I. Supreme Court of Singapore - High Court

II. Strandore Invest A/S and others v Soh Kim Wat - [2010] SGHC 151 (14 May 2010)

Strandore Invest A/S and others v Soh Kim Wat
[2010] SGHC 151

Suit No: Originating Summons No 19 of 2010

Decision Date: 14 May 2010

Court: High Court

Coram: Quentin Loh JC

Counsel: See Tow Soo Ling (Colin Ng & Partners) for the Applicants; Leo Cheng Suan (Infinitus Law Corporation) for the Respondent.

Subject Area / Catchwords

Arbitration

Judgment

14 May 2010

Quentin Loh JC:

Introduction

1 The applicant Danish companies, Strandore Invest A/S (“Strandore”), LKE Electric Europe A/S (“LKE Europe”) and MS Invest Odense A/S (“Odense”), (collectively “the Applicants”), filed Originating Summons 19/2010 (“OS 19/2010”) to enforce an arbitration award (“the Final Award”) against the Respondent, Soh Kim Wat (“Soh”). The Final Award, dated 30 April 2008, in favour of the Applicants, was made by a 3-member Arbitral Tribunal and issued out of the Danish Institute of Arbitrators, (“DIA”).

2 Soh made the following applications;

(a) Summons No 712/2010/D: to stay this Originating Summons, OS 19/2010, pending the resolution of Suit No 968 of 2009 (“S 968/2009”), (in which Soh basically challenged the Final Award and asked for various declaratory reliefs), in the alternative, Soh applied to have OS 19/2010 continue as if the same had been commenced by way of Writ of Summons under O 28 r 9 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed)(“RSC”), and that OS 19/2010 be heard together and consolidated with S 968/2009.

(b) Summons No 282/2010/J: to set aside the Mareva injunction issued on 8 January 2010 (“the Mareva injunction”) against him, following an *ex parte* application by the Applicants for the said injunction in Summons No 94/2010.

3 The Originating Summons and Soh’s two applications came up for hearing before me on 9 April 2010. After hearing the parties, I dismissed Soh’s applications, granted the Applicants leave to enforce the Final Award and declined to discharge the Mareva injunction. Soh appealed against my decision on 13 April 2010 and I now set out my grounds for my decision.

Background

4 The Applicants were shareholders of a Malaysian company, LKE Electric (M) Sdn Bhd (“the Company”). Soh was and still is a director and shareholder of the Company.

5 On 22 March 2003, Soh entered into Share Sale Agreements with Strandore and Odense to purchase their shares in the Company with the former selling 1,520,000 shares for US$500,000 and the latter selling 732,561 shares for US$289,169. On 10 December 2004, Soh entered into a Share Sale Agreement with LKE Europe to purchase its 500,000 shares in the Company for DKK 1,611,923. All the Share Sale Agreements, (collectively, “the Agreements”), contained a similar arbitration clause providing that Danish Law was the governing law and any dispute was to be resolved by arbitration in Denmark:

This agreement shall be governed by Danish Law and any dispute or claim between the parties arising directly or indirectly out of this agreement shall be subject to arbitration before Copenhagen Arbitration according to the Rules of Procedure of Copenhagen Arbitration.

6 Soh made payment of DKK44,673 to LKE Europe but otherwise failed to make any payments under the Agreements. On 23 June 2006, Strandore, LKE Europe and Odense filed their Request for Arbitration before the DIA.

7 The DIA had its own published Rules of Procedure which came into force on 1 April 2006, (“DIA Rules”). The Applicants contended that Copenhagen Arbitration meant arbitration under the DIA Rules of Procedure and the applicable law was the Danish Arbitration Act which came into force on 1 July 2005. Mr Leo, counsel for Soh, did not seek to argue otherwise.

8 The DIA sent notice of the Applicants’ Request for Arbitration by registered letter dated 30 June 2006 to Soh at the address used in the Agreements, 16 Ford Avenue,

Singapore (“the Singapore Address”). This letter was returned “unclaimed”. The Applicants then served the Request for Arbitration on Soh on 4 November 2006 together with the DIA’s letter dated 30 June 2006 and the DIA Rules at Soh’s office at Lot 1 & 3, Jalan SS 13/3C Subang Jaya Industrial Estate 47500, Petaling Jaya, Selangor Darul Ehsan, Malaysia, (“Soh’s Malaysian office address”). There is a statutory declaration from a Malaysian solicitor to that effect and it exhibits a document with Soh’s endorsement: “Received without prejudice.” Soh followed this up with a 3-page letter dated 8 November 2006 to the DIA, *inter alia*, challenging the validity of the request for arbitration, the service and contending that the documents were “definitely not in order”. Soh also gave some background and alleged an agreement that all the Agreements were for the collateral purpose of showing them to a third party to assist the Claimants (*ie* the Applicants in this case), and were at all material times not meant to be enforced against him. However Soh did not nominate an arbitrator as required under the DIA Rules. The DIA sent a letter dated 29 December 2006 in accordance with Article 19 of the DIA Rules notifying Soh of its proposal to appoint Advokat Peter Wengler-Jørgensen and Attorney Per Magid, both from Copenhagen, as members, and Dr Wolfgang Kühn from Dusseldorf, as Chairman, of the Arbitral Tribunal. The DIA requested Soh for his comments on or before 16 January 2007, failing which the DIA would proceed with their formal appointment.

9 On 31 January 2007, the DIA informed parties of the appointment of the Arbitral Tribunal in accordance with Articles 19 and 20 of the DIA Rules. This letter was sent to Soh’s Malaysian office address. This was followed by a Procedural Order dated 26 February 2007 from the Arbitral Tribunal ordering a hearing to take place on 3 May 2007. In his letter dated 6 March 2007, Soh opposed the appointment of the Arbitral Tribunal on various grounds, including lack of proper service of the Request for Arbitration. The hearing was held as scheduled on 3 May 2007 and the Arbitral Tribunal issued its Award dated 15 May 2007 on jurisdiction ruling that it had no competence to render a decision on the grounds, *inter alia*, that Soh did not receive the DIA’s letter dated 29 December 2006 on the appointment of the Arbitral Tribunal.

10 The DIA then sent a letter dated 24 May 2007 enclosing the Arbitral Tribunal’s Award of 15 May 2007 and proposed the appointment of the same three arbitrators. The DIA also said that unless one of both parties propose other candidates or are otherwise instructed by the parties no later than 24 July 2007, it would proceed to regard the three gentlemen as approved by the parties.

11 Soh replied on 16 July 2007, stating, *inter alia*:

Please note that I STRONGLY OBJECT to the Proposed Tribunal, proposed members of the Tribunal and the proposed Arbitration.

If the proposed Tribunal/Arbitration is valid, I would certainly wish to propose an Arbitrator for the purported Arbitration.

However, the proposed Tribunal and the proposed Arbitration is invalid. In any event your documents are not even complete.

Soh also complained that there was no valid Request for Arbitration issued to him, the Request for Arbitration was unsigned and not authenticated, not addressed to any person or organisation, it was unlawful, highly improper and irregular for the DIA to employ the Applicant's lawyers to effect service on him, the DIA was not impartial, the Agreements relied upon to launch the arbitration were being challenged by him, as the Applicants well knew (referring to Singapore Court proceedings), their arbitration clauses were therefore invalid, that the Agreements were not to be enforced against him personally since they were for the collateral purpose of assisting the Applicants and to be showed to a third party. Soh also claimed that under the DIA Rules he could propose his arbitrator and only upon his failure to do so could the DIA proposed an arbitrator. He accused the DIA of not treating him with equality and fairness, for not being impartial, breaches of natural justice and proper procedure and reserved his rights. It should be noted however, that Soh did not propose anyone as arbitrator.

12 The Applicants' solicitor wrote to the DIA on 30 July 2007 stating that their clients had no objections to the tribunal and noted that Soh had not objected to the claims and had not put forward any comments about the claims. It appears the Applicants or their solicitor sent an earlier letter dated 29 May 2007 informing the DIA that they had no objections to the proposed arbitrators.

13 The DIA informed both parties on 9 August 2007 that it "could not follow" Soh's objections and strongly urged Soh to propose an arbitrator no later than 10 September 2007, otherwise the DIA will consider the tribunal as approved by the parties and therefore duly constituted. Soh responded on 6 September 2007, repeating his objections and again objected to the arbitration and appointment of the proposed tribunal. But Soh did not propose or appoint an arbitrator. On 10 September 2007, the DIA appointed Dr Wolfgang Kühn, Peter Wengler-Jørgensen and Per Magid as the Arbitral Tribunal with Dr Kühn as the Chairman and asked Soh to submit a Statement of Defence by 1 October 2007. Soh replied on 1 October 2007, repeating his arguments. On 22 November 2007, Soh was given an extension by the DIA to submit his Statement of Defence by 15 January 2008. Soh responded by letter dated 28 December 2007 repeating some of his arguments. By letter dated 17 January 2008, the Arbitral Tribunal scheduled a hearing on 17 March 2008 at 10.00 am at the DIA's offices in Copenhagen. Soh objected to this in a letter sent by email to the Chairman on 13 March 2008.

14 Soh did not, in the event, file any Statement of Defence (save for what he had contended in his letters referred to above), and did not turn up at the hearing on 17 March 2008. On 30 April 2008, the Final Award was rendered in favour of the Applicants and a copy was served on Soh on 8 May 2008.

15 On 30 July 2008, Soh challenged the Final Award in the City Court of Helsingore ("City Court of Denmark"). This challenge was dismissed on 25 June 2009. Soh's appeal to the High Court of Denmark against the judgment of the City Court was dismissed on 19 November 2009.

16 In the meantime, on 10 November 2009, Soh filed Suit No 968/2009 in the High Court of Singapore to, in effect, challenge the Final Award. The Statement of Claim contained many of Soh's contentions set out in his letters referred to above, but with

more details. Soh contended that the Agreements were unenforceable, void or voidable, that there would be unjust enrichment to the Applicants, the shares could not be transferred to Soh even if he paid for them, the disputes were not capable of settlement by arbitration, enforcement of the Final Award would be contrary to public policy, Soh alleges fraud and fraudulent misrepresentation and asks for various declaratory reliefs. This Writ is currently in the process of being served on the Applicants.

17 On 7 January 2010, the Applicants filed OS 19/2010 for leave to enforce the Final Award. On 8 January 2010, the Applicants applied for and obtained a worldwide Mareva Injunction against Soh, which restrained him from removing from Singapore up to $3 million of the proceeds of sale of his property at 16 Ford Avenue, Singapore 268695 ("the Ford property"). The sum frozen was reduced to S$2.6 million on 26 January 2010 by Belinda Ang J.

Whether the stay should be granted

18 As noted above, Soh asserted that OS 19/2010 ought to be stayed pending the resolution of S 968/2009, or in the alternative that it be converted to a writ action and be consolidated together with S 968/2010. Mr Leo argued that this was an unusual case because the Agreements were never meant to be enforced from the outset. Soh contended that the Agreements were merely a ploy to help his close friend, Kaare Vagner Jensen ("Kaare"), who was the Chairman and Executive Director of the company, divest his interest in the company as he was facing legal action by "Schneider", a European company, for trademark infringement. They were not true share sale and purchase agreements at all. In addition, Soh claimed that the shares could not be transferred to him even if he paid for them because the directors had the power under the Company's Articles of Association to refuse consent to any such transfer. Soh produced an affidavit dated 9 February 2010 from one Mr Lim Boon Thor, ("Mr Lim"), an independent director of the Company, stating that he has been a director of the Company for more than 10 years and he would have objected to any purported share transfer from any of the Applicants to Soh. Mr Lim exhibited two letters dated 23 March 2003 and 20 April 2009 to that effect. Mr Lim also confirmed that he knew that the Agreements were not true share sale and purchase agreements and Mr Kaare Vagner told Mr Lim this sometime in or about 2005 in Copenhagen. Hence, Soh submitted that enforcement of the final award was unconscionable and against public policy.

19 Ms See Tow for the Applicants argued that Soh was delaying matters in every way that he could. His current S 968/2010 should be seen in light of the full history of this matter. Very much earlier on in this dispute, the Applicants' former solicitors, Acies Law Corporation, sent a letter of demand on 4 January 2006 to Soh demanding payment under the Agreements. Soh's Malaysian solicitors, Messrs Sidek Teoh Wong & Dennis, responded on 23 January 2006 stating that Soh was "prepared to proceed with Copenhagen Arbitration in accordance with the terms of the said Agreements" and that the Applicants' threat to commence proceedings in Singapore was in breach of the Agreements:

Our client categorically disputes your client's demands and for the avoidance of any doubt, our client is prepared to proceed with Copenhagen Arbitration in accordance with the terms of the said Agreements

The Applicants filed Suit No 55 of 2006, ("S 55/2006"), for the purchase price under the Agreements and served it on Soh on or about 21 February 2006. Soh promptly applied to stay the same. Soh swore an affidavit in S 55/2006 on 11 March 2006, which stated, *inter alia*, his intention and readiness to have the disputes resolved by arbitration, notice of which of had been sent by his solicitors to the Applicants and Soh stated that at all material times he was willing and ready to have the disputes arbitrated via Copenhagen Arbitration:

I verily state based on the aforesaid that the Plaintiffs ought to be held to the Arbitration Clause which they themselves have agreed to from the outset" (see paragraphs 61 and 62).

S 55/2006 was stayed on 10 May 2006 pursuant to s 6 of the International Arbitration Act (Cap 143A, 2002 Rev Ed)("IAA") and the Applicants were ordered to pay costs fixed at $1,200 plus reasonable disbursements. Hence, as noted above, the Applicants proceeded to arbitration and issued the Request of Arbitration before the DIA on 23 June 2006.

20 Ms See Tow then put forward the following facts obtained from the affidavits as being very noteworthy:

(a) When the Final Award dated 30 April 2008 was rendered in favour of the Applicants, the Applicants commenced enforcement proceedings in Singapore in OS 999/2008 on 29 July 2008. Leave to enforce the Final Award was granted on 31 July 2008.

(b) On 30 July 2008, Soh challenged the Final Award by filing challenge proceedings in the City Court of Denmark, (Case No 1-1389/2008).

(c) Soh then effectively set aside all orders obtained in OS 999/2008, including the leave to enforce the Final Award (and an Order for Examination of Judgement Debtor obtained on 24 September 2008) on 20 February 2009 on the basis that he was challenging the validity of the Final Award before the Danish Court. The Applicants were ordered to pay costs of $2,500 plus reasonable disbursements.

(d) Soh's challenge was dismissed by the City Court, Denmark on 25 June 2009.

(e) Soh proceeded to file an appeal in the High Court of Denmark on 13 July 2009 appealing against the judgment of the City Court.

(f) On 12 November 2009, Soh commenced S 968/2009 in Singapore against the Applicants, challenging the Final Award and to litigate his claims set out above at [16].

(g) On the 19 November 2009, Soh's appeal to the High Court of Denmark was dismissed, not on the merits but because Soh had not paid the High Court fees for the appeal.

(h) In the meanwhile on 8 October 2009, one Martua Sitorus lodged a caveat against Soh's property at 16 Ford Avenue in Singapore claiming an interest as a purchaser.

Ms See Tow submitted that sub-paragraphs (e), (g) and (h) clearly showed Soh filed the appeal to the High Court in Denmark to drag the matter out and not because he had a genuine disagreement with the decision of the City Court of Denmark; further, whilst dragging matters out, he attempted to quickly sell his Ford Avenue property in the meanwhile so as to defeat any fresh enforcement proceedings. I accepted that submission. Soh knew the Applicants had already tried to enforce the Final Award in July 2008, but were stymied by his challenging the Final Award at the seat. He could have been in no doubt the Applicants would try again once the challenge failed.

21 It will be readily seen from the recitation above that Soh had successfully taken every possible procedural step and availed himself of every technicality to delay the Applicants. First, Soh stayed the Applicants' Singapore action (S55/2006) under s 6 IAA on the ground that there was a valid and binding arbitration clause and that he was willing to go to arbitration to resolve the disputes. Then he objected, I must say, on rather unmeritorious technicalities to thwart the Danish arbitration from proceeding. When he could delay no longer, (despite telling the Singapore Court he was able and willing to proceed to arbitrate his disputes by Danish Arbitration as agreed), he did not appoint his arbitrator, failed to file his Statement of Defence, despite being given a number of opportunities to do so, and finally refused to appear or otherwise participate at the hearing of the Danish Arbitration. Soh then appealed to the City Court in Denmark against the Final Award against him, raising all his grounds already canvassed and more, and meanwhile stopping enforcement proceedings in Singapore. Having lost before the courts of the seat, Soh came back to start another action in the Singapore Court and wanted the Applicants' second attempt to enforce the Final Award in this OS 19/2010 to be stayed pending resolution of S 968/2010 or to be consolidated with that action. On the facts, I could not see how Soh could be allowed to stay an action in Singapore, insist that he wants to go to arbitration, then play out his delay options at the arbitration and having lost, come back to the Singapore Court and ask that his disputes now be dealt with by the Singapore Courts. What Soh raises in S968/2009 should have been raised before the Danish Arbitral Tribunal.

22 I now turn to the law. *Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd and another* [2006] 3 SLR(R) 174 ("*Aloe Vera*") lays down the rule that the enforcement of a foreign arbitration award under s 30 IAA and O 69A r 6 RSC, is a mechanistic process. All the applicant seeking enforcement has to do is to produce the arbitration agreement, prove that the defendant was mentioned in the arbitration agreement exhibited by the applicant, and that an Arbitral Tribunal had made a finding that the defendant was a party to that agreement and that the Arbitral Tribunal had made an award against him, exhibiting the duly authenticated original award or a duly certified copy thereof. It does not require a judicial investigation by the court enforcing the award under the IAA, the examination that the court must make of the documents under O 69A r 6 RSC is a formalistic and not substantive one. Section 31(1) IAA

supports this approach. This approach has also been endorsed recently in *Denmark Skibstekniske Konsulenter A/s I Likvidation (formerly known as Knud Hansen A/S) v Ultrapolis 300 Investments Ltd (formerly known as Ultrapolis 3000 Theme Park Investments Ltd* [2010] SGHC 108, ("*DSK v Ultrapolis*"). A distinction is drawn between the first stage under s 30 and the second stage under s 31.

23 With great respect to two very experienced judges, I have my reservations, especially on *Aloe Vera*, and how far the approach that is advocated is consistent with other cases, including the recent English Court of Appeal decision in *Dallah Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan* [2009] EWCA Civ 755, ("*Dallah Estate*"). The judge at first instance stated that when a party is challenging the jurisdiction of an arbitral tribunal under s 103(2) of the English Arbitration Act 1996, (which is the equivalent of our s 31(2) IAA), and that party is, by the very words of that section, required to "prove" a matter, that must mean prove the existence of the relevant matters on a balance of probabilities. That exercise is, to that extent, a rehearing, not a review.

24 The English Court of Appeal agreed with that approach and ruled that proceedings under s 103(2) should take the form of a full re-hearing and not a more limited review. Nothing in our IAA or the Convention suggests that "…the supervisory court at the seat is intended to have any primacy in the sense that enforcing courts are expected, much less required, to treat the award as valid and binding unless and until successfully challenged in the supervisory court… and it is well established… that a person against whom an arbitration award has been made is not bound to challenge it before the supervisory court in order to challenge its enforcement in another jurisdiction.." (at [18] and for the latter point citing *Svenska Petroleum Exploration AB v Government of Lithuania (No.2)* [2006] EWCA Civ 1529). Insofar as *DSK v Ultrapolis* seems to accept that a s 31 challenge is a rehearing, I respectfully agree and insofar as *Aloe Vera* suggests otherwise, I respectfully disagree. Counsel for Dallah had also advocated that international comity and a general "pro-enforcement" approach should be adopted in recognition and enforcement of international arbitration awards. Both the judge and first instance and the Court of Appeal did not agree and said it was a matter of statutory interpretation. However that may not be the last word as *Dallah Estate* is due to be heard by the Supreme Court in late June this year. There are other jurisdictions which follow the *Dallah Estates* approach and have to come to a different conclusion from that reached in *Aloe Vera*. It is worth remembering that just as parties who have chosen arbitration must live with their arbitrator, 'good, bad or indifferent,' our courts may be called upon to enforce 'bad' awards from another jurisdiction.

25 However, none of these reservations arise in the present case. The Applicants have satisfied the formal requirements set out in s 30 IAA and O 69A r 6 RSC. Mr Leo took no issue on that score but rested Soh's application squarely on s 31(4)(b) IAA which provides as follows:

In any proceedings in which the enforcement of a foreign award is sought by virtue of this Part, the court may refuse to enforce the award if it finds that —

…

(b) enforcement of the award would be contrary to the public policy of Singapore.

26 Burroughs J's[note: 1] epithet of an "unruly horse", when applied to the common law concept of public policy and never knowing where it will carry one, does not seem to apply s 31(4)(b) IAA. Our Court of Appeal has interpreted that phrase as only giving a court very limited powers of review. In *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597. The Court of Appeal stressed at [59] as follows:

Although the concept of public policy of the State is not defined in the Act or the Model Law, the general consensus of judicial and expert opinion is that public policy under the Act encompasses a narrow scope. In our view, it should only operate in instances where the upholding of an arbitral award would "shock the conscience" (see *Downer Connect* ([58] *supra*) at [136]), or is "clearly injurious to the public good or ... wholly offensive to the ordinary reasonable and fully informed member of the public" (see *Deutsche Schachbau v Shell International Petroleum Co Ltd* [1987] 2 Lloyds' Rep 246 at 254, *per* Sir John Donaldson MR), or where it violates the forum's most basic notion of morality and justice: see *Parsons & Whittemore Overseas Co Inc v Societe Generale de L'Industrie du Papier (RAKTA)* [1974] USCA2 836; 508 F 2d 969 (2nd Cir, 1974) at 974.

27 The restrictiveness of 'public policy' set out in s 31(4)(b) IAA can be seen in *Aloe Vera* itself. There an award made by an Arizona arbitrator, holding the manager of a Singapore company personally liable, even though he had signed an agreement made between a Singapore company and a US corporation, in his capacity as manager of the Singapore company, was held nonetheless enforceable against him in Singapore. My reservation arises because it must follow from this that if a foreign arbitrator, applying a foreign governing law of the contract, were to hold not only the company which was a party to that contract liable but also its holding companies up to the ultimate holding company also liable, on the basis that the foreign governing law treats all the different companies in the group as one, then when enforcement of that award is sought in Singapore, the Singapore courts will enforce that award as it stands, mechanistically, against all the companies.

28 However, Mr Leo's submission was that the Agreements were all very unusual agreements, made only for a collateral purpose and were never meant to be enforced, and it would therefore be against public policy to enforce such agreements, which were not, by far, something that shocked the conscience or violated Singapore's most basic notions of morality and justice. All Mr Leo could point to included the fact that the Agreements were very 'unusually brief', there was some mistake in the one of the Agreements, *viz*, that dated 22 March 2003, where although the agreement stated that 500,000 shares are to be transferred from LKE Electric Europe to Soh, the appendix stated that the 500,000 shares were transferred to LKE Electric Europe, Article 23 of the company's Articles of Association clearly provided that "directors may in their discretion and without assigning any reasons refuse to register a transfer of any shares". Mr Leo argued that if Mr Lim was asked to approve the share transfer, he would have objected to it. However the full Article 23 in the Articles of Association should be looked at:

Directors may in their discretion and without assigning any reasons refuse to register a transfer of any share to any person of whom they do not approve, and they may also refuse to register a transfer of any share on which the Company has a lien

As the Applicants correctly pointed out, it was difficult to see why Mr Lim would refuse a transfer of shares when the transfer was made between existing shareholders of the company.

29 In the final analysis, all these matters are contentions that should have been brought up in the Danish arbitration proceedings. Soh had been given every opportunity to do so by the DIA. There was no substance in Soh's complaints that he was treated unfairly by the DIA. He was given a number of opportunities to appoint his arbitrator but he failed to do so. Here therefore cannot complain about the composition of the Arbitral Tribunal. All the issues Soh wanted to ventilate in S 968/2009 were matters that he should have raised in the arbitration.

30 For these reasons, I dismissed Soh's stay application and granted the Applicants' leave to enforce the award.

Whether the Mareva injunction should be set aside

31 As for the application to set aside the Mareva injunction in Summons No 282 of 2010, Soh asserted that the injunction should be set aside as there was no real risk of dissipation of assets, that there had been no full and frank disclosure to the court by the Applicants and the interest due to the Applicants had not been properly computed thereby resulting in freezing a greater sum than was reasonable.

32 It is a basic requirement that an applicant has to show the risk of dissipation of assets before he can be granted a *Mareva* injunction. In *Barclay-Johnson v Yuill* [1980] 1 WLR 1259, Sir Robert Megarry VC said, at 1264:

[T]he heart and core of the Mareva injunction is the risk of the defendant removing his assets from the jurisdiction and so stultifying any judgment given by the courts in the action. If there is no real risk of this, such an injunction should be refused; if there is a real risk, then if the other requirements are satisfied the injunction ought to be granted.

Megarry VC's view was endorsed by the Court of Appeal in *Choy Chee Keen Collin v Public Utilities Board* [1996] 3 SLR(R) 812 at [19].

33 Soh contended that his other assets were known to the Applicants as he had declared his other assets in his 1st affidavit at para 47. These included his shares in the company, a 24,000 square feet plot of land in Seremban, an apartment in a condominium in Singapore, and shares in a business based in China. However, the question I have to address is the risk of dissipation of assets in Singapore, not elsewhere. It is in Singapore that the Applicants have chosen, as they are entitled to, to enforce their Final Award. The Applicants may well have their own valid reasons for not choosing to enforce their Final Award in other countries like Malaysia or China or elsewhere.

34 I accepted the Applicants' submission, as I did when they first applied for the *Mareva* injunction before me, that there was a real risk of dissipation of assets if we look at the timing of the sale and resisting the validity of the Final Award. After the Final Award was rendered on 30 April 2008, the Applicants served a copy on Soh on 8 May 2008. Soh knew the Applicants wanted to enforce the Final Award in Singapore because they had filed OS 999/2008 on 29 July 2008 seeking leave to do so. As noted above, Soh filed his challenge in the City Court of Denmark on 30 July 2008. On the basis of his challenge before the Danish Courts, Soh succeeded in getting the Applicants' OS 999/2008 and all orders obtained there dismissed on 20 February 2009. On 25 June 2009, the City Court Denmark dismissed Soh's challenge. Soh filed an appeal against that decision to the High Court of Denmark on 13 July 2009. I accepted that appeal was to gain time because Soh did not even pay the required fees to the High Court for the appeal. That was the reason for its dismissal and shows his appeal was not genuine. In the meanwhile, he sold his 16 Ford Avenue property. The purchaser lodged his caveat on 8 October 2009. It is therefore clear to me that Soh was trying to liquidate that property to defeat the Applicants' enforcement in Singapore.

35 Soh alleged that there was nothing surreptitious in his wanting to sell the Ford Avenue property. Soh deposed in his 1st Affidavit of 19 January 2010, at para.52, that the Ford property was sold as his wife was staying alone in a big house and they were getting older. They had plans to use the funds, *inter alia*, to develop or purchase properties. Unfortunately Soh forgot about his earlier affidavit when he was raising technicalities and objecting to service of the arbitration notices and documents on him at his Singapore address. In Soh's affidavit filed on 11 March 2006 in S 55/2006, he stated that he has been residing in Malaysia since 2003 and the Singapore address used by the Applicants for service is a house actually occupied by his wife from whom he has been separated since 2003 and he has not stayed there for many years. Soh referred to his wife as his "estranged wife" from whom he was "separated for many years".

36 Considering Soh's behaviour as a whole, I was of the view that he was liquidating his assets and accepted that there was a real risk of dissipation of his assets to frustrate enforcement of the Final Award against him.

37 It is also clear law that a party applying for a *Mareva* injunction must make full and frank disclosure to the court. I need only refer to two authorities for the rationale and scope of that duty to make full and frank disclosure. In *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901, the Court of Appeal explained the rationale:

It is settled law that on an *ex parte* application, the applicant must disclose to the court all matters within his knowledge or which ought to have been within his knowledge, which are material to the proceedings and which may be in favour of the party against whom the application is made: see *The King v The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington, ex parte Princess Edmond de Polignac* [1917] 1 KB 486 at 514 and *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah* [2001] 1 SLR(R) 786 … at [21].

In *Siporex Trade SA v Comdel Commodities Ltd* [1986] 2 Lloyd's Rep 428 at 437, Bingham J set out the scope of the duty to make full disclosure in these terms:

He must identify the crucial points for and against the application, and not rely on general statements and the mere exhibiting of numerous documents. He must investigate the nature of the cause of action asserted and the facts relied on before applying and identify any likely defences. He must disclose all facts which reasonably could or would be taken into account by the Judge in deciding whether to grant the application

38 Soh claimed that the Applicants had failed to inform the court that the Agreements were not meant to be enforced and that the shares could not be transacted because the other directors of the company would have opposed the transaction. First, these claims by Soh were contained in the multiple documents exhibited in the affidavits of the Applicants. They were therefore before me at the time I granted the *Mareva* injunction. Secondly, I do not find there to be much substance in any of these contentions. When measured against the rationale and scope set out above, I find they were certainly not in the nature of material facts that were not disclosed and would have affected my decision whether to grant the *Mareva* injunction or not. This objection is, in my view, untenable.

39 As for Soh's assertion that the interest due to the Applicants was not computed properly or clearly, and the Applicants had to concede lowering the amount frozen before Belinda Ang J, Ms See Tow explained that the interest computations were complex and unclear as they depended on what the bank rates were for various periods in the past. There was difficulty ascertaining these rates but once they were obtained and re-calculated, the Applicants readily accept a reduction in the sum to be frozen by the *Mareva* injunction. There was evidence before me making good these submissions and I accept there was some confusion about the Danish interest rates over different periods in the past. This objection accordingly failed as well.

40 After considering all the circumstances and submissions, I was of the view that the Mareva injunction order should be maintained. It is worth noting that the Applicants already have a Final Award in hand.

41 I therefore dismissed Soh's applications and gave leave to the Applicants to enforce the Final Award.

[note: 1] *Richardson v Mellish* [1824] EngR 715; (1824) 2 Bing 229, 130 ER 294