

## MAREVA INJUNCTIONS

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Mareva injunctions have been developed during the last decade and have now become an established remedy both in England and in Australia: compare AJ Bekhor & Co Ltd v Bilton [1981] QB 923 and Riley McKay Pty Ltd v McKay [1982] 1 NSWLR 264. Broadly they are injunctions that prevent the defendant from removing assets from the jurisdiction or from disposing of or dealing with them within the jurisdiction in such a way as to frustrate execution under proceedings brought or to be brought by the plaintiff.

In many circumstances Mareva injunctions may cause especial difficulties to banks. Thus the injunction may in some circumstances prohibit the disposing of assets only in so far as they do not exceed a particular amount: see Spry, Equitable Remedies, 3rd ed, p 497. Again, the injunction may except expenditure on specified matters, such as normal living expenses or particular business expenses: Equitable Remedies, p 498. It may be difficult for banks to know whether particular payments or transactions do or do not fall within prohibited categories, and if they err they may find themselves in contempt of court. To the extent to which it is practicable to do so, Mareva injunctions should hence be drawn in terms that minimise difficulties that may be encountered by banks and other third persons: see generally the discussions by members of the Court of Appeal in Z Ltd v A-Z [1982] QB 558.

Where it appears to a bank to be doubtful whether a requested payment is or is not within the enjoined class, an application may be made to the court for the purposes of obtaining protection: Z Ltd v A-Z [1982] QB 558 at p 588. Further, ordinarily the person obtaining an injunction is required to undertake to indemnify third parties such as banks for reasonable costs, expenses and fees, and he may be required to indemnify them in regard to the costs of appropriate court applications. It is accordingly possible to ensure, in appropriate cases, that banks are protected in regard to their expenditure, even although it exceeds what might normally be allowed on a party and party basis: see generally Equitable Remedies, p 499, and Project Development Co Ltd SA v KMK Securities Ltd [1982] 1 WLR 1470.