

ROYAL COURT
(Samedi Division)

52.

16th March, 1995

Before: The Deputy Bailiff and Jurats
Blampied and Herbert

<u>Between</u>	Stephen Mark Quinn Liquidator of Geoff Bell Limited (In Liquidation)	<u>Plaintiff</u>
<u>And</u>	Ian Geoffrey Bell	<u>First Defendant</u>
<u>And</u>	Barakot Limited	<u>Second Defendant</u>
<u>And</u>	John Derek Whitehead	<u>First Party Cited</u>
<u>And</u>	The Viscount	<u>Second Party Cited</u>

Inter partes application for imposition of
injunctions set out in Order of Justice in above captioned
proposed action.

Advocate A. P. Begg for the Plaintiff
Advocate P. Landick for the Defendant

JUDGMENT

5 THE DEPUTY BAILIFF: We have before us an Order of Justice where the
plaintiff is Steven Mark Quinn, liquidator of Geoff Bell Limited
(in liquidation). The Order of Justice seeks immediate interim
injunctions preventing Mr. Ian Geoffrey Bell and the company of
which he is a director and shareholder, Barakot Limited
10 (registered in Jersey) from dealing or disposing with a mortgage
note, and the second defendant's shares in a company known as
Cumbria Developments Limited.

15 The Order of Justice sets out that the plaintiff is a
chartered accountant and licensed insolvency practitioner who was
appointed as liquidator of Geoff Bell Limited ("the company") with

effect from 3rd December, 1991 by order of the Secretary of State dated 25th November, 1991.

5 At the time of the liquidation, it is stated that the directors of the company were Christopher Geoffrey Bell and Michael Bland, and that the company was totally controlled by the first defendant, who was, in the terms of the Order of Justice, "a shadow director".

10 It is stated that at 25th March, 1992 (the significance of the date is not clear), the company had no assets, but owed £284,183.96 to its holding company, £26,287 to trade creditors and £4,000 to the Inland Revenue in respect of VAT. The Order of Justice goes on to allege that on or about 31st May, 1990, the company purported (the word used in the Order of Justice) to
15 dispose of all its assets and equipment to an English company, Geoff Bell (U.K.) Limited, for a total consideration, including VAT, of £154,100 (the Order of Justice is wrong by £100). Two cheques made up that amount, both dated 7th May, 1990 - one in the
20 sum of £134,000 and the other in the sum of £20,100. Apparently, nine days previously, on 22nd May, the company paid £200,000 to the second defendant. The contention in the Order of Justice is that because the company on 30th April, 1990 had net assets of
25 £22,828 (the share capital, plus the net balance on the profit and loss accounts) and fixed assets with a book value of £285,548, the disposal of those assets for £134,000 (no mention is made of the £20,100) and the payment (again the word used in the Order of Justice) of £200,000 to the second defendant, were made in order to make the company insolvent.

30 In paragraph 8, the plaintiff states that he is "not aware that any consideration was given for the payment of the said £200,000", which was preferred to the creditors of the company.

35 The next paragraph in the Order of Justice states that on 18th September, 1992, in the High Court of Justice, Manchester District Registry, the plaintiff began proceedings. In those proceedings, the first defendant apparently swore an affidavit which states that the advance of £200,000 to Barakot was a loan
40 and was and is properly repayable.

Despite requests by the plaintiff which are said to be repeated, that £200,000 has not been repaid in whole or in part.

45 We then move in the Order of Justice into matters of which this Court is now painfully aware. That the company now apparently only owns property in Florida, a 50% shareholding in Cumbria Developments Limited (which owns land in Florida), and a right of action against a company known as Epiette Limited, which, if
50 successful, has an estimated value of £3,000,000.

We then have a detailed rehearsal of the matters that led to this Court setting aside the reciprocal order obtained in Jersey by reason of the fact that a judgment against the second defendant of £3,034,403.37 had been set aside. The plaintiff states that there was no time, because of the protracted argument under the reciprocal enforcement order, to apply to set the property of the second defendant *en désastre*. This Court expressed the view at the time that as the *désastre* application was again based on the flawed reciprocal order, it viewed the prospects of success as slight.

The plaintiff therefore is effectively applying for the stay which was not granted to Geoff Bell Holdings Limited to be granted to the liquidator of Geoff Bell Limited and he bases the application on a loan of £200,000 by the company to Barakot.

This is an unusual hearing in that it is made *inter partes* on Mr. Begg's application for the signing of the Order of Justice and the granting thereafter of the injunctions sought.

It is almost trite for us to say that all plaintiffs seeking injunctions from the Court *ex parte* (or indeed, *inter partes*, as here), must show the utmost good faith and disclose all matters, good or bad, which are material to the case and of course, the question or whether or not the injunction should be granted. The reason for this is again so obvious that it possibly does not need to be re-stated. The Mareva injunction has a devastating effect on those against whom it is obtained and the Court has to be satisfied that it is not being used in order to force the defendant to pay out monies quickly which otherwise might have taken a considerable period of time and argument to release.

We have to consider in this case whether there has been in one particular instance sufficient candour. The sole director of Geoff Bell Holdings Limited on 27th February, 1995, when he swore an affidavit in the High Court of Justice in Manchester was Mr. Geoffrey Allen. In that affidavit, he adumbrated matters concerning the dispute which have been argued in this Court previously. In that affidavit, Mr. Allen said "*In addition to the assets disclosed in the plaintiff's accounts, it is also due monies in respect of a loan in the sum of £284,000 made to Geoff Bell Limited, a subsidiary of the plaintiff and which is now in liquidation. The liquidator of Geoff Bell Limited has commenced proceedings against inter alia Barakot Limited, a Jersey registered company owned by Mr. Bell. A hearing is due to take place on 8th/9th March and arising from which the plaintiff expects to receive substantial funds in repayment of the loan*". Earlier on in his affidavit, Mr. Bell refers to a letter written by Messrs. Burnetts, Solicitors, acting for Geoff Bell Holdings Limited and on behalf of Mr. Bell to "a Mr. Bland of the defendants" - (our underlining). The defendants in this action were Dodd & Co. (a firm). Again in his affidavit to us, Mr. Begg,

at paragraph 15, said this: "A further recurring theme throughout the Jersey litigation is the assertion of Mr. Bell and Barakot Limited that a Mr. Bland" (our underlining) "who is the company secretary of Geoff Bell Holdings Limited, is personally involved in the proceedings. I believe that it may be assisted [sic] that there is a "personal" or "malicious" element in the proceedings. This would be totally denied by Geoff Bell Holdings Limited". It does seem surprising to us that Mr. Bland, A.C.A. (he is a chartered accountant), writing a letter on 3rd April, 1993, is writing from an address in London which is the same address as the address used by Mr. Allen when he swore his affidavit. We were informed that Mr. Bland sought the appointment of Mr. Quinn as liquidator. This is not to say that Mr. Quinn is anything other than highly reputable and professional, nor is it to say that he is not exercising his duties as liquidator perfectly properly. It is to say that Mr. Bland is not a stranger to this action. He had clearly some relationship with Mr. Quinn, either through Mr. Allen, or by reason of his relationship with the company, which should have been disclosed.

The other matter which has concerned us is that there must be, in order for the claim for the Mareva injunction to succeed, an underlying cause of action. In originating proceedings in Manchester on the application of Mr. Quinn as liquidator of Geoff Bell Limited, various allegations were made concerning the £200,000. The petition talks about payment at an under-value within the meaning of Section 238 of the Insolvency Act 1986. Alternatively, there is a preference by Barakot to Mr. Bell which is voidable under Section 239 of the Act. There is an allegation of misfeasance and breach of trust. There is no mention of a loan. We have a letter from Mr. J. D. Whitehead, LL.B, a partner in the firm of Grainger, King & Hynes, who was appointed by reason of the defunct consent order dated [17th May, 1994], as a director of Barakot. In his letter of 16th March, he writes to Advocate Landick to say "My position as a director is simply that I put Geoff Bell Limited to specific proof that the money was received by Barakot Limited, because on the information which I have, there is no evidence of that at all. Mr. Bell's position is that he did not receive the money". Mr. Begg showed us a cheque dated 22nd May, 1990, which purports to pay Barakot Limited £200,000. He showed us a statement of account which apparently showed that on the same day, the cheque was cleared by Midland Bank. That struck us as particularly puzzling in the absence of explanation. We also have the same cheque (photocopied apparently before it was sent out, because it does not have the Bank's cancelled stamp upon it), and that is attached to the affidavit of Mr. Andrew Gregory of Davies, Wallace, Foyster, acting on behalf of the plaintiff in this action. The only "evidence" of a loan is an apparent acknowledgement in an affidavit of the first defendant sworn on 4th November, 1992.

We cannot on the facts presented to us find any indication that the money was in fact received by Barakot and even if it were, it seems to us that all the plaintiff has in those circumstances is a claim for a purported loan which is disputed and not a proprietary interest in a sum of money sufficient to found a basis for an arguable case and to support the relief sought in the injunctions.

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We were told that the Order of Justice has no value to the plaintiff without its injunctions. In the circumstances, we decline to sign the Order of Justice.

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No Authorities