IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. E.083 OF 1993

BETWEEN	**RBTT BANK JAMAICA LIMITED**	**CLAIMANT**
AND	**Y.P.SEATON**	**1ST DEFENDANT**
AND	**EARTHCRANE HAULAGE LIMITED**	**2nd DEFENDANT**
AND	**Y.P.SEATON & ASSOCIATES LIMITED**	**3rd DEFENDANT**

CONSOLIDATED WITH

CLAIM NO. C.L.1993/S252

BETWEEN	**Y.P.SEATON**	**CLAIMANT**
AND	**RBTT BANK JAMAICA LIMITED**	**DEFENDANT**

Miss Hilary Phillips Q.C., Mrs. Denise Kitson and Miss Nicole Roberts instructed by Grant Stewart Phillips and Co. for RBTT Bank Jamaica Limited. Mrs. Pamela Benka-Coker Q.C., Mr. Andre Earle and Miss Anna Gracie instructed by Rattray Patterson Rattray for Y.P.Seaton, Earthcrane Haulage Limited, and Y.P Seaton & Associates Limited.
Mr. Lackston Robinson, Deputy Solicitor General, instructed by the Director of State Proceedings watching proceedings for FINSAC.

IN OPEN COURT

Application to strike out portions of Witness Statement – Whether inconsistent with Statements of Case – Scope of Declaratory Relief

Heard : 16th , 17th July and 10th November 2009.

Mangatal J:

1. This case was fixed for trial but first an application by RBTT Bank Jamaica Limited " RBTT" to strike out certain paragraphs of the Witness Statements was heard. At the end of the hearing of this application, I asked Counsel on both sides to file further Written Submissions, the last of which were not submitted by RBTT's Attorneys until sometime in September 2009. Although I had ordered that these submissions be handed in by an August date, I have allowed them to stand notwithstanding the late filing given their importance to the point being deliberated.
2. The application seeks an order that paragraphs 58, 59 and 60 of the Witness Statement of York Page Seaton dated 23rd February 2007, and the words " and should repay the full sum of $15,000,000 as deducted and the interest thereon" in paragraph 14, and the words " and J$15,252,584.00" in paragraph 17 of the Supplemental Witness Statement of York Page Seaton dated the 20th April 2007, be struck out.
3. The stated grounds of the application are as follows:
    1. *Neither York Page Seaton personally nor any of his affiliated Companies who are parties to this consolidated action have made any claim or counterclaim on any of their pleadings for $15,252,584.00 with interest thereon which Mr. Seaton is now seeking to claim in his Witness Statement.*

    2. *Any claim for $15,252,584.00 would have required a Counterclaim in the Defence filed in* ***Suit No. E083 of 1983*** *or a claim in the Writ of Summons and Statement of Claim filed in* ***C.L.S 252 OF 1993*** *and that since the matters which gave rise to this claim occurred in or about 1992, any new claim for the sum of $15,252,584.00 with*

interest thereon would be barred by the operation of the Limitations of Actions Act.

3. *In any event neither Y.P Seaton personally nor any of his affiliated companies could make any claim in respect of the aforesaid sum as such a claim would be inconsistent to the statements of case already filed on their behalf as they claim they were acting on behalf of Prolacto at all material times in* ***Suit No. E083 of 1983.***
4. The parties were agreed that as the trial judge before whom the case was fixed for trial, I have the jurisdiction to hear this application and that the trial judge has extensive powers to control the evidence given at trial. Reference was made to Part 29 of the Civil Procedure Rules 2002 " the C.P.R.".

5. **The submissions of RBTT**

The written submissions settled by learned Queen's Counsel Miss Phillips were very clear and easy to follow and worthy of direct quotation in part:

4. A perusal of the pleadings indicates that the circumstances which gave rise to these claims occurred in 1991 pursuant to contractual arrangements commencing in 1990 between an overseas supplier of milk powder, Prolacto, and the Jamaica Commodity Trading Company Limited (JCTC) a statutory body, then charged inter alia with the importation of commodities into Jamaica. Seaton acted in a representative capacity for Prolacto. Prolacto and JCTC agreed that Eagle Commercial Bank (the Bank), one of the predecessor banking institutions which eventually became RBTT would process the payments by JCTC.

6.Disputes arose between Prolacto and JCTC resulting in JCTC suing Prolacto and the Bank. The Bank settled with JCTC but sought to recover from Seaton by Suit No. ***E083 of 1993****, sums which had been paid into Seaton's accounts which ought not to have been paid as incorrect prices had been applied in making certain payments; the*

wrong rate of foreign exchange was used to compute certain payments; certain commissions were wrongly credited to Prolacto and interest on certain deposits were incorrectly credited to Prolacto and all these sums were paid into the Seaton accounts which were not due. Additionally the Bank had debited Seaton's accounts for a sum totaling ***J$15, 252,584.00*** *which it had traced into Seaton accounts from the amount paid in by JCTC for milk powder which was not in fact delivered. In the action the Bank seeks a declaration that this debit was correctly done.*

7. An examination of the Defence filed by Seaton reveals that in Suit No ***E. 083 OF 1993*** *no Counterclaim was filed seeking an order that as the* ***J$15, 252, 584.00*** *was wrongly debited, it ought to be repaid to Seaton. Indeed Seaton's defence was merely that in relation to the transaction and the sums claimed he acted as an agent of Prolacto. He however filed a separate claim* ***C.L. 1993/ S 252*** *seeking the repayment of specific US $ denominated funds which Seaton says had been wrongly debited or withheld from "A" accounts which he says were his personal funds. In fact he stated categorically in paragraph 4 of his Reply "* ***that the transactions dealt with in this suit are not in any way connected with or related to the transaction dealt with in Suit No. E-83 of 1993"*** *. It is submitted that as no cause of action has been pleaded for the recovery of* ***J$ 15,252,584.00*** *or indeed* ***J $ 15,000,000.00****. Seaton is not entitled in his Witness Statements to seek to claim these amounts.*

6. **The position of the Y.P.Seaton parties**

It was submitted that the important point was whether or not the combined pleadings of the parties disclose sufficient allegations to warrant Mr. Seaton being able to recover the sum of J $ 15,252,584.00.

Both parties were agreed that the ratio of **Perestrello v. United Paint** [1969] 3 All E.R. 479 (as set out in the headnote) was as follows:

Held- (1) Where a plaintiff has suffered damage of a kind which is not the necessary and immediate consequence of the wrongful act complained of, he must warn the defendant in the pleadings that the compensation claimed will extend to this damage and particularize any item of damage which is capable of substantially exact calculation while at the same time giving the defendant access to the facts which make such calculation possible, thus showing him the case he has to meet and assisting him in computing a payment into court; furthermore the extent of this requirement is dictated not by any preconceived notions of what is general or special damage but by the circumstances of the particular case.

7. I agree with Counsel for Y.P. Seaton's submission that whether or not there is a pleading sufficient to ground the claim for recovery of damages, or, as in this case, for a sum of money, will depend upon the circumstances of each case.
8. Again, the written submissions settled by learned Queen's Counsel Mrs. Benka-Coker were very clear and easy to follow and worthy of quotation in full in relation to certain points. In suggesting that the court will have to examine the pleadings in this case, it was submitted that such an examination will disclose the following:
    1. *At paragraph 3 of its endorsement on its Writ of Summons dated the 30th July 1993 the claimant seeks the following:*
    " a declaration that the plaintiff was entitled to debit the accounts of the defendants held with the plaintiff in the sum of $15,254,583.69 by reason of the overpayment of in mistake of the said amounts and/or their credit or payment in error to the defendants or on their behalf."

    2. *Paragraph 21 of the claimant's Amended Statement of Claim seeks to explain the reason for the overpayment and the*

manner in which the overpayment was computed in order to arrive at the final figure.

3. *Paragraph 22 alleges that the defendants held the said sum of $15,254,583.69 to the use and for the benefit of the plaintiff.*
4. *The plaintiff then alleges in paragraph 23 " That the defendants refused to repay the said sum to the plaintiff whereupon the plaintiff, on October 16th 1992 debited the defendants' accounts with the plaintiff in the said sum.*
5. *In the prayer to the statement of claim at paragraph 5 the plaintiff repeats its request for a declaration that it was entitled to debit the said sum.*
6. *In the endorsement on his Writ of Summons the claimant Y.P. Seaton at paragraph (a) seeks the recovery of all monies deposited by the plaintiff with the defendant.*
7. *At paragraph (c) he seeks "an account showing the principal deposited by the plaintiff at the said branch of the Defendant bank."*
8. *In the prayer to his statement of claim at paragraph IV the claimant seeks at (a) that an order that an account be taken "of the principal sums deposited by the plaintiff at the said or other branches of the defendant bank."*

It is therefore submitted that in light of the preceding sub paragraphs 1-8 and (the **Perestrello** case) *it cannot be said that the claimant should have been warned that Y.P.Seaton would seek to recover the sum of $15,252,584.69 when the claimant itself was aware that it had itself debited the said sum from the defendants accounts....*

It cannot be argued by the claimant that it was not aware of the amount of the sum that it debited. It cannot be argued that the

claimant did not know when the defendants' accounts were debited. It cannot be argued that the claimant does not know the source of the sum which it debited.

It is not a claim that was sprung on the claimant, and it is not a claim the "nature of which had to be disclosed" and as a consequence there is no need on the state of the pleadings for the claimant YPS to seek to amend his claim. The claimant knew about the debit that it made from the defendants' accounts, and the claimant YPS is seeking an account from the claimant in relation to all sums held to his account by the claimant.

9. I think that it is important to appreciate that this case is not concerned with the question of amendment of Statements of Case at a late stage, or after they may have become statute-barred. The Attorneys for Mr. Seaton have emphatically said that they are not seeking an amendment.

10. So the question therefore boils down to whether the statements of case in this case, which must delineate the issues involved that arise for resolution by the Court, as they stand, allow for a claim for this sum of money, i.e. $15, 252,584.00 plus interest at commercial rates being claimed.

11. During the course of the submissions being made by both sides, I took the view that it was critical to know what exactly is the scope of declaratory relief where no consequential relief was sought.

12. My reasoning was this: If RBTT is asking the Court to say and declare that they correctly debited the Defendants' Account , would the corollary be that if they did not succeed in obtaining that declaration, the Court would nevertheless be obliged to declare whether anyone is entitled to the sum, and if so, who?. If the Court is so obliged, given that the sum was debited from the Defendant's account, would the Court be entitled to declare, on the other side

of the coin, so to speak, (subject to arguments about agency) that the Defendant/s or any of them are entitled to the sum and to in addition order it paid over by RBTT to the Defendant/s?

13. It is in this context that the Further written submissions were made by both sides. I am particularly indebted to Counsel for RBTT, Mrs. Kitson, who is now the new lead Counsel for RBTT, and to Mrs. Benka-Coker, and their teams for the excellent assistance provided to the Court.

14. After a very careful review of the Law as it relates to Declarations, it was submitted on behalf of Y.P.Seaton that, the Court does have the legal authority to grant a declaration as to rights without granting consequential relief. However, the declaration being a discretionary remedy, it was submitted that it continues to have some characteristics of an equitable remedy in that its primary objective is to "do justice in the particular case before the court. It is wide enough to allow the court to take into account most objections and defences available in equitable proceedings" Reference was made by Counsel to **Zamir & Woolf**s text **The Declaratory Judgment , 2nd Edition, page 116.** It was submitted that it would not be appropriate for the court to prematurely deprive the litigant Y.P. Seaton, of his right to have the Court hear all the evidence before it makes any orders. The submissions make the point that, in conjunction with the fact that RBTT is seeking this declaratory relief, the substance of Y.P.Seaton's claim is for an account against RBTT and he should be given the opportunity to present his case in its entirety.

15. The penultimate paragraph of the further submissions states:

> *19. As important, the Court should avail itself of its opportunity to hear all the evidence prior to exercising its judicial discretion to grant or refuse the declaration sought by RBTT. If the Court finds that RBTT was not justified in so*

debiting the account of Y.P.Seaton, the justice of the case demands that this Honourable Court orders, RBTT to refund the sum so debited with interest.

16. I agree with the submissions on behalf of RBTT that neither Y.P.Seaton personally nor any of his affiliated companies who are parties to this consolidated action have made any express claim or counterclaim on any of their pleadings for the sum of $15, 252, 584.00 that Mr. Seaton is now seeking to claim in his Witness Statements. There is no Counterclaim for this sum in the Defence filed in Suit No. E 083 of 1983 nor is there a claim in the Writ of Summons and Statement of Claim filed in Suit No. C.L. 252 of 1993.

17. I now turn to examine what are the proper ambits of the declaratory relief sought. As the learned author **Zamir** states in his book **The Declaratory Judgment**, Chapter 1, page 1, :
Declaratory judgments are contrasted with executory judgments. In executory judgments the court declares the respective rights of the parties, and then proceeds to order the defendant to act in a certain way, e.g. to pay damages or to refrain from interfering with the plaintiff's rights. This order, if disregarded, may be enforced through official institutions, mainly by execution levied against the defendant's property or by his imprisonment for contempt of court. ***Declaratory judgments, on the other hand, merely proclaim the existence of a legal relationship, and do not contain any order which may be enforced against the defendant.*** (My emphasis).

18. As **P.W. Young Q.C.** points out in his Work **Declaratory Orders**, 2nd edition, at paragraph [212], page 18, *The enforceability of a declaratory order is the weak spot in its armour, as there is no sanction built into declaratory relief.*

19. At page 3 of his Work, **Zamir,** examines the subject of mere declaratory relief from the angle of its effectiveness:

...A declaration made by the court is not a mere opinion devoid of legal effect: the controversy between the parties is thereby determined and becomes res judicata. Hence, if the defendant subsequently acts contrary to the declaration, his act will be unlawful. The plaintiff may then ***again*** *resort to the court, this time for damages to compensate him for loss suffered or for a decree to enforce his declared right. Apprehensive of such consequences, the defendant will usually yield to the declaratory judgment. Where, however, the plaintiff has good ground to fear that the declaration will not be strictly observed, he may-* ***in cases in which he is entitled to declaratory relief-claim <u>together with the</u> declaration an award of damages, an order for specific performance, an injunction etc.*** (My emphasis).

20. By virtue of sections 27 and 28 of the **Judicature (Supreme Court) Act** our Court has and exercises all of the jurisdiction power and authority of the English Courts at the time of reception. The position in England with regard to Declaratory Orders used to be governed by Order 15, Rule 16, which stated:

No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

The commentary under that rule in the *Supreme Court Practice* states:

The jurisdiction of the Court to make a declaration of right is confined to declaring contested legal rights, subsisting or future of the parties represented in the litigation before it...."

21. In our old Civil Procedure Code, which were the governing civil procedure rules prior to the Civil Procedure Rules 2002, I cannot

trace any express rule dealing with the power to make declarations, and thus it would seem that by virtue of section 686 of the Civil Procedure Code we would have followed the English procedure and practice in the Form of Order 15, Rule 16.

22. In England, the language of the rule governing declaratory relief has changed somewhat, and is now contained in the English Civil Procedure Rules, " the English C.P.R." Part 40.20 which reads:

The court may make binding declarations whether or not any other remedy is claimed.

23. Rule 8.6. of the Jamaican Civil Procedure Rules 2002 " the C.P.R." concerns declaratory judgments and states:

Declaratory judgment

8.6. A party may seek a declaratory judgment and the court may make a binding declaration of right whether or not any consequential relief is or could be claimed.

24. Interestingly, Rule 8.7 (1) of the C.P.R., sub-paragraphs (a) and (b) state:

What must be included in the claim form

8.7.(1) The claimant must in the claim form (other than a fixed date claim form)-

(a) include a short description of the nature of the claim ;

(b) specify any remedy that the claimant seeks (though this does not limit the power of the court to grant any other remedy to which the claimant may be entitled).

24a Section 48(g) of the **Judicature Supreme Court Act 1880** states that:

"With respect to the concurrent jurisdiction of law and equity in civil cases and matters in the Supreme Court the following provisions shall apply –

The Supreme Court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it shall grant absolutely or on such reasonable terms and conditions as to it seems just, all such remedies as any of the parties thereto appear to be entitled to in respect of any legal or equitable claim properly brought forward by them respectively in such cause or matter; so that as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined and multiplicity of proceedings avoided."

25. In **Messier-Dowty v. Sabena** [2000] 1 W.L.R. 2040 at pages 2045-46, Lord Woolf, sitting in the English Court of Appeal, cited with approval the statement by the judge at first instance as follows:

The Court has an inherent jurisdiction to grant declaratory relief, which, as Sir Thomas Bingham M.R. pointed out in ***Re S (hospital patient : court's jurisdiction)*** *[1995] 3 All E.R. 290 at 296, is regulated rather than conferred by O.15 r.16.*

In the case before him, Lord Woolf was concerned with the question of negative, as opposed to positive declarations, i.e. a declaration that a Claimant is under no liability, as opposed to a declaration as to a positive liability or existence of legal rights.

Lord Woolf pointed out that a practical approach designed to deal with the particular problem before the Court must be taken, and that the court's main concern was with how justly to exercise its discretion. At page 2050 – 2051 he stated:

The approach is pragmatic. It is a matter of discretion. The deployment of negative declarations should be scrutinized and their use rejected where it would serve no useful purpose. However, where a negative declaration would help to ensure that the aims of justice are achieved, the courts should not be reluctant to grant such declarations. They can and do assist in achieving justice....

So in my judgment the development of the use of declaratory relief in relation to commercial disputes should not be constrained by artificial limits wrongly related to jurisdiction. It should instead be kept within proper bounds by the exercise of the courts' discretion.

26. In **Wiltshire v. Powell** [2004] EWCA Civ 534 at page 10 of 12 , a decision of the English Court of Appeal, Lady Justice Arden indicated that the replacement of RSC. Order 15 r. 16 by the English C.P.R. rule 40.20 has not changed the nature of the Court's power to make declaratory orders.

27. Similarly, in the English Court of Appeal, Lord Justice Kennedy in **Padden v. Arbuthnot Pensions & Investments Limited** [2004] EWCA Civ. 582 (13 May 2004) reasoned, at page 6 of 10:

19. The starting point, as it seems to me, must be a recognition that the power to make a declaration is a discretionary power which is not circumscribed by any statute or rule. C.P.R. 40.20, like its predecessor Order 15 Rule 16, simply states that –

" The court may make a binding declaration whether or not any other remedy is claimed."

Accordingly, no question of jurisdiction really arises, but there may well be circumstances where it would be inappropriate to grant a declaration, and in cases of that kind courts have sometimes said that they had no jurisdiction to grant a declaration.

28. To the like effect is the statement of Viscount Radcliffe in the Privy Council decision of **Ibebeweka v. Egbuna** [1964] 1 W.L.R. 219, at pages 224-225 where he stated that the power under the English R.S.C. Order 25, r.5,(the Rule which existed before Order 15, Rule 16), which stated that "the court has power to make binding declarations of right, whether any consequential relief is or could be claimed or not" , was in wide and general terms and what was conferred was a discretion to be exercised according to the facts of each individual case. Beyond the fact that the power to grant a

declaration should be exercised with a proper sense of responsibility and a full realization that judicial pronouncements ought not to be issued unless there were circumstances that called for their making, there was no legal restriction on the award of a declaration.

29. In **Financial Services Authority** [2001] EWHC 704, (Ch) (19 October 2001) Mr. Justice Neuberger in analyzing the nature of Declaratory Orders within the ambit of the CPR said at page 4 of 12 :

The court's power to grant a declaration is to be found in CPR Part 40.20, which is in these terms:

"The court may make binding declarations whether or not any remedy is claimed."

Accordingly, so far as the CPR are concerned, the power to make declarations appears to be unfettered. As between the parties in the section, it seems to me that the court can grant a declaration as to their rights, or as to the existence of facts, or as to the principle of law, where those rights, facts, or principles have been established and one party asks for a declaration. The court has to consider whether, in all the circumstances, it is appropriate to make such an order.

30. Having quoted from **Patten v. Burke** [1994] 1 W.L.R. 541 and from Lord Woolf in **Messier-Dowty**, referring to most of the passage cited above, Neuberger J. continued:

It seems to me that, when considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration.

31. In my judgment, in Jamaica, the Court's power to make declarations is a discretionary power which is not constrained by

any Statute or regulations. The question therefore of whether, and what are the ambits of a declaration sought in a particular law suit, is not so much a question of jurisdiction, but is one of the declaration being kept within proper bounds by the court's discretion. A practical approach must be taken, and this is particularly so in commercial disputes, such as the one before me now.

32. Rule 8.6 of the C.P.R. regulates, rather than confers, the power to grant declarations. In my judgment, the combined effect of Rules 8.6 and 8.7 (1)(b) is to allow the court to grant binding declarations even where no consequential relief has been sought and to grant other remedies other than the precise declaration that is being sought , to the party claiming the declaration. The court has a duty in keeping with the overriding objective of doing justice between the parties to deal with as many aspects of a case as is practicable on the same occasion-See Part 1 and rule 25.1 (i) of the C.P.R. I think that the Court could in its discretion, where one particular declaration is sought in relation to certain facts and circumstances, grant a declaration in terms that are different to the exact terms of the declaration sought, provided that the party claiming the declaration appears on the case as pleaded and presented, entitled to that other form of declaration. A practical approach is to be taken.

33. However, no matter how pragmatically a court may approach the issue, that cannot change the fact that a declaratory judgment is quite different from an executory judgment. A claim for a mere declaration, cannot be transformed into a claim for money. This is so even though the Court exercises concurrent jurisdiction at common law and in equity. It would seem even more plain that RBTT's claim for a declaration that the money was correctly debited cannot be transformed into a claim by Mr. Seaton for

repayment of this money. In other words, however, widely we interpret the remedy claimed by RBTT, neither Mr. Seaton nor his affiliated companies can seek relief from the Court via RBTT's claim for a declaration. Further, in Suit No. C.L. S-252 of 1993, it is expressly pleaded in paragraph 4 of Y.P Seaton's Reply, that the transactions dealt with in this suit, i.e the Suit in which an account is claimed, are not in any way connected or related to the transactions dealt with in Suit No. C.L.E -083 of 1993, i.e. the Suit in which the transaction and circumstances concerning the $15, 254,583.69 are dealt with.

34. The claim for an account, cannot, on the pleadings or Statements of Case, amount to a claim by Y.P. Seaton to be personally entitled to the sum of $15,254,583.69 or to a claim that a part of the balance to be found due on taking the account includes the $15, 254, 583.69. In my judgment, a claim for accounts, albeit it may either expressly or impliedly suggest that a Claimant has been left in ignorance as to the exact amount due to him, is not the same thing as a claim for money itself, in a sum certain, i.e. the claim now for over $15 M. In addition, the claim for an accounting by Y.P. Seaton is made in Suit No. C.L.S.-252 of 1993, in respect of which Mr. Seaton expressly pleads at paragraph 4 of the Reply, that the transactions dealt with in this Suit are not in any way connected with or related to the transactions involved in Suit No. C.L.E 083 of 1993. Further, Mr. Seaton's claim is for an accounting in relation to sums deposited by him, whereas the sum in issue was clearly not pleaded as having been deposited by Mr. Seaton. See in particular paragraphs 21 – 26 of the Defences filed in the RBTT Suit, C.L.E. 083 of 1993. Thus, in my view the claim for an account in the Suit filed by Mr. Seaton cannot properly relate to the sum of $15, 254,583.69 in respect of which RBTT

claims a declaration in Suit E083 of 1993 that its debiting action was in order.

35. In my judgment, any claim to be made for this sum could only be properly raised if the pleadings were amended on behalf of Y.P. Seaton to make a direct and express claim for this sum. Mrs. Benka-Coker was quite clear on the fact that no amendment was being sought. It seems to me that the fact that such a claim would now be severely statute-barred may have wisely influenced that decision. Such an amendment, even if sought, would raise a whole new case, which could have the effect of unraveling the present threads of this litigation. This is so because it would be inconsistent with core aspects of the present statements of case.

36. So whilst I agree with Mrs. Benka-Coker that RBTT cannot be heard to say that it was not aware of the amount and timing of the debit, I disagree that the claim which Mr. Seaton is seeking to make in his two Witness Statements is not one which ought to take RBTT by surprise. This is because up to the time of filing of these Witness Statements the backdrop against which Mr. Seaton's and his affiliated companies' case was set was that the transactions in the two suits were not in any way connected with, or related to, each other. It was also Mr. Seaton's position that in relation to the Suit No. C.L.E 083 of 1993 and the transactions there referred to, he acted as the servant and/or agent of the third Defendant Earthcrane Haulage Limited, which in turn acted as the servant and/ or agent of Prolacto. In the Suit filed in his own right, Mr. Seaton in his Reply stated that the admission that he acted as agent in relation to the RBTT suit, was not an admission that he acted as agent in relation to any of the transactions involved in the Suit filed on his behalf. To that extent, the claim by Mr. Seaton in the contested paragraphs of his Witness Statements is inconsistent with the existing statements of case. It cannot properly be said

that RBTT were forewarned or alerted to the fact, or should have known that, in addition to the monetary claims in Suit C.L. S252 of 1993 and claim for accounting, Mr. Seaton was also claiming the sum of $15, 252, 584.69 in his own right. That RBTT may well not have been so aware is to be seen not only by virtue of what Mr. Seaton and his affiliated companies have put forward as their respective cases in the two suits, but it is to be noted that part of RBTT's Defence in Mr. Seaton's suit is that the amounts claimed were deposited pursuant to the contractual arrangements referred to in the RBTT suit and that the amounts were received by Mr. Seaton and/or deposited by or on behalf of Mr. Seaton as agent of Prolacto. Therefore, RBTT's position is that even in respect of the sums claimed by Mr. Seaton in his Suit, he is not entitled to maintain an action in his own name. In those circumstances, to have an additional claim being made in Mr. Seaton's personal capacity, whereby RBTT would find themselves exposed to a risk of substantially greater potential liability, must require some warning to RBTT by way of pleadings or statements of case. The circumstances of this case include the pleaded contextual fact that the relevant transactions concerned not only RBTT and Mr. Seaton and his affiliated companies, but also involved JCTC and Prolacto. It is not permissible for Mr. Seaton to make this claim in what must be construed as an oblique and/or implied way. Even if a claim for payment of money could be made in that manner, which in my view it cannot, the statements of case when taken together do not point in that direction.

37. As stated above, I am of the view that the declaration sought by RBTT that it was entitled to debit the accounts cannot be transformed by Mr. Seaton into a declaration that RBTT was not entitled to debit the sum, or into a declaration that Y.P. Seaton or Prolacto are entitled to the sum of $15,254,583.69. No such

declaration had been sought by Y.P. Seaton or his affiliated companies and those are not declarations sought by RBTT. If RBTT fails in its quest for a declaration then the declaration would simply not be made. Even if a declaration could in theory be made that the funds belong to Prolacto because RBTT wrongly debited them, that could only be done in a law Suit involving Prolacto as a party or if Mr. Seaton or his affiliated companies had filed his suit, or defended RBTT's suit, by purporting to act in the suit on behalf of, and in advancement of the interests of Prolacto. On that basis the decision of the Privy Council in **Ibeneweka v. Egbuna** [1964] 1 W.L.R. 219 falls to be distinguished on the unusual facts of that case, where the trial judge had taken the view that interested parties not represented were in reality fighting the suit "from behind the hedge". The case was seen by the Privy Council as a suitable one in which to make the point that there was no unqualified rule of practice that forbade the making of a declaration even when some of the persons interested in the subject of the declaration were not before the court.

39. Further, although under Rule 8.7 (1) (b) the Court may have the power to grant relief other than that claimed by a Claimant, provided that the Claimant appears entitled to it, based on the pleaded framework of the Suit filed on Mr. Seaton's behalf, it would not be open to the Court on the case as pleaded to grant relief by which Y.P. Seaton could lay claim to the $15,254,583.69. Although the Court has these wide powers in relation to remedies, there must be some parameters or boundaries to inform the Court's exercise of its discretion to grant a declaration or indeed, any other remedy. Similarly, although Section 48(g) of the Judicature Supreme Court Act states that the Court has power to grant all such remedies as any of the parties appear entitled to, the section plainly states that, whether it is a legal or equitable claim that is

being made, the claim must be "properly brought forward." In any event, taking Mr. Seaton's case on the pleadings at its highest in relation to any relief regarding the sum of $15, 254, 583.69, even if the Court could grant a declaration as to the entitlement of Mr. Seaton or anyone else to this sum, that would not amount to a claim or order for the payment of the money. It would not be executory, and therefore if disregarded, it could not be enforced by way of execution levied against RBTT's property or by any other means. In other words, Mr. Seaton would still need a decree from the Court to enforce his declared rights, he would still have to file a new law Suit expressly claiming the sum of money, which claim would now be long statute-barred.

40. I am therefore of the view that the application is well-founded and so I order as follows:

(a) Paragraphs 58, 59, and 60 of Mr. Seaton's Witness Statement dated 23rd February 2007 are struck out;

(b) The words " and should repay the full sum of $15,000,000.00 as deducted and interest thereon" which appear in paragraph 14, and the words "and J$15,252,584.00" which appear in paragraph 17, in the Supplemental Witness Statement of Y.P. Seaton dated 20th April 2007 are struck out.

(c) 7/8 of the Costs of this Application are awarded to the Applicant RBTT to be taxed if not agreed or otherwise ascertained, as opposed to full costs, as a result of the late filing of the further submissions required by the Court.

(d) Permission to appeal is granted to Mr. Y.P. Seaton and his affiliated companies.