

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 76/2017

APPLICATION NO 150/2017

**BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE McDONALD-BISHOP JA**

BETWEEN	ALLIANCE FINANCE LIMITED	APPLICANT
AND	CAPITAL SOLUTIONS LIMITED	1ST RESPONDENT
AND	MARK ANDERSON JONES	2ND RESPONDENT

Conrad George and Andre Sheckleford instructed by Hart Muirhead Fatta for the applicant

Paul Beswick, Christopher Dunkley and Miss Carissa Bryan instructed by Phillipson Partners for the 1st respondent

2nd respondent absent and unrepresented

16, 17, 20 and 30 November 2017

PHILLIPS JA

[1] Alliance Finance Limited (the applicant) is seeking to set aside the order of P Williams JA made on 3 August 2017 refusing an interim freezing order. The applicant is also seeking a freezing order restraining the 1st respondent, whether by itself or by its servants and/or agents or otherwise howsoever, from disposing of or transferring, charging, diminishing or in any way howsoever dealing with the proceeds from the sale

of the transfer of land, situate in Bloomfield, Mandeville in the parish of Manchester, registered at Volume 1051 Folio 929 and Volume 897 Folio 9 of the Register Book of Titles (the properties), wherever situate, and from withdrawing or transferring any funds from their accounts or accounts in their names or held on their behalf, up to the value of US\$1,200,000.00, pending consideration of the appeal.

[2] The application is made pending the hearing of an appeal from the decision of Edwards J made in the Supreme Court, delivered on 19 July 2017 (Appeal No 76/2017), in which she refused the applicant's application for a similar freezing order.

[3] We have considered the voluminous material placed before us and the oral submissions of counsel for the parties.

[4] Having reviewed the submissions of counsel and the evidence contained in the various affidavits within the context of the applicable law, particularly as it relates to the principles of trust; the entitlement of an alleged *cestui que* trust to sue the parties to a contract (in dispute) (to which he is not a party) by way of a derivative action; the efficacy of the derivative action in those circumstances; the principles governing the grant of a freezing order and the imposition of a freezing order in the circumstances of this case against a financial institution; as well as the power of this court to interfere with the exercise of the discretion of the single judge, we conclude that there is no proper basis on which this court could properly disturb the order granted by P Williams JA.

[5] Accordingly, the application for this court to set aside the order of P Williams JA and to grant an interim freezing order is refused.

[6] Given that this is an interlocutory application in which the issues raised for determination by the court are, more or less, the same that will arise for consideration on the substantive appeal from the decision of Edwards J, we have found it prudent to refrain from giving more detailed reasons for our decision.

[7] The order of the court is as follows:

1. Application for court orders (Application No 150/2017) filed on 15 August 2017 is refused.
2. Costs to the 1st respondent to be taxed if not agreed.