

JERSEY / JUDGMENT

# P v P [2002] JRC 70A (26 March 2002)

**[2002] JRC 70A**

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## judgment

THE COMMISSIONER: 1. The hearing before the Court today arises as a result of matrimonial proceedings, commenced in England by SP, who resides there, against her husband, who is thought to be living in M. 2. Mrs P, the Petitioner, obtained from the High Court, an Order arresting her husband's assets, and in pursuance of this began proceedings in Jersey by Order of Justice obtaining an immediate interim injunction against his assets here. The Order of Justice was subsequently amended, and the injunctions continued. 3. The summons today requests that the Court should order: out of the moneys arrested a sum of £8,584 per month, as ordered by the High Court; and discovery. 4. The learned Deputy Bailiff, when it came before him requested - the Respondent not having appeared - that the Attorney General appear as Partie Publique to make such submissions as he thought fit. 5. Advocate Hoy, for the Petitioner, advised the Court that there were other proceedings, presently before the learned Deputy Bailiff concerning a company, in which the Respondent is said to have shares. No issues relating to that were before the Court today, and the Orders sought relate solely to the accounts, held at various Barclays entities in the name of the Respondent. 6. Mr Hoy, for the Petitioner, further advised the Court that the Respondent was now in contempt of Court in that he had had the opportunity to produce an affidavit of means which had been ordered by the Royal Court, and had failed to do so. 7. The Petitioner's case, in seeking that the orders which she presently has should be extended to those which she seeks today, is based on her complaint that she is without funds in England and that the Respondent is a wealthy man who is not only not maintaining her, but is actively attempting to conceal his assets in order not to fund any order, or settlement which may finally be made. 8. The questions before the Court today, therefore, are whether it has the power to extend the orders in the manner sought by the Petitioner; and if it has, whether it should exercise its discretion to do so. 9. It is quite clear that the order of the High Court is not final and conclusive between the parties and, therefore, does not fall within the definition of Article 3 (2) (a) of the Judgments Reciprocal Enforcement (Jersey) Law 1960, so that registration under that law is not open to the Petitioner. 10. Mr Hoy, for the Petitioner, relied on the practice of comity between Courts. In his submission the meaning of "comity" had never been judicially determined or defined. 11. He was, however, able to point to its use in Lane -v- Lane (1985-1986) JLR 48 where the Court enforced an order of the English Court and ordered the transfer of a share in a house in Jersey by the surviving joint owner to the devisee of the deceased owner of the other joint share, even though the order had not been carried through before the death of the party in whose

favour the transfer had been ordered. 12. In its Judgment, the Court made it clear (page

57) that: "so far as the doctrine of Comity is concerned, the Royal Court recognises that if it can it will follow that doctrine". 13. That apart, the question of granting aid to foreign proceedings was considered in *Solvalub Limited-v-Match Investment Limited*

[1996] JLR 361 CofA, where the headnote reads in part: "Conflict of Laws - parallel foreign proceedings - Mareva injunction in aid of foreign proceedings - Jersey court may grant Mareva injunction in aid of foreign proceedings even if only proceedings in Jersey are for injunction itself" ..... "(2) There was authority to support the view that the Royal Court had the power to grant a Mareva injunction in aid of foreign proceedings, even if there were no proceedings before the Jersey court other than the seeking of the Mareva itself. Indeed, this was desirable in the interest of comity with the courts of other countries and in the interest of Jersey's reputation as a financial centre". This power should be understood to refer to proceedings in any foreign jurisdiction, not only England. In his judgment, Sir Godray Le Quesne made the following observations: "With that there is to be contrasted the clear statement in the *Johnson Matthey* judgement that it is customary for the Royal Court to exercise the power to impose an injunction in aid of proceedings in a foreign court. In my judgment, to the extent that those two cases are inconsistent with each other, the authority of the *Johnson Matthey* case is to be preferred. The result of this is that there cannot be said to be a strong line of local authority, but what there is supports the view that the power of the Royal Court to grant a Mareva injunction in aid of proceedings in a foreign court does exist. This, as it seems to me, is what one would have expected to find in the circumstances of this jurisdiction. Jersey is an important financial centre. Geographically it is very close to the United Kingdom. For practical and especially for financial purposes, it is very close to many more countries all over the world. There are dozens of funds which are constantly encouraging people who have money to place it here. Every now and again a figure is quoted, ever rising, of the total quantity of funds which are deposited in Jersey. The figure is enormous. If the Royal Court were to adopt the position that it was not willing to lend its aid to courts of other countries by temporarily freezing the assets of defendants sued in those other countries, that in my judgment would amount to a serious breach of the duty of comity which courts in different jurisdictions owe to each other. Not only so, but the consequence of such an attitude would be that Jersey would quickly become known as a safe haven for persons wishing to evade liabilities imposed on them by the courts to which they are subject. This is exactly the reputation which any financial centre strives to avoid and Jersey so far has avoided with success. These local circumstances, in my judgment, explain why the law on the particular point under consideration should have developed as it appears to have developed in the authorities to which I have referred. If one turns to see what the position is in England, on strict authority it is that the English court has no power to issue a Mareva injunction in aid of proceedings in a foreign court. That was decided by the House of Lords in *Siskina (Cargo Owners) v. Distos Cia. Naviera S. A.* However, while the latest authority in the strict sense, that is not the latest judicial pronouncement on the point. The latest

pronouncement is the dissenting judgment of Lord Nicholls in the Mercedes case. In that case the majority, having decided the appeal on the grounds of the point of personal service, found it unnecessary to express any conclusion on the question of power. Lord Nicholls arrived at a different view on the point of personal service and did consider the question of power. For his conclusion I quote a couple of sentences from his judgment. First ([1996] A. C. at 310): "The boundary line of the Mareva jurisdiction is to be drawn so as to include prospective foreign judgments which will be recognised and enforceable in the Hong Kong courts." Secondly (ibid., at 313): "...[A] writ claiming Mareva relief and nothing more could have been issued and served on Mr Leiduck in Hong Kong." As part of his reasoning in reaching these conclusions, Lord Nicholls considered the decision in *The Siskina* and comments made on it in subsequent cases and concluded that *The Siskina* should no longer be followed. In view of the local authority and the local circumstances to which I have referred, I should with respect adopt the conclusions and reasoning of Lord Nicholls and it is not necessary for me to set that out at length in this judgment. In my judgment, it is within the power of the Royal Court to grant a Mareva injunction in aid of proceedings in a foreign court and to do that in proceedings here in which no relief other than the grant of the Mareva injunction is sought. I would add that in my judgment, this power of the Royal Court is not limited - as the judgment in *Johnson Matthey Bankers v. Arya Holdings* might be read to suggest

- to cases in which the jurisdiction in which the other proceedings are going on is the English jurisdiction. I therefore disagree with the conclusions of the Deputy Bailiff on the question of power. My conclusion is that the Royal Court did have jurisdiction in the sense of power to grant the relief for which the appellant was asking. I would add only one point further upon this part of the case. There have been cases in which the Royal Court has referred to *Siskina (Cargo Owners) v. Distos Cia. Naviera S. A.* and has followed its conclusion. Two such cases have been cited to us: *James Capel (C. I.) Ltd. v. Koppel and Abbott Indus. Inc. v. Warner*. In my judgment, in so far as they follow the law as laid down in *The Siskina*, those decisions of the Royal Court should no longer be treated as authoritative." 14. Mr Hoy further made reference to *F-v-H* (27 th July, 2001) Jersey Unreported; [2001/163], where the Court in the interests of comity and public policy exercised its inherent jurisdiction to make a mirror order in respect of children already subject to an order of the High Court who were coming to live in the Island. 15. Dr Kelleher, for the Attorney General, was concerned to advise the Court whether the proper route was by mandatory order, or should rather be made under the laws concerning maintenance orders. 16. The Petitioner was seeking enforcement of an order which was not a final judgment, and was asking for an order, not limited to freezing assets, but which required from time to time a payment order from them. 17. It was quite clear from his submissions that the Separation and Maintenance Orders (Jersey) Law 1953 would not permit what the Plaintiff sought, and neither would the Judgments (Reciprocal Enforcement) (Jersey) Law 1960. On the other hand whilst the 1960 Law (by Article 8) did prohibit other methods of enforcing judgments which fell within its ambit, the 1953 Law did not, so that an alternative route was not precluded by that law. 18.

The application, therefore, in the first summons could therefore only proceed on the basis of comity and it was for the Petitioner to persuade the Court that the principle should be extended to the order that she sought. 19. As to the second part of the summons, viz. discovery, he had no submissions to make. The Court should add, at this point, that it is grateful to Dr Kelleher for his helpful submissions. 20. On this point, that is discovery, Mr Hoy referred first to a passage from *Gee: Mareva Injunctions and Anton Piller Relief* (4th Edn) pp. 347-8 as follows: "The plaintiff will often be concerned to find out as much as he can about the defendant's assets so that steps can be taken to preserve those assets. These steps may be by way of giving notice of a Mareva injunction to third parties, or seeking an order for delivery up of specified assets. There are other possible reasons for seeking information about the defendant's assets. Thus, for example, in *A v C*, Robert Goff J said: The defendant may have more than one asset within the jurisdiction - for example, he may have a number of bank accounts. The plaintiff does not know how much, if anything, is in any of them; nor does each of the defendant's bankers know what is in the other accounts. Without information about the state of each account it is difficult, if not impossible, to operate the Mareva injunction properly: for example, if each banker prevents any drawing from his account to the limit of the sum claimed, the defendant will be treated oppressively, and the plaintiff may be held liable on his undertaking in damages. Again, there may be a single claim against a number of defendants; in that event the same difficulties may arise. Furthermore, the very generality of the order creates difficulties for the defendant's bankers, who may for example be unaware of the existence of other assets of the defendant within the jurisdiction; indeed, if a more specific order is possible, it may give much-needed protection for the defendant's bankers, who are, after all, simply the innocent holders of one form of the defendant's assets. An order for disclosure of information about assets by discovery or affidavit can be made if the purpose is ancillary to the effective working of the injunction. Whether an order is made is a matter of discretion. An order was not granted when it was sought so as to show past dealings with assets within the jurisdiction in order to justify restoration of a Mareva injunction which had been discharged: *Smith v Hegard*. Similarly, an order will not be made if its purpose is merely to investigate whether an injunction has been broken and (if so) to supply material for contempt proceedings. An order can be made if the purpose is to identify and preserve assets of the defendant which might otherwise be dissipated notwithstanding the injunction: *House of Spring Gardens v Waite*. The defendant may be entitled to claim privilege against self-incrimination. It has now become standard practice to order disclosure of information about assets as an ancillary order in aid of a Mareva injunction, and this is reflected in the standard form orders. The justification for this practice is that once the plaintiff has shown a real risk of dissipation of assets it is usually appropriate to give relief designed to help the plaintiff make the Mareva injunction effective." 21. And second to Goldrein & Others "Commercial Litigation: Pre-emptive Remedies (3rd Edn), p259: "3. Solution The Court has inherent jurisdiction to make all such ancillary orders, including an order for discovery, as appears to the court to be just and convenient in order to ensure that the exercise of the Mareva jurisdiction is effective to achieve its purpose: see *Bekhor Ltd* (ibid.) at 949 per Griffiths L. J."

22. Given the circumstances disclosed in the affidavits attached to the summons, none of which have been contested and bearing in mind the Respondent's failure to respond, and having in particular regard to the remarks, supra, of Sir Godfray Le Quesne, in Solvalub, the Court has no hesitation in extending the order, in the terms sought by the Petitioner in her summons viz (i) That the maintenance pending suit and interim periodical payments of £8,584 per month ordered by the High Court of England and Wales on 29 th November 2001 be paid by the Defendant from 19 th October 2001 to the Plaintiff from the funds held in the Defendant's name at Barclays Bank Finance Company (Jersey) Limited as disclosed by Bailhache Labesse on 31 st October 2001 to account number --- (sort code ---) in the name of S. B. at the Standard Chartered Bank CI Limited, Conway Street, St Helier, Jersey. (ii) That within 14 days of any Order the Honourable Court may make in the Plaintiff's favour in paragraph (i) hereof (or within such other delay as the Honourable Court deems just), the Parties Cited shall disclose to the Plaintiff's Solicitors, Voisin & Co, Templar House, Don Road, St Helier, Jersey, verified by Affidavit, all documents in their respective control which indicates the value, location and details of the Defendant's assets held by them either now or in the past three years. Authorities Lane-v-Lane (1985 - 1986) JLR 48. Yachia-v-Levi (26 th March, 1998) Jersey Unreported. Parkes-v-Vrioni (18 th October, 1999) Jersey Unreported. F-v-H (27 th July 2001) Jersey Unreported; [2001/163]. Matthews-v-Matthews (26 th October,

2001) Jersey Unreported; [2001/216]. Gee: Mareva Injunctions and Anton Piller Relief (4 th Edn) pp. 347 - 357. Goldrein & Others: Commercial Litigation: Pre-emptive Remedies, (3 rd Edn) pp. 258-261. D-v-M (6 th August, 1999) Jersey Unreported; [2000/5]. Solvalub Lts-v-Match Investments

(1996) JLR 361 CofA. Separation and Maintenance Orders (Jersey) Law 1953. Judgments (Reciprocal Enforcement) (Jersey) Law, 1960. Page Last Updated: 28 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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