# Precious Wishes Limited v Sinoble Metalloy International (Pte) Ltd
# [2000] SGHC 5

**Case Number** : Adm in Per 790/1998

**Decision Date** : 10 January 2000

**Tribunal/Court** : High Court

**Coram** : Judith Prakash J

**Counsel Name(s)** : Augustine Liew with Keuk Ping Yang (Haridass Ho & Partners) for the plaintiffs; Tan Siah Yong (Piah Tan & Partners) for the defendants

**Parties** : Precious Wishes Limited — Sinoble Metalloy International (Pte) Ltd

## JUDGMENT:

## GROUNDS OF DECISION

**Background**

1. The plaintiffs are a ship-owning company incorporated in Thailand. In October 1998, they chartered their vessel, *Nopporn Naree*, to the defendants, a Singapore company. The vessel was delivered to the defendants on 18 October 1998 on the basis that charter hire would be paid every 15 days in advance. The vessel then took on cargo in accordance with the defendants' instructions and commenced a voyage to Galverston, Texas, USA which was estimated to take up to 16 December 1998. The defendants paid charter hire on taking delivery but failed to pay the next two instalments of hire payable for the periods from 2 November 1998 to 16 November 1998 and from 17 November 1998 to 2 December 1998.

2. On 23 November 1998, the plaintiffs commenced this action to recover the sum of US$175,000 comprising the outstanding hire and other payments due from the defendants. On the same day, they applied for, and were granted, a mareva injunction. The specific terms of the order prevented the defendants by their agents or employees from removing from Singapore or in any way disposing of or dealing with or diminishing the value of any of their assets which were in Singapore whether in their own name or not and whether solely or jointly owned up to the value of US$500,000. This prohibition included the defendants' assets in their US$ account with the Rabobank, Singapore branch.

3. The injunction order was obtained in the evening. The plaintiffs' solicitors caused a notice of injunction to be sent at 6.18 pm the same day by facsimile transmission from their firm to the fax number of the defendants. The actual order and the writ in the action were, however, only physically served on the defendants on the next day, 24 November 1998. The defendants did not enter an appearance to the action and judgment in default of appearance was obtained by the plaintiffs on 31 December 1998.

4. In the meantime, on 8 December 1998, the plaintiffs obtained an order requiring disclosure of assets by the defendants. The defendants were ordered to inform the plaintiffs in writing at once of all their assets in Singapore and whether in their own name or not, and whether solely or jointly owned, giving up to date information about the value, location and details of such assets and this information had to be confirmed in an affidavit sworn or affirmed by or on behalf on the defendants and served within seven days of service of the court order. This second order of court was served on the defendants at their registered office on 10 December 1998.

5. The defendants have three directors each of whom is also a shareholder in the company. Only one of these directors and shareholders is resident in Singapore. He is Mr Tay Sien Djim also known Moses Tay. At the material time, Mr Tay's address was 92 Seletar Hill Drive, Singapore. On 4 January 1999, a clerk from the plaintiffs' solicitors' office went to this address and served on Mr Tay copies of the first and second injunction orders.

6. In the meantime, the plaintiffs' solicitors had discovered from documents provided to them by the Rabobank pursuant to a court order that on 24 November 1998 the defendants had withdrawn US$96,000 (equivalent to S$150,000) from their US$ account at the said bank. The withdrawal had been effected in stages. First, the sum of US$96,000 was transferred from the

defendants' US$ account to their Singapore dollar account with Rabobank. This account was credited with S$150,000. The S$150,000 was immediately withdrawn by way of a cash cheque for this amount drawn by Rabobank on its account with the Standard Chartered Bank Singapore. The cash cheque was handed to Mr Tay who had initiated these transactions on behalf of the defendants, and the same was cashed by Mr Tay at the Standard Chartered Bank's branch at Battery Road at about 12.22 pm the same afternoon.

7. On 4 February 1999, the defendants filed an affidavit in purported satisfaction of the second order of court. This affidavit exhibited a list of the defendants' assets. This list did not, however, include the sum of US$96,000 withdrawn from the Rabobank account. Nor did it make mention of any debt owing to the defendants by Mr Tay.

8. The plaintiffs took the view that the defendants and Mr Tay were in contempt of both the orders of court mentioned and applied for an order of committal against both of them. The plaintiffs applied for Mr Tay to be committed to prison and for Mr Tay and the defendants to be ordered to restore the sum of S$150,000 which had been taken from the defendants' account on 24 November 1998. The plaintiffs also asked for costs.

9. The contempt proceedings were heard before me between 13 to 15 September 1999. The stand taken by Mr Tay and the defendants was that they had had no knowledge of the mareva injunction at the time when Mr Tay cashed the cheque for S$150,000 and disposed of the proceeds and that therefore they were not in contempt of court. At the conclusion of the hearing, I found both defendants guilty of contempt in relation to the handling and disposal of the S$150,000 from the Rabobank account and ordered both to procure the repayment of that sum to the company's account with the said bank. I also found them guilty of contempt in not making a proper disclosure of the company's assets in the affidavit of Mr Tay filed on 4 February 1999.

10. Sentencing was postponed for one month upon the application of the defendants' counsel. This was to give Mr Tay time to make the restitution ordered. When court reconvened on 13 October 1999, however, it appeared that although Mr Tay had made attempts to raise funds he had not been able to do so. After hearing the mitigation plea, I sentenced Mr Tay to three months' imprisonment for his contempt of court. Appeals against conviction have been lodged by both Mr Tay and the defendants and Mr Tay has also appealed against the sentence imposed.

The evidence

11. The documentary evidence established that the defendant company was notified by facsimile transmission at about 6.18 pm on 23 November 1998 of the injunction obtained by the plaintiffs against it. The defendants did not take the stand that the fax had not been received in their office on that date or at that time. Their stand was that they had no notice of the injunction that day because the fax was received after their office closed at about 5.30 pm and that Mr Tay, the only director present in Singapore, did not see the fax until he arrived at the office sometime after 1 pm on 24 November 1998. By that time he had already withdrawn the S$150,000 from Rabobank. The documentary evidence also established that the cash cheque issued by Rabobank for S$150,000 was cashed by the Standard Chartered Bank at approximately 12.22 pm that day.

12. The plaintiffs' evidence in the contempt proceedings was adduced by way of an affidavit filed by their solicitor, Mr Augustine Liew which exhibited the court orders, the procedural steps taken by the plaintiffs and the documents obtained by them about and from the defendants, including correspondence from the defendants' solicitors and documents supplied by Rabobank. The plaintiffs also relied on an affidavit filed by one Mr Woon Kim Leng, a ship broker who had sent a fax to the defendants' office on 24 November 1998 and who had spoken to Mr Hector Goh of the defendants. Mr Woon was cross-examined by the defendants' solicitors on his affidavit.

13. The defendants filed two affidavits to contest the plaintiffs' allegations. The first was made by Mr Moses Tay and the second by Mr Goh Hean Sung who was employed by the defendants as a manager between 18 May 1998 and 30 November 1998. Mr Goh did not, however, attend for cross-examination on his affidavit and I accordingly had to disregard it. The defendants' only witness was, therefore, Mr Tay.

14. The facts which the defendants wanted me to find were as set out in Mr Tay's affidavit of 12 May 1999. He stated that whilst the registered address of the company was at No. 2 Handy Road #09-08/09 Cathay Building, its place of business was at 101 Thomson Road, #26-02 United Square. The registered office was only a secretarial office and its operational hours were between 9 am and 5.30 pm. The defendants operated their own office between 9 am to 6 pm, five days a week although fax machine, telephone lines and telex machine were on 24 hours a day. At the material time, the defendants employed two persons namely Hector Goh (presumably that was Goh Hean Sung), a shipping manager, and Tan Gek Choo, an assistant manager, to assist Mr Tay in the operations of the defendants' business. Mr Tay was overall in charge of operations. The other directors were investors and were not involved with the defendants' business.

15. Mr Tay said that he was never personally served with the mareva injunction and the other order of court which formed the subject matter of the plaintiffs' application for contempt. The writ and mareva injunction were only served on the defendants at their registered address on 24 November 1998 at 3 pm although by the time Mr Tay returned to the office at 1 pm on 24 November 1998 he had sight of the plaintiffs' solicitors' letter of 23 November 1998 which had been faxed to the business office at about 6.16 pm that day. Mr Tay reiterated that he was not in the business office at 6.16 pm on 23 November 1998 as he had left for the day at about 1700 hours. He could not recall exactly where he was nor what he had done but it was likely that he had gone home. He did not know whether his two employees were in the business office at the time when the fax was sent but he did not receive any call from either of them on the evening of 23 November in relation to the fax.

16. On 24 November 1998 at about 12 noon, he was at the Rabobank drawing out the sum of S$150,000 for the purpose of a loan to himself. He remembered drawing up a cash cheque on 23 November for S$150,000. The next day, 24 November 1998, before going to the business office, he attended at the Rabobank to present the cheque for payment. Rabobank then paid through a Standard Chartered Bank cheque which he encashed on the same day.

17. Mr Tay went on to say that during the period from May 1998 to November 1998 he had periodically made deposits into the Rabobank account and each deposit had exceeded S$30,000. Similarly he had also made cash withdrawals from the Rabobank account. He said that in the course of his appointment as a director of the defendant company, he had made advances amounting to approximately S$700,000 to the company and had also taken loans of varying amounts from it. As of the date of the affidavit, the amount which he had borrowed from the defendant company stood at approximately S$1,050,000.

18. Mr Tay reiterated that at the time when he encashed the cheque at the Standard Chartered Bank he did not know of the mareva injunction that was issued and neither was he informed of it by anyone from his office or from the secretary's office. He only knew about the injunction when he returned to his office at about 1 pm on 24 November 1998 and read the documents.

19. Mr Tay referred to the defendants' solicitors' letter to the plaintiffs' solicitors on 25 January 1999 and stated that the same explained why he had not been able to comply with the second order of court, that dated 8 December 1998. He restated the reasons in his affidavit as follows:

> (1) he originally thought that he had to obtain a full set of accounts namely the balance sheets and profit and loss accounts and therefore upon receipt of the order he proceeded to seek the assistance of the auditors to prepare them;
>
> (2) however, the accounts could not be prepared as the bank statements for December 1998 had not been received from the banks and also the two foreign directors had not agreed to nor approved the accounts. Mr Tay subsequently discovered from Rabobank that as all the defendants' facilities with that bank had been cancelled upon the bank's receipt of the injunction order the bank had not issued any further statement to the defendants after November 1998. He was therefore not able to submit bank statements to the plaintiffs.

20. Mr Tay said that after receiving a letter from the plaintiffs' solicitors on 11 January 1999 he decided to engage a firm of solicitors to reply on his behalf. It was only then that he discovered that he had to file a list of the defendant company's assets and did so on 4 February 1999. Paragraph 14 of that affidavit he said itemised the quantity of the assets described and also their

value. As these assets were all items of office equipment, they were in the defendants' business office at that time. He therefore thought it unnecessary to set out the location of the items. As to the bank account, Mr Tay stated that it had not occurred to him that he had to furnish particulars of the bank account. He then went on to say that as at the date when the order was served the company had had only two bank accounts, one a US$ account and the other a Singapore dollar account, and both were with Rabobank. He disclosed the balances of the accounts as being US$3,565.37 and S$7,955.01 respectively.

21. The main issue was whether the defendants had been aware of the injunction order at the time the money from the Rabobank account had been withdrawn and disposed of. The only evidence on their lack of knowledge came from Mr Tay. Neither Mr Goh nor his colleague were called to confirm Mr Tay's position. The credibility or otherwise of Mr Tay was therefore vital to both parties and as a result he was cross-examined intensively. His credibility was severely damaged by this process.

22. Mr Tay agreed that as a director of the defendants he knew of its indebtedness to various creditors. He confirmed that as at 30 November 1998 the defendant company was insolvent because of a net loss of approximately S$1.09 million. Out of that net loss, S$1.04 million could be attributed to loans taken by him from the company. As at 23 November, he had owed the company about S$911,000 and the extra S$150,000 of indebtedness had come from the loan the company made to him on 24 November. Mr Tay admitted that there was no directors' resolution which had authorised any of the loans taken by him. In answer to my question as to who had authorised the loans, his reply was 'nobody'. He was asked whether in those circumstances the taking of the loans amounted to criminal breach of trust. His reply was there was no question of criminal breach of trust and that he could not be in breach of trust if the defendants' shareholders were not taking action against him.

23. Mr Tay then agreed that he had gone to Hong Kong on 3 December 1998 to see the shareholders but that up to the date of the hearing he had not received any approval from the shareholders in respect of the loans made to him. When he was asked what reason there could have been for the shareholders to advance to him the S$150,000 which he had borrowed on 24 November 1998, his reply was that he had no answer to the question and that he did not understand it. It was then put that there was no reason for the defendants to advance him that money when doing so would increase the defendants' insolvency. Again his response was 'I have no means of answering this question'.

24. Later in his cross-examination, Mr Tay stated that the other shareholders had first known about the various loans which the company had made him when he visited them in Hong Kong in December 1998. He had told them that the purpose of the various loans was to settle his gambling debts and this news had upset them. He tried to persuade them to sign a directors' resolution approving the loans but after a series of discussions they told him that they needed time to consider the matter. He then flew back to Singapore. Thereafter, he called them many times but they would not agree to sign either the resolution or the company's accounts. It was clear to me from this testimony that Mr Tay had treated the defendants' funds as his own to be used as suited his convenience and that he had no regard for the legalities which should have governed the use of such funds.

25. Mr Tay was queried on the purpose of the loan of S$150,000. His reply was that it was made to enable him to settle his personal debt. Subsequently, he was asked whom he had owed this money to. His reply was that he did not have the full names and details of his creditors. When pressed further as to what he had done with the S$150,000 Mr Tay said:

> 'I know one Bobby. I gave Bobby $150,000 the same day, 24/11/98. I met him in a coffee shop in Toa Payoh at about 7pm. Coffee shop in Toa Payoh, Lorong 8. Bobby works for a gambling syndicate. I gambled on board a casino ship. That was the Superstar Leo. Bobby's employer provided me with credit for the purpose of gambling. Bobby's employer provides credit facilities for people who gamble on board ships.'

26. This evidence was interesting because it indicated that Mr Tay had had the S$150,000 in his hands when he returned to the office and learnt about the injunction order. Paying the money over to Bobby at 7 pm that night in full knowledge of the order would have been a flagrant breach of it. Mr Tay gave this evidence in the morning. After lunch he retracted it. Immediately he took the stand in the afternoon Mr Tay volunteered the following:

> 'In my earlier testimony, I made a mistake in relation to the timing of the meeting with Bobby. The

particular transaction of handing over the money to him was done immediately after withdrawing the money from the bank. He was waiting for me outside the bank.'

Mr Tay was then asked how he had realised that 7 pm was the wrong time and his reply was that it was because he had had more than one transaction with Bobby and that the 7 pm meeting he had mentioned actually referred to a previous transaction that had taken place about a week earlier. Mr Tay conceded that he did not keep any diary of what he did and when asked what had prompted him to recollect something different, his answer was that the break had given him an opportunity to recollect the events that occurred during the relevant days.

27. More questions were put to Mr Tay regarding his meeting with Bobby. He said that he had gone to the Rabobank office at Republic Plaza, Raffles Place around noon or late morning. Bobby waited for him at the ground floor of Republic Plaza. Then the two of them walked to the Standard Chartered Bank branch at Battery Road. Mr Tay went into the bank alone. Bobby waited outside the bank. After Mr Tay cashed his cheque, he left the bank and handed the money over to Bobby in the street. The money was not in an envelope. He just handed the notes directly to Bobby who then left. I found it difficult to believe this story. Mr Tay had a cash cheque from Rabobank. He could have given that cheque to Bobby inside Standard Chartered Bank office or he could even have given the S$150,000 in cash to Bobby in the bank lobby. Why should Bobby wait for him on the street? In any case, why should Bobby go with him to both banks instead of meeting him in the evening at the coffee shop which was their more frequent meeting place? Mr Tay did not give any reason why in this case the money should have been handed over outside the bank instead of elsewhere. The only reason I could attribute for the change in his evidence was his realisation of the implications of what he had said before the lunch break. It was also noteworthy that he had not deigned to explain his use of the money in his affidavit. He had only come up with this story in answer to cross-examination questions. It appeared to me to be an afterthought.

28. There were other difficulties with Mr Tay's story of having disposed of the S$150,000 in ignorance of the court order. The Rabobank statement of account showed that just prior to 24 November 1998, the defendant company's US$ call deposit account had a credit balance of US$96.30. On that day a deposit of US$97,014.03 was made bringing the credit balance up to US$97,110.33. On the same day, the sum of US$96,000 was withdrawn and this left the account with a balance of US$1,110.33.

29. Mr Tay stated in evidence that he had drawn up and signed a cash cheque on the defendants' US$ account for US$96,000 at about 5.30 pm on the evening of 23 November. He had done this despite the fact that the account held insufficient funds to meet this cheque on that date because he knew that a freight payment due to the defendants would be coming into the account the next day and because he knew he was not going into the office the next morning since he had to run some errands. When asked, Mr Tay could not remember what errands he had had to run on the morning of 24 November. That failure of memory was surprising considering that Mr Tay was able to remember all the details of his meeting with Bobby on the morning of 24 November and could specify that he reached the office at 1 pm that day. There were only two possible reasons why he could not remember the details of his errands. The first was because there had been no errands to run. The second was because he truly had a bad memory so that details of what he had done in the past eluded him in which event the details of his meeting with Bobby could only have been recounted so clearly because he had made them all up.

30. The next morning, having carried the signed cash cheque home in his briefcase, Mr Tay went about his errands, carrying the cheque with him and then went to the bank around noon to cash the cheque. He was not worried about losing the cheque and explained that he had dated it 24 November although he had drawn it up on 23 November because he knew he would be able to cash the cheque the next day. I asked him whether it would not have been safer to carry an uncompleted cheque leaf around with him. He agreed that that would have been the safer course but said that he frequently carried large amounts of cash with him.

31. I could not accept Mr Tay's story that the cheque for S$150,000 was drawn up in the evening of 23 November and post-dated to 24 November because he was absolutely certain that the money would be in the next day. I think that it is more probable that he checked with the bank on the morning of 24 November and drew up the cheque that morning when the bank informed him that the money had been received. He could not admit this because he wanted to maintain the fiction that the decision to withdraw had been made on 23 November before he could possibly have had notice of the injunction. It is not

credible that Mr Tay could have known for sure on 23 November that the money would be in the bank the next day even if he had spoken to the remitting party as he maintained. Intercontinental transfers of money are not instantaneous and even if a telegraphic remittance is made by one party on one day the recipient cannot be certain that he will receive it the next day.

32. In relation to the other allegation of contempt of court, Mr Tay was asked why when he filed his affidavit of 4 February 1999 there had been no mention of any debt owing by him to the defendants. His reply was 'I have no answer'. He had mentioned this indebtedness, however, in two affidavits which he had filed in other actions. He was asked why the difference. His answer was that he could only assume that there was no specific request in this action for a list of debtors. He was then told that in this action there was a request for a list of assets. Mr Tay made no response for a long time. Finally he said that all that he could say was that it was probable that the omission was an oversight.

33. I was satisfied after hearing and considering the evidence that the defendants and Mr Tay had had notice of the injunction order before the sum of S$150,000 was withdrawn from the Rabobank account and definitely before the money was disposed of by Mr Tay whether by payment to Bobby as he alleged or by payment to anyone else. I was also satisfied that he had deliberately omitted mention in his affidavit detailing the defendants' assets of the amounts in the Rabobank accounts and the amounts of his indebtedness to the defendant company to try and conceal the fact that he had disposed of money belonging to the defendants after having had notice of the mareva injunction. I therefore found him and the defendants guilty of contempt of court.

34. As regards sentence, I took the view that the nature of the contempt was serious. Mr Tay had deliberately disregarded the court's order for his own personal benefit and by doing so had put himself and the company in contempt. He had put his own interests above those of the company and its creditors. He showed no respect whatsoever for any party other than himself. He was not able to recover any of the money that he had disposed of despite having known of the contempt proceedings from at least May 1999 and having been given a further month to raise money after conviction. By his actions, both the defendant company and its creditors have suffered. Court orders must be respected and there was no excuse for his conduct. In the circumstances, I considered that three months was a fair sentence.

JUDITH PRAKASH

JUDGE

SINGAPORE