**[2015] JMSC Civ. 20**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN CIVIL DIVISION**

**CLAIM NO. 2011 HCV O4453**

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| **BETWEEN** | **JOY AITKEN PHILLIPS** | **CLAIMANT** |
| **A N D** | **DONOVAN PHILLIPS** | **DEFENDANT** |

**IN CHAMBERS**

**Roxane Williams, instructed by Pollard, Lee-Clarke and Associates, for the Claimant.**

**Defendant appears in person.**

**Heard: January 20 & 26, 2015**

**APPLICATIONS BY CLAIMANT AND DEFENDANT TO STRIKE OUT EACH OTHER'S CLAIMS – APPLICATION FOR 'SUCH FURTHER AND/OR OTHER RELIEF AS MAY BE JUST'**

**Anderson, K. J**

[1] The defendant has filed three separate applications for court orders, one on November 15, 2011 and the other two, on January 6 and February 3, 2014, respectively. Since these applications, to one extent or another, overlap each other, in terms of the respective orders sought therein and these were three of the four applications which were heard by this court, in chambers, on January 20, 2015, it will be convenient for this court to provide rulings in respect of at least some of the respective court orders being sought in those applications. Those rulings would only be in respect

of ‘some’ of all the orders being sought in various applications, because there exists overlapping, between various orders being sought.

[2] There is though, another application for court orders which was heard by this court, in chambers, on January 20, 2015, and the outcome of that other application, must, of necessity, affect this court’s consideration as to whether it should grant particular orders sought by the defendant in one or the other of his applications. That other application for court orders, was one which was filed by the claimant on November 27, 2013 and is an amended application which, *inter alia*, seeks to have the defendant’s defence struck out. The claimant’s original application in that regard, was filed on the aforementioned date, but that application was later amended and that amended application was filed on May 30, 2014 and this court granted to the claimant, permission to pursue before it during the chambers hearing on January 20, 2015, the claimant’s amended application. That amended application has incorporated within it, the original application of the claimant but has also, added to that original application. As such, this court treated with that amended application by considering the same, in substitution for the claimant’s original application.

[3] All of the aforementioned applications were duly served and indeed, it is convenient, at least from a time and costs perspective, that all of those applications were heard together, by one Judge, during a single hearing. It is to be noted that the defendant’s applications were filed by him, on his own behalf and that he is not an attorney-at-law. He has, at all times in these court proceedings as regards this claim, which was filed using a fixed date claim form, in 2011, been representing himself as best he can, without an attorney. This court does not look unfavourably on any court proceeding being pursued by any party, merely because that party is unrepresented by counsel. It is though, undoubtedly, a virtual hidden minefield that one enters and walks upon, when representing oneself in any civil or criminal court proceedings. It is though, nonetheless, still the law in Jamaica, that it is open to anyone to be before this court without any legal representation. It may be though, that it is now time for Jamaica’s Parliament to recognize that it would likely be in the best interests of litigants, courts and

the nation as a whole, from a social justice perspective, if the law were to be changed, such as to necessitate that everyone appearing before any of our nation's court's, must have legal representation. Even though such is not the law as yet though, this court will do what it ought to and must do, even if that were now the law, which is, to decide on each and every matter which comes before it for consideration, without fear or favour.

[4] To return to this court's consideration of the respective applications before it, what should now be made clear, is that the claimant's application for court orders, must, of necessity, impact upon the outcome of all of the defendant's applications, since, even if the court were to be minded to grant to the defendant, any of the orders which he has sought by means of his applications, nonetheless, this court cannot, will not and must not make any such orders, in circumstances wherein, this court is going to, as applied for by the claimant, strike out the defendant's defence, or in other words, the defendant's statement of case. See the term, *'statement of case'* as defined in the **Civil Procedure Rules (CPR), at rule 2.4 (a)**. The reason for this is obviously that, if the defendant's defence is struck out, this would mean that the defendant would no longer be in a position to defend against the claim. As such, it would, when considered in that context, be not only pointless, but also, a manifest wastage of time and costs, if this court were to, as the defendant desires to obtain by means of his applications, make orders requiring the claimant to do various things and/or make available various documents, prior to the trial of the claim and upon the defendant's application, in circumstances wherein this court may very well decide that the defendant's defence is to be struck out. If that happens, as has been applied for by the claimant, whilst it does not automatically mean that judgment on the claim must be awarded to the claimant – this since this claim is properly being pursued by her, by means of fixed date claim form, it nonetheless, will mean that the claim no longer then being a defended one, it would not be in the interests of justice for the claimant's claim to be treated as though it were properly being defended against, if in fact this court were to, in its rulings/orders to be announced shortly hereafter, rule that the defendant's defence should be struck out. The converse would though, of course, be true and applicable, in the event that this

court is not minded to grant the orders as sought by the claimant in her amended application.

[5] This court will address its mind, firstly, to the defendant's three applications for court orders, albeit that it will reserve any final ruling on any aspect of same, until after it has also given equally careful consideration to the claimant's amended application, whereafter, it will then make the orders in accordance with its overall determination as regards the respective applications and amended application. Not only will this court firstly address its mind to the defendant's applications, it will do so collectively. This is in the interest of saving time, since as earlier mentioned, the defendant's applications, in large measure, overlap one another.

[6] The further background information as regards those particular fixed date claim form proceedings, is that it appears to have arisen from a marital separation and divorce between the parties, whereupon, these proceedings have been filed by the claimant, seeking division of properties (real estate); spousal maintenance and maintenance of children, orders. The claimant's court proceedings in that regard, have been vigorously contested, until now. Whether though, that will remain so hereafter, will be dependent on this court's rulings on the parties' respective applications and amended application.

[7] For the purpose of saving further time in setting out these reasons for ruling, this court will not refer to the orders sought in each party's applications or amended application, with fulsome specificity. Suffice it for present purposes, to state though, that as regards the defendant's application which was filed on November 15, 2011, all other than two of the orders sought therein, are all orders which can and ought properly only to be made by this court, after a trial of this claim has been concluded – this of course, only at this juncture, being stated, in the event that a trial does take place.

[8] In any event though, it is not for this court, on an interim application for court orders, to make orders which ought properly, only to be made at trial, after this court had carefully considered the evidence of the respective parties, in respect of judgment

orders which will then be sought. If it were otherwise, there would never be a need for any trial and it would essentially mean that trials would routinely be held in chambers. That is not what ought to be undergone, or done by this court, in respect of any interim application. Even in respect of an interim application seeking to strike out a party's statement of case, this court should only strike out a party's statement of case, in the most plain and obvious cases. If, in order to decide on whether to do so, this court would have to engage in that which would amount to a mini-trial, then, this court should decline to so engage and furthermore, should decline to strike out. See: **Kyrris v. Oldham** – [2003] EWCA Civ. 1506 in that regard.

[9] Order no. 3 as sought in the defendant's application for court orders which was filed on November 15, 2011, though, is an order which the claimant can properly seek at an interim stage, which is the stage at which these court proceedings are now at. As such, it is worthwhile setting out the precise terms of that particular order which is being sought. It is as follows – *'An order for the Bank of Nova Scotia to issue to the Supreme Court of Judicature in the Civil Division the original cheque leaves that is copied and attached in the claimant's affidavit to support her fixed date claim form at 'JP 12' to JP 17.'*

[10] Whilst such an order can properly be pursued at an interim stage through, the same ought not to be permitted by this court to be granted to the party applying for same, in circumstances wherein such application has been made without notice to the party most directly thereby affected. In respect of that particular order being sought, the party to be most directly affected if that order were to be made by this court, is the Bank of Nova Scotia. No notice of this application made by the defendant though, has been provided to them. In the circumstances, this court cannot and will not grant said application.

[11] The defendant did, as regards the order being sought in that particular application for court orders, seek, in his oral submissions, the permission of this court to pursue all of those other orders, upon trial of the claim brought against him by the

claimant. This court had found itself unable to grant such permission. It has been unable to do so, because in any event, such reliefs as would need to be sought at trial, could only properly be sought by the defendant if they were all orders being sought by him in a counterclaim which he had filed against the claimant. The defendant though, has not yet filed any such counterclaim. It is also therefore, for this reason that this court cannot grant orders no. 1, 2, 4, 5, 6 & 7 as sought in the defendant's application which was filed on November 15, 2011, since, not only would those orders need to be sought at trial and not only are they each such as can only properly be granted as part and parcel of this court's judgment orders upon trial, they are all orders which can, in any event, only properly be granted, even upon a trial, as judgment orders, if the defendant is, upon trial, pursuing an ancillary claim (counterclaim), seeking by that means, to obtain any or all of those orders. This though, is not currently being pursued by the defendant.

[12] Order no. 8 being sought by the defendant in the said application, reads as follows:- *'such further and other relief as this Honourable Court may deem just, appropriate and or necessary to grant to the claimant herein.'* This court does not, in the prevailing circumstances, consider any further or other relief to be either necessary, just or appropriate in the circumstances. This court cannot and must not be expected to act in a vacuum. The defendant has filed no evidence in support of this application of his. In the circumstances, this court could hardly be properly expected to determine that any further or other relief is either necessary, appropriate or just. In any event, this court has absolutely no idea, as to what such further or other relief could properly be. This court has to act on evidence; as distinct from guesswork. In the circumstances, the defendant's entire application of November 15, 2011, is denied. Furthermore, 'such further and/or other relief as may be just' is an order which cannot properly be sought on an interim application, as it lacks sufficient specificity. The lack thereof is addressed, further on, in those reasons.

[13] As regards the defendant's application for court orders which was filed on January 6, 2014, five of the fourteen orders being sought therein, were five of the same

orders that have been sought and denied, in respect of the defendant's application of November 15, 2011. In the defendant's January 6, 2014 application, those orders which are the same as in the earlier in time application are orders nos. 4, 5, 7, 8 & 9. As such, those orders will be given no further consideration by this court at this juncture. The defendant's January 6, 2014 application does though, in some important respects, differ from its 'predecessor.' It does seek therein, certain reliefs which can and ought in fact, properly to be sought by means of an interim application. One of those reliefs so being now sought, is an application by the defendant for an order that *'the matter is struck out'* and another is that, *'the claimant's fixed date claim is struck out'.* Yet another, seeks an order that the claimant's claim for maintenance of the children and spousal maintenance be struck out. The essence of these orders is one and the same, albeit that the grounds for the proposed striking out of the claimant's claim or part thereof, as have been set out in orders nos. 2 and 3 of the defendant's January 6, 2014 application, are not one and the same. Whether or not any of those three orders should be granted will be considered by this court collectively, for the sake of convenience, albeit that the grounds set out for same, will de distinctly separated and considered by this court, just as indeed, the defendant has separated those grounds in that application of his.

[14] Furthermore, it must be hereby, clearly stated at this juncture, by this court, that it also inexorably follows that, just as would be done with respect to the claimant's amended application to strike out the defendant's defence, if the defendant's application to strike out this claim were to be successful, then there would be no need to consider any other aspect, either of any of the defendant's applications, or of the claimant's amended application. If though, the defendant's applications to strike out the entire claim, were to be unsuccessful, then the other reliefs being sought by the defendant will have to be considered along with the claimant's application to strike out the defendant's defence, since, if this court is going to strike out the defendant's defence, it would not only be pointless, but also, a manifest waste of time and costs, to grant to the defendant, any of the interim orders which he has sought.

[15] The defendant's application of January 6, 2014, is supported by affidavit evidence and the claimant does not oppose the granting by this court, or order no. 1 which is being sought by means of that application. That order no.1 reads as follows – *'An order stating that the title of the document filed by the defendant entitled Affidavit of answers to fixed date claim form be change to read as affidavit of answers to the claimant's affidavit in support of the fixed date claim form.'* Of course though, whether or not this order will be granted by this court, will be dependent, firstly, upon this court's consideration as to how the defendant's applications for orders nos. 2 & 3 in his January 6, 2014 application, ought to be determined and if possible or necessary thereafter, how the claimant's amended application ought to be determined.

[16] Order no. 12 which is being sought in the defendant's application which was filed on January 6, 2014, is an order which is being sought that, '*mortgage institutions'*… *'declare that the clauses in the mortgage agreement that the defendant has relied upon to prove his case are authentic.'* Since such an order would directly affect the said mortgage institutions and they were not served with the defendant's application, for the same reasons earlier provided in a similar type of context, this court denies that application.

[17] In the defendant's January 16, 2014, application, he had also sought an, '*order for the claimant to be declare her financial possession at the time of her divorce from the defendant and for the defendant to be treated accordingly under the Property (Rights of Spouses) Act.'*

[18] In addressing that particular aspect of that particular application made by the defendant, it must be stated firstly, that this court has been completely unable to discern from the defendant, whether by means of his oral submissions to this court upon the hearing of the applications, or from his affidavit evidence in support of same, what order it is that the defendant wishes for this court to make, as regards his being treated, *'accordingly under the Property (Rights of Spouses) Act, in terms of his application for this court to order that his wife declare her financial possessions at the time of her*

*divorce.'* Considered in that context, this court will make no order for the defendant, '*to be treated accordingly under the Property (Rights of Spouses) Act.'* Secondly, what the defendant is really desirous of obtaining an order as to, is, as he has clearly set out, an order for the claimant to declare her financial possessions at the time of her divorce '*from the defendant.'* The defendant needed to have first sought such information, pursuant to a request for information. See **rule 34.1 (2) of the CPR** in that regard. It is only if he were not provided with such information within a reasonable time, after having made such a request, that an order of this court could properly be sought, to require the opposing party to provide same. In this matter, we are not yet at that stage, as the defendant has not, to this court's knowledge, as yet, made any such request of the claimant, through her attorney. Indeed, if he had done so, such request ought to have been filed. This court had no record of same having been filed, nor has the defendant, in the affidavit evidence which he has deponed to, in support of this particular application, given evidence of the service on the claimant's attorneys, of any such request for information. In the absence of such evidence, the defendant's application in that regard, is, at best, insofar as he is concerned, at this stage, premature. Said supplication for that particular order is therefore, also denied by this court.

[19] In his application of January 6, 2014, the defendant has also sought an order restraining the claimant, *'from entering or issuing any instruction to any of her designates to enter any property that the defendant occupies to carry out work or any alterations or disturbances.'*

[20] There only exists dispute between the parties to this claim, in respect of two properties. The restraining order being sought is not limited as pertaining to only those two properties, or to either of them. In the circumstances, the terms of the restraining order being sought, are framed in terms that are too broad/wide, such, that it would not only, not be in the interests of justice for this court to grant such an order, but also, it would be inequitable for this court to do so. Additionally, the defendant has given no undertaking in damages, nor has he set out, if he had given such undertaking, how it is that he would have been able to meet same. Both the giving of the undertaking and the

provision of evidence to the court, as to how one would be able to meet such undertaking, are of equal importance. See: **rule 17.4 (2) of the CPR** and see**: Injunctions, David Bean,** 8th ed. [2004], at paragraphs 3.03 and 3.04 (pages 24 and 25).

[21] In any event, since the order being applied for, has been framed by the defendant, in terms that are far too wide to be such that said order could be properly and/or justly granted by this court, it is not for this court to simply grant injunctive relief in such terms as this court may deem fit. This is because, as set out in **rule 11.13 of the CPR,** *'An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission'.* The *'hearing'* being referred to in that particular rule of court, is the hearing by this court, of any application for court orders. That is why this particular rule falls within the ambit of Part 11 – *'General Rules about Applications for Court Orders.'*

[22] As such, upon any application for court orders, the particular order(s) being sought must be precisely and specifically set out therein. **Rule 11.13 of the CPR** would be both otiose and redundant, if this were not so. As such, since it is the court's considered opinion that said rule ought not to be interpreted in a manner that would render that particular rule to be both otiose and redundant, but rather, must be interpreted in an effective manner, this court cannot grant to the defendant, the injunctive relief either which he has sought, or for that manner, any other injunctive relief which may have been more appropriate, in terms of the extent thereof, but which the defendant has not only not applied for, but also which he did not, at, the hearing, seeks this court's permission to be permitted to pursue.

[23] **Rule 11.13 of the CPR** also, to my mind, makes it clear that an application for *'such further and/or other relief as may be just'* is not properly an order which can be sought on an interim application. It is though, an order which can and indeed, is often sought, upon the hearing of a claim by this court, at trial. If it were otherwise, an applicant could always, on an interim application, simply seek *'such further or other*

*relief'* and thereby be entitled to pursue any order which he wishes to pursue on that interim application. Clearly, that would not be a permissible course of action. For that reason therefore, order no. 14 of the defendant's application which was filed on January 6, 2014, is also denied.

[24] The defendant is, in order no. 2 which he is seeking, applying for an order that the claimant's fixed date claim form be struck out for failure to comply with, *'section 8 of the CPR and in particular, sections 8.8 and 8.9.'* This court has understood the defendant's reference to **section 8**, to, if it is to be correctly understood, actually making reference to **Part 8 of the CPR and rules 8.8 and 8.9** thereof.

[25] This court does not consider the defendant's application for that order, as being of any merit whatsoever. The claimant's fixed date claim form has set out what statutory enactment that fixed date claim is being made pursuant to and has set out the reliefs being sought by the claimant. Additionally, the claimant has filed an affidavit and also, a supplemental affidavit in support of fixed date claim form. Those documents collectively constitute her particulars of claim.

[26] In any event, this court should only strike out a claim or any part thereof, in circumstances wherein the interests of justice demand that same be done. Furthermore, in circumstances wherein the consequence of a failure to comply with a rule of court has not been specified, as indeed, it is not specified either in **rule 8.8 or 8.9 or anywhere in Part 8 of the CPR** for that matter**, rule 26.9 of the CPR** would be applicable. That rule of court provides that, *'an error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders.'* Furthermore, it is, in that rule, provided that, '*where there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.'*

[27] If this court is of the view that it would *'put matters right'* for this court to make an order rectifying a failure on the claimant's part to comply with Part 8, then it can make

such an order. This court though, does not accept the defendant's submission that the claimant has failed to comply with any aspect whatsoever, of **Part 8 of the CPR**. Accordingly, the defendant's application for that order is also denied.

[28] Order no. 3 being sought by the defendant is an order that the *'matter is struck out'* arising from the claimant's failure to comply with **rule 39.9 of the CPR.** That rule of court though, has absolutely no applicability whatsoever at this time. That rule could only apply, at trial. In any event, it is not a rule which is required to be complied with by any party to a claim. Its wording makes this obvious. For the benefit of those reading these reasons, that wording in now set out: '*Where the court considers that a decision made on an issue substantially disposes of the claim or makes a trial unnecessary, it may dismiss the claim or give such other judgment or make such order as may be just'.*

[29] Order no.6 being sought by the defendant in the said application is relief which ought, if it is to be sought at all, to be sought to be recovered following upon a trial, in pursuance of an ancillary claim by the defendant. For reasons earlier given, that is not relief which can properly either be granted to the defendant at all, in the absence of he having filed any ancillary claim, but also is, in any event, not relief which this court could properly grant at this interim stage. Accordingly, the defendant's application for that order is also denied.

[30] Order no.10 being sought by the defendant, is an '*order stating that the claimant's claim for maintenance for the children and spousal maintenance is struck out as not correctly placed before the Supreme Court in the Civil Division.'* This application is also entirely un-meritorious. It is unmeritorious because, **section (3) (2) of the Maintenance Act**, expressly permits an application for such maintenance to be made upon an application under the Property (Rights of Spouses) Act. This court also has jurisdiction, granted to it by the provisions of **sections 12 and 14 of the Maintenance Act**, to adjudicate over child and spousal maintenance disputes. Furthermore, **rule 8.3 of the CPR** permits a claimant to use a single claim form to include all, or any other claims which can be conveniently disposed of in the same proceedings.

[31] For all of the aforementioned reasons, except for order no. 1 being sought in the defendant's January 6, 2014 application, adjudication on which will await this court's determination of the claimant's application to strike out the defendant's defence, all other reliefs being sought by the defendant in his January 6, 2014 application are denied.

[32] In respect of the claimant's amended application for court orders, which was filed on February 3, 2014, all orders that were being sought by means of that application, have already been pursued as part and parcel of one or the other, or both of the defendant's applications for court orders, which have already been referred to and expressly addressed by this court, in these reasons for ruling. As such, no further consideration will be given to that amended application.

[33] The claimant's amended application for court orders which was filed on May 30, 2014, has also therein sought a number of orders. Order no. 5 being sought therein, is for the defendant's application which was filed on November 5, 2011, and which has been addressed in detail by this court, earlier on in these reasons, to be struck out. This court will not strike out the same. In any event, it matters not, since all orders being sought there by the defendant, have been denied by this court.

[34] Orders nos. 1- 4 being sought in the claimant's amended application, also, will not be granted by this court. Those orders seek, for various reasons, to have this court strike out the defendant's '*affidavit in support of and serving as application for stay of actions and/or orders of the court until after the completion of all hearings in the case as stated.'* That document is serving no useful role in these court proceedings. It does not constitute a defence, nor is it evidence which, in the form in which has been placed before this court, can properly be relied on by the defence, as evidence upon a trial, if this claim goes to trial. In the circumstances, since this court is always keenly aware that the defendant is unrepresented by counsel and since this court does not know why it is that that particular affidavit has been filed by the defendant, this court is not of the view that it would be in the overall interests of justice for the said affidavit to be struck

out. Furthermore, since that affidavit is not part of the defendant's statement of case, this court cannot apply **rule 26.3 of the CPR** and strike out same.

[35] The defendant has filed an 'affidavit in answer and defence.' Orders nos. 6-16 being sought in this claimant's amended application for court orders, are seeking either to have that entire affidavit in answer struck out, or to have parts thereof struck out, or to have the entire defence struck out.

[36] As far as this court has been able to discern, the defendant has not yet filed an acknowledgement of service. If this is indeed so, then his failure to have so done, would mean that he has not met a condition prerequisite towards his being permitted by this court to defend against this claim. Of course though, if this indeed be so, then this court can and would likely make an order to put matters right, if application were to be made to it, for such to be done and there exists sufficient evidentiary basis for such to be done.

[37] In the event though, that this court is wrong in having, at least initially, concluded that the defendant has not yet filed any acknowledgement of service, it appears from an affidavit of service which was filed by the claimant on October 31, 2011, that the defendant may have been personally served with the fixed date claim form and affidavit in support, on October 7, 2011. If that is so, then the defendant's defence, which was filed on November 21, 2011, was filed out of time and served out of time. If it is that the defendant's *'affidavit in answer'* was intended to constitute his defence, then the same was also filed out of time, since the time limit for the filing of same in fixed date claim form proceedings, is twenty-eight days. That affidavit in answer, was filed by the defendant on November 10, 2011.

[38] As such, there may very well presently exist, no valid defence to be struck out. It may simply be that there will not exist a valid defence before this court unless an extension of time for the filing and service of same was to be applied for and granted by this court. It should be noted in that regard though, that extensions of time will never be

granted by this court as a matter of course and that same also will not be granted in circumstances wherein the defendant's proposed defence has no merit.

[39] In the circumstances, this court is not minded at present to strike out either entirely or in part, the defendant's affidavit in answer, or his defence. There may exist nothing to be struck out in that regard and if so, this court should not act in vain. If it is that the defendant's affidavit in answer will be sought to be relied on by the defendant as his evidence at trial, then it is the trial judge and only the trial judge who should determine, as he or she would then be best placed to do so, whether any aspect of that evidence should be struck out and if so, why same should be struck out. The trial judge could exercise his or her powers, under ***rule 29.1 of the C.P.R.***, to do so.

[40] This court is, it should be noted, also uncertain as to whether the requisite documents, after this claim had been initiated, were all served on the defendant. See: **rule 8.16 (1) of the CPR** in that regard. If not, then, the failure to have served all such documents, may very well justify the defendant, not only in having filed his defence late in time, but also, in his not having filed any acknowledgement of service – if even such be the case, any at all. Furthermore, if **rule 8.16 (1) of the CPR** was not complied with by the claimant, then time for the purpose of the filing of a defence to this claim, or for the purpose of the filing of an acknowledgement of service, has not yet, even until now, began to run against him.

[41] For the reasons given above, this court denies the claimant's applications for court orders nos. 1-16 as set out in her amended application. This court though, will, in accordance with the grounds as set out in the claimant's amended application and bearing in mind that a statement of issues and a list of documents form part of a party's statement of case, strike out the defendant's list of documents and statement of issues and order that same be filed in a properly acceptable form and in accordance with any applicable rules of court, failure which, the defendant's statement of case shall stand as struck out without the need for further court order. The court will make such an order, in exercise of its discretion under **rule 26.9 of the CPR**.

[42] In order that this court may effectively now go about the process of managing this case, this court will also make the order listed as no. 1, in the defendant's application for court orders which was filed on January 6, 2014 and provide a time limit within which such order is to be complied with by the defendant.

[43] This court will also schedule this claim to return for hearing before Anderson, J. upon a pre-trial review and will require the parties to file a listing questionnaire and a pre-trial memorandum. At that pre-trial review hearing, this court will then be able to make the necessary enquiries of the parties *vis-à-vis* service of documents and other things and will also then be able to determine what has been done and what needs to be done by the parties, in order for them to each be properly prepared for trial. The trial date will, in the circumstances, have to be adjourned, as the trial of this claim was scheduled to commence on January 28, 2015, that being two days hence.

[44] As regards the costs of the various and sundry applications, it will be ordered that each party bear their own costs.

**Orders**

1. The defendant's statement of issues and list of documents are struck out and it is ordered that the defendant shall file and serve both such documents, which documents are to be prepared in accordance with any applicable procedural rules and shall also be prepared so as to serve their respective intended purposes. Said filing and service of those documents, shall be done by the defendant, by or before February 27, 2015.

2. If the defendant shall fail to fully comply with order no.1 above, then his statement of case shall stand as struck out, without the need for further court order.

3. It is ordered that the title of the document filed by the defendant, intituled, *'affidavit of answers to fixed date claim form'* is changed to read – '*affidavit of answers to the claimant's affidavit and supplemental affidavit in support of fixed date claim form. The defendant shall file and serve said document, so intituled, but with there being no other changes thereto, other than the date of same (if necessary) and shall do so, by or before February 27, 2015.'*

4. There shall be held, a pre-trial review for this claim, before Anderson J, in chambers, on March 13, 2015 commencing at 2 p.m. for 90 minutes.

5. The parties shall respectively file and serve a revised listing questionnaire and a revised pre-trial memorandum, if either or both sides have earlier filed a pre-trial memorandum and listing questionnaire. Any party who has not filed and served both such documents, shall file and serve same. The filing and service of either of same shall be done, by or before February 27, 2015.

6. The claimant shall file and serve, by or before February 27, 2015 a further affidavit of service, deponing as to what documents were in fact served on the defendant and if served, when each such document was served.

7. As regards the defendant's applications for court orders filed on November 15, 2011 and January 6, 2014 and amended application filed on February 3, 2014 and the claimants original application, which was filed on November 27, 2013 and her amended application, which was filed on May 30, 2014, each party shall bear their own costs.

8. Trial dates of January 28-30, 2015 are vacated and no new trial date shall be set other than at a pre-trial review.

9. The claimant shall file and serve this order.

**Note:** Earlier orders were made on January 20, 2015, pertaining to the parties' respective applications. Those orders are not set out in this document.

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**Hon. K. Anderson, J.**