

COMPANY LAW

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV 2011/0352

IN THE MATTER OF SECTION 241 OF THE COMPANIES ACT, NO. 21 OF 1994

BETWEEN:

[1] LETITIA BUTLER-MOSES

[2] AYANNA PRINGLE (As Personal Representatives of Ian Pringle, deceased)

Applicants

and

**[1] HENRY SHILLINGFORD (As Personal Representative of the estate of ELAINE
PRINGLE-TOULON)**

[2] SOLANGE DEWHURST

[3] ROSANNE PRINGLE

[4] LEASE ENTERPRISES LTD

Respondents

Appearances:

Heather Felix Evans of Optimum Services for the Applicants

Hugh Marshall and Henry Shillingford for the Respondents

2019, June 14, 19

December

RULING ON WRITTEN SUBMISSIONS

- [1] **STEPHENSON J.:** The claimants are the administrators and along with other siblings are also beneficiaries of the estate of Ian Pringle deceased (“Ian”). The defendants in this matter are Attorney at Law, Henry M S Shillingford in his capacity as Personal Representative of the Estate of Elaine Pringle-Toulon deceased,¹ Solange Dewhurst and Roseanne Pringle who are the sisters of Ian Pringle Deceased and the daughters of Mrs Pringle Toulon and Lease Enterprises Limited was a company owned and operated by Ian Pringle deceased and the Mrs Pringle Toulon which was managed by Ian and his mother. (“the defendants”)
- [2] This case concerns the estate of Ian Pringle which includes commercial entities which were controlled by his now late mother Elaine Pringle Toulon to the exclusion of the claimants who are the beneficiaries of their father’s estate.

The Background

- [3] The claimants at the time of their father’s death were very young and had no firsthand knowledge of their deceased father’s personal, business affairs or his assets. Mrs Pringle Toulon Ian’s mother, it is claimed by the claimants, was seised with this information and she after the death of her son took over the management and control of their father’s personal and business affairs and the management of his business and assets. This, it was alleged, was to the exclusion of them the beneficiaries of the estate of Ian Pringle.
- [4] In 2009 the claimants obtained letters of administration to their father’s estate. The claimants filed this claim against the defendants in November 2011 seeking relief under section 241 of the Companies Act. These proceedings were stayed which stay was lifted by order of this court². The claimants now seek to proceed with this matter.

¹ Mrs Pringle Toulon died in December 2016 and Mr Henry M S Shillingford was appointed the Personal Representative of her Estate and he was substituted as first named defendant

² Order of Court dated 29th March 2019

[5] There have been a number of applications with affidavits and numerous exhibits and written submissions file by both sides in this matter which the court will identify and deal with each issue separately.

Defendants' Application to strike out the Fixed Date Claim, the Amended Fixed Date Claim and the Re-Amended Fixed Date Claim and Claimants' application to deem amendment and re-amendment properly filed.

The Defendants' submissions

[6] On the 11th June 2019 the defendants made the following application: to strike out the fixed date claim³ as an abuse of process and likewise the amended fixed date claim⁴ and re-amended fixed date claim⁵. The defendants assert that:

- a. the claimants filed their amended and re-amended claim without the courts leave and in that these purported amendments were done after the first case management conference in the case at bar which took place on the 20th January 2012 and is therefore the purported amendments are in contravention of Part 20 of CPR 2000 and are a nullity;
- b. the defendants also contend that the claimants failed to bring forth and litigate their whole case when they had to opportunity to do so in DOMHCV2010/0282. In that case the defendants contend the subject matter of the case at bar was brought by way of counterclaim filed on the 11th day of April 2011 which claim was brought by the first and fourth named Applicants/defendants which was withdrawn on the first day of trial of DOMHCB292/2010. That there was no impediment at that time to the claimant prosecuting their claim That they were in that matter made to defend the counterclaim brought against them with related costs up to the time when the counterclaim was withdrawn, and now the claimants are seeking to have them answer the very same questions already answered in their defence to counterclaim in DOMHCV2010/0282. That the attempt by the claimants to now litigate the issues which they could have litigated

³ Filed on the 10th November 2011

⁴ Filed on the 13th May 2019

⁵ Filed on the 23rd May 2019

before and failed to do so amounts to an abuse of process and should therefore be dismissed;

- c. the defendants also assert that they are placed at a disadvantage by the lapse of time in view of the fact that the first named defendant is now deceased and in the circumstances will be unable to give evidence or make any contribution to the defence of the case; and
- d. that they are being greatly prejudiced by being made to pay costs to defend proceedings that they were prepared to defend before and which ought rightly to have been disposed of in DOMHCV2010/0282.

The Claimant submissions in response to Application for Amendment and Re Amendment of the Fixed Date Claim to be struck out

[7] The claimants responded to the defendants' application to strike the amendment and re amendment by applying to have the said amendment and re amendment filed without leave of the court deemed properly filed. It was conceded by the claimants that Leave of the court ought to have been obtained. However, Learned Counsel Mrs Heather Felix Evans sought to have this court to exercise its discretion not to strike out the proposed amendment and re-amendment. Learned counsel drew to the court's attention that the first hearing in this matter was set for the 20th January 2012 when there was an application made to consolidate this matter with DOMHCV2010/0282 which application was never granted and a stay was placed on this matter which stay was subsequently lifted by this court. That failure to apply for leave to amend was due to inadvertence based on the fact that the first hearing date had long come and gone and in fact no first hearing was ever heard.

[8] Learned Counsel pointed out that the stay that was granted was granted before the first hearing and the stay was in place for 7 years and the action by the claimants to amend and re-amend their claim has in fact been made before the refixture of the first hearing and that there would be no judicial time lost or wasted if the claimants amendments were allowed.

[9] Learned counsel outlined in her application that the amendments that were being sought do not in any way add anything new to the case at bar however the amendments do not fundamentally or at all change the basis of the claim, what they are seeking to do is to state the claim more clearly, precisely and directly the grounds of the claim and remedies being sought by the claimants.

[10] Learned Counsel in her submissions stated that the failure to obtain leave was a procedural failure for which there is no sanction. Counsel made reference to Part 26.9 of the CPR which provides that a procedural error or failure to comply with the rules does not invalidate the steps taken in the proceeding unless the court so orders. Further that Part 26.9(3) and(4) the court may make an order to rectify the situation.

[11] Learned Counsel made reference to the cases of **Darrel Montrope –v- The Public Service Commission et anor**⁶ and **Attasi et anr –v- Murtada et al**⁷ in support of her submissions that when all the facts and circumstances of the matter is considered the court would be giving effect to the overriding objective of CPR to matters right by deeming the amended pleadings properly filed.

Court's Consideration & Conclusion

[12] Rule 26. 9 of CPR deals with the courts general power to rectify matters where there has been a procedural error. The Rule applies:

- (1) Only where the consequence of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order.
- (2) An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless the court so orders
- (3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.
- (4) The court may make such an order on or without an application by a party."

⁶ SLUHCV2017/0395

⁷ SKBHCV2015/0283

[13] This rule applies only where the consequence of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order. Rule 20.1 does not provide the consequence for failure to comply to the requirements.

[14] The Court has a very broad discretionary power under CPR 26.9 which, however, cannot be exercised in a vacuum or on a impulse. The court's discretion at all time must be exercised judicially and in accordance with well-established principles. It is trite law that in the exercise of this discretion, the court must seek to give effect to the overriding objective which is to ensure that justice is done as between the parties.

[15] The court is of the view that considering all the circumstances of this case the claimant's amendments and re-amendments without first obtaining leave is a procedural error and the court has and will exercise its discretion in these circumstances to put matters right. Having examined the amendments and re-amendments against the claim being brought, this court finds that the defendants would not be prejudiced by the amendments and re-amendments sought.

[16] This court would also take into consideration that the matter is still at case management stage and a trial date would not have been affected. Further this court is of the view that this is a matter where there should be a vigorous and conscientious effort by the parties herein to settle this matter. In fact at the end of the consideration of this interlocutory skirmish this court has every intention of making a mediation order and encourages the parties to settle the matter to bring it to a swift end that would more likely than not give the parties an opportunity to manage the outcome of the affairs of the estate of Ian Pringle deceased.

[17] The defendants' application in so far as striking the claimants' amendments and re-amendments is denied and the claimants' application to deem their amendments and re-amendments is granted.

Defendants' Application to strike out the entire claim as an Abuse of Process

The Defendants' submissions in support of their application

[18] The defendants have applied for the claim to be struck out in its entirety on the ground that the claim amounts to an abuse of process. Mr Henry M Shillingford who formerly had conduct of this matter and who consequent on his being appointed Executor of the will of the first named defendant has been substituted as the first defendant and has transformed into a party to the matter. He swore to an affidavit on the 11 June 2019 in support of the application to strike.

[19] Mr Shillingford avers that in the previous matter DOMHCV2010/0282, the claimants who were the defendants in that matter filed a counterclaim and the contents and the issues raised by that counterclaim was that In Pringle deceased held 50% beneficial interest in Lease Enterprises Ltd ("Lease") and the claimant in their counterclaim sought a full accounting of the assets of Lease and other related relief. That the reliefs sought in the proceedings in the case at bar were pleaded in the previous matter. Mr Shillingford exhibited the counterclaim filed in the former matter in support of his statement.

[20] Mr Shillingford averred that the contentions in the counterclaim were rigorously defended by the then claimants (now defendants) up to the date of trial and on the first date of trial the now claimants discontinued the counterclaim there was no order as to costs made in favour of the then claimants and all the money and time invested by the then claimants went down the drain.

[21] Mr Shillingford spoke to the fact that despite the contents of the counterclaim the claimants in the matter at bar filed this claim concurrently with the previous claim which claim was stayed pending the determination of DOMHCV2010/0282. That against the objections of the defendants herein the stay was lifted by order of court in March 2019, this court having ruled that the matters pertaining to this suit had not been litigated in the previous suit. Mr Shillingford sought to opine that this matter is an abuse of process as it brings repeated actions before the court which amounts to hounding the defendants and lends itself to continuing litigation.

[22] Mr Shillingford further averred that there were no special circumstances extant that prevented the claimants from prosecuting their counterclaim in DOMHCV2010/0282 which sought the same relief as they are seeking in the case at bar.

[23] Mr Shillingford also spoke to the fact that the defendants in the current case are greatly prejudiced by the passing of their mother who is the one who is to answer to the questions put by the claimants in the case at bar. Miss Roseanne Pringle filed an affidavit in support of the defendants' application which more or less mirrored the averments of Mr Shillingford regarding the question of abuse of process and therefore I will not repeat same.

[24] In the submissions regarding striking out the claim as an abuse of process Learned Counsel Mr Hugh Marshall in part repeated the averments made in the affidavits of Mr Shillingford and Miss Pringle. He also submitted that when this case was initially commenced an application was made to consolidate it with DOMHCV2010/0282 on the grounds that both actions essentially sought the same relief between essentially the same parties. Counsel submitted that the consolidation application was not granted however the case at bar was stayed pending the hearing and outcome of DOMHCV2010/0282. Learned Counsel submitted that the court acted in this matter so as to avoid a multiplicity of proceedings.

[25] Mr Marshall submits that the abuse that the defendants are seeking to avoid is the rule of public policy based on the desirability, in general interest as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do.⁸

[26] Learned Counsel went onto submit⁹ that the principle applies where a party has brought successive claims against the essentially same party seeking essentially the same remedy. Further that it also applies where the claimant in an earlier action should have or could have pursued their claim but did not. That equally it applies where the matter in the later claim could have been brought in the earlier claim but was not. Counsel relied on the case of **Bradford & Bingley Building Society –v- Malcolm Wolstenholme Seddon et al**¹⁰ in support of his statement.

[27] Mr Marshall submitted that court does not condone parties bringing the same question before it for determination in more than one action. That the court's general position is to avoid a multiplicity of

⁸ See paragraph 11 of the Defendants submission filed on the 12 June 2019

⁹ See paragraph 12 of the Defendants' submissions filed on the 12 June 2019

¹⁰ [1999] 1 WLR 1482

actions. It was submitted that in the case at bar the claimants are seeking to litigate issues that could have been litigated four years ago and that they discontinued their counterclaim which according to learned Counsel Mr Marshall the court had directed should determine the issue between the parties.

[28] I pause to state that I was unable to discern why the court firstly refused to consolidate these two actions and why the stay was imposed. There was nothing on the court's file to give any indication of the judge's thinking. This I mentioned in the court ruling to the application to lift the stay¹¹.

The Claimants' response to Application for Matter to Be Struck Out As Being an Abuse of Process

[29] Learned Counsel Mrs Heather Felix Evans on behalf of the claimants dealt with the defendant's application in very short terms. She submitted that the defendants were seeking to argue that which they argued in opposing the claimants' application to lift the stay and that those arguments were already dealt with by the court in its judgment. Counsel submitted that the arguments raised by the defendant in their application to strike out the claimant's claim as an abuse of process was already ventilated and rejected by the court, therefore in the circumstances they ought not to be allowed to relitigate that which has already been argued and decided upon. That the issue is *res judicata* and to permit the defendant to relitigate the issue would in fact constitute an abuse of process of Court.

[30] Counsel Felix Evans submitted that if the defendants were dissatisfied with the court's ruling to lift the stay of execution they ought to have appealed the said ruling.

Court's Consideration & Conclusion

[31] I agree with the submissions of Mrs Felix Evans as it regards this application. In my ruling in the application for the lift of stay of proceedings this is what this court had this to say

"This court does not agree that the matters discontinued were litigated. There was no evidence led or submissions made on the matters which were discontinued, so therefore they were not litigated as contended by the defendants and there can therefore be no abuse of

¹¹ Paragraph 10 of Ruling of this court in the application to lift stay of proceedings delivered on the 29th March 2019

process in the circumstances of the case at bar. There has been no definitive judgment on the issues discontinued.”¹²

[32] Further, in that judgment it was noted that when the claimant (then defendants) sought to discontinue the proceedings there was no objection by the then claimants now defendants, neither was there an application for costs which would have been rightly made had this been done.

[33] This application which the defendants now seek to bring has been litigated before this court and ruled on already and to attempt to do so by the defendants is an attempt by the defendant to place before the court arguments which they have placed before the court before and lost on which is in and of itself an abuse of the process of court. The application by the defendants to strike this matter out as an abuse of process therefore fails.

The Freezing Injunction:

[34] On the 23rd May 2019 the claimants filed for and obtained an ex parte freezing order from this court in short, preventing the defendants from removing from Dominica or in any way disposing of or dealing with or diminishing the value of any of their assets up to the value of EC\$600,000.00. This order made reference to a number of properties including bank accounts, various real properties in the names of defendants.

[35] The defendants on the 11th June 2019 applied to have the injunction granted discharged as against the first, second and third named defendants and varied as against the 4th named defendant to restrain the disposition of its shareholding and assets.

[36] The application to discharge and vary the injunction was supported by affidavit sworn to by Rosanne Pringle and filed on the 11th June 2019. Miss Pringle avers that the personal bank accounts of the both she and her sister the Solange Dewhurst¹³(“Solange”¹⁴) have been frozen as a result of the ex parte freezing order causing embarrassment and excessive hardship on them and that they have

¹² Ibid para 45

¹³ The third and second named defendants respectively

¹⁴ NO disrespect meant by using this party’s first name

both sustained injury and loss. Miss Pringle further avers that the monies that have been frozen have nothing to do with the claims in the case at bar.

[37] Miss Pringle further avers that neither she nor her sister Solange have done anything neither do they have any intentions of disposing of the assets of Lease Enterprises Ltd. ("Lease")¹⁵. Miss Pringle in her affidavit prayed that the injunction granted against the first three defendants in the case at bar should be dismissed and that provision should be made that the shareholdings of the Lease should not be transferred or otherwise encumbered.

Defendants' submissions vis a vis the injunction:

[38] Learned Counsel Mr Hugh Marshall Jr. on behalf of the defendants submits that there are essentially two grounds for the making and continuation of a freezing order. That the applicant must have a good arguable case and that there must be a real risk of dissipation of the assets. It is the defendants' contention that the claimants' case does not establish these two grounds and the interim order ought in the circumstances to be dismissed.

[39] The essence of the defendants' argument against the continuation of the freezing injunction obtained against the first, second and third named defendants is that the monies in the personal bank accounts of these defendants have been derived from their personal income and livelihood which have nothing to do with the fourth defendant or the matters before the court and therefore has no bearing on the outcome of any possible decision in this matter. That "*...the injunction as against the 1st, 2nd, and 3rd Defendants has no legitimate purpose as against them and is unrelated to the injunction granted. ...*"¹⁶

[40] The first to third defendants also contend that in the case at bar there are no personal claims brought against them and so they question why it is that their personal assets have been frozen

[41] The defendants also contend that no expenditure or disposition of assets have been brought to the court's attention which would warrant or support the grant of the injunction obtained. Further that the

¹⁵ The fourth named defendant

¹⁶ Paragraph 18 of the submissions filed on behalf of the defendant on 12 June 2019

claimants have not produced evidence to show the court that should there be a judgment for the transfer of shares that it would go unsatisfied.

The Claimants' Case for the continuation of the injunction

[42] The claim at bar is being made pursuant to section 241 of the Companies Act 1994¹⁷. It is the claimants' contention that Lease was a company owned jointly by their deceased father and grandmother. That since their father's death that the defendants carried on and conducted the business affairs of Lease, further that they exercised the powers as directors of the said company in a manner that was oppressive and unfairly prejudicial towards them or that they unfairly disregarded the interest of their father's estate.

[43] In their application for the freezing injunction the claimants contend that there are a number of real properties and bank accounts which are owned by Lease for which there has been no accounting. The claimants contend that there are properties registered in the name of Lease and in the name of their deceased father which was being dealt¹⁸ with by the defendants to their exclusion.

[44] The claimants also contend that they have a good arguable case with a good chance of success.

[45] It is also the claimants' contention that when their grandmother who was the first defendant in the matter died that her estate was administered by the current first named defendant Mr Shillingford, and that the declaration made as to her estate was not accurate leaving them with the view that the defendants were taking every possible action to hide, dissipate or deal with the resources of Lease so that in the event they obtain judgments that judgment would be an empty one.

[46] The claimants also assert that Lease has over the years earned substantial income from its property including rent from property located in Portsmouth, sold property in Belfast for the sum of \$900,000.00 EC currency and in the circumstances should or ought to be in possession of substantial sums of monies from these activities.

¹⁷ Act no. 21 of 1994

¹⁸ The claimants contend that properties were continuously rented out over many years and some sold

[47] It is the claimants' case that their grandmother died on the 14th November 2016 at the age of 92 and that she was a business women here in Dominica and that in the latter part of her life her daughters the second and third named defendants conducted business and managed her affairs by virtue of powers of attorneys executed in their favour by their mother.

[48] Learned Counsel Heather Felix Evans on behalf of the Claimants submits that the purpose of the freezing injunction is to stop the *"injunctioned defendant dissipating or disposing of property which could be the subject of enforcement in the claimant goes on to win the case it has brought, and not to give the claimant security for his claim."*¹⁹

[49] Learned Counsel submitted that an injunction is a discretionary remedy which can be granted where it is just and convenient so to do. Counsel submitted that this discretion could be exercised in circumstances where the court is satisfied that property held in the name of a third party against whom there is no substantive relief holds those assets that are arguably the property of the principal defendant.

[50] Learned Counsel urged the court to consider two of the stated principles in the **JSC BTA Bank Case**²⁰ that is the enforcement principle and the flexibility principle. Counsel submitted that the "court's jurisdiction to make a freezing order should be exercised in a flexible and adaptable manner so as to be able to deal with new situations and new ways used by the sophisticated and wily operators to make themselves immune to the court's order or deliberately thwart the effective enforcement of those orders."²¹

[51] Learned Counsel made detailed reference to the three pronged test to be applied by the court:

- a. that there is a good arguable case on the merits of the substantive claim;
- b. whether or not the defendants have assets within the jurisdiction or if there are no or insufficient assets within the jurisdiction assets outside? and

¹⁹ Paragraph 6 of the submissions filed on the 17th June 2019 quoting from JSC BTA Bank –v- Ablyazov [2014] 1 WLR 1414 (The JSC BTA Bank Case)

²⁰ *supra*

²¹ See Paragraph 9 of the Claimants Submissions *supra*

- c. Is there a real good risk of dissipation of assets such that there is a real risk of a judgment in the claimants' favour going unsatisfied if the injunction is not granted?

[52] Learned Counsel Felix Evans relied on the following authorities among others in support of her submissions:

- i. **Ketchum International –v- Group Public Relations**²²
- ii. **Lindsen Interenational Ltd –v- Hampuss Sea Transport Pte Ltd**²³
- iii. **Ras AL Khaimah Investment Authority et al –c- Bestfort Development LLP**²⁴

[32] The claimants contend that the defendants have from the very beginning of the matter have failed to answer the claims against them. That from the beginning the defendants have filed a defence which in law they submit is unacceptable in that their defence consists of bare denials and no more. Learned counsel submitted that is the kind of defence “with no defence at all” as is stated in the **Lindsen Case**²⁵.

[33] Counsel urged this court to consider that in such a situation like in the said **Lindsen Case** the defendants are more likely to dispose of the assets so as to defeat the claimants' case.

[34] Learned Counsel Mrs Felix Evans points out to this court that the first, second and third defendants have withheld and continue to withhold information about Ian Pringle's shareholding in the fourth named defendant company in order that his estate will not enjoy the rights and benefits as shareholders of Lease. Counsel on behalf of the claimant contends that the behaviour and actions of the defendants i.e. evidence of the fact that they will do anything in their power to ensure that Lease will never have sufficient assets to satisfy any judgment that the claimants will obtain, particularly in view of the strength of the claimants' case against them.

[35] Learned Counsel relied on and quoted the dicta of Christopher Clarke J in support of her submission

²² [1996] 4 ALL E R 374

²³ [2010] All E R (D) 258 (Feb) , [2010] EWHC 303 (Comm)

²⁴ [2017] EWCA 1024

²⁵ Op cit

“Although the existence of any defence and the risk of dissipation were two separate subjects, the former might have some bearing on the court's approach to the latter. A court might, depending on the circumstances, be disposed to regard a defendant with no defence at all as more likely to dispose of assets in order to defeat the claim than one who had a perfectly respectable defence”²⁶

[36] In the claim at bar, the claimants are alleging abusive and oppressive conduct on the part of the defendants as it regards the business of Lease Enterprises Ltd the fourth named defendant (“Lease”) of which they claim to be entitled to 50% of the said company.

[37] The defendants of course vigorously deny this.

[38] The claimants have drawn to the court's attention their concerns about property purchased by their now deceased father which properties were rented and, in some instances, sold without any accounting by the defendants of same.

[39] The claimants contend that at all material times they have been excluded from the conduct of the business affairs of Lease, from meetings, business meetings, general meetings, shareholder's meetings. Further that they have not been provided with any information such as accounts, minutes, financial statements and records. That throughout the years the defendants have willfully excluded them from Lease which they partially own, to their detriment and they have been disallowing them from enjoying the benefit and from partaking in benefits to be derived from their late father's estate.

[40] The claimants contend that there have been actions on the part of the defendants which can be seen as and can amount to defalcation of the company. The claimants contend that arising from all the ongoing commercial activities, the sale of the properties by the defendants since their father's disappearance and subsequent demise there must have been earnings made and dividends paid. The claimants assert that they have not received any such thing and that they have not been provided with any financial information or statements regarding the company.

²⁶ Paragraph 70 of the judgment

[41] The claimants also assert that the defendants' attitude and actions including that their now deceased grandmother has been to make every effort to exclude them to that which they are entitled to.

[42] The claimants contend that they have a serious case with an excellent chance of succeeding.

[43] The claimants have submitted to this court that the defendants have been from the inception of this matter denied them information regarding their father's shareholdings in Lease and continue to do so. Learned Counsel Felix Evans submits that the from continued conduct of the defendants it is clear that they will do anything and everything in their power to ensure that Lease will never have any or sufficient assets to satisfy any judgment in favour of the claimants.

[44] Learned Counsel drew to the court attention that the defendant's now submit that they are greatly prejudiced by their mother's passing as she is the one who "must answer the questions put by the claimants in these proceedings."

[45] The defendants, it was submitted by Counsel Felix Evans, now take the stance that they are unable to provide answers to the claimants' questions. Learned counsel submitted that when the mother was alive she did not speak, all that occurred was a denial on the part of the defendants.

[46] This court pauses to comment that in the many years this court has been dealing with all the matters involving these parties to the best of this court's recollection, the late Mrs Pringle Toulon has ever played an active part in these proceedings and during her life the excuse proffered by her daughters and their counsel has been firstly her refusal to accept her son's demise, then her grief over his demise which was making her ill and her subsequent illness. The defendants at one stage sought to say that their deceased mother lent substantial amounts of money to their brother which had to be recovered.

[47] It is clear to this court that throughout both of these proceedings the defendants have not been forthcoming with information and in fact their posture throughout has been to just barely deny and whatever information has been forthcoming has been after some pressure being applied and the information received really has no way been substantial or satisfactory based on the claimants case as has been presented thus far.

[48] This court once again says that every effort must be made by all the parties herein to settle these proceedings.

Court's Consideration & Conclusion

The Freezing Injunction

[49] The court has jurisdiction to grant a 'freezing injunction' also known as a Mareva Injunction so as to prevent a defendant from disposing of assets² in order to defeat a judgment. The power to grant this order was originally expressed in **Mareva Compania Naviera SA v International Bulkcarriers SA, The Mareva**²⁷ and has now been provided for in the Civil Procedure Rules at Part 17.1(j) which provides that:

“The court may grant interim remedies including- ...

- (j) an order (referred to as a “freezing order”) restraining a party from –
 - (i) dealing with any asset whether located within the jurisdiction or not;
 - (ii) removing from the jurisdiction assets located there; “

[50] The purpose of a freezing injunction is not in any way to improve the position of claimants in a matter but simply to prevent the injustice of a defendant placing assets which might otherwise have been available to satisfy judgment out of the reach of the claimant: **Re: Iraqi Ministry of Defence v Arcepey Shipping Co SA, The Angel Bell**²⁸

[51] A Mareva order as we tend to call it, may be made before or after judgment against defendants, whether or not based in the country in order to restrain the removal of assets from the jurisdiction, to avoid the disposal of or otherwise dealing with assets within the jurisdiction in such a way as to place them beyond the reach of the claimants.

[52] What are assets within the meaning of the Mareva injunction proceedings?

²⁷ (1975) [1980] 1 All ER 213n at 215, [1975] 2 Lloyd's Rep 509–511, CA, per Lord Denning MR,

²⁸ [1981] QB 65, [1980] 1 All ER 480.

“ The standard form of a freezing injunction applies to all the respondent's assets whether or not they are in his own name and whether they are solely or jointly owned including any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. ... A freezing injunction can cover any assets acquired between the grant of the injunction and the eventual execution of judgment”.²⁹

[53] The court in the case **JSC BTA Bank v Solodchenko**³⁰ summarised the principles to be applied in the granting of a freezing injunction as follows:

“(1) that the purpose of a freezing order is to stop the enjoined defendant dissipating or disposing of property which could be the subject of enforcement if the claimant goes on to win the case it has brought, and not to give the claimant security for his claim, this is referred to as “enforcement principle”³¹;

(2) that the jurisdiction to make a freezing order should be exercised in a flexible and adaptable manner so as to be able to deal with new situations and new ways used by sophisticated and wily operators to make themselves immune to the courts' orders or deliberately to thwart the effective enforcement of those orders this is referred to as the flexibility principle);³² and

(3) that, because the consequences of breach are serious, injunction orders must be 'clear and unequivocal' and 'strictly construed' in favour of the person to whom it is directed, that is, the strict construction principle³³.”

²⁹ Halsbury's Volume 11 of the 5th Edition at paragraph Para 596 (Re:TDK Tape Distributor (UK) Ltd v Videochoice Ltd [1985] 3 All ER 345, [1986] 1 WLR 141 (proceeds of life assurance policy maturing after grant of injunction).”

³⁰ [2010] EWCA Civ 1436

³¹ *ibid*

³² *TSB Private Bank International SA v Chabra* [1992] 2 All ER 245, [1992] 1 WLR 231)

³³ *Federal Bank of the Middle East v Hadkinson* [2000] 2 All ER 395, [2000] 1 WLR 1695, CA)

[54] When making a Mareva Injunction consideration must be given to and provision ought to be made in the order to making an allowance for legal expenses and for ordinary living and business expenses of the person against whom the order is being made. The injunction should not inhibit the ordinary course of business or interfere with a defendant's ordinary transactions, especially where third parties are involved. A freezing injunction which would interfere with the normal course of a defendant's business will not be granted in order to protect a purely speculative cause of action and to insert the maximum amount to be restrained in case the defendant has assets which exceed the amount of the claimant's claim.

THE TEST

[55] In **Ninemia Maritime Corp. v Trave Schiffahrtsgesellschaft mbH & Co. KG (The "Niedersachsen")** [1984] 1 All ER 398. Mustill J's laid out the test for the court to consider on an application for a freezing in these terms

"The test to be applied by the court when deciding to exercise its statutory discretion to grant a Mareva injunction to a plaintiff pursuant s 37 of the Supreme Court Act 1981 whenever it 'appears to the court to be just and convenient to do so' is whether, after the plaintiff has shown that he has at least a good arguable case and after considering the whole of the evidence before the court, the refusal of a Mareva injunction would involve a real risk that a judgment or award in the plaintiff's favour would remain unsatisfied because of the defendant's removal of assets from the jurisdiction or dissipation of assets within the jurisdiction."

Alternative or Ancillary Orders

[56] A court can and should consider making ancillary orders to aid the Mareva Injunctions such as making an order for disclosure of documents³⁴; the court may order the defendants to provide further information as to their assets³⁵. Further the court may make an order directing the defendant to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction.³⁶

³⁴ *A J Bekhor & Co Ltd v Bilton* [1981] QB 923, [1981] 2 All ER 565

³⁵ *A v C* [1981] QB 956n, [1980] 2 All ER 347

³⁶ *Den Norske Bank ASA v Antonatos* [1999] QB 271, [1998] 3 All ER 74, CA.

This court is aware that caution must be exercised to avoid the court's order being used to help the claimant establish their claim.

[57] The court may give a direction that the defendant attend and yield themselves up to cross examination to make ancillary orders³⁷ if it is just and convenient so to do.

[58] The court may give directions that the defendant for the delivery up of assets³⁸.

[59] While the issue in the present case is not so much the removal of the assets from the jurisdiction, the underlying principle stands. This court is concerned about the defendants dissipating the assets of Lease in order to avoid the risk of having to satisfy a judgment. The court also bears in mind the hardships experienced by the defendants as expressed in the affidavit of Miss Pringle and the effect that the freezing of the freezing of the personal bank accounts of the defendants is having on them.

[60] The evidence adduced by the defendants; it is **not** in my opinion sufficient to displace any inference to be drawn from the evidence of the claimants in relation to that issue. It is the opinion of this court that allowing the Mareva injunction to remain would merely serve the purpose of allowing the claimants to ensure that there will be assets available to satisfy any judgment obtained. However, the court is of the opinion that the hardship of the defendant is not to ignored. I ask the question regarding the issue of the defendants' hardship whether in all the circumstances of the case whether or not it is just and convenient to continue the granting of the Mareva Injunction. This has to be weighed against the risk of dissipation.

[61] This court is minded not to discharge the injunction as granted but to vary it in such a way that the hardship on the defendants would be alleviated.

[62] This court is also minded to put in place the alternatives which are available to this court in an attempt to deal with this justly and to further the Overriding Objective of CPR. Rule 1.2 of the C.P.R. provides

³⁷ *Otkritie International Investment Management Ltd v Urumov* [2012] EWHC 3106 (Comm), [2012] All ER (D) 192 (Nov)

³⁸ *CBS United Kingdom Ltd v Lambert* [1983] Ch 37, [1982] 3 All ER 237

that:- 'The court must seek to give effect to the overriding objective when interpreting these rules or exercising any powers under `these rules`.' (emphasis mine)

[63] The overriding objective of the C.P.R. is to enable the court to deal with cases justly. Rule 1.1(2) provides that dealing with a case justly includes:-

- (a) ensuring, so far as is practicable, that the parties are on equal footing and are not prejudiced by their financial position;
- (b) saving expense;
- (c) dealing with it in ways which take into consideration-
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases

[64] "Dealing with a case justly is ultimately a matter of judicial discretion and can be one of the most challenging tasks a CPR judge has to perform"³⁹. This court is of the view that every effort should be made by the parties to mediate and settle this matter soonest. This court considers first and foremost that save and except the first named defendant who is involved in the matter at this stage as the Personal Representative of the Estate of Elaine Pringle Toulon, the claimants and the second and third named defendants are closely related they being the aunts of the claimants. The subject matter of the case at bar is about the estate of Ian Pringle who was an immediate family member. The matter is a long outstanding matter than can possibly remain in the system for a very long time to come. Finally, ultimately this court is of the view that it would be in the best interest of the claimants and the second and third defendants to have the matter settled.

³⁹ Exploring the Role of the CPR Judge by Justice Peter Jamadar JA & Kamla Jo Braithwaite. A publication of the Judicial Education Institute of Trinidad and Tobago quoting from Jones JA in the case of **Rain Forest Resorts Limited and another –v- The National Gas Company of Trinidad and Tobago Limited and Super Industrial Services Limited –v- The National Gas Company of Trinidad and Tobago Limited** Civil Appeal Nos 186 & 190 of 2016[29]

[65] In an effort to move this matter along in that direction this court will make the following orders and directions:

- (i) The defendants' application to strike out the amended and re-amended Fixed Date Claim is not granted;
- (ii) The claimant's amended and re-amended Fixed Date Claim Form filed without leave of the court is deemed properly filed;
- (iii) The Mareva Injunction granted against the defendants is continued with the following variation that each of the respondents (defendants) are at liberty to spend the sum of EC\$800.00 per week towards their ordinary living expenses.
- (iv) The defendants to provide further information as to their assets as it relates to Lease on or before the **29th January 2020**
- (v) the defendants are to provide information about the location of relevant property or assets or to provide information about relevant property or assets relating to Lease on or before the **29th January 2020**;
- (vi) the defendant shall deliver to the claimants a full accounting as to the assets of Lease Enterprises on or before the **29th January 2020**;
- (vii) The parties are to attend court on **Monday 6th January 2020** a mediation order to be made.
- (viii) Liberty to apply
- (ix) Costs of these proceedings to be dealt with at mediation;
- (x) This matter is adjourned to the February 28th 2020 for report and or further directions.

[66] The court wishes to express its thanks to Counsel for their written submissions in this matter and continues to encourage the parties to seriously and conscientiously approach mediation with the intention of truly settling these long outstanding matters between them. The court further apologises to Counsel and the parties for the length of time it took for this ruling to be delivered. It was in fact completed since October 2019 but due to the circumstances existing at the High Court Registry there was some delay in having the ruling edited and prepared for delivery. Should there be any typographical or editorial corrections to be made please do not hesitate to draw this to the attention the Court.

M E Birnie Stephenson
High Court Judge

SEAL

BY THE COURT

REGISTRAR