THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2017-03151

In the Matter of the Securities Industry Act 1995
And Securities Industry (take over) By-Laws 2005

AND

In the Matter of an Application by Trinidad Cement Limited
Pursuant to By-Law 26
Of The Securities Industry (take over) By-Laws 2005
To fix the fair value of Shares in Readymix (West Indies) Limited

BETWEEN

Trinidad Cement Limited

Claimant

AND

Peter Permell

Defendant

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Appearances

Ms. Catharine Ramnarine instructed by Mr. Miguel Vasquez for the Claimant

Mr. Ronnie Bissessar instructed by Mr. Varin Gopaul-Gosine for the Defendant

Delivered on 5th October 2018

Ruling

A. Introduction

1. This Ruling makes a determination as to which party should pay certain costs. These costs do not relate to the cost of the proceedings as a whole but to the expense of having an appraisal done of the fair value of the securities which are the subject matter of the Claim, namely shares in Readymix (West Indies) Limited ["the Company"].

2. The issue as to who should bear that cost arises in a Claim that is unique in that it is not one brought voluntarily. The Claim is an Application that Trinidad Cement Limited ["the Claimant"], having acquired 90% of the shareholding in the Company, is mandated to make in circumstances set out at **Rule 26 of the Securities Industry (Take-Over) By-Laws, 2005** ["the By-Laws"] made under the **Securities Industry Act, 1995**.

3. Such an application must be made to the Court when a minority security holder in that Company exercises his right to demand that the 90% securities owner acquires his shares as well, but does not agree to the price offered by the said majority shareholder. Mr. Peter Permell ["the Defendant"] is a minority shareholder in the Company. The Claimant having received proper notice from him that he was exercising the aforementioned rights as prescribed in the By-Laws, filed this Claim seeking to have the "fair value" of the Defendant's shares in the Company "fixed by the Court".

4. **Rule 26(10)** of the By-Laws authorizes the Court to appoint one or more appraisers to assist the Court in fixing a fair value for the securities in question i.e. in this case the shares of the Company. It does not however specify who should pay the costs of the appraisal.

5. The parties by Consent Order dated June 18, 2018 agreed that they would endeavor to "jointly agree an independent and competent appraiser", ascertain the appraiser's fees and notify the Court thereof by July 21, 2018. The Court would then appoint the appraiser. The parties were not able to agree on which side should pay for the appraisal but consented to having the Court determine this as a preliminary issue before appointing the appraiser they said they would agree to. The Parties have thus far failed to meet the deadline they set themselves to inform the Court of an agreed Appraiser however, this Ruling will determine who pays the Appraisers fees when they are appointed.

B. <u>Factual Matrix</u>

6. Prior to a Take-Over bid whereby the Claimant became 90% shareholder, the Claimant owned 8,531,977 shares in the Company or 71.1% of its issued shares.

7. On 27th March 2017 the Claimant made a take-over bid for the remaining 3,468,023 shares (29.9%) which were held by 495 minority shareholders, including the Defendant who owns 31,781 of the Company's shares.

8. In the March 27, 2017 takeover bid the Claimant offered the minority shareholders (including the Defendant) TT$11.00 or US$1.62 per share of the Company ["the Offer Price"].

9. The Offer Price of TT$11.00 was based *inter alia* on a report prepared by PricewaterhouseCoopers Advisory Services Ltd ["PWC"] which valued the Readymix shares (as at 22nd March 2017) within a range of $10.25 and $11.13 ["the PWC Valuation"]. The Claimant also relied on an independent fairness opinion dated 12th April 2017 from Ernst & Young Services Ltd ["EY Fairness Opinion"] which concluded that the Offer Price was "*fair from a financial point of view to the minority shareholders of Readymix."*

10. PWC had previously prepared a valuation for the Claimant which valued a Readymix share (as at November 2016) within a higher range of $10.42 and $11.25.

11. The take-over bid was made in accordance with **Rule 15(1) of the By Laws**. It closed on May 1st, 2017 and was accepted by 53 of the Company's shareholders, including institutional investors such as banks and insurance companies. The Claimant acquired approximately half the shares of all the minority shareholders. Thereafter, in a Mop-Up period, the claimant acquired more of the minority shareholders' shares thereby arriving at it's over 90% shareholding in the Company. At this point the mandatory provisions of **Rule 26 of the By-Laws** became relevant as the remaining Readymix Shareholders, including the Defendant, were entitled to require the Claimant to acquire their shares.

12. The Claimant issued a Notice dated June 2, 2017 which was expressly made pursuant not only to **Rule 26(4) of the By-Laws** but to **Section 203 of the Companies Act, Chap 81.** The said Section was enacted by an Amendment in Act No 5 of 1997, almost

a decade before the By-Laws were introduced under the Securities Industry Act. It covers similar ground as Rule 26(4) of the By-Laws except that the fair value of the shares under Section 203 of the Companies Act was to be fixed by the Securities Commission.

13. The Notice issued by the Claimant on June 2, 2017 advised minority shareholders including the Defendant of their right to require the Claimant to acquire their shares. It also informed them that if they wanted this to be done they had to notify the Claimant of their election whether to receive the Offer Price for the shares or they preferred that a fair value be fixed by the Court.

14. On 31st July 2017, in accordance with this statutory election right or entitlement, the Defendant, Mr. Permell notified the Claimant of his election to demand payment of the fair value of his 31,781 Readymix shares. Mr. Permell's notice triggered the Claimants obligation as prescribed by **Rule 26(5) of the By Laws** to apply to the Court to fix the fair value of a Readymix share. Thus although the Claimant contends that the Offer Price was a fair value it was required by statute to apply by this Claim to have the Court fix a fair value for the shares.

15. The Defendant's main reason for not agreeing to the Offer Price as a fair value is explained in the submissions of his Attorneys as follows:

> "12. This fair value of TT$11.00 (US$1.62) was challenged by Mr. Permell in his defence; one of the reasons for his challenge was because, in the PWC Valuation at p. 28, PWC applied a discount of 15% to the valuation:-
> "…a minority discount of 15% has been applied to the surplus assets of liabilities in arriving at the overall conclusion given a minority shareholder may not be able to access the additional value of net surplus assets represent."
> 13. PWC therefore discounted the value of a Readymix share by 15% to arrive at its valuation range of $10.25 and $11.13; at p. 30 of the PWC Valuation, using the adjusted net value approach, PWC therefore estimated Readymix's value as being in the range of $123.7M and $128.7M as opposed to the pre-discounted range of $145.5M and $151.3M.
> 14. Mr. Permell averred that TCL's fair value of $11.00 (US$1.62) for a Readymix share was fatally flawed insofar as this value relied on the PWC

Valuation. This is because By Law 18(1) (c) makes it clear that the valuer's opinion of a minority shareholder's shares cannot be discounted or downwards adjusted:-

"the valuer's opinion as to a value or range of values for the participating securities, without any down-ward adjustments in value on account of any of the participating securities not being part of a controlling interest."

16. The Defendant further contends that the PWC Valuation, on which the Offer Price is based, requires clarification as it inconsistently refers at times to "fair value" and at other times to "fair market value" as the standard for of its appraisal

17. The Claimant, by way of submissions, has not exhaustively addressed these main points of challenge which relate to the alleged improper discounting. Instead the written submission appears to concede, properly in my view, that this is a matter that can more appropriately be taken into account by the Appraiser who will guide the Court in fixing a fair value. The Claimant says "*the reasonableness and applicability of a minority discount is a matter for the Court to determine when fixing the fair value of the Defendant's shares*".

18. Although not highlighted in submissions, the Defendant has in his filed Defence set out a number of other grounds for not accepting the Offer Price as fair value. The grounds include concerns as to:
    - the alleged failure in the PWC Valuation to take account of valuable real estate holdings of the Company
    - Failure to take into account an earlier valuation
    - Impact of the interlocking directorship of the Claimant and the Company on directors' statements and recommendations and
    - An alleged cosy commercial relationship between the Claimant, PWC and Ernst & Young that undermines the independence of the valuation

19. The Defendant's dissatisfaction with the Offer Price as a fair value was not raised belatedly after the Defendant received the June 2, 2017 Notice. As early as April 23, 2017 he had set out his reasons for doubting the fair value of the Offer Price. This was

done in a letter to the Editor of the Daily Express published online on April 22, 2017 and in print on the next day.

20. On the other hand, the Claimant submits that the acceptance of the offer by a large majority of shareholders, including institutional investors with fiduciary due diligence obligations to their own shareholders, is a prima facie or even strong indication of the offer's fairness and reasonableness. As such the Claimant contends that the Defendant "*should not be allowed to simply 'fish' for evidence to justify a higher share price, at no cost or risk to himself*". They say further that this is not a case where the dissenting minority shareholder is unsophisticated or impecunious, seemingly expecting the Court to take Judicial Notice of these facts as there is no evidential basis given.

21. A number of other statements of fact are made in the submissions of the Claimant however, the evidential basis for same is unclear. Some points made by the Claimant appear in my view to be relevant to the eventual considerations of the appraiser who will assess the fair value so as to assist the Court in fixing same. For example, the Claimant states that the other minority shareholders that accepted the Offer Price were organizations "whose investment decisions are governed by fiduciary duties owed to stakeholders". No indication is given as to the compliance standards of these entities.

C. Guiding Legislation, Rules and Authorities

22. Unlike the By-Laws, there is some mention of the issue of costs in the provisions of the Companies Act that govern the proceedings where an election to have the Commission fix a fair value of the securities is made under **Section 203 of the Companies Act.**

23. **Sections 211 and 212** make clear that the outcome of the proceedings will be an order in the amount of the fair value fixed. That order will be in favour of the dissenting minority shareholder offeree and against the majority shareholder who was mandated to make the application. It is clearly envisaged that there may be costs incurred by the Commission in fixing the fair value. The Companies Act allows the Commission to decide who should pay these costs based on the conduct of the parties, by providing as follows:

"*211. (2) The Commission may appoint one or more appraisers to assist the Commission to fix a fair value for the shares of a dissenting offeree. (3) The final order of the Commission shall be made* ***in favour of each dissenting offeree against the offeror*** *and be for the amount of the offeree's shares as fixed by the Commission.*

212. In connection with proceedings under this Division, the Commission may make any order it thinks fit, and, in particular, it may— (e) ***order that any party who has unreasonably caused or delayed the proceedings or otherwise increased the costs thereof to pay the whole or part of the reasonable costs of the Commission***." [Emphasis Added]

24. The By-Laws, as aforementioned, are silent as to the issue of who will pay costs generally of the Application and specifically the costs of an Appraiser appointed by the Court. It is made clear at **Rule 26(11)** however that "*The Final Order of the Court shall be made* ***against the Offeror*** *in favour of each entitled security holder*." [Emphasis Added].

25. In the absence of any guiding provision in the By-Laws on who pays the cost of the appraiser the Defendant has, by written submissions, sought to persuade the Court as to the applicability of Canadian cases interpreting the provisions of Canadian legislation that addresses this issue specifically.

26. **Section 191 (11) of the Canadian Business Corporation Act** states that "*a dissenting shareholder (a) is not required to give security for costs in respect of an application under subsection (6), and (b) except in special circumstances must not be required to pay the costs of the application or appraisal*."

27. The Canadian cases cited by the Defendant seek to provide guidance on the interpretation of this Canadian section and in particular what type of special circumstances could justify an order that the dissenting minority shareholder pay the costs of the Appraisal. For example, at paragraphs 43 to 44 of submissions, the following is cited:

*"43. In **RFG Private Equity Ltd Partnership v Value Creation Inc (2001) Carswell Alta 1100** the Court had to consider what constituted special circumstances justifying the minority shareholder bearing the cost of the appraiser. At paragraph 11 of Strekaf J used the phrase exceptional circumstances in describing actions where there has been some form of blameworthiness, misconduct, deception of the Court, or other inappropriate behaviour.*

44. The same case came up for hearing in another matter in 2017. In giving additional guidance as to what constitutes exceptional circumstances Romaine J reaffirmed that the company pay the appraiser's costs since there were no exceptional circumstances which warranted a different order. The justification for such an order was stated by him at paragraphs 13 and 14:-

"Except in special circumstances [a dissenting shareholder] must not be required to pay the costs of [the proceeding… As drafted, section 191(11) is a shield that protects dissenting shareholders from costs consequences while encouraging corporations to make reasonable offers of fair value. However, granting full indemnity costs to dissenting shareholders on a presumptive basis would be contrary to the policy of encouraging dissenting shareholders to accept reasonable offers, rather than undertaking litigation with no downside risk."

28. I find that there is merit in the submission of Counsel for the Claimant that the authorities cited by the Defendant on this point are irrelevant. This is so as they have no bearing on the Trinidad and Tobago legislation governing the Defendant's election in this case. There is no legislation in Trinidad and Tobago providing that in all but exceptional circumstances costs or the Appraisal are to be borne by the majority shareholding offeror.

29. There being no clear legislation specifically governing who pays the costs of the appraiser appointed by the Court, the provisions of the **Civil Proceedings Rules, 1998, as amended ["CPR"]** are relevant.

30. On costs of the litigation as a whole **CPR 66.6 (1)** indicates that the successful party is generally entitled to costs. The legislation governing this Application for an appraisal specifies that the final order will in any event be against the Claimant and in favour of

the dissenting minority shareholder. As aforementioned that aspect of costs is not the subject matter of this Ruling but it is useful to note that **CPR 66.6(2)** allows the Court to make exceptions to this general rule. Factors that can be taken into account under **CPR 66.6 (5)** include:

- the conduct of the parties,
- whether it was reasonable to raise a particular issue and
- the manner in which the party has pursued the issue.

31. Since the cost of Appraisal in this matter is a subset of the cost of the litigation as a whole, I view these CPR considerations as relevant to my determination. The Claimant has in submissions largely challenged the reasonableness of raising the issue of the need for a fair value to be fixed by underscoring the acceptance of the offer price by the majority of other shareholders. The cases cited are as follows:
    a. **Re Bugle Press Ltd [1960] 1 All ER 768** which states *"in the ordinary case of an offer under s.209, where the ninety per cent. Majority who accept the offer are unconnected with the persons who are concerned with making the offer, the court pays the greatest attention to the views of that majority. In all commercial matters, where commercial people are much better able to judge of their own affairs that the court is able to do, the court is accustomed to pay the greatest attention to what commercial people who are concerned with the transaction in fact decide"* and *"where there is a large majority of shareholders who are only concerned to see that they get what they consider to be a fair price for their shares, and who are in favour of accepting the offer, the burden is a heavy one on the dissentient shareholder to show that the offer is not one which he ought reasonably to have to accept."*
    b. **Re Hoare & Co. Ltd [1933] All ER Rep 105** which states that *"I think, however, the view of the legislature is that where not less than nine-tenths of the shareholders in the transferor company approve the scheme or accept the offer, prima facie, at any rate, the offer must be taken to be a proper one"*, and *"that again prima facie the court ought to regard the scheme as a fair one inasmuch as it seems to me impossible to suppose that the court, in the absence of very strong grounds, is to be entitled to set up its own view of the fairness of the scheme in opposition to so very large a majority of the shareholders who are concerned."*

32. However, as submitted by the Defendant in submissions in Reply, **Re Hoare** is a 1933 judgment and **Re Bugle Press** a 1963 one and in both cases it is the English securities legislation that is examined. This is in contrast to the Canadian model which is to an extent used in Trinidad and Tobago. Moreover, the notion of minority shareholders' rights and remedies is a much more recent development which does not form part of English common law.

33. In particular, the Defendant submits that **Re Bugle** has no relevance to the securities industry and is based on the English common law and its companies' legislation and in **Bugle**, Buckly J in fact agreed with the defendant in holding at p. 768E that *"…the onus must rest on the acquiring company [in this case TCL] to satisfy the Court that the offer was fair."*

34. The Defendant submits further that in **Re Hoare** the Court states that the acceptance of an offer by the majority may be deemed prima facie a fair one but only in the absence of an application by a dissenting shareholder and that the court may in fact order otherwise where sufficient reasons are supplied by the dissenting minority.

35. Further it is to be noted that in the cases above cited by the Claimant, the Court is discussing the burden to be discharged upon the hearing of the application and not which party should bear the costs. It appears to be suggested by the Claimant that the party who bears the higher evidential burden should also bear the costs of the appraisal, however, this is not necessarily a fair position.

36. **CPR 33.8 (2) (b)** gives the Court the power to specify which party is responsible for the costs of the preparation of an expert report by a person agreed to on the direction of the Court. There is no specific provision guiding how this authority is to be exercised. It is therefore a matter to be guided by the overriding objectives of the CPR.

37. Accordingly, under **CPR 1.1** I have also considered the need to deal with this case justly by ensuring that so far as practicable the parties are on an equal footing. Additionally, the complexity of the issues is relevant. Had there been evidence of the financial position of either side that would also have been relevant. It is notable however, that Counsel for the Defendant contends in his Reply submissions that "*having regard to*

the high costs involved, any order that Mr. Permell pays the whole or part of it, effectively frustrates the minority shareholders' statutory remedies since he (Mr. Permell) will not be able to afford it."

38. Applying the overriding objectives to the circumstances of this case requires in my view a balancing of the Defendant's statutory interest in being protected as a dissenting minority shareholder from possible oppressions as against the Claimant's interest in a proper/not over protected business environment, which can be facilitated by discouraging unnecessary litigation where reasonable good faith offers are made.

D. Analysis and Findings

The Underlying Philosophy

39. The Defendant's statutory right/entitlement to make the election that he did and the provision in the legislation that the final decision is to be against the Claimant must be the starting point in deciding who should pay for the required appraisal. As highlighted in the Reply submissions filed by the Defendant, the election that he exercised is one of a number of protections against possible oppression afforded to minority shareholders in the legislative framework for Companies and Securities. It is clear that there is an intention to protect the investing public.

40. The Defendant in its reply submissions quotes the 2014 Trinidad and Tobago Takeover Guide authored by Dr. Claude Dendow S.C., at page 1:-

"The Takeover regime in Trinidad and Tobago was originally governed by the provisions of the Securities Industries Act 1995, Chap. 83:02 ("the SIA"), the Take-over By-Laws 2005 ("TOBL") and the Companies Act 1995 ("CA") Division 10. The SIA was repealed by the Securities Act 2012) ("the new SIA").

However, despite the enactment of a new securities law regime, there has been no change to the Takeover regime. The position is still governed by the Take-over By-laws 2005 and the Companies Act 1995 ("CA"). Those By-laws remain in force until replaced by new By-laws made pursuant to the new SIA. To date no new Take-over By-laws have been made. The regulatory regime for takeovers is based essentially on the Canadian regulatory model. This model reflects the following principles:

- *protection of the target company shareholders;*
- *ensuring that there is equal information available to both the bidder and the*

target shareholders respecting bid terms and share values; and

- *that the bidder should provide target shareholders with true and accurate information."*

41. This underlying philosophy of By Law 26 ought not to be undermined by unduly penalizing dissenting minority shareholders for stepping out of line by not accepting that an offer agreed to by others was fair value.

The Conduct of the Parties- any unreasonable delays?

42. The Defendant met all statutory deadlines for making his election. Prior to that he made his position clear on his objection to the Offer Price as not being fair value by way of a publication in the Media. Accordingly, there has been no conduct of the Defendant to justify him being ordered to pay the costs of the Appraisal.

43. In fact, it is the conduct of the Claimant that has been called into question by the filing of "Supplemental Submissions on the Payment of the Appraiser's Fees" on 29 August, 2019. It is clear to me that all of the information in paragraph 3 (a) to (g) of these submissions could have been included in the Claimant's Statement of Case. In addition to presenting evidence in this supplemental submission, the Claimant is also, in a very unusual way, adding to its pleadings at a time when the first case management ended. They thus seem to be seeking to circumvent the **CPR Rule 20.1(3)** which provides that amendments to pleadings must come only with the Court's permission after a first CMC. Further, evidence can only be put in by witness statements and based on the consent approach of the parties thus far, there were no directions for witness statements. The parties agreed to go straight to the appraisal of the shares. It is therefore the Claimant's conduct that to me seems to lack procedural bona fides so far.

Was it reasonable to raise the issue i.e. the need for fair value to be fixed?

44. There is no basis for considering the Defendant's application a frivolous or vexatious insistence on having the fair value fixed by the Court. The Defendant has raised clear and cogent issues of challenge as outlined at paragraphs 15 and 16 above. It is clear from the Claimant's submissions as well that these issues are suitable for further consideration as the cases cited all refer to some deliberation by the Court on similar applications, with decisions in favour of both the dissenting shareholder (**Re Bugle**

Press) and the company with majority shareholding (**Re Hoare**).

Did the Defendant pursue this issue in a reasonable manner?

45. The Defendant appears to have pursued this matter in a proper and reasonable manner. Firstly, he raised public debate on the issue by letter to the Editor of the Daily Express of April 22, 2017. Thereafter he retained counsel for advice in these proceedings and fully set out detailed reasons for challenging the Offer price.

What weight should be given to the fact of majority accepting the Offer, the type of investors involved and the sophistication of the Defendant in deciding who pays costs of the Appraisal of fair value?

46. Little or no weight is applicable to this point as the Claimant has not provided any evidential basis on which the Defendant should have simply accepted that because many Institutional Investors accepted the Offer Price as a fair value he should also do so. Against the backdrop of the issues with the valuation raised by the Claimant, this point would hold little influence in the mind of a minority shareholder seeking fair value for his shares.

E. Decision

47. The costs of the Appraisal and of this Preliminary Point are to be borne by the Claimant.

Delivered on 5th October 2018

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Eleanor Joye Donaldson-Honeywell

Judge.

Assisted by: Christie Borely, JRC 1

Postscript

Ruling on the Notice of Application filed on October 3, 2018

1. At midday on Friday 28th September 2018, immediately upon the Claimant's filing of the Supplemental Submissions coming to the Court's attention, an email was sent by the JSO to Attorneys-at-Law for the Claimant asking on what basis the additional submission was filed without leave of the Court. A response apologising for that omission was emailed to the Court shortly thereafter and the Claimant's Attorney, indicated that an Application would be filed. At that time the Court's Ruling had been finalised. No Application came in two days after the Claimant indicated one would be filed. However, the Supplemental Submission had been read and considered. The date for delivery of the Ruling was brought forward to this date. Parties were notified of the new date on Wednesday 3rd October at 9.26 am and the Claimant then filed the instant Application at 2. 28 pm. The Application came to my Attention this morning.

2. My finding that the filing of the Supplemental Submission was procedurally improper, not only because it was filed without leave but also because it sought to introduce new pleadings and evidence is stated at paragraph 43 of today's Ruling on the issue of payment of the costs of the Appraisal. The Application that has now been filed simply reiterates the contents of the Supplemental Submission. Accordingly, for the same reasons the Application cannot succeed.

3. It is also my finding that substantively no relevant information has been raised in the Supplemental Submission that should be considered in deciding which party pays the costs of the appraisal.

4. As to the substantive point raised in the Supplemental Submission regarding the Defendant purchasing a few more shares in Readymix at the offer price of $11.00 after he filed his Defence, that cannot in my view amount to a lack of bona fides as alleged at paragraph 8 of the Supplemental Submission. He bought shares at that price presumably because the seller was willing to take that from him. There was no submission as to any statutory obligation on him to purchase at fair value. It appears that even if he got someone to sell him the shares at a major discount – say $2.00 per share there would be no law preventing him from taking up that offer. That does not,

in my view, mean that he, Mr. Permell agrees that the $11.00 he paid for those shares is the fair value of the shares that TCL was required by statute to offer him at fair market value in a take-over bid

5. At paragraph 10 of the Supplemental Submission the Defendant is alleged to have engaged in "an attempt to 'flip' the shares to obtain a higher 'payout', while bearing no risk. The submission does not address whether or not flipping of shares is part of the normal course in securities trading, provided it is not done based on some unfair advantage such as insider trading. Here the fact that the Defendant was willing to purchase more shares at what he sees as an undervalue seems more indicative of his confidence in the merits of his challenge to the Claimant's offer price of $11.00 than as showing any lack of bona fides on his part. It seems he genuinely believes the price offered was too low and he is therefore willing to take the risk of buying more shares in the hope that eventually he will be proven right and can sell the shares at a profit. If he is wrong he will bear the loss. It is not clear on what basis the Claimant is alleging that the Defendant is therefore engaging in fishing while bearing no risk.

6. In light of my reasons above my conclusion is that in addition to pleadings and evidence being improperly filed in the Supplemental Submission there is no merit to the contention that the points raised per se reveal lack of bona fides of the Defendant such that he should pay for the Appraisal.

7. Further at paragraphs 11 to 13 of the submission, Counsel for the Claimant unfairly reiterates what was already argued in the Claimant's initial submissions. The Claimant, at this juncture, is unfairly seeking an advantage by having the last word.

8. Accordingly the Application filed on October 3, 2018 is dismissed. There will be no order as to costs on that application as it was not responded to by the Defendant.

Delivered on 5th October 2018

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Eleanor Joye Donaldson-Honeywell

Judge.