

IN CHAMBERS  
IN THE GRAND COURT OF THE CAYMAN ISLANDS

*unreported*

CAUSE NO: 478 OF 2004

BETWEEN:

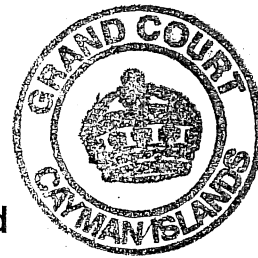
**Tassaruf Mevduati Sigorta Fona**  
(an entity established under Turkish law)

*16-6*  
*16-12-04*

Plaintiff

AND:

1. Wisteria Bay Ltd.
2. Utterton Ltd.
3. Abdallah Ibrahim Abdallah Al-Ayed
4. The Registrar of Shipping



Defendants

Before: The Honourable Madame Justice Priya Levers

**Appearances:**

Counsel for the Plaintiff: Alistair Walters and Martin Jones of Campbells  
 Counsel for the 1<sup>st</sup> & 2<sup>nd</sup> Defendants: Nigel Sanders of Walkers  
 Counsel for 3<sup>rd</sup> Defendant: Hector Robinson of Quin & Hampson  
 Counsel for the 4<sup>th</sup> Defendant: Douglas Schofield

Heard: December 14, 2004

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**RULING**

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*Walter*  
*JL*

Levers J.

The Plaintiff by way of ex parte summons applied for an injunction to prevent the registration of mortgages over two vessels in favour of the Third Defendant. The court granted the injunction, restraining all parties

including the Plaintiff from dealing with the vessels. The vessels are registered in the Cayman Islands albeit the Plaintiff and the vessels are physically in Turkey. The First and Second Defendants are BVI registered companies and the Third Defendant is a Jordanian national. The Plaintiff invoked the jurisdiction of the Cayman Islands well knowing that proceedings to deal with the vessels were well underway in Turkey. The court granted the injunction to preserve the status quo. The Defendants were joined in this matter by the Plaintiff.

In breach of the injunction, the Plaintiff sold one of the vessels and the Defendants have now taken out a summons seeking various forms of relief. I must now however deal with the issue of contempt. The Plaintiff has filed an affidavit admitting the contempt but praying in mitigation that various acts of fraud were committed by the Defendants and that a Turkish court order mandated the sale. There was not a scintilla of documentary evidence to support the Plaintiff's case. I am mindful of the authorities presented to me, in particular Omrod LJ's statement in **Ansah v Ansah [1977] (Family 138 at 144)** and the fact that a public entity and the public may be interested in this matter. However, the behaviour of the Plaintiff and the continued likelihood to commit contempt is so blatant that the

Defendants are entitled in the circumstances to relief over and above the norm from this court. I therefore rule as follows:

1. The monies realized in the sale of one of the vessels is to be paid into the courts of the Cayman Islands or to be held in escrow in an independent country where both the Defendants and the Plaintiff will have access to it or some guarantee given by the Turkish Government or the Turkish courts that in the event that the Defendants are successful, the Turkish authorities will guarantee payment. The Plaintiff will have 14 days to exercise one of these options.
2. The Order herein obtained ex parte by the Plaintiff on 6 December 2004 be varied as follows:
  - (a) A penal notice shall be endorsed on the Order and it shall be deemed service on the Parties to these proceedings;
  - (b) In Paragraph 1:
    - (i) Delete the opening words "until judgment or further Order herein, the Registrar of Shipping be restrained from taking any or any further steps in relation to the registration of" and replacing them with "the Registrar of Shipping shall complete the registration of" and

(ii) Delete the words "including not the step of sending out transcripts of the registration of the said mortgages and not returning to the First, Second or Third Defendants, the original document(s) evidencing the Frequency Mortgage and the original document(s) evidencing the Airwaves Mortgage" and replacing them with "including sending out transcripts of the registration of the said mortgages and returning to the First, Second or Third Defendants, the original document(s) evidencing the Frequency Mortgage and the original document(s) evidencing the Airwaves Mortgage"; and

(c) In Paragraph 2: add the following words to the beginning of that paragraph: "Save as directed by paragraph 1 of this Order, as amended,".

3. The Plaintiff shall take all necessary steps to ensure the preservation of M/V Frequency in its current condition and in good repair;
4. The Plaintiff shall, within 2 days, serve a copy of this Order and the amended Order of 6 December 2004 on the third party to which the Plaintiff purportedly sold M/V

Frequency and file and serve an affidavit of service in respect thereof within 7 days of such service;

5. The existing injunction is to remain in force until further order and the Plaintiff is bound by paragraph 2 therein;
6. The proceedings commenced by way of originating summons to be taken to be by way of writ of summons and these proceedings should now proceed as an action and the Plaintiff is required to file a properly pleaded statement of claim 30 days from the date hereof.

It is clear that full and frank disclosure was not made by the Plaintiff in the ex parte application and I therefore order:

1. Disclosure of any court decisions or judgments in relation to this application in the Turkish courts.
2. Copies of the indications from the interested purchasers of the vessels.
3. Details of the proposed sale of the vessels and notifications to the press and media in relation to the said sales.
4. Copies of the registration of the vessels with the Turkish registrar of shipping and of the dispensations given by the Cayman Islands shipping registry.

5. Such discovery to be made within 31 days.

That I believe is the extent of the discovery I will order at present.

The Plaintiff is a foreign party. The circumstances of this case dictate that it will be a complex, prolonged matter. In light of the Plaintiff's behaviour, its contempt, the failure to provide full and frank disclosure and the court's concern that the Defendants, if successful, may not be able to ensure the recovery of their costs; I order that the Plaintiff pay the sum of \$500,000 dollars on or before the 23<sup>rd</sup> of December as security for costs and all proceedings to be stayed until the said sum is paid. The Court believes the monies are needed for the protection of the Defendants' costs. Costs of this application to the Defendants. Liberty to apply.

Dated this 16<sup>th</sup> day of December, 2004



P. Levers  
Judge of the Grand Court

