Mareva orders over foreign land in the Supreme Court of Victoria

In *Talacko v Talacko* [2009] VSC 349, the Supreme Court of Victoria made *Mareva*-type orders, restraining the defendants to proceedings pending before the Court from disposing of properties in the Czech Republic, Slovakia and Germany. The properties had been owned by the parents of Helena, Peter and Jan Talacko, progressively confiscated by Communist governments in Czechoslovakia and East Germany from 1948, and restored to Jan Talacko, now resident in Victoria, following the fall of those governments. Evidence suggested that the properties were worth over $36 million.

In 1998, Helena Talacko and others instituted proceedings in Victoria against Jan Talacko, alleging that he had breached an agreement to hold the properties on behalf of himself and his siblings in equal shares. The proceedings settled and Jan Talacko agreed to convey interests in the properties and, if he breached his obligations, to pay equitable compensation for breach of fiduciary duty. In 2005, the plaintiffs reinstated the 1998 proceedings and successfully alleged breach of the settlement terms, entitling them (subject to outstanding defences) to equitable compensation. The properties were the main assets from which Jan Talacko would satisfy such judgment. In 2009, Jan Talacko transferred interests in the properties to his sons (one in Prague and one in London) by way of gift. The plaintiffs instituted further proceedings in Victoria against Jan Talacko and his sons.

The plaintiffs sought *Mareva*-type orders against Jan Talacko and his sons, restraining them from disposing of the properties and directing them to take steps to withdraw any documents which had been filed to register the gifts of the properties. Kyrou J's judgment contains a useful summary of the considerations relevant to making *Mareva* orders over foreign land (at [35]):

> *(a) Provided that the defendant is subject to this Court's jurisdiction, this Court has power to make a Mareva order in respect of foreign assets and there is no rule of practice against granting such an injunction.*
>
> *(b) Whether the assets were in the jurisdiction at the time the proceeding was*

commenced, or indeed have ever been within the jurisdiction, does not affect whether the court has jurisdiction to make a Mareva order or its practice in relation to such orders. However, it may be relevant to the exercise of the discretion.

(c) It has been said that the discretion to make a Mareva order in respect of foreign assets should be exercised with considerable circumspection and care. The suggestion in one Australian case that the jurisdiction should only be exercised in 'exceptional cases', which appears to broadly reflect the English position, has not been followed consistently in the Australian cases dealing with the exercise of discretion. With respect, I do not accept that the discretion can only be exercised in exceptional cases. …

(d) The discretion will be exercised more readily after judgment.

His Honour noted (at [36]) that these 'principles have, in broad terms, also been applied in relation to mandatory injunctions requiring parties to do acts with an overseas element'. It is worth noting that his Honour also observed that the claim against Jan Talacko fell outside the *Mocambique* rule, being based on breach of terms of settlement arising from allegations of breach of contract, trust and fiduciary duty.

In the circumstances, Kyrou J considered that the requirements for a *Mareva* order were satisfied and that there were 'exceptional circumstances' in this case sufficient to justify making such an order over foreign land (even though his Honour did not think this was required). For the precise facts, see the judgment — suffice to say, Jan Talacko's conduct did not impress the Court …