

Mareva injunctions under Singapore law

Whether the Singapore court has the jurisdiction or power to grant a Mareva injunction in aid of foreign court proceedings was recently considered by the Singapore High Court in *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] SGHC 64. Both plaintiff and defendant were Indonesian and the claim related to alleged breaches of duties which the defendant owed to the plaintiff. The plaintiff had obtained leave to serve the writ in Indonesia on the defendant. The defendant thereupon applied, inter alia, to set aside service of the writ and for a declaration that the court has no jurisdiction over him. In response, the plaintiff applied for a Mareva injunction against the defendant in respect of the defendant's assets in Singapore. The plaintiff had, after the Singapore action was filed, commenced actions in Malaysia and Indonesia covering much the same allegations against the defendant.

Under Singapore law (excluding actions commenced in the Singapore International Commercial Court where different rules apply), leave to serve the writ on the defendant abroad may be granted at the court's discretion if the plaintiff is able to show: (i) a good arguable case that the claim falls within one of the heads of Order 11 of the Rules of court; (ii) a serious issue to be tried on the merits; and (iii) Singapore is *forum conveniens*. On the facts, the parties were Indonesian and the alleged misconduct occurred in Indonesia. As the plaintiff was unable to satisfy the third requirement, the court discharged the order for service out the writ out of the jurisdiction. Other orders made in pursuant of the order for service out were also set aside.

On the Mareva injunction, the Singapore High Court adopted the majority approach in the Privy Council decision of *Mercedes*

Benz v Leiduck [1996] 1 AC 284. Lord Mustill had distinguished between two questions, to be approached sequentially: first, the question of whether the court has *in personam* jurisdiction over the defendant; secondly, the question of whether the court has a power to grant a Mareva injunction to restrain the defendant from disposing of his local assets pending the conclusion of foreign court proceedings. Valid service is required to found *in personam* jurisdiction under Singapore law. In *PT Gunung Madu Plantations*, as in *Mercedes Benz* itself, as the answer to the first question was in the negative, the second question did not arise.

Justice Woo was cognisant of the difficulties caused by hewing to the traditional approach of viewing Mareva relief as strictly ancillary to local proceedings but stated 'that is a matter that has to be left to a higher court or to the legislature' (para 54). His Honour referenced developments in the UK and Australia, where freestanding asset freezing orders in aid of foreign proceedings are permitted. Further, the Singapore International Arbitration Act was amended in 2010 to give the court the power to grant an interim injunction in aid of a foreign arbitration. It is likely that legislative intervention will be required to develop Singapore law on this issue.

The judgment may be found here:
<http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/high-court-judgments/23135-pt-gunung-madu-plantations-v-muhammad-jimmy-goh-mashun>