

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV-2433 of 2003

BETWEEN	KINGSTON TELECOM LTD	CLAIMANT
AND	ZION DAHARI	1 st DEFENDANT
AND	RAHUL SINGH	2 nd DEFENDANT
AND	COMMONWEALTH COMMUNICATIONS LLC	3 rd DEFENDANT

Gordon Robinson and Minett Palmer for Claimant instructed by Palmer and Walters.

John Graham for Second and Third Defendants instructed by John G. Graham and Company

David Henry watching proceedings for First Defendant

Conrad George watching proceedings on behalf of National Commercial Bank Jamaica Limited.

Heard: February 2, 3, and 17 and July 27, 2004

RATTRAY, J.

On the 17th December, 2003 the Honourable Mr. Justice Marsh granted a Freezing Order on the ex parte application of Kingston Telecom Limited restraining Zion Dahari, Rahul Singh and Commonwealth

Communications LCC, whether by themselves, their servants or agents from disposing of and/or dealing with their assets wheresoever situate up to a limit of US \$1,800,00.00 for a period of 28 days.

This Order was varied on the 14th day of January, 2004 by the Honourable Mr. Justice James, inter alia to add the Claimant's undertaking as to damages and to permit the Defendants the use of such sums as would be required for normal living expenses, as well as legal fees incurred in relation to this suit. The application was then adjourned to the 2nd day of February 2004, when it first came before this Court on the inter parties hearing for the Freezing Order to be extended until the trial of this action.

Kingston Telecom Limited is a limited liability company incorporated in or about May, 2002 for the purposes of establishing and operating a full services telecommunications network in Jamaica.

Zion Dahari is an Israeli National, resident in the State of Florida in the United States of America, who at all material times was a director of and shareholder in Kingston Telecom. Rahul Singh is an American citizen also resident in the State of Florida in the United States of America. Commonwealth Communications LLC is a limited liability corporation registered in the State of Florida and its only members are Zion Dahari and

Rahul Singh, the latter of whom at all material times exercised control over its operations.

In the Affidavit of Marc Diamond sworn to in December, 2003 on behalf of Kingston Telecom, it is alleged that on or about the 21st April 2003, Zion Dahari was appointed Managing Director of the Claimant company with full authority to execute any and all documents on its behalf on such terms as he deemed fit and to manage the day to day operations of the company.

The complaint raised by Kingston Telecom is that Zion Dahari, in breach of his fiduciary duty as a member of the Board of Directors of the company conspired with Rahul Singh and Commonwealth Communications LLC to defraud and/or deceive Kingston Telecom and thereby caused the company financial loss and damage. Specifically, it is alleged that Zion Dahari caused the company to enter into a contract with Rahul Singh for the supply of telecommunications equipment, services and software on terms that were adverse to Kingston Telecom and which gave substantial commercial advantage to Rahul Singh.

It is further alleged that Mr. Dahari caused Kingston Telecom to enter into an exclusive contract for the provision of telecommunication services to

Commonwealth Communications LLC, again on terms adverse to the company's interest.

That contract is alleged to have been entered into without making full and proper disclosure to the company of the interests of Zion Dahari and Rahul Singh in the transaction and without advising as to the existence of the exclusive contract, which gave substantial commercial advantage to Commonwealth Communications LLC. It is argued by Kingston Telecom that in acting as alleged, all the revenues generated by the company's telecommunications network were received by the Defendants and applied to their own use without any or any proper accounting to the company.

Kingston Telecom's claim against Rahul Singh is inter alia, for damages for breach of the contract for the supply of telecommunications equipment. The complaint in this regard is that on the 6th December 2003, Rahul Singh forcibly and unlawfully entered the company's premises by cutting the locks and using a security code assigned to him by Zion Dahari. It is alleged that he then removed all of the company's telecommunications equipment and office furniture, thereby effectively bringing Kingston Telecom's telecommunications network to a complete standstill.

These steps were taken at a time when the Claimant company says it was not in breach of its obligation as regards payment for the said

equipment. It further says that Zion Dahari and Rahul Singh were the ones in complete control of the revenues of Kingston Telecom and were responsible for servicing the company's debt to Rahul Singh. The Claimant company also contends that the goods and equipment purchased from Rahul Singh were supplied to the company free of any lien or encumbrance.

Kingston Telecom's complaint against Commonwealth Communications LLC includes a claim that it is in breach of its obligation to pay for services provided by the Claimant company under the Exclusive Carrier Services Agreement. It alleges that from the commencement of services under the contract in July, 2003 up to and including December 6, 2003, when the contract was effectively terminated by the Defendants, it received no payments from Commonwealth Communications, the company managed and/or owned by Messrs Dahari and Singh, for services rendered.

Marc Diamond in his Affidavit goes on to allege that for the period April 22, 2003 to December 6, 2003, Zion Dahari and Rahul Singh were in complete control of the operations of Kingston Telecom and they transacted the company's business without making any or any proper report to the Board of Directors.

Pivotal to the success of the company's telecommunications network is its compliance with an Interconnection Agreement between Kingston

Telecom and Cable and Wireless Jamaica Limited, under which Cable and Wireless terminated incoming international calls that originate with Kingston Telecom's customers outside of Jamaica. The company alleges that in the purported exercise of his powers as Managing Director, Zion Dahari appointed himself and Rahul Singh as the persons who were directly and solely responsible for the administration and management of the said Interconnection Agreement. As a consequence, it further alleges that it has received no information regarding the state of the company's indebtedness to Cable and Wireless and it fears that the Defendants will dissipate the funds of the company or act in such a manner as to breach the company's financial obligations to Cable and Wireless.

The Claimant company, through the Affidavit of Marc Diamond, maintains that it has been unable to secure access to financial information, cash and other assets of the company which are and have been in the custody, management and control of the Defendants.

Kingston Telecom obtained the leave of the Court to issue and serve the Claim Form in this action and all subsequent process on the Defendants out of the Jurisdiction by leaving sealed copies at the addresses in the United States of America as stated in the Order granted on the 17th December, 2003. Acknowledgements of Service of Claim Form have been filed on behalf of

Rahul Singh and Commonwealth Communications LLC. No such Acknowledgement has been filed on behalf of Zion Dahari. However in these proceedings learned Counsel Mr. David Henry is watching proceedings on his behalf.

Counsel for the Second and Third Defendants Mr. John Graham referred to and relied on the Affidavit of Rahul Singh sworn to on the 13th January, 2004 in opposition to this application. In that Affidavit, Rahul Singh joins issue with the Claimant company on practically every material allegation contained in the Affidavit of Marc Diamond. By way of his Affidavit Mr. Singh: -

- 1) states that the equipment used to operate the network up to December 6, 2003 was owned by him and he exhibits an Agreement in support of his contention.
- 2) denies that the installed capacity for the conveyancing of international voice calls was 9 million minutes per month as alleged, but was instead, between 1 million to 1.25 million carrier minutes per month.
- 3) says that bills from Cable and Wireless show the actual amount of traffic minutes used, which could easily have been ascertained from that Company (Cable and Wireless).

- 4) denies any conspiracy between Zion Dahari and himself and says no objection was raised by any of the shareholders or directors concerning the several contracts entered into with the Defendants.
- 5) says all contracts were entered into with full knowledge and involvement of the directors and shareholders of Kingston Telecom.
- 6) denies that 20 leased circuits to transmit voice traffic were connected to Kingston Telecom's network by Cable and Wireless.
- 7) admits that various contracts were entered into, but denies that the terms of such contracts were abnormal or oppressive to the Claimant company in the circumstances under which his investment was made.
- 8) maintains that Kingston Telecom was provided with all accounting information to which it was entitled as it related to income earned under the Exclusive Carrier Services Agreement.
- 9) states that he was of the view that Kingston Telecom was about to breach its contractual agreement with Commonwealth Communications by disrupting its operations to update its I P system and he therefore decided to repossesses his equipment.

10) denies stealing any equipment and says the steps he took were to protect his investment.

In response to the Affidavit of Rahul Singh, Kingston Telecom relied on the Affidavit of Errol Taylor and the second Affidavit of Marc Diamond sworn to on the 30th January 2004 and the 31st January 2004 respectively. Both deponents categorically deny knowledge of the agreement relied on by Rahul Singh between himself and Kingston Telecom which was exhibited to Mr. Singh's Affidavit and which purportedly gave him the right to repossess the said equipment.

Errol Taylor goes on to join issue on the numbers of T1 circuits installed by Cable and Wireless and on whether legal advice was sought by or provided to the company. He maintains that his agreement to Rahul Singh's participation in Kingston Telecom was based on his expectation that Mr. Singh would provide the agreed support required to utilize the 20 T1 circuits installed by Cable and Wireless. He further alleges that he relied on the advice and direction of Zion Dahari and Rahul Singh, as he was of the view that they were acting in the best interests of Kingston Telecom until certain difficulties arose.

Marc Diamond in his second Affidavit challenges the legality of

Rahul Singh's actions in the manner in which he obtained entry to the company's premises to repossess the equipment. He asserts that information as to Kingston Telecom's operations were not disclosed to the shareholders by Zion Dahari or Rahul Singh, who at all material times were in full control of its affairs.

This corporate cauldron continued to bubble with internal strife with the fortunes of certain of the parties changing depending on the controlling hand stirring the company pot.

It is clear on an examination of all the Affidavits filed herein that there are several areas of dispute. It is equally clear that it is not the function of the Court at this stage of the proceedings to attempt to resolve or reconcile those differences. That is the province of the trial Judge. The burden lies on the Claimant company to satisfy this Court on the Affidavit evidence presented that it is entitled to the relief sought.

In the case of Jamaica Citizens Bank Limited vs Dalton Yap S.C.CA. No. 82/93 at pages 8 and 9 the then President of the Court of Appeal stated inter alia: -

“The applicant for the Mareva has to meet two tests to the satisfaction of the Judge:

- (a) on a preliminary appraisal he must establish a “good arguable case, in the sense of a case which is more than barely capable of serious

argument and yet not necessarily one which the judge believes to have a better than 50% chance of success". (Mustill J. in Ninemia Maritime Corporation Case). This is a minimum which the plaintiff must show in order to "cross the threshold", in other words, as I understand it, to get a foot in at the door, so as to access the entrance chamber of further consideration.

- (b) having got to first base, so to speak on (a), he must establish the risk or danger that the assets sought to be frozen by the Injunction and in respect of which the restraining jurisdiction of the Court is being prayed against the defendant will be dissipated outside the reach of the Court by the defendant thus depriving the plaintiff of the fruits of his judgment."

The question then is, has Kingston Telecom on the totality of the Affidavit evidence before this Court, shown a good arguable case against Zion Dahari, Rahul Singh and Commonwealth Communications LLC.

In attempting to answer this question, the court must examine the grounds for Mr. Graham's submission that Kingston Telecom has not made out a good arguable case to entitle it to relief by way of a Freezing Order: -

Ground 1 - Whether this Court has jurisdiction where the Exclusive Carrier Services Agreement between Kingston Telecom and Commonwealth Communications LLC states that that agreement is governed by the laws of the State of Florida and that the proper venue with respect to any dispute shall be Dade County, Florida

Counsel Mr. Graham argues that the parties themselves agreed that the jurisdiction with respect to this contract was elsewhere than in Jamaica. On that basis, the argument is that the Court has no jurisdiction to grant the relief sought.

This issue is but the first hurdle that the Claimant company must clear if it is to be successful in this application. Clearing it does not guarantee success as there are other pre-conditions to be satisfied. Failing to clear it however brings this legal excursion to an abrupt end.

The jurisdiction of this Court over a dispute between the parties arises if the cause of action is justiciable in Jamaica. Kingston Telecom is a limited liability company duly incorporated under the Companies Act with its registered office in Jamaica. The alleged breaches of contract occurred in Jamaica. The bank account in which funds allegedly belonging to Rahul Singh were frozen is located in Jamaica.

If Counsel Mr. Graham is seeking to rely on the principle of forum non conveniens, the usual approach is for an application to be made to stay the present proceedings on the basis that a more appropriate forum exists elsewhere for the adjudication of the dispute. No such application was made.

Despite this, I am aware that in considering the relevant principles to be applied with respect to the exercise of the Court's discretion in such a matter, it has been said that: -

"... The object, under the words 'forum non conveniens' is to find that forum which is the more suitable for the ends of justice, and is preferable because pursuit of the litigation in that forum is more likely to secure those ends." Per Lord Sumner in Socie'te' du Gaz de Paris vs Law Socie'te Anonyme de Navigation "Les Armateurs Francais." (1926) 23 Lloyds Law Reports 209

This Court then is obliged to consider the various factors of the particular case and to give such weight as is proper in the circumstances in order to decide which Court is likely to secure the ends of justice. See Kuwait Oil Co. (K.S.C) vs Idemitsu Tankers KK (The "Hida Maru") (1981) 2 Lloyd's Law Reports 510.

After a careful perusal of the facts in this matter, I am of the view that the Jamaican Courts have jurisdiction and provide the proper forum for the hearing of this matter.

Ground 2 - The existence of an arbitration clause in the Interim Partnership Agreement between Rahul Singh and Kingston Telecom, which agreement is also stated to be governed by the laws of the State of Florida.

Clause 19 of that Agreement provides: -

“That any controversy or claim arising out of or relating to any provision of this Agreement or the breach thereof shall be settled by arbitration in accordance with the rules of the American Arbitration Association then in effect, to an extent consistent with the laws of the State of Florida, County of Miami Dade.”

The mere fact that a contract contains a provision for the settlement of any claim or controversy that may arise between the parties thereto by way of arbitration in another jurisdiction, does not by or of itself prevent this Court from granting relief by way of Injunction, once the cause of action is justiciable in these Courts.

In the case of Channel Tunnel Group Ltd. and another vs. Balfour Beatty Construction Ltd. and others (1993) 1 AER 664, the House of Lords held that even where proceedings in England were stayed under the 1975 Arbitration Act so that the agreed method of adjudication could take place, the Court still had the power to grant an interlocutory injunction under Section 37 of their 1981 Supreme Court Act, which is similar to section 49 (h) of the Jamaican Judicature Supreme Court Act, in support of a cause of action which the parties had agreed should be the subject of a foreign arbitration, since the cause of action remained potentially justiciable before the English Court, despite the stay.

In the case before this Court, Rahul Singh has not sought to bring any application to stay the present proceedings in reliance on the arbitration

clause, nor has he indicated any intention to have this matter referred to arbitration. Instead, he has submitted to the Court's jurisdiction by opposing this application while at the same time seeking the protection of the arbitration clause. In addition, he argues through his Counsel that the Interim Partnership Agreement is also governed by the laws of the State of Florida.

I find no merit in those contentions for the reasons already outlined. In addition, I am fortified in my view in light of the specific wording of Clause 18 of this particular Agreement which states: -

“That all provisions of this agreement shall be construed and enforced with the laws of the state of Florida, Miami – Dade County for Rahul Singh and Commonwealth Communications USA LLC and with the laws of Jamaica for Kingston Telecom Limited without regard to conflicts of law, or the choice of law principles.” (emphasis supplied)

The wording of this clause speaks for itself. In the circumstances, I therefore find no basis for this objection sufficient to prevent this Court from hearing the application.

Ground 3 - The Defendants do not owe a fiduciary duty to the Claimant.

In carefully examining the several Affidavits and numerous documents exhibited thereto in this matter, the Court's attention is drawn to two items of evidence – firstly, the Certificate of and Minutes of Meeting for Kingston Telecom held on the 21st day of April, 2003, wherein reference is

made to Rahul Singh as Vice President and a Director of the Claimant company and his responsibilities outlined therein.

Secondly, the Interim Partnership Agreement between Commonwealth Communications LLC and Kingston Telecom dated the 22nd day of April 2003, which dealt inter alia with the apportionment of all net profits generated as a result of that business relationship. That Agreement was signed by Zion Dahari and Rahul Singh on behalf of Commonwealth Communications LLC and by Zion Dahari, David Hadeed, Mark Sanfillipo and Rahul Singh on behalf of Kingston Telecom.

The question then of whether or not the Defendants, particularly Rahul Singh owed a fiduciary duty to the Claimant company is an issue to be determined by the Judge at trial.

Ground 4 - The failure of Kingston Telecom to show that the Defendants are in breach of any of their contracts, and if in fact there is a breach, that the Claimant company as a consequence has suffered damage.

To properly assess this objection, this Court would be obliged to peruse in some detail the Affidavit evidence filed herein and come to a determination, the effect of which would be to short circuit the trial process. It must always be remembered that at this stage of the litigation, the evidence available is incomplete and untested by oral cross-examination.

Any attempt then to resolve disputed issues in the Affidavit evidence as to facts alleged by any of the parties falls squarely outside the scope and function of this Court. No ruling determinative of a party's right can or ought properly to be made at this time.

The real question is whether Kingston Telecom can show a good arguable case with respect to the breaches of contracts alleged to have been committed by the Defendants. I am satisfied that such a case has been made out on the Affidavit evidence presented and that the issues raised ought properly to be ventilated at trial.

Ground 5 - Non disclosure of material facts as to:

- (a) the actual number of circuits utilized by Kingston Telecom when this information was available from Cable and Wireless Jamaica Limited.
- (b) the complete partnership agreement between Rahul Singh and Kingston Telecom.

Where a litigant applies to the Court for ex parte injunctive relief, it is obliged to act in the utmost good faith and to make full and frank disclosure of all the material facts for the Court to assess whether or not to grant the sought after relief. This duty of disclosure is perhaps even more

fundamental where the application is for a Freezing Order, which if granted is likely to cause severe prejudice to the affected party.

The duty extends not only to matters known to the applicant, but also to matters which it ought to have known had reasonable enquiries been made prior to the institution of legal proceedings. The critical nature of the duty of disclosure on an ex parte application is such that even where information which may assist a Defendant is contained in an exhibit attached to but not mentioned in the body of an Affidavit filed on behalf of an applicant, that party may still be viewed as being in breach of this obligation; see Jamculture Limited vs. Black River Upper Morass Development Company Limited and Agriculture Development Corporation (1989) 26 J.L.R. 244.

The question here is whether Kingston Telecom, in the words of Wright J.A. in the Jamculture case at page 249,

“made a full and frank disclosure of all material facts or whether any deception was practiced on the Court such as disentitled the appellant to the relief which he sought by way of injunction.”

I am of the view that the contention over the number of circuits leased from Cable and Wireless Jamaica Limited and available to Kingston Telecom is one of the several disputes which exist between the parties to this action. The issue of whether the number of circuits is 5 or 20 and the question of the revenue generating capacity of Kingston Telecom based on

its capacity to convey voice traffic per month are all matters on which the parties are at odds. A Judge at trial must be left to determine these issues. The fact that the figures cited by the parties are at variance with each other, does not to my mind amount to material non-disclosure.

The institution of these legal proceedings appear to have stemmed from an apparent shifting of the balance of power and control within the Claimant company. One of the grievances outlined in the Affidavit of Marc Diamond is that between April and December 2003, Zion Dahari and Rahul Singh were in complete control of Kingston Telecom's operations and transacted all its business without making any proper report to the company's Board of Directors.

As the pendulum of power swung away from those Defendants, Marc Diamond, the newly reinstated Director contends that Kingston Telecom was unable to secure access to the company's records, information and assets in their custody, possession and control. In essence then, from the evidence presented on behalf of the Claimant company, as least two of its four shareholders, Errol Taylor and Marc Diamond allege that they were kept in the dark by Zion Dahari and Rahul Singh with respect to the operations and activities of Kingston Telecom. It is against that backdrop that those deponents plead lack of knowledge in answer to the accusation of

failing to disclose the Agreement with Rahul Singh, which purportedly reserved his right to repossess the equipment once the purchase price had not been paid in full.

The contention that Kingston Telecom did not bring this Agreement to the attention of the Court on the hearing of the ex parte application for a Freezing Order is impatient of debate. The complete document was not disclosed. The explanation given for the omission is that both deponents were unaware of the full terms of the agreement and that all the material documentation concerning the Claimant company were in the hands and control of the individual Defendants.

The question then is, what is the effect of this non-disclosure?

Although the parameters of an applicant's duty of disclosure appear well settled, it is not every omission to disclose material facts that leads to an injunction being automatically discharged. Where the non-disclosure was innocent or inadvertently done and there was no intention to mislead, the Court has a discretion, where the circumstances warrant it, to continue the Order or make a new Order on terms; see Brink's – MAT Limited vs Elcombe and others (1988) 3 ALL E.R. 188 per Ralph Gibson LJ at pages 192 – 193.

I am satisfied with the explanation given for the failure to disclose the said Agreement between Kingston Telecom and Rahul Singh and I am of the view that there was no intention to deceive the Court. I also accept Mr. Robinson's submission that there is in this case no application to discharge the Freezing Order on the ground of non-disclosure. What is in fact before this Court is the further consideration of the application for relief under Part 17.4 of the Civil Procedure Rules 2002. At this juncture on the inter parties hearing, the material facts are before the Court for consideration as to whether or not this order should be continued until the trial of this action.

As I find that there was no deliberate or intentional concealment of information by Kingston Telecom, I do not therefore accept the contention by Counsel, Mr. Graham that there is no good arguable case on the basis of material non-disclosure.

My findings however, that the threshold of a good arguable case has been passed does not necessarily provide the green light for Kingston Telecom in this application. There is still a further hurdle to clear. The applicant for relief by way of a Freezing Order must also demonstrate by cogent evidence the risk of dissipation or removal of assets from the jurisdiction by the other party, which would result in a Judgment or award going unsatisfied.

The company maintains that as Zion Dahari and Rahul Singh are not Jamaican nationals and as the Defendant Company, owned and/or managed by them was incorporated in the State of Florida in the United States of America, there is a real risk of them dissipating any of their assets presently in Jamaica.

It appears from the Affidavit evidence as well as the exhibits attached thereto, that the transactions between the parties were all conducted in United States currency and that there are few if any assets in Jamaica, apart from the funds in the bank account.

Kingston Telecom contends that Messrs. Dahari and Singh are adept at moving funds internationally and have business dealings outside of this jurisdiction, with their sole interest in Jamaica being the operations of Claimant company. It further contends that those Defendants have spent the greater part of 2003 ensuring that none of the revenues of Kingston Telecom remain in Jamaica or accrue to anyone's benefit but their own.

Two further Affidavits of Rahul Singh reveal conflicting figures as to the value of his assets as well as the assets of Commonwealth Communication LLC, although each Affidavit was deposed to only one day apart. Additionally, the evidence as to the assets of the company Defendant

disclose no bank account in Jamaica and indicates that its assets are limited to sums due primarily by Kingston Telecom.

The obligation of the Court is to consider all the evidence before it in order to determine whether there is a real risk of dissipation or removal of assets from the jurisdiction, thereby leaving any judgment in the applicant's favour unsatisfied. The mere fact that the Defendants are foreigners is not in itself decisive of this issue, but it is a factor which cannot be ignored. When to that is added the paucity of financial ties to Jamaica, the uncertain state of their disclosed assets and the manner of operation of the Claimant company by Zion Dahari and Rahul Singh, I find that a sufficient foundation has been laid to show a real risk of withdrawal or dissipation of assets by the Defendants. Any judgment awarded in the claimant's favour is likely to be unsatisfied were the Court not to grant the relief sought herein.

Finally, an Affidavit of Rohit Singh sworn to on the 13th January 2004 was filed on behalf of Rahul Singh praying that "this Honourable Court will grant the Order sought herein." No application however, has been made by or on behalf of Rahul Singh in this matter.

In that Affidavit, the deponent a brother of Rahul Singh asserts that the funds frozen by the Order of the Court belong to Rajnet Communications Limited, a company incorporated in June, 2003 to provide

telecommunications services. Its shareholders were Rahul Singh, Rohit Singh and Errol Taylor.

He further asserts that the funds in question were transferred from the United States to the National Commercial Bank Jamaica Limited to the credit of Rajnet Communications Limited so that a bank guarantee could be issued to Cable and Wireless Jamaica Limited, in order that the necessary interconnections could be made to facilitate the commencement of Rajnet's telecommunications enterprise. This was not done. Those funds were instead, transferred at Rajnet's request to a personal account in the names of Rahul Singh and Rohit Singh, which attracted the Freezing Order.

I do not find the allegations outlined in the Affidavit of Rohit Singh convincing. The transfer of the funds to the personal account of the brothers Singh does not appear to have been necessary to carry out the purpose for which the funds were allegedly required. Those funds had already been lodged in the account of Rajnet Communications Limited.

After a close and careful examination of the totality of the evidence before this Court, I find that Kingston Telecom has satisfied me of its entitlement to the relief claimed. I therefore Order as follows: -

- (1) The Defendants be restrained, whether by themselves, their servants or agents or otherwise howsoever from disposing of

and/or dealing with their assets including moneys held to the account of the Defendants, whether in their own names or jointly with any other party, wheresoever situate in so far as the same do not exceed US \$1,800,000.00 until the trial of this action, save and except an amount for expenses and legal fees incurred in relation to this suit.

- (2) The Claimant is to pay the reasonable costs of anyone other than the Defendants, which have been incurred as a result of this Order, including the costs of ascertaining whether that person holds any of the Defendants' assets
- (3) Nothing in this Order shall prevent a Bank from exercising any rights of set off it may have in respect of facilities afforded by the said Bank to the Defendants or either of them prior to the 17th December, 2003.
- (4) The Claimant undertakes to abide by any Order as to damages that the Court may make as a result of the granting and/or extension of this Order, from and since the 17th December, 2003.
- (5) Costs to be costs in the Claim.