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INJUNCTIONS WITHOUT A CAUSE (OF ACTION)

Half a century ago, it was accepted that the court's power to grant injunctions was limited to situations where the applicant had an independent underlying substantive right against the respondent. This notion is now generally considered outmoded, in view of the incremental development of novel forms of injunctions, many of which are "freestanding" in the sense of not requiring an independent underlying substantive right or cause of action. This article defends the modern position and argues that the rejection of "freestanding" injunctions in *Gazelle Ventures v Lim Yong Sim* [2024] 4 SLR 1066 represents a backward step that should not be followed.

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1 In England and Wales, it has now been confirmed by the Supreme Court of the United Kingdom that "the grant of injunctive relief is not always conditional on the existence of a cause of action".[1] The marked progress in the law on injunctions in this regard since *The Siskina*[2] has allowed the courts to innovate and generate flexible solutions in the context of Mareva (or freezing) injunctions, Norwich Pharmacal disclosure orders,[3] website blocking orders[4] and so on.

2 However, the position in Singapore is, with regret, unclear. In the most recent pronouncement on this question in Singapore, Philip Jeyaretnam J in *Gazelle Ventures Pte Ltd v Lim Yong Sim*[5] ("*Gazelle Ventures*") rejected the existence of what His Honour termed "freestanding" injunctions – *ie*, injunctions granted without the applicant having an independent cause of action against the respondent, going against *dicta*

1 *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983 at [43].
2 [1979] AC 210.
3 [1974] AC 133.
4 As in *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 (CA); this aspect upheld on appeal: *Cartier International AG v British Sky Broadcasting Ltd* [2018] Bus LR 1417 (SC).
5 [2024] 4 SLR 1066.

in *Sulzer Pumps Spain SA v Hyflux Membrane Manufacturing (S) Pte Ltd*[6] ("*Sulzer Pumps*") and *Tanoto Sau Ian v USP Group Ltd*[7] ("*Tanoto*").

3 This article respectfully argues that Jeyaretnam J's conclusion represents a step backwards in the law, and that the time has come for Singapore law to recognise injunctions without a cause of action. Modern developments in England recognise that injunctions are granted in response to a range of reasons beyond an applicant's private entitlement. A private law cause of action is not the only cause for an injunction.

I. Background to *Gazelle Ventures*

4 *Gazelle Ventures* arose out of an application for an injunction by Gazelle, an investment vehicle, to restrain the respondents from calling for, and passing, certain resolutions at an extraordinary general meeting of No Signboard's shareholders. No Signboard's majority shareholders were Mr Lim (CEO and Executive Chairman) and his investment vehicle, GuGong. Gazelle had previously offered rescue financing to No Signboard, the bulk of which would only be made available following the satisfaction of several conditions of an Implementation Agreement ("IA"). However, a regulatory issue upset a previous arrangement involving No Signboard's majority shareholders under which, in exchange for them voting for several resolutions that would satisfy the conditions of the IA, Mr Lim would be retained as a business consultant and obtain some of No Signboard's intellectual property. As the dispute between Mr Lim, GuGong and No Signboard could not be resolved, GuGong issued a requisition notice for No Signboard to hold an extraordinary general meeting, seeking to: (a) annul the resolutions implementing the IA; and (b) remove the directors that Gazelle had appointed.

5 In response, Gazelle sought an injunction to restrain Mr Lim and GuGong from taking the above steps, on the grounds that this would constitute a breach of contract, the tort of causing loss by unlawful means, or the tort of conspiracy (whether by lawful or unlawful means).[8] Alternatively, Gazelle submitted that a freestanding injunction should be granted, regardless of whether it had any independent cause of action against the defendants.

6 Given that Gazelle could not establish that the acts that it sought to injunct, even if committed by the defendants, would give rise to any

6 [2020] 5 SLR 634.
7 [2023] 5 SLR 909.
8 *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [6].

of the pleaded causes of action, Jeyaretnam J held that Gazelle was not entitled to a *quia timet* injunction (which requires that "the act enjoined would if committed give rise to a cause of action, either in itself or upon causing damage").[9] Arguably, a stronger basis for a *quia timet* injunction would have been to restrain a commission of the tort of procuring a breach of contract,[10] with the potential breach being of a *Mackay v Dick*-type implied term to co-operate to bring about the performance of the IA and/or not to do anything that would prevent the performance of the IA.[11] However, this possibility is by the by.

7 Importantly for present purposes, after finding that Gazelle was not entitled to a *quia timet* injunction, Jeyaretnam J went on to also reject Gazelle's alternative submission seeking a freestanding injunction:[12]

> Before me, it was suggested that there is now a new category of 'freestanding injunctions' granted to prevent injustice, regardless of whether there is a cause of action present or future. I do not agree …
>
> The jurisdiction of the court to grant interlocutory injunctions is broad (whenever 'just and convenient') but the exercise of that jurisdiction remains incidental to and dependent upon the enforcement of a substantive right.

8 In rejecting the suggestion that the court has the power to grant freestanding injunctions independent of the enforcement of any substantive right, Jeyaretnam J expressly disagreed with, and declined to follow, the *dicta* in *Sulzer Pumps* and *Tanoto* which suggested that the court did have such a power. Therefore, the legal position in Singapore can now fairly be said to be in a state of flux.

9 This is neither principled nor desirable. With all due caution that should be adopted when disagreeing with Jeyaretnam J, it is respectfully argued that His Honour's strident rejection of freestanding injunctions represents an unprincipled backwards step in the law. In short, it hews too closely to the old orthodox position that straitjackets the court's equitable jurisdiction to issue – and thereby develop the law of – injunctions, a position which has rightly been chipped away at over the past several decades. It is respectfully submitted that Jeyaretnam J's judgment goes against the grain of what appears to be a clear (and preferable) direction of travel.

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9 *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [5].

10 As Jeyaretnam J possibly hinted at in *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [26].

11 Gazelle submitted that Mr Lim and GuGong had "repeatedly sought to prevent the performance of the Implementation Agreement": *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [67].

12 *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [2]–[3].

10 This article will begin by setting out the orthodox position that was established in the 19th century, culminating in and encapsulated in Lord Diplock's speech in *The Siskina*. It will then show that since the 1980s, however, the court began taking a more expansive approach towards its powers to grant injunctions, developing the law on injunctions to meet the needs of justice over time and necessarily creating more (and more significant) exceptions to the orthodox position. It will be shown that these developments have reached a point where it is clear that the orthodox position can no longer be sustained.

11 The decision in *Sulzer Pumps* (namely that the court may grant freestanding injunctions) will then be examined against this backdrop, which should demonstrate that, far from being heterodox or unprincipled, it is in fact consonant with the modern judicial zeitgeist. This article will conclude by arguing that this position is to be welcomed, such that Jeyaretnam J's reasoning in *Gazelle Ventures* should be regarded as an outlier that should not be followed.

II. Orthodox position: injunction must be tied to cause of action

12 The proposition that the grant of an injunction requires the applicant to have an independent substantive right or cause of action against the respondent is ancient, if no longer accurate. For convenience, it will be referred to as the "orthodox position" or "orthodoxy".

13 Preliminarily, the powers of the court to grant injunctions have always stemmed, and continue to stem, from the court's inherent jurisdiction,[13] albeit they are confirmed by statute.[14]

14 The notion that an injunction must be tied to a legal right or liability can be traced back to *North London Railway Co v Great Northern Railway Co*,[15] where the Court of Appeal considered whether the effect of the Supreme Court of Judicature Act 1873[16] (which, as is well known, fused the common law courts and the courts of equity) was to alter the pre-existing rule that the grant of an injunction required an independent

13 *Snell's Equity* (John McGhee & Steven Elliott eds) (Sweet & Maxwell, 34th Ed, 2020) §18-046; *Fourie v Le Roux* [2007] 1 WLR 320 at [25].

14 Supreme Court Act 1981 (c 54) (UK) s 37(1); Supreme Court of Judicature Act 1969 (2020 Rev Ed) s 18(2) read with First Schedule, para 14; Civil Law Act 1909 (2020 Rev Ed) s 4(10). See also O 92 r 4(1) of the Rules of Court (2014 Rev Ed).

15 (1883) 11 QBD 30.

16 (c 66) (UK).

cause of action. Both Brett and Cotton LJJ answered in the negative. Brett LJ held:[17]

> … the cases before the Judicature Act would seem to shew that no Court would have issued an injunction in a case where if the thing went on there would be no legal injury.
>
> …
>
> [I]n my opinion there is nothing in the Judicature Act which enables any part of the High Court to issue an injunction in a case in which before the Judicature Act there was no legal right on the one side or no legal liability on the other at law or in equity.

15 As such, the Court of Appeal held that the plaintiff was not entitled to an anti-arbitration injunction to restrain the defendant from commencing an arbitration that would be futile, since:[18]

> … the fact of the appellants going on with that futile arbitration is no legal injury. Suppose an award was made the respondents could not bring an action on that account against the appellants. It would not be a cause of action known to the law.

16 The position remained largely unchanged for almost a century, as confirmed by the House of Lords in *The Siskina*. Lord Diplock, with whom all the other Law Lords agreed, said in an oft-quoted passage:[19]

> A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action …
>
> Since the transfer to the Supreme Court of Judicature of all the jurisdiction previously exercised by the court of chancery and the courts of common law, the power of the High Court to grant interlocutory injunctions has been regulated by statute. That the High Court has no power to grant an interlocutory injunction except in protection or assertion of some legal or equitable right which it has jurisdiction to enforce by final judgment, was first laid down in the classic judgment of Cotton LJ in *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30, 39–40, which has been consistently followed ever since.

17 *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30 at 35 and 38.
18 *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30 at 36.
19 *The Siskina* [1979] AC 210 at 256.

17 It must be noted that the preceding passage from Lord Diplock's speech, although influential, is technically *obiter*.[20] What was in issue in *The Siskina* was the narrow question of whether an interim injunction fell within the scope of an "action" within the meaning of (what was then) RSC Ord 11, r 1(1)(i), which governed permission to serve a writ out of the jurisdiction. The House of Lords decided in the negative, holding that r 1(1)(i) referred only to final injunctions sought as the substantive relief in a cause of action. As such, technically, neither the nature of interim injunctions nor the court's power to grant interim injunctions was in issue in *The Siskina*, though it appears safe to say that Lord Diplock's speech, endorsed as it was by all four other Law Lords hearing the case, did accurately represent the law as it stood then.

III. Moving away from *The Siskina*

18. Despite how unequivocally Lord Diplock espoused the orthodoxy in *The Siskina*, the scope of circumstances in which the court exercised its jurisdiction to grant injunctions began to widen almost immediately afterwards.

A. South Carolina Insurance Co v Assurantie Maatshappij De Zeven Provincien NV*: anti-suit injunctions and freezing injunctions*

19 As early as 1987, it was recognised that anti-suit injunctions and freezing injunctions elude easy classification within a framework requiring injunctions to be tied to a cause of action. In *South Carolina Insurance Co v Assurantie Maatshappij De Zeven Provincien NV*[21] ("*South Carolina Insurance Co*"), Lord Brandon attempted to categorise the situations where the High Court would exercise its power to grant injunctions into two broad categories: (a) when it can be shown that the respondent "has either invaded, or threatens to invade, a legal or equitable right of the [applicant] for the enforcement of which the latter is amenable to the jurisdiction of the court"; and (b) where the respondent "has behaved, or threatens to behave, in a manner which is unconscionable".[22] However, His Lordship was unable to fit the anti-suit injunction and the freezing injunction (both of which, by then, had become well-established) into

20 As was recognised by the Privy Council in *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389 at [9]–[10].

21 [1987] AC 24. The case concerned an anti-suit injunction which turned on its facts.

22 *South Carolina Insurance Co v Assurantie Maatshappij De Zeven Provincien NV* [1987] AC 24 at 40.

that dichotomy, and sought to categorise them as *sui generis* exceptions to the orthodoxy.

20 As to anti-suit injunctions, Lord Brandon explained their exceptionality on the ground that they were granted in circumstances where:[23]

> … the party who has brought the proceedings in the foreign court may not by doing so, have invaded any legal or equitable right of the other party, nor acted in an unconscionable manner. The court nevertheless has power to restrain him from continuing his foreign proceedings on the ground that there is another forum in which it is more appropriate, in the interests of justice, that the dispute between the parties should be tried.

21 An anti-suit injunction may be freestanding where it is sought as a final injunction to restrain vexatious and oppressive conduct abroad, and the defendant has no claim based on an underlying legal or equitable right.[24] Though Lord Brandon may have identified such an injunction as an exception to his taxonomy of injunctions, it appears to remain a matter of some debate whether such anti-suit injunctions enforce a legal or equitable right. The authors return to this point below in the discussion on *Mercedes Benz AG v Leiduck*[25] ("*Mercedes Benz*"), but for now, it is sufficient to highlight that Thomas Raphael KC considers that Lord Brandon's taxonomy comfortably renders anti-suit injunctions an "established exception" to the requirement that an injunction be tied to a cause of action.[26]

22 As to freezing injunctions, Lord Brandon did not elaborate on why freezing injunctions constituted an exception to his proposed dichotomy; indeed, the answer was perhaps not fully clear at the time *South Carolina Insurance Co* was decided. But it is now clear that freezing injunctions are often exceptional, as they can be granted without the applicant having an independent cause of action against the respondent, and, indeed, without there being any invasion, or threat to, a legal or equitable right of the applicant whatsoever.

23 *First*, it is now clear that freezing injunctions may be granted against third parties to a dispute, against whom the applicant has no cause of action or substantive right independent of the injunction itself.

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23 *South Carolina Insurance Co v Assurantie Maatshappij De Zeven Provincien NV* [1987] AC 24 at 40.

24 See *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 for the requirements for an anti-suit injunction in Singapore.

25 [1996] AC 284.

26 Thomas Raphael QC, *The Anti-suit Injunction* (Oxford University Press, 2nd Ed, 2019) at para 3.06.

The quintessential example is the Chabra injunction, under which a third party against whom a plaintiff has no cause of action may be joined to a suit and a Mareva injunction issued against him if a good arguable case can be shown that that third party owns assets belonging to the defendant.[27] In respect of the court's jurisdiction to grant such relief, Mummery J explained:[28]

> There is one defendant Mr. Chabra against whom the plaintiff undoubtedly has a good arguable cause of action… The claim for an injunction to restrain disposal of assets by Mr. Chabra is ancillary and incidental to that cause of action. In my judgment the claim to a similar injunction against the company is also ancillary and incidental to the claim against Mr. Chabra and the court has power to grant such an injunction in an appropriate case. *It does not follow that, because the court has no jurisdiction to grant a Mareva injunction against the company if it were the sole defendant, the court has no jurisdiction to grant an injunction against the company as ancillary to, or incidental, to the cause of action against Mr. Chabra* … [emphasis added]

24 The Chabra injunction is firmly part of Singapore law. In *Teo Siew Har v Lee Kuan Yew*,[29] Chao Hick Tin JA held that such a third party could be added to the dispute in accordance with the procedure in O 15 r 6(2)(*b*) of the Rules of Court 2014[30] ("ROC 2014"). While the Rules of Court have since been revised as of 2021 ("ROC 2021"), it is suggested that the Chabra injunction remains available. Though there is no direct statutory analogue to the old O 15 r 6(2)(*b*) in the ROC 2021, the new O 9 r 10(1) provides that the court may add a defendant who "may have an interest in the action". The authors tentatively suggest that such a provision could be used to add a third party for the purposes of issuing a Mareva injunction against them. It is also notable that the authors of the Singapore White Book, writing in respect of the new O 13 (concerning injunctions), appear to consider that the Chabra-type Mareva injunction remains available.[31]

25 Relatedly, it is worth mentioning that Norwich Pharmacal disclosure orders[32] and Anton Piller search orders[33] may also be granted

27 Named after *TSB Private Bank International SA v Chabra* [1992] 1 WLR 231.

28 *TSB Private Bank International SA v Chabra* [1992] 1 WLR 231 at 241–242.

29 [1999] 3 SLR(R) 410.

30 *Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410 at [19].

31 Wendy Lin & Lionel Leo, "Injunctions, Search Orders and other Interim Relief Before Trial" in *Singapore Civil Procedure 2024* (Cavinder Bull gen ed) (Sweet & Maxwell, 2024) at para 13/1/61.

32 *Norwich Pharmacal Co v Customs and Excise Commissioners* [1974] AC 133; see also, *eg*, *Various Claimants v News Group Newspapers Ltd (No 2)* [2014] Ch 400 at [51]–[55].

33 *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55; see also, *eg*, *Abela v Baadarani (No 2)* [2018] 1 WLR 89 at [33]. In Singapore, the courts are empowered

(cont'd on the next page)

against innocent third parties caught up in a dispute. It also seems that Bankers Trust disclosure orders may be granted against innocent third parties to assist with tracing assets, a development of the common law as confirmed in O 11 r 11(1) of the ROC 2021.[34] These injunctions may be obtained notwithstanding that, apart from the injunction, the applicant can assert no cause of action against the respondent.[35]

26 *Second*, it has also been firmly established that freezing injunctions may be granted even in the total absence of any invasion or threat to a legal or equitable right of the applicant (and not merely where the applicant has an independent cause of action against someone other than the respondent). This point is illustrated by the court's power to grant post-judgment freezing injunctions, whose purpose is to assist the execution of a debt.[36] As explained by Lord Leggatt in *Convoy Collateral Ltd v Broad Idea International Ltd*[37] ("*Broad Idea*"):

> Under the doctrine of merger, a cause of action is extinguished once judgment has been given on it, and the claimant's sole right is a right founded on the judgment… Therefore, when a freezing injunction is granted post-judgment, there is no extant cause of action for damages or other substantive relief in aid of which the injunction could be granted.

27 Returning, for the moment, to *South Carolina Insurance Co*, it is thus clear that even by 1987, no ironclad rule that the grant of an injunction required an independent legal or equitable right could be sustained, with even Lord Brandon's attempt at distilling a general approach having to admit of exceptions.

28 The better view, as noted by Prof Devonshire, is that "[t]he discretionary nature of injunctive relief cannot be constrained by a single formula"; as such, "*The Siskina* is misplaced as a general doctrine… [i]t does not follow that every order that is inconsistent with *The Siskina* must

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to grant search orders under O 13 of the Rules of Court 2021, which includes the scope of the Anton Piller order.

34 *Bankers Trust Co v Shapira* [1980] 1 WLR 1274; *Goh Seng Heng v Liberty Sky Investments Ltd* [2017] 2 SLR 1113; Rules of Court 2021 O 11 r 11(1). Note, however, that the correctness of this principle has been doubted by Goh Yihan J in *Alliance Divine Impex Pte Ltd v Arulappan Tony* [2024] SGHC 227, on grounds that it potentially stands at odds with certain sections of the Banking Act 1970 (2020 Rev Ed) – but not because of any limitation on the court's inherent jurisdiction.

35 In Singapore law, the availability of these remedies is enshrined in statute: see O 13 of the Rules of Court 2021.

36 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2021] 1 SLR 1298 at [21]. See also *Michael Wilson and Partners Ltd v Emmott* [2019] 4 WLR 53, especially at [53]: "post-judgment *Mareva* injunctions can no longer be described as rare".

37 [2023] AC 389 at [91].

be justified as an exception to it."[38] Indeed, this observation had already been made by Lord Goff when stating in *South Carolina Insurance Co* that he was:[39]

> … reluctant to accept the proposition that the power of the court to grant injunctions is restricted to certain exclusive categories. That power is unfettered by statute and it is impossible at the present time to foresee every circumstance in which it may be thought right to make the remedy available.

29 Indeed, not long after *South Carolina Insurance Co*, Lord Goff's *dictum* quoted above was endorsed by a majority of the House of Lords in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd*[40] ("*Channel Tunnel*"). *Channel Tunnel* laid down the proposition that the court has the power to grant an interlocutory injunction against a party within its jurisdiction, where the injunction would be ancillary to a claim for relief being pursued in arbitration proceedings or in a foreign court,[41] leading Lord Collins (who had, at that point, not yet been elevated to the Bench) to note that "the clear modern trend is against the authority of *The Siskina*".[42]

B. Mercedes Benz

30 Merely three years later, an even stronger statement against any limit on the court's jurisdiction to grant injunctions emerged from Lord Nicholls' dissent in *Mercedes Benz*.[43] The case turned on whether a worldwide freezing injunction could be granted in a jurisdiction separate from where the substantive relief was being sought (and which, therefore, would be freestanding). Lord Nicholls considered the above cases that followed *The Siskina*, and remarked:[44]

> *These are highly persuasive voices that the jurisdiction to grant an injunction, unfettered by statute, should not be rigidly confined to exclusive categories by judicial decision.* The court may grant an injunction against a party properly before it where this is required to avoid injustice, just as the statute provides and just as the Court of Chancery did before 1875. The court habitually grants

38 Peter Devonshire, "Re-Examining The *Siskina* Doctrine: Recent Developments" (2020) 39(3) CJQ 237 at 253.

39 *South Carolina Insurance Co v Assurantie Maatshappij De Zeven Provincien NV* [1987] AC 24 at 44.

40 [1993] AC 334 at 343 (*per* Lord Browne-Wilkinson, with whom Lord Keith and Lord Goff agreed).

41 This also represents the position in Singapore: *Front Carriers Ltd v Atlantic & Orient Shipping Corp* [2006] 3 SLR(R) 854 at [32], [43] and [52]; *Bi Xiaoqiong v China Medical Technologies, Inc* [2019] 2 SLR 595 at [103].

42 Lawrence Collins, "The End of The *Siskina*?" (1993) 109 LQR 342 at 343.

43 [1996] AC 284.

44 *Mercedes Benz AG v Leiduck* [1996] AC 284 at 308.

> injunctions in respect of certain types of conduct. But that does not mean that the situations in which injunctions may be granted are now set in stone for all time. The grant of *Mareva* injunctions itself gives the lie to this. As circumstances in the world change, so must the situations in which the courts may properly exercise their jurisdiction to grant injunctions. The exercise of the jurisdiction must be principled, but the criterion is injustice. *Injustice is to be viewed and decided in the light of today's conditions and standards, not those of yester-year.* [emphasis added]

31 Arguably, Lord Nicholls overshot the mark to the extent that his remarks appear to suggest that the court had a "strong" discretion unbounded by principle to grant novel injunctions.[45] More properly, the sense in which the court's jurisdiction to grant injunctions is "unfettered" should be understood as "referring to the capacity of unwritten rules of law to evolve over time, subject to the limits imposed by the doctrine of precedent".[46]

32 The upshot of Lord Nicholls' speech, nonetheless, is that the focus on identifying an independent legal or equitable right is unnecessary and futile. He highlights that "causes of action" may extend into areas where the corresponding rights may be "elusive", a phenomenon illustrated in the freestanding anti-suit injunction.

33 To fit such an injunction into the *Siskina*'s requirement of an underlying cause of action, Lord Nicholls observes that "the underlying right, if sought to be identified, can only be defined along the lines that a party has a right not to be sued abroad when that would be unconscionable".[47] In other words, the cause of action that the anti-suit injunction is tied to would have to be the right to that injunction, an argument that "exemplifies the circular nature of the discussion".[48]

34 The implication of this is that if one really wanted to, the language of rights can be strained to justify any instance in which the court grants an injunction, as some commentators have valiantly attempted.[49] This impulse was described by Lord Leggatt in *Broad Idea* as harmless, "provided [such a right] is understood to be different, and different in character, from the right on which a cause of action for substantive relief

45 Andrew Dickinson, "Taming Anti-suit Injunctions" in *A Conflict of Laws Companion* (Andrew Dickinson & Edwin Peel eds) (Oxford University Press, 2021) at p 82.

46 Andrew Dickinson, "Taming Anti-suit Injunctions" in *A Conflict of Laws Companion* (Andrew Dickinson & Edwin Peel eds) (Oxford University Press, 2021) at p 83.

47 *Mercedes Benz AG v Leiduck* [1996] AC 284 at 310.

48 *Mercedes Benz AG v Leiduck* [1996] AC 284 at 310.

49 See especially J D Heydon, M J Leeming & P G Turner, *Meagher, Gummow and Lehane's Equity: Doctrines & Remedies* (LexisNexis Butterworths Australia, 5th Ed, 2015) at ch 21.

is based".[50] Notwithstanding that it is harmless, the authors respectfully submit that such an approach is neither necessary, nor even useful, for illuminating the basis for granting injunctions.[51] In any event, as Lord Nicholls explained, even if this approach were adopted, that merely recognises that the applicant must have a *right to the injunction*. It does not follow that, in order to have that right, the applicant must also have an *independent legal or equitable right to substantive relief* against the respondent.[52] There is therefore little to be gained from dwelling on semantics.

C. Broadmoor Special Hospital Authority v Robinson

35 A further nail in the coffin of Lord Diplock's statement of orthodoxy in *The Siskina* came in the form of Lord Woolf MR's speech in *Broadmoor Special Hospital Authority v Robinson*[53] ("*Broadmoor*"), which warned that Lord Diplock's statement was "far from being an exhaustive statement of the extent of the court's powers to grant an injunction or as a guide as to who is entitled to bring proceedings to claim an injunction".[54] Lord Woolf MR then endorsed the following passage from *The Principles of Equitable Remedies*:[55]

> *The powers of courts with equitable jurisdiction to grant injunctions are, subject to any relevant statutory restrictions, unlimited*. Injunctions are granted only when to do so accords with equitable principles, but this restriction involves, not a defect of powers, but an adoption of doctrines and practices that change in their application from time to time. Unfortunately there have sometimes been made observations by judges that tend to confuse questions of jurisdiction or of powers with questions of discretions or of practice. The preferable analysis involves a *recognition of the great width of equitable powers*, an historical appraisal of the categories of injunctions that have been established and an acceptance that *pursuant to general equitable principles injunctions may issue in new categories when this course appears appropriate*. [emphasis added]

36 *Broadmoor* involved the applicant hospital authority seeking an injunction to restrain a former patient from publishing a book

50 *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389 at [89].

51 A similar argument was floated in Thomas Raphael QC, *The Anti-suit Injunction* (Oxford University Press, 2nd Ed, 2019) at para 3.25 in respect of the case *Masri v Consolidated Contractors International (UK) Ltd (No 3)* [2009] QB 503.

52 A distinction recognised in I C F Spry, *Equitable Remedies* (Sweet & Maxwell, 9th Ed, 2014) at p 343 cited with approval by Lord Leggatt in *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389 at [54].

53 [2000] QB 775.

54 *Broadmoor Special Hospital Authority v Robinson* [2000] QB 775 at [20].

55 *Broadmoor Special Hospital Authority v Robinson* [2000] QB 775 at [20]. See I C F Spry, *The Principles of Equitable Remedies* (Thomson Reuters Australia, 5th Ed, 1997) at p 323.

containing personal details about some of his fellow patients, which the hospital authority argued would, *inter alia*, cause distress to them. All three judges in the Court of Appeal held that, as a matter of principle, the court had the power to grant an injunction to enable a statutory authority to perform its statutory responsibilities without impediment;[56] this was so notwithstanding that it appeared doubtful what, if any, cause of action the statutory authority would have independent of the injunction sought. That being said, the injunction sought in *Broadmoor* was not granted on the facts: Lord Woolf MR decided against the grant of the injunction sought as a matter of discretion,[57] while Morritt and Waller LJJ held that the scope of the hospital authority's statutory power did not extend so far as to serve as a proper basis for seeking the particular injunction sought.[58]

D. Fourie v Le Roux

37 In view of the aforementioned developments, Lord Scott (giving the judgment of the court) was plainly correct to observe in *Fourie v Le Roux* ("*Fourie*") that:[59]

> The practice regarding the grant of injunctions, as established by judicial precedent and rules of court, has not stood still since *The Siskina* [1979] AC 210 was decided and is unrecognisable from the practice to which Cotton LJ was referring in *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30, 39–40 and to which Lord Diplock referred in *The Siskina* at p 256.

38 Curiously, the passage of *Snell's Equity* which Jeyaretnam J cites in *Gazelle Ventures* in relation to the court's jurisdiction to grant injunctions[60] references the exact passage of Lord Scott's speech in *Fourie* above. Jeyaretnam J's conclusion that the court's power to grant injunctions is "dependent upon the enforcement of a substantive right"[61] is plainly at odds with Lord Scott's conclusion.

IV. No closed list of injunctions

39 In modern times, the contexts in which the court has proved willing to exercise its inherent equitable power to grant injunctions have

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56 *Broadmoor Special Hospital Authority v Robinson* [2000] QB 775 at [25] and [31], *per* Lord Woolf MR, at [50], *per* Morritt LJ and at [55]–[56], *per* Waller LJ.

57 *Broadmoor Special Hospital Authority v Robinson* [2000] QB 775 at [32]–[33].

58 *Broadmoor Special Hospital Authority v Robinson* [2000] QB 775 at [43], *per* Morritt LJ and at [57], *per* Waller LJ.

59 *Fourie v Le Roux* [2007] 1 WLR 320 at [30], cited with approval in *Sulzer Pumps Spain, SA v Hyflux Membrane Manufacturing (S) Pte Ltd* [2020] 5 SLR 634 at [88].

60 *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [69].

61 *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [3].

only continued to increase. This is at odds with Jeyeratnam J's narrow characterisation of the court's exercise of that jurisdiction.[62] Rather, it is suggested that the court ought to take a wide view of this power and will not hesitate to exercise it, so long as there is a principled basis to do so in the interest of justice.[63]

A. Expanded scope of Norwich Pharmacal orders

40 Beyond the significantly expanded scope of freezing injunctions discussed above, this is further evidenced by the widening scope of Norwich Pharmacal orders in England. In *Norwich Pharmacal Co v Customs and Excise Commissioners*[64] itself, the claimants had (a) a good arguable case against the wrongdoers that (b) a tortious act had been committed by the wrongdoers and (c) required the defendant to disclose information in order to commence proceedings against the wrongdoers.[65] In the decades since, all three of these requirements have been abrogated. As observed by Hollander,[66] it is now clear that Norwich Pharmacal orders can be granted where: (a) no good arguable case against the wrongdoer(s) has been established;[67] (b) where the wrong committed is a crime or equitable wrong rather than a tort;[68] and (c) even where no proceedings are intended to be commenced against the wrongdoer(s).[69] This demonstrates the capacity for the law to develop incrementally along principled lines, evincing a willingness to grant injunctions quite irrespective of whether the applicant has an independent legal or equitable right against the respondent.[70]

62 *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [69].
63 *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 at [54], discussed below.
64 [1974] AC 133.
65 *Norwich Pharmacal Co v Customs and Excise Commissioners* [1974] AC 133.
66 Charles Hollander, "*Norwich Pharmacal* Takes Wings" (2009) 28(4) CJQ 458.
67 *P v T Ltd* [1997] 1 WLR 1309.
68 *Ashworth Hospital Authority v MGN Ltd* [2002] 1 WLR 2033. Presumably the wrong being a breach of contract would also be no impediment, though it is difficult to conceive of a factual scenario where a Norwich Pharmacal order is required to show (or would assist in showing) a breach of contract.
69 *British Steel Corp v Granada Television Ltd* [1981] AC 1096.
70 Note, however, that the Singapore court's power to grant Norwich Pharmacal orders is statutorily confirmed in the Supreme Court of Judicature Act 1969 (2020 Rev Ed) First Schedule, at para 12, and O 11 r 11 of the Rules of Court 2021. The latter "enables a scope of pre-action production that extends beyond the parameters set out in *Norwich Pharmacal*": *Gillingham James Ian v Fearless Legends Pte Ltd* [2023] SGHCR 13.

B. Cartier International AG v British Sky Broadcasting Ltd*: website-blocking injunction*

41 The most recent example of the court's power to grant injunctions being extended in a novel direction is to be found in *Cartier International AG v British Sky Broadcasting Ltd*[71] ("*Cartier International*"). Kitchin LJ (with whom both Jackson and Briggs LJJ agreed on this point) ordered an injunction against five internet service providers ("ISPs") compelling them to block access to websites that infringed trademarks.[72] This was notwithstanding that the ISPs, being mere intermediaries with no control over the content in the websites which they provided access to, were held to have not invaded or threatened to invade any independently identifiable legal or equitable right of the claimants. In other words, the claimants had no cause of action against them and had not (and could not have) brought proceedings for substantive relief against them independent of their application for an injunction.[73]

42 In ordering an unprecedented website-blocking injunction, Kitchin LJ comprehensively reviewed the authorities on the court's power to grant injunctions, and observed that:[74]

> It is clear … that matters have moved on since 1986 and the courts have shown themselves ready to adapt to new circumstances by developing their practice in relation to the grant of injunctions where it is necessary and appropriate to do so to avoid injustice …
>
> … [T]he preferable analysis involves a recognition of the great width of [the court's] equitable powers, an historical appraisal of the categories of injunctions that have been established and an acceptance that pursuant to general equitable principles injunctions may issue in new categories when this course appears appropriate.
>
> …
>
> I believe that this court must now recognise pursuant to general equitable principles that this is one of those new categories of case in which the court may grant an injunction when it is satisfied that it is just and convenient to do so.

43 It has further been suggested that the website-blocking order in *Cartier International* can be made in other contexts beyond that of

71 [2017] Bus LR 1.

72 A similar order was granted by the Supreme Court of Canada in *Google Inc v Equustek Solutions Inc* [2017] 1 SCR 824.

73 As recognised in *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389 at [50].

74 *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 at [46], [54] and [65].

trademark infringement.[75] This would be consistent with the reasoning in *Cartier International* itself, which distilled the principle of an equitable duty of assistance underpinning a long line of authorities that came before, in which innocent third parties were injuncted from facilitating a wrong.[76] In each of those cases, an injunction was granted notwithstanding that the respondent was not itself regarded as a wrongdoer and it was accepted that the respondent would not be liable to pay compensation for any breach of legal or equitable duty.

44 These developments confirm that the categories of injunctions which the court is empowered to grant in the exercise of its equitable jurisdiction is not closed, much less tethered to any requirement that the applicant must have an independent legal or equitable right (or cause of action) against the respondent.

45 For completeness, it is noted that the decision of the Court of Appeal in *Cartier International* was overruled by the Supreme Court on the issue of which party should pay for the costs of implementing the website-blocking injunction,[77] though the Supreme Court confirmed the Court of Appeal's finding that the court had the equitable power to order a website-blocking injunction. Lord Sumption (with whom the rest of the Supreme Court agreed) approved of the existence of an equitable duty to assist on an innocent third party respondent of an injunction application (against whom the applicant of the injunction has no independent cause of action),[78] albeit His Lordship explained the duty as being:[79]

> … not a legal duty in the ordinary sense of the term … [but] really only another way of saying that the court had an equitable jurisdiction to intervene … the duty is said to lie rather on the court to make an order necessary to the administration of justice than on the respondent to satisfy some right existing in the plaintiff.

75 Alice Blythe, "Website Blocking Orders Post-*Cartier v BSkyB*: An Analysis of the Legal Basis for These Injunctions and the Potential Scope of this Remedy Against Other Tortious Acts" (2017) 39(12) EIPR 770 at 773.

76 *Cartier International AG v British Sky Broadcasting Ltd* [2017] Bus LR 1 at [52]–[53] and [200]–[205]. The case law can be traced back to *Upmann v Elkan* LR 12 Eq 140; 7 Ch App 130.

77 *Cartier International AG v British Sky Broadcasting Ltd* [2018] 1 WLR 3259.

78 *Cartier International AG v British Sky Broadcasting Ltd* [2018] 1 WLR 3259 at [31].

79 *Cartier International AG v British Sky Broadcasting Ltd* [2018] 1 WLR 3259 at [11], citing the South African decision of *Colonial Government v Tatham* (1902) 23 Natal LR 153 at 158.

C. Broad Idea

46 All the above cases were comprehensively considered by the Privy Council in *Broad Idea*,[80] culminating in the four-judge majority (comprising Lords Leggatt, Briggs, Sales and Hamblen; Sir Geoffrey Vos MR, Lords Reed and Hodge in the minority) expressly rejecting the notion that the grant of an injunction required (at least ancillary) proceedings for substantive relief in respect of a cause of action. The majority endorsed Dr Spry's passage quoted by Lord Woolf MR in *Broadmoor*,[81] and went on to observe that:[82]

> Since *The Siskina* was decided, the proposition that the power to grant an interlocutory injunction, or its exercise, is dependent on the existence of a claim for substantive relief which the court has jurisdiction to grant has been comprehensively undermined.
>
> …
>
> It is necessary to dispel the residual uncertainty emanating from *The Siskina* and to make it clear that the constraints on the power, and the exercise of the power, to grant freezing and other interim injunctions which were articulated in that case are not merely undesirable in modern day international commerce but legally unsound. The shades of *The Siskina* have haunted this area of the law for far too long and they should now finally be laid to rest.

D. Wolverhampton City Council v London Gypsies and Travellers

47 The majority's conclusion in *Broad Idea* was again reiterated by all five judges in the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers*[83] ("*Wolverhampton City Council*"), who observed that "[i]t is now well established that the grant of injunctive relief is not always conditional on the existence of a cause of action",[84] and

80 *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389. The primary issue that arose for consideration by the Privy Council was the scope of the court's power to grant freezing injunctions "in aid of any judgment capable of enforcement through the Court's process, whether that judgment be local or foreign, existing or prospective, or against the injunction's addressee or not": see John-Patrick Asimakis, "Broadening the Idea and Unfreezing the Law of Freezing Injunctions: *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24" (2022) 41(3) CJQ 203 at 204. Discussion of this particular issue, important though it is in the law of freezing injunctions, is beyond the scope of the present article, which concerns injunctions of all kinds.

81 *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389 at [57].

82 *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389 at [115] and [120].

83 [2024] AC 983.

84 *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983 at [43].

who again endorsed Dr Spry's statement that "[t]he powers of courts with equitable jurisdiction to grant injunctions are, subject to any relevant statutory restrictions, unlimited".[85] In light of these observations, the Supreme Court endorsed the granting of "newcomer injunctions" as a wholly new type of *contra mundum* injunction to restrain anyone from camping without permission on land owned by a local authority.[86]

V. Position in Singapore

A. Sulzer Pumps *and* Tanoto

48 It was against this backdrop (*sans* the decisions in *Broad Idea* and *Wolverhampton City Council*, which had not yet been decided[87]) that *Sulzer Pumps* was decided. In *Sulzer Pumps*, Aidan Xu @ Aedit Abdullah J unequivocally confirmed that "the court has the power to grant a freestanding injunction to prevent injustice, in exercise of its equitable jurisdiction".[88] As should be clear by this stage of the argument, the authors are of the view that this statement of principle on which *Sulzer Pumps* was decided is entirely correct and in line with the clear direction of travel in the law in this area.

49 In reaching his conclusion, Xu J first considered Lord Scott's speech in *Fourie* which confirmed the court's power to issue injunctions notwithstanding a lack of substantive proceedings. His Honour then considered the Singapore Court of Appeal's characterisation of a restraining injunction on a bond call in *Eltraco International Pte Ltd v CGH Development Pte Ltd* as an exercise of the court's "equitable jurisdiction" in "ensur[ing] that there is no injustice or abuse".[89] All of these decisions speak with one voice.

50 For completeness, it must be noted that *Sulzer Pumps* concerned injunctions on a bond call, with the applicant alleging an improper and unfair bond call by the respondent. The bond was security for the applicant's warranty obligations for a project it was contracted by the respondent to deliver, and the defendant made a call on the bond, claiming that the applicant's work fell short of its obligations. At the

85 *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983 at [147].
86 *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983 at [238].
87 Though, in any event, *Convoy Collateral Ltd v Broad Idea International Ltd* [2023] AC 389 merely confirmed what had already become clear: David Capper, "The *Siskina* Doctrine: Much Ado About Nothing?" (2022) 138 LQR 181 at 185.
88 *Sulzer Pumps Spain, SA v Hyflux Membrane Manufacturing (S) Pte Ltd* [2020] 5 SLR 634 at [90].
89 [2000] 3 SLR(R) 198 at [36].

time, the respondent's group of companies was undergoing restructuring proceedings, and the application for an injunction was to prevent a payout which might be unrecoverable before the dispute could be resolved. As Jeyaretnam J noted in *Gazelle Ventures*, if the call was indeed wrongful, this would form a cause of action in Singapore under the ground of unconscionability, and not therefore constitute a freestanding injunction if granted.[90] Nevertheless, Xu J's statement of principle as to the circumstances in which injunctions are available remains, it is submitted, correct.

51 Similarly, in some of the English cases in which an injunction was granted against a non-cause of action defendant, the applicant arguably did have an independent legal or equitable right against the respondent which was under threat, even if it was not argued or articulated before the court. In such cases, the precise juridical relationships between the parties, and the court, can often be a controversial question – though further exploration of this difficult question is beyond the present scope.

52 Nevertheless, while the precise nature and basis for the injunction under consideration in *Sulzer Pumps* (and other cases) may be in dispute, it is clear that the line of authority presented in Xu J's *dicta* confirms the present state of the law (both in Singapore and England and Wales) as recognising the court's power to grant freestanding injunctions.

53 *Sulzer Pumps* was followed in *Tanoto*. The relevant *dicta* in *Tanoto* follows from an application for an injunction seeking to prevent several minority shareholders of USP Group, a public company, from calling for an extraordinary general meeting to replace USP Group's existing directors. In response to the minority shareholders' submission that the application for an injunction must fail for want of any independent cause of action, Goh Yihan JC confirmed the existence of freestanding injunctions by characterising the requested injunction as one. His Honour, referring to *Sulzer Pumps*, reiterated that freestanding injunctions have "no requirement that there must be an underlying cause of action",[91] and endorsed Xu J's *dicta* (among others) that ultimately, "the purpose of granting a freestanding injunction is to prevent injustice".[92]

B. Principled exercise of court's inherent jurisdiction

54 With these authorities all speaking with one voice, the opposite conclusion reached by Jeyaretnam J in *Gazelle Ventures* is surprising, and

90 *Gazelle Ventures Pte Ltd v Lim Yong Sim* [2024] 4 SLR 1066 at [70].
91 *Tanoto Sau Ian v USP Group Ltd* [2023] 5 SLR 909 at [73].
92 *Tanoto Sau Ian v USP Group Ltd* [2023] 5 SLR 909 at [74].

evidently out of step with the developments in the law of injunctions as established through decades of Singapore and English authorities.

55 This is regrettable, if for no other reason, because it is untenable. Freezing (including Chabra) orders, anti-suit injunctions, Norwich Pharmacal and Bankers Trust orders, and Anton Piller orders, are all now fixtures in Singapore law. Assuming (as we should) that the law should strive for coherence, the law has only four choices.

56 First, take *Gazelle Ventures* seriously and abolish all of these (on *Gazelle Ventures*' view) "heterodox" injunctions – this choice need only be stated to be rejected.

57 Second, take *Gazelle Ventures* seriously and squint hard to find legal or equitable rights behind all these new injunctions – Singapore law would have to hope to succeed where, as shown above, many others have failed. Further, there is the risk that the medicine will be worse than the disease, so to speak: straining to find legal or equitable rights may well introduce unnecessary artificiality and distortion into the law.

58 Third, not take *Gazelle Ventures* too seriously and admit the existing new injunctions as exceptions. But then it is difficult to see what work the orthodox rule is doing – the law would still need further principles and reasons to explain when the orthodox rule does or does not apply to bar the recognition of new injunctions.

59 The fourth option simply follows from the untenability of the earlier three: discard the orthodox rule and focus directly on the principles and reasons for and against granting new injunctions. This is not a licence for unfettered judicial discretion, but recognises that the orthodox rule is unfit for purpose as a constraint on the court's injunctive power.

60 The discarding of the orthodox rule in England represents the realisation, perhaps obvious in hindsight, that there are good reasons for the court to grant an injunction that extend beyond the enforcement of a person's legal or equitable rights. Most of these "new" injunctions are concerned, at their core, not with private rights but the administration of justice. Freezing (including Chabra) orders ensure that defendants cannot frustrate the processes of the court by whisking their assets out of the jurisdiction (or, in the case of Chabra orders, by squirreling away their assets by transferring them to someone else). Norwich Pharmacal disclosure orders and Anton Piller orders are concerned with ensuring that necessary information and evidence can be placed before the court for the just disposal of the issues before it. Anti-suit injunctions not based on contractual rights are granted to prevent foreign proceedings

from imperilling the due administration of justice domestically.[93] For these injunctions, the interest in the administration of justice is both a necessary and sufficient condition for their grant. Nothing is added – and much by way of conceptual clarity may be lost – by squeezing them into the mould of private rights, or casting them as exceptions to orthodoxy.

61 Other new injunctions – *eg*, in *Broadmoor* and *Cartier International* – are less convincingly brought within the administration of justice rationale, since they do not concern the court's processes. However, once the law accepts that injunctions can be justified for reasons broader than the enforcement of private rights, it is far from obvious that the range of candidate reasons can (or should) be rigidly confined to the administration of justice. This is not the occasion to explore in depth the plausible justifications for these injunctions: they have rightly given rise to vibrant debate. All the same, these debates should be centred on the principles and reasons weighing in favour of or against these injunctions; rather than on an outmoded and inaccurate orthodox rule. The starting point should be acceptance that a private law cause of action is not the only cause for an injunction. The important task at hand is mapping out what those causes should be.

C. Looking ahead: new types of injunctions

62 To cleave to the orthodox rule while other jurisdictions steam ahead is to regrettably deprive the Singapore courts of the opportunity to engage with the exciting judicial discourse across the common law world. From a practical perspective, with an eye to Singapore's position as a hub of international litigation, such a position also straitjackets the court's ability to exercise its equitable jurisdiction to adapt to the realities of modern commerce.

63 One instance in which this straitjacket is evident is in the availability of Mareva injunctions in aid of proceedings where the substantive relief is being sought in a foreign court (à la *Mercedes Benz*). Today, the Singapore court's jurisdiction to issue such freestanding injunctions is confirmed by statute: see s 4(10A) of the Civil Law Act 1909,[94] amended in 2022. But prior to this amendment, the law was more complex. In *Bi Xiaoqiong v China Medical Technologies*[95] ("*Bi Xiaoqiong*"), the Singapore Court of Appeal considered the position in foreign jurisdictions (including the cases of *Channel Tunnel* and

93 Andrew Dickinson, "Taming Anti-suit Injunctions" in *A Conflict of Laws Companion* (Andrew Dickinson & Edwin Peel eds) (Oxford University Press, 2021).

94 2020 Rev Ed.

95 *Bi Xiaoqiong v China Medical Technologies, Inc* [2019] 2 SLR 595 at [62].

Mercedes Benz) and conflicting Singapore High Court authorities, holding that the court had jurisdiction to grant a Mareva injunction in aid of foreign court proceedings only where the Singapore courts retained residual jurisdiction over the substantive dispute. Practically, this required that the substantive proceedings be brought in the Singapore courts but stayed – and not struck out – in favour of the foreign proceedings, such that the court "retains its ancillary jurisdiction over the action".[96]

64 In the years to come, several High Court judgments appeared to express some unease with *Bi Xiaoqiong* prior to the 2022 amendment of the Civil Law Act. Xu J in *Sulzer Pumps* observed that *Bi Xiaoqiong* contradicted the decision in *Fourie*, which was not considered by the Court of Appeal, and sought to confine the findings of *Bi Xiaoqiong* to Mareva injunctions only. And in *Allenger, Shiona v Pelletier, Olga*,[97] Andrew Ang SJ, though bound by *Bi Xiaoqiong*, highlighted that preventing Mareva relief in favour of foreign proceedings facilitate cross-border fraud and the easy dissipation of assets.[98] In this vein, Ang SJ mooted the possibility of legislative change to address the issue, but also the possibility of granting relief on the basis of the courts' inherent jurisdiction.[99]

65 While this criticism is now moot with the introduction of s 4(10A) of the Civil Law Act 1909, it is suggested that the direction of the travel of the law on this issue serves as an example where the scope of the court's equitable jurisdiction in granting injunctive relief could have incrementally developed. But for the introduction of s 4(10A) of the Civil Law Act 1909, it is very conceivable that if (or when) the issue goes before the Court of Appeal again, *Bi Xiaoqiong* might have been departed from.

66 In this regard, while the Singapore courts have not yet had the opportunity to consider novel injunctions such as those in the English cases of *Cartier International* and *Wolverhampton City Council*, it would not be right to block off their possibility before they even arise for proper consideration before the court.

67 Consider the recent English case of *Titan Wealth Holdings Ltd v Okunola*.[100] The background to that case was a claim for breach of confidence, breach of contract and harassment brought by various claimants against Ms Okunola. As the litigation progressed, Ms Okunola sent "threatening and/or sexually abusive content" to the claimants and

96 *Bi Xiaoqiong v China Medical Technologies, Inc* [2019] 2 SLR 595 at [108].
97 [2022] 3 SLR 353.
98 *Allenger, Shiona v Pelletier, Olga* [2022] 3 SLR 353 at [151].
99 *Allenger, Shiona v Pelletier, Olga* [2022] 3 SLR 353 at [151].
100 [2024] EWHC 2641 (KB).

their lawyers.[101] In these circumstances, the claimants applied for an interim injunction to prohibit Ms Okunola from, *inter alia*, "using profane or otherwise grossly offensive language or imagery in communications address to the Claimants' lawyers, or in which they were copied".[102]

68 Hill J recognised that the injunction being sought was conceptually novel, because "although brought in the name of the Claimants, [the injunction sought] relates to the conduct of the Defendant towards different people, namely their lawyers".[103] In the circumstances, Hill J was not persuaded that the court had a "sound jurisdictional basis" for making the injunction,[104] but nevertheless granted permission to appeal her order.[105]

69 It is submitted that, in view of *Cartier International* and *Wolverhampton City Council*, the injunction sought should at least be arguable as a matter of English law, and Hill J was right to grant permission to appeal. If granted by the Court of Appeal, it would represent a further incremental development in the circumstances in which injunctions can be granted, much like other leading cases such as *Cartier International*, *TSB Private Bank International SA v Chabra*,[106] and indeed *Mareva Cia Naviera SA v International Bulkcarriers SA*[107] itself (all of which granted injunctive relief of a nature which, at that time, was unprecedented).

70 It is too early to say whether the injunction sought in *Titan Wealth* would be granted, though if so, it appears likely to lend its name to a new subcategory of injunction ("Titan Wealth injunctions"). For present purposes, the significant point is that the injunction sought in *Titan Wealth* is plainly *arguable* (at least sufficiently arguable to justify an appeal to the Court of Appeal) as an incremental development of the law; in view of *Cartier International* and *Wolverhampton City Council*. There should not be any doubt that the court has the jurisdiction to award the relief sought, albeit the question of whether such jurisdiction should be exercised (*ie*, whether it would be "just and equitable" to do so) remains to be decided by the Court of Appeal.

71 Thus, it is desirable that a Titan Wealth injunction be at least arguable. The (English) Court of Appeal may grant the injunction sought, or it may grant it in a less intrusive form, or it may deny relief altogether,

101 *Titan Wealth Holdings Ltd v Okunola* [2024] EWHC 2641 (KB) at [9].
102 *Titan Wealth Holdings Ltd v Okunola* [2024] EWHC 2641 (KB) at [13].
103 *Titan Wealth Holdings Ltd v Okunola* [2024] EWHC 2641 (KB) at [31].
104 *Titan Wealth Holdings Ltd v Okunola* [2024] EWHC 2641 (KB) at [44].
105 *Titan Wealth Holdings Ltd v Okunola* [2024] EWHC 2641 (KB) at [55].
106 [1992] 1 WLR 231.
107 [1980] 1 All ER 213.

but whatever the result that will be reached in that particular case, it is a credit to the law that the forms of equitable relief are sufficiently flexible for the court to at least be able to consider exercising its equitable jurisdiction in such cases.

72 By contrast, if Jeyaretnam J's *dicta* definitively represents the position in Singapore, *ie*, if the law takes seriously an inflexible "cause of action" requirement for the grant of injunctions, then the Titan Wealth injunction would not even be arguable if brought before the Singapore court; it would simply be struck out or summarily dismissed. That is undesirable: not only would this potentially straitjacket the ability of the law to do justice, but more harmfully, it straitjackets the ability of the law to *develop incrementally* to adapt to being able to do justice in a greater array of situations.[108]

73 To that end, in so far as Jeyaretnam J's *dicta* signals a reversal of course back towards *The Siskina*, the authors submit that it should be rejected. That is not to say that the outcome in *Gazelle Ventures* was incorrect. Jeyaretnam J's unwillingness to grant the injunction sought is understandable on the facts, but it is submitted that a more preferable (and, in view of the above analysis, principled) approach would have been to refuse the injunction sought on the basis that it would not have been just and convenient to grant one in the circumstances. It is therefore regrettable that the law in Singapore was instead thrown into flux by a return to the now-outmoded dogma that the court has no power to grant freestanding injunctions.

VI. Conclusion

74 Ultimately, the controlling factor in issuing an injunction is the "criterion of injustice".[109] What constitutes injustice is, of course, a question which "must be decided, not by the caprice of the Judge, but according to sufficient legal reasons or on settled legal principles",[110] but it would be unprincipled to tether the availability of an injunction to the existence of an independent legal or equitable right. In a word, freestanding injunctions should be left standing.

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108 See, in this regard, *Harsha Rajkumar Mirpuri (Mrs) née Subita Shewakram Samtani v Shanti Shewakram Samtani Mrs Shanti Haresh Chugani* [2018] 5 SLR 894, where the court considered an application for an injunction to restrain a law firm from acting for the defendant advanced on the basis of the court's inherent jurisdiction to supervise the conduct of its officers.

109 *Mercedes Benz AG v Leiduck* [1996] AC 284 at 308.

110 *Beddow v Beddow* (1878) 9 Ch D 89 at 93.

75 As has been observed by one commentator in the wake of *Broad Idea*, it is now clear that "there is nothing extraordinary in equity deploying … injunctions to respond to emergent circumstances", in accordance with principle, when it is just and convenient to do so.[111] The majority of modern authorities are in step in stating that the court's power to grant an injunction is not dependent on or even necessarily ancillary to the enforcement of a substantive right (whether in law or in equity; whether past, present, or in the future; whether in this jurisdiction or in another; whether against the respondent to the injunction application or against some other party). In this, *Gazelle Ventures* stands alone on the veldt, and should not be followed.

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111 John-Patrick Asimakis, "Broadening the Idea and Unfreezing the Law of Freezing Injunctions: *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24" (2022) 41(3) CJQ 203 at 214.