IN THE COURT OF APPEAL OF BELIZE AD 2014
CIVIL APPEAL No. 3 of 2012

NIGG, CHRISTINGER & PARTNER
YOSIF SHALOLASHVILI Appellants

v

NINA SOMKHISVILI Respondent

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BEFORE
The Hon Mr Justice Dennis Morrison Justice of Appeal
The Hon Mr Justice Douglas Mendes Justice of Appeal
The Hon Mr Justice Samuel Awich Justice of Appeal

Rodwell Williams SC and Nigel Ebanks for the appellants.
Mr E A Marshalleck SC and Mrs A Arthurs-Martin for the respondent.

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11 March, 27 June 2014.

MORRISON JA

[1] In his judgment in this matter, which I have had the pleasure of reading in draft, Mendes JA has elucidated a particularly arcane area of our civil procedural law. I entirely agree with his reasoning and his conclusions and there is nothing that I can possibly add.

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MORRISON JA

MENDES JA

[2] On 4 July 2011, Hafiz J issued separate injunctions against the first and second appellants, the terms of which are set out in detail later on in this judgment. At the same time, she granted leave to the respondent to serve her Fixed Date Claim Form, along with the affidavits filed in support of the claim and all applications, affidavits, orders and notices in the Claim, on the first and second appellants outside the jurisdiction at addresses in Zurich, Switzerland and Ashdod, Israel, respectively. It is not in dispute that the documents were delivered by courier at the addresses identified in the court's order and that the appellants received them by this route. It is not in dispute either that this did not constitute personal service.

[3] By a joint application dated 4 October 2011, the appellants applied to the Supreme Court for orders discharging the injunctions, setting aside the Fixed Date Claim Form, discharging the order granting the respondent leave to serve the Fixed Date Claim Form and the other documents on the appellants outside the jurisdiction and declaring that the Court had no jurisdiction over the appellants or to grant the injunctions. The appellants relied on a number of grounds in support of the application, but only five continue to be relevant. They are i) that the respondent needed leave to issue the Fixed Date Claim Form for service out of the jurisdiction but did not apply for it; ii) that the court had no power to grant leave to serve the Fixed Date Claim Form out of the jurisdiction by way of a mode of service alternative to or in substitution for personal service, or, alternatively, in the absence of an application pursuant to rule 7.8 of the Supreme Court (Civil Procedure) Rules 2005 ("CPR") for leave to effect service in accordance with the law of the country in which the document is to be served and in the absence of any evidence before the court as to what modes of service were permissible in that country; iii) that in any event service of the injunctions could only be effected personally; iv) that the claim was not one in respect of which service out of the jurisdiction could be ordered; and v) that there was no cause of action made out against the first appellant. Hafiz J found no merit in any of these grounds, for reasons which will be explained later, and the appellants appeal on the ground, broadly speaking, that she was wrong in law in each instance so to find.

[4] Before addressing the appellants' complaints, it is first necessary to sketch in some background facts.

The Background Facts

[5] The respondent was once married to Somkhishvili Tamaz Vaterianovich ("Tamaz"). Their marriage produced one daughter, who they named Liana. The respondent had two daughters from a previous marriage, one of whom is named Anastasia.

[6] The first appellant is a management firm based in Zurich, Switzerland. In or around 1998, Mr. Ernst Christinger, a former director of the first appellant, acting on Tamaz's instructions, caused Palor Real Estate Corporation ("Palor") to be incorporated in Belize as an offshore company under the International Business Companies Act, 1990. On Tamaz's instructions, as well, Mr. Christinger caused 100% of the share capital in Palor, comprising 10,000 shares, to be issued in three separate share certificates, each made out to "Bearer". Share Certificate No. 1 was issued for 2000 shares and Share Certificates Nos 2 and 3 for 3000 and 5000 shares, respectively. Initially, Mr. Christinger kept all the share certificates in his possession in Zurich.

[7] Palor's registered agent is a company named Morgan & Morgan Trust Corporation (Belize) Limited which employed a professional intermediary named MMG Panazar Limited ("Panazar"), also based in Zurich.

[8] The respondent describes the first appellant's role as taking instructions from Tamaz as to the management of Palor. Anastasia also describes the first appellant as Palor's management company. Similarly, Morgan & Morgan's compliance officer refers to the first appellant as Panazar's "client of record" and as the entity from which Panazar took instructions as regards Palor.

[9] In September 1999, Palor purchased a property situate at 93 Redington Road, London. Tamaz provided the funds for the purchase. The respondent went to live there

with Liana in 1999 and she has occupied the premises ever since. She claims that Tamaz agreed that the property had been acquired for her and that it was to be her exclusive residence.

[10] In 2002, Tamaz instructed Anastasia to visit the first appellant's offices in Zurich to collect the Palor share certificates. Tamaz claims that he instructed Anastasia to deposit the share certificates at his office, but Anastasia denies this. Anastasia collected Share Certificates Nos 2 and 3 from the first appellant and signed the share register acknowledging receipt. She then deposited the share certificates in the respondent's safety deposit box and claims that she informed Tamaz immediately that she had done so. She also claims that she reminded Tamaz from time to time between 2002 and 2010 that the share certificates were in the respondent's safety deposit box. Tamaz claims, on the other hand, that he only became aware that Anastasia had given the share certificates to the respondent sometime later when he was looking for them for "a possible mortgage finance agreement" and, when confronted, she told him that she had done this in order to assist her mother.

[11] By March 2010, the respondent's marriage to Tamaz had broken down. He had fathered a child with another woman. Around this time, Tamaz confronted the respondent about the share certificates and she refused to surrender them to him. Accordingly, he instructed the first appellant to cause Share Certificates Nos. 2 and 3 to be cancelled and to be replaced by a share certificate to bearer for 8,000 shares.

[12] For his part, Mr. Christinger claims that in March 2010 Tamaz told him that he did not receive the share certificates from Anastasia and that they were lost, and that steps should be taken to cancel them. Accordingly, by email dated 25 March 2010, the first appellant asked Panazar to cancel Share Certificates Nos 2 and 3 immediately "because the client has lost them", and to issue a new certificate for 8000 shares. At Panazar's request, the first appellant issued an "Indemnity Declaration" on 29 March 2010, which they signed as Palor's principal, declaring that they "hold and duly represent all of the issued and outstanding shares of the Company" and that "we have

lost the share certificates of the Company." On the same day, at a special meeting of Palor's board of directors held in Belize, it was resolved that Share Certificates Nos 2 and 3 be declared null and void with immediate effect, and that a new certificate No. 4 to bearer for 8,000 shares be issued ("the special resolution").

[13] Thereafter, Tamaz delivered Share Certificate No. 4 to the second appellant, his brother in law. This was done, he claims, to satisfy a judgment debt.

[14] By letter dated 23 June 2010, the respondent's English solicitors wrote to the first appellant informing them that the respondent "holds 80 percent of the shares in Palor Real Estate" and asking them not to take any steps to "manage, deal, charge or dispose of this company or any of its assets in any way" having regard to pending matrimonial proceedings between the respondent and Tamaz. There was no response to this letter. It was only after the respondent wrote to the first appellant on 8 December 2010 attaching copies of Shares Certificates Nos 2 and 3 that the first appellant responded by letter dated 10 December 2010 informing her that the certificates had been cancelled and that a notice to that effect had been published in the Financial Times newspaper of 23 April 2010.

[15] In her Fixed Date Claim Form filed on 16 June 2011, the respondent claims an order setting aside the special resolution and a declaration that Share Certificates Nos 2 and 3 are valid and that the respondent is the lawful owner of 8000 shares in Palor. She also claims the following injunctions:

> "An injunction restraining the First Defendant, whether by itself, its servants or agents or otherwise howsoever from taking and acting on instructions from any person or persons, including the Second Defendant in relation to the Company and from dealing with the Company without the written approval of the Claimant and/or parting with possession of any of the assets of the Company until trial or further Order of the Court.

ii) An injunction restraining the Second Defendant, whether by himself, his servants or agents or otherwise howsoever from representing himself as the owner of the Company or majority shares therein, or from giving any instructions to any person or persons, including the First Defendant in relation to the Company and from dealing with the Company without the written approval of the Claimant and/or parting with possession of any of the assets of the Company until trial or further Order of the Court."

[16] The respondent claims that in giving directions to Palor's directors to cancel the share certificates, the first appellant acted fraudulently in that they knew that Share Certificates Nos 2 and 3 were not lost or stolen and they took no corrective steps to reverse the special resolution even after they were told that the share certificates were in the respondent's possession.

[17] On 4 July 2011, Hafiz J issued the injunctions claimed in the Fixed Date Claim Form until trial or further order of the court.

Must Leave to issue a claim for service out of jurisdiction be obtained?

[18] The respondent filed, or issued, the Fixed Date Claim Form which commenced these proceedings on 16 June 2011. She had not previously applied for or obtained leave of the Supreme Court to do so. On 1 July 2011, she applied for an order pursuant to CPR 7.3(2)(b) and 7.14 that the Fixed Date Claim form and affidavits filed in support and all other applications, orders and notices be served on the appellants outside of the jurisdiction, and orders to this effect were granted. The appellant contends that leave to issue a claim form for service out of the jurisdiction is a pre-condition to the assumption of jurisdiction by the Supreme Court.

[19] Order III Rule 4 of the Supreme Court Rules once provided that "No Writ of Summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be <u>issued</u> without leave of the Court" (emphasis added). But CPR 7.2 now requires the court's permission only for the service of the claim form out of the

jurisdiction, not for the issue of the claim form. As Morrison JA pointed out in ***Rezende v Comphania Siderurgia Nacional International Investment Fund Limited*** (CA 23 of 2009, 20 October 2010) (at paras 58-59):

> ”There is no obvious requirement in Part 8 of the CPR, which deals with the method of commencement of proceedings, for the court's permission as a precondition to the issue of a claim form intended for service out of jurisdiction … Part 7 does not on the face of it address in any respect the method by which proceedings in the Supreme Court are commenced which is … dealt with separately in Part 8 …"

Similarly, Hafiz J held that there is no requirement under the CPR for permission to issue a claim form for service out of the jurisdiction, and rejected the appellant's objection on this ground.

[20] Mr. Williams accepts, as I understand him, that there is no longer any requirement under the rules that leave to issue a claim form for service out of the jurisdiction must be obtained. What he submits is that the requirement for leave to issue a claim form is part of the substantive law of Belize. He originally located the source of this substantive rule in sections 18 and 19 of the UK Common Law Procedure Act of 1852 which he said was extended to and formed part of the law of Belize by virtue of the Imperial Laws (Extension) Act Cap 2, section 2(1) of which extended to Belize ”all Acts in abrogation or derogation or in any way declaratory of the common law passed prior to 1st January 1899.” However, Mr. Williams later informed us through the Registrar after the appeal was heard that sections 18 and 19 of the Common Law Procedure Act had been repealed by the Statute Law Revision and Civil Procedure Act 1883 and accordingly were not in existence to be extended to Belize. He pointed out further in his letter to the Registrar that even if section 19 of the Common Law Procedure Act had not been repealed prior to the reception date in 1899, the CPR 2005 made by the Chief Justice pursuant to section 95 of the Supreme Court of Judicature Act Cap 91 would have had the effect of repealing any procedure provided for under the Common Law Procedure Act inconsistent with the CPR. But he did not expressly withdraw his complaint that leave to issue a claim form for service out of the jurisdiction was a pre-

condition to the founding of jurisdiction in the Supreme Court over persons located outside the jurisdiction, and, more particularly, he did not abandon his submission that the other source of the substantive rule requiring leave to issue a claim form for service out of jurisdiction is to be found in the common law itself. This point must therefore still be considered, but it can be disposed of shortly.

[21] None of the authorities cited by Mr. Williams asserts the existence of a common law rule by which the High Court's jurisdiction over a person residing out of the jurisdiction is dependent upon the prior grant of permission by the court to issue the originating process. The common law rule is that the jurisdiction of the court depends, broadly speaking, upon presence in the jurisdiction – see per Sir Robert Phillimore in ***Re Smith*** [1876] 1 P.D. 300, 301; ***Johnson v Taylor Brothers & Co. Ltd*** [1920] AC 144, 154 per Lord Dunedin. Unless a statute or a rule of court permits service out of the jurisdiction, therefore, any service of any originating or other process upon a defendant while out of the jurisdiction would be irregular and liable to be set aside – see ***Hawkins v Hall (***1839) 1 Beav. 73; p 48 ER 866. But, at common law, a person who is ordinarily resident out of the jurisdiction may nevertheless be subject to the High Court's jurisdiction if he is served with the originating process while he is temporarily present within the jurisdiction or if he voluntarily submits to the court's jurisdiction. As formulated by the authors of ***Dicey and Morris on Conflict of Laws*** 12th Ed. Pp. 270-271, the general principle is that service of an originating process is the foundation of the court's jurisdiction to entertain an action in personam. Where a claim form cannot legally be served on a defendant the court can exercise no jurisdiction over him. It is therefore the ability to effect lawful service upon a defendant which founds jurisdiction. If it is permissible to serve originating process on a person who is temporarily within the jurisdiction or who voluntarily submits to the jurisdiction of the court, it must be permissible to issue the originating process in anticipation of the temporary presence of the person within jurisdiction or his voluntary submission to jurisdiction, unless otherwise provided by statute or rules of court. The only common law prohibition, therefore, is against service outside of the jurisdiction, not against the issue of originating process for service on someone who was not within the jurisdiction when the originating process was issued.

[22] There is therefore no substantive rule of law requiring leave to issue a claim form for service out of the jurisdiction and the CPR does not require such leave. This ground of appeal accordingly fails.

Substituted Service out of Jurisdiction and Personal Service

[23] The respondent applied for orders that the Fixed Date Claim Form, the accompanying affidavits and all applications, orders and notices be served outside the jurisdiction at the appellants' addresses in Switzerland and Israel. Hafiz J granted the orders as prayed. The orders did not specify the method of service on the appellants but merely the place at which the documents were to be served.

[24] Mr. Williams says that Hafiz J had no power to order an alternative or substituted method of service. He says that the court's power to order a method of service as an alternative to personal service applies only to service within the jurisdiction under Part V of the CPR. The power to order alternative service under Part V does not "cross-apply" to service out of the jurisdiction under Part VII. He relies on the decision of Barrow J (as he then was) in ***Transworld Metal SA (Bahamas) et al v Bluzwed Metals Limited (BVI) et al*** (Claim No. BVIHC 2003/0179, 22 March 2005) for this proposition. His assumption, of course, is that Hafiz J ordered an alternative method of service.

[25] CPR 5.1(1) provides that: "The general rule is that a claim form must be served personally on each defendant." Necessarily, specific provision is made for service on bodies corporate (CPR 5.7 and 5.9), partnerships (CPR 5.8) and minors and patients (CPR 5.10); and in some instances service by post or fax is permitted, for example, on a corporate body's registered office. Parties are also permitted to choose an alternative method service (CPR 5.13(1)) but must file evidence on affidavit proving that the method of service selected was sufficient to enable the defendant to ascertain the contents of the claim form (CPR 5.13(2)). A party may also apply to the court for an order to serve the claim form by a specified method and on such an application the court may direct that a claim served by the method specified in the court's order be deemed to be good service (CPR 5.14). Specific provision is also made (CPR 5.18) for applications to the

court for an alternative method of service of a claim for possession of land where there is no person in occupation of the land and service cannot otherwise be effected on the defendant.

[26] There is no provision in Part VII similar to CPR 5.15 and 5.18 for application to be made to the court to order a specific method of service. CPR 7.8 to 7.13 merely provide for the various ways in which service out of the jurisdiction may be effected and the procedure which must be followed in specific instances to effect such service. For example, where a claimant wishes to serve the claim form through the judicial authorities of the country where the claim form is to be served, he or she must file a request for service of the claim form by his or her chosen method, whereupon the court's office must seal the copy of the claim form provided and send the documents filed to the Minister with responsibility for Foreign Affairs with a request that arrangements be made for the claim form to be served by the method requested (CPR 7.10). Apart from any specific procedure which attaches to any particular method of service, however, a claimant is free to select any of the methods of service permitted in Part VII. Thus, a claimant may choose to serve the claim form pursuant to CPR 7.8(1)(b) "in accordance with the laws of the country in which it is to be served."

[27] In ***Transworld Metals SA v Bluzwed Metals Limited***, Barrow J granted permission to serve the claim form out of the jurisdiction and ordered further that the defendants were to be served by post and courier at specific addresses, or by post in the case of a company in Moscow and on solicitors in London, and by courier on lawyers in Switzerland. The defendants contended that he had no power to do so. Noting that the rules as to service within jurisdiction and service out of the jurisdiction are dealt with in different parts of the Eastern Caribbean Civil Procedure Rules 2000 (which are similar in all material respects to the Belizean counterpart), Barrow J held that the provisions for ordering alternative methods of service in Part 5 (dealing with service within jurisdiction) did not "cross apply" to Part 7 (dealing with service out of jurisdiction). As he reasoned (at para 33):

> "If personal service which is so obvious a method, needed to be stated in Part 7 to be a permissible method of service out of the jurisdiction then substituted service, which is an extraordinary method, needed for more to have been stated in Part 7 to be a permissible method of service out of jurisdiction. I simply cannot accept that the Rules could have been so punctilious as to provide in this particular rule for personal service and so cryptic as to not provide for substituted service but intend it to be available."

He therefore held that the rules do not provide for the court to order alternative methods of service of a claim form out of jurisdiction and accordingly he set aside the ex parte orders which permitted such service.

[28] Hafiz J did not confront Mr. Williams' point directly. Rather, she accepted the respondent's submission that, based upon evidence presented on the application to set aside service, service was in fact effected in accordance with the laws of Switzerland and Israel, which is a permitted method of service under Rule 7.8(1)(b). She regretted only that, at the ex parte hearing, the court did not request evidence from the respondent as to the method of service to be used and whether it was expressly permitted by the law of the country in which service was to be effected or that it did not contravene the law of that country.

[29] Apart from criticising Hafiz J for ordering an alternative method of service when she had no power to do so, Mr. Williams complains that Hafiz J was wrong to make the order she did in the absence of evidence of what was permissible by the laws of Switzerland and Israel. He points out that the respondent did not apply for an order for service in accordance with the laws of Switzerland and Israel and neither did the court so order. Hafiz J was therefore wrong to so order "after the fact". In the absence of an order to serve the claim form by post in accordance with the laws of Switzerland and Israel, he submits, the Fixed Date Claim Form ought to have been served personally.

[30] It seems to me that Mr. Williams' submission is based upon two misconceptions. First of all, there is no requirement in Part VII that an order of the court must be obtained to effect service in accordance with the laws of the country in which the claim form is to be served, or indeed to effect service by any of the methods permitted in CPR 7.8 –

7.13. All a claimant is required to do is to obtain the court's permission to serve the claim form out of the jurisdiction. The precise method by which service is to be affected is a matter for her choice, as long as it conforms to the methods of service and the procedure provided for in Part VII.

[31] Secondly, Hafiz J did not order that the documents be served "by post" at the specified addresses. The words "by post" do not appear in the order at all. As such, she did not order an alternative method of service and it therefore seems to me that the objection based on ***Transworld Metals SA v Bluzwed Metals Limited*** is off the mark.

[32] Neither do I think that it was necessary for Hafiz J to have before her evidence of the methods of service which were permissible under the laws of Switzerland and Israel. She was asked to grant permission to serve the Fixed Date Claim Form and other documents out of jurisdiction. Having so ordered, the choice of the method of service out of the jurisdiction was for the respondent to decide. She was not asked to order that service be effected by post or by courier and she was not asked to say whether this would be in accordance with the laws of Switzerland and Israel. It was therefore not necessary for her to so order or to so find. Evidence as to the permissible methods of service in those countries was accordingly not necessary at that stage. The respondent did ask Hafiz J to order that service be effected at specified addresses in Switzerland or Israel and she so ordered. But the method of service was not specified. That meant that if the respondent chose to effect personal service in accordance with CPR 7.8(1)(a), such service had to be done at the specified addresses. It meant as well that if she chose to effect service in accordance with the laws of Switzerland and Israel, service by a method permitted by the laws of Switzerland and Israel had also to be effected at the specified addresses.

[33] It was open to the appellants to apply to set aside service on the ground that it was not effect in accordance with any of the methods permitted in Part VII or in accordance with the order of the court. They could have complained that the method of service used to effect service on them was not in accordance with the law of Switzerland or Israel. Or they could have complained that service was not effected at the addresses

specified in the order. This did neither. They did not challenge the respondent's evidence that the law of Switzerland and Israel permitted service by post at the specified addresses.

[34] The appellants do contend, however, that the injunction ordered had to be served personally since CPR 17.4(6) requires personal service of interim injunctions made without notice, along with the application for the interim order and the evidence in support. But CPR 7.14(2) provides that

> "The procedure by which (an application, order or notice) is to be served is the same as that applicable to the service of a claim form and accordingly Rules 7.8 and 7.13 apply."

[35] CPR 7.14(2) applies specifically to orders made in proceedings to be served outside of jurisdiction. CPR 17.4(6) is accordingly inapplicable.

[36] There is accordingly no substance in these grounds of appeal.

Did CPR 7.3(2)(b) apply?

[37] By CPR 7.2 a claim form "may be served out of the jurisdiction only if – (a) Rule 7.3 or 7.4 allows: and (b) the court gives permission". The respondent relied entirely on CPR 7.3(2)(b) which provides that

> "A claim form may be served out of the jurisdiction where –
> …
>
> (b) a claim is made for an injunction ordering the defendants to do or refrain from doing some act within the jurisdiction …"

[38] The appellants submit that the injunctions sought do not fall within Rule 7.3(2)(b) because the appellants are all outside of Belize and incapable of doing any act in Belize. There is no merit in this submission. As Mr. Marshalleck points out, the whole of Part VII is premised upon the persons on whom service is to be effected out of jurisdiction, in fact being out of the jurisdiction.

[39] Hafiz J rejected the appellants' submission simply because the injunction granted restrained the appellants from disposing of Palor's assets, and Palor is a company registered in Belize. This produced the retort from Mr Williams, not entirely unjustified, that Palor's assets are located in London. But the true answer to this ground of appeal, as provided by Mr. Marshalleck, is that any disposal of Palor's assets, wherever they may be located, or any 'dealing' with Palor, must involve a decision by the board of directors of Palor, which is located in Belize. As such, any dealing with Palor by the appellants and any disposal of assets of Palor by them, must ultimately involve instructions given by them to the board of directors in Belize. The injunctions sought and granted therefore require the appellant to refrain from doing acts within the jurisdiction and fall squarely within the terms of CPR 7.3(2)(b).

[40] The appellants submit finally that the CPR 7.3(2)(b) is only applicable to an injunction which is claimed as part of the relief sought in the claim, that is to say, final relief, and not to interim relief sought pending the hearing and determination of the claim. In other words, it applies to a permanent injunction, not an interlocutory or temporary injunction.

[41] I accept that CPR 7.3(2)(b) is to be interpreted as applying only where the claim is for final injunctive relief. An ancillary application for injunctive relief pending the hearing of a claim, does not constitute the making of a claim for injunctive relief. But, as Mr. Marchalleck points out, injunctive relief is part of the relief sought in the Fixed Date Claim Form in this case and although it is framed to last until trial, it contains the alternative of being extended by further order of the court to a point in time after the trial has been concluded. This is not an unrealistic possibility. The respondent claims to be the majority shareholder in Palor. She seeks to have the cancellation of her shares set aside. She also seeks to have the second appellant's shareholding declared null and void. If she is successful it appears to me that she would have a good case for a permanent injunction restraining both appellants from interfering in the affairs of the company. The evidence is that the first appellant directed the directors of Palor to cancel Share Certificates Nos 2 and 3 and to issue Share Certificate No 4 to the second appellant. In other words, the claim for injunctive relief cannot be considered to have

been artificially included in the Fixed Date Claim Form for the purpose of bringing the case within the terms of CPR 7.3(2)(b). I would accordingly reject this ground of appeal as well.

No cause of action

[42] The appellants contend that there is no cause of action against the first appellant which would found the grant of an interim injunction. It is conceded that there is a cause of action against the second appellant. They say that the first appellant resides outside of the jurisdiction, does not claim any shares or interest in Palor, is not a director, officer or registered agent of Palor and there is no declaratory or other relief sought against them. They say as well that the interim injunction claimed is not itself a cause of action, nor did it protect any right the infringement of which may give rise to a cause of action or to prevent a breach of law by the first appellant in Belize. The first appellant accordingly asks that the interlocutory injunction granted against them be discharged.

[43] It is of course trite law that an interim injunction must itself be founded on a cause of action against the person who is to be restrained. In this case, the respondent seeks relief which would fundamentally affect the shareholding in Palor. She seeks an order setting aside the cancellation of the bearer share certificates which she says are hers by virtue of the fact that they are in her possession, and an order setting aside the bearer share certificate which the second appellant has in his possession. She also seeks a declaration that the share certificates she holds are valid and that she is the lawful owner of 8000 of the 10,000 shares in Palor. If she is successful, she will have gained the right to substantially influence the decisions which may be taken on Palor's behalf, particularly with regard to the disposition of the property in London which she occupies.

[44] It is clear that the relief she seeks impacts upon the second appellant's interests to the extent that, if the claim succeeds, he will be dispossessed of his shareholding. But it is equally clear that the first appellant will be affected by the relief sought. Quite apart from there being evidence that the first appellant exercises management rights over Palor and gives effective instructions to Palor's registered agent and its board of

directors, the first appellant issued an Indemnity Declaration in which they declared themselves to "hold or duly represent all of the issued and outstanding shares" of Palor. On the face of it, therefore, the relief sought, if granted, will also affect the first appellant's interests and they are a proper party to the claim. I would therefore also reject this ground of appeal.

[45] I would accordingly dismiss the appeal and order the appellants to pay the respondent's cost of the appeal, fit for one senior and one junior attorney, to be assessed if not agreed. This order as to costs shall stand unless application be made for a contrary order within 7 days of the date of delivery of this judgment, in which event the matter shall be decided by the Court on written submissions to be filed within 15 days from the said date.

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MENDES JA

AWICH JA

[46] I concur.

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AWICH JA