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

[2025] SGHC 34

Originating Application No 1152 of 2023 (Summonses Nos 391 and 995 of 2024)

Between

Jonathan John Shipping Ltd

… *Claimant*

And

Continental Shipping Line Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Mareva injunctions]

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Jonathan John Shipping Ltd
v
Continental Shipping Line Pte Ltd

[2025] SGHC 34

General Division of the High Court — Originating Application No 1152 of 2023 (Summonses Nos 391 and 995 of 2024)
Chan Seng Onn SJ
22 July, 24 October, 5 December 2024; 22 January 2025

26 February 2025

Chan Seng Onn SJ:

Introduction

1 The present case concerns two applications made in relation to a Mareva injunction I granted on 14 November 2023 (the "Mareva Order"). The defendant applied to set aside the Mareva Order in HC/SUM 995/2024 ("SUM 995"). Separately, the claimant applied for various disclosure orders and variation of certain terms of the Mareva Order in HC/SUM 391/2024 ("SUM 391").

2 After considering the parties' submissions, I granted the claimant's application and dismissed the defendant's application. The defendant has filed an appeal against my decision in SUM 995, and is seeking permission to appeal against my decision in SUM 391. I now give the reasons for my decision.

Facts

The parties

3 The claimant is Jonathan John Shipping Ltd (the "Claimant"), a company incorporated in the Marshall Islands, and the registered owner of the *Aegean Express*, a ship sailing under the flag of Panama (the "Vessel").[1]

4 The defendant is Continental Shipping Line Pte Ltd (the "Defendant"), a company incorporated in Singapore.[2] The Defendant primarily operates a "feeder service for carriage of cargo between Singapore and Myanmar".[3] The Defendant is owned by U Ko Ko Htoo, also known as Ko Ko Htoo ("Ko"), a Myanmar national residing in Singapore.[4] Ko is the sole director and shareholder of the Defendant.[5]

Background to the dispute

5 On 23 November 2020, the parties entered into an agreement whereby the Claimant chartered the Vessel to the Defendant until the beginning of April 2022 (the "Charterparty").[6] It was agreed that there would be no dry-docking of

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1 Affidavit of Marcos Vassilikos filed 10 November 2023 ("MV's 1st Affidavit") at para 5.

2 MV's 1st Affidavit at para 6.

3 Defendant's Skeletal Submissions for HC/SUM 995/2024 filed 19 July 2024 ("DSS-995") at para 6.

4 MV's 1st Affidavit at pp 35–40.

5 MV's 1st Affidavit at pp 37–39.

6 MV's 1st Affidavit at para 7; DSS-995 at para 8.

the Vessel during the currency of the Charterparty except in cases of emergency.[7]

6 On 21 February 2022, the parties purportedly agreed to an addendum titled "Addendum No 3" (the "Addendum" or "Addendum No 3").[8] It is to be noted that the authenticity of Addendum No 3 remains contested by the Defendant.[9] Under the Addendum, the Charterparty was extended for another 36–39 months from 1 April 2022.[10] No dry-docking would apply during the duration of the Charterparty, except in the case of emergency or the next scheduled dry-docking due on 10 November 2022.[11] Addendum No 3 also provided that the Vessel was to be dry-docked at a "convenient yard in China" and that the Charterers would position the Vessel "within [the] Singapore/Hong-Kong range" between 15 October 2022 and 1 November 2022.[12]

7 On 29 June 2022, the Claimant sent an e-mail to the Defendant, informing them that the Vessel had been arranged for dry-docking, and requesting that the Defendant release the Vessel for dry-docking purposes.[13] The e-mail further stated that the estimated duration of repairs would be around 25–30 days.[14]

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7 MV's 1st Affidavit at p 51 (line 138 of the Charterparty); Affidavit of U Ko Ko Htoo filed 15 April 2024 ("Ko's 2nd Affidavit") at para 15.

8 MV's 1st Affidavit at para 7, pp 78–81.

9 DSS-995 at para 9.

10 MV's 1st Affidavit at para 9, p 78.

11 MV's 1st Affidavit at para 9, p 78.

12 MV's 1st Affidavit at para 10, p 78.

13 MV's 1st Affidavit at p 83.

14 MV's 1st Affidavit at p 83.

8 The Vessel was delivered in Singapore to the Claimant for dry-docking on 15 October 2022.[15] It entered dry-dock at Guangzhou, China on 13 November 2022, following delays due to "a typhoon affecting the whole Hong Kong and Guangzhou area, Covid regulations and bad weather".[16] Subsequently, on 15 November 2022, the Claimant notified the Defendant that extensive repair works had to be carried out on the Vessel, which would delay the return of the Vessel to the Defendant's service until 5 January 2023.[17]

9 Repair works on the Vessel were delayed for various reasons.[18] On 9 January and 13 January 2023, the Claimant sent e-mails notifying the Defendant that the Vessel would be delivered on or about 2 February 2023.[19] On 17 January 2023, the Defendant sent the Claimant an e-mail in which they sought to terminate the Charterparty.[20]

10 On 1 February 2023, the Claimant commenced arbitration proceedings against the Defendant in London ("the Arbitration Proceedings") in accordance with the London Maritime Arbitrators Association's Terms and Procedures 2021 ("LMAA Terms").[21] The Claimant alleged that it suffered loss and damage amounting to an estimated sum of US$22,573,870.33 owing to the Defendant's wrongful termination of the Charterparty.[22] In response, the Defendant argued

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15 MV's 1st Affidavit at para 11.

16 MV's 1st Affidavit at para 12.

17 MV's 1st Affidavit at para 13.

18 MV's 1st Affidavit at para 14.

19 MV's 1st Affidavit at para 15.

20 MV's 1st Affidavit at paras 16–22.

21 MV's 1st Affidavit at para 23.

22 MV's 1st Affidavit at para 22.

that it was entitled to terminate the Charterparty, and brought a counterclaim for damages totalling US$472,886.80.[23]

Procedural history

11 On 10 November 2023, the Claimant filed an application without notice in HC/SUM 3468/2023 ("SUM 3468") seeking interim relief in support of the Arbitration Proceedings, pursuant to s 12A of the International Arbitration Act 1994 (2020 Rev Ed) (the "IAA"). The Claimant sought a worldwide Mareva injunction prohibiting the disposal of assets by the Defendant, up to a total sum of US$22,573,870.33. I granted the Mareva Order on 14 November 2023.

12 On 13 February 2024, the Claimant filed an application for various disclosure orders to be made against the Defendant, and variation of certain terms of the Mareva Order (SUM 391). Separately, on 15 April 2024, the Defendant filed an application to set aside the Mareva Order (SUM 995).

Decision

13 After considering the parties' submissions, I granted the Claimant's application in SUM 391 and dismissed the Defendant's application in SUM 995. I begin with my reasons for dismissing the Defendant's application to set aside the Mareva Order.

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[23] MV's 1st Affidavit at p 106.

SUM 995

Issues to be determined

14 The Defendant argued that the Mareva Order ought to be set aside for the following reasons:

(a) First, the court did not have power to grant the Mareva Order, pursuant to s 12A of the IAA.[24]

(b) Second, the Claimant did not have a good arguable case on the merits.[25]

(c) Third, the Claimant could not show a real risk of dissipation of the Defendant's assets.[26]

(d) Fourth, the Mareva Order was sought by the Claimant in an abuse of process, as (i) there was an inexplicable delay in bringing the application;[27] and (ii) the Claimant failed to give full and frank disclosure in its application without notice.[28]

15 I found that none of the aforementioned grounds were made out. I address each in turn.

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24 Ko's 2nd Affidavit at paras 34–37.

25 DSS-995 at paras 74–96.

26 DSS-995 at paras 43–73.

27 DSS-995 at paras 37–42.

28 DSS-995 at paras 97–101.

Whether the court had the power to grant the Mareva Order

16 Under s 12A(6) of the IAA, the court may grant a Mareva injunction in support of arbitral proceedings "only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively". I accepted the Claimant's expert evidence that the relevant arbitral tribunal, being seated in London and constituted pursuant to the LMAA Terms, had no power to grant interim injunctive relief.[29] Accordingly, the court had power to grant the Mareva Order in SUM 3468.

Whether the court ought to have granted the Mareva Order

17 The principles governing the grant of Mareva injunctions are well established. Per *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [36], the claimant must satisfy the court that there is: (a) a good arguable case on the merits of the claimant's case; and (b) "a real risk that the defendant will dissipate his assets to frustrate the enforcement of an anticipated judgment of the court".

The Claimant had a good arguable case on the merits

18 The threshold of a good arguable case is low; it merely requires a case "more than barely capable of serious argument" (*Bouvier* at [36]). Parties were in agreement that the merits of the Claimant's claim turned on whether the Defendant had a lawful right to terminate the Charterparty on 17 January 2023.[30] In other words, the Defendant had to definitively show that it had a lawful right

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29 Affidavit of Timon Karamanos-Cleminson filed 12 July 2024 at paras 25–28.

30 Transcript dated 14 November 2023 at p 13, lines 21–27; DSS-995 at para 18.

of termination, failing which, the Claimant would have an arguable case on the merits. On the evidence, I found that the Defendant could not *definitively* show that it had a lawful right of termination. For this reason, I was satisfied that the Claimant had crossed the threshold of a good arguable case.

19 First, I address the Defendant's claim that it had a contractual right of termination.[31] Clause 79 of the Charterparty provided, *inter alia*, for a right of termination to arise in the event that the Vessel was off-hire for one continuous period of more than 25 days, excluding time spent for "mutually agreed dry-docking":[32]

> If Vessel be off-hire for more than 3 (three) periods of 72 (seventy-two) hours each incident within a period of 14 (fourteen) days for any reason, or one period of more than 25 (twenty-five) consecutive days during the course of this Charter for any cause, *except mutually agreed dry docking/maintenance* and all off-hire times caused by Charterers or their servants, Charterers have the right within 30 (thirty) days after the last incident as above to terminate this Charter forthwith at their discretion.
>
> [emphasis added]

20 I noted that Clause 79 appeared to have been deleted by way of Addendum No 3.[33] This deletion was disputed by the Defendant, which challenged the authenticity of the Addendum altogether.[34] I found this to be a matter best reserved for determination by the relevant arbitral tribunal.

21 At the present stage, *assuming* that Clause 79 remained in effect, it sufficed for me to find that there was some *objective evidence* of mutual

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31 Transcript dated 22 July 2024 at p 19, lines 4–5.

32 DSS-995 at para 96.

33 MV's 1st Affidavit at p 79.

34 Transcript dated 22 July 2024, p 23, line 29 to p 24, line 21; DSS-995 at paras 81–82.

agreement on dry-docking arrangements (see *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("*JTrust Asia*") at [41]–[45]), which called into question the existence of the Defendant's contractual right of termination. On the facts, I found that there was sufficient objective evidence. First, the Claimant adduced evidence wherein an employee of the Defendant appeared to have approved a draft of the Addendum.[35] The Defendant's retention of control over the Vessel up till 15 October 2022 further supported the existence of the Addendum – without this Addendum, the Charterparty ought to have lapsed in April 2022 (see [5] above). Second, the Defendant had delivered the Vessel for dry-docking on 15 October 2022. There was no reason for the Defendant to do so in the absence of mutual agreement on dry-docking arrangements.

22 Secondly, I turn to address the Defendant's claim that it had a common law right of termination,[36] which arose as a result of the Claimant's repudiatory breach of the Charterparty.[37] Here, the Defendant argued that the Claimant's failure to "complete [dry-docking] and redeliver the Vessel within a reasonable time" constituted a repudiatory breach of the Charterparty.[38] However, I found that there was insufficient evidence to conclusively establish that the Claimant had committed a repudiatory breach of the Charterparty, for the following reasons:

(a) First, there was no evidence that parties had agreed on the duration of the Vessel's dry-docking. I accepted the Claimant's

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35 MV's 1st Affidavit at pp 193–200.

36 DSS-995 at paras 95–96; Transcript dated 22 July 2024 at p 19, line 6.

37 DSS-995 at paras 95–96.

38 DSS-995 at para 86.

argument that the email sent on 29 June 2022 merely contained an *estimated* duration for the repairs.[39]

(b) Secondly, the duration of the delay could not have been said to be *conclusively* "unreasonable". The Vessel was off-hire for a period of three and a half months, between the Defendant's delivery of the Vessel on 15 October 2022 and the Claimant's promised redelivery on 2 February 2023. Given the context of a multi-year Charterparty, such a delay might not be considered unreasonable. Crucially, the Claimant had informed the Defendant of the expected delays via e-mail on three separate occasions – on 15 November 2022,[40] 9 January 2023,[41] and 13 January 2023.[42] The Defendant did not reply to any of these emails to express any objection or dissatisfaction.[43] The Defendant's failure to raise timely objections to the delay contradicted its own position that the "Defendant would not have agreed to an indefinite withdrawal of its only Chartered Vessel from service".[44]

23 For the above reasons, I found that the Defendant could not *conclusively* demonstrate that it had a lawful right of termination, whether in contract or at common law. Accordingly, I found that the Claimant had a good arguable case on the merits.

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39 MV's 1st Affidavit at para 37(k); Claimant's Skeletal Submissions for HC/SUM 995/2024 dated 19 July 2024 ("CSS-995") at para 35.

40 MV's 1st Affidavit at p 85.

41 MV's 1st Affidavit at pp 86–87.

42 MV's 1st Affidavit at p 88.

43 CSS-995 at para 35; Affidavit of Marcos Vassilikos filed 25 June 2024 in support of SUM 995 ("MV's 2nd Affidavit") at para 16.

44 DSS-995 at para 84.

There was a real risk of dissipation of the Defendant's assets

24 I turn to the second element of the test in *Bouvier*, which requires the claimant to establish a real risk that the defendant's assets may be dissipated to frustrate the enforcement of an anticipated judgment (*Bouvier* at [36]). In this regard, there must be "solid evidence" to demonstrate the risk of dissipation (*Bouvier* at [36], citing *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 ("*Guan Chong*") at [18]).

25 Before turning to my assessment of the risk of dissipation, I briefly address two preliminary arguments raised by the Defendant. First, the Defendant challenged the reliability of three investigation reports adduced by the Claimant in SUM 3468 (collectively, "the Reports").[45] These were the two reports prepared by Mr Phillip Butler (the "Butler Reports"),[46] and the first report of Mr Howard Nathan Wheeler (the "1st Wheeler Report").[47] Mr Butler passed away on 24 June 2023 before he was able to affirm an affidavit exhibiting his reports;[48] the Butler Reports were thus exhibited in the affidavit of Mr John Heslop, Mr Butler's colleague.[49] The Defendant claimed that the Reports did not pass "the bare minimum [threshold] of reliability to be accorded any weight",[50] as the Reports did not disclose their primary sources or "the full basis for its conclusions" and were thus hearsay evidence.[51]

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45 DSS-995 at paras 45–53.

46 Affidavit of John Heslop filed 10 November 2023 ("Heslop's Affidavit") at pp 14–85.

47 Affidavit of Howard Nathan Wheeler filed 10 November 2023 ("Wheeler's 1st Affidavit") at pp 6–128.

48 Heslop's Affidavit at para 6.

49 Heslop's Affidavit at paras 1, 6–8.

50 DSS-995 at para 51.

51 DSS-995 at paras 45, 47.

26 For the avoidance of doubt, although the Defendant did not appear to challenge the *admissibility* of the reports,[52] I noted that in interlocutory proceedings, affidavits are admissible notwithstanding the presence of hearsay evidence (*Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883 ("*Gobi a/l Avedian*") at [64]–[65]).

27 Turning to the question of weight, while it is true that affidavit evidence must "meet a minimum threshold of reliability before a court will accord it any weight", the exact threshold depends on the facts of each case (*Gobi a/l Avedian* at [66]). In *Gobi a/l Avedian*, the appellants sought to rely on an affidavit deposed by the appellants' Malaysian solicitor, Mr Zaid. Mr Zaid's affidavit reproduced the account of an anonymous "Witness", who claimed to have undergone training under the Singapore Prison Service. The court declined to place any weight on Mr Zaid's affidavit, finding that it did "not have enough evidence to judge the reliability of the Witness's evidence" (*Gobi a/l Avedian* at [66]). Unlike the affidavit in *Gobi a/l Avedian*, the Reports did not wholly contain hearsay evidence; they also contained information derived from public databases such as that of the Accounting and Corporate Regulatory Authority ("ACRA"). Thus, I found that the Defendant's assertions were insufficient to wholly displace the reliability of the Reports.

28 Further, as the target of the investigations, the Defendant was well-equipped to ascertain and challenge the veracity of the claims made in the Reports. The Defendant did *in fact* do so in the second affidavit of Ko filed 15 April 2024 ("Ko's 2nd Affidavit").[53] It was for the court to assess, in relation

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52 Transcript dated 22 July 2024 at p 27, lines 1–3.

53 Ko's 2nd Affidavit at paras 46–50.

to the claims before it, the amount of weight that should be accorded to either party's evidence.

29 Secondly, the Defendant argued that the court should disregard any information obtained pursuant to ancillary disclosure orders in assessing whether the Claimant had established a real risk of dissipation.[54] The Defendant relied on the following paragraphs in *Bouvier* (at [102]–[103]):

> 102 Where the Mareva injunction itself is ultimately found not to have been justified on the basis of the material before the court at the time it was granted, it seems to us inherently unfair to nonetheless allow the plaintiff to use information that he has obtained through the ancillary disclosure orders to try to shore up a case for a real risk of dissipation. … To further prejudice the defendant by allowing the plaintiff to use information extracted from an ancillary disclosure order to support an otherwise unsustainable Mareva injunction would be to provide the plaintiff with an unfair and improper advantage.
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> 103 *Further, the information obtained from an ancillary disclosure order will often have little, if any, bearing on a real risk of dissipation.* The disclosed information does not provide a longitudinal view of the defendant's assets. All that is disclosed are the assets standing to the defendant's name at the time disclosure is made. *The information will not show whether there has been a systematic and unexplained attrition of the defendant's assets over time, which, presumably, would be the justification for inferring a real risk of dissipation.* The disclosed information is also often rough and ready. Given that the disclosure affidavits usually have to be compiled and filed under stringent timelines, the information set out therein is not the type of information that tends to stand up well to the microscopic scrutiny of lawyers and forensic accountants … *It will be unreliable or even misleading to rely on information of this nature to establish whether or not a defendant has been concealing his assets.*
>
> [emphasis added]

30 However, *Bouvier* does not wholly preclude consideration of information obtained pursuant to an ancillary disclosure order. In the subsequent

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54 DSS-995 at paras 34, 43–44.

paragraph (at [104] of *Bouvier*), the court identifies two situations wherein the information obtained pursuant to ancillary disclosure orders may be relevant to the risk of dissipation:

> 104 In our judgment, ancillary disclosure orders may only be relevant to the risk of dissipation in two narrow situations. The first is where the defendant refuses to provide any disclosure of his assets at all. This might, in appropriate circumstances, found the inference that there is a real risk that the defendant may dissipate his assets (see *Z Ltd v A* [1982] 1 All ER 556 at 566B–566C *per* Lord Denning; *Jarvis Field Press* ([80] *supra*) at [14]; *Madoff Securities* ([82] *supra*) at [172]–[173]). The second is where the information disclosed by the defendant reveals assets which are so glaringly inadequate or suspicious that the deficiencies cannot be attributed to the urgency with which the disclosures were made or other accounting or valuation inaccuracies. This latter situation would rarely arise because if the defendant were truly minded to conceal his assets, the likelihood is that he would not provide any disclosure at all. *Even in these situations, the court would have to carefully consider whether, in all the circumstances, an inference of a real risk of dissipation may appropriately be drawn.*
>
> [emphasis added]

31 Thus, I was of the view that the overarching test remains the *relevance of the information in establishing a real risk of dissipation*. For instance, in cases where information disclosed pursuant to an ancillary disclosure order reveals "a systematic and unexplained attrition of the defendant's assets over time", such information can form the "justification for inferring a real risk of dissipation" (*Bouvier* at [103]) and ought to be taken into consideration. I address this point in greater detail below.

32 In assessing the risk of dissipation, the ultimate question is whether there are circumstances suggesting that the defendant can and will likely frustrate the judgment (*Milaha Explorer Pte Ltd v Pengrui Leasing (Tianjin) Co Ltd* [2023] 1 SLR 1072 ("*Milaha Explorer*") at [24]; *JTrust Asia* at [65]). Relevant factors include, among others, the nature of the assets which are to be the subject of the

proposed injunction, the ease with which the assets could be disposed of or dissipated, the nature and financial standing of the defendant's business, the length of time the defendant has been in business, and the domicile or residence of the defendant (*Milaha Explorer* at [24]; *JTrust Asia* at [65]).

33 In the present case, having considered the information obtained both pre- and post-Mareva, I found sufficient evidence from which a real risk of dissipation could be inferred. Amongst the factors originally raised by the Claimant in SUM 3468,[55] I found the following relevant: (a) the nature of the Defendant's assets (which comprised mainly current assets);[56] and (b) the Defendant's cessation of its primary business operations.[57] I address each factor in turn:

(a) On factor (a), it was undisputed that the Defendant's assets were mainly held in the form of current assets.[58] Such assets, by their nature, are capable of being easily dissipated (see *JTrust Asia* at [78]). This was a factor supporting the existence of a real risk of dissipation.

(b) On factor (b), the Claimant relied on the 1st Wheeler Report to assert that the Defendant had ceased business operations in early 2023 following the termination of the Charterparty.[59] In response, the Defendant took the position that it had not ceased operations as its director, Ko, was still "actively seeking to renew lost commercial

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55 MV's 1st Affidavit at paras 60–70.

56 MV's 1st Affidavit at para 61.

57 MV's 1st Affidavit at paras 63, 66.

58 Affidavit of U Ko Ko Htoo filed 30 November 2023 ("Ko's 1st Affidavit") at pp 9–11; DSS-995 at para 69.

59 CSS-995 at para 41.

relationships and sourcing for new business opportunities".[60] The Defendant declined to give further details of these endeavours, citing confidentiality.[61] Even taking the Defendant's words at face value, it was clear that the Defendant had (at present) ceased its *primary* business operations of chartering vessels.[62] This much was accepted by Defendant's counsel during the hearing.[63] I found the Defendant's cessation of primary business operations to be a relevant factor in assessing the existence of a real risk of dissipation (see *Guan Chong* at [24]).

34 The aforementioned factors were relevant supporting factors in assessing the existence of a real risk of dissipation. Taken together with information disclosed by the Defendant post-Mareva, I found that the overall evidence supported the existence of a real risk of dissipation. To establish a real risk of dissipation, the Claimant sought to rely on two pieces of information obtained post-Mareva:[64]

(a) the disparity between the Defendant's assets as reflected in its financial statements for the year ending 31 December 2018, and the Defendant's assets as disclosed by Ko on 30 November 2023 pursuant to the Mareva Order; and

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60 Ko's 2nd Affidavit at para 27.

61 DSS-995 at para 63; Ko's 2nd Affidavit at para 27.

62 Transcript dated 24 October 2024 at p 8, lines 3–7.

63 Transcript dated 24 October 2024 at p 6, line 6 to p 10, line 16.

64 CSS-995 at paras 46–49.

(b) the fact that the Defendant had made withdrawals amounting to $118,197.70 between November 2023 and January 2024 – this was disclosed pursuant to paragraph 4 of the Mareva Order.[65]

35 I did not find (a) to be relevant to assessing the risk of dissipation. A cursory comparison of the Defendant's total asset value in 2023 and in 2018, *years* before the cause of action arose, was not sufficient to disclose any risk of dissipation – any decrease in the Defendant's net asset value could easily have been attributed to a decline in business. However, I found (b) to be concerning – the Defendant's inability to justify withdrawals from its accounts *following* the Mareva Order raised reasonable concerns that the Defendant's assets had been factually dissipated, *in spite of* the Mareva Order.

36 I reproduce below the list of withdrawals disclosed by the Defendant pursuant to paragraph 4 of the Mareva Order, which was compiled by the Claimant and annexed to HC/SUM 391/2024.[66]

S/N	Purpose	Amount (SGD)	Notification
1.	**November 2023**: Payment of salaries (including CPF and SDL contributions) of the existing staff employed by CSPL	**52,626.01** (from HSBC XXX-XXXXXX-001)	Defendant's solicitors' email of 11 December 2023 at 6.32pm SGT (see page **40** of 1st Affidavit of Nur Rafizah Binte Mohamed Abdul Gaffoor ("**NRG 1st**"))

65 Affidavit of Nur Rafizah Binte Mohamed Abdul Gaffoor filed 13 February 2024 ("Rafizah's 1st Affidavit") at pp 40–60.

66 HC/SUM 391/2024, Annex A.

2.	**November 2023**: Payments to third-party service providers suppliers [*sic*] and/or suppliers	**17,913.68** (from HSBC XXX-XXXXXX-001)	Defendant's solicitors' email of 28 December 2023 at 8.52pm SGT (see page **41** of NRG 1st)
3.	**December 2023 / January 2024**: Payment of Salaries (excluding CPF contributions)	**22,096.08** (from HSBC XXX-XXXXXX-001); and **3,518.50** (from HSBC XXX-XXXXXX-179)	Defendant's solicitors' email of 16 January 2024 at 11.46pm SGT (see page **51** of NRG 1st)
4.	**December 2023 / January 2024**: Payments to third-party suppliers and/or service providers	**437.48** (from HSBC XXX-XXXXXX-178); and **8,014.37** (from HSBC XXX-XXXXXX-001); and **1,662.08** (from HSBC XXX-XXXXXX-002)	Defendant's solicitors' email of 16 January 2024 at 11.46pm SGT (see page **51** of NRG 1st)
5.	**December 2023 / January 2024**: Payment of CPF contributions, as well as CDAC and SDL contributions	**8,329.50** (from HSBC XXX-XXXXXX-002)	Defendant's solicitors' email of 7 February 2024 at 11.25pm SGT (see page **55** of NRG 1st)

6.	**December 2023 / January 2024**: Payment to third-party supplier or service provider.	**3,600.00** (from HSBC XXX-XXXXXX-179)	Defendant's solicitors' email of 7 February 2024 at 11.25pm SGT (see page **55** of NRG 1st)

37 Further particulars relating to the above withdrawals were furnished in Ko's 2nd Affidavit;[67] I reproduce them in the table below. Names of persons other than Ko have been redacted.

S/N in Annex-A	Payee	Amount (SGD)	Description
1.	[Employee A]	2,341.62	Salary for November 2023
	[Employee B]	3,518.50	Salary for November 2023
	[Employee C]	7,500.00	Salary for November 2023
	[Employee D]	4,800.00	Salary for November 2023
	[Employee E]	6,731.39	Salary for November 2023
	Ko Ko Htoo	19,628.00	Salary for November 2023
	Central Provident Fund Board	8,103.50	CPF, SDL and CDAC Contributions for November 2023
	—	3.00	[Miscellaneous] bank charges

[67] Ko's 2nd Affidavit at para 68(c), pp 146–147.

2.	[Landlord A]	3,600.00	Ko Ko Htoo apartment rental payable to Landlord
	Harbourfront Centre Pte Ltd	8,014.37	Office rental for December 2023 payable to Landlord
	Justlogin Pte Ltd	129.60	Supplier of HR payroll system
	Amazon Web Services Singapore Private Limited	6.15	Supplier of Cloud based Web hosting services
	Singtel	2,124.21	Office telephone and internet
	Singtel	57.52	Ko Ko Htoo mobile bill
	Tuas Power Supply Pte Ltd	232.48	Office electricity bill
	Radius Business Solutions (S) Pte Ltd	248.31	For Petrol charges incurred by employees using their own vehicles for company business. Radius supplies "Shell" card[s] that are issued to employees to top up petrol at Shell petrol stations on credit, which the Defendant later pays for on a monthly basis
	Infosys Network	1,300.00	Supplier of IT / software services

	Oregon Prime Marketing (Intl)Pte Ltd	2,201.04	Supplier of IT / hardware services
3.	[Employee A]	2,239.00	Salary for December 2023
	[Employee B]	3,518.50	Salary for December 2023
	[Employee C]	7,500.00	Salary for December 2023
	[Employee D]	4,800.00	Salary for December 2023
	[Employee E]	7,557.08	Salary for December 2023
4.	Radius Business Solutions (S) Pte Ltd	372.68	For Petrol charges incurred by employees using their own vehicles for company business. Radius supplies "Shell" card[s] that are issued to employees to top up petrol at Shell petrol stations on credit, which the Defendant later pays for on a monthly basis
	Justlogin Pte Ltd	64.80	HR payroll system
	Harbourfront Centre Pte Ltd	8,014.37	Office rental for January 2024 payable to Landlord
	Singtel	1,461.45	Office telephone and internet

	Tuas Power Supply Pte Ltd	200.63	Office electricity bill
5.	Central Provident Fund Board	8,329.50	CPF, SDL and CDAC Contributions for December 2023
6.	[Landlord A]	3,600.00	Ko Ko Htoo apartment rental payable to Landlord

38 The Defendant asserted that the withdrawals were made "in the proper and ordinary course of business",[68] having gone towards the rental of office premises and payment of employee salaries.[69] Such withdrawals were provided for under paragraph 4 of the Mareva Order, which allowed the Defendant to deal with its assets "in the ordinary and proper course of business". However, the Claimant raised doubts about the legitimacy of these withdrawals, with which I agreed. I address these points below.

39 First, it was undisputed that the Defendant had undertaken the payment of rent of $8,014.37 per month and utilities for office premises shared with an associated company.[70] The tenancy agreement for the office premises was entered into by Global Green Shipping Pte Ltd ("GGS"),[71] a company sharing the same sole director and shareholder as the Defendant – Ko.[72] The Defendant undertook to pay the monthly rental and utility fees on behalf of GGS, in

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68 Ko's 2nd Affidavit at para 60, 68(c); Defendant's Skeletal Submissions for HC/SUM 391/2024 filed 19 July 2024 ("DSS-391") at paras 37–38.

69 DSS-391 at paras 37–38.

70 DSS-391 at para 38; Ko's 2nd Affidavit at pp 146–147.

71 Ko's 2nd Affidavit at para 49(d).

72 Wheeler's 1st Affidavit at pp 13, 84–85.

exchange for the "[s]haring of use [of] the office space".[73] The Defendant asserted that this arrangement was reasonable as the other companies sharing the premises were "dormant", and the Defendant was the only entity "actively occupying that address".[74] I found this to be an unsatisfactory explanation, having regard to the fact that the Defendant had ceased its primary business operations (see [33(b)] above). Further, the fact that the two companies were associated companies under the control of Ko raised questions on the propriety of the arrangement – even if the Defendant utilised the premises while it actively tried to resume its business operations, it was doubtful whether it was reasonable for the Defendant to undertake payment of the *entirety* of the rent and utilities for "shared" office premises.[75]

40 Second, the Claimant raised a concern that the Defendant's employees may have been tasked to carry out work for the Defendant's associated companies.[76] The Defendant had six employees on its payroll, including Ko.[77] I found it improbable that the Defendant would have kept these employees on its payroll despite the cessation of its primary business operations. I was further unable to accept the Defendant's assertion that these employees' present job scope consisted entirely of assisting with the present operations of "marketing

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73 Ko's 2nd Affidavit at p 72.

74 DSS-391 at para 38.

75 Ko's 2nd Affidavit at p 72.

76 Claimant's Skeletal Submissions for HC/SUM 391/2024 dated 19 July 2024 ("CSS-391") at paras 51–53.

77 DSS-391 at para 37; Ko's 2nd Affidavit at pp 140–141.

to […] bring back customers"[78] and assisting the Defendant in the Arbitration Proceedings.[79]

41 In my view, the Defendant's disclosed withdrawals across the period of November 2023 to January 2024 reflected a "systematic and unexplained attrition of the defendant's assets over time" (*Bouvier* at [103]). For the avoidance of doubt, this was not a definitive finding that the Defendant's withdrawals had been made in breach of the Mareva Order. Instead, I only found that the Claimant could rely on the disclosures to establish a real *risk* of dissipation.

42 As both elements of the test in *Bouvier* were satisfied, there were sufficient grounds not to set aside the Mareva Order. Further, on a balance of convenience, it was appropriate not to set aside Mareva Order as the Claimant had undertaken to compensate the Defendant for any wrongful loss resulting from the grant of the Mareva Order.[80]

Whether the Claimant's application for an injunction was an abuse of process

43 Mareva injunctions sought in an abuse of the court's process may be set aside (*Bouvier* at [107]–[108]). I found that the facts did not disclose any abuse of process which warranted the setting aside of the Mareva Order. The Defendant made the following arguments, which I address in turn:

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78 Transcript dated 22 July 2024 at p 135, lines 9–14; Transcript dated 24 October 2024 at p 6, line 28 to p 7, line 2.

79 Transcript dated 22 July 2024 at p 134, lines 3–31.

80 Mareva Order, Schedule 1.

(a) First, there was inexplicable delay in the Claimant's bringing of the application in SUM 3468.[81]

(b) Second, the Claimant had failed to fulfil its duty to make full and frank disclosure in its application without notice in SUM 3468.[82]

Inexplicable delay

44 SUM 3468 was commenced on 10 November 2023, nearly ten months after the Claimant's purported cause of action arose on 17 January 2023.[83] This delay, the Defendant claimed, demonstrated that the injunction was sought to "inflict commercial prejudice" and prevent the Defendant from using its funds to defend the arbitration against the Claimant, rather than to prevent the dissipation of its assets.[84]

45 I recognised that the period of delay in the present case was longer than that in the cases of *Bouvier* (four months) and *Meespierson NV v Industrial and Commercial Bank of Vietnam* [1998] 1 SLR(R) 287 ("*Meespierson NV*") (nine months), wherein the court found that there had been an abuse of process. However, the length of delay is not dispositive. As noted in *Bouvier* (at [109], citing *Madoff Securities International Ltd and another v Raven and others* [2011] EWHC 3102 (Comm) at [156]–[157], the length of the delay and any explanations for such delay should be considered against all the circumstances of the case.

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81 DSS-995 at paras 37–40.

82 DSS-995 at paras 97–101.

83 MV's 1st Affidavit at paras 16–22.

84 DSS-995 at paras 37–42.

46 In my view, it is crucial to keep mind the overarching purpose of the inquiry – to assess whether the Mareva injunction was sought as an instrument of oppression against the Defendant, or if the Claimant had acted with *bona fide* intentions to prevent the dissipation of the Defendant's assets upon discovering information which revealed a risk of dissipation. For this reason, the length of delay ought not to be *strictly* assessed from the time the cause of action arose or the commencement of proceedings. In some cases, such as the present, it is necessary to account for the time at which evidence supporting a real risk of dissipation arose and was discovered. It is not unforeseeable that in some cases, evidence supporting a real risk of dissipation would arise and be discovered only in the midst of ongoing proceedings.

47 In the present case, I accepted the Claimant's argument that the Defendant's cessation of operations was only made known to them through the 1st Wheeler Report, which was dated 23 October 2023.[85] As discussed earlier, the Defendant's cessation of operations was a key factor in finding the existence of a risk of dissipation (see [33(b)] above). Thus, I was satisfied that the Claimant had acted swiftly upon receiving evidence pointing towards a real risk of dissipation and that there was no inexplicable delay.

48 For avoidance of doubt, I address the Defendant's argument that the Claimant ought to have obtained the 1st Wheeler Report earlier, if it were "truly concerned to obtain an accurate picture of the Defendant's financial position".[86] The Defendant relied on the fact that the Butler Report dated 27 January 2023 (the "1st Butler Report") had stated that it was unable to comment on the

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85 MV's 1st Affidavit at paras 50–55.

86 DSS-995 at paras 38–40.

Defendant's "current financial position".[87] However, I was of the view the First Butler Report did not create a situation where the Claimant "must have known or at least had very strong reason to suspect" that the Defendant had ceased primary operations (*Bouvier* at [112]) – in fact, the First Butler Report expressly stated that "CSL appears to be still operating and conducting business across set routes".[88]

Full and frank disclosure

49 In an application without notice, the claimant is "under a clear duty to make full and frank disclosure of all material facts in his possession at the time of application, even if they are prejudicial to his claim" (*Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng and another* [2009] 4 SLR(R) 365 ("*Bahtera*") at [20]; *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 at [85]). However, even if a court finds that a claimant has failed to make full and frank disclosure, it retains discretion in deciding whether to discharge the Mareva injunction (*Bahtera* at [25]). The exercise of this discretion turns on factors including the materiality of the non-disclosure, the overall merits of the claimant's case, and whether the non-disclosure was innocent, or deliberately calculated to mislead the court (*Bahtera* at [26]–[27]; *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR(R) 1000 at [128]–[129]).

50 The Defendant asserted that the Claimant had breached its duty of full and frank disclosure as it omitted to disclose the following facts in SUM 3468:[89]

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87 DSS-995 at para 39; Heslop's Affidavit at p 31.

88 Heslop's Affidavit at p 31.

89 DSS-995 at paras 97(a)–97(c).

> **Material Fact 1**: That the Defendant's power to terminate the Charterparty for repudiatory breach at common law was not subject to any notice requirement or period of cure;
>
> **Material Fact 2**: That the Addendum No 3 relied on by the Claimant is unsigned and disputed by the Defendant;
>
> **Material Fact 3**: That the Claimant's supporting affidavits and exhibits did not disclose their sources or state the primary materials on which their conclusions were based;
>
> [footnotes omitted]

51 In the present case, I found that the Claimant had not breached its duty of full and frank disclosure. In any event, any non-disclosure would not have been of sufficient materiality to warrant a setting aside of the Mareva Order. In relation to Material Facts 1 and 2, I did not find that the Claimant had misrepresented the Defendant's case on the merits. In any event, I found that any purported omission would not have been material to the court's decision on whether to grant a Mareva injunction. As earlier discussed (at [18] above), the relevant threshold is that of a good arguable case. The Claimant did not have to reproduce the Defendant's entire case on the merits in its application; it sufficed for me to find that the Defendant could not *conclusively* show that it had a lawful right of termination. I did not find Material Fact 3 to be of a nature that warranted disclosure.

52 In sum, I found that there was no abuse of process which warranted a setting aside of the Mareva Order. For this reason, I dismissed the Defendant's application to set aside the Mareva Order.

SUM 391

53 I turn to address the Claimant's application for various disclosure orders and the variation of certain terms of the Mareva Order.

Orders sought

54 The Claimant filed an application for the following orders (the "Variation Orders"):[90]

(a) the Defendant to provide all supporting documents along with payee details for withdrawals made by the Defendant since the date of the Mareva Order, and evidence that such withdrawals fall within the ambit of the exceptions to the Mareva Order ("Disclosure Order A");

(b) the Defendant to disclose all withdrawals from its accounts and/or dispositions of its assets, along with supporting documents, from 17 January 2023, being the date the Claimant's cause of action against the Defendant arose ("Disclosure Order B"); and

(together, the "Disclosure Orders")

(c) Paragraph 4 of the Mareva Order to be amended to include the following line: "But before spending any money, the Defendant must inform the Claimant's solicitors of the reason for such payment and provide all supporting documents and obtain the Claimant's consent." (the "Amendment Order")

Whether the orders were warranted

55 In deciding whether a variation order is warranted, the court must consider if it is in the interests of justice to grant the orders sought (*Sumifru Singapore Pte Ltd v Felix Santos Ishizuka and others* [2020] 4 SLR 904 ("*Sumifru*") at [21]). The court may grant the order if it finds that "reasonable

90 HC/SUM 391/2024, Prayers 1(a)–1(c).

doubts were raised" in relation to the defendant's transactions, and the variations sought are reasonably necessary for the claimant's policing of the Mareva injunction (see *Sumifru* at [22]–[25], citing the case of *Thevarajah v Riordan and others* [2015] EWHC 1949 (Ch)).

The evidence raised reasonable doubts

56 Paragraph 4 of the Mareva Order contained an exception which allows the Defendant to deal with its assets in the ordinary and proper course of business (the "Exception"). The Defendant was under an obligation to account to the Claimant for withdrawals made under the Exception:

> 4. This order does not prohibit the Defendant from dealing with or disposing of any of its assets in the ordinary and proper course of business. The Defendant must account to the Claimant weekly for the amount of money spent in this regard.

57 In my view, the evidence raised reasonable doubts as to the legitimacy of the Defendant's withdrawals under the Exception. As discussed at [35]–[41] above, I found that the Defendant had provided insufficient justification as to why it continued to incur significant expenses in the form of rental fees and employee salaries, despite the cessation of its primary business operations.

58 For the avoidance of doubt, I address the Defendant's argument that the Claimant bore the burden of proof in showing that the withdrawals were not in accordance with the Exception, which it had failed to discharge[91] – this was not a committal hearing; the Claimant merely had to raise *reasonable doubts* about the legitimacy of the withdrawals. I was satisfied that this threshold had been crossed.

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[91] DSS-391 at paras 25–26.

The orders sought were reasonably necessary

(1) Disclosure Order A

59 The Claimant sought a disclosure order for the Defendant to provide "all supporting documents along with payee details" for withdrawals made since the date of the Mareva Order, along with evidence that such withdrawals fell within the scope of the Exception. I agreed with the Claimant that further disclosures relating to the details of these withdrawals were necessary for the Claimant to effectively police the Mareva Order.

60 However, I found that it would be excessive for the Claimant to require supporting documents for all withdrawals, regardless of quantum and type. The Claimant's interest in obtaining said information was limited to determining the legitimacy of the Defendant's withdrawals. There was no need for the Defendant to separately justify every single payment in cases involving recurring payments (*eg*, the payment of employees' salaries). Thus, I ordered that Disclosure Order A be granted, subject to the relevant withdrawals being that of amounts greater than $7,000.

(2) Disclosure Order B

61 The Claimant sought further information relating to the Defendant's withdrawals from its accounts and any dispositions of its assets, *dating from the time the cause of action arose on 17 January 2023*.[92] The Claimant argued that such disclosures were necessary (a) to determine the state of operations prior to the breach, in order to establish a "course of ordinary trading";[93] and (b) as the Defendant may have begun to dissipate assets prior to the grant of the Mareva

[92] CSS-391 at paras 36–39.

[93] CSS-391 at para 36.

Order.[94] I disagreed. The purpose of ancillary disclosure orders was for the Claimant to effectively police the Mareva Order (see *Bouvier* at [101]). Accordingly, the relevant date ought to be the date of the Mareva Order.

62 Given the above, the difference between Disclosure Orders A and B was that Order B covered both the Defendant's withdrawals from its accounts *and any dispositions of its assets*. I ordered that Disclosure Order B be granted, subject to the relevant date being the date of the Mareva Order on 14 November 2023, and the relevant withdrawals and dispositions being that of a value greater than $7,000.

(3) Amendment Order

63 The Claimant asked that Paragraph 4 of the Mareva Order be amended to include a requirement that the Defendant seek the Claimant's consent before making future withdrawals under the Exception. I agreed that a further restriction would be necessary to prevent dissipation of the Defendant's assets. Thus, I ordered that the Amendment Order be granted, subject to the relevant withdrawals being that of amounts greater than $7,000. I further added that the Claimant's consent was not to be unreasonably withheld.

Conclusion

64 For the aforementioned reasons, I dismissed the Defendant's application in SUM 995 and granted the Claimant's application in SUM 391, with modifications to the terms of the orders sought.

65 I made the following orders in relation to costs:

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94 CSS-391 at para 36.

(a) For SUM 995, costs fixed at $20,000 all-in, to be paid immediately by the Defendant to the Claimant; the Mareva Order to be varied to allow the payment out of the frozen funds of an amount of $20,000 to be made to satisfy this costs order.

(b) For SUM 391, costs fixed at $25,805 all-in, to be paid immediately by the Defendant to the Claimant; the Mareva Order to be varied to allow the payment out of the frozen funds of an amount of $25,805 to be made to satisfy this costs order.

66 The costs order in relation to SUM 391 had been amended on 22 January 2025, prior to the perfection of the court order. The original sum of $10,000 all-in was increased to $25,805 all-in, to reflect disbursements incurred by the Claimant in experts' fees. These fees had been mistakenly omitted by Claimant's counsel during the hearing on 5 December 2024.

Chan Seng Onn
Senior Judge

Chua Chok Wah and Nur Rafizah Binte Mohamed Abdul Gaffoor (Joseph Tan Jude Benny LLP) for the claimant;
Kwek Choon Lin Winston and Adam Isaac Ho Han Yang (Rajah & Tann Singapore LLP) for the defendant.