

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Division

Consolidated Suit Nos: 1612/1613 of 2005

BETWEEN

PHILIP VERNON NICHOLLS - PLAINTIFF

AND

JOYCE GRIFFITH - 1st DEFENDANT
ALLAN ST. CLAIR WATSON - 2nd DEFENDANT

*Before The Honourable Madam Justice Maureen Crane-Scott, Q.C.
Judge of the High Court
(In Chambers)*

**2009: May 15, 27;
June 2, 22, 23, 29;
July 13;
August 10, 11, 18, 21;
September 10, 11, 17.**

**Mr. Edmund Hinkson and Mrs. Julie Harris Hill of Cottle Catford &
Co for the Plaintiff
The First and Second Defendants appearing in person**

REASONS FOR DECISION AND ORDER

- [1] **Crane-Scott J:** This was an *urgent* application by the Plaintiff brought by way of Summons filed April 30, 2009 pursuant to **O. 43** of the **Rules of the Supreme Court, 1982** for the settlement and confirmation of the accounts of the former partnership of Cottle Catford & Co, which partnership was at one time carried on by the Plaintiff and the First and Second Defendants but which dissolved on December 31, 2002.
- [2] The application was brought against the background of a Consent Order which was made in the Court of Appeal on December 3, 2007 in which it was ordered that:

“1. The Respondent/Plaintiff produce to the Appellant/Defendant...

(a) the former partnership accounts, bank statements and records as at the 31st December, 2007;

(b) unaudited accounts of receipts of the former partnership debts and liabilities from the 1st day of January, 2003 to December 3, 2007.

2. That the Appellant/Defendant within seven days...pay her portion of the expenses of preparing the unaudited accounts that have already been prepared.

3. That the Appellant/Defendant and the Respondent/Defendant pay their respective share of the

costs of updating the unaudited accounts to the 3rd day of December, 2007.

4. *That on settlement of these accounts they be submitted to the High Court to be entered as judgments in respect of the Defendants' liabilities of the former partnership.*
5. *That the application for leave to appeal be dismissed and the consent order filed.*
6. *That there be no order as to costs."*

- [3] The application was heard on several dates between May and September, 2009. During this period, the Defendants made numerous requests for additional information and particulars to be provided by the Plaintiff to enable them to conduct a detailed examination of the partnership accounts which had been prepared by Mr. Carlyle Forde, the Chartered Accountant, with a view to their ultimately being settled by the Defendants as contemplated in the Court of Appeal Consent Order of 3rd December, 2007.
- [4] The vast majority of the Defendants' requests for information and further particulars were incorporated in numerous interim orders which were duly perfected and filed by the Plaintiff and served on the Defendants with a view to facilitating the process.
- [5] In instances where it was more convenient (due to the sheer volume of the documents to be inspected) for the requested information to be physically examined or inspected by the Defendants in an out-of-Court venue, orders were made for such meetings to be facilitated at the offices of the accountant, Mr. Forde, at times convenient to the parties or their representatives and to him.

- [6] On June 23, 2009, at the request of both Defendants (who insisted that the accounts prepared by the accountant could not be settled unless the ledger or clients accounts for each client of the former partnership be produced) the Court ordered the preparation by the accountant of a *Debit and Credit Account Working List* to enable the Defendants to examine, comment on, identify and settle the amounts due to and from clients of the old partnership as at December 31, 2002.
- [7] As additional information became available to the parties over the course of the hearing, the former partnership accounts originally filed with the Summons on April 30, 2009, were amended from time to time by the accountant to reflect current, up-to-date balances and summaries.
- [8] During the course of the hearing it became obvious to the Court, based upon the amounts shown in the accounts of the former partnership to be due from the First and Second Defendants, that the Court would (pursuant to the Court of Appeal order) ultimately be expected to enter judgment against each Defendant in amounts which were likely to exceed the specific sums originally claimed in the Statement of Claim.
- [9] The Plaintiff was then invited, and leave was granted to the Plaintiff to amend his Statement of Claim for the sole purpose of showing the increased amounts due from each Defendant as disclosed in the updated accounts of the former partnership.
- [10] An amended Statement of Claim was subsequently filed by the Plaintiff on July 24, 2009.
- [11] As the Court of Appeal Consent Order clearly contemplated the entry of judgment against the Defendants by the High Court based upon

- settled accounts of the former partnership and as amendment of the Statement of Claim had been requested for the sole purpose of enabling the Court to enter judgment against the Defendants for the amounts shown to be due from the Defendants in the accounts of the former partnership which exceeded the amounts claimed in the original Statement of Claim and no other purpose, the Court has had no regard to the other issues raised in the amended Statement of Claim.
- [12] Furthermore, as the Court of Appeal Consent Order of December 3, 2007 clearly contemplated the entry of judgment against the Defendants based on the amounts shown in the accounts of the former partnership prepared by Mr. Carlyle Forde, there was also no necessity for the Defendants to file amended Defences. The Defendants' applications to file amended Defences were accordingly refused by the Court on August 10, 2009, as were the Defendants Summonses filed on August 7, 2009 seeking to strike out portions of the Amended Statement of Claim.
- [13] On August 11, 2009, with a view to enabling the Court to ascertain exactly what aspects of the former partnership accounts had been agreed to and settled by the parties, both Defendants were ordered to examine the updated accounts of the former partnership exhibited with the affidavit of Philip Vernon Nicholls filed on July 29, 2009 and to highlight specifically those items of the accounts which had not been settled or on which there was no agreement.
- [14] On August 17, 2009 in compliance with the said order, the Second Defendant duly filed an affidavit to which copies of the updated accounts were exhibited and on which he had identified by means of

an orange-coloured highlighter, the aspects of the account which had not been settled or in respect of which additional information and/or particulars would be required from the Plaintiff before settlement of the accounts could be reached.

[15] The First Defendant did not comply with the order of August 11, 2009 and filed no documents. She cited her inability to do so due to administrative difficulties in preparing the affidavit. She however expressly confirmed to the Court that she intended to and would rely on the objections and submissions which the Second Defendant had raised in his affidavit of August 17, 2009 with respect to the accounts.

[16] On subsequent days of the hearing, the Court painstakingly took the parties line-by-line through each of the partnership accounts and in particular through the Second Defendant's affidavit of August 17, 2009. In relation to each page of the accounts, the Court identified and confirmed with the parties the areas on which agreement had been reached and those on which there was either no agreement or in respect of which additional information was still required before agreement could be reached. Further adjournments were granted to allow any additional information requested to be provided to the Defendants.

The issues in Dispute:

[17] On the final day of the hearing on September 11, 2009, the Court sought and received express confirmation from the respective parties that save and except for 2 areas of disagreement; the parties had reached agreement on and settled all other aspects of the updated accounts of the former partnership.

[18] The Court also sought and obtained express confirmation from the parties that the 2 remaining aspects of the updated accounts on which no agreement had been reached related to the following 2 questions or issues:

- (i) Whether the net over-drawings of each partner as at December 31, 2002 should be included in or brought into account as shown in the updated account dated August 26, 2009 prepared by the accountant, Mr. Carlyle Forde and entitled “*Partners’ capital and current Accounts (over-drawings)*”? (See attachment exhibited with the Supplemental Affidavit of Philip Vernon Nicholls filed on September 8th, 2009); and
- (ii) Whether a sum of \$78,106.00 being the legal fees of Mr. David Bristow, a Canadian lawyer engaged by the Plaintiff to represent the firm of Cottle Catford & Co in proceedings said to have arisen out of transactions involving, Kingsland Estates Ltd, a client of the former partnership which transactions had taken place before dissolution, should be apportioned between the former partners and brought into account in the updated accounts of the former partnership? (See attachment dated August 26, 2009 prepared by the accountant, Mr. Carlyle Forde and entitled “*Partners’ capital and current Accounts (over-drawings)*” exhibited with the Supplemental Affidavit of Philip Vernon Nicholls filed on September 8th, 2009).

[19] Having identified and narrowed the areas of disagreement between the parties to the foregoing 2 issues, the Court then sought and obtained the confirmation of the parties that the disputed issues were to be resolved by the Court. In this regard, the Court already had before it various affidavits setting out the position of the parties in relation to these 2 issues together with the respective submissions of the parties which had been made at various times during the course of the hearing.

Issue 1 - Should the respective partners' over-drawings be brought into account in determining the amount due to the Plaintiff following the dissolution of the former partnership?

[20] Having examined this issue and considered the submissions of respective parties, together with the affidavits filed herein, the Court has determined that it is both appropriate and reasonable for the over-drawings of the respective partners as at December 31, 2002 to be brought into account in the accounts of the former partnership by the accountant, Mr. Carlyle Forde as shown in the documents entitled ***"Partners' capital and current Accounts (over-drawings)"*** and the ***"Statement of Affairs following adjustment to Clients' Balances"*** updated as at August 26, 2009 for the following reasons:

- a) the Court is satisfied that the evidence disclosed in the several affidavits filed in these proceedings establishes that for several years prior to the date of dissolution of the partnership on December 31, 2002, all three partners had acknowledged as requested by the firm's auditors, PricewaterhouseCoopers, the existence of very substantial

over-drawings standing in their names in connection with the former partnership. (*See in particular Exhibits "PVN 2", "PVN3" and "PVN 4" attached to the affidavit of Philip Vernon Nicholls filed on April 30, 2009 where the existence and the then levels of the over-drawings were acknowledged and confirmed by all 3 partners in April 1998*);

- b) the Court accepts in particular, the findings of the firms' former auditors PricewaterhouseCoopers set out in ("Exhibit PVN 5") attached to the affidavit of Philip Vernon Nicholls filed on April 30, 2009 that: "*At December 31, 1998 the partners' cumulative over-drawings which have been funded primarily from clients' monies amounted to \$1,505,369.00.*"
- c) the Court has also taken note of the auditors' recommendation to the then partners to the effect that the partners' practice of funding large over-drawings from clients' monies, "*should be discontinued and clients' monies should be segregated and used solely for clients' purposes. Furthermore, the partners should agree among themselves the terms and conditions under which the over-drawings will be repaid.*"
- d) Although the levels of the over-drawings of the respective partners do not appear to have been settled or agreed between the former partners at the date of dissolution, the Court holds that Clause 7 of the Dissolution Agreement

provides further evidence that all three partners had overdrawn accounts in the old partnership;

- e) The Court is satisfied that the existence of over-drawings standing in the names of the former partners at the dissolution of the former partnership has been admitted by both Defendants and particular by the Second Defendant who has clearly conceded that the three partners were to continue to be liable to clients to whom monies were owing at the termination date to the extent that the monies held by the old firm and the monies subsequently credited to the account of the old firm were insufficient to liquidate the same. *(See in particular paragraphs 4 to 11 of the affidavit of Allan St. Clair Watson filed on July 9, 2009.)*
- f) During the course of these proceedings, both Defendants accepted that by reason of the Plaintiff being permitted to use the name “Cottle Catford & Co in connection with his new firm, those clients to whom monies were owing by the old firm would be calling on him. *(See paragraph 8 of the affidavit of Allan St. Clair Watson filed on July 9, 2009.)*
- g) The Court is accordingly satisfied, and holds that the partners’ over-drawn accounts represent debts due to the former partnership by each of the former partners and that the over-drawings were funded primarily from clients monies;
- h) The Court holds that Plaintiff has satisfactorily established, and it has not been denied that the starting balances showing over-drawings standing in the names of the

respective partners at termination were as shown in a computerized print-out attached to the affidavit of Philip Vernon Nicholls generated on August 26, 2003 as follows:

P.V. Nicholls - \$751,093.94

J. J.Griffith - \$1,224,784.18

A. St.C. Watson- \$1,316,566.83

- i) As it was agreed and is not in dispute that all three partners were to continue to be liable to clients to whom monies were owing at the termination date to the extent that the monies held by the old firm and the monies subsequently credited to the account of the old firm were insufficient to liquidate the same, the Court is satisfied and holds that ascertaining the precise levels of each partners' overdrawings is integral to and an indispensable part of the process of settling the accounts of the former partnership;
- j) During the course of the hearing, both Defendants alleged that aspects of the accounts of the former partnership were unsettled and unfit for settlement for entry as judgments unless the Plaintiff provided them with additional information;
- k) In particular, the Second Defendant has in paragraph 10 clearly conceded that the Plaintiff is entitled to claim from the Defendants their shares of monies which the Plaintiff paid out to clients; (*See paragraph 10 of the affidavit of Allan St. Clair Watson filed on July 9, 2009.*)
- l) Both Defendants requested that the Plaintiff clearly establish that there was insufficient money in his hands to

settle the amounts due to the clients of the former partnership for whom he had assumed responsibility; (*See paragraph 10 of the affidavit of Allan St. Clair Watson filed on July 9, 2009.*)

- m) Over the course of the hearing, all reasonable requests of the Defendants to be provided with detailed information to enable them to verify the accounts of the former partnership were permitted and the Court was satisfied that on the last day of the hearing (i.e. on Friday September 11, 2009) every line and every page of the several updated accounts of the former partnership had been settled save and except for the accounts relating to the 2 disputed issues identified at paragraph above.
- n) The Court holds that the evidence has established, and it has been conceded by both Defendants, that following the dissolution of the former partnership, the Plaintiff assumed responsibility for and settled the claims of clients of the former partnership including those who did not continue business with the new firm.
- o) Both Defendants have also settled and agreed the updated Customer Balance Summary dated June 23, 2009 prepared by the accountant, Mr. Carlyle Forde and entitled “***Updated Credit and Debit Account Working List***”. This document sets out, *inter alia*, the names of those clients of the former partnership which the Defendants have agreed were transferred to the Plaintiff w.e.f. 1st January, 2003 and the

credit balances (i.e. the amounts owed by the former partners) payable to each client as at December 31, 2002.

- p) Both Defendants have also settled and agreed the updated account dated July 28, 2009 prepared by the accountant, Mr. Carlyle Forde and entitled “*Statement of Funds available at December 31, 2002 and funds received and paid after that date.*” This document clearly establishes that at the date of the dissolution of the former partnership, the net bank balances of the former partnership stood *in the red* in the sum of *minus* (-\$11,012.86);
- q) During the course of the proceedings and with a view to reducing the amount of their over-drawings and the amount immediately due to the Plaintiff, the Defendants requested and the Plaintiff agreed to place the credit balances of specific client accounts in a Contingency Liability Account. These clients accounts totalling \$407, 622 shown were deducted from the partners respective over-drawings and duly settled by both Defendants;
- r) The Court is also satisfied that the settled accounts of the former partnership establish that there were insufficient funds in the bank accounts of the former partnership to enable the Plaintiff to settle the credit balances owed by the former partners to the clients of the former partnership clients which were transferred to the Plaintiff at December 31, 2002;
- s) The Court is accordingly satisfied and holds that as both Defendants have conceded that the Plaintiff is entitled to

claim from them amounts due to clients of the former partnership whom the Plaintiff has either paid or assumed responsibility for, the accountant, was justified in bringing the partners' over-drawings into account in determining the Defendants' indebtedness to the former partnership and consequently to the Plaintiff as the sole partner of the new firm.

- t) The Court is satisfied that the document entitled "***Partners' capital and current accounts (over-drawings)***" and certified by the accountant, Mr. Carlyle A. Forde, shows that the partners' over-drawings originally standing in the names of the 3 partners at December 31, 2002, have continually been revised and adjusted by the accountant to reflect agreed income of the partnership and other payments settled by agreement between the former partners during the course of the hearing;
- u) the Court is also satisfied that as at September 11, 2009, the updated ***Partners' capital and current accounts (over-drawings)***" establishes that the over-drawings now standing in the names of the First and Second Defendants respectively are:

J.J. Griffith - \$467,351.00

A. St.C. Watson - \$688,878.00. (See updated

Partners' capital and current accounts (over-drawings)" account dated August 26, 2009 attached to the affidavit of Philip Vernon Nicholls filed on September 8, 2009);

- v) The Court holds that it is satisfied that the settled accounts of the former partnership prepared by Mr. Carlyle A. Forde pursuant to the Court of Appeal order of December 3, 2007, adequately support the Plaintiff's claim that the Defendants are indebted to him in the sums shown in the "***Partners' capital and current accounts (over-drawings)***" account dated August 26, 2009 attached to the affidavit of Philip Vernon Nicholls filed on September 8, 2009 by reason of:
- i) the substantial over-drawings standing in the names of both Defendants for many years prior to the dissolution;
 - ii) the insufficiency of funds in the partnership bank accounts as at December 31, 2002 to enable the Plaintiff to pay the agreed credit balances due to the clients of the former partnership transferred to the Plaintiff as at December 31, 2002, and
 - iii) by reason of the fact that the Plaintiff has provided ample evidence of his having assumed personal responsibility after December 31, 2002 for Liabilities of the former partnership totalling \$1,256,142.00 as shown in the accounts;
- w) The amount actually paid by the Plaintiff together with the amount due to clients of the former partnership for which the Plaintiff has assumed responsibility total \$1,256,142.00 and are shown as "Liabilities" in the "***Statement of Affairs following adjustment to Clients' Balances***" updated as at August 26, 2009 which is annexed to the Supplemental affidavit of Philip Vernon Nicholls filed on September 8, 2009.

- x) The Court is satisfied that apart from the inclusion of the over-drawings totalling \$1,156,229.00 due by the First and Second Defendants shown therein under the heading “Assets” of the former partnership, the above *Statement of Affairs* was otherwise settled by both Defendants on the last day of the hearing;
- y) The Court is of the view that the First and Second Defendants having accepted that the Plaintiff assumed personal responsibility after December 31, 2002 for Liabilities of the former partnership totalling \$1,256,142.00, and having, during the course of these proceedings, agreed to and settled an amount of \$99,913.00 as the legal fees due from former clients of the partnership, and settled the amount to be placed in the Contingent Liability Account, are estopped and precluded from now objecting to the inclusion of the amounts standing in their overdrawn accounts in the accounts of the former partnership;
- z) In short, the Court holds that it is both appropriate and reasonable for the total over-drawings of \$1,156,229.00 standing in the name of the First and Second Defendants to be brought into account in the accounts of the former partnership as follows:

J.J. Griffith - \$467,351.00

A. St.C. Watson - \$688,878.00.

[21] In the light of the foregoing findings, the Court hereby approves the inclusion of the respective over-drawings standing in the names of the

Defendants as at December 31, 2002 in the accounts of the former partnership which amounts are more particularly shown in the accounts entitled “*Partners’ capital and current Accounts (over-drawings)*” and in the “*Statement of Affairs following adjustment to Clients’ Balances*” updated as at August 26, 2009 by accountant, Mr. Carlyle Forde.

- [22] In the result, the Court confirms that that the over-drawings of the former partnership have been appropriately included and brought into account in the accounts of the former partnership prepared by the accountant, Mr. Carlyle A. Forde and declares that these amounts shall (subject to the Court’s decision in relation to Issue #2 hereunder) form the basis of the entry of judgment against both Defendants as clearly contemplated in the Court of Appeal order of December 3, 2007.

Issue 2 - Should the legal fees of Canadian attorney-at-law, Mr. David Bristow, be apportioned and included in or brought into account in the accounts of the former partnership prepared by the accountant, Mr. Carlyle Forde?

- [23] Having examined this issue and considered the submissions of respective parties, together with the relevant affidavits filed herein and the Dissolution Agreement entered into by the parties on December 3, 2002 , the Court has determined that it is not permissible for the legal fee of Mr. David Bristow to be brought into account in the updated account dated August 26, 2009 prepared by the accountant, Mr. Carlyle Forde and entitled “*Partners’ capital and current Accounts (over-drawings)*” for the following reasons:

- a) Clause 8 of the Dissolution Agreement deals with Kingsland Estates Ltd (a client of the former partnership) and specifically provides that “*All fees and expenses with respect to that client for work done AFTER 1st January, 2003 will be for the account of the new firm*”; (See Dissolution Agreement marked (“*Exhibit JJG 1*”) annexed to the affidavit of the First Defendant filed on June 19, 2009.)
- b) The Plaintiff has not established that he obtained the consent of the Defendants following the dissolution of the partnership to incur any expenditure on their behalf in connection with defending the former partnership in the Canadian suit or hiring Canadian counsel in connection therewith;
- c) In the absence of an agreement between the former partners altering Clause 8 of the Dissolution Agreement or otherwise expressly providing how the cost of defending the Canadian litigation against the former partnership would be met, the sum of \$78,106.00 must be borne by the Plaintiff as the sole partner of the new firm.

[24] In the result, the Court holds that all references to the sum of Bds \$78,106.00 (being the Barbados dollar equivalent of US\$8,228.78 and Cdn\$30,032.00 paid by the Plaintiff to Mr. David Bristow in connection with the Kingsland Estates Ltd litigation involving Cottle Catford & Co) which was included in the “*Partners’ capital and*

current Accounts (over-drawings)” account prepared by Mr. Carlyle Forde and updated as at August 26, 2009) should be deleted from the appropriate row and from the relevant columns of the said account

[25] In consequence, the Court declares that the total over-drawings standing in the names of the First and Second Defendants should be and are hereby amended and reduced as follows:

J.J. Griffith	-	\$441,576.00
A. St.C. Watson	-	\$661,541.00.

Concluding remarks:

[26] The Court is of the view that the First and Second Defendants having settled all other aspects of the former partnership accounts in furtherance of the Court of Appeal order of December 3, 2007, have advanced no good and sufficient reasons why the two accounts entitled “*Partners’ capital and current Accounts (over-drawings)*” and in the “*Statement of Affairs following adjustment to Clients’ Balances*” updated as at August 26, 2009 cannot also be settled by them.

[27] The Court is further satisfied that the failure and/or refusal by the First and Second Defendants to settle these two remaining accounts of the former partnership, will have the effect of frustrating the process which was contemplated and consented to by the parties in Court of Appeal Order of December 3, 2007.

[28] Although it is clear to the Court that the Defendants are not now prepared either to accept or to deny the specific amounts of over-drawings standing in their names in the accounts of the former partnership as set out in the “*Partners’ capital and current Accounts*

- (over-drawings)*” and in the “*Statement of Affairs following adjustment to Clients’ Balances*” updated as at August 26, 2009 prepared by Mr. Carlyle Forde, the Court is satisfied that both Defendants have accepted that client debit and credit account balances of the former partnership were transferred to the Plaintiff and that he had assumed responsibility for settling the credit balances with effect from December 31, 2002 pursuant to the Dissolution Agreement.
- [29] Against the background of Court of Appeal Order and consistently throughout the course of the current hearing, both Defendants have participated in the proceedings with a view to ultimately settling the accounts of the former partnership. Furthermore, at the outset when the Court embarked on hearing the current application, all parties had expressly confirmed that it was their understanding that in pursuance of the Court of Appeal Order, judgment would ultimately be entered for the Plaintiff for all amounts shown in the accounts of the former partnership to be owed by the First and Second Defendants.
- [30] It having been accepted by all parties that the Plaintiff had by virtue of the Dissolution Agreement assumed responsibility for liquidating amounts owed to clients of the former partnership, it was also clearly understood at the outset that any amounts due to the former partnership by the First and Second Defendants would ultimately be due to the Plaintiff.
- [31] The Court is also satisfied that both Defendants have clearly accepted and have settled the updated account prepared by accountant, Mr. Carlyle Forde entitled “*Statement of Funds available at December 31, 2002 and funds received and paid after that date*” which shows that the bank accounts of the former partnership were in the red and

- insufficient to enable the Plaintiff to settle the credit balances payable by the former partners to the former clients of the partnership.
- [32] On September 11, 2009, both Defendants also accepted and confirmed to the Court that they had examined and settled the account entitled *“Schedule of Clients of the Former Partnership (other than those shown on the Payments to Clients in 2003 and 2004)”* prepared by Mr. Carlyle Forde showing that an amount received by the Plaintiff of \$1,333,000.00 being legal fees due to the former partnership, was applied by the Plaintiff in settling credit balances amounting to \$1,333,071.90 payable by the former partnership to certain clients of the former partnership listed in the said account.
- [33] Following the examination by the Defendants of the said Schedule and their acceptance of the list of clients contained therein, the Court is satisfied that the Second Defendant have conceded that the issues of duplication and objections raised in his affidavit of September 11, 2009 have been explained to his satisfaction.
- [34] Given the considerable time and resources which this Court has devoted to hearing of this application in the expectation that the Defendants would, in good faith, have settled the accounts of the former partnership after all reasonable information had been provided to them by the Plaintiff, the Court is of the view that it cannot now be reasonable for the Defendants to refuse to settle the remaining portions of the former partnership accounts relating to their overdrawings and essentially resile from, and frustrate the process for settlement of this suit which was agreed on before the Court of Appeal on December 3, 2007.

[35] In the circumstances, the Court confirms and certifies that it is appropriate that the over-drawings of the First and Second Defendants shown in the relevant accounts prepared by Mr. Forde be brought into account and provide the basis for ascertaining the respective amounts due by them to the former partnership and consequently to the Plaintiff. As clearly contemplated in the Court of Appeal Order of December 3, 2007, such accounts (including partners' over-drawings) will also provide a basis on which judgment for the Plaintiff may be entered.

Disposal and Order:

[36] Consequent on the foregoing decision in relation to the 2 issues in dispute referred for the Court's decision and discussed at paragraphs [18] to [25] above, the Court makes the following directions and orders:

- 1.) The Accounts of the former partnership of Cottle Catford & Co. between the Plaintiffs and the Defendants prepared by Mr. Carlyle Forde as contained in the following documents, namely,
 - i. **Statement of Funds available at December 31, 2002 and Funds Received and Paid after December 31, 2002 (with Supporting Schedules)** updated as at August 26th 2009 and filed herein on the 8th day of September, 2009 and subsequently amended with leave of the Court on September 14, 2009 and filed herein on the 14th day of September, 2009;
 - ii. **Updated Debit and Credit Account Working List** as at the 28th day of July, 2009, 2009 and filed herein on the 29th day of July, 2009;

- iii. **Detailed List of Funds received from Clients of the Former Partnership for 2003/2004** as at the 23rd day of July, 2009 and filed herein on the 29th day of July, 2009;
- iv. **List of Accounts to be placed in Contingency Liability Account** as listed in the “*Statement of Affairs following adjustment to Clients’ Balances*” referred to at paragraph 2(ii) of this order;
- v. **Schedule of Clients balances paid by Philip Nicholls from funds received of \$1,333,000.00 (other than those shown on the payments to Clients in 2003 and 2004”** attached to the affidavit of Philip Vernon Nicholls filed with leave of the Court on September 14, 2009,

having been certified by Mr. Carlyle A. Forde, Chartered Accountant and having been settled by the Plaintiff, the First Defendant and the Second Defendant, be and are hereby adopted as the settled Accounts of the Former Partnership;

2.) The undermentioned Accounts of the former partnership of Cottle Catford & Co. between the Plaintiffs and the Defendants having been certified by Mr. Carlyle A. Forde, Chartered Accountant which are set out in the following documents, namely,

- i. **Partners’ Capital and Current Account (Overdrawings)** updated as at the 26th day of August, 2009 and filed herein on the 8th day of September, 2009; and
- ii. **Statement of Affairs following adjustment to clients’ Balances** updated as at the 26th day of August and filed herein on the 8th day of September, 2009

having not been settled by the parties, but having, at their request, been settled by the Court, are amended by deletion from the account referred to at i.) of this paragraph of all references to the sum of \$78,106.00 being the legal fees paid to Mr. David Bristow. In consequence of the said amendment, the total over-drawings standing in the name of the First Defendant are declared to be \$441,576.00 while the total over-drawings of the Second Defendant are declared to be \$661,541.00. The accounts of the former partnership identified at i.) and ii.) of this paragraph having been adjusted by the Court as aforesaid, shall be and are hereby also confirmed and declared as the settled Accounts of the Former Partnership;

- 3.) Judgment for the Plaintiff be and is hereby entered against the First Defendant in the sum of \$441,576.00 certified in the accounts of the former partnership to be due by the First Defendant to the former partnership and to the Plaintiff together with interest thereon at the rate of 4 % per annum from the date of service of the Writ to the date hereof and at the rate of 8 % per annum from the date hereof until satisfaction;
- 4.) Judgment for the Plaintiff be and is hereby entered against the Second Defendant in the sum of \$661,541.00 certified in the accounts of the former partnership to be due by the Second Defendant to the former partnership and consequently to the Plaintiff together with interest thereon at the rate of 4 % per annum from the date of service of the Writ to the date hereof and at the rate of 8% per annum from the date hereof until satisfaction;

- 5.) The client balances of the former partnership settled by the parties and certified in the amount of \$407,622.00 and identified in the document entitled **Statement of Affairs following adjustment to Client Balances** referred to at paragraph 1(iv) of this Order shall be transferred to a Contingency Liability Account to be funded by the Plaintiff, the First Defendant and the Second Defendant in proportion to their respective shares in the former partnership and shall be operated on such terms and conditions as shall be approved by the Court. In this regard, there is liberty to apply;
- 6.) The reasonable professional fees, disbursements and expenses of Mr. Carlyle Forde, Chartered Accountant incurred in connection with this application shall be paid by the Plaintiff, the First Defendant and the Second Defendant in proportion to their respective shares in the former partnership within 21 days of the presentation by Mr. Carlyle A. Forde of his Invoice.
- 7.) The Plaintiff is awarded his costs of the application certified fit for one attorney-at-law to be agreed or taxed.
- 8.) There shall be liberty to apply generally.

**Maureen Crane-Scott
Judge of the High Court**