

BARBADOS

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT**

Civil Division

[Unreported]

Suit No: CV2070 of 2009

BETWEEN

WOODBANK INVESTMENTS LIMITED - FIRST CLAIMANT

CHRISTOPHER ANDREW MCHALE - SECOND CLAIMANT

AND

ANTHONY DA SILVA - FIRST DEFENDANT

INNOTECH SERVICES LIMITED - SECOND DEFENDANT

CARIBBEAN LIFESTYLES LIMITED - THIRD DEFENDANT

Before The Honourable Madam Justice Maureen Crane-Scott,

Judge of the High Court

2010: January 11, February 9, 10

2013: February 14.

Appearances: Mr. Barry V. Gale, Q.C. in association with Miss. Karen Perreira for the Claimants and Mr. Alair P. Shepherd, Q.C. in association with Mr. Bryan Weekes for the Defendants

DECISION

- [1] **Crane-Scott J:** On December 21st, 2009, the Claimants filed a Claim Form alleging that the Defendants were in breach of confidence in respect of certain confidential and privileged information which they alleged was wrongfully in their possession. The Claimants further alleged that they had suffered and continue to suffer prejudice, harm, loss and damage by reason of the Defendants' wrongful possession, disclosure and use of the said confidential information.
- [2] They complained that unless restrained, the Defendants would continue, as they have already done, to unlawfully use and disclose the Claimants' privileged and confidential information in the Defendants' possession causing the Claimants further prejudice, harm, loss and damage.
- [3] The Claimants also sought a permanent injunction restraining the use or disclosure of any of the Claimants' confidential and privileged information and an order for the delivery up of all confidential and privileged documents and materials which were in the Defendants' possession or control.
- [4] The Claim Form gave particulars of the existence of a number of ongoing disputes between the Claimants and the 1st, 2nd and 3rd Defendants. The Claimants also identified specific items of correspondence including draft e-mails, letters and faxes which they claimed were confidential and privileged information passing between the Claimants and their attorneys-at-law and which they allege were among other confidential and privileged information contained in two confidential e-mail folders belonging to the Claimants.

- [5] The Claimants further alleged that from around 14th August, 2008, they, their attorneys-at-law and other third parties began receiving faxes and emails from the Defendants which alluded to various privileged or confidential correspondence passing between the Claimants and various parties including their attorneys-at-law and advisors.
- [6] After setting out particulars of 3 faxes and e-mails which had ostensibly been issued by the 1st Defendant to various persons, the Claimants complained that it was highly likely that the Defendants wrongfully had in their possession the said correspondence and other unidentified privileged and confidential information belonging to the Claimants contained in the Claimants' two confidential e-mail folders.
- [7] **The Search Order:** Contemporaneously with the filing of their Claim Form, the Claimants applied *ex parte* to the High Court under a Certificate of Urgency and obtained a Search Order and ancillary injunctions ("the Search Order") pursuant to Part 17 of the ***Civil Procedure Rules, 2009*** by virtue of which they were authorized to enter the Defendants' premises to search for and seize certain documents which were categorized as confidential and legally privileged and which the Claimants alleged to be unlawfully in the Defendants' possession.
- [8] In keeping with the established safeguards for the grant and execution of ***Anton Piller*** Orders, the Search Order stipulated that service and execution of the Search Order was entrusted to an independent attorney-at-law, Mr. Alrick Scott (hereinafter called "the Supervising Attorney"). A 4-member search party, comprising the above-named Supervising Attorney, Computer Technician, Mr. Ryan Dottin, and the Claimants' attorneys-at-law, Mr. Barry Gale, Q. C. and Miss. Karen Perreira, was also expressly authorized to enter the Defendants' 3 premises identified in

the Order to search for, inspect, photograph or photocopy and deliver into the safekeeping of the Claimants' attorneys-at-law, the documents and articles specified in Schedule B to the Order ("the listed items").

- [9] The Search Order contained, *inter alia*, the usual provision expressly prohibiting the Defendants from destroying, tampering with, canceling or parting with possession, power, custody or control of the listed items.
- [10] Additionally, the Defendants were prohibited from disclosing to any third party, including the Arbitrator, Mr. Leroy Inniss QC, any privileged or confidential information contained in any non-public document prepared by or belonging to the Claimants or any of the Claimants' employees or officers or from soliciting receiving or procuring any confidential information or non-public document prepared by or belonging to the Claimants.
- [11] The Search Order was issued *ex parte* by the Court on the basis of a lengthy Affidavit sworn to on December 18th, 2009 by the 2nd Claimant, Christopher Andrew McHale (hereinafter called "Mr. McHale") in which Mr. McHale set out certain facts in support of his belief that the Defendants were wrongfully in possession of and/or had misappropriated confidential and legally privileged documents and information belonging to the Claimants relating, *inter alia*, to pending assault proceedings arising out of a physical altercation between the 1st Defendant and Mr. McHale in 2008 and to various disputes between the Claimants and the Defendants and their affiliates and/or associated companies which disputes were either being arbitrated or were pending before the High Court.
- [12] Exhibited with Mr. McHale's affidavit were copies of the draft e-mail, letters and faxes which the Claimants allege were confidential and

privileged information passing between the Claimants and their attorneys-at-law and which they further allege were among other confidential and privileged information contained in two confidential e-mail folders belonging to the Claimants.

- [13] Exhibited with Mr. McHale's affidavit was a copy of a fax also particularized in the Claim Form and dated October 9th, 2009 ostensibly sent by the 1st Defendant to the Claimant's attorney-at-law bearing the following handwritten notation:

"This is just some of the stuff your client gets up to. What do you think the Arbitrator is going to think about this sort of conduct?"

- [14] Also exhibited with Mr. McHale's affidavit was a copy of an email dated October 14th, 2009 particularized in the Claim Form and ostensibly sent from the 1st Defendant to Mr. Anthony Ensom, an independent expert engaged by the 1st Claimant in connection with its defects claim against the 2nd Defendant.

- [15] The email included a copy of the 1st Defendant's email to Mr. Nick Pope and Mr. Michael Woolley of October 13th, 2009 and the 1st Defendant's letter to Mr. McHale of October 12th, 2009 and a copy of a draft letter dated August 14th, 2008 to Mr. Nick Pope. The email to Anthony Ensom stated:

"We understand that you are intended by Woodbank Investments Limited (WIL) to be offered up as an Expert Witness in the Arbitration between Innotech Services Limited (ISL) and WIL. Notwithstanding the obvious difficulties given that you have been instructed by the TBA, WIL and/or its agents, paid by WIL including your airfare to and accommodation in Barbados during visits here, we are sure you will find the below email to Mr. Pope attached interesting.

We are pretty sure that the attached email from Mr. McHale will be cause for serious concern, rightfully so I suspect. ISL have a litany of correspondence similar in nature to this.”

[16] The Search Order was subsequently amended on December 23rd and 28th, 2009 and was continued by further Order of the Court on the 11th day of January, 2010.

[17] **Inter Partes Proceedings for Discharge of the Search Order:** On January 11, 2010, the Defendants applied to the Court seeking, *inter alia*, the variation and/or discharge of the Search Order.

[18] The application for discharge was made on the following grounds:

- 1) That the Claimants have not demonstrated a very strong *prima facie* case as revealed by the evidence filed on their behalf in this matter;
- 2) That the Claimants have failed to demonstrate that they have a viable cause of action against the Defendants as no cause of action was disclosed in the Particulars of Claim filed therein on their behalf;
- 3) That the Claimants are guilty of serious non-disclosure in this matter as to the actual facts and evidence relevant to the matters before the court;
- 4) That the Claimants did not address the (Court) on the defences available to the Defendants; and
- 5) That the (Court) was not assisted as to the specificity of the actual documents to be seized if found in the Defendants' possession at the premises named in the order which led to the order being too widely drawn.

[19] The Application for discharge/variation of the Search Order was supported by the following affidavit evidence:

- (i) Affidavit of Anthony DaSilva filed on January 11, 2010 with its 26 Exhibits “**ADS 1**” to “**ADS 26**”;
- (ii) Affidavit of Basil DaSilva filed on January 22, 2010;
- (iii) Further Affidavit of Anthony DaSilva filed on January 22, 2010;
- (iv) Further Affidavit of Anthony DaSilva filed on January 22, 2010;
- (v) Affidavit of Karah Amanda Welch filed February 1, 2010;
- (vi) Affidavit of Renee Sealy filed February 1, 2010;
- (vii) Affidavit of Lynette Marshall filed February 1, 2010;
- (viii) Affidavit of Amanda Maree Thompson filed February 1, 2010;
- (ix) Second Affidavit of Basil DaSilva filed February 2, 2010 with its 4 Exhibits “**BDS 1-4**”;
- (x) Affidavit of Lenee Paulraj filed February 5, 2010;
- (xi) Second Affidavit of Amanda Maree Thompson filed February 5, 2010 with its 8 Exhibits “**AT 1(A-G)**” and “**AT 2**”;
- (xii) Affidavit of Anthony DaSilva filed on in Response to Christopher McHale’s 2nd Affidavit with its 5 exhibits “**ADS 49**” to **ADS 52**”.

[20] At the hearing of the Defendants’ application, the Claimants relied on the following affidavits:

- (i) Affidavit of Christopher Andrew McHale filed on December 21st, 2009 together with a paginated bundle of documents marked “**CM 1**”;

- (ii) Affidavit of Corie Pilgrim filed on January 11th, 2010;
- (iii) Affidavit of Karen Perreira filed February 2, 2010;
- (iv) Second Affidavit of Christopher Andrew McHale filed February 5th, 2010;
- (v) Affidavit of Corie Pilgrim filed on February 8th, 2010 in Reply to Basil DaSilva Affidavit of February 2nd, 2010;
- (vi) Further Affidavit of Karen Perreira filed February 8th, 2010.

[21] **The Hearing:** Hearing of the application for the discharge and/or variation of the Search Order took place on February 9th and 10th, 2010. Both parties provided the Court with lengthy written submissions and voluminous authorities and materials. Following the hearing, the Court reserved its decision and suspended the Search Order until further order.

[22] **Defendants' submissions in support of the Application for discharge of the Search Order:** At the outset, Counsel for the Defendants submitted that the Search Order ought not to have been granted since the Claimants had not met the basic requirements laid down in the case of ***Anton Piller KG v. Manufacturing Processes Ltd [1976] Ch. 55*** for the grant of such an order.

[23] Referring to grounds 1 and 2 of the Application, Counsel for the Defendants, Mr. Weekes, submitted that the evidence filed by the Claimants did not demonstrate a very strong *prima facie* case and further that the Claimants had failed to demonstrate that they have a viable cause of action against the Defendants since, in his view, no cause of action against the Defendants had been disclosed in the Particulars of Claim filed herein on their behalf.

[24] Mr. Weekes cited the case of ***CMI-Centers for Medical Innovation GmbH v. Phytopharm plc [1999] F.S.R. 235*** and the dicta of Laddie J.

regarding the minimum requirements for sustaining a successful action for breach of confidence. He submitted that the Claimants had: (i) failed to clearly identify the information which they claimed to be confidential; (ii) failed to show that the information had been handed over in circumstances of confidence; (iii) failed to establish that the information was of a type which can be treated as confidential; and (iv) failed to show that the information was used without their permission or that the Defendants had threatened to use it without permission.

[25] Mr. Weekes referred to the Claim Form and to the Claimant's draft e-mail of the 14th August, 2008 addressed to Nick Pope in which Mr. McHale claimed to have been seeking legal advice from Mr. Pope in relation to the Ocean Reef/Innotech dispute in which the Claimants claimed to be legally privileged. The 1st Defendant had admitted having obtained the draft e-mail and to have forwarded it to the Claimant and to the Claimants' attorney-at-law with the following handwritten annotation:

"Mr. McHale,

We would be pleased if you would explain what the benefit of "let's hit them with something really vexatious" could be? Please advise.

Regards"

[26] Mr. Weekes submitted that although the Claimants claimed that the draft email of 14th August, 2008 letter to Nick Pope was subject to legal privilege, it would not attract legal or litigation privilege since its dominant purpose had not been to seek legitimate legal advice, but to seek advice as to how best to thwart or frustrate the Defendants by slapping them with vexatious and unnecessary litigation causing them to spend money and resources unnecessarily. He cited *Waugh v. British Railways Board [1980] AC 521* and *Williams v. Quebrada Ry Ltd [1895] 2 Ch. 751* in support of this submission.

- [27] Referring once again to Laddie J's dictum in the *CMI-Centers Case*, Mr. Weekes contended that there was nothing in the Claimants' pleadings to establish how the relationship of confidence had arisen or how the Defendants' alleged duty of confidence to the Claimants' had arisen. He further submitted that the mere fact of being in possession of a confidential document was not sufficient.
- [28] Turning next to ground 5 of the Application, Mr. Weekes submitted that the Search Order was too widely drawn and expressed concern as to the lack of specificity in the order as to the actual documents to be seized if found in the possession of the Defendants at the premises named in the Order. He also drew attention to specific items of correspondence listed in Schedule B of the Search Order such as items 19 and 20 and queried how those items related to the Claimants' substantive cause of action for breach of confidence. He submitted further that most of the documents were copy documents and contended that the case was not one to which *Anton Piller* relief was best suited.
- [29] The Defendants' lead Counsel, Mr. Alair Shepherd, Q.C then addressed the Court in relation to grounds 3 and 4 of the Application.
- [30] In relation to ground 3, Mr. Shepherd submitted that the Search Order should be discharged since the Claimants had been guilty of serious non-disclosure concerning facts and evidence relevant to the matters before the Court. He drew the Court's attention to the several matters deposed to at paragraphs 12 to 28 of the Affidavit of Anthony DaSilva filed on January 11, 2010 relating to what he termed as the personal attacks, aggravating, insulting and vitriolic conduct engaged in by Mr. McHale designed to ruin the reputation of the Defendants.

- [31] Mr. Shepherd submitted that despite having filed a further affidavit, the Claimants had not addressed any of the allegations contained in the Affidavit of Anthony DaSilva filed on January 11, 2010. He cited the following authorities in relation to the effect of non-disclosure: *Columbia Picture Industries Inc et al v. Robinson et al* [1986] 3 WLR 542; *Jeffrey Rogers Knitwear Productions Limited v. Vinola (Knitwear) Mfg Co* [1985] F.S.R. 184; *Lock International plc v. Beswick et al* [19889] 1 WLR 1268; and *Booker McConnell plc et anor v. Plascow et al* [1985] R.P.C. 425.
- [32] In relation to ground 4, Mr. Shepherd submitted that it was his view that the Counsel for the Claimants had not been forthright with the Court as to the Defences which were open to the Defendants in relation to the action for breach of confidence. He, however, conceded that as the matter had been dealt with *ex parte* and there was no record as to what legal submissions had been made to the Court in support of the Search Order, the Defendants were somewhat at a disadvantage in arguing this ground.
- [33] Claimants' submissions against discharge of the Search Order: In response, Counsel for the Claimants, Mr. Gale submitted that it was not open to the Defendants to seek a discharge of the Search Order on the ground that it disclosed no strong *prima facie* case or that no cause of action had been disclosed. He observed that the Defendants had not applied to strike out the proceedings as disclosing no cause of action, but had instead elected to join issue with the Claimants on their Particulars of Claim by filing a Defence to the Claimants' action on February 1st, 2010.
- [34] He drew the Court's attention to paragraph 11 of the Defence which, he submitted, amounted to an admission that the document in question had

been sent to the Claimants' legal advisor coupled with a denial that the document was either privileged or confidential.

[35] With reference to paragraph 13 of the Defence, Mr. Gale contended that it appeared to be an admission that the Defendants were in possession of the documents particularized at paragraph 20 of the Claim and a further admission that they had in fact published the documents to third parties as alleged.

[36] After a detailed analysis of the Defence, Mr. Gale contended that there were several admissions on the pleadings which established not only that the Claimants have a strong *prima facie* case, but also a case which is virtually unanswerable.

[37] While observing that a cause of action for breach of confidence normally arose in cases where there was a contractual relationship between the parties, Mr. Gale contended that a relationship of confidence was not absolutely essential for the duty of confidence to arise in equity. He cited the following authorities on the law relating to breach of confidence: *Bullen & Leake & Jacobs, Precedents of Pleadings, 17th Edition, Vol. 2 @ pp. 1051-1059; A.G. v. Observer Ltd and A.G. v. Times Newspapers Ltd [1990] 1 A.C. 109 @ 281 per Lord Goff of Chieveley; and Campbell v. Mirror Group Newspapers Ltd [2004] 2 WLR 1232.*

[38] In particular, Counsel for the Claimants drew the Court's attention to the following dictum of *Lord Goff* in the *Times Newspapers Case* (cited above) which speaks for itself:

"I realize that, in the vast majority of cases, in particular those concerned with trade secrets, the duty of confidence will arise from a transaction or relationship between the parties-often a contract, in which event the duty may arise by reason of either an express or an implied term of the contract...But it is well settled that a duty of

confidence may arise in equity independently of such cases; and I have expressed the circumstances on which the duty arises in broad terms, not merely to embrace those cases where a third party receives information from a person who is under a duty of confidence in respect of it, knowing that it has been disclosed by that person to him in breach of his duty of confidence but also to include certain situations...where an obviously confidential document is wafted by an electric fan out of a window into a crowded street, or where an obviously confidential document, such as a private diary, is dropped in a public place, and is then picked up by a passer-by....”

- [39] Counsel for the Claimants submitted that it was clear from the Defendants’ admission in their pleadings as well in Anthony DaSilva’s affidavits of January 11th and 22nd, 2010 that Anthony DaSilva had received the documents and proceeded to publish them not only to the Claimants’ advisors but to third parties.
- [40] Referring to the sworn disclosures in paragraphs 8, 9, 10, 11 and 12 of the Affidavit of Anthony DaSilva filed on January 22nd, 2010 pursuant to paragraph 24 of the Search Order, Mr. Gale submitted that the 1st Defendant had made direct admissions as to the receipt by him of 3 brown envelopes containing listed items.
- [41] Referring also to the matters deposed to in paragraphs 26, 30, 31, 32, 35, 37, 39, 42, 68, 75, 91, 94 and 98 of the Affidavit of Anthony DaSilva filed on January 11th, 2010, Counsel for the Claimants submitted that the evidence before the Court at this stage of the proceedings was replete with admissions by the Defendants as to their possession and use of certain of the listed items. The evidence, he said, also established that the Defendants had admitted having received from anonymous sources, obviously private, personal and confidential documents and information

belonging to the Claimants, which, according to the Defendants, they had either retained or destroyed.

- [42] Counsel for the Claimants submitted that the Court should have little difficulty in satisfying itself that the Claimants not only had a strong *prima facie* case, but an unanswerable case.
- [43] **Discussion:** The law relating to *Anton Pillar* orders has, subject to some refinement over the years, been long settled. In *Anton Piller KG v Manufacturing Processes Ltd (supra)* the English Court of Appeal laid down the following requirements which a Claimant ought to meet before a search order could be granted. An applicant had to show 1) that he had a strong *prima facie* case; 2) that the potential or actual damage to his interests was very serious; and 3) that the respondent had in his possession incriminating documents or things and there was a real possibility that he would dispose or destroy said documents before any application on notice can be made.
- [44] In this case, the Claimants' action is based on a perceived breach of confidence between the Defendants and themselves. In *CMI-Centers for Medical Innovation GmbH et anor v. Phytopharm plc et anor* [1998] IP & T Digest 6 (a case involving an alleged breach of confidence in the context of a confidentiality agreement) Laddie J. identified four requirements that must be met for a claimant to succeed in an action for breach of confidence. Firstly, a claimant had to clearly identify the information which he was alleging was confidential (*John Zink Co Ltd v Wilkinson* [1973] RPC 717). Secondly, the information itself must have 'the necessary quality of confidence about it' (*Coco v Clark* [1969] RPC 41). Thirdly, the information had to be imparted or handed over under an obligation of confidence or in circumstances importing an obligation of confidence. (*Coco v Clark*) (*Ibid*) Finally, it had to be established that there

was an unauthorized use of the information without the Claimant's licence or consent, or a threat to so use it to the detriment of the Claimant.

- [45] In his affidavit filed in support of the Search Order, Mr. McHale deposed at paragraph [114] that the "*order was necessary so that the applicants (could) know the full extent of the disclosure and take such steps as are advised to them to protect their interests...*".
- [46] The whole purpose of an *Anton Pillar* order is, *inter alia*, to secure specific documents for fear of wrongful destruction or use. Search orders should not be sought (as in this case) "fish for evidence" or to verify what is, or is not in the possession of a Defendant (*Hytrac Conveyors Limited v Conveyors International Ltd*[1983] 1 WLR 44). As Lord Hoffman stated in *Lock International plc v. Beswick* [1989] 1 WLR 1268 at 1280, the order is used to preserve evidence and Courts must exercise great care in their use.
- [47] The evidence which the Claimants placed before the Court in support of the original application for the grant of the search order did not indicate, with any specificity, the documents which the Defendants were said to have had. The evidence provided is primarily circumstantial and in the Court's view, and, on further reflection, did not meet the standard required to establish a strong *prima facie* case of breach of confidence. Accordingly, the Court is satisfied that the first criterion for the grant of an *Anton Pillar* order has not been met.
- [48] Given the Claimants' inability to identify with any degree of certainty what documents or materials the Defendants' actually had in their possession, the Court has, on further reflection, found it unlikely that the Claimants' action for breach of confidence could be properly sustained on the evidence before the Court.
- [49] The Claimants drew the Court's attention, quite circumstantially, to the possession, use and suspected dissemination of legally privileged documents by, Marsha Callender, one of the 2nd Claimant's former

employees. Yet the order was not sought against that former employee. Further, she was not named as a Defendant in the substantive claim, nor was any request, from the evidence before me, been made to her for the return of such documents.

- [50] The Court is satisfied that the mere fact that someone is suspected of, or may even have admitted to being in possession of a document (or a copy of a document) which is confidential, privileged or otherwise does not necessarily mean that a breach of confidence actionable at law, has taken place.
- [51] The Court is satisfied that confidential documents which, for want of a better expression, “fall off the back of a truck” and come into the possession of another person will not, without more, provide a basis for an action for breach of confidence. As the Court has already pointed out, to succeed in its action against the Defendants for breach of confidence, the Claimants will need to show, *inter alia*, that the documents specifically identified in the Particulars of Claim had been imparted or handed over to the Defendants under an obligation of confidence or in circumstances importing an obligation of confidence.
- [52] Nothing in any of the Claimants’ affidavits shows that this was ever the case. The evidence before the Courts fails to establish that the Claimants’ confidential documents had been handed over to the Defendants in circumstances of confidentiality or that they had used the material without the Claimants’ consent. In the circumstances, the case against the Defendants for breach of confidence appears quite weak and the continuation of an *Anton Pillar* order in such circumstances cannot be justified.
- [53] The third limb for the granting of any *Anton Pillar* order is that there must be a real possibility of destruction or use of material that a claimant alleges a respondent has in his possession. On reflective examination of the

affidavit evidence which the Claimants have placed before the Court, the Court is satisfied that while it is clear that there is no love lost between the 2nd Claimant and the 1st Defendant and, as clearly appears from paragraph 104 of his affidavit, the 2nd Claimant probably had every reason to believe that the Defendants may have been in possession of confidential and even privileged material belonging to the Claimants, the Claimants have, at best, been only able to speculate as to the specific nature and extent of the documents suspected to be in the possession of the Defendants and the use to which they might be put.

[54] I turn now to the Undertaking in Damages given at the time the Search Order was first made. In the 2nd Claimant's supporting affidavit, he asserted, at paragraph 121, that the 1st Claimant had a minimum of \$20 million Barbados dollars in assets, while his net assets consisted of some \$7 million Barbados dollars. It is now clear to the Court that the Claimants were required to produce the necessary evidence in support of their claim on the making of their application so that the Court could satisfy itself that the Claimants are good for any damages that they might ultimately be ordered to pay (*Vapormatic Co Ltd v Sparex Ltd [1976] 1 WLR 939*). But on a perusal of the supporting affidavit, no such evidence was provided.

[55] In his affidavit opposing discharge of the Search Order, the 2nd Claimant sought to adduce financial statement in support of his contention. The statements he provided are audited financial statements as at 31 March 2007 together with a number of other statements for subsequent years which were prepared, apparently, by the 2nd Claimant and which are unaudited. On a perusal of same, no independent verification of the 2nd Claimant's assertion has been provided and there is no clear evidence to indicate the Claimants' true worth. In the circumstances, the Court is satisfied that this was a material non-disclosure.

- [56] **Disposal:** In summary, the evidence which the Claimants have placed before the Court is not of the required quality or kind to justify the further imposition or continuation of the Search Order granted in December 2009. There was also a material non-disclosure in relation to the Claimants' true worth and on the evidence, a strong *prima facie* case of breach of confidence has not been established.
- [57] It follows that the Defendants have succeeded on their application and the Search Order granted in December 2009 is hereby discharged.
- [58] The Defendants have leave to proceed to an inquiry before the Master on the cross-undertaking in damages.
- [59] All documents and computer records seized under the Search Order and which are held by the Supervising Attorney and/or by the Claimants or their advisers shall be returned to the Defendants.
- [60] The Claimants are permitted to keep copies of such of the seized documents and computer records as correspond to the documents specifically identified at paragraphs 17 and 20 of the Particulars of Claim filed in these proceedings on December 21, 2009 solely for the purpose of the substantive legal proceedings already commenced.
- [61] Costs of the application are awarded to the Defendants and are certified fit for 2 attorneys-at-law and shall be assessed by the Court, if not agreed.

Maureen Crane-Scott
Judge of the High Court