JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 6/2007

APPLICATION NO 100/2013

BEFORE: **THE HON MR JUSTICE MORRISON JA**
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE BROOKS JA

BETWEEN	**AMERICAN JEWELLERY COMPANY LIMITED**	**1ST APPLICANT**
AND	**INDRU KHEMLANI**	**2ND APPLICANT**
AND	**ROSHAN KHEMLANI**	**3RD APPLICANT**
AND	**SHAM KHEMLANI**	**4TH APPLICANT**
AND	**RAJ KHEMLANI**	**5TH APPLICANT**
AND	**COMMERCIAL CORPORATION JAMAICA LIMITED**	**1ST RESPONDENT**
AND	**TEWANI LIMITED**	**2ND RESPONDENT**
AND	**GORDON TEWANI**	**3RD RESPONDENT**
AND	**JENNIFER MESSADO**	**4TH RESPONDENT**

Mrs Denise Kitson QC and Mrs Suzanne Risden-Foster instructed by Grant, Stewart, Phillips & Co for the applicants

Miss Carol Davis and Miss Nicole-Anne Fullerton for the 1st, 2nd and 3rd respondents

Nigel Jones instructed by Nigel Jones & Co for the 4th respondent

5 December 2013 and 20 June 2014

MORRISON JA

[1] By notice of application for court orders filed on 10 September 2013, the applicants ('American Jewellery') seek an order that this court "clarify and/or correct the error arising in its Judgment of 1st October 2010". The ground of this application is that there is an inconsistency between the judgments delivered by the members of the court and its orders as drawn.

[2] Rule 42.10(1) of the Civil Procedure Rules 2002 ('the CPR') provides that "[t]he court may at any time (without an appeal) correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission". This is the well-known 'slip rule', which has been a feature of the rules of civil procedure for many years. While this is not one of the rules of the CPR which has been explicitly incorporated into the rules of this court by rule 1.1(10) of the Court of Appeal Rules 2002, it is common ground between the parties that this court may, by virtue of its inherent jurisdiction to control its process,"correct a clerical error, or an error arising from an accidental slip or omission…in its judgment or order" (per Harris JA, in ***Brown v Chambers*** [2011] JMCA Civ 16, para. [11]).

[3] The 1st, 2nd and 3rd respondents ('Commercial') have offered no objection to this application. However, the 4th respondent ('Mrs Messado') has challenged the very assumption upon which it is based, contending that, on a true reading of the judgments

and orders in question, there is in fact no error or inconsistency. The single issue that therefore arises on this application is which of the parties is correct on this question. At the heart of the matter is the order by this court that Mrs Messado, as damages for breach of a professional undertaking, should pay interest on the sum of $575,000.00, no order having been made for payment of the principal by her, or indeed, by anyone else.

[4] But it is first necessary to say something of the history of the litigation, which is long and complicated. Beswick J (as she then was) conducted the trial of five consolidated actions, which lasted 27 days, spread over 20 months and her judgment was delivered on 4 December 2006. This was followed by a five day hearing in this court (Cooke, Harrison and Dukharan JJA), after which judgment was delivered on 1 October 2010. And finally (or so it appeared), after the hearing of a further appeal to the Privy Council, the judgment of the Board was given on 7 February 2013. For the purposes of this application, it is happily unnecessary to attempt more than an outline of this history, so as to give an understanding of the very narrow issue which now remains open for consideration. I have gratefully adapted this outline from the judgment of the Board, which was delivered by Lord Wilson.

[5] By an agreement comprised in two related contracts entered into on 16 August 1999, American Jewellery contracted to sell property known as 3 Tropical Plaza, Constant Spring Road ('the property') to Commercial. The total price was $20,000,000.00 and, as agreed, Commercial paid a deposit of $4,000,000.00. The property comprised of two retail shops, one of which was at the date of the agreement

occupied by American Jewellery for the purposes of its business. Under the terms of the agreement, it was agreed that, upon completion of the sale, which was scheduled for 30 September 1999, this shop would be leased back to American Jewellery for a period of three years. American Jewellery and Commercial were represented in the transaction by Mr Raymond Clough and Mrs Messado respectively, both experienced conveyancing attorneys-at-law. Mr Clough had carriage of sale.

[7] The transaction was beset by many problems. American Jewellery was unable to complete on the agreed completion date and, by agreements negotiated between Mr Clough and Mrs Messado on behalf of their respective clients, various strategies were adopted to move the sale along. These included Commercial advancing $6,397,313.00 on American Jewellery's behalf to discharge an existing mortgage on the property in December 1999 and making a further part payment on the purchase price of $4,000,000.00 early in 2000.

[8] So it was that, by letter dated 15 March 2000, Mrs Messado came to give on American Jewellery's behalf the professional undertaking with which the current phase of the proceedings is concerned. This was an irrevocable undertaking to Mr Clough in respect of (as the Board put it at para. 11 of their judgment) "what then appeared to be the balance of the price, namely $6,120,898.00". The condition of the undertaking was that this amount was to be paid "in exchange for duplicate Certificate of Title…duly endorsed in the name of [Commercial] duly free and clear of all encumbrances".

[9] On 16 June 2000, Commercial was duly registered as proprietor of the property, though it appears that there continued to be a dispute as to the terms of the lease-back

of the shop which American Jewellery had continued to occupy. I cannot improve on Lord Wilson's summary (at paras 15-17) of how the matter (the conveyancing aspect of it, at any rate) was finally brought to a conclusion:

> "15. On 23 June 2000 Mrs Messado sent to Mr Clough a statement of the balance of the price allegedly payable to American Jewellery. The present appeal requires attention only to one entry on it, namely a proposed deduction from the price of $575k, inclusive of GCT, by way of rent allegedly payable by American Jewellery from 1 March to 30 June 2000 referable to the shop.
>
> 16. On 18 July 2000 Mrs Messado sent to Mr Clough a cheque for $2m on account of the balance payable but she expressed it to be in consideration of agreement by American Jewellery that it would suffer not only the deduction, already proposed, of $575k by way of rent from March to June 2000 but also a deduction of $862,500 in respect of the rent due for the six months from July to December 2000. The cheque was made payable to Mr Clough's firm; and he cashed it. Three days later Mrs Messado sent to Mr Clough a statement of the balance payable, revised so as to allow for the further payment and for the further deduction: the balance was $388,402.
>
> 17. Under cover of a letter dated 29 August 2000, Mrs Messado duly sent to Mr Clough a cheque for $388,402. She requested him to sign, and to return to her, a copy of the letter 'in acknowledgment of receipt and in discharge of our client's obligations herein'. He did so."

[10] On 7 June 2001, American Jewellery filed action against Commercial and Mrs Messado was subsequently added as a defendant. As against Commercial, it was alleged that the purchase price had not been fully paid and a balance in the region of $1,656,825.57 was claimed (this amount included both the deductions of $575,000.00 and $862,500.00 which had been referred to by Mrs Messado in her letter to Mr Clough

dated 18 July 2000). And, as against Mrs Messado, American Jewellery claimed "damages for breach of her professional undertaking given in respect of the sale of 3 Tropical Plaza".

[11] As regards the claim against Commercial, Beswick J's general conclusion was that, as the agent of American Jewellery, Mr Clough had had the authority to agree to the deductions stipulated by Mrs Messado and that he had done so by encashing the cheque sent on 18 July 2000 and by signing and returning to Mrs Messado a copy of her letter dated 29 August 2000 enclosing the cheque for $388,402.18 as payment of the balance of the purchase price. However, the learned judge considered that the deduction of $575,000.00 was improperly made. The basis of this view was that American Jewellery could not be liable to pay rent for the shop, which it continued to occupy, to Commercial during a period prior to the registration of Commercial's interest on 16 June 2000, when it (American Jewellery) was still the registered owner of the property. Commercial was therefore ordered to pay the $575,000.00 (see paragraph (2) of the judge's summary of her orders at para. 208 of her judgment).

[12] As regards the claim for breach of undertaking, the learned judge found that Mrs Messado had breached her undertaking by not paying the agreed balance of the purchase money and costs within a reasonable time of the registration of her client's name on the title. Treating a reasonable time as seven days from 16 June 2000, the judge accordingly ordered that Mrs Messado should pay interest on the amount of $388,402.18 for the period 23 June 2000 to 29 August 2000 (when the balance was paid to Mr Clough), at a commercial rate to be determined either by agreement or by

the Registrar of the Supreme Court (see paragraph (5) of the judge's summary of her orders at para. 208 of the judgment).

[13] On appeal, this court upheld Beswick J's general conclusion as to Mr Clough's authority to bind American Jewellery. However, disagreeing with the judge on this point, the court considered that the deduction of $575,000.00 was also covered by Mr Clough's agreement and that there should have been no award of this sum to American Jewellery. On the question of Mrs Messado's liability for breach of her undertaking, it was held that, in addition to interest for late payment of the $388,402.18, there should be an order for the payment of interest on the sum of $2,000,000.00, which had only been paid on 18 July 2000, that is, over three weeks after it should have been paid. And finally, this court ordered that Mrs Messado should also pay interest on "the sum of $575,000.00 from 25 June 2000 to the date of payment".

[14] On this last point, Cooke JA (with whom Harrison and Dukharan JJA agreed) said this (at para. [15]):

> "Finally, on this aspect, there is the sum of $575,000.00 which was also outstanding, the learned judge having determined that that was a wrongful deduction. There is a breach of undertaking in respect of the payment of this amount. I do not know if this sum has yet been paid. There is no documentary evidence which I have seen to so indicate. If it has been paid, then interest is to be calculated on similar terms as to the sums above from 25 June 2000 to the date of payment. These late payments and non-payment lead to the breach of an undertaking rather than to a breach of contract by the purchaser."

[15] Further, summarising his conclusions (at para. [23]), Cooke JA added this:

> "I would uphold the order made by the learned judge except for the following:
>
> (1) There should be an award to the 1st appellant [American Jewellery] for $575,000.00, as stated in paragraph (2) of the listing of the orders made. This sum it will be recalled, related to a deduction from the purchase monies. This sum which I agree was wrongly deducted ought properly to be considered in the claim in respect of the breach of professional undertaking.
>
> (2) Accordingly, paragraph (5) of the listed orders has to be amended to take into account the sums of not only $388,402.18, but also the sum of $575,000.00 and $2,000,000.00 as stated in paragraph 15 of this judgment. So, therefore, the rate of interest on $388,402.18 is as the learned judge prescribed and in respect of the two other sums, is to be similarly determined and the period for which interest is due is set out in paragraph 15 (supra).
>
> (3) …"

[16] The terms of the orders ultimately made by this court were as proposed by Harrison JA (at para. [51]). The relevant paragraphs are (i) and (ii):

> "(i) There shall be no award to the 1st appellant [American Jewellery] for the sum of $575,000.00.
>
> (ii) The 4th respondent [Mrs Messado] shall pay to the 1st appellant [American Jewellery] as damages for breach of undertaking, interest on the sum of $388,402.18 from 23 June to 29 August 2000, on the sum of $2,000,000.00 from 23 June 2000 to 18 July 2000 and on the sum of $575,000.00 from 25 June 2000 to the date of payment. Interest is to be paid at a commercial rate to be determined either by agreement within 30 days of the date of delivery of this judgment or by the Registrar of the Supreme Court/Court of Appeal."

[17] As I have indicated, American Jewellery appealed to the Privy Council from the judgment of this court. As Lord Wilson observed (at para. 9), before the Board the major issue was "whether American Jewellery invested Mr Clough with ostensible authority to agree with [Commercial], acting through Mrs Messado, that certain deductions should be made from the price payable to it upon completion of the sale". After reviewing the relevant authorities and some features of the evidence, Lord Wilson stated (at para. 35) that "[t]he Board is in no doubt that…Beswick J and the Court of Appeal were correct to hold that Mr Clough had ostensible authority to enter on behalf of American Jewellery into the agreement with Mrs Messado (into which, on any view, he did indeed enter) to the effect that American Jewellery would accept the two deductions".

[18] Lord Wilson noted (at para. 20) that American Jewellery had also asked the Board to consider a subsidiary question arising out of this court's order for the payment of interest on the sum of $575,000.00 by Mrs Messado: "Why (asks American Jewellery) is interest to be paid to it when the order for payment by [Commercial] of the principal sum has been set aside and, according to the order as drawn, 'there shall be no award' for payment of it?" Despite considering that this question "at first sight seems reasonable", the Board declined to express a concluded view on it, in the light of the fact that Mrs Messado, who was not a party to the appeal to the Privy Council, was not before it. But Lord Wilson did allow himself the remark that "passages in the leading judgment of Cooke JA in the Court of Appeal, in which he proposed orders with which the other two judges expressed their agreement, suggest that the court may perhaps

have concluded that Mrs Messado was also obliged by her undertaking to pay the principal sum of $575k to American Jewellery; and therefore that the actual orders of the court that there should be 'no award' for payment of it and that Mrs Messado should pay only interest referable to it are incorrectly drawn". The learned judge also expressed the view that "it is unfortunate that those representing American Jewellery have for two years apparently failed to notice this possible inconsistency between the judgments of the Court of Appeal and its orders as drawn, still less, if so advised, to apply to that court, on notice to Mrs Messado, for amendment of its orders under the slip rule, namely Rule 42.10 of the Civil Procedure Rules".

[19] So the parties are before us now for this purpose. We were told by Mrs Kitson QC for American Jewellery (and we naturally accept) that, on that side, the "inconsistency" between this court's orders as drawn and its judgments was noted, but that it had been thought that the appropriate way to deal with it was by way of the further appeal to the Privy Council. Be that as it may, Mrs Kitson submitted, there is a clear error on the face of this court's judgment: despite Cooke JA having held (at para. [23] of his judgment) that there should be an award to American Jewellery for $575,000.00, the order finally disposing of the appeal was that there should be no award to American Jewellery in the same amount. This was a patent conflict in the judgment, amounting to an accidental slip or omission which can be remedied either under rule 42.10 of the CPR or the court's inherent jurisdiction. Accordingly, Mrs Kitson invited the court to correct its final order to incorporate an order for payment of the sum of $575,000.00 to American Jewellery by Mrs Messado.

[20] Miss Davis for Commercial told the court that her client's only interest in the appeal was to preserve this court's order that there should be no award in American Jewellery's favour against Commercial for payment of the sum of $575,000.00. For this purpose, Miss Davis helpfully took the court through the judgment of the Board to demonstrate that this remained the position.

[21] Mr Jones for Mrs Messado urged us not to accede to the application. He submitted that, on a proper analysis of the claims made by American Jewellery in the court below; and the judgments of Beswick J in that court and Cooke and Harrison JJA in this court, there is no inconsistency in this court's orders.As for the statement of Cooke JA (at para. [23] of his judgment) that "[t]here should be an award to the 1st appellant [American Jewellery] for $575,000.00", upon which Mrs Kitson relied, Mr Jones submitted that, taken in its context, the learned judge was here doing no more than stating that this order, which was made by Beswick J, would not be upheld. In holding that Mrs Messado should pay interest on the $575,000.00, Mr Jones submitted further, Cooke JA was concerning himself not with whether she ought to repay the principal amount, but rather with what would be an appropriate order to make in the circumstances by way of damages for breach of her undertaking to pay the balance purchase price upon completion. So, should the court now order Mrs Messado to pay the sum of $575,000.00, Mr Jones concluded, it would in effect be revisiting its previous decision, which it has no power to do.

[22]In his judgment in ***Bristol-Myers Squibb Co v Baker Norton Pharmaceuticals Inc&Anor*** [2001] EWCA Civ 414, a decision of the English Court of Appeal to which we

were referred by Mrs Kitson, Aldous LJ restated (at para. 25)the well-established principle that "…the slip rule cannot enable a court to have second or additional thoughts…Once the order is drawn up any mistakes must be corrected by an appellate court".However, as the learned editors of the White Book 2009, to which we were referred by Mr Jones, make clear (at para. 40.12), "the Court has an inherent jurisdiction to vary its own order to make the meaning and intention of the Court clear and can use the slip rule to amend an order to give effect to the intention of the Court".

[23] A good example of an order as drawn not reflecting the court's true intention is ***Adam & Harvey Ltd v International Maritime Supplies Co. Ltd*** [1967] 1 All ER 533, to which Mrs Kitson also referred us. On an interlocutory appeal in that case, the Court of Appeal intimated that there should be no immediate taxation of costs. The appeal was allowed, with costs of the appeal and before the judge in the court below to the appellants. The order as drawn up provided that the costs of the proceedings before the judge should be the appellants' costs in any event and that the respondents should pay to the appellants their costs of the appeal, such costs to be taxed by the taxing master. The appellants applied for taxation of the costs of the appeal, though the action had not yet been tried. The respondents applied by motion under the slip rule to amend the order, so as to provide that the costs of the appeal should be the appellants' in any event. This application succeeded, the court holding that, as the order as drawn up gave the appellants a right to immediate taxation, though the action had not yet come on for trial, it did not express the intention of the court and it would

therefore be amended as requested. Harman LJ gave the rationale for the decision in these terms (at page 534):

> "As far as I am concerned, I did not intend that there should be this exceptional order for payment of costs at once, but that costs should be in any event those of the successful appellant. That was the order which I intended to pronounce, and I thought that I had done so. I see, however, that there is some room for mistake owing to the fact that after I had made the observation which showed that I did not intend an immediate taxation, an application was made which could have had that result and was so interpreted by the learned associate. That is a slip which can be amended under RSC, Ord 20, r 11, because inadvertently the order as drawn did not express the intention of the court owing to a misunderstanding between the associate and the court which pronounced it. I am not blaming anybody for it, except perhaps myself for not being more vigilant in the matter. I am sure of what I intended and I think that we have jurisdiction to give effect to that intention, and I would so hold."

[24] The cases cited by Mrs Kitson also establish that, even where the requirements of the slip rule have been satisfied, the court nevertheless retains a discretion to refuse to make an order under it if something has intervened which would make it "inexpedient or inequitable to do so" (per Lord Pearson in ***Tak Ming Co. Ltd v Yee Sang Metal Supplies Co.*** [1973] 1 WLR 300, 306).Thus, for instance, "[t]he rights of third parties may have intervened, based upon the existence of the decree and ignorance of any circumstances which would tend to show that it was erroneous, so as to dis-entitle the parties to the suit or those interested in it to come at so late a period and ask for the correction to be made" (per Lord Herschell LC, in ***Hatton v Harris*** [1892] AC 547,

558). But as David Neuberger QC (sitting as a deputy judge of the Chancery Division) observed in ***Re Brian Sheridan Cars Ltd*** [1995] BCC 1035, 1039, although –

> "…it would be inappropriate to amend an order under the slip rule in such a way as would cause prejudice to the respondent…it seems clear, both on principle and on authority that the mere fact that there has been a substantial delay in applying to alter the order does not justify the application to alter being rejected, unless of course the alteration results in prejudice to the respondent."

[25] I accordingly approach this application on the basis that, despite the inherent jurisdiction of this court to correct or vary its own orders, so as to make the meaning and intention of the court clear and to give effect to that intention, it is a jurisdiction to be exercised mindful of the limitation that, by this means, the court is not enabled to have second or additional thoughts about the previous decision. Given that, in resisting this application, Mr Jones has not relied on any factors relevant to the question of discretion, the matter turns entirely, it seems to me, on what was the true meaning and intention of the judgments of this court, in particular the leading judgment of Cooke JA.

[26] Mrs Kitson urged on us Cooke JA's statement (at para. [23] of his judgment) that "[t]here should be an award to the 1st appellant [American Jewellery] for $575,000.00, as stated in paragraph (2) of the listing of the orders made". I am however inclined not to take this into account, mainly because I consider that, in its context, it is not free from ambiguity. On the one hand, it might be taken, as Mrs Kitson submitted, to be the clearest statement in the judgment that that amount was to be paid by Mrs Messado. But, on the other hand, there is, it seems to me, something to be said for Mr Jones'

contention that all that the learned judge was doing in that paragraph was to identify those areas of Beswick J's judgment with which he disagreed. The point gains some force, in my view, from Cooke JA's explicit reference to "paragraph (2) of the listing of the orders made", since it is clear that what he was referring to there was Beswick J's listing, paragraph (2) of which had included her order for payment of the $575,000.00 by American Jewellery.

[27] But, putting this on one side, a number of other factors have impelled me to the conclusion that the intention of the court was, contrary to what its order as drawn says, to make an order that Mrs Messado should pay the sum of $575,000.00 to American Jewellery by way of damages for breach of her undertaking.

[28] First, there is the clear inconsistency between the order that there should be no award for the payment of the $575,000.00 to American Jewellery and the order that Mrs Messado should nevertheless pay interest on it. I find it difficult to understand why, if the court's intention was to make an award of damages for breach of the undertaking calculated by reference to interest on a principal amount of $575,000.00 (as Mr Jones suggested was the case), it did not say so; particularly since, in the absence of an order that Mrs Messado was also liable to pay that amount, this would have – as it in fact does – carried with it the clear appearance of anomaly, requiring some justification or explanation.

[29] Second, there is Cooke JA's clear statement, to which Lord Wilson also referred, that "[t]here is a breach of undertaking in respect of the payment of this amount" (para.

[15] of the judgment). Making good the breach by an order for payment of the amount to the aggrieved party would seem to be the obvious way of redressing the breach.

[30] Third, after stating that, if this sum had in fact been paid since action was filed, interest on it should be calculated on similar terms as on the late payment of the $2,000,000.00 and the $388,402.18, from 25 June 2000 to the date of payment, Cooke JA made the further observation that "[t]hese late payments and non-payment lead to the breach of an undertaking rather than to a breach of contract by the purchaser". It seems to me that the "non-payment" referred to here could only be a reference to the $575,000.00.

[31] And fourth,there is Cooke JA's statement (at para. [23], also pointed out by Lord Wilson) that the sum of $575,000.00, "which I agree was wrongly deducted ought properly to be considered in the claim in respect of the breach of professional undertaking". Taken in its overall context, it seems to me that this must have been an indication of the learned judge's view that, although the agreement struck by the parties through their lawyers to deduct the $575,000.00 from the balance purchase price meant that the court could not order that it be paid by American Jewellery, payment of the sum nevertheless remained a live issue in respect of the claim for a breach by Mrs Messado of her undertaking.

[32] I confess that I have not found this to be an easy matter to resolve. Indeed, as counsel may well recall, during the hearing of the application I was particularly struck by the fact that the result for which Mrs Kitson contended would mean that, despite

Commercial, by virtue of the agreement arrived at on its behalf by Mrs Messado, not having any liability to pay the sum of $575,000.00, Mrs Messado herself would be liable to pay it. But this is, of course, no part of the court's business at this stage: what we are now concerned with is what order the court which heard this appeal intended to and did make, and not with any view that this court might have as to the justice or otherwise of that order. So while the consequence that would flow from one view or the other may have some relevance as a measure of what the court might have intended, where that intention is clear, as it appears to me to be in this case, it is that intention that must prevail. It is in any event necessary to keep in mind, it seems to me finally, that, as Cooke JA was at pains to emphasise, there is a clear difference between monies payable by virtue of contract and any order that the court may make as damages for breach of a professional undertaking.

[33] I would therefore grant the application as prayed. I would propose that this court should make an order, in substitution for paragraphs (i) and (ii) of the order set out at para. [16] above, in the terms indicated below (with the amendments to the original order shown in bold type):

> (i) There shall be no award **for payment** to the 1st appellant **of** the sum of $575,000.00 **by the 1st and 3rd respondents**.
>
> (ii) The 4th respondent shall pay to the 1st appellant as damages for breach of undertaking, **(a) the sum of $575,000.00 and (b)** interest on the sum of $388,402.18 from 23 June to 29 August 2000, on the sum of $2,000,000.00 from 23 June 2000 to 18 July 2000 and on the sum of $575,000.00 from 25 June 2000 to the date of payment. Interest is to be paid at a

> commercial rate to be determined either by agreement within 30 days of the date of delivery of this judgment or by the Registrar of the Supreme Court/Court of Appeal.

[34] Finally, as regards the costs of this application, my distinct inclination is that there should be no order as to costs, given the fact that blame (if that is the right word) for the imperfection of the orders of the court as drawn cannot be laid at the feet of either party. But, in the event that either party wishes to seek a different order, I would propose that the court fix a schedule for them to be heard on the point in writing and for the matter to be disposed of by the same means without any further hearing.

DUKHARAN JA

[35] I have read the draft judgment of my brother Morrison JA and agree with his reasoning and conclusion. There is nothing that I wish to add.

BROOKS JA

[36] I have read, in draft, the judgment of Morrison JA. I agree with his reasoning, conclusion and proposed order and have nothing to add.

MORRISON JA

ORDER

(1) Application granted.The following order is substituted for paragraphs (i) and (ii) of the order made by this court on 1 October 2010 (with the amendments to the original order shown in bold type):

(i) There shall be no award **for payment** to the 1st appellant **of** the sum of $575,000.00 **by the 1st and 3rd respondents**.

(ii) The 4th respondent shall pay to the 1st appellant as damages for breach of undertaking, **(a) the sum of $575,000.00 and (b)** interest on the sum of $388,402.18 from 23 June to 29 August 2000, on the sum of $2,000,000.00 from 23 June 2000 to 18 July 2000 and on the sum of $575,000.00 from 25 June 2000 to the date of payment. Interest is to be paid at a commercial rate to be determined either by agreement within 30 days of the date of delivery of this judgment or by the Registrar of the Supreme Court/Court of Appeal.

(2) The court makes no order as to costs. However, this order is provisional only and, if either party wishes the court to make some other order, written submissions should be filed by that party within 28 days of this order. Upon the filing of such submissions, the court will thereafter deal with the question of costs on paper, without any further hearing. If no submissions are filed by either party within the time stipulated above, then this provisional order for costs will stand as the court's final order.