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

[2022] SGHC 80

Originating Summons No 849 of 2021
(Summons No 4226 of 2021)

In the Matter of Section 12A of the International Arbitration Act (Cap 143A)

And

In the Matter of Order 69A, Rule 3 of the Rules of Court (Cap 322, Rule 5)

And

In the Matter of an Arbitration Agreement between Pengrui Leasing (Tianjin) Co Ltd and Milaha Explorer Pte Ltd

Between

Pengrui Leasing (Tianjin) Co Ltd

… *Applicant*

And

Milaha Explorer Pte Ltd

… *Respondent*

GROUNDS OF DECISION

[Arbitration — Interlocutory order or direction — Court’s power — Granting of injunction order]
[Injunctions — Mareva injunction]
[Injunctions — Discharge — Full and frank disclosure]

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v
Milaha Explorer Pte Ltd

[2022] SGHC 80

General Division of the High Court — Originating Summons No 849 of 2021 (Summons No 4226 of 2021)
Lai Siu Chiu SJ
23 August, 18 October 2021

8 April 2022

Lai Siu Chiu SJ:

Introduction

1 Pengrui Leasing (Tianjin) Co. Ltd. ("Pengrui") applied by way of an *ex parte* Originating Summons No 849 of 2021 ("the OS") for a Mareva injunction against Milaha Explorer Pte. Ltd. ("Milaha"), prohibiting the latter, *inter alia*, from removing from Singapore, dealing with or diminishing the value of its assets which are in Singapore up to the value of US$23,760,473 (the "Sum"). This included the vessel "Milaha Explorer" (the "Vessel"), the property and business of Milaha's business as well as any money in its Hongkong and Shanghai Banking Corporation Limited bank accounts numbered XXX178 (the "HSBC Account").

2 On 26 August 2021, the court heard and granted the Mareva injunction in terms of the OS (the "Injunction Order"). Milaha subsequently applied by

way of Summons No 4226 of 2021 (the "Application") to set aside the Injunction Order. The court heard and dismissed the Application.

3 Dissatisfied with the court's decision, Milaha filed a notice of appeal by way of Civil Appeal No 118 of 2021 ("CA 118") to the Appellate Division of the High Court. This was procedurally incorrect, as the notice of appeal should have been filed in the Court of Appeal in accordance with s 29C(2) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), read with para 1(*c*) of the Sixth Schedule to the SCJA.

4 Realising its error, Milaha applied to transfer CA 118 to the Court of Appeal. Pengrui objected to this application. Milaha's application was dealt with by the appellate court, which directed that CA 118 be transferred to the Court of Appeal. It was accordingly renamed Civil Appeal No 2 of 2022 ("CA 2").

5 In the light of CA 2, the court now sets out its reasons for making the Injunction Order and dismissing the Application.

The facts

6 The facts set out below are extracted from the affidavits and exhibits filed in the OS. Pengrui's version of events is found in the affidavits filed by Zhang Xiao Cong ("Zhang"), who is also known as Watson, in particular, his first and third affidavits ("Zhang's first affidavit" and "Zhang's third affidavit" respectively). Milaha's version of events is detailed in the sole affidavit filed by Frederick Charles Chambers ("Chambers").

7 Pengrui is a company incorporated in the People's Republic of China and is engaged in the business of the ownership and leasing of ships.[1] Milaha is incorporated in Singapore and it principally provides ship-chartering and oilfield service equipment rental services.[2] Milaha owns the Vessel, a Singapore-registered self-propelled offshore construction jack-up barge that was built in 2016.[3] Milaha's ultimate beneficial owner is a Qatari company, Qatar Navigation Q.P.S.C. ("Qatari Navigation") which is listed on the Qatari stock exchange.[4]

8 On 31 May 2021, Milaha entered into a memorandum of agreement (the "MOA") under the amended Norwegian Saleform 2012 with Pengrui, whereby it agreed to sell the Vessel to Pengrui at the price of US$26m (the "Sale Price").[5]

9 The relevant clauses under the MOA are in brief terms, as follows:

(a) under clause 2, a deposit of 20% of the purchase price amounting to US$5.2m ("the Deposit") was payable to Milaha within ten banking days after execution of the MOA by the parties which would be 15 June 2021;

(b) under clause 3, a payment of the balance purchase price (together bunkers, lubrication and hydraulic oil and other expenses) was due on delivery of the Vessel;

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[1] Zhang Xiao Cong's affidavit dated 3 September 2021 ("Zhang's 1st Affidavit") at [6].

[2] Zhang's 1st Affidavit at p 33 (exhibit ZXC-1, ACRA search on Milaha).

[3] Zhang's 1st Affidavit at [7].

[4] Milaha's Written Submissions at [118].

[5] Zhang's 1st Affidavit at pp 101–113 (exhibit ZXC-1, MOA).

(c) under clause 4, Pengrui had the right by 10 June 2021, to inspect the Vessel's classification records and decide whether they were acceptable;

(d) under clause 5, the Vessel would at Milaha's option, be delivered to Pengrui at a safe anchorage at Lube Freeport, Equatorial Guinea, Africa. Notice of Readiness ("NOR") would not be tendered by Milaha before 28 June 2021 while the cancelling date would be 12 July 2021;

(e) under clause 8 ("the completion clause"), completion of the sale of the Vessel would take place when in exchange for the balance purchase price, Milaha provided inter alia the following documentation:

(i) three copies of the original bill(s) of sale in a form recordable in Pengrui's nominated flag state free of encumbrances, maritime liens or any other debts;

(ii) a class maintenance or declaration of class certificate issued within three banking days prior to delivery;

(f) under clause 11, the Vessel would be at Milaha's risk until she was delivered to Pengrui;

(g) under clause 13 ("the buyer's default clause"), should the deposit not be paid in accordance with clause 2, Milaha had the right to cancel the MOA immediately and Pengrui would be liable to pay compensation to Milaha. Should the balance price not be paid in accordance with clause 3, Milaha would be entitled to cancel the MOA and forfeit the deposit together with any interest earned thereon;

(h) under clause 14 ("the seller's default clause"), should Milaha fail to give NOR in accordance with clause 5 or fail to complete the legal transfer under clause 8, Pengrui had the option to cancel the MOA in which event the deposit (with accrued interest) would be released to Pengrui immediately; and

(i) under clause 16 ("the arbitration clause"), any dispute between the parties would be referred to arbitration in London.

10 By way of an addendum dated 8 July 2021 ("Addendum No 1"),[6] a new clause 26 was added to the MOA. Clause 26 states:

> Once [Milaha] have received the copy of the conditional payment SWIFT MT199, [Milaha] shall sail the Vessel from port of Limbe in Cameroon to port of Luba in Equatorial Guinea and deliver the Vessel to [Pengrui] in Luba, and [Milaha] shall also before delivery provide the copy of the delivery documents[7] required by [Pengrui] including but not limited to the class certificates, bill of sale etc, in accordance with the MOA for [Pengrui's] review and acceptance after receipt of the conditional payment SWIFT MT199.

Amendments were also made to clauses 3 and 5 of the MOA.

11 Pengrui did not pay the deposit by 15 June 2021 due to "procedures involved with foreign exchange control and anti-money laundering"[8] but eventually paid the deposit on 27 June 2021. Although Milaha was entitled to exercise the buyer's default clause under clause 13 of the MOA, it did not do so. Instead, Milaha accepted the late payment as reflected in an email from

[6] Zhang's 1st Affidavit at p 119 (exhibit ZXC-1, Addendum No 1).

[7] See [9(e)] *supra*.

[8] Zhang's 1st Affidavit at [11].

Milaha's agent Axis Marine Services ("Axis Marine") to Pengrui's broker Wang Zuo Peng James ("Wang") dated 30 June 2021, confirming receipt of the deposit.[9]

12 On 28 July 2021, Milaha tendered the two days' advance NOR via an email from Chambers[10] to Zhang. In his email reply to Chambers on the same day, Zhang rejected the NOR. Zhang pointed out that in the absence of a clean class certificate, the NOR was invalid.[11]

13 In his first affidavit, Zhang provided the following reasons explaining why he alleged that the Vessel did not have a "clean class certificate":[12]

(a) In order for the Vessel to be delivered in accordance with the MOA, clause 11 requires that:

> **11. Condition on delivery**
>
> … the Vessel shall be delivered free of cargo and free of stowaways with her Class maintained without condition/recommendation*, free of average damage affecting the Vessel's class, and with her classification certificates and national certificates, as well as all other certificates the Vessel had at the time of inspection, valid and unextended without condition/recommendation by the Classification Society or the relevant authorities at the time of delivery.
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> …

[9] Zhang's 1st Affidavit at p 118 (exhibit ZXC-1, Email from Wang dated 30 June 2021).

[10] Zhang 1st Affidavit at p 122 (exhibit ZXC-1, Email from Chambers dated 28 July 2021).

[11] Zhang 1st Affidavit at p 121 (exhibit ZXC-1, Email from Wang dated 28 July 2021).

[12] Zhang's 1st Affidavit at [33]–[46].

(b) Since 7 June 2021, Zhang had repeatedly requested for documentation to ascertain and confirm that the Vessel's class was clean, to no avail.[13] In mid-July 2021, Pengrui was informed by a third party that an underwater survey conducted in the presence of the classification society, American Bureau of Shipping ("ABS"), revealed major issues concerning a torn or cracked spud leg ("the spud leg issue").[14] Apparently, on 30 July 2021, ABS had made repair recommendations on the spud leg issue. Zhang submitted that for the ABS' recommended repairs to be made, this required a minimum of 2-3 weeks, not including ABS' subsequent survey and finding clearing of the Vessel.[15] These recommendations were never disclosed to Pengrui.[16]

(c) On 5 August 2021, Milaha sent an ABS class certificate issued on 30 July 2021[17] ("the ABS Certificate") to Pengrui, which stated:

> This is to certify that the above has been surveyed in accordance with the Rules of this Bureau and entered in the Record with the Class:

However, page 4 of the ABS Certificate also stated:

> THIS CERTIFICATE IS NOT A CONFIRMATION OF CLASS.

(d) Zhang was therefore of the view that the ABS Certificate was not a "Declaration of Class" or a "Class Maintenance Certificate"

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[13] Zhang's 1st Affidavit at [34]–[35].

[14] Zhang's 1st Affidavit at [40(a)].

[15] Zhang's 1st Affidavit at [40(e)].

[16] Zhang's 1st Affidavit at [41].

[17] Zhang's 1st Affidavit at p 147 (exhibit ZXC-1, ABS Class Certificate).

> stipulated under clause 8(a)(v) as set at [9(e)] above. Pengrui's view was that the requisite class certificate was not tendered by Milaha three days before delivery of the Vessel and the NOR tendered on 28 July 2021 was therefore invalid.

14 Chambers responded the next day asserting that Zhang's rejection of the NOR was groundless and not accepted. He added that Milaha expected to receive the MT199 confirmation within Qatar business hours that same day, in order for Milaha to commence departure protocols and sailing to Luba.[18]

15 On the morning of 3 August 2021, Zhang was surprised to receive from Chambers an email attaching another addendum dated 31 July 2021 ("Addendum No 2").[19] Chambers requested Zhang to sign Addendum No 2 as Milaha had already signed it.

16 Addendum No 2 contained amendments to clauses 1, 3, 5 and 8 of the MOA, the deletion of clause 26 as per Addendum No 1[20] and two new clauses 26 and 27.

17 The new clause 26 read as follows:

> When the Vessel is physically ready for sailing from Port of Limbe in Cameroon to port of Luba in Equatorial Guinea. [Milaha] shall give [Pengrui] a three calendar days in advance, written notice of sailing.

The new clause 27 stated:

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[18] Zhang's 1st Affidavit at p 120 (exhibit ZXC-1, Chambers' email dated 29 July 2021).

[19] Zhang's 1st Affidavit at p 124 (exhibit ZXC-1, Chambers' email dated 3 August 2021).

[20] See [10] *supra*

> Within one banking (1) day of [Milaha's] issuing the notice of sailing, [Pengrui] shall share with [Milaha] a copy of the conditional payment SWIFT MT 199 for the balance of the Purchase Price. Once [Milaha] have received the copy of the conditional payment SWIFT MT199, [Milaha] shall sail the Vessel from Port of Limbe in Cameroon to port of Luba in Equatorial Guinea and deliver the Vessel to [Pengrui] in Luba.

18 As far as Zhang was concerned, Addendum No 2 was invalid and had no effect. Prior to his receipt of the said document, there were no discussions or negotiations for a further extension of time for the NOR and the cancelling date.[21] Zhang's position was that the cancelling date had already passed. Hence, pursuant to the seller's default clause of the MOA, he gave Notice of Cancellation on 4 August 2021 by email to Chambers and requested a refund of the deposit.[22]

19 On 9 August 2021, Pengrui received a letter from Milaha dated 8 August 2021 ("Milaha's 8 August letter").[23] The letter stated that a meeting between Chambers and Zhang had taken place on 2 August 2021 ("the 2 August 2021 meeting") where for good and valuable consideration, the parties had agreed to vary the terms of the MOA on the following terms ("the amended MOA"):

(a) the sale price would be reduced to US$23m from US$26m;

(b) issues of Class Certificate were resolved;

(c) provisions of Addendum No 1 in respect of clauses 3 (Payment) and clauses 5 (NOR); and

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[21] Zhang's 1st Affidavit at [22].

[22] Zhang's 1st Affidavit at [23].

[23] Zhang's 1st Affidavit at p 128 and p 133 (exhibit ZXC-1, Pengrui's email dated 4 August 2021 and Milaha's letter dated 8 August 2021).

(d) cancelling date extended to 12 August 2021.

The letter further stated that Pengrui had purportedly reneged and refused to sign Addendum No 2, which was a mere formality, that Milaha had signed and sent to Pengrui on 3 August 2021. Milaha accused Pengrui of having no intention to perform the amended MOA. Milaha requested Pengrui to confirm by 9 August 2021, 7.00am Doha time that it intended to perform the amended MOA, failing which Pengrui would be in breach of the terms (as amended).

20 Zhang deposed he had no knowledge of, let alone attended, the 2 August 2021 meeting. He asserted that on that day, he was in Nantong, China, for a business meeting during the day that was completely unrelated to this matter. On the night of 2 August 2021, he attended a dinner and entertainment session with his client. He did not attend any meeting with Chambers on 2 August 2021. Neither did he attend any such meeting the day before or after.[24]

21 Consequently, on 10 August 2021, Pengrui responded to Milaha's 8 August letter ("Pengrui's 10 August letter"). Pengrui, *inter alia*, denied there were any discussions between Zhang and Chambers or that there was an amended MOA or that there was the 2 August 2021 meeting. Pengrui repeated its demand for the return of the deposit.[25]

22 To reinforce Zhang's disavowal of the 2 August 2021 meeting, Pengrui procured an affidavit from its broker Wang which was filed on 7 October 2021.

[24] Zhang's 1st Affidavit at [24].

[25] Zhang's 1st Affidavit at [26].

The contents of Wang's affidavit will be dealt with later[26] when the court considers Milaha's version of events. At this juncture, it suffices to say that Wang supported Zhang's claim that Zhang did not have any discussion(s) or meeting with Chambers on 2 August 2021.

23 Milaha responded to Pengrui's 10 August letter on 12 August 2021 ("Milaha's 12 August letter"),[27] raising further allegations against Pengrui (which Zhang asserted were untrue) and which again referred to the 2 August 2021 meeting. Zhang was not only alarmed that in the letter Milaha stated that it had exercised the buyer's default clause to cancel the MOA, but also by the following statement:[28]

> Further, TAKE NOTICE that pursuant to Clause 13 of the MOA, Sellers are now free to sell the Vessel to other buyers.

24 Pengrui through Zhang responded to Milaha's 12 August letter on 16 August 2021[29] denying the latter's allegations. In response to Milaha's statement that it had exercised the buyer's default clause, Pengrui replied as follows:

> As to paragraphs 8 and 9 of your letter, the Sellers have no entitlement whatsoever to cancel the MOA and have no right to exercise Clause 13 of the MOA. The Seller is reminded of the notice of cancellation given by the Buyer by email on 4 August 2021 which is reiterated in Buyer's letter of 10 August 2021 and demands the Sellers compliance with its obligations in Clause 14 of the MOA to immediately return the deposit to the Buyer with interest.

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[26] See [42] *infra*

[27] Zhang's 1st Affidavit at pp 136–138 (exhibit ZXC-1, Milaha's letter dated 12 August 2021).

[28] Zhang's 1st Affidavit at p 138 (exhibit ZXC-1, Milaha's letter dated 12 August 2021 at [9]).

[29] Zhang's 1st Affidavit at pp 140–141 (exhibit ZXC-1, Pengriu's letter dated 16 August 2021).

After consulting its lawyers, Pengrui filed the OS ten days later.

25 In support of the Application, Chambers filed his affidavit on 16 September 2021. Notably, Chambers is not an employee of Milaha but is a Vice President of Milaha Group, a Qatari Public Shareholding Company.[30]

26 Chambers alleged that Pengrui had failed to make full and frank disclosure of all material facts in applying for the Injunction Order and the same should therefore be discharged or set aside.[31]

27 Besides himself, Zhang and Wang, Chamber identified other parties relevant to this dispute as follows:[32]

(a) Ravi Kumar, Pengrui's broker from Axis Marine and

(b) Ankul Trivedi ("Ankul"), Milaha's broker from Lightship Chartering DMCC ("Lightship").

28 Chambers clarified that the discussions and negotiations that took place between the parties (himself and Zhang) on or around 29 July 2021 and on 2 August 2021 were by teleconference and not physical meetings.[33] Chambers categorized the alleged non-disclosures by Zhang into three categories:[34]

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[30] Chambers' Affidavit dated 8 September 2021 ("Chambers' Affidavit") at [1].

[31] Chambers' Affidavit at [8]-[9].

[32] Chambers' Affidavit at [10].

[33] Chambers' Affidavit at [13].

[34] Chambers' Affidavit at [14].

(a) with respect to the background and context of the parties' discussions and negotiations which resulted in Addendum No 1, including, critically, what the two days' advance NOR meant ("Non-disclosure 1");

(b) the purported issues with the Vessel's class and spud leg which were not concealed by Milaha but was discussed with Pengrui ("Non-disclosure 2"); and

(c) Zhang's blatant untruth in asserting that he did not attend the 2 August 2021 meeting which led to the agreed terms in Addendum No 2 ("Non-disclosure 3").

29 With respect to Non-disclosure 1, Chambers explained that Milaha decided to grant Pengrui some leeway in relation to the deadline to make payment of the deposit out of goodwill.[35] However, this also raised concerns about Pengrui's financial stability.[36] Pengrui had requested, on or about 8 July 2021, that Milaha deliver the Vessel at a later date, on 26 July 2021, citing the process of obtaining a loading permit in the Port of Luba as the reason. In addition to this, the heavy lift vessel, the "OHT Osprey" (the "OHT") that Pengrui had chartered for the Vessel was not ready to take the Vessel by the cancelling date of 12 July 2021.[37] Milaha however had grave concerns over the Vessel remaining at the agreed place of delivery in the Port of Luba, as there were reports of hijackings of vessels in the area.[38]

[35] Chambers' Affidavit at [19].

[36] Chambers' Affidavit at [20].

[37] Chambers' Affidavit at [23].

[38] Chambers' Affidavit at [24].

30 To minimize the risk of a hijack if the Vessel continued to remain at Luba for the duration requested by Pengrui, Milaha changed its obligation to tender NOR when the Vessel was at the Port of Limbe in Cameroon, so that the Vessel need not remain at Luba.[39]

31 The change led to the amendment of clauses 3 and 5, which were reflected in Addendum No 1. Instead of requiring that the delivery of the Vessel be made no later than ten banking days after the date that NOR had been given, the timeline was changed to two banking days. For clause 5, the cancelling date was changed from 12 July 2021 to 30 July 2021. Another change to clause 5 was on the giving of the NOR. The following words in the original clause 5

> When the Vessel is at the place of delivery and physically ready for delivery in accordance with this Agreement

was accordingly changed to:

> (b) When the Vessel is at the place of port of Limbe in Cameroon and physically ready for sailing from Port of Limbe in Cameroon to port of Luba in Equatorial Guinea, the Sellers shall give the Buyers a two-days in advance written Notice of Readiness for delivery.

32 Chambers explained that because clause 5 was amended to require an advance written NOR, Pengrui's obligation to pay the balance of the purchase price was amended from outright payment to Milaha's bank account following the tendering of the NOR to conditional payment by way of a SWIFT MT199.[40]

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[39] Chambers' Affidavit at [24].

[40] Chambers' Affidavit at [28].

33 As for Non-disclosure 2, Chambers deposed that around 12 July 2021, Milaha was informed by Ankul of Lightship that Pengrui would agree to accept the Vessel with ABS' class recommendation in return for a price reduction of US$750,000 from the purchase price of the Vessel.[41] Chambers responded on the same day, clarifying that there were no hull plates replacement or repair works required. As far as Chambers was aware, the issue raised by Pengrui was resolved in April 2021, even though it was still listed as outstanding by ABS in July 2021.[42] However, Pengrui refused to accept Chambers' explanation.[43]

34 Pengrui raised the class issue again on or about 22 July 2021 through an email from Lightship and requested for a discount to cover its current losses for expenses it incurred, which included the cost of chartering the OHT. In this regard, Zhang had emailed Wang on the same day,[44] indicating that Pengrui wanted Milaha to reduce the purchase price by around US$3 to US$4m.[45]

35 On 26 July 2021, Chambers forwarded (via Lightship) an excerpt of email received from ABS to Pengrui stating that the alleged hull issues had been considered closed.[46] As for the spud leg issue, Chambers understood that the repairs would not be significant. The repairs could be done while the Vessel was onboard the OHT. Bearing in mind the potential demurrage that Pengrui may incur in relation to the OHT, Chambers offered to bring forward the advance

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[41] Chambers' Affidavit at [31(a)].

[42] Chambers' Affidavit at [31(a)(ii)].

[43] Chambers' Affidavit at [31(a)(iii)].

[44] Zhang's 1st Affidavit at p 144 (exhibit ZXC-1, Email from Wang dated 22 July 2021).

[45] Chambers' Affidavit at [31(b)].

[46] Chambers' Affidavit at [31(c)].

NOR so that Pengrui could take the Vessel earlier to avoid incurring demurrage.[47] He was also prepared to give a discount on the purchase price to factor in the cost of repair of the spud leg.

36 As Chambers did not hear back from Pengrui on the proposal described in [35] above, Chambers notified Pengrui on 27 July 2021 that Milaha would be tendering the advance NOR on 28 July 2021 and upon receipt of MT199, Milaha would mobilise the Vessel to sail for delivery to the Port of Luba. Due to his concerns regarding Pengrui's financial stability, Chambers suggested extending the cancelling date to 5 August 2021.[48] To save time, Chambers prepared Addendum No 2, which reflected the extended cancelling date and was signed by Milaha. Chambers forwarded Addendum No 2 to Pengrui on 27 July 2021.[49]

37 Pengrui did not respond to Addendum No 2. Instead, on 28 July 2021, Pengrui issued a seller's notice of default and demanded the return of the deposit.[50] Chambers responded by inviting Pengrui to execute the Addendum No 2 and followed up with tendering the two days' advance NOR, which was rejected by Pengrui on the same day.[51]

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[47] Chambers' Affidavit at [31(d)].

[48] Chambers' Affidavit at [34].

[49] Chambers' Affidavit at [35].

[50] Chambers' Affidavit at [36].

[51] Chambers' Affidavit at [38].

38 On 29 July 2021,[52] parties attended a conference call. The persons present at the conference call were Chambers and Milaha's broker, Walter van Aarde, while Pengrui was represented by Zhang.[53] During the conference call, Milaha agreed to discount the purchase price of the Vessel by US$1m on condition that:

(a) Pengrui accepted the Vessel "as is";

(b) Pengrui would provide MT199 no later than 2 August 2021 at 2.00pm Doha time;

(c) the cancelling date would be extended to 5 August 2021; and

(d) the parties would execute a new addendum on 30 July 2021.

39 On 1 August 2021, Pengrui rejected Milaha's terms in [38] that had been relayed through Lightship and instead, asked for a discount of US$8m on the purchase price, together with a clean certificate of class and a new cancelling date. Chambers was not amenable to this, given the minor issues with the vessel and requested Lightship to arrange a conference call to discuss the next steps.[54] The conference call was arranged on 2 August 2021.

40 Chambers accused Zhang of misleading the court (both in his first affidavit and by Pengrui's counsel at the hearing of the OS) in denying Zhang's attendance at the 2 August 2021 meeting. Chambers confirmed that the

[52] Chambers' Affidavit at [39].

[53] Chambers' Affidavit at [39].

[54] Chambers' Affidavit at [40].

conference call was attended by himself, Walter van Aarde and one Mrs Nishana Macksood on behalf of Milaha, while Zhang represented Pengrui.[55]

41 Chambers confirmed that the parties agreed to the terms of the amended MOA at the 2 August 2021 meeting, which was also reflected in his email of the same date to Ankul/Lightship[56]. Apart from those set out at [19] above, the key terms agreed to were as follows:

(a) Addendum No 2 to be signed by 2 August 2021;

(b) Addendum No 2 to be dated 30 July 2021;

(c) Milaha would provide condition-free class certificate within 24 hours of the signed Addendum No 2;

(d) three calendar days' sailing notice to be provided by Milaha, provisionally on 7 August 2021;

(e) MT199 to be provided by Pengrui within one banking day of the sailing notice;

(f) one day's NOR to be provided by Milaha when in Luba provisionally 10 August 2021;

(g) intended delivery date to be 11 August 2021;

(h) class certificate to be dated 30 July 2021; and

[55] Chambers' Affidavit at [41].

[56] Chambers' Affidavit at p 68 (exhibit FC-1, email from Chambers dated 2 August 2021).

(i) balance payment of US$17.8m to be made on closing.

42 At this juncture, it would be appropriate to refer to Wang's affidavit that the court had earlier alluded to at [22] above. In his affidavit, Wang deposed that he was the broker who acted for Pengrui in the sale and purchase transaction between the parties.[57] He pointed out that Chambers was wrong to refer to Kumar of Axis Marine as Pengrui's broker. It was Wang and not Kumar who acted as Pengrui's broker. As far as he was aware, Kumar acted for Milaha.[58]

43 Wang further disclosed that it was he and not Zhang who represented Pengrui at both conference calls on 29 July and 2 August 2021.[59] He confirmed that Pengrui did not know and was not informed of the conference calls until 3 August 2021, when the draft Addendum No 2 was sent by Chambers to Zhang.[60]

44 On or around 22 July 2021, Pengrui discovered the pending ABS recommendation over the spud leg issue and instructed Wang to clarify the condition of the spud leg with Milaha.[61] Wang did not receive any clarification from Milaha. Instead, on 28 July 2021, Milaha via Chambers sent the NOR directly to Zhang, which Zhang rejected.[62]

45 Wang was aware that Pengrui was greatly concerned, for if the Vessel was not delivered to Pengrui, the latter would be liable for breach of its

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[57] Wang's Affidavit at [1].

[58] Wang's Affidavit at [6]–[7].

[59] Wang's Affidavit at [9].

[60] Wang's Affidavit at [10].

[61] Wang's Affidavit at [12(c)].

[62] Wang's Affidavit at [12(i)].

downstream contract with OHT and would be liable to liquidated damages of at least US$12m.[63] By the cancelling date of 30 July 2021, neither Wang nor Pengrui knew the status of the spud leg issue.[64]

46 Wang deposed that around 26 July 2021, he decided to take the initiative to salvage the deal.[65] His correspondence with Milaha, along with the 2 August 2021 meeting resulted in Addendum No 2 which Chambers sent to Zhang on 3 August 2021. It was only then that Wang spoke to Zhang to update him on Addendum No 2.[66] Unfortunately, Pengrui did not agree to Milaha's offer on the spud leg issue and Pengrui served the Notice of Cancellation on Milaha on 4 August 2021.[67]

47 Wang added that after the Notice of Cancellation was served, he received no further instructions from Pengrui, save for a request on 5 August to obtain from Milaha the ABS survey status report and to ascertain if there were any pending class conditions *vis-à-vis* the Vessel. Wang duly passed this request on to Milaha.[68] As Pengrui had cancelled the MOA and Wang was no longer instructed, Wang sought to broker a deal between Milaha and a new buyer, as he was aware there were other potential buyers of the Vessel in Tianjin.[69]

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[63] Wang's Affidavit at [12(e)].

[64] Wang's Affidavit at [12(f)].

[65] Wang's Affidavit at [12(g)].

[66] Wang's Affidavit at [12(h)].

[67] Wang's Affidavit at [12(i)].

[68] Wang's Affidavit at [12(j)].

[69] Wang's Affidavit at [12(k)].

48 The facts in [7] to [47] outline the state of the affidavits when the Application was heard.

The submissions

Pengrui's arguments

49 Pengrui's arguments for the Injunction Order centred on the tests laid down 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*"), namely whether:

(a) there a valid cause of action over which the Court has jurisdiction;

(b) Pengrui as the plaintiff has a good arguable case on the merits as per the test in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*");

(c) Milaha has assets within jurisdiction; and

(d) there is a real risk that Milaha will dissipate its assets to frustrate the enforcement of an anticipated judgment of the court or tribunal.

Pengrui submitted that all of the requirements were satisfied in this case.

Milaha's arguments

50 Milaha on the other hand alleged that Pengrui had failed to give full and frank disclosure of material facts and therefore, the Injunction Order should be

discharged. As alleged in Chambers' affidavit,[70] the *gravamen* of Milaha's case was Pengrui's alleged failure to give full and frank disclosure via Zhang's first affidavit. To recapitulate, Milaha complained that Pengrui failed to:

(a) disclose the background and context of the parties' discussions and negotiations that resulted in Addendum No 1, which Pengrui also did not disclose (Non-disclosure 1);

(b) disclose that the purported issues with the Vessel's class and the spud leg issue were matters discussed between the parties and had not been in any way concealed by Milaha as Pengrui alleged (Non-disclosure 2); and

(c) disclose the discussions and negotiations between the parties which led to the terms in Addendum No 2, including that Zhang had attended the 2 August 2021 meeting (Non-disclosure 3).

(a) Non-disclosure 1

51 To elaborate on its case, Milaha[71] alleged that Zhang's first affidavit "vaguely" introduced Addendum No 1 in the context of the delivery protocol for the Vessel. Although he set out the clause in the MOA (as amended by the Addendum No 1) for the two days' advance NOR,[72] Zhang failed to provide the background or context to the parties' agreement on that term. Milaha added that the background to the signing of Addendum No 1 was material, as it went

[70] See [28] to [41] *infra*

[71] Milaha's Written Submissions in SUM 4226/2021 ("Milaha's Written Submissions") at [75].

[72] Zhang's 1st Affidavit at [13].

towards the validity of the NOR tendered by Milaha. This was directly relevant to Pengrui's assertion that the NOR was invalid and therefore, Milaha had not tendered the NOR by the cancelling date of 30 July 2021.[73] However, it should be noted that Zhang's first affidavit did exhibit a copy of Addendum No 1[74] and he referred to the document and to its terms.[75]

52 Milaha[76] noted that Zhang's third affidavit[77] disputed Chambers' explanation (at [29]–[31] above) of the agreed meaning of the two days' advance NOR. Milaha submitted that this issue, together with the validity of Milaha's NOR are matters to be dealt with at the arbitral proceedings between the parties.

53 Zhang's third affidavit disputed Chambers' version of events and set out Zhang's interpretation of the two days' NOR. He pointed out that Chambers provided no documents to explain how Chambers came to the understanding that the OHT was not ready to take the Vessel by the cancelling date of 12 July 2021.[78] Zhang deposed that the OHT was in fact, already on her way to the place of delivery on 7 July 2021 and attached copies of the OHT's NOR.[79] He added that it made no commercial sense for Pengrui to delay taking the Vessel, as Pengrui would incur demurrage to the OHT. Zhang asserted that the reason why

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[73] Milaha's Written Submissions at [76].

[74] Zhang's 1st Affidavit at p 119 (exhibit ZXC-1, Addendum No 1).

[75] Zhang's 1st Affidavit at [13]–[21].

[76] Milaha's Written Submissions at [77].

[77] Zhang's 3rd Affidavit at [27]–[30].

[78] Zhang's 3rd Affidavit at [25].

[79] Zhang's 3rd Affidavit at [24].

the NOR was pushed back to 30 July 2021 was to accommodate Milaha and to enable Milaha to get the Vessel with clean class. Consequently, Addendum No 1 was to accommodate Milaha's needs, and not those of Pengrui.[80]

(b) Non-disclosure 2

54 In response to Chambers' allegations relating to the Vessel's condition and classification,[81] Milaha submitted that the issue is again, to be dealt with in arbitration. Its grievance that was relevant to the Application was: (i) Pengrui's "calculated averments to mislead the court into thinking that there were concealments" by Milaha and (ii) Pengrui's failure to disclose the parties' discussions and negotiations on the purported issue.[82] Had it not been for such egregious conduct, it would have been clear to the court that contrary to Pengrui's assertions, there was no neglect or deceitful representation by Milaha, let alone any fraudulent behaviour.

55 Milaha accused Pengrui of intentionally omitting to inform the court of Milaha's response to Pengrui's email of 22 July 2021.[83] Chambers' denied[84] Zhang's allegation that Milaha concealed the fact that according to the ABS' register, the Vessel's class was not clean due to outstanding repair works on the hull plates and the spud leg issue. Milaha had responded by an email dated 26 July to Ankul of Lightship, referred to at [35] above.

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[80] Zhang's 3d Affidavit at [24].

[81] Chambers' Affidavit at [30]–[32].

[82] Milaha's Written Submissions at [85].

[83] See [34] *infra*

[84] At para 31(c) and (d) and Chambers' Affidavit at pp 51–52 (exhibit FC-1, Chambers' email dated 26 July 2021).

56 Zhang stated that Pengrui was concerned by the spud leg issue.[85] He deposed that the Vessel, while afloat, needed to be dry docked for the requisite repairs to be carried out, but there were no suitable dry docks nearby. This would mean that the Vessel would have to sail to another location where there was a suitable dry dock before any works could be carried out, leading to further delay.[86]

(c) Non-disclosure 3

57 Chambers alleged that Zhang had failed to disclose to the court his attendance at the 2 August 2021 meeting where parties negotiated and agreed on the terms of Addendum No 2. Further, Chambers alleged that Zhang had misled the court into thinking it was a physical meeting that he did not attend and/or could not have attended when in reality, the 2 August 2021 meeting took place over a conference call.[87]

58 Zhang denied that he misled the court.[88] Zhang pointed out that Milaha's letter dated 9 August 2021[89] did not make it clear whether the meeting was physical or virtual. Hence, he assumed that there was a physical meeting that took place, which he did not attend.

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[85] Zhang's 3rd Affidavit at [34]–[35].

[86] Zhang's 3rd Affidavit at [35].

[87] Zhang's 3rd Affidavit at [43].

[88] Zhang's 3rd Affidavit at [49].

[89] At [19] *infra* and Zhang's 1st Affidavit at p 133 (exhibit ZXC-1, Milaha's letter dated 8 August 2021).

The decision

59 It is trite that an applicant for an *ex parte* Mareva injunction is required to give full and frank disclosure of *material* facts; non-disclosure *per se* is not fatal. This principle was enunciated in *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR 1000 a case cited by Milaha (and which the appellate court in *Bouvier* reviewed).[90] This principle was also recently reiterated by the Court of Appeal in *JTrust Asia Pte Ltd v Group Lease Holdings Pte and Others* [2018] 2 SLR 159 ("*JTrust*").

60 In dismissing the Application, the court was very mindful of the appellate court's pronouncements in *Bouvier* and in *JTrust*.

61 It would be appropriate to first set out the arbitration clause under the MOA which was Pengrui's basis for applying for the Injunction Order. The relevant portion of clause 16 titled **Law and Arbitration** states:

> This agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.
>
> The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The place of arbitration shall be London, UK. …

62 The title of the OS made reference to s 12A of the International Arbitration Act 1994 ("IAA"), which states:

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[90] See [49] *supra*

> **Court-ordered interim measures**
>
> 12A.—(1) This section is to apply in relation to an arbitration —
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> (*a*) to which this Part applies; and
>
> (*b*) irrespective of whether the place of arbitration is in the territory of Singapore.
>
> (2) Subject to subsections (3) to (6), for the purpose of and in relation to an arbitration referred to in subsection (1), the General Division of the High Court has the same power of making an order in respect of any of the matters set out in section 12(1)(*c*) to (*j*) as it has for the purpose of and in relation to an action or a matter in the court.
>
> …
>
> (4) If the case is one of urgency, the General Division of the High Court may, on the application of a party or proposed party to the arbitral proceedings, make such orders under subsection (2) as the General Division of the High Court thinks necessary for the purpose of preserving evidence or assets.

The court undoubtedly has the power to grant the Injunction Order as a matter of urgency under s 12A(4) of the IAA and as a prelude to Pengrui's arbitration proceedings which have since been commenced. At the hearing, the court was informed that Pengrui had in August 2021, commenced arbitration proceedings in London against Milaha.

(a) Non-disclosure 1

63 This first ground of the Application centred on the NOR and parties' differing understandings of what the two days' NOR meant. In this regard, the court had noted that Chambers is English-speaking whereas Zhang affirmed his affidavits in Mandarin. Zhang's understanding or misunderstanding could be due to misinterpretation or incorrect translation issues. The court cannot determine based on the affidavits whose version and/or understanding of the

revised two days' NOR is correct. Tellingly, Milaha itself agreed[91] that the disputed NOR is a matter to be determined at the arbitration proceedings. That being the case, it cannot be said that Pengrui was guilty of not making full and frank disclosure of material facts.

64 The secondary question to ask is, if indeed the court had been apprised of the full facts surrounding the change in timelines and duration of the NOR, would it have affected the court's decision in granting the Injunction Order? The answer is that it would not.

(b) Non-disclosure 2

65 It seemed to the court that Milaha had again, overstated the gravity of Non-disclosure 2. As in the case of Non-disclosure 1, Milaha submitted[92] that it should be left to the arbitral tribunal to decide whether the parties had resolved the spud leg issue and the Vessel's repairs to accommodate class requirements as Milaha had contended, but which Pengrui denied. Again, this issue pertained to the parties' understanding. Chambers may well have been satisfied with the statement of ABS at [35] above, but Zhang clearly was not. Zhang was also not prepared to accept repairs to the spud leg being effected while the Vessel was on board the OHT, as finding a suitable dry dock to carry out the requisite repairs would result in further delays. That did not mean that Pengrui deliberately concealed the information from the court. It just meant that each party maintained different stands *vis-à-vis* the Vessel's class requirements in relation to outstanding repairs.

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[91] See [52] *supra*

[92] See [54] *supra*

66 It was clear to the court from the parties' exchange of emails that Pengrui wanted to use the issue of the Vessel's necessary repairs for class requirements to drive a hard bargain and secure a substantial discount of US$3-4m on the purchase price of the Vessel.[93] If that surmise is correct, Pengrui cannot be faulted for adopting what would be considered as standard commercial tactics.

(c) Non-disclosure 3

67 This non-disclosure was the most serious of the three alleged by Milaha. In essence, Milaha accused of Zhang of lying when he deposed he did not attend the 2 August 2021 meeting and had not agreed to Addendum No 2. Based on Wang's affidavit, the court was of the view that Zhang did not lie.

68 In this regard, it is noted that the first paragraph of Milaha's letter dated 8 August 2021[94] states:

> We write further to the formal meeting of 02/08/2021 between our Mr. Frederick Chambers, Vice President – Procurement and your Mr. Watson Zhang wherein for good and valuable consideration, the Parties agreed and varied the following terms of the MOA, among others as particularized in the attached Amendment No 2, were varied:- …

69 Not only Zhang, but the court thought that the reference to "formal meeting" in the excerpt set out at [68] above referred to a physical meeting. It was only from Chambers' affidavit that the court understood that the meeting was by way of a teleconference. Since the meeting was a teleconference, Chambers could hear but not see, the participants. He could not see Wang at the

[93] See [34] *supra* and Zhang's 1st Affidavit at p 144 (exhibit ZXC-1, Zhang's email to James Wang dated 22 July 2021)

[94] See [29] *supra* and Zhang's 1st Affidavit at p 133 (exhibit ZXC-1, Milaha's letter dated 8 August 2021).

teleconference of 29 July 2021 or at the 2 August 2021 meeting. He assumed (wrongly) that Zhang attended both meetings when it was Wang who did so on Pengrui's behalf. Chambers and/or Milaha did not and could not challenge Wang's affidavit that he was Pengrui's attendee at both meetings, not Zhang.

70 That being the case, Zhang did not lie or mislead the court when he deposed that he knew nothing of the 2 August 2021 meeting nor did he agree to Addendum No 2 – he saw the document for the first time when Chambers forwarded it to him on 3 August 2021,[95] when it had already been pre-signed by Milaha.

71 Chambers on the other hand assumed (again, wrongly) after the 2 August 2021 meeting that because Zhang (or so he thought) had attended the 2 August 2021 meeting and the earlier meeting on 29 July 2021, the parties had reached consensus on all matters that were discussed. Hence, Chambers signed Addendum No 2 on Milaha's behalf and forwarded the document to Zhang.[96] However, Wang, as Pengrui's attendee and broker, deposed in his affidavit that he could not have agreed to the terms or signed Addendum No 2 without first clearing it with Zhang. When he subsequently attempted to obtain Zhang's approval, Zhang rejected the document.

72 Consequently, there was no failure by Zhang to disclose the 2 August 2021 meeting as he did not attend the teleconference or participate in the discussions that resulted in Addendum No 2.

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[95] Zhang's 1st Affidavit at p 124 (exhibit ZXC-1, Chambers' email dated 3 August 2021).

[96] See [15] *supra* and Zhang's 1st Affidavit at pp 126–127 (exhibit ZXC-1, Addendum No 2).

(d) Was there a real risk of dissipation of assets?

73 The final prong in Milaha's attack on the Injunction Order was that Pengrui had not shown by solid evidence or objective facts that there was any risk, let alone a real risk of dissipation of assets by Milaha.

74 The court noted that Zhang had exhibited an ACRA search ("the Search")[97] on Milaha, a special purpose company incorporated for the purpose of owning the vessel. As Pengrui submitted, the Search showed that Milaha has a paid-up capital of $50,000 and its sole shareholder is another Singapore company called Milaha Offshore Holding Company Pte. Ltd. ("Milaha Offshore"). Although Zhang had deposed that Milaha's ultimate owner is Qatari Navigation, this was not reflected in the Search.

75 The annual report of Milaha for the year ended 31 December 2019 was also exhibited in Zhang's first affidavit.[98] It was noted therefrom[99] that as of 31 December 2019, Milaha suffered accumulated losses totalling US$12,148,259.[100] Under the header "Going Concern", the auditors stated:

> The Company is in a deficit shareholder's fund of US$12,111,787 (2018: USD 11,007.480) and its current liabilities are in excess of current assets by USD 16,503,397 (2018: USD 14,322,540) as at 31 December 2019. Notwithstanding, the financial statements have been prepared on a going concern basis because the ultimate holding company has undertaken to provide the Company with continuing financial and other support as is necessary to enable the

[97] Zhang's 1st Affidavit at pp 33–38 (exhibit ZXC-1, ACRA search on Milaha).

[98] Zhang's 1st Affidavit at pp 202–233 (exhibit ZXC-1, 2019 Annual Report of Milaha).

[99] Zhang's 1st Affidavit at p 210 (exhibit ZXC-1, 2019 Annual Report of Milaha).

[100] Zhang's 1st Affidavit at p 212 (exhibit ZXC-1, 2019 Annual Report of Milaha).

> Company to continue its operations and to meet its liabilities as and when they fall due.

76 Nothing was mentioned about Milaha Offshore in any document, save that Zhang's first affidavit had exhibited an ACRA search on this company.[101] It was noted therefrom that its paid-up capital is S$50,000 and its shareholder is a Qatari company called Milaha Offshore Support Services LLC. Again, Qatari Navigation did not feature in the company's shareholdings.

77 Pengrui's claim against Milaha is for its loss estimated at US$23,760,473[102] based on seven items in its alleged losses totalling US$49,686,397.[103] Included in the breakdown was the deposit as well as two items, namely item 6, being a design fee of US$341,085 paid to Desail Offshore & Marine Engineering Co. Ltd.[104] and item 8, which comprised liquidated damages amounting to US$12,345,679 for the breach of a ship leasing contract dated 25 March 2021[105] ("the ship leasing contract") made between Zhongtian Technology Ocean Engineering Co., Ltd. ("Zhongtian") and Nantong Brightsea Offshore Engineering Co., Ltd. ("Nantong").

78 Under the ship leasing contract, Nantong had tentatively leased the Vessel to Zhongtian for one year from 30 April 2021 to 30 April 2022, at RMB14m per month, which sum equates to S$2.8m (on an exchange rate of RMB5.00 to S$1.00). Under Article 2 of the ship leasing contract, delivery of

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[101] Zhang's 1st Affidavit at pp 234–236 (exhibit ZXC-1, ACRA search of Milaha Offshore).

[102] Zhang's 1st Affidavit at [57].

[103] Zhang's 1st Affidavit at [56].

[104] Zhang's 1st Affidavit at p 171 (exhibit ZXC-1, remittance advice).

[105] Zhang's 1st Affidavit at pp 186–199 (exhibit ZXC-1, the ship leasing contract).

the Vessel to Zhongtian was to take place at Rudong Port, Jiangsu.[106] Under Article 9.2.2, should Nantong unilaterally terminate the ship leasing contract, it had to pay Zhongtian RMB50m as the penalty and if the penalty sum was insufficient to compensate for Zhongtian's actual losses, Zhongtian may file a further claim.[107]

79 Nantong had in turn entered into a separate contract on 10 June 2021 with Pengrui to lease the Vessel from Pengrui ("Nantong's lease")[108] in order to perform the ship leasing contract "downstream".

80 Due to the dispute between Pengrui and Milaha and the cancellation of the MOA, the resultant non-delivery of the Vessel to Pengrui caused Pengrui to be in breach of Nantong's lease. This in turn, caused Nantong to breach the ship leasing contract. Consequently, Nantong passed "upstream" to Pengrui its liability to Zhongtian, pursuant to Article 9.2.2 of the ship leasing contract.

81 In addition, Pengrui had a charter agreement for the OHT. Due to the present dispute and the non-delivery of the Vessel to Pengrui, this rendered the charter useless and Pengrui was out-of-pocket in having to pay the termination fee and the demurrage to OHT.

82 Milaha submitted that the fact it is a special purpose vehicle and a one-ship company in itself is no evidence of risk of dissipation (citing *UCO Bank v Golden View Maritime Pte Ltd* [2003] SGHC 271 and *Quek Jin Oon v Goh Chin*

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[106] Zhang's 1st Affidavit at p 186 (exhibit ZXC-1, the ship leasing contract).

[107] Zhang's 1st Affidavit at pp 190–191 (exhibit ZXC-1, the ship leasing contract).

[108] Zhang's 1st Affidavit at p 173 (exhibit ZXC-1, Nantong's lease).

Soon [2020] SGHC 246).[109] Milaha added that Pengrui knew that Milaha's ultimate owner is Qatari Navigation, a listed company in Qatar.

83 The court has set out earlier at [74] to [76] its observations on the ACRA searches conducted on Milaha and its sole shareholder, Milaha Explorer. If not for the continued financial support by its ultimate holding company (according to its auditors), Milaha would be insolvent. It is cold comfort to a creditor to be told that a Qatari listed company is the ultimate shareholder of its debtor when the parent company is not shown to be a shareholder of the debtor as in this case. Hence, Milaha's submission that "[Pengrui] is fully aware that [Milaha] is ultimately owned by Qatari Navigation, a Qatari public company traded on the Qatar Stock Exchange'' is neither here nor there.[110] Should Pengrui succeed in the arbitral proceedings, Pengrui would still be at the mercy of Qatari Navigation as to whether it wishes to bail out Milaha and meet Milaha's legal obligations.

84 What the court did note was Milaha's letter dated 12 August 2021 to Pengrui that stated:[111]

> Further, **TAKE NOTICE** that pursuant to Clause 13 of the MOA, Sellers are now free to sell the Vessel to other buyers.
>
> [emphasis in original]

As such, nothing could be clearer as to Milaha's intentions. This fulfils the requirement of "solid evidence" to demonstrate that there is a real risk of

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[109] Milaha's Written Submissions at [117].

[110] Milaha's Written Submissions at [118].

[111] Zhang's 1st Affidavit at p 138 (exhibit ZXC-1, Milaha's letter dated 12 August 2021 at [23] infra).

dissipation of assets (*Bouvier* at [36]).[112] Bearing in mind Milaha's own admission that Milaha is a special purpose vehicle and a one-ship company,[113] there was reason for Pengrui to fear that if it succeeded in the arbitral proceedings, its award would be rendered nugatory if the Vessel was sold.

85 Milaha also cited[114] *Bouvier* (at [66]), where the Court of Appeal said:

> …. the existence of a real risk of dissipation must be assessed *independently* from the prospect of the plaintiff's eventual success (or failure) in establishing an allegation of dishonesty.
> …
>
> [emphasis in original]

86 Applying the above principle to this case, the court disregarded Pengrui's (hotly contested) allegations of fraudulent conduct on the part of Milaha and focused on the issue of what would happen should the Vessel be sold – Pengrui would have no prospect of recovery should it ultimately succeed in the arbitral proceedings.

87 In this regard, the court had inquired of Milaha's counsel at the hearing as to whether Milaha would provide security if the court were to grant the Application. He responded that he would take his client's instructions and added that his client had no plans to sell the Vessel.[115] If they did, they would pay the entire proceeds into court. However, Milaha's counsel did not subsequently revert on the court's inquiry nor on his statement on his client's intentions. Had

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[112] See Bouvier at [36] quoting from *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157

[113] Milaha's Written Submissions at [117(a)] and [118].

[114] Milaha's Written Submissions at [125].

[115] Notes of Evidence dated 18 October 2021 at p 27.

Milaha offered security, the court would have discharged the Injunction Order without more.

Conclusion

88 Contrary to Milaha's arguments, the court was of the view that based on *American Cyanamid* principles, Pengrui had a good arguable case. At this preliminary stage, it was not for the court to determine what Pengrui's likelihood of success is in its arbitration proceedings against Milaha. Even if the court had accepted Milaha's version of facts relating to the three alleged non-disclosures, it would not have made any difference to the outcome of the OS – the Injunction Order would still have been granted.

Lai Siu Chiu
Senior Judge

Henry Li-Zheng Setiono (Ang & Partners) for the applicant;
Edgar Chin Ren Howe and Samantha Ch'ng Cheng Yi (Ascendant Legal LLC) for the respondent.