

Civil Procedure

– Mareva injunction – Application for discharge – Whether possibility of some not insubstantial amount of money in the estate which the first defendant had control over – Whether preservation order to be maintained

Civil Procedure

– Third Party Notice – Setting aside – Whether wrong to encourage a writ action within the narrow scope of an inquiry

Civil Procedure

– Application for opposing accountants to exchange reports and for inquiry to be conducted by an arbitrator – Whether hearing would be delayed

Facts

The original dispute was in respect of the assets of the estate of Ong Seng King. The outstanding matter is the inquiry to determine the estate in question and the second defendant's share of the estate. The inquiry was scheduled to commence on 21 October 2002 but in the meantime, the parties filed eight summonses-in-chambers.

Held

, dismissing all but one summonses-in-chamber:

(1) The first three applications for interim payments were dismissed because until the inquiry is done, there was no basis to speculate as to how much money is left in the estate. Moreover, it is a circuitous exercise to ask whether there is money in the estate when the whole purpose of the inquiry is precisely to determine that very point. Any claim must be made after the inquiry is concluded (see 2).

(2) In view of the refusal to allow interim payment, the fourth application to stop any interim payment became redundant, save for the question of costs which was reserved to the Registrar (see 3 and 7).

(3) The fifth application to discharge a Mareva injunction imposed earlier by this court against the first defendant was dismissed as, on the little evidence, there might be some not insubstantial sums of money in the estate in which the first defendant had control over. A preservation order should be maintained, subject only to any variation or other orders that the Registrar conducting the inquiry may make (see 4).

(4) The seventh application to set aside the Third Party Notice taken out by the second defendant against the first defendant was allowed. The notice was technically flawed in that it did not satisfy the requirements under O 16 of the Rules of Court. Moreover, the inquiry could not be expanded to cover related but obviously independent action that the second defendant might have against the first defendant. Nothing can be more calamitous, legally and procedurally, than to encourage a writ action within the narrow scope of an inquiry (see 5).

(5) The eighth application taken out by the first defendant for an order that the accountants for the main opposing camps exchange reports and for the inquiry to be conducted by an arbitrator was dismissed as it had come too late. It would only have the effect of delaying the hearing (see 6).

Legislation referred to

Rules of Court 1997, O 16

Judgment

GROUNDS OF DECISION

1. The original dispute in respect of the assets of the estate of Ong Seng King, had been heard and judgment handed down on 16 July 1996 by Justice Chao Hick Tin. The outstanding matter is the inquiry ordered by Justice Chao, principally, to determine the assets of the estate in question and the second defendant's share of the estate. The plaintiff's interest in the assets of the estate hinges on the half share of the second defendant's entitlement of the estate that was granted to her in the July 1996 judgment. The inquiry has been scheduled to commence on 21 October 2002. In the meantime, parties filed eight summonses-in-chambers before me. I dismissed all but one, and now give my grounds in one compendious judgment.

2. The first three applications were for interim payments. Two were made by the second defendant (one as trustee and administrator of the estate) and the third was by his former wife, the plaintiff. The second defendant's application as a beneficiary was made on virtually the same basis as that of the plaintiff. Both have set out the grounds as to why they need the money. In the case of the plaintiff, the court had previously ordered interim payments amounting to at least \$3,000,000. She now wants another \$1,200,000, mainly to enable her to engage a senior counsel to assist her at the inquiry. She also wanted a sum of 5,000 a month to cover her living expenses. I accept that the assistance of senior counsel will be helpful to the inquiry, apart from the assumed benefit to the plaintiff herself, and also that she might well require funds, but that is not a sufficient ground in itself to make an order for a further interim payment. The two applicants here submitted that according to Price Waterhouse Coopers' Interim Report of 21 March 2000 there is a sum of \$12,477,556 due to the second defendant (of which the plaintiff would be entitled to half). This report is being challenged by the first defendant. I note that some interim payments have already been made to the plaintiff, but circumstances are different at this moment. Until the inquiry is done I have no basis to speculate as to how much money is left in the estate. Secondly, as the inquiry is due to commence soon, it is, therefore, a circuitous exercise to ask whether there is money in the estate when the whole purpose of the inquiry is, precisely, to determine that very point. So far as the second defendant's application to be paid in his capacity as trustee of the estate, I am of the view that in principle, he may be right, but under the present circumstances, he must make his claim after the inquiry is concluded. The three applications for interim payments were therefore disallowed.

3. The fourth application was a joint application by the third and fourth defendants (the brothers of the second defendant, and all three are sons of the first defendant) to stop any payment that might be made to the plaintiff and second defendant. In view of my refusal to allow interim payments, this application is redundant save for the question of costs, which I shall revert shortly.

4. The fifth application was an application by the first defendant to discharge a *Mareva* injunction imposed by this court on 22 February 2002 pursuant to an application by the second defendant. The sixth application was by the third and fourth defendants to vary the *Mareva* injunction granted by this court on 29 April 2002 also pursuant to an application by the second defendant. The second injunction was granted to ensure that the first defendant does not move assets belonging to the estate that may have been transferred from her control to the third and

fourth defendants, and thereby rendering the injunction against her under the 22 February order ineffective. The history of this case, and I mean the entire case from the first shot fired in the original Originating Summons up to the present applications before me, the relationship of two main parties in opposition, namely the plaintiff and the first defendant (the second defendant appears to have switched alliance), have been acrimonious, and mutual suspicion continues to govern their every conduct, each with the other. On the little evidence (by way of affidavits) before me, I can only conclude that there may be some not insubstantial (but undefined) sums of money (or assets with value) in the estate and in which the first defendant has control over. If that is correct, then given the present situation, I am of the view that a preservation order should be maintained, subject only to any variation or other orders that the Registrar conducting the inquiry (and the parties may be reminded that the inquiry is less than 30 days away), may make. For these reasons, the applications to discharge or vary the *Mareva* injunctions were dismissed.

5. The seventh application was an application to set aside the Third Party Notice taken out by the second defendant against the first defendant. Technically, the Third Party Notice is flawed in that it does not satisfy the requirements under O 16 of the Rules of Court, and no directions have been taken out by the second defendant so far that may identify the precise nature and purpose of that application. Nonetheless, it must not be forgotten that the scheduled inquiry as ordered, and the terms of the inquiry, cannot be expanded to cover related but obviously independent action that the second defendant might have against the first defendant or any other party. The inquiry is specifically to ascertain the size and value of the estate, and the share that the second defendant may be entitled. The inquiry is not the forum for any action concerning a breach of trust, a wrongful failure to administer the estate, or the wrongful use of estate funds. What is left under the present Originating Summons, as I have recited *ad nauseam* is to inquire into the assets of the estate. My point is reinforced by the expression of intent by Mr. Arul to join the fourth defendant as the second Third Party. Nothing can be more calamitous, legally and procedurally, than to encourage a writ action within the narrow scope of an inquiry. The application to set aside the Third Party Notice was therefore allowed.

6. The eighth application was taken out by the first defendant for an order that Arthur Anderson and Price Waterhouse Coopers (the accountancy experts for the main opposing camps respectively) exchange their reports and for the inquiry to be conducted by an arbitrator. The first part of this application is superficially attractive, but it seems to me to have come too late. An exchange of reports at this stage, given the history of this case, is likely to spawn further applications such as may stymie the inquiry. The parties must stand by its respective reports and, if any further directions are required, to be issued by the Registrar conducting the inquiry. The second part of this application also appears attractive. I am of the view, however, that a direction for the inquiry to be conducted by an arbitrator at this stage will similarly delay the hearing; so that call has also come a little late, but nonetheless, the parties may still, by consent, proceed to arbitration on their own accord even though realistically, the prospect of that is dimly dim.

7. Costs of all the applications are reserved to the Registrar.

Sgd:

Choo Han Teck

Judicial Commissioner

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