COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2019/CLE/gen/01728

IN THE MATTER of the Law of Property and Conveyancing (Condominium) Act, Chapter 139

BETWEEN

GRAFTON COURT CONDOMINIUM ASSOCIATION COMPANY LIMITED
(a body Corporate by virtue of the Law of Property and Conveyancing (Condominium) Act, Chapter 139))

Claimant

AND

CAROLINE SAYERS

First Defendant

AND

GRETCHEN PARUCH

Second Defendant

AND

THADDEUS PARUCH

Third Defendant

Before:	**Her Ladyship The Honourable Madam Senior Justice Deborah Fraser**
Appearances:	**Mrs. Tanya Wright and Mrs. Alecia Bowe for the Claimant**
	Ms. Ruby E. Gray for the First Defendant
	No Appearance for the Second and Third Defendants (did not participate in the application)
Judgment Date:	**26 January 2024**

Application for a Preliminary issue to be tried before trial – Rules 26.1 (2) (e) and (i) of the Supreme Court, Civil Procedure Rules, 2022 – Overriding Objection – Rule 1.1 of the Supreme Court Civil Procedure Rules – Section 17(2) of the Law of

Property and Conveyancing (Condominium) Act, 1967 – Production of annual accounts duly audited by a duly qualified auditor

JUDGMENT

1. This is an application brought by the First Defendant, Caroline Sayers, for a preliminary issue to be heard before the trial of this action.

Background

2. The Claimant, Grafton Court Condominium Association Company Limited ("**GCCA**") is a statutory management corporation established under the provisions of the Law of Property and Conveyancing (Condominium) Act, 1967 ("**Act**") to manage the Grafton Court Condominium situate on Lot 21 Bell Channel Bay subdivision, Freeport Grand Bahama ("**Condominium**") with power pursuant to the said Act and the Declaration of Condominium dated 04 October 1991 and recorded in Volume 6039 at pages 546 to 574 ("**Declaration**"), and the Confirmatory Declaration of Condominium dated 05 February 2004 and recorded in Volume 8965 at pages 252 to 266 ("**Confirmatory Declaration**") to enforce for the benefit of all the unit owners of the Condominium and the restrictions and conditions set out in the Second Schedule of the Confirmatory Declaration.

3. The First Defendant, Caroline Sayers ("**Ms. Sayers**"), is the owner of Unit A4 in the Condominium by virtue of an Indenture of Conveyance dated 12 February 2004 made between Migrafill Investments Limited ("**MIL**") of the one part and Caroline Sayers of the other part and recorded in the Registry of Records in the city of Nassau in Volume 9118 at pages 527 to 538.

4. The Second and Third Defendants, Gretchen Paruch and Thaddeus Paruch are the owners of Unit A3 of the Condominium.

5. MIL, the developer of the Condominium, is the owner of units A1, A2, A5 and A6 in the Condominium.

6. There is no set maintenance fee outlined in the Declaration or the Confirmatory Declaration.

7. Prior to the Annual General Meeting ("**AGM**") on 02 March 2019, it is alleged that all Parties agreed that the total common expenses would be proportioned 1/6, 1/6, 4/6 between the unit owners based on Unit entitlement.

8. In or about 2006, it is alleged that the unit owners agreed to purchase and/or build a pool, dock and generator. The costs of such construction was allegedly to be shared amongst the unit owners of the Condominium.

9. In or about 2007, a dispute over outstanding condominium expenses and fees arose among the unit owners and Mr. Grafton Ifill, the majority shareholder of MIL. And President of the GCCA.

10. The dispute resulted in GCCA filing an action against the Defendants in court action 2007/CLE/gen/00173. The action was dismissed by the late Justice Stephen G. Isaacs who adjudged, inter alia, that the GCCA was not entitled to costs associated with capital development of the Condominium and that there ought to have been a set maintenance fee. It was further found, inter alia, that the Defendants were responsible for 2/6 of the total contribution from February 2004 to the date of judgment and continuing ("**2007 Judgment**").

11. GCCA filed a Notice of Appeal of the 2007 Judgment, however, by Deed of Settlement and Compromise dated 19 July 2012 and its addendum ("**Deed**"), the Parties agreed to withdraw the appeal and abide by the terms in Deed.

12. GCCA alleges that, pursuant to the Deed, the Parties agreed not to set a fixed maintenance fee but to deal with maintenance on an item by item basis, with receipts and/or invoices being provided. Also, GCCA purportedly removed all costs deemed "capital development cost" from the invoice previously demanded from the Defendants.

13. Despite the executed Deed, the dispute remained extant amongst the Parties as the Defendants allegedly refused and/or failed to pay their share of the common expenses. GCCA allegedly continued to maintain the common expenses without the assistance of the Defendants but kept receipts and/or invoices of all expenditure.

14. GCCA claims that it continued to provide the breakdown of all expenditure to the Defendants. However, the Defendants purportedly refused to make their contributions to the maintenance of the Condominium.

15. At the 02 March 2019 AGM, it is alleged that all Parties agreed to allow Barefoot Marketing to manage the Condominium moving forward and agreed to appoint an accountant to audit the accounts to determine the issue of what is owed by the Parties from February 2004 to March 2019.

16. On or about 30 March 2019, the Condominium's accounts were allegedly reviewed again by chartered accountant Sandy Morley and a report was produced to outline the amount owing by the Defendants.

17. On or about 15 November 2019, a notice in writing levying outstanding contributions of the common expenses were allegedly sent to the Defendants' respective addresses.

18. On 05 December 2019, GCCA filed a Writ of Summons against all of the Defendants for alleged breaches of the Act, the Declaration, the Confirmatory Declaration and the Deed for purported failure to pay fees owing for maintenance and common expenses of the Condominium. GCCA seeks the sum of $188,279.96 from Ms. Sayers, the sum of $246,957.24 from the Second and

Third Defendants, a charge over units A3 and A4, interest, costs and such other relief the Court deems just.

19. On 16 September 2020, a Defence and Counterclaim were filed on behalf of all the Defendants (who, at the time were all represented by the same counsel) denying the allegations made by the GCCA in its Writ of Summons and, through counterclaim, claim that GCCA breached its statutory duty by failing to adhere to the Act. They claim damages and exemplary damages for alleged loss suffered due to, inter alia, GCCA purportedly failing to maintain the Condominium and adhere to the terms of the Deed.

20. On 07 April 2022, Ms. Sayers brought this application requesting a preliminary issue to be tried prior to the trial. Specifically, she requests that the following preliminary issue be tried and, if such issue was to be tried, would be dispositive of the substantive trial:

> *"1) Whether or not the Plaintiff has a mandatory duty to produce annual accounts duly audited by a duly qualified auditor to all unit owners at least once a year under Section 17(2) of the Law of Property and Conveyancing (Condominium) Act ("the Act")*
>
> *2) If the Court finds that Section 17(2) is a mandatory duty under the Act an Order from this Court that such annual accounts duly audited in accordance with the Act be provided to all unit owners including the First Defendant."*

Issue

21. The Court must determine whether there ought to be a hearing of the preliminary issue before the trial of the substantive action?

Evidence

22. The evidence provided by GCCA and Ms. Sayers is quite extensive. I will, however, attempt to summarize as succinctly as possible the most relevant evidence for the purposes of this application.

Ms. Sayer's Evidence

23. On 16 January 2023, Ms. Sayer's filed an Affidavit ("**First Sayer Affidavit**") which provides that: (i) GCCA has withheld all invoices and accounting information pertaining to her unit and failed to keep detailed and accurate records of receipts and expenditures arising from the management and operation of the Condominium; (ii) around 2005, Ms. Sayer paid on account $400.00 per month as maintenance fees for her unit and continued to pay this amount until January 2012; (iii) due to GCCA's failure to set a maintenance fee and keep accurate and detailed accounting records, the dispute between GCCA and Ms. Sayers persisted; (iv) MIL, a majority owner in the Condominium, along with GCCA continue to retain sole possession and control of the accounts, records, invoices,

and data related to the Condominium and the Unit expenses, expenditures and fees; (v) in 2004, in the absence of the Defendants, GCCA appointed MIL's office manager/employee, Ms. Sarah Rolle as manager of the Condominium. Since her engagement, she has routinely failed to keep Ms. Sayers and the other Defendants informed of GCCA's expenses; and (vi) on 14 April 2006, Ms. Sayers wrote to GCCA advising it of her desire to pay maintenance fees and the impossibility of doing the same as GCCA failed to provide any Condominium Bank Account details.

24. The First Sayers Affidavit further states that: (i) GCCA's inability to set maintenance fees resulted in its inability to perform its duties under the Condominium provisions being: (a) maintaining an insurance policy and payment of insurance premiums; (b) establishing reserves for capital improvements and maintenance of the common property and the discharge of any other obligations to GCCA; (c) determining from time to time amounts of money to be raised for the operation, maintenance and administration of the Condominium; (d) recovering from any unit owner in the Condominium any sum of money expended by itself for repairs or work done by it; (e) having accurate and legitimate annual accounts duly audited by a qualified auditor and render the same to all unit owners at least once in every year; and (f) holding general meetings that might be capable of reviewing accurate accounts, assessing maintenance fees, and to plan and execute any required maintenance.

25. The First Sayers Affidavit also provides: (i) a history of the action initiated by GCCA in 2007 and the 2007 Judgment; (ii) in March 2019, GCCA signed a contract with Barefoot Marketing Limited for it to manage the Condominium. On signing the contract, the maintenance fees were set at $250.00 per Unit with an additional $100 per unit for management fees of Barefoot Marketing Limited (a copy of the contract is exhibited); (iii) that MIL began intermeddling and interfering with Barefoot Marketing Limited's management; (iv) that in or about June 2022, Barefoot Marketing Limited terminated its contract with GCCA. No further word regarding the management of the Condominium was forthcoming from GCCA; (v) that GCCA continually fails to attend to adequate and timely repairs to the Condominium as a result of its lack of proper accounting and budgeting in addition to the outstanding and continuing issue of the maintenance fees; In or about 2006, unbeknownst to Ms. Sayers and without her approval, GCCA undertook works at the Condominium and demanded the sum of $68,165.56 from Ms. Sayers and the Second and Third Defendants; and (vi) Ms. Sayers seeks a court appointed auditor to manage and review the records and accounts of the Condominium.

26. On 18 September 2023, Ms. Sayers filed a second affidavit ("**Second Sayers Affidavit**") which provides: (i) Ms. Sayers made numerous maintenance payments to GCCA and financial statements were issued by Barefoot Marketing

evidencing such payments (the financial statements are exhibited); (ii) between February 2004 to 31 March 2019, GCCA failed to set maintenance fees and has continued to do so to date; (iii) that the only time a fixed maintenance fee was provided was between 01 April 2019 to 31 March 2022; (iv) that contrary to GCCA's affidavit (which will be summarized later in this ruling), a "unanimous agreement" to waive the auditing of accounts as required under the Deed is false; (v) the addendum to the Deed waiving auditing of accounts was never finalized; and (iv) as a result of the termination of the contract between Barefoot Marketing and GCCA, Ms. Sayers has not received any information from GCCA with regards to bills, maintenance fees or regular upkeep of the Condominium since March 2022 (which is exhibited).

GCCA's Evidence

27. On 18 August 2023, Mr. Grafton Ifill filed an affidavit ("**Ifill Affidavit**") which states that: (i) an accounting at this stage of the proceedings is a financial burden on GCCA; (ii) such expense for an audit is borne by the homeowners; (iii) requesting the production of unaudited financial for GCCA without any time frames or accounting periods for the production of audited accounts is contrary to the unanimous agreement of the owners dating as far back as 2012 that "*the parties have agreed that an audit or a review by an accounting firm is not economically feasible…";* (iv) on 31 December 2014 the Defendants, through their then attorney Mrs. Tiffany Dennison, were reminded of the items resolved by the settlement agreement by letter from Petra M. Hanna-Weekes, then counsel for GCCA (the letter is exhibited); (v) GCCA has kept detailed and accurate records arising from the operation of the Condominium; and (vi) on 01 March 2019, during an AGM (where all Defendants were present), it was unanimously resolved that GCCA engage an "*accountant…whose sole mission would be the determination of the historical maintenance fee which included insurance…the terms of reference would be based on the Deed and the addendum*." (the minutes of the AGM are exhibited).

28. The Iffill Affidavit further provides that: (i) On 30 March 2019, by unanimous agreement of the Parties, the GCCA engaged Mr. Dandy P. Morley to prepare the accounting in accordance with what was resolved at the AGM (the report is exhibited); (ii) the report was circulated to all owners yet the Defendants continued to dispute the amounts claimed; (iii) at paragraph 6 of the Defendants' Defence and Counterclaim, the Defendants admit that at the said meeting "*it was agreed between all the Unit Owners that the maintenance fee moving forward would be $350.00 per month per unit*"; and (iv) from the evidence, it is clear that the Parties can and have determined their respective obligations to GCCA and that no order appointing an auditor ought to be made in the circumstances.

DISCUSSION AND ANALYSIS

Whether there ought to be a hearing of the preliminary issue before the trial of the substantive action?

29. For completeness, I have read the submissions of counsel for their respective arguments. I acknowledge that submissions, in part, were laid over prior to the promulgation of the Supreme Court Civil Procedure Rules, 2022 and its amendments ("**CPR**"). Accordingly, I will not penalize counsel for relying on the Rules of the Supreme Court, 1978. I will apply the applicable principles under the CPR.

30. The Court is empowered to permit the trial of a preliminary issue by virtue of Rules **26.1 (2) (e) and (i) of the CPR.** The rules provide:

> **"26.1 Court's general powers of management.**
>
> **(2) Except where these rules provide otherwise, the Court may —**
>
> **…**
>
> **(e) direct a separate trial of any issue;**
>
> **(i) dismiss or give judgment on a claim after a decision on a preliminary issue;**
>
> **…"**

31. In the case of **McLoughlin v Jones and Others [2001] EWCA Civ 1743**, Brooke LJ identified certain characteristics of a genuine preliminary issue. At paragraph 66 of the judgement, the learned judge opined:

> *"66 In my judgment, the right approach to preliminary issue should be as follows:*
>
> *a. Only issues which are decisive or potentially decisive should be identified;*
>
> *b. The questions should usually be questions of law.*
>
> *c. They should be decided on the basis of a schedule of agreed or assumed facts;*
>
> *d. They should be triable without significant delay, making full allowance for the implications of a possible appeal;*
>
> *e. Any order should be made by the court following a case management conference."*

32. In **Jinxin Inc. v Aser Media Pte Ltd [2022] EWHC 2431 (Comm)**, the Court highlighted certain matters that a judge ought to keep in the forefront of his/her mind when considering whether or not there should be a trial of a preliminary issue. At paragraphs 23 and 24 of the judgment, the Court opined:

> *"23 The fact remains that the decision to split what would otherwise be a single trial into more than one trial each dealing with defined issues is a step out of the norm, where in most cases there will be a single trial determining all of the issues arising in an action. Accordingly, there must be a real and substantial advantage if a split trial were ordered to take place. In Bindel v PinkNews Media Group Ltd [2021] EWHC 1868 (QB); [2021] 1 WLR 5497, Nicklin, J said at para. 33:*
>
> > *" a case in which the court directs determination of a preliminary issue that will require resolution of disputed issues of fact, including disclosure, witness statements and cross-examination, must be regarded as an exception to the general rule, and one that requires careful consideration by the court and very clear justification."*
>
> *24 It is also salutary to recall the warning of Lord Neuberger, MR in Rosetti Marketing Ltd v Diamond Sofa Company Ltd [2012] EWCA Civ 1021; [2013] 1 All ER (Comm) 308, at para. 1 in connection with the proposal for trials of preliminary issue:*
>
> > *"… It represents yet another cautionary tale about the dangers of preliminary issues. In particular, it demonstrates that (i) while often attractive prospectively, the siren song of agreeing or ordering preliminary issue should normally be resisted, (ii) if there are none the less to be preliminary issues, it is vital that the issues themselves, and the agreed facts or assumptions on which they are based, are simply, clearly and precisely formulated, and (iii) once formulated, the issues should be answered in a clear and precise way.""*

33. The case of **Wentworth Sons Sub-Debt S.A R.L. v Anthony Victor Lomas and Others [2017] EWHC 3158 (Ch)**, provides useful guidance and factors to consider on an application for the hearing of a preliminary issue:

> *"28 The Court's power to order the trial of distinct preliminary issues is undoubted. CPR r.3.1 expressly provides that " Except where these Rules provide otherwise, the court may … (i) direct a separate trial of any issue."*
>
> *29 <u>But it is, I think, appropriate to acknowledge at the outset that preliminary issues often look more appealing and definitive in the early days of a case than when they come on later to be adjudicated. That which appeared to be conclusive, when a preliminary issue was directed, is not infrequently subsequently revealed to raise further questions; and that which appeared to be capable of discrete determination is often found later</u>*

to be inextricably linked to issues whether of fact or law or both which cannot safely and satisfactorily be summarily determined.

30 Furthermore, where the issues are of both novelty and importance, the prospect of appeals is real; and a bifurcated process may result, with the preliminary issue on appeal and the trial which may or may not become necessary, being stalled in the meantime. It is a truism that preliminary issue are often a source of regret, as being an apparent short cut to what turns out to be a longer journey in the end.

31 The authorities are replete with such experiences, and with warnings in consequence at the highest level as to the need for exercising the power to order preliminary issue "with caution" and "sparingly" (see, for example, Wrottesley v HMRC [2015] UKUT 637 (TCC) at [28]). In Tilling v Whiteman [1980] A.C. 1, Lords Wilberforce and Scarman joined in the following statement:

> *"I, with others of your Lordships, have often protested against the practice of allowing preliminary points to be taken, since this course frequently adds to the difficulties of courts of appeal and tends to increase the cost and time of legal proceedings. If this practice cannot be confined to cases where the facts are complicated and the legal issue short and easily decided, cases outside this guiding principle should at least be exceptional."*
>
> *and*
>
> *"Preliminary points of law are too often treacherous short cuts. Their price can be, as here, delay, anxiety, and expense".*

Guidelines as to the approach required

32 In Steele v Steele [2001] C.P. Rep. 106, Neuberger J (as he then was) examined in detail the questions which must necessarily arise in considering whether the determination of a preliminary issue is appropriate. In summary, these were:

> *(1) First, would the determination of the preliminary issue dispose of the case or at least one aspect of it?*
>
> *(2) Second, would the determination of the preliminary issue significantly cut down the cost and time involved in pre-trial preparation or in connection with the trial itself?*
>
> *(3) Third, whereas here the preliminary issue was one of law the Court should ask itself how much effort would be involved in identifying the relevant facts.*
>
> *(4) Fourth, if the preliminary issue was one of law to what extent was it to be determined on agreed facts?*

(5) Fifth, where the facts were not agreed the Court should ask itself to what extent that impinged on the value of a preliminary issue.

(6) Sixth, would determination of the preliminary issue unreasonably fetter the parties or the Court in achieving a just result?

(7) Seventh, was there a risk of the determination of the preliminary issue increasing costs and/or delaying the trial?

(8) Eighth, the Court should ask itself to what extent the determination of the preliminary issue may turn out to be irrelevant.

(9) Ninth, was there a risk that the determination of the preliminary issue could lead to an application for the pleadings to be amended so as to avoid the consequences of the determination?

(10) Tenth, taking into account the previous points, was it just to order a preliminary issue?

33 Although when in passing at the hearing I referred to these guidelines as the "Ten Commandments", Counsel for the LBIE Administrators understandably and correctly warned against treating them as written in stone. That said, the ten points provide useful criteria and a useful reminder of the caution and care to be exercised.

34 However, the caution required should not be such as to oust the use and utility of preliminary issue where, on the best judgment that can be made at the time, their direction appears appropriate. Especially, as it seems to me, where there are limitation or other time bars potentially in issue, the purposes of the time bar may only really be fulfilled by early determination of its application; and/or where there are points of law which it does appear could, if determined, determine the case, with considerable saving of time and cost, the machinery available is salutary (emphasis added)."

34. I will now apply the factors to consider as outlined from the *Steele v Steele* decision.

(i) Would the determination of the preliminary issue dispose of the case or at least one aspect of it?

35. The proposed preliminary issue which the First Defendant would like heard is as follows:

"1) Whether or not the Plaintiff has a mandatory duty to produce annual accounts duly audited by a duly qualified auditor to all unit owners at least

once a year under Section 17(2) of the Law of Property and Conveyancing (Condominium) Act ("the Act")

2) If the Court finds that Section 17(2) is a mandatory duty under the Act an Order from this Court that such annual accounts duly audited in accordance with the Act be provided to all unit owners including the First Defendant."

36. In my view, determining this single issue would not be dipositive of the entire matter. There are allegations made in the GCCA's pleadings regarding outstanding funds. Particularly, GCCA's prayer for relief asks for, inter alia, sums totaling $435,237.20 along with interest. GCCA also seeks an order that a charge be placed over units A3 and A4. Determining this issues alone would not resolve such matters.

37. Furthermore, the Defendants have collectively made a Counterclaim for damages and exemplary damages. Again, addressing this preliminary issue will not resolve such matters.

38. I do, however, see how addressing the first question can deal with a live issue that is likely to be before the Court at the substantial trial (based on the submissions provided by counsel for the Claimant and First Defendant). Both counsel argue the point extensively and have opposing views on the matter (i.e. the mandatory nature of the relevant provisions).

39. It is clearly a matter that must be dealt with.

(ii) Would the determination of the preliminary issue significantly cut down the cost and time involved in pre-trial preparation or in connection with the trial itself?

40. Determination of this preliminary issue would not likely significantly reduce the cost and time involved in pre-trial preparation or in connection with the trial itself. This is a legal issue (like many other issues which, from a cursory view of the pleadings, are likely to arise). It is not likely that determination of this preliminary issue would affect costs associated with the main trial in any significant manner.

(iii) How much effort would be involved in identifying the relevant facts?

41. Based on the voluminous affidavits, just for this application alone is very telling. There is significant conflict with the facts in this case, which will require close examination and analysis to determine what facts are irrelevant and which are not. In my view, it will take some effort to identify the relevant facts of this case.

42. I, however, do not see how this factor applies as this preliminary issue is a legal question.

(iv) If the preliminary issue was one of law to what extent was it to be determined on agreed facts?

43. The preliminary issue is clearly a question of law. As I have said, the facts of this case are extensive and are in dispute. Very little facts seem agreed, however, the extent to which the issue can be determined on the agreed facts is minimal.

(v) Where the facts were not agreed the Court should ask itself to what extent that impinged on the value of a preliminary issue.

44. The facts of the case, as I have said, are in dispute. The preliminary issue, however, is a question of law.

45. I do not see what value the facts have on the preliminary issue.

(vi) Would determination of the preliminary issue unreasonably fetter the parties or the Court in achieving a just result?

46. A determination of the preliminary issue would not unreasonably fetter the parties or the Court in achieving a just result.

47. The preliminary issue only deals with one aspect of the claim, but there are several issues which I can identify which need to be addressed. This application is not the proper forum to expound upon the issues which emanate from the pleadings. I merely highlight that it is unlikely that determination of the preliminary issue would affect the just result of the matter.

(vii) Was there a risk of the determination of the preliminary issue increasing costs and/or delaying the trial?

48. In my view, determining this preliminary issue would indeed increase costs and possibly delay the trial as the Court would, in effect, have two trials as this preliminary issue only deals with one aspect of the claim and does not even address the Defendants' Counterclaim.

49. It would undoubtedly increase costs to allow the hearing of this preliminary issue then deal with a full blown trial of other issues.

50. Furthermore, if I were to allow the hearing of the preliminary issue, based on the facts I have read and the highly contentious nature of this matter, the likelihood of appeal seems very likely. Should an appeal of my determination on this one preliminary issue arise, it certainly would delay the substantive trial.

(viii) To what extent the determination of the preliminary issue may turn out to be irrelevant.

51. In the grand scheme of this matter, the determination of whether the preparation and provision of accounting of the Condominium's expenses by the GCCA is mandatory or not is not irrelevant. It is a live issue and requires an examination of

the relevant deeds and statutory regime within the context of a condominium and the relevant facts of this case.

(ix) Was there a risk that the determination of the preliminary issue could lead to an application for the pleadings to be amended so as to avoid the consequences of the determination?

52. I do not see how an application for an amendment would arise based on the preliminary question before this Court. I view this as highly unlikely as the preliminary question is one of pure law that does not turn on facts of the case.

53. It requires interpretation of deeds and statute. No amendment should arise.

(x) Taking into account the previous points, was it just to order a preliminary issue?

54. Based on all the circumstances of this case and the dense facts of this case, I do not see how the hearing of a preliminary issue would swiftly deal with the matter.

55. I am reminded of **Rule 1.1 of the CPR** and the need for the overriding objective to be fulfilled and adhered to. That rule reads as follows:

> *"1.1 The Overriding Objective.*
>
> *(1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.*
>
> *(2) Dealing justly with a case includes, so far as is practicable:*
>
> *(a) ensuring that the parties are on an equal footing;*
>
> *(b) saving expense;*
>
> *(c) dealing with the case in ways which are proportionate to —*
>
> *(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;*
>
> *(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and*
>
> *(f) enforcing compliance with rules, practice directions and orders (emphasis added)."*

56. The Court ought to be reluctant to accede to applications that are likely to delay the fair hearing of the matter that would only cause further costs and unnecessary use of precious judicial time.

57. We must be robust in enforcing the Overriding Objective and ensure that matters are dealt with fairly, justly, expeditiously and with reasonable/proportionate costs being expended in litigating the matter.

CONCLUSION

58. Based on the facts before me and my interpretation of the law, I am not prepared to accede to the First Defendant's application.

59. Accordingly, I refuse the relief sought by the First Defendant.

60. The First Defendant shall pay the Claimant's costs, to be assessed by this Court, if not agreed.

61. The Parties should move to have this extant matter dealt with as soon as possible.

62. If the Parties are not ready to proceed to trial, I shall set a date for further case management.

Senior Justice Deborah Fraser

Dated this 26 day of January 2024