**JUDGMENT**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CLAIM NO. HCV 4070/2007**

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| **BETWEEN** | **DELTONIA WILLIAMS** | **CLAIMANT** |
| **AND** | **WHITHORN DEVELOPMENT COMPANY LIMITED** | **2ND CLAIMANT** |
| **AND** | **M.Z. HOLDINGS LIMITED** | **DEFENDANT** |

**AND CLAIM NO. HCV 01343/ 2005**

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| **BETWEEN** | **M.Z.HOLDINGS LIMITED** | **CLAIMANT** |
| **AND** | **DELTONIA WILLIAMS** | **1ST DEFENDANT** |
| **AND** | **WHITHORN DEVELOPMENT COMPANY LIMITED** | **2ND DEFENDANT** |

Mr. Lancelot Cowan instructed by Lancelot Cowan and Co. for Deltonia Williams and Whithorn Development Company Limited.
Mr. Harold Brady instructed by Brady and Co. for M.Z.Holdings Limited.

**Heard : July 15 and 25 2008.**

**Consent order- Application to Set`Aside- Whether Application to be made in old Suit or in new Claim- Grounds for Setting Aside- Whether Same Basis for Setting Aside Contract**

**Mangatal, J :**

On the 11th October 2007 my sister Mrs. Justice Sinclair-Haynes ordered the applications in these two Suits to be heard together.

1. In Claim No. HCV 01343/ 2005 the application by Mr. Williams and Whithorn Development is by Notice of Application for Court Orders filed November 9 2006 seeking to set aside and vacate the Consent order entered by the parties in that Suit on May 24 2005. In Claim No. HCV 04070 / 2007 Mr. Williams and Whithorn Development by way of relief sought in fresh proceedings by way of Fixed Date Claim Form seek a declaration that the Consent order entered on May 24 2005 is vacated and set aside.

2. In the 2005 Claim M.Z. Holdings on the 4th October 2006 filed a Request for Entry of Judgment as follows:

> *The Claimant requests entry of judgment against the Defendants per the Court Order of this Honourable Court dated May 24, 2005 as follows:*
>
> *JUDGMENT ON THE WHOLE DEBT*
>
> A. *The sum of $ 5, 671, 989.50 being the debt admitted by the Defendants under the Court Order.*
>
> B. *Possession of the Cool Oasis Petrol Station situated at Whithorn in the Parish of Westmoreland for the management of the station pursuant to the Court Order dated May 24, 2005.*

**BACKGROUND**

3. In the 2005 Claim M.Z.Holdings Limited "M.Z.Holdings" had sued Mr. Williams and Whithorn Development for the sum of $9,886,823.20 in respect of promissory notes and interest, and in respect of petrol and petroleum products supplied, breach of contract and interest at commercial rates.

4. M.Z. Holdings was at all times material to the 2005 Claim a limited liability company incorporated under the Companies Act and carried on the business of marketing and wholesaling petroleum products under the " Cool Oasis" brand.

5. Deltonia Williams and Whithorn Development were at all times material to the 2005 Claim operators of a gasoline service station located at Whithorn, in the Parish of Westmoreland, under the brand name " Cool Oasis" pursuant to a Motor Fuels Franchise Agreement dated October 21, 2003.

6. On the 24th of May 2005 this matter came on for hearing before my brother Mr. Justice Marsh at which time it was ordered as follows:

> *IT IS HEREBY ORDERED BY CONSENT:*
>
> *1.Commencing the 25th day of May 2005, the Defendants will continue to operate the petrol station and to purchase petroleum and petroleum products exclusively from the Claimant by paying cash on delivery by Managers cheque in accordance with the existing Motor Fuel Franchise Agreement. On the second delivery and all deliveries thereafter the Defendants will pay an additional amount of fifty thousand dollars ($50,000.00) until the trading arrears of Three Million, Eight Hundred & Ninety-six Thousand Eight Hundred and Seventy-three Dollars & Thirty-eight Cents ($ 3, 896, 873.38) is paid in full.*

2. *Upon payment in full of the trading arrears, the parties will agree a monthly payment schedule to liquidate the loan of Five Million, Six Hundred & Seventy-one Thousand, Nine Hundred & Eighty-nine Dollars & Fifty Cents ($5, 671,989.50) outstanding with interest as agreed.*
3. *The Defendants agree to grant to the Claimant full management of the station in the event the Defendants fail to meet the terms of this order set out at item (1) above.*
4. *The consent order to be signed by both Counsel and filed within 7 days hereof.*
5. *.No order as to cost*

*6.* It is Mr. Williams' and Whithorn Development's contention that the parties have since the entry of the Consent order, by agreement, and by their own actions, varied the Consent order. In so doing without the court's permission, they argue, both parties have breached the order and it ought therefore to be discharged. It is on this basis that these parties seek the declaration and/ or relief sought.

7. Mr. Williams, the Managing Director of Whithorn Development, in one of his Affidavits indicates that at first the parties adhered to the terms of the Consent Order, however over time, he was paying the $50,000.00 from his pocket, because the quantities of fuel he ordered were not sufficient to generate profit of $50,000.00 to meet the payments towards the arrears. Also, he states that even when he ordered fuel during that period, M.Z.Holdings would send him quantities of fuel that were different from what he ordered, thereby making it difficult for Mr. Williams to arrange his fuel orders in an orderly manner.

8. Mr. Williams in addition claims that some months after the Court order he and M.Z. Holdings agreed that instead of Mr. Williams paying for fuels on a cash-on- delivery basis, payment would be accepted on a

"load-over-load" basis. "Load-over-load" means taking fuel and paying for that load after it is sold, which amounts to payment on a credit basis. Mr. Williams indicates that in addition, he also instead of paying $50,000.00 per delivery towards the arrears, paid M.Z. Holdings amounts varying between $10,000.00 and $33,000.00 depending upon what the load delivered to him permitted him to pay towards the arrears.

9. This arrangement continued until September 2006 when Mr. Williams decided to close the retail fuel sale business. He was promised that M.Z.Holdings would give him a payment plan to liquidate the indebtedness by September 7 2006. Instead, however, of presenting a payment plan, M.Z. Holdings went to the property with security and police and locked Mr. Williams' staff in the separate convenience store business which, although separate and apart from the fuel sale business, is located on the same property as the station.

10. In support of the claim that the Consent order has been varied and /or breached by the parties, Mr. Williams claims that he made several settlement proposals to M.Z.Holdings and that he believes that the latter does not want to accept installment payments from him because their ultimate goal is to possess and take full and sole control of the property and the station. Certain documents are exhibited, which Mr. Williams and Whithorn Development rely on as demonstrating the variation and /or breach.

11. On the other hand, Mr. Blair Gonsalves, Managing Director of M.Z. Holdings states that by terminating the operation of the petrol station, Mr. Williams and Whithorn Development have breached the court order and that gives M.Z. Holdings the right to take over full management of the station.

12. Mr. Brady, Attorney-at-Law with conduct of the matter on behalf of

M.Z. Holdings, in his Affidavit indicates that there were arrangements made between the parties in November 2005 to assist Mr. Williams and Whithorn Development in liquidating their debts and making timely payments, after the latter parties had failed to adhere to the terms of the court's order. Mr. Brady makes reference to a letter which he wrote on behalf of M.Z. Holdings dated August 4 2005 in which M.Z. Holdings agreed to waive the $50,000.00 payment due in August and to accept $10,000.00 instead. However, as Mr. Brady points out, the letter closes with the following paragraph:

> *The foregoing waiver is not a discharge or variation of the terms and conditions of the Order of the Court dated May 24, 2005.*

**Procedural Issue-Whether Application to Set Aside to Be Made in Original Claim Or In Fresh Claim**

13 In my judgment, one of the first questions that arises is procedural and revolves around the question whether the application to set aside is properly to be brought in the original suit in which the Consent order was entered, or whether it should be made in the form of a fresh action. The case of **Ainsworth v. Wilding** [1896] 1 Ch. 673, cited by Mr. Brady , to my mind is authority for the proposition that in respect to a final order/judgment, (as opposed to an interlocutory order), after a judgment has been passed and entered, even where it is made by consent, or under a mistake, the Court cannot set it aside unless a fresh action is brought for that purpose unless (a) there has been a clerical mistake or error arising from an accidental slip or omission within the meaning of Court Rules, or (b) the judgment as drawn up does not correctly state what the Court actually decided and intended to decide.

14. In my view, the grounds for setting aside in this case do not involve any clerical error or accidental slip(pursuant to Rule 42. 10 of

the C.P.R.2002 this court has power to correct a judgment on basis of clerical error or accidental slip or omission), and do not involve any inaccuracy in the recorded judgment. I am of the view that the application is correctly brought in the 2007 Claim and not in the 2005 Claim.

15. The next issue is one of substance and requires the Court to enquire what are the bases on, or circumstances in, which a Court will normally set aside a Consent order.

16. Firstly, I agree with Counsel Mr. Brady that a consent order is not lightly set aside by the Courts and as Cotton L.J. said in **Ainsworth v. Wilding** [1896] 1 Ch. 673, "It is only in special circumstances that the Court will interfere with an order which has been passed and entered…"

17. In **Roger James Weston v. Sara Elizabeth Dayman** [2006] EWCA Civ 1165, Lady Justice Arden, sitting in the English Court of Appeal, at paragraph 5 stated:

18. *First, as I have said, a consent order is to be interpreted like a contract. The authority for this proposition may be found in the speech of Lord Steyn in Sirius International Insurance Co v. FAI General Insurance Limited [2004] 1 w.l.r. 3251. At paragraph 18 Lord Steyn said:*

> *"The settlement contained in the Tomlin order must be construed as a commercial instrument. The aim of the enquiry is not to probe the real intentions of the parties but to ascertain the contextual meaning of the relevant contractual language. The inquiry is objective: the question is what a reasonable person, circumstanced as the parties were, would have understood the parties to have meant by the use of specific language. The answer to that question is to be gathered from the text under consideration and its relevant contextual scene.*

19. In **Sirius** at paragraph 34, Lord Walker of Gestingthorpe stated:

> *34. The terms in the schedule, and paragraph 4 in particular, must also be viewed, like any other contractual document, in their commercial context.*

20.My understanding of the Law is that where the consent order contains an agreement which amounts to a contract between the parties, the Court will only interfere with it on the same grounds that it would with any other contract. In the local unreported decision, **Century National Bank Limited et al v. Windsor Commercial Land Company Limited et al** , Suit No. C.L. 1993/C363, delivered September 23rd 2005, Campbell J. stated at page 8:

***The Agreement Between the Parties***

*Although the Consent Order is not a contract, it evidences the agreement of the parties upon which is superimposed the authority of the Court.*

*In the Supreme Court Practice (1997) Vol. 2, para. 4608 states:*

*" Where a consent order embodies an agreement which amounts to a contract between the parties, the Court will only interfere with it in the same grounds as it would with any other contract, and therefore where it appears that the order embodies the conclusion of negotiations between the parties, the Court will give effect to it where one party is in breach and will not vary it by e.g. giving extra time to perform its terms. An order by consent, like the contract which it evidences, is to be construed in light of any admissible evidence of surrounding circumstances, but without direct evidence of the parties' intention."*

*21.* According to the English Civil Procedure Rules and Practice Directions , April 6, 2007, Part 40.6.3, "Setting Aside consent judgments and orders", it is stated:

> *…The authorities demonstrate that the grounds for setting aside or varying a consent order fall into two categories. They are : (1) cases in which there was, at the date of the order an erroneous basis of*

*fact; and (2) cases in which there has been a material or unforeseen change in circumstances after the order so as to undermine or invalidate the basis of the order….A consent order is an agreement between the parties and the court must be very careful in exercising a discretion to vary the terms of an order which represents a contract.(Weston v.Dayman[2006] EWCA,Civ. 1165, …..(Court of Appeal accepting without deciding that the court has under r. 3.1(7) a residual discretion to vary a consent order not falling within either of the two categories).See also Ropac Ltd. v. Inntrepreneur Pub Co (cpc) Ltd. [2001] C.P.Rep. 201 (Neuberger J.) (variation of consent order extending time).*

22. As Mr. Brady states in his written submissions, the court is generally quite reluctant to vary or discharge a consent order because , unlike in matrimonial causes, a consent order is considered to be tantamount to a contract between the parties and thus the Court will uphold agreements made by consent, particularly when both parties are legally advised. Here in the instant case, the parties did receive legal advice, and indeed, Mr. Williams and Whithorn Development were represented by eminent Queen's Counsel. As Mr. Brady submits, nevertheless, in the following circumstances, as in contract cases, the Court may grant variation or discharge of a final Consent Order:

i. Fraud
ii. Mistake
iii. Misrepresentation
iv. Duress, and
v. Other vitiating factors.

**Resolution of Main Issue on the Evidence**

23. In my judgment, none of the factors that would allow a court to set aside a Consent Order are present in this case. As to the question of variation, it seems to me that whilst Mr. Williams and Whithorn Development were attempting to have the original agreement as

embodied in the Consent order varied, M.Z. Holdings did not agree to that, and indeed, in the letter dated 4th August 2005, expressly reserved their rights under the Consent Order by closing with the words:

> *The foregoing waiver is not a discharge or variation of the terms and conditions of the Order of the Court dated 24th May 2005.*

In any event, even though M.Z.Holdings may have agreed to accept smaller sums than were due, and on a payment basis differing from time to time to those set out in the Consent order, I cannot see that there would be any consideration for that allowance flowing from Mr. Williams or Whithorn Development.

24. In this case, Mr. Williams and Whithorn Development have not raised any question of promissory estoppel or any reliance to their detriment that might estop M.Z.Holdings from relying on the contract between the parties embodied in the Judgment. Further, I do not see any evidence that such a claim could properly arise here.

25. As to the question whether the wide case management rules under our Civil Procedure Code 2002, coupled with the overriding objective, give the Courts a wider power to set aside Consent Orders which embody agreements between the parties, as the English Civil Procedure Rules and Practice seems to suggest certain English cases referred to in paragraph 21 above are prepared to accept, I have my own reservations. This point has not really been argued before me but since it is raised in the authorities cited by M.Z.Holdings, and to which Mr. Williams and Whithorn Development's Attorneys had the right to respond, I think I should address it briefly.

26. Rule 26.1 (7) of our C.P.R. 2002 states that a power of the court under the Rules to make an order includes a power to vary or revoke that order. In discussing Rule 3.1(7) of the English C.P.R. which gives a

similar case management power, Lady Justice Arden in **Weston v. Dayman** at paragraphs 24 and 25 states:

> *24.I need to deal with the argument put forward on variation. This is based on the Civil Procedure Rules 3.1(7), which provide for the court to have power to make an order to vary or revoke an order and secondly, generally, on the liberty to apply. In relation to that matter Mr. Warwick relies on the decision of Neuberger J., as he then was, in Ropac Ltd. v. Inntrepreneur Pub Co. (CPC) Ltd. [2001] L & TR 10. Neuberger J. held in a nutshell that, even when parties have come to a consent order, in that case on an extension of time, there was an exceptional jurisdiction whereunder the court could still extend time . In my judgment, wherever the jurisdiction comes from—and it could come from the liberty to apply in this order—the court must be very careful in exercising a discretion to vary the terms of an order which represents a contract between the parties. ....*
>
> *25. I will proceed on the basis (without deciding the point) that C.P.R.3.1 (7) applies to paragraph 10 of the order of 23 January 2003. I would accept that the court should accede to an application for variation when it is just to do so, but in my judgment one of the aspects of justice is that a bargain freely made should be upheld. Mr. Weston clearly obtained benefits under the order of 23 January 2003. It may well be that those benefits are not as great as he thought, but that*

> *is not a matter for this court. In those circumstances I do not consider it would be right for this court to exercise its discretion to vary the order sought.*(my emphasis)

27. I must confess that I am not prepared to say that our Rule 26.1(7) of the C.P.R. 2002 gives the Court wider powers to vary or revoke a consent order than hitherto obtained, though I agree that the plain meaning of the rule is that the court should accede to an application to vary when it is just to do so. It seems to me that where a Consent Order, properly so called, as opposed to an order where parties are simply submitting to jurisdiction, or in contrast to matrimonial cause orders, or orders that are interlocutory, or orders by their nature not final such as orders to do with children, embodies an agreement between the parties, this is a matter which goes beyond procedure and involves substantive law.

28. The courts have always had power to vary or revoke orders in certain circumstances and I do not think that the fact that the C.P.R.2002 gives the courts wide procedural powers of case management can change the nature of a consent order which embodies an agreement between the parties. It therefore seems to me that the law as to setting aside or varying such an order is still governed by the Law and interpretation of agreements applicable under the Law of Contract. It may well be that there is not much practical difference between what I am saying and what the English Judges in the cases cited above are saying, since, although they are prepared to say that the power to vary applies to consent orders, they are disinclined to vary the order where the order embodies a bargain freely entered into and in respect of which proper legal advice was received. In other words, the relevant rule 26.1 (7) would only be applied to set aside or vary a Consent Order in the same sort of circumstances that would allow for the setting aside or variation of a contract.

*29.* All told, I am therefore of the view that the application by Mr. Williams and Whitborn Development in the 2005 Suit ought to be dismissed because bringing the application in that Suit is procedurally incorrect. I am also of the view that the application by way of Fixed Date Claim Form in the 2007 Claim also ought to be dismissed, but for the reason that the Applicants Mr. Williams and Whithorn Development have not established a proper basis, the same sort of basis upon which a contract could be set aside or varied.

*30.* As regards the applications by Mr. Williams and Whithorn Development my orders are therefore as follows:

(a) In Claim No. 2005 HCV 01343, the Notice of Application for Court Orders filed November 9 2006 is dismissed, with costs to the Claimant in that Suit M.Z. Holdings Limited to be taxed if not agreed.

(b) In Claim No. 2007 HCV 4070, the Fixed Date Claim Form is dismissed, with costs to the Defendant in that Suit M.Z. Holdings Limited to be taxed if not agreed.

**REQUEST FOR ENTRY OF JUDGMENT BY M.Z.HOLDINGS LTD. IN CLAIM NO.2005 HCV 01343**

31. The Request for Entry of Judgment requests "Judgment on the Whole Debt"

> " A The sum of J$5, 671,989.50 being the debt admitted by the Defendants under the Court Order" of May 24 2005 and
>
> "B Possession of the Cool Oasis Petrol Station situated at Whithorn in the Parish of Westmoreland for the purpose of the management of the station pursuant to the Court Order dated May 24, 2005.

32. In dealing with the merits of this application I note that the Consent order which was entered on the 24 May 2005 did not have the words "liberty to apply" embodied in it.

33. In a work which I find very useful, **The Law and Practice of Compromise**, at page 82, under the heading "The Terms of a Compromise", and sub-heading " 'Liberty to Apply' omitted" , the learned authors , David Foskett and David Hodge, have this to say:

> *5-13. Parties may, when drawing up the order designed to give effect to their agreement, omit the words "liberty to apply". The incorporation of these words into the order enables the court to make further orders for the purpose of working out the order. If the parties omit the expression, would the court imply it and entertain an application as if it had been expressly reserved? In cases of orders not made by consent which are not of a final character and which may require further orders for their working out, it is clear that the words will be implied and leave given, if appropriate, to amend the order under the slip rule. There would seem no reason in principle why the same should not apply to consent orders of a similar character. ...*

34. Again, at Chapter 17 of **The Law and Practice of Compromise**, the learned authors provide useful guidance as follows:

> *17-01 General*
>
> *Where the terms of a compromise permit recourse to the original claim in the event of non-compliance with the agreement, the innocent party will have the option of deciding whether to follow that course or to pursue such remedies as may be available under the compromise. The discussion that follows presupposes a decision by the*

*innocent party to rely upon his rights under the compromise.*

*The manner in which those rights may be enforced will depend upon the machinery chosen for giving effect to the compromise. The essential primary consideration is whether or not what is to be enforced is a contract or an order or judgment.*

*.....*

*WHERE THERE IS AN ORDER OR A JUDGMENT*

*17-03 Needless to say, the courses open in respect of the enforcement of a consent order or judgment depend upon the form the order or judgment takes. Doubtless these courses will have been taken into account when the form of order was considered.*

***A simple consent order or judgment for a sum of money giving no provision as to time***

*17-04 Unless any of the circumstances exist whereby the leave of the court is required before execution may issue, the appropriate steps may be taken at any time.*

***A consent order or judgment giving time for payment***

> *17-05 Such a judgment may well be regarded as one which requires the fulfillment of a condition, namely, the expiration of the period given for payment, before execution can issue and, to that extent, leave to issue execution will be necessary in the High Court.*

35. At paragraphs 17-15 and 17-16 the authors discuss the matter of an agreed order which recites the terms of agreement, and I think that is the factual situation apposite here:

> ***Agreed order that recites the terms of agreement***
>
> *In certain circumstances it appears that the mere recitation of the terms of an agreement in an order will be sufficient to enable enforcement of these in an existing action.*
>
> *In Atkinson v. Castan ((1991) C.A.T.332 The Times April 17, 1991), P and D had been in a dispute about a sycamore tree that grew on D's property close to its boundary with P's property....P's solicitors prepared a draft consent order which was headed "Draft Consent Order"...*
>
> *This draft order was in due course signed by the parties' respective solicitors and submitted to the court. The order drawn up by the court and signed by the registrar in June 1988 differed from the draft consent order in that*(amongst other matters) *... the words " By consent it is ordered that" were inserted before the preamble or recitals ....*

*….(iii) no "liberty to apply" was provided for……..*

*The Court of Appeal held that a fresh action was not necessary in the circumstances. Since the parties agreed that the order made by the court should recite the agreed terms, that was sufficient to enable those terms to be enforced by obtaining an appropriate order in the existing action…..*

> *17-16…..The means by which parties had hitherto ensured that summary orders coud be secured in aid of enforcement of the contractual obligations of a compromise was to agree that a Tomlin order should be made or that the agreement should be filed and made a rule of court. In either situation the court has normally looked for an express term to this effect within the compromise. In Atkinson it seems that the Court of Appeal construed the agreement reflected in the draft consent order as involving either an express or implied term to the effect that the terms set out in the recitals would be enforceable within the action. The matter was put thus by Woolf L.J.:*
>
> *"It is clear from [the draft order] first of all that the compromise was set out in full in*

> *the recitals; secondly, that it was intended that the compromise as set out should be included as part of the record of the decision of the court; thirdly, that the purpose of this being done was to ensure that the compromise would have had the added status which results from a compromise being a part of or incorporated into a decision of the court; fourthly, that the obvious purpose of this added status was to put the plaintiffs in a position where they would have the advantage , which would not otherwise be available, of going back to the court in the existing action to have the compromise enforced if the court was prepared to make the necessary orders to achieve this result; and fifthly and finally, that there should be liberty to apply for the purposes of enforcing the action".*

36. An abstract of the Times Report of **Atkinson v. Castan** reads as follows:

*Abstract: C appealed against an order requiring them to comply with a consent order made in the county court following a compromise between the parties. The consent order narrated the terms of the agreed compromise and stated that no order was made apart from the award of costs. Following S's failure to adhere to the agreement, A successfully applied to the court for an order for nuisance and for C to carry out the terms embodied in the consent order. C relying on Green v. Rosen [1955] 1 W.L.R. 741 argued that such an order could not be made and A had to bring a fresh action.*

*Summary: Held: Appeal dismissed. A fresh action was not necessary as the agreement had been recorded as part of the court's decision notwithstanding the absence of any express obligation to carry out the terms of the consent order. Green v. Rosen was distinguished as in that case no measure was taken to incorporate the settlement into the decision of the court.*

37.In my judgment, in this case "liberty to apply" should be implied. It was clear that the Consent Order entered in the 2005 Suit might require some further orders for the purpose of working out the Consent Order. The parties plainly intended by giving their agreement in the form of a Consent Order, to secure to themselves the advantage of reverting to the court in the same action should it become necessary to obtain further orders to implement or enforce their agreement.

38. As regards paragraph A of the Request for Entry of Judgment, it is clear from the terms of the Consent Order that after the payment in full of trade arrears, the parties were to move to agree a payment schedule in liquidation of the sum of $5,671,989.50 loaned by M.Z.Holdings. However, it is manifest that Mr. Williams and Whithorn Development have not succeeded in paying the full trade arrears. The indebtedness in respect of the sum claimed is however, clearly acknowledged in the agreement embodied in the Consent Order.

39. As regards paragraph B, it is also plain that the event constituting a pre-condition, or a trigger set out in item 3 of the May 24 2005 Consent Order to M.Z.Holdings' agreed right to manage the station, has occurred. That factual matrix is that Mr. Williams and Whithorn Development have failed to meet the terms set out in item 1 of the Order. This is the bargain that the parties have made. In like fashion to what Lady Justice Arden said in **Weston v. Dayman**,(paragraph 25) , it may be well be that this bargain is not as great as Mr. Williams and Whitborn Development thought , but that is not a matter for this court.

40.I can see no difficulty in principle with me expressly granting liberty to apply to the parties, in acceding to M.Z.Holdings application for entry of Judgment. This is in order to facilitate the parties with any further orders that may be necessary to enforce their rather wide, broad-brush agreement.

41. There will therefore be orders, pursuant to the Consent Order of May 24 2005, as follows in Claim No 2005 HCV 01343:

A. Judgment for the Claimant against the Defendants in the sum of $5,671,989.50;

B . The Claimant is entitled to possession forthwith of the Cool Oasis Petrol Station situated at Whithorn in the Parish of Westmoreland for the purpose of assuming full management of the Station;

C. Liberty to Both Parties to Apply.