

**Judgment 45/2007 Masood et al v Zahoor et al – Royal Court (Civil
Action File 938) – 27 November 2007**

Companies (Guernsey) Law, 1994 (Section 75) – allegation of prejudice to minority shareholders – stay of proceedings – application for interim relief – discrepancies in the evidence of the Defendants – order for costs on the indemnity basis – Advocate must not make factual submissions without first personally checking their veracity - similarly affidavits must be checked as far as practicable

IN THE ROYAL COURT IN THE ISLAND OF GUERNSEY

Civil 938

The 27th day of November, 2007 before Richard Charles Southwell,
Lieutenant Bailiff; sitting alone.

Between:-

(1) SOHAIL MASOOD
(2) NEWPORT FINANCIAL HOLDINGS LIMITED
(3) MOHAMMAD ALI

Plaintiffs

and

(1) MOHAMMAD ZAHOOR
(2) INTERNATIONAL STEEL & TUBE INDUSTRIES LIMITED
(3) ISTIL GROUP INC
(4) AZOT LIMITED
(5) WASEEM MAHBOOB
(6) PARVEEN SALEEMI

Defendants

ON THE APPLICATIONS of the
Plaintiffs for Interim Relief, THE COURT, on the 2nd and 3rd October and 1st and 2nd
November 2007, having heard thereon Advocates J.M. Wessels and A.M. Ozanne,
Counsel for the Plaintiffs and Defendants respectively, and on the 19th and 20th of

November 2007 having heard thereon Advocates J.M. Wessels and J.P Greenfield,
Counsel for the Plaintiffs and Defendants respectively, RESERVED full written
judgment;

THE COURT this day handed down
judgment in the terms attached hereto.

M A TOSTEVIN
Her Majesty's Deputy Greffier.

**Approved Text
27.11.07**

**IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION**

Between:

**(1) SOHAIL MASOOD
(2) NEWPORT FINANCIAL HOLDINGS LTD
(3) MOHAMMAD ALI**

**The
Plaintiffs**

and

**(1) MOHAMMAD ZAHOOR
(2) INTERNATIONAL STEEL AND TUBE
INDUSTRIES LIMITED
(3) ISTIL GROUP INC
(4) AZOT LIMITED
(5) WASEEM MAHBOOB
(6) PARVEEN SALEEMI**

**The
Defendants**

Judgment of Lieutenant Bailiff Richard Southwell QC

**Advocate J M Wessels appeared for the Plaintiff
Advocate J P Greenfield appeared for the Defendants**

Hearing date: 19th & 20th November 2007

Judgment handed down: 27th November 2007

1. By a judgment handed down on 3 November 2006 and an Order of that date (following a hearing on 9 October 2006), this Court ordered a stay of the proceedings in Guernsey, in order that to the greatest extent practicable all the issues between the parties should be heard together in the High Court of England and Wales.
2. In this judgment I use the same shortened forms as in the judgment of 3 November 2006. There were two exceptions to the stay and those arose in this way. It is part of Masood's and the Trustee's case that one or both of them are entitled to be shareholders in ISTIL Guernsey. As a result of the stay that claim is to be tried in England. If they are held to be entitled to be shareholders in ISTIL Guernsey, then two issues will arise which would be expected to be decided by this Court in Guernsey. The first relates to the consequential claim for rectification of the register in Guernsey of the

shareholders of ISTIL Guernsey. But this is no longer in issue, the Defendants having accepted that if the Plaintiffs are, or one of them is, held by the English High Court to be entitled to be such shareholders, the register will be rectified. The second issue relates to the claim that they have as shareholders suffered unfair prejudice, within section 75 of the Companies (Guernsey) Law 1994, with further consequential claims. (It needs to be recorded that in paragraph 70 of the judgment of 3 November 2006, the fourth sentence, the words “*undue influence*” should be deleted, and the words “*unfair prejudice*” substituted). That claim will, if Masood or the Trustee succeed in England, be heard by this Court, subject to the possibility of some other course being favoured by both Plaintiffs and Defendants.

3. It is of some importance in relation to the matters to be considered in this judgment to recall that at the start of the hearing on 9 October 2006 the Plaintiffs sought leave to amend their Order of Justice to plead a number of matters relating to Mont Blanc Trading Limited (“Mont Blanc”). It was necessary to deal with this application then so that this Court knew precisely the nature of the proceedings in Guernsey which the Defendants were seeking to have stayed. There was little or no opposition from the Defendants to this application to amend then being heard, and little or no opposition to the amendment being allowed. The amendment was allowed. The relevant part of the amended pleading began at paragraph 100 in a section headed “*Mont Blanc Trading Limited*”. It included as part of paragraph 103 these two sentences:

“However, in a deposition taken at the office of Hogan and Hartson from 17 July 2006 the First Defendant initially denied any knowledge of the ownership of [Mont Blanc] but then, after consulting in private with his attorneys, changed his testimony to admit that his brother Mr Khalid Hassain held the beneficial ownership of the Company for him and also that he controlled [Mont Blanc]. Further, during the course of the said deposition, the First Defendant also admitted that he had not disclosed his interest in [Mont Blanc] to the auditors of the ISTIL Group namely Messrs Moore Stephens, Hong Kong.”

That was a sworn deposition made by Zahoor in the course of proceedings in the Courts of the State of Oregon, United States of America. The relevance of this extract from the amendment to the Order of Justice for which this Court gave leave on 9 October 2006 is (inter alia) that:

- (1) The suggestion that Zahoor was the beneficial owner of the shares in Mont Blanc has subsequently been accepted by Zahoor to be untrue (as will appear later in this judgment he now says that the beneficial owner is ISTIL Guernsey).
- (2) From the time that the draft amendment to the Order of Justice reached the office of Advocate Ozanne for the Defendants (on or shortly after 29 September 2006) she knew not only of the existence of the deposition, but also the two main points relevant to the subsequent proceedings, i.e.

- (a) that Zahoor claimed to own Mont Blanc himself; and
 - (b) that he admitted not disclosing his interest to the auditors of ISTIL Guernsey.
4. On 1 November 2006 (two days before the long judgment of this Court on the stay application was delivered), Advocate Wessels for the Plaintiffs wrote to Miss Ozanne. In this letter he referred to Mont Blanc, to the matters included by amendment in the Order of Justice, and specifically to the two sentences quoted in paragraph 3 above. He then stated his clients' concern that:

“The First Defendant is using Mont Blanc to strip assets out of the ISTIL group in order to render worthless our clients' claims to be the owner of shares in the group's holding company, namely the Second Defendant [ISTIL Guernsey].”

Mr Wessels went on to ask for the disclosure of relevant documents and for undertakings as to dealings with the assets of the ISTIL Group companies.

5. On 8 November 2006, Miss Ozanne's firm replied. The new paragraphs of the Order of Justice were specifically referred to. Disclosure and undertakings were not agreed. Further, it was objected that the Plaintiffs were not entitled to rely on the deposition which was designated in the Oregon action as confidential. This was a point which had been mentioned by Miss Ozanne on 3 November 2006.
6. On 19 December 2006, the Plaintiffs applied to this Court for interim relief in connection with their potential Section 75 claim. The relief sought was, as foreshadowed in Mr Wessels' letter of 1 November 2006, for disclosure of relevant documents relating to Mont Blanc, and for injunctive restrictions on the ISTIL Guernsey group companies. As in the letter, it was alleged that Zahoor was stripping profits from the ISTIL Guernsey group into Mont Blanc (of which Zahoor had stated on oath in the deposition that he was the beneficial owner).
7. The hearing of that application took place on 8 February 2007. For the purposes of the application, Zahoor swore his second affidavit (“Zahoor 2nd”) on 31 January 2007. The relevant points which arise from Zahoor 2nd are set out in paragraphs 8 and 9 below.
8. Zahoor objected to the use of his Oregon deposition by the Plaintiffs. Indeed, the day before the hearing the Oregon Court issued a ruling confirming that the deposition was confidential and not to be relied on in another Court without there being first an application for leave to rely on it in either that Court or the Oregon Court.
9. He dealt with the allegation that he was stripping assets or profits from the ISTIL Guernsey Group in strong terms. In paragraph 7b of Zahoor 2nd he stated:

“The suggestion that ISTIL has or might dissipate its assets in any name whatsoever is incorrect. Quite the opposite is the case and ISTIL continues to consolidate and build its asset base, a fact that is evidenced by ISTIL’s financial records (MZ2, p. 91 – 134).”

In paragraphs 27 and 28 he stated as follows:

27. *ISTIL Group has banking arrangements with a number of banks including EBRD, currently US\$35 million and soon to be expanded to a facility of US\$85 million. The suggestion that ISTIL will dissipate assets from under their very watchful eyes has no connection with commercial reality. As is usual with such relationships, EBRD expect various financial ratios to be maintained and this banking relationship is an obvious reason why there is absolutely no prospect of ISTIL dissipating assets.*
28. *Equally, I would suggest that one only need look at the consolidated group accounts of the ISTIL Group during the time Mr Masood has been making his unfounded claim to own shares to confirm there has been no attempt by me or ISTIL to deplete the value of ISTIL. Far from doing so, since the date Mr Masood first made a claim for shares in ISTIL in 2002 the net asset value of ISTIL (shown in the accounts, in essence, as shareholders equity) has risen*”

Zahoor then referred to the audited consolidated accounts of ISTIL from 2002 to September 2006 and the figures for shareholders equity which showed (inter alia) US\$119,546,000 in 2002 and US\$131,174,000 in September 2006. In paragraph 30 Zahoor dismissed as baseless allegations that the extensive trading with Mont Blanc and the reduced profitability of ISTIL were connected, and put forward a number of other points as showing that ISTIL’s business and profits had not suffered to the benefit of Mont Blanc. In paragraph 31 Zahoor stated (inter alia):

“that Mont Blanc is supporting and expanding ISTIL’s business, not deflating it.”

There were exhibited to Zahoor 2nd (inter alia) the audited accounts of Istil Group Inc for 2003 and the audited accounts of ISTIL Guernsey for 2004 and 2005.

10. In relation to the deposition, following arguments concerning this at the start of the hearing on 8 February 2007, Miss Ozanne agreed that the Court could examine the deposition during the hearing de bene esse. This concession appeared to have been made because the Court had already seen the statement of the relevant points in the deposition as set out in the Amended Order of Justice as long before as 9 October 2006. I emphasise this period of four months, because it has been suggested on the Defendants’ behalf that there was no opportunity for Miss Ozanne’s firm to take instructions from Zahoor concerning the deposition and its contents. That is not correct. After the

hearing it was accepted on behalf of the Defendants that the Court could refer to and rely on what Zahoor had said in the deposition.

11. I emphasise that this Court had to consider Zahoor's evidence in the light of his statement on oath in the Oregon deposition that through his brother as nominee he held the beneficial interest in the shares of Mont Blanc, though he had not disclosed this to the auditors of ISTIL Guernsey. That was the basis on which Advocate Ozanne founded her submissions on the Defendant's behalf to the Court.
12. Advocate Wessels on behalf of the Plaintiffs, founding his submissions on Masood's 7th affidavit, Zahoor's 2nd, Zahoor's statements on oath in the deposition, and Miss Ozanne's submissions, submitted in summary (inter alia) as follows:
 - (1) there was a good arguable case that Masood and/or the Trustee was entitled to be a shareholder in ISTIL Guernsey;
 - (2) there was a good arguable case that the Plaintiffs would suffer prejudice as minority shareholders (assuming that they would be held to be shareholders);
 - (3) at an earlier date, Zahoor had used a Cyprus company owned by him, Reventox Consulting Ltd, as a means of directing from the ISTIL Guernsey Group a particular trading opportunity; Zahoor had (as he subsequently admitted in a formal defence in proceedings in England) lied to the Audit Committee of ISTIL Guernsey about this;
 - (4) in Zahoor 2nd, Zahoor had refrained from adducing any evidence as to the ownership of Mont Blanc or its relationship with ISTIL Guernsey;
 - (5) Zahoor (as pleaded in the Plaintiffs' Amended Cause) appeared to be using Mont Blanc in a way similar to his use of Reventox as a means of stripping ISTIL Guernsey of assets;
 - (6) on the balance of convenience this Court should order disclosure of the documents of which the Plaintiffs were seeking disclosure, and should impose the restrictions on ISTIL Guernsey so as to prevent any further removal of assets from that company or its subsidiaries.
13. Miss Ozanne for the Defendant relied on Zahoor's evidence as contained in the deposition. She submitted that Zahoor's evidence was to be trusted, because, though in the course of the deposition he had at first stated that he did not know who was the beneficial owner of Mont Blanc, he almost immediately asked for time to consult his attorneys, and on resumption stated on oath, in correction of his previous statement, that he himself was the beneficial owner through his brother Mr Hassain as his nominee. Miss Ozanne submitted that it was to his credit that he had corrected his evidence and stated the true position.

14. As will be mentioned below, Advocate Ozanne made these submissions without having obtained any instructions from Zahoor and indeed without having spoken with him.
15. Miss Ozanne submitted with no little force that no case for an order either as to disclosure or imposing restrictions on ISTIL Guernsey had been made out.
16. In this Court's judgment handed down on 27 February 2007, the application for interim relief was summarised by me (in paragraph 4) as follows:

“The application for interim relief set out above relates solely to Mont Blanc, and (as can there be seen) would if granted, involve (i) the disclosure of documents relating to Mont Blanc including documents already in existence, and (on a continuing basis) documents coming into existence in the future, and (ii) restrictions on the commercial activities of ISTIL Guernsey and all its subsidiaries.”

17. I noted in paragraph 2 of the judgment that it was common ground between the parties that the Royal Court is the appropriate Court to determine the application for interim relief, and that the legal principles governing the application for and grant of such interim relief were also agreed between the parties.
18. The Court held that the Plaintiffs had established a good arguable case of entitlement to shares in ISTIL Guernsey.
19. On the issue whether the Plaintiffs had established a good arguable case as to prejudice, I referred to the audited consolidated accounts of the ISTIL Guernsey group, including the decline in profits from nearly US\$10.7 million in 2003 to only US\$425,000 in 2005, despite the substantial increase in turnover, and I noted that, despite Zahoor's alleged beneficial interest in the shares of Mont Blanc, Mont Blanc was not included in the statements of related parties in such accounts.
20. I then dealt with the Oregon deposition, including the Defendants' acceptance that this Court could read and take account of what Zahoor had said in the deposition in deciding the application for interim relief (the relevant passages in the deposition being set out fully in the judgment).
21. After considering the evidence then before the Court, and noting that neither Zahoor, nor his Advocate Miss Ozanne, had provided any further explanation of the deposition, I concluded in paragraph 35 of the judgment that Masood had made out a good arguable case that Zahoor had diminished the profitability of ISTIL Guernsey to the detriment of Masood or the Trustee (if one of them would be held to be a shareholder) for the following summarised reasons:

(1) the profits of the ISTIL group have seriously diminished;

- (2) *this has coincided with 2/3rds of the ISTIL group's products being sold to and through a personal company of Zahoor's, Mont Blanc;*
- (3) *there is no small resemblance between Zahoor's present use of Mont Blanc and his previous use of Reventox, about both of which Zahoor initially lied, as he admitted;*
- (4) *Zahoor (for reasons which he has chosen not to explain to this Court) has chosen to conceal from the ISTIL group auditors, from its international bank lender EBRD, and from anyone who might rely on the accounts of ISTIL Guernsey and the ISTIL group (including minority shareholders) his control and ownership of Mont Blanc;*
- (5) *such unexplained concealment appears to have had, as at least one motive, the aim of concealing from all such persons profits derived by Zahoor personally through the intervention of Mont Blanc in the sales of ISTIL group products;*
- (6) *any such profits made by Mont Blanc (which Zahoor has chosen not to disclose to this Court) are profits which, it appears, would otherwise have been made by the ISTIL group;*
- (7) *the value of the shares in ISTIL Guernsey would appear likely to have been affected by such transfer of profits to Mont Blanc, despite the apparent increase in asset value and shareholders' equity."*

22. In paragraph 36 I added:

"It needs to be emphasised strongly that in reading this conclusion, the Court has been much influenced by Zahoor's own conduct including his failure to provide any convincing explanation in relation to Mont Blanc, his cavalier treatment of this subject in his second affidavit, and the concealment of the Mont Blanc position from the auditors [of the ISTIL Guernsey companies] and the banks [lending to those companies]."

23. As regards relief, the Court granted an order for disclosure. In paragraph 38 I rejected the submission by Advocate Ozanne that damages would suffice as a remedy, because:

"If profits are being moved to Zahoor's own company Mont Blanc to the detriment of ISTIL Guernsey, it is likely to be very difficult for the Plaintiffs to establish, perhaps some years hence, what the profits of the ISTIL Group ought to have been, and therefore what the value of the shareholding ought to be (or what the damages are)."

24. The Court, however, refused to grant interim relief by way of restrictions on ISTIL Guernsey's activities, at any rate at that stage, stating (in paragraph 43 of the Judgment):-

“....., in my judgment the better course will be for the Plaintiffs to see the disclosure to be made by these Defendants as is now ordered by the Court, and thereafter to re-consider whether it is appropriate to seek any restrictions, and if so in what reformulated terms.”

25. Zahoor swore his third affidavit on 22 March 2007 (“Zahoor 3rd”), and disclosure of that affidavit and numerous documents was made on 23 March 2007, and subsequently. A reading of Zahoor 3rd and the exhibits to that affidavit shows that this Court was seriously misled on 8 February 2007. I will return in a moment to consider the respects in which the Court was so misled.
26. What should here first be noted is that despite the serious disparity between Zahoor's evidence of 22 March 2007 (in Zahoor 3rd) and his earlier evidence (and also the basis on which Advocate Ozanne had presented his case on 8 February 2007), there was at that stage:

- (1) no recognition by Zahoor or Miss Ozanne that the Court had been misled.
- (2) no explanation of how this could have occurred, and
- (3) no apology to this Court.

Even if Zahoor and Miss Ozanne as his Advocate had misjudged the position earlier, that could not have been the case once Advocate Wessels for the Plaintiffs had on 18 July 2007 made an application for further interim relief, supported by a skeleton argument in which Mr Wessels set out in detail the respects in which the case as presented by Miss Ozanne on 8 February 2007 and by Zahoor in Zahoor 2nd could be seen to be falsified by Zahoor 3rd which was sworn on 22 March 2007 and filed and served the next day.

27. It is a matter of concern to the Court that at the time when Zahoor 3rd was being prepared and sworn, neither Zahoor, nor Miss Ozanne, nor his London lawyers who appear to have assisted in the preparation, recognised that this Court had been misled, though this was abundantly clear from Zahoor 3rd. It is also a matter of concern that there was no such recognition in the period between 22 March 2007 and 17 July 2007, i.e. before Mr Wessels' next application was made on the Plaintiffs' behalf.
28. I now turn to Mr Wessels' skeleton argument of 18 July 2007, which provides a summary of the disparities between the case made on 8 February 2007 and that appearing in Zahoor 3rd. I will try to summarise his excellent summary in this way:
- (1) In the Oregon deposition, and through Advocate Ozanne's submissions on 8 February 2007, Zahoor alleged that he was the

beneficial owner of Mont Blanc through his brother as his nominee. In Zahoor 3rd he claimed that on 30 April 2006 (two months before the deposition was made) his brother signed a formal but un-witnessed declaration that he held the one issued share of Mont Blanc as nominee for Zahoor, and also on 30 April 2006 Zahoor executed a formal but un-witnessed declaration that he held the beneficial interest in Mont Blanc as nominee for ISTIL Guernsey. Copies of the two declarations were exhibited to Zahoor 3rd. At that stage Zahoor did not indicate that he had sent his declaration to anyone else or told anyone else about it. Zahoor did not attempt in Zahoor 3rd to explain why he had not mentioned this declaration in the deposition or in Zahoor 2nd. In this respect this Court had clearly been misled.

- (2) The relationship between ISTIL Guernsey, Mont Blanc and Zahoor was entirely different from what had been presented to this Court on 8 February 2007.
- (3) A “*Framework Agreement*” between ISTIL Guernsey, Mont Blanc and Zahoor dated 28 May 2003 was exhibited to Zahoor 3rd. By this Framework Agreement, the ownership of Mont Blanc was to be held on trust for ISTIL Guernsey (Clause 3). Clause 5.3 provided that Mont Blanc’s profits were to be split between Zahoor and ISTIL Guernsey in the ratio 1:2. Such profits were to be distributed by way of dividend or bonus so as to minimise taxes for the recipient. Zahoor might receive his share of profits before ISTIL Guernsey received its share. After ISTIL Guernsey requested in writing, but subject to Zahoor’s determination as to timing of payment, Mont Blanc should pay to ISTIL Guernsey all of its share of accrued and unpaid profits. References to ISTIL Guernsey were to include another company in its group in so far as nominated in writing from time to time. Zahoor offered no explanation as to why he was to take one-third of all Mont Blanc’s profits after tax for himself, or why he was to have the rights:
 - (1) to take his one-third share whenever he chose, and
 - (2) to delay ISTIL Guernsey’s receipt of its two-thirds share as long as he chose.
- (4) On 29 May 2003, a Consultancy Agreement was made between Mont Blanc and Zahoor under which he was entitled to be paid US\$50,000 per month regardless of the hours he worked, and a profit share bonus “*to be paid in such manner as we agree*” (Clause 5).
- (5) On 10 July 2003 an Exclusive Dealership Agreement (“*the ED Agreement*”) was entered into between Istil Group Inc (“*IGI*”, a subsidiary of ISTIL Guernsey) and Mont Blanc by which Mont Blanc was given the exclusive right to buy, for all export sales, steel products from “*MSM ISTIL Ukraine*” (another group

subsidiary, which was a major manufacturer) except for sales to CIS and some Eastern European Countries to be agreed – see Article 2. The grant of this right in practice has enabled Mont Blanc to make massive profits which otherwise would have been made by ISTIL Guernsey or its subsidiaries. The consideration for the grant of this right was the payment of a debt owed by IGI and ISTIL Guernsey to Danieli and C. Officine Meccaniche S.p.A amounting to just less than US\$2 million by 18 instalments over a period running to 1 October 2004. As will appear later, the profits made by Mont Blanc were vastly greater than US\$2 million. The instalments were later deferred and it is not clear from Zahoor 3rd or the exhibits to it whether Mont Blanc ever paid the whole sum of nearly US\$2 million to Danieli.

- (6) The accounts of Mont Blanc for its first period of trading (10 February to 31 December 2003) showed that Mont Blanc had already accumulated profits of US\$16,121,109.
- (7) By Addendum 2 to the ED Agreement made on 5 January 2004, Mont Blanc arranged that IGI might act as Mont Blanc's undisclosed agent for sales in so far as nominated by Mont Blanc. At that stage i.e. at 22 March 2007, Zahoor produced no evidence as to which sales had been nominated by Mont Blanc to be made by IGI. Subsequently, files of sales contracts were produced by Miss Ozanne containing contracts made between Mont Blanc and IGI (or other ISTIL Guernsey group companies) but without distinguishing between the two categories.
- (8) The audited financial statements of Mont Blanc in 2005 showed (inter alia) that Mont Blanc had made profits in 2004 of nearly US\$33 million, and in 2005 of over US\$38 million. At 31 December 2005 Mont Blanc had current net assets of over US\$67 million. No explanation was offered by Zahoor why such profits had been diverted from the ISTIL Guernsey Group to Mont Blanc (thereby giving Zahoor an entitlement under the Framework Agreement to one third of these large profits).
- (9) Such audited financial statements also showed that interim dividends of US\$10 million each had been paid by Mont Blanc in 2004 and 2005 to an undisclosed person. Zahoor did not state in Zahoor 3rd to whom the total of US\$20 million had been paid. But at that stage it was to be assumed that Zahoor himself had been the recipient.
- (10) There was a serious lack of clarity as to exactly what were the true relationships between Zahoor, Mont Blanc and ISTIL Guernsey and its subsidiaries, and why Mont Blanc had been inserted into the complex of relationships, unless it was to enable Zahoor to abstract profits without that becoming apparent on the face of the ISTIL Guernsey consolidated accounts. In this connection, it was noted by Mr Wessels that the auditors for Mont Blanc were different

from the ISTIL Guernsey auditors, and no explanation for this had been given by Zahoor.

- (11) The evidence in Zahoor 3rd and its exhibits showed that the hearing on 8 February 2007 and the Court's judgment of 27 February 2007, had been founded on false bases derived from Zahoor 2nd and Miss Ozanne's then submissions. No explanation or apology for the falseness of what had then been placed before the Court was given in Zahoor 3rd (or by Miss Ozanne).

I emphasise that in sub-paragraphs (1) to (11) above, I have made only a selective summary from the points cogently argued by Mr Wessels.

29. Mr Wessels' skeleton of 18 July 2007 was served and filed in support of an application for further interim relief in two categories:

- (1) an injunctive order restraining the First, Second and Fourth Defendants from causing or permitting the capital, assets or profits of Mont Blanc to be distributed, or the ownership of Mont Blanc to be disposed of;
- (2) An order that Zahoor make a 4th affidavit providing a substantial number of explanations and producing relevant documents.

I do not set out the application in any detail, because the detail can be reserved to when I set out the terms of the Order which was made by the Court on this application for further interim relief.

30. The application for further interim relief came on for hearing by the Court on 2 October 2007. Miss Ozanne had her own belated application for the contracts ordered by this Court to be disclosed (in the judgment of 27 February 2007, and in the formal Order of 9 March 2007) to be redacted before disclosure (substantial disclosure having already been made in a redacted form). Her skeleton argument offered no response to the many points raised by Mr Wessels on 18 July 2007, despite the passage of two months since then, and was accompanied only by a brief affidavit of an associate in her firm exhibiting some correspondence between her firm and that of Mr Wessels.

31. I deal first with Miss Ozanne's application for leave to redact the copy contracts disclosed. This application was lamentably out of date. Nevertheless, I allowed it to be made and it was opposed by Mr Wessels. I examined the copy contracts contained in three boxes and in numerous files. It was apparent that the only redaction was the covering up of the name and address of the external consignee in each case. My conclusion was that the Plaintiffs did not need to know who were the consignees, a trade secret of the ISTIL group and Mont Blanc, and granted Miss Ozanne's application.

32. I turn next to Mr Wessels' application for further interim relief. It was a matter of the deepest concern to me that, despite the passage of over two months since receipt of Mr Wessels' skeleton of 18 July 2007:

- (1) no further affidavit had been made by Mr Zahoor dealing with the serious matters outlined in that skeleton by Mr Wessels;
- (2) there was no explanation of or apology for the manner in which the Defendants' case had been presented to the Court on 8 February 2007, through Zahoor 2nd and Advocate Ozanne's then submissions.

33. In my judgment I need at this point to state the position as at 2 October 2007 shortly and starkly:

- (1) In her submissions to the Court on 8 February 2007, Miss Ozanne presented her clients' case on the basis that what Zahoor had said in the Oregon deposition on oath, that he owned the beneficial interest in Mont Blanc, was true.
- (2) Zahoor 3rd showed that that was not true, and that Zahoor held the beneficial interest for ISTIL Guernsey, as in fact was recorded in the consolidated audited accounts of the ISTIL Guernsey group for 2006.
- (3) It has subsequently become apparent that Miss Ozanne made her submissions assuming that Zahoor had told the truth in the Oregon deposition, and without first checking and discussing the matter with her client Zahoor. Miss Ozanne then made her submissions without any knowledge that they were based on a false premise.
- (4) In Zahoor 2nd Zahoor strenuously denied having stripped, or having any intention to strip any moneys from the ISTIL Guernsey group of companies, in terms which have been summarised in paragraph 9 of this judgment.
- (5) That denial was false. As Zahoor 3rd showed, massive profits had been shifted from ISTIL Guernsey to Mont Blanc, the Framework Agreement had been made giving Zahoor one-third of Mont Blanc's profits and the right to delay indefinitely receipt by ISTIL Guernsey of the other two-thirds of Mont Blanc's profits, and in 2004-05 at least US\$20 million had been transferred to Zahoor personally, apparently as dividends, though documents relating to the decisions to pay dividends had not been produced by Zahoor.
- (6) Thus Zahoor had knowingly given false evidence to this Court in Zahoor 2nd in this regard.
- (7) Zahoor himself had shown in Zahoor 3rd the falseness of the Defendants' case as presented on 8 February 2007, in these respects.
- (8) As at 2 October 2007 neither Zahoor nor Miss Ozanne had offered any explanation of or apology for this regrettable situation.

- (9) This situation should have been clear to Zahoor and those advising him and preparing the draft of Zahoor 3rd (who may well not have included Miss Ozanne) before 22 March 2007. It should have been clear once Zahoor 3rd had been sworn and filed, both to Zahoor and to Miss Ozanne. It certainly should have been abundantly clear once Mr Wessels' skeleton of 18 July 2007 had been read by Zahoor and by Miss Ozanne.
34. At the hearing on 2 October 2007, Mr Wessels in his oral submissions went through (inter alia) the matters raised in his skeleton of 18 July 2007 in some detail. As regards Miss Ozanne's submissions, it became apparent that she had not appreciated the position as set out in paragraph 33 above, that she had not discussed this with Zahoor, and that accordingly she was not equipped to deal with either that position or the details of Mr Wessels' submissions.
35. Miss Ozanne undertook on behalf of the Defendants to provide on or before 18 October 2007 a fourth affidavit to be sworn by Zahoor dealing with the position as set out in paragraph 33 above.
36. On 3 October 2007 I delivered a short extempore judgment. I summarised the position set out in paragraph 33 above and made (in all essentials) the Order for further interim relief sought by the Plaintiffs, and the Order sought by the Defendants for the redaction of the contracts disclosed to the Plaintiffs. I made clear that Zahoor's fourth affidavit should deal with the matters referred to in paragraph 33 and indicated that Miss Ozanne would be able at the resumed hearing on 1 November 2007 to deal with her personal position as regards the submissions she had made to this Court on 8 February 2007. The terms of the Order of 3 October 2007 (so far as material) were as follows:
- “1. *The First, Second and Fourth Defendants must not without the leave of the Court or the written consent of the Plaintiffs whether by themselves or by their employees, servants or agents either directly or indirectly:*
- (i) *cause or permit Mont Blanc to distribute any of its capital and/or assets and/or pay any dividend to any person whomsoever including but not limited to the First, Second and Fourth Defendants and Mr Khalid Hussein of 256A, Block 6, P.E.C.H.S, Karachi in Pakistan; and/or*
- (ii) *cause or permit Mont Blanc to distribute any of its profits to any person whomsoever including but not limited to all or any of the First, Second and Fourth Defendants and the said Mr Khalid Hussein whether pursuant to the Framework Agreement dated 28 May 2003 or otherwise howsoever; and/or*
- (iii) *deal with or carry out or attempt to carry out any transaction relating to and/or concerning or in any*

way dispose of the ownership of or the legal or beneficial interest in the shares and/or the assets of Mont Blanc

provided always that Mont Blanc shall be entitled to carry out its normal business activities in the ordinary course of its business subject to making relevant timely disclosure under the Order of this Court dated 9 March 2007. For the avoidance of doubt this sub-paragraph is included only for the sake of clarity and is not intended to qualify the interim Orders made at sub-paragraphs 1(i), 1 (ii) and 1 (iii) above.

2. *The First, Second and Fourth Defendants must serve on the Advocate for the Plaintiffs and the Greffe in hard copy and by e-mail by 4.00 pm on 18 October 2007 an affidavit sworn by the First Defendant containing the relevant explanations, and exhibiting the relevant documents in so far as they are in the possession, custody or power of any of the First, Second and Fourth Defendants as specified in (a) – (k) below:*
 - a) *A full and frank explanation of the commercial rationale behind the incorporation of Mont Blanc, the Framework Agreement, the EDA, and the declaration letters signed by Mr Khalid Hussain and the First Defendant and exhibited at pages 36 and 37 of MZ3.*
 - b) *Full details of any payments of whatever nature made by the Second Defendant or any of its subsidiaries to Mont Blanc and the First Defendant, together with a full and frank explanation as to why each payment was made.*
 - c) *Confirmation as to whether the declaration letter from the First Defendant to the Second Defendant dated 30 April 2006 was ever sent and/or acknowledged and/or whether a copy was submitted to the Second Defendant's administrators, auditors and/or its board, and if so when.*
 - d) *A full and frank explanation of any payments made to the First Defendant and/or Mont Blanc and/or the Second Defendant pursuant to the Framework Agreement (and for the avoidance of doubt relevant documents shall include any correspondence between the Second Defendant, the First Defendant and/or Mont Blanc regarding the same) and whether the First Defendant or any third party has held or holds any sum paid to them pursuant to the*

Framework Agreement on trust for the Second Defendant.

- e) *A full and frank explanation of when and to whom the two dividend payments of US\$10 million paid by Mont Blanc in 2004 and 2005 were made, details of any dividend payments which have been or are anticipated for 2006 and from whom the sum of US\$17,511,867 (referred to in the audited financial statements for Mont Blanc for the year ending 31 December 2005) is due.*
 - f) *A full and frank explanation of when the payments that were due to be made by Mont Blanc to Danieli pursuant to the EDA between ISTIL Group Inc and Mont Blanc and the amendments thereto were made and in what amount on each occasion of payment.*
 - g) *A full and frank explanation of the internal accounting processes employed by the Second Defendant in order to ensure that sales which are made to the Second Defendant as undisclosed agent of Mont Blanc are treated as a sale in Mont Blanc and details of all such transactions from the date of Mont Blanc's incorporation to date.*
 - h) *A full and frank explanation as to why Mont Blanc does not appear as a subsidiary in any of the accounts of the Second Defendant.*
 - i) *A full and frank explanation as to why Mont Blanc has retained a different firm of auditors from the Second Defendant.*
 - j) *A full and frank explanation as to why Mont Blanc has a correspondence address in Geneva.*
 - k) *Confirmation of when the general power of attorney from Mont Blanc to the First Defendant at pages 34 to 35 of MZ3 was given.*
3. *The First, Second and Fourth Defendants shall make the following documents available for inspection at the offices of their Guernsey Advocates by 5.00 pm on 18 October 2007 (and should any of the said documents no longer be in the possession, custody or power of any of these Defendants, the First Defendant shall in the affidavit to be served pursuant to*

paragraph 2 above of this Order give a full and frank explanation of what has become of them):

- a) *The original general power of attorney issued by Mont Blanc on 17 November 2003 in favour of the First Defendant.*
 - b) *The original of the Mont Blanc board resolution referred to in the second paragraph of the power of attorney of 17 November 2003.*
 - c) *The original letter of declaration from Khalid Hussain to the First Defendant dated 30 April 2006.*
 - d) *The original letter of declaration from the First Defendant to the Second Defendant dated 30 April 2006.*
4. *In the affidavit to be sworn pursuant to paragraph 2 of this Order, the First Defendant shall provide a full and frank explanation of how and why the Court, for the purposes of the hearing on 8 February 2007, was not provided by the First Defendant with accurate statements regarding the ownership of or the beneficial interest in the shares of Mont Blanc and the payments made to the First Defendant from Mont Blanc and/or the Second Defendant.*
5. *Any further affidavit evidence which is to be served and filed by any of the parties shall be served and filed no later than 4.00 pm on Friday 26 October (in hard copy and by e-mail).*
6. *The hearing of the Plaintiffs' application dated 18 July 2007 shall be resumed not before 10.30 am on Thursday 1 November 2007."*

37. I note here that I made the Order of 3 October 2007 contained in paragraph 1 thereof, imposing restrictions in relation to Mont Blanc, because of the concerns that:

- (1) substantial parts of the business of the ISTIL Guernsey Group had been shifted to Mont Blanc in circumstances as yet unexplained by Zahoor;
- (2) as a result, massive profits had been made by Mont Blanc which could otherwise have been made by the ISTIL Guernsey Group;
- (3) US\$20 million had gone to Zahoor by way of "dividend" from Mont Blanc, though no documents in this regard had been

disclosed, and it appeared that other shareholders in ISTIL Guernsey would have received no such dividend;

- (4) it was unclear whether Zahoor had received further moneys from Mont Blanc;
- (5) no explanation of the rationale underlying the Framework Agreement or the ED Agreement had been provided.

38. A fourth affidavit (“Zahoor 4th”) was filed and served in draft and finally sworn by Zahoor on 29 October 2007. In Zahoor 4th:

- (1) Zahoor sought to explain the discrepancies between Zahoor 2nd (plus Miss Ozanne’s submissions on 8 February 2007) and Zahoor 3rd, seeking to exculpate both himself and Miss Ozanne. In particular, he made it clear that the ownership of Mont Blanc had not been discussed between him and Miss Ozanne before 8 February 2007.
- (2) He explained the incorporation of Mont Blanc by saying that a company independent of the ISTIL Guernsey Group was needed both to carry forward the trade in steel and to secure working capital. He had therefore decided to use Mont Blanc as “*an offshore special purpose company that would appear unrelated to the Group but which would in fact be operated for the Group’s benefit*”: paragraph 18.6 of Zahoor 4th.
- (3) He indicated (paragraph 19 of Zahoor 4th) that minimising profits in the ISTIL Guernsey Group and maximising profits in Mont Blanc had tax advantages for the group, and anyway without Mont Blanc the group would not have been successful. This was, he stated, part of the commercial rationale for the Framework Agreement.
- (4) He explained his share of the profits being set at one-third as justified by “*The extra efforts and use of my personal relationships and hard won reputation with bankers and buyers built up over 16 years*” (paragraph 20.3 of Zahoor 4th). He did not explain how these factors could sit with his assessment that without Mont Blanc the ISTIL Guernsey Group would not have succeeded.
- (5) He justified the ED Agreement on the footing that in 2003 the ISTIL Guernsey group was unable to pay the nearly US\$2 million by the 18 instalments (see paragraph 28(5) of this judgment). Given that between February and December 2003 Mont Blanc as a newly formed company was able to make profits of over US\$16 million (see paragraph 28(6) above), this was one of the statements by Zahoor which I considered should be treated with some measure of doubt.

- (6) He explained the declaration letters of 30 April 2006 on the basis that Mont Blanc “*was to be held and operated for the benefit of the ISTIL Group yet appearing to be independent*” (paragraph 22, preamble, of Zahoor 4th).
- (7) He explained that payments had been made to or credited to him by Mont Blanc and produced a schedule of these payments and credits (MZ4 at pages 148 – 150) from 1 May 2003 to 30 September 2007. The schedule shows that against his profit share under the Framework Agreement he had been credited with a total of US\$46,944,447. He did not explain why this had not been disclosed by him in Zahoor 3rd, or why in Zahoor 3rd he had made no direct reference to such sums, leaving it (for example) to be discovered from Mont Blanc’s accounts that US\$20 million in total had been paid in two dividends to an unspecified person. In 2007, on 1 January 2007 US\$20,344,447 had been credited to him, and on 15 July 2007 (just before Mr Wessels’ skeleton of 18 July 2007 was served, showing the inconsistencies in Zahoor’s evidence) he was credited with US\$6.6 million. In the schedule it is recorded that all the sums totalling nearly US\$47 million were part of his profit share, though in paragraph 25 of Zahoor 4th he indicated that some of the sums may have been for other purposes:

“such as a term deposit to VA Bank in Ukraine for business development purposes, an expensive car or yacht for client entertainment purposes.”

- (8) He dealt with the two dividends of US\$10 million each, and produced written resolutions of the sole director of Mont Blanc dated 27 May and 29 October 2004, the sole director being his brother Mr Hussain.
- (9) He dealt with certain investments made on his own account, which he transferred to Mont Blanc in 2005, and which were transferred back to him at book cost in 2006, because as loss-making ventures they “*were not attractive to lending banks and in fact diminished the value of [Mont Blanc] as a pure steel trader rather than enhanced it*”. (Paragraph 37 of Zahoor 4th).
- (10) He indicated that separate auditors had been used for Mont Blanc to avoid Mont Blanc “*being treated as a subsidiary of the Group, so defeating the whole initial purpose of [Mont Blanc]*” (paragraph 43 of Zahoor 4th).

39. On 26 October 2007 Mr Wessels served and filed a skeleton argument in support of a further application. In his skeleton Mr Wessels first pointed out that in Zahoor 2nd, Zahoor had made a number of sworn statements which, it now appeared, had been plainly untrue:

- “(i) *Mr Zahoor deposed that he would show that the suggestion that ISTIL has or might dissipate its assets in any manner whatsoever is incorrect (paragraph 7) and he also said “There has been no attempt by me or ISTIL to deplete the value of ISTIL”(paragraph 28). However, it is now clear from his Fourth Affidavit that he has personally benefited from MBT in the order of many tens of millions of dollars, a fact he previously and deliberately kept secret from the Court.*
- (ii) *Mr Zahoor deposed that the suggestion that ISTIL would dissipate assets from under the “very watchful eyes” of EBRD had no connection with commercial reality (paragraph 27). However, he has now admitted that the reason why MBT was incorporated was to deceive its lenders about its ultimate beneficial ownership. EBRD were never told about these secret arrangements. Mr Zahoor only claims that the auditors were told much later.*
- (iii) *Mr Zahoor deposed that the reduction in ISTIL’s profitability was due to an increase in the cost of raw materials (paragraph 30b) but he deliberately kept secret from the Court the vast sums he secretly siphoned off from ISTIL to MBT.*
- (iv) *Mr Zahoor deliberately kept secret from the Court the fact that he claimed to hold his beneficial interest in MBT on behalf of ISTIL; nor did he disclose the existence of the Framework Agreement or the Asset Agreement.”*

40. Mr Wessels next dealt in detail with the explanations provided by Zahoor in seeking to comply with paragraph 4 of the Order of 3 October 2007 (see paragraph 36 of this judgment). Mr Wessels submitted in his paragraph 17, that:

“17. *Although he does not honestly acknowledge it, Mr Zahoor, by accepting that his responses to the deposition questions and his Second Affidavit “were not complete and did not tell the story” and by attempting to justify that admission by his attitude to Mr Masood has signalled that he took a deliberate decision as to what to say and include and what not to say and include. He has therefore effectively admitted attempting to mislead the Guernsey Court by virtue of his Second Affidavit and the Oregon Court as a result of the answers he gave in the Deposition. When he swore it, he must have known that his Second Affidavit was not complete and did not tell the full story.”*

Mr Wessels went on to submit that Zahoor by seeking to mislead this Court had committed a contempt of Court.

41. Mr Wessels next dealt with what Zahoor had deposed in Zahoor 4th about the commercial rationale underlying the formation and use of Mont Blanc, and made these specific points:

- “(i) Why it was apparently impossible for a company with \$150 million of assets to obtain any credit lines. No contemporaneous documentation has been provided as evidence of ISTIL’s apparent difficulties in obtaining them.*
- (ii) What security Mont Blanc, incorporated in Mauritius and which after its incorporation in early 2003 was merely a shell company with no accounts, offered to lenders to obtain such loans and what possible incentives there were to the lenders to make loans to such a company.*
- (iii) There is no reference to any of the loans apparently obtained by Mont Blanc in its accounts for 2003, 2004 and 2005.*
- (iv) There is no reference to or evidence of any of the loans in paragraph 18 of the Affidavit.*
- (v) There is no reference to any such loans in the Framework Agreement between Mont Blanc, ISTIL and Mr Zahoor.”*

In my judgment these points fortified the concerns about what was the real reason why Mont Blanc was brought into play, and whether in truth it represented a means (like Reventox) of enabling Zahoor to move profits from ISTIL Guernsey, primarily for his own benefit. The terms of the Framework Agreement already adverted to in this judgment raise similar concerns, as Mr Wessels submitted.

42. I consider that it is not necessary to spell out in further detail the submission made by Mr Wessels, which raised further serious questions as to the correctness of Zahoor’s explanations in Zahoor 4th. In conclusion, Mr Wessels submitted that Zahoor had attempted to deceive the Plaintiffs and this Court. Accordingly, he sought:

- (1) an order for costs on an indemnity basis;
- (2) an order that the injunction granted on 3 October 2007 be extended until further order, with a penal notice added;
- (3) an order that that injunction be amended to deal with the position of the assets of the ISTIL Guernsey Group companies (I note that this was similar to the injunctive relief sought on 19 December 2006 which the Court had (for the time being) refrained from ordering in February/March 2007);
- (4) an order that Zahoor should file an affidavit with the names and addresses of all the directors of each of the Second and Fourth Defendants and their subsidiaries for the purposes of a penal notice to be inserted in the orders;

- (5) an order (with certain embellishments) that in his 5th affidavit Zahoor should comply with paragraph 2(b) of the order of 3 October 2007.
43. In her written submissions and in the course of oral submissions at the hearing on 1 November 2007, Miss Ozanne sought to answer the many points raised by Mr Wessels in support of the application for further interim relief. In the course of her oral submissions, Miss Ozanne made a personal statement apologising to the Court for having, unknowingly, misled the Court on 8 February 2007. The Court unreservedly accepted and accepts her apology (which, however, should have been made much earlier). It is clear from her statement and from Zahoor 4th that on 8 February 2007 she had simply assumed that Zahoor's evidence had been true, had not discussed his evidence with Zahoor, and had not received any specific instructions in respect of that evidence.
 44. Miss Ozanne submitted that she and her client had not had time to consider in any detail the new request for an interim injunction in respect of the ISTIL Guernsey companies. I considered that there was some force in this submission, and therefore agreed that this should be treated as an application ex parte without notice to the Defendants, but with the Defendants' Advocate being present and able to make such submissions as she might be able to make on that occasion.
 45. In so far as in the course of the submissions she sought also to defend Zahoor in respect of the many points of criticism made by Mr Wessels, for a substantial part I did not on 1 November 2007 accept what she wrote and said in his defence, and in writing this judgment I do not accept that. Put shortly (but inevitably with a degree of repetition):-
 - (1) I am satisfied that Zahoor deliberately sought to mislead the Oregon Court by the lies in his deposition, and this Court by the sworn statement, including further lies, in Zahoor 2nd.
 - (2) There remains serious ground for suspecting that part of the reasoning underlying the introduction of Mont Blanc was to move profits out of the ISTIL Guernsey Group, and so to enable Zahoor to take a substantial part of those profits (one-third) for his own benefit, without having to disclose that fact to the shareholders in ISTIL Guernsey.
 - (3) In Zahoor 3rd, Zahoor failed adequately to deal with the abstraction of profits from the ISTIL Group (which was now recognised as including Mont Blanc). It was not until Zahoor swore Zahoor 4th that he finally disclosed that he had taken from Mont Blanc by way of profit share under the Framework Agreement nearly US\$47 million.
 - (4) I was and am forced to the regrettable conclusion that Zahoor is a person who is prepared to tell lies to the Court (here, this Court and the Oregon Court) if he thinks that will help his cause, and who is

prepared to be economical with the truth (for example, about the abstraction of moneys from Mont Blanc), again if he thinks that the whole truth will not be discovered.

46. In these circumstances this Court had to consider what steps were necessary to protect the Plaintiffs as potential shareholders in ISTIL Guernsey.
47. On 2 November 2007 I delivered a short extempore judgment concerning the relief to be ordered.
48. Miss Ozanne accepted that the injunctive Order of 3 October 2007 in respect of Mont Blanc should continue until further Order, and accordingly I extended paragraph 1 of the Order of 3 October 2007 until further Order of the Court. I declined to include a provision for automatic lifting of the injunction if the Plaintiffs were finally to be held not to be shareholders of ISTIL Guernsey, as being unnecessary. The only other question was whether, as sought by the Plaintiffs, a penal provision should be included. In the light of the history of this matter, including the lies told by Zahoor and the concerns about his affidavits (including Zahoor 4th) I reached the conclusion that a penal provision should be included so as to bring home to Zahoor (and his associates) the need to obey the Order of this Court in every respect, and in future to place before the Court evidence which is truthful and complete.
49. As to the further injunction sought in respect of the assets and profits of the ISTIL Guernsey group, I repeat what I said in my brief judgment on 1 November 2007:

“I have reached the firm conclusion that, in the light of Mr Zahoor’s twists and turns in his evidence and the presentation of his case, I am bound to grant the further injunction in the terms sought by the Plaintiffs. I have in mind particularly the fact (now admitted by Mr Zahoor) that out of the large profits made by Mont Blanc he has so far taken nearly US \$ 47 million, of which a not insubstantial part has been taken after Mr Zahoor told this Court, on oath, that there was no question of him stripping profits out of the ISTIL Guernsey Group of companies including Mont Blanc. I do so at this stage on an interim basis until the matter can come back before me on Monday 19th November 2007.”

I directed that a penal notice be included in this Order also, for the same reasons.

50. Miss Ozanne had agreed to file and serve a fifth affidavit of Zahoor, dealing with the matters set out in paragraph 2(b) of the Court’s Order of 3 October 2007 by 4.00 pm on 8 November 2007, and I so ordered.
51. As regards costs, I ordered payment of sums on account by 8 November 2007, and stood over to 19 November 2007 Mr Wessels’ application for indemnity costs, while indicating that there seemed to me to be an arguable case for an Order for indemnity costs.

52. Accordingly, the two Orders of the Court, each with penal notices, were:

FIRST

“1. *The First, Second and Fourth Defendants must not without the leave of the Court or the written consent of the Plaintiffs whether by themselves or by their employees, servants or agents either directly or indirectly:*

- (1) *cause or permit Mont Blanc to distribute any of its capital and/or assets and/or pay any dividend to any person whomsoever including but not limited to the First, Second and Fourth Defendants and Mr Khalid Hussein of 256A, Block 6, P.E.C.H.S, Karachi in Pakistan; and/or*
- (2) *cause or permit Mont Blanc to distribute any of its profits to any person whomsoever including but not limited to all or any of the First, Second and Fourth Defendants and the said Mr Khalid Hussein whether pursuant to the Framework Agreement dated 28 May 2003 or otherwise howsoever; and/or*
- (3) *deal with or carry out or attempt to carry out any transaction relating to and/or concerning or in any way dispose of the ownership of or the legal or beneficial interest in the shares and/or assets of Mont Blanc*

provided always that Mont Blanc shall be entitled to carry out its normal business activities in the ordinary course of its business subject to making relevant timely disclosure under the Order of this Court dated 9 March 2007. For the avoidance of doubt this sub-paragraph is included only for the sake of clarity and is not intended to qualify the Orders made at sub-paragraphs 1(i), 1(ii) and 1 (iii) above.

2. *This Order shall remain in force until further order of the Court.”*

SECOND

“1. *The First, Second and Fourth Defendants must not without the leave of the Court or the written consent of the Plaintiffs whether by themselves or by their employees, servants or agents either directly or indirectly:*

- (i) *cause or permit the ISTIL Group to distribute any of its capital and/or assets and/or pay any dividend to any person whomsoever including but not limited to the First, Second and Fourth Defendants and Mr Khalid Hussein of 256A, Block 6, P.E.C.H.S, Karachi in Pakistan; and/or*

- (ii) *deal with or carry out or attempt to carry out any transaction relating to and/or concerning or in any way dispose of the ownership of or the legal or beneficial interest in the shares and/or the assets of the ISTIL Group.*

Provided always that the ISTIL Group shall be entitled to carry out its normal business activities in the ordinary course of its business.

2. *The order set out in paragraph 1 above shall remain in force until the conclusion of the resumed hearing of the Plaintiffs' Application dated 1 November 2007 which shall be adjourned until 19 November 2007.*
3. *The First Defendant shall file and serve a sworn affidavit by 4.00 pm on Friday 9 November 2007 which:*
 - (i) *contains the full names and current addresses of all the directors of the Second and Fourth Defendants and their subsidiaries (including Mont Blanc Trading Limited) for the purposes of completing the penal notice included herein and on the penal notice to be endorsed on another Order of this Court dated 2 November 2007 and confirms that the First Defendant has informed each and every one of them of the orders that have been made.*
 - (ii) *Contains full details of any payments of whatever nature made by the Second Defendant or any of its subsidiaries to Mont Blanc and the First Defendant, together with a full and frank explanation as to why each payment was made.*
- 3(bis). *In respect of the Plaintiffs' Bill of Costs served on the Defendants' Advocates on 22 March 2007 the Defendants shall pay the sum of £27,500.00 on account of the costs claimed therein to the Plaintiffs' Advocates Ozannes on or before Thursday 8 November 2007.*
4. *In respect of the Plaintiffs' Draft Bill of Costs dated 1 November 2007 the Defendants shall pay the sum of £50,000.00 on account of the costs claimed therein to the Plaintiffs' Advocates Ozannes on or before Thursday 8 November 2007.*
5. *The hearing of the Plaintiffs' application for an order that their costs as set out in their Draft Bill of Costs dated 1 November 2007 be paid on an indemnity basis forthwith without taxation shall be adjourned until Monday 19 November 2007.*

6. *The Defendants shall file and serve any evidence and other material in opposition to the Plaintiffs' Application dated 1 November 2007 and the application referred to at paragraph 5 above by 4.00 pm on Friday 9 November 2007 (by hard copy and by e-mail).*
7. *The Plaintiffs shall file and serve any evidence and other material in response on or before noon on Friday 15 November 2007 (by hard copy and by e-mail)."*

53. An unsworn 5th Affidavit of Zahoor ("Zahoor 5th") was filed and served by e-mail after hours on 9 November 2007. A sworn affidavit had not been supplied by the date of the completion of this judgment. By the unsworn affidavit Zahoor provided:

- (1) details of payments to him by ISTIL Guernsey and Azot;
- (2) the names and addresses of the directors of ISTIL Guernsey, Azot and their subsidiaries (though he failed to state which of such persons were directors of which companies).

He dismissed the notion that he had dissipated assets of the ISTIL Guernsey group companies including Mont Blanc, stating that the payments made to him totalling nearly US\$47 million were simply, in his view:

"contractual payments agreed in May 2003 in relation to the unknown future for my expertise, contacts and value I add to the ISTIL Group. I think it fair to say that I am the main driver for the Group's profits and the payments constitute, in my view, my legitimate award".

54. There was also produced a copy of the register of members of ISTIL Guernsey as at 23 July 2007. Out of a total of 100 million US\$0.10 shares, 92,467,000 were held by Azot. It may be that others of the shares were held for the benefit of Zahoor or his family. There was a number of minority shareholders (including whoever might be held to be entitled to the shares claimed by Masood and/or the Trustee).
55. By a further skeleton filed and served on 9 November 2007 by Miss Ozanne it was submitted in relation to the temporary order of 2 November 2007 preventing distribution of assets or profits of the ISTIL Guernsey group that this order should not be continued. Miss Ozanne submitted that none of the requirements necessary to be fulfilled before any such order could be made or extended had been fulfilled by the Plaintiffs. It is therefore necessary that each of such requirements be considered in turn.
56. Before doing so, I should add that between 9 and 19 November 2007 Miss Ozanne withdrew from the case, and was replaced by Advocate John Greenfield. At the hearing on 19 November 2007 Mr Greenfield did not seek to add to Miss Ozanne's written submissions in respect of such requirements, while maintaining that those submissions showed that the order relating to the assets of the ISTIL Guernsey group should not be continued.

57. I repeat in this judgment (without quotation) paragraph 2 of this Court's judgment of 27 February 2007.
58. The first question is whether the Plaintiffs have made out a good arguable case of entitlement to a minority shareholding in ISTIL Guernsey. In my judgment they have established such a case, and I repeat paragraphs 7 to 10 inclusive of the judgment of 27 February 2007 (without quotation).
59. The second question is whether, assuming the Plaintiffs' entitlement to a minority shareholding, the Plaintiffs have made out a good arguable case that Zahoor has engaged in activities which diminish the profitability of ISTIL Guernsey to the detriment of minority shareholders. In the light of the evidence now available to the Court (and summarised above in this judgment) I conclude that clearly such a good arguable case has been established. I refer in particular to
- (1) the movement of profits to Mont Blanc;
 - (2) the creation of Zahoor's entitlement to one-third of the profits under the Framework Agreement;
 - (3) Zahoor's taking by payment or credit to his account with Mont Blanc of nearly US\$47 million;
 - (4) the process by which Zahoor has, through successive orders for disclosure by this Court, been forced to disclose (1), (2) and (3) above, a process in which Zahoor has first lied to the Court, then disclosed a limited part of the relevant facts, and then been forced to reveal what the position now appears to be regarding the profits made by Mont Blanc in lieu of those profits remaining with ISTIL Guernsey.
60. The next question is whether in all the circumstances it is just and convenient to make the order sought in continuance of the temporary order of 2 November 2007.
61. Miss Ozanne submitted that the Plaintiffs would be adequately compensated by damages, and that plainly Zahoor, ISTIL Guernsey and Azot could meet any award of damages. She submitted that the Plaintiffs should be required to place a maximum value on their maximum potential shareholding in ISTIL Guernsey, and that this could, if the Court thought it appropriate, be secured in a suitable manner.
62. As to the valuation of the shareholding Mr Wessels has submitted that this could not be carried out with any degree of certainty in the light of the matters summarised in this judgment, including the movement of profits to Mont Blanc (and previously to Reventox) and the removal of a substantial portion of those profits to the personal benefit of Zahoor.
63. Further Mr Wessels has submitted that in the absence of such an order, in the light of Zahoor's past conduct which he has been forced to disclose by the orders of

this Court during 2007, there is a real likelihood that Zahoor might take further steps (for example, by creating another vehicle for the abstraction of profits from the group) to damage the interests of minority shareholders, or to make it difficult for this Court, when and if the issue of valuation might come before it, to make a full assessment of value in the light of true rather than assumed facts. Mr Wessels submits that on the information so far provided a realistic valuation cannot be reached.

64. Though in many cases it is possible at an interlocutory stage to place a maximum value on the claim, and to limit a freezing order accordingly, that is not universally the case. Thus in one case cited to me by Miss Ozanne, concerning breach of copyright and infringement of patent, *McDonald & Anr v Graham* (16 December 1993, English Court of Appeal, apparently unreported) Ralph Gibson LJ dealt with this issue. In *McDonald* the plaintiff argued that he had “no means of calculating the extent of the damage because the defendant appears to be concealing the full extent of his wrongful acts” (page 26F-G). Ralph Gibson LJ said this (at pages 28A-29C):

“There is, in my judgment, no essential requirement for the insertion of a maximum in a Mareva injunction, as Mr Ashton has contended. In most cases the court will, I think, consider it right to insert a maximum amount in order to avoid any unjustified interference with the defendant’s freedom to use his own assets. It seems to me that a maximum amount might have been inserted in this order without significant risk to the interests of the plaintiffs but there is force in the point made by Miss Clark that, having regard to the history of the defendant’s dealings with the plaintiffs, a maximum amount might have enabled the defendant, if he achieved a substantial profit on a transaction, to remove any temporary surplus over that maximum from the trading account, with the result that what was left in the account would then be expended in trading and other expenses.

The mere asserted inability of the plaintiff to calculate the extent of damages will not necessarily justify a decision not to insert a maximum amount in a Mareva injunction. It must be rare for the nature of a plaintiff’s business to be such that a realistic maximum could not be proposed which would effectively protect the plaintiff. Further, the mere fact that a defendant does not have assets which are likely to be in excess of his potential liability will not necessarily justify a decision not to insert a maximum amount; if only because a person trading in a business of the nature of that of the plaintiffs and of the defendant may in one transaction gain a large profit; and a defendant should not be prevented from using any part of that profit save to the extent that it is just and convenient to impose a restriction.

On the facts of this case, however, these refinements do not, in my judgment, matter. There was and is before the court nothing to suggest that the absence of a maximum amount from the injunction has caused, or will in any foreseeable circumstances cause, injustice, or even difficulty, to this defendant. He has been and remains free to run his business and to earn what he can and to pay his costs and business expenses and

outgoings. If there should be any significant change in the circumstances, he can apply to the court to vary the order.”

65. In my judgment, in the unusual circumstances of the present case it is just and convenient to impose the restrictions on ISTIL Guernsey (and Zahoor and Azot as the persons controlling ISTIL Guernsey), because

- (1) there is a clear risk that Zahoor will take steps to deplete the value of ISTIL Guernsey;
- (2) there is no injustice in imposing the order, because it is designed to ensure that ISTIL Guernsey (like Mont Blanc under the earlier order) can carry on its business in the usual way;
- (3) all that is prevented by the order is dissipation of the assets or profits of ISTIL Guernsey and its group, otherwise than for use in its usual business activities;
- (4) by preventing dissipation of assets and profits the position of minority shareholders, as regards both valuation of their shareholding and payment of moneys held to be due to them, will be secured appropriately;
- (5) despite the submissions made by Miss Ozanne on occasions since December 2006, these Defendants have not provided to the Court and the Plaintiffs any considered and realistic assessment of value;
- (6) if ISTIL Guernsey wishes to pay dividends that can be speedily dealt with by this Court, provided that proper, full and truthful information is first placed before the Court.

66. At the hearing on 19 November 2007 Mr Greenfield, while supporting all Miss Ozanne’s submissions, raised two matters as to the continuation of the order. The first (also raised by Miss Ozanne) was related to intra-group debt and Christmas bonuses to staff. I indicated to him that these could readily be approved by the Court, if the necessary information were provided. The second was the possibility of the sale of all or some of ISTIL Guernsey’s subsidiaries which might be negotiated and which might require an urgent hearing before this Court at short notice. I dealt with this in two ways: first, by accepting that the order should be amended to enable a sale to be negotiated and a sale agreement to be reached subject to an express condition precedent that the agreement would not become effective or proceed to completion before the Court’s leave to conclude the sale had been granted; and secondly, by indicating that the Court would sit at short notice to consider any such application.

67. Mr Greenfield raised some particular points as to the wording of the order, including the penal notice, and the matter is to come before the Court again on 27 November 2007 for the final wording of the order to be determined.

68. As regards costs, it was common ground that these Defendants should pay the Plaintiffs' costs of and occasioned by the interlocutory steps since 10 March 2007 on the indemnity basis, and the order will so provide.

69. Finally, I draw attention to one lesson appearing from this case for all Guernsey Advocates. It is incumbent on an Advocate

- (1) not to make factual submissions without first personally checking as far as practicable that the submissions are based on the true facts;
- (2) to ensure that affidavits of clients or other witnesses as far as practicable contain true and complete factual statements.

Mere reliance on instructing lawyers from another jurisdiction (whether from England and Wales or elsewhere) does not suffice. It is the duty of a Guernsey Advocate to take the normal personal responsibility for what the Advocate places before the Court, whether in pleadings, written oral submissions, affidavit or otherwise.