

THE MAREVA INJUNCTION

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PREFACE

This paper was intended primarily to deal with three main areas of the Mareva injunction. They were the existence of the Mareva jurisdiction in Malaysia, the exercise of the Mareva injunction and the future of the injunction.

The discussion on the jurisdiction of the Mareva injunction relied substantially on the case of Zainal Abidin bin Haji Abdul Rahman because of its significant as the first case decided on the Mareva jurisdiction in Malaysia, in addition, the Debtors Act, 1957 was dealt with in comparison to the injunction. The chapter on the exercise of the Mareva injunction was examined at in the light of the decided cases in England together with its application in Malaysia. Finally the chapter on the future of the Mareva injunction illustrated the need of the injunction to assist in commercial expediency. This was evident from the recent case of Mohamed Hassan v Sherwood Deans (S) Ltd decided in Brunei. Here Justice Jones proposed for the amendment of the law in order to give the court the power to grant a Mareva injunction. The implementation of the injunction must now; and in the future be in a manner which is just and convenient to avoid its abuse.

The very nature of this paper required a paper work research without much field work. Most of the materials relied on were cases and articles written on the subject. This was possible with the full cooperation and assistance of the staffs at the Per-

pustakaan Tun Razak, I.T.M., Shah Mam, the University Malaya law library and the High Court Library in Johor Bahru.

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CONTENTS

Preface	i
List of Cases	iv
List of Statute	v

CHAPTER I

A.	Existence of the Mareva Jurisdiction in Malaysia.	
1.	The High Court decision	1
2.	The Federal Court decision	9

CHAPTER II

B.	Exercise of the Mareva Injunction	
1.	Policy in granting the Mareva Injunction	14
a.	Good arguable case	14
b.	Substantive claim	16
	i) Defendants assets within the jurisdiction	21
	ii) The risk of removed of the assets	23
	iii) Other conditions to be satisfied	26

CHAPTER III

C.	Future of the Mareva Injunction.	
1.	Commercial Expediency	28
2.	Meaning of "just and convenient"	32
3.	Used and abuses of the Mareva injunction	33
4.	The position of third party in Mareva injunction proceeding	35
5.	Conclusion	41

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CHAPTER I

A. EXISTENCE OF THE MAREVA JURISDICTION IN MALAYSIA

1. THE HIGH COURT DECISION

Do the courts in Malaysia have jurisdiction to grant such an order?. In Malaysia the question of jurisdiction of the High Court in granting Mareva injunction was first brought up in Zainal Abidin bin Haji Abdul Rahman v Century Hotel Sdn. Bhd. Thus the discussion on this matter will be best looked at with reference to that case both in the High Court and Federal Court.

It is clear that, question of this kind will be resolved by reference to the Courts of Judicature Act 1964. Justice Hashim Yeop Sani in the High Court correctly refers to section 25 of the Courts of Judicature Act and paragraph 6 of the Schedule to the Act to ascertain the power of the High Court and section 50 and 51 of the Specific Relief Act 1950 on power of the High Court with reference to injunction.

The observation of the court was that our courts are created by statute and the powers of the courts are as provided thereunder. If no such jurisdiction is provided then the courts