THE MAREVA INJUNCTION: SOME RECENT DEVELOPMENTS

ONE of the hazards of litigation which a plaintiff has to accept, is the risk of the defendant surreptitiously disposing of his assets so as to evade any judgment that may be obtained against him. Until recently there was little that the plaintiff could do to minimise the risk, for it was generally accepted that until judgment the assets of the defendant were inviolable. On the 22nd of May 1975, the English Court of Appeal in *Nippon Yusen Kaisha* v. *Karageorgis*, departed from the previous practice and granted an *ex-parte* interlocutory injunction to restrain non-resident defendants from removing out of the jurisdiction, any of their assets located within the jurisdiction.[1] This form of injunction is now commonly referred to as the Mareva injunction[2] and is now a well established feature of English law. In the local context, the existence of a Mareva jurisdiction has been confirmed both in Malaysia and Singapore. In *Zainal Abidin* v. *Century Hotel Sdn. Bhd.*, the Federal Court of Malaysia confirmed the existence of the jurisdiction, although the High Court in Malaya had earlier denied that it had jurisdiction.[3] In Singapore it would appear that the existence of the Mareva jurisdiction had been recognised for some time by the High Court,[4] although it was only in *Art Trend Ltd.* v. *Blue Dolphin (Pte) Ltd.*,[5] that a written judgment was delivered by the High Court confirming the existence of the jurisdiction. The purpose of this article will be to examine three aspects of the Mareva injunction. These are:

(i) Whether the injunctive relief is available where there is a danger that the defendant may dispose of his assets *within*

[1] *Nippon Yusen Kaisha* v. *Karageorgis* [1975] 2 Lloyds Rep. 187. It would appear that the reluctance of the courts prior to 1975 in granting this form of injunctive relief stemmed not from a want of jurisdiction but from a rule of practice. See *The Third Chandris Shipping Corporation* v. *Unimarine* [1979] 2 All E.R. 972 at p. 974 *per* Mustill J., and also Lawton L.J. at pp. 985-986.

[2] See the *Mareva Campania Naviera S.A.* v. *International Bulk Carrier S.A.* [1975] 2 Lloyds Rep. 509. This was the second case in which this type of injunction was granted and after which the procedure is named.

[3] See *Zainal Abidin* v. *Century Hotel Sdn. Bhd.* [1982] 1 M.L.J 40 where Hashim Yeop A. Sani J. held that there was no jurisdiction to grant a Mareva injunction because there was no statutory provision corresponding to s. 45 of the English Supreme Court of Judicature (Consolidation) Act, 1925. In England, the basis of the Mareva Jurisdiction rested on s. 45 of the Act. See below at n. 7. On appeal to the Federal Court, reported at [1982] 1 M.L.J. 260 it was held that the High Court in Malaysia did have a Mareva jurisdiction which jurisdiction was founded on paragraph 6 of the schedule to the Courts of Judicature Act, 1964. The paragraph provided:

> "Power to provide for the interim preservation of property the subject-matter of any cause or matter by sale or by injunction or the appointment of a receiver or the registration of a caveat or a lie pendens or in any other manner whatsoever."

[4] See A.P. Godwin "The Mareva Injunction. Its Use and Abuse" [1980] 2 M.L.J. lxxi.

[5] [1983] 1 M.L.J. 25.

jurisdiction but without any evidence of any intention to transfer those assets outside the jurisdiction;

(ii) The Mareva injunction and third party rights; and

(iii) The Mareva injunction and seizure of assets.

I. Disposal of Assets within the Jurisdiction of the Court

In the recent decision of the English Court of Appeal in *Z* v. *A*., Kerr L.J. stated that the "original justification for the new procedure was that foreign defendants should not be able to deprive a plaintiff of the fruits of a judgment in his favour when it appears to the court that the plaintiff is likely to succeed in his claim by removing their assets out of the jurisdiction."[6] That this is so can clearly be seen from the decision in *Nippon Yusen Kaisha* itself. There the shipowners had brought a claim for charterhire against two non-resident charterers. Whilst they were unable to locate the whereabouts of the charterers they were able to ascertain that the charterers had funds placed with banks in London. Lord Denning M.R. in delivering his judgment stated that the practice of English courts not to seize assets of a defendant in advance of judgment, or to restrain their disposal should be revised. The power of the High Court to grant such an injunction could be found in section 45 of the Supreme Court of Judicature (Consolidation) Act (U.K.) 1925 which provided that:

> A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient.[7]

Since there was a strong *prima facie* case that the hire was owing and that monies might be removed out of the jurisdiction so as to thwart any judgment, it was clearly both just and convenient to grant the order sought. For this reason then, section 45 was invoked and a new procedure was spawned.

The need to prevent a foreign or foreign based defendant from transferring his assets outside the jurisdiction so as to thwart any potential judgment of the court was clearly the motivating factor behind the development of this new form of injunctive relief.[8] How-

[6] [1982] 1 All E.R. 556 at p. 571.

[7] S. 45 has now been re-enacted in substance by s. 37(1) of the Supreme Court Act 1981. S. 37(1) provides that:

> "The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so."

S. 37 of the Supreme Court Act 1981 came into force on the 1st January 1982 — see s. 153(2) of the Act.

[8] See Goff J., in *The Angel Bell* [1980] 1 Lloyds Rep. 632 at p. 635 who after reviewing the authorities declared that: "the fundamental purpose of the Mareva jurisdiction was to prevent foreign parties from causing assets to be removed from the jurisdiction in order to avoid the risk of having to satisfy any judgment which may be entered against them." The apparent justification for limiting the Mareva Injunction to foreign or foreign based defendants can be found in the *Third Chandris Shipping v. Unimarine* [1979] 2 All E.R. 972 at p. 986 where Lawton L.J. pointed out that a British defaulter who attempted to dissipate his assets would eventually face retribution in the form of bankruptcy or winding up proceedings. The foreign defendant on the other hand would be immune from local jurisdiction once the funds were removed outside the jurisdiction. It is however difficult to see why the availability of bankruptcy or liquidation proceedings should make any difference. If a British defaulter has disposed of his assets within or without jurisdiction to thwart legal proceedings, bankruptcy or liquidation proceedings would hardly make any difference to the deprived Plaintiff.

ever, as was pointed out by Goff J. in the *Angel Bell*,[9] the Mareva jurisdiction was then still in its formative stages of development and its exact parameters had yet to be fully defined by the courts.[10] In particular, the question remained as to whether the Mareva injunction could issue against defendants who in no sense could be regarded as "foreigners". In *Barclay-Johnson* v. *Yuill* [11] Sir Robert Megarry V-C came firmly to the conclusion that the Mareva jurisdiction was not confined to cases where the defendant was a foreigner or foreign based. The reason for his conclusion lay in the analysis of the *raison d'etre* of the jurisdiction which he stated to be as follows:

> "It seems to me that the heart and core of the Mareva injunction is the risk of the defendant removing his assets from the jurisdiction and so stultifying any judgment given by the courts in the action.... If the assets are likely to remain in the jurisdiction, then the plaintiff like all others with claims against the defendant must run the risk common to all, that the defendant may dissipate his assets, or consume them in discharging other liabilities, and so leave nothing with which to satisfy any judgment."

On this basis it was clear that there was no reason why the jurisdiction should be limited to foreign or foreign based defendants. A defendant within the jurisdiction was just as capable of transferring his assets abroad, especially with the abolition of exchange control in U.K. in 1979. This of course did not mean that the nationality, domicile etc. of the defendant was totally irrelevant, for as was pointed by the Vice-Chancellor, these factors would remain of importance in so far as they bore on the question of the likelihood of the assets being removed.[12]

The fact that the Mareva jurisdiction was extended to cover defendants within the jurisdiction did not however necessarily mean that it would be available when there was no evidence to suggest that the defendant was about to transfer the assets outside of the court's jurisdiction. Whilst it must of course be accepted that a defendant might choose to dissipate, destroy or hide his assets within the jurisdiction of the court, the gist of the Mareva injunction according to the authorities referred to above is to prevent the transfer of assets outside of the court's jurisdiction, so as to thwart any potential judgment. Indeed it should be noted that the Vice-Chancellor in the *Barclay-Johnson* case took pains to stress that where the evidence pointed to the assets remaining within the jurisdiction, no injunction should issue. About two months after the Vice-Chancellor's decision,

[9] [1980] 1 Lloyds Rep. 632 at p. 634.

[10] In *The Third Chandris Shipping Corporation & Ors.* v. *Unimarine S.A.* [1979] 2 All E.R. 972 at p. 984, Lord Denning M.R. cautioned that this type of injunctive relief should not be stretched too far. For this reason he laid down the following guidelines as to its exercise:

(i) The plaintiff should make a full and frank disclosure of all matters in his knowledge which are material for the judge to know,
(ii) The plaintiff should give particulars of his claim, stating his ground, the amount and the points made against it by the defendant,
(iii) The plaintiff should give grounds for believing that the defendant have assets here,
(iv) The plaintiff should give some grounds for believing that there is a risk of the assets being removed before the judgment or award is satisfied,
(v) The plaintiff must give an undertaking in damages,

[11] [1980] 3 All E.R. 190 at p. 194.

[12] [1980] 3 All E.R. 190 at p. 195.

the Court of Appeal had an opportunity in *Prince Abdul Rahman Bin Turki Al Sudairy* v. *Abu Taha*[13] to consider the same point. Lord Denning M.R. in delivering the main judgment of the court expressly approved the decision of the Vice-Chancellor in the *Barclay-Johnson* case and concluded that:[14]

> "A Mareva injunction can be granted against a man even though he is based in this country if the circumstances are such that there is a danger of his absconding or a danger of the assets being removed out of the jurisdiction or disposed of within the jurisdiction or otherwise dealt with so that there is a danger that the plaintiff if he gets judgment will not be able to get it satisfied."

With respect to the Master of the Rolls, the conclusion which he came to was somewhat broader than that of the Vice-Chancellor. In particular, the Master of the Rolls suggested that the Mareva injunction would be available:

(i) If there was a danger of the defendant absconding; or

(ii) If there was a danger of the assets being removed out of the jurisdiction; or

(iii) If there was a danger of the assets being disposed of within the jurisdiction.

Furthermore, he went so far as to suggest that the injunction should issue whenever there was a danger that a defendant would deal with his assets so as to thwart any potential judgment. This conclusion of the Master of the Rolls represented a considerable advancement in the scope of the Mareva injunction into then unchartered waters. In particular, it raised the question as to whether the injunction should be available where there was a danger of dissipation of assets within the jurisdiction, and in the absence of any evidence that the defendant intended to have them removed from the court's jurisdiction. Prior to the decision in *Prince Abdul Rahman,* the position was relatively clear. The gist of the court's jurisdiction was thought to lie in the threat of removal out of the court's jurisdiction.[15] Given the existence of such a threat, the terms of the injunction had to be framed in such a manner as to achieve its objective. This would be done by ordering the defendant to refrain from dealing or disposing of his assets within the jurisdiction and from removing his assets from the jurisdiction. Why was the order framed in such a broad manner? The rationale for framing the injunction in such wide terms was explained by the Vice-Chancellor in the *Barclay-Johnson* case. He said:[16]

[13] [1980] 3 All E.R. 409.

[14] [1980] 3 All E.R. 409 at p. 412.

[15] Indeed see the guidelines laid down by Lord Denning M.R. at n. 10 above. See also *Etablissement Esefka International Anstalt* v. *Central Bank of Nigeria* [1979] 1 Lloyds Rep. 445 at p. 448 *per* Lord Denning M.R.: "The Mareva injunction is only to be granted where there is a danger of the money being taken out of jurisdiction so that if the plaintiff succeed they are not likely to get their money." Accordingly a Mareva injunction was refused.

[16] [1980] 3 All E.R. 190 at p. 194. See also Goff J. in the *Angel Bell* [1980] 1 Lloyds Rep. 632 at p. 636: "The point of the Mareva jurisdiction is to proceed by stealth, to pre-empt any action by the defendant to remove his assets from the jurisdiction. To achieve this result the injunction must be in a wide form because, for example, a transfer by the defendant to a collaborator within the jurisdiction would lead to the transfer of the assets abroad by that collaborator."

> "On the other hand, if there is a real risk of the assets being removed from the jurisdiction, a Mareva injuction will prevent the removal. It is not enough for such an injunction merely to forbid the defendant to remove them from jurisdiction, for otherwise he might transfer them to some collaborator who would then remove them; accordingly the injunction will restrain the defendant from disposing of them even within the jurisdiction."

In *A.J. Bekhor* v. *Bilton*,[17] a subsequent Court of Appeal voiced opinions somewhat at variance with those of the Master of the Rolls. Ackner L.J., in particular, restated the view that the foundation of the Mareva jurisdiction was the need to prevent judgments of the court from being rendered ineffective by the removal of the defendant's assets from the jurisdiction. The Mareva only provided a limited exception to the general rule that the court will not normally grant an injunction to restrain a defendant from parting with his assets, so that they could be preserved in case the plaintiff's claim succeeded.[18] Griffiths L.J., in delivering the second judgment of the court, expressed a similar view and echoed the words of the Vice-Chancellor by holding that:

> "Although the primary purpose of the Mareva injunction is to prevent the defendant from removing his assets from the jurisdiction and thus out of reach of execution, the form of the order generally prevents the defendant not only from removing his assets from the jurisdiction but also from otherwise dealing with them within jurisdiction. The latter part of the order is made in order to prevent the defendant passing on his assets to a third party who takes them out of jurisdiction. To mitigate the obvious hardship that may be caused to a defendant if a large part of his assets are completely frozen the court will be prepared to vary the order to enable the defendant to use his assets for legitimate trading and other purposes within jurisdiction."[19]

On what basis then can the decision of the Master of the Rolls in *Prince Abdul Rahman* be explained? It is submitted that the decision can only be supported on the basis that the true rationale behind the Mareva jurisdiction is to prevent the defendant from dealing with his assets in such a manner as to make himself "judgement proof." That this was the probable basis of the decision can be seen from his concluding remarks that the Mareva Injunction should be available whenever there was a risk of the defendant dealing with his assets so as to thwart any potential judgment. Indeed in *Rasu Maritima S.A.* v. *Pertamina*[20] Lord Denning M.R. pointed out that the early cases of *Nippon Yusen Kaisha v. Karageorgis* and *Mareva Compania Naviera S.A.* v. *International Bulk Carriers Ltd.* were best seen as part of an evolutionary process. The true scope of the Mareva Injunction had yet to be fully defined as could be seen by its later extension to cover

[17] [1981] 2 All E.R. 565.

[18] [1981] 2 All E.R. 565 at p. 577. The general rule referred to be Ackner L.J. is the rule stated by Cotton L.J. in *Lister* v. *Stubbs* (1890) 45 Ch. D. 1: "I know of no case where, because it was highly probable that if the action were brought to hearing the plaintiff could establish that a debt was due to him from the defendant, the defendant has been ordered to give security until that has been established by the judgment or decree." See also *Barclay-Johnson* v. *Yuill* [1980] 3 All E.R. 190 at p. 195.

[19] [1981] 2 All E.R. 565 at p. 581.

[20] [1977] 3 W.L.R. 518.

defendants within the jurisdiction. In any event, whilst the original rationale for the Mareva Injunction may have been to prevent transfers out of the jurisdiction, the actual source of the court's power to grant injunctions of this sort was to be found in section 45 of the Supreme Court of Judicature (Consolidation) Act 1925 (U.K.), which section conferred on the court a discretion to grant an interlocutory injunction whenever it appeared just and convenient. In both *Nippon Yusen Kaisha* and *Mareva Compania Naviera* the facts were such as to make the grant of the injunction both just and convenient. Following this line of reasoning it would be of course equally just and convenient to grant the injunction to restrain the defendant from disposing of his assets within the jurisdiction of the court, if he intended to do so for the purpose of thwarting any potential judgment.[21] This standpoint is clearly against the views expressed by the judges in *Barclay Johnson v. Yuill* and *A.J. Bekhor* v. *Bilton* that the Mareva injunction was only available if there was a real risk that the assets would be transferred outside of the court's jurisdiction. It should further be noted that in the case of *Faith Panton Property Plan Ltd.* v. *Hodgetts*,[22] Vinelott J., at first instance, held that the Mareva jurisdiction was restricted to the granting of an injunction to restrain the defendant from disposing of his assets outside of the jurisdiction, there being no discretion to prevent the dissipation by the defendant of assets within the jurisdiction. On appeal it was argued by counsel for the plaintiffs that the only logical explanation for the exercise of the Mareva jurisdiction was on the basis of jeopardy. That unless some such order was made the plaintiff would be jeopardised by being deprived of the fruits of any judgment that he might get. This jeopardy, counsel submitted, was not dependant solely on the risk of assets being removed out of the jurisdiction. It is submitted that there is much force in counsel's argument and indeed both Waller and Brandon L.JJ., although not expressing any firm conclusion on the point recognised the weight of the argument.[23] Waller L.J. in view of the fact that to accept the argument would be to considerably extend the scope of the Mareva jurisdiction, preferred to reserve his opinion until the facts of the case made it necessary to decide. Brandon L.J. on the other hand pointed out that section 45 of the Supreme Court of Judicature (Consolidation) Act 1925 was soon to be replaced by section 37 of the then Supreme Court Bill. He therefore felt it inappropriate to express any opinion on what the law would have been

[21] [1977] 3 W.L.R. 518 at pp. 526-527 esp. p. 530 where Lord Denning M.R. stated categorically that the court's jurisdiction to grant injunctions to restrain removal of assets should not be fettered by rigid rules. It should be exercised where just and convenient. But see n. 10 above.

[22] [1981] 1 W.L.R. 927.

[23] [1981] 1 W.L.R. at pp. 932 and 937. It was not necessary for the Court of Appeal to decide this point on the scope of the Mareva jurisdiction since it had reversed the decision of Vinelott J. on the basis that as a judgment order in favour of the plaintiffs had already been made, an injunction would be available on the basis of pre-Mareva principles. The facts briefly were that the plaintiffs had instituted passing-off proceedings against the defendants. In respect of these proceedings the defendants had given certain undertakings to the Court. On motions to commit the 1st defendant for breaches of the undertakings, Foster J. ordered the 1st defendant to pay the taxed costs of the motions. Taxation of the costs could not take place for about 4 to 5 months but was assessed approximately as £12,000. The 1st defendant then informed the plaintiffs that he would be unable to pay the costs when taxed and that he intended to sell his business assets. The plaintiffs sought an injunction to restrain the defendants from so acting. Vinelott J. refused the application.

without section 37, unless it was necessary to do so. Whatever may have been the legal validity of the decision in the *Prince Abdul Rahman* case, few will gainsay its merits and indeed section 37(3) of the U.K. Supreme Court Act 1981 now gives statutory force to the views expressed by the Master of the Rolls. This section provides that:

> "The power of the High Court... to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court or otherwise dealing with assets located within the jurisdiction shall be exercisable in cases where he is not domiciled, resident or present within that jurisdiction."

In Z v. *A* [24] Lord Denning M.R. expressed the view that the phrase "otherwise dealing with" bore out his view in *Prince Abdul Rahman*, that the Mareva jurisdiction extended to cases where there was a danger that the assets would be dissipated within the country as well as by removal out of the jurisdiction. This view was supported by Kerr L.J. who declared that:[25]

> "The danger of assets being removed from the jurisdiction is only one facet of the ploy of a defendant to make himself judgment proof by taking steps to ensure that there are no available or traceable assets on the day of judgment, not as a result of using his assets in the ordinary course of his business or for living expenses but to avoid execution by spiriting his assets away in the interim.... It is therefore logical to extend the scope of this jurisdiction to whenever there is a risk of a judgment which a plaintiff seems likely to obtain being defeated in this way. Accordingly I welcome section 37(2) of the Supreme Court Act 1981... which will put the position beyond doubt and on a statutory basis."

Whilst the position may now be clear in U.K., the position in Singapore in the absence of any statutory equivalent to section 37(3) of the Supreme Court Act 1981 (U.K.), remains uncertain. That the local courts have a Mareva jurisdiction is clear, there being a direct statutory equivalent to section 45 of the Supreme Court of Judicature (Consolidation) Act 1925 (U.K.), in section 4(8) of the Civil Law Act.[26] What is unclear is how the courts will exercise that jurisdiction. Whilst some of the English authorities prior to the passing of section 37(3) indicated that the Mareva injunction should only be available

[24] [1982] 1 All E.R. 556 at p. 561.

[25] [1982] 1 All E.R. 556 at p. 571. A curious point to note is that the injunction in this case was first granted on the 10th of July 1981 and was varied on the 24th July 1981. The hearings in the Court of Appeal took place in October of 1981 with the decision being handed down on the 16th of December 1981. At the relevant times, s. 37 of the Supreme Court Act 1981 was not yet in force. See n. 7 above. It could therefore be argued that the Court of Appeal whilst referring to s. 37(3) of the Supreme Court Act, proceeded on the basis that the section was merely declaratory of existing law.

[26] Cap. 30, Singapore Statutes (1970) S. 4(8) reads: "A mandamus or an injunction may be granted or a receiver appointed by interlocutory order of the court, either unconditionally or upon such terms and conditions as the court thinks just, or all cases in which it appears to the court to be just or convenient that such orders should be made."
See also *Art Trend Ltd.* v. *Blue Dolphin (Pte) Ltd.* [1983] 1 M.L.J. 25 at p. 29 a decision of Lai Kew Chai J. in which the learned judge recognised that Mareva injunctions had been for many years issued under s. 4(8) of the Civil Law Act. See also generally Colin Ying "The Mareva Injunction and Pretrial Attachment" [1981] 2 M.L.J. cvii.

where there is a real risk of removal of the assets from the court's jurisdiction,[27] the conflicting views of Lord Denning M.R. in the *Prince Abdul Rahman* case, however warrant close attention.[28] In particular it is difficult to see why the court should continue to distinguish between disposal of assets outside the jurisdiction to thwart any potential judgment and disposal within the jurisdiction to achieve the same objective. The mischief which it is desirable to eliminate must surely be the risk of the court's judgment being ineffective. This is not to say that the Mareva injunction will operate to freeze the assets of the defendant simpliciter. It will only be available when it is just and convenient, or in other words, when the defendant is acting with an intent to thwart the potential judgment of the court. A defendant who wished to use his assets for legitimate business or other purposes would not be caught by the injunction. It should also be noted that the concept of pre-trial attachment is by no means new to Singapore. Part III of the Debtors Act [29] confers on the court such a power of attachment. In particular section 17(1)C makes it clear that the jurisdiction thereunder is available whether or not the defendant intends to transfer his assets outside the court's jurisdiction. The court may order under section 17(1)C the seizure of assets if the Plaintiff can establish a good cause of action and that the defendant with intent to obstruct or delay execution of any judgment which has been or may be made against him, has removed or is about to remove, or has concealed, or is concealing, or making away with or handing over to others, any of his moveable or immoveable property. In view of the provisions of section 17(1)C it could hardly be argued that local policy considerations militate against the wider views expressed by Lord Denning M.R. in the *Prince Abdul Rahman* case. Indeed in *Zainal Abidin* v. *Century Hotel Sdn. Bhd.*[30] the Federal Court of Malaysia stated the view that:

> "The discretion exercised by the courts is not fettered by rigid rules. The first two cases, viz., *Nippon Yusen Kaisha* v. *Karageorgis & Anor.* and *Mareva Compania Naviera S.A.* v. *International Bulk Carriers S.A.* itself are part of the evolutionary process enabling the law to deal with commercial realities of modern business. It is illustrative of a statutory provision conferring judicial discretion to do what is just and convenient being applied in a way which keeps them in line with contemporary changing social attitudes."

It is therefore submitted that the courts in Singapore have a jurisdiction under section 4(8) of the Civil Law Act to grant a Mareva

[27] See above, in particular *Barclay-Johnson v. Yuill* [1980] 3 All E.R. 409 and *A.J. Bekhor* v. *Bilton* [1981] 2 All E.R. 565.

[28] It should be noted that the dictum of Lord Denning M.R. in the Prince Abdul Rahman case was apparently followed by the Court of Appeal in *Kirby* v. *Banks* [1980] CA Transcript 624, when a defendant was within the jurisdiction and there was a danger that he would dispose of £60,000, *within* the jurisdiction, in such a way as to be beyond the reach of the plaintiffs. This decision was unfortunately unreported and can be found referred to in the judgment of Lord Denning M.R. in *Z* v. *A* [1982] 1 All E.R. 556 at p. 561. This case was decided before s. 37 of the Supreme Court Act 1981 came into effect. (See n. 7 above). Likewise in *Searose* v. *Seatrain (U.K.) Ltd.* [1981] 1 All E.R. 806 a decision prior to the coming into effect of s. 37 of the Supreme Court Act, an injunction was granted to restrain the defendant from disposing of its assets within jurisdiction, save insofar as those assets exceeded £44,000. Nothing was mentioned about disposal outside of the jurisdiction.

[29] Cap. 19, Singapore Statutes (1970).

[30] [1982] 1 M.L.J. 262 at pp. 262-263.

injunction whenever there is evidence that the defendant is about to deal with his assets in such a way as to thwart any judgment of the court on the basis that it is both just and convenient. The fact that a similar jurisdiction exists in the Debtors Act does not necessarily preclude such a Mareva jurisdiction.[31]

The only locally reported case which touches on this matter is *Art Trend Ltd.* v. *Blue Dolphin (Pte) Ltd. & Ors.*,[32] a decision of Lai Kew Chai J. There, the plaintiffs had brought proceedings against the first and second defendants for a total sum of US$728,468.65. The plaintiffs obtained *ex parte* Mareva injunctions restraining the defendants from removing from Singapore or otherwise disposing, whether within or without the jurisdiction, any of their assets (including immoveable properties and moneys in bank accounts) in which they were beneficially interested, or otherwise pledging them or giving them by way of security. Paragraph 3 of the injunction provided that:

> The Defendants shall not be prevented from dealing in any way with their assets in so far as the assets of the Defendants... exceed in aggregate the sum of US$ 1,230,000.

A total of twelve banks were notified of the injunction. The learned judge accepted that section 4(8) of the Civil Law Act[33] conferred upon the court a Mareva jurisdiction. He also accepted that the court, in exercising its discretion to grant the injunction when just and convenient, should not be bound by a rigid set of principles. However, whilst the existence of the broad discretion was recognised, the learned judge pointed out that guidelines had been laid down by the English Court of Appeal as to the manner in which the discretion was to be exercised.[34] The guideline which was particularly in issue was the requirement that the plaintiffs should give grounds for believing that there was a risk of assets being removed (out of Singapore). On the facts it was abundantly clear that there was no such evidence. Indeed there was no evidence at all from which the court could infer that the defendants intended to evade any judgment which intent, it has been submitted, is the root of the Mareva jurisdiction. Given the lack of evidence, it is not surprising that the learned judge concluded that the plaintiff's conduct in seeking the injunctions was merely a ploy on their part to bring the defendants to their knees.[35] The question then arises as to whether the decision stands as an authority against the proposition that an injunction may issue on the basis solely of an intent to dispose of assets within the jurisdiction to thwart any

[31] See Colin Ying "The Mareva Injunction and Pre-trial Attachment" [1981] 2 M.L.J. cvii. Note also that in *Riley Mckay Pty. Ltd.* v. *Mckay* [1982] 1 NSWLR 264, the New South Wales Court of Appeal came to the conclusion that the jurisdiction to grant a Mareva Injunction resided in the court's inherent power to prevent abuse, and that the jurisdiction was founded on the risk that the defendant will deal with his assets so as to stultify any judgment of the court. No mention was made of any limitation to disposal of assets outside of jurisdiction, which limitation would of course run contrary to the fundamental purpose of the jurisdiction: to ensure that justice is effectively administered.

[32] [1983] 1 M.I.I. 25.

[33] Singapore Statutes (1970) Cap. 30.

[34] The guidelines referred to were those set out by Lord Denning M.R. See n. 10 above.

[35] This clearly would be an improper use of the Mareva Injunction. See similar observations of the Court of Appeal in Z v. *A.* [1982] 1 All E.R. 556 at 571.

potential judgment. It is submitted with respect, that the decision cannot be so regarded. Not only was this question not directly in issue before the court, but also the authority of *Prince Abdul Rahman Bin Turki Al Sudairy* v. *Abu Taha* was not argued on. Whilst it cannot be disputed that the Master of the Rolls laid down guidelines which appear to run contrary to the proposition argued for, those guidelines must now been viewed in the light of his later remarks in the *Prince Abdul Rahman* case. In view of the uncertainty in Singapore over this question, it will doubtless be wise for practitioners to proceed under section 17(1)C of the Debtors Act, in cases where there is no evidence of an intent to transfer assets outside the jurisdiction. In most respects, an application under section 17(1) will be as efficient and effective as the Mareva, since the usual procedure under Order 74 of the Rules of Supreme Court (1970) is by means of an *ex-parte* application supported by an affidavit.[36] The main disadvantage of section 17(1), from a procedural stand point, lies in the fact that the writ must first be issued before an application is made. In very urgent cases it may be desirable to proceed prior to the issue of the writ. In such cases the Mareva injunction offers itself as the most appropriate means of proceeding for it is now well established that in urgent cases the injunction can be granted prior to the issue of the writ and, even without a supporting affidavit.[37]

II. MAREVA INJUNCTION AND THIRD PARTY RIGHTS

In order for a Mareva injunction to be fully effective, it will often be necessary to give notification of the order to third parties, in whose hands the assets of the defendant are to be found.[38] Once the injunction has been so notified, it will be incumbent on the third party concerned to comply with its terms, for a failure to do so, will place him in contempt of court.[39] In the recent case of Z v. *A* the Court of Appeal has further established that this duty of compliance arises irrespective of whether the defendant has been served with the order. The contempt of the third party is independent of the position of the defendant and lies in the fact that by acting contrary to the order, the third party will be interfering with the due administration of justice.[40] One particular difficulty which might arise in the context contempt proceedings against third parties, lies in the degree of knowledge necessary to found liability. Clearly a third party would only be liable if he had knowingly acted in breach of the terms of the order. What degree of knowledge is then necessary, especially where the third party is a corporation, such as a bank? So far it is clear that if a servant of the bank, acting in the course of his employment, knowingly assists in the breach of the terms of the injunction, the bank

[36] Order 74 of the R.S.C. 1970 sets out the procedure for applications under the Debtors Act. 0.74 R.5.(l) provides: "An application under... s. 17... must be made *ex parte* by summons supported by an affidavit to a Judge in chambers, unless the court otherwise orders."

[37] See *Chartered Bank* v. *Daklouche* [1980] 1 W.L.R. 107, *Allan* v. *Jambo Holdings Ltd.* [1980] 1 W.L.R. 1252 and Z v. *A.* [1982] 1 All E.R. 556.

[38] Where the plaintiff has given notice of the order to third parties by telephone or telex, it should be followed up with a written confirmation as soon as possible, see Z v. *A.* [1982] 1 All E.R. 556 at p. 565.

[39] *Prince Abdul Rahman Bin Turki Al Sudairy* v. *Taha* [1980] 3 All E.R. 409 at p. 412 *per* Lord Denning M.R.

[40] [1982] 1 All E.R. 556 at p. 562 *per* Lord Denning M.R. and at p. 567 *per* Eveleigh L.J.

will be vicariously responsible. But as Eveleigh L.J.[41] pointed out, what would be the position, when a bank clerk who has no notice of the injunction pays out on a cheque, after notice of an injunction freezing the account has been given to another person employed by the bank? Given that contempt of court in this context is not an absolute offence, the bank should not on principle be vicariously liable unless the person to whom notice was given acted in contempt of the court. This would of course only be the case if that person authorised the payment, or knew that the payment was likely to be made under a general authority derived from him. In the latter case it would also be necessary to show that the person to whom the notice was given, deliberately refrained from taking any steps to prevent it. It will follow therefore that if a bank official is notified of an injunction over a specified account of the defendant, the bank would be obliged to take steps to freeze that account in accordance with the terms of the order. In the event that the plaintiff is unable to identify the accounts of the defendant, the order would be made applicable in general to the assets and the accounts of the defendant. In such a case the third party bank would be obliged as a matter of prudence, to conduct such searches as were necessary to ascertain whether the defendant in fact held any accounts with them. If they failed to do so, and drawings were made on an account held by the defendant with the third party bank, the latter could well be held in contempt of the court order.[42]

What then is the position of such a third party? Clearly the law must strike a balance between the rights of the plaintiff and the rights of innocent third parties, whose duty it becomes to comply with the terms of the order. This question has loomed large in several recent English decisions, from which the following guidelines and propositions can be drawn.[43]

i. *The Plaintiff must undertake to pay the reasonable costs and expenses of the Third Party in complying with the order.*

The basis for this undertaking lies in the fact that by notifying the third party of the order, the plaintiff is regarded as having impliedly requested compliance with the order. As a corollary to this implied request, it would follow that the plaintiff impliedly promises to pay the costs of compliance and also to indemnify the third party against any liability which may arise out of compliance.[44] Indeed it would now appear to be established practice to require the plaintiff to undertake to pay the reasonable costs incurred by any third party in complying with the terms of the order. Thus a bank which had expended money in searching for the account of the defendant (assuming the

41 See Z v. *A* [1982] All E.R. 556 at pp. 566-571.

42 See *Z* v. *A* [1982] 1 All E.R. 556 at pp. 570 and 573.

34 Any third party affected by injunction may apply to vary the order. See *Angel Bell* [1980] 1 AER 480. See also *Project Development Co. Ltd. S.A.* v. *KMK. Securities Ltd.* [1982] 1 W.L.R. 1470 where Parker J. permitted a third party intervener, who had applied for a variation of the order, to recover all reasonable costs of the application to vary, to be taxed on a solicitor and own client basis. It was for the intervener to establish that the costs had been reasonably incurred and were reasonable in amount.

44 See *Z* v. *A* [1982] 1 AER 556 at p. 564 *per* Lord Denning M.R. and see also *Prince Abdul Rahman Bin Turki Al Sudairy* v. *Abu Taha* [1980] 3 All E.R. 409 at p. 412 and *Searose* v. *Seatrain* [1981] 1 All E.R. 806 at p. 807, and also *Clipper Maritime Co. Ltd.* v. *Mineralimportexport* [1981] 3 All E.R. 664.

account was not identified in the order) would be entitled to recover the reasonable costs thereof. These costs could be substantial for the estimated costs of simply searching through a clearing bank's records in England is estimated at £2,000.[45] Furthermore, in a proper case, the reasonable costs of compliance can extend to include income lost by the third party. Such a situation arose in *Clipper Maritime* v. *Mineralimportexport*[46] where the plaintiff sought a Mareva injunction to restrain the defendants from disposing of or dealing with their assets within the jurisdiction, or from removing such assets from the jurisdiction and in particular, cargo being the property of the defendants loaded on board a certain vessel. This vessel was on a time charter to the defendants and was being loaded at the Port of Barry in Wales. In these circumstances the grant of the order would clearly affect the Port authorities in that income might be lost from the high income berth at which the vessel was then moored, until she could be moored elsewhere. Accordingly the plaintiff was required to undertake to compensate for the loss of income, if any.

ii. *Where the effect of a Mareva injunction is to interfere substantially with an innocent third party's freedom of action or freedom of trade, the third party's freedom of action or trade is to prevail over the Plaintiffs wish to secure the Defendant's assets.*

Thus in *Galaxia* v. *Mineralimportexport*,[47] the plaintiffs who were shipowners had a *prima facie* claim against the defendants in respect of demurrage due under a charter party. They obtained a Mareva injunction restraining the defendants from disposing of or dealing with their assets within jurisdiction, in particular a cargo of coal loaded on a vessel belonging to another innocent third party shipowner, which was in a port in South Wales. Undertakings were given to pay the reasonable costs of compliance as well as to indemnify any loss or damage suffered by the third party as a result of compliance with the order. The vessel, on which the coal was loaded, was chartered under a voyage charter party from the third party shipowner to the defendants and unless it sailed by the December 17, 1981, it would be unable to sail until just before Christmas. The Injunction thus affected not only the third party shipowner's trading activities but also with the crew's personal Christmas arrangements. The third party shipowner objected to the injunction notwithstanding the undertakings. The Court of Appeal in an unanimous decision upheld the objection. Where the effect of granting a Mareva injunction would be to interfere substantially with an innocent third party's freedom of action generally or freedom to trade (for example, by interfering with his performance of a contract made between him and the defendant relating to the assets in question), the third party's freedom of action and trade should prevail over the plaintiffs wish to secure the defendants assets for himself. The fact that undertakings were given were irrelevant for as Kerr L.J. stated :

> A plaintiff seeking to secure an alleged debt or damages due from the defendant by an order preventing the disposal of assets of the defendant, cannot possibly be entitled to obtain the advantage of

[45] See Z v. *A* [1982] 1 All E.R. 556 at p. 573.
[46] [1981] 3 All E.R. 664.
[47] [1982] 1 All E.R. 796.

> such an order for himself at the expense of the business rights of an innocent third party, merely by proferring him an indemnity in whatever form.
>
> In this connection it is crucial to bear in mind not only the balance of convenience and justice as between plaintiffs and defendants, but above all also as between plaintiffs and third parties. Where assets of a defendant are held by a third party incidentally to the general business of the third party (such as the accounts of the defendant held by a bank, or goods held by a bailee as custodian, for example in a warehouse) an effective indemnity will hold their balance, because service of the injunction will not lead to any major interference with the third party's business. But where the effect of service must lead to interference with the performance of a contract between the third party and the defendant which relates specifically to the assets in question, the right of the third party in relation to his contract must clearly prevail over the plaintiff's desire to secure the defendant's assets for himself against the day of judgment.[48]

On the facts, the injunction clearly interfered with the trading freedom of the third party shipowner, since it prevented him from sending his vessel on a voyage out of the jurisdiction under a previously concluded contract with the defendant. Moreover, as Eveleigh L.J. pointed out, the injunction not only affected the trading activity of the third party, but also interfered with the private Christmas arrangements of all persons on board the ship.[49]

What then is the position of a bank? So far it is clear that once the bank is notified of the order it must in general, freeze the defendant's bank account according to the terms of the injunction.[50] It cannot allow drawings to be made on the account whether by cheques drawn before the injunction nor by those drawn after it.[51] The position is however more complex where the third party bank has issued cheque cards[52] or credit cards to the defendant. Whilst in the case of cheques, the bank's obligation is to the defendant alone, cheque card and credit card transactions will involve obligations to indemnify third parties

[48] [1982] 1 All E.R. 796 at p. 799 *per* Kerr L.J.

[49] Note that the similar case of *Clipper Maritime* v. *Mineralimportexport* [1981] 3 All E.R. 664 was distinguished on the basis that:
(i) The shipowners there had apparently not made any application to the court; and
(ii) The vessel was on a time-charter party and therefore the financial consequences of the delay were more likely to rest on the defendant's shoulders.
BO Where the order is expressed in one currency and is made applicable to bank accounts, and it transpires that the account is in another currency, the bank should on being served with the order convert the credit balance into sterling *(i.e.* currency of the order) at the then buying rate to the extent necessary to meet the sum stated in the order, see *Z* v. *A* [1982] 1 All E.R. 556 at p. 577.

[51] *Z* v. *A* [1982] 1 All E.R. 556 at p. 563 per Lord Denning M.R.

[52] On the effect of cheque cards see Holden, "The Law and Practice of Banking" 3rd Edition at pp. 302-303.
"A cheque card is a document issued by a bank which enables the holder to cash cheques up to a stated maximum … at any branch of the issuing bank or of certain other banks with whom reciprocal arrangement have been made. Furthermore, the card is useful when making payments to third parties because it contains an undertaking to the payee of the cheque that the bank will pay any cheque not exceeding the stated maximum"... Cheque card facilities are not currently available in Singapore.

who have provided the cash or credit. Any bank being thus bound to indemnify third parties in this manner, should be entitled to debit the defendant's account with the corresponding amount. Thus the order should make it clear that it does not preclude the debiting of the account in respect of such transactions effected by the defendant prior to the date when the order is served in the bank.[53] Of course it follows that after the order is served on the bank, the bank should take whatever steps are possible to withdraw the facilities. Likewise, the injunction should not apply to prevent payments under letters of credit or bank guarantees since these involve obligations towards other parties under instruments of commerce which banks must be entitled, and indeed are obliged, to honour according to their tenor. Further, in the situation where the defendant is himself the beneficiary or the payee of a bill of exchange, the bank would not have the means of identifying the defendant as the beneficiary or payee.[54] However if the proceeds of such obligations are paid into an account covered by the order, it would follow that they would then be "frozen".

iii. *The Form of Order should be clear and precise*

The third party must not be left in any doubt as to what he must do or must not do, and the assets in question should be identified with as much precision as possible.[55] The need for certainty must however be reconciled with the need to do justice as between the plaintiff and the defendant. In particular, as a general rule, the injunction should only freeze the defendant's assets up to the level of the plaintiff's claim, since that is the maximum extent of his legal entitlement.[56] Where the plaintiff's claim is liquidated, the court will have few problems in drawing up such an order as the maximum extent of the claim will be known. Where, however, the claim is unliquidated, as in the case of a claim in respect of personal injuries, the plaintiff will only be able to provide an estimate of the probable award of the court. In such cases the estimate will have to serve as the guideline for the court. There may in fact be cases in which the plaintiff is unable, whether for lack of time or other reasons, to give an estimate of the value of his claim. In such a situation, it may well be that the courts will have no alternative but to freeze the assets generally, at least until an estimate can be given. In the final analysis there can be no hard and fast rule on the form of the order, other than that the court must try to hold the balance of justice and convenience as between the parties[57] *inter se*, and as between the plaintiff and any third party. The merits of a 'maximum' sum order are clear as between the plaintiff

[53] Z v. *A* [1982] 1 All E.R. 556 at p. 577 *per* Kerr L.J.

[54] See *Z* v. *A* [1982] All E.R. 556 at p. 563 and p. 576.

[55] See *Z* v. *A* [1982] 1 All E.R. 556 at p. 574 where Kerr L.J. suggested that the application should be accompanied by a full draft order which should *inter alia* define the assets, and if those assets are known or suspected to be in the hands of the third parties, to define their location to the greatest possible extent. In the case of Bank Accounts, the plaintiff should make every effort to indicate:
(a) which bank or banks hold the accounts in question,
(b) at what branches, and
(c) if possible under what numbers.

[56] See *Mareva Campania Naviera* v. *International Bulk Carrier* [1975] 2 Lloyds Rep. 509 at p. 510 *per* Lord Denning, that the power under s. 45 to grant an injunction is subject only to the fact that the court will not grant an injunction to protect a person who has no legal or equitable right.

[57] See *Allen* v. *Jambo* [1980] 2 All E.R. 502 at p. 506.

and the defendant. However, the difficulty faced by third parties with such an order is that the third party, say a bank, would not know what other assets the defendant had, or of their value. Without such knowledge, the order, at least from the third party's stand point would be unworkable. The compromise evolved by the courts n U.K. would appear to be as follows: The order would in the first place freeze the assets of the defendant generally up to the value of the claim. This would then be followed up with a specific order that any third party who is notified of the order, is obliged to freeze the assets of the defendant in his hands up to the maximum sum, namely the value of the claim.[58] The advantage to the third party in framing the order in this manner is clear. The fact that, *vis-a-vis* the defendant, there may be some duplication, is a necessary evil and one which is better than the alternative which is to freeze all his assets.[59]

iv. *The Injunction when worded in general terms against the assets of the Defendant should not apply to Joint Accounts, Shares or Title Deeds held by a Bank, nor to the contents of Safe Deposit Boxes, unless there are express words to the contrary.*[60]

The reason behind this proposition is an entirely practical one for a bank would not generally know the precise value of such assets, and in the case of safe deposit boxes it would not even know of the nature of the contents. The order should be clear as to whether it does extend to such assets, and if it does, the plaintiff would of course be obliged to indemnify the third party for any costs of valuation. Similarly, given that the bank will not know how much of a "joint account" 'belongs' to the defendant, the order should not extend to such accounts, especially if the other account holder is not a party to the action.[61]

III. MAREVA INJUNCTIONS AND SEIZURE OF ASSETS

Where the assets of the defendant are held by innocent third parties, such as banks, the plaintiff will be protected as soon as the order is notified to the third party concerned. With the threat of contempt proceedings, it is unlikely that any such third party would knowingly disobey the injunction. However where the assets in question are easily disposable, such as antiques and are in the defendant's hands, the position is not quite so simple. The Mareva injunction would only have been granted in the first place on the basis that there was a likelihood of dissipation to thwart any judgment of the court. Given such a scenario, there may be cases where the defendant will, despite the service of the order and the threat of contempt proceedings, attempt to dispose of the asset in question. In such cases it may well be desirable to order the delivery up of the asset concerned. The question as to whether the court has such a power to order the delivery up of an asset in aid of a Mareva order was considered recently by the

[58] See *Z* v. *A* [1982] 1 All E.R. 556 at pp. 565 and 575.

[59] See *Art Trend Ltd.* v. *Blue Dolphin (Pte) Ltd. & Ors.* [1983] 1 M.L.J. 25, above referred to, where Lai Kew Chai J. *inter alia* held that there was no justification in the plaintiffs freezing US$1.23 million worth of assets, when their total effective claim against both defendants was only US$728,468.65 plus interest and commission.

[60] See *Z* v. *A* [1982] 1 All E.R. 556 at p. 576.

[61] See *Z* v. *A* [1982] 1 All E.R. 556 at pp. 565 and 576.

Court of Appeal in *CBS* v. *Lambert*.[62] There the plaintiffs were representatives of the members of the British Phonographic Industry. In 1981, in the course of proceedings against a distributor of counterfeit records and tapes, they discovered that the defendant had been the supplier of the offending articles. The defendant was subsequently arrested and charged for handling stolen goods and he admitted to the police that he was a record pirate. It was estimated that the plaintiffs were entitled to damages of about £105,000. It appeared that the defendant was pretending to be unemployed and to be receiving social security payments when he had no right to them. It also appeared that he was spending his money on assets such as expensive motor cars which could be easily hidden or disposed of for cash and that he intended to ensure that the owners of the copyrights would never he able to enforce judgment against him. The plaintiffs applied for the usual Anton Piller[63] orders together with a Mareva injunction. In addition, the plaintiffs sought an order that the defendant should deliver up to the plaintiff's solicitor all the motor vehicles owned by the defendant. The question *inter alia* presented for appeal was whether there was a jurisdiction to include in the Mareva order, requirements for the delivery up of assets. Lawton L.J., in delivering the judgment of the court held that there was such a jurisdiction and laid down the following guidelines to follow when deciding whether or not to order the delivery up of chattels in aid of a Mareva injunction:

1. There should be clear evidence that the defendant is likely to dispose of or otherwise deal with his chattels in order to deprive the plaintiff of the fruits of any judgment.

2. The court should be slow to order delivery up of property belonging to the defendant unless there is evidence or inference that the property has been acquired by the defendant as a result of his wrongdoing. In the instant case there was reason to believe that the defendant had put the profits from infringing the copyrights into chattels such as the motor vehicles.

3. No order should be made for the delivery up if a defendant's wearing apparel, bedding, furnishings, tools of his trade, farm implements, livestock, or any machines (including motor vehicles) or other goods such as materials or stock in trades which it is likely he uses for the purposes of a lawful business.

4. All orders should specify, as clearly as possible, what chattels or classes of chattels are to be delivered up.

5. The order must not authorise the plaintiff to enter the premises of the defendant, or to seize the defendant's property save by the permission of the defendant. It should, however, be noted that the failure to give consent would be a contempt of court for the substance of the order would be that the court was requiring consent to be given.

6. Delivery up should be made to the plaintiff's solicitor or a receiver appointed by the High Court.

7. The court should follow the guidelines for the granting of Mareva injunctions in so far as they are applicable to chattels

[62] [1982] 3 All E.R. 237.

[63] See *Anton Piller K.G.* v. *Manufacturing Processer Ltd.* [1976] 1 All **E.R.** 779.

in the possession, custody or control of third parties see Z v. *A*.[64]

8. Provision should be made for liberty to apply to stay, vary or discharge the order.

Whilst the guidelines will doubtless be welcomed by judges and practitioners alike, it is not immediately apparent as to where the source of the jurisdiction to order a delivery up of assets is to be found. Indeed, the traditional view was that a Mareva injunction only operated *in personam.* It was not regarded as a remedy *in rem* and did not take the form of a pre-trial attachment of assets. It would therefore follow that the injunction did not affect a seizure of the assets, but was merely an order to restrain the defendant from dealing with his assets in certain ways.[65] Whilst this view represents the orthodox approach, it should be noted that Lord Denning M.R. came to a completely opposite conclusion. In *Rasu Maritima S.A.* v. *Pertamina*[66] the Master of the Rolls compared the Mareva jurisdiction with the former procedure of foreign attachment used in the City of London. Under this procedure, if a defendant was not to be found within the jurisdiction of the court, the plaintiff was enabled to attach the assets of the defendant within the jurisdiction of the court. The Master of the Rolls further felt that there was no objection to the practice of the defendant giving security to have his assets released, arguing that there was no material difference between giving security in this case and the giving of security to secure the release of a ship arrested under Admiralty jurisdiction.[67] More recently, the Master of the Rolls in Z v. *A*[68] stated that the Mareva injunction operated *in rem*, because it was a method of attaching the asset itself, and he concluded that the Mareva injunction enabled the seizure of assets so as to preserve them for the benefit of the creditor, but not so as to give any charge in favour of any particular creditor. This latest decision of the Court of Appeal in *CBS* v. *Lambert* would appear to be in line with the views propounded by the Master of the Rolls. One weakness however of the decision in *CBS* v. *Lambert* was that the prior authorities of *Cretanor* v. *Irish Marine Management* and *The Angel Bell* were not referred to. In both of these cases, the courts stated that the Mareva injunction did not effect a seizure of the assets. Some further light might however be shed on this point by referring to the decision in *AJ. Bekhor* v. *Bilton.*[69] There the main issue was whether there was a jurisdiction to order discovery in aid of a Mareva injunction. The Court of Appeal decided in the affirmative. Both Ackner and Griffiths L.JJ. decided that there was such a power on the basis that since section 45 of the U.K. Supreme Court of Judicature (Consolidation) Act 1925 conferred a power to make a Mareva injunction, there must be, inherent in that power, the power to make all such ancillary orders as were just and convenient so as to ensure that the Mareva injunction was effective to achieve its purpose. Applying this line of reasoning to the issue question of the court's power to order delivery up of the assets, it would follow that such a power

64 [1982] 1 All E.R. 556.
65 See *Cretanor Maritime Co. Ltd.* v. *Irish Marine Management Ltd.* [1978] 3 All E.R. 164 at p. 170. See also *The Angel Bell* [1980] 1 Lloyds Rep. 632 at p. 636.
66 [1977] 3 W.L.R. 518 at pp. 524-526.
67 [1977] 3 W.L.R. 518 at p. 529.
68 [1982] 1 All E.R. 556 at p. 562.
69 [1981] 2 All E.R. 565.

would exist, but only to the extent necessary to ensure that the Mareva Injunction was effective.[70]

This latest development in the scope of the Mareva injunction is one which will help ensure that the order of the court is not summarily evaded by an uncaring defendant. So long as the guidelines laid down by the court are followed, little injustice is likely to result. In fact, as mentioned earlier, pre-trial seizure of assets is by no means a new concept in Singapore, for under Part III of the Debtors Act,[71] an order for attachment takes effect by seizure. Given that the courts have the power to grant such ancillary orders as are just and convenient to ensure that the Mareva injunction is effective, it is perhaps a little difficult to see why the power to order a delivery up should be confined as suggested in the guidelines, to cases where the asset in question was acquired by reason of the defendant's wrongdoing. As with all guidelines, it is their spirit and not the letter which should be observed. In granting an order for delivery up, the court must be mindful of the need to ensure that the order is both just and convenient *i.e.* to preserve the balance of convenience as between the parties. There may well be cases where such an ancillary order is desirable notwithstanding the lack of a casual connection between the wrongdoing and the asset in question. One such case might be where the defendant has by his words or conduct indicated an intention to dispose of his assets, notwithstanding the service of an injunction on him. Following the reasoning of the courts in *CBS* v. *Lambert* and *A.J. Bekhor v. Bilton* it is submitted that the courts in Singapore have a like power to grant such ancillary orders as are necessary to ensure an effective Mareva order. It will be interesting to see how our courts apply that power and, in particular, as to whether they will require a casual connection between the wrongdoing and the asset concerned.

CONCLUSION

The Mareva injunction has thus evolved from a 'remedy' available only against foreign defendants in respects of removal of assets outside of jurisdiction into a 'remedy' available wherever just and convenient, backed up with powers of discovery and delivery up. Small wonder then that Lord Denning M.R. labelled the Mareva as one of the most important instances of judicial law reform of recent times.[72]

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[70] This line of reasoning still however leaves open the question as to whether the Mareva injunction is a *remedy in rem* or *in personam.* See also *Johnson* v. *L & A Philatelies Ltd.* [1981] FSR 286. There the Plaintiffs feared the Defendants were about to leave the country taking with them the Defendant's stamps and leaving insufficient assets to pay his debt. They applied *ex-parte* for a Mareva injunction to restrain the defendants from removing or dealing with their stamps and an Anton Piller order requiring the defendants to permit the Plaintiff's solicitors to take into their custody the defendants' stamps. The order was granted by Goff J. No written judgment setting out his reasons was however given. The case of *Anton Piller K.G.* v. *Manufacturing Processors Ltd.* [1976] Ch. *55* established that the court had a inherent jurisdiction to make an order for the detention or preservation of the subject-matter of a cause and of the documents relating thereto.

[71] Cap. 19, Singapore Statutes 1970. See s. 17.

[72] See Lord Denning M.R. *The Due Process of Law* (1980) at p. 134.

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