

**Malaysian Civil Litigation Series.  
Volume 3: Freezing of Assets before a Claim**

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## 1. Introduction

In our previous edition, we have looked into the commencement of a legal suit. However, there may be instances where drastic measures need to be taken in order to protect a party's rights and sometimes there is not enough time to file a writ and



statement of claim. For this article, we shall explore one of the more well-known orders to freeze assets, which is the Mareva injunction.

## 2. What is a Mareva Injunction?

The Mareva injunction derives its name from the case of origin, which is *Mareva Compania Naviera SA v International Bulkcarriers SA*<sup>1</sup>. This is a temporary order which blocks the defendant from disposing of his/ her assets until the determination of a case that he/she is involved in. Naturally, this order will be requested for by the plaintiff. In the local courts, it has been defined as a form of injunction which “restrains a defendant by himself or by his agents or servants or otherwise from removing from the jurisdiction or disposing of or dealing with those of his assets that will or may be necessary to meet a plaintiff's pending claim”<sup>2</sup>. This means that a Mareva Injunction can take place even if a claim has not been filed by a potential plaintiff. The procedure changes slightly in the event that the injunction is required before a suit has been filed or during the filing of such a suit.

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<sup>1</sup> [1980] 1 ALL ER 213

<sup>2</sup> *S & F International Limited v Trans-Con Engineering Sdn Bhd* [1985] 2 CLJ 228

This form of injunction is also known as a freezing order under the Civil Procedure Rules 1997<sup>3</sup> and it is not uncommon that the words “Mareva injunction” and “freezing orders” are used interchangeably in court hearings.

### **3. Procedural Steps for a Mareva Injunction**

In terms of how it is applied, reference must be base to the Rules of Court 2012. Firstly, the application must be made via a notice of application supported by an affidavit. It is common that this application is made without notifying the defendant and without requiring the defendant to be present in court, also called an ex-parte application.

If it is of utmost urgency, it is possible for a plaintiff to file an application before an actual suit was filed to begin with. The affidavit supporting this application must contain the following points<sup>4</sup>:

- the facts giving rise to the claim;
- the facts giving rise to the application for an interim injunction;
- the facts relied on to justify the application ex parte, including details of any notice given to the other party or, if notice has not been given, the reason for not giving notice;
- any answer by the other party (or which he is likely to assert) to the claim or application;
- any facts which may lead the Court not to grant the application ex parte or at all;
- any similar application made to another Judge, and the order made on that application; and
- the precise relief sought.

If the case at hand does not require immediate intervention via an ex parte application, then the plaintiff can file a Mareva injunction like any standard application to Court. However, in practice this is very unlikely as only imminent danger of property being transferred out would justify the use of a Mareva injunction.

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<sup>3</sup> The Civil Procedure Rules were introduced in 1997 by the Civil Procedure Rule Committee. They are the rules of civil procedure used by the Court of Appeal, High Court of Justice, and County Courts in civil cases in England and Wales. As the legal history between England and Wales and Malaysia is very similar, it is common for Malaysian courts to borrow terms from the same.

<sup>4</sup> Order 29 Rule 1(2A), Rules of Court 2012

In order to protect the interest of the unsuspected defendant, the plaintiff may be required to provide an undertaking<sup>5</sup> for an interim injunction such as a Mareva injunction. This undertaking in practice usually comes in a form of a deposit payable to the Court and is applicable to all interim injunctions and the general principles of the same will be further discussed in a future edition.

#### **4. Considerations for the Approval of a Mareva Injunction**

With regard as to what the court would consider in terms of allowing such an injunction, reference would then need to be made to case law. Namely, in the case of *Bank Bumiputra v Lorrain Osman*<sup>6</sup>, provides that the plaintiff must show these three points: a good arguable case; evidence that the defendant has assets within the jurisdiction; and that there is a risk that assets may be disposed by the defendant before a judgment.

In terms of what is a “good arguable case”, the plaintiff only has to show a case that based on available evidence, there is a fair chance for the plaintiff to win the case, which can warrant a summary judgment<sup>7</sup>. Pertaining to evidence for assets within the jurisdiction, it should be noted that there are no specific rules to the same. Having said that, it is common in practice for the plaintiff to provide evidence of assets such as bank account statements or copies of title deeds. It should be noted that the Court will not intervene at this juncture as sourcing such evidence is the responsibility of the plaintiff. In addition to those three points, the disclosing of facts for the application of the injunction must be “full and frank disclosure”. Essentially, this means that there must be no misleading facts or any suppression of material facts.

#### **5. Once obtaining the Mareva Injunction**

If granted, the Mareva injunction will take effect for up to 21 days (ie: the assets of the defendant cannot be moved or transferred during said 21 days), unless otherwise revoked or set aside<sup>8</sup>. In the event that the hearing for the application for the inter partes is not held within the 21 days, or if there is a need for the injunction to continue to be active, then a fresh application would be necessary<sup>9</sup>.

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<sup>5</sup> *Keet Gerald Francis Noel John v Mohd Noor @ Harun Abdullah and Others* [1995] 1 CLJ 293

<sup>6</sup> [1985] 2 MLJ 236

<sup>7</sup> *Beyond Hallmark Sdn Bhd v Leong Tuck Onn Wong Swee Min* [2017] MLJU 1315

<sup>8</sup> Order 29 Rule 1(2B), Rules of Court 2012

<sup>9</sup> *RIH Services (M) v Tanjung Tuan Hotel* [2002] 3 MLJ 1

Once the Mareva injunction is granted, it must be served within 7 days of the date of the order, and the Court when granting the order must fix a date to hear the application inter partes (ie: with both plaintiff and defendant present) within fourteen days from the date of the order<sup>10</sup>. This is to enable the affected defendant the opportunity to challenge the injunction, since his/her right to freely move assets has been severely infringed. Alternatively, this also gives the opportunity for the plaintiff to request from the court the extension of the Mareva injunction until the dissolution of the case. After the hearing of the inter partes application, the Court may decide to allow the freezing of the assets to continue on, or to revoke the Mareva injunction entirely. When deciding during an inter parte application, the Courts will rely on the same three points similar to the Bank Bumiputra case above<sup>11</sup>. This continuing of the freezing of the assets shall be deemed as a new injunction<sup>12</sup>.

Having said that, if the application is made before the filing of a suit, the suit must be filed and issued within 2 days of the granting of the order/such period as the court sees fit<sup>13</sup>.

## 6. Conclusion

We hope that the information shared has provided a general idea on what Mareva injunctions are and how they work. However, there are various moving parts in such an injunction and the needs of each plaintiff will differ. In the event that you would like to know about what was shared in greater detail, please do not hesitate in contacting us. For our next edition, we will look into other forms of injunctions and further interlocutory applications

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<sup>10</sup> Order 29 Rule 1(2BA), Rules of Court 2012

<sup>11</sup> All Kurma Sdn Bhd v Teoh Heng Tatt and Others [2022] 9 CLJ 526

<sup>12</sup> RIH Services (M) v Tanjung Tuan Hotel [2002] 3 CLJ 83

<sup>13</sup> Order 29 Rule 1(3)(b), Rules of Court 2012



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