BRITISH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. BVIHCV2005/0174

SIBIR ENERGY PLC

Applicant/Claimant

-and-

(1) GREGORY TRADING SA
(2) RICHARD ENTERPRISES SA
(3) FERENCO INVESTMENT & SERVICES LIMITED
(4) SHAW INVEST & FINANCE CORP.
(5) CARROLL TRADING SA
(6) TRANQUILLO TRADING SA
(7) OJSC SIBERIAN OIL COMPANY
(8) ROMAN ABRAMOVICH

Respondents/Defendants

Appearances:

Mr. Guy Philipps QC, with him Mr. Colin Mc Kie for the Applicant/Claimant
Mr. Mark Howard QC, with him Mr. Daniel Jowell and Mr. Phillip Kite for the Respondents/Defendants

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2005: November 29
November 30, December 23

JUDGMENT

[1] HARIPRASHAD-CHARLES J: The Applicant, Sibir Energy PLC ("Sibir") applies to the Court for an Order against the 1st, 2nd, 3rd and 7th Respondents to extend the interim injunctive order dated 13 July 2005 as varied on 21 July 2005 pending the hearing of an appeal by the Court of Appeal of the Eastern Caribbean Supreme Court.

Procedural history of application for interim relief

[2] Sibir commenced these proceedings against the Respondents on a without notice application dated 12 July 2005. The application sought various forms of injunctive relief.

On 13 July 2005, the Court granted the interim injunctive relief sought against the Respondents ("the Order").

[3] On 18 July 2005, the Respondents applied to the Court to discharge the Order. At the same time, they applied to strike out or dismiss the claims and to dispute and/or contest the jurisdiction of the Court.

[4] By Order dated 21 July 2005, the Court ordered by consent that certain paragraphs of the Order would be discharged upon the provision of certain limited and confidential undertakings proffered by some of the Respondents. Directions were given for the hearing of the Respondents' applications as well as Sibir's application for interim relief.

[5] Between 19 – 21 September 2005, the hearing took place in respect of the Respondents' applications to strike out or for reverse summary judgment and to dispute and/or contest the jurisdiction of the Court. At the said hearing, Sibir applied to continue the Order. No substantive hearing of the application took place as the Respondents undertook that the undertakings in the Order of 21 July 2005 shall continue until the earlier of 25 November 2005 or 7 days after the delivery of the Judgment upon the Respondents' application. It was ordered that Sibir's application for interim relief should be heard immediately after delivery of judgment upon the Respondents' applications.

[6] On 14 November 2005, Sibir issued an application notice returnable on 24 November 2005 for interim relief. The relief sought goes no further than the scope of the confidential undertakings scheduled to the Order of 21 July 2005 and constitutes relief of a narrower kind than that obtained on the original without notice application on 13 July 2005. It also precedes the outcome of the Respondents' applications which were heard on 19 – 21 September 2005.

[7] On 29 November 2005, the Court delivered a written Judgment ("the Judgment"). The Judgment has (i) granted the applications of the 1st, 2nd, 4th and 5th Respondents ("the BVI Respondents") for reverse summary judgment and (ii) dismissed the claims against the

remaining 3rd, 6th, 7th and 8th Respondents ("the Foreign Respondents") for want of jurisdiction.

[8] Sibir maintains its application for interim relief against some of the Respondents, namely the 1st, 2nd, 3rd and 7th Respondents. In effect, Sibir seeks an Order to maintain the status quo pending appeal in order to ensure that any decision by the Court of Appeal in its favour is not rendered nugatory.

[9] Sibir asserts that the Court should continue the interim relief sought for the following reasons:

a) The evidence establishes a strong case of a particularly large and egregious fraud perpetrated on Sibir by the Respondents. There is, at the very least, a serious issue to be tried. Sibir contends that at the 19 – 21 September hearing, the Respondents did not seek to suggest that there was no serious issue to be tried, save for the jurisdictional and conflicts of laws issues.

b) Damages would not be an adequate remedy for Sibir. Sibir says that the Respondents declare that any order in Sibir's favour against them could be satisfied by Sibneft alone; it being one of the largest oil companies in Russia with total assets in excess of US$8.5 billion and net income alone in excess of US$2.2 billion. Sibneft maintains that it has plenty assets to satisfy any judgment against it. But Sibir says that its claim is for participation interests in Sibneft-Yugra. Sibir says that the participation interests held by the 1st, 2nd and 3rd Respondents are the only valuable assets of which Sibir is presently aware within the jurisdiction of this Court. Sibir says that however deep Sibneft's pockets might be, its riches lie not in the BVI but in Russia, so any judgment of this Court against Sibneft cannot effectively be enforced in Russia.[1]

c) Sibir alleges that, if for any reason, the interim relief against the 1st, 2nd or 3rd Respondents should not have been granted, any loss suffered by the Respondents

[1] The position regarding the enforcement of an order of this court is now common ground: that a decision of the BVI Court will not be enforceable in Russia.

may be compensated in damages. In addition, the Respondents are protected in the usual undertaking as to damages but, in any event, they have not advanced any convincing reason why they may suffer loss if the 1st, 2nd and 3rd Respondents are restrained from dealing with the participation interests in Sibneft-Yugra.

d) To the extent that it is necessary to consider the balance of convenience, Sibir asserts that the balance falls firmly in granting the relief sought. It says that the Respondents will suffer no loss, or at least no loss that cannot be compensated in damages. On the other hand, if the relief is not obtained, there is a real risk that the 1st, 2nd and 3rd Respondents will dissipate the participation interests which are held by them. Sibir's allegation is that it is worried that these Respondents would take steps to repeat the fraud that forms the basis of its claim, and either transfer the participation interests away from the 1st, 2nd and 3rd Respondents or engineer a further re-arrangement of the participation interests of Sibneft-Yugra so as to frustrate its claim.[2]

[10] The terms of the relief are to be found in the draft order as amended. They are as follows:

> "It is hereby ordered that for 14 days from today's date and within that time, the Claimant/Applicant lodges a Notice of Appeal with the Court of Appeal then for 14 days after the grant or refusal of leave to appeal by the single Judge:
>
> 1. The 1st, 2nd and 3rd Respondents:
>
> a) will not dispose of, or transfer, or in any way whatsoever deal with the participation interest in LCC Oil Company ("Sibneft-Yugra") which they respectively own;
>
> b) will not take or procure or cause to be taken, whether by exercising or purporting to exercise (whether by itself or any other person or entity pursuant to any authority granted by it at any time) any right to vote as a holder of a participation interest in Sibneft-Yugra or otherwise, any step intended to have the consequence that the net assets of Sibneft-Yugra or the value of any participation interest in Sibneft-Yugra may be diminished;
>
> c) will inform the Court and the Claimant's solicitors immediately it is informed of any intention by Sibneft-Yugra to issue a dividend or make a distribution of profits.

[2] See para. 7 of Michael Pringle's affidavit (Tab 3 of Index Bundle 6).

2. The 7th Defendant:

a) will not take any step intended to have the consequence that the net assets of Sibneft-Yugra or the value of any participation interests in Sibneft-Yugra may be diminished;

b) will not take or procure or cause to be taken any step intended to have the consequence that any of the 1st, 2nd or 3rd Respondents shall act in contravention of or frustrate any of the orders in respect of them, set out in paragraph 1 above.

[11] It cannot be disputed that the relief sought is very limited. Mr. Philipps QC emphasizes that if the interim relief is not granted, then the Respondents are at liberty to put the participation interests in Sibneft-Yugra beyond the reach of Sibir and/or this Court and "justice will be frustrated" should Sibir succeed on appeal because the only asset in this jurisdiction would have already been dissipated. This is indeed an attractive argument.

[12] The Respondents assailed the application for a freezing order on the ground of lack of jurisdiction to grant it. Furthermore, say the Respondents, even if the Court were to have jurisdiction, it should not exercise that jurisdiction to grant the interim relief sought in light of the Judgment.

No Jurisdiction

[13] Two issues arise for consideration under the generic heading of jurisdiction namely:

a. In light of the Applicant's intention to seek leave to appeal the Judgment, should the present application for interim relief be made to the single judge of the Court of Appeal?

b. Is there a pre-existing cause of action since the Judgment (i) granted the application of the BVI Respondents for reserve summary judgment and (ii) dismissed the claims against the Foreign Respondents for want of jurisdiction?

a. Leave to appeal

[14] Much time was spent arguing whether the present application for interim relief should have been made to a single judge of the Court of Appeal. CPR 62.16 (1) makes provision that "a single judge of the court [emphasis added] may make orders for, among other things (a) an injunction restraining any party from disposing of or parting with the possession of the subject matter of an appeal pending the determination of the appeal." The word "court" under CPR 62.1(2) means the Court of Appeal. On a true construction of CPR 62.16(1) and CPR 62.1 (2), it appears proper to make such an application to the Court of Appeal. The section is silent on whether a Judge of the High Court could hear such an application. But, when CPR 62 is read as a whole, it appears that there is nothing to preclude a Judge of the High Court from hearing such an application.

[15] In any event, section 24 (1) of the West Indies Associated States Supreme Court (Virgin Islands), Act, Cap. 80 is instructive. It states:

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

[16] It is my considered opinion that this section clarifies the apparent obscurity of CPR 62.16. As a consequence, it appears that I am properly clothed to hear the present application.

b. No jurisdiction

[17] It is a well-established principle that the right to obtain interlocutory relief is merely ancillary and incidental to a pre-existing cause of action. In the classic speech of Lord Diplock in Siskina (Cargo Owners) v Distos Compania Naviera S.A. ("the Siskina")[3] (with whom the other members of the House of Lords agreed), he explained (at 254) that section 45(1) [identical to our section 24 (1)] presupposes the existence of an action, actual or potential, claiming substantive relief which the High Court has jurisdiction to grant and to which the

[3] [1979] A.C. 210.

interlocutory orders referred to are but ancillary. He enunciated the basic understanding of an interlocutory injunction more generally at 256:

> "A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction.
>
> Since the transfer of the Supreme Court of Judicature of all the jurisdiction previously exercised by the court of chancery and the courts of common law, the power of the High Court to grant interlocutory injunctions has been regulated by statute. That the High Court has no power to grant an interlocutory injunction except in protection or assertion of some legal or equitable right which it has jurisdiction to enforce by final judgment, was first laid down in the judgment of Cotton LJ in North London Railway Co. v Great Northern Railway Co[4] which has been consistently followed ever since."

[18] Lord Diplock's approach has been consistently followed by the English Courts and remains intact notwithstanding that the House of Lords casts some doubt on other aspects of the Siskina in Channel Tunnel Group Ltd and Another v Balfour Beatty Construction Ltd and Others.[5] The qualification formulated in the Channel Tunnel relates to cases where the court has jurisdiction but declines to exercise it. In Steamship Mutual Underwriting Association (Bermuda) Ltd v Thakur Shipping Co. Ltd [6], the Court held that in a case in which the only existing cause of action was for a declaration, it could not grant a Mareva injunction. In Veracruz Transportation Inc v VC Shipping Co Inc (the "Veracruz")[7], the Court cited with approval the statement of Bingham J. in Siporex Trade SA v Comdel Commodities Ltd[8]:

> "I take it to be clear law, both on principle and authority, that a Mareva injunction will not be granted to an applicant who has no cause of action against the defendant at the time of the application."

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[4] (1883) 11 Q.B.D. 30 at 39-40. See also Steamship Mutual Underwriting Association (Bermuda) Ltd v Thakur Shipping Co. Ltd [1986] 2 Lloyd's Rep. 439.
[5] [1993] 1 All ER 664.
[6] Ibid 4.
[7] [1992] 1 Lloyd's Rep 353 at 358-359.
[8] [1986] 2 Lloyd's Rep 428 at 436.

[19] The approach of Lord Diplock in the Siskina was once again advanced in the Privy Council case of Mercedes-Benz AG v Leiduck[9]. The salient facts of the case are that the plaintiff company, Mercedes-Benz, incorporated in Germany, commenced by writ, an action in the Supreme Court of Hong Kong against two defendants, Leiduck and a company incorporated in Hong Kong of almost the entirety of whose share capital he was the registered owner. Mercedes obtained an ex parte order granting leave to serve a Mareva injunction restraining the defendants from dealing with their assets within or without the jurisdiction, but particularly the shares in the Hong Kong company. Leiduck was in Monaco where the substantive civil proceedings were brought against him but his assets were in Hong Kong. It was in protection of the potential judgment in Monaco that the Mareva injunction was issued in Hong Kong. On ultimate appeal to the Privy Council, Lord Mustill, speaking for the majority comprising himself, Lord Goff of Chieveley, Lord Slynn and Lord Hoffmann observed (at 298) that the statements of general principles by Lord Diplock in the Siskina has been endorsed in many subsequent decisions of the House of Lords or by legislation. In particular, the Privy Council made clear that the additional jurisdiction granted by s. 25 of the Civil Jurisdiction and Judgments Act 1982 (which empowered the English Court to grant interim relief in proceedings in England in support of a foreign cause of action) did not affect the interpretation of s. 37 of the Supreme Court Act (or the correct interpretation of Order 11).

[20] The approach has been followed in some recent cases in England as well as the Commonwealth Caribbean. In Re Premier Electronics (GB) Ltd[10], Pumfrey J said: "It has been well recognized that the granting of an injunction requires the subsistence of a relevant cause of action." In Meespierson (Bahamas) Ltd v Grupo Torras[11], the Court of Appeal of the Bahamas firmly endorsed the approach in the Siskina and by the majority of the Privy Council in Mercedes-Benz. In his judgment, Gonsalves-Sabola P. said "for this court to apply a rule of law that is inconsistent with the Siskina without the authority of legislation to that end, is an impermissible aberration from the judicial function." He took issue (at 635) with Lord Nicholls' dissenting judgment in the Mercedes-Benz case which

[9] [1996] AC 284
[10] [2002] 2 BCLC -
[11] [2000] 1 LRC 627

criticized Lord Diplock's basing of the right to obtain an interlocutory injunction of a pre-existing cause of action and asserts its inconsistency with the analysis of a Mareva injunction as ancillary merely to a prospective right of enforcement.

[21] More significantly, the principle in the Siskina has been applied in the Courts of this jurisdiction. In Floyd Koch v Robert Chew[12], Georges J. said (at 545-546):

> "A Mareva injunction can only be granted if it is ancillary to a substantive claim and that substantive claim must satisfy the requirements of Order 11 rule 1 RSC which permits service of Writ or notice of a Writ out of the jurisdiction."

[22] It must be emphasized that a Mareva injunction is not just a procedural facility to maintain the status quo. Its fundamental purpose is to protect private rights, in particular, a plaintiff's right not to be deprived of the fruits of his judgment. But, applying the well-established principle from the Siskina which was followed in later decisions, a right to obtain an interlocutory injunction is not a cause of action. It cannot stand by itself. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction. This is the fundamental hurdle which Sibir is unable to circumvent. It is not sufficient for it to argue that (i) there is a serious issue to be tried and (ii) there is a real risk of dissipation of assets. These are merely two criteria.

[23] Mr. Philipps QC contended and correctly so that the Judgment is appealable and is subject to be reversed at the Court of Appeal. Therefore, for all intent and purposes, the substantive claim still exists. I feel the force of this argument. Despite its forcefulness, this Court has granted reverse summary judgment against the BVI Respondents and concluded that it has no jurisdiction to hear the claims against the Foreign Respondents. Accordingly, it has determined that there is no cause of action against the BVI Respondents and that it has no jurisdiction over the Foreign Respondents.

[12] (1997/98) 1 OFLR 537

[24] The ineluctable conclusion that I must come to is that this Court has no power under section 24 (1) of the West Indies Associated States Supreme Court (Virgin Islands) Act to grant the relief sought and I accordingly, decline to do so.

No exercise of jurisdiction

[25] Mr. Philipps QC fought hard to persuade the Court to exercise an exorbitant jurisdiction to grant the relief sought because if it is not granted, then the Respondents are at liberty to put the participation interests in Sibneft-Yugra beyond the reach of Sibir and/or this Court and "justice will be frustrated" should Sibir succeed on appeal.

[26] The Respondents argue that even if Sibir were able to find a jurisdictional basis for the Court (having granted reverse summary judgment and found that it has no jurisdiction) then to grant an injunction, this would not be an appropriate case for it to exercise any discretion it may have.

[27] The Court will not grant a Mareva injunction except when it is satisfied that it would be just and convenient in all the circumstances of the case to grant the relief sought. In practice two particular factors which should be considered are whether:

1. the claimant has a good arguable case against the defendant;

2. there is a real risk that judgment will go unsatisfied by reason of the disposal by the defendant of his assets, unless he is restrained by court order from disposing of them.

1. Good arguable case

[28] It is trite law that a claimant does not need to show that its case against the defendant is so strong that it is likely to succeed. The test is whether the claimant has a "good arguable case."[13] In Rasu Maritima v Perusahaan Pertambangan[14], Lord Denning observed that the test was "in conformity with" the test for granting injunctions laid down by the House of Lords in American Cyanamid Co. v Ethicon Ltd.[15] In Ninemia Maritime Corporation

[13] Ninemia Maritime Corporation v Trave GmbH (The Niedersachsen) [1983] 1 WLR 1412, at 1415-1417.
[14] [1978] Q.B. 644 at 661
[15] [1975] A.C. 396

[supra], Mustill J described a "good arguable case" as "one which is more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent chance of success."

[29] A requirement that the court must form the provisional view that the claimant will probably succeed at trial would be plainly inconsistent with an approach which enables the court to achieve "its great object" namely abstaining from articulating any opinion upon the merits of the case until its hearing. Nonetheless, the court will take into account the apparent strength and weakness of the case in order to decide whether the claimant's case, on the merits, is sufficiently strong to reach the "threshold", and this will include assessing the apparent plausibility of statements in affidavits.[16]

[30] A "good arguable case" is no doubt the minimum which the claimant must show in order to cross what Mr. Howard QC rightly described as the "threshold" for the exercise of the jurisdiction, but at the end of the day the court must consider the evidence as a whole in deciding whether or not to exercise its discretion.

[31] In the present case, the Judgment rejected Sibir's submissions on almost every count. The summary judgment application by the BVI Respondents has been accepted. In doing so, the Court followed (i) Sibir's own summary of the law as set out in their original skeleton argument for the hearing without notice and (ii) applied principles which were considered to be fairly well-settled. Whilst it is theoretically possible that the Court of Appeal might reconsider this issue, there is no realistic prospect of the Court of Appeal coming to a different view. With respect, it is my firm view that there is no realistic prospect of succeeding on appeal.

[32] The Respondents next argued that even if there were realistic prospects of success on appeal, this would still not be an appropriate case for the interim relief being sought.

[16] See National Westminster Bank v Daniel [1993] 1 W.L.R. 1453.

[33] Against Mr. Abramovich, it was argued that there is clearly no basis for any sort of interim relief as it is now common ground that there has been a significant factual development since the last hearing in this matter. Sibneft has now been sold to the Russian Oil Company JSC Gazprom which is essentially an arm of the Russian Government. The participation interests in the 1st, 2nd and 3rd Respondents have also, therefore, been transferred to Gazprom along with Sibneft. According to Mr. Howard QC, the result of this is that any links there may have been between Mr. Abramovich and the 1st, 2nd and 3rd Respondents (and to Sibneft-Yugra) are now firmly severed. Suffice it to say, at this hearing, Sibir withdrew its application for any interim relief against Mr. Abramovich.

[34] The Respondents next argued that there is no basis for any injunction against Sibneft either. The claim in this case is not a proprietary claim. This claim is for a monetary remedy (an account of the monetary profits). Mr. Howard QC emphasized the depth of Sibneft's pockets; it being one of the largest oil companies in Russia.

[35] Sibir's states that Sibneft's riches do not lie in the BVI (except for the participation interests) and if the interim relief is not granted, the Respondents will be given *carte blanche* to dispose of the participation interests beyond the reach of Sibir and/or the Court.

[36] It appears that Sibir's principal concern is that "an Order of this Court cannot effectively be enforced in Russia"[17]. The Respondents argue that whilst this allegation may explain why Sibir thinks, in theory, that it requires an interim relief against the 1st, 2nd and 3rd Respondents, it cannot justify why it should be granted interim relief against Sibneft. Mr. Howard QC analogizes that if an order of this Court cannot effectively be enforced in Russia, it follows that an interim relief cannot be enforced in Russia. If the Court's orders are enforceable in Russia against Sibneft, then there is no need for an injunction; if the Court's orders are not enforceable in Russia, then the grant of an interim relief would serve no useful purpose. I agree with Mr. Howard's submissions.

[17] See para. 12 (b) of Michael Pringle's second affidavit.

2. Solid evidence of risk of dissipation

[37] Learned Queen's Counsel Mr. Philipps submits extensively that there is a real risk that the Respondents will cause the participation interests in Sibneft-Yugra currently held by the 1st, 2nd and 3rd Respondents to be transferred beyond the effective reach of Sibir. Mr. Philipps QC submits that the transfer of the participation interests in Sibneft-Yugra from the 4th, 5th and 6th Respondents to the 1st, 2nd and 3rd Respondents in November 2003 served no apparent commercial purpose except to obscure the ownership of the participation interests in Sibneft-Yugra and to obscure the reasons for the dilution in respect of which Sibir claims in these proceedings. Sibir asserts that the November 2003 transfer was unnecessary and it remains entirely a mystery why such transfer was made at all.

[38] According to Mr. Philipps QC, the Respondents have sought to explain the reasons for the transfer on the basis that it was thought important "to ensure Sibneft has increased control over the foreign nominee companies holding these interests." It is alleged that Mr. Davidovich asked Sibneft's lawyers in Moscow to arrange a transfer of all rights to claim the repayment of loans and to transfer the 49% interest in Sibneft-Yugra to three nominee companies which were "closer" to Sibneft and which would be consolidated into the international financial statements of the Sibneft group. Mr. Philipps QC submits that it is indeed puzzling why the 1st, 2nd and 3rd Respondents are alleged to be "closer" to Sibneft, or why it is alleged that Sibneft is able to assert greater control over them, or why it is alleged to have made the November 2003 transfer at all.

[39] Mr. Howard QC submits that as regards the 1st, 2nd and 3rd Respondents, Sibir has clearly failed to adduce any "solid evidence" of objective facts to show that the Respondents are likely to move assets or dissipate them. The Court in the Ninemia[18] made it clear that "bare assertions that the respondents are likely to put an asset beyond the plaintiff's grasp and are unlikely to honour any judgment or award are clearly not enough by themselves. Something more is required."

[18] Supra at 1419.

[40] Learned Queen's Counsel asserts that the only evidence referred to by Mr. Pringle to support risk of dissipation is the fact that the Respondents transferred the participation interests from the 4th, 5th and 6th Respondents to the 1st, 2nd and 3rd Respondents in November 2003. Moreover, says Mr. Howard QC, there is not a shred of evidence that there was anything sinister in that transfer –still less that it was an effort to remove or dissipate assets. According to the Respondents, the transfer to the 1st, 2nd and 3rd Respondents made Sibneft's ownership of the participation interests more transparent and open. It had the result of such openness that it was reported in the Sibneft Group's annual accounts.

[41] Mr. Howard asserts that above all, there is now no basis to allege any risk of dissipation since the 1st, 2nd and 3rd Respondents (and Sibneft) are controlled by Gazprom, an arm of the Russian Government.

[42] The Court will only grant a Mareva injunction where there is a danger of the participation interests being taken out of the jurisdiction so that if Sibir succeeds, the judgment is not worthless. In Third Chandris Shipping Corporation v Unimarine S.A.[19], Lawton LJ at pp.671-672 said:

> "There must be facts from which the Commercial Court, like a prudent, sensible commercial man, can properly infer a danger of default if assets are removed from the jurisdiction…These facts should enable a commercial judge to infer whether there is likely to be any real risk of default."

[43] In Barclay-Johnson v Yuill[20], Sir Robert Megarry VC had this to say:

> "It must appear that there is a danger of default if the assets are removed from the jurisdiction. Even if the risk of removal is great, no Mareva injunction should be granted unless there is also a danger of default."

[44] In my respectful view, Sibir's evidence in the present case can certainly be described as exiguous. Sibir cannot base its allegation of a current risk of dissipation of assets on the historic activities of Sibneft. The alleged fraud has nothing to do with Sibneft's current board. In view of that, those matters cannot form any basis for inferring that Sibneft or the

[19] [1979] Q.B. 645
[20] [1980] 1 W.L.R. 1259, 1265.

1st, 2nd and 3rd Respondents will act in the future so as to remove assets out of the jurisdiction or seek to dissipate those assets. As Mr. Howard QC indicated, it would indeed be an audacious conclusion for this Court to arrive at; to suggest that an effective arm of the Russian Government is likely to dissipate assets with the object or effect of frustrating the judgment of this Court.

[45] For all of these reasons, I would accordingly decline to grant the interim relief sought by Sibir. Sibir will pay the costs of this application to be assessed.

Indra Hariprashad-Charles
High Court Judge