment by the court in which the injunction is sought. In that case, the merits of the claim would be determined in the BVI and the plaintiff's sole purpose for commencing the Singapore action was to obtain a Mareva injunction to enforce an injunctive relief earlier granted by the BVI court. Tay J thus set aside the interlocutory relief previously granted, as well as the writ of summons, the service thereof and all subsequent proceedings thereto (at [18]).

12 In *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR(R) 1000 ("*Multi-Code*"), the plaintiffs commenced an action in Malaysia and obtained a worldwide Mareva injunction

against the first and fourth defendants. The plaintiffs then commenced an action in Singapore against the first, third and fourth defendants, for almost identical relief as that claimed in the Malaysian action, and obtained an *ex parte* Mareva injunction preventing them from disposing their assets located in Singapore. The actions in Malaysia and Singapore were recognised to be duplicitous.

13 Chan Seng Onn J upheld the injunction granted against the first and fourth defendants (the injunction against the third defendant was discharged as the plaintiffs could not prove a real risk of asset dissipation by him). Chan J held at [79] and [85] that under s 4(10) of the CLA, the court had a residual jurisdiction over the underlying cause of action that could ground the court's jurisdiction to grant or allow the continuation of a domestic Mareva injunction against assets in Singapore even if the Singapore action was stayed. Certain prerequisites, however, would have to be met: (a) first, the court must have *in personam* jurisdiction over the defendants for the Singapore action; and (b) second, the "stayed" action must not have been struck out (because there was no reasonable accrued cause of action under Singapore law or for other reasons under O 18 r 19 of the Rules of Court) and the writ must not have been set aside on the basis that the court had no jurisdiction to hear or try the matter. The residual jurisdiction would allow the stayed Singapore action to be revived and carried forward to judgment in the Singapore court if, for some reason, the stay was subsequently lifted by the Singapore court.

14 Both *Petroval* and *Multi-Code* referred to the case of *Swift-Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR(R) 629 ("*Swift-Fortune*"). The issue there was whether the court had power to grant a Mareva injunction in aid of foreign arbitrations. The Court of Appeal held that the then s 12(7) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("the IAA") did not apply to foreign arbitrations but only to Singapore international arbitrations. The Court of

Appeal further held at [61]–[62] that s 12(7) of the IAA did not independently confer any powers on the court, and hence, the court's power under s 12(7) had to be found in other statutory sources, *ie*, s 4(10) of the CLA read with s 18(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("the SCJA"). The Court then concluded that s 4(10) of the CLA did not confer any power to grant a Mareva injunction against the assets of a defendant in Singapore unless the plaintiff has an accrued cause of action against the defendant that is justiciable in a Singapore court (at [96(c)]. However, the existence of the court's personal jurisdiction over the defendant in itself did not give power to the court to grant a Mareva injunction in aid of a foreign arbitration. As the applicant did not have a justiciable right against the respondent at any time, the Mareva injunction should not be granted (see [87] and [96(e)]).

15 I make some observations about *Swift-Fortune*. First, the Court did not decide whether s 4(10) of the CLA empowered the court to grant interlocutory injunctions in aid of foreign *court* proceedings, although it made some *obiter* observations (at [93]–[94]). Second, the Court noted that where the plaintiff had such a cause of action against a defendant who is subject to the personal jurisdiction of the Singapore courts, the High Court in *Front Carriers Ltd v Atlantic & Orient Shipping Corp* [2006] 3 SLR(R) 854 ("*Front Carriers*") had decided that the court has power under s 4(10) of the CLA to grant a Mareva injunction in aid of a foreign arbitration to which the substantive claim had been referred in accordance with the agreement of the parties, and by implication, where the substantive claim is tried in a foreign court. The Court however did not state whether it endorsed the decision in *Front Carriers*, preferring to leave that issue to another occasion.

Whether s 4(10) CLA can be invoked to grant a* Mareva *injunction in aid of foreign court proceedings

16 The starting point is to examine s 4(10) of the CLA and to determine its legislative intent at the time of its enactment in its predecessor form (as alluded to by the court in *Swift-Fortune* at [94]). The genesis of s 4(10) of the CLA is s 25(8) of the UK Supreme Court of Judicature Act 1873 (c 66) (UK) ("the 1873 UK Act"), and the latter of which provides that:

> A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made; and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just …

17 The wording of s 4(10) of the CLA has essentially remained unchanged since its enactment in its predecessor form, save that "mandamus" was replaced with "mandatory order" in January 2006 (via the Statutes (Miscellaneous Amendments) (No 2) Act 2005 (Act 42 of 2005)). Section 4(10) reads as follows:

> A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made.

18 The 1873 UK Act was passed primarily to restructure the English judicial system so that a single administration would govern both its legal and equitable jurisdictions and the English superior courts (*ie*, the High Court and Court of Appeal) would be united in one Supreme Court (see First Reading of the Bill for the 1873 UK Act). The 1873 UK Act conferred on the courts the broad power to grant an injunction where it appears to be "just or convenient" to do so.

19 Singapore enacted s 2(8) of the Straits Settlement Ordinance No IV of 1878 ("SSO 1878"), from which s 4(10) of the CLA is derived, to restructure the Singapore court system to reflect the changes in the English judicial system following from the 1873 UK Act. As stated in Gary Chan and Jack Lee, *The Legal System of Singapore: Institutions, Principles and Practices* (LexisNexis, 2015) at para 1.31, "[t]he ***full*** transplantation of the British legal system with all its attendant substantive effects happened only in response to Singapore's growing commercial importance" [emphasis added]. Given that Singapore law was intended to mirror English law in all respects at that time, it would appear that the ambit of the Singapore court's power to grant an interlocutory injunction was intended to be just as broad as that of the equivalent provision in the 1873 UK Act, *ie*, whenever it appeared to the Court to be "just or convenient" to do so.

20 Even though Mareva injunctions were not specifically contemplated when s 4(10) was first enacted in its predecessor form, the English and Singapore courts have invoked (what is equivalent to) s 4(10) for its power to grant such injunctions to restrain a defendant from removing from the jurisdiction of the court assets located within that jurisdiction: see the seminal case of *Mareva Compania Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509 at 511 and *Art Trend Ltd v Blue Dolphin (Pte) Ltd and others* [1981–1982] SLR(R) 633 at [27].

21 Moreover, when s 4(10) was first enacted in its predecessor form, it is unlikely that Parliament had contemplated that this would extend to restraining a defendant from dealing with his assets *located abroad* (*ie*, a worldwide Mareva injunction), yet the courts have consistently invoked the provision (or its predecessor) in granting such injunctions. For instance, s 37(1) of the Supreme Court Act 1981 (c 54) (UK) ("the UK SCA 1981") has been relied on

in granting a worldwide Mareva injunction (see, *eg*, *Babanaft International Co. SA v Bassatne and another* [1990] 1 Ch 13 at 26). Section 37 of the UK SCA 1981, which essentially replaced s 45 of the Supreme Court of Judicature (Consolidation) Act 1925 (c 49) (UK) (which in turn replaced s 25(8) of the 1873 UK Act), reads as follows:

> **Powers of High Court with respect to injunctions and receivers**
>
> **37**.–(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
>
> (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.
>
> (3) The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction.

22 The courts, in determining whether to grant a Mareva injunction (be it domestic or worldwide), considers whether it would be "just or convenient" to do so – subject to jurisdictional and other limits which I will return to later (see [43]–[45] below). As the courts have recognised that Mareva injunctions (both domestic and worldwide) fall within the ambit of "a mandatory order or an injunction" under s 4(10) of the CLA, it is my view that the ambit of s 4(10) (including in its predecessor form) allows the court to grant a Mareva injunction even in aid of foreign court proceedings, so long as it appears to the court to be "just or convenient" that such an order should be made. There is nothing to suggest that Parliament had intended to restrict the ambit of s 4(10) to exclude the granting of such an injunction.

23 The Court of Appeal in *Swift-Fortune* stated (at [94]) that it was "open to argument in a future case whether in the context of the political and commercial conditions existing in Singapore in 1878, the legislature of the Straits Settlement had intended s 4(10) to give power to the court to grant interlocutory injunctions in aid of foreign court proceedings". However, at the time s 2(8) of the SSO 1878 (the predecessor to s 4(10) of the CLA) was enacted, it was doubtful that Mareva injunctions were even contemplated. Yet, the courts have interpreted s 4(10) broadly to give such effect. If so, on a plain reading, s 4(10) is likewise wide enough to confer the court the power to grant an injunction in aid of foreign court proceedings, so long it appears to be "just or convenient".

24 The Court of Appeal in *Swift-Fortune* also observed at [79] as follows:

> After *Channel Tunnel* and until the enactment of the UK Arbitration Act 1996, the position in England was that the court had power to grant Mareva injunctions in aid of foreign court or arbitral proceedings if the substantive claim was justiciable in an English court. *Channel Tunnel* clarified and circumscribed the doctrine in *The Siskina* to the extent stated, but the prerequisite that the court must have jurisdiction over the cause of action, even if on a *residual* basis, remained intact. [emphasis in original]

25 In *Channel Tunnel Group Ltd and another v Balfour Beatty Construction Ltd and others* [1993] AC 334 ("*Channel Tunnel*"), which was decided on s 37(1) of the UK SCA 1981, the House of Lords held that the English courts had power to grant an interlocutory injunction in substantive proceedings brought in England although the proceedings were stayed for the claim to be resolved by arbitration abroad. The House of Lords, citing *South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV* [1987] AC 24 at 39–40 (at 361), observed that s 37(1) was similar to its predecessors and which remained substantially unchanged save that "although

the terms of [s 37(1)] and its predecessors are very wide, the power conferred by them has been circumscribed by judicial authority dating back many years". Hence, s 37(1) of the UK SCA 1981 did not change the position of its predecessors such that under the UK SCA 1981 the court now had power to grant interim relief in aid of foreign arbitration (or foreign court proceedings) which it previously did not have. What was new in s 37 was sub-section (3) which was enacted to give the court power to grant Mareva injunctions *against non-residents*, to resolve any previous doubts as to whether the English courts had such power (see *Swift-Fortune* at [72]). Hence, *Channel Tunnel* clarified and circumscribed the doctrine in *Siskina (Owners of Cargo Lately Laden on Board) v Distos Compania Naviera SA* [1979] AC 210 ("*The Siskina*"). Although *Channel Tunnel* was decided without reference to s 25 of the Civil Jurisdiction and Judgments Act 1982 (c 27) (UK) ("CJJA 1982") (which empowered the UK High Court to grant interim relief in aid of foreign proceedings in a contracting State), the fact remained that the House of Lords in *Channel Tunnel* had interpreted s 37(1) of the UK SCA 1981 broadly to empower the English courts to grant a Mareva injunction even if the substantive proceedings in England were subsequently stayed for arbitration.

26 In the light of the above, I agree with Chan J in *Multi-Code* that s 4(10) of the CLA was drafted very widely and in much the same terms as s 37(1) of the UK SCA 1981, and that its scope should not be unduly fettered.

27 I pause to deal briefly with para 5(c) of the First Schedule to the SCJA, which confers on the High Court the broad power to preserve assets for the satisfaction of any judgment "which has been or may be made" and even "before … any proceedings are commenced". The powers conferred under para 5(c) may, on the face, seem to exceed that under s 4(10) of the CLA. First, the First Schedule refers to "Additional Powers of the High Court"; second, the wording

of para 5(c) envisages an order to preserve assets for the satisfaction of any judgment even before proceedings are commenced. That said, the more prevalent view is that para 5(c) is merely confirmatory (see generally Tan Yock Lin, "Supreme Court of Judicature (Amendment) Act 1993" [1993] SJLS 557 at p 572; Jeffrey Pinsler SC, *Principles of Civil Procedure* (Academy Publishing, 2013) at para 13.010, where the author avers that para 5(c) is a "specific application of the general jurisdiction to grant injunctions conferred by [s 4(10) of the CLA]"). Regardless, there is nothing to suggest that para 5(c) is intended to limit the scope of s 4(10) of the CLA.

Justiciability

28 Having determined that s 4(10) of the CLA confers on the court the power to grant a Mareva injunction in aid of foreign court proceedings, I turn now to the prerequisites for such a power to arise, *ie*, the first two principles decided in *The Siskina* (see [32] below) and which the Court of Appeal in *Swift-Fortune* recognised. In *Swift-Fortune*, the Court held (at [89], [96(c)] and [96(d)]) that for the power under s 4(10) of the CLA to arise, the plaintiff must have an accrued cause of action against the defendant that is justiciable in a Singapore court, and the Singapore court must have *in personam* jurisdiction over the defendant in respect of the Singapore action.

29 The concept of *in personam* jurisdiction is clear on the decided authorities. As to the meaning of "justiciable" in the present context, the word is defined as "properly brought before a court of justice; capable of being disposed of judicially" in *The Black's Law Dictionary* (Thomson Reuters, 10th Ed, 2014) at p 997, and "liable to be tried in a court of justice; subject to jurisdiction" in vol VIII of *The Oxford English Dictionary* (Clarendon Press, 2nd Ed, 1989) at p 327. Bi's counsel submitted,[6] on the authority of *The Siskina*,

that a cause of action is justiciable if there is a claim for a substantive relief which the court has jurisdiction to grant, and if a claim cannot be tried by the court of that jurisdiction for whatever reasons, the claim is not justiciable in that jurisdiction. Further, Bi also noted that in *Channel Tunnel*, "justiciability" was construed as requiring both: (a) that the rights claimed by the plaintiff give rise to a cause of action recognised under English law; and (b) that the issuing court has "jurisdiction simpliciter" to adjudicate the substantive dispute (and grant the substantive relief sought).[7] Bi submitted that the latter means that "while the court might decline jurisdiction on the basis of *forum non conveniens* or a contractual jurisdiction clause, it must nonetheless have the potential to initially take jurisdiction over the dispute".

30 In my judgment, a claim is justiciable if it is one for a substantive relief which the court *has* jurisdiction to grant and is a claim that *can* be tried by that court. That the court (seized of jurisdiction and able to try the claim) subsequently declines to do so in favour of proceedings elsewhere, does not make the cause of action non-justiciable in that court.

31 As Chan J stated in *Multi-Code* at [79] and [85]:

> 79 … the court would be regarded as retaining a ***residual*** jurisdiction over the underlying cause of action … provided that there was all along a substantive justiciable claim that would have been tried in the Singapore court and would have ended with a Singapore judgment had the action not been stayed. In any case, the ***residual*** jurisdiction would allow the stayed Singapore action to be revived and carried forward to judgment in the courts in Singapore if, for some reason, the stay was subsequently lifted by the Singapore court.
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> …

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6 Bi's Supplemental Submissions, para 42.

7 Bi's Supplemental Submissions, para 46.

> 85 … s 4(10) of the CLA conferred a general power on the court to grant Mareva relief, even though the Singapore action was stayed and the continuation of the Mareva relief against the assets in Singapore of the defendants was in a sense in support of ***foreign court proceedings*** which were continuing. This was, however, provided that certain jurisdictional pre-requisites were met, namely: (a) the court ought in the first place to have clear *in personam* jurisdiction over the defendants of the Singapore action that was brought; and (b) the "stayed" action had not been struck out because there was a reasonable accrued cause of action under Singapore law and the other reasons under O 18 r 19 for striking out did not apply, and the writ had also not been set aside on the basis that the court had no jurisdiction to hear or try the matter. Once these preliminary jurisdictional criteria were satisfied, the court's jurisdiction to grant Mareva relief would then materialise.
>
> [emphasis in original]

Additionally, Lord Browne-Wilkinson stated in the *Channel Tunnel* (at 342), "the relevant question is whether the English court has power to grant the substantive relief not whether it will in fact do so".

32 I note that in *Petroval*, Tay J stated (at [13]) that *Swift-Fortune* had re-affirmed and applied the principles in *The Siskina*, one of which is that "the substantive claim must not only be justiciable in an English court but should also terminate in an English judgment". In my respectful view, I was unable to come to the same conclusion. The Court of Appeal in *Swift-Fortune* made that statement in reference to the decision in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 ("*Karaha Bodas*"). The Court of Appeal in *Karaha Bodas* recognised three principles that arose of out *The Siskina*. First, O 11 r 1(1)(*i*) of the English Rules of Court did not allow the English courts to assume jurisdiction against a foreign defendant on the merits of a claim just because the defendant had assets in England and the plaintiff had asked for a Mareva injunction against these assets. Second, there was no jurisdiction to grant Mareva relief unless and until the plaintiff had an accrued right of action. Third, there was no jurisdiction to preserve assets

within the jurisdiction of the court in order to support the plaintiff in a claim he was making in a foreign jurisdiction. The Court in *Karaha Bodas* affirmed only the first two principles which were sufficient to dispose of the appeal, and the third principle did not arise for decision (at [45]). The Court of Appeal in *Swift-Fortune* at [68] and [93] also recognised that the third principle in *The Siskina* did not arise in *Karaha Bodas*, and did not expressly endorse the third principle as it stated that given the facts in *Swift-Fortune*, its decision would not "take the law beyond *The Siskina* doctrine as applied in *Karaha Bodas*, and confirmed in *Mercedes Benz*" (at [92]).

33 Tay J in *Petroval* also concluded that the Court of Appeal in *Swift-Fortune* was "sailing with *The Siskina* and decided not to travel the *Channel Tunnel* route". Whilst I am cognisant that Tay J was also on the coram of the Court of Appeal in *Swift-Fortune*, I agree with Chan J in *Multi-Code* that he would not be able to interpret *Swift-Fortune* as having "decided *simpliciter* that the court would have no power under s 4(10) of the CLA to grant any injunction in aid of foreign court proceedings, even when the … defendant was subject to the *in personam* jurisdiction of the Singapore court and the plaintiff had a recognisable cause of action under Singapore law." The Court in *Swift-Fortune* had left this issue open; and it is pertinent to note that the Court had not made any definitive pronouncement on the correctness of *Front Carriers* (where the court therein had found a justiciable cause of action; conversely, in *Swift-Fortune*, the applicant never established a justiciable right against the party it sought to impose the Mareva injunction on) (*Swift-Fortune* at [87]).

34 As an aside, Bi's counsel (Mr Hee) sought to distinguish *Multi-Code* as it was the defendant in that case who had applied for a stay of the Singapore court proceedings which the plaintiffs had intended to actively prosecute (in addition to prosecuting the action in Malaysia).[8] In my judgment, it is irrelevant

who applies for the stay of the Singapore proceedings, as it does not change the fundamental issue of how s 4(10) of the CLA should be interpreted.

Position in foreign jurisdictions

35 I turn to examine the position in foreign jurisdictions. The court's power to grant Mareva injunctions or freezing orders in aid of foreign proceedings has been recognised in a number of jurisdictions including the UK, Hong Kong, Canada and Australia.

36 In the UK, the position against the granting of free-standing interlocutory relief has, as the Court of Appeal in *Swift-Fortune* stated, been eroded by a succession of developments, namely s 25 of the CJJA 1982 and the decision in *Channel Tunnel* (based on s 37(1) of the UK SCA 1981). At present, in the UK, there is no lingering doubt as to the court's power to grant free-standing interlocutory relief including Mareva injunctions to assist court proceedings as well as foreign arbitrations (*Swift-Fortune* at [74]).

37 In Hong Kong, legislative enactment in the form of s 21M of the High Court Ordinance (Cap 4) (HK) ("the HCO") has put beyond doubt the court's power to grant interim relief in support of foreign proceedings where those proceedings are capable of giving rise to a judgment which may be enforced in Hong Kong. In fact, the Hong Kong regime goes beyond what is envisaged in *Multi-Code*. Section 21M explicitly provides that such relief can be sought in the absence of substantive proceedings in Hong Kong:

> **21M. Interim relief in the absence of substantive proceedings**

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8 Minute sheet of 16 May 2018.

> (1) Without prejudice to section 21L(1), the Court of First Instance may by order appoint a receiver or grant other interim relief in relation to proceedings which –
>
> > (a) have been or are to be commenced in a place outside Hong Kong; and
> >
> > (b) are capable of giving rise to a judgment which may be enforced in Hong Kong under any Ordinance or at common law.
>
> …
>
> (3) Subsection (1) applies notwithstanding that –
>
> > (a) the subject matter of those proceedings would not apart from this section, give rise to a cause of action over which the Court of First Instance would have jurisdiction; or
> >
> > (b) the appointment of the receiver or the interim relief sought is not ancillary or incidental to any proceedings in Hong Kong.

38 In Canada, the courts have adopted the position in *Channel Tunnel*, based on an interpretation of the Canadian provisions which are broadly similar to s 37(1) of the UK SCA 1981 and s 4(10) of the CLA. Section 44 of the Federal Courts Act 1985 (RSC 1985, c F-7) (Canada) ("FCA 1985") provides:

> In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a *mandamus*, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all cases in which it appears to the court to be just or convenient to do so. The order may be made either unconditionally or on any terms and conditions that the court considers just.

39 In *Canadian Pacific Limited v Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation* [1996] 2 RCS 495 at 505–506, the Supreme Court of Canada, in considering an appeal from the Court of Appeal for British Columbia (in which s 36 of the British Columbia Law and Equity Act 1979 (RSBC 1979, c 224) (Canada) is largely similar to s 44 of the FCA 1985), held as follows:

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

40 In Australia, it has been recognised that the superior courts have jurisdiction to grant a freezing order in relation to assets in Australia in aid of foreign proceedings or arbitration, essentially based on its jurisdiction conferred by primary legislation to make orders including interlocutory orders and orders necessary for the administration of justice and on the court's inherent power. See *Construction Engineering (Aust) Pty Ltd v Tambel (Australasia) Pty Ltd* [1984] 1 NSWLR 274 (freezing order may be granted even where there is no primary proceeding in the court but the party seeking the injunction was claiming moneys in a pending arbitration proceedings); *Davis v Turning Properties Pty Ltd* (2005) 222 ALR 676 (freezing order made in support of a worldwide freezing order issued in the Bahamas for proceedings begun in the Bahamas); *Celtic Resources Holdings Plc v Arduina Holding BV* [2006] WASC 68 at [56]; and *PT Bayan Resources TBK v BCBC Singapore Pte Ltd* (2014) 320 ALR 289 ("*PT Bayan*") at [42], [222]–[245].

41 Finally, plaintiffs' counsel (Mr Poon) also cited the case of *Solvalub Ltd v Match Investments Ltd* [1998] IL Pr 419 ("*Solvalub*"), in which the Jersey Court of Appeal held that the court has power to grant Mareva injunctions in aid of foreign proceedings – in that case, personal jurisdiction against the defendant had been established.[9] It is pertinent to note that the Court of Appeal

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9 Plaintiffs' Further Written Submissions, para 77.

in *Solvalub* at [31], in holding that it had such power, cited reasons of comity and Jersey's position as an important financial centre:

> If the Royal Court were to adopt the position that it was not willing to lend its aid to courts of other countries by temporarily freezing the assets of defendants sued in those other countries, that in my judgment would amount to a serious breach of the duty of comity which courts in different jurisdictions owe to each other. Not only so, but the consequence of such an attitude would be that Jersey would quickly become known as a safe haven for persons wishing to evade liabilities imposed on them by the courts to which they are subject. This is exactly the reputation which any financial centre strives to avoid and Jersey so far has avoided with success.

42 I should add that Mr Hee sought to rely on the case of the Court of Appeal of the Bahamas in *Meespierson (Bahamas) Limited v Grupo Torras SA* (1999–2000) 2 ITELR 29 to support its case that the court has no power to grant a Mareva injunction in aid of foreign court proceedings. That case can be distinguished as the plaintiff therein did not have a cause of action against the defendants *anywhere*, and in that sense, it is a case more akin to *Swift-Fortune* (see *Swift-Fortune* at [95]).

Conclusion on ambit of s 4(10) of the CLA

43 Having regard to the above, I prefer the position in *Multi-Code*. In my judgment, the court is empowered under s 4(10) of the CLA to grant a Mareva injunction in aid of foreign court proceedings, subject to the prerequisites set out in *Multi-Code* (at [116]):

> (a) The plaintiff must have a reasonable accrued cause of action against the defendant that is recognised or justiciable in a Singapore court.

(b) The defendant must be subject to the *in personam* jurisdiction of the Singapore court.

(c) There must be assets within the territorial jurisdiction of Singapore which could be the subject of a Mareva injunction.

(d) Substantive proceedings must be brought in Singapore against the defendant, although those proceedings might be stayed by the Singapore court in favour of proceedings elsewhere.

44 However, I would add that a factor to be taken into consideration is whether the foreign court proceedings are capable of giving rise to a judgment which may be enforced in Singapore. In *Mercedes Benz AG v Leiduck* [1996] 1 AC 284 ("*Mercedes Benz*") at 306, Lord Nicholls (in a dissenting judgment) explained the purpose of a Mareva:

> [A Mareva relief] is relief granted to facilitate the process of execution or enforcement which will arise when, but only when, the judgment for payment of an amount of money has been obtained. The court is looking ahead to that stage, and taking steps designed to ensure that the defendant cannot defeat the purpose of the judgment by thwarting in advance the efficacy of the process by which the court will enforce compliance. …

45 A Mareva relief is essentially "a protective measure in respect of a prospective enforcement process" (*Mercedes-Benz* at 306). There is no reason why it should not be available to aid the enforcement of an anticipated foreign court judgment, where that judgment may be enforceable in Singapore, as it is in respect of an anticipated judgment obtained in the Singapore courts. If the foreign judgment is not capable of being enforced in Singapore, it is likely that the interim Mareva relief (granted by the Singapore court) would not be able to facilitate the process of enforcement or execution (against the assets frozen) in satisfaction of the foreign court judgment, given that the judgment would not be

enforceable here. In such a case, it would not be in the interest of justice, or "just or convenient", to grant such relief in the first place.

46 To conclude, the starting point of the inquiry in s 4(10) of the CLA is whether a Mareva injunction is a "Mandatory Order or an injunction". The decided cases put beyond doubt that it is. If so, I hold that the court is empowered to grant a Mareva injunction, even in aid of foreign court proceedings, so long as it appears to be "just or convenient" to do so, bearing in mind the considerations mentioned at [43]–[45].

47 This approach is consistent with the UK position in *Channel Tunnel* and s 37(1) of the UK SCA 1981, a provision that has remained unchanged from its predecessor and is which materially similar to s 4(10) of the CLA, which in turn is derived from the same source as s 37(1) (*viz*, the 1873 UK Act). It also accords with the position in Canada, premised on statutory provisions largely similar to s 37(1) of the UK SCA 1981 and s 4(10) of the CLA. Moreover, the above approach would accord with the policy of promoting mutual assistance and reciprocity in the international arena to achieve the ends of justice. As the court in *PT Bayan* explained (at [240]), the granting of a freezing order by the local court in aid of a prospective foreign judgment is ancillary and incidental to the prospective invocation of the local court's enforcement process in relation to the prospective foreign judgment, and immediately prevents the abuse or frustration of the local court's processes and protects the administration of justice. It should be noted that after the Court of Appeal's decision in *Swift-Fortune*, Parliament enacted s 12A of the IAA to enable the High Court to grant interim measures including Mareva injunctions in aid of an international arbitration, regardless of whether the arbitration is based in Singapore.

48 Finally it should be noted that in the more recent decision of *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd and another appeal* [2013] 4 SLR 1097, which concerned the doctrine of forum election, the Court of Appeal stated at [36] that where a plaintiff has commenced proceedings both in Singapore and abroad, and then elected to pursue its claim abroad, the court could either discontinue the Singapore action or, in appropriate circumstances, grant a stay of proceedings. In particularly, a stay may be appropriate "where the action in Singapore is brought to obtain security by way of a Mareva injunction", and citing *Multi-Code*.

Whether Mareva injunction should be granted

49 In the present case, it is not disputed that: (a) the court has *in personam* jurisdiction over Bi; (b) P1 and P2 have a reasonable accrued cause of action against Bi recognised by the Singapore court; (c) Bi has assets in Singapore which could be the subject of a Mareva injunction; and (d) an action has been commenced in the Singapore courts. It is also not disputed that should P1 and P2 obtain a judgment against Bi in the Hong Kong High Court for a sum of money, that judgment may be enforceable in Singapore pursuant to the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed).[10]

50 Hence, in my judgment, the court is empowered to grant a Mareva injunction in aid of the Hong Kong court proceedings. The question is whether it should do so, and the grounds of contention are whether there is a good arguable case on the merits and whether there is a real risk of asset dissipation to frustrate the enforcement of an anticipated judgment.

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10 Bi's counsel's letter to the court, dated 23 May 2018.

Good arguable case on the merits

51 P1 and P2's claims against Wu are essentially for fraudulent breaches of duty, breach of trust, conspiracy, knowing receipt, dishonest assistance and moneys had and received, in relation to some US$521.8m. The claims against Bi are in essentially for dishonest assistance, knowing receipt and for restitution for money had and received in respect of US$17.6m which were received by her and her controlled entities.[11] As Bi's role is essentially "secondary" in nature, I first make a preliminary finding on whether P1 and P2 have a good arguable case against Wu. A good arguable case is one which is "more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent chance of success" (*Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [36].)

Good arguable case against Wu

52 P1 and P2's claims essentially were that they were the victims of the Fraud (see [3] above). It is not disputed that P1 and P2 had acquired from SW, the technologies for US$521.8m. However, Cosimo Borrelli ("Borrelli"), one of P1's liquidators, had attested to conducting investigations with the assistance of experts, and ascertained that the technologies acquired for such substantial sums had no, or no significant value.[12] At the time P1 and P2 acquired the technologies, Wu was the founder and chief executive officer of P1 (and its largest shareholder through Chengxuan) and a director of P1 and P2. Tsang was at the material time the chief financial officer of P1 and also a director of P1 and P2.

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11 Borrelli's 1st affidavit, para 6.3.

12 Borrelli's 1st affidavit, paras 64–66.

53 There is also evidence that the sale and purchase of the technologies were not at arms' length, contrary to what was announced by P1 at the material time. Both Wu and Tsang were authorised signatories of P1's and P2's bank accounts from which moneys for the purchase of the technologies were paid out to SW's bank accounts of which Tsang was its sole authorised signatory. Despite this, Tsang and Wu had previously caused P1's financial statements to assert that SW was unrelated to P1 and P2.[13] The liquidators had also found that in many instances, Wu or Tsang were the ones who had caused the moneys to be transferred from P1 and P2 to SW and from SW to other entities. Additionally, Mdm Chong and Mr Chan (who were at the material time SW's named directors) had attested that when the technologies were sold to P1 and P2, they had been appointed as directors without their knowledge or consent and the contracts for the sale of the technologies containing their signatures, purportedly on SW's behalf, were also forged.[14]

54 Based on bank records and documents obtained from P1, P2, SW and SW Payees,[15] the liquidators had traced the moneys deposited into SW's accounts which were then channelled to the SW Payees' accounts (of which Wu and/or Tsang were also its authorised signatories), in many instances within days of SW receiving the moneys. The moneys subsequently made their way to bank accounts of Further SW Payees, including the accounts of Wu and Bi or entities controlled by them.[16] The SW Payees and some of the Further SW Payees are defendants in the first and second HK writs. From the tracing

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13 Borrelli's 1st affidavit, paras 67.1 and 70 and exhibit CBS-40.

14 Borrelli's 1st affidavit, paras 67.3 and 67.4; Plaintiffs' counsel's letter to the court (dated 23 May 2018) enclosing affirmations by Mdm Chong and Mr Chan filed in the Hong Kong proceedings.

15 Borrelli's 1st affidavit, paras 73–83.

16 Borrelli's 1st affidavit, pp 679–688.

exercise, the liquidators found that Wu received around US$13.5m of the funds in his personal bank accounts, and around US$428m in several entities under his control. P1 and P2 thus alleged that Wu had used the various corporate entities to perpetrate the Fraud and to conceal the Fraud and Wu's involvement therein.

55 Finally, the liquidators have stated that the Federal Bureau of Investigation in the US and the Commercial Crime Bureau of the Hong Kong Police Force are undertaking ongoing investigations in respect of the Fraud. The liquidators also exhibited various documents such as the US Department of Justice's press release dated 20 March 2017 and indictment papers to show that Wu and Tsang have been indicted on various criminal charges relating to the Fraud in the USA.[17]

56 In the round, I find that there is a good arguable case against Wu on the claims set out by the plaintiffs, as there is evidence to suggest that he was directly involved in the Fraud and transfer of moneys of which some ended up in his accounts or accounts of entities controlled by him.

Good arguable case against Bi

57 The plaintiffs' claims against Bi are essentially for dishonest assistance rendered in the Fraud, knowing receipt of the stolen proceeds and restitution for money had and received. At the heart of the claims for dishonest assistance and knowing receipt is whether Bi had the requisite knowledge. In dishonest assistance, a defendant must have such knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to adequately query them (*George*

17 Borrelli's 1st affidavit, para 85 and exhibit CBS-43.

Raymond Zage III and another v Ho Chi Kwong and another [2010] 2 SLR 589 ("*George Raymond Zage*") at [22]). For knowing receipt, a recipient's knowledge must be such as to make it unconscionable for him to retain the benefit of the receipt (*George Raymond Zage* at [23]). However, actual knowledge of a breach of trust or fiduciary duty is not invariably necessary to find liability, particularly where there are circumstances in a particular transaction that are so unusual or so contrary to accepted commercial practice, that it would be unconscionable to allow a defendant to retain the benefit of receipt. The test of unconscionability should be kept flexible and fact centred. See *George Raymond Zage* at [32] and [45].

58 As for money had and received, the underlying basis for such action is embraced under the rubric of unjust enrichment (*Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [125]). The elements to be satisfied are that the defendant has been benefitted or enriched at the expense of the claimant, such enrichment was unjust and there are no applicable defences. A claim in unjust enrichment is one based on strict liability at common law (subject to certain defences such as change of position). See *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [98], [99] and [109].

59 I find that the claims against Bi had crossed the threshold of a good arguable case, at least in relation to the claims for knowing receipt and money had and received. The liquidators had shown evidence to support a disposal of the plaintiffs' assets in breach of fiduciary duty by the main perpetrators of the Fraud (*ie*, Wu and Tsang) which resulted in loss to P1 and P2. The liquidators had also traced that some of the moneys deposited into SW's accounts had ended up in the accounts of Bi and entities controlled by her (see [54] above). Bi admits to the US$14.1m received in her personal bank accounts and trust

accounts held or controlled by her and the US$3m and US$0.5m received by Long Chart and WB International respectively.[18] She does not dispute that the moneys were received from the various entities (the payors) as claimed by the liquidators, although she claims she does not know from whom those payors received the moneys.[19] Bi is the sole director, and sole shareholder since 30 November 2012, of WB International. Wu was a shareholder until 27 April 2012 and a director until 31 March 2012. As for Long Chart (a BVI company), Bi is also the sole director, and sole shareholder since 3 November 2006 (as Wu was also a shareholder prior to that date). Bi accepts that the moneys in WB International and Long Chart belong to her as she currently has sole interest in the companies.[20]

60 Although there is insufficient evidence at this point to show Bi had actual knowledge of a breach of trust or fiduciary duty by Wu or by the main perpetrators of the Fraud, there is evidence to suggest that Bi had the requisite knowledge for a claim in knowing receipt such that it would be unconscionable for her to retain the benefit of the receipt. In the following paragraphs, it will become apparent that Bi's evidence and explanations for the moneys received were riddled with gaps and inconsistencies.

61 Long Chart received the US$3m between February and March 2009 from two BVI companies, Chengxuan (owned by Wu) and East Hope International Limited ("East Hope") whose account signatories included Wu and Tsang. However Bi could not explain the purpose for receiving the moneys, stating that she could not recall and could not find any supporting documents.[21]

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18 Borrelli's 1st affidavit, para 47.1; Plaintiffs' Funds Flow Diagrams.

19 Minute sheets dated 23 March 2018 and 16 May 2018.

20 Minute sheet of 16 May 2018, p 3.

21 Bi's 1st affidavit dated 14 February 2018 ("Bi's 1st affidavit"), para 63.

This is despite the large sum of money received and that Long Chart was then solely controlled by her.

62 WB International received the US$0.5m in January 2009 from Chengxuan. Bi claims that this comprised part of the proceeds of sale of joint ventures or joint investments with Wu, and which Wu owed her.[22] However, in relation to this US$0.5m, she has given no elaboration on which joint ventures (or proceeds from the sale thereof) this related to or when the sale of the joint ventures took place. By Bi's own evidence, the various sale transactions (purportedly relating to their joint investments) occurred between 2003 and 2006,[23] well before the US$0.5m was transferred into WB International's account on 20 January 2009.[24] Bi asserts that before she married Wu, she had already accumulated wealth by reason of her own prior businesses.[25] But despite being an experienced businesswoman, she did not seem to keep track of her interest (including any monies) arising from the various joint ventures nor verify the purpose of the moneys obtained by WB International (and Long Chart). Bi also claims that she was not involved in the joint investments with Wu or the sales thereof.[26] Yet she was able to conclude that the moneys received in WB International's account came from the proceeds of the sale of the joint investments.

63 In relation to the US$14.1m received by Bi in her personal accounts and trust accounts that she controlled, she asserts that they were moneys from Wu

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22 Bi's 1st affidavit, para 67.

23 Bi's 1st affidavit, paras 33–37; Borrelli's 2nd affidavit dated 7 March 2018 ("Borrelli's 2nd affidavit") at para 22.

24 Plaintiffs' Funds Flow Diagrams.

25 Bi's 1st affidavit, para 27.

26 Bi's 1st affidavit, para 28.

and comprised what Wu owed her as proceeds from the joint ventures or investments, monies to purchase properties and moneys for her and her daughter's living expenses.[27] As I had earlier found, Bi's assertions that the moneys were purportedly proceeds from the joint investments were unsubstantiated and not contemporaneous with the receipt of the moneys. In fact, the receipts of these amounts were more contemporaneous with the timing of the Fraud and the money flows arising from the Fraud. As for the moneys received being for the "purchase of properties", this was a bare assertion unsupported by any evidence. Likewise, Bi did not provide any details of her and her daughter's living expenses, although she claimed that had received some of the moneys for those purposes. It should be noted that a substantial lump sum of US$3m was paid on 2 January 2009 into a trust account under the daughter's name and US$5m was paid into Bi's personal account on 30 March 2007. In particular, although Bi had attempted to show that large sums had been paid into the trust accounts on other occasions,[28] she has not shown any bank statements in relation to her personal bank accounts. Finally, although Bi asserts that the US$14.1m were moneys *from Wu* or owed to her *by Wu* (either for joint investments, purchase of properties or living expenses), it is unclear why the US$5m paid into her personal account came from East Hope when Wu was neither a named director nor shareholder of East Hope (although the liquidators have alleged that Wu and/or Tsang controlled East Hope).[29]

64 Additionally, there is evidence to suggest that Bi was involved in P1 and P2 at the material time and when the Fraud was committed and continued to maintain personal and business ties with Wu even after they had separated in

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27 Bi's 1st affidavit, paras 68–69.

28 Bi's 1st affidavit, para 70.

29 Borrelli's 1st affidavit (exhibit CBS-7), p 174 (Statement of Claim filed in the 2nd HK writ).

2001. Bi herself stated that she and Wu continued to be involved in various companies and investments together.[30] She made various money transfers from a trust account (controlled by her) to various persons between 2005 and 2008, which she claimed were done on Wu's behalf.[31] She also purchased a residential property in Singapore ("the Coral Island property") jointly with Wu in 2009 despite having allegedly separated from him, and Wu continued to be a director of WB International until March 2012 (shortly before their divorce).

65 Further, despite Bi's assertion that she "had no involvement in [P1] and its affiliates" save for a Singapore-incorporated company, CMT Diagnostics (Singapore) Pte Ltd ("CMT"),[32] there is evidence to suggest otherwise. For instance, one Winnie Yam from P1 had emailed Dr Chen (then the chief technology officer of P1 and P2) on 26 March 2009 wherein she referred to presentation slides customised "for a meeting with [Bi]"[33] – Bi's only explanation for this was that she could not recall why such slides were prepared for her.[34] Further, an application form for which Bi was applying for a bank account with UOB in Singapore in November 2009 stated her position as director of "China Medical Technology". Although Bi claimed that the form was filled up by a bank officer, and that she did not inform any bank officer that she was a director of China Medical Technology, it is unclear how the bank officer would have filled up the form as such barring any instructions from Bi and would have come to possess her personal information (*eg*, her address and contact details) to fill in the form.[35] It should also be noted that CMT is a wholly-

30 Bi's 1st affidavit, paras 33–37.

31 Bi's 1st affidavit, paras 51 and 58.

32 Bi's 1st affidavit, para 11.

33 Borrelli's 1st affidavit (exhibit CBS-7), p 150 (Statement of Claim filed in the 2nd HK writ); Borrelli's 2nd affidavit (exhibit CBS-50), p 168.

34 Bi's 3rd affidavit dated 28 March 2018 ("Bi's 3rd affidavit"), para 14.

owned subsidiary of P1, and of which she was a director (purportedly on Tsang's request).

66 Hence, I am satisfied that there is at least a good arguable case on P1 and P2's claims against Bi for knowing receipt and unjust enrichment. As for the claim in unjust enrichment, the evidence would suggest that the "unjust factor" is a failure of consideration for the amounts received and Bi not having put forth any applicable defences.

67 Before I turn to address the question of whether there is a real risk of dissipation, I note that the Hong Kong position, at present, is to consider whether there is a good arguable case *from the perspective of the foreign courts, where the primary proceedings are taking place*. In *Compania Sud Americana de Vapores SA v Hin-Pro International Logistics Ltd* (2016) 19 HKCFAR 586, the Hong Kong Court of Final Appeal held that Mareva relief would be granted so long as it could be shown that there was a good arguable case before the foreign court since it is the foreign judgment that is intended to be enforced in Hong Kong (at [50], [52] and [53]). Moreover, when the court overseeing the primary proceedings has carried out an analysis of the strength of a party's case (such as by issuing a reasoned judgment at an interlocutory stage), that would be a useful starting point and, depending on the cogency of the reasoning, would likely be conclusive.

68 Crucially, however, it must be borne in mind that s 21M of the HCO allows for Mareva injunctions to be ordered in the absence of an underlying domestic suit in Hong Kong (see [37] above). In Singapore, there is no legislation to that effect, and it is necessary for Mareva relief to be predicated on a set of proceedings in Singapore, even if such proceedings were stayed in

[35] Borrelli's 3rd affidavit (exhibit CBS-50), p 187; Bi's 3rd affidavit, paras 15–16.

favour of the primary proceedings. As Chan J acknowledged in *Multi-Code*, the court would have no jurisdiction to grant a Mareva injunction if the writ was set aside or if the action was struck out as such relief would not be ancillary to any subsisting action (*Multi-Code* at [90]). As such, it is necessary to consider whether there is a good arguable case on the Singapore proceedings.

69 In any case, even if I had to consider a good arguable case also from the perspective of the Hong Kong courts, I am satisfied that the plaintiffs have a good arguable case there. The causes of action pursued in Hong Kong are essentially the same as those earlier discussed, and in my view, the fact that the Hong Kong courts have granted a worldwide Mareva injunction against Wu and Bi is conclusive.[36] Moreover, I note that in the plaintiffs' affidavit filed in support for the application for Mareva relief in Hong Kong, reference was made to an earlier decision rendered in the winding up proceedings of P1 wherein the Hong Kong judge had held that there was reason to believe that P1's assets had been misappropriated by persons in Hong Kong, including Tsang.[37]

Real risk of asset dissipation

70 The plaintiffs are seeking a Mareva injunction against Bi to prohibit the disposal of the following assets in Singapore:

(a) The Coral Island property, jointly owned with Wu;

(b) Moneys in a UOB account 380 – xxx – 0, held jointly with Wu;

(c) Moneys in two other UOB accounts and one Standard Chartered bank account, held in her personal capacity;

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[36] Borrelli's 1st affidavit (exhibit CBS-14), p 433; see also Borrelli's 1st affidavit (exhibit CBS-14), p 475 *et seq*.

[37] Borrelli's 1st affidavit, p 476.

(d) Moneys in a UOB account of WB International; and

(e) Moneys in a Credit Suisse AG account of Long Chart.

71 I begin with the parties' submissions on whether a risk of dissipation existed. The plaintiffs submit that there is a real risk that Bi will dissipate the assets in Singapore. First, Wu and Bi had attempted to sell the Coral Island property in November 2017 at a time when they were aware that proceedings were being pursued against them in Hong Kong. The liquidators also discovered on 20 November 2017 that Bi's property in Nevada, USA, had also been put up for sale. Second, a real risk of asset dissipation could be inferred from the nature of the dishonesty alleged against Wu and Bi, as they are accused of perpetuating, assisting or benefitting from the fraudulent misappropriation of the plaintiffs' assets through the fictitious sale of the technologies which were worthless.[38]

72 Bi submits that there is no real risk of dissipation as the Coral Island property was put up for sale around three years ago, there is no allegation of dishonesty on her part which has a real and material bearing on the risk of dissipation, and the nature of the alleged Fraud and relationship with Wu have no real and material bearing on the risk of dissipation.[39] Further there was a lack of urgency on the plaintiffs' part in taking out the application for the Mareva injunction. Bi pointed out that shehad spent a substantial amount of time in Singapore since 2009 and had purchased her primary residence here, namely the Coral Island property, in December 2009 jointly with Wu.[40] She eventually obtained Singapore citizenship in November 2010. Bi claimed that about three years ago (which would have been around 2015), she decided to put up the Coral

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38 Plaintiffs' Written Submissions dated 23 March 2018, paras 58 and 60.

39 Bi's Written Submissions dated 19 March 2018, para 217.

40 Bi's 1st affidavit, para 29.

Island property for sale as she no longer needed such a large residence in Singapore since her parents planned to return to China due to her father's medical conditions.[41] She also claimed that the Coral Island property is hers alone, although held in joint names, as she paid for the purchase solely.[42]

73 I next set out the applicable legal principles in relation to whether a real risk of dissipation existed. The recent Court of Appeal decisions in *Bouvier* and *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2018] SGCA 27 ("*JTrust Asia*") are instructive in this regard.

(a) The plaintiffs must show that there is a *real risk* that the defendant will dissipate his assets to frustrate the enforcement of an anticipated court judgment and this requires the production of "solid evidence" to demonstrate the risk, not just bare assertions to that effect (*Bouvier* at [36]).

(b) While a risk of dissipation could be inferred from a good arguable case of dishonesty, the alleged dishonesty had to be of such a nature that it had a real and material bearing on the risk of dissipation (*Bouvier* at [93]). A well-substantiated allegation that a defendant had acted dishonestly could and often would be relevant to whether there was a real risk that the defendant would dissipate his assets. It was therefore incumbent on the court to examine the precise nature of the dishonesty alleged and the strength of the evidence relied on in support of the allegation, keeping in mind that the proceedings were only at an interlocutory stage (*Bouvier* at [94]). It is also important to note that "an allegation of dishonesty cannot obviate the need to establish a real risk

41 Bi's 1st affidavit, para 76.

42 Bi's 1st affidavit, para 80.

of dissipation", and "the fact that a defendant might be crooked does not in and of itself establish that there is a real risk that he will bury his spoils to defeat a judgment that may in due course be rendered against him" (*Bouvier* at [65]).

(c) Delay in applying for the Mareva injunction may be taken against the plaintiff as a plaintiff who is genuinely concerned that the defendant will dissipate his assets would be expected to act with urgency. That said, delay in and of itself will never be dispositive; the length of the delay and any explanations for it should be considered against all the circumstances of the case (*Bouvier* at [109], citing *Madoff Securities International Limited v Stephen Ernest John Raven* [2011] EWHC 3102 at [156]–[157]).

(d) The factors which the court generally considers relevant in assessing whether there is a real risk of dissipation include the nature of the assets which are to be the subject of the proposed injunction and the ease of their disposal; the nature and financial standing of the defendant's business; the defendant's domicile or residence; any intention expressed by the defendant about future dealings with his local or overseas assets; connections between the defendant and other companies which have defaulted on awards or judgments; the defendant's behaviour in respect of the claims; and, as mentioned above, good grounds for alleging that the defendant has been dishonest. However, the ultimate question is whether the defendant has characteristics which suggest that he can and will frustrate judgment (*JTrust Asia* at [65]).

74 I am satisfied that the liquidators have shown solid evidence to demonstrate a real risk of asset dissipation by Bi.

75 It would be apposite to start with two factors which I find to be neutral. The first is the plaintiffs' delay in bringing the application for a Mareva injunction, which Bi claims to be suggestive of an abuse of process. According to Bi, the plaintiffs had levelled accusations against her, from as early as 2012, in relation to a set of US Chapter 15 proceedings, for her alleged complicity in the Fraud.[43] Further, as early as from March 2014, Bi was extensively questioned about her involvement in the Fraud in a set of examination proceedings (CWU 37/2013) in respect of the promotion, formation, trade dealings, affairs or property of CMT.[44]

76 While I accept that the time gap from that point onwards up until the taking out of the instant application is not insubstantial, I accept the liquidators' explanations for this.[45] The nature of the complex web of transactions, the large amounts of moneys involved in the Fraud and the number of defendants involved (23 in total, spanning across multiple jurisdictions) meant that substantial time and expense were required to investigate the Fraud. I accept that although the liquidators had examined Bi in 2014 (in CWU 37/2013) they did not have sufficient information to determine whether to pursue her on the substantive claims. Even if they did, they would only be able to obtain a Mareva injunction if they possessed sufficient information to support their application including evidence of a real risk of asset disposal. Hence, when the liquidators claimed that they only found out in November 2017 about Bi's attempts to dispose the Coral Island property, the HK injunction was granted shortly after

43 Bi's submissions, para 242; Bi's 1st affidavit, para 73.

44 Bi's submissions, paras 243–245; Bi's 1st affidavit, paras 74–75.

45 Borrelli's 2nd affidavit, paras 100–105.

in December 2017 and the plaintiffs then filed Suit 1180 together with the Singapore application for a Mareva injunction. Finally, it must be remembered that the plaintiffs are in liquidation. As such, in conducting the investigations and commencing proceedings, the liquidators have to determine whether it is worthwhile to pursue the claims and the steps to be taken, bearing in mind the substantial costs that would have to be incurred by an already insolvent company.

77 The second neutral factor is Bi's failure to be forthcoming about her relationship with Wu (despite her claims that she has been separated from him since 2001) and the large sums of moneys (totalling $17.6m) received by her or entities controlled by her. I am not convinced that dishonesty is made out. Even if Bi's lack of candour is suggestive of a lack of probity, a real and material bearing on the risk of dissipation was not made out.

78 Whilst a stronger case against Wu could be made out for inferring a real risk of dissipation as there is evidence to suggest that he was directly involved in the Fraud and the transfer of the moneys, this was not so *vis-à-vis* Bi. She was not a main perpetrator of the Fraud, and there is no evidence that she was actively complicit in the acquisition of the technologies or in perpetrating the Fraud. The plaintiffs' claim against Bi is founded on her being a recipient of part of the proceeds of the Fraud transferred to her (and accounts controlled by her) via a series of intermediaries. I am not persuaded, at this stage, that her conduct amounts to dishonesty in the context of dishonest assistance. As stated earlier, I did not find sufficient evidence that Bi had actual knowledge of a breach of trust or fiduciary duty by the main perpetrators of the Fraud, although there is some evidence to suggest that it would be unconscionable for her to retain the benefit of the receipt. Having received such large sums of money, one would have thought that she should have made enquiries. At the same time, I

am cognisant that Bi had shown, in relation to a trust account, that Wu had on other occasions also credited into that account large sums (and which is not the subject of the Fraud)[46] to support her assertion that she believed she was legitimately entitled to the moneys which the liquidators have claimed as proceeds of the Fraud.

79 Hence, the evidence at this stage would likely suggest that (as with Mrs Rappo, a defendant in *Bouvier*) Bi was "content to receive the substantial sums … without inquiring further into the source of those payments" and she "might have known or had reason to suspect that the water supplied to her came from a tainted well, but she drank it anyway" (see *Bouvier* at [138]). As I found above at [61]–[63], Bi had not explained how large sums of moneys (traced as proceeds of the Fraud) came to be received by Long Chart, WB International and in her personal accounts. But this does not lead inexorably to the conclusion that she would dissipate the monies to defeat an anticipated court judgment. As in the case of Mrs Rappo in *Bouvier*, the allegations levelled against Bi did not, in my judgment, have a real or material bearing on the risk of her dissipating her assets. There is no evidence to suggest that Bi had attempted to conceal the moneys (the subject of the Fraud) that she received.

80 Further, unlike Wu, Bi is also not the subject of criminal investigations in the USA and Hong Kong in relation to the Fraud. And although there is some evidence that she continued to maintain ties with Wu in the years between 2005 and 2012 (see [64] above), this did not necessarily support that there would a real risk of asset dissipation.

81 Leaving aside these two neutral factors, I find that there were two factors that pointed towards the existence of a risk of dissipation.

[46] Bi's 1st affidavit, pp 215–219.

82 First, it is undisputed that Bi intends and has attempted to dispose of not just the Coral Island property but another property in Nevada, USA. That Bi had put up the Coral Island property for sale since around 14 November 2017[47] is not challenged. This comes after the second HK suit was commenced against Bi (among others) on 23 December 2016. By the time the property was listed for sale, Bi would have been aware that the first HK suit had been commenced against Wu and that she was already under investigations[48]. Bi's claim that the property was listed for sale some three years back (*ie*, around early 2015) is an unsubstantiated assertion. In any event, by that time, the Fraud had been perpetrated and the moneys transferred into Bi's accounts or accounts controlled by her and she had been cross-examined in CWU 37/2013. That the property was being listed for sale again in 2017 would merely reinforce that she was attempting to dispose of it. It should be noted that the Coral Island property is her residential home – whilst she claimed that she no longer required such a large home in Singapore, she has not explained whether she intends to obtain a substitute home for her and her daughter in Singapore or whether she already has another home in Singapore. Given that the sale of the Coral Island property led the plaintiffs to file the application for the Mareva injunction in respect of Bi, it was insufficient for Bi to raise unsubstantiated reasons for the sale of that property; nothing was adduced to negate what that sale attempt stood for in and of itself.

83 That there is a real risk of dissipation is also reinforced by the fact that the liquidators also discovered on 20 November 2017 that Bi's other property in Nevada, USA, was also listed for sale. This is not disputed. It is telling that she has not explained why she was also selling the Nevada property. As criminal

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47 Borrelli's 1st affidavit, para 22.

48 Bi's 1st affidavit, paras 73–74.

investigations had been commenced by authorities in the USA against Wu at the material time, and accusations were levelled against Bi filed in the US Chapter 15 proceedings, these may have had a bearing on Bi's decision to put up the Nevada property for sale.

84 Second, the assets which are the subject of the proposed injunction, namely the bank accounts held in her personal capacity or joint capacity with Wu and the accounts of WB International and Long Chart (and in which the moneys the subject of the Fraud were deposited into), are all within her control and the moneys therein can be easily disposed of. It is not even clear whether Long Chart (a BVI company) and WB International have any substantial business or they are merely holding companies. Bi stated that WB International was incorporated "as a vehicle through which [she] could invest in and carry on business in Singapore to support [her] application for Singapore Permanent Residence"[49].

85 As against these two factors that were in favour of granting an injunction, I note also that Bi had not displayed unwillingness to participate in the proceedings. Bi had accepted service of the Singapore proceedings and Hong Kong proceedings through solicitors with a view to defending the claims against her. Even when an application to wind up CMT was taken out in 2013 (Companies Winding Up No 37 of 2013 ("CWU 37/2013"), she had attended court on more than one occasion to be cross-examined on CMT's affairs. She had also complied with the court's order (in CWU 37/2013) to produce various bank statements for the purposes of her examination.[50] Further, Bi is a Singapore citizen and has shown that she has business ties here. She is the founder, director

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49 Bi's 1st affidavit, para 66.

50 Bi's 1st affidavit, paras 55–56.

and chief executive officer of Sincere Healthcare Group (Singapore) Pte Ltd, incorporated in September 2010 and which has various subsidiaries which are ongoing business concerns. That said, Bi *had not disclosed her shareholding* in these entities; if her shareholding of these entities was not significant, this would have reduced the weight of this point.

86 Balancing the factors at [82]–[84] against those at [85], I was satisfied that there was a real risk of dissipation. In the light of the above, I would grant a Mareva injunction against Bi to prohibit the disposal of the assets in Singapore as mentioned at [70] above. In doing so, I also considered the following issues.

87 First, I am of the view that an injunction can be granted against Bi to prevent her from disposing of moneys in the UOB account and Credit Suisee AG account held in the names of WB International and Long Chart respectively, as the moneys in those accounts are in truth Bi's assets: see *Bouvier* at [124] citing *SCF Finance Co Ltd v Masri* [1985] 2 All ER 747. As mentioned earlier, Bi accepts that the moneys in WB International and Long Chart belong to her as she currently has sole interest in the companies. This is unlike in *Bouvier* where the court did not find any evidence that the assets of various companies (who were not parties to the action, but which would be affected by the injunction sought against the defendant) belonged to the defendant and further found that some of those companies were going concerns. In the present case, Bi has not disclosed any evidence as to whether Long Chart and WB International are companies with ongoing operations or whether they have any employees who would be affected by the grant of a Mareva injunction.

88 Second, I considered that although the Hong Kong High Court had granted a worldwide Mareva against Bi, which included the Singapore assets the subject of this current application, this did not prevent me from granting a

domestic injunction against Bi in relation to the same Singapore assets, so long as the principal requirements for a Mareva injunction have been made out (*JTrust Asia* at [114] and [116]). In particular, the liquidators have shown that the Singapore Land Authority would not register a caveat against the Coral Island property pursuant to a foreign injunction (*ie*, the HK injunction) and had only accepted the lodgement of a caveat pursuant to the Mareva injunction granted later by the Singapore court on 4 January 2018 against Wu.[51] As for the Singapore bank accounts which would be affected, whilst the banks which have been given notice of the HK injunction may potentially incur sanctions for non-compliance, I accept the liquidators' point that such sanctions based on the HK injunction would have to be made by the Hong Kong court which in itself may not have extra-territorial reach.

Orders made

89 In conclusion, I allow SUM 5689 and grant the plaintiffs the Mareva injunction against Bi. I also allow SUM 878 to stay Suit 1180, as it is not disputed that Hong Kong is the more appropriate forum for the dispute. I order the costs of both summonses to be costs in the cause.

Audrey Lim
Judicial Commissioner

Kelvin Poon / Nigel Pereira / Chew Xiang / Quek Teck Liang (Rajah & Tann Singapore LLP) for the plaintiffs;

[51] Borrelli's affidavit dated 20 February 2018, paras 21–22.

Hee Teng Fong / Tan Chau Yee / Sharmini Selvaratnam / Andrea Koh (Eversheds Harry Elias LLP) for the second defendants.