[2015] JMSC Civ 151

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO 2015HCV02107

BETWEEN	**NORTH AMERICAN HOLDINGS COMPANY LTD**	**CLAIMANT**
AND	**ANDROCLES LIMITED**	**DEFENDANT**

IN CHAMBERS

Christopher Dunkley and Jahyudah Barrett instructed by Vivette Miller of Crafton S Miller and Co for the claimant

Nigel Jones and Kashina Moore instructed by Nigel Jones and Company for the defendant

July 1, 8, 20 and 22, 2015

FREEZING ORDER – MATERIAL NON-DISCLOSURE – DISCHARGE OF FREEZING ORDER – CLAIMANT HAS UNSATISFIED DEBTS – UNDERTAKING AS TO DAMAGES

SYKES J

[1] A freezing order was granted ex parte by Christine McDonald J on April 21, 2015 restraining the defendant, Androcles Limited ('Androcles'), from parting with monies up to the sums of JA$9,750,000.00 and US$70,000.00 that came into its possession arising from a sale of property. At this inter partes hearing Androcles has opposed the extension of the freezing order on three grounds. These are (a) material non-disclosure; (b) no evidence that defendant intends to move assets outside of Jamaica and (c) no evidence that the claimant can meet the undertaking as to damages if required. Androcles has succeeded on all grounds. These are the reasons.

The allegations

[2] In very succinct terms the claimant, North American Holdings Company Ltd ('North American'), alleges that it is entitled to a refund of a deposit from Androcles because a proposed sale of land fell through. North American had paid a deposit pursuant to an agreement for sale under which it was to purchase the property from Androcles. Androcles, it is said, promised to repay the deposit from the proceeds of sale in the event that the property was sold. The property has now been sold. Androcles is in receipt of the sale price and has not repaid the deposit. The claimant then went and secured a without notice freezing order compelling the defendant to hold for the claimant the sums of money it claims to be entitled to. Having regard to the decision of the court there is no need to address the merits of the claim.

[3] Mr Dunkley sought to say that the court ought to look at the conduct of the defendant in the matter and take that into account when deciding whether the order should be extended. The court declines the invitation. Instead the court will focus on the duty of an applicant for a without notice order and what the law says about such applications. The court will now address the first of the three complaints made by the defendant.

Material non-disclosure

[4] It is well established that an applicant who makes an ex parte or without notice application is under a very onerous duty to make full and frank disclosure to the court of all material facts. Material facts are those that affect or may affect how the discretion to grant or not to grant the freezing order is exercised. Material facts include the claimant's case and any fact the defendant could urge had he been present at the hearing. The nature of this duty is so great that the law requires the applicant to make all reasonable enquiries so that he is fully informed as circumstances allow about his claim before the application is made or heard so that the applicant is in a position to advise the court of all relevant matters, particularly those matters which the defendant could have raised had he been told about the application and was present. The reason for this is that a without notice application is prima facie a breach of natural justice which requires that a person be heard or be presented with the opportunity to make representations before an order is made, especially an adverse order. This is true of all without notice applications. Of course there are some without notice applications where the full rigour of the rule is mitigated to some extent. An example is an application made by a law enforcement agency to enforce a statute.

[5] In private law litigation, the cases do indicate that the rule is applied with full strictness the vast majority of the time despite the recognition by Lord Denning in **Bank Mellat v Nikpour** [1985] FSR 87, 90 that *'[t]here may sometimes be a slip or mistake--in the application for a Mareva injunction--which can be rectified later. It is not for every omission that the injunction will be automatically discharged. A locus poenitentiae may sometimes be afforded.' This was said in response to the submission of counsel for the claimant that the non-disclosure was innocent and 'there was no fraud or deception or anything like that*' (page 90). His Lordship had stated earlier at page 89:

> *I would like to repeat what has been said on many occasions. When an ex parte application is made for a Mareva injunction, it is of the first importance that the plaintiff should make full and frank disclosure of all material facts. He ought to state the nature of the case and his cause of action. Equally, in fairness to the defendant, the plaintiff ought to disclose, so far as he is able, any defence which the defendant has indicated in correspondence or elsewhere. It is only if such information is put fairly before the court that a Mareva injunction can properly be granted.*

[6] The court is aware of Slade LJ's concern about using non-disclosure as a way of getting out from under a freezing order when, on the merits, the affected party would not have been able to escape the crippling effects of the freezing order (**Brink's Mat Ltd v Elcombe and others** [1988] 1 WLR 1350, 1359: '*In one or two other recent cases coming before this court, I have suspected signs of a growing tendency on the part of some litigants against whom ex parte injunctions have been granted, or of their legal advisers, to rush to the Rex v. Kensington Income Tax Commissioners [1917] 1 K.B. 486 principle as a tabula in naufragio, alleging material non-disclosure on sometimes rather slender grounds, as representing substantially the only hope of obtaining the discharge of injunctions in cases where there is little hope of doing so on the substantial merits of the case or on the balance of convenience*'). This warning should not undercut the high duty of candour on an ex parte application.

[7] Even Slade LJ in **Bank Mellat** had this to say at pages 92 – 93:

> *Mr. Strauss referred us to an Australian*

decision in Thomas A. Edison Ltd. v Bullock (15) C.L.R. 679. There Isaacs J. referred to the duty on any party seeking an ex parte interlocutory injunction in the following terms at page 681:

"There is a primary precept governing the administration of justice, that no man is to be condemned unheard; and therefore, as a general rule, no order should be made to the prejudice of a party unless he has the opportunity of being heard in defence. But instances occur where justice could not be done unless the subject matter of the suit were preserved, and, if that is in danger of destruction by one party, or if irremediable or serious damage be imminent, the other may come to the court, and ask for its interposition even in the absence of his opponent, on the ground that delay would involve greater injustice than instant action. But, when he does so, and the court is asked to disregard the usual requirement of hearing the other side, the party moving incurs a most serious responsibility."

This statement seems to me to set out the relevant principles clearly and correctly. I think it is of the utmost importance that on any ex parte application for an interim injunction the applicant should recognise his responsibility to

present his case fully and fairly to the court and that he should support it by evidence showing the principal material facts upon which he relies. Most particularly, I think that this duty falls on an applicant seeking a Mareva injunction which, if granted, may have drastic consequences for a defendant, by freezing assets in this country which are not necessarily even the subject matter of the action.

I appreciate that, in some circumstances, the urgency of a particular case may make it necessary for a party or his legal advisers to apply on evidence which is in a less tidy or complete form than they or the court would have preferred. In some cases of extreme urgency, it may even be necessary for counsel to apply to the court supporting his application by merely an oral statement of facts, coupled with an undertaking that those facts will be subsequently embodied in an affidavit. Nevertheless, no amount of urgency or practical difficulties can, in my judgment, justify the making of a Mareva application unless the applicants have first made serious attempts to ascertain the relevant cause of action and to identify for the benefit of the court the principal facts that will be relied on in support of that cause of action. Throughout this judgment, in referring to "the applicants," I intend also to include their legal advisers where the context makes this appropriate. Unless the applicants

> *in any given Mareva application have directed their minds to the nature of the cause of action, they are not in a position to present a proper application to the court, because they are not in a position to identify the relevant facts. Furthermore I think that, as is well established by authority, it is their duty on any such application to state any defence which they anticipate will be relied upon by the other side.*

[8] Donaldson J stated at page 92:

> *The rule requiring full disclosure seems to me to be one of the most fundamental importance, particularly in the context of the draconian remedy of the Mareva injunction. It is in effect, together with the Anton Piller order, one of the law's two "nuclear" weapons. If access to such a weapon is obtained without the fullest and frankest disclosure, I have no doubt at all that it should be revoked.*

[9] In the **Bank Mellat** case the problem for the claimant was that it had not disclosed the nature of the defendant's possible defence to the action despite the fact that this was known to the claimant before the application was made. To put it another way, the claimant failed to advocate on behalf of the defendant when it knew what defence the defendant may have relied on had it been present. In those circumstances all three judges were firmly of the view that no concession would be granted to the claimant. In addition, the claimant had difficulty in formulating its cause of action.

[10] In the context of a freezing order the need for candour is obvious. It was stated by Mustill J in **Third Chandris Shipping Corporation v Unimarine SA** [1979] QB 645, 653:

> *The whole point of the Mareva jurisdiction is that the plaintiff proceeds by stealth, so as to pre-empt any action by the defendant to remove his assets from the jurisdiction [or dissipate them with a view to avoiding any judgment]. This entails that the defendant finds that his bank account has been blocked before he has any idea of what is going to happen. This may have extremely serious consequences. Cheques or bills drawn on the account may be presented at a time when adequate funds are available to meet them, and may yet be dishonoured because the injunction inhibits the bank in making payment. Moreover the very secrecy of the procedure deprives the defendant of the opportunity to make a timely alternative arrangement for presentment or payment abroad. The dishonour of the defendants' paper may have disastrous consequences; and all this in a situation where the plaintiff has shown no more than an arguable case. An undertaking by the plaintiff for damages may not always be a sufficient indemnity for the loss the defendant may suffer. Again the blocking of an account may have very serious consequences for a*

defendant who is dependent on cash flow for his commercial survival.

[11] Experience has taught the courts that the most effective way of policing this duty is to discharge the order without regard to the merits of the case. It has also been recognised that in some instances the order may be re-imposed on different terms than were originally the case.

[12] Not only must the applicant make the appropriate enquiries but he must bring to the attention of the judge during the application all reasonable points that can be made in the defendants favour. In other words the applicant wears two hats – one for himself and the other for the defendant. To carry out this role, the applicant must place himself in the seat, shoes, clothes or under the cap of the defendant and ask, 'What points might the defendant make had he been present?' The applicant is, in practical terms, an 'advocate' for the absent defendant. Clearly, the applicant's interest do not coincide with that of the defendant and so there may a reluctance to undertake the task of making points in favour of the defendant but that is what the law requires and it must be strictly observed by the applicant and enforced by the court.

[13] There is an additional point. It is not sufficient for an applicant to place material before the court and then say, 'The judge granted the order on the material presented.' The applicant must bring home to the judge in clear and unmistakable language not only the facts on which he relies but also the implication of those facts, especially if they tell in favour of the defendant. For example, a claimant who has significant debt that may affect his ability to meet any undertaking as to damages cannot just say, 'I am debt' but should say, 'The debt is equal to the full value of all my assets' if that is the case.

[14] The applicant must point out in the material presented to the judge the crucial things for the judge to be aware of. The judge is not to be left to wade through

material unaided. The applicant must be the guide. At the end of the day the judge must be left with a clear and unambiguous understanding of the applicant's case, the basis for the application, what factors are in favour of the applicant, what things are against the applicant and what points are in favour of the defendant. The implications of the points raised must be brought home to the judge. For example, it is one thing for a claimant to say that the defendant owes me JA$10m but quite another to say the defendant owed me JA$50m of which he has paid JA$40m and he has promised to pay the rest in three months. The context must always be laid bare and made plain.

[15] In this particular case, the court observes that an ex parte injunction was granted by Christine McDonald J. At the time of the application before her Ladyship it was supported by an affidavit dated April 21, 2015. There is no mention, in the affidavit, of the fact (it is not clear whether her Ladyship was told this during the application) that on April 14, 2015, Pusey J had refused the injunction when it came before him on a without notice application. The minute of order of Pusey J noted the actual reason for the refusal. It reads, 'Affidavit filed April 14, 2015 does not indicate the urgency to support the application.' In other words, Pusey J was saying that there was nothing to justify an ex parte application against any of the defendants. This, quite likely explains why the very next day, Stamp J's (Ag) minute order states ''application in respect to (sic) the 1st defendant is short served no (sic) heard.'. The implication of this is that in all probability the two prior judges felt it desirable that the matter be heard inter partes.

[16] In light of this note in the minute of order it does seem odd that the matter should have been presented to Christine McDonald J as if it were a true ex parte application when the record shows that the reason it was not heard, inter partes, by Stamp J (Ag) on April 15, 2015, at least in respect of Androcles was that it was short served. There is nothing in the April 21, 2015 affidavit to show that these matters were brought to the attention of her Ladyship. It cannot be argued,

realistically, that these developments were immaterial. These are observations made by the court. The defendant did not rely on these omissions and so the court will not use them against the claimant.

[17] There are two other bases for the discharge on the ground of material non-disclosure. The first is that there is evidence that the judge granting the without notice order was not told that Androcles' defence was that it was the claimant which owed money and not the other way round. The claimant not only knew the defence of Androcles but also the reason for Androcles' allegation that it was owed money.

[18] It is now common knowledge that before the application was made before Christine McDonald J, North American knew that Androcles was saying that it was owed for building plans which North American had received. It was known that the price of those plans was said to be JA$35m. Androcles' case was that since it was not paid the money for the plans then, inferentially, it could keep the deposit. As will be seen from the cases below, this non-disclosure is sufficient to discharge the freezing order.

[19] The second is the worth of the undertaking as to damages. The claimant gave an undertaking to the court that it would abide any order as to damages made should it turn out that the injunction ought not to have been granted. This is the third ground (identified in paragraph 1 above) argued by the defendant but the court is of the view that it is better dealt with as a non-disclosure issue.

[20] Androcles has pointed out that the claimant did not bring home to Christine McDonald J that serious questions arose regarding this undertaking because of the significant indebtedness of the applicant. For example, one property which the applicant owns is charged with a number of provisional charging orders arising from default costs certificate. These certificates are in excess of JA$20m. If the applicant cannot meet costs of previous litigation without the beneficiaries of those costs orders having to take enforcement action what confidence can

there be that it can meet any order as to damages under this undertaking given in order to secure the freezing order? It was Lord Denning who said in **Third Chandris** that in a suitable case the undertaking should be supported by a bond or security. Had the true financial position of the claimant been brought home to the judge undoubtedly her Ladyship would have applied or considered Lord Denning's dictum. It was the defendant who brought the claimant's true financial difficulties to the fore at this inter partes hearing. There is no question that this is a very, very serious material non-disclosure.

[21] Mangatal JA (Ag) in **TPL Limited v Thermo-Plastics (Jamaica) Limited** [2014] JMCA Civ 50 at paragraph 67 indicated that the proper and usual practice is and has been 'to require evidence of willingness and ability to provide an undertaking as to damages.' Now that the challenge has been made as to its ability to meet the undertaking, North American has not produced any material to suggest that it is really in a position to do so. This position, apparently, is not new but was known to the applicant at the time of the application before Christine McDonald J and her Ladyship was not told of the significant encumbrances on its property or properties. Her Ladyship should have been told in plain terms that the claimant has unsatisfied debts which might affect its ability to meet any damages arising from the undertaking and that creditors had taken steps to charge one property with the outstanding debts. This reason alone is one for which the injunction must be discharged. When taken along with the previous non-disclosure point made earlier (Androcles defence), the question of regranting the freezing order on different terms does not even arise for consideration. This is not one of those cases where the court can exercise some degree of benevolence.

[22] This court agrees with the position taken in **R v Kensington Commissioners** [1917] 1 KB 486 by Lord Cozens Hardy MR when he said at page 504 – 506 (citing previous cases as well):

It is not necessary for me to decide, and I do not propose to decide, whether the evidence sufficed to prove that she was a resident there or not, but it was a matter which was material for the consideration of the Court, whatever view the Court might have taken. It is a case in which it seems to me there was plainly a suppression of what was material, and we cannot be too strict in regard to that which to the best of my belief has been a long established rule of the Court in applications of this nature and has been recognized as the rule. The authorities in the books are so strong and so numerous that I only propose to mention one which has been referred to here, a case of high authority, Dalglish v. Jarvie, which was decided by Lord Langdale and Rolfe B. The head-note, which I think states the rule quite accurately, is this: "It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward." Then there is an observation in the course of the argument by Lord Langdale: "It is quite clear that every fact must be stated, or, even if there is evidence enough to sustain the injunction, it will be dissolved." That is to say he would not decide upon the merits, but said that if an applicant

does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted, but that he must come again on a fresh application. Then there is a passage in Lord Langdale's judgment which is referred to in the head-note. It is this: "There is, therefore, a question of law, whether having regard to the facts thus appearing, the plaintiffs are entitled to the protection they ask; and there is also a question of practice, whether the facts stated in the answer being material to the determination of the question, and being within the knowledge of the plaintiffs by whom the case was brought forward, and who obtained an ex parte injunction upon their own statement, whether the omission of the statement of these facts in the bill does not constitute a reason why the ex parte injunction so obtained should be dissolved." They held that the injunction ought not to be granted although there might be materials apart from this question upon which the injunction might have been granted. Rolfe B. says this: "I have nothing to add to what Lord Langdale has said upon the general merits of the case; but upon one point it seems to me proper to add thus much, namely, that the application for a special injunction is very much governed by the same principles which govern insurances, matters which are said to

require the utmost degree of good faith, 'uberrima fides.' In cases of insurance a party is required not only to state all matters within his knowledge, which he believes to be material to the question of the insurance, but all which in point of fact are so. If he conceals anything that he knows to be material it is a fraud; but, besides that, if he conceals anything that may influence the rate of premium which the underwriter may require, although he does not know that it would have that effect, such concealment entirely vitiates the policy. So here, if the party applying for a special injunction, abstains from stating facts which the Court thinks are most material to enable it to form its judgment, he disentitles himself to that relief which he asks the Court to grant. I think, therefore, that the injunction must fall to the ground." That is merely one and perhaps rather a weighty authority in favour of the general proposition which I think has been established, that on an ex parte application uberrima fides is required, and unless that can be established, if there is anything like deception practised on the Court, the Court ought not to go into the merits of the case, but simply say "We will not listen to your application because of what you have done."

Then it is said that that rule may be true in cases of injunctions where there is an

immediate order granted, which order can be discharged, but that it has no reference at all to a case like a rule nisi for a writ of prohibition, which is nothing more than a notice to the other side that they may attend and explain the matters to the Court. To so hold would, I think, be to narrow the general rule, which is certainly not limited to cases where an injunction has been granted. It has been applied by this Court, and certainly by the Courts below, to an application for leave to serve a writ out of the jurisdiction. If you make a statement which is false or conceal something which is relevant from the Court, the Court will discharge the order and say "You can come again if you like, but we will discharge this order, and we will apply the general rule of the Court to applications like this." There are many cases in which the same principle would apply. Then it is said "That is so unfair; you are depriving us of our right to a prohibition on the ground of concealment or misstatement in the affidavit." The answer is that the prerogative writ is not a matter of course. The applicant must come in the manner prescribed and must be perfectly frank and open with the Court.

[23] As can be seen from this passage it does not matter what the ex parte application is, the high duty of candour is imposed. The passage is a clear indication of how seriously the courts have taken this duty of candour. The Master of the Rolls is equating the duty of candour on an ex parte application

with a contract of insurance. It is well known that an insurance contract (a contract of the utmost good faith) can be avoided by the insurer if there is any material non-disclosure even if innocently done. The court wishes to make the point that the applicant in that case deliberately concealed evidence and deceived the court. The court is not saying that that is what has happened here but nonetheless the high duty of full and frank disclosure cannot be overlooked. There is no need to come to such a conclusion. To the same effect is Warrington LJ at page 509:

> *It is perfectly well settled that a person who makes an ex parte application to the Court - that is to say, in the absence of the person who will be affected by that which the Court is asked to do - is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him. That is perfectly plain and requires no authority to justify it. Did the applicant in the present case make that full disclosure?*

[24] Scrutton LJ insisted on the duty at pages 513 – 515:

> *Now that rule giving a day to the Commissioners to show cause was obtained upon an ex parte application; and it has been*

for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement. This rule applies in various classes of procedure. One of the commonest cases is an ex parte injunction obtained either in the Chancery or the King's Bench Division. I find in 1849 Wigram V.-C. in the case of Castelli v. Cook stating the rule in this way: "A plaintiff applying ex parte comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go." The same thing is said in

the case to which the Master of the Rolls has referred of Dalglish v. Jarvie. A similar point arises in applications made ex parte to serve writs out of the jurisdiction, and I find in the case of Republic of Peru v. Dreyfus Brothers & Co. Kay J. stating the law in this way: "I have always maintained, and I think it most important to maintain most strictly, the rule that, in ex parte applications to this Court, the utmost good faith must be observed. If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made." A similar statement in a similar class of case is made by Farwell L.J. in the case of The Hagen : "Inasmuch as the application is made ex parte, full and fair disclosure is necessary, as in all ex parte applications, and a failure to make such full and fair disclosure would justify the Court in discharging the order, even although the party might afterwards be in a position to make another application."

[25] In this extract, Scrutton LJ equates an application for a without notice order with a contract. His Lordship describes it as a contract with the court to state the whole of the case; not the whole of the applicant's case but the whole case which

necessarily includes whatever the affected party might have urged had he been present.

[26] All three judges in **Kensington Commissioners** as well as the judges they cited made it clear that once there was a material misstatement the merits of the case becomes irrelevant – so strong is the rule. The court now moves to the second complaint; that of the absence of evidence of the risk of dissipation.

Risk of dissipation

[27] Miss Kashina Moore submits that now that the challenge to the without notice injunction has been made the claimant is unable to make good the assertion that there is a risk of dissipation. Relying on the judgment of Wolfe CJ in **Half Moon Bay Ltd v Levy** Suit No H -12 of 1996 learned counsel submitted that whether there was a real risk of dissipation is determined objectively. Wolfe CJ said:

> *In the instant case the plaintiff's fear, of removal of the assets from the jurisdiction, is based on the fact that if the defendant is allowed to sell, the proceeds of sale could readily be transferred out of the jurisdiction. This to my mind is not sufficient to establish the risk factor. No evidence has been adduced which suggests that the defendant is taking steps to dissipate the assets or remove them from the jurisdiction.*

[28] What the learned Chief Justice has said applies with full force to this case. Mr Evans' affidavit fits squarely in this passage. Mr Evans has not stated any conduct on the part of the defendant to suggest that it is or will dissipate the assets. Lest we forget, if the proceeds of sale are being used to operate the

business and meet legitimate expenses that is not dissipation of assets within the freezing order jurisprudence.

[29] The learned Chief Justice relied on the case of **Wheelabrator Air Pollution Control v F C Reynolds** (1995) 32 JLR 74, 77 I where Carey JA held that the 'fear must be determined on the basis of facts disclosed.' In the **Wheelabrator** case the defendant company was a foreign company which had come to Jamaica to perform some contract which was awarded. It had no further ties to the country. There was no arrangement for reciprocal enforcement of judgments between Jamaica and the home country of the company. The payments that the company was to receive represented the only asset in Jamaica. On these facts the risk of the money being sent from Jamaica was self evident. According to Carey JA 'the fact that the company is a foreign company whose entire assets comprise the balance of the proceeds of a contract which is almost completed, the inference is inescapable that having been paid, it will collect its assets and withdraw itself from the jurisdiction' and therefore '[i]t follows that there [were] good grounds for believing that there [was] a real risk of a judgment in the respondent's favour remaining unsatisfied' (page 78 C).

[30] At paragraphs 23 and 24 of his affidavit Mr Devon Evans for the claimant swore that the defendant has one asset and unless it is prevented from dealing with the proceeds of sale there is a risk that the defendant will not recover what it claims is due to it. Mr Evans also says that since the sale of the property the defendant has failed to make good the repayment of the deposit.

[31] This does not amount to evidence of the risk of dissipation. What has happened here is that the claimant is trying to transform his still unproven claim into that of a secured debt à la mortgagee. Not even judgment creditors have this status to say nothing of a claimant who has not said one word about his claim in a trial on the issue. It has been said that the freezing order is not designed to rewrite the laws of insolvency. It is not a security against insolvency (see Robert Goff J in ***Iraqi Min. of Defence v Arcepey Shipping*** [1980] 1 All ER 480, 486d). It

conveys no property rights (***The Cretan Harmony*** [1978] 1 Lloyds Rep. 425, 431). Lastly, neither is it an enforcement order (Lord Mustill in ***Mercedez Benz AG v Leiduck*** [1996] AC 284 at pages 299B, 301E, 302B). A freezing order gives the claimant no advantage over other persons who may make a claim to the defendant's property.

Disposition

[32] The freezing order is discharged. Costs to the defendant to be agreed or taxed.