

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **HOLDEN AT GEORGE TOWN**

3 **Cause No: 0121/2011**

4  
5 **BETWEEN:**

6 **BRENNINI SABRE, INC.**

7  
8 **PLAINTIFF**

9  
10 **AND:**

- 11 **1. PIRATES CAVES LIMITED**  
12 **2. GIL STERN**  
13 **3. PATRICIA ROHLEDER**  
14 **4. DAVID ROHLEDER**  
15 **5. ILLA STERN**

16  
17 **DEFENDANTS**

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19  
20 **Appearances:**

**Mr. David Dinner of Bodden & Bodden for  
the Plaintiff**

**Ms. Sheridan Brooks of Brooks & Brooks  
for the Second Defendant**

**Mr. George Giglioli of Giglioli & Co. for the  
Third and Fourth Defendants**

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29 **Before:**

**The Hon. Mr. Justice Charles Quin**

30 **Heard:**

**28<sup>th</sup> April 2011**

31  
32 **JUDGMENT**  
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- 34  
35 1. On the 6<sup>th</sup> April 2011 the Plaintiff, a company incorporated under the laws of  
36 Maryland, U.S.A., issued an *ex parte* Originating Summons seeking, *inter alia*, an  
37 injunction restraining the Second Defendant from dealing with the assets of the  
38 First Defendant and restraining him from acting as a director of the First  
39 Respondent.

1           2.       On the 7<sup>th</sup> April 2011 Henderson J., on hearing counsel for the Plaintiff and on  
2                               reading 21 documents set out in Schedule 2, made the following Order:

3                               1.   *That the Second Defendant be restrained by himself, his servants and*  
4                               *agents or otherwise howsoever from acting or purporting to act as*  
5                               *director of the First Defendant Pirates Caves Limited*

6                               2.   *(a) That the Second Defendant be restrained by himself, his servants*  
7                               *and agents or otherwise howsoever from charging, selling,*  
8                               *transferring, encumbering, leasing, stratifying or in any way*  
9                               *diminishing the value of that residential property in Bodden Town,*  
10                              *Grand Cayman, located at 53 Manse Road, and more specifically*  
11                              *described as Bodden Town, Block 44B Parcel 4 and any stratification*  
12                              *thereof; and*

13                              *(b) That the Court do make an order pursuant to s.124 of the*  
14                              *Registered Land Law (2004 Revision) inhibiting until further order, the*  
15                              *registration of any dealing with that residential property in Bodden*  
16                              *Town, Grand Cayman, located at 53 Manse Road, and more*  
17                              *specifically described as Bodden Town, Block 44B Parcel 4 including*  
18                              *any stratification of the said parcel.*

19                              3.   *That the First Defendant by itself, its servants or agents, be restrained*  
20                              *from in any way parting with possession of, charging, transferring,*  
21                              *encumbering or diminishing the value of any property and assets until*  
22                              *such time as the matter is brought back before the Court on an inter*  
23                              *partes basis.*

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25           3.       Henderson J. ordered that the injunction would remain in force up to and including  
26                               the 21<sup>st</sup> April 2011, being the return date, unless before then it is varied or  
27                               discharged by a further Order of the Court.

28           4.       Schedule 1 to Henderson J.'s Order provides the undertakings given to the Court by  
29                               the Plaintiff. Aside from the usual cross undertakings in damages, to provide a copy  
30                               of the Order and pay the reasonable costs of affected third parties, the Plaintiff gave  
31                               two other significant undertakings:



1 8. On the 20<sup>th</sup> April 2011 the Third and Fourth Defendants filed the affidavit of  
2 Georgie Linford in support of their Summons to have the inhibition vacated and the  
3 proceedings struck out as against the Third and Fourth Defendants.

4 9. On the 21<sup>st</sup> April 2011 the Plaintiff filed a second Summons in relation to the four  
5 Defendants, to obtain the following relief:

6 *That the Order of Henderson J. dated the 7<sup>th</sup> April 2011 continue in*  
7 *force pending further order of the Court.*

8

9 ***Position of the Third and Fourth Defendants***

10 10. Mr. Giglioli, counsel for the Third and Fourth Defendants, makes a number of  
11 submissions:

12 1. That the Third and Fourth Defendants have not been served with any  
13 originating process and further submits that they are unclear whether  
14 there is any originating process.

15 2. That the Third and Fourth Defendants submit that the only document  
16 that has been served on them is the injunction Order of Henderson J.  
17 dated the 7<sup>th</sup> April 2011 and sealed on the 8<sup>th</sup> April 2011 in the Grand  
18 Court registry. The Third and Fourth Defendants submit that the  
19 injunction was served on their attorneys on the 11<sup>th</sup> April 2011.

20 3. The Third and Fourth Defendants submit that the Plaintiff is in breach  
21 of its undertaking, in that it has failed to issue and serve on the Third  
22 and Fourth Defendants the Writ of Summons, together with the

1                                    injunction Order which it undertook to do before Henderson J. on the  
2                                    7<sup>th</sup> April 2011 as soon as practicable.

3                                    4. The Third and Fourth Defendants submit that the Plaintiff's Summons,  
4                                    issued on the 21<sup>st</sup> April 2011, has never been served on the Third and  
5                                    Fourth Defendants and they only had sight of the Plaintiff's Summons  
6                                    when they received the Plaintiff's bundle on the afternoon of the 27<sup>th</sup>  
7                                    April 2011.

8                                    5. The Third and Fourth Defendants submit that the Plaintiff is in breach  
9                                    of the provisions of GCR O.32 r.3 which states that the Summons must  
10                                    be served on every other party not less than four days before the day  
11                                    specified in the Summons for the hearing of the application and further  
12                                    any evidence relied on in support of the application must be served  
13                                    with the Summons.

14                                    6. In addition, the Third and Fourth Defendants complain that the Plaintiff  
15                                    is in breach of the undertaking it gave to Henderson J. that it would  
16                                    serve on the Defendants a Summons for the return date, together with a  
17                                    copy of the affidavits and exhibits containing the evidence relied on by  
18                                    the Plaintiff as soon as practicable.

19                                    7. The Third and Fourth Defendants submit that there are no affidavits  
20                                    other than the Second Defendant's affidavit and Ms. Linford's affidavit  
21                                    on behalf of the Third and Fourth Defendants before the Court and that  
22                                    the Plaintiff is in breach of GCR O.32 r.17 and O.41 r.9.



1       14.     The Plaintiff confirms that it served a copy of Henderson J.'s Order, dated the 7<sup>th</sup>  
2             April 2011, on the Registrar of Lands on the 8<sup>th</sup> April 2011, and that, to date, the  
3             Second Defendant has still not been served with the Order.

4       15.     The Plaintiff's counsel contends that he has encountered problems due to the fact  
5             that his client is in the United States. There is clearly a serious dispute as to who is  
6             the director of the Plaintiff and indeed the First Defendant. There is documentation  
7             which demonstrates that at one time the Second Defendant was the sole director of  
8             the Plaintiff and the sole director of the First Defendant, and there is recent  
9             documentation to suggest that Ms. Ellen Jane Stern, the estranged wife of the  
10            Second Defendant is the sole director of the Plaintiff and the First Defendant.

11       16.     The Plaintiff's counsel maintains that he has difficulties obtaining instructions in  
12            view of the fact that his clients, the Plaintiff and Ms. Ellen Jane Stern are also  
13            represented by US attorneys. In addition, the Plaintiff submits through its counsel  
14            that the delay was further exacerbated by the religious holidays over the Easter and  
15            Passover time in the United States.

16       17.     Furthermore, the Plaintiff contends through its counsel, Mr. Dinner, that the  
17            Plaintiff Company has received no cooperation from the registered office of the  
18            First Defendant and, accordingly, on the 21<sup>st</sup> April 2011, the Plaintiff issued a  
19            Summons against the first four Defendants that Cayman International Corporate  
20            and Marine Services Ltd. deliver up, forthwith, the copy of the minute book and  
21            complete corporate file of the First Defendant Company to the Plaintiff's attorneys.

22       18.     The Plaintiff Company contends that it is the sole shareholder of the First  
23            Defendant Company and that it has different causes of action against the different  
24            Defendants.

- 1        19.     The Plaintiff maintains that the Second Defendant acted *ultra vires* and changed the  
2                corporate structure of the First Defendant Company without the consent of the  
3                shareholders.
- 4        20.     In view of the difficulties that the Plaintiff has encountered, counsel for the Plaintiff  
5                submits that it has not been practicable to file affidavits with the Court, although the  
6                affidavits have been inserted in the Plaintiff's bundle – copies of which were  
7                provided to the Court and the other parties on the evening before the *inter partes*  
8                hearing. The Plaintiff maintains that this was the first opportunity it had, due to the  
9                result of the delays and the difficulties encountered, to provide the documents to the  
10              other parties.
- 11       21.     Counsel for the Plaintiff submits that the difficulties that the Plaintiff has  
12              encountered have been from the outset, and certainly from the 24<sup>th</sup> February 2011.  
13              In addition, the Plaintiff's counsel alleges that the charge over the afore-mentioned  
14              property - Bodden Town, Block 44B Parcel 4 – in favour of the Fifth Defendant,  
15              was not a *bona fide* charge.
- 16       22.     Mr. Dinner indicated that the Plaintiff was doing everything as quickly as possible,  
17              and that the earliest that it could have filed the documents in support of the  
18              continuation of the injunction, was on the 27<sup>th</sup> April 2011, the day before the  
19              hearing of the Third and Fourth Defendants' Summons.
- 20       23.     The Plaintiff submits that the affidavits do not have to be filed to be referred to.
- 21       24.     On the question of security for costs, counsel for the Plaintiff indicated that he had  
22              received no instructions in relation to providing security of costs, but submitted that

1 a sum of five thousand dollars (\$5,000.00) would be fair and reasonable in the  
2 circumstances of this case.

3 25. The Plaintiff, in a final response to the Third and Fourth Defendants' reply submits  
4 that the First Defendant did not have the capacity to sell the property to the Third  
5 and Fourth Defendants on the 30<sup>th</sup> March 2011 and it was the Plaintiff's intention to  
6 attack the sale of the property.

7 26. The Plaintiff contends that the balance of convenience lies in favour of continuing  
8 the injunction in favour of the Plaintiff

9 *Analysis and Conclusion*

10 27. I have not gone into the facts as presented by either the Plaintiff or the Third and  
11 Fourth Defendants, due to the fact that the submissions made by the Third and  
12 Fourth Defendants are based on the Plaintiff's failure to comply with the rules of  
13 the Grand Court and the procedure to be adopted on obtaining and continuing an *ex*  
14 *parte* injunction. For the purposes of this Judgment I find that it is only necessary to  
15 analyse the submissions of the parties and not to examine the purported facts which  
16 are decidedly unclear.

17 28. Order 2 of the Grand Court Rules provides for the consequences of non-compliance  
18 with the Grand Court Rules. In essence, a failure to comply with the procedural  
19 requirements set out in the Rules does not make the proceedings a nullity, but the  
20 Court is vested with powers under GCR O.2 r.1(2) to set aside wholly or in part the  
21 proceedings on such terms as it thinks fit.

22 29. Page 120 of the second edition of "*Civil Litigation*" by Deborah Barker Royes  
23 ("Ms. Barker") at paragraph 9.3 reads:

1                    *“The power of the Court to grant injunctive relief exists in the Cayman Islands*  
2                    *be virtue of the adoption by the Grand Court Law, s.11 of the powers of the*  
3                    *Supreme Court of England.”*

4                    Ms. Barker goes on to state, and it is trite law:

5                    *“That an injunction is a serious and powerful measure which will not be*  
6                    *granted lightly.”*

7

8                    30.        GCR O.29 sets out the procedure to be adopted when applying for an interlocutory  
9                    interim injunction:

10                    *“Where the applicant is the plaintiff and the case is one of urgency such*  
11                    *application may be ex parte on affidavit but, except as aforesaid, such*  
12                    *application must be made by motion or Summons.”*

13

14                    ***A. Affidavit Evidence in Support of the Injunction***

15                    31.        Normally if the party seeking the injunction has not had sufficient time to provide  
16                    the affidavit evidence, the evidence could be taken orally and the Judge would  
17                    make a note of the evidence, with the party obtaining the injunction undertaking to  
18                    file an affidavit as soon as reasonably practicable.

19                    32.        To date the Plaintiff has failed to file any affidavit evidence to support the  
20                    injunction it obtained on the 7<sup>th</sup> April 2011, and all that were placed on the Court  
21                    file were the 21 documents set out in Schedule 2. At present there is no evidence  
22                    from the Plaintiff giving rise to the cause of action against the Third and Fourth  
23                    Defendants, and, most importantly, to demonstrate that there is a serious question to  
24                    be tried.

25                    33.        I find that the Plaintiff has failed to provide the evidence to put before the Court on  
26                    the 7<sup>th</sup> April 2011, and further, to provide a note of the hearing. I draw assistance

1 from the dicta of the learned Chief Justice in *Cable & Wireless (Cayman Islands)*  
2 *Ltd. v. Information & Communications Technology Authority* [2007] CILR 273  
3 where the Chief Justice stated at paragraph 58:

4 “It is now established that an applicant for *ex parte* relief owes the further  
5 following duties ... to provide full notes of the *ex parte* hearing to any person  
6 affected by the relief sought.”

7  
8 34. The affidavit evidence or a note of the sworn testimony should set out the facts  
9 giving rise to the application including the nature of the claim and the cause of  
10 action against each of the Defendants. Furthermore, it should set out evidence  
11 which can support the adequacy of the Plaintiff’s cross undertaking in damages and  
12 should ensure that the Plaintiff provides full and frank disclosure, together with any  
13 defence each of the Defendants might have to the application.

14 35. The Plaintiff has failed to file any affidavits setting out the evidence which was  
15 relied upon at the hearing, and it has failed to provide a note of the sworn testimony  
16 or a note of the evidence and material facts relied upon to obtain the *ex parte*  
17 injunction to either the Court or to the Defendants affected by the injunction.

### 18 ***B. Undertakings***

19 36. I come now to the two undertakings referred to in paragraph 4 above given by the  
20 Plaintiff at the *ex parte* hearing before Henderson J.

21 37. The Court receives considerable assistance from the commentary by the learned  
22 editors of the Supreme Court Practice 1999 and in particular Order 29/1A/2,3,  
23 where the editors state:

1                    “An undertaking to issue the writ “forthwith” or “as soon as practicable” must  
2                    be properly and expeditiously implemented by the Plaintiff’s solicitor and his  
3                    failure to do so is prima facie a grave breach of his duty to the court.”

4  
5            38.     Nourse J. in *P.S. Refson & Company Ltd. v. Saggars and Another* [1984] 1WLR  
6            1025 held that:

7                    “The grant of an injunction under R.S.C. O.29 r.1(3) on an undertaking to issue  
8                    a writ “forthwith” or “as soon as practicable” normally requires the writ to be  
9                    issued on the same day or on the next day that the writ office is open, and a  
10                  failure to issue it expeditiously is a contempt of court.”

11  
12           39.     Nourse J. having discussed the procedure with the then Vice Chancellor, Sir Robert  
13            Megarry, made the following observations at page 1030 paragraph F:

14                  “1.     Wherever possible there should be put before the court the draft of an  
15                  indorsement on the writ, and preferably an engrossed writ ready for  
16                  issue. In cases where relief is sought over the telephone, the material  
17                  part or parts of the draft indorsement should normally be read to the  
18                  judge. Only in cases of very exceptional urgency should the court be  
19                  asked to act without a sight or hearing of the material part or parts of a  
20                  draft indorsement.

21                  2.     Although there is no difference in meaning or effect between an  
22                  obligation to issue a writ “forthwith” or “as soon as practicable” or  
23                  “as soon as reasonably practicable,” the first of these formulae is to be  
24                  preferred and should normally be adopted. According to the  
25                  circumstances the undertaking should normally be in one of the  
26                  following forms: (a) “forthwith to issue a writ of summons in the form  
27                  of the said draft writ;” or (b) “forthwith to issue a writ of summons  
28                  claiming relief in the form of the said draft indorsement with or without  
29                  other relief”; (c) “forthwith to issue a writ of summons claiming relief  
30                  substantially similar to that hereinafter granted with or without other  
31                  relief”.

32                  3.     As in the case of any other undertakings relating to the conduct of  
33                  proceedings, it is the duty of the solicitor (attorney in this case) acting  
34                  for an intended plaintiff on whose behalf an undertaking is given to the  
35                  court to issue a writ to see that it is properly and expeditiously  
36                  implemented; and counsel who is instructed to give such an  
37                  undertaking may sometimes regard it as his duty to remind the solicitor  
38                  of his (sic) [this].”



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*“The Grand Court Rules 1995 require that the following documents shall be issued by or filed with the Court namely, 2.2.5 affidavits which were actually used in Court (O.41 r.9).”*

44. Paragraph 3.5.1 of the said Practice Direction states:

*“Whether or not affidavits are required to be filed depends on the purpose for which they are served. GCR O.41, r.9 provides that every affidavit used in a cause or matter must be filed. An affidavit is only used within the meaning of this rule when it is read by the Judge and constitutes part of the evidential basis upon which a judgment is given or an order made.”*

45. Furthermore GCR O.41 r.14(2) states:

*“A party wishing to refer to a document contained in the Court file shall serve notice of his intention to do so and shall provide the opposing party with an office copy thereof.”*

46. As at the 28<sup>th</sup> April 2011 the Plaintiff had failed to file any affidavit evidence with the Grand Court registry and further had failed to properly serve the Defendants with any affidavit evidence, and, accordingly, is in breach of the aforesaid provisions of GCR O.41 and the Grand Court Practice Direction No. 1/99.

***D. Summons***

47. The Plaintiff’s Summons against the four Defendants issued on the 21<sup>st</sup> April 2011 appears not have been served on any of the Defendants and was only seen by counsel for the Second, Third, and Fourth Defendants on the eve of this hearing.

48. Having heard the submissions of all three counsel it would appear that the Plaintiff is in breach of the rule set out in GCR O.32 r.3 namely, under O.32 r. 3(2):



1       53.     It appears from the evidence before me that the Third and Fourth Defendants are  
2             purchasers for value without notice. They have *prima facie* acted properly and with  
3             the benefit of an official search from the Land Registry, there is no reason before  
4             the Court that they should not be entitled to be registered as proprietors of the  
5             property they purchased pursuant to s.42(2) of the Registered Land Law.

6       54.     As has often been cited the grant of injunctive relief is dependent upon the  
7             existence of a cause of action forming the legal substratum of the claim for relief.

8       55.     This Court has followed the long established principle famously laid down by Lord  
9             Diplock in the case of *The Siskina* [1979] A.C. 210 where he stated at page 256:

10                     *“A right to obtain an interlocutory injunction is not a cause of action. It cannot*  
11                     *stand on its own. It is dependent on there being a pre-existing cause of action*  
12                     *against the defendant arising out of an invasion, actual or threatened by him, of*  
13                     *a legal or equitable right of the Plaintiff for the enforcement of which the*  
14                     *Defendant is amenable to the jurisdiction of the Court. The right to obtain an*  
15                     *interlocutory injunction is merely ancillary and incidental to the pre-existing*  
16                     *cause of action. It is granted to preserve the status quo pending the*  
17                     *ascertainment by the Court of the rights of the parties and the grant to the*  
18                     *Plaintiff of relief to which his cause of action entitles him, which may or may*  
19                     *not include a final injunction.”*

20             In this case, the Plaintiff has failed to issue a writ of summons or even provide a  
21             draft writ of summons, and this Court cannot identify any cause of action against  
22             the Second and Third Defendants.

23       56.     Accordingly, having reviewed the submissions of counsel for all the parties and the  
24             evidence contained in the affidavits of the Second Defendant and Georgie Linford  
25             on behalf of the Third and Fourth Defendants, I hereby lift the inhibition and also  
26             strike out the action against the Third and Fourth Defendants.

27

1 *F. Delivery Up of Corporate Records of the First Defendant*

2 57. I turn now to the Plaintiff's Summons for Delivery Up of the Corporate Records of  
3 the First Defendant held by Cayman International Corporate and Marine Services  
4 Ltd.

5 58. I have been told by counsel for the Plaintiff that he has spoken to the principal of  
6 Cayman International Corporate and Marine Services Ltd. who confirmed that he  
7 was aware of the application. I have been further told by counsel for the Plaintiff  
8 that the principal of Cayman International Corporate and Marine Services Ltd.  
9 declined the opportunity to appear at the hearing but confirmed that he would  
10 comply with whatever Order this Court deems fit to impose.

11 59. Again I note that there seems to be a genuine dispute as to who are the proper  
12 directors and officers of the First Defendant Company and accordingly, to be fair to  
13 the Plaintiff and the Second Defendant I hereby order that Cayman International  
14 Corporate and Marine Services deliver up copies of the minute book and the  
15 complete corporate file for the First Defendant Company to Bodden & Bodden,  
16 attorneys at law for the Plaintiff, and to Brooks & Brooks, attorneys at law for the  
17 Second Defendant.

18 *G. Security for Costs*

19 60. All that remains for this Court to consider at this stage is the Second Defendant's  
20 application for security for costs.

21 61. There is no evidence before the Court that the Plaintiff has sufficient assets to pay  
22 for the costs of any of the Defendants, should the Plaintiff fail and the Defendants

1 succeed at the ultimate trial of this action. The Second Defendant applies under  
2 GCR O.23 r.1(1), namely:

3 *“Where on the application of a Defendant to an action or other proceedings it*  
4 *appears to the Court (a) that the Plaintiff is ordinarily resident out of the*  
5 *jurisdiction; or (b) that the Plaintiff (not being a Plaintiff who is suing in the*  
6 *representative capacity) is a nominal Plaintiff who is suing for the benefit of*  
7 *some other person, and that there is reason to believe that it will be unable to*  
8 *pay the costs of the Defendant if ordered to do so...then if, having regard to all*  
9 *the circumstances of the case the Court thinks it is just to do so, it may order*  
10 *the Plaintiff to give such security for the Defendant’s costs of the action or*  
11 *other proceedings as it thinks just.”*

12

13 62. There is recent case law in this Court and in the Courts of the United Kingdom  
14 which confirm that the Courts’ approach to the exercise of discretion pursuant to  
15 GCR O.23 r.1 must be changed because it is contrary to the provisions of the  
16 European Convention of Human Rights. However, in this case, and in the recent  
17 case of *British Caymanian Insurance Company v. Thomas Enterprises Inc. and*  
18 *Fourth Quarter Properties 1 (Cayman Islands) Ltd.* FSD 217 of 2010, dated  
19 29/10/10 (*“British Caymanian v. Thomas et al”*) the parties against whom an  
20 Order for security for costs was sought, are companies and not individuals.  
21 Accordingly, GCR O.23 r.1(1) must be read with s.74 of the Companies Law (2010  
22 Revision).

23 63. Section 74 of the Companies Law (2010 Revision) reads:

24 *“Where a company is Plaintiff in action, suit or other legal proceeding, any*  
25 *judge having jurisdiction in the matter, it be satisfied that there is reason to*  
26 *believe that if the Defendant is successful in his defence the assets of the*  
27 *company will be insufficient to pay his costs, may require sufficient security to*  
28 *be given for such costs, and may stay all proceedings until such security is*  
29 *given.”*

30

1       64.     On the 25<sup>th</sup> October 2010 in *British Caymanian v. Thomas et al* I ordered security  
2             for costs in the sum of two hundred and fifty thousand dollars (\$250,000.00) based  
3             on GCR O.23 r.1(1) as read with section 74 of the Companies Law and the classic  
4             and long established principles of Lord Denning M.R. in *Sir Lindsay Parkinson &*  
5             *Co. Ltd. v. Triplan Ltd.* [1973] 1 Q.B. 609.

6       65.     In *British Caymanian v. Thomas et al* there was evidence in relation to likely costs  
7             incurred in the continuation of the proceedings. In this case, counsel for the Third  
8             and Fourth Defendants submitted that a proper figure in accordance with GCR O.23  
9             r.1(1) should be \$150,000.00, whereas counsel for the Plaintiff suggests a figure of  
10            \$5000. Counsel for the Second Defendant adopted the submission of counsel for the  
11            Third and Fourth Defendants and accordingly, there is a wide range in the  
12            submissions as to the proper figure for security for costs.

13       66.     As the Plaintiff has failed to provide any evidence of its financial standing, and also  
14             this Court was presented with no evidence of the likely costs involved in this action,  
15             I consider the sum of CI\$35,000.00 to be a fair and reasonable figure at this early  
16             stage of the proceedings.

17       67.     Accordingly, I order the Plaintiff to pay the sum of CI\$35,000 into Court as  
18             security for costs within two weeks of this Judgment.

19       68.     I grant the parties liberty to apply to vary this figure upon filing relevant affidavit  
20             evidence on the question of either the Plaintiff's ability to honour its cross  
21             undertaking in damages and in relation to security for costs.

22

1        69.     I will hear counsel for the parties on the question of the costs of this application at  
2                their earliest convenience.

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5     **Dated this the 5<sup>th</sup> day of May 2011**

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9     **Honourable Mr. Justice Charles Quin**  
10    **Judge of the Grand Court**