

SUPREME CT.

ANTHONY GOLD V. JIMINEZ

[1988–90 Gib LR 119]

**ANTHONY GOLD, LERMAN AND MUIRHEAD v.
JIMINEZ**

SUPREME COURT (Alcantara, A.J.): November 3rd, 1988

Injunctions—interlocutory injunction—factors for consideration—delay—interlocutory Mareva injunction to preserve assets for payment of judgment debt inappropriate when delay between judgment and application for injunction—suggests non-urgency

Injunctions—Mareva injunction—court’s discretion to grant injunction—inappropriate for solicitor to obtain Mareva injunction against client—unduly extends scope of Mareva order—Mareva injunction to have commercial character, rather than merely improving applicant’s position in relation to debt—interlocutory Mareva injunction to preserve assets for payment of judgment debt inappropriate when delay between judgment and application for injunction

Injunctions—Mareva injunction—post-judgment injunction—Mareva injunction to have commercial character, rather than merely improving applicant’s position in relation to judgment debt—interlocutory Mareva injunction to preserve assets for payment of judgment debt inappropriate when delay between judgment and application for injunction

Legal Profession—remuneration—legal action to secure remuneration—Mareva injunction—inappropriate for solicitor to obtain Mareva injunction against client—unduly extends scope of Mareva order—Mareva injunction to have commercial character, rather than merely improving applicant’s position in relation to debt

The plaintiffs sought a *Mareva* injunction against the Gibraltar assets of the defendant in support of a judgment obtained against him in England and leave to serve process on him out of the jurisdiction.

The plaintiffs, a London firm of solicitors, had carried out legal work for the defendant in relation to a Gibraltar restaurant business of which he was a partner, for which they had not been paid. They obtained judgment against him in England in respect of the sum owed. The plaintiffs then obtained leave from the Supreme Court to serve process on the defendant out of the jurisdiction (as he was living in either Gibraltar or Spain, but also had a registered English address) and sought a *Mareva* injunction to prevent the dissipation of assets in Gibraltar.

The plaintiffs submitted that (a) the defendant was likely to remove his assets from Gibraltar to avoid paying the judgment debt; and (b) it would be proper for the court to grant a *Mareva* injunction to freeze his assets within and outside Gibraltar to the extent of £6,345.58—the amount of the judgment and costs—in order to prevent this.

Held, refusing the application:

The granting of a *Mareva* injunction would be inappropriate in the circumstances. First, there had been a delay of several months between the date of the judgment and the application, which suggested that the circumstances were not urgent enough to grant an interlocutory injunction; secondly, the application was merely made in order to improve the plaintiffs' position in regard to a debt, rather than having any commercial character; and, thirdly, it was not appropriate for solicitors to obtain *Mareva* injunctions against their clients, as this would extend unduly the scope of the *Mareva* order (paras. 7–9).

Cases cited:

- (1) *Foot v. Fashions La Niña Intl. (Gib.) Ltd.*, Supreme Ct., Case No. 1987 F. No. 226, December 24th, 1987, unreported, applied.
- (2) *Hambros Bank Ltd. v. Kennedy Assocs. Ltd.*, Supreme Ct., Case No. 1987 H. No. 91, May 15th, 1988, unreported, applied.
- (3) *Library Management Servs. Ltd. v. Rhodes Intl. Ltd.*, Supreme Ct., Case No. 1987 L. No. 88, May 15th, 1988, unreported, applied.
- (4) *Ninemia Maritime Corp. v. Trave Schiffahrtsgesellschaft mbH & Co. K.G., The Niedersachsen*, [1983] 1 W.L.R. 1412; [1984] 1 All E.R. 398; [1983] 2 Lloyd's Rep. 600, *dictum* of Kerr, L.J. applied.
- (5) *United Bank of Gib. v. Roope*, Supreme Ct., Case No. 1987 U. No. 175, November 15th, 1987, unreported, applied.

D.J.V. Dumas and *L.E.C. Baglietto* for the plaintiffs;
The defendant did not appear and was not represented.

1 **ALCANTARA, A.J.:** This is an application for an *ex parte Mareva* injunction, which I refused on October 28th, 1988. The plaintiffs, a firm of English solicitors practising in London, came before me seeking leave to serve a writ out of the jurisdiction, relying on the Rules of the Supreme Court, O.11, r.1(1)(m): “the claim is brought to enforce any judgment or arbitral award.” The specifically endorsed writ states that:

“The plaintiffs' claim is for monies due and owing to them from the defendant under a judgment in Case No. 8723715 of the Westminster County Court of England and Wales dated June 10th, 1988 in the sum of £3,345.58 plus the costs of these proceedings to be taxed, pursuant to that judgment, interest pursuant to s.14 of the Contract and Tort Ordinance and costs.”

2 The judgment referred to above was obtained in default of appearance

SUPREME CT. ANTHONY GOLD v. JIMINEZ (Alcantara, A.J.)

and was in respect of legal work carried out for the defendant by his solicitors, the plaintiffs. In the affidavit in support of this application it is stated that the moneys are still unpaid and that the defendant is now living either in Gibraltar or Spain. Notwithstanding this latter assertion, leave is sought to serve the writ in England and the defendant's address is given as 20 Sawyer's Lawn, Drayton Bridge Road, Ealing, London, W13. Leave to serve out of the jurisdiction was granted on the usual terms. The plaintiffs also seek a *Mareva* injunction to freeze the defendant's assets within and outside the jurisdiction to the extent of £6,345.58 until trial. The plaintiffs have added £3,000 to the original Westminster County Court judgment to cover the costs of the said judgment and any further costs.

3 In the affidavit in support, the plaintiffs state that they believe that the defendant will seek to remove his assets from Gibraltar, and that they believe that he has assets within the jurisdiction at the Main Street branch of Banco de Bilbao. The same affidavit further states that the plaintiffs have been authorized to refer to the affidavit of Mr. Graheme Robert Gunns sworn in another matter in support of an application to this court to register a High Court judgment and the issue of a *Mareva* injunction in that other matter. I now make reference to the affidavit of Mr. Gunns in those proceedings. Paragraph 11 of the affidavit reads:

“Finally, I refer to the affidavit of my solicitor, Mr. Gold, relating to the judgment which his firm has against the first-named defendant in Westminster County Court. I confirm that the professional work which they carried out and which is the subject-matter of their judgment, was work carried out for the Martinez Spanish Restaurant and I am jointly liable with the first-named defendant to pay those costs.”

Mr. Gold is one of the partners of the plaintiffs; the first-named defendant referred to above is the defendant in the present action and application.

4 In a nutshell, what has happened is this. A firm of solicitors has done work and has not been paid. The work was done for and on behalf of the defendant and Mr. Gunns, who were in partnership in relation to the Martinez Spanish Restaurant. They are both jointly liable to their solicitors. The solicitors have thought fit to proceed against the defendant alone.

5 What I have to answer is whether this is a proper case for a *Mareva* injunction, but first I will refer to a number of decisions of this court. In *Library Management Servs. Ltd. v. Rhodes Intl. Ltd.* (3), the secretary of a company sought *Mareva* relief against the company, his employer, to secure payment of money due to him for work done. I refused it on the ground that the *Mareva* injunction should not be used just to improve the position of the plaintiff, and warned that the frontiers of the *Mareva* injunction should not be extended. In *Hambros Bank Ltd. v. Kennedy Assocs. Ltd.* (2), I also refused a *Mareva* injunction to a bank that was

seeking to improve its position *vis-à-vis* a client in relation to an overdraft of £2,457.29. In *United Bank of Gib. v. Roope* (5), a *Mareva* injunction was refused to a bank which wanted to improve its position in relation to a bank loan. In that case, the bank held a mortgage. In *Foot v. Fashions La Niña Intl. (Gib.) Ltd.* (1), there was an attempt to obtain a *Mareva* injunction in respect of a debt of £16,060. I also refused it on the grounds that a *Mareva* injunction is not the proper remedy to obtain security for the payment of a debt.

6 The test is to be found in the judgment of Kerr, L.J. in *Ninemia Maritime Corp. v. Trave Schiffahrtsgesellschaft mbH & Co. K.G.* (4), where he said ([1983] 1 W.L.R. at 1422):

“The machinery of the *Mareva* injunction is extremely useful in appropriate cases. But, as the law stands, this jurisdiction cannot be invoked for the purpose of providing plaintiffs with security for claims, even when these appear likely to succeed.”

7 Is the present application “an appropriate case”? In my opinion, no. First, there has been delay. The judgment is dated June 10th, 1988, and the application came before me on October 28th, 1988. On the question of delay, Goldrein & Wilkinson, *Commercial Litigation: Pre-emptive Remedies*, at 20 (1987) say: “Delay, even if not amounting to acquiescence, may deprive a plaintiff of equitable relief—on the ground that if the matter was so urgent, application for an interlocutory injunction would have been made earlier.” And, *op. cit.*, at 24, two cases are cited where a delay of three months proved fatal.

8 Secondly, there is no commercial aspect to this application. The plaintiffs are just seeking to improve their position in regard to a debt owing to them.

9 Thirdly, I do not think that a *Mareva* injunction is a proper remedy for a solicitor to invoke against his client or ex-client in respect of unpaid fees. It would be extending the frontiers of the *Mareva* injunction.

Application refused.