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ROYAL COURT  
(Samedi Division)  
Before: Sir Philip Bailhache, Bailiff  
and Jurats Vibert and Jones

11th June, 1996

Between	Krohn GmbH	Plaintiff
And	Varna Shipyard	Defendant
And	The Royal Bank of Scotland PLC	First Party Cited
	The Royal Bank of Scotland Jersey Limited Jersey Limited	Second Party Cited
	The Royal Bank of Scotland International Limited	Third Party Cited
	Lawrence Graham (a firm)	Fourth Party Cited

Advocate R. J. Michel for the Fourth Party Cited  
Advocate M. J. Thompson for the Plaintiff

JUDGMENT

THE BAILIFF: The Plaintiff is a ship-owning company incorporated in Austria. The Defendant is the eponymous owner of a shipyard in Bulgaria. It is said that, by a Letter of Intent dated 22nd March, 1996, the Defendant agreed to build two vessels for the Plaintiff at a price of US\$10.2 million each. It was envisaged that a detailed contract between the parties should subsequently be executed. In fact no such contract was ever completed. Shortly after signature of the Letter of Intent, the parties were in disagreement and the vessels were sold to other buyers. A dispute between the parties as to whether the Letter of Intent (which was expressed to be subject to English law) constituted a binding contract was referred to arbitrators in London. By an Award dated 18th October, 1996, the arbitrators adjudged that the Letter of Intent did constitute a binding contract and that the Defendant was in repudiatory breach of that contract. The Defendant's application for leave to appeal was refused with the result that the Award became final as a matter of English law. A hearing on the quantum of damages, if any, was due to take place during April, 1997, but we were given no information as to the outcome of that hearing.

On the 16th December, 1996, it appears that the Plaintiff applied to a court in Hamburg, Germany, for a provisional order for security for its damages' claim. The Plaintiff had learned that the Defendant had contracted with a German buyer for the

5 building of another vessel and that payment would be due by the  
German buyer towards the end of 1996 or at the beginning of 1997.  
On the 19th December, 1996, the Hamburg court made an order,  
apparently called an "Arrestatorium", prohibiting the German buyer  
10 from paying up to \$6 million to the Defendants. The Defendant  
appealed against the making of that order and that appeal was  
again due to be heard at the end of April, 1997. In or about  
February, 1997, it emerged that the order of the German court  
15 contained an omission which may have affected its validity as an  
arrest order. It is alleged by the Plaintiff that the Defendant  
took advantage of that apparent omission to transfer the funds  
involved to an account in Jersey to the order of the Fourth Party  
Cited with one or other of the First, Second or Third Parties  
Cited. The Fourth Party Cited (to which we shall refer as  
"Lawrence Graham") is the firm of English solicitors acting for  
the Defendant in its dispute with the Plaintiff.

20 On 27th March, 1997, the Plaintiff made an ex parte  
application to the Bailiff in Chambers seeking orders for interim  
injunctions against the Defendant and Lawrence Graham:

25 *"i. That service of this Order of Justice upon them of  
[sic] shall operate as an immediate interim injunction  
restraining them whether by themselves, their servants  
or agents, or until further order from dealing with or  
disposing of in any manner whatsoever all any bank  
accounts monies or other assets held in the name of  
the Fourth Party Cited within the jurisdiction of this  
Court and where the Defendant has any interest of any  
30 kind whatsoever (whether direct or indirect), thereon  
and/or all or any accounts monies and other assets in  
the name of the Defendant or any person, firm,  
company, agent, nominee or trustee on behalf of the  
Defendant within the jurisdiction, to a maximum of US\$  
35 6 million and this pending further order of the Court  
or until the prior written consent of the Plaintiff's  
Advocate is obtained;*

40 *ii. within five working days of service of this Order of  
Justice upon them they each shall cause to be sworn  
and served upon the Plaintiff's Advocate an Affidavit  
setting out full details of all and any bank accounts  
monies or other assets maintained by them their  
45 servants or agents within the jurisdiction of this  
Court with any of the First, Second or Third Parties  
Cited in so far as these accounts contain any monies  
which are or may be the subject of the two German  
Court Orders or which would have been subject thereto  
50 if the German Court[sic] of 19 December 1996 had  
contained the "Arrestatorium" set out in the German  
Court Order served on 21 March 1997 and if any such  
accounts no longer exist or such asset or monies are  
no longer with [sic] the jurisdiction, then stating*

what has become of the funds in the said accounts, and whether or not the same remain within or without the jurisdiction."

5           That application was granted subject to various undertakings including an undertaking to furnish security in the sum of £10,000 to be held to the order of the court.

10           On 2nd April, 1997, the Deputy Judicial Greffier made an order under the Service of Process (Jersey) Rules 1994 giving the Plaintiff leave to serve the Defendant and Lawrence Graham out of the jurisdiction.

15           On the 18th April, 1997, Lawrence Graham issued a summons seeking to set aside the order of the Deputy Judicial Greffier. The summons was expressed to be issued "without prejudice to the Fourth Party Cited's contention that the Royal Court had no jurisdiction to make the Orders made, nor had the Judicial Greffier jurisdiction to give leave to effect service of these proceedings upon the Fourth Party Cited out of the jurisdiction of the Royal Court. By issuing this Summons the Fourth Party Cited does not hereby submit to the jurisdiction of the Royal Court".

25           In the skeletal argument helpfully provided by counsel for Lawrence Graham, Mr. Michel argued that his clients should not have been called upon to provide information about the affairs of the Defendant on the ground that it was subject to privilege. At the hearing Mr. Michel told the court that, while he was not conceding the argument, he wished to advance as his principal submission the contention that the court had no jurisdiction to make the orders made against Lawrence Graham and that accordingly the order of the Deputy Judicial Greffier should be set aside. Mr. Michel informed us that he was also instructed by the Defendant but that an application to set aside the injunctions imposed against the Defendant would be a matter for another day.

35           Very similar questions to those arising for decision in this case were considered recently by the Court of Appeal in Solvalub Limited v. Match Investments Limited and another, (13th December, 40 1996), Jersey Unreported CofA. Mr. Michel boldly submitted that the Court of Appeal had misunderstood the pre-existing jurisprudence on the jurisdiction of the Royal Court to issue Mareva-type injunctions when the parties were outside the Island and that the *ratio decidendi* of Solvalub ought to be narrowly 45 construed. The remaining observations of the Court of Appeal should, he submitted, be treated as *obiter*. The facts of Solvalub were briefly that Solvalub, an English company, claimed to have contracted with Match, an Irish company, for the sale by Solvalub to Match of gas oil to be delivered FOB Fort Kavkaz. The contract 50 appeared to have been signed in Moscow and was expressed to be subject to English law. Solvalub issued proceedings in London claiming the price of oil allegedly delivered, or alternatively damages. Having issued those proceedings Solvalub then commenced

5 a further action in Jersey against Match naming a Jersey bank as a party cited. Interim injunctions were obtained against Match and a Jersey bank freezing funds held in the Island. No leave was given to serve Match outside the Island. When the case was called before the Royal Court Match accepted service under protest as to jurisdiction. Subsequently Match applied successfully to the Royal Court to strike out the order of justice and the injunction. On appeal to the Court of Appeal the decision of the Royal Court was reversed.

10 Mr. Michel submitted that the decision of the Court of Appeal was, narrowly, that Match had, by pleading to the order of justice and seeking substantive relief from the Royal Court, voluntarily submitted to the jurisdiction of the court. Mr. Thompson submitted that, in order to decide Mr. Michel's question the court had first to determine whether the Royal Court had jurisdiction in the sense of power to issue a Mareva-type injunction in aid of proceedings overseas. The Court of Appeal had decided that first question in the affirmative and this court was bound by that decision.

20 In our judgment Mr. Thompson's argument is to be preferred. The Court of Appeal examined the question at some length, reviewing such authority as there was. Le Quesne J.A. concluded:

25 *"The result of this is that there cannot be said to be a strong line of local authority, but what there is supports the view that the power of the Royal Court to grant a Mareva injunction in aid of proceedings in a foreign court does exist. This, as it seems to me, is what one would have expected to find in the circumstances of this jurisdiction."*

30 Having reviewed those circumstances Le Quesne J.A. continued:

35 *"In view of the local authority and the local circumstances to which I have referred I should with respect adopt the conclusions and reasoning of Lord Nicholls [in Mercedes Benz AG v Leiduck [1996] AC 284] and it is not necessary for me to set out that at length in this judgment. In my judgment it is within the power of the Royal Court to grant a Mareva injunction in aid of proceedings in a foreign court and to do that in proceedings here in which no relief other than the grant of the Mareva injunction is sought. I would add that, in my judgment, this power of the Royal Court is not limited - as the judgment in Johnson Mathey Bankers v. Arya Holdings might be read to suggest - to cases in which the jurisdiction in which the other proceedings are going on is the English jurisdiction."*

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50 In our judgment it is quite impossible to construe those passages as being obiter. This court is bound by the conclusion

that it does have jurisdiction in the sense of power to grant a Mareva injunction in aid of proceedings in a foreign court.

5 We now turn to the question of territorial or personal jurisdiction. Mr. Michel submitted that the court did not have such jurisdiction, Lawrence Graham being outside the territory of Jersey and the Service of Process (Jersey) Rules 1994 conferring no power to order service of the order of justice on it outside the jurisdiction. The affidavits sworn by Advocate Timothy John Le Cocq in support of the Plaintiff's applications for leave to serve out referred, in relation to Lawrence Graham to paragraph (c), and in relation to the Defendant to paragraphs (b) and (m) of Rule 7 which provide as follows:

15 "7. Service out of the jurisdiction of a summons may be allowed by the Court whenever -

...

20 (b) an injunction is sought ordering the Defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of the doing of or failure to do that thing);

25 (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;

30 ...

(m) the claim is brought to enforce any judgment or arbitrable award;" ... .

35 The Deputy Judicial Greffier made a single order granting leave to serve both the Defendant and Lawrence Graham.

40 In this court it was argued by Mr. Thompson, and not seriously contested by Mr. Michel, that the court could uphold the order of the Deputy Judicial Greffier if it were satisfied that any of the paragraphs of Rule 7 applied irrespective of the grounds referred to in the affidavits. We therefore turn to examine each of the paragraphs cited above.

45 Rule 7 (m)

50 The present position is that the Plaintiff has obtained a final judgment against the Defendant on liability. The damages payable, if any, have not however been quantified. The question is therefore whether the claim in the Order of Justice is brought to "enforce" the arbitral award. It seems clear to us that the answer is no. At present there is nothing to enforce. The claim is brought to obtain security

for the payment of any damages which may ultimately be awarded. Rule 7 (m) cannot therefore justify the service of proceedings on Lawrence Graham.

5 Rule 7 (b)

Lawrence Graham is not a Defendant to the proceedings and this sub-paragraph cannot therefore confer power on the court to order service of process upon it.

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Rule 7 (c)

We were addressed at length by both counsel on the question of whether Lawrence Graham was a "necessary or proper party" to the proceedings. It is necessary however first of all to make an assumption. This sub-paragraph empowers the court to order service upon a person out of the jurisdiction only if, as a pre-requisite, **"the claim is brought against a person duly served within or out of the jurisdiction"**. The current position is that the Defendant has been served out of the jurisdiction and has not yet challenged that service. We therefore assume that for present purposes the Defendant has been "duly served".

We remind ourselves that the relief sought against Lawrence Graham is (1) an injunction restraining them from dealing with the monies of the Defendant within the jurisdiction of this court up to a maximum of \$6 million and (2) the production of an affidavit setting out the details of accounts with any of the First, Second and Third Parties Cited to the extent that any account contains monies which were or might have been subject to the "Arrestatorium" of the Hamburg court. In so far as essentially the same relief is sought from the first, second and third parties cited who are within the jurisdiction of the court, it is clear that it is not "necessary" to seek such relief from Lawrence Graham. The monies, if any, are frozen. The details of the account, or accounts, are to be supplied by the First, Second or Third Parties Cited. Is Lawrence Graham nevertheless a "proper" party to the claim? Mr. Michel made two points in that connection. First, he drew our attention to a passage in the notes on paragraph (1)(c) to order 11 of the Rules of the Supreme Court under the heading "Discovery".

*"Where relevant documents in a case between domestic parties are in the possession of the overseas holding company of one of them it is not possible to assert that there is a good arguable case against the overseas holding company under O 11 r.1(c) if the only purpose of joining the overseas company to the proceedings is to obtain discovery. The same principles would apply to prevent joinder of a party for that purpose under the Brussels*

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*Convention (Article 6): Unilever Plc v. Chefaro Proprietaries [194] F.S.R. 135."*

5 This may not be directly in point here, but it sounds a helpful cautionary note of the limits within which the discretionary power to join a party outside the jurisdiction should be exercised. Secondly, although we heard no detailed submissions on the issue of privilege, it is the case that Lawrence Graham are the English solicitors to the Defendant. In the absence of allegations of fraud or other malpractice, there should in our judgment be strong evidence shown as to why it is proper to require a firm of solicitors to yield up confidential information about the affairs of their clients. We have examined the affidavits sworn by Advocate Le Cocq in support of the application before the Deputy Judicial Greffier to serve Lawrence Graham out of the jurisdiction. The relevant paragraph reads:

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*"4. The relief sought against the Defendant includes a claim for injunctive relief in respect of monies held by the Royal Bank of Scotland International Limited, ("the third party cited") in the name of the fourth party cited for the Defendant's benefit in an account named the "Lawrence Graham Client Account", and the fourth party cited is therefore a necessary and proper party to these proceedings. In consequence the Plaintiff's claim fall within Rule 7 (c) of the Rules."*

30 This amounts to a statement that because the solicitors are the account holders of monies which have already been enjoined pursuant to a Mareva injunction they are proper parties to the action. In our judgment this is a quite inadequate justification for setting aside the duty of confidentiality which Lawrence Graham owes to their client.

35 In conclusion we can find no sufficient ground for the exercise of the discretionary power under Rule 7 of the Service of Process (Jersey) Rules 199 to order service out of the jurisdiction on Lawrence Graham. We accordingly grant the application and set aside the order of the Deputy Judicial Greffier of 2nd April, 1997, so far as Lawrence Graham are concerned.

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Authorities

Solvalub Ltd -v- Match Investments Ltd. (13th December, 1996) Jersey Unreported CofA.

Service of Process (Jersey) Rules 1994: Rules 7(c) and (m).

Kuwait Oil Tanker -v- Al Bader (1st April, 1997) "The Times".

R.S.C. (1997 Ed'n): O.11, r.11(1)(c) & (m): pp. 82-92.

Mercedes Benz A.G. -v- Leiduck [1995] 3 All ER 929; (1996) A.C. 284.

The Siskina [1977] 3 All ER 803; [1979] AC 210.

Middle East Engineering -v- Edwards (1980) J.J. 265.;

Johnson Matthey Bankers -v- Arya Holdings [1985-86] J.L.R. 208.

Invercargill City Council -v- Hamlin 1996 1 All ER 756.

Channel Tunnel Group Ltd. -v- Balfour Beatty (1993) All ER 164.



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