

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Bressmer v. M & F Handel Development Ltd.*, 2007 NSCA 76]

**Date:** 20070620

**Docket:** CA 281382

**Registry:** Halifax

**Between:**

Rainer and Margit Bressmer &  
Armin and Isabel Portele

Appellants

v.

M&F Handel Development Limited, a body corporate,  
and Friedrich Handel, Isolde Handel and Matthias Handel

Respondents

**Judges:** Cromwell, Oland and Fichaud, JJ.A.

**Appeal Heard:** June 20, 2007, in Halifax, Nova Scotia

**Written Release:** June 21, 2007

**Held:** Leave to appeal granted and appeal allowed per oral reasons for judgment of Cromwell, J.A.; Oland and Fichaud, JJ.A. concurring.

**Counsel:** John A. Keith, for the appellants  
Rubin Dexter, for the respondents

**Reasons for judgment:**

[1] The appellants filed a notice of trial and subsequently applied for leave under **Civil Procedure Rule** 28.05(2) to initiate an application for a **Mareva** injunction. The **Mareva** injunction was sought on the basis that the defendants had entered into an agreement to sell real property which is their main asset in Nova Scotia and that the sale risked depriving the appellants of assets within the province available to satisfy any judgment they may obtain after trial. Pickup, J. denied leave and the appellants seek leave to appeal that refusal.

[2] The order under appeal is both interlocutory and within the discretion of the chambers judge. This Court will only interfere with such an order if the judge applied wrong principles of law or it gives rise to a patent injustice: **Exco Corporation Ltd. v. Nova Scotia Savings & Loan Co.** (1983), 59 N.S.R.(2d) 331 (S.C.A.D.) at para. 6.

[3] The chambers judge held that leave should be granted only in “exceptional circumstances” and found none. He rejected the appellants’ submission that leave should be granted on the basis that the sale arose after the action was set down for trial. The judge reasoned that while the contract of sale had been entered into after the delivery of the notice of trial, the respondents’ intention to sell had been known well before. The appellants, having delivered their notice of trial with that knowledge, should not be permitted to initiate interlocutory proceedings in relation to that matter thereafter.

[4] We are all of the view that the judge erred in principle in denying leave. In considering whether exceptional circumstances exist which justify granting leave, all relevant circumstances, viewed in the context of the underlying purpose of the **Rule**, must be considered. These include (and I am not attempting to be exhaustive) the likely impact of the proposed interlocutory proceedings on the trial date and the orderly and timely conduct of the litigation as well as whether the interlocutory proceedings are necessary to do justice between the parties. Respectfully, the judge considered none of these factors. In doing so we respectfully conclude that he erred.

[5] There was here no suggestion that the proposed application for a **Mareva** injunction would place the trial date in jeopardy or that the appellants had in any

other respect failed to prosecute the litigation appropriately and with dispatch. While we make no assessment of the ultimate merits of the **Mareva** application, it is clear that failure to grant such relief in an appropriate case could lead to a failure of justice and that the appellants placed before the judge an arguable case for the granting of such relief.

[6] Leave to appeal is granted and the appeal is allowed. The order of the chambers judge dated June 1, 2007 is set aside. Leave is granted to the appellants to initiate and continue an interlocutory proceeding to seek an order for a **Mareva** injunction and other injunctive relief pursuant to **Rule** 43.01. The costs before the chambers judge, fixed at \$750 inclusive of disbursements and costs in this Court fixed at \$750 plus disbursements will be costs in the cause of the application for the **Mareva** injunction and other injunctive relief under **Rule** 43.01.

Cromwell, J.A.

Concurred in:

Oland, J.A.

Fichaud, J.A.