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

COMMONWEALTH OF DOMINICA

CLAIM NO. DOMHCV2012/0203

ADRIEN MITCHELL

Claimant/Applicant

AND

C. O. WILLIAMS CONSTRUCTION LTD.

Defendant/Respondent

Before:

Master Charlesworth Tabor (Ag.)

Appearances:

Mrs. Gina Dyer-Munro for the Claimant
Miss Colleen Felix for the Defendant

……..
2013: March 11
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RULING

[1] TABOR, M (Ag.): This is an application for interim payment by the claimant/applicant filed on 3rd December, 2012 under Rule 17.6 of the Civil Procedure Rules (CPR) 2000. In support of this application the claimant relies on his affidavit filed 3rd December, 2012. The grounds of the application are:

(1) That the claimant has to travel to Barbados for further surgical treatment as a result of the injury suffered by the claimant on 29th February, 2012 when he fell through the walkway into a hole thereunder which said walkway was being constructed by the defendant company.

(2) That the further surgical treatment which the claimant requires is not available in Dominica and the claimant cannot afford to pay for further necessary treatment abroad.

(3) That the defendant is in a position to make the interim payment to the claimant for such medical treatment.

[2] Counsel for the defendant filed submissions opposing the application for interim payment on 14th January, 2012; while counsel for the claimant filed submissions on 28th February, 2013. After hearing oral arguments from counsel on each side, I granted the application for interim payment and will herein present the reasoning for so doing.

Background Facts

[3] The claimant is a 43 year old dialysis patient suffering from an End Stage Renal Disease. In his amended statement of claim filed on 21st November, 2012 he avers that on or about 29th February, 2012 whilst walking to the Pointe Michel Credit Union along a walkway constructed by the defendant he fell through the walkway into a hole beneath it.

[4] At the time of the incident, the defendant was operating under a contractual arrangement with the government of the Commonwealth of Dominica to undertake road works in the Point Michel area. As part of the facilitation of these road works, the defendant constructed a walkway along the Pointe Michel road which was under its management and control when the accident occurred.

[5] The claimant contends that the accident was as a result of the negligence of the defendant, its servants or agents. He particularized the negligence of the defendant as follows:

(1) Failing to secure the walkway along the Pointe Michel road so as to make it safe for pedestrians.
(2) Failing to take steps to prevent the walkway from being dangerous.
(3) Failing to secure the hole under the walkway so as not to endanger pedestrians.
(4) Failing to warn pedestrians that the walkway was dangerous or of the presence of a hole thereunder.
(5) Failing to construct the walkway properly or at all or to take any other step to prevent pedestrians from falling into it.
(6) Failing to ensure that walkway was safe for use of pedestrians.

[6] As a result of the accident, the claimant sustained a closed intertrochanteric fracture of his right femur. This diagnosis was confirmed by an X-ray taken on the 29th February, 2012 at the Princess Margaret Hospital. In the medical report of 27th March, 2012 by Dr. Jendayi Nibbs of the Princess Margaret Hospital, it is noted that the claimant requires surgical treatment of an open reduction and internal fixation of the fracture with a dynamic plate and screw and that the hardware to undertake this procedure is unavailable in Dominica. The medical report further notes that any other attempt at ORIF (Open Reduction Internal Fixation) using alternative hardware will necessitate a longer surgery and cause more extensive bleeding which are unacceptable risks in an End Stage Renal Disease patient such as the claimant. As a consequence, Dr. Hendricks Paul has recommended that the claimant get medical treatment outside of Dominica.

[7] Prior to the accident the claimant worked as a linesman with Marpin 2K4 Limited, however, following the accident he is in the process of being medically boarded off by his employer. He deposes that his hip is still affecting him, his leg is crooked and that he can only walk with crutches and cannot work as he used to before the accident.

[8] It is against that background that the claimant has applied for interim payment pursuant to Rule 17.6 of CPR 2000.

[9] In his affidavit in support of the application for interim payment, the claimant deposes that he is desirous of having an interim payment in the sum of EC$50,111.54 to facilitate treatment by Dr. Thorne (an Orthopaedic Surgeon) in Barbados. This sum would cover the costs for the surgical operation, two airline tickets to Barbados, dialysis treatment, caregiver, embarkation taxes and pocket money.

[10] The claimant further deposes that the defendant has the means of making such a payment, particularly since they have admitted that they have public liability insurance and is a company which has been engaged in contracting services for several years throughout the Caribbean.

[11] It is the submitted view of the claimant that the interim payment is more than a reasonable proportion of the likely amount of the final judgment in the matter, and that it would be unfair and unjust to delay his medical treatment until the final disposition of the matter.

[12] The defendant opposes the application and has submitted that the instant case is not one suitable for an order for interim payment.

The Principles Governing CPR 17.6: Interim payments – conditions to be satisfied and matters to be taken into account

[13] Pursuant to Rule 17.6 (1) of the CPR:

> "The court may make an order for an interim payment only if –
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> (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;
>
> (b) the claimant has obtained an order for an account to be taken as between the claimant and the defendant and for judgment for any amount certified due on taking the account;
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> (c) the claimant has obtained judgment against the defendant for damages to be assessed or for a sum of money (including costs) to be assessed;
>
> (d) (except where paragraph (3) applies), it is satisfied that, if the claim went to trial, the claimant would obtain judgment against the defendant from whom an

order for interim payment is sought for a substantial amount of money or for costs; …..".

[14] Instructive is Rule 17.6 (2) which states:

"In addition, in a claim for personal injuries the court may make an order for interim payment of damages only if the defendant is –

(a) a person whose means and resources are such as to enable that person to make an interim payment;

(b) insured in respect of the claim; or

(c) a public authority".

[15] It is also instructive to look at Rules 17.6 (4) and 17.6 (5). Rule 17.6 (4) provides that "the court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment", while 17.6 (5) provides that "the court must take into account – (a) contributory negligence (where applicable); and (b) any relevant set-off or counterclaim".

Claimant/Applicant's Submissions

[16] Learned Counsel Mrs. Dyer-Munro urged the court to grant the application for an interim payment and submitted that the relevant rules which the court should be guided by are Rule 17.6 (1)(d) and Rule 17.6 (2).

[17] It was further submitted by Learned Counsel that the court has a wide discretion in determining whether to make an interim payment order. To support this submission, learned Counsel cited paragraph 25.7.6 of The White Book, 2001, Civil Procedure, Volume 1, London Sweet & Maxwell which states "Whether or not an order is made is a matter of discretion. In the former RSC rules, it was said that the court could make an interim payment order "if it thinks fit" and the amount of the payment was expressed to be " of such amount as [the court] thinks just". Learned Counsel noted that it was these phrases which encouraged the courts to emphasise that the discretion is extremely wide and that no limitations on its exercise (over and above those imposed by the rules themselves) should be implied (Crimpfil Limited v Barclays Bank Plc, The Times, February 24, 1995, CA). Counsel also cited Schott Kem Limited v Bentley [1990] 3 WLR 397, CA, at 406 where it was held that it was not necessary for the claimant to satisfy the court of his need for an interim payment or that he will suffer prejudice if it is not granted.

[18] Learned Counsel noted that in determining and considering Rule 17.6 (1)(d), the court is empowered to "have regard to all the circumstances of the case, including the Statement of Case, any documents disclosed or exhibited and any other relevant material and any admission made by the defendants, and to determine on such material whether it is satisfied that the claimant will at trial obtain judgment for a substantial sum of money. The court must embark on a two stage process in considering this rule". Counsel further noted

that this principle which is encapsulated in Rule 25.7 (1)(c) of the United Kingdom Rules is pari materia to Rule 17.6 (1)(d) of the CPR 2000.

[19] In considering an application for interim payment, Learned Counsel in citing Schott Kem Limited v Bentley and Shanning International Limited v George Wimpey International Limited [1988] 1 WLR 981 as authorities, has submitted that the court should consider the application in two stages. Firstly, the court must be satisfied that if the action goes to trial that the claimant will obtain judgment for a substantial sum. Secondly, the court will then need to consider, given its discretion, whether to grant the interim payment. Learned Counsel has posited that at the first stage the claimant must satisfy the court on a balance of probabilities, but to a high standard, that he will obtain judgment for a substantial sum and that the court in this regard must consider the likelihood of a set-off or any other defence succeeding. The point was also noted that at the second stage, the Rules require that the court should take into account any set-off claimed by the defendant and any counterclaim.

[20] Learned Counsel has submitted that although the defendant has pleaded contributory negligence, no counterclaim has been filed. Learned Counsel has further submitted that the defendant has pleaded that they do not know how the accident happened as indicated in point (v) of the particulars of negligence which suggests the claimant "stumbling, slipping or over balancing in some manner unknown to the defendant, so as to fall and injure himself". It is submitted by learned Counsel that this lack of knowledge on the part of the defendant as to the cause of the accident should be into account by the court in determining whether the claimant will succeed at trial. Counsel has urged the court to find in favour of the claimant since the defendant's version of events indicate that they do not know how the accident happened.

[21] To further support her contention that the court should find in favour of the claimant, learned Counsel has highlighted the fact that there is a freezing order that the court has granted in the matter as well as a bond of $150,000.00 that has been entered into by the defendant. Counsel is of the view that the granting of the interim freezing order by the court establishes the fact that the claimant has a good arguable case. As a consequence, Counsel therefore submits that the court of necessity should be satisfied that if the claim went to trial the claimant would succeed.

[22] Learned Counsel in addressing the submissions of the defendant in opposition to the application for interim payment, noted that the defendant is relying on the case of Joseph Pinder v Trishell Wetherill HCVAP 2011/0041 and has misapplied the principle of law in that case in its submissions. Learned Counsel contends that in the case at Bar, unlike the Joseph Pinder v Trishell Wetherill case, there are no affidavits filed by the defendant that conflict with the claimant's version of events. In fact Counsel has argued that the defendant failed to comply with Rule 17.5 (5) of the CPR 2000.

[23] In her final submissions Learned Counsel addressed the import of two quotations cited by learned Counsel for the defendant in support of her opposition to the interim payment. The two quotations are as follows:

> "Further, the Schott Kem case is also authority for the principle that the interim payment procedure is not suited to cases of serious dispute on issues of fact or law. The version of events here are very much in conflict and gives rise to a situation which cannot be resolved in the absence of cross-examination at a trial as to liability and then further, as to the degree of liability" (Joseph Pinder v Trishell Wetherill HCVAP 2011/0041 – Hon. Janice M. Pereira JA as she then was).
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> "It is unlikely that the court will be able to predict the outcome of a trial where difficult or complex issue of fact or law arise. Applications for interim payment are therefore inappropriate in such cases, not least because they may require lengthy hearings" (Adrian Zuckerman – Civil Procedure, Lexis Nexis UK (2003) pg 347).

[24] Learned Counsel has noted that the facts in Schott Kem were complex as the claim was against several defendants for damages under various heads including conspiracy to defraud, breach of contract, misuse of confidential information and seeking an account of profits obtained from the diverted contracts. Learned Counsel has submitted however that despite these complex issue of law the interim payment was still allowed and simply reduced. In that regard Counsel posits, "It is clear therefore, that the law is not simply that where liability is not established and there is conflict of evidence that an interim order cannot be made outright. Such would be an affront to the underlying rationale of an interim payment which is to prevent hardship".

[25] Learned Counsel has submitted that in the case at Bar, the facts are not complicated nor do difficult questions of law arise. There is no affidavit evidence in reply showing any conflict or complex facts. It is a simple case of negligence and there is an admission by the defendant in its defence that it does not know how the accident occurred.

[26] Learned Counsel has submitted finally that the court in considering whether to grant the application has a discretion and must consider the overriding objective of CPR 2000. She noted further that the defendant has a duty to further the overriding objective under Rule 1 (3) of CPR 2000, and as such the defendant should not even have opposed the application for the interim payment for the claimant's operation which is long outstanding.

Respondent/Defendant's Submissions

[27] Learned Counsel Miss Colleen Felix submitted that on the 27th July, 2012 the defendant filed a defence wherein it denied liability wholly but saying in the alternative, if at all the claimant's injury did occur in the place and manner alleged, the accident was wholly caused by the claimant or partly, by his own negligence.

[28] Learned Counsel further submitted that on the 28th August, 2012 the claimant obtained an order freezing assets of the defendant valued in excess of EC$ 1.3 million, on the basis that he was informed that the defendant was leaving Dominica so he was fearful that he would not be able to realize the fruits of any judgment which may be given in his favour. Learned Counsel noted that on the 21st September, 2012 the defendant applied to the

court for an order that the injunction granted in favour of the claimant be varied or lifted. On the 3rd October, 2012 the order was varied by the court.

[29] Learned Counsel in her submissions has outlined Rule 17.5 of the CPR 2000 which sets out the procedure to be used in applying for an interim payment and Rule 17.6 which states the conditions that should be satisfied for such an application to be successful. Learned Counsel noted her opposition to the application and urged the court to dismiss it.

[30] In support of her contention to have the application for interim payment dismissed, learned Counsel cited as authority the case of Joseph Pinder v Trishell Wetherill HCVAP 2011/0041. In that case the Master Cheryl Mathurin made an order for interim payment pursuant to Rule 17.6 (1) (d) of the CPR which allows the court to make such an order if satisfied that if the matter went to trial the claimant would obtain judgment against the defendant from whom an order for interim payment is sought for a substantial amount of money of for costs.

[31] Learned Counsel has submitted that in the Joseph Pinder case there was no admission of liability and the versions of how the accident occurred were at considerable variance. The parties' affidavits conflicted on many matters ranging from how the accident occurred and the cause thereof to the conversations allegedly between the parties or witnesses for the parties. The issue of contributory negligence was also raised.

[32] The learned Justice of Appeal in the Joseph Pinder case held that the case was not one suitable for the application of the interim payment procedure and the learned Master erred in principle in ordering interim payment in the circumstances. The Court of Appeal therefore set aside the order of the Master.

[33] In further support of her contention that the interim payment application should not be granted, learned Counsel cited the learning from the learned author Adrien Zuckerman which I quoted earlier, that underscored the point that the court should not grant applications for interim payments where there are complex issues of fact or law which would require lengthy hearings. Learned Counsel also cited Blackstone Civil Procedure, 2011 Edition, Pg. 473, where the learned authors stated:

> "Establishing a claim that will succeed for the purposes of an interim payment requires cogent evidence of the circumstances of the case. It is similar to finding that the respondent's case has no real prospect of success for the purpose of summary judgment. From the point of view of the entire case, the interim payment test is more stringent than that for summary judgment".

[34] With respect to the general procedure that should be followed regarding interim payments, learned Counsel has submitted that the application is not in compliance with Rule 17.5 (3) (a) as it was served on 3rd December, 2012 eight (8) days before the date of the hearing. The rule mandates that the application is served at least fourteen (14) days before. Counsel also noted that the affidavit in support of the application does not comply with Rule 17.5 (4) (c), since the applicant does not state an assessment of the amount of damages or other monetary judgment that are likely to be awarded.

[35] Learned Counsel urged the court, in the case at Bar, to take guidance from Neill L.J. who wrote the judgment in the Schott Kem Court of Appeal case which dealt with an application for interim payment. The instructive pronouncements from the judgment cited by Counsel relate to the approach that the court should adopt in determining whether to grant an interim payment application. Before granting such an application the court firstly has to be satisfied:

> "that if the action proceeded to trial, the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages for costs",
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> and in order for the court to be satisfied that the plaintiff would obtain judgment
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> "something more than a prima facie case is clearly required, but not proof beyond a reasonable doubt. The burden is high. But it is a civil burden on the balance of probabilities, not a criminal burden".

[36] Learned Counsel has submitted that the applicant does not satisfy any of the conditions set out in Rule 17.6 of the CPR, in that, the defendant/respondent has not admitted liability; the claimant has not obtained any such order for account; the claimant has not obtained judgment against the defendant for damages to be assessed or for a sum of money (including costs) to be assessed.

[37] With respect to Rule 17.6 (1) (d), which is the condition upon which the present application turns, learned Counsel has urged the court to consider the cases and learning cited in her submissions. In particular Counsel has submitted that this matter is similar to the case of Joseph Pinder v Trishell Wetherill. In that case the version of events of both sides were very conflicting and Counsel is contending that the present case is similar with the claimant alleging that he sustained injury while walking on a walkway built by the defendant, and the defendant alleging that there is absolutely no way the incident could have taken place on their walkway or in the vicinity of their works.

[38] Learned Counsel has submitted that this matter is strictly a contest of facts, on the test of credibility of the witnesses, which must be assessed at trial and is therefore not one suitable for an order for interim payment.

Court's Analysis and Conclusion

[39] This is an application for an interim payment arising out of a personal injury. Rule 17.6 (1) outlines the conditions to be satisfied for such an application. Clearly, the application has to be considered pursuant to Rule 17.6 (1) (d) since Rule 17.6 (1) (a), (b) or (c) does not apply.

[40] The court has reviewed the submissions of both learned Counsel and has perused the pleadings together with all the documentary evidence that have been submitted in this matter.

[41] The critical aspect of this application is the determination pursuant to Rule 17.6 (1) (d) as to whether the claimant would obtain judgment for a substantial sum of money if the claim went to trial. In order to do this the court has to look at all the pleadings and be satisfied that on a balance of probabilities, albeit at the higher end, that the claimant would obtain judgment against the defendant.

[42] In the affidavit of Odel Williams filed on 14th January, 2013 in opposition to the application for interim payment, no evidence whatsoever is presented to support the defendant's case as to how the accident happened. All that is stated by Mr. Williams is that there is a claim for negligence and compensation for special and general damages, a claim which the defendant vehemently opposes and giving a completely different version of the facts.

[43] In the defence filed on 27th July, 2012, the defendant stated quite emphatically that the claimant did not fall on the walkway or footpath which they constructed, but that the claimant fell even before he made his way unto the said walkway/footpath. Also, the defendant said that the claimant did not fall into a "hole" as there were no such "holes" on or along the walkway. Notwithstanding these denials by the defendant, the defendant goes on to characterize the accident as one where the claimant stumbled, slipped or over balanced in some manner unknown to them so as to fall and injure himself. This admission by the defendant is quite startling and certainly at trial would undermine their case.

[44] On 13th August, 2012 the claimant filed a reply to the defence of the defendant. In his reply the claimant denies every particular of the defendant's defence. Moreover, the claimant stated that when he fell through the walkway/footpath into a hole he was unable to get up out of the hole and was assisted by persons who were servants/agents of the defendant to get up to be taken to the Princess Margaret Hospital. He further stated that because of the condition of the road the bus which transported him to the hospital had to turn first before heading north to the hospital and on the way back passing the site of the accident, he and others saw servants or agents of the defendant filling the hole through which he had fallen.

[45] I find the account of the accident by the claimant credible and persuasive and more consistent with truth and reality than what is presented in either the defence or the affidavit of Mr. Odel Williams. Clearly, one would not expect someone with a fractured hip to get up and and climb out of a hole. As the claimant stated, he was assisted by servants or agents of the defendant to get out of the hole, so I would have thought that the defendant would at least have used one of his servants or agents to present affidavit evidence as to the circumstances surrounding the accident. This was not done and no evidence was presented in opposition to the application for interim payment by the claimant other than a blanket denial by the defendant.

[46] In her submissions learned Counsel for the defendant argued that the case at Bar is very similar to the Joseph Pinder case, in that, the facts presented by both sides were diametrically opposed and therefore an interim payment should not be granted prior to the determination of the matter at trial. I do not accept this submission since in the instant case, the defendant has not proffered any evidence whatsoever to challenge the version of events put forward by the claimant.

[47] Learned Counsel for the defendant when citing the Schott Kem case, urged the court to take guidance from Neill L.J. and the pronouncements he made in that case. Neill L.J. stated:

> Furthermore, even where conditional leave to defend is given under Ord 14 the court may nevertheless order an interim payment in an appropriate case. Thus in British and Commonwealth Holdings Plc v Quadrex Holdings Inc [1989] QB, 842, 866D Sir Nicholas Browne-Wilkinson V-C put the matter as follows:
>
> > "in cases where on the evidence then before it, the court entertains sufficient doubts as to the genuineness of the defence to give only conditional leave to defend, it is possible for a court to be satisfied that the plaintiff will succeed at trial. Although in such a case it does not automatically follow that it is appropriate to make an order for interim payment, if in all the circumstances such payment appears sensible and desirable, in my judgment it can be ordered".
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> While learned Counsel for the defendant included the foregoing quotation in her submissions, I do not think that it lends support to her case. If anything, it provides a rationale why the interim payment application of the claimant should be granted given all the circumstances.

[48] Learned Counsel for the defendant has submitted that the application for interim payment is not in compliance with Rule 17.5 (3) (a) and Rule 17.5 (4) (c) of the CPR. With respect to Rule 17.5 (3) (a), Counsel argues that the application was served on 3rd December, 2012 eight (8) days before the date of the hearing when the rule requires the application to be served fourteen (14) days before. In the case of Rule 17.5 (4) (c), Counsel noted that no assessment of the amount of damages likely to be awarded was provided. I should indicate here, though, that in an affidavit filed on 16 August, 2012 in support of an ex parte application for a freezing order, the claimant indicated that he was expecting no less than $100,000.00 in damages if his claim was successful. I should also note that despite the observation of these non-compliance by learned Counsel, there was no request that the application should be denied as a result.

[49] The non-compliance of the claimant with Rule 17.5 (3) (a) appears to have resulted from an error made by the court at a case management hearing. On 21st November, 2012 when the matter came up for hearing before Master Agnes Actie, she granted leave for the application to be filed and served on or before 3rd December, 2012. The matter was then adjourned to 12th December, 2012. At the hearing on 12th December, 2012 the application for interim payment was adjourned to 23rd January, 2013. On 23rd January, 2013 the matter came before me and by consent the parties agreed to file and serve submissions in respect of the application for interim payment on or before 28th February, 2013. The matter was then adjourned to 11th March, 2013.

[50] While there was non-compliance with Rule 17.5 (4) (c), I do not believe that this should be fatal to the application when taken against the totality of the circumstances of the case. Learned Counsel for the claimant in her submissions has urged the court to be mindful of the overriding objective of the Rules. In fact Rule 1.2 of the CPR stipulates that the court

must seek to give effect to the overriding objective when it exercises any discretion given to it by the Rules, or when it interprets any rule. Further, the amendment to Rule 17.3 – How to apply for interim remedy, states:

> "Where, in support of any application under this Rule, it is not practicable to produce evidence on affidavit then the application may be supported by evidence given by witness statement and, in such event, the court may at any time give such directions as it thinks fit in relation to the filing, in due course, of evidence by affidavit".

In applying the overriding objective of the Rules to the case at Bar and taking cognizance of the amendment to Rule 17.3, I would not deny the application for interim payment.

[51] The rules require that the court must be satisfied that if the claim went to trial that the claimant would succeed in obtaining judgment for a substantial sum. The quantum awarded to the claimant for interim payment must not be more than a reasonable proportion of the likely final judgment as required by Rule 17.6 (4). Also, in determining the interim payment award, the court must take into account contributory negligence and any relevant set-off or counterclaim as required by Rule 17.6 (5). In looking at the pleadings the issue of set-off does not arise in the case at Bar, and although the defendant raised the issue of contributory negligence in his defence no counterclaim has been filed.

[52] Before granting an application for an interim payment, the court must also be guided by Rule 17.6 (2) which require that the application should only be ordered where the defendant is a person whose means and resources would enable such payment to be made, the defendant has insurance in respect of the claim or the defendant is a public authority. In the case at Bar, the defendant certainly has the resources and means to be able to make the interim payment, coupled with the fact that they also have public liability insurance and a bond in the amount of $150,000.00.

[53] It is my view that the claimant has satisfied the threshold required by Rule 17.6 (1) (d) of the CPR. In addition, I am convinced that the defendant is in a position to make the interim payment.

[54] Having decided that the claimant would obtain judgment against the defendant for substantial damages, the court still has the discretion whether to grant the application. In exercising this discretion, I cannot think of a case which is more suitable for the application of the interim payment procedure than the case at Bar and to borrow the words of Sir Nicholas Browne-Wilkinson V-C in the British Commonwealth Holdings Plc v Quadrex Holdings Inc case, "in all the circumstances such payment appears sensible and desirable".

[55] In the premises, the claimant's application for interim payment is granted.

Conclusion

[56] For the foregoing reasons the order of the court is as follows:

(1) The application for an interim payment by the claimant to the defendant in the amount of $50,000.00 is hereby granted.
(2) The interim payment should be paid to the claimant within three (3) weeks of today's date.
(3) Costs in the cause.

[57] The court wishes to acknowledge the assistance of learned Counsel on each side.

Charlesworth Tabor
Master (Ag.)