**ALLEN AND OTHERS**

**v.**

**JAMBO HOLDINGS**

COURT OF APPEAL, CIVIL DIVISION

20 JUNE 1979

**LEX (1979) – 2 ALL E.R. 502**

OTHER CITATIONS

3PLR/1979/5 (CA-E)

[1980] 2 All E. R 502

**BEFORE THEIR LORDSHIPS:**

LORD DENNING MR, SHAW AND TEMPLEMAN LJJ

**BETWEEN**

ALLEN AND OTHERS – Appellant

AND

JAMBO HOLDINGS - Respondent

**ORIGINATING COURT(S)**

HIGH COURT (Bristow J., Presiding)

**REPRESENTATION**

MICHAEL BURTON - for the plaintiffs

DERMOD O'BRIEN - for the first and second defendants

ROBERT WEBB - for the third defendants

SOLICITORS:

*J ISRAEL, ARNOLD AND STRANGE - For the Plaintiffs);*

*BARLOW, LYDE AND GILBERT - For the First and Second Defendants);*

*BEAUMONT AND SON - For the Third Defendants)*

**ISSUES FROM THE CAUSE(S) OF ACTION**

TORT AND PERSONAL INJURIES LAW:- Fatal Accidents - Personal injuries claim - Plaintiff legally aided and unable to give satisfactory undertaking in damages if action failed - Whether Mareva injunction able to be granted in personal injuries action - Whether injunction should be granted regardless of plaintiff's inability to give undertaking as to damages

TRANSPORTATION AND LOGISTICS LAW – AVIATION:- Death arising from propeller of a light aircraft – Claims arising therefrom – Where plane is only asset of owners within jurisdiction - Whether Injunction could issue to prevent plane from moving out of jurisdiction pending determination of proceedings

TRANSPORTATION AND LOGISTICS LAW – AVIATION:- Freezing of plane’s movement with Mareva Injunction – Application to discharge same – Nature of security required – Insurance and reinsurance backing - bond or an undertaking by a reputable company or concern within jurisdiction so as to ensure that any award of damages to the plaintiffs would be met.

TRANSPORTATION AND LOGISTICS LAW – SHIPPING AND AVIATION:- Mareva Injunction - Whether different rules apply to Ships in contradistinction from Airplanes – “As with ships, so with aircraft. The situation is so parallel, the one with the other, that even though this is a new case, it seems to me that it would be right to continue the Mareva injunction in the expectation that the aircraft will be released at any moment as soon as security is provided.” Per Denin M.R

TRANSPORTATION AND LOGISTICS LAW – AVIATION:- Aerodrome management and enforcement of Freezing Orders against a plane parked thereat – Right to apply for guidance as to what should be done with the plane at the aerodrome – Whether injunction does not prevent any steps being taken so as to see that the aircraft is in good order and is kept in good condition and is serviceable – Duty of aerodrome managers/owners where injunction makes it clear that the aircraft must not be removed from the jurisdiction or from the aerodrome permanently until further order

INSURANCE AND REINSURANCE LAW:- Aviation Insurance – Existence of insurance policy against litigation claims – Admissible evidence of same as security against a Mareva (Freezing) Injunction- Need to show the insurance corporation have accepted responsibility or other relevant considerations – Whether mere assertion of insurance is not sufficient ground for discharging the injunction – Where insurance policy is foreign – Whether there if need to show proof of an undertaking by a local insurance company of standing

INTERNATIONAL TRADE – AVIATION:- Nigerian company with aircraft in foreign aerodrome - Claims for personal injury against company - Injunction issued against plane from leaving jurisdiction till parent company provide satisfactory security so that any award of damages against them could be met – Nature of insurance, reinsurance, bond or security that will be acceptable

CHILDREN AND WOMEN LAW – WIDOWS – NOTABLE STATEMENT:- “There is one other point that I must mention. It is said whenever a Mareva injunction is granted the plaintiff has to give the cross-undertaking in damages. Suppose the widow should lose this case altogether. She is legally aided. Her undertaking is worth nothing. I would not assent to that argument. As Shaw LJ said in the course of the argument, a legally aided plaintiff is by our statutes not to be in any worse position by reason of being legally aided than any other plaintiff would be. I do not see why a poor plaintiff should be denied a Mareva injunction just because he is poor, whereas a rich plaintiff would get it. One has to look at these matters broadly. As a matter of convenience, balancing one side against the other, it seems to me that an injunction should go to restrain the removal of this aircraft.” Per Denning M.R

**PRACTICE AND PROCEDURE ISSUES**

JUDGMENT AND ORDER - MAREVA INUNCTIONS:- Whether there was no difference in principle between commercial actions and actions for personal injuries or other causes of action in regard to the issue of a Mareva injunction - Whether the issue of a Mareva injunction is to be determined solely by a plaintiff's financial standing - Whether in each case the issue of an injunction depended on the balance of justice and convenience

JUDGMENT AND ORDERS - INTERLOCUTORY INJUNCTION:– Mareva Injunction - Danger that defendant may transfer assets out of jurisdiction - Injunction restraining removal of assets out of the jurisdiction – Whether could be refused on ground that plaintiff

HISTORY AND SUMMARY

The plaintiffs were the widow, children and executors of a man who was killed when he was hit by the propeller of the light aircraft he was about to board. The aircraft was owned by a Nigerian company and at the time of the accident was in England for servicing. The plaintiffs anticipated making a fatal accident claim against both the pilot and the Nigerian company as his employers. The Nigerian company had no other assets in England and when it was discovered that the aircraft was about to return to Nigeria the plaintiffs issued a writ and immediately sought and were granted a Mareva injunction preventing the aircraft from being removed out of the jurisdiction. On an application to discharge the injunction the questions arose (i) whether a Mareva injunction could be granted in a personal injury action or was confined to commercial actions, and (ii) whether the injunction should be refused because the widow was legally aided and neither she nor the other plaintiffs could give a satisfactory undertaking as to damages if their anticipated action failed.

**Held –**

There was no difference in principle between commercial actions and actions for personal injuries or other causes of action in regard to the issue of a Mareva injunction. Nor was the issue of a Mareva injunction to be determined solely by a plaintiff's financial standing. In each case the issue of an injunction depended on the balance of justice and convenience, and on the facts of the case the injunction ought to be continued until the Nigerian company provided satisfactory security to ensure that any award of damages against them would be met

**MAIN JUDGMENT**

20 June 1979. The following judgments were delivered.

**LORD DENNING, M.R**

A man's head got caught in a propeller. He was decapitated and killed. It was at the Leavesden aerodrome, near Watford. There was a small twin-engined aircraft there. It belonged to a Nigerian company called Jambo Holdings Ltd. It had come into this country for servicing and to qualify for a certificate of airworthiness. All was in order for its return to Nigeria. It was due to leave on the evening of Saturday, 27 January 1979. The first leg to Gatwick, then on to Nigeria.

The pilot, John Eismark, had agreed to take two passengers with him on the first leg from Leavesden to Gatwick. Two friends were to go to see them off. They were Mr Harry Allen and his wife Ruth Allen. Earlier in the evening Mr Allen himself had gone with the pilot to the aerodrome to help load some of the heavier luggage into the aircraft. Afterwards they both returned to fetch the others and the hand luggage. The pilot went ahead to test the engines. It was a cold, icy night, and he wanted to see that there was no ice on the wings and the propellers, and to see that everything was in order. He was in the cockpit making those checks when Mr Allen, his wife and the two passengers (who were going aboard the aircraft that evening) arrived by car. As the car approached the aircraft, the pilot switched on the lights of the aircraft. The car driver had his lights on as he drew near. The pilot waved him on. The motor car backed to a distance of about ten yards from the aircraft. Then the passengers and Mr Allen and his wife got out to go to the aircraft. Mr Harry Allen was carrying a bag on his shoulder. He went first and the others followed after. It was then the accident happened. Mr Allen's head became caught in the propeller. He was killed. It was a tragedy.

There was an inquest. It was held on 1 March 1979. The coroner found a verdict of accidental death. As soon as the inquest ended, the pilot told the solicitor for the widow that he intended to fly the aircraft back to Nigeria immediately. The solicitor was afraid that any claim by the widow for damages would be fruitless if the aircraft was flown back to Nigeria. It would be very difficult to enforce any judgment in Nigeria. The solicitors tried to discover whether the aircraft was insured with an English insurance company, but they failed. So on the next day they took steps immediately. They instructed counsel. Counsel telephoned Drake J and explained the circumstances to him. The judge granted a Mareva injunction (*Mareva Compania Naviera SA v International Bulkcarriers SA* (1975) [1980] 1 All ER 213) to restrain the Nigerian company and the pilot from removing the aircraft from the jurisdiction until after the hearing of a summons. The aircraft has remained at Leavesden aerodrome ever since. The injunction was continued by agreement. No request was made for it to be discharged. The reason was because more work had to be done on the aircraft, and further tests were to be made. From March until June nothing was done by the Nigerian company or anyone on their behalf to try and discharge the injunction.

Then on 19 June 1979 (that is, last month) a summons was taken out by a well-known firm of solicitors who act for insurance companies in the City of London. They applied for the injunction to be discharged. Affidavits were sworn on both sides. It washeard by Bristow J. He realised that it was a new and important case. After careful consideration he decided to discharge the injunction. But he intimated that it was a suitable case for appeal to this court. So he gave leave to appeal.

It is a new case altogether. In the past Mareva injunctions have been confined to the commercial court. The judges of that court have granted injunctions to restrain foreign companies from removing moneys so as to defeat their creditors. The leading case is *Rasu Maritima SA v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina) and Government of Indonesia (as interveners)* [1977] 3 All ER 324, [1978] QB 644, coupled with a very recent case, *Third Chandris Shipping Corpn v Unimarine Sa* [1979] 2 All ER 972, [1979] QB 645. Those were commercial cases. But this is new. Not because it concerns an aircraft. There was one case where an aircraft ran up a bill for fuel. Its bill was not paid. The aircraft was restrained from moving until it was paid. But this is the first case we have had of a personal injury (this is a fatal accident case) where a Mareva injunction has been sought. The nearest parallel is a ship in an English port where there is an accident causing personal injuries or death. It has been settled for centuries that the claimant can bring an action in rem and arrest the ship. She is not allowed to leave the port until security is provided so as to ensure that any proper claim will be duly met.

The question in this case is whether a similar jurisdiction can be exercised in regard to an aircraft. In principle I see no reason why it should not, except that it is to be done by a Mareva injunction instead of an action in rem. The real difficulty is that we do not know the rights or wrongs of this accident. The widow alleges that the pilot knew that people were coming aboard with the luggage; he knew that they were approaching the doorway close to the propeller. Either he ought to have warned them, or he ought to have stopped his engines and stopped the propellers going round. On the other hand, it is alleged against Mr Harry Allen that he ought to have known better; he could hear that the engines were running; and that any person taking reasonable care of himself would not have gone close to the propellers as he did.

There are the two sides. It cannot be decided today. It has to be decided in the action. As the judge says, it may be that the owners of the aircraft are wholly liable, or it may be that Mr Harry Allen was wholly liable; or it may be half and half. All that can be said is that the widow and her children have a good, arguable case for claiming damages on the ground that it was at least in part the fault of the pilot. That is sufficient. We said so in *Rasu Maritima SA v Pertamina* [1977] 3 All ER 324 at 335, [1978] QB 644 at 663 and, as we also said there, the Mareva principle applies not only to money but also to goods. So it applies to this aircraft.

On the evening of and March 1979 all the plaintiffs knew was that the aircraft was about to fly off to Nigeria. It was Nigerian owned. For aught that anyone knew, if the aircraft went off, it might never return. The widow would have great difficulty in getting any damages if they were awarded to her. That was quite sufficient to warrant the judge in granting the Mareva injunction.

The Nigerian company now come here and ask that that injunction should be discharged. They do it on these grounds: First, they say in their affidavit:

`... the First Defendant [that is, the Nigerian company] is insured against claims of this nature under Policy No. MA/AHL/78/HL/0004 issued by the National Corporation of Nigeria of 118 Broad Street, P.O. Box 1100, Lagos, Nigeria upon whose instructions the First and Second Defendants' Solicitors herein are acting.'

That is all we are told. Nothing is said about whether the insurance corporation have accepted responsibility. Nothing is said as to their stability or their backing or as to reinsurance or anything of that kind. Until more is known about it, it seems to me that the mere assertion of insurance is not sufficient ground for discharging the injunction. If there had been an undertaking by an English insurance company of standing, it would be different. But no such undertaking has been offered.

The affidavit goes on to say that this is a new aeroplane which was made in the United States from where it was exported in February 1978. It was intended to register it in Nigeria. It was worth £1/2m, which is far more than what might be awarded on any claim. No doubt that is true. But then it goes on to say that, if this injunction remains, the Nigerian company would suffer great loss. They are a big industrial group, and if they were deprived of the use of this aircraft they would have to employ a further 20 senior managers at £50,000 a year each; and that would raise the group's overheads by £1m a year. That is difficult to swallow.

So the affidavit does not impress me in the least. I can see no reason in this case, as is done in shipping cases all over the world, why security should not be given in the way of a bond or an undertaking by a reputable company or concern in England so as to ensure that any award of damages to the plaintiffs would be met. If the Nigerian company are of such high standing, as we are now told they are, if they are ready to accept any liability, as we are told they will, it seems to me that a bank or an insurance company of standing in this country would back the Nigerian company by way of security without any difficulty whatsoever. No such security is forthcoming or is mentioned in the affidavit.

We were told, `Ships are different. They have their protection and indemnity clubs, whereas aircraft have not.' I would expect that insurance policies nowadays would cover the provision of security. But, even if they do not, the sooner they do the better. As with ships, so with aircraft. The situation is so parallel, the one with the other, that even though this is a new case, it seems to me that it would be right to continue the Mareva injunction in the expectation that the aircraft will be released at any moment as soon as security is provided.

There is one other point that I must mention. It is said whenever a Mareva injunction is granted the plaintiff has to give the cross-undertaking in damages. Suppose the widow should lose this case altogether. She is legally aided. Her undertaking is worth nothing. I would not assent to that argument. As Shaw LJ said in the course of the argument, a legally aided plaintiff is by our statutes not to be in any worse position by reason of being legally aided than any other plaintiff would be. I do not see why a poor plaintiff should be denied a Mareva injunction just because he is poor, whereas a rich plaintiff would get it. One has to look at these matters broadly. As a matter of convenience, balancing one side against the other, it seems to me that an injunction should go to restrain the removal of this aircraft.

The owners of the aerodrome, Rolls-Royce Ltd, are here. They wish for guidance as to what should be done at the aerodrome. This injunction does not prevent any steps being taken so as to see that the aircraft is in good order and is kept in good condition and is serviceable. But the injunction does make it clear that the aircraft must not be removed from the jurisdiction or from the aerodrome permanently until further order. It is to be hoped that all difficulties will be resolved in an hour or two by security being provided.

I would allow the appeal accordingly.

**SHAW LJ**.

I agree. Counsel who has argued this appeal on behalf of the first and second defendants has not suggested that there is any real difference in principle between an action for personal injury such as this one and an action in respect of some mercantile transaction. What he has said is that one ought to look more cautiously at this situation because in commercial disputes it is usually the case that a plaintiff will be in a position to meet any potential liability under his undertaking in damages if he asks for a Mareva injunction and then loses the action. But, as Lord Denning MR has pointed out, questions of financial stability ought not to affect the position in regard to what is the essential justice of the case as between the parties.

In the present case the defendants have deposed to their being solvent and to the fact that the company has assets which are sufficient to satisfy a judgment. That perfunctory dismissal of the suggestion that the Mareva injunction ought not to go in respect of their aeroplane makes no reference at all to where those other assets are to be found or what they consist of; nor do they take into account what the magnitude of the judgment may be if the action should go against them. Altogether I found their affidavit evidence very unimpressive; and indeed, if one began with any misgivings whether the plaintiff if she succeeds in this action will be paid any damages she may be awarded, the defendants' affidavits did not serve to allay those misgivings. They had rather the opposite effect.

One comes back to what is the central principle which should determine whether a Mareva injunction should go. It is urged that it would be a novel departure from precedent to apply it to an action such as this; but as recently as 1975 it was something of an innovation in regard to mercantile transactions. If one applies the principle that the proper order is that which would result in a due balance of justice and convenience, it would follow that in the circumstances of this case the course to be taken is that which would involve the least risk of ultimate injustice having regard to the actual and potential rights and liabilities of the parties on both sides. This, in my view, will be best achieved by the order proposed by Lord Denning MR, and I would allow the appeal accordingly.

**TEMPLEMAN LJ**.

I agree. The pilot assumed that the two passengers, Mr and Mrs Allen, and the hand baggage would not be brought up to the aircraft. The pilot knew but obviously Mr Allen did not realise that the clearance between the propeller and the entrance to the aircraft was such as to make it dangerous to attempt to enter while the engines were running. The pilot did not switch off the engines, and Mr Allen was fatally injured.

The pilot's employers are a foreign corporation with no assets in this country except the aircraft. They resist liability for the death of Mr Allen; and through counsel they complain that their one asset in this country, the aircraft, has been frozen. They produce evidence, although months have gone by, merely making the bland statement that the pilot's employers are solvent and have assets sufficient to satisfy a judgment. They produce the bland statement that they are insured against claims of this nature. They do not explain why they have not taken what would be the normal precautions to reassure the widow and executors in the circumstances, namely of producing an undertaking by insurers who are resident in this country or by producing a bond or some form of security. Instead of that they have put forward the proposition that if an injunction is granted and they have to do without the aircraft for a long period they will require 20 senior managers at £50,000 a year, raising their overheads by £1m a year. I am not impressed either by what they have not said, or by what they have said.

So far as the question of jurisdiction is concerned, I can see no difference between a Mareva injunction in a commercial action and a Mareva injunction for personal injury or any other cause of action save this, that in the kind of actions in which Mareva injunctions have been granted, where the contest is between two big commercial concerns, there is usually very little argument about the value of the cross-undertaking in damages, and there are freely available methods of security.

In this case one factor which counsel for the first and second defendants very properly urged on us (but it is only a factor which we must bear in mind) is the cross-undertaking in damages which must inevitably be limited to the assets of the executors which I understand are no more than the present inflated value of a house. Nevertheless it seems to me that to deny an injunction in these circumstances would be to deny a measure of assurance to the widow which she is entitled to have. Accordingly I agree that the injunction should go, and I would suggest that the defendants instead of spending the amount which they have spent on air fares and the amount which they or their insurers have spent on this litigation will now employ their resources in obtaining what it seems to me are perfectly available, feasible and not difficult methods of securing the release of their aircraft by providing the necessary security.

Appeal allowed.

Injunction to go restraining removal of aircraft from the aerodrome or the ground except by agreement with the plaintiffs' solicitors and to the extent agreed. Security to be limited to £50,000 to include undertaking to be provided by reassurers in London to the extent of 40%. Liberty to apply to both sides. Application for leave to appeal to the House of Lords refused.

**Cases referred to in judgments**

Mareva Compania Naviera SA v International Bulkcarriers SA, The Mareva(1975) [1980] 1 All ER 213, [1975] 2 Lloyd's Rep 509, CA.

Rasu Maritima SA v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina) and Government of Indonesia (as interveners) [1977] 3 All ER 324, [1978] QB 644, [1977] 3 WLR 518, [1977] 2 Lloyd's Rep 397, CA.

Third Chandris Shipping Corpn v Unimarine SA, The Pythia, The Angelic Wings, The Genie [1979] 2 All ER 972, [1979] QB 645, [1979] 3 WLR 122, [1979] 2 Lloyd's Rep 184, CA.