[2026] JMCC Comm 35

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2025CD00421

BETWEEN	**FITZROY PRENDERGAST T/A CABLE NEWS AND SPORTS TV (CNS)**	**CLAIMANT**
AND	**DR. MARLENE STREET-FORREST**	**1ST DEFENDANT**
	THE JAMAICA STOCK EXCHANGE	**2ND DEFENDANT**

Civil Procedure Rules Parts 15 and 26.3 – Summary Judgment – Whether Claimant has a real prospect of success – Breach of confidence – Information imparted in the course of seeking and performing a paid engagement – Whether use of information unauthorized – Intellectual property – Whether right identified – Whether disputed facts preclude summary determination

Trevor Cuff instructed by Cuff & Shaw, Attorneys-at-Law for the Claimant

Allan Wood KC & Stephen Nelson instructed by Livingston, Alexander & Levy, Attorneys-at-Law for the Defendants

G. Ashmead (Judicial Counsel)

Heard: 24th September 2026

IN CHAMBERS (VIA VIDEOCONFERENCE)

Cor: Batts, J.

[1] On the 24th September 2026, I made the following orders:

"a) Summary judgment is entered for the Defendants against the Claimant and the claim is dismissed accordingly.

b) Costs to the Defendants to be taxed if not agreed."

I promised then that my reasons would be put in writing at a later date. This judgment fulfils that promise.

[2] This matter concerns a Notice of Application for Court Orders filed on the 20th July 2026 by the Defendants, Dr. Marlene Street-Forrest ("the 1st Defendant") and The Jamaica Stock Exchange ("the 2nd Defendant). It seeks the following orders:

"1. That summary judgment be entered in favour of the Defendants on the Claim.

2. Alternatively, that the Claimant's Statement of Case be struck out and judgment entered in favour of the Defendants.

3. Costs to the Defendants to be taxed, if not agreed.

4. Such further or other relief as this Honourable Court deems fit."

[3] The application invokes rules 15.2 and 26.3(1) of the Civil Procedure Rules, 2002 ("the CPR"). In summary, the grounds are that the Claimant, Mr. Fitzroy Prendergast trading as Cable News and Sports TV ("CNS"), has no real prospect of succeeding and the claim discloses no reasonable ground for bringing the claim, because:

i. the circumstances in which the Claimant imparted information did not import an obligation of confidence, as it was provided in his capacity as a paid consultant and then Station Manager;

ii. there was no unauthorized use of any information he provided

iii. the information was neither novel nor original;

iv. he has identified no recognized intellectual property right infringed and there is no intellectual property right in an idea, concept, procedure or process; and

v. there was no agreement that information would be shared on the basis of a partnership and his proposal for part-ownership having been expressly rejected, he agreed to work as a paid consultant.

Pursuant to rule 15.4(4) the Defendants propose that the Court deal with two issues: whether the Claimant has any intellectual property rights which have been infringed; and whether any confidential information was provided to the Defendants in circumstances importing an obligation of confidence and, if so, whether it was misused.

[4] In his claim, commenced on the 23rd December 2025, the Claimant pleads that he is an experienced media practitioner who owned confidential know-how and information: "*that could be developed and used for the purposes of the formation and proposed operation of a business focused television channel*" (paragraph 5 of Particulars of Claim filed 23rd December 2025). He says the information included "*the structure, business concept, strategy, and operational model, financial projections, funding plans, and capital structure, shareholder agreements, and internal communications*" (paragraph 6), and that it had the necessary quality of confidence. He alleges that on the 1st January he "*via email submitted a formal proposal and business case to the 1st Defendant proposing a partnership between the Claimant and the 2nd Defendant*" for a business focused television channel (paragraph 8). The Particulars of Claim call the channel the "*Caribbean Business Network*" and the "*Caribbean Business Exchange*". The parties have treated these as the same channel and I refer to them as "the CBX".

[5] The Claimant pleads that the disclosure occurred in circumstances importing an obligation of confidence, including "*a shared understanding that the confidential information was supplied on the basis of establishing a partnership between the Claimant and the 2nd Defendant and an implied agreement that the information would not be used for the Defendants' own benefit or disclosed to third parties*

without the Claimant's ownership interest being recognized" (paragraph 9). He alleges that on or about the 24th August 2022 the Defendants launched the CBX using his confidential information *"without recognizing the Claimant's ownership stake through his proprietary information"* (paragraph 4). The particulars of breach of confidence allege that the Defendants used his confidential information to advance their own commercial interests contrary to the purpose of its disclosure, acted in breach of an express and/or implied obligation of confidence, and misappropriated a business opportunity by launching the channel without him. He claims financial loss and loss of business opportunity, and seeks general damages, costs and interest. The claim is framed as one for breach of intellectual property and/or breach of confidence, paragraph 10 of the particulars of claim speaks of intellectual property, asserting that he "*enjoyed exclusive rights to use, reproduce, distribute, license, and commercially exploit the intellectual property*".

[6] The Defence was filed on the 4th May 2026. The Defendants admit paragraph 8 of the Particulars of Claim but state that the proposal conceded that the CBX would be owned by the 2nd Defendant, and that his proposal for a partnership, that is part-ownership, was rejected by the 2nd Defendant. He was instead engaged as a paid consultant. They say that the 2nd Defendant commenced work on the CBX in 2019 before engaging the Claimant, that he was engaged first as a consultant and then as Station Manager and was remunerated. Any information he supplied was either already within the 2nd Defendant's knowledge or was supplied under those paid engagements. There was not the necessary quality of confidence, and that there is no intellectual property right in an idea. The Defendants deny that the Claimant conceptualized the name, logo or programming of the CBX. The Defence also records that the 1st Defendant retired from the 2nd Defendant on the 30th September 2025. Their submissions assert that she acted at all material times for and on behalf of the 2nd Defendant and this to the knowledge of the Claimant. It is alleged therefore she ought not to have been sued. This latter submission was unanswered and is I dare say unanswerable.

[7] Most of the factual background is common ground or uncontested. In August 2019 the 1st Defendant, then the Managing Director of the 2nd Defendant, visited the Canadian Securities Exchange with a team of its employees and observed its podcast studio. The Defendants say that the decision to create a business and exchange network followed, and that they had already made plans to establish a network akin to the offerings of Bloomberg Media Company, see affidavit of Livingstone Morrison filed 20th July 2026 paragraphs 4-6 and affidavit of the 1st Defendant in reply filed the 1st September 2026. An email trail from the 23rd August to the 9th September is exhibited in the Morrison affidavit at LM-1, pages 1-2. The Claimant describes it as brief thank-you exchanges following that visit, with a passing reference to getting some idea to set up "*our own media center*", and says that it describes no business concept, structure, operational, model, financial projections, funding plan or capital structure (see paragraph 6 of the Claimant's affidavit filed on the 14th August 2026). The Claimant does not admit that the 2nd Defendant had, before January 2020, any concrete plan for such a channel (paragraph 5).

[8] The Claimant approached the 1st Defendant with a proposal for the 2nd Defendant to establish a business-focused television network. The 1st Defendant's account is that she responded by pointing out that the 2nd Defendant was already exploring the venture and that consideration could be given to engaging him to assist with its build-out, see the Morrison affidavit paragraph 7. The Claimant does not admit that part of the account. By letter dated the 1st January 2020, exhibited at LM-1/paragraph 3, of the Morrison affidavit, the Claimant made a proposal to the 2nd Defendant. The Claimant admits sending the letter and that it referred to monthly operating costs and to CNS operating the network on behalf of the 2nd Defendant (Claimant's affidavit, paragraph 8). The letter acknowledged that the network would be owned by the 2nd Defendant. The Defendants' submissions refer to a line item in the estimate of costs contained in that proposal as "*My Remuneration $250,000*". The Claimant says the letter did not represent the whole of the confidential business case and proprietary information disclosed to the

Defendants, which included the structure, business concept, strategy, operational model, financial projections, funding plans and capital structure communicated on and after that date. He exhibits the Business Case as "FP-1", see the Claimant's affidavit filed 14th August 2026.

[9] The Claimant then raised with the 1st Defendant the question of quantifying a stake in the CBX. He admits that she indicated that the 2nd Defendant was not willing to consider a part-ownership arrangement, see paragraph 9 of the Claimant's affidavit. The 1st Defendant in her affidavit in reply (filed 1st September 2026) states that his proposal for a partnership "*was expressly rejected by me*" (paragraph 8). The refusal is therefore common ground. The Claimant's position is that the refusal does not extinguish his underlying proprietary interest in, or the confidentiality attaching to, the information he had already disclosed.

[10] On the 23rd October 2020 the Claimant emailed the 1st Defendant requesting a consultancy package (page 4 of exhibit LM-1 to the Morrison affidavit). He was engaged and paid as a consultant from late 2020, and invoices for consultancy services dated between the 1st December 2020 and the 22nd November 2021 are exhibited at LM-1 pages 5-9. The Claimant admits that he was engaged and paid as a consultant from late 2020, see paragraph 11 of his affidavit. He was engaged as Station Manager of the CBX by the 2nd Defendant under successive contracts for services being: a one-year contract effective the 1st September 2022 (LM-1 pages 10-14); a six-month contract effective the 1st November 2023 (LM-1 pages 15-19); and, following a letter of the 27th May 2024 advising of Board concerns about non-performing operations including the CBX, a three-month contract dated the 1st June 2024 (LM-1 pages 20 and 21-25). By letter of the 26th August 2024 the 2nd Defendant informed him that his contract would not be renewed (LM-1 page 26). The Particulars of Claim allege that the channel was launched on or about the 24th August 2022. The Defence does not take issue with that date.

[11] The contracts are said by the Defendants to: expressly place the Claimant under a duty to keep confidential information he became privy to as Station Manager, to

require him to take instructions from and report to the Group Business Development Manager, and did not impose confidentiality obligations on the Defendants. The Defendants point further to the contract effective the 1st November 2023 as providing that his duties include implementation of an organizational structure for the CBX and updating its Operating Procedures. The Claimant accepts that the contracts were prepared by the 2nd Defendant and governed his role as a paid Station Manager. His answer is that the contracts are silent on the earlier question of ownership of the concept and of the confidential information he disclosed before the contracts existed (Claimant's affidavit paragraphs 12 and 13).

[12] Four programme concept papers dated between the 15th June 2021 and the 15th September 2021 and attributed to Mr. Michael B. Johnson of the 2nd Defendant are exhibited at LM-1 pages 29-48. The Claimant says they post-date his disclosure by at least seventeen months and concern individual programme formats rather than the channel itself (paragraphs 15 and 16 of Claimant's affidavit).

[13] I turn first to a preliminary evidential objection. The Claimant complains that Mr. Morrison was appointed Chief Executive Officer only in September 2025, about five years after the events occurred. He therefore has no first-hand knowledge of what transpired. His evidence is derived from the 2nd Defendant's records or from the 1st Defendant, who is a party and an interested witness. The Claimant contends that evidence of that kind is unsuitable for resolving contested issues summarily (Claimant's affidavit paragraph 4). I do not accept that the objection assists the Claimant. First, Mr. Morrison states the sources of his knowledge: the 2nd Defendant's records, to which he has access as Chief Executive Officer, and information provided by the 1st Defendant, whom he identifies as the person who had conduct of the matter, see Morrison affidavit paragraphs 1, 2 and 5. The Defendants submit at paragraph 9 of their written submissions, citing paragraphs 29 to 31 of ***Jamaica Public Service Company Limited v Charles Vernon Francis and another [2017] JMCA Civ 2,*** that a company can only give evidence through its officers, who may speak to matters within the company's knowledge.

Rule 30.3(2)(b) of the CPR permits an affidavit sworn for a summary judgment application to contain statements of information and belief provided the affidavit identifies the source. Mr. Morrison's affidavit identified his sources in the manner required. Second, and decisively, the 1st Defendant has herself sworn an affidavit in which she confirms the truth of Mr. Morrison's affidavit and says that it accords with her own recollection. That is direct evidence from the person who dealt with the Claimant. Third, the facts on which this decision turns are largely admitted by the Claimant, or apparent from the documents, so that the weight of the objection is slight in any event.

[14] Rule 15.2 of the CPR provides that the court may give summary judgment on the claim or on a particular issue if it considers that the Claimant has no real prospect of succeeding on the claim or the issue. The applicable principles are not controversial. The Defendants refer *to* ***Swain v Hillman [2001] 1 All ER 91*** where Lord Woolf MR explained that the word "real" distinguishes fanciful prospects of success from realistic ones. They refer to ***Sagicor Bank Jamaica Limited v Taylor-Wright [2018] UKPC 12***, in which the Board observed at paragraph 17 that there will in almost all cases be disputes about the underlying facts, but that a trial of those disputes is only necessary if their outcome affects the claimant's entitlement to the relief sought, since otherwise it is generally an unnecessary waste of time and expense. They also refer to ***Somerset Enterprises Ltd. and Lindeerth Powell v National Export Import Bank of Jamaica Ltd [2021] JMCA Civ 12***, in which Brooks P, adopting earlier authority, said that a respondent resisting summary judgment must show a case which is better than merely arguable, that is, realistic rather than fanciful, but that the court should not conduct a mini-trial. I respectfully adopt and apply those principles.

[15] Rule 26.3(1)(c) permits a statement of case to be struck out if it discloses no reasonable grounds for bringing the claim. The Defendants rightly accept that there is considerable overlap between the two applications. As I have concluded that

summary judgment ought to be given under rule 15.2, it is unnecessary to decide the alternative application to strike out.

[16] The claim has two strands, intellectual property and breach of confidence. I take the first shortly. The Particulars of Claim do not identify any recognized intellectual property right said to have been infringed, whether copyright in a particular work, a trade mark, or any other. They do not identify any specific expression of the Claimant's that is said to have been copied. What they plead in paragraphs 5 and 6 is a body of know-how and information: a structure, business concept, strategy, operational model, projections, funding plans and capital structure. The assertion in paragraph 10 of "*exclusive rights*" is unspecified, "*intellectual property*" is a conclusion, not a pleaded right. The Claimant's affidavit, too, does not identify any such right: its case is expressed for the most part in terms of confidential information and breach of confidence.

[17] The Defendants submit, and I accept, that copyright does not protect an idea, concept, process, principle, procedure or system as such, but only its expression in some qualifying work, see section 6(8) of the **Copyright Act**. The Claimant has not alleged that the Business Case or any other document was an original literary or dramatic work of which the Defendants reproduced a substantial part. The Defendants also say, without contradiction on the evidence before me, that the Claimant did not conceptualize the name or logo of the CBX or any programme shown on it. The Defendants' counsel referred to ***Banner Universal Motion Pictures Ltd v Endemol Shine Group Ltd and others [2017] EWHC 2600 (Ch)*** in which a television format was held not to attract copyright because of its lack of specificity and structure. I find that on the pleadings and evidence before me no intellectual property right has been identified or sufficiently specified. The claim for breach of intellectual property has no real prospect of success. In any event, and for reasons elaborated below, the evidence shows that there was no breach because the Claimant consented to the use by the Defendants of the alleged or any intellectual property.

[18] The real contest is the claim for breach of confidence. The three elements which ordinarily must be established are those stated by Mr.Justice Megarry in ***Coco v A.N. Clark (Engineers) Ltd [1969] RPC 41, 47-48***. Firstly, the information itself must have "*the necessary quality of confidence about it*". Secondly, it must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorized use of the information to the detriment of the party communicating it. On the second element Megarry J suggested that the question is whether any reasonable person standing in the shoes of the recipient would have realized that, upon reasonable grounds, the information was being given to him in confidence, see page 48 line 15 of the judgment.

[19] The first element is contested. The Defendants submit that the information was commonplace, that business-focused television stations exist elsewhere, and that the Claimant provided nothing novel or original. The Claimant answers, and I accept, that a claim in confidence does not require that the information be a patentable or novel invention. Megarry J said that quite often the more striking the novelty the more commonplace its components may be, and that "*some product of the human brain*" may confer a confidential nature on the information, see page 47 line 25. I have not found it necessary to decide the first element. I do not have to decide whether the 2nd Defendant had conceived the CBX before the Claimant approached it, nor how far the content of the Business Case differs from standard items which the 1st Defendant says it contains. For the purposes of this application I assume in the Claimant's favour that the information in the Business Case had the necessary quality of originality, ingenuity or novelty as to confer a confidential nature and that he communicated it to the 1st Defendant on and from the 1st January 2020. The claim fails on the second and third elements.

[20] The Claimant's own pleading identifies the circumstances said to import the obligation. Paragraph 9 of the Particulars of Claim alleges that the information was supplied "*on the basis of establishing a partnership*" between the Claimant and the 2nd Defendant, with an implied agreement that it would not be used for the

Defendants' benefit "*without the Claimant's ownership interest being recognized.*" The alleged obligation was therefore tied to the prospect of a partnership and the recognition of an ownership interest. It is common ground that that prospect was denied. The Claimant admits that he was told that the 2nd Defendant was not willing to consider a part-ownership arrangement. No agreement conferring on him an ownership interest in the CBX is pleaded, and none is alleged in his affidavit. As the Defendants point out, an ownership interest of the kind he claims could arise only by agreement, and there is none.

[21] What the Claimant did next is also admitted. Having been told there would be no part-ownership, he asked for a consultancy package. He was engaged and paid as a consultant to assist with the building out of the CBX, and later engaged and paid as its Station Manager under three successive contracts, while continuing to lease equipment to the 2nd Defendant for which he was also paid. In the course of those engagements he was taking part in the very thing the Particulars of Claim allege the Defendants did wrongly: bringing the CBX into being and operating it. This is not a case in which the Defendants took an idea, left the Claimant out, and engaged someone else behind his back. The channel was built and run, in significant part, by the Claimant himself, on terms he accepted, on the 2nd Defendant's behalf, and for payment which he received.

[22] Those undisputed facts are fatal to the second element. Even if an obligation of confidence arose on the 1st January 2020, in the terms the Claimant alleges, the basis on which he says the information was given ceased to exist when the 2nd Defendant refused to enter a partnership with him. He knew that before he asked for a consultancy package and before he signed any contract. A reasonable person in the position of the 2nd Defendant, having refused a partnership and then engaged the Claimant as a paid consultant and later Station Manager to build and operate the channel, could not understand that whatever the Claimant had told it and supplied was given in confidence or on terms that restrained its use in establishing and operating that channel. On the contrary, that was the purpose for which he was paid.

[23] The same facts are fatal to the third element. The use of which the Claimant complains is the use of his information in establishing and operating the CBX. By agreeing to the consultancy and then to Station Manager contracts, and by performing them, he authorized the 2nd Defendant to build on and use what he contributed for that purpose. Nothing in his affidavit suggests that he reserved his position, or told the 2nd Defendant that he was participating while retaining control over how his information might be used. The use was therefore not "unauthorized". The Claimant's contention that the Defendants used his information without recognizing his ownership stake is a complaint that the 2nd Defendant refused to give him something it was never legally bound to give, and which he knew it had already refused. The law of confidence restrains the unauthorized use of information. There is no evidence that use of the information was unauthorized, nor could there be, given it was the Claimant who utilized it for and on behalf of the 2nd Defendant.

[24] The Claimant's answer is that the contracts were prepared unilaterally by the Defendants for a different purpose, are silent on ownership of the concept and of the January 2020 information, and that the remuneration he received was for operational services and not in settlement or purchase of anything he had contributed to the conception of the channel. I accept that the contracts do not in terms say that the 2nd Defendant purchased the Claimant's information, and that they do not themselves decide what happened in January 2020. The question however is not whether payment extinguished a proprietary interest, it is whether the information was imparted in circumstances restraining its use and whether its use was unauthorized. On the Claimant's own evidence he participated in the project with full knowledge that his request for a stake had been refused. The silence of the contracts on ownership cannot assist him: it cuts against the existence of any agreed interest, and it leaves the Claimant with no basis to restrain a use he participated in.

[25] That leaves detriment. The Particulars of Claim plead financial loss and loss of business opportunity. In substance the loss is an ownership stake in the CBX which the Claimant never had, and the continuation of his paid role after his contract was not renewed. The claim is not framed in contract and does not allege any wrongful non-renewal. The evidence is that the Station Manager contract was for a fixed term, and that the 2nd Defendant gave notice by letter that it would not be renewed. Neither the refusal of a stake nor the end of a fixed-term engagement is a detriment caused by a breach of confidence. The Claimant was paid for his services as consultant and as Station Manager. His request for a share in the venture was refused before he began to share his knowledge and expertise.

[26] I deal also with the Claimant's submission that the matter is unsuitable for summary determination because of genuinely disputed questions of fact. He identifies the following: what was said between himself and the 1st Defendant before January 2020, the full content of what he disclosed and, whether and to what extent the Defendants' use of the CBX concept derived from the disclosure. I accept that these are matters on which the parties differ. But the question, as **Sagicor** teaches, is whether resolving them could affect the Claimant's entitlement to relief. Taking each at its highest in the Claimant's favour, I would assume that he said what he says he said, disclosed everything he says he disclosed, that it was confidential, and that the CBX drew on it. None of that alters the matters on which the outcome turns and which are admitted: that his proposal for a partnership was refused, that he performed the contracts and, that no agreement for any ownership interest is alleged. On those facts the obligation of confidence he alleges was not imposed and no unauthorized use of intellectual property or confidential information occurred. A trial would not change that and would be a waste of time and expense. His reservation of a right to seek further disclosure of materials underlying the concept papers (Claimant's affidavit paragraph 16) will not affect the issues I have to decide.

[27] For these reasons the Claimant has no real prospect of succeeding on the claim for breach of intellectual property or on the claim for breach of confidence. Summary judgment was therefore given for the Defendants and the claim dismissed. As to costs, the Defendants were the successful parties. The general rule is that the unsuccessful party pays the costs of the successful party, and I saw no reason to depart from it. The Defendants are accordingly entitled to their costs, to be taxed if not agreed.

David Batts
Puisne Judge.