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

**[2023] SGHC 280**

Originating Application No 652 of 2023
(Summons No 2452 of 2023)

Between

ILC Co, Ltd

… *Applicant*

And

(1) Saitama Hiroshi
(2) Hora Yohei
(3) Asia Capital Management Pte Ltd.
(4) Oshima Yumiko

… *Respondents*

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# GROUNDS OF DECISION

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[Contempt of court — Civil contempt — Breach of disclosure order under Mareva injunction]

# ILC Co, Ltd
# v
# Saitama Hiroshi and others

**[2023] SGHC 280**

General Division of the High Court — Originating Application No 652 of 2023 (Summon No 2452 of 2023)
Choo Han Teck J
22 September 2023

4 October 2023.

**Choo Han Teck J:**

1 This was the application by the plaintiff for committal against the 3rd and 4th respondents, pursuant to leave granted in *ILC Co, Ltd v Saitama Hiroshi and others* [2023] SGHC 206. No action has been taken against the 1st and 2nd respondents because they have not been served with process although a Mareva injunction was ordered against them as well as the 3rd and 4th respondents. The 1st and 2nd respondents are enjoined up to US$6,718,925.11, and the 3rd and 4th respondents to US$194,031.23. The 3rd and 4th respondents have the full sum of the claim against them set aside in a separate bank account with the Development Bank of Singapore ("DBS") to the satisfaction of the plaintiff, and as such, declined to disclose further assets to the plaintiff.

2 The plaintiff's counsel, Mr Janssen Chow ("Mr Chow"), submitted that such partial disclosure was a breach of the terms of the Mareva injunction order and thus brought the present committal proceedings against the 3rd and 4th respondents. The plaintiff believes that the 3rd and 4th respondents are assisting the 1st respondent to conceal (and possibly dissipate) his assets. The plaintiff thus asked for the 3rd and 4th respondents to be committed for contempt, unless they make full disclosure within two weeks from the date of the judgement.

3 Mr Mark Tan ("Mr Tan"), counsel for the 3rd and 4th respondents argued that the plaintiff's committal application has no merits because the 3rd and 4th respondents have already satisfied the Mareva injunction (and disclosure order) made against them. They had secured the plaintiff's full claim against them by setting aside US$194,031.23 in a separate DBS bank account until further order. The 3rd and 4th respondents undertook not to draw down on this US$194,031.23. They say that they have no connection with the plaintiff's claim against the 1st and 2nd respondents, and that the plaintiff should not be allowed to use the disclosure obligation under the Mareva injunction for the extraneous purpose of going beyond protecting its US$194,031.23 claim against them. Using the disclosure obligation in this way, is an abuse of process.

4 I agree with Mr Tan. The purpose of a Mareva injunction is to preserve assets claimed by a plaintiff until trial. The 3rd and 4th respondents' securing of this US$194,031.23 has satisfied the order against them. It preserves the US$194,031.23 claimed by the plaintiff against them. The plaintiff's insistence on seeking further disclosure from the 3rd and 4th respondents is based on its belief that they are concealing assets for the 1st respondent. However, the plaintiff has shown no evidence of this. It alleged that the 4th respondent shared a close and personal relationship with the 1st respondent, and that this must lend credence to the allegations of hiding assets. This assertion is also not borne out

in the emails that the plaintiff relies on. On the contrary, the emails merely show a business relationship between the two. In any event, a close and personal relationship alone is not indicative that one party is hiding assets on behalf of another. Allegations of such wrongful behaviour must be specifically proved. What the plaintiff has against the 3rd and 4th respondents are speculations drawn simply from the fact that the 4th respondent knows the 1st respondent, or that the 1st respondent was a previous director in the 3rd respondent. There is no presumption nor adverse inference to be drawn on the basis of friendship or directorship alone.

5 The plaintiff's persistence in obtaining disclosure about other assets of the 3rd and 4th respondents as an indirect means of obtaining information about the 1st respondent's assets is not proper. The disclosure obligation of a Mareva injunction should be used to obtain information about the particular party's assets, and not for the purposes of finding out about potential assets of another party. This is all the more so when there is insufficient evidence to establish the link between said party and the assets of another.

6 This is not the only procedurally improper aspect of the plaintiff's claim. It applied for the Mareva injunction under HC/OA 153/2023, which was an application for leave for the plaintiff to commence a derivative action under s 216A of the Companies Act 1967 (2020 Rev Ed) ("Companies Act") on behalf of Asian Energy Investments Pte Ltd ("AEI"), the company at the centre of the suit. This was because at that point in time, the plaintiff was only a minority shareholder of AEI, and the 1st and 2nd respondents were on the board of AEI. In the affidavit filed in support of obtaining the Mareva injunction (dated 22 February 2023), the plaintiff had stated that it was unlikely that the plaintiff would proceed with OA 153 because the plaintiff was intending to replace the 1st and 2nd respondents as directors of AEI and to gain control of AEI's board,

before arranging for AEI to commence the claim against the respondents directly. Counsel for the plaintiff confirmed before me that this was still the case and as the plaintiff is no longer the minority shareholder, fresh proceedings would be commenced by AEI directly against the respondents in due course.

7 This is procedurally wrong. First, the plaintiff should not be asking for leave to bring a s 216A Companies Act derivative action when the plaintiff knew from the outset it was unlikely to maintain the derivative action. It had the support of a major shareholder from the beginning, and together, the two shareholders held a majority shareholding in AEI. They could have started a suit against the respondents directly through AEI. Secondly, and in any event, based on evidence tendered by the 4th respondent, the plaintiff itself has been the majority shareholder of AEI since 27 July 2023 (at the latest). The plaintiff has acknowledged that the 1st and 2nd respondents had been removed as directors of AEI on 26 April 2023. There is thus no reason for the present action to be maintained and for the plaintiff to maintain a s 216A Companies Act derivative action on behalf of AEI against the respondents.

8 The committal application against the 3rd and 4th respondents was therefore dismissed. Costs in the sum of $4,000 each, plus reasonable disbursements, were awarded to the 3rd and 4th defendants.

- Sgd -
Choo Han Teck
Judge of the High Court

Jansen Chow, Ang Leong Hao and Faith Hwang (Rajah & Tann Singapore LLP) for the applicant;
Mark Tan, Zeng Hanyi and Edward N Ong (Focus Law Asia LLC) for the 3rd and 4th respondents.

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