IN THE COURT OF APPEAL OF BELIZE AD 2022
CIVIL APPEAL NO 8 OF 2022

BETWEEN:

MICHAEL BELGRAVE

Appellant

and

DOUGLAS THOMPSON

Respondent

Before:

The Hon Madam Justice Marguerite Woodstock Riley	Justice of Appeal
The Hon Madam Justice Sandra Minott-Phillips	Justice of Appeal
The Hon Mr. Justice Peter Foster	Justice of Appeal

Appearances:

Ms. Sharryn Dawson for the Appellant
Mr. Derek Courtenay, S.C and Ms. Vanessa Retreage for the Respondent

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2023: October 20

2024: June 20

JUDGMENT

[1] **FOSTER, JA:** This appeal arises from the decision of the Hon Madam Justice Shoman striking out the appellant's claim against the respondent for various relief relating to the administration of the Estate of Ellismere Belgrave. The learned judge dismissed the appellant's application for certain injunctive relief against the respondent, ordered the respondent to provide accounts in relation to the Estate and stayed the proceedings pending the provision of the said accounts. Consequent on the foregoing orders, the judge ordered that the appellant pay the respondent costs.

[2] The appellant, by this appeal, seeks to challenge the entire judgment. The respondent resists the appeal contending that the learned judge was correct in making the orders that she did.

Background

[3] The circumstances giving rise to this appeal, so far as is relevant, may be shortly stated. However before doing so, I should identify the parties. The appellant is a beneficiary under the Last Will and Testament of his late father, Ellismere Irvin Belgrave. The respondent is the Executor of the Estate of the late Ellismere Irvin Belgrave.

[4] By way of Fixed Date Claim Form (as amended on 6th January 2021), the appellant sought the following relief from the Court on the basis that the respondent breached his fiduciary duties in the administration of the testator's estate:

(i) An order that the respondent be made to account for all activities in the estate pursuant to Sections 49, 50, 51 and 52 of the **Administration of Estates Act**;[1]

(ii) An order that the respondent produce and deliver up to the appellant title absolute for Parcel 81, Block 16, 4 Independence Drive, Buttonwood Bay, Belize City ("the Buttonwood Bay property") bequeathed by the testator and duly transferred under the said estate pursuant to section 35 of the **Administration of Estates Act**;

(iii) An order granting a caveat against any dealing in the testator's unregistered land situate at Crown Land Book No. 403 of 1997 in the Ranguana Range, 5 East, Punta Gorda Town, Toledo District (23 miles off Placencia Village) (the Ranguana Cayes") until the Court determines the matter and/or such time as the court deems fit to protect the unregistered interest of the beneficiary;

[1] Cap 197, Laws of Belize.

(iv) An order that probate granted to the respondent be revoked and letters of administration be given to the appellant;

(v) Any other order(s) and relief(s) the court deems fit;

(vi) Damages;

(vii) Interests; and

(viii) Costs.

[5] At the time of filing the Fixed Date Claim (before amending the same on 6th January 2021), the appellant filed an ex-parte notice of application dated 24th November 2020 (the "Injunction Application") in which he sought an interim injunction preventing the respondent from further dealing in any and all assets of the Estate of the late Ellismere Irvin Belgrave until the claim is heard and/or until such time as the court deems fit; a freezing order on the bank account(s) housing proceeds of sale of land amounting to some two million Belizean Dollars ($2,000,000.00) BZD; and costs.

[6] The *ex parte* Injunction Application came on for hearing on 14th December 2020, during which the court adjourned the matter and ordered that the application be heard on an *inter partes* basis. The court also ordered that the appellant serve the Injunction Application and the Fixed Date Claim Form on the respondent.

[7] Upon being served with the Fixed Date Claim Form and the Injunction Application, the respondent, by way of notice of application dated 2nd July 2021 applied for several orders from the court. Specifically that:

1. The appellant's application for an interim order and freezing injunction is refused;
2. The 1st Affidavit of the appellant in support of Fixed Date Claim Form dated 24th November 2020, is struck out;
3. The appellant's claim for an order that the respondent produce and deliver up to the claimant absolute title for Parcel 81, Block 14, 4 Independence Drive, Buttonwood Bay, Belize City, Belize bequeathed him by the testator and duly transferred under the said Estate pursuant to section 35 of the Act is struck out;
4. The appellant's claim for an order granting a caveat against any dealing in the testator's unregistered land situate at Crowns Lands Book No.

403 of 1997 on the Ranguana Range, 5 Miles East of Punta Gorda Town, Toledo District (23 Miles off Placencia Village) until the court determines the matter and/or until such time as the Court deems fit to protect the unregistered interest of the beneficiary is struck out.

5. The respondent is ordered to provide accounts in relation to the Estate of Ellismere Belgrave and to file and serve the appellant within 90 days from the date of this ruling with the said accounts;
6. All further proceedings in this matter are to be stayed until the period of 90 days for filing accounts as ordered has passed, and either party has made an application to the court or the court has set a date for further hearing of this matter;
7. The appellant shall pay the respondent costs and Parties are invited to make submissions to the court in respect of same.

I shall refer to this application as the "Strike out Application".

Judgment below

[8] The Injunction Application and the Strike out Application were heard on 20th January 2022 and 11th February 2022. In a written ruling dated 8th May 2022, the judge refused the Injunction Application on the basis that the appellant did not have either a serious issue to be tried or a good arguable case. In light of this finding, the judge thought it unnecessary to proceed to consider whether there is a risk of dissipation of the assets or to consider which course is likely to cause irremediable prejudice to one party or the other. In relation to the Strike out Application, the judge granted the orders claimed by the respondent.

[9] The judge therefore made the following orders that are challenged by the appellant on the appeal:[2]

1) "The [appellant's] Application for an Interim Order and Freezing Injunction is refused;

[2] At para. 75 of the judgment.

2) The 1st Affidavit of Michael Belgrave in Support of Fixed Date Claim Form dated 24th November 2020, is struck out;
3) The [appellant's] Claim for an Order that the respondent, Douglas Thompson produce and deliver up to the [appellantt] TITLE ABSOLUTE for Parcel 81, Block 16, 4 Independence Drive, Buttonwood Bay, Belize City, Belize bequeathed him by the Testator and duly transferred under the said Estate pursuant to section 35 of the Act is struck out;
4) The [appellant's] Claim for an Order granting a Caveat against any dealing in the Testator's unregistered land situate at Crowns Lands Book No. 403 of 1997 on the Ranguana Range, 5 Miles East of Punta Gorda Town, Toledo District (23 Miles off Placencia Village) until the Honourable Court determines the matter and/or until such time as the Court deems fit to protect the unregistered interest of the beneficiary is struck out;
5) The Defendant is ordered to provide accounts in relation to the Estate of Ellismere Belgrave and to file and serve the Claimant within 90 days from the date of this Ruling with the said accounts;
6) All further proceedings in this matter are to be stayed until the period of 90 days for filing accounts as ordered has passed, and either party has made an application to the Court or the Court has set a date for further hearing of this matter;
7) The [appellant] shall pay the [respondent] costs and Parties are invited to make submissions to the Court in respect of the same."

The appeal

[10] The appeal is an appeal of the whole decision and is brought on 5 grounds. The first ground seeks to challenge the judge's refusal of the Injunction Application and finding that the appellant did not have a serious issue to be tried or a good arguable case. The Appellant contends she misapplied the relevant legal principles and erred in fact and law.

[11] The remaining grounds seek to impugn the judge's analysis and conclusions on the Strike out Application, particularly Orders 2 through 5 which are set out in paragraph 9 of this judgment. Dealing with those grounds calls for consideration

of the preliminary objection raised by the respondent of whether leave to appeal was required to bring the appeal against the Orders 2 through 5.

[12] In the scheme of this judgment, I will address the respondent's preliminary objection in relation to grounds 2-5 first. Ground 1 warrants separate comment and will later be addressed.

Preliminary issue – Was leave required?

[13] At the hearing of the appeal and in her written submissions in response, counsel for the respondent, Ms. Retreage, took the preliminary objection that the notice of appeal in respect of grounds 2-5 was a nullity. The objection, in a nutshell, was that by virtue of the relevant provisions of the **Senior Courts Act** the appellant was compelled to apply for leave to appeal orders 2 through 7 which relate to the strike out application. Having not done so, the appeal in respect to those grounds was a nullity and not properly before the Court.

[14] Section 201(1) of the **Senior Courts Act**[3] provides that:

> "201(1) An appeal shall lie to the Court in any cause or matter from any order of the High Court or a judge thereof where such order is-
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> a) final and is not such an order as is referred to in paragraph (f) or (g);
> b) an order made upon the finding or verdict of a judge or jury, as the case may be;
> c) an order upon the application for a new trial;
> d) a decree nisi in a matrimonial cause or an order in an Admiralty action determining liability;
> e) an order declared by rules of court to be of the nature of a final order;
> f) an order upon appeal from any other court, tribunal, body or person;
> g) a final order of a judge of the High Court made in Chambers;
> h) an order made with the consent of the parties;
> i) an order as to costs;
> j) an order not referred to elsewhere in this subsection.
>
> (2) No appeal shall lie from any order referred to in sub-section (1)(f)–

[3] Senior Courts Act, 2022, Laws of Belize.

a) except –

i. upon a question of law;
ii. where such order precludes any party from the exercise of his profession or calling, from the holding of public office, from membership of a public body or from the right to vote at the election of a member for any such body;

b) in any other case, except with the leave of a single judge of the Court or, if that judge refuses, with the leave of the Court.

(3) No appeal shall lie from any order referred to in subsection (1)(g) to (j) :-

a) except –

i. where the liberty of the subject or the custody of infants is concerned;
ii. where an injunction or the appointment of a receiver is granted or refused;
iii. in the case of a decision determining the claim of any creditor or the liability of any director or other officer under the Companies Act in respect of misfeasance or otherwise;
iv. in the case of an order on a special case stated under the Arbitration Act;
v. in the case of an order refusing unconditional leave to defend an action;

b) in any other case, except with the leave of a single judge of the Court or if that Judge refuses, with leave of this Court.

[15] The preliminary objection, therefore, raises only one question, that is, whether the order appealed against is interlocutory or final? It is beyond contention that the applicable test in this jurisdiction in determining whether an order is interlocutory or final, for the purposes of determining whether a party requires leave of the court to appeal, is the application test. This approach has been consistently applied by this Court in many cases including ***John Rudon v Santiago Castillo Limited***[4] and ***Summerlin Limited v Martha Reneau and others***[5] where the leading Eastern Caribbean case of ***Othniel Sylvester v***

[4] Civil Appeal No 28 of 2016.
[5] Civil Appeal No 35 Of 2016.

Satrohan Singh[6] was cited with approval. In ***Othniel Sylvester***, Bryon JA at pages 10 – 11 said:

> "In conclusion the English Courts are now committed to the application test in determining whether an order or judgment is interlocutory. Applying that test, the order under appeal is interlocutory.
>
> In addition, Order 59 rule 1 A[6][c] of the English Rules of the Supreme Court, [which incidentally does not regulate our practice or procedure] prescribes that the order is interlocutory. I do not think that the order test would have produced a different result, because whereas the order effectively terminated the litigation, it did not determine any of the issues raised by the litigation. It dealt only with the question of whether the proceedings could continue. Although in some cases the rights of a party are determined by such procedural issues, in this case that was not so. The appellant's allegations of defamation were not disposed of by the order and could have been relitigated. If the effluxion of time (sic) has had any effect on his rights that could not be said to be a result of the order that the writ and its service were invalid. In my view, the only conclusion that can be drawn is that the order is interlocutory. The preliminary objection must be upheld, resulting in the declaration that the notice of appeal is void and there is no appeal."

[16] In ***Oliver McDonna v Benjamin Wilson Richardson***,[7] Barrow JA explained the test in this way:

> "The application test says that the court considering the question whether an order was interlocutory or final must look at the application pursuant to which the order was made. If, whichever way the application was decided that decision would have brought an end to the issue in litigation, the decision given on that application is a final order. If, on the other hand, the proceedings would not have ended if one side as opposed to the other side won, the order is not a final order but is an interlocutory order."

[17] Edwards JA in ***Nigel Hamilton-Smith et al v Alexander M. Fundora***,[8] puts it succinctly:

> "... it is well established in a plethora of decisions that our courts apply the "application test" to determine whether or not the order or decision is interlocutory. The observations of Vaughan Williams LJ in Herbert Reeves reflect our preferred approach. The "application test" looks at the outcomes that were possible on the application. The test is whether a decision on the application had it been decided in favour of the

[6] Civil Appeal No 10 of 1992 of Saint Vincent & the Grenadines.
[7] Civil Appeal No 3 of 2005 at para. 19.
[8] ANUHCVAP2010/0031 (delivered 31st August 2010, unreported).

> appellant or the respondent would have brought an end to the proceedings…A final order must generally be one which ends the litigation and leaves nothing for the court to do but execute the judgment. In other words, the final order must conclusively determine the substantive rights of the parties."

[18] Applying the application test to the instant case, there can be no question that irrespective of how the respondent's strike out application was decided, it would not have determined all of the issues between the parties. Had the judge found in favour of the appellant and dismissed the strike out application, the matter would have continued. Indeed, in ***John Rudon***, this Court addressed the very issue of whether an application to strike out a claim gave rise to an interlocutory or final order. The Court concluded that such an order was interlocutory in nature. Therefore, I am of the view that the preliminary objection by the counsel for the respondent that leave was required to appeal should be upheld since the order made by the trial judge was interlocutory.

[19] As was stated in ***John Rudon***, the proper course for the Court in a case where a would-be appellant files a purported notice of appeal without having first obtaining leave to appeal as required by the Rules is to strike out such purported notice as a nullity. This principle was given judicial recognition as far back as 1983 in ***Henderson v Archila***[9], where Sir John Summerfield P stated:

> "Our law is clear and positive and no appeal proceeding can be commenced until leave has been granted. Any notice which may have been filed without leave being first obtained is of no effect and is completely valueless and void. It cannot be revived by the subsequent granting of leave. Accordingly, the purported notice of appeal was struck out with costs.'

[20] I am therefore constrained to find that the legal consequence of not seeking and obtaining leave to appeal where leave was required, is that the notice of appeal in respect of grounds 2-5 is a nullity. As I have previously mentioned the Orders made by the Judge are all interlocutory in nature. Save for the order refusing the interlocutory freezing injunction they do not fall within the exceptions listed in

[9] (1983) 37 WIR 90.

section 201(2) or (3). Accordingly, leave to appeal those orders was required. This disposes of grounds 2-5 as leave to appeal was not obtained.

[21] I will proceed to consider ground 1 which relates solely to the Injunction Application. by virtue of section 201(3)(a)(ii) the judge's order relating to the Injunction Application does not require leave to appeal.

Is there a serious issue to be tried?

[22] The main thrust of the appellant's argument was that it had a good arguable case within the meaning of the principles espoused in ***American Cyanamid and Ninemia Maritime Corporation*** because of the respondent's repeated failure to file accounts of the estate; the respondent's failed attempt to represent that an accountant was assisting with the accounts where the accountant had not signed a report in review; and the respondent's failure to duly commission a purported affidavit of the accountant. Counsel for the appellant, Ms. Dawson submitted that the judge wrongly referenced and relied on the accountant's unsigned report and used the said document to form a view that the appellant did not have a good arguable case.

[23] Further, Ms. Dawson submitted that the judge erred in finding that the "evidence of Clinton Gardiner insofar as his attached title search report is concerned is to be struck and thus cannot be relied upon for the Injunction application." Additionally, Ms. Dawson argued that the judge erred in holding that the hearing of the injunction is to exclude the evidence of the Registrar and should be restricted only to the evidence contained in the appellant's affidavit in support of the Injunction Application.

[24] Counsel for the respondent, Ms. Retreage, submitted that based on the test outlined in ***Hadmor Productions Limited and Other v Hamilton and Another***,[10] in order for this Court to set aside the order of the judge, it "would have to find that she misunderstood the law or the evidence before her, made an inference that particular facts existed or did not exist which could be demonstrated to be wrong by further evidence becoming available at the time

[10] [1982]1 ALL ER 1042 at p. 1046.

of the appeal, or that the orders she made were so aberrant that they must be set aside on the ground that no reasonable judge regardful of his duty to act judicially could have reached it."

[25] Ms. Retreage argued that the appellant has failed to properly identify either an error of law or an error of fact made by the trial judge in arriving at her conclusion that there was no serious issue to be tried and that there was not a good arguable case. Further, she submitted that at paragraphs 6-10 of the judgment, the judge properly identified the law in relation to the grant of prohibitory injunctions and freezing injunctions by reference to section 27 of the ***Supreme Court of Judicature Act; Internet Experts SA DBA Insta Dollar v. Omni Networks Limited****;* ***Mareva Compania Naviera SA v. International Bulkcarriers SA****;* and ***Belize Telemedia Limited v Speednet Communications Limited****.* Ms. Retreage stated the judge extensively considered the evidence to determine whether there was a serious question to be tried and/or whether the appellant had a good arguable case. She argued that the failure to file accounts is not an issue between the parties as the respondent admitted to this failure. Therefore, there is no issue to be tried in relation to the accounts. Further she stated that there was no "failed attempt" to represent that an accountant was assisting with the accounts. According to her this was a fact stated by the respondent at paragraph 12 of his Affidavit dated 25th February 2021. Ms. Retreage said that, read in the context of the Affidavit, it becomes evident that the contents of the accountants' report were not introduced to verify the truth of the report's content; but to simply state the fact that an accountant had been retained.

[26] In response to the argument concerning the affidavit of Clinton Gardiner and the Registrar of Lands, Ms. Retreage submitted that there is no order of the court striking out the affidavit of Clinton Gardiner and that there is no record of the Court excluding the affidavit of the Registrar of Lands. Ms. Retreage told the Court that the contents of the Clinton Gardiner Affidavit were directly refuted by the respondent in his Affidavit dated 25th February 2021 and the contents of the Affidavit of Patricia Blackett were directly refuted by the respondent in his Affidavit of 25th February 2021. Ms. Retreage submitted that, more importantly,

the respondent provided evidence to demonstrate that the opinions of the Registrar of Lands as contained in her Affidavit were not based on fact since the conveyance of the Ranguana Caye Property had been formally recorded at the Land Titles Unit.

[27] It is common ground that an interlocutory injunction is a discretionary relief and the discretion whether or not to grant it is vested in the High Court judge by whom the application for it is heard.[11] Ms. Retreage has rightly reminded the Court of the well-known principles governing the approach of an appellate court when reviewing the exercise of a judge's discretion as set out in ***Hadmor Productions Limited and Other v Hamilton and Another*** and restated in several cases including ***National Commercial Bank of Anguilla Ltd v National Bank of Anguilla (Private Banking and Trust) (in administration)***.[12] The function of the appellate court is initially one of review only. The appellate court is to uphold the exercise of the judge's discretion unless it was based on a misunderstanding or misapprehension of the law or of the evidence, or there is new evidence or a material change of circumstances since the hearing before the judge, or the decision of the judge is so aberrant that no reasonable judge mindful of his duty to act judicially would have reached it. It is only if and after the appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons, that it becomes entitled to exercise an original discretion of its own. The function of the Court in reviewing the judge's discretion is not to interfere with the judge's exercise of discretion merely upon the ground that the members of the appellate court would have exercised the discretion differently. It is in accordance with these principles that I shall determine the issue of whether the judge erred in refusing to grant the injunction on the basis that there existed no serious issue to be tried.

[28] It is clear on reading the judgment that the judge identified the applicable legal principles and carefully examined each relief sought by the claimant in his Fixed Date Claim, and the evidence of the parties. At paragraph 9, the judge made reference to the test for granting a freezing order as set out in ***Mareva***

[11] Emmerson International Corporation and another v Viktor Vekselberg BVIHCMAP2020/0011 (delivered 8th March 2021, unreported); Hadmor Productions Limited and Other v Hamilton and Another.
[12] AXAHCVAP2016/0009 (delivered 28th February 2017, unreported).

Compania Naviera SA v International Bulkcarriers SA.[13] Further, at paragraph 10, the judge went on to outline the principles that the court should apply to the grant of any interim injunction as stated in ***Belize Telemedia Limited v Speednet Communications Limited***.[14]

[29] Regarding the accounts of the estate, the judge noted the respondent's admission of his failure to file accounts as required. According to the judge, this was undisputed and did not constitute a serious issue to be tried. The judge highlighted **rule 66.5(1) of the Supreme Court (Civil Procedure) Rules** which provides that the Court "need not make any judgment or order in an administration claim unless satisfied that the question in issue cannot be determined by other means." She further highlighted **rule 66.5(2)(i)** which authorises the Court, where "a person claiming to be entitled under the will" (such as the Claimant) alleges that no, or no sufficient, accounts have been furnished by the executors, to "stay the proceedings until a specified date and direct the executors…to supply proper accounts to the Claimant".

[30] In my view, there is no serious issue to be tried with respect to the filing of the accounts. In paragraph 6 of the respondent's affidavit filed and dated 13th January 2021, he admitted the failure and provided reasons to the Court for the failure. He also states that "I have lately engaged the firm of Swift and Associates to undertake an Independent preliminary review of the Executorship accounts maintained by me in the Estate." The judge accepted this evidence and made an order in accordance with **rule 66.5(2)(i).** I am persuaded by the submissions of the respondent. I can find no discernable error of law or of the evidence which would warrant this Court exercising its discretion afresh.

[31] The judge went on to consider the Buttonwood Bay property and concluded based on the concession of the appellant that there was no serious issue to be tried in respect of his claim that the respondent should produce and deliver up to him "title absolute for Parcel 81, Block 16, 4 Independence Drive, Buttonwood Bay, Belize City". The appellant conceded that he is and has been in physical possession of the Buttonwood Bay property since July 2020. The judge noted

[13] [1975] 2 Lloyd's Rep 509.
[14] Civil App No 27 of 2009.

that although the appellant claims that he has never received the actual copy of the Land Certificate for Parcel 81, he is the only one who can make an application to the Lands Department in respect of his Land Certificate. Considering the concession of the appellant and based on the totality of the evidence, this conclusion was open to the judge. She cannot therefore be criticized for a finding which is based on the evidence before her.

[32] Further, the judge considered the relief sought in relation to the Ranguana Cayes. The appellant contended that the respondent sold the property which belonged to the Estate "arbitrarily, without transparency and/or consultation with the [appellant]". It was the respondent's evidence[15] that purchase money for the sale of the Ranguana Caye Property is not an asset nor any part of the property of the Estate of the Testator. The Ranguana Caye Property was in fact owned by a Belizean Limited Liability Company, Serenade Island Resort Limited, a company in which the testator held 49% of the shares and his late wife, Carrie Fairweather held 51% of the shares. This evidence was not disputed.

[33] At paragraph 37, the judge concluded that:

> " the Ranguana Caye Property was owned by Serenade Island Resort Ltd. That "entity has its own legal personality. What did fall to the Estate of the Testator in this claim, as personal property, were those shares held by him in that Company. But the Ranguana Caye Property was an asset of the company, and are not assets of the Estate of the Testator.

[34] The evidence of ownership of the property is undisputed. I do not agree with the appellant that because of the testator's shareholding in the company, the proceeds of sale of the property belonged to the estate. The assets of a company are not owned by its shareholders. In ***Prest v Petrodel Resources Ltd and others***[16] Lord Sumption stated at paragraph [8]

> **"**Subject to very limited exceptions, most of which are statutory, a company is a legal entity distinct from its shareholders. It has rights and liabilities of its own which are distinct from those of its shareholders. Its property is its own, and not that of its shareholders. In *Salomon v A Salomon and Co Ltd [1897] AC 22, 66 LJ Ch 35, 4 Mans 89,* the House of Lords held that these principles applied as much to a company that was wholly owned and controlled by one man as to any other company.

[15] Defendant's Second Affidavit in Reply
[16] Prest v Petrodel Resources Ltd and others [2013] UKSC 34

> In *Macaura v Northern Assurance Co Ltd [1925] AC 619, 94 LJPC 154, 31 Com Cas 10,* the House of Lords held that the sole owner and controller of a company did not even have an insurable interest in property of the company, although economically he was liable to suffer by its destruction.
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> Lord Buckmaster, at pp 626-627 said:
>
> > *"no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up."*
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> In *Lonrho Ltd v Shell Petroleum Co Ltd* [1980] 1 WLR 627, 130 NLJ 605 the House of Lords held that documents of a subsidiary were not in the "power" of its parent company for the purposes of disclosure in litigation, simply by virtue of the latter's ownership and control of the group. These principles are the starting point for the elaborate restrictions imposed by English law on a wide range of transactions which have the direct or indirect effect of distributing capital to shareholders. The separate personality and property of a company is sometimes described as a fiction, and in a sense it is. But the fiction is the whole foundation of English company and insolvency law. As Robert Goff LJ once observed, in this domain "we are concerned not with economics but with law. The distinction between the two is, in law, fundamental": *Bank of Tokyo Ltd v Karoon (Note)* [1987] AC 45n, 64, [1986] 3 All ER 468, [1986] 3 WLR 414n. He could justly have added that it is not just legally but economically fundamental, since limited companies have been the principal unit of commercial life for more than a century. Their separate personality and property are the basis on which third parties are entitled to deal with them and commonly do deal with them.."

[35] The judge noted that in relation to a freezing order, the appellant would need to show, that he had a "good arguable case", which is the minimum threshold for the exercise of the court's discretion when considering a freezing injunction application. The freezing order was sought in relation to the proceeds of the sale of the property which does not belong to the appellant. In my view, and for the reasoning I have set out in paragraph [34] above, I find that there is no good arguable case on the facts and circumstances of this case.

[35] There is no reason to conclude, as suggested by the appellant, that the judge erred in the exercise of her discretion to refuse the injunction. Despite Ms. Dawson's passionate oration, she has failed to demonstrate that the judge's

decision was based on a misunderstanding or misapprehension of the law or of the evidence, or there is new evidence or a material change of circumstances since the hearing before the judge, or the decision of the judge is so aberrant that no reasonable judge mindful of his duty to act judicially would have reached it. In the circumstances, this ground of appeal fails.

Conclusion

[36] Having found that there is no basis to interfere with the exercise of the judge's discretion on the Injunction Application and that the remaining grounds of appeal, having been pursued without leave of the court, are a nullity, I would dismiss this appeal.

[37] I would make the following orders:

1. The appeal is dismissed.
2. Costs to the respondent to be assessed if not agreed.

Peter Foster K.C.
Justice of Appeal

[38] I concur.

Marguerite Woodstock-Riley
Justice of Appeal

[39] I have had the opportunity of reading, in draft, the decision of my brother and agree with the decision and the reasons given.

Minott-Phillips
Justice of Appeal