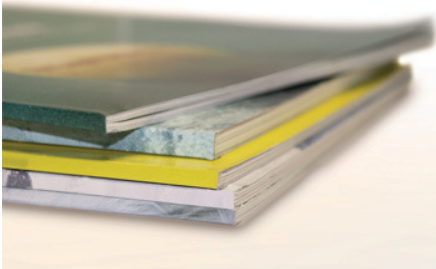


## Mareva Relief – A Flexible Jurisdiction

*As originally appeared in Resolution – Jersey Summer 2010*



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**A Mareva injunction (now referred to as a freezing order in England) can be an extremely valuable tool in litigation. The effect of a Mareva injunction is to prevent a defendant in court proceedings from dissipating or dealing with his assets. The injunction is only available where the plaintiff is able to satisfy the court that there is a real risk that without the injunction the defendant would remove or dissipate his assets prior to the plaintiff enforcing any judgment which he may ultimately obtain against the defendant.**

In other words, the plaintiff must satisfy the court that without the injunction there is a real risk that any judgment which the court might ultimately award him will not be satisfied because the defendant will have removed his assets from the jurisdiction or otherwise dissipated those assets. Whilst a Mareva injunction is intended only to preserve the *status quo* pending the determination of the substantive issues between the parties, the draconian effect of a Mareva injunction means that a defendant will frequently be forced to compromise his claim at an early stage in proceedings.

### **Draconian Effect**

The Royal Court in Jersey largely adopts the approach of the English Courts to the grant of Mareva injunctions and will generally look to English legal authority. There are, however, certain differences in approach which can make obtaining

Mareva relief in Jersey particularly attractive to a Plaintiff.

In Jersey, the standard form of Mareva injunction contains not only a provision imposing an obligation on the defendant to give disclosure of his assets within the jurisdiction, but also a provision requiring named third parties (or “Parties Cited”) to give disclosure. This can be extremely valuable, particularly where (as will often be the case where Mareva relief is considered necessary) there is a belief that the defendant will not give full disclosure of his assets.

The Parties Cited will typically include banks, trust companies and other fiduciary services companies who it is believed hold or administer assets belonging to the defendant or assets in which the defendant has an interest. The Parties Cited are made party to the proceedings for the purposes of the injunctive relief and any ancillary orders which may be made, but they will otherwise generally have little role in the proceedings. Service of the Mareva injunction on a Party Cited acts as an immediate interim injunction, restraining it from removing from the jurisdiction, disposing of or in any way dealing with the defendant’s assets, regardless of whether those assets are in the defendant’s own name or not. This may include, for example, assets which are held on trust or in a nominee capacity for the defendant. Significantly, the standard form of injunction also contains a provision requiring the Parties Cited to inform the plaintiff’s lawyers in

writing of:

*“... all of the Defendant’s assets in the Island of Jersey held by it whether in the Defendant’s own name or not and whether solely or jointly owned, giving the value, location and details of all such assets”.*

This form of order is not typically included in the English form of freezing order (although non-party disclosure can, of course, be obtained in certain circumstances) and gives a plaintiff who is seeking to trace assets against which a judgment might ultimately be enforced a significant advantage. In appropriate circumstances it may be possible to obtain an order from the court requiring disclosure from the Parties Cited prior to service of the injunction on the defendant. This would enable a plaintiff to use the disclosure obtained from the Parties Cited to identify other assets of the defendant which can then be preserved before the defendant is on notice of what the plaintiff is attempting to do.

Another significant area of flexibility in relation to Mareva relief in Jersey is that the Royal Court has jurisdiction to grant a Mareva injunction even where there are no substantive proceedings in Jersey, provided there are such proceedings elsewhere. In other words, a plaintiff who is litigating against a defendant in England can seek a Mareva injunction

in Jersey and obtain third party disclosure in relation to the defendant’s assets notwithstanding the fact that there are no substantive proceedings against the defendant in Jersey. The disclosure obtained from any such application may assist the plaintiff in identifying and tracing other assets of the defendant

### **Worldwide Relief**

Like the English courts, the Royal Court is prepared to grant worldwide injunctive relief in appropriate circumstances. Where assets are held by a bank or fiduciary services company which is itself within the jurisdiction of the Royal Court, a worldwide Mareva injunction can assist in protecting not only the assets held by that institution in Jersey but also the assets held by that institution elsewhere. The Royal Court has also been willing to grant disclosure orders in respect of a defendant’s worldwide assets even where a worldwide Mareva injunction has not been granted.

Injunctive relief is, of course, only available in limited circumstances. It can, however, be an extremely valuable protection for a plaintiff faced with litigating against a shadowy defendant. The flexibility and scope of the Mareva injunction in Jersey can form a very important part of that protection.

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July 2010  
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