Mareva injunctions in support of foreign proceedings

In *Bi Xiaoqing v China Medical Technologies* [2019] SGCA 50, the Singapore Court of Appeal provided clarity on the extent of the court's power to grant Mareva relief in support of foreign proceedings.

The first and second respondents were companies incorporated in the Cayman Islands and the British Virgin Islands. The action was pursued by the liquidators of the first respondent against the appellant, a Singapore citizen, who was formerly involved in the management of the respondents and allegedly misappropriated funds from them.

Hong Kong proceedings were commenced first and a worldwide Mareva injunction was granted against, inter alia, the appellant. The terms of the Hong Kong injunction specifically identified assets in Singapore.

Two days after the Hong Kong injunction was obtained, the respondents commenced action in Singapore and applied for a Mareva injunction to prevent the defendants from disposing of assets in Singapore. The action in Singapore covered substantially the same claims and causes of action as those pursued in Hong Kong. After the grant of a Mareva injunction on an *ex parte* basis, the respondents applied to stay the Singapore proceedings pending the final determination of the Hong Kong proceedings on the basis that Hong Kong was the most appropriate forum for the dispute. The High Court granted the stay and confirmed the Mareva injunction in *inter partes* proceedings.

The issues before the Court of Appeal were: (1) whether the court had the power to grant a Mareva injunction and (2) whether it should grant the Mareva injunction. In other words, the first question dealt with the existence of the court's power to grant a Mareva injunction and the second question dealt with the exercise of the power.

The Singapore court's power to grant an injunction can be traced back to section 4(10) of the Civil Law Act which is in these terms: "A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court

thinks just, either unconditionally or upon such terms and conditions as the court thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made." The Court of Appeal clarified that section 4(10) of the Civil Law Act should be read as conferring on the court the power to grant Mareva injunctions, even when sought in support of foreign proceedings. Two conditions had to be satisfied: (1) the court must have *in personam* jurisdiction over the defendant; and (2) the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore.

Given the stay of the Singapore proceedings, the Court of Appeal had to consider if the Singapore court still retained the power to grant Mareva relief. There had been conflicting first instance decisions on this point: see *Petroval SA v Stainsby Overseas Ltd* [2008] 3 SLR(R) 856 cf *Multi-Code Electronics Industries (M) Bhd v Toh Chun Toh Gordon* [2009] 1 SLR(R) 1000. The Court of Appeal preferred the *Multi-Code* approach, taking the view that the court retains a residual jurisdiction over the underlying cause of action even when the action is stayed. This residual jurisdiction grounds the court's power to grant a Mareva injunction in aid of foreign proceedings. Further, a party's intentions on what it would do with the injunction had no bearing on the existence of the court's power to grant the Mareva injunction.

Party intentions, however, was a consideration under the second question of whether the court should exercise its power to grant the injunction. Traditionally, a Mareva injunction is granted to safeguard the integrity of the Singapore court's jurisdiction over the defendant so that, if judgment is rendered against the defendant, that jurisdiction is not rendered toothless. The court commented that where it appears that the plaintiff is requesting the court to assume jurisdiction over the defendant for the collateral purpose of securing and safeguarding the exercise of jurisdiction by a foreign court, the court should not exercise its power to grant Mareva relief. On the facts, the court held that it could not be said that the respondents had such a collateral purpose as there was nothing on the facts to dispel the possibility that the respondents may later request for the stay to be lifted. This conclusion suggests that the court would generally take a generous view of litigation strategy and lean towards exercising its power in aid of foreign proceedings.

Given the requirement that the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore, a Mareva injunction is not free-

standing relief under Singapore law. The court emphasized that a Mareva injunction in aid of foreign court proceedings is still ultimately premised on, and in support of, Singapore proceedings. This stance means that service in and service out cases may end up being treated differently. If the defendant has been served outside of jurisdiction and successfully sets aside service of the writ, there would no longer be an accrued cause of action in Singapore on which to base the application for a Mareva injunction. See for example, *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] SGHC 64, [2018] 4 SLR 1420 (see previous post **http://conflictoflaws.net/2018/mareva-injunctions-under-singapore-law/**). On the other hand, if the defendant had been served as of right within jurisdiction and the action is stayed (as in the present case), the court retains residual jurisdiction to grant a Mareva injunction.

After a restrictive court ruling in relation to the court's power to grant free-standing Mareva relief in aid of foreign arbitrations, the legislature amended the International Arbitration Act to confer that power to the courts. It remains to be seen if the legislature would act similarly in relation to the court's power to grant free-standing Mareva relief in aid of foreign proceedings.

To a certain extent, this lacuna is plugged by the recent amendments to the Reciprocal Enforcement of Foreign Judgments Act ("REFJA") (see previous post **http://conflictoflaws.net/2019/reform-of-singapores-foreign-judgment-rules/**). Under the amended REFJA, a judgment includes a non-monetary judgment and an interlocutory judgment need not be "final and conclusive". In the Parliamentary Debates, the minister in charge made the point that these specific amendments were intended to enable the court to enforce foreign orders such as Mareva injunctions. Only judgments from certain gazetted territories qualify for registration under the REFJA. To date, HK SAR is the sole listed gazetted territory although it is anticipated that the list of gazetted territories will expand in the near future. While the respondents had in hand a Hong Kong worldwide Mareva injunction, the amendments to REFJA only came into force after the case was decided.

The judgment may be found at: **https://www.supremecourt.gov.sg/docs/default-source/module-document/judgement/ca-188-2018-j—bi-xiaoqiong-pdf.pdf**