ROYAL COURT

19th February, 1990

31A.

Before: The Bailiff, and
Jurats Le Boutillier and Le Ruez

Between:	Shore Securities Limited and Delmar Overseas Limited	Plaintiffs
And:	Marja Properties Limited	First Defendant
And:	Panther Properties Limited	Second Defendant
And:	David St. Clair Morgan	Third Defendant
And:	C.I. Law Services Limited	Fourth Defendant
And:	C.I. Law Trustees Limited	Fifth Defendant

Application by the third, fourth and fifth defendants seeking to raise the interim injunctions imposed on them by virtue of service of the Order of Justice in the above action.

Advocate J.G. White for the plaintiffs,
Advocate P.C. Sinel for the third, fourth and fifth defendants,
(the first and second defendants not yet having been served).

JUDGMENT

BAILIFF: This action arises from an Order of Justice, which was signed by myself, between the plaintiffs, Shore Securities Limited and Delmar Overseas Limited, which are companies incorporated in the Isle of Man and Marja Properties Limited, the first defendant, and Panther Properties Limited the second defendant, which were companies registered in Jersey until they were liquidated, and as the third, fourth and fifth defendants, Mr. David St. Clair Morgan and two companies under his control who were concerned with the liquidation. I need not go into the details of the liquidation; it is not relevant to this hearing.

The claim in a nutshell is that the plaintiff company, through its beneficial owner, Mr. Otudeko, employed a Mr. Mohsen Galal in a fiduciary capacity in the United Kingdom. It was through the latter that the plaintiff company (really acting through Mr. Otudeko) was introduced to the possibility of acquiring certain land at 17/19 Elsworthy Road, London, NW3, then owned by Eton College, which was in dispute with Alghussein Establishment, a Liechtenstein Anstalt over the benefit of a building lease in respect of that property.

The Order of Justice supported by an affidavit of Mr. Nigel Bremner of 20 Clifton Street, London, who is a Solicitor of the Supreme Court of England and Wales, who has the conduct of certain proceedings on behalf of the plaintiffs before the High Court, indicates that the first plaintiff understood that it would be possible to acquire that property and the benefit of course of the building lease for five million pounds, the details of which would be that £3.5m would be paid to Eton College and £1.5m to Alghussein. And because of those two payments the dispute between Eton College and Alghussein would be settled and there would be a grant of a fresh building lease to the first plaintiff.

What the two plaintiffs say is that, having effected the necessary payments partly in cash to Eton College and then the £1.5m partly in cash to solicitors acting for Marja which was then still in existence and partly by the transfer of a property owned by the second plaintiff,

also beneficially owned by Mr. Otudeko, to a property company called Rodale, thereafter Eton College itself made a payment to Alghussein out of what it had received; and that therefore, the plaintiffs claim, the monies which they were told would be needed for the acquisition of this property were not dealt with in the way they had been led to believe and they have therefore paid more, - that presumably is what they are saying - than they might otherwise have done, and Mr. Galal, either with Alghussein or on his own, we don't know, obtained some further monies.

The plaintiffs then go on to say that after the third, fourth and fifth defendants had been appointed liquidators, one of the partners of the firm of David St. Clair Morgan, his son, who is not a party to this action, was concerned at one stage in some discussions for the purpose of raising money and was in fact, indeed consulted by Mr. Otudeko himself. Be that as it may, the fact is that these two companies, Marja and Panther, were operated in fact through Mr.Morgan's company. Panther's liquidation commenced in April, 1989, by which time it had disposed of the house which had been transferred to it under the agreement to another company which, in turn, had sold it on to Relicpride.

Marja's liquidation began in December, 1989, shortly after the payment of some of the money which was part of the original deal. In short the plaintiffs say, the third, fourth and fifth defendants have information relating to where this money came from, why it came into their hands, where it has gone and they would like to find out where it is. For Mr. Sinel to submit that this is not a tracing action is something we find difficult to accept. In our opinion this is clearly a tracing action. Of course it is quite true that the orders signed by myself were widely drawn. But to use the words of Mr. White appearing for the plaintiffs, these transactions have been shrouded in mystery and there is a tangled web which has to be untangled as best one can.

To look at the authorities makes it clear to us that the purpose of these orders is to assist plaintiffs in tracing their assets which they say have gone astray; and even if Mr. Morgan's firm is totally

blameless in everything that it did and that may well be, the fact is, if we look at the headnote of the well-known case of Norwich Pharmacal -v- Comm Customs & Excise (1973) 2 All ER 943, they still have a duty to assist in tracing where the monies have gone.

Looking at the leading Jersey case, which is now that of Paramount Airways Limited -v- Anser General Investments SA (6th October, 1989) Jersey Unreported, the Court took a very robust and wide interpretation of its powers to grant orders such as those obtained in this case and refused to cut them down.

We are satisfied that this is a tracing order and that with two minor exceptions, the orders which were made for production should be confirmed. The two minor exceptions and I turn to them are these: we will omit, in the case of Marja and Panther, and therefore in the case of the third, fourth and fifth defendants, the first requirement that is to say the reason for the transfer to it of £400,000 or alternatively £416,878.90 from the plaintiff, for the reason that we do not think it necessary for the purposes of the plaintiffs to be disclosed. We also think that it is unnecessary for paragraph vi in the case of the third, fourth and fifth defendants (the manner of the administration of Shore) to be disclosed. We do not think either of those are necessary for the tracing or attempted tracing of these monies. But with those minor amendments we are satisfied that the Order was properly given and accordingly the summons is not granted and the Orders remain.

I think costs should be in the cause.

Authorities referred to:

AGIP (Africa) Ltd -v- Jackson and others (Times Law Report dated 5th June, 1989).

In re Montagu's Settlement Trust (1987) Ch. 264.

A and another -v- C and others (1988) 2 All ER 347.

Bankers Trust & Co -v- Shapira and others (1980) 3 All ER 353.

Norwich Pharmacal Co -v- Comm Customs & Excise (1973) 2 All ER 943.

Guinness plc -v- Market & Acquisition Consultants Limited Royal Court (11th March, 1987) Jersey Unreported.

Lipkin Gorman -v- Cass CHD "The Times", 29th May, 1985.

Paramount Airways Limited -v- Anser General Investments SA (6th October, 1989) Jersey Unreported.

R.S.C. (1988 Ed'n): O.24, r.5.