



proceedings pending arbitration under the sub-contract but we have not been asked to do so and the Court cannot go outside the prayer of the pleadings.

- 5) That for the reasons already given, the Court is not prepared to strike out the Plaintiff's proceedings.
- 6) That applying the principles set out, for convenience, in *Johnson Matthey Bankers Ltd. -v- Arya Holdings Ltd.* (Jersey J. Unreported 22 Nov. 1985) the Court lifts the injunctions imposed upon the second Defendant - the Court is satisfied that there was a failure to make a full and frank disclosure or to give particulars of the points made against the claims - the learned Bailiff was not informed of the proper law of the main contract or of the sub-contract and was not informed of the arbitration clauses in both those contracts - nor was the learned Bailiff informed of the existence of the proceedings in France and the 'saisie conservatoire' nor was he given any grounds for the belief that the second defendant has assets within this jurisdiction; indeed, the court is satisfied that the Plaintiff was relying on suspicion or hope rather than on a justified belief. The Court is satisfied that the learned Bailiff, if all relevant factors had been made known to him, would not have granted the injunctions.

Having said that we would go on to state that in our view the justice of this matter lies in favour of the Plaintiff for which we have a great deal of sympathy. It would seem that the 60 million dollar loan that is to be raised and will now be unhindered by the injunctions is already totally committed; it seems also that part of that money is to be used to finance new projects rather than settle existing liabilities; in the defective state of Jersey Company Law we are unable to investigate the propriety of the Directors in thus trading to the possible detriment of existing creditors. We regret that the second Defendant found it impossible to enter into an

undertaking or to pay monies into Court following the raising of the 60 million dollar facility on the line suggested by the Court. It is with considerable reluctance that we have found ourselves unable to come to the assistance of the Plaintiff but we have to apply the law as we find it; the so called Mareva injunction is restricted to assets within the jurisdiction and we cannot extend the injunction to prevent the second Defendant from dealing with its overseas assets rather than from removing assets from this jurisdiction. Sadly, it means that people who trade with corporation tax companies do so at their peril. We can only express the hope that urgent steps will be taken by the first and/or second defendants to meet the liability to the Plaintiff in more tangible form than anything that has been expressed to us.

- 7) Costs shall be in the cause.