[2024] JMSC Civ 29

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV02832

BETWEEN	**SANDY MARIE WOOD**	**CLAIMANT**
AND	**ARC MANUFACTURING COMPANY LIMITED**	**1ST DEFENDANT**
AND	**LACKIE HORNE**	**2ND DEFENDANT**
AND	**CHARLOTTE ALEXANDER**	**3RD DEFENDANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**4TH DEFENDANT**

IN CHAMBERS

Mrs. Simone Mayhew, KC and Miss Ashley Mair instructed by Mayhew Law for the Applicants/1st to 3rd Defendants

Mr Richard Reitzin instructed by Reitzin & Hernandez for the Claimant/Respondent

December 7, 2023, January 16, 2024 and February 29, 2024.

Application to strike out a claim; whether summary judgment is applicable to a claim for Defamation; the Defamation Act, 2013 and the limitation period created by the Act, the court's power to extend the limitation period under the Defamation Act ,2013; whether the court has authority to extend the time for an applicant to challenge the court's jurisdiction to hear a claim, breach of the implied term of trust and confidence in a contract of employment and the jurisdiction of the court to determine claims for breach of trust and confidence and wrongful dismissal.

STEPHANY ORR, J (AG)

[1] Sandy Marie Wood, is a former employee of Arc Manufacturing Company Limited (ARC MFG), the 1st Defendant herein. Lackie Horne and Charlotte Alexander (the 2nd and 3rd Defendants) are employees of ARC MFG, and though not so stated, it can be inferred from the pleadings that they were in senior management positions at ARC MFG.

[2] The Attorney General of Jamaica is also joined as the 4th Defendant, but this application does not concern him. For the purposes of this application therefore any reference to "the defendants" is solely in relation to the 1st to 3rd Defendants who filed this application.

[3] In her claim filed on July 20, 2022, Miss Wood alleged that while employed by ARC MFG she was accused of theft and defamed by the 1st and 2nd Defendants. She also alleged that she was wrongfully dismissed by the 1st defendant.

[4] In an amended particulars of claim filed on August 5, 2022, she included a claim for breach of the implied term of trust and confidence in her contract of employment with the 1st Defendant.

THE APPLICATION

[5] Before me is an application by the defendants to strike out the claim for defamation and in the alternative for summary judgment on the basis that the claim discloses no reasonable grounds for bringing the claim pursuant to CPR 26.3 (1) (c) and further, that the claim for damages for defamation is an abuse of process of the court and is likely to obstruct the just disposal of the proceedings pursuant to CPR Rule 26.3(1)(b).

[6] In the further alternative, they ask the court to find that it lacks the jurisdiction to hear the claimant's claim for wrongful dismissal inter alia and ask the court to extend the time to make this application.

[7] Where they do not succeed on their application, they ask the court for an extension of time to file their defence.

[8] The Claimant has opposed the application by raising preliminary objections and challenges to the defendants' evidence in support of the application. Mr. Reitzin for the claimant has summarised his objections as follows:

i) The ratio of Index Communications precludes the defendants from relying on their further amended application insofar as it –

a) added a claim for summary judgment; and

b) added the ground of no real prospect of success to support their application for summary judgment in response to the claimant's preliminary objection;

ii) Application of the principles of the law of evidence would result in the court striking out all inadmissible portions of the evidence proffered by the defendants such that the defendants' various applications would be devoid of any or any substantial evidential support;

iii) The defendants' application for an extension of time to apply to "deny" jurisdiction is fatally flawed –

a) in breach of the rules no grounds are stated upon which the application is brought; and

b) it is devoid of evidential support;

c) no procedural defect on the part of the claimant is identified – as is necessary;

d) all of the many factors which should be considered weigh against the defendants and not in their favour;

e) *all defendants elected, blindly, not to argue that the court should not exercise jurisdiction – the first defendant by neglect, the second and third by intentional election;*

iv) *The defendants' application for a declaration that the court should not exercise its jurisdiction to hear the claimant's claim –*

v) *The defendant's case, insofar as it is discernible despite the evidential void, is inconsistent with its conduct as alleged by the claimant, having led to her dismissal;*

vi) *The defendants' posited but unproven case is that no breach of the implied term of mutual trust and confidence took place and the dismissal was entirely independent of any conduct on the part of any defendant;*

vii) *The defendants' application for a stay of filing their defences is misconceived since –*

a) *rule 9.6(4) cannot apply to them if it be interpreted so as not to be open to abuse;*

b) *it suffers from the same defects as their application for an extension of time to argue that the court should not exercise its jurisdiction to hear the claimant's claim.*

I have addressed these objections and challenges as they arise in my judgment.

[9] There are five main issues which arise for the court's consideration, that can be summarized as follows:

a) Whether the court can grant summary judgment on a claim for defamation;

b) The limitation period for claims made pursuant to the Defamation Act;

c) Whether the court can extend the time for a party to challenge the court's jurisdiction;

d) Whether this court has the jurisdiction to consider a claim for breach of the implied term of trust and confidence in a contract of employment, and lastly;

e) The jurisdiction of this court to determine a claim for wrongful dismissal.

[10] The pleadings in this claim are important as they play a dual role in outlining the history between the parties which led up to the filing of this claim. They also provide the factual information that I will consider in determining the defendants' application. I have therefore outlined the relevant aspects of the Claimant's statement of case as they arise in my analysis.

[11] Both counsel have provided extensive submissions and authorities in support of their arguments. I am grateful for their industry which has assisted in narrowing the issues arising on the application. While I have not rehearsed these submissions in detail or all of the authorities cited in my analysis, counsel can rest assured that I have carefully considered their arguments and the cases relied upon.

[12] In considering the defendants' application, I have treated the causes of action individually and I will therefore first consider the application for summary judgment and the application to strike out the claim as both are aimed at Miss Wood's claim for damages for defamation. Thereafter, I will consider the application challenging the court's jurisdiction to consider her claim for wrongful dismissal.

SUMMARY JUDGMENT

[13] In addressing the application for summary judgment, I must first rule on a preliminary objection Mr. Reitzin raised in relation to this aspect of the application.

[14] The application for summary judgment was pleaded as an alternative to the application to strike out the claim for defamation. Summary judgment was not

included in the initial notice of application filed on February 22, 2021, by the defendants' previous Attorneys-at-Law.

[15] This amendment to include an application for summary judgment was made on November 16, 2023 by the defendants' present counsel.

[16] The hearing of the application commenced on December 7, 2023, but was abruptly interrupted by a JPS power outage which resulted in the hearing being adjourned to January 16, 2024. Orders were also made for the filing and serving of written submissions and authorities, as Mr. Reitzin had also objected to the defendants' application on the basis that the defendants' counsel had not complied with PD 20 of 2008 and this impacted his ability to respond to their application.

[17] Before the adjournment Mrs. Mayhew, KC commenced her submissions, Mr. Reitzin interposed his preliminary objections in summary, however as the defendant's application was pleaded in the alternative, I asked that he allow Mrs. Mayhew, KC to complete her submissions and then he could make his submissions on behalf of the claimant.

[18] During his initial brief submissions, he challenged the defendant's application for summary judgment on the basis that the application did not comply with Rule 15.4(4) which provides that *"The notice under paragraph (3) must identify the issues which it is proposed that the court should deal with at the hearing".*

[19] During this adjournment, the defendants' counsel filed a further amended notice of application on December 11, 2023, which amended the grounds on which the application striking out the claimant's case was pleaded. It also now included a specific reference to the grounds on which summary judgment was being sought. In relation to the jurisdictional challenge, they included grounds for the delay in making the application challenging the court's jurisdiction.

[20] When the hearing resumed on January 16, 2024, written submissions and authorities were before the court for its consideration. In his written and oral

submissions Mr. Reitzin raised a further preliminary objection. He submitted that the defendants' amendments to their notice of application were without the court's permission and therefore procedurally irregular and should not be allowed.

[21] He relied on **Index Communication Ltd v Network Capital Solutions Limited** [2012] JMSC Civ 50 to substantiate his arguments that the amendments were made without the court's permission and the defendants could not rely on these amendments. Relying on Mangatal, J's dicta in that case he submitted that it was unfair for the defendants to amend their notice of application to meet his objection and thereby effectively move the goal post.

[22] In **Index,** Mangatal, J was dealing with an application to strike out a statement of case which was filed by two defendants. After the defendants' counsel made their submissions and the claimant's counsel was responding to these submissions, he requested an adjournment and thereafter filed an amended statement of case which sought to cure the deficiencies in the statement of case that the defendants complained of.

[23] The court in addressing the issue of the belated application criticised the timing of the amendment in that it was after the defendants' counsel had completed their submissions. It was in those circumstances that Mangatal, J held that where an application is made to strike out a statement of case, the party whose statement of case is being challenged cannot simply amend his statement of case to meet the challenges raised by the other side and must first obtain the court's permission to amend.

[24] Although she very clearly expressed her displeasure with the claimant's attorney's actions, she did not say that he could not be heard on his application. Importantly, she recognised that despite the inappropriateness of the late amendment to the statement of case coupled with the fact that the defendants' goal post may well be moved, she could not automatically deny the claimant the opportunity to amend his statement of case as this would not be in keeping with the overriding objective

of dealing with cases justly. Her reference to the decision in **Diamantes Diamantides v JP Morgan Chase Bank et al** (2005) EWCA Civ 1612 reflects this view. In that case it was held that:

> *"On an application to strike out particulars of claim on the grounds that they disclose no cause of action the court will normally consider any proposed amendment since, if the existing case can be saved by a legitimate amendment, it is usually better to give permission to amend rather than to strike out the claim and leave the claimant to start again."*

[25] I will not dwell too much on this preliminary objection. I do not believe that this case assists the claimant as amendments to a statement of case and amendments to a notice of application are incomparable. It was never argued and I have not found any requirement in the Civil Procedure Rules which requires an applicant to seek the court's permission to amend a notice of application.

[26] The rules do not restrict a party's ability to amend a notice of application as litigants must be at liberty to seek the orders they deem necessary to put their best case forward, whatever that case may be.

[27] In the interest of justice and in upholding the overriding objective, the court will always however consider the timeliness of an amendment to a notice of application and any likely prejudice caused to other parties. Ultimately, the court's duty is to determine all issues that are in dispute between parties, including those that can be determined at the interlocutory stage. The court will therefore use its court management powers to determine the best way to deal with the late amendments to a notice of application. Striking out the application will therefore always be a last resort.

[28] Some considerations the court will have include:

a) the necessity for the amendment

b) the impact that the late amendment to the application will have on both party's statement of case,

c) the reason for the late amendment

d) counsel's ability to respond to the late amendment to the application at the hearing, and

e) whether an adjournment will be necessary.

[29] The court can also exercise its discretion to award costs where a party is compelled to request an adjournment to address a belated amendment to a notice of application.

[30] In the instant case, the amendments were indeed made during the adjournment. They would have also been served on counsel's office prior to the January 16, 2024 hearing. Mr. Reitzin has not at any time said that he was unable to respond to the application, either before or after the amendments were made because it did not contain the grounds of the application and thus he did not understand the defendants' application. His only complaint was that the defendants fixed their application to meet his objection and therefore moved the goal post -to use his words.

[31] Rule 15.4(4) is important because the respondent to an application for summary judgment must be able to understand the challenges to his statement of case, as also the court must understand the basis of the application.

[32] It cannot be over-emphasised that counsel and parties alike must always comply with the rules and orders of the court as this ensures good and efficient administration of justice. However, in these particular circumstances, the defendants' Attorneys' failure to include the grounds they intended to rely on for the application for summary judgment to my mind was by no means fatal to the application. It was an irregularity in the application that could be easily cured. Their failure to comply with Rule 15.4(4) did not mean that the application was to be automatically struck out.

[33] There would be no utility in striking out the notice of application on a technicality because the defendants would not be precluded from refiling their application as it would not have been determined on its merits.

[34] As it turns out however, the defendants' late amendment to comply with CPR 15.4(4) was not the issue that Mr Reitzin should have concerned himself with. The rule immediately before Rule 15.4(4) is of far greater importance to these proceedings.

[35] Rule 15.3 excludes certain causes of actions from summary judgment proceedings, it provides:

> *"The court may give summary judgment in any type of proceedings **except-***
>
> *(d) proceedings for –*
>
> *(i) false imprisonment*
>
> *(ii) malicious prosecution; and*
>
> *(iii) **defamation**" (emphasis mine)*

[36] In the circumstances, the defendants' application for summary judgment in relation to the claim for defamation cannot be granted.

STRIKING OUT

[37] The challenge to the claimant's claim for defamation was twofold. These defendants also asked the court to strike out the Claimant's statement of case on the basis that it was an abuse of process and disclosed no reasonable cause of action against them.

[38] The court's power to strike out a party's statement of case or part thereof is derived from Rule 26.3(1) which provides:

> *"26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –*

…

(b)that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;

(c)that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or

…"

[39] McDonald-Bishop JA in **Sally Fulton v Chas E Ramson** [2022] JMCA Civ 21 considered Lord Bingham's dicta in **Johnson v Gore Wood** where in commenting on the court's power to strike out a claim for abuse of the process of the court, at page 22 he expressed the view that:

> *"The rule of law depends upon the existence and availability of courts and tribunals to which citizens may resort for the determination of differences between them which they cannot otherwise resolve. Litigants are not to be without scrupulous examination of all the circumstances, to be denied the right to bring a genuine subject of litigation before the court... This does not however mean that the court must hear in full and rule on the merits of any claim or defence which a party to litigation may choose to put forward. For there is, as Lord Diplock said at the outset of his speech in Hunter v Chief Constable of the West Midlands Police [1982] AC 529, 536, an*
>
> *'inherent power which any court of justice must possess to prevent misuse of its procedure in a way in which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right thinking people. The circumstances in which abuse of process can arise are very varied...'"*

McDonald-Bishop, JA went on to caution that;

> *"There are, therefore, two crucial competing principles in determining the question whether to strike out a claim for abuse of process. They are (i) the prevention of the misuse of the court's procedures; and (ii) the right of a litigant to bring a genuine subject of litigation before the court. It is because of the latter competing principle that it is advised that the court's power to strike out a party's statement of case should be used "sparingly" and only in hopeless cases as it is a draconian power that could deprive litigants of access to justice. In* ***Gartmann v Hargitay*** *Cooke JA, at para. 10, gave expression to this principle in these terms:*
>
> *"10. The striking out (dismissal) of a claimant's statement of case (in this case statement of claim) is a draconian order. Such an order, while*

> *compelling in suitable circumstances, should be informed by caution lest litigants are deprived of access to the 'judgment seat'. In my view this drastic step of striking out a statement of case should only be considered when such statement of case can be categorized as entirely hopeless..."*

[40] There are other considerations that a court must have when determining an application to strike out a party's statement of case. The court considers the pleadings only and accepts that the allegations pleaded are true. (See **Morgan Crucible Co. plc v Hill Samuel & Company Limited** [1991] Ch 295.)

[41] As Batts, J said in **City Properties Limited V New Era Finance Limited [2013] JMSC Civ 23** at paragraph [9] (and relied upon by the claimant)

> *"there must be reasonable grounds for bringing or defending a claim. These reasonable grounds must be evident on a reading of the statement of case. It is well established and a matter for which no authority need be cited, that upon an application to strike out pleading, no affidavit evidence need be filed, the issue is determined by reference to the pleadings."*

[42] At paragraph 15 of their affidavit filed on February 21, 2021, in support of their application to strike out the claim, the 1st and 2nd defendants outline that "*they believe that her (Miss Wood) claim is statute barred and they will be prejudiced in defending the claim due to the lengthy delay in bringing the claim."*

[43] Despite the complaints raised by Mr. Reitzin, that the information contained in the affidavit is couched as a pleading and not a statement of fact, I do not accept this submission. In addition, the fact that the defendants have not stated how they will be embarrassed in defending the claim against them is not fatal as limitation is a sufficient defence to any claim.

[44] As such I am prepared to accept the affidavit evidence and to consider the defendants' submissions in relation to this aspect of their application.

[45] Mrs. Mayhew, KC relied on Section 33(b) of the Defamation Act (2013) to support her argument that the claim for defamation was statute barred. Mr Reitzin did not address the provisions of section 33(b) in his submissions. He only argued that the limitation defence should only be considered at trial.

[46] The Defamation Act (1963) and the Libel and Slander Act (1851) were repealed when Parliament enacted the Defamation Act on November 29, 2013. This new legislation brought the Jamaican legislation in line with changes already made in other commonwealth jurisdictions.

[47] Section 33 (1) provides that – An action for defamation shall be brought-

> *(i) in the case of defamatory matter published on the Internet, within two years from the date upon which the defamatory statement is first published on the Internet or the date upon which it is first capable of being viewed or listened to through the Internet, whichever is later; or*
>
> *(b) in the case of any other defamatory matter, within two years from the date that the defamatory matter was first published,*
>
> *hereinafter referred to as the "limitation period".*
>
> *(2) A person claiming to have a cause of action for defamation may apply to a court for an order extending the limitation period.*
>
> *(3) Subject to section (4), on an application under subsection (2), a court may extend the limitation period,*
>
> *(4) …*
>
> *(5) If the court orders the extension of the limitation period*
>
> *(a) the limitation period shall not be more than four years from the date on which the cause of action arose; and*
>
> *(6) An order for the extension of a limitation period, and an application for an order, may be made even though the limitation period has already expired.*

[48] An important change introduced in the 2013 legislation was the removal of the six-year limitation period which previously existed under the 1963 Act. The new act created a shorter limitation period of 2 years. Although absent in the Statute of Limitations, in the Defamation Act (2013), the court has the power to extend this

2-year limitation period for up to four years after the cause of action arose. The court's power to extend the limitation period is not unfettered however, and parliament has attached a caveat to this power to extend the limitation period. The court cannot extend the limitation period beyond four years after the cause of action arose but is however permitted to extend the limitation period even after the initial two-year limitation period has expired

[49] In considering Miss Woods' pleadings, the alleged defamatory words were said to have been spoken by the 2nd and 3rd Defendants on November 23, 2016. Miss Wood also alleges that on November 25th 2016, the 2nd Defendant uttered other defamatory words. Her causes of action in defamation therefore arose on November 23, 2016 and November 25, 2016 respectively.

[50] Pursuant to Section 33(b), limitation in both instances expired on **November 22, 2018 and November 24, 2018 respectively**. Since the court has the power to extend the limitation period for up to four years from the dates on which her causes of action arose, on a successful application by the claimant at any date before November 22 2020, and November 24, 2020, the court could have extended the limitation period in relation to both causes of action.

[51] This means that despite the expiry of the initial two-year limitation period, before Miss Wood's claim was filed on July 20, 2020, she could have applied for an extension of time to bring her claim for defamation against the 1st and 2nd Defendants.

[52] In **Shaun Baker v O'Brian Brown and Anor**, (unreported) Supreme Court Jamaica (delivered May 3, 2010) Carol Edwards, J (Ag) as she then was provided a detailed and extensive history of our Limitation Act and contrasted it with its UK counterpart. Although she was considering an application under the Fatal Accidents Act and the Law Reform Miscellaneous Provisions Act, her clear reasoning is applicable to all limitation periods generally.

[53] She explained Parliament's intention in enacting the limitation period when she expressed that:

> *"64. This limitation period may have been the law makers' best informed estimate of when it would become unjust to allow a claim to proceed, as between the victim and the tortfeasor, in order to protect defendants from stale claims. When one considers the historical perspective of limitation laws, it would appear that its intent was not to provide the defendant with a defence on the merits but to bar the victim from his remedy, if he comes too late. The defendant remained a tortfeasor but he could not be sued.*
>
> *65. The Limitation Act therefore, recognized that there would be some prejudice to the victim who comes to court too late, in that he will be forever barred from his remedy. Megaw J, at first instance, in* ***Heaven v Road and Rail Wagons Limited,*** *(1965) 2 All ER 409, in reviewing the cases where the court may exercise its discretion to renew an expired writ, after the limitation period, under the Fatal Accidents Act said:*
>
> > *"The defendant has his defence as of absolute right. The reasons of public policy are not far to seek. It is unfair to the defendant, and it makes the administration of justice more uncertain, if litigation is delayed so that witnesses die or cannot be traced, or memories fade; and defendants are entitled to know definitely, at the expiry of some defined time, whether or not they are to be pursued in the courts. "*
>
> *70. A claim must be issued within the limitation period and it is always necessary when faced with the possibility of bringing a claim, to ascertain when the relevant limitation period will expire. If a claim is issued outside of the limitation period, the defendant will generally have an indefeasible defence to the claim. (emphasis mine)*
>
> *71. Furthermore, a claim which is clearly outside the relevant limitation period may also be struck out on that ground. See* ***Richies v DPP*** *(1973) 1 WLR 1019, where it was held inter alia, that; it was open to a defendant on an application to dismiss an action as being frivolous and vexatious or an abuse of the process of the court, to show that the plaintiffs cause of action was statute barred and must inevitably fail for that reason. See also the judgment of Stephenson L.J. in* ***Ronex Properties v John Laing*** *(1983) 1 Q.B. 398 at p. 408. There the learned judge of appeal in giving his observations on the limitation point concluded that:*
>
> > *"There are many cases in which the expiry of the limitation period makes it a waste of time and money to let a plaintiff go on with his action. But in those cases it may be*

> *impossible to say that he has no reasonable cause of action. The right course is therefore for a defendant to apply to strike out the plaintiffs ' claim as frivolous and vexatious and an abuse of the process of the court, on the ground that it is statute-barred".”*

[54] I note that there are indeed some cases where the date that the cause of action arose is in dispute, in those cases the court should not allow a defendant to rely on the limitation defence at the interlocutory stage but should rather allow the claim to proceed to trial and hear evidence and submissions, as limitation would be a live issue to be determined at trial.

[55] Where as in this case the date that the cause of action arose is not in dispute, there would be no benefit in allowing such a claim to proceed to trial.

[56] It is not lost on me that these defendants have not yet filed a defence which raises the limitation defence. While in most cases a defendant will plead the limitation defence in his defence, an application can be made to strike out a claim which is statute barred even where no defence has been filed.

[57] In **Sherrie Grant v Charles Mclaughlin & Anor** [2019] JMCA Civ 4, Brooks JA (as he then was) said that:

> *“[42] Usually, the reliance on the provisions of the Limitation of Actions Act as a defence to a claim, is to be demonstrated at a trial. In certain circumstances, however, a defendant may rely on a limitation of actions defence prior to the trial. A defendant may apply to strike out a claim if it appears on the face of the claim, that it is time barred (see **Lt Col Leslie Lloyd v The Jamaica Defence Board and Others** (1978) 16 JLR 252). The basis of the application is that the claim amounts to an abuse of the process of the court (see rule 26.3(1)(b) of the CPR). A defendant may also rely on a limitation of actions point if the claimant seeks to amend his claim to add a party or to seek a remedy, which the proposed party, or the defendant, asserts is time barred.” (emphasis mine)*

[58] Later, Paulette Williams JA in **The Attorney General of Jamaica v Arlene Martin [2017] JMCA Civ 24**, said that:

> *“[36] Although the defence that a limitation period has expired is a procedural defence, it is one that usually has to be raised as such and be*

> *resolved at trial. However, it is permissible for the defendant to apply to have the claim, or the relevant parts of it struck out as being an abuse of process. This however will only be allowed in a case where the expiry of the limitation period is clearly established and unanswerable."*

[59] On Miss Woods's pleadings, the causes of action for defamation arose on November 23, 2016 and November 25, 2016. It is clear on the face of her pleadings and a reading of the Defamation Act that when she commenced her claim on July 20, 2020, limitation on her claim had already expired and she had no order from the court extending the time to file her claim.

[60] I am guided by the warnings given by McDonald-Bishop, JA in **Sally Fulton.** I appreciate the draconian nature of an order striking out a statement of case and the caution that must guide the court in the exercise of this discretion as the Claimant is likely to have no further recourse in relation to her claim.

[61] In this case however, there is no amendment or application that can be made to enable the Claimant to pursue her claim for damages for defamation at this late stage, some nearly eight years after the limitation period has expired. It has been accepted in this jurisdiction (**Shaun Baker**) that it is an abuse of process to commence a claim after the expiry of the limitation period (**Ronex Properties Ltd. v John Laing Construction Limited [1983] QB 398.**)

[62] These defendants would therefore succeed on their application to strike out Miss Wood's claim for defamation as being an abuse of the process of the court, the claim having been commenced against the 2nd and 3rd Defendants after the limitation period for a claim under the Defamation Act had expired.

EXTENSION OF TIME TO APPLY TO DISPUTE THE COURT'S JURISDICTION

[63] As I have already considered the Claimant's claim for damages for defamation, in considering the application to dispute the court's jurisdiction, I have only contemplated Miss Wood's claim for wrongful dismissal and breach of the implied term of mutual trust and confidence.

[64] The defendants' application to extend the time to file an application to ask the court to decline jurisdiction to hear the Claimant's claim did not initially include the grounds for the application. These grounds were added in a further amended application.

[65] I have already dealt with the issue of the late amendments and will only say that for the reasons I have outlined earlier, the defendants did not need to obtain permission form the court to amend their application.

[66] Mrs.Mayhew, KC has relied on Rule 9.6 which requires an application disputing the court's jurisdiction to be made within the prescribed time to file a defence. She also submitted that Rule 26.9(3) allows the court to extend the time for a party to comply with a procedural breach. Reliance was also placed on **Texan Management Limited & Ors v Pacific Electric Wire & Cable Company Limited** (2009) UKPC 46 to support her position that the court's power to extend time also applies to an application under Rule 9.6, even where the time to file a defence has already expired.

[67] In further support of her application she relied on the decision in **Paulette Richards v NERHA et al** [2020] JMSC Civ 20 to argue that even where there is a delay, the merit of the case is also a factor to be considered when the court is exercising its discretion to extend time.

[68] It was submitted that the period of delay was only some 5 months and that as with any application to extend time, the court must consider the period of delay, the reason for the delay and any prejudice to the claimant.

[69] On the issue of prejudice, it was submitted that there is no prejudice to the defendant on account of the delay, and that the prejudice to the defendants would be far greater if they were not permitted to make their application.

[70] Mr. Reitzin's challenges are outlined at paragraph 8 (iii) above. Apart from the procedural defect in the defendants' application, he submitted that the affidavit

evidence did not support the application and that the defendants have not identified any procedural defect in the claim.

ANALYSIS

[71] Firstly, save a reference in Miss Chantelle Young's affidavit which did not provide the source of her information as pointed out by Mr. Reitzin, (and which I did not consider) I found sufficient evidence to support this aspect of the defendants' application.

[72] In calculating the defendants' delay in making this application I perused the documents on the court file. I noted that the affidavit of service filed in proof of service of the claim on the 1st defendant by registered post states that the claim form and attendant documents were served on the 1st defendant on August 5, 2020. There is no registered receipt slip exhibited to that affidavit.

[73] A supplemental affidavit of posting exhibits a copy of the front and back of an envelope addressed to the 1st defendant. There are two date stamps on the envelope which are not clear. The dates seem to show August 11, 2020 and a date in September 2020. The envelope is marked with the word "unclaimed".

[74] It would seem that the Master hearing the application to set aside the default judgment accepted August 5, 2020 as the deemed date of service on the 1st defendant as costs were awarded to the claimant when the default judgment was set aside. This is the date of service that I must therefore use.

[75] The 2nd and 3rd Defendants in their affidavit outline that they first learnt of this claim when the claim form was left at the 1st Defendant's offices on January 7, 2021. Though not personally served they nevertheless filed an acknowledgement of service. They say they were unaware of the earlier purported service on the 1st Defendant.

[76] Mr. Lackie Horne the 2nd Defendant in his affidavit explained that there was some confusion as to the date that the first defendant was served and that he and Charlotte Alexander were never served but having learned of service on the 1st Defendant agreed to participate in the claim.

[77] Miss Chantelle Young who provided an affidavit in support of this application is counsel from the firm of attorneys-at-law that initially represented the defendants. Indeed, it is her email address that is listed on the initial application to strike out the claim and to challenge the court's jurisdiction filed on February 22, 2021. By providing a chronology of events she explained the delay in making this application, and outlined that she was informed by the 3rd Defendant Charlotte Alexander that the claim form was left at the 1st Defendant's office on January 7, 2021. The defendants were all unaware of the earlier purported service on the 1st Defendant by registered post. This application was filed on February 22, 2021 because the former attorneys-at-law were awaiting complete instructions from the defendants.

[78] The acknowledgement of service filed on behalf of all three defendants also lists the date of service as January 7, 2021.

[79] Rule 9.6 allows a party to apply to challenge the court's jurisdiction or to ask the court to decline to exercise its jurisdiction. Rule 9.6(3) provides that any such application must be filed within the prescribed time to file a defence. In this case within 42 days of service of the claim form.

[80] Using the date of service of August 5, 2020, the defendants' application would have been filed some 5 months out of time on February 22, 2021.

[81] Rule 26.1 (2) (c) gives this court the authority to extend the time for a party to comply with any rule, order or practice direction. The court can also exercise this jurisdiction even after the prescribed time to comply with the rule, order or practice

direction has passed. This power to extend time is only affected by a rule which specifically precludes the court from extending time.

[82] There is no such prohibition in Rule 9.6(3) and I am also guided by the court's decision in **Texan Management** which confirms that the court can extend time to dispute the court's jurisdiction even after the time to make the application has expired.

[83] The considerations a court must have have been repeated in several cases from this jurisdiction including **Fiesta Jamaica Limited v National Water Commission** [2010] JMCA Civ 4 Some of the considerations a court should have include; the length of the delay in making the application, any explanation provided for the delay, any potential prejudice to the other party where the order is granted, (the merit of the appeal) the effect of the delay on public administration and the importance of parties complying with time limits

[84] In determining the application, the court takes a holistic approach, and each case must be decided on its own facts.

[85] In considering any delay on the part of the 1st Defendant in making this application, I have considered that the defendant's previous counsel would have filed this application on February 21, 2021. This would have been a little over one month after the defendants said that they received the claim form which was left at the 1st Defendant's office on January 7, 2021.

[86] While I accept that the application was filed some nearly five months after the claim form was said to have been served on the 1st Defendant by registered post, realistically, the defendants could not respond to a claim that they were unaware of. They made their application within six weeks of learning of the claim which is not an excessively inordinate delay in all the circumstances. The explanation for this delay is that they were unaware of service on the 1st Defendant as no registered receipt slip was received.

[87] I have considered the likely prejudice to all parties – there was no prejudice stated by the claimant. The defendants as counsel submitted would suffer the greater prejudice, where the court refused the extension of time and they were unable to dispute the court's jurisdiction.

[88] The would only be able to raise the jurisdictional issue at trial and would incur the costs associated with a trial. I have also considered the court's duty to uphold the overriding objective in the interpretation and application of all rules of court. The court is required to ensure that no unnecessary costs are incurred and that the court's resources are used efficiently so that each case can be heard and determined in a timely manner while ensuring that each case is allotted a reasonable amount of the court's time.

[89] The nature of the defendants' application was therefore an important consideration as it raises a question of the court's jurisdiction to hear a claim.

[90] Thus when all the particular circumstances of this case are considered I am prepared to find that while there was a delay in making the application to dispute the court's jurisdiction, this delay was not egregious. I am therefore prepared to grant the defendants the extension of time requested to make their application.

WRONGFUL DISMISSAL

[91] Miss Wood has also claimed damages for wrongful dismissal as against the 1st Defendant. In her particulars of claim she alleges that:

33. By letter dated 25 November, 2016 the first defendant purported to dismiss the claimant by reason of redundancy on the basis that the first defendant was "undergoing a restructuring exercise".
34. The first defendant was not undergoing a restructuring exercise.
35. The claimant's position was not made redundant but the fourth defendant is estopped from denying the same.
36. By the said conduct, the first defendant dismissed the claimant summarily.
37. By reason of the matters aforesaid, the first defendant wrongfully dismissed the claimant.
38. Further, by reason of the matters aforesaid, the claimant has suffered loss and damage.

Particulars

i) In November, 2016 the claimant was earning an average of approximately $16,000.00 per fortnight net;
ii) Following her dismissal, the claimant was unemployed for approximately 2 years;
iii) Thereafter, the claimant began her own business of selling charcoal but her earnings were very meagre – barely enough to put food on the table.

[92] With no disrespect to counsel, I will briefly summarise the defendants' submissions as follows- Miss Wood's claim for wrongful dismissal is really a claim for unfair dismissal dressed up as a claim for wrongful dismissal. Based on her pleadings her complaint surrounds the manner of her dismissal and this court has no jurisdiction to determine such a claim.

[93] Relying heavily on the Court of Appeal decision in **Edward Gabbidon v Sagicor Bank Jamaica Limited (formerly RBTT Bank Jamaica Limited)** [2020] JMCA Civ 9 Mrs. Mayhew, KC submitted that Brooks, P, has concluded that the courts in this jurisdiction have no jurisdiction to award damages for breach of the implied term of trust and confidence. The remainder of Miss Wood's complaint is also as to the manner of her dismissal and can only be determined under the Labour Relations and Dispute Tribunal Act. Claims under that act are time sensitive and she is out of time in relation to her claim for unfair dismissal. The Supreme Court has no jurisdiction to hear a claim for unjustifiable dismissal.

[94] For the claimant Mr. Reitzin has argued that:

a) The defendants' case is inconsistent with its conduct, as alleged by the claimant, having led to her dismissal

b) The defendants have not established that there is no breach of the implied term of mutual trust and confidence and that Miss Wood's dismissal was entirely independent of any conduct on the part of any defendant.

[95] As indicated earlier, Mr. Reitzin also challenged the application on the basis that the evidence in support of the application could not be relied on. Based on his several complaints he believed that the affidavit evidence was not in keeping with the rules of evidence.

[96] Importantly, while I have considered the affidavit evidence, it did not weigh heavily in my deliberations. I did not find it necessary to determine whether or not Miss Wood had been made redundant, or to determine whether she was paid a redundancy package. Those issues which are in dispute on the pleadings and as raised on the defendants' affidavit evidence respectively, are not for my consideration at this stage.

[97] Where the defendants are asking the court to decline to exercise its jurisdiction to entertain the Claimant's claim, the duty of the court is not to assess the strength or weakness of the affidavit evidence or the claim itself to determine whose version of events is believed. These are issue for a trial judge.

[98] In my view, based on the challenges raised by the defendants, the court is to concern itself only with the claimant's pleadings to ascertain whether this court has jurisdiction to determine her claim.

[99] The considerations the court must make are therefore similar to those made in an application to strike out a claim. In this case the court must scrutinize the pleadings to determine Miss Wood's cause of action and whether the court has jurisdiction to determine her claim.

[100] In my analysis I have therefore contrasted wrongful dismissal at common law with unfair or unjustifiable dismissal.

WRONGFUL/UNALAWFUL DISMISSAL

[101] At common law either party to a contract of employment has a right to terminate the contract by giving reasonable notice. This is so even if there is no legitimate reason for terminating the contract. There is no "right" to employment and no "right" to hold a particular job/position.

[102] In **Wallace v United Grain Growers Limited** 152 DLR (4th) 1 the court held that:

> *"The action for wrongful dismissal is based on the implied obligation in the employment contract to give reasonable notice of an intention to terminate the relationship (or pay in lieu thereof) in the absence of just cause for dismissal… A wrongful dismissal action is not concerned with the wrongness or rightness of the dismissal itself. Far from making a dismissal a wrong, the law enables both employer and employee to terminate the employment relationship without cause. A wrong arises only if the employer breaches the contract by failing to give the dismissed employee reasonable notice of termination." (emphasis mine)*

[103] The remedy for wrongful or unlawful dismissal is damages. The contract of employment is like any other contract and thus the award of damages is to put the employee in the place she would have been in had her employer not breached their contract. The measure of damages for wrongful or unlawful dismissal is therefore the prescribed statutory remuneration that the employee should have been paid where the employer had not breached the employment contract.

[104] Carey, JA explained it this way in **Kaiser Bauxite Company Limited v Vincent Caden** [1983] JLR 168 CA when he said:

> *"The plaintiff's claim is founded in contract, not tort, and the general rule as respects damages in breach of contract is the loss flowing from the breach. In the case of wrongful dismissal, that would be the estimated pecuniary loss resulting as a reasonable and probable consequence from the premature determination of the employee's service, subject to the plaintiff's obligation to mitigate his loss, he would be entitled to wages due and payable for the agreed period of service."*

[105] In that case Mr. Caden sought damages in the lower court for the highhanded manner in which his contract was terminated after thirteen years of service to the appellant company. Carey, JA underscored that there is no award of damages for the employer's actions when the employee is dismissed.

[106] In a characteristically, clear and detailed decision, Brooks, P in **Gabbidon v Sagicor Bank** traces the development of the law of wrongful dismissal in the United Kingdom and provides a comparative outline of the development of unlawful dismissal in other commonwealth jurisdictions. He then addresses his mind to the development of wrongful dismissal and unfair dismissal in this jurisdiction.

[107] In his introduction he boldly states that:

> *"A common law principle regarding wrongful dismissal has remained virtually unchanged for over 100 years. In 1908, the House of Lords, in Addis v Gramophone Company Limited 1909 AC 488; [1908-1910] All ER Rep 1, HL (Addis), stated that, although an employee was entitled to damages for the loss suffered as a result of the employer's failure to give proper notice of termination, damages will not be awarded to the employee for the manner of the dismissal, the actual loss of the job, or pain and distress that may have been suffered, as a consequence of the contract of employment having been terminated."*

UNJUSTIFIABLE DISMISSAL/UNFAIR DISMISSAL

[108] In April 1975, parliament enacted the Labour Relations and Industrial Disputes Act (LRA IDA). As Corthesy and Harris -Roper in their text Commonwealth Caribbean Employment Law and Labour Law (1st Ed) posit, the act did not create a statutory right against unfair dismissal in Jamaica. Instead, parliament gave the Industrial Disputes Tribunal (IDT) the power to reinstate workers who they deemed to have been unjustifiably dismissed.

[109] The authors make the point that in this jurisdiction, the legislation refers to unjustifiable and not unfair dismissal.

[110] Unjustifiable dismissal is therefore a creature of statute and was created to provide employees with protection from the arbitrary dismissal practices of some

employers. As Smith CJ said in **R v Minister of Labour and Employment, The Industrial Disputes Tribunal, Devon Barrett et al**

> *"… the provision of unfair dismissal protection was designed to achieve a number of objectives. Together with [UK] Contracts of Employment Act 1963 and Redundancy Payments Act… it marked a trend towards recognizing that the employee has an interest in the job which is akin to a property right. A person's job can no longer be treated as a purely contractual right which the employer can terminate by giving an appropriate contractual notice.*
>
> *… **in essence unfair dismissal differs from the common law in that it permits tribunals to review the reasons for dismissal.** It is not enough that the employer terminates the contract. If he terminates it in breach of the Act; even if it is lawful termination at common law, the dismissal will be unfair. **So the Act questions the exercise of managerial prerogative in a far more fundamental way than the common law will do."** (emphasis mine)*

[111] Rattray P, provided an explanation for the necessity for this parliamentary intervention in enacting the LRIDA in **Village Resorts Limited v The Industrial Disputes Tribunal and Others** (1998) 35 JLR 292, where he expressed the view that:

> *"The relationship between employer and employee confers a status on both the person employed and the person employing. Even by virtue of the modern change of nomenclature from master and servant to employer and employee there is clear indication that the rigidities of the former relationships have been ameliorated by the infusion of a more satisfactory balance between the contributors in the productive process and the creation of wealth in the society.*
>
> *…The legislators have made their own contribution by enacting laws to achieve that purpose, of which the Labour Relations and Industrial Disputes Act is an outstanding example. The law of employment provides clear evidence of a developing movement in this field from contract to status. For the majority of us in the Caribbean, the inheritors of a slave society, the movements have been cyclic, - first from the status of slave to the strictness of contract, and now to an accommodating coalescence of both status and contract, in which the contract is still very relevant though the rigidities of its enforcement have been ameliorated. To achieve this Parliament has legislated a distinct environment including the creation of a specialized forum, not for the trial of actions but for the settlement of disputes.*
>
> *…*

> *The Labour Relations and Industrial Disputes Act is not a consolidation of existing common law principles in the field of employment. It creates a new regime with new rights, obligations and remedies in a dynamic social environment radically changed, particularly with respect to the employer/employee relationship at the workplace, from the pre-industrial context of the common law. The mandate to the Tribunal, if it finds the dismissal 'unjustifiable' is the provision of remedies unknown to the common law."*

[112] Lord Hoffman echoed similar sentiments in **Johnson v Unisys** which was adopted by Brooks, P in **Gabbidon v Sagicor Bank Jamaica Limited**- he said:

> *"… the statutory system for dealing with unfair dismissals was set up by Parliament to deal with the recognised deficiencies of the law as it stood… The remedy adopted by Parliament was not to build upon the common law by creating a statutory implied term that the power of dismissal should be exercised fairly or in good faith, leaving the courts to give a remedy on general principles of contractual damages. Instead, it set up an entirely new system outside the ordinary courts, with tribunals staffed by a majority of lay members applying new statutory concepts and offering statutory remedies. Many of the new rules… were not based upon any principle which it would have been open to the courts to apply. They were based upon policy and represented an attempt to balance fairness to employees against the general economic interests of the community."*

Important to these proceedings as Brooks, P concludes at paragraph [90] in **Gabbidon:**

> *"**Based on the above analysis, it must be held that, in this country, there is a comprehensive alternative statutory scheme for providing a remedy where an employee is unfairly dismissed. The Addis principle and the Johnson v Unisys approach should be followed, namely, that there is no right of action for damages for an alleged breach of trust and confidence, where that breach is what led to the dismissal, or for loss which flows from the manner of dismissal. It is for the IDT, in an appropriate case, to determine if such a dismissal, is unfair, and worthy of compensation."** (emphasis mine)*

[113] **Gabbidon** was followed by **United General Insurance Company Limited v Marilyn Hamilton** [2020] JMCA Civ 29 and again Brooks, P delivered the decision on behalf of the court. He found that the trial judge erred in awarding the Respondent two additional years' notice pay as compensation for the manner in which she was dismissed. He reiterated his earlier findings in **Gabbidon** when he held that "insofar *as the law of wrongful dismissal is concerned, the learned judge*

erred when she found that the Addis principle was no longer applicable to circumstances such as the dismissal in this case."

[114] It is important to point out that in **Gabbidon,** Brooks, P distinguished **Malik v Bank of Credit and Commerce International SA (in liquidation) et al** [1997]3 All ER 1. He made special mention of this case which he said was not a 'manner of dismissal' case. The decision of the House of Lords in **Malik** was clearly based on the peculiar facts of that case.

[115] Corthesey and Harris- Roper **(Commonwealth Caribbean Employment Law)** refer to Malik as a "stigma" case and not a manner of dismissal case. In explaining the House of Lord's decision they submit that "the court carved out a new head of damages where the employer (by virtue of the dishonest way in which it operated its business) breached the implied contractual term of mutual trust and confidence, thereby making it virtually impossible for the employee to source work after being dismissed. The stigma attached to the employee must, however result in an ascertainable financial loss, recoverable as damages, and does not extend to an employer's actions occurring at dismissal …" Indeed, subsequent decisions have said that **Malik** was decided on its own facts.

[116] Turning to the facts of this case, Miss Wood's claim is essentially that 1st Defendant purported to carry out a redundancy exercise but in truth her post was never made redundant and she was therefore summarily dismissed. Relying on the very words on which she hoisted her claim for defamation, she has complained that the 1st and 2nd Defendants' use of these words breached the implied term of mutual trust and confidence. She alleges that the 2nd and 3rd Defendants accused her of being a thief and implied that she could not be trusted.

[117] In determining whether Miss Wood's claim is for wrongful dismissal or unjustifiable dismissal, I have first considered the measure of damages that she is seeking. The information she intends to rely on is outlined at paragraph [91]. She has said that she was earning $16,000 fortnightly when she was dismissed, she did not work for 2 years and thereafter she has been employed as a charcoal vendor but she has been barely able to put food on her table.

[118] The measure of damages for wrongful dismissal at common law is the amount of the employee's statutory entitlement under the ETRPA which she should have received at the time of her dismissal, in addition to the value of any accrued vacation leave or other accrued benefits.

[119] This court certainly cannot consider anything other than evidence as to her statutory entitlement. She would have also had to specifically plead this entitlement as it is a measure of special damages.

[120] This information included in her statement of case clearly indicates that she is seeking a sum of damages that is much greater than any statutory entitlement she would be entitled to receive under EPTRPA. The legislation provides that an employee should receive 2 or 3 weeks' salary for each year of their employment.

[121] In considering the issues that a court will have to determine at trial, Miss Wood is essentially asking the court to enquire into whether there was a true redundancy exercise at ARC MFG, and whether her position was actually made redundant. Ultimately she is asking the court to determine whether she was unjustifiably dismissed.

[122] As I have said earlier in this judgment, at common law, there is no right to employment. An employer is entitled to terminate the contract of employment and can lawfully do so even if he has no justifiable reason to terminate the contract, provided that he gives the employee the proper statutory notice or payment in lieu of notice.

[123] An employee who believes that she has been unjustifiably or unfairly dismissed has no remedy before this court but must file a complaint with the Minister of Labour who will determine whether there is a dispute between the employer and employee. Where he determines that a dispute exists he will refer the dispute to the IDT.

[124] This court lacks the jurisdiction to enquire into whether or not ARC MFG had a justifiable reason to dismiss Miss Wood, or whether or not her post at the company was actually made redundant.

[125] Only the Industrial Disputes Tribunal can consider such a claim which is really a dispute between ARC MFG and Sandy Marie Wood which must be determined under the LRAIDA, the legislation specially enacted by parliament to address these disputes and enquire into the manner or merits of the dismissal.

[126] This court cannot award any damages for any breach of the implied term of mutual trust and confidence.

[127] The defendants have made a compelling argument that Miss Wood's claim for wrongful dismissal is really a claim for unfair/unjustifiable dismissal. I find that Miss Wood in her claim is complaining about the manner of her dismissal and whether the 1st defendant had just cause to terminate her contract of employment. I must accept their submissions and I find that Miss Woods claim is for unjustifiable (unfair) dismissal and not wrongful dismissal.

[128] I make a further finding that this court lacks the jurisdiction to hear and determine Miss Wood's claim and provide her with the remedy she seeks. Similarly, this court has no jurisdiction to award damages for breach of the implied term of mutual trust and confidence.

[129] Sinclair-Haynes, J (as she then was) was faced with similar circumstances in **Lindon Brown v Jamaica Flour Mills Ltd**. (Unreported, Supreme Court of Jamaica delivered July 16, 2003). (See Caribbean Commonwealth Employment

Law page 155) Mr. Lindon Brown filed a claim for wrongful and unfair dismissal in this court. The learned judge was of the opinion that Mr. Brown having commenced his claim in the court by doing so invoked the court's common law jurisdiction she concluded that:

> *"It is axiomatic that this claim was instituted for wrongful dismissal at common law. The claimant is therefore deprived of the remedies which would have been available to him had he proceeded under the LRIDA. He is denied the right to any security of employment and the right to a humane manner of dismissal, which the LRIDA and its Code would have accorded him."*

[130] After I read this decision, Mr. Romario Miller counsel representing the 4th Defendant enquired whether the court was minded to strike out the claim for defamation as against the 4th Defendant in light of the court's findings on this cause of action in relation to the 1st to 3rd Defendants.

[131] Mr. Reitzin was invited to respond as the court should not make orders which are not prayed in an application without more. Mr. Reitzin said there was no application before the court in relation to the 4th Defendant to strike out the claim as being an abuse of the process of the court.

DISPOSITION

[132] In disposing of this claim the following orders are made:

1. The application for summary judgment is refused.

2. The claim form filed on July 30, 2020 and the amended particulars of claim filed on August 5, 2022 in so far as it relates to a claim for defamation is struck out as against the 1st to 3rd Defendants; ARC Manufacturing Company Limited, Lackie Horne and Charlotte Alexander respectively as being an abuse of the process of the court and likely to obstruct the just disposal of the proceedings pursuant to CPR Rule 26.3 (1) (b).

3. The 1st to 3rd Defendants are granted an extension of time to make the application for permission to apply for the Court to deny jurisdiction pursuant to CPR Rule 9.6. and the application filed on February 21, 2021 is permitted to stand.

4. Pursuant to CPR Rule 9.6 the court will not exercise its jurisdiction to hear this claim against the 1-3rd Defendants in so far as it relates to a claim for wrongful dismissal, which the court has found to be a claim for unjustifiable dismissal and the claim for breach of the implied term of mutual trust and confidence, as this court has no jurisdiction to hear such a claim.

5. Judgment is entered against the Claimant in favour of the first, second and third Defendants on this claim.

6. The 4th Defendant is permitted to file a formal notice of application with supporting affidavit and serve same on the claimant together with written submissions and a list of authorities within 14 days of the date of this order.

7. The Claimant is permitted to respond to any application filed by the 4th Defendant and should file and serve written submissions and a list of authorities within 14 days of receipt of any application filed by the 4th Defendant.

8. Counsel for the Claimant and 4th Defendant are to attend before the court on April 9, 2024 at 10:30 am.

9. The Costs of this Application are to the 1st to 3rd Defendants to be taxed if not agreed.

10. Counsel for the 1-3rd Defendants are to prepare, file and serve this order on counsel for the Claimant.