



[2012] JMSC Civ. No. 63

JUDGMENT

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
SUIT NO. E 407 OF 2001**

**BETWEEN JAMAICA GASOLENE RETAILERS CLAIMANT
ASSOCIATION**
**AND GASOLENE RETAILERS OF JAMAICA DEFENDANT
LIMITED**

Mr. Garth McBean and Mr. Lancelot Cowan instructed by Lancelot Cowan & Associates for the Claimant.

Mr. John Graham and Miss Petagaye Manderson instructed by John G. Graham & Company for the Defendant.

Heard : 15, 16, 17 November 2010, 8th December 2011, 31st May 2012, 2nd and 10th of July 2012.

Trade union – Whether trade union can sue in registered name when claiming beneficial interest in property or whether trustees must bring claim – Gift - Resulting trust

Court’s Power to Revisit or reopen Judgment When Draft Judgment Delivered but Formal Judgment Not Yet Drawn Up, Perfected, Signed or entered in the Judgment Book and Sealed- Further Submissions made on Memorandum and Articles of Association handed up to Court after all of the evidence was presented and after closing submissions – Court’s attention not drawn previously to particular Article

Mangatal J:

[1] The Claimant the Jamaica Gasolene Retailers Association “JGRA” is registered as a trade union under the Trade Union Act. JGRA is also an organization registered under the Industrial and Provident Societies Act.

[2] The Defendant Gasolene Retailers of Jamaica Limited “GRJ Ltd.” is a limited liability company which was duly incorporated under the Companies Act.

THE NATURE, OBJECTS, AND COMPOSITION OF THE JGRA

[3] A trade union is an unincorporated association of persons that owes its legal validity to the Trade Union Acts – **Taff Vale Railway Co. v. Amalgamated Society of Railway Servants** [1901] A.C.426, per Farwell J. pages 427-428. The Trade Union Act of Jamaica defines a “trade union” as meaning “any combination whether temporary or permanent, the principal purposes of which are, under its constitution, the regulation of the relations between workers and employers, or between workers and workers, or between employers and employers, whether such combination would or would not, if this Act had not been enacted, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade”.

[4] At pages 428-429, of the **Taff Vale** decision, Farwell J. quoted from Sir George Jessel in **Rigby v. Connol** (1880) 14 Ch. D. 489, who described the object and limitations of the Trade Union Act of England, which was in terms similar to our own. Farwell J. in this leading decision also made his own discerning comments :

*The object and the limitations of the Acts were stated by Sir George Jessel in **Rigby v. Connol** as follows: “That Act, no doubt, was passed primarily with a view to preventing the treasurers and secretaries and officers of these societies from robbing them; that was the chief object. It was discovered that some of these men, abusing the confidence reposed in them, took advantage of the law which made these societies illegal, by appropriating their funds and property to their own use. That, no doubt, was one of the principal objects and therefore the Act was passed to get at these men. Another object was this: there was a great difficulty in suing and getting their property from third persons, and one object of the Act was to enable these*

societies to sue in respect of their property, and also to enable them to hold property, such as a house or office, but it was not intended that the contracts entered into by the members of the society should be made legal contracts inter se, so that Courts of Justice should interfere to enforce them. If that had been intended, the result would have been this, that an agreement between a number of workmen once entered into, compelling them to work in a particular manner, would have been enforceable according to law, and to a certain extent would have reduced some portion of the workmen to a condition of something like serfdom and slavery. Of course the Legislature, by interfering, had no idea of doing anything of that sort.” But these limitations merely restrict the actual enforcement of trade union contracts by action or suit, and do not affect the question of the status of the association to which such members belong. Now, although a corporation and an individual or individuals may be the only entity known to the common law who can sue or be sued, it is competent to the Legislature to give to an association of individuals which is neither a corporation nor a partnership nor an individual a capacity for owning property and acting by agents, and such capacity in the absence of express enactment to the contrary involves the necessary correlative of liability to the extent of such property for the acts and defaults of such agents. It is beside the mark to say of such an association that it is unknown to the common law. The Legislature has legalized it, and it must be dealt with by the Courts according to the intention of the Legislature.

[5] The Constitution of the JGRA was one of the documents comprised in an agreed bundle of documents. Amongst the objects of the JGRA stated in its Constitution are the following:

4....

- (i) *To regulate the relations in the Gasolene Retailers’ business between employees and employers.*

- (ii) *To promote and protect the legitimate trade interests of its members by such lawful means as may from time to time seem expedient,*

[6] Provision 5 of the Constitution deals with the question of membership and it will be seen that there are several types of membership, including ordinary, associate, social and honorary membership. However, general membership and ordinary membership are delineated as follows:

5. (i) *Any person, firm or company who shall desire to become a member of the Association shall make an application in writing in such form as the Committee shall from time to time prescribe and shall be investigated by two members of the Association and upon acceptance by the Committee shall be admitted a member of the Association. Every such person, firm or company shall thereupon become subject to the rules of the Association and shall be deemed to have agreed to be bound by and to observe the same.*

(ii) *The membership shall be categorised and shall be comprised as follows:*

(a) *Ordinary membership*

Persons, firms or companies owning and/or operating petrol stations, or their nominated representatives, who shall be entitled to all the privileges of membership.

[7] The management of the JGRA is dealt with in Provision 10. 10(i) and (ii) read as follows:

10. (i) *The management of the Association shall be vested in a Committee of Management which shall have full power to act in the name of the Association.*

(ii) *The Committee shall consist of a President, First, Second and Third Vice Presidents, a Treasurer (hereinafter referred to as "Officers") the immediate Past*

President, and five ordinary members who shall continue to act until their successors are appointed. Retiring members of the Committee shall be eligible for re-election.

[8] Provision 12 deals with property, 13 with Trustees, and 18 with dissolution. They provide as follows:

PROPERTY

12. All moneys belonging to the Association shall be received by the Treasurer who shall thereupon pay all moneys as instructed by the Committee. So much of the funds of the Association as may not be wanted to meet the usual accruing liabilities may at the discretion of the Committee be placed on deposit at a Bank, used for the purchase of property of any nature including real estate, motor vehicles, machinery and equipment or invested in any security authorised by law for the investment of trust funds in the name of the Trustees of the Association.

TRUSTEES

13. (i) There shall be three Trustees of the Association.

(ii) Any Trustee may at any time be removed and a new Trustee appointed by a general meeting of the Association.

....

DISSOLUTION

18 ...

(iii) Upon the dissolution of the Association the property of the Association not consisting of money shall be sold and the proceeds together with so much thereof as shall consist of money shall be applied in satisfaction of the debts and liabilities of the Association and subject thereto shall not be paid to or distributed among the members of the Association but shall be given or transferred to some charitable institution or institutions which shall prohibit the distribution of its or their income among

its or their members such institution or institutions to be determined by the members of the Association at or before the time of dissolution or in default thereof by such Judge of the Supreme Court as may have or acquire jurisdiction in the matter and if and so far as effect cannot be given to the aforesaid provision then to some charitable object.

THE CLAIM

[9] In its Amended Statement of Claim, JGRA avers that in 1975 the Government of Jamaica granted a 5 cent per gallon increase in the price of gasoline. From this 5 cent increase, 1 cent was credited to the accounts of the members of the JGRA to create a fund for the repayment of a loan taken out by the JGRA on behalf of its members.

[10] JGRA states that the loan was paid off and a surplus of funds accrued to it. It is claimed that thereafter, in 1976 and 1977, the Managing Committee of the JGRA proposed, and the JGRA's membership agreed, to use the surplus funds to acquire a property to meet the expanding needs of the JGRA.

[11] The JGRA through its managing committee, received advice that a company was required to be formed as the JGRA lacked the legal capacity to purchase and/or hold real property in its own legal right.

[12] The membership of the JGRA agreed that the surplus funds would be and inure solely to the credit of the JGRA and not to each member in their individual capacity.

[13] The proposal to use the surplus moneys to purchase a property was unanimously passed by the JGRA membership at its annual convention in January of 1977.

[14] The JGRA started the process of purchasing the property in 1979 and in that regard, a decision was taken to form a holding company, the GRJ Ltd. GRJ Ltd. was duly incorporated on the 29th of June 1979.

[15] At a meeting of the JGRA's Managing Committee on the 8th of August 1979, the directorship of the GRJ Ltd. was selected, comprised of and drawn entirely from the then Managing Committee of the JGRA, which was comprised of namely, :

W.E.Clarke	D.Hall	A. Abrahams
R.Chin	A. Chuck	A.McKenzie
N.Bowen	A. Hobbins	D.Whittingham

[16] On the 24th of October 1979 , the GRJ Ltd. became the registered owners of property known as 38 Kings Plaza, Kingston 10, in the Parish of Saint Andrew, being all that parcel of land comprised in the Certificate of Title registered at Volume 1120 Folio 200 of the Register Book of Titles. JGRA claim that it was pursuant to the mandate of the JGRA through its Managing Committee at the time, and with the express intention of making a real estate acquisition on behalf of the JGRA, that GRJ Ltd. became registered as owner.

[17] The stated purchase price was \$230,000.00 and of that amount, \$216,000.00 was provided by the JGRA from the surplus fund.

[18] It is pleaded that the membership of the JGRA were never officially informed of the acquisition of the property at any annual general meeting or any other forum of record.

[19] The JGRA claim that, at all material times, from and since 1979, it had through its members, sought to have the GRJ Ltd., through its members, give an account of and transfer the assets of the JGRA, being the property at issue.

[20] The GRJ Ltd., through its members, has wilfully neglected, avoided and/or refused to give account of, refund or transfer to the assets of the JGRA, the property at Kings Plaza.

[21] JGRA further pleads that the GRJ Ltd. held and hold the funds and the property on trust for and on behalf of the JGRA and its members.

[22] At paragraph 14 of the Amended Statement of Claim, it is pleaded:

14. That as a result of the acts and/or omissions of the Defendant, the Plaintiff continues to be kept out of its moneys and its property and has suffered loss and damage.

AND THE CLAIMANT CLAIMS:

- 1. An injunction restraining the Defendant directly and/ or its servants and/or agents or howsoever from holding a Special Meeting of the Contributors to Gasolene Retailers of Jamaica on August 22, 2001;*
- 2. A declaration that the property known as Shop 38, Kings Plaza, Kingston 10 in the Parish of Saint Andrew, registered at Volume 1120 Folio 200 of the Register Book of Titles in the name of the Defendant Gasolene Retailers of Jamaica Limited is held in trust by same for the purposes of the Plaintiff and/or are held and possessed on behalf of the Plaintiff; and*
- 3. An order that the Defendant furnish a proper Statement of its Accounts to the Plaintiff and the vouching of such accounts.*
- 4. That the Defendant...be ordered to transfer the property known as Shop 38, Kings Plaza, registered at Volume 1120 Folio 200 of the Register Book of Titles to the Plaintiff Jamaica Gasolene Retailers Association; and*
- 5. That should the Defendant fail to transfer the said property to the Plaintiff, that the Registrar of the Supreme Court be empowered to execute all documents and do all things necessary to register the transfer of the property from the Defendant....to the Plaintiff.....; and*

6. *Damages for breach of contract, breach of fiduciary duty, breach of duty of confidentiality arising from the Defendants' actions in the conduct of its business with the Plaintiff by reason of which the Plaintiff has suffered loss and damage; and*
7. *Costs; and*
8. *Such further and other relief including all further or appropriate declarations, inquiries and directions this Honourable Court deems just.*

[23] It should be noted that, although the Claim speaks about Shop No. "38", that would appear to be an error, and in fact, it is shop No."5", located at 38 Constant Spring Road.

THE DEFENCE

[24] GRJ Ltd. admit the cess referred to in the JGRA'S Statement of Claim, as well as the fact that a surplus did accrue. However, it alleges that the surplus accrued to and for the benefit of individual members and not the Claimant.

[25] GRJ Ltd. deny that all of the JGRA's members agreed to use the surplus to purchase a property to meet the expanding needs of the Claimant ; they say that only some members so agreed.

[26] GRJ Ltd. say that the members of the JGRA were informed of the acquisition of the property at a general meeting of the JGRA. However, it in any event denies that it had any obligation to officially inform the Claimant of the acquisition.

[27] As regards the matter of the composition of the Directorship of the GRJ Ltd., the GRJ Ltd. say that A. Hobbins and D. Whittingham were not among the first directors of the GRJ Ltd.

[28] GRJ Ltd. aver that the purchase of the property was not made pursuant to the mandate of the JGRA and nor was it the intention that the premises would have been acquired on behalf of the JGRA.

[29] At paragraphs 8 and 9 of the Defence it is pleaded:

8.the defendant will say if, which is not admitted any monies were given to the defendant by the plaintiff such monies represented a refund to individual members and was paid over to the defendant for the benefit of those members.

9.....the defendant will say that no request was made of it for an account or for a transfer as alleged. Further, the defendant will say that it had no legal obligation to give an account or effect a transfer to the plaintiff and if same had been requested such a request would not have been complied with.

[30] GRJ Ltd. denies that the JGRA is entitled to the reliefs claimed, or any relief at all.

THE PROCEEDINGS

[31] Two witnesses gave evidence on behalf of the JGRA, Mr. Hopeton Nembhard and Mr. Leonard Green. Mr. Aston D. Hobbins gave evidence on behalf of GRJ Ltd.

WHETHER ACTION FATALLY FLAWED AND A NULLITY- WHETHER JGRA CAN SUE OR WHETHER IT IS THE MANAGEMENT COMMITTEE /TRUSTEES WHO ARE THE PROPER PARTIES

[32] Very late in the day, indeed at a stage after all of the evidence was in and when closing addresses/submissions were to be made to the Court, Mr. Graham, on behalf of the GRJ Ltd. took a fundamental legal point on behalf of his client.

[33] It was Mr. Graham's submission that the "Jamaica Gasolene Retailers Association" cannot sue in its own name in the circumstances of this case as the JGRA is claiming a right to property.

[34] It was pointed out that JGRA pleads that it is registered under the Industrial and Provident Society Act and is also registered under the Trade Union Act. He says that no evidence was put forward to support this registration under the Industrial and Provident Societies Act. Reference was made by Mr. Graham to section 5 of the Trade Union Act which reads as follows:

The following enactment, that is to say-

(a)...

(b) The Industrial and Provident Societies Act, and any enactment amending or replacing the same; and

(c) The Companies Act and any enactment amending or replacing the same;

shall not apply to any trade union, and the registration of any trade union under any of the said enactments shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Act and any enactment amending the same before the passing of this Act, shall cease to be of any effect.

[35] Counsel submits that the registration of the JGRA under the Industrial and Provident Societies Act is void. Consequently, in filing this action the JGRA cannot be purporting to act under the Industrial and Provident Societies Act. I think that this argument is unassailable and was not contested by the JGRA's Counsel Mr. McBean. Mr. Graham further submitted that the JGRA is an unincorporated association which has no juridical personality which would allow it to sue in its own name.

[36] This law suit was filed in 2001. This was prior to the advent of the Civil Procedure Rules 2002 "the CPR". In 2001, the Judicature (Civil Procedure Code) Law "the CPC" was the Act which governed civil procedure in the Supreme Court. Mr. Graham submits that section 97 of the CPC, which was similar to the then English Order 16, Rule 19 is applicable. It reads as follows:

97. Where there are numerous persons having the same interest in one cause or matter, one or more such persons may

sue or be sued or may be authorised by the Court or a Judge to defend in such cause or matter, on behalf of or for the benefit of all persons so interested.

[37] It was Counsel's submission that the requirements of section 97 of the CPC were not met in that the Management Committee of the JGRA ought to have sought the permission of the court to bring an action on behalf of the members of the JGRA.

[38] It was further submitted that, as a creature of Statute, the JGRA must act in accordance with the powers vested in it by the Trade Union Act. Section 9 of the Trade Union Act, so far as relevant, reads as follows:

The trustees empowered to bring and defend actions and prosecutions

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint in any court of law or equity, touching or concerning the property, right or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office,....

[39] Mr. Graham also referred to Rules 10(i) and (ii) of the Constitution of the JGRA which deal with the management of the JGRA and are set out above at paragraph [7].

[40] Mr. Graham submitted that when section 9 of the Trade Union Act is read together with Rule 10(1) of the JGRA's Constitution, it is clear that the persons comprising the Committee of Management are the proper persons in whose name a suit can be filed in order to pursue a claim on behalf of the JGRA. It was further contended that before the persons who constitute the

JGRA's Management Committee can initiate any legal action, they must first satisfy a court that all the persons in the JGRA have the same interest in the matter.

[41] Reference was made to the decision in **London Association for Protection of Trade & Another v. Greenlands Ltd.** (1916) 2 A.C. 15, where Lord Parker of Waddington referred to the 8th Edition of Lindley on **Partnership** page 14, where it was stated:

If liabilities are to be fastened on any members of such an association 'it must be by reason of the acts of those members themselves, or by reason of the acts of their agents; and the agency must be made out by the person who relies on it, for none is implied by the mere fact of association'...

[42] Lord Parker concluded:

My Lords, it is obvious that these difficulties were questions of substance, and not mere technical matters which could be waived if the parties so elected. Indeed, during the hearing before your Lordships the plaintiffs were so oppressed by them that they consented to have the judgment, so far as the association was concerned, entirely set aside, and to proceed upon the footing that the association had never been made a Defendant....

[43] Mr. Graham referred to our Court of Appeal's decision in S.C.C.A 21/2000, **The Junior Doctors Association v. The Central Executive of the Junior Doctors Association**, delivered July 12, 2000, where the above authorities were discussed.

[44] Reference was also made to the **Law Quarterly Review**, Volume LI in January 1935 where, in commenting on the status of a trade union, it was stated:-

So far as status is concerned, it will generally be conceded that it is unfortunate, to say the least, that there should be a species

of institution which is neither fish, flesh nor good red herring. Yet this is the character of a trade union in the eyes of the law. It is neither a corporation nor a voluntary association in the ordinary sense of the term; at most it is no more than 'a sort of corporation'. Trade unions are not comprehensively regulated by statute, nor do they wholly come under the law relating to unincorporated groups. Hence, they fall outside, or perhaps one should say cut across, both of the main categories marked out in English law for organized group activity.

[45] Finally on this aspect of the case, Mr. Graham submitted that the JGRA is a registered trade union and as such cannot sue in respect of property in its own name. Further, that any action brought on behalf of the JGRA should be in the names of the Trustees of the Association on behalf of the members of the Association with the same interest. However, if Trustees were to be added, the submission continued, they would have to consent, and would have to swear Certificates of Truth in relation to Statements of Case pursuant to the Rules of the CPR. Accordingly, Counsel submitted that the case brought by the Claimant JGRA is a nullity (as was held to be the case in the **Junior Doctors Association** decision), and as such the claim should be dismissed.

JGRA'S RESPONSE ON THE ISSUE OF CAPACITY TO SUE AND NULLITY

[46] In relation to this issue, Mr. McBean, on behalf of the JGRA, submitted that the case law establishes that a trade union may sue and be sued in its own name since it is a quasi-corporation. Mr. McBean referred to and relied upon the decision of the House of Lords in **Taffe Vale Rail Co. v. Amalgamated Society of Railway Servants**. In that case, Farwell J. at first instance had refused an application made by a trade union to strike out a claim brought against them as defendants on the basis that they were neither a corporation nor an individual, and thus had argued that they could not be sued in a quasi-corporate or any other capacity. The sections of the English Trade Union Act under consideration in this case were identical to those in our

own. The Court of Appeal had set aside the orders made by Farwell J. The House of Lords allowed an appeal, having found the orders of Farwell J. to be correct and ordering them to be restored. In the course of his judgement in the House of Lords, Lindley M.R. at pages 444 and 445 stated:

The Act does not in express terms say what use is to be made of the name under which the trade union is registered and by which it is known. But a trade union which is registered under the Act must have a name: see ss.14, 16 and Sched. I.; it may acquire property, but, not being incorporated, recourse is had to the well known machinery of trustees for acquiring and holding such property, and for suing and being sued in respect of it(ss. 7,8,9). The property so held is, however, the property of the union; the union is the beneficial owner. Section 12 provides summary remedies for misapplication of the trade union's property, but there is nothing here to oust the jurisdiction of the superior Courts, and, there being nothing in the Act to prevent it, I cannot conceive why an action in the name of the trade union, against its trustees to restrain a breach of trust or to make them account for a breach of trust already committed should be held unmaintainable or wrong in point of form....

The Act appears to me to indicate with sufficient clearness that the registered name is one which may be used to denote the union as an unincorporated society in legal proceedings as well as for business and other purposes. The use of the name in legal proceedings imposes no duties and alters no rights: it is only a more convenient mode of proceeding than that which would have to be adopted if the name could not be used. I do not say that the use of the name is compulsory, but it is at least permissive.

Your Lordships have not now to consider how a judgment or order against a trade union in its registered name can be enforced. I see no difficulty about this; but, to avoid misconception, I will add that if a judgment or order in that form is for the payment of money it can, in my opinion, only be

enforced against the property of the trade union, and that to reach such property it may be found necessary to sue the trustees.

(My emphasis)

[47] JGRA's Attorneys also relied upon the cases of **Keys v. Butler** [1871] 1 Q.B. 300, **Bonsor v. Musicians' Union** [1955] 3 All E.R. 518, and the Guyanese case of **Caesar v. British Guyana and Mine Workers Union** (1959) 1 W.I.R. 232. In **Keys v. Butler** [1971] 1 Q.B. 300, Lord Denning M.R., reviewed section 9 of the 1871 Trade Union Act, which is the equivalent of section 9 of the Jamaican Act, and which empowers trustees and officers of a Trade Union to bring or defend an action. One of the questions involved in this case was whether the trustees were empowered to act on behalf of the Union and to instruct solicitors. Lord Denning stated:

*I may say that in 1871 the legal position of a trade union was not settled. It was not till **Taff Vale Railway Co. v. Amalgamated Society of Railway Servants** [1901] A.C. 426 that it was settled that it could be sued in its registered name. Even then, it was thought to be only a convenient way of suing all the members. But Lord Lindley went on significantly to point out, at pp. 443,445, that if you wanted to get at the property of the trade union, you could bring in the trustees for the purpose so as to get any damages from their funds. But a long time afterwards it was settled in **Bonsor v. Musicians' Union** [1956] A.C. 104 that a trade union is a legal entity. I will not go into the barren question whether it is in law strictly a corporation. That does not matter. It is certainly a legal entity which can sue and be sued and make contracts the same as any other legal entity. I think that, in view of this development of the law, we should read section 9 of the Act of 1871 in a wide sense so as to apply it to the circumstances which were not envisaged in 1871. We should expand it so as to apply it to a case where a trade union itself is sued. If the Executive Council of a union is paralysed (as happens in this case), I think the section enables the trustees*

themselves (who, after all, have the property of the union and all its funds are vested in them) to defend or cause to be defended any action which is brought against the union touching or concerning its property. Such seems to me to be plain on the first sentence of section 9; but I cannot leave the case without referring to the sentence at the end of that section, which says: “and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names,” that is the trustees-“without other description than the title of their office”. It might be suggested that the second part ought to be read with the first; so that the first part only applies to cases where the trustees sue or are sued in their proper own names. I can see that that argument could be put forward, at all events in 1871, before the law had developed in the way that I have described in the Taff Vale.....and Bonsor ...cases. But now that a trade union can sue and be sued in its own name, I think that the section must be construed in the light of the changed situation and moulded accordingly. We can fill in the gaps. So doing I think the trustees can defend an action against the union and cause it to be defended, and can instruct solicitors for the purpose. Otherwise there would be an impossible situation. Here then would be a trade union made party to an action, and bound by an order made by the court in this section; and yet it could not be represented at the hearing.

The only satisfactory solution of the impasse which has arisen (owing to the dispute between the two divisions) is for the trustees themselves to instruct solicitors to act on behalf of the union.

[48] Mr. McBean therefore submits that from these cases it is clear, that notwithstanding section 9 of the Trade Union Act which empowers trustees of a registered trade union to bring and defend actions and prosecutions, the Trade Union itself may bring or defend actions in its registered name.

Accordingly, the JGRA, it was submitted, was entitled to bring this action in its registered name. It was common ground that JGRA is registered under the Trade Union Act, and indeed, the Constitution of the Claimant describes the Jamaica Gasolene Retailers Association as “A Trade Union Registered Under Chapter 296 Laws of Jamaica 1953 Edition. Registered July 21, 1953”.

[49] Mr. McBean at the end of his submissions on this legal issue, also referred to Paragraph 14 of the Statement of Claim, and sub-paragraphs 4 and 5 where the relief sought is as follows:

4. That the Defendant...be ordered to transfer the property known as Shop No. 38, Kings Plaza, Kingston 10 in the Parish of Saint Andrew, registered at Volume 1120 Folio 200 of the Register Book of Titles to the Plaintiff Jamaica Gasolene Retailers Association; and

5. That should the Defendant fail to transfer the said property to the Plaintiff, that the Registrar of the Supreme Court be empowered to execute all things necessary to register the transfer of the property known as Shop 38, Kings Plaza, Kingston 10 in the Parish of Saint Andrew, registered at Volume 1120 Folio 200 of the Register Book of Titles from the Defendant Gasolene Retailers of Jamaica Limited to the Plaintiff Jamaica Gasolene Retailers Association; and

[50] Mr. McBean’s application would be to in sub- paragraph 4 remove the word “and” and substitute therefor “or alternatively into the names of the trustees of the Claimant at the date of judgment”. A corresponding amendment to sub-paragraph 5 was also sought.

[51] Mr. Graham stated that he objected to such an application and that it is too late in the day for it to be made.

**RESOLUTION OF THE ISSUE AS TO CAPACITY TO SUE AND WHETHER
CLAIM A NULLITY**

[52] In addition to section 9, sections 7 and 8 of the Trade Union Act are also relevant. Those sections read:

Registered union may deal in land.

7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the name of the trustees for the time being of such union any land and to sell, exchange, mortgage or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for the sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

Real and personal estate shall be vested in the trustees.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided for by this Act, for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch or of the trustees of the trade union if the rules of the trade union so provide and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of this Island which shall be transferred into the names of such new trustees; and in all actions, or suits, or indictments or

summary proceeding before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustee of such trade union, without any further description.

DECISION ON ISSUE AS TO WHO CAN SUE AND WHETHER PROCEEDINGS A NULLITY

[53] In my judgment, these proceedings are not a nullity and the circumstances are readily distinguishable from those which obtained in the **Junior Doctors Association** case. This is because, although a trade union may not be a corporation, that does not matter. Indeed, as Lord Denning remarked in **Keys v. Butler**, such a question is barren. The trade union that is registered under the Trade Union Act has a name and that name is a name that can be used to denote the union as an unincorporated society in legal proceedings. As stated in the **Taffe Vale** case by Lindley M.R., not being an incorporated body, a trade union has to hold or acquire property via the route of trustees. However, the beneficial owner of any such property is the trade union. (My emphasis)

[54] As Lord Denning stated in **Keys v. Butler**, section 9 of the Trade Union Act ought to be read in a wide sense now that it is recognised by the developments in the case law that a registered trade union is a legal entity that can sue and be sued in its registered name. Thus, if the executive management of a trade union is “paralyzed” or in disarray, the trustees can defend an action concerning the property of the union. On my reading of section 9 of the Act, the Trustees are empowered to bring an action in respect of property. If the trustees do so sue, they shall sue in their proper names without any other description than as trustees of the Trade Union. That is what the “shall” in the second part of the provision refers to. They may be sued also in that way-section 9. (My emphasis).

[55] Section 35 of the Trade Union Act reads:

35. An action against a trade union, whether of workers or masters, or against any member or officials thereof on behalf of themselves and all

other members of the trade union in respect of any tortuous act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

[56] This section makes trade unions immune from liability in tort. I agree with Mr. McBean that this section is a direct consequence of the decision in the **Taff Vale** case (see also **The Law Quarterly Review, Vol. LI**, page 205). I agree that further, this section of the Act confirms that aspect of the **Taff Vale** decision which recognises that an action can be brought in the name of or against a trade union in its name since the section expressly exempts a trade union from actions in respect of torts. Immunity from liability in tort was one of the incidents attaching to all voluntary unincorporated associations. If it is that a trade union could not sue or be sued in its own name then there would be no need for this section.

[57] Further, or alternatively, in a case such as the present, where the claim is firstly concerned with claiming a declaration as to beneficial ownership, in my judgment it is quite permissible for the claim to have been filed in the registered name of the trade union, i.e. the Jamaica Gasolene Retailers Association. The union is the only legal entity that could be claiming a beneficial interest under the law of trusts, and not the trustees themselves. It might be different if this case was concerned with a claim based upon property in respect of which the Trustees were already vested with the legal ownership on the part of the union. However, here the trustees cannot make a claim that they are entitled to beneficial ownership. This is because they are only a component of the methodology that the law decrees must be employed in relation to legal ownership of property because the union lacks corporate status. Thus, if the Suit had been filed in the name of the trustees in this case, the relief claimed may well have been considered cumbersome or circuitous, even if permissible. What would the trustees claim? A declaration that the GRJ Ltd. holds the property in trust, not for them, but for the JGRA? As Lord Lindley M.R stated in the circumstances in **Taff Vale**, whilst the use of the trade union's name may not be compulsory, it certainly must be permissible in

the circumstances. Further, the use of the name in legal proceedings alters no rights; it is only a convenient mode of bringing the proceedings.

[58] In my judgment, the claim was correctly brought in the name of the JGRA. There is no proper basis for dismissing the Claim and that application is without merit. However, because the legal ownership cannot be vested in the JGRA, paragraphs 4 and 5 which seek a transfer of legal ownership would have to be amended to have the property placed in the names of the only persons empowered under law to hold property on behalf of the union, and that is the trustees. (My emphasis) One of the difficulties in this case is that whilst there has been mention of Managing Committees, there is no evidence as to when Trustees have been appointed on behalf of the JGRA or as to their identity. The failure on the part of the JGRA to note the importance and role of the trustees would seem to be part of the problem that has led to this law suit. However, I think that this situation could be cured by granting the amendment sought, and liberty to apply, in the event that the JGRA succeeds in its claim to beneficial ownership. In my view, the trustees would not have to be parties in order for the Court to order property to be transferred into their names. I disagree with Mr. Graham on that submission. In so ordering, the Court would simply be perfecting the legal form that would follow from a substantive resolution and determination as to beneficial entitlement made in the JGRA's favour. That situation would be distinguishable from one where there is a money judgment against the JGRA, in which case the issue of joining or suing the trustees to get at the JGRA's property might arise-(see per Lindley M.R. in **Taff Vale**). I will therefore move on to consider the substantial claim as to beneficial interest at this time.

THE EVIDENCE

[59] The evidence of Mr. Hopeton Nembhard is that he is a former President of the JGRA. He stated that he joined the JGRA in 1978 when he purchased a gas station and he became an active member in 1979. He concedes that his evidence set out in his Witness Statement, ordered to stand as his examination-in-chief, as to what occurred in 1975, is derived from his reading of the Minutes of Meetings of the JGRA.

[60] It is common ground however that the JGRA took out a loan to assist its members with the payment of retroactive sums which were due to each retailer's service attendants. The Government in 1975 had granted a 5 cent per gallon increase in the price of gasoline. From this 5 cent increase, 1 cent was credited to the accounts of the JGRA's members to create a fund for the repayment of the loan. The funds were maintained in an account in the name of the JGRA. In cross-examination, Mr. Nembhard agreed that the mechanics of the procedure was that the marketing companies would charge the dealers a price increased by the 1 cent and then hold on to that one cent and pay that over to the JGRA at a future date. Mr. Nembhard also agreed that the accumulation of the surplus which occurred after the loan had been repaid, with regard to the amount to be credited to each retailer would vary depending on a particular gas station's throughput, in other words, it would vary with how much gasoline was sold through their gas/petrol stations. Therefore those gas stations that sold the most gas would have the largest accumulation.

[61] The other witness called on behalf of the JGRA was Mr. Leonard Green. Mr. Green became a member of the JGRA in 1996 and it was, he agreed in cross-examination, under his presidency of the JGRA that the challenge to the GRJ Ltd.'s ownership of the property commenced. It was Mr. Green's evidence that, from his reading of the Minutes, the purchase money came from three sources:

- (a) The surplus on the cess;
- (b) An advance payment from United Gasolene Retailers Limited "UGRL" for rent; and
- (c) A small portion from the JGRA's sale of property at Ivy Green.

[62] Mr. Green stated that UGRL was a separate legal entity that functioned as the trading arm of the JGRA. According to Mr. Green this company was a company formed to fulfil that trading purpose and every single member of the JGRA automatically became a member of the UGRL. He admitted however that he had never looked at the share register of the UGRL to confirm whether every single member was registered. Mr. Green says that

the entire interest in the property belonged to the JGRA even though there were three sources of the funds, including the small amount (he thought \$21,000.00) from UGRL. This was because it was the JGRA that provided the major portion of the purchase price, and the sum from UGRL was an advance on rental for use of space in the Kings Plaza property by UGRL, which rent the JGRA considered itself entitled to.

[63] Both Mr. Nembhard and Mr. Green relied quite heavily on the Minutes of the Meetings of the JGRA's Managing Committee. It is to be noted that none of the Minutes in the agreed bundle are of the Annual General Meetings; they all are in relation to the Management Committee's Meetings. There is however reference in these Minutes to decisions taken at the Annual General Meetings.

[64] I have extracted relevant passages from these minutes and set them out below.

Minutes of the Emergency Meeting of the Executive of the JGRA held on August 10, 1975.

Present:

Messrs. H.S Morais, A.D.Hobbins, Basil Watson, Vincent Chin, Bunny Myers, Richard Chin, Winston Clarke, and C.T.Lewis...

BUSINESS TRANSACTED

....

Mr. Hobbins explained the background of the negotiations and advised that Government was willing to allow JGRA to be the custodian of the funds for the retroactive pay and that these funds would be provided by a bank on the undertaking that the oil companies would pay regularly to the JGRA the returns resulting from a 1c per gallon on the price of bulk products.

The JGRA would transmit those amounts to the bank to defray the loan.

This 1c per gallon would be made available not only until the debt was completely met but until a new price structure was declared by Government.

When the loan was repaid the extra margin would revert to the dealers through the JGRA. It was felt that perhaps dealers would allow this amount to remain at credit of the JGRA to help to provide a proper headquarters for the organization. The loan, he thought, would take about 13 months to be repaid.

The meeting was advised that the anticipated increase in the price of gasoline and gas oil was 6c per gallon. Of this 1c would be a provision to meet increases to the tanker drivers; 1c per gallon as stated before would be to meet retroactive pay to gas station attendants. 4 c would be increased margin to the dealer from which he would be expected to meet the new pay rates as soon as the increase in price became effective. ..

When the loan is repaid and until there is a new price structure or arrangement with Unions, the cash flow from the 1c cess would be to the credit of the Association in trust for the dealers. It was felt that out of this a sizeable reserve would be built up and that dealers would allow the amount to remain as their investment in the anticipated new headquarters. ...

(My emphasis)

[65] Minutes of Meeting of JGRA's Managing Committee held on February 3 1977.

Attendance:

Messrs. Sydney Morais, President; W.E.Clarke, Vincent Chin; Guy Morris; Reggie Chin; Basil Watson; Jack Bowen, Roy Hutchinson; Bunny Myers, and Bertie Yap.

....

Purchase of new premises

Discussions arose over the resolution passed at the last Convention, authorising purchase of new premises to facilitate the expansion of the business of UGR Ltd.....

[66] Minutes of Meeting of Management Committee held March 24 1977.

Present:

Messrs. Vin Chin, Basil Watson, Roy Hutchinson, Guy Morris, Bertie Yap, A.D. Hobbins, Jack Bowen, C.H. Valentine and C.H.Lewis-Secretary.

.....

Purchase of Property:

A wide ranging discussion took place on whether or not the mandate through a unanimously passed resolution at the last Annual General Meeting, to purchase new premises to accommodate further development of our activities, should be pursued. The final decision was in the affirmative.

According to Messrs. Watson and Hobbins, even if there were cut-backs in imports, as good businessmen we should be able to devise alternatives to make up for losses in certain directions. The purchase of new property should therefore be pursued.....

.....

Other applicants for full refund:

Letters were read from a number of members who wanted their full credit from the accumulation of the 1c paid to them.

Decision:

They should be advised that the decision of the Annual General Meeting was binding on all members and that a marked copy of Rule 9 section 7 of our Constitution be sent to them.

(My emphasis)

[67] Minutes of Managing Committee meeting of the JGRA held on February 21st 1979.

Present:

Messrs. W. Clarke; A. Mckenzie; D.Hall; Reggie Chin; B. Beckford; W. Nembhard; A. Chuck; A. Abrahams; R. Hutchinson; Manley Bowen.

...

6. Purchase of Property at Kings Plaza:

The secretary reported that a deposit of \$23,000.00 was made to Clinton Hart & Co. in connection with the purchase of premises at King Plaza. The present Bank accumulation is \$216,323.42.

Mr. Abrahams suggested that the Association employ the services of another lawyer to conclude the transaction. He recommended Messrs. Judah, Desnoes, Lake, Nunes Scholefield & Co. This was agreed.

A holding company is to be formed. **Members** will be duly informed of interest etc. and their equity in the property.

(My emphasis)

[68] **Minutes of Managing Committee Meeting of the JGRA HELD 8TH August 1979.**

Present:

Messrs. W.E.Clarke, President; Dudley Hall; Reggie Chin; Vincent Chin; A.Abrahams; A. McKenzie; Astley Chuck; C.T.Lewis, M. Bowen.

.....

(b) Purchase of premises at Kings Plaza

....

(ii) A letter was received from Mr. Frankie Lewis requesting the payment of his accumulated credit as he had given up his gas station.

Decision: Transfer accumulated sum from Mr. Lewis' account to Mr. Reggie Chin's account. Mr. Chin would in turn pay over to Mr. Lewis the full amount of his credit.

(iii) In respect of the covenant of sale which was being asked for by Clinton Hart & Co. letters were exchanged resulting in assurance from Judah, Desnoes, Lake, Nunes & Scholefield to the effect the condition being

required was innocuous and could not be enforced by law.

Subject to change at the next Annual General Meeting, the following members were selected as Directors of the Gasolene Retailers of Jamaica Limited :

Messrs : Winston Clarke; Dudley Hall, Andrew Abrahams, Norman Bowen, A. McKenzie; Reggie Chin; Astley Chuck; A.D.Hobbins; Desi Whittingham; and C.T.Lewis, Secretary

(My emphasis)

[69] Minutes of Managing Committee Meeting of JGRA held 19th December 1979.

Present:

Messrs. Winston Clarke-President

A. Guy Morris

Andy Abrahams

Vincent Chin

Reggie Chin

A. McKenzie

Bunny Beckford

Astley Chuck and

W. Nembhard

.....

4. Kings Plaza : New Premises

Progress report on developments to date was given to the effect that the title to the property was in our possession, the U.G.R.Limited had advanced the necessary amount to complete payment, there was an official handing over ceremony and that the formation of the holding company "Gasolene Retailers of Jamaica" was accomplished .It was decided that a meeting of the sub-committee should be held early in the new year to plan for the orderly transfer of operations to the new site. ...

Sale of 11 Ivy Green Crescent

It was decided that the property should be advertised for sale and that a minimum of \$40,000 should be the final 1 price.

(My emphasis)

[70] Amongst the agreed documents is an Auditors' Certificate from Chartered Accountants Mair, Russell & Partners dated December 28, 1987 and to which is attached a list of dealers and balances shown to their credit. The Certificate reads as follows:

AUDITORS' CERTIFICATE

We certify that the attached lists of proposed refunds to certain dealers totalling four hundred and eighty thousand, one hundred and forty five dollars (\$480,145) represent five(5) times the balance shown to the credit of each dealer in the accounts of Gasolene Retailers of Jamaica Limited as at June 30, 1987.

The attached three page list, broken down into Shell, Esso and Texaco stations/dealers is headed "Gasolene Retailers of Jamaica One Cent (1c) retroactive Investment".

[71] The letter from the Registrar of Companies dated November 22, 2004, states the shareholders of the GRJ Ltd. to be Raymond Clough and Ian Don. The directors are stated to be:

Winston E. Clarke
Dudley Hall
Andrew Abrahams
Reginald Chin
Albert McKenzie
Norman Bowen
Aston D. Hobbins
Desi Whittingham.

These are eight of the very same directors referred to as being selected by the Managing Committee of the JGRA, "subject to change at the next annual general meeting".

[72] In cross-examination, Mr. Graham questioned Mr. Green about a letter written in 2001 on behalf of the GRJ Ltd. under the signature of Winston Clarke to the JGRA. It reads as follows:

2001 July 25

Kings Plaza

Kingston 10

Dear Sirs

RE: NOTICE OF MEETING

We hereby advise you that Gasolene Retailers of Jamaica Limited ("the Company") will hold a meeting of present and former gasoline retailers who contributed to the purchase of property at Kings Plaza, Constant Spring Road, Kingston 10 on Wednesday August 21, 2001 at the Hotel Four Seasons, 18 Ruthven Road, Kingston 10 commencing at 2:00 p.m.

At a meeting of Contributors held on June 20, 2001, the decision was taken to ask the Company's Attorneys to prepare a Document giving details regarding a proposal made at the meeting to issue Debentures to the Contributors. We therefore enclose an Explanatory Memorandum, which we are sure you will find informative.

We ask that you give consideration to this document and send a duly appointed representative to attend the meeting prepared to discuss it and take decisions on the proposals outlined therein.

Yours truly

GASOLENE RETAILERS OF JAMAICA LTD.

(Sgd)

*Winston E. Clarke
Chairman*

[73] Mr. Green indicated that he was President at the time that this letter was written. He told Mr. Clarke, who in cross-examination Mr. Green admitted he knew up to that time to be nothing but an upright gentleman, that such a meeting should not be held. Mr. Green says he was outraged by the contents of the letter. He spoke to the membership of the JGRA. In answer to a question in cross-examination, he stated that it was not this letter alone that hastened this law suit. Mr. Green indicated that the meeting was not held but he does not know why it was not held.

[74] One witness gave evidence for GRJ Ltd. That was Mr. Aston D. Hobbins. Mr Graham indicated that he no longer proposed to call Mr. Roy Hutchinson and that Mr. Clarke was too ill to travel.

[75] Mr. Hobbins gave a Witness statement dated 30th March 2009 which was ordered to stand as his examination –in-chief. He stated that he had been a director of GRJ Ltd. for 29 years, having been first appointed on the 31st day of August 1979. He had also been a member of the JGRA since 1959 and he had held many different positions in the JGRA, including being President 1986-88. Mr. Hobbins was also involved with United Gasolene Retailers Limited, UGRL from its formation in 1964 until 1994, and held several positions over that time. It was Mr. Hobbins' evidence that it was always agreed that the surplus was retained for the benefit of the individual members of the JGRA and that the surplus was due to each member in his personal capacity.

[76] The JGRA proposed the following options to the members in respect of the surplus from the cess:

- (i) Those members who wished to could contribute 50% of the surplus to a fund which monies were to be held by the JGRA to purchase a building to be owned by those gasoline dealers who had opted to contribute to the purchase and the remaining 50% of the surplus would be paid over to them.
- (ii) Those members who wished that their entitlement

from the surplus be paid over to them in full could so request.

[77] Mr. Hobbins states that whilst a number of the dealers chose a full refund, the majority were paid half of the surplus and the other half was kept by the JGRA to be contributed to the purchase of the shop at Kings Plaza.

[78] At paragraphs 11 -16 Mr. Hobbins states as follows:

11. The Claimant made certain proposals that some of the members of the Claimant who were also persons who contributed a part of their surplus to the fund should put themselves forward as potential directors of any company which would be formed to acquire the property. The proposed directors were not all members of the managing committee of the Claimant. The Defendant was incorporated in or about 29th June 1979. I was appointed to the board of the Defendant as one of the original directors and the other directors who sat on the Board were Messrs. Dudley Hall, Winston E. Clarke, Reginald Chin, Albert McKenzie, Andrew Abrahams, Astley Chuck (deceased), Norman Bowen and Desi Whittingham. It was not necessary for the Claimant to ratify or confirm the directors of the Defendant.

12. On or about the 24th of October 1979 the Defendant purchased the property at Shop No. 5, King's Plaza, 38 Constant Spring Road, in the Parish of Saint Andrew, registered at Volume 1120 Folio 200 of the Register Book of Titles.

13. The purchase price of the property was paid primarily from the funds that the Claimant held in trust for certain members of the Claimant in their individual capacity. In addition, the Defendant received a loan of \$21, 373.00 from United Gasolene Retailers Ltd.

14. It was never discussed or intended that the monies from the surplus should have been pledged to the Claimant so that the monies and by extension the property which was to be purchased with those monies would be owned by the Claimant and all its members irrespective of whether the Claimant and those members contributed to the fund or not or whether they became members of the Claimant after the property had been acquired and had made no contribution.

15. *The Claimant was not the beneficial owner of the shares of the Defendant nor was it the beneficial owner of the property at Shop No. 5, King's Plaza, 38 Constant Spring Road in the Parish of Saint Andrew. The Defendant was no the holding company of the Claimant.*

16. *The Claimant has no equity in the Defendant except insofar as in 1987 the Claimant purchased from some of the members who were original contributors to the property at King's Plaza and who were leaving the gasoline business the equity they had invested in the Defendant.*

[79] The agreed bundle contained 10 vouchers described as "showing monies received from Jamaica Gasolene Retailers Association in lieu of shares in Gasolene Retailers of Jamaica Limited". The common terms of each of these vouchers read as follows:

Received from the Jamaica Gasolene Retailers Association the sum of..... This sum is received in lieu of shares in Gasolene Retailers of Jamaica and I hereby transfer all my interest in the said Gasolene Retailers of Jamaica Limited to the Jamaica Gasolene Retailers Association.

[80] In cross-examination Mr. Green had said that he had never seen these documents, was not aware of them, and had never discussed them with his lawyers. He and Mr. Nembhard did, however, agree that they had seen in the minutes where refunds of surplus had been made to some members.

[81] In cross-examination Mr. Hobbins admitted that the Title to the property has been in the possession of the JGRA from the date of completion of the purchase until the time of trial. Further, that the JGRA has occupied the property from sometime in 1979.

[82] As regards the loan from United Gasolene Retailers, Mr. Hobbins says it was repaid with interest from an account in the name of GRJ Ltd. Then he said it was set off against future rent.

[83] When asked why the JGRA was never asked by the GRJ Ltd. to pay rent from 1979, Mr. Hobbins says that that was because it was agreed that the JGRA could be allowed space to accommodate its office and activities. The remainder of the space was rented out to UGRL. According to Mr. Hobbins, it was the JGRA that collected the rent, but he says this was on GRJ Ltd.'s behalf. Although Mr. Hobbins claims that this rent was collected from UGRL by JGRA up to the early 1990's on behalf of the GRJ Ltd. and kept in a special account for the GRJ Ltd. operated by the JGRA, there was no documentary evidence in support of this assertion produced to the Court. Mr. Hobbins did seek to make the point that "many of the people involved were the same on either side" as an explanation for the seeming overlap between the activities of the JGRA and the GRJ Ltd. to do with the property.

COURT'S POWER TO REOPEN THE MATTER AND ALLOW FOR FURTHER SUBMISSIONS AFTER DRAFT JUDGMENT DELIVERED, BUT NOT YET ENTERED

[84] On the 31st of May 2012, I had delivered to the parties a draft Judgment in open Court, this judgment being made in favour of the JGRA. I had asked for the parties to let me know as soon as possible whether they saw any typographical errors so I could correct any such before finalizing the Judgment. By letter dated June 5 2012 Messrs. John Graham and Co. made reference to the Memorandum and Articles of Association of GRJ Ltd. It should be noted that this Memorandum and Articles of Association were not a part of the agreed bundle and were only delivered to the Court by JGRA's Attorneys, with the consent of the JGRA's Attorneys after all of the evidence had been completed. These documents were sent under cover of a letter dated July 13 2011. When the parties made their closing submissions in December 2011, Counsel did not refer to, or make any submissions about the Memorandum and Articles of Association. In his letter dated June 5 2012 Mr. Graham asked that the parties be permitted to address me in open Court in relation to the effect of Article 27(though subsequently confirmed to be Article 28). Both parties met with me in Chambers and July 2nd 2012 was set for submissions in relation to the question of whether the Court had power to

reopen the matter, and alter its judgment and if so, what is the effect of the relevant article.

[85] On the 2nd of July 2012, I heard submissions, and both parties appeared to be ad idem on the Court's power to reopen the matter and recall or alter the judgment since it had not yet been signed, perfected drawn up or sealed. I ordered that the matter be reopened and that further submissions could be made by the parties in relation to the Memorandum as well as the Articles of Association, Mr. Graham having expanded his application to include the Memorandum. In so doing I had regard to the useful decisions in **Paulin v. Paulin** [2010] 1 WLR 1057, **Re T (Contact : Alienation: Permission to Appeal)** [2003] 1 F.L.R. 531, at 548, and **Miller's Case**(1876) 3Ch D. 166, all cited by Mr. Graham on behalf of JGRL Ltd.

[86] Mr. Graham requested that the Court should consider article 28 for the following reasons:

(a) It is at the core of the Claimant's case that the Defendant was formed as a holding company exclusively for the purpose for the purpose of holding property at Shop No. 38, Kings Plaza, Kingston 10 in the Parish of Saint Andrew, registered at Volume 1120 Folio 200 of the Register Book of Titles in trust for the Claimant.

(b) It is the Claimant's case that the reason why the Defendant was formed to hold the property was because the Claimant being a trade union could not hold property in its own name.

(c) The Witness Statements of both Leonard Green and Hopeton Nembhard, the Claimants' witnesses rely on the articles of association of the Defendant:-

Pursuant to the Articles of Association of the Defendant, the members of the JGRA are not automatic members of the Defendant company.

(d) Article 28 provides the most contemporaneous evidence that the parties intended for the shareholders of the Defendant company to be not only the Claimant but also individual members of the Claimant and individual members of the United Gasolene Retailers Limited.

[87] Mr. Graham also submitted that the GRJ Ltd.'s Articles of Association were placed before the Court after all the evidence had been led and unfortunately the court's attention was not drawn to article 28 which the Defendant contends is relevant. However, he submitted, there is a continuing duty of disclosure on the parties and that the Articles of Association are helpful in resolving the issues before the Court. It was also stated to be GRJ Ltd's position that there is also a duty on Counsel in situations such as these to point out any omissions to the Court before the Judgment is perfected.

[88] Mr. Graham submitted that it is the JGRA's case that the Defendant was creating a holding company to own property on behalf of the members of the JGRA. GRJ Ltd. submit that article 28 clearly shows that the GRJ Ltd. was not created as a "holding" company.

[89] GRJ Ltd. contend that in light of Article 28 and its import, it must be considered and mentioned in any judgment to be given as to who is the legal and beneficial owner of the property in dispute at Kings Plaza.

[90] Mr. Graham also referred to in **Miller's case**, as being a case where the court had delivered judgment, however prior to the order of the court being perfected the court was invited to consider the articles of association of the company which had not been pointed out to the court. Upon a re-hearing the articles of association, Mr. Graham submits, compelled a conclusion opposite to that which had been reached previously.

[91] Article 28, so far as directly relevant, reads as follows:

Transfer of Shares

Restrictions on Transfers

28. The shares of the Company shall not be transferrable except in accordance with the following provisions:-

(a) Shares of any class may be transferred freely to a person:

(i) who is a member of the Jamaica Gasolene Retailers Association;

(ii) who is already the holder of a share of that class;

(iii) who is a member of the United Gasolene Retailers Limited.

[92] Mr. Graham submitted that whilst there is nothing before the Court as to what was asked of the lawyers, what we do have is the lawyers response to what was asked in how the Memorandum and Articles of Association were drafted. Mr. Graham poses the proposition, that if it is that GRJ Ltd. was supposed to be a holding company, meaning the vehicle or receptacle to hold the property for the JGRA, then there would have been no need for the lawyers to get instructions to create a clause that was seeking to deal with potential shareholders of three different categories. Mr. Graham also refers to the fact that there is undisputed evidence that the UGRL did advance monies towards the purchase price of the Kings Plaza property.

[93] Mr. Graham also made reference to the Memorandum of Association and referred to the numerous Objects Clauses there set out. Mr. Graham submits that the Court should find it significant that nowhere in the fifteen pages of object clauses is there any mention of an object of holding a property for the JGRA.

RESOLUTION OF THE ISSUES

[94] A number of interesting points emerge from the evidence, both oral and documentary. Firstly, this Trade union, the JGRA, consists of persons, firms or companies owning and /or operating petrol stations. So the membership of the JGRA was and is essentially comprised of persons forming the employer category of the gasolene retail business rather than the employee class. Such persons would have benefitted from the loan taken out by the JGRA on behalf of its members in order to pay retroactive pay to workers.

[95] In many ways, this has been a strange case. It was filed over ten years ago and there have been a number of interlocutory skirmishes that have made their way back and forth from the Supreme Court to the Court of Appeal. There have been a cluster of evidential gaps that are not easy to cross or bridge. Whereas it is the JGRA's case that the property at Shop Number 5 Kings Plaza is held in trust by the GRJ Ltd. on behalf of the JGRA,

it is not easy to decipher exactly what is the GRJ Ltd's case. In response to the JGRA's pleaded case that approximately \$216,000.00 of the stated purchase price of \$230,000.00 was provided by the JGRA from the surplus cess fund, the GRJ Ltd. deny this paragraph and say, that "if, which is not admitted any monies were given to the defendant by the plaintiff such monies represented a refund to individual members and was paid over to the defendant for the benefit of those members." The GRJ Ltd. has not said that they paid the purchase price. They say, if they received money from the surplus, but they are not admitting it, this money was paid over for the benefit of individual members. Mr. Hobbins in his evidence however seems to admit that most of the money did come from the JGRA but, he says, it was surplus funds held for each of the dealers in their personal capacity. Yet no "individual members", other than Mr. Hobbins, have come before the court to give evidence or to lay claim to an interest. In fact, Mr. Hobbins did not himself say what his own entitlement, whether to the surplus funds, or to the property, or to the company shares of GRJ Ltd. is or was. Further, the GRJ Ltd. make this assertion claiming the interest of individual members, yet the evidence from the Registrar of Companies, which is in the agreed bundle shows that, as at November 2004, the only registered shareholders of GRJ Ltd. are Mr. Ian Don and Mr. Raymond Clough. Those gentlemen were Attorneys-at-Law at the firm of Judah, Desnoes, Lake, Nunes, Scholefield & Co. who the Minutes of the Management Committee Meeting of the JGRA of the 21st February 1979 reveal were to be retained to conclude the purchase of the property. Though in his evidence in cross-examination Mr. Hobbins said that he thought that the shares were transferred to two members of the Management Committee, absolutely no proof of that was put forward. As Mr. McBean points out in his written submissions, neither Mr. Don nor Mr. Clough are pursuing or making this claim. As Mr. McBean commented in his submissions, one would have expected that if the situation was as contended for by the GRJ Ltd., one would have expected that the individual members who contend that the surplus belonged to them would have been shareholders of the Company. It therefore seems reasonable to draw the inference that indeed, the GRJ Ltd. is a holding company. So the question is, for whom?

[96] There is another evidential gap. Although the auditor's certificate and list appears in the agreed bundle, Mr. Green claims he has never seen those documents or the payment vouchers before. As far as I can see from the notes which I took of the evidence, the other witness for the JGRA Mr. Nembhard was never asked about them. Nor did Mr. Hobbins speak to whether all of these dealers referred to in the auditors' list received or did not receive a refund, whether in the amount credited to them in the account or along the lines of the calculation carried out by the auditors representing five times the amount credited in the account, or otherwise. Other than the 10 persons whose names appear on the vouchers, no one on this long list has come before the Court to tell me what is the position as to whether they were refunded, and if not, whether they claim to have been beneficially entitled to the surplus or to the property purchased with it. Although in the Defence filed the GRJ Ltd. deny that the JGRA is entitled to any relief claimed, and say that they had no legal obligation to give an account to the JGRA, in Mr. Hobbin's Witness Statement he appears to concede that the JGRA has an equitable interest in the property based upon the fact that the JGRA, according to him, purchased interests from some of the persons who were original contributors and who were going out of the gasoline business. Mr. Graham in his Closing Submissions states that "The Defendant admits that the Claimant has an interest in the Defendant Company; however, that interest is limited to the interests of the members which the Claimant bought". Regrettably, I was not assisted as to the calculation of the magnitude of that interest.

[97] Mr. McBean in his closing submissions referred to the well-known text **Equity and the Law of Trusts**, by Phillip Pettit, the 10th Edition, pages 174 and 176. The learned author there states:

(page 174)

Whenever someone buys either real or personal property and has it conveyed or registered or otherwise put into the name of another or of himself and another jointly, it is presumed that the other holds the property on trust for the other person who has paid the purchase money.

(page 176)

There is no need for the conveyance or other instrument of transfer to contain any reference to the fact that the purchase price has been paid by someone other than the transferee. Parole evidence is always admissible to establish who in fact advanced the money and this is so even though the consideration is expressed to be paid by the nominal purchasers.

[98] Mr. Graham did not really have any quarrel with these principles, and indeed, he referred to the well-known decision of great antiquity in relation to resulting trusts; **Dyer v. Dyer** (1788) 2 Cox 92,93; 30 E.R. 42. The disagreement arises in relation to the application of these well-known legal principles to the facts.

[99] I must say that I feel severely handicapped by the way in which this case has evolved and the paucity of evidence put forward, but I will do the best I can in the circumstances. I can only surmise that the passage of time, (indeed, over twenty-one years passed between the date of acquisition of the property and the date when Suit was filed), has played its part in causing these inadequacies. Along with the passage of time, the casual, informal and if I may say so, overlapping and confusing manner in which interactions were conducted between the parties, has also played its part. In order to decide the case on a balance of probabilities as between the JGRA and the GJJ Ltd., I will analyze the evidence to see which aspects favour the case for the JGRA, and which favour the case for the GRJ Ltd.

[100] The umbrella finding which I make on the balance of probabilities is that the GRJ Ltd. is indeed a holding company. It purchased the property at Kings Plaza but the purchase proceeds did not belong to the GRJ Ltd. As the proceeds for the purchase of the property were provided by a person or persons other than itself, then the GRJ Ltd. holds the property on a resulting trust for the person or persons to whom those funds can properly be attributed.

THE EVIDENCE POINTING IN FAVOUR OF THE JGRA'S CLAIM

[101] Although Mr. Graham correctly points out that some of the evidence of JGRA's witnesses was not based upon their first-hand knowledge, the Minutes of the JGRA's Managing Committee are in evidence as exhibits in this case having formed part of an agreed bundle of documents. There has been no challenge as to their correctness. Indeed, Mr. Hobbins, who was present at most of the meetings, had more of a quarrel as to their proper interpretation rather than their accuracy. The Minutes suggest that at an Annual General Meeting that was held prior to the Managing Committee Meetings in 1977, it was unanimously agreed that the surplus funds would be used to purchase new premises to accommodate further development and expansion of the activities of the JRGA.

[102] The majority of the funds for the purchase came from the bank account in the name of the JGRA at the Bank of Nova Scotia Jamaica Limited.

[103] The rest of the funds came from the UGRL. Although Mr. Green stated that some portion of the funds came from the JGRA in respect of the proceeds of sale of Ivy Green, I am not satisfied of that since the Minutes of the Managing Committee's Meeting on the 19th December 1979, a date after the purchase of the Kings Plaza property, speak of deciding to advertise the Ivy Green property for sale. It was Mr. Green's evidence that the sum from UGRL represented advanced rent, which rent JGRA considered would belong to them. Mr. Hobbins claimed that it was the JGRA that collected rent from UGRL but claimed that this was collected on behalf of the GRJ Ltd. and kept in a separate account. No such evidence was, however, produced. I accept the evidence that UGRL was a sort of trading arm of the JGRA, and it would seem to me, that such a sum paid by UGRL, would point more in the JGRA's favour than GRJ Ltd.

[104] In the Minutes of the Managing Committee Meeting of the 21st of February 1979, it is stated that a holding company was to be formed. It is the JGRA's Managing Committee that is taking these decisions as to a holding

company and there is no mention whatsoever of this holding company only dealing with, or holding for, particular members. The Minutes of that same meeting state that “Members will be duly informed of interest etc. and their equity in the property”. I note that it was members, which I draw the reasonable inference means all members, not some particular members that were to be informed of their equity.

[105] Contrary to what Mr. Hobbins stated in his evidence, all of the Directors of the GRJ Ltd. were drawn from, and represented a large sub-set of the membership of the JGRA’s Managing Committee at the relevant time. The Records from the Companies Office reflect the directors as at November 22 2004, and all the persons named therein were members of the JGRA’s Managing Committee in August 1979. Further, with the exception of Mr. Astley Chuck, who Mr. Hobbins has indicated is deceased, all of the names of Directors reflected are the directors that were proposed by the JGRA Managing Committee in August 1979. All were members of the Managing Committee(at least if their attendance at Managing Committee Meetings reflected in the Minutes is anything to go by). The Minutes of August 8, 1979 show that the JGRA’s Managing Committee selected the Directors of the GRJ Ltd. What is even more telling is that the Minutes say that the selection was “subject to change at the next Annual General Meeting”. If the formation of the GRJ Ltd. had nothing to do with the JGRA as a whole, then why should a decision as to the directorship of the company be submitted to the general membership at an Annual General Meeting? This point gains even greater strength when it is considered that, on the GRJ Ltd.’s case, the Directors were chosen because they were amongst the contributors. As they(or any of them) happened to be members of the JGRA’s Managing Committee, why did they not at these Meetings, as recorded in the Minutes, clarify that the interests were those of some members only, or raise a protest to such extensive input by the JGRA and all its members?

[106] Both the witness for the JGRA, Mr. Green, and the witness for the GRJ Ltd., Mr. Hobbins agree that from the date of acquisition of the property,

the duplicate Certificate of Title was, and has been, in the possession of the JGRA.

[107] The JGRA has been in possession of the property and has remained in possession since its acquisition.

[108] Though Mr. Hobbins proffered an explanation, the uncontrovertible fact is that there has never been any demand or request from the GRJ Ltd. for the JGRA to pay rent.

[109] It was the JGRA Managing Committee, see Minutes February 21, 1979, who retained Attorneys to deal with the purchase, initially, Clinton Hart & Co, and they also decided to later retain Judah Desnoes Lake Nunes Scholefield & Co. to conclude the sale.

[110] It is true, as Mr. Graham has argued, and suggested to the JGRA's witnesses, that if the surplus belonged to dealers in their individual capacities, and the size of their entitlement was dependent on the degree of throughput at their respective gas stations, then the members of the JGRA in general meeting could not simply by unanimous resolution, bind any individual member entitled to surplus. They could not bind any individual member who did not wish to be so bound. They also could not give a gift of the entire surplus since individual dealers were the ones entitled in their individual capacity to their respective share and not the membership of the JGRA as a whole. To the extent therefore, that the JGRA may have operated under the view that a unanimous resolution of its members could assign, or gift the surplus to the Union, then they would have been mistaken. The fact is, however, and I so accept, that some members did receive a refund of their share of the surplus from the JGRA after the purchase of the property, so implicitly, the JGRA in so refunding must have accepted that the unanimous resolution did not result in a gift of the entire surplus to them. By accepting payment out from the JGRA, however, such dealers could not lay claim to any further interest in the surplus or any property purchased with it. However, it

was also quite open to dealers to provide the JGRA with a gift of their respective entitlement to the surplus, in whatsoever way they wished to do so.

[111] No individual dealers have asserted any claim to the court seeking a declaration as to a resulting trust in their favour. Further, there is no evidence before me as to precisely, and fulsomely, and accurately, who these individuals are that the GRJ Ltd claim are beneficially entitled. It would not be unreasonable to expect that if the purchase was done on behalf of, or for the benefit of the unnamed individual members, that they would have insisted on share ownership. In any event, I find it puzzling that the individual members who Mr. Hobbins claims were the real beneficial owners of the property have not come forward and given evidence in this Court to establish their connectedness to GRJ Ltd. or taken the opportunity to themselves have their beneficial interest declared by this Court. What has happened to all the “contributors” referred to in the GRJ Ltd.’s letter of July 25 2001?

[112] Even if there had been clear evidence about particular individual dealers being entitled, which there is not, there is no evidence to link those dealers to the GRJ Ltd. This is not the type of issue where the Court could make any reasonable inference as to which dealers were still entitled, or claiming to be entitled; that would be mere surmise and speculation. The two issued shares in the GRJ Ltd. have remained in the name of Messrs. Clough and Don as far as the evidence presented is concerned. Neither Mr. Don nor Mr. Clough are making any claim.

THE EVIDENCE POINTING IN FAVOUR OF THE GRJ Ltd.’S CLAIM

[113] There is evidence that, subsequent to the Annual General Meeting at which the JGRA claim that the resolution was unanimously passed for the purchase of the property, some dealers sought and obtained a refund, either of a portion of, or the whole of the surplus to which they were entitled, or many years later, received refunds five times the amount of the sums standing to their credit in the accounts of the JGRA based on through-put.

[114] Payment vouchers were signed which suggest that members accepted payments in lieu of shares in GRJ Ltd. and transferred all their interest in G R J Ltd to the JGRA. This would suggest that some individual dealers did have an interest in GRJ Ltd. and arguably, in the property.

[115] The property was put in the name of the GRJ Ltd., and not in the name of persons appointed as trustees of the JGRA.

[116] The Memorandum of Association does not mention as an object anything to do with the GRJ Ltd. being formed for the purpose of holding the Kings Plaza property for the JGRA.

[117] Article 28 of the Articles of Association of the GRJ Ltd. speaks to the free transfer of shares of any class to a person who is a member of the JGRA, or a person who is already the holder of a share of that class, or a person who is a member of the United Gasolene Retailers Limited.

DISPOSITION

[118] However, it seems to me that even these points that on the face of it favour the GRJ Ltd., are not so much in favour of the claim by the GRJ Ltd., as they are against the claim by the JGRA. In any event, they are not unanswerable. The fact is, that even if some dealers did receive refunds subsequently, and the vouchers referred to above were signed, that would mean that they had, albeit subsequently, relinquished any interest in the surplus or property bought from it. Further, there is no evidence as to any other dealers now claiming an interest by way of resulting trust. The evidence is that the majority of the funds came from the surplus which was held by the JGRA. It is not contested that there was a unanimous resolution passed by members that the surplus was to be used for the purchase of the property, which was for the purpose of use for expansion of the activities of, and as headquarters for, the JGRA. It is permissible in law for individual dealers to have given a gift to an association to which they belong and which association is set up to secure benefits on their behalf, Indeed, it can be seen from the

Minutes that it was considered by some that the JGRA had been instrumental in obtaining a significant benefit to the members. This they arguably did by securing the loan to provide proceeds from which service attendants could be paid their retroactive pay, and by negotiating for a cess to be granted by the Government from which repayment of this loan could occur. It is not inconceivable that gifts may have been bestowed in those circumstances.

[119] The fact that the property was put in the name of the GRJ Ltd. and not in the name of trustees of the JGRA does not take the matter terribly far since the evidence is that the JGRA were acting on legal advice in so doing.

[120] As regards the further matters and submissions considered with regard to the Memorandum and Articles of Association, I agree with Mr. McBean that it is more than a quantum leap from the idea that the Kings Plaza property was to be the Headquarters for the JGRA(as stated in the Minutes), to say that specific instructions were given to the lawyers to draft the Articles of Association in a particular way. That is not the only reasonable inference to be drawn. In addition, even if there is evidence that UGRL advanced money towards the purchase price, there was at no time any evidence that individual members of the UGRL(and it is transferrability of shares to individual members of the UGRL that Article 28(a)(iii) speaks to, and not to the separate legal entity of UGRL itself), contributed to the purchase, or were claiming any interest in the property. I agree that the fact that article 28(a) was drafted as it was does not mean that they were so drafted on the specific instructions of the JGRA, as opposed to instructions simply to form a company where there would be allowance for capacity for free transfer amongst related parties. I also accept Mr. McBean's argument that the fact that the object of being a holding receptacle of the property on behalf of the JGRA is not stated in the Memorandum of Association, does not water down or take away from the express unchallenged evidence as represented in the Minutes, part of the agreed documents, wherein it is stated that this was the purpose.

[121] The question now arises as to what is the just and equitable solution on the state of the evidence. I have found that the surplus did originally belong to

individual dealers, and some got reimbursement from funds held by the JGRA, after the purchase had already taken place. On Mr. Hobbins evidence some would have insisted and received their refund before the purchase. By receiving reimbursement they would have relinquished either a claim to an interest in the GRJ Ltd. or to a beneficial interest in the property. Others have not come forward to make any claim nor sought to be registered as shareholders of the GRJ Ltd., and this is for a period in excess of thirty years (over twenty-one at time of filing of the law suit). There is evidence of a unanimous resolution passed by members in favour of the purchase of the property for the benefit of the JGRA and its entire membership. There is no evidence put forward on behalf of the GRJ Ltd. that it provided the money for the acquisition of the property. The funds were provided by the JGRA. I accept the evidence that the advance rent paid by UGRL, the JGRA's trading arm, would also have been money to which the JGRA would have been entitled and that therefore that portion of the purchase proceeds can be considered as contributed on the behalf of the JGRA. When all of these factors are taken into account, along with the matters set out above as being evidence pointing in favour of the JGRA's claim, I am satisfied on a balance of probabilities that the entire beneficial interest in the property belongs to the JGRA. I am prepared to so declare.

[122] However, the trustees are not parties to this matter (which I have already found they did not need to be), but more importantly there is no evidence currently before the Court as to their identity or whether they currently exist. I therefore propose to make the declarations sought. I also will grant the amendment sought, grant liberty to apply, and conduct enquiries, which would allow the JGRA to put before the Court evidence as to the names of the appointed trustees so that the legal interest in the property can be vested in them as contemplated by the Trade Union Act. The case ought from the outset to have been filed in such a way as to ask for the transfer of the property into the names of the trustees at the date of judgment, as Mr. McBean now seeks to have effected by way of the late amendment. However, as the crux of the matter is really the determination of the beneficial interest in the property, I do not think that allowing this amendment or further evidence

from the JGRA as to the trustees, prejudices the GRJ Ltd. If I do not treat with this issue in this way, what would be the consequence? A new suit would have to be filed in order to perfect my findings in this law suit. It would therefore be consequential on my decision here, and not based upon any new cause of action. This would not be the best use of time and the Court's resources and would not in my view be in keeping with the Court's overriding objective of dealing with cases justly. The way to deal with any inconvenience to the GRJ Ltd. is to have the JGRA bear the costs occasioned by having to have a further hearing.

[123] There will therefore be judgment in favour of the Claimant JGRA as follows:

(a) It is hereby declared that:

(i) the Defendant Gasolene Retailers of Jamaica Limited, the registered owner, holds the property known as Shop No. 5, Kings Plaza, 38 Constant Spring Road, Kingston 10 in the Parish of Saint Andrew, being the land comprised in the Certificate of Title registered at Volume 1120 Folio 200 of the Register Book of Titles, in trust for the Claimant Jamaica Gasolene Retailers Association.

(ii) the Claimant Jamaica Gasolene Retailers Association is entitled to the entire beneficial interest in the property known as Shop No. 5, Kings Plaza, 38 Constant Spring Road, Kingston 10 in the Parish of Saint Andrew, being the land comprised in the Certificate of Title registered at Volume 1120 Folio 200 of the Register Book of Titles.

(b) That, subject to the holding of Accounts and Enquiries, the Defendant is ordered to transfer the property known as Shop 5, Kings Plaza, registered at Volume 1120 Folio 200 of the Register Book of Titles to the Trustees of the Claimant at the date of judgment. The costs attendant on such transfer shall be borne by the Claimant.

(c) That should the Defendant fail, neglect and/or refuse to transfer the said property to the Trustees of the Claimant, the Registrar of the Supreme Court

is empowered to execute all documents and do all things necessary to register the transfer of the property from the Defendant to the Claimant's said Trustees at the date of judgment.

(d) Accounts and Enquiries are to be held in Chambers on a Date to be Fixed by the Registrar, with a view to perfecting the order for transfer of the legal interest in the property to Trustees of the Claimant at the date of judgment. In that regard, the Claimant is permitted to file and serve on the Defendant by the 31st of July 2012, evidence by way of an Affidavit attesting to, and attaching documentary proof, if any, as to whether there are currently Trustees of the Claimant, and if so, identifying these persons.

(e) Liberty to Apply.

(f) Costs of the trial to be the Claimant's to be taxed if not agreed.

(g) Costs of the hearing of the Accounts and Enquiries to be the Defendant's to be taxed if not agreed.