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

[2022] SGHC 63

Suit No 86 of 2022
(Summons No 416 of 2022)

Between

Shinhan Investment Corporation

… *Plaintiff*

And

1. Yap Shi Wen
2. Crystal Cove Holdings Private Limited
3. Elumi Events Pte Ltd
4. Fundnel Pte Ltd
5. Aurora Grand Limited

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Mareva Injunctions]

Shinhan Investment Corp
v
Yap Shi Wen and others

[2022] SGHC 63

General Division of the High Court — Suit No 86 of 2022 (Summons No 416 of 2022)
Choo Han Teck J
15 March 2022

23 March 2022.

Choo Han Teck J:

1 The plaintiff, Shinhan Investment Corporation, is a corporation incorporated under the laws of the Republic of Korea. The first defendant, Yap Shi Wen ("Yap"), is a Singapore citizen. The second defendant, Crystal Cove Holdings Pte Ltd, and the third defendant, Elumi Events Pte Ltd, are both incorporated in Singapore. At all material times, Yap was the sole shareholder and director of the second and third defendants. The fourth defendant, Fundnel Pte Ltd ("Fundnel"), is a private investment company incorporated in Singapore that assists private companies selling their shares through a network of institutional and accredited investors. The fifth defendant, Aurora Grand Limited, referred to as "Aurora BVI" ("Aurora BVI") by counsel, is a company incorporated in the British Virgin Islands.

2 The plaintiff applies in Summons 416 of 2022, for a worldwide Mareva

Injunction against the first three defendants.

3 Between March 2019 and June 2019, the plaintiff entered into a series of transactions to acquire 412,884 Series C Preferred Stock of WeWork Companies Inc ("the WeWork Shares"). The WeWork shares were purportedly held by Oasis Buona Limited ("Oasis"), a company incorporated in the Cayman Islands, which was wholly owned by Aurora BVI.

4 The acquisition was brokered by Fundnel. The parties agreed that an intermediary, SC Global Vision Fund SPC ("South China"), would be used to purchase the shares on behalf of the plaintiff. South China is an exempted segregated portfolio company incorporated in the Cayman Islands.

5 Under the agreed transactional structure, the plaintiff would subscribe for, and be the sole holder of, Class A participating shares in one of the segregated portfolios of South China ("the Fund"). The Fund would in turn purchase 100% of the shareholding of Oasis held by Aurora BVI for a total consideration of US$13,625,172 ("the Purchase Price"). The parties also entered into an Escrow Agreement which provided that the Fund shall an amount equivalent to the purchase price with Oxon Law LLC ("Oxon Law"), a law practice incorporated in Singapore.

6 Pursuant to the agreed transactional structure, the plaintiff remitted the purchase price of US$13,625,172 through its proxy, South China, to Aurora BVI. However, Aurora BVI subsequently refused to register the transfer of the Oasis shares with the Cayman Registry.

7 On or around 27 February 2020, South China commenced legal proceedings before the Grand Court of the Cayman Islands ("the Cayman

Court") by way of FSD 39 of 2020 ("FSD 39") to rectify Oasis's Register of Members ("ROM"). Shortly after the filing of FSD 39, Aurora BVI commenced arbitral proceedings against the Fund by way of ICC Case No 25310/HTG ("ICC Arbitration"), alleging that the Fund conspired with other parties to defraud Aurora BVI. Aurora BVI then applied for a stay of FSD 39 in favour of arbitration. This was dismissed by the Cayman Courts on the ground that "there was no real or substantial dispute to be referred" to arbitration.

8 After the dismissal of the stay, the ICC Arbitration was discontinued by reason of Aurora BVI's non-payment of the requisite advance on costs. The plaintiff says that the ICC Arbitration was a deliberate attempt to delay and frustrate FSD 39 and these dilatory and obstructive tactics were performed on the instructions of Yap, the sole shareholder of Oasis and Aurora BVI.

9 Pursuant to the Order of the Cayman Court, Oasis' corporate registry was amended to reflect the change of ownership of Oasis shares. After further inquiries by the plaintiff, it eventually came to light that the WeWork Shares were not in fact owned by Oasis.

10 The plaintiff then took steps to uncover the whereabouts of the wrongfully-dissipated funds. Pursuant to pre-action discovery, the plaintiff discovered the existence of a Second Escrow Agreement, purportedly entered into between Fundnel, Aurora BVI, and Oxon Law. The plaintiff says that the Second Escrow Agreement was signed by Yap on behalf of Aurora BVI, and that Yap instructed Oxon Law to remit the sum of $3,303,072 to Fundnel.

11 The plaintiff says that the remaining sum of US$10,322,100 was initially remitted to a Maybank Account held by Aurora Singapore, a sole proprietorship

owned by Yap, but was subsequently emptied out on Yap's express instructions. The details are as follows:

(a) Between 13 July 2019 and 19 June 2020, the total sum of US$3,459,569.10 was transferred from the Maybank Account to the second defendant.

(b) Between 17 July December 2019 and 20 February 2021, the total sum of US$5,464,280.67 was transferred from the Maybank Account to the third defendant.

(c) Between 2 July 2019 and 19 February 2021, the total sum of US$1,118,654.49 was transferred from the Maybank Account to another Maybank account bearing account number 4011130965, held by Yap's sole proprietorship, Aurora Grand STL AC ("Aurora Singapore").

(d) On or around 23 February 2021, the Maybank Account held by Aurora Singapore was emptied of all funds and closed. Aurora Singapore ceased registration on 31 March 2021.

12 On these grounds, the plaintiff says that it has been defrauded and its assets dissipated by a complex web of companies incorporated and controlled by Yap. This is especially when the second and third defendants were incorporated by Yap just prior to the transactions. The plaintiff, therefore, seeks a worldwide Mareva injunction against the first to third defendants to prevent them from further dissipating their assets to frustrate a court judgment in the plaintiff's favour.

13 The defendant's main defence is that Yap is a mere nominee shareholder and director of Aurora BVI who only acted in accordance with the instruction

of his principal and thus had no knowledge about the fraudulent transactions. I am unable to accept this self-serving declaration in the context of the evidence adduced so far on the affidavits. Such mere assertions cannot assist Yap when the facts before me suggest that fraud has clearly been perpetrated against the plaintiff. Furthermore, I am not convinced the Yap's involvement was entirely innocuous. When Aurora BVI was incorporated on 17 April 2019 with Yap as its sole shareholder. Yap was also the sole shareholder of Oasis, the entity which purportedly "owned" the WeWork shares which formed the subject matter of the fraudulent transactions. Moreover, Yap was also the sole director and shareholder of second and third defendants, which were incorporated just prior to the transaction and used to dissipate the funds. In the light of these circumstances, it is not likely that Yap was merely a nominee who had no knowledge of the transactions at all. At the very least, a credible explanation supported by evidence is required, but Yap had not produced any.

14 The defendant also says that the plaintiff has no standing to sue because the plaintiff is claiming as a shareholder of South China and that Yap's representations, if any, were made to South China, not the plaintiff.

15 I disagree. South China is merely an intermediary in the transaction that acted on the instructions of the plaintiff to acquire WeWork shares for the plaintiff. Furthermore, South China has entered into an Assignment Agreement with the plaintiff on 19 December 2021, under which South China assigned to the plaintiff "any cause of action available at law and in equity that [South China] may have against any third party arising out of, or otherwise in connection with, the purchase of the shares of Oasis Buono by South China". Therefore, contrary to the defendant's argument, there is no risk of double-recovery by South China.

16 For the reasons above, I am of the view that the plaintiff has a good arguable case against the defendant. Given that the sale proceeds had already been dissipated across various jurisdictions, including into and out of the second and third defendants, I am of the view that there is a real risk of dissipation of assets to frustrate a court judgment in the plaintiff's favour. Therefore, I granted the plaintiff order in terms. Costs reserved to trial judge.

- Sgd -
Choo Han Teck
Judge of the High Court

Daniel Tan Shi Min, Jason Leong Woon Ho and Suresh Viswanath (Shook Lin & Bok LLP) for plaintiff
Nichol Yeo Lai Hock, Qua Bi Qi and Zhang Jun (Solitaire LLP) for first, second and third defendants.