NOTES OF ORAL JUDGMENT [2014] JMSC Civ. 164

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013 HCV 06917

BETWEEN	**MZ HOLDINGS LIMITED**	**CLAIMANT**
AND	**COOL PETROLEUM LIMITED (Later known as THE ANTILLES GROUP LIMITED Now known as RUBIS ENERGY JAMAICA LIMITED)**	**DEFENDANT**

Ms. Maliaca Wong and Ms. Shani Nembhard instructed by Myers, Fletcher & Gordon for the claimant

Kevil Powell and Ms. Shanique Scott instructed by Hylton Powell for the defendant

Heard: July 28 & 31, 2014

Application for stay of proceedings – arbitration proceedings –claimant a non-party to arbitration proceedings – principles applicable – case management powers to order a stay – CPR 26.1

IN CHAMBERS

E. BROWN, J

[1] On the 28th July, 2014 I heard submissions, further to written submissions, on the Notice of Application to Stay Proceedings filed on the 30th April, 2014. Having considered the submissions, on the 31st July, 2014 I delivered an oral judgment and made the following order:

> *"Proceedings are stayed until the 31st December, 2014 upon the undertaking of BE TAG Holdings Ltd that it will not take any action to enforce the assignment between itself and the Antilles Group against MZ Holdings until the determination of the Florida proceedings. If the decision*

of the arbitrator is not to hand by that time the defendant is at liberty to apply for an extension. Leave to appeal granted."

Below are my reasons for so ordering.

[2] By Fixed Date Claim Form filed 17th December 2013 MZ Holdings Limited seeks against the defendant, so far is relevant, the following order:

> *"A declaration that the Deed of Assignment of Receivables entered into between the Antilles Group Limited (TAG) and BE Tag Holdings Limited (BETAG) and dated December 31, 2012 is invalid and not bind on the claimant."*

In response to the Fixed Date Claim Form, on the 30th April, 2014, the defendant filed a Notice of Application to stay proceedings. By paragraph one of the Notice of Application the defendant seeks on order that:

> *"These proceedings be stayed pending the determination of arbitration proceedings being conducted by arbitrator Mark A Buckstein in Boca Raton, Florida."*

[3] The defendant's application is hitched to a troika of grounds:

1. *Rule 26.1 (2)(e) of the Civil Procedure Rules provides that the court may stay the whole or part of any proceedings generally or until a specific date or event.*

2. *The matter in dispute in these proceedings is the subject of arbitration proceedings which are ongoing and are currently scheduled to be completed in October 2014.*

3. *It is in the interest of the overriding objective that these proceedings be stayed pending the final determination of the said arbitration proceedings.*

Submissions

[4] Developing on grounds one (1) and three (3), apparently, Mr. Powell submitted that rule 26.1(2)(v) provides for the court to "make any order for the purpose of managing the case and furthering the overriding objectives." He further advanced that

the court's power to stay proceedings also springs from its inherent jurisdiction and from its consolidating statute, the ***Judicature (Supreme Court) Act*** section 48 (e), (hereafter ***the Act***). Mr. Powell cited **Halsbury's Laws of England** vol.11 5th edition, para 529 in urging that the court may have resort to the disparate powers individually or collectively as they are cumulative and not exclusive in their operation.

[5] I am anxious not to do any violence to the submission of Mr. Powell in saying that in essence he advanced two reasons for the stay of proceedings. First, an elaboration of ground two (2), is that one of the issues to be determined at Boca Raton is whether the claimant is entitled to refuse to pay the MZ Receivables in reliance on the assignment prohibition clause. This submission ignores the contention of the claimant that the sums are not owed. Be that as it may, counsel opined that if these proceedings are not stayed this court will be deploying resources to determine an issue which the arbitrator will be bound to determine. Hence, this embraces the possibility of the ignominy of conflicting rulings. Counsel had earlier cited Lord Denning in ***Taunton-Collins v Cromie and Another***, [1964] 2 ALL ER 332.

[6] Secondly, in an apparent concession that the claimant is not a party to the Boca Raton alternative dispute resolution mechanism, Mr. Powell dismissed that as an inhibiting factor. Not only can the arbitrator determine the issue of the MZ Receivables, he can compel their payment through directions to the majority beneficial owner of the claimant and, or, its controlling shareholder, Mr. Powell argued. The upshot of reasons one and two is that the real issue forming the substratum of this claim will be resolved.

The Dispute

[7] Central to the question before me is the parameters of the dispute to be arbitrated in Boca Raton. The dispute is encapsulated in the affidavit of Mr David M. Roth. This is how it is expressed:

> *"[the] refusal and failure of the claimant, its controlling beneficial owner and/or its commonly controlled affiliates to pay the MZ Holdings Receivables to BE TAG Holdings Limited is a breach of the Shareholders' Agreement and the Share Purchase agreement."*

Parties to the Arbitration

[8] That the ownership of the entities, including the claimant, in grossly intertwined is amply demonstrated by a reference to the pleadings before the arbitrator. The parties to the arbitration are set out in the document entitled, "AD-HOC Arbitration under United States Arbitration Act". Paragraph 10 is of relevance:

> *"10. The Third-Party Respondent Joseph Issa is a Jamaican citizen whose primary residence is in Ocho Rios, Jamaica. Respondent Issa through the Jaguar Trust of which he is the primary beneficiary, and/or through other means and/or relationships and/or arrangements, has beneficial ownership and control, directly or indirectly of Cool Corp., CIHL, CPMIC and the non-party MZ Holdings Limited ("MZ Holdings"). MZ Holdings is the owner of approximately 25 "Cool Oasis" branded gas stations and convenience stores across Jamaica. At the time of sale of TAG to Rubis by BE TAG, MZ Holdings owed $521,289,072 JMD for gasoline and product deliveries (equating to US $5,675,439 USD based on conversion rates applicable at such time) plus interest to TAG (the "MZ Accounts Receivable"). The MZ Accounts Receivable were assigned to BE TAG at the time of, and as a condition of, the sale of TAG to Rubis."*

It is to be noted that MZ Holdings is styled as a "Non-party".

[9] Further, although there is an agreement to bind affiliates of the parties to the arbitration, there is no such agreement in respect of the MZ Holdings Limited. Again, the pleadings demonstrate this:

> *"18. Counsel for CIHL, BEP. BE TAG, TAG, Blue Equity, Blue, Roth and Smith (the parties listed in CIHL's Statement of Claims) have agreed to have the disputes raised in the Statement of Claims and in this Counterclaims and Third Party Claims resolved by a single arbitrator – the Mark A. Buckstein, Esq. Because CIHL through its directors Issa, Hendrick and Davis, is a defined Affiliate of CPMIC and Cool Corp, this agreement is also binding on CPMIC and Cool Corp. as well. Accordingly, all parties are in agreement to have such disputes settled before the single arbitrator-the Honourable Mark a. Buckstein."*

Law and Reasoning

[10] There is no doubt that this court has the power to stay proceedings, either generally or in a limited way: (***the Act***, section 48 (e)). Further, by virtue of the ***Civil Procedure Rules 2002*** 26.1(2)(e) (***CPR***) the court may "stay the whole or part of any proceedings generally or until a specified date or event." The same rule declares this power to be in addition to any power conferred upon the court "by any other rule or practice direction or by any enactment." As was submitted, all the sources of the court's power may be marshalled at once since the sources are "cumulative [and] not exclusive, in their operation": ***Halsbury's Laws of England*** 5th edition vol. 11 paragraph 529.

[11] The real thorny question is therefore not whether the power exists but how it should be wielded. As I understand it, the defendant's plea is an invocation of the court's case management powers. Specifically, the defendant wishes the claim stayed because of the likelihood of it either being compromised or settled in the Boca Raton proceedings. The framers of the ***CPR*** did not lay down directly the standard which should be fulfilled before the stay is granted. However, since the power in the ***CPR*** emanates from ***the Act***, some guidance may be sought there. Under section 48(e) of ***the Act*** the court may direct a stay of proceedings if it thinks fit, either of its own motion or upon application of any person, whether or not a party to the proceedings.

[12] If the court thinks fit speaks both to the discretionary nature of the power and the threshold to be met. In respect of the threshold I would go further to say, in arriving at a decision whether or not to order a stay of proceedings in the exercise of its case management powers, the court ought to have regard to the overriding objectives of the ***CPR***. That is so because the court is there "exercising [a] power under these rules" (***CPR*** 1.2). The overarching or overriding objective is therefore to deal with the case justly. In my opinion, the ***CPR***'s postulation of what justly includes may be compendiously captured in the phrase, 'just and convenient'. Indeed, that is the standard articulated in ***Halsbury's Laws of England*** 5th edition vol. 11 at paragraph

529. Therefore, 'if the court thinks fit' and 'just and convenient' may be synonymous interchangeable expressions with a difference of only semantic significance.

[13] I find support for the position that the relevant principles are those encapsulated in the overriding objectives of the ***CPR 2002***, in ***AB (Sudan) v Secretary of State for the Home Department*** [2013] EWCA Civ 921, a decision of the English Court of Appeal. The principles adumbrated by the judge at first instance were imprinted with imprimatur of the appellate court. The quotation in the judgment of Jackson LJ deserves unabbreviated reproduction:

> *"27. A stay on proceedings may be associated with the grant of interim relief, but it is essentially different. In determining whether proceedings should be stayed, the concerns of the court itself have to be taken into the balance. Decisions as to listing, and decisions as to which cases are to be heard at any particular time are matters for the court itself and no party to a claim can demand that it be heard before or after any other claim. The court will want to deal with claims before it as expeditiously as is consistent with justice. But, on the other hand, it is unlikely to want to waste time and other valuable resources on an exercise that may well be pointless if conducted too soon. If, therefore, the court is shown there will be, or there is likely to be, some event in the foreseeable future that may have an impact in the way a claim is decided, it may decide to stay proceedings in the claim until after that event. It may be more inclined to grant a stay if there is an agreement between the parties. It may not need to grant a stay if the pattern of work shows that the matter will not come on for trial before the event in question. The starting point must, however, be that a Claimant seeks expeditious determination of his claim and that delay will be ordered only if good reason is shown."* (My emphasis)

[14] So, in keeping with the overriding objectives of the ***CPR***, the bedrock assumption is that all claimants desire, and are entitled to, their claims being dealt with expeditiously and fairly. Since a stay of proceedings is the very antithesis of expedition, then it will only be granted for good cause shown. One good reason to grant a stay is where there are concurrent civil proceedings: ***Taunton Collins v Cromie and Another***, *supra*. The concerns in that case were the extra costs of two separate proceedings, a fact which in itself could result in more delay and, the likely scandal on the system of justice if there are conflicting rulings.

[15] ***Imperial Tobacco Ltd and Another v Attorney-General*** [1980] 1 All ER 866, is to the same effect. This is how Lord Lane (at page 884) summed it up:

> *"Where there are concurrent proceedings in different courts between parties who for all practical purposes are the same in each, and the same issues will have to be determined in each, the court has jurisdiction to stay one set of proceedings if it just and convenient to do so or if the circumstances are such that one set of proceedings is vexatious or an abuse of the process of the court."*

In my opinion, the quintessential reason to invoke the court's case management power to grant a stay would be where the trial of the claim before it would eventually become moot or of academic interest. That is, since part of the court's mandate springing from the overriding objectives is the 'saving [of] expenses', all the expenses associated with the case would thereby be spared.

[16] Since the bedrock principle is the expeditious and fair disposal of cases then it is plainly:

> *"a strong thing to say to a plaintiff who is bringing an action that his complaint will not be heard, to say that it will be stayed without there having been a trial, without the evidence having been heard."*
>
> (Per Vaughan Williams LJ in ***Shackleton v Swift*** [1913] 2 KB 303, 311-312)

While much guidance is to be obtained from this dictum, I venture to opine that when the court moves under its case management powers to stay proceedings it is not necessarily saying, by that act, that the proceedings so stayed 'must fail'. It appears to me that 'stay' was being used by Vaughan Williams LJ in the sense of striking out or dismissing the case. A perfectly well founded claim may be stayed for a variety of reasons, none of which need be the inevitable failure of the claim.

[17] Indeed, as I understand the application before me, the defendant is not asking that the claimant be driven away from the seat of judgement. What the court is being asked to say is this since the issues forming the substratum of the claim may be

resolved in another legitimately constituted forum, the trial of this claim should abide the outcome of those proceedings. This claim should abide that outcome as it will result in the saving of expenses and the avoidance of the possibility of conflicting findings of facts.

[18] It follows therefore, that caution must be a counsel of prudence in the decision-making process. Equally, I must be mindful of the moral dimension to a claim before the court and "the standing risk of a distinct form of public injustice," ***Law's Empire***, Ronald Dworkin at page1-2. An unsuccessful party will have to face public opprobrium and therefore if the decision is unfair that party would have been wrongly branded as an outlaw. According to Dworkin, "the injury is substantial when a plaintiff with a sound claim is turned away from court."

[19] It wasn't argued before me that the claimant does not have a sound claim. I therefore assume the claim to be sound. As a result, the question for me is whether there is any good reason the trial of this claim, properly filed on the face of it, should abide the outcome of the Boca Raton arbitration hearing? Put another way, will it be just and convenient to say to the claimant, although you have brought a sound claim and are entitled to an expeditious disposal of it, the trial should await the outcome of some other proceeding to which you are not a party?

[20] The answer to this question is to be found in a juxtapositional examination of the declaration being sought by the claimant from this court and the dispute before the Boca Raton arbitral proceedings. It does not take an eagle's eye to appreciate, at no more than a glance that the claim and dispute are as intertwined as conjoined twins. In my opinion the commixture is of such a nature that not even laser angloplasty could burn away the one without scorching the other. This fact is emphasized, if emphasis be needed, by the pleadings before the Arbitrator.

[21] The following references should make the point. Count 3 of the claim, para 82 – 89:

"82. On December 31, 2012, in connection with, and as a condition of, BE TAG's sale of all of the issued and outstanding shares of its wholly-owned subsidiary, TAG, to Rubis and pursuant to a Deed of Assignment of Receivable, the previously described MZ Accounts Receivable were transferred and assigned to BE TAG, totalling, in the aggregate, the principal amount of J $521, 289,072 (equating to US $5,675,439 based on conversion rates applicable at such time), plus interest and/or any other accrued amounts.

83. The MZ Accounts Receivable consisted of amounts charged for fuel and other products delivered by TAG to MZ Holdings for sale or use in its services and gas stations throughout Jamaica.

84. As recited in the Applicable Shareholders Agreement, Cool Corp., Issa, Hendrick, CPMIC, Davis and CHL are all affiliates of MZ Holdings. Section 11.12 of the Applicable Shareholders Agreement provides, inter alia, that each of the parties to the Applicable Shareholders Agreement shall take all actions, and cause its Affiliates to take actions, necessary or appropriate to give effect to the provisions of the Applicable Shareholders Agreement, and to refrain, and cause its Affiliates to refrain, from taking any action which would be contrary or adverse to, or in violation of, the provision of this Agreement. Section 10.3(c) of the Applicable Shareholders Agreement provides that, upon a default or breach of the Applicable Shareholders Agreement by any party, BE TAG is permitted to demand immediate repayment of all loans and/or other amounts due to BE TAG and/or TAG from the defaulting or breaching party and/or any Affiliate of such defaulting or breaching party, and the defaulting or breaching party is then required to promptly repay, and/or cause its Affiliates, as applicable, to promptly repay, such loans or other amounts due.

85. On December 30, 2012, Roth on behalf of BE TAG and TAG provided notice of all Counterclaimants and Third Party Respondents that the MZ Holdings Account Receivable had been or would be assigned upon closing to BE TAG as part of TAG's sale to Rubis.

86. Despite the transaction closing, MZ Holdings has made no payments on the MZ Accounts Receivable to TAG or BE TAG.

87. On September 26, 2013, BE TAG demanded that Cool Corp., CIHL, CPMIC, Issa, Davis and Hendrick as Affiliates of MZ Holdings, immediately: (i) take any and all actions, and cause MZ Holdings and all other Affiliates to take any and all actions, necessary to cause the immediate payment in full of all of the MZ Holdings Accounts Receivable to BE TAG Holdings (principal, interest, and any other amounts accrued or due with respect thereto), and (ii) refrain from taking any action, and cause

MZ Holdings and their other Affiliates to refrain from taking any action, which would be contrary or adverse to the immediate payment in full of all of the MZ Accounts Receivable to BE TAG Holdings.

88. Notwithstanding the demand, no payments have been received by BE TAG from MZ Holdings and, as such, no one has caused immediate payments in full of any or all of the MZ Holdings Accounts Receivable. This failure to pay or cause payment constitutes a breach by Cool Corp., CIHL, CPMIC, Issa, Davis, and Hendrick of their obligations under Sections 10.3(c) and 11.12 of the Applicable Shareholders Agreement.

89. As a result, BE TAG has been damaged in an amount in excess of $5,675,439.00 USD plus interest, attorneys' fees and costs."

[22] Count 4 of the claim, para 90-101 is similarly instructive:

"90. Restate and incorporate the allegations set forth in paragraphs 1 through 69.
91. Section 2.3(d)(ii) of the SPA provides, in pertinent part, as follows: "At no time after the Closing shall any of the Seller Restricted Parties … take any action that would personally be expected to damage or impair the Jamaican Business."

*92. Section H(l) of the SPA provides that "the term '**Seller Restricted Parties**' shall mean each and every one of the following persons (bracketed language added for clarification purposes): (i) the Seller [Cool Corp.], (ii) the Shareholders [including Issa and Hendrick], and (iii) any Affiliates of the Seller and/or the Shareholders." Thus, the term "**Seller Restricted Parties"** including MZ Holdings, which is specifically identified as an Affiliate of Cool Corp, Issa, and CPMIC in both the SPA and the Applicable Shareholder Agreements*

93. Therefore, MZ Holdings is directly subject to and bound by the provisions of Section 2.3(d)(ii) of the SPA, and, in such regard, Cool Corp, Issa, and CPMIC acted as agent for, in the name of, and on behalf of, MZ Holdings (as well as in the name of, and on behalf of, themselves and their other Affiliates) in executing and delivering the SPA and agreeing to such provisions of the SPA

94. The "Jamaican Business" is defined in the SPA as being, in pertinent part, "the business carried on by the Company [BE TAG] and/or the Subsidiaries of (i) selling, distributing, marketing, exporting, importing, and otherwise dealing in and with respect to petroleum …, fuels, bio-fuels, lubricants, and related products and activities within, to, in, or from

Jamaica, through retail, wholesale, commercial, and/or any other channels ….”

95. Accordingly, the Jamaica Business is inclusive of the business of selling and otherwise dealing in fuels such as selling or dealing in fuels with customers of BE TAG and/or its subsidiary TAG, including MZ Holdings.

96. The MZ Accounts Receivable were incurred by MZ Holdings by reason of the sale and provision by TAG to MZ Holdings of fuels, lubricants, and/or related products, and related activities, with Jamaica, all within the scope of, and as a part of, the conduct of the Jamaican Business by TAG and BE TAG.

97. On December 31, 2012, in connection with, and as a condition of, BE TAG Holdings' sale of all of the issued and outstanding shares of its wholly-owned subsidiary, TAG and pursuant to a Deed of Assignment of Receivables, all of the MZ Accounts Receivable owing from MZ Holdings to TAG were transferred and assigned to BE TAG.

98. In response to a demand for payment sent to MZ Holdings, BE TAG received a letter from Noel Levy, an attorney acting on behalf of MZ Holdings, asserting that the Deed of Assignment of Receivable was invalid and not binding on MZ Holdings because no prior written consent was given by MZ Holdings for the assignment to BE TAG of the MZ Receivable.

99. No consent by MZ Holdings was or is necessary with respect to such assignment for the reasons set forth in paragraph 106, and this claim shall not be taken or construed as admitting otherwise.

100. In any event, however, the past and continued failure of MZ Holdings, (i) to pay the MZ Accounts Receivable to TAG and/or BE TAG when due and payable, (ii) to pay the MZ Accounts Receivable, plus accrued interest thereon, to BE TAG promptly following the Demand for payment sent by BE TAG, and (iii) to consent to the Deed of Assignment of Receivables, if such consent was or is required, are all actions that have damaged or impaired, and that, at all times since the dates upon which such MZ Accounts Receivable become due and payable, would reasonably be expected to damage or impair, the Jamaican Business of TAG and BE TAG Holdings, all contrary to, and in breach of Cool Corp., Issa, Hendrick,CPMIC, and CIHL's obligations and covenants under Section 2.3(d)(ii) of the SPA.

101. As a result, BE TAG has been damaged in an amount in excess of $5,675,439.00 USD plus interest, attorneys' fees and costs."

[23] Count 5 of the claim, para 102 – 113 is no different:

"102. Restate and incorporate the allegations set forth in paragraphs 1 through 69.

103. Section 11.12(a) of the Applicable Shareholders Agreement provides, in pertinent part, as follows:

> *"Each the Parties hereby agrees … (ii) without further consideration, to execute and deliver such additional instruments and documents and to take such additional actions as may be reasonably requested by any of the Parties at any time and from time to time in order to effectuate the transaction and arrangements contemplated by this Agreement."*

104. Section 11.12(b) of the Applicable Shareholders Agreement provides, in pertinent parts, as follows:

> *"(b) Without limiting the generality of the provision set forth in Section 11.12(a): …. (ii) Each of the Parties hereby agrees that, to the extent possible, such Party shall take all actions and enter into all agreements, documents, and arrangements, and cause such Party's Affiliates to take all actions and enter into all agreements, documents, and arrangements, necessary or appropriate (i) to give effect to the provisions of this Agreement to the fullest extent possible, and (ii) to procure any amendment or change to the Governing Instruments of the Company and/or the subsidiaries of the Company necessary or appropriate in connection with the provisions of this Agreement."*

105. Section 3.1 of the Applicable Shareholders Agreement provides, in pertinent part, as follows:

> *"The purpose of the Company and each of the Company's subsidiaries are as follows: . . . (b) To purchase, acquire invest in, own, improve, maintain, lease, sell, exchange, and otherwise deal in and with respect to such property, real, personal or mixed, tangible or intangible, including, but not limited to, closely held and publicly held securities and interests in business entities as the Board of Directors of the Company or such subsidiary, as applicable may reasonably deem necessary or appropriate in connection with the conduct of the Business … and related activities."*

106. On December 31, 2012, in connection with, and as a condition of, BE TAG's sale of all of the issued and outstanding shares of its wholly-

owned subsidiary, TAG (formerly CPL) and pursuant to the Deed of Assignment of Receivables, all of the MZ Accounts Receivables was assigned to BE TAG.

107. In response to such Demand for Payment, BE TAG received a letter from Noel Levy, an attorney acting on behalf of MZ Holdings, asserting that the Deed of Assignment of Receivables was invalid and not binding on MZ Holdings because no prior written consent was given by MZ Holdings for the assignment to BE TAG of the MZ Accounts Receivable.

108. No consent was required or was necessary given, inter alia, that: (a) the MZ Accounts Receivable are debts and obligations of MZ Holdings for goods delivered in whole or in part under invoice and common law, separate and apart from that certain Products Sale and Purchase Agreement between MZ Holdings and TAG which the attorney for MZ Holdings asserts is the basis of an alleged consent requirement (b) such sale and purchase agreement expired on June 1, 2012 and the Deed of Assignment of Receivables does not purport to assign such sale and purchase agreement.

109 Nonetheless, in order to avoid such argument by MZ Holdings and without waiving the position of BE TAG, BEP or any defined Affiliate, but to avoid the costs that may be incurred by reason of MZ Holdings' wrongful position, on October 25, 2013, demand was made on Cool Corp., CIHL, CPMIC, and Issa under Section 11.12 of the Applicable Shareholders Agreement to cause the Affiliates, defined thereunder to include MZ Holdings, to take all actions and enter into all agreements, documents, and arrangements, necessary or appropriate to give effect to the provisions of the Applicable Shareholders Agreement to the fullest extent possible, by executing and delivering to BE TAG (and in any event, on or before November 5, 2013) a written consent to the assignment of the MZ Accounts Receivable from TAG to BE TAG under and pursuant to the Deed of Assignment of Receivables.

110. Such action is necessary to give full effect to the purpose of BE TAG and TAG provided for under Section 3.1 of the Applicable Shareholders Agreement and the sale of TAG shares consummated on or about December 30, 2012 pursuant to, and in accordance with, such purposes (in connection with, and as a condition of which, the assignment of the MZ Accounts Receivable under the Deed Assignment of Receivable was executed).

111. As of the filing of this Counterclaim and Third Party Claim, no response to said demands has been received and it is believed, given

counsel's letter, that Cool Corp., CIHL, CPMIC, and Issa will not comply with such demand.

112. The failure to promptly comply with this request is a breach of the Applicable Shareholders Agreement.

113. As a result, BE TAG has been damaged in a presently unknown amount but it is believed that such Losses will total $5,675,439 USD, plus interest, attorneys', fees and costs, or more if the Arbitrator were to find that MZ Holdings' consent to the assignment of the MZ Accounts Receivable to BE TAG is required and MZ Holdings fails to provide such consent and pay the full amount of the MZ Accounts Receivable."

[24] Count 8 of the claim, para 140 and count 9 para 144-145 are in the same vein:

"140. …failure to disclose the December Petrojam Letter and the December Petrojam Emails, BE TAG and BEP would have stopped doing business with MZ Holdings.

144. As a result, BE TAG has been damaged in the amount of $91,106,735.03 JMD (approximately $991,907.84 USD as of the sale of TAG to Rubis) plus the amount of account receivable owned by MZ Holdings on September 29, 2011 which were not collected on or before April 29, 2012 and total approximately $6,000.00 USD (applying payments made against latest invoices first), for a total of approximately $7,000.00 USD plus interest, legal fees and costs.

145. In addition, BEP has been damaged in the amount by which distributors to BEP of the net proceeds from BE TAG's sale of the shares of TAG to Rubis would have been increased and all of the accounts receivable encompassed by this Breach, in fact, been collected by TAG within the 120 period provided for under Section 4.16 of the Cool SPA, including, but not limited to, the amounts of those accounts receivable owned by MZ Holdings on September 28, 2011, which were not collected on or before ***April 29, 2011*** *(applying payments made against latest invoices first), and legal fees and costs."*

[25] When the foregoing extracts are considered together with the declaration being sought it becomes apparent that the MZ receivables are, if not at the heart of the dispute in Boca Raton, at the very least arterially concerned with it. It is therefore clear to me that the arbitrator cannot properly arbitrate the dispute in Boca Raton without fully considering the question of the assignment of the MZ receivables. Accepting that, the

next issue is whether having considered the question, an enforceable ruling can be made to dispose of the matter. This takes us back to the contention that MZ Holdings is a “Non Party” to the Boca Raton proceedings. On this score I am in full agreement with Mr Powell that the claimant is compellable through its majority beneficial owner, who is a party to the proceedings in Boca Raton.

[26] So, although the claimant has a legitimate expectation that his claim should be tried expeditiously, there is a good reason to order a stay of these proceedings. That is, the claim is resolvable through the alternate dispute resolution mechanism being undertaken in Boca Raton. Additionally, a check with the clerk assigned to Chambers revealed that the state of the court list made it impossible for the claim to come on for trial before the next calendar year. Although it may be said that the latter point makes the grant of a stay unnecessary, it underlines the fact that the order for the stay squares with the overriding objective to deal with the claim justly.