

"X" v "A"

5 February 2014

Court of First Instance

CFI

High Court Action No 2433 of 2013

HCA 2433/2013

Citations: [2014] HKEC 2172

Presiding Judges: Zervos J

Phrases: Civil procedure - injunctions - Mareva injunctions - disclosure orders in aid of injunctions - granted

Counsel in the Case: Ms Carol Wong, instructed by William KW Leung & Co, for the plaintiff

Cases cited in the judgment:

CAC Brake Co Ltd Zhuhai v Bene Manufacturing fco Ltd [1998] HKLRD (Yrbk) 561

Dadourian Group International Inc & Others v Azuri Ltd [2005] EWHC 1768 (Ch)

Films Rover International Ltd & Others v Cannon Film Sales Ltd [1987] 1 WLK 670

Mercedes Benz AG v Leiduck [1996] 1 AC 284

Music Advance Ltd v Incorporated Owners of Argyle Centre Phase 1 [2010] 2 HKLRD 1041

Yukong Line v Rendsburg [2001] 2 Lloyd's Law Reports 113

A Co v B Co [2002] 3 HKLRD 111

American Cyanamid Co v Ethicon Ltd [1975] AC 396

Babanaft International Co SA v Bassatne [1989] 2 WLR 232

CY Foundation Group Ltd v Best Max Holdings Ltd (unrep., HCA 787/2011, [2013] HKEC 864)

Dadourian Group International & Others v Simms & Others [2006] 3 All ER 48

Derby & Co Ltd & Others v Weldon & Others [1989] 2 WLR 412

Honsaico Trading v Hong Yiah Seng Co Ltd [1990] 1 HKLR 235

Hui Chi Ming v Koon Wing Yee (unrep., HCA 1479/2009, [2009] HKEC 1592)

Lipkin Gorman (a firm) v Karpnale Ltd [1991] 2 AC 548

Norwich Pharmacal Co v Customs and Excise Commissioners [1974] AC 133

Shanghai Tongji Science & Technology Industrial Co Ltd v Casil Clearing Ltd (2004) 7 HKCFAR 79

TSB Private bank International SA v Chabra [1992] 1 WLR 231
Westdeutsche Landesbank Girozentrale v Islington LBC [1996] AC
669

Judgment:

Zervos J

Background

1. On 2 December 2013, the plaintiff, QoQa Services SA ("the plaintiff") transferred US\$316,400 into a Hong Kong bank account held by the 1st defendant, Daxton Ltd ("Daxton"), as a payment for the purchase of a quantity of luxury watches. The plaintiff was subsequently informed by the seller of the watches that the payment instructions into Daxton's bank account were false.

2. On 12 December 2013, the plaintiff obtained a Mareva injunction (also referred to as a freezing injunction) prohibiting Daxton from disposing its assets in Hong Kong with a return date on 10 January 2014. 1 Daxton was also ordered to disclose its assets in Hong Kong within 7 days but failed to do so by the deadline or at all. On 13 December 2013, the plaintiff issued a writ against Daxton for the sum of US\$316,400. It is claimed that the money received by Daxton was a mistake by which Daxton was unjustly enriched at the expense of the plaintiff and/or a fraud practiced on the plaintiff.

3. On 27 December 2013, the plaintiff obtained a disclosure order against the Hong Kong and Shanghai Banking Corporation ("HSBC") in relation to Daxton's bank accounts. A gagging order was also made on the bank not to reveal to Daxton the disclosure order until 10 January 2014. 2

4. On 17 January 2014, I ordered that the case title be intitled with letters of the alphabet by "X" for the plaintiff and "A", "B", "C" and "D" for the 1st to 4th defendants respectively. At an appropriate time when the need for secrecy is no longer required, the order and the restriction on the publication of this decision can be lifted.

Brief facts

5. The plaintiff is a limited company registered under the laws of Switzerland. Daxton is a company incorporated in Hong Kong on 7 November 2013 with two shareholders, Kevin Magee ("Magee") and Sky Charm Secretarial Services Ltd ("Sky Charm"). Magee is the sole director of Daxton and according to the company records resides in the United Kingdom.

6. The plaintiff entered into an agreement to purchase 27 Rolex watches for US\$316,400 from a watch dealer in Dubai operating under the name of Tourbillon Watches and Jewellery. The sale was arranged through a middleman, Alexandre Bigler ("Bigler"), a specialist in watches for an auction house here in Hong Kong. On 30 November 2013, instructions were received by Bigler from a purported representative of the watch dealer by the name of Mustafa Alsaïdi ("Mustafa") that payment be made by a transfer of funds into a Hang Seng Bank account in Hong Kong in the name of Ho Kian Chan. As to why a transaction with a Dubai watch dealer required payment into a personal bank account of someone in Hong Kong has not been explained. There followed three emails cancelling the payment into the Hang Seng account and two further emails instructing that the funds be transferred into Daxton's account with HSBC in Hong Kong. Bigler and Mustafa also communicated through Whats App. Bigler passed on the payment instructions to Fabio Monte ("Monte"), the representative of the plaintiff.

7. The funds were transferred into Daxton's bank account on 2 December 2013 and transferred out progressively on 3 and 4 December 2013 to two bank accounts in Mainland China. One account was in the name of Tianjin Lidu Industry Holdings Co Ltd ("Tianjin Lidu") with the Bank of Communications in Shanghai, China to which a total sum of US\$126,000 was transferred. The other account was in the name of Hangzhou Jinrong Import and Export Co Ltd ("Hangzhou Jinrong") with the Bank of China in Hangzhou, China to which a total sum of US\$234,000 was transferred.

8. It was subsequently claimed that the new payment instructions were a result of someone hacking into the email account of Mustafa and falsely redirecting the payment to Daxton's bank account. However, in further communications with Mustafa, he became vague and evasive about the emails.

9. On 8 December 2013, a person claiming to be the lawyer for Daxton made contact with the

plaintiff's Swiss lawyer. He claimed that the money would be repaid, but nothing came of it and further attempts to contact him failed.

10. On 17 December 2013, the plaintiff's solicitors received emails from a person claiming to be a transmitter of Daxton inquiring about the action against the company. In an email dated 18 December 2013, the transmitter confirmed that Magee was the sole controller of Daxton and matters in relation to the Mareva injunction had been passed onto him. In a further email dated 19 December 2013, the transmitter gave an email address and telephone number for Magee. Repeated attempts to contact Magee with the contact details failed. Thereafter, there was no contact from the transmitter. A curious feature of the transmitter's emails is that they are all in Chinese.

Hearing on 10 January 2014

11. On 10 January 2014, the following matters came on before me:

The return date of the summons taken out on 13 December 2013 in respect of the Mareva injunction order made on 12 December 2013. The injunction order restrained Daxton from dealing with its assets for the purpose of preventing it from removing them from the jurisdiction to defeat any later judgment against it. 3

The return date of the summons taken out on 30 December 2013 in respect of the disclosure order made on 27 December 2013 against the HSBC in relation to Daxton's bank account. The disclosure order sought discovery, production and inspection of the relevant banking records and a gagging order was also made on the bank that it be restrained by injunction from revealing directly or indirectly to the 1st defendant or its agents the fact of the making of and compliance with the order on 27 December 2013. The summons sought the continuation of the gagging order. 4

Two summonses taken out on 8 January 2014 for:

An order that the plaintiff have leave to amend the summons taken out on 30 December 2013 by stating that the application in Chambers is "not open to the public"; 5 and

An order that the plaintiff have leave to join Magee as the 2nd defendant in the proceedings and amend the Writ of Summons accordingly. 6

Summons taken out on 9 January 2014 for an order that the plaintiff have leave to join (i) Tianjin Lidu as the 3rd defendant in the proceedings and (ii) Hangzhou Jinrong as the 4th defendant in the proceedings and amend the Writ of Summons accordingly. 7

An application for a Mareva injunction prohibiting disposal of assets worldwide against (i) Magee (the 2nd defendant); (ii) Tianjin Lidu (the 3rd defendant); and (iii) Hangzhou Jinrong (the 4th defendant).

Five summonses taken out on 10 January 2014 for a disclosure order and a corresponding gagging order against (i) the HSBC with respect to bank accounts held in the name of Magee; (ii) the Bank of China, Hangzhou, China with respect to the bank accounts in the name of Daxton, Magee and Hangzhou Jinrong; (iii) the Bank of Communications, Shanghai, China with respect to Daxton, Magee and Tianjin Lidu; (iv) Sky Charm with respect to all documents and information relating to Daxton, Magee and/or person(s) who have been in control of Daxton; and (v) Hong Kong QBL Accounting Office Ltd ("QBL") with respect to all documents and information relating to Daxton, Magee and/or person(s) who have been in control of Daxton. 8

An order for service outside the jurisdiction of the orders sought, if granted, in relation to (i) Magee; (ii) Tianjin Lidu; (iii) Hangzhou Jinrong; (iv) the Bank of Communications Co Ltd; and (v) the Bank of China Ltd. 9

12. At the hearing on 10 January 2014, there was no attendance by Daxton. I was satisfied that service of the relevant court documents was properly effected at the registered office of Daxton.

13. In respect of the summons of 13 December 2013, I made an order in the terms sought by the application. I ordered that the Mareva injunction against Daxton made on 12 December 2013 continue to 14 February 2014 with costs to the plaintiff. I note that the funds in question had been transferred out of the jurisdiction, but I continued the injunction order as it related to Daxton and its servants or agents or anybody coming into possession of any assets of Daxton within Hong Kong up to the value of the funds and prohibited removal or dealing with such assets.

14. In respect of the summons of 30 December 2013, I granted leave to amend the summons as applied for in the summons of 8 January 2014 by noting that the application in Chambers was not open to the public. The disclosure order made on 27 December 2013 had not yet been satisfied by HSBC. The bank submitted a letter in which it stated it would not contest the summons and agreed to be bound by any order made in terms of the summons. The summons was adjourned to 14 February 2014 with the gagging order to continue until that day.

15. In respect of the summonses of 8 and 9 January 2014, the applications sought leave to join Magee, Tianjin Lidu and Hangzhou Jinrong as the 2nd, 3rd and 4th defendants respectively, and amend the Writ of Summons accordingly. I granted the applications. The 2nd defendant is a shareholder and director of the 1st defendant. The 3rd and 4th defendants are the company recipients in Mainland China of the funds in question after they had been transferred out of the 1st defendant's bank account in Hong Kong. I was satisfied that it was just to join the 2nd, 3rd and 4th defendants in the proceedings as provided under the Rules of the High Court. As to the question of costs in relation to the summonses, I ordered that they be reserved.

The applications

16. The plaintiff seeks worldwide Mareva injunctions against (a) Magee, (b) Tianjin Lidu and (c) Hangzhou Jinrong who are now joined as the 2nd, 3rd and 4th defendants respectively of the action.
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17. The plaintiff further seeks disclosure orders in aid of the Mareva injunctions against:

- HSBC, Hong Kong, with which Daxton has an account;
- Bank of Communications, Shanghai, with which Tianjin Lidu has an account;
- Bank of China, Hangzhou, with which Hangzhou Jinrong has an account;
- Sky Charm, the other shareholder of the defendant; and
- QBL, the ex-corporate secretary of the defendant.

18. Upon the relevant applications being granted, the plaintiff seeks leave for service outside the jurisdiction of the Mareva injunction orders and the disclosure orders against the foreign subjects, Magee in the United Kingdom and Tianjin Lidu, Hangzhou Jinrong, Bank of Communications and Bank of China in China.

19. The above applications were dealt with on 10, 16 and 17 January 2014. On 17 January 2014, the plaintiff applied for two additional disclosure orders in relation to the Hong Kong offices of the Bank of Communications and the Bank of China in the same terms as sought against the banks at the relevant office in Mainland China. I granted the worldwide Mareva injunctions and the disclosure orders in the terms as indicated except for the two against the banks in relation to the relevant office of each in Mainland China.

20. On 20 January 2014, I said I would give reasons for my decisions in relation to the various applications which I now do.

Worldwide Mareva injunction - the relevant principles

21. In this action, the plaintiff seeks the return of funds it claims were mistakenly and/or fraudulently paid into Daxton's bank account in Hong Kong. In a cause of action in which the plaintiff seeks to recover property, the court has jurisdiction to grant an interlocutory injunction restraining disposal of the property over which the plaintiff has a proprietary claim or restraining the defendant from disposing, or dealing with, his assets which would satisfy a judgment in the plaintiff's favour. 11 It is normally granted for the purpose of maintaining the status quo until the trial can be heard. The essential principles concerning the grant of an interlocutory injunction are contained in the well known authority of

American Cyanamid Co v Ethicon Ltd [1975] AC 396

. The court must be satisfied that there is a serious question to be tried and consider whether the balance of convenience lies in favour of granting or refusing the injunction. 12

22. A Mareva injunction operates in personam (directed toward a particular person), in circumstances in which the plaintiff shows a good arguable case and that it is likely the defendant will dissipate his assets so as not to be available to satisfy a judgment against him. The purpose of a Mareva injunction is to prevent injustice by preserving the assets of a defendant in order to guard against the risk of the

disposal or dissipation of those assets by the defendant with a view to defeating the execution of a judgment against him. 13 The court will take the course that appears to carry the lower risk of injustice if it should turn out to have made the wrong decision. 14 If there is insufficient or no assets within the jurisdiction, the relief may be granted against assets held outside the jurisdiction. 15

23. Necessity is the mother of invention and so it was that the initial territorial limitations on the scope of Mareva injunctions were removed. As Lord Donaldson explained in *Derby & Co Ltd and Ors v Weldon and Ors*, 16 that as the underlying nature of Mareva relief was that no court should permit a defendant to take action designed to frustrate subsequent orders of the court, it followed that it should extend to making orders concerning foreign assets subject to the ordinary principles of international law. He made the point that the fewer the assets within the jurisdiction the greater the necessity for taking protective measures in relation to those outside it by providing extraterritorial relief. As Lord Nicholls has pointedly remarked, there is no black hole that a defendant can escape out of sight and become unreachable in order to defeat the judicial process. 17 There are situations that cry out, as a matter of justice to the plaintiff, for disclosure orders and Mareva injunctions covering foreign assets of defendants. 18

24. The jurisdiction of Mareva relief has gone beyond the prevention of the removal or disposal of assets to defeat judgment and includes provisions for securing property over which the plaintiff asserts a proprietary or tracing claim. 19 The reach of a Mareva injunction may extend to non-parties (sometimes referred to as the Chabra jurisdiction). The jurisdiction is exercised as ancillary relief granted by the court in aid of, and as part of, the freezing relief granted against the defendant to the substantive claim. Exercise of the jurisdiction can occur where there is good reason to suppose that the assets of the third party are in fact the assets of the enjoined defendant. 20 The Chabra jurisdiction also applies in cases against a co-defendant, and the fact that the asset of the co-defendant cannot be specifically identified would not prevent the court from granting an injunction against his assets generally. This was explained by Potter LJ in

Yukong Line v Rendsburg [2001] 2 Lloyd's Law Reports 113
: 21

"Although it is plain that the court's Chabra-type of jurisdiction will only be exercised where there are grounds to believe that a co-defendant is in possession or control of assets to which the principal defendant is beneficially entitled, it does not seem to me that the jurisdiction is limited to case where such assets can be specifically identified in the hands of the co-defendant. Once the court is satisfied that there are such assets in the possession or control of the co-defendant, the jurisdiction exists to make a freezing order as ancillary and incidental to the claim against the principal defendant, although there is no direct cause of action against the co-defendant. Since the purpose of granting such an injunction against the co-defendant is to preserve the assets of the principal defendant so as to be available to meet a judgement against him, the form of order made against the co-defendant should be as specific as which he has possession or control. Thus, generally, the form of injunction will be tailored to that purpose and should be no wider than is necessary to achieve it. However, subject to that requirement, if a co-defendant is mixed up in an attempt to make the principal defendant judgment-proof and the assets or their proceeds are not readily identifiable in his hands it is open to the court, where it is just and convenient to do so, to make an order which catches the co-defendant's general assets up to the amount of the principal defendant's assets of which he appears to have possession and control."

25. It is on this basis that Ms Carol Wong, for the plaintiff, argues that although Magee's assets are not readily identifiable, an injunction may nonetheless be granted against his general assets, whatever they may be, to ensure that the objective of the injunctive relief is not defeated. This is justified on the basis that Magee is the person in purported control of Daxton and the funds in question have now been transferred out of the jurisdiction and possibly in the hands of others. She also applies for worldwide Mareva injunction against Tianjin Lidu and Hangzhou Jinrong, the recipients of the funds.

26. A court has jurisdiction to grant a Mareva injunction restraining a party, regardless of whether domiciled, resident or present within the jurisdiction of the court, from dealing with assets wherever they are located. 22

27. For the grant of worldwide Mareva injunction, it must be demonstrated to the court's satisfaction that (a) there is a good arguable case against the defendants in respect of the claim; (b) the defendants have no assets or insufficient assets within the jurisdiction to satisfy the claim and there are assets without the jurisdiction; (c) refusal of the relief sought would involve a real risk of

dissipation of the assets in such a way that a judgment in favour of the plaintiff would go unsatisfied; and (d) the balance of convenience is in favour of granting the injunction in that it is just and convenient to do so. 23

28. Underpinning the application is the fundamental obligation on a plaintiff to make full and frank disclosure. The court relies heavily on an applicant in particular in an ex parte application, that all relevant information and material is put before the court, and appropriately presented and explained, pointing out to the court if necessary any particular matter that is for or against the application.

Disclosure order - the relevant principles

29. Where innocent parties are caught up or have become involved in the tortious or wrongful activities of others, justice may require that such persons come under a duty to assist the victim of the tort or wrongful activities, by the provision of information. There are restrictions as to the jurisdiction of granting what is commonly known as the Norwich Pharmacal order: 24

There must generally be cogent and compelling evidence to demonstrate that serious tortious or wrongful activities have taken place;

The applicant must clearly demonstrate that the order will or will very likely reap substantial and worthwhile benefits for the applicant;

The discovery sought must not be unduly wide but must be specific and restricted to documents that are necessary for the applicant's purpose; and

The court must balance the competing interest of the applicant (as the victim of the alleged wrongdoing) and the party from whom discovery is sought (as the innocent party caught up on the wrongdoing). 25

Application of the principles for worldwide Mareva injunctions

30. A Mareva injunction was granted restraining Daxton from disposing of its assets over which the plaintiff has a proprietary claim. From the information to hand, Daxton has transferred its assets, in the form of these funds, to other persons or entities in Mainland China.

31. In my view, the plaintiff has established a good arguable case that it has been the victim of a fraud or deception in that representatives of the plaintiff were deceived into making payment for the purchase of a quantity of luxury watches into the bank account of Daxton in Hong Kong. It is not certain who are the perpetrators of the alleged fraud as there is the involvement of a representative of the seller by the name of Mustafa who purportedly gave the initial instructions for the payment which were subsequently changed in an email communication purportedly from him. He claimed his email account had been hacked into, but I am told that in subsequent dealings with him, he became vague and evasive about the matter.

32. There is also the involvement of Daxton in Hong Kong into whose bank account the payment was made. It was only recently incorporated and purports to be controlled by a national of the United Kingdom by the name of Kevin Magee. Immediately after the funds were paid into Daxton's account, the funds were transferred out to two companies in Mainland China. As to the actual involvement of these two companies in this case, it is a little hard to say at this stage. They, or the persons behind the companies, may be a party to the alleged fraud, or they may be third parties not involved but receiving payment of monies from Daxton in relation to an unrelated matter. There are two matters that should be taken into account when considering the involvement of these two companies. First, Daxton is a company only recently incorporated with no established or apparent business. Secondly, after service of the court documents on Daxton, there have been two sets of strange communications. The first was with the plaintiff's Swiss lawyer, by a person claiming to be the lawyer for Daxton, who told the Swiss lawyer that the money would be repaid. But after that exchange there were no further communications with this person. The second was a series of brief emails to the plaintiff's solicitors in Hong Kong from someone purporting to speak on behalf of Daxton. The communications were in Chinese and indicated that the person sending the emails was possibly in Mainland China. Again after an exchange of emails inquiring about the proceedings and providing contact details for Magee (which proved unsuccessful in making contact with him), there were no further communications.

33. I preface the views I have expressed about the case by noting that they are based on the information and material disclosed to the court by the plaintiff and in accordance with the obligation of the plaintiff to make full and frank disclosure.

34. I am satisfied that on the information and material presented before me, and on the submissions of counsel, that the plaintiff has demonstrated that:

There is a good arguable case against the defendants in respect of the claim as contained in the writ. In light of the facts and circumstances disclosed, I am of the view that the plaintiff has a strong arguable case against the defendants for unjust enrichment for money had and received on the ground of mistake and fraud; and/or conspiracy to defraud and/or to injure the plaintiff. 26 The key allegation is that the defendants were involved in a fraudulent scheme. It was carried out by someone impersonating as the representative of the seller of the watches and instructing the plaintiff to transfer the money into Daxton's account, and immediately upon receipt of the money, transferring it to the China bank accounts of the 3rd and 4th defendants. 27

The defendants have insufficient assets within the jurisdiction to satisfy the claim. By the time the application came on before me the funds in the Daxton account had been moved out of the jurisdiction. There are clearly insufficient assets within the jurisdiction. According to Daxton's company records, Magee appears to be its sole controller. He filed a copy of a United Kingdom passport and stated his residence to be in the United Kingdom. The funds transferred to the bank accounts of the 3rd and 4th defendants were in a total sum slightly in excess of the funds from the plaintiff. It appears that other funds were received from overseas which were part of the transfer to them.

The refusal of the relief sought will involve a real risk of dissipation of the assets of the defendants in such a way that a judgment in favour of the plaintiff would go unsatisfied. There is no question that there is a real risk of dissipation when there is a strong arguable case of fraud. 28

It is just and convenient to grant the injunctive relief. The balance of convenience is in favour of granting the Mareva injunction as Daxton received and used monies to which it had no entitlement. The receipt of the funds by Tianjin Lidu and Hangzhou Jinrong justifies an injunction against them. I have limited the Mareva injunction on them to the proportion of monies that they have received from Daxton that have as their origin the US\$316,400 payment from the plaintiff. The sum restrained against Tianjin Lidu is US\$110,740 and against Hangzhou Jinrong is US\$205,660. This was necessary as they appeared to have received other monies from Daxton. I also note that the plaintiff is a private company, which I am informed, is financially sound and can perform the necessary undertakings as to damages. 29

Application of principles for disclosure orders

35. The plaintiff seeks disclosure orders against (a) HSBC in relation to Magee's account(s); (b) Bank of Communication in relation to Tianjin Lidu's account(s); and (c) Bank of China in relation to Hangzhou Jinrong's account(s), in aid of the Mareva injunctions against Magee, Tianjin Lidu and Hangzhou Jinrong, to ensure that the Mareva jurisdiction is properly and effectively exercised.

36. In light of my reasons for the grant of the worldwide Mareva injunctions, I am satisfied that there is urgency and justification for the disclosure orders regarding assets of Magee, Tianjin Lidu and Hangzhou Jinrong.

37. In respect of the applications for disclosure orders against the Bank of Communications in Shanghai, China and the Bank of China in Hangzhou, China, I make no order at this stage and adjourn them to 14 February 2014. I have made disclosure orders against the banks in Hong Kong and it would be prudent to await the outcome of these orders before dealing further with the disclosure orders against the banks outside the jurisdiction.

38. The plaintiff relies on the Norwich Pharmacal jurisdiction to seek disclosure against Sky Charm and QBL. I am satisfied that:

There is cogent and compelling evidence that a fraudulent scheme has taken place;

The information required to be disclosed will very likely reap substantial and worthwhile benefits for the plaintiff in identifying the whereabouts of the assets of Daxton and Magee, tracing the funds and making the Mareva injunction effective. Sky Charm and QBL have been involved in Daxton as a shareholder and the corporate secretary respectively, so it is very likely that they possess information.

The scope of the order sought is not unduly wide as it confines only to information for the purpose of identifying and tracing assets.

The interest of the plaintiff in identifying and tracing assets far outweighs any inconvenience that would potentially cause to Sky Charm and QBL.

Conclusion

39. In all the circumstances, I am satisfied that this is a matter in which it is appropriate for me to exercise my discretion in favour of the plaintiff as set out above. There will be orders in the terms as indicated. I also order service outside the jurisdiction of the relevant matters in accordance with the Rules of the High Court.

1This was an ex parte application by the plaintiff for a Mareva injunction against Daxton before Barnes J on 12 December 2013. The plaintiff filed a Draft Order; a Draft Writ of Summons with Endorsement of Claim; an Affidavit of Alexandre Bigler dated 12 December 2013 and an Affidavit of Fabio Monte dated 12 December 2013. See Hearing Bundle (HB), 125-134, Order of Barnes J.

2This was an ex parte application by the plaintiff for a Disclosure Order against HSBC before Deputy High Court Judge A Wong on 27 December 2013. The application was made under section 21 of the Evidence Ordinance, Cap 8 in aid of the Mareva injunction. The plaintiff filed a Draft Order and in addition to the two Affidavits filed, an Affirmation of Fung Lim Kai dated 27 December 2013. See HB, 185-189, Order of Deputy High Court Judge A Wong.

3Summons dated 13 December 2013, Order 29, rule 1 of the Rules of the High Court (RHC) and inherent jurisdiction.

4Summons dated 30 December 2013, Order 24, rules 3, 11 and 11A, RHC and section 21 of the Evidence Ordinance, Cap 8.

5Summons dated 8 January 2014, Order 3, rule 5 and Order 32, rule 2, RHC.

6Summons dated 8 January 2014, Order 3, rule 5, Order 15, rule 6(2) and Order 20, rule 5, RHC and inherent jurisdiction.

7Summons dated 9 January 2014, Order 3, rule 5, Order 15, rule 6(2) and Order 20, rule 5, RHC and inherent jurisdiction.

8Ex parte Summonses dated 10 January 2014, Order 24, rules 3, 11 and 11A, RHC and section 21 of the Evidence Ordinance, Cap 8.

92nd Supplemental Skeleton Submission for the plaintiff dated 17 January 2014, Order 11 rules (1) (c), (1) (f) and (1) (p). See Hong Kong Civil Procedure 2014, Vol 1, Â§11/1/16.

10See sections 23L and 23M of the High Court Ordinance, Cap 4; Order 28 rule 1, RHC; and Practice Directions 11.1 and 11.2.

11Hong Kong Civil Procedure 2014, Vol 1, Â§29/1/58.

12Section 21L (1) of the High Court Ordinance, Cap 4: a court may grant an injunction where it appears to be just or convenient to do so.

13

Hui Chi Ming v Koon Wing Yee & Others HCA 1479/2009
, unreported, at para 24 per Fok J (as he then was).

14In deciding whether or not to grant an interlocutory injunction, it is a fundamental principle that the court should take the course that appears to carry the lower risk of injustice if it should turn out to have made the wrong decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. See

Films Rover International Ltd & Others v Cannon Film Sales Ltd [1987] 1 WLR 670
at 680 per Hoffmann J (as he then was); and

Music Advance Ltd v The Incorporated Owners of Argyle Centre Phase 1 [2010] 1041
at 1046-1048 per Ma J (as he then was).

15

Derby & Co Ltd & Others v Weldon & Others [1989] 2 WLR 412

at 421H-422E and 437H-438B.

16Ibid at 421H-422E.

17Dissenting judgment in
Mercedes Benz AG v Leiduck [1996] 1 AC 284
at 305B.

18

Babanaft International Co SA v Bassatne [1989] 2 WLR 232
(CA), at 247G-M per Kerr LJ.

19Hong Kong Civil Procedure 2014, Vol 1, Â§29/1/58.

20See Hong Kong Civil Procedure 2014, Vol 1, Â§29/1/80;
Hui Chi Ming v Koon Wing Yee (unreported, HCA 1479/2009)

;

TSB Private bank International SA v Chabra [1992] 1 WLR 231

;

Dadourian Group International Inc & Others v Azuri Ltd [2005] EWHC 1768 (Ch)

.

21[2001] 2 Lloyd's Law Reports 113 at para 44.

22Section 21L of the High Court Ordinance, Cap 4; Order 29, rule 1, RHC.

23Hong Kong Civil Procedure 2014, Vol 1 Â§29/1/83. In

Dadourian Group International & Others v Simms & Others [2006] 3 All ER 48
, Arden LJ provided a set of guidelines when considering an application for a worldwide Mareva
injunction, which I have borne in mind and applied when addressing the above requirements.

24

Norwich Pharmacal Co v Customs and Excise Commissioners [1974] AC 133

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25See

A Co v B Co [2002] 3 HKLRD 111
at paras 10 to 13 per Ma J (as he then was).

26

Shanghai Tongji Science & Technology Industrial Co Ltd v Casil Clearing Ltd (2004) 7 HKCFAR 79

;

Lipkin Gorman (a firm) v Karpnale Ltd [1991] 2 AC 548

;

Westdeutsche Landesbank Girozentrale v Islington LBC [1996] AC 669

.

27

CY Foundation Group Limited & Another v Best Max Holdings & Others HCA 787/2011
(unrep, 3 June 2012)

28See

Honsaico Trading v Hong Yiah Seng Co Ltd [1990] 1 HKLR 235
at 240. See also

CAC Brake Co Ltd Zhuhai v Bene Manufacturing fco Ltd [1998] HKLRD (Yrbk) 561
, Â§18.

29Affidavit of Fabio Monte Â§Â§33-35.

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