

SECURING THIRD-PARTY FREEZING INJUNCTION IN SINGAPORE: THE THREE ARROWS CASE STUDY



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INTRODUCTION

- In anticipation of losing a lawsuit, respondents may transfer their assets to third parties to keep these assets out of the claimant's reach to frustrate the enforcement of a prospective judgment against the respondents. To prevent this, an interim third-party freezing injunction can be sought from the Singapore Courts.
- The utility of a third-party freezing injunction is illustrated by the recent case of *Three Arrows Capital Ltd and others v Davies, Kyle Livingston and another* [2024] SGHC 164 ("*Three Arrows*"), which involved a third-freezing party injunction with respect to assets that were held by a respondent's wife.

THE LAW ON OBTAINING A THIRD-PARTY FREEZING INJUNCTION IN SINGAPORE

- To obtain a third-party freezing injunction in Singapore, an applicant must meet two requirements in addition to the requirement of making full and frank disclosure.
- First, they must show a "good arguable case" that a third party is holding assets belonging to the defendant. The threshold of a "good arguable case" is not high,

merely requiring the case to be "*more than barely capable of serious argument*". It is a lower standard of proof than the test of a balance of probabilities.

- Second, an applicant must show a real risk that the assets will be dissipated to frustrate the enforcement of an anticipated judgment. This requires "solid evidence" showing a real and material risk of dissipation.

ADVANTAGES OF SECURING A THIRD-PARTY FREEZING INJUNCTION

There are multiple advantages of securing a third-party freezing injunction. Some of these advantages are:

- **Secures Assets Transferred to Third Parties to Satisfy Judgment:** A third-party freezing injunction helps secure assets which have been transferred by the defendant to third parties. This helps to ensure that these assets are preserved in order to satisfy the judgment if the claimant wins the case.
- **Can be Sought on a Without Notice Basis:** As the third-party freezing injunction can be obtained without prior notice given to the defendant, this reduces the opportunity for the defendant / third party

to transfer or hide the assets before the third-party freezing injunction is secured by the claimant before the Court.

- **Worldwide Reach:** A third-party freezing injunction can be secured over assets of the defendant held worldwide and can thus secure assets transferred by the defendant to third parties across multiple jurisdictions, both local and foreign.

A BRIEF SUMMARY OF THE *THREE ARROWS* CASE

- Three Arrows Capital Ltd (“the Company”) was co-founded by one Mr. Zhu and one Mr. Davies. The Company used to be a hedge fund engaged in the trading and investing of cryptocurrencies and other digital assets.
- The Company’s feeder fund was Three Arrows Fund Limited (“TAFL”). Mr. Davies had previously owned shares in TAFL, but transferred these shares to his wife, Ms. Chen, in 2020 without consideration.
- The Company was subsequently placed into liquidation in June 2022 by the British Virgin Islands (“BVI”) courts. In the course of the BVI proceedings, the liquidators of the Company (the “Liquidators”) made a number of claims against Mr. Zhu, Mr. Davies, and Ms. Chen:
 1. First, the Liquidators made claims against Ms. Chen in respect of debts of over US\$4.5 million that she allegedly owed to the Company (the “Debt Claims”), and sought to set aside an alleged undervalue transaction that she had entered into with the Company.
 2. Second, the Liquidators made a claim against Mr. Davies and Mr. Zhu worth around US\$1.078 billion, on the basis of their alleged insolvent trading which they had engaged in while they still controlled the Company’s business.
- The liquidators of the Company had obtained a worldwide freezing order over the assets of Mr. Zhu, Mr. Davies, and Ms. Chen in the BVI proceedings. Subsequently, they sought freezing orders in the Singapore Courts in aid of those BVI proceedings. The freezing orders sought by the Liquidators in Singapore included orders in respect of Ms. Chen, to restrain her from disposing of her Singaporean assets up to the value of US\$1.082 billion.
- These orders were sought on two bases: (a) first, in respect of the claims made against Ms. Chen personally; and (b) second, in her capacity as a third party in respect of the claims that were made against Mr. Davies, on the basis that she held assets on his behalf as his nominee.
- A Singapore High Court judge granted an application for an interim freezing order (the “Singapore Freezing Order”), and the High Court in the *Three Arrows* case was primarily concerned with Ms. Chen’s application to set that order aside.

GOOD ARGUABLE CASE

- The Court held the freezing order should only lie against Ms. Chen up to the aggregate of: (a) the Debt Claims; and (b) additionally, in respect of such assets in her name for which there was a good arguable case that Mr. Davies had a beneficial interest. In this regard, the Court opined that the liquidators had made out a good arguable case that Ms. Chen was holding assets as Mr. Davies’ nominee.
- The Court took the view that the inference that Mr. Davies had adopted an arrangement of having his wife act as his

nominee to hold his interests in TAFL and related companies was “*compelling, and certainly at the least, more than seriously arguable*”. In respect of Ms. Chen’s TAFL shares, the Court found that there was a good arguable case that these were held on behalf of Mr. Davies, because there was a “mirroring” of executed transactions between her and Mr. Zhu.

- In other words, Ms. Chen had executed transactions such as redemptions, stock transfers, and loans to the Company at or around the same times and in the same or similar quantities as Mr. Zhu, which (according to the Liquidators) was consistent with the co-founders Mr. Zhu and Mr. Davies acting together as principals to plan transactions relating to TAFL and the Company. The Court also took into account the fact that Mr. Davies himself had no other shares in TAFL in his name.
- The Court also held that the Singapore Freezing Order was to include a Good Class Bungalow (the “**Singapore Property**”) that was registered in Ms. Chen’s sole name. This was because Ms. Chen conceded that S\$1 million of the down payment for that property could be said to be attributable to the TAFL shares, and the Court took the view that there was a good arguable case that receipts from the TAFL shares beneficially belonged to Mr. Davies.
- In coming to this conclusion, the Court also took into consideration a number of dealings involving Ms. Chen and Mr. Davies, including: (a) Mr. Davies’ transfer of a Dubai villa to Ms. Chen without consideration; and (b) a purchase of a yacht that Mr. Davies had referred to in contemporaneous documents as a purchase by him and Mr. Zhu, but for which the Company paid by debiting against Mr. Zhu and Ms. Chen’s accounts with the Company.
- While these assets were not in Singapore and hence not subject to the Singapore Freezing Order, the Court took the view that analysing the potential beneficial interests in the Singapore Property should not be undertaken in isolation. The Court opined that there was, on the evidence, a web of dealings between Ms. Chen and Mr. Davies that were not compellingly explained, and which supported a good arguable case that Mr. Davies beneficially owned the Singapore Property at least in part.

REAL RISK OF DISSIPATION OF ASSETS

- The Court found a real risk of dissipation by Ms. Chen, taking into account both her and Mr. Davies’ conduct. First, the Court found that the evidence suggested a considerable degree of cooperation and coordination between Mr. Davies and Ms. Chen, and that there were ample grounds to infer that Ms. Chen would cooperate with Mr. Davies’ efforts to remove or dissipate assets unless she was enjoined against doing so.
- Second, the Court found that Ms. Chen’s conduct gave rise to risks of removal or dissipation of assets. The Court took the view that Ms. Chen’s taking of loans while the Company was insolvent suggested an attempt to remove assets from the reach of creditors. Moreover, Ms. Chen had sought to withdraw assets from the Company by attempting to redeem shares on the date of liquidation.

CONCLUSION

- Hence, in cases where respondents have sought to move their assets into the hands of third parties to prevent claimants from enforcing their rights, it would be open to

claimants to seek the preservation of these assets for execution by obtaining freezing orders against these third parties.

- As shown in *Third Arrows*, this may be viable in cases where there are signs that assets had been transferred without consideration, especially where the third party appears to act in tandem with a respondent.

This article was authored by our Partner [Lionel Chan](#) and Senior Associate [Beatrice Wee](#). The authors thank Legal Intern [Bernice Tan](#) for her valuable assistance with the article.

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