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

[2024] SGHC 182

Originating Application No 3 of 2024 (Summons No 34 of 2024)

Between

Farooq Ahmad Mann (in his capacity as the private trustee in bankruptcy of Li Hua)

… *Claimant*

And

Xia Zheng

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Injunctions — *Mareva* injunctions — Principles — "Real risk of dissipation" requirement — Applicability of balance of convenience test to *Mareva* injunctions]
[Civil Procedure — Injunctions — Proprietary injunctions — Principles]
[Insolvency Law — Avoidance of transactions — Transactions at an undervalue — Whether transfer of property pursuant to ancillary relief order capable of challenge as a transaction at an undervalue — Section 361 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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v
Xia Zheng

[2024] SGHC 182

General Division of the High Court — Originating Application No 3 of 2024 (Summons No 34 of 2024)
Aedit Abdullah J
4, 9 April, 9 May 2024

15 July 2024

Aedit Abdullah J:

1 This was an application by Mr Farooq Ahmad Mann ("the Private Trustee"), in his capacity as the private trustee in bankruptcy of Mr Li Hua ("the Bankrupt"), for a *Mareva* and/or proprietary injunction against the respondent, Ms Xia Zheng ("Ms Xia"), in support of the Private Trustee's claim against Ms Xia to avoid certain transfers of property from the Bankrupt to Ms Xia in the lead-up to the Bankrupt's bankruptcy on the grounds that these were transactions at an undervalue or fraudulent conveyances under s 361 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") and s 73B of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA") respectively.

2 The peculiarity of this case arose from the mode of transfer of these properties to Ms Xia. The Bankrupt and Ms Xia had been married, and the properties were transferred to Ms Xia following an interim judgment for divorce by consent prior to the Bankrupt's bankruptcy. A novel conflict between the matrimonial and insolvency jurisdictions of the court thus lay at the heart of this case: could an ancillary relief order providing for the division of matrimonial property be subsequently challenged through the avoidance provisions in the insolvency legislation?

3 Having considered the parties' submissions, including a round of further arguments at Ms Xia's request, I allowed the Private Trustee's application and granted a worldwide *Mareva* injunction as sought. As Ms Xia has appealed against my decision, I now set out the detailed grounds for my decision. In addition to considering the abovementioned tension between the matrimonial and insolvency regimes, these grounds also address fundamental points of principle on the juridical basis of *Mareva* injunctions, particularly in relation to its constituent elements and the requirement of a real risk of dissipation of assets by the defendant.

Background facts

4 The Bankrupt and Ms Xia were previously married but are currently divorced,[1] with final judgment having been entered on 9 October 2019.[2] By an

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1 Affidavit of Xia Zheng in HC/SUM 34/2024 dated 23 February 2024 ("Ms Xia's Affidavit") at para 28; Affidavit of Farooq Ahmad Mann dated 5 January 2024 and affirmed 4 January 2024 ("Private Trustee's Affidavit") at para 13.

2 Final Judgment dated 9 October 2019 (Ms Xia's Affidavit at p 133; Private Trustee's Affidavit, Tab 17, p 409).

interim judgment by consent dated 8 July 2019 (the "Interim Judgment"), the Bankrupt agreed to:[3]

(a) transfer his interests in the following four matrimonial properties ("the Properties") to Ms Xia for no cash consideration:[4]

(i) a property at Duchess Road ("the Duchess Road Property");

(ii) a property at Leedon Heights ("the Leedon Heights Property");

(iii) a property at Duchess Avenue ("the Duchess Avenue Property"); and

(iv) a property at Orchard Boulevard ("the Orchard Property");

(b) continue making repayments towards the outstanding mortgage loan of the Properties;[5]

(c) transfer all his other Singapore matrimonial assets including but not limited to his shares and credit balance standing in his Singapore bank accounts to Ms Xia as her share of the matrimonial assets;[6] and

(d) pay S$2,000 per month in child maintenance to Ms Xia.

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3 Interim Judgment dated 8 July 2019 (Ms Xia's Affidavit at pp 131–132; Private Trustee's Affidavit, Tab 17, pp 407–408).

4 Para 3(c)(1) of the Interim Judgment dated 8 July 2019 (Ms Xia's Affidavit at p 132; Private Trustee's Affidavit at p 408).

5 Para 3(c)(2) of the Interim Judgment dated 8 July 2019 (Ms Xia's Affidavit at p 132; Private Trustee's Affidavit at p 408).

6 Para 3(d) of the Interim Judgment dated 8 July 2019 (Ms Xia's Affidavit at p 132; Private Trustee's Affidavit at p 408).

5 In the main application in HC/OA 3/2024 ("OA 3"), the Private Trustee contends that the Interim Judgment was an asset protection scheme by the Bankrupt, in which Ms Xia was complicit, to put his assets out of reach of his creditors at a time when he was facing multiple lawsuits as the mastermind of an alleged fraudulent investment scheme gone wrong. As a result, the Private Trustee seeks to unwind the transfers of the Bankrupt's interests in the Properties to Ms Xia as undervalue transactions or fraudulent conveyances under s 361 of the IRDA and s 73B of the CLPA respectively.

6 By way of background, the Bankrupt is alleged to have used two companies under his and Ms Xia's control (both currently in liquidation), Sunmax Global Capital 1 Fund Pte Ltd ("Sunmax") and SMGC Pte Ltd ("SMGC"), to run a fraudulent investment scheme intended to allow him and Ms Xia to profit off the moneys invested into the scheme.[7] The scheme supposedly went on from Sunmax's incorporation on or around 7 April 2009[8] until its liquidation on 5 August 2022.[9]

7 Sunmax was the vehicle used to procure investment from investors, while SMGC was used as a conduit for siphoning off investment monies in Sunmax to the Bankrupt and Ms Xia's own pockets.[10] This was done under the guise of Sunmax appointing SMGC as an investment manager, and having Sunmax pay SMGC fees for its services, which the Bankrupt then withdrew from SMGC by procuring the payment of directors' fees and dividends to

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7 Private Trustee's Affidavit at para 18.

8 Private Trustee's Affidavit at para 8.

9 Private Trustee's Affidavit at para 10.

10 Private Trustee's Affidavit at para 15.

himself and Ms Xia.[11] The alleged fraud was of a considerable scale. In numerical terms, a large sum of some S$65.7m was invested into Sunmax by investors in the period between 2009 and 2012.[12] From 2009 to 2017, Sunmax paid a substantial total sum in excess of S$14m to SMGC as fees for its services,[13] and in turn, a sum in excess of S$8.5m was paid by SMGC to the Bankrupt and Ms Xia as directors' fees and/or dividends.[14]

8 During this period, the Bankrupt and Ms Xia purchased and/or repaid the mortgage loans taken on the Properties in Singapore, which they held as joint tenants.[15] The Private Trustee alleges that the Properties were acquired through monies invested in Sunmax that were siphoned off by the Bankrupt and Ms Xia in the manner described above.[16]

9 On 21 July 2016, Sunmax informed its investors that they were facing substantial losses on their investments.[17] Subsequently, a wave of litigation from various disgruntled investors was commenced against Sunmax and the Bankrupt.[18] The Private Trustee contends that, as a result of the increase in legal proceedings taken out against him, the Bankrupt began taking steps to dissipate his assets to Ms Xia so as to put them out of reach of his potential creditors.[19]

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11 Private Trustee's Affidavit at paras 18, 39–40.

12 Private Trustee's Affidavit at para 24.

13 Private Trustee's Affidavit at para 39.

14 Private Trustee's Affidavit at para 40.

15 Private Trustee's Affidavit at para 42.

16 Claimant's Submissions dated 22 March 2024 ("Private Trustee's WS") at para 11.

17 Private Trustee's Affidavit at para 44.

18 Private Trustee's Affidavit at para 45.

19 Private Trustee's Affidavit at para 18(e).

10 On or around 26 February 2019, the Bankrupt caused Sunmax to release a mortgage that Sunmax had held over the Leedon Heights Property. The mortgage and caveat lodged against the Leedon Heights Property by Sunmax was fully discharged on 24 June 2019 and, on the same day, the Leedon Heights Property was sold to a third party for S$2.16m, with the entire sale proceeds paid to Ms Xia.[20] Ms Xia did not dispute that she had received the proceeds of sale of the Leedon Heights Property.[21]

11 Around the same time as the sale of the Leedon Heights Property, the Bankrupt and Ms Xia entered into the Interim Judgment, the terms of which have been set out at [4] above.[22] As is evident from the terms of the Interim Judgment, its result was that the entirety of the Bankrupt's assets in Singapore (including his interests in the Properties) were transferred to Ms Xia, while keeping the Bankrupt responsible for making child maintenance payments and the mortgage repayments on the Properties.[23]

12 Shortly after the Interim Judgment, the Duchess Avenue Property and the Duchess Road Property were sold for S$2.4m and S$2.88m on 18 October 2019 and 22 November 2019 respectively.[24] The proceeds of these sales were also paid to Ms Xia,[25] which she also did not dispute.[26]

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20 Private Trustee's Affidavit at para 51.

21 Ms Xia's Affidavit at para 8.

22 Private Trustee's Affidavit at paras 52–54.

23 Private Trustee's Affidavit at para 55.

24 Private Trustee's Affidavit at para 61.

25 Private Trustee's Affidavit at para 62.

26 Ms Xia's Affidavit at para 8.

13 The total sale proceeds from the sales of the three Properties paid to Ms Xia thus come up to S$7.44m.

14 At present, only the Orchard Property has not been sold. Despite the terms of the Interim Judgment, the Orchard Property remains registered in the joint names of the Bankrupt and Ms Xia. It is estimated by the Private Trustee to be worth around S$5m.[27]

15 On 8 May 2022, the Bankrupt filed a debtor's bankruptcy application seeking to place himself into bankruptcy. He was subsequently adjudged a bankrupt on 28 June 2022, and the Private Trustee was appointed in his capacity as such on 2 August 2022.[28]

The present application

16 Primarily, the Private Trustee sought a worldwide *Mareva* injunction of up to S$12.44m, being the total value of the Orchard Property and the sale proceeds from the three Properties, that were the subjects of the Private Trustee's avoidance action in OA 3.[29]

17 In the alternative, the Private Trustee sought a domestic *Mareva* injunction of up to S$7.44m, being the total value of the sale proceeds paid to Ms Xia in respect of the three Properties (see [10]–[13] above), as well as a proprietary injunction over the Orchard Property.[30]

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27 Private Trustee's Affidavit at para 64.

28 Private Trustee's Affidavit at para 12.

29 Private Trustee's WS at para 2(a).

30 Private Trustee's WS at para 2(b).

The applicable legal framework on injunctions

18 The statutory source of the court's general jurisdiction to grant injunctions is s 18(2) and paras 5 and 14 of the First Schedule of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"). Paragraph 14 of the First Schedule empowers the court to "grant all reliefs and remedies at law and in equity, including damages in addition to, or in substitution for, an injunction or specific performance". In terms of interlocutory injunctions specifically, para 5(*a*) gives the court the power to provide for "the interim preservation of property which is the subject matter of the proceedings" (thus referring to a proprietary injunction), while para 5(*c*) of the First Schedule refers to a power to provide for "the preservation of assets for the satisfaction of any judgment which has been made or may be made" (thus referring to a *Mareva* injunction).

Mareva *injunctions*

19 The purpose of a *Mareva* injunction is to restrain a defendant from dissipating his assets with a view to frustrating the enforcement of a potential judgment against him on the claimant's claim (see the Court of Appeal decision of *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("*JTrust*") at [95]). In the recent decision of the Judicial Committee of the Privy Council in *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389, Lord Leggatt JSC referred to this rationale as the "enforcement principle" (at [86]), and expanded on it in the following terms (at [89]):

> The interest protected by a freezing injunction is the (usually prospective) right to enforce through the court's process a judgment or order for the payment of a sum of money. A freezing injunction protects this right to the extent that it is possible to do so without giving the claimant security for its claim or interfering with the respondent's right to use its assets for ordinary business purposes. The purpose of the injunction is to prevent the right of enforcement from being rendered ineffective

> by the dissipation of assets against which the judgment could otherwise be enforced.

20 An important point on the nature of a *Mareva* injunction, made clearly by Lord Leggatt JSC in the extract above, is that it operates as an *in personam* constraint against the respondent to support enforcement of a money judgment. A *Mareva* injunction has no *in rem* effect, in the sense that it has no impact on the legal or beneficial ownership of the respondent's assets, nor does it operate as a form of attachment or confer any form of security or proprietary interest on the applicant (see *Civil Fraud* (Thomas Grant QC & David Mumford QC gen eds) (Sweet & Maxwell, 1st Ed, 2018) ("*Civil Fraud*") at para 28-004).

21 The well-established requirements for the grant of a *Mareva* injunction, insofar as they are relevant to the present application, are twofold (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 [36]):

(a) first, a good arguable case on the merits of the Private Trustee's claim in OA 3; and

(b) second, a real risk that Ms Xia would dissipate her assets to frustrate the enforcement of an anticipated judgment on the Private Trustee's claim.

22 In terms of the territorial scope of the order, despite some initial reticence to making orders extending to assets beyond the court's territorial jurisdiction, it is now well-settled that the court's power extends to enjoining the disposal of assets worldwide (see *Bouvier* at [2]).

23 The legal requirements for a worldwide *Mareva* injunction are no different from those for a domestic *Mareva* injunction. However, the courts would generally take a more careful approach, and the threshold of necessity will likely be more exacting where a worldwide *Mareva* injunction is concerned (see *Bouvier* at [37]). Thus, if the respondent has sufficient assets in Singapore to satisfy the claim, a domestic *Mareva* injunction would suffice to adequately protect the applicant's interest (see Jeffrey Pinsler SC, *Singapore Civil Practice* (LexisNexis, 2022) ("*Singapore Civil Practice*") at para 28-62). Contrariwise, the fewer the assets the respondent appears to have within the jurisdiction, the greater the necessity for extending the reach of the *Mareva* injunction to assets outside of the jurisdiction (see the Court of Appeal decision of *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 ("*Guan Chong*") at [29], citing the English Court of Appeal decision of *Derby & Co Ltd and others v Weldon and others (Nos 3 and 4)* [1990] 1 Ch 65 ("*Derby*") at 79).

Proprietary injunctions

24 A proprietary injunction is distinct from a *Mareva* injunction, in that it is granted in support of a claim for proprietary relief in relation to a particular asset in the hands of the defendant, and not a mere personal claim for money (see *Bouvier* at [143]–[144]). It does so by preserving the claimant's property (*ie*, an asset in which he asserts a proprietary interest) and restraining the defendant from dealing with it in a way that may prejudice the claimant's rights in respect of that asset (see Steven Gee, *Commercial Injunctions* (Sweet & Maxwell, 7th Ed, 2021) ("*Gee on Injunctions*") at para 2-031).

25 The differences in purpose also manifest as differences in the legal requirements. A proprietary injunction has the same constituents as an ordinary

prohibitory injunction and is thus governed by the general principles set out in the influential House of Lords decision of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*") (see *Bouvier* at [144]). Thus, in order to obtain a proprietary injunction over the Orchard Property, the Private Trustee had to establish that (see the Court of Appeal decision of *RGA Holdings International Inc v Loh Choon Ping Robin and another* [2017] 2 SLR 997 at [28]):

(a) there is a serious question to be tried, *ie*, a "seriously arguable case", that he has a proprietary interest in the Orchard Property (see *Bouvier* at [151], citing the English Court of Appeal decision of *Derby & Co Ltd and others v Weldon and others (No 1)* [1990] Ch 48 at 64); and

(b) the balance of convenience lay in favour of granting the injunction (see *Bouvier* at [156]).

In contrast to the *Mareva* injunction, there is no requirement to show a real risk of dissipation in respect of the Orchard Property (see *Gee on Injunctions* at para 2-031; and the English High Court decision of *Madoff Securities International Ltd and another v Raven and others* [2012] 2 All ER (Comm) 634 at [128]).

The parties' cases

26 I set out the parties' cases in the present application in broad strokes, which I will elaborate on at the relevant junctures below.

The Private Trustee's arguments

27 The Private Trustee relied solely on its claim based on s 361 of the IRDA (and not its alternative claim under s 73B of the CLPA) for the present injunction application.[31]

28 The Private Trustee submitted that the requirements of a worldwide *Mareva* injunction had been satisfied in relation to this claim.

29 First, there was a good arguable case on the merits. Apart from the formal requirements as to the Private Trustee's standing, the Interim Judgment being within the relevant look-back period under s 361 of the IRDA, and the Bankrupt's insolvency at the time of the Interim Judgment,[32] the Interim Judgment was a transaction made on terms that provided for the Bankrupt to receive no consideration (s 361(3)(*a*) of the IRDA), or at the very least, a transaction in which the Bankrupt received consideration of a significantly lesser value than the consideration he provided (s 361(3)(*c*) of the IRDA).[33]

30 There was no rule of law providing for the immunity of ancillary relief orders from the court's insolvency jurisdiction to set aside certain transactions for the benefit of a bankrupt's creditors.[34] In particular, there was authority for the proposition that ancillary relief orders that were the product of collusion to adversely affect a bankrupt's creditors could be set aside as undervalue

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31 Private Trustee's WS at para 2.

32 Private Trustee's WS at para 32.

33 Private Trustee's WS at para 34.

34 Private Trustee's WS at para 28.

transactions.[35] In this case, two factors lent to the inference that the Interim Judgment had been the product of such collusion:

(a) First, the suspicious timing of the Interim Judgment and sale of the three Properties, as well as the unusually onerous terms imposed by the Interim Judgment on the Bankrupt, lent to the inference that the Interim Judgment had been a scheme to hide assets from the Bankrupt's creditors.[36]

(b) Second, the Interim Judgment had been obtained under false pretences and/or material concealment from the Family Court:[37]

(i) In the first place, the stated ground for the parties' divorce, being irretrievable breakdown based on separation for a continuous period of four years, had been false, as the parties had not in fact separated as they claimed.[38] Indeed, the Bankrupt continued to live with Ms Xia and their children at the Orchard Property for more than two years after the Interim Judgment, had driven and/or been driven in a car registered in Ms Xia's name, and was continuing being financially supported in his living expenses by Ms Xia.[39]

(ii) Moreover, at the time that the Interim Judgment was obtained, the parties had made material non-disclosures to the court by failing to disclose the completed sale of the Leedon

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35 Private Trustee's WS at paras 29–31.

36 Private Trustee's WS at paras 35–38.

37 Private Trustee's WS at para 41.

38 Private Trustee's WS at para 42(d).

39 Private Trustee's WS at para 39.

> Heights Property (which was a subject of the Interim Judgment), the agreed sale of the Duchess Road Property (also a subject of the Interim Judgment), and pending litigation against the Bankrupt in the High Court at that time.[40]

31 Second, there was a real risk of Ms Xia dissipating her assets to frustrate the Private Trustee's enforcement of an anticipated judgment in OA 3. From the outset, the Bankrupt and Ms Xia's entire purpose had been to use Sunmax and SMGC as vehicles of fraud to dissipate investors' monies into their own pockets.[41] The Interim Judgment was, at its core, nothing but an attempt by Ms Xia and the Bankrupt to hide the latter's assets from his creditors. Indeed, their attempt at dissipating the Bankrupt's assets had already been put into motion with the sale of the three Properties. Ms Xia's continuing intention to assist the Bankrupt's scheme was apparent from her refusal to cooperate with the Private Trustee and to respond to his inquiries seeking an account of the whereabouts of the sale proceeds.[42] And in fact, Ms Xia had stated that she had already withdrawn at least S$3.2m of the sale proceeds which she apparently kept as cash in her home.[43] Given the evidence of past and ongoing collusion between Ms Xia and the Bankrupt, it was likely that Ms Xia would complete the dissipation of the sale proceeds and the Orchard Property unless enjoined from doing so.[44]

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40 Private Trustee's WS at paras 42(a)–42(c).

41 Private Trustee's WS at para 65(a).

42 Private Trustee's WS at para 65(c).

43 Private Trustee's WS at para 65(c).

44 Private Trustee's WS at para 66.

32 Third, it was necessary for a *Mareva* injunction ordered against Ms Xia to extend to her assets worldwide. Although the Orchard Property was immovable property situated in Singapore, and thus adequately protected by a domestic *Mareva* injunction or proprietary injunction, a worldwide *Mareva* injunction was necessary in respect of the sale proceeds from the three Properties totalling S$7.44m, given Ms Xia's refusal to account for their whereabouts, including whether they remained in Singapore or not.[45]

Ms Xia's arguments

33 Ms Xia's primary case against the injunction, as well as her defence to the main action in OA 3, was that the Private Trustee's claim was legally unsustainable in the face of the Interim Judgment. The Private Trustee could not challenge or seek to set aside the Interim Judgment in OA 3 through the court's insolvency jurisdiction.[46]

34 Alternatively, the requirements of s 361 of the IRDA were not made out in respect of the Interim Judgment.[47] The Bankrupt could not be presumed to have been insolvent at the time of the Interim Judgment.[48] The Bankrupt had received consideration as, in entering into the Interim Judgment by consent, Ms Xia had foregone her rights to seek maintenance and division of matrimonial property in court.[49]

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45 Private Trustee's WS at para 68.

46 Written Submissions of Xia Zheng dated 22 March 2024 ("Ms Xia's WS") at paras 45–48.

47 Ms Xia's WS at para 67.

48 Ms Xia's WS at para 67.

49 Ms Xia's WS at para 68(c).

35 Finally, even if the Private Trustee's claim was sustainable at this interlocutory stage, the court should nevertheless refrain from ordering a *Mareva* injunction as that was the course that would carry the lower risk of injustice if the Private Trustee's claim in OA 3 were to fail in the end.[50] If the injunction were to be issued, the bank holding a mortgage over the Orchard Property would be likely to exercise its power of sale, leaving Ms Xia and her children, who were currently occupying the Orchard Property, without a home.[51]

My decision: the application was allowed

36 Having considered the parties' submissions, I allowed the Private Trustee's primary application for a worldwide *Mareva* injunction up to the value of S$12.44m.

37 In the alternative, had I not granted the Private Trustee's primary application for a worldwide *Mareva* injunction, I would have at the least granted a domestic *Mareva* injunction of the same quantum. If necessary, I would also have been satisfied that a proprietary injunction over the Orchard Property should issue.

A worldwide* Mareva *injunction was granted

38 I start with the Private Trustee's primary case, being the application for a worldwide *Mareva* injunction. This required consideration of three issues:

(a) first, whether the Private Trustee had a good arguable case on the merits in OA 3 given the objections raised by Ms Xia;

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50 Ms Xia's WS at para 51.

51 Ms Xia's WS at para 62.

(b) second, whether there was a real risk of Ms Xia dissipating her assets; and

(c) third, if the two requirements above for the grant of a *Mareva* injunction were satisfied, whether the injunction to be granted ought to be a domestic or worldwide *Mareva* injunction.

Preliminary observations on Ms Xia's case

39 There was not much put forward by Ms Xia to address the question of any real risk of dissipation aside from a brief response on affidavit to the Private Trustee's allegation of a risk of dissipation in respect of the Orchard Property, where Ms Xia stated that "[i]f [she] intended to sell all the properties after the divorce, [she] would already have sold [the Orchard Property]" and that the Orchard Property was the home of Ms Xia and her children.[52] However, this point was not expanded on at any length in either written or oral submissions.

40 Instead, Ms Xia appeared to adopt a balance of convenience test as being uniformly applicable to both *Mareva* and proprietary injunctions. This was evident in her submission that "[e]ven if the Court does not consider that OA 3 is doomed to fail, it is nevertheless submitted that [the present application] should be dismissed as *that would carry a lower risk of injustice*" [emphasis added][53] – the "lower risk of injustice" being the gravamen of *American Cyanamid* – and accompanying citation to the Court of Appeal decision of *Chuan Hong Petrol Station Pte Ltd v Shell Singapore (Pte) Ltd* [1992] 2 SLR(R) 1,[54] which did not involve a *Mareva* application. I address Ms Xia's apparent

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52 Ms Xia's Affidavit at para 40(a).

53 Ms Xia's WS at para 51.

54 Ms Xia's WS at para 52.

importation of the balance of convenience test into *Mareva* injunctions at [110]–[133] below.

Good arguable case on the merits?

41 I agreed with the Private Trustee that the first element of a good arguable case on the merits in respect of his claim in OA 3 was satisfied.

42 That the court is, in a *Mareva* injunction application, only concerned with the existence of a "good arguable case" is a point worth emphasising in the present case. As this standard only involves a "preliminary assessment of the merits of the claim", there is certainly "no need to establish a conclusive case at the outset" (see the Court of Appeal decision of *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [51]).

43 In this regard, the traditional formulation of the "good arguable case" standard in the context of *Mareva* injunctions, as affirmed by the Court of Appeal in *Bouvier* (at [36]), is that laid down in the English Court of Appeal decision of *Ninemia Maritime Corporation v Trave Schiffahrtgesellschaft mbH und Co KG (The "Niedersachsen")* [1983] 2 Lloyd's Rep 600 ("*The Niedersachsen*"): a "good arguable case" is one that is "more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent chance of success" (at 605).

44 The applicable principles to s 361 of the IRDA were summarised by Goh Yihan J in the recent High Court decision of *DDP (in his capacity as the joint and several trustees of the bankruptcy estate of [B]) and another v DDR (a minor) and another* [2024] 3 SLR 1457 ("*DDP*"). Three requirements have to be met for a transaction entered into by an adjudged bankrupt to be set aside as a transaction at an undervalue under s 361 (see *DDP* at [13]):

(a) first, the transaction was at an undervalue as defined in s 361(3) of the IRDA;

(b) second, the individual entered into the transaction within the relevant time (see s 361(1) read with s 363(1)(*a*) of the IRDA); and

(c) third, the individual was insolvent at the time of the transaction or became insolvent as a result of the transaction (see s 363(2) of the IRDA).

45 In the present case, the relevant "transaction" sought to be set aside by the Private Trustee was the transfers of the Properties pursuant to the Interim Judgment.

46 In my judgment, it was clear that the second and third requirements had been met, as it was the first requirement that was the centre of gravity of the parties' dispute. Given this, I shall first briefly address the second and third requirements, before turning to address the main point of controversy in the first requirement in detail.

(1) Was the Interim Judgment within the relevant time?

47 Under s 363(1)(*a*) of the IRDA, the "relevant time" within which a transaction can be set aside as a transaction at an undervalue under s 361 of the IRDA is defined as the period within three years before the date of the bankruptcy application on which the individual is adjudged bankrupt.

48 The Bankrupt's debtor bankruptcy application, on which he was subsequently adjudged bankrupt on 28 June 2022, was filed on 8 May 2022 (see [15] above). Given that the Interim Judgment was dated 8 July 2019 (see [4] above), it was within the period of three years before 8 May 2022, and thus

within the "relevant time" as defined in s 363(1)(*a*) of the IRDA read with s 361(1) of the IRDA.

(2) Was the Bankrupt insolvent at the time of the Interim Judgment?

49 The insolvency of a bankrupt at the time of the transaction is a requirement under s 363(2) of the IRDA, which provides that a transaction is not within the relevant time for the purposes of s 361 of the IRDA unless the bankrupt was (a) insolvent at that time; or (b) became insolvent in consequence of the transaction.

50 The Private Trustee did not adduce any specific evidence on the Bankrupt's solvency at the time of the Interim Judgment. Instead, the Private Trustee relied on the presumption of insolvency that arises when the transaction is entered into with an associate of the bankrupt under s 363(3) of the IRDA.

51 I agreed with the Private Trustee's invocation of the presumption in s 363(3) of the IRDA. Being the Bankrupt's spouse at the time, Ms Xia was clearly an "associate" of the Bankrupt (see s 364(2)(*a*) of the IRDA). Although Ms Xia asserted that the presumption did not arise in this case,[55] this was a bare assertion that was not coupled with any explanation or evidence as to why this was so.

52 In the circumstances, I was satisfied that there was a good arguable case that the Bankrupt was insolvent at the time of the Interim Judgment by virtue of the operation of the statutory presumption of insolvency.

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[55] Ms Xia's WS at para 67.

(3) Were the transfers of the Properties to Ms Xia a transaction at an undervalue?

53 I come to the main area of dispute between the parties, which was whether the transfers of the Properties to Ms Xia pursuant to the Interim Judgment could constitute a transaction at an undervalue as defined in s 361(3) of the IRDA.

54 Section 361(3) of the IRDA provides that an individual enters into a transaction with a person at an undervalue if:

> (a) the individual makes a gift to that person or the individual otherwise enters into a transaction with that person on terms that provide for the individual to receive no consideration;
>
> (b) the individual enters into a transaction with that person in consideration of marriage; or
>
> (c) the individual enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

55 The Private Trustee impugned the transfer of the Properties to Ms Xia through the Interim Judgment as an undervalue transaction on three bases: (a) a gift; (b) a transaction on terms providing for the Bankrupt to receive no consideration; or (c) a transaction involving a significant inequality of exchange in terms of the consideration provided and received by the Bankrupt.

56 Ms Xia submitted that the transfers of the Properties were fundamentally incapable of amounting to a transaction at an undervalue as they had been done

through the Interim Judgment. According to Ms Xia, unless the Interim Judgment was set aside, the Private Trustee could not look behind the Interim Judgment and seek to set aside the transfers of the Properties. In this regard, Ms Xia argued that the insolvency court's jurisdiction to set aside undervalue transactions did not extend to setting aside the Interim Judgment. Instead, the Private Trustee had to apply to the Family Court to have the Interim Judgment set aside.[56]

57 There were thus two issues to be determined. First, was it possible for the transfers of the Properties to be reversed under s 361 of the IRDA without the Interim Judgment being set aside? Second, if it was possible in principle for the transfer of the Properties to be set aside, was the transfer of the Properties a transaction at an undervalue as defined in s 361(3) of the IRDA?

(A) COULD THE TRANSFERS OF THE PROPERTIES BE REVERSED WHILE THE INTERIM JUDGMENT REMAINED IN PLACE?

58 It is axiomatic that a judgment or order of a court remains valid and binding until it is set aside, and it must be set aside in the proper way. This is so even if an aggrieved party considers a court order to be defective, whether in result or procedure, as an "irregular order or proceeding continues to be valid and to operate until it is successfully set aside" (see *Singapore Civil Practice* at para 35-10). The rationale for this principle is obvious: the rule of law necessitates that court orders and judgments be obeyed (see the UK Supreme Court decision of *R (Majera (formerly SM (Rwanda))) v Secretary of State for the Home Department (Bail for Immigration Detainees intervening)* [2022] AC 461 at [45]).

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[56] Ms Xia's WS at para 69.

59 This principle applies equally to consent judgments and orders such as the Interim Judgment in this case. A consent judgment gives rise to a *res judicata* in the same way as any other order of court (see Patrick Keane, *Spencer Bower and Handley: Res Judicata* (LexisNexis, 6th Ed, 2024) at paras 2.16–2.18). In *Wiltopps (Asia) Ltd v Drew & Napier and another* [1999] 1 SLR(R) 252 (at [23]), the High Court cited with approval the following statement of the effect of a consent order from the old English case of *Wilding v Sanderson* [1897] 2 Ch 534 (at 543–544), which has also been subsequently affirmed by the Court of Appeal (see, *eg*, *Siva Kumar s/o Avadiar v Quek Leng Chuang and others* [2021] 1 SLR 451 at [34]):

> A consent judgment or order is meant to be the formal result and expression of an agreement already arrived at between the parties to proceedings embodied in an order of the Court. The fact of its being so expressed puts the parties in a different position of those who have simply entered into an ordinary agreement. *It is, of course, enforceable while it stands, and a party affected by it cannot, if he conceives he is entitled to relief from its operation, simply wait until it is sought to be enforced against him, and then raise by way of defence the matters in respect of which he desires to be relieved. He must, when once it has been completed, obey it, unless and until he can get it set aside in proceedings duly constituted for the purpose.*
>
> [emphasis added]

60 The Interim Judgment has been relied on by Ms Xia and the Bankrupt as a defence in multiple proceedings. In the High Court's decision in *Xia Zheng v Song Jianbo and another* [2022] SGHC 124, Andre Maniam J set aside a writ of seizure and sale against the Orchard Property issued by a judgment creditor of the Bankrupt on the basis that the Interim Judgment had resulted in the Bankrupt having no interest in the Orchard Property to which the writ could attach. I had also, in an earlier, unreported application,[57] declined to make certain orders of committal against the Bankrupt for the dissipation of the sale

[57] HC/SUM 4329/2020.

proceeds of the Duchess Road and Duchess Avenue Properties in alleged breach of a *Mareva* injunction on the basis that, the Interim Judgment having pre-dated that *Mareva* injunction, the Bankrupt did not have any interest in these Properties capable of dissipation.[58] The Interim Judgment was, once again, the centrepiece of Ms Xia's defence to OA 3 and the present application. The question, therefore, was whether the Interim Judgment posed a similar impediment in the present case as it had on these previous occasions.

61 In my judgment, no such flaw affected the Private Trustee's claim in OA 3 and the present application. Bearing in mind, once again, that it was sufficient at this interlocutory stage for the Private Trustee to establish a good arguable case, I did not accept Ms Xia's submission that the Private Trustee could not seek the reversal of the transfers of the Properties under s 361 of the IRDA without setting aside the Interim Judgment.

62 Ms Xia's position was, with respect, based on a flawed premise that the Interim Judgment and the transfers of the Properties thereunder were inseparable. At the very least, that seemed to me to be an erroneous assumption as a matter of principle. In my view, it was readily arguable – certainly to the requisite good arguable case standard – that an order under s 361 of the IRDA could set aside the transfers of the Properties (and any interest of the Bankrupt in their traceable proceeds) while leaving the Interim Judgment untouched. This was for three reasons.

63 The first reason relates to the nature of an order under s 361 of the IRDA. Section 361(2) provides that, if the court is satisfied that the legal requirements have been met, the court may "make such order as it thinks fit for restoring the

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[58] Oral Judgment in HC/SUM 4329/2020 at para 2 (Notes of Evidence for HC/SUM 4329/2020 (18 February 2021) at p 1 ln 40–p 2 ln 5).

position to what it would have been *if that individual had not entered into that transaction*" [emphasis added]. The phrase I have placed in emphasis makes clear that, although s 361 of the IRDA (and other provisions in the insolvency legislation such as those relating to unfair preferences) have often been referred to as "avoidance" provisions, there is, strictly speaking, no avoidance of the transaction *per se* when the court makes an order under that section. As the learned authors of Rebecca Parry, James Ayliffe QC & Sharif Shivji, *Transaction Avoidance in Insolvencies* (Oxford University Press, 3rd Ed, 2018) observe (at para 4.188):

> The legislation does not appear to contemplate that the undervalue transaction should be wholly set aside. Rather the range of possibilities listed suggests that *what the court is required to do is to order steps to be taken that will neutralize the disadvantageous effects of the transaction*, for example, by vesting property in the company or the trustee in bankruptcy.
>
> [emphasis added]

64 The same point, that an order under s 361 of the IRDA does not have the same legal effect as rescission of the transaction *ab initio*, is also made in the following explanation of the nature of an order under the corporate insolvency analogue to s 361 of the IRDA under English law (*viz*, s 238(3) of the English Insolvency Act 1986 (c 45) (UK) ("IA 1986")) (see John Armour, "Transactions at an Undervalue" in *Vulnerable Transactions in Corporate Insolvency* (Howard Bennett & John Armour gen eds) (Hart Publishing, 2003) at para 2.121):

> First, the court's power is restitutionary, rather than simply compensatory: it is designed to require the counterparty to disgorge, in favour of the company, the benefit which received unjustly from the company. Secondly, *the effect of the order is not to avoid the transaction retrospectively. Rather, it will compel counterparties and the office-holder to restore things to the position that* ***would*** *have obtained* ***if*** *the transaction had not occurred. The transaction itself remains valid.*
>
> [emphasis added in italics; original emphasis in bold italics]

65 On this analysis, the Interim Judgment was strictly immaterial. The court in making an order under s 361 of the IRDA would not have to go so far as to specifically set aside, rescind or discharge the Interim Judgment itself. Rather, it could simply make orders mirroring or mimicking the effect of the Interim Judgment being set aside, such as by revesting the Properties to the Bankrupt in accordance with the pre-Interim Judgment position, or to order the payment of the proceeds (or a portion thereof) from the sale of the three Properties to the Private Trustee.

66 Indeed, based on how the Private Trustee's prayers in OA 3 had been framed, this appeared to be precisely what the Private Trustee had in mind. The Private Trustee was seeking orders for the reversal of the transfers of the Properties and the sale proceeds specifically, as opposed to attacking the Interim Judgment itself. For reference, I reproduce the Private Trustee's prayers in OA 3 relating to s 361 of the IRDA:[59]

> (a) "[a] declaration that the *disposal of the interests* of [the Bankrupt] in the sale proceeds of [the Leedon Heights Property] to [Ms Xia] … constitutes a transaction at an undervalue …" [emphasis added]; and
>
> (b) "[a] declaration that the *transfers of the Bankrupt's interests in the properties* at (i) [the Duchess Road Property]; (ii) the Leedon Heights Property; (iii) [the Duchess Avenue Property]; and (iv) [the Orchard Property] to [Ms Xia], pursuant to paragraph 3(c) of the Interim Judgment … constitute transactions at an undervalue …" [emphasis added].

[59] HC/OA 3/2024 at paras 1–2.

67 The point can also be put in this way. The Private Trustee's claim under s 361 of the IRDA does not, unlike the previous occasions I have referred to at [60] above, require the court to disregard the Interim Judgment. To use Maniam J's decision as an example, in order to find that the Bankrupt had an interest in the Orchard Property to which the writ of seizure and sale could attach required the court to ignore the effect of the Interim Judgment, as the Interim Judgment meant that no such interest of the Bankrupt subsisted. So too *vis-à-vis* the attempt to commit the Bankrupt for dissipating the sale proceeds of the Properties. On the contrary, in the present case, it was a necessary premise of the Private Trustee's claim in OA 3 that the Interim Judgment had divested the Bankrupt of his interests in the Properties: as a matter of logic, there could be no 'reversal' of a transfer that did not occur in the first place. Thus, quite apart from disregarding the Interim Judgment, the existence of the Interim Judgment and the transfer of the Properties it effected was a pre-condition of the Private Trustee's claim in OA 3.

68 The second reason I considered was that the possibility of separating the transfer of the Properties and the sale proceeds from the Interim Judgment itself found support from the Court of Appeal decision of *Cheo Sharon Andriesz v Official Assignee of the estate of Andriesz Paul Matthew, a bankrupt* [2013] 2 SLR 297 ("*Cheo Sharon*"). Although it was not cited to me by either party, I found this case to be highly instructive.

69 The facts of *Cheo Sharon* were that, between the filing of a bankruptcy application against the appellant's ex-husband and the making of a bankruptcy order against him, the appellant and her ex-husband agreed to an interim consent order which required the ex-husband to transfer his interest in two properties to the appellant. At first instance, the High Court held that the ex-husband's transfer of his interest in the properties constituted a "disposition of property"

within s 77(1) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) ("the BA") that was rendered void upon the subsequent making of a bankruptcy order against the ex-husband. On appeal, the appellant argued *inter alia* that s 77(1) of the BA did not apply to a disposition of property pursuant to a court order, on the basis that such a disposition was "not one made by the person to whom the court order is directed" but which took place by operation of law (at [22]).

70 The Court of Appeal did not accept this argument. Three points from the court's analysis are apposite.

71 First, Andrew Phang Boon Leong JA explained that "[the interim consent order] may have been the *means* by which the Disposition was made, but the Disposition was nonetheless made, in our view, *by the Bankrupt*" [emphasis in original] (see *Cheo Sharon* at [23]). In my view, although *Cheo Sharon* did involve a different avoidance provision, it is, at the very least, binding authority on me that refuted Ms Xia's broad submission that the fact that the transfer of the Properties had been effected by the Interim Judgment immunised it from the court's insolvency jurisdiction.

72 Second, and following on from the point above, Phang JA went on to expressly reject the suggestion that encapsulating the transfer of property in a court order ought to make all the difference (see *Cheo Sharon* at [27]):

> … if the appellant's submission is accepted, a disposition during the Relevant Period pursuant to an out-of-court settlement of a dispute would be caught by s 77(1), but if the terms of settlement are recorded as a consent order instead, a disposition pursuant to such an order would not be so caught. *We see no logical basis whatsoever for distinguishing between these two scenarios.* This is especially so in the light of the line of decisions from this court holding that a liquidator (and, by analogy, an Official Assignee) may go behind court orders, which are open to scrutiny during liquidation and bankruptcy, respectively.

> [emphasis added]

73 Third, as an aside, although he did not decide the issue specifically, Phang JA expressed no aversion to the possibility of s 73B of the CLPA – the other avoidance provision relied on by the Private Trustee in OA 3 – being used to avoid the disposition of the two properties by the ex-husband through the consent order (see *Cheo Sharon* at [28]–[29]). Hence, although the Private Trustee did not rely on his claim under s 73B of the CLPA for the purposes of the present injunction application, this was also a factor weighing in favour of the viability of his claim in OA 3. Moreover, there is authority identifying a degree of analogy between the elements of s 73B of the CLPA and the concept of an undervalue transaction under s 361 of the IRDA, as the defendant's provision of "good consideration" or "valuable consideration" is, among other requirements, a defence to a claim under s 73B of the CLPA (see the recent High Court decision of *Envy Asset Management Pte Ltd (in liquidation) and others v CH Biovest Pte Ltd* [2024] SGHC 46 at [93]–[103]).

74 The third and final reason I considered was that it was well-established under English law that ancillary relief orders are not immune from attack through the transaction avoidance provisions in the insolvency legislation, although the circumstances in which such claims would succeed were not so clearly settled.

75 Section 39 of the English Matrimonial Causes Act 1973 (c 18) (UK) ("MCA 1973") is unequivocal that an ancillary relief order can be challenged as a transaction at an undervalue:

> **39 Settlement, etc. made in compliance with a property adjustment order may be avoided on bankruptcy of settlor**
>
> The fact that a settlement or transfer of property had to be made in order to comply with a property adjustment order shall not prevent that settlement or transfer from being a transaction in

> respect of which an order may be made under section 339 or 340 of the Insolvency Act 1986 (transactions at an undervalue and preferences).

76 Although there is no equivalent provision to s 39 of the MCA 1973 in our local statute books – in particular, the IRDA and the Women's Charter 1961 (2020 Rev Ed) ("the WC") – the Court of Appeal in *Cheo Sharon* expressly stated that the proposition articulated in s 39 of the MCA 1973 was not an idiosyncratic rule of English law, but a clarification of the existing law prior to its enactment, and thus applicable to our local context as well (at [24]). In coming to this conclusion, the court rejected an argument by the wife there that the absence of a local equivalent to s 39 of the MCA 1973 led to the necessary inference that the position under Singapore law was divergent from English law.

77 In this connection, the English courts have confirmed that a property adjustment order under the MCA 1973 – in broad terms, the equivalent to an order for division of matrimonial property under s 112(1) of the WC – can be challenged as a transaction at an undervalue under the IA 1986.

78 The leading decision in English law on the issue is the English Court of Appeal decision of *Hill and another v Haines* [2008] Ch 412 ("*Hill v Haines (CA)*"). The facts were straightforward. Mr and Mrs Haines filed for divorce, and a property adjustment order was made against Mr Haines requiring him to transfer his interest in the former matrimonial home to Mrs Haines. Shortly after this, Mr Haines was adjudged bankrupt, and his trustees in bankruptcy subsequently applied for a declaration that the transfer of his interest to Mrs Haines was a transaction at an undervalue under s 339(1) of the IA 1986.

79 In the English High Court, HHJ Pelling QC found in favour of the trustees in bankruptcy. He held that the transfer to Mrs Haines was either (a) a transaction on terms providing for Mr Haines to receive no consideration (under

s 339(3)(*a*) of the IA 1986); or (b) a transaction with a significant inequality of exchange for Mr Haines (under s 339(3)(*c*) of the IA 1986) (see *Hill v Haines* [2007] BPIR 727 at [23]).

80 Although HHJ Pelling QC's decision was reversed on appeal by the English Court of Appeal, none of the members of the appellate court cast doubt on the possibility of s 339 of the IA 1986 being applied to reverse a transfer of property put into force by a property adjustment order of the court. Instead, their concern was focused on the breadth of the proposition laid down by HHJ Pelling QC that neither an agreement compromising a wife's claim for ancillary relief nor a court order granting such relief were conceptually capable of constituting "consideration" in the context of s 339(1) of the IA 1986. By arriving at this conclusion, HHJ Pelling QC had swung the balance too far in favour of the bankrupt's creditors at the expense of his or her former spouse by making it an inevitability that an ancillary relief order made within the relevant time prior to the bankruptcy would be set aside as a transaction at an undervalue (see *Schaw Miller and Bailey: Personal Insolvency: Law and Practice* (Giles Maynard-Connor QC *et al* eds) (LexisNexis, 6th Ed, 2022) at para 21.95).

81 First, Sir Andrew Morritt C observed that (see *Hill v Haines (CA)* at [36]):

> … if the applicant spouse is not treated as providing consideration for the transfer either at all or in money or money's worth then all such transfers will be void under paragraphs (a) and/or (c) [of s 339 of the IA 1986]. *I cannot accept that Parliament intended that what must be one of the commonest orders made by courts exercising their matrimonial jurisdiction, namely that the husband do transfer his beneficial interest in the matrimonial home to the wife, should be capable of automatic nullification at the suit of the trustee in bankruptcy of the husband against whom a bankruptcy order was subsequently made on his own petition.*
>
> [emphasis added]

82 In a similar vein, Thorpe LJ emphasised the need to strike "a fair balance" between the interests served by the court's matrimonial and insolvency jurisdictions when dealing with ancillary relief orders (see *Hill v Haines (CA)* at [60]):

> … Between the two systems of law there needs to be a fair balance which on the one hand protects the creditors against collusive orders in ancillary relief and on the other protects orders justly made at arms length for the protection of the applicant and the children of the family.

83 Finally, the last member of the court, Rix LJ, emphatically summarised his conclusion in the following way (see *Hill v Haines (CA)* at [82]):

> … as to policy, it would be unfortunate in the extreme if a court-approved, or even (an a fortiori case) a court-determined property adjustment order would be liable, in practice, to be undone for up to five years because the husband goes bankrupt within that period. That could even encourage such bankruptcy on the part of a disaffected husband. Although *a collusive agreement by a divorcing husband and wife to prefer the wife and children over creditors and thus dishonestly to transfer to her more than his estate can truly bear, if his debts were properly taken into account, and thus more than her ancillary relief claim could really and knowingly be worth, is no doubt susceptible to section 339 relief despite the existence of a court order in her favour* (see the decision in *Kumar's* case [1993] 1 WLR 224): nevertheless, in the ordinary case, where there is no dishonest collusion, and where a court approves or determines the sum or property to be transferred, it would be entirely foreign to the concept of a "clean break" if the husband's creditors could thereafter seek to recover, in bankruptcy, the property transferred or its value. However, in my judgment, it would require the overthrow of long established jurisprudence, the reinterpretation of section 39 [of the MCA 1973], the misunderstanding of the doctrine of consideration, and an assault on current views of the statutory entitlement to ancillary relief, to arrive at that unhappy and unnecessary situation.
>
> [emphasis added]

84 Thus, although the decision in *Hill v Haines (CA)* does preach caution against adopting an overly trigger-happy approach to reversing transfers of

property effected by ancillary relief orders in the exercise of the court's matrimonial jurisdiction, it is a decision made on the precise premise that the court does have the power to affect such transfers of property *via* its jurisdiction to set aside transactions at an undervalue. Indeed, in the extract from Rix LJ's judgment that I have referred to in the immediately preceding paragraph, his Lordship expressly stated that "a collusive agreement … is no doubt susceptible to section 339 relief despite the existence of a court order in [the wife's] favour".

85 For completeness, I note that *Hill v Haines (CA)* continues to represent the position under English law today. As recently as last year, it was cited with approval by the English Court of Appeal, who made the accompanying observation that "[t]he interplay between IA 1986 and matrimonial law was settled in *Hill v Haines*" (see *Simon v Simon and another* [2024] 1 WLR 1207 at [69]).

(B) WERE THE TRANSFERS OF THE PROPERTIES TO MS XIA A TRANSACTION AT AN UNDERVALUE?

86 Turning to the second issue, I was satisfied that there was a good arguable case that the transfers of the Properties to Ms Xia constituted a transaction at an undervalue under s 361(3) of the IRDA.

87 As noted above, *Hill v Haines (CA)* is authority cautioning that the court should not too readily find that a spouse has failed to give adequate consideration for a transfer of property under an ancillary relief order.

88 Given this, the starting point as set out by the English Court of Appeal, if situated into our local legislative context, is that a wife undergoing divorce has a statutory right to apply to the court for ancillary relief orders, including an order for the division of matrimonial property under s 112 of the WC (see *Hill*

v Haines (CA) at [29]). In the ordinary course, the transfer of property through an order for division of matrimonial property would be a transaction for which the wife is taken to have provided not only some consideration, but full consideration of an equivalent value to the transferred property, to the husband for the purposes of the undervalue transaction provision in s 361 of the IRDA. The wife's statutory entitlement to a share of the matrimonial assets means that she is "notionally a creditor" of the husband for a sum representing the value of her share of the matrimonial assets (see *Rayden and Jackson on Relationship Breakdown, Finances and Children* (Steven Trowell KC & David Williams KC gen eds) (LexisNexis, Looseleaf Ed, 2016, March 2024 release) at para 15.241).

89 The effect of a court order on ancillary relief is to quantify the wife's statutory entitlement; or, put differently, the amount which the husband is notionally indebted to the wife for (see *Hill v Haines (CA)* at [35]). It follows that, as the court in ancillary relief proceedings is undertaking a process of quantification, the terms of a court order on ancillary relief are a *prima facie* measure of the wife's rights against the husband (see *Hill v Haines (CA)* at [29]). This explains why, if property valued at S$100,000 is transferred to the wife by the husband pursuant to an order for division of matrimonial property, the wife is generally treated as having provided S$100,000 in consideration to the husband, as the transfer is made to settle the husband's notional indebtedness of S$100,000 based on his liability to the wife's statutory right (of this value) under the WC (see *Hill v Haines (CA)* at [39]). On this analysis, it would thus be the default position that a wife who is transferred property from her husband through an ancillary relief order would have provided full consideration to the husband, such that the transfer is not a transaction at an undervalue for the purposes of s 361 of the IRDA. It would not be considered a gift, a transaction on terms providing for the husband to receive no consideration, nor a transaction involving a significant inequality of exchange between the parties.

90 Finally, it is nothing to the point that the ancillary relief order is obtained by consent rather than following contested matrimonial proceedings (see *Hill v Haines (CA)* at [48]). Either way, the court order quantifies the wife's entitlement *vis-à-vis* the husband, and the husband in complying with the court order receives consideration from the simultaneous discharge of his obligations to the wife arising from her statutory rights under the matrimonial legislation. It is trite that forbearance to sue is good consideration (see *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) at para 04.34). Thus, a wife's forbearance to sue for her share of S$100,000 of the matrimonial assets is valuable consideration for her husband's transfer of S$100,000 of the matrimonial assets to her pursuant to an interim judgment by consent (see the English High Court decisions of *Papanicola v Fagan* [2009] BPIR 320 at [30] and *Sands (as trustee in bankruptcy of Singh) v Singh and others* [2016] BPIR 737 at [73(i)]).

91 However, the above analysis represents only the default position. Its fundamental premise that the terms of the court order are a *prima facie* measure of the wife's entitlement can be displaced in certain circumstances. In *Hill v Haines (CA)*, it was common ground between all three members of the English Court of Appeal that an element of collusion or other vitiating factor could disapply the general immunity of a property adjustment order from attack as a transaction at an undervalue. The position was clearly summarised by Morritt C as follows (at [35]):

> If one considers the economic realities, the order of the court quantifies the value of the applicant spouse's statutory right by reference to the value of the money or property thereby ordered to be paid or transferred by the respondent spouse to the applicant. In the case of such an order, whether following contested proceedings or by way of compromise, in the absence of the usual vitiating factors of fraud, mistake or misrepresentation the one balances the other. *But if any such factor is established by a trustee in bankruptcy on an application*

> *under section 339 of the [IA 1986] then it will be apparent that the prima facie balance was not the true one and the transaction may be liable to be set aside.*
>
> [emphasis added]

92 In my judgment, there was a good arguable case that the exception recognised in *Hill v Haines (CA)* allowing ancillary relief orders to be challenged as undervalue transactions could apply to the facts of the present case.

93 First, although the timing of the Interim Judgment was admittedly some time – just under three years – before the Bankrupt filed an application to place himself into bankruptcy, I agreed with the Private Trustee that the terms of the Interim Judgment were so onerous on the Bankrupt that this necessarily raised suspicion as to the Bankrupt and Ms Xia's *bona fides* and intentions in entering into the Interim Judgment. As the Private Trustee submitted, it did not appear to be a rational division of matrimonial assets for the Bankrupt to voluntarily impoverish himself by transferring ostensibly every asset he had in Singapore to Ms Xia, while also undertaking to pay child maintenance, in circumstances where he had no income.[60]

94 Under s 112(1) of the WC, a wife's entitlement to the pool of matrimonial assets is limited to that which is "just and equitable". This is so even when, as in the present case, the parties came to an agreement and had it recorded as an interim judgment by consent. It is trite that a consent order in family proceedings derives its authority from the court and not from the consent of the parties, in contradistinction to consent orders in ordinary civil proceedings which derive their authority from the contract made between the

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60 Private Trustee's WS at paras 36–38.

parties (see the UK Supreme Court decision of *Sharland v Sharland* [2016] AC 871 ("*Sharland*") at [27], citing the House of Lords decision of *Ernest Ferdinand Perez de Lasala v Hannelore de Lasala* [1980] AC 546). In the Court of Appeal decision of *AOO v AON* [2011] 4 SLR 1169 ("*AOO*"), Phang JA said that (at [13]):

> It is clear, in the first place, that a "consent *order*" (here, in the form of an alleged consent judgment) *must necessarily* involve the court. In other words, while a consent *order* might be based on a prior *agreement* between the parties (and, in *that* sense, involves a quite *distinct* conception of the concept), *the court's* scrutiny – as well as official confirmation and endorsement – of the prior agreement is necessary.
>
> [emphasis in original]

95 By the same token, insofar as consent orders on the division of matrimonial assets between the spouses are concerned, the power of division emanates not from the parties, but the court under s 112(1) of the WC. Of course, this does not mean that the parties' intentions are irrelevant; s 112(2)(*e*) of the WC expressly provides that one of the factors that the court can have regard to in exercising its power of division is "any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce". All this was clearly stated by Phang JA in the Court of Appeal decision of *TQ v TR and another appeal* [2009] 2 SLR(R) 961 (at [73]):

> It is clear, in our view, that as the ultimate power resides in the court to order the division of matrimonial assets "in such proportions as the court thinks *just and equitable*" [emphasis added] (see s 112(1) [of the WC]), a prenuptial agreement *cannot* be construed in such a manner as to *detract from* this ultimate power. However, this does not mean that such a prenuptial agreement cannot (where *relevant*) be utilised to *aid* the court in exercising its power pursuant to s 112 of the [WC]. Indeed, and turning specifically to s 112(2)(*e*) of the [WC] … it would appear (contrary to the arguments made by the Wife) that a *prenuptial* agreement relating to the division of matrimonial assets between the spouses would (without any strained

> construction) fall within its ambit. There is a reference to "*any* agreement" [emphasis added], which would presumably encompass both prenuptial as well as postnuptial agreements.
>
> [emphasis in original]

96 It is thus clear that, even in consent orders, the division of matrimonial assets remains governed by the overarching principle that it must be "just and equitable". Ms Xia did not dispute this.[61] Given this, coming back to the terms of the Interim Judgment in this case, it would to my mind be a vanishingly rare case, if ever, for a court to find the total impoverishment of the husband to be a "just and equitable" division of the matrimonial assets. In the premises, the fact that the terms of the Interim Judgment were so disproportionately skewed in favour of Ms Xia, and thus at variance with the "just and equitable" standard, was a weighty factor in finding a good arguable case that it must have been the product of collusion between the Bankrupt and Ms Xia.

97 Second, I was satisfied that the Private Trustee had made out a good arguable case that the Interim Judgment had been obtained on false pretences and material concealment.[62] It is trite that the parties seeking a consent order in family proceedings, as Ms Xia and the Bankrupt had in this case *vis-à-vis* the Interim Judgment, owe a duty of full and frank disclosure to the court (see *AOO* at [18]; *Sharland* at [27]). In my view, there was a good arguable case that at least two material non-disclosures or outright misrepresentations had been made to the Family Court to procure its approval of the Interim Judgment.

98 The first material non-disclosure or misrepresentation related to the basis of the parties' divorce – *ie*, irretrievable breakdown based on continuous

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61 Ms Xia's WS at para 68(a).

62 Private Trustee's WS at para 41.

separation of four years.[63] Apart from the Bankrupt having stated – to the Singapore Police Force, no less – that his residential address was the Orchard Property shortly before the Interim Judgment, there was also evidence that the Bankrupt had continued cohabiting in the Orchard Property with Ms Xia and her children even after final judgment dissolving their marriage had been passed.[64] In particular, this included a report prepared by private investigators who had carried out surveillance on the Bankrupt,[65] which contained multiple pictures of the Bankrupt having been sighted at the Orchard Property and driving a vehicle registered in Ms Xia's name.[66]

99 In considering the Private Trustee's evidence, I also noted that Ms Xia did not, in her reply affidavit, make any categorical denial of the Private Trustee's claim that the Bankrupt had continued to reside with her at the Orchard Property even after their divorce.[67]

100 Indeed, in oral submissions, Ms Xia's counsel essentially accepted that Ms Xia and the Bankrupt were continuing to reside together in the Orchard Property, as all she offered in response was that separation for the purposes of establishing an irretrievable breakdown did not require physical separation *per se*. While that was no doubt a valid point as a matter of legal principle, it was not particularly of believable application to the present case given Ms Xia's own statements on affidavit that she had "frequent quarrels" with the Bankrupt during their marriage, leading it to deteriorate to the point that it "could not be

63 Private Trustee's Affidavit at paras 66(a)–66(b).

64 Private Trustee's WS at para 18.

65 Private Trustee's Affidavit at para 66(d).

66 Private Trustee's Affidavit, Tab 22, pp 452–471.

67 Ms Xia's Affidavit at para 33(a).

saved". Further, given Ms Xia's position that she had separated from the Bankrupt since 2013,[68] it was highly suspicious that, some eight years on, the Bankrupt appeared to continue to reside at the Orchard Property with her.

101 On balance, it was more likely than not, at this preliminary juncture, that Ms Xia and the Bankrupt had not separated as she claimed. Proceeding on this basis, this was strong evidence that Ms Xia and the Bankrupt had colluded in jointly representing to the Family Court that their relationship had irretrievably broken down in order to procure a divorce and obtain the Interim Judgment.[69]

102 The second material non-disclosure related to the status of the Properties that were the subject of division of matrimonial assets in the Interim Judgment. As the Private Trustee submitted, as of the date of the Interim Judgment on 8 July 2019, the sale of the Leedon Heights Property had already been completed (on 24 June 2019), and the Bankrupt and Ms Xia had already entered into a contract with a third-party purchaser for the sale of the Duchess Avenue Property (on 24 May 2019).[70] Yet, judging from the fact that the Interim Judgment purported to transfer the Bankrupt's interests in both of these Properties to Ms Xia, it was apparent that the sales of these Properties had not been disclosed to the court. In particular, the order purporting to transfer the Bankrupt's interest in the Leedon Heights Property to Ms Xia would have made no sense if the Family Court had known of the sale, as *ex hypothesi* the Bankrupt would no longer have had *any* interest in the Leedon Heights Property.

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68 Ms Xia's Affidavit at para 33(a).

69 Private Trustee's WS at para 40.

70 Private Trustee's WS at para 42.

103 The failure to inform the Family Court that the Bankrupt and Ms Xia had already made arrangements to dispose of their interests in Properties over which the Family Court was being asked to make orders for division over was clearly an omission falling foul of the standard of full and frank disclosure.

104 In this regard, the High Court's decision in *Ong Dan Tze Magdalene v Chee Yoh Chuang and another* [2021] SGHC 129 ("*Magdalene Ong*") was a case on point. In that case, the applicant, the wife of the marriage, commenced divorce proceedings against her husband on 8 August 2019. A bankruptcy application was then filed against the husband on 25 September 2019. Shortly after, the applicant and her husband entered into an interim judgment by consent on 7 November 2019 which included orders providing, among other things, that a property at River Valley Road be sold within six months of the final judgment, after which the proceeds (following certain deductions) were to be paid solely to the applicant. A bankruptcy order was subsequently made against the husband on 23 January 2020, resulting in the purported disposition of the River Valley property to the applicant being retrospectively voided by operation of s 77(1) of the BA. The applicant applied to the High Court seeking *ex post* ratification of the interim judgment.

105 Crucially, as it happened, a sale of the River Valley property for S$2.17m had already been completed before the entering of the interim judgment, with the balance sale proceeds of S$817,345.40 having been paid to the applicant. In refusing to ratify the disposition of the proceeds of sale of the River Valley property, Mavis Chionh Sze Chyi J found that the concealment of the prior sale of the River Valley property from the Family Court was "strongly indicative of guilty knowledge" and that the applicant had not acted in good faith when she obtained the interim judgment (see *Magdalene Ong* at [26]). Chionh J's criticisms of the applicant's non-disclosure in that case were equally

applicable to Ms Xia and the Bankrupt's concealment of the sale of the Leedon Heights and Duchess Avenue Properties in this case, and are worth referring to in full (see *Magdalene Ong* at [22]–[23]):

> 22 In any event, the inescapable inference to be drawn from the terms of the consent orders in the IJ is that the district judge who granted the IJ was never informed of the River Valley sale on 14 October 2019. These consent orders for which the Applicant obtained the district judge's approval provided for the River Valley property to be "*sold in the open market within 6 months from the date of the Final Judgment*" (per paragraph 3(c)(1)) – when in reality she and the bankrupt had completed the sale of this property a month before the IJ. ***Had the district judge been apprised of the truth about the completion of the sale on 14 October 2019, it is inconceivable that she would have approved paragraph 3(c)(1) of the consent orders in the terms in which it was drafted.***
>
> 23 ***I find this deeply disturbing***. Any party seeking the court's approval for a consent order has a duty to make full and frank disclosure of all material facts: see for *eg*, the CA's decision in *AOO v AON* [2011] 4 SLR 1169 at [18]. ***Not only did the Applicant fail to make full and frank disclosure of the completed River Valley sale to the district judge, the consent orders she put forward for the district judge's approval presented a state of affairs which did not exist. The Applicant has not explained her conduct anywhere in her affidavits. I do not think it is possible to characterise the Applicant's conduct as anything other than a deception practised on the court granting the IJ. Indeed, the further inference I draw from the Applicant's behaviour in presenting the consent orders in the IJ with the terms as stated for the court's approval and in concealing from the court the truth about the completed River Valley sale is that she did so because she knew there was something untoward about the transaction***. On the evidence before me, it would seem the only untoward element here was that the bankrupt had purported to dispose of his interest in the River Valley property to the purchasers *after* bankruptcy proceedings had been filed against him, and in the absence of any ratification of such disposal.
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> [emphasis added in bold italics]

106 Similar to the apparent deceit practised on the Family Court *vis-à-vis* continuous separation as the basis for their divorce, the non-disclosure or

concealment of the sale of the Leedon Heights and Duchess Avenue Properties to the Family Court was also highly suggestive of collusion between the Bankrupt and Ms Xia to obtain the Interim Judgment on false pretences.

(C) CONCLUSION

107 For the reasons above, I was amply satisfied that the Private Trustee had established a good arguable case that the Interim Judgment had been the product of collusion between the Bankrupt and Ms Xia. There was, in turn, more than a good arguable case that the Interim Judgment was susceptible to challenge as a transaction at an undervalue under s 361 of the IRDA in light of the exception recognised by the English Court of Appeal in *Hill v Haines (CA)*.

Real risk of dissipation?

108 Having found that the Private Trustee had established a good arguable case on the merits of his claim under s 361 of the IRDA in OA 3, I turn to the second requirement of the *Mareva* injunction, which was a real risk of Ms Xia dissipating her assets.

109 Before I turn to address whether a real risk of dissipation existed on the facts of this case, I make two related points of principle on this requirement. These relate to (a) the nature of the "real risk of dissipation" requirement; and (b) the applicability of the balance of convenience test to *Mareva* injunctions. I have found it useful to clarify these two points because, as noted at [39]–[40] above, Ms Xia did not address the "real risk of dissipation" element but instead appeared to apply the balance of convenience test. In my view, once the nature of the "real risk of dissipation" requirement is properly appreciated, there ought to be little confusion that the balance of convenience does not have any distinct role to play in the context of *Mareva* injunctions.

(1) The nature of the "real risk of dissipation" requirement

110 As Sundaresh Menon CJ observed in *Bouvier*, the element of a "real risk of dissipation" of assets by the defendant "lies at the heart of the court's jurisdiction to grant Mareva injunctions" (at [94]). Put differently, the existence of a real risk of dissipation by the respondent is a jurisdictional fact that enlivens the court's power to enjoin such dissipation.

111 However, the search for a precise definition of the concept of "dissipation" in the context of *Mareva* injunctions has sometimes proven elusive. As Christopher Clarke J observed in the English High Court decision of *TTMI Ltd of England v ASM Shipping Ltd of India* [2006] 1 Lloyd's Rep 401, although it is often said that the purpose of the *Mareva* jurisdiction is to prevent the "dissipation of assets", "[w]ithout explanation that phrase is, itself, obscure" (at [25]).

112 It is useful to approach this from first principles. A broad starting point is the English Court of Appeal decision of *The Niedersachsen*, in which Kerr LJ framed the operative question as being whether "the refusal of a *Mareva* injunction would involve a real risk that the judgment or award in favour of the plaintiffs would remain unsatisfied" (at 617). However, this statement is, on its face, overbroad. The self-evident reason for this is that the risk that a claimant's victory on the merits may turn out pyrrhic due to the defendant's failure or inability to satisfy the judgment is a natural incident of litigation. Thus, while there may be a procedure for security for costs, there is, under our law, no equal provision for security for judgment (see Adrian Zuckerman, *Zuckerman on Civil Procedure: Principles of Practice* (Sweet & Maxwell, 4th Ed, 2021) at para 10.240).

113 The *Mareva* injunction, although sometimes thought to be an exception to this general rule, is in principle nothing of the sort. It is trite that obtaining security on a claim, or guarding against counterparty insolvency, is not a legitimate purpose for seeking a *Mareva* injunction (see the Court of Appeal decision of *Milaha Explorer Pte Ltd v Pengrui Leasing (Tianjin) Co Ltd* [2023] 1 SLR 1072 ("*Milaha Explorer*") at [29] and [39]). That oft-issued judicial caution, however, does not mean that the courts are blind to reality. As Tomlinson LJ recognised in the English Court of Appeal decision of *Energy Venture Partners Ltd v Malabu Oil and Gas Ltd* [2015] 1 WLR 2309, "in many cases … a freezing order has the practical if not theoretical effect of giving security to the claimant for its claim" (at [52]).

114 The significance of recognising that the *Mareva* injunction is not intended as a qualification of the proposition that the possibility of non-satisfaction of the claimant's judgment is an inherent risk of litigation is that it puts the purpose of the *Mareva* injunction into perspective. A claimant is not entitled to a *Mareva* injunction as security for his claim if the risk of non-enforcement remains at inherent levels. But, where the risk is artificially generated or inflated by the defendant, the law intervenes because the claimant is now forced to bear a level of risk that the law considers to be illegitimate. As the learned author of Paul McGrath, *Commercial Fraud in Civil Practice* (Oxford University Press, 2nd Ed, 2014) ("*McGrath on Commercial Fraud*") explains (at paras 20.09–20.10):

> A claimant is not entitled to ask the court to secure assets belonging to the defendant simply and solely to enable them to be available should the claimant obtain a judgment against the defendant. This principle remains unaltered notwithstanding the strength of the merits of the claim. There always remains a risk, therefore, that a claimant might find, at the conclusion of the trial, that there are few valuable assets against which enforcement of the judgment might take place. Such is considered the normal risk of litigation …

> What is not tolerated by English law is where a defendant may take certain steps, outside his usual business activities, in order deliberately to dissipate or transfer his assets so that they will not be available to meet any judgment the English court might award. *Such a defendant is not playing by the rules. He is attempting to subvert the judicial process, in the event that judgment is obtained against him. Such conduct is exactly that which attracts the attention of the English court. …*
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> [emphasis added]

115 Thus, when the law intervenes with a *Mareva* injunction, although the practical effect may be to give the claimant security for his claim, this is an incidental consequence (or benefit). The intervention is strictly intended as a corrective, oftentimes also prophylactic, measure against abusive conduct by the defendant. The court's intervention is based on two themes: (a) the conduct of the defendant itself; and (b) the court's refusal to stand by and allow the defendant to render a court order or judgment meaningless by deliberate or unjustifiable conduct (see *McGrath on Commercial Fraud* at para 20.21). To similar effect, Professor Adrian Zuckerman, writing some three decades ago, commented that "the combination of a proven risk of evasive dissipation and of a strong prima facie case … conjured up the idea of an imminent and wrongful threat both to the plaintiff's rights and to the court's authority", and that resultingly, the *Mareva* injunction was devised as a solution "against unscrupulous defendants bent on flouting the court's authority and on evading their liability" (see AAS Zuckerman, "Mareva Injunctions and Security for Judgment in A Framework of Interlocutory Remedies" (1993) 109 LQR 432 at 435–436).

116 Seen in this light, quite apart from *inter partes* justice, a third interest animates the *Mareva* jurisdiction: the court's interest in stifling the defendant's attempt at abusing its process by stultifying enforcement of its judgments. As Lord Donaldson of Lymington MR said in *Derby*, the "fundamental principle"

underlying the *Mareva* jurisdiction is that "no court should permit a defendant to take action designed to ensure that subsequent orders of the court are rendered less effective than would otherwise be the case" (at 76). The Court of Appeal has also recognised "the need to prevent the defendant snapping his fingers at a judgment of the court with financial impunity" because he has taken steps to engineer that outcome (see *Lee Shieh-Peen Clement and another v Ho Chin Nguang and others* [2010] 4 SLR 801 at [27]).

117 However, on the issue of what constitutes abusive conduct by the defendant, notwithstanding the relatively short life of the *Mareva* injunction, one can discern in the authorities an ebb and flow as to what has to be proven by the claimant to trigger the court's intervention. Initially, the early authorities from the *Mareva* jurisdiction's infancy suggested a high watermark of requiring the court to be satisfied that the defendant had a subjective intent to deal with his assets for the purpose of defeating any judgment which the plaintiff might obtain against him. In the teenage years, a bout of apparent youthful rebellion caused a Janus-like turn to the exceedingly low threshold of a "real risk of the judgment going unsatisfied" (as in the *The Niedersachsen* case). In modern times, seemingly in correction of the recklessness of its pubescent years, the law has trended towards a middle ground of an unjustified dealing by the defendant with his assets (see *McGrath on Commercial Fraud* at para 20.12; *Gee on Injunctions* at para 12-035).

118 The same development is broadly traceable in the local jurisprudence. The standard was pitched at the high level of subjective dishonesty by the High Court in *Meespierson NV v Industrial and Commercial Bank of Vietnam* [1998] 1 SLR(R) 287, as Judith Prakash J said there that "the purpose of a *Mareva* injunction is to prevent a defendant from acting dishonourably" and "[t]he court only renders its assistance when there is evidence that the defendant will act

with the *express intention of evading his obligations*" [emphasis added] (at [19]). After the turn of the millennium, an about turn appeared to be done by the Court of Appeal in *Guan Chong* who, citing *The Niedersachsen*, stated that "[t]he court is not concerned with motive or purpose" and "[t]here is no need to show an intention to dissipate assets" (at [17]). Finally, in more recent times, the local courts have arrived at the same equilibrium of focusing on "whether there is objectively a real risk that a judgment may not be satisfied because of a risk of unjustified dealings with assets" (see the Court of Appeal decisions of *JTrust* at [64] and *Milaha Explorer* at [23]).

119 Thus, the prevailing position is that the *Mareva* jurisdiction rests on a distinction between justified and unjustified dealings with assets. In my view, the distinction is easiest appreciated by considering what is justified rather than unjustified. I agree with the following observations by Andre Maniam JC in the High Court decision of *Bugis Founder Pte Ltd v Seng Huat Coffee House Pte Ltd* [2021] 5 SLR 1308 (at [27]):

> A *justified* dealing with an asset (or business) does not show a risk of *unjustified* dealings with assets. If the court accepts that there is a "reasonable", "sufficient", "plausible" or "justified" explanation for the asset disposal (or business closure), the court should not freeze the defendant's assets just because the asset disposed of (or the business closed) is the subject matter of the parties' dispute.
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> [emphasis in original]

120 In this regard, it is well-established that *Mareva* injunctions granted by courts would contain a carve-out allowing the defendant to make dispositions that are ordinary living expenses (in the case of a natural person) or ordinary business expenses (in the case of a corporate entity) (see *Gee on Injunctions* at para 12-040; and the English Court of Appeal decision of *Organic Grape Spirit Ltd v Nueva IQT, SL* [2020] EWCA Civ 999 ("*Organic Grape*") at [15]–[16]).

The *Mareva* injunction sought by the Private Trustee in this application was no exception.[71] Given this, in line with Maniam JC's statement above, the inquiry as to whether there is a real risk of dissipation or unjustified dealing with assets by the defendant is, in substance, a question of whether, but for the injunction, there is a real risk that the defendant would deal with his assets in a manner that is outside the ordinary course of business or the ordinary conduct of his domestic affairs (see *Civil Fraud* at para 28-028; *Milaha Explorer* at [32]).

121 Finally, it bears noting that what constitutes justified dealings with assets, or what comes within the categories of ordinary course of business or living, must necessarily be particularised to the circumstances of each defendant. This ensures that the court, in assessing the real risk of dissipation requirement, strikes the right balance between (a) protecting the claimant's rights and the court's processes from abuse; and (b) the defendant's right to not have its interests prematurely sidelined to an unjustifiable degree, bearing in mind that no conclusive determination on the defendant's liability has yet been made.

122 Thus, an individual defendant's ordinary living expenses would be "assessed by reference to his pre-freezing order standard of living and expenditure" (see *Gee on Injunctions* at para 12-040). This is so even if the defendant's spending habits might be lavish or extravagant, since "the level of spending by a billionaire oligarch cannot be equated with that of a wealthy (by ordinary standards) individual" (see *McGrath on Commercial Fraud* at para 20.100). The English Court of Appeal decision in *Vneshprombank LLC v Bedzhamov and others* [2020] 1 All ER (Comm) 911 provides a useful reference. In that case, Males LJ opened his judgment by commenting that

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[71] HC/SUM 34/2024, Annex A, at paras 3–4.

"some defendants have living expenses which by any normal standards are quite extraordinary", and the defendant there, being a Russian oligarch, was one such defendant (at [1]–[2]). After reviewing the authorities, his Lordship summarised his conclusion as follows (at [63] and [67]):

> 63 While there are some statements in the cases which refer to 'reasonable' living expenses or to the standard of living to which the defendant was 'reasonably accustomed', in none of the cases was it suggested that this involved anything more than consideration of whether the expense was of a nature and amount which was ordinarily incurred by the defendant in the past. *It was not suggested, let alone held, that the expenses had also to be reasonable in some objective sense determined by the court, nor was there any consideration of what, if any, standard might have to be applied to any such assessment. That is not surprising. An expense which may be reasonable or even modest for the multi-millionaire may be hopelessly out of reach even for moderately wealthy defendants.*
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> …
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> 67 In my judgment principle, authority and practicality point the same way. *A defendant should be permitted to spend by way of ordinary living expenses in accordance with his actual past standard of living.* It is unnecessary and undesirable to go further. Future changes in expenditure necessary to maintain that standard which result from the ordinary exigencies of family life can be dealt with by variation of the order as and when necessary.
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> [emphasis added]

As his Lordship observed, the operative question of the defendant's "past standard of living" is "a question of past fact" to be determined on the evidence before the court on the defendant's "actual expenditure and standard of living, exercising where appropriate a healthy scepticism about assertions for which there is no sound evidential foundation" (at [65]).

123 The same principle applies equally to corporate defendants, who are entitled to make such expenditures that are within the ordinary course of business. The learned author of *Gee on Injunctions* articulates the proposition

that "a defendant will not be hampered in his ordinary business dealings any more than is absolutely necessary to protect the claimant from the risk of improper dissipation of assets", and observes that "there can be no objection in principle to the defendant's dealing in the ordinary way with his business and with his other creditors, *even if the effect of such dealings is to render the injunction of no practical value*" [emphasis added] (at para 21-038). I agree that that accurately states the position. Indeed, considerable latitude is given to corporate defendants as to the scope of the ordinary course of business exception. As Newey LJ observed in *Organic Grape*, the fact that a transaction or business involves "a degree, even a substantial degree, of risk or speculation" does not mean that it would constitute unjustified dealing. If something is in the ordinary course of business, that is the end of the matter: the defendant would be allowed to pursue it even if it carries substantial risk, without consideration of whether it is objectively reasonable or any balancing exercise being undertaken (at [22]).

124 To sum up the above, for the purposes of the *Mareva* injunction, the defendant's dealings with assets are parsed into two categories: justified and unjustified. If a dealing is in the defendant's ordinary course of business or living, it is a justified dealing and would not be caught by a *Mareva* injunction even if one is granted. On the other hand, if a dealing does not answer to the former description, it is an unjustified dealing and, if the court is satisfied that there is a real risk that such dealing would occur, a real risk of dissipation is made out and a *Mareva* injunction should then issue. The central premise for this, as one commentator has observed, is that any unjustified dealing is deemed to be an attempt at dissipating assets (see David Capper, "The Concept of Dissipation in Freezing Orders" [2021] LMCLQ 590 at 599):

> The court has to ask whether the defendant is "dissipating" assets. "Dissipation" is the disposal of assets for no sensible

> reason. *Where someone dissipates assets, they are wasting them, using them in a way in which genuine benefit in return is so unlikely to materialise that the court is justified in reaching the conclusion that the defendant can have no other real object in mind than defeating the claimant's attempt to enforce judgment.*
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> [emphasis added]

125 Thus, in the English High Court decision of *Congentra AG v Sixteen Thirteen Marine SA (The Nicholas M)* [2009] 1 All ER (Comm) 479, Flaux J elucidated the concept of "dissipation" in *Mareva* injunctions as entailing (at [49]):

> (a) a real risk that a judgment or award will go unsatisfied, in the sense that, unless restrained by injunction, the defendant will dissipate or dispose of his assets *other than in the ordinary course of business*; or
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> (b) that unless the defendant is restrained by injunction, assets are likely to be dealt with in such a way as to make enforcement of any award or judgment more difficult, *unless those dealings can be justified for normal and proper business purposes*.

(2) Does the balance of convenience test apply to *Mareva* injunctions?

126 Once the nature and content of the "real risk of dissipation" requirement is properly understood (as I have endeavoured to expand on above), there should not be any confusion of the sort demonstrated in Ms Xia's submissions involving the cross-pollination of the balance of convenience test into the context of *Mareva* injunctions. More specifically, if it is appreciated that the *Mareva* injunction is intended only to restrain *unjustified* dealings of assets, there is no warrant for any further intercession of the balance of convenience test as a matter of principle.

127 The reason, in simple terms, is that the carve-out for justified dealings already provides adequate protection for the defendant. This is especially so since, as I noted above, the scope of the carve-out would be necessarily specific to the defendant's own circumstances (see [121]–[123] above). There is thus an identity between the purposes of the real risk of dissipation requirement in *Mareva* injunctions and the balance of convenience test in interlocutory injunctions generally, insofar as both are concerned with protecting the defendant's interests.

128 The point can alternatively be put in this way. The *Mareva* injunction is, in a sense, a prohibitory injunction relating to the dealing with one's assets. From this perspective, the distinction between justified and unjustified dealings which lies at the heart of the *Mareva* jurisdiction is, in substance, a specialised application of the balance of convenience test. Specifically, the boundary line between justified and unjustified dealings itself represents the balance of convenience: if an act by the defendant constitutes unjustified dealing, the balance of convenience would weigh against the doing of that act, resulting in the defendant being justifiably enjoined from doing it.

129 This is also consistent with the underlying justification for the court's intervention through the imposition of a *Mareva* injunction. As I have explained above, the court intervenes, at least in part, to safeguard against the potentiality of the defendant abusing its process by taking steps to deliberately render a judgment or order of court ineffectual (see [116] above). That is, to my mind, an overriding interest that supplants any private interest or convenience of either party to the dispute. It can never be in the balance of convenience for the interests of justice to be suborned in this way.

130 I am buttressed in this conclusion by the Malaysian Court of Appeal decision of *Lee Kai Wuen and another v Lee Yee Wuen* [2022] 7 CLJ 505. Having specifically considered the issue of the applicability of the balance of convenience test to *Mareva* injunctions, the court concluded by expressing "doubt that the balance of convenience is, or was ever, a criterion that needs to be considered by a court when considering the grant of a *Mareva* injunction" (at [122]). The court's reasoning, which I respectfully agree with in its entirety, was as follows (at [120]–[121]):

> 120 The jurisdiction exercised by courts in the grant of *Mareva* injunctions is one to prevent an abuse of the legal process in cases where there is a real risk that a litigant facing potential liability may seek to render any judgment that may finally be entered against him impotent by dissipating or disposing his assets.
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> 121 Where it is demonstrated that such a risk exists, we do not see any room for a consideration of the balance of convenience. ***Seeking to defeat a judgment of the court in such a fashion cannot be countenanced by any inconvenience that may be proffered.*** It is therefore important to distinguish between the basis and criteria for the grant of a non *Mareva* injunction from that of a *Mareva* injunction (see the analysis in *Zschimmer & Schwarz GmbH & Go KG Chemische Fabriken v Persons Unknown & Anor* [2021] 4 CLJ 446; [2021] 7 MLJ 178). ***In a roundabout way, this distinction also brings home the point, again, that vital to the grant of a Mareva injunction is evidence, direct or indirect, of a real risk of dissipation or disposal of assets to defeat a judgment of the court.*** It is only where such a risk is properly established that a court would impose what can potentially be a burdensome and harsh order; even before the merits of the claim have yet to be finally determined.
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> [emphasis added in bold italics]

131 To be sure, the fact that a balance of convenience test is not applicable in the *Mareva* injunction context does not mean that a court *must* necessarily grant a *Mareva* injunction once it is satisfied of the merits of the claimant's case and the existence of a real risk of dissipation of assets by the defendant. In the first place, the *Mareva* injunction is a discretionary relief. Further, as all

injunctions are equitable remedies, the court may disallow the claimant from injunctive relief if he or she comes before the court without clean hands (see *JTrust* at [84]). For instance, in *JTrust*, the Court of Appeal accepted as "a valid argument in principle" that, if the claimant were shown to be seeking a *Mareva* injunction for a collateral purpose, the impropriety in his motive may justify the denial of the relief he seeks even if the formal requirements are made out (at [97]–[99]).

132 By no means do I dispute the discretionary nature of the remedy. My point above is simply that a further or discrete application of a balance of convenience test is not a relevant factor in the calculus. Indeed, as I have explained at [127] above, any attempt to do so would get the defendant nowhere because, once a real risk that the defendant would engage in unjustified dealings with his or her assets has been found, *ex hypothesi* the balance of convenience would weigh in favour of granting the injunction.

133 I thus rejected Ms Xia's attempt at infusing arguments on the balance of convenience or injustice insofar as the Private Trustee's *Mareva* application was concerned.

(3) Was there a real risk of Ms Xia dissipating her assets?

134 Coming to the facts of this case, in assessing whether there was a real risk of Ms Xia dissipating her assets, a conspectus of the applicable principles is as follows. First, it was incumbent on the Private Trustee to produce "solid evidence" to demonstrate this risk, and not just make bare assertions to that effect (see *Bouvier* at [36], citing *Guan Chong* at [18]). Second, what entails sufficient evidence of this risk "in any given case will necessarily vary according to the individual circumstances" (see the English Court of Appeal decision of *Holyoake and another v Candy and others* [2018] Ch 297 at [34]).

Third, the court should consider the factors set out by the Court of Appeal in *JTrust* (at [65]) and *Milaha Explorer* (at [24]) as relevant in determining the risk of the defendant engaging in unjustified dealing with his or her assets. Having regard to these considerations, I was satisfied that there was a real risk of Ms Xia dissipating her assets for the following reasons.

135 First, this was a case where a real risk of dissipation could be inferred from there having been a good arguable case of dishonesty established against Ms Xia based on the Private Trustee's allegation of collusion between the Bankrupt and Ms Xia to obtain the Interim Judgment and procure the transfer of the Properties to Ms Xia.[72]

136 At the outset, I stress that, in making this finding, I was cognisant of the Court of Appeal's caution in *Bouvier* against equating a good arguable case of dishonest conduct (under the first element of the *Mareva* analysis) with a real risk of dissipation (under the second element). However, Menon CJ expressly recognised that the court could legitimately draw an inference of a real risk of dissipation from a finding of dishonesty if the alleged dishonesty had a "real and material bearing on the risk of dissipation" (see *Bouvier* at [93]). Contrariwise, "[i]f the alleged dishonesty has nothing to do with the dissipation of assets, then it will be of little relevance" (see *JTrust* at [66]).

137 The instant case was undoubtedly one where the allegation of dishonesty against Ms Xia had a "real and material bearing" on the issue of the likelihood of her dissipating assets. Indeed, it was difficult to imagine another case where the nexus between the alleged dishonesty and the risk of dissipation could be closer, given that the dishonesty alleged against Ms Xia by the Private Trustee

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72 Private Trustee's WS at para 66.

in OA 3 was precisely her involvement in a collusive scheme (with the Bankrupt) to dissipate assets by procuring the Interim Judgment.[73] Moreover, having regard to the wider background of the case as a whole, Ms Xia and the Bankrupt's attempt at dissipating assets through the Interim Judgment was part of an alleged overall scheme to dissipate investor monies in Sunmax to themselves.[74] In these circumstances, a real risk of dissipation was *inherent* in the nature of the underlying claim against Ms Xia in this case.

138 Second, I considered the nature of Ms Xia's assets. As Steven Chong JA explained in *JTrust*, the court's focus is trained on the ease or difficulty with which the defendant's assets can be disposed of or dissipated (at [75]). Although I did not have a complete picture of all of Ms Xia's assets, Ms Xia did not dispute that the sale proceeds for the three Properties (totalling S$7.44m) had been paid to her. Indeed, she also admitted under oath in separate proceedings that she had withdrawn at least S$3.2m from these proceeds, which she supposedly kept in her home.[75] In my view, given that a substantial part of the sale proceeds was apparently in Ms Xia's hands as fiat cash, it was clearly capable of swift and easy dissipation. Moreover, to the extent that the rest of the proceeds (*ie*, the unwithdrawn balance of the total sum of S$7.44m) appeared to be held by Ms Xia in bank accounts, I considered that these sums were also readily disposable as they could be withdrawn in the same way that Ms Xia had already done in the past (see *JTrust* at [78]). All in all, there was little by way of hoops that had to be jumped through by Ms Xia to dissipate the sale proceeds given their highly liquid nature.

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73 Private Trustee's WS at paras 59–61.

74 Private Trustee's WS at para 65.

75 Private Trustee's Affidavit at para 90(d).

139 As for the Orchard Property, although I acknowledged that it was an asset with less liquidity than fiat cash or a bank account balance, having regard to the speed at which Ms Xia and the Bankrupt had managed to sell the other three Properties, I nonetheless considered that it was also an asset capable of relatively easy dissipation.

140 Third, I also took note of Ms Xia's response to the Private Trustee's claims (see *JTrust* at [65]).[76] Although the relevant inquiry is as to the existence of a current risk of dissipation, past events may be evidentially relevant to that question (see the Court of Appeal decision of *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 490 at [39], citing the English High Court decision of *National Bank Trust v Ilya Yurov and others* [2016] EWHC 1913 (Comm) at [70(d)]). The Private Trustee had written to Ms Xia on 7 December 2022 seeking, *inter alia*, an account of the proceeds from the three Properties that had been sold.[77] Ms Xia did not respond to this request. In her reply affidavit, Ms Xia claimed that she had not responded to the Private Trustee's inquiries as it did not concern him and the sale proceeds belonged to her.[78] I did not accept this as a valid explanation. In my view, Ms Xia's evasiveness and persistent refusal to give a straight answer (or any at all) on the proceeds that were the subject of the Private Trustee's claim was consistent with an intention to potentially dissipate them further down the line. If all she believed was that she was entitled to the moneys and the Private Trustee's claim was completely without merit, there would have been no reason for her to act so surreptitiously with regards to the whereabouts of the money.

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76 Private Trustee's WS at para 65(c).

77 Private Trustee's Affidavit at para 90(c); Private Trustee's Affidavit, Tab 37, pp 760–782.

78 Ms Xia's Affidavit at para 40(c).

141 For these reasons, I had little difficulty in finding that there existed a real risk that Ms Xia would dissipate her assets if not restrained by *Mareva* injunction from doing so.

Territorial scope of the injunction to be granted

142 I accepted the reasons advanced by the Private Trustee as to the necessity of a worldwide *Mareva* injunction.[79] In particular, Ms Xia's plain refusal to give any account of the whereabouts of the sale proceeds was a weighty factor in my assessment that it was necessary for the injunction to extend to her assets worldwide. There was also no indication from the evidence before the court that Ms Xia had sufficient assets within the jurisdiction to satisfy any potential judgment that the Private Trustee might obtain, so as to render a worldwide injunction unnecessary.

In the alternative, a proprietary injunction would have been granted over the Orchard Property

143 If I did not grant the *Mareva* injunction sought by the Private Trustee, I would have, in the alternative, been satisfied that a proprietary injunction should issue over the Orchard Property. I set out my reasoning in brief in the event that I am wrong on my findings *vis-à-vis* the primary *Mareva* application.

Serious question to be tried?

144 I have, in the above paragraphs, explained my finding of a good arguable case on the merits of the Private Trustee's claim in OA 3 (see [46]–[107] above). For the same reasons, I was satisfied that there was a seriously arguable case that the Private Trustee had a proprietary claim to the Orchard Property.

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[79] Private Trustee's WS at para 68.

145 If the Private Trustee were to succeed in OA 3, the court would make an order "restoring the position to what it would have been" if the transfer of the Orchard Property through the Interim Judgment had not occurred (see s 361(2) of the IRDA). To this end, the court has the power to order the vesting of the Orchard Property in the Private Trustee (see s 365(1)(*a*) of the IRDA). Given this, the Private Trustee did not merely have a personal claim for restitution of the value of the Orchard Property, but a proprietary claim to it.

Balance of convenience?

146 Although I have found above that the balance of convenience is not a distinct consideration in the analysis as to whether a *Mareva* injunction should be granted, it was a relevant consideration insofar as the Private Trustee's application for a proprietary injunction was concerned.

147 The gist of the balance of convenience test was neatly summarised by Menon CJ in the Court of Appeal decision of *Maldives Airports Co Ltd and another v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 (at [53]):

> The essential principle is that because the court is asked to conduct this balancing exercise at an early stage and based only on affidavit evidence, it should take whichever course appears to carry the lower risk of injustice if that course should ultimately turn out to have been the "wrong" course, in the sense of an injunction having been granted when it should have been refused or an injunction having been refused when it should have been granted. Would the unsuccessful applicant for an injunction who later establishes that he was right, or, in the converse situation, the party who is later shown to have been wrongly subjected to an injunction be adequately compensated by an award of damages?
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> [internal citations omitted]

148 In my judgment, there was no real risk of irreparable loss or damage being caused to Ms Xia from the grant of a proprietary injunction at this stage in the event that the Private Trustee were to fail in OA 3.

149 The only factor that Ms Xia pointed to as a source of potential irremediable prejudice was a risk that the mortgagee holding a mortgage over the Orchard Property would exercise its power of sale if an injunction were to be maintained over the Property. Ms Xia suggested that this would leave her and her children without a home.[80]

150 Although this was in theory a drastic consequence that could amount to irreparable harm, I was not persuaded by Ms Xia's submission for two reasons.

151 First, the potentiality of the mortgagee enforcing its security against Ms Xia's home, even if true, had to be considered in the larger context of the fact that Ms Xia had indisputably received the sale proceeds for three of the Properties. Being in possession of a considerable sum of S$7.44m, it could hardly be said that the mortgagee's enforcement action against the Orchard Property would necessarily render Ms Xia and the children homeless. The spectre of visiting homelessness on Ms Xia and her children – which might constitute irremediable prejudice if true – was thus more apparent than real.

152 Indeed, as the Private Trustee's counsel pointed out in oral submissions, Ms Xia's own affidavit evidence was that a different bank stood ready to offer her a new loan (in place of the current mortgagee) if no injunction were to be granted.[81] I agreed with the Private Trustee that the fact that a financial institution remained apparently willing to grant financing to Ms Xia indicated

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80 Ms Xia's WS at para 62.

81 Ms Xia's Affidavit at para 40(a).

that her financial situation was not as dire as she claimed. Ms Xia was clearly sufficiently resourced to make alternative arrangements even if the mortgagee enforced its security against the Orchard Property.

153 Second, at the time of the initial hearing, Ms Xia did not lead any evidence demonstrating that there was a probability, as opposed to the hypothetical possibility, that enforcement action would be taken against the Orchard Property. Indeed, as Ms Xia confirmed that she had been continuing to make the required mortgage payments to the current mortgagee,[82] in the absence of concrete evidence of the mortgagee's intention to imminently exercise its power of sale, I was not satisfied that this was a realistic possibility that should bear on the analysis.

154 Given that the concern of Ms Xia being rendered homeless was more apparent than real, Ms Xia did not raise any factor that demonstrated that she would suffer prejudice that could not be compensable by an award of damages in the event that the injunction over the Orchard Property turned out to be wrongly granted.

Conclusion on the Private Trustee's application

155 For the foregoing reasons, after having briefly reserved judgment following the hearing of oral submissions on 4 April 2024, I granted the Private Trustee's application for a worldwide *Mareva* injunction up to S$12.44m on 9 April 2024.

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82 Ms Xia's Affidavit at p 99, para 18.

Ms Xia's application for further arguments

156 Subsequently, on 12 April 2024, Ms Xia filed a request for further arguments to be heard pursuant to s 29B of the SCJA and O 18 r 28 of the Rules of Court 2021. I allowed the request on 18 April 2024 and heard further arguments on 9 May 2024.

157 Ms Xia's further arguments were, with respect, for the most part a rehash of points that had already been ventilated in the parties' written submissions and at the first hearing on 4 April 2024. The points raised generally concerned the issue of whether the Private Trustee had established a good arguable case on the merits of its claim in OA 3 to justify the grant of the worldwide *Mareva* injunction:[83]

(a) First, that the Private Trustee's allegations on the Properties having been acquired by the Bankrupt and Ms Xia using funds siphoned off from investments into Sunmax were "based wholly on conjecture or speculation".

(b) Second, that there was no evidence that Ms Xia and the Bankrupt had acted in concert in the alleged misappropriation of investor monies into Sunmax.

(c) Third, that the Bankrupt and Private Trustee's divorce was legitimate and not a collusive scheme as alleged by the Private Trustee.

(d) Fourth, that granting the *Mareva* injunction entailed "disregard[ing] the Interim Judgment", as "[t]here [was] no allegation or fraud or collusion made against [Ms Xia]".

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83 Defendant's Letter to Court dated 12 April 2024 ("Ms Xia's FA Application").

(e) Fifth, that the Private Trustee's claim had no merit as "[c]onjecture or speculation" did not suffice.

158 I was not persuaded by Ms Xia's attempt at re-opening these points:

(a) For the first and second point above, given that the Private Trustee was merely seeking to reverse the transfer of the Properties from the Bankrupt to Ms Xia, whether the Properties had actually been acquired through investor monies into Sunmax was, to my mind, *res inter alios acta*. The source of the funds might be relevant in an action by the liquidators of Sunmax against the Bankrupt and/or Ms Xia to reclaim the Properties or their value, but it was not a particularly relevant consideration to the Private Trustee's claim in OA 3.

(b) For the third point above, Ms Xia did not raise any arguments that cast doubt on my finding of a good arguable case of collusion between her and the Bankrupt based on (i) the suspicious terms of the Interim Judgment; and (ii) a reasonable inference that they had jointly concealed material facts from and/or made misrepresentations to the Family Court in obtaining the Interim Judgment (see [93]–[106] above).

(c) For the fourth point, Ms Xia did not raise any arguments casting doubt on the correctness of *Hill v Haines (CA)*, which was a focal point of the Private Trustee's case, as well as my finding above, that the Interim Judgment did not pose any fatal impediment to the success of the Private Trustee's claim in OA 3 (see [58]–[85] above).

(d) For the fifth point, for the reasons I have explained in detail above, it certainly could not be said that the Private Trustee's claim was based on nothing but conjecture or speculation.

159 The arguments raised by Ms Xia in her further arguments application thus did not, to my mind, move the needle on my earlier decision that the requirements for the grant of a *Mareva* injunction had been met. It bears reiterating, once again, that Ms Xia's further arguments also did not address the issue of the risk of her dissipating assets.

160 The only point that could be considered new arose in a further affidavit of Ms Xia filed shortly before the hearing for further arguments.[84] In this affidavit, Ms Xia claimed that she had been issued a final notice by the mortgagee of the Orchard Property that it would enforce its security if the mortgage was not redeemed by 15 May 2024.

161 However, I was not persuaded that this new development materially altered the calculus in my initial decision to grant the *Mareva* injunction. Indeed, I considered that the contents of Ms Xia's further affidavit *confirmed* my earlier finding of a real risk of dissipation of assets by Ms Xia if an injunction were not granted.

162 First, Ms Xia averred that she had been keeping up with the mortgage payments in respect of the Orchard Property (of S$17,000 per month) and, strikingly, that she "ha[d] about S$80,000 in cash at home".[85] As counsel for the Private Trustee pointed out, this begged the question as to what had become of the some S$3.2m in sale proceeds that Ms Xia had withdrawn previously. If Ms Xia's claim that she only had S$80,000 at home were to be believed, this meant that almost the entirety of the withdrawn sum had already been dissipated. In these premises, the fact that Ms Xia had ostensibly already spirited away a large

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84 Affidavit of Xia Zheng dated 7 May 2024 ("Ms Xia's 2nd Affidavit") at para 5.

85 Ms Xia's 2nd Affidavit at para 6.

sum of money resoundingly confirmed the need for a *Mareva* injunction to be granted.

163 Moreover, Ms Xia confirmed again that another bank continued to stand ready to provide her with funds to redeem the existing mortgage over the Orchard Property. As I noted at [152] above, it was inconceivable that a bank would be willing to extend financing to Ms Xia if her financial situation was as dire as she claimed. I agreed with the Private Trustee that the logical inference was that, even if Ms Xia's claim that she only had S$80,000 in cash at home was true, it was likely that she had other assets such that the bank would be confident of her ability to repay the financing it was offering to her.

164 For these reasons, I did not regard any point raised by Ms Xia in her application for further arguments as cutting any ice, and I thus affirmed my earlier decision and held that the worldwide *Mareva* injunction was to stand.

Aedit Abdullah
Judge of the High Court

Tham Lijing (Tham Lijing LLC) for the claimant;
Oei Ai Hoea Anna (Tan Oei & Oei LLC) for the defendant.
