BARBADOS

IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION

Civil No. 275 of 2015

GLOBE FINANCE INC. CLAIMANT

AND

RODNEY L. WILKINSON FIRST DEFENDANT
PREMIER PRE-OWNED VEHICLES INC. SECOND DEFENDANT
LEV INVESTMENTS LIMITED THIRD DEFENDANT
SANDRA WILKINSON FOURTH DEFENDANT

Before The Hon. Mr. Justice William J. Chandler, Judge of the High Court

Dates of Hearing: 2017 20th February, 24th February
1st March, 27th March
11th April, 21st April, 27th April

Appearances:

Mr. Michael J. Koeiman and Mr. S. Matthew Goodin of Messrs. Clarke, Gittens and Farmer, Attorneys-at-Law for the Claimant.
Mr. Marlon M. Gordon, Attorney-at-Law for the First, Second and Third Defendants.
Ms. Cicely P. Chase Q. C. in association with Mr. Graeme Brathwaite and Ms. Shari-Anne Walker, Attorneys-at-law for the Fourth Defendant.

Decision

Introduction:

[1] The Claimant filed a fixed date claim form on the 4th March 2015 claiming:

(1) Payment of $676,653.05 being principal interest and fees as at 6th February 2015 and further interest at the rate $158.90 per diem until payment, which sums were owed to the Claimant and secured by a deed of charge by way of Legal Mortgage dated the 28th day of February 2011 made between the First Defendant (as 'the Borrower') and the Third Defendant (as 'the Company') (together 'the Borrowing Group') and the Claimant (as 'the Lender') and recorded in the Land Registry on the 20th day of June 2011 as Deed No. 4483 of 2011 (the 'Mortgage') and a Further Charge dated the15th day of August 2011 made between the First Defendant (as 'the Borrower') and the Third Defendant (as 'the Company') (together 'the Borrowing Group') and the Claimant (as 'the Lender') and recorded in the Land Registry on the 28th day of October 2011 as Deed No. 7422 of 2011 (the 'Further Charge') over lot 2 Friendly Hall situate in the parish of Saint Michael in this Island, together with the dwelling house and all and singular the erections

and buildings thereon ("the Property"); and/or

(2) Possession of the Property; and/or

(3) Foreclosure; and/or

(4) Sale of the Property;

(5) Further or other relief; and

(6) Costs.

[2] On 25 January 2015, this court made an order by consent that the Defendants deliver up possession of the property to the Claimant on or before the 31st day of July 2016. On January 17th 2017, this court, on application by the Claimant filed 8th August 2016, granted permission to the Claimant to issue a writ of possession in respect of the property which it sought to execute.

[3] The Fourth Defendant, the wife of the First Defendant, applied for and was granted permission to intervene as a Defendant in the proceedings on the 24th of February 2017 and an order made staying the writ of possession until the 1st of March 2017.

[4] On the 1st of March 2017, this court gave directions that (1) the First Defendant filed and serve particulars of her claim by way

of Affidavit on or before the 29th of March 2017. (2) The Claimant and Defendants do file and serve Affidavits in response within seven days after service of the particulars of the claim on them. (3) Parties do file written submissions in relation to the continuation or discharge of the stay at least two days before the next date of hearing. (4) That the stay ordered by **Reifer J.** do continue until the next date of hearing. (5) It was further ordered by consent that the First, Second and Third Defendants give particulars of the party issuing the instrument by which the investment was made by the proposed purchaser (Mr. Gilkes) the date thereof and provide a copy of the same. (6) Written submissions to be filed at least two clear days before the substantive hearing. (7) The matter was adjourned until the 27th of March 2017, as a mention date.

[5] On the 27th of March 2017, Mr. Gordon did not appear and the matter was adjourned until the 11th of April. On the 11th of April 2017 Mr. Gordon informed that he had not filed the submissions and the court ordered among other things that Mr. Gordon file and serve his submissions on or before the 13th of

April 2017 and Mr. Koeiman to file his response before the next date of hearing or present his oral arguments on the next date of hearing. The stay was continued until the next date of hearing on the 21st of April 2017.

The Present Applications

2.

[6] There are two applications before the court. The first application filed February 20th, 2017 by the First, Second and Third Defendants was for (a) an order restraining the Respondent/Claimant whether acting through its agents, servants or acting otherwise from taking physical position of the property situate at lot 2 Friendly Hall, St. Michel, (b) an order permitting the First Applicant to enter and complete an agreement for sale of the property to Mr. Hugh Gilkes within 90 days and (c) that costs be the cost in the cause.

[7] The grounds of the application are, among others, that:

(1) the applicant submitted a loan agreement dated 12th January, 2016 between the said Hugh Gilkes as lender to the First Applicant for an unsecured loan of $1,200,000.00, to be repaid by 20th December, 2027 by

three drawdowns of $400,000.00 to liquidate a loan from the Claimant secured over lot 2 Friendly Hall and Lot 3 Mullins Terrace in the names Lev Investment Ltd and Wilkinson Edwards and Marjory Wilkinson respectively.

(2) The respondent by letter dated January 27, 2017 advised that it was not amenable to the proposal for the loan agreement and filed the request for the Writ of possession.

(3) The First Applicant by letter dated February 14, 2016 advised the respondent that there was a memorandum for an agreement of sale between the Applicant and Mr. Gilkes, the purchase price for this agreement of sale was $1,200,000.00 with a completion date of April 30, 2017.

(4) The First Applicant further requested from the respondent copies of all title deeds and the plot for the property in order to draft and prepare the agreement for sale between the First Applicant and Mr. Gilkes. The First Applicant also requested that the respondent do give an undertaking not to proceed with any further action to take possession of the property pending the completion of the agreement

for sale.

(5) By letter dated February 16, 2016 the respondent advised the First Applicant that it was unwilling to give an undertaking not to proceed with the possession of the property and will continue its effort to take possession save in the event that the First Applicant pays into the offices the Respondent's Attorney-at-Law the sum of $1,143,630.63 plus legal fees.

[8] The second application concerns the stay granted to the Fourth Defendant Sandra Wilkinson previously referred to.

[9] There are three issues before the court (1) whether the stay, granted in favour of the Fourth Defendant, should be continued? (2) Whether the Claimant should be restrained from taking possession of lot 2 Friendly Hall, St. Michael? And (3) whether the court should permit the First Applicant Rodney Wilkinson to enter and complete an agreement for sale of the property to a Mr. Hugh Gilkes within 90 days?

The Submissions

[10] The Court made orders for the filing of submissions by specified dates which the First, Second and Third Respondents failed to comply with on two occasions, despite the fact that the matter came on a certificate of urgency filed by their counsel on the 20th of February, 2017 and which was certified as urgent. Mr. Gordon filed his submissions on 19th April, 2017. He submitted that the court had inherent jurisdiction to act during and after the course of court proceedings under the **Supreme Court (Civil Procedure) Rules 2008 (CPR) Rule 11.4 (4)**. Reliance was placed also on **section 101** of the **Property Act, Cap. 236** of the **Laws of Barbados (The Property Act)**.

[11] He also submitted that the court might direct a sale of the mortgage property on such terms as it thought fit, since the mortgagor retained the right to redeem the mortgage even where it was in default of its obligations under the mortgage. The equitable right of redemption remains vested in the mortgagor even where the contractual right to redeem had been lost. That equity of redemption allowed the court to stay or suspend execution of a judgment or an order, **Campbell v Holy**

Land (1897) 7 Ch. D166 at 71.

[12] Counsel also submitted that the court had a discretion to reopen a final order of foreclosure at any time on equitable grounds, **Section 30 of the Supreme Court of Judicature Act Cap 117A** of the Laws of Barbados (The Supreme Court of Judicature Act), and **Babbie v Petryczka (1975) 8 O.R. (2d) 718 (Babbie)**. He also relied on **Cheltenham and Gloucester Building Society PLC v Booker [1997] FLR 311 (Cheltenham)** and submitted that the mortgagee would not suffer any prejudice if a further 90 days were granted to allow the First Defendant/Applicant to clear the principal debt.

[13] Counsel further submitted that the matter involved the Third Defendant, a corporate entity, and, if the court lifted the corporate veil, it would be seen that the First Defendant was the sole director. The property is residential and the matrimonial home of the First and Fourth Defendants for the past 36 years. The situation would be different if the property was commercial in nature.

[14] Mr. Gordon also made reference to the principles enunciated in

Toojays Limited v. Westhaven Limited Civil Appeal No 14 of 2008 unreported decision of [16th September 2011] (Toojays), but informed the court that he was not seeking injunctive relief in the sense envisioned in **Toojays** but had used the case to further his submission that the interlocutory relief could still be obtained at this stage. In this regard there was a serious issue to be tried, namely whether the court had jurisdiction to intervene at this stage which, in his submission it did. The balance of justice favoured granting the relief sought since the Claimant could be compensated in damages and the First to Third Defendants were seeking to save their matrimonial home.

The Fourth Respondent's Submissions

[15] Ms. Chase Q.C. filed her submissions on the 13th of April 2017 in which she submitted that the Fourth Defendant had an equitable interest in the property, which did not supersede the legal interest of the Claimant mortgagor and which would now be overreached into any surplus of the proceeds of sale of the mortgage property.

[16] Counsel also submitted that the court had a discretion to prevent the Claimant taking possession of the property under

section 101(2) of the Property Act.

[17] Counsel opined that, if the court was satisfied that the First, Second and Third Defendants had found a prospective purchaser for the property and that an agreement for sale could be completed between the Third Defendant and the prospective purchaser then the court should exercise its discretion under **section 101** to direct the sale of the property in which case all interests of the parties would be satisfied and the Claimant would obtain what is due to it.

[18] Counsel also submitted that the Claimant should pay the Fourth Defendant's costs of the application since it failed to give any proper notice of its intention to apply for writ of possession.

The Claimant's Submissions

[19] Mr. Koeiman submitted that the Third Defendant was entitled to clear off the mortgage and redeem its security at any time before a sale. He conceded that there was a statutory power under the **Supreme Court of Judicature Act,** where a dwelling house was involved, but maintained that the position under the **Property Act** had already taken place. The court's

discretion must be properly exercised.

[20] On the facts of the case the order had been made in January 2016, and no monies paid in spite of numerous proposals made. There was no real agreement. Even if the First Defendant had owned the property, which he did not, the discretion under **Section 30** could not reasonably be exercised in his favour. He relied upon the decision in **Cheltenham**. He noted that the Claimant would not be able to realise what was due to it upon a sale of the property because there was a discrepancy between the estimated value and what could be realised on sale. The mortgage debt was increasing by $247.00 per day and over the fifty-seven days since the First, Second and Third Defendants' application was filed some $11,882.79 had accrued on the debt, which they were unlikely to recoup. He further submitted that there was no serious issue to be tried.

[21] As far as the Fourth Defendant's application was concerned, counsel submitted that she had conceded that she had no legal interest, and therefore her action should fail. She was not entitled to costs, since the Claimant was never under an

obligation to serve her because she had postponed her interest in the property by signing a document to that effect. Fifty-seven days had already expired and there was no reasonable likelihood that the proposed sale could be completed within a reasonable time. The balance of justice did not favour the grant of a restraining order.

The Law

[22] **Section 98 of the Property Act** provides as follows:

> 98. (1) Subject to subsection (2), when a legal mortgage of land is created after 1st January 1980, the mortgagee has (subject to the rights of the mortgagor as mortgagor) the same protection, powers and remedies as he would have had if his security had been effected by conveyance or assignment to him of the legal estate of the mortgagor.
>
> (2) A mortgagee may apply to the court in a summary manner for possession of the mortgaged property, or any part thereof, and on such application the court may, if it thinks proper to do so, order possession of that property or part to be granted to the applicant, but
>
> (a) the taking of possession by the mortgagee does not convert any legal estate of the mortgagor into an equitable interest; and
> (b) the right of a legal mortgagee to possession otherwise than in accordance with this subsection is hereby abolished, whether the mortgage was made before or after 1st January, 1980
>
> (3) The court may, in order to allow time for redemption, adjourn an application made under subsection (2), **or make an order for possession subject to such conditions as to stay of execution or otherwise as the court determines (emphasis added).”**

[23] **Rule 11.4(4)** of the **CPR** provides:

"11.4 (1) The general rule is that the applicant must give notice of the application to each respondent.

(2) …
(3) …
(4) Notice of the application must be included in the form used to make the application (Form 10)."

[24] **Section 30(1)** of the **Supreme of Judicature Act** provides:

"30. (1) Where the mortgagee under a mortgage of land that consists of or includes a dwelling-house brings an action in which he claims possession of the mortgaged property, not being an action for fore-closure in which a claim for possession of the mortgaged property is also made, the High Court may exercise any of the powers conferred on it by subsection (2) **if it appears to the court that if it exercises that power the mortgagor is likely to be able within a reasonable period to pay any sums due under the mortgage, or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage. (emphasis added)**

(2) The Court may,

(a) adjourn the proceedings, or
(b) on giving judgment, or making an order for delivery of possession of the mortgaged property, **or at any time before** the execution of such judgment or order,

(i) stay or suspend execution of the judgment or order, or
(ii) postpone the date for delivery of possession, for such

periods as the Court thinks reasonable.

(3) Any adjournment, stay, suspension or postponement under subsection (2) may be made subject to such conditions with regard to payment by the mortgagor of any sum secured by the mortgage or the remedying of any default as the Court thinks fit.
(4) The Court may from time to time vary or revoke any condition imposed under this section.
(5) This section has effect in relation to an action referred to in subsection (1) and begun before the date on which this section comes into force, unless in that action judgment has been given or an order made for delivery of possession of the mortgaged property and that judgment or order was executed before that date."

[25] **Section 101 of the Property Act provides as follows:**

> **"101.** (1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead-of for redemption in an action brought by him for redemption alone, for sale alone or for sale or redemption in the alternative.
>
> (2) In any action for
>
> (a) redemption; or
> (b) sale; or
> (c) the raising and payment in any manner of mortgage money, on the request of the mortgagee or of any person interested either in the mortgage money or in the right of redemption, the court may direct a sale of the mortgaged property on such terms as it thinks fit, including the deposit in court of a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms; and the court may so direct
>
> (i) notwithstanding that any person dissents, and
> (ii) notwithstanding that the mortgagee or any person interested in the mortgage money or in the right of redemption does not appear, and
> (iii) allowing or not allowing any time for redemption or for the payment of any mortgage money.
>
> (3) In an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for cost as the court determines, may give the conduct of the sale to any defendant and may give such directions as it determines respecting the costs of the defendants or any of them.
> (4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of encumbrances."

Discussion

[26] I will briefly deal with the submission that the court has an inherent jurisdiction under **C.P.R. 11.4(4)**. This rule does not provide for jurisdiction, it is simply a regulatory rule, which provides for the methodology of bringing applications before,

during and in the course of proceedings.

Section 30 of the **Supreme Court of Judicature Act- Submissions**

[27] **Section 30 Cap 117A of the Laws of Barbados** has already been recited in this decision. The following ought to be noted. A consent order was made on 25 January 2016 that the Defendants deliver up possession of the property to the Claimant on or before 31 July 2016. That order gave the Defendants six months to get their house in order and obtain any funding to redeem the mortgage. In effect the court postponed the date for delivery of possession for a six month period. This period was arrived at by consent since counsel for the Defendants informed the court that attempts were being made to obtain financing. That was done under **section 30** of the **Supreme Court of Judicature Act** referenced by Mr. Gordon at the hearing of the application for possession.

[28] The application for the issuance of the writ of possession was filed on 08 August 2016, the order for such issuance was not made until 17 January 2017 some five and a half months after the filing of the application and some six and a half months

after the date for delivery up of possession under the order of court. It cannot be properly argued that the Defendants have not had the benefit of the exercise of the court's discretion in their favour pursuant to **section 98** of the **Property Act** at the time of hearing the application for possession. We are now post that stage.

[29] Mr. Koeiman quite rightly conceded that the court may intervene at any stage prior to sale of the property and allow for redemption by the mortgagors, he however urged that the court should not do so in this case since enough time had already been granted to the mortgagors to obtain loan facilities and that the prospective loans had proven illusory.

[30] He also submitted that the Claimant was unlikely to recover the outstanding principal and interest and costs since the value of the property was less than the mortgage debt and interest was accruing at the rate of $247.00 per day on the said debt. An affidavit was filed by Ms. Catherine Hanschell, Collection Administrator for the Claimant's company on 18th June, 2015 in which she deposed that the amount due and owing by the

Defendants to the Claimants as at June 17th, 2015 was $699,810.05.

[31] An affidavit was filed by Mr. Ronald Davis, the Claimant's Managing Director on the 23rd of February, 2017 in which he deposed that, by letter dated 14th February, 2017, the Defendants' Attorney-at-Law wrote the Claimant's attorney-at law advising that they had found a purchaser (Mr. Hugh Gilkes) at a price of $1,200,000.00 with completion scheduled for the 30th of April, 2017 and seeking an undertaking not to proceed with any further action to take possession of the property pending completion of the agreement for sale which they declined to give.

[32] The deponent also deposed that at the hearing of February 24th, 2017 an affidavit of Mr. Gilkes was presented confirming Mr. Gilkes' intention to purchase the property (by virtue of a maturing investment which would become payable within the ninety days). He also deposed that by letter dated 21 February, 2017 sent by facsimile transmission to Mr. Gordon the Claimant's attorney at law, he sought details of the maturing

investment and more specifically the date and by whom the instrument was issued and requesting a copy of the same to which they was no reply. Interest was accruing at a rate of $208.47 per day (note that Mr. Davis gave an interest rate of $208.47) making the total sum secured as at February 21st, 2017 $724,688.95 as to principal $936,929.75 in total, whilst the property was valued at $774,000.00 a copy of a valuation prepared by A. N. Kirton Inc. was attached.

[33] The court's power to vary its own order must be predicated upon an evidential basis for so doing. Mr. Gilkes was proffered as a person who would loan to the First Defendant the sum of $1,200,000.00 in three stated installments, which failed to come to fruition.

[34] Mr. Gilkes filed an affidavit prepared by Mr. Gordon on the 20th of February 2017 in which he deposed that there was a memorandum of agreement between himself and the First Defendant in respect of the property. No memorandum was produced. He also deposed that he was in a position to finance the purchase by virtue of a maturing investment in the next 90

days and he was prepared to complete the purchase within those 90 days.

[35] In response to a question from the court Mr. Gordon informed the court that there was a confidentially clause and a non-disclosure clause in the instrument of investment which prevented Mr. Gilkes from disclosing particulars of the said investment. I am not impressed with this suggestion. There can be no document of a confidential nature which cannot be disclosed to a court of law under confidential cover and received by the court upon terms that that document be kept by the Registrar of the Supreme Court under her seal and not to be disclosed to anyone except by order of court.

[36] What conclusion can the court draw from the facts as presented with reference to the proposed purchase? Firstly Mr. Gilkes proposed to purchase from the First Defendant, this is an impossibility since the property is owned by the Third Defendant. The Court cannot lift the corporate veil as suggested by Mr. Gordon in such a manner as to equate the First Defendant with the Third Defendant. There are specified

circumstances in which a court lifts the corporate veil and this is not one of them. One does not have to lift the corporate veil in order to ascertain the directors of a company.

[37] Secondly, without credible evidence of the ability of Mr. Gilkes to purchase this property, the court must balance the rights of the Defendants as against the rights of the Claimant who has the benefit of a consent order for possession of the property.

[38] Thirdly, no credible explanation has been given for Mr. Gilkes' withdrawal of the proposal to provide the loan facility to the First Defendant, the last drawdown of which ought to be made by the 31st December, 2017 and the first of which ought to be made by the 31st April, 2017 and yet a further period of 90 days is being sought.

[39] I am of the opinion and hold that, on the state of the evidence, there is no credible evidence that Mr. Gilkes would be able to fund this purchase.

[40] In the circumstances, I find that there is no reasonable likelihood that the mortgagor would be able within a reasonable

period to pay the sums due under the mortgage from the proceeds of a proposed sale, which does not appear to have any credibility. I therefore decline to exercise my discretion in favour of altering my order so as to permit a proposed purchase by Mr. Gilkes.

[41] In his affidavit filed on 20th February 2017 in support of the application to restrain the Claimant's taking of possession, Mr. Wilkinson deposed that the Respondent/Claimant had not yet advertised the property for sale and had no offer for purchase. That procedure will take some time and I am of the view that if Mr. Gilkes is serious about purchasing the property, he will make the appropriate arrangements through his own counsel between now and the execution of an agreement for sale by the Claimant as Mr. Koeiman noted was still available to the Defendant.

[42] I consider the reasoning as given by **Millett LJ** in **Cheltenham** to be applicable to this matter. In that case the court held:

> "There is a residual jurisdiction in the court, but a strictly limited one, to postpone the giving of possession to the mortgagee for a short period in order to enable the property to be sold by the mortgagor. If so, it appears to me in principle difficult to deny the existence, at least in theory, of a similar jurisdiction to defer

> the giving of possession for a short time in order to enable the property to be sold by the mortgagee.
> If the court is satisfied: (a) that possession will not be required by the mortgagee pending completion of the sale but only by the purchasers on completion; (b) that the presence of the mortgagor pending completion will enhance, or at least not depress, the sale price; (c) that the mortgagor will co-operate in the sale by showing prospective purchasers round the property and so forth; and (d) that he will give possession to the purchaser on completion, it seems to me that there is no reason in principle why the court should accede to a mortgagee's insistence at immediate possession prior to the sale should be given to him."
> **Millett LJ** said further, "However, while the jurisdiction exists, experience shows that these conditions are seldom likely to be satisfied. Accordingly, in my judgment, the jurisdiction should be sparingly exercised, and then exercised only with great caution. If the conditions, which I have mentioned exist, the court is likely to entrust the conduct of the sale to the mortgagor. There is an inherent illogicality in entrusting conduct of the sale to the mortgagee and yet leaving the mortgagor in possession pending completion unless the mortgagee has agreed to this course.
> The obtaining of possession with a view to giving it to the purchaser IS part of the necessary arrangements for sale. In my opinion the party having conduct of the sale ought normally to have the right to decide when it is desirable for him to obtain possession from those in occupation in order to enable the sale to be effectively carried through."

[43] I agree with the above reasoning. Mr. Koeiman submitted that his client would not consent to the mortgagor's remaining in possession of the property. It appears to me that the Claimants are desirous of being able to provide vacant possession to any purchaser of the property on the exercise of their power of sale. It is for the Defendants to provide evidence to satisfy the court of the four conditions outlined in **Cheltenham** above. They

have failed to do so.

[44] The court also during the course of previous proceedings suggested to Mr. Gordon that Mr. Gilkes, through his own counsel ought to contact the Claimant's Attorney-at-Law with reference to his offer to purchase the property. This has not been done. In this regard the evidence of a proposed purchase does not possess the evidential character which would persuade this court to suspend the writ of possession or grant the relief sought by the First, Second and Third Defendants.

The Injunctive Relief

[45] Mr. Gordon's submission that the serious issue to be tried is whether the court has jurisdiction is not really the kind of issue envisaged in **Toojays**. The issue to be tried would be an issue as between the parties themselves whether of a tortuous, contractual, statutory, common-law or equitable nature. Counsel's submission goes to the jurisdiction or power of the court to vary its own orders made between litigants who are before the court. That is a question of law and not an issue *inter partes*. I therefore hold that there is no merit in his submission.

Conclusion

[46] Having regard to the concession by Ms. Chase that her client's interest lies in the surplus, if any, of the proceeds of sale of the property and that her client's equitable interest does not supersede that of the Claimant the Fourth Defendant's application must fail.

[47] Having regard to my findings with respect to the proposed sale to Mr. Gilkes and the lack of credibility in the evidence presented in support of the proposed sale and purchase, I find no merit in the application to restrain the Claimant from exercising its lawful rights to obtain possession of the property. Whilst I acknowledge there will be some hardship to the First and Fourth Defendants in having to vacate what is in essence their matrimonial home, I must balance all these circumstances against the lawful rights of the Claimant under a mortgage lawfully created by the Third Defendant and whose rights must also be protected by the court.

Costs

[48] I am of the opinion that the situation in which the Fourth Defendant has found herself is not as a result of any misfeasance or malfeasance on the Claimant's part.

[49] Under **Part 65** of the **CPR** costs normally follow the event. The concession by the Fourth Defendant means that she has failed in her application and costs would normally be awarded against her. Whilst I appreciate that the court may order costs to be paid by a successful party I see no reason to do so in this case, since this would add another layer of financial burden to the Claimant which has not in any way being culpable in the manner in which it exercised its rights.

Disposal

[50] In the circumstances the court orders as follows:

(1) The First, Second and Third Defendants' application is dismissed;

(2) The stay ordered in favour of the Fourth Defendant is discontinued;

(3) The First, Second and Third Defendants will jointly and

severally pay the Claimant's costs of the application to be assessed if not agreed; and

(4) No order for costs is made against the Fourth Defendant.

William J. Chandler
High Court Judge