COURT OF APPEAL, CIVIL DIVISION

Mareva Compania Naviera SA v International Bulkcarriers SA
The Mareva

[1980] 1 All ER 213

COUNSEL: Bernard Rix for the shipowners.
The charterers were not represented.

SOLICIITORS: Holman, Fenwick & Willan (for the shipowners).

JUDGES: Lord Denning, MR, Roskill and Ormrod, L.JJ

DATE: 23 June 1975

Appeal

The plaintiffs, Mareva Compania Naviera SA ("the shipowners"), issued a writ on 25 June 1975 claiming against the defendants, International Bulkcarriers SA ("the charterers"), unpaid hire and damages for repudiation of a charterparty. On an ex parte application Donaldson J granted an injunction until 17.00 hours on 23 June restraining the charterers from removing or disposing out of the jurisdiction moneys standing to the credit of the charterers' account at a London bank. The shipowners appealed against Donaldson J's refusal to extend the injunction beyond 17.00 hours on 23 June. The facts are set out in the judgment of Lord Denning MR.

23 June 1975. The following judgments were delivered.

LORD DENNING MR. This raises a very important point of practice. It follows a recent case, *Nippon Yusen Kaisha v Karageorgis*. The plaintiffs are shipowners who owned the vessel Mareva. They let it to the defendants ("the charterers") on a time charter for a trip out to the Far East and back. The vessel was to be put at the disposal of the charterers at Rotterdam. Hire was payable half monthly in advance and the rate was $US3,850 a day from the time of delivery. The vessel was duly delivered to the charterers on 12 May 1975. The charterers sub-chartered it. They let it on a voyage charter to the President of India. Freight was payable under that voyage charter: 90% was to be paid against the documents and the 10% later.

Under that voyage charter the vessel was loaded at Bordeaux on 29 May 1975 with a cargo of fertiliser consigned to India. The Indian High Commission, in accordance with

the obligations under the voyage charter, paid 90% of the freight. But paid it to a bank in London. It was paid out to the Bank of Bilbao in London to the credit of the [*214] charterers. The total sum which the Indian High Commission paid into the bank was £174,000. Out of that the charterers paid to the shipowners, the plaintiffs, the first two instalments of the half monthly hire. They paid those instalments by credit transferred to the shipowners. The third was due on 12 June 1975, but the charterers failed to pay it. They could easily have done it, of course, by making a credit transfer in favour of the shipowners. But they did not do it. Telexes passed which make it quite plain that the charterers were unable to pay. They said they were not able to fulfil any part of their obligations under the charter, and they had no alternative but to stop trading. Their efforts to obtain further financial support had been fruitless.

Whereupon the shipowners treated the charterers' conduct as a repudiation of the charter. They issued a writ on 20 June. They claimed the unpaid hire, which comes to $US30,800, and damages for the repudiation. The total will be very large. They have served the writ on agents here, and they have applied also for service out of the jurisdiction. But meanwhile they believe that there is a grave danger that these moneys in the bank in London will disappear. So they have applied for an injunction to restrain the disposal of those moneys which are now in the bank. They rely on the recent case of *Nippon Yusen Kaisha v Karageorgis*. Donaldson J felt some doubt about that decision because we were not referred to *Lister & Co v Stubbs*. There are observations in that case to the effect that the court has no jurisdiction to protect a creditor before he gets judgment. Cotton LJ said (45 Ch D 1 at 13, [1886-90] All ER Rep 797 at 799):

> "I know of no case where, because it was highly probable that if the action were brought to a hearing the plaintiff could establish that a debt was due to him from the defendant, the defendant has been ordered to give security until that has been established by the judgment or decree."

And Lindley LJ said (45 Ch D 1 at 15, [18890] All ER Rep 797 at 800): "… we should be doing what I conceive to be very great mischief if we were to stretch a sound principle to the extent to which the Appellants ask us to stretch it … s"

Donaldson J felt that he was bound by *Lister & Co v Stubbs* and that he had no power to grant an injunction. But, in deference to the recent case, he did grant an injunction, but only until 17.00 hours today (23 June 1975), on the understanding that by that time this court would be able to reconsider the position.

Now counsel for the charterers has been very helpful. He has drawn our attention not only to *Lister & Co v Stubbs* but also to s 45 of the Supreme Court of Judicature (Consolidation) Act 1925, which repeats s 25(8) of the Judicature Act 1873. It says:

> "A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient … "

In *Beddow v Beddow* ((1878) 9 Ch D 89 at 93) Jessel MR gave a very wide interpretation to that section. He said: "I have unlimited power to grant an injunction in any case where it would be right or just to do so … "

There is only one qualification to be made. The court will not grant an injunction to protect a person who has no legal or equitable right whatever. That appears from *North London Railway Co v Great Northern Railway Co.* But, subject to that qualification, the statute gives a wide general power to the courts. It is well summarised in Halsbury's Laws of Englanda: [*215]

> FNa 21 Halsbury's Laws (3rd Edn) 348, para 729; see now 24 Halsbury's Laws (4th Edn) para 918
> "… now, therefore, whenever a right, which can be asserted either at law or in equity, does exist, then, whatever the previous practice may have been, the Court is enabled by virtue of this provision, in a proper case, to grant an injunction to protect that right."

In my opinion that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets. It seems to me that this is a proper case for the exercise of this jurisdiction. There is money in a bank in London which stands in the name of these charterers. The charterers have control of it. They may at any time dispose of it or remove it out of this country. If they do so, the shipowners may never get their charter hire. The ship is now on the high seas. It has passed Cape Town on its way to India. It will complete the voyage and the cargo will be discharged. And the shipowners may not get their charter hire at all. In face of this danger, I think this court ought to grant an injunction to restrain the charterers from disposing of these moneys now in the bank in London until the trial or judgment in this action. If the charterers have any grievance about it when they hear of it, they can apply to discharge it. But meanwhile the shipowners should be protected. It is only just and right that this court should grant an injunction. I would therefore continue the injunction.

ROSKILL LJ. I agree that this injunction should be extended until judgment in the action or until further order. The application to this court is made ex parte, and is necessitated by the fact that the learned judge, Donaldson J, understandingly in the circumstances,

refused to extend the jurisdiction beyond 17.00 hours this afternoon (23 June 1975). Though the admirable argument to which we have listened puts the case very fairly both for and against continuing the injunction, the fact remains that, we have only heard argument from one side and I do not think it would be right to express any opinion as to what the result would be were this matter hereafter to be argued fully. But, as at present advised, it seems reasonably clear, first, that this court has jurisdiction to continue this injunction, and, secondly, that the difficult question is whether on the present facts this court ought at this stage to continue it until judgment or further order. Donaldson J, in his judgment of which we have a full note, has asked a number of other questions of this court which at present it would be wrong for us to seek to answer. If the charterers were represented, it would no doubt be said on their behalf that the decision of this court in *Lister & Co v Stubbs* precludes this court, not as a matter of jurisdiction but as a matter of practice, from granting this injunction.

Indeed it is right to say that, as far as my own experience in the Commercial Court is concerned, an injunction in this form has in the past from time to time been applied for but has been consistently refused. This court should not, therefore, on an ex parte interlocutory application be too ready to disturb the practice of the past save for good reasons. But on the facts of this case, there are three good reasons for granting this injunction. First, this ship was on time charter from the plaintiffs to the defendants on the New York Produce form, which provided, a little unusually, for a daily rate of hire payable half-monthly in advance and only the first two half-monthly instalments have been paid; secondly, there has been what would seem to be a plain and unexcused default in the payment of the third half-monthly instalment, and indeed a repudiation of the time charter by the charterers; thirdly, that third instalment fell due when the ship was under voyage charter from the time charterers to the President of India as voyage charterers.

On the evidence the charterers have already received £174,000 from the voyage charterers. Yet they have sent a telex to the shipowners in London on 17 June stating [*216] that their efforts to raise further financial support have been fruitless and that they have no alternative but to stop trading. If therefore this court does not interfere by injunction, it is apparent that the shipowners will suffer a grave injustice which this court has the power to help avoid; the injustice being that the ship will have to continue on her voyage to India and perhaps, as is not unknown in Indian ports, wait a long time there for discharge without remuneration while the charterers will be able to dissipate that £174,000.

In my judgment it would be wrong to tolerate this if it can be avoided. If it is necessary to find a reason for distinguishing this case from *Lister & Co v Stubbs*, I would venture to suggest that it is at least arguable that the court should interfere to protect the shipowners' rights which arise under cl 18 of the time charter. The relevant part reads: "That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Average contributions.s"

There is or may be a legal or perhaps equitable right which the shipowners may be entitled to have protected by the court. The full extent and nature of that right has long been a controversial matter which may have to be resolved hereafter and I therefore say no more about it.

For those rather narrow reasons I should continue this injunction until judgment or further order. It is open to the charterers to apply to discharge the injunction or to apply for a stay under the arbitration clause at any time if they are so advised. I agree with the order proposed by Lord Denning MR.

ORMROD LJ. I agree. In my judgment the charterers here have a very strong case on the merits. We have not heard any argument from the other side because it is an ex parte application. In these circumstances I would reserve my own views until I have heard argument from the other side if any such argument is put forward. But, in the absence of any such argument, in my view this injunction should be continued.

Appeal allowed. Injunction continued.