



[2026] JMCC Comm 30

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO. SU2023CD00297

BETWEEN	KWOK – HING LEE	CLAIMANT
AND	MING CUISINE FOODS LIMITED	1st DEFENDANT
AND	DONG WANG	2nd DEFENDANT
AND	HING SING LOW	3rd DEFENDANT

Miss Amanda Montague and Miss Nicole Taylor instructed by Myers Fletcher and Gordon for the claimant

Mr Christopher Dunkley and Miss Tiffany Sinclair instructed by Phillipson Partners for the 1st defendant

Mr Sean - Christopher Castle and Mr. D'Angello Foster instructed by Cardinal Law for the 2nd and 3rd defendants

Heard: March 2, 2026. March 10, 2026, July 3, 2026, and September 18, 2026

CIVIL PROCEDURE – Specific disclosure – Whether the documents sought are directly relevant to any issue in the proceedings – Whether a Norwich Pharmacal order should be granted - CPR 28.6 and 28.7

IN CHAMBERS

CORAM: JARRETT, J

Introduction

- [1] This is my decision on two applications for specific disclosure. One is that of the claimant, and the other is that of the 3rd defendant. I will start with the claimant's application as it was argued first. But before doing that, it is useful to set out the pleadings, as they give the necessary context for both applications.

The claim

- [2] The claimant, Kwok - Hing Lee, is a businessman of Chinese descent. The 1st defendant, Ming Cuisine Foods Limited, is a company incorporated on January 23, 2020, under the laws of Jamaica and is the operator of a Chinese food restaurant known as Ming Cuisine. The 2nd defendant, Dong Wang and the 3rd defendant, Hing Sing Low are businesspersons also of Chinese descent.
- [3] The claimant's claim amended on January 10, 2025, is brought under section 213 A of the Companies Act ("the Act"). He brings this claim, in what he contends is his capacity as director and shareholder of the 1st defendant. According to him, he and the 2nd and 3rd defendants agreed to operate a restaurant which would have its day-to-day management being undertaken by the 2nd and 3rd defendant. This led to the incorporation of the 1st defendant. On incorporation he subscribed to 3,000 ordinary shares and was made director. One Raymond Lee also subscribed to 3,000 ordinary shares. On February 19, 2021, the 2nd defendant was allotted 4,000 ordinary shares and on August 31, 2021, the 2nd and 3rd defendants were added as directors.
- [4] The claimant says he initially invested USD\$126,415.75, in the 1st defendant. It was agreed that he would get 15% of the 1st defendant's earned profits based on the capital he invested.
- [5] He pleads that the 2nd and 3rd defendants have operated the 1st defendant in a manner which is oppressive and unduly prejudicial to him as shareholder and director. He alleges that they have unjustly enriched themselves, and/or are in

breach of contract, are liable to him for moneys had and received and in conversion. He seeks remedies under section 213A of the Act, damages for breach of contract, restitution for unjust enrichment and /or moneys had and received.

- [6] In terms of the pleadings in the particulars of claim, in summary they are that the 2nd and 3rd defendants purportedly removed the claimant as a director of the 1st defendant on March 29, 2022, in circumstances where he did not resign from his directorship, and no meeting was held to remove him. Thereafter, he has been excluded from the management of the 1st defendant and has not had access to its records. He complains that the 2nd and 3rd defendants have transferred large sums of money from the 1st defendant to themselves. He pleads further that the 2nd and 3rd defendants have incorporated another company called New Hope Foods, to which, it appears, they have unlawfully and without his consent, transferred the 1st defendant's business; or are operating this company contemporaneously with the 1st defendant, using in the process, the 1st defendant's assets and resources for their own benefit.
- [7] The claimant has particularised the alleged acts of oppression, unfair prejudice, unjust enrichment, breach of contract and moneys had and received by the 2nd and 3rd defendants in paragraph 16 of his particulars of claim: -

- i. Failing to send the claimant any notices of general meetings of the 1st defendant.
- ii. Failing to send the claimant copies of financial statements or any other financial information relation to the affairs of the 1st defendant.
- iii. Failing to provide the claimant with other pertinent information regarding the 1st defendant's affairs, including the terms of service contracts and information on the benefits paid by the 1st defendant to third parties or to the 2nd and 3rd defendants.

- iv. Excluding the claimant from participating in the management and affairs of the 1st defendant.
- v. Purporting to remove the claimant as a director of the 1st defendant.
- vi. Improperly managing the affairs of the 1st defendant.
- vii. Failing to honour the agreements with the claimant.
- viii. Creating conflicts of interest which affect the business and value of the 1st defendant.
- ix. Unjustly enriching themselves with the 1st defendant's revenue.
- x. Converting the 1st defendant's revenue to their own use or the use of a third-party entity, New Hope Foods Limited.

[8] The remedies being sought are:

- i. An order compelling the defendants and New Hope Foods Limited to produce and make available to the claimant all financial statements and other accounting and banking records of the 1st defendant and New Hope Foods Limited.
- ii. An order that a qualified and independent forensic accountant be appointed to audit the records and financial documents of the 1st defendant and New Hope Foods Limited.
- iii. An order that the claimant's shares in the 1st defendant be valued by an independent chartered accountant with expertise in business valuation.
- iv. An order rectifying the records of the 1st defendant to reflect that the claimant remains a director of the 1st defendant.

- v. A declaration that the purported transfer of the 1st defendant's business to New Hope Foods Limited is null and void and of no effect.
- vi. Compensation to the claimant of 15% of the profits which would have been made by the 1st defendant but for the 2nd and 3rd defendants' unlawful conduct, together with interest at the commercial rate from January 2020 to the date of payment.
- vii. An order that the 2nd and 3rd defendants shall purchase all of the claimant's shares in the 1st defendant at fair value within 30 days of the court's order or, alternatively pay restitution to the claimant in the sum of USD\$ 126,415.75, together with interest at a commercial rate from the date of judgment to the date of payment.
- viii. Costs.
- ix. Any further or other relief that this Honourable Court deems just or to give effect to the orders above.

The defence

[9] Although separate defences were filed, for purposes of these applications, I will summarise together, both the 2nd and 3rd defendants' defences. Their case basically is that: a) there was no agreement that the claimant would get 15% of the profits of the 1st defendant as a result of his investment, b) based on initial discussions, the claimant was to get 10% of the 1st defendant's profits, c) it was agreed that the claimant was to get 15% of all profits earned by the 1st defendant based on the services he provided not from any investment of capital, and he received that 15% when he agreed to leave the 1st defendant; d) moneys which it may have appeared that the claimant paid to the defendants were moneys he had borrowed from the 2nd defendant or companies associated with her and her family in China and there is a decision from a court in China to support this; e) the

claimant made no monetary investment in the 1st defendant, he was paid for services he rendered, f) by his conduct the claimant resigned from the 1st defendant, started operating other restaurants and paid himself, through his companies, the value of what he calculated was his 15% entitlement to profits as at March 2022; g) on leaving the 1st defendant, the claimant caused the removal of staff of the 1st defendant to his new business, h) the claimant removed the 1st defendant's book keeping records; i) New Hope Foods Limited's incorporation is admitted, but it is denied that the 1st defendant's business has been transferred to this company; j) this company was incorporated due to the actions of the claimant to allow for "best accounting practices"; k) the allegation that the 2nd and 3rd defendants transferred large funds from the 1st defendant to themselves is denied; and l) the allegations of oppression, unfair prejudice, moneys had and received, unjust enrichment and breach of contract are denied.

- [10] The 2nd and 3rd defendants each filed a similar counterclaim for damages, breach of fiduciary duties, breach of section 174 A of the Act, exemplary damages interest and costs. It is pleaded that the counterclaim is based on the grounds that: a) the claimant initiated or incentivised the removal of staff from the 1st defendant to work in his new business ventures and by doing so, is in breach of his fiduciary duties to the 1st defendant; b) after discussions referred to in paragraph 8 of the defence, the claimant unlawfully and unjustly withdrew from the 1st defendant, money paid to the 1st defendant by service providers/third party providers; c) after relinquishing himself from his duties as director of the 1st defendant, the claimant removed all the 1st defendant's accounting records. Section 174A of the Act requires a director to avoid conflicts of interest.
- [11] By virtue of these forgoing matters, it is alleged that the claimant is in breach of his fiduciary duty owed to the 1st defendant.
- [12] Unsurprisingly, save for admitting to its existence, the 1st defendant in its defence, does not plead anything substantive. It says essentially that the truthfulness or

otherwise of the allegations in the claim are only within the knowledge of the claimant and the 2nd and 3rd defendants.

Claimant's reply and defence to counterclaim

[13] In his reply and defence to the counterclaims, the claimant says that as a result of transfers which took place in June and August 2021, as of March 11, 2022, he and the 3rd defendant each held 1500 shares in the 1st defendant, and the 2nd defendant held 7000 shares. He says further that on March 3, 2023, the 2nd defendant removed him as company secretary, without a resolution of the company. He admits to receiving moneys paid from third party service providers 7 Krave and Hugo Foods, but says this represented his 15% share of the profits earned from those services. He also admits to receiving some of the 1st defendant's documents. He denies the allegations in the counterclaims.

The 1st defendant

[14] I should indicate at this stage, that the 1st defendant had initially joined forces with the 2nd and 3rd defendants in their response to the claim and in the making of the 3rd defendant's application. At the start of the hearing, all the defendants were represented by Cardinal Law. However, shortly after counsel Mr Castle started his oral submissions in response to Miss Montague's submissions, the 1st defendant retained new counsel. Since that time, the 1st defendant has basically not taken a position on any of the two applications. With the permission of the court, it filed its own defence referred to above. As I understand it, it is no longer a party to the 3rd defendant's application.

The claimant's application

[15] The claimant's amended application was filed on March 28, 2025. By this application, the claimant sought several orders, including an order for summary judgment and default judgment. These other aspects of the application were earlier determined by Batts J and so all that is currently before me, is the order by which

the claimant seeks specific disclosure. The claimant says the documents for which he seeks disclosure are needed to dispose of the following remaining issues at trial:

- a) the determination of the value of his shares and the compensation to be paid,
- b) profits payable to him, and
- c) the effect of the alleged transfer of the 1st defendant's business to New Hope Foods Ltd.

[16] The following are the documents for which specific disclosure is sought:

- a) records of all income and expenditure related to the 1st defendant from January 23, 2020 (date of incorporation) to the present;
- b) records of all payments made by the 1st defendant to the 2nd and 3rd defendants and the corresponding reasons for the said payments;
- c) records of all tax returns filed at the Inland Revenue Department on behalf of the 1st defendant
- d) bank statements from all financial institutions where the 1st defendant has an account;
- e) financial records and bank statements from all financial institutions where New Hope Foods Limited has an account.

[17] In the grounds for the application, the claimant relies on section 213A of the Act, which provides that the court may make an interim order that a company produce to the court or an interested party (such as he is), financial statements or an accounting in such form as the court may determine. He also cites CPR 28.6, which empowers the court to make an order for specific disclosure where the documents required are directly relevant to one or more issues in the proceedings.

The claimant says these documents are directly relevant to issues raised in these proceedings, particularly those related to his investment in the 1st defendant, and his 15% share of its profits. He also says that disclosure is necessary to fairly dispose of the issues in the claim and those documents requested are in the exclusive control of the defendants.

[18] In his affidavit in support, the claimant repeats much of what he pleads in his particulars of claim. The 3rd defendant in his affidavit in response, says the claimant has not shown that he had requested disclosure, prior to making this application. He says New Hope Foods Limited is a separate business venture operated separate and apart from the 1st defendant. According to him, the claimant has not shown any serious connection between the 1st defendant and New Hope Foods Limited or how its records are directly relevant to any issue in these proceedings. He asks the court to deny the application. The 1st defendant filed no affidavit in response to the application.

[19] The claimant and the 2nd and 3rd defendants filed helpful written submissions, and counsel on their behalf, made oral submissions at the hearing. Even though, I have not referred to all the submissions and authorities relied on by counsel, I have carefully considered all of them and am grateful to counsel for their industry.

Analysis and discussion

[20] CPR 28.6 and 28.7 deal with specific disclosure. CPR 28.6(5) states that an order for specific disclosure may only be made in relation to documents which are **directly relevant** to one or more of the matters in issue in the proceedings. CPR 28.1(4) provides that documents meet this threshold only if the party with control of them intends to rely on them, they tend to adversely affect that party's case, or they tend to support another party's case. CPR 28.7 sets out the factors the court must consider on such an application. CPR 28.7(1) provides that the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim and save costs. While CPR 28.7 (2) stipulates that the court is also to have

regard to the likely benefits and costs of specific disclosure and whether it is satisfied that the financial resources of the party against whom such an order is sought, are likely to be sufficient to enable that party to comply with the order.

[21] Happily, there is no dearth of authority on the interpretation of these provisions. Recently, the Court of Appeal in **Old National Bank t/a Old National Wealth Management (Personal Representative in the Estate of Raymond John Ryan) v Al Socrates Jobson & Ors.** [2024] JMCA Civ 14, provided a very helpful reminder: -

“[29] ...rules 28.6(5) and 28.7 disclose a two staged process to be employed by a judge when determining whether to grant an order for specific disclosure. The first stage of the process is whether the document is directly relevant, as that phrase is defined by rule 28.1(4), to one or more matters in issue in the proceedings; and the second is, whether specific disclosure is necessary to fairly dispose of the claim or to save costs. The court granting specific disclosure must be satisfied that both questions are answered in the affirmative (see **Miguel Gonzales v Edwards and another v Leroy Edwards** [2017] JMCA Civ 5 (**‘Miguel Gonzales’**), para.[38].

[30] Secondly, whether a document is directly relevant is to be determined by having recourse to the specific meaning attributed to that phrase by rule 28.1(4) of the CPR. The rule accords a narrow and exhaustive meaning to the phrase in the sense that a document may only be considered directly relevant for the purposes of an application for specific disclosure ‘only if’ it falls within one or more of the circumstances prescribed in rule 28.1(4) (see **Miguel Gonzales** at para.[22], and **Attorney General v BRL Limited and another** [2021] JMCA Civ 14 (**‘BRL Limited’**) at para.[103].

[31] Thirdly, and finally, whether a document is directly relevant under rules 28.6(5) and 28.1(4) is to be determined by having regard to the “matters in issue in the proceedings”. Therefore, there must be a close examination of

the issues arising in the claim, as disclosed by the pleadings and any evidence filed in support of the claim prior to the grant of specific disclosure (see **BRL Limited** at para.[32] and **Diandra Bramwell** at paras. [18-[21].”

[22] In the case before me, there is no dispute that between January 23, 2020, and March 29, 2022, the claimant was a director and shareholder of the 1st defendant. There is, however, significant dispute between the parties, whether on or around March 29, 2022, the claimant voluntarily relinquished his directorship or whether he was wrongfully removed as a director by the 2nd and 3rd defendants. There is also significant dispute as to whether, despite his name appearing on the company’s records at the Companies Office of Jamaica, the claimant remains a shareholder of the 1st defendant as of around March 29, 2022. Not to be outdone in terms of significance, is the dispute whether the claimant is entitled to 15% of the profits of the 1st defendant as a result of his initial capital investment in the business, or whether he paid himself the value of his investment or his shareholding, on or around March 29, 2022. These are plainly matters in issue in these proceedings.

[23] An examination of the pleadings and the affidavit evidence also demonstrate that the following are also matters in issue in these proceedings: a) whether the 2nd and 3rd defendants acted in breach of contract; b) whether the claimant made any initial capital investment in the 1st defendant or was simply repaying moneys owed to the 2nd defendant or companies associated with her; c) whether the 2nd and 3rd defendants unjustly enriched themselves at the expense of the 1st defendant; d) whether by operating New Hope Foods Limited, the 2nd and 3rd defendants have placed themselves in a conflict of interest with their duties owed to the 1st defendant.¹

¹ The issue whether a claimant to an oppression claim can incorporate in his claim what amounts to a derivative action, was raised by the court peripherally at the hearing. It is unnecessary for purposes of the

[24] The only time period the claimant has identified for the disclosure sought, is in relation to records of the income and expenditure of the 1st defendant and the financial records and bank statements of New Hope Foods Limited. The period is since incorporation to the present. Save for the disclosure in relation to New Hope Foods Limited, which I will deal with separately, in my view there are two important time periods under which the claimant's application ought to be assessed. The first is January 23, 2020 (the date of incorporation of the 1st defendant), to March 29, 2022 (the date of the alleged buy out), and the second is March 30, 2022 (the day after the alleged buy out), to the present.

Records of the 1st defendant's income and expenditure /Records of all payments made to the 2nd and 3rd defendants /The 1st defendant's bank statements/ The 1st defendant's tax returns

January 23, 2020, to March 29, 2022

[25] There does not seem to be any dispute that during the period January 23, 2020, to August 31, 2021, the claimant was the sole director of the 1st defendant. It was over one year and a half later, on August 31, 2021, that the 2nd and 3rd defendants were added as directors. On the claimant's case, it was after March 29, 2022, that the alleged oppression began. During arguments, it appeared (save for documents related to New Hope Foods Limited), that the defendants are not averse to disclosing the requested documents sought, for the period spanning the 1st defendant's incorporation on January 23, 2020, to March 29, 2022. They seem to

present applications to come to a decision on the point. In passing I note the following commentary in **Corporations and Partnerships in Canada**, 3rd Ed. by Mark Gillen at para 212: “[I]n private corporations with a small number of shareholders, a wrong to the corporation committed by a shareholder or director often arises out of a personal dispute between the principals. In such cases, the courts are more likely to find that the action is personal in character, even where there is a breach of a duty formally owed to the corporation.”

take this posture, because, they say, the claimant would have been entitled to the documents, both in his capacity as director and shareholder, during that time.

[26] It seems to me, that, since the 2nd and 3rd defendants contend that the claimant ceased to have any shareholding in the 1st defendant and ceased being one of its directors as of March 29, 2022; and was paid his portion of the 1st defendant's earned profits as well as the value of his shares, the 1st defendant's financial history prior to March 29, 2022, is significant. This is because, in order to determine whether the 2nd and 3rd defendants' are correct in saying, that the claimant was paid out, and also whether the amount he received was accurate, there needs to be some evidential basis for determining: a) what the 1st defendant's financial status was, including any profits it may have made, from incorporation to the alleged date of pay out, and b) any disbursements made or moneys paid to the 2nd and 3rd defendants. This period provides the 1st defendant's financial starting point. Its bank statements can be tested against its income and expenditure records and would help to show the 1st defendant's true financial position, including its profitability prior to the alleged buy out. Likewise, the 1st defendant's tax returns would be a useful means of testing the 2nd and 3rd defendant's account of the company's finances

[27] These documents should be in the 2nd and 3rd defendants' control and would either adversely affect either their case or tend to support the claimant's case. These records are directly relevant to the issue in this claim, whether the claimant remained a shareholder and director after March 29, 2022, or was paid out for his share of the 1st defendant's profits. In my view, they are undoubtedly necessary for the fair disposal of the claim. There is nothing in the evidence before me to suggest that the 2nd and 3rd defendants' financial resources are insufficient to allow them to make this disclosure.

March 30, 2022, to present

- [28] The claimant alleges that it was after March 29, 2022, that the 2nd and 3rd defendants wrongfully excluded him from the management of the 1st defendant. He says that from around this time, the 2nd and 3rd defendants began diverting the 1st defendant's resources to New Hope Foods Limited, failed to inform him of general meetings of the 1st defendant, and paid out large sums of money to themselves. He says he remains a shareholder and director of the 1st defendant. On the other hand, the 2nd and 3rd defendants say the claimant voluntarily left the 1st defendant and orally resigned, and this is evidenced by his conduct. They say too that despite the claimant appearing on the records of the 1st defendant at Companies Office of Jamaica as shareholder, he was paid for his shares and/or the value of his investment and profits.
- [29] Mr Castle, counsel for the 2nd and 3rd defendants argued that the court should first determine liability, and particularly whether after March 29, 2022, the claimant remained a director and shareholder of the 1st defendant, before making any of the disclosure orders sought by the claimant. However, it seems to me, that the rules in relation to specific disclosure which I referred to earlier, do not support this proposition in this case.
- [30] There can be no serious doubt that the 1st defendant's financial records, including any payments made to the 2nd and 3rd defendants during this period, would be directly relevant to the matters in issue in these proceedings. The alleged mismanagement of the 1st defendant and the alleged financial misconduct started after March 29, 2022, and on the claimant's case is ongoing. These allegations are part and parcel of the allegations of oppression which are matters in issue in these proceedings. They go to the issue whether the 2nd and 3rd defendants unjustly enriched themselves during this period; whether they improperly diverted funds from the 1st defendant to the operations of New Hope Foods Limited and whether their operations of New Hope Foods Limited placed them in a conflict of interest. The financial health and profitability of the 1st defendant have some bearing on the value of any alleged shareholding held by the claimant. I bear in mind that the

claimant remains on the records of the 1st defendant at the Companies Office of Jamaica as a shareholder in the 1st defendant and contends that he remains a shareholder and director.

[31] The 1st defendant's bank statements and tax returns, as in the previous period, will serve to test the 2nd and 3rd defendants' account of the 1st defendant's finances. As stated earlier, these documents should be in the 2nd and 3rd defendants' control and would either adversely affect either their case or tend to support the claimant's case. These documents are directly relevant to the issues that arise in this claim. They are capable of either proving or disproving the alleged financial misconduct and oppression which the claimant pleads in the claim. In my view, they are undoubtedly necessary for the fair disposal of the claim.

[32] In the result, the disclosures sought by the claimant for the period January 23, 2020, to the present will be granted.

Financial records and bank statements for New Hope Foods Limited

[33] The parties accept that the request for the disclosure of the financial records and bank statements of New Hope Foods Limited, is a request for a Norwich Pharmacal Order (NPO).

[34] These orders have evolved since the House of Lord's decision in **Norwich Pharmacal Co. v Customs & Excise Commissioners** [1974] AC 133, from which their name is derived. In **Disclosure**, 5th Ed., by Paul Matthew and Hode M Malek QC, the learned authors succinctly state the decision's *ratio decidendi* at para.3.03 and go on to speak to the value of an NPO: -

“[I]t was held that a person who was innocently caught up in the wrongdoing of another, so that he was more than a “mere witness”, could be compelled to disclose the identity of the actual wrongdoer, in order that proceedings could be taken by the victim against the apparent defendant. This *Norwich Pharmacal* jurisdiction has been developed by case law to become a useful

mechanism to obtain information about wrongdoers and the location of assets.”

[35] At para 3.04 they outline the requirements of the order: -

“(1) That a wrong has been carried out, or at least arguably carried out, by a wrongdoer.

(2) That the claimant intends to assert his legal rights against the wrongdoer.

(3) That there is the need for an order to enable action to be brought against the wrongdoer, usually to require the defendant to the application to identify the wrongdoer. In other words, that an order is necessary and proportionate to assist the claimant in achieving justice and there is no other practical source of information or that it is just and convenient to make the order sought.

(4) That the defendant or respondent is a person who was mixed up in or facilitated the wrongdoing (even innocently) or has some relationship with the wrongdoer sought to be identified and is able to provide the information necessary to enable the wrongdoer to be identified or sued.”

[36] In **Mitsui & Co. Limited v Nexen Petroleum UK Limited** [2005] 3 All E.R.511; a decision relied on by the claimant, Lightman J spoke to the extended application of an NPO to contractual wrongdoing. He said that an NPO may be ordered where the claimant requires disclosure of crucial information in order to bring his claim or where he needs a “missing piece of the jigsaw”. The claimant argues that the NPO is necessary in this case, as the financial records of New Hope Foods Limited are required to determine the relationship between that company and the 1st defendant; whether the latter’s business was transferred to it and if so, the consequences for his shareholding in the 1st defendant. Counsel Miss Montague relied on the court of appeal decision in **Morrison v Morrison** [2020] JMCA Civ

55, for the submission that it is not necessary that a person be a party to a claim, for a court to make an NPO requiring that person to provide necessary information.

[37] The 2nd and 3rd defendant's object to the NPO. Citing several authorities, they argue that an application for an NPO must not amount to a fishing expedition, and if it is possible for the claimant to plead his case without the information, then the *Norwich Pharmacal* jurisdiction is not available (see for example **Axa Equity and Law Life Assurance Society v National Westminster Bank**, 16 [1998] P.N.L.R. 433); it is a remedy of last resort (see **Rugby Football Union v Consolidated Information Services Ltd (formerly Viagogo Ltd) (In Liquidation)** [2012] 1 WLR 3333.), and must be justified and proportional (**Rugby Football Union**) . They submit further that: a) the claimant has not shown that any wrong has been committed by the defendants; b) a claim has been filed , and so it cannot be said that the information is required to bring a claim against the defendants, furthermore the claimant is privy to and should have the evidence to support his claim; c) during the normal process of disclosure under the provisions of the CPR, the defendant's will disclose all the documents that they have and intend to rely on; d) the claimant has failed to establish a sufficient nexus between New Hope Foods Limited and the defendants, and e) the order is not necessary and proportionate.

[38] In **Morrison**, a decision also relied on by the 2nd and 3rd defendants, Foster Pusey JA, writing for the court of appeal, in considering the requirements for an NPO said:

“[108] The authorities establish that the pre-condition that the person from whom, the information is sought had to be mixed up in or to have facilitated the wrongdoing has evolved to a minimum requirement of involvement. Thus, the individual against whom the order is sought should, at the very least, have become involved in some transactions or arrangements as a result of which he has acquired the required information. Furthermore, in certain circumstances, an individual may become actively concerned if they can assist in locating the whereabouts of assets which are in issue in

the proceedings. In such circumstances, the individual could not be seen as a 'mere witness'."

- [39] It means then, that if there is some evidence indicating that the 2nd and 3rd defendants have transferred the 1st defendant's business to New Hope Foods Limited and using the former's resources in conducting the business of the latter, New Hope Foods Limited would have participated in the transaction by which the assets were transferred and in the use of the 1st defendant's resources. It seems to me that this would satisfy the minimum requirement in **Morrison**. But the obvious difficulty the claimant has, is that on his pleadings and his evidence, he indicates that he does not know whether there has been any such transfer of the 1st defendant's business or use of its resources. For him, it is a mere suspicion.
- [40] In paragraph 14 of his particulars of claim, all the claimant says is that "it appears" that the transfer took place. In his affidavit in support of the application, he says in paragraph 22 (iv), that the financial records of New Hope Foods Limited are necessary "to determine the relationship between [it] and the 1st defendant [and] whether the 1st defendant's business was transferred to [it]...". Earlier in paragraph 19, he says it is "unclear if [the 2nd and 3rd defendants] operate the restaurant through the 1st defendant company or through New Hope Foods Limited...", whose registered addresses are the same.
- [41] There is lack of sufficient evidence to lead me to conclude that there was an alleged transfer and that New Hope Foods Limited was involved in it. The claimant's suspicion is not enough. It falls short of evidence of the minimum requirement of involvement the court of appeal speaks of in **Morrison**. I am not satisfied, on the evidence and the pleadings, that there is sufficient evidential foundation for me to conclude that New Hope Foods Limited has the required involvement. In **Morrison**, the court of appeal was satisfied that the party against whom the NPO was sought, had the information requested or the ability to access and provide the information needed by the court for a just a fair determination of the claim. I cannot say the same thing in this case. The fact that the 2nd and 3rd

defendants incorporated New Hope Foods Limited around the time the claimant is alleged to have voluntarily left the 1st defendant and that both companies share the same registered address, are certainly not enough. As argued by Mr Castle, it is not unusual for companies operating separate businesses to share the same registered address. The fact that the 2nd and 3rd defendants plead that New Hope Foods Limited was incorporated for “best accounting practices” is similarly not enough.

[42] As reiterated by the court of appeal in **Morrison** at paragraph 93, what must be shown is that the person, against whom the NPO is sought is mixed up or has facilitated the alleged wrongdoing. The *Norwich Pharmacal* jurisdiction cannot be invoked to assist an applicant to determine whether a person is involved in wrongdoing or has facilitated wrongdoing. It is the person’s involvement, which provides the justification for the court granting the NPO. It seems to me that it is precisely what the court cannot do, that the claimant is asking it to do. While the claimant need not **prove** that the 1st defendant’s business was transferred to New Hope Foods Limited, there must be some evidential basis from which the court can properly infer involvement. The jurisdiction, however, cannot be used as a fishing expedition to discover whether there was involvement.

[43] For the foregoing reasons, the NPO sought by the claimant will not be granted.

The 3rd defendant’s application

[44] By the 3rd defendant’s application filed on March 12, 2025, he seeks in addition to costs, the following orders: -

“1. The Claimant shall specifically disclose:

- a. Copies of records of all payments made by the 1st Defendant to the Claimant from January 23, 2020 (the date of incorporation) to the present.

b. Bank statements from all financial institutions where the Claimant has had an account from January 23, 2020, to the present.

2. The Claimant shall disclose copies of bank statements from all financial institutions where New Star Limited operates from March 2022 (the date the Claimant relinquished duties in the 1st Defendant) to the present.
3. The Claimant shall disclose copies of bank statements from all financial institutions where Lees Packaging and Novelties Co. Limited operates from January 23, 2020, to the present.
4. The Claimant shall disclose copies of bank statements from all financial institutions where Hing Hong Food Limited operates from the date of incorporation (September 13, 2022) to the present.
5. The Claimant shall declare all companies which he is a director, shareholder and /or beneficial owner of from January 2020 to present.
6. The Claimant shall disclose incorporation and other company documents for companies of which he is a director, shareholder and/or beneficial owner from January 2020 to present.”

[45] The grounds relied on are essentially that: a) a wrong has been carried out by the claimant and the 3rd defendant avers in his defence and counterclaim, facts which establish a breach of fiduciary duty and of section 174 of the Companies Act; b) the documents possessed by Lees Packaging and Novelties Co. Limited, New Star Limited and Hing Hong Foods Limited are necessary to dispose of the claim and the counterclaim as they demonstrate the misappropriation of funds belonging to the 1st defendant which were paid out to the claimant and /or his associated companies Lees Packaging and Novelties Co. Limited and New Star Limited; c)

the claimant is a director of these companies, and d) these companies are mixed up in the wrongdoing of the claimant, as the claimant unlawfully removed moneys paid by third party providers/service provides to the 1st defendant for the further business of these companies.

[46] As seen from the grounds relied on for the remedies sought in the counterclaim, the following are the issues that arise for determination:

- a) Whether the claimant incentivized and/or removed the 1st defendant's staff to work in his business.
- b) Whether after March 2022, the claimant wrongfully removed moneys paid by service providers/ third party providers to the 1st defendant.
- c) Whether after March 2022, the claimant removed all the 1st defendant's accounting records.

Copies of records of all payments made by the 1st Defendant to the Claimant from January 23, 2020 (the date of incorporation) to the present.

[47] There is no allegation in the 2nd or 3rd defendants' pleadings to the effect that the claimant misappropriated funds from the 1st defendant and that those funds were used in the businesses of Lees Packaging and Novelties Co. Limited, New Star Limited or Hing Hong Foods Limited. In relation to the 1st defendant's funds, all the 2nd and 3rd defendants allege is that following discussions referred to in paragraph 8 of their defences, amounts paid to the 1st defendant by service providers/third party providers, were unlawfully/unjustly removed by the claimant. Paragraph 8 of the defence does not say when that meeting occurred. But it is in paragraph 22 of the 2nd defendant's defence, and paragraph 21 of the 3rd defendant's defence, that that meeting is said to have occurred, "in or around March 2022". This is the date used by the 2nd and 3rd defendants in their defences and by the 3rd defendant in his application as the date the claimant allegedly voluntarily left the 1st defendant

and relinquished his duties. There is no allegation that the claimant paid these funds to any of the companies referred to in the 3rd defendant's application and used them during these companies' business operations. The allegation in the 3rd defendant's application of misappropriation of the 1st defendant's funds to the business operations of these companies by the claimant, is simply not supported by the pleadings.

[48] Since "in or around March 2022" is when the 2nd and 3rd defendants allege that the claimant voluntarily left the 1st defendant, the obvious question that arises is how did he gain access to these funds as alleged, since he was by then gone from the 1st defendant? Nevertheless, and more importantly, the pleaded allegation is not that these funds were taken from the 1st defendant and used in the claimant's businesses conducted by the aforesaid companies. The pleaded allegation is simply that the claimant unlawfully removed these funds after the meeting which took place "in or around March 2022".

[49] There is no allegation that moneys paid by service providers/third party providers to the 1st defendant, were unlawfully removed by the claimant **since the date of incorporation** of the 1st defendant. It therefore seems to me, that a record of all payments which the 1st defendant made to the claimant **after March 2022**, is directly relevant to the issue which arises on the counterclaim, whether after March 2022, the claimant wrongfully removed moneys paid by service providers/third party providers to the 1st defendant. These documents will either adversely affect the claimant's case or tend to support the 2nd and 3rd defendant's case. They are, in my view, necessary for the fair disposal of the claim and the counterclaim. I will therefore, grant an order for the disclosure, by the claimant, of copies of the records of all payments made by the 1st defendant to the claimant after March 2022. It has not been suggested by the claimant, that he does not have the financial resources to comply with such an order.

Bank statements from all financial institutions where the Claimant has had an account from January 23, 2020, to the present.

[50] As to order 1(b), save for the period after March 2022 (when the 2nd and 3rd defendants allege that the claimant unlawfully removed funds from the 1st defendant), I fail to see how the bank statements from financial institutions where the claimant has an account from the date of incorporation of the 1st defendant to the present time is relevant to any issue that arises on the claim or the counterclaim. There is no allegation in the pleadings which suggest any nexus between the allegation that the claimant incentivised or removed the 1st defendant's staff to work in his businesses, and his bank statements from January 23, 2020, to the present time. Similarly, there is no nexus in the pleadings between these bank statements and the allegation that the claimant unlawfully removed the 1st defendant's accounting records.

[51] In my view, given that there is to be disclosure of the record of all payments made to the claimant from the 1st defendant after March 2022, in relation to the allegation that the claimant removed funds from the 1st defendant after March 2022, the disclosure of his bank statements as well, is disproportionate and unnecessary.

Copies of bank statements from all financial institutions where New Star Limited operates from March 2022(the date the Claimant relinquished duties in the 1st Defendant) to the present.

Copies of bank statements from all financial institutions where Lees Packaging and Novelties Co. Limited operates from January 23, 2020, to the present.

Copies of bank statements from all financial institutions where Hing Hong Food Limited operates from the date incorporation (September 13, 2022) to the present.

Incorporation and other company documents for companies of which the claimant is a director, shareholder and/or beneficial owner from January 2020 to present.

[52] I turn now to orders 2, 3 and 4. As argued by Miss Montague, there is no allegation in the pleadings against either Lees Packaging and Novelties Co. Limited, New Star Limited or Hing Hong Foods Limited, or of them being involved in any

wrongdoing in relation to the 1st defendant. There is no evidence establishing that evidential link between the allegations against the claimant in the defence and counterclaim and these companies. There is nothing in the pleadings to suggest that the allegation that the claimant incentivized or removed staff from the 1st defendant to work in his businesses, led to any losses or injury incurred by the 1st defendant or the 2nd and 3rd defendants. There is no connection alleged, or any that I can discern from the pleadings or the evidence, between this allegation and the disclosure of the bank statements for Lees Packaging and Novelties Co. Limited, New Star Limited or Hing Hong Foods Limited. The same applies to the claimant's own bank statements.

- [53] Likewise, there is no connection alleged, and I can discern none from the pleadings or the evidence, between the allegation that the claimant removed the 1st defendant's accounting records after March 2022, and the disclosure of the bank statements for Lees Packaging and Novelties Co. Limited, New Star Limited or Hing Hong Foods Limited, and for that matter, the claimant's bank statements.
- [54] In the result, I can see no basis on which orders 2, 3 and 4, sought against these companies can be granted. As stated earlier, the grounds in the application which speak to the claimant misappropriating the 1st defendant's funds and using them in the business of these companies is not supported by any pleadings. I do not see how the bank statements for any of these companies is directly relevant to any issue in these proceedings. They will not support or adversely affect the case of the claimant or the case of the 2nd and 3rd defendants. I do not find that they are necessary for the fair disposal of either the claim or the counterclaim.
- [55] For these very same reasons, I also do not see how the incorporation and company documents for companies of which the claimant is a director, shareholder and/or beneficial owner from January 2020 to the present, sought in order 6, are directly relevant to any issue in these proceedings. Consequently, those disclosures will not be ordered.

Disclosure of all companies the claimant may have an interest in either as director, shareholder or beneficial owner

[56] Finally, I come to order 5. The 3rd defendant is asking for the disclosure of all companies the claimant may have an interest in either as director, shareholder or beneficial owner. Absolutely nothing in the pleadings make this disclosure directly relevant to any issue in either the claim or the counterclaim. The reasons that I have given in relation to orders 2, 3, 4 and 6 apply equally to order 5. As was mentioned earlier, save for the allegation in the application, that the 1st defendant's funds were misappropriated to the claimant's companies (an allegation not supported by the pleadings), there is nothing in the 3rd defendant's application, or in the pleadings, which makes this disclosure directly relevant to any of the issues in these proceedings.

Costs

[57] Both the claimant and the 3rd defendant have asked for costs on their applications. No reason for a departure from the normal course that costs follow the event has been urged upon me. Of the five sets of documents sought by the claimant, I will be granting disclosure of four of them. I am therefore of the view that it is only fair and just that he receives 80% of his costs.

[58] In relation to the 3rd defendant's application, of the six orders he seeks, I will be granting a modified version of only one. In the circumstances, I believe it is fair and just that he receives 17% of his costs.

Orders

[59] In the result, I make the following orders: -

- a) The 2nd and 3rd defendants are to conduct searches and disclose to the claimant the following documents:

- i. Copies of the 1st defendant's financial statements from January 23, 2020, to the present.
 - ii. Records of all payments made by the 1st defendant to the 2nd and 3rd defendants and the reasons for those payments for the period January 23, 2020, to the present.
 - iii. Copies of all tax returns for the 1st defendant filed at Tax Administration Jamaica for the period January 23, 2020, to the present.
 - iv. Copies of bank statements for the 1st defendant from all financial institutions it has an account from January 23, 2020, to the present.
- b) The order requesting financial statements for New Hope Foods Limited is denied.
- c) The claimant shall have 80% of his costs, against the 2nd and 3rd defendants, such costs to be taxed if not agreed.
- d) The claimant is to conduct searches and disclose to the 3rd defendant copies of records of all payments made by the 1st defendant to him after March 2022.
- e) The order requesting bank statements from all financial institutions where the claimant has had an account from January 23, 2020, to the present is denied.
- f) The order requesting that the claimant disclose copies of bank statements from all financial institutions where New Star Limited operates from March 2022 to the present is denied.

- g) The order requesting that the claimant shall disclose copies of bank statements from all financial institutions where Lees Packaging and Novelties Co. Limited operates from January 23, 2020, to the present is denied.
- h) The order requesting that the claimant shall disclose copies of bank statements from all financial institutions where Hing Hong Food Limited operates from the date of incorporation (September 13, 2022) to the present is denied.
- i) The order that the claimant shall declare all companies which he is a director, shareholder and /or beneficial owner of from January 2020 to present is denied.
- j) The order that the claimant shall disclose incorporation and other company documents for companies of which he is a director, shareholder and/or beneficial owner from January 2020 to present is denied.
- k) The 3rd defendant shall have 17% of his costs against the claimant, such costs to be taxed if not agreed.
- l) There will be a case management conference on December 14, 2026, at 12 noon for 1 hour.
- m) The claimant's attorneys-at-law to prepare file and serve the formal order.

A Jarrett
Puisne Judge