U.S. SEC v. Manterfield: How Her Majesty's Courts Assisted the SEC in the Fight Against Global Financial Fraud

I. OVERVIEW

The United States Securities and Exchange Commission (SEC) commenced proceedings in the United States District Court of Massachusetts in April 2007 against Lydia Capital, LLC, and its two main principals, Glenn Manterfield and Evan Anderson, accusing them of defrauding foreign investors of millions of dollars.[1] The SEC alleged that Manterfield, through Lydia Capital, was involved in a fraudulent scheme in which the company offered and sold hedge fund interests to investors in Taiwan without disclosing that the fund's underlying assets, including life insurance policies, were virtually worthless.[2] The complaint by the SEC alleged that the scheme conducted by Manterfield and Anderson, which ran from June 2006 to April 2007, defrauded over sixty Taiwanese investors into investing approximately $34 million in the fund.[3] The SEC further alleged that Manterfield and Anderson misappropriated millions of dollars from the fund.[4] The district court issued an interim injunction purportedly freezing all assets belonging to Manterfield, including those sitting in foreign countries, until the conclusion of his criminal case in the United States.[5] The SEC made an application to the Sheffield Crown Court in England in February 2008 for interim freezing orders in support of the case against Manterfield in the United States, relying on section 25(1) of the Civil Jurisdiction and

1. U.S. SEC v. Manterfield [2009] EWCA (Civ) 27, [2] (Eng.).
2. *Id.*
3. *Id.*
4. The SEC alleged that the two withdrew around $8 million from the fund, of which Manterfield received $2.35 million. *Id.*
5. The court noted that the injunction would not commonly be enforceable on assets held in foreign countries such as England. *Id.* at [3]. Manterfield's assets had previously been subject to restraint by English authorities. *See id.* at [4].

Judgments Act 1982.[6] In May 2008, Sir Charles Gray, sitting as Deputy High Court Judge in the United Kingdom, upheld the order of the Sheffield Crown Court and continued the injunction against Manterfield's assets.[7]

In February 2008, Manterfield moved to dismiss the action in the Massachusetts District Court, claiming that even if the SEC's pleadings were correct, none of his assets were within the SEC's jurisdictional reach.[8] At the time, the SEC was cooperating with the South Yorkshire Police, who were independently investigating Manterfield's assets in England.[9] The district court in Massachusetts denied his motion to dismiss.[10] After Manterfield failed to cooperate with the U.S. district court, the SEC personally brought an action to the high court of England in order to obtain assistance in upholding the worldwide freeze on his assets, including those located in England.[11]

Manterfield argued before the High Court "that the SEC's action in Massachusetts was seeking to enforce a 'penal law' and that thus any judgment obtained in Massachusetts would be unenforceable in England."[12] Further, the High Court dismissed Manterfield's cross-undertaking in damages.[13] The SEC argued that despite the fact that the SEC did not have the power to offer an unlimited cross-undertaking in damages, the court should still dispense with the undertaking as if an English regulatory body were pursuing an analogous claim in England.[14] Manterfield countered "that the court only dispensed with a cross-undertaking in very limited circumstances"[15] and that the case before the court did not provide such circumstances, "even if [the] SEC was a domestic regulatory body dealing with a domestic situation."[16] Further,

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6. *Id.* at [3]-[4]. The court noted that this act formerly only allowed an English court to grant interim relief where the foreign litigation was in a country that was a party to the Brussels and Lugano conventions, and when the case involved civil or commercial matters. These restrictions were later removed. *Id.* at [5].

7. *Id.* at [1].

8. S.E.C. v. Lydia Capital, LLC, Civ. Action No. 07-10712-RGS, 2008 WL 509136, at *1 (D. Mass. Feb. 21, 2008).

9. Both the American and English courts noted that the SEC likely brought charges in England after English authorities and the South Yorkshire police decided to lift their own freeze and investigation on Mr. Manterfield's assets in England. *See id.*; *Manterfield* [2009] EWCA (Civ) 27, [4].

10. *S.E.C.*, 2008 WL 509136, at *1.

11. *See* U.S. SEC v. Manterfield [2008] Lloyd's Rep. F.C. 477.

12. *Id.* at [7].

13. *Id.* at [8].

14. *Id.* at [9].

15. *Id.*

16. Manterfield's attorney argued, and the court agreed, that a cross-undertaking in damages should only be dispensed with in rare circumstances. *See id.*

he argued that the SEC was a foreign body and the action was related to a domestic situation, and because Manterfield would suffer serious harm if the freezing order were upheld, this was not a situation in which the court should dispense with a cross-undertaking in damages.[17] Nevertheless, Judge Gray dispensed with the cross-undertaking and continued the Crown Court's interim injunction freezing Manterfield's assets, which Manterfield appealed.[18] The United Kingdom Court of Appeal, Civil Division, *held* that the U.S. district court's worldwide freeze on Manterfield's assets should be upheld in England and that Judge Gray correctly used his discretion in dispensing with the cross-undertaking in damages. *U.S. SEC v. Manterfield* [2009] EWCA (Civ) 27 (Eng.).

II. BACKGROUND

Like most nations, England has adopted rules that protect its sovereignty and prevent other nations from enforcing their domestic laws on English citizens not within the foreign nation's jurisdiction.[19] The courts in England have traditionally resisted such attempts by other nations, including the United States, to enforce their laws on English citizens and corporations.[20] The evolution of global cooperation, however, has forced the English courts to examine whether they should cooperate with foreign enforcement agencies such as the SEC by continuing injunctions sought by the those agencies, such as a worldwide freeze on the assets of an English citizen.[21] Thus, the question that English courts must look at in situations that involve issuing injunctions that assist foreign enforcement agencies is not one of jurisdiction, but rather one of international cooperation to combat global financial fraud, and the English courts have little precedent to rely on in this matter.[22]

Over the years, the courts in both England and the United States have generally not favored enforcing each other's laws as a means of halting objectionable corporate activity.[23] For instance, within the past twenty years, U.S. and English courts have run into disputes regarding

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17. *Id.*

18. *Id.* at [10].

19. The lower court addressed the issue and viewed this concept as a given, calling it "common ground." *Id.* at [3].

20. See generally *Hartford Fire Insurance Co. v. California*, 509 U.S. 764 (1993), in which England generally opposed U.S. courts obtaining any jurisdiction under the Sherman Act over insurance companies located and incorporated in England.

21. *See generally Manterfield* [2008] Lloyd's Rep. F.C. 477.

22. *Id.*

23. *See generally Hartford Fire Ins.*, 509 U.S. 764.

which country's laws may apply to certain insurance matters.[24] In *Hartford Fire Insurance Co. v. California*, a famous U.S. case regarding international comity issues between the United States and England, the courts in the United States disagreed with insurance companies in England in deciding how to deal with the application of U.S. law to London-based reinsurers who were operating in the United States.[25] In *Hartford*, the London reinsurers at the center of the dispute in the case argued that the United States courts should have declined to exercise jurisdiction over them under the principle of international comity.[26] However, the United States Supreme Court held in *Hartford* that Congress had never expressed a view on whether U.S. courts should decline jurisdiction under the Sherman Antitrust Act for purposes of international comity, and that what was more important was whether the actions of the London reinsurers had an effect within the borders of the United States.[27] Justice Scalia wrote a vigorous dissent stating that absent a specific statement from Congress to the contrary, the Court should not extend U.S. laws to these reinsurers under international comity principles, and the Court should respect the insurance regulation scheme in place in England.[28] However, the majority held that as long as there was no direct conflict between the English and American laws, the companies could follow both and should be expected to do so.[29] This case did not leave clear what England would do if it were to hear a similar case, but it does show that until recently, courts in countries such as America and England would be hesitant to recognize and enforce one another's laws, especially to their own citizens.[30]

The SEC can bring claims against individuals or companies in order to enforce penalties for securities fraud by relying on the Securities Exchange Act of 1934.[31] The purpose of the Act is to provide the federal government with a means of bringing charges against individuals or companies operating in interstate or foreign commerce who participate in

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24. *Id.*
25. *Id.*
26. *Id.* at 797.
27. *Id.* at 797-98. Whether the actions of the London reinsurers had an effect within the U.S. determines if U.S. laws apply extraterritorially. *Id.*
28. For more on Justice Scalia's analysis, see *id.* at 800-20.
29. *Id.* at 798-800.
30. *See generally id.* Recent cases in England would seem to indicate that the need to argue over which nation's law controls or concepts of international comity might be outweighed by the need for global cooperation. *See* U.S. SEC v. Manterfield [2008] Lloyd's Rep. F.C. 477.
31. The court granted the preliminary injunction freezing Mr. Manterfield's assets on the same day. *Manterfield* [2008] Lloyd's Rep. F.C. 477, [6], [34].

unfair practices, including fraud, on the exchanges or markets.[32] The SEC has the ability, after it has brought an action under any relevant securities legislation, including the 1934 Act, to claim equitable relief through injunctions and disgorgement of any unlawful gains in order to refund money to wronged investors.[33] This right is codified under U.S. law in 15 U.S.C. § 78.[34]

However, laws such as the U.S. Securities Exchange Act of 1934 would not be enforceable in England, as English courts cannot enforce foreign penal law.[35] *Dicey, Morris, and Collins on Conflicts of Law*, an English book on comparative law, articulates this concept.[36] Rule 3 from this book, or as the English courts refer to it in this case, *Dicey* rule 3, states that English courts cannot enforce either directly or indirectly another state's penal law.[37] The court noted that this rule has previously been accepted and cited in English cases.[38] Furthermore, this rule has evolved somewhat over the years, as English courts have found broad ways to interpret how the rule can be applied.[39] The rule, as interpreted by English courts, does not necessarily mean that English courts allow extraterritorial exercise of another state's sovereignty by assisting that state in obtaining evidence that can be used to enforce that state's laws within its borders.[40] In other words, the English courts will assist a

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32. The act is codified in U.S. law. *See* 15 U.S.C. § 78b (2006). The purpose of the act is to regulate various types of fraud, including fraud committed by issuers of securities. The act intends "to insure the maintenance of fair and honest markets in such transactions," thus putting the alleged actions of Mr. Manterfield squarely within it. *Id.*

33. The lower court noted that this provision to claim relief, including injunctive remedies and disgorgement of unlawful gains on behalf of wronged investors, was confirmed by the Securities Enforcement Remedies and Penny Stock Reform Act 1990. *See Manterfield* [2008] Lloyd's Rep. F.C. 477 at [34].

34. *See* 15 U.S.C. § 78u(d)(5) ("In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.").

35. *Manterfield* [2008] Lloyd's Rep. F.C. 477 at [41].

36. 1 A.V. DICEY ET AL., DICEY, MORRIS AND COLLINS ON THE CONFLICTS OF LAW 100-01 (Lawrence Collins ed., Sweet & Maxwell 2006) (1896). The court relied on the statement of the law in this book in formulating its analysis of English enforcement of foreign penal laws.

37. Rule 3 states, "English courts have no jurisdiction to entertain an action: (1) for the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign State; or (2) founded upon an act of state." *Id.* at 100.

38. The courts noted that the rule is cited in *Huntington v. Attrill*, [1893] AC 150. The rule's reasoning was stated in *Attorney General of New Zealand v. Ortiz*, [1984] AC 32. *See Manterfield* [2008] Lloyd's Rep. F.C. 477 at [41].

39. *See Manterfield* [2008] Lloyd's Rep. F.C. 477 at [41]-[46].

40. *Id.* at [43] (citing *Ortiz*, [1984] AC 32).

foreign court or agency in enforcing the laws of its state by upholding certain injunctions in England.[41]

In *Evans v. European Bank Ltd.*, the Court of Appeal in New South Wales, Australia, analyzed whether upholding a foreign injunction was penal law, because being characterized as such, it could fall under the "exclusionary rule," meaning the court could not enforce it.[42] In *Evans*, the Australian court held that a receiver appointed by the U.S. Federal Trade Commission (FTC) could sue in New South Wales as a means of recovering the proceeds of credit card fraud.[43] The court determined that whether the enforcement of a foreign statute constituted "governmental interest" depended on the scope, nature, and overall purpose of the provisions being enforced.[44] The court stated that not every proceeding brought about by a governmental regulatory regime is an enforcement of penal law, and regulatory regimes, such as the FTC, can engage in consumer protection.[45] Furthermore, simply because the law being enforced is government law does not mean that it should fall under the exclusionary rule.[46] In that case, the court held that a proceeding to recoup funds in order to return them to the individuals who had been defrauded was not an enforcement of a penal law and thus allowed it to go forward.[47]

In *Iran v. Barakat Galleries Ltd.*, the U.K. Court of Appeal ruled on a dispute as to whether the state of Iran or an Iranian gallery had rights to certain antiquities.[48] However, the notable issue in this case is that the Court of Appeal in England incorporated the reasoning of the *Evans* case into its opinion.[49] One of the questions on appeal in *Barakat Galleries* was whether the Iranian law in dispute was a penal law.[50] The court in *Barakat Galleries*, after engaging in a lengthy discussion, stated that

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41. *See id.* at [41]-[47] (explaining the evolution up until now of English case law in interpreting the *Dicey* rule 3 principles, and noting that criminal sanctions that include penalties and forfeitures do not necessarily mean the statute is penal in nature).

42. (2004) N.S.W.L.R. 75.

43. *Id.* paras. 83-89.

44. *Id.* paras. 42-45, 59-63.

45. *Id.* paras. 59-60.

46. *See id.* paras. 48, 62. The court noted that other courts had reasoned that regulations promulgated by foreign governments that do not constitute a government interest, but rather are in place to protect the "community at large" and private individuals, are not considered penal law because the state is not seeking claims for offenses against the state, but on behalf of the public. *Id.* para. 48 (citing Huntington v. Attrill, (1893) A.C. 150, 157-58 (U.K.)).

47. *Id.* para. 89.

48. [2007] EWCA (Civ) 1374 (Eng.).

49. *Id.* at [124]-[125].

50. *See id.* at [95]-[96] (citing *Dicey* rule 3 in explaining that English courts cannot enforce penal, revenue, or other public law of a foreign state).

simply because a law contains criminal sanctions does not necessarily mean that it is a penal law.[51] The English court there agreed with the *Evans* test, stating that certain laws contemplate furthering consumer protection rather than enforcing penal laws.[52] The court in *Barakat Galleries* adopted the reasoning of *Evans* and stated that there is no rule that bars English courts from enforcing *all* foreign public laws.[53]

In *Securities & Investments Board v. Lloyd-Wright*, the English Chancery Court dealt with the issue of cross-undertaking in damages.[54] In that case, the Securities and Investments Board (SIB) was granted a worldwide freezing order on the defendant's assets.[55] The court held that it had discretion to determine whether a cross-undertaking in damages was necessary, and if it found such necessity, it could dispense with the cross-undertaking.[56] Specifically, the court held that because the SIB was authorized to claim monetary restitution for those who suffered because of fraud, and because the remedy was not for the SIB, but for the public at large, it would be appropriate to not have a cross-undertaking in damages.[57]

III. THE COURT'S DECISION

In the noted case, the U.K. Court of Appeal relied on a literal interpretation of rule 3 in *Dicey*, as well as U.S. security statutes and prior English case law, in order to determine that upholding the freezing

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51. *Id.* at [109].

52. *Id.* at [124]-[125].

53. *Id.* at [125]; *see also* Yahoo! Inc. v. La Ligue Contre le Racisme et l'Antisemitisme, 433 F.3d 1199, 1239 (9th Cir. 2006) (stating the U.S. standard, which is to "honor foreign court judgments unless they 'prejudice the rights of United States citizens or violate domestic public policy.'"). This would conceivably allow the United States to enforce some foreign public laws domestically, similar to what the English court did in *Barakat Galleries*.

54. *See* Sec. & Inv. Bd. v. Lloyd-Wright [1993] 4 All E.R. (Ch.) 210. A cross-undertaking in damages under English law is provided to secure a defendant's right to obtain compensation for loss caused by a court order or injunction that is wrongfully made. Gillhams Solicitors LLP, Cross-Undertakings in Damages, http://www.gillhams.com/dictionary/208.cfm (last visited Jan. 28, 2010).

55. *Lloyd-Wright*, [1993] 4 All E.R. at 213. In the case, the worldwide freezing order is referred to as a "Mareva" injunction and was one of four injunctions that the SIB was seeking. *Id.*

56. *See id.* The court noted several reasons why it could dispense with a cross-undertaking. Primarily, that the agency was acting within its function and discretion in seeking restitution for those who had been victimized by unauthorized business. The court also emphasized that the remedy was provided to the SIB by statute. *Id.*

57. *See id.* The court stated that the SIB was acting in a law enforcement capacity in seeking the Mareva injunction, and the injunction reflected the worldwide nature of the defendant's activities. *Id.*

order was not an enforcement of foreign penal law.[58] The court noted that the complaint filed in the District Court of Massachusetts sought the disgorgement of all "ill-gotten gains" and disbursement of any money seized from Manterfield and his company.[59] Based on the holding in *Evans*, which was ratified by the English Court of Appeal adopted in *Barakat Galleries*, the Court held that the judgment sought in the U.S. district court was a civil judgment and did not fall under rule 3 in *Dicey*.[60] The court, relying on prior English case law, further held that Deputy High Court Judge, Sir Charles Gray, was entitled to dispense with the cross-undertaking in damages at his discretion, and thus, Manterfield could not attack Judge Gray's discretion in this capacity.[61] The primary point that the court made in looking at Judge Gray's decision to dispense with the cross-undertakings was that it was irrelevant that the SEC was a foreign enforcement agency, because states should cooperate to ensure that fraudulent activity spanning several countries is properly prevented and punished.[62]

The first argument that the court addressed on appeal was whether the SEC was seeking to enforce a penal or public law of a foreign state against Manterfield, a citizen of the United Kingdom.[63] Manterfield argued that based on rule 3 in *Dicey*, it is improper for England to enforce a tax or penal offense imposed by a sovereign power.[64] The court reviewed the original complaints filed against Manterfield in the U.S. court, which, as confirmed by the SEC, sought disgorgement of Manterfield's funds as well as civil penalties.[65] Manterfield argued that because the SEC was seeking civil penalties along with disgorgement of funds, continuing the freezing order would be the same as enforcing the

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58. U.S. SEC v. Manterfield [2009] EWCA (Civ) 27 [11]-[24] (Eng.).

59. *Id.* at [12]. The SEC had decided previously that any disgorged funds would be returned promptly to those who had lost money investing in fraudulent hedge funds with Lydia Capital. *Id.* at [17].

60. *See id.* at [19]-[23].

61. *Id.* at [25]-[29].

62. *See id.* at [27].

63. *See id.* at [11]-[24]. The SEC sought disgorgement of the fraudulently obtained funds and payment of a civil monetary penalty under section 20(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(d)(3) (2006). *Manterfield* [2009] EWCA (Civ) 27 at [13]. Section 21(d)(3) of the Securities Exchange Act of 1934 authorizes the SEC to seek fines and penalties against those who violate the act. 15 U.S.C. § 78u(d)(3).

64. *See Manterfield* [2009] EWCA (Civ) 27 at [6]. Manterfield argued that enforcing U.S. securities law against a U.K. citizen in England would be the exact type of enforcement of foreign penal law that *Dicey* rule 3 warned against. *See id.* at [11] (citing DICEY ET AL., *supra* note 36, para. 5.020).

65. *Id.* at [15]. Manterfield also accepted that the SEC was seeking both disgorgement and civil penalties. *See id.*

civil penalties in England, which rule 3 in *Dicey* counsels against.[66] The SEC countered that it would not seek enforcement in England of any judgment relating to penalties, that is, that the disgorgement and penalties were "severable."[67] However, Manterfield argued that the penalties were a critical part of the claim filed in the United States, and that there could therefore be no severance, regardless of whether the SEC sought the money for disgorgement or for penalties, and thus the freezing order still violated *Dicey* rule 3.[68]

The court first analyzed this issue by referring to *Evans* as persuasive authority.[69] The court, following the reasoning in *Evans*, asserted that when governmental actions are the central issue, the substance of what occurred is more important than the form of the proceedings.[70] The court then stated that the actions taken to refund those who were victims of Lydia Capital's fraud were the substance of what occurred in this case and, as such, the SEC was not acting in a governmental interest, but rather on behalf of the public.[71] Thus the court held that the exclusionary rule as discussed in *Evans* should not apply here.[72] The court also emphasized that although *Evans* was an Australian case, the English Court of Appeal in *Barakat Galleries* had adopted its reasoning.[73] Manterfield attempted to distinguish *Evans*.[74] However, the

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66. *Id.* at [16].

67. *Id.* at [17]. The SEC also conceded, however, that the assets available in England would likely not even be enough to meet the sum sought to be disgorged, so a penalty might be impossible. *Id.* The SEC stated that this should not be taken as a concession as to whether penalties would run afoul of *Dicey* rule 3. *Id.* In fact, under the American Sarbanes-Oxley Act, the U.S. may also use penalties awarded to the SEC to refund defrauded investors. *See id.* at [15]-[16].

68. *Id.* at [18].

69. *See id.* at [19]. Both parties and the judge accepted *Dicey* rule 3 as the initial standard, which was formulated in *Huntington v. Attrill*, (1893) A.C. 150 (U.K.). Both parties also referred to *Evans v. European Bank Ltd.*, (2004) N.S.W.L.R. 75, as one of the prominent international cases that addresses this problem.

70. *Id.* (citing *Evans*, (2004) N.S.W.L.R. 75).

71. *Id.* at [20] (quoting *Evans*, (2004) N.S.W.L.R. 75 at [89] (stating that the exclusionary rule does not apply when funds are recouped in order to be returned to those who have been illegally deprived of them, as there is no governmental interest in doing so that would rise to the level of triggering the proceeding to be excluded in another country)).

72. *Id.* at [24].

73. *See id.* at [21] (citing Iran v. Barakat Galleries Ltd. [2007] EWCA 1374, [124]-[125] (Eng.)).

74. He sought to distinguish his case because in *Evans* the action was brought by a receiver for the FTC, and was thus between two private litigants. *Id.* at [22]. In addition, no penalties were ever part of the foreign court action in *Evans*. *Id.*

court promptly rejected any distinctions because both *Evans* and the noted case involved regulatory bodies seeking disgorgement of funds.[75]

Finally, the court ended its analysis of this issue by noting that in order to settle whether assets retrieved after a judgment are used for disgorgement or penalties, courts can simply look at what type of penalty is actually enforced, and act further if necessary.[76] The court also noted that whether a judgment or freeze order is requested as part of a criminal proceeding does not denote whether the injunction or subsequent proceedings will conflict with Dicey rule 3.[77] The court reiterated that it is the substance of what is being enforced that is important for the purposes of the *Dicey* rule 3 analysis, and this view is supported by cases such as *Evans* and *Barakat Galleries*.[78] The court stated that the substance of what the SEC was seeking to enforce was the disgorgement of proceeds from a fraudulent scheme, which the SEC was attempting to return to investors.[79] Thus, the court denied Manterfield's argument on appeal that the SEC was seeking to enforce a penal law and stated that Judge Gray was correct in continuing the Crown Court's injunction freezing Manterfield's assets in England.[80]

The court next addressed whether the lower court was entitled to dispense with the cross-undertaking in damages and, if it was, whether the exercise of that discretion could be attacked on appeal.[81] The SEC argued that Judge Gray was correct in dispensing with the cross-undertaking, which enabled the freezing order, whereas Manterfield argued that this case did not fall within the exceptional area in which the judge should have dispensed with the cross-undertaking, and as a result, the freezing order could not be granted.[82] Manterfield emphasized that the SEC was a foreign enforcement organization, not funded by British

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75. *See id.* at [23] (stating that the status of the parties is irrelevant, as the receiver was still a regulatory body seeking protection in order to obtain disgorgement).

76. The court seems to imply that it will have the ability to look into this. *Id.* at [24] (citing Raulin v. Fischer (1911) 2 K.B. 93 (Eng.)).

77. *Id.* at [24]. *Evans* and *Barakat Galleries* both support this point, and the court seems to think that the judgment in the U.S. will not conflict with *Dicey* rule 3. *See id.* at [19]-[21], [24].

78. *Id.* at [24].

79. *Id.*

80. *Id.*

81. *Id.* at [25]-[34].

82. *Id.* at [25]. Both sides argued that no cross-undertakings should be made; the conflict concerned whether the judge should dispense with the cross-undertaking, as the SEC argued, or if he even had the right to do so, as Manterfield argued he did not. *See id.* The Court of Appeal strongly agreed with Judge Gray's analysis and his decision on the issues. *See id.* Manterfield's lower court argument based on article 6 of the European Convention on Human Rights was abandoned on appeal. *Id.* at [27].

taxpayers, and the interim injunction here was issued outside of the United Kingdom.[83] The court acknowledged that cross-undertakings are usually required in order to uphold an interim injunction; however, the court also acknowledged that it is sometimes within the court's discretion to dispense with cross-undertakings.[84] Manterfield countered that such situations have only occurred in domestic cases.[85]

The court relied on *Lloyd-Wright*, in which the SIB sought several injunctions, one of which was to dispense with a cross-undertaking in damages related to a similar freezing order.[86] The court, following the logic of the *Lloyd-Wright* decision, held that similar to the SIB in *Lloyd-Wright*, the SEC was acting in performance of a public duty, was authorized to claim monetary restitution on behalf of those who had suffered as a result of fraud, and was claiming money not for its own benefit but for the benefit of the public at large.[87] Manterfield argued that this situation was distinguishable because the freezing order was one of several injunctions.[88] The court disagreed.[89]

In the alternative, Manterfield argued that even if *Lloyd-Wright* does apply, it should only apply in the domestic context and should not be applied where the SEC is abroad, not funded by British taxpayers, and U.K. citizens are not adversely affected.[90] The lower court rejected this argument, and the Court of Appeal agreed with its reasoning.[91] It stated that it is "incontrovertible" that fraudulent activities such as those carried out by Manterfield and his company are international problems that require international prevention and punishment efforts.[92] The court, noting that most of the investors were Taiwanese nationals, stated that

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83. *Id.* He stated that because of these reasons, and because no U.K. citizens were even injured, this was not a case within the exceptional area in which a judge can use his discretion to dispense with a cross-undertaking. *Id.*

84. *Id.* at [28] (citing Hoffman-LaRoche & Co. v. Sec'y of State for Trade and Indus., (1975) A.C. 295 (Eng.)).

85. *Id.* at [29]. He argued that the only time judges have used their discretion to dispense with cross-undertakings is when local government or regulatory bodies are pursuing a law enforcement claim and civil proceedings have commenced or are about to commence, and there is a large public interest at stake. *Id.*

86. *Id.* at [30] (citing Sec. & Invs. Bd. v. Lloyd-Wright [1993] 4 All E.R. 210 (Eng.)).

87. *Id.* at [31]. The court also noted that a regulatory agency seeking to claim monetary restitution on behalf of the public and not the government was the same scenario that led the court in *Lloyd-Wright* to decide the case the way it did. The court also noted the restitution was criminal, rather than penal. *See id.*

88. *Id.* at [32]. Alternatively, he suggested that *Lloyd-Wright* should be overruled, however, the court declined to do so, holding that it had been decided correctly. *Id.*

89. *Id.*

90. *Id.* at [33].

91. *See id.* at [32]-[35].

92. *Id.* (quoting U.S. SEC v. Manterfield [2008] Lloyd's Rep. F.C. 477, [27]).

bodies such as the U.S. SEC and comparable institutions in other countries exist in order to combat fraudulent activities.[93] Thus, the Court of Appeal agreed that it was within the lower court's discretion to dispense with cross-undertakings and continue the freezing order, regardless of which enforcement agency sought it and whose citizens it affected.[94] The lower court was primarily concerned with ensuring cooperation between countries to combat international fraud, and the Court of Appeal, agreeing with its reasoning, upheld that it was within the court's discretion to dispense with cross-undertakings in damages.[95]

IV. ANALYSIS

In allowing for domestic courts to uphold the injunctions, freezing orders, and possibly even decisions of foreign courts, the decision in the noted case certainly provides a much broader range of enforcement possibilities for countries attempting to combat international fraud than if those injunctions or freezing orders only had domestic effect. While there has been much in the news recently regarding international fraud and the global economy, this case presents one way in which nations can combine resources in order to identify global fraud schemes that span multiple countries. Possibly the most interesting aspect of this case is that the court opted to side with a U.S. governmental agency over an English citizen. This demonstrates that, at least in terms of global financial schemes that have the power to affect citizens of many different nations, foreign governments might be willing to uphold decisions from other nations' courts in order to ensure that those who commit such crimes are held accountable.[96]

This case could have broad implications for how courts around the world may handle cases that involve aspects of globalization and cooperation between nations. As the world moves towards a more global economy, cases such as this one may provide the type of precedent that other courts will look to when deciding whether to uphold injunctions and other law enforcement mechanisms ordered by foreign courts. The court seems to have decided this case correctly based on prior reasoning, but it also made the right decision based on where the world is going.[97] As Judge Gray pointed out in his opinion, which the court of appeal cited and agreed with, financial fraud has become a crime that affects markets

93. *Id.*
94. *Id.* at [33].
95. *Id.* at [34].
96. *See id.* at [33].
97. *See id.* at [34] (citing *Manterfield* [2008] Lloyd's Rep. F.C. 477 at [27]).

and investors all over the world.[98] Thus it would seem that the only way to combat global fraud is for countries to cooperate with other foreign governments in their attempts to solve international fraud cases. This case is an example of a court in one nation placing the imperative of international cooperation to combat global fraud ahead of the narrow-minded focus on protecting its own citizens from enforcement of foreign judgments at home.[99] As this case shows, the global market may dictate that cooperation, in order to prevent worldwide financial crimes, takes precedence over individual sovereignty.

The noted case provides a natural development from previous English cases and could determine how England will handle similar claims in the future. Traditionally, as Manterfield argued thoroughly on appeal, English courts would not uphold the injunctions of foreign courts against English citizens in England.[100] Manterfield also pointed out several times that U.K. taxpayers do not fund the SEC and that no U.K. citizens were involved in this fraudulent scheme.[101] Therefore, according to the arguments that Manterfield put forth and based on rule 3 from *Dicey*, England would not have traditionally given legal effect to a freezing order issued by a foreign court, such as the one sought in the U.S. district court.[102] The English court, breaking precedent in the noted case, certainly changes how courts in the United Kingdom might handle future cases that involve orders or injunctions from foreign courts, and the ruling in the noted case may make foreign courts more willing to pursue these injunctions abroad, especially in England. Thus this case may create an important precedent at least in England, if not in courts around the world, who, like the courts in England, would probably not have previously upheld an injunction against a state national. Courts in other nations may decide to follow England's lead and uphold foreign court orders in the name of global cooperation.

This case also creates questions regarding the future implications of this decision in England and in other countries that may have similar cases appear before their courts. While courts in other countries are certainly free to handle similar cases in whatever way they see fit, it would be reasonable to suggest that if England upholds an SEC injunction against an English citizen, it might expect other foreign courts

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98. *See Manterfield* [2008] Lloyd's Rep. 477 at [27].

99. *See generally* Evans v. European Bank Ltd., (2004) N.S.W.L.R. 75; *Manterfield* [2009] EWCA (Civ) 27 (Eng.).

100. *See Manterfield* [2009] EWCA (Civ) 27 at [12]-[22].

101. *Id.* at [33].

102. *Id.* at [11]-[24].

to do the same in a similar situation.[103] However, decisions like this are bound to raise questions regarding sovereignty and rights of citizens to expect protection from foreign governments and court systems. Several other questions arise: Would England or other countries only uphold foreign injunctions from an allied or democratic nation, and would it refuse to uphold rulings from a court system that belongs to a non-ally or a government it views as corrupt? Also, outside of organizations such as the SEC, what constitutes a regulatory body? Must it be an enforcement agency? Finally, an important question is: How would U.S. courts react if a U.S. citizen found herself in the same situation as Manterfield?[104] These questions represent the many decisions courts will have to make in the future when grappling with this issue if they choose to follow the same type of analysis set forth in the noted case.

Finally, the court in the noted case was careful to address the issues only in the narrow context presented therein and only looked at the specific issues that were before the court on appeal.[105] Specifically, when looking at whether it should uphold the SEC injunction, the court was careful to point out that it was continuing the freezing order only because it would be used as part of a potential disgorgement of Manterfield's ill-gotten gains.[106] Therefore, this case does not address what would happen if a foreign enforcement agency sought a freezing order in England as a means of seeking penalties. However, given the language of the court's decision, the assumption is that this decision would only apply to disgorgement proceedings.[107] This decision was important in England for

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103. Given the emphasis placed on worldwide cooperation by both Judge Gray in the lower court, and the Court of Appeal in the noted case, it would not be out of the realm of possibility to expect that if England assists the SEC by continuing a freeze in England on an English citizen's assets, it might expect the American courts to do the same if England were ever to need similar assistance in combating global fraud. *See id.* at [33]-[34].

104. As suggested by some U.S. case law, the courts might be willing to uphold the decisions of foreign courts as long as they do not infringe on the rights of U.S. citizens. However, the question would probably turn on whether the courts would find a U.S. citizen in a similar situation as Manterfield; the question is whether the foreign action infringes on the citizen's rights. *See* Yahoo! Inc. v. La Ligue Contre le Racisme et l'Antisemitisme, 433 F.3d 1199, 1239 (9th Cir. 2006).

105. *See generally Manterfield* [2009] EWCA (Civ) 27 at [11]-[33]. The court only looked at two narrow issues on appeal: First, whether the SEC wanted to enforce foreign penal law; and second, whether the judge was within his discretion to dispense with the cross-undertakings. *Id.*

106. *Id.* at [17], [24].

107. In fact, as mentioned in the portion of the court's decision discussed *supra* Part III, the court seems to imply that it would be unwilling to allow any assets to be released that are not part of the funds being returned to investors; although the SEC does not concede that American penalties would be unenforceable, they agree not to pursue them. *See Manterfield* [2009] EWCA (Civ) 27 at [17].

purposes of precedent, in the United States for purposes of seeking global cooperation in fighting financial fraud, and in the legal community as an example of where global financial fraud litigation is heading. The decision was narrow and only addressed financial fraud and disgorgement proceedings, so it may not have much value as precedent in any other areas. However, it is important for the purposes of showing how economically developed countries are addressing global fraud schemes and may be an example to which both English and foreign courts look when addressing this issue, because there was no shortage of cases in 2009 involving worldwide cooperation between state enforcement agencies, especially the SEC.[108]

V. CONCLUSION

The court wrote its decision in the noted case in January 2009, when the focus of worldwide financial news was the massive securities fraud and market problems that had brought several important national economies to their knees.[109] The European and American economies were hit especially hard.[110] At the time this decision was rendered, many of the frauds perpetrated by individuals and companies were just coming to light, and the anger felt by many consumers who had lost money in the markets was likely fresh in everyone's minds, including the judges'. In an era when financial fraud can affect people all over the world and can be executed across several national financial markets, it would have been even more surprising had the court denied the SEC's injunction. While

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108. *See* Eugene Goldman, You May Hear from the SEC: The Global Reach of Securities Enforcement (June 04, 2009), *available at* http://www.mwe.com/info/pubs/complinet_0609.pdf. The author, an attorney who defends against SEC actions, lists several recent (2008-09) cases currently being litigated that follow the Manterfield global cooperation trend. Those listed include cases in which the SEC has received assistance on similar injunctions and worldwide freezing orders from foreign authorities in Europe, Asia, Africa, and the Americas. The cases show the breadth of SEC enforcement and cooperation in fighting financial fraud across the globe. Cases listed from after the Manterfield judgment include *SEC v. Halliburton* and *SEC v. Watson*.

109. *See* Edmund L. Andrews, *Greenspan Concedes Error on Regulation*, N.Y. TIMES, Oct. 23, 2008, *available at* http://www.nytimes.com/2008/10/24/business/economy/24panel.html?_r=1&partner=permalink&exprod=permalink; Jim Puzzangherea, *Task Force Targets Fraud Tied to Crisis*, L.A. TIMES, Nov. 18, 2009, *available at* http://articles.latimes.com/2009/nov/18/business/fi-financial-fraud18; *see also* Anthony Faiola, *A Global Retreat as Economies Dry Up*, WASH. POST, Mar. 5, 2009, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/03/04/AR2009030404221.html?sid=ST2009030404264; Tom Gjelten, Economic Crisis Poses Threat to Global Security (Feb. 18, 2009), http://www.npr.org/templates/story/story.php?storyId=100781975.

110. *See* Mark Landler, *The U.S. Financial Crisis Is Spreading to Europe*, N.Y. TIMES, Sept. 30, 2008, *available at* http://www.nytimes.com/2008/10/01/business/worldbusiness/01global.html.

this case did not reach the English Court of Appeal until almost two years after the SEC brought charges against Manterfield, this case could obviously set the tone for global cooperation for what could be a large increase in these types of cases. Given that the financial problems in the United States affected markets all over the world, including markets in England, it would have certainly been in England's best interest to ensure a precedent of global cooperation between courts in dealing with these matters, regardless of any citizenship or sovereignty issues that might arise. Thus this decision by the Court of Appeal in England may have been very different if it was rendered only a few months earlier. This decision is almost certainly a product of the financial environment in which it was decided, and while cooperation between countries in enforcing each others' laws is not unprecedented in international law, this case might lead to more cooperation between countries in litigating and enforcing financial fraud. Given the worldwide financial recession and stories that permeated the news concerning global financial fraud around the time of this decision, it is now hard to imagine the English court not assisting the SEC and American courts in combating global securities fraud.

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