



[2024] JMSC Civ. 86

ORAL JUDGMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2024CV02292

BETWEEN	PETROLEUM COMPANY OF JAMAICA LIMITED	CLAIMANT
AND	JAMGAS LIMITED	1ST DEFENDANT
AND	BILL'S GAS AND APPLIANCES LIMITED	2ND DEFENDANT
AND	MANCHESTER GAS DISTRIBUTORS LIMITED	3RD DEFENDANT

IN CHAMBERS

Mr. Sundiata Gibbs instructed by Hylton Powell appearing for the Claimant

Defendants absent and unrepresented

Heard: June 25th, 2024 and July 26th, 2024

Application for Interim Injunction — Factors considered by the Court in granting an Interim Injunction — Whether there are serious issues to be tried — Whether the Balance of Convenience lies in favour of the grant of injunctive relief — Whether damages are an adequate remedy — The American Cyanamid Test — Section 49 (h) of the Judicature (Supreme Court) Act.

T. HUTCHINSON SHELLY, J

INTRODUCTION

[1] This is an ex-parte Application by Petroleum Company of Jamaica (hereinafter “Petcom”) for an interim injunction to restrain the Defendants from collecting, filling, repainting, rebranding and/or distributing the cylinders bearing the specific embossing showing JAMGAS and the number 12-14 which is representative of the cylinder’s test date of December 2014, cylinders bearing the brand “Petcom Cookie Gas” or any other cylinders belonging to or associated with Petcom.

BACKGROUND

[2] Petcom is a petroleum marketing company that is authorized to sell and distribute liquefied petroleum gas in bulk throughout Jamaica. It was initially government owned but became privately owned in or around 2016.

[3] The 1st Defendant (“Jamgas”) is a company incorporated under the Companies Act of Jamaica and is in a similar business as Petcom. Two of its directors and principals, Dean Peart and William Shagoury, were directors of Petcom between 2014 and 2024.

[4] The 2nd Defendant (“Bill’s Gas”) is also a company incorporated under the Companies Act of Jamaica. Mr. Peart and Mr. Shagoury are also directors and the principals of that company, which is a filling plant in May Pen, Clarendon. Bill’s Gas sells, fills and distributes Jamgas cylinders to the public. Mr. Peart and Mr. Shagoury own and are the directors of the two (2) other similar filling plants – Costal Gases Limited (“Costal Gas”) and the 3rd Defendant.

[5] The 3rd Defendant (“Manchester Gas”) is a company incorporated under the laws of Jamaica. Manchester Gas sells, fills and distributes Jamgas cylinders to the public.

[6] On May 24th, 2024, Petcom initiated a Claim by way of Claim Form and Particulars of Claim against Jamgas, Bill’s Gas and Manchester Gas seeking (amongst other things) damages and an injunction to restrain the Defendants from collecting, filling,

repainting, rebranding and/or distributing the cylinders bearing the specific embossing showing “JAMGAS” and the number 12-14 which is representative of the cylinder’s test date of December 2014, cylinders bearing the brand “Petcom Cookie Gas” or any other cylinders belonging to or associated with Petcom.

[7] The claim arose when in or around April 2024 Petcom discovered that the Defendants were filling and distributing Petcom branded cylinders to the public with their own gas; an action which was unauthorized by Petcom, any previous authority having been terminated in May 2023. Petcom also discovered that Jamgas has sprayed the 2014 cylinders grey, rebranding them as “Jamgas” cylinders and has been filling and distributing them to the public.

[8] Although the application was filed without notice, the Court made orders for it to be served along with all affidavits filed. The order for service of the documents and the date for hearing were complied with by the Claimant. The hearing proceeded uncontested as no appearance or affidavits in response have been filed.

THE APPLICATION

[9] In support of the Application, the Applicant relied on affidavits sworn to by Mike A. Hylton and Andrew Porter.

[10] The orders sought in the Without Notice Application for Injunctive Relief filed on May 24th, 2024 were:

1. An injunction restraining the 1st, 2nd and 3rd Defendant from collecting, filling, repainting, rebranding and/or distributing the cylinders bearing the specific embossing showing “JAMGAS” and the number 12-14 which is representative of the cylinder’s test date of December 2014, cylinders bearing the brand “Petcom Cookie Gas” or any other cylinders belonging to or associated with the Claimant.
2. Such costs order as the Court deems fit.
3. Such further or other orders as the Court deems fit.

[11] The grounds upon which the Applicant sought the Orders were as follows:

- i. Section 49(h) of the Judicature (Supreme Court) Act provides that an injunction may be granted by an interlocutory order of the Court, in all cases in which it appears to the Court to be just and convenient that such order should be made.
- ii. The Claimant markets and distributes a selection of petroleum products and fuels including liquefied petroleum gas (LPG) for domestic use. The Claimant sells, fills and distributes LPG domestic cylinders under the brand “Petcom Cookie Gas.”
- iii. The Claimant has discovered that the 1st, 2nd and 3rd Defendants have been filling with their own gas, selling and distributing the Petcom Cookie Gas cylinders to the public despite having no authority to do so.
- iv. There is a real risk that a substantial number of persons in the public will believe that they are receiving gas supplied by the Claimant which they are in fact not.
- v. The Claimant also faces a real risk of damage to its goodwill and reputation as it cannot:
 - a. Control the quality or quantity of the gas the Defendants are placing in its cylinders;
 - b. Ensure the cylinders are safe to be distributed to the public; or
 - c. Verify that they have been tested and correctly sealed for safe distribution.
- vi. The Claimant has also discovered that the 1st Defendant (“Jamgas”) has converted the Claimant’s LPG domestic cylinders (which it originally purchased from Jamgas) and has repainted, rebranded and filled them for its own use and distribution.
- vii. Jamgas has failed to deliver up possession of the converted cylinders despite the Claimant demanding that it do so.

viii. The injunction is urgently needed to prevent members of the public from being endangered by gas which the Claimant has no control of. The injunction is as also urgently needed to safeguard the Claimant's goodwill, reputation and property.

ix. Rule 17.3(2) of the Civil Procedure 2002 (as amended) states that the Court may grant an interim remedy on an application made without notice if it appears to the Court that there are good reasons for not giving notice.

x. The Claimant has a good reason for not giving notice of the application in that, if it notifies the Defendants of the application, there is a real risk that they may take steps to alter the Claimant's cylinders in their possession, making it more difficult to trace them.

xi. Damages would not be an adequate remedy for the Claimant.

xii. The balance of convenience favours the grant of an injunction.

xiii. The Claimant undertakes to do the following if the Orders are granted:

a. To serve copies of the following documents on the Defendants:

i. The interim order made without notice;

ii. The application for injunctive relief;

iii. The affidavits in support of that application; and

iv. Notice of the date, time and place of where the Court will further consider this application.

b. To abide by any order as to damages should the Court hereafter be of the opinion that the Defendants or any third parties given notice of this order have suffered any damages that the Claimant ought to pay.

THE LAW

[12] The guiding principles which the Court must consider in determining whether to grant an injunction were set out in the House of Lords decision of **American Cyanamid v Ethicon Limited** [1975] 1 ALL ER 504. These principles have been adopted in our jurisdiction, as reiterated by the Privy Council decision of **National Commercial Bank v Olint** [2009] UKPC 1.

[13] In **Associated Gospel Assemblies v Jamaica Cooperative Credit Union League Limited and another** [2022] JMCA Civ. 36 at paragraph 42, McDonald-Bishop JA stated that:

“The first point of departure in considering the appropriateness of granting injunctive relief is the Judicature (Supreme Court) Act, section [49(h)], which empowers the Supreme Court to grant an injunction by an interlocutory order ‘in all cases in which it appears to the Court to be just or convenient that such order should be made’. The applicable law also includes the well-settled principles that govern the grant of an interlocutory injunction as laid down in the well-known cases of *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504 (‘*American Cyanamid*’) and *National Commercial Bank Jamaica Limited v Olint Corp. Limited* [2009] UKPC 16 (‘*NCB V Olint*’).”

In addition, Part 17 of the Civil Procedure Rules (hereinafter “CPR”) provides the procedural context of the application for an interim injunction.

[14] In order to arrive at a reasoned decision on whether the orders sought should be granted, the Court must consider the following factors:

- a. **Whether there is a serious issue to be tried:** - This means that the claim must not be frivolous or vexatious. This is different from the requirement to establish a prima facie case. If there is no serious question to be tried, then the injunction should be refused.
- b. **Whether damages would be an adequate remedy:** - If there is a serious question to be tried, the next question is whether damages would be an adequate remedy for the Claimant. One must also consider whether the

Defendant is able to pay them. If damages are an adequate remedy, then an injunction should not be granted as then there is no basis for interfering with the Defendant's freedom of action by granting an injunction.

- c. **Whether the balance of convenience lies in favour of granting or refusing the injunctive relief that is sought:** - The question of the balance of convenience arises where there is doubt as to the adequacy of damages. The Court must be satisfied that the hardship or inconvenience which is likely to be caused to the Applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. Thus, the Court must embark on a balancing exercise in considering the convenience of the Applicant/plaintiff vis-a-vis the inconvenience of the Defendant.

[15] In **NCB v Olin** (supra), Lord Hoffmann, in delivering the decision, stated that:

"[16] ...It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial... The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result...

[17] ...The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other...

[18] Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases."

ISSUES

- [16] The principal issue is whether it is just and convenient to restrain the Defendant from collecting, filling, repainting, rebranding and/or distributing the cylinders belonging to or associated with the Claimant. To this end, the three (3) considerations earlier outlined are relevant and are discussed in detail below.

CLAIMANT'S SUBMISSIONS

Serious issue to be tried

- [17] Counsel referred to **American Cyanamid (supra)** in support of the assertion that the claim is not a frivolous one. Mr. Gibbs submitted that the Claimant's pleadings raise a serious issue to be tried as to whether the Defendants have converted and passed off its products as being Petcom's.
- [18] Counsel further submitted that the evidence shows that the Defendants have been filling and distributing Petcom's cylinders with their own gas despite having no authority to do so and have been retaining possession of Petcom's cylinders and repainting, rebranding and distributing them as if they were their own.
- [19] Counsel referred to correspondence which showed that both Bill's Gas and Manchester Gas terminated their agreements with Petcom which had allowed them to operate as filling stations for Petcom last year. This agreement authorized the two (2) companies to fill and sell Petcom Cylinders. He further stated that after the termination in May 2023, the companies would have been estopped from filling, selling and/or distributing Petcom's cylinders; and altering their appearance.
- [20] Mr. Gibbs relied on the affidavits of Mike Hylton and Andrew Porter and their attachments which he submitted contain evidence that the Claimant has conducted investigations which proves that individuals have been purchasing Petcom owned cylinders from Bill's Gas which do not contain Petcom's product. Additionally, Petcom employees have observed Petcom Cookie Gas cylinders on Manchester Gas's filling plant being loaded onto Manchester Gas's trucks as well as other

yellow Petcom cylinders on the filling bay of the plant. Counsel argued that this is proof that Manchester Gas continues to fill and distribute Petcom's cylinders with gas which neither belongs to, nor is it supplied by Petcom. There is further evidence, according to the Claimant, that Jamgas has sprayed cylinders grey and rebranded them as "Jamgas" cylinders.

Adequacy of damages

[21] In support of the point that damages are not an adequate remedy, the Claimant placed reliance on a statement from the authors of the ***Common Law Series: The Law of Tort*** which state that:

"The damage must be such as can be ascertained with reasonable accuracy and compensated in money...."

Learned Counsel then adumbrated that damages would not be an adequate remedy for the Claimants as the extent of the potential damage is unknown and is impossible to quantify. He further stated that the loss from the varied potential impacts and breaches is difficult, if not impossible to ascertain.

[22] Counsel submitted that the Claimant is concerned that there is potential irreparable harm to Petcom's reputation within the regulated petroleum industry. In the event of an explosion or gas leak with one of the Petcom's cylinders filled with the Defendant's gas (which appears to contain a more volatile mix), the consequences would extend far beyond monetary loss which can be compensated for in damages.

[23] Learned Counsel further submitted that any incident involving Petcom's cylinders could lead to severe repercussions for the public, especially since they are mandated to ensure safety and reliability. The perception of safety is paramount in the petroleum marketing industry, and once compromised, it is exceedingly difficult to restore. He stated that a perception could be created that Petcom's products are unsafe, even if the fault lies with the Defendants' gas.

[24] An event of this nature could place Petcom's licence to market petroleum products at risk of revocation or suspension of its product. The loss of a licence would not merely disrupt Petcom's operation but could exclude it from the industry altogether.

Balance of convenience

[25] On the issue of the balance of convenience, Counsel submitted that an injunction is justified as the Defendants do not stand to lose anything as they currently have no legal right to fill and distribute Petcom's cylinders. Therefore, to restrain them from doing so does not place them in any worse position than they are already in.

[26] Mr. Gibbs argued that the two (2) most important factors in relation to the balance of convenience in this case are:

- a. The Defendants stand to suffer no loss if prohibited from using the Claimant's cylinders; and
- b. The Claimant stands to suffer substantial loss of use and reputational damage if it is deprived of its cylinders.

[27] Counsel further contended that Petcom stands to suffer significant harm if the injunction is not granted for the following reasons.

- Petcom will be without its cylinders, which are essential to its business operations. This not only hampers its ability to supply its customers, but it also risks substantial reputational damage.
- Secondly, should damage, harm or loss come to the public as a result of damage occasioned by the use of a cylinder perceived to be supplied by Petcom, it may face substantial liability and reputational damage with the risk of its licence being revoked. Such a revocation would be detrimental to the Claimant as this would result in the Claimant being wholly unable to operate in the market.
- the likely injury to third parties and the public interest.

- [28] Counsel submitted that there is a strong prima facie case in their favour and that it is just and convenient for the Court to grant the injunction being sought as the Defendants are unlikely to compensate them.

DISCUSSION/ANALYSIS

IS THERE A SERIOUS ISSUE TO BE TRIED

- [29] It is well established that the case of the **American Cyanamid** (supra) outlines the relevant considerations for a Court faced with an application for an injunction. In determining whether there is a serious issue to be tried, the guidance of Lord Diplock in **American Cyanamid** (supra) was carefully reviewed where he stated that:

“...The Court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.

It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages upon the grant of an interlocutory injunction was that “it aided the Court in doing that which was its great object, viz. abstaining from expressing any opinion upon the merits of the case until the hearing”. *Wakefield v Duke of Buccleugh* (1865) 12 L.T. 628, 629. **So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.”**

- [30] It is the evidence of Mr. Andrew Porter that when he visited the Manchester Gas Filling Plant, he observed that there was evidence of paint stripping activities where yellow Petcom branded cylinders, both 25 and 30 pounds, were being stripped of their yellow paint. Yellow Petcom branded cylinders were also being sold to customers at the plant. Mr. Porter opened three (3) 40 feet containers and found seventy-two (72) yellow Petcom branded cylinders of various sizes (excluding 20 pounds). They also found a used bag of Petcom branded paper seals and one (1)

plastic yellow seal. A container was searched which contained twelve (12) 100 pound cylinders. Mr. Porter averred that these cylinders were hidden away from the public view and were only found after he was allowed to search the container.

- [31]** The Affidavit of Mike Hylton mentions the Filling Agreement which authorized Bill's Gas and Manchester Gas to fill and sell Petcom Cylinders. This Agreement terminated on the 31st of May 2024, thus, rescinding any authority that these companies had to distribute Petcom products.
- [32]** Mr. Hylton further deponed that in or around April 2024, he was informed by Gary Lawrence (a Representative of CNG) that Bill's Gas continued to fill and distribute Petcom's cylinders with gas. He also stated that he conducted investigations and discovered that Bill's Gas has been delivering filled Petcom cylinders to dealers in Porus, Manchester.
- [33]** He contacted CNG Agency Limited, a cooking gas distributor in May Pen who buys from Bill's Gas and pretended to be a customer. He was informed that consumers can in fact purchase Petcom cooking gas cylinders from the company.
- [34]** Subsequent to this conversation, Mr. Andrew Porter and Ms. Masters, Senior Representatives of Petcom, visited CNG location and obtained proof that Bill's Gas had continued to sell Petcom cylinders. This was secured by way of a receipt which detailed the price CNG paid for Petcom gas. They also observed a Bill's Gas truck deliver Petcom branded cylinders to CNG for distribution.
- [35]** In relation to Manchester Gas Distribution Limited, Mr. Hylton stated that Canute Maye, a Senior Representative of Petcom witnessed yellow Petcom gas cylinders on Manchester Gas filling plant being loaded onto Manchester Gas company trucks and that other yellow Petcom cylinders were present at the filling bay plant.
- [36]** On the issue of Jamgas' conversion and passing off, it is Mr. Hylton's evidence that Jamgas has failed to return the 2014 cylinders and have asserted ownership over them. In his Affidavit, he outlined that customers and filling plant operators

from other marketing companies have observed Jamgas employees spraying the Petcom cylinders grey, rebranding them as “Jamgas” cylinders and filling and distributing them as such.

- [37] He also deponed that only Bill’s Gas returned several of the 2014 cylinders on May 15th, 2014 and May 21st, 2024 respectively. However, both Manchester Gas and Jamgas have outrightly refused to return the 2014 Petcom cylinders that they have in their possession.
- [38] Mr. Mike Hylton further deponed that customers who purchased gas from the Defendants under the impression that it was Petcom’s gas, have expressed concerns about the quality of the gas. Of particular note was the feedback from a customer who shared that the gas (purchased from the Defendants) “*turned her pots black, damaged her burners on her stove and finished quickly than she was accustomed to.*” Mr. Hylton stated that the complaints from the customers are consistent with using liquefied petroleum gas – a mixture of butane and propane, rather than the pure butane which Petcom supplies.
- [39] Mr. Hylton averred that the public will assume that the gas offered by the Defendants’ is actually gas from Petcom, especially since the cylinders bear the brand “Petcom Cookie Gas.” Mr. Hylton also expressed concerns that if the Defendants are not restrained by the Court, there is a significant risk in terms of damage to Petcom’s brand and reputation as they cannot attest to the quality or quantity of gas that the Defendants are putting in Petcom branded cylinders. He further asserted that Petcom has no way of ensuring the safety, testing or precise sealing of the cylinders the Defendants are distributing to customers.
- [40] The unchallenged evidence presented on behalf of the Claimant, discloses that not only is it incurring a financial loss by being deprived of the use of its cylinders by the Defendants but its operations and reputation in the petroleum market stand to be significantly affected by the actions of the Defendants.

- [41] It is in these circumstances that the Court finds that the affidavit evidence of Mr. Andrew Porter and Mr. Mike Hylton disclose a serious issue to be tried and the claim cannot be described as either frivolous or vexatious.

WOULD DAMAGES BE AN ADEQUATE REMEDY

- [42] On the question of the adequacy of damages, Lord Diplock stated:

“.... The governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.”

- [43] When considering the adequacy of the remedy of damages for either party, the Court examines whether, if the Claimant were to succeed at trial, he would have been adequately compensated by an award of damages. If damages would be an adequate remedy and the Defendant is in a financial position to pay them, then the injunction should be refused, regardless of how strong the Claimant's claim may appear to be at that stage.

- [44] If damages would not provide an adequate remedy for the Claimant, the Court would then consider whether, if the Defendant were to succeed at trial then whether his loss by virtue of being restrained by the injunction would be adequately compensated by the Claimant's undertaking as to damages.

[45] On the matter of an undertaking as to damages, Lord Diplock stated, at paragraph 16, that:

“...if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant’s freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.”

[46] Having carefully reviewed the evidence presented, I find that the substantial prejudice and reputational damage likely to be suffered by the Claimant cannot be quantified in damages at this stage.

[47] Having decided that there is a serious issue to be tried and that damages would not be an adequate remedy for the Claimants, I then considered the balance of convenience.

THE BALANCE OF CONVENIENCE

[48] In explaining when the balance of convenience should be considered, His Lord Diplock explained that:

“It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.”

[49] **Section 49 (h) of the Judicature (Supreme Court) Act** provides:

A mandamus or an injunction may be granted or a receiver appointed, by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be

made either unconditionally or upon such terms and conditions as the Court thinks just, and if an injunction is asked either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court thinks fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

[50] This provision cloaks this Court with the authority to grant the injunction sought by the Claimant if the evidence shows that it would be just and convenient to do so. In the instant case, the Court is satisfied that the Defendants' companies do not have a legal right to retain, fill and distribute Petcom's cylinders.

[51] I am satisfied on the evidence presented that the Defendants will not suffer a loss as they have no legal right to fill and distribute Petcom's cylinders. I also find that the Claimants will likely suffer irreparable harm if the Defendants are allowed to continue with the passing off and conversion of their cylinders.

[52] Accordingly, the balance of convenience favours the Claimant.

CONCLUSION

[53] In light of the foregoing, the Court makes the following orders:

1. An Interim Injunction is granted in terms of paragraph 1 of the Notice of Application for Court Orders filed on the 24th of May 2024 until the 22nd of August 2024 or so soon thereafter as Counsel maybe heard.
2. The inter-partes hearing is scheduled for the 22nd of August 2024 at 10am for one (1) hour.
3. Costs of this application is awarded to the Applicant to be taxed, if not agreed.

4. Applicant's Attorney-at-Law to prepare, file and serve the Formal Order herein. The Formal Order is to be served on the Defendants and an Affidavit of Service filed by the 9th of August 2024.