

IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 433 of 2010

(1) THE BELIZE BANK LIMITED CLAIMANTS
(2) BCB HOLDINGS LIMITED

AND

THE CENTRAL BANK OF BELIZE DEFENDANT

Hearings

2010

16th July

22nd July

Mr. Eamon Courtenay SC and Mrs. Ashanti Arthurs-Martin for the Claimants.

Ms. Lois Young SC and Ms. Deanne Barrow for the Defendant.

LEGALL J.

JUDGMENT

1. This is an application by the claimants for an injunction to prevent the defendant from enforcing a directive issued to the claimants. The main facts that gave rise to the application are as follows. The Belize Bank Limited (BBL) the No. 1 claimant, which is a subsidiary of the

- No. 2 claimant, gave a loan to Universal Health Services Ltd. (UHS) of 29 million Belize Dollars for the purpose of the construction of a hospital. The government of Belize (GOB) in 2004 guaranteed the loan. UHS defaulted in repaying the loan, and in March 2007, BBL and the GOB entered into a settlement agreement whereby GOB agreed to execute a loan note in favour of BBL who agreed to discharge the GOB from obligations under the 2004 guarantee.
2. The settlement agreement provided that disputes be resolved by arbitration in London. The GOB failed to comply with the settlement agreement. The validity of the agreement was challenged in the Supreme Court on the ground that it was void because prior approval for the agreement was not obtained from the National Assembly by the GOB before signing it. In addition, the BBL went to arbitration in London with respect to the said agreement on the ground that it was valid.
 3. While awaiting a decision on the merits of the arbitration, the GOB and BBL reached another settlement agreement in January 2008 under which ten million US dollars; or \$20 million BZ, a part of a grant of \$20 million US from the Government of Venezuela to the GOB for housing the poor, were placed in the BBL. There was a change of Government in Belize in February 2008 and the new government brought a claim in the Supreme Court to recover the \$20 million BZ from BBL. The Central Bank of Belize (CBB) also issued a directive to BBL to pay the said \$20 million BZ into the GOB account. The BBL filed a claim, Belize Bank Ltd. v. Central Bank of Belize No.

196 of 2008, challenging the directive as unlawful and seeking an injunction to prevent the enforcement of the directive.

4. Muria J. refused the injunction and ordered that all further proceedings before him be stayed until after any decision of the Appeal Board in respect of the directives. The judge also ordered the CBB to refrain from taking enforcement actions on the directives. BBL appealed the CBB directive under section 71 of the Banks and Financial Institution Act Chapter 263 (the Act) to the Appeal Board, established by the Act, and also made a claim No. 338 of 2008 in the Supreme Court on the ground that the Appeal Board was bias and not independent. The Supreme Court dismissed the claim, and an appeal to the Court of Appeal was also dismissed. The BBL applied unsuccessfully to the Appeal Board for a stay of execution of the CBB directive that BBL return the \$20 million BZ to the GOB. On 7th August, 2008, the BBL transferred or returned the said \$20 million BZ to the GOB.

5. Before the said transfer of the \$20 million BZ to the GOB, BBL started in July 2008 new arbitration proceedings in relation to the January 2008 settlement agreement. The Supreme Court in the mean time held in Claim No. 218 of 2007 Association of Concerned Belizean v. AG that the 2007 Loan Note was unlawful. The arbitration tribunal in 2008 also held that the sum received from the Government of Venezuela belonged to the GOB and “that the 2008 Settlement Agreement was unlawful because the Venezuela sum should have been paid into the GOB Consolidated Revenue Fund

pursuant to provision of Belizean Law”: see claimant first affidavit at paragraph 35. In March 2010 the decision of the Supreme Court holding that the loan note was unlawful was upheld by the Court of Appeal. An application by the claimants for leave to appeal to the Privy Council was granted, which was the final appellate Court of Belize at that time, but which was replaced this year by the Caribbean Court of Justice. The appeal is still pending.

6. In spite of the fact that the sum of \$20 million was transferred by BBL to the government account in August 2008, BBL still included it as an asset in its balance sheet. This caused the CBB to request by letter dated 20th October, 2008 that BBL amend its balance sheet. The letter stated as follows:

CENTRAL BANK OF BELIZE

Ref. PSSD/6603/1/08 Vol. V11 (53)
20 October 2008

Mr. Phillip Johnson
President
Belize Bank Limited
60 Market Square
Belize City
BELIZE

Dear Mr. Johnson:

Re: \$20 million reported as Other Assets-
Foreign

A review of Belize Bank Limited’s (BBL)
BR 1 dated 13 August 2008 revealed that
upon crediting Government’s account held

with the Central bank of Belize for \$20.0mn on 8 August 2008, BBL then proceed to report \$20.00mn as a foreign receivable under line item 16b(1). The matter was raised with Mr. Michael Coye, BBL's Finance Director, who confirmed that the \$20.0mn represented the funds that had been transferred to the Government but that the BBL feels justified in maintaining same as a balance sheet asset since it believes the court will rule that the Government must either return this money or be liable to repay the Universal Health Services loan.

What cannot be disputed is the fact that the funds in question are now in the possession of the Government of Belize and are consequently being included in the calculation of the official foreign reserves. BBL's balance sheet entry therefore creates a situation of double counting which is untenable. The Central Bank is of the view that BBL's expectations, whatever these may be, can only feasibly be recorded as an off balance sheet item at this time. BBL would have the right to include the \$20mn as a balance sheet asset only if these funds are eventually returned to its possession.

The Central Bank therefore requires BBL to amend its balance sheets accordingly with effect from August 2008 and to ensure that all amended returns are submitted by 29 October 2008.

Sincerely yours,

Christine Vellos

(for) Governor

7. Another letter dated 4th June, 2010, though differently worded, but to the general effect as the above letter, was sent to BBL. The penultimate paragraph of the letter states as follows:

CENTRAL BANK OF BELIZE

Mr. Phillip Johnson

4 June 2010

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Directive

In light of the above, CCB is issuing the following directive in accordance with Section 36(5) of the Banks and Financial Institutions Act:

BBL derecognize the asset by passing a prior period adjustment for the \$20.0 million, in addition to any accrue interests capitalized and restate the financial statements for the period in which the asset was first recognized. (emphasis mine)

Kindly provide CBB with written confirmation of adherence to this directive accompanied by the relevant entries by 16 June 2010.

Sincerely yours,

Diane Gongora

(For) Director

Financial Sector Supervision Department

8. The underlined portions of the letter, is referred to above, and is hereinafter referred to, as the directive. Section 36(5) of the Act states:

“36(5) If the Central Bank determines that the acts or course of conduct in question may pose a serious risk to the condition of a licensee, cause a significant financial loss to a licensee or personal gain arising from the foregoing to the person which is the subject of the order or directive, or otherwise seriously prejudice the interest of a licensee’s depositors or customers, the Central Bank may issue a summary order or directive which shall take effect promptly on delivery to the subject person affected, who shall be afforded the opportunity to present his views to the Central Bank within ten days after the delivery of the order or directive on whether the order or directive in question should be removed or varied.”

9. The claimants state that the CBB exceeded its jurisdiction in that it had no power or authority under the above section to issue the directive; and that CBB acted unreasonably and ultra vires the said section. Under section 36(5) the CBB would be authorized to issue the directive if it determines that the acts or conduct of the claimants in including as an asset in its balance the \$20 million which was paid to the GOB, may (a) pose a serious risk to the condition of the claimants or (b) cause a significant financial loss to the claimants or

(c) would otherwise seriously prejudice the interest of the claimants depositors or customers.

10. The claimants state that including the \$20 million in their balance sheet as an asset would not cause (a) (b) or (c) above because:

“One major reason for this is that BBL is so highly capitalized. Even without the US\$10m, the regulatory capital of BBL would be above the required minimum. It cannot be said that the accounting treatment of the amount in question may seriously prejudice the interest of the bank’s depositors or customers”

11. The Governor of the CBB in his affidavit is of a different view. He swore:

“5. The directive was issued using Section 36(5) as in our opinion a \$20 million overstatement of the assets and retained earnings of the bank represents a material misstatement of the financial position of BBL that if allowed to continue could mislead both the public and the CBB in its evaluation of the financial stability of the bank. The materiality of this transaction is undisputed as it is relied on heavily in the affidavit of Phillip Osborne of BCB Holdings in Claim No. 433 of 2010. The CBB is also keenly aware of BBL’s extremely high ratio of non-performing loans to total loans of 28%, which is more than five times the prudential benchmark of

5%. On the latter, the CBB had expressed its concerns separately and requested a plan from BBL to address this issue and restore the bank to a stable position.

6. (iii) (A) The material overstatement of assets and concomitant understatement of expenses can mislead the bank's directors, the CBB and other users of the financial statements as to the true soundness of the bank and its true capacity to absorb losses, as is the case here. This poses serious risks to the bank in the context of the circumstances described in 5 above.

(B) An overstatement of retained earnings can give a false sense of security to directors, shareholders and the public. Directors and controlling shareholders can gain personally from artificially inflating earnings by declaring higher dividends than the bank can actually afford.

6. (iv) However, since then the deteriorating financial performance of the bank and the extremely high levels of non-performing loans combined with the recent decisions of the courts heightened that urgency.

50. The Belize Bank's performance is deteriorating and if left unchecked and unresolved could lead to the bank becoming financially unstable. The Belize Bank's published financial statements at 31st March 2010 show that the Bank's non-performing loans were at \$206.9 million dollars out of a total portfolio of \$680.4 million dollars. When adjusted for specific provisions, this translated into 28% of its entire portfolio

being made up of non-performing loans which is more than five times higher than the prudential standard.”

12. The claimants also submit that the directive and section 36(5) are contrary to section 6 of the Constitution and therefore unconstitutional. Section 6 states:

“6.-(1) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

(2) If any person is charged with criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(7) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.”

13. Section 6 of the Constitution applies where a person is charged with a criminal offence, and it also gives the right to a hearing, a constitutional basis. The right to a hearing in Belize is not only a common law right, but also a constitutional right on the basis of section 6(7) of the Constitution, where the phrase civil rights and obligations appear.

14. But is there evidence of any criminal charge preferred against the claimants, and does section 36(5) take away the right to be heard. The claimants submit that the directive constitutes a criminal charge for purposes of section 6 of the Constitution and relies on the case of *Deweer v. Belgium 1979 EH RR, 439*. In this case, the applicant a butcher was alleged to have committed an offence of selling meat at an illegal profit. The public prosecutor ordered the provisional closure of the applicant's shop either until judgment was given in the intended criminal prosecution against the applicant, or until he paid an agreed fine by way of settlement. Under protest, the applicant paid the fine. The applicant claimed that the imposition of a fine paid by way of settlement under the constraint of provisional closure of his shop, was in violation of Article 6(1) of the European Convention of Human Rights. Article 6 (1) of the Convention, the first sentence of which reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an

independent and impartial tribunal established by law.”.

15. The court held that “taken separately, neither the offer of settlement nor the closure decision would offend Article 1; but the combined use of the two procedures did violate Article 1.” The court also proceeded to define “criminal charge” as used in Article 1 as “the official notification given to an individual by the competent authority of an allegation that he has committed an offence.” In this application for an injunction before me, there is no evidence at this stage that the defendant notified the claimants of an allegation that it had committed a criminal offence. The claimants further argue that the power under section 36(5) to issue the directive without giving the claimants the opportunity to respond before the order takes effect breaches the Constitutional right to be heard under section 6 of the Constitution.

16. It seems to me that the above mentioned facts, some of which are disputed, raise serious questions to be tried namely, whether the directive is unconstitutional; whether it falls within the elements of section 36(5), and whether section 36(5) breaches the Constitutional right to be heard under section 6(7) of the Constitution. Moreover, the claimants argue, based on the provisions of sections 29 and 30 of the Act, that the CBB statutory functions or role do not include supervising accounting treatment, or to act as an external auditor, and do not include the audit of financial statements of a bank, which is the objective of the directive. The claimant therefore applies for the

injunction to restrain the CBB, servants and agents “from acting upon, in consequence of, or seeking to enforce” the directives mentioned above.

17. As an accounting mechanism, BBL states that it is proper to show in its accounting records the \$20 million; and that it is confident that “it will succeed in ensuring that the GOB returns the 20 million to it.” By letter dated 29th October, 2008, Mr. Michael Coye, Finance Director of BBL wrote to CBB. The letter states, inter alia, as follows:

“As you know, BBL was ordered to transfer to the Government US\$10 million by the Central Bank pursuant to its directives dated 14 March 2008 (the Directive). Following the refusal of the Banks and Financial Institutions Appeal Board (the Appeal Board) on 7 August 2008 to grant a stay of effect of the Directors, BBL was left with no realistic option but to transfer the sum of US\$10 million to the Government’s account. However, BBL is confident that this sum will be fully recovered. BBL is confident that once those issues have been assessed by an independent and impartial appeal board or other appropriate body, it will be found that the Directives should be set aside and the US\$10 million returned to it by the Government. In light of the foregoing, the US\$10 million is a receivable which arises from transactions entered into by BBL. It is well recognized in accounting standards that the conditions under which receivables exist usually involve some

degree of uncertainty about their collectability, but in circumstance where in BBL's view it will ultimately recover the US\$10 million, BBL is entitled to, and indeed ought to, recognize it as an asset on its balance sheet. In light of the above, we believe that it would not be in compliance with current accounting standards for BBL to amend its balance sheet or its returns as you suggest.”

18. It is acceptable for parties to legal proceedings to be confident in their case, but it is to go beyond confidence, it seems to me, to show in the balance sheet of the bank the \$20 million dollars, the subject of the pending legal proceedings, as assets of the BBL when that amount was returned to the GOB. That is not confidence: it is certainty that the legal proceedings will result in government having to return the \$10 million to the BBL; and BBL could not properly have that certainty of the outcome of legal proceedings, unless the BBL knows the thinking of the tribunal charged with deciding the said legal proceedings, which I do not think is the case.

19. Moreover, it was submitted that section 36(5) is unconstitutional in that it contravenes section 6 of the Constitution because it gives the bank the power to issue directives without affording the recipient of the directive an opportunity to respond before the directive takes effect. The Attorney General who is usually a party to proceedings where a breach of a Constitution is alleged was not made a party to these proceedings.

20. The above matters raise serious questions to be tried. At this interlocutory stage for an application for an injunction, it is not the courts function to make a final decision whether the directive is ultra vires the Act and section 36(5) of the Act, or whether the section and the directive are repugnant to section 6 of the Constitution. These matters are for the trial judge. The courts function at this interlocutory stage has been discussed in well known cases. In *Nevison v. Pender 1883 ICH 43* Cotton L.J. said that at the interlocutory stage on an application for an injunction the court has to consider “whether the materials that are before us show a probability that at the hearing the Plaintiff will get an injunction. In the case *D.T.C. v. Phang 1962 L.R. B.G. 378 at page 384* Wylie J said that the court would grant an interlocutory injunction “when the legal right claimed was clearly established Or if a prima facie case in favour of the right was established.
21. But Lord Diplock in *American Cyanamid (1975) 1 A.E.R. 504 at p. 511* has seriously questioned the above views of Cotton L.J. in *Pender and Wylie J in Phang. Lord Diplock* said that “the use of such expressions as a “a probability” “a prima facie case” or “a strong prima facie case” in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court must no doubt be satisfied that the claim is not frivolous or vexatious; in other words, there is a serious question to be tried.”.

22. This is the principle to apply at this stage. Since the parties, in my judgment, have shown that there are a serious questions to be tried, the court must move to the second stage of the enquiry, whether damages would be an adequate remedy, because if damages would be an adequate remedy, and the defendants would be in a position to pay the damages, even though a serious question is to be tried, no interlocutory injunction should normally be granted.

23. The principle was put by Lord Diplock in **American Cyanamid** above where His Lordship says that “the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant’s continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff’s claim appeared to be at the stage.”.

24. If the application for the injunction is refused, it means that BBL would have to adjust its balance sheet to remove the \$20 million stated therein as an asset. It does not seem to me that the adjustment would cause significant financial loss, because BBL in the affidavit in support of the injunction states that in this matter there is no serious

risk to the condition of the BBL, no significant financial loss or personal gain to BBL and no prejudice to the interest of depositors or creditors. Mr. Phillip Johnson at paragraph 55 of his affidavit gave the reason, which is quoted above, but which for convenience may be repeated:

“One major reason for this is that BBL is so highly capitalized. Even without the US\$10m, the regulatory capital of BBL would be above the required minimum. It cannot be said that the accounting treatment of the amount in question may seriously prejudice the interest of the bank’s depositors or customers”

25. The claimants also state that their standing in the business community and their reputation, if they have to adjust their balance sheet based on the directive, and later on if they succeed in the legal proceedings, have to adjust it back, would in both situations cause irreparable reputational damage to them. Moreover, it is submitted, if the claimant, have to comply with the directive, its capital and reserves would immediately be reduced by \$20 million. But that sum of \$20 million is not at present actually part of the capital or reserves of the BBL. It is part of the GOB account. The claimants say that there would be confusion with their depositors and customers, and they would suffer reputational damage if their application for the injunction is refused and they have to obey the directive, and therefore damages would not be an adequate remedy.

26. There is the possibility that some reputational damage may occur. The problem arises in assessing damages for such alleged reputational harm, and consequently the difficulty in deciding whether or not damages would be an adequate remedy, bearing in mind that where damages would be an adequate remedy no injunction should normally be granted.
27. In *Graham v. Dedderfield and other 1992 Fleet Street Report p. 313 at p. 315* Dillion L.J. agreed that in deciding whether damages would be an adequate remedy in the context of an application for interlocutory injunction, there must be some material from which the court could say “with some accuracy” the damage suffered by the Plaintiff.
28. What is the extent of the publication of the directive. Was it published to the people at the BBL and the CBB or to the Belizean public? The extent of the publication is not disclosed. On the facts of this case, I have doubt whether damages would be an adequate remedy. Lord Diplock in *Cyanamid* above at p. 511 states that it is “where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both that the question of balance of convenience arises.”.
29. The Court must now go on to consider the balance of convenience or balance of justice as it is sometimes called. The principle to be applied under the heading balance of convenience was given in *D.T.C. v. Phang* above where it is stated that “where any doubt

exists as to the plaintiff's right, or if his right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right.”.

30. The burden of proof that the inconvenience which the plaintiff will suffer by the refusal of the injunction is greater than that which the defendant will suffer, if it is granted, lies on the plaintiff. In other words, the court must consider the evidence on the affidavits and make a decision as to who would suffer the greater disadvantage if the injunction was or was not granted. But in making such a decision it “would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relevant weight to be attached to them: see *American Cyanamid* above at p 512.

31. In *National Commercial Bank of Jamaica Ltd. v. Olint*, Privy Council Appeal No. 61 of 2008, Lord Hoffmann said that among the matters which the court may take into account in deciding where the balance lies, are “the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be

compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases.”

32. If the court grants the claimants the injunction, the claimants balance sheet would continue to show the \$20 million BZ dollars as an asset, when in reality, the said amount of \$20 million BZ dollars is not held by the BBL as an asset.
33. The balance sheet of the claimants shows to the public, assets, including the \$20 million BZ, when in fact at present the said \$20 million is not an asset of the claimant bank, but an asset of the government. The consequences of allowing the BBL to show the said \$20 million BZ as an asset is quoted above from the affidavit of the Governor of the CBB. The said balance sheet, is to say the least, misleading to officials and others in the banking community, as well as to the depositors and customers. An injunction is an equitable remedy, and is within the discretion of the court, and I doubt whether the equitable jurisdiction of the Supreme Court would allow its discretionary injunctive power to be used to preserve a situation which is misleading to the public, and others in the banking sector.
34. It has been submitted that it is well recognized in accounting standards that in a situation where the claimant bank is confident that it will recover the \$20 million BZ; then it is entitled to recognize the

\$20 million as an asset in its balance sheet. As proof of this, the claimant bank has submitted a letter from Price Water House dated 17th June, 2010. The letter states:

Mr. P Johnson
Belize Bank Limited
60 Market Square
Belize City
Belize
Central America

17 June 2010

Dear Mr. Johnson

Belize Bank Limited ('BBL')
accounting treatment of the BZ\$20
million accounts receivable.

We confirm that BBL has consulted
with PricewaterhouseCoopers LLP.

We have reviewed, amongst other
things, the summaries of the various
legal matters prepared by
management and outside Counsel.

On the basis of the above, we concur
with BBL's accounting treatment as
of 31 March 2010.

Yours sincerely,
PricewaterhouseCoopers LLP

35. This letter is very general and ambiguous. It does not specifically state that it is standard accounting practice to include in a balance sheet assets which, in the context of this case, are not in possession of a bank, but which the bank is confident that it will recover.

36. The CBB consulted Castillo Sanchez and Burrillo Accountants on this matter, and the Accountants issued an opinion dated 28th May, 2010 in which the Accountants wrote that “Belize Bank Limited should have recorded an extraordinary loss rather than an asset once the loan note and facility were declared unlawful The accounting entry that should have been recorded when the money was transferred back to the GOB is as follows: Debit extraordinary loss – \$20,000,000; Credit cash (monies returned to GOB) \$20,000,000.” The Governor therefore swore in his first affidavit that the CBB “was justified in its view that the Belize Bank was not compliant with proper accounting treatment.”
37. The court may grant an injunction in all cases in which it appears to the court to be just or convenient to do so: see section 27(1) of the Supreme Court of Judicature Act Chapter 91. At the interlocutory stage, the court must assess whether granting or withholding an injunction is more likely to produce a just result. In *National Commercial Bank Jamaica Ltd. v. Olint Corp. Limited PC Appeal No. 61 of 2008 at page 6*. Lord Hoffmann says that the “basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other.”
38. The evidence of the CBB is that its credibility as the regulator of the banking industry will be damaged if BBL continues to misrepresent its assets in the balance sheet to the extent of the \$20 million BZ. When the court considers the facts of this case including the damage referred to in the affidavit of the Governor of CBB above, and also

considers the reputational damage of the claimants, including that the directive may adversely affect an application for a banking licence in Trinidad & Tobago and the share price of the second claimant, and applying the principles of *Olint and American Cyanamid* above, I find that the balance of convenience lies in favour of the defendants.

39. The court was urged by the claimants to retain the status quo until the hearing and determination of this matter. But since I have found that the balance of convenience lies in favour of the defendant, it is not necessary to go on to the question of the status quo, because such questions only become necessary “when other factors appear to be evenly balanced”: see Lord Diplock in *American Cyanamid* at page 509.

40. In conclusion, I find that there are serious questions to be tried; and that there is doubt whether damages would be an adequate remedy. I find on the facts, that the balance of convenience lies in favour of the defendant. It is therefore not necessary to go on to consider the status quo. The application for injunction is therefore refused.

41. I therefore make the following orders:

(1) The application for the interlocutory injunction is dismissed.

(2) The claimants shall pay costs to the defendant, to be agreed or taxed.

Oswell Legall
JUDGE OF THE SUPREME COURT
22nd July, 2010