

Lee Shieh-Peen Clement and another v Ho Chin Nguang and others
[2010] SGHC 12

Case Number : Suit No 285 of 2009 (Summons No 6045 of 2009)
Decision Date : 12 January 2010
Tribunal/Court : High Court
Coram : Philip Pillai JC
Counsel Name(s) : S Rasanathan and Luo Ling Ling (Colin Ng & Partners LLP) for the plaintiffs; Julia Yeo Heem Lain (Robert Wang & Woo LLC) for the defendants.
Parties : Lee Shieh-Peen Clement and another — Ho Chin Nguang and others

Injunctions – Mareva Injunction

Contempt of Court – Execution of order of committal

12 January 2010

Judgment reserved.

Philip Pillai JC:

Background

1 This is a summons filed by the Plaintiffs, having obtained leave of the Honourable Justice Judith Prakash on 17 November 2009, for a committal of the first and second Defendants, Ho Chin Nguang and Ng Sow Moi, for their contempt of the orders of this Honourable Court dated 7 April 2009 and 31 July 2009 (the "Order"), by failing to inform the Plaintiffs' solicitors in writing, within the requisite time limit or at all of:

- (a) the value and details of all their assets whether in or outside Singapore by way of an affidavit, which was to have been served on the Plaintiffs' solicitors within seven (7) days after the respective Orders had been served on the First and Second Defendants; and
- (b) the source of the money used before spending the same in the amount specifically limited by this Honourable Court for their expenditure on ordinary living and legal expenses.

2 The interim Mareva injunction was granted on 7 April 2009 against all three Defendants. It was replaced by a final Mareva injunction granted on 31 July 2009 against only the first and second Defendants.

Terms of this Mareva Injunction

3 The materially relevant terms of the final Mareva injunction are as follows:

Disposal of assets

1. (1) The 1st and 2nd Defendants must not:
 - (a) remove from Singapore, in any way dispose of or deal with or diminish the value of their assets which are in Singapore whether in their own name(s) or not and whether solely or

jointly owned up to the value of SGD \$5,100,000; or

(b) in any way dispose of or deal with or diminish the value of any of their assets whether they are in or outside Singapore whether in their own name(s) or not and whether solely or jointly owned up to the same value.

(2) This prohibition includes the following assets, in particular:

(a) the property known as 57 Hume Avenue, #07-08 Parc Palais Singapore 598753 or the net sale proceeds if it has been sold;

(b) any money in any sole or joint bank account(s) situated in Singapore, or elsewhere, as per Schedule 2:

(c) the 1st Defendant's Seletar Country Club membership;

(d) the following Vehicles owed (*sic*) by the 1st and 2nd Defendants:

(i) BMW with Vehicle Registration No. SFF 80 R; and

(ii) Toyota MPV with Vehicle Registration No. SBJ 80 S.

(e) the following watches owed (*sic*) by the 1st Defendant:

(i) Roger Dubui diamond studded watch; and

(ii) Cartier rose gold watch.

(3) If the total unencumbered value of the 1st and 2nd Defendants' assets in Singapore exceed SGD \$5,100,000.00, the 1st and 2nd Defendants may remove any of those assets from Singapore or may dispose of or deal with them so long as the total unencumbered value of the assets still in Singapore remains not less than SGD \$5,100,000.00.

(4) If the total unencumbered value of the 1st and 2nd Defendants' assets in Singapore does not exceed SGD \$5,100,000.00, the 1st and 2nd Defendants must not remove any of those assets from Singapore and must not dispose of or deal with any of them, but if they have other assets outside Singapore, the 1st and 2nd Defendants may dispose of or deal with those assets as long as the total unencumbered value of all his assets whether in or outside Singapore remains not less than SGD \$5,100,000.00.

Disclosure of information

2. The 1st and 2nd Defendants must inform the Plaintiffs in writing at once of all their assets whether in or outside Singapore whether in their own name(s) or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an affidavit which must be served on the Plaintiffs' solicitors within seven (7) days after this order has been served on the 1st and 2nd Defendants.

EXCEPTIONS TO THIS ORDER

3. This order does not prohibit the 1st and 2nd Defendants from spending \$1,500.00 a week towards their ordinary living expenses and also \$1,500.00 a week *or* a reasonable sum on legal

advice and representation. But before spending any money the 1st and 2nd Defendants concerned must tell the Plaintiffs' solicitors where the money is to come from.

4. This order does not prohibit the 1st and 2nd Defendants from dealing with or disposing of any of their assets in the ordinary and proper course of business. The 1st and 2nd Defendants shall account to the Plaintiffs within three (3) weeks for the amount of money spent in this regard.

5. The 1st and 2nd Defendants may agree with the Plaintiffs' solicitors that the above spending limits should be increased or that this order should be varied in any other respect by (*sic*) any such agreement must be in writing.

...

THIRD PARTIES

8. Effects of this order

It is a contempt of Court for any person notified of this order to knowingly assist in or permit a breach of this order. Any person doing so may be sent to prison or fined.

9. Effect of this order outside Singapore

The terms of this order do not affect or concern anyone outside the jurisdiction of this Court until it is declared enforceable or is enforced by a Court in the relevant country and then they are to affect him only to the extent they have been declared enforceable or have been enforced UNLESS such person is:

- (1) a person to whom this order is addressed or an officer or an agent appointed by power of attorney of such a person;
- (2) a person who is subject to the jurisdiction of this Court; and
 - (a) has been given written notice of this order at his residence or place of business within the jurisdiction of this Court; and
 - (b) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this order.

10. Assets located outside Singapore

Nothing in this order shall, in respect of assets located outside Singapore, prevent any third party from complying with:

- (1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Defendants; and
- (2) any orders of the Courts of that country or state, provided that reasonable notice of any application for such an order is given to the Plaintiffs' solicitors.

The law on Mareva injunctions and committal proceedings

4 The relevant considerations in relation to this application for committal are the first principles of Mareva injunctions and the scope and purpose of the exceptions contained in such injunctions. In *Polly Peck International plc v Nadir (No 2)* [1992] 4 All ER 769 ("*Polly Peck (No 2)*"), Lord Donaldson of Lynton MR stated (at 785):

So far as it lies in their power, the courts will not permit the course of justice to be frustrated by a defendant taking action, the purpose of which is to render nugatory or less effective any judgment or order which the plaintiff may thereafter obtain. ... It is not the purpose of a Mareva injunction to prevent a defendant acting as he would have acted in the absence of a claim against him. Whilst a defendant who is a natural person can and should be enjoined from indulging in a spending spree undertaken with the intention of dissipating or reducing his assets before the day of judgment, he cannot be required to reduce his ordinary standard of living with a view to putting by sums to satisfy a judgment which may or may not be given in the future. Equally no defendant, whether a natural or juridical person, can be enjoined in terms which will prevent him from carrying on his business in the ordinary way or from meeting his debts or other obligations as they come due prior to judgment being given in the action.

5 The relevant considerations relating to committal proceedings bear restatement. J Pinsler, *Singapore Court Practice 2009* (LexisNexis, 2009) states at para 52/1/2 and para 52/2/1:

As a general principle, the judgment creditor is expected to use alternative enforcement methods before contemplating committal. Even if those methods have been engaged without success, the court will not commit the judgment debtor unless there is credible evidence that the debtor's non-compliance was wilful in the sense that he refused or neglected to pay in spite of his ability to do so (*Khoo Wai Leong, Ronnie v Andrew J Hanam* [2003] SGMC 41, para 35;) ...

The other purpose of the order is to punish the offender for his contempt (*Re Barrell Enterprises* [1973] 1 WLR 19). ...

Committal to prison is normally a measure of last resort. Other options are available to the court, and often the exercise of its discretion will be based on the attitude of the offender. If he is apologetic and promises to comply with the court order (or if he has already complied with it since the service on him of the notice of motion for committal), the court may merely reprimand him in strong terms. If he has yet to comply with the order, the court may warn him that unless he does so he will be imprisoned.

In *Syarikat M Mohamed v Mahindapal Singh* [1991] 2 MLJ 112 at 114, K C Vohrah J stated that: '... since committal proceedings are quasi-criminal proceedings and the liberty of the subject is involved, the procedural rules applicable must be strictly enforced.' The point is that the person against whom the committal proceedings are brought, 'needs to know with particularity what charge or charges they are faced with, charges which can land them in prison.' The learned judge ruled that as it is the specific purpose of the statement to include these grounds, any omission to do so cannot be made good by setting them out in the affidavit, the purpose of which is to merely verify the statement. ... (See *Cartier International BV v Lee Hock Lee* [1993] 1 SLR 616.)

6 In *P J Holdings Inc v Ariel Singapore Pte Ltd* [2009] 3 SLR 582 at [7], Choo Han Teck J stated:

Order 45 r 5 (1)(a) applies only when "a person required by a judgment or order to do an act within a time specified in the judgment or order *refuses or neglects* to do it." ... In *Re Quintin Dick* [1926] Ch 992, Romer J held that the term "refuse or neglect" was not equivalent to "fail or

omit", and that the former implied a conscious act of volition whereas the latter did not. In *Ng Tai Tuan v Chng Gim Huat Pte Ltd* [1990] SLR 903, Chao Hick Tin JC (as he then was) expressed the view that the word "neglect" necessarily implies some element of fault. He cited the case of *Re London & Paris Banking Corp* (1874) 19 Eq 444 where Jessel MR said, at p 446:

... the word 'neglected' is not necessarily equivalent to the word 'omitted'. Negligence is a term which is well known in law. Negligence in paying a debt on demand, as I understand, is omitting to pay without reasonable excuse. Mere omission by itself does not amount to negligence.

The word "refuse" has also been similarly defined. In *DP Vijandran v Majlis Peguam* [1995] 2 MLJ 391, the court noted that "[t]he ordinary meaning of the word refuse is to decline to give", and that "failure is not synonymous with refusal." Similar sentiments were also expressed by the tribunal in *Lowson v Percy Main & District Social Club* [1979] ICR 568. I agree with the foregoing cases. ...

First alleged breach of this Mareva Injunction

7 The Plaintiffs claim in their application that:

1. The 1st and 2nd Defendants ... by failing to inform the Plaintiffs' solicitors in writing, within the requisite time limit or at all:

(1) of the value and details of all their assets whether in or outside Singapore by way of an affidavit which was to have been served on the Plaintiffs' solicitors within seven (7) days after the respective Orders had been served on the 1st and 2nd Defendants; ...

The substance of the failure complained of relates to the expenditure from undeclared source(s) of funds. The undeclared source(s) of fund, it is claimed is evidenced by a number of events including the minimal withdrawals from their disclosed bank accounts from 4 May to 9 September 2009, their solicitor's requesting an increase in combined limit of S\$6,000 for ordinary living expenses and the subsequent deposit of S\$67,097 into their disclosed POSB bank account.

8 The first Defendant admits in his affidavit that between June and November 2009 he spent about S\$16,115.27 to S\$19,615.27 a month. However, he also explained in his affidavit that he had subsequently received IDR 134,819,900 by way of a monthly cash allowance from PT Mega Fortune for his role as an advisor and Vice Chairman.

9 As the Defendants' disclosed assets are insufficient to cover the Plaintiffs' claim, the Plaintiffs counter-argued that the Order extends to assets to be acquired in the future.

10 Clause 2 of this Mareva injunction by its own terms requires a one-off disclosure by an affidavit a list of assets and this has been done. By its express terms it does not stand as a primary or a continuing order to regularly update after acquired assets. In any event, the subsequent receipt of monthly allowance in cash after the due submission of the affidavit of assets as required by the Mareva injunction, does not by its very nature constitute an undisclosed asset that was required to be disclosed by the terms of this Mareva injunction, in particular Clause 2.

11 I am of the view that Clause 1(4) of this Mareva injunction by its terms operates only to restrict the disposal or dealing of disclosed assets. It contemplates a diminution of the disclosed assets. Even if a liberal construction of this Mareva injunction were warranted, such that there is

construed to be a continuing obligation to update and disclose after acquired assets, this monthly cash allowance does not by its nature constitute an asset. I therefore find that there was no breach arising from such receipt of a monthly allowance.

Second alleged breach of this Mareva Injunction

12 The Plaintiffs further claim that the first and second Defendants had failed to provide the Plaintiffs' solicitors with the value and details of the assets comprising of their disclosed shareholdings in a number of private companies.

13 It was conceded that the Defendants had provided the latest available financial statements relating to the Singapore, BVI, Indonesian and Chinese private and unlisted companies in which they have an interest and which were already disclosed in the affidavit of assets. The Plaintiffs submit that this was not sufficient compliance as the Defendants are, additionally, obliged to provide either their own estimate of the value or an independent valuation of the same.

14 Bearing in mind that the shares are of private companies in multiple jurisdictions, no additional commercial purpose can be served by requiring the Defendants to provide their estimate of the value when the Plaintiffs have been given the relevant financial statements and were able to arrive at their own conclusion as to the valuation of those assets. To require the Defendants to take the further step of procuring independent valuations of unlisted companies would be unduly onerous considering the interlocutory nature and the purpose of granting a Mareva injunction. I accordingly find no breach as claimed by the Plaintiffs.

Third alleged breach of this Mareva Injunction

15 The Plaintiffs' application further claims that the Defendants have failed to inform the Plaintiffs' solicitors in writing, within the requisite time limit or at all of the source of the money used before spending the same in the amount specifically limited by this Honourable Court for their expenditure on ordinary living and legal expenses *to wit* that they have breached the spending limits by reason of their admitted monthly expenditure of S\$16,115.27 to S\$19,615.27.

16 As the first Defendant had already explained in his affidavit, these amounts were monthly cash allowances received subsequently to the filing of his affidavit of assets due to his role as advisor and Vice Chairman of PY Mega Fortune. Given that his interest in PY Mega Fortune has been duly disclosed in his affidavit of assets, and also he has not drawn on or dissipated the bank accounts and assets disclosed in his affidavit of assets, it would be a stretch to conclude that he is to be subject to committal proceedings by virtue of receiving subsequent advances or gifts which, I have already determined, do not constitute assets for the purposes of this Mareva injunction.

17 As I do not find there to have been a contumelious breach of the Orders in the circumstances, the application is denied.

18 No order as to costs.

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