IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 27

Court of Appeal / Civil Appeal No 16 of 2023

Between

Parastate Labs Inc

… *Appellant*

And

Wang Li

… *Respondent*

In the matter of Originating Claim No 130 of 2022 (Summons No 2564 of 2022)

Between

Parastate Labs Inc

… *Claimant*

And

(1) Wang Li
(2) Yang Zhou
(3) Babel Asia Asset Management Pte Ltd
(4) Babel Holding Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Mareva injunctions — Quantum of Mareva injunction]

Parastate Labs Inc
v
Wang Li

[2023] SGCA 27

Court of Appeal — Civil Appeal No 16 of 2023
Judith Prakash JCA, Steven Chong JCA
4 September 2023

25 September 2023

Steven Chong JCA (delivering the grounds of decision of the court):

Introduction

1 It is well-recognised that Mareva injunctions, which may under certain circumstances be obtained without notice, pre-judgment and with extraterritorial reach so as to freeze a defendant's assets, can be a draconian measure with a corresponding potential for abuse (*Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 at [1]; *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("*JTrust 2018*") at [1]). Cognisance has been taken of the powerful effect of Mareva relief, which, together with the Anton Piller order, has been described as one of the law's two "nuclear" weapons (*Bank Mellat v Nikpour* [1985] FSR 87 at 90–92, per Donaldson LJ). The law thus requires that claimants seeking Mareva relief must satisfy the court that the

threshold of a good arguable case has been met and that there is a real risk of dissipation of assets.

2 The purpose of a Mareva injunction is, ultimately, to prevent a party from taking steps to deliberately frustrate any judgment of the court that may eventually be obtained and thereby render that judgment nugatory. However, there are situations in which a claimant who successfully obtains an interlocutory Mareva injunction subsequently fails to establish its claim at trial, and in the intervening period, the defendant may have suffered loss as a result of the injunction. Order 13 rr 1(6) and 1(7) of the Rules of Court 2021 ("ROC 2021") thus prescribes the use of Forms 24 and 25 of the Supreme Court Practice Directions 2021 ("SCPD 2021") for applicants seeking Mareva relief, which require that the claimant provide an undertaking to compensate the defendant if it is later found that loss was suffered as a result of the injunction (the "undertaking as to damages").

3 The genesis of the requirement for an undertaking as to damages and the purpose it serves was outlined by Lord Diplock in *F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295 as follows (at 360, referred to in *CHS CPO GmbH (in bankruptcy) and another v Vikas Goel and others* [2005] 3 SLR(R) 202 ("*CHS CPO*") at [18]):

> The practice of exacting an undertaking as to damages from a plaintiff to whom an interim injunction is granted originated during the Vice-Chancellorship of Sir James Knight Bruce who held that office from 1841 to 1851. At first it applied only to injunctions granted ex parte but after 1860 the practice was extended to all interlocutory injunctions. By the end of the century the insertion of such an undertaking in all orders for interim injunctions granted in litigation between subject and subject had become a matter of course.
>
> The advantages of this practice … are plain enough. An interim injunction is a *temporary and exceptional remedy which is available before the rights of the parties have been finally*

> *determined* and, *in the case of an ex parte injunction, even before the court has been apprised of the nature of the defendant's case* … at the time of the application, it is not possible for the court to be absolutely certain that the plaintiff will succeed at the trial … If he should fail to do so *the defendant may have suffered loss as a result of having been prevented from doing it while the interim injunction was in force …*
>
> It is to *mitigate this risk that the court refuses to grant an interim injunction unless the plaintiff is willing to furnish an undertaking …*
>
> > "to abide by any order the court may make as to damages in case the court shall [thereafter] be of opinion that the defendant shall have sustained any damages by reason of [the] order …"
>
> [emphasis added]

4 Further, an undertaking as to damages ought not be merely illusory. Accordingly, the safeguard of requiring the claimant to fortify its undertaking works in tandem with the requirement to provide that undertaking. However, the making of any such order for fortification depends on whether a *real risk of loss* could be shown by the defendant (*CHS CPO* at [89(c)]). Indeed, an order for fortification ought not to be made if the effect would be to unjustifiably deprive a plaintiff that otherwise has established the merits of the injunction of its rights (*CHS CPO* at [122]). The order for fortification must be made with sensitivity to the question of whether the defendant has shown the risk of its anticipated loss.

5 The present appeal arose from the decision of the judge below (the "Judge") on an application for a worldwide Mareva injunction, HC/SUM 2564/2022 ("SUM 2564") made in the main action, HC/OC 130/2022 ("OC 130"). The appellant, Parastate Labs Inc ("Parastate") had commenced OC 130 against the respondent, Mr Wang Li ("Mr Wang") and three other defendants. Parastate sought the injunction for the full value of its claim in OC 130, which was US$5 million, as against Mr Wang. The Judge granted the

injunction but limited it to a quantum of US$2.5 million and required that Parastate fortify its undertaking as to damages by paying S$50,000 into court. The Judge delivered his grounds of decision in *Parastate Labs Inc v Wang Li and others* [2023] SGHC 153 (the "GD").

6 On 4 September 2023, we heard and allowed Parastate's appeal against the Judge's decision. We ordered that the injunction granted shall cover assets of up to US$5 million with immediate effect. We also ordered that Parastate shall provide additional fortification so that the total amount available shall be US$100,000. Finally, we granted parties the liberty to apply in respect of the injunction and the fortification. We now provide the grounds of our decision.

Background

7 Parastate invested US$5 million worth of the cryptocurrency Tether in the Babel Quant Alpha USDT Fund (the "Fund"), managed by a cryptocurrency financial services provider trading as "Babel Finance", which refers collectively to the third and fourth defendants in OC 130 – Babel Asia Asset Management Private Limited ("Babel Asia") and Babel Holding Limited ("Babel Holding") respectively. Babel Asia was the entity that Parastate contracted with. Babel Holding was the sole shareholder of Babel Asia.

8 The first and second defendants in OC 130, Mr Wang and Mr Yang Zhou ("Mr Yang"), were co-founders of Babel Holding and directors of Babel Asia at certain periods leading up to OC 130. At the time when the key events leading up to OC 130 took place, Mr Wang was the sole director of Babel Asia. Parastate's case was that Mr Wang was the controlling mind and will of Babel Finance at the material time.

9 Parastate's investment was made in March 2022. In June 2022, Parastate sought to withdraw its investment but was informed that Babel Finance was experiencing financial difficulties and could not meet the withdrawal request. According to Parastate, it was informed that Deribit, a cryptocurrency exchange platform, had cross-liquidated all of Babel Finance's sub-accounts maintained with Deribit, including the Fund's sub-account, as three of Babel Finance's sub-accounts (excluding the Fund's sub-account) had exceeded their maintenance margins.

10 On 13 July 2022, Parastate commenced OC 130 seeking, among other reliefs, liquidated damages of US$5 million from Mr Wang and Mr Yang on a joint and several basis. Among other things, Parastate alleged that Babel Asia and Babel Holding breached their fiduciary duties and/or trustee duties owed to Parastate in respect of its investment in the Fund, and Mr Wang and/or Mr Yang dishonestly assisted Babel Asia's and Babel Holding's breaches. Parastate initially sought via SUM 2564 the Mareva injunction as against both Mr Wang and Mr Yang but later withdrew the application as against Mr Yang. At the time of the *inter partes* hearing before the Judge, Parastate's application for the Mareva injunction was therefore only against Mr Wang.

The decision below

11 The Judge granted the Mareva injunction but limited the quantum to US$2.5 million and required that Parastate fortify its undertaking as to damages by paying S$50,000 into court (GD at [2] and [40]). The Judge found that Parastate had established a good arguable case against Mr Wang and a real risk of dissipation of assets. However, the Judge decided to limit the quantum of the injunction to half the amount claimed, considering it just and convenient to do so having regard to Parastate's conduct (GD at [44]).

12 The conduct in question referred to two of Parastate's "material non-disclosures … in relation to its ability to meet its undertaking as to damages, and in deliberately omitting prescribed undertakings …" (GD at [39]). These in essence referred to two irregularities in Parastate's Mareva injunction application.

13 First, in Parastate's supporting affidavit for its *ex parte* injunction application, Parastate's undertaking as to damages merely stated that Parastate "undertakes to abide by an order for damages [made by the Court]" and "[i]f necessary, [Parastate] will fortify the undertaking herein". However, pursuant to paragraph 73(1)(*f*) of the SCPD 2021, Parastate was required to include in the affidavit not only an undertaking as to damages, but also state "what assets are available to meet that undertaking and to whom the assets belong", which Parastate failed to do (GD at [14]–[17]). The Judge took note of this irregularity at the *ex parte* hearing. The Judge then gave directions for an *inter partes* hearing and for Parastate to address at that hearing its ability to meet its undertaking as to damages. Parastate filed a second affidavit in support of its application but still failed to provide the missing information. Instead, the second affidavit only mentioned that Parastate had raised US$11.8 million in funding, with the last funding date being 14 July 2021. News articles about the funding were exhibited. No financial statements or bank statements were provided. The Judge found that Parastate's evidence on its ability to meet its undertaking as to damages was unsatisfactory and that Parastate remained in breach of the SCPD 2021, as well as the court's direction for it to address its ability to meet its undertaking (GD at [19]–[25]). We refer to this irregularity as the "Failure to State Available Assets".

14 Second, Parastate failed to include in its application the prescribed undertakings 9 and 10 provided in Form 25 of the SCPD 2021, without

explanation and without bringing the omissions to the Judge's attention. Pursuant to O 13 r 1(7) of the ROC 2021 and paragraph 72(2) of the SCPD 2021, Form 25 of the SCPD 2021 must be used in applications for worldwide Mareva injunctions and any departure from the terms of the prescribed form should be justified by the applicant in its supporting affidavit. At the *ex parte* hearing, the Judge noted the irregularity and directed Parastate to address the issue at the *inter partes* hearing. Parastate's counsel, Mr Foo Maw Shen accepted at the *inter partes* hearing that the prescribed undertakings 9 and 10 should be included. Accordingly, the Mareva injunction that the Judge granted incorporated those undertakings (GD at [29]–[36]). We refer to this irregularity as the "Failure to Include Prescribed Undertakings".

15 The Judge considered that the lower quantum injuncted would strike the right balance between the interests of both parties, considering the "likely effects of an injunction on [Mr Wang]" and the "unsatisfactory evidence from Parastate as to whether it was good for its undertaking" (GD at [46]).

Issue to be determined

16 The only issue before us was whether the Judge's exercise of discretion to reduce the quantum of the Mareva injunction from US$5 million to US$2.5 million was based on principled grounds.

Whether the exercise of discretion was principled

17 At the outset, we noted that in the appeal before us, it was undisputed that Parastate had established (a) a good arguable case; and (b) a real risk of dissipation of assets, as found by the Judge. It was also undisputed that Parastate's claim was for a single, indivisible sum of US$5 million. In other

words, Parastate would either succeed *in full* or not at all. There was no middle ground.

The applicable law

18 In arriving at his decision, the Judge referred to the legal principles on the failure to make full and frank disclosure in seeking relief *ex parte*, citing *JTrust 2018* at [84] and [89]–[92]. The Judge therefore considered "Parastate's material non-disclosures" (*ie*, the Failure to State Available Assets and the Failure to Include Prescribed Undertakings) in deciding to limit the quantum of the Mareva injunction (GD at [26] and [39]).

19 Indeed, as this Court has previously pronounced, a Mareva injunction is a form of equitable relief and any plaintiff seeking such relief is expected to come to court with clean hands (*JTrust 2018* at [84]). In the same vein, it is well established that an *ex parte* injunction obtained may, in the court's discretion, be discharged if there was a failure to make full and frank disclosure of material facts (*JTrust 2018* at [90]).

20 For instance, in *Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng and another* [2009] 4 SLR(R) 365 ("*Bahtera Offshore*"), the High Court discharged the *ex parte* Mareva injunction because of the plaintiff's failure to make full and frank disclosure. In *Bahtera Offshore*, the High Court found, among other things, that the plaintiff had "deliberately suppressed and distorted material facts so that the court hearing the *ex parte* application would believe that the Defendants were dissipating their assets" (*Bahtera Offshore* at [34]). In the same vein, the High Court in *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR(R) 1000 ("*Multi-Code Electronics*"), discharged the *ex parte* Mareva injunction obtained against

the third defendant on account of the plaintiffs' "deliberate suppression and distortion of the material fact concerning the present whereabouts of the third defendant" which "could or would have affected the judge's impression of the third defendant as someone who was trying to evade the plaintiffs and who had been dissipating his assets …" (*Multi-Code Electronics* at [136]).

21 A similar approach has been taken in cases where the applicant's ability to honour its undertaking as to damages had been called into question. In *Block and another v Nicholson (trading as Limascue Stud)* [1987] CLY 3064 ("*Block*"), the plaintiffs had obtained an *ex parte* Mareva injunction while failing to disclose that one of them, Mr Block, had been arrested and charged for fraud about a month before the application. In upholding the decision to discharge the injunction, the English Court of Appeal observed that it was the duty of an applicant seeking an *ex parte* injunction to make full disclosure of "any facts which could reasonably be regarded as relevant to the exercise of the Court's discretion to grant such an injunction". The Court held that Mr Block's arrest, among other things, should have been disclosed because it would have been a matter of prime importance whether the implied undertaking as to damages given by Mr Block was one that the Court could safely accept.

22 In *North American Holdings Company Ltd v Androcles Limited* [2015] JMSC Civ 151 ("*North American Holdings*"), the Supreme Court of Judicature of Jamaica discharged an *ex parte* Mareva injunction on the ground that the plaintiff did not bring home to the judge who heard the *ex parte* application that "serious questions arose regarding [the plaintiff's undertaking as to damages] because of the significant indebtedness of the [plaintiff]" (*North American Holdings* at [20]). The Court considered that the plaintiff had a duty to make full and frank disclosure of all material facts in its *ex parte* application, which would include "the [plaintiff's] case and any fact the defendant could urge had

he been present at the hearing". The Court noted that one property owned by the plaintiff was charged with a number of provisional charging orders arising from default costs certificates in excess of JA$20 million. This showed that the applicant could not even meet the costs of previous litigation without enforcement action having been taken against it. There was therefore serious doubt as to the plaintiff's ability to meet its undertaking as to damages. The Court considered that the failure to bring home this point to the judge was a very serious material non-disclosure justifying the discharge of the injunction.

23 The authorities outlined above illustrate that a Mareva injunction obtained *ex parte* may be set aside for the applicant's failure to make full and frank disclosure of any material fact. The underlying rationale for this is that the judge deciding the application may not have been "appropriately sensitised to the real merits of the application" as a result of the material non-disclosure (*The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [85]).

24 Having examined the authorities outlined above, we made two key observations. First, the material non-disclosures justifying a discharge of the injunctions granted were ones that had a bearing either on (a) the requirements for the grant of a Mareva injunction; or (b) the plaintiff's ability to honour its undertaking as to damages. In other words, the non-disclosures had a material bearing on the merits of the Mareva injunction application. Further, in those decisions, there were material facts which the claimant sought to suppress. Second, the material non-disclosure typically caused the injunction to be discharged and did not lead merely to a reduction of the quantum of the injunction. In this regard, counsel for Mr Wang, Mr Choo Zheng Xi ("Mr Choo"), candidly acknowledged at the hearing before us that there was no authority for the exercise of discretion to reduce the quantum of an injunction

for an indivisible claim notwithstanding the establishment of a good arguable case for the entire claim and a real risk of dissipation of the defendant's assets.

Whether there was a material non-disclosure in the present case

25 Parastate's Failure to State Available Assets and Failure to Include Prescribed Undertakings were described by the Judge as material non-disclosures. In our view, there was no material non-disclosure to speak of as neither had an impact on the Judge's findings of a good arguable case and a real risk of dissipation of assets, or Parastate's ability to honour its undertaking as to damages. In the cases where the injunctions were discharged on account of material non-disclosure in relation to the applicants' ability to honour their undertaking as to damages, material facts such as the extent of the applicant's indebtedness or the applicant's pending criminal charges were in fact suppressed by the applicants.

26 Here, the Failure to Include Prescribed Undertakings was not a material non-disclosure relating either to the requirements for the grant of a Mareva injunction or to Parastate's ability to honour its undertaking as to damages. The prescribed undertakings that were omitted were undertakings by the applicant: (a) not to commence proceedings against the defendant in any other jurisdiction or use information obtained as a result of an order of the Singapore Court for the purpose of civil or criminal proceedings in any other jurisdiction; and (b) not to seek to enforce the Mareva injunction in any country outside Singapore (or to seek an order of a similar nature) without the permission of the Singapore Court. In any event, these prescribed undertakings were ultimately included in the Mareva injunction ordered by the Judge.

27 With respect to the Failure to State Available Assets, we observed that Parastate's affidavits were unsatisfactory and did not comply with the SCPD 2021, despite the express directions by the Judge. We were not persuaded by Parastate's attempt to explain the state of the information that it had provided. Parastate contended that owing to the nature of it being a corporate vehicle for its founders' investment, it did not have financial statements prepared from the time of its incorporation. This, however, did not explain the absence of other relevant documents, such as bank statements.

28 Nonetheless, the Failure to State Available Assets, while unacceptable for its non-compliance with the SCPD 2021 requirements, was not a material non-disclosure relating either to the requirements for the grant of a Mareva injunction or to Parastate's ability to honour its undertaking as to damages. Indeed, the Judge did not see fit to decline to grant the Mareva injunction on account of the non-compliance, which in our view, was consistent with his finding that there was a good arguable case and a real risk of dissipation of assets. We further observed that the Failure to State Available Assets in the present case was distinguishable from the material non-disclosures in *Block* and *North American Holdings.* In the latter two cases, there were undisclosed facts that cast serious doubt on whether the applicants were good for their undertaking as to damages, which should have been disclosed and would have had a material bearing on the Judge's decision as to whether to grant the Mareva injunction in the circumstances. In the present case, there was no suggestion that Parastate had suppressed or failed to disclose facts which had a material bearing on its ability to honour the undertaking as to damages.

The proper approach to addressing Parastate's non-compliance with the SCPD 2021

29 That was, however, not to say that any uncertainty as to whether Parastate was good for its undertaking as to damages created by its non-compliance should go unaddressed. In this regard, we referred to the following passage in Steven Gee, *Commercial Injunctions* (Sweet & Maxwell, 6th Ed, 2016) at para 11-028:

> … On an inter partes hearing, *if the court considers that the unsecured cross-undertaking is not satisfactory, then it should go on to consider what security should be provided as a condition of maintaining the injunction. Immediate discharge without providing the applicant with the option to put up adequate security may be set aside on appeal.* If security is not provided after it has been ordered, this in itself justifies discharge of the injunction …
>
> [emphasis added]

We agreed and considered that it would not be proportionate to order the immediate discharge of an injunction for the sole reason that the undertaking as to damages was unsatisfactory, without first providing the applicant with an opportunity to put up adequate security. In this regard, we referred to this Court's decision in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2021] 1 SLR 1298 ("*JTrust 2021*"), where this Court declined to maintain the quantum of a *post-judgment* Mareva injunction at an amount far in excess of the outstanding judgment debt. In *JTrust 2021*, the appellants sought to maintain the higher quantum by arguing that the first and second respondents had not been forthcoming with their asset disclosure (having failed to disclose assets sufficient to satisfy the quantum of their debt). This Court held at [25] that it would have been a "disproportionate and unprincipled reaction to the unsatisfactory state of [the first and second respondents'] asset disclosure" to maintain the Mareva injunction at the higher amount. Instead, this Court took

the view that the proper remedy to address the respondents' failure to provide proper disclosure was to commence contempt proceedings (if the conditions were satisfied) or to order further disclosure (as was ultimately done).

30 On the facts of the present case, we took the view that the proportionate and principled response to the unsatisfactory state of Parastate's evidence was to order adequate fortification rather than to limit the quantum of the injunction. The impact of limiting the quantum of the injunction, as recognised by the Judge in his grounds of decision, was that should Parastate ultimately succeed in its claim against Mr Wang, only half the claimed sum would have been enjoined (GD at [45]). There was therefore the potential that any judgment Parastate might eventually obtain against Mr Wang would be frustrated insofar as half the claim amount was concerned. This, in our view, was not the proportionate and principled response when the requirements for the grant of the Mareva injunction for the full claim were found to have been met. Further, there was no principled basis for a reduction by half of the quantum of an injunction for an otherwise indivisible claim, when the non-compliance had no impact on the underlying cause of action or the undertaking as to damages. The reduction appeared to us to be somewhat arbitrary and perhaps even punitive in nature.

31 Further, we noted that there was no material before the Judge or before us as to what damages Mr Wang might suffer as a result of the injunction. At the hearing before the Judge, Mr Choo stated that he had no particular figure to suggest as the appropriate sum for fortification. The sum of S$50,000 ordered by the Judge was in fact at the highest end of the range suggested by Parastate. Mr Choo accepted at the hearing before us that no submission was made before the Judge that the sum of S$50,000 would be inadequate.

32 As alluded to earlier (at [4]), the order for fortification must be sensitive to the real risk of losses to the defendant that may result from the grant and implementation of the injunction. There was, however, no material before us as to what losses Mr Wang may suffer. That being said, it was important that the undertaking as to damages was not merely illusory. We therefore did not think it would have been appropriate to ignore Parastate's unexplained non-compliance with the SCPD 2021. We thus ordered an increase in fortification from S$50,000 to US$100,000. This sum appeared to us to be more than sufficient, given the state of the evidence as to the losses that Mr Wang may suffer as a result of the injunction.

Conclusion

33 For the above-mentioned reasons, we allowed the appeal and ordered that the injunction granted shall cover assets of up to US$5 million and that Parastate shall provide additional fortification so that the total amount available shall be US$100,000. We also ordered that Mr Wang pay Parastate's costs fixed at $15,000 (inclusive of disbursements).

34 As an addendum, we add that it was brought to our attention in the course of the hearing that after the papers for the present appeal were filed, a case management stay of OC 130 as against Mr Wang was granted. The stay is in effect till 15 September 2023, the date on which the moratorium granted in favour of Babel Asia in relation to its proposed restructuring will expire. We were also informed that Babel Holding has sought leave to convene its scheme meeting on or before 21 November 2023. In light of this, we granted the parties

liberty to apply in respect of the injunction and the fortification in recognition of a possible change in circumstances due to the scheme proceedings.

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Foo Maw Shen, Chu Hua Yi and Tan Jinwen Mark (FC Legal Asia LLC) for the appellant;
Choo Zheng Xi, Chew Di Shun Dickson and Yuen Ai Zhen Carol (Remy Choo Chambers LLC) for the respondent.