IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM No. 2008HCV04075

BETWEEN	CAPITAL SOLUTIONS LIMITED	CLAIMANT
AND	BLACK BROTHERS LIMITED.	1ST DEFENDANT
AND	KENNETH BLACK	2ND DEFENDANT

Mr. Christopher Dunkley instructed by Phillipson Partners for the Claimant

Mr. Gayle Nelson for the Defendants

Heard: July 13, 2009

Sinclair-Haynes J

Application to Enter Judgment and
an Admission without Notice

On the 13th July 2009, an application by Capital Solutions Limited (the Claimant) for the sale of property owned by Blacks Brothers Limited (the first Defendant) and Kenneth Black (the second Defendant) came up for hearing before the Court. The application was adjourned. However, an oral application was made for judgment for the sum of US$2,850,000.00, which sum the second Defendant at all material times admitted owing to be signed by the Registrar of the Supreme Court. The application was granted. A chronology of the matter is outlined below.

Capital Solutions Limited extended loan facilities to the first Defendant and second Defendant in 2003. The Defendants defaulted in their payments.

On the 20th August 2008, the Claimant instituted proceedings against the Defendants for the sums of US$3,742,083.78, US$660.9I5.41 and US$28,864.24 which sums the Claimant claims were sums that were advanced to the Defendants over the period 2003-2007.

The second Defendant, in his Acknowledgement of Service dated 22nd October 2008 acknowledged owing the Claimant the sum of US$2,850,000.00. In the Defence filed on the 13th November 2008, the 2nd Defendant averred that they (the Defendants) may owe the Claimant the aforesaid sum but denied owing the balance claimed by the Claimant. On the 12th day of December 2008, the Claimant filed for Judgement on Admission on the basis of the admissions made and on the 19th December 2008 filed a Notice of Application for Sale of Land. By way of affidavit dated the 24th February 2009, in response to the Application for Sale of Land, the second Defendant deponed that he was anxious to pay the amount he said was owed.

On the 24th February the Application for Sale of Land came up for hearing before Beckford J. The second Defendant admitted owing the sum of U$2,850,000.00 and he consented to pay the sum admitted in tranches. Consequently, Beckford J. made the following order:

> "The Defendants to pay the Claimant the sum of United States two hundred and eighty-five thousand dollars (US$285,000.00) within forty–five (45) days of the date hereof, being part of the admitted debt owed to the Claimant."

The Application for Sale of Land was adjourned to the 31st March 2009. The Defendants disobeyed the said order. The second Defendant filed another Affidavit dated the 15th April 2009 in which he again admitted owing the sum of US$2,800,000.00, requested time to pay and asked that the Claimant's application for sale be refused.

On the 6th May 2009, Parlanex Corporation Limited had applied to the Court and sought *inter alia,* an order that it had an interest in the lands and that an order for sale would be subject to its interest in the proceeds of sale equivalent to its interest under the agreement for sale.

On the 10th and 13th days of July 2009, the Application for the sale of the Defendants' property again came up for hearing before me in Chambers.

The second Defendant, in an affidavit dated July 13 2009, challenged Parlanex' claim. He requested that the Court refuse to grant an order for the sale of the property and grant the Defendants an extension of time to pay what is referred to in paragraph 26 of his affidavit as, "its genuine admitted debt to the claimant herein." At paragraph 41 of the said affidavit, he deponed that the Claimant's claim was incorrect although he admitted owing a maximum total of $2,800,000.00. He disputed owing the full sum claimed.

On the 10th July 2009, the second Defendant had filed a further affidavit in which he expressed dissatisfaction with the treatment of the matter by his previous attorney. He admitted owing the sum of $2,800,000.00 and disputed the balance claimed. On the 13th July 2009, the Defendants' attorney Mr. Gayle Nelson applied to the Court for an

adjournment in order to prepare himself for the hearing. The Court acceded to his request.

However, prior to adjourning the matter, an oral application was made by Mr. Christopher Dunkley, the Claimant's attorney, to have the Registrar sign and perfect forthwith the Formal Order of the Judgment on Admission which had been filed from the 12th December 2008. Mr. Nelson objected to the application on the ground that there was no Notice of Application for an order that the Registrar be ordered to enter judgment before the Court. The Court considered the circumstances of the case, that is, that the second Defendant had consistently, since the filing of the Acknowledgement of Service on behalf of the Defendants, maintained that the Defendants owed the sum admitted. Additionally, the dicta of the Court of Appeal in ***Benros Co. Ltd. & Bentley Rose v. Workers Savings & Loan Bank Ltd. SCCA 9 & 10/97*** was applicable.

In the circumstances, the Court exercised its discretion to dispense with the requirement for the application to be made in writing.

Rule 11.6(4) states that the general rule is that an application must be made in writing. However, rule 11.6(2) (b) allows an application to be made orally if the Court dispenses with the requirement for the application to be in writing.

Consequently, the court ordered that:

1. The Registrar of the Supreme Court do sign and perfect Judgement on Admission filed on the 12th day of December 2008, forthwith;

2. Application for Sale of Land and for Applicant to be named Intervenor adjourned to January 12, 2010 at 12:00 noon.