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

[2023] SGHC 153

Originating Claim No 130 of 2022 (Summons No 2564 of 2022)

Between

(1) Parastate Labs Inc

… *Claimant*

And

(1) Wang Li
(2) Yang Zhou
(3) Babel Asia Asset Management Private Limited
(4) Babel Holding Limited

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure — Mareva injunctions — quantum of Mareva injunction]

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Parastate Labs Inc
v
Wang Li and others

[2023] SGHC 153

General Division of the High Court — Originating Claim No 130 of 2022
(Summons No 2564 of 2022)
Andre Maniam J
14 July, 28 November 2022

26 May 2023

Andre Maniam J:

Introduction

1 I granted the claimant ("Parastate") an injunction prohibiting the disposal of assets worldwide ("Mareva injunction") against the first defendant, Mr Wang.

2 As Parastate's evidence of its ability to meet its undertaking as to damages was unsatisfactory, I set the quantum of the Mareva injunction at US$2.5m, half of the US$5m that Parastate had applied to injunct.

3 In CA/CA 16/2023, Parastate has appealed against my decision not to injunct the full amount of US$5m sought by it. These are my grounds of decision.

Background

4 Parastate invested in the Babel Quant Alpha USDT Fund ("the Fund"), which was managed by a cryptocurrency financial services provider trading as "Babel Finance".

5 The Babel Finance entity that Parastate contracted with was the third defendant ("Babel Asia"), a company wholly owned by the fourth defendant ("Babel Holding").

6 Mr Wang and the second defendant, Mr Yang, were two of five co-founders of Babel Holding: at the time of incorporation, Mr Wang had a 30% shareholding and Mr Yang had a 40% shareholding.[1] Mr Wang and Mr Yang were also directors of Babel Asia for certain periods of time.

7 Parastate and Babel Asia entered into a management agreement, following which Parastate invested US$5m into the Fund, in the form of the USDT cryptocurrency.

Procedural history

Mareva injunction

8 By way of SUM 2564/2022, Parastate applied *ex parte* for a Mareva injunction against both Mr Wang and Mr Yang.

9 That *ex parte* application was heard by me on 14 July 2022. I declined to grant an injunction on an *ex parte* basis; instead, I directed that the application

[1] Mr Yang's 1st Affidavit, 28 October 2022, para 10.

be converted to an *inter partes* one, and gave directions for Parastate to address certain matters at the *inter partes* hearing.

10 The *inter partes* hearing proceeded on 28 November 2022. By then, Parastate had decided that it would only seek an injunction against Mr Wang, and not also Mr Yang. I granted the Mareva injunction against Mr Wang, but for a quantum of US$2.5m instead of $5m as sought by Parastate.

Stay of proceedings

11 In HC/SUM 3639/2022 I granted a mandatory arbitration stay of Parastate's claims against Babel Asia. In HC/SUM 3651/2022 I granted a case management stay of the rest of the action. In CA/CA 15/2022 Parastate has appealed against the case management stay.

12 There is a pending application (in HC/SUM 1179/2023) by Parastate to lift the case management stay in relation to Mr Wang and Mr Yang, as Babel Asia is presently subject to a moratorium against proceedings. That application is scheduled for hearing before me next month.

Parastate's unsatisfactory evidence as to its ability to meet its undertaking as to damages

Parastate's breach of the Supreme Court Practice Directions 2021

13 In its application for the Mareva injunction, Parastate duly included the prescribed undertaking as to damages: "If the Court later finds that this order has caused loss to the defendant, and decides that the defendant should be compensated for that loss, the claimant will comply with any order the Court may make."

14 However, Parastate's supporting affidavit (a solicitor's affidavit exhibiting a draft client affidavit) said nothing about Parastate's ability to meet that undertaking.

15 Parastate's application was filed as a summons for injunction without notice, and para 73(1)(f) of the Supreme Court Practice Directions 2021 ("Practice Directions") required Parastate, as the applicant, to include in the affidavit prepared and filed in support of the application the following information under clearly defined headings: "… (f) An undertaking to pay for losses that may be caused to the opponent or other persons by the granting of the orders sought, stating what assets are available to meet that undertaking and to whom the assets belong".

16 All that was said about the undertaking in Parastate's supporting affidavit was, in the draft client affidavit:

> F. UNDERTAKING TO PAY DAMAGES
>
> 64. The Claimant undertakes to abide by an order for damages that this Court should make should the Court be of the opinion that the 1st Defendant and the 2nd Defendant has sustained damage by virtue of this injunction. If necessary, the Claimant will fortify the undertaking herein.

17 That simply said that Parastate was giving the prescribed undertaking, and would fortify it if necessary. Nothing was said about what assets were available to meet that undertaking and to whom the assets belonged; this was information that the Practice Directions required Parastate to provide.

18 At the *ex parte* hearing on 14 July 2022, all that Parastate's counsel could say about Parastate's ability to meet its undertaking was that he was instructed that Parastate could meet an order for damages, and that he could take

instructions on fortification – that obviously fell short of the information required by the Practice Directions.

Parastate's breach of the court's direction

19 At the *ex parte* hearing, I declined to grant the Mareva injunction. Instead, I directed that the application proceed on an *inter partes* basis, and required Parastate to address certain matters at the *inter partes* hearing, one of which was its ability to meet an order as to damages (on its undertaking).

20 In response, Parastate filed the 2nd affidavit of Mr Chen Jiayi dated 11 August 2022 with a section from paras 31–33 on "Claimant's ability to meet undertaking as to damages". Mr Chen said, in para 31, that Parastate was a company incorporated in Delaware, a project for which the founders used their own money to invest in September 2020; a corporate restructuring had just been completed recently and hence Parastate did not have any financial statements prepared since it was started. He went on to say that he nevertheless believed that Parastate had the ability to meet an undertaking as to damages as it had raised US$11.8m in funding over the past 1.5 years: US$1.3m on 27 January 2021, US$5m on 9 April 2021, and US$5.5m on 14 July 2021. In para 32 he referred to news articles about that funding, copies of which were exhibited to his affidavit. He concluded by saying in para 33, "I confirm that the Claimant is financially sound."

21 Paragraphs 31–33 of Mr Chen's 2nd affidavit still fell short of what the Practice Directions required. He did not say what assets were available to meet Parastate's undertaking and to whom the assets belonged. He mentioned in his 2nd affidavit that Parastate had raised US$11.8m, but the last funding date was on 14 July 2021, more than a year ago. Of the US$11.8m, presumably US$5m

had gone into Parastate's cryptocurrency investment in the Fund. Given the financial difficulties Babel Asia had mentioned, it appears that the sum which had gone to Babel Asia would not be available to meet Parastate's undertaking if Parastate should fail in its claims against Mr Wang and be ordered to pay him damages on its undertaking.

22 As for the balance US$6.8m raised, Mr Chen did not say how much of that Parastate still had, or in what form Parastate's assets were. For instance, were Parastate's assets in the form of cryptocurrency? If so, how much were those assets worth? And were there any issues with how those assets were held – like there were with the cryptocurrency Parastate had invested with Babel Asia? The fact that Parastate did not have any financial statements was a poor excuse for Mr Chen not disclosing the worth of Parastate's assets. Parastate and Mr Chen must have known what Parastate's assets were worth (and not just what Parastate had previously raised in funding) but they simply did not say.

23 Unsurprisingly, Mr Wang attacked Parastate's evidence, saying that Parastate would have had to produce information about its financial position to third parties to secure the US$11.8m in funding, and yet it provided no information to the court other than the dates and amounts of funding raised; Parastate provided no bank statements, or statements of accounts.[2]

24 To that, Mr Yang added that Parastate had provided no evidence as to its financial state since July 2021 (the date of the last funding), and the funding referred to was before the crypto crash in mid-2022.[3]

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2 Mr Wang's submissions, paras 98–100.

3 Mr Yang's submissions, paras 54–59.

25 I agreed with Mr Wang and Mr Yang that Parastate's evidence about its ability to meet its undertaking was unsatisfactory. Parastate continued to be in breach of the Practice Directions as well as the court's direction that it address its ability to meet its undertaking.

Material non-disclosure by Parastate

26 Mareva relief may be refused in cases where the plaintiff has not come to court with clean hands: *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("*JTrust*") at [84]–[92], and that includes cases where there has been a failure to make full and frank disclosure in seeking relief *ex parte*: *JTrust* at [84(b)], [89]– [92].

27 Parastate's unsatisfactory evidence as to its ability to meet its undertaking was one aspect of its material non-disclosure in seeking relief *ex parte*.

28 Another aspect (which involved another breach of the Practice Directions) was Parastate's deliberate omission of prescribed undertakings 9 and 10 in Form 25 of Appendix A of the Practice Directions:

> 9. The claimant will not without the permission of the Court begin proceedings against the defendant in any other jurisdiction or use information obtained as a result of an order of the Court in this jurisdiction for the purpose of civil or criminal proceedings in any other jurisdiction.
>
> 10. The claimant will not without the permission of the Court seek to enforce this order in any country outside Singapore (or seek an order of a similar nature including orders conferring a charge or other security against the defendant or the defendant's assets).

29 Paragraph 72 of the Practice Directions states that Forms 24, 25, and 26 of Appendix A (as the case may be) should be used except to the extent that the

judge hearing a particular application considers there is a good reason for adopting a different form, and "Any departure from the terms of the prescribed forms should be justified by the applicant in his or her supporting affidavit(s)."

30 Parastate's application for the Mareva injunction did not include prescribed undertakings 9 and 10, but Parastate's supporting affidavit did not mention, let alone justify, such departure from the prescribed Form 25.

31 At the *ex parte* hearing, I noted that prescribed undertakings 9 and 10 were missing from the application, and asked Parastate's counsel whether there was an intention to commence proceedings in other jurisdictions. My notes of the *ex parte* hearing (which were not *verbatim* notes) do not record that query, but they record counsel's response: that Parastate might make a mirror application in Hong Kong, and that is why those prescribed undertakings were not included in the application. In short, the omission of the prescribed undertakings was deliberate.

32 Pursuant to the Practice Directions, Parastate should have been forthright and mentioned the omission of the prescribed undertakings in the supporting affidavit, rather than to only mention it in a response to a query from the court (in the event of the court noticing that the prescribed undertakings were missing).

33 I also highlighted to counsel that the importance of those undertakings was explained by the Court of Appeal in *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558. In that case, the court said at [131]:

> We will close off this discussion on the abuse of court process with an observation. When a plaintiff seeks a worldwide Mareva injunction from a Singapore court, the plaintiff should

> ordinarily undertake to the court that it shall not, without the court's leave, enforce the injunction or seek an order of a similar nature in any jurisdiction outside Singapore. This is a standard undertaking found in the prescribed form for a worldwide Mareva injunction: Form 7 of the Practice Directions at Sched 1, para 8. This undertaking plays a vital role because it protects a defendant from the risk of oppression which may arise from a multiplicity of suits: *Dadourian Group International Inc v Simms* [2006] 1 WLR 2499 at [2] and [24]. Courts have gone so far as to say that a worldwide Mareva injunction should not be granted unless the plaintiff gives such an undertaking: *Re Bank of Credit and Commerce International SA* [1994] 3 All ER 764 at 794. This undertaking was not given by the respondents, and it appears that they have taken steps to enforce the Mareva injunction against Mr Bouvier overseas without obtaining any leave from the court to do so.

34 I directed Parastate to address at the *inter partes* hearing, why prescribed undertakings 9 and 10 should not be required in light of the Court of Appeal's observations in *Bouvier*.

35 In response, Mr Chen said at para 34 of his 2nd affidavit:

> D. THE UNDERTAKINGS TO BE GIVEN TO THE COURT NOT TO ENFORCE OR APPLY FOR A SIMILAR ORDER IN ANY COURT OUTSIDE SINGAPORE WITHOUT THE PERMISSION OF THIS COURT
>
> 34. I am advised and has [*sic*] been advised that the undertakings are usual undertakings that have to be given, and I have therefore instructed my solicitors to include them in the Summons.

36 At the *inter partes* hearing, Parastate's counsel accepted that the prescribed undertakings should be included, and the Mareva injunction I granted thus incorporated those undertakings. Nevertheless, Parastate's earlier conduct remained a relevant consideration.

37 In relation to Parastate's deliberate omission of prescribed undertakings 9 and 10, not only did Parastate not disclose that to the court, but it did not cite the Court of Appeal decision of *Bouvier* which discussed the importance of

those undertakings, nor did it cite the subsequent Court of Appeal decision of *JTrust* which cited *Bouvier* (see *JTrust* at [109]–[118]).

38 Had I granted the Mareva injunction at the *ex parte* stage, it would have been susceptible to being set aside for material non-disclosure, although the court would have had a discretion nevertheless to continue the injunction or to re-grant it on new terms: *JTrust* at [90], particularly [90(e)]. On a parity of reasoning, if the material non-disclosure were detected by the court at the *ex parte* stage, and consequently no injunction were granted at that stage, it would remain open to the court to take into account the non-disclosure and refuse to grant the injunction at the *inter partes* stage: *JTrust* at [92] where the court mentioned "discharge *or denial* of Mareva relief", and "the discharge *or the refusal* of the injunctions" [emphasis added].

39 I thus considered Parastate's material non-disclosures (both in relation to its ability to meet its undertaking as to damages, and in deliberately omitting prescribed undertakings 9 and 10) in deciding Parastate's Mareva application.

The appropriate quantum of the injunction

40 In granting the injunction, I required that Parastate fortify its undertaking by paying S$50,000 into court. That was at the top end of the S$30,000–S$50,000 range suggest by Parastate's counsel. Even so, S$50,000 was less than 1% of the US$5m Parastate had asked to injunct, and less than 2% of the US$2.5m that I did injunct. If the court should later decide that the injunction was wrongly asked for, and directed an inquiry as to damages, Mr Wang might well find himself with no recourse beyond the S$50,000 provided by Parastate as fortification, and injuncting US$2.5m (let alone US$5m) might have caused him loss well beyond S$50,000.

41 In *Maldives Airport Co Ltd and another v GMR Male International Airport Pte Ltd* [2013] 2 SLR 449 ("*Maldives Airport*"), the Court of Appeal set aside an injunction, mentioning as the final factor in that case, the respondent's ability to make good on its cross-undertaking (at [79]–[80]). The court noted that one of the solicitors acting for the respondent claimed that the respondent "would plainly be able to satisfy any award that may be made in [the Appellants'] favour", but there was no evidence to substantiate that claim. The court also noted that the judge who granted the injunction appeared to have been influenced by a contention that the respondent was a company of good financial standing, given its paid-up capital of US$40.2m. But the court held: "a company's paid-up capital is not proof of its creditworthiness, and, if it had come down to it, the absence of evidence on this score would also have weighed against the granting of the Injunction" (at [80]).

42 Similarly, Parastate's mention of funds it had raised a year ago was not proof of its creditworthiness at the time it sought the Mareva injunction.

43 Parastate's unsatisfactory evidence in this regard weighed against the granting of the Mareva injunction. However, the ultimate question is still whether "it appears to the court to be just or convenient that such order should be made": s 4(10), Civil Law Act 1909 (2020 Rev Ed).

44 Parastate sought an injunction for US$5m, as that was the amount of its investment in the Fund. I agreed that it had established a good arguable case against Mr Wang, and a real risk of dissipation. However, having regard to Parastate's conduct as detailed above, I considered that the just and convenient thing to do would be to grant an injunction for half the sum claimed, *ie*, US$2.5m instead of US$5m. I further ordered that the parties be at liberty to

apply to vary the amount either way, but there has been no such variation application to date.

45 From Parastate's perspective, if it were to succeed in its claim against Mr Wang, only half of its claimed sum would have been injuncted. From Mr Wang's perspective, though, if Parastate were to fail in its claim against Mr Wang and Parastate were ordered to pay him damages on its undertaking, the lower quantum of the injunction would tend to have caused Mr Wang less damage to be compensated.

46 In my view, the lower quantum of the injunction struck the right balance between the interests of both parties, considering the likely effects of an injunction on the defendant (*JTrust* at [97]) and the unsatisfactory evidence from Parastate as to whether it was good for its undertaking.

Conclusion

47 A good arguable case, and real risk of dissipation, are necessary but not sufficient requirements for the grant of a Mareva injunction – *JTrust* at [95]: "where the two requirements have been established, there remains scope for the refusal of relief." Ultimately, whether to grant a Mareva injunction, and if so, on what terms, depends on what appears to the court to be just or convenient. Having regard to Parastate's unsatisfactory evidence as to its ability to meet its

undertaking as to damages, the Mareva injunction I granted was for a lower quantum than what Parastate had applied for.

Andre Maniam
Judge of the High Court

Foo Maw Shen, Chu Hua Yi and Mark Tan (FC Legal Asia LLC) for the claimant;
Choo Zheng Xi and Carol Yuen (Remy Choo Chambers LLC) for the first defendant;
Darius Chan and Michael Chan (Breakpoint LLC) for the second defendant;
Ang Ann Liang and Yeoh Tze Ning (Allen & Gledhill LLP) for the third and fourth defendants.