



1 IN CHAMBERS

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3 IN GRAND COURT IN THE CAYMAN ISLANDS

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5 CAUSE NO: 710 OF 2000

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8 BETWEEN: PRODIGIOUS INVESTMENTS LTD. PROSPECTIVE PLAINTIFF

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11 AND: UNICORN INVESTMENTS LTD. PROSPECTIVE DEFENDANT

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14 **Appearances:**

15 Mr. Alistair Walters and Mr. Broadbent of Bruce Campbell & Co for the plaintiff
16 Mr. Peter Broadhurst of Broadhurst DaCosta for the Defendant

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19 **Before:** Chief Justice Anthony Smellie

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21 **Date:** 7th September 2000

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26 **RULING**

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29 In light of the House of Lords decision in the case of Astro Exito v Southland Enterprises
30 (Chase Manhattan Bank intervening)[1983] 2 A.C. 787 my equitable jurisdiction to grant
31 interim injunctive relief in a case such as this is a matter of settled law. The Court has
32 wide powers to make interim orders to preserve the position as between parties, so that
33 in due course, if appropriate, an effective order for specific performance of a contract can
34 be granted. The form of these orders is by no means limited to negative injunctions. It
35 may be necessary to grant mandatory relief simply to enable the plaintiff to preserve the
36 possibility of specific performance. See also: Mareva Injunctions and Anton Piller
37 Relief; Gee 4th Edition, Sweet & Maxwell pp. 105 -106.

6 The plaintiff paid a deposit of 389,000 USD upon signing the contract.
7 The defendant has called for completion of the contract by payment of the balance of the
8 purchase sum; ie: USD 3.23 million.
9 Whether or not the defendant has provided specific performance of the contract so as to
10 entitle it to call for completion by payment without any retention of the balance of the
11 purchase price, is very much a matter of fact and the very issue of dispute which it seems
12 the parties are not likely to agree upon and which will be litigated to the bitter end, the
13 costs of so doing notwithstanding.
14 In these circumstances I have no doubt that the kind of relief prayed for the plaintiffs
15 summons - an interim order for specific performance on the ex parte basis - would be
16 inappropriate. It would in effect be seeking to give the plaintiff the very relief which the
17 defendant disputes and which would be the subject of the trial.
18 Similarly, the other proposed form of order - that pending performance of the contract the
19 defendant be restrained from taking any steps or doing any act likely to prejudice the
20 interests of the plaintiff under the contract - appears to be misconceived .
21 The only steps that can be taken that could prejudice the interests of the plaintiff would
22 be those which the contract allows failing compliance with the defendant's notice to
23 complete, which notice has already been served upon the plaintiff.

5 so the property will remain amenable to the jurisdiction of the Court until the case is
6 tried.

7 The foregoing notwithstanding, I must observe that the papers presented to me do reveal
8 a clear prima facie case of breach of contract, subject of course to the fact that I have
9 heard only one side of the story. The deposit of some \$389,000 has been paid and
10 released to the defendant as/seller.

11 If the plaintiff ultimately succeeds, it will be at risk of dissipation of that amount and of
12 prejudice of having that money out of pocket without interest until after conclusion of the
13 trial.

14 The plaintiff's fair concern is that the deposit which has been paid might be dissipated
15 without hope of recovery.

16 In these circumstances the equitable jurisdiction requires the court to do what it properly
17 can to prevent injustice or prejudice.

18 However, I do not think I can properly invoke the jurisdiction at this stage so as to
19 become involved in the dispute between the parties in any way which might create an
20 advantage for one side or the other. The merits have to be tried unless the parties can
21 compromise and the best any side could hope for is to have the status quo preserved until
22 then.

23 The order I make will be circumscribed by these considerations:

and legislate in respect of the property until after trial or further order.

6 Liberty to apply.

7 Costs reserved.

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11 ANTHONY SMELLIE

12 CHIEF JUSTICE

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14 DATED THE 7TH DAY OF SEPTEMBER 2000.

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