[2019] JMSC Civ 194

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2008 HCV 01680

BETWEEN	**ROSEMARIE SAMUELS**	**RESPONDENT/ CLAIMANT**
AND	**JAMAICA PUBLIC SERVICE COMPANY LIMITED**	**APPLICANT/ DEFENDANT**

IN CHAMBERS

Messrs. Patrick Foster Q.C. and François McKnight instructed by Messrs. Nunes, Scholefield, DeLeon & Company for the Applicant/Defendant

Mr. Sean Kinghorn instructed by Messrs. Kinghorn & Kinghorn for the Respondent/Claimant

Heard: April 26, May 21, June 4, 17, 18 and 20, July 29, September 16, 19 and 26, 2019

Civil Procedure – Application to adduce further evidence – Whether further evidence can be adduced after the close of the evidence and before judgment is delivered – The relevant test to be applied

A. NEMBHARD, J

INTRODUCTION

[1] By way of a Notice of Application for Court Orders to Adduce Further Evidence, filed on 15 April 2019, the Applicant/Defendant, Jamaica Public Service Company Limited, seeks the following Orders: -

(1) That the Applicant/Defendant be permitted to adduce further evidence in respect of the Assessment of Damages hearing which concluded on February 8, 2019;

(2) That permission be granted for the Applicant/Defendant to file Witness Statement of Blaine Jarrett;

(3) That the Order for written submissions to be filed on April 26, 2019 be vacated;

(4) That there be a date fixed for the hearing of the Assessment of Damages to continue;

(5) That the Applicant/Defendant is permitted to remove its overhead power lines, poles and all electrical equipment across the perimeter of the Claimant's property;

(6) That there be an abridgment of time for the Applicant/Defendant to file and serve this Notice of Application for Court Orders;

(7) Costs to be costs in the Claim;

(8) Such further and/or other relief as this Honourable Court deems just.

BACKGROUND

[2] The proceedings in the instant matter were begun by way of a Claim Form and Particulars of Claim, each filed on 3 April 2008. The Respondent/Claimant,

Rosemarie Samuels, claims against the Applicant/Defendant, Jamaica Public Service Company Limited ("JPS"), for damages for trespass to property.

[3] Miss Samuels contends that she is the registered owner of all that parcel of land, part of Rhymesbury, in the parish of Clarendon, being the land comprised in Certificate of Title registered at Volume 1213 Folio 789 of the Register Book of Titles ("the said land").

[4] Miss Samuels further contends that, in or around the year 1996, JPS trespassed on the said land by unlawfully erecting and maintaining its overhead power lines and poles across the perimeter of the said land. Consequently, she suffered loss and damage and was deprived of the use and benefit of a substantial area of the said land, for the purpose for which she purchased it, namely, the rearing of chickens in modernized chicken houses.

[5] Miss Samuels sought the following Orders: -

(1) Damages;

(2) An injunction restraining the Defendant, whether by itself, its servants and/or agents from continuing the said trespass of having upon the Claimant's property, its overhead power lines and poles across the perimeter of the Claimant's property;

(3) An injunction ordering the Defendant to remove the said overhead power lines and poles across the perimeter of the Claimant's property;

(4) Interest thereon for such rate and for such period as this Honourable Court deems just, pursuant to the Law Reform (Miscellaneous Provisions) Act;

(5) Costs;

(6) Such further and/or other relief as this Honourable Court deems just.

[6] On 29 January 2010, Frank Williams, J, as he then was, granted summary judgment in favour of Miss Samuels on the basis that JPS had no reasonable prospect of successfully defending the Claim. JPS appealed this decision. The appeal was dismissed and the Order of Frank Williams, J was affirmed. The Court of Appeal concluded that the document by which JPS entered the said land was a contractual licence which, neither at common law nor in equity, bound the licensor's successors in title. JPS did not register the document on the registered title, as it was entitled to do during the licensor's lifetime, and therefore failed to secure the benefit of the provisions of section 41 of the Electric Lighting Act, which allowed its licence to be so registered.

[7] JPS' contractual licence ceased immediately upon the land having been transferred to Miss Samuels and it became a trespasser upon that event occurring. Miss Samuels is entitled to possession in the absence of JPS relying on the Electric Lighting Act.

[8] In the circumstances, the Court of Appeal concluded that, the defence, as pleaded, had no chance of success, the summary judgment must be upheld and the matter proceed to assessment of damages, taking into account the date on which Miss Samuels became entitled to possession.

[9] A hearing of the Assessment of Damages was conducted during the period 5 February to 8 February 2019, during which the Court heard evidence from two (2) witnesses called on behalf of Miss Samuels and a Valuation Report, prepared by Mr. Mervyn Downer, was received in evidence on behalf of JPS.

<u>THE ISSUES</u>

[10] The following issues arise for the Court's determination: -

(1) Should JPS be permitted to adduce the proposed further evidence in the circumstances of the instant case?

(2) Can the Court properly make an Order permitting JPS to remove its equipment from the said land?

THE LAW

Finality to litigation as a matter of public policy

[11] The general rule is that a party is expected to adduce all the evidence on which he intends to rely before closing his case. However, several exceptions to the general rule have developed both in the criminal and civil law. A party may be allowed to call evidence in rebuttal after the close of the Defendant's case, to rebut the Defendant on issues, the proof of which rested with the Defendant. (See – **Penn v Jack** (1866) LR 2 Eq 314) and **Rogers v Manley** (1880) 42 LT 584.)

[12] In civil cases, under the regime of the Civil Procedure Rules, 2002 ("the CPR"), regard has to be had to the overriding objective. The exceptions to the general rule have been extended to cases where judgment has been reserved but not yet delivered, or, delivered in draft but not yet perfected, or, delivered but the Order has not yet been drawn up. (See – **Stoczina Gdanska SA v Latvian Shipping Company** (2000) LT 12/2/2001.)

[13] A judge has the jurisdiction to exercise a discretion to alter a judgment before perfection, as he retains control of his case, even up to judgment and before the Orders are perfected. (See – **In re Barrell Enterprises** [1973] 1 WLR 19.)

[14] This jurisdiction extends to the right of a judge to reconsider the matter, either of his or her own volition or on the application of a party, or to hear further arguments on a point on which he had already made a decision and handed down judgment, so long as his Orders had not yet been perfected. It also includes the discretion to allow the amendment of pleadings or the adducing of further evidence or further arguments, at that stage. (See – **Charlesworth v Relay Roads Ltd (in Liquidation) and Others** [1999] 4 All ER 397 which has

been followed by **Vringo Infrastructure Inc v ZTE (UK) Ltd** [2015] All ER (D) 187 (Feb). In relying on **Charlesworth** and in balancing the competing interest, Fraser, J in **National Housing Trust v Y.P. Seaton & Associates Company Limited**, unreported, judgment delivered on 31 March 2011, adopted the words of Brooks, J, in **National Housing Development Corporation v Danwill Construction Limited, Warren Sibbles and Donovan Hill** [2004] HCV 361 and 362, judgment delivered on 4 May 2007, who noted that allowing the amendments will assist the Court in 'determining the real questions in controversy between the parties.' It was held that those amendments ultimately facilitated the resolution of the matter fairly and justly.)

[15] In **Fisher v Cadman** [2005] EWHC 377 (Ch) it was held that where the application to reopen is made after judgment but prior to it being perfected, the principles in **Ladd v Marshall** [1954] 1 WLR 1489, are to be applied with more flexibility than they are applied in an appeal court but that the threshold before new evidence is allowed is a high one.

[16] It has also been held that reopening contentious matters or permitting one party or the other to add to his case or to make a new case after the close of evidence, should only be allowed in exceptional circumstances. (See – **Gravgaard v Aldridge and Brownlee (a firm)** [2004] EWCA Civ 1529.)

[17] It is therefore clear from the authorities that, it is in the discretion of the judge to reopen civil proceedings to receive further evidence, at any stage, even after judgment but before the Order is perfected. The basis of the exercise of this discretion, however, between these extremes, is different.

[18] Where the discretion is being considered before judgment, the principles on which the Court will act surrounds questions of relevance, fairness, prejudice, delay and, under the CPR, the overriding objective. At this end of the spectrum, what the applicant to reopen the case is trying to do is to persuade the Court that

the evidence is relevant to the issue to be determined and which, if it is not heard, may result in an unfair and unjust decision.

[19] The CPR makes no provision for rebuttal evidence. The Court therefore has to be guided by the overriding objective (of the CPR), the applicable common law principles and rules of practice.

[20] In **Lilieth Douglas v Errol Francis** [2017] JMCA App 8, Edwards, JA (Ag.), as she then was, at paragraph [47], opined that factors that the Court ought to consider include: -

> *"(i) Whether the evidence was being given in rebuttal;*
>
> *(ii) The stage of the proceedings;*
>
> *(iii) The nature and relevance of the evidence;*
>
> *(iv) Any prejudice which may result from allowing the evidence to be adduced;*
>
> *(v) Any possible effect from the delay;*
>
> *(vi) Any explanation given for not adducing the evidence before;*
>
> *(vii) The interests of justice."*

[21] Where judgment has been reserved or has been delivered but not perfected, the Court will consider factors similar to **Ladd v Marshall** (supra), in determining whether the overriding objective will be achieved by allowing the evidence at that stage. Implicit in this consideration is the principle of the finality of litigation. At this stage, what the applicant to reopen seeks to do is to persuade the Court that if it had heard the further evidence, it would have come to a different conclusion.

[22] In **Ladd v Marshall** (supra), the learned trial judge had entered judgment in the following terms: -

> *"I prefer on every point where the evidence is in conflict the evidence of the Defendant to the evidence of the Plaintiff and his witnesses. There will therefore be judgment for the Defendant with costs."*

[23] On appeal from that decision Lord Justice Hodson stated as follows: -

> *'…the discretion in this Court to receive further evidence if the justice of the case requires has always been exercised in the light of the maxim interest reipublicae ut sit finis litium. This seems to me to be particularly the case where one might envisage no end to litigation if people who had given evidence were allowed to come again and say "I told lies last time. I want to tell the truth now."'*

[24] Lord Hodson stated further that when a litigant has obtained judgment in a court of justice he is by law entitled not to be deprived of that judgment without very solid grounds; and where the ground is the alleged discovery of new evidence, it must at least be such as is presumably to be believed, and, if believed, would be conclusive.

[25] In **Rohan Collins and Sonia Collins v Wilbert Bretton**, Claim No. E 227 of 2002, judgment delivered on 26 May 2003, on 6 May 2003 the Respondent and the 1st Applicant came before the Court on a Vendor and Purchaser Summons requesting a number of declarations. The 2nd Applicant did not appear and the 1st Applicant appeared in person without his Attorney. The Court took the view that there was no good reason for an adjournment and requested the 1st Applicant to proceed on his own behalf.

[26] At the end of the Respondent's case, the 1st Applicant chose not to produce an affidavit or to give oral evidence on his behalf, in effect, closing his case.

[27] Judgment was reserved for a date to be announced.

[28] On 7 May 2003, the 1st Applicant filed a Notice of Change of Attorney and an Application, under Part II of the CPR, for Court Orders requesting that permission be granted to the Defendants to present their response.

[29] R. Jones, J (Ag.), as he then was, opined, at page 4, that it is apparent from the new rules (the CPR) that the Court is no longer restrained to consider only the position of the actual parties in the litigation before it, but must also consider the effect of the conduct of the parties, on the administration of justice as a whole.

[30] With this in mind, it is important that the Courts do not appear to condone defaults where parties do not comply with time limits. There must be some finality to litigation, as a matter of public policy. It is trite to say that a party must litigate all causes of action arising from the same event, or that are closely associated with that event, in one proceeding. (See – **Henderson v Henderson** [1843-60] All ER 378.)

[31] In pronouncing the judgment of the Court, Sir James Wigram VC, in **Henderson v Henderson** (supra), at pages 381-382, stated as follows: -

> *"In trying this issue, I believe I state the rule of the Court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."*

[32] However, this rule is not cast in stone, as, in the case of **Johnson v Gore Wood & Company** [2001] 1 All ER 481, the House of Lords, in assessing the decision in **Henderson v Henderson** (supra), held that: -

> *"…although the bringing of a claim or the raising of a defence in later proceedings might, without more, amount to abuse if the Court was satisfied that the claim or defence should have been raised in earlier proceedings, it was wrong to hold that a matter should have been raised in such proceedings merely because it could have been. A conclusion to the contrary would involve the adoption of too dogmatic an approach to what should be a broad, merits based judgment which took account of the public and private interests involved in the facts of the case, focusing attention on the crucial question whether, on given facts, abuse was to be found or not."*

[33] In **Charlesworth v Relay Road Limited** (supra), judgment was given for the Claimant on a part of his Claim but the judge adjourned to consider the terms of the Order to be made, when the applicant applied to amend the pleadings and to adduce new evidence in support of the amended pleadings.

[34] The following extract is taken from the head note: -

> *"The power of a judge to review his own judgment before the drawing up of the order includes a discretion to permit the amendment of pleadings, even if that involves the putting forward of a new argument or the adducing of further evidence. That discretion must be exercised in a way best designed to achieve justice…"*

[35] Neuburger, J had this to say at page 401: -

> *"As is so often the case where a party applies to amend a pleading or to call evidence for which permission is needed, the justice of the case can be said to involve two competing factors. The first factor is that it is desirable that every point which a party reasonably wants to put forward in the proceeding, is aired…"*

ANALYSIS

The proposed further evidence

[36] In determining whether JPS ought properly to be permitted to adduce the proposed further evidence of Mr. Blaine Jarrett, an examination of that evidence and of its relevance to the issues to be determined, at the conclusion of the hearing of the assessment of damages, is imperative.

[37] The proposed Witness Statement of Blaine Jarrett was exhibited to the Affidavit of Blaine Jarrett and of Urgency, filed on 15 April 2019, as exhibit "BJ-1". Mr. Jarrett purports to give the proposed further evidence in his capacity as Senior Vice President, Energy Delivery at JPS. He is also an Engineer. He indicates that as the Director of Engineering, his duties include directing JPS' business operations in the areas of Engineering and Construction (Transmission and Distribution Systems expansions and upgrades); System Reliability; Asset Management; Transmission and Distribution Term Planning; Grid Interconnection and Joint Pole; and Protection and Control. (See – Paragraphs 1 and 3 of the proposed Witness Statement of Blaine Jarrett.)

[38] Mr. Jarrett asserts that he is familiar with the Parnassus to Kendal transmission line, a section of which traverses the said land. He asserts that, since 2009, JPS has made significant investments in the reliability and stability of its Transmission and Distribution Systems, a process that is continuing. He asserts that JPS has embarked on a grid modernization programme, particularly in the past four (4) years, to enable the grid to detect faults more quickly, to minimize the impact of outages on customers and to facilitate quicker restoration, through the installation of distribution automated switches, trip savers and fault circuit indicators, together with the installation of other equipment. Mr. Jarrett asserts further that the varying amendments to the Electricity Licence has also aided in solidifying the programme. Consequently, Mr. Jarrett asserts, JPS has more flexibility and is now better able to make changes to its Transmission System, with minimal

interruption to customers, and at a more moderate cost. (See – Paragraphs 4 and 5 of the proposed Witness Statement of Blaine Jarrett.)

[39] Mr. Jarrett contends that JPS had always given serious consideration to removing the section of its power line that affects the said land, and had done so since in or around 2009. However, certain limitations existed. These limitations made it extremely difficult for JPS to remove the wires without severe and prolonged disruption to customers in the parishes of Manchester and Clarendon. These limitations have been significantly reduced due to the improvement in JPS' procurement process; the re-design of the grid system; the grid modernization; and the change in the landscape arising from the change in ownership, and the general development of the area has improved the easement procurement process (the use of parochial roads versus private lands.) (See – Paragraphs 6 and 7 of the proposed Witness Statement of Blaine Jarrett.)

[40] Additionally, the construction of a solar plant, which commenced in or around 2013, and the commissioning into service of that plant on 28 August 2016, has also had an impact on the grid. (See – Paragraph 9 of the proposed Witness Statement of Blaine Jarrett.)

[41] Mr. Jarrett contends that JPS was able to modify the Parnassus to Kendal transmission line to facilitate the tying into the JPS grid by Content Solar. This resulted in an improvement in grid interconnection and flexibility in the transmission of power to customers in south central Jamaica. Two other renewable plants, Wigton Wind Farm, in the parish of Manchester and BMR Munro Windfarm, in the parish of St. Elizabeth, became operative in 2016. This, Mr. Jarrett asserts, resulted in significant relief to the transmission constraints that existed with the Parnassus to Kendal transmission line. (See – Paragraph 10 of the proposed Witness Statement of Blaine Jarrett.)

[42] Finally, Mr. Jarrett asserts that, since 2016, JPS has embarked on varying projects relating to the maintenance of its transmission lines, the relocation of

select distribution lines throughout rural parishes, the upgrading of its substations and the voltage upgrade projects. During the first quarter of 2019, he visited Rhymesbury, in the parish of Clarendon, as part of the transmission line maintenance programme. Arising from that site visit, an area was identified where a proposed new section of the transmission line could be constructed, to provide better access to and maintenance of the transmission line by JPS, thereby allowing it to better serve its customers. Construction of the new section of the transmission line began in or around March 2019. Mr. Jarrett contends that this enabled JPS to de-energize the section of the transmission wires that traverse the said land and to remove a portion of the equipment affecting it. (See – Paragraphs 12 and 13 of the proposed Witness Statement of Blaine Jarrett.)

[43] The Court observes that the assertions made by Mr. Jarrett are supported by the Affidavit of Katherine P.C. Francis and of Urgency, filed on 15 April 2019. (See – Paragraphs 4-8 of the Affidavit of Katherine P.C. Francis and of Urgency, filed on 15 April 2019.)

Should JPS be permitted to adduce the proposed further evidence in the circumstances of the instant case?

The relevant test to be applied

[44] It is clear from the authorities that it is in the discretion of the judge to reopen civil proceedings to receive further evidence, at any stage, even after judgment but before the Order is perfected. The basis of the exercise of this discretion, however, between these extremes, is different. Where the discretion is being considered before judgment, as in the instant case, the principles on which the Court will act surround questions of relevance, fairness, prejudice, delay and, under the CPR, the overriding objective. At this end of the spectrum, what the applicant to reopen the case is trying to do is to persuade the Court that the evidence is relevant to the issue to be determined and which, if it is not heard,

may result in an unfair and unjust decision. (See - **Lilieth Douglas v Errol Francis** (supra).)

The relevance of the proposed further evidence

[45] There are two main elements to the proposed further evidence: (1) The de-energizing or de-activating of JPS' wires; and (2) the removal of its equipment from the said land. This evidence directly affects the claim for loss of future earnings, loss of income to Miss Samuels' estate and loss of value of the chicken houses. It is not an issue that re-opens the entire case. The de-energizing or de-activating of its wires and the removal of its equipment demonstrate a willingness on the part of JPS to give expression to one of the remedies being sought by Miss Samuels.

The prior availability of the proposed further evidence

[46] The Court finds that the proposed further evidence was not available at the time of the hearing as to the Assessment of Damages. The Court accepts the submissions of Mr. Patrick Foster Q.C., on behalf of JPS, that, there were challenges that existed that precluded JPS from being in a position to adduce this evidence at the hearing of the Assessment of Damages. These challenges included the fact that (1) the attendant cost of de-energizing its wires and relocating its equipment was prohibitive; and (2) the substantial inconvenience to customers in two (2) of the Island's parishes was prohibitive. The technology has since evolved, as a consequence of which, over a period of time, JPS has been given the ability or flexibility to de-energize its wires and to relocate its equipment.

Fairness

[47] The Court finds that it would not be fair to exclude the proposed further evidence that is pivotal to the determination of the remedies to which Miss Samuels is entitled. This evidence should be before the Court for it to assess whether Miss

Samuels is now capable of building her modernized chicken houses, which she was previously unable to do.

Delay

[48] Any delay caused by the eliciting of the proposed further evidence can be mitigated and the continuation of the hearing of the Assessment of Damages can be managed in such a way as to ensure that no prejudice inures to Miss Samuels.

The overriding objective

[49] The Court is mindful that the general rule is that a party is expected to adduce all the evidence on which he intends to rely before closing his case and that it is important that the Courts do not appear to condone defaults where parties do not comply with time limits. There must be some finality to litigation, as a matter of public policy. In the circumstances of this case however, and having regard to the overriding objective of the CPR, this Court is of the view that all the evidence relevant to the issues should be before the Court for its deliberation, in order to arrive at a just and fair result.

Can the Court properly make an Order permitting JPS to remove its equipment from the said land?

[50] In the circumstances of the instant case, this Court is of the view that it can properly make an Order allowing JPS to remove its remaining equipment from the said land. Such an Order would have the practical effect of abating the trespass, the substance of the Claim, and would give expression to one of the remedies being sought by Miss Samuels.

[51] It was submitted that, in the removal of the remaining equipment, should JPS personnel remain in the unfenced section of the said land, their activities should not compromise the good health of the chickens or the integrity of the modernized chicken houses that are located on the said land.

[52] The Court will therefore make an Order permitting JPS to enter onto the said land and to remove its remaining equipment.

CONCLUSION

[53] In summary, it is clear from the authorities that it is in the discretion of the judge to reopen civil proceedings to receive further evidence, at any stage, even after judgment but before the Order is perfected. Where the discretion is being considered before judgment, the Court will be concerned with questions of relevance, fairness, prejudice, delay and, under the CPR, the overriding objective.

[54] The Court finds that the proposed further evidence directly affects the claim for loss of future earnings, loss of income to Miss Samuels' estate and loss of value of the chicken houses. As such, it would be unfair to exclude it, as it is pivotal to the Court's determination of the issues that arise. Any delay caused by the eliciting of the proposed further evidence can be mitigated and the continuation of the hearing of the Assessment of Damages can be managed in such a way as to ensure that no prejudice inures to Miss Samuels.

[55] In the circumstances of the instant case, and having regard to the overriding objective of the CPR, this Court is of the view that all the evidence relevant to the issues should be before it for its deliberation. Accordingly, the Court will make an Order that JPS be permitted to adduce the proposed further evidence as is contained in the Proposed Witness Statement of Blaine Jarrett and which was exhibited to the Affidavit of Blaine Jarrett and of Urgency, filed on 15 April 2019, as exhibit "BJ-1", save and except any reference to the drawing mentioned at paragraph 12 of the said proposed witness statement.

[56] The Court will also make an Order permitting JPS to remove its remaining equipment from the said land.

DISPOSITION

[57] It is hereby ordered as follows: -

(1) The Applicant/Defendant is permitted to adduce further evidence in respect of the Assessment of Damages in terms of the proposed Witness Statement of Blaine Jarrett exhibited to his Affidavit sworn to and filed on 15 April 2019, in support of the Applicant/Defendant's Notice of Application for Court Orders herein, as exhibit "BJ-1", save and except any reference to the drawing mentioned at paragraph 12 of the said proposed witness statement. Such witness statement, when filed, may also include evidence relating to the removal of the equipment permitted by paragraph (6) of this Order;

(2) The Applicant/Defendant is to file and serve the Witness Statement of Blaine Jarrett on or before 15 October 2019;

(3) The time within which the parties are to comply with paragraphs 5 and 6 of the Order of the Honourable Mrs. Justice Marcia Dunbar-Green, made on 4 June 2015, for Standard Disclosure and Inspection of Documents, is varied and extended to 11 October 2019;

(4) The Respondent/Claimant is at liberty to adduce further evidence in relation to the matters raised in the Witness Statement of Blaine Jarrett. Any further and/or additional Witness Statement or Expert Report, to be filed on behalf of the Respondent/Claimant, is to be filed and served on or before 8 November 2019;

(5) The hearing of the Assessment of Damages is scheduled to continue on 29 November 2019 at 10:30 a.m., before the Honourable Miss Justice A. Nembhard, for one (1) day;

(6) The Applicant/Defendant is permitted to remove its equipment remaining on the Respondent/Claimant's land situate at Rhymesbury, in the parish of Clarendon, being the land comprised in Certificate of Title registered at Volume 1213 Folio 789 of the Register Book of Titles, by 11 October 2019 and such removal is to be done in a manner that has no adverse effect on the Respondent/Claimant's business operations. The Applicant/Defendant is to notify the Respondent/Claimant's Attorneys-at-Law, in writing, at least three (3) working days in advance of the date that such removal is to be done;

(7) Costs of the Application to the Respondent/Claimant to be taxed if not sooner agreed;

(8) Liberty to apply;

(9) The Applicant/Defendant's Attorneys-at-Law are to prepare, file and serve the Orders made herein.