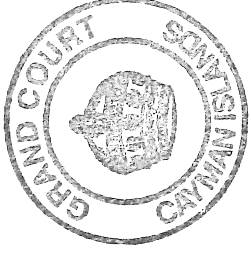


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IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
CAUSE NO. 482/95



BETWEEN:

J. P. MORGAN & COMPANY

PLAINTIFF

AND:

- (1) SHAUN ASHLEY COLLINS
- (2) MEXICON CORPORATION
- (3) ALTAJIR BANK

DEFENDANTS

For the plaintiff: Mr. P. Boni  
For the defendants: Mr. R. McDonough

BEFORE HARRE CJ

JUDGMENT

The plaintiff bank alleges that the first defendant stole US\$1.2 million from it and, through an account at another Cayman Bank, transferred US\$400,000 to an account with the third defendant. On an ex parte application a worldwide Mareva injunction was obtained on 6th December 1995, varying a previous order, on the basis of allegations contained in an affidavit sworn on behalf of the plaintiff bank which describes what are alleged to be "unusual transactions" relating to funds available for redeeming certain bearer bonds which were paid to a company beneficially owned by the first defendant. The plaintiff says that there is no lawful explanation for the transfer of US\$1.2

million to the first defendant's company account in the Cayman Islands.

The first defendant vigorously challenges this. He says that the money is derived from the redemption of a bearer bond given to him by his grandfather shortly before his death.

There is an application, yet to be heard, to discharge the injunction. The evidence in relation to that is not complete and in the meantime I am asked to vary it by allowing the First Defendant to withdraw US\$30,000 from the account with the third defendant to meet legal expenses and US\$1500 per month towards his living expenses.

The law on this matter is clear enough. This is a matter of discretion. There is no principle that a defendant will invariably be allowed to draw on funds frozen by injunction in order to meet his legal or living expenses nor that such funds shall not be so used if they are subject to an adverse proprietary claim. The purpose of a Mareva injunction is to prevent dissipation of assets and prima facie the payment of legal costs is not dissipation. Cala Cristal SA & ors v. Emran Al-Borno & ors (1994) TLR 251. It is not intended to give a plaintiff priority, prevent a defendant from paying his debts, punish him or enable a plaintiff to exert pressure on him.

The first defendant acknowledges that he has no assets other than those acquired as a result of his acquisition of the US\$1.2 million which is the subject of this case.

The plaintiff puts its case against the order for variation in the boldest terms. It says that if the variation sought is denied, and the effect of that is tantamount to judgment against the defendant, justice will be done sooner rather than later. In support of that it offers the prospect, in a future affidavit, of cogent evidence in support of its view that there is no defence. It also asks me to infer that some US\$300,000 unaccounted for in the first defendant's affidavit of means is, at least in part, available to fund any defence. It would, in my view, be quite wrong for me to make that inference at this stage without evidence contradicting the first defendant's unequivocal statement on oath that he has no assets other than those he has disclosed.

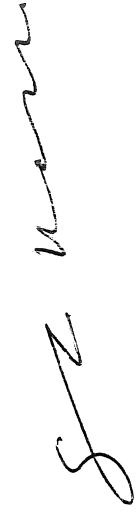
I am not at all attracted by the plaintiff's approach. Stifling a defence by a Mareva injunction cutting off the funds to conduct it leading to the possibility of obtaining what would be in effect summary judgment by that means is precisely, it seems to me, what the courts have always found to be a wrong use of this powerful remedy.

I grant the variation sought in paragraph (a) of the summons subject to the requirement that the sum of US\$30,000 withdrawn shall be for the account of Bruce Campbell & Co. and shall not be paid to or come under the control of the first or second defendants, by their servants, agents or otherwise. There is no suggestion that the first and second defendants attorney has charged, or will charge excessively, but in the event of the plaintiff succeeding in a

proprietary claim to assets which have been used to meet these costs there must be an opportunity to challenge them. How that is to be done will need to be determined in accordance with the costs taxation procedure in force at the time.

There remains the matter of the first defendant's living expenses. I need to ask what is the proper yardstick to apply. Is it the standard which he formerly enjoyed as a bank employee, the standard of a former bank employee who was dismissed and has no job or other means or the standard of one possessed of a considerable part at least of the US\$1.2 million which the plaintiff says is stolen and the first defendant says is his late grandfather's gift? The third alternative can be dismissed. The first defendant should not be thus enriched out of the very funds which are in dispute. In any event, he will, if his affidavit of means is true, be living quite modestly even if I vary the injunction in the way he proposes. I shall do so, and make an order in terms of paragraph (b) of the summons

Costs in the cause.



Dated 18<sup>th</sup> January 1996

G.E. Harre  
Chief Justice

