



**Investec Trust (Guernsey) Limited et al and
Glenalla Properties Limited et al**
Court of Appeal
14th January, 2014

JUDGMENT 07/2014

Application for a Stay of Execution.

Approved Text
14 January 2014

IN THE COURT OF APPEAL OF GUERNSEY

CIVIL DIVISION APPEAL No. 467

12th December 2013

Before:

**Robert Logan Martin QC, President
Sir John Nutting Bt, QC
James Walker McNeill QC**

Between:

**(1) InvestecTrust (Guernsey) Limited
(2) Bayeux Trustees Limited**

Plaintiffs

and

**(1) Glenalla Properties Limited
(2) Thorson Investments Limited
(3) Eliza Limited
(4) Oscatello Investments Limited**

Defendants

(5) Rawlinson & Hunter Limited

Defendant/Third Party Claimant

and

**(1) Glenalla Properties Limited
(2) Thorson Investments Limited
(3) Eliza Limited
(4) Oscatello Investments Limited**

Defendants to Third Party Claim

**Advocate J Wessels for the Applicants
Advocate JP Greenfield for the First to Fourth Respondents
Advocate IC Swan for the Fifth Respondent**

JUDGMENT

LOGAN MARTIN JA

Introduction

1. The present application to this Court arises out of a judgment delivered by the Lieutenant Bailiff, The Rt Hon Sir John Chadwick, on 6 December 2013.
2. The plaintiffs were formerly the trustees of a trust known as the Tchenguiz Discretionary Trust (“the TDT”) and they were referred to in the judgment by the learned Lieutenant Bailiff and in the pleadings as “the former trustees”. The first to fourth defendants are companies registered in the British Virgin Islands and now in liquidation and they are referred to by the Lieutenant Bailiff as “the BVI Companies”. The fifth defendant is the current trustee of the TDT and was referred to by the Lieutenant Bailiff as “the present trustee”.
3. The TDT is a trust which was set up to provide financial support to Mr Robert Tchenguiz and his children. It held significant interests in companies both directly and indirectly and it did so through forms of derivatives. It entered into substantial loan arrangements which as a consequence of the deteriorating financial conditions since 2007 have led to the situation which lies behind the present litigation. One of the assets of the TDT is a residential property in London which was formerly the premises of the Royal College of Organists. It is referred to as “the RCO House” and is held on leasehold by Iver Resources Limited which is a company in which the TDT is a shareholder. The RCO House is occupied by Mr Tchenguiz and members of his family as their home.
4. The judgment of the learned Lieutenant Bailiff was given after trial of an action in which a number of orders were sought from the Royal Court in the Amended Application for the plaintiffs. These related to certain loan agreements between the plaintiffs and the first to fourth defendants which were referred to in the Amended Application for the plaintiffs as “the Arrangements”. Within the Amended Application, the plaintiffs sought the following particular relief:
 - “(1) The Court’s determination of whether the Arrangements constituted or gave rise to and if so whether or not at all material times after 24 August 2007 remained binding loan agreements between Glenalla, Thorson, Eliza and Oscatello [that is to say the first to fourth defendants] and the Plaintiffs”.The plaintiffs also sought the following declaration:
 - “(3) As against Glenalla, Thorson, Eliza and Oscatello, a declaration that the Plaintiffs have no personal liability to Glenalla, Thorson, Eliza and Oscatello under the Arrangements and that the claims of Glenalla, Thorson, Eliza and Oscatello under the Arrangements extend only to the trust property of the TDT pursuant to Article 32(1)(a) of the Trusts (Jersey) Law 1984 (as amended).”
5. In their Further Amended Defence and Counterclaim, the first to fourth defendants sought a number of orders including judgment against the plaintiffs for three specified sums in favour of the first to third defendants respectively and totalling a sterling equivalent of approximately £185 million. In its Amended Defences and Counterclaim, the fifth defendant sought a number of orders including a declaration that “(1) ... that... the BVI Companies have no claim against the Former Trustees...”
6. At paragraph 253 of his judgment, the learned Lieutenant Bailiff set out his conclusions on the contentions for the parties. In particular, he made the following findings:

“(1) I answer the... question posed for determination by paragraph (1) of the relief sought in the Amended Application as follows:

(i) ...
(iii) [the] obligations [under the Arrangements] remained the obligations of the former trustees at all material times after 24 August 2007...

(2) ...

(3) I make no declaration in the terms sought in paragraph (3) of the relief sought by the Amended Application.

(4) I hold that the former trustees may retain and realise such of the assets subject to the trusts of the TDT as remain vested in them in order to satisfy their obligations as borrowers in respect of [the Arrangements].

(5) I hold that the BVI Companies succeed on their counterclaim and direct that the former trustees shall pay (i) to Glenalla Properties Limited the sum of €78,825,988.98 (or the sterling equivalent at the date of the order), (ii) to Thorson Investments Limited the sum of £80,578,539 and (iii) to Oscatello Investments Limited the sum of £39,386,354.80 with interest on such sums...”

The learned Lieutenant Bailiff also made no declaration in the form sought by the fifth defendant.

7. The practical effect for present purposes of the conclusions in the judgment of the Lieutenant Bailiff may be summarised as follows. The plaintiffs have become liable to make payment to each of the first, second and third defendants of substantial sums. Although the plaintiffs may realise the assets of the TDT in order to satisfy the sums due to the first to third defendants, the liability of the plaintiffs is not limited only to the trust property of the TDT. The result is that the plaintiffs have an immediate obligation to make payment of the sums specified and that obligation is not limited by reference to their role as the former trustees.

The application to the Royal Court

8. In response to the giving of the judgment, which had been provided in draft on 2 December 2013, the plaintiffs made an application to the learned Lieutenant Bailiff in which they sought relief which was described in a Skeleton Argument as follows:

“a. The Former Trustees’ application for a stay of execution of the judgment, pending their appeal, in respect of the determination that they are personally liable to the BVI Companies, with such liability not restricted to the value of the TDT trust assets;...”

In their Skeleton Argument the plaintiffs submitted that a stay should be granted pending an appeal by them against the judgment of the learned Lieutenant Bailiff. Such an appeal was not one for which they required leave. The plaintiffs submitted that if a stay was not granted, the plaintiffs would be likely to face a winding-up petition by the first to fourth defendants by way of enforcement of their personal liability, and as a result the plaintiffs would not be able to pursue an appeal against the determination that they were personally liable. It was submitted that the result would be that their right of appeal would be rendered nugatory.

9. In support of their position, the plaintiffs relied upon an affidavit sworn on 5 December 2013 from Mr Luis Gonzales who is a director of the first plaintiff and a director of two companies which are the directors of the second plaintiff. In summary, Mr Gonzales stated that the

assets of the TDT are not sufficient to meet the liabilities owing to the first to third defendants and that the ultimate parent company of the first plaintiff has confirmed in a letter that it is not its intention nor of any associated company to meet or to contribute to any judgment made against the first plaintiff.

10. Having heard argument for the plaintiffs, for the first to fourth defendants and for the fifth defendant, the learned Lieutenant Bailiff made the following order which is taken from the Official Transcript:

“3. I stay enforcement of paragraph 3 of the order for the period ending at 5 pm on Friday 13th December so that the parties may make an application to the Court of Appeal in the course of next week for a further stay if they think fit. I stay enforcement of paragraph 4 [sic] of the order against the non-trust assets of the former Trustees, whether such enforcement is by way of execution or by the institution of winding up proceedings, until 5 pm on Friday 13th December for the same reason.”

It may be taken that in referring to “paragraph 3” of his order, the learned Lieutenant Bailiff was referring to his refusal to grant a declaration that the liability of the plaintiffs extended only to the trust property of the TDT, and that in referring to “paragraph 4”, he was referring to the finding which he made that the plaintiffs should make payment of specified sums to the first to third defendants which is item (5) in paragraph 253 of his judgment. The Lieutenant Bailiff also made the following further order:

“4. I direct that in the period up to 5 pm Friday 20th December the present and former Trustees shall not take any actions themselves and will procure the Boards of Directors of the companies which they control within the TDT Group and will use all reasonable endeavours to procure the Boards of Directors of the companies which they do not control from disposing of or dealing in any assets of those companies without first obtaining the leave of the Court and I give liberty to apply or discharge that order on 48 hours notice...”

That order has been referred to in the course of the hearing before this Court as “the freezing order” and it is numbered “(5)” in a draft formal Order which is yet to be signed by the Lieutenant Bailiff. The Lieutenant Bailiff also made a number of other orders relating to costs, disclosure and service of a notice of appeal which are not relevant to this judgment.

The applications to this Court

11. As a consequence of that order of the learned Lieutenant Bailiff which granted a stay of execution for a limited period, two applications have been made to this Court. The first is an application by the plaintiffs pursuant to rules 15 and 16 of the Court of Appeal (Civil Division) Rules 1964 (“the Appeal Rules”) and they seek:

- “1. A stay of execution of the Order for Payment and/or an order that the First, Second and Third Defendants shall not seek to enforce the same against the personal assets of the Former Trustees until the earlier of (i) the final determination of the Former Trustees’ Appeal and (ii) further order of the Court.
2. Any further Order that the Court deems fit.”

12. The second is an application by the fifth defendant and it seeks orders pursuant to rules 15 and 17(1) of the Appeal Rules as follows::

- “1. That time for service of any Notice of Appeal in relation to the Judgment of Lieutenant Bailiff Chadwick handed down on 6 December 2013... be extended until 4 pm on 20 January 2014.
2. That execution of the Judgment be stayed:
 - a. Until 20 January 2014; and
 - b. If Notice of Appeal in respect of the Judgment is served by the Applicant on or before 4pm on 20 January 2014, until final determination of that appeal.”

The competing positions

13. Shortly before the hearing, the Court was advised that the plaintiffs and the first to fourth defendants had agreed a Consent Order as a result of which the plaintiffs’ application for a stay of execution would be adjourned sine die. In the Consent Order, the first to fourth defendants offered to the Court undertakings whereby they would not take any steps to enforce the order for payment against the plaintiffs personally or against their personal assets, including the issuing of a winding-up petition, unless certain events were to occur (referred to in the Consent Order as the “Trigger Events”). The plaintiffs and first to fourth defendants sought approval for the Consent Order. This meant that neither of these parties required to make any submissions to the Court on the application which had been made by the plaintiffs. On behalf of the plaintiffs, Advocate Wessels remained in order to assist the Court if necessary, and he participated in certain procedural discussions which ensued, but otherwise the plaintiffs made no substantive submissions at the hearing. The Court indicated that it was content to approve of the Consent Order as it was provided subject to the period of notice of any application which might arise being stated to be 24 hours.
14. This means that the hearing was confined to submissions which were made in relation to the application by the fifth defendant for an extension to the time for service of any notice of appeal and for a stay of execution of the judgment until the final determination of any appeal. In his submissions for the fifth defendant, which is the current trustee of the TDT, Advocate Swan began by addressing the basis upon which this Court should approach the granting of an application for a stay of execution where an appeal against the relevant judgment is contemplated. In addition to the authorities referred to in his Skeleton Argument and which are discussed below, he referred to the decision of the Court of Appeal of Jersey in *Veka AG v TA Picot (CI) Limited and others* [1999 JLR 306]. He submitted that unless an appeal would not be *bona fide*, a stay of execution should be ordered if there was a risk of the appeal being rendered nugatory. In relation to authorities from England and Wales, he made particular reference to the decision of the Court of Appeal there in *Leicester Circuits Limited v Coates Brothers plc* [2002] EWCA Civ 474. He drew a contrast between what had been said by Potter LJ and by Arden LJ, where the former had taken into account the strength of the merits of an appeal whereas the latter had said that she had not. Advocate Swan suggested that this meant that the line of English authority was not unanimous.
15. Advocate Swan submitted that if one adopted the Jersey approach, then the fifth defendant satisfied the test because its appeal would be *bona fide*, and if one adopted what might be said to be the more stringent English approach, whereby a consideration of the merits of an appeal required to satisfy a higher threshold, then the merits of the prospective appeal by the fifth defendant would overcome that threshold. In either event, the fifth defendant was entitled to make its application for a stay and it was not appropriate for that to depend upon some sort of miniature hearing of the substantive appeal. Thereafter, it was necessary to carry out a balancing of the consequences for and against the granting of a stay of execution.
16. In the Skeleton Argument for the fifth defendant, it was stated that it had been contended at trial that any liabilities to the first to fourth defendants and to the plaintiffs had been incurred by the unreasonable actings of these parties and that the learned Lieutenant Bailiff had failed

adequately to deal with the case, had misunderstood or ignored aspects of the evidence, and had erred in law in relation to his construction of article 26 of the Trusts (Jersey) Law 1984. The Lieutenant Bailiff had failed to find, against the weight of the evidence, that the plaintiffs had been grossly negligent. Advocate Swan referred to passages in the judgment and submitted that notwithstanding the witnesses who had given evidence, the Lieutenant Bailiff had made no assessment of their evidence. The Lieutenant Bailiff had approached his judgment mainly with regard to the documents and had failed to deal with the evidence. Advocate Swan suggested that the explanation for that lay in the fact that the judgment was issued some eighteen months after the conclusion of the trial, and although it had been delayed by incidental applications, the first of these had not been made until some fourteen months after the end of the trial. Advocate Swan referred to a passage in the transcript of the proceedings on 6 December 2013 where the Lieutenant Bailiff had appeared to accept that there was some justification for a stay. Advocate Swan referred to the decision of the Court of Appeal in England in the case of *Bond v Dunster Properties Limited and others* [2011] EWCA Civ 455 and to the passages in the judgment of Arden LJ at paragraphs 2 and 7. He submitted that these were substantial criticisms of the judgment of the learned Lieutenant Bailiff and that they demonstrated that an appeal by the fifth defendant would have prospects that satisfied what he described as the threshold.

17. In relation to the balancing of factors for and against the granting of a stay of execution, the position for the fifth defendant was that if a stay of execution were not granted there was a serious risk of injustice. The first to fourth defendants were all non-Guernsey companies and they were insolvent. Any sums which could be realised from the TDT would not satisfy the sums for which judgment had been given. The ability to realise the assets now would result in a “fire sale” where assets would be sold at an undervalue. Although the first to fourth defendants had undertaken to hold any assets recovered in a special account and not to deal with them pending the appeal, this did not meet the concern of the fifth defendant regarding the RCO House which was the home of Mr Tchenguiz and his family. It was said that the refusal of a stay which would allow the RCO House to be sold would engage the rights of Mr Tchenguiz and his family which are secured by Article 8 of the European Convention on Human Rights (“the ECHR”) and by the Human Rights (Bailiwick of Guernsey) Law 2000. On the other hand, there were no significant risks in granting a stay. The reality is that the assets of the TDT have been effectively preserved and safeguarded and not dissipated throughout the duration of the litigation, and had been secured in particular by undertakings given to the Royal Court in proceedings before Lieutenant Bailiff Talbot (the so-called *Beddoe* proceedings, referred to as “Guernsey 2”). Any further undertakings which might be necessary pending the outcome of the appeal should be capable of agreement.
18. In his submissions to the Court, Advocate Swan emphasised two aspects. The first was that many of the assets held within the TDT were investments which had been made on a long term basis and the possibility that these might have to be realised at short notice would result in the achievement of lesser values. Should the appeal succeed, then the return of any proceeds to the fifth defendant would result in losses to the TDT and there had been no offer of a cross-undertaking that if such assets were realised at a lower value the first to fourth defendants would make good any shortfall. The second aspect emphasised by Advocate Swan was that if the RCO House were sold, that would have an effect on Mr Tchenguiz and members of his family. They would be required to move from their home and in the event that the appeal was successful, the return of the cash proceeds would be small recompense. As Advocate Swan put it, in that event the house could not simply be given back. The suggestion had been made that in order to protect his position in the RCO House, Mr Tchenguiz should have bought it today but he did not have the financial ability to do that.
19. Turning to what harm would ensue if a stay of execution were to be granted, Advocate Swan submitted first that the risk of dissipation of assets was not a real risk. The assets had been held throughout the course of the litigation and no dissipation had taken place. The reality was that the assets were at no risk of flight and were in any event the subject of regulation in

other proceedings before the Royal Court. Secondly, if the stay of execution was granted, the delay would be for only a few months because any substantive appeal could be concluded within that period. Thirdly, although it had been suggested that if assets were not recovered by the first to fourth defendants there was the potential loss of claims which they might have against third parties, there was no clear evidence that that was a real risk. Fourthly, he submitted that in relation to the potential loss of value if a stay of execution were to be granted, any sums realised were not going to be available immediately to the first to fourth defendants because such sums as they did realise were going to be placed in an account (which Advocate Swan referred to in his submissions as a special purpose vehicle) and were to be held there in order that they might be returned if the appeal were successful.

20. In reply for the first to fourth defendants, that is to say the BVI companies, Advocate Greenfield referred to the legal principles which were set out in his Skeleton Argument. These related to the decisions of the Court of Appeal in England and Wales in the cases of *DEFRA v Downs* [2009] EWCA Civ 257 and *Relfa v Varsani* [2013] EWHC 763 (Ch) where it was said that an applicant for a stay of execution required to have “solid grounds”, and to the principle set out in *Hammond Suddards v Agrichem International Holdings Limited* [2001] EWCA Civ 2065. The burden of justifying a stay of execution was on the fifth defendant, not on the first to fourth defendants of justifying refusal. The weight to be attached to the decision in *Veka AG v TA Picot (CI) Limited and others* by the Court of Appeal in Jersey had to be read against the background of the then recent English case of *Ketchum International PLC v Group Public Relations Holdings Limited* [[1997] 1 WLR 4], although Advocate Greenfield did note that one of the factors referred to in *Veka* was that in considering whether or not to grant a stay of execution the court could take into account the fact that there had been a refusal to offer undertakings.
21. As set out in the Skeleton Argument for the first to fourth defendants, its position was that in order to address any concerns if a stay of execution were to be refused that assets which were realised would ultimately not be recoverable if the appeal were to be successful, the first to fourth defendants would pay all net realisations into an account to be held in Guernsey and not deal with these pending final determination of the appeal. If the appeal were successful, they would undertake to deal with such funds as directed by the Court of Appeal. Such an arrangement had been accepted in England in the case of *Relfa v Varsani*. The concern of the first to fourth defendants was that the funds likely to be recovered would fall far short of the judgment debt and there was no reason why the commencement of realisation of the assets of the TDT should be delayed. It was believed that the fifth defendant had no material assets of its own and was not in a position to indemnify or to offer any other any guarantee of compensation in the event that the first to fourth defendants were to suffer a loss by reason of a stay. At the hearing on 6 December 2013, the Lieutenant Bailiff had expressed the view that early realisation would be beneficial in reducing the amount of interest, even if the cash was not distributed. The first to fourth defendants referred to a number of issues arising from the conduct of the assets of the TDT which were said to justify the view that they should not be left under the management and control of interests connected with Mr Tchenguiz. In relation to the RCO House, this was not being funded by Mr Tchenguiz himself, contrary to what had been the understanding of the first to fourth defendants. The refusal of a stay would not engage the rights under article 8 of the ECHR of Mr Tchenguiz or his family because enforcement of the judgment of the Lieutenant Bailiff would not permit any eviction from the house. Any order for possession would require to be pursued through the English courts.
22. In his submissions to the Court, Advocate Greenfield referred to the evidence of Mr Akers who was one of the joint liquidators of the BVI companies. The sum for which judgment had been given by the Lieutenant Bailiff far exceeded the known value of the TDT. The value of the TDT had lain in what were highly speculative and highly geared investments and Mr Akers had said that at one stage there had been up to £4 billion of external borrowings. As far as the RCO House was concerned, it had been put into an Isle of Man company, the shares of which were held by an offshore trust. The RCO House had been used itself for trust

borrowings of £8 million. It had not been put into a family trust but had been used to provide an investment vehicle. The company which actually owned the RCO House was not in funds to meet the debts arising from it and it did not have the resources to maintain it. It had been assumed previously by the first to fourth defendants that Mr Tchenguiz was in such a financial position that he would be indemnifying the costs of the house, but by reference to his recent affidavit, he was having to depend upon funding from family members and he was not in a position to buy the RCO House from the TDT. Advocate Greenfield submitted that Mr Tchenguiz and his family were living in a large property but no explanation had been provided as to how the resulting financial commitments were being met.

23. Advocate Greenfield submitted that properties held for the benefit of the TDT at Farnborough Airport had been thought to be the only properties of value but even these had given rise to issues with HMRC in the United Kingdom. There was also property at Magna Park which was held by Cenzana Limited in respect of which there had been interest and there was no sense in not proceeding to realise its value now. Other than in the case of the RCO House, there was no reason why the other assets should not be marketed. Regardless of the outcome of the appeal, the properties should be marketed now with a view to realising whatever value they had. There might have been a reason for justifying a stay of execution if a sensible financial plan had been presented but there was no such plan.
24. Advocate Greenfield referred to the loss of opportunity which would be suffered by the first to fourth defendants in the event that there was delay in the execution of the judgment. In the Fourth Affidavit of Mr Akers it is stated that:

“38. The events which this case concerned occurred largely in 2007 to 2008. I am deeply concerned that there limitation periods on claims which may be about to expire, and, indeed, that some limitation periods may already have expired. Given the jurisdictions in which the investments of the TDT were mainly held (England and Guernsey), I think it is reasonable to assume that the limitation periods are likely to be around 6 years. That being so, it is very likely that we are about to encounter limitation issues. However, until information is obtained so that we have visibility s [sic] to potential claims, it will be impossible to investigate and pursue such claims. As I note below, given the extensive attempts by the Current Trustee to block us from obtaining information, it is not unreasonable to assume that there may well be claims which could be available but from that which may become time-barred.

39. Due to the lack of visibility, it is difficult at this stage to say with certainty what claims there may be...”

Advocate Greenfield referred to subsequent passages in that affidavit which concerned Mr Akers’ understanding about disposals which have taken place of interests within the TDT, and his concern that, if a stay is granted pending appeals, decisions will require to be made in the meantime regarding assets of the TDT. Mr Akers had been given no information as to how the interests of the BVI Companies would be protected. In contrast, the claims of disadvantage to the fifth defendant through the possibility of the sale of assets at an undervalue had not been substantiated. There had been no offer of an indemnity in favour of the first to fourth defendants in the event of the grant of a stay and subsequent loss in the event of an unsuccessful appeal. There was no explanation as to who would indemnify the BVI companies if there was a subsequent drop in value.

25. In his response, Advocate Swan referred to the answer in the affidavit of Mr McCallum in relation to the suggested conflict of interest. With respect to the RCO House, Advocate Swan referred to the affidavit of Mr Tchenguiz which demonstrated that he had no resources to purchase the house. Advocate Swan accepted that however the RCO House might come to

be sold, whether now if a stay of execution were to be refused, or as a result of some other event concerning its upkeep or otherwise, the funds realised would fall into and be for the benefit of the TDT. In respect of the properties at Farnborough Airport and Magna Park, if no stay of execution were to be granted, these would be realised in a way which was beyond the control of the Court. In so far as the proceedings before Lieutenant Bailiff Talbot were concerned, there was a power available for the first to fourth defendants to intervene by reference to section 69(1)(a)(i) and (iv) of the Trusts (Guernsey) Law 2007.

26. These were the submissions which were made relating to the application for a stay of execution but there were two further matters which may be regarded as subsidiary. The first concerned the freezing order which the Lieutenant Bailiff had made and which was effective until 20 December 2013. For the fifth defendant, Advocate Swan submitted that as the freezing order had been granted in unqualified terms, it meant that the fifth defendant was unable to use the assets of the TDT and the companies in the TDT for any purpose, and was thereby unable to make payments of salaries and wages to those who were employees. The learned Lieutenant Bailiff had made the freezing order with inadequate consideration. Advocate Swan submitted that the appropriate course would be to insert the words “other than in the course of the ordinary business of the companies” or an equivalent formulation which was regarded as customary in court orders of the sort similar to the freezing order.
27. In reply, Advocate Greenfield submitted that this was a real difficulty only in respect of the company named R20 and he referred to the affidavit of Mr McCallum in which it was explained that that company was being funded by third party interests. This meant that any funds received could be passed on directly to persons such as employees and without infringing the freezing order.
28. After the decision which is set out below was delivered to the parties in draft, further discussion on this matter ensued. Advocate Greenfield suggested that any exemption for payments in the course of ordinary business should be limited to £1000 beyond which intimation should be made to the first to fourth defendants. Advocate Swan said that such a limit was unrealistic. Advocate Greenfield, supported by Advocate Wessels, submitted that the existence of an order such as the freezing order should be the subject of undertakings and cross-undertakings. Reference was made to the relevant provisions in the CPR of England and Wales. Advocate Greenfield also suggested that there ought to be a more general freezing order for a longer period. These considerations appeared to introduce what was in effect a new consideration and one which arose in what I regarded as a relatively subsidiary matter given that the effect of the freezing order (at least in its existing form) would continue for only just over one week after the hearing before this Court. The Court was also aware that Lieutenant Bailiff Chadwick had stated that he was prepared to sit on 23 December 2013 in order to deal with any applications arising .
29. Having considered the submissions regarding the freezing order, the decision of this Court is that the freezing order should continue for a slightly extended period until 5 pm on 23 December 2013 and that leave to apply to the Lieutenant Bailiff should be given which will allow any application for its continuation or further variation to be made to the Lieutenant Bailiff. It is the view of this Court that he should regard himself as free to deal with the freezing order and any matters arising from it in whatever way he considers to be appropriate, including any applications for a further extension of the freezing order or any other or further variation of its terms. With reference to the present wording of the freezing order, the decision of this Court is that the customary formulation suggested by Advocate Swan should be inserted. It does not seem unreasonable that there should be an ability in the face of such an order to make payments which may be regarded as reasonable and customary business payments and there was nothing said by Advocate Greenfield which suggested that that was not justified. I did not regard his suggested limit of £1000 as reasonable or realistic and in any event the freezing order will continue only for a matter of eleven days after the decision of this Court to vary it. It will be for the learned Lieutenant Bailiff to decide if it should be

continued for any further period and, if so, on what terms.

30. The second subsidiary matter concerned the application by the fifth defendant that the time for service of any Notice of Appeal should be extended until 20 January 2014. This was said to be justified both because of the length and complexity of the judgment of the learned Lieutenant Bailiff and because of the intervention of the Christmas and New Year holiday periods. Advocate Greenfield opposed this application principally because he was concerned that it might lead to delay and could prevent the hearing of any substantive appeal taking place in the March sitting of this Court. Advocate Wessels associated himself with this application upon the basis that it would be reasonable that any party seeking to appeal should have the benefit of the same extended period.
31. Notwithstanding the importance of any substantive appeal being heard as soon as practicable, I have had little difficulty in deciding that the Court should grant this application. The Court has a general power under rule 17(1) of the Appeal Rules to extend the time of one month for serving a notice of appeal under rule 3. None of the parties referred to any authority relating to the exercise of the power to allow an extension of time and I proceed upon the basis that it would involve a general exercise of discretion taking into account the factors which were judged to be relevant. The concern of Advocate Greenfield may well be met by the holding of a special sitting given that the hearing of the appeal is likely to be substantial, and in any event there is no certainty that it could be accommodated in the March sitting even if the parties were in a position to proceed at that stage.
32. Having reviewed the submissions for the fifth defendant and for the first to fourth defendants, and having dealt with the two subsidiary matters, I turn to consider the issue of whether or not the Court should grant the stay of execution which has been applied for.

The legal principles

33. In respect of an application for a stay of execution, rule 15 of the Appeal Rules states

“15. Except so far as the court below or the Court may otherwise direct—
(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below.”

The effect of this is that unless a stay of execution is granted, the judgment of the learned Lieutenant Bailiff is enforceable now, but the entitlement of this Court to grant such a stay is at the general discretion of this Court.

34. A number of authorities from the courts of England and Wales and from Jersey were put before the Court by the parties in their Skeleton Arguments and in the submissions referred to above (and I do not repeat the citations where these have been given above). The first is the case of *Hammond Suddards v Agrichem International Holdings Limited* which concerned rule 52.7 of the Civil Procedure Rules (“the CPR”) of England and Wales whose terms were in effect the same as those of rule 15(a) of the Appeal Rules. In his judgment, Clarke LJ said:

“22. By CPR rule 52.7, unless the appeal court or the lower court orders otherwise, an appeal does not operate as a stay of execution of the orders of the lower court. It follows that the court has a discretion whether or not to grant a stay. Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is the risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused what are the risks of the appeal being in being stifled? If the stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgement? On the other hand, if a stay is refused and the appeal succeeds, and the judgement is enforced in the meantime, what are the risks of the

appellant being able to recover any monies paid from the respondent?”

35. In *Leicester Circuits Limited v Coates Brothers plc*, the defendants had applied for permission to appeal and for a stay of execution. In his judgment, Potter LJ considered the merits of an appeal and was satisfied that permission should be granted although he also said in para 6 that there would be “a substantial mountain for the defendants to climb at the hearing of the appeal”. In respect of the application for a stay of execution, his Lordship said:

“13. The proper approach is to make the order which best accords with the interests of justice. Where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives to decide which is less likely to cause injustice. The normal rule is for no stay, but where the justice of that approach is in doubt, the answer may well depend on the perceived strength of the appeal.”

He concluded following an assessment of the competing considerations that a stay should be refused. In doing so, he did take into account the prospects for the appeal mentioning as a factor that “I think the defendants have a hard task ahead”: see the judgment at para 14. In her judgment, Arden LJ said:

“18. I agree with the orders my Lord proposes and for the reasons that he gives. I would just add one or two observations about the application for a stay of execution. In considering that matter, I have formed no view as to the likelihood of the appeal succeeding. The prospect of an appeal is not without any substance and thus meets the threshold test required for permission to appeal.”

As Advocate Swan noted, there is a potential difference in approach between the learned judges with Arden LJ placing what she describes as the “threshold” at a level of “not without any substance” but otherwise not taking the prospects for the appeal into account, whereas Potter LJ did include the prospects for the appeal in his assessment of the merits for and against a stay.

36. In *Gater Assets Limited v Nak Naftogaz Ukrainiy* [2008] EWCA Civ 1051, Mummery LJ said:

“3. ... There is no dispute between the parties about the relevant legal principles that apply to this application. The court has a discretion, which is exercisable in all the circumstances of the case, with particular regard to the risk of injustice. It looks at the position as it would be if a stay was granted and the appeal fails and asks: what are the risks that Gater would be unable to enforce its judgment? It also looks at the position if the stay is refused and the appeal succeeds and the judgment has been enforced in the meantime: what are the risks of non-recovery?”

37. These passages may be regarded as summarising the elements of the approach which is adopted currently by the Court of Appeal in England and Wales. As submitted by Advocate Greenfield by reference to the authorities which he cited, it has also been said in the courts there that in order to succeed in obtaining a stay, the party making the application must advance what are referred to as “solid grounds”: see *DEFRA v Downs*, the judgment of Sullivan LJ at para 8; and *Relfa v Varsani*, the judgment of Sales J at para 4. In *Relfo*, his Lordship also said:

“3. ... The usual rule in relation to a court judgment, where a stay is applied for, is that the successful litigant should not generally be deprived of the fruits of their litigation pending appeal, unless there is some good reason for that.”

In refusing to grant a stay of execution, Sales J stated at para 5 of his judgment that he had

required:

“the liquidator for the claimant to give an undertaking that, when the monies are paid over, they will be held in a separate protected account, pending the outcome of any appeals by the non-party costs defendants. There is, therefore, no risk of dissipation or loss of those monies once paid over.”

As noted above, that is a particular passage which is relied upon by Advocate Greenfield in the present case.

38. Aside from England and Wales, the submissions for the fifth defendant mentioned the decisions of the Court of Appeal of Jersey in the cases of *A v S* [1987-88 JLR 651] and *Veka AG v TA Picot (CI) Limited and others*. These cases were decided by reference to authorities from England and Wales which were decided before the more recent decisions just referred to. *Veka* concerned applications seeking leave to appeal to the Privy Council and for a stay of execution pending their appeal. In his judgment at p 309, Southwell JA said:

“Where there is an appeal by an unsuccessful party, the usual approach to be adopted in the courts of Jersey is to make whatever orders, including an order staying proceedings under the judgment appealed from, as will prevent the appeal, if successful, from being nugatory, unless the court is satisfied that the appeal is not *bona fide*, has no realistic chance of success or there are other exceptional circumstances. That has been the approach adopted by the courts in England and Wales in a number of cases...”

He then referred to a number of the earlier authorities from England and Wales and he continued:

“A more restricted approach has recently been adopted by the English Court of Appeal in *Ketchum International PLC v Group Public Relations Holdings Limited*. The court held that an application for injunctive relief, equivalent to a stay, should not be granted unless (a) the party seeking this relief had a good arguable appeal; and (b) where leave would have been granted if it had been required. In *Ketchum* the English court departed from the previous approach for reasons which are not wholly clear. The potential effect of the court’s order in *Ketchum* was that the appeal, if successful, would be nugatory. We consider that *Ketchum* should not be followed in Jersey, and that the approach should be the one which we have already indicated.”

In relation to the merits of the application in *Veka*, Southwell JA took into account a number of factors including his view that the likelihood of the success of the appeal was not high and the fact that no substantial undertaking in had been offered or given by *Veka AG*. In granting a stay of execution, he referred in particular to “the absence of undertakings by *Veka*”.

39. Before discussing what was said by Southwell JA, I should note that Advocate Swan mentioned that *Veka* had been referred to in the subsequent case of *Mrs C v Trilogy Management Limited and others* [2012] JCA 113 which was a decision of a single judge of the Jersey Court of Appeal. The case concerned an application for the continuation of a stay of execution following the serving of a notice of appeal. In his judgment, McNeill JA referred to a number of authorities including the passages in the judgments of Potter and Arden LLJ in *Leicester Circuits*, and he decided to approach the competing contentions adopting the same approach as in *Veka*: see the judgment at paras 26 and 39. He concluded his judgment thus:

“53. ... In my view the lifting of the stay would render the appeal nugatory, it has not been shown that the appeal is not presented in good faith, it has not been shown that the appeal has no realistic chance of success and there are no other exceptional

circumstances supporting the lifting of the stay.”

40. It may therefore be said that the approach set out in the judgment in *Veka AG v TA Picot (CI) Limited and others* represents the law of Jersey. Although Southwell JA had in principle adopted the approach of the courts in England and Wales, he did so as I understand it with the qualification that he did not accept that where leave to appeal was not required, the test for leave should nevertheless be carried out when a stay of execution was being sought. He described the approach as being to permit the court to make an order staying proceedings so as to prevent the appeal, if successful, from being nugatory, and unless the court is satisfied that the appeal is not *bona fide*, has no realistic chance of success or there are other exceptional circumstances.
41. This Court has been referred to no relevant authority from Guernsey, whether in the Royal Court or in the Court of Appeal. This suggests that in addressing the application for a stay of execution in the circumstances of the present case, this Court is in a position to identify and to apply the principles which would be appropriate. In order to do that, it is necessary to consider the apparent differences in approach which appear to emerge from the authorities referred to. In essence, the issue is whether it is appropriate to apply what Advocate Swan described as a threshold, and which requires only that an appeal be *bona fide* and not unrealistic, or whether the Court requires to be satisfied that an appeal has identifiable prospects of success before a balancing of the factors for and against the granting of a stay of execution can be justified. The further consideration of exceptional circumstances has not been urged upon us in this case and I do not need to address it further although I do consider that it must be a consideration which could be relevant in an appropriate case given the unrestricted discretion which is provided by rule 15(a) of the Appeal Rules.
42. Having considered the authorities which have been referred to, it is my opinion that there are truly two individual issues relating to the assessment of the prospects for an appeal. The first is what is the threshold which an applicant requires to satisfy before a court can be required to consider and balance the factors for and against the granting of a stay of execution. The second is whether weight can be attached to the strength or otherwise of the appeal in the weighing of that balance.
43. Advocate Swan submitted that the threshold for consideration of whether a stay of execution can be justified is that described by Southwell JA in *Veka* which is that an application for a stay will be granted where the appeal would be rendered nugatory unless the appeal is not *bona fide* or where it has no realistic chance of success (subject only to the possibility of other exceptional circumstances which, as I have said, does not arise in this case). I infer that the expression “not *bona fide*” means that the appeal is being pursued not because of its merits but because of some other consideration such as causing delay to the implementation of a judgement which is truly unimpeachable. Advocate Swan submitted that a court which is considering an application for a stay of execution cannot be expected to carry out a detailed consideration of the merits of an appeal, not least in a situation such as the present where no notice of appeal has yet been served, but it may be said that even the assessment of whether an appeal is in good faith or has more than unrealistic prospects of success does require some assessment by the court of its prospects.
44. Whether an appeal will be rendered nugatory in the absence of a stay appears to me to be a matter to be judged in the carrying out of the balancing of the practical considerations which arise. If an appeal has insufficient prospects of success or is not being pursued *bona fide*, then that will be an end of the matter because a stay of execution can never be justified in such a situation (unless exceptional circumstances are said to exist). This means in my opinion that the first question which a court should ask in the circumstances of an application for a stay such as the one before us is whether the applicant has grounds for an appeal which are not without any substance and which are in good faith. That is in effect the standard set out by Southwell JA in *Veka* and it coincides with what Arden LJ said in *Leicester Circuits* where

she described the threshold as being an appeal which is not without any substance. I regard the expression “not unrealistic”, which was used by Southwell JA, as being equivalent to “not without any substance” and, with respect, I prefer the former which seems to me a more accurate way of judging whether or not the grounds for an appeal are sufficient to justify a stay of execution. This is therefore the first question which a court must ask itself and it may be described as the threshold to be overcome before a stay of execution can be justified upon a balancing of the factors for and against.

45. In addressing the nature of the threshold, I should say that I do not consider that the need for what are referred to as “solid grounds” in the cases of *DEFRA v Downs* and *Relfa v Varsani* adds anything to my conclusion on the nature of the threshold. I take these references as consistent with the fact that it is always for an applicant for a stay of execution to justify its granting and for the court to have a sufficient basis for doing so, but I do not regard that expression as offering any guidance as to how the threshold is to be overcome.
46. If the threshold is overcome, the court will then carry out the exercise which is described in the cases above and which is most conveniently summarised from the judgment of Clarke LJ in *Hammond Suddards* as being an assessment of “whether there is the risk of injustice to one or other or both parties if it grants or refuses a stay.” By reference to what has been said in the authorities referred to, it will be necessary to consider whether an appeal would be rendered nugatory if a stay of execution were to be refused and, on the other side, whether the respondent would be unable to enforce its judgment if the appeal fails. These are essentially matters to be judged in the circumstances of an individual case given the discretion provided in this jurisdiction by rule 15(a) of the Appeal Rules and the carrying out of the balancing exercise in the interests of justice.
47. I regard this as a separate and subsequent issue to the overcoming of the initial threshold. At the second stage, where the threshold has been overcome, I consider that it will open to the court to have regard to the particular strength or weakness of an appeal and that is supported by what Potter LJ said in his judgment in *Leicester Circuits* at para 14 and by Southwell JA in his decision in *Veka*. Whether the inclusion of the particular strength or weakness of an appeal in the balancing exercise will be justified in any particular case is likely to depend upon there being enough information on the prospects at that early stage, but it is my opinion that it will be legitimate for an appellant to put forward the particular strength of an appeal and for a respondent to put forward the particular weakness of an appeal, and for a court then to take into account the prospects in carrying out the balancing of risks in the interests of justice. But that need not inevitably occur because neither party may be able to advance their positions on the merits of an appeal beyond the initial threshold stage. In a situation where there is not enough particular information beyond that which is necessary for a court to decide that an appeal justifies the making of an application for a stay of execution, then the balancing exercise can be carried out with reference to the practical factors relating to the risks for and against the granting of a stay but without any further consideration of the merits of the appeal once it is satisfied that the threshold for an application has been satisfied.
48. I would also agree with Advocate Greenfield that in carrying out the balancing of the risks, it will be legitimate to take into account whether or not any undertaking has been offered or refused. That was one of the factors relied upon by Southwell JA and I respectfully agree that he was correct to do so. In balancing the risks of delay in the implementation of a judgment against the risks of allowing it to be implemented in the face of an appeal which may be successful, it seems to me equally legitimate to assess the competing consequences in light of whether a party has agreed to indemnify in respect of any potential losses or has not agreed to indemnify.

Determination of the application by the fifth defendant

49. In light of the of the legal principles discussed above, the first question to be considered is whether or not the fifth defendant has satisfied the Court that it intends to proceed with an appeal which is not without substance and which is being prosecuted in good faith. Advocate Swan put forward a number of detailed criticisms of the judgment of the learned Lieutenant Bailiff which in summary suggest that he had failed properly to take account of aspects of the evidence and to deal with them in his judgment. At this stage, this Court can only judge whether or not there appears to be sufficient substance in what has been put forward because it is not possible, and indeed would be undesirable, for us to reach any substantive conclusion on whether the criticisms of the judgment were justified or not.
50. Although Advocate Greenfield drew our attention to aspects of the legal principles which I have already referred to, he did not make any detailed submission which suggested that an appeal would be so devoid of merit that it should be judged to be without any substance now. In this situation, I am satisfied that the fifth defendant has demonstrated to this Court that it has grounds for an appeal against the judgment of the Lieutenant Bailiff which are not without substance and I conclude that what has been put forward on behalf of the fifth defendant has satisfied that aspect of the threshold test.
51. As regards whether or not the appeal would be mounted in bad faith, there has been no suggestion to that effect. Whilst it is inevitable that the existence of an appeal will delay the final outcome of these proceedings, I have seen nothing which suggests that this forms any part of the decision of the fifth defendant to appeal such that it could be said that the appeal would be in bad faith. Advocate Greenfield did not make any suggestion to this effect. I am satisfied that this cannot be said to be an appeal which would be being made in bad faith. Finally, and as I have already said, no party suggested the existence of possible exceptional circumstances.
52. Having taken into account these considerations, I have concluded that the fifth defendant has satisfied the threshold described above, and accordingly that it is appropriate for this Court to consider the balancing of the factors for and against the granting of a stay of execution.
53. In relation to that balancing, the first consideration which arises from the legal principles which I have discussed is whether or not it would be appropriate to place in the balance, on one side or another, the strength or weakness of the proposed appeal. Whilst the grounds which the fifth defendant has put forward may be met with a substantial response, that is yet to be seen, and it therefore cannot be said how difficult or otherwise it will be for the fifth defendant as an appellant to satisfy this Court in due course that its grounds of appeal should succeed. In this situation, I regard the prospects for the appeal as being essentially neutral and I have not identified any material which would permit me to reach a provisional conclusion, such as that expressed by Potter LJ in *Leicester Circuits* or Southwell JA in *Veka*, that the fifth defendant will have particular difficulty in succeeding in its appeal. For this reason, I do not consider that the prospects for the appeal should be placed in the balance on either side, and having decided above that it does satisfy the threshold test, I have thereafter left it out of my consideration of whether or not a stay of execution should be granted.
54. I then come to the practical risks which have been identified on each side. Having considered the competing arguments for and against a stay of execution, I have decided that a stay should be refused in respect of all of the assets of the TDT with the exception of the RCO House. In doing so, I have recognised that it is for the person seeking a stay of execution to justify its granting and in all the circumstances I do not consider that the fifth defendant has done so. In respect of all of the assets other than the RCO House, it does not appear that their realisation now would render the outcome of the appeal, if successful, nugatory. The assets were acquired as investments and their realisation, sooner or later, is inevitable. Whilst the fifth defendant may prefer to have its own control over these assets, they would still receive the

benefit of their realisation in due course if the appeal succeeds. I see no reason why they should remain under the control of the fifth defendant in a situation where the fifth defendant has offered no undertaking to the first to fourth defendants to indemnify them in respect of any losses which might be incurred during the continuing control of those assets by the fifth defendant. In contrast, the first to fourth defendants have offered to provide arrangements whereby any funds which are realised will be secured in an account under the control of this Court pending the outcome of the appeal. Whilst it is fair to say, as Advocate Swan submitted, that this means that the first to fourth defendants will not have any actual benefit of those funds in the meantime, nevertheless that does not appear to me to be a reason to delay the process of realisation under the direction of the first to fourth defendants taking place. I am satisfied that the opportunity to begin to realise these assets is in the best interests of all parties and in the interest of justice and I do not accept that the fifth defendant ought to have some control over that process.

55. In addition, I regard the fact that there may be third party losses in respect of which claims could be made but which may be lost as a result of the expiry of prescription or limitation periods as being a significant factor in my decision to refuse a stay of execution. So long as the first to fourth defendants do not have control over the assets, they will remain unaware of whether or not any such claims may exist, and if so to be in a position to pursue them in order to avoid the expiry of their entitlements to do so. Although the existence of any such claims remains uncertain, that is not a consequence of anything done by the first to fourth defendants and I regard it as in the interests of justice overall that they have the opportunity to carry out proper investigation and to establish the existence of any potential claims as soon as possible.
56. In reaching this decision, I have taken into account the nature of the arrangement proposed by the first to fourth defendants to secure that any assets recovered will be retained under the control of this Court pending the outcome of the appeal. I regard such an arrangement as a legitimate consideration in the balancing of the risk in the interests of justice and I have noted that it is of a form similar to that approved by the High Court in England in *Relfo v Versani*. I am also aware that Advocate Swan submitted that the first to fourth defendants had offered no cross-undertaking that if such assets were realised at a lower value the first to fourth defendants would make good any shortfall. Whilst such a cross-undertaking might have been offered, I do not regard its absence as critical. This is because I consider the opportunity to realise the assets of the TDT now (other than the RCO House) and in accordance with the judgment of the Lieutenant Bailiff as not having been displaced by the risks identified by the fifth defendant.
57. The position with regard to the RCO House is different. If it were to be sold now, it would be lost to the TDT and it could not be returned to the fifth defendant if its appeal were to be successful. Whilst the fifth defendant would receive the proceeds of sale, that would not be the same thing. I regard a stay of execution in respect of the RCO House as being justified because otherwise it would render nugatory the outcome of the appeal in that respect. In any event, it comprises real property of substantial value and it is not an income producing asset. Its value as real property will remain, and in the event of its realisation, sooner or later, the proceeds of sale will fall into the TDT. I do recognise that it has particular debts secured over it and that there is uncertainty about how its upkeep is being funded, whether by Mr Tchenguiz or otherwise, but nevertheless its physical loss from the TDT would be irretrievable in the event of a successful appeal and I regard that as the critical consideration. For these reasons, a stay of execution should be granted in respect of the RCO House but that is, of course, a matter which may be reviewed by this Court upon the application of any party were circumstances to change.
58. I should say that the existence or otherwise of the rights of Mr Tchenguiz and his family under article 8 of the ECHR has not played any part in my decision on this aspect. Whilst it is fair to say that refusing a stay of execution in respect of the RCO House would not give rise to the inevitable eviction of its occupants, neither Mr Tchenguiz nor any member of his

family made submissions before this Court and it would be inappropriate to offer any conclusion upon this point. I therefore confirm that the possibility of any rights which may exist under the ECHR has formed no part in my decision to refuse a stay of execution in respect of the RCO House.

Decision

59. I therefore confirm the decision of the Court which was delivered on 12 December 2013 and which, after consideration of a draft by the parties and revision by the Court, is as follows:
- (a) The Court grants approval for the Consent Order between the plaintiffs and the first to fourth defendants as exhibited on 12 December 2013 subject to the substitution of the period of “24 hours” for the period of “12 hours” which is specified in paragraph 3;
 - (b) The Court grants the application by the fifth defendant, and as supported by the plaintiffs, that the time for service of a Notice of Appeal by any party in relation to the judgment of the Lieutenant Bailiff handed down on 6 December 2013 be extended until 4 pm on 20 January 2014;
 - (c) The Court grants the application by the fifth defendant for a stay of execution of the order of the Lieutenant Bailiff for payment by the plaintiffs to the first, second, third and fourth defendants:
 - (i) until 20 January 2014; and
 - (ii) if a Notice of Appeal is served before 4 pm on 20 January 2014, until the final determination of the appeal against the judgment of the Lieutenant Bailiff;and the Court orders that during these periods the first, second, third and fourth defendants shall not seek to enforce the same against the assets of the TDT, but that that stay of execution and order are granted only in respect of that part of the assets of the TDT which comprises the shareholding in Iver Resources Limited and that company’s leasehold interest in the property known as the RCO House;
 - (d) The Court refuses the application by the fifth defendant for a stay of execution of the order of the Lieutenant Bailiff in respect of all of the other assets of the TDT;
 - (e) The Court varies the order of the Lieutenant Bailiff which was made on 6 December 2013 (which is paragraph 4 in the Official Transcript of the proceedings on that date and is to be number (5) in the formal Order to be placed before the Lieutenant Bailiff), and which is referred to as the freezing order, so that:
 - (i) it continues until 5 pm on 23 December 2013;
 - (ii) it includes the words “under exception of transactions carried out in the ordinary course of the business of said companies”;and the Court grants leave to any party to apply to the Lieutenant Bailiff in any respect which is related to the terms, duration and any other aspect of the freezing order or to this variation of the freezing order;
 - (f) The Court grants leave to any party to apply to this Court to vary this order upon cause shown or to make any further order consequential upon this order.
60. I would further direct that the parties agree a draft of a formal Order which is in accordance with this judgment and which is to be placed before the Court for signature within seven days of the date of this judgment.

SIR JOHN NUTTING JA

61. I agree.

McNEILL JA

62. I agree.