JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 50/83

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE ROSS, J.A.

BETWEEN:	NATIONAL COMMERCIAL BANK JAMAICA LIMITED	-	DEFENDANT/ APPELLANT
A N D :	PETER ROUSSEAU PATRICK HOPPNOR ORLA ROUSSEAU	-	PLAINTIFFS/ RESPONDENTS

R.N.A. Henriques, Q.C., Jos Leo-Rhynie, Q.C., R. Ashenheim, R. Barber and A. Wood for the appellant.

Emil George, Q.C. instructed by D. Jones for the respondents.

May 28-31, 1984 and January 31, 1985

KERR, J.A.:

This was an appeal from an Order of Smith, C.J. made June 15, 1983 whereby he ordered that the defendant be restrained from taking steps to prosecute a demand for repayment of $3,567,000.00 from N.C.B. Properties Limited until the trial of the pending action between the parties, on the plaintiffs by their attorneys-at-law undertaking to abide by any Order the Court might make as to damages.

We dismissed the appeal and affirmed the Order of the learned Chief Justice and in keeping with the promise then made by us, I now set out herein my reasons for concurring in that decision.

The Order of the learned Chief Justice was made pursuant to and in keeping with the prayer in the plaintiffs' summons for an interlocutory injunction.

The facts as summarised by the learned Chief Justice in his judgment are as follows:

"In August, 1982, the plaintiffs together owned and controlled all the 50,000 fully paid up and issued shares in Memphis Catering Ltd., having a nominal value of $1.00 each. By agreement in writing dated 27 August, 1982, the plaintiffs granted to the defendant the option to purchase their shares by 10 September 1982. The option was duly exercised by the defendant on 3 September 1982, thus bringing into effect heads of agreement, which were scheduled to the option agreement and which became the agreement of the parties for the sale and purchase of the shares.

Clause 1 of the agreement stated the purchase price to be $2,853,000.00, to be satisfied, on the exercise of the option, by the issue by the defendant of a debenture or debentures in the single or aggregate sum of $675,730.00 and, on the completion date, by a further issue in the single or aggregate sum of $2,177,270.00. Clause 2 fixed 31 October 1982 as the completion date. The provisions of cl. 3 are as follows:

> 'In addition to the provisions of Clause 1 above, the Purchaser shall on or before the 31st day of August, 1982:
>
> (a) Make an interest-free cash loan to the Company in the amount of Three Million, Five Hundred and Sixty Seven Thousand ($3,567,000.00) to be utilised by the Company for the payment of existing liabilities of the Company.
>
> (b) Assume full responsibility for the payment of all legal fees .....'

A debenture for $657,730.00 was delivered to the plaintiffs on 3 September 1982 and the loan was made to the company, Memphis Catering Ltd., on the same day. At the request of the defendant, the plaintiffs changed the name of the company to N.C.B. Properties Ltd. on 15 October, 1982. The defendant did not complete the purchase of the shares on the completion date as agreed, or at all, hence the action filed on 16 December 1982. By letter dated 2 March 1983 a demand was made on N.C.B. Properties Ltd. for payment of the loan with a threat of action to compel payment if this was not made by 10 March."

The obligation on the appellant to grant the loan to the N.C.B. Properties Ltd. was duly performed.

The plaintiffs in their statement of claim complained to the effect that despite repeated requests the defendant had

neglected and refused to complete the transaction in accordance with the terms of the agreement and sought in the main:

> "(1) Specific performance of the Contract made between the Plaintiffs and the Defendant for the purchase by the Defendant of the shares in Memphis Catering Limited, now known as N.C.B. Properties Limited as aforesaid.
>
> (2) All necessary and consequential accounts, directions and inquiries.
>
> (3) A declaration that the loan in the amount of $3,557,000.00 made by the Defendant to the said Memphis Catering Limited (now known as N.C.B. Properties Limited) on the 3rd day of September, 1982 pursuant to the terms and conditions of the Contract between the parties is not, and shall not be, due and payable until and after completion of the said Contract by the Defendant.
>
> (4) Interest on the amount of the Debenture or Debentures in the sum of $2,177,270.00 referred to at Paragraph 6(b) hereof from the 1st November, 1982 until the date of issue and delivery thereof."

Appearance on behalf of the defendant was entered but no defence had been filed.

The learned Chief Justice carefully considered the evidence before him, the arguments of counsel, the terms in the agreement and the following, amongst other cases: Fellowes & Son v. Fisher (1975) 3 W.L.R. 184; American Cyanamid v. Ethicon Ltd (1975) A.C. 396, and concluded that there was a serious issue to be tried and that the balance of convenience was clearly in favour of granting the injunction.

The following grounds of appeal and the arguments in support may conveniently be treated together:

> "1. That the Learned Chief Justice erred as a matter of law when he came to the conclusion that on a construction of the Agreement between the Plaintiffs and the Defendant dated 27th August 1982 the loan to N.C.B. Properties Limited (formerly Memphis Catering Limited) was not repayable before completion of the said Agreement.

"2. The Learned Chief Justice erred as a matter of law when he held that it was an implied term of the said Agreement that the said loan was not repayable before completion of the said Agreement.

3. The Learned Chief Justice erred as a matter of law when he failed to apply the proper principles applicable to the construction of a commercial contract and as a consequence came to the erroneous conclusion that the said loan was not repayable before completion, or alternatively, that it was an implied term of the said Agreement.

4. The learned Chief Justice erred as a matter of law when he held that the Plaintiffs had established a legal right which was capable of infringement by the Defendant's action in calling in the said loan or to establish a basis for the grant of an interlocutory injunction."

Mr. Henriques submitted that there was no express agreement as to the payment of the loan which was entered in the books of the appellant as a 'demand loan.' The learned Chief Justice erred:

(i) In treating the Option Agreement as a final binding contract, and

(ii) That "when read as a whole, the language of the agreement is susceptible of a construction which would establish that it was the intention of the parties that the loan should not be repayable before completion of purchase of the shares."

In respect to (ii) above, he submitted that such an implication was not necessary to give business efficacy to the transaction between the parties and ought not to be drawn. Further, the loan was made between the appellant and the company and therefore the plaintiff had no proprietary interest, legal or equitable in it and accordingly was not entitled to the relief granted. The company would be liable for repayment of the loan whether or not the sale of the shares went through. He sought support for his contention in dicta and propositions from the following, amongst other cases: American Cyanamid (supra); Carden Cottage Foods v. Milk Marketing Board (1983) 2 All E.R. 770 and N.W. Ltd. v. Woods (1977) 3 All E.R. 615.

Mr. George for the respondent contended that the learned Chief Justice was perfectly right in concluding that there was a serious issue to be tried. The focal point, he submitted, was whether the loan to the company was in splendid isolation or part of a larger transaction and so inter-woven that it was impossible to separate it. From the terms and conditions in the agreement it was clearly the intention of the parties that the loan was a very important and significant part of the agreement and the necessary implication was that calling in the loan would not precede the date of completion. Accordingly, any act by the appellant to recover the loan by action in the Supreme Court before completion of the transaction would be in breach of their contractual obligation and thereby infringing the plaintiffs' rights.

The basic question identified by the learned Chief Justice and also raised before us, was whether the loan was payable on demand as was argued on behalf of the appellant or not repayable until completion of the business between the parties when the appellant would have been the sole owner of all the shares of M.C.B. Properties Ltd. which would then be the wholly owned subsidiary.

The probative potential of the evidence to establish that there was a serious issue to be tried was considered by Lord Diplock in the American Cyanamid case at p. 406:

> "My Lords, when an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action."

And later:

> "In those cases where the legal rights of the parties depend upon facts that are in dispute between them, the evidence available to the court

> "at the hearing of the application for an interlocutory injunction is incomplete. It is given on affidavit and has not been tested by oral cross-examination. The purpose sought to be achieved by giving to the court discretion to grant such injunctions would be stultified if the discretion were clogged by a technical rule forbidding its exercise if upon that incomplete untested evidence the court evaluated the chances of the plaintiff's ultimate success in the action at 50 per cent. or less, but permitting its exercise if the court evaluated his chances at more than 50 per cent."

And after referring to the two different approaches - the one calling for a "strong prima facie case" as exemplified in dicta in such cases as Smith v. Crigg Ltd. (1924) 1 K.B. 555 and the expressions indicating "less onerous criterion" as in Jones v. Pacaya Rubber and Produce Co. Ltd (1911) 1 K.B. 455 - and the pedantic efforts to reconcile these different standards in Donmar Productions Ltd. v. Bart (Note) (1967) 1 W.L.R. at p. 742 and Harman Pictures N.V. v. Osbourne (1967) 1 W.L.R. at p. 738 - which did not long survive, having been rejected in Hubbard v. Vosper (1972) 2 Q.B., he then, with evident approval, referred to the Court of Appeal in the Hubbard case expressly deprecating "any attempt to fetter the discretion of the court by laying down any rules which would have the effect of limiting the flexibility of the remedy as a means of achieving the objects" indicated earlier by him. He then went on to say:

> "Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expressions as 'a probability,' 'a prima facie case,' or 'a strong prima facie case' in the context of the the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried."

Now in the instant case the learned Chief Justice had to consider the nature of the loan. A demand loan simpliciter, I apprehend, is as its name suggests, one which may be called in

at the will of the lender. However, calling a transaction a "demand loan" and entering it in a banker's book as such will not change its nature if the intrinsic terms and the conditions under which it was granted demand another interpretation. Therefore in the instant case, the terms of agreement which governed the loan are relevant to the determination of its nature.

The learned Chief Justice in concluding that it was the intention of the parties that the loan should not be repayable before completion of the purchase of the shares quite rightly in my view considered certain relevant provisions of the agreement.

In that regard I find the following pertinent and cogent. In the Option Agreement there are the undermentioned terms:

> "B. The said Option is granted from the date hereof and expires at 4:00 p.m. on the 10th day of September 1982 and the consideration therefor is the payment by the Purchaser of the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) to the Vendor, (the receipt of which is hereby acknowledged) and which payment shall be in addition to the issue of the Debenture to be issued as hereinbefore provided, which Debenture shall be substantially in the form set out in the First Schedule hereto.
>
> C. The said option shall be deemed to have been duly exercised if exercised during the said period of the option or any extension or renewal thereof by notice either in writing or orally given by any Director or the Purchaser to the Vendor or any of them. In the case of an oral exercise of the said Option a certificate in writing given by an Attorney-at-Law practising in Jamaica that the said Option was duly exercised in his or her presence on the date therein specified shall be conclusive evidence of the fact so certified.
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> .....
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> G. In the event of the said Option being exercised as aforesaid the Agreement for the purchase of the shares thus resulting shall be and be deemed to be subject to the Heads of Agreement set out in the Second Schedule hereto and in such event the costs and Attorney's fees for the preparation, stamping and execution of this Option shall be deemed to form part of the costs and disbursements incurred in the entire transaction which shall be borne by the Vendor and Purchaser as provided in the

"said Heads of Agreement; but in the event of the said Option not being exercised such costs of stamping and execution shall be borne equally by the parties and each party shall bear its own Attorney's fees."

And in the Second Schedule thereto:

"1. The purchase price shall be TWO MILLION, EIGHT HUNDRED AND FIFTY THREE THOUSAND DOLLARS ($2,853,000.00) as aforesaid and shall be satisfied as follows:

(a) By the issue by the Purchaser upon the exercise of the Option granted by the Vendor to the Purchaser of an unsecured Debenture or unsecured Debentures substantially in the form set out in the First Schedule hereto in favour of the Vendor in the amount or the aggregate sum of SIX HUNDRED AND SEVENTY FIVE THOUSAND, SEVEN HUNDRED AND THIRTY DOLLARS ($675,730.00).

(b) By the issue by the Purchaser on the Completion Date of an unsecured Debenture or unsecured Debentures substantially in the form set out in the First Schedule in favour of the Vendor in the amount of the aggregate sum of TWO MILLION, ONE HUNDRED AND SEVENTY SEVEN THOUSAND, TWO HUNDRED AND SEVENTY DOLLARS ($2,177,270.00).

2. The Completion Date shall be the 31st day of October, 1982.

3. In addition to the provisions of Clause 1 above, the Purchaser shall on or before the 31st day of August, 1982:

(a) Make an interest-free cash loan to the Company in the amount of THREE MILLION, FIVE HUNDRED AND SIXTY SEVEN THOUSAND ($3,567,000.00) to be utilised by the Company for the payment of existing liabilities of the Company.

.....

5. Possession of the Company's assets and the relevant shares will be delivered to the Purchaser on completion.

6. Completion will take place upon the satisfaction by the Purchaser of the purchase price in manner aforesaid in exchange for the delivery of the transfer or issue by the Vendor of all the shares in the Company to the Purchaser or its nominees.

"7. The Vendor HEREBY REPRESENTS AND WARRANTS as follows:

(a) .....

(m) That at the time of completion the current assets of the Company will be not less than SIX MILLION, SEVEN HUNDRED THOUSAND DOLLARS ($6,700,000.00), and there will be no current liabilities of the Company and that there shall be no liability of the Company to related companies or Directors or shareholders on loan account. .....

(p) The liabilities of the Company will not, at the Completion Date, exceed the amounts set out in Clause 3(a) above."

On the face of it, these terms and stipulations may reasonably be interpreted to include an obligation on the appellant to make the loan to N.C.B. Properties Ltd., as was in fact done, and a corresponding obligation on the respondents that when the shares were transferred to the appellant, N.C.B. Properties Ltd. would be free of all outstanding liabilities save the loan which would have been used to bring the affairs of N.C.B. Properties to the happy position as warranted by the respondents. In that event, the loan would be an integral part of the agreement between the parties. I am therefore in agreement with the learned Chief Justice that there was a serious issue to be tried.

There, however, then arises the important question whether or not the learned Chief Justice erred in the exercise of his discretion in granting the respondents' application.

The commendable and acceptable approach of an appellate Court to an appeal from an Order of a judge granting or refusing an interlocutory injunction was advocated in Hadmor Productions Ltd. v. Hamilton (1982) 1 All E.R. 1042 and restated and re-affirmed by Lord Diplock in the Garden Foods case at p. 772:

> "The function of an appellate court is initially that of review only. It is entitled to exercise an original discretion of its own only when it has come to the conclusion that the judge's exercise of his discretion was based on some misunderstanding of the law or of the evidence before him, or on an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn on the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal, or on the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes be sketchy, there may also be occasional cases where, even though no erroneous assumption of law or fact can be identified, the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside on the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons that it becomes entitled to exercise an original discretion of its own."

Now in the instant case Smith, C.J. in the course of his judgment after referring to Lord Diplock's "governing principles" in the American Cyanamid case said:

> "In my view, it is not necessary to prove that damages will not be an adequate remedy by a witness saying so in terms in an affidavit. It is sufficient if this can reasonably be inferred from the material before the court.
>
> In my opinion, it is at least doubtful whether, if the plaintiffs succeed at the trial, they would be adequately compensated by damages for loss caused by refusal to grant the injunction for which they have applied. On the other hand, if the injunction is granted, it seems certain that if the defendant succeeds at the trial it would be adequately compensated under the plaintiffs' undertaking as to damages. The question of the balance of convenience therefore arises for consideration under the third 'governing principle' of Lord Diplock in the American Cyanamid case as enumerated by Browne, L.J. in Fellowes & Son v. Fisher (supra)."

Mr. Henriques submitted that there was no evidence on the affidavit that damages would not be an adequate remedy. In that regard when the claim is analysed damages would be the only remedy to which respondents would be entitled and he referred to the judgment in the unreported case of Supreme Court Suit No. E. 211/76 - Rose Hall Limited and Rose Hall (Development) Limited v. Chase Merchant Bankers Jamaica Limited and Rose Hall (H.I.) Limited - delivered November 22, 1976. Further that the learned Chief Justice erred when he held that damages would not be an adequate remedy and in that regard his finding that calling in the loan would cause the shares to depreciate was based on conjecture and speculation. Even if calling in the loan would cause the company to be wound up, that was irrelevant. Finally he urged that even if this was a case in which the balance of convenience arose, the Chief Justice failed to consider the hardship on the defendant in being forced to continue an interest-free loan of approximately $3.5 million.

In the American Cyanamid case Lord Diplock at p. 408 said:

> "So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.
>
> As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted however strong the plaintiff's claim appeared to be

> "at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.
>
> It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case."

I have quoted extensively because unless the whole passage is considered there is the risk of interpreting certain sentences as restricting the judge's discretion; whereas taking the passage as a whole, the proper interpretation, in my view, is that Lord Diplock was earnestly advocating a comprehensive and liberal approach, including the consideration of competing inconveniences on either side. Indeed the sentence which follows, indubitably indicates his intent thus:

> "Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo."

That principle and approach clearly counselled the grant of an interlocutory injunction where there was doubt as to whether or not damages would be an adequate remedy to the party seeking the the injunction.

Lord Diplock apparently not unaware that there may be misunderstanding of the principles enunciated in the American Cyanamid case in N. W. Ltd. v. Woods (1979) 3 All E.R. said at p. 625.:

> "My Lords, when properly understood, there is in my view nothing in the decision of this House in American Cyanamid Co. v. Ethicon Ltd to suggest that in considering whether or not to grant an interlocutory injunction the judge ought not to give full weight to all the practical realities of the situation to which the injunction will apply. American Cyanamid Co. v. Ethicon Ltd, which enjoins the judge on an application for an interlocutory injunction to direct his attention to the balance of convenience as soon as he has satisfied himself that there is a serious question to be tried, was not dealing with a case in which the grant or refusal of an injunction at that stage would, in effect, dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which it was in the unsuccessful party's interest to proceed to trial."

Now I apprehend when one speaks of a balance of convenience or any balance at all, the concept involves some weight on either side of a fulcrum. In a case where damages would doubtless be adequate compensation, what inconvenience could a party put on his side of the scale? So it was in the Rose Hall case - where Rowe, J. (as he then was) after a painstaking review of the evidence, the arguments presented, and the commendable approach propounded in the American Cyanamid case, held there was a serious issue to be tried but that damages would be an adequate remedy and that the first defendant was in a position to pay whatever damages might be awarded to the plaintiffs and therefore it was unnecessary for him to consider the balance of convenience or as to whether the plaintiff should be ordered to pay into Court the amount of the debt as a condition to the grant of the injunction.

It has not been urged that the facts in the Rose Hall case are on all fours with the instant case. The judgment of Rowe, J. rested firmly on his positive finding that damages would be adequate remedy. The applicant could therefore show no inconvenience worthy of consideration.

Even more unhelpful to the appellants' cause is the Carden Cottage Foods case. In that case the trial judge found that damages would be an adequate remedy and refused the injunction. The Court of Appeal allowed the appeal; the apparent reason being that each member of the Court felt some doubt whether the plaintiff's cause of action sounded in damages at all. In reversing the Court of Appeal and affirming the Order of Lord Parker, C.J. in the Court below, it was held by the majority in the House of Lords:

> "Article 86 of the EEC Treaty imposed a duty on an undertaking holding a dominant position within the common market or a substantial part of it not to abuse that dominant position in a way which affected trade between member states, and also thereby conferred corresponding rights on individual citizens of member states of the EEC. Assuming that an individual citizen of the United Kingdom affected by a breach of art 86 could bring an action based on a breach of statutory duty in order to gain redress for loss or damage caused by an undertaking's breach of its statutory duty under art 86, it was unarguable that such a cause of action would not give rise to a remedy in damages for loss already caused by that contravention but would merely give rise to a remedy by way of injunction to prevent future loss occurring. Furthermore, because the only loss which the plaintiff would suffer would be loss of profits, which could easily be assessed, damages would be an adequate remedy should the plaintiff ultimately succeed at the trial of the action. Since the judge had not misunderstood the law and since he was entitled to conclude that damages would be an adequate remedy, the Court of Appeal was wrong to interfere with the exercise of the judge's discretion and to grant an injunction. Accordingly, the appeal would be allowed and the injunction would be discharged," (headnote p. 770).

Unlike Lord Parker, C.J. in the Carden Cottage Foods case, or Rowe, J. in the Rose Hall case, Smith C.J. did not find damages to be an adequate remedy. Among the factors he considered was the likely depreciation of the shares and the consequential winding up of the Company. It is true that the value of shares in a Company may rise and fall due to various circumstances and forecast as to such value involves a certain amount of speculation. The Chief Justice was voicing a probability which was not unreasonable having regard to the high improbability of the Company on its assets raising

a loan of such an amount on such extremely favourable terms.

But this is but one factor considered by the learned Chief Justice. There were other compelling considerations.

The respondents sought by their action specific performance. In order to succeed they have to show that they were at all material times ready, willing and able to fulfil their obligations under the agreement. These include the warranty concerning the state of the Company's liabilities at the time of completion. This ability to meet that warranty depended on the loan being available to the Company for the discharge of all other outstanding debts. Reiterating for emphasis it was highly improbable that a stranger to the agreement would grant a loan of that size and well nigh impossible on the existing terms and all within the time fixed for completion.

As regards the prayer for the declaration, a grant after recovery of the loan by action or a judgment for the amount in favour of the appellant, would be as futile as "shutting the stable door after the steed was gone." While a Court may grant a declaration without coercive orders, yet the Court must be satisfied that it will serve a useful purpose, it must not be an exercise in futility - some good must flow from it - Supreme Court Civil Appeals Nos. 46 and 47 of 1980 - A.C. and others v. Donald Thompson, (unreported) delivered July 23, 1981 at p. 25.

In the instant case the nature of the injunction is prohibitory: the appellant is restrained from embarking upon a course of action until the pending case is tried. There is no complaint concerning the genuineness or reality of the undertaking.

The inconvenience to the appellant, should he succeed in the action, was identified by the Chief Justice as being deprived of the payment of the loan in the interim. I see no good reason for disagreeing with that finding.

Accordingly, I am in agreement that there is a serious issue to be tried and that at the lowest there is doubt as to damages being an adequate remedy, should the respondents succeed. In my view, there was neither misunderstanding of the law nor misinterpretation of the facts by the learned Chief Justice as would justify interference by this Court.

On the contrary the factors presented to him in the affidavits and the relevant documentary evidence strongly support the preserving of the status quo until the case is tried.

CAREY, J.A.:

I AGREE.

ROSS, J.A.:

I AGREE.