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The Second Circuit Extends Grupo Mexicano to Bar Pre-judgment Asset Freezes Absent a Lien or an Equitable Claim

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A Mareva Injunction in common law countries enables a seizure of assets so as to preserve them for the benefit of the creditor either pre- or post-judgment. *Mareva Compania Naviera SA v. International Bulk Carriers SA*, 1 All E.R. 213 (1980). To obtain a Mareva injunction, the applicant must show a good arguable case and a serious risk that the respondent will either remove the assets from the jurisdiction or dissipate them so as to frustrate future recovery. The application can be *ex parte*, but applicants must serve the order expeditiously and indemnify third parties against expense incurred as a result of the order.

In 1999, in *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), the US Supreme Court decided whether U.S. federal courts had the authority to issue a *Mareva*-type injunction to prohibit a defendant in a civil case from transferring assets likely needed to pay for a later final judgment. The Supreme Court was faced with respondent investment funds who had purchased unsecured notes (Notes) from petitioner a Mexican holding company. After petitioner fell into financial trouble and missed an interest payment on the Notes, respondents accelerated the Notes' principal amount and filed suit for the amount due in Federal District Court. Alleging that petitioner was at risk of insolvency, or already insolvent, that it was preferring its Mexican creditors by its planned allocation to them of its most valuable assets, and that these actions would frustrate any judgment respondents could obtain, respondents requested a preliminary injunction restraining petitioners from transferring the assets. The Supreme Court ruled that the District Court did not have the authority to issue an injunction as it was only available if permitted by statute, lien or in equity and the creditor only presented a contract claim for money damages.

Recently, in *Leadenhall Capital Partners LLP v. Advantage Capital Holdings LLC*, 2026 WL 796177 (2d Cir 2026), the Second Circuit considered whether the District Court had the equitable power to grant a preliminary injunction to freeze a guarantor's assets upon the borrower's default and the claim that assets were being liquidated and dissipated. Defendants argued the freeze was in contravention of *Grupo Mexicano*. The court found that the plaintiff was not a secured creditor as to the guarantors and without an encumbrance on property. Thus, there was no lien to enforce. Also, the plaintiff was not seeking restitution in equity, but rather monetary damages to collect an accelerated debt. In seeking equitable relief, the action must seek to restore to the plaintiff particular funds or property in the defendant's possession by way of specific performance, rescission, restitution, disgorgement, or constructive trust and plaintiff was not asserting such a claim. Without a cognizable

equitable interest at issue, the court decided that *Grupo Mexicano* controls and there was no authority to issue a preliminary injunction to freeze guarantor's assets.

Leadenhall Capital confirms that pre-judgment seizure of assets by preliminary injunction in the US is limited to enforcement of a lien or an equitable claim. The broader injunction available in common law countries is unobtainable in the US.

Related People



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