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

[2024] SGHC 190

Suit No 443 of 2020
Summons No 1325 of 2024

Between

Orexim Trading Limited

… *Plaintiff*

And

1. Mahavir Port and Terminal Private Limited (formerly known as Fourcee Port and Terminal Private Limited)
2. Singmalloyd Marine (S) Pte Ltd
3. Zen Shipping and Ports India Private Limited

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure – Mareva injunctions – Whether plaintiff under obligation to restore asset dissipated in breach of Mareva injunction – Value of assets to be restored to asset pool]

[Civil Procedure – Striking out – Defendants deliberately and persistently failing to comply with court orders – Whether striking out of defence justified]

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v
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Kwek Mean Luck J:

Introduction

1 This case involves a party, Zen Shipping and Ports India Private Limited ("Zen"), that knowingly disposed of two vessels in breach of a Mareva injunction. Zen was earlier found in contempt of court for the disposal of one of the vessels. It has not complied with the sentences imposed by the court for being in contempt. Zen then proceeded to dispose of the other vessel. I granted the application by Orexim Trading Limited ("Orexim"), for orders to restore the vessels or their equivalent value to the asset pool, and for Zen's defence to be struck out unless it complies with the restoration orders. I set out below, the detailed reasons for my decision.

Background

2 In S 443 of 2020 ("S 443"), the Plaintiff, Orexim, seek to set aside the transfers of the Bon (known in the pleadings as "Bon Chem" and referred to as such) and the Chem (known in the pleadings as "Bon Vent" and referred to as such) (collectively "Vessels"), from the 1st Defendant, Mahavir Port and Terminal Private Limited (formerly known as Fourcee Port and Terminal Private Limited) ("MPT") to the 2nd Defendant, Singmalloyd Marine (S) Pte Ltd ("SML"), and then from SML to the 3rd Defendant, Zen, on the ground that the conveyances were a sham. Orexim also seek in S 443, orders for the Vessels or their equivalent value to be made available to MPT's creditors for the enforcement of judgments and debts. Orexim is a judgment creditor of MPT.

3 In Sum 1325 of 2024 ("SUM 1325") of S 443, Orexim sought against Zen, the following orders:

> (1) Within 14 days of the date of the order, the 3rd Defendant shall:
>
> > (a) deposit into its pool of assets the value of the vessel known as the Bon (IMO No. 9248203) (formerly known as the Bon Atlantico and the Bon Chem) in the sum of US$4,717,000.00;
> >
> > (b) deposit into its pool of assets either the vessel known as the Chem (IMO No. 9240914) (formerly known as the Tulip, the MT Tulip, and the Bon Vent), or the value of the same in the sum of US$2,400,000.00;
> >
> > (c) affirm an affidavit confirming that the assets have been restored, confirming the manner of holding of the assets, and exhibiting the documentary evidence showing the restoration including but not limited to:

> i. the 3rd Defendant's bank account statements showing the sum(s) deposited; and
>
> ii. in the case where the 3rd Defendant restores the vessel with IMO No. 9240914 to its pool of assets, the proof of current ownership.
>
> [collectively "Restoration Orders"]
>
> (2) Unless the above is complied with, the 3rd Defendant's Defence shall be struck out. ["Striking out Order"]
>
> (3) The 3rd Defendant, whether by itself, its servants or agents, or otherwise howsoever, is restrained and an injunction is granted restraining it from disposing of, charging, encumbering, or diminishing the value of the restored assets wherever they may be in the world until the trial of or determination of this action or until further order.

4 On 2 July 2020, Orexim obtained in ORC 3449 of 2020 ("ORC 3449"), a Mareva injunction ("MI") against each of the 3 defendants in S 443, which contained the following terms regarding the disposal of assets.

> 1. (a) The 1st Defendant, the 2nd Defendant and/or the 3rd Defendant, whether by themselves, their servants or agents or any of them or otherwise howsoever, be restrained and an injunction be granted restraining them from disposing of, charging, encumbering or diminishing the value of the vessel known as the MT Tulip (formerly known as the MT Bon Vent) ("MT Bon Vent") and the vessel known as the Bon Atlantico (formerly known as the Bon Chem) ("Bon Chem") (collectively "the Assets") wherever they may be in the world until the trial of or determination of this action or until further order;
>
> (b) This prohibition shall apply to the Assets, or the net sale money after payment of any mortgages if either of the Assets has been sold.
>
> …
>
> 14. Each Defendant (or anyone notified of this order) may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that person), but anyone wishing to do so must inform the Plaintiff's solicitors.

5 After the MI had been ordered, Zen entered into an agreement to sell the Bon Chem to a 3rd party on 2 August 2021. Zen did not seek to vary or discharge the MI before doing so.

6 Orexim commenced committal proceedings against Zen for breach of the MI. On 12 October 2022, in Summons 559 of 2022 ("SUM 559") Justice Hoo Sheau Peng found Zen and four of Zen's officers guilty of contempt by disposing of the Bon Chem in breach of the MI. The committal order was issued in HC/ORC 5231/2022 ("ORC 5231").

7 From the records for SUM 559, it can be seen that the Judge found that Zen completed the sale on 25 September 2021. This was preceded by a board meeting on 11 June 2021, where the board resolved to sell the Bon Chem. The directors understood that they would be ignoring the MI and would have to face serious repercussions for doing so. Nevertheless, by a vote comprising the majority of the board of directors, they resolved to sell the Bon Chem. The Judge also found that Mr Saurabh Chandrashekar Naik ("Mr Naik"), a director of Zen, had dishonestly stated in his third affidavit filed on 16 September 2021, that Bon Chem was "solely owned by Zen in name" and that "the assets have not been sold". After finding them guilty of contempt, the Judge imposed a fine on Zen, and terms of imprisonment or fines on the officers of Zen.

8 Notably, the fines imposed have not been paid. The terms of imprisonment imposed have also not been served[1].

9 In mid-December 2023, Orexim's solicitors were informed that the registered ownership of the Bon Vent had changed from Zen to Anajaneya

[1] Mr Stanislav Konovalov's ("Mr Konovalov")'s affidavit filed on 30 April 2024 at [43].

Shipping Inc ("Anajaneya") sometime around 10 June 2023. Zen's solicitors, wrote on 13 February 2024 to confirm the change of ownership, stating that Anjaneya had no common shareholders or directors with Zen and that the change in ownership was necessary for the "continued operational employment" of the Bon Vent, that the change is temporary and registered ownership will be returned to Zen at the end of the current charter under which the Bon Vent is employed. Zen has not provided a copy of the agreement between Zen and Anajaneya, despite Orexim's request.

Plaintiff's case

10 Orexim highlighted that Zen's disposal of the Vessels has put them out of reach of Orexim and made it impossible for Orexim to seek the transfer of their ownership back to MPT in the event the court declares that the original conveyances were a sham.

11 If Zen wanted to dispose of either vessel, it would have needed to first vary or discharge the MI. Zen did not do so before disposing of the Vessels. Orexim thus sought, amongst other things, an order of court to compel Zen to restore to its asset pool: (a) the value of the Bon Chem; and (b) either the Bon Vent itself or the value of the same.

12 The court has exercised powers to order parties in breach of a Mareva injunction to restore assets back into its asset pool; *Suntech Power Investment Pte Ltd v Power Solar System Co Ltd (in liquidation)* [2019] 2 SLR 564 ("*Suntech*") at [66], [88]-[89] and *Lee Shieh-Peen Clement and another v Ho Chin Nguang and others* [2010] 4 SLR 801 ("*Clement Lee*") at [49].

13 It was also held in *Suntech* that it is the contemnor, and not the victim, who has the onus of ascertaining the value of the assets dissipated in breach of

the Mareva injunction; at [71]-[72]. Orexim has nevertheless gone to produce the expert report of Mr Steven Michael Bishop ("Mr Bishop") for the value of the Vessels. These estimates are based on incomplete information since Orexim does not own the vessels. Zen is still obliged to demonstrate that the value it restores to its asset pool matches the true value of the vessels.

14 Mr Bishop opined that at the material time, the Bon Chem ought to have been sold by Zen for at least US$4,717,000. Orexim submits that Zen's purported sale price of US$1,652,490 is a clear undervalue. Zen did not provide details of why Mr Bishop's valuation is wrong, nor did Zen provide its own valuation.

15 Zen relies on the alleged sanction by the United States Office of Foreign Assets Control ("USOFAC") as the reason why it cannot return the monies. However, according to Zen, it was only sanctioned in April 2024. The Bon Chem was disposed of in 2021. There is no explanation of why the USOFAC sanction affects Zen's ability to put monies into its own bank account.

16 Mr Bishop opined that on a on a worst-case scenario where the Bon Vent is sold for scrap value, its value is estimated be US$2,400,000. Orexim highlights that Zen has still not explained the change in ownership for the Bon Vent, beyond claiming that it was "necessary for the continued operations of the vessel". Zen has not given any assurance of when or how the vessel will return to its ownership. Zen has also not provided reasons for the sanctions by the USOFAC nor how it practically affects Zen's ability to restore the Bon Vent to its ownership.

17 The courts have held that a striking out order may be justified where the defaulter's conduct demonstrates his total disregard of the court's orders;

Alliance Management SA v Pendleton Lane P and another and another suit [2008] 4 SLR(R) 1 ("*Pendleton Lane*") at [9] and [14]. In *Ramindo Sukses Perkasa Pte Ltd v Sim Kwang Oo* [2015] 3 SLR 403 ("*Ramindo*"), the High Court acknowledged that the principles elucidated in *Pendleton Lane* were of universal application; at [83]-[84]. The court in *Ramindo* ultimately struck out the plaintiff's action due to its non-compliance with an injunction not to deal with 2 vessels, of which the defendant was the mortgagee. In *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 ("*Mitora*"), the Court of Appeal held at [48] that in exceptional circumstances, an action may be struck out even where there might still be a reasonable prospect of a fair trial. In *DNG FZE v Paypal Pte Ltd* [2024] SGHC 65 ("*DNG*") the High Court noted at [84]-[85] that an unless order should not be made unless there has been "a trend of non-compliance by the defaulting party".

18 In this case, Zen has repeatedly breached the MI by disposing of the Bon Chem followed by the Bon Vent. It never tried to vary or discharge the MI. This demonstrates a blatant and contumacious disregard for the Court's orders. The purpose of the MI was to preserve the assets to satisfy a judgment which Orexim may obtain. It would therefore be appropriate to pair the striking out order with an unless order compelling Zen's compliance with order to restore assets.

19 The court should take into account Zen's overall conduct throughout the course of these proceedings.

a. Over the course of S 443, Orexim has obtained no fewer than nine costs orders against Zen across various interlocutory proceedings amounting to SGD $69,360.10, EUR €1,213.60, and USD $1,800.00 (before interest). Zen has not paid any of these costs orders to-date,

reflecting a willingness to litigate cynically and unaccountably against Orexim.

b. Zen has lied on oath through one of its directors, Mr Naik. In his affidavit, Mr Naik had claimed that the Bon Chem was solely owned by Zen as of 16 September 2021 and subject to outstanding mortgages as of 30 September 2021. However, this was untrue as the Bon Chem had already been arranged to be sold as of 2 August 2021, and the mortgage had been discharged as of 25 August 2021.

c. Zen carefully timed its appearance in these proceedings *after* SML (the 2nd Defendant) was struck out, most likely in a bid to delay Orexim's conduct of the Suit. It bears noting that Orexim had validly served the cause papers in the Suit on Zen as early as 20 July 2020.

d. Zen is using the USOFAC sanction as a bare excuse that it cannot restore the Bon Vent nor restore the value of the vessel to its assets. However, Zen has failed to explain how these sanctions practically impact its ability to do either of these things. In any event, Zen has only itself to blame for being sanctioned, and cannot rely on its own deliberate acts to excuse itself from compliance with a court order.

3rd Defendant's case

20 Zen accepted that the Court has the power to order a party to restore the asset(s) or the equivalent in value in instances where such asset(s) has been dissipated in breach of a Mareva injunction; see *Suntech* and *Clement Lee*.

21 Zen submitted that *Suntech* can be distinguished from the present case on the facts. In *Suntech*, the court found that there was no credible explanation

for the disposal of the shares. The court also found that the appellant had no reason not to restore the value of its shares to its asset pool to undo the breach of the Mareva injunction.

22 In this case, Mr Naik testified in his affidavit dated 21 June 2024 that on 21 December 2020, the Bon Chem was involved in an accident which resulted in it no longer being able to operate. Zen had to dispose of Bon Chem as Zen would otherwise have been unable to repay the sums due to Yes Bank. In the event that Zen did not sell the Bon Chem, Yes Bank could have commenced action in the National Company Law Tribunal against Zen, which is equivalent to insolvency proceedings in Singapore. This would have resulted in Zen's liquidation and the forced sale of both the Bon Chem and the Bon Vent. As for the Bon Vent, it was never meant to be transferred to Anjaneya permanently.

23 Furthermore, Zen does not have the ability to restore the value of the Bon Chem or the Bon Vent due to the financial difficulties that the company is facing. This is exacerbated by the fact that Zen is now sanctioned. Mr Naik testified that Zen has been sanctioned by the USOFAC in April 2024, and is unable to deposit the sum of US$4,717,000 into its bank account.

24 Zen also submitted that Orexim's valuation of the two vessels do not accurately reflect their value. There is no reason for Zen to have sold the Bon Chem to a third party at an undervalue. The estimates provided by Mr Bishop also do not take into account factors such as the urgency in which Zen needed to make the sale as well as the actual status of the vessel at the time of the sale. Unless and until evidence is provided by both parties, it would be unsafe to rely on the valuation by Orexim.

25 Zen submitted that the court should not grant Orexim's application for Zen's Defence to be struck out if Zen does not comply with the order to restore the assets. SUM 1325 is timed to stifle a bona fide defence from Zen as it has been taken out only when parties are at the door-step of trial. Zen is also practically unable to restore the value of the vessels. It simply does not have the financial ability to do so. In addition, the consequence of the USOFAC sanction is that Zen cannot transact in US dollars.

Decision

26 There are three issues in SUM 1325:

a. having breached the MI, whether Zen should be ordered to restore the vessels or value of the vessels to the asset pool;

b. what should be the value that Zen is ordered to restore to the asset pool; and

c. whether the restoration orders should be accompanied by an unless order that Zen's defence be struck out if it does not comply with the restoration orders.

Legal Principles

27 The applicable legal principles are well established and not disputed.

28 First, it is established that the courts have the power to order a party that is in breach of a Mareva injunction by disposing of assets, to restore such assets or the value of such assets back to the asset pool.

29 In *Suntech*, the Court of Appeal held at [66] that as the appellant was found in committal proceedings to have breached the Mareva injunction, "it was incumbent on the appellant to comply with the Mareva injunction by restoring the value of those shares back into its asset pool". The appellant in *Suntech* was

issued an unless order to pay into Court the value of its shares in Shanghai Suntech, which it failed to comply with, leading to its appeal being struck out as an abuse of process; at [98]-[99]. At [65], the court held:

> 65. It would therefore make nonsense of the Mareva injunction in this case, and contempt proceedings in civil litigation in general, if the appellant need not restore the value of its shares in Shanghai Suntech to its asset pool just because it had already been fined S$100,000 and ordered to pay security of S$100,000 to secure its compliance with the Mareva injunction.

30 In *Clement Lee*, the Court of Appeal found during committal proceedings, that the respondents had spent monies in excess of what the Mareva injunction had allowed and imposed a financial sanction. The respondents were required to restore the amount of their excess spending into their Singapore bank account:

> 49. … The advantage which the Respondents had obtained in breaching the Order was to have more money to spend. In this instance, we felt that a financial sanction would be sufficient. In our opinion, an appropriate order to make was to require the Respondents to restore S$200,000 into their Singapore account within seven days, with proof of such restoration to be furnished to the Appellants' solicitors. This sum was computed based on the monthly amounts which the Respondents had spent in excess of the limit laid down in the two Mareva injunctions over the period of the breach.

31 Second, a striking out order may be justified where a defaulting party's conduct in disregarding court orders demonstrates contumelious conduct such that a continuation of the action would amount to an abuse of the court's process.

32 In *Pendleton Lane*, Belinda Ang J held at [9] and [14]:

> 9. … I am mindful that there could be situations where a defaulting party's conduct demonstrates that his total disregard of the Rules of Court or orders of court was such that it could properly be viewed as contumelious conduct so that a

> continuation with the action would amount to an abuse of the court's process. Notably, any decision not to allow the party concerned to take further part in the proceedings by striking out the pleadings is not from a perceived need to punish the party concerned; rather, it is a proper and necessary response not to allow the court's process to be used as a means of achieving injustice. The injustice here is not only to the other party in the proceedings but also to other litigants with demands upon the finite resources of the court…
>
> 14. Significantly as the local cases I have referred to illustrated, what is needed to justify a striking out order is where the defaulter's conduct demonstrates his total disregard of the court's orders. The question the court has to ask is whether, on the facts, there was a total disregard of the rules or orders of court as to amount to contumelious conduct, or an abuse of the process as explained in [9] … above. If the answer is in the affirmative, a striking out order is appropriate without considering the question whether a fair trial is possible or is dependent on the need to show prejudice to the other party…

33 In *Ramindo*, Belinda Ang J held that while the court in *Pendleton Lane* was dealing with a procedural default, the principles elucidated in *Pendleton Lane* were of universal application. It follows that these principles are equally applicable in the factual matrix here, which involves breaches of the MI. The Judge also held that where there is total disregard of court's orders such that it could be viewed as contumelious conduct, such conduct warrants a striking out order regardless of whether a fair trial is possible and without having to make an "unless order":

> 83. Indeed the court there [in *Pendleton Lane*] was essentially dealing with a procedural default, but it is clear (*a fortiori*) that the legal principle there enunciated is of universal application…
>
> 84. As a matter of legal principle, the court in *Pendleton Lane* held that where there was a total disregard of the court's orders such that it could properly be viewed as contumelious conduct, such conduct warrants a striking out order regardless of whether a fair trial was possible and without having to make an "unless order". As noted by the court in *Pendleton Lane* (at [9]), this legal basis for striking out "is not [premised upon] a perceived need to punish the party concerned [and] is a proper and necessary response not to allow the court's process to be used as a means of achieving injustice". Jeffrey Pinsler SC

> rightly points out in his book *Singapore Court Practice 2014* (Lexis Nexis, 2014) at para 24/16/2 that the legal basis for striking out in *Pendleton Lane* "is anchored on the public interest". The public interest there relates to upholding the authority of the court and ensuring its processes are not used in an unjust way. Indeed, it is implicit in the observations of the Court of Appeal in *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 (at [48]) that a court has the discretion to strike out when it was in the public interest to do so.

34 Third, the Court of Appeal has held that the court is entitled to look at all circumstances in its assessment of whether the striking out application should be granted; *Mitora* at [48].

35 Fourth, an unless order is an order of last resort. It should not be made unless there is a history of failure to comply with other orders.

36 In *Syed Mohamed Abdul Muthaliff and another v Arjan Bhisham Chotrani* [1999] 1 SLR(R) 361 ("*Syed Mohamed*"), the Court of Appeal at [15] accepted the English Court of Appeal's summary of the applicable principles in *Hytec Information Systems Ltd v Coventry City Council* [1997] 1 WLR 1666 ("*Hytec*") (at 1674–1675). This included the principle that "[a]n unless order is an order of last resort. It is not made unless there is a history of failure to comply with other orders. It is the party's last chance to put his case in order."

37 With these legal principles in mind, I turn to the issues arising in SUM 1325.

Restoration of assets

38 Zen did not dispute that the courts have the power to order restoration of assets into the asset pool, where there is a breach of a Mareva injunction. It submitted that such power should not be exercised here, as it has a credible explanation for the breach.

39 In my assessment, Zen has not evidenced any credible explanation for the breaches, and certainly not any credible explanation that justifies the breaches of the MI without first seeking a variation or discharge of the MI.

40 In respect of the Bon Chem, Mr Naik testified that Zen had to dispose of the Bon Chem as Yes Bank would have commenced the equivalent of an insolvency proceeding against Zen, if the Bon Chem was not disposed of to pay for the sums due to Yes Bank.

a. However, this bare assertion is not backed up by any evidence that Yes Bank contemplated or threatened insolvency of Zen. This was confirmed by counsel for Zen at the hearing.

b. In any event, even if there was evidence of such, it still does not explain why Zen could not have first sought to vary or discharge the MI relying on what Mr Naik testified to.

41 In respect of the Bon Vent, Mr Naik testified that the vessel was never meant to be transferred to Anjaneya permanently.

a. However, there is no evidence of the contractual arrangement between Zen and Anjaneya, nor any indication from Zen as to when the vessel is to be returned to Zen. Zen has been conspicuously silent on these key facts, despite requests from Orexim's solicitors since 2 January 2024[2].

b. In any event, even if there is evidence of such, it does not explain why Zen could not have first sought to vary or discharge the MI.

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[2] Mr Konovalov's affidavit filed on 30 April 2024 at [49].

42 Zen further sought to justify its inability to restore the value back to the asset pool, by stating that it is sanctioned by USOFAC in 2024.

a. However, it has not produced any evidence as to how such sanctions affect Zen. Zen has only referenced, a list showing Zen and the Bon Vent as listed on USOFAC sanction list and in its written submissions, regulations and a press release, that do not inform how Zen in particular is affected. This was confirmed by counsel for Zen at the hearing.

b. Even on Mr Naik's evidence, the USOFAC sanctions took place in April 2024. The Bon Chem was disposed of in September 2021. The transfer of the Bon Vent's registered ownership took place in June 2023. There is no explanation of why Zen could not have restored the value back into the asset pool prior to the occurrence of the USOFAC sanctions in April 2024.

c. Even on Mr Naik's evidence, what Zen is prevented from doing, is depositing monies into its bank account[3]. It does not prevent Zen from depositing monies into an escrow account or into court. While not stated as such in Mr Naik's affidavit, Zen submits in its written submissions that the USOFAC sanctions prevent Zen from transacting in US dollars. Even if Zen's claims on USOFAC sanctions are taken as alleged, the sanctions do not prevent Zen from restoring the assets into the asset pool, by depositing the equivalent value in Singapore dollars, into an escrow account or into court.

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[3] Mr Saurabh Chandrashekar Naik's ("Mr Naik")'s affidavit filed on 21 June 2024 at [25].

d. In any event, Zen cannot credibly rely on its own breach of the regulations relating to the USOFAC sanctions to justify its breaches of the MI or its inability to remedy such breach.

43 I therefore find that in the circumstances, it would be fair and just to order Zen to restore the Vessel(s) or the value of the Vessel(s) back into the asset pool. Indeed, it would make nonsense of the court order for the MI, if Zen is not ordered to do so.

Value to be restored to the asset pool

44 I turn next to the second issue, the value to be restored to the asset pool.

45 Zen testified that the Bon Chem was disposed of at the sale price of US$1,652,490. It is Orexim's case that the sale was at an undervalue.

46 Orexim relies on the valuation made by Mr Bishop. He provided a valuation of US$4,717,000 in his 1st affidavit filed on 9 November 2021. He noted that while Zen referred to an accident on 21 December 2020, the Accident/Incident Report only refers to a generator malfunction/damage. There was no indication of an accident involving a collision or grounding. In addition, despite the Bon Chem's pre-existing defects, the Bon Chem was able to move on its own power from the port in Chennai to a port in Mumbai. It was sailed to Alang, which is the largest place for ship demolition/recycling in India. The damage detailed in the reports would at most only affect the vessel's value as a trading vessel. It would have very little impact on the value of a vessel marked for demolition. Mr Bishop referenced the Baltic Ship Recycling Tanker

Assessment reports and a report of what he regards as a leading independent ship demolition broker, to arrive at his assessment[4].

47 For the Bon Vent, Orexim relies on Mr Bishop's 2nd affidavit filed on 16 May 2024, where he provided a valuation report assessing the value of the Bon Vent at the sum of US$2,400,000. He based the valuation on a worst-case scenario where the vessel would be recycled or "scrapped". He estimated the Bon Vent's value purely on an assumed stainless steel content, which is the high-value component of a vessel of this type (i.e. a chemical tanker) when being sold for recycling/scrap purposes[5].

48 Despite Mr Bishop's 1st affidavit being filed on 9 November 2021, Zen has not filed any expert report to refute Mr Bishop's valuation of the Bon Chem. Zen has also not filed an expert report to refute Mr Bishop's valuation of the Bon Vent. Neither did Zen indicate that it would be doing so. It merely asserts that Mr Bishop's valuations are wrong, without providing any detailed reasons for this assertion.

49 In *Suntech*, the Court of Appeal had observed that the onus was not on the party that had obtained the Mareva injunction to find evidence to ascertain the value lost from the breach of the injunction. It was the obligation of the party that breached the injunction to restore that value to the asset pool. The court held at [72]:

> 72 … Regardless of what the value of Shanghai Suntech and, thus, the appellant's shares in Shanghai Suntech was, the appellant had been under a continuing obligation since 4 September 2014, the date on which the Mareva injunction was

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4 Mr Stephen Michael Bishop's ("Mr Bishop")'s affidavit filed on 9 November 2021 at pg 6-12.

5 Mr Bishop's affidavit filed on 16 May 2024 at pg 6-9.

> imposed, *not* to dispose of any of its assets, as stated in the Mareva injunction. Having already breached the Mareva injunction by disposing of its shares in Shanghai Suntech, the appellant now had to restore that asset or its equivalent in value to its asset pool. The onus was not on the respondent to now scramble and find evidence to ascertain the value that the appellant had lost as a result of its disposal of its shares in Shanghai Suntech in breach of the Mareva injunction, in order that the appellant would be obliged to restore that value to its asset pool. Instead, the appellant's obligation to restore the value of its shares in Shanghai Suntech to its asset pool was one that was independent of any action on the part of the respondent.

50 In this case, Orexim has provided *prima facie* credible evidence of the valuation of the Bon Chem at US$4,717,000 and the Bon Vent at US$2,400,000. On the other hand, Zen has not provided any evidence or reason why such valuation is inaccurate. This is despite the valuation for the Bon Chem being provided by Orexim over two and a half years ago. It is despite the onus being on Zen to restore the value of the asset to the asset pool. I note that even though Zen was aware of the hearing for SUM 1325, it did not provide any evidence or detailed reasons as to why Mr Bishop's valuation was wrong, for the Bon Chem, or the Bon Vent. Neither did it request for time to provide a counter valuation. I hence adopted Mr Bishop's valuation for the Vessels.

51 Zen also did not request for more time to comply with the MI but instead said it was unable to because of the USOFAC sanctions. However, Zen has provided no evidence on how USOFAC sanctions affects Zen in particular. In any event, it is no defence to say that it cannot remedy the breaches of the MI because of its alleged breaches elsewhere.

52 I hence ordered that Zen restore the value of the Bon Chem to the asset pool within 14 days of this order, in the sum of US$4,717,000 or its equivalent value in Singapore dollars.

53 In respect of the Bon Vent, Zen claims that the vessel was not disposed of and would be returned to Zen. However, Zen has not provided any dates of when it would do so. It has also not provided any evidence as to why it cannot do so forthwith. I hence ordered that Zen restore the Bon Vent to the registered ownership of Zen, or its equivalent value to the asset pool, which would be in the sum of US$2,400,000 or its equivalent value in Singapore dollars, within 14 days of this order.

Unless order

54 Finally, I address Orexim's application that the restoration orders be accompanied by an unless order. It was held in *Syed Mohamed* that an unless order is an order of last resort; at [15]. It should not be made unless there is a history of failure to comply with other orders. At the same time, it has been held in *Ramindo*, that where there is total disregard of court's orders such that it could be viewed as contumelious conduct, such conduct warrants a striking out order without having to make an unless order.

55 In this case:

a. Zen has breached the MI ordered in ORC 3449. As stated above, Zen has not provided any credible justification for why it did not first seek to vary or discharge the MI, before disposing of or dealing with the Vessels.

(i) In the case of the Bon Chem, the court has in SUM 559 found that Zen intentionally breached the MI despite being aware of it and despite knowing the serious repercussions from breaching the MI. What compounds this breach of the MI by Zen, is the dishonesty of Zen's

director in course of the contempt of court proceedings. Hoo J found that Mr Naik had dishonestly testified that Bon Chem was "solely owned by Zen in name" and that "the assets have not been sold", when the vessel had already been sold.

(ii) In the case of the Bon Vent, Zen disposed of the vessel despite the findings and sentences imposed for contempt of court against Zen and its officers for the disposal of the Bon Chem in ORC 5231.

b. In addition, Zen has not complied with the orders made in ORC 5231 after the court found Zen to be in contempt of court. Neither Zen nor the four officers of Zen found to be guilty of contempt, have paid the fines or served the imprisonment terms imposed by the court.

c. Zen has also not complied with at least nine costs orders made against Zen across various interlocutory proceedings in S 443 amounting to SGD $69,360.10, EUR €1,213.60, and USD $1,800.00 (before interest). Zen has not paid any of these costs orders to-date[6]. This was not disputed.

56 As set out above, Zen has a long and chequered history of not complying with court orders. This includes orders for the MI and costs orders. It even

6 Mr Konovalov's affidavit filed on 30 April 2024 at [66].

extends to blatantly disregarding the orders imposed by the court, after Zen was found to be in contempt of court, for disregarding court orders.

57 Zen also foreshadowed that it would continue to disregard any court orders to restore the value of the assets to the asset pool. It made a bare assertion that it is prevented from depositing monies into its bank account because it is sanctioned by USOFAC. However, as highlighted above, Zen has produced no evidence as to how such sanctions affect Zen. Even on its' alleged claims about the sanctions, Zen is not prevented from restoring the value of the assets into the asset pool through a non-US dollar currency, into an escrow account or into the court. It is also no answer to Zen's contumelious breaches of the MI, that it cannot remedy such breaches, because it in breach elsewhere.

58 In addition to all the above, it would also affect the conduct of a fair trial in S 443 if Zen did not comply with the restoration order. By disposing of the assets that Orexim pursues in S 443, Zen effectively denies Orexim the fruits of its litigation, even if Orexim succeeds.

59 Given Zen's history of total and blatant disregard of court orders and the contempt of court process, as well as Orexim's inability to benefit from the fruits of litigation in S 443 unless the assets are restored to the asset pool, I held that the restoration orders should be accompanied by an unless order that Zen's defence be struck out, if it does not comply with the restoration orders. I also granted order in terms to prayers 1(c) and 3 of SUM 1325. Orexim was

awarded costs in the sum of $14,000 plus reasonable disbursements in the sum of $2283.

Kwek Mean Luck
Judge of the High Court

Hui Choon Wai and Luke Chew (Wee Swee Teow LLP) for the plaintiff;
Yuen Zi Gui (Oon & Bazul LLP) for the 3rd defendant.