

BARBADOS

IN THE SUPREME COURT OF BARBADOS

HIGH COURT

CIVIL DIVISION

Suit No. CV1258 of 2005

**In the Estate of Harvey Juman,
deceased**, also known as Hafeez
Harvey Khan Juman also known as
Hafies Khan Juman, deceased

IN THE MATTER of the Succession
Act, Chapter 249 of the Laws of
Barbados

AND IN THE MATTER of Rule 67 of
The Supreme Court (Civil Procedure)
Rules (CPR) 2008

BETWEEN:

IMAN JUMAN

CLAIMANT

AND

CHARLES HARVEY JUMAN

FIRST DEFENDANT

PAUL MICHAEL JUMAN

SECOND DEFENDANT

EDWARD HARVEY JUMAN

THIRD DEFENDANT

SALIM JUMAN

FOURTH DEFENDANT

*Before The Honourable Mr. Justice Cecil N. McCarthy, Q.C. Judge of the High Court
(Ag.)*

2018: June 27 and July 9

2019: July 31

Appearances:

Mrs. Marguerite Woodstock-Riley for the Fourth Defendant/Applicant

Mr. Roger Forde Q.C. for the First, Second and Third Defendants

**Mr. Peter Symmonds Q.C. in association with Ms. Eva Jeffers Bagwell
for the Claimant**

DECISION

INTRODUCTION

[1] This is an interlocutory application brought by the fourth defendant (“the applicant”) against the first, second and third defendants (“the defendants”) pursuant to part 17 of the Civil Procedure Rules (“CPR”) and the inherent jurisdiction of the court.

[2] By the application the applicant seeks orders that:

“1. The First, Second and Third Defendant be restrained, whether by themselves, their servants and agents or howsoever otherwise from removing from the jurisdiction, disposing of and/or dealing with his assets of the Estate of Harvey Juman within the jurisdiction and in particular:

- (a) the property and assets of Ridge View Limited including the business of Continental Foods;
- (b) any money in the account numbered at the Royal Bank of Canada, Broad Street, Bridgetown.
- (c) Negotiating any cheques on behalf of Ridge View Limited;
- (d) Conducting any business on behalf of Ridge View including continuing to operate the business of Continental Foods

Until further order of the Court;

2. The First, Second and Third Defendant and their servants, agents or otherwise howsoever be restrained from disposing, discarding or in any way using or interfering with any documents, financial information, pay roll, customs forms,

account information and any all documentation pertaining to Ridge View and/or Continental Foods:

3. The First, Second and Third Defendant and their servants, agents immediately return all documentation, financial and accounting information, files relating to Ridge View Limited trading as Continental Foods in their possession to Mr. Anthony Hinkson, the internal auditor for Ridge View Limited;
4. The Royal Bank of Canada provide all bank statements relating to Ridge View Limited from January 2017 to present within 7 days of this Order;
5. Mr. Hinkson, the internal auditor, be immediately given access to the accounts and cheque books of Ridge View Limited and to the computer system in his office and all documents filed, emails and other information on the computer system;
6. The First, Second and Third Defendant immediately disclose all other bank accounts currently being held in the name of Ridge Limited;
7. An order that the First, Second and Third Defendant pay the costs incidental to this application, such costs to be agreed or assessed.”

BACKGROUND TO THE PROCEEDINGS

[3] This matter has a long history. In order to fully understand the reason for the application and to consider the respective positions of the parties it is necessary to give a brief history of the proceedings of which the application is the most recent chapter.

[4] In 2005, Iman Juman, the widow of Harvey Juman, (the deceased) commenced proceedings in the High Court by way of originating summons under the old rules of court by which, among other

things, she sought an order from the Court that the estate of her deceased husband be distributed in accordance with section 49(3) of the Succession Act, namely one-third of the estate to her, and the remaining two-thirds equally between the defendants (the adult children of the deceased) and the two minor children of the deceased.

[5] In the said summons Mrs. Juman requested the Court to order the defendants to render accounts relative to the operation of a company called Ridge View Limited (RVL) which was then thought to have been owned 100% by the deceased.

[6] On September 22, 2005 Justice Christopher Blackman, among the things, ordered that there be a valuation and determination of the shareholding in RVL by an independent financial person agreed on by the parties or in the absence of agreement by the Court.

[7] On November 28, 2005 Letters of Administration were granted to Iman Juman and one of the defendants, Paul Michael Juman, who was added as an administrator pursuant to the order of the court made on September 22, 2005.

[8] On November 12, 2015 the applicant applied to the Court to be added as a party to the proceedings as a second claimant.

[9] The basis of his application was that he was a shareholder of RVL; there was an issue in dispute with respect to the shareholding in RVL; any determination of the shareholding in RVL would directly affect his proprietary rights and/or interest as a shareholder; and he would be prejudiced if all the relevant facts were not before the Court and a decision made without hearing his side of the issue.

[10] On November 25, 2016 the Court ordered that the applicant be joined as a defendant in the matter.

[11] The applicant was therefore added as a party to the proceedings to assist with the issue of determining the shareholding in RVL. The applicant is the brother of the deceased and is not entitled to benefit from his estate under section 49 of the Succession Act.

[12] On March 16, 2018 Richards J. ordered, among other things, that:

- “1. PricewaterhouseCoopers SRL (“PWC”) be appointed as the independent financial firm to:
 - (a) Determine the value of Ridge View Limited;
 - (b) Advise on its findings with regard to the value of the shares in Ridge View Limited.
2. The Parties are to agree to the terms of engagement of PWC on or before the 20th day of April 2018;
3. The 1st, 2nd and 3rd Defendant shall render to all Parties and to PWC full accounts (audited and unaudited including management), bank statements and all other documents corporate and otherwise relative to the operation of Ridge View Limited for the years 2004 to present inclusive of those ordered to be produced at 2 a. to e. in the Consent Order of 14th July, 2015 and filed herein on 27th August, 2015;
4. Ridge View Limited’s accountant’ J. Richard A. Lynch of J. Richard Lynch & Co., and internal accountant, Mr. Anthony Hinkson, provide all documentation and records required by PWC in the exercise of its valuation of the Company.”

- [13] The applicant commenced these proceedings on the basis that the defendants were operating the business of RVL in an unauthorized manner and that unless restrained they may cause irreparable damage to RVL.
- [14] In support of the application an affidavit was sworn by Anthony Hinkson.
- [15] According to the documents filed by or on behalf of the applicant, the application was made because it was feared that the “First, Second and Third Defendants [were] operating the business of the company [Ridge View Limited] in an unauthorized mannerand unless restrained may cause irreparable damage to Ridge View Limited.”
- [16] According to the application it was feared that as a result actions of the defendants PWC would be unable to perform its obligations set out in the order of the Court if the documentation and information relating to Ridge View Limited [was] discarded and otherwise.
- [17] The applicant also represented that there was fear that unless restrained the defendants may cause irreparable damage by disposing of or destroying the said information which is necessary for PWC to perform its obligations pursuant to the order of the Court.

THE AFFIDAVITS

Affidavit filed on behalf of the Applicant

- [18] The application for an injunction was supported by an affidavit sworn by Anthony Hinkson, the internal accountant for RVL.
- [19] In his affidavit Mr. Hinkson deposed that he was the full-time accountant for RVL since in or around 2000. He said that from his knowledge RVL financed the business known as Continental Foods.
- [20] He deposed further that until recently he was responsible for all payroll, customs, and accounts at RVL.

- [21] He averred also that Mr. Salim Juman (the applicant) is a shareholder of RVL and he had seen documentation evidencing that the applicant owned 40% of the shareholding in RVL.
- [22] He said that RVL made monthly payments to the applicant until August 2016 when the second defendant stopped signing cheques issued to him.
- [23] He alleged that some months ago the second defendant asked him for the keys to his office and in May 2018 the second defendant refused to unlock the door to his office.
- [24] Later on June 7, 2018, according to the applicant, all documents and financial information relating to RVL were removed from his office and he was unable to obtain access to the use of the files, documents and e-mails or any computer in his office and he feared that the other defendants were operating the company in an unauthorized manner.
- [25] He also deposed that the applicant was not consulted and did not consent to any change of signatories to the bank account of RVL at Royal Bank of Canada.
- [26] It is based on the above information that Mr. Hinkson feared that without oversight money standing to the credit of RVL would be “mismanaged, used or otherwise disposed of.”

Affidavit filed on behalf of the Defendants

- [27] The second defendant, Mr. Paul Juman, responded to the applicant’s application and the affidavit of Mr. Hinkson.
- [28] Mr. Paul Juman explained that he is a director of the RVL; in fact he is the managing director of RVL.

[29] He said that since the filing of these proceedings Mr. Hinkson has been reluctant to carry out his orders. His affidavit essentially evidences that the matters complained of are matters related to the internal management of RVL and do not relate to the shareholding of Harvey Juman, deceased which is the subject of the administration proceedings.

[30] The second defendant also observed that the mention of Mr. Hinkson in the order of the court does not mandate RVL to continue to hire Mr. Hinkson.

[31] The second defendant stated that the documents contemplated by the order of the Court are in the custody of RVL and have not been disposed of and the allegations to the contrary by Mr. Hinkson were mere speculation.

[32] The Court received oral and written submissions from counsel representing the parties.

THE APPLICANT'S SUBMISSIONS

[33] Learned counsel for the applicant, Mrs. Marguerite Woodstock-Riley, Q.C. highlighted the following matters deposed in the affidavit of Anthony Hinkson:

- i. Mr. Hinkson, the internal accountant of RVL, was locked out of his office at RVL, a company which the deceased was a shareholder;
- ii. Mr. Hinkson discovered that all documents and financial information relating to RVL were removed from his office;
- iii. Mr. Hinkson has been denied access to the accounts and cheque book of RVL;
- iv. It is feared that the defendants may be operating the business of the company in an unauthorised manner.

v. Based on the matters set out at i -iv above the fourth defendant fears that the first defendant and third Defendant may cause irreparable damage by disposing of or otherwise destroying the financial documents of RVL;

[34] Learned counsel for the applicant, grounds her application in the provisions of section 44 of the Supreme Court of Judicature Act, Chapter 117A which reads in part:

“The High Court may, at any stage of any proceedings,

- (a)
- (b) grant a mandatory or other injunction;
- (c)

where it appears to the Court to be just and convenient to do so for the purposes of the proceedings before it; and if the case is one of urgency, the Court may grant a mandatory or other injunction before the commencement of the proceedings.”

[35] Learned counsel for the applicant, interprets the above provisions as conferring on the Court “a wide discretion to grant an injunction where it is just and convenient to do so for the purposes of proceedings before it. There is no limitation.”

[36] She argues that there are proceedings before the Court for the determination and valuation of shares in RVL. The Court having added the applicant as a party to the proceedings, is empowered to grant an interlocutory injunction to enforce the terms of its Order that affects the rights of the parties to the action.

[37] Learned counsel cites the case of **Maclaine Watson & Co v ITC [1989] Ch. 286** as supporting the proposition that the court may make an ancillary order, including a mandatory order to ensure the effectiveness of any order of the Court.

- [38] She submits that the order of Richards J. is being thwarted by the actions of the defendants.
- [39] She argues that there is an issue between the applicant and the defendants; the defendants having taken issue with the applicant's shareholding in RVL. Counsel asserts that this amounts to a substantive issue between the defendants and the applicant.
- [40] Learned counsel for the applicant asserts that as party to the proceedings and owner of shares, the applicant has a substantive right against the defendants in the form of the order made and the determination to be made at trial.
- [41] She argues that an argument based on their being a new cause of action is inapplicable to the current situation.
- [42] She asserts further that the court has a wide jurisdiction to grant an injunction against a non-party where there was no claim for substantive relief.
- [43] Learned counsel relies on **C Inc PLC v L [2001] 2 ALL ER (Comm.) 446** and cites paragraph 74 of the decision of the court where it said that:
"the cases establish that a freezing order can be made where there is a pending action against a defendant or a judgment has already been obtained against the defendant".
Counsel asserts that in the instant case an order was made against the defendants and the application before the Court arises from that order.
- [44] Finally, Learned counsel rejects the view that RVL is entitled to be heard. She says that the directors of RVL are the defendants who are all before the Court.

THE DEFENDANTS' SUBMISSIONS

[45] In summary, Counsel for the defendants, Mr. Roger Forde Q.C., submits that:

- (7) (i) Section 44 of the Supreme Court of Judicature Act Chapter 117A does not authorise the High Court to grant free standing injunctive relief;
- (ii) The authority reposed in the High Court must be exercised judicially and not in an arbitrary matter;
- (iii) The guidelines for the exercise of the injunctive power vested in the High Court are set out in the case law. The case law establishes that in order to obtain such injunctive relief the applicant must have a cause of action against the defendants;
- (iv) The applicant must have a legal right or equitable right which he can enforce against the defendants.

[46] Learned counsel relies on **The Owners of Cargo Lately Laden on Board the Siskina v Distos Compania Naviera SA (the Siskina) [1977] 3 ALL ER 803** in which Lord Diplock observed that:

“the right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent on there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action.”

- [47] Learned counsel for the defendants, asserts that the affidavit of Mr. Hinkson discloses no cause of action by the applicant against the defendants. The affidavits disclose no rights which the applicant can enforce against the defendants.
- [48] He argues that the applicant has no right to the documents of RVL which it can enforce against the defendants; and no right to the money on the account at RBC which it can enforce against the defendants. He submits that the applicant has no right to the property and assets of RVL which it can enforce against the defendants.
- [49] Learned counsel also contends that the applicant has no right to the information, payroll and customs forms that it can enforce against the defendants.
- [50] Put another way, learned counsel is contending that the fourth defendant is seeking rights which can only be properly asserted against RVL who is not a party to the action.
- [51] Mr. Roger Forde Q.C. further submits that the substantive proceedings before the Court are proceedings for the administration of the estate of Harvey Juman, deceased which includes shares owned by the deceased.
- [52] Learned counsel for the defendants additionally submits that the order for determination of the shareholding in RVL is merely ancillary to the substantive claim for administration of the estate; and the applicant has no interest in the substantive matter before the court and is only before the court to assist with the determination of the shareholding in RVL.
- [53] The claimant in the substantive proceedings, Mrs. Iman Juman, is not directly involved in the application before the Court. However, Mrs. Eva Jeffers-Bagwell made submissions supporting those made by the applicant.

PRELIMINARY ISSUE

[54] The first issue that the Court must consider is whether the relief sought against the defendants is in fact relief which should be claimed against RVL and therefore, whether RVL ought to have been made a party to the proceedings and given an opportunity to be heard.

[55] Mr. Roger Forde Q.C., in his written submissions made the following observation:

“As a general principle Courts do not grant injunctions which would affect third party interests without allowing them to be heard. None of the special circumstances aforementioned arise in these proceedings that would necessitate an exception to this general rule.”

RELEVANT LEGAL PRINCIPLES

[56] In **Re Wykeham Terrace, Brighton, Sussex, ex parte Territorial Auxiliary and Volunteer Reserve Association for South East [1971] Ch. 204, 208**, Stamp J. stated the reason underpinning the right to be heard in these words:

“... it is axiomatic that a person claiming an order of this court against another, except when a statute provides otherwise cannot obtain that relief except – in proceedings to which that other person is a party and after that other person has had the opportunity of appearing before this court and putting forward his answer to the claim The accusatorial process by which the person against whom relief is sought is summoned to appear to answer the plaintiff’s claim is the process by which justice has been done in England and Wales between man and man over the centuries”

[57] Steven Gee Q.C. in the first paragraph of Chapter 13 of the textbook **Commercial Injunctions** Fifth Edition expresses it this way:

“An injunction is granted against a party to the action

The usual rule is that an injunction will be granted only against a party to an action. As Lord Eldon QC. said in **Iveson v Harris** “you cannot have an injunction except against a party to the suit”. In consequence an injunction should be addressed to a party to an action or to someone who is about to be joined as a party.” (footnotes omitted)

[58] The learned author goes on to observe that occasionally the Court may grant an injunction against persons who are not parties to the proceedings.

“However once an injunction is to be granted against a person who is not a party, the practice is to join that person as a party to the proceedings.” (ibid. at pg. 368)

In support of this proposition the learned author cites *C Inc. PLC v L* [2001] 2 Lloyd’s Rep. 459.

[59] In the proceedings before the court the interim relief sought by the applicant at paragraph 1 of the application is in fact a *mareva* (freezing) injunction restraining the defendants from “disposing of and/or dealing with the assets of the Estate of Harvey Juman within the jurisdiction and in particular:

- (i) the property and assets of Ridge View Limited including the business of Continental Foods ;
- (ii) any money in the account ... at Royal Bank of Canada ...;
- (iii) negotiating any cheques on behalf of Ridge View Limited;
- (iv) conducting any business on behalf of Ridge View Limited including continuing to operate the business of Continental Foods.”

- [60] The application for the freezing injunction as drafted appears to confuse the assets of RVL with those of the estate of Harvey Juman.
- [61] Mr. Harvey Juman may have been a shareholder in RVL but the assets of RVL are not the assets of the his estate but are the company's.
- [62] RVL is not a party to the proceedings and, therefore, special circumstances would have to be present to permit the court to make an order against RVL.
- [63] The question of the extent to which a freezing order could affect the assets of a non-defendant body corporate was recently considered by the English High Court in **FM Capital Partners Ltd v Marino & Ors. [2018] EWHC 2889 (Comm)**.
- [64] In that case Peter Eggers QC acting as a deputy judge of the High Court was considering an application by the claimant and third defendant to vary a freezing order made by the court in respect of the defendant's asset in which they had no beneficial interest.
- [65] The order had purported to apply to companies in which the respondent was interested but which were not parties to the action.
- [66] The Court held that the assets of a company wholly owned by a respondent to a freezing order are not the assets of the respondent due to the separate legal personality held by the company.
- [67] While considering the case of **Group Seven Ltd v Allied Investment Corpn. Ltd. [2013] EWCH 1509 (Ch)**., a judgment of Hildyard J., Judge Peter Eggers said at paragraph 21 of his decision:
21. "In concluding that a company which has a sole director, who owns all of the shares in the company, does not hold or control its assets in accordance with the

director/shareholder's instructions, Hildyard, J referred to the decision of Rimer, LJ in **Prest v Prest** [2012] EWCA Civ 1395; [2013] 2 AC 415, at para/ 104-105, to the effect that the mere fact that a director/shareholder is entitled to exercise control over the company's affairs does not mean that the director/shareholder is entitled to the company's assets; if it were otherwise, such a company would never hold its own assets beneficially. Rimer, LJ continued:

“The flaw in the ‘power equals property’ approach is that it ignores the fundamental principle that the only entity with the power to deal with its assets is the company. Those who control its affairs-even if the control is in a single individual-act merely as the company’s agents. Their agency will include the authority to procure an exercise by the company of its dispositive powers in respect of its property, but those powers are still exclusively the company’s own: they are not the agents’ powers. When and if the agents act as such, and procure a company disposition, the property which immediately before the disposition belonged to the company will become the property of the donee. Until then, it remains the property of the company and belongs to no one else.”

[68] Justice Peter Eggers Q.C. also discussed the Court of Appeal's decision in **Lakatamia Shipping v Su** [2014] EWCA Civ 636.

[69] In **Lakatamia Shipping v Su** the claimant was granted a freezing order which prohibited the defendants from disposing of, dealing with or diminishing the value of any of their assets. Specifically, the order stipulated that:

“... The defendants' assets include any asset which they have the power directly or indirectly, to dispose of or deal with as if it were their own. The defendants are to be

regarded as having such power if a third party holds or controls the assets in accordance with their direct or indirect instructions.”

[70] The Court had to consider whether the freezing order froze the assets of three companies which were not defendants to the proceedings of which the first defendant was a director and directly or indirectly a 100% shareholder.

The Court of Appeal held that the freezing injunction did not apply directly to non-defendant companies or their assets.

[71] At paragraph 42 of the decision Sir Bernard Rix said:

“...., if a claimant wishes to freeze company assets of a non-defendant, he must either be prepared to make a sufficient case that the company concerned is just the money-box of the defendant and holds assets to which the defendant is beneficially entitled, and/or it has to make that company a defendant itself under the *Chabra* jurisdiction. Where a defendant’s alleged liability is not merely that in the ordinary way of a party liable in debt or damages but is said to arise out of the misappropriation of funds or some such dishonesty, as in the *Ablyazov* litigation, it will often be possible to request the court to make orders in wider terms and/or to make the defendant’s corporate creatures defendants themselves. But in the more ordinary case, even where a freezing order is justified under its standard rationale, that does not extend to freezing the assets of other parties or corporate non-defendants.”

[72] In the instant case, the applicant is contending that he is a 40% shareholder in RVL. The applicant cannot therefore, contend that RVL holds or controls its assets in accordance with the defendants’ instructions; and no case has been advanced to the Court to this effect.

- [73] If the doctrine of separate legal personality leads to the result that a company whose assets are wholly owned by a respondent to a freezing order not being the assets of the respondent, a fortiori, a similar result must follow where a defendant owns less than 100% shareholding.
- [74] The application for a freezing order is, therefore, refused.
- [75] An examination of the other relief claimed in the application shows that it relates entirely to matters concerning the property, management or operation of RVL.
- [76] Paragraph 2 of the application seeks to restrain the defendants from disposing or interfering with documents, financial information, pay roll, customs forms or account information.
- [77] Paragraph 3 seeks to compel the defendants to return all documentation, financial and accounting information and files to RVL.
- [78] Paragraph 4 seeks an order that Royal Bank of Canada provide all bank statements to RVL from January 2017 to the present.
- [79] Paragraph 5 seeks an order that the internal auditor be given access to the accounts, cheque books and computer system of RVL.
- [80] Paragraph 6 seeks an order that the defendants disclose all other banks accounts held in the name of RVL.
- [81] Having considered each paragraph of the claim for interim relief, it is clear that there is one common thread, namely that all of the orders sought will adversely impact RVL.
- [82] It is for this reason that counsel for the defendants, Mr. Roger Forde Q.C. submitted that RVL had a right to be heard.

[83] In answer to Mr. Forde’s submission, Mrs. Marguerite Woodstook- Riley Q.C. on behalf of the applicant made the following submission:

“With regard to the submission that RVL is entitled to be heard, the Directors of RVL are the Second and Third Defendant and the Applicant all of whom are before the Court. The shareholders of RVL are the Estate of Harvey Juman and the Applicant. It is submitted that all parties entitled to represent RVL are before the Court.”

[84] As Mr. Roger Forde Q.C. points out the defendants are before the court in their capacity as beneficiaries of the estate of Harvey Juman deceased and not as representatives or agents of RVL, since RVL is not before the Court.

[85] The submissions of the applicant appear to completely ignore the core company law principle that a company is a separate legal entity and has a separate corporate personality.

[86] Counsel for the defendants is, therefore, correct when he submits that RVL is not before the court.

[87] The applicant also seeks to rely on what is now commonly called the “Chabra jurisdiction” in which an order can be made against a third party defendant against whom there is no cause of action if there is reason to suppose that the assets of the third party are in reality the assets of the defendant against whom a cause of action is asserted. (See **PJSC Vseukrainskyi Aktsionernyi Bank v Maksimov and others [2013] EWCH 422 (Comm)** at paragraph 7, where the principles relating to this jurisdiction are summarized).

[88] In citing this jurisdiction, counsel for the applicant appears to have conveniently ignored the fact the third party in that case was a party to the action while in the instant case the third party (RVL) has not been joined as a party to the proceedings.

[89] It is my view that the failure to make RVL a party to the application for injunctive relief is fatal to the application having regard to the fact that:

1. all the relief claimed adversely affect the interest of RVL;
2. no legal justification has been advanced for ignoring the separate personality which RVL has as a body corporate;
3. no exceptional circumstances have been cited that would permit the court to exercise a discretion to make the orders which will impact RVL adversely.

[90] For the same reason that I have refused to grant a freezing injunction I must also refuse to grant the other relief claimed in the application.

[91] I consider that the failure to join RVL to the proceedings is enough to justify my decision to refuse the injunctive relief claimed. But there are a number of other issues that were raised in the parties' submissions, one of which, I think it useful to briefly discuss and render an opinion thereon. I refer to the question of whether it is necessary for the applicant to have a cause of action against the defendants, in order to obtain an injunction.

[92] It is accepted that the substantive claim before the court is one brought by the claimant against the defendants as beneficiaries of the estate of Harvey Juman, deceased, in accordance with the Succession Act.

[93] The applicant can have no interest in the substantive proceedings because he is not a beneficiary of the estate of the deceased.

- [94] As indicated earlier, the applicant was joined in the proceedings because he claimed an interest in RVL which at one time was thought to be wholly owned by the deceased. He was joined in the proceedings so that the interest in RVL could be determined by the court.
- [95] The proceedings relating to the determination of the shareholding in RVL are clearly ancillary to the main proceedings which conveniently can be referred to as “the estate proceedings”.
- [96] When the applicant chose to commence proceedings for injunctive relief an unusual situation arose in that the applicant who was a defendant in the proceedings ancillary to the main cause of action was now claiming relief against the defendants against whom he clearly had no cause of action in the main proceedings.
- [97] Based on the factual background learned counsel for the defendants, Mr. Roger Forde Q.C. with great clarity and economy recited the orthodox legal position with respect to the grant of interim injunctions.
- [98] Having drawn to the court’s attention that the only live claim before the court is the proceedings brought by the claimant and founded on Part 67.2 of CPR (the estate proceedings). Mr. Forde, Q.C. said:
“It is trite law that in order to obtain an interim injunction against a particular party the applicant must have a cause of action against that party and must be seeking relief against that party.”
- [99] Learned counsel cited **American Cyanamid and Fourie v Le Roux and Others [2007] UKHL 1, 13.**

[100] In his written submissions the well-known statement of principle by Lord Diplock in the **Siskina** was quoted:

“A right to an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent on there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an injunction is merely ancillary and incidental to the pre-existing cause of action.”

[101] Learned counsel for the applicant made submissions which may be summarized as follows:

- i. Section 44 of the Supreme Court of Judicature Act, Chapter 117A confers on the Court a wide and unlimited discretion to grant an injunction where it is just and convenient to do so for the purposes of proceedings before it.
- ii. The court may make an ancillary order, including a mandatory order to ensure the effectiveness of any order of the Court. **Maclaine Watson & Co. v ITC**, supra was cited as authority for this proposition.
- iii. There is a substantive issue between the applicant and the defendants, mainly the dispute with respect to the shareholding in RVL.
- iv. The court has a wide jurisdiction against a non-party against whom there was no claim for substantive relief. **C Inc PLC v L** supra has been referred to as authority for this proposition.

[102] Having carefully considered the above arguments I now make the following observations.

- [103] Section 44 of the Supreme Court of Judicature Act is similar to section 37.1 of the Senior Courts Act, 1981 of the UK. Commenting on the English provisions Lord Mustill said: “Although the words of sections 37.1 and its forebears are very wide it is firmly established by a long history of judicial self-denial that they are not to be taken at their face value and that their application is subject to severe constraints: see **The Siskina 1979 A.C 210** ... the doctrine of the Siskina at its highest, is that the right to an interim injunction cannot exist in isolation, but it always incidental to and dependent on the enforcement of a substantive right which usually although not invariably takes the shape of a cause of action” (**Channel Tunnel Group Ltd. v Balfor Beatty Construction Ltd. [1998] A.C 344 at 360-362**).
- [104] It is submitted that section 44 of the Supreme Court of Judicature Act does not confer an unfettered power to grant injunctive relief but is similarly circumscribed by judicial authority.
- [105] With respect to **Maclaine Watson v ITC**, that case concerned the failure of a judgment debtor to disclose its UK assets. It does not appear to me that any general principle can be derived from the case. The facts before the court are distinguishable from the facts in that case. In this case the issue of shareholding in RVL is to be determined and there is no final judgment in the matter before the court at the time of application.
- [106] In respect of the court’s power to make an order against a non-party, this is an exceptional power which can only be exercised in certain situations which are not present in this case.

[107] The principles relating to what has been called “the Chabra Jurisdiction” are not applicable to the facts of this case. In that jurisdiction the target is a “non-cause of action defendant”. In the case at Bar the target is a third party who is not before the Court.

[108] The applicant has made no attempt to identify a cause of action against the defendants. The proceedings before the court are ancillary to the substantive proceedings and cannot ground the grant of an injunction on established principles.

[109] It is my view that the applicant ought to have identified the claim for substantive relief and commenced ancillary proceedings since the facts of the case do not appear to me to permit an exception to the cause of action rule. For sure, not in relation to the claim for a freezing order.

[110] It is, therefore, my view that apart from a failure to join RVL there is also failure to identify a cause of action to which the grant of an injunction is incidental.

DISPOSAL

[111] For the foregoing reasons, the application for interim injunctive relief is dismissed in its entirety. I will hear the parties on the issue of costs.

Cecil N. McCarthy

Judge of the High Court (Acting)