1981 October 9

[SAVVIDES, J.]

LINMARE SHIPPING CO. LTD.,

Plaintiffs,

v.

MOUNIR BOUSTANI,

Defendant.

(*Admiralty Action No.* 18/79).

Promissory estoppel—Charterparty—Demurrage—Shipowners having a lien on cargo for demurrage—Defendant not a party to the charterparty but giving assurances to owners that he would pay demurrage—Owners relying on such assurances and releasing the cargo over which they had a lien thus acting to their detriment—Defendant cannot be permitted to act inconsistently with his assurances—Adjudged to pay demurrage.

Injunction—Interlocutory injunction—Mareva injunction—Restraining defendant from removing his assets out of the jurisdiction pending determination of the action—Judgment for plaintiff in the action—Order continuing in force Mareva injunction, in aid of execution, granted in the exercise of the inherent jurisdiction of the Court to control its own process and in particular in order to prevent any possible abuse of such process—To do otherwise object for which injunction was granted would be defeated and would amount to abuse of the process of the Court.

By means of a charterparty dated June 27, 1978, the plaintiffs agreed to hire their vessel "Brothers Luck" to Agence Generale Maritime Sarl and ets., Camile M. Boustany and Emile Boustany, of Beirut, for the carriage of certain goods from Albania to Beirut. By the said charterparty and addendums thereto it was agreed that the charterers should pay to the plaintiffs demurrages at the rate of U.S. $ 1,900 per day and that the shipowners should have a lien on the cargo for, *inter alia*, demurrage due to the owners. The ship arrived at the discharging port on the 16th August, 1978, the discharge commenced on the 29th August and was completed on the 9th September, 1978. On

these facts demurrage was incurred at the discharging port amounting to U.S.$ 28,429,70. The defendant was not a party to the above charterparty, but in an addendum thereto he was named as the person to whom cables or telexes relating to the charterparty should be sent; and at a meeting which he had with Mr. Montanios, an advocate acting on behalf of the ship-owners, he assured Mr. Montanios that he was going to pay the demurrages himself. As a result of this promise and assurance the master of the ship, upon being informed of the situation, consented to unload and deliver the cargo, over which a lien already existed in favour of the ship-owners, which they could enforce by arresting the cargo, and they thus acted to their detriment.

Following the refusal of the defendant to pay the above amount as demurrages the plaintiffs proceeded to recover this amount by means of this action and, also, obtained an interim injunction ("the Mareva injunction") restraining the defendant from removing his assets out of the jurisdiction. In the course of his address counsel for the plaintiff applied that the mareva injunction should continue to remain in force after judgment in aid of execution.

Counsel for the plaintiff mainly contended that in the circumstances of the present case the defendant is bound to pay because under the doctrine of promissory estoppel, which is applicable in this case, he should not be permitted to act inconsistently with the said promise or assurance.

Held, (1) that the plaintiffs' evidence as to the amount of demurrages due and the reason why such demurrages were caused, has not been contested and no evidence was called by the defendant on this issue to contradict the evidence called by the plaintiffs or substantiate any allegations to the contrary in the answer; and that, therefore, the plaintiffs have proved their claim for demurrages to the extent of U.S.$ 28,429.70.

(2) *On the question whether the defendant is answerable for the above amount, after accepting the evidence of Mr. Montanios as true and reliable and rejecting that of the defendant:*

That under the doctrine of promissory estoppel where by his words or conduct one party to a transaction makes to the other a promise or assurance which is intended to affect the legal relations between them, and the other party acts upon it altering

his position to his detriment, the party making the promise or assurance will not be permitted to act inconsistently with it (see *Hadjiyiannis* v. *Attorney-General of the Republic* (1970) 1 C.L.R. 32 at pp. 48 and 49); that on the evidence as accepted by this Court it finds that the defendant was well acquainted with all material facts concerning plaintiffs' claim for demurrages in the present case and that by his words and conduct promised and assured the plaintiffs that he would pay the demurrages, as a result of which the plaintiffs relying on such assurance, released the cargo over which they had a lien, thus acting to their detriment; that, therefore, the plaintiff has proved his claim against the defendant; accordingly judgment will be given against the defendant for the equivalent in Cyprus Pounds of U.S. $ dollars 28,429.70 with costs.

(3) *On the application that the mareva injunction should continue in force in aid of execution*:

That if the application of the plaintiffs in this respect is dismissed, defendant will be entitled upon delivery of this judgment if no provision is made to the contrary to remove his assets out of the jurisdiction and, therefore, the object for which the injunction was granted will be defeated; that leaving it open to the defendant to defeat the very purpose for which the injunction was granted, would be an abuse of the process of the Court; that, therefore, in the inherent jurisdiction of this Court to control its own process and in particular to prevent any possible abuse of such process, the application will be granted and an order that the Mareva injunction continue in force in aid of execution is made accordingly.

Judgment for plaintiff against the defendant for U.S. $ 28,429.70 *with costs. Order continuing in force Mareva injunction granted.*

Cases referred to:

Hadjiyiannis v. *Attorney-General of the Republic* (1970) 1 C.L.R. 32 at pp. 48 and 49;

Xenopoulos v. *Constantinidou* (1979) 1 C.L.R. 521;

W.J. Adam and Co. Ltd., v. *El Nasr Export and Import Co.* [1972] 2 All E.R. 127;

Mareva Compagnia Naviera S. A. v. *International Bulkcarriers* [1975] 2 Ll.L.R.509; [1980] 1 All E.R. 213;

Stewart Chartering v. *C. & O. Managements* [1980] 1 All E.R. 718.

Admiralty action.

Admiralty action for demurrage amounting to the sum of U.S. $ 28,429.70 or their equivalent in Cyprus currency arising out of the delay in unloading the ship "BROTHERS LUCK" at Port Said, Egypt.

G. Michaelides for Montanios and Montanios, for the plaintiffs.

S. McBride, for the defendant.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The plaintiffs' claim in this action against the defendant is for US $ 28,429.70 or their equivalent in Cyprus currency as demurrages due by the defendant in respect of the ship "BROTHERS LUCK" under a charterparty and/or by virtue of an undertaking by the defendant to pay such demurrages and in the alternative, as damages for breach by the defendant of an agreement to pay such demurrages.

The plaintiffs are a shipping Company and are the owners of the vessel S/T "BROTHERS LUCK". By a charterparty in GENCON form, dated 27th June, 1978, (*exhibit* 1), entered into between the plaintiffs of the one part and Agence Generale Maritime Sarl and ets. and Camile M. Boustany and Emile Boustany, of Beirut, of the other part (hereinafter to be referred to as "the charterers"), the plaintiffs hired their vessel "BROTHERS LUCK" to the charterers for the carriage of a cargo of 5,000 M.T. 5% Moloo Cement from Durres, Albania, to Beirut. By an addendum No. 1 (*exhibit* 2a) to the aforesaid charterparty, it was agreed that the discharging port shall be substituted to one safe Egyptian Mediterranean port, and by an addendum No. 2 (*exhibit* 2b) to the aforesaid charterparty the charterers nominated as discharging port Port Said, Egypt.

By the aforesaid charterparty and addendums 1 and 2 thereto, it was agreed that the charterers should pay to the plaintiffs demurrages at the rate of US $ 1,900.—per day or pro rata for any part of a day payable every three days in advance, less

2 1/2% address commission. By Clause 8 of the aforesaid charterparty, it was provided that the owners should have a lien on the cargo for, *inter alia*, demurrage due to the owners.

The said vessel, according to the plaintiffs, arrived at port anchorage Port Said at 19.00 hrs. On the 16th August, 1978, and notice of readiness (copy of which was produced as *exhibit* 5), was thereupon tendered to the charterers agents who accepted the same at 10.00 hrs. of the 17th August, 1978. The discharge commenced at 08.00 hrs. on the 29th August, 1978, and was completed at 11.00 hrs. on the 9th September, 1978. These facts are affirmed by an agreed statement of facts dated 9th September, 1978, copy of which, bearing the signatures of the parties concerned was produced as *exhibit* 4.

It is alleged that in the light of the above, demurrage was incurred at the discharging port amounting to US $ 28,429,70.

Two bundles of documents consisting of copies of telexes and telegrams exchanged between the plaintiffs and the charterers and the plaintiffs and one Naoum, a shipping agent of Limassol, alleged by the plaintiffs to be the agent of the defendant, in connection with the present case, were produced as *exhibits* 6(a) to 6(g), and 7(a) to 7(f), subject to a reservation by Counsel for the defendant as to whether they were relevant or binding on the defendant.

The version of the plaintiffs as to how the defendant enters the scene is as follows: In the addendum No. 2 to the Charterparty (*exhibit* 2(b)) in paras. 'D' and 'E' the following are recorded:

"D. Cable or telex to NAUSHIP with ETA P. Said also DATE/TIME of vessel's arrival at P. Said, above cable to be sent attention Mr. MOUNIR BOUSTANY.

E. MASTER to phone if possible Mr. MOUNIR BOUSTANY at Phone No. 68619 or 68988 LIMASSOL advising him vessel's ETA P. SAID AND DATE/TIME of vessel's arrival".

On the 18.8.1978 and 24.8.1978 two cables (*exhibits* 6(b) and 6(a)) respectively, were sent by the Master of the ship to the defendant advising him of the arrival of the vessel and holding him fully responsible for delays due to non-presentation of

documents for discharge of cargo. Such telegraphs were sent to Naoum Shipping Company with attention to the defendant.

On the 23.8.1978 the following telex (*exh.* 7(b)) was sent by Camile Boustani, one of the charterers, to the plaintiffs:

> "Communicated contents (of plaintiffs' telex of same date) to buyers Mounir Boustani Limassol C/o Naoum Shipping, requesting them settle demurrage with you as per our agreement with them. Suggest you also get in touch with them on the subject".

On the same day in an exchange of deliberations in the same telex (*exh.* 7(c)) between the Master of the ship (P.W.1) and Naoum, the latter alleging that the defendant was near him reading the message, the following were stated:

> "Captain Linas (P.W. 1). Good evening this is Naoum on the telex and Mr. Mounir G. Boustani is next to me reading message. About demurrages no problem, we are giving instructions to receivers to cash it to Master if you wish which is the quickest way.
> (From P.W.1)
>
> Re demurrages is imperative to have latest tomorrow noon.
> (From Naoum)
>
> OK directly to you or shall we give them to Master and he will confirm it to you as you wish Capt. Linas.
> (From P.W.1)
>
> Please arrange with Mr. Boustani and his bank to confirm remittance of the three first days demurrage.
> (From Naoum)
>
> OK noted Mr. Boustany is reading your message now and he says that you get him out of this headache for discharge the earliest in the morning please".

On 26.8.1978 the plaintiffs sent a telex (*exh.* 6(d)) to the defendant and Naoum at the address of Naoum Shipping Company in Limassol expressing their disappointment for the delay in payment of demurrages contrary to what had been agreed and asking defendant to hand over to Mr. Montanios within

the same day a cheque covering demurrages already due and to arrange for all future demurrages to be paid timely in order to avoid complications.

On 28.8.1978 a telex (*exh.* 7(d)) was sent by Naoum to the plaintiffs explaining the reason for delay of settlement of demurrages and stating *inter alia*:

> "We regret we did not honour our promise.....and there is no intention at all for avoiding to settle demurrages".

On 29.8.1978 the following telex (*exh.* 7(e)) was sent by Emile Boustani, one of the charterers, to the plaintiffs:

> "Ref. your telex 28/8 to Camile Boustani guidance my brother Camile presently abroad. I have phoned Mounir Boustani in Cyprus requesting him to settle matter with you without delay in order to avoid consequences. He promised that he will deposit a bank guarantee in your favour until settlement of your claim. Presume matter arranged by now".

On 24.8.1978 the following telex (exh. 8) was sent by the plaintiffs to Mr. Montanios, their advocate in Limassol:

> "We refer to our todays telephone conversation in which on behalf of owners, we have authorised you to accept/ collect demurrage at discharging port of Port Said i.e. US $ 5,557.50 representing demurrage 24-27/8 X US $ 1,900.—less 2.5 add comm.
>
> You are further authorised to collect all future demurrage which is payable every three days in advance. The above amount and all future amounts will be paid by Mr. M. Boustani and/or Mr. Naoum who is contactable at phone 54939/55226 telex 2029".

After receipt of the telex of 24.8.1978, Mr. E. Montanios tried to get in touch with Naoum and the defendant which he finally succeeded and both Mr. Naoum and the defendant attended Mr. Montanios's office. According to the evidence of Mr. Montanios, Mr. Naoum, who was a shipping agent, presented himself as acting for the defendant in this case. Whilst at his office, Mr. Montanios told them that he had instructions

to collect the money due according to their agreement because the ship owners had telephoned to him in this respect and also had sent him a telex (*exh.* 8) the contents of which he conveyed to the defendant and Mr. Naoum.

A conversation took place between Mr. Montanios and the defendant during which Mr. Montanios asked the defendant if he had brought the cheque. The defendant did not deny any connection with the case, but on the contrary he asked to be informed why there was such a delay because, as he said, according to the evidence of Mr. Montanios, "I have a lot of money, this is peanuts for me, I can pay immediately but I want to know why there was this delay. I do not want people to fool me". According to the evidence of Mr. Montanios the defendant assured him that he was going to pay and as a result the master of the ship upon being informed of the situation consented to unload and deliver the cargo over which a lien already existed in favour of the plaintiffs which they could enforce by arresting the cargo.

On 22.9.1981 the plaintiffs sent to the defendant through Naoum Shipping Company an express registered letter enclosing copy of the Time Sheet of discharging with particulars of the demurrages claimed to which no reply was received as a result of which the present action was instituted.

The facts related to the demurrages are supported by the evidence of the master of the ship, P.W.1, and details appear on the agreed statement of facts signed by the parties to the charterparty (*exh.* 4) and they have not been seriously contested by the defendant, his line of defence being that he had nothing to do with the present case and that the evidence of the master and the contents of the documents is, so far as his name is mentioned, hearsay evidence.

The defendant in his evidence, which was given in Arabic and interpreted into English, denied any connection with either the charterers or the plaintiffs. His story was that Camile Boustany (one of the charterers) and Naoum with whom he had no business transactions whatsoever, approached him in Limassol and requested him to help them in disposing a cargo of cement which was loaded on a ship in Limassol Port and in response to their request promised and in fact did help

them in disposing such cargo by introducing to them the Manager of the Arab Foreign Trading Co. who happened to come to Cyprus. He had no other contact either with the Charterers or Naoum and in any event none with the plaintiffs.

As to the meeting at the office of Mr. Montanios his version was as follows:

"A. I with Naoum went to the office of Mr. Montanios. The lawyer was insisting on seeing me three times but I went on this occasion with Naoum. I went and I told him that I had nothing to do with this business. The responsible people is Arab Foreign Trading Co. Montanios asked me: 'Is this Camile your brother?', and I told him no.

Q. Did you promise to pay the demurrages?

A. I told him: 'Do not insist on asking me, I have nothing to do with Camile Boustani, my name is Mounir and I have nothing to do with this case'.

Q. Did you try to help in this case?

A. Ask Naoum and ask Camile Boustani about this case".

He denied that he said anything to Mr. Montanios to the effect that he was a rich man and that he had a lot of money and could pay and that he only wanted to know why there had been a delay at Port Said. He further denied that Mr. Montanios mentioned anything about the telex (*exh.* 8).

To a further question as to the reason why he was called by Mr. Montanios at his office together with Naoum he said that the conversation with Mr. Montanios was as follows:

> "Do you know something about the case of the ship 'BROTHERS LUCK', I said "I know nothing about it, I do not know the owner of the ship, I do not know the name of the ship, the only thing I know is that Camile Boustani sold the cement to the Egyptian firm".

Defendant admitted that he knew Naoum and he used to see him at his office, but denied that they ever had any conversation with Naoum about this case or that any telexes were communicated to him by Naoum in connection with this case.

Though the defendant requested that his evidence be given in Arabic and translated into English, he gave me the impression that he was well acquainted with the English language and on occasions when questions were put to him in English he answered them in English without waiting for the interpreter to translate same. This appears also from the evidence of Mr. Montanios, according to which, the conversation at his office took place in English. The defendant in giving evidence did not allege that he could not understand and speak English or that there was a misunderstanding as to what was spoken at the office of Mr. Montanios. What he denies is the whole of the conversation as related by Mr. Montanios and substituting his own version as to what was said between him and Mr. Montanios in the presence of Mr. Naoum.

As I have already said earlier in this judgment, the plaintiffs' evidence as to the amount of demurrages due and the reason why such demurrages were caused, has not been contested and no evidence was called by the defendant on this issue to contradict the evidence called by plaintiffs or substantiate any allegations to the contrary contained in the answer. I, therefore, find that the plaintiffs have proved their claim for demurrages to the extent of US $28,429.70. What remains to be considered and which is the issue in the present case, is whether the defendant is answerable for this amount.

The plaintiffs tried to prove their case against the defendant by a series of documents in an effort to connect the defendant with the transaction and also by the oral evidence of advocate Mr. Montanios—who was acting for the plaintiffs—regarding an undertaking by the defendant to pay the amount of demurrages due, which induced the plaintiffs to proceed with the delivery of the cargo, thus abandoning their lien on same.

The defendant on the other hand, denied any knowledge of any correspondence between the plaintiffs and the charterers or the plaintiffs and Mr. Naoum concerning him, and, he further denied that the alleged conversation between him and Mr. Montanios did ever take place.

The whole issue has to be decided on the acceptance or not of the evidence of Mr. Montanios, because in the absence of

such evidence, I agree with what has been argued by Counsel for the plaintiffs that any reference to the defendant in correspondence exchanged between the plaintiffs and third parties or any mention of his name in an addendum to a charterparty not signed by him, is not by itself sufficient evidence to prove any claim against him.

In the case before me, I have no hesitation in accepting the evidence of Mr. Montanios as true and reliable evidence as against that of the defendant whose version I have not believed, and in finding that what took place in his office was as related by him. The defendant went to the office of Mr. Montanios together with Mr. Naoum after a request over the telephone to Mr. Naoum, whom Mr. Montanios described as the agent of the defendant. The evidence of Mr. Montanios on this point was as follows:

"A. .....I managed to contact Mr. Naoum and arranged for him and Mr. Boustani to come to my office, Mr. Boustani, the defendant, who is in Court today and I see him.

Q. And did they come to your office?

A. Yes, finally the defendant came to my office accompanied by Mr. Naoum. Mr. Naoum is a shipping agent and he was the shipping agent *who presented himself as acting for Boustani in this case*". (The underlining is mine).

And in cross-examination:

"I addressed the question because I understood that Mr. Naoum was acting as agent and the question was addressed to Boustani, have you brought the cheque? Because he would hand over the cheque".

Mr. Montanios was not cross-examined as to how Mr. Naoum presented himself as acting for the defendant or how he understood that Mr. Naoum was acting as agent of the defendant.

Though the evidence of Mr. Montanios was so crucial in this case and, though Mr. Montanios said in his evidence that the conversation took place in the presence of Mr. Naoum who presented himself as the agent of the defendant, the defendant did not call Mr. Naoum, whom he knew so well

and used to visit him in his office, according to his evidence, to contradict Mr. Montanios and support his version that the only connection he had with the ship and the charterers was to introduce to them a buyer at the request of Mr. Naoum to facilitate the charterers in disposing the cargo.

Counsel for the defendant submitted that his client does not understand English well and Mr. Montanios might have misunderstood what defendant said. The defendant did not allege in his evidence that he could not understand or could not follow the conversation between Mr. Montanios and himself. Mr. Montanios, according to his evidence, explained to the defendant the reason he called him at his office and communicated to him the contents of the telex (*exhibit* 8) which was connecting the defendant with the case and the claim for demurrages. The defendant when confronted with such situation did not reject the allegations contained in *exhibit* 8, that he had to pay for such demurrages, but on the contrary by his words and conduct promised and assured the plaintiffs that he would pay the demurrages, as a result of which the plaintiffs released the cargo and lost their lien over it, thus acting to their detriment.

Counsel for the plaintiffs argued that in the circumstances of the present case the defendant is bound to pay, as under the doctrine of promissory estoppel, which is applicable in the present case, he should not be permitted to act inconsistently with his said promise or assurance.

The doctrine of promissory estoppel was examined in the case of *Hadjiyiannis* v. *Attorney-General of the Republic* (1970) 1 C.L.R. 32. As stated in the aforesaid judgment at pp. 48 and 49:

> "The doctrine of promissory estoppel is to the following effect, that is to say, where by his words or conduct one party to a transaction makes to the other a promise or assurance which is intended to affect the legal relations between them, and the other party acts upon it, altering his position to his detriment, the party making the promise or assurance will not be permitted to act inconsistently with it: See *Hughes* v. *Metropolitan Railway Co.* [1877] 2 App. Cas. 439. H.L.; *Birmingham & District Land Co.* v. *L. & N. W. Ry.* [1888] 40 Ch. D. 268; *Central London*

Property Trust Ltd. v. *High Trees House Ltd.* [1947] K.B. 130; *Combe* v. *Combe* [1951] 2 K.B. 215; *Foot Clinics* (1943) *Ltd.* v. *Cooper's Gowns, Ltd.* [1947] K.B. 506; *Charles Rickards Ltd.* v. *Oppenhaim* [1950] 1 K.B. 616; *Braithwaite* v. *Winwood* [1960] 1 W.L.R. 1257; *Ajayi* v. *R.T. Briscoe (Nigeria)* [1964] 1 W.L.R. 1326 at 1330. This is 'the gist of the equity': *Tool Metal Manufacturing Co. Ltd.* v. *Tungsten Electric Co. Ltd.* [1955] 1 W.L.R. 761 at 764, per Lord Simonds (also at pages 781, 799). See also *Evangelou* v. *Crompton* (1954) 20 C.L.R. Part I, page 122, a case which was decided by the District Court of Nicosia, in which these principles were applied".

The same principle was reiterated in *Xenopoulos* v. *Constantinidou* (1979) 1 C.L.R. 521 in which reference is also made to the more recent decision of *W.J. Adam and Co., Ltd.*, v. *El Nasr Export and Import Co.*, [1972] 2 All E.R. 127 in which Lord Denning, M.R. restated his views that detriment need not be proved in cases of promissory estoppel as follows:

> " I know that it has been suggested in some quarters that there must be detriment. But I can find no support for it in the authorities cited by the judge. The nearest approach to it is the statement of Viscount SIMONDS in the *Tool Metal* case, that the other must have been led to alter his position, which was adopted by Lord HODSON in *Emmanuel Ayodeji Ajayi* v. *R.T. Briscoe (Nigeria), Ltd.* But that only means that he must have been led to act differently from what he otherwise would have done".

However in that case the other two members of the Court of Appeal left the question open, STEPHENSON, L.J. because he held the promisee had acted to his detriment and MEGAW, L.J., because he held that there had been a consensual variation of the contract for consideration.

On the evidence as accepted by me, I find that the defendant was well acquainted with all material facts concerning plaintiffs' claim for demurrages in the present case and that by his words and conduct promised and assured the plaintiffs that he would pay the demurrages, as a result of which the plaintiffs relying on such assurance, released the cargo over which they had a

lien, thus acting to their detriment. I, therefore, find that plaintiff has proved his claim against the defendant and I give judgment for plaintiff against the defendant for the equivalent in Cyprus Pounds of U.S. dollars $28,429.70 with costs. Costs to be assessed by the Registrar.

In the course of his address, counsel for plaintiffs applied that the interim injunction restraining the defendant to take assets sufficient to cover plaintiffs' claim out of the jurisdiction, continue in force after judgment in aid of execution. The said injunction, generally known as a Mareva injunction (see *Mareva Compagnia Naviera S.A.* v. *International Bulkcarriers* [1975] 2 Ll.L.R. 509 [1980] 1 All E.R. 213) was granted on the application of the plaintiffs when this action was instituted and by consent was extended pending the final determination of the action.

There is no doubt that if the application of the plaintiffs in this respect is dismissed, defendant will be entitled upon delivery of this judgment, if no provision is made to the contrary, to remove his assets out of the jurisdiction and, therefore, the object for which the injunction was granted, be defeated.

The question of allowing a Mareva injunction to continue in force in aid of execution, was dealt with recently in the case of *Stewart Chartering* v. *C. & O. Managements* [1980] 1 All E.R. 718 in which Robert Goff, J. had this to say:

> "I am therefore presented with the paradoxical situation that, because the plaintiffs have obtained an injunction designed to prevent the defendants from removing assets from the jurisdiction in order to prevent the plaintiffs from satisfying any judgment, they are inhibited from signing judgment in default of appearance which is, in the present situation, the next step which would ordinarily be taken by them with a view to enforcing their claim.
>
> The solution to this problem lies, in my judgment, in the inherent jurisdiction of the Court to control its own process, and in particular to prevent any possible abuse of that process. If the plaintiffs were unable to obtain a judgment in the present case without abandoning their Mareva injunction, it would be open to a defendant to

defeat the very purpose of the proceedings simply by declining to enter an appearance. Such conduct would be an abuse of the process of the Court; and in my judgment the Court has power to take the necessary steps, by virtue of its inherent jurisdiction, to prevent any such abuse of its process. The appropriate action to be taken by the Court in such circumstances is, in my judgment to grant leave to the plaintiffs, in an appropriate case, to enter judgment in default of appearance, notwithstanding that the writ is indorsed with a claim for an injunction. If the Court so acts, it can also order that the Mareva injunction continue in force after the judgment, in aid of execution. The purpose of a Mareva injunction is to prevent a defendant from removing his assets from the jurisdiction so as to prevent the plaintiff from obtaining the fruits of his judgment; from this it follows that the policy underlying the Mareva injunction can only be given effect to if the Court has power to continue the Mareva injunction after judgment, in aid of execution.

In my judgment, the present case is an appropriate case for the Court so to proceed. I therefore give leave to the plaintiffs to enter judgment; and I shall also order that the Mareva injunction continue in force in aid of execution".

Adopting the view expressed by the learned Judge in the above case, I also feel that leaving it open to the defendant to defeat the very purpose for which the injunction was granted, would be an abuse of the process of the Court. Therefore, in the inherent jurisdiction of this Court to control its own process and in particular to prevent any possible abuse of such process, I grant the application and I make an order that the Mareva injunction continue in force in aid of execution.

Judgment for plaintiffs against the defendant for U.S. $28,429.70 with costs. Order continuing in force Mareva injunction granted.