COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMERCIAL DIVISION

2022/COM/COM/00035

IN THE MATTER of an application by **DORIS THOMPSON** for leave to institute proceedings against the Defendants pursuant to section 278(c) of the Companies Act 1992

IN THE MATTER of the Companies Act 1992
(the Act)

AND

IN THE MATTER of ABACO OUTBOARD ENGINES LTD.
(the Company)

BETWEEN

DORIS THOMPSON
(Complainant pursuant to Section 280 of the Act)
Intended Claimant

AND

STEPHEN J. ALBURY
JEFFREY ALBURY
(Sued in their capacity as Officers & Directors of the Company)
Intended Defendants

Before:	**Her Ladyship The Honourable Madam Senior Justice Deborah Fraser**
Appearances:	**Mr. Kahlil Parker KC Ms. Roberta Quant and Ms. Leslie Brown for the Intended Claimant** **Mr. Jacy Whittaker for the Intended Defendants**
Judgment Date:	**18 December 2023**

Sections 278 and 280 of the Companies Act, 1992 – Proper Person under Companies Act, 1992 – Complainant under the Companies Act, 1992 – Inherent Jurisdiction of the Court

JUDGMENT

1. This is an application brought by Ms. Doris Thompson ("**Intended Claimant**") against Messrs. Steven J. Albury and Jeffrey Albury to be recognized as a "Proper Person" pursuant to sections 278 (c) of the Companies Act, 1992 ("**Act**") and under the inherent jurisdiction of the Court.

Background

2. The Intended Claimant commenced an action against Abaco Outboard Engines Ltd ("**Company**") – CLE/GEN/00513 of 2011 for breach of contract due to the Company's failure to provide an engine the Intended Claimant purchased from it for her boat. Default Judgment of Appearance was entered against the Company on 12 April 2011. On 22 November 2013, an assessment of damages was heard before Deputy Registrar Marilyn L. Meeres (as she then was) where she ruled that the assessed total damages owing to the Intended Claimant from the Company was $26,890.75 with interest thereon at the statutory rate. The Intended Claimant entered Final Judgment against the Company on 25 November 2013.

3. Subsequently, on 29 January 2018, an Examination of the Judgment Debtor was heard by Deputy Registrar Camille Darville-Gomez (as she then was) where Mr. Stephen Albury (General Manager, Secretary and Director of the Company – "**Mr. Albury**"): (i) stated that he was aware of the $26,890.75 debt owing to the Intended Claimant; (ii) stated that the Company was in a position to satisfy the debt; and (iii) gave an undertaking on behalf of the Company to pay the debt. The Deputy Registrar read those statements back to Mr. Albury and he confirmed that they were correct. To date, despite several attempts by the Intended Claimant to enforce the judgment, the debt remains owing.

4. Curiously, on 20 July 2022, the Intended Claimant filed another Writ of Summons ("**New Writ**") (though the Intended Claimant has not been deemed a proper person to bring such a claim) as well as a Summons and Affidavit requesting, *inter alia*, an order of the Court pursuant to section 278 (c) of the Companies Act, 1992 ("**Act**") and under the inherent jurisdiction of the court declaring her a fit and proper person to bring an action against the Intended Defendants.

5. The New Writ claims, *inter alia*, breaches of fiduciary duty by the Intended Defendants as well as oppression, unfair oppression and/or disregard by the Intended Defendants as against the Intended Claimant.

6. Prior to the substantive hearing, on 16 August 2022, the Intended Defendants filed an application to have the Intended Claimant's New Writ struck out.

ISSUES

7. The issue that the Court must decide is whether the Intended Claimant is a Proper Person in accordance with section 278 (c) of the Act?

EVIDENCE

Intended Claimant's Evidence

8. On 20 July 2022, the Intended Claimant filed the Affidavit of Shelly N. Beadle ("**Beadle Affidavit**") which provides that: (i) the Intended Claimant brought an action against the Company in Supreme Court Action CLE/GEN/00513 of 2011 – Doris Thompson v Abaco Outboard Engines Ltd and on 12 April 2011 entered Judgment in Default of Appearance against the Company for the sum of $5,995.00, with interest thereon at the statutory rate from the date thereof until payment, damages to be assess and costs to be taxed if not agreed. Assessment of Damages took place on 22 November 2013 before Deputy Registrar Marilyn L. Meeres (as she then was) and damages were assessed at $20,895.75. Accordingly, the total damages assessed was $26,890.75 and the Intended Claimant entered Final Judgment on 25 November 2013 (the Writ of Summons, Judgment in Default of Appearance and Ruling on the assessment of damages and Final Judgment in the initial action are exhibited to the affidavit).

9. The Beadle Affidavit further provides that: (i) the Company managed, operated and controlled by the Intended Defendants have failed to pay the outstanding debt notwithstanding repeated demands for same; (ii) The Intended Defendants were examined together with the first Intended Defendant Mr. Stephen J. Albury, giving evidence on their joint behalf under oath before the Deputy Registrar Mrs. Camille Darville-Gomez (as she then was) and provided evidence (as stated in paragraph 3 of this judgment); (iii) the undertaking under oath by the Intended Defendant that the Company not only had the means to pay but would in fact satisfy the Company's judgment debt to the Intended Claimant, the Company has to date failed to satisfy its indebtedness to the Intended Claimant; and (iv) The Intended Claimant is pursuing the action to ensure that the Intended Defendants do not escape liability for their conduct by not paying the outstanding debt. The affidavit also exhibits a draft Writ of Summons to be filed, should the Court grant leave for the filing of such writ.

Intended Defendants' Evidence

10. The Intended Defendants did not file any affidavits or any other document as evidence in this matter.

SUBMISSIONS

Intended Defendants' Submissions

11. The Intended Claimant's Counsel submits that the Intended Claimant is a proper person to bring an action against the directors of the Company, pursuant to **section 278 (c) of the Act**.

12. Counsel cites **section 278 of the Act**, which provides:

> **"'complainant' means (a) a shareholder or debenture holder or a former holder of a share or debenture of a company; (b) a director or an officer or former director or officer of a company or its affiliates: (c) any other person, who in the opinion of the court is a proper person to institute an action under this Part."**

13. Counsel asserts that, **section 278 of the Act** necessitates that in circumstances such as those in the present case an application of this nature be made as a preliminary step in order to maintain an action under Part IX of the Act.

14. Counsel then draws the Court's attention to **section 280 (2) of the Act**, which reads:

> **"(2) If upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates —**
>
> **(a) any act or omission of the company or any of its affiliates effects a result;**
>
> **(b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or**
>
> **(c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner, that is oppressive or unfairly oppressive to, or that unfairly disregards the interest of any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matter complained of."**

15. Counsel submits that it is a fundamental principle that the law does not afford a right without a remedy, *ubi jus ibi remedium*, and it is equally true that the law does not afford a remedy without a means of enforcement. Counsel further submits that, therefore, the Act afforded creditors, like the Intended Claimant, a statutory remedy when faced with oppressive or unfairly oppressive conduct or conduct that unfairly disregards their interests displayed by a company or its directors or officers.

16. Counsel contends that the Beadle Affidavit demonstrates the Intended Claimant's standing as a bona fide judgment creditor of the Company and the factual and evidential basis of her claim for relief against the Intended Defendants under Part IX of the Act.

17. The Intended Claimant's counsel then cites the case of **Zachary James Galantis v Antony & Alexander Alexiou COM/COM/0004 of 2009** for the following pronouncements by Hepburn J (as she then was):

> **"23. In the case of Five Star Medical and Ambulance Service Limited v Telecommunications Services of Trinidad and Tobago Limited and Samuel Martin H.C.A. No. 1539 of 2001, Ventour J in considering the scope of section 239, had this to say at page 14:**
>
> > **"Section 242 of the Act was enacted with that liberal approach in mind. That section empowered the Complainant to apply to the Court for an order to rectify the conduct of a company which was oppressive or unfairly oppressive or unfairly prejudicial to, or unfairly disregards the interests of any shareholder or debenture holder, creditor, director or officer of the company'**
>
> **Then, after setting out the provisions of 239, the learned judge went on to say at pages 15 and 16: "It is interesting to note that the word creditor is not mentioned in section 239 of the Act which defines the word "complainant' for the purpose of section 242. Section 239 makes reference to shareholder, debenture holder, director, officer and even Registrar. While it is true that a debenture holder is a creditor it is arguable that a creditor is not necessarily a debenture holder. So in effect what the Legislature had in mind when drafting section 242 was the possibility that a normal creditor (as distinct from a secured creditor) whose interests have been affected by the company's conduct would be elevated to the status of a complainant for the purpose of section 242. In my view that explains the very wide discretion given to the Court under section 239(d) of the Act which states that person may be a "complainant" if he is a person "who in the discretion of the Court, is a proper person to make an application under this part…The court is allowed to determine, who, in the circumstances of the particular case, is a proper person to be elevated to the status of a 'complainant' for the purpose of section 242 of the Act.**
>
> **24. In The Bahamas, the Court has a similarly wide discretion under section 278(c) to determine who in the circumstances of the particular case is a proper person to make an application under Part IX of the Act. Counsel for the defendants sought to place a very narrow construction upon the provisions of [278 (c)] of the Act. Words in a statute are to be given their ordinary meaning. There is no ambiguity**

in the words of the section nor the intent of Parliament. Parliament clearly intended that in exercising the jurisdiction given to it under section 278 (c), the Court should have a very wide discretion so as to ensure that persons who would not come within subsections (a) and (b) of section 278 but whose interests have been unduly affected by the conduct of the company or its directors could obtain relief from the court under Part IX of the Act. In the words of McDonald J, the Court has a broad power to do justice and equity in the circumstances of a particular case. It is clear that the term 'complainant' is not limited to shareholders of the Company and can include ordinary, unsecured creditors of the Company. There is nothing in the Act to prohibit the Court from declaring that the complainant, to whom the Company owes a debt, is a proper person to institute an action under Part IX.

25. Having regard to the provisions of section 278 (c) of the Act and the authorities from the Commonwealth jurisdictions referred to above, I am satisfied that a creditor can be a complainant and that the Claimant is a proper person to institute this action under Part IX of the Act.""

18. Counsel asserts that the evidence demonstrates that the Intended Claimant falls within the scope of section 278 (c) of the Act and is thus, a proper person to bring an action against the Intended Defendants.

19. The Intended Claimant concludes by asking the Court to make a declaration that the Intended Claimant is a proper person under section 278 (c) of the Act to commence an action against the Intended Defendants as directors of the Company. The Intended Claimant also requests costs.

Intended Defendants' Submissions

20. The Intended Defendants' counsel submits that the Intended Claimant is not a proper person to bring a claim against the Intended Defendants pursuant to section 278 (c) of the Act.

21. He asserts that the intended Writ amounts to an abuse of process since it is effectively the same facts, the same parties by virtue of the Defendants being Abaco's privies, and the same relief (which the Intended Plaintiff has already; obtained).

22. Counsel then cites the case of **Galantis (Respondent) v Alexiou and another (Appellants) (Bahamas) [2019] UKPC 15** ("**Galantis**") and submits that the Privy Council accepted that a judgment creditor had standing to bring a s. 280 claim and that a company's failure to satisfy a judgment debt can amount to oppressive action. Counsel further asserts that, in Galantis, the Court of Appeal (at that stage of the proceedings) found that: *"the oppressive acts complained of by the appellant and the directors' blatant refusal to honor a debt and to prevent*

payment of that debt by subsequently removing the company's assets and preventing the appellant, a judgment creditor, from successfully settling his claim."

23. The Intended Defendants' counsel asserts that the Intended Claimant is not a victim. He asserts that the Intended Claimant did not provide any evidence in its intended application to show that she qualifies as a complainant and there is no evidence that the Company is in a position to settle its debts and has chosen not to pay.

24. He submits that the Intended Claimant claims under section 280 of the Act that she has suffered oppression or unfair disregard of her interest as a creditor at the hands of the Intended Defendants and is seeking an order against them for relief from the alleged oppression without any evidence.

25. Counsel also cites **section 280 of the Act** and asserts that the Intended Claimant must demonstrate that the conduct of the Company/Intended Defendants is: (i) oppressive; (ii) unfarily prejudicial to; (iii) or unfarily disregards the interests of the Intended Claimant.

26. Counsel concludes by requesting that the application be dismissed.

DISCUSSION AND ANALYSIS

Whether the Intended Claimant is a Proper Person in accordance with section 278 (c) of the Act?

27. The Intended Claimant's Counsel is of the view that the Intended Claimant falls squarely within the ambit of section 278 (c) of the Act and therefore is a proper person to bring an action against the Intended Defendants for alleged oppressions/unfair prejudice/unfair disregard for her interests. The Intended Defendants' Counsel asserts that the Intended Claimant does not fall within section 278 (c) as she has not provided any evidence to confirm this.

28. The critical sections of the Act which the Court must examine for the purposes of this application are **sections 278 and 280 of the Act**. **Sections 278 and 280 (1) and (2) of the Act** read:

> **"278. In this Part —**
>
> **"action" means an action under this Act;**
>
> **"complainant" means —**
>
> **(a) a shareholder or debenture holder or a former holder of a share or debenture of a company;**

(b) a director or an officer of former director or officer of a company or its affiliates;

(c) <u>any other person, who in the opinion of the court is a proper person to institute an action under this Part</u>…

280. <u>(1) A complainant may apply to the court for any order against a company or a director or officer of that company to restrain oppressive action.</u>

<u>(2) If upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates —</u>

<u>(a) any act or omission of the company or any of its affiliates effects a result;</u>

<u>(b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or</u>

<u>(c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner, that is oppressive or unfairly oppressive to, or that unfairly disregards the interest of any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matter complained of</u> (emphasis added)."

29. I also wish to expound upon the ***Galantis*** decision and its similarities to the instant case. The salient facts of the case are these: by written agreement dated 08 July 1998, Mr. Zachary James Galantis ("**Respondent**") sold all his shareholdings in a a Bahamian company known as BK Holdings Ltd., along with the leasehold interest and inventory of goods to Ali Cat Designs Limited ("**Ali Cat**") for the sum of $500,000.00. At the time, the directors of Ali Cat were Mr. Antony Alexiou ("**First Appellant**") and Mr. Alexander Alexiou ("**Second Appellant**"). Ali Cat paid B$300,000 in cash and, by way of promissory note, agreed to pay the outstanding balance in instalments.

30. By 06 February 1999, Ali Cat paid B$36,506.34 towards the outstanding B$200,000 debt secured by the promissory note. Ali Cat thereafter refused to make payments towards the Respondent. The Respondent subsequently brought an action against Ali Cat in the Supreme Court of The Bahamas on 22 October 1999 claiming B$182,531.70 in respect of the balance due under the promissory note, interest, damages and costs. On 17 February 2005, judgment was granted in the Respondent's favor in the full amount plus interests and costs. Ali Cat unsuccessfully appealed that ruling, but the outstanding sum remained unpaid.

31. In 2007, the First and Second Appellants were examined by a Deputy Registrar of the Supreme Court as part of the enforcement of judgment proceedings. The Respondent formed the view that Ali Cat's refusal to pay the outstanding debt amounted to unfair and oppressive behavior – particularly because he learned

that that the business he sold to Ali Cat was “converted” by the first appellant, in conjunction with Bahama Republic Ltd, a Bahamian company owned and operated by the first appellant, and which was operating a retail store on the company's initial business premises.

32. By letter dated 14 August 2008, the Deputy Registrar General informed the parties that Ali Cat had been removed from the Register of Companies.

33. On 21 April 2009 the Respondent commenced proceedings against the Appellants in their capacities as former directors of Ali Cat. Like the instant case, he sought relief under section 280 of the Act, which enables a complainant under section 278 of the Act to apply to the Court for an order against Ali Cat to restrain oppressive action.

34. The Supreme Court rules that the Respondent was a proper person to institute an action under part IX of the Act. At the substantive hearing of the matter, the learned judge refused the relief sought by the Respondent. Though the behavior of the Appellants was deemed oppressive behavior, the Court formed the view that it could not grant the relief sought as Ali Cat was removed from the Register of Companies and thus, there was no ongoing oppression suffered by the Respondent.

35. On 30 May 2014, the Court of Appeal allowed the Respondent’s appealed, reversed the decision of the Court of first instance and granted the relief sought. The Appellants appealed that decision to the Privy Council, whom reversed the decision of the Court of Appeal and concurred with the judge at first instance.

36. The Privy Council, did however, make it abundantly clear that the Respondent, indeed, fell within the ambit of section 278 (c) as the Respondent had an outstanding debt and pursued the Appellants (as former directors). Had the Respondent restored Ali Cat, then he could have pursued the Appellants.

37. In the instant case, we are not dealing with a company that has been removed from the Register of Companies. There is no evidence of this. Furthermore, the Beadle Affidavit discusses the existence of the company and the fact that the Intended Defendants are existing directors of the Company. This evidence was not controverted.

38. Furthermore, the uncontroverted evidence as provided in the Beadle Affidavit (namely, the outstanding judgment, final judgment and ruling on assessment of damages) demonstrates that there is, indeed a debt due and owing by the Company to the Intended Defendants. It is curious why the Intended Defendants provided absolutely no evidence to challenge the Beadle Affidavit. In the premises, I see no reason why I would not accept that which is provided before me.

39. I would also like to point out that the Beadle Affidavit states that there were numerous instances that the outstanding debt was demanded by the Intended Claimants, but was never satisfied or even answered. Though there is no demand letter or correspondence exhibited to the Beadle Affidavit evidencing such purported efforts made to recover the debt, this evidence was not challenged at all by the Defendants. I therefore, accept such evidence as fact.

40. In my view, this conduct amounts to some evidence of oppressive behavior. I find additional comfort in my conclusion by the uncontroverted evidence provided by the First Intended Defendant where, during the Examination of the Judgment Debtor, he confirms that he is aware of the debt and that the Company has the assets to satisfy it. He even provided an undertaking that such debt would be satisfied, yet the debt remains outstanding.

41. Again, none of this evidence was challenged or refuted by the Intended Defendants.

42. I concur with the Intended Claimant's Counsel that the Intended Claimant falls squarely within the scope of **section 278 (c) of the Act**. It is the very individual who makes all efforts to pursue a company lawfully and attempts to recover and enforce the fruits of judgment who will not be disadvantaged by any conduct of a company that is tantamount to oppressive, prejudicial, or unfair behavior towards such persons who have bona fide claims/debts.

43. In the premises, I am satisfied that the Intended Claimant is indeed, a complainant and a proper person to bring an action against the Intended Defendants.

Inherent Jurisdiction of the Court

44. Time and time again, counsel relies on or purports to invoke the inherent jurisdiction of the Court in a manner which does not align with decided cases and other authorities on the matter. I now take this time to remind counsel of when the inherent jurisdiction of the Court ought to be invoked.

45. The scope of the inherent jurisdiction of the Court was explored in the Bahamian Court of Appeal decision of ***Belgravia International Bank & Trust Company Ltd v Bretton Woods Corporation SCCivApp No. 75 of 2021*** ("**Belgravia**"). Though ***Belgravia*** dealt with an appeal concerning a Supreme Court Judge's discretion to vary an unless order, I find the discourse on the inherent jurisdiction of the Court in that case helpful and instructive.

46. At paragraphs 53 to 64 of ***Belgravia***, Barnett P made the following pronouncements:

> **"53. Throughout the proceedings before this Court, Sigma has argued that it was unnecessary to apply for relief from sanctions pursuant to**

the provisions of O.31 A, r.25. Rather, Sigma postulates that it was within the judge's inherent jurisdiction to grant relief notwithstanding the specific and explicit provisions of O.31 A, r.25. In support of its contentions, on 28 July 2022, Sigma supplied the court with a number of authorities in support of that submission.

54. Sigma referred to the decision of this court in Stuart v. Bonamy [1997] BHS J. No. 58. In that case the court stated, inter alia, that:

> **"13 In an application to the High Court for an Order which is not contemplated by the Rules of the Supreme Court or where the applicant seeks an order in circumstances not envisaged by the provisions of the Rules of the Supreme Court, the High Court may resort to its inherent jurisdiction in granting the order sought even though the applicant has not in his summons expressly asked the court to do so." (Emphasis added)**

55. In my judgment, this case does not avail Sigma. The court is stating that where rules are silent on a particular issue, only then can the inherent jurisdiction be relied upon. Thus, in the case where O.31A, r.25 sets out an explicit framework for dealing with non-compliance with unless orders, there would clearly be no need to resort to the inherent jurisdiction.

56. Further, Sigma relied upon the following excerpt from Halsbury's Laws of England, Volume 12A of 2015:

> **"The jurisdiction of the court which is comprised within the term 'inherent' is that which enables it to fulfill, properly and effectively, its role as a court of law. It has been said that the overriding feature of the inherent jurisdiction of the court is that it is a part of procedural law, both civil and criminal, and not a part of substantive law; it is exercisable by summary process, without a plenary trial; it may be invoked not only in relation to parties in pending proceedings, but in relation to any one, whether a party or not, and in relation to matters not raised in the litigation between the parties; it must be distinguished from the exercise of judicial discretion; and it may be exercised even in circumstances governed by rules of court (although a claim should be dealt with in accordance with the rules of court, rather than by exercising the court's inherent jurisdiction, where the subject matter of the claim is governed by those rules). The term 'inherent jurisdiction' is not used in contradiction to the jurisdiction of the court exercisable at common law or conferred on it by statute or rules of court. Even in an area which is not the subject of statute or statutory procedural rules, the court's inherent jurisdiction to regulate how proceedings should be conducted is limited because**

> **(subject to certain established and limited exceptions) the court cannot exercise its power in such a way as will deny parties their fundamental common law right to participate in the proceedings in accordance with the common law principles of natural justice and open justice." (Emphasis added)**

57. However, Halsbury's clearly states that applicable rules of court should be relied on, rather than inherent jurisdiction.

58. Sigma also relied on the Canadian case of In Montreal Trust Company v. Churchill Forest Industries (Manitoba) Limited, 1971 CanLII 960 (MB CA), regarding the limits of a court's inherent jurisdiction. At page 81, the court stated that:

> **"Inherent jurisdiction is derived not from any statute or rule but from the very nature of the Court as a superior Court of law: "The jurisdiction which is inherent in a superior court of law is that which enables it to fulfill itself as a court of law." (p. 27). Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or rule. Moreover, because it is a special and extraordinary power, it should be exercised only sparingly and in a clear case".**

Master Jacob concludes his very helpful analysis with the following definition at p. 51:

> **In this light, the inherent jurisdiction of the court may be defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them." (Emphasis added)**

59. Similarly, this case highlights that inherent jurisdiction is a residual source of powers that is relied upon when rules do not address a situation. Further, it should be exercised only in exceptional cases. In my judgment, even if inherent jurisdiction could be relied on to grant relief from the sanctions in the Unless Order, there is nothing, particularly via affidavit evidence, that would show that this is a clear case in which the court should invoke inherent jurisdiction to grant relief.

60. Finally, Sigma relies on the case of MacMillan Bloedel Ltd. v. Simpson [1995] 4 SCR 725 to support its views on inherent jurisdiction.

"Further, the inherent power of superior courts to regulate their process does not preclude elected bodies from enacting legislation affecting that process. The court's inherent powers exist to complement the statutory assignment of specific powers, not override or replace them. Courts must conform to the rule of law and, while they can exercise more power in the control of their process than is expressly provided by statute, they must generally abide by the dictates of the legislature. It follows that Parliament and the legislatures can legislate to limit and define the superior courts' inherent powers, including their powers over contempt, provided that the legislation is not otherwise unconstitutional." (Emphasis added)

61. Again, in my judgment, far from supporting Sigma's view, this case reinforces the principle that the inherent jurisdiction has to be subservient to specific statutory rules.

62. In my judgment, the decision of the Privy Council in The Attorney General v Universal Projects Limited [2011] UKPC 37 encapsulates the law regarding inherent jurisdiction versus rules of court. Lord Dyson said at paragraphs 26–27:

"26. …Mr. Knox submits that, even if the application under rule 26.7 is rejected, the court retains an inherent jurisdiction to set aside the judgment in order to prevent its own process from being abused where the claim is shown to be misconceived and to be bound to fail.

27. Rule 26.2(1) provides that the court may strike out a statement of case or part of a statement of case if it appears "(b) that the statement of case or part to be struck out is an abuse of the process of the court; or (c) that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim". The rules contemplate that an application under rule 26.2(1) will be made while the proceedings are on foot, i.e. before judgment is entered. If a default judgment is entered, the rules provide that the defendant can apply to have it set aside, but only if the conditions set out in rule 13.3(1) or rule 26.7 (whichever is applicable) are satisfied. There is no scope for recourse to the inherent jurisdiction of the court. The territory is occupied by the rules. The court's inherent jurisdiction cannot be invoked to circumvent the express provisions of the rules. As the Board said in Texan Management v Pacific Electric Wire and Cable Co Ltd [2009] UKPC 46 at para 57:

> **" The modern tendency is to treat the inherent jurisdiction as inapplicable where it is inconsistent with the CPR, on the basis that it would be wrong to exercise the inherent jurisdiction to adopt a different approach and arrive at a different outcome from that which would result from an application of the rules."**
>
> **The argument that Mr. Knox seeks to advance is an attempt to circumvent the stringent conditions to which rule 26.7 is subject. It cannot be accepted." (Emphasis added)**

63. More recently, in Lopes v Justice, Equality and Law Reform [2014] 2 IR 301, Clarke J said at paragraph 15:

> **"[15] Applications to dismiss at an early stage of proceedings are, when brought, frequently based alternatively on the provisions of O. 19, r. 28 of the Rules of the Superior Courts 1986 ("RSC") and the inherent jurisdiction of the court. It is important to emphasize that the inherent jurisdiction of the court should not be used as a substitute for, or means of getting round, legitimate provisions of procedural law. That constitutionally established courts have an inherent jurisdiction cannot be disputed. That the way in which the ordinary jurisdiction of those courts is to be exercised is by means of established procedural law including the rules of the relevant court is also clear. The purpose of any asserted inherent jurisdiction must, therefore, necessarily, involve a situation where the court enjoys that inherent jurisdiction to supplement procedural law in cases not covered, or adequately covered, by procedural law itself. An inherent jurisdiction should not be invoked where there is a satisfactory and existing regime available for dealing with the issue under procedural law, for to do so would set procedural law at nought." (Emphasis added)**

64. In my judgment, inherent jurisdiction only begins where rules of court end. Thus, to the extent that the RSC set out specific provisions (particularly O.31 A, r.25) stipulating what was to occur in the case of a breach of an unless order, it would be inappropriate to ignore them in favor of the view that the court should exercise its inherent jurisdiction. If courts were to be permitted to ignore clear rules and merely rely on inherent jurisdiction, then all rules of court would be otiose (emphasis added)."

47. In relation to the instant case, there are clear statutory rules which govern the very application before me and what relief is available (section 278 and 280 of the Act). On that basis, I see no reason why I should invoke my inherent

jurisdiction in this matter. As the President of the Court of Appeal opined (and I now paraphrase), to exercise such powers when there are clear rules which govern the matter would make such rules otios or superfluous.

CONCLUSION

48. In the circumstances and based on the authorities referred to above, the Court accedes to the Intended Claimant's application and thus deems her a proper person pursuant to **section 278 (c) of the Act**.

49. My Order shall read as follows:

    A) The Intended Claimant is declared a proper person pursuant to section 278 (c) of the Act to pursue an action against the Intended Defendants.

    B) The Intended Claimant is granted leave to file and serve a Standard Claim Form along with a Statement of Case by 31 January 2024;

    C) The Intended Defendants shall file and serve their Defence within 28 days from the date of service of the Standard Claim Form and Statement of Case.

    D) The Intended Claimant is awarded costs, to be assessed by this Court.

    E) Failure of the Intended Claimant to file her pleadings within the requisite time period shall bar her from such filing and the claim will be dismissed with costs to the Intended Defendants.

    F) Failure of the Intended Defendants to file its pleadings within the requisite time period shall bar them from such filing and judgment will be granted to the Intended Claimant with costs to the Intended Claimant.

50. Once my Order has been complied with, the matter will move to case management and progress accordingly.

Senior Justice Deborah Fraser

Dated this 15th day of December 2023