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

[2023] SGHC 359

Originating Claim No 158 of 2022 (Summons No 2781 of 2022)

Between

Leong Quee Ching Karen

… *Claimant*

And

(1) Lim Soon Huat
(2) Lim Soon Heng
(3) Lim Kim Chong Investments Pte Ltd
(4) Sin Soon Lee Realty Company (Private) Limited
(5) Lim Yong Yeow, Thomas
(6) Seng Lee Holdings Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — Injunctions]
[Injunctions — Interlocutory injunction]

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Leong Quee Ching Karen
v
Lim Soon Huat and others

[2023] SGHC 359

General Division of the High Court — Originating Claim No 158 of 2022
(Summons No 2781 of 2022)
Goh Yihan J
26 October 2023

29 December 2023 Judgment reserved.

Goh Yihan J:

1 HC/SUM 2781/2022 ("SUM 2781") is the claimant's application for interim injunctions against the defendants, pending the final determination of HC/OC 158/2022 ("OC 158"). This application was first made on 27 July 2022 without notice to the defendants. However, on 28 July 2022, the claimant was directed to proceed on the basis that this was to be an application with notice to the defendants.

2 The claimant's application for relief is framed in the following manner:[1]

(a) An interim prohibitory injunction to restrain the fourth defendant, whether by itself, its servants or agents or any of them or otherwise, from facilitating and/or taking steps towards effecting the

[1] HC/SUM 2781/2022 filed 29 July 2022 (Amendment No 1).

transfers of a property located in Geylang (the "Geylang Property") and a property located in Tamarind Road (the "Tamarind Road Property") to the first defendant and the fifth defendant, respectively, pending the final determination of OC 158 (and any appeals therefrom).

(b) An interim prohibitory injunction to restrain the first defendant, the second defendant, and/or the third defendant, whether by themselves, by their servants or agents or any of them or otherwise, from taking any further steps in furtherance of the proposed transfer of the Geylang Property and the Tamarind Road Property, pending the final determination of OC 158 (and any appeals therefrom).

(c) In the alternative to (a) and (b), an interim prohibitory injunction to restrain the first defendant and the fifth defendant, whether by themselves, by their servants or agents or any of them or otherwise, from selling and/or otherwise disposing of the Geylang Property and the Tamarind Road Property respectively, pending the final determination of OC 158 (and any appeals therefrom).

3 Having heard the parties' submissions, I dismiss the application. In my view, the claimant's application turns on a point of principle: whether it is necessary for an applicant, who claims to be the victim of minority oppression in a company, to possess proprietary interest over properties for which transfers she seeks an injunction to restrain? For the reasons that I will explain below, I conclude that as long as an applicant is applying for a prohibitory injunction that is, in effect, a proprietary injunction, he or she must have a proprietary interest in the property concerned to seek such an injunction.

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Background facts

4 The dispute in OC 158 arose out of the conduct of the first to third defendants, who are the majority shareholders in Seng Lee Holdings Pte Ltd ("SLH"). The claimant, the first defendant, and the second defendant are some of the children of the late Dato Lim Kim Chong ("Dato Lim"). On 25 July 2013, Dato Lim and his children entered into a Deed of Family Arrangement (the "Original Deed") to, among others, distribute a portion of his assets to his eight children in Singapore. He divided his children into two groups ("Group A" and "Group B"). Group A, which included the first defendant, became shareholders of the fourth defendant, Sin Soon Lee Realty Company (Private) Limited ("SSLRC"), with the assets held by SSLRC and its subsidiaries to be held and operated for the Group A members' benefit. Group B, which included Dato Lim, the claimant, and the second defendant, became shareholders of SLH, with the assets held by SLH and its subsidiaries to be held and operated for the Group B members' benefit.[2]

5 On 28 February 2015, the members of the Lim family entered into an Amending and Restating Deed of Family Arrangement to amend certain terms of the Original Deed (the "Amended Deed"). Under cl 9.1 of the Amended Deed, the Group A beneficiaries were obliged to procure SSLRC to make a gift or transfer of two properties to SLH and/or its nominees. The two properties in question are the Geylang Property and the Tamarind Road Property (collectively, the "Properties").[3]

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2 1st Affidavit of Leong Quee Ching Karen dated 27 July 2022 ("Karen's 1st Affidavit") at paras 5–6 and 22–24.

3 Karen's 1st Affidavit at paras 23 and 25–26.

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6 On 13 July 2022, three of the shareholders of SSLRC wrote to the claimant's lawyers informing them, among other things, that the first defendant had requisitioned SSLRC to hold an extraordinary general meeting ("EGM") to vote on the transfer of the Properties, and that SSLRC would be holding the EGM on 1 August 2022.[4]

7 On 27 July 2022, the claimant commenced OC 158 against, among others, the majority shareholders of SLH, including the first and the second defendants, for minority oppression. For present purposes, it suffices to state that one of the alleged oppressive acts was that the first and second defendants intended for the first defendant and his son, the fifth defendant, to receive the Properties instead of SLH.[5] This explains why the interim injunctions sought in the present application are targeted towards the transfer of the Properties to the first and the fifth defendants.

8 Following the claimant's application for the interim injunctions, on 29 July 2022, the first defendant, through his solicitors, issued an undertaking to the court that he would "take all steps to postpone dealing with the resolutions pertaining to the transfer of the [Properties] the subject of SUM 2781 pending the resolution of SUM 2781".[6]

9 On 1 August 2022, during the EGM, the resolutions pertaining to the proposed transfer of the Properties were withdrawn.[7]

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4 Karen's 1st Affidavit at para 53.

5 Karen's 1st Affidavit at para 58.

6 1st Affidavit of Lim Soon Huat dated 22 August 2022 at p 244.

7 1st Affidavit of Lim Teong Huat dated 22 August 2022 at para 14.

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Procedural history

10 Because of the various applications parties have taken out and the related actions that are currently pending, I now turn to the procedural history behind OC 158.

11 On 22 August 2022, the defendants applied in HC/SUM 3124/2022 and HC/SUM 3125/2022 to strike out OC 158 on the basis that the claimant had acted unreasonably in not accepting offers put forward by the first defendant to buy out the claimant's shares in SLH. The Assistant Registrar dismissed the applications. The High Court dismissed the resulting appeals in HC/RA 297/2022 and HC/RA 298/2022 (see *Leong Quee Ching Karen v Lim Soon Huat and others* [2023] 4 SLR 1133).

12 On 12 September 2022, the claimant applied in HC/SUM 3376/2022 to strike out certain "without prejudice" e-mails and references thereto in the first defendant's affidavit and the second defendant's affidavit. The High Court allowed the application to strike out most of the e-mails, save for one (see *Leong Quee Ching Karen v Lim Soon Huat and others* [2023] SGHC 234).

13 On 25 July 2023, the first defendant commenced HC/OA 738/2023 for an order granting, among other orders, the transfer of the Geylang Property to the first defendant and the Tamarind Road Property to the fifth defendant. On the same day, the second defendant commenced HC/OA 739/2023 for the same. The claimant is a respondent to both these originating applications. On 26 September 2023, an Assistant Registrar granted the claimant's application in HC/SUM 2633/2023 and HC/SUM 2642/2023 to convert the originating applications into originating claims. The High Court dismissed the resulting

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appeals in HC/RA 215/2023 and HC/RA 216/2023 (see *Lim Soon Huat v Lim Teong Huat and others and another matter* [2023] SGHC 356).

14 With the background facts and procedural history in mind, I turn to address the present application.

The generally applicable law

15 At the outset, while cases have used the varying terminologies of "interim injunctions" and "interlocutory injunctions", they refer to the same type of injunction, which is granted pending the outcome of a trial or any other substantive determination of a matter. Thus, in the Court of Appeal decision of *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah (trading as Sin Kwang Wah)* [2000] 1 SLR(R) 786, the court explained as follows (at [46]):

> In our opinion, the terms "interim injunction" and "interlocutory injunction" are not terms of art, and in their ordinary sense, an interim injunction means an injunction made in the meantime and until something is done, *eg* the final disposal of the matter; and an interlocutory injunction means an injunction made prior to the final disposal of the suit or action, *ie* at the interlocutory stage of the suit or action. An interim injunction is an interlocutory injunction, and *vice versa*. We do not think that there is any material difference between the two.

However, for the purpose of consistency in this judgment, I will use the term "interim injunction".

16 As a starting point, the court's power to grant interim injunctions is provided for in s 4(10) of the Civil Law Act 1909 (2020 Rev Ed), which states:

> **Injunctions and receivers granted or appointed by interlocutory orders**
>
> (10) A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either

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> unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made.

In turn, the general power of the General Division of the High Court ("General Division") to grant injunctions is provided by s 18(2) read with paras 5 and 14 of the First Schedule of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA").

17 More specifically, O 13 r 1(1) of the Rules of Court 2021 provides that "[a] party may apply for an injunction or a search order, whether or not a claim for such relief was included in that party's originating process, counterclaim or third party notice, as the case may be". The predecessor to this is O 29 r 1(1) of the Rules of Court (2014 Rev Ed). As observed in Jeffrey Pinsler, *Singapore Civil Practice* vol 1 (LexisNexis, 2022) at para 27-3, while O 13 "retains the substance of O 29 … the terminology in O 13 is much clearer than its predecessor".

18 In relation to the present application, the generally applicable test for interim injunctions is that: (a) there is a serious question to be tried; and (b) the balance of convenience lies in favour of granting the injunction (see the Court of Appeal decision in *RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997 ("*RGA Holdings*") at [28]). This general rule is based on the fundamental principle that "the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong at trial in the sense of granting relief to a party who fails to establish his rights at the trial, or of failing to grant relief to a party who succeeds at the trial" (see *RGA Holdings* at [28], citing the Court of Appeal decision of *Chuan Hong Petrol Station Pte Ltd v Shell Singapore (Pte) Ltd* [1992] 2 SLR(R) 1 at [88]). Similarly, the Court of Appeal explained in *Maldives Airports Co Ltd and*

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another v GMR Malé International Airport Pte Ltd [2013] 2 SLR 449 ("*Maldives Airports*") (at [53]) that this principle is necessary because the court is asked to assess the balance of convenience at an early stage and based only on affidavit evidence. In particular, the Court of Appeal framed the question as whether the party who is later shown to have been wrongly subjected to an injunction may be adequately compensated by an award of damages.

19 Further, interim injunctions may be further categorised into interim prohibitory injunctions and interim mandatory injunctions. While the former forbids the commission or continuation of an act, the latter compels the defendant to do a positive act to repair an omission or restore the status quo by undoing some act (see *RGA Holdings* at [29]). This distinction is important because the grant of interim mandatory injunctions is "a very exceptional discretionary remedy" and there is thus "a much higher threshold to be met in order to persuade the court to grant such an injunction as compared to an ordinary [prohibitory] injunction" (see *RGA Holdings* at [31], citing the Court of Appeal decision of *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] 2 SLR(R) 565 at [75]).

My decision: the interim injunctions should not be granted

20 Applying these general principles, I decide that the interim injunctions should not be granted.

There is no serious question to be tried

21 First, I am not satisfied that there is a serious question to be tried. In sum, the requirement that there is a serious question to be tried necessitates the claimant to prove that their claim is not frivolous or vexatious (see the House of

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Lords decision of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*") at 407).

The test for a serious question to be tried

22 In this regard, it is relevant to highlight that the test for an interim injunction previously required the claimant to show a "strong *prima facie* case that the right which he seeks to protect in fact exists" (see the English Court of Appeal decision of *Smith v Grigg Ltd* [1924] 1 KB 655 at 659). However, as Lord Diplock explained, this has since been replaced with the test of whether there are serious questions to be tried, because the evidence before the court during the hearing in relation to the interim injunction would often be incomplete (see *American Cyanamid* at 406). Indeed, such evidence is also given by affidavit and would not have been tested by cross-examination (see *Maldives Airports* at [53]). As such, the purpose of interim injunctions – to protect the plaintiff's interests pending a full trial on the merits – would be stultified if the court's discretion to grant an interim injunction "were clogged by a technical rule forbidding its exercise if upon that incomplete untested evidence the court evaluated the chances of the plaintiff's ultimate success in the action at 50 [percent] or less, but permitting its exercise if the court evaluated his chances at more than 50 [percent]" (see *American Cyanamid* at 406). Ultimately, Lord Diplock emphasised that the court's function at the interlocutory stages of proceedings is not to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may depend nor to decide difficult questions of law that call for detailed argument (see *American Cyanamid* at 407).

23 The threshold for finding a serious question to be tried does not appear to be particularly high. For instance, in the High Court decision of *Chen*

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Mingxing and others v Zhang Jian and others [2021] SGHC 3, in relation to the plaintiffs' application for an interim injunction to restrain the defendants from disposing of any shares in a company pending trial, the court found that there was a serious question to be tried because the evidence disclosed an investment plan that the defendants had known about and had benefitted them. While the court noted that there remained unanswered questions and facts in contention, these remained for the trial judge to determine and what mattered at this stage was that the plaintiffs' pleaded case revealed serious questions to be tried. Indeed, for a claimant to *fail* in establishing a serious question to be tried, they must have "prospects [that] are so small that they lack substance and reality" (see *Singapore Civil Procedure 2022* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2022) ("*Singapore Civil Procedure*") at para 13/1/13), or the claim must be "largely speculative" (see the High Court decision of *Sang Cheol Woo v Charles Choi Spackman and others* [2021] SGHC 42 ("*Spackman*") at [95]).

The serious question to be tried in the present application

24 Before me, the parties differed in their positions on *what* the serious question to be tried is for the purposes of the interim injunctions sought. On the one hand, the claimant argues that it is the broader question of whether she has a viable case in minority oppression.[8] The claimant explains that the diversion or dissipation of company assets can amount to oppression. As such, it must follow that she has the right to injunctions to stop such diversion or dissipation so long as she can establish a credible case in minority oppression.[9] On the other hand, the defendants argue that the serious question to be tried is the more

8 Claimant's Written Submissions dated 19 October 2023 ("CWS") at paras 44–51.

9 CWS at para 46.

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specific question of whether the claimant has proprietary interest over the Properties, since she is seeking, in substance, proprietary injunctions. Framed this way, it is implicit in the claimant's characterisation of the question to be tried that she does not think that it is necessary for her to have a proprietary interest over the Properties so as to pursue the injunctions sought.[10]

25 To resolve this conflict between the parties' positions, it is necessary to determine what the serious question to be tried is. In my view, while the claimant is correct that the broader question in OC 158 pertains to whether she has a viable case in minority oppression, it does not follow that that is the serious question to be tried in the *present application*. This is because even if the claimant establishes that she has a viable case in minority oppression, it is a different question whether she is entitled to the specific reliefs which she seeks. To put this in another way, even if the claimant convinces me that there is a serious question to be tried as to whether she has been oppressed as a minority shareholder of SLH, this says nothing about the sort of remedy, which may include a buyout of the minority's shares, that may be made available to her, as an oppressed shareholder, at the end of trial. Such a remedy of a buyout would not be of the same nature as the proprietary remedies she is asking for in the present application. It follows, however, that even though I have, for the reasons to follow, decided that there is no serious question to be tried in the present application, it does not mean that the claimant's claim in OC 158 lacks "substance and reality" (see *Singapore Civil Procedure* at para 13/1/13), or that the claim is "largely speculative" (see *Spackman* at [95]). I am only here

[10] 1st, 3rd, and 5th Defendants' Written Submissions dated 19 October 2023 ("135DWS") at paras 49–57; 2nd Defendant's Written Submissions dated 19 October 2023 ("2DWS") at para 59.

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concerned with whether there is a serious question to be tried in so far as the interim injunctions sought are concerned.

26 I therefore agree with the defendants that the serious question to be tried for the *present application* is whether the claimant is entitled to the very relief she seeks, which are the interim injunctions over the Properties concerned. This requires me to consider the proper characterisation of the interim injunctions. Since the defendants have argued that these are really proprietary injunctions, I turn next to discuss what is a proprietary injunction.

There is no serious question to be tried in the present application

(1) The claimant requires a proprietary interest to seek the interim injunctions

27 To begin with, a proprietary injunction is a relief that stems from the exercise of the Chancery Court's jurisdiction, that fastens on the specific asset in which the claimant asserts a proprietary interest, and prevents the defendant from dealing with that asset and its traceable proceeds (see the Court of Appeal decision of *Ernest Ferdinand Perez De La Sala v Compañía De Navegación Palomar, SA and others* [2020] 1 SLR 950 at [59]). As such, a proprietary injunction is a *specific* form of prohibitory injunction (see the Court of Appeal decision of *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [144]).

28 As with the General Division's power to grant an injunction generally, the court's power to grant a proprietary injunction specifically is also located in s 18(2) read with para 5(*a*) of the First Schedule to the SCJA. The applicable test is thus the same as the generally applicable test for granting interim

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injunctions, with the qualification that the first requirement that there is a serious question to be tried will be satisfied as long as the claimant has a "seriously arguable case that they [have] a proprietary interest" (see *Bouvier* at [151], citing the English Court of Appeal decision of *Derby & Co Ltd v Weldon (No 1)* [1990] Ch 48 at 64A–64B). In this regard, it bears mentioning that a proprietary injunction ought not to be confused with a freezing injunction. This is because a freezing injunction is granted in support of a claim for personal relief and does not latch on to any specific asset of the defendant. Instead, it merely prevents the defendant from dissipating his assets beyond a certain value to defeat a possible judgment that may in due course be rendered against him. On the other hand, it is clear that a proprietary injunction is granted in support of a claim for proprietary relief (see *Bouvier* at [143]–[144]).

29 Given that a proprietary injunction is one which attaches to the property concerned so as to prohibit any dealings with it, I am of the view that the interim injunctions which the claimant seeks should be properly characterised as proprietary injunctions. I say this for the following three reasons.

30 First, although the interim injunctions sought are framed as "interim prohibitory injunction[s]",[11] this does not preclude the court from finding that they are, in substance, proprietary injunctions. For instance, in *Spackman*, although the claimant had applied for an "interim injunction" preventing the defendant from: (a) selling or transferring shares; (b) disposing of the sale proceeds of the shares; and (c) causing the sale proceeds to be transferred to third parties (at [36]), the court characterised the injunction sought as a proprietary injunction because it would "prevent dealings with particular assets or traceable proceeds thereof" (at [97]–[98]). Relatedly, in the High Court

[11] HC/SUM 2781/2022 filed 29 July 2022 (Amendment No. 1).

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decision of *CLM v CLN and others* [2022] 5 SLR 273, the court did not question the plaintiff's characterisation of an injunction "prohibiting the first defendants from dealing with, disposing of, or diminishing the value of the Stolen Cryptocurrency Assets" as a proprietary injunction. In the present application, because the claimant is applying to restrain the transfer of the Properties to the first and fifth defendants, I am satisfied that the injunctions are, in substance, proprietary injunctions because they seek to prevent any diversion or dissipation of the Properties.

31 Second, I find that it is immaterial that the injunctions sought are intended to prevent the diversion or dissipation of the Properties *pending* the determination of OC 158, instead of being so-called "freestanding" injunctions (on the issue of whether there can ever be a "freestanding" injunction, see the important discussion of the General Division in the recent case of *Gazelle Ventures Pte Ltd v Lim Yong Sim and others* [2023] SGHC 328 at [2] and [66]–[72], though see also the UK Supreme Court decision of *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47 at [43]–[49]). This is because the litmus test for determining if an injunction is proprietary in nature remains whether they fasten upon the asset in question, and not the purpose for which the injunction is sought. In this regard, I note that in the High Court decision of *Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE")* [2023] 3 SLR 1191 (at [25]), the application was for a "proprietary injunction prohibiting the defendant from in any way dealing with the Bored Ape NFT, *until after the trial of Originating Claim No 41 of 2022*" [emphasis added]. Despite the purpose of the injunction being clear, it did not appear to affect the court's characterisation of it as a proprietary injunction.

32 Third, I do not think that the claimant's reference to two English decisions, which have granted what appears to be proprietary injunctions in the

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context of a minority oppression claim despite the applicant not possessing any proprietary interest over the assets concerned, assists her case. In my view, these decisions are different because they do not involve proprietary injunctions.

33 The first decision is *Re Mountforest Ltd* [1993] BCC 565 ("*Re Mountforest Ltd*"), where Harman J granted, among others, an injunction restraining the respondents from acting upon resolutions intended to be passed at two extraordinary general meetings. These resolutions would authorise the sale of the assets of the company, and Harman J opined that "it cannot be right to allow the company to pass a resolution which will have the effect of purporting to validate a transaction which does not in fact comply with the resolution" (at 571). Where this decision differs from the present application is in the nature of the injunction sought. The claimant there was seeking to restrain shareholders from acting on resolutions proposed to be passed on the basis that the supporting shareholders did not genuinely intend to act in accordance with those resolutions, and are instead seeking to use those resolutions to validate non-compliant transactions. The injunction sought in *Re Mountforest Ltd* thus does not involve any proprietary interest *per se*. Yet, while the first defendant had previously requisitioned SSLRC to hold an EGM to vote on the transfer of the Properties on 1 August 2022, following the undertaking by the first defendant on 29 July 2022, the resolutions pertaining to the transfer of the Properties were withdrawn.[12] Therefore, as it stands, there are no resolutions proposing the transfer of the Properties. The nature of the interim injunctions sought here is therefore quite different from the injunction granted in *Re Mountforest Ltd*.

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12 Karen's 1st Affidavit at para 53; 1st Affidavit of Lim Soon Huat dated 22 August 2022 at p 244; 1st Affidavit of Lim Teong Huat dated 22 August 2022 at para 14.

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34 The second decision is *Re Ravenhart Service (Holdings) Ltd* [2004] 2 BCLC 376, where Etherton J granted the claimant's application for an interim injunction restraining the company and the subsidiaries from making payments by way of remuneration to the respondents pending the determination of the petition. It is pertinent to note that the claimant there sought to restrain the making of payments by way of remuneration, which is quite unlike the present application to restraint the transfer of properties.

35 Accordingly, given that the injunctions sought in the present application are proprietary injunctions, in order for the claimant to show a serious question to be tried, it is incumbent on the claimant to establish a proprietary interest in the Properties. The question is whether she has done so.

(2) The claimant does not have proprietary interest to seek the interim injunctions

36 In my judgment, the claimant does not have proprietary interest to seek the interim injunctions. In this regard, *Spackman* is of assistance, where the court found that "the substantive claim … would not, even if successful, entitle the [claimant] to relief in respect of the shares and/or the traceable proceeds thereof specifically", but instead, it was a personal claim that "would entitle them to damages that can be assessed" (see *Spackman* at [101]). Similarly, even if the claimant is successful in OC 158, her claim is personal, *qua* shareholder. There is no proprietary relief that she is entitled to.

37 This must be the case because a shareholder owns no interest, legal or equitable, in any of the company's assets by virtue of holding shares in the company (see the Court of Appeal decision of *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd (formerly known as Tian Jian Hua Xia Medical Group Holdings Pte Ltd) (in judicial management) and another* [2022] 1 SLR 884 at

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[115]). Accordingly, it would not be right to grant the claimant a proprietary injunction over the Properties, which she would not ultimately have control of. As to the claimant's point that further damage would be caused to her by the transfer of the Properties, the answer is that she can be adequately financially compensated (see [43] below).

(3) It is not necessary to decide whether the claimant is a proper plaintiff

38 For completeness, the first defendant also argues that the claimant is not the proper plaintiff in that the injury allegedly suffered by the claimant is not distinct from the injury allegedly suffered by SLH.[13] In this regard, based on the test set out by the Court of Appeal in *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333, a claimant suing on an oppression claim must show how the breach is not merely a corporate wrong, but instead, a wrong they suffer *qua* shareholder (see the Court of Appeal decision of *Ong Heng Chuan v Ong Teck Chuan and others* [2021] 2 SLR 262 at [33]). In this regard, the claimant submits that if the Properties were to be transferred to the first and the fifth defendants, she would be deprived of any future rental income from the Properties and the future value of the Properties.[14] Further, SLH would lose valuable assets.[15]

39 Given my conclusion above that the claimant has failed to establish proprietary interest in the Properties and therefore has not shown a serious question to be tried, I do not find it necessary to decide whether she is a proper plaintiff, which can be left to the hearing of OC 158. This is because, even if the

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13 13DWS at paras 63–64.

14 2nd Affidavit of Leong Quee Ching Karen dated 5 September 2022 ("Karen's 2nd Affidavit") at para 7(b).

15 Karen's 2nd Affidavit at para 58(d).

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claimant can demonstrate that she is a proper plaintiff, this is insufficient to establish a serious question to be tried in relation to the transfer of the Properties, which is premised on her having the requisite proprietary interest.

40 Accordingly, for the reasons given above, I am of the view that there is no serious question to be tried in so far as the interim injunctions concerning the Properties are concerned, because the claimant has no proprietary interest in the Properties. This is sufficient to dispose of the claimant's application. Nevertheless, assuming that there is a serious question to be tried, I now consider whether the balance of convenience lies in favour of granting the injunctions.

The balance of convenience does not lie in favour of granting the interim injunctions

41 For the reasons that I will now develop, I find that the balance of convenience does not lie in favour of granting the injunctions.

The test for determining the balance of convenience

42 In determining where the balance of convenience lies, the court proceeds on a two-stage analysis: (a) at the first stage, the court considers whether damages would be an adequate remedy for the respective parties; and (b) at the second stage, if damages would not be an adequate remedy, or if the court is doubtful about the adequacy of damages, the court considers where the balance of convenience lies (see *Singapore Civil Procedure* at paras 13/1/14 to 13/1/16). Relevant factors at the second stage include the risk of irreparable damage (see the High Court decision of *Challenger Technologies Ltd v Courts (Singapore) Pte Ltd* [2015] 5 SLR 679 at [32]) and the potential hardship an injunction may

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bring to the party enjoined (see the Court of Appeal decision of *Reed Exhibitions Pte Ltd v Khoo Yak Chuan Thomas and another* [1995] 3 SLR(R) 383 at [21]).

43 One qualification to the above test in the context of an oppression action under s 216 of the Companies Act 1967 (2020 Rev Ed) is that it should not be framed in terms of the adequacy of damages. This is because in the event that the oppression claim is successfully made out, s 216 does not provide for damages as a remedy. However, there are remedies providing for financial compensation, such as a buyout order. Indeed, the same has been observed in the UK, where because s 461 of the Companies Act 1985 (c 6) (UK) does not provide for an award of damages at common law, but allows the court to order various forms of financial compensation, the inquiry should be whether there is an adequate *remedy* for the claimant (see the English High Court decision of *Re Posgate & Denby (Agencies) Ltd* [1987] BCLC 8 at 15–16 and the English Court of Appeal decision of *Pringle and others v Callard* [2008] 2 BCLC 505 at [26]–[27]). It is therefore more precise to frame the inquiry as whether the claimant may be adequately financially compensated.

The balance of convenience does not lie in favour of granting the interim injunctions

44 I begin by considering the first stage in the balance of convenience analysis. In my view, even if the interim injunctions are not granted, and the claimant is successful in OC 158, the claimant may be adequately financially compensated. This is because even if the Properties are transferred, any loss caused to the claimant remains quantifiable. In this regard, I do not accept that the claimant would find it difficult to quantify any potential loss because there are plans to redevelop the Geylang area, on which one of the Properties lie. It cannot be that the mere fact of redevelopment renders it impossible to reach an

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objective valuation of a property. If so, this would mean that the properties within the area of redevelopment cannot be valued until the redevelopment is completed, which cannot be the case.

45 In this regard, while the Court of Appeal in *Bouvier* (at [157]) appeared to treat "unique property, or property that cannot be readily purchased or substituted on the market" differently from fungible assets in the context of proprietary injunctions, the claimant's case is not that the Properties are unique and cannot be easily replaced. Instead, the claimant's case is premised on the valuation of the Properties, which must mean that the claimant is concerned with the economic value of the Properties, and not any unique value that cannot be quantified in monetary terms.

46 Further, the claimant had been previously presented with a written offer by the first defendant dated 2 August 2022, which the claimant herself conceded during a hearing on 27 September 2022 to be a reasonable offer that "dealt with" and "sufficiently addressed" the issue of the Properties.[16] In so far as the adequacy of financial compensation is concerned, this concession suggests that the claimant can be adequately financially compensated.

47 Accordingly, because the claimant may be adequately financially compensated, the balance of convenience does not lie in favour of granting the injunctions.

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16 Certified Transcript 27 September 2022 at p 2 lines 20–27, p 7 lines 1–2, and p 7 line 30 to p 8 line 1.

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Other relevant factors

48 For completeness, I consider other relevant factors, in particular, the behaviour of the claimant in bringing the present application.

49 Because an interim injunction is a form of equitable relief, the applicant must come to the court with clean hands. This does not mean that the applicant must be blameless in all ways. With that being said, in order to prevent a person from receiving equitable relief, the undesirable behaviour must be more than general depravity. It must also have an immediate and necessary relation to the equity sued for and must be a depravity in a legal as well as in a moral sense (see the High Court decision of *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [224]–[226]).

50 Additionally, as the learned authors of *Snell's Equity* (Sweet & Maxwell, 34th Ed, 2020) observed, a claimant applying for an interim injunction must demonstrate the urgency of the application (at para 18-065):

> … Moreover, interim relief is granted only in matters of urgency, so that a claimant who delays thereby demonstrates the absence of any urgency requiring prompt relief. Even a month's delay between the assertion of a right and the commencement of proceedings may debar the claimant if in the meantime the defendant has contracted to let the subject-matter to third parties. Delay is, however, of less significance where the case turns simply on the construction of documents.
>
> [footnotes omitted]

51 Indeed, delay is relevant because it affects the "practical doing of justice on the application" and "raises questions about whether the claimant really needs an injunction pending trial" (see Steven Gee, *Commercial Injunctions* (Sweet & Maxwell, 6th Ed, 2016) at para 2-022). For instance, in the High Court decision of *Meespierson NV v Industrial and Commercial Bank of*

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Vietnam [1998] 1 SLR(R) 287 (at [29]–[30]), the court observed that a delay of nine months before an application for a Mareva injunction was made indicated that there was no real risk of dissipation, and the injunction was to "oppress the defendants and force them to settle and/or to obtain security for the claim", which "was an abuse of the process of [the] court". And in the English High Court decision of *JSC BTA Bank v Ablyazov and others* [2009] EWHC 2840 (Comm) (at [18]), the delay of five months was "a point worthy of consideration because delay in seeking a Freezing Order can indicate that there is no real risk of dissipation".

52 In the present case, although I am satisfied that the claimant has not acted with such depravity that would bar the present application, I agree with the defendants that there has been substantial delay in the claimant's bringing of the present application. The claimant sent a letter to the defendants on 30 March 2022 stating her concerns regarding the transfer of the Properties, but the present application was filed only on 27 July 2022. If the transfer of the Properties were as serious as the claimant alleges, it was unclear why she took close to four months before applying to restrain the transfer of the Properties. In my view, this is a relevant factor that militates against granting the interim injunctions sought by the claimant.

Conclusion

53 For all the reasons given above, I find that there is no serious question to be tried in relation to the claimant's application for the interim injunctions, that the balance of convenience does not lie in favour of granting the injunctions, and that the claimant's delay in seeking the injunctions militate against granting the injunctions. As such, I dismiss the claimant's application.

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54 Unless the parties are able to agree on costs for this application, they are to file their submissions on costs, limited to seven pages each, within 14 days of this decision.

Goh Yihan
Judge of the High Court

Ng Ka Luon Eddee, Tnee Zixian Keith, Lee Pei Hua Rachel and Foo Yiew Min (Tan Kok Quan Partnership) for the claimant;
Sarbjit Singh Chopra, Roshan Singh Chopra and Yuen Zi Gui (Selvam LLC) for the first, third and fifth defendants;
Tan Teng Muan and Loh Li Qin (UniLegal LLC) for the second defendant;
Eugene Jedidiah Low Yeow Chin (Kelvin Chia Partnership) for the fourth defendant;
Tan Kheng Ann Alvin (Wong Thomas & Leong) for the sixth defendant (watching brief).

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