[2021] JMCC. Comm. 10

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO. SU2020CD00095

BETWEEN	**HASHEBA DEVELOPMENT COMPANY LIMITED**	**CLAIMANT /RESPONDENT**
AND	**PETROLEUM CORPORATION OF JAMAICA LIMITED**	**1ST DEFENDANT /APPLICANT**
AND	**SEAN KINGHORN**	**2ND DEFENDANT**
AND	**JUDY ANN KINGHORN**	**3RD DEFENDANT**
AND	**KINGHORN & KINGHORN (A PARTNERSHIP LAW FIRM)**	**4TH DEFENDANT**

IN CHAMBERS

Mr Abraham Dabdoub, Mr Christopher Dunkley and Ms Tiffany Sinclair, instructed by Dabdoub Dabdoub & Co., Attorneys-at-Law for the Claimant/Respondent

Mr Michael Hylton Q.C., Mr Garth McBean Q.C. and Mr Mike A. Hylton, instructed by Garth McBean & Co., Attorneys-at-Law for the 1st Defendant/Applicant

Heard: 4th and 12th March 2021.

Injunction- Freezing order- Principles to be applied- Whether real risk of dissipation has been established

LAING, J

Background

[1] The genesis of the dispute between the parties is a commercial arrangement which provided for the Claimant to sell and the 1st Defendant to purchase lands which were the subject of three Agreements for Sale entered into between them. Following the hearing of the Fixed Date Claim Form, the Court on 22nd July 2020 delivered a written judgment, the citation of which is [2020] JMCC Comm17 ("the Laing J Judgment"). On 27th July 2020 the Court made a number of orders, including an order that there be specific performance of the Agreements for Sale and for the payment of certain sums of money ("the Laing J Orders").

[2] The Claimant was dissatisfied with the conduct of the 1st Defendant in failing or refusing to comply with the Laing, J Orders and on 28th September 2020, it filed a Notice of Application seeking the confiscation of the assets of the 1st Defendant, the appointment of a Receiver of the 1st Defendant for the purpose of giving effect to the Laing J Orders and sought more specifically an order in the following terms:

> *"That the 1st Defendant, its directors and officers and servants and or/or agents be restrained from assigning, charging or otherwise dealing with any property and assets belonging to the 1st Defendant save and except for the purpose of complying with Orders of the Hon. Mr. Justice Kissock Laing made on the 27th day of July 2020."*

[3] On the 5th October 2020 Mr Justice Batts made the following orders ("the Batts J Orders"), which so far as is material, provide as follows:

> …
>
> *2. Unless the 1st Defendant complies to the satisfaction of the Claimant with the Order of this Court made on the 27th July 2020 by Laing J, as to which an Affidavit of Compliance shall be filed by the Claimant, on or before the 9th October 2020, the 2nd Defendant and Mr. Colin Karjohn Directors of the 1st Defendant shall attend this Court on Tuesday 13th October 2020 at 10:00 a.m. to show cause why either or both of them ought not to be committed to prison for contempt of Court or such other Order as may be appropriate.*
>
> *3. The 1st Defendant by itself, its servants or agents or otherwise howsoever is hereby restrained except in the ordinary course of business from transferring, assigning, charging or otherwise dealing with any property and assets of the 1st Defendant to the extent of $513,000,000.00*

> *until the Order dated the 27th July 2020 has been complied with or until further Order of the court.*
>
> *4. Inter partes hearing is fixed for the 13th October 2020 in Open court.*

The Application

[4] The 1st Defendant, Petroleum Company of Jamaica Limited, by a Notice of Application filed on 13th November 2020 ("this Application") seeks the following orders:

> *1. An order pursuant to Rule 11. 16 (1) of the Civil Procedure Rules ("the CPR") that paragraph 3 of the order that was made on October 5, 2020 by the Honourable Mr. Justice Batts be discharged.*
>
> *2. An order that the Claimant pay the costs of this application and order.*
>
> *3. Such further and other relief as this Honourable Court deems fit.*

[5] Although the Batts J Orders fixed the *inter partes* hearing for the 13th October 2020, the *inter partes* hearing was not commenced on that day. On the 13th October 2020 Batts J noted that applications had been filed by Mr. Colin Karjohn and Mr. Sean Kinghorn to set aside the Batts J Order and the learned Judge adjourned all notices of application to the 3rd December 2020. In order to accommodate all the applications that had been fixed for hearing on the 3rd December 2020, including this Application which had been filed on 13 November 2020, all applications were fixed before me for hearing.

[6] On the 3rd December 2020, at the request of the parties and with their consent, the Claimant's Notice of Application filed 28th September 2020 and Order 2 of the Batts J Orders were set aside. The Claimant made a preliminary objection to this Court hearing this Application. The objection was on the ground that the Court lacked jurisdiction having regard to the fact that there was an appeal against the Laing J Judgment. I heard the parties on the preliminary objection and by a written judgment delivered on 14 December 2020, the citation of which is [2020] JMCC Comm 35 ("the Second Laing J Judgment"). I found that this Court retains the jurisdiction to hear this Application to set aside the freezing order made by Batts J

on 5th October 2020 and I made an order for a date convenient to Counsel to be fixed for the hearing of this Application. The Claimant appealed against the Second Laing J Judgment but was unsuccessful.

The law relating to Mareva Injunctions (freezing orders)

[7] An injunction is an order of the Court which directs a party to perform a specific act or to refrain from doing a specific act or activity. It is usually interim, (until a specific date or further order) or interlocutory (until trial or further order). Injunctions are distinguishable from detention, custody or preservation orders. There are injunctions which are in aid of proprietary and tracing claims and there is the Mareva Injunction which is a special type of injunction. A particular feature of the Mareva Injunction is that, unlike other "ordinary" injunctions in aid of proprietary and tracing claims, it may, and usually extends, to those assets of the Defendant which are not a part of or connected to the subject matter in dispute. The Court may also order a defendant to disclose the nature, value and location of all his assets, or to provide information about relevant property in his own name or held on his behalf which are, or which may be the subject of the application for the Mareva injunction. These assets which are capable of being frozen may include chattels such as motor vehicles, jewellery, *objects d'art* and choses in action (see **C.B.S. United Kingdom Ltd v Lambert** [1983] Ch. 37. Because of its scope, the Mareva injunction has been famously described as one of the nuclear weapons of law by Donaldson LJ in **Bank Mellat v Mohammed Ebrahim Nikpour** [1982] Com. L.R. 158 at 159.

[8] The name "Mareva Injunction" is derived from the case of **Mareva Compania Naveria SA v International Bulkcarries** SA 2 Lloyd's Rep [1975] ("the Mareva Case") which is credited with creating this very wide asset freezing jurisdiction in England. However, it is a matter of historical record that a similar order was granted a few months earlier in the case of **Nippon Yusen Kaisha v Karageorgis** [1975] 1 WLR 1093 CA. In many commonwealth jurisdictions, including Jamaica, the

Mareva Injunction is referred to as a freezing order and these two terms will be used interchangeably throughout this judgement.

[9] The use of the Mareva injunction in this jurisdiction is settled and in **RBTT Bank Jamaica Limited v Lakeland Farms Limited** Claim No 2007 HCV 02993 delivered July 1 2009, Anderson J observed as follows:

> *"In **Jamaica Citizens Bank Limited v Dalton Yap (1994) 31 J.L.R.42** the Jamaican Court of Appeal affirmed its previous decision of **Watkis v Simmons and others, (1988) 25 J.L.R.282** where it was held that the Supreme Court had the power to grant Mareva Injunctions. That conclusion is now reflected and codified in Part 17 of the Civil Procedure Rules 2002 dealing with Interim Remedies."*

Our Civil Procedure Rules 2002, as amended, ("the CPR"), Part 17.1(1) provides that the Court may grant interim remedies including:

> *(f) an order (referred to as a "**freezing order**")-*
>
> > *(i) restraining a party from removing from the jurisdiction assets located there; and/or*
> >
> > *(ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;*

[10] The general principles in relation to the granting of freezing orders are not in dispute. In summary, the Applicant must, at least show a "*good arguable case*" on the merits which means "*one which more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50% chance of success*" (see Mustill J as he then was) in **Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft Gmbh** [1984] 1 All ER 398 ("the Niedersachen"). This is the minimum which the applicant has to show, in order to, as Rattray, P expressed it in **Dalton Yap** (supra), "*get a foot in the door, so as to access the entrance chamber of further consideration*." Rattray P expressed the position further as follows:

> *(b) having got to first base, so to speak on (a), he must establish the risk or danger that the assets sought to be frozen by the Injunction and in respect of which the restraining jurisdiction of the Court is being prayed against the*

> *defendant will be dissipated outside the reach of the Court by the defendant thus depriving the plaintiff of the fruits of his judgment.*

[11] In **Dalton Yap** (supra at page 53), Forte JA adopted the statement of Mustill J in **the Niedersachsen** at page 404 that:

> *"Nevertheless, certain themes can be seen to run through the cases. It is not enough for the plaintiff to assert a risk that the assets would be dissipated. He must demonstrate this by solid evidence. This evidence may take a number of different forms. It may consist of direct evidence that the defendant has previously acted in a way which shows that his probity is not to be relied on. Or the plaintiff may show what type of company the defendant is (where it is incorporated, what are its corporate structure and assets, and so on) so as to raise an inference that the company is not to be relied on. Or again, the plaintiff may be able to found his case on the fact that inquiries about the characteristics of the defendant have led to a blank wall. Precisely what form the evidence may take will depend on the particular circumstances of the case."*

[12] In **the Niedersachsen** (supra [1984] 1 All ER 398 the same citation - on appeal to the Court of Appeal) at page 422, Kerr LJ emphasised that the Court had to look at the evidence as a whole in deciding whether or not it is just and convenient to exercise the discretion. He accepted that Mustill J had correctly stated the law when he expressed the view that:

> *'The judge who hears the proceedings inter partes must decide on all the evidence laid before him', and this is clearly what the judge did in this case. Whether the inter partes hearing takes the form of an application by the defendant to discharge the injunction, as is usual in the Commercial Court, or whether, as in the Chancery Division, the injunction is only granted for a limited time and there is then an inter partes hearing with regard to whether or not it should be continued, the judge must consider the whole of the evidence as it then stands in deciding whether to maintain or continue, or to discharge or vary, the order previously made.*

[13] The relevant test as settled, may also be seen in the relatively recent English Court of Appeal case of **Holyoke v Candy** [2017] 2 AER (Comm) 513 at paragraph 34 as follows:

> *"However, the threshold in relation to conventional freezing orders is well established. There must be a real risk, judged objectively, that a future judgment would not be met because of unjustifiable dissipation of assets. But it is not every risk of a judgment being unsatisfied which can justify freezing order relief. Solid evidence will be required to support a conclusion*

that relief is justified, although precisely what this entails in any given case will necessarily vary according to the individual circumstances."

The evidence on behalf of the Claimant

[14] The Claimant's Notice of Application for the freezing order was supported by an affidavit of Mr. Gabriel Ishmael Thompson filed on the 28th September 2020. Mr Hylton QC submitted, quite correctly, that the only portion of Mr Thompson's evidence that could possibly be relied on as evidence of an allegation of risk of dissipation is paragraph 22, but in that paragraph the affiant fails to make even a mere allegation of risk of dissipation of assets, instead he suggests that the injunction should be made almost by way of punishment for contempt. Paragraph 22 of the affidavit states as follows:

The Claimant is satisfied that the 1st Defendant does not intend to comply with the remainder of the Orders of the Hon. Mr. Justice Kissock Laing and is therefore in deliberately (sic) in contempt of This Hon. Court and it is therefore necessary that the order of This Hon. Court made on the 27 July 2020 and served on the 1st Defendant be enforced by:-

(a) Confiscation of its assets to the extent necessary to comply with the orders of This Hon. Court made on the 27 July 2020 and complete the Agreements for Sale;

(b) The granting of an injunction to restrain the 1st Defendant, its Directors and Officers and servants and /or agents from assigning, charging or otherwise dealing with any property or asset belonging to the 1st Defendant save and except for the purpose of complying with the terms of the Order of The Hon. Mr. Justice Kissock Laing made on the 27 July 2020; and

(c) The appointment of a receiver for the purpose of giving effect to the Orders of the Hon. Mr. Justice Kissock Laing made on the 27 pursuant to his Judgment.

[15] In the Claimant's submissions in opposition to the Application filed 27th November 2020, Counsel advanced the following:

36. It is the Claimant's submission that unless the freezing order remains in place, given the fact that the 1st Defendant, has ***been found by a competent court to have*** *ignored the provisions of the agreement for sale, ignored the orders made by Justice Laing* ***and only post litigation now***

> *indicates that "it is no longer interested in purchasing the property in question from the Claimant", **such a litigant could** very well take steps, during the period leading up to the appeal hearing, to dissipate or encumber its assets either by selling or mortgaging them. In any such case the Claimant, if successful in the appeal, will not be able to enjoy the fruits of its judgment.*

[16] It is therefore noteworthy, that although the Claimant has made an assertion that the 1st Defendant "**could** very well take steps" to dissipate or encumber its assets, it has not produced solid evidence or any evidence to support a real risk of the dissipation of assets.

The evidence on behalf of the 1st Defendant/ Applicant

[17] In support of the Application, the 1st Defendant/Applicant relies on an affidavit sworn to by Mr. Godfrey Boyd filed on the 13th November 2020. Mr. Boyd is the general manager of the Applicant and he has averred that the Applicant owns substantial fixed assets including the following:

> *a) There are 17 PETCOM service stations and 14 LPG (liquid petroleum gas) filling plants island-wide. PETCOM has invested millions of dollars in fully outfitting these stations and plants with fuel pumps, fuel dispensers, fuel storage tanks for gasoline, automotive diesel oil, ultra low sulphur diesel (ULSD). Kerosene and liquid petroleum gas (LPG), and other equipment.*
>
> *b) PETCOM owns the real estate on which 8 of these service stations are located. It also owns several other pieces of real estate including its head office complex located at 695 Spanish Town Road, Kingston 11.*

[18] Mr. Boyd also indicated that the Applicant has over fifty persons employed in various positions at its head office and over one hundred other persons employed at various service stations which it owns. He further averred that the Applicant is one of the largest customers of the national refinery Petrojam from which it purchases one hundred percent of its fuel supplies. He stated that the Applicant also supplies petroleum and petrochemical products to various private sector companies. He positively asserted that the Applicant has not attempted to dispose of any of these assets and instead has been in the process of acquiring more assets and his evidence in this regard is unchallenged.

Analysis of the evidence of risk of dissipation

[19] As Kerr LJ stated in **Z Ltd v A-Z** [1982] 1 QB 558 at 585:

> *"In non-international cases, and also in many international cases, the defendants are generally persons or concerns who are established within the jurisdiction in the sense of having assets here which they could not, or would not wish to, dissipate merely in order to avoid some judgment which seems likely to be given against them; either because they have property here, such as house or flat on which their ordinary way of life depends, or because they have an established business or other assets which they would be unlikely to liquidate simply in order to avoid a judgment".*

In the case before me, there is no basis to conclude that the 1st Defendant, a long established and fully functioning business would liquidate or encumber their assets simply in order to avoid the Laing J Judgment. Therefore, in assessing the evidence on a whole, it is patently clear, and I so find, that the Claimant has not established a real risk of dissipation by the 1st Defendant of its assets.

Did the Claimant apply for a special type of injunction pursuant to CPR Parts 51 and 53 which does not require evidence of a real risk of dissipation of assets?

The Claimant's submissions

[20] It has been submitted by Mr. Dabdoub that there was no requirement for the Claimant to establish a risk of dissipation because the Claimant's Notice of Application filed on the 28 September 2020 did not seek a freezing order pursuant to Part 17 of the CPR but sought protection under Parts 51 and 53. It was submitted that Rule 51.2 (2) and (3) deals specifically with applications for an injunction to restrain the judgment debtor or other respondent from assigning, charging or otherwise dealing with any property identified in that application. It was also submitted that where an application is for the appointment of a receiver and for an injunction it may be made without notice.

[21] Rule 51.2 provides as follows:

> ***Application for appointment of a receiver and injunction***
>
> *51.2 (1) An application for the appointment of a receiver must be supported by evidence on affidavit.*
>
> *(2) The applicant may also apply for an injunction to restrain the judgment debtor or other respondent from assigning, charging or otherwise dealing with any property identified in the application.*
>
> *(3) Where an application for an immediate injunction is made, the application for the appointment of a receiver and for an injunction may be made without notice.*
>
> *(Rules 17.3 and 17.4 dealing with applications for interim injunctions.)*

Mr Dabdoub submitted that the effect of Part 51 is to create a freestanding right to apply for injunctive relief (unconnected to Part 17) and as a consequence such relief is not encumbered by the rules which attach to applications for interim injunctions pursuant to Part 17 of the CPR.

[22] Mr Dabdoub submitted that orders 2 and 3 of the Batts J Orders must be read together because they have been linked by Batts J. He posited that the Order 2 which provided that "*Unless the 1st Defendant complies to the satisfaction of the Claimant with the Order July 2020 by Laing J,… on or before the 9th October 2020…*", was evidence of the Court specifying time for an act to be done pursuant to Part 53. Accordingly, the injunction granted in Order 3 was a result of the Court exercising its inherent jurisdiction to take such steps to ensure that Order 2 was not frustrated. It was therefore not an interim injunction granted pursuant to Part 17, but was a special kind of injunction born out of the court's inherent jurisdiction to protect its own order until the referenced contempt proceedings are heard.

The 1st Defendant's submissions

[23] The submissions on behalf of the Claimant that there was no requirement to prove a risk of dissipation of assets were provided to the Court and opposing counsel on the morning of the hearing of this Application. Nevertheless, Mr Hylton QC

indicated his willingness to continue and made a number of counter submissions by way of response. He submitted that there is no authority which supports the argument that Part 51 creates a discrete freestanding right to apply for an injunction. He noted that part 51(2)(2) states that "*The applicant may also apply for an injunction* …" which demonstrates that this right is related to and only consequent on the appointment of a receiver. It was also submitted that the fact that the injunction was granted post-judgment does not mean it is not interim and this is demonstrated by the use of the word "until". As it relates to the footnote which reads "*Rules 17.3 and 17.4 dealing with applications for interim injunctions*", Mr Hylton submitted that they should not be ignored because such foot noting is a part of the scheme of the CPR to cross reference the particular rule under consideration to the rule or rules which deal generally with that subject matter. This he said is evident in many sections of the CPR for example rule 56.11 which deals with the service of the claim form for administrative order but references Part 5 which deals generally with the service of claims.

[24] Mr Hylton submitted that the injunction should not be viewed as an injunction aimed at enforcing the Laing J Orders because the Court of Appeal has stayed the enforcement of those orders and therefore this cannot provide justification for the continuation of the injunction. Furthermore, Order 2 of the Batts J Order has been by consent of the parties on 3rd December 2020 and the injunction should not be continued if its purpose was the protection of Order 2.

Analysis

[25] In the **Mareva Case** (supra) the English Court of Appeal considered the traditional view as expressed by Cotton L.J. in **Lister & Co v Stubbs** (1890) 45 Ch.D. which was that it was wrong in principle to protect a plaintiff prior to judgment being obtained. The English Court of Appeal considered that it had the jurisdiction to grant an injunction before judgment where there was a danger that the debtor may dispose of his assets so as to defeat the claim before judgment. This conclusion was based on the provisions of **s 45 of the Supreme Court of Judicature**

(Consolidation) Act 1925 (UK), which repeats **s 25(8) of the Judicature Act 1873** which states that:

> *'A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient … '*

[26] In the **Yap** case Forte J.A. referred to the unreported case of **Bertram Watkis v Anthony Simmons et al.** SCCA 48/97 delivered on the 19 July 1988 in which Kerr J.A. acknowledged that the English Mareva Injunction is available in this jurisdiction and is founded on a similar statutory underpinning. Kerr J.A. noted that section 45 of the English act is equivalent to section 49 (h) of our Judicature (Supreme Court) Act, the relevant portion of which reads:

> *A mandamus or an injunction may be granted or a receiver appointed, by an interlocutory order of the court, in all cases in which it appears to the court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just,…"*

[27] It should be appreciated that the rules governing Mareva Injunctions have been largely developed by case law over years. In **Yap** Forte J A was of the view that before dealing specifically with the facts and issues in the **Yap** case it would be appropriate to examine the established guidelines in England for the granting of such injunctions. In his exploration Forte J.A. proceeded to examine a number of English cases including **the Niedersachsen** (supra).

[28] The authority for the Mareva injunction in England is now clearly statutory by operation of **s. 37 of the Supreme Court Act 1981** which expressly empowers the High Court to grant an injunction in all cases in which it appears to the court to be just and convenient to do so and is covered in the UK CPR. 25.1. Notwithstanding this statutory legitimacy, in **the Niedersachsen** (supra) at pages 418-419 Kerr LJ acknowledges the role of the case law authorities in helping to define the ambit of the Mareva Injunction jurisdiction as follows:

> *(1) Although the discretion ultimately rests on the words of s 37 of the Supreme Court Act 1981 to grant an interlocutory*

> *injunction 'in all cases in which it appears to the court to be just and convenient to do so', certain material criteria have already been laid down in a number of well-known authorities, to which regard must be had in the application of these wide words in relation to Mareva injunctions.*

[29] A freezing order may be granted prior to the trial or at any stage of a claim. It is therefore not disputed that the Court has the jurisdiction to grant a freezing order post judgment in support of execution. In the case of **Orwell Steel v Asphalt & Tarmac (U.K.) Ltd** [1984] 1 WLR 1097, Farquharson J found that there is a power to grant an interlocutory injunction between final judgment and execution and there was no logical reason why a Mareva injunction should not be used in aid of execution. Farquharson J opined at page 1100 that:

> *There is accordingly, in my judgment, power to grant an interlocutory injunction between final judgment and execution.*
>
> *If there is such a power, there seems to be no logical reason why a Mareva injunction should not be used in aid of execution. Indeed, in one sense it could be said that there is greater justification for restraining a defendant from disposing of his assets after judgment than before any claim has been established against him. It is true that there is a variety of methods for enforcing execution as set out in R.S.C., Ord. 45, r. 1 and once the plaintiff has obtained judgment it may be said that he should pursue the remedies provided by the rules rather than extend the application of Mareva injunctions still further. The answer to that objection is that, as has been frequently pointed out, the Mareva injunction acts in personam on the defendant and does not give the plaintiff any rights over the goods of the defendant nor involve any attachment of them. In this context it would have the effect of preserving the defendant's goods until execution could be levied upon them; and the remedies of injunction and execution can take effect side by side. Such was the view of Robert Goff J. in **Stewart Chartering Ltd. v. C. & O. Managements S.A. [1980] 1 W.L.R. 460** where he continued a Mareva injunction granted before judgment in aid of execution. Plainly an injunction will only be granted where the plaintiff can adduce evidence of a kind which normally supports an application for a Mareva injunction, namely, that there are grounds for believing that the judgment debtor may dispose of his assets to avoid execution. Perhaps such grounds may be more readily established after judgment than before it…*

[30] It is my opinion that the learned Judge's analysis of the relationship between the Mareva injunction/freezing order and the execution process explains the rationale behind the inclusion in CPR 51.2(2) of the right of a litigant to apply for an injunction

in addition to his application for the appointment of a receiver. The potential availability and anticipated function of the freezing order in its natural form as an aid to execution demonstrates why the analysis of Mr Dabdoub in which he suggests that it is a special type of injunction is, with respect, misconceived.

[31] The Mareva injunction temporarily freezes assets which are required to satisfy a judgment which has already been obtained or an expected judgment. The purpose of such "*freezure*" (per Lord Denning in **Z Ltd v A-Z** supra) is to prevent their dissipation within or removal from the jurisdiction of the Court. It is trite law that it gives the plaintiff no security over the property frozen and does not give a charge in favour of any particular creditor. Its purpose is to maintain the integrity of the Court process by preventing the Defendant from making himself judgment proof.

[32] It is therefore important to distinguish between freezing orders on the one hand, and interim injunctions in aid of proprietary claims or tracing claims, on the other hand. The injunction in question which was granted by Batts J, prevents the dissipation of the 1st Defendant's assets. Such assets of the 1st Defendant are neither the subject of the litigation, nor are they assets in respect of which the Claimant is asserting an interest. The injunction is not in aid of a proprietary or tracing claim. The injunction is one which has the distinguishing characteristics of a Mareva injunction and falls within the provision of CPR 17.1(f). It is a non-proprietary freezing order and accordingly, it falls squarely within the definition of a "freezing order" as used in this jurisdiction.

[33] The purpose of the injunction granted by Batts J is clearly to maintain the integrity of the Court process by preventing the dissipation of the 1st Defendant's assets. In my opinion, it does not matter that this injunction provides the same function which is described by Mr Dabdoub as the Court protecting its own order. I find that the injunction is an interim freezing order as recognized by CPR 17.1(f). In arriving at this conclusion I do not find it necessary to consider or make any finding as to whether I may obtain assistance from the footnotes as an aid to construction, or otherwise. Having regard to my findings, I do not accept the submissions of Mr

Dabdoub that it is a special specie of injunction to which special rules apply and to which access can only be gained by reference to the provisions of CPR Part 51 or 53. The architecture of the CPR does not support such a conclusion nor do the case law authorities. I also find that it is of no moment whether a receiver was appointed pursuant to CPR part 51.

[34] Mr Hylton has questioned whether it is accurate to label the freezing order granted by Batts J as a "*post judgment freezing order in support of execution*" in the context of a situation where the Court of Appeal has granted a stay of execution of the Laing J Orders. However, in my view such a label is immaterial for our purposes. What is important is that the grant of a freezing order such as the one which is the subject of this Application, although in the Judge's discretion, is still subject to the principles which have been developed by the Court in assessing whether a freezing order should be granted. For present purposes, whether the freezing order was granted in aid of execution of a judgment is not determinative of the outcome of this Application. The significant point made by Farquharson J in **Orwell Steel** which is quoted earlier and with which I am in total agreement, is that even if it is a freezing order in aid of execution of a judgment, it should only be granted where the plaintiff can adduce evidence of a kind which normally supports an application for a [pre-judgment] Mareva injunction. The test is similar in this regard. One of these fundamental principles to which I have repeatedly made reference, is that the Applicant for a freezing order must demonstrate a real risk that the Defendant will dissipate his assets so as to deprive the Claimant of the fruits of his judgment. This must be done by solid evidence and it is indisputable that the Claimant has not done so in this claim.

Conclusion and disposition

[35] I have now had the benefit of an *inter partes* hearing with full submissions by the parties which my learned brother Batts J did not have. Having regard to the all the evidence before the Court, I am duty bound to grant the relief sought on this Application and set aside the injunction.

[36] I must acknowledge that the Applicant based its application on four main grounds. Mr Hylton QC disclosed during his presentation that the main focus of his presentation was the absence of any evidence of risk of dissipation and since the Applicant has been successful on this ground I do not consider it necessary to analyse and specifically rule on the other grounds. I mean no disrespect to learned Queen's Counsel in adopting this course, but in my view addressing the other grounds would be a purely academic exercise.

[37] For the reasons stated herein the Court makes the following Orders:

1. Paragraph 2 of the order made on 5th October 2020 by the Honourable Mr Justice Batts is set aside.

2. Costs of this Application are awarded to the 1st Defendant and against the Claimant, to be taxed if not agreed.