

Obtaining a Mareva Injunction in Jersey

An injunction is an order of the Court by which a person is required to do or refrain from doing a particular act. In Jersey, a Mareva injunction, also known as a "freezing order", is the most common form of injunction, and is used to prevent a defendant from dissipating assets pending final judgment so as to seek to place his assets beyond the reach of a claimant. The Royal Court of Jersey frequently grants Mareva injunctions in aid of foreign proceedings, even where no other relief is sought in Jersey but the grant of the Mareva injunction (per *Solvalub Ltd v Match Investments Ltd* (1996) JLR 361). It is recognised as a draconian order in the Royal Court's armoury since the order is often granted at the pre-trial stage in *ex parte* hearings, based on affidavit evidence alone.

The pre-requisites for the grant of a Mareva include that there must be evidence that (a) the defendant has assets within the jurisdiction, and (b) there is a risk that he will dissipate those assets unless restrained by order of the Royal Court. A Mareva can be granted at any stage during the proceedings or after judgment in order to assist execution of a foreign judgment. It is important to note that a Mareva in Jersey is required in order to give effect to a worldwide freezing order which has been granted by a foreign Court – banks and other financial institutions will not generally recognise that any foreign Court order is enforceable against them, in the absence of an order from the Royal Court of Jersey Court as well.

The granting of a Mareva injunction is a matter for the discretion of the Bailiff or Deputy Bailiff when considering an application. Given the desirability of firms adopting a consistent approach in relation to the form and carrying out of such orders, the Royal Court has issued a Practice Direction designed to set out guidelines for the assistance of the Court and those who apply for Mareva injunctions and to set out a standard form of Mareva injunction. As noted in the Practice Direction, the standard form should be used wherever possible. If any departure from that standard is proposed, the amended provisions should be clearly identified and explained for consideration by the Bailiff or Deputy Bailiff when the application is made.

The papers in support of an application for a Mareva include the Order of Justice (the pleading setting out the salient facts and the relief claimed, including the body of the injunction), the supporting affidavit and all exhibits. In practice, we will need, at the earliest possible stage, sight of the foreign Court order, the claim form filed in the foreign proceedings and the affidavit in support of the application made in the foreign Court. In addition to identifying evidence in support of the fact that the defendant has assets in the jurisdiction and the risk of dissipation, the affidavit should set out the procedural steps taken in the foreign Court, the orders handed down by the foreign Court and any subsequent steps taken by the claimant. Experience shows that where these matters are addressed with us fully when we are instructed we will be able to turn around the papers required for an injunction in short order.

Once completed, the papers are sent down to the Bailiff's Chambers. The Bailiff or Deputy Bailiff will consider the application as soon as possible. The Order of Justice containing the injunction will, if granted, be signed or the applicant's Advocate will be required to attend upon very short notice at the Bailiff's Chambers in order to address any issues which might be raised by the Bailiff or the Deputy Bailiff. An applicant should be prepared, if necessary, to support his cross-undertaking in damages. Provision can be made in the order for payment of the defendant's reasonable living expenses and legal costs although much will depend on the nature of the relief sought and the unique background circumstances of the particular case. If the applicant has a proprietary claim to the moneys enjoined, it may be legitimate not to include such provision although this is a matter to draw to the Court's attention.

Other undertakings worth noting include the undertaking on the part of the applicant to serve the Order of Justice containing the injunctions and the supporting affidavit on the defendant and any parties cited (see below) as soon as practicable. As emphasised in the Practice Direction: "*This obligation, especially that of service on the defendant, is fundamental to the granting of the Mareva injunction. Any failure to comply with that undertaking will be viewed by the Court with considerable disfavour.*" If a party is out of the jurisdiction, an order for service out will be required. This is usually addressed in a separate shorter supporting affidavit.

The terms of any disclosure orders are also very important. The standard form Mareva contains provision for disclosure but it is possible when making the application to widen the scope of the relief sought, to include Bankers Trust type orders which will enable the applicant more effectively to follow and trace funds if, as can sometimes be the case, the assets have been redirected elsewhere. Again, any amendment to the standard form should be highlighted and explained to the Judge.

Any application for the discharge or variation of any of the injunctions granted will be dealt with as soon as the Court can entertain such an application. The parties should ensure their availability at short notice for such purpose.

It is usual for the bank or other financial institution to be named as a party cited. This is because a party cited usually becomes involved in such a matter simply because it is or may be holding funds (for example in a bank account) or other property on behalf of a defendant – it is not a party to the substantive issues in dispute between the claimant and the defendant. In practice, one would always serve the bank first to prevent the defendant withdrawing his money. The party cited's duty is to comply with the order and this overrides any contractual duties (eg. the duty of confidence which subsists between a bank and its customer). Failure to preserve the assets or comply with the disclosure order is a contempt of Court.

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