COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION
2018/CLE/gen/00169

IN THE MATTER of an Agreement for Sale dated the 21 day of September A.D. 2016 and made between BAHAMAS SUPERMARKET Limited PENSION PLAN LIMITED (as Vendor) and AML FOODS LIMITED (as Purchaser) for the sale of the free hold property known as ALL THAT piece or parcel of land formerly lot numbers 6, 7, and 8 and a portion of a reserve on the plan recorded in the Department of Lands and Surveys as Plan Number 579 of New Providence Road Industrial Site on Independence Drive in the Eastern District of the Island of New Providence one of the Islands of the Commonwealth of The Bahamas.
AND IN THE MATTER the law of Conveyancing and Property Act.

BETWEEN

AML FOODS LIMITED

Plaintiff

AND

DENNIS WILLIAMS

ROSALIE McKENZIE
(Trustees of The Bahamas Supermarkets Employee Retirement Fund)

1st Defendants

AND

BSL RETIREMENT PLAN LIMITED

2nd Defendant

AND

WHANSLAW TURNQUEST
(Representative of the Beneficiaries of BSL Profit Sharing Retirement Plan)

3rd Defendant

AND

ABDAB PROPERTIES LIMITED

4th Defendant

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Ms. Chizelle Cargill along with Mr. Marco Turnquest for the Plaintiff
Mr. Myles Parker along with Mr. Roger Minnis for the First Defendant
Mr. Desmond Edwards for the Second Defendant
Mr. Rouschard Martin for the Third Defendant
Ms. Judith Smith for the Fourth Defendant

Ruling Date: 27th March, 2023

RULING

1. By summons filed on August 18th, 2020 the First Defendants sought an order that the injunctive relief obtained on the 17th August 2020 (sic) be discharged or varied pursuant to Section 16(3) of the Supreme Court Act, and pursuant to Order 31 Rule 18 (2)(s), Order 32(1) of the Rules of the Supreme Court and under the inherent jurisdiction of the Court.

SUBMISSIONS

FIRST DEFENDANTS

2. In support of this application, Dennis Williams swore affidavits on the April 28th, 2020 at the time when the injunction was initially opposed and a subsequent affidavit filed 1st December, 2021 when the application was renewed.

3. They now submit that the injunction in place is a freezing injunction, the purpose of which is to prevent a Defendant from dissipating assets to frustrate the enforcement of a prospective judgment. They rely on the principles enunciated in **American Cyanamid v Ethicon Ltd.** when dealing with the discharge or variation of this injunction.

4. They rely specifically on the risk of dissipation of assets and maintain that there is no evidence of any attempts by either of the First Defendants to dissipate any assets or that they are likely to do so.

5. They further maintain that the delay in obtaining the injunction casts a doubt as to whether there was even a real risk of dissipation as they would have been able to do so before the injunction was obtained.

6. There is no direct claim against the First Defendants in the Statement of Claim. The Plaintiff supports the 2017 Conveyance and is only seeking relief from the First Defendant in the alternative should the court find the 2017 Conveyance null and void.

7. They maintain that the balance of convenience is in their favour as it would be futile to think that funds received as payment for work done as Trustees would still be in their account.

8. There are no guidelines in place to enable the first named First Defendant to conduct his affairs as a practising attorney with the injunction in place and as such it creates a difficulty in his conducting his business affairs.

9. The Plaintiff had many instances to apply for the injunction and did not and accordingly the balance of convenience is in favour of the First Defendants.

10. They accept that it would be fair for the court to vary the injunction to enable the First Defendants to operate banking facilities without hindrance until a determination of the validity of the 2017 conveyance.

11. They also submit that damages would be an adequate remedy in the circumstances.

SECOND DEFENDANT

12. The Second Defendant relied on its submissions made at an earlier application to discharge the injunction against certain third parties, as well as the affidavit of Mark Finlayson filed August 26th, 2020. They oppose the discharge of the injunction on the ground that neither of the First Defendants were ever appointed as Trustees of the East West Highway property ("the Property"). They were appointed specifically to hold ABDAB preference shares in order to conclude an agreement for sale signed by former Trustees and to hold a reversionary right in 70% of the shares in Trinity Limited.

13. The Second Defendant opposes the discharge on the ground that to do so would be to prematurely determine whether the First Defendants fraudulently or negligently represented that they were appointed to hold the Property and also whether they unduly received financial gain from the aforementioned acts without the benefit of a trial of these issues.

14. To discharge the injunction would also result in discharging all persons who may have aided and abetted the First Defendants.

15. The Second Defendant further submitted that if the injunction was discharged the prospect of any of the other parties being fully compensated for their loss would be destroyed.

THIRD DEFENDANT

16. The Third Defendant who in the midst of the hearing was replaced by Mr. Glen Adderley as the representative of the beneficiaries of the Bahamas Supermarkets Limited Profit Sharing Retirement Plan **("the Retirement Plan")** relied on the affidavit of Carlton A. Martin than opposition to the discharge of the injunction. In his affidavit he spoke to the date when the injunction was ordered which was one year after the commencement of the action.

17. The Third Defendant avers that the First Defendants have committed breaches of trust and fiduciary duties arising out of the sale of the trust property. He further provided details of which they considered were the breaches.

18. He avers that the First Defendants are dissipating the trust funds and that they wish to continue to spend trust funds, and their various affidavits provide evidence of this fact.

19. The first named First Defendant is deemed a professional trustee and is judged at a higher standard and ought to know inter alia that the trust property cannot be sold unless the court has approved the order and further the First Defendants cannot collect or distribute trust funds without the consent of the Beneficiaries and the court.

20. Counsel for the First Defendants never advised the court in Action FP/41 of 2012 that the property had been sold and the proceeds had been distributed, thus they lacked good faith.

21. He further averred that the First Defendants had a duty to inform beneficiaries of the sale, and not to benefit from the trust and must act in the best interest of the beneficiaries.

22. In their submissions they set out their chronology of events leading up to the

commencement of this action. This chronology is helpful and the court sets it out herein.

1) **The Third Defendant, Whanslaw Turnquest, represents the beneficiaries of Bahamas Supermarkets Limited Profit Sharing Retirement Plan (the Retirement Plan) as appointed and ordered by the Supreme Court in this action.**

2) **The Plaintiff, AML Food Limited, sought to purchase the East West Highway trust property (Property) from the Third Defendant Trustees. Such trust property was held by the trustees for the benefit of the beneficiaries whom the Third Defendant represents.**

3) **The Property was subject to a Consent Order filed on the 23rd September, 2016 (Consent Order) in Supreme Court action 2012/CLE/gen/FP/00041. The Consent Order was agreed to and signed by the First Defendants (Trustees) and all parties in Supreme Court action 2012/CLE/gen/FP/00041. The Consent Order granted jurisdiction to a Registrar of the Supreme Court to conduct an assessment and/or accounting of the Retirement Plan including the prime asset, the Property.**

4) **By way of Summons dated the 31st January, 2018 and filed by the Third Defendant in Supreme Court action 2012/CLE/gen/FP/00041 the Court became aware of the completion of a $3,000,000.00 sale between the Plaintiff and the First Defendants resulting in a conveyance of the Property to the Plaintiff on the 28th July, 2017.**

5) **The payment of $2,287,757.57 was paid by the Plaintiff's attorney (C. F. Butler & Associates) to Roger Minnis (Minnis & Co.) on the 9th August, 2017 with a previous 5% deposit on the said sale in the sum of $150,000 being paid to Minnis & Co on the 21st September, 2016.**

6) **The balance of the purchase price in the sum of $562,242.43 was retained by the Plaintiff's attorney, C. F. Butler & Associates, for the alleged purpose of paying outstanding real property tax and Bahamas Power and Light bills.**

7) **Before the commencement of this action, the Deputy Registrar, Camille Darville-Gomez, on the 5th February, 2018 ordered the First Defendants and their attorney, Roger Minnis, to pay into Court the alleged remaining sums ($732,064.52). The payment was made.**

8) **The payment of the said $2,287,757.57 and subsequent distribution came to the knowledge of the Court, the Third Defendant and the beneficiaries of the Retirement Plan some six (6) months after its receipt on the 9th August, 2018.**

9) **The First Defendants and their attorney distributed (as hereinafter mentioned and referred to in the 15th February 2018 affidavit of Rosalie McKenzie in action 2013/CLE/gen/FP/00041) a substantial portion of the said sums they received. They made the distribution without permission from the aforesaid Deputy Registrar presiding over the Court ordered assessment/accounting pursuant to the Consent Order.**

10) **The Plaintiff commenced this action and later filed its Statement of Claim primarily seeking a declaration that the First Defendant Trustees vested title to the Property in it. The Third Defendant filed an Amended Defence and Counterclaim.**

11) **The Court on its own volition issued a proprietary injunction order on the 6th February, 2019 (the Order) seeking to protect proceeds of sale in the sum of $3,000,000.00, the majority of which has been paid to the First Defendants as mentioned above.**

23. They rely on **JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA Civ 139** where the court emphasized the substantive reason for issuing the proprietary injunction.

> **"14. The principles upon which freezing orders are granted are well known. The purpose underlying the grant of a freezing order is to prevent a defendant from putting assets beyond the reach of judgment creditors in the event that judgment is enteref against him. This has been said on many occasions, and it is unnecessary to cite authority in support of that proposition. Assets may be put beyond the reach of judgment creditors by hiding them, by transferring them abroad, or by dissipating them. But the underlying purpose if freezing order is always the same. It is because that is the purpose of a freezing order that its scope is normally restricted to assets which would be amenable to execution in aid of judgment. In JSC BTA Bank v Solodchenko [2010] EWCA Civ 1436, [2011] 1 WLR 888 Patten LJ said at [49] (1):**
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> > **"... the only purpose of [a freezing order] is to prevent the dissipation of assets which would otherwise be available to meet a judgment. The inclusion of trust assets is therefore only justifiable if there are proper grounds for believing that assets ostensibly held by the defendant on trust or as a nominee for a third party in fact belong to him (or to another person whose assets are also frozen). Absent such circumstances, I can see no possible justification for including in the order assets which belong beneficially to a third party and are not therefore the property of the defendant."**

24. They submitted that the action of Scotiabank in freezing the account was appropriate to prevent Scotiabank from knowingly assisting the First Defendants.

25. The First Defendants have the burden of proving the funds in the bank account were personal funds and not trust funds and evidence is required as to where the proceeds of sale are.

26. There is a presumption in law that in the absence of cogent evidence to prove otherwise the funds in the account are from the proceeds of sale.

27. They further relied on the three guiding principles identified by Beaston LJ in **JSC BTA Bank v the Ablyazov** where he stated:-.

> **"1. The enforcement principle. The first and primary principle is that the purpose of a freezing order is to stop the injuncted defendant dissipating or disposing of property which could be the subject of enforcement if the claimant goes on to win the case it has brought, and not to give the claimant security for his claim.**
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> **2. The flexibility principle. The jurisdiction to make a freezing order should be exercised in a flexible and adaptable manner so as to be able to deal with new situations and new ways used by sophisticated and wily operators to make themselves immune to the court's orders or deliberately to thwart the effective enforcement of those orders.**
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> **3. The strict interpretation principle. Because of the penal consequences of breaching a freezing order and the need of the defendant to know where he, she or it stands, such orders should be clear an unequivocal, and should be strictly**

construed."

28. They submit that the court has an inherent power to police its own order when made on its own volition.

FOURTH DEFENDANT

29. The fourth Defendant opposes the application to vary or discharge the proprietary injunction. They maintain that the First Defendant has not shown why the order should be varied or discharged.

30. They submit that the order is a proprietary injunction and not a Mareva injunction. They rely on **Kea Investments Ltd. v Watson and others [2020] EWHC 472** where the court stated:

> **"Since the basis of proprietary claim is that the particular asset in question is said to belong to the claimant, the question is not whether the Defendant should be able to use his own asset, but whether he should be permitted to use assets which may turn out to be the claimant's. There is therefore no presumption in favor of his being able to do so. "**

31. They also rely on **JSC BTA Bank v Ablyazov [2015] EWHC 3871** where the court held:-

> **"...The principles in such cases of a proprietary claim are well established. Where there are assets which may belong to the claimant, the court will not allow those funds to be used for living expenses or legal costs unless the defendant has shown, by full and frank evidence that he does not have, or have access to, any other funds or asset which can be used for those purposes. If he does he must use such other funds or assets first. That is the threshold requirement which must be satisfied by a Defendant in the case of proprietary claim. If that threshold requirement is met, then the court has to carry out a balancing exercise."**

32. They submit that an injunction can apply to a joint account and rely on **Halsbury Chambers (a firm) v Josephine Bowleg and John Stuart PR of the Estate of the late Carolyn Bowleg (2015) 1BHSJ NO. 15** where Winder J stated:-

> **"Where a person deposits money with a bank in the names of himself and another with instructions that is to be payable to either or the survivor, the other's right against the bank depends on whether the depositor purported to make the other a party to the contract; if the depositor did so, then he must have had authority to act as the others agent. If there was no such authority, the bank would not be under obligation to the other party unless the latter ratified the contract."**

33. They further rely on **In RE: Northall [2010] EWHC 1448** where Richards J stated:

> **"There is no dispute as to the applicable legal principles. First, where a sum of money belonging to one person is paid into a joint account there is a presumption that the owner of the money does not intend to make a gift of it to the other account holder and accordingly the money is held on a resulting trust for the provider. The presumption will be rebutted if the circumstances give rise to a presumption of advancement, which is not suggested here, or by evidence that the owner intended to transfer the beneficial interest to the account holders jointly or, as the case maybe, to the other account holder solely. "**

34. They further submit that simply because the funds are held in a joint account does not automatically give all the account holders a beneficial interest in the funds. Mr. Williams

will have to establish that the funds were his, otherwise if the funds from the transaction were paid to the First Defendants and can be traced to the joint account, those funds can be held pursuant to the proprietary injunction.

PLAINTIFF

35. The Plaintiff opposes the application to vary or discharge the injunction. In support of their position they rely on the affidavit of Gavin Watchorn filed on 21st October 2021.

36. In their evidence they set out the factual matrix upon which they rely, particularly including the fact that the First Defendant Mr. Dennis Williams had filed an initial summons seeking an order that Scotiabank release the hold on his joint account held with his wife and for a declaration that the order made by the court did not constitute a freezing order. The First Defendant withdrew this summons; and a few months later filed the instant summons supported by the affidavits of both First Defendants.

37. The Plaintiff avers that there are serious issues to be tried and rely on the ruling of this court made on the First Defendants previous unsuccessful application to strike-out the action against them on the ground that there was no reasonable cause of action.

38. They maintain that the balance of convenience lies in maintaining the injunction as the First Defendants have produced no evidence to support their claim that the injunction would cause irreversible damage. Further the Plaintiff is a large company capable of paying damages to the First Defendants should the court so order, where the reverse cannot be said.

39. Upon review of the First Defendants' evidence, they confirm that they received a total of $665,585.32 from the sale proceeds.

40. The Plaintiff maintains that if the court determines that the 2017 Conveyance is invalid, it would have a strong proprietary claim to the purchase money paid over to the First Defendants.

41. The First Defendants have not out forward any compelling reasons to justify the discharge or variation of the order.

42. The Plaintiff submits that the court should consider the following guidelines in deciding whether to maintain an injunction.
    a. Is there a serious question to be tried?
    b. Will an award of damages at the trial adequately compensate the Plaintiff?
    c. Would the Applicants be adequately protected by the Plaintiff's undertaking in damages?
    d. Where does the "balance or convenience" lie?

43. They maintain that the court must decide if there is a serious issue to be tried which they maintain there is as the court has already ruled that the Plaintiff has a cause of action against the First Defendant. They note that the court at this stage of the proceeding is not to resolve the conflict of evidence on the affidavits or to decide any questions of law all of which should await the trial.

44. They rely on **Fellowes & Sons v Fisher 1976 1 QB 122** where the court considers

whether damages would be an adequate remedy:-

> **" ... The governing principle is that the court should first consider whether, if the plaintiff succeeds at the trial, he would be adequately compensated by damage for any loss caused by the refusal to grant an interlocutory injunction." If damages 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 that stage.**
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> **If on the other hand, damages would not be an adequate remedy, the court should then consider whether, if the injunction was granted the defendant would be adequately compensated under the plaintiff's undertaking as to damages. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction."**

45. The Plaintiff submits that damages would not be an adequate remedy if they were successful at trial, as the Fund of which the First Defendants are Trustees is insolvent. Further no evidence has been proffered to prove that the Trustees have sufficient assets in their personal capacities to repay the purchase money. Based on this fact alone, the court should refuse to discharge the injunction.

46. The Plaintiff has given an undertaking to pay damages should they be unsuccessful.

47. They submit that it is only where there is a doubt as to the adequacy of the respective remedies in damages available should the question of balance of convenience arise. The Plaintiff maintains that the balance lies in favor of maintaining the injunction pending trial.

48. The prejudice alleged is not supported by any evidence. The fact the First Defendants claim to have paid away a portion of the money does not prove any prejudice to the First Defendants.

49. There was no delay in seeking the order.

50. The application to vary was not set out in detail so as to formulate how exactly the order should be varied except that the balance figure should be a lower figure. No figure was purported and no justification was given for the lower figure, hence it should be refused.

51. The Plaintiff is seeking to maintain the order freezing the amount of the purchase price and nothing more.

DECISION

52. Section 21 of the Supreme Court Act states:-

> **"(1) The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.**
>
> **(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit.**

53. The court on February 6, 2019 made an order of its own volition upon assuming carriage of this action, freezing the Purchase Money until the action was determined or further order.

54. This order was a proprietary injunction made against the First Defendants who were the purported trustees of the Bahamas Supermarket Employees Retirement Fund **("the Fund").**

55. The Fund owned 6.52 acres of land on the East West Highway **(the Property).**

56. By a conveyance dated 28th July 2017 the First Defendants purported to convey the Property to the Plaintiff in consideration of $2,437,757.77 of which $2,287,757.57 was received by the First Defendants (**"the Purchase Money"**) from the Plaintiff.

57. Issues arose concerning the title to the Property resulting in the commencement of this action by the Plaintiff seeking certain declaratory relief or alternatively restitution of the Purchase Money.

58. Deputy Registrar Darville-Gomez (as she then was) in a separate action ordered the First Defendants to pay into court the sum of $732,064.50, being a portion of the Purchase Money which they did.

59. Allegations have been made that a substantial portion of the Purchase Money has been distributed by the First Defendants to third parties.

60. This injunction was extended on the 21st July, 2020 to certain third parties who allegedly received some of the Purchase Money. This order against some of these third parties was subsequently discharged as the undertaking initially given by the Third Defendant to maintain the injunction was withdrawn by him upon his resignation and withdrawal from the action.

61. A proprietary injunction is distinct from a mareva injunction. A proprietary injunction is an injunction granted in an action which seeks to preserve property that a party in that action claims is its property or that it has a right to. The purpose of which is to preserve the property until the determination of the action. As such it should not normally be allowed to be used by other parties to pay legal expense or other expenses. **See Meadow Design Ltd. and others v Rishco Leisure Ltd. and another [2022]EWHC 2211 (Ch)**

62. In **Polly Pecks International p/c v Nadia and others (No 2) 1992 4AER769** Lord Justice Scott stated:-

> **"I now come to the question whether a limited injunction preserving, pending trial, the £8.9m should be granted. This would not be a Mareva injunction. It would not be subject to provisos enabling the use of the money for normal business purposes, or for the payment of legal fees, or the like. There is, in general, no reason why a defendant should be permitted to use money belonging to another in order to pay his legal costs or other expenses. The objection in principle to the grant of the Mareva injunction to which I have referred does not apply to an injunction to preserve a fund that, in the contention of PPI, belongs to PPI."**

63. I previously ruled that the Plaintiff has a reasonable cause of action against the First Defendants. I am satisfied therefore that there is an arguable case and a serious issue to be tried.

64. It is common ground that the three elements as established in **American Cyanamid v Ethicon Ltd. (1975) 1AER504** must be established and considered in order to determine whether to grant and or maintain a proprietary injunction.

65. I am satisfied that it is not necessary to show any risk of dissipation in order to maintain this type of injunction.However on the facts of this case, there is already evidence that some of the Purchase Money has been distributed to third parties. This fact strengthens the reason for maintaining the injunction.

66. As Justice Flaux stated in **Madoff Securities International Ltd. and another v Raven and others (2011) EWHC 3102** which I adopt:-

> **"In particular, unlike in the case of a freezing injunction, it is not necessary to show any risk of dissipation of assets and, even if there has been delay in making an application which might lead to refusal of a freezing injunction, a proprietary injunction may none the less be granted: see *Cherney v Neuman [2009] EWHC 1743 at [101]-[102] per Judge Waksman QU siting as a Judge of the High Court.***
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> Here the court is referring to the Mareva as a freezing injunction.

67. **Further in Michael Cherney et al v Frank Neuman et al [2009] EWAC 1743** Justice Waksman QC stated:-

> **"The approach of the Court is different here. The jurisdiction is founded upon the Court's equitable jurisdiction and its express powers under CPR 25.1 (1) (c) to preserve assets. The jurisdiction is broad and does not depend on it being shown that here is a real risk of dissipation of assets to avoid a judgment since this is relevant only to Mareva – type general freezing relief. Obviously, if the location of the claimed asset were known and it was fully secured pending trial, the Court would be unlikely to grant relief absent grounds for immediate delivery-up etc."**

The Purchase Money here was not fully secured. The need for maintaining the injunction is emphasized as the converse is true.

68. Once the court has been satisfied that there is a serious issue to be tried, the court must determine in whose favour the balance lies in determining whether to maintain or discharge the injunction. This issue would only arise if there is a question as to the adequacy of damages which could be used to compensate the successful party.

69. The First Defendants have paid out over $1,705,693.00 of the purchase monies as averred in the affidavit of Ms. Rosalie Mckenzie. Further in Mr. Williams' affidavit, he admits that he and his wife are experiencing financial difficulties because of the freezing of their account. In his second affidavit he avers that the First Defendants would suffer loss which could not be compensated in damages and he also avers that he would suffer prejudice which would outweigh any prejudice experienced by any other party. He avers that the prejudice would be irremediable as it impacts his reputation, loss of income and ease of doing business. He does not provide any evidence of any risk to his reputation, or loss of income or difficulty in conducting his business.

or loss of income or difficulty in conducting his business.

70. The Third Defendant represents the beneficiaries of the Fund. The prejudice to these beneficiaries is readily apparent in that should the Conveyance in 2017 not be validated because of a previous Conveyance, the funds will have to be reimbursed and they will be ultimately responsible for the reimbursement. Further if the sale is validated, the admitted disbursement of the funds is prejudicial and if allowed to continue, they will suffer obvious and irreplaceable loss unless the issues between the beneficiaries and the First Defendants are resolved.

71. The Fourth Defendant avers that the First Defendants were never appointed as trustees to hold the Property and accordingly they were not entitled to hold any Purchase Money from the sale of the Property. To discharge the injunction would be to remove any safeguards on the Purchase Money which the First Defendants are holding and which the Fourth Defendant alleges is being held wrongfully.

72. Finally the Plaintiff maintains that if the conveyance in its favour is declared invalid, they are entitled to the return of the Purchase Money forwarded to the First Defendants. If the injunction is not maintained, based on the evidence adduced, the First Defendants are not in a position to reimburse the Purchase Money.

73. Both the First Defendants as Trustees of the Fund have averred that there are no assets of the Fund other than the purchase monies to repay the Purchase Money. The First Defendants have not produced any evidence of their ability in their personal capacities to repay the Purchase Money thus leaving the Plaintiff in a challenging position should the court order the funds returned. Further if the injunction is discharged, there is no guarantee that there will be any funds available to repay the Plaintiff. They have not proven that damages would be an adequate remedy. In fact the evidence produced questions their means to pay any damages.

74. Upon a review of all of the evidence and submissions made, I am satisfied that the balance of convenience lies in maintaining this injunction. The onus would be on the parties to move the matter to trial without further delay to determine the issues and minimize any further risks.

75. The First Defendants in support of their application also rely on the perceived delay in the injunction being obtained as a reason to submit that that it was not necessary at all.

76. I accept that there was no explanation given for the time elapsed between the commencement of the action and the date of the order, however upon a review of this file the reason is apparent. This action was commenced in 2018 and was being heard before Chief Justice Isaacs who sadly died in 2018. After a contested hearing the Chief Justice had adjourned the matter for a ruling which to my knowledge was never rendered due to his unfortunate demise.

77. In February of 2019 this court became seised of the matter. An application was made by the Plaintiff to have the action which had been commenced by originating summons to be converted to a writ action because of the considerable dispute of facts between the parties. An order was made in April 2019 converting the action to a writ action and this action has crawled and struggled through numerous interlocutory disputes. The proprietary injunction however was made at the first hearing in 2019 and accordingly I do

injunction.

78. Having reviewed all of the evidence and heard all of the submissions I am satisfied that this injunction should be continued. There is already evidence that some of the Purchase Money has been disbursed to third parties. While I make no finding as to whether these were proper transfers or not, the fact is that the monies have left the control of the Trustees and should a decision be made that they be returned to the Plaintiff there will be challenges in recovering these monies.

79. While I normally would not vary this injunction due to the lack of evidence provided as to why it should be varied, I am aware, having reviewed the affidavit evidence that only $2,287,757.57 was in fact received by the First Defendants and accordingly the injunction is varied to freeze $2,287,757.57.

80. Accordingly the First Defendants application is dismissed with the costs of the Plaintiff and the other Defendants to be paid by the First Defendants and to be to be taxed if not agreed.

Dated this 27th day of March 2023

Hon. Madam Justice G. Diane Stewart