REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2012-01753

Between

URBAN DEVELOPMENT CORPORATION OF TRINIDAD AND TOBAGO

Claimant

And

JOHN CALDER HART

First Defendant

KRISHNA BAHADOORSINGH

Second Defendant

RICARDO O' BRIEN

Third Defendant

NEELANDA RAMPAUL

Fourth Defendant

Before The Honorable Justice David C. Harris

Appearances:

Mr. D. Punwasee instructed by Mr. Daryll Allahar **for the Claimant**
Ms. Annabelle Sooklal **for the First Defendant**
Mr. Colin Kangaloo instructed by Ms. Daniel Nieves **for the Second Defendant**
Mr. Anthony Bullock instructed by Mr. Imran Ali **for the Third and Fourth Defendants**

DECISION

INTRODUCTION

Background

1. This is a decision on the applications of the First and Second Defendants that the claim herein stands automatically struck out pursuant to Rule 27.3 (4) of the Civil Proceedings Rules 1998 (as amended). No similar application has been filed on behalf of the Third and Fourth

Defendants, but it has been accepted that the outcome of the First and Second Defendants will also apply to the Third and Fourth Defendants. At the onset let me say that the resolution to the issues arising in this application, apart from the CPR1998(as amended)("***the "CPR"***), is found primarily in both the Court of Appeal and the Privy Council (**"the Board" or "the PC"**) judgment of ***Super Industrial Services Ltd and another v National Gas Company of Trinidad and Tobago*** [2018] UKPC 17 ("***SIS.NGC***") and authorities referred to therein[1].

2. The statement of case was first filed on the 1st May 2012; it was amended and filed on the 26th September 2012 where the 2nd - 4th Defendants were added; Re amended on the 20th November 2012 where apparently only a name spelling was corrected and Re-Re amended on the 17th April 2013. This was one day after the last amended defence was filed and finally following ruling on the 31st March 2017 by the court, where various parts of the Re Re amended Statement of Case("***SoC***") were struck out, the Claimant on the 5th May 2017 filed Re Re Re Amended statement of case reflecting the ruling.

3. The last defence was filed on the 16th April 2013 and that was an amended defence filed by the Second Defendant.

4. The presiding judge at the time, by order dated the 31st March 2017, fixed the 1st CMC for the 3rd of July 2017. Regrettably, a perusal of the court records does not reflect what, if anything happened on that day other than that the matter was adjourned. The record picks-up on the 24th of July where among other things a notice to *cease to act* for the Attorney of the claimant was dealt with and the Defendant(s) gave verbal notice of a pending application, presumably(but not necessarily) the applications now before the court. What is clear, is that although a CMC date was clearly fixed for the 3rd July 2017, no further conventional, if you will, case management orders were made in July or August of 2017. That said order, made on the 31st March 2017 has not been set aside, nor have the Defendants expressly applied to set it aside and it stands as an Order of the court today. No issue has been taken to the other specific orders of the court that day which include the decision on the 1st Defendant's notice of application of the 9th June 2014 to strike out certain paragraphs of the Re Re amended SoC which had been filed the year before, on the 17th April 2013. Up to the 31st March 2017 date of the Court order for a CMC, no party had taken issue with a breach of Part 27.3 or with the court Order of that day.

5. The notices of application for which we are here, were filed on the 11 September 2017 and the 16th October 2017 by the 2nd and 1st Defendants respectively, some 6-7 months after the court order fixing the CMC and approx. 4 years after the filing of the last defences. It appears that throughout the various amended statements of case, no further defences or amended defences were filed.

[1] See also the consolidated Court of Appeal decision in the matter at Civ App P186/2016; 190/2016 and; Estate Management and Business Development Company limited v Saiscon Limited Civ App No. S. 104/2016("***Saiscon***"); and the myriad authorities cited in the submissions.

6. Where relevant at all, unless commonsense dictates otherwise or specifically stated or the context admits to the contrary, this decision speaks to the conduct of the parties as of that date of filing of the two applications before this court.

Why are we here?

7. To this end, the first issue which the Court must resolve is whether there has been a case management conference ("**CMC"**) within the period provided for by Rule 27.3. More specifically, for the matter to have been dismissed automatically pursuant to Rule 27.3 (4), no case management conference must have taken place within the period provided for it to occur. In particular, as observed by the Privy Council (**"the Board" or "the PC"**) in the said ***Super Industrial Services Ltd and Another v National Gas Company of Trinidad and Tobago Ltd*** **[2018] UKPC 17 ("*SIS.NGC*")** the Court Office and the Judge must not have fixed a Case Management Conference ("***CMC"***) [see Rule 27.3 (1) and (2)], and the judge must also not have dispensed with the requirement for a case management conference pursuant to Rule 27.4.

8. So for when is the case management conference ("***CMC"***) to be fixed ? According to Rule 27.3 (2), the Court Office must fix a CMC upon the filing of the last defence or when the period for the filing of the last defence to the statement of case in existence at that time has expired. According to the affidavit of Ms. Danielle Nieves for the 2nd Defendant for instance, filed on September 11, 2017, that date was April 15, 2013, when the defences of the Third and Fourth Defendants were filed. However, upon the perusal of the court file and the other submissions in this application, the last defence to be filed was an amended defence by the 2nd Defendant on the 16th April 2013. Time would in the normal course of things start running against the Claimant under rule 27.3 from this last date. However, before even the court office was required to fix a court date, the Claimant filed the said Re Re amended SoC on the 17th April 2013. This would act as a reset to the time lines. So for instance the Defendants all, would have 28 days upon service to file their defences (as amended) or consider their positions and opt to stay with the same defences if they wish. In any event when all the time lines under the CPR and rule 27.3 are recalculated including the 3-month allowance for the Claimant to apply for relief from sanctions, the critical date stands as the 29th September 2013 (factoring in the long vacation). It was not, however, until the 5th of May 2017 that the final Re Re Re amended SoC was filed. Whatever the argument for determining the date at which time starts running i.e. 15th April 2013 or the 29th September 2013, either date attracts the same reasoning and conclusions in this matter. This court accepts the later date for our purposes as the date at which time commenced running against the claimant. The CPR Rule 27.3 provides that unless the Court has dispensed with the need to have a case management conference, and the Court does not fix a date for the conference to be held within 14 days of the date on which it was required to do so, the Claimant must then apply to the Court for a date for a case management conference to be fixed. That application must be made within 28

days from the filing of the defence. Rule 27.3 (4) provides that where no such application is made, the claim shall be automatically struck out.

9. Applying these rules, therefore, the last defence having been deemed to have been filed and served on the 15th May 2013 (28 days after the amended SoC), then by the 29th May 2013 (14 days after) the court must fix the CMC date. If the court office had not fixed it, the Claimant ought to have made an application for a case management conference to be fixed. There is no express evidence that the Court dispensed with the need to have a case management conference by May 29th 2013 or at any other time, so that the Claimant's application ought to have been filed. If no such application was ever filed within 28 days of 29th May, 2013 or at all, and, applying Rule 27.3 (4), the claim stood automatically struck out as at 13th June, 2013. The learning as to what constitutes a commencement of a CMC as opposed to a non-cmc hearing where certain management directions are given, is well thrashed out and elucidated in several court of appeal judgments not least of which is the ***Saiscon*** case and the ***SIS.NGC*** case. The Board in the ***SIS.NGC*** matter have not disapproved any of the relevant learning in the ***Saiscon*** and indeed appeared reluctant to delve into procedural issues not expressly before it and presumably, which might require amongst other things, the understanding of specific circumstances of the case, of local circumstances and practice culture on the point.

10. Rule 27.3 (5) provides that the Claimant may apply for relief from the automatic striking out sanction within 3 months of the date of the service of the defence. I take it as a matter of record that at the time of the filing of the application to strike, no such application had been filed in this case. Finally, in default of applying for relief from sanctions within the period specified, it is open to a party to later apply to the court for an extension of time for making such application pursuant to the court's discretion in CPR Part 26.1(1)(d) and in furtherance of the overriding objectives[2]. The Claimant has not applied for the extension of time to apply for relief from sanctions. The relief from sanctions is governed by a threshold requirement – 'Prejudice' - pursuant to Part 27.3(6). One context if you will, within which a court would have to consider an application for relief or indeed an extension of time for the filing of such an application notwithstanding the peculiarly lower thresholds than that of rule 26.7, is the importance and procedural significance of the CMC to the civil litigation process and to the parties. This procedural importance is well set out by the Court of Appeal and the Board in ***SIS.NGC***, more particularly at paras 27-33 thereof.

FINDINGS-CONCLUSIONS

11. The procedure on the face of it appears straight forward; so what then is left in this application for the striking out of the claim ?

12. This question draws me to the board's observations at para 35 of the ***SIS.NGC;*** that there is nothing in the express provisions of the rule – rule 27.3 - which dis-applies the Claimant's duty

[2] *Supra*, See also para 34 of SIS.NGC; see also CPR1998 (as amended) at Part 1.1(2)

to apply for the fixing of a CMC, where the court office does not do so, even in circumstances where there is a pending interim application in which the court may have already applied some active case management or at the end of which it is likely that the court will give comprehensive directions. The general rule is that the court office will fix a CMC, but where that general rule is not followed, then rule 27.3(3) imposes a *deliberately inflexible rule* that the Claimant must do so, with automatic striking out as the consequence if he does not. It seems to me however, that during the period up to the automatic striking out, time will recommence running if the Claimant files and serves an amended statement of case. It appears that it did do so and is reflected in the time lines of the various filings for the statement of case and defences set out above.

13. So then, the court either fixes a CMC or alternatively dispenses with the CMC pursuant to rule 27.4(1). Where this power to dispense with the CMC is exercised, the court is required to *"…set a full timetable for steps until trial….and in any event, fix a trial date of window: see rule 27.4(2)."* [3] It is not in dispute that a full CMC timetable was not given and that a trial date or window was not fixed. This important step in the court-controlled case-management process, is required by the rule in 27.6(4) and simply was not carried out in this case[4].

14. The Claimant contends that this court retains the power and discretion to extend time and grant relief from sanction reinstating a matter that has been automatically dismissed[5]. The Claimant submits this was alluded to in the ***SIS.NGC*** case. Indeed it was. This falls under the rubric, "implied relief".

15. The Claimant contends that the Court did impliedly extend time and grant relief to the Claimant. The Claimant refers to the court order of the 31st March 2017 that *"…a first case management conference be fixed for the 3rd July 2017*", some four years after the time had passed for automatic striking off. This the Claimant contends is evidence of the court exercising its discretion to extend time and grant relief prior to making the order setting the case management conference date.

16. It is not in contention I would think, that procedural requirements for the filing of an application for an extension of time (pursuant to rule 11 and 26.1(1)(d)) or an application for relief from sanctions (pursuant to rule 27.3(5)) have not been complied with. If it is in contention then I rule that those requirements (see 27.3(8) in relation to the 'relief') have not been satisfied. No notice of application and affidavit evidence in support of either application has been made.

17. In response to the Claimant's submissions on this point the Defendants and more particularly the 2nd Defendant's reply to the Claimant's further submissions; it is there submitted, that

[3] *Ibid,* See para 25.
[4] This is so notwithstanding the Claimant's allegation (whether accurate or not) that earlier in the proceedings the court had expressed an intent to fix a trial date/window, but was resisted by the Defendants.
[5] See Claimant's further submissions filed November 5, 2018.

whilst it is correct that in the Privy Council ***SIS.NGC*** Judgment the Board did speak about the potential issue of implied relief at Paragraph 40, the Court was careful to temper its discussion on this issue at Paragraph 42 of the Judgment. In this regard, their Lordships were careful to say at Paragraph 42 that:

> *"**But implication of this kind will not be lightly made, and the necessity test for any implication is likely to be strictly applied. In particular, it will not be likely to be made in the first of those examples where the court has not given all the directions required by rule 27.4 when dispensing with a CMC.** In the second example the court and one or more of the parties may be entirely unaware that the striking out sanction has been triggered. In such a case, an application by the defendant to set the judgment aside on the basis that the claim had by then been struck out would have to be met by the claimant applying for relief from sanctions. The court would be in a position to exercise its wide discretion as to costs in order to achieve a result conforming to the overriding objective and the needs of justice".*

18. So the Defendant here contends and I accept and adopt the contention, that taking the first example given by the Board – dispensing with the CMC - in this case, no such directions have been given, and in fact the matter remains at the stage of pleadings and specific discovery, and full or sufficient directions have not been given, whether for standard disclosure or otherwise or trial date or window – this after 6 years of litigation. It therefore cannot be said that any party to these proceedings consented to or acquiesced to comprehensive CMC directions at a hearing which was not scheduled for that purpose. To borrow a turn of phrase from the Board; I acknowledge the *faint* submission of the Claimant, that at an earlier hearing the court attempted to fix a trial window but was at the time resisted by the Defendants[6]. This allegation, although it does not appear to be disputed, taken at its highest would not elevate that hearing to that of a CMC, implied or express, but at best, arguably reflects the defendants deliberate participation in the 'procedural saga'.

19. In the second part of Paragraph 42, the Board has highlighted a situation where one or more of the parties (and the Court) may be entirely unaware that the sanction has been triggered, and therefore on later application to set aside an order or judgment given in ignorance of that fact, would have to be met with an application for relief from sanction by the Claimant. The issue of the sanction having been triggered was first raised before this Court at the hearing of this matter on July 28, 2017, and the Second Defendant's instant application was filed on September 11, 2017. However, well more than a year later the Claimant has not formally applied for an extension of time to apply for relief from sanction.

20. Further, I agree with and adopt the 2nd Defendant's submission that the Claimant cannot convert the Second Defendant's application for an order confirming the automatic dismissal of the claim into an implied application for its relief from sanction, as it seeks to do by Paragraphs 13 through 15 of its Further Submissions. The caveat to that assertion however,

[6] See para 19 of claimant's submissions filed November 13th, 2018, on defendants applications.

is that in appropriate circumstances the court can use it's powers under Part 26 in furtherance of the overriding objectives in relation to the saving of time and costs (if no other considerations) to deal with the issue of relief from sanctions if all the requirements of such an application on both sides were present in the Application before me now. They are not. If there is to be an application for relief, the Claimant must expressly make same and set out its evidence in relation to default and in the case of a relief application, the absence of prejudice to the other parties. Then further, the Defendants must be given an opportunity to be heard, by way of evidence on the issues of prejudice and otherwise. The court accepts that this is clearly the mechanism prescribed by Part 27.3(8) of the CPR, which may not be circumvented by the Claimant in the manner in which it seeks to do.

21. The Defendant's contention on this point, I believe makes clearer the resolution to this matter before me. Having regard to the history of this matter as documented on the court file along with all the submissions and further submission - post ***NIS.NGC*** - and having regard to the learning in the Court of Appeal and the Board's decision in the ***SIS.NGC*** matter I can do more than to first refer to para 32(i) – (iv) of the said PC decision which encapsulates the CPR provisions as to the hall-mark requirements of a CMC. Then, I state further that the rule in 27.3(3) **does** impose a deliberately inflexible rule that the Claimant must follow or face the consequence of an automatic striking out of the claim. In the absence of a CMC (express or implied) or the dispensing (implied or express) with the CMC, again, as it is with this case, the matter stands struck out as contemplated in the CPR rule 27.3.

22. I pose the question again, what is left in this application and in this matter? The stakes are high. The history of this matter is convoluted and not linear. None of the parties including the Defendants are hapless litigants that were railroaded down the *dirt road* as it were. It appears that all the parties deliberately and albeit with the objective of resolving the real issues in the matter either through settlement or litigation, did participate in a now elucidated procedural saga, the outcome of which will ultimately be determined in accordance with the law.

23. The Board in the ***SIS.NGC*** case several times alluded to the CPR option of an application for relief from sanctions under the CPR, being available if a claim is automatically struck out. The Board also alluded to the requirement now, of the Claimant first having to make an application for an extension of time for the filing of an out of time application for relief from sanctions from the automatic striking out of the claim. The relief from sanctions are provided for in rule 27.3(5),(6). I add no further light to the core issue by noting what there appears to be a less prohibitive threshold requirement for the application for relief from sanctions than that which applies in the disquieting CPR rule, 26.7. In the ***SIS.NGC*** case the PC noted the lower threshold in rule 26.1 and 27.3, but on the facts of that case, which included the formal and deliberate withdrawal of the application for relief by the Claimant at an earlier stage of the proceedings and the failure to formally put it before the appeal to the PC, the Board felt that in the circumstances of that case the question as to whether the Board then and there should introduce before it as it were, the said applications afresh and determine whether Claimant should have relief from sanctions was both "…*unexpected and in the broad scheme*

of things, undeserved". Somewhat similarly, for that reason, in this case, this court will not in this hearing deal with the "application" which as it turns out the 2nd Defendant also alluded to[7]; that the Claimant raised only in its submissions, for this court to determine – i.e. the *request-come* application for an *extension* and the grant of the *relief*. On this issue as to whether the court ought to permit the Claimant to make this application, and I stress – *to permit the application* and not whether the Claimant meets the threshold for relief - the circumstances and facts of this case are not on all fours with that of the ***SIS.NGC*** case. The Claimant ought to be permitted pursuant to rule 26.1(1)(d) to make its application for an extension of time for the filing of the application for relief so as to afford the other parties the opportunity to resist or consent to it as the case might be, to either or both applications.

24. It seems to me that having regard to the relevant considerations that the court is entitled to enter into in determining whether to grant the extension of time, it is this court's view that a knowledge of the case for the Claimant on the relief application is also desirable. What are the considerations the court is entitled to entertain on an application properly filed before it? In the case of ***Dr. Keith Rowley v Anand Ramlogan*** Civ App P215 0f 2014 where Jamadar JA; Yorke Soo-Hon JA and M. Rajnauth-Lee JA presided, Mme Justice Rajnauth-Lee delivered the Judgment after hearing submissions from Mr. D. Mendes SC for Appellant and Deborah Peake SC/ Mr. Gerald Ramdeen, for the Respondent, and set out the considerations for a court in dealing with an application under Part 26 for an extension of time. This is set out in the excerpt below:

> *"……I agree, that the trial judge's approach in applications to extend time should not be restrictive. In such applications, there are several factors which the trial judge should take into account, that is to say, the Rule 26.7 factors (**without the mandatory threshold requirements**), the overriding objective and **the question of prejudice**. These factors, however, are not to be regarded as "hurdles to be cleared" in the determination of an application to extend time. They are factors to be borne in mind by the trial judge in determining whether he should grant or refuse an application for extension of time. The trial judge has to balance the various factors and will attach such weight to each having regard to the circumstances of the case. Of course, not all the factors will be relevant to every case and the list of factors is not exhaustive. All the circumstances must be considered. In addition, I wish to observe that this approach should not be considered as unnecessarily burdening the trial judge. In my view, when one examines the principles contained in the overriding objective, it is not difficult to appreciate the relevance of the rule 26.7 factors. The following Rule 26.7 factors are therefore **applicable without the restriction of the threshold**: **(a**) whether the application was made promptly; **(b)** whether the failure to comply was not intentional; **(c)** whether there is a good explanation for the*

[7] See for instance the last two sentences in para 6 of the 2nd Defendant's reply filed on November 22 2018, to the Claimants submissions.

*application; **(d)** whether the party in default has generally complied with all other relevant rules, practice directions, orders and directions; **(e)** the interests of the administration of justice; **(f)** whether the failure to comply was due to the party or his attorney; **(g)** whether the failure to comply has been or can be remedied within a reasonable time; and **(h)** whether the trial date or any likely trial date can still be met if relief is granted. Rule 1.1(1) sets out the overriding objective of the CPR which is to enable the court to deal with cases justly. Dealing justly with the case includes - **(a)** ensuring, as far as practicable, that the parties are on an equal footing; **(b)** saving expenses; **(c)** dealing with case in ways which are proportionate to - (i) the amount of money involved; (ii) the importance of the case; (iii) the complexity of the issues; and (iv) the financial position of each party; **(d)** ensuring that it is dealt with expeditiously; and **(e)** allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases. **In addition, inherent in the overriding objective to enable the court to deal with matters justly are considerations of prejudice.** It is for the judge to consider on which party lies the greater risk of prejudice if the application is granted or refused. The court will take account of the various disadvantages to the parties should the application be granted or refused."* (Emphasis added)

25. For reasons in part derived from that excerpt, I think it sensible that both applications be made simultaneously. Quite apart from this, this conjoined procedure saves time and costs.

26. There is one last issue to touch upon. In the case of ***Ansa Merchant bank Limited v Sara Swan*** CA P234-236 of 2017("***Ansa***") delivered on the 29th February, 2018 by Madame Justice Jones JA on facts/and application of the CPR Rules somewhat akin to that of our case, the issue arose as to the status of a court order fixing a CMC notwithstanding non- compliance with rule 27.3. It in essence commences with the understanding that a court order issued by a court of unlimited jurisdiction remains a valid enforceable order and must be obeyed unless and until it has been set aside by the court. Then, at para 28-31 thereof the court alludes to the "…*residual power in the court to fix a CMC despite the automatic striking out of the claim pursuant to part 27.3(4)"* and in addition, pursuant to its powers under Part 26.1(1)(d) to extend time for compliance. Mdme Justice Jones JA goes on to note the court's further powers - which appear applicable to our circumstances - at Part 26.1(1)(w), which "…*gives the Judge the ability to take any step, give any direction for the purpose of managing the case and furthering the overriding objective.".* The upshot of the judgment for our purposes here, is found at paras 30-31 of that case and substantially set out below:

"…in any event the Judge had the jurisdiction to make an order fixing the CMC even after the expiration of the period identified in part 27.3(4). The submission of the respondent that the jurisdiction of the judge was limited by the automatic application of the sanction for non-compliance is therefore incorrect. The issue here was not whether the judge had the jurisdiction to fix the CMC but whether given the rules, the judge wrongly exercised her undoubted jurisdiction.

In accordance with the decisions of the Privy Council in both ***Issaac***[8] *and* ***Strachan***[9] *and our decision in the* ***Official Reciever***[10]*, the forum to challenge this wrongful exercise of jurisdiction was on appeal or, in limited circumstances, by an application to set aside the decision. In this case the application to set aside the order does not arise and there is no appeal of the decision.* ***The order having been perfected the parties are bound by it****. Indeed not only was the order perfected but it was acted upon. Both parties appeared at the adjourned hearing of the CMC without objection. Indeed the respondent sought and benefited from an order for costs in her favour up the stage of the CMC."* (Emphasis and Footnotes added)

27. In our case ***– UDECOTT -*** the order fixing the CMC still stands today. There is evidence of parties continuing conduct in the civil procedure process at least up to the CMC order 31st March 2017 that on its face pays no heed to part 27.3.

28. This raises an issue (if it is a relevant one at all) perhaps not frontally addressed or required to be addressed in the applications and submissions before me. This authority raises something of an *estoppel* (loosely defined) having regard to the conduct of the parties over the period of litigation. It goes to the fundamental issue of the applications before me of whether the claim stands struck out at all. The distinction between the issue raised by Jones JA and those which arise in the applications and/or will arise in prospective applications referred to in this decision, is ever so subtle. Having regard to the pointed and defined issues and submissions before me and not having had the benefit of directed submissions on this authority and issues it raises, the court is not able to reconcile this decision with the more recent Privy Council decision in ***SIS.NGC*** to which I have repeatedly referred and indeed rely upon, in this decision. The thrust of the submissions(incl. the further submissions) draw from the learning in the ***SIS.NGC*** case more so than any other authority and suggest the primacy of this more recent ruling on similar CPR provisions and the legal and procedural issues raised in these applications[11]. I earlier indicated that in this court's view the ***SIS.NGC*** case provides the resolution to the two applications before me; and it does so in the manner set out above.

[8] [1985] 1 AC 97.
[9] (2005) 66 WIR 268.
[10] CA No 91 of 2015.
[11] It might be that having regard to the state of the law and learning on the substance of the two applications not least of which is elucidated in the ***SIS.NGC*** case at both the Court of Appeal and the Privy Council, the ***Saiscon*** case and the ***Ansa***, that either one or other of the parties may not wish to proceed further on their end, whichever that may be. In that case the party or parties will of course say so up front.

29. For the reasons provided above **IT IS HEREBY ORDERED** that:

i. The claim stands automatically struck out pending the application for relief from sanctions;

ii. That the Claimant is permitted to file and serve an application for an extension of time to apply for relief from sanctions;

iii. That the Claimant do simultaneously file its separate application for relief from sanctions;

iv. That the two applications by the Claimant are to be supported by separate Affidavits in support;

v. That the said two(2) applications be filed and served on all relevant parties on or before 3pm on the 19th Day of February 2019

vi. That the Claimant do file and serve its written submissions in support of the said two applications on or before 3pm on the 21st February 2019;

vii. That the four(4) Defendants(or any of them as they see fit) are permitted to file their Affidavits in response to the said Applications and Affidavits in support, on or before the 8th March 2019;

viii. That the Defendants (or any of them) do file their written submissions in opposition to the two (2) Application on or before the 12th march 2019;

ix. That the parties may refer to and/or rely upon any earlier submissions but such earlier submissions are to be fully and distinctly identified (including the court stamp date of filing) in the latter submissions;

x. Costs of this application to be paid by the Claimant to the 1st and 2nd Defendants respectively, to be assessed before a Master in Chambers forthwith.

DAVID C HARRIS

HIGH COURT JUDGE

FEBRUARY 11, 2019