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not ordinarily and in the absence of a
 claim in reconvention be ordered to give
 security. Compare BANKS v HENSHAW 1962 (3)
 SA 464 (D) at 465." 5

This approach was approved of in M V LERESTI at 689G in the
 following terms:

"As a general approach and without more ado,
 or more than can be said for the intervening
 respondent here, I share the caution expressed 10
 by KING J in SUNNYFACE MARINE LTD v HITOROY
 LTD (TRANS ORIENT STEEL LTD AND ANOTHER
 INTERVENING); SUNNYFACE MARINE LTD v GREAT
 RIVER SHIPPING INC 1992 (2) SA 653 (C) at 657G-I
 that the granting of security to a peregrine 15
 claimant in circumstances such as these, is a
 power which should be sparingly exercised. Un-
 less it is to assist a litigant with a firm
 claim to bring against the defendant who may
 not otherwise satisfy a judgment, I do not 20
 think that it should be readily granted."

In M V HEAVY METAL, COMRIE J expressed his view as follows,
 namely that while he did not necessarily find himself in the
 "sparing school of thought", he did recognise a substantial need
 for caution. This approach was approved of in MV AKKERMAN at 25
 596H. To the extent that there is in fact any real difference

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between the two approaches, I align myself with the latter approach, and I have already noted in another context the need for added caution in a matter such as the present where the security sought is for costs on a punitive scale. 5

(44) The point was made in Gran's affidavit, and echoed by Ms De Swart in argument, that the applicant had not in the papers filed by it in respect of the hearing on 22 November 2001 (which in fact constituted the applicant's founding affidavit in the present dispute) made any allegation that there was reason to apprehend 10 that the intervening respondent was not in a financial position to meet any claim for costs or that the applicant would be unable to enforce any judgment of this Court, whether in Norway or elsewhere. It was in fact denied by Gran that the applicant would be unable to recover any eventual costs from the intervening 15 respondent.

(45) In a further affidavit deposed to by Mr Shaw, filed on behalf of the applicant, some attempt, with reference to a particular document, was made to suggest that the intervening creditor found itself in impecunious circumstances. The attempt was not successful. 20

(46) However, financial ability to meet a costs award is not the only consideration to which regard may be had. It is not in dispute that the intervening respondent has no assets in this country. The applicant's case is in substance that in the light of the far-reaching and calculated dishonesty on the part of Gran in respect of the 25 stance that the intervening respondent has adopted in this

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litigation, which has been prima facie established, there is every reason, on a balance of probabilities, to apprehend that, faced with an order for punitive costs against it, the intervening respondent would, through Gran, make every endeavour to avoid satisfying the debt in question. To avoid difficulties on that score, which are a real likelihood, the applicant's position should be safeguarded. A genuine and reasonable need for the security sought has accordingly been established by the applicant, and the present is a proper case for the Court to exercise its discretion in favour of the applicant.

(47) I agree.

ORDER

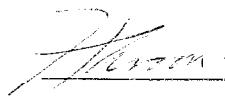
(48) The parties were agreed that should I find in favour of the applicant, an order in the terms set out below should issue, and it is so ordered:

1. The rule nisi contained in paragraph 1 of the order of this Court dated 8 February 2002 is confirmed.
2. Applicant's attorney shall by 3 April 2002 furnish the intervening respondent's attorneys with a pro-forma bill of costs together with supporting documents where possible in support of its demand for security for costs in the sum of US\$ 100 000 so as to enable the intervening respondent to assess the reasonableness of the amount claimed.

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3. Failing agreement being reached between the parties as to the amount and/or form of security, the parties are ordered to appear before the Registrar on 10 April 2002 for the Registrar to determine the amount and form of the security to be furnished. 5
4. The intervening respondent shall furnish the security so determined or agreed upon by 17 April 2002 failing which, the applicant is given leave to approach this Court as a matter of urgency on the same papers, supplemented insofar as need be, for such relief as may be appropriate. 10
5. The intervening respondent is ordered to pay the party and party costs of the hearings on 22 November 2001 (insofar as these relate to the application for security for costs), 8 February 2002, 14 March 2002 and 28 March 2002. 15



F. KROON

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JUDGE OF THE HIGH COURT