

Allied Marine Services Ltd v LMJ International Ltd
[2005] SGHC 201

Case Number : Suit 672/2005, SIC 4873/2005
Decision Date : 28 October 2005
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Christopher Chong and Toh Chen Han (Kenneth Tan Partnership) for the plaintiff
Parties : Allied Marine Services Ltd — LMJ International Ltd

Civil Procedure – Mareva injunctions – Whether to grant injunction where third parties may thereby be adversely affected – Whether offer of indemnity to third parties adversely affected sufficient justification for granting injunction

28 October 2005

Tan Lee Meng J:

1 This case involves an *ex parte* application by the plaintiff, Allied Marine Services Ltd (“AMS”), a company incorporated in Liberia, for a Mareva injunction restraining the defendant, LMJ International Ltd (“LMJ”), a company incorporated in India, from disposing of, dealing with or removing its assets, and, in particular, a cargo of iron ore on board a vessel, the *Alitis*, from the jurisdiction.

2 In September 2003, AMS, the disponent owner of a vessel, the *Marylaki*, chartered the said vessel to LMJ. Disputes between the parties with respect to the charterparty arose. AMS commenced arbitration proceedings in London in accordance with the terms of the charterparty, which was governed by English law. In September 2004, the arbitrator issued an award in favour of AMS. As a result, LMJ was required to pay AMS US\$431,704.94, as well as interest on the said sum, at the rate of 6.5% per annum from 16 October 2002 until the date of settlement.

3 On 25 May 2005, AMS was granted leave by the English High Court to enforce the arbitration award in the same manner as a judgment or order and to enter judgment with respect to the terms of the award. The award remained unsatisfied and AMS sought to enforce its rights under the award and the English judgment in Singapore.

4 LMJ has no business presence in Singapore. AMS, relying on information that a cargo of iron ore belonging to LMJ was on board the *Alitis*, which was bunkering in Singapore before proceeding on the next stage of her voyage to China, applied for a Mareva injunction with respect to the said cargo.

5 When third party rights are unaffected by the granting of a Mareva injunction, the court looks at the balance of convenience and justice as between the plaintiff and defendant. However, where third parties are involved, the court must consider the effect of such an injunction on their rights. In *Galaxia Maritime SA v Mineralimportexport* [1982] 1 WLR 539 (“*The Eleftherios*”) at 543, Kerr LJ pointed out that where the effect of service of such an injunction on a third party substantially interferes with the third party’s business, the rights of the third party must always prevail over the desire of the plaintiff to secure the ultimate recovery of debts or damages with which the third party is in no way concerned. In similar vein, Eveleigh LJ said at 542 that he regarded it as absolutely intolerable that the fact that one person had a claim for a debt against another should inconvenience third parties and affect their freedom of trading.

6 In the present case, delay and inconvenience would be suffered by the shipowner and other cargo owners if the injunction sought by AMS is granted as the iron ore might have to be discharged before the *Alitis* can proceed on the next stage of her voyage to China. The shipowner and the other cargo owners are innocent third parties who have nothing to do with the dispute between AMS and LMJ and there is no reason why their business interests should be affected by the dispute in question.

7 In *The Eleftherios*, the plaintiff, who chartered its vessel to the defendant, contended that it was entitled to US\$400,000.00 for demurrage under the charterparty. It applied for and obtained a Mareva injunction against the defendant. One of the terms of the injunction was that the defendant be restrained from disposing or dealing with its cargo of 11,000 tonnes of coal on board a vessel that was owned by a third party. The plaintiff gave an undertaking that it would provide a guarantee in respect of any loss or damage suffered by the parties as a result of the order. The vessel, which was then at the port of Barry in South Wales, was on a voyage charter and the shipowner applied for the injunction to be lifted. The English Court of Appeal had no doubt whatsoever that the injunction should be discharged. Kerr LJ explained at 542 as follows:

To allow a plaintiff to serve a *Mareva* injunction on a shipowner in relation to cargo, which is owned or alleged to be owned by the defendant and which is on board ... in order to seek to prevent the ship from sailing out of the jurisdiction with the cargo, appears to me to be a clear abuse of this jurisdiction, because it involves an unwarrantable act of interference with the business of the third party, the shipowner.

8 In the present case, AMS offered to furnish an indemnity of US\$10,000.00 to third parties affected by the granting of the injunction. Apart from the fact that this is an unacceptably low amount, I do not see how the furnishing of an indemnity can justify the inconvenience and uncertainties faced by the shipowner and other cargo owners by the granting of the injunction sought. Admittedly, in *Clipper Maritime Co Ltd of Monrovia v Mineralimportexport (The Marie Leonhardt)* [1981] 2 Lloyd's Rep 458, Robert Goff J granted a Mareva injunction with respect to a cargo of coke that the defendants were likely to load at the port of Barry in Wales on condition that the plaintiffs furnish an undertaking to pay the actual income lost by the port authority of Barry as well as the administrative costs incurred by that port authority as a consequence of the granting of the injunction. However, that case is of no assistance in the present case. In *The Marie Leonhardt*, the vessel was time-chartered by the defendants, against whom the Mareva injunction was sought, and the consequences of any delay of the vessel would more likely have fallen on the defendant time charterer than on the shipowner. More importantly, *The Marie Leonhardt* must now be viewed in the light of *The Eleftherios*, where Kerr LJ said at 542 that a plaintiff seeking to secure an alleged debt or damages due from the defendant by an order preventing the disposal of the defendant's assets cannot possibly be entitled to obtain the advantage of such an order for himself at the expense of the business rights of an innocent third party merely by proffering him an indemnity in whatever form. I thus dismissed AMS's application for a Mareva injunction with respect to the cargo of iron ore on board the *Alitis*.

Copyright © Government of Singapore.