IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2006/0638

BETWEEN:

NATIONAL INSURANCE CORPORATION

Claimant/Applicant

and

ROCHAMEL DEVELOPMENT COMPANY LIMITED

Defendant/Respondent

Appearances :
Mrs. C. St Rose-Albertini
Mr. P. Foster with Ms. R. St Rose for Defendant/Respondent

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2006: September 18, 21, 26.

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# JUDGMENT

## Factual Background

[1] EDWARDS, J.: By a Notice of Application for Extension of Interim Order, filed on 6th September 2006, National Insurance Corporation (N.I.C.), sought to extend a freezing order, made on 17th August 2006, for 3 parcels of land belonging to Rochamel Development Company Limited (Rochamel). Rochamel is an alien company registered under the Commercial Code of St. Lucia since 1989, and continued under Section 365 of the Companies Act.

[2] This Application has been treated by the Court as a new Application, since the events which overtook the Application, caused it to be heard, after the interim order made without notice had expired on 14th September 2006.

[3] On 14th August 2006 N.I.C., a statutory corporation established under the National Insurance Act No. 18 of 2000, for collecting the contributions and surcharges from employees pursuant to Sections 77 and 34 respectively of the Act, filed a claim against Rochamel.

[4] The Particulars of Claim in the Statement of Claim allege that Rochamel owes a total of $205,818.77 as contributions and surcharges for several months, from September 2001 up to May 2006.

The Applications for Freezing Order

[5] On 15th August 2006 N.I.C. filed a Notice of Application for Interim Injunction without Notice, with 2 supporting Affidavits from N.I.C.'s Director Ms. Emma Hippolyte. She deposed then as follows in one of the Affidavits:

> "5. At the time of filing the Claim the Respondent was registered as proprietor with absolute title to three parcels of immovable property registered in the Land Registry as Parcel Nos. 1255B-378, 1255B-579, 1255B-677. A copy of the Land Registers are exhibited hereto and marked "EH1", "EH2" and "EH3" respectively.
>
> 6. That I believe that the Applicant has a good chance of obtaining judgment in its favour against the Respondent and that there is a very real danger of the Respondent dissipating all of these assets by the time the claim is determined, which will have the effect of defeating such judgment, unless it is restrained by the Court.

7. That the Applicant undertakes to abide by any order which the Court may make as to damages sustained by the Respondent if any, by reason of this application which the Applicant ought to pay."

[6] In the Affidavit of Urgency, Ms. Hippolyte alleged –

"3. . . the Applicant believes that the Respondent is on the verge of disposing [of] substantial assets which will have the effect of dissipating all its available remaining assets namely the immovable properties registered as Parcel Nos. 1255B-378, 1255B-579 and 1255B-677, to the detriment of the Applicant upon obtaining judgment in the substantive matter.

4. I have been informed and do verily believe that the Respondent is encountering financial difficulties and as a result is in the process of sourcing finances through another company and will be transferring the said properties to this company, in an effort to defeat enforcement of any judgment which the Applicant may obtain against the Respondent by reason of the Claim.

5. That I have been informed and do verily believe that these are the main significant remaining asset of the Respondent capable of being attached and that if the Respondent disposes of these immovable assets this will have the effect of defeating any judgment which the Applicant may obtain for the sum claimed against the Respondent.

6. That I believe that the Applicant has a good chance of obtaining judgment in its favour against the Respondent and

that there is a very real danger of the Respondent dissipating all of these assets by the time the claim is determined unless its restrained by the Court."

[7] The Order granted by the Court on 17th August 2006 by Mason J was in the following terms –

> "AND UPON THE APPLICANT giving an undertaking to abide by any order that the Court may make as to damages in case the Court shall hereafter be of the opinion that THE RESPONDENT shall have sustained by reason of this Order, which THE APPLICANT ought to pay.
>
> IT IS HEREBY ORDERED
>
> 1. That the Respondent whether by itself, its servants, agents or howsoever otherwise be restrained from disposing, selling or in any other way dealing with the immovable properties registered in the Land Registry as Parcel Nos. 1255B 378, 1255B 579 and 1255B 677 in the Registration Quarter of Gros Islet until further hearing of this matter.
>
> 2. . . .
>
> 3. That this Application is made returnable on Thursday 14th September 2006.
>
> 4. This matter is adjourned to Thursday 14th September 2006."

[8] Rochamel was served with this Order on 18th August 2006.

[9] Now the third Affidavit of Ms.Hippolyte, filed on 6th September 2006 in support of the Application for Extension of the Interim Order , added nothing new to the substance of the allegations concerning Rochamel's dissipation of its assets. Paragraph 5 and 8 of this Affidavit repeated the allegations in paragraph 5 of the Affidavit of Urgency; and paragraph 8 of the Affidavit in Support respectively, which were filed on 15th August 2006.

[10] By the 18th September 2006 when this matter came before me, there was on the record, an Affidavit from Director of Rochamel Mr. Gavin French, which was filed on 12th September 2006.

[11] Mr. French deposed:

> "4. Contrary to what is stated in the Affidavits of the Claimant/Applicant dated is August 2006 and 6 September 2006, there is absolutely no danger of the Defendant/Respondent dissipating its assets in particular the Properties. The Defendant/Respondent has not engaged in any negotiations or entered into any agreements for the sale of the Properties, in fact, the Defendant/Respondent has at no time or at all ever had any intention of selling the Properties.
>
> 5. The Properties are presently encumbered with a Registered Hypothecary Obligation in favour of First Caribbean International Bank formerly C.I.B.C. Caribbean Ltd and a legal hypothec in favour of the Inland Revenue Department. Should the Defendant/Respondent wish to dispose of these

assets, they would first have to settle and release the hypothecs registered against the property.

6 to 7 . . .

8. This injunction if granted would prevent the Defendant/Respondent from "selling", disposing and otherwise dealing" with the property. A restriction against the property in this way will prevent the Defendant/Respondent from renovating, expanding or otherwise developing the property and the Defendant/Respondent will be seriously prejudiced by such a restriction against the property.

9. At present the shareholders of the Defendant/Respondent have entered into an agreement with L'Avant-Mer Limited for the sale and purchase of the shares of the Defendant/Respondent. This does not in any way affect the Claimant/Applicant's ability to register a judgment against the Properties when and if judgment is obtained or affect the Claimant/Applicant's ability to claim any sums from the Defendant/Respondent."

[11] Paragraphs 6, 7 and 10 of Mr. French's Affidavit contain legal submissions which are impermissible in an Affidavit.

[12] Ms. Hippolyte's response to this Affidavit was filed on 13th September 2006. In this 4th Affidavit and a subsequent 5th Affidavit Ms. Hippolyte contended that she had been informed and verily believed -

"that another company namely Cotton Bay Resorts Ltd with which Mr. French is closely associated has sourced a loan from a local financial institution with the direct intention of settling the hypothecs referred to in paragraph 5 of . . . [Mr. French's] Affidavit and transferring the properties to Cotton Bay Resort's Limited."

[13] Ms. Hippolyte also alleged the following –

1. Mr. Michael Pilgrim a Director of Cotton Bay Resorts Ltd applied to the N.I.C. for a clearance certificate on behalf of Cotton Bay Resorts Ltd a new Company for the purposes of obtaining a loan from a local financial institution, with the intention of settling the liabilities of Rochamel registered on the Land Register for the said 3 parcels of land, so as to facilitate transferring of the properties to Cotton Bay Resorts Ltd.

2. Both Garvin French and Michael Pilgrim were Directors of Cotton Bay Resorts Ltd with Mr. French having controlling interests.

3. Garvin French is also a Director of L'Avant-Mer Ltd which Mr. French has admitted is in the process of purchasing Rochamel's shares.

4. Cotton Bay Resorts Ltd is the sole shareholder of L'Avant-Mer Ltd.

5. That Ms. Petrona James told her that Mr. Michael Pilgrim contacted N.I.C,'s offices and stated his displeasure with the interim injunction placed on Rochamel's properties, saying that this had severely hampered a transaction which was about to be concluded, and for which the finances had already been obtained from a Bank. Mr. Pilgrim enquired whether N.I.C. would consider some reprieve on the debt owed by the Rochamel.

6. That Mr. Garvin French as controlling director of an affiliated Company Rochamel Construction Company Ltd, has engaged in similar conduct in the past which has left a substantial judgment in favour of N.I.C. unsatisfied. That to date N.I.C. has no means of enforcing the judgment obtained in Claim No. SLUHCV2001/595 against the sued Company since all of its assets were dissipated prior to determination of the claim. This has had the effect of placing N.I.C. on guard. Ms. Hippolyte believes that if left unfettered Mr. French as controlling Director of Rochamel, will repeat the same conduct to frustrate another legitimate claim of the Applicant.

7. That Rochamel has not filed Annual Returns with the Registrar of Companies since 2001. The current corporate status of the Company cannot therefore be ascertained.

[14] Ms. Hippolyte's 4th and 5th Affidavits also contain impermissible legal submissions. Affidavits address questions of fact and are not intended to raise questions of law. She has failed to disclose the source of the following information –

(i) That the said 3 parcels of land are the main significant remaining assets of Rochamel capable of being attached and that Rochamel has every intention of disposing of all of these immovable assets in order to have the effect of defeating any judgment which the Applicant may obtain against the Respondent.

(ii) That as long as the finances have been sourced, settlement for the existing liabilities and transfer of the properties can take place within less than 24 hours.

[15] The Affidavit of Petrona James filed on 20th September 2006 confirms that Mr. Michael Pilgrim had several meetings with Ms. Hippolyte, Counsel Mrs. Albertini; and herself before the Clearance Certificate was issued to Cotton Bay Resort Ltd

by N.I.C. She confirmed that Mr. Pilgrim contacted her and told her "they were on the verge of doing a transaction only to find out that an injunction was placed on the property. She confirmed also that Mr. Pilgrim requested a waiver of the surcharges accrued on the debt.

[16] Mr. French in his second Affidavit filed on 20th September 2006 has explained –

> "(i) The three parcels of land . . . being the subject matter of the injunction contains . . . (43) apartment units of varying values . . . (3) of which have been sold many years ago. Each remaining unit being valued at a minimum of U.S.$150,000.00.
>
> (ii) The property is presently being renovated, refurbished and repaired and new apartment units are to be constructed for the purpose of operating a new condominium style hotel.
>
> (iii) For this purpose, the company intended to finance the refurbishment and renovation and new construction by mortgaging the property to raise these finances.
>
> (iv) The Claimant/Applicant has never made enquiries of the Defendant/Respondent as to its intended use of the property on the value.
>
> (v) The Defendant/Respondent has never demonstrated or threatened or given any reason to suspect whether reasonable or otherwise any intention to sell or dissipate the properties with the intention of evading or avoiding its liability to pay . . . [N.I.C.] contributions."

[17] Mr. Pilgrim deposed to an Affidavit which was filed on 13th September 2006. He denied the allegations of Ms. Hippolyte about the purpose for which the loan was sourced and Rochamel's plans to transfer the 3 parcels to Cotton Bay Resort Ltd. He contended that Ms. Hippolyte's statements were false and baseless. He denied telling Ms. James that the injunction had severely hampered a transaction which was about to be concluded and for which finances had already been obtained from a Bank. He admitted speaking to Ms. James around 8th September 2006 to discuss the claims made by N.I.C. against Rochamel.

## Findings of Fact

[18] Having considered the Affidavit, the documentary evidence, and the oral testimony of Ms. Hippolyte and Mr. French under cross examination, I have concluded that Ms. Hippolyte's assertions reproduced at paragraph 12 above are speculative, baseless and untrue. I accept the testimony of Mr. French that L'Avant-Mer Ltd is the Company purchasing the shares of Rochamel for US$6m. I accept his explanations concerning the Marlin Quay Hotel which had to be closed because it was operating at a loss. I accept his testimony that L'Avant-Mer Ltd is trying to purchase the shares of Rochamel and take on the liabilities of Rochamel, so as to redevelop the property as a Condominium Resort, which should be run by Sunset Resort, according to proposals. I accept his testimony that the Interval Lease documents are connected to the properties in question. According to Mr. French, upon Marlin Quay being registered as a Condominium, the plan is for Sunset Resort to manage this Condominium Resort, which should value about US $18m.

[19] Mr. French testified that the Injunction has put a stop to the sale of the shares, and Rochamel will now be unable to go to the lending institution to get funds to build. This means that Rochamel cannot finance the project without the funds from the lending institution.

[20] He testified that Rochamel's 2 debts registered on the Land Register is about U.S.$1 m in contrast to N.I.C.'s alleged claim which is about U.S.$100,000.00. The plan was for Rochamel to pay off the outstanding debts upon L'Avant-Mer Ltd becoming a shareholder.

Legal Arguments

[21] Learned Counsel Mr. Foster criticized the Affidavits of Ms. Hippolyte for not disclosing the source of the information as is required by PART 30.3 (2) (b) (i) of CPR 2000. Furthermore, he argued, the hearsay statements of Ms. Hippolyte without more, offered no probative evidence that Rochamel was disposing of its assets so as to avoid satisfying the alleged debt claimed by N.I.C. There was therefore no solid evidence of any dissipation of its assets by Rochamel. There was no receivable and credible evidence to prove that there was a real risk of disposal of Rochamel's 3 parcels of land, Mr. Foster argued. He relied on the following authorities to buttress his submissions: Z Ltd v A.Z and AA-LL [1982] 2 W.L.R. 288; Ninemia Maritime Corporation v Trave Schiffahrtsgeselt-schaff mbH Und. Co. KG [1983] 1 W.L.R. 1412; Hurrell v Fitness Holdings Europe Ltd (unreported) Q.B.D. 15/3/02; Derby & Co. Ltd v Weldon (No. 3 and No. 4) [1990] Ch 65; Brink's Mat Ltd v Elcombe and Others [1988] 1 W.L.R. 1350.

[22] Part 30.3 (2) (b) (i) of CPR 2000 states:

> "An Affidavit may contain statements of information and belief –
>
> . . . (b) if the Affidavit is for use in an . . . interlocutory application, provided that the Affidavit indicates –

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source of any matters of information and belief."

[23] It is patently clear when one looks at the first 2 Affidavits of Ms. Hippolyte, that Part 30.3 (2) (b) (i) was not complied with. Though the other subsequent Affidavits may have complied with this Rule to some extent, the absence of some of the subsequently disclosed information in the 2 supporting Affidavits filed on 15th August, 2006 also signifies that Ms. Hippolyte did not make full and frank disclosure of material facts, and or failed to make relevant and necessary inquiries.

[24] There is a duty on an Applicant for a freezing order to make full and frank disclosure of all the material facts which it is material for the judge to know in dealing with the Application. The Applicant must make proper inquiries before making the application; and any relevant fact which an Applicant would have known, had she made the proper inquiries will be regarded as a material fact: Brinks Mat Ltd (supra) Per Gibson L.J.).

[25] Relying on this authority, Learned Counsel Mr. Foster submitted that the fact that the 3 parcels in question comprised a condominium type time share hotel resort property, with a value far exceeding the value of the claim, was an important and material fact that N.I.C. failed to disclose to the Court. Such material non-disclosures have been held to be capable of causing a Court to discharge an injunction.

[26] M. Foster described Ms. Hippolyte's evidence as bare assertions that Rochamel will dissipate its assets with no evidence to back it up. In Ninemia (supra), Kerr L.J. stated that: "Base assertions that the defendants are likely to put any

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."

[27] Mr. Foster also reminded the Court of the many judicial statements which frown on the use of freezing orders to provide Claimants with security for claims. In Z Ltd supra, Kerr L.J. emphasized that an injunction, as the present one requested, should be refused if there is no real danger of the Defendant dissipating his assets to make himself "judgment proof." It is an abuse of a Mareva injunction (in recent times styled freezing order) where it may be invoked by the Claimant in order to obtain security in advance of a judgment which he may obtain, and where its real effect is to exert pressure on the Defendant to settle the action.

[28] Mr. Foster argued further, that the fact that Rochamel was in the process of selling its shares to L'Avant-Mer Ltd, would not of itself justify the making of a freezing order. While the proceeds of the sale of the shares would accrue to Rochamel, the value of its assets would not diminish. In order to justify the making of a freezing order in such a case, there would have to be other evidence showing a risk that Rochamel's assets are likely to be removed out of the jurisdiction, or otherwise dissipated, Council submitted. The sale of the shares does not affect Rochamel's ownership of the 3 parcels, and this cannot provide sufficient reason for a freezing order, Counsel argued.

[29] In Hurrell (supra), the Court's focus was on the use that the Defendant Company was making of the proceeds from the sale of its businesses and assets, and whether such use was a dissipation of its assets. Cooke J observed at page 22 of his judgment:

> "It was expressly accepted by the Claimant herself . . . that all of the proceeds of sale had to be used to repay the loan made by the parent company's lenders. The loan and debt were legitimate and the

obligation to repay inescapable. This is exactly the sort of justifiable payment which the Court should not, in my judgment, stop unless there is evidence of other assets from which repayment could be made; thus allowing a sum to remain frozen for any judgment or award that might later be obtained."

[30] Mr. Foster concluded –

(a) that on the evidence presented to the Court in the Affidavits filed on 15th August 2006, the Interim injunction should not have been granted;

(b) on the evidence presented in the Affidavits filed subsequent to 15th August 2006, N.I.C. has failed to produce any evidence that Rochamel intends to dissipate its assets to avoid paying the judgment.

The Application should be dismissed with costs to Rochamel Mr. Foster said.

[31] On the other hand, Learned Counsel Ms. Albertini's submissions focused on the juridical basis for an interim injunction which has been stated in American Cyanamid Co. v Ethecon [1975] 1 All E.R. 504 and other decisions, and crystallized by Charles J in Castries Car Park Facility Ltd v Gladys Taylor Claim No. SLUHCV2004/0133 delivered 15th October 2004. I have considered these well established principles.

[32] It is important to note however that a freezing order is not an ordinary interim injunction which must satisfy "the serious question to be tried" test. The freezing order requires more than that, it requires a good arguable case against

Rochamel, and a reasonable apprehension that Rochamel is in the process of dissipating its assets which will prevent N.I.C. from enforcing its judgment.

[33] Ms. Albertini pointed to the following facts as proof that Rochamel's conduct presents a very real risk that the only remaining immovable assets of Rochamel within this jurisdiction may be disposed of before the determination of the Claim -

(a) The controlling director of Rochamel Mr. Gavin French is also a director of L'Avant-Mer Ltd which is purchasing the shares of Rochamel.

(b) The sole shareholder of L'Avant-Mer Ltd is Cotton Bay Resorts Ltd, another Company of which Mr. French is also a director with controlling interests.

(c) Mr. French's past conduct as controlling director of Rochamel Construction Co. Ltd in another Claim involving a substantial judgment debt in favour of N.I.C. which remains unsatisfied.

(d) The loan Cotton Bay Resorts Ltd is obtaining makes it possible for the liabilities of the Rochamel to be easily settled and the properties disposed of. This is a manipulation of corporate powers and blatant acts of hiding behind the corporate veil. In the English jurisdiction this would be tantamount to fraudulent trading, resulting in the disqualification of such individuals from being directors of a company .

[34] Mrs. Albertini therefore argued that the preponderance of evidence weighs heavily in favour of N.I.C. in this Application, and N.I.C. stands to suffer a grave miscarriage of justice should the injunction not be granted and the properties are all dissipated before determination of the claim.

(f) There is no likely prejudice to Rochamel should the injunction be granted until the trial date, as Rochamel has stated in Mr. French's Affidavit, as there is no intention to dispose of the property. There will be no real harm if the status quo is maintained by way of the interim injunction until the claim is determined.

[35] Finally, Ms. Albertini argued, that in the event the Court concludes that the terms of the previous injunction are too wide, the Court should limit the conduct to be restrained, to that of selling or disposing of the 3 parcels, or in the alternative to selling or disposing of only Parcel 378 which Mr. French admitted has no buildings on it.

[36] Both Counsel made submissions concerning the nature of the undertaking for damages which an Applicant is required to give before the Court can grant a freezing order, Mr. Foster contended that there was no such undertaking from N.I.C. for the present Application. Mrs. Albertini countered, that the undertaking given at paragraph 7 of Ms. Hippolyte first Affidavit filed on 15th August 2006 is sufficient.

[37] Learned Counsel Ms. Albertini lost sight of the fact that the freezing order remedy, is designed not to preserve the status quo, but to prevent a judgment for debt from becoming worthless and to prevent frustration of the Court's process.

[38] The evidence need not be direct evidence to prove dissipation of assets. The authorities show that the Court is entitled to assume a risk of dissipation of assets from any dishonest or discreditable conduct of Rochamel's directors/incorporators. At paragraph 38.8 in Blackstones Civil Practice 2000, the factors relevant to the question of risk of dissipation have been stated to include:-

(a) whether the Defendant is domiciled or incorporated in a tax haven or country with tax company law;

(b) . . .

(c) whether the evidence supporting the substantive cause of action discloses dishonesty or a suspicion of dishonesty on the part of the Defendant. This is a weighty factor when it is present, and that is so whether or not it is pleaded as fraud.

(d) Whether there is evidence that the Defendant has been dishonest outside the actual cause of action, this includes contrivances designed to generate an appearance of wealth

(e) Past incidents of debt default by the Defendant, although it is not essential for the Claimant to have such evidence.

(f) Evidence that the Defendant has taken steps to remove or dissipate assets.

[39] There is no direct evidence that Rochamel has taken steps to remove or dissipate its assets in this case, given my findings of fact, based on the evidence I have accepted as credible. The risk existing relates to a justifiable disposal of Rochamel's shares which can provide the opportunity to dispose of the assets. This might be sufficient to satisfy a Court of the relevant risk.

[40] Though there may be no direct evidence of dissipation, N.I.C. has relied on the poor financial standing of Rochamel, its non compliance with the Companies Act; the incestuous relationship between the 3 Companies and their Directors, and Mr. Gavin French's track record in relation to satisfying judgment debts, to justify the grant of the freezing order.

[41] However, I am of the view that though these factors have probative value in proving the risk of dissipation they must be considered along with the plans of Rochamel to sell its shares, and the reason given by Rochamel in its explanations for selling the shares. If the plans of Rochamel are not justifiable, then this would provide N.I.C. with proof that there is sufficient likelihood of risk, in my view.

[42] There is no evidence that Rochamel has other available assets to satisfy the debts owing to C.I.B.C. and Inland Revenue. Rochamel obviously wishes to achieve its goal to develop its bankrupt Resort Complex into a viable commercial enterprise; and it has made plans and taken steps for this to materialize. As part of the plan, it has to satisfy its creditors disclosed on the Land Register for the 3 parcels in question, so that it can raise further loans from a lending institution, to complete the Condominium Resort, and hand it over to Sunset Resort to manage.

[43] In my opinion, the Court should not prevent Rochamel from pursuing such a goal. Cooke J in Hurrell supra referred to the text book 'Mareva Injunctions and Anton Piller Relief' 4th Edition 194, where the author sets out a number of situations where the granting of an injunction would not be appropriate. He thereafter identified the authority The Angel Bell Q B 65 as his authority for saying that a freezing order would not be appropriate "should the Defendant be prevented from carrying on his business, even if the effect of the Claimant succeeding in the claim would be to render the Defendant insolvent: (at page 19).

[44] Cooke J later observed at page 20 -

> "In assessing the risk of dissipation, the Court is concerned with the risk of dissipation which is unjustifiable, not with the use of assets to pay genuine indebtedness to others. The way in which this is expressed in Mr. Gee's textbook; to which I already referred is this:

> "In assessing the risk of dissipation, the Court is concerned with the risk of dissipation which if it were to take place would be unjustifiable, not the overall risk of whether the asset will be preserved intact until judgment in the action, including the risk of proper expenditure."

[45] Though Rochamel's track record in St. Lucia, concerning its inability or failure to pay its debts, excites suspicion, I am not sufficiently persuaded from all of the evidence that there is a real risk of Rochamel dissipating its assets, thereby frustrating the ordinary process of the Court, and the enforcement of its judgments, by dishonesty, irresponsibility, or improper dealings with its assets.

[46] In addition to this, there is insufficient motive for Rochamel to be likely to dissipate, given the size of the debt claimed, and the value of Rochamel's assets in question. It is impropable therefore that the contemplated transaction was conceived as a mechanism to evade the payment of the debt claimed by N.I.C.

[47] It must be remembered that a freezing order has the capacity to impair or restrict commerce where it is inappropriately granted.

[48] It is a drastic remedy, which would impose hardship on Rochamel, and substantial prejudice. Though hardship problems are relevant matters to be considered by the Court in the exercise of its discretion, in the present case, the hardship to Rochamel cannot be cured by limitations in the order.

## Conclusions

[49] I am satisfied that there is evidence that N.I.C. has a good arguable case in respect of its claim. But that is not sufficient. Having applied the usual principles

for granting freezing orders, I am of the view that N.I.C.'s evidence falls short of what is required to invoke the discretion of the Court to grant a freezing order.

[50] The Application is therefore dismissed with Costs to be assessed, upon the Defendant/Respondent presenting its statement of Costs pursuant to PART 65.11 (5) of CPR 2000.

DATED THIS 26TH DAY OF SEPTEMBER, 2006.

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OLA MAE EDWARDS
HIGH COURT JUDGE