

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. E.041 OF 1998

BETWEEN	E.D. & F. SUGAR INC.	PLAINTIFF
A N D	TROPICANA HOLDINGS LTD. (In Receivership)	FIRST DEFENDANT
A N D	JOHN WESLEY LEE (As Receiver and Manager of Tropicana Holdings Ltd.)	SECOND DEFENDANT
A N D	WORKERS SAVINGS AND LOAN BANK	THIRD DEFENDANT

Andre Earle and Miss Karen Wilson for the Plaintiff.

Miss Katherine Francis for Second Defendant.

Mrs. Sandra Minott-Phillips for Third Defendant.

HEARD: 16th, 17th and 18th September, 1998,
25th, 26th and 27th March, 1999, 12th
April, 1999 and 7th June, 1999.

F. SMITH, J.

The Plaintiff is a company organised under the laws of the State of Delaware, U.S.A. and specialises in international sugar trading and distribution.

The First Defendant is a limited company registered in Jamaica and is involved in sugar production.

The Second Defendant was appointed by the Third Defendant on the 22nd January, 1998 as the Receiver and Manager of the First Defendant.

The Third Defendant is a commercial bank licensed under the Banking Act of Jamaica.

By Summons dated the 29th June, 1998 the Plaintiff seeks an interlocutory injunction ordering that:

1. The Second Defendant by himself his agents, servants and/or successors in title otherwise be restrained from parting with, appropriating or in any other way disposing of the proceeds of sale or other disposition of any of the assets of Tropicana Holdings Limited including:
 - (a) Leased property including approximately 763.18 hectares of sugar cane, lands, sugar factory ancillary buildings and employees' house.

- b. Rolling stock including cars, pick-up trucks, tractors, cane loaders and other equipment.
 - c. Separate parts inventory which were contained in a publication in the Daily Gleaner dated Friday May 22, 1998 under the heading "RECEIVERS SALE" other than on a pari passu sharing of the said proceeds of sale in proportion of the indebtedness owed by the First Defendant to the Third Defendant and the Plaintiff respectively until the trial hereof or until the further order, with the plaintiff giving the usual undertaking as to damages.
2. Costs to be for the Plaintiff to be agreed or taxed.
 3. A full accounting by the Second Defendant of all receipts and expenditures received and incurred since his appointment as Receiver of the First Defendant.

Initially the Third Defendant, Workers Savings and Loan Bank, was not a party to these proceedings because at the time there was an order in place which prohibited the commencement or continuation of any proceedings against it.

On the 18th September, 1998 leave was granted to join the Bank as a party. Accordingly the Writ of Summons and Statement of Claim were amended.

The claim against the First Defendant is for money. The claim against the Second Defendant is for an injunction. Against the Third Defendant the plaintiff seeks a declaration, specific performance of an agreement and damages.

The application before me is for an interlocutory injunction against the Second Defendant. Hence the only issue for my determination is whether or not this equitable remedy ought to be granted.

The Plaintiff's application is supported by the affidavit evidence of Mr. Eric Jan Walson the Vice President of the Plaintiff's company Mr. William Maloney who was at the material time the Managing Director of the First Defendant and Miss Tania Wong an Attorney-at-Law.

The affidavit evidence discloses that in November, 1996 Mr. Walson in his capacity as the Vice President of the plaintiff attended a meeting at the

Third Defendant's head office in Kingston to discuss a proposal of a loan of U.S.\$750,000 by the Plaintiff to the First Defendant. At this meeting the Third Defendant was represented by Mr. Errol Maloney, the then assistant General Manager of Business Risks and Mr. Karl Townsend, the First Defendant by Mr. William Maloney and Mr. Rohan Budhai, and of course, Mr. Erik Jan Walson for the Plaintiff.

In its amended Statement of Claim the plaintiff avers that at the meeting Mr. Errol Maloney in order to induce the plaintiff to provide the loan to the First Defendant made the following representations:

- (a) That the Third Defendant held a debenture over all the fixed and floating assets of the First Defendant to secure the indebtedness of the First Defendant to the Third Defendant as the Third Defendant's security.
- (b) That if the Plaintiff provided the principal amount to the First Defendant, the Third Defendant would offer the Plaintiff a pari passu position with the Third Defendant as the Plaintiff's form of security for the loan.

The Plaintiff further alleges in its amended Statement of Claim that:

- "(7a) As a result of the aforesaid representations made by the Third Defendant to the Plaintiff in the said meeting in November, 1996, it was agreed between the Plaintiff, the First Defendant and the Third Defendant that the Plaintiff would provide a loan to the First Defendant in the sum of U.S.\$750,000 in consideration of the Third Defendant taking all such steps as were necessary to ensure that the Plaintiff enjoyed a pari passu ranking with the Third Defendant's debenture.
- (7b) It was at all material times agreed and understood by the Plaintiff, First Defendant and Third Defendant that effect could be given to the said agreement by the Third Defendant upstamping its own debenture to cover such additional indebtedness of the First Defendant to the Plaintiff as may have arisen from time to time.

(7c) Further and in the alternative it was an implied term of the said agreement of November 1996 that the Third Defendant would take all such steps, all such acts and/or things as were necessary (including but not limited to obtaining the permission of ING) to ensure that the obligations of the First Defendant to the Plaintiff as a result of the said U.S.\$750,000 loan would at all times rank pari passu with the obligations of the First Defendant under the debenture issued in favour of the Third Defendant.

Affidavits of Mr. A. Errol Maloney and Mr. John Wesley Lee were filed in opposition of the plaintiff's application.

The Third Defendant in its Defence admits that there was such a meeting in November, 1996 at Mr. A. Errol Maloney's office. However the Third Defendant denies making the representations referred to above. It claims that at the meeting Mr. A. Errol Maloney told the Plaintiff that the Third Defendant was then negotiating to take over the First Defendant's debt from Eagle Merchant Bank of Ja. Ltd. and that Internationale Nederlander (U.S.) Capital Corporation (I.N.G.) had a first Debenture on the First Defendant's assets. That the Third Defendant indicated its willingness to allow the Plaintiff to register a pari passu first Debenture on the assets of Tropicana Holdings along with that of Workers Savings and Loan Bank subject to I.N.G. consenting to same. It claims that the responsibility of preparing its own Debenture was always that of the Plaintiff.

The Third Defendant is saying that such agreement as there was in respect of the loan of U.S.\$750,000 was, to the best of its knowledge, an agreement between the Plaintiff and the First Defendant only.

The Second Defendant, the Receiver, is opposing the Plaintiff's application on the ground that, if granted, the injunction sought would create an unfair preference for the Plaintiff and would totally negative the provisions of Section 93 of the Companies Act.

The principles applicable in determining whether an interlocutory injunction should be granted are now well known. They were enunciated by Lord Diplock in American Cyanamid Co. v. Ethicon Ltd. (1975) 1 All E.R. 504 H.L. These were summarised by Miss Catherine Francis, the Second Defendant's attorney-at-law, in her submissions

as follows:

- (a) The Plaintiff must establish that he has a good arguable claim to the right he seeks to protect;
- (b) The court must not attempt to decide this claim on the affidavits, it is enough if the Plaintiff shows that there is a serious question to be tried;
- (c) If the Plaintiff satisfies these tests the grant or refusal of an injunction is a matter for the exercise of the court's discretion on the balance of convenience.

I like this summary as it beckons me to first determine whether or not the plaintiff has established that it has a good arguable claim to the right it seeks to protect. What is this right?

The Plaintiff is claiming an entitlement to have the obligation of the First Defendant to the Plaintiff rank pari passu with the registered debenture of the Third Defendant dated April 11, 1997. This claimed right is based on an alleged agreement between the Plaintiff, the First Defendant and the Third Defendant.

The affidavit of Mr. Erik Jan Walson discloses that on the 22nd November, 1996 the Plaintiff entered into a Credit Agreement with the First Defendant whereby the Plaintiff agreed to lend and the First Defendant agreed to borrow U.S.\$750,000 subject to certain conditions in the agreement. This agreement was signed by Mr. Walson as Vice President of the Plaintiff and Mr. William Maloney as Managing Director of the First Defendant.

According to Mr. Walson the Plaintiff entered this agreement acting in reliance on the representation by the Third Defendant that it held a debenture and warranted that the Third Defendant would allow a debenture to be registered and which debenture would rank pari passu with the Third Defendant's debenture. The Plaintiff also relied on the Third Defendant's letter dated 19/11/96 (to which I will return).

Paragraph (8A) of the Plaintiff's Amended Statement of Claim reads:

The said representations were and each of them was false and untrue in that:

- (1) The Third Defendant did not at the time of the representations hold a debenture over all the fixed and floating assets of the First Defendant or any debenture at all.
- (2) The Third Defendant was not in a position to allow the plaintiff to register any debenture on the plaintiff company (sic) whether pari passu or otherwise at the time.
- (3) The Third Defendant has to date refused and/or failed to give the plaintiff a pari passu ranking with its debenture which only came into being on April 11, 1997.

Importantly the Plaintiff states at paragraph 10 of the said Statement that:

.....The Third Defendant is estopped from denying that the plaintiff is entitled to a pari passu ranking with the Third Defendant's debenture having regard to :

- (a) the representations that were made to it at the meeting convened in or around November, 1996 at which Messrs. Erik Walson, Rohan Buddhai, William Maloney and Mr. Errol Maloney the servant or agent of the Third Defendant were present and
- (b) the letter written by the Third Defendant to the Plaintiff dated November 19, 1996.

A letter dated November 6, 1996 gives the background to the meeting of the parties in November, 1996. This letter is reproduced below:

"Mr. Errol Maloney
Assistant General Manager - Business Risk
Workers Bank
134 Tower Street,
Kingston.

Dear Mr. Maloney,

Further to my recent letter and our telephone conversation regarding the initiatives we have been taking in order to access loan funding from ED&F Man Sugar Inc., to bridge us to our N.D.B. loan in exchange for a marketing joint venture and equity option, I herein enclose a copy of a Letter of Understanding executed today between THL, JCPS and ED&F Man Sugar Inc.

Mr. Erik Jan Walson of ED&F Man Sugar Inc., is to come to Jamaica next week for meetings on Tuesday, November 12 to, hopefully, conclude the various agreements in the Letter of Understanding. As Workers consent and co-operation is integral to the success of our initiatives with Man and funding from this source we would (Mr. Walson and I) like to meet with you at your convenience on Tuesday, November

12 to discuss the proposals.

My office will contact you in order to schedule a meeting time that is convenient to you.

Thank you very much for your consideration.

Sincerely yours,
TROPICAL HOLDINGS LIMITED

William Maloney
Managing Director

Enclosed

c.c. "Mr. Rohan Buddhai"

Mr. Walson at paragraph 7 of his affidavit dated June 5, 1998 states:

"While discussing this loan, Mr. Errol Maloney of the Third Defendant represented that the Third Defendant held a debenture over all the fixed and floating assets of the First Defendant as its security and warranted that once this loan was granted to the First Defendant by the Plaintiff, the Third Defendant would allow a debenture to be registered and which debenture would rank pari passu with the Third Defendant's debenture."

Mr. William Maloney at paragraph 9 of his affidavit dated July 14, 1998 states:

".....Mr. A. Errol Maloney did not indicate at the said meeting that Workers was willing to allow Man to register a pari passu first debenture on the assets of Tropicana along with Workers, subject to ING consenting. Rather he indicated that Workers would be prepared to provide Man a pari passu position with Workers. In fact upon being asked by either Mr. Erik Jan Walson or Miss Teresita Vazquez Weisser as to what security Workers had, Mr. A. Errol Maloney responded that Workers had a debenture over the fixed and floating assets of Tropicana."

The letter of November 19, 1996 addressed to E.D & F. Man Sugar Inc., for the attention of Erik Jan Walson reads:

"Re: Tropicana Holding Ltd.

Further to our recent discussions regarding your proposed loan of U.S.\$750,000 to Tropicana Holdings Ltd., we write to inform you that Workers Savings and Loan Bank is willing to allow your company to register a pari passu First Debenture on the Assets of Tropicana Holdings along with Workers Savings and Loan Bank to secure your proposed loan to Tropicana Holdings Ltd.

However as you are aware, this will be subject to ING granting such permission as they now hold a First Debenture on the assets of Tropicana Holdings Ltd.

Yours faithfully,
A. Errol Maloney
Assistant General Manager
Business Risk."

The Credit Agreement of 22nd November, 1996 between E.D. & F. Man Sugar Inc., (the Plaintiff) and Tropical Holdings Ltd. (the First Defendant) which was signed by Mr. Walson and Mr. Williams Maloney has a "Consent" Clause for the signatures of Workers, Savings and Loan Bank (Third Defendant) and I.N.G. Neither of them signed this 'Consent.'

For purposes of this exercise I will refer to three of the Clauses of this Credit Agreement:

1. Man agrees, subject to the terms and conditions hereinafter set forth to make available to THL a loan in dollars of the United States, in one or more advances which shall not exceed in this aggregate a total of U.S.\$750,000.
2. Man shall make an advance of U.S.\$375,000 upon the signing of the Agreement. The remaining funds shall be advanced by Man to THL upon fulfilment of the conditions listed below
4. The obligation of Man to maintain outstanding the present advance and to make future advances on the loan is subject to the conditions precedent that Man shall have received prior to the disbursement of the loan all of the following documents, in form and substance satisfactory to Man:
 - (i) This Agreement duly executed by THL and acknowledged and consented to by the Workers, Savings and Loan Bank (Workers Bank) and any of her bank, financial institution or entity which may have a security interest in THL, its assets or both.
 - (ii)
 - (iii)
 - (iv)
 - (v)
 - (vi) Delivery to Man of a property executed and recorded Pari Passu Security Sharing Agreement executed by Workers' Bank and all other necessary parties, whereby Man shall have the right, among other things, to apro rata share in the proceeds of the liquidation of any of THL's assets pursuant to the Debenture dated the 17th day of February, 1994, between Tropicana Holdings Ltd., and One Part and Eagle Merchant Bank of Jamaica Ltd., as amended and assigned from time to time (the "Debenture").

(vii) I.N.G.'s Consent to Pari Passu
Security Sharing Agreement
detailed in (vi) above.

Mr. William Maloney in his affidavit sworn to on the 14th July, 1998 stated that at the November, 1996 meeting Mr. Errol Maloney advised them that all the necessary documentation would be drawn up in due course to place the Plaintiff's company on equal ranking with the Bank (The Third Defendant).

He further stated that subsequent to the Plaintiff's disbursement of funds to the First Defendant, Mr. Errol Maloney informed Mr. Budhai and himself that the Bank did not actually hold a debenture over the fixed and floating assets of the First Defendant and did not at the time the representation was made hold any security to share on a pari passu basis with the Plaintiff.

Mr. Earle for the Plaintiff argued forcefully that if the trial Court should find that the Third Defendant did make the representations already referred to and that in reliance on them the Plaintiff acted to his detriment then the Third Defendant would be estopped from denying that the Plaintiff is entitled to a pari passu ranking with its debenture registered on the 11th April, 1997.

The Plaintiff has established, he submitted, that it has a good arguable claim and that there are several serious questions to be tried.

Miss Katherine Francis and Mrs. Sandra Minott-Phillips for the Second and Third Defendants with equal force submitted that the Plaintiff has not established that it has a good arguable claim to the right it seeks to protect.

Mrs. Minott-Phillips submitted that unless the Plaintiff can show that it had obtained security from Tropicana (the First Defendant) and that I.N.G. Ltd. had given its consent it cannot succeed. The bottom line, she contended, is that the Plaintiff has no security and is a mere unsecured creditor. There can be no serious issue to be tried she forcefully argued.

Miss Francis submitted that the Plaintiff has failed to prove that it had complied with terms of the purported security sharing agreement and accordingly is not entitled to a pari passu ranking. She contended that the Plaintiff's charge was not registered as

required by Section 93 of the Company's Act and consequently the debt is not secured by the First Defendant's property and is accordingly void as against the liquidator.

She further submitted that to grant the injunction sought by the Plaintiff against the Receiver would establish a precedent which would totally negative the public policy behind Section 93 of the Companies Act.

The heart of the Plaintiff's claim is that it has a right to participate in (the Third Defendant's - Workers Bank's) Debenture.

The Plaintiff is contending that the Third Defendant, induced it to make the loan to the First Defendant by representing that it (the Third Defendant) held a debenture over all the fixed and floating assets of the First Defendant.

In its letter of November 19, 1996 the Third Defendant said it was "willing to allow (the Plaintiff) to register a pari passu First Debenture on the Assets of Tropicana Holdings along with Workers, Savings and Loan Bank." However at that time the Third Defendant had no such debenture.

It is true that the Third Defendant in that letter stated "this will be subject to I.N.G. granting such permission" But it is the contention of the Plaintiff that the Third Defendant agreed to take all such steps including the obtaining of consent of I.N.G. to ensure that the obligations of the First Defendant to the Plaintiff rank pari passu with the debenture of the Third Defendant.

It should be noted that by virtue of the Credit Agreement the Plaintiff made an advance of U.S.\$375,000 upon the signing of the Agreement. The Plaintiff's obligation to "maintain outstanding - the advance made and to make future advances" was subject to certain conditions precedent including:

- (i) The delivery to the Plaintiff of a properly executed and recorded Pari Passu Security Sharing Agreement executed by the Third Defendant and all other necessary parties and
- (ii) ING's consent.

It should also be noted that Clause 26 of the Third Defendant's Debenture of the 11th April, 1997 empowered the debenture holder to impress additional stamp duty thereon covering any sum or sums by

which the indebtedness may be increased. It must be emphasised that the plaintiff is claiming the right to participate in the Third Defendant's Debenture. Mrs. Minott-Phillips submitted that Clause 26 of the Debenture of 11 April, 1997 can only mean that if the First Defendant increased its indebtedness to the Third Defendant then the latter can upstamp its debenture to cover that increase. This has nothing to do with the plaintiff's indebtedness to the first Defendant, she contended.

It seems to me that if at the trial the plaintiff should establish the facts pleaded viz:

- (a) that at the November 96 meeting the third Defendant falsely represented that it then held a debenture over all the fixed and floating assets of the first Defendant;
- (b) that as a result of that representation it was agreed between the plaintiff and the first and third Defendants that the plaintiff would provide the aforesaid loan in consideration of the third defendant taking the necessary steps to ensure that the plaintiff enjoyed a pari passu ranking with the third Defendant's debenture and;
- (c) that it was agreed and understood by the parties that effect could be given to the agreement by the third Defendant upstamping its own debenture to cover the additional indebtedness of the first Defendant to the Plaintiff.

then these would raise a serious question for the decision of the trial court as to whether or not the court may order the third Defendant to upstamp its debenture, which was subsequently obtained, to cover the plaintiff's loan to the first Defendant.

In light of the foregoing I cannot accept the submissions of Counsel for the Second and Third Defendants that because the Plaintiff had not obtained a security from the First Defendant or the consent of ING, there can be no serious issue to be tried.

Miss Francis' submission as to the Plaintiff's failure to register the charge with the Registrar pursuant to S.93 of the Companies Act is not a matter for me to determine at this stage. This too must be seen in the light of the plaintiff's claim to be entitled to participate in the Workers bank Debenture. In any event Section 99 empowers a Court to extend the time for registration.

This indeed will raise serious issues and difficult questions of law which calls for detailed argument.

Having considered the material before me and the submissions of Counsel for the parties I am of the view that the Plaintiff has established that it has a real prospect of succeeding in its claim for a permanent injunction against the Second Defendant. I am satisfied that the Plaintiff's claim is not frivolous or vexatious.

Balance of Convenience

I must therefore go on to consider where the balance of convenience lies. As was said by Lord Diplock in the American Cyanamid case if damages would be an adequate remedy and the defendant would be in a financial position to pay them no interlocutory injunction should normally be granted however strong the plaintiff's claim appeared to be.

Miss Francis submitted that damages would be adequate. Relying on Spry on Equitable Remedies 4th Edition, she submitted that damages will only not be sufficient if the wrong is irreparable, outside the scope of pecuniary compensation or if they would be difficult to assess. This is not so in the instant case, she argued.

Mr. Earle for the Plaintiff did not contend that damages would not be an adequate remedy, as indeed he could not, rather he argued that the defendants would not be in a financial position to pay them. He pointed to the fact that the first Defendant is in receivership.

Miss Francis on the other hand submitted that to contend that simply because a company is in receivership it will be unable to pay its debts is to fail to appreciate that the primary duty of a Receiver is to allow for the reorganisation of the company. That there is no evidence that the company i.e. the First Defendant will not be in a position to pay its debts and/or emerge a viable company from receivership.

Miss Tania Wong's affidavit evidence is to the effect that the Receiver (the second Defendant) is in breach of his statutory duty to file a copy statement of affairs and an abstract in the prescribed form pursuant to S.328 of the Companies Act. This has not been controverted by Mr. John Wesley Lee, the Receiver.

has had the opportunity to pursue its claims.

- (ii) The proceeds of sale of the various assets of the First Defendant can be placed into an interest bearing account pending trial.
- (iii) The evidence of Mr. Erik Jan Walson is that the Plaintiff's company has substantial resources with net assets of approximately U.S.\$700,000,000.00 and is in a position to abide by any order the court may make regarding damages.

Finally, Miss Francis urged the court to consider the balance of hardship i.e. whether granting the injunction will do more harm than good. In this regard she submitted that:

If the Second Defendant - Receiver is restrained in the manner sought, he would be prevented from performing his statutory duties and would be placed in an "excruciatingly difficult situation"

She contended that if the Receiver is unable to perform its statutory duties secured creditors who rank in priority to the Plaintiff would commence actions against the Receiver who would be personally liable.

I am afraid I cannot accept this view. Mr. Lee in his affidavit mentioned no such difficulty. Mr. Errol Maloney (the then Assistant General Manager of the Third Defendant) in his affidavit stated Eagle Merchant Bank and I.N.G. were the secured creditors of The First Defendant. There is no evidence of any other secured creditor.

It would appear that Eagle subsequently assigned its debenture to the Third Defendant. Thus in effect I.N.G. is the only secured creditor who ranks in priority to the Third Defendant. Here it is necessary to repeat the plaintiff's claim that it was an implied term of the agreement of November, 1996 that the Third Defendant would take all steps necessary to obtain the permission of I.N.G.

In the circumstances it is difficult to understand the submissions of Counsel in this regard.

Counsel for the second Defendant further contended that it is not the practice of the court to grant an interlocutory application which would have the practical effect of granting the sole relief sought. For this contention she relied on Dodd v. Marine Workers' Union 1923 93 L.J. CH. 65

That case concerned the exercise of a statutory right by a member of a trade union to inspect the books of the union. On an interlocutory motion the judge made an order for the books to be produced for inspection. The Court of Appeal discharged the Order on the ground that it was contrary to practice to grant the whole relief in an action on an interlocutory motion - See (1923) 1 All E.R. (Reprint) p.194.

It is tolerably clear that that decision is not applicable to the matter before me. Here the plaintiff is simply asking that the Second Defendant be restrained from distributing the proceeds of sale pending trial.

I can see no hardship attending the Second Defendant if the interlocutory injunction should be granted.

In my judgment the balance of convenience lies in favour of the Plaintiff.

Accordingly the interlocutory injunction is granted in terms of paragraphs 1 and 2 of the Summons. Plaintiff to give the usual undertaking as to damages.

Costs of this application to be costs in the cause. Certificate for Counsel granted.

Leave to appeal granted to Second and Third Defendants.

As to the third Defendant, Mr. Earle referred to The Banking (Workers, Savings and Loan Bank) Vesting Order 1998 in the Jamaica Gazette Supplement of July 28, 1998 No.44 in which the Minister of Finance acting under powers vested in him by the Banking Act states that in his opinion Workers Savings and Loan Bank has ceased to be viable.

By this Vesting Order all the shares and subordinated debt of Workers, Savings and Loan Bank were vested in the Minister.

It seems to me that on the material before me there is at least reasonable doubt as to whether or not the defendants will be in a financial position to pay damages in the measure recoverable at common law if the Plaintiff should succeed in its claim.

Indeed there is no evidence as to the financial position of any of the Defendants. The evidence indicates that the First Defendant is insolvent and that the Third Defendant "has ceased to be viable," and of course the second Defendant is but the agent or servant of the first Defendant and was appointed by the Third Defendant.

Mr. Earle's contention that the First Defendant is insolvent and may not be in existence at the time of trial is certainly not without merit in light of the "Receiver's Sale" advertisement exhibited with the affidavit of Mr. Erik Jan Walson. Consequently it is my opinion that if the Plaintiff were to succeed at the trial the Defendants would not be in a financial position to pay the damages recoverable.

I must therefore go on to consider whether the defendants will be adequately compensated under the Plaintiff's undertaking as to damages for the loss they would have sustained if the second defendant is restrained in the manner sought.

I am clearly of the view that damages recoverable under the Plaintiff's undertaking would be an adequate remedy for such loss and that the Plaintiff will be in a financial position to pay them for the following reasons:

- (i) All the Plaintiff is asking for is that the Second Defendant be restrained from distributing the proceeds collected from the sale of the first defendant's assets to the Third Defendant until it