



[2025] JMCC COMM. 05

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE COMMERCIAL DIVISION
CLAIM NO. SU2020CD00516**

BETWEEN	VICKY HUATONG RERRIE (Executor of the Estate of Anthony Rerrie, Deceased Substituted for ANTHONY RERRIE by Order dated 10 th November, 2022)	1ST CLAIMANT
AND	JENNIFER RERRIE (Substituted for KENNETH RERRIE by Order dated 25 th June, 2024)	2ND CLAIMANT
AND	JASON RERRIE (Substituted for KENNETH RERRIE by Order dated 25 th June, 2024)	3RD CLAIMANT
AND	MIRELLE CLOUGH (Executor of the Estate of Raymond Clough, Deceased)	1ST DEFENDANT
AND	CHRISTOPHER MARK CLOUGH (Executor of the Estate of David Emmanuel Clough Deceased) (Discontinued by Order of The Honourable Ms. Justice C. Barnaby made on the 20 th December, 2022)	2ND DEFENDANT
AND	CLOUGH LONG & CO. (A Partnership sued by and in the capacity of its Surviving partner, MAURICE LONG, Deceased) - who Now appears by Thomas Ramsay and Peter Moses, (Executors of the Estate of MAURICE LONG)	3RD DEFENDANT
AND	CHANTELLE YOUNG (Discontinued based on Notice of Discontinuance filed on the 2 nd February, 2022)	4TH DEFENDANT
AND	OCEAN LAKE HEIGHTS LIMITED	5TH DEFENDANT

Mr Kevin Williams instructed by Grant Stewarts, Phillips & Co., Attorneys-at-law for the Claimants/Respondents

Mr. Abe Dabdoub and Mr. Franz Jobson instructed by Jobson, Wadsworth & Fontaine Attorneys-at-law for the 1st Defendant/Applicant

Mr. Thomas Ramsay instructed by Ramsay Stimpson for the 3rd Defendant/Applicant

Civil Procedure- Part 24 Civil Procedure Rules, 2002 - Application for security for costs- Whether the conditions for security for costs have been met- Whether security for costs can be ordered against representative parties- Whether the claim is a sham or bona fide- Whether there is a reasonable prospect of success- Whether the application is made at a late stage- Whether the Claimant has unencumbered assets within the jurisdiction

IN CHAMBERS

Heard on: 19th February, 9th April, 15th May, 25th June, 30th September, 29th November 2024 and 16th January 2025

STEPHANE JACKSON-HAISLEY, J

INTRODUCTION

[1] This Claim relates to a dispute about the ownership of shares in the Company Ocean Lake Heights Limited which is named as the 5th Defendant herein. In or about 1969 Ocean Lake Heights Limited was incorporated under the Companies Act of Jamaica. At the date of incorporation, it had a nominal share capital of JA\$2000.00 divided into 1000 shares. The majority shareholder was Anthony Alexander Rerrie. Anthony Alexander Rerrie is the grandfather of the original Claimant herein Anthony Kenneth Rerrie who asserted that at the time of filing of the Claim on December 11, 2020 he was the sole shareholder and a director in the

company having inherited all 1000 shares in the company. It however came to his attention that the Form of Annual Returns of the Company dated 2nd February 2008 reflects that the 1000 shares in the 5th Defendant were vested in the names of Raymond Clough and David Clough. He asserted that this was due to fraud, misrepresentation and misstatement of Raymond Clough. Raymond Clough was an Attorney-at-law and was the original 1st Defendant herein and David Emmanuel Clough, was his father and the original 2nd Defendant herein. Raymond Clough was a partner in the partnership Clough Long and Company, the 3rd Defendant herein.

[2] The Claimant filed the Claim against the Defendants seeking several remedies with a view of having all these shares re-issued in his name. By Further Amended Claim Form and Amended Particulars of Claim both filed August 24, 2024, he sought several declarations and orders relating to shares in the 5th Defendant as well as for the Defendants to give an account of the whereabouts and disposal of the net proceeds of sale of real property and all Certificates of Title relative to those real property assets. The Declarations and Orders sought include the following:

- i. *A Declaration that the transfer of ONE THOUSAND (1,000) SHARES in and/or of the 5th Defendant OCEAN LAKE HEIGHTS LIMITED, to Raymond Clough (as to 500 shares) and David Emmanuel Clough (as to 500 shares) on or about the 31st July 2008 and/or any other date is void and of no effect having been procured and/or undertaken by the fraudulent acts done by Raymond Clough, Deceased.*
- ii. *A Declaration that the transfer of ONE THOUSAND (1,000) SHARES in and/or of the 5th Defendant OCEAN LAKE HEIGHTS LIMITED to Raymond Clough (as to 500 shares) and David Emmanuel Clough (as to 500 shares) on or about the 31st July 2008 and/or any other date is void and of no effect, such shares having been transferred from the legal and/or beneficial ownership of Anthony Rerrie and to the said*

Raymond Clough and/or David Emmanuel Clough without either Raymond Clough and/or David Emmanuel Clough paying for and/or giving any consideration for the transfer of the said shares.

- iii. *An order directing the Registrar of Companies to re-issue the ONE THOUSAND (1,000) SHARES in and/or of the 5th Defendant, OCEAN LAKE HEIGHTS LIMITED in the names of the Claimants, or such other persons as the Claimants shall direct.*
- iv. *An order pursuant to section 115 and subsection (2) (a) and (b) and (3) (k) of section 213A of the Companies Act, 2004 that:*
 - a. *The Register of Members of OCEAN LAKE HEIGHTS LIMITED be rectified by striking out ONE THOUSAND (1,000) shares of the share capital of the Company purportedly held by Raymond Clough and/or David Emmanuel Clough as to FIVE HUNDRED (500) shares each;*
- v. *A Declaration that RAYMOND CLOUGH and DAVID CLOUGH were never lawfully appointed as directors and/or secretary of OCEAN LAKE HEIGHTS LIMITED such appointments having been effected contrary to the Articles of Incorporation of the Company.*

[3] The Claimants allege that since its inception in or about 1969, the shares in Ocean Lake Heights Limited remained in the family, passing from Anthony Alexander Rerrie, the original majority shareholder, to Veronica Rerrie who was his second wife who then passed the shares to Eustace Anthony Rerrie and upon his death, passed those shares to Anthony Kenneth Rerrie, the originally named Claimant.

[4] It is alleged that the shares in the 5th Defendant were fraudulently transferred through fraud, misrepresentation and misstatement of Raymond Clough by forging Anthony Rerrie's signature on the share transfer(s) and presenting Annual

Returns, Notices and completed ORC Forms to the Office of the Registrar of Companies with false material.

- [5] The original Claimant Anthony Rerrie died in June 28, 2022 and by Order of the Court dated 10th November 2022 Vicky Huatong Rerrie and Kenneth Rerrie were substituted for him. On March 19, 2024 Kenneth Rerrie died and by Order of the Court dated June 25, 2024, Jennifer Rerrie and Jason Rerrie were appointed as representatives Kenneth Rerrie.
- [6] The 1st named Defendant, the Executor of the Estate of Raymond Clough, in the Amended Defence filed October 25, 2024 denies the averment that all One Thousand (1,000) shares were owned by the Claimant Anthony Rerrie since inception of the 5th Defendant or were inherited by him. The 1st Defendant countered that the Articles of Association reveals that at the date of incorporation, the shareholders were Trevor DeLeon, L. Rogers, G. Montwell, O Messado, Ian Don, Ian McConnell and Selvin C. Lee who were members of the firm Judah Desnoes & Co. It is also averred that Mr Raymond Clough and David Clough were the duly appointed trustees of the Estate of Anthony Alexander Rerrie appointed in substitution for the persons appointed Executors and Trustees subject to Probate and Copy Will of Anthony Alexander Rerrie filed in Claim No. P. 543 of 1969.
- [7] The 1st Defendant denies any allegations of fraud, misrepresentation or misstatement and has instead countered that the claim is statute barred by the doctrine of laches as the alleged fraud occurred years prior to the filing of the subject claim knowing that Raymond Clough was terminally ill and the Claimants were strategic in their approach to await his passing before bringing the claim.

The 3rd named Defendant is a Partnership that carried on the business of providing legal services on behalf of the original Claimant at the material time, however the surviving partner at that time MAURICE LONG, (deceased) denied any knowledge

of the assertions made as against RAYMOND CLOUGH. In the Amended Defence filed October 28, 2024, it was pointed out that the entity Clough Long and Co. is not a partnership and hence the capacity of the late Maurice Long is incorrect. The allegations of fraud, misrepresentation and misstatement are denied.

[8] By order of this Honourable Court made on May 17, 2021, the claim against the 4th Defendant was discontinued.

THE APPLICATIONS

[9] The applications before me are for security for costs filed by the 1st and 3rd Defendants. By Amended Notice of Application for Court Orders for Security for Costs filed October 25, 2024, the 1st Defendant sought the following orders:

- i. That security for costs in the form of Deed of Indemnity, a bond executed by a commercial bank or payment in the joint names of the Attorneys-at-law for the Claimants and the Defendant in the sum of Sixteen Million Five Hundred and Eight Thousand Two Hundred and Fifty Dollars (J\$16,508,250.00) inclusive of General Consumption Tax in currency of Jamaica, or such other sum as may be deemed sufficient be provided by the Claimants.*
- ii. That the security for costs be provided as soon as deemed practical by this Honourable Court.*
- iii. That the Claim be stayed until such time as security for costs is provided in accordance with the Court's order.*
- iv. That if security is not provided in accordance with the terms of the Court's order that the claims be struck out.*

- v. *That costs of the application and of the said claim be paid by the Claimants.*

[10] The grounds on which the 1st Defendant is seeking the order are as follows:

- (i) *The original Claimant, who at all material times resided in Canada, is now deceased and the Executors of his Estate, VICKY HUATONG RERRIE and KENNETH RERRIE were substituted for the original Claimant pursuant to an order of this Honourable Court dated 10th November 2022.*
- (ii) *The original Claimant Anthony Rerrie was the same person known as Anthony Kenneth Rerrie and at Paragraphs 1 and 8 of the original Particulars of Claim the said Anthony Rerrie claimed that all the shares in the 5th named Defendant were vested in and owned by him since the date of incorporation.*
- (iii) *That both VICKY HUATONG RERRIE and KENNETH RERRIE are likewise resident in Canada and outside the jurisdiction of this Honourable Court and have indicated in Notice of Application to this Honourable Court that they are both from Scarborough, in the Province of Ontario, Canada.*
- (iv) *That Kenneth Rerrie subsequently died in Scarborough, Canada and an application was made to this Honourable Court to substitute JENNIFER RERRIE and JASON RERRIE the children of KENNETH RERRIE as Claimants.*
- (v) *That both VICKY HUATONG RERRIE and KENNETH RERRIE being the Executors of ANTHONY KENNETH RERRIE both adopted*

these assertions and allegations without making any new allegations.

- (vi) The 1st named Defendant challenged these assertions and provided documentary evidence that at the date of incorporation of the 5th Defendant Anthony Kenneth Rerrie was not a shareholder and that the only shareholder person who was at any time a shareholder was ANTHONY ALEXANDER RERRIE.*
- (vii) That it is to be noted that at the date of incorporation ANTHONY KENNETH RERRIE could not be a shareholder as he had not yet attained the age of majority which is a requirement to hold shares in a company incorporated under the Companies Act.*
- (viii) That this Honourable Court did on the 25th day of June 2024 grant an order naming JENNIFER RERRIE and JASON RERRIE as Claimants in substitution of their father KENNETH RERRIE.*
- (ix) That the Claimants have amended the Particulars of Claim and now claim that ANTHONY KENNETH RERRIE inherited the shares in Ocean lake Heights Limited as set out in Paragraph 9 through 13 from EUSTACE ANTHONY RERRIE.*
- (x) That ANTHONY ALEXANDER RERRIE died on the 19th day of June 1969 leaving a Last Will and Testament which was probated, and which left the residue of his estate to his Trustee with specific instructions as to how the residue is to be dealt with.*
- (xi) That the shares of Ocean lake Heights were not mentioned in the Last Will and Testament of Anthony Alexander Rerrie and therefore fell into and became part of the residue of his estate.*

- (xii) *That by Order dated the 27th day of January, 1988 made in Supreme Court of Judicature of Jamaica Claim No. E-39 of 1987 RAYMOND CLOUGH and DAVID CLOUGH were appointed the Trustees in place of VERONICA RERRIE, LESLIE ALEXANDER RERRIE, DONALD NETHERSOLE AND CLINTON ALGERNON LESTER MUSCHETT, the Executors of the Last Will and Testament of ANTHONY ALEXANDER RERRIE, deceased.*

- (xiii) *That on the facts established by documentation available to this Honourable Court it is clear that the Claimants do not have a credible claim which has any likelihood of success and the pursuit of this Claim against the 1st named Defendant is a futile exercise incapable of producing any justifiable success.*

- (xiv) *That they are now the Claimants as listed in this amended application claiming against the Applicant, who is the Executrix of Raymond Clough, deceased and who herself is admitted to practice in all the Courts in Jamaica.*

- (xv) *All the previous and now the existing Claimants have no un-encumbered assets in Jamaica and all their assets are beyond the jurisdiction of the Court.*

- (xvi) *That it will be difficult, if not impossible for the Applicant/1st Defendant to enforce an order of this Honourable Court and/or to collect any damages or costs awarded.*

- (xvii) *To ensure respect for and compliance with the orders of this Honourable Court by the Claimant.*

(xviii) The Defendant is put to the costs of defending this expensive litigation with the risk that if it is ultimately successful it will be unable to recover the taxed costs despite procedural enforcement.

(xix) That it is in the interest of justice that the Claimant provides security for the Defendant's costs.

(xx) Accordingly, there should be an order to stay the action pending the provision of security for costs and should be made in consideration of the application of Part 24 of the Civil Procedure Rules.

[11] By Amended Notice of Application filed November 1, 2024, the 3rd Defendant also sought security for costs against the Claimants. The orders sought are similar to those sought by the 1st Defendant excepting that the amount sought is Fifteen Million, One Hundred and Twenty-Two Thousand, Five Hundred Jamaican Dollars (J\$15,122,500.00). The grounds are somewhat similar and do not require repetition.

[12] The 1st Defendant's application is supported by Affidavits of Franz C. Jobson filed on August 10, 2023, November 2, 2023, February 15, 2024, March 27, 2024 and October 25, 2024. Affidavits of Thomas Oswald Ramsay filed October 11, 2023, October 31, 2023 and November 1, 2024 were filed on behalf of the 3rd Defendant. Affidavits of Gordon McFarlane filed October 12, 2023 and October 31, 2023 as well as Affidavit of Russel D. Cooper filed April 5, 2024 were filed on behalf of the Claimant opposing the applications.

[13] In his affidavit filed August 10, 2023, Mr. Jobson stated that both Vicky Huatong Rerrie and Kenneth Rerrie are residents in Canada and to the best of his knowledge, all their assets are beyond the reach of the jurisdiction of this Honourable Court. Mr. Jobson averred that it will be difficult, if not impossible for

the 1st Defendant to enforce an order of this Honourable Court or collect any damages or costs if so awarded.

- [14]** Mr. Jobson further stated that the 1st Defendant has been put to defend an expensive litigation and is incurring costs to defend the claim is estimated at Sixteen Million Five Hundred and Eight Thousand Two Hundred and Fifty Dollars (\$16,508,250.00). Further, that there is no certainty that the 1st Defendant will be able to recover the taxed costs despite procedural enforcement.
- [15]** In his affidavit in response to Mr. Jobson's affidavit filed October 12, 2023, Mr. Gordon McFarlane averred that, prior to his death, Mr. Christopher Clough executed a Transfer whereby 500 shares of Ocean Lake Heights Limited were re-transferred to Anthony Rerrie which represented a 50% of the shareholding of the 5th Defendant. He further averred that prior to their death, Mr. Christopher Clough and Mr. Anthony Rerrie executed and filed a Consent and Admission in this Honourable Court which contained an agreement that the five hundred (500) Shares of Ocean Lake Heights Limited registered and owned by David Emmanuel Clough are legally and beneficially owned by Anthony Rerrie. He indicated that the five hundred (500) shares in the 5th Defendant is a significant asset that is being held in this jurisdiction.
- [16]** Mr. McFarlane also stated that Anthony Rerrie's estate is the legal and beneficial owner of 50% of the share capital in the 5th Defendant which owns 21 parcels of land within the jurisdiction of Jamaica. He asserted that by letter dated September 5, 2013, Raymond Clough advised Mr. Rerrie that the Certificates of Title for the properties were in his possession however, despite repeated requests, the Certificates were not delivered either to Counsel for Mr. Anthony Rerrie and/or his executors.
- [17]** Mr. McFarlane indicated that there are assets within the jurisdiction that can be liquidated to compensate the Defendants where any costs orders are made

against the Claimants. He further expressed that incurring legal costs is a natural consequence of the 1st Defendant's refusal to return to the estate the shares in the 5th Defendant. He denied that any of the Defendants have a real prospect of succeeding at a trial and that on a balance of probabilities, the Claimants are entitled to the claimed shares in the 5th Defendant.

- [18]** Mr. Thomas Ramsay plays a dual role in this matter. He is a Partner of the firm Ramsay Stimpson on record for the substituted 3rd Defendant and he is also one of the Executors in the Will of the late Maurice Long, who was a Partner of the 3rd Defendant named firm. Mr. Ramsay in his Affidavit filed October 13, 2023 indicated that even though the 3rd Defendant operated as a Partnership, the Partners operated and carried on the separate legal practices.
- [19]** Mr. Ramsay also stated that the Claimants, in their capacity as Executors of the original Claimant reside outside the jurisdiction and to his knowledge, they have no assets in Jamaica as any assets they possess are beyond the shores of this jurisdiction. Mr. Ramsay stated that if damages are awarded to the substituted 3rd Defendant, it would be impossible to enforce any Judgment. He asserted that the 3rd Defendant has absolutely nothing to do with any aspect of the claim and have incurred legal fees and costs. He averred that legal fees for a two weeks' trial would estimate costs in the sum of Fifteen Million, One Hundred and Twenty-Two Thousand, Five Hundred Dollars (\$15,122,500.00).
- [20]** Mr. Ramsay asserted that the 3rd Defendant has a good and credible defence with a great likelihood of success at trial and it would be unable to recover taxed costs if it is ultimately successful.
- [21]** In his affidavit in response filed October 31, 2023, Mr. McFarlane asserted that at all material times, Mr. Maurice Long and Mr. Raymond Clough never advised Mr. Anthony Rerrie that they were not partners in the firm of Clough, Long & Co. and there were no distinctions as regards their practice. He asserted that Mr. Long in

fact signed a letter dated December 5, 2019 to Mr. Rerrie as a Partner of Clough Long & Co.

- [22] Mr. McFarlane posited that both Vicky Huatong Rerrie and Kenneth Rerrie do not appear in their personal capacities but were appointed by this Honourable Court to appear pursuant to Part 21 of the CPR and in representative capacities as the executors of the Estate of Anthony Rerrie, deceased. He asserted further that neither Vicky Huatong Rerrie nor Kenneth Rerrie are required to have assets in the jurisdiction to secure costs.
- [23] He contended that the estate of Maurice Long does not have any real defence with a real prospect of succeeding at trial and that under Partnership law, all partners of a firm are responsible for actions taken by any one partner of that firm against a former client. He asserted that on a balance of probabilities, the Claimants are entitled to the claimed shares in Ocean Lake Heights Limited and it is not just and/or equitable to make any order on the application for Security for costs.
- [24] By affidavit filed October 31, 2023, Mr. Thomas Ramsay responded to the Affidavit of Gordon McFarlane in response to Franz Jobson's affidavit. Mr. Ramsay asserted that he is one of the named Executors in the Will of the late Maurice Long, along with Mr. Peter Moses and that the named Executors have no knowledge of the matters mentioned in Mr. McFarlane's affidavit and that there is no evidence to support the submission that the 500 shares constitute a significant asset within the island of Jamaica.
- [25] He asserted that ownership of the five hundred (500) shares is a question to be determined by the Court and as a consequence, the 3rd Defendant cannot be compensated by the Claimants for costs incurred in the event this Honourable Court finds that Raymond Clough is the rightful owner of the said shares.

- [26]** In his Third Affidavit in support of the application filed October 25, 2024, Mr. Jobson averred that the allegations made by the original Claimant that he is the owner of the shares in the 5th Defendant were adopted by the current Claimants without making new allegations. These allegations were challenged as documentary evidence revealed that Anthony Kenneth Rerrie was not a shareholder at the date of incorporation as he had not yet attained the age of majority. Mr. Jobson asserted that the Claimants amended their Claim to state that the shares were inherited however, his investigations reveal that Anthony Kenneth Rerrie died leaving a Will which was Probated and he left specific instructions how the residue should be dealt with.
- [27]** By affidavit filed November 1, 2024, Mr. Jobson also filed an affidavit in reply to the affidavit of Gordon McFarlane. In this affidavit, he accepts that a Consent and Admission purporting to be executed by Christopher Mark Clough and Anthony Rerrie was filed on November 10, 2022. He however, stated that David Emmanuel Clough and Raymond Anthony Clough are the lawful Executors of Anthony Alexander Rerrie who is a different person from the Anthony Rerrie named in the purported Consent and Admission. He asserted that Mr. McFarlane is unable to attest to the validity or the signature on the document and asserted that the Consent and Admission is flawed, void as a matter of law and has no legal effect.
- [28]** He posited that it could be possible that many of the lots mentioned in the letter dated December 5, 2013 were sold or otherwise disposed of and cannot be assets being relied on by the Claimants to pay costs in the event the 1st Defendant is successful.
- [29]** In his affidavit filed on February 15, 2024, Mr. Jobson averred that a search at the Office of the Registrar of Companies discloses that the original shareholders of Ocean Lake Heights Limited as stated in the Articles of Association were Selvin Lee, Trevor DeLeon, L. Rogers, G. Montwell, O. Messado, Ian Don and Ian McConnell. He further averred that the Annual Returns for the years 1968 and

1969 included Anthony Alexander Rerrie and Victoria Rerrie as shareholders holding 543 and 250 shares respectively and at no time was Anthony Kenneth Rerrie ever listed as a shareholder or director. He asserted that Anthony Alexander Rerrie and Anthony Kenneth Rerrie are two separate individuals and that Anthony Alexander Rerrie died on June 19, 2019.

- [30]** In his Supplemental Affidavit filed March 27, 2024, Mr. Jobson averred that on March 14, 1998, Raymond Clough and David Emmanuel Clough filed with the Registrar of Titles an Application for Registration on Transmission in the estate of Estate Anthony Alexander Rerrie and that the application for transmission referred to an Order of the Supreme Court dated January 27, 1988 appointing both Raymond Anthony Clough and David Emmanuel Clough as Executors and Trustees of the Estate of Anthony Alexander Rerrie, deceased.
- [31]** He posited that there is no evidence how the original Claimant came to own shares in the 5th Defendant and it is virtually impossible for Anthony Kenneth Rerrie to have been an original legal shareholder as he was born on July 23, 1946 and at that date he would not yet have attained the age of 21, the age of majority at the material time.
- [32]** The affidavit of Russell Cooper filed April 5, 2024 responds to the affidavits of Franz Jobson filed on February 15 and March 27, 2024. He gave information regarding the family tree and how the shares were passed from Anthony Alexander Rerrie to Veronica Rerrie, his second wife, then passed to Eustace Anthony Rerrie, the father of Anthony Kenneth Rerrie. Mr. Cooper exhibited copies of the Annual Returns since 1968 evidencing the trajectory of the shares passing down the family line and as at 2008, the Annual Returns show that for the first time, the shares were transferred outside the family line and Raymond Clough and David Clough became Directors and shareholders of 500 shares each.

SUMMARY OF SUBMISSIONS ON BEHALF OF THE APPLICANTS

Submissions on behalf of the 1st Defendant/Applicant

[33] Mr. Dabdoub on behalf of the 1st Defendant highlighted the factual matrix of the case and submitted that the Court is not to investigate in considerable detail the likelihood of success or failure of the claim nor is the Court required to consider the merits of the claim unless it can clearly be demonstrated that there is a high degree of the probability of success or failure. He pointed the Court to dicta in **Prozelack KG v Prozelack (UK) Ltd. [1987] 1 ALL ER 1074** which he submitted was followed in **Teisha Combes v Russell Investments Limited t/a Pier 1 [2022] JMSC Civ 129**. Counsel also referred the Court to **Rebecca Bowes v Fiesta Jamaica Limited and Axis (Jamaica) Limited [2023] JMSC Civ 147** where Johnson J (Ag.) at paragraph 19 stated that “the court is not at this stage to investigate in considerable detail the likelihood or otherwise of the success of the action”.

[34] Mr. Dabdoub submitted that the Claimant is trying to take the place of the dead based on what his investigations carried out with the Registrar General Department revealed. Mr. Dabdoub submitted that the Claimants’ claim is doomed to failure against the background that the original Claimant was never a director of the 5th Defendant since the document at the Companies Office revealed that Anthony Alexander Rerrie was the director and shareholder and Raymond Clough and David Clough were the Executors of his estate.

Submissions on behalf of the 3rd Defendant/Applicant

[35] Counsel for the 3rd Defendant, Mr. Thomas Ramsay asserted that all subscribers to the Memorandum of the 5th Defendant have died and that the current Claimants have not proved to the Court that the substituted Claimants and the original Claimants have anything to do with Ocean Lake Heights Limited as all other

witnesses are deceased. Counsel asserted that there is no information regarding the occupations and addresses of the substituted Claimants and there is nothing to show they are children of the deceased Claimant. He further submitted that there is no evidence to show that the Claimants have the financial capabilities or any tangible assets in the jurisdiction as their assertion is that they have shares in the 5th Defendant.

[36] Mr. Ramsay asserted that all subscribers to the Memorandum have died and the Claimant should have ascertained whether they have standing in the matter. Counsel submitted that the Claimant has not established that the subsequent Claimant and the current Claimants have anything to do with Ocean Lake Heights Limited. Counsel submitted that the 3rd Defendant is now being called upon to incur immense legal costs. He submitted that the estimated sum being claimed as security for costs is sufficient to cover the 3rd Defendant's costs in the event the claim fails.

SUMMARY OF SUBMISSIONS ON BEHALF OF THE CLAIMANTS/RESPONDENTS

[37] Counsel for the Claimants, Mr. Kevin Williams submitted that the issues that the Court has to consider are-

- a. Whether any of the conditions for ordering security for costs under Rule 24.3 of the Civil Procedure Rules, 2002 is/are satisfied.
- b. Whether having regard to all the circumstances of the case that it would be just to exercise the Court's discretion to make orders for Security for Costs.
- c. Whether the amount sought by the 1st and 3rd Defendants as Security for Costs respectively is excessive and intended to stifle the claim.

[38] Mr. Williams commended dicta in **Manning Industries Inc. et al v Jamaica Public Service Company Limited Suit No. C.L. 2002/M058** where the Court found that it would be both discriminatory and unjustifiable if the prima facie ruling is based on residence abroad. He also commended dicta in **Corfu Navigation v Mobil Shipping (1991) 2 Lloyds L.R. 52 at 54** where Mance LJ opined at paragraph 419 that:

“...if the discretion to order security is to be exercised it should therefore be an objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular foreign claimant or country concerned.”

[39] Counsel submitted that security for costs does not apply to persons suing in a representative capacity. He relied on **Vera Bennett (Executor of the Estate of Valda Ferrest Bennett) et al v Vincent Pearson (Executor of the Estate of Agnes May Pearson) et al (unreported Claim No. C.L. 1994/B446** where Sykes J. (as he then was) found that trustees, executors and administrators are representatives under Rule 21.6. He stated that Sykes J (as he then was) dismissed the application on the grounds that the Claimants are suing in a representative capacity and are exempt under Rule 24.3(d) of the CPR.

[40] Mr. Williams submitted that the application for security for costs was made at a late stage of the proceedings, approximately 9 months after the substitution of Vicky Huatong Rerrie in place of Kenneth Rerrie and that period is unreasonable and appears to be an attempt to stifle the proceedings. He submitted that Phillips JA in paragraph 48 in **Symsure Limited v Kevin Moore [2016] JMCA Civ 8** stated that:

“....delay in making the application...is also a factor to be considered. As indicated the application ought to be made at a very early stage of the proceedings. It has been said that lateness itself may be a reason to refuse the application, particularly if the application is made very

close to the trial date and the sum asked for is exorbitant, or in any event, very high, as it may cause suspicion as to the genuineness of the claim.”

- [41] Counsel averred that the 1st Defendant has not justified a claim for Ten Million Dollars (\$10,000,000.00) as the skeleton bill exhibited did not specify the necessity for the seniority of the Attorneys-at-law nor the purpose of two (2) senior counsel appearing simultaneously. He submitted that the claim is not complex nor does it raise a difficult or complex question of law and that if the court is minded to grant security for costs, the sum of One Million Dollars (\$1,000,000.00) would be appropriate, fair and just.
- [42] In answering the question whether the Claimants have assets within the jurisdiction for the purposes of enforcement of any possible costs orders, Mr Williams reiterated that the Claimants have evidenced ownership of 500 shares in the 5th Defendant and this is strengthened by the Consent and Admission filed on November 10, 2022 in which there is admission that David Emmanuel Clough was never the legal and/or beneficial owner of any of the shares in the 5th Defendant.
- [43] Mr. Williams submitted that the Claimants have a bona fide claim against the 1st and 3rd Defendants, especially in regards to the contents of the Consent and Admission of the 2nd Defendant and the executed Transfer of Shares document granting the Claimant 50% ownership of assets in the 5th Defendant. He urged the Court to deny the Orders sought and instead declare the sums requested are excessively inflated and intended to stifle the claim.

ISSUES

- i. Whether the conditions under Part 24 for security for costs have been satisfied?
- ii. Whether the court should exercise its discretion and award security for costs?

DISCUSSION

Whether the conditions under Part 24 for security for costs have been satisfied?

[44] The considerations for me at this juncture are whether or not the conditions for the grant of security for cost have been satisfied. Part 24 sets out the conditions to be met for a security for costs application to be successful. Part 24.2 requires that where practicable an application for security for cost must be made at a case management conference or pre-trial review and it must be supported by evidence on affidavit. The applicants have complied with these provisions as the application was made at an adjourned case management conference and is supported by evidence on affidavit.

[45] Part 24.3 provides:

24.3 The Court may make an order for security for costs under rule 24.2 against a claimant only if, it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that –

- (a) the claimant is ordinarily resident out of the jurisdiction;*
- (b) the claimant is a company incorporated outside the jurisdiction;*
- (c) the claimant-*
 - (i) failed to give his or her address in the claim form;*
 - (ii) gave an incorrect address in the claim form; or*
 - (iii) has changed his or her address since the claim was commenced, with a view to evading the consequences of the litigation;*
- (d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21, and there is reason to believe that the Claimant will be unable to pay the defendant's*

costs if ordered to do so;

- (e) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;*
- (f) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover; or*
- (g) the claimant has taken steps with a view to placing the Claimant's asset beyond the jurisdiction of the court. Enforcing order for security for cost.*

24.4 On making an order for security for costs the court must also order that-

- (a) the claim (or counterclaim) be stayed until such time as security for costs is provided in accordance with the terms of the order; and/or*
- (b) that is security is not provided in accordance with the terms of the order by a specified date, the claim (or counterclaim) be struck out.*

[46] Part 24.3 stipulates that the Court **may** (emphasis mine) make an order for security for costs, which suggest that the grant of the order is discretionary so even if all the conditions are satisfied, the Court would still have a discretion whether or not to grant it. However, such a discretion would have to be exercised judiciously and not arbitrarily, and the paramount consideration must be whether it is just to do so.

[47] The original Claimant was Anthony Rerrie however, he is now deceased and was initially represented by his widow Vicky Huatong Rerrie and Kenneth Rerrie who were appointed by Order of the Court dated 10th November 2022. During the

hearing of the Application for Security for Costs Mr Kenneth Rerrie died and by Order of the Court dated June 25, 2024 Jason Rerrie and Jennifer Rerrie were substituted for him. There is no dispute that all of these persons, Anthony Rerrie, Vicky Huatong Rerrie, Kenneth Rerrie, Jason Rerrie and Jennifer Rerrie are ordinarily resident outside the jurisdiction. In this regard the Applicants would have complied with subsection (a) of Part 24.3 and have therefore satisfied one of the conditions.

[48] Counsel for the Claimants submitted that though the Claimants reside outside the jurisdiction, they are appearing as representative parties and are exempt from such an order pursuant to Part 24.3(d) CPR. Reliance was placed on the dicta of Sykes J. (as he then was) in the **Vera Bennett** case where Sykes J. (as he then was) stated that trustees, executors and administrators are representatives under Rule 21.6 and dismissed the application on the grounds that the Claimants are suing in a representative capacity and are exempt under Rule 24.3(d) of the CPR.

[49] Counsel Mr. Dabdoub contended that the circumstances in the **Vera Bennett** case are different from this case and that the current Claimants are acting as nominal Claimants and it is unlikely that they will want to pay any of the Defendants' costs and there is no evidence before the Court that they have assets in Jamaica and that they are financially able to meet any order in costs. Mr. Williams' reply is that the only nominal party is the 5th Defendant. It could be argued that the Claimants are not nominal Claimants as they stand to benefit from the shares if the Court were to so award and so could not be described as having no interest in the outcome of the case.

[50] The Claimants herein would be representatives under Part 21 of the CPR and so would have some interest in the outcome of the case. When the **Vera Bennett** case is examined, it is clear that the application for security for cost was dismissed on the basis that the Claimants are suing in a representative capacity. I find it is distinguishable from the instant case as it was decided based on the particular

facts of that case. My understanding of the position is that whereas the fact of being a nominal Claimant who is believed to be unable to pay the Defendants' costs, satisfies a condition upon which such an application can be granted and could be said to open the gateway for a court to exercise its discretion to grant security for cost, the fact of being a representative Claimant, without more, does not. Representative Claimants under part 21 are in a sense real Claimants and can be required to provide security for costs if any of the other criteria is satisfied. In this case the basis of the 1st and 3rd Defendants' application is not that the Claimants are acting in a representative capacity but rather that they are ordinarily resident outside of the jurisdiction and have no unencumbered assets in Jamaica.

[51] This point is really academic as all of the Claimants and substituted Claimants reside in Canada and so would have satisfied the criteria for being ordinarily resident outside the jurisdiction. Based on the dicta of Brooks J in **Manning Industries**, there is no need for an applicant to satisfy more than one of the criteria under Part 24.3. It is noted that previously the rule indicated expressly that one or more on the conditions be satisfied. In the amended version this is not replicated however, it is clear from an interpretation of the provision that this must be what was intended. It is sufficient that one criterion is satisfied and in this case the criterion of 'ordinarily resident outside the jurisdiction has been met.

Whether the court should exercise its discretion and award security for costs

[52] The next issue is whether I should exercise my discretion and award security for costs. Phillips JA in the **Symsure Limited v Kevin Moore** case made it clear that since the justice of the case forms a significant consideration, the learned judge has been given a wide discretion whether or not to impose the order for security for costs and the principles upon which the discretion is to be exercised are dependent on the circumstances of each case. She emphasized that the discretion must be exercised judicially taking certain important factors into account. Phillips

JA after reviewing authorities extrapolated the factors from the case of **Harnett, Sorrell and Sons Ltd v Smithfield Foods Ltd** BB1987 HC 15 and suggested that the Court may take certain factors into account. The factors mentioned which I find to be relevant to this case are whether the Claimant's claim is bona fide and not a sham, whether the Claimant has a reasonably good prospect of success, whether the application for security is made at a late stage of the proceedings and whether the Claimant owns assets within the jurisdiction.

Whether the claim is bona fide and not a sham?

- [53] The Claim against the Defendants is essentially for declarations that the transfer of shares in the 5th Defendant is void and of no effect due to procurement by fraud and without giving any consideration and for a return of those shares as well as damages for fraud. The Claimant averred that he was the owner of the 1000 shares in the 5th Defendant and that it was never transferred by him to the 1st or 2nd Defendants but yet in May 1988 the Form of Annual Return for the 5th Defendant reflected that the 1st and 2nd Defendants were the owner of these shares. It is averred that the information contained in the Form of Annual Return was false and fraudulent. Further, that the shares were transferred through the forging of the Claimant's signature as he did not sign any document to effect any transfer.
- [54] The Defendants admit that the Form of Annual Return reflects the owners of the shares to be the 1st and 2nd Defendants however, in the oral submissions before me it was contended that the alleged fraud was not satisfactorily particularized. However, it would be sufficient at that stage for the owner of the shares to show that he had not transferred the shares or divested himself of the shares in the company and that he had not signed any documents to effect the transfer and that is what the Claimant did.
- [55] The Defendants have contended that there was a deliberate attempt on the part of Anthony Rerrie to deceive the Court into believing that he was in fact the original

Anthony Rerrie and have suggested that this is a case of mistaken identity. Reliance was placed on the affidavit of Mr Franz Jobson who after conducting checks at the Company Office averred that from his examination of the corporate records filed at the Office of the Registrar of Companies, at no time was Anthony Kenneth Rerrie ever a shareholder or a director of the company. He is of the view that Anthony Kenneth Rerrie held himself out to be one and the same person as Anthony Alexander Rerrie and it is incumbent on the Claimants to provide evidence that he is one and the same person mentioned and referred to as Anthony Alexander Rerrie, and/or to provide proof that he was registered as a shareholder. To the best of his knowledge Anthony Alexander Rerrie died on the 19th June 2069 and Anthony Kenneth Rerrie died on the 28th June 2022.

[56] It was also pointed out by Mr Dabdoub in support of his contention that at the time of the alleged incorporation of the 5th Defendant, Anthony Kenneth Rerrie was 19 years old and so would not then have attained the age of majority which at the time was 21 years old and so he did not then have the legal capacity to own shares in any company. In response the Claimant relies on the affidavit of Russel Cooper, an associate attorney-at-law with the firm, who set out information he garnered from the current substituted Claimants to the effect that Anthony Alexander Rerrie was the grandfather of Anthony Kenneth Rerrie, the original named Claimant and that all the shares in the name of Anthony Alexander Rerrie, upon his death passed to Veronica Rerrie and then to Eustace Anthony Rerrie and that Anthony Kenneth Rerrie inherited the shares in Ocean Lake Heights Limited on the death of Eustace Anthony Rerrie. He pointed out that Anthony Kenneth Rerrie has never said in any documents before the Court that he was one and the same as Anthony Alexander Rerrie. This is in fact so, in fact in the Amended Claim Form he said that he was the sole shareholder a director of the 5th Defendant and by virtue the amendments made in the Particulars of Claim replicated much of what was said by Mr Cooper in his affidavit. He did not indicate how he came to be the sole shareholder.

[57] The contention was made that no Probate was granted in the Estate of Kenneth Rerrie but that is neither here nor there, as it is trite that an executor stands in the shoe of the testator upon his death. What is clear to me is that the issue relating to the genesis of the ownership of the shares in the company is a matter that is best left to be determined at trial. The authorities have stressed that in an application for security for cost it is not for the court to conduct as it were a mini trial. The issues raised demonstrate that this is not a sham but instead a bona fide claim.

[58] In addition, there is the fact that Mr. Christopher Clough, Executor of the Estate of David Clough and Mr. Anthony Rerrie executed and filed a Consent and Admission in this Honourable Court which contained an agreement that the five hundred (500) shares in Ocean Lake Heights Limited registered and owned by David Emmanuel Clough are legally and beneficially owned by Anthony Rerrie. A transfer of shares document dated December 2020 was executed by Anthony Rerrie and Christopher Clough transferring five hundred (500) shares in the 5th Defendant to Anthony Rerrie. This demonstrates the bona fides of at the very least the claim relating to the then 2nd Defendant. The Annual Returns are available to be examined and so it would be a question for a court to decide whether the information was false or fraudulent. On this point also, the Claim raised triable issues and could not be said to be a sham but rather has the makings of a bona fide claim.

Whether the Claimant has a reasonably good prospect of success?

[59] I agree with Counsel for the 1st and 3rd Defendants that the Court is not at this time required to investigate in great detail the likelihood of success in the action, however, it is prudent to consider whether the Claimant has a reasonably good prospect of success.

[60] Although the Court in the **Porzelack KG v Porzelac (UK) Ltd case** frowned on a court delving deeply into the merits of the case, it was pointed out that if it can

clearly be demonstrated that the claimant is likely to succeed then that is a matter to be weighed in the balance.

[61] The Claimants asserted that one thousand (1000) shares in Ocean Lake Heights Limited were wrongly transferred from the Estate of Anthony Rerrie to Raymond and David Clough pursuant to Annual Returns filed at the Companies Office in 2008. The 1st Defendant in the Amended Defence denied the averments made and put the Claimants to strict proof. It is pleaded that by Order of the Court dated 27th January 1987, Mr Raymond Clough along with Mr David Clough were the duly appointed Trustees of the Estate of Anthony Alexander Rerrie in substitution for the persons appointed Executors and Trustees, by the Will of the said Anthony Alexander Rerrie. It is also averred that the 1st Defendant and Mr David Clough became the lawful owners of the shares in the 5th Defendant pursuant to an Order of the Supreme Court dated 27th January 1988.

[62] The 1st Defendant's response to the Claimant's assertion that the signature of Anthony Rerrie was forged, was simply to put the Claimant to strict proof and to deny the Particulars of Fraud, Misrepresentation and Misstatement of Raymond Clough. Although there are denials in the Amended Defence when carefully scrutinized it is noted that in the face of this assertion of fraud on the part of the 1st Defendant who was an attorney-at-law, there is no clear assertion on behalf of the 1st Defendant demonstrating that there was in fact this authority granted. Although the Amended Defence reflects the appointment of the 1st Defendant as Trustees and the lawful owners of the shares by order of the Court there is no further evidence as to how they came to be in this position in light of the fact that the shares had been owned by the Rerrie family and passed down through inheritance. The 1st Defendant's Defence appears to be somewhat of a bare denial. The cases have suggested that if there is no Defence to the case then it would be unjust to order security for cost. Taking all of that in account, it is clear to me that the Claimant has a reasonably good prospect of success.

Whether the application was made at a late stage of the proceedings?

- [63] The Claim was filed on December 11, 2020. The case management conference was first set to take place on December 20, 2022. After four case management conferences had taken place on June 21, 2023 trial dates were set for September 23 to October 3, 2024. On August 10, 2023 the first application for security for costs was filed on behalf of the 1st Defendant. On October 12, 2023 the 3rd Defendant followed suit and filed a similar application for security for costs.
- [64] By then the matter had been before the court for a few months' shy of three years. During the course of that time several applications were filed and dealt with including applications to substitute parties in respect of three persons who died during the currency of the matter. Although the trial dates were vacated and no pre-trial review has taken place, it is the Claimants' position that the application has been made at a late stage of the proceedings.
- [65] It could be argued that the delay in filing the matter had to do with the deaths of the respective persons and the need to substitute them before proceeding with the matter. However, both applications for security for cost are grounded on the fact that the original Claimant at all material times resided in Canada, the substituted Claimants likewise reside in Canada and neither the Claimant nor the Claimant's Executors have any unencumbered assets in Jamaica and all their assets are beyond the jurisdiction of the court and that it would be difficult if not impossible for the Applicants to enforce an order or collect any damages or costs awarded. It was only in the Amended Application filed November 1, 2024 that it is expressly pointed out that in respect of the current substituted Claimants, Jennifer Rerrie and Jason Rerrie, their respective occupations have not been revealed to the Defendants and that neither the original Claimant nor any of the substituted Claimants have declared and or proven to have any formalized assets, tangible and or otherwise in Jamaica.

[66] It is clear therefore that from the very inception of the Claim, there would have been material upon which to ground the applications for security for cost as Anthony Rerrie at all material times resided outside of the jurisdiction and according to them had no unencumbered assets within Jamaica. This is an application for an interim relief and so it should have been made as soon as possible. I therefore accept that there has been considerable delay in the filing of the applications.

[67] Phillips JA in the **Symsure Limited v Kevin Moore** judgment pointed out that delay in making the application is also a factor to be considered and that the application ought to be made at an early stage of the proceedings. By no stretch could it be said that this application was made at an early stage. Phillips JA made the following instructive remarks at paragraph 48 of the judgment:

“It has been said that lateness itself may be a reason to refuse the application, particularly if the application is made very close to the trial date and the sum asked for is exorbitant, or in any event, very high, as it may cause suspicion as to the genuineness of the claim.”

[68] The sum now being claimed by the 1st Defendant as security for cost is Sixteen Million Five Hundred and Eight Thousand Two Hundred and Fifty Dollars (\$16,508,250.00) and the sum being claimed by the 3rd Defendant as security for cost is some Fifteen Million One Hundred and Twenty-Two Thousand Five Hundred Jamaican Dollars (\$15,120,500.000. These sums are exorbitant and so on behalf of the Claimant it has been argued that this is an attempt to stifle the Claim. However, this without more is not sufficient to prove that this is an attempt to stifle the Claim, however the fact of the lateness in filing the application is a factor that must be weighed alongside the exorbitant figure in costs being claimed in determining whether to grant the applications.

Whether the Claimant owns assets within the jurisdiction for the purposes of enforcement of any possible cost orders against the Claimant

[69] It is noted that the case against the 2nd Defendant was discontinued due to the Consent and Admission of the 2nd Defendant which was filed on November 10, 2022 reflecting that 500 shares in the 5th Defendant are legally and beneficially owned by Anthony Rerrie and that a transfer of shares documents dated December 2020 was executed by Anthony Rerrie and Christopher Mark Clough transferring 500 shares to Anthony Rerrie. This is supportive of the Claimant's contention that it is not accurate to say that the Claimant has no assets within the jurisdiction and Ocean Lake Heights Limited is a company incorporated in Jamaica. Mr. Gordon McFarlane in his affidavit pointed out that the 500 shares in the 5th Defendant which were transferred to Anthony Rerrie is a significant asset held within Jamaica and that the 5th Defendant of which Anthony Rerrie's estate is the legal and beneficial owner of 50% of the share capital owns at least twenty-one parcels of land within the jurisdiction of Jamaica.

[70] The Applicants have presented no evidence to contradict the evidence of Mr McFarlane however, it has been argued on their behalf that the question of the ownership of the shares in the company is for the court to decide and have highlighted that the transfer has not yet been noted at the Companies Office because of the dispute. Despite the notation not having been made at the Companies Office this does not take away from the fact that the transfer of the 500 shares has been effected. The 500 shares that were transferred by the 2nd Defendant is no longer an issue before this Court. That was determined by virtue of the Consent and Admission documents which when filed resulted in the case against the 2nd Defendant for the mis-appropriation of 500 shares by the 2nd Defendant being discontinued. What remains to be determined is the issue concerning the 500 shares said to have been transferred to Mr. Raymond Clough.

[71] Any order for security for cost would clearly not be against the Claimants in their personal capacity but against them in their capacity as Executors of the Estate of

the original Claimant Anthony Rerrie so it is his Estate that must be relevant and not their assets. I find that the 500 shares in the 5th Defendant represents a significant asset. I note that the company is the owner of some twenty-one properties. I therefore do not agree that the Claimants have no assets within the jurisdiction. On behalf of the Defendants, it was also argued that the current Claimants' occupation is unknown. That is not a relevant factor for this Court, not only because I have found there to be significant assets within Jamaica but also because it is not the assets owned by the substituted Claimants that should be the main consideration but rather the assets owned by the original Claimant Anthony Rerrie.

DISPOSITION

[72] The Courts concern is whether in all the circumstances it would be fair and just to order security for cost against the Claimants. In exercising my discretion, I note that if an order for security for cost is granted, it would operate as a stay of the proceedings until the sum is paid and so it can be regarded as a fetter to the Claimant's access of justice. This is especially so in a case such as this where the amounts being sought exceed Thirty Million Dollars (\$30,000,000.00). Would it be just in these circumstances to order security for cost in this sum or in any sum for that matter. Counsel for the 1st Defendant has urged on me to consider the decision in **Porzelack KG v Porzelack (UK) Ltd** and I have done so and note that the stated purpose of an order for security for cost to ensure that a successful defendant will have a fund available within the jurisdiction from which to secure its costs. If the Defendants herein were in fact successful, they would have the Claimant's interest in the 500 shares in Ocean Lake Heights Limited as a means of enforcing an order for costs.

[73] When this fact is weighed with the other factors such as the likelihood of success on the part of the Claimant, the inordinate delay in making the application they do

not auger well for the imposition of an order for security for cost. Imposing an order for security for cost at this late stage will only result in further delay of the matter which cannot be countenanced at this stage. It is important to reiterate that such an application should be made as soon as it is perceived to be necessary. This practice is consistent with the overriding objective of the Civil Procedure Rules which is to deal with cases justly and to refrain from practices which result in delays and significant expense.

[74] When these factors are weighed alongside the fact of the 500 shares being held by the Claimant in the company Ocean Lake Heights Limited which can be liquidated to enforce an order for cost, and so operates as an available means to secure any costs incurred, I do not find that the interest of justice requires the imposition of an order for security for costs. It would not be fair and just in all these circumstances to make orders for security for costs. Both applications for security for costs are refused.

[75] Both the 1st and 3rd Defendants applied for leave to appeal. On behalf of the 1st Defendant, it was submitted that the Court failed to take into account essential features of the 1st Defendant's case in particular that the 1st Defendant was a duly appointed Trustee of the Estate of Anthony Alexander Rerrie. On behalf of the 3rd Defendant, it was submitted that the Court failed to take into account that there is no value ascribed to the 500 shares in the 5th Defendant. The Court pointed out that the fact of the 1st Defendant's appointment as Trustee was taken into account and the Court was of the view that there was no reasonable prospect of success in the Appeal and refused the application for leave to appeal.

[76] My Orders are as follows:

1. The Orders sought in the 1st Defendant's Amended Notice of Application for Court Orders for Security for Costs filed on October 25, 2024 are refused.
2. The Orders sought in the 3rd Defendant's Amended Notice of Application for Court Orders for Security for Costs filed on November 1, 2024 are refused.

3. Application for leave to appeal by the 1st and 3rd Defendants refused.
4. Costs in the Applications to the Claimants to be agreed or taxed

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Stephane Jackson-Haisley
Puisne Judge