

**Judgement 29/2004**

**Jameel v. Zerrouk, Zerrouk and Lloyds TSB  
Bank Offshore Limited (Guernsey Branch) –  
Royal Court (Civil Action File 828) – 29 June,  
2004**

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**Freezing order – Respondent’s application for living expenses – need for full and frank disclosure, including overseas assets.**

**IN THE ROYAL COURT OF GUERNSEY**

The 29th day of June, 2004 before A.R.W. Hancox, Esquire, Lieutenant Bailiff; sitting alone

In the matter of:

MOHAMMED JAMEEL

Applicant

v

ABDELMOUNAIME FAOUZI ZERROUK

First Respondent

and

SHARON ELIZABETH ZERROUK

Second Respondent

and

LLOYDS TSB BANK OFFSHORE LIMITED (GUERNSEY BRANCH)

The Bank

WHEREAS on 24<sup>th</sup> June, 2004 the Lieutenant Bailiff considered submissions as to whether the First Respondent must make full disclosure of his assets and heard in this respect Advocates R. Le Cras and S. Brehaut counsel for the Applicant and Respondents respectively.

The LIEUTENANT BAILIFF this day gave judgement in the terms attached hereto and

1. ORDERED that the First Respondent must make full disclosure of his assets and must do so in relation as to whether or not he has overseas assets
2. RESERVED the question of costs.

S. M. D. ROSS  
Her Majesty’s Deputy Greffier

Approved Text

IN THE ROYAL COURT OF GUERNSEY  
(ORDINARY DIVISION)

BETWEEN:

MOHAMMED JAMEEL

Applicant

v

ABDELMOUNAIME FAOUZI ZERROUK

First Respondent

and

SHARON ELIZABETH ZERROUK

Second /Respondent

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LLOYDS TSB BANK OFFSHORE LIMITED  
(GUERNSEY BRANCH)

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**Judgment.**

1. On the 11<sup>th</sup> March this year the Deputy Bailiff granted a Freezing Order in the usual *Mareva* form freezing the assets of the First and Second Respondent held in two specified accounts, numbered 1165131 and 1165132 with Lloyds TSB Offshore Ltd, Guernsey, but the Order was not limited to the assets held in those accounts. The assets consist of a portfolio of bonds, shares and other securities totalling, I am informed, around U.S \$ 800,000. There was a parallel disclosure Order directed to the Bank requiring it to disclose to the Applicant's Advocate details of the accounts held during the past five years in the names of any of the individuals or entities listed in Schedule 3 to the Order.

2. There were Exceptions to the Order, which included *inter alia* the following, which has become the subject of great controversy in the proceedings before me on the 10<sup>th</sup>, 16<sup>th</sup> and 24<sup>th</sup> June, 2004. It reads as follows:

“2.1 This Order does not prohibit the First and Second Respondents from spending’  
i) ‘a reasonable sum towards ordinary and proper business expenses and’  
ii) ‘a reasonable sum on legal advice and representation.”

3. As the Bailiff stated when this matter came before him on 29<sup>th</sup> March, it is settled by authority that people whose assets are frozen by means of an *ex parte* Order should be given money to live on. In Z Ltd v. A & Others [1982] 1 AER 556 Lord Denning M.R. said that the *Mareva* injunction is now an established feature of English law. Kerr L.J. at page 571 called it ‘an extremely useful addition to our judicial armoury’, but he warned that it ‘should not be taken too far, let alone abused’. Examples of abuse are where the plaintiff's predominating motive is to obtain security in advance for any judgment he may get, or to obtain payment under a contract which turns out to be unjustifiable.

4. It is thus almost as well established as the principles governing *Mareva* injunctions that the defendant, or respondent, is entitled to reasonable living expenses. Denning M.R. clearly regarded it as a standard form of Clause in the Order, (see page 565 *f*), while in P.C.W. (Underwriting Agencies) Ltd v. Dixon [1983] 2 AER 158, page 165, Lloyd J. said:

“Similarly justice and convenience require that’ the defendant ‘ should be able to pay his ordinary bills and continue to live as he has been accustomed to live heretofore.”

It is also evident from Lloyd J.'s judgment that until the matter is tried the plaintiff is not entitled to put undue pressure on the defendant by setting too low a limit for the living expenses in order, for example, to bring about his capitulation.

5. It is obvious that, in some cases, a defendant will be tempted to inflate his living expenses, and possibly his legal bills, so as to reduce the amount which is frozen, leaving (as in this case his alleged) assets elsewhere than in Guernsey untouched. Advocate Le Cras, on behalf of Mr. Jameel, the main Applicant in this case, has suggested that this is the risk here. To date the Applicant has consented to the release under Clause 2.2 of four separate sets of monthly living expenses, amounting to just under C \$ 13,000, or approximately U.S. \$ 10,000 each, and if this goes on unchecked, particularly in the absence of an overview of the First Respondent's global assets, Miss Le Cras submits that this will whittle away the assets frozen in the Lloyds TSB Accounts.

6. Advocate Brehaut, representing the Zerrouks', scoffs at this. She says that a total of less than the equivalent of U.S. \$ 40,000 under this head, plus of course, Messrs. Haskins' fees of £10,000 so far, represents peanuts in relation to the total of the assets frozen, remembering that none of Mr. Jameel's allegations are, as yet, proved, and that Mr. Zerrouk has sworn Affidavits refuting most if not all of the matters contained in Mr. Hill's two Affidavits of the 2<sup>nd</sup> March and 4<sup>th</sup> May, 2004.

7. In her submissions and in her latest Skeleton Argument filed on 25<sup>th</sup> June, Miss Le Cras cited Halifax Plc v. Chandler [2001] EWCA Civ. 1750. In that case the Appellant's living expenses were allowed at the rate of £400 a week, and these were not specifically in issue. However some five weeks after the Order was issued, the Appellant applied to be allowed to mortgage his property in Spain and to apply the sum so borrowed to finance the instant action and another in which he was the claimant. Clarke L.J. referred to an earlier decision of Bingham M.R. (as he then was) in Sundt Wrigley Co Ltd v. Wrigley [1993] (unreported), and continued:

“As that passage shows, in the *Mareva* case, in order to be allowed to spend frozen monies, the defendant must show that he has no other assets which he can use.” My emphasis.

8. The dictum in Wrigley's case appears to support Miss Le Cras' submission that it is incumbent on the Respondent in this case to show that he does not have any, or any substantial, assets outside Guernsey. However it has to be borne in mind that the Wrigley case was one where the plaintiff had asserted a proprietary claim, and consequently the contention was that the money which the defendant was seeking to release in order to finance his litigation was not his at all, but was in effect held on trust for the plaintiff.

9. Miss Brehaut strongly disagrees with that submission. She says that in the absence of any express condition in Clause 2.2 to the effect that this exception was dependent on her client establishing that he had no assets elsewhere, no such requirement should be read into the sub-Clause. The purpose of a freezing Order is not to transform the Applicant into a secured creditor. The existing words should be construed *contra proferentem*, that is to say against the party which drafted the Order subsequently granted by the Court. Consequently there is no warrant for reading into Clause 2.2 a qualification to the effect that the exception in respect of living expenses is dependent upon the Respondents having no assets outside Guernsey. Had the Applicant wished to rely on such a qualification nothing would have been easier than for him or his advisers to have included it at the material time, namely when obtaining the *ex parte* Order.

10. The full latin phrase *Verba chartarum fortius accipiuntur contra proferentem* is a rule of construction relating to deeds and statutes and can be resorted to if there is ambiguity or uncertainty in a deed so as to construe it against the party proffering it and who must be taken to be responsible for its content. I do not think it has any application to the sub-Clause under consideration. It seems to me that once the Court is being asked to exercise its discretion, and, given that the freezing Order is already in place and has not been discharged, and, although in her

letter of 21<sup>st</sup> June Miss Brehaut says that

“.....we, on behalf of the First and Second Respondent, may shortly be in a position to make application for the vacation of the injunction – we will revert to you shortly on this matter.”

the fact is that as of now no application has been made for its discharge. Consequently, within the framework of the extant freezing Order the First Respondent is seeking the exercise of the Court’s discretion to allow him and his family to withdraw from the frozen assets his reasonable monthly living expenses.

11. How can the Court do that unless it has a true picture of his assets? As Robert Goff J. said in A. v. C. (infra) at page 127 *d* if there is no evidence placed before the Court it is not possible for it to assess whether any other assets of the Respondents are available to meet the living expenses or, if they are so available, why the Respondents are seeking to make use of the frozen assets for the purpose. True it is that the Respondent has denied that he has any other assets, but as Robert Goff J. said in A v. C it is not enough for a defendant merely to assert (in the case of a debt) ‘I owe somebody some money’ or, as here, ‘I have no other assets’, in order to show that there is no conflict with the principle underlying a *Mareva* injunction (see again A v.C infra, at page 486 *a.*)

12. Approaching the issue from another angle, it is an established principle of law that anyone seeking the exercise of the Court’s discretion is obliged to make a full and frank disclosure of his true circumstances. In A.J. Bekhor Ltd v. Bilton [1981] Q.B. 923, which is an authority relating to the Court’s power to order cross-examination on a deponent’s affidavit, the plaintiffs, having commenced abortive proceedings against him, then learned that the defendant had sold two farms and obtained a *Mareva* injunction restraining him from disposing of the proceeds of those sales. Subsequently the defendant applied for a variation *inter alia* permitting him to withdraw from the frozen funds £1,250 per month for living purposes.

13. It later emerged that the variation had been obtained without proper disclosure to the Court of the true position of the defendant’s assets. Ackner L.J said, at page 945:

“.....the judge of his own initiative could have withdrawn from the defendant the permission to remove any further money from the jurisdiction unless and until he made a full and proper disclosure of those matters which the court thought were necessary to establish the true nature of his assets.....”

14. The other case cited by Miss Le Cras in the course of her argument was A & another v. C & Others (No 2) [1981 2 AER 126], in which the issue was not whether the defendants should be entitled to reasonable living expenses, but whether the *Mareva* Order previously granted should be varied so as to permit payment to them of £65,000 out of the frozen monies for legal expenses likely to be incurred in the instant proceedings. Robert Goff J. (as he then was) referred to a previous judgment of his in Iraqi Ministry of Defence & Others v. Arcepey Shipping Co SA; The Angel Bell [1980] 1 AER 480 at page 485 where he had said:

“I am satisfied from the authorities that the fundamental purpose of the *Mareva* jurisdiction is to prevent [foreign] parties from causing assets to be removed from the jurisdiction in order to avoid the risk of having to satisfy any judgment which may be entered against them in pending proceedings in this country.”

I have used the word ‘foreign’ parenthetically because in A v. C Robert Goff J. said that, in the light of subsequent developments, the word should now be deleted from that statement of principle.

He then continued, at page 486 *a* of the Iraqi Report:

“.....it does not follow that, having established the injunction, the Court should not thereafter permit a qualification to it to allow a transfer of assets by the defendant *if the defendant satisfies the Court that he requires the money for a purpose which does not conflict with the policy underlying the Mareva jurisdiction.*”

My italics.

15. In A v. C Robert Goff J. pointed out that in the Iraqi case the Court did permit the release of monies to repay the balance of a loan to the Interveners, Messrs Gillespie Brothers, because the frozen money, being the proceeds of insurance on a ship in a single ship company, was clearly the defendant’s only asset, and there was no question of there being other funds from which the loan might be repaid.

16. In A v. C the position was different from Arcepey. As Robert Goff J. said at page 127 of that Report:

“There was evidence before the Court that the defendants were likely to incur substantial costs in the forthcoming proceedings: and they therefore applied, invoking the principle stated in’ Arcepey ‘for release of money to pay these costs. But no evidence whatsoever was placed before the Court *concerning any other assets* of the defendants making the application.” Again my italics.

17. I should refer to one further authority cited in the Commentary to Order 29 in the 1999 White Book at 29/L/58, which was included as an Annexure to Miss Le Cras’ latest Skeleton Argument of the 25<sup>th</sup> June, namely Atlas Maritime v. Avalon Maritime (No1): The Coral Rose [1991] 4AER 769. That case recognises that which had by then become known as the ‘Angel Bell’ variation. However the variation sought by the respondent in that case was rejected because the business debt which Avalon sought to have released from the frozen monies was owed to its parent company, Marc Rich & Co AG of Switzerland. The Court of Appeal upheld Hobhouse J’s order refusing the variation because of the close link between Avalon and Marc Rich and because the debt in question could not be said to have been incurred in the ordinary course of routine trading.

18. In my view it matters not in the general context of Freezing Orders whether the money sought to be released represents household expenses or a trading debt, because the unmistakable thread running through all the authorities is that the defendant, or respondent, must satisfy the Court that he requires the money for a purpose which does not conflict with the policy underlying *Mareva* Orders. Manifestly, once the Applicant, or plaintiff, has shown that there is reasonable ground to believe that the Respondent, or defendant, has other assets, then the conflict is shown, because he can then discharge the debt, or living expenses, as the case may be, from the other assets, as Robert Goff J. said in A v.C.

19. Accordingly, in my judgment once the Applicant has satisfied the Court that it is proper to grant the freezing Order, and the Order as drafted contains a qualification as to living expenses, if the *quantum* of that which the Respondent claims is challenged by the Applicant, or plaintiff, then it is for the Respondent, or defendant, to adduce *prima facie* evidence in support of that which he claims. Once he shows, in the words of Lloyd J., that that which he is claiming is consistent with that to which he was accustomed before the Order was obtained, then he has gone a long way to establishing that the exception, in this case Clause 2.2, should reflect that. In saying this I do not lose sight of the principle, which was reiterated recently by the Guernsey Court of Appeal in R. Durnell & Sons Ltd v. Kaduna Ltd [2003] Civil Appeal 334 of 16<sup>th</sup> December, 2003, that the general burden of proof remains on the Party who has obtained an interim Order *ex parte*, to show that the Order should be continued, either in its full rigour or subject to such qualifications as may become appropriate.

20. This still leaves the vexed question of whether the First Respondent in this case is obliged to show that he has no assets elsewhere than in Guernsey. Much of the Affidavit evidence now filed, which consists of the two Affidavits of Mr. Cameron Angus Hill, the confirmatory Affidavit of the Applicant of 18<sup>th</sup> May, the four Affidavits of the First Respondent and one from Mrs Zerrouk, (together with the voluminous exhibit ‘CAH 1’ consisting of 5m lever arch files) contains detailed analyses of certain quite complicated international transactions. I do not propose to enter into the details of all the allegations and counter-allegations contained therein, for to do so might well compromise a decision on credibility if and when all or any of the deponents are called for cross-examination, save in one respect. In paragraph 33 *et seq.* of Mr. Hill’s Affidavit of 2<sup>nd</sup> March he recites the passage of an interest free loan of \$ 1.2 million made by his client, Mr. Jameel, to the two Respondents to enable them to buy a house in British Columbia. The loan was secured by a mortgage and was due to mature on 1<sup>st</sup> October, 2004.

21. On 9<sup>th</sup> October, 2002, the parties having fallen out, the Applicant began an action in the Supreme Court of British Columbia containing the claims set out in Exhibit CAH 1. Shortly afterwards the Applicant obtained a Certificate of Pending Litigation which had the effect of encumbering the property. Subsequently, as a result of entreaties by the Respondents and as it was the Holy month of Ramadhan, the Applicant withdrew the Certificate thus permitting the Respondents to sell the house and move into more modest accommodation. In fact, as is alleged, no new house was purchased giving rise to suspicion on the part of the Applicant that the released assets were spirited away from that jurisdiction.

22. The First Respondent’s answer to this set of alleged facts is given in paragraphs 9 and 10 of his third Affidavit of 8<sup>th</sup> April, 2004, in which he states that he did purchase another house and invested the difference in the Lloyds TSB account in Guernsey. That difference, according to Mr. Zerrouk, was U.S \$ 850,000. Added to the existing ‘funds already invested’ with Lloyds TSB the aggregate was said to be U.S.\$ 800,000. There is a discrepancy there of \$ 50,000, plus the already existing funds. It is unexplained. There are other matters arising from Mr. Zerrouk’s Affidavits, but it is sufficient to say that the Applicant has shown grounds for believing that full disclosure has not been made.

23. In a case of this kind the Court has to undertake a delicate balancing exercise the nature of which is stated by Neill L.J in The Coral Rose (*supra*) at page 776 *b*, as follows:

“The injunction must not be used as to amount to an instrument of oppression which would bring about the cessation of ordinary trading’ (or, as Lloyd J. said in the P.C.W case (*supra*) to so reduce his living expenses as to bring about his capitulation). ‘On the other hand, the Court must have regard to the interests of the plaintiff and consider whether a variation of the injunction would involve a real risk that a judgment or award in his favour would remain unsatisfied.”

24. It may be that when he gives evidence Mr. Zerrouk will make everything clear. However, bearing the foregoing words of Neill L.J. in mind, in carrying out the balancing exercise, as the learned Lord Justice continued, the Court must look at all the circumstances of the case in order to try to do justice between the parties. Having done so I am satisfied the Applicant has made out a case requiring explanation. This can only be done by the Respondent satisfying the Court that he has no assets outside this jurisdiction. I am therefore in agreement with the Bailiff’s remarks when he said on 29<sup>th</sup> March that the Court must have a full picture of the global assets of the person enjoined so as to decide whether or not it is just and right to release some of the frozen assets on the basis that there were no other funds available.

25. I accordingly reject Miss Brehaut’s submissions to the effect that the relevant Clause should have stated that it was necessary to show that there were no assets outside Guernsey. I hold that it is eminently a matter of law that the Respondent must make full disclosure of his assets, and, to this end, he must do so in relation to whether or not he has

overseas assets. In my judgment, as Ackner L.J said in Bekhor v. Bilton (*supra*) he can only do this by submitting to cross-examination and I so direct.

26. The question of Mr. Zerrouk coming to Guernsey during the current week has of necessity had to be shelved, pending this Ruling. Whether Mr. Hill or Mr. Jameel should also attend remains for decision. In this connexion I fully agree with Miss Brehaut that this Court has power, equally as in the case of Mr. Zerrouk, to order, in particular, Mr. Hill to submit to cross-examination. It may well be that in order to achieve the level playing field for which Miss Brehaut contends, I should do so. It is perhaps part of the wider axiom that justice must not only be done, but must manifestly be seen to be done. But I cannot make that Order until I have heard full argument. Meanwhile, until fresh arrangements can be made for Mr. Zerrouk's attendance I hope that Miss Le Cras will not object to the release of similar monthly sums *de bene esse*: without prejudice to her ultimate contention.

27. For the avoidance of doubt, in view of the frequency of these Freezing Order applications, I should state that it is the view of this Court that any deponent, including a deponent seeking indulgence as to the release of frozen assets, should be prepared to submit to cross-examination on his Affidavit, and that forms part of the general law that a party seeking the exercise of the Court's discretion must make full and frank disclosure of all his assets, whether in Guernsey or elsewhere. For this reason it is not appropriate that such a requirement should appear in a normal clause relating to living expenses.

28. I would finally observe that a representative of Haskins & Co was present when the Bailiff made his observations about global assets. Matters even got as far as a Consent Order to release the amount of Mr. Zerrouk's air fare to attend this Court, with no inkling that this issue as to the construction of Clause 2.2 was intended to be raised. I accordingly propose to reserve the question of costs of all the Court attendances subsequent to the 29<sup>th</sup> March for later argument.

A.R.W.Hancox  
Lieutenant Bailiff  
29<sup>th</sup> June 2004