

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

SAINT LUCIA

CLAIM NO. SLUHCV2008/0574

BETWEEN:

QUALITY MOTORS LIMITED

Claimant

And

- 1. CLARKE INVESTMENTS LIMITED**
- 2. HUNTER JOSEPH FRANCOIS**
- 3. BLUE ROCK QUARRIES LIMITED**

Defendants

Appearances:

Mr. Alvin St. Clair with Ms. Lorraine Jolie for Claimant
Mr. Peter Foster with Ms. Renee St. Rose for 1st named Defendant
No appearance for 2nd named Defendant
Mr. Geoffrey DuBoulay for 3rd named Defendant

2009: March 01;
October 1,13.

DECISION

[1] **GEORGES, J (Ag.):** This is a With Notice application filed by the claimant on 13th June 2008 for an interim order pursuant to CPR 17.1 (1) (e) and (j) that:

- (i) the First and Third defendants (the defendants) do provide information regarding their assets; and
- (ii) the defendants be restrained from dealing with all monies made from the blasting excavation and processing of material from the area known as the rock until further order of the Court.

[2] The evidence at paragraphs 4 5 and 7 of the supporting affidavit of the claimant's Managing Director Goddard Darcheville states:

4. *"I did cause certain searches to be made and have found that the First and Third Named Defendants are paper companies having and owning absolutely no assets."*
5. *"The monies being made by the blasting excavation and processing of material from the area which is clearly beyond the Quarry and which this court has allowed the defendants access to are being dissipated."*
7. *"This is a matter of urgency as the defendants are making haste to deplete the area so that by the time the trial is done they would have completed their mission and would not be in a position to compensate the Claimant should the court find against them."*

[3] The questions which arise are:

- (i) Does the evidence of the claimant/applicant support the application for an order that the defendants provide information about their assets having particular regard to CPR 17.1 (1) (e)?
- (ii) Has the claimant met the requirements necessary for a grant of a freezing order?
- (iii) Is there a risk that the defendants will dissipate their assets?

[4] Firstly CPR 17.1 (1) (e) states that:

The court may grant interim remedies including an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order.

Secondly CPR 17.1 (2) provides that in paragraph (1) (e) "relevant property" means property which is the subject of a claim or in relation to which any question may arise on a claim.

- [5] The property which the claimant refers to – money derived from the operations of the quarry are not the subject of any claim especially Claim No. SLUHCV2008/0574 as there is no claim filed in this suit but only two applications. The only claim filed in respect of the quarry is Claim No. SLUHCV2008/0261/0262.
- [6] CPR 17.2 (1) (b) provides that an order for an interim remedy may be made at any time including before a claim has been made. No claim has been made in Claim No. SLUHCV2008/0574.
- [7] Thirdly CPR 17.2 (5) provides that if the court grants an interim remedy before a claim has been issued it must require an undertaking from the claimant to issue and serve a claim form by a specified date. The affidavit of Goddard Darcheville gives no such undertaking. And even if the claimant were to give such an undertaking the issuing of two claims (SLUHCV2008/0574 and SLUHCV2008/0262/0261) would be a clear abuse of the Court process by the claimant. The defendants would in effect have to defend two claims for substantially the same cause of action and the same remedy.
- [8] In short the claimant's application cannot be said to fall within the definition of "relevant property" under CPR 17.1 (2) and the claimant cannot therefore be granted disclosure of "relevant property".
- [9] As learned Counsel for the first defendant pointed out referring to the decision of Gabriel Moss QC sitting as a deputy High Court Judge in *Parker v C S Structured Credit Fund Ltd* and another [2003] EWHC 391 (Ch) [2003] 1WLR:

There is no free-standing jurisdiction under CPR 25.1 (1) (q) (the English equivalent of CPR 17.2 (5)) to order disclosure of information which may in a remote sense be relevant to a possible application for a freezing injunction.

- [10] Counsel for the claimant submitted that this application must be looked at together with Claim No. SLUHCV2008/0262/0261. There has been no consolidation of 2008/0574 – no claim has been filed but only two applications. As stated at paragraph 3 the property which the claimant refers to viz **money derived from the operations of the quarry** is not the subject of any claim and in particular Claim No. SLUHCV2008/0574.
- [11] I now turn to the claimant's application for a freezing order in respect of monies made by the defendants from its mining operations of the rock platform. As enunciated by learned Counsel for the claimant the circumstances in which the court can grant a freezing order are well established. As Saunders J stated ... the claimant must show (1) that it has a good arguable claim against the defendant and (2) that there is a real risk that if the order is not granted any judgment (or award) will remain unsatisfied because the defendant has dissipated its assets. The third requirement to be satisfied before the court will grant the order is that it is just and convenient in all the circumstances of the case that the order should be granted.
- [12] The gravamen of the claimant's case as I see it is that in the light of the order of Mason J on 14th July 2008 (in Claim No SLUHCV2008/0261 AND 0262) allowing the defendants to mine the rock platform which is an area in excess of the 4 acre area any profits as opposed to gross profits made from this operation should not be left to the defendants to dissipate and utilize but rather should be kept in an account on escrow and preserved pending the decision of the court after the trial.
- [13] The claimant applied for a freezing order restraining the respondent from dealing with monies derived from the quarrying operations. In his affidavit, Goddard Darcheville has given no evidence for his belief in the "danger/risk that the assets of the defendants are being removed before the judgment or award is satisfied". In his affidavit he simply states

at paragraph 5 that "the monies being made by the blasting excavation and processing of material...are being dissipated". He asserts no factual basis for his belief. It is tantamount to pure speculation in my view.

- [14] In enunciating his guidelines for the grant of Mareva injunctions **Denning MR** stated in **Third Chandris Shipping v Unimarine [1979] 2 All ER 972 at 985** that *"the plaintiff should give some grounds for believing that there is a risk of the assets being removed before the judgment award is satisfied."* And Lawton LJ had this to say at QB 645:

"In my judgment an affidavit in support of a Mareva Injunction should give enough particulars of the plaintiff's case to enable the court to assess its strength and should set out what inquiries have been made about the defendant's business and what information has been revealed including that relating to its size origins business domicile the location of its known assets and the circumstance in which the dispute has arisen."

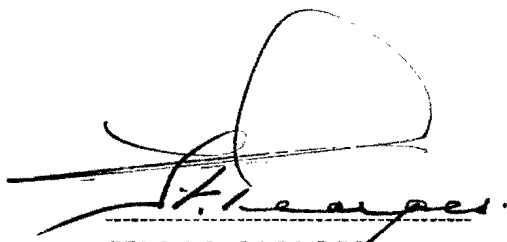
- [15] This principle was further re-iterated expanded and further elucidated by **Sir Robert Megarry V-C** in **Barclay – Johnson v Yuill [1980] 3 All ER 190 at 194 d to e**: *"It seems to me that at the heart and core of the Mareva Injunction is the risk of the defendant removing his assets from the jurisdiction and so stultifying any judgment given by the courts in the action. If there is no real risk of this such an injunction should be refused...If the assets are likely to remain in the jurisdiction then the plaintiff like all others with claims against the defendant must run the risk common to all that the defendant may dissipate its assets or consume them in discharging other liabilities and so leave nothing with which to satisfy any judgment."*

- [16] To order that all revenue derived by the defendants from its quarrying operations be paid into court would inevitably in my view halt operations at the Quarry as no income would be available for operational expenses and costs. On that account alone this application should be refused bearing in mind its domino effect on the wider economic front. In my

judgment it would manifestly not be just and convenient in all the circumstances that the order sought should be granted. And I so order. Application is refused.

[17] Costs to the defendants (Nos 1 and 3) to be assessed in accordance with CPR 65.12 (1).

[18] I am deeply indebted to Counsel on both sides for their most helpful submissions.



EPHRAIM GEORGES
HIGH COURT JUDGE (Ag.)