

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 142

Suit No 780 of 2015 (Summonses No 4404 of 2017 and 4410 of 2017)

Between

Sia Chin Sun

... Plaintiff

And

Yong Wai Poh

... Defendant

And

Sia Tze Ming

... Non-party

GROUND OF DECISION

[Civil procedure] — [Parties] — [Joinder]

[Civil procedure] — [Stay of proceedings]

[Civil procedure] — [Injunction]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND	3
RELATIONSHIP BETWEEN THE PARTIES	3
THE PLEADINGS	4
EVENTS LEADING UP TO THE APPLICATIONS	8
THE APPLICATION TO INTERVENE.....	10
THE PARTIES' CASES.....	10
MY DECISION	12
THE INTERIM INJUNCTION APPLICATION	20
THE PARTIES' CASES.....	20
MY DECISION	22
<i>Mareva injunction or proprietary injunction.....</i>	<i>22</i>
<i>Applicable legal test for a proprietary injunction.....</i>	<i>24</i>
<i>Scope of the interim injunction</i>	<i>30</i>
CONCLUSION.....	31

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Sia Chin Sun
v
Yong Wai Poh
(Sia Tze Ming, non-party)

[2018] SGHC 142

High Court — Suit No 780 of 2015 (Summonses No 4404 of 2017 and 4410 of 2017)

Hoo Sheau Peng J

10, 29 November 2017

18 June 2018

Hoo Sheau Peng J:

Introduction

1 On 28 July 2015, at the age of 75, the plaintiff, Sia Chin Sun (“Mr Sia”), commenced this action against the defendant, Yong Wai Poh (“Mr Yong”), based on allegations which included the exercise of undue influence by Mr Yong. Mr Sia claimed for certain sums of money amounting to a total of \$1,192,090.80, which he had transferred to Mr Yong from sometime between 2010 to 2012. Mr Sia also claimed for certain reliefs in relation to his share in a property known as 33 Club Street, #04-16, Emerald Garden Condominium, Singapore (“the Emerald Garden property”) which was transferred to Mr Yong on 12 February 2012. In response, Mr Yong admitted to receipt of certain sums of money amounting to \$1,027,684 from Mr Sia,

but explained that these were meant as gifts and for other purposes. He denied any wrongdoing towards Mr Sia, and disputed the claims.

2 Less than a year after the action was commenced, Mr Sia passed away on 24 March 2016. He left behind a widow, a daughter, Sia Tze Ming (“Ms Sia”) and a younger brother, Chua Seng Kee (“Mr Chua”). He also left behind no less than four wills. Mr Yong claims to be the rightful executor of the estate, duly appointed by Mr Sia in the second will dated 14 February 2012 (“the second will”). It is only under the second will that Mr Yong is a beneficiary, and in fact, the major beneficiary of the estate. On the other hand, Ms Sia and Mr Chua claim to be the rightful executors of the estate, duly appointed by Mr Sia in the fourth will dated 28 December 2015 (“the last will”). Under any of the four wills, as well as in the event of intestacy, Ms Sia would be a beneficiary, albeit with different beneficial interests. Separate proceedings to contest the validity of the second and the fourth wills, and to determine the rightful executor(s) of the estate, are underway, which I shall refer to as “the probate proceedings”.

3 Pending the resolution of the probate proceedings, there is no personal representative of the estate to be substituted in place of Mr Sia so as to carry on with the action under Order 15 rule 7(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC”). For that reason, a stay of the action was ordered on 10 August 2016 (“the stay order”). On 22 September 2017, Ms Sia applied to lift the stay order, and for her to be added as a second plaintiff under Order 15 rule 6(b)(ii) of the ROC (“the application to intervene”). As a beneficiary of the estate, Ms Sia sought to intervene so as to take the necessary steps in the action to protect the assets of the estate. To that end, Ms Sia concurrently applied for an injunction prohibiting Mr Yong from disposing of his assets up to the value of \$1,453,153.31 in Singapore (“the interim injunction

application”), although that amount was subsequently reduced to \$1,255,184 in written submissions. Both the applications were resisted by Mr Yong.

4 On 29 November 2017, I granted the application to intervene, lifting the stay order for limited purposes. Also, I granted the interim injunction application, prohibiting Mr Yong from disposing of his assets in Singapore up to the value of \$1 million. Essentially, Ms Sia was permitted to intervene in the action, for the restricted purposes of dealing with the interim injunction application, any application to vary or discharge the interim injunction, as well as any appeal arising from the interim injunction application or the application to intervene.

5 On 5 January 2018, I granted Mr Yong leave to appeal against my decisions in the two applications. He has filed the appeals, and I now provide my reasons.

Background

Relationship between the parties

6 In 1988, Mr Sia was an engineer with the Public Utilities Board, while Mr Yong was a project manager and electrical engineer of a supplier to the Public Utilities Board. Mr Yong was 14 years younger than Mr Sia. They met in the course of work, and became close friends. From sometime in 2003, they became business partners in a business known as S&Y M&E Consultants. Separately, Mr Sia owned a business known as Zhi Pin Enterprise,¹ while Mr Yong owned two businesses, a real estate agency and a maid agency.²

¹ Statement of Claim dated 28 July 2015 (“SOC”) at para 3.

² Defence dated 26 August 2015 (“Defence”) at para 1.3.

7 Sometime in 2009, Mr Sia became estranged from his family. It was not disputed that for certain periods from 2010 to 2012, Mr Sia stayed with Mr Yong and his family. During this time, apart from suffering from mental illness, including depression, Mr Sia was diagnosed with prostate cancer.

8 Sometime in early June 2012, Mr Sia moved out of Mr Yong's home. Three years later, Mr Sia commenced the action which concerns events that occurred between 2010 to 2012. By then, Mr Sia was a man of little means. To pursue the action, he sought and was granted legal aid. Before he commenced the action, Mr Sia made a statutory declaration on 19 June 2015, setting out material facts in support of his claims.³

The pleadings

9 In the Statement of Claim, it was pleaded that Mr Sia started to stay with his friends to avoid any form of contact with his family. After he began staying with Mr Yong and his family in July 2010, Mr Yong denied Mr Sia's family access to Mr Sia. Mr Sia lost contact with his family members. In June 2012, Mr Sia managed to complain to his sister about Mr Yong controlling his life, and keeping his identity card and bank cards. He also complained that Mr Yong intended to bring him to China. With the help of his family members, Mr Sia managed to move out of Mr Yong's home.⁴

10 At this juncture, I should observe that the Statement of Claim is somewhat confusing. It contains allegations ranging from undue influence, fraud, breach of fiduciary duty, breach of trust, breach of implied terms, conversion, as well as monies had and received. It also prays for a range of

³ Ms Sia Tze Ming 3rd Affidavit dated 20 September 2017 ("Ms Sia's 3rd Affidavit") at Tab 10.

⁴ SOC at paras 7, 8, 11 to 14.

reliefs. I would think that the Statement of Claim may require amendments in due course, so as to provide more clarity in the action.

11 Be that as it may, in the main, Mr Sia alleged that during his stay with Mr Yong, Mr Yong had exercised “great influence and control over [him]”, and “was able to persuade and/or induce [him] to carry out certain acts and/or actions for various reasons which included safekeeping and/or investing [Mr Sia’s] assets/investments/monies or grant loans to [Mr Yong] for [Mr Yong’s] maid agency business.”⁵

12 Broadly, these acts carried out by Mr Sia fell into two categories:

(a) First, Mr Sia claimed that from 21 June 2010 to 22 March 2012, a total sum of \$1,192,090.80 had been transferred from Mr Sia to Mr Yong.⁶ This happened after Mr Sia was persuaded to include Mr Yong as a partner in what was originally his sole proprietorship, Zhi Pin Enterprise, and had made Mr Yong the sole signatory of Zhi Pin’s bank account.⁷ The transfers were made from either Mr Sia’s own bank account, or that of Zhi Pin Enterprise (which was controlled by Mr Yong).⁸

(b) Second, on or about 12 February 2012, Mr Sia transferred his share in the Emerald Garden property to Mr Yong for the sum of \$290,000. This transfer was at an undervalue. Furthermore, the sum of \$290,000 was then almost immediately transferred out of Mr Sia’s bank account back to Mr Yong. Also, after he purchased his share on

⁵ SOC at para 9.

⁶ SOC at para 10.

⁷ SOC at para 9(ii).

⁸ SOC at para 9(iv) and (v).

4 September 2006, Mr Yong did not account to Mr Sia for the rental income from the Emerald Garden property.⁹

13 Based on the above and other particulars, Mr Sia prayed for a mix of reliefs and orders, including a declaration of Mr Yong’s liability to account to Mr Sia for “loss and damage”; an order for an account for “all or any secret profit [Mr Yong] may have earned directly or indirectly” due to the breaches; a tracing order “to trace all such monies from the hands of [Mr Yong] to such other repository as it may be found”; “a declaration as to what sums in the hands of [Mr Yong] are assets in equity of [Mr Sia] or traceable proceeds thereof”; “all due accounts and inquiries” and payment of the sum found due; an injunction prohibiting Mr Yong from disposing, dealing with or diminishing the value of his assets in Singapore; and any other further orders as the court deems fit.¹⁰

14 The Defence is extremely lengthy, and I summarise its key aspects. It was pleaded that Mr Sia stayed with Mr Yong from 2010 to 2012. Although Mr Yong encouraged Mr Sia’s family to keep in touch with him, they did not wish to do so. They abandoned him to the care of Mr Yong and his family. During this time, Mr Yong had to bear all of Mr Sia’s expenses, including the medical expenses.¹¹ Shortly before a scheduled work trip to China, on or around 4 June 2012, Mr Sia’s family removed Mr Sia from Mr Yong’s home against Mr Sia’s will.¹²

⁹ SOC at para 9(iii).

¹⁰ The prayers within the SOC.

¹¹ Defence at para 244(b).

¹² Defence at para 207.

15 In fact, Mr Sia trusted Mr Yong more than his own family, and wanted Mr Yong to care for him for the rest of his life.¹³ Thus, on 21 May 2010, Mr Sia made Mr Yong a partner of Zhi Pin Enterprise, with Mr Yong as the sole signatory of the bank account.¹⁴ Also, Mr Sia made the second will naming Mr Yong as the executor, and giving Mr Yong the residual share of the estate after some specified sums were distributed to Ms Sia and a few others.¹⁵

16 Mr Yong admitted that he had received certain sums of money transferred by Mr Sia, amounting to a total of \$1,027,684.¹⁶ However, Mr Yong alleged, *inter alia*, that the monies he received were given by Mr Sia out of Mr Sia's gratitude for caring for him, as compensation and reward, and as Mr Sia's contribution to their shared business ventures in the course of their close friendship. Mr Sia was abandoned by his family, and was helped and supported by Mr Yong.¹⁷

17 With regard to the Emerald Garden property, it was pleaded that Mr Sia's 7/20 share of the Emerald Garden property was in fact Mr Yong's. Mr Yong transferred the share to Mr Sia as collateral for a loan of \$280,000 given by Mr Sia.¹⁸ Mr Yong subsequently paid off the loan, and hence Mr Sia transferred the share back to Mr Yong. Thereafter, Mr Sia decided to write off the loan entirely, and returned Mr Yong the sum of \$280,000, as well as an additional sum of \$10,000 as a contribution towards Mr Yong's family expenses.¹⁹

¹³ Defence at para 244.

¹⁴ Defence at paras 93 to 97.

¹⁵ Defence at paras 187 and 188.

¹⁶ Defence at para 250.

¹⁷ Defence at para 2.2.

¹⁸ Defence at paras 54 to 59.

Events leading up to the applications

18 As mentioned above at [2], Mr Sia passed away in the early stages of the action. Ms Sia and Mr Chua applied to be substituted as the plaintiff to carry on with the action under Order 15 rule 7(2) of the ROC (“the application for substitution”). Given the dispute over the rightful executor(s) of the estate, and in turn, the rightful personal representative(s) to carry on with the action, that application was dismissed on 10 August 2016. On the same day, pursuant to Mr Yong’s application, the stay order was granted, staying the action until the outcome of the probate proceedings.

19 As the probate proceedings progressed, Ms Sia discovered certain dealings by Mr Yong with regard to the Emerald Garden property. The Emerald Garden property was initially held by Mr Sia, Mr Yong’s wife and Mr Yong, in the proportion of 7/20, 7/20 and 6/20 shares respectively. After Mr Sia’s transfer of his share to Mr Yong, the latter held 13/20 share in the Emerald Garden property.²⁰ On or around 12 June 2017, through a title search, Ms Sia learned that Mr Yong had, on or around 23 March 2017, transferred the 13/20 share to his daughter, Ms Yong Hui Yan (“Ms Yong”) for a sum of \$942,500.²¹ Further, she discovered that on the same day of the transfer, a mortgage in favour of United Overseas Bank Limited had been granted by Ms Yong and Mr Yong’s wife.²²

20 Ms Sia’s lawyers wrote to Mr Yong’s lawyers to request an explanation for Mr Yong’s conveyance of the Emerald Garden property, what

¹⁹ Defence at paras 191 to 195.

²⁰ Ms Sia’s 3rd Affidavit at para 33.

²¹ Ms Sia’s 3rd Affidavit at para 34. See also Ms Sia’s 3rd Affidavit at Tab 14, p 187.

²² Ms Sia’s 3rd Affidavit at paras 35 and 36.

had become of the sale proceeds and whether Mr Yong would be agreeable to place the proceeds in an escrow account.²³ Mr Yong's lawyers replied, stating that Ms Sia's demand for an explanation by Mr Yong was misconceived, that she had no basis to demand that Mr Yong provide an account of any of the assets that "allegedly belong to [Mr Sia's] [e]state" and that she had no *locus standi* to participate in the action.²⁴ At around the same time, Ms Sia's lawyers wrote to Ms Yong requesting confirmation in writing that she would cease dealing with the Emerald Garden property until the conclusion of the action.²⁵ There was no response from Ms Yong.²⁶

21 Thereafter, on 22 September 2017, Ms Sia filed the two applications which form the subject matter of the appeals. I shall now deal with each application in turn.

The application to intervene

The parties' cases

22 For the application to intervene, Ms Sia's counsel relied on the legal proposition that under special circumstances, a beneficiary of an estate may take proceedings to protect the assets of an unadministered estate: *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1996] 3 SLR(R) 27 ("*Wong Moy*").²⁷ It was submitted that special circumstances existed in this case to warrant the addition of Ms Sia to the action, so as to allow her to take steps to protect the assets of the estate. First,

²³ Ms Sia's 3rd Affidavit at para 37.

²⁴ Ms Sia's 3rd Affidavit at Tab 9 at pp 160 and 161.

²⁵ Ms Sia's 3rd Affidavit at para 38.

²⁶ Ms Sia's 3rd Affidavit at para 40.

²⁷ Ms Sia's written submissions (6 November 2017) ("Ms Sia's written submissions") at paras 27 and 32 to 34.

it was impossible for the estate to take proceedings in a timely manner. This was because the question of the rightful executor of the Mr Sia's estate was being litigated in the probate proceedings, which meant that no party could be substituted for Mr Sia in the action.²⁸ Second, there was a real risk of Mr Yong dissipating his assets, which in turn would impact on the assets of the estate, thus requiring a beneficiary of Mr Sia's estate to intervene.²⁹ The stay order was made before any threat to the estate arose. For Ms Sia to intervene, the stay order had to be lifted.³⁰ Unlike in *Wong Moy* where the beneficiary was affirmed by the court to have the *locus standi* to commence the proceedings, here, Mr Sia had already started the action. What was required was for Ms Sia to be able to intervene in the action, and it was submitted that the procedure was to permit her to do so pursuant to Order 15 rule 6(b)(ii) of the ROC.³¹

23 In his written submissions, Mr Yong's counsel contended that there was no basis in law to accord Ms Sia *locus standi*, but did not address *Wong Moy*. In his oral submissions, Mr Yong's counsel raised three key points in relation to *Wong Moy*, which I reframe as follows:

- (a) In *Wong Moy*, the court merely allowed a beneficiary to institute proceedings to protect the estate where there were claims of a proprietary nature. There was no legal basis to permit a beneficiary to intervene to pursue purely pecuniary claims;³²

²⁸ Ms Sia's written submissions at paras 39 to 46.

²⁹ Ms Sia's written submissions at para 47.

³⁰ Ms Sia's written submissions at paras 49 to 50.

³¹ Ms Sia's written submissions at para 48.

³² Notes of Evidence on 10 November 2017 at pp 6, lines 27 – 31; 7, lines 1 – 2.

(b) The Statement of Claim should be characterised as one disclosing purely pecuniary claims. In seeking to intervene to protect the assets of Mr Sia's estate, Ms Sia was attempting to expand the action from one involving mere pecuniary claims into one which included proprietary claims. Ms Sia cannot be in a better position than Mr Sia.³³ Specifically, Mr Sia did not stake any proprietary claim with regard to Mr Yong's share in the Emerald Garden property.³⁴ Instead, he sought the difference between the market price and the consideration paid by Mr Yong. Yet, in her affidavit in support of the application to intervene, Ms Sia stated that she "verily believe[s] that we would have been entitled to seek a rescission of that transfer, and [Mr Yong] would be ordered to transfer the property back to my father's estate".³⁵ This was an expansion beyond the scope of the action. Mr Sia did not pursue a proprietary claim in respect of the Emerald Garden property, and Ms Sia cannot take a position inconsistent with that taken by Mr Sia.

(c) Even if *Wong Moy* were to be applicable, there were no special circumstances to justify the intervention by Ms Sia.³⁶

24 In addition, Mr Yong's counsel contended that Ms Sia was attempting to re-litigate the application for substitution. As discussed at [18], this earlier application had been dismissed, with no appeal by Ms Sia and Mr Chua. The circumstances remained the same as when the application for substitution was brought, and *res judicata* operated against Ms Sia.³⁷ Given that there was no

³³ Notes of Evidence on 10 November 2017 at p 5, lines 21 to 24.

³⁴ Notes of Evidence on 10 November 2017 at p 4 line 29 to p 5 line 2.

³⁵ Ms Sia's 3rd affidavit at para 49.

³⁶ Mr Yong's written submission at para 48 to 56.

merit to the substantive prayer to intervene, there was no reason to lift the stay order.³⁸ In any event, Mr Yong’s counsel argued that the procedure under Order 15 rule 6(b)(ii) of the ROC could not be engaged, as its requirements were not met.³⁹

My decision

25 In *Wong Moy*, the Court of Appeal agreed with the reasoning in *Omar Ali bin Mohd and others v Syed Jafaralsadeg bin Abdulkadir Alhadad and others* [1995] 2 SLR(R) 407 (“*Omar*”), and held that a beneficiary may, in special circumstances, institute action to protect and recover assets belonging to the unadministered estate: see [11] and [12]. Since then, the legal principle has been applied or cited in various cases relied upon by the parties, including *Ching Chew Weng Paul v Ching Pui Sim* [2010] 2 SLR 76 (“*Ching Chew Weng Paul*”) at [55] – [58], *Fong Wai Lyn Carolyn v Kao Chai-Chau Linda and others* [2017] 4 SLR 1018 (“*Carolyn Fong*”) at [35] and *Lakshmi Anil Salgaocar v Vivek Sudarshan Khabya* [2017] 4 SLR 1124 at [41]–[61].

26 As the facts of *Wong Moy* are pertinent to my analysis, I set them out in some detail. The appellant, Wong Moy, claimed to be the lawful widow of the deceased, married under Chinese customary rites in 1952. In 1964, the deceased purported to marry the respondent, Soo Ah Choy, at the Registry of Marriages. The deceased died intestate in 1995. Before extracting the letters of administration, on 30 August 1995, the appellant commenced an action to seek a declaration that two properties were held by the respondent on trust for the estate. As the two properties had been sold in April 1981 and January

³⁷ Notes of Evidence on 10 November 2017 at p 5 line 26 to p 6 line 4.

³⁸ Mr Yong’s written submissions at paras 64 to 68.

³⁹ Notes of Evidence on 10 November 2017 at p 6 lines 21 to 25.

1995, well before the proceedings commenced, the appellant's claim was directed at their proceeds of sale, and the appellant obtained an *ex parte* injunction restraining the respondent from disposing of her assets up to a value of \$3.5m. In particular, there was an order stating that the *assets* included the balance of the proceeds from the sale of the two properties. The respondent applied to discharge the injunction on the ground that the appellant lacked *locus standi* to bring the proceedings. The High Court struck out the action, and discharged the *ex parte* injunction on the basis that the appellant's failure to extract the grant of letters of administration to the estate meant that she had no capacity to sue and as such the writ was a nullity. On appeal, the Court of Appeal held that special circumstances existed to enable the appellant to bring the action *qua* beneficiary, and reinstated the writ, the statement of claim, as well as the interim injunction.

27 With that in mind, I turn to the first point made by Mr Yong's counsel that based on *Wong Moy*, a beneficiary does not have *locus standi* to pursue purely pecuniary claims on behalf of an estate. It bears noting in this regard that the High Court in *Omar* cited the following remarks from *Re Atkinson, deceased* [1971] VR 612 ("*Re Atkinson*") at 700 to explain that the basis for such proceedings by a beneficiary is that "they are taken on behalf of the estate and if they are successful, they can only result in the lost property being restored to the estate for use in the due course of administration. Thus, while they assert the beneficiary's right of remedy, they assert the estate's right of property..." Therefore, I agreed with Mr Yong's counsel's contention that a beneficiary would not have *locus standi* to pursue a personal claim with pecuniary reliefs on behalf of the estate. Any proceedings must be grounded in the need to protect and preserve the assets of the estate.

28 However, did the action involve purely pecuniary claims? This was the second point argued by Mr Yong’s counsel, and in my view, the argument can be broken down to two aspects. First, Mr Yong’s counsel appeared to suggest that based on the cases, the assets to be protected should be restricted to certain classes of assets, and exclude money. Second, as I understood it, the contention was that the Statement of Claim did not include a claim for recovery of any of Mr Sia’s assets (and therefore, any assets of the estate). The action involved personal claims only. Taken together, I believe this was what Mr Yong’s counsel meant when he contended that there were no “proprietary claims” in the action by Mr Sia.

29 On both counts, I was unable to agree with Mr Yong’s counsel. I deal with the first aspect quickly. I saw no reason to read *Wong Moy* restrictively so as to limit its applicability only to the protection of certain classes of assets, excluding money. Money belonging to an estate is as much an asset or property of the estate as any other asset of the estate. I did not see any basis to distinguish between the money transferred by Mr Sia to Mr Yong from the balance proceeds from the sale of the two properties claimed to be in the hands of the respondent in *Wong Moy*: see [26] above. Money is a fungible asset and in fact, as argued by Ms Sia’s counsel, money which has flowed into the hands of a defendant is at greater risk of further dissipation by the defendant. The difficulty lies in providing suitable interim relief to protect such a fungible asset, which is set out from [68] below.

30 On the second aspect, I deal first with the sums of money transferred from Mr Sia to Mr Yong. From a perusal of the Statement of Claim, it was my view that a proprietary claim over the sums of money had been asserted. To support the proprietary claim, Mr Sia prayed for a tracing order, so as to

identify money, proceeds or assets held by Mr Yong traceable to the money of the estate: see [13] above.

31 I deal next with Mr Sia's share in the Emerald Garden property. As things stood, it was true that the Statement of Claim did not disclose a proprietary claim for the 7/20 share in the Emerald Garden property. Nonetheless, based on the facts as pleaded, there was sufficient material to sustain a proprietary claim over the share in the Emerald Garden property, and to specifically seek proprietary relief over the asset. In particular, Mr Sia detailed how the transfer was carried out not only at an undervalue, but that the consideration paid by Mr Yong of \$290,000 was transferred back to Mr Yong's account. In other words, Mr Sia alleged that there was no consideration for the transaction, providing the basis for challenging the transaction.

32 In this connection, I disagreed with the contention by Mr Yong's counsel that Ms Sia was seeking to be in a better position than Mr Sia (or the estate). Rather, in my view, Ms Sia was seeking to put forth a position that was available to Mr Sia, and would be available to the estate. Mr Sia's position was not cast in stone. Nor is the estate's. Depending on the outcome of the probate proceedings, it is open to the estate to seek leave to amend the pleadings in the action in relation to its claim concerning the Emerald Garden property.

33 In terms of the objection by Mr Yong's counsel that there was no evidence available from Mr Sia to support a proprietary claim in relation to the Emerald Garden property, it would suffice for me to observe that this was not a case where such a claim would be untenable because of the demise of Mr Sia. Apart from the statutory declaration made by Mr Sia, documentary

evidence would also be available, and the overall facts and circumstances of the transaction would also fall to be evaluated by the court. While this was not the appropriate stage to evaluate the merits of such a claim, Ms Sia's position would not be factually unsustainable. Indeed, in relation to such a claim, there was a serious question to be tried.

34 Further, even if Ms Sia's position could be said to be inconsistent with that taken in the action by Mr Sia, this should not weigh against Ms Sia's case. Her position would not be prejudicial to the estate, but instead would serve to protect the assets of the estate. Admittedly, at some point, the estate might have to clarify its position. But I should highlight that unlike the beneficiaries in *Wong Moy* and the other cases, Ms Sia did not commence the action. Instead, Ms Sia merely sought to intervene in an action commenced by Mr Sia. In principle, I see no reason why the rule in *Wong Moy* should not be applicable to provide a basis for a beneficiary of the estate to be added to proceedings so as to protect or recover assets of the estate. More importantly, I see no reason to consider the case purely on the basis of the claims and remedies as originally pleaded by Mr Sia. If a proprietary claim might have been sought by Ms Sia should she have started the proceedings as a beneficiary, with the appropriate relief so as to protect an asset of the estate, such matters may be considered by the court.

35 To sum up, in relation to the second point contended by Mr Yong's counsel, I would not characterise the Statement of Claim as one disclosing purely pecuniary reliefs. Instead, the action is one giving rise to both personal and proprietary claims in relation to the money belonging to the estate. In relation to the share in the Emerald Garden property, a proprietary claim with consequential relief is supportable based on the material facts as pleaded in the Statement of Claim.

36 Moving on, I go to the third point raised by Mr Yong’s counsel that there were no special circumstances so as to allow Ms Sia to intervene. In *Wong Moy*, it is said that “special circumstances” should not be read too inflexibly as it may lead to injustice, and are not confined to cases where the personal representative has defaulted in acting. All the circumstances of the case should be considered including the nature of the assets, the position of the personal representative and the reason for the default of the personal representative in taking action. It may be pertinent to see whether the circumstances made it impossible, or at least seriously inconvenient for the representatives to take proceedings: see [24] and [28]. In *Carolyn Fong*, the High Court added that establishing “special circumstances” is a fact-specific inquiry which includes taking cognisance of factors such as the executor’s willingness or inability to sue, the merits of the case and the potential loss to the beneficiaries: see [9].

37 Having considered the facts and circumstances, I agreed with Ms Sia’s counsel that there were indeed special circumstances present in this case which justified adding Ms Sia in the action to protect the assets of the estate. Ordinarily, the proper party to obtain a remedy on behalf of and for the benefit of the estate is the executor (*Carolyn Fong* at [7]). In this case, pending the resolution of the probate proceedings, the estate was without any executor, and thus, any personal representative. Indeed, the application for substitution taken out by Ms Sia and Mr Chua had failed. As such, it was impossible for the estate to take any action to protect its position in the action, and to protect the assets of the estate, should Mr Yong take any action which might be prejudicial to the estate such as dissipating the assets in Singapore so as to frustrate the recovery of any of the assets of the estate. There was also added need for Ms Sia to intervene, given that the nature of some of the assets was money.

38 In light of the foregoing, I found that there were special circumstances present in this case which warranted Ms Sia’s intervention. On the mechanism for doing so, O 15 r 6(2)(b)(ii) of the ROC states:

Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just ... or on application –

...

(b) order any or the following persons to be added as a party, namely:

...

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

39 As a beneficiary of the estate, Ms Sia was seeking to protect the assets of the estate which formed the subject matter of the action. The questions between Ms Sia and Mr Yong as to whether any assets belonged to the estate, and whether such assets required any interim protection were related to the action by Mr Sia. Based on all of the discussion above, it was just and convenient under Order 15 rule 6(2)(b)(ii) of the ROC to add Ms Sia as a second plaintiff in the action.

40 I should add that in order to grant leave for Ms Sia to intervene, I also had to lift the stay order. Relying on *Rotary Engineering Ltd and others v Kioumji & Eslim Law Firm and another and another appeal* [2017] 1 SLR 907 (“*Rotary Engineering*”) at [24], Ms Sia’s counsel submitted that a court is empowered to lift a stay it made where the premise of the stay no longer holds. *Rotary Engineering* involved a stay of proceedings on the ground of

forum non conveniens. There, the Court of Appeal held that the effect of the stay was suspensory only such that the court remains seised of the proceedings and may in principle lift the stay at a later stage. In this case, the stay order was granted so that the question of who the rightful executor of the estate should be would be litigated in the probate proceedings. There can be no doubt that the court is empowered to lift the stay order. As it had become necessary for Ms Sia, the beneficiary of the estate to take steps to protect the estate in the action, it was appropriate for the court to lift the stay. As stated above at [4], the stay was lifted for limited purposes only.

41 To end off, I should deal with Mr Yong's counsel's argument that this was a re-litigation of the application for substitution, and by the operation of *res judicata*, the application to intervene should not be permitted. I found this submission to be misconceived. The two applications were brought on wholly different bases. The application for substitution was meant for Ms Sia and Mr Chua to be substituted as the plaintiff in the action to proceed with the litigation, and was premised on them being the rightful executors of the estate. This application to intervene was entirely different, and was premised on Ms Sia's interest as a beneficiary of the estate, so as to protect the assets of the estate. As such, the factual and legal issues in the two applications were completely different, and *res judicata* did not operate to bar the application to intervene.

The interim injunction application

The parties' cases

42 Turning to the interim injunction application, again, Ms Sia's counsel relied on *Wong Moy*, and sought an interim injunction similar to that granted in there: see [26] above. Ms Sia's counsel characterised the interim injunction

granted in *Wong Moy* as a Mareva injunction, and sought an order prohibiting Mr Yong from disposing of his assets in Singapore up to the amount of \$1,255,184 to protect the anticipated fruits of the litigation.⁴⁰

43 Out of the four requirements to be satisfied in order to obtain a Mareva injunction, the parties primarily clashed over (1) whether there was a good arguable case, and (2) whether there was a real risk of Mr Yong dissipating his assets.

44 On the first issue, Ms Sia’s counsel argued that there was a good arguable case of undue influence against Mr Yong. After all, it was not seriously disputed that Mr Sia had placed tremendous trust and confidence in Mr Yong.⁴¹ It was also clear that Mr Sia had made a series of disadvantageous transactions in favour of Mr Yong during the course of their relationship, which included the transfer of large sums of money to Mr Yong, as well as the transfer of Mr Sia’s share of the Emerald Garden property to Mr Yong. Proprietary remedies would be available.

45 On the next issue, Ms Sia’s counsel submitted that there was “solid evidence” to show a real risk of Mr Yong dissipating his assets in Singapore.⁴² In the midst of the action, Mr Yong had disposed of the 13/20 share of the Emerald Garden property to his daughter, Ms Yong, for the sum of \$942,500.⁴³ Given the facts and circumstances surrounding the case, as well as the transfer to Ms Yong, this element had been established.

⁴⁰ Ms Sia’s written submissions at para 93.

⁴¹ Ms Sia’s written submissions at paras 65 to 78.

⁴² Ms Sia’s written submissions at para 79.

⁴³ Ms Sia’s written submissions at para 80; Ms Sia’s 3rd Affidavit at p 187.

46 In response, Mr Yong’s counsel argued that there was no good arguable case against Mr Yong. Mr Sia did not specifically plead undue influence. With regard to the claim in relation to the Emerald Garden property, Mr Sia’s pleaded position and the position taken by Ms Sia were inconsistent.⁴⁴ Next, there was no “solid evidence” which pointed to a real risk of Mr Yong dissipating his assets.⁴⁵ As the action did not involve any proprietary claim over Mr Yong’s share of the Emerald Garden property, there was no basis for Ms Sia to find fault with Mr Yong’s disposal of his share in the Emerald Garden property.⁴⁶ In any case, the transaction between Mr Yong and Ms Yong was done at arm’s length, along with independent property valuation and legal advice.⁴⁷ It was a final resort to raise funds for litigation, and that this was a legitimate purpose.⁴⁸ There was nothing untoward about the transaction.

My decision

Mareva injunction or proprietary injunction

47 As set out above, Ms Sia’s counsel characterised the interim injunction in *Wong Moy* as a Mareva injunction, and both sides proceeded to argue whether the requirements for a grant of a Mareva injunction had been established. In relation to the application to intervene, Mr Yong’s counsel highlighted the distinction between personal and proprietary claims. This was to support his contention that the Statement of Claim did not contain proprietary claims, and therefore Ms Sia was not entitled to intervene as a

⁴⁴ Mr Yong’s written submissions at paras 81 to 91.

⁴⁵ Mr Yong’s written submission at para 95.

⁴⁶ Mr Yong’s written submissions at para 96(1).

⁴⁷ Mr Yong’s written submissions at para 96(2).

⁴⁸ Mr Yong’s written submissions at paras 96(3) and 96(4).

beneficiary. However, Mr Yong’s counsel did not go further to articulate the dichotomy between two types of injunctive relief available – the Mareva injunction and the proprietary injunction – which serve to support personal and proprietary claims respectively, and whether a beneficiary is entitled to pursue the former relief. It is to this question that I now turn.

48 As explained by the Court of Appeal in *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 (“*Bouvier*”) at [144], a proprietary injunction is a relief that “fastens on the specific asset” in which the plaintiff asserts a proprietary interest, and prevents the defendant from dealing with that asset and its traceable proceeds. The applicable test would be that set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (“*American Cyanamid*”). In contrast, as set out in *Bouvier* at [143], a Mareva injunction is granted in support of a claim for personal relief, which does not latch on to any specific asset of the defendant, but prevents the defendant from disposing of his assets beyond a certain value to defeat a possible judgment that may be rendered against him.

49 In preparing these grounds of decision, I have come to the view that the interim injunction in *Wong Moy* was proprietary in nature. This issue was not specifically discussed in either in *Wong Moy* or the High Court grounds of decision in *Wong Moy (administratrix of the estate of Theng Chee Khim, deceased) v Soo Ah Choy* [1995] 3 SLR(R) 822. I noted that while the interim injunction in *Wong Moy* appeared to prohibit the respondent from disposing of her assets up to a value of \$3.5m, the order also specified that the assets include “the net sale money of the properties”.

50 To reiterate, the legal proposition in *Wong Moy* is that under special circumstances, a beneficiary of an estate may take proceedings to protect the assets of an unadministered estate. I note that in *Omar*, the High Court cited from *Re Atkinson* that “any beneficiary would be entitled to the remedy in a court of equity to which the estate was entitled”. Expanding on this, in *Ching Chew Weng Paul*, the High Court concluded that a beneficiary was not confined to seeking declaratory reliefs, and may claim *any* reliefs on behalf of the estate (at [58]-[59]). While *Omar* and *Ching Chew Weng Paul* seemed to suggest that a beneficiary may claim *any* reliefs on behalf of the estate, this should be circumscribed by a requirement that the reliefs must be in support of proprietary claims to protect and preserve the assets of an estate.

51 To the extent that Ms Sia’s counsel relied on *Wong Moy* to seek to protect the entire benefit which might accrue to the estate by virtue of an anticipated monetary judgment flowing from a successful claim for personal relief, this was misplaced. Ms Sia was not in the position to protect the fruits of litigation which might accrue to the estate out of purely personal claims. It was open to Ms Sia, however, to rely on *Wong Moy* to seek an interim injunction to protect the assets of the estate. As I shall explain shortly, in my view, Ms Sia had satisfied the test for doing so.

Applicable legal test for a proprietary injunction

52 Before me, the parties argued the twin issues whether there was a good arguable case, and whether there was a real risk of dissipation of the assets. In my decision on 29 November 2017, I accepted that both elements had been established. Given my view of the nature of the interim injunction in *Wong Moy*, and therefore, the nature of relief that Ms Sia could avail herself of, the *American Cyanamid* principles would be applicable instead.⁴⁹ Therefore, the

two key questions should be whether there was a serious question to be tried, and whether the balance of convenience favoured the grant of such an injunction.

53 I am mindful that parties did not provide submissions based on the *American Cyanamid* principles. However, I found their arguments in relation to a Mareva injunction relevant to the two key requirements to be met under *American Cyanamid*. Also, the parties had thoroughly ventilated the pertinent facts and circumstances of the case. Therefore, I shall explain how my findings relate to the *American Cyanamid* principles, and expand on the reasons for my findings on 29 November 2017.

54 First, there is a serious question to be tried as long as the applicant can show that it has “a seriously arguable case that [the applicant has] a proprietary interest”: *Bouvier* at [151]. As I stated in my findings on 29 November 2017, there was a good arguable case made out by Ms Sia. For the same reasons, I am of the view that Ms Sia had established that there was a seriously arguable case that the estate has a proprietary interest which should be protected.

55 The key cause of action relied on was undue influence exercised by Mr Yong to Mr Sia’s detriment. Broadly speaking, to establish presumed undue influence (which Ms Sia’s counsel argued on), a plaintiff must show the existence of a particular relationship in which one party reposed trust and confidence in the other party, and that the transaction in question is not readily explicable by the relationship of the parties: see *First Asia Capital*

⁴⁹ In *Wong Moy*, the interim injunction was originally granted on an *ex parte* basis on 30 August 1995, and reinstated by the Court of Appeal. The minutes of the hearing on 30 August 1995 show that the parties’ arguments were based on the *American Cyanamid* principles.

Investments Ltd v Société Générale Bank & Trust and another [2017] SGHC 78 at [83].

56 On the requirement of a relationship of influence, the Statement of Claim stated that when Mr Sia faced marital problems, suffered from ill health and was abandoned by his family, he confided in and stayed with Mr Yong over a period of time from 2010 to 2012. The same position was stated by Mr Sia in his statutory declaration of 19 June 2015. In Mr Yong’s Defence, as well as in his various affidavits filed for the action, Mr Yong did not deny that Mr Sia placed trust and confidence in him, including in relation to his financial affairs. The fact of a relationship of trust and confidence was not seriously disputed.

57 As for the transactions, within less than two years between 2010 to 2012, Mr Sia transferred a sum of \$1,192,090.80 to Mr Yong. He also transferred the share of the Emerald Garden property to Mr Yong for no consideration. At the end of the day, it would appear that these assets formed the bulk of what Mr Sia owned. By the time Mr Sia commenced the action, he could not afford to pay for legal representation, and instead had to resort to obtaining legal aid. There was evidence to support the case that the transactions were disadvantageous to Mr Sia.

58 Of course, Mr Yong’s explanations for these transactions were that these were gifts, or transfers made willingly by Mr Sia for various reasons. In due course, the court would have to evaluate the parties’ positions. Admittedly, the Statement of Claim is not drafted very clearly, and might well have to be amended. For this reason, Mr Yong’s counsel contended that the cause of action of “undue influence” was not specifically pleaded. Notwithstanding the lack of clarity in the Statement of Claim, I was of the

view that sufficient material facts had been disclosed so as to give Mr Yong notice that the gravamen of the claim against him included undue influence. As for the contention by Mr Yong's counsel that Ms Sia has taken a position different from Mr Sia in relation to the Emerald Garden property, I have already set out my views above at [33]. Any inconsistency did not detract from the strength of the cause of action based on undue influence as disclosed by the material facts.

59 By the above, I found that there was a seriously arguable case of undue influence such that the estate has a proprietary claim in the assets, being the money and the share in the Emerald Garden property.

60 In considering the balance of convenience, whether there was a real risk of Mr Yong dissipating his assets in Singapore was a significant consideration. Based on the facts and circumstances, I found that that there was a real risk that Mr Yong would dissipate his assets in Singapore, and that this would in turn frustrate the recovery of the assets of the estate.

61 It was undisputed that Mr Yong had disposed of the 13/20 share in the Emerald Garden property for the sum of \$942,500. This would include the 7/20 share transferred from Mr Sia to Mr Yong. Contrary to the submission by Mr Yong's counsel that there was nothing untoward about this transaction, I was gravely concerned by the circumstances surrounding the transaction.

62 While it is true that Mr Sia did not specifically stake a proprietary claim for the 7/20 share in the Emerald Garden property, it was an asset involved in the proceedings. As Ms Sia's counsel pointed out, prior to the transaction, Mr Sia had tried to take a loan from United Overseas Bank using his share of the Emerald Garden property as security. The bank rejected him

because of the claims which involved the Emerald Garden property in the action and the probate proceedings. Indeed, Mr Yong used this to explain that “he had no choice but to sell it” to his daughter.⁵⁰ However, in my view, this background should have alerted Mr Yong to the fact that there might be concerns about any dealings with his share in the Emerald Garden property. Therefore, I disagreed with Mr Yong’s counsel that by so acting, Mr Yong was not seeking to dissipate his assets, or that there was any risk that he would do so. In general, the liquidation of immovable property raises a degree of concern as to a risk of dissipation of assets, and this case was no different.

63 Further, I was not convinced by Mr Yong’s explanation that he sold his share of the Emerald Garden property for the sole reason of raising funds for litigation purposes. According to Mr Yong, funds were required to pay for the legal costs of the action and the probate proceedings.⁵¹ However, when Mr Yong attempted to obtain a bank loan for this purpose, he sought to raise a substantially lower amount of only \$240,000. This attempt was unsuccessful.⁵² No reasons were provided as to why the funds needed for Mr Yong’s litigation of the action and the probate proceedings suddenly ballooned to close to four times the initial amount. It was also troubling that Mr Yong would dispose of the entire 13/20 share in the Emerald Garden property, rather than his original 6/20 share. Taking the consideration of \$942,500 for transfer of the 13/20 share, the transfer of the 6/20 share would have been worth around \$435,000, which would have been almost double the \$240,000 which Mr Yong originally thought was necessary.

⁵⁰ Ms Sia’s written submissions at para 85; Mr Yong Wai Poh’s 8th Affidavit dated (“Mr Yong’s 8th Affidavit”) 21 June 2016 at para 65(3).

⁵¹ Mr Yong’s 8th Affidavit at para 65(3).

⁵² Mr Yong’s 8th Affidavit at para 65(2).

64 In relation to the transaction, I placed little weight on the fact that there appeared to be a proper valuation and legal advice underpinning it. Given that Ms Yong had to obtain a bank loan, it would probably have been necessary for them to do so.

65 In my view, the transaction posed a threat to the assets of the estate in two ways. First, given that Mr Sia's claims centred on the recovery of money from Mr Yong, the fact that Mr Yong has disposed of the real asset into a large sum of money increased the difficulty of tracking and tracing the money belonging to Mr Sia (and the estate), and facilitated the disposal of the money belonging to Mr Sia (and the estate). Second, Mr Yong's need for such a huge amount of money caused concerns as well. If it were true that Mr Yong required the sum of \$942,500 for legal costs, this suggested that Mr Yong was expending his assets (and assets which might be due to the estate) at a very fast pace. After all, Mr Yong had received more than \$1,000,000 from Mr Sia about five years ago. He claimed that he lived a modest lifestyle, and appeared to be getting income from at least two sole proprietorships. This was a fairly alarming situation.

66 Based on the foregoing, I was of the view that there was a real risk of dissipation of any remaining assets of the estate which remained in the hands of Mr Yong, making it difficult for the estate to recover such assets. On a balance of convenience, a proprietary injunction should be granted. The fact of the matter is that given the tussle between Mr Yong and Ms Sia (and Mr Chua) over the rightful executor(s) of the estate, the estate was not able to act to protect its position in full. Given the context, the factors weighed in favour of the grant of an interim injunction so as to secure the assets of the estate.

67 For completeness, I should deal with the contention by Mr Yong's counsel that there had been undue delay on Ms Sia's part in filing the interim injunction application, and that it was not a *bona fide* application. It was pointed out that the application was lodged close to three months after discovering Mr Yong's disposal of the 13/20 share in the Emerald Garden property, and was meant to oppress Mr Yong. At the same time, Mr Yong's counsel contended that Ms Sia was delaying the probate proceedings. However, Ms Sia explained that having lost the application for substitution, she had to consider the merits of the present applications carefully. She also had to take into account her financial position. I did not find undue delay on Ms Sia's part in taking the present applications such that she should be denied relief. As for concerns about the progress of the probate proceedings, it was incumbent on both parties to ensure that they proceed expeditiously.

Scope of the interim injunction

68 I turn to the terms of the interim injunction order granted.

69 I note that the interim injunction in *Wong Moy* was crafted in wide terms up to the value of \$3.5m, with the respondent's assets to include the balance of the proceeds from the sale of the two properties. The order did not specify any bank account, any repository of the balance sale proceeds or any asset which might represent the balance sale proceeds.

70 I ordered that Mr Yong be prohibited from disposing of his assets in Singapore up to the value of \$1 million only. I had capped this amount, and not taken into account the sum of \$227,000 which Ms Sia's counsel submitted to be the profit made by Mr Yong arising from the transfer of Mr Sia's share in the Emerald Garden property, and which he specifically asked to be included in computing the value to be stipulated in the order. This was in

recognition of the fact that Ms Sia's interest was to protect the assets of the estate, and not to protect a pure monetary claim. The sum of \$1 million was meant to broadly represent the value of the assets of the estate which had flowed to Mr Yong, and in any event, Mr Yong had admitted that he received around that amount from Mr Sia.

71 However, rather than stating that Mr Yong's assets to be covered by the interim injunction would include the full sale proceeds of the 13/20 share of the Emerald Garden property, I should have stated that only the sale proceeds of the 7/20 share of the same (which would translate to about \$507,500) would be included. In line with the discussion above, it would be the balance sale proceeds of the 7/20 share which fall to be protected as assets to be recovered for the estate.

72 Further, I had included the assets of Mr Yong's businesses within the interim injunction. This was because of the allegation by Mr Sia that some of the transfers of money were purportedly for investments, and as purported "loans" to Mr Yong's maid business: see [11] above.

Conclusion

73 In conclusion, I granted the applications, with costs to be reserved.

Hoo Sheau Peng
Judge

Lok Vi Ming SC, Lee Sien Liang Joseph, Tang Jin Sheng, Tan Jia Hui and Ng Hian Pheng Evans (LVM Law Chambers LLC) for the

Sia Chin Sun v Yong Wai Poh

[2018] SGHC 142

non-party;
Christopher Anand s/o Daniel and Ang Si Yi (Advocatus Law
LLP) for the defendant.