[2021] JMCC COMM. 30

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO. SU2021CD00268

BETWEEN	**ISLAND LUBES DISTRIBUTORS LIMITED**	**1ST CLAIMANT**
AND	**WEST INDIES PETROLEUM LIMITED**	**2ND CLAIMANT**
AND	**JOHN LEVY**	**1ST DEFENDANT**
AND	**DONNA LEVY**	**2ND DEFENDANT**
AND	**SPRINT FUELS & LUBRICANTS LIMITED**	**3RD DEFENDANT**
AND	**COURTNEY WILKINSON**	**4TH DEFENDANT**
AND	**ECOMARINE ENERGY COMPANY LIMITED 5**	**5TH DEFENDANT**
AND	**ECO PETROLEUM LIMITED**	**6TH DEFENDANT**

IN CHAMBERS

Mrs. Georgia Gibson Henlin Q.C., Ms. Stephanie Williams and Ms. Peta-Shea Dawkins instructed by Henlin Gibson Henlin for the 1st and 2nd Claimants

Mr. Nigel Jones and Ms. Kashina Moore instructed by Nigel Jones & Co, Attorneys-at-Law for the 1st, 2nd and 3rd Defendants

Mrs. Symone Mayhew Q.C. and Ms. Ashley Mair, instructed by Mayhew Law, Attorneys-at-Law for the 4th, 5th and 6th

Heard: 13th, 24th, 27th and 28th September 2021

Injunction – Principles to be applied

Breach of fiduciary duty- Principles to be applied - Whether maintainable against former director

Wrongful interference with contractual relations and procuring breach of contract – Distinction and principles to be applied

Breach of Confidence – Principles to be applied

Consent order – Whether real contract - Circumstances in which party may be permitted to withdraw consent

Laing, J

The Claim

[1] The Claimants are limited liability companies incorporated under the laws of Jamaica. The 1st Claimant ("Island Lubes") is a wholly owned subsidiary of the 2nd Claimant ("WIPL"). Both Claimants are involved in the distribution of lubricants and other products.

[2] The 1st Defendant ("Mr. Levy"), was a director of the 1st Claimant until 16th March 2021 and of the 2nd Claimant until 9th February 2021. He is currently a Director and Shareholder of the 3rd and 5th Defendants.

[3] The 2nd Defendant ("Mrs. Levy"), was the Company Secretary of Island Lubes up until her resignation by letter dated the 29th April 2020.

[4] The 3rd Defendant ("Sprint"), is a limited liability company incorporated under the laws of Jamaica. Mr. Levy and Mrs. Levy are its sole Shareholders and Directors.

[5] The 4th Defendant (Mr. Wilkinson"), was until 9th February 2021 a director of WIPL. He is currently a Director and Shareholder of the 5th Defendant.

[6] The 5th Defendant ("Ecomarine") is a limited liability company incorporated under the laws of Jamaica on the 16th February 2021. Mr. Levy and Mr. Wilkinson are its sole Shareholders and Directors.

[7] The 6th Defendant ("Eco") is a limited liability company incorporated under the laws of Jamaica. Mr. Levy and Mr. Wilkinson are its sole Shareholders and Directors.

The issue of procedure

[8] By Notice of Application filed 11th June 2021 ("the Original Notice of Application"), Island Lubes sought a number of reliefs including a freezing order, a search order, or in the alternative, a preservation order and an interim injunction. The Court granted an interim injunction in terms of the order dated 16th June 2021 ("the Order").

[9] On the 13th July 2021, the Attorneys-at-Law representing the Claimants filed an Amended Notice of Application (the Amended Notice of Application") by which the 2nd Claimant WIPL was added as an applicant. Mrs. Gibson Henlin Q.C. submitted that a Notice of Application can be amended at any time, and there was nothing to prohibit the Court hearing the Amended Notice of Application at the *inter partes* hearing, despite the fact that the Order was granted in respect of the Original Notice of Application only. Learned Queen's Counsel argued that the amendments arose out of the same facts and would involve the same principles of law. Counsel for the Defendants objected to the hearing of the Amended Notice of Application. I upheld the objections and proceeded with the *inter partes* hearing of the Original Notice of Application filed 11th June 2021. The hearing of the Amended Notice of Application was adjourned pending the hearing of an application by the 1st to 3rd Defendants for a stay of the proceedings. This application was subsequently withdrawn.

[10] On 14th August 2021, I delivered a written Judgment bearing citation [2021] JMCC COMM 27 ("the First Judgment") in which I ordered the fortification of the Applicant's undertaking as to damages and granted an injunction in the following terms:

> *1. An injunction is hereby granted until trial of the claim or further order of the Court:*

> *(a) restraining the 1st, 2nd and 4th Defendants by themselves, their servants or agents or otherwise howsoever from using or misusing the confidential information or any information in relation to the contracts, suppliers, customers and employees of the 1st Claimant or any part thereof for any purpose or otherwise exploiting the information.*
>
> *(b) restraining the 1st, 2nd and 4th Defendants, their servants, and/or agents or otherwise from inducing or procuring breaches by unlawfully interfering in contracts between the 1st Claimant, and its employees, sub-contractors or suppliers or business relationships and to prevent them from committing a repetition thereof.*
>
> *(c) restraining the 1st and 2nd Defendants from breaching their fiduciary duties to the 1st Claimants and from conflicts of interest by engaging on their own account or in conjunction with others and whether directly or indirectly to establish, develop, carry on or assist in carrying on, be engaged, concerned, interested or employed in, or provide technical commercial or professional advice to any other business, enterprise or venture engaged in supplying goods and services identical, similar or competitive with the marketing, warehousing, and distribution of lubricants for passenger and commercial vehicles in Jamaica.*

[11] On 13th September 2021, the Amended Notice of Application came on for hearing. I expressed a concern as to whether it was permissible or appropriate for the Court to hear the Amended Notice of Application since the Court had already determined the Original Notice of Application. Counsel for the Defendants expressed a similar concern and indicated that the continued existence of references to Island Lubes including the statement that it was claiming reliefs, tended to obfuscate the precise ambit of the application. The Court was not required to rule on this issue because Counsel, in a display of pragmatism, by mutual consent, agreed that the most appropriate course was for a fresh Notice of Application to be filed by WIPL as the sole applicant. Pursuant to that agreed position, an appropriate application was filed ("the Application".)

[12] The draft Application provided to the Defendants on the 13th September 2021 after a short adjournment sought the following orders:

> 1. *An injunction to restrain the 1st, 2nd, 4th, 5th and 6th, Defendants by themselves, their servants or agents or otherwise howsoever from using or misusing the confidential information in relation to the*

contracts, suppliers, customers and employees of the 2nd Claimant or any part thereof for any purpose or otherwise exploiting the information.

2. *An injunction restraining the 1st, 2nd, 4th, 5th and 6th Defendants, their servants, and/or agents or otherwise and to prevent them from committing a repetition thereof, inducing or procuring breaches by unlawfully interfering in contracts between the 2nd Claimant, and their sub-contractors or suppliers or business relationships.*

3. *An injunction restraining the 1st and 2nd Defendants as parties to the agreement for sale or otherwise as the servants and/or agents of the 1st Claimant from breaching clause 8 of the contract dated the 14th day of October 2019 and in particular for the period of three (3) years from:*

    a. *on their own account or in conjunction with others and whether directly or indirectly to establish, develop, carry on or assist in carrying on, be engaged, concerned, interested or employed in, or provide technical commercial or professional advice to any other business, enterprise or venture engaged in supplying goods and services identical, similar or competitive with marketing, warehousing and distribution of lubricants for passenger and commercial vehicles in Jamaica at the date of signing this Agreement.*

    b. *having any proprietorship interest as shareholder or partner in any business which is identical, similar to or competitive with Island Lubes Distributors Limited in Jamaica;*

    c. *at any time after the Completion Date disclose any confidential information in respect of Island Lubes Distributors Limited to any person or use it for any purpose;*

    d. *solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the employees of Island Lubes Distributors Limited for the purposes of employment by the Vendors in an enterprise or venture materially competing with Island Lubes Distributors Limited;*

4. *An injunction restraining the 1st, 2nd and 4th, Defendants from continuing to breach their fiduciary duties to the 2nd, Claimant and from conflict interest by engaging in the following:*

    a. *on their own account or in conjunction with others and whether directly or indirectly to establish, develop, carry on or assist in carrying on, be engaged, concerned, interested or employed in, or provide technical commercial or professional advice to any other business, enterprise or venture engaged in supplying goods and services identical,*

similar or competitive with the marketing, warehousing and distribution of petroleum and lubricants for passenger, commercial vehicles, and maritime vessels in Jamaica.

b. having any proprietorship interest as shareholder or partner in any business which is identical, similar to or competitive with the 2nd Claimant in Jamaica;

c. Disclosing any confidential information in respect of the 2nd, Claimant to any person or use it for any purpose;

d. solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the employees of the 2nd Claimant for the purposes of employment by the 1st 2nd and 4th, Defendants in an enterprise or venture materially competing with the 2nd Claimant;

5. An injunction restraining the 4th, 5th, and 6th, Defendants from inducing and/or procuring and/or continuing to induce and/or procure the 1st, and 2nd Defendants to breach clause 8 of the contract dated the 14th day of October 2019 and in particular for the period of three (3) years from the 14th October 2019:

a. on their own account or in conjunction with others and whether directly or indirectly to establish, develop, carry on or assist in carrying on, be engaged, concerned, interested or employed in, or provide technical commercial or professional advice to any other business, enterprise or venture engaged in supplying goods and services identical, similar or competitive with the Business in Jamaica at the date of signing this Agreement.

b. having any proprietorship interest as shareholder or partner in any business which is identical, similar to or competitive with the Business of the Company in Jamaica;

c. at any time after the Completion Date disclose any confidential information in respect of the Company to any person or use it for any purpose;

d. solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the employees of the Company, for the purposes of employment by the Vendors in an enterprise or venture materially competing with the Company;

[13] Following a discussion between Counsel, a number of concessions were made by the Claimants and the Defendants. It was agreed that the issues that remained to be determined by the Court would be subject to the following positions:

a. As to Paragraph 1: The Applicant would not be pursuing any relief against Mrs. Levy while Mr Levy would not be resisting the Application. Ecomarine and Eco would be opposing the application.

b. As to Paragraph 2: The Applicant would not be proceeding against the Levys. Mr. Wilkinson would not be contesting the Application in respect of the allegation of breach of 12th October 2019 contract. Ecomarine and Eco would be resisting the Application.

c. As to Paragraph 3: The Defendants would not be contesting the Application subject to an amendment inserting the words "commencing 29th April 2020" between the words "years" and "from:"

d. As to Paragraph 4: It was agreed that sub-paragraph a be amended to replace the words "continuing to breach" with "breaching", and inserting the words "for a period of 3 years from 29th of April 2020" between the words "interest" and "by".

   It was agreed that 4 sub-paragraph c be amended to change "2nd Claimant" to "1st Claimant".

   Subject to these amendments Paragraph 4 b,4 c and 4 d of the Application would not be resisted by Mr. Levy and would not be pursued against Mrs. Levy.

   Paragraph 4 would be resisted in its entirety by Mr. Wilkinson.

e. As to Paragraph 5: This would be resisted by Mr Wilkinson Ecomarine and Eco.

[14] The hearing of the Application was fixed for 14th September 2014 and at the start of the hearing, Mrs Mayhew indicated that Mr Wilkinson would be changing with position previously indicted to the Court and would now also be resisting paragraph 1 and sub-paragraph 4a. This fact is of significance and I will return to it.

[15] Following agreement on these issues WIPL produced a draft order expressed to be "by and with consent", for my signature. I was made aware of the draft order sometime after the hearing of the Application. I did not sign the order because when I was noting the position of each defendant in respect of the Application, I did not contemplate that there would have been a consent order and another order as a consequent upon the delivery of my reasons for decision. I intended to deliver my reasons on the Application shortly thereafter and I was of the view that having one composite order encapsulating the respective positions of all the Defendants (whether arrived at by consent or by a determination of the court), in a single document was prudent. On 23rd September 2021 after I had indicated to the parties my desire to make orders and give my reasons on 24th September 2021, I was advised that Mr Levy wished to withdraw his consent to portions of the draft order and intended to file a Notice of Application seeking the Court's permission to do so. The Notice of Application of Mr Levy as filed sought to set aside his agreement in the following terms:

> *a. That the 1st Defendant is not restrained from establishing developing, carrying on, being interested in, employed in or providing any technical, commercial or professional advice in relation to the marketing, warehousing and distribution of petroleum.*
>
> *b. That Order 5 be varied to remove the reference to petroleum.*

[16] On 27th September 2021 I heard Mr Levy's application to withdraw his consent. The submissions of Counsel for Mr Levy framed the relief sought in the form of an application for the Court to change an order before it is perfected and to determine the issue between the parties on its merits.

[17] Mrs Gibson Henlin Q.C. submitted that the issue was whether there is a legal basis for a party that has consented to an order to be permitted to withdraw his admission

or consent. Mrs Gibson Henlin made written submission as it relates to the position of a party withdrawing admissions, but conceded that the facts of this case were more consistent with that of a party wishing to withdraw from a consent order. As a consequence, she placed her emphasis on the line of cases which address consent orders. One of those cases is **Clifford James v Jacqueline James** [2020] JMCA Civ 46 in which the parties entered into a consent order in respect of division of property and one party asked the court to set aside the consent order on the ground that he did not agree with its terms and had been "browbeaten" into signing the order against his will. At paragraph 44 of her Judgment, the Honourable Mrs. Justice Sinclair Haynes quoted paragraph 38 of Stuart Symes text "A practical Approach to Civil Procedure" 4th edition as follows:

> *"Many orders are made 'by consent.' A true consent order is based on a contract between the parties. As such, the contract is arrived at by bargaining between the parties, perhaps in correspondence, and the consent order is simply evidence of that contract (Wentworth v Bullen (1840) 9 B & C 840).* ***To be a true consent order there must be consideration passing from each side. If this is the case, then, unlike other orders, it will only be set aside on grounds, such as fraud or mistake, which would justify the setting aside of a contract*** *(Purcell v F.C. Trigell Ltd [1971] 1 QB 385).*
>
> ***However, there is a distinction between a real contract and a simple submission to an order****." (emphasis supplied by the learned judge)*

[18] Her Ladyship Justice Sinclair Haynes also referred to the observations of Lord Denning MR in the English Court of Appeal case of **Siebe Gorman and Co Ltd v Pneupac Ltd** [1982] 1 WLR 185 at 189 which I have found to be instructive:

> *It should be clearly understood by the profession that, when an order is expressed to be made "by consent," it is ambiguous. There are two meanings to the words "by consent." That was observed by Lord Greene M.R. in* ***Chandless-Chandless v. Nicholson*** *[1942] 2 K.B. 321, 324. One meaning is this: the words "by consent" may evidence a real contract between the parties. In such a case the court will only interfere with such an order on the same grounds as it would with any other contract. The other meaning is this: the words "by consent" may mean "the parties hereto not objecting." In such a case there is no real contract between the parties. The order can be altered or varied by the court in the same circumstances as any other order that is made by the court without the consent of the parties. In every case it is necessary to discover which meaning is used. Does the*

> *order evidence a real contract between the parties? Or does it only evidence an order made without objection?*

[19] It was submitted by Mr Jones that this was not a case of Mr. Levy withdrawing an admission as to facts because at the hearing on 13th September 2021 insofar as he was prepared to consent to orders being entered, he was signalling that he would not be contesting the application. He was not accepting or admitting any fact or contention that was being relied on. Mrs. Gibson Henlin on the other hand submitted that this was a case of a negotiated positon and was a real contract between the parties evidenced by the fact that the word "settlement" was being used in their discussion at one point.

[20] Putting to the side the issue of whether there was any consideration which could have supported a real contract, I have no hesitation in accepting Mr. Levy's position that the true nature of his consent as expressed to the Court was that he was not objecting to orders being made in certain terms. That is the sense in which I understood it. In arriving at this conclusion I have considered the background to his position as expressed. The discussion between the parties was at the invitation of the Court, made with the expressed intention of having the parties determine whether the time spent hearing this Application could be shortened by agreement on any of the issues. This would have been particularly helpful having regard to the time utilised in the Original Application and the production of the First Judgment. In such circumstances, I find that the consent given by Mr. Levy did not amount to a real contract as Mrs. Gibson Henlin submitted.

[21] In **Siebe-Gorman** (supra) the Court held that where the order does not constitute a true contract (as I have found in this case), the order can be altered or varied by the court in the same circumstances as any other order that is made by the court without the consent of the parties. There is therefore no need for the Court to conduct an enquiry to determine whether there is any fraud, mistake, illegality duress or other vitiating factors necessary to set aside consent where there is a real contract between the parties. This is important because I doubt that I would be prepared to accept the assertion that the basis for the application was that the

consent was made by mistake. Mr Jones had expressed his reluctance to consent to any order until he had seen it in printed form and the opportunity was provided for him to do so. The fact that there were multiple drafts or that the orders sought on this Application are different from those prayed for previously, provides no excuse. Furthermore, although there are differences in each of the paragraphs of the Application, one would expect that Mr. Jones and Ms. Moore being experienced Counsel would have noted the differences and advised Mr Levy accordingly. This appears to be a case where Mr Levy has had second thoughts and wishes to change his position.The crux of the application then is whether the Court should permit Mr Levy to withdraw his consent in such circumstances.

[22] Had Mr Levy made this application on the 14th September 2021 immediately before oral submissions commenced, I would not have had a difficulty in permitting him to withdraw his consent and to resist the application, even if Mrs. Gibson had objected. It is worth highlighting a fact to which I have previously made reference that is, that at the start of the hearing on the 14th September 2021, Mrs. Mayhew indicated to the Court on an oral application that Mr Wilkinson wished to be permitted to withdrew his consent in respect of sub- paragraph 4a and Paragraph 1. He was permitted to do so and there was no objection by Mrs Gibson Henlin. Mrs Gibson Henlin has explained that her position was influenced by discussions between herself and Mrs. Mayhew which at that time was not viewed as a matter which needed to be communicated to the Court in the limited time available for the hearing. I have no doubt that that is what transpired. However, that not having been indicted to me and not noted, what remains on the record is an application by Mr Wilkinson to withdraw his consent to which there was no objection and an application by Mr Levy in respect of which there is an objection.

[23] It therefore appears to me that the problem with Mr Levy's application lies mainly in its timing, which is obviously last minute and frowned upon by this Court. However, I am required to examine the facts in the round. I find that the possible adverse consequences of his delay are mitigated because of his willingness to adopt the submissions made on behalf of Mr Wilkinson. The practical effect of

allowing the withdrawal of his consent is that the court will now need to review the evidence in respect of Mr Levy and Mr Wilkinson and determine independently to determine whether there are any distinguishing features in the evidence of each which will result in a different conclusion as it relates to individual liability. Mrs. Gibson Henlin has admitted that the evidence against Mr Levy and Mr Wilkinson is very similar. Accordingly, I concluded that allowing the application of Mr Levy would only result in the day of one day to allow the Court to review its analysis and to make appropriate amendments to the draft judgment which it had already prepared and which was ready to be delivered. I was unable to discern any prejudice which can accrue to the WIPL by the Court permitted the withdrawal of Mr Levy's consent. I have also considered in my deliberation that fact that there is no finalised order in existence which needs to be changed.

[24] For these reasons the court ordered that the 1st Defendant is permitted to withdraw his consent to paragraph 4 of the 2nd Claimants Amended Notice of Application filed 13th July 2021, with costs of the application awarded to the 2nd Claimant in any event, to be taxed if not agreed.

[25] The First Judgment contains a full analysis of the evidence and a number of conclusions arrived at by the Court. The parties have treated those findings as binding for the most part save for areas in which there is need for a more nuanced approach having regard to the discrete claim of WIPL. For purposes of these reasons, I will make reference to, but will not reproduce in detail those findings or conclusions unless necessary for clarity.

Background in summary

[26] Mr. Levy and Mrs. Levy ("referred to together herein as "the Levys", were shareholders in Island Lubes. Pursuant to an Agreement for Sale dated the 14th October 2019 ('the Agreement") the Levys and other shareholders, sold their shares in Island Lubes to WIPL ("the Shares"). The Shares were transferred to WIPL on or about 18th February 2020. Mr Wilkinson was not a shareholder of Island

Lubes. At the time of the transfer of the Shares, Mr. Levy and Mr. Wilkinson were Directors of WIPL.

[27] The Claimants are now complaining about the conduct of the Defendants, more precise details of that conduct is contained in the First Judgment.

The Law related to interlocutory injunctions

[28] The principles applicable to the grant of an interim injunction have been clearly identified in the House of Lords case of ***American Cyanamid v Ethicon*** *[1975] 1 All ER 504*.These principles have been endorsed explained by the Privy Council in ***National Commercial Bank Jamaica Limited v Olint Corp. Ltd.*** *[2009] UKPC 16.* The issues to be resolved can be conveniently summarised as follows:

(a) Whether there is a serious issue to be tried;

(b) Whether damages are an adequate remedy for either party; and

(c) Where does the balance of convenience lie.

As Lord Diplock established in ***American Cyanamid*** *(supra)*, what the applicant for an injunction needs to do to show *that there is a serious question to be tried, is to* establish to the satisfaction of the Court "*that the claim is not frivolous or vexatious."* I will firstly examine the various components of the Claim in order to determine whether there is a serious issue to be tried in respect of the various heads under which relief is claimed by WIPL.

Is there a serious issue to be tried in respect of the claim for misusing confidential information?

[29] It was agreed between the parties that at common law there are three elements essential to a cause of action for breach of confidence, namely:

(a) that the information was of a confidential nature;

(b) that it was communicated in circumstances importing an obligation of confidence; and

(c) that there was an unauthorised use of the information.

[30] Mrs. Gibson Henlin QC submitted that Mr. Levy and Mr. Wilkinson also have an obligation of loyalty and confidentiality by virtue of section 174 of the Companies (Amendment) Act 2017 and provides as follows:

> *"**174.**—(1) Every director and officer of a company in exercising his powers and discharging his duties shall—*
>
> *(a) act honestly and in good faith with a view to the best interest of the company; and*
>
> *(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including, but not limited to the general knowledge, skill and experience of the director or officer."*

[31] Furthermore, Queen's Counsel submitted that an obligation of confidentiality is imposed by virtue of clause 11 of the Agreement in relation to "*the Business*" which is defined in the Agreement as "*the marketing, warehousing, and distribution of lubricants for passenger and commercial vehicles*". Clause 11 provides as follows:

> *<u>CONFIDENTIAL INFORMATION</u>*
>
> *11.1 The Vendors acknowledge that they have information in respect of the Business and financing of the Business and the dealings, transactions, affairs, plans and proposals of the Business all of which information is or may be secret or confidential and important to the Business. In this clause such information is called 'the Confidential Information' and includes, without limitation, confidential or secret information relating to the trade secrets, know-how, ideas, business methods, finances, prices, business plans, sales targets, sales statistics, customer lists, customer relationships, computer systems and computer software of the Business. The Vendors restrictions contained herein.*
>
> *11.2 The Vendors shall not at any time after Completion:*
>
> *disclose the Confidential Information in respect of the Business to further acknowledge that the disclosure of the Confidential Information (whether directly or indirectly) to actual or potential competitors of*

> *the Business would place the Business at a competitive disadvantage and would do damage to its business. The Vendors accordingly agree to enter into the*
>
> *(a) any person or use it for any purpose except as authorised by the Purchaser,*
>
> *(b) use the Confidential Information for the Vendors' own purpose or for any purposes other than those of the Business, or*
>
> *(c) through failure to exercise all due care and diligence cause or permit any authorised disclosure of the Confidential Information.*
>
> *Provided however, these restrictions shall cease to apply to information that becomes available to the public generally otherwise than through the fault of the Vendors.*

[32] Mrs. Gibson Henlin QC relied heavily on the minutes of a meeting of WIPL held on Friday 28th June 2019, exhibited to the 3rd affidavit of Mr. Gordon Shirley ("the Minutes"). It was submitted that the Minutes clearly demonstrate the purpose for WIPL's acquisition of the shares of Island Lubes as part of its expansion plan in respect of the distribution and sale of fuels and lubricants. It was further submitted that Mr. Levy and Mr. Wilkinson were both present at the meeting and are fully aware of the strategic discussions.

[33] Mrs. Mayhew QC, submitted that the expansion plan referred to at paragraph 4(a) of the Minutes could be understood to be a reference to the BP contract for bunkering business which is a specific line of business. In my view paragraph 4(a) of the Minutes cannot properly be viewed in isolation. When one examines the Minutes in its entirety, it is clear that the strategic discussions extended beyond bunkering fuel and included options in respect of the pricing of Ultra Low sulphur Diesel and petrol if obtained from a particular supplier. At paragraph 4(c) of the Minutes (relating to a particular issue, the details of which it is not necessary for me to disclose), there is also a record of an opinion expressed by Mr. Wilkinson as to the role to be played by gas stations as follows: "*Mr. Wilkinson felt that it would perhaps do so in the short term but did not believe it would in the long-term; he thought gas stations were probably a better bet long-term*". I will return to this point when I address the issue of breach of fiduciary duty.

[34] In my consideration of the injunction application by Island Lubes, I found that Island Lubes has given sufficient particulars of the confidential information on which it intends to rely at the trial in respect of its contracts with its suppliers and customers. I found that there was a serious issue to be tried on the Claim as to whether this information was of a confidential nature deserving of the Court's protection. I have cautioned myself as to the risk of falling into error on this Application by finding that because Island Lubes is a wholly owned subsidiary of WIPL then, *ipso facto*, there would also be a serious issue to be tried in respect of the allegations against WIPL of a breach confidentiality.

[35] It is convenient at this juncture to indicate that the underlying theory of the case advanced by WIPL, or at least a fundamental component of it, is that the wrongs done to Island Lubes have indirectly impacted WIPL as its parent. Mrs. Gibson - Henlin has sought to rely on the case of ***Re Citybranch Group Ltd; Gross and others v Rackind and others*** *[2004] 4 All ER 735*, and commended the finding of the English Court of Appeal as contained in the headnote as being relevant. It reads as follows:

> *"The conduct of the affairs of one company could also be conduct of the affairs of another, since a holding company had been held to have been conducting the affairs of a subsidiary. The expression 'the affairs of the company' was one of the widest import which could include the affairs of a subsidiary of that company. Equally, however, the affairs of a subsidiary could also be the affairs of its holding company, especially where, as in the instant case, the directors of the holding company, which necessarily controlled the affairs of the subsidiary, also represented a majority of the directors of the subsidiary."*

[36] I accept the submissions of Mrs. Mayhew QC, that these findings were in the very limited context of an unfair prejudice claim and should not be extended to general application. I therefore have not found this authority to be of any assistance in the instant case.

[37] I appreciate that because of the intimate connection between Island Lubes and WIPL, there is a danger that certain elements of the claim of WIPL may in fact be claims for a reflective loss. In the recent case from the Supreme Court UK of

Sevilleja v Marex Financial Limited *[2020] UKSC 3*, the principle of reflective loss, has been modified from its classic formulation in the case of ***Prudential Assurance Co. Limited v Newman Industries Ltd (No 2)*** *[1982] Ch 204*. However, at its core, the principle is still live and prohibits claims brought by a shareholder in relation to any loss which he, she or it has suffered in the capacity of shareholder, such as a diminution of share value. The principle has its origins in the rule in ***Foss v Harbottle*** *(1843) 2 Hare 461, 67 ER 189*, that where an actionable wrong that has been done to a company causes loss, it is the company that must bring the claim in respect of such loss.

[38] Mrs. Mayhew QC, has submitted that WIPL cannot seek to vindicate rights which are vested solely in Island Lubes. I accept that this is correct as a broad statement of principle. However, there is possibly an intersection or overlap between the information belonging to Island Lubes and the Information belonging to WIPL. This is because the information belonging to WIPL includes its business activities and plans, some of which the evidence suggests it intended to be effected through the use of a corporate vehicle, namely Island Lubes its subsidiary. Any analysis in this regard related to confidential information cannot ignore the evidence that the reason for the acquisition of Island Lubes was to seek to expand the footprint of WIPL in the petroleum industry, and as a consequence, there would have necessarily been a flow of information between the two companies.

[39] Having considered these issues, I find that there is a serious issue to be tried as to whether the three elements of the tort of breach of confidence are satisfied namely (a) that the information was of a confidential nature, (b) that it was communicated in circumstances importing an obligation of confidence and (c) that there was an unauthorised use of the information.

[40] It is the Court's conclusion that there is a serious issue to be tried as to whether information belonging to WIPL, particularly of the kind disclosed in the Minutes, is confidential and that it was communicated in circumstances importing an obligation

of confidence. Accordingly, there is also a serious issue to be tried as to whether there was an unauthorised use of that information by Mr Wilkinson.

[41] In ***Coco v A. N. Clark***, the Court accepted that the obligation of confidence could arise where there is no contract between the owner of the information and the party alleged to have misused it. In this case, Ecomarine and Eco as separate legal entities may have received the information in question from Mr. Levy and Mr. Wilkinson. As a consequence, there is also a serious issue to be tried on the Claim as to whether Ecomarine and Eco would also potentially be liable for misusing such information.

Is there is a serious issue to be tried in respect of the claim for breach of fiduciary duty by Mr. Levy and Wilkinson

[42] WIPL avers that Mr. Levy and Mr. Wilkinson as directors and officers of WIPL have a duty to act honestly and in good faith with a view to the best interest of WIPL. WIPL asserts that Mr. Wilkinson, by virtue of his directorship knew of its business plans.

[43] It is the Claimants' case that Mr. Levy and Mr. Wilkinson were each removed as directors of WIPL on 9th February 2021 and that after their removal they both embarked on a course of conduct or were party to a course of conduct that caused harm to WIPL. WIPL asserts that this was in breach of Mr. Levy's and Mr. Wilkinson's duty as directors to act honestly and in good faith with a view to the best interest of WIPL. It was further submitted that they failed to avoid circumstances that would constitute a conflict of interest whether directly or indirectly and that they exploited the Claimants' property and /or contracts for their benefit or that of connected persons. The actions complained of are detailed in the First Judgment and I do not find it necessary to reproduce them here.

[44] It is also averred that these acts also directly or indirectly conflict with the interests of WIPL because Mr. Levy and Mr. Wilkinson, as evidenced by the Minutes, knew that WIPL acquired Island Lubes in order to expand its reach in the petroleum

sector and that by interfering with and terminating Island Lubes' contracts, WIPL would suffer a loss on its investment. I did not address this submission in the First Judgment because the Original Application was brought by Island Lubes only. However, in this Application those submissions are relevant.

[45] In analysing this issue, I am exercising caution to ensure that I do not conclude that the conduct of Mr Levy which I have previously found would be capable of amounting to a breach of his fiduciary duty to Island Lubes, necessarily amounts to a breach of his fiduciary duty to WIPL. As it relates specifically to WIPL, it is necessary to examine whether there is conduct on the part of Mr. Levy and Mr. Wilkinson which may amount to a breach of that duty.

[46] The law relating to the duties of directors and former directors has been addressed in detail in the Judgment. I opined that the cases of ***Allfiled UK Limited v Eltis*** *2016 FSR 11* and ***Foster Bryant Surveying Limited v Bryant*** *[2007] EWCA Civ 200*, are accurate in their conclusion that the director's duties can subsist post resignation. I made particular note that in ***Foster Bryant*** the Court expressly stated the position to be applicable to a former director "…*after ceasing the relationship by resignation or otherwise*." I am therefore of the opinion that there is no difference in principle whethr Mr Wilkinson resigned as director or if his directorship was terminated as was the case of Mr Levy.

[47] Mrs. Mayhew's submissions on behalf of Mr. Wilkinson relied heavily on the case of ***Foster Bryant*** in which Rix LJ quoted with approval a number of principles and I reproduce below those on which Counsel has placed the greatest reliance.

> *"1. A director, while acting as such, has a fiduciary relationship with his Company. That is he has an obligation to deal towards it with loyalty, good faith and avoidance of the conflict of duty and self-interest.*
>
> *2. A requirement to avoid a conflict of duty and self-interest means that a director is precluded from obtaining for himself, either secretly or without the informed approval of the Company, any property or business advantage either belonging to the Company or for which it has been negotiating, especially where the director or officer is a participant in the negotiations.*

…

> *7. A director is however precluded from acting in breach of the requirement at 2 above, even after his resignation where the resignation may fairly be said to have been prompted or influenced by a wish to acquire for himself any maturing business opportunities sought by the Company and where it was his position with the Company rather than a fresh initiative that led him to the opportunity which he later acquired."*

[48] Mrs. Mayhew did not highlight the following passage, but it is quite instructive in its demonstration of the multiplicity of factors which a Court will be required to examine in order to determine whether there has been a breach of a fiduciary duty by the diversion of a corporate opportunity:

> *"8. In considering whether an act of a director breaches the preceding principle the factors to take into account will include the factor of position or office held, the nature of the corporate opportunity, its ripeness, its specificness and the director's relation to it, the amount of knowledge possessed, the circumstances in which it was obtained and whether it was special or indeed even private, the factor of time in the continuation of the fiduciary duty where the alleged breach occurs after termination of the relationship with the company and the circumstances under which the breach was terminated, that is whether by retirement or resignation or discharge."*

[49] Mrs. Mayhew submitted that all the acts of Mr. Wilkinson that are complained of by WIPL, for example the incorporation of Ecomarine and Eco were done after Mr. Wilkinson was removed as a director of WIPL. She further submitted that there is no evidence that the incorporation of Ecomarine (and Eco which was incorporated on 6th April 2021) was as a result of any plotting he did before his directorship was terminated. Having regard to the guidance in the quoted portion of the preceding paragraph, it is clear that it is not always possible to find a "smoking gun"/conclusive evidence which demonstrates that the former director was plotting to exploit the company's business opportunity once his relationship with the company was terminated, (whether voluntarily by resignation or at the instance of the company). In most cases, the Court will always have to examine all the factors highlighted in the round, in order to draw reasonable inferences.

[50] Mrs. Mayhew further submitted that the business models of Ecomarine and of Eco are different than that of WIPL. The position of Mr. Wilkinson is that the supply/distribution contract between Island Lubes and its main supplier BP Lubricants (Castrol) expired in June 2020 and has not been renewed by Island Lubes. The issue of reflective loss is therefore potentially relevant in respect of the activities of Ecomarine because it trades in marine lubricants and the operation of WIPL in that market is through Island Lubes as a corporate vehicle. The Court will therefore need to consider whether the reflective loss principle prohibits WIPL from relying on the operations of its subsidiary Island Lubes' operation in the marine lubricant market, because, as Mrs. Gibson Henlin submitted, WIPL has a right to protect its investment in Island Lubes.

[51] Mrs. Mayhew referred to the second affidavit of Mr. Wilkinson in which he describes the business of WIPL as bunkering and that its tag line is "bunkering is what we do". Mr. Wilkinson stated that, furthermore, although WIPL's website indicates that its business lines include marine lubricants, this business is by Island Lubes, of which he was never a director.

[52] Mr. Wilkinson also averred that in respect of several of its business lines WIPL is an importer of petroleum products and operates in the wholesale space. It does not have a contract with the Petroleum Company of Jamaica (Petrojam) but is in fact a competitor. He averred that Eco on the other hand intends to enter into the retail fuel market and does not intend to act as a wholesaler. It has a supply distribution contract with Petrojam for bulk fuel. Mrs. Mayhew argued that WIPL does not have an exclusive right to operate in the petroleum industry and the fact that Eco operates in the same industry (but not the same business), is not sufficient to amount to a breach by Mr. Wilkinson of any fiduciary duty he may have had following the termination of his directorship (the existence of such a duty being challenged).

[53] As it relates to Mrs. Mayhew's submissions on retail operations, it is noted that Mr. Wilkinson accepted that WIPL purchased another company named Gas

Investments the business of which was to supply fuel to independent petrol stations and small to medium size customers. I have previously alluded to the fact that the Minutes mentions a discussion as to the possible role of gas stations in future WIPL operations. The issue of whether the proposed operations of Eco will be exploiting a business opportunity that was being explored by WIPL when Mr. Wilkinson was a director is one which the Court will need to consider.

[54] I have noted Mr Jones' position that Mr Levy is adopting and relying on the submissions of Mrs. Mayhew which were made in respect of Mr Wilkinson.

[55] Mrs. Gibson Henlin submitted that it is not coincidental that Mr. Wilkinson, [and by extension Mr Levy], became involved in the same business as WIPL after their directorship ended and that the association of Mr. Levy and Mr Wilkinson in this venture is evidence of an intention on their part to "torpedo" the business operations of WIPL in breach of their fiduciary duty to WIPL. Mrs. Mayhew submitted to the contrary, that it was only natural having regard to Mr. Wilkinson's experience in the petroleum industry that he embarked on a venture in that field using the knowledge gained over the years. It was submitted that he was entitled to do so and his conduct in that regard does not amount to breach of fiduciary duty. These same arguments would apply to Mr Levy.

[56] These contested positions are difficult to resolve and such resolution can only be achieved by examining all the factors as suggested by Rix LJ in **Foster Bryant** (supra). I am therefore of the view that there is a serious issue to be tried as to whether the incorporation of Ecomarine and Eco and their operation in pursuance of business opportunities by Mr. Wilkinson after he ceased to be a director was as a result of "…*his position with the company rather than a fresh initiative that led him to the opportunity that he later acquired*" (per Rix LJ supra). The Court will need to determine whether this amounts to the wrongful diversion of a corporate opportunity or corporate opportunities of WIPL, which it intended to exploit using its subsidiary Island Lubes, a plan of which both Mr Levy and Mr. Wilkinson were

aware. There is therefore a serious issue to be tried as to whether Mr. Levy and Mr. Wilkinson breached their fiduciary duty to WIPL by their conduct.

[57] It was submitted by Mrs. Mayhew that the case against Mr. Wilkinson in respect of the alleged breach of his fiduciary duty to WIPL is very different from that of Mr. Levy in respect of Mr. Levy's alleged breach of fiduciary duty to Island Lubes. Counsel posited that this is so because there are allegations of improper conduct of Mr. Levy while he was a director of Island Lubes, but none such allegations as it relates to Mr. Wilkinson while he occupied the office of director of WIPL.

[58] Even if this were so, I do not find this distinction to be an area of substantial divergence between the position of Mr. Levy and that of Mr Wilkinson which is relevant in my analysis of the possible breach of their duty of care to WIPL. The breaches alleged against Mr. Levy and Mr. Wilkinson are similar for the most part save for allegations against Mr Wilkinson in respect of one items of correspondence for which Mr. Wilkinson was responsible and that is a letter dated 11th November 2020 to Sygnus Capital ("the Sygnus Letter") challenging the conduct of Mr Gerald Chambers and suggesting that Sygnus had put itself in a position of conflict with WIPL.

[59] Mrs. Mayhew submitted that the complaints in respect of the correspondence were relatively minor matters and none of these would amount to a breach of fiduciary duty although Mr. Wilkinson was dismissed for an alleged data breach.

[60] Mrs. Gibson Henlin has submitted that, the complaints relating to Mr Levy's and Mr. Wilkinson's conduct while they were directors of WIPL such as the disruption to the company's affairs by the correspondence they generated, including but not limited to, the 3rd February 2021 letter to the Ministry of Economic Growth & Job creation (and the Sygnus Letter authored solely by Mr Wilkinson) are serious issues which are capable of supporting a finding of breach of fiduciary duty.

[61] I accept the submissions of Mrs. Gibson Henlin on this point and accordingly I find that the conduct of Mr. Wilkinson while he was a director of WIPL are also factors

which may influence the Court's conclusion as to whether he breached his fiduciary duty to WIPL.

Is there is a serious issue to be tried in respect of the claim for procuring a breach of the Agreement by Mr Wilkinson, Ecomarine and Eco

[62] The Agreement provides at Clause 8 as follows:

RESTRAINT OF TRADE

> *8.1 Except in relation to any existing entities or ventures at the Completion Date, the Vendors hereby undertake to procure that neither they nor any of the Company's directors or officers, for a period of three (3) years after the Completion Date, be:*
>
> *(a) on its own account or in conjunction with others and whether directly or indirectly establish, develop, carry on or assist in carrying on, be engaged, concerned, interested or employed in, or provide technical commercial or professional advice to any other business, enterprise or venture engaged in supplying goods and services identical, similar or competitive with the Business in Jamaica at the date of signing this Agreement;*
>
> *(b) have any proprietorship interest as shareholder or partner in any business which is identical, similar to or competitive with the Business of the Company in Jamaica;*
>
> *(c) at any time after the Completion Date disclose any confidential information in respect of the Company to any person or use it for any purpose;*
>
> *(d) solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the employees of the Company, for the purposes of employment by the Vendors in an enterprise or venture materially competing with the Company;*

[63] In the case of ***OGB v Allan*** *(No.3) [2007] 4 All ER 545 HL* the House of Lords confirmed that liability for inducing breach of contract was established by the famous case of ***Lumley v Gye*** *[1853] 2 E & B 216, 118 ER*. I have addressed the law in detail in the First Judgment and will not repeat those observations.

[64] In his affidavit filed 2nd July 2021, Mr. Wilkinson confirmed that he was a Director of WIPL at the time of the Agreement, but that he was unaware of the terms and

conditions of the Agreement and did not take part in the negotiation or settlement of its terms.

[65] I am prepared to accept at this stage that having regard to the close connection between Mr. Levy and Mr. Wilkinson and their involvement in Ecomarine and Eco, there is ample evidence on which a Court could reasonably conclude that Mr. Wilkinson would have become aware of the restraint imposed on Mr. Levy by the Agreement. In such circumstances there is a serious issue to be tried as to whether Mr. Wilkinson induced a breach by Mr. Levy of the Agreement. By parity of reasoning there is also a serious issue to be tried as to whether Eco and Ecomarine, subsequent to their incorporation, were responsible for inducing the continuing breach by Mr. Levy.

Unlawful interference with the business contracts of WIPL

[66] As it relates to the assertion that Mr. Wilkinson, Ecomarine and Eco have unlawfully interfered in contracts between WIPL and their direct sub-contractors or suppliers or business relationships, (as distinct from those of Island Lubes), I have not seen sufficient evidence which is capable of leading me to the conclusion that there is a serious issue to be tried on this issue.

[67] Based on my findings, I refuse to grant the relief prayed for in paragraph 2 of the Application.

The submissions on behalf of Mr. Wilkinson and Ecomarine and Eco in relation to unlawful interference with WIPL's employees contract

[68] In the First Judgment I explored at length the law related to unlawful interference with contract. I found that the observation of the Court and the learned judge in the ***UBS*** judgment is illustrative of the issues which arise in this claim and I will reproduce paragraph 38 as follows:

> *"38 In my judgment, it would be one thing if these members of staff had independently and separately decided to go at times of their own choosing,*

> *as they are entitled to do. It is here the secret plotting to go together en masse and to join en masse a new start-up competitor which is objectionable, for, as must have been foreseen and indeed intended, what was sought was a knockout blow to paralyse UBS, to torpedo them, as Mr McGregor put it, to make it difficult for UBS properly and professionally to continue to service their existing clients or even to comply with the FSA criteria. UBS was entitled to their loyalty and fidelity which, it seems to me, it may not have received. It is, to my mind, highly likely that this plotting and planning will be held to have taken place, which would be unlawful in itself or at least an unlawful means conspiracy."*

[69] There is no issue of a restrictive covenant in respect of the former employees of WIPL. At paragraph 12 of his affidavit filed on 2nd July 2021 Mr. Wilkinson agreed that there are former employees of WIPL now working for Ecomarince. He averred that they were not enticed or encouraged by Mr. Levy or himself but left WIPL and joined Ecomarine of their own free will. I have also noted the notice by advertisement exhibited to the fifth affidavit of Mr. Shirley advising that Mr. Heron and Mr. Mogg have joined Eco.

[70] In my opinion there is an issue to be resolved by the Court as to the circumstances under which these employees left the employment of WIPL and find that there is a serious issue to be tried as to whether Mr. Wilkinson influenced their decision to leave WIPL in a manner which amounts to unlawful interference with their contracts.

Causing loss by unlawful means

[71] In the First Judgment I have also examined at great length the case of ***OGB*** (supra) in which Lord Hoffman explained the differences between unlawful interference with contracts and causing loss by unlawful means. In this case the conduct of Mr. Wilkinson which may potentially amount to unlawful means appears to issues which I have previously addressed namely:

(1) the independent breach of fiduciary duty by Mr. Wilkinson;

(2) the breach of confidence and misuse of confidential information in competition with WIPL by Mr. Wilkinson; and

(3) the targeting and enticing of WIPL's employees.

Having regard to my earlier findings I am of the view that there is a serious issue to be tried as to whether Mr. Wilkinson is liable for causing loss by unlawful means to WIPL.

Are damages an adequate remedy

[72] The submissions made on this subject on the Original Application also applies in respect of this Application and in following the **American Cyanamid** recommendations of the approach to be followed especially in assessing whether damages are an adequate remedy for either party.

[73] For similar reasons as declared in respect of the Original Application by Island Lubes, I find that it would be difficult to calculate the damages which WIPL might suffer if the injunction is not granted and that it will not be adequately compensated by an award of damages. This is premised primarily on its potential loss of market share in a limited market. There is also an absence of any evidence that the Defendants would be able to pay such damages. Accordingly, I find that damages would not be an adequate remedy for WIPL in this case.

[74] Ecomarine and Eco are both relatively new companies. In such circumstances, any potential losses to the parties which are restrained would be much easier to calculate. Mrs. Mayhew has submitted that since Eco was formed after Mr. Levy and other employees had left WIPL it could not be liable for procuring the breach of those contracts and accordingly the only potential liability would be in respect of being a party to the continuation of those breaches. For this reason, Mrs. Mayhew argued that damages would be an adequate remedy for WIPL. I acknowledge that there is a distinction between the allegations of procuring a breach and continuing a breach but in my opinion when viewed in the round it is not sufficient to influence the Court's findings on this issue. It would still be difficult to calculate the loss of any market Ecomarine might have gained if permitted to compete freely under the

control and direction of Mr. Levy, the Levys and/ or Mr. Wilkinson. It is therefore doubtful whether damages would be an adequate remedy for the Defendants.

[75] I have noted that the Court was previously directed to the fact that the vessels referred to by Island Lubes are in fact owned by WIPL and this would enure to the benefit of WIPL in the Court's consideration of the undertaking as to damages if the Court were prepared to grant the injunction.

The balance of convenience

[76] The Court having concluded that there is doubt as to the adequacy of the respective remedies in damages available to WIPL on the one hand, and the Defendants on the other hand. In addition, the Court has to consider the balance of convenience.

[77] I have adopted a similar approach as I did in relation to the Original Application by Island Lubes as demonstrated in the First Judgment and I have arrived at a similar conclusion on this issue of the balance of convenience. I find that on balance, the claim of WIPL is stronger than that of the Defendants and the course which will result in the least irremediable prejudice is for the Court to grant the injunction substantially in the terms sought by WIPL.

Conclusion and disposition

[78] I acknowledge that this is an early stage in the proceedings and all the pleadings and evidence is not before me. However, based on my analysis of the pleadings and the evidence which I considered, I have concluded that there was a serious issue to be tried, and damages are not an adequate remedy.

[79] It is patently clear that this Application should have been made concurrently with the Original Application. It has resulted in an inefficient use of judicial time and increased the cost to the Defendants and in particular the 4th and 5th Defendants. In these circumstances it is my decision that costs of the application should not be costs in the claim, but are awarded against the applicant WIPL and in favour of the

Defendants, save for the 6th Defendant in respect of which the evidence was discovered recently. The Taxing Officer will in the usual course take into account the varying levels of participation of each Defendant.

[80] For the reasons stated herein, and subject to the 2nd Claimant's undertaking as to damages, I grant the following orders:

1. An injunction restraining the 1st, 4th, 5th and 6th Defendants by themselves, their servants or agents or otherwise howsoever from using or misusing the confidential information in relation to the contracts, suppliers, customers and employees of the 2nd Claimant or any part thereof for any purpose or otherwise exploiting the information.

2. An injunction restraining the 1st and 2nd Defendants as parties to the agreement for sale or otherwise as the servants and/or agents of the 1st Claimant from breaching clause 8 of the contract dated the 14th day of October 2019 and in particular for the period of three (3) years commencing 29th April 2020 from:

    a. on their own account or in conjunction with others and whether directly or indirectly to establish, develop, carry on or assist in carrying on, be engaged, concerned, interested or employed in, or provide technical commercial or professional advice to any other business, enterprise or venture engaged in supplying goods and services identical, similar or competitive with marketing, warehousing and distribution of lubricants for passenger and commercial vehicles in Jamaica at the date of signing this Agreement.

    b. having any proprietorship interest as shareholder or partner in any business which is identical, similar to or competitive with Island Lubes Distributors Limited in Jamaica;

c. at any time after the Completion Date disclose any confidential information in respect of Island Lubes Distributors Limited to any person or use it for any purpose;

d. solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the employees of Island Lubes Distributors Limited for the purposes of employment by the Vendors in an enterprise or venture materially competing with Island Lubes Distributors Limited.

3. An injunction restraining the 1st and 4th Defendants from breaching their fiduciary duties to the 2nd Claimant and from conflict of interest pending trial or further order, by engaging in, inter alia, the following:

a. on their own account or in conjunction with others and whether directly or indirectly to establish, develop, carry on or assist in carrying on, be engaged, concerned, interested or employed in, or provide technical commercial or professional advice to any other business, enterprise or venture engaged in supplying goods and services identical, similar or competitive with the marketing, warehousing and distribution of petroleum and lubricants for passenger, commercial vehicles, and maritime vessels in Jamaica, by the 2nd Claimant;

b. having any proprietorship interest as shareholder or partner in any business which is identical, similar to or competitive with the 2nd Claimant in Jamaica;

c. disclosing any confidential information in respect of the 2nd Claimant to any person or using it for any purpose;

d. soliciting, canvassing or enticing away (or endeavouring to solicit, canvass or entice away) any of the employees of the

2nd Claimant for the purposes of employment by the 1st, 2nd and 4th Defendants in an enterprise or venture materially competing with the 2nd Claimant.

4. An injunction restraining the 4th, 5th and 6th Defendants from inducing and/or procuring and/or continuing to induce and/or procure the 1st and 2nd Defendants to breach clause 8 of the contract dated the 14th day of October 2019 and in particular for the period of three (3) years from the 14th October 2019:

    a. on their own account or in conjunction with others and whether directly or indirectly to establish, develop, carry on or assist in carrying on, be engaged, concerned, interested or employed in, or provide technical commercial or professional advice to any other business, enterprise or venture engaged in supplying goods and services identical, similar or competitive with the Business in Jamaica at the date of signing this Agreement.

    b. having any proprietorship interest as shareholder or partner in any business which is identical, similar to or competitive with the Business of the 2nd Claimant in Jamaica;

    c. at any time after the Completion Date disclose any confidential information in respect of the 2nd Claimant to any person or use it for any purpose;

    d. solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the employees of the 2nd Defendant, for the purposes of employment by the 1st and 2nd Defendants in an enterprise or venture materially competing with the 2nd Claimant.

5. Costs of the application are awarded against the 2nd Claimant and in favour of the Defendants (save for the 6th Defendant) in any event, to be taxed if not agreed.

6. The 2nd Claimant's Attorneys-at-Law are to prepare file and serve a copy of this order.