

Lyu Yan @ Lu Yan v Lim Tien Chiang and others
[2019] SGHC 10

Case Number : HC/Suit No 1109 of 2018 (HC/Summons No 5490 of 2018)
Decision Date : 22 January 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ng Lip Chee and Jennifer Sia (NLC Law Asia LLC) for plaintiff; Gino Hardial Singh and Debbie Ooi Yu Ting (Abbots Chambers LLC) for first defendant; Chooi Jing Yen and Hamza Malik (Eugene Thuraisingam LLP) for second and third defendants
Parties : Lyu Yan @ Lu Yan — Lim Tien Chiang — Ang Jian Sheng Jonathan — Lim ZhengDe

Civil Procedure – Injunctions

22 January 2019

Judgment reserved.

Choo Han Teck J:

1 The plaintiff opened a private wealth account with BNP Paribas Singapore (“BNP”). She wanted to transfer US\$3m equivalent in RMB from her personal RMB account in China to one of her personal bank accounts in Singapore. BNP was unable to undertake that transaction and referred the plaintiff to the first defendant who was an employee of EFG Bank AG (“EFG”).

2 The plaintiff contacted the first defendant and that resulted in a successful placement of US\$3m from the plaintiff’s personal RMB account in China to her Credit Suisse bank account in Singapore (the “First Tranche”). For the First Tranche, the first defendant utilised the remittance services of PT Niaga Lestari Remittance (“PT Niaga”), an Indonesian company.

3 Thereafter the plaintiff wanted to effect a second transfer, also in US\$3m, to her BNP bank account in Singapore (the “Second Tranche”). As PT Niaga was not ready to effect this Second Tranche, the first defendant sought the remittance services of the third defendant, who was an ex-colleague of his. This time, the first defendant gave the plaintiff four bank accounts for her to deposit the equivalent of US\$3m in RMB.

4 Two of the four accounts were in the name of the second defendant and one in the name of the third defendant. The fourth account was in the name of one Kang Tie Tie (“Kang”). The second and third defendants admitted that they gave their account numbers to the first defendant for the transfer of money from the plaintiff. They deny knowledge of Kang’s account.

5 The RMB equivalent of US\$3m were deposited into the four accounts by the plaintiff on 16 October 2018. The money was subsequently remitted to a person known only as “Allan”. “Allan” is an unlicensed money changer in China, and was the contact of the second and third defendants. That was the last the plaintiff saw of her US\$3m.

6 The plaintiff sued the defendants for misrepresentation, fraud, and unjust enrichment. By this summons, she sought to enjoin the assets of all three defendants, including their bank accounts. When the plaintiff discovered that the money was gone, she had discussions with the first and third

defendants to find out where it had gone. When it became clear to her that it was gone and her instructions of transferring the money to her BNP bank account were not carried out, she filed a writ against the three defendants and an application for an order for injunction against them. The writ was filed on 1 November 2018 and this summons on 21 November 2018 and the summons was fixed for hearing on 16 January 2019.

7 The first defendant denies any liability and claims that he does not know "Allan". He had only contacted the third defendant to carry out the transfer because, according to him, his bank EFG was unable to carry out this transaction. No reason was given as to why not. The third defendant then told the first defendant to split the money, and deposit it into two accounts belonging to the second defendant and one account belonging to the third defendant. The exchange rate quoted by the third defendant to first defendant was US\$1 to 6.99 RMB. That was 0.02 RMB more than what "Allan" quoted the second and third defendants. The first defendant told the plaintiff that the rate was US\$1 to 7.025 RMB, effectively making a profit of approximately US\$100,000 for himself, which the plaintiff deposited into the bank account of Kang.

8 None of the defendants seem to know "Allan" very well. Most of the direct messages between the second or third defendants and "Allan" had been deleted by the two defendants. They were only able to show the plaintiff remittance slips amounting to a total of US\$1.98m transferred from the second and third defendants to "Allan".

9 Although the second and third defendants are partners and have been doing business in China, they have provided scant information about "Allan". The business they do includes helping foreigners find their way to do businesses in China, such as helping them incorporate companies and presumably helping them remit money in and out of China. They do not seem like people who have no idea how money is remitted, and I find it astonishing that for a significant remittance sum of US\$3m, the only detail the second and third defendants had on "Allan" is his "WeChat" number.

10 All three defendants submitted that the court should not assist the plaintiff's application for injunction, as her transmission of US\$3m out of China was illegal according to China laws, and hence against the public policy of Singapore. As it stands, there is no sufficient evidence to show any illegality, and that, in the circumstances of this case, should be heard as part of the defence at trial. The defendants have not been fully candid and it is not fair to have the defendants litigate this case in piecemeal fashion. Any inquiry into whether the plaintiff had acted illegally and if so, whether that affects the plaintiff's claim is hereby directed to be heard at trial.

11 Although the bulk of the plaintiff's money is gone, a sum of US\$1.02m which is unaccounted for may still be here. However, given the time from 21 November 2018 when this summons was filed until now, even that might have disappeared.

12 The original US\$3m were deposited into accounts of the defendants. The fourth account in the name of Kang seems to be under the control of the first defendant, although the first defendant denies it. It is incontrovertible that "Allan" had taken most, if not all, the US\$3m, and the explanations given by the defendants were inadequate and unconvincing. The entire sum of US\$3m seems to have been dissipated through or to the three defendants and "Allan". Not a cent has been recovered or accounted for. I am therefore of the view that there is a real risk of dissipation of assets, and hence sufficient reason to enjoin the assets of the defendants and to have the defendants disclose their financial transactions concerning the deposits.

13 At the end of the hearing before me on 16 January 2019 I granted an interim injunction against the three defendants until 22 January 2019 or further order.

14 For the reasons above, I would grant an order in terms of the summons that:

(a) The plaintiff be granted an order in terms of the draft order entitled "Injunction Prohibiting Disposal of Assets Worldwide" marked as "Annex A" to the plaintiff's summons for injunction dated 21 November 2018;

(b) The defendants inform the plaintiff in writing at once of all their assets whether in or outside Singapore, whether in their own name or not, whether solely or jointly owned, and whether the defendants are interested in them legally, beneficially or otherwise, giving the value, location and details of all such assets;

(c) The defendants state in the affidavit and provide documents to evidence full details of:

(i) What has happened to the RMB 13,975,000 transferred by the plaintiff to the second defendant's two bank accounts;

(ii) What has happened to the RMB 7,000,000 transferred by the plaintiff to the third defendant's bank account; and

(iii) What has happened to the RMB 100,000 transferred by the plaintiff to Kang's bank account.

(d) Personal service of the Mareva Injunction on the defendants be dispensed with under O 45 r 7(6) and/or O 45 r 7(7) of the Rules of Court;

(e) Service of the Mareva Injunction be validly effected on the first defendant by way of service of the same on his solicitors on record, Abbots Chambers LLC;

(f) Service of the Mareva Injunction be validly effected on the second and third defendants by way of service of the same on their solicitors on record, Eugene Thuraisingam LLP; and

(g) The costs of this application be costs in the cause.