[2018] JMSC Civ. 44

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016HCV01895

BETWEEN	**GLORIA CHUNG**	**1st CLAIMANT**
AND	**AMANDA CHUNG**	**2nd CLAIMANT**
AND	**MARK CHUNG**	**3rd CLAIMANT**
AND	**MICHAEL CHUNG**	**1st DEFENDANT**
AND	**MIKOL INVESTMENTS LIMITED**	**2nd DEFENDANT**

IN CHAMBERS

Mr. Stephen Shelton QC and Ms. Stephanie Ewbank instructed by Myers, Fletcher & Gordon for the Claimants

Mrs. Georgia Gibson Henlin QC and Ms. Stephanie Williams instructed by Henlin Gibson Henlin for the Defendants

Heard: 6th February & 3rd April, 2018

Civil Procedure - Defendants' Notice of Application to Vary/Set Aside Order or for an Extension of Time to Comply with Order - Rules 42.10(1), 26.1(7) and 28.7(1)(2)(a) and (b) of the Civil Procedure Rules - Claimants' Notice of Application to Strike out Defence – Rules 28.14 (2) and 26.3 (1)(a) of the Civil Procedure Rules.

Cor: Rattray, J.

[1] Before this Court were two Applications, the first of which was filed on behalf of the Defendants seeking to vary/set aside or for an extension of time within which to comply with an Order for Specific Disclosure, and the other on behalf of the Claimants,

seeking to strike out the Defendants' Defence. However, before the Court embarks on a consideration of the respective Applications, it is important to give a brief chronology of the events leading up to the Applications being filed.

[2] The Fixed Date Claim Form filed herein on the 9th May, 2016, originally came before the Court for Case Management Conference (CMC), on the 28th July, 2016, before Tie J(Ag) (as she then was). On that occasion, both sides had retained legal representations, the Claimants by Messrs. Myers, Fletcher & Gordon and the Defendants by Messrs. Clayton Morgan & Company.

[3] The learned Judge at the CMC made Orders requiring, *inter alia*, the 1st Defendant to file and serve Affidavit in Response to the 1st Claimant's Affidavit on or before the 19th September, 2016, the Claimants to file and serve Affidavit in Response on or before the 21st October, 2016, and any further Affidavits by either side to be filed and served on or before the 30th November, 2016. In addition, the learned Judge also adjourned the CMC to the 24th March, 2017.

[4] Subsequently, on the 6th March, 2017, the Claimants filed a Notice of Application for Specific Disclosure, which was scheduled to be heard at the adjourned CMC, on the 24th March, 2017.

[5] When the adjourned CMC came before this Court on the 24th March, 2017, on the application of the Defendants' then Attorneys-at-Law, Messrs. Clayton Morgan & Company, the CMC was further adjourned, as well as Claimants' Notice of Application for Specific Disclosure, to the 25th July, 2017. The Court also on the 24th March, 2017, extended the time for the 1st Defendant, to file and serve an Affidavit in Response to the Claimants' Notice of Application for Specific Disclosure, to the 27th March, 2017 by 4pm. In addition, permission was granted to the Claimants to file and serve Affidavit in Reply, if necessary, on or before the 11thApril, 2017.

[6] On the 21st June, 2017, the Claimants filed another Notice of Application, this time seeking to have a chartered accountant appointed to audit the financial documents

of the 2nd Defendant for the years 2003 to 2016 inclusive. This was scheduled to be heard at the further adjourned CMC on the 25th July, 2017.

[7] Subsequently, a Notice of Change of Attorneys-at-Law was filed on the 21st July, 2017 on behalf of the Defendants, placing their new Attorneys-at-Law, Messrs. Henlin Gibson Henlin on the record.

[8] On the 25th July, 2017, the further adjourned CMC, the Claimants' Notice of Application for Specific Disclosure, and the Claimants' Notice of Application seeking to appoint a chartered accountant to audit the financial documents of the 2nd Defendant, came on for hearing before this Court.

[9] On that occasion, the Defendants were represented by Counsel Ms. Williams instructed by Henlin Gibson Henlin, who requested an adjournment, as Counsel indicated that her firm was recently retained in the matter, and needed time to take instructions from their clients. She further indicated that it was only the day before, that she was made aware of the Claimants' Notice of Application for Specific Disclosure, and had not had sight of the said Application.

[10] Mr. Shelton QC in his reply, advised the Court that he had instructions from his clients, not to oppose an adjournment of the CMC, nor the Notice of Application seeking to appoint a chartered accountant to audit the financial documents of the 2nd Defendant. He however, objected to the Notice of Application for Specific Disclosure being adjourned, as he argued that on the last occasion, the Application was adjourned at the request of Messrs. Clayton Morgan & Company, on behalf of the Defendants.

[11] In deciding whether or not to proceed with the Notice of Application for Specific Disclosure, the Court had to bear in mind that the Application was filed from the 6th March, 2017, to be heard on the 24th March, 2017. On that date, at the request of the Defendants' Attorneys-at-Law, the Application was adjourned to the 25th July, 2017. The 1st Defendant then would have personally known about the Application from the 24th March, 2017, as he was present and legally represented when it was adjourned. That Defendant had also been present on all occasions that the matter had been before the

Court. As such, he could have and should have properly advised his new Attorneys-at-Law of the Application. In addition, a perusal of the Court file revealed that the 1st Defendant had filed an Affidavit opposing the Notice of Application for Specific Disclosure, and so it would appear that he was well aware of, and knew about the Application.

[12] The Court therefore having considered learned Queen's Counsel's position, and that of Counsel for the Defendants, Ms. Williams, granted the Order for Specific Disclosure of the documents as set out hereunder, such disclosure to take place on or before the 22nd September, 2017 by 3pm:

> *"1. Copies of Annual Returns for the years 1999-2016 in relation to the 2nd Defendant;*
>
> *2.Copies of audited Financial Statements and/or management accounts for the period 1999-2008 and the years 2011 and 2016 in relation to the 2nd Defendant;*
>
> *3. Copies of all banking records including all bank loans, overdraft facilities and bank statements and mortgages for the period 1999-2016 in relation to the 2nd Defendant;*
>
> *4.Details and copies of all statements in relation to the Director's Urban Renewal Bond Loan account for the period 2004-2016 in relation to the 2nd Defendant;*
>
> *5.Copies of all Leases and Rental Agreements between the tenants and the 2nd Defendant at Centre Point Plaza for the period 2000-2016;*
>
> *6.Copies of all Leases and Rental Agreements between the tenants and the 2nd Defendant at Seaview Plaza for the period 2011-2016;*
>
> *7.All Income Tax Returns and Assessments and General Consumption Tax Returns and Assessments in relation to the 2nd Defendant for the period 2000-2016;*
>
> *8.The 2nd Defendant's General Ledger for the period 1999-2016;*
>
> *9.Minutes of all Shareholders' meetings and Directors' meetings for the period 1999-2016 in relation to the 2nd Defendant;*
>
> *10.All bank statements from the Bank of NT Butterfield & Sons Limited in Bermuda from May 2010 to December 2010;*
>
> *11.Copies of all contracts of service between the 2nd Defendant and its employees, auditors, lawyers and consultants;*
>
> *12.Specific details of all insurance claims and settlements in relation to and on behalf of the 2nd Defendant between 2000-2016."*

[13] In addition, the CMC and the Claimants' Notice of Application seeking to appoint a chartered accountant to audit the financial documents of the 2nd Defendant, were adjourned for a date to be fixed by the Registrar.

[14] Subsequently, on the 21st September, 2017, the Defendants filed a Notice of Application seeking to vary and/or set aside or for an extension of time to comply with the Order for Specific Disclosure made by the Court on the 25th July, 2017. The Application was scheduled by the Registrar to be heard on the 18th December, 2017. The Claimants then filed a Notice of Application on the 13th November, 2017, seeking to strike out the Defendants' Defence, which was also set to be heard on the 18th December, 2017.

[15] On the 11th December, 2017, the Defendants filed an Amended Notice of Application seeking to vary and/or set aside or for an extension of time to comply with the Order for Specific Disclosure made by the Court on the 25th July, 2017.

[16] Both Applications, the Defendants' Amended Notice of Application seeking to vary and/or set aside or for an extension of time to comply with the Order for Specific Disclosure, and the Claimants' Notice of Application to strike out the Defendants' Defence, came before Shelly-Williams J, on the 18th December, 2017, who adjourned same to the 19th January, 2018 to be heard by this Court.

[17] The Defendants filed a Further Amended Notice of Application seeking to vary and/or set aside or for an extension of time to comply with the Order for Specific Disclosure made on the 25th July, 2017. On the 19th January, 2018, both Applications came before this Court. However, on that occasion, the Court file could not be located, and none of the Bundles that were said to have been filed by the respective parties could be located. In those circumstances the Applications had to be adjourned.

[18] The parties then met with the Registrar, and the Applications were both adjourned to the 6th February, 2018, to be heard by this Court. These are the Applications now to be considered.

THE APPLICATIONS

[19] The Defendants'Further Amended Notice of Application filed on the 22nd December, 2017, sought the following reliefs:

1. The Formal Order of the Honourable Mr. Justice Rattray granted on the 25thJuly, 2017 be amended to include the following:

   Permission is granted to the Defendants to apply to vary and/or set aside Order 1 of the Orders made herein on or before the 21st September, 2017;

2. Paragraph 1 of the Order made by the Honourable Mr. Justice Rattray on the 25th July, 2017 is varied and/or set aside;

3. Alternatively, the Defendants are granted an extension of time to comply with Order 1 of the Order made by the Honourable Mr. Justice Rattray on the 25th July, 2017;

4. Costs of the Application are costs in the claim.

The grounds relied on by the Defendants:

Order 1

a) Pursuant to Rule 42.10(1) of the **Civil Procedure Rules (CPR);**

b) That on the 25th July, 2017 the learned Rattray J granted Orders in terms of paragraph 1-12 of the Claimants' Notice of Application for Specific Disclosure filed and dated the 6th March, 2017;

c) That at the time of making the Order, the learned Judge indicated that he would grant the Defendants an extended period of time to comply with the Order so as to give their new Attorneys the opportunity to review the Application and the documents and make an Application if they find it necessary to vary or discharge the Order;

d) Both parties agreed to these terms, however, due to inadvertence of Counsel and/or the learned Judge, the provision to vary and/or discharge the Order was not included as an Order.

Order 2

e) Alternatively, pursuant to Rule 26.1(7) of the CPR;

f) Pursuant to Rules 28.7 (1); 28.7 (2) (a) and (b) of the CPR;

g) The Defendants' duty of standard disclosure would not extend to the documents requested, as they are not directly relevant to the proceedings;

h) The disclosure requested is speculative and is a fact finding expedition;

i) The disclosure requested imposes an onerous duty on the Defendants to undergo an extensive and expensive search of its records to comply with the Order;

j) It is in the interest of justice and the overriding objective.

[20] The Claimants' Notice of Application filed on the 13th November, 2017, sought the following reliefs:

1. That the Defendants' Defence by way of Affidavit of Michael Chung filed on the 16th September, 2016, and any further affidavits in defence to the claim be struck out;

2. Costs to the Claimants to be agreed or taxed.

The grounds relied on by the Claimants:

a) On the 25th July, 2017, the Honourable Mr. Justice Rattray made an Order, *inter alia,* for specific disclosure in terms of paragraphs 1-12 of the Notice of Application for Specific Disclosure filed and dated the 6th March, 2017, such disclosure to take place on or before the 22nd September, 2017 by 3pm;

b) Rule 28.14(2) of the CPR provides that a party seeking to enforce an order for specific disclosure may apply to the Court for an order that the other party's Statement of Case or some part of it be struck out. In these proceedings, the Claimants are seeking to enforce the Honourable Mr. Justice Rattray's Order for Specific Disclosure;

c) Pursuant to CPR Rule 26.3(1)(a), the Court is empowered to strike out a Statement of Case or a part of a Statement of Case, if it appears to the Court that there has been a failure to comply with a rule or practice direction or with an order or direction given by the Court. In these proceedings, the Defendants have failed to comply with the Honourable Mr. Justice Rattray's Order.

d) The Defendants' Notice of Application for Court Orders filed on the 21st September, 2017, which seeks the variation or setting aside or extension of time of the said Specific Disclosure Order, is baseless and ought to be refused.

THE DEFENDANTS' SUBMISSIONS

[21] Learned Queen's Counsel Mrs. Gibson Henlin, submitted that at the hearing on the 25th July, 2017, the learned Judge advised the parties that the Defendants may apply to vary the Order for Specific Disclosure, after Counsel has had an opportunity to review the Application, the documents, and complete instructions from her clients. She contended that it was due to inadvertence of Counsel, and or the learned Judge, that this was not made a term of the Order, and in those circumstances it would be fit and proper to amend the Order to include the omitted terms.

[22] She further contended that the learned Judge intimated that having regard to the circumstances, that is, the fact that Counsel for the Defendants had only become aware of the Application the day before the hearing, had not have sight of the Application, and was unable to oppose or consent to the Orders being sought, then in an effort to arrive at an equitable resolution, he would give the Defendants an opportunity to apply to vary the Order, if so required.

[23] Mrs. Gibson Henlin QC cited the Court of Appeal decision of **American Jewellery Company Limited and Ors v Commercial Corporation Jamaica Limited and Ors** [2014] JMCA App 16, which relied on the decision of **Adams & Harvey Ltd v International Maritime Supplies Co. Ltd** [1967] 1 All ER 533, which she argued affirmed that the use of the slip rule was appropriate in circumstances where the effect of an Order contradicts the Court's intention.

[24] She also relied on the case of **Petrojam Limited v Sea Ventures Shipping Limited and Ors** [2013] JMCC Comm. 16, and submitted that this case supports her clients' position that the Order for Specific Disclosure ought to be varied and/or discharged, in the circumstances.

[25] She further submitted that a variation or a discharge of the Order is necessary, because at the hearing of the Application, Counsel for the Claimants did not bring to the Court's attention, that an Affidavit was filed on behalf of the Defendants opposing the Notice of Application for Specific Disclosure. Further, she argued that Counsel for the Claimants also failed to bring to the Court's attention, that the documents requested, covered an extensive period, and included documents already in the Claimants' possession.

[26] Learned Queen's Counsel Mrs. Gibson Henlin, also relied on the Court of Appeal decision of **Miguel Gonzales and Suzette Saunders v Leroy Edwards** [2017] JMCA Civ. 5, where she submitted, that F. Williams JA, indicated that a prerequisite for disclosure is a finding that a document is not just relevant, but 'directly relevant'. In reliance on this case, she submitted that the Claimants have failed to provide any supporting evidence to show that the documents requested were directly relevant to the issues in the case, and in those circumstances the Order should be set aside.

[27] In relation to the Claimants' Application, Mrs. Gibson Henlin QC, argued that this was not a case of flagrant non-compliance with the Orders of the Court, as before the time set for compliance, her clients' Application was filed and served on the Claimants' Attorneys-at-Law, which sought to vary and/or revoke or for an extension of time within

which to comply with the Order for Specific Disclosure. As such, she contended that this was not an appropriate case for a striking out Order to be made.

THE CLAIMANTS' SUBMISSIONS

[28] In his reply, learned Queen's Counsel Mr. Shelton, contended that the slip rule, as outlined in Rule 42.10 (1) of the CPR, does not apply to the circumstances in the present case, as there was no clerical error or mistake made by the Court. In support of this position, he referred the Court to the decision of **Lyndel Laing and Anor v Lucille Rodney (Executor of Estate Sandra McLeod deceased) and Anor** [2013] JMCA Civ. 27. That Rule insofar as is relevant states:

> *"42.10(1) The court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission."*

[29] He submitted that there was no evidence before the Court to satisfy Rule 42.10 (1) of the CPR. Firstly, he contended that there was a dispute on the evidence as to what the Honourable Judge stated when he granted the Order for Specific Disclosure. Secondly, he insisted that the statements that the Defendants attributed to the learned Judge, does not appear in the Record of Proceedings and Minute of Order, or on the perfected Formal Order, which are identical in their terms.

[29] Thirdly, he argued that there was never any question of consent in respect of the Order made for Specific Disclosure, and fourthly, it is unlikely and highly improbable that the Honourable Judge would have intended such an Order, as the only Rule which gives the Court the power to vary or revoke its Order is Rule 26.1(7) of the CPR. That Rule states – *"A power of the court under these Rules to make an order includes a power to vary or revoke that order."*

[30] Mr. Shelton QC further argued that an Application for variation or revocation must be made promptly, that is, between the time when the Order was handed down and the date the Order was perfected. He submitted that this power should be used sparingly, and there must be a plain mistake on the part of the Court, or the discovery of new facts or a change of circumstances, subsequent to the Order or that the Judge was misled for

such an Order to be granted. He strongly contended that the Application for variation or revocation is not a backdoor method by which an unsuccessful litigant can seek to re-argue their case.

[31] In support of these submissions Mr. Shelton QC, relied on the cases of **Petrojam Limited v Sea Ventures Shipping Limited and Ors** (supra), **Lloyds Investment (Scandinavia) Limited v Ager-Hanssen** [2003] EWHC 1740 (Ch), **Fitzgerald Hoilette v Valda Hoilette and Ors**, Claim No. 2006HCV-01526, a judgment delivered on the 4th April, 2011, and **Sarah Brown v Alfred Chambers** [2011] JMCA App 16.

[32] The Defendants he asserted, cannot now seek to re-argue the Notice of Application for Specific Disclosure, which has already been heard inter partes involving Counsel for the Defendants, and after the Order has been perfected. Further, he maintained that Counsel for the Defendants did not seek leave at the hearing to appeal the Order for Specific Disclosure, and has not applied to appeal the said Order. In any event, he contended that the deadline for any such appeal had long elapsed.

[33] Learned Queen's Counsel also contended that the Honourable Judge, being aware of the scope of Rule 26.1(7), was unlikely to have expressly or impliedly intended to give the Defendants, permission in advance, to apply to vary or revoke the Order, where there were no changes of circumstances alleged, where the Court was not misled, and/or where there was no error or plain mistake in the Order.

[34] In respect of the Defendants' alternative request for an extension of time for compliance with the Order for Specific Disclosure, Mr. Shelton QC urged the Court to refuse any such extension. He argued that the Order was made approximately four months ago, and to date the Defendants have not provided even one of the documents, nor have they provided any explanation for the delay in complying with the said Order.

[35] In relation to his Application to strike out the Defendants' Defence, Mr. Shelton QC submitted that the Defendants' Statement of Case should be struck out pursuant to Rules 28.14(2) and 26.3(1)(a) of the CPR, and that his clients be permitted to proceed with their claim in default. Both provisions relied on empower the Court to order the

striking out of a party's Statement of Case on failure to comply with an Order for Disclosure or a direction of the Court.

[36] He cited the Court of Appeal case of **Marcia Jarrett (Administratrix of the Estate of Dale Jarrett, deceased) v South East Regional Health Authority and Ors** [2010] JMCA Civ. 15, where it was concluded at paragraph 27, that the appropriate Order to be made pursuant to Rule 28.14 of the CPR in the circumstances of that case (which involved a breach of an Order for Specific Disclosure), was an Unless Order, providing that unless the party in default complies with the Order for disclosure by a specific date, the party's Statement of Case is struck out.

[37] Mr. Shelton QC submitted that time is of the essence in this case, and an Unless Order would hardly be appropriate unless it were to be set for a very short time which could preserve the trial date of the 10th April, 2018 for two days. Further, he argued that on a perusal of the Defendants' Written Submissions, at paragraph 9, it showed that the Defendants have the documents outlined in the disclosure Order, but are refusing to disclose them notwithstanding the Court's Order, and that in the circumstances, the Order for Specific Disclosure should not be varied or set aside, and sanctions would be indeed appropriate.

ANALYSIS AND DISCUSSION

[38] The relevant rule of the CPR, which provides for the striking out of a party's Statement of Case, for the failure to comply with an Order for disclosure is Rule 28.14 (2),which states that:

> *"A party seeking to enforce an order for disclosure may apply to the court for an order that the other party's statement of case or some part of it be struck out."*

[39] Similarly, the Court's power to strike out a party's Statement of Case is enshrined in Part 26 of the CPR, and in particular Rule 26.3(1) (a), which provides that:

> *"...the court may strike out a statement of case or part of a statement of case if it appears to the court-*

> *(a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;"*

[40] However, although the CPR confers on the Court wide ranging powers to strike out a party's Statement of Case, such a severe approach should be used sparingly, and only as a matter of last resort. This position has been expressed by our Court of Appeal on numerous occasions, but more recently in the decision of **The Commissioner of Lands v Homeway Foods Limited and Stephanie Muir** [2016] JMCA Civ. 21, where McDonald-Bishop JA (Ag) (as she then was), in delivering the judgement of the Court stated that:

> *"The authorities have equally made it clear that striking out or dismissing a party's case is a draconian or extreme measure and so it should be regarded as a sanction of last resort. As Lord Woolf explained in **Biguzzi**, there may be alternatives to striking out, which may be more appropriate to make it clear that the court will not tolerate delay but which, at the same time, would enable the case to be dealt with justly, in accordance with the overriding objective. The court in considering what is just, he said, is not confined to considering the effects on the parties but is also required to consider the effect on the court's resources, other litigants and the administration of justice."*

[41] In the leading case of **Biguzzi v Rank Leisure plc** [1999] 4 All ER 934, which outlined the approach of the Court to the issue of striking out under the CPR, Lord Woolf MR posited that:

> *"Under r 3.4(2)(c) [the English CPR equivalent of rule 26.3(1)(a)] a judge has an unqualified discretion to strike out a case such as this where there has been a failure to comply with a rule. **The fact that a judge has that power does not mean that in applying the overriding objectives the initial approach will be to strike out the statement of case. The advantage of the CPR over the previous rules is that the court's powers are much broader than they were. In many cases there will be alternatives which enable a case to be dealt with justly without taking the draconian step of striking the case out**."*
>
> [My emphasis]

This approach was considered and adopted by Brooks JA in the Court of Appeal decision of **Business Ventures & Solutions Inc v Anthony Dennis Tharpe et al** [2012] JMCA Civ. 49.

[42] Another useful authority on the approach to be taken by the Courts, when faced with the issue of a striking out, is the case decided by the Caribbean Court of Justice (CCJ) of **Barbados Rediffusion Service Ltd v Asha Mirchandani and Others** (No 2)

(2006) 69 WIR 52. This case was approved by McDonald-Bishop JA (Ag), in **The Commissioner of Lands** case, in which she outlined the relevant principles as follows:

> *"(i) Strike out orders should be made either when that is necessary in order to achieve fairness or when it is necessary in order to maintain respect for the authority of the court's orders. In this context, fairness means fairness not only to the non-offending party but also to other litigants who are competing for the finite resources of the court.*
>
> *(ii) If there is a real risk that a fair trial may not be possible as a result of one party's failure to comply with an order of the court, that is a situation which calls for an order striking out that party's case and giving judgment against him.*
>
> *(iii) The fact that a fair trial is still possible does not preclude a court from making a strike out order. Defiant and persistent refusal to comply with an order of the court can justify the making of a strike out order. While the general purpose of the order in such circumstances may be described as punitive, it is to be seen not as retribution for some offence given to the court but as a necessary and, to some extent, a symbolic response to a challenge to the court's authority, in circumstances in which failure to make such a response might encourage others to disobey court orders and tend to undermine the rule of law. This is any type of disobedience that may properly be categorized as contumelious or contumacious.*
>
> *(iv) It must be recognised that even within the range of conduct that may be described as contumelious, there are different degrees of defiance, which cannot be assessed without examining the reason for the noncompliance.*
>
> *(v) The previous conduct of the defaulting party will obviously be relevant, especially if it discloses a pattern of defiance.*
>
> *(vi) It is also relevant whether the non-compliance with the order was partial or total.*
>
> *(vii) Normally, it will not assist the party in default to show that non-compliance was due to the fault of the lawyer since the consequences of the lawyer's acts or omissions are, as a rule, visited on his client. There may be an exception made, however, when the other party has suffered no prejudice as a result of the non-compliance.*
>
> *(viii) Other factors, which have been held to be relevant, include such matters as (a) whether the party at fault is suing or being sued in a representative capacity; and (b) whether having regard to the nature of the relief sought or to the issues raised on the pleadings, a default judgment can be regarded as a satisfactory and final resolution of the matters in dispute.*
>
> *(ix) Regard may be had to the impact of the judgment not only on the party in default, but on other persons who may be affected by it."*

[43] I am satisfied that the striking out of a party's Statement of Case, involves a careful balancing exercise of the respective rights of the parties, in light of the severe

consequences involved. The grant of that particular Order brings to an immediate end that party's search for justice, and as such, the Court must be careful in its exercise of its discretion, when faced with such an Application.

[44] In the instant case, the Defendants were ordered to comply with the Order for Specific Disclosure on or before the 22nd September, 2017 by 3pm. However, on the 21st September, 2017, the Defendants filed their Application, seeking to vary and/or set aside, or for an extension of time within which to comply with the Order for Specific Disclosure, made by the Court on the 25th July, 2017.

[45] In my view, although the Defendants' Application was filed at the eleventh hour, a day before the final date set for compliance with the Order for Specific Disclosure, the Court ought not to ignore the fact that the Defendants' Application was filed before the date stated for compliance. This Court however does not encourage nor condone last minute Applications being made.

[46] It is obvious that the Defendants have not to date, complied with the Order for Specific Disclosure, and this is in breach of the Order of the Court. However, because the Application seeking to vary and/or set aside or for an extension of time within which to comply with the Order for Specific Disclosure, was filed by the Defendants, the Court ought not to proceed to enforce the Order for Specific Disclosure, while the Defendants' Application is pending before this Court. I am not satisfied that such an approach should be adopted. To do so would be a disproportionate sanction in the circumstances, bearing in mind that this is not a situation where there is any evidence of apparent wilful non-compliance by the Defendants.

[47] A trial date has been set for the 10th April, 2018. In coming to a decision on matters of this nature, the Court is guided by the overriding objective of the CPR, which is to deal with matters justly. I am therefore not prepared to accede to the request of learned Queen's Counsel Mr. Shelton, to strike out the Defendants' Statement of Case. That Application is therefore refused.

[48] I now turn to consider learned Queen's Counsel Mrs. Gibson Henlin's Application. Rule 42.10 of the CPR, which governs the well-known 'slip rule', provides that:

> *"1.The court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.*
>
> *2. A party may apply for a correction without notice."*

[49] Harris JA in **Lyndel Laing and Anor v Lucille Rodney (Executor of Estate Sandra McLeod deceased) and Anor** (supra), considered what Sir Donaldson MR, said in **R v Cripps, Ex parte Muldoon and Others** [1984] QB 686, in speaking about the rule where he stated:

> *"…once the order has been perfected, the trial judge is functus officio and, in his capacity as the trial judge, has no further power to reconsider or vary his decisions whether under the authority of the slip rule or otherwise. The slip rule power is not a power granted to the trial judge as such. It is one of the powers of the court, exercisable by a judge of the court who may or may not be the judge who was in fact the trial judge."*

[50] The learned Master of the Rolls further stated:

> *"It is surprisingly wide in its scope. Its primary purpose is akin to rectification, namely to allow the court to amend a formal order which by accident or error does not reflect the actual decision of the judge: Preston Banking Co. v. William Allsup & Sons [1895] 1 Ch. 141. But it also authorises the court to make an order which it failed to make as a result of the accidental omission of counsel to ask for it: In re Earl of Inchcape [1942] Ch. 394, approved by the Judicial Committee of the Privy Council in Tak Ming Co. v. Yee Sang Metal Supplies Co. [1973] 1 W.L.R. 300, 304. It even authorises the court to vary an order which accurately reflects the oral decision of the court, if it is clear that the court inadvertently failed to express the decision which it intended: Adam & Harvey Ltd. v. International Maritime Supplies Co. Ltd. [1967] 1 W.L.R. 445. However, it cannot be over-emphasised that the slip rule power can never entitle the trial judge or a court to reconsider a final and regular decision once it has been perfected, even if it has been obtained by fraud: per Lord Halsbury in Preston Banking Co. v. William Allsup & Sons [1895] 1 Ch. 141, 143."*

[51] Harris JA for her part, in speaking about the slip rule, opined:

> *"This rule only comes into operation where, in a judgment or an order a clerical mistake, or an error emanating from an accidental slip or omission, is manifested. The purport and spirit of the rule is to bring a judgment or an order in which an error, omission or mistake arises in harmony with that which a judge intended to pronounce. Therefore, a judge is not competent to alter a judgment or an order once it has been drawn up and perfected, if it accurately expresses the intention*

> *of the court or the judge. To qualify under the rule, an applicant must show that the error, omission or mistake is one in expressing the manifest intention of the judge."*

[52] The slip rule was also recently considered in the decision of **Dalfel Weir v Beverly Tree** [2016] JMCA App 6, where Morrison P (Ag) (as he then was), made the following pronouncement:

> *"...This court has the power to correct errors in an order previously made by it arising from accidental slips or omissions, so as to bring the order as drawn into conformity with that which the court meant to pronounce.* ***In considering whether to exercise this power, the court will be guided by what appears to be the intention of the court which made the original order****..."*
>
> [My emphasis]

[53] From these Authorities, it is therefore evident that the slip rule only comes into play, where there is a clerical mistake, arising from an accidental slip or omission, which runs counter to the true intention of the Court. The purpose of the rule is to bring the judgment or order of the Court complained of, into conformity with the intention of the Court.

[54] In applying the slip rule to the present case, the Defendants have argued that the Court intimated that it would have granted an extended period of time for the Defendants to comply with the Order for Specific Disclosure, so as to give the Defendants' Attorneys-at-Law, the opportunity to review the Notice of Application for Specific Disclosure, and make an Application, if necessary, to vary or discharge the Order for Specific Disclosure. The Defendants further argued, that the parties agreed to such an approach being taken by the Court.

[55] I must at this point clearly indicate that the contentions of the Defendants, did not reflect the intention of the Court, when it granted the Order for Specific Disclosure. Further, Counsel Ms. Williams, who appeared on behalf of the Defendants on the day the Order was made, did not request any such Order of the Court. Therefore, there was no inadvertence on the part of the Court in relation to the Orders made on the 25th July, 2017. The Minute of Order and the perfected Formal Order, both dated the 25th July,

2017, in my view, properly reflects the true intention of the Court, in relation to learned Queen's Counsel Mr. Shelton's Notice of Application for Specific Disclosure.

[56] It is admitted that the Court granted the Defendants an extended period for compliance in light of their recent retention of new Counsel in this matter. The Court also mentioned, that the extended period could be utilised by the Defendants to make an Application, if thought necessary, to vary or discharge the Order made for Specific Disclosure. However, at no time was it the intention of the Court that those comments were to be a part of the Court Order.

[57] I am therefore of the view that in the circumstances of this matter, there was no clerical error resulting from an accidental slip or omission on the part of the Court, that would warrant the use of the slip rule. The Order made therefore reflected the true intention of the Court.

[58] I now turn to consider the Defendants' Application to vary/revoke the Order for Specific Disclosure. The general power of the Court to vary or revoke an Order is contained in Rule 26.1 (7) of the CPR which states:

> *"A power of the court under these Rules to make an order includes a power to vary or revoke that order."*

[59] Our Court of Appeal in **San Souci Ltd v VRL Services Ltd** SCCA No. 20/2006, a judgment delivered on the 2nd July, 2009, approved the statement of law in **Millensted v Grosvenor House Ltd** (1937) 1 All ER 736, where Farwell J stated:

> *"it is now well settled that, until an Order made by a judge has been perfected, by being passed and entered there is no final Order, and consequently, the judge may, at any time until the Order is perfected, vary or alter the Order which he had intended to make."*

[60] In the Court of Appeal decision of **Norman Harley v Doreen Harley** [2010] JMCA Civ. 11, Harris JA, in examining Rule 26.1(7) of the CPR, opined that:

> *"…The case of **Mair v Mitchell and Others** SCCA 123/08 delivered in February 2009, affords guidance as to the principles which the court ought to employ in dealing with an application under rule 26.1 (7). In that case Smith J.A., in considering the question as to the power of the Court to vary an order under rule 26.1(7), relied on the ratio decidendi as enunciated by Patten J, in **Lloyd's***

> ***Investment (Scandinavia) Limited v Ager-Harrisen*** *[2003] EWHC 1740. Patten J, in dealing with an application to vary an order under Part 3.1 (7) of the English CPR, at paragraph 11 said:*
>
> *Although this is not to be an exhaustive definition of the circumstances in which the power under CPR Part 3.1 (7) is exercisable, it seems to me that, for the High Court to revisit one of its earlier orders, the applicant must either show some material change of circumstances or that the judge who made the earlier order was misled in some way, whether, innocently or otherwise, as to the correct factual position before him."*

[61] The learned Judge of Appeal further opined that:

> *"Smith J.A. in adopting the ratio pronounced by Patten J, said:*
>
> *Although Patten J. was dealing with an application to vary the conditions attached to an order setting aside a default judgment and not one to vary a procedural regime, as in the instant case, I am of the view, that the reason for his decision represents a correct statement of the principle of law applicable to the exercise of the judge's discretion, under Rule 26.1(7) of the CPR. Indeed, this principle was approved by the English Court of Appeal in* ***Collier v Williams*** *(supra)."*

[62] In concluding Harris JA stated that:

> *"It is patently clear that rule 26.1 (7) restricts the conditions under which a court may vary or revoke an order. The rule does not provide an open door permitting a court to reverse its decision merely because a party wishes the court so to do. A court therefore, will only revisit an order previously made if an applicant, seeking to revoke that order, shows some change of circumstances or demonstrates that a judge who made an earlier order has been misled…"*

[63] Patten J, in the case of **Lloyds Investment (Scandinavia) Limited v Ager-Hanssen**(supra), in considering Rule 3.1(7) under the English CPR, the equivalent to Rule 26.1(7) under our CPR, indicated that there is no real guidance as to the possible limits of the Rule, when he intimated that:

> *"…This is not confined to purely procedural orders and there is no real guidance in the White Book as to the possible limits of the jurisdiction…"*

[64] Similarly, Mangatal J, in **Petrojam Limited v Sea Ventures Shipping Limited and Ors** (supra), opined:

> *"…Whilst a judgment or order of the Court is to have immediate effect, unless otherwise stated by the Court, the Civil Procedure Rules have given the Court express power to vary or revoke such orders or judgment.* ***The rule is not specific as to when or the circumstances in which the power can be invoked****. As the rule does not have a temporal element to it, it would seem that a*

> *Court could revisit its order or judgment, with a view to revoking or varying it, between the time it was handed down and the date which it was sealed or otherwise perfected. This contrasts with the Court's general power to correct a clerical mistake or accidental slip or omission at any time (Rule 42.10 CPR)."*
>
> [my emphasis]

[65] In the recent decision of **In re L and another (Children) (Preliminary Finding: Power to Reverse)** [2013] UKSC 8, Baroness Hale, traced the history of the Court's jurisdiction to vary or revoke its order as follows:

> ***"16*** *It has long been the law that a judge is entitled to reverse his decision at any time before his order is drawn up and perfected.*
>
> ***17*** *The modern story begins with the Judicature Acts 1873 (36 & 37 Vict c 66) and 1875 (38 & 39 Vict c 77), which amalgamated the various common law, chancery and doctors' commons jurisdictions into a single High Court and created a new Court of Appeal for England and Wales. In In re St Nazaire Co (1879) 12 Ch D 88, the Court of Appeal decided that there was no longer any general power in a judge to review his own or any other judge's orders. Malins V-C had permitted a petition to proceed which sought to vary an earlier order which he had made and which had been unsuccessfully appealed to the Court of Appeal. The Court of Appeal held that he had no power to do so. Jessel MR explained that the Judicature Acts had changed everything. Before they came into force, the Lord Chancellor, Vice-Chancellor and Master of the Rolls had power to rehear their own decisions and, indeed, the decisions of their predecessors. He remarked that "the hope of every appellant was founded on the change of the judge": p 98. (An example of Jessel MR revisiting one of his own orders is In re Australian Direct Steam Navigation (Miller's Case) (1876) 3 Ch D 661.) But such an application was in the nature of an appeal and jurisdiction to hear appeals had now been transferred to the Court of Appeal. Thesiger LJ added that, "whatever may have been the practice in the High Court of Chancery before the Judicature Act as to the review of their decisions or the rehearing of their decisions, nothing can be clearer than that there was nothing analogous to that in the Common Law courts" 12 Ch D 88, 101. The court's conclusions harmonised the practice in all Divisions of the newly amalgamated High Court.*
>
> ***18*** *Nothing was said in In re St Nazaire about the position before the judge's order was perfected. In In re Suffield and Watts; Ex p Brown (1888) 20 QBD 693, a High Court judge had made an order in bankruptcy proceedings which had the effect of varying a charging order which he had earlier made under the Solicitors Act 1860 (23 & 24 Vict c 127). All the members of the Court of Appeal, citing In re St Nazaire, agreed that he had no power to do this once his order had been drawn up and perfected. Unlike the bankruptcy jurisdiction, the Solicitors Act gave no power of variation. As Fry LJ put it, at p 697: "So long as the order has not been perfected the judge has a power of re-considering the matter, but, when once the order has been completed, the jurisdiction of the judge over it has come to an end."*
>
> *Strictly speaking, the reference to what may be done before the order is perfected was obiter, but that this was the law was established by the Court of*

> *Appeal no later than Millensted v Grosvenor House (Park Lane) Ltd [1937] 1 KB 717, where the judge had revised his award of damages before his order was drawn up and the court held that he was entitled to do so.*
>
> ***19** Thus there is jurisdiction to change one's mind up until the order is drawn up and perfected. Under CPR r 40.2(2)(b), an order is now perfected by being sealed by the court. There is no jurisdiction to change one's mind thereafter unless the court has an express power to vary its own previous order. The proper route of challenge is by appeal. On any view, therefore, in the particular circumstances of this case, the judge did have power to change her mind. The question is whether she should have exercised it."*

[66] Baroness Hale went on to consider the decision of the Court in **Stewart v Engel** [2000] 1 WLR 2268 CA, and opined:

> *"Clarke LJ dissented on this point. He did not think that the court was bound by the Barrell case to look for exceptional circumstances. He clearly took as a starting point the overriding objective in the Civil Procedure Rules of enabling the court to deal with cases justly. He considered [2000] 1 WLR 2268, 2285 that the judge had been right to direct himself that the examples given by Neuberger J in In re Blenheim Leisure (Restaurants) Ltd (No 3) The Times, 9 November 1999--a plain mistake by the court, the parties' failure to draw to the court's attention a plainly relevant fact or point of law and the discovery of new facts after judgment was given--were merely examples: "How the discretion should be exercised in any particular case will depend upon all the circumstances."*

[67] She concluded that:

> *"I would agree with Clarke LJ in Stewart v Engel [2000] 1 WLR 2268, 2282 that his overriding objective must be to deal with the case justly. A relevant factor must be whether any party has acted upon the decision to his detriment, especially in a case where it is expected that they may do so before the order is formally drawn up. On the other hand, in In re Blenheim Leisure (Restaurants) Ltd, Neuberger J gave some examples of cases where it might be just to revisit the earlier decision. But these are only examples. A carefully considered change of mind can be sufficient. Every case is going to depend upon its particular circumstances."*

[68] I glean from these Authorities, that before the coming into effect of the CPR, it was well settled that until an Order of the Court was perfected, the Judge could at any time vary or revoke his Order. This principle has not been lost with the advent of the CPR, as Rule 26.1(7) confers such powers on the Court. However, Rule 26.1 (7) is not specific as to whether the power can be invoked after the Order has been perfected, or whether it can only be invoked before the Order is perfected by the Court.

[69] In my view, Rule 26.1 (7) does not limit the varying of an Order made by the Court in its wide ranging case management powers, such as an Order for Specific

Disclosure, even after it has been perfected, as was the situation in the present case. I am of the opinion, that in appropriate circumstances the Court could vary the Order, bearing in mind the overriding objective to deal with cases justly. Further, it must be borne in mind that the Order was not a final one that disposed of the matter. This position was eloquently expressed by Baroness Hale in, **In re L and another (Children) (Preliminary Finding: Power to Reverse)** (supra):

> *"**37 Both the Civil Procedure Rules and the Family Procedure Rules make it clear that the court's wide case management powers include the power to vary or revoke their previous case management orders**: see CPR r 3.1(7) and FPR r 4.1(6). This may be done either on application or of the court's own motion: CPR r 3.3(1), FPR r 4.3(1). It was the absence of any power in the judge to vary his own (or anyone else's) orders which led to the decisions in In re St Nazaire Co 12 Ch D 88 and In re Suffield and Watts; Ex p Brown 20 QBD 693. **Where there is a power to vary or revoke, there is no magic in the sealing of the order being varied or revoked.** The question becomes whether or not it is proper to vary the order.*
>
> ***38 Clearly, that power does not enable a free-for-all in which previous orders may be revisited at will. It must be exercised "judicially and not capriciously". It must be exercised in accordance with the overriding objective**."*
>
> [My emphasis]

[70] Mangatal J, in the **Petrojam Limited** case outlined some instances, where it would be just for the Court to exercise its powers under Rule 26.1 (7) of our CPR:

> *"1. The Court could consider whether there are any compelling reasons justifying the Court revisiting its orders or judgment. In the **Engel** decision, the decision of Neuberger J **In re Blenheim Leisure (Restaurants) Ltd (no.3) The Times, 9th November 1999** was cited as setting out justifiable instances of cases where the jurisdiction might justifiably be invoked. These include:*
>
> *i. Plain mistake on the part of the court*
>
> *ii. Failure of the parties to draw the Court's attention to a fact or point of law that was plainly relevant*
>
> *iii. Discovery of new facts subsequent to the judgment being given*
>
> *iv. If the applicant could argue that he was taken by surprise by a particular application from which the court ruled adversely to him and that he did not have a fair opportunity to consider.*
>
> *2. In the **Stewart v Engel** case**,** it was also suggested that where the Court is being asked to revisit its order or judgment in order to allow an amendment to a statement of case, the Court should consider the timing of the application.*

> *3. Both Clarke L.J. and Baroness Hale in their respective judgments indicated that the Court should also consider whether any party had acted upon the decision to their detriment in deciding whether to grant or refuse the application.*
>
> *4. **In Re L and another**, Baroness Hale also pointed out that justice might require the revisiting of a decision, for no more reason than the judge having a carefully considered change of mind."*

[71] In the instant case, when the Court granted the Order for Specific Disclosure, the Court was not aware of the fact, that an Affidavit of the 1st Defendant had been filed on the 24th March, 2017, opposing the Application for Specific Disclosure. The said Affidavit was not on the Court file, through no fault of any of the parties. In light of this, the Court will now consider the Affidavit of the 1st Defendant, in order to determine if a variation of the Order for Specific Disclosure is necessary in the circumstances.

[72] The 1st Defendant in his Affidavit indicated that most of the documents sought are already in the possession of the 1st Claimant, as they were disclosed to her during the course of divorce proceedings in Canada. He also indicated that some of the documents sought are not in the possession of the Defendants, and that some of the documents requested do not exist.

[73] The 1st Defendant exhibited three documents to his Affidavit to prove his assertions. The first document is a letter dated the 13th July, 2016, addressed to the 1st Claimant from the 1st Defendant's Attorney-at-Law in Canada, which purportedly gives the status of the 1st Claimant's request for disclosure in the Canadian Court. However, having considered the letter, this Court could not ascertain that the status as outlined in the said letter is accurate, or that the documents were in fact disclosed to the 1st Claimant. Further, and which I find peculiar, is the fact that it would appear that some of the pages from the said letter are omitted.

[74] The 1st Defendant also exhibited a document headed, 'Disclosure Request Still Outstanding from Michael Chung since 2014', which in my view, speaks to the fact that certain documents were requested from him, and not that they were actually disclosed. Furthermore, the said document does not say who requested the documents, and there

is no indication that any of the Claimants were involved. Similarly, it also appears that some of the pages are missing from this document.

[75] The third document exhibited is a Court Order of The Honourable Mr. Justice Hood, of the Ontario Superior Court of Justice, dated the 2nd March, 2017. In that Order the 1st Defendant, insofar as is relevant, was to provide to the 1st Claimant, with all general ledgers for the 2nd Defendant, Mikol Investments Limited. The Order also mentioned the disclosure of other documents. However, the description of those documents were not specified, and this Court could not ascertain whether they were the same documents that were ordered disclosed by this Court.

[76] I am satisfied that at least one of the documents ordered disclosed by this Court, was already the subject of a disclosure Order by the Ontario Superior Court of Justice in Canada. In those circumstances, it would be unnecessary to have a replication of such an Order. That being said, I am not convinced in light of the 1st Defendant's Affidavit that the other documents requested by the Claimants in their Application for Specific Disclosure, are in the possession of the 1st Claimant.

[77] Learned Queen's Counsel Mrs. Gibson Henlin, has contended that the disclosure of the documents requested by the Claimants are not directly relevant to the issues to be determined in the case. However, after perusing the list of items requested, I must respectfully disagree with such a contention, as I am of the opinion that the documents are indeed directly relevant.

[78] Rule 28.6 (5) of our CPR indicates what should be disclosed by an Order for Specific Disclosure:

> *"An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings."*

[79] Rule 28.1(4) goes on to outline what is meant by directly relevant:

> *"…a document is "**directly relevant**"*
>
> *only if -*

(a) the party with control of the document intends to rely on it;

(b) it tends to adversely affect that party's case; or

(c) it tends to support another party's case."

[80] The definition of a party in Rule 2.4 of our CPR:

> *"…includes both the party to the claim and any attorney-at-law on record for that party unless any rule specifies or it is clear from the context that it relates to the client or to the attorney-at-law only;"*

[81] Rule 28.7 of our CPR outlines the criteria for ordering Specific Disclosure, and reads:

> *"(1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.*
>
> *(2) It must have regard to-*
>
> *(a) the likely benefits of specific disclosure;*
>
> *(b) the likely cost of specific disclosure; and*
>
> *(c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.*
>
> *(3) Where, having regard to paragraph (2)(c), the court would otherwise refuse to make an order for specific disclosure, it may however make such an order on terms that the party seeking that order must pay the other party's costs of such disclosure in any event."*

[82] In the decision of **Miguel Gonzales and Suzette Saunders v Leroy Edwards** (supra), F. Williams JA, observed that there is no requirement under Part 28 of our CPR for the filing of Affidavit evidence. However, I am satisfied that it would be unreasonable to expect the Court to exercise its discretion without the assistance of such evidence. The learned Judge of Appeal in support of his position, referred to the first instance judgment of **Maxwell Gayle and others v Desnoes and Geddes Limited and others**, Claim No. 2004HCV01339, a judgment delivered on the 13th May, 2005, where Mangatal J observed:

> *"...the determination of the question whether the documents are directly relevant can be made by looking at the Claim and at the law, whatever the contents of the application or of the Affidavit."*

[83] It is my view that the contention of Mrs. Gibson Henlin QC, that the Claimants did not provide any supporting evidence, to show how the documents requested by disclosure are directly relevant, is not fatal. I am satisfied that the Court can determine the question of whether a document is directly relevant, by examining the claim, and the relevant law, which is what guided this Court when it granted the Order for Specific Disclosure.

[84] On a perusal of the Fixed Date Claim Form, the Claimants who are all minority shareholders of the 2nd Defendant company, with the 1st Claimant also being a director as well, are concerned that the affairs of the company are being carried out by the 1st Defendant, in a manner that they allege is oppressive and or prejudicial to them. The Claimants are concerned about the general management of the company, including but not limited to its finances. In order to show that the affairs of the company are being carried out in such manner, the documents requested by Specific Disclosure, would be directly relevant, as provided in Rule 28.6(5) of the CPR. I am satisfied that the Claimants would require the documents requested in order to prove their case. Further, if the Trial Judge is to determine whether the company is being managed in the manner alleged, the said documents would assist the Court in coming to a decision on that issue.

[85] In those circumstances, I am not prepared to set aside the Order for Specific Disclosure. However, I am of the view that it is appropriate to vary the Order to exclude all the general ledgers for Mikol Investments Limited, the 2nd Defendant, as those items were already the subject of a Disclosure Order in the Ontario Superior Court of Justice. If that Order has been complied with, my Order for Specific Disclosure herein would exclude the said General Ledgers.

[86] I will also grant the Defendants an extension of time within which to comply with the Orders, as I think it is only fair in the circumstances. However, such an extension will have to be of a short duration, as the trial is set to commence on the 10th April, 2018. Further, it appears from a reading of the Defendants' Written Submissions filed on the 18th December, 2017, that the documents are already in the Defendants'

possession, as such the Defendants are now obliged to turn them over to the Claimants.

CONCLUSION

[87] In the premises the Court makes the following Orders:

1. The Claimants' Notice of Application to strike out Defendants' Defence filed 13th November, 2017 is refused;

2. The Defendants' Further Notice of Application filed on the 22nd December, 2017, seeking to amend, vary and or set aside is refused;

3. The Defendants are granted an extension of time to the 9th April, 2018 by 4pm, to comply with the Order for Specific Disclosure made on the 25th July, 2017, of the following documents, failing which the Statement of Case of the Defendants to stand struck out:

    a. Copies of Annual Returns for the years 1999-2016 in relation to the 2nd Defendant;

    b. Copies of audited Financial Statements and/or management accounts for the period 1999-2008 and the years 2011 and 2016 in relation to the 2nd Defendant;

    c. Copies of all banking records including all bank loans, overdraft facilities and bank statements and mortgages for the period 1999-2016 in relation to the 2nd Defendant;

    d. Details and copies of all statements in relation to the Director's Urban Renewal Bond Loan account for the period 2004-2016 in relation to the 2nd Defendant;

e. Copies of all Leases and Rental Agreements between the tenants and the 2nd Defendant at Centre Point Plaza for the period 2000-2016;

f. Copies of all Leases and Rental Agreements between the tenants and the 2nd Defendant at Seaview Plaza for the period 2011-2016;

g. All Income Tax Returns and Assessments and General Consumption Tax Returns and Assessments in relation to the 2nd Defendant for the period 2000-2016;

h. The 2nd Defendant's General Ledger for the period 1999-2016;

i. Minutes of all Shareholders' meetings and Directors' meetings for the period 1999-2016 in relation to the 2nd Defendant;

j. All bank statements from the Bank of NT Butterfield & Sons Limited in Bermuda from May 2010 to December 2010;

k. Copies of all contracts of service between the 2nd Defendant and its employees, auditors, lawyers and consultants;

l. Specific details of all insurance claims and settlements in relation to and on behalf of the 2nd Defendant between 2000-2016.

4. Costs of the Defendants' Application to vary and/or set aside or for an extension of time, awarded to the Claimants, such costs to be taxed if not agreed; and

5. Costs of the Claimants' Application to strike out the Defendants' Defence to be costs in the claim.