

ROYAL COURT
(Samedi Division) 148.

15th August, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff and
Jurats Bonn and Le Ruez.

Between:	The State of Qatar	Plaintiff
And:	Sheikh Khalifa Bin Hamad Al-Thani	First Defendant
And:	Dr. Issa Ghanim Al-Kuwari	Second Defendant
And:	ANZ Grindlays Bank (Jersey) Ltd	First Party Cited
And:	Terbury Ltd	Second Party Cited
And:	Callington Ltd	Third Party Cited
And:	Yukon Investments Ltd	Fourth Party Cited
And:	Virosa Ltd	Fifth Party Cited
And:	Henfield Investments Ltd	Sixth Party Cited

Application by the Defendants for an Order staying proceedings until 10 days after judgment is given on the preliminary issues before the High Court of England, and in any event no later than 21st October, 1996, or further Order.

Advocate B.E. Troy for the Plaintiff.
Advocate C.G.P. Lakeman for the Defendants.
Advocate T.J. Le Cocq for the Second Party Cited
Advocate T.J. Le Cocq for the Third Party Cited.
Advocate A.J.N. Dessain for the Fourth Party Cited.
Advocate A.J.N. Dessain for the Fifth Party Cited.

Advocate J.G.P. Wheeler for the Attorney General.
The First Party Cited did not appear and was
not represented.

JUDGMENT

5 THE DEPUTY BAILIFF: This application today follows from the
proceedings issued by way of Order of Justice by the State of
Qatar as Plaintiff against the First and Second Defendants who
were, until recently, the Emir and the Chef de Cabinet
respectively of the State of Qatar. Qatar declared its
10 independence in 1971 following an unsuccessful attempt to
associate itself with Bahrain and the Trucial Sheikhdoms in a
Federation of Arab Emirates. After a series of changes of power,
in February, 1972, Sheikh Khalifa Bin Hamad Al-Thani, with the
support of the majority of the Al-Thani ruling family, declared
15 himself to be Emir. On 19th April, 1972, the Emir (who is the
First Defendant in this action) promulgated a constitution which
apparently has its executive powers concentrated in the Emir, who
has the power to amend the constitution itself. There are no
elections or political parties and the rulership is hereditary in
the Al-Thani family, the heir apparent being nominated by Emiri
edict.

20 Shortly after the constitution was promulgated the Emir's
son, Sheikh Hamad Bin Khalifa Al-Thani was appointed heir apparent
on 31st May 1977 by order of the Emir.

25 He had no executive powers and such powers as he had could
only be bestowed upon him by the Emir and even then only in the
capacity of deputy Emir acting in the Emir's absence.

30 In June, 1995, whilst the Emir was out of the country, his
son, Sheikh Hamad, seized power in a *coup d'état*. Perhaps in those
circumstances the Order of Justice is a little colourful in its
linguistic undertones when it says "that until 27th June, 1995,
35 *Sheikh Khalifa Bin Al-Thani was the Emir of the State of Qatar*"
and further "*that the Defendants have left Qatar and are believed
to currently reside in the United Arab Emirates*". The Order of
Justice alleges that large sums of money were transferred between
40 1981 to 1995 from State accounts in Qatar to personal accounts in
banks and other institutions world-wide. The Second Defendant is
Dr. Issa Ghanim Al-Kuwari, who was the Emir's Chef de Cabinet. It
is perhaps interesting that the Order of Justice when compared
with the Order filed in the Supreme Court of the State of New York
is "like a resounding gong or a clanging symbol" in that the writ
in New York speaks of embezzlement, conversion and unjust

enrichment. The pleadings in New York (and there are pleadings in many other jurisdictions) do not state that a coup took place but merely say "On June 27th, 1995, Sheikh Khalifa Bin Hamad Al-Thani was succeeded by his son, the Crown Prince Hamad Bin Khalifa Al-Thani, the current Emir of Qatar. Dr. Al-Kuwari left power at the same time". We have to say that it is clear to our minds that the pleadings raise many questions to be answered by the Plaintiffs. All that is reasonably unimportant except to say that as a result of the Order of Justice being instigated Mareva injunctions were obtained from this Court (and indeed from many other Courts in other jurisdictions) on 5th June, 1996, and although the Order of Justice was amended on 29th July, 1996, the injunctions have been in force since 5th June. Within the injunctions are the First and Second Defendants and the six Parties Cited, all companies within the Island of Jersey.

The preliminary issues in the litigation - namely (a) whether the Emir was entitled to appropriate for his own use monies paid to him by the Ministry of Finance other than for the purposes pleaded by the Plaintiff in their statement of claim; and if so to what extent and (2) whether in an English Court the Defendants or either of them are inviolable and/or immune from English proceedings - are to be heard in the High Court for five days commencing on 16th September, 1996. In those circumstances, a stay is both sensible and desirable pending the outcome of that Court's decision. The stay is agreed in many jurisdictions including the Supreme Court in New York. The Plaintiff has informed the Court that there is no objection for the stay to remain on until the expiry of ten days after judgment is given on the preliminary issues before the High Court, but in any event, not later than 21st October, 1996. This is, however, subject to an order that we made on 29th July which we now set out in full:

"The Court sat to consider the Defendants' application that, pending further order of the Royal Court, the period within which the Defendants should make disclosure by virtue of sub-paragraph (ii) of paragraph A of the prayer to the Plaintiff's Order of Justice dated 5th June, 1996, be extended to expire seven days after the adjudication of the Plaintiff's summons herein dated 3rd July, 1996.

Upon hearing the advocates for the Plaintiff and the Defendants, the Court refused the application and ordered the Defendants to make the required disclosure to the Judicial Greffier, the documents so disclosed to be held by the Judicial Greffier pending the hearing on the 15th August, 1996, of the Plaintiff's summons dated the 3rd July, 1996".

There is, however, one surprising event that has occurred. During the course of these proceedings, a copy letter was received by Advocate Troy from his instructing solicitors, Messrs.

Slaughter & May. It is dated 29th July, 1996, and is from a firm called Mercury Asset Management. It reads as follows:

5 *"The State of Qatar v. Sheikh Khalifa Bin Hamad Al-Thani and Dr. Issa Ghanim Al-Kuwari.*

10 *I refer to your two letters addressed to Mercury Asset Management Limited dated 26th July and 29th July, 1996, and our telephone conversation this afternoon.*

15 *As agreed, I am writing to confirm that since 13th March, 1996, Mercury Asset Management plc (rather than Mercury Asset Management Limited - there is no such company in the United Kingdom) has not managed any assets for either the Sheikh or Dr. Al-Kuwari. However since that date our Jersey subsidiary (Mercury Asset Management Channel Islands Ltd.) managed assets for both the named individuals. However, the assets were liquidated and transferred to a bank outside the United Kingdom and the Channel Islands on 27th June, 1996, following receipt of appropriate instructions. Until 13th March, 1996, the Custodian of the assets was S.G.Warburg & Co. Ltd. in London. Since that date and until 27th June, 1996, the assets were held by S.G.Warburg & Co. (Jersey) Ltd.*

25 *It is most unlikely that we will be attending the Court on 31st July, 1996, but we will, of course, comply with any disclosure order obtained by you [on] behalf of the State of Qatar at the hearing".*

30 There had been on the face of it a clear breach by one or both of the Defendants of our Order and we sat to consider how we were to deal with that event.

35 We also had read to us the affidavit of Benjamin James Quentin Strong, a solicitor at Slaughter & May and the recipient of the letter to which we have referred. Mr. Troy read to us from that affidavit. Paragraph 3 of it reads as follows:

40 *"The Summons seeking disclosure was served on MAM on 29th July and at around 2.00 p.m. On that day I received a call from a person who identified himself as the Compliance Officer for MAM. Before I asked him anything, he explained that there was a subsidiary of MAM incorporated in Jersey which had held substantial funds for the First Defendant managed by Mercury Asset Management Channel Islands Ltd. ("MAMCIL"). The Compliance Officer said that some weeks previously MAMCIL had received instructions from the First Defendant to liquidate all funds held for him and transfer the money away. He said that he would write to me to confirm what he had said. I then informed him that there was an order freezing the First Defendant's assets in*

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5 Jersey ("the Jersey order"). He said that he was not aware of the order and that he almost certainly would have been if MAMCIL had been notified. I have since been informed by the Plaintiff's Advocate in Jersey (Advocate Troy) that he had not notified MAMCIL of the Jersey Order and had not arranged for it to be notified because the Plaintiff was not aware that MAMCIL held funds for either Defendant".

10 We also had regard to the second affidavit of Robert John Hunter of Messrs. Allen & Overy dated 12th August, 1996, where apart from saying that the determination of the preliminary issues in the litigation in September is likely to be decisive in the international litigation as a whole and that his legal team is working extremely hard, also said this:- "Finally, I am conscious
15 that it has been alleged by the plaintiffs that the Jersey Mareva injunction has been broken. In the light of the foregoing and because of the logistical difficulties arising from the fact that my clients are in Amsterdam, I have not yet established their full response. In the circumstances set out above, I suggest that now
20 is not the time for the matter to be pursued".

We have to say that we found that last paragraph of the affidavit to be astonishing. Mr. Troy referred to the attitude as being cavalier and while we will not gild the lily or clothe her with finest gold, we must say that we find the word to be
25 apposite. Mr. Lakeman was applying today for a delay in our Order of 29th July. We had to ask him why the fact that the Defendants were in Amsterdam made it impossible for contact to be made with them; (the First Defendant apparently speaks no English, the
30 Second Defendant apparently does); why an application was not made before the order ran its course; and why no attempt had been made once the contempt had been realised to repay the money back to this jurisdiction where it clearly belongs. We adjourned the matter until 2.30 to enable Advocate Lakeman to take better
35 instructions on the amount that had left the jurisdiction, as to who actually gave the instructions for it to be removed and as to why the money had been removed in the first place.

Mr. Troy, on the question of contempt, referred us to an
40 interesting case Gidrxslme v. Tantomar-Transportes Maritimos LDA [1994] 4 All ER 507. In that case, Coleman J said at page 515:

"It is thus reasonably clear that, at least in origin, the
45 jurisdiction to order disclosure of assets had the purpose of facilitating the administration of the injunction by identifying the assets upon which it operated and thereby (i) making it more difficult for the Defendant surreptitiously to disobey the order restraining disposal or export abroad of his assets, and (ii) enabling notice
50 to be given to Third Parties who might have custody of the assets, such as banks or warehouses, so as to bind them to the injunction. The function was not to establish that the

Mareva injunction Defendant had assets within the jurisdiction, but to ascertain their precise whereabouts and extent".

5 At the resumed hearing, matters took on a far more
conciliatory tone. Mr. Lakeman handsomely apologised for Mr.
Hunter's wording. He was working under extreme pressure. He told
us that the money transferred from Mercury Asset Management was
10 \$US 25,129,510.31c. The breach was unintentional and he gave an
undertaking on behalf of the Defendants to refund the money within
10 days.

 Mercury Asset Management has now by consent been made a
15 Seventh Party Cited and Mr. Troy will serve them accordingly.

 Our Order of 29th July appeared to us to have been finalised
by consensus. Mr. Lakeman says that matters changed considerably
on 31st July when the matter of the trial of the core issue came
to be explored and agreed in the High Court.

20 There was a change in emphasis and whether either side is now
attempting tactical advantages in that jurisdiction is of no
concern to us whatsoever.

25 In the circumstances and despite Mr. Troy's meaningful
protestation we will now accede to Mr. Lakeman's request for a
stay. If matters do not proceed in accordance with the time-table
laid down in England, the Plaintiff has leave to re-apply.

30 We would say this. The Defendants have breached an
injunction. A substantial sum of money left the jurisdiction and
is now returning. We regard that its arrival in Jersey will be a
purging of the contempt coupled, as it is, with an apology and an
35 explanation.

 The Defendants must not assume that they can play ducks and
drakes with this Court. If they are aware or anyone becomes aware
of the fact that other funds or assets have been removed from this
jurisdiction while the injunction was in force, they would be well
40 advised to make an immediate disclosure to this Court.

 The Defendants before the lunch adjournment came perilously
close to having a judgment given against them.

45 The Defendants must pay the costs of and incidental to this
day's hearing on a full indemnity basis within 21 days of the
finalised bill being received by them, including the costs of all
the parties summoned today.

Authorities

Gidrxslme -v- Tantomar-Transportes Maritimos LDA [1994] 4 All ER
507.