THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 1 OF 2005

BETWEEN:

ANDREW POPELY

Claimant

v

AYTON LIMITED

First Defendant

CORPORATE DIRECTORS LIMITED

Second Defendant

Appearances: Mr. S.K. John for the Claimant
Mr. P.R. Campbell for the Defendant

November 8, 2005

RULING

[1] **THOM, J (IN CHAMBERS)**: This is an application for the discharge of an interim injunction and for an order for security for costs.

[2] The Claimant Andrew Popely is one of the beneficiaries of Blue Ridge Trust an International Trust registered pursuant to the International Trust Act 1996 Laws of Saint Vincent and the Grenadines.

[3] The First Defendant is an International Business Company registered pursuant to the International Business Companies Act 1996 Laws of Saint Vincent and the Grenadines and is wholly owned by the Blue Ridge Trust.

[4] The Second Defendant is the sole Director of the First Defendant and a related company St. Vincent Trust Services Ltd is the trustee of Blue Ridge Trust.

[5] The property White Owl Barn situate at Reading Street, Tenterden, Kent TN 30 7HS England is owned by the First Defendant.

[6] The Blue Ridge Trust was set up by the Jeeves Group an offshore company on the instructions of John Henry Popely. The beneficiaries are the Claimant, his brother John Anthony Popely and any living grandchildren of John Henry Popely and Ann Patricia Popely.

[7] On 16th January 2002 a charge was registered against White Owl Barn by the Second Defendant in favour of St. Vincent Trust Services Ltd for fees and expenses owing to St. Vincent Trust Services.

[8] The Claimant and members of his family and the First Defendant have been engaged in four (4) civil suits in the United Kingdom. As a result of these suits costs in excess of £100,000 have been awarded to the First Defendant. Those costs remain unpaid.

[9] The English Courts have settled the issue of ownership of White Owl Barn. The Courts have determined that the First Defendant is the legal and beneficial owner of White Owl Barn and is entitled to possession thereof and an Order for possession was granted in favour of the First Defendant on November 30, 2004.

[10] On January 5, 2005 Justice Bruce-Lyle on an application without notice made an order restraining the Defendants from enforcing a charge dated 16th day of January 2002 on behalf of St. Vincent Trust Services Limited which said charge has been placed against the First Defendant's real property known as White Owl Barn for the sum of £500,000 or any other sum whatsoever as security for payment of outstanding fees and charges purportedly due to the Second Defendant and/or its affiliated company St. Vincent Trust Services Limited and/or from evicting the Claimant and/or his children and/or his parents John Henry Popely and Anne Popely or any of them from the said property.

[11] The Defendants in their application to discharge the injunction set out four grounds being:

(a) Material non-disclosure;

(b) The facts do not justify injunctive relief;

(c) Material change in the circumstances of the parties since the injunction was granted; and

(d) The oppressive effect of the injunction.

[12] On the day prior to the hearing of this application the Claimant filed an application for injunctive relief in similar terms to the Order granted on January 5, 2005 with an additional provision that the Defendants be restrained from selling, mortgaging or otherwise encumbering the said property.

[13] By consent both applications were heard together.

MATERIAL NON-DISCLOSURE:

[14] Residence

The Defendants alleged that the Claimant misrepresented to the Court that he is resident at the said property when in fact he resides at 6 Forge Meadow, Harrietsham, Maidstone, Kent ME17 1JE. The Defendants relied on the affidavit of Russell Peter Sargeant a private investigator. He deposed that the telephone at the residence at 6 Forge Meadow was in the name of A. Popely and on a visit to the residence he was informed by two ladies that the Claimant lived there and the older of the two women told him that the younger woman was the Claimant's partner.

[15] The two women Rebecca Fagg and Angela Fagg both filed affidavits on behalf of the Claimant and denied that the Claimant lives at 6 Forge Meadow.

[16] An examination of Russell Sergeant's affidavit shows that it does not refute the fact that the Claimant lives at White Owl Barn. In any event the Claimant referred the Court to copies of the Civil Suit in England instituted by the First Defendant in which the First Defendant stated the Claimant's address as White Owl Barn. I find that there was no material non-disclosure on this ground.

[17] Beneficiaries of Blue Ridge Trust

The Defendants contended that the Claimant failed to disclose that none of the beneficiaries reside at White Owl Barn, that he made a misrepresentation to the Court when he stated in paragraph 19 of his affidavit that it would be unjust for the beneficiaries of the Trust to be evicted from their home.

[18] The Claimant in paragraph 8 of his statement of claim stated:

> "Subsequently .... thereby evicting the Claimant and his parents and other beneficiaries of the Trust who must quit and deliver up possession of the Property by January 10, 2005."

The Claimant in his affidavit stated very clearly at paragraphs 1 and 4 that the beneficiaries of the Trust are himself, his brother and any living grandchildren of John Henry Popely and Ann Patricia Popely. Further in paragraph 3 the Claimant specifically stated:

> "The property is my family home and that of my parents John Henry Popely and Ann Patricia Popely....."

And in paragraph 17:

> "....thereby evicting my parents and myself therefrom and compelling us to quit and deliver up possession of the property by January 10, 2005."

[19] When the statement of claim and the affidavit are read conjointly I find that there was not a material non-disclosure of who were the beneficiaries of the Trusts and who resided at White Owl Barn.

[20] Possession Order In England and Stay of Proceedings

The Defendants contended that the Claimant failed to disclose to the Court that the possession order made by Mr. Justice Mitchell in the Canterbury County Court on 30th November 2004 was already the subject of a stay of proceedings and that Mr. Justice Crane on 16th December 2004 ordered that:

> "Unless the application for permission is determined before 10th January 2005, there be a stay of execution of the Order dated 30th November 2004 until the determination of the application for permission or until further order."

[21] Paragraph 8 of the Statement of Claim reads as follows:

> "Subsequently the Defendants have obtained an order dated the 30th day of November 2004 from the Canterbury County Court for the possession of the property, thereby evicting the Claimant and his parents and other beneficiaries of the Trust who must quit and deliver up possession of the property by January 10, 2005....."

[22] The Claimant in paragraph 17 of his affidavit deposed:

> "Notwithstanding, acting in their capacity as its directors the Second Defendant has compounded this wrongful conduct by causing the First Defendant to bring a claim and obtain an order from the Canterbury Court for possession of the property, thereby evicting my parents and myself there from and compelling us to quit and deliver up possession of the property by January 10, 2005. A copy of the said Order is exhibited herewith marked "A.P. 7".

[23] The Defendants contended that while the Claimant exhibited the Order of Justice Mitchell "A.P. 7" the Claimant failed to draw to the attention of the Court that the Order made provision for the Claimant to apply to a Judge for a stay of the eviction. Learned Queen's Counsel for the Defendants referred the Court to the Judgment of Sharma J (as he then was) in Coosals Quarry Ltd v Teamwork Trinidad Ltd (1985) 37 WIR p. 417:

> "What then is counsel's duty on an ex parte hearing for an injunction? The duty of counsel for the plaintiff is to state fairly the points the defendant is making against it. He is under a duty to disclose to the Court all matters within his knowledge which are material to the proceedings and which tend to support the absent defendant. I cannot say that in the circumstances of this case this was done. I am quite sure that if this had been done, the Mareva injunction would not have in fact been granted.
>
> In my judgment this is the most powerful and cogent reason for discharging this injunction. There is no doubt that the documents in these proceedings were extremely voluminous. There are many affidavits, and many more exhibits, some of which contained many pages and others many letters. When an order is made by a judge on an ex parte application it is to be presumed that the judge has seen and read all the documents before the order is made. But in my judgment this is a rebuttable presumption and one has to examine the circumstances of each case to see if this presumption has in fact been rebutted.
>
> In the circumstances such as we have in this case where the proceedings are voluminous I think that it was counsel's duty to ensure that the said letter was exhibited and specifically and separately marked, and in addition the relevant and

> material portions of the said letter should have been set out in the affidavit in support of the application.
>
> In this case the letter dated 23rd August 1985 was tucked away in a bundle marked "A5". This letter formed the cornerstone of the defendant's case. It was actually setting out its case and invoking clause 18(2) of the subcontract. In my judgment, this could not have been brought to the attention of the judge nor could she have read it. That is the irresistible inference; for, had she done so, I am quite satisfied that she would not have made the order she did."

In the present case the provision for the Claimant to apply to the Court for an order to stay the eviction was in small print at the bottom of the Order. If the Court was made aware of this provision I am satisfied that the court would not have made the Order on January 5, 2005.

[24] The failure of the Claimant to disclose to the Court that an Order was made by Justice Crane on the 16th December 2004 was a material non-disclosure. Further the order of Justice Crane was made on an application by the John Henry Popely, Ann Patricia Popely, the Claimant and Andrew John Popely.

[25] It is settled law that an applicant who seeks injunctive relief on an application without notice must disclose to the court all facts material to the issues before the Court. A failure to disclose all facts material to the issue is a ground for discharging an Order made without notice. However, where the material non-disclosure was innocent and on the facts and in all the circumstances it would have been appropriate for the Court to grant the injunction had the material been disclosed to the Court, the Court may continue the injunction or grant a new injunction on the same terms.

[26] The issue of material non-disclosure was discussed in the cases of Behbehani v Salem [1989] 1 WLR p 723, St. Merryn Meat Ltd v Hawkins [2001] LT; and Siporex Trade SA v Condel Commodities Ltd [1986] 2 Lloyd's rep. p. 428. The principles which emerge from these cases are:

(a) An innocent non-disclosure can be said to be one where there was no intention to omit or withhold information which was thought to be material.

(b) In determining whether the non-disclosure was deliberate the Court has to consider the quality of the material which was not disclosed.

(c) Where the facts were so important to the issue to be determined by the Court, the Court may infer that the non-disclosure was deliberate.

[27] Applying the principles stated above to the present case, the Claimant in approaching Court on January 5, 2005 on an application without notice was required to disclose all matters relevant to the issue before the Court.

[28] The Claimant sought an order to restrain the Defendants from evicting him from White Owl Barn and enforcing a change in favour of St. Vincent Trust Services and stated in his affidavit at paragraph 17 that unless the Defendants are restrained he would be evicted from his home on January 10, 2005. The Claimant was a party to the action in which the stay of execution was granted. The Claimant was therefore fully aware of the details of the Order of Justice Crane made on December 16, 2005 which as stated earlier was an Order made on an application by the Claimant and members of his family. In making the statement at paragraph 17 of his Affidavit, the Claimant must have known that this was information which was relevant in the Court determining whether to grant an injunction to restrain the Defendants from evicting the Claimant and his parents from White Owl Barn.

[29] I find that this non-disclosure by the Claimant was deliberate. The facts not disclosed were material in determining whether an injunction should be granted in the circumstances. Further had the Claimant disclosed the existence of the Order of Justice Crane made on December 16, 2004 it would not have been necessary to grant an injunction on an application without notice on January 5, 2005. There would have been no urgency.

MATERIAL CHANGE IN PARTIES' CIRCUMSTANCES:

[30] The Defendants contended that since the granting of the Order on 5th January 2005 Mr. Justice Clarke on March 16, 2005 rejected the Claimant and his family appeal against the Order made on November 30, 2004 by Justice Mitchell where Justice Mitchell found that the Claimant and his parents were not entitled to possession of White Owl Barn and granted possession thereof to the First Defendant who was earlier declared to be the legal and beneficial owner of the property White Owl Barn.

[31] A ground on which an interim injunction may be discharged is where there has been a material change in circumstances since the grant of the injunction. I agree with Learned Queen's Counsel for the Defendants that in this case there has been a material change in circumstances. The issue of possession of White Owl Barn is now settled. The Claimant's appeal against the Order for possession has been dismissed. The Claimant and his parents have no right of possession of White Owl Barn. Further the First Defendant who owns the property gave an Undertaking to the Court in the United Kingdom where the property is situate in the following terms:

> "Ayton undertakes that it will not execute the Order for possession made on 30th November 2004 until either of the following:
> (1) The undertaking will lapse on the first date when the events listed at (a) and (b) below have both occurred.
> (a) The St. Vincent injunction has been discharged, or so modified, as to permit the execution of the Order for possession, and
> (b) The question whether Mr. Popely (John Henry Popely) may remove the current trustees of the Blue Ridge Trust, has been resolved in St. Vincent.
> (2) Further Order of the Court in the meantime."

[32] In view of the material non-disclosure by the Claimant and the material change in circumstances since the grant of the interim injunction I do not find it necessary to consider the other grounds raised by Learned Queen's Counsel for the Defendants. The injunction granted on the 5th day of January 2005 is hereby discharged.

APPLICATION WITH NOTICE:

[33] I will now consider the Claimant's application with notice for injunctive relief.

[34] The grant of an interim injunction is discretionary. In American Cyanamid v Ethicon Ltd [1975] A.C. p. 396 the Court outlined the principles by which a Court should be guided when exercising its discretion. These are as follows:

(a) Interim injunctions are generally granted only when the applicant has established a serious issue to be tried.

(b) Damages will not be an adequate remedy.

(c) The balance of convenience lies in favour of granting the injunction.

(d) The applicant is and will be able to compensate the respondent for any loss which the order may cause him in the event that the injunction should not have been granted.

[35] Learned Queen's Counsel for the Defendants submitted that the Defendants were willing to give an undertaking to the Court in the terms of the undertaking given to the Court in the United Kingdom and further that they will undertake not to mortgage, sell or alienate the property until final resolution of the issues in contention or until further order of the Court. Learned Queen's Counsel undertook to file such undertaking with the Court.

[36] The purpose of an interim injunction is to preserve the status quo until the rights of the parties have been determined by the Court. The grant of an injunction being discretionary the Court will only exercise its discretion when it is necessary to do so. In view of the undertaking given by Learned Queen's Counsel I am of the opinion that it is not necessary for the Court to exercise its discretion to grant an injunction against the Defendants.

SECURITY FOR COSTS:

[37] The Defendants in paragraph 13 of their grounds of application outlined the grounds on which they sought security for costs as follows:

(i) The Claimant is ordinarily resident out of the jurisdiction.

(ii) The Claimant has no assets whatsoever within the jurisdiction

(iii) The Claimant has failed or refused or neglected or has been unable to satisfy several costs orders of the English Courts against him.

[38] Ms. Kristina Phelan filed two affirmations on behalf of the Defendants in support of the application. In her first affirmation, affirmed on April 20, 2005, Ms. Phelan outlined in paragraphs 108 – 149 the various civil suits between the First Defendant and the Claimant and other members of his family in which costs were ordered against the Claimant and members of his family. Those costs remain unpaid.

[39] In her second affirmation, affirmed on July 20, 2005 at paragraph 158 Ms. Phelen stated the total costs to be £135,361.34.

[40] The Claimant in his second affidavit dated June 30, 2005 on the issue of security for costs stated at paragraph 24:

> "The First Defendant is indebted to myself and other members of my family in relation to loans made to it to finance the purchase of the subject property. As demonstrated in the affidavit of Mr. Jonathan Mitchell Chartered Accountant, the amount of the loans owed to me by the First Defendant are significantly in excess of the sum of the costs which have been awarded against me on behalf of the First Defendant. Further in light of the fact that the beneficial interest in the Blue Ridge Trust and hence the First Defendant are owned by my brother John Jr. and I and our children. The First Defendant will not be prejudiced in any way so as to warrant giving security for its costs as prayed for in the subject application."

[41] Jonathan Mitchell a Chartered Accountant on June 28, 2005 swore an affidavit on behalf of the Claimant. Jonathan Mitchell in paragraphs 21 – 25 supports the Claimant that sums are owing to the Claimant by the First Defendant in excess of £141,000. In paragraph 24 he states:

> "If that is the case the revised accounts clearly show that what is owed to the Claimant let alone the Popely family is significantly in excess of the £119 k that St. Vincent Trust Services are claiming he owes them. The Claimant is entitled to half of the line "AP/JAP" and absolutely all of the line noted as "AP". These lines appearing under "Loans" are current liabilities. The amount at the end of December 2004 ignoring interest, for the Claimant is £141,029 (50% of the AP/JAP line and all of the AP line). In addition, there will be the accrued interest at 7.5% per annum."

[42] Ms. Phelan in her second affirmation, affirmed on September 13, 2005 in paragraphs 42 and 99 disputed the allegation that the First Defendant owed the Claimant. In paragraph 42 Ms. Phelen states:

> "In paragraph 24 of his Affidavit the Claimant alleges that Ayton is indebted to him and the other members of his family in relation to loans made to Ayton to finance the purchase of White Owl Barn. The Court will have of course noted that repayment of these so-called loans said to have been made in October 2000, does not feature as one might have expected as a head of relief in the particulars of Claim. Instead, together with the evidence of the Popely's accountant, a Mr. Mitchell of Spain Brothers, they are advanced in an attempt to defeat Ayton's application for security. The Claimant's position in maintaining the existence of these so called loans is all the more remarkable, given that the suggestion of loans having been made by the Popelys to either Blue Ridge Trust and/or Ayton in order for Ayton to purchase White Owl Barn was so vehemently rejected by them in Ayton 2 proceedings."

[43] Rule 24 (2) of CPR 2000 provides for a defendant to apply to the Court for an order for the Claimant to give security for the Defendant's costs. While Rule 24(3) sets out the conditions to be satisfied before an order is made for security for costs. The Court must be satisfied that it is just to make such an order having regard to the circumstances of the case, and that one or more of the matters listed in paragraphs (a) – (g) are applicable. The relevant paragraph in this case is paragraph (g) "the Claimant is ordinarily resident out of the jurisdiction."

[44] It is not disputed that the Claimant is not ordinarily resident in St. Vincent and the Grenadines. It is also not disputed that the Claimant has no assets in St. Vincent and the Grenadines save the sums he alleges that is owed to him by the First Defendant which the First Defendant denies. It is also not disputed that White Owl Barn is owned by the First Defendant not the Blue Ridge Trust.

[45] Learned Counsel for the Claimant submitted that the fact that the Claimant is ordinarily resident outside of the jurisdiction is the only relevant condition mentioned in the application upon which the Court's jurisdiction to order security for costs may be invoked. It is not an inflexible or rigid rule that because the Claimant is resident abroad the Order should be made. The Court has a real discretion and indeed it is bound by virtue thereof to consider all the circumstances of the instant case and in the light thereof to determine

whether and to what extent or for what amount the Claimant may be ordered to provide security for costs. The other matters referred to by the Defendants may affect the exercise by the Court of its discretion and no more.

[46] Counsel also submitted that the First Defendant is substantially indebted to the Claimant for money advanced to it towards the purchase of White Owl Barn. If an order for security for costs is made for a substantial sum the Claimant would be hard pressed to satisfy the order and at the same time the several award of costs of the English Courts and this will result in the Claimant's claim being stifled. Counsel relied on the cases of Porzelack K.G. v Porzelack (UK) Ltd [1987] 1 WLR p. 420 and Keary Development Ltd v Tarmac Construction Ltd [1193] 3 AER p. 534. Counsel referred the Court to the following passage in the judgment of Gibson LJ at p. 540:

> "The Court will properly be concerned not to allow the power to order security to be used as an instrument of oppression, such as by stifling a genuine claim by an indigent company, particularly when the failure to meet that claim might in itself have been a material cause of the plaintiff's impecuniosity.... But it will also be concerned not to be reluctant to order security that it becomes a weapon whereby the impecunious company can use its inability to pay costs as a means of putting unfair pressure on the more prosperous company..."
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> "Before the court refuses to order security on the ground that it would unfairly stifle a valid claim the court must be satisfied that, in all the circumstances, it is probable that the claim would be stifled. There may be cases where this can properly be inferred without direct evidence... In the Trident case there was evidence to show that the company was no longer trading, and that it had previously received support from another company which was a creditor of the plaintiff company and therefore had an interest in the plaintiff's claim continuing, but the judge in that case did not think, on the evidence, that the company could be relied upon to provide further assistance to the plaintiff, and that was a finding which, this court held, could not be challenged on appeal."

[47] The Claimant in his affidavit did not depose that he was impecunious that his claim would be stifled if he was ordered to give security for costs. In fact the Claimant gave an undertaking to pay damages to the Defendants if the injunction was continued. The burden is on the Claimant to satisfy the Court that his claim would be stifled if an order for security for costs is made. In the Keary Development Ltd case the Court held at p. 534:

> "The court will not refuse to order security on the ground that it would unfairly stifle a valid claim unless it is satisfied that in all the circumstances, including whether

> the company can fund the litigation from outside sources, it is probable that the claim would be stifled. In this regard it is for the plaintiff company to satisfy the court that it would be prevented by an order for security from continuing the litigation."

No evidence that the claim would be stifled has been adduced by the Claimant. The fact that the Claimant has not paid the costs awarded by the English Courts does not necessarily mean that the Claimant is unable to do so. The Defendants produced exhibits to show that proceedings for enforcement are continuing in the English courts. The Claimant has not satisfied the Court that his claim would be stifled if an order is made for security for costs.

AVAILABILITY OF ASSETS:

[48] It was submitted on behalf of the Claimant that the First Defendant owes him £141,029. This is disputed by the First Defendant.

[49] If a claimant has assets which could meet the estimated Defendant's costs then it is a complete answer to an application for security for costs. See. De Bry's case. However in this case the alleged assets are disputed. The issue whether the sums are owed to the Claimant is not an issue for determination in the substantive claim filed by the Claimant. The Court therefore cannot determine that such assets would be available to pay costs if costs were awarded against him.

RESIDENCE:

[50] It is not disputed that the Claimant is ordinarily resident out of the State of St. Vincent and the Grenadines.

[51] This issue was discussed in a number of cases including De Bry v Fitzgerald and Another [1999] 1 WLR p. 552, Berkely Administration Inc v McClelland [1990] 2 WLR p. 1021; and Nasser v United Bank of Kuwait [2002] 1 AER p. 402. The Court held in Nasser's case that the relevance of the Claimant being ordinarily resident out of the jurisdiction must be

considered as relating to the ability of a successful defendant to enforce an award for costs against such claimant. Mance LJ at 419 said:

> "Returning to rules 25.15 (1), 25.13(1) 2(a) and (b), if the discretion to order security is to be exercised, it should therefore be on objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular foreign claimant or country concerned. The former principle was that, once the power to order security arose because of foreign residence, impecuniosity became one along with other material factors (see the case of Thune v London Properties Ltd [1990] 1 AER p. 972). This principle cannot in my judgment survive in an era which no longer permits discrimination in access to justice on grounds of national origin. Impecuniosity of an individual claimant resident within the jurisdiction or in a Brussels or Lugano state is not a basis for seeking security .....
>
> The justification for the discretion under rules 25.13(2) (a), (b) and 25.15. (1) in relation to individuals and companies ordinarily resident abroad is that in some, it may well be many, cases there are likely to be substantial extra burden (e.g. of costs or delay) in enforcing an English judgment, significantly greater than there would be as regards a party resident in England or in a Brussels or Lugano state. In so far as impecuniosity may have a continuing relevance, it is not on the ground that the claimant lacks apparent means to satisfy any judgment, but on the ground (where this applies) that the effect of the impecuniosity would be either (i) to preclude or hinder or add to the burden of enforcement abroad against such assets as do exist abroad, or (ii) as a practical matter, to make it more likely that the claimant would take advantage of any available opportunity to avoid or hinder such enforcement abroad."

[52] A judgment given by the Courts in St. Vincent and the Grenadines would be enforceable in the United Kingdom under the Judgments (Administration of Justice) Act 1920 Part II (Amendment) Order 1985.

[53] In the present case the Claimant is ordinarily resident out of the jurisdiction, has no assets in the jurisdiction other than the disputed sums referred to earlier. The Claimant has not

paid any of the costs awarded the First Defendant in the English courts. It is not disputed that the First Defendant has incurred further costs in the United Kingdom on seeking to recover the costs awarded. If an award is made for costs in this matter the Defendants would have an extra burden in terms of cost in enforcing the judgment of the Saint Vincent and the Grenadines Court in the United Kingdom. This would be significantly greater than if they had to enforce it against a party resident in Saint Vincent and the Grenadines. Also the Defendants would have to incur significant costs in investigating what assets are owned by the Claimant and where those assets are located. There is no evidence that the Claim would be stifled if an order for security for costs is made. The Claimant gave an undertaking to pay damages in the event an injunction is granted. In view of these circumstances I am satisfied that it is just for the Court to exercise its discretion pursuant to Part 24(3) of CPR 2000 and make an order for security for costs.

[54] The question that arises is what amount should be ordered.

[55] The Defendants in their affirmations did not state an amount which should be ordered nor did the Defendant estimate the costs that would be payable pursuant to Part 65. During submissions Learned Counsel for the Defendants submitted that the Court should order security for costs in the sum of £50,000.

[56] In Keary Development Ltd v Tarmac Construction Ltd and Another [1995] 3 AER p. 535 Gibson LJ said at p. 540:

> "The Court in considering the amount of security that might be ordered will bear in mind that it can order any amount up to the full amount claimed by way of security, provided that it is more than a simply nominal amount, it is not bound to make an order of a substantial amount (see Roburn Construction Ltd v Williams Irvin South & Co Ltd [1191] BCC p. 726)"

[57] The defence and counterclaim has already been filed in this case. Costs would be prescribed costs pursuant to Part 65.5. Having regard to all of the circumstances I would award a sum of £15,000.

[58] It is ordered that:

1. The injunction granted on the 5th day of January 2005 is hereby discharged.
2. The Claimant's application for an interim injunction made on September 26, 2005 is dismissed.
3. The Defendants' file an undertaking in the terms outlined above within two weeks of the date of this order. Should the Defendants fail to do so the Claimant shall be at liberty to apply to vary or discharge this order.
4. The Claimant shall give security for costs in the sum of £15,000 to be paid either in cash or be secured by a bank guarantee from a financial institution doing business in Saint Vincent and the Grenadines involving business with nationals of Saint Vincent and the Grenadines within six (6) weeks. All proceedings are stayed until security for costs is given in accordance with this Order. Unless security is given as ordered the Claim shall stand dismissed without further order.
5. Costs to the Defendants in the sum of $2,500.
6. On the Claimant giving security for costs as ordered the parties be at liberty to seek directions on case management.

.....
Gertel Thom
HIGH COURT JUDGE