ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV 2004/0082

BETWEEN:

VT LEASECO LIMITED

Claimant

and

FAST FERRY LEASING LIMITED

First Defendant

RAPID EXPLORER OPERATIONS INC

Second Defendant

Appearances:

Mr Sydney Christian QC. for the Applicant with him is Ms Gail Christian
Ms E. Ann Henry and Ms Debra C Burnette for the First Defendant
Mr Arthur Thomas and Mr Kayode Omarde for the Second Defendant

……
2005: November 18th 24th
December 5th 13th 21st
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JUDGMENT

[1] Blenman, J: This is a hotly contested application for an injunction, which seeks to compel the return of two vessels, alternatively the court's assistance is sought to prevent the defendants from interfering with ownership (the vessels)

[2] I gave an oral reasoned judgment on the 21st December 2005. It has now become necessary for me to produce my written reasoned judgment as I now do.

Background

[3] It is appropriate to describe briefly what the substantive matter is about. The matter concerns two vessels and three foreign companies. VT Leaseco Limited is a company incorporated in England and Wales. (VTL). On 4th May 2001 Fast Ferry Leasing Limited

(FFL) was incorporated under the United Kingdom Companies Act 1985 as a private company. Rapid Explorer Operations Inc (REO) was incorporated on 7th November 2003 under the laws of British Virgin Islands.

[4] By agreement dated 2nd August 2001, VTL, FFL and Neptune Worldwide Limited entered into an agreement whereby VTL would build vessels based on design submitted by FFL and FFL would therefore take the vessels on charter for a period of 3 years. VTL built and owned 2 vessels the "Katia" and the "Milancia" which it chartered to FFL based on an agreement dated 26th March 2004. Under the charter, FFL is required to pay charter hire to VTL in the sum of ℑ31,500 per month per vessel. VTL agreed to the subcharter of the vessels by FFL provided that any subcharter was on the terms of the form of subcharter, as approved by VTL. The approved draft subcharter included the following terms.

> (a) Termination
> This charter shall be subject to the termination provisions of the Agreement
>
> (b) Rights
> The rights under the Charter of VTL as owners apply in full to this sub charter and VTL have the express right to enforce the rights and obligations of the charterer under the Laws of the United Kingdom Contract (Rights of Third Parties) Act 1999

[5] VTL alleges that FFL repudiated the charter agreement by failing to make good the charter payments whereupon VTL accepted the repudiatory breaches and terminated the agreement. Acting in accordance with the agreement, VTL contends that it sought to withdraw the vessels, as it was entitled to do, but was met by vigorous opposition.

[6] VTL brought proceedings against FFL claiming several reliefs including the return of the vessels. It asserts that FFL owes it in excess of $431,482.00. It sought injunctive reliefs against FFL and on 30th June 2005 based on an exparte application for an injunctive relief, Mr Justice Thomas ordered FFL to return the vessels to VTL.

[7] REO filed an application and intervened in the proceedings and indicated to the court its interest in the matter and stated that the vessels were in its (REO) possession on

subcharter and were being used to transport passengers. On 14th July 2005, the court discharged the order that was granted exparte.

[8] On October 5, 2005 VTL filed and present an application seeking an interim order against both VTL and FFL. When the matter first came before me, there were a number of applications through which VTL sought to amend the claim form and the FFL applied to strike out the claim. There were a series of other applications by all parties that addressed procedural matters and focused for the most part on the issue whether or not the VTL had complied with CPR 2000 in seeking the reliefs for which it prayed. In the original claim VLT sought accounts of monies from the defendant and had failed to conform to Rule CPR 2000. FFL applied for VTL's claim to be struck out due to its noncompliance with the rules. I heard all of the applications and being mindful of the overriding objective of CPR and the need to deal with cases justly as aptly put by Alleyne JA: in St Kitts Development Ltd v. Golfview Development Ltd and Michael Simanic Civil Appeal No 24 of 2003 at paragraph 18 where he stated as follows: -

> "It is the duty of the court in exercising any discretion or applying any rule to give effect to the overriding objective of the Rules, which is not, as Counsel for he Respondent has urged to comply with the rules, but rather to deal with cases justly."

On the 23rd November 2005 I granted VTL leave to amend the claim form so as to claim only for the possession of the vessels from REO.

[9] VTL amended its claim again and sought possession of the vessels from REO. While both defendants entered appearance to the matter, only REO has filed a defence to VTL's claim and REO also counterclaimed against VTL.

So much for the background.

Present Application

[10] In the present application VTL seeks an interim order compelling REO to immediately give up control and custody and deliver up possession of the vessels "Milancia" and "Katia".

[11] The issue for me to determine is whether in he circumstances that obtain the court should grant VTL a mandatory interim injunction.

[12] Mr Javiere Lemone deposed to several affidavits on behalf of VTL in support of its application for the interim injunction. It is not prudent to attempt to reproduce the very detailed allegations contained in the affidavits. However, the main contentions of VTL are that FFL has breached the charter agreement that was entered into and as it consequence FFL owes it in excess of ℑ431,482.00 as of Friday June 20, 2005. Despite repeated requests of VTL that FFL makes goods its indebtedness, it has refused or failed to do so. As a consequence of FFL's several breaches, VTL terminated the agreement and sought to repossess the vessels. REO has possession of the vessels and strenuously resists VTL's actions. The vessels are docked in the Heritage Quay pier and have been stationed there since October 2004. VTL argues that the vessels are falling in a state of repair and asserts that REO has been unable to pay its crew and therefore is not in a viable financial position to make good any losses that VTL may ultimately suffer through REO's retention of the vessels.

[13] VTL complains that it is suffering undue hardship as a result of the vessels being under the control of REO. VTL contends that it is unable to reclaim, recharter and use its vessels and are suffering financially since it is receiving no payment for the vessel and are unable to use it for its own purposes. In fact FFL has not paid them any charter-hire for the vessels since November 2004 and it was as a consequence of this breach that VTL terminated the agreement it had with FFL.

[14] VTL says that the vessels are at risk of damage since are lying idle for several months. It advocates that there is no evidence before the court to show that FFL has lawfully subchartered the vessels to REO even though REO remains in possession of them and refuses to deliver them up to VTL despite repeated requests.

[15] REO by affidavit deposed to by Mr Nick Cheremett, contends that it has acquired rights to the vessel, which have been subchartered by FFL to it with the consent of VTL. REO

allege that during the period of the subcharter it observed numerous defects in the vessels, which it repaired at its (REO) own costs. Accordingly, it is entitled to be compensated for the expenditure incurred. It was also deprived of the use of the vessels due to the vessels being inoperable between May 2004 and June 2005 for a period of 334 days and must be compensated by VTL for the losses incurred. REO further states that since July 31, 2005 the vessels have not been operated commercially.

[16] REO asserts that VLT owes it the sum of $4,139,820.00 USA dollars, which it counterclaims against VTL. REO strenuously apposes the Court's grant of the injunction. Mr Nick Cheremett filed several other affidavits on behalf of REO

[17] Mr Nick Cheremett says that FFL subchartered the several affidavit and subcharter vessels with the consent of FFL as contained in a letter dated 30th April 2004. After the subcharter was executed REO took possession and operated the vessels. However it was unable to fully utilize the vessels since they suffered numerous defects that had to remedy at substantial costs to both FFL and REO.

[18] On 24th May, 2004 FFL received notice from VTL that it should pay VTL ℑ316,462 as outstanding hire in default VTL would withdraw the vessels. Several negotiations ensued resulted in FFL making no payment to VTL whereupon VTL sought to seize the vessels commencing June 21st 2005. He contends that it has acquired rights to the vessels and asserts that VTL cannot lawfully repossess the vessels since there was no contract between REO and VTL and "the equities created by the possession of the vessels" had been created with VTL's knowledge and consent. In a further affidavit Mr Nick Cheremeteff says that the vessels have not left Antigua and Barbuda since July 31, 2005 and are not operated commercially. He says that due to the defects in the vessels and the actions of VTL in seeking to repair possession of the vessels, REO has suffered significant which it counterclaims against VTL.

[19] REO maintains that FFL is not in possession of the vessels and therefore cannot give VTL possession of them.

[20] John Peter Tivadar deposed to an affidavit in reply on behalf of VTL. He says clause 7.3 of the charter agreement between VTL and FFL states as follows:

> 7.3 VTL may terminate this Agreement and Charter them in existence immediately on written notice of FFL commit a series or suffer any of the events stated in Cl 7.2.1 – 7.24 or if
>
> 7.3.5 FFL fails to make the payments pursuant to the terms of a charter or otherwise materially breach the terms of any charter.

There was an amendment to the agreement by an Acceptance Agreement dated March 24, 2004 in which FFL and VTL agreed that the charter hire applicable during the initial term of each charterparty of 3 years was to be ℑ31,500 per vessel per month. Clause 5 provided that:

> "it is agreed and understood by FFL that a breach by FFL of the Agreement, this Acceptance Agreement and/or any charterparty of a vessel shall be deemed a breach of the Agreement and all of such charterparties. Failure to pay any Charter Hire when due will be deemed a material breach of all charterparties relating to the vessels and VTL."

[21] John Peter Tivadar maintains that VTL has an immediate right to withdraw the vessels from the service of the Chaterer, declare the Charterers to be in default of the Charter, terminate the charter and recover the vessels. He says that while VTL agreed for FFL to subcharter vessels on the same terms stated in a draft charter form, it is unaware of the terms on which FFL subchartered the vessels to REO. Despite its regaled requests that FFL provide this information it has failed to do so.

[22] Further, Mr Tivadar, stated that the financial position, of FFL and REO as stated in their respective constituent document indicates that neither company appears to have assets. The company search reveals that REO has an authorized capital of $US50, 000.00 while FFL on the other hand is a private company limited by shares. The sole shareholder of FFL is Reliance Capital Limited (another company) and only one share has been issued by FFL. To the contrary, VTL is a company with substantial undertakings with sufficient

assets. It has placed evidence before the court showing that VTL owns substantial assets. He also alleges that REO has impaired VTL's security.

Submissions

[23] Learned Counsel Mr E Ann Henry appearing on behalf of FFL relied on the following cases. The Jade [1975] 1 ALL ER 441 Redland Bricks Ltd v. Morris and anon [1969] 2 ALL ER 503; Cayne and anor v. Global Natural Resources PLC [1984] 1 ALL ER 225. Counsel submitted that the court should not grant the mandatory injunction since to do so would have the effect of altering the status quo. This would also be a breach of Clause 22.1 of the Agreement, which provides that "any disputes arising from the Charter which are directly related to its operation or termination shall be referred to arbitration in London according to the terms set out on the charter."

[24] She urged the court not to grant the injunction since the parties have already referred the matter to arbitration in London. Another plank of FFL's contention was that the court should not grant the reliefs claimed since to do so would deprive FFL of the option to purchase the vessels.

[25] Finally, counsel was of the view that the court should be slow to grant a mandatory injunction at the interlocutory stage since it will have the practical effect of putting an end to the action, the court should approach the case. Therefore, Ms Henry maintains that the court should approach the matter on the broad principle of what it can do in its best endeavour to avoid injustice and to balance the risk of doing an injustice to either party. She urged the court not to grant the relief sought since to do so would have the effect of giving VTL the main relief sought without permitting the defendant the right of a full trial. In this regard, learned counsel relied on Cayne and anor v. Global Natural Resources PLC [1984] 1ALL ER 225.

[26] Mr Arthur Thomas, learned counsel, appearing on behalf of REO relied on the Myrto (1977) 2 Lloyd's Rep 24; American Cyanamid v Ethicon Ltd [1975] 1 WIR 638.

Locabail International Finance Ltd v. Agroexport and others The SeaHawk [1986] 1 ALL ER 90.

[27] The main thrust of Counsel's argument was that REO has a substantial counterclaim against VTL and the status quo should be retained pending the determination of the substantive matter. He urged that the court therefore, not to grant the relief. REO has substantial claims against VTL for VTL's breach of warranty and conditions in relation to the condition of the vessels. He further advocated that VTL by permitting FFL to subcharter the vessels to REO in effect agreed to FFL being VTL's agents. Once REO has paid the charter moneys to FFL (which they have paid) VTL could not properly withdraw the vessels.

[28] Mr Thomas further submitted that the court should not grant the mandatory interlocutory injunction and relied heavily on the judgment of Mr Justice Brandon in the Myrto (1977) 2 LLR 243 in which His Lordship held that a mortagee of a ship has no right to arrest or repossess vessels following default upon a mortgage without regard to the rights of third parties. Brandon J at p 16 said:

"The principles of law which these authorities establish, in relation to a case where the owner of a ship, having mortgaged her to a mortagee to secure a loan, remains in possession of her, can, in my view, be summarized as follows: -

1. The owner is entitled, subject to one exception, to deal with the ship (and that includes enjoying her under a contract with a third party) in the same way, as he would be entitled to do if the ship were not mortgaged.

2. The one exception is that the owner is not entitled to deal with the ship in such a way as to impair the security of the mortgagee.

3. Where the owner makes a contract with a third party for the employment of the ship of such a kind and made or performable in such circumstances, that the security of the mortgage is not impaired, and the owner is both willing and able to perform such contract, the mortgagee is not entitled, by exercising his right under the mortgage, whether by taking possession, or selling, or arresting the ship in a

mortgage action in rein, to interfere with the performance of such contract.

4. The mortgagee is however, entitled to exercise his rights under the mortgage without regard to any such, contract made by the owner with a third party for the employment of the ship in two cases.

   (a) where the contract is of such a kind, and/or is made or performable in such circumstances, that the security of the mortgage is impaired;

   (b) where, whether this is so or not, the owner is unwilling and/or unable to perform the contract.

[29] Learned counsel Mr Thomas submits that there is no evidence before the court to establish that the VTL's security is in any way impaired. He says the VTL can prove that its security is impaired by establishing that a lien was created which rank above its claim of indebtedness – this usually takes the form of evidence of unpaid crew wages. He maintains that VTL will be unable to show an impairment of security or otherwise to bring it within the fourth head stated by Brandon J in Myrto ibid. Mr Thomas further stated that the court ought not to grant a mandatory interlocutory relief in the absence of special circumstances and then only in clear cases.

[30] Learned Queen's Counsel Mr Sydney Christian appearing on behalf of VTL argued that the court should apply the principles stated in Zockoll Group Limited v. Mercury Communications Ltd [1988] FSR 354. He says the test is now "the least risk of injustice."

[31] Mr Sydney Christian further advocated that the REO is not a party to arbitration matter in London and therefore there is no question of VTL abusing the process of the court. The application before this court is very different from the matter, which is engaging the attention of arbitration in London. In fact the application before this court preceded the arbitration proceedings in London.

[32] He says that in applying "the Least Risk of Justice Test" the court should lean in favour of granting VTL the injunction because of the following reasons:

(a) VTL is likely to succeed at trial. REO has no contract with VTL and therefore cannot sue VTL for breach of contract

(b) Neither defendants have assets against which VTL could successfully enforce a monetary judgment in its favour if it were to succeed at the trial. Unless the court orders the return of the vessels to VTL it has no realistic prospect of recovering its losses.

(c) Alternatively if REO and or FFL were to succeed at trial VTL has substantial assets against where the defendants can enforce a monetary judgment in their favour.

(d) REO has failed to properly maintain the vessels which has resulted in

[33] Counsel placed heavy reliance on Zockoll Group Limited v. Mercury Communications in seeking the mandatory injunction. Mr Lord Justice Phillips sitting in that case the Court of Appeal reviewed the authorities said that "all the citation that should in future be necessary is found in the concise summary of the law given by Chadwick J in Nottingham Building Society v. Eurodynamics Systems [1993] FSR 468 at p 474

> In my view the principles to be applied are these. First, this being an interlocutory matter, the overriding consideration is which course is likely to involve the least risk of injustice if it turns out to be 'wrong' in the sense described by Hoffmann J.
>
> Secondly, in considering whether to grant a mandatory injunction, the court must keep in mind that an order, which requires a party to take some positive step at an interlocutory stage, may well carry a greater risk of injustice if it turns out to have been wrongly made than an order, which merely prohibits action, thereby preserving the status quo.
>
> Thirdly, it is legitimate, where a mandatory injunction is sought, to consider whether the court does feel a high degree of assurance that the plaintiff will be able to establish this right at a trial. That is because the greater the degree of assurance the plaintiff will ultimately establish his right, the less will be the risk of injustice if the injunction is granted.
>
> But, finally, even where the court is unable to feel any high degree of assurance that the plaintiff will establish his right, there

> may still be circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage. Those circumstances will exist where the risk of injustice if this injunction is refused sufficiently outweigh the risk of injustice if it is granted."

Analysis

[34] The court in determining whether or not to grant a mandatory injunction the court should not go into the merits of the matter. It is no part of the court's function to determine at the interlocutory stage of the proceedings whether FFL is in breach of the subcharter. The court can do no more than examine the evidence placed before it and to determine whether VTL has established an arguable case for the return of the vessels.

[35] It is noteworthy that FFL has not filed a defence in the matter, neither has any representative of FFL deposed to any evidence in an affidavit to place before the court in order for the court to be able to ascertain the nature of the subcharter between VTL and REO. Be that as it may, the court has before it the uncontroverted evidence that FFL owes substantial sums of charter monies to VTL. If this were to be proven to be true at the trial it is very arguable that FFL would have been in breach of the charter. It is arguable that VTL would therefore have been entitled to terminate the charter as it has sought to do.

[36] There seems to be no dispute between the parties that the REO has possession of the vessels based on the subcharter it allegedly entered into with FFL.

[37] It is REO's case that VTL is precluded from retrieving the vessels based on the subcharter it has with FFL. For my part, I cannot see how this can be so particularly when there is no evidence of any agreement between REO and FFL.

[38] With respect, I find it difficult to see how REO can possibly have any cause of action against VTL. Even if I am wrong on this aspect of the application I am still of the view that it would not be fair to allow REO or FFL for that matter to be able to rely on the alleged subcharter the terms of which are unknown to VTL and more importantly to the court. It seems to me that it would be unfair to allow REO to rely on the terms of the subcharter

which it has not seen fit to place before the court even though it is aware that the terms of the subcharter is a live issue from the inception of the matter. Unless the subcharter accords with the provision of the charter agreement, between VTL and FFL, REO may have difficulty in maintaining its counterclaim against VTL.

[39] I am of the view that each case must be determined based on its own facts. While I appreciate Mr Thomas's arguments with respect I am not persuaded that the Myrto is applicable to the case at Bar.

[40] I am grateful to all counsel for all the authorities they have cited. With respect, I have no doubt that the authority that is applicable to the case at Bar is Zockoll Group Ltd ibid especially the judgment of Lord Justice Phillips. I can do better than adopt the principles so well stated by his Lordship and referred to earlier.

[41] It is clear to me that after Zockoll there are special considerations that the court must apply to mandatory injunctions. The court traditionally was very reluctant to grant mandatory injunctions. The approach requires the court to first seek to determine whether the applicant has an arguable case. If there is a positive finding the court is then required to seek to determine the course that offers "the least risk of injustice."

[42] In applying the principles enunciated by Mr Lord Justice Phillips arguable case. Does VTL have an arguable claim for possession of them?

[43] In seeking to determine whether VTL has an arguable claim against REO for possession I am aware of the fact that it is not for me to seek to determine the facts as they touch and concern the substantive matter. Neither am I permitted to seek to resolve the disputes that arise on the affidavit.

[44] I have however given serious considerations to the matter of whether or not VTL has an arguable claim. Based on the affidavits and the very able submissions of all counsel and I have no doubt that there are serious issues to be tried in this matter and based on the

evidence before the court it seems to me that VTL has an arguable claim to the possession of the vessels.

[45] My nest task then is to pay attention to the overriding considerations that is to determine which course is likely to involve the least risk of injustice.

[46] In applying "the test of the least risk of injustice" I propose to now examine the factors relevant to VTL vis a vis FFL and REO. The factors that touch and concern VTL are as follows:

(a) VTL has substantial assets if the final decision were to go against it; there should be no difficulty in paying the damages awarded.

(b) Damages would not be an adequate remedy.

(c) VTL owns substantial assets.

(d) VTL vessels are inactive since July 31st 2005.

(e) There is no existing contract between REO and VTL.

(f) Security of vessels is likely to be impaired by REO's action.

(g) The vessels are likely to go into disrepair if they remain inactive for much longer and await the determination of the substantive matter.

(h) FFL and REO can seek alternative vessels to subcharter.

(i) Very importantly, there is no evidence to show that the subcharter is in accordance with the charter agreement.

[47] The factors that concern REO are:

(a) The vessels are in their possession.

(b) If the court were to refuse VTL application thereby preserving the status quo the effect of order would keep vessels in possession of REO.

(c) REO has substantive counterclaim for damages against VTL

(d) Should the court grant the interlocutory order VTL (a foreign company) may have no need to pursue its claim since it is substantially the same relief it is seeking in the main action.

(e) VTL – no basis for seeking to repossess the vessels since REO has paid all sums due to FFL in accordance with the terms of the subcharter.

(f) It may be difficult to recover any damages from VTL if the court were to make such an order.

[48] The factors that concern FFL are as follows:

(a) FFL has given VTL a bank guarantee for ℑ500,000

(b) The nature of FFL's defence is unknown.

(c) FFL has an option to purchase the vessel under the charter agreement (if the court were to grant the mandatory injunction at the stage it may prejudice FFL's ability to exercise its option.

(d) Damages would not be an adequate remedy.

[49] Applying the second limb of the Zockoll test, I am of the respectful view that this is a matter that calls for the court to be very cautious in its determination of whether or not the application should be granted. Not least of all because the items that are subject matter of the dispute belonging to a foreign company which does not have any assets in this jurisdiction.

[50] However a court must never shift from its responsibility and seek to do what is right once it has determined, in its respectful opinion, the relief which should be granted in order to lead "to the least risk of injustice" should the court be subsequently found to have made the wrong order.

[51] I have weighed the factors in favour of all the parties and am not of the respectful view that if I were to grant the application sought at this stage, it will carry a greater risk of injustice if it turns out to have been wrongly made. In passing, I state that I am particularly concerned about the fact that the vessels have been lying idle since July 2005 and no useful purpose would be served in having this state of affairs continue.

[52] More importantly, even if I am wrong I have no doubt that FFL is in a position to adequately compensate REO and FFL for any loss they may suffer as a consequence of my order. I am not convinced that REO is in a position to do likewise based on enquiries made of counsel for REO and the clear evidence before the court.

[53] Based on the evidence placed before me it is doubtful that on the facts as stated that REO would be able to sustain its claim against VTL. Even if I am wrong on this point, I am far from convinced that either REO or FFL would be able to compensate VTL for any losses it may have suffered if the court were to award damages to VTL against them at the trial of the substantive matter.

[54] While it is true VTL has argued that it would be deprived of its option to purchase the vessels I am of the respectful view that if FFL were to succeed at the trial of the matter in establishing that it was entitled to exercise the option to purchase the vessels and was improperly deprived of this opportunity the court can properly award FFL damages which will serve to adequately compensate FFL at the main trial.

[55] Further I am of the respectful view that on the facts as placed before the court there is a high degree of assurance that the claimant will ultimately establish his right to the vessels against REO. (VTL has no contract with REO and the basis of REO's claim against VTL is doubtful). In the absence of any evidence from either REO or FFL as to the terms of the subcharter in view of he fact that this was made an issue by VTL from the commencement of their claim, it is reasonable to infer that FFL and REO are most reluctant to place the terms of the subcharter before the court for reasons which are best known to them.

[56] Finally, VTL has convinced me that there is an urgent need for the court to make the order compelling the return of the vessels to them. Even if I am wrong in my determination that I have a high degree of assurance that VTL is likely to succeed, I have very little, if any doubt that in the circumstances of this case it is appropriate for the court to grant a mandatory injunction at an interlocutory stage. I am of the respectful view that the risk of

injustice if this injunction is refused outweigh the risk of injustice if it is granted since it seems clearly wrong to have the vessels lying idle for in excess of 7 (seven) months and to deprive its owner of the vessels when damages would be an adequate remedy to any claim made by FFL or REO against VTL. I am not of the view that based on the facts of this matter an award of damages would be an adequate remedy to VTL.

[57] The court is mindful to have VTL fortify its undertakings given upon enquiry of the court as to whether VTL would be inclined to fortify the undertaking given in damages (in view of the fact that it is a totally foreign owned company), Learned Queen's Counsel indicated that should the need arise VTL is prepared to fortify its undertakings by placing the sum of $50,000US into an account in a bank in Antigua and Barbuda.

[58] The Court was of the view that in order to exercise its discretion in a very equitable manner, it was prudent to require VTL to fortify its undertakings in damages. This is no way negate the fact that the court is of the view that VTL has substantial assets but this requirement would in the court's view go some way to meet the concerns that REO has about VTL being a foreign company and if the mandatory injunction is granted VTL may have no interest in continuing with its claim leaving REO with a worthless undertaking.

[59] Let me say however while I appreciate Mr Thomas' concern I am not of the view that if VTL were to discontinue its claim in this court it would necessarily prejudice REO's counterclaim against it.

[60] In conclusion and for the above reasons I make the following orders

Conclusion

[61] It is ordered that:

(1) The Claimant VT Leasco Limited shall deposit the sum of US$50,000.00 into a bank account in the names of Attorney-at-Law Arthur G.B. Thomas Esq., Ms E. Ann Henry and Sydney P. Christian Q.C. Esq., to beheld in escrow to abide the outcome of the substantive matter and/or to fortify its undertaking of damages;

(2) Upon deposit of the funds into the Escrow Account by the Claimant as aforesaid, the 1st Named Defendant, Fast Ferry Leasing Limited, its servants and/or agents, and/or the 2nd Named Defendant Rapid Explorer Operations Inc., its servants and/or agents of relinquish control and custody and to deliver up possession of the vessels, "MILANCIA" and "KATIA" to the Claimant, VT Leasco Limited;

(3) Alternatively, I grant an order to restrain the 1st Named Defendant, Fast Ferry Leasing Limited, its servants and/or agents, and/or the 2nd Named Defendant Rapid Explorers Operations Inc., its servants and/or agents from preventing the Claimant, its servants and/or agents from taking possession and custody of the vessels;

(4) The substantive matter be referred to the court office in order for its listing to be had with a view to expediting the hearing of the substantive matter;

(5) Cost in the matter to be costs in the cause.

[62] I gratefully acknowledge the assistance of all counsel.

Louise Esther Blenman
High Court Judge