

ROYAL COURT
(Samedi Division)

28th July, 1988

Before: The Bailiff and
Jurats Lucas and Gruchy

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| <u>Between</u> | P.M.M. TRUST COMPANY LIMITED | <u>Plaintiff</u> |
| <u>And</u> | SIGMA DESIGN TEAM INCORPORATED | <u>Second Plaintiff</u> |
| <u>And</u> | PETER KELWAY TREGUNNA | <u>First Defendant</u> |
| <u>And</u> | TREMARBEL TRUSTEE COMPANY LIMITED | <u>Second Defendant</u> |
| <u>And</u> | BELTRE FINANCING LIMITED | <u>Third Defendant</u> |
| <u>And</u> | BELTRE NOMINEES LIMITED | <u>Fourth Defendant</u> |
| <u>And</u> | MARATHON INVESTMENTS LIMITED | <u>Fifth Defendant</u> |
| <u>And</u> | DOMINION TRUST COMPANY LIMITED | <u>Sixth Defendant</u> |
| <u>And</u> | MAUREEN RONDEL | <u>Seventh Defendant</u> |
| <u>And</u> | MIDLAND BANK PLC | <u>Party Cited</u> |

Summons by the Seventh Defendant
requesting that the injunction
against her be raised

Advocate T.J. Le Cocq for the plaintiffs
Advocate R. Renouf for the seventh defendant

JUDGMENT

BAILIFF: This matter comes before us by way of a summons to lift the injunction imposed on the seventh defendant, Mrs Maureen Rondel, in an action brought by PMM Trust Company Limited and Sigma Design Team Incorporated against Mr Peter Kelway Tregunna (the first defendant) and a number of other defendants.

The injunction was obtained by an order of the Deputy Bailiff and it is said that at the time there was insufficient information or, in the alternative, not full and frank disclosure made to the learned Deputy Bailiff which would have entitled him to make the order he did. It is not necessary for me to recite the order except to say that it is a very full one and prevents the applicant from dealing with her property and, in particular, with her real property. In so far as her real property is concerned the extent, if any, of her property was unknown to the plaintiffs at the time the injunction was obtained. Subsequently, the applicant has filed an affidavit which discloses that she has some property in Jersey but that it is held jointly with a number of other relations. The affidavit also discloses that she is a person from this Island who has roots here and intends to remain here. In fairness, we think it cannot be said that she is a person who is likely to remove herself or her assets from the Island.

We think that so far as the injunction is concerned, the Deputy Bailiff was entitled to make the order he did, including the order against the seventh defendant, because of the possible claim to be argued. It is now conceded by the seventh defendant's advocate that the claim was well founded and, in the circumstances, there is an arguable case. At the time, the Deputy Bailiff was informed by the affidavits lodged with him that Mrs Rondel had been the secretary of Mr Tregunna and that she perhaps took a more active part in Mr Tregunna's financial affairs than an ordinary secretary might be expected to do. However, nowhere was there a firm indication that because she was his secretary she was, so to speak, "parti pris" to the affair and was someone who could properly be said to be equally responsible for the running of Mr Tregunna's financial affairs.

It is perfectly true that the main action between the plaintiffs and the first defendant alleges breaches of trust amounting in some cases to fraud. However, to suggest that because Mrs Rondel was the defendant's secretary she

was also his confidant and therefore can, by association, be deemed to be tarred with the same brush, is to our mind, to stretch the limits of inference which the Deputy Bailiff might have been asked to infer, too far. We therefore find that there is insufficient evidence to suggest that Mrs Rondel should be considered as being 'on a par' with Mr Tregunna. Nevertheless, we can well understand why the Deputy Bailiff imposed the injunction.

From the authorities cited to us there is quite clearly also a second matter which has to be satisfied, namely, that before such an injunction is imposed, there has to be a real risk that the person against whom it is sought is likely to remove their assets from the jurisdiction. It does not matter whether the person against whom the injunction is being imposed is a local person or not. The principles governing the imposing of an injunction have been extended to cover those persons who are normally within the jurisdiction and therefore the fact that Mrs Rondel is a Jersey woman does not, per se, mean that an injunction cannot be imposed against her. I repeat that what has to be shown is that there was a real risk that she would remove her assets. It has been suggested that there could have been a proper inference drawn by the Deputy Bailiff that she might well do so. That might well be so, but we are not saying that the Deputy Bailiff was not entitled to impose the injunction that he did.

So, today we are not going to lift the injunction made by the Deputy Bailiff, but we are going to consider it de novo. The effect may well be the same, but we have been assisted today not only by the arguments of counsel, to whom we are indebted, and the authorities which they have shown to us, but by two further affidavits. The first is that of Mr Caine, who was one of the beneficiaries under the trust, which it is said, was defrauded by Mr Tregunna and which was originally before the Deputy Bailiff. The second affidavit which we have seen today and which was not before the Deputy Bailiff, is the affidavit of Mrs Rondel. It is clear to us, although Mr Caine comments on Mrs Rondel's affidavit, that she has no intention of disposing of her assets. She has roots here and, although as I have just mentioned, that is not a reason per se why an injunction cannot be imposed, we are satisfied that in all the circumstances, this is a matter which we are entitled to take into account and accordingly we do so. There is authority for saying that it is not correct for a plaintiff merely to obtain a Mareva injunction in order to protect his assets against other possible creditors. That authority is to be found in the case of

the Ninemia Marine Corporation -v- Trave Schiffahrtgesellschaft mbh & Co K.G. (The Niedersachsen), which is reported at (1984) 1 All E.R. 398. There are two passages from the judgment of Kerr LJ., the first at page 419, letter 'C', where he says:

"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 (we are speaking generally and not with reference to this case), and even when there is no reason to suppose that an order for an injunction, or the provision of some substitute security by the defendants would cause any real hardship to the defendant".

And then he says at page 422:

"Further, it must always be remembered that if, or to the extent that, the grant of a Mareva injunction inflicts hardship on the defendant, his legitimate interests must prevail over those of the plaintiff who seeks to obtain security for a claim which may appear to be well founded but which still remains to be established at the trial".

There is also a passage in a judgment provided by Mr Le Cocq, namely the case of Dormeuil Frères SA et al -v- Nicolian International (Textiles) Limited 1988 (Times) (Judgment given on 22nd April, 1988). On page 9 of the judgment, the learned Vice Chancellor, Sir Nicolas Brown-Wilkinson, says this:

"In my judgment, save in exceptional cases, it is not the correct procedure to apply to discharge an ex parte injunction on the grounds of lack of full disclosure at the interlocutory stage of the proceedings. The purpose of interlocutory proceedings is to regulate the future of the case until trial".

That being said, it is alleged that the present proceedings were not properly founded. The Dormeuil Frères case concerned an Anton Pillar Order and not a Mareva injunction as Mr Renouf correctly pointed out, and the damage arising from an Anton Pillar Order (the search for documents and so forth) is generally finished before any application is made or the issue heard inter partes. This is not the case with a Mareva injunction, where the damage

caused by the imposition of the injunction continues until the date of the trial.

I refer now to the case which was provided to us by Mr Renouf of Walters -v- Bingham and Bingham -v- Walters (there are two actions) which is reported in Jersey Judgments on the 22nd December, 1986. In that case the Court reviewed the whole principles underlying the granting of a Mareva injunction. The Mareva injunction is a name known to this Court but not part of our common law, we use a "saisie conservatoire"; however, this is used under different circumstances and for different purposes. Nevertheless, we have in mind some of the principles of the English Courts when applying the rules as to whether we should grant an injunction. Certainly, full disclosure is needed, but it is not clear whether one requires an affidavit or not. In the Bingham -v- Walters case, the Court laid down that it was a matter to be agreed and was certainly a matter for the discretion of the Bailiff or Deputy Bailiff. The Bingham -v- Walters case followed an earlier case to which reference is made, namely the case of Shelton, where the Court said:

"it is customary in some cases, but not in all, depending on the circumstances, to require the allegations in the Order of Justice to be substantiated by affidavits".

That was more a procedural point but as I read the cases and that case in particular, the Court does say that it is a matter for the Court's discretion. We agree. Therefore, we have considered this afternoon whether we should re-impose the injunction, lift it or impose one with variations.

We have come to the conclusion that the Deputy Bailiff was entitled to impose the injunction that he did. However, we are now considering whether it should be re-imposed or continued. Under the circumstances and having regard to the affidavits (particularly that of Mrs Rondel) we think that although the first head was satisfied, that is to say, the Deputy Bailiff had sufficient information for satisfying himself that there was a proper case and that Mrs Rondel's assets should be seized for the time being, we are satisfied that there is little or no risk that she would dissipate her assets, which are assets of realty. We therefore lift the injunction, with costs.

Authorities referred to in the judgment:-

Ninemia Marine Corp -v- Trave Schiffahrtsgesellschaft mbh & Co K.G. (The Niedersachsen) (1984) 1 All E.R. 398.

Dormeuil Frères SA and Another -v- Nicolian International (Textiles) Limited 1988 (Times) (Judgment given 22nd April, 1988).

Michael Quentin Walters and Others -v- Andrew Hill Bingham (first action) and Andrew Hill Bingham -v- Michael Quentin Walters and others (second action) Royal Court of Jersey (Judgment given 22nd December, 1986) - as yet unreported.

Representation of B. Shelton and A. Shelton: J.J. 5th August, 1982 - unreported.

Other authorities referred to:-

Johnson Matthey Bankers Limited -v- Arya Holdings Limited & Another 1985-86 JLR 208.

Trasco International Aktiengesellschaft -v- R.M. Marketing Limited (29th October 1986 - unreported.

Barclay-Johnson -v- Yuill (1980) 3 All E.R. 190.

Mareva Injunctions: Law and Practice by Gee and Andrews (Longmans) pages 53 to 56.