

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

[2023] SGHC 110

Originating Summons No 1050 of 2021 (Summons No 4269 of 2022)

Between

Kristin Annus

... Plaintiff

And

- (1) Jekaterina Annus
- (2) Ljubov Skurd
- (3) TA Activity Singapore Private
Ltd

... Defendants

GROUND OF DECISION

[Injunctions — Interim injunction — Plaintiff's undertaking as to damages —
Whether undertaking ought to be enforced]

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Annus, Kristin
v
Annus, Jekaterina and others

[2023] SGHC 110

General Division of the High Court — Originating Summons 1050 of 2021
(Summons No 4269 of 2022)

Lai Siu Chiu SJ
5 December 2022

24 April 2023

Lai Siu Chiu SJ:

1 This was the application of TA Activity Singapore Private Ltd (“the third defendant”) to enforce an undertaking as to damages given by Kristin Annus (“the plaintiff”) in connection with an interim injunction she obtained against it, in support of proceedings taking place in Estonia between the plaintiff, her mother, and several other persons. The plaintiff argued that her undertaking should not be enforced, and that in the alternative, the question of enforcement should only be resolved after the main Estonian proceedings were resolved.

2 After hearing the parties, this court ordered that the enforcement of the plaintiff’s undertaking be held over until the Estonian proceedings had been dealt with between the plaintiff and Jekaterina Annus (“the first defendant”). As the third defendant has appealed against my decision, I now give my reasons.

Factual background

3 The plaintiff is the daughter of the late Toivo Annus (“the deceased”). She claimed to have been cheated of her rightful inheritance in the deceased’s estate by way of fraud perpetrated by her stepmother, the first defendant, and so commenced proceedings against the latter in Estonia on 30 September 2021 (“the Estonian proceedings”).¹

4 On 4 October 2021, the plaintiff obtained an injunction in Estonia from the Harju County Court (“the first Estonian injunction”), which prohibited the first defendant from disposing of shares in the third defendant belonging to the deceased’s estate, without the plaintiff’s consent. The third defendant is wholly owned and controlled by the first defendant and the plaintiff’s step-grandmother, Ljubov Skurd (“the second defendant”).²

5 In support of the Estonian proceedings and the first Estonian injunction, the plaintiff commenced HC/OS 1050/2021 in Singapore on 14 October 2021, seeking an injunction to restrain the defendants from “dealing with all assets and shares of [the third defendant] pending the full and final determination of [the Estonian proceedings]”.³ Concurrently, the plaintiff also applied in HC/SUM 4741/2021 for an interim injunction prohibiting the third defendant from disposing or otherwise dealing with its assets worldwide (“the interim injunction”). In connection therewith, the plaintiff provided the usual undertaking to pay damages and costs ordered by the court in the event that the

¹ 8th Affidavit of Tambert Mullari (18 February 2022) at para 11.

² Plaintiff’s Skeletals (30 November 2022) at para 11.

³ Defendant’s Skeletals (30 November 2022) at para 3.

interim injunction resulted in damage to the third defendant (“the undertaking”).⁴

6 The interim injunction was granted on 15 October 2021 in HC/ORC 5738/2021 and served on the third defendant on 19 October 2021.⁵

7 The third defendant claimed that it had plans to divest shares in a company called Sea Ltd over the course of six months, which commenced on 4 October 2021 and would have originally been completed on 19 April 2022.⁶ As a result of the interim injunction, the divestment was halted on 22 October 2021, and resumed only on 10 November 2021, after the plaintiff agreed to amend the terms of the interim injunction to, among other things, permit the third plaintiff to deal with its assets in the ordinary course of business.⁷

8 As a consequence, the divestment was completed 13 trading days later than originally intended, on 6 May 2022. This allegedly caused the third defendant to suffer losses owing to the severe downturn in the technology sector between late 2021 and the first half of 2022, compared to a counterfactual in which they had completed the divestment as originally scheduled.⁸

9 On 7 January 2022, an appellate court in Estonia granted the defendants’ appeal against the first Estonian injunction order in part, narrowing its scope to

⁴ Defendant’s Skeletals (30 November 2022) at para 4.

⁵ Plaintiff’s Skeletals (30 November 2022) at para 30.

⁶ Defendant’s Skeletals (30 November 2022) at para 7.

⁷ Defendant’s Skeletals (30 November 2022) at para 7(f).

⁸ Defendant’s Skeletals (30 November 2022) at para 8.

prevent the first defendant from “disposing of 3/16 pro-indiviso share” in the estate of the deceased.⁹

10 On 21 January 2022, the plaintiff obtained a second injunction in Estonia from Harju County Court (“the second Estonian injunction”), which, much like the original terms of the first Estonian injunction, prohibited the first defendant from disposing of the shares of the third defendant which belonged to the deceased’s estate without the plaintiff’s consent. This too was appealed in Estonia by the defendants, and on 11 April 2022, the Estonian appellate court again narrowed the scope of the second Estonian injunction to prohibit the first defendant from disposing of the 3/16 pro-indiviso share in the deceased’s estate.

11 On 17 March 2022, this court allowed the first and second defendants’ jurisdictional challenge against HC/OS 1050/2021.¹⁰ On 20 June 2022, the interim injunction was set aside, and on 5 September 2022, HC/OS 1050/2021 was struck out without objection by the plaintiff.¹¹ The third defendant subsequently applied to enforce the plaintiff’s undertaking, in respect of the losses it allegedly suffered as mentioned at [7].

The parties’ arguments and issues

12 The sole issue before the court was whether to immediately allow or dismiss the application to enforce the plaintiff’s undertaking, or whether to defer that question until the Estonian proceedings had been disposed of.

⁹ Plaintiff’s Skeletons (30 November 2022) at para 17.

¹⁰ Plaintiff’s Skeletons (30 November 2022) at para 21(i).

¹¹ Defendant’s Skeletons (30 November 2022) at para 9; Plaintiff’s Skeletons (30 November 2022) at paras 22 and 26.

13 The third defendant’s position was that the undertaking should be enforced immediately because it was clear that the interim injunction was wrongly granted, as evinced by the fact that the Estonian injunction had been narrowed in scope, and that HC/OS 1050/2021 had been struck out without any objection by the plaintiff.

14 On the other hand, the plaintiff’s position was that the court should decline to enforce her undertaking. This was because the grant of the interim injunction could not be said to have been wrongly granted, as the Estonian proceedings were still ongoing. In any case, even if it was wrongly granted, the reasonableness of her conduct, and the lack of any evidence that the interim injunction had caused loss to the third defendant, nonetheless made it unjust and inequitable for her to be held to it. Alternatively, it should be held in abeyance until the Estonian proceedings were fully resolved.

My decision

15 At the outset, the relevant principles governing the enforcement of an undertaking as to damages are not controversial. The court has the ultimate discretion to determine whether the undertaking should be enforced. This discretion must be exercised with reference to all factors in the case, and the court must be satisfied that the injunction was wrongly granted and that there are no special circumstances militating against the enforcement of the undertaking (*Neptune Capital Group Ltd and others v Sunmax Global Capital Fund 1 Pte Ltd and another* [2016] 4 SLR 1177 at [46]).

The enforcement of the undertaking should not be immediately dismissed

16 It could not be said that the plaintiff’s “reasonableness” constituted special circumstances which justified an immediate refusal to enforce her

undertaking. Circumstances which *would* justify such refusal have been understood to include the conduct of the defendant, a delay in seeking an inquiry as to damages, or situations where the plaintiff acts in the public interest (*Astro Nusantara International BV and others v PT Ayunda Prima Mitra and others and another matter* [2016] 2 SLR 737 (“*Astro Nusantara*”) at [27]–[31]).

17 However, it does not stand to reason that the plaintiff’s *good* conduct may amount to special circumstances justifying the court’s refusal to enforce an undertaking. The default position is that where the plaintiff has lost their claim, this would militate strongly in favour of an order for an inquiry (*Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [54]). This is consistent with the proposition that the entitlement of the restrained party to obtain, in appropriate circumstances, an award of damages pursuant to an undertaking as to damages is an equitable right (*Astro Nusantara* at [24]). The fact that the party who gave the undertaking did not behave unreasonably is not a special circumstance which can displace this default position – indeed, this is no more than what the court expects of every litigant appearing before it and cannot justify relieving the litigant of something which he or she has undertaken to do.

18 The fact that the third defendant allegedly did not provide “cogent and credible evidence” of the losses they suffered as a result of the interim injunction is also no basis to decline granting an order for an inquiry as to damages. An application for enforcement of an undertaking as to damages proceeds in two stages – the court first decides whether the undertaking should be enforced and, only if it finds in the affirmative, proceeds to consider the measure and quantum of damages (*Astro Nusantara* at [34]). The defendant could not be faulted for not adducing evidence directed towards the latter question when the proceedings were concerned with the former.

Nevertheless, the enforcement of the undertaking should not be immediately granted

19 However, it was also not appropriate to immediately order an inquiry as to damages, for the simple reason that, at this juncture, it could not be said that the injunction was wrongly granted. The fact that the plaintiff did not object to the striking out of HC/OS 1050/2021 did not, without more, mean that the interim injunction was wrongly granted. As the plaintiff’s counsel suggested during the hearing, the plaintiff’s decision not to object might have been made because she lacked the funds to conduct two actions in separate countries at the same time, and it cannot be taken as an indication of the merits of the case.¹²

20 Similarly, neither the discharge of the interim injunction on 20 June 2022, nor the narrowing of the scope of the first Estonian injunction by the Estonian appellate court, was sufficient for the court to conclude that the interim injunction was wrongly granted. The question of whether an undertaking in damages should be enforced is a separate question from whether an injunction order should be discharged or continued, and it is incorrect to assume that the discharge of an injunction at the interlocutory stage must mean that it was wrongly obtained in the first place (*Astro Nusantara* at [25]; *SH Cogent Logistics Pte Ltd and another v Singapore Agro Agricultural Pte Ltd and others* [2014] 4 SLR 1208 (“*SH Cogent*”) at [175]).

The enforcement of the plaintiff’s undertaking should be held over until the determination of the Estonian proceedings

21 In view of the foregoing and given that the interim injunction was ultimately obtained in support of the Estonian proceedings, the English Court

¹² Minute Sheet (5 December 2022) at p 4.

of Appeal decision of *Cheltenham & Gloucester Building Society (formerly Portsmouth Building Society) v Ricketts* [1993] 1 WLR 1545 (“*Cheltenham*”) was instructive. There, the court found that the question of the enforcement of an undertaking as to damages, given in connection with an injunction, was best reserved to the trial judge to determine after the merits of the claim were decided. In coming to this conclusion, Peter Gibson LJ placed great emphasis on the fact that the plaintiffs’ main claim was in fraud. If they were proven right on the merits at trial, and the defendants did indeed prove to be fraudsters, then that might suggest that there was a real risk that they would have attempted to defeat the judgment in precisely the manner which the injunctions had been sought to guard against. This being the case, the most prudent course would be to determine whether the undertaking should be enforced only “at the conclusion of the trial when all the facts are known” (*Cheltenham* at 1560).

22 In this case, it should be borne in mind that the Estonian proceedings were likewise founded on claims of fraud. If it is found in the Estonian proceedings that there is some merit to this claim, then it would in retrospect not be unreasonable to believe that the first defendant might have taken advantage of her control over the third defendant to transfer its assets to other entities which did not form part of deceased’s estate. While this would not undermine the plaintiff’s legal rights in the estate, it would certainly impair the value of that share – indeed, there is nothing in the Estonian appellate court’s decision on 7 January 2022 to suggest that the shares in the third defendant were not part of the deceased’s estate, with its use of the phrase “individual objects

belonging to the estate”¹³ in respect of those shares. In fact, the use of this phrase suggested quite the opposite.

23 As those proceedings had not yet concluded, there was little to be lost, and less still that could not have been compensated by damages or costs, from waiting until the court is fully apprised of the circumstances of the case. This is so that it may come to a more informed conclusion on whether the plaintiff’s undertaking should be enforced. This was in my view the most just and equitable way forward, in view of the ongoing proceedings and the ultimate purpose for which the interim injunction was sought.

24 Accordingly, the plaintiff’s undertaking as to damages was ordered to be held over until the Estonian proceedings were resolved.

Lai Siu Chiu
Senior Judge

Kyle Gabriel Peters, Chua Ze Xuan and Ramachandran Doraisamy
Raghunath (PDLegal LLC) for the plaintiff;
Tan Chuan Thye SC, Kee Lay Lian, Kok Chee Yeong Jared and
Yvette Tay Yu Wei (Rajah & Tann Singapore LLP) for the third
defendant.

¹³ 2nd Affidavit of Kristjan Teder (25 January 2022) at p 17.