

NO 915

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. W011/2002

BETWEEN	RICKMAN WARREN	CLAIMANT
AND	BOSUNG ENGINEERING & CONSTRUCTION COMPANY LIMITED	DEFENDANT

IN CHAMBERS

David Batts and Miss Daniella Gentles instructed by Livingston, Alexander & Levy for the Claimant.

Miss Gillian Mullings instructed by Patrick Bailey & Co.
for the Defendant.

Mrs. Michele Champagnie and Christopher Kelman instructed by Myers,
Fletcher & Gordon for the intervenor.

Heard: 9th, 11th, 19th December, 2003 & 17th February, 2004

Cole-Smith, J.

At a conjoined hearing there were applications for Court Orders by the Defendant and an Intervenor. The Intervenor claims that the Mareva Injunction covers equipment which belongs to him and the injunction should be discharged in that regard. Additionally he also seeks to be added as a party if his initial application is unsuccessful. On the other hand the Defendant seeks a discharge or a variation of the Mareva Injunction and a Bond Security.

Intervenor's Application

Mr. Kelman contends that the Defendant leased the equipment, defaulted on its obligations and as a result the leases between the Defendant and the companies were terminated and an auction held at which the equipment was purchased.

Mr. Kelman further contends that no affidavit was filed by the claimant in opposition to what the applicant has said.

Mr. Batts for the Claimant filed on the 9th December 2003, a Notice of Intention to Rely on affidavits. He contends that there is contradictory evidence before the Court as to the ownership of the equipment. The Defendant by several affidavits filed in relation to this matter claimed ownership and said the equipment was sufficient to satisfy the judgment.

The Court finds that the Defendant based on the affidavits has caused the Court to order the Mareva as prayed and therefore the application for the declarations will not be granted. The application for the intervenor to be added as a party is granted.

APPLICATION TO VARY MAREVA INJUNCTION

Miss Mullings for the applicant is seeking to have operational expenses, legal fees and legal expenses released. She contends that the claimant should not have proceeded to ask the Court to freeze the

Defendant's assets for an indefinite period since there were no expert reports alleging damage caused by the defendant.

The Claimant took eight months to supply Interrogatories and when the Defendant applied to strike out the matter the expert reports miraculously appeared. The Defendant is here to build a highway and the building of the highway is an expensive endeavour. She further contends that the Defendant has shown that debt to financiers is substantial and that the debt forms a part of its legitimate expenses.

The Defendant seeks \$2,000,000.00 for legal fees, \$500,000.00 for transportation and teleconference of witnesses and \$1,800,000.00 per month as operational expenses.

Mr. Batts contends that the Court may vary a Mareva Injunction to permit the Defendant to pay reasonable living expenses or payments in the ordinary course of business and to pay legal fees. P.C.W. (Underwriting Agencies) Limited v. P. S. Dixon & Anor. (1983) 2 A.E.R. 158. This is discretionary and is to be exercised after all the relevant circumstances are considered.

He further contends that although a Defendant may be allowed to pay reasonable expenses in the ordinary course of business, the Court should not permit a Defendant to vary an Injunction if the payments are not bona fide or

if there is an intention to deprive the Claimant out of the proceeds should the Claimant be successful.

He further states that the Defendant has not alleged or proved that there are no assets outside Jamaica from which these alleged expenses can be paid. Miss Mullings states that the company in Korea is bankrupt.

Having considered the principles applicable to the grant and variation of a Mareva Injunction I will exercise my discretion and vary the Mareva Injunction and allow the Defendant \$500,000.00 for legal fees and \$500,000.00 for legal expenses.

BOND SECURITY TO DEFENDANT

Miss Mullings seeks \$18,000,000.00 as a Bond Security. Mr. Batts contends that the Claimant lives in Jamaica and owns property as deponed in his affidavit.

The Claimant in paragraph 27 of his affidavit dated 27th October 2003 depones that he is the registered proprietor of property situated at Green Island, Hanover and the property has a valuation in excess of US\$1,000,000.00.

The Court finds that based on this the Claimant should therefore be in a position to satisfy the undertaking given should judgment be awarded to the Defendant.

Notice of Application to Court for Leave to Intervene and for
Declarations.

Declarations not granted. Applicant added as a party Pursuant to Rule 19.2(3) (b) of the Civil Procedure Rules.

Amended Notice of application for Court Orders and Further Amended
Notice of Application for Court Orders.

Order that the Mareva Injunction granted herein be varied.

- (i) Legal fees of \$500,000.00 is granted to Attorneys at Law on the record.
- (ii) Legal costs for the transportation and teleconference of witnesses into the jurisdiction granted in the sum of \$500,000.00.

Costs to be costs in the claim.

Leave to appeal granted to Intervenor, Claimant and Defendant.