TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A No. 2839 of 2002

BETWEEN

MORA VEN HOLDINGS LIMITED

MORA OIL VENTURES LIMITED

GEORGE NICHOLAS

Plaintiffs

AND

KRISHNA PERSAD & ASSOCIATES LIMITED

KRISHNA PERSAD

Defendants

Before the Honourable Mr. Justice Ventour

Appearances:

Mr. Israel Khan SC and Mr. Keith Scotland
instructed by Mr. Daniel Khan for the Plaintiffs.

Mr. Justin Phelps instructed by Messrs Alves,
Clarke & Co. for the Defendants.

DECISION

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INTRODUCTION

(1) Mora Ven Holdings Limited (the 1st named Plaintiff) is a publicly owned company ("MVHL") duly incorporated on the 30th day of April, 1997. MVHL is duly registered with the Securities Exchange Commission of Trinidad and Tobago pursuant to the provisions of the Securities Industries Act 1995.

(2) Mora Oil Ventures Limited ("MOVL") the 2nd named Plaintiff is a privately owned Company duly incorporated on the 6th day of June, 1994.

(3) The shareholding of MOVL at all material times has been regulated by the terms of an Acquisition and Shareholders Agreement ("ASA") dated the 30th day of July, 1997 and made among the 1st and 2nd named Plaintiffs and Vista Oil Limited.

(4) MVHL was at all material times the majority shareholder of MOVL and Vista Oil Limited was the minority shareholder of MOVL until the 26th day of September, 2000.

(5) The third named Plaintiff became a shareholder of MVHL and a director of MVHL and MOVL from about the month of May 2002.

(6) The 1st named Defendant Krishna Persad & Associated Ltd. was at all material times a minority shareholder of MVHL and became a shareholder of MOVL by virtue of its acquisition of the shareholding of Vista Oil Limited in MOVL effective the 26th day of September, 2000.

(7) The 2nd named Defendant is and was at all material times a minority shareholder and a director of MVHL. He is and was at all material times also a shareholder and/or Chief Executive Officer of the 1st named Defendant.

(8) The 2nd named Defendant was at all material times the 1st named Defendant's nominee Director on the Board of Directors of the 2nd named Plaintiff pursuant to the terms and conditions of the A.S.A.

(9) By an Exploration and Production Licence dated the 30th day of December, 1994 and made between the Government of the Republic of Trinidad and Tobago, the Minister of Energy and Energy Industries and the 2nd named Plaintiff, the 2nd named Plaintiff was granted an exclusive licence to search for bore and to get petroleum in and under the submarine area comprising an area of approximately 2036.88 hectares (hereinafter referred to as "the Mora Field".)

(10) By an operating Agreement made on the 30th day of December, 1994 between MOVL and the 1st named Defendant (hereinafter referred to as KPA), MOVL agreed to appoint KPA as the Operator of the Licence in accordance with the terms and conditions of the said Licence and the Operating Agreement.

(11) In the years that followed irreconcilable differences arose between the Plaintiffs and the Defendants with specific reference to the operation of the Mora Field and matters incidental thereto.

(12) As a consequence of those differences the Plaintiffs caused to be issued against the Defendants on the 3rd day of September, 2002 an Originating Summons claiming a number of relief pursuant to section 242(3) of the Companies Act 1995.

(13) The following affidavits were filed by the Plaintiffs in support of the Originating Summons filed on the 3rd day of September, 2002:

(i) Affidavit of Henry Chase the General Manager of MOVL filed on the 16th day of January, 2003;

(ii) Supplement affidavit of Henry Chase filed on the 17th day of January, 2003;

(iii) Affidavit of Keith Cox, Mechanic Supervisor employed with MVHL from the 20th February, 1996 and continued until the 13th September, 2002;

(iv) Affidavit of Shirlon Bernard, the Captain of the tug known as the "Corridor 1" owned by the Caribbean

Drydock and Engineering Services Ltd. filed on the 28th January, 2003;

(v) Affidavit of Peter Gould-Davies the snubbing Manager employed in the Workover Department of MOVL filed on the 16th January, 2003;

(vi) Supplemental affidavit of Peter Gould-Davies filed on the 28th January, 2003;

(vii) Affidavit of Faris Al-Rawi, Attorney at Law for the Plaintiffs filed on the 27th August, 2003;

(viii) Affidavit of George Nicholas, Chairman of the Board of Directors of MVHL and MOVL filed on the 22nd March, 2004;

(ix) Affidavit of Francis Inniss, Managing Director and Principal Geologist of I & G Geosciences and Reservoir Engineering Consultants Limited filed on the 22nd March, 2004;

(x) Affidavit of Kirk La Borde, Production Manager employed by MOVL and Director of MVHL filed on the 22nd March, 2004;

(xi) Affidavit of Roshan Baboolal, Chartered Accountant and Secretary to MVHL as of the 17th July, 2003 filed on the 22nd March, 2004;

(xii) Supplemental affidavit of Roshan Baboolal filed on the 26th April, 2004; and

(xiii) Affidavit of George Nicholas filed on the 28th May, 2004.

(14) The following affidavits were filed on behalf of the Defendants in opposition to the originating Summons:

(i) Affidavit of Debra Olliviere, Litigation Clerk, employed in the firm of Phelps & Co. (Attorneys at Law for the

Defendants herein) filed on the 18th December, 2002;

(ii) Affidavit of Dr. Krishna Persad, Geologist and Director of the 1st named Defendant filed on the 18th December, 2002;

(iii) Affidavit of Dr. Krishna Persad, Chairman of the 1st named Defendant filed on the 27th January, 2003;

(iv) Affidavit of Dr. Krishna Persad, Chairman of the 1st named Defendant, filed on the 30th January, 2003;

(v) Affidavit of Nicole De Verteuil-Milne, Attorney at Law employed with Phelps & Co. filed on the 3rd June, 2003;

(vi) Affidavit of Dr. Krishna Persad, Chairman of the 1st named Defendant filed on the 29th August, 2003;

(vii) Supplemental affidavit of Dr. Krishna Persad, Director of the 1st named Defendant filed on the 11th December, 2003; and

(viii) Affidavit of Nicole De Verteuil-Milne, Attorney at Law filed on the 11th December, 2003.

(15) Since the filing of the Originating Summons this matter came up before several Judges and several orders and directions were made in preparing the matter for trial.

(16) The said Summons first came before this Court on the 1st July, 2004 when directions were given for the filing of further affidavits and the matter was adjourned for Case Management Conference.

(17) The matter next came before this Court on the 7th October, 2004 and having carefully considered the magnitude of the Plaintiffs complaint and the Defendants response to those complaints this Court took the view that the issues for the Court's determination will be easily identified if the parties were made to tell their respective stories by way of pleadings.

The Court gives Directions

(18) Accordingly with the consent of the parties the following directions were given on the 7th October, 2004:

(i) Originating Summons dated the 3rd September, 2002 to be treated as a Writ of Summons;

(ii) The Plaintiffs to file Statement of Claim on or before the 18th October, 2004;

(iii) A Defence and Counterclaim if any to be filed on or before the 3rd November, 2004;

(iv) Plaintiffs to file a Reply and Defence to Counterclaim if necessary on or before the 17th November, 2004;

(v) Affidavits filed in this matter to stand as evidence in Chief for the trial subject to a Notice of objection on any hearsay evidence;

(vi) Notice of objection to be filed and served by both parties on or before the 21st October, 2004;

(vii) Each party to respond to the Notice by the 26th October, 2004 indicating agreement, if any, on objections raised;

(viii) Each party to file and serve written submissions on those matters not agreed to by the 10th November, 2004;

(ix) Each party to file and serve written submissions on those matters not agreed to by the 10th November, 2004;

(x) Court will give its decision on the 22nd November, 2004;

(xi) Notice of cross-examination to be filed and served on or before the 24th November, 2004;

(xii) Statements of facts and issues to be filed by both parties

on or before the 30th November, 2004;

(xiii) List of witnesses to be filed on or before 30th November, 2004;

(xiv) List of all documents to be filed on or before 30th November, 2004;

(xv) Inspection of documents to take place on or before the 7th December, 2004;

(xvi) Liberty to apply.

The Statement of Claim

(19) On the 20th November, 2004 with the consent of the parties some adjustments were made to the directions given by the Court on the 7th October, 2004. The Plaintiffs, however, did in fact file their Statement of Case as directed on the 18th October, 2004. The Defence and Counterclaim was filed by the Defendants on the 29th December, 2004 and on the 16th February, 2005 the Reply and Defence to the Counterclaim was filed by the Plaintiffs.

(20) Subsequent to the close of pleadings several applications were made of an interlocutory nature by both parties. In particular, the Plaintiffs sought and obtained leave of the Court to amend the Writ of Summons (Originating Summons) and the Statement of Case on the 27th April, 2005. On the 25th May, 2005 leave was again granted to the Plaintiffs to re-amend their Statement of Claim.

(21) The re-amended Statement of Claim was filed on the 25th May, 2005. In the meanwhile the Defendants, although they had been given leave to amend their Defence and Counterclaim on the 27th April, 2005, they declined to do so.

(22) In the re-amended Statement of Claim the Plaintiffs contended that at all material times during KPA's operatorship of the Licence and the Mora Platform and the 2nd Defendant's stewardship of MVHL and/or MOVL, the Defendants

abused and/or misused their respective positions as shareholders and/or director and/or as Chief Executive Officer of MVHL and MOVL and/or as Operator of the Mora Platform

(a) to act and/or carry on and/or conduct the business and/or affairs of MVHL and/or MOVL and/or

(b) exercised their powers as such, in a manner that was oppressive and/or unfairly prejudicial to and/or unfairly disregarded the respective interest of the Plaintiffs/Complainants as Shareholders and/or director of

(c) MVHL and/or MOVL, and also in relation to MVHL the rights and/or interests of the corporation itself and/or its shareholders.

(23) The Plaintiffs gave very extensive particulars of the alleged wrongdoing in paragraph 10 of the re-amended Statement of Claim in support of the alleged violation of section 242 of the Companies Act.

The Plaintiffs seek relief

(24) Based on the case as pleaded the Plaintiffs seek the following relief as against the Defendants:

(i) A declaration that the Defendants were acting and/or carrying on and/or conducting the business and/or affairs of MVHL and/or MOVL and/or exercising their powers in a manner which was oppressive and/or unfairly prejudicial to and/or that unfairly disregarded the interests of the Plaintiffs/Complainants;

(ii) A declaration that the second Defendant breached his fiduciary duties to MVHL and/or MOVL by permitting and/or authorizing KPA to act and/or carry on and/or conduct the operations of MOVL and/or to exercise its powers in a manner that was oppressive and/or unfairly disregarded the interests of the Plaintiffs/Complainants;

(iii) An order requiring the Defendants to produce to this Honourable Court in such form as it thinks fit an accounting of all revenue generated by and/or all assets and/or all monies belonging to MVHL and/or MOVL and, the expenditure and/or application of such revenue and/or monies and/or the application and/or use and/or disposal of assets, as the case may be during KPA's operatorship of the Mora Platform and during the second Defendant's stewardship of MVHL and/or MOVL;

(iv) An order that the Defendants do pay to MVHL and/or MOVL such sums as may be found due upon the taking of the said account together with interests thereupon pursuant to the Supreme Court of Judicature Act, Chapter 4:01 of the Laws of Trinidad and Tobago;

(v) An order directing the Defendants to produce and deliver to the Plaintiffs/Complainants within a specified time frame such assets and/or documents and/or data determined at trial belong to MVHL and/or MOVL but still in the lawful possession of the Defendants;

(vi) An order that the Defendants, whether jointly or severally, hold 7.5% interest in the Point Liguore Block as trustee and/ or agent and/or in trust for and on behalf of MVHL;

(vii) A declaration that the Operating Agreement dated the 30th day of December, 1994 made between KPA and MOVL is and has been terminated by reason of KPA's abandonment of the Mora Platform and its obligations under the said Operating Agreement on or about the 27th day of September, 2002;

(viii) Further and/or in the alternative, an order setting aside the Operating Agreement dated the 30th day of December, 1994 made between KPA and MOVL;

(ix) An order to regulate the affairs of MOVL by varying and/or amending the Acquisition and Shareholders Agreement

between MVHL, MOVL and KPA in order to prevent the unreasonable use of same by KPA and/or any other minority shareholder;

(x) An order directing the Defendants to offer for sale and sell its shares in MVHL and/or MOVL;

(xi) An injunction restraining the Defendants from seeking to acquire and, if required, from disposing of and/or dealing with MOVL's right and/or interest to 50% in the Northern Basin Consortium Licence issued by the Government of Trinidad and Tobago in respect of Mora Oilfield;

(xii) Such further and/or other relief as this Honourable Court thinks just and appropriate;

(xiiii) Costs certified fit for senior and junior Counsel.

The Defence and Counterclaim

(25) In their Defence and Counterclaim filed on the 29th December, 2004 the Defendants denied each and every allegation made by the Plaintiffs, particularly in paragraph 10 of the Statement of Claim as alleges that the Defendants or either of them abused and/or misused their respective positions as shareholders and/or director and/or chief executive officer of the first and/or second Plaintiffs and/or as Operator of the Mora Platform.

(26) In their Counterclaim, the Defendants' case, like that of the Plaintiffs, is grounded on oppression pursuant to section 242 of the Companies Act, Chapter 88:01 and the common law dealing with oppression of a minority within the corporate structure of MOVL and/or MVHL.

(27) Further in their Counterclaim the Defendants have accused the Plaintiffs of the following acts of wrongdoing:

(a) deliberately and persistently breaching the terms of the Acquisition and Shareholders Agreement (ASA) and the Operating Agreement (OA);

(b) wrongfully and deliberately excluding the second Defendant from the Board Meetings of MOVL;

(c) wrongful and physical removal of KPA as Operator by force of arms and without recourse of law:

(d) failed to provide documents and information;

(e) mismanagement of operations;

(f) dilution of the Defendants' shareholding by the First and Third Plaintiffs in MOVL in breach of the provisions of the ASA.

(28) The Defendants contend more specifically in paragraph 28 of their Counterclaim that the acts of the Plaintiffs or any one or more of them and/or the manner in which the business or affairs of the First and/or the Second Plaintiffs and/or the exercise of the powers of the directors of the First and/or the Second Plaintiffs are or have been carried out in a manner that is oppressive and/or unfairly prejudicial to and/or unfairly disregards the interests of and/or the reasonable expectations of the 1st Defendant as shareholder of the 1st Plaintiff and/or director and/or officer of the 2nd Plaintiff in consequence whereof the Defendants have suffered loss damage and/or detriment.

The Defendants seek certain relief

(29) As a consequence of the Plaintiffs alleged violation of section 242 of the Companies Act the Defendants seek the following relief:

(i) An order that the Plaintiffs do within 90 days purchase the Defendants' entire shareholding in MOVL and MVHL at the price of TT$5.30 per share;

(ii) Alternatively, an order that the Defendants do within 90 days purchase the Plaintiffs entire shareholding in MOVL and MVHL at the price of TT$5.30 per share;

In the still further alternative:

(iii) an order that:

(a) an independent operator be appointed or

(b) an order directing that the First Defendant be reinstated as Operator in accordance with the terms of the Operating Agreement dated the 30th December, 1994; and

(c) an Operating Committee be established and installed pursuant to the Operating Agreement dated 30th December, 1994;

(iv) an order that the Plaintiffs do forthwith give the Defendants access to the corporate records of MOVL and MVHL as well as any such records in the custody power or control of the third Plaintiff;

(v) an order restraining the Plaintiffs whether by themselves their servants and and/or agents and howsoever otherwise from disposing of any assets of MOVL and/or MVHL that reduces the value of the Defendants' shareholding otherwise than in accordance with the provisions of the Acquisition and shareholders Agreement;

(vi) an order for damages on the basis of the profits and gains which would have been made if the First Defendant had remained as Operator;

(vii) an order that the directors of the First Plaintiff be removed and that they be replaced by suitably qualified and experience personnel in the oil industry and particularly in offshore operations;

(viii) an order restraining the Plaintiffs whether by themselves, their servants and/or agents or howsoever otherwise from issuing shares in the

first and/or second Plaintiffs without the consent and approval of the first Defendant;

(ix) an order restraining the first and second Plaintiffs whether by themselves, their servants and/or agents or howsoever otherwise from holding any meetings of the Board of Directors of the first and/or second Plaintiffs without convening same in accordance with the Companies Act, Chapter 88:01 and/or the provisions of the Acquisition and shareholders Agreement and the By Laws of the first and second Plaintiffs;

(x) an order restraining the second and third Plaintiffs whether by themselves, their servants and/or agents or otherwise howsoever from excluding the second Defendant whether by himself or by proxy from Board meetings of the second Plaintiff;

(xi) an order directing the second Plaintiff to call an annual general meeting of its shareholders in such manner and within such time as the Court may direct;

(xii) an order that the first Plaintiff do file all necessary and proper and relevant documentation to satisfy the statutory requirements of the Trinidad and Tobago Stock Exchange and the Securities and Exchange Commission in such manner and within such time as the Court may direct;

(xiii) an order that the second Plaintiff do submit in accordance with the provisions of the Acquisition and Shareholders Agreement dated the 30th July, 1997 all Financial Statements and reports to the shareholders and directors including but not limited to:

(a) copies of plans and budgets relating to the Mora Project;

(b) copies of all reports tendered by the

second Plaintiff or its Operator in respect of the Mora Project which could reasonably be expected to be of significance to the second Plaintiff or its shareholders;

(c) monthly cash flow statements on a well-by-well basis setting forth in reasonable detail all production, revenue and expenses information;

(d) copies of quarterly unaudited and audited annual financial statements more particularly referenced in section 9.8 of the said Acquisition and Shareholders Agreement;

(e) accounting information regarding the use of all financing provided by the Second Plaintiff; and

(f) information concerning any developments in respect of the Mora Project of an extraordinary nature, either positive or negative, which might reasonably be expected to affect the funding obligations, liability, performance or other similar aspects of the Mora Project or the Shareholders' interests therein.

(xiv) an order directing the Plaintiffs to deliver up to the Defendants in accordance with the provisions of the Operating Agreement dated the 30th December, 1994 any or all of the following documents and/or information relevant to the period after 11th October, 2002 and continuing:

(a) Copies of all electrical logs or surveys;
(b) Daily drilling progress reports;
(c) Copies of all drill stem tests and core analysis reports;
(d) Copies of the plugging reports;
(e) Copies of the final geological and geophysical maps and

reports;

(f) Engineering studies, developmental Schedule and annual progress reports on developmental projects;

(g) Field and well performance reports, Including reservoir studies and reserve estimates;

(h) Copies of all reports relating to Mora operations furnished by the Second Plaintiff to the Government;

(i) Any other reports and/or data required in the course of the Mora Operations.

(xv) an order that Messrs. Ernest & Young being an independent third party be appointed to act as Company Secretary of both the first and second Plaintiffs;

(xvi) an order restraining the Plaintiffs and each and every one of them whether by themselves their servants and/or agents or otherwise howsoever from
further publishing or causing to be published any article and/or advertisement with respect to the subject and other related proceedings and matters concerning the business and affairs of the first and/or second Plaintiffs without the prior approval of the Court;

(xvii) an order compensating the first Defendant for breach of the Operating Agreement dated the 30th December, 1994 by the second Plaintiff and/or its affiliates the First Plaintiff, acting by themselves, their Servants and/or Agents or howsoever otherwise their “alter-ego” in the person of the Third Plaintiff;

(xviii) an order compensating the Second Defendant for breach of the undated contract made in or about January 2001 with the Second Plaintiff;

(xix) an order that the First Defendant be indemnified under Article 8.1(h) of Exhibit “A” Accounting Procedure to the Operating Agreement in full in respect of all legal costs and expenses incurred by it in these and other related proceedings;

(xx) Interest on all sums ordered to be paid at such rate and for such period as to the Court may seem just;

(xxi) Such further and/or other relief as to the Court may seem just; and

(xxii) an order that the second Plaintiff do pay to the first Defendant all legal costs and expenses paid by it to date and continuing.

Reply to the Defence and Defence to Counterclaim

(30) The Reply to the Defendants' Defence and the Defence to the Counterclaim was filed by the Plaintiffs on the 16th February, 2005; the Plaintiffs contend that the Defendants' Defence disclosed no reasonable defence to the Plaintiffs' claim and without prejudice to that plea they joined issue with the Defendants' Defence. With respect to the Counterclaim the Plaintiffs denied each and every allegation made therein.

The Plaintiffs identify the issues

(31) Counsel for the Plaintiffs have taken the liberty to identify from the pleadings the issues for the Court's determination. For the Plaintiffs the issues are as follows:-

(a) In respect of the Operating Agreement ("OA") dated the 30th December, 1994, did the 2nd Defendant as Operator, conduct the OA in a manner that disregarded the interest of shareholders and was such conduct prejudicial to the Plaintiffs?

(b) In construing the OA were cash calls to be made in advance or in arrears?

(c) Was Dr. Persad required to reimburse MOVL for overpaid cash call and are there any exceptions?

(d) Did KPA comply with accounting procedures under the OA with respect to cash calls for May 2002 to September 2002?

(e) Was KPA in breach of the OA?

(f) Was the OA repudiated by KPA especially by its actions between May and September 2002 and the abandonment of the Mora Platform?

(g) In those circumstances were the Plaintiffs right to assume the obligations of the Operator and take control of the Mora Platform?

(h) In relation to the Acquisition and Shareholders Agreement ("ASA") dated the 30th July, 1997, was KPA exercising its powers as Shareholders in MOVL under ASA in an oppressive manner?

(i) In constructing the ASA did the Plaintiffs require the unanimous approval of the Shareholders of MOVL to remove KPA as Operator?

(j) Did KPA unreasonably rely on the ASA to entrench its position as Operator to the detriment of the Plaintiffs?

(k) In relation to the Exploration and Production Licence No. 13189 of 1995 did KPA as Operator jeopardize the licence by the actions it took in September 2002?

(l) Did Dr. Persad misuse his position as Chief Executive Officer and Director of MOVL and MVHL respectively?

(m) Did Dr. Persad breach his fiduciary duty by his actions and inactions as claimed in paragraph 10 of the Statement of Case?

The Defendants identify the issues

(32) The issues arising from the Defendants case are as follows:

(a) Whether MOVL was incorporated on 6th June, 1994;

(b) Whether Dr. Persad was ever Chief Executive Officer of MVHL;

(c) Whether Dr. Persad was ever the alter ego of KPA?

Whether KPA and Dr. Persad abused their position to the detriment of MOVL and MVHL?

(e) Whether the ASA sets out binding obligations;

(f) Whether according to the ASA or base on reasonable expectation of it, KPA would be the Operator or had to be removed by unanimous approval;

(g) Whether the Plaintiffs breached the terms of the ASA;

(h) Whether Ashram Ramnarine was co-opted onto the Board of Directors in breach of the ASA;

(i) Was Dr. Persad wrongly excluded from MOVL Board meetings.;

(j) Whether the first Defendant was wrongly neutralize as Operator;

(k) Whether the 3rd Plaintiff was guilty of mismanagement;

(l) Whether the 3rd Plaintiff maligned Dr. Persad at a Board meeting on 15th April, 2004.

(33) Notwithstanding those issues identified by Counsel for the Plaintiffs, I have taken the decision in deciding whether the Plaintiffs have proved their case, to direct my attention to the several allegations made by the Plaintiffs in the particulars referred to in paragraph 10 of the re-amended Statement of Claim

filed herein. The issues referred to by counsel would be relevant when considering the Counterclaim filed by the Defendants.

Reasonable Expectations

(34) The OA is made between MOVL and the KPA (the Operator) while the ASA is made among MVHL , MOVL and Vista Oil Ltd. (whose 10% share interest in MOVL was subsequently transferred to KPA the first named Defendant).
The parties expect the relationship provided for in the OA and ASA to be built upon the principles of fairness. Therefore the reasonable expectations of the parties to this action can only be determined when one looks at the terms and conditions of the Operating Agreement (OA) and the provisions of the Acquisition and Shareholders Agreement (ASA).

(35) When therefore the OA and the ASA are examined as a whole I have no doubt that the terms and conditions therein expressed would have given rise to certain reasonable expectations on the part of the parties to the said agreements. In particular such Agreements do create reasonable expectations about the manner in which information would be disseminated and how the boards of directors would be constituted. See the case of **820099 Ontario Inc. –v- Harold E. Ballard Ltd. [1991] 3BLR(2nd) 113 at 191.**

(36) In other words, in assessing the Plaintiffs' allegations of oppression, unfair prejudice and/or unfair disregard of their interests and/or reasonable expectations, the cases require the Plaintiffs to prove bad faith on the part of the Defendants in proof of oppressive conduct; on the other hand, bad faith is not required in proof of unfair prejudice or unfair disregard of the Plaintiffs' interests as shareholder and/or director, although it may be relevant in determining whether the Defendants have acted unfairly; the issue in such cases is whether the matters complained of have effected an unfair result. See **Brant Investment Ltd. –v- Keeprite 3OR (3d) 289 per Mc Kinlay, L.J.**

(37) The underlying conduct which has given rise to oppression has always been one of unfairness. See **Scottish Co-operative Wholesale Society Ltd. – v- Meyer [1959] AC 324 @ page 342.** In the case of **Ebrahimi –v- Westbourne Galleries Ltd. [1972] 2AER 492** the House of Lords looked at the conduct of unfairness against the reasonable expectations of the parties involved. The treatment of what is just and equitable as decided in the Ebrahimi case has led Markus Koehnen the author of the text **"Oppression and Related Remedies"** to observe that since the Ebrahimi case "courts have increasingly ignored the

distinction between the three statutory components and have looked with greater frequency to the reasonable expectations of the parties to determine whether oppression has occurred."

(38) In looking at the reasonable expectations of the parties the Court is entitled to look beyond their strict legal rights. In the case of **Main –v- Delcan Group Inc. [1999] O.J. No. 1961**decided by the Ontario Superior Court of Justice it was Lederman, J. who observed that although a shareholder agreement is often viewed as reflecting the reasonable expectations of shareholders:

> **"It must be noted, however, that shareholders' expectations may not be static over time and legal analysis is sensitive to their potential evolution. Accordingly, the relationship between principals must be looked at from a practical stand point. The oppression remedy is to be administered on the understanding that a court does not interfere lightly with the internal affairs of the corporation. In assessing whether judicial intervention under the oppression remedy is warranted, there exist three key issues that must be addressed:**
>
> **(i)Was the impugned conduct outside the range of reasonable business judgment;**
>
> **(ii)Was the impugned conduct inconsistent with the reasonable expectations of the complainants; and**
>
> **(iii)Did the impugned conduct cause prejudice to the Complainant?"**

<u>The Operating Agreement</u>

(39) This Agreement was made between Krishna Persad and Associates Limited (the 1st named Defendant herein) on the one hand and Mora Oil Ventures Limited (the 2nd named Plaintiff) on the other and took effect from the 30th December, 1994 (hereinafter referred to as the said Agreement).

(40) By the said Agreement the 1st Defendant agreed to act as the Operator of the Exploration and Production Licence which was granted to the 2nd Plaintiff by the Government of Trinidad and Tobago on the 30th December, 1994. (See Clause 4.1 of the Agreement).

(41) By the said Agreement the contracting Parties agreed to define their respective rights and obligations with respect to their duties under the said Agreement. For example:

(a) Article III entitled "REVENUE INTEREST" CLAUSE 3.2 (A) provides for all the rights and interests in and under the Agreement, all Mora property and any Hydrocarbons produced from the Licensed Area shall, subject to the terms of the Licence, be owned by Mora Ven (Mora Oil Ventures Ltd.)

(b) Clause 3.2(B) provides inter alia, that all liabilities and expenses incurred by the Operator in connection with the operations shall be charged to the Mora Account and all credits to the Licensee Account shall be to the Licensee.

(c) Clause 3.2(C) provides for the Licensee to pay when due, in accordance with the Accounting Procedure, the Mora Account expenses, including cash advances and interest accrued pursuant to the Operating Agreement;

(d) Article IV of the said Agreement entitled "Operator" provides by Clause 4.2 for the "Rights and Duties of the Operator."

In particular Clause 4.2B (1) and (4) state that in the conduct of the Mora Operations, Operator shall, inter alia,

(1) Perform Mora Operations in accordance with the provisions of the Licence, this Agreement and the instructions of the Operating Committee;

(4) Perform the duties as directed by the Mora Ven Operating Committee set out in Article V, and prepare and submit to the Operating Committee the proposed Work Programme, Budgets and AFE's as provided in Article VI;……

Also Clause 4.2B (6),(7) and (8) provide that the Operator shall:

(6) Permit the representatives of Mora Ven to have at all reasonable times and at their own risk and expense reasonable access to the Mora Operations with the right to observe all such Mora Operations and to inspect all Mora Property and conduct financial audits as provided in the Accounting Procedure;

(7) Promptly pay and discharge all liabilities and expenses incurred in connection with Mora Operations and use its reasonable efforts to keep and maintain the Mora property free from all liens, charges and encumbrances arising out of Mora operations.

(8) Pay to the Government for the Mora Account within the period and in the manner prescribed by the Licence and all applicable laws and regulations, all periodic payments, royalties, taxes, fees and other payments pertaining to Mora operations.

(e)Clause 4.9 of Article IV provides for the "**Resignation of Operator"** and states that subject to Clause 4.11 hereof, Operator may resign as operator at any time by so notifying the Licensee at least one hundred and twenty (120) days prior to the effective date of such resignation.

(f)Clause 4.10 of Article IV provides for the "**Removal of Operator"** and states in sub Clause (A) that subject to Clause 4.11 hereof, Operator shall be removed upon receipt of notice from Licensee if:

(1) An order is made by a Court or an effective resolution is passed for the dissolution, liquidation, winding up or reorganization of Operator;

(2) Operator's dissolves, liquidates or terminates its Corporate existence;

(3) Operator becomes insolvent , bankrupt or makes an

assignment for the benefit of creditors; or

(4) A receiver is appointed for a substantial part of Operator's assets.

(g)Sub Clause (B) of Clause 4.10 of Article IV states that subject to Clause 4.11 hereof, Operator may be removed by the decision of Licensee if Operator has committed a material breach of this Agreement which Operator has failed to commence to rectify within thirty (30) days of receipt of notice from the Licensee detailing the alleged breach. Any decision of Licensee to give Notice of breach to Operator or to remove Operator under this Article 4.10 shall be made by an affirmative vote of at least sixty percent (60%) interest of the shareholders of Mora Ven exclusive of the Operator.

(h)Clause 4.10 (D) of Article IV states that subject to Clause 4.11 hereof, Operator may be removed at any time without cause by the affirmative vote of at least sixty percent (60%) of the shareholders of Mora Ven. In the event that the Operator is a shareholder, the Operator shall not be entitled to vote.

(i)Clause 5.1 of Article V provides for the "Establishment of an Operating Committee" by the Board of Directions of Mora Ven for the overall supervision and direction of the Mora Operations.

(j)Clause 5.5(A) of Article V provides for the Operator to call a meeting of the Operating Committee by giving notice to its members at least fifteen (15) days in advance of such meetings.

(k)Clause 6.1(A) of Article VI entitled "Work Programmes and Budgets" also provides that within thirty (30) days after the date of execution of the Agreement, the operator shall deliver to Mora Ven a proposed Work Programme and Budget detailing to Mora operations to be performed in the Licensed area for the remainder of the current calendar or Project Budget Year and, if appropriate for the following Calendar Year or Project Budget Year. Within thirty (30) days of such delivery, the Operating Committee shall meet to consider and to endeavour to agree on a Work Programme and Budget.

(l)By virtue of Clause 14.1(A) of Article xiv entitled "General Provisions" provides that each party to the Agreement undertakes that it shall avoid any conflict of interest between its own interests (including the interest of affiliates) and the interests of the other party in dealing with suppliers, customers and all other

organizations or individuals doing or seeking to do business with the Parties in connection with activities contemplated under this Agreement.

(42) Finally, there is the Accounting Procedure which according to Article 1.1 of the Operating Agreement means the rules, provisions and conditions set forth and contained in Exhibit "A" attached to the Operating Agreement.

(a) According to Clause 1.2 of Exhibit "A" the Accounting Procedure is to establish equitable methods for determining charges and credits applicable to Operations under the Operating Agreement.

(b) Clause 1.6 of Exhibit 'A' states that the accounting for Mora Operations will be undertaken by the Operator using accounting procedures which are consistent with the generally accepted practices in the international petroleum industry.

The Acquisition and Shareholders Agreement

(43) I now turn to the Acquisition and Shareholders Agreement ("A.S.A") dated 30th July, 1994 made between MVHL, Vista Oil Ltd. (Vista) and MOVL and in which the parties agreed, inter alia, to regulate and determine in particular, the relationship, rights and obligations of MVHL and Vista as shareholders of MOVL.

(44) It is necessary to refer to, what I consider certain material provisions of the A.S.A. which in some way touch and concern some of the issues raised in these proceedings. For example:

(i) By section 7.1 MOVL agrees to enter into arrangements with Mora Holdings and Vista to obtain information respecting the current and anticipated financial requirements and the status of Project and results thereof, so as to keep the shareholders informed on a reasonable basis as to the results being achieved and comparisons of expected and actual results. Without limitation, the Company agrees to enter into arrangement with Mora Holdings and Vista which will entitle the Company or the Shareholders, on request, to the following:

(a) copies of plans and budgets relating to the Project;

(b) copies of all reports rendered by the Company or its operator in respect of the Project which could reasonably be expected to be of significance to the Company or the Shareholders;

(c) monthly cash flow statements on a well-by-well basis setting forth in reasonable detail all production, revenue and expense information;

(d) copies of quarterly unaudited and audited annual financial statements as more particularly referenced in Section 9.8;

(e) accounting information regarding the use of all financing provided by the Company; and

(f) information concerning any developments in respect of the Project of an extraordinary nature, either positive or negative, which might reasonably be expected to affect the funding obligations, liability, performance or other similar aspects of the Project or the Shareholders' interests therein.

(ii) By section 7.2 the Company undertook to ensure that its executive and technical personnel or those of its operator be available to meet with the Shareholders or their representatives at all reasonable time, to provide briefings and relevant information concerning the status of the Project and anticipated future funding requirements of the Company;

(iii) By section 8.1 each of the Shareholders shall vote or cause to be voted the Shares owned by it, to the extent that such shares carry the right to vote pursuant to the Articles or the Act, cause meetings to be held, resolutions to be passed, by-laws to be enacted, directors to be elected, agreements and documents to be signed and do or perform such acts so as to fully implement the terms and conditions of this Agreement and shall, if any director for any reason refuses to exercise his or her discretion in accordance with the terms of this Agreement, forthwith take such steps as are necessary to remove such director.

(iv) Section 8.3 provides that the Company agrees to be bound by the terms of the A.S.A. and to take no action which would constitute a contravention of the terms and provision thereof.

(v) By section 9.8 the Company, unless waived by all Shareholder, has undertaken within 45 days after the end of each quarter of each fiscal year deliver to each shareholder internally prepared financial statements of the Company and its subsidiaries and within 90 days after the end of each fiscal year deliver to each shareholder audited consolidated financial statements of the Company and its subsidiaries.

(vi) Section 9.9 conveys a right on each of the Shareholders to examine and receive copies of financial and other records of the Company and its subsidiaries at any time upon reasonable notice and during normal business hours of the Company.

(vii) Section 11 stipulates that the written approval of all of the Shareholders of MOVL must be had before a decision of the company is made with respect to a number of matters, including but not limited to the following:

(a) any change in the number of members of the Board of Directors from that provided in section 9.2 or section 9.3 thereof;

(b) any delegation of any power, right or duty of the directors;

(c) the creation of any subsidiaries by the Company or the acquisition by the Company, of any of its subsidiaries, or any shares or securities of any other corporation, unless for the purpose of short-term investment of surplus funds;

(d) the creation or issuance of any shares or other securities of the Company or any of its subsidiaries, or any options or rights to acquire shares or other securities of the Company or any of its subsidiaries;

(e) except as contemplated by section 10.1 hereof the redemption or repurchase for cancellation of any shares in the capital of the Company or any other return of Capital to a shareholder;

(f) the conversion, exchange reclassification, redesignation, subdivision, consolidation or other change of or to any shares in the capital of the Company;

(g) the creation or assumption of any mortgage, pledge, charge or other encumbrance on or the creation of any security interest in any of the assets of the Company or any of its subsidiaries, other than to secure the purchase or lease price of property acquired by the Company or any of its subsidiaries for the purpose of carrying on its business in the ordinary course from a third party dealing at arm's length with the Company or such subsidiary;

(h) any material change in the undertaking or operations of the Company;

(i) any transfer of shares other than pursuant to the provisions of Article 12;

(j) any material change to the contracts or business arrangements respecting the Project, including without limitation any refinancing, reorganisation, farm-in, farm-out, joint venture, participation with another entity, or abandonment of any such contracts or of the Project;

(viii) By section 14.13 of the A.S.A it is expressly provided that the said Agreement and the rights and privileges created there-under shall …….. to the benefit of and be binding upon the Parties thereto and their respective successors and assigns.

Statutory Requirement – section 242

(45) The case for the Plaintiffs is founded on section 242 of the Companies Act 1995 ("the Act") under which the Plaintiffs claim that the First and Second Defendants are carrying on the business of the Second Plaintiff (MOVL) in a manner which is oppressive, unfairly prejudicial to and in unfair disregard of the interests of the First and Third Plaintiffs as a shareholder and director respectively of the second Plaintiff. A similar complaint has been made by the Defendants in their Counterclaim filed on the 29th December, 2004.

(46) The onus of proof is on the Complainant to demonstrate that the company or those in control of it have been engaging in conduct that is oppressive, unfairly prejudicial or that unfairly disregards the complainant's interests. Case law has shown that the burden of proof with respect to unfair prejudice or unfair disregard of interest is not as rigorous as the burden of proof where oppression is being alleged.

(47) Section 242 of the Act expressly provides that a Court may make an order to rectify the matters complained of where,

> (a) any act or omission of the company or any of its affiliates effects a result;
>
> (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or
>
> (c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interest of any shareholder or debenture holder, creditor, director or offices of the company.

(48) This section of the Act is intended to restrain acts of oppression within the management of the corporation generally. It is important to note that only a complainant is authorised to make such an application referred to in section 242(1) of the Act. Section 239 of the Act defines Complainant as –

> (a) a shareholder or debenture holder, or a former holder of a share or debenture of a company or any of its affiliates;
>
> (b) a director or an officer or former director or officer of a company or any of its affiliates;
>
> (c) the Registrar; or
>
> (d) any other person who, in the discretion of the Court, is a proper person to make an application under this Part.

(49) From the definition of Complainant in section 239 it is clear that a shareholder or director of the company or any of its affiliates has the right to complain and seek relief from the Court from oppressive conduct.

(50) I am satisfied therefore that the three (3) Plaintiffs in these proceedings qualify as Complainants for the purpose of these proceedings. Mora Ven Holdings Ltd (the 1st named Plaintiff) is the major shareholder of Mora Oil Ventures Ltd (the second named Plaintiff). Mora Oil Ventures Ltd. Is, as a consequence, an affiliate of Mora Ven Holdings Ltd. The first Defendant is the Operator of the Mora Oil Platform while the second Defendant is the controlling shareholder and the Chief Executive Officer of the First Defendant.

(51) Section 242 of the Act creates a new statutory remedy not dissimilar to section 234 of the Canadian Business Corporations Act. It was Mc Donald, J. who, in the case of **First Edmonton Limited –v- 315 888 Alberta Limited (1988) 40 BLR 28** expressed very succinctly the scope and the manner in which the section ought to be interpreted. At page 50-51 of the decision the Learned Judge said:

> **"Introduction of a statutory remedy against oppression and unfair prejudice is a deliberate departure from the policy of judicial non-intervention in corporate affairs. Section 234 'casts the Court in the role of an active arbiter of business policies.' It is drawn in very broad terms and as remedial legislation should be given a liberal interpretation in favour of the Complainant.....**
>
> **The addition of unfairly prejudicial and unfairly disregards to oppressive gives the Court a broad basis on which to apply notions of equity and fairness to the conduct of the Directors and the majority..... Clearly the addition of unfairly prejudicial and unfairly disregards puts the Court in a position to judge the fairness of the actions of management."**

Oppression

(52) Oppression is viewed by the Courts as conduct that is 'burdensome harsh and wrongful." See **Scottish Co-operative Wholesale Society & Meyer (1959) AC 324 at page 342.** Also as a "visible departure from standards of fair dealing." See **Keho Holdings Ltd. –v- Noble [1987] 38 DLR (4th) 368 at page 372.** Further as an "abuse of power which results in an impairment of confidence in

the probity with which the Company's affairs are being conducted." See **Elder –v- Elder (1952) S.C. 49 at page 55.**

The Court in addressing this remedy under the Act must also seek to determine whether the impugn conduct unfairly prejudices or unfairly disregards the interest of the Complainant. For example:

Unfair Prejudice

(53) Unfair Prejudice has been found to mean "injury to a complainant's rights or interest that is unfair or inequitable or conduct that is unjust and inequitable – See **Diligent –v- RWMD Operations Kilowna Ltd. (1976) 1BCLR 36 at page 45 (B.C.S.C.) and Wind Ridge Forms Ltd. –v- Quadra Group Investments Ltd. (1999), 50 B.L.R. (2d) (Sask. C.A.).**

Unfair Disregard

(54) Unfair disregard is seen as conduct which is neither oppressive nor unfairly prejudicial. It is conduct which unfairly disregards the interest of the complainant – See **Gillespie –v- Overs (1987) OJ No. 747 (Ont. H.C.).** The Courts have found that unfair disregard means to ignore, pay no attention to or treat the interests of the Complainant as being of no importance. See **Stech –v- Davies (1987) 5 W.W.R 563 at page 569 (Alta Q.B.).**

(55) Particulars of the impugned conduct of the Defendants have been pleaded in paragraph 10 of the Plaintiffs re-amended Statement of Claim. The first named Defendant is by virtue of the Operating Agreement in control of the affairs of the second named Plaintiff. The second named Defendant is the Chief Executive Officer of the first named Defendant and was at all material times the Chief Executive Officer of the second named Plaintiff.

Allegations of misconduct are examined

(56) As a general rule it is for the Complainant to establish oppression on a balance of probabilities. I have to examine very carefully the several allegations of misconduct made by the Plaintiffs against the Defendants as pleaded in the particulars provided in paragraph 10 of the re-amended Statement of Claim filed on the 25th day of May, 2005.

(57) Twenty-two (22) witnesses were called to give evidence in support of the case filed by the Plaintiffs against the Defendants. The Defendants by Notice file on the 29th December, 2004 did indicate their intention to call twenty-one (21) witnesses to give evidence on their behalf at the trial. The initial List was amended by Notice filed on the 18th January indicating the Defendants intention to call eight (8) witnesses for the trial. However, at the trial the Defendants called two (2) witnesses.

(58) The second named Defendant is on record as having sworn and filed five (5) affidavits in support of the Defence and Counterclaim filed herein. However, the said Defendant failed to present himself for cross-examination and as a consequence his evidence was not considered for the purpose of the trial.

(59) The Plaintiffs have pleaded 28 particulars of alleged misconduct of either one or both of the Defendants as they conducted the business and/or affairs of MVHL and/or MOVL.

(60) I propose to examine each of those particulars as they relate to the conduct of the Defendants in order to determine whether on the evidence adduced by the Claimants the case against the Defendants has been proved.

Particular 10(i)

"Incurring unauthorized excessive and/or inappropriate and/or unjustified expenditure purportedly for the operations of the Mora Platform and/or on behalf of M.O.V.L."

(61) The following witnesses gave evidence on behalf of the Plaintiffs in support of this allegation. They were Nigel Woodcock, Professor Thomas Buckhoff, Steve Ragoobar and Jasserani Persad.

(62) In his evidence in chief Mr. Woodcock testified that there were several instances where expenses were being incurred by the Operator. Many of the expenses incurred by the Operator involved transactions with related parties. Jasserani Persad identified related parties as companies in which the Defendants were connected by way of shareholding. The witness listed some of those companies as Acteon Holdings Ltd., Footprints Eco Resort Ltd., Heritage Holdings Ltd., C & A International Supplies Ltd., K.P.A. Services Ltd. and Krishna Persad & Associates Ltd. (the Operator).

Related Company Transactions

(63) In his evidence in chief Nigel Woodcock, the internal Auditor of MOVL and MVHL referred to the following expenses which were charged to the account of MOVL:-

(a) An expense of $6,663.30 incurred by Footprints Eco Resort Ltd. for accommodation and meals for one Henry Govia and charged to the account of MOVL. Mr. Woodcock admitted in his evidence that this was not a proper charge for MOVL's account;

(b) Membership fees for Club BWIA were charged to MOVL paid on behalf of Dr. & Mrs. Persad, Mr. K. Mc Harris, Mr. H. Govia, Mr. R. Persad & Mrs. M. Persad (son and daughter-in-law of Dr. Persad) and Mrs. Mia Persad, daughter of Dr. Persad who had connection with Footprints Eco Resort Ltd. These expenses were being investigated to determine their legitimacy;

(c) Monies owed by Footprints to one Saran Sampath were paid by MOVL to offset an account receivable in the records of MOVL;

(d) Transaction involving a Barge in the sum of $60,000 US (this transaction will be discussed in greater detail later in this judgment).

(64) In conducting the affairs of MOVL and MVHL the Operator was guided by the terms of the Operating Agreement. Clause 4.2(B) of Article IV of the Operating Agreement states:

> **"In the conduct of Mora Operations, Operator shall: Perform Mora Operations in accordance with the provisions of the Licence, this Agreement and the instructions of the Operating Committee."**

(65) Failure to perform Mora operations in accordance with the provision of the Licence could lead to a revocation of the Licence by the Minister of Energy and Energy Industries. For example under Clause 15(2) of the Licence the Minister has the power to revoke the Licence in the event of, inter alia,

> "**failure by the Licensee to make payments stipulated as rent, royalty, petroleum import, petroleum production**

levy or taxes within three calendar months of the date on which such payments fall due."

(66) According to the Operating Agreement the **"Accounting Procedure"** to be used in the conduct of Mora Operations is set out in Exhibit "A" which is attached to the Operating Agreement. Clause 8.1 of Exhibit "A" under the heading CHARGEABLE COSTS AND EXPENDITURES states:

"Operator shall charge the Mora Account for <u>all costs necessary</u> to conduct Mora operations in or with respect to the Licensed Area….." <u>emphasis added.</u>

(67) Clearly, the Operator and the Licensee agreed that the Operator shall incur such costs as are necessary in the conduct of the Mora Operations. Counsel for the Plaintiffs have submitted that to incur unauthorized excessive and/or inappropriate and/or unjustified expenditure purportedly for the operation of the Mora Platform would breach the reasonable expectation of the Plaintiffs as such expenditure will be contrary to the terms and conditions of the Operating Agreement.

(68) An unauthorized expenditure may nevertheless be necessary and therefore consistent with the terms of the Accounting Procedure set out in the Operating Agreement but any costs which have been proven to be inappropriate, excessive and/or unjustified will be inconsistent with the terms of the Operating Agreement and therefore would amount to a breach of the expectations of the second named Plaintiff (MOVL) and by extension MVHL.

(69) Counsel for the Plaintiffs have argued that the expenses incurred by the Operator for the rental of motor vehicles for persons who only work for MOVL intermittently were inappropriate. The evidence show that those workers worked for the Operator not only on the Mora Platform but also for the Operator on the oil field in Barrackpore which is owned by the Operator. The costs incurred for the rental of those motor vehicles were attributed by the Operator to the account of MOVL. Such expenditure were, in my view, inappropriate, excessive and unjustified.

(70) In fact, the evidence of Mrs. Jasserani Persad reinforces such a conclusion. This witness testified that her role was basically to provide foodstuff for those employees stationed on the Mora Platform and for that purpose she made occasional visits. Nevertheless, a motor vehicle was rented by the

Operator for her use for which the monthly rental was paid for by MOVL. Surely this must have been an excessive and unnecessary costs incurred on behalf of MOVL. Since Mrs. Persad's infrequent visits to the Mora Platform could have been arranged with the assistance of any of the other drivers employed by the Operator.

(71) Another issue of concern for the Plaintiffs is the significant percentages of salaries which were paid to the employees of the Operator out of the account of MOVL without any supporting time sheets as stipulated in the Operating Agreement.

(72) Section 8.1(b)(ii) of Exhibit "A" of the Operating Agreement specifically provides that employees of the Operator who spend only a portion of their time working for Mora Operations, the Mora Account shall be charged on a time sheet basis (for the purpose of recording the hours worked). There was no evidence put before the Court that the Operator utilized the time sheet basis for the payment of salaries and wages of the employees of the Operator.

(73) It is true that salaries and wages were paid by the Operator on a percentage basis contrary to the terms of the Operating Agreement but there is no evidence to suggest that the payments were either excessive, inappropriate or unjustified.

(74) Counsel for the Defendants submitted that the particular provided in paragraph 10(i) of the Plaintiffs' Statement of Claim in support of the allegation of oppression is not supported by the evidence. He argued that the documentary evidence and the oral evidence of Mr. Nigel Woodcock proved that every item of expenditure analysed by the witness during his time at MOVL was authorized, justified and appropriate.

(75) Counsel further contended that the evidence disclosed that the expenditure of MOVL was approved in advance each year by the Board of MVHL of an Annual Budget and thereafter scrutinized by the Audit Committee of MVHL. Mr. Woodcock, he argued, had appraised every item of the expenditure of MOVL in his "Expenditure Variance Analysis" documents which he prepared monthly. Both Mr. Woodcock and Mr. Mc Harris (a member of the Audit Committee) confirmed that every item of expenditure of MOVL was authorized, appropriate and justified.

(76) There was detailed cross examination of Mr. Woodcock on the following items of expenditure viz. vehicle rental, office space, royalty, petroleum tax,

production levy, processing fees, repairs and maintenance of equipment, administration fees, building rental, maintenance, equipping, furnishing and operating of offices, interest expenses, finance costs, office expenses and freight, cellular phone, electricity, training, labour administration, contract labour, insurance expense, life insurance on Dr. Persad, directors fees, transport expenses, operating supplies and expenses, workover costs, helicopter expenses, committee expenses, boat expenses, credit cards and professional fees.

(77) There were a number of items which Mr. Woodcock considered to be immaterial (low risk) which were analysed in the profit and loss account but not referred to in the "Expense Variance Analysis" account. Some of those items were for example, depreciation, entertainment, donations and subscriptions, advertising and promotion and the "Green Fund Levy." No evidence was adduced to determine whether these items of expenditure were authorized, excessive, justified and appropriate.

Credit Cards

(78) The expenditure incurred by the Operator from the issuance of credit cards to the employees of the Operator was another item of major concern. The external auditor Price Waterhouse Cooper (PWC) audited the credit card expenditure (see exhibit NW21) and did raise queries over certain items of expense. Moreover, at a meeting of the Audit Committee on 20th February, 2002, the Committee raise certain questions surrounding the credit card expenditure describing the system as "unwieldly" and expressed the view that the cards "should be immediately withdrawn."

(79) The expert witness Professor Thomas Buckhoff was retained by the first and second Plaintiffs to conduct a forensic audit of the accounts of both Plaintiffs during the period 1998 to 2002 while both Plaintiffs were under the control of the second named Defendant.

(80) The evidence of Professor Buckhoff showed that credit cards were issued by the Operator to the following employees of the Operator and indicated the amount of money expended by each employee over the period therein stated:-

Dr. Krishna Persad for the period April
1999 to September 2002…….$38,951.08US
George Mc Harris for the period February

2001 to July 2002……..$ 9,468.48US
Steve Rajan for the period December 1999
to January 2001……$ 5,589.71US
Henry Govia for the period December 1999
to March 2002……$17,482.09US
James Stewart for the period December
1999 to August 2002……$10,678.67US

(81) The evidence before the Court confirmed the credit card charges were all paid for out of the Scotia Bank account of MOVL. Professor Buckhoff concluded that since there were no itemized receipts validating the business related purpose of the expenditure of the several credit cards it was reasonable to conclude that the expenses incurred were personal. As a result, MOVL would have suffered significant financial losses as a result of the use of the credit cards.

(82) But Mr. Woodcock had testified during cross-examination that MOVL had a system in place to check credit card expenditure. He said that discussions were usually held to confirm that an item was business related and therefore was for MOVL's account "unless it is very apparently clear from the invoice or the statement that it is for Mora, but if there was any doubt that's where the discussion would take place."

(83) Whether the system to which Woodcock referred worked in MOVL's interest is doubtful because at its meeting held on the 20th February, 2002, the Audit Committee had specifically raised the question of credit card expenditure, describing the system as "unwieldy" and recommended that the cards "should be immediately withdrawn." Mr. Mc Harris who was a member of the Audit Committee and who was present at the meeting held on the 20th February, 2002 testified that although the Company (MOVL) paid the credit card bill in full on a monthly basis, items not supported by receipts were "kicked back" and the employee in question was required to pay the bill.

(84) Woodcock's Report to Management for January 2002 made reference to the external Auditor's Audit of the financial statements for the year ended December 31st 2001 in which he said that:

> **"The auditors had provided the accounting staff with a list of credit card expenditure which are unsupported. Letters are to be done to the various individuals to whom these expenditures relate asking them to supply relevant documents. Where these are not received in a reasonable time frame, the expenditures would be charged to the**

particular individuals."

(85) Mr. Mc Harris testified that one such individual was Mr. Henry Govia who failed to provide back up documents to support his expenditure and his credit card was revoked.

Related Parties

(86) Professor Buckhoff in his testimony expressed serious misgivings over business transactions the Operator entered into with related parties. The witness described a related party as follows:

> **"A related party is any party that controls or can significantly influence the management or operating policies of the company to the extent that the company may be prevented from fully pursuing its own best interests. Related parties typically include affiliates, principal owners, management and immediate family members of owners who are management."**

(87) This witness expressed the opinion that related party transactions were potentially a problem because the offending party is a party to both sides of the transaction and can manipulate the terms of the transaction for personal gain to the economic detriment of the offender's employee. The witness further stated that it is for that reason that related party transactions should be approved by the Board of Directors before any transactions are completed between two related party entities.

(88) Professor Buckhoff identified a number of dealings by the Operator with a related party which did not have a business related purpose. He confirmed that funds were disbursed from the MOVL account at Scotia Bank to Footprints Ecoresort, a company owned by the second Defendant. Such transaction created a conflict of interest because Dr. Persad at the material time was also the Chief Executive Officer of Mora Oil Ventures Limited. This witness is of the opinion that during the period March 28, 1998 to November 9, 2001 funds totaling US $36,695.92 were disbursed to Footprints Ecoresort out of the account of MOVL without any evidence of a business related purpose.

(89) Professor Buckhoff found after his examination of the invoices and cheque payment vouchers that payments made from MOVL's account to related parties

were as follows:

J&B International Supply Inc……..$ 857,747.62
C&A International Supply Ltd…….$ 60,000.00
Krishna Persad & Associates Ltd……..$ 501,164.09
K.P.A. Services Ltd..……$ 103,559.60
Acteon Holdings Ltd…….$ 255,523.53
Footprints Eco-resorts……..$ 36,695.92
Total Related party disbursements……$1,814,690.76US

(90) Related party transactions of MOVL undertaken by the Operator did give rise to some concerns expressed by the external auditors of MVHL and MOVL. Price Waterhouse Coopers (PWC) was engaged by MVHL to audit the financial statements of the Company as far back as 1995. PWC also became the external auditors of MOVL.

Office rental

(91) The Professor's spreadsheet analysis as it related to office rental showed that from January 1998 to August 2002 funds in the sum of $739,833.33 were disbursed out of MOVL's Scotia Bank account to Acteon Holdings Limited or Krishna Persad and Associates Limited (two related parties) for the rental of office space by MOVL. During his analysis the witness also found that from the beginning of July 2001 the monthly rental paid by MOVL to Acteon Holdings Limited suffered an increase of $4,600 T&T dollars, that is, from $13,800 T&T dollars to $18,400 T&T dollars.

Car rentals

(92) The spreadsheet analysis of the car rental payments for the period January 1998 to August 2002 was also received by this witness and it was found that rental payments on eight different vehicles totaling $1,550,306.63 T&T dollars were disbursed out of MOVL's bank account to Acteon Holdings Limited, Krishna Persad and Associates Limited and KPA Services Ltd. (related parties) for car rentals.

Report of Management – 31st December, 2000

(93) In its Report to Management of MOVL and MVHL for the year ending 31st December, 2000 the external auditors commented that Mora Oil, as part of its normal course of business, continues to conduct considerable trading activities

with related parties. Although the auditors noted approval by the Board of Mora Ven of major expenditure undertaken by Mora Oil with related parties the auditors would have had good reason to again strongly recommend (having done so in previous Reports) that all related party transactions be carefully examined and that appropriate prior approval of the transactions as well as acceptable documentation be established.

(94) In the said Report the Auditors noted that several contracts (included related party contracts) had been entered into by the Operator but had not been approved by the Board of MOVL nor by the Audit Committee as required by the terms of the Operating Agreement. For example, contracts entered into with the following:-

(i) Acteon Limited;
(ii) KPA Services Limited;
(iii) Subcontract for Petroleum Services between Gould Petroleum Services and KPA Limited; and
(iv) Subcontract for snubbing Services between Clevemar Limited and KPA Limited.

(95) The Auditors found that these contracts though drafted prior to the December 1999 year end were still subject to review and approval by the Audit Committee as at the end of December 2000.

(96) The Auditors noted the risk involved in that MOVL may be unable to properly support changes from the related companies and in particular to establish that those transactions were conducted at arm's length. Moreover, the Auditors pointed out that since the companies are related, the validity of those expenses may be challenged by the Board of Inland Revenue if there were no approved underlying agreements.

(97) The Auditors recommended that the Audit Committee of MOVL should ensure that the Agreements with related parties be approved on a timely basis by the Board of Directors to avoid the problems identified. They also recommended that the terms of Agreements be examined carefully to ensure that they are reasonable and are at arm's length, based comparison with market conditions.

(98) The Auditors Report for the said year ending December 31, 2000 also referred to advances made by MOVL to KPA Services Limited in the sum of $1.6 million. For the year ending 31st December, 1999 the Auditors did report to

Management that the company (MOVL) continued to be in a critical cash flow situation and its ability to continue to trade in the foreseeable future was being called into question. Notwithstanding the Company's critical cash flow constraints the Auditors found that for the Operator to continue making advances from the account of MOVL to finance the operations of related parties and other persons may be considered "inappropriate use of Company funds." The Auditors found no evidence to indicate that the Board of Directors approved the advances prior to the payments being made.

C&A International transaction

(99) Mr. Woodcock did identify several instances where purchases were made by the Operator without the authorization for expenditure (AFE) or instances when the AFE was secured sometime after the purchases were made contrary to the terms of the Operating Agreement. One such transaction was the payment by the Operator of US $60,000.00 to C&A International Supply Limited for the transport of the Mora tank barge from the USA to Trinidad.

(100) This transaction was viewed with some degree of suspicion on the part of the Audit Committee who ordered that an investigation be undertaken by the internal auditor Mr. Nigel Woodcock in the month of March 2002.

(101) The result of Mr. Woodcock's investigation was submitted to the Audit Committee by letter dated March 17, 2002. Mr. Woodcock found in his investigation that C&A International Supply Limited was incorporated in the Cayman Islands and that part of its objects was to provide supplies to Trinidad and Tobago oilfield clients. The beneficial owners of C&A International Supply Limited were Dr. Krishna Persad and his wife Mrs. Jasserani Persad.

(102) An examination of the invoice for the US $60,000.00 confirmed that the name of the supplier was C&A International Supply Ltd. and that the invoice was a pro-forma (not an original) and was undated. Copy of the invoice was faxed to Port of Spain from the office of J & B International Supply Ltd. and the invoice requested that the cheque be made payable to J & B International and not to C & A International Supply Ltd. who were the supplier of the good/service to the Operator. Finally, the invoice was not supported by an AFE which meant that the expenditure was not authorized by the Board of Directors of Mora Oil nor by the Audit Committee.

(103) The recommendation made by Mr. Woodcock to MOVL and MVHL was as follows:-

> **"Where a director has an interest in a material transaction with the Company for which a benefit is received, disclosure and approval by the Board of Directors is of paramount importance for reasons of transparency. The quotations received from J & B carry little merit due to the implied relationship between J & B International and C & A International Supply Ltd. that is invoice faxed from offices of J & B, payment made to J & B on behalf of C & A etc. Independent quotes to be obtained especially concerning transactions with a member of the Board."**

(104) It is my view that in the absence of the AFE and in the absence of disclosure and/or approval by the Board of Directors the benefit received by the second Defendant as a result of this transaction must be contrary to the reasonable expectations of the parties provided for in the Operating Agreement and in breach of the Defendants fiduciary duty owed to MOVL and MVHL.

The 5% handling fee

(105) Again in its Report to Management for the year ending December 31, 2000 the external auditors found that Mora Oil was being charged a 5% handling fee by the Operator on labour charges, a charge which is not provided for in the Operating Agreement made between the parties. Handling charges for the year amounted to $218,000.00. The charges were eventually reversed when brought to the attention of the Audit Committee at the end of the year. However, the External Auditors commented that the fact that these charges were made by the Operator throughout the year and went unnoticed by the Board of Mora Oil demonstrates the breakdown in control and the risks to the Company in the management of the Mora Platform.

(106) Notwithstanding the submission of Counsel for the Defendants I am of the view that the Plaintiffs have adduced sufficient evidence for this Court to conclude as a fact that the Defendants did incur certain expenditure which could reasonably and properly be described as unauthorized, excessive and/or inappropriate and/or unjustified in the conduct of the operations of the Mora Platform on behalf of MOVL. This Court therefore finds on a balance of

probability that the Defendants have carried on the business of the second Plaintiff (MOVL) in a manner which is oppressive or unfairly prejudicial to or unfairly disregarding the interests of the First and Third Plaintiffs as a shareholder and Director of MOVL respectively.

Particular 10(ii)

"Failure and/or persistent and unreasonable refusal to adhere to the accounting procedures stipulated by the Operating Agreement so as to account to the other shareholders of MOVL and/or MVHL as to the expenditure and/or application of monies belonging to MVHL and/or MOVL notwithstanding repeated requests by MVHL and/or MOVL for K.P.A. to do so."

(107) The accounting procedure referred to in paragraph 10(ii) of the re-amended Statement of Claim is captured in Exhibit "A" which forms part of the Operating Agreement entered into between the second Plaintiff and the first Defendant on the 30th day of December 1994. (Article II of the Operating Agreement).

(108) Under Clause 1.6 of the Accounting Procedure the Mora Operations had to be undertaken by the Operator using accounting procedures which are consistent with the generally accepted practices in the internal petroleum industry.

(109) In an attempt to prove this allegation of the Operator's failure and/or its persistent failure to adhere to the accounting procedure stipulated in the Operating Agreement the Plaintiffs relied on the testimony of Nigel Woodcock, Professor Thomas Buckhoff, George Nicholas and Steve Ragoobar.

(110) Counsel for the Defendants argued that this plea by the Plaintiffs that the Operator had been guilty of a failure or persistent or unreasonable refusal to adhere to the accounting procedure was in fact directly contradicted by the Plaintiffs own evidence. Counsel relied substantially upon the testimony of Mr. Woodcock rendered on the 17th of May, 2007.

(111) The evidence recorded at page 42 of the transcript on the 17th May, 2007 is as follows:-

"Q: It would be wrong to suggest that the Operator had been guilty of a failure or persistent refusal to adhere to the accounting procedure?

A: Yes.

Q: Is that not so?

A: Yes."

At page 43 of the transcript:

"Q: And it would be wrong to suggest that the Operator had been guilty of a failure or persistent or unreasonable refusal to adhere to the accounting procedure, correct?

A: That is correct."

"Q: It will be wrong to suggest that he had failed to comply with the accounting procedure so as to account to the shareholders of Mora Ven Holdings or Mora Oil Ventures Limited?

A: When you say so as to account, so as not to account?

Q: With the result that he did not account to them.

A: No, well that's inaccurate. He did account because the accounts were issued, audited and issued.

Q: And that would be in connection both with the expenditure and the application of the moneys belonging either to MVHL or MOVL, correct?

A: Yes. A cash flow statement would have been provided as well with the accounts."

(112) Mr. Woodcock did testify that in each of his report to Management on a monthly basis, he did a review of cheque payments, journal entries, expenditure variance analysis, related party accounts, profit and loss documentation and

related Party Balance documentation. As a consequence he was able to confirm that the Operator maintained accounting records in accordance with generally accepted practice in the petroleum industry.

(113) In effect the sum total of Mr. Woodcock's testimony is that there was no failure and/or persistent and unreasonable refusal by the Operator to adhere to the accounting procedures stipulated by the Operating Agreement. I do not understand Mr. Woodcock's evidence to mean that the Operator complied with both the letter and the spirit of the Accounting procedure stipulated in the Operating Agreement. There were a number of irregularities referred to by Professor Buckhoff and the external auditors Price Waterhouse Coopers in their evidence before this Court.

(114) Professor Buckhoff highlighted the deficiencies in the use of the credit cards and cellular phones issued by the Operator to several of its employees. He expressed the opinion that the absence of proper control in the system led to an abuse which resulted in financial losses to MOVL and MVHL.

Failure to deliver a Budget

(115) Both Professor Buckhoff and the external Auditors testified that the Operator had failed to comply with the requirement of the Operating Agreement to deliver to Mora Ven a Budget. The Operating Agreement did provide that the Operator had to deliver a Budget "on or ninety (90) days before the commencement of each Calendar Year or Project Budget Year, Operator shall deliver to Mora Ven a proposed Work Programme and Budget detailing the Mora Operations to be performed in the licensed area for the following Calendar Year or Project Budget Year. Within forty-five (45) days of such delivery, the Operating Committee shall meet and endeavour to agree on a work programme and Budget."

(116) In stressing the importance of a budget to the success of any business Professor Buckhoff in his evidence said:

> **"A budget essentially is a detailed quantitative plan for acquiring and using financial and other resources over a specified time period, and they are critical to the operation or effectiveness of a business entity for four reasons: number one, budgets help communicate management's plans throughout the entire organization; number two,**

budgets force managers to anticipate and plan for the future; number three, the budget process can uncover potential cash flow problems before they occur; and number four, budgets establish goals and objectives that can serve as benchmarks for evaluating subsequent performance."

(117) The witness did testify that in the absence of a budget it was difficult to quantify any direct losses that Mora Oil Ventures Ltd. may have suffered. He admitted however, that the Company can incur indirect losses to the extent that its operational effectiveness is diminished by the lack of a budget.

Related Parties

(118) Professor Buckhoff also expressed his opinion on disbursements made by the Operator to related party entities which included J&B International Supply Inc., C&A International Supply Ltd. and Footprints Eco Resorts Ltd. The Professor defines a related party as any party that controls or can significantly influence the management or operating policies of the company to the extent that the company may be prevented from fully pursuing its own best interests. He said that related parties typically include affiliates, principal owners, management and immediate family members of owners who are management.

(119) Professor Buckhoff further expressed the view that related party transactions create two potential problems. The first relate to the fact that related party transactions cannot be presumed to be carried out on an arm's length basis because both parties are not free – competitive free market conditions do not generally exist. Second is that related party transactions often create conflicts of interest in which the offender can manipulate the terms of the contract for personal gain to the economic detriment of the victim company.

(120) Under the terms of the Operating Agreement the Operator was at liberty to enter into contracts with Affiliates. Article 6.5 of the Agreement states:

"Operator shall award each contract for approved Mora operations to the best qualified contractor as determined by cost and ability to perform the contract without obligation to tender and without informing or seeking the approval of the Operating Committee, except that before entering into contracts with Affiliates of the Operator exceeding US dollars twenty-five thousand (US$25,000.00),

Operator shall obtain the approval of the Operating Committee; provided however, the Operator shall submit to the Operating Committee a competitive bid analysis stating the reasons for the choice made; and upon the request of a number, provide such number with a copy of the final version of the contract awarded."

(121) Clearly, the Operating Agreement makes provision for the Operator to enter into or to award contracts to related parties but where the contract price exceeds twenty-five thousand US dollars the Operator is mandated to first obtain the approval of the Operating Committee before entering into such agreements. No approval is necessary therefore where contracts by the Operator with affiliates do not exceed the sum of twenty-five thousand US dollars.

(122) This Court has not been directed (by way of evidence), to any particular transaction entered into between the Operator and a related party in which the contract price exceeded the stipulated twenty-five thousand US dollars and for which there was no approval by the Operating Committee.

Questions raised on the Performance of the Operator

(123) The Audit Committee of the Board of Mora Ven Holdings Limited at one of its meetings held on the 20th February, 2002 held considerable discussion on the poor general performance of the Operator in not following good accounting practice and, in particular, not following recommendations of the Audit Committee. The Committee also found that the Operator was not reporting back as requested, in action taken to remedy deficiencies.

(124) At the said meeting the monthly reports on the performance of the Operator for October and November of 2001 by Mr. Woodcock were being reviewed and the Committee found the reports referred to several specific deficiencies in accounting practice by the Operator. Little or no details of these deficiencies were highlighted but a decision of the Committee was taken to have the Chairman of the Audit Committee prepare a very strong letter addressed to the Operator complaining of the failure of the Operator to conform to good accounting practices. The draft letter was to be forwarded to the Chairman of the Board of Directors of MVHL with the reports of Mr. Woodcock for the months of October and November 2001 attached thereto. "See exhibit GMH 54."

(125) The evidence adduced before this Court does identify some failures on the part of the Operator to adhere to the accounting procedures stipulated in the Operating Agreement. However, those failures were not in my view persistent nor did they amount to an unreasonable refusal to adhere to the procedures as alleged.

Particular 10(iii)

"In the case of the second Defendant and in breach of his fiduciary duty to MVHL and/or MOVL, failing to provide for and/or to cause to be provided the implementation of checks and controls in respect of purchases made and/or expenses claimed by the Defendants and/or their affiliates. In this regard the Plaintiffs/Complainants will refer and rely on inter alia (a) the Minutes of the Audit Committee of MVHL dated the 20th day of February 2002; and (b) Price Waterhouse Coopers Management Report for the year ended 31st day of December, 2001."

(126) The Plaintiffs rely on the evidence of Mr. Nigel Woodcock and Professor Thomas Buckhoff in support of the allegation made in particular 10(iii) of the re-amended Statement of Claim. The Plaintiffs contend that there is an absence of accountability where the Defendants are allowed to make purchases on behalf of MVHL and/or MOVL without the implementation of any checks and controls. In the absence of such checks and controls the affairs of MOVL would be conducted through excessive and unnecessary spending. Counsel contends that this is clearly not in the best interest of the Company.

(127) Counsel for the Defendants argued however, that the plea made in particular 10(iii) of the re-amended Statement of Claim is a non sequitur for the reason that neither the Operator nor Krishna Persad was responsible for deciding what controls ought to have been put in place to ensure the proper governance of MOVL. Relying upon the testimony of Mac Harris, who at the material time was a member of the Audit Committee of MVHL, Counsel argued that the management structure of MVHL and MOVL was such that it was the responsibility of the external auditors, the internal auditor and the Audit Committee to put in place controls over the cash resources of MOVL.

(128) According to the evidence of Mac Harris (given on the 14th day of July, 2009), the Audit Committee, external auditors and the internal auditor would direct the Operator as to what accounting procedures were to be implemented. This direction would be given via the Board of Directors of MOVL, who would be

required to approve for implementation, such of the recommendations of the Audit Committee and the Auditors as it saw fit.

(129) On the other hand Counsel for the Plaintiffs contend that the second Defendant in his capacity as the Chief Executive Officer of the Operator failed to provide for and/or to cause to be provided the implementation of checks and controls in respect of purchases made and/or expenses claimed by the Defendants and/or their affiliates. In support of this allegation Counsel for the Plaintiffs rely on two pieces of documentary evidence viz.:

(a) The Minutes of the Audit Committee of MOVL dated the 20th day of February, 2002; and

(b) Price Waterhouse Coopers Management Report for the year ended 31st day of December, 2001.

The Court will closely examine these two documents to determine whether there is any merit in the contention of Counsel for the Plaintiffs.

Minutes of the Audit Committee

(130) Reference has already been made to document (a) referred to above which is the Minutes of the meeting of the Audit Committee held on the 20th February, 2002.

(131) Counsel for the Defendants was quick to point out that the Committee's deliberations failed to consider a letter of the 22nd November, 2001 (see document 66, Volume FF(13) GMH 56) which was written by the Chairman of MVHL and addressed, to the Chief Executive Officer of MOVL Dr. Krishna Persad. In that letter (a copy of which was not forwarded to the Audit Committee) Mr. Boopsingh listed five (5) items i.e.:

(a) Fixed Assets;
(b) Inventory – MOVL;
(c) Management Letter Response;
(d) Purchases;
(e) Credit Card Purchases.

which had been approved by the Board of MVHL for implementation by MOVL.

(132) The evidence before the Court is that Dr. Persad at the time of the Audit Committee Meeting held on the 20th February, 2002, had implemented four (4) out of the five (5) recommendations and was awaiting the Management letter from PWC in order to implement the 5th recommendation.

(133) The Audit Committee headed by its Chairman Michel Andrews was unaware of these developments hence the comments at the meeting on "the poor general performance of the Operator in not following good accounting practice and, in particular not following recommendations of the Audit Committee." It was in those circumstances that the Committee "agreed that a further stronger letter be sent to the Operator" because they were not aware that the Operator had already implemented four (4) out of the five (5) recommendations which the Board of MVHL had earlier approved for implementation.

(134) An abstract of the evidence of Mac Harris on the 20th July, 2009 at page 17 of the transcript will help to clarify the issue:

Q: Now, just go back to that letter that Mr. Boopsingh wrote to Dr. Persad, the matters he raised with him. You have that, CMH 56?

A: Yes.

Q: Item one "Fixed Assets," dealt with specific action by the time of the meeting of the 20th February, 2002; yes?

A: Yes.

Q: Item two, "Inventory," dealt with by specific action by the time of the meeting of the 20th February, 2002; correct?

A: Correct.

Q: Item four, "Purchases," dealt with by specific action by the time of the meeting of the 20th February, 2002?

A: Correct.

Q: And “Credit Card Purchases,” dealt with by specific action by the time of the meeting of the 20th February, 2002?

A: Yes.

Q: Now, the only item that had not, therefore, that had not been dealt with by the time of that Audit Committee Meeting on the 20th February, 2002, was the question of the Management Letter response, yes?

A: Correct.

Q: However, that could not, could it, have been dealt with by the time of the meeting of the Audit Committee on the 20th February, 2002; could it?

A: No.

Q: And the reason is that the PWC Management letter would not arrive until about April, May of 2002?

A: Correct.

Q: When it did arrive, the Operator did prepare a draft response forwarded to the Board in order for the Board to respond to PWC, did it not?

A: Yes.

The cross examination of the witness continued at page 23 of the transcript as follows:-

Q: Now it has to be - my understanding is , but you tell His Ludship – you were on the Audit Committee; you were at this meeting – that what this minute is saying is, “Look, we have not seen the letter that Mr. Boopsingh wrote to Dr. Persad; but Dr. Persad has failed to comply with requests to correct serious financial matters.” You accept that?

A: Yes.

Q: Now, again, I ask you the question, anybody reading this minute, you see might form the impression that the Operator or Dr. Krishna Persad had been at fault in connection with quite serious – well, serious financial matters, yes?

A: Yes.

Q: And all I am saying is, that in the circumstances in the facts, that is misleading, is it not?

A: Yeah, I guess so – Yes.

(135) Moreover, Mr. Woodcock during his cross-examination, admitted that there were at MOVL, controls and checks on purchases and other expenses made by the Operator. Mr. Woodcock testified that as the internal Auditor, he collaborated with the Audit Committee and the External Auditors to provide checks and controls on the accounting department of the Operator before the accounts reached the Board of both MOVL and MVHL. When asked by Counsel whether it was not false to say that Krishna Persad and Krishna Persad and Associates Limited had failed to provide checks and controls regarding purchases and expenses that they made, his response was that "that is an inaccurate statement."

PWC Management Report – ending 31st December, 2001

(136) In the Management Report for the year ended 31st December, 2001 the external auditors noted the following:

(a) that there were still significant and non-routine transactions which should have been approved or at least brought to the attention of and discussed by the Board of MOVL prior to their execution.

(b) that advances were still being made to or on behalf of KPA Services Ltd. Also advances continued to be made to Mac Harris and Dr. Krishna Persad mainly via credit card payments. There was no evidence to indicate that the Board of Directors approved these advances.

(c) a number of transactions were entered into by the Operating

Agreement.

(137) On a review of the evidence before the Court, this Court has found nothing in the external Auditors Report for the year ended 31st December, 2001 and the Minutes of the Audit Committee of MVHL dated the 20th day of February 2002 in support of the allegation made in particular 10(iii) of the re-amended Statement of Claim that the second Defendant failed to implement checks and controls in respect of purchases made and/or expenses claimed by the Defendants and/or their affiliates.

Particular 10(iv)

"Obtaining and/or in the case of the second Defendant in breach of his fiduciary duties to MVHL and/or MOVL purporting to approve contractual and/or other arrangement with K.P.A. and/or its affiliates and/or second Defendant which were commercially unfavourable to MVHL and/or MOVL and/or intended to secure an unfair commercial advantage to K.P.S. to the detriment of the Plaintiffs/Complainants. In this regard, the Plaintiffs/Complainants will refer and rely on inter alia (a) Price Waterhouse Coopers Management Report for the year ended 31st day of December, 2001; (b) the Minutes of the Audit Committee of MVHL dated the 20th day of February, 2002; and (c)the Report dated the 17th day of March, 2002 by Nigel Woodcock."

(138) The allegation being made under this particular is that the second Defendant sought to approve certain contractual and/or other arrangements with K.P.A. and/or its affiliates which were commercially unfavourable to MOVL and/or MVHL. Moreover, these arrangements were intended to secure an unfair commercial advantage to K.P.A. to the detriment of the MVHL and/or MOVL.

(139) Counsel for the Defendants argued that there was no evidence tendered throughout the trial by the Plaintiffs of any transaction which was approved by the second Defendant. Neither was there any transaction which was commercially unfavourable to MVHL and/or MOVL nor any transaction which was "intended to secure an unfair commercial advantage" to the Operator.

(140) Apart from the documentary evidence relied on by the Plaintiffs in support of the allegation, the Plaintiffs also relied on the testimony of Nigel Woodcock, Thomas Buckhoff, Steve Ragoobar, George Nicholas and Jasserani Persad.

(141) For the most part, the evidence of Mr. Woodcock on this issue was characterized with uncertainty as he was examined by Counsel for the Plaintiffs. Mr. Woodcock did highlight a number of irregularities in the management of the affairs of MOVL by the Defendants but at no time did he testify that K.P.A. and/or its affiliates and/or the second Defendant approve contractual and/or other arrangements which were commercially unfavourable to MOVL and/or MVHL.

(142) In the Woodcock's Report of the 17th day of March, 2002 the author (Nigel Woodcock) did testify that there was nothing in the Report that suggested that the transaction he analysed was intended to secure an unfair commercial advantage to KPA, to the detriment of MVHL and MOVL. As the evidence unfolded it was clear that Mr. Woodcock's statement that the sum of $60,000.00 (US) was paid out of the account of MOVL to C & A International Supply Ltd. was because of the fact that several documents were never shown to the witness during his examination in chief.

(143) During cross-examination Woodcock admitted that had he been shown the invoice from J & B International Ltd. for the sum of $60,000.00 (US) for transporting the vessel to Trinidad and a copy of the cheque confirming payment to J & B International his conclusion arrived at in his Report would certainly have been different. See exhibit "NW1642". Mr. Woodcock accepted during cross examination that MOVL's bank account being debited for the sum of US $60,000.00 was in fact paid to J & B International.

(144) Moreover, Mr. Mac Harris a member of the Audit Committee of MVHL did testify on the 20th July, 2009 that neither the Operator nor the second Defendant or anyone connected to the KPA group of companies had sought to approve any transaction commercially unfavourable to Mora Oil Ventures Limited.

(145) I have carefully perused the Minutes of the Audit Committee of MVHL dated 20th day of February, 2002 and the Price Waterhouse Coopers Management Report for the year ended 31st day of December, 2001 and I have found nothing in either of those documents to suggest that the Operator or the second Defendant purported to approve contractual and/or other arrangements with K.P.A. and/or its affiliates which were commercially unfavourable to MVHL and/or MOVL as pleaded by the Plaintiffs.

(146) Indeed, I am not satisfied from the evidence relied upon by the Plaintiffs that the allegation made by the Plaintiffs in paragraph 10(iv) of the Statement of Claim as against the Defendant has been proven.

Particular 10(v)

"Taking unauthorised and unsecured advances from monies belonging to MVHL and/or MOVL when the Defendants knew or ought to have known of the cash flow constraints under which MVHL and/or MOVL were operating and/or the Auditor's reservation about the inability of MVHL and/or MOVL to continue as a going concern during the second Defendant's stewardship of MVHL and/or MOVL."

(147) The allegation being made here is that the Defendants took unauthorised and unsecured advances from monies belonging to MOVL and/or MVHL at a time when they (the Defendants) knew of the cash flow problems being experienced by MOVL and/or MVHL.

(148) It is a fact that the external auditors (P.W.C.) in their Reports to Management for the years ending 31 December, 1999, 31 December, 2000 and 31 December, 2001 did comment on the critical cash flow constraints which MOVL was experiencing. For example, for the year ending December 31, 1999 commenting on "Going Concern Issues" the Auditors stated that "the company continues to be in a critical cash flow situation and its ability to continue to trade in the foreseeable future is in question." The Auditors further stated that "Mora Oil Ventures Limited conducts considerable trading activities with related parties. The value of transactions with related parties for the year ending 31 December, 1999 was approximately $4.8m."

(149) In the Auditor's Report to Management for the period ending December, 31, 2000 the auditors cautioned Management as follows:

> **"Given the Company's critical cash flow constraints, advances to finance the operations of related parties and other persons may be considered inappropriate use of Company funds."**

The Auditors repeated verbatim the very caution expressed in their Report to Management for the period ending December 31, 2001.

(150) I agree with Counsel for the Plaintiffs that it would be unfair and oppressive for the Defendants to take unauthorised and unsecured advances

from MOVL and/or MVHL at a time when either of those companies was experiencing cash flow constraints. But I have not seen any evidence to suggest that the first named Defendant in particular, took unauthorised and unsecured advances from monies belonging to MOVL and/or MVHL.

(151) Much has been said about the related party balance of the first named Defendant. There is, however, no evidence that this balance was unauthorised. In fact reference to this balance was highlighted in the minutes of the meeting of the Audit Committee of MVHL held on the 20th February, 2002. Three (3) items of indebtedness by the first Defendant were discussed by the Committee as follows:

(i) An account of $900,000.00 (T&T) owed with respect to the Barges;

(ii) An amount of T & T $2,000,000.00 owed in respect of Snubbing unit; and

(iii) An account of T & T $2,300,000.00 owed for workboat "MV Devious."

(152) According to the evidence of Mr. Woodcock these three (3) transactions were recorded in the books of the first Defendant (the Operator) and were authorised by the Board of Mora Oil Ventures Limited. The evidence from Mr. Woodcock showed clearly that Mora Oil Ventures Ltd. had authorised the purchase of the K.P. Rambler, but it was MVHL that overruled the decision of MOVL, arguing that the latter should stick to its core business and instead transfer the boat to K.P.A. Services Ltd. a related party. As a result the costs associated with the purchase of the KP Rambler by the first Defendant were transferred to the related party account of KPA Services Ltd. A similar arrangement was finalised with respect to the purchase of the supply Boat for MOVL. In the main therefore the indebtedness of the related parties to MOVL was not as a result of any unauthorised and unsecured taking of advances from monies belonging to MVHL and/or MOVL.

(153) On the evidence presented by the Plaintiffs there appears to be an unauthorised "taking" or unauthorised "interference" by the 2nd Defendant of monies belonging to MVHL and/or MOVL during the period known to the second Defendant when the said companies were experiencing cash flow constraints.

The inter-bank transfer of $600,000.00

(154) In the Minutes of the Audit Committee of the Board of MVHL held on February 28, 2002 the Committee had to consider a Report by Mr. Woodcock in which he made reference to a transfer of US $600,000.00 from one Scotiabank account into a call deposit in the month of October 2001. Mr. Woodcock did report that when he made the necessary inquiry he was informed by the second Defendant that "the monies were to be held as security for the Operator to be granted a loan to repay the related party balances."

(155) In view of the Mr. Woodcock's Report the Committee noted the following:-

(i) to date this transaction has not taken place;

(ii) it was recommended that steps ought to be taken to have these funds invested/utilised in a more efficient manner;

(iii) further, according to the Minutes, the Committee agreed that the transaction was highly irregular and should be investigated and brought to the attention of the Board;

(iv) the MVHL Annual Report 2001, pages 12 and 24 (i.e. the Balance Sheet and accompanying footnotes), do not include the US $600,000.00 in the US $951,647.12 total "Due from related parties";

(v) in the circumstances it cannot reasonably be concluded that the Defendant Krishna Persad, took US $600,000.00 and used it for a purpose not approved by the Board of Directors; and

(vi) whether or not these funds were some time later returned to the MOVL accounts does not rectify the irregularity of the transaction ab initio.

(156) Mr. Woodcock had found upon investigation that the purpose for which the money was taken, that is, to hold as security for Dr. Persad to be granted a loan to repay the related party balances never took place.

(157) There was also evidence of this transaction uncovered by Dr. Thomas Buckoff. Dr. Buckoff had discovered in his forensic investigation that there was an inter-bank transfer of funds in the sum of US $600,000.00 out of Scotiabank US dollar account number 8847517 which was unknown to either MOVL or MVHL. Such evidence corroborated the evidence of Mr. Woodcock relative to the said transaction. There was no contradictory evidence coming from the Defendants.

The unauthorized withdrawal of funds

(158) Further evidence led by the Plaintiffs in support of the allegation made with respect to the particular stated at paragraph 10(v) of the Statement of Claim is the unauthorised and unjustified withdrawal from the Plaintiffs account in the sums of US $827,000.00 and TT $1,450,000.00 purportedly to service the June 2002 cash call.

(159) Again the unauthorised taking of these advances by the second named Defendant was comprehensively captured in the witness statement of Mr. Mc Harris duly signed and filed in these proceedings on the 1st June, 2009. The witness narrated in paragraph 23 of his witness statement that when he signed the two blank cheques he did so to facilitate business to the end of March 2002 as he would have been out of the country during that time. Having signed and left those cheques with the accounting clerk the witness testified that he expected that "the payee", "the amount" and "the date" would be inserted at the material time.

(160) Both cheques were tendered into evidence and marked GH1 and GH2 respectively. Mr. Mr. Mc Harris also testified that at a general meeting of MOVL on the 10th May, 2002 both he and Dr. Persad were removed as directors from the Board of MOVL. The two (2) cheques were shown to have been signed by both Mc Harris and Krishna Persad on the 20th June, 2002 that is, at a time when neither of these two signatories was authorised by the Board of Directors of MOVL to sign cheques on behalf of the Company.

(161) KPA, the payee named on both cheques must have known that the funds were improperly obtained by its Chief Executive Officer Dr. Krishna Persad who himself, knew or ought to have known that he had no authority to sign two cheques in MOVL's name at the time that he did. In my respectful view, the

conduct of Dr. Persad on this issue borders on fraud and it matters not for what purpose the funds were used.

(162) I am satisfied from the evidence adduced by the Plaintiffs that the withdrawal of the said sums of US $827,000.00 and TT $1,456,000.00 from the Plaintiffs account was both unauthorised and unjustified and in breach of the Defendants fiduciary duties to MVHL and MOVL. Such conduct I find to be oppressive or unfairly prejudicial to or unfairly disregards the interests of the Plaintiffs.

Particular 10(vi)

"In the case of the second Defendant and in breach of his fiduciary duties to MVHL and/or MOVL, approving improper and/or inadequate secured advances in respect of monies loaned to KPA by MOVL when he knew or ought to have known that the security purportedly provided by KPA to MOVL was improper and/or inadequate to secure the advances."

(162) The allegation here is that Dr. Krishna Persad in breach of his fiduciary duty to MVHL and/or MOVL did approve improper and/or inadequate security for monies loaned to KPA by MOVL at a time when Dr. Persad knew or ought to have known that the security provided for the said loan was improper and/or inadequate.

(163) Counsel for the Defendants was very brief in his response to the allegation. He argued that the plea must fail for lack of evidence. Counsel further argued that there is no evidence that Dr. Persad ever at any time approved any advance or loan to anyone.

(164) The evidence before this Court confirms that Dr. Krishna Persad was in absolute control of the first named Defendant. I believe it is reasonable to conclude that he was the directing mind and will of the company. He was also the Chief Executive Officer (CEO) and director of MOVL and a director of MVHL.

(165) Evidence was led by Mr. Woodcock that on the basis of the reviews he conducted for the period ending 30th September, 2001 showed that there was an indebtedness from the Operator to MOVL.

(166) On day 19 of the hearing held on the 27th March, 2006 the following evidence was led during the examination in chief of Mr. Woodcock by Counsel

for the Plaintiffs:

Q: "Could you, tell his Lordship, on the basis of the review you conducted at the end –well for the period up to 30th September, 2001, taking the first entry , "Krishna Persad & Associates Limited," whether any payment was made to liquidate the indebtedness to Mora Oil?

A: Well, according to this, there was no payment in the particular two month period for that party.

Q: There was no payment?

A: By the related party.

Q: Sorry could you repeat that?

A: There was no payment by the related party in the months of August and September to liquidate that balance, according to this.

Q: That is Krishna Persad & Associates Limited?

A: Yes."

(167) The examination in chief continued with respect to the indebtedness of other related parties to MOVL. The evidence revealed that at the end of November 2001 the related party balance in the sum of 5.3 million dollars was owed to MOVL. The examination in chief continued as follows:

"Q: So was it your understanding, in carrying out your exercise, Sir, that these moneys- well at the end of November, $5.3 million – was a loan by MOVL or a series of loans by MOVL to the related party?

A: Well loans, advances or balances due, I wouldn't know how legally to term it, but they were amounts due to MOVL from the related party.

(168) In light of the above evidence I find it difficult to accept the submission of Counsel for the Defendants to the effect that there was no evidence of any advance or any monies loaned to KPA by MOVL. What is clear however, is that the related party balances increased in size with the approval of the Board of Directors of MOVL and/or MVHL as well as the Audit Committees of these Companies. The duty to ensure that advances made by MOVL to the related parties rest entirely on the Board moreso than on the Chief Executive Officer in the person of Dr. Krishna Persad.

(169) I have found no evidence to support the contention that the second Defendant was in breach of his fiduciary duty to MVHL and/or MOVL by approving improper and/or inadequately secured advances in respect of monies loaned to KPA by MOVL. It is true that the advances to the related parties increased considerably over time, a fact which led Mr. Woodcock to confirm in one of his report that "MOVL is not in a position to be financing the operations of other parties especially where the Company itself is saddled with a significant debt burden."

(170) It is only in the light of those findings did the Companies make any effort to ensure that some form of security ought to be provided by the related parties to protect the interest of the shareholders of MOVL.

Particular 10(vii)

"Failing to service repayment on outstanding loans and/or advances due and payable by the Defendants to MOVL when they knew or ought to have known of the cash constraints under which MVHL and /or MOVL were operating and/or the Auditors reservations about the ability of MVHL and/or MOVL to continue as a going concern during the second Defendant's stewardship of MVHL and/or MOVL."

(171) Again Counsel for the Defendants has submitted that there is no evidence from the Plaintiffs of any outstanding loan and/or advance due and payable either by Dr. Persad or by KPA to MOVL.

(172) That submission seems to run contrary to the evidence led by Nigel Woodcock during his examination in chief on day 19 of March, 2006 and to which reference has been made with respect to the arguments analysed under particular 10(vi).

(173) The evidence shows that the Operator as part of the group of companies referred to as "the related parties" were all indebted to MOVL during the stewardship of Dr. Persad over MOVL and/or MVHL. In one of his many reports to Management Mr. Woodcock reported that as of 30th September, 2001 the related parties owed MOVL some $4.6 million and by the end of November, 2001 that sum had increased to $5.3 million.

(175) Mr. Woodcock cautioned the Board of Directors of MOVL that the

Company was not in a position to be financing the operations of other parties while the Company was saddled with a significant debt burden.

(176) In the external Auditors Management Letters for the years ending December 1999, 2000 and 2001the Auditors commented upon the considerable trading activities that MOVL conducted with related parties. Moreover, the Auditors warned the Board of Directors of MOVL in their Report to Management for the year ending 31 December, 2001 that given the company's critical cash flow constraints, advances to finance the operations of related parties and other persons may be considered inappropriate use of the Company's funds.

(177) In the years during the stewardship of Dr. Persad of the Plaintiff Companies I have found little or no attempt by the Board of Directors of either MOVL and/or MVHL to properly manage the related party balances as a critical aspect of the operations of MOVL. The evidence confirmed that the outstanding loan and/or advances due and payable by the related parties (including the first name Defendant) to MOVL rose to $6.2 million by the end of December 2001.

(178) Mr. Woodcock testified that it was only at the end of the financial year of 2001 that consideration was given by the Board of MOVL to secure the advances by preparing loan documents with appropriate security with time frames and repayment schedules. Prior to this development there was never any contractual obligation placed upon the Defendants to ensure that the related party advances were reduced or liquidated. In those circumstances it is fair to conclude that the Defendants failed to service repayments on the outstanding loans and/or advances due and payable by the Defendants to MOVL as alleged but this was with the tacit approval of the Board of Directors of MOVL and/or MVHL. This is so notwithstanding the fact that Dr. Persad was the CEO of the first Defendant and the Chairman of MOVL and/or MVHL.

(179) It is my respectful view that the ultimate responsibility of acting in the best interest of the Companies rest not only with the Board of Directors as a whole but also with each individual director. The Board neglected to put in place any schedule for the repayment of the indebtedness of the related parties to MOVL. Instead the members of the Board of both MOVL and MVHL remained inactive while the indebtedness continue to grow over the years.

(180) In those circumstances I am not prepared to hold that the Defendants inaction with respect to the outstanding indebtedness by the related parties to MOVL could amount to an act of oppression against the Plaintiffs.

Particular 10(viii)

"Approving the utilization of and/or utilizing the monies of MVHL and/or MOVL with the intent to secure a loan taken by KPA to repay MOVL monies owed to it by KPA when the Defendants knew or ought to have known of the cash flow constraints under which MVHL and/or MOVL were operating and/or the Auditor's reservations about the inability of MVHL and/or MOVL to continue as a going concern during the second Defendant's stewardship of MVHL and/or MOVL."

(181) The conduct complained about in this particular was partly dealt with earlier in particular 10(v).

(182) Counsel for the Defendants has argued that this plea by the Plaintiffs was directly contradicted by the evidence at the trial. The allegation refers to a sum of US $600,000.00 which was placed in a term deposit in or about October 2001 and subsequently put into a current account in or about April of 2002. Counsel for the Defendants contends that neither Defendant has ever been connected to the movement of the money.

(183) What is clearly not in issue is the fact that there was movement of the said sum of US $600,000.00 which belonged to MOVL. The question however, is who was responsible for the movement of the funds and for what purpose. In Woodcock's Report to Management (exhibit "NW 19") dealing with "Cash balances" Woodcock reported as follows":

> **"In the month of October 2001 US $600,000.00 was transferred from the Scotia US dollar account to a call deposit at the same financial institution. Enquiries regarding the reasons for this transfer revealed that the amount was to be held as security for the Operator to be granted a loan to repay the related party balances. To date this transaction has not taken place and steps ought to be taken to have these funds invested utilized in a more efficient manner."**

(184) Examination in chief of the witness on the issue took the following form:

Q: "First of all, Sir, the enquiries to which you refer, the enquiries were made by whom?

A: By myself.

Q: And you said the $600,000.00 was transferred to a Scotia USA account. That account was in whose name?

A: Mora Oil Ventures Limited.

Q: And it was transferred to a call deposit account you say?

A: Yes."

(185) The evidence before me is that Woodcock's Report was discussed by the Audit Committee of MVHL and they described the transaction as "highly irregular" if in fact the reasons stated in the Report were true. During the examination in chief Woodcock confirmed that the enquiries into the transaction was conducted by Mr. Woodcock himself and that the account was in the name of MOVL. The only person or entity from whom Mr. Woodcock could have made those enquiries is from Dr. Persad, the CEO of Krishna Persad & Associates Limited and/or from other officials of the Operator. Under the terms of the Operating Agreement it is the Operator who had "exclusive charge of and shall conduct all Mora Operations."

(186) The Operator would not have misled Mr. Woodcock in his enquiries on a transaction of that nature. It is true that what was intended never materialised. But to conceive such a plan without getting the approval and/or permission of the Board of Directors of MOVL and/or MVHL is in my view unacceptable conduct. Clearly Dr. Persad and the Operator were not acting in the best interest of MOVL and its shareholders when the plan was conceived to use the sum of US $600,000.00 (belonging to MOVL) as security for a loan to pay off the indebtedness of the related parties to MOVL.

(187) The evidence revealed that the said sum was removed from its current account and placed in a call deposit account to facilitate the plan. Such a transfer could only have been effected by the Operator who had the exclusive authority to manage the accounts of MOVL.

(188) I therefore find that such conduct by the second Defendant must be seen as contrary to the reasonable expectations of the Plaintiffs and therefore oppressive or unfairly prejudicial to or in disregard of the interests of the Plaintiffs.

Paragraph 10(ix)

"Defaulting in and/or deferring without good reason and/or cause and/or explanation to the shareholders of MVHL and/or MOVL payment of royalties

and taxes to the Government of Trinidad and Tobago as required by the terms of the Exploration and Production Licence."

(189) Counsel for the Defendants has submitted that this allegation is "frivolous and vexatious." Counsel argued that no evidence was ever called to support a finding that the money was given to KPA (or Dr. Persad) to discharge those liabilities of MOVL.

(190) It is true that under the terms of the Licence MOVL was under an obligation "from the date of the commencement of the term hereby granted and throughout the continuance thereof, there shall be paid by the Licensee to the Minister, the several royalties stipulated hereunder in the manner provided herein." See Clause 8(1)(a) of the Exploration and Production Licence dated 30th day of December, 1994.

(191) Pursuant to Clause 15(2)(b) of the said Licence the Minister has the power to revoke the said Licence for:

> **"failure by the Licensee to make payments stipulated as rent, royalty, petroleum impost, petroleum production levy or taxes within three calendar months of the date on which such payments fall due."**

(192) Having regard to the terms and conditions of the Licence it is important that royalties and taxes are paid when they fall due, since default could result in revocation of the said Licence. The question that arises for consideration is whether there has been default in and/or a deferral without good reason for payment of royalties and taxes to the Government of Trinidad and Tobago as alleged by the Plaintiffs.

(193) Clearly therefore, the primary liability for the payment of royalty and other taxes rests squarely on the shoulders of MOVL, the Licensee. However, under the terms of the Operating Agreement (O.A.) the Operator has been given "Exclusive charge of and shall conduct all Mora operations." All expenses incurred by the Operator in conducting the operations of MOVL are to be charged to the Mora account and the Licensee shall pay when due, in accordance with the Accounting Procedure, the Mora Account expenses. See Article 3.2(B) & (C) of the O.A.

(194) Further, pursuant to Article 9.1 of the O.A. the Operator is responsible for

reporting and discharging the tax assessed upon MOVL and the latter has agreed to indemnify the Operator from any and all costs or liability arising from a failure to discharge such taxes.

(195) The Licence and the Operating Agreement took effect from the 30th December, 1994. The documentary evidence before the Court is that there was default and/or deferral in the payment of royalty on crude oil and gas for the years 1996 through to the year 2000. See paragraph 9 of the Witness Statement of Vilma Fortune dated and filed the 8th day of April 2010. Vilma Fortune at the material time was the Planning Officer II (Acting) employed with the Ministry of Energy and Energy Industries.

(196) Ms. Fortune, testified that the records from the Ministry confirm that arrears from 1998 were paid in 2001 in the sum of $945,000.00 and arrears from 1999 and 2001 were paid in 2002. Her evidence is that most of these arrears were paid on and after the 16th May, 2002. It is to be noted that on the 16th May, 2002 the third named Plaintiff was appointed Chairman of MVHL and a few days later was appointed Chairman of MOVL.

(197) Counsel for the Defendants has argued that as early as December 19, 2000 the Board of Directors of MVHL had written to the Ministry of Energy on the issue of royalty re-scheduling and that the then Chairman Mr. Boopsingh had expressed optimism that a mechanism would be found to resolve the said issue.

(198) It appears to me that the only reason why the Board of Directors of MVHL would have made such a request of the Ministry is because the accumulated arrears of the payment of royalty had become unmanageable over the years, that is, from 1995 through to 2000. The question that inevitably arises is why were the royalty and other taxes not being paid by the Operator who was credited with the responsibility of managing the affairs of MOVL in accordance with the terms of the Operating Agreement.

(199) Pursuant to Clause 4.1 of the Operating Agreement it was the Operator who, “on or before the tenth day after the last, day of each month ..... bill the Licensee for its costs as set out in this Agreement for such month, which amount shall be due and payable within twenty (20) days after receipt of such billing.” That was the Accounting Procedure in place at the time whereby the Operator would be indemnified by MOVL for all expenses incurred for managing the affairs of MOVL. The practice was that the Operator prepare a record of all its expenditure made on behalf of the Licensee (with supporting documentation) and

submit same in a timely fashion for payment by MOVL.

(200) I therefore disagree with Counsel's argument that "no evidence was called to show that MOVL ever at any time paid money to KPA to pay royalties and other petroleum taxes which thereafter remained unpaid." The responsibility was always that of the Operator during the years from 1995 through to 2000 to incur the expenses for the payment of royalties and other petroleum taxes and thereafter to bill the Licensee for such expenditure.

(201) The evidence before the Court is that the non-payment of the royalties and other petroleum taxes over the years led to a significant built up of arrears which then necessitated negotiations between the Plaintiffs and officials of the Ministry of Energy for a re-scheduling of the payments. Negotiations were initiated by the Plaintiff companies for that purpose.

(202) As indicated earlier in this judgment the failure of the Operator to carry out its responsibility in the payment of royalties and taxes could have led to the revocation of the Licence by the Minister. Such conduct on the part of the Operator in my respectful view unfairly disregarded or prejudiced the interests of MOVL and/or MVHL and their respective shareholders.

Particular 10(x)

"In the case of the second Defendant in breach of his fiduciary duty to MVHL and/or MOVL, failing and/or neglecting to fully disclose the names, sizes and values of the East Mora and Tourmaline prospects in any public MVHL and/or MOVL documents and/or any other documents to which the shareholders of those companies had access."

(203) l for the Defendants has submitted that the Plaintiffs have led no evidence in support of this allegation and consequently the allegation ought to be rejected.

(204) I have considered the allegation and having regard to the paucity of evidence produced by the Plaintiffs in support of this allegation I am not satisfied that the allegation has been proved on a balance of probability.

Particular 10(xi)

"Selling and/or disposing of and in the case of the second defendant in breach of his fiduciary duties approving the sale and/or disposition of MVHL's 17.5% interest in the Point Ligoure Block at an undervalue of TT$2.87 million when the second Defendant knew or ought to have known that same was valued over TT$250 million."

Particular 10(xii)

"Obtaining and/or receiving and in the case of the second Defendant in breach of his fiduciary duties obtaining and/or receiving a 7.5% interest in the Point Ligoure Block and/or other financial benefits at payment and/or compensation for arranging the sale and/or the disposal of MVHL's 17.5% interest in the Point Ligoure Block at the aforesaid undervalued sale price."

(205) I have decided to analyse these two sets of particulars together since they are based on the same set of factual circumstance. The allegations being made against the Defendants and in particular the second named Defendant are that the MVHL's 17.5% interest in the Point Ligoure Block was sold by the Defendants at a gross undervalue for TT$2.87 when the Defendants knew that the Block was valued over TT$250 million.

(206) Moreover, the Plaintiffs are alleging also that the second Defendant wrongly received a benefit of 7.5% interest in the said Point Ligoure Block for arranging the sale of the Plaintiffs interest in the said Point Ligoure Block.

(207) From the evidence adduced by the Plaintiffs an agreement was entered into among Mora Ven Holdings Limited ("MVHL"), Venture Productions (Trinidad) Limited and Ligoven Resources Limited (Ligoven) on or about the 16th November, 2000 whereby MVHL agreed to sell its 17.5% interest it held in the Point Ligoure Block to Venture Productions (Trinidad) Limited for a consideration of $50,000.00 (US currency).

(208) One of the Plaintiffs main witness in the person of Professor Buckhoff testified that as a result of the sale, the Company (MVHL) had suffered a loss of some US$17,000,000.00. In his testimony Professor Buckhoff based his opinion on the assumption that the documents that he examined were authentic and that PKF's valuation of the asset was accurate. Professor Buckhoff admitted during

cross-examination that his opinion was based on a misunderstanding that PKF valuation gave a fair market value of the Point Ligoure interest.

(209) However, Mr. Hayden Toney a Consultant engaged with PKF testified during cross-examination that PKF was never asked to provide a fair market value of the Point Ligoure asset. He testified that the third named Plaintiff had given PKF instructions as to what was required by the valuation.

(210) The evidence produced by the Plaintiffs does not satisfy this Court that the second Defendant was responsible for the sale of MVHL's 17.5% interest in the Point Ligoure Block. The documentary evidence shows otherwise. The Board of Directors meeting of October 28, 1999 recorded the sale as "necessary and in the best interests of the Company." The Board's Resolution of that meeting in part stated as follows:

> **"And whereas it is considered necessary and in the best interest of the Company that it enters into a Memorandum of Understanding with Venture Production (Trinidad) Limited for the sale of its shareholding in Ligo Ven Resources Limited for the sum of $850,000.00 in United States currency."**

(211) Both witnesses for the Plaintiffs Mr. Mc Harris and Professor Buckhoff had testified in chief that the Board of Directors had not approved the sale. The documentary evidence proved otherwise. The minutes of the Board Meeting of MVHL held on the 13th November, 2000 confirmed that the Board met and concluded its discussions regarding the sale. See exhibit "GMH20."

(212) In his witness statement Mc Harris had testified that there was no "official valuation of the Point Ligoure interest and that it was Dr. Persad alone who had initiated the entire transaction. The evidence before the Court revealed that Mc Harris was never shown prior to signing his witness statement a letter dated the 22nd June, 1998 written by Petrotrin in which the Company invited MVHL and KPA the first named Defendant to negotiate a farm out and joint operating agreement with respect to the Point Ligoure Block. That letter informed the parties that a cash bonus of US$1,100,000.00 was required upon the signing of the agreement.

(213) Minutes of a meeting of the Operating Committee of MOVL held on the

28th August, 1998 recorded that a technical evaluation of the Point Ligoure reserves was undertaken by Professional Petroleum Services Limited (PPSL) and a copy of the report was sent to the Operating Committee of MOVL. Mc Harris saw that report for the first time during cross-examination and then accepted that an official valuation was in fact done on the Point Ligoure reserves. This admission under cross-examination contradicted the evidence he gave in his witness statement.

(214) The evidence before the Court belies the allegation that the Defendants or either of them sold or dispose of MVHL's 17.5% interest in the Point Ligoure Block. The documentary evidence confirms that MVHL arranged and approved the sale to Venture Productions (Trinidad) Limited for a consideration of $850,000.00 US currency. Also I am not satisfied on the evidence that KPA's 7.5% in the consortium was a payment or compensation for the sale as alleged by the Plaintiffs.

Particular 10(xiii)

"In the case of the Second Defendant and in breach of his fiduciary duty to MVHL, withholding price sensitive information and/or engaging in inside activities contrary to the Securities Industry Act of Trinidad and Tobago in his and/or his affiliates buy-out bid to MVHL shareholders on or about the 31st December, 2001."

(215) The allegation being made by the Plaintiffs in this particular is that Dr. Persad acting in breach of his fiduciary duty withheld very sensitive information which could have affected the price of the shares of MVHL at a time when a subsidiary of the First Defendant (South Western Oil Limited) made an offer to buy out the shares of MVHL in MOVL.

(216) The evidence adduced before the Court is that MVHL and/or MOVL have been unable to exploit undeveloped reserves and/or increase production beyond the existing wells because of the poor financial health of these Companies. The search for an investor was on and Dr. Persad seized the opportunity to have one of his affiliate companies make the investment. The offer to purchase the 90% shareholding of MVHL in MOVL was made by South Western Oil Limited ("SWOL") sometime around 31st December, 2001 at an offer of $2.20 per share.

(217) The evidence of Mr. George Nicholas reveals that Dr. Persad had in his possession since the year 2000 a Report entitled the "Joint 2000 Companie

Geophysical Generale." That Report contained very important information concerning the potential reserves of the East Mora Prospect and the West Tourmaline Prospect. The evidence emanating from the Plaintiffs is that at no time did Dr. Persad disclosed this information to the shareholders of MVHL while he was a director of MVHL and even when his affiliate company (SWOL) made the offer to buy out MVHL's 90% shareholding in MOVL.

(218) There is no evidence coming from the Defendants to contradict the Plaintiffs evidence. I am therefore constrained to accept the evidence of the Plaintiffs on this issue and to find as a fact that the second Defendant did breach his fiduciary duty to the Plaintiffs by failing to disclose to the shareholders of MVHL such critical information which impacted the Company's potential. The Second Defendant's conduct was clearly oppressive or unfairly prejudicial to or unfairly disregarded the interest of the First named Plaintiff and the Third named Plaintiff as shareholder and director respectively.

Particular (xiv)

"Until the imposition of a gag order by this Honourable Court in this action on or about the 14th day of July, 2003, recklessly and/or deliberately publishing erroneous and misleading statements in the Press in Trinidad and Tobago when the Defendant knew or ought to have known that such statements had the potential to adversely affect the business and/or affairs and/or financial stability and/or credit worthiness of MVHL and/or MOVL. In this regard, the Plaintiffs/Complainants will refer, to and rely on, inter alia, the Defendants advertisement in the Trinidad Guardian dated the 11th day of January, 2003."

(219) The Defendants contend that there was no evidence called by the Plaintiffs on this issue at the trial. On the other hand the Plaintiffs rely on the evidence given by Mr. Henry Chase who at the material time was the General Manager of MOVL. In support of the allegation, the Plaintiffs rely on, inter alia, the first Defendant's advertisement in the Trinidad Guardian dated the 11th day of January, 2003. The advertisement read as follows:-

> **"1. The Public is hereby notified that George Nicholas and/or anyone acting on his behalf is not authorized to sell or mortgaged or in any way pledge or deal with any of the assets owned by Mora Oil Ventures Limited, which company is partly owned by Krishna Persad and Associates Limited (K.P.A);**

2. **Goerge Nicholas is not authorized to conduct any business on behalf of the Mora Project, for which K.P.A is the legal operator;**

3. **Any person buying the said equipment or entering into any agreement or arrangement to pledge any of Mora's assets will be subject to legal action by K.P.A.**

KRISHNA PERSAD AND ASSOCIATES LIMITED"

(220) The said Notice was designed to counter another Notice placed in the Trinidad Guardian by MOVL.

(221) No evidence has been put before this Court at the trial indicating what aspect of the publication is erroneous and misleading, more so reckless. On the evidence before the Court Krishna Persad and Associates Limited (the Operator) is the owner of 10% of MOVL and MVHL owns the other 90%. Moreover, the issue as to whether the first Defendant continued to be the "legal operator" at the time of the publication was a very contentious issue between and among the parties.

(222) Counsel for the Plaintiffs contend that the published statement was particularly damaging due to the fact that it made specific mention to the third Plaintiff who was already at the time Chairman of both MVHL and MOVL. However, no evidence has been led as to the damage suffered by either of the Plaintiffs as a result of the publication.

(223) The evidence of Mr. Henry Chase relied upon by the Plaintiffs in his affidavit of January 16, 2003 is clearly hearsay and therefore inadmissible. I am therefore not satisfied that the Plaintiffs have led any evidence upon which this Court can conclude that the allegation made has been proved.

Particular 10(xv)

"Misrepresenting the true oil production rate of the wells in the Mora Field by, inter alia, periodically filling the custody transfer tank with salt water instead and in place of oil, installing a high pressured hose from National Gas Company of Trinidad and Tobago Limited to the custody transfer meter where gas will be pumped at 900 PS1 instead of and in place of oil, utilizing a magnetic instrument to distort the magnetic pickup coil located in the head by which false movements through the turbine would be detected, altering the 'k' factor by manually removing "the tamper proof seals" of the meter head as to change the configuration thereof and/or taking other measures and/or steps to manipulate the silt and water percentages of produce samples from the Mora wells and/or the resting thereof."

(224) With respect to this allegation the Plaintiffs contend, inter alia, that the true oil production rate of the wells in Mora Field was misrepresented by the Defendants and that misrepresentation was clearly shown by the evidence of Mr. La Borde who testified (see paragraph 5 of his affidavit sworn and filed on the 22nd March, 2004) that in 1996 during the course of his preparation of the daily production report, he was required to read the custody transfer meters which recorded figures related to the production rate at the Mora Platform.

(225) Mr. La Borde testified that he compared the figures he observed and recorded with the figures recorded by his relief supervisor one Mr. Manzano for the previous week. The witness noted that the figures recorded by him amounted to a production rate of twenty five barrels of oil per day (bopd) while his relief supervisor recorded a figure of one hundred barrels of oil per day. Mr. La Borde said that he spoke to his supervisor about the difference in the production rate and was told that his (the supervisor) figures were rigged and that he (Mr. La Borde) was to record the rigged figures only or face dismissal. Mr. La Borde testified that he followed the instructions of his supervisor and duly recorded the rigged figures.

(226) Mr. La Borde also testified that he observed some of the techniques adopted by the employees of KPA to boost the appearance of production. Some of the techniques were:

(i) Periodically filling the custody transfer tank with salt water instead and in place of oil and pumping same to BPTTLC; and

(ii) Installing a high-pressured hose from the National Gas Company of Trinidad and Tobago Ltd. to the custody transfer meter where gas would be pumped at 900 PS1 instead of and in place of oil.

(227) Mr. La Borde further testified that he did accompany Mr. Henry Govia (the Chief Operating Officer of MVHL) each month to the Laboratory facilities of BPTTLC at Guayaguayare where he observed Mr. Govia making cash payments to a Mr. Mohammed. Upon enquire Mr. La Borde said that he was told that the payments were made to cover up KPA's boosting of production.

(228) These allegations made by the Plaintiffs against the Defendants are very serious allegations indeed. However, Counsel for the Defendants argued that the evidence of Mr. La Borde was given entirely on information and belief and therefore inadmissible. It is true that the testimony of La Borde in support of the Plaintiff's allegation is based entirely on what was said to the witness by both Mr. Rayard Manzano (Mr. La Borde's relief supervisor) and Mr. Henry Govia.

(229) Mr. Manzano was never called as a witness to corroborate the evidence of Mr. La Borde. On the other hand Mr. Govia although he had sworn affidavit evidence in these proceedings, he was never called by the Plaintiffs as a witness to be cross-examined on his testimony. The end result is that there is no direct evidence before the Court to substantiate the allegation made against the Defendants in particular 10(xv) of the re-amended Statement of Claim.

Particular 10(xvi)

"Unreasonable, reliance on the Acquisition and Shareholders Agreement and/or the Operating Agreement to prevent KPA's removal as the Operator of the Mora Platform, and/or to permanently entrench KPA"s position as the Operator of the Mora Platform and/or to frustrate the business and/or affairs of MVHL and/or MOVL and/or the Operations of the Mora Platform."

(230) Counsel for the Defendants has submitted that the Plaintiffs have led no evidence in support of this pleaded allegation. Counsel for the Plaintiffs, on the other hand, have argued that evidence was adduced by the Plaintiffs in support of the allegation that the Defendants relied unreasonably on the Acquisition and Shareholder's Agreement and/or the Operating Agreement to prevent KPA's

removal as the Operator of the Mora Platform.

(231) The Acquisition and Shareholders Agreement (ASA) was entered into among Mora Ven Holdings Ltd., Vista Oil Ltd. and Mora Oil Ventures Ltd. on July 30 1997. By Share Transfer dated the 26th day of September, 2000 KPA (the Operator) replaced Vista Oil Ltd. as a member of the Acquisition and Shareholders Agreement referred to earlier.

(232) The Operating Agreement (OA) was made between KPA on the one hand and MOVL on the other on the 30th day of December, 1994. By this Agreement MOVL agreed that KPA should act as Operator of the Licence in accordance with the terms of the Licence and the terms of the said Agreement. KPA is therefore a party to both ASA and the OA.

(233) If it is that the Plaintiffs are alleging that the first named Defendant is unreasonably relying on the ASA and the OA in order to entrench itself as the Operator of the Mora Platform then this Court would have expected the Plaintiffs to indicate what aspects of the Agreements are being relied upon. The issue appears to be one of interpretation of the expressed terms of both the ASA and OA in order to determine whether the reliance placed on the Agreements by the Defendant is reasonable or unreasonable as alleged.

(234) I do not accept Counsel's suggestion that evidence of the Defendants refusal to hand over to the Plaintiffs companies, documents, information and assets belonging to the Plaintiffs after repeated requests and resort to litigation could be taken to support the allegation made at paragraph 10(xvi) of the re-amended Statement of Claim.

(235) In my respectful view the Defendants have every right to rely upon the expressed provisions of the ASA and/or the OA in support of their position that they cannot lawfully be removed as the Operator of the Mora Platform. Interpretation of the provisions of those Agreements is a matter for the Court to determine whether or not they are reasonable.

Removing the Operator

(236) Evidence was led by the Plaintiffs particularly by Mr. George Nicholas to the effect that efforts were made by the Plaintiffs to have the first named Defendant removed as Operator of the Mora Platform. The removal of the Operator was by no means a simple process under the terms of the Operating Agreement and the Acquisition and Shareholders Agreement.

(237) Under the Operating Agreement entered into between MOVL and Krishna Persad and Associates Limited dated December 30, 1994 provision was made for the removal of the Operator. See for example, Clause 4.10 of the Operator Agreement.

(238) On the 30th day of July 1997 Mora Ven Holdings Ltd. Vista Oil Ltd. And Mora Oil Ventures Ltd. entered into an Acquisition and Shareholders Agreement the objectives of which were to regulate and determine the relationship, rights and obligations of Mora Holdings and Vista as Shareholders of the Company and the rights and obligations of the Company, and to restrict certain of the powers of the directors of the Company.

(239) On the 26th day of September, 2000, however, Krishna Persad and Associates Ltd. (the Operator) purchased the 10% shareholding of Vista Oil Ltd. In MOVL and so became a party to the Acquisition and Shareholders Agreement (ASA).

(240) By virtue of section 11.1(t) of the ASA it is made quite clear that all shareholders of MOVL must give their approval if there is to be any material change to the contracts or business arrangements respecting the Project. Under Section 1.1 of the ASA "Project is defined as the oil and gas project situated offshore east coast Trinidad and Tobago (Mora Field).

(241) In considering the removal of the Operator the question that has to be asked and answered is whether the removal of the Operator amounts to a "material change to the contracts or business arrangement respecting the Project" in accordance with section 11.1(t) of the ASA. I will answer that question in the affirmative. I see the removal of the Operator for whatever reason as a material change of the Operating Agreement.

(242) It seems to follow therefore, that KPA's agreement will be necessary to effect its removal as Operator. In the circumstances it is very difficult or unlikely that KPA would ever agree to vote to remove itself as Operator of the Mora Platform. As a consequence the Plaintiffs have argued that KPA's position as Operator and as a shareholder of MOVL is firmly entrenched under the Operating Agreement. I agree since to remove the Operator would require the approval of all the shareholders of MOVL (including KPA the Operator).

(243) In my respectful view it could not have been intended that where a shareholder had a direct interest in the operatorship of the Mora Platform as the Operator under the Operating Agreement that such a shareholder would be entitled to invoke section 11.1(t) to insist that it be permitted to vote on an issue in which it is directly interested. Such a right, if it is allowed to exist would give

rise to a conflict of interest and that could never be in the best interest of the Company. In the circumstances I would strongly recommend that both the Operating Agreement and the Acquisition and Shareholders Agreement be amended where necessary to give the shareholders the right to remove the Operation for good cause without the Operator having the right to vote on the issue of the Operator's removal.

Particular 10(xvii)

"Making premature and/or exorbitant and/or unreasonable cash calls on MOVL and/or duplicating expense claims during the months of May to September 2002 purportedly for the operations of the Mora Platform."

Particular (xviii)

"Drawing and/or causing to be drawn monies from the bank accounts of MVHL and/or MOVL without due authorization and/or without the consent and prior knowledge of the Plaintiffs/Complainants including but not limited to drawing and/or causing to be drawn in the month of June 2002 in the sums of TT$1,456,000.00 and US$827,000.00 from MOVL's bank accounts held at Scotia Bank Trinidad and Tobago Limited."

AND

Particular 10(xix)

"In the specific case of the Second Defendant and in breach of his fiduciary duties to MVHL and/or MOVL, issuing cheques and/or purporting to authorize and/or issue approval to KPA to draw and/or cause to be drawn monies from the bank accounts of MVHL and/or MOVL, including but not limited to the aforesaid sums in the said month of June 2002 when he knew or ought to have known (a) that he had no authority to do so having been removed as a signatory on MOVL's bank account effective 16th May, 2002; and (b) that there was an outstanding request from the Plaintiffs to be met by KPA for documentation to justify the release of monies of KPA to meet its cash calls."

(244) These three sets of particulars will be dealt with together because the allegations made are based on the same set of factual circumstances.

(245) The Plaintiffs are here alleging that the second Defendant Dr. Krishna Persad withdrew the sums of TT$1,456,000.00 and US$827,000.00 respectively out of MOVL's bank account held at Scotia Bank in the month of June 2002 when he had no authority to do so and with full knowledge that he no longer had the authority to do so, having been removed as a signatory on MOVL's bank account with effect from the 16th May, 2002.

(246) The Plaintiffs rely on the testimony of George Mc Harris and George Nicholas in support of the said allegation. Mr. Mc Harris testified that sometime before the end of March, 2002 he had cause to sign two bank cheques. The witness said he did so in order to facilitate the business of MOVL up to the end of the month of March 2002 knowing that he would have been out of the country for that period.

(247) In his witness statements signed on the 1st June, 2009 Mr. Mc Harris identified his signatures on the two cheques dated 20th June, 2002 and made in the name of Krishna Persad and Associates Limited in the respective sums of TT$1,456,000.00 and US$827,000,00. He identified the other signature as that of Dr. Krishna Persad and he denied that he had authorized anyone to insert the date, the amount or the payee on the cheques. Mr. Mc Harris has admitted that he knew that as of the 10th May, 2002 he was no longer a Director of MOVL and neither was he authorized to sign any cheques on the company's behalf.

(248) The evidence of Mr. Nicholas confirmed this position. Mr. Nicholas evidence is that at a General Meeting of MOVL held on the 10th May, 2002 both Mr. Mc Harris and Dr. Persad were removed as Directors of MOVL. Further on the 24th May, 2002 at a Board Meeting of MOVL it was resolved that the signatories to the Company's bank account be changed and the two new signatories were Christopher Nahous and George Nicholas effective immediately. Dr. Persad was present at that meeting of the Board of Directors.

(249) Mr. Nicholas further testified that Dr. Persad had acknowledged by letter dated 27th May, 2002 that he was no longer a signatory on the MOVL accounts; there was no Board of Directors approval for the withdrawal of the funds from MOVL's account on the 24th June, 2002. Mr. Nicholas concluded that neither Dr. Persad nor Mr. Mc Harris had any authority to interfere with the Company's (MOVL) funds on the date when they did. Counsel for the Defendant have in my

respectful view failed to address the issue of unauthorized withdrawal of the Company's funds from the Scotia Bank's account.

(250) Counsel argued that the matters raised in paragraphs 10(xviii) and 10(xix) are the same raised in paragraph 10(xx) and proceeds to make his submissions with respect to the allegation made in paragraph 10(xx). I disagree. It seems very clear to this Court that the allegation raised in paragraph 10(xx) deals with the issue of accountability and not unauthorized interference with the Company's funds. Counsel's submissions vis-à-vis the issue of accountability of the funds withdrawn from MOVL's bank account have no relevance to whether Dr. Persad and Mc Harris had any authority to sign any cheques on the Company's behalf debiting MOVL's bank account in the respective sums of TT$1,456,000.00 and US$827,000.00.

(251) I accept the testimony of both George Mc Harris and George Nicholas and as a consequence I have concluded that Dr. Persad and George Mc Harris had no authority to sign cheques debiting the Company's (MOVL) bank account at the time that they did. They were removed by resolution of the Board of Directors on the 24th May, 2002 as signatories on the Company's account. I therefore find as a fact that their action was improper and unlawful. The Operator's complicity in such an improper and unlawful act cannot go unnoticed. The Operator was the payee on both cheques must share responsibility for this improper act equally with that of the second Defendant.

(252) As a Director of MOVL and MVHL the second Defendant has acted in breach of his fiduciary duties to both companies. The Operator on the other hand as a shareholder of MOVL acted in breach of the Operating Agreement and the Acquisition and Shareholders Agreement. Both the Operator and the second Defendant have therefore acted in breach of the reasonable expectation under the Operating Agreement and the Acquisition and Shareholders Agreement. I find as a fact that their conduct is oppressive or unfairly prejudicial to or unfairly disregards the interests of the Plaintiffs.

(253) In the Canadian case of **Calmont Leasing Ltd. –v- Kredl [1993] 7WWR 428** Russel, J very succinctly stated the principle as follows:

> **"Where the breach of fiduciary duty has occurred, the test for oppression has also been met. The objective of the remedy in oppression is to allow the Courts to determine responsible**

corporate management in accordance with equitable standards. In violating that standard, K was not acting responsibly in his corporate capacity. In expropriating benefits to which he was not entitled, he abused his position and power in a manner which was not only unfair and prejudicial and without regard for the interests of other shareholders and directors, but also oppression."

Particular 10(xx)

"Failure and/or unreasonable and willful refusal to date to account to MVHL and/or MOVL for the use and/or application of the sums of TT$1,456,000.00 and US$827,000.00 withdrawn from MOVL's accounts in June 2002 as aforesaid."

(254) The allegation made with respect to this particular is that there has been a failure on the part of the Defendants to account to MVHL and/or MOVL for the monies removed from MOVL's account in June 2002.

(255) Counsel for the Defendants have submitted that the documentary evidence before the Court exhibited as "NW74" shows a "Movement in Cash Balance" prepared by Woodcock directly contradicts this plea. Counsel argued that not only has the evidence showed that these sums were properly accounted for and (except for a small amount unspent and carried forward) expended on the Mora operations, but that the third Plaintiff George Nicholas knew that they were so expended.

(256) I have carefully perused the documentary evidence referred to by Counsel for the Defendants and I have been able to confirm that the evidence before the Court supports his submission. The evidence coming from Mr. Woodcock during cross-examination on the 2nd April, 2007 is as follows:

"Q: Mr. Woodcock, let me put the suggestion to you that there is an allegation in these proceedings that there had been, on the part of Krishna Persad and KPA Limited, the Operator, a failure and/ or unreasonable and willful refusal to date to account to MVHL and/or MOVL for the use and/or application of the sums of TT$1,456,000.00 and US$827,000.00 withdrawn from MOVL's accounts in June 2002. Do you accept that?

A: Well I don't accept the statement as being true but I am aware of an allegation.

Q: Right. And having regard to all that you have told His Lordship on the issue of these two accounts, is it not a fact that the allegation is false?

A: As far as I am aware, yes.

Q: And from the information that you had furnished to Mr. Nicholas in August 2002 he would have been informed that that allegation was false?

A: Yes, and I also met with him and gave him these reports physically as well.

Q: And the expenditure of those funds, that sum of $1,456,000.00 TT and $847,000.00US, the expenditure of those two amounts, therefore, were analysed by you and found to be properly accounted for and supported by the appropriate documentation?

A: Yes."

(257) During the trial the Plaintiffs have not produced one shred of evidence to contradict the evidence of Mr. Woodcock as reported above nor have they adduced any evidence to support the allegation made under particular 10(xx). The Plaintiffs have failed to discharge the burden placed upon them. The allegation has not been proved.

Particular 10(xxi)

"Refusing to hand over and/or unlawfully detaining and/or withholding documents, data and assets belonging to MOVL and for MVHL in particular during the period May 2002 to November 2003 notwithstanding repeated request to hand over same and a court order dated the 14th day of July, 2003."

Particular 10(xxii)

"Unlawfully withholding financial and/or other data belonging to MVHL and/or MOVL when the Defendants knew or ought to have known that (a) MVHL required the said financial and/or other data to meet its statutory and regulatory obligations to the Trinidad and Tobago Stock Exchange and the Trinidad and Tobago Securities Commission; (b) MVHL's failure to meet its aforesaid statutory and regulatory obligations exposed it to the risk of suspension from trading its shares on the Stock Exchange; and (c) the data would have advised the shareholders of MVHL of the existence and/or size and/or value of the east Mora and Tourmaline prospects and/or the rights and interests of MVHL and/or MOVL in the Point Ligour Block and/or the Northern Basic Consortium Licence issued by the Government of Trinidad and Tobago in respect of Mora Oilfield."

(258) The Plaintiffs have led evidence from several of their witnesses in support of Particulars (xxi) and (xxii) of paragraph 10 of the re-amended Statement of Claim. With respect to Particular 10(xxi) Counsel for the Defendants has referred the Court to the submissions made "above in connection with this plea." This Court has not been able to identify those submissions. However, with respect to Particular 10(xxii) Counsel has argued that the evidence relied on by the Plaintiffs in support of this plea does not support the plea. In any event Counsel submits that the evidence relied upon was inconsequential as it failed to establish any consequence flowing from the alleged withholding of documentation by the Defendants.

(259) By virtue of their exclusive control of the conduct and management of the operations of Mora Oil under the terms of the OA, the Defendants had possession and control of the documents pertaining to the drilling and production of oil and related matters of Mora Oil as well as the items of equipment used on the platform and otherwise.

(260) Those documents and equipment, which are listed at schedules "A" and "B" to the Summons of the 16th January, 2003, have never been returned to Mora Oil but remained in the possession and control of the Defendants up until the filing of the said Summons.

(261) The evidence shows that the Plaintiffs' operations both in terms of satisfying the Ministry of Energy as the regulator and the conduct of its oil production business are being significantly prejudiced by not having access to and possession of those documents and equipment. The evidence from the Plaintiffs also confirm that repeated attempts on the part of Mora Oil to recover its documents and equipment have been frustrated and denied by the Defendants.

(262) The evidence before the Court also shows that after Mr. Nicholas assumed the chairmanship of the Plaintiff companies there developed an increased tension between the Plaintiff Companies and the Defendants culminating in a shutdown of the Mora platform on the 27th day of September, 2002. As a consequence of these developments the Plaintiffs filed a Summons in Chambers on the 16th January, 2003 in which they sought, inter alia, the following relief:

(a) An order that the Defendants deliver up the documents now in their possession, (listed as schedule "A" to the Summons) owned by MOVL;

(b) An order that the Defendants deliver up the equipment now in their possession but owned by MOVL, listed as Schedule "B" to the Summons.

(263) By a written judgment of the Court delivered on the 14th day of July, 2003 the Court granted the relief sought by the Plaintiffs as aforesaid and mandated the Defendants to deliver up the documents listed in Schedule "A" by 4:00 p.m. on Wednesday 16th July, 2003 and the equipment listed in Schedule "B" and "C" by 12:00 noon on Thursday 17th July, 2003.

(264) Mr. Faris Al-Rawi then Attorney at Law on record for the Plaintiffs testified (see paragraph 4 of his affidavit filed on the 22nd March, 2004) that he did inform the Defendants and their legal representatives following the hearing before the Honourable Mr. Justice Myers as follows:

(i) that MVHL and Mora Oil Ventures Limited (MOVL) through no fault of their own, were in default of their obligations to the Ministry of Energy as well as their statutory obligations to the Trinidad and Tobago Securities Exchange Commission (TTSEC) to file their comparative financial statements for the relevant periods in satisfaction of the Securities Industries By Laws 1997;

(ii) that the said financial statements could not be compiled and prepared until the Defendants delivered up to MVHL and MOVL essential financial information, documents and millions of dollars worth of equipment belonging to the Plaintiffs, which had been ordered by the Judge to be delivered up by the

Defendants by Order dated the 14th of July, 2003 (the Production Order) and which formed part of the requisite periods audit of MVHL and MOVL;

(iii) that it was critical that the Defendants deliver up to MVHL and MOVL the Asset Register of Mora Oil, which the Defendants had at the time maintained on MVHL's computers at its registered offices, as this was the starting point for the audit of the companies financial affairs and the preparation of their financial statements. Until May 2002 the MVHL registered office was located at the Defendants premises at Acteon Court, Bobb Street-on-the-Sea, La Romain.

(iv) that there was a real threat of suspension of the trading of MVHL's shares on the Stock Exchange and/or its delisting from the Registry of Public Companies by the Trinidad and Tobago Securities Exchange Commission, as evidenced by a publication appearing in the Guardian Newspaper on 14th July, 2003.

(265) Prior to the orders made by the Honourable Mr. Justice Myers on the 14th July, 2003 that the Defendants deliver to the Plaintiffs the data, information and equipment referred to in the said orders, several requests were made by the Plaintiffs for the Defendants to hand over same. The evidence from Mr. Nicholas confirms that several pieces of correspondence were exchanged between Mr. Nicholas as Chairman of MVHL and Dr. Persad as Chief Executive Officer of Krishna Persad and Associates Limited (the Operator) particularly during the months of May and June of 2002 on the delivery of the said information.

(266) Mr. Al-Rawi did testify in paragraph 8 of his affidavit filed on the 22nd March, 2004 as follows:

"At all material times, I have been involved in working out with the Defendants' Attorneys the <u>Production Order</u> as well as the Defendants' handing over of the agreed financial documents. During this working out exercise, I observed that the Defendants embarked on what can only be described as a consistent and deliberate campaign to frustrate inter alia MVHL's compliance with its statutory and regulatory obligations under the Securities Industry Act and By-laws and MVHL's and MOVL's obligations to

the Ministry of Energy of the Government of Trinidad and Tobago."

(267) Mr. Al-Rawi in the said affidavit talked about the breakdown in communication between himself and Mr. Clive Phelps, Attorney at Law acting on behalf of the Defendants with respect to the compliance of what came to be referred to conveniently as the **Production Order.** Mr. Al-Rawi lamented the fact that "delivery of only certain of the aforesaid documents in a sporadic piecemeal and unstructured fashion, with instances of postponed delivery of same on more than one occasion for no good reason. By reason of the Defendants' actions in this regard, MVHL was considerably handicapped in its attempt to comply with its statutory and regulatory obligations to the Stock Exchange and the TTSEC."

(268) This witness gave a detailed account of his attempts to have the Defendants comply with the **Production Order** of Mr. Justice Myers. He testified as to the adverse consequences which could befall MVHL if the company continued to fail to comply with its statutory and regulatory obligations.

(269) On the 27th August, 2003 both MOVL and MVHL were constrained to file yet another application before the Court seeking directions for the Defendants immediate compliance with the **Production Order** and the agreement to deliver up the agreed financial documents. At this hearing on the 29th of August, 2003 before Mr. Justice Myers, the Defendants Attorney at Law agreed to hand over the documents still in their possession with effect from September 8th, 2003.

(270) Incidentally, on the 8th day of September, 2003 a meeting was convened of all the parties in the Chambers of Mr. Justice Myers to ensure that the TTSEC was kept informed of the reasons for MVHL's inability to meet its statutory and regulatory obligations.

(271) Despite this meeting at the Judges Chambers default in compliance with the **Production Order** continued unabated by the Defendants. The relevant information and data continued to be supplied to the Plaintiffs in a sporadic manner. In the meanwhile MVHL was being threatened by the Stock Exchange to suspend the trading of its shares on the Stock Market if the Company failed to provide the necessary information in compliance with its statutory and regulatory obligations.

(272) A further meeting convened at the Judges Chambers on the 31st October, 2003 saw in attendance both the General Manager and the Chairman of the

Board of Directors of the Stock Exchange together with Attorneys at Law for the Plaintiffs and the Defendants. Undertakings were made and promises were given but the impasse continued. However, on the 5th December, 2003 Mr. Al Rawi testified that twelve (12) boxes of papers were delivered to his offices by the Defendants.

(273) In view of the evidence of Mr. Al-Rawi and Mr. Nicholas I find it disingenuous of Counsel for the Defendants to argue that the evidence of the Plaintiffs in support of the allegation made under particulars 10(xvi) and 10(xxii) are inconsequential as it failed to establish any consequence flowing from the alleged withholding of documentation by the Defendants.

(274) The Defendants have adduced no evidence to contradict the allegation made by the Plaintiffs that they refused to hand over documents, data and equipment belonging to MOVL and MVHL during the period May 2002 to November 2003 despite repeated requests to do so. Neither have the Defendants denied by way of evidence unlawfully withholding financial and/or other data belonging to MVHL and/or MOVL when the Defendants knew or ought to have known that MVHL required the said financial and/or other data to meet its statutory and regulatory obligations to the Trinidad and Tobago Stock Exchange and the Trinidad and Tobago Securities Commission. See in this regard the case of **Hamilton –v- Sartorio (1991) 3WWR 670.**

(275) In my judgment there is overwhelming evidence that the Plaintiffs have a contractual right to the information, data and items of equipment pursuant to the terms and conditions of the Operating Agreement. See in particular Clause 4.4 of the Agreement. Clearly the information and data requested were critical for the Plaintiffs to comply with their statutory obligation to be able to prepare reports for the delivery to the Ministry of Energy. Failure to prepare and submit those reports put MOVL at risk of having its licence revoked in accordance with Clause 15 of the Exploration and Production Licence dated 30th December, 1994. On the other hand MVHL was at risk of being delisted from the Registry of Public Companies by the Trinidad and Tobago Securities Exchange Commission.

(276) In the circumstances I have found that the conduct of the Defendants in failing to deliver up to the Plaintiffs the information data and equipment in a timely manner and as requested by the Plaintiffs and as ordered by the Court is oppressive or unfairly prejudicial to or in unfair disregard of the First and Third Plaintiffs interests as a shareholder and director of Mora Oil Ventures Limited

respectively.

Particular 10(xxiii)

"Failing to properly maintain and or neglecting the maintenance of the Mora Platform during the period May to September 2002 with intent to shut down or shut in the platform. In this regard, the Plaintiffs will rely on inter alia (a) the Inspection Report conducted on or about the 23rd July, 2002 by the Ministry of Energy and Energy Industries; (b) the Incorrtech Limited Report dated August 2002; and (c) the Defendants Crisis Report for the period August to September, 2002"

(277) On the 23rd July, 2002 the Ministry of Energy conducted an HSE inspection of the Mora Platform and found numerous deficiencies and unsafe conditions which existed on the platform. The report highlighted the following unsafe conditions during inspection (a) insufficient food for the crew on board; (b) main electrical generator non-functional for four months; (c) bolts were missing from the vent line off the oil tank; (d) no emergency lights on the Production Deck; (e) emergency Muster point on the production Deck was congested with spares, standby generators and salvage material; (f)corrosion to vessels and main structure is intensifying; (g)fire extinguishers missing safety straps and inspection tage; (h) fire suppression system to main generator house non-functional and stairway missing standard handrails; (i) no annual inspection and certification to crane; (j) no access to inflatable life raft; (k) inadequate supply of potable water.

(278) The HSE report also recommended the immediate suspension of the operations of Mora Ven until management could give the Ministry of Energy the assurance that these adverse conditions affecting the employees would be addressed within the shortest time frame.

(279) In August 2002, in Corr-tech Ltd (Inspection and quality control engineers, contracted by MOVL) carried out inspections on the pressure vessels and sea king pedestal crane to ascertain the integrity and continued safe and reliable service. The report highlighted *inter alia*, the heavy and/or mild corrosion and failing paintwork on some of the vessels and also made recommendations for the repair of the Sea King Crane.

(280) During the period August and September, the First named Defendant submitted numerous Daily Crisis Reports, which highlighted, inter alia, the inability of the Operator to guarantee safety of the operations, or to effect remedial work on pressure vessels, fire suppression system and/or to repair the

generator, etc. or to purchase supplies and consumable items, because no funds were being released by MOVL to the Operator, and it appeared that the Operator had since lost effective management and control of the platform.

(281) The Plaintiffs contend that the evidence of Kirk La Borde, Henry Govia, Kenneth Ferguson and Anthony Brereton highlight the failure of the proper maintenance and/or neglect of the maintenance of Mora Platform during the period May 2002 to September 2002 with intent to shut down and/or shut in the Mora Platform.

(282) Kirk La Borde gave evidence at paragraph 12 of his Affidavit, that during his employment with KPA on the Mora Platfrom, he observed that KPA 'only effected works and/or operations on a need be basis with little or no maintenance and or preventative maintenance.' Mr. La Borde stated that he witnessed a steady deterioration in the working and safety conditions on the Mora Platform immediately before the change in operatorship of the Mora Platform.

(283) Kenneth Ferguson swore in his affidavit at paragraph 9, that during his visit to the Mora Platform in the early part of September 2003, he observed that the house keeping maintenance of the platform was in a poor state and condition, in particular the gas lift system, controllers and positioner on the production separator appeared to have been neglected by the Operator of the Mora Platform for many years and as a consequence, several elements were defective and or out of service. The evidence of Mr. Ferguson cannot be relied on since his observation was made mainly after the period of the shut down of the Mora Platform in September of 2003 and not over a period of time while the platform was under the stewardship of the defendants.

(284) Henry Govia, swore at paragraph 5 of his affidavit, that he was informed by the Employees of the First Defendant, that for the last 2 years they were all working in extremely poor working conditions. His evidence was mainly hearsay and cannot be relied on.

(285) Anthony Brereton also gave evidence at paragraph 3 of his witness statement that during the stewardship of the platform by the operator Khrishna Persad and Associates in 2000 to 2002 there were extremely poor working conditions that existed on the Mora Platform.

(286) The defendants in response, rely on the documentary evidence (Expense Variance Analysis) of Mr. Nigel Woodcock who testified that his variance analysis documents for the months May and June 2002, showed that substantial repair and maintenance work was done by the Operator in May and June 2002.

(287) In his Expense Variance Analysis for the month ending May 2002, Woodcock noted that TT$383,937.00 had been spent on repair and maintenance of equipment on the MOVL platform and the month ending June 2002, Woodcock recorded expenditure of TT$84,630.00 for repairs and maintenance.

(288) Under re-examination on the 17th September, 2008 Mr. Woodcock confirmed that works of repairs and maintenance had in fact been done in May and June 2002. He also testified (on 15th May, 2007) that for the months of July, August and September, no cash call payments were and as a result no repair work could have been effected to the platform during that period.

(289) With respect to the HSE inspection report dated the 23rd July, 2002 Mr. Woodcock noted (on the 14th May, 2007) that as of the date of the letter and from his movement in cash balances no cash call money was paid to the Operator. The cost relating to the unsafe conditions listed in the HSE report, would properly be an expenditure of Mora Oil Veture Ltd. and properly payable to the Operator.

(290) I accept and prefer the evidence of Mr. Woodcock that there was maintenance and repair work to the Mora Platform carried out in May and June 2002. However, from the date of the HSE report in July 2002 it would appear that there was a decline in the maintenance of the Platform for the reasons stated by Mr. Woodcock.

Particular 10(xxv)

Recklessly Misrepresenting the true facts concerning the lack of maintenance and the safety of operations of the Mora Platform to representatives of Ministry of Energy of Trinidad and Tobago, when the Defendants knew or ought to have known that their actions in this regard jeopardized the Exploration and Production Licence and or continued operation on the Mora Platform.

(291) The Plaintiffs alleged in this particular, that the Defendants recklessly misrepresented the true facts concerning the lack of maintenance and the safety operations of the Mora Platform to representatives of the Ministry of Energy when the Defendants knew or ought to have known that their actions in this regard jeopardized the Exploration and Production Licence and or continued operation on the Mora Platform.

(292) The Plaintiffs in support of this particular sought to rely on the correspondences between the Defendants and the Ministry of Energy of Trinidad and Tobago for the period May 2002 to September 2002 and the Defendants Crisis Reports for the month September 2002.

(293) On the other hand the Defendants have contended that the Plaintiffs have led no evidence to support the allegation made in this Particular. On the 23rd July, 2002 the Ministry of Energy and Energy Industries conducted an inspection of the Mora Platform, the report highlighted a number of deficiencies and unsafe conditions which were found during the inspection. The report recommended the immediate suspension of the operations of Mora Ven until Management could give the Ministry of Energy and Energy Industries the assurance that these adverse conditions affecting the employees would be addressed within the shortest time frame.

(294) On the 19th August, 2002 Krishna Persad wrote to the Permanent Secretary of the Ministry of Energy in response to the inspection report of the 23rd July, 2002. In response Dr. Persad assured the Ministry that with reference to the deficiencies highlighted in the report most were rectified within a few days of the inspection and all others were being dealt with expeditiously. Mr. Persad also highlighted the plight of the non payment of cash calls for the months of July and August and indicated that he did not intend to initiate a shutdown of the platform but it will become necessary if the cash calls were not received in the immediate future.

(295) On the 10th September, 2002, Krishna Persad and Associates Limited (KPA) wrote to the Minister of Energy and Energy Resources, indicating that they had lost effective management and control of the project through the actions of Mr. Nicholas. The Company indicated that the difficulties experienced were not only financial in nature but also arose out of the effective removal of KPA's authority to manage the Mora project. As a result KPA informed the Ministry that they were no longer in a position to maintain or give any assurances as to the Safety of the Mora Project; the Management of the Mora offshore operation; the well being of the personnel assigned to the Mora project; the maintenance and upkeep of the equipment and the effective, efficient and proper management of Mora facilities.

(296) The Defendant submitted numerous Daily Crisis Reports, which highlighted inter alia the inability of the Operator to guarantee safety of the operations, or to effect remedial work on pressure vessels, fire suppression system and or to repair the generator, etc. or to purchase supplies and consumable items, because no funds were being released by MOVL to the Operator, and it appeared that the operator had since lost effective management and control of the platform.

(297) In my respectful view, the Plaintiffs have failed to identify which statements, if any, were misrepresented in those correspondence and crisis

reports. The Plaintiffs have not demonstrated by way of evidence to the satisfaction of this Court that, the Defendants have recklessly misrepresented the facts concerning the lack of maintenance and the safety of operations of the Mora Platform to representatives of the Ministry of Energy of Trinidad and Tobago. In their letters to the Ministry of Energy in August and September, and also in the Defendants Crisis Reports for the same period the Defendants highlighted the plight of non payment of cash calls and the fact that the Operator could give no further assurances on the safety of the Platform.

(298) I have carefully examined the correspondences, and the daily crisis reports of the Defendants prepared during the months of August and September, 2002 and I can find no evidence to support the allegations made in Particular 10(xxv).

Particular 10(xxiv)

"Threatening to shut down and/or shut in the Mora Platform during the period May 2002 to September 2002 and/or thereby pressuring the Plaintiffs to release monies belonging to MVHL and/or MOVL to meet the KPA's aforesaid premature and/or exhorbitant and/or unreasonable cash calls, and so doing notwithstanding and in spite of their full knowledge that their sole source of revenue by MVHL was and is from the operations of the Mora Platform."

Particular 10(xxvi)

"Shutting down the Mora Platform on the 27th September, 2002 without reasonable justification and/or cause."

Particular 10(xxvii)

"Abandoning the Mora Platform on or about the 27th September, 2002 without reasonable justification and/or cause and/or without providing the Plaintiffs/complainants with any or any sufficient opportunity to make alternative arrangements to prevent the cessation of operations on the Mora Platform."

Particular 10(xxviii)

"Deliberately and/or recklessly and/or unlawfully preventing the Plaintiffs/Complainants from gaining access to the Mora Platform after the Defendants abandonment of same by rendering inaccessible the helipad on the Mora Platform and/or rendering the use of the Sea King Crane unsafe and/or by removing the mooring ropes when the Defendants knew or ought to have known that their actions in this regard compromised the safety and/or the restarting of operations on the Mora Platform."

(299) These four particulars 10(xxiv), 10(xxvi), 10(xxvii) and 10(xxviii) are connected in a material way since they all relate in some way to the alleged shutting down or shutting in of the Mora Platform by the Defendants. Counsel for the Defendants does not disagree with this approach. He argued that particulars 10(xxiv), 10(xxvi and 10(xxvii) are all related and that his submissions made with respect to particular 10(xvii) apply will equal force to these particulars. He further submitted that the Plaintiffs have failed to adduce any evidence in support of particular 10(xxviii) at the trial.

(300) Let me start my analysis of these particulars by saying that the shutting down or shutting in of the Mora Platform at the time that it did was most unfortunate. The allegation made in particular 10(xxiv) is that the Defendants threatened to abandon the Mora Platform during the period May to September 2002 if MVHL and/or MOVL failed to pay to KPA cash calls when they fall due, which cash calls the Plaintiffs alleged were premature, exorbitant and unreasonable.

(301) Under paragraph 4.1 of the Accounting Procedure provided for in the Operating Agreement a System was established for the Operator to bill or credit MOVL (the Licensee) for its costs incurred in operating the Mora Platform. Paragraph 4.1 states:

> **"On or before the tenth day after the last day of each month, Operator shall bill or credit the Licensee for its costs as set out in this Agreement for such month, which amount shall be due and payable within twenty (20) days after receipt of such billing. Such billings shall be accompanied by statements of all costs, summarised by appropriate classifications indicative of the nature thereof."**

(302) Clearly the procedure outlined above provided for the reimbursement by the Licensee of all expenses incurred by the Operator relative to the operations of the Mora Platform. Such an arrangement is normal says the expert witness of the Defendant Mr. Andrew Dunn. Mr. Dunn is one of the Vice President at Hunter Energy LLC an independent oil company with its head office in Denver, Colorado of the USA. At paragraph 9 of his witness statement filed on March 16, 2010 Mr. Dunn stated as follows:

> **"The Operating Agreement and Accounting Procedure normally will provide for the Operator whether an independent contractor or an interested party in the field, to be re-imbursed for direct costs incurred on behalf of all the owners in conducting the operations and to be paid an overhead or administrative fee to compensate Operator for the costs of performing the duties of Operator."**

(303) Sometime in early 2002 it appears that this procedure was not functioning in the best interest of the parties and Mr. Woodcock in the month of April 2002 made recommendations to MVHL's Audit Committee for the institution of a cash call system in the month of May, 2002. See exhibit "NW 62". The evidence before the Court confirms that the new cash call system was approved and accepted by MVHL and MOVL and in his report to management for May, 2002 ("NW 63") Woodcock reported that the new cash call procedures were implement in that month.

(304) This new system, unlike that provided for in paragraph 4.1 of the Accounting Procedure of the Operating Agreement, provided for the Operator to prepare and submit to MOVL an estimate of its expenses for each month for the operation of the Mora Platform.

<u>The cash call system is introduced</u>

(305) Instead of reimbursing the Operator for all reasonable expenses incurred, the Licensee (MOVL) is now required to provide the funds in accordance with the new cash call system to cover projected expenses in the operation of the Platform.

(306) Mr. Dunn confirmed the legitimacy of this new cash call system. In paragraph 10 of his witness statement he testified as follows:

"Most Operating Agreements and Accounting Procedures provide a mechanism which allows the Operator to cash call invoice the owners for sufficient funds to conduct upcoming operation in advance of Operator making the actual expenditures so that the Operator is not out of pocket and the operations of the fiel smoothly without interruption."

(307) That cash call system which Woodcock recommended to MVHL and MOVL in April 2002 was implemented with the approval of both MVHL and MOVL in the months of May and June 2002. See Woodcock's report to management for the months of May and June 2002 – "NW 63" and "NW 69". In both reports Woodcock noted that the expenditures were reasonable with no unusual fluctuations and generally supported by underlying documents.

(308) Mr. Woodcock testified that he did inform Mr. George Nicholas of the new system of cash calls as it applied to the management of the operations of the Mora Platform as early as May 2002. The cross-examination of Mr. Woodcock reads as follows:-

Q: And arising out of your meeting with Mr. Nicholas on the 27th May and your subsequent communications by e-mail with him, you had informed him of the cash call system and how it worked?
A: Yes.
Q: And therefore, by the time that this situation had developed, with the queries and refusal to pay the cash calls, Mr. Nicholas had been informed by you of how the Mora Oil Venture Limited operations were to be funded?
A: Yes.

(309) In light of Mr. Woodcock's evidence it is difficult to appreciate Mr. Nicholas' testimony and his reasons for challenging the cash calls made for the months of May, June and July of 2002. In paragraph 105 of his witness statement Mr. Nicholas testified as follows:

"It will become apparent that instead of the Defendants making a cash call in arrears ten (10) days after the end of the month for the preceding month and waiting twenty (20) days thereafter for payment, the Defendants were prepared to make a cash call either in advance or on a

current basis for expenditure which was estimated for payments due in the future and not in arrears as required by Clause 4.1 of Appendix "A" hereto before referred."

(310) Clearly, Mr. Nicholas got it wrong. As I understand the evidence coming from Mr. Woodcock the parties to the Operating Agreement had agreed in April 2002 to change the "Statements, Billings and Adjustments" procedure expressly set out in Clause 4.1 of the Accounting/Procedure of the Operating Agreement and instead use a cash call system which was recommended by Mr. Woodcock in April 2002. The new cash call system was implemented in the month of May 2002 without any objection by either one of the three contracting parties. As a consequence Clause 4.1 of the Operating Agreement was amended accordingly.

(311) For Mr. Nicholas to insist that the cash calls made by the Operator for the months of May, June, July and August were inconsistent with the terms of the Operating Agreement and therefore premature was itself not consistent with the amended terms of the Operating Agreement.

(312) The new cash call was made on the 2nd May, 2002 and continued on the 2nd day of each month that followed Mr. Nicholas' assumption of the chairmanship of MOVL and MVHL by the end of May, 2002. He challenged the cash calls on the basis that not only were they premature but that they were "extravagant and involved duplication or double billing unsubstantiated and lacking in proof."

(313) Mr. Woodcock did not agree. Described as an "accomplished accountant with auditing experience" Mr. Woodcock in his several reports to management for the months of May, June and July 2002 included an audit of the cash calls and he noted that the expenditure was reasonable with no unusual fluctuations and generally supported by the underlying documents. See exhibits "NW 69" and "NW 75."

(314) Woodcock further testified that the question of the cash calls being "exorbitant" (as pleaded) did not arise because the cash call was analysed monthly and that each of the cash calls for May, June and July was within the budget approved by the Board of Directors of MVHL for the year 2002. Wood cock agreed that because the expenditure provided for in the cash call was projected there would be no supporting documentation other than the Operator's estimate.

Mora refuses to pay the cash calls

(315) Mr. Nicholas testified that the events leading up to the shut down/abandonment of the Mora Platform revolved around the demands by the Defendants for payment by MOVL to KPA as the Operator of substantial sums of money for the performance of the Operating Agreement. See paragraph 109 of Mr. Nicholas witness statement filed on 4th December, 2009. Those demands by KPA were not met because , as the evidence has shown Mr. Nicholas did not accept that the new cash call system implemented for the first time in the month of May 2002 had replaced (with the consent of the contracting parties) Clause 4.1 of the Operating Agreement.

(316) By letter dated 22nd July, 2002 written on behalf of MOVL to KPA Mr. Nicholas had taken the position that KPA had not provided supporting documents for the cash call made for the months of May and June 2002. The new cash call system represented a projected estimate of expenditure for the current month and the documentation forwarded to MOVL by KPA in support of the estimated expenditure was found by MOVL to be "wholly inadequate."

(317) During the months of July and August KPA forwarded several letters to MOVL and also to the Ministry of Energy complaining about the failure of MOVL to honour the cash calls and indicating the Operator's inability to give assurances that the operations of the platform could be safely maintained.

(318) By letter dated 28th August, 2002 KPA again wrote to MOVL complaining about the fact that MOVL was acting in breach of the terms of the Operating Agreement by directly paying the creditors of the Operation for the goods and services rendered in carrying out the operations of the Mora Platform.

(319) Mr. Nicholas testified that the reason why MOVL adopted the position of paying MOVL's creditors directly rather than doing so through the Operator was because MOVL and George Nicholas no longer trusted KPA to receive monies from MOVL to be paid to the creditors of MOVL. The absence of trust may have aggravated the already strained relationship that existed between George Nicholas and Dr. Krishna Persad over the years.

The Operator shuts down the Platform

(320) Every effort was made during the case management stages of these proceedings to bring about an amicable resolution of this dispute. Unfortunately the parties remained polarized in their respective views throughout. It may very well be that a greater effort was needed for the parties to engage more meaningfully in discussing the issues that confronted them in bringing about an amicable resolution of the matter.

(321) The shutting down of the Mora Platform in September 2002 was a culmination of the differences which affected the relationship between the Plaintiffs on the one hand and the Defendants on the other. It was a most unfortunate development. It was an act likened to "killing the goose that laid the golden egg". Both parties were prepared to blame the other for this unfortunate development which led to millions of dollars in loss of revenue for Mora Oil Ventures Ltd (the second named Plaintiff herein) and by extension Mora Ven Holdings Limited and its Shareholders.

(322) It has not been disputed that the shutting down of the Mora Platform for any length of time would have serious consequences for the shareholders of MOVL since the operations of the Mora Platform provided the only source of income for that Company. Moreover, a shutting down of the platform would have certainly put at risk a possible revocation of the Exploration and Production (Public Petroleum Rights) Licence which the second Plaintiff holds pursuant to Clause 15 of the Licence Agreement on the ground that the said Licensee is in breach of its obligation to produce oil without interruption under Clause 6 of the said Agreement.

(323) The request for cash call continued throughout the month of September and by letter dated the 23rd September, 2002 KPA wrote to MOVL stating that the situation was critical and required an immediate release of funds in order to avert the shutting down of the Mora Platform.

(324) Two days later, that is, on the 25th September, 2002, KPA wrote to MOVL advising that it had decided to shut down the Mora Platform for the reasons stated, in the said letter. KPA went on to advise that it had decided to postpone the shutting down of the said Platform to the 27th September, 2002 in order to facilitate a meeting between Krishna Persad and George Nicholas in an effort to find a solution to the problem. That meeting never came off and by letter dated 27th September, 2002 KPA again wrote to MOVL advising of the actual shut down of the Mora Platform. In the said letter KPA ended by advising MOVL that

"we will only be in a position to restart production when the funds needed to ensure its safe operation are released to us by MOVL."

(325) Clearly, the die was cast. Mr. Nicholas interpreted the contents of the said letter to mean "that the Defendants were holding MOVL to ransom and had shut down the platform as a coercive act in an attempt to secure payment of monies which they were claiming from MOVL, failing which the production of oil would not take place and no revenue would be generated for the Plaintiff Companies."

(326) In addition Mr. Nicholas was of the view "that the Defendants had finally achieved what seemed to be their purpose from the time I assume control of MOVL, that is, to shut down the Mora Platform as a strategy in opposition to my having control of MVHL."

(327) I am unable to share Mr. Nicholas' view of how the events developed without the supporting evidence. Why would the Defendants want to jeopardize their ten (10) per cent investment in MOVL simply because George Nicholas had assumed control of MVHL and MOVL? If in fact the Defendants were in opposition to George Nicolas being in control of MVHL and/or MOVL they had several options, any of which they could have exercised without shutting down the Mora Platform.

(328) Counsel for the Defendants submitted that the refusal by MOVL to pay the cash calls for funding the operations of the Mora Platform by KPA brought about an inevitable result. He argued that such unreasonable refusal to pay the cash call was bound to put the obligations of MOVL in jeopardy.

(329) Counsel for the Plaintiffs on the other hand submitted that the shutting down or shutting in of the Mora Platform on or about the 27th September, 2002 was in fact without reasonable justification and/or cause.

(330) I have carefully assessed all the evidence relative to the alleged "shutting down" of the Mora Platform. In my respectful view the Operator was in no position at the end of September 2002 to continue funding the Operators in light of MOVL's failure to honour the monthly cash calls.

(331) The "shutting down" of the Mora Platform did not come as a "thief in the night". The Defendants through their many letters and correspondence had telegraphed their intention to shut down the Platform long before September 27, 2002. The Plaintiffs knew or ought to have known it was coming. It did not happen suddenly. It was inevitable since the cash calls were not being honoured.

(332) When KPA requested the cash call by letter dated 2nd September, 2002 for the month of September the Chairman of MOVL (Mr. George Nicholas) was unmoved. He noted that KPA demanded immediate payment contrary to the express terms of the Operating Agreement in that the demand was made for the month of September and not August as required by Clause 4.1.

(333) To argue that the Plaintiffs were not provided with a sufficient opportunity to make alternative arrangements to prevent the cessation of operations on the Mora Platform is to misread the facts as they unfolded. The Plaintiffs knew at all material times that they were not going to honour the cash calls. The Plaintiffs knew that they had lost all trust in the Defendants to continue to act as Operator of the Mora Platform. Why then was alternative arrangements not made in anticipation of the impending shut down?

Access to the Platform by the Plaintiffs

(334) The Plaintiffs alleged in particular 10 (xxviii) of the re-amended Statement of Claim that the Defendants deliberately and/or recklessly and/or unlawfully prevented the Plaintiffs from gaining access to the Mora Platform after the Defendants are alleged to have abandoned the said Platform.

(335) In considering this allegation I have evaluated the evidence of Mr. Kirk La Borde the Production Manager of Mora Oil Ventures Limited, made by affidavit sworn and filed on the 22nd March, 2004. In paragraphs 13(iv) and (v) and14 of the said affidavit the witness said:

"13(iv) that the said James Stewart [an agent and/or servant of Dr. Persad] expressly instructed the aforementioned employees and supervised the following acts on the Mora Platform on the 27th September, 2002 to wit:

the removal of the fuel injector line from the aforementioned Sea King Crane;

. the removal of certain valves from the Auto Con Well control panel which said panel directly critically controls inter alia the pressuring of essential lines and gauges involved in the exploitation of oil and natural gas;

. the placement of a large wooden spool bobbin and an 8 x 8 wooden obstacle onto the helipad on the Mora Platform;

. the depressurizing of the air compressor accumulation.

(v) That I observed the said James Stewart taking with him the said parts removed from the Sea King Crane and the Auto Con Panel when he eventually left the Mora Platform on the said 27th September, 2002.

14. The consequence of the implementation of Mr. Stewart's instructions as deposed to above was that:

(i) the removal of the fuel injector line increased the probability of undetected spillage of fuel on to the combustion engine, thereby posing a serious risk of major fires on the Mora Platform and injuries to operating and/or other personnel. This danger was particularly exacerbated by inadequate fire suppression systems and lack of water hoses mentioned above;

(ii) the removal of the valves in the Auto Con Well Control Panel rendered the re-initiation of the exploitation of oil and gas production difficult with consequent delays and expenses;

(iii) access to the Mora Platform was virtually inaccessible to all except those permitted by the Defendants because of the placing of obstacles on the Helipad, the hazards of using the Sea King Crane without its fuel injector line

and the lack of mooring ropes on the Mora Platform."

(336) The evidence of Mr. La Borde on what was done on the Mora Platform on the instructions of Dr. Persad has not been contradicted by the Defendants. It would seem therefore that the acts of the Defendants on the Mora Platform following the cessation of operations were deliberately intended to prevent or to make it difficult for the Plaintiffs to gain access to the Platform to resume any type of operations. Such conduct on the part of the Defendant has to be seen as being unfairly prejudicial to the interests of the Plaintiffs and unfairly disregards their interests in the various capacities stated earlier in this judgment.

(337) In my view the cessation of operations on the Mora Platform by the Operator on the 27th September, 2002 was a very unfortunate development. The only source of income for Mora Oil Venture Limited and its parent company Mora Ven Holdings Limited and its shareholders had ceased, albeit temporarily. Could this situation have been avoided?

(338) A plethora of legal actions were initiated by MVHL and MOVL against KPA, the Operator, Krishna Persad and others in the year 2002 and beyond. It is reasonable to assume that millions of dollars were expended in legal fees with very little results in finding a solution to the main problems confronting the parties. A personal battle raged on for power and control between the third named Plaintiff and the second named Defendant. The battle was brewing even before Mr. Nicholas assumed control of both Mora Ven Holdings Limited and Mora Oil Ventures Limited.

(339) Dr. Persad, acting as the Chief Executive Officer of Krishna Persad and Associates Limited (the Operator) and holding a controlling interest in several of the companies with whom the Operator contracted for goods and services in carrying out the operations of the Mora Platform was a recipe for disharmony and mistrust. Dr. Persad also held directorship in the Plaintiff companies while the Operator held a 10% share interest in Mora Oil Ventures Ltd. (the Licensee).

Was resignation an option?

(340) Could the Operator have avoided the "shutting down" of the Mora Platform on the 27th September, 2002? What were the choices confronting the Operator during the months that the cash calls were not being paid by MOVL? Several letters were written by Dr. Persad addressed to the Chairman of MVHL and

MOVL informing him (the Chairman) that the problem had reached crisis proportion. The third named Plaintiff was unmoved. There were options opened to Dr. Persad rather than engaging in the "shutting down" of the Platform or allowing operations on the Platform to come to a halt.

(341) Clause 4.0 of the Operating Agreement provides for the resignation of the Operator. Clause 4.9 states:

> **"Subject to Clause 4.11 hereof, Operator may resign as Operator at any time by so notifying the Licensee at least one hundred and twenty (120) days prior to the effective date of such resignation."**

Recognising the attitude of the Chairman of the Plaintiff Companies, Dr. Persad, as the Chief Executive Officer and the controlling shareholder of Krishna Persad and Associates Limited, failed to see the wisdom in exercising this option and so, in the interest of the shareholders of Mora Oil Ventures Limited (and by extension Mora Ven Holdings Limited) moved to avoid what occurred on 27th September, 2002.

(342) Why did the Operator not see resignation as a visable option rather than be part of the impending shutting down of the platform which clearly could not have been in the best interest of the shareholders of MOVL and/or MVHL. The Plaintiffs had demonstrated that they had lost all trust and confidence in the Operator's ability to continue to manage the Mora Platform. The Operator had by letter dated the 10th September, 2002 written to the Minister of Energy and Energy Resources indicating that they (the Operator) had lost effective management and control of the project. Given all the circumstances there was absolutely no need for the Operator to be confrontational. Resignation was a viable option!

ARBITRATION

(343) Another option open to Dr. Persad was the utilization of the mechanism provided for under the Operating Agreement for the resolution of conflicts and disputes. As indicated earlier several court actions were filed by the Plaintiff companies against Dr. Persad and others during the course of the dispute. Dr. Persad's main dispute was that the Operator was not being paid the cash call which it was entitled to receive in accordance with the terms and conditions of

the Operating Agreement as amended. Legal action was threatened against the second named Plaintiff by Dr. Persad for damages for breach of contract. Beyond the threat nothing materialized. The dispute was obvious. The evidence before the Court speaks nothing about the utilization of Article xiii of the Operating Agreement. Article 13.2A states:

"Dispute Resolution

Any dispute, controversy or claim between the Operator and Mora Ven arising out of or in relation to or in connection

with this Agreement or the operations carried out under this Agreement including without limitation dispute as to the validity, interpretation, enforceability or breach of this Agreement, shall be exclusively and finally settled by arbitration, and either party may submit such a dispute, controversy or claim to arbitration."

(344) There is absolutely no evidence before this Court that Dr. Persad acting on behalf of the Operator did submit any dispute to Arbitration for resolution. Again I ask whether Dr. Persad and/or the Operator considered the interest of the shareholders of MOVL when the events giving rise to the dispute were allowed to culminate on the 27th September, 2002 by 'shutting down' the Platform. It was well known that the Mora Platform was the only income generating asset owned by MOVL and/or MVHL. Clearly in those circumstances the conduct of the Defendants in "shutting down" the Platform must be seen as unfairly prejudicial to and unfairly disregards the interests of the Plaintiff companies and their shareholders.

Conflict of Interest

(345) The positons Dr. Persad held provided a classical opportunity for conflict of interest to flourish. It is my view that only lip service was paid to this concept as expressed in Clause 14.1 of the Operating Agreement. The external auditors Price Waterhouse Coopers commented on Dr. Persad's position vis a vis conflict of interest in their Annual Reports to Management. Notwithsanding, the situation was allowed to continue.

Article 14.1 states:

> **"(A) Each Party undertakes that it would avoid any conflict of interest between its own interests (including the interest of Affiliates) and the interest of the other Party in dealing with suppliers customers and all other organizations or individuals doing or seeking to do business with the Parties in connection with activities contemplated under this Agreement."**

(346) I have noted the undertaking given by both parties to the Agreement to avoid any conflict of interest in their dealings with third parties. I have also noted the inapplicability of Article 14.1(A) in circumstances where the provisions of Article 14.1(B)(1) and (2) of the Agreement apply and I ask the question rhetorically how could a conflict of interest be avoided when the Parties were fully aware that the second named Defendant was the Chief Executive Officer of the Operator (the first Defendant) and also the Chief Executive Officer of the second named Plaintiff (the Licensee)? Dr. Persad at the material time acted as the Chief Executive Officer and a Director of MVHL prior to the appointment of George Nicholas as Chairman in May of 2002.

(347) The evidence before the Court disclosed that the majority of the transactions undertaken by the Operator on behalf of the Licensee were entered into with an affiliate of the Operator, that is, a business enterprise in which Dr. Persad and his family had some interest. How then could anyone reasonably expect a conflict of interest to be avoided in circumstances where Dr. Persad held the positions referred to earlier.

(348) As a result of this family connection the external Auditors were constrained to comment adversely on the fact that "Mora Oil, as part of its normal course of business, continues to conduct considerable trading activities with related parties." The Auditors further noted in their Report for the years 1999, 2000 and 2001 that related party contracts were not properly supported and that advances were made to KPA Services Ltd. an affiliate of the Operator in the sum of $1.6m for the year ending December 2000. It was also noted that advances were made to Mc Harris and to Dr. Persad during the said year without the approval of the Board of Directors of MOVL. This led the External Auditors to report that "given the Company's critical cash flow constraints, advances to finance the operations of related parties and other persons may be considered inappropriate use of Company funds."

(349) Professor Buckhoff in his forensic analysis of the several transactions undertaken by the Operator on behalf of MOVL with Footprints Eco Resort, an affiliate of the Operator indicated that such transaction did create a problem. Professor Buckoff said:

> **"…..it is potentially a problem because Footprints Eco Resorts was owned by Krishna Persad who is also the Chief Executive Officer of Mora Oil Vetures Limited and, as such, he is a party to both sides of the transaction, and that creates a conflict of interest for him, and so, all those transaction between MOVL and Footprints Eco Resorts constitute what are called related party transactions and related party transactions are a problem because the requisite conditions of arm's length transaction are not present."**

(350) I have no doubt that the positions Dr. Persad held in those companies gave rise to a potential conflict of interest and that may have caused some of the many problems which the Operator experienced in conducting the operations of the Mora Platform. See the case of **Aberdeen Rail Co. –v- Blaikie Brothers [1843-60] AER 249.**

(351) The general rule in company law is that a director of a corporation must not place himself in a position which gives rise to a conflict of interest. The rule was clearly stated as far back as 1874 by Blake, V.C. in the case of **Greenstreet –v- Paris Hydraulic Co. (1874) 21 Gr. 229 (Ont. Ch.)** where the Vice Chancellor said:

> **"A director of a company is a trustee for the shareholders, and…. A person occupying this fiduciary capacity is not allowed to enter into engagements in which he has or can have a personal interest conflicting, or which possible conflict, with the interest of those whom he is bound by their duty to protect. This principle is so strictly adhered to that no question is allowed to be raised as to the fairness or unfairness of the transaction, and it makes no difference whether the contract related to reality or personality….."**

(352) The law is clear. A director of a company has a duty to avoid conflicts of interest and if he fails to do so the company can seek relief against him. See the case of **Phipps –v- Boardman [1967] 2 AC46.**

(353) In examining the conduct of the defendants in the management and operation of the Mora Platform the Court is not concern with the adherence of strict legal rights of the parties as it is with underlying equitable principles.

(354) Was the conduct of the Defendants throughout the management of the platform fair and equitable? Could it be argued that MOVL and by extension MVHL were treated fairly by the Operator and its managing director during the period of management of the Mora Platform? Were the revenues of MOVL generated from the production of oil and gas on the Mora Platform managed by the Operator in the best interest of the shareholders of MOVL and by extension MVHL?

(355) In answering those questions one must have regard to the court's finding of facts on the following matters viz:

(a) the unauthorized, excessive, inappropriate and unjustified spending in the operation and management of the Mora Platform – see particular 10(i);

(b) the significant amount of loans taken out of MOVL's account and made available to the Defendants and other related parties – see particular 10(v);

(c) the unauthorized removal of funds ($600,000.00 US) of MOVL from the account to another in the Bank of Nova Scotia - see particular 10(viii);

(d) failure on the part of the Defendants to pay Royalties to the Government of Trinidad and Tobago in accordance with the terms of the Exploration and Production Licence – see particular 10(ix);

(e) withholding price sensitive information contrary to the Securities Act of Trinidad and Tobago – see particular 10(xiii);

(f) the improper and unlawful interference of millions of dollars of MOVL funds by the Defendants in the month of June 2002 –

see particulars 10(xviii) and (xix);

(g) the positions held by the second Defendant in KPA Ltd., MOVL and other related parties giving rise to potential conflict of interests;

(h) the extent to which the Operator contracted with related parties of the Operator for goods and services in the management and operation of the Mora Platform.

(356) .While it is true that a particular event when considered alone may not qualify as oppressive conduct, such conduct may give rise to oppression where various events are considered together.

(357) On the evidence adduced by the Plaintiffs I am satisfied that the case of oppression has been properly established in accordance with section 242 of the Companies Act, Chap. 81:01 ("the Act'). Where it is necessary to prevent or to protect the Complainant from oppressive conduct within the corporation section 242 of the Act provides the Court with very wide powers to intervene in the affairs of the corporation and grant such relief that will bring an end to the oppression.

COUNTER CLAIM

(358) The Defendants' Counterclaim filed on the 29th December, 2004 is grounded on oppression pursuant to section 242 of the Companies Act, Chapter 88:01 and the common law dealing with oppression of a minority within the corporate structure of MOVL and/or MVHL.

(359) Counsel for the Defendants have relied principally on the terms and conditions of the Acquisition and Shareholders Agreement (A.S.A) in establishing the reasonable expectations of the contracting parties. Counsel have argued that the conduct of the Plaintiffs during the period of operation of the Mora Platform the Operator and Dr. Krishna Persad have been oppressed.

(360) The evidence before the Court discloses that the First Defendant KPA is a minority shareholder of MOVL holding 10% of the shareholding of that company. MVHL owns the remaining 90%. Under the terms of the A.S.A. KPA is entitled to have one member appointed to the Board of Directors of MOVL while MVHL is entitled to have two (2) appointees on the Board. Pursuant to Clause 9.2 of the A.S.A. the Board shall initially be comprised of these members.

(361) In paragraph 16(c) of the Plaintiffs' Reply and Defence to Counterclaim the Plaintiffs pleaded in part that "it was the advice of the Plaintiffs then Attorneys

at Law that it would be highly inimical to the interests of MOVL and courted disastrous consequences for it in its already fragile financial state if the second Defendant were to be included at Board Meetings and/or otherwise made privy to the plans and strategies MOVL were going to employ."

(362) Counsel for the Defendants have submitted that paragraph 16(c) as pleaded amounts to an admission alleging that Dr. Persad (the duly appointed representative of KPA on the Board of Directors of MOVL) was excluded from the Board of MOVL contrary to the terms of the A.S.A. The evidence reveals that Dr. Persad had been excluded from attending Board meetings of MOVL since June 2002 ad continuing.

(363) It would appear from the evidence that such exclusion of Dr. Persad from MOVL Board meetings would be contrary to the reasonable expectations of the Defendants as a contracting party to the A.S.A. However, given all the circumstances is such conduct on the part of the Plaintiffs oppressive according to section 242 of the Companies Act.

(364) It was during the month of June 2002 that the conflict between the Plaintiffs and the Defendants (Dr. Persad in particular) intensified. The uncontraverted evidence is that the second named Defendant Dr. Persad, unlawfully withdrew approximately six (6) million dollars (TT currency) out of MOVL's bank account held at Scotia Bank in the month of June 2002. At the material time Dr. Persad knew that he had no authority to sign cheques on the Company's (MOVL) behalf, having been removed as a signatory on MOVL's bank account with effect from the 16th May, 2002.

(365) There is also evidence that Dr. Persad had been engaged in transferring a sum of $600,000.00 (US) from MOVL's account in late 2001 and placing it in a term deposit. Enquiries conducted by Mr. Woodcock revealed that the amount was to be held as security for the Operator to be granted a loan to repay the related party balances. Mr. Woodcock confirmed during his testimony that the transaction never materialized and in April 2002 the sum was subsequently transferred back into MOVL's current account at the same financial institution.

(366) The evidence showed that the Operator had exclusive right to interfere with the accounts of MOVL under the terms of the Operating Agreement. The Court found as a fact that the transfer of the said sum was effected without the approval and/or permission of MOVL and/or MVHL.

(367) There is no evidence before the Court that in any of these situations the Plaintiffs' permission was sought. It was clear therefore that the Defendants acted in breach of their fiduciary duty and contrary to the reasonable

expectations of the Plaintiffs in accordance with the terms of the Operating Agreement.

(368) In the circumstances could it be argued that the Defendants by so conducting themselves had surrendered whatever rights they may have had under the terms of the OA and the A.S.A. Would it therefore be unfair of the Plaintiffs to have taken a decision to exclude Dr. Persad from Board Meetings where the financial affairs of MOVL were being discussed. Mr. Nicholas had testified that the Plaintiffs no longer had any trust in Dr. Persad and KPA the Operator. After all Dr. Persad had committed what could be described as the ultimate sin the area of corporate governance and was deserving the ultimate sanction. I don't agree that in the circumstances excluding Dr. Persad from Board Meetings of MOVL was oppressive as submitted by Counsel for the Defendants.

REFUSAL OF INFORMATION REGARDING ALLEGATION MADE BY NICHOLAS AGAINST PERSAD

(369) Counsel for the Defendants' did argue that Nicholas did refuse Persad any information regarding allegations being made by Nicholas against Persad. Not much was made by this issue during Counsel's submission. The evidence coming from Mr. Nicholas is that the Board of Directors had taken a decision to appoint a legal Committee to look into the allegations made. If therefore, following the Committee's investigation into the matter, before any action is taken against Dr. Persad, he would have been entitled, upon request, to any information relevant to the issue.

MISMANAGEMENT OF THE BUSINESS AND AFFAIRS OF MVHL and MOVL

(370) Counsel for the Defendants has contended that Mr. Nicholas has mismanaged the business affairs of MVHL and MOVL in a manner which would be considered oppressive. Counsel argued that at a shareholders meeting of MVHL on the 10th May, 2002 Nicholas as the controlling shareholder, approved the appointment of four members to the Board of MVHL viz. Nahous, Stewart, de Verteuil and Carr. Mr. Nicholas did so because he was satisfied that those persons "could grow the interest of the shareholders."

(371) However, because of irreconcilable differences efforts were being made by Nicholas on or around the 4th July, 2002 to have these directors removed from office. Legal action was taken by Nicholas against three (3) of those directors, Carr, de Verteuil and Stewart in the month of July 2002 because Nicholas was of

the view, inter alia, that they had been conspiring to pass a resolution which was for improper purposes and not in the best interest of the shareholders of MVHL. An injunction was obtained from the Court on the 10th July, 2002 to exclude the three directors from the Board of Directors of MVHL. Nahous resigned from the Board of MVHL on the 11th July, 2002.

(372) The evidence before the Court confirms that both Nicholas and Nahous were MVHL's two representatives on the Board of MOVL while Dr. Persad was the representative of KPA on the Board of MOVL. However, with the resignation of Nahous and the exclusion of Dr. Persad from the Board of MOVL there was only one member on the Board of MOVL contrary to the reasonable expectations of the shareholders of MVHL.

(373) In his submissions Counsel relied heavily on the conduct of Mr. Nicholas in first requesting that three members of the Board of MVHL resign before seeking an injunction ex parte from the Court to exclude the said Directors. Counsel described Nicholas' conduct in asking the Directors Carr and de Verteuil to resign as "arrogant, high handed and outside the realm of legal corporate conduct."

(374) At this stage I am not prepared to speculate on Nicholas' conduct as it relates to the other directors of MVHL. However, I note with concern Counsel's comment made in paragraph 552 of his written submissions filed on the 20th May, 2011. Paragraph 552 states:

> **"It is inescapable as well, that element of trickery (reminiscent of the Buckhoff 'misunderstanding' of the PKE valuation and the specific request of PKF made by Nicholas not to do a 'fair' market value') was involved. That was that Myers, J. was never informed at any time that having injuncted Carr, de Verteuil and Stewart on the basis of Nicholas suspicion, there was no operative Board of MVHL because Nahous resigned the day after he granted the exporte order."**

(375) First to suggest that the Court (Myers, J.) granted an exparte order on the basis of suspicion is to infer improper motive which in my respectful view is unacceptable. The Court would have had before it admissible evidence before granting the order. Secondly, it is important to note that the injunction was granted on the 10th July, 2002 and Nahous resigned from the Board on the 11th July, 2002. What was the purpose of Nicholas having to inform the Court of Nahous resignation? Certainly a special shareholders meeting could have been

called to appoint a replacement on the Board to fill the vacancy. Where is the "element of treatry" to which Counsel has referred? I don't see it.

MANAGEMENT – MOVL'S OFFSHORE OPERATIONS

(376) Under this heading Counsel refers to the several attempts of Nicholas to have the Operator removed. Cash calls for July, August and September 2002 were not paid. Such evidence has not been contradicted. From the month of June there was a total breakdown of trust between MVHL and MOVL on the one hand and KPA and Dr. Persad on the other. The Defendants had improperly and in my view unlawfully interfered with substantial sums of the MVHL and MOVL funds. In those circumstances it would have been extremely difficult to maintain the relationship that existed between the Operator and Licensee.

MANAGEMENT – MVHL AND MOVL'S FINANCES

(377) Counsel for the Defendants took the opportunity under this heading to criticise the management style of Nicholas. Counsel's argument is that Nicholas spent the Companies (MOVL and MOVHL) money pursuing litigation against Dr. Persad and the other directors of MOVL and MOVHL rather than on exploration and drilling which would help to increase production under the licence. In Nicholas view he was acting in the best interest of the shareholders and that the "approach of the new management has been to initiate all necessary civil and criminal proceedings to recover these and other debts.

TERMINATION OF THE OPERATING AGREEMENT

(378) Counsel for the Defendants have submitted that Nicholas was patently wrong to seek to have the Operator removed while the Operating Agreement was still in existence. Counsel for the Plaintiffs have contended however, that the Defendants having by their conduct repudiated the ASA and the OA cannot therefore rely on the contractual terms of the said ASA and OA.

(379) Mr. Nicholas testified that he was advised by Senior Counsel that in order to remove the Operator and for MOVL to take possession of the platform a Court order will be necessary. As a consequence, an application was made before Jamadar, J. for that purpose but before any order was secured MOVL and MVHL pre-emptively took possession of the platform on or about the 11th October, 2002. Such action by MOVL and MVHL was criticised by Counsel for the Defendants inferring that such pre-emptive action would have prejudiced the proceedings before the Court.

(380) I cannot accept Counsel's contention on the issue. I am of the view that if the action of the Plaintiffs was wrong then the Court had the power to apply whatever sanction it saw fit in the circumstances. If in fact anyone had suffered any loss as a consequence of the action taken by MVHL and MOVL, to take possession of the Platform an appropriate order would have been made to adequately compensate such persons.

(381) But it must be remembered that MOVL had certain obligations to carry out under the terms of the Licence with the Government of Trinidad and Tobago. One must also remember that the Licence provided MOVL with the only source of income to MVHL. It could be argued therefore that both MVHL and MOVL were acting in the best interest of their shareholders when the decision was made to take possession of the Platform and continue operations in the interest of all including Dr. Persad who is a shareholder of MVHL and MOVL through his company KPA.

(382) In this judgment I have already addressed the issue as to whether the Defendants could continue to rely on the terms and conditions of the ASA and OA to establish a case for breach of their reasonable expectations to come within section 242 of the Companies Act. I am not satisfied that on the evidence before this Court that a case has been made out by the Defendants that the conduct of the Plaintiffs "constitute a clear case of oppression" against the Defendants by the Plaintiffs. As a consequence I am constrained to dismiss the Defendants Counterclaim with costs.

The Orders

(383) In granting the necessary relief I am guided by the statement of R.A. Blair, J. made at page 313 in the Canadian case of **Deluce Holdings Inc. –v- Air Canada (1992) 8 BLR 294** as follows:-

> **"The Court has a very broad discretionary power under the oppression remedy legislation to select a remedy appropriate to the situation at hand. It's mandate is to "make any interim or final order it thinks fit." This discretion must be exercised in accordance with judicial principles, of course, and within the overall parameters of corporate law. Nonetheless, the remedy has been described by one early commentator as "……. Beyond question the broadest, most comprehensive and most open-ended shareholder remedy in the common law world ……." See Stanley M. Beck – "Minority Shareholders Rights in the 1980's."**

(384) It is my hope therefore that the following orders and declarations of this Court "will rectify the matters complained of" and finally bring an end to the conflicts which have affected the parties over the years.

(385) I am not prepared to grant several of the relief claimed by the Plaintiffs in the relief clause of the re-amended Statement of Claim on the basis that the evidence adduced by the Plaintiffs throughout the trial does not, in my respectful view, support the relief claimed.

(386) In the circumstances, I am prepared to make the following Orders and Declarations:

(1) A Declaration that the Defendants were acting and/or carrying on and/or conducting the business and/or affairs of MVHL and/or MOVL and/or exercising their powers in a manner which was oppressive and/or unfairly prejudicial to and/or that unfairly disregarded the interest of the Plaintiffs/Complainants;

(2) A Declaration that the second Defendant breached his fiduciary duties to MVHL and/or MOVL by permitting and/or authorizing KPA to act and/or carry on and/or conduct the operations of MOVL and/or to exercise its powers in a manner that was oppressive and/or unfairly prejudicial to and/or unfairly disregarded the interest of the Plaintiffs/Complainants;

(3) An Order setting aside the Operating Agreement dated the 30th day of December, 1994 made between KPA and MOVL;

(4) An Order to regulate the affairs of MOVL by varying and/or amending the Acquisition and Shareholders Agreement made among MVHL, MOVL and KPA in order to prevent the unreasonable use of same by KPA and/or any other minority shareholder (a) to entrench itself and/or prevent its removal as Operator of the Mora Platform and (b) to frustrate the operations of the Mora Platform and/or the business and/or affairs of MOVL;

(5) An Order that the Plaintiffs do within 90 days (or within such extended time as the parties may agree) purchase the Defendants' entire shareholding in MOVL and MVHL at a fair market value;

(6) An Order that the Defendants do pay to the Plaintiffs 60% of the Plaintiffs costs of the Claim (to be taxed if not agreed) certified fit for senior and junior Counsel; and

(7) An Order dismissing the Defendants' Counterclaim with costs (to be taxed if not agreed) to be paid to the Plaintiffs by the Defendants.

Finally this Court would like to place on record its appreciation for the depth and the quality of legal research undertaken by Counsel on both sides in assisting the Court throughout the trial. My appreciation also for the tremendous assistance which I received from Ms. Alicia Lowenfield (my Research Assistant) in the preparation of this judgment.

Dated this 6th day of February, 2014

Sebastian Ventour,
Judge.