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1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

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Civil

CAUSE NOS. 555 of 2005 & 80 of 2007

BETWEEN: **TASARRUE MEVDUATI SIGNORTA FONU** Plaintiff

- AND:
- (1) MERRILL LYNCH BANK AND TRUST COMPANY (CAYMAN) LIMITED
 - (2) KAFFEE LIMITED
 - (3) BARLA FINANCE LIMITED
 - (4) CONUR CASH LIMITED
 - (5) MEDRO LIMITED
 - (6) YAIHYA MURAT DEMIREL



Before: The Honourable Madam Justice Levers

Appearances:
Mr. Simon Dickson of Quin & Hampson for the plaintiff
Mr. Jeremy Walton of Appleby for the defendants

Heard: 16th April, 2007



RULING

Levers, J.

This is the Summons for a variation of an order made in Cause 555 of 2005, seeking the Plaintiff to use disclosed information in Cause 555 of 2005 in Cause 80 of 2007. In the latter cause a worldwide Mareva has been obtained.

1 Mr. Walton for the Plaintiff readily concedes that the variation sought is to
2 investigate the Plaintiff's assets in other jurisdictions outside Cayman for the
3 purpose of commencing actions other than in Cayman to enforce a judgment
4 obtained through the Turkish Courts. The two claims are a proprietary claim
5 in 555 and an enforcement of judgment claim in 80. He submits that the
6 affidavit of mere denial filed by Mr. Demirel, (the Defendant) in Cause 80 of
7 2007 puts the matters in issue and therefore in the interest of justice I should
8 exercise my discretion in favour of the Plaintiff who seeks to trace assets in
9 Switzerland, the U.S.A, Germany, Lichtenstein and the Channel Islands. He
10 concedes that the only specific information that he has is about the yacht.

11
12 Mr. Simon Dickson for the Defendant on the other hand submits that the
13 application is premature. He says the judgment that is being enforced is
14 being contested and if the Mareva is discharged (application is being made)
15 then the reason for the enquiry will fall away as the Court will no longer be
16 interested in the assets. The width of the Mareva he says makes it
17 oppressive and will be enormously detrimental to Mr. Demirel.

18
19 It is trite law that the use of discovery should only be varied in very specific
20 circumstances.

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2 The factual situation at present is that the judgment which is being sought to
3 be enforced is being contested. The very Mareva Injunction is the subject
4 matter of an application to discharge.

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6 Having considered all the authorities including *Babanaft International Co.*

7 *S.A. v Bassatne and another* [1990] Ch 90, in particular, page 46 F:

8 “However, having considered Kerr L.J.'s
9 observations on *Ashtiani v. Kashi* [1987] Q.B. 888,
10 one point which strikes me forcefully is this. I say
11 nothing concerning the circumstances in which it
12 will be proper for the court to make an order for
13 the disclosure of information regarding assets
14 situated abroad, either before judgment or after
15 judgment. That is not a matter which arose, or was
16 argued, on this appeal. But in all cases where such
17 an order is sought or made the court will need to
18 be alive to the importance of exercising control
19 over the use of information disclosed compulsorily
20 about assets situated overseas.”

21

22 And page 47 D:

23 “A second point follows from this. Once
24 information has been disclosed it cannot be
25 recalled. The disclosure of information is an
26 irreversible step. The only means available to the
27 English court to control the use made abroad of
28 information disclosed concerning foreign assets is
29 such control as the English court may have in the
30 circumstances over the plaintiff to whom it has
31 compelled the defendant to make disclosure. Thus
32 before making a disclosure order in respect of

1 foreign assets, the court normally will need to be
2 satisfied that, by reason of the plaintiff's continuing
3 connection with this country or otherwise, the
4 court has over the plaintiff a degree of control
5 sufficient to ensure compliance with any orders it
6 may make regarding the use of the information."
7

8 I rule that the Summons should not be varied at this stage and I will not
9 release the Plaintiff from its implied undertaking.

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11 Costs to be reserved to the hearing of the injunction application.

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13 Dated this day of April, 2007

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16 Levers, J.
17 Acting Chief Justice

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foreign assets, the court normally will need to be satisfied that, by reason of the plaintiff's continuing connection with this country or otherwise, the court has over the plaintiff a degree of control sufficient to ensure compliance with any orders it may make regarding the use of the information."

I rule that the Summons should not be varied at this stage and I will not release the Plaintiff from its implied undertaking.

Costs to be reserved to the hearing of the injunction application.

Dated this 20th day of April, 2007



Levers, J.
Acting Chief Justice