

IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

PRACTICE DIRECTION NO. 5 OF 2003

AMENDMENTS TO FORM 5 AND FORM 6:

**FORM 5 (PARAGRAPH 23) – INJUNCTION PROHIBITING
DISPOSAL OF ASSETS WORLDWIDE; AND**

**FORM 6 (PARAGRAPH 23) – INJUNCTION PROHIBITING
DISPOSAL OF ASSETS IN SINGAPORE.**

To clarify and improve the effectiveness of the standard form orders of court for Mareva injunctions, the following amendments (shown in bold type) have been made to Form 5 and Form 6 of the Supreme Court Practice Directions:

(a) Form 5

“Disposal of assets

1 (1) ...

(2) If the total unencumbered value of the defendant’s assets in Singapore exceeds \$ the defendant may remove any of those assets from Singapore or may dispose of or deal with them so long as the total unencumbered value of his assets still in Singapore remains ~~above~~ **not less than** \$. If the total unencumbered value of the defendant’s assets in Singapore does not exceed \$, the defendant must not remove any of those assets from Singapore and must not dispose of or deal with any of them, but if he has other assets outside Singapore the defendant may dispose of or deal with those assets so long as the total

unencumbered value of his assets whether in or outside Singapore remains ~~above~~ not less than \$.”

(b) Form 6

“Disposal of assets

1 (1) ...

(2) If the total unencumbered value of the defendant’s assets in Singapore exceeds \$, the defendant may remove any of those assets from Singapore or may dispose of or deal with them so long as the total unencumbered value of his assets still in Singapore remain ~~above~~ not less than \$.”

2 In addition, to clarify the position with respect to third-party banks subject to worldwide Mareva Injunctions, an additional clause has been added to Form 5. This clause is commonly known as the “*Baltic Clause*”, being derived from the case of *Baltic Shipping Company v Translink Shipping Ltd* [1995] 1 Lloyd’s Rep 673. The added clause is shown below:

THIRD PARTIES

(1) ...

(2) ...

(3) **Assets located outside Singapore**

Nothing in this order shall, in respect of assets located outside Singapore, prevent any third party from complying with:

(a) **what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of**

any contract between itself and the defendant;
and

- (b) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the plaintiff's solicitors.

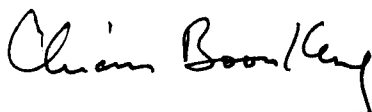
~~(3)~~(4) ...

~~(4)~~(5) ...

3 This practice direction will take effect on 12 May 2003.

4 This practice direction should be included in *The Supreme Court Practice Directions (1997 Ed.)* immediately before the first page of the table of contents. Instructions for effecting the amendments to *The Supreme Court Practice Directions (1997 Ed.)* are contained in the Appendix hereto.

Dated this 6th day of May 2003



CHIAM BOON KENG

REGISTRAR

SUPREME COURT

APPENDIX

Instructions for amendment of

The Supreme Court Practice Directions (1997 Ed.)

- 1 The existing pages 116, 118, and 123 should be replaced with the attached pages 116, 118 and 123.

- 2 The attached page 118A should be inserted after page 118.

THE ORDER

An application was made today [date] by counsel for ... the plaintiff to Justice [] by way of ex-parte summons-in-chambers no. ___ of ___. Justice [] heard the application and read the affidavit(s) of [name] filed on [date].

As a result of the applications **IT IS ORDERED** by Justice [] that:

Disposal of assets

- 1 (1) The defendant must not (i) remove from Singapore any of his assets which are in Singapore whether in his own name or not and whether solely or jointly owned up to the value of \$ or (ii) in any way dispose of or deal with or diminish the value of any of his assets whether they are in or outside Singapore whether in his own name or not and whether solely or jointly owned up to the same value. This prohibition includes the following assets in particular:-
 - (a) the property known as ... or the net sale money after payment of any mortgages if it has been sold;
 - (b) the property and assets of the defendant's business known as ... (or carried on at ..) or the sale money if any of them have been sold; and
 - (c) any money in the accounts numbered at
- (2) If the total unencumbered value of the defendant's assets in Singapore exceeds \$ the defendant may remove any of those assets from Singapore or may dispose of or deal with them so long as the total unencumbered value of his assets still in Singapore remains not less than \$. If the total unencumbered value of the defendant's assets in Singapore does not exceed \$, the defendant must not remove any of those assets from Singapore and must not dispose of or deal with any of them, but if he has other assets outside Singapore the defendant may dispose of or deal with those assets so long as the total unencumbered value of all his assets whether in or outside Singapore remains not less than \$.

THIRD PARTIES

(1) Effect of this order

It is a contempt of Court for any person notified of this order knowingly to assist in or permit a breach of the order. Any person doing so may be sent to prison or fined.

(2) Effect of this order outside Singapore

The terms of this order do not affect or concern anyone outside the jurisdiction of this Court until it is declared enforceable or is enforced by a Court in the relevant country and then they are to affect him only to the extent they have been declared enforceable or have been enforced **UNLESS** such person is:

- (a) a person to whom this order is addressed or an officer or an agent appointed by power of attorney of such a person; or
- (b) a person who is subject to the jurisdiction of this Court and (i) has been given written notice of this order at his residence or place of business within the jurisdiction of this Court and (ii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this order.

(3) Assets located outside Singapore

Nothing in this order shall, in respect of assets located outside Singapore, prevent any third party from complying with:

- (a) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the defendant; and
- (b) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the plaintiff's solicitors.

(4) Set off by banks

This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the defendant before it was notified of the order.

(5) Withdrawals by the defendant

No bank need enquire as to the application or proposed application of any money withdrawn by the defendant if the withdrawal appears to be permitted by this order.

[SERVICE OUT OF THE JURISDICTION AND SUBSTITUTED SERVICE

- (1) The plaintiff may serve the writ of summons on the defendant at ... by ... [mode of service].
- (2) If the defendant wishes to defend the action he must enter an appearance within days of being served with the writ of summons.]

(The next page is page 119)

THE ORDER

An application was made today [date] by counsel for ... the plaintiff to Justice [] by way of ex-parte summons-in-chambers no. ____ of _____. Justice [] heard the application and read the affidavit(s) of [name] filed on [date].

As a result of the application **IT IS ORDERED** by Justice [] that:

Disposal of assets

- 1 (1) The defendant must not remove from Singapore in any way dispose of or deal with or diminish the value of any of his assets which are in Singapore whether in his own name or not and whether solely or jointly owned up to the value \$ _____. This prohibition includes the following assets in particular:-
 - (a) the property known as ... or the net sale money after payment of any mortgages if it has been sold;
 - (b) the property and assets of the defendant's business known as ... (or carried on at ..) or the sale money if any of them have been sold; and
 - (c) any money in the accounts numbered at.....
- (2) If the total unencumbered value of the defendant's assets in Singapore exceeds \$ _____, the defendant may remove any of those assets from Singapore or may dispose of or deal with them so long as the total unencumbered value of his assets still in Singapore remains not less than \$ _____.

Disclosure of information

- 2 The defendant must inform the plaintiff in writing at once of all his assets in Singapore whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an affidavit which must be served on the plaintiffs solicitors within ... days after this order has been served on the defendant.