**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2017-00316**

**BETWEEN**

**TRINIDAD CEMENT LIMITED**

**Claimant**

**AND**

**DR. ROLLIN CLIFTON BERTRAND**

**Defendant**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Appearances:**

Mr B. ST. Michael Hylton Q.C. leading Mr Ravi Heffes-Doon instructed by Ms Alana Bissessar for the Claimant
Mr Elton Prescott S.C. leading Mr Frederick Gilkes instructed by Mr Yuri Saunders for the Defendant

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**DECISION ON CLAIMANT'S APPLICATION TO CONSOLIDATE PROCEEDINGS**

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## I. Background:

[1] Dr Bertrand, the Defendant, was the CEO and a board member of the Claimant Company from 1998 to 2014, when he resigned from the board immediately preceding his dismissal from the Company as its CEO. The circumstances surrounding the determination of his employment with the Claimant Company is the primary source of contention between the parties. Two actions have arisen therefrom, which, although they carry different causes

of action—one being for, *inter alia*, wrongful dismissal and the other, the instant claim for breach of the Defendant's fiduciary duties— the Claimant argues that the issues significantly overlap and thus, applied to have them consolidated. The Defendant not only objects to this Application, but also seeks summary judgment on the instant Claim.

[2] Prior to Dr Bertrand's resignation and dismissal from the Claimant Company, the Claimant Company was considered to be in financial distress. The cause of such distress is in dispute: Dr Bertrand contends it was as a result of the 2008 world economic recession, whereas certain shareholders of the Claimant Company lost confidence in Dr Bertrand's Directorship. This loss of confidence culminated in the issue of a Requisition made pursuant to **Section 133 of the Companies Act, Chap 81:01** (Companies Act) filed by a group of majority shareholders. The purpose of this Requisition was to call a compulsory shareholders' meeting to replace 6 of the Claimant Company's Directors, inclusive of the Defendant with 7 new Directors. It was anticipated that this Requisition would take effect at the next Annual General Meeting of the Claimant Company.

[3] Dr Bertrand and his Board of Directors sought to resist this Requisition and the attendant compulsory shareholders' meeting and thus, took a decision to retain Dr Claude Denbow SC to institute legal proceedings for injunctive relief against these shareholders. One of those shareholders was named Kamal Ali and thus, Dr Bertrand's action, **CV2014-02882 Trinidad Cement Limited v Kamal Ali & Ors** was entitled the ***"Kamal Ali proceedings."*** The Kamal Ali claim sought, *inter alia*, to restrain the shareholders from holding their Special Compulsory Meeting of Shareholders to discuss the Requisition until determination of the Proceedings. Madame Justice Kangaloo, presided over the matter and dismissed Dr Bertrand's application for injunctive relief on the 18th August, 2014.

[4] Given the calibre of counsel employed by Dr Bertrand and his board, the legal costs attendant to the Kamal Ali proceedings were relatively high. Kangaloo J's ruling, however, was debilitative to Dr Bertrand and his board's opposition to the shareholders and thus, shortly after, they tendered their resignations. Before doing so, a payment of **$2,234,733.00** in legal fees was authorised and made to Dr Denbow SC and Mr. Darrell Allahar.

[5] Several years lapsed before the Claimant Company sought to recover these fees from the Defendant by way of the instant Claim filed on the **25th January, 2017**. It asserts in its pleading that these onerous legal fees were incurred as a result of an illegal and erroneous decision by Dr Bertrand to commence the Kamal Ali proceedings. That decision, it pleaded, was in breach of Dr Bertrand's fiduciary duties as a Director and evidenced, *inter alia*, a failure to act in good faith or to seek the Claimant Company's best interests. Thus, *inter alia*, a declaration to that effect is sought in addition to an order requiring Dr Bertrand to repay the said legal fees.

[6] Within 3 months of the filing of the instant Claim, Dr Bertrand, on the **21st April, 2017**, responded with a Defence in which he maintained, *inter alia*, that the decision to proceed with the Kamal Ali claim was based, in good faith, on legal advice and conducted with approval from his board and thus, not made in his personal capacity. Further, any payment of attendant legal fees required board approval, which was given. Most notably Dr Bertrand alleged that one of the reasons for the board's decision to bring the Kamal Ali proceedings was the failed take-over bid of the Claimant Company by CEMEX.

[7] Dr Bertrand on the **24th May, 2017**, then opted to initiate his own action just over a month after filing his Defence. This second Claim brought against the intituled Claimant herein contended, *inter alia*, that his dismissal as CEO was in breach of his contract and was inspired by improper motive. Such improper motive, he pleaded, arose from the fact that his dismissal was done to facilitate a failed take-over of the Claimant Company by CEMEX. Further, Dr Bertrand averred, that the Claimant Company displayed oppressive conduct towards him by (i) their decision to commence the instant Claim for recovery of legal fees from the Kamal Ali proceedings; and (ii) terminating his employment as the Claimant's CEO.

[8] Given the similar issues raised in both Claims, the Claimant filed the instant **Application of the 30th June, 2017** seeking to consolidate the two Claims on four grounds: (i) that Dr Bertrand's second Claim for wrongful dismissal should really have been brought as a counterclaim to his Defence of the instant Claim; (ii) that there exists common factual and legal issues as follows: that in the wrongful dismissal action it is pleaded that the bringing of the instant Claim against the Defendant amounts to "oppression" as defined

in the Companies Act. Thus, the judgment given in the instant Claim will materially affect this issue in the wrongful dismissal claim. Secondly, it is pleaded in the second Claim that Dr Bertrand's wrongful dismissal was occasioned by the failed CEMEX take-over bid, which was also stated in the instant Claim as the cause of the initiation of the Kamal Ali proceedings; (iii) that there is significant overlap between the subject-matter and chronology of events between both Claims; and (iv) that there is a risk of inconsistent verdicts on identical or similar issues if the two Claims are tried separately.

[9] Dr Bertrand's strategy in rebutting the Claimant's Application was two-pronged: He responded by an affidavit in response on the **4th September, 2017**, and then opted to simultaneously file an **Application for Summary Judgment** on even date. Both documents raised similar arguments, however, it was contended by Dr Bertrand that the **Application for Summary Judgment** ought to be dealt with first as a summary dismissal of the instant Claim would, for obvious reasons, negate the need for consolidation of the two Claims.

[10] The Claimant, however, did not agree with this submission and in my estimation, for valid reasons. It was their view that a preliminary determination of the **Summary Judgment Application** *"…would not avoid the prospect of inconsistent verdicts or the wasteful multiplicity of proceedings"*. This is because such an application still requires a decision on the merits of the claim. Thus, if this Court were to dismiss the instant claim on its merits summarily in circumstances where similar issues arose in the second claim, the concurrent court, hearing the second claim would not be bound by those findings. There remains, therefore, the risk that the second claim may arrive at a different outcome on the same issues that were dismissed summarily in the instant claim.

Rather, adopting the Claimant's approach, the first step would be to decide whether to consolidate the matters. This would require an assessment of whether there indeed, exists similar and/or overlapping issues. If consolidated, the Defendant can then have his Application heard on both claims before the same Court. Thus, the Court would now be asked to assess, once and for all, the merits of the overlapping issues in the consolidated claims. In such a situation, the issues of time and expense are minimised and the inherent dangers of multiplicity of proceedings are avoided. This, to me, on considered reflection,

is the safer and more prudent route to take. In any event, I did not give the parties any directions for the filing of submissions for the summary judgment application and therefore, it is not yet fit for determination in this judgment.

Alternatively, should I find, after my assessment, that there are no overlapping issues which justify consolidation, then the Defendant's Application for Summary Judgment can be heard on the instant matter only, while the second Claim remains in the jurisdiction of the other court.

[11] The affidavit in response to the **Claimant's Application for Consolidation** denied the existence of any significant overlap and asserted that there remains three issues for determination in the instant Claim: (i) whether Dr Bertrand made the decision to oppose the Requisition personally or in conjunction with his board; (ii) whether Dr Bertrand made the decision to pay legal fees personally or in conjunction with his board; and (iii) whether Dr Bertrand is personally liable in law for decisions rendered by his board. These issues share no relation to those inherent in the wrongful dismissal action and as a result, there was no need for consolidation.

[12] The summary judgment application contended that the instant Claim had no realistic prospect of success because all decisions taken in relation to the Kamal Ali proceedings were not done by Dr Bertrand personally but with board approval and moreover, was based on legal advice.

## II. Law & Analysis:

[13] Given my analysis above at paras 9 & 10 *ante*, this Court will now proceed to give its decision on the **Claimant's Application to Consolidate the two Claims**.

**The Claimant's Application**:

[14] The principles against multiplicity of proceedings are contained both in statute and case law. Statutorily, we look to **Section 20 of the Supreme Court of Judicature Act, Chap 4:01**, which states:

> *"The High Court…in the exercise of the jurisdiction vested in them by this Act and the Constitution shall in every cause or matter pending before the*

*Court grant, either absolutely or on such terms and conditions as to the Court seems just, all such remedies whatsoever…so that as far as possible, all matters in controversy between the parties may be completely and finally determined,* ***and all multiplicity of legal proceedings concerning any of those matters avoided.****"*

[15] At common law, we are guided by the doctrine of *res judicata*, which effectively seeks to prevent an abuse of process by duplicity of proceedings. Such duplicity can be prevented by way of: (i) the doctrine of cause of action estoppel, which seeks to prevent the same cause of action being litigated separately; and (ii) the doctrine of issue estoppel, which seeks to prevent the re-litigation of the same issue in separate matters with a different cause of action.

**Halsbury's Laws of England**[1] explains the differences succinctly:

*"The doctrine of res judicata provides that, where a decision is pronounced by a judicial or other tribunal with jurisdiction over a particular matter,* ***that same matter cannot be reopened by parties bound by the decision, save on appeal****. It is most closely associated with the legal principle of 'cause of action estoppel', which operates* ***to prevent a cause of action being raised or challenged by either party in subsequent proceedings where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties (or their privies), and having involved the same subject matter****. However, res judicata also embraces* ***'issue estoppel'****, a term that is used to describe a defence which may arise where* ***a particular issue forming a necessary ingredient in a cause of action has been litigated and decided, but, in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue****. For this reason, res judicata has been described as a portmanteau term which is used to*

[1] Civil Procedure Vol 12A- Finality of Judgments and of Litigation (2015) at para 1603

*describe a number of different legal principles with different juridical origins upon which the courts have endeavoured to impose some coherent scheme only in relatively recent times."*

Somervell LJ stated in **Greenhalgh v Mallard [1947] 2 All ER 255 at 257** that issue estoppel may cover—

***"issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."***

[16] It is undisputed that the cause of action in the two Claims are different— recovery of legal fees paid and breach of director's duties in the instant Claim as opposed to wrongful dismissal in the latter Claim. However, the Claimant in its Application contends that similar issues are to be determined in both. Thus, they seek to consolidate the proceedings in pursuance of the doctrine of issue estoppel.

[17] Further clarity on the scope and operation of the issue estoppel doctrine is given at paragraph 1623 of **Halsbury's** *ibid*:

*"**The conditions for the application of issue estoppel require a final decision on the issue by a court of competent jurisdiction and that:***

***i. the issue raised in both proceedings is the same; and***

***ii. the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.***

*Deciding if the issue is the 'same' in both cases will depend upon whether the court takes a narrow or a wide view of the extent of the issue determined in the earlier case.* ***It is now established that the question whether the raising of an issue in subsequent proceedings amounts to an abuse of process is one to be decided in a broad, merits based way in the light of all the circumstances****. Where a matter is held not to fall within the scope of issue estoppel, it may nonetheless be struck out*

*as vexatious or frivolous; to re-litigate a question which in substance has already been determined is an abuse of process…"*

The parties in the wrongful dismissal Claim or their privies are the same as in the instant Claim and thus, the element at (ii) is satisfied. It therefore falls for determination whether, as the Claimant submits, the same issues are raised in both proceedings adapting a *"broad merit-based approach".*

[18] In the Statement of Case filed in the wrongful dismissal Claim a copy of which is attached as **KMB1** to the affidavit of Ms Kathryna Baptiste filed on the 30th June, 2017 in support of the Claimant's Application, Dr Bertrand, the Claimant in that Claim, stated that his dismissal as CEO was in breach of his employment contract and therefore, amounted to a wrongful dismissal. The particulars of the breach of contract, however, involved allegations of failure to follow the proper process for dismissal. However, he pleaded that the decision to dismiss him was "*unreasonable, perverse and oppressive*" because it was based on a ***"non-existent ground and tainted with improper motives, as the 1st Defendant (TCL) sought to remove him as a main opponent to the removal of its 20% shareholding limit in order to facilitate an eventual take-over bid by Cemex,*** *…"*[2]

Dr Bertrand then dedicated several subsequent paragraphs particularising the events leading up to the failed take-over bid by CEMEX. It is therefore evident to me that a determination on the issue of improper motive and the failed take-over bid is central to the outcome of the wrongful dismissal claim.

[19] Similarly, the underpinning elements of the instant claim is that Dr Bertrand breached his director duties in instituting the Kamal Ali proceedings because, *inter alia*, the decision was made for his own self-interest and not that of the company. The particular allegations are made at paragraphs 38 – 40 of the Statement of Case herein. In response, Dr Bertrand denied the allegations in those paragraphs and pleaded that one of the reasons that influenced the decision to initiate the Kamal Ali proceedings was the ***"earlier efforts by CEMEX of a failed take-over bid of the Claimant and the group of companies."***[3] Thus,

[2] See paras 17 & 18
[3] See para 22 (i) (a) of the Defence

a finding on the issue of the CEMEX failed take-over bid is required in both proceedings and accordingly, it can be said that the same issue arises.

[20] Additionally, at paragraph 24 of the wrongful dismissal Statement of Case, Dr Bertrand particularized what he viewed as *oppressive* behaviour by the intituled Claimant. One of those particulars contained at (vi) included the Claimant's decision to sue Dr Bertrand in his personal capacity to recover the legal fees he authorised and paid out in the sum of $2,324,733.00, which is the cause of action and the main relief sought in the instant Claim. Thus, again, I find that the judgment in the instant Claim would significantly impact any finding of whether there was indeed oppressive behaviour in the wrongful dismissal Claim.

Prima facie, therefore, it appears that the doctrine of issue estoppel ought to be engaged. The Court, however, must first apply the *"broad merit-based approach"* prior to deciding on the Claimant's Application. Operation of this approach is best explained by the following common law examples:

[21] In **Johnson v Gore Wood & Co**[4], the House of Lords looked at the doctrine of issue estoppel and gave some illuminating dicta thereon. Thus, it is necessary to set out the essential facts and findings of the Court as follows:

In 1988, J, acting on behalf of his company, instructed the defendant, a firm of solicitors, to serve a notice exercising the company's option to purchase certain land. The solicitors duly served the notice, but the vendor disputed the validity of the notice. J's company, through its solicitors, issued proceedings against the vendor for specific performance. Although the court eventually granted the order, it was not until April 1992 that the land was conveyed to the company. By that time, the company had suffered substantial loss because of, *inter alia*, the cost of the proceedings.

Prior to the conveyance of the land, J's company in 1991, brought separate proceedings for professional negligence against the solicitors. J also informed the solicitors that he intended to bring a personal claim against them seeking similar reliefs. However, due in part to his limited financial resources, J had brought no such claim by December, 1992

[4] [2001] 1 All ER 481

when his company's proceedings for negligence against the solicitors were settled on payment of a substantial part of the sum claimed.

In 1993, after obtaining full legal aid, J finally brought his personal action against the solicitors for breach of duty, which sought several reliefs in addition to negligence for: (i) the manner in which they had exercised the option; and (ii) the advice given to him personally on the likely outcome and duration of the proceedings against the vendor.

In December 1997, the solicitors applied to strike out J's personal action as an abuse of the process of the court, contending that the action could and should have been brought at the same time as the company's first action. On the hearing of that application, the judge held that the solicitors were estopped by convention from contending that the action was an abuse.

On the solicitors' appeal, the Court of Appeal reversed the judge's finding on estoppel by convention and concluded that the proceedings were an abuse of process, holding that J could have brought his action at the same time as the company's proceedings and that he should therefore, have done so. J then appealed to the House of Lords.

[22] The House of Lords reversed the Court of Appeal's decision primarily on the basis that, in the House's opinion, they took too much of a mechanical and narrow view of the doctrine of issue estoppel and failed to conduct the required broad merit-based assessment of whether J, by bringing the second personal action, was misusing or abusing the processes of the Court. In particular, the House viewed that the question to be asked is whether in all the circumstances J's conduct was an abuse rather than narrowly looking at the personal claim as being duplicitous. Their ruling was as follows:

> *"Although the bringing of a claim or the raising of a defence in later proceedings might, without more, amount to abuse if the court was satisfied that the claim or defence should have been raised in earlier proceedings,* ***it was wrong to hold that a matter should have been raised in such proceedings merely because it could have been****. A conclusion to the contrary would involve the adoption of too dogmatic an approach to what should be* ***a broad, merits based judgment which took account of***

***the public and private interests involved and the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party was misusing or abusing the process of the court by seeking to raise before it an issue which could have been raised before****.*

*It was not possible to formulate any hard and fast rule to determine whether, on given facts, abuse was to be found or not. Thus, while lack of funds would not ordinarily excuse a failure to raise in earlier proceedings an issue which could and should have been raised then, it was not necessarily irrelevant, particularly if it appeared that the lack of funds had been caused by the party against whom it was sought to claim. While the result might often be the same,* ***it was preferable to ask whether in all the circumstances a party's conduct was an abuse than to ask whether the conduct was an abuse and then, if it was, to ask whether the abuse was excused or justified by special circumstances****.*

*In the instant case, the Court of Appeal had applied* ***too mechanical an approach, giving little or no weight to the factors which had led J to act as he had done, and failing to weigh the overall balance of justice****. His action was not an abuse of process and, in any event, it would be unconscionable in the circumstances to allow the solicitors to seek to strike out the claim. It followed that J's appeal would be allowed."*

Thus, having concluded at paragraphs 16 – 19 *ante* that the same issues arise for determination in both Claims as pointed out on the Claimant's Application, the House of Lords now requires us to take a broad merit-based approach and look at all the circumstances to determine whether the second claim for wrongful dismissal is an abuse of process as per the doctrine of issue estoppel. The mere fact that Dr Bertrand could and should have included the second claim for wrongful dismissal as a counterclaim to the instant proceedings is not, by itself, a sufficient reason to consolidate the proceedings.

[23] The Court of Appeal in **House of Spring Gardens Ltd v Waite [1990] 2 All ER 990**, adopted a similar approach to the issue of issue estoppel. In that case, the plaintiffs sued

three defendants in England to enforce a judgment which they had obtained against those defendants in Ireland. The defendants pleaded in defence that the Irish judgment had been obtained by fraud. That was a contention which two of the defendants, but not the third (a Mr McLeod), had raised in the Irish proceedings to set aside the judgment, but the allegation had been dismissed by Egan J.

Summary judgment was given against the three defendants in England but Mr McLeod appealed against that judgment. The Court of Appeal held that Mr McLeod, like the other defendants, was estopped from mounting what was in effect a collateral challenge to the decision of Egan J. It also held that Mr McLeod's defence was an abuse of process. Stuart-Smith LJ said:

> ***"The question is whether it would be in the interests of justice and public policy to allow the issue of fraud to be litigated again in this court****, it having been tried and determined by Egan J in Ireland. In my judgment it would not; indeed, I think it would be a travesty of justice. Not only would the plaintiffs be required to re-litigate matters which have twice been extensively investigated and decided in their favour in the natural forum,* ***but it would run the risk of inconsistent verdicts being reached, not only as between the English and Irish courts, but as between the defendants themselves.*** *The Waites have not appealed Sir Peter Pain's judgment, and they were quite right not to do so. The plaintiffs will no doubt proceed to execute their judgment against them. What could be a greater source of injustice, if in years to come, when the issue is finally decided, a different decision is reached in Mr Macleod's case?* ***Public policy requires that there should be an end to litigation and that a litigant should not be vexed more than once in the same cause."***

Thus, the Court of Appeal asks us to also consider the interests of public policy, i.e. that there should be finality in litigation. It requires me to ask whether the re-litigation of the issues identified above in the wrongful dismissal Claim would serve the interests of justice. Finally, it asks this Court to account for the fact that, should it choose to dismiss

the Claimant's Application, there remains a significant risk that inconsistent verdicts could be rendered on the same issues.

[24] However, the dicta from the case of **Arnold v National Westminster Bank plc [1991] 3 All ER 41**, which also dealt with issue estoppel, saw the House of Lords rule that there are indeed exceptions to the issue estoppel doctrine.

In **Arnold**, tenants invited the court to construe the terms of a rent review provision in the sub-underlease under which they held premises. The provision had been construed in a sense adverse to them in earlier proceedings before Walton J, but they had been unable to challenge his decision on appeal. Later cases threw doubt on his construction. The question was whether the rules governing issue estoppel were subject to exceptions which would permit the matter to be reopened. The House held that they were. Lord Keith of Kinkel said:

> *"In my opinion your Lordships should affirm it to be the law that there may be an exception to issue estoppel in the special circumstance* ***that there has become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material which could not by reasonable diligence have been adduced in those proceedings****. One of the purposes of estoppel being to work justice between the parties, it is open to courts to recognise that in special circumstances inflexible application of it may have the opposite result, as was observed by Lord Upjohn in the passage…from his speech in the Carl-Zeiss case [1966]..."*

In the passage referred to, Lord Upjohn had said:

> *"All estoppels are not odious* ***but must be applied so as to work justice and not injustice, and I think the principle of issue estoppel must be applied to the circumstances of the subsequent case with this overriding consideration in mind."***

Guided by the dicta above, I do not see any relevant exceptions to the issue-estoppel doctrine that would apply to the case at bar. Indeed, no such exception has been raised by the Defendant in his submissions. Further, when I take a broad merit-based approach and consider the circumstances of the two Claims, I do not find any factors that would persuade me to allow the two Claims to be heard and decided separately.

[25] Unlike in **Gore** *supra*, the reasons for not including the wrongful dismissal claim as a counterclaim in the instant proceedings were not due to lack of finances or for any other reason save for the argument that, in the Defendant's opinion, there did not appear to be any overlapping issues. This contention, however, has already been found to be meritless based on the analysis and findings at paragraphs 16 – 19 *ante*. In fact, I do not see any benefit to the Defendant's case nor to the interests of justice in opposing the Claimant's Application. To my mind, the public policy interests for finality in proceedings and the benefits of greater efficiency, speed and saving costs all compel me to grant the Claimant's Application.

[26] Further, I was persuaded by Queen's Counsel's oral submissions particularly with regard to the chronology of events that lead to the filing of the Defendant's summary judgment application.

The instant Claim was filed since the 25th January, 2017. The Defendant filed its Defence a few months later on the 21st April, 2017. At this point, it should have been patently clear to Dr Bertrand that it had enough facts to file his summary judgment application on the grounds that he did. Instead, the matter proceeded to a case management conference (CMC) on the 13th June, 2017, where the Claimant duly gave notice of its proposed Application for consolidation. As a result, directions were given for its filing and service along with the filing of an affidavit in response, submissions, submissions in reply, if necessary, as well as the preservation of the first CMC, which would deal with the Application. At no time was it communicated to the Court that the Defendant intended to file an application for summary judgment.

As directed, the Claimant filed its instant Application on the 30th June, 2017. However, it was not until the 4th September, 2017 that the Defendant decided to file both an affidavit in response and the summary judgment Application.

[27] Based on this recount of events, it seems to me that the decision to file the summary judgment Application only came about after the Defendant considered the contents of the Claimant's Application and affidavit in support of consolidation of the proceedings. Thus, to my mind, the summary judgment application reeks of afterthought and is being used not in the manner for which it is prescribed, i.e. to prevent the continuation of meritless Claims, but rather, as a means to oppose the Claimant's Application.

In the circumstances, it is this Court's considered opinion that the Claimant's Application to consolidate the two Claims pursuant to **Part 26 (1) (a), (c) and (i) of the CPR 1998** be granted.

**Costs:**

[28] It is clear that the Claimant is the undisputed winner of its Application. Further, I find no justification for departing from the general rule on entitlement that the unsuccessful party must pay the costs of the successful party (CPR Part 66.6(1)). In the circumstances, I award the Claimant its costs on its Application for Consolidation, which will fall for assessment pursuant to **CPR Part 67.11**, in default of agreement.

## III. Disposition:

**[30] Accordingly, in light of the foregoing analyses, the order of the Court is follows:**

**ORDER:**

1. **Claim No. CV2017–01902 between Dr Rollin Clifton Bertrand v Trinidad Cement Limited, Wilfred Espinet, Alison Lewis, Nigel Edwards, Francisco Aguilera Mendoza, Alejandro Alberto Ramirez Cantu, Jean Michel Allard, Wayne Yip Choy, Christopher Dehring, Michael Glenn Hamel Smith and Carlos Alberto Palero Castro be and is hereby consolidated and shall be heard together with the instant Claim (CV2017-00316).**

2. **The Defendant shall pay to the Claimant its costs of the Application for Consolidation filed on the 30th June, 2017 to be assessed in accordance with CPR 1998 Part 67.11, in default of agreement.**

3. **The Consolidated Claims be and are hereby scheduled for a Case Management Conference on the 17th July, 2018 at 2:00 pm in courtroom POS 22.**

**Dated this 29th day of May, 2018**

**_____**
**Robin N. Mohammed**
**Judge**