IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 130

Suit No 916 of 2019
Summons No 6207 of 2019

Between

(1) The Micro Tellers Network Limited
(2) Michael Lin Daoji
(3) Rio Lim Yong Chee
(4) Wong Zhi Yang, Clement

… *Plaintiffs*

And

(1) Cheng Yi Han (Zhong Yihan)
(2) Ling Hui Andrew
(3) Providence Asset Management

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure] — [Mareva injunctions] — [Whether good arguable case on the merits] — [Whether asset belonging to defendant] — [Whether real risk of asset dissipation]

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The Micro Tellers Network Ltd and others
v
Cheng Yi Han and others

[2020] SGHC 130

High Court — Suit No 916 of 2019 (Summons No 6207 of 2019)
Audrey Lim J
5 February 2020; 8 and 15 June 2020

25 June 2020

Audrey Lim J:

Introduction

1 The first plaintiff, The Micro Tellers Network Limited ("P1"), is incorporated in Hong Kong. Charles Thach ("Charles") is its sole director and shareholder. The second to fourth plaintiffs ("P2", "P3" and "P4" respectively) are Michael Lin, Rio Lim, and Clement Wong, who are Singapore citizens (collectively "RG"). The plaintiffs will be referred to collectively as "the Plaintiffs". The third defendant, Providence Asset Management ("D3"), is incorporated in the Cayman Islands. The first and second defendants, Cheng Yi Han ("D1") and Andrew Ling Hui ("D2"), are Singapore citizens. D2 is the managing partner of D3 and holds all the ordinary shares of and controls D3. D1, D2, and D3 will be referred to collectively as "the Defendants".

2 P1 and RG brought separate claims in this suit ("Suit 916") against the Defendants, claiming essentially that they were induced to transfer money and/or cryptocurrency to the Defendants upon the latter's fraudulent misrepresentations. The matter before me concerns the Plaintiffs' application for a worldwide Mareva injunction against the Defendants.

3 A plaintiff seeking a Mareva injunction needs to show: (a) that it has a good arguable case on the merits of its claim; and (b) that there is a real risk that the defendant will dissipate its assets to frustrate the enforcement of an anticipated judgment of the court. Underlying these requirements is the threshold of necessity which, in the case of a worldwide Mareva injunction, will likely be more exacting: *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [36]–[37].

P1's claim against the Defendants

4 As a preliminary point, D1's counsel (Mr Vergis) informed the court in the midst of the hearing before me that D1 had applied to strike out Suit 916 as P1's claim should be tried separately from RG's claim. However, D1's application to strike out the Suit has not been determined. Hence, I proceeded to deal with the Mareva injunction application based on Suit 916 as it stood and considered both P1's and RG's claims together.

P1's version of events

5 P1 alleged that, from April to October 2018, the Defendants made fraudulent representations to Charles to induce P1 to transfer the equivalent of

US$2,700,198 in fiat currency, cryptocurrency, and cash to them.[1] The US$2,700,198 comprised: cash of US$276,000; 331 Bitcoin ("BTC"), which were converted into fiat currency of US$2,217,700 on or around 9 or 10 October 2018; and 926 Ethereum ("ETH"), which were converted into fiat currency of US$206,498 on or around 9 October 2018 ("MT Investment").

6 The MT Investment was made pursuant to the Defendants' representations that the sum would be used to purchase 85% of the shares of a private bank in Curacao ("Curacao Bank") and the 100% value of Curacao Bank would be US$28 million ("Bank Acquisition"). P1 completed payment of the MT Investment by 9 October 2018. However, instead of acquiring Curacao Bank, a bank in Comoros ("Comoros Bank") was acquired at only US$4 million.[2]

7 P1 thus claimed against the Defendants for fraudulent misrepresentation, conspiracy (lawful and unlawful), negligent misstatement, breach of fiduciary duty, breach of trust, and unjust enrichment. In the premises, P1 claimed that the Defendants are liable to pay it US$2,700,198, or fiat currency and/or cryptocurrency of that amount.[3]

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1 Statement of Claim (Amendment No. 1) dated 20 November 2019 ("SOC Amd 1") at [14]–[36]; Charles's 1st affidavit dated 10 December 2019 ("Charles's 1st Affidavit") at [40].

2 SOC Amd 1 at [14], [23], [31]–[32], [40].

3 SOC Amd 1 at [45]–[52].

D1's version of events

8 D1 does not dispute the MT Investment sums (at [5] above).[4] He claimed that the Bank Acquisition could not be completed because of a fraud perpetuated by one Feng Then ("Feng"). The target bank was initially a Cayman company with a banking licence ("Alexandria Bank") but was changed to Curacao Bank.

9 The structure of the Bank Acquisition would be for Blue Summit Investments Limited ("BSI"), a special purchase vehicle incorporated in the British Virgin Islands ("BVI"), to acquire 85% of the shares in Curacao Bank. D1 and D2 would be the directors and shareholders of BSI. The remaining 15% of the shares in Curacao Bank would be held by Gestalt Group Ltd that is owned and controlled by Feng. The acquisition of Curacao Bank was negotiated by Feng. After the acquisition of Curacao Bank, 5672 (or 11.344%) of BSI's shares would be transferred from D1 and D2 to P1, as evinced by the shareholders' agreement dated 8 October 2018 executed by P1 and BSI ("SHA"). Under the SHA, funds for the purchase of Curacao Bank would be placed in the bank account ("WPS Account") of Walkers Professional Services Limited ("WPS"). D1 was led to believe that WPS was used by Walkers, a law firm in which Feng was a lawyer, for escrow transactions.[5]

10 During the course of the Bank Acquisition, Feng informed D2 that the seller of Curacao Bank would sell Curacao Bank and Comoros Bank together for US$8.5 million. D1 believed that Comoros Bank was eventually acquired and renamed Royal Eastern Bank Ltd ("REB"). However, it transpired that REB was not acquired, but another entity named Royal Eastern Bank Limited with a

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4 D1's 1st affidavit dated 4 February 2020 ("D1's 1st Affidavit") at [7]–[8].

5 D1's 1st Affidavit at [6(b)] and [6(e)].

different banking licence was acquired. WPS did not belong to Walkers but was an entity controlled by Feng, who had misappropriated the funds held in escrow on trust for the Bank Acquisition.[6]

11 D1 also claimed that P1's investment in fiat currency was never within his custody or control. The proceeds of P1's previous cryptocurrency trades of US$276,000 were paid into D3's bank account ("D3's DBS Account"), and D1 believed the US$276,000 was then transferred by D3 to WPS for the Bank Acquisition. D2, but not D1, had access to or control of D3's DBS Account. The proceeds of the conversion of the 331 BTC and 926 ETH into fiat currency were paid into the OCBC account of 5&2 Pte Ltd ("5&2 Account"), of which D2 is a director. The proceeds were not paid into D3's DBS Account as that account had been closed by then and D3 did not have any other bank account. D1 had no access to the 5&2 Account. On 10 October 2018, D2 gave instructions to transfer US$2,200,000 – being part of the MT Investment – from the 5&2 Account to the WPS Account. The remainder was kept in the 5&2 Account to be added to a "float" (which represents part of the funds which RG placed with D3 for cryptocurrency transactions (see also [51] below)).[7]

12 D1 denied that P1 invested in the Bank Acquisition because of the specific bank targeted, as Charles had committed to a US$5 million investment even before D1 provided details of the first target bank (Alexandria Bank) to him on 19 May 2018. The Bank Acquisition was a "genuine and legitimate

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6 D1's 1st Affidavit at [6(g)]–[6(i)].

7 D1's 1st Affidavit at [10] and [21(d)].

transaction" because a bank (Comoros Bank) was acquired, and the plan was to acquire Comoros Bank together with Curacao Bank.[8]

D2's version of events

13 D2 claimed that only US$2,617,910.90 was received by D3 from P1, and this comprised US$276,000 in cash; 331 BTC that was converted to US$2,126,310.90; and 979.955 ETH that was converted to US$215,600.[9]

14 D2 denied making most of the representations (as alleged by P1) or that D1 had made the representations on his behalf. D2 had spoken to Charles only once on 14 May 2018 in Hong Kong ("14 May 2018 Meeting"). At that meeting, he informed Charles that he and D1 were raising funds to purchase a private offshore bank; they intended to purchase 85% of the shareholding in Alexandria Bank with a target valuation of US$28 million (at 100%); and the purchase was targeted to be completed in October 2018. The remaining 15% of Alexandria Bank would be purchased by D1 and Feng, D2's business partner. D2 alleged that Feng was responsible for the loss of P1's funds.[10]

15 After the 14 May 2018 Meeting, D2 decided to change the target bank to Curacao Bank. Around that time, Feng was also negotiating with the seller of Curacao Bank to sell him Comoros Bank. While this was going on, D1 and D2 were raising funds for the purchase of 85% of the bank from other parties. During this time, only D1 corresponded with Charles. The bank would be 100%

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8 Charles's 1st Affidavit at p 222; D1's 1st Affidavit at [13] and [19].

9 D2's Defence (Amendment No. 1) dated 5 December 2019 ("D2's Defence Amd 1") at [10(f)]–[10(h)]; D2's 3rd affidavit dated 20 January 2020 ("D2's 3rd Affidavit") at [35].

10 D2's 3rd Affidavit at [14]–[17] and [30].

owned by a BVI entity, Star Dust. D1, D2, and "[their] investors" would hold 85% of Star Dust through BSI, with the remaining 15% held by Feng through Gestalt Group Ltd. By 10 October 2018, D3 had received a total of US$2,617,910.90 from P1. D1 told D2 that the amounts were sent by Charles as the latter's investment in the offshore bank that they would be purchasing.[11]

16 Around November 2018, Feng negotiated to purchase Comoros Bank and Curacao Bank for US$8.5 million in total (US$4 million for Comoros Bank and US$4.5 million for Curacao Bank). D3 and 5&2 would deposit monies which D2 and D1 raised from investors into the WPS Account. Feng had given D2 the "false impression" that the WPS Account was maintained by Walkers, and had "all along told [D2] that WPS was an entity that was controlled by Walkers". However, WPS was incorporated by Feng in the BVI and wholly owned by Feng's wife.[12] By October 2018, D2 had transferred US$5,184,000 and S$400,000 (including the majority of the sums raised from P1) to the WPS Account for the purchase of Comoros and Curacao Banks. Feng then informed D2 that the purchase of Comoros Bank for US$4 million had been completed and that he had renamed it as REB. Feng said that there was no need to purchase Curacao Bank as REB would fit their purpose of providing offshore banking services. D2 agreed with Feng to discontinue the purchase of Curacao Bank and subsequently asked for the return of the balance of monies not used for that aborted purchase.[13]

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11 D2's 3rd Affidavit at [24], [27]–[29], and [34]–[35].

12 D2's 3rd Affidavit at [37] and [39].

13 D2's 3rd Affidavit at [43], [48]–[50].

17 Around February 2019, Feng "confessed" to D2 that WPS was his personal vehicle, and said that the remaining US$4,510,000 was "still safe" in the WPS Account and that he would return it to D2. D2 believed Feng because they were friends and business partners. Then, in June 2019, Feng "admitted" to D2 that he and WPS no longer had the money and that he had taken it for his own purposes. On 2 July 2019, D2 (on behalf of D3 and 5&2) filed Suit 653 of 2019 ("Suit 653") against, *inter alia*, Feng to recover the monies.[14]

Fraudulent misrepresentation

18 The elements of fraudulent misrepresentation are: (a) there must be a representation of fact, made by words or conduct; (b) the representation must be made with the intention that it should be acted upon by the plaintiff; (c) the plaintiff had acted upon the false statement; (d) the plaintiff suffered damage by so doing; and (e) the representation must be made with the knowledge that it is false: *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14].

19 I was satisfied that P1 has shown a good arguable case against the Defendants for fraudulent misrepresentation.

Whether representations were made

20 P1 pleaded, and Charles attested, that D1 made the following representations to Charles from April to October 2018 ("Bank Representations") which induced P1 to pay the MT Investment to the Defendants.[15]

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14 D2's 3rd Affidavit at [51]–[55].

15 Charles's 1st Affidavit at [41]; SOC Amd 1 at [14].

(a) D1 and D2 were obtaining funds to purchase a private offshore bank (*ie*, the Bank Acquisition at [6] above).

(b) D1 and D2 intended to first operate the bank as a traditional private bank, gather deposits, and then expand the bank to a cryptocurrency bank serving both fiat currency and cryptocurrency.

(c) The target bank was initially Alexandria Bank, but D1 and D2 subsequently changed the target bank to Curacao Bank.

(d) D1 and D2 would purchase 85% of the shareholding of Curacao Bank, based on the bank's valuation of US$28 million (at 100%).

(e) D1 and D2 had already raised US$20 million in cash to complete the Bank Acquisition.

(f) If P1 invested US$2.7 million in the Bank Acquisition, it would own 9.64% of Curacao Bank.

(g) The Bank Acquisition would be completed in October 2018.

(h) In August 2018, the Central Bank of Curacao had approved the proposed acquisition of Curacao Bank.

(i) In August 2018, Curacao Bank was re-branded as REB and could operate in Singapore under a licence from Toronto Dominion Bank.

(j) By September 2018, D1 and D2 were in talks with a family who was willing to contribute US$500 million worth of deposits to Curacao Bank, and there were already a few projects that wanted to engage Curacao Bank, once the Bank Acquisition was completed.

21 I found there to be a good arguable case that D1 made the Bank Representations. Although D1 denied making the representations, he pleaded that they were true in substance. He also admitted in his Defence that, in around April 2018, he informed Charles that he and D2 had already raised US$20 million for the Bank Acquisition and they needed another US$8 million and hence D1 asked Charles to invest US$5 million.[16] Charles also provided screenshots of WeChat conversations with D1, which supported that some of these representations were made.[17] Critically, whilst denying the representations in his pleadings, D1 did not, on affidavit, address P1's assertions that the representations were made to Charles. Instead, D1 referred to the SHA (which would support the representations) that BSI would acquire 85% shares in Curacao Bank and would transfer 11.344% of BSI's shares to P1 based on P1's US$2.7 million contribution to the acquisition of Curacao Bank.

Whether D1 was representing D2 and/or D3 in making the representations

22 Next, I found a good arguable case that D1 was representing D2 and D3 when making the representations, that D2 knew what D1 represented to Charles and that they were working together to get P1 to invest in the Bank Acquisition.

23 First, I examine D1's evidence. D1 pleaded that he was D3's representative in dealing with P1 on cryptocurrency transactions and that he was working with D2 to raise funds to purchase a bank whilst relating details of the target bank, the valuation price, how much they had raised and how much they

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16 D1's Defence (Amendment No. 2) dated 5 December 2019 ("D1's Defence Amd 2") at [9(d)] and [11].

17 Charles's 1st Affidavit at [19], [23] and [35], and pp 266–267 and 285.

wanted P1 to invest.[18] In the representations that D1 admitted to,[19] he had informed P1 of various matters pertaining to what he *and D2* were doing relating to the Bank Acquisition. D1 also admitted that both he *and D2* had communicated with P1 on the Bank Acquisition.[20]

24 Second, I turn to D2's evidence.

(a) D2 admitted that, at the 14 May 2018 Meeting, he informed P1 that he and D2 were raising funds to purchase Alexandria Bank, with a target valuation of US$28 million and that D1/D2 intended to buy 85% of the bank targeted for completion in October 2018. D2 stated that, shortly after the 14 May 2018 Meeting, the target bank was changed to Curacao Bank.[21] If so, it was likely that, when D1 subsequently informed P1 of the change of the target bank, he did so also on D2's behalf. The SHA, which represented the "Target Bank" as Curacao Bank, was signed by D1 *and D2* (for BSI).

(b) D2 pleaded[22] that P1 should have been aware of the change from Curacao Bank to Comoros Bank because D1 had informed P1. D2 also pleaded and attested to various matters, including Feng informing D1/D2 that two banks were being purchased and that Comoros Bank was bought for US$4 million, which D2 claimed he "left it to [D1] to

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18 D1's Defence Amd 2 at [5] and [11].

19 SOC Amd 1 at [16], [22], [24] and [25].

20 SOC Amd 1 at [22] and [24]; D1's Defence Amd 2 at [17] and [19].

21 D2's 3rd Affidavit at [24].

22 D2's Defence Amd 1 at [10(e)].

inform Charles … as Charles was [D1's] contact".[23] The fact that D2 left it to D1 to liaise with P1 suggested that D1 was authorised to make representations, on D2's behalf, given that D1 and D2 were acting together in the Bank Acquisition and looking for potential investors to invest with them. D2 also called D1 his "partner" in their chats.[24]

25 Third, other contemporaneous evidence showed a good arguable case that D1 and D2 were acting together.

(a) In chats between P1 and D1, D1 related to P1 what D2 had been doing pertaining to the Bank Acquisition, including obtaining "central bank approval", and D1 referred to D2 as "his partner".[25]

(b) WhatsApp messages between D1 and D2[26] showed that they discussed bringing P1 on board for the Bank Acquisition; that D2 had told D1 "for charles I really need you to wing it bro"; and D2 reminded D1 to "check in" on Charles to keep their relationship warm. D1 had also forwarded to D2 a screenshot of his conversation with Charles pertaining to the Bank Acquisition. The messages also showed D1 and D2's discussion on how the Bank Acquisition should be structured with P1 and BSI, and on a need for a "solid timeline" for the central bank approval of the acquisition, as otherwise Charles "might pull out". Further, the messages showed that D1 and D2's "priority" was to get Charles to sign the SHA.

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23 D2's Defence Amd 1 at [10(i)]–[10(j)]; D2's 3rd Affidavit at [66].

24 Charles's 4th Affidavit at [7(g)].

25 Charles's 1st Affidavit at [21], [24] and [31] and pp 227–229 and 250.

26 Charles's 4th Affidavit at [7].

(c) By the SHA, both D1 and D2 knew that the Target Bank was Curacao Bank; that the purchase price (at 100%) was US$28 million; and that P1 would contribute US$2.7 million.[27]

26 D2 is the managing partner of D3 and D1 claimed to have made various representations as D3's agent. It was also undisputed that D1 and D2 were together securing investors for the Bank Acquisition. All the evidence above thus shows a good arguable case that D1 and D2 had a close working relationship and were acting in concert in the intended Bank Acquisition; D2 authorised D1 to negotiate and make representations to Charles on the Bank Acquisition; and D2 knew about the representations that D1 made to Charles/P1. As the managing partner of D3, D2 was the will and mind of D3. Hence, even if D1 (and not D2) made the Bank Representations to P1, there is a good arguable case that he made them on the Defendants' behalf.

Reliance

27 A misrepresentation is actionable if it played a real and substantial part in the representee's decision to enter into the transaction; and it need not be the sole inducement (see *Panatron* ([18] *supra*) at [23]).

28 P1 pleaded[28] that D1 told him that D1 and D2 had raised US$20 million for the Bank Acquisition and they needed another US$8 million, and that the target bank was Alexandria Bank. Hence P1 handed over the initial sum of

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27 Charles's 1st Affidavit at [42] and pp 388–406 (Exhibit CCT-8).

28 SOC Amd 1 at [16].

US$276,000. D1 admitted to the said representations.[29] P1 also pleaded[30] that, around August 2018, D1 and D2 told him that they were unable to acquire Alexandria Bank and had changed the target bank to Curacao Bank. D1 and D2 also said that the value of Curacao Bank was US$28 million and they would purchase 85% of it, and that the acquisition would be completed in October 2018 pending the approval of the Central Bank of Curacao. D1 admitted (in his Defence) that he had informed P1 that D1 and D2 would acquire Curacao Bank because they could not acquire Alexandria Bank, and that they also told P1 around August 2018 that the Central Bank of Curacao had approved the proposed acquisition of Curacao Bank. During this time (between 20 July and 1 October 2018), P1 paid over some US$2.2 million (in BTC).

29 Hence, there is a good arguable case that P1 had relied on the representations, and forwarded the MT Investment based on D1's representations regarding the identity and value of the target bank and that D1 and D2 had already raised US$20 million for the Bank Acquisition. Despite D1 denying (in his Defence) that he had informed P1 that the value of Curacao Bank was US$28 million or that D1 and D2 would purchase 85% of the Bank, D1 did not address or deny this on affidavit. In fact, D1 himself relied on the SHA, which clearly stated the "Target Bank" as Curacao Bank and that the acquisition price was US$28 million, of which P1 would invest US$2.7 million and obtain 11.344% shares in BSI for BSI's investment in the Target Bank. This 11.344% share was based on the identity of the Target Bank and the *value* of its acquisition, *as well as BSI's investment amount in the Target Bank vis-à-vis*

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29 D1's Defence Amd 2 at [11].

30 SOC Amd 1 at [22]–[25].

P1's investment amount.[31] Hence, D1's claim that P1 was not interested in which bank was specifically targeted did not seem credible.

Whether the representations were false and whether D1 and D2 had genuine belief or reasonable grounds to believe them to be true

30 The evidence supported a good arguable case that the representations, if made, were false and that D1 did not have a genuine belief or reasonable grounds to believe them to be true at the material time.

(a) D1 has not, on affidavit, denied or sought to explain P1's claims that he had informed Charles in August 2018 that he had obtained in-principle approval from the Central Bank of Curacao for the Bank Acquisition; that D1 and D2 had rebranded Curacao Bank as REB;[32] and that D1 had informed Charles that the Bank Acquisition would be completed in October 2018.

(b) Charles asserted on affidavit that, around November 2018 (after P1 had transferred all the US$2.7 million), he met D1 in Hong Kong who told him that the Bank Acquisition *had been completed* and that Curacao Bank was doing well.[33] Although D1 denied this in his Defence, *he did not deny this on affidavit* or explain how he came to such a belief.

(c) Charles attested that, in or around June 2019, D1 had informed him that the purchase price for Curacao Bank had been discounted to US$8.5 million and that Comoros Bank, and not Curacao Bank, had

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31 5/2/20 Notes of Evidence ("NE") at p 2.

32 Charles's 1st Affidavit at [31] and [33], and p 250.

33 Charles's 1st Affidavit at [45].

been acquired for US$4 million ("June 2019 Narrative").[34] Whilst D1 denied the Narrative in his Defence, he *did not deny or explain it on affidavit*. D1 was also silent in his affidavit on when he was allegedly first informed that the seller would sell both Curacao and Comoros Banks for US$8.5 million and when he eventually believed that Comoros Bank had been acquired (see [10] above); whether he had conveyed the information to P1 at the material time; and whether P1 had agreed to its money being channelled to the acquisition of two banks for a lower price or eventually to Comoros Bank alone.

(d) D1 stated that the proceeds of the 331 BTC and 926 ETH were paid into the 5&2 Account as D3's DBS Account had been closed. D2 claimed that D3's DBS Account was closed in June 2018. P1 was not informed that its investment would be held in the 5&2 Account.[35] This raises the question of D1 and D2's conduct at the material time, even before the moneys were transferred to the WPS Account for the purported Bank Acquisition, as P1 was never dealing with 5&2.

(e) D1's revelation that some of P1's money was not transferred for the purposes of the Bank Acquisition but kept in the 5&2 Account "to be added to the float"[36] raises questions as to why this was done when there was no evidence that P1 had agreed to it.

(f) Whilst a number of the above matters occurred after P1 had parted with its investment money, the fact remained that: (i) D1 did not

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34 SOC Amd 1 at [40]; Charles's 1st Affidavit at [53].

35 Charles's 4th Affidavit at [10].

36 D1's 1st Affidavit at [10].

deny nor explain on affidavit Charles's assertion that D1 had continued to maintain the narrative that the Bank Acquisition had been completed and that Curacao Bank was doing well; and (ii) D1 and D2 did not explain why P1's moneys were transferred to the 5&2 Account or why some of it was retained for the float. Mr Vergis submitted that it was "inconsequential" that the MT Investment was transferred to the 5&2 Account as the money ultimately reached the WPS Account in accordance with the SHA.[37] However, it is undisputed that at least US$400,000 of the MT Investment was not transferred to the WPS Account and is, instead, now unaccounted for (see further [84] below).

(g) Mr Vergis also sought to paint the impression that D1's role was limited to obtaining funds for the Bank Acquisition. However, when Charles messaged D1 around 26 or 27 June 2019 (in order to find out what had happened), D1 replied that he "was told, bank was initially 38mil", then "discounted 28mil then discounted 8.5mil". In reply, Charles asked "so to acquire the bank at the time, it would have been only 8.5 musd?"[38] The conversation supports the inference, as submitted by the Plaintiffs' counsel, Mr Veluri, that D1 knew all along that the purchase price of the bank had been reduced to US$8.5 million but he did not inform Charles of this.

31 Likewise, there is a good arguable case that D2 did not have a genuine belief or reasonable grounds to believe the representations to be true at the material time. I refer to the matters at [30] above, in addition to the following.

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37 8/6/20 Minute Sheet at p 5.

38 Charles's 1st Affidavit at pp 346–347.

At the 14 May 2018 Meeting, D2 had informed P1 that the target valuation of the intended bank was US$28 million. In Suit 653, D3 pleaded that, in *mid-2018*, Feng informed D2 that he "*had become aware* of the availability of [Curacao Bank] for purchase *at US$8.5m*" [emphasis added][39] and claimed that, on 22 June 2018, Feng corresponded with a third party on the purchase of Curacao Bank. If so, D2 had known, by mid-2018 (which, based on D3's own narrative, would seem to be by June 2018), that the purchase price of Curacao Bank would be US$8.5 million. Yet, the SHA – signed in *October* 2018 – continued to represent the purchase price as US$28 million. D2 has not explained – not even in his affidavit filed *after* Charles had highlighted this discrepancy[40] – why the reduced price was not conveyed to P1 at the material time, and that the SHA continued to state the purchase price as US$28 million.

32 D2's counsel (Mr Chia) submitted that Charles knew at the material time that Comoros Bank was acquired and that, since December 2018, Charles would have been aware of the plan to buy Comoros Bank. In a WeChat message among Charles, D1 and D2 on 27 March 2019, D1 stated that "comoros trying to upgrade our bic to achieve swift connectivity".[41] However, this did not change my analysis. First, D1 and D2 have not pleaded or raised on affidavit this WeChat group message, let alone explain how a message in *March 2019* would lend to the conclusion that P1 knew, *prior to* Comoros Bank being acquired, that it would be acquired and with P1's consent to use its funds for that purpose. Second, the message, read in context with the preceding and succeeding messages, did not necessarily lend to Mr Chia's interpretation or inference.

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39 See Statement of Claim in Suit 653 at [15], annexed at D2's 3rd Affidavit at p 179.

40 Charles's 4th Affidavit at [9(e)]–[9(f)].

41 Charles's 1st Affidavit at p 414.

Whether the claim should have been brought as a contractual claim in BVI

33 Finally, I deal with Mr Vergis' submission that P1's claim was, in truth, a claim for breach of the SHA, *ie*, breach of contract. The SHA provided that the BVI courts "shall have exclusive jurisdiction to hear and determine any action or proceeding arising out of or in connection with this Agreement". Hence, this court should be slow to grant a Mareva injunction to P1, who had commenced Suit 916 in breach of the exclusive jurisdiction clause. Further, clause 22.1 of the SHA provided that the SHA "constitute[s] the entire contractual relationship between the parties in relation thereto and there are no representations, promises, terms, conditions or obligations between the parties other than those contained or expressly referred to therein". As such, even if the alleged representations were made to P1 and Charles, they were rendered irrelevant by this entire agreement clause.[42]

34 I was unpersuaded by these submissions. First, the Defendants are not parties to the SHA. Thus, a claim for breach of the SHA would not lie against the Defendants and P1 is not precluded from bringing a claim in tort against them. In any event, the SHA states that it "does not restrict liability of any party arising as a result of any fraud". Furthermore, unless it is clearly expressed, an entire agreement clause only denudes any pre-contractual statements or representations of contractual effect and the mere inclusion of the word "representation" in an entire agreement clause does not necessarily exclude liability for misrepresentation: *Creative Technology Ltd and another v Huawei International Pte Ltd* [2017] SGHC 201 at [79] and [82]; *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 at [113].

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42 Charles's 1st Affidavit at p 401; 8/6/20 Minute Sheet at p 9.

Conclusion on misrepresentation claim

35 In conclusion, I found there to be a good arguable case for P1's claim for fraudulent misrepresentation against the Defendants. Whilst D1 and D2 have attempted to pin all the blame on Feng, this did not change my analysis. At this stage, the court has only to consider if the plaintiff has a good arguable case on the merits of its claim. It bears noting that Feng's version of events (set out in Suit 653) contradicted material allegations of D1 and D2. He alleged that D3 (and D2) knew that WPS was his personal vehicle and that his investment in the Bank Acquisition was in his personal capacity; and that D3 knew and had agreed to Comoros Bank (or REB) being returned to the seller who would provide Feng and D3 with another entity of a similar name to REB. Therefore, whether Feng did or did not defraud the Defendants is a live issue.

Conspiracy

36 Having found that P1 has a good arguable case against the Defendants for fraudulent misrepresentation, it was not necessary to assess if it has a good arguable case for all of its alternative cases, for the purposes of the Mareva injunction application. Nevertheless, I analysed one other claim, namely for conspiracy. I found that P1 also has a good arguable case against the Defendants for lawful or unlawful means conspiracy.

37 The matters which I had raised in relation to P1's claim for fraudulent misrepresentation would also support a good arguable case in conspiracy, and I do not intend to repeat them, save to note a few points.

38 When Feng informed D2 in late 2018 that he had purchased Comoros Bank for US$4 million and there was no need to purchase Curacao Bank, the question remained as to why D2 did not then inform P1 (or inform D1 to inform

P1) that a different bank had been purchased; that the purchase price was only US$4 million; and that Curacao Bank would not be purchased. It bears repeating that P1's claim that D1 had informed him in November 2018 that the bank acquisition had been completed and that Curacao Bank was doing well was not denied by D1 on affidavit.

39 The is a good arguable case that D2 had maintained the same storyline as D1 to give the impression that Curacao Bank had been acquired. Charles attested that, around 17 December 2018, D2 informed him that the Bank Acquisition had been completed and that *Curacao Bank* was performing very well.[43] It is pertinent to note that D2 pleaded in his Defence that he spoke to Charles around 17 December 2018 and informed Charles that the purchase of *Comoros Bank* had been completed and Charles would have been "fully aware" by then of the purchase of Comoros Bank. However, D2 did not mention on affidavit that he had spoken to Charles in December 2018, much less to inform Charles that Comoros Bank had been purchased.[44]

40 Indeed, it would seem that D2 could not get his story straight. He pleaded that, originally, Feng, D1 and he had planned to buy Curacao Bank but Feng negotiated with the seller to purchase both Curacao and Comoros Banks. D1 and D2 turned to investors to raise funds to purchase "the two" banks, and D1 secured P1 as an investor.[45] This suggested that D1 and D2 had approached investors (including P1) *from the outset* to purchase *two banks*. This leaves doubts as to when Feng had negotiated to purchase two banks; whether this was

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43 SOC Amd 1 at [36]; Charles's 1st Affidavit at [46].

44 D2's Defence Amd 1 at [10(a) and [10(e)]; 15/6/20 Minute Sheet at p 2.

45 D2's Defence Amd 1 at [10(i)].

informed to P1 when he was approached to invest; and why the SHA (executed later) mentioned only Curacao Bank. However, the foregoing position was *not* D2's main case in other parts of his Defence – he also pleaded that the target bank represented to Charles was Alexandria Bank, before it was changed to Curacao Bank *only*, before it was *changed* finally to Comoros Bank.[46]

41 Next, I found that D2's claims cast some doubt on his veracity. He claimed that, in December 2018, he asked Feng to return the balance of US$4,510,000 ("Balance Sum") which was not used for the purchase of Comoros Bank, but Feng did not return it to him. Despite knowing that Feng had changed the parameters of the bank acquisition to only Comoros Bank and of the substantial reduction in the purchase price, there was no evidence that D2 did anything to ensure that Feng returned the Balance Sum after he asked Feng for it. Whilst there were messages from 6 to 11 December 2018 where D2 asked Feng to return the Balance Sum, there was no evidence that D2 chased Feng after 11 December 2018 even though Feng said he would "update" D2.[47] Further, if Feng had in February 2019 (some two months later) "confessed" that WPS was his vehicle, it was strange that D2 *continued to trust* Feng to return the Balance Sum even after he discovered that Feng had misled him regarding WPS and Feng had done nothing since December 2018 to return the money.

42 Moreover, Feng's defence in Suit 653 presented a different picture of the pertinent points (see [35] above), which, if true, raised issues pertaining to D2's conduct and dealings with the MT Investment. It bears noting that neither D1 nor D2 had explained why the fiat currency (converted from P1's 331 BTC

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46 D2's Defence Amd 1 at [10(d)(iii)] and [10(e)(i)].

47 Statement of Claim in Suit 653 at [28(f)], annexed at D2's 3rd Affidavit at pp 190–191.

and 926 ETH) were paid into the 5&2 Account and why D3's DBS Account was closed in June 2018 (in the midst of the Bank Acquisition).

43 In the circumstances, I found that P1 has a good arguable case against the Defendants for conspiracy as there is a good arguable case that: (a) they had made the false Bank Representations to P1 so that he would transfer the MT Investment to them for the alleged purchase of Curacao Bank; (b) they had intended or had the predominant intention to cause damage or injury to P1 by those acts; (c) the acts were to be performed in furtherance of their agreement; and (d) P1 had suffered loss as a result of the conspiracy.

RG's claims against the Defendants

The Europe Transaction

44 I turn to the claims made by RG and pleaded as follows.

45 Around December 2017 to February 2018, D1 made the following representations to P3 and P4 ("Cryptocurrency Trade Representations"):[48] (a) D1 and D2 had connections in the cryptocurrency market which enabled them to liquidate large amounts of cryptocurrency; (b) D1 and D2 could buy and sell large quantities of cryptocurrency on RG's behalf; (c) if RG transferred fiat currency and/or cryptocurrency to the Defendants, D3 would carry out the cryptocurrency trades for RG; and (d) any fiat currency generated from these trades would be placed in D3's DBS Account to be held for RG's benefit.

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48 SOC Amd 1 at [66]; Michael Lin 1st affidavit dated 10 December 2019 ("P2's 1st Affidavit") at [10]–[14].

46 Around February 2018, in reliance of the Cryptocurrency Trade Representations, P4 informed D1 that RG was interested in engaging the Defendants to buy and sell cryptocurrencies on its behalf. From around 7 March 2018, RG forwarded money or BTC to D3's DBS Account or to a cryptocurrency wallet controlled by D3. The Defendants carried out the cryptocurrency trades on RG's behalf and, by 4 April 2018, RG's investment had been liquidated to a total of US$7,201,150 ("RG Funds") which the Defendants kept in D3's DBS Account.[49]

47 Around April 2018, the Defendants represented to RG that the RG Funds could be used to purchase cryptocurrency which would then be sold for a profit within a short span of time. Specifically, the Defendants represented that US$5,197,146.20 ("Europe Transaction Amount") out of the RG Funds could be used to purchase 554.66 BTC which would then be sold in Europe for €5,000,000 ("Europe Transaction"). I will refer to these representations as the "Europe Transaction Representations". D1 said the Europe Transaction would take place face to face and the buyer would pay in cash, and the Defendants had engaged a security company (called SGS) to be present to ensure that the cash collected would be legitimate. D1 further informed RG that the Europe Transaction was a legitimate opportunity for the latter to sell cryptocurrency for €5,000,000. RG agreed to the Europe Transaction based on the Europe Transaction Representations that it was a legitimate deal.[50]

48 The Europe Transaction Amount was used to purchase 554.66 BTC on or around 26 April 2018. However, around 27 April 2018, D1 informed RG that

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49 SOC Amd 1 at [67]–[68] and [71]–[72]; P2's 1st Affidavit at [13]–[14] and [21]–[22].

50 SOC Amd 1 at [75]–[79]; P2's 1st Affidavit at [28]–[31].

the Defendants had transferred the 554.66 BTC to the buyer but that the cash given by the latter ("Banknotes") was counterfeit. D1 told RG that the Defendants would still be able to obtain the sum of €5,000,000 to pay it.

49 RG claimed that the Europe Transaction was designed by the Defendants to defraud it. Alternatively, the Defendants had collected genuine Banknotes but fabricated a story that they were counterfeit to deceive RG into believing that €5,000,000 was no longer available to it. RG thus claimed against the Defendants for fraudulent misrepresentation, breach of trust, unjust enrichment, conspiracy and negligent misstatement, and that they account for the US$5,197,164.20, or alternatively pay RG 554.66 BTC or €5,000,000.[51]

50 D1 and D2 pleaded, in gist, as follows. D1 believed the representations to be true when he made them to RG. In any event, there was no trust established between them, as D1 was D3's representative in dealing with RG and RG was aware of this.[52] D2 claimed he did not make any representations to RG as RG only dealt with D1. D2 pleaded that Feng had brokered the Europe Transaction and D3 had engaged SGS to verify the Banknotes. SGS had acknowledged the Banknotes to be legitimate but they were subsequently discovered to be fake.[53]

The Float

51 Besides the Europe Transaction Amount, another US$2,074,051.80 ("the Float") from the RG Funds (of US$7,201,150) remained in D3's DBS Account. P2 attested that, around 23 November 2018, RG realised that the Float

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51 SOC Amd 1 at [83]–[130].

52 D1's Defence Amd 2 at [50], [53], [55], and [61].

53 D2's Defence Amd 1 at [27].

was left in D3's DBS Account, so P3 informed D1 to return the Float to RG. However, D1 and D2 employed numerous delay tactics such that, to date, RG has only been repaid $238,486, leaving a balance of US$1,901,859.74 ("the Outstanding Float") still owed to it and which RG claimed on the basis of a breach of trust or fiduciary duties owed by the Defendants to it.[54]

52 D1 asserted that the Float in fiat currency was held by D3 and he did not have access to D3's DBS Account and did not know when funds were moved out of that account. Thus, "any account for and/or refund of the [F]loat to RG is to be made by [D3], and not [D1]", as D1 was merely D3's representative.[55] D2 stated that, in April 2018, he asked D1 whether RG would agree to use the Float to invest in the purchase of an offshore private bank (which Mr Chia confirmed to be the Bank Acquisition). D1 told D2 that RG was agreeable to this and that D1 would get RG's approval. Pursuant to the investment proposal, D2 transferred the Float to the WPS Account based on D1's instructions and D2 assumed that D1 had obtained RG's approval for this. When RG subsequently asked for the return of the Float, D2 realised that D1 had not obtained its approval to use the Float. As D1 was his friend, D2 tried to help him get the funds back from Feng to pay RG but to no avail.[56]

Europe Transaction: whether RG has a good arguable case

53 I was satisfied that RG has a good arguable case against the Defendants for fraudulent misrepresentation and conspiracy on the Europe Transaction.

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54 SOC Amd 1 at [125]–[130]; P2's 1st Affidavit at [23], [56], [57], [69] and [136].

55 D1's Defence Amd 2 at [68]; D1's 1st Affidavit at [29]–[30].

56 D2's Defence Amd 1 at [23(e)]–[23(i)] and [35]; D2's 3rd Affidavit at [108]–[116].

Given this, it was unnecessary to deal with the other claims, for the purposes of RG's application for a Mareva injunction.

54 As the circumstances surrounding the Europe Transaction and the Defendants' conduct would be relevant to both causes of action, I dealt with them together. Essentially, RG's case was that representations were made by the Defendants, which they knew to be false or did not have a genuine belief in their truth, to get RG to part with its money; and the Defendants had acted in concert to defraud RG. I deal with some of the salient elements of these claims.

Whether the Defendants made the Europe Transaction Representations

55 I found a good arguable case that the Europe Transaction Representations were made. D1 did not deny in his affidavit that these representations were made, but that he believed them to be true at the material time.[57] There is a good arguable case that D1 made the representations on D2 and D3's behalf and with their knowledge and consent.

56 D1 claimed that the funds managed and trades performed for RG were solely at D3's discretion, and he represented the Europe Transaction as a legitimate opportunity by RG to sell cryptocurrency, as D3's agent. D1 attested that he conducted the cryptocurrency transactions on D3's behalf and through D3; that the buyer for the Europe Transaction ("the Buyer") was sourced by D2; that D1 was a middleman who relayed information by updating RG on the transaction and he obtained such information from D2 and/or D3.[58] Even D2's evidence would suggest that D1 represented the Defendants in dealing with RG.

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57 D1's 1st Affidavit at [23].

58 D1's Defence Amd 2 at [45] and [57]; D1's 1st Affidavit at [21] and [24].

D2 claimed that D1 arranged for D3 to conduct the cryptocurrency trades with RG. D2 also knew and allowed D1 to use D3 to receive proceeds from cryptocurrency trades for third parties, as D1 would share the commission he received with D2 and D3. D2 also stated that he had asked D1 to liaise with RG to use the Float for the purposes of investing in the Bank Acquisition.[59]

57 As such, I found a good arguable case that the Defendants made the Europe Transaction Representations to RG and that D1 had made the representations on the Defendants' behalf.

Whether the Defendants knowingly made the representations to injure RG

58 I also found a good arguable case that the representations were false, which D1 and D2 knew to be case, and that they had acted in concert to make them to RG. The circumstances surrounding the Europe Transaction and the Defendants' conduct support a good arguable case that the transaction may have been designed to defraud RG.

59 First, RG pleaded that D1 had informed it that the Defendants had engaged SGS to be present to ensure that the Banknotes would be legitimate. D1 admitted to this representation and said that it was true.[60] However, the evidence showed that the Defendants never engaged SGS directly. Mr Chia admitted that there was no contract between D3 and SGS.[61] When D3's Swiss lawyers ("Walderwyss") wrote a letter of demand to SGS pertaining to the Banknotes, SGS responded in a letter dated 8 April 2019 to say that it had "no

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59 D2's 3rd Affidavit at [74]–[76] and [110].

60 D1's Defence Amd 2 at [50] read with SOC Amd 1 at [78]; D1's 1st Affidavit at [26].

61 5/2/20 NE at p 8.

legal connection" with D3 as it had been engaged by another entity ("KippCo"), and denied any knowledge of the underlying bitcoin transaction.[62] SGS also stated that it was engaged by KippCo "to collect funds from [D3] to fulfil *[D3's] obligations towards KippCo* originating from a legally signed investment contract between [D3 and KippCo]" [emphasis mine]. The investment contract ("KippCo Agreement") was between KippCo and D3, and the evidence also showed that SGS's contractual relationship was with KippCo (and not with D3).

60 Second, and in response to the above, D2 claimed that Feng told D1 and D2 to use D3 to engage SGS through KippCo, and use KippCo to deposit the €5,000,000 that would be received from the Buyer, as KippCo would not face any problems with depositing this sum. KippCo "would take the money after SGS had checked it, and transfer [the Defendants] the €5,000,000 after that".[63]

61 However, D2's explanation was at odds with the documentary evidence. The KippCo Agreement states, *inter alia*, that D3 would "*invest*" *€5,000,000 in KippCo* "in exchange to [fulfil] the Buy and Sale of Commodities" (such as copper cathodes and aluminium ingots). Both SGS's 8 April 2019 letter and the KippCo Agreement suggest that *D3 would transfer* €5,000,000 *to KippCo*. The Defendants also claimed that RG's BTC was transferred directly to the Buyer from D1's cryptocurrency wallet[64] and the Buyer would transfer €5,000,000 to KippCo (for D3). If so, the KippCo Agreement did not set out the real transaction between KippCo and D3.

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62 P2's 1st Affidavit at [148] and pp 600–601.

63 D2's 3rd Affidavit at [89].

64 D2's 3rd Affidavit at [95].

62 As such, the KippCo Agreement did not support D2's claim that KippCo was engaged merely to temporarily park the €5,000,000. It is not disputed that RG did not know of the arrangement between D3 and KippCo or of the KippCo Agreement at the material time. The first time RG knew of KippCo was in June 2019 when the Defendants attempted to prove their innocence in the Europe Transaction to RG.[65] The KippCo Agreement and SGS's 8 April 2019 letter further cast doubts on the legitimacy of the Defendants' intentions behind the Europe Transaction.

63 Third, the contractual relationships between SGS and KippCo, and KippCo and D3, were odd in light of the Defendants' claim as to the roles of SGS and KippCo. The Defendants claimed that SGS was engaged to authenticate the Banknotes *for D3*, whilst KippCo's role was to receive the moneys from the Buyer into KippCo's account for onward transfer to D3. If that were the case, it was strange that SGS was not directly engaged by D3. D2 further claimed that D3 engaged KippCo as KippCo would not face any problems with depositing €5,000,000. The Defendants have not explained what "problems" D3 would face in obtaining €5,000,000 directly from the Buyer. During the Europe Transaction, D3's DBS Account was still alive. D2 also stated that KippCo would then transfer the €5,000,000 to D3. It is unclear why D3 could not have received €5,000,000 directly from the Buyer when it could receive this sum from KippCo.

64 Fourth, the Defendants' version that SGS had conducted the security check on the Banknotes appears to be suspect. RG claimed that, around 27 April 2018, D1 had informed it that he had transferred 554.66 BTC to the Buyer but

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65 P2's 1st Affidavit at [146]–[151]; 5/2/20 NE at p 9.

that the Banknotes were counterfeit. D1 also informed RG that the Banknotes were "very good fakes" and had passed SGS's assessment method called the "blot test" but the Banknotes still turned out to be fakes. D1 admitted to this narrative.[66] However, it transpired that no blot test was ever carried out by SGS.

(a) D2 produced a report by one Leonard (the Defendants' representative) who had purportedly witnessed the Europe Transaction.[67] Leonard reported that, *on 26 April 2018, he had informed D2* that SGS had *not* carried out a blot test and had not counted the total quantity of the Banknotes, and then reiterated that "no blot test was done". If so, D2 knew by around 26 April 2018 that SGS did not perform a blot test. Indeed, Mr Chia conceded that there was no evidence that SGS did a blot test or did any testing.[68]

(b) Next, D1 has not explained his basis for informing RG that the Banknotes had passed the blot test. This suggested that he may not have been truthful about his narrative to RG and had intended to deceive RG.

(c) A conversation between D2 and one Shawn Lin (D1 and D2's associate) showed Shawn asking D2 whether "50 notes blot test is complete all notes real", and D2 replied "yes". This conversation took place on 27 April 2018, *around the time* Leonard had informed D2 that no blot test was done, and when D2 was still in the midst of transferring BTCs to the Buyer.[69] This suggested that the "blot test" was a charade.

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66 D1's Defence Amd 2 at [53] read with SOC Amd 1 at [81]–[82]; P2's 1st Affidavit at p 325.

67 D2's 3rd Affidavit at [88] and [98] at pp 329–333 (in particular p 331).

68 5/2/20 NE at p 11.

69 D2's 3rd Affidavit at pp 325–326.

65 Fifth, D2 claimed that the Buyer became uncontactable after the Europe Transaction was completed, and he produced WhatsApp chats between the Buyer and him in April 2018.[70] Contrary to D2's claim, the last WhatsApp chat on 27 April 2018 showed the *Buyer* making *five missed calls* to D2. Pertinently the last day of the WhatsApp conversation between D2 and the Buyer, being 27 April 2018, was around the same day when the Defendants had purportedly discovered that the Banknotes were counterfeit. There was no evidence to show that *D2* had attempted to contact or confront the Buyer after purportedly discovering the Banknotes were fake; on the contrary it was the Buyer who had attempted to contact D2 but to no avail.[71]

66 Further, I found a good arguable case for RG's submission that, whilst D2/D3 sought to give the impression that the Defendants were genuinely seeking to pursue SGS to compensate RG for the Europe Transaction (to show that the Defendants did not intend to defraud RG), the evidence suggested that they had no real intention to do so. D2 and D3 had pleaded (as late as *December 2019*) that D3 had engaged Walderwyss to pursue a civil claim against SGS and "legal proceedings [were] ongoing".[72] However, the documents exhibited by D2 showed that the *last* correspondence between him and Walderwyss was in September 2019 (even before D2 and D3 maintained in their pleadings that legal proceedings were ongoing). Mr Chia also admitted that there was nothing to suggest that any proceedings were commenced anywhere against SGS.[73]

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70 D2's 3rd Affidavit at [93] and pp 310–318.

71 D2's 3rd Affidavit at [99] read with p 353; D1's Defence Amd 2 at [53] read with SOC Amd 1 at [81].

72 D2's Defence Amd 1 at [27(h)].

73 15/6/20 Minute Sheet at p 2.

67 Mr Vergis, again, tried to paint the picture that D1 had little involvement in the Europe Transaction as his role was only to relay information to RG by updating it on the developments and to transfer the bitcoins from his wallet to the Buyer.[74] I accepted RG's submission that there is a good arguable case that this was not so and that D1 had engaged in a pattern of making false representations to RG regarding the Defendants' attempt to recover its moneys.

(a) On 27 April 2018, D1 informed RG in a group chat ("RG-D1 Group Chat") that SGS's insurance policy covered the value of the Banknotes; that "SGS is filing the insurance claim"; that D1 would "share the insurance filing"; that D1 "will forward the documents as they come to [D1]"; and that the insurance payout takes about "6–8 weeks".[75] When RG requested for the supporting documents, D1 stated that he did not have any but would update RG when he obtained them. To date, the Defendants have not produced a copy of any insurance document.

(b) D1 also informed RG in April and May 2018 that police reports had been made and that he was "awaiting the Interpol report filing" and that the "Interpol report" would be available soon. Despite the Defendants' repeated assurances to RG that they would produce police reports and Interpol reports, the Defendants have failed to do so.[76]

(c) Then, in June 2018, D1 informed RG that SGS's insurer would not be making any payment on the Europe Transaction because the French police "ha[d] yet to issue a file number – and insurance requires

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74 8/6/20 Minute Sheet at pp 8–12.

75 P2's 1st Affidavit at pp 325–329.

76 P2's 1st Affidavit at [54] and pp 326, 328 and 335.

that".[77] However, D1 did not provide any documents to support this assertion and did not address this point in his affidavit.

68 The Defendants' conduct (and documentary evidence) thus suggested that the Europe Transaction was not legitimate, which the Defendants knew, and they knowingly made the false Europe Transaction Representations to induce RG to enter into the Europe Transaction.

69 Finally, despite the Defendants' claim that 554.66 BTC were transferred to the Buyer,[78] they have not adduced any evidence to show that this in fact occurred. In fact, the messages showed that only 522 BTC were purportedly transferred to the Buyer, and no explanation was given for this discrepancy or whether RG was aware of this at the material time.[79]

70 As such, I was satisfied that RG had shown a good arguable case for its claim in fraudulent misrepresentation and conspiracy. The evidence raised suspicions as to the existence or purport of the Europe Transaction and called into question the integrity of the Defendants' role in it.

The Float: whether RG has a good arguable case

71 I also found a good arguable case on the Float, based on a breach of trust or of fiduciary duties owed to RG in misappropriating the Float.

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77 P2's 1st Affidavit at [46] and [55].

78 D1's Defence Amd 2 at [53] in relation to SOC Amd 1 at [81]; D2's Defence Amd 1 at [27(e)]; P2's 1st Affidavit at p 331.

79 D2's 3rd Affidavit at p 326; 15/6/20 Minute Sheet at p 4.

72 The Float belonged beneficially to RG and was deposited into D3's DBS Account for the Defendants to carry out cryptocurrency trades on RG's behalf pursuant to the Cryptocurrency Trade Representations. For the same reasons highlighted at [55] above, I found a good arguable case that the Cryptocurrency Trade Representations were made by D1, representing the Defendants collectively, to RG. Consequently, there is a good arguable case that all three Defendants held the Float on trust for RG.

73 I also found a good arguable case that the Defendants breached this trust by using the Float for some other purpose (such as the Bank Acquisition as they claimed) without RG's knowledge, and which resulted in RG's loss of the Outstanding Float.

74 First, there was no evidence that D1 had obtained RG's agreement to use the Float. D1 claimed that he did not know that the Float had been moved out of D3's DBS Account. It was not his case that he had told D2 that he had obtained RG's approval to use the Float for the Bank Acquisition.[80] In any event, whilst D1 claimed he did not have access to D3's DBS Account, he could assert that, following the closure of that Account and the Europe Transaction, the Float was transferred to the 5&2 Account.[81] This suggested that D1 knew about the movement of the Float money and about what had happened to the Float.

75 Next, as the Float was held with D3 for RG, D2 (being in control of D3) should have verified with RG or obtained its written confirmation (even if it was through D1) on the use of the Float. D2 knew the Float, which contained a

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80 D1's 1st Affidavit at [29]–[30].

81 D1's 1st Affidavit at [30].

substantial sum, belonged to RG. D2 claimed that D1 told him to transfer the Float money to WPS for the Bank Acquisition and D2 did so "assuming" that D1 had obtained RG's approval.[82] But there is no evidence to support his claim.

76 The Defendants also did not inform RG that, as D1 claimed, the remainder of the Float money was transferred from D3's DBS Account to the 5&2 Account.[83] It was only when RG asked for the return of the Float that, in January 2019, it was told by the Defendants that D3's DBS Account had closed and the moneys were held in an escrow account of a law firm called Walkers.

77 Finally, when RG asked the Defendants to return the Float, D2 had, by his own admission,[84] lied to RG even in January and February 2019 that he was trying to, and did, transfer the Float back to RG,[85] when this did not happen. It was only in June 2019 that the Defendants informed RG that the Float had been misappropriated by Feng. D2's explanation for not being "entirely upfront" with RG was that he was trying to help RG and D1 get the monies back from Feng.[86] This explanation was suspicious and did not appear credible.

78 I also found a good arguable case that D1 was privy to the misapplication of the Float (see also [74] above). When RG was asking D2 for proof that repayment of the Float had been made to RG on 25 February 2019, after D2 said that the money had been transferred from his account to RG, *D1* told RG that "[D2] is settling some incoming transactions and have assured me that the funds

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82 D2's 3rd Affidavit at [110].

83 P2's 1st Affidavit at [70]–[71]; D1's 1st Affidavit at [30].

84 D2's 3rd Affidavit at [115].

85 P2's 1st Affidavit at [70]–[131]; 8/6/20 Minute Sheet at p 3.

86 D2's 3rd Affidavit at [115].

will land this week" and that "spamming us is hindering our work and the pace of which we can get the monies across. [P]lease hang on tight for this week".[87] The fact that D1 stepped in to defend D2 suggested that they were equally complicit and D1 was not merely carrying out D2's instructions as alleged.

Real risk of asset dissipation

79 The next issue is whether there was a real risk of asset dissipation by the Defendants. In this regard, the plaintiff must produce solid evidence to demonstrate this risk (*JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("*JTrust Asia*") at [64]). In *JTrust Asia* (at [65]), the court enumerated various factors relevant to assessing whether there is a real risk of dissipation. However, the ultimate question is whether the defendant has characteristics which suggest that he can and will frustrate a judgment.

80 The Plaintiffs' submission that there was a real risk of asset dissipation is primarily based on the Defendants' dishonesty. In this regard, the alleged dishonesty on the defendant's part must be of such nature that it has a "real and material bearing" on the risk of dissipation: *Bouvier* ([3] *supra*) at [93]. Whether or not such an inference may be drawn is a question of fact. In the present case, I was satisfied that there was a real risk that the Defendants would dissipate their assets to frustrate the enforcement of an anticipated court judgment.

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87 P2's 1st Affidavit at [93].

Dishonesty having a real and material bearing on the risk of dissipation

81 I found that the Defendants' dishonesty had a real and material bearing on the risk of dissipation, and touched at the very heart of the transactions between the Plaintiffs and them.

82 First, the matters as set out above, and D1 and D2's own evidence and conduct, show a lack of probity and a propensity to hide material matters pertaining to the transactions that are the subject matter of Suit 916. I will not repeat my findings above, but set out a few matters here.

(a) P1 was not informed that the purchase price for the target bank had been discounted from US$28 million to US$8.5 million, until June 2019 when Charles confronted D1 regarding the Bank Acquisition. P1 was also not informed about the change in the Target Bank from Curacao Bank to Comoros Bank at the material time.

(b) The Defendants also did not seek P1's permission to use their money for the Float.

(c) Likewise, RG's consent was not obtained to use the Float money for any matter, and when RG asked for the return of the Float, the Defendants continued to deceive RG about it and attempted to delay the matter. D2 admitted that he had been less than truthful with RG in his WhatsApp chats on the Float.

(d) P1 was unaware that the 5&2 Account had been used to store the MT Investment, including the proceeds of the conversion of the 331 BTC and 926 ETC, and that D3's DBS Account had been closed. Similarly, the Defendants also did not let RG know that they had stored

the RG Funds in an account that did not belong to D3. It was not disputed that the Plaintiffs were unaware of 5&2's existence at the material time.

83 Second, I had found a good arguable case that the Defendants misappropriated the Plaintiffs' moneys for their own use. I found this to be dishonest conduct that had a direct bearing on the risk that the Defendants would dissipate their assets to frustrate the enforcement of an anticipated judgment. Although D3's DBS Account had closed, D1 had informed Charles, even as late as June 2019, that the fiat currency (from the MT Investment) was sent to D3,[88] although it had been transferred to 5&2 (see [11] above). The Defendants used the same *modus operandi vis-à-vis* RG where the Float was transferred from D3's DBS Account to the 5&2 Account without RG's knowledge. Their conduct of moving the Plaintiffs's moneys, the subject of the Plaintiffs' claims, without their knowledge and then attempting to delay the return of the moneys demonstrated a serious risk of asset dissipation by the Defendants.

84 Finally, it appears that some US$400,000 of the MT Investment remains unaccounted for by the Defendants and may have been dissipated, as P1 claimed.[89] The Defendants' own case pertaining to the US$400,000 was inherently inconsistent.

(a) On the Defendants' case, D3 received at least US$2.6 million from P1 as part of the MT Investment.[90] Yet, the relevant sum pertaining to the MT Investment that was pleaded by D3 in Suit 653 that had been

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88 Charles's 1st Affidavit at pp 344–345.

89 Plaintiff's written submissions dated 31 January 2020 at [158]–[164]; 8/6/20 Minute Sheet at p 15; 15/6/20 Minute Sheet at pp 1–2.

90 D2's 3rd Affidavit at [35]; D1's 1st Affidavit at [7]–[8].

transferred to the WPS Account was only US$2.2 million. It was strange that D3 was only pursuing Feng for some US$2.2 million if Feng had misapplied all of the MT Investment sums as the Defendants alleged.[91]

(b) D1 attested that D2 had "decided and gave instructions to" transfer US$2.2 million from the 5&2 Account to the WPS Account and to keep the "remainder" of the MT Investment (*ie*, the US$400,000) in the 5&2 Account "to be added to the float".[92] As P1 had not consented for the remaining MT Investment to be added to the Float, the Defendants' conduct showed their dishonesty in diverting P1's money without its permission.

(c) Pertinently, D2 did not, as Mr Chia conceded, provide any explanations *in his affidavits* on the US$400,000 or its whereabouts.[93] This is despite Charles having raised this issue on affidavit and which D2 had an opportunity to reply to.

Defendants' attempt to dispose of assets

85 Next, other factors pointed towards the existence of a real risk of asset dissipation. The first was D2 and D3's attempt to dispose of multiple assets.

86 D3 has no assets in Singapore. His only assets as revealed by D2 are six flats in the United Kingdom ("the Flats"). D3 claimed that it was in the process

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91 Charles's 4th Affidavit at [11]–[14]; D2's 3rd Affidavit at p 186 (Statement of Claim in Suit 653 at [26(b)]); 8/6/20 Minute Sheet at pp 15–16.

92 D1's 1st Affidavit at [10].

93 8/6/20 Minute Sheet at p 16.

of selling *all* the Flats to raise funds to repay its preference shareholders and legal fees. D3's reason is rather suspect.

(a) It should be noted that D2 owns all the ordinary shares of D3.[94] However, D2 did not reveal who D3's preference shareholders are.

(b) D3 claimed that the preference shareholders lent it a total of US$650,000 pursuant to various loan agreements in around February/March 2015, and were repaid only £60,500 in early 2017 with the remaining outstanding. D3 exhibited three agreements in support.[95] However, the agreements appear suspect. The first agreement was not dated (other than "2015"). The other two agreements were not signed by D3. All three agreements had the identity of the "shareholder" redacted, so its identity cannot be determined. Further, there is no evidence that only £60,500 had been repaid and, strangely, nothing has been done to discharge the rest of the debt since 2017. It is only *now* that D2 and D3 are taking action to sell the Flats purportedly to pay off the shareholders.

(c) Next, D2 claimed that a shareholder had lent D3 US$250,000 by "gifting" three of the Flats but there was no shareholder agreement.[96] Again, it was odd that a shareholder would part with not one, but three, of his properties to D3 without some record that they were for the purpose of a loan of US$250,000, which was not insubstantial. D2 and D3 also did not produce evidence that the shareholder was the owner of

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94 D2's 3rd Affidavit at [125(k)].

95 D2's 3rd Affidavit at [127] and pp 811–816.

96 D2's 3rd Affidavit at [129].

the three flats before they were transferred to D3 and there was no evidence on when the purported "gifting" or transfer took place.

(d) Pertinently, whilst D2 claimed that the marketing of the Flats "predates the commencement of the Suit", he did not state or adduce evidence to show when D3 started marketing the Flats for sale, or whether the valuation of £400,000 as claimed by D2 was a genuine valuation. It was also suspicious that D3 sought to sell *all six flats* (and which formed the only assets of D3, as declared by D2) at the same time.

87 D1 also showed similar tendencies to dispose of his assets. After the dispute between P1 and the Defendants had erupted following the June 2019 Narrative, Charles noticed that D1 had 900 ETH in his ETH wallet on 2 July 2019. He asked D1 to transfer this to P1 since P1 had paid D1 926 ETH as part of the MT Investment. D1, instead, promptly transferred the 900 ETH to another ETH wallet on 5 July 2019 (undisputed by D1), leaving only about 5 ETH in his wallet.[97] D1's explanation for this was that the 900 ETH "did not fully belong to" him and also was not the 926 ETH that P1 had transferred to him.[98] Even if that were true, D1 could have explained to Charles that the 900 ETH was not P1's. Instead, D1 promptly transferred the 900 ETH to another wallet. That D1 was in such a hurry to move the 900 ETH from his wallet suggested that was a real risk of asset dissipation by him.

88 I turn to a property in Singapore held jointly between D2 and his wife ("Joo Chiat Property"), which D2 claimed was valued at $1.58 million and had

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97 8/6/20 Minute Sheet at p 7; D1's 1st Affidavit at [47]; Charles's 1st Affidavit at [88].

98 D1's 1st Affidavit at [48].

an outstanding mortgage of $985,343.22.[99] D2 claimed that he was also currently trying to sell the property to raise funds for his living and legal expenses and to pay off an existing creditor called Riady. It is pertinent to note that D2 did not reveal when he started to market the Joo Chiat Property for sale.

89 To support his contention that he owed Riady money, D2 exhibited a settlement agreement dated 5 September 2019 ("Settlement Agreement") between him and Riady.[100] The Agreement stated that Riady had previously agreed to advance US$360,000 to D2; the parties were desirous of settling the claim; D2 had made part payment of $300,000 in four instalments; D2 would make one last payment not exceeding $200,000; and D2 would take steps to sell the Joo Chiat Property to discharge this $200,000 to Riady.

90 I found the Settlement Agreement to be rather suspicious, even when read in light of D2's explanation of his debt owing to Riady.

(a) First, D2 had not produced the underlying loan agreement between him and Riady to show the existence of this alleged loan (the subject of the Settlement Agreement). It was also unclear *when* the loan was extended to D2.

(b) The Settlement Agreement states that four part-payments had been made, *ie*, on 29 August, 30 August, 3 September and 3 September 2019 of $100,000, $100,000, $50,000 and $50,000 respectively. However, D2 also claimed that, on 4 July 2019, he had sold his Ferrari

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99 D2's 3rd Affidavit at [125(a)].

100 D2's 3rd Affidavit at pp 769–771.

car for $330,000 and paid that money to Riady on 6 July 2019.[101] Notably, D2 had not explained why he had to pay Riady another $330,000. There was no mention of this $330,000 in the Settlement Agreement to "off-set" what was purportedly still owing to Riady or why this $330,000 was left out of the equation. D2's only explanation, in a subsequent affidavit, was that he had purchased the Ferrari "with monies that [D2] had received from Riady on a deal".[102] But he did not explain what this "deal" was, or state that the "deal" was a loan transaction, or that he owed Riady money on the "deal".

(c) From the above, D2's claim that he had sold his Ferrari to pay Riady was thus suspicious. If the "deal" (which D2 seemed to imply to be loan) was the same as the underlying loan transaction in the Settlement Agreement, then this $330,000 would have discharged the Settlement Agreement and there would not have been a need for D2 to make one last payment not exceeding $200,000 (which D2 claimed would come from the proceeds of the Joo Chiat Property sale) to Riady.

(d) The timing of the Settlement Agreement (5 September 2019) was also suspicious. This was *barely a week before* Suit 916 was brought and *shortly after* the June 2019 Narrative (when P1 was told that Comoros Bank had been purchased at a reduced price of US$8.5 million), which would be the time when P1 began to realise the true extent of the Defendants' use of their moneys. The purported part-payments under the Settlement Agreement were also made at the end of August or beginning of September 2019.

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101 D2's 3rd Affidavit at [131] and p 769.

102 D2's 6th affidavit dated 28 January 2020 at [14(b)].

91 As such, I disbelieved D2's explanations for why he is attempting to sell the Joo Chiat Property and why he sold his Ferrari to Riady.

92 Finally, as already alluded to before at [90(d)] above, the timing of D2 and D3's attempts to dispose of their assets was also suspicious. This was all within the same timeframe, after the June 2019 Narrative and after multiple attempts by the Defendants to delay the return of the Float to RG in the first half of 2019. It was also around the time Suit 653 was commenced (on 2 July 2019), which is when D3's and Feng's narrative in that Suit revealed a different picture from P1's; and shortly before Suit 916 was commenced. The above suggested that D2 and D3 was in a hurry to keep their assets out of the Plaintiffs' reach.

Nature of assets and Defendants' domicile or residence

93 The next factor that pointed towards the existence of a real risk of asset dissipation was the nature of the assets which are the subject of the proposed injunction, and the defendants' domicile or residence. The assets are essentially cryptocurrencies and monies which can be easily disposed of. D3 is a company incorporated in the Cayman Islands and, according to D2, has no bank accounts in Singapore or anywhere.[103] D2 is also the main shareholder (and sole shareholder of all the ordinary shares) of D3. Whilst 5&2 is incorporated in Singapore, D2 has not stated where the other entities of which he is a shareholder are incorporated.[104] As for D1, his solicitors had attested that he is presently based in Japan,[105] and D1's affidavit for the purposes of the injunction application was affirmed in February 2020 in Japan. There is no evidence as to

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103 D2's 3rd Affidavit at [130] and p 768.

104 D2's 3rd Affidavit at p 176 (Statement of Claim in Suit 653 at [2]), and at [125].

105 Alankriti Sethi's 1st affidavit dated 14 January 2020 at [3].

whether D1 will return to Singapore. Pertinently, D1 has not revealed his assets, whether in Singapore or abroad.

94 Contrary to D2 and D3's submissions, this was not a case in which D2 and D3 had been "entirely transparent" about the assets that they hold, or that they had demonstrated no propensity to dissipate assets.

95 As such I was satisfied that the Plaintiffs had demonstrated solid evidence of a real risk of asset dissipation by the Defendants.

5&2 Account

96 The Plaintiffs also sought to injunct the 5&2 Account. However, 5&2 is not a defendant in Suit 916 and D2 only owns 50% of 5&2's shares and has not identified the other shareholders of 5&2.

97 The court may issue a Mareva injunction over assets belonging to a third party where the assets are "in truth the assets of the defendant" or if a good arguable case can be shown that the third party is holding assets belonging to the defendant (*Bouvier* ([3] *supra*) at [124], citing *Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410 at [14]–[19]).

98 D1 deposed that the 5&2 Account was "controlled by [D2]" and used by D2, in his capacity as D3's director, "as if it [was D3's] bank account". D1 also deposed that it was *D2's* decision to use the 5&2 Account to store the Plaintiffs' funds after D3's DBS Account was closed.[106] Tellingly, D2 had nothing to say about this, even though he had filed an affidavit after D1 had deposed the above.

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106 D1's 1st Affidavit at [30] and [44].

Indeed, D2 stated that, by 10 October 2018, *D3* had received some US$2.6 million from P1.[107] D3's DBS Account was closed in June 2018, and hence the money would have been transferred to the 5&2 Account by D2/D3.

99 As such, I found that the 5&2 Account was D2's asset and controlled by D2, and I thus granted an injunction over that account.

Whether a worldwide Mareva injunction is necessary

100 Finally, I was satisfied that a worldwide Mareva injunction should be granted. The fewer the assets within the jurisdiction, the greater the necessity for taking protective measures in relation to those outside it: *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [29]. D1 is based overseas and has not stated what assets he has. D2 does not appear to have much assets in Singapore and whatever local assets he has declared would be insufficient to cover the value of the substantial claim which the Plaintiffs are seeking to pursue. As for D3, it has no assets here.

101 I deal briefly with Mr Chia's argument that the fact that the Plaintiffs had not taken out "an expedited Mareva and were happy to leave the hearing until [8 June 2020]" supports the inference that the Plaintiffs themselves did not think that the Defendants would dissipate their assets.[108] I rejected this argument, as this did not *ipso facto* lead to the conclusion that the Plaintiffs believed that there is no real risk of asset dissipation. To hold otherwise would lead to the perverse outcome that all Mareva injunction applications should be taken out

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107 D3's 3rd Affidavit at [35].

108 8/6/20 Minute Sheet at p 13.

and heard on an expedited basis, as otherwise the court would invariably conclude that there is no real risk of asset dissipation by the respondent.

Conclusion

102 For the above reasons, I granted the Plaintiffs' application for a worldwide Mareva injunction against the Defendants' assets up to the value of US$9,799,221.94 comprising P1 and RG's claims in Suit 916. This worldwide Mareva injunction included an injunction over the 5&2 Account.

Audrey Lim
Judge

Hari Veluri, Yeoh Jean Ann, and Joel Lim (TSMP Law Corporation) for the plaintiffs;
Abraham Vergis and Lim Mingguan (Providence Law Asia LLC) for the first defendant;
Daniel Chia Hsiung Wen and Ker Yanguang (Morgan Lewis Stamford LLC) for the second and third defendants.