COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2021/CLE/gen/01115

IN THE MATTER of an engagement as counsel and attorneys of record for and in relation to various and sundry civil court proceedings designated 2018/Cle/gen/No. 0252 and 2018/SCCiv. App. No. 0182, respectively;

AND IN THE MATTER of two Certificates of Taxation made in 2018/SCCiv.App.No. 0182, dated the 22nd October 2019 and 14th November 2019, respectively;

AND IN THE MATTER of a demand letter dated 14th January 2020.

BETWEEN

MAURICE O. GLINTON & CO. (a Firm)
(by the principal and sole proprietor of the Firm)

Claimant

AND

ROBERT K. ADAMS
(as counsel and attorney and a member and partner of Graham Thompson & Co.)

First Defendant

AND

GRAHAM, THOMPSON & CO. (a Firm)
(as attorneys of record for parties to proceedings in each of the intituled actions)

Second Defendants

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Maurice Glinton KC with Meryl Glinton for the Claimant
Dawson Malone with Raven Rolle, Ebonesse Bain and Miquel Cleare for the First Defendant
Leif Farquharson KC with Gabriel Brown for the Second Defendants

5 May 2023; 6 July 2023; 7 July 2023; 18 September 2023

RULING

WINDER, CJ

[1.] This is my ruling on an application for summary judgment brought by summons filed by the Claimant ("MOG & Co") on 23 November 2021 (the "Summary Judgment Summons") and an application to strike out the claim and to dismiss or stay the action brought by summons filed by the First Defendant ("Mr. Adams KC") on 6 December 2021 (the "Strike Out Summons"). There is also before me an application for time to serve a defence filed by the Second Defendant ("Graham Thompson") on 12 November 2021.

[2.] The Summary Judgment Summons is supported by the Verifying Affidavit of Maurice O. Glinton ("Mr. Glinton KC") filed on 23 November 2021 and the Supplemental Affidavit of Mr. Glinton KC filed on 5 July 2022. The Strike Out Summons is supported by the Affidavit of Mr. Adams KC filed on 20 January 2022. Graham Thompson filed the Affidavit of Adrian Hunt on 24 January 2023 in opposition to the Summary Judgment Summons and in support of the grant of an extension of time to serve a defence.

[3.] Notwithstanding the submission that the ***Supreme Court Civil Procedure Rules, 2022*** (the "***CPR***") do not apply to the applications, I am satisfied that the provisions of the ***CPR*** do apply by virtue of ***preliminary rule 2*** (which stipulates to which proceedings the ***CPR*** applies) and ***preliminary rule 3*** (which revokes the ***Rules of the Supreme Court, 1978***). By virtue of ***preliminary rule 2(1)(a)*** and ***preliminary rule (2)(a)***, as amended by the ***Supreme Court Civil Procedure (Amendment) Rules, 2023***, the ***CPR*** applies to all proceedings commenced before the commencement date of the ***CPR*** in which no trial date has been fixed without any transitional period or discretion to disapply the ***CPR***'s provisions.

Background

[4.] This action was commenced by MOG & Co, who is suing via the principal and sole proprietor of the firm, Mr. Glinton KC. A specially indorsed writ of summons was filed on 29 September 2021. The writ of summons was served on Graham Thompson on 14 October 2021 and served on Mr. Adams KC on 8 November 2021. A memorandum of appearance was filed on behalf of Graham Thompson on 28 October 2021 and filed on behalf of Mr. Adams KC on 16 October 2021. Neither defendant has filed and served a defence.

[5.] Pursuant to the Summary Judgment Summons, Mr. Glinton KC has invoked the jurisdiction of the Court to grant judgment without a trial on the ground that the Defendants

have no defence to any of the claims contained in MOG & Co's writ of summons. Mr. Glinton KC seeks:

(a) a declaration confirming MOG & Co's right of lien,
(b) a declaration confirming MOG & Co's right to receive payment directly of the taxed costs subject to the lien,
(c) a declaration confirming the Defendants cannot impose conditions on payment of the taxed costs subject to the lien,
(d) a declaration confirming the Defendants are jointly and severally liable for tortious interference with MOG & Co's contract with the late Julius Trevor Bethel JTB to provide legal services (of which the lien is allegedly a part),
(e) damages for tortious interference with MOG & Co's right of lien,
(f) an order for restitution of MOG & Co's right of lien over $67,717.85 and $19,958.91,
(g) an order for payment of exemplary damages,
(h) interest at the rate of 6.75% from the date of judgment to the date of payment, and
(i) costs.

[6.] Conversely, Mr. Adams KC seeks to arrest or terminate the progress of this action by seeking to have MOG & Co's statement of claim struck out and the action dismissed as against him on the ground that the statement of claim discloses no reasonable cause of action, is scandalous, frivolous, vexatious and/or otherwise an abuse of the process of the Court and may prejudice, embarrass or delay the fair trial of the action or, alternatively, to have the action stayed pending the determination of the interpleader proceedings in ***Supreme Court Action No. 2021/Cle/gen/01273*** ("the Interpleader Action") on the ground that it is likely to dispose of this action.

[7.] The essential background facts may be summarized as follows.

[8.] MOG & Co (and thus Mr. Glinton KC) were engaged by JTB to provide legal advice and representation in connection with two proceedings in this Court, ***Supreme Court Action No. 2010/CLE/gen/1137*** (the "Trust Action") and ***Supreme Court Action No. 2018/CLE/gen/0252*** (the "Writ Action") (collectively, the "Actions").

[9.] While a partner at Graham Thompson, Mr. Adams KC represented Patricia Ruth Bloom ("Patricia Bloom") and Amy Bloom Clough ("Amy Bloom") in the Trust Action. Mr. Adams KC also represented Patrica Bloom and Amy Bloom in the Writ Action, together with Michael Clough, Sarah St George, Grand Bahama Port Authority, Limited (the "GBPA") and Port Group Limited ("PGL").

[10.] JTB appealed a decision that I made on 4 September 2018 refusing an injunction application in the Writ Action to the Court of Appeal (***SCCiv App. No. 182 of 2018***) (the "Writ Action Appeal"). JTB succeeded in the Writ Action Appeal on 28 January 2019 and was awarded his costs in the Court of Appeal. Each of Mr. Adams KC's clients was thereby ordered to pay the costs of the appeal (the "First Costs Order"). Another costs order was made in JTB's favour when a motion seeking leave to appeal to the Judicial Committee of the Privy Council was struck out (the "Second Costs Order") (collectively, the "Costs Orders").

[11.] A Deputy Registrar of the Court of Appeal issued Certificates of Taxation dated 22 October 2019 and 14 November 2019 in respect of the Costs Orders in the respective amounts of $18,873 and $64,340.50 (the "Certificates of Taxation"). Neither the Costs Orders nor the Certificates of Taxation purported to impose a personal obligation on Mr. Adams KC or Graham Thompson to pay costs nor did they provide for costs to be paid directly to MOG & Co.

[12.] Mr. Adams KC ceased to be a partner at Graham Thompson with effect from 31 December 2019 and transitioned to a role as a consultant at Delaney Partners ("DP"). Around this time, Graham Thompson ceased to act for the persons Mr. Adams KC represented in the Actions. Graham Thompson claims that it was not privy to the exchanges that subsequently took place between Mr. Adams KC and Mr. Glinton KC.

[13.] MOG & Co wrote a demand letter to Mr. Adams KC dated 14 January 2020 upon receipt of the Certificates of Taxation in the post. MOG & Co transmitted the demand letter to Mr. Adams KC via email on 16 January 2020. The demand letter made no mention of any attorney's lien although Mr. Glinton KC contends that no demand was strictly necessary and, if one was, this letter sufficed so far as Mr. Adams KC was concerned.

[14.] Mr. Adams KC responded to MOG & Co's demand by email the same day it was received stating, *inter alia*, that he was awaiting receipt of the file pertaining to the matter from Graham Thompson and that he did not *"anticipate enforcement proceedings will be necessary"*. The Supplemental Affidavit of Mr. Glinton KC confirms that it was clear to Mr. Glinton KC at this point that Mr. Adams KC no longer worked for Graham Thompson.

[15.] JTB died in The Bahamas on 17 January 2020 from undetermined causes.

[16.] On 19 January 2020, Mr. Glinton KC wrote to Mr. Adams KC regarding the interest he claimed was payable on the amounts stated to be due in the Certificates of Taxation.

[17.] On 31 January 2020, Edward J Marshall II ("EJM"), a partner at DP, transmitted a draft Deed of Release to MOG & Co (the "Draft Deed of Release") between Mr. Glinton KC and MOG & Co as Releasors and Patricia Bloom, Michael Clough, the GBPA, PGL and Sarah St. George as Releasees "*...in relation to the costs awarded to* [JTB] *in the Court of Appeal*". The Draft Deed of Release was stated to be under review by DP's clients (the parties liable to pay costs) and, therefore, possibly subject to amendment. Recital (F) of the Draft Deed of Release provided:

> (F) Subsequent to the demand by the Releasors for payment of the Certificates of Taxation JTB passed away. The Releasors have made representations to counsel for the Grand Bahama Port Authority, Port Group Limited and Sarah St. George that:-
>
> > (i) the costs awarded to JTB in the Court of Appeal Action, and payable to him by virtue of the said Certificates of Taxation, represent unpaid monies and or fees that are now and have been due and owing to the Releasors by JTB both prior to and at the time of his death for legal services duly rendered to JTB by the Releasors in connection with the Court of Appeal Action; and
> >
> > (ii) The Releasors are duly authorized to collect and or receive the sums payable by the Releasees pursuant to the Certificates of Taxation on the basis that such monies are and have been due and owing to the Releasors for legal services that were duly rendered to JTB prior to his death.

[18.] The claimed rationale for the Draft Deed of Release was explained in an Affidavit sworn by Karla S. McIntosh filed on 27 October 2021 in the Interpleader Action at paragraph 15:

> 15. After much consideration, [the GBPA, PGL and Sarah St. George] instructed their counsel to pay over to [MOG & Co] the sum of $83,013.50 representing the costs taxed in favour of JTB in exchange for a Deed of Release executed by [Mr. Glinton KC] and [MOG & Co]. There were, however, concerns as to whether [Mr. Glinton KC] and [MOG & Co] continued to possess the requisite legal authority to provide [the GBPA, PGL and St. George] a legally valid and effective release and receipt in light of the fact that their client, JTB, had died. There were also concerns that, without a legally valid and effective release and receipt being issued on behalf of JTB, his Estate might also make a claim against [the GBPA, PGL and St. George] for the sums due and payable by virtue of the Certificates of Taxation. In a good faith attempt to address the said concerns, a draft of the Deed of Release was prepared and sent by counsel for [the GBPA, PGL and Sarah St. George] to [Mr. Glinton KC] and [MOG & Co] for their review and agreement...

[19.] On 2 February 2020, Mr. Glinton KC wrote Mr. Adams KC in the following terms:

> It was thought to be clearly understood that we were willing to execute a formal acknowledgment for the amounts the Respondents are to pay over to Maurice O. Glinton & Co., as counsel and attorneys of record in proceedings in the appeal, pursuant to the respective Certificates of Taxation issued by the Registrar of the Court of Appeal, if such would allay a concern you expressed. Having seen the draft Release you had Edward forward to us to review instead, with the caution that it was in the meantime being reviewed by the Respondents one is left to accept this as an invitation to Maurice O. Glinton & Co to resort to other legal means to compel the Respondents' payment of the Judgment debts. It is to be noted that in the interim interest continues to accrue on these awards.

[20.] On 2 February 2020, Mr. Adams KC responded to Mr. Glinton KC as follows:

> It is regrettable that you have formed that view set forth in your message below. It is my understanding that your Firm is prepared to execute a receipt and release in favour of my clients that includes an expressed representation on your part the sums of money due payable to your former client, The Late Trevor Bethel, as per the Certificates of Taxation, are, in fact, sums of money due and owed by your former client to your Firm. Further, such sums were due and owed by your former client to your Firm as at the time of his death. If there are amendments you wish to make to the draft documents Mr. Marshall has remitted to you, please make them and we will consider the same. It is not our intention to unduly prolong the resolution of this issue. Our client, however, is entitled to obtain a legally effective receipt and document evidencing satisfaction of the debt upon tendering payment.

[21.] No further correspondence passed between Mr. Glinton KC and Mr. Adams KC regarding the Draft Deed of Release and the Draft Deed of Release was not executed.

[22.] On 24 March 2020, Mr. Glinton KC wrote a letter to Graham Thompson to inform the firm that it and Mr. Adams KC were "*possibly implicated*" as "*subjects of formal complaint to the Bar of unbecoming professional conduct*" and Mr. Glinton KC invited it to influence Mr. Adams KC "*...to act in a manner avoiding further professional embarrassment...*". Mr. Glinton KC contends this letter sufficed as a demand vis-à-vis Graham Thompson to the extent that a demand was required for MOG & Co to assert its lien.

[23.] On November 2020, JTB's mother, Daisy Bloneva Bethel (the "Administratrix"), was granted letters of administration in JTB's estate in ***Supreme Court Action No. 2020/Pro/npr/FP/00031***.

[24.] On 29 September 2021, MOG & Co commenced these proceedings. On that same date, MOG & Co also commenced separate proceedings against the Administratrix, ***Supreme Court Action No. CLE/gen/01116***, seeking, *inter alia*, a declaration that the Costs Orders are subject to MOG & Co's lien and do not form a part of JTB's estate (the "Estate Action").

[25.] On 22 October 2021, Tynes & Tynes, the Administratrix's attorneys, wrote to the Defendants to request that they remit all funds payable to JTB's estate pursuant to the Certificates of Taxation to them together with the interest accrued thereon. MOG & Co do not accept the *bona fides* of this correspondence.

[26.] In a ruling made in the Actions dated 26 April 2022, I granted MOG & Co security by way of lien or charge on both the taxed and untaxed costs which were ordered to be paid to JTB in the Actions. In my ruling, I noted that the proceedings were not " *...enforcement proceedings but the exercise of the right of MOG, as the attorneys for Bethel, to ask the court to intervene in order to protect the solicitor's entitlement to fees as against his client*".

[27.] Neither of the Defendants holds the funds payable pursuant to the Certificates of Taxation. On 27 October 2021, the GBPA, PGL and Sarah St. George commenced the Interpleader Action to try the issue of whether the funds should be paid to MOG & Co or JTB's estate. Neither of the Defendants is a party to the Interpleader Action although Mr. Adams KC represents the GBPA, PGL and Sarah St. George.

[28.] Mr. Glinton KC has applied by summons filed on 10 November 2021 to, *inter alia*, strike out the Interpleader Action as an abuse of process, describing it as a "contrivance". That application is pending. These proceedings and the Interpleader Action have been set up in competition with one another as one of the reliefs Mr. Glinton KC seeks if unsuccessful in his strike out application is a stay of the Interpleader Action pending trial of this action.

The pleaded claim

[29.] While MOG & Co's statement of claim is exceptionally elaborate, the gravamen of the statement of claim can, I think, be fairly summarized as follows:[1]

[1] Where "MOG & Co" and "Other Persons" are used in the subparagraphs that follow, the expressions are intended to bear the same meanings as are ascribed to them in the statement of claim)

(1) Notwithstanding Mr. Adams KC's assurances to MOG & Co before JTB died, and the assumption of him being cognizant of long settled law and practice as to the attorney's lien attaching costs, the Defendants together in complicity and in concert with Other Persons liable for payment of the Certificates of Taxation imposed a novel and extraneous condition for paying over the taxed costs, namely, the Draft Deed of Release, thus derogating from MOG & Co's right of lien attaching the taxed costs, which is part or an incident of JTB's contract for services with MOG & Co.

(2) The Draft Deed of Release contained an acknowledgment that the taxed costs subject to the lien were in fact sums of money due and owed to MOG & Co. Thus Mr. Adams KC knew of MOG & Co's exertions on behalf of JTB who lacked the financial means to pay the costs of services provided by MOG & Co and that knowledge is to be imputed to Graham Thompson. The Defendants knew or should have known of the state of JTB's indebtedness to MOG & Co from documents filed in the Actions. Further, the Defendants knew whoever JTB did engage as counsel and attorney to act on his behalf in the Actions would have no assurance of JTB paying for services.

(3) The Defendants in concert with Other Persons knowingly misapplied or disregarded the law and practice to negate MOG & Co's right of lien and were professionally negligent in that they subjected MOG & Co to conditions that no reasonably informed and competent member of the legal profession would have done. Further, the Defendants as counsel and attorneys as well as officers of the court intentionally and negligently breached their professional and fiduciary obligations as such by acting in a manner no competent officer of the court would have as regards the taxed costs payable to MOG & Co. Further, the Defendants are jointly and severally liable in tort for unlawfully and negligently interfering with the performance of the contract of services MOG & Co undertook successfully.

(4) Had the Defendants acted as they ought to have by securing and seeing to payment of the Certificates of Taxation by those liable for payment and not breached their obligations as counsel and attorneys of record, by colluding with Other Persons to deprive MOG & Co of such costs, Mr. Glinton KC would not have suffered the serious loss of earnings/income he did, leaving him unable to pay debts when they were due and to meet normal financial obligations as has continued to occur. The Defendants knowingly and incompetently ignored the law as to attorney's liens and colluded with the Defendants in the Trust Action to not pay over the taxed costs to MOG & Co, causing financial injury and damaging Mr. Glinton KC's creditworthiness and character.

(5) The Defendants' strategy all along was to financially neuter JTB and render him unlikely or unable to hire fit legal representation by experienced counsel and attorneys. This could only have had as its direct consequence (as it in fact did), the Defendants knowingly and consciously depriving JTB of any ultimate success in the Actions, having gotten the benefit of MOG & Co's services without paying for them and nothing else of value and significance. The Defendants successfully colluded with Other Persons to deprive JTB entirely of means to resist and oppose their various objectives, which included excluding his participation in the Sir Jack Hayward (1993) Discretionary Settlement.

(6) A direct effect of the Defendants imposing preconditions on paying over the taxed costs to JTB while alive, having given assurance of such payment, was that MOG & Co did not employ enforcement proceedings and this was not only deceitfully misusing legal procedure for the purpose of swindling (or enabling the Other Persons to swindle) MOG & Co but also tortious interference with the performance of JTB's contract for services. As a result of the Defendants' deceit and tortious interference with contract, MOG & Co has been put to inconvenience and expense in order to recoup the fruit of exertions on JTB's behalf by having to take legal action against the administrator of JTB's Estate to recover the taxed costs as part of the unpaid Bill of Costs.

(7) MOG & Co's lien over JTB's taxed costs is in the nature of property or an interest in property which the Defendants unlawfully appropriated to their own use and utility and that of others upon the Defendants failing and refusing to obey the law and practice applying to attorneys' liens, for which they are liable to make restitution to MOG & Co or payment of its value, as measured by MOG & Co's inconvenience and opportunity costs in also being denied the practical timely use and utility of such property.

(8) MOG & Co seeks against Mr. Adams KC, specifically: (i) damages for collusion with persons Mr. Adams KC represented in the Actions and others known and unknown to deprive and to cheat MOG & Co. of its right of lien; (ii) damages for deceit by misrepresentation as counsel and attorney, as to Mr. Adams KC's status as a member and partner of Graham Thompson (the true attorneys of record for the Other Persons); (iii) an Order for restitution of $18,653.00 and $64,340.50; (iv) liquidated damages of $67,717.85 and $19,958.91, the respective amounts of JTB's taxed costs under the Certificates of Taxation as at the date of the demand for payment; and (v) interest pursuant to the provisions of the ***Civil Procedure (Award of Interest) Act, 1992***.

(9) MOG & Co seeks against both Defendants *inter alia*: (i) damages for tortious interference with the performance of MOG & Co's contract to provide legal services to

JTB; (ii) damages for collateral abuse of process in requiring Mr. Glinton KC, contrary to the law and practice, to comply with an illegal condition, with intent to frustrate and deprive him of his right of lien; (iii) damages for deceit by misrepresentation with intent to induce Mr. Glinton KC not to commence proceedings to enforce payment of the taxed costs stated in the Certificates of Taxation; (iv) damages for tortious interference with MOG & Co's right of lien;(v) a declaration that MOG & Co's right of lien is not capable of becoming or forming part of JTB's estate and, as such, MOG & Co cannot be deprived of it; (vi) a declaration that MOG & Co's right of lien is neither extinguished nor diminished in value notwithstanding the passage of time since the death of JTB and the appointment of an administrator of JTB's estate in the events that have happened; (vii) an account by the Defendants for the taxed costs of $18,653.00 and $64,340.50; (ix) an order of restitution of MOG & Co's right of lien, or, alternatively, payment of the value as damages; (x) aggravated and exemplary/vindicatory damages; (xi) liquidated damages of $67,717.85 and $19,958.91; (x) interest on the said amounts pursuant to the provisions of the ***Civil Procedure (Award of Interest) Act, 1992***; and (xii) costs.

Submissions

[30.] Each of the parties lodged helpful written submissions setting out their respective positions. Mr. Glinton KC lodged a skeleton argument dated 21 July 2022 and written reply submissions dated 29 September 2023. Mr. Adams KC lodged written submissions dated 17 April 2023 and written reply submissions dated 6 October 2023. Graham Thompson lodged written submissions dated 17 April 2023 and associated themselves with Mr. Adams KC's written reply submissions by an email dated 6 October 2023. I thank counsel for their assistance. An overview of the submissions made is set out below.

<u>MOG & Co's submissions</u>

[31.] Mr. Glinton KC contended that the wrongs which the Defendants committed are tortious in nature and the claims made are "*primarily restitutionary or compensatory*". On Mr. Glinton KC's characterization of it, this action requires the interpretation and application of principles of law and procedure relating to an attorney's lien for costs and is uncomplicated by fact sensitive issues. Accordingly, it is one suitable for the summary judgment procedure. While Mr. Glinton KC acknowledged that, points of law arise, he submitted that the issues are clear-cut, there has been adequate argument by counsel and the points can be decided as well now as at trial.

[32.] Mr. Glinton KC invited this Court to exercise its jurisdiction to grant summary judgment because, on his submission, the Defendants are unable to set up a bona fide

defence to MOG & Co's claim or to raise any issue which ought to be tried. Mr. Glinton KC submitted that, by virtue of my rulings in the Actions dated 8 April 2022 and 26 April 2022 on MOG & Co's right of lien, which recognized MOG & Co's lien over JTB's costs in the Actions, and the fact that neither of the Defendants, until sued, "*protested*" MOG & Co's lien, neither of the Defendants have a defence of any merit.

[33.] Mr. Glinton KC explained that he sues as counsel and attorney, pleading causes of action against each of the Defendants in tort for injury caused by breach of professional obligations owed to him/his firm. Mr. Glinton KC submitted that the Defendants owed him and his firm an obligation pursuant to an "*implied covenant reflecting the policy of the law*" (codified in "*legal binding practice*") to pay (or perhaps more accurately, to direct their clients to pay) the amounts due under the Certificates of Taxation to him or his firm without demand. Mr. Glinton KC's grievance is, broadly speaking, that the Defendants breached their duty to conform to standard practice accepted as normal and general by counsel and attorneys in similar circumstances by "*seeing to*" the payment of his costs.

[34.] In ***Gavin Edmondson Solicitors Ltd v Haven Insurance Co. Ltd [2018] 1 WLR 2052*** ("***Gavin Edmondson***"), a decision of the Supreme Court of the United Kingdom, ***Lord Briggs*** said at paragraph 4:

> 4. In the ordinary course of traditional litigation, with solicitors acting on both sides, the amount due under a judgment, award or settlement agreement would be paid by the defendant's solicitor to the claimant's solicitor. Or the claimant's solicitor might recover the sum due to his client by processes of execution. In either case the equitable lien would entitle the solicitor not merely to hold on to the money received, but to deduct his charges from it before accounting to his client for the balance. But equity would also enforce the security where the defendant (or his agent or insurer) paid the debt direct to the claimant, if the payer had either colluded with the claimant to cheat the solicitor out of his charges, or dealt with the debt inconsistently with the solicitor's equitable interest in it, after having notice of that interest. In an appropriate case the court would require the payer to pay the solicitor's charges again, direct to the solicitor, leaving the payer to such remedy as he might have against the claimant. This form of remedy, or intervention as it is sometimes called, arose naturally from the application of equitable principles, in which equitable interests may be enforced *in personam* against anyone whose conscience is affected by having notice of them, either to prevent him dealing inconsistently with them, or by holding him to account if he does.
>
> [Emphasis added]

[35.] In ***Bott & Co. Solicitors Ltd. v. Ryanair DAC [2022] UKSC 8*** ("***Bott***"), ***Lord Legatt*** and ***Lady Rose*** said at paragraph 1:

> ...This remedy [of the solicitor's lien] has been recognised by the courts for over two hundred years. In its traditional form, it entitles a solicitor who assists a client to recover money (or other property) through litigation to recoup the costs of doing so out of the money recovered. Any proceeds of a judgment or settlement will normally be paid to the solicitor's firm, which can then deduct its costs before accounting to the client for the balance. But if the opposing party pays the money directly to the solicitor's client despite knowing or being on notice of the solicitor's interest in the debt, and the client then fails to pay the solicitor's costs, the court may order the opposing party to pay those costs to the solicitor - in addition to the payment already made to the solicitor's client.
>
> [Emphasis added]

[36.] Mr. Glinton KC said the Defendants initially undertook their obligation, but, after JTB's death, later breached it, by imposing the Draft Deed of Release as a condition of payment. Mr. Glinton KC described that in oral submissions as "*patently wrong*" and a "*nonsense*". MOG & Co submitted that the Defendants' actions gave MOG & Co a cause of action and right to sue them directly in tort. MOG & Co further submitted that there was absolutely no right to insist on a release and it was *"no business*" of the Defendants as to what would have happened if the Defendants' clients had paid the funds due under the Certificates of Taxation to MOG & Co.

[37.] Mr. Glinton KC submitted that MOG & Co's lien attached in priority to JTB's interest or to that of anyone claiming through him and obligated the Defendants *qua* attorneys for those liable to pay costs to pay them, to Mr. Glinton KC or MOG & Co and no release to secure performance of the obligation had to be given. MOG & Co's refusal to execute a release following JTB's death did not absolve the Defendants of their obligation in that regard, nor does it provide the Defendants with a defence to the claim. MOG & Co's lien arose from the moment the Costs Orders were made and it did not abate with JTB's death.

[38.] Mr. Glinton KC submitted that the obligation owed by the Defendants arose from the "proximity" of the parties. MOG & CO submitted that whether a duty of care exists in a given situation is a question of law and the legal test for the existence of a duty of care in a novel situation was established by ***Lord Wilberforce*** in ***Anns v Merton London Borough Council [1978] AC 728*** (a decision which has since been overruled). Applying the test in ***Anns***, Mr. Glinton KC submitted that there was a sufficiently proximate or neighbourhood relationship giving rise to a duty of care owed to MOG & Co, who relied on the Defendants to advise their clients as to the payment of the costs.

[39.] MOG & Co also relied on the decision of the House of Lords in ***White v Jones [1995] 2 AC 207***, under which liability in tort was imposed on a solicitor based on a notional assumption of responsibility notwithstanding the absence of privity of contract or a pre-existing fiduciary relationship, in support of the alleged duty of care. Mr. Glinton KC submitted that, on becoming an attorney, an individual is placed under a more onerous position vis-à-vis the persons with whom they deal as attorneys and one of the responsibilities the Defendants were under was to see to their conduct being in accordance with the general or standard practice in the profession.

[40.] Mr. Glinton KC submitted that, as the Defendants opted not to follow normal or standard practice, they were negligent, as identified in ***Saif Ali v Sidney Mitchell & Co [1980] AC 198*** ("***Saif Ali***"). Mr. Glinton KC relied on a passage in ***Lord Diplock***'s speech in ***Saif Ali*** which he said described the "*tort of professional negligence based on an error of judgment*". ***Lord Diplock*** said at page 220 *inter alia that "*[n]*o matter what profession it may be, the common law does not impose on those who practise it any liability for damage resulting from what in the result turn out to have been errors of judgment, unless the error was such as no reasonably well-informed and competent member of that profession could have made*".

[41.] Mr. Glinton KC submitted that the Defendants made a gross error in judgment that no reasonably informed and competent member of the profession would have made and that the Defendants could not justify why, after they received notice of the Certificates of Taxation and the Costs Orders, they did not follow the standard practice when costs are to be paid between legally represented parties. According to Mr. Glinton KC, failure to adopt the general practice is "*often the strongest possible indication of want of care*" per John Fleming in ***The Law of Torts (9th edn)***.

[42.] Mr. Glinton KC submitted that, in this case, not only did the Defendants not adopt the generally accepted practice in the profession, by paying over the costs due under the Certificates of Taxation to him/his firm, they did so intentionally and in defiance of well-settled law, having acknowledged his right or lien. Mr. Glinton KC added that the Defendants neglected their duty to the court to apprise themselves of current reported decisions on attorneys' liens and suggested that the Defendants also breached their duties as officers of the court by failing to adhere to standard practice.

[43.] Mr. Glinton KC submitted that the Defendants and their current or former clients by unlawful means knowingly deprived him of property, i.e., the equitable lien attaching to the taxed costs they were obliged to pay him under the Certificates of Taxation, and ignored his written demand for them, and still persist in not conforming with their

obligations. Mr. Glinton KC suggested that this has hindered or prevented him from performing his contract to provide legal services with JTB.

[44.] Mr. Glinton KC referred the Court to an abundance of authorities on attorneys' liens including ***Welsh v Hole (1779) 1 Doug. KB 238***; ***Barker v St Quintin 12 M & W 441***; ***Read v Dupper 101 ER 595***; ***Ex Parte Bryant (1815) 1 Madd 49***; ***Gould v Davis (1831) 1 Cr & J 415***; ***Ex Parte Rhodes 15 Ves Jun 539***; ***Lloyd v Mason (1845) 4 Hare 132***; ***Ex Parte Cleland [1866-67] 2 Ch. App 808; Mercer v Graves [1897] 2 Ch D 314***; ***Campbell v Campbell and Lewis [1941] 1 All ER 274; In the Estate of FULD (No. 4) [1968] P. 797; Halvanon Insurance Co. Ltd v Central Reinsurance Corp [1988] 1 WLR 1122;*** and ***Fairfold Properties Ltd v Exmouth Docks Co. Ltd. No. 2) [1993] Ch. 196; Gavin Edmondson*** and ***Botts*** to support his submissions on the law relating to attorneys' liens.

[45.] Mr. Glinton KC explained in his submissions that MOG & Co's interference claim was premised on the Defendants knowingly impeding payment of the taxed costs to him or his firm, "*unlawfully depriving him of his equitable lien and his property*". Mr. Glinton KC submitted that, as the Defendants' clients had funds available to pay and were prepared to pay but for Mr. Adams KC's advice not to do so without a release, the Defendants cannot deny interfering. Relying on ***In re Capital Insurance Association (1883) 24 Ch. D 408***, Counsel submitted that the lien of an attorney forms part of the contract entered into between the attorney and his client. Developing this submission, Mr. Glinton KC said in his written submissions:

> The evidence is that the Defendants acted inconsistently with the Plaintiff's contract with his Client, of which they had knowledge, with intent of wrongfully interfering with the Plaintiff's right of property part of the said contract, in that they refused to honour their obligation to the Plaintiff, by not seeing that their clients pay the taxed costs to him. In so doing they opted not to conform with standard practices accepted as normal and general by practicing attorneys in similar circumstances. The fact that the Defendants rather than seeking court approval of their action instead opted not to conform with standard practices accepted as normal and general by practicing attorneys in similar circumstance and unilaterally oppose the Plaintiff's lien, it is fair to assume they acted for ulterior purposes...

[46.] Mr. Glinton KC submitted that, if it is accepted that, had the Defendants' clients paid anyone other than MOG & Co, they would have done so unlawfully and would have damaged MOG & Co, then it follows that the Defendants' advice to their clients not to pay MOG & Co because of a potential demand from JTB's estate was equally unlawful and damaging to MOG & Co.

[47.] Mr. Glinton KC criticized the Interpleader Action brought by Mr. Adams KC's clients on the basis that the action was procedurally irregular, as the application for interpleader relief should have been made under ***Order 17, rule 3(1)*** of the ***RSC*** in the Writ Action, and on the basis that there is no debt or any money, goods or chattels that MOG & Co claims adverse to the Administratrix respecting which the Interpleaders are or rightly anticipate being sued in respect of liability therefor. MOG & Co is not in any real competition with the Administratrix and MOG & Co's claim is not a "debt" as it is a claim in tort for which damages are "*at large*".

[48.] Mr. Glinton KC further submitted that the Interpleader Action and the Strike Out Summons are an abuse of process. Mr. Glinton KC submitted that the Interpleader Action involves the use of legal procedure for ulterior purposes and the invocation of the interpleader procedure in circumstances where no reasonable attorney with knowledge of the law and generally accepted practice within the profession could advise the paying parties to pay the taxed costs to anyone other than MOG & Co. Mr. Glinton KC further submitted that the Strike Out Summons was issued after an unconditional appearance was filed rather than a conditional appearance. If Mr. Adams KC wished to dispute the propriety of MOG & Co's action on the basis that MOG & Co's writ discloses no reasonable cause of action, he ought to have filed a conditional appearance.

[49.] Addressing the relief sought by the summary judgment application, Mr. Glinton KC submitted that the Court has jurisdiction to grant interlocutory declarations on a summary judgment application where it is clear there are no factual disputes and the refusal of relief will cause injustice to the claimant or unnecessary hardship (citing *inter alia* ***Leco Instruments (U.K) Ltd v Pyrometers Ltd [1981] 7 FSR 325***). Mr. Glinton submitted interlocutory declarations would be appropriate on the facts because the interlocutory declarations sought would be expedient in resolving the dispute between the parties, would clarify the duty of care owed by the Defendants and would clarify future rights relating to untaxed costs in the Trust Action.

[50.] Mr. Glinton KC sought a summary order for an account to be taken on the basis that one would be ordered at trial. As to the claim for exemplary damages, Mr. Glinton KC asked that exemplary damages be awarded on the basis that, among other things, (the Defendants' competency being assumed) the Defendants' conduct was knowing and contumelious, intended to aid and abet their clients in depriving JTB of the benefit of any success in the Actions, and the Defendants' clients retained the benefit of the funds that should have been paid under the Certificates of Taxation to the detriment of MOG & Co. Mr. Glinton KC submitted the case fell within the second category of case in which

exemplary damages may be awarded identified by ***Lord Devlin***'s in ***Rookes v Banard [1964] AC 1129*** (i.e. where the defendant's conduct has been calculated by him to make a profit for himself).

[51.] In his reply submissions, Mr. Glinton KC argued, among other things, that the Defendants had miscast MOG & Co's claim, failed to adequately deal with the authorities he cited (such as ***Lloyd v Mason (1845) 4 Hare 132*** and ***Ex Parte Bryant (1815) 1 Madd 49***) and had disregarded ***section 55*** of the ***Probate and Administration of Estates Act, 2010*** and ***section 65*** of the ***Probate and Administration of Estates Act, 2010***, subsection (1) of which makes JTB's interest in the taxed costs primarily liable for payment of the equitable charge that is the attorney's lien (although he and his firm do not "*claim through the deceased*").

[52.] Mr. Glinton KC submitted, relying on my rulings in the Actions dated 8 April 2022 and 26 April 2022, that this Court has already decided to whom JTB's taxed costs should be paid and any assertion that this Court has left unresolved to whom the taxed costs should be paid is "*illogical, unsustainable and...disappointing from Counsel*" and "*further evidences the unconscionable lengths to which* [the Defendants] *have gone and will go towards their inexplicable defiance of established procedure, the only object of which could be to deprive* [JTB] *and* [Mr. Glinton KC] *of their success*".

[53.] Mr. Glinton KC submitted that the efforts on the part of the Defendants and the Interpleaders to stay this action proves their persistent disregard of MOG & Co's rights. Mr. Glinton KC argued that the Defendants have demonstrated no legitimate defences to his firm's claim and the points they raise in opposition to the Summary Judgment Summons, to the extent they are meritorious or explanatory at all, go only towards reducing or eliminating any award of punitive damages (though there has been no apology here), or apportioning damages amongst themselves.

<u>Mr. Adams KC's submissions</u>

[54.] Counsel for Mr. Adams KC submitted that it is plain and obvious that MOG & Co's statement of claim ought to be struck out against Mr. Adams KC as the action is "*patently unsustainable and misconceived; it is bound to fail in its entirety*". Mr. Malone submitted that, even if the case as pleaded is accepted, the case for relief is "*not made out*". Counsel submitted that no conditional appearance was necessary to make the application.

[55.] Citing paragraphs 44 to 51 of ***Allen SJ***'s decision (as she then was) in ***Lionel Levine v Michael Barnett et al Action No. CLE/gen/00881/2008 (7 October 2010)*** ("***Lionel Levine***"), Counsel submitted that it was incumbent on this Court, given the nature of the allegations made against Mr. Adams KC, to examine the pleadings and affidavit evidence and form a view of whether MOG & Co.'s claim is sustainable.

[56.] Counsel for Mr. Adams KC submitted that in order for MOG & Co's claim to have any "traction", it would be necessary to conclude that what Adams KC did on the facts was something that was calculated and capable of rendering Mr. Glinton KC's lien or security ineffective. However, Mr. Glinton KC's "*right of lien*" did not give MOG & Co any right to payment of the taxed costs, it only gave MOG & Co a security interest and no monies were paid to JTB or his estate in priority to MOG & Co. Counsel submitted that what Mr. Adams KC in fact did was attempt to facilitate the payment of costs

[57.] On the authority of ***Re Weston, Kumar v Julien (1963) 6 WIR 386***, Counsel for Mr. Adams KC submitted that the death of a client suspends the authority of their attorney to act on their behalf and that authority may only be restored by the personal representatives of the client ratifying the attorney's contract. The actions alleged by MOG & Co are therefore incapable of constituting an interference with Mr. Glinton KC's performance of his contract to provide legal services to JTB. Further, Mr. Adams KC's conduct was reasonable. On the death of JTB, his estate, which vested in a Justice of the Supreme Court pursuant to ***section 50*** of the **Probate and Administration of Estates Act, 2010**, automatically became entitled to the Certificates of Taxation and to deal in any way contrary to the estate could have led to possible liability as an *executor de son tort*.

[58.] Mr. Malone, drawing on the discussions of the solicitor's non-possessory lien in ***Gavin Edmondson*** and ***Khans Solicitor (A Firm) v Chifuntwe [2014] 1 WLR 1185***, submitted that the authorities on interference with a solicitor's lien establish that liability requires either a payment defeating the lien in the face of notice of the lien (***Gavin Edmondson*** confirms knowledge of the lien is sufficient) or in collusion with the solicitor's client to deprive the solicitor of their lien. Here, there was no express notice of the lien, no payment in the face of the lien and nothing in the Draft Deed of Release suggested collusion or fraudulent conspiracy; the Draft Deed of Release was in fact facilitating payment.

[59.] Mr. Malone submitted that there is no evidence anything was done inconsistent with Mr. Glinton KC's interest in the taxed costs. The monies are available to be paid and are subject to the direction of this Court in the Interpleader Action. The Interpleaders are willing and able to pay the monies due under the Certificates of Taxation but are seeking

direction as to where it should be paid in light of JTB's death as they do not want the estate "*coming after them*".

[60.] Counsel for Mr. Adams KC argued that, on the facts, MOG & Co, suffered no loss and damage as a result of Mr. Adams KC's actions. Thus, MOG & Co has no viable cause of action in tort. MOG & Co's lien gave Mr. Glinton KC no immediate right to enforce or demand payment of the taxed costs and his lien continues to exist undisturbed. Consequently, Mr. Glinton KC's claim for damages for tortious interference with its right of lien and ability to perform his contract is "*plainly unsustainable*".

[61.] Relying on paragraphs 59 to 60 of the decision of ***Allen SJ*** in ***Lionel Levine*** for the requirements of the tort of abuse of process, Counsel submitted that MOG & Co's abuse of process claim is "*hopeless*" because the taxed costs were not ordered by the Court to be paid to MOG & Co, on MOG & Co's pleaded case, Mr. Adams KC damaged JTB and not MOG & Co and MOG & Co has no enforcement right in respect of taxed costs until a determination is made in the Estate Action and, therefore, MOG & Co has no legal right to complain about the decision not to transfer payment without a release being executed.

[62.] Mr. Malone submitted, in the alternative, that it is in the interests of justice that these proceedings be stayed pending the determination of the Interpleader Action, in which all of the relevant parties are participants and the matters in dispute would be more effectively and completely adjudicated. Counsel noted that the parties whom are liable to pay the taxed costs are not parties to these proceedings, but they are a party to the Interpleader Action.

[63.] Counsel submitted that, if this action is not struck out, it must be because this action is a "*very extreme novel case requiring trial and detail which is not appropriate for a summary judgment application*". Counsel for Mr. Adams KC noted that the number of authorities relied upon by Mr. Glinton KC was "*counter*" to the summary judgment procedure. Mr. Malone submitted that Mr. Adams KC's affidavit "*reveals that it is manifest that* [Mr. Adams KC] *has good defences to* [MOG & Co's] *claims*" and, therefore, the Summary Judgment Summons should be dismissed and Mr. Adams KC should be given leave to defend.

[64.] Mr. Malone objected to Mr. Glinton KC's written reply submissions in his written submissions dated 6 October 2023 on the basis that those submissions exceeded the proper scope of a reply. Mr. Malone responded substantively by submitting that no admissions of any wrongdoing were made by Mr. Adams KC, Mr. Glinton KC could not

rely on ***section 55*** of the ***Probate and Administration of Estates Act, 2010*** as it was not pleaded, a claim based on fraud is not appropriate for summary judgment, and the invocation of ***section 55*** by Mr. Glinton KC is no answer to the strike out application because it is based on false facts as neither Mr. Adams KC nor his clients (nor Graham Thompson) have ever "*effected the release of the Estate's debt and liability*".

Graham Thompson's submissions

[65.] Graham Thompson adopted Mr. Adams KC's submissions as to why MOG & Co's claim is "*doomed to failure*". It was submitted that, due to the flaws in MOG & Co's claim, the Summary Judgment Summons should be dismissed with costs. Mr. Farquharson KC described the case on behalf of Graham Thompson as one that is "*pre-eminently not a case for summary judgment*".

[66.] Mr. Farquharson KC submitted that MOG & Co's right of lien does not give it any right to enforce payment of the taxed costs against the paying parties under the two Certificates of Taxation and, *a fortiori*, it does not give a right of enforcement against the paying parties' counsel or attorney. MOG & Co's right of lien merely provides a security interest (or charge). MOG & Co's right to enforce payment depends on MOG & Co obtaining judgment in the Estate Action. Adams KC's actions could not have interfered, unlawfully or otherwise, with MOG & Co's right of lien, as the charge still subsists. Further, there was no express notice of the lien, and no payment of funds to MOG & Co's client, and thus no loss to MOG & Co, which is at odds with the authorities establishing what conduct is actionable. The allegation of interference is thus "*vacuous*" or at least "*open to considerable doubt*".

[67.] Counsel submitted that, as the death of JTB and the authority of MOG & Co to continue to act on his behalf in the Actions was suspended, the request by Mr. Adams KC for a release affirming that the sums referred in the Certificates of Taxation were due and owed to MOG & Co could "*hardly…be unlawful in the circumstances*" or at least was consistent with a reasonable body of professional opinion and, therefore, not professionally negligent. Mr. Farquharson KC submitted that, in view of this, the requirement for unlawful conduct for the purposes of a claim of tortious or unlawful interference must be "*open to doubt*"; further, "*…the very eventuality such release was intended to protect against has arisen*".

[68.] Graham Thompson submitted that, in order to succeed in the firm's interference claim, MOG & Co will need to prove intent and intent is, at the very least "*disputed and*

open to considerable doubt" because Mr. Adams KC's evidence was that, in attempting to secure the execution of the Draft Deed of Release, he primarily considered the need for his clients to obtain a legally valid release from the recipient of funds. His intention is something that Mr. Adams KC would testify to at trial. Intent is therefore, at its lowest, a triable issue which makes summary judgment inappropriate.

[69.] Graham Thompson submitted that, based on the requirements of the tort of abuse of civil process, MOG & Co's claim of abuse of process is fundamentally misconceived because Graham Thompson did not institute any "legal proceeding" against MOG & Co or anyone else, the taxed costs under the Certificates of Taxation were ordered to be paid to JTB and not MOG & Co, the damage on MOG & Co's pleaded case was suffered by JTB and not MOG & Co, MOG & Co's right of lien conferred only a security interest in the taxed costs and not a right to enforce payment pending the determination of the Estate Action, Mr. Adams KC was no longer a partner of Graham Thompson at the relevant time, and there was a perfectly legitimate basis for Mr. Adams KC to request MOG & Co execute a release; there is no evidence of any predominant intention to achieve an ulterior object.

[70.] Mr. Farquharson KC submitted that the correctness of Graham Thompson's joinder is "*doubtful*", as the correspondence between MOG & Co and Mr. Adams KC was written at a time when Mr. Adams KC was no longer a partner of Graham Thompson and, by that time, Graham Thompson had also been formally replaced by Higgs & Kelly as attorneys for the Other Persons (including the Interpleaders) in the Actions and had ceased acting for its other former clients in both Actions. Mr. Farquharson added that if the action is struck out against Mr. Adams KC, there will be "*nothing left to litigate*" so far as Graham Thompson is concerned as its liability is essentially vicarious in nature.

Legal framework

[71.] While there was largely no dispute between the parties about the applicable legal principles, the parties argued the applications on the basis of the provisions of the ***RSC***. I am therefore required to review the relevant legal framework under the ***CPR***.

The Overriding Objective

[72.] Pursuant to ***rule 1.2(1)*** of the ***CPR***, the Court is required to seek to give effect to the overriding objective whenever it is interpreting the ***CPR***, exercising any powers under the ***CPR*** or exercising any discretion given by the ***CPR***. The overriding objective of the CPR is to deal with cases "*justly and at proportionate cost*". ***Rule 1.1*** of the ***CPR*** provides:

(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.

Stays

[73.] The Court has inherent jurisdiction to stay proceedings before it whenever it "*thinks fit*" to do so, and this jurisdiction is preserved by ***section 16(3)*** of the ***Supreme Court Act***. The statute imposes no other express requirement which must be satisfied and the test is simply what is required by the interests of justice in the particular case: ***Athena Capital Fund SICAV-FIS SCA v Secretariat for the State of the Holy See [2022] 1 WLR 4570***. Additionally, pursuant to ***rule 26.1(2)(q)*** of the ***CPR,*** as part of its case management powers, the Court may stay the whole or part of any proceedings generally or until a specified date or event, where it would promote the overriding objective. The question of whether to grant a stay or not under both sources of jurisdiction is discretionary. The circumstances in which a stay may be appropriate are diverse but the stay must be justified taking into account the relevant factors on the facts.

Summary disposal (in general)

[74.] The Court has wide case management powers under the ***CPR*** which include the ability to strike out all or part of a statement of case (under ***Part 26***) and to grant summary judgment against a claimant or a defendant on a claim or a particular issue (under ***Part 15***). The ***Caribbean Civil Court Practice 2011*** explains at page 144:

> Together with CPR 26, [Part 15] provides the court with the power to dispose summarily of claims in furtherance of the overriding objective. Under its case management powers in CPR 26 the court has the power, acting on its own initiative, to direct that an application for summary judgment be heard. In an appropriate case an application for summary judgment may be combined with an

application to strike out under CPR 26. Conversely, the court may treat a defendant's application to strike out as if it were an application for summary judgment: Taylor v Midland Bank Trust Co Ltd 21 July 1999, BLD 230799916, [1999] All ER (D) 831. Similarly, where the defence merely contains bare denials, the court may equally make an order for summary judgment under Part 15 on the basis that the defence stands no real prospects of success: Ed Jacob v Millenium Development Corporation Ltd (TT: CV 2007 – 1668) (3 April 2008) (Justice Stollmeyer).

[75.] In ***Partco Group Ltd v Wragg [2002] 2 BCLC 323***, a decision of the English Court of Appeal, ***Potter LJ*** at paragraphs 27 and 28 usefully summarized seven propositions that should be borne in mind whenever a court is called upon to consider exercising its powers of summary disposal which I reproduce (formatting mine):

> (1) The purpose of resolving issues on a summary basis and at an early stage is to save time and costs and courts are encouraged to consider an issue or issues at an early stage which will either resolve or help to resolve the litigation as an important aspect of active case management: see Kent v Griffiths (No 3) [2000] 2 All ER 474, [2001] QB 36. This is particularly so where a decision will put an end to an action.
>
> (2) In deciding whether to exercise powers of summary disposal, the court must have regard to the overriding objective.
>
> (3) The court should be slow to deal with single issues in cases where there will need to be a full trial on liability involving evidence and cross-examination in any event and/or where summary disposal of the single issue may well delay, because of appeals, the ultimate trial of the action.
>
> (4) The court should always consider whether the objective of dealing with cases justly is better served by summary disposal of the particular issue or by letting all matters go to trial so that they can be fully investigated and a properly informed decision reached. ...
>
> (5) Summary disposal will frequently be inappropriate in complex cases. If an application involves prolonged serious argument, the court should, as a rule, decline to proceed to the argument unless it harbours doubt about the soundness of the statement of case and is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of the trial itself: see the Three Rivers case per Lord Hope at paras 94–98 (pp 542–544), considering the Williams & Humbert case.
>
> (6) It is inappropriate to deal with cases at an interim stage where there are issues of fact involved, unless the court is satisfied that all the relevant facts can be identified and clearly established: see Killick v PricewaterhouseCoopers at 72 and 73.
>
> (7) It is inappropriate to strike out a claim in an area of developing jurisprudence. In such areas, decisions should be based upon actual findings of fact: see Farah v British Airways plc [1999] CA Transcript 2120) per Lord Woolf MR at para 35 and

per Chadwick LJ at para 42, applying Barrett v Enfield London Borough Council [2001] 2 AC 550, [1999] 3 All ER 193and X (Minors) v Bedfordshire CC [1995] 2 AC 633, [1994] 4 All ER 640 and [1995] 2 AC 633, [1995] 3 All ER 353–373.

[76.] While strike out and summary judgment will "*frequently be inappropriate in complex cases*", the volume of documentation and the complexity of the issues raised on the statements of case "*should be the subject of critical scrutiny and should not without more deter the judge from considering whether it is really necessary to commit the parties and the court to a lengthy trial and all the preparatory steps which that will involve*": ***Three Rivers District Council v Bank of England (No 3) [2003] 2 AC 1*** ("***Three Rivers District Council***") per ***Lord Hobhouse*** at paragraph 156.

[77.] When the Court is called upon by a party to exercise powers of summary disposal or is considering whether to do so of its own motion, it must be "*alert to the defendant, who seeks to avoid summary judgment* [or strike out] *by making a case look more complicated or difficult than it really is*" and must "*guard against the cocky claimant, who, having decided to go for summary judgment* [or strike out], *confidently presents the factual and legal issues as simpler and easier than they really are and urges the court to be 'efficient' ie produce a rapid result in the claimant's favour*": ***Doncaster Pharmaceuticals Group Ltd v Bolton [2006] EWCA Civ 661*** per ***Mummery LJ*** at paragraphs 10 and 11.

Strike out

[78.] The statutory jurisdiction of the Court to strike out all or part of a statement of case is found in ***rule 26.3(1)*** of the ***CPR***, which provides:

> (1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that —
> (a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;
> (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
> (c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
> (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[79.] An application made under ***rule 26.3(1)(b)*** of the ***CPR*** is the ***CPR***-equivalent of a demurrer. In ***Duchess of Sussex v Associated Newspapers Limited [2021] 1 All ER 336 (Ch)*** ("***Duchess of Sussex***"), ***Warby J*** (as he then was) provided a helpful summary

of the correct approach to be taken when considering the English equivalent at paragraph 33(2), where he said:

> An application under CPR 3.4(2)(a) calls for analysis of the statement of case, without reference to evidence. The primary facts alleged are assumed to be true. The Court should not be deterred from deciding a point of law; if it has all the necessary materials it should 'grasp the nettle': *ICI Chemicals and Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725, [2007] All ER (D) 115 (Jun), But it should not strike out under this sub-rule unless it is 'certain' that the statement of case, or the part under attack discloses no reasonable grounds of claim: *Richards (t/a Colin Richards & Co) v Hughes* [2004] EWCA Civ 266, [2004] PNLR 706 (at [22]). Even then, the Court has a discretion; it should consider whether the defect might be cured by amendment; if so, it may refrain from striking out and give an opportunity to make such an amendment.
>
> [Emphasis added]

[80.] ***Rule 26.3(1)(c)*** of the ***CPR*** is a blend of the grounds formerly contained in ***Order 18, rules 19(1)(b)***, ***(c)*** and ***(d)*** of the ***RSC***. In ***Duchess of Sussex***, ***Warby J*** considered the correct approach to be taken when considering an application to strike out brought under ***rule 3.4(2)(b)***, the comparable but not identically worded provision of the ***English CPR***. He said at paragraphs 33(3), 33(4) and 34:

> Rule 3.4(2)(b) is broad in scope, and evidence is in principle admissible. The wording of the rule makes clear that the governing principle is that a statement of case must not be 'likely to obstruct the just disposal of the proceedings'. Like all parts of the rules, that phrase must be interpreted and applied in the light of the overriding objective of dealing with a case 'justly and at proportionate cost'. The previous rules, the Rules of the Supreme Court, allowed the court to strike out all or part of a statement of case if it was 'scandalous', a term which covered allegations of dishonesty or other wrongdoing that were irrelevant to the claim. The language is outmoded, but I agree with Mr White that the power to exclude such material remains. Allegations of that kind can easily be regarded as 'likely to obstruct the just disposal' of proceedings.
>
> 'Abuse of process' is a sub-set of category (b). An abuse of process is a significant or substantial misuse of the process. It may take a variety of forms. Typical examples are proceedings which are vexatious, or attempts to re-litigate issues decided before, or claims which are not 'worth the candle' (*Jameel (Yousef) v Dow Jones & Co Inc* [2005] EWCA Civ 75, [2005] QB 946, [2005] 2 WLR 1614). But the categories are not closed.
>
> In the context of r 3.4(2)(b), and more generally, it is necessary to bear in mind the Court's duty actively to manage cases to achieve the overriding objective of deciding them justly and at proportionate cost; as the Court of Appeal recognised

> over 30 years ago, 'public policy and the interest of the parties require that the trial should be kept strictly to the issues necessary for a fair determination of the dispute between the parties': *Polly Peck (Holdings) plc v Trelford* [1986] 2 All ER 84 at 94, [1986] QB 1000 at 1021(O'Connor LJ). An aspect of the public policy referred to here is reflected in CPR 1.1(2)(e): the overriding objective includes allotting a case 'an appropriate share of the court's resources, while taking into account the need to allot resources to other cases'.
>
> [Emphasis added]

[81.] The Court, when exercising the power to strike out conferred by the ***CPR***, will have regard to the overriding objective and to its general powers of case management under ***Part 26*** of the ***CPR***. The Court has a discretion whether to strike out and therefore must consider whether any alternatives adequately meet the justice of the case, such as, where the complaint is a defective statement of case, making an unless order requiring the party against whom strike out is being considered to serve an amended statement of case within a further specified period of time: ***Real Time Systems Limited v Renraw Investments Limited (2014) 84 WIR 439***.

[82.] In addition to its statutory jurisdiction, it is well-established that the Court has a residual inherent jurisdiction as a superior court of law and a court of unlimited jurisdiction to strike out statements of case and to stay or dismiss actions that are frivolous, vexatious or otherwise an abuse of its process. Under its inherent jurisdiction, the Court may dismiss actions that are bound to fail as a matter of law or because there is no realistic chance the facts underpinning the claim will be proved at trial. Evidence is, in principle, admissible when the Court is considering whether to exercise its inherent jurisdiction.

[83.] The inherent jurisdiction of the Court was ably discussed by ***Allen SJ*** in ***Lionel Levine*** at paragraphs 44 to 48 as follows:

> 44. The Court's power to strike out an action both under its inherent jurisdiction and under Order 18 rule 19 of the Rules of the Supreme Court should only be exercised in plain and obvious cases. (See Lawrence and Nord Norreys (1890)15 AppCas. 210.)
>
> 45. The principle is that the application should be acceded to where the plaintiff's case is bound to fail on the material presently available and there is no reasonable possibility of evidence becoming available to the plaintiff sufficiently to support his case and to give it some prospect of success (See, Three Rivers DC v Bank of England (No. 3) [2003] 2 AC).

46. Neill L.J. expressed it in this way in McDonald's Corpn. V Steel [1995] 3 All ER 615 at page 623: "...the power to strike out was a draconian remedy which was to be employed in clear and obvious cases where it was possible to say at the interlocutory stage and before full discovery that a particular allegation was incapable of being proved."

47. The authorities further say that the remedy cannot be employed where it would require a minute and protracted examination of documents to see whether the plaintiff really has a good cause of action (See Wenlock v Moloney [1965] 2 All E.R. 871).

48. That position, however, was modified in Williams and Humbert Ltd. v W & H Trade Marks (Jersey) Ltd. [1986] AC 368. Their Lordships found that there were special circumstances which made it right for the judge to proceed with the application to strike. Lord Templeman at pages 435-436 noted that if the pleadings and particulars had not been struck out, the matter would have proceeded to trial and the evidence would have been "harassing to the plaintiff and embarrassing to the Court and designed to support the allegations and insinuations of oppression and bad faith on the part of the Spanish authorities ..... and were rightly disposed of at the first opportunity."

[Emphasis added]

Summary judgment

[84.] The jurisdiction of the Court to grant summary judgment is found in ***rule 15.2*** of the ***CPR***, which provides:

> The Court may give summary judgment on the claim or on a particular issue if it considers that the —
> (a) claimant has no real prospect of succeeding on the claim or the issue; or
> b) defendant has no real prospect of successfully defending the claim or the issue.

[85.] ***Rule 15.6*** of the ***CPR*** supplements ***rule 15.2*** of the ***CPR*** and provides:

> (1) The Court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end.
>
> (2) Where the proceedings are not brought to an end the Court must also treat the hearing as a case management conference.

[86.] The ***CPR*** is silent on whether an application for summary judgment may be made against a defendant before a defence, unlike the prior Order 14 rule 1 which specifically

prescribed the timing of the application as after the service of a statement of claim and the defendant had entered an appearance. There is no obvious reason why, in the absence of clear words, the Court should be without the ability to consider a summary judgment application against a defendant merely because no defence has been filed.

[87.] The Court may have regard to evidence, in which any defence may be set out, on an application for summary judgment pursuant to ***rule 15.5*** and there are circumstances where summary judgment may be preferable to a default judgment such as where the judgment is required for the purposes of execution outside of the jurisdiction.

[88.] In ***Swain v Hillman [2001] 1 All ER 91*** ("***Swain***"), a decision of the English Court of Appeal, ***Lord Woolf MR*** described the English equivalent of ***rule 15.2*** of the ***CPR*** in the following terms at page 92:

> Under r 24.2, the court now has a very salutary power, both to be exercised in a claimant's favour or, where appropriate, in a defendant's favour. It enables the court to dispose summarily of both claims or defences which have no real prospect of being successful. The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success or, as Mr Bidder QC submits, they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success.
>
> [Emphasis added]

[89.] The ***Caribbean Civil Court Practice 2011*** explains the test for summary judgment under ***Part 15*** as follows at pages 144 to 145:

> The test under Part 15 (ENG CPR 24) is whether there is a real prospect of success in the sense that the prospect of success is realistic rather than fanciful; when undertaking this exercise, the court should consider the evidence which can reasonably be expected to available at the trial – or the lack of it; it is not appropriate for the court to undertake an examination of the evidence (without a trial) and adopt the standard applicable to a trial (namely, the balance of probabilities). See Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550, [2001] BLR 297.

[90.] In ***Three Rivers District Council, Lord Hobhouse*** provided useful guidance on the approach required of a judge when considering the test for summary judgment paragraph 158:

> ...The important words are 'no real prospect of succeeding'. It requires the judge to undertake an exercise of judgment. He must decide whether to exercise the power to decide the case without a trial and give a summary judgment. It is a

'discretionary' power, ie one where the choice whether to exercise the power lies within the jurisdiction of the judge. Secondly, he must carry out the necessary exercise of assessing the prospects of success of the relevant party. If he concludes that there is 'no real prospect', he may decide the case accordingly. I stress this aspect because in the course of argument counsel referred to the relevant judgment of Clarke J as if he had made 'findings' of fact. He did not do so. Under RSC Ord 14 as under CPR Pt 24, the judge is making an assessment not conducting a trial or fact-finding exercise. Whilst it must be remembered that the wood is composed of trees some of which may need to be looked at individually, it is the assessment of the whole that is called for. A measure of analysis may be necessary but the 'bottom line' is what ultimately matters. ... The criterion which the judge has to apply under CPR Pt 24 is not one of probability; it is absence of reality. ...

[Emphasis added]

[91.] There will often be a natural reluctance on the part of a judge to venture into the merits at an early stage of the proceedings without disclosure having taken place and without the parties having led their evidence and tested their opponent's evidence. However, where it is clear that it would be pointless and wasteful for a claim or issue to be tried, to dispose of it at an early stage gives effect to the overriding objective. In ***Sagicor Bank Jamaica Limited v Taylor-Wright [2018] 3 All ER 1039, Lord Briggs***, giving the advice of the Judicial Committee of the Privy Council, said at paragraph 16:

> Part 15 of the CPR provides, in Jamaica as in England and Wales, a valuable opportunity (if invoked by one or other of the parties) for the court to decide whether the determination of the question whether the claimant is entitled to the relief sought requires a trial. Those parts of the overriding objective (set out in Pt 1) which encourage the saving of expense, the dealing with a case in a proportionate manner, expeditiously and fairly, and allotting to it an appropriate share of the court's resources, all militate in favour of summary determination if a trial is unnecessary.
>
> [Emphasis added]

[92.] Nonetheless, the jurisdiction to grant summary judgment must be kept within its proper bounds. It is not meant to dispense with the need for a trial where there are issues which should be investigated at trial, per ***Lord Woolf MR*** in ***Swain*** at page 95. As ***Lord Hope*** explained in ***Three Rivers District Council***, at paragraph 95, the object or purpose of the jurisdiction is to dispose of cases that are plainly not fit to be tried at all either because it is clear as a matter of law that, even if they succeed in establishing their

pleaded case, they will fail, or because it is possible to say with confidence that the factual basis of their case is fanciful because it is entirely without substance.

[93.] The key principles applicable on an application for summary judgment brought against a defendant were summarized by ***Freedman J*** in ***Ventura Capital GP Ltd v DNAN Ltd and others [2023] EWHC 1631 (Ch)*** at paragraph 33 and ***Peter MacDonald KC*** in ***Dexia Crediop SPA v Provincia Di Pesaro E Urbino [2023] 2 All ER (Comm) 567*** at paragraph 58 drawing from the summary provided by ***Lewison J*** (as he then was) in ***Easyair Ltd (Trading As Openair) v Opal Telecom Ltd [2009] EWHC 339 (Ch)***:

> (1)The court must consider whether the claimant (or defendant) has a "realistic" as opposed to a "fanciful" prospect of success.
> (2) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.
> (3) In reaching its conclusion the court must not conduct a "mini-trial". Disputed facts must generally be assumed in the defendant's favour.
> (4) This does not mean that the court must take at face value and without analysis everything that a claimant says in its statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.
> (5) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application, but also the evidence that can reasonably be expected to be available at trial.
> (6) Although a trial may turn out not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so effect the outcome of the case.
> (7) On the other hand, it is not uncommon for an application under CPR 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there

would be a real, as opposed to fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction.

Discussion and analysis

[94.] With the foregoing principles in mind, having reviewed the statement of claim, the parties' submissions and the evidence, it is my view that the appropriate disposition of the applications is to refuse the stay sought by Mr. Adams KC, to refuse to grant summary judgment against the Defendants, to refuse to strike out the claim as against Mr. Adams KC, to extend the time for the Defendants to file defences and to adjourn this matter for case management. Shortly put, there are points of law of substance for argument and matters requiring investigation.

[95.] Dealing first with the stay, I do not think that these proceedings should be paused. From MOG & Co's perspective, Mr. Glinton KC and his firm have been "out of pocket" for over three years. From the Defendants' perspective, this action continues to hang over their heads with their professional reputations implicated. From the perspective of the wider administration of justice, a stay would not necessarily avoid a multiplicity of actions. If the Interpleader Action resolves in MOG & Co's favour, these proceedings might still be pursued by MOG & Co to recover damages, interest or costs even if the Interpleaders pay MOG & Co. Moreover, as a matter of policy, allegations of misconduct made against officers of the court should be investigated with minimum delay.

[96.] Having dealt with the stay, I turn next to the request to enter summary judgment against the Defendants. As to that request, I am unable to agree with Mr. Glinton KC that MOG & Co's claim is straightforward enough or meritorious enough on its face to warrant summary judgment. Despite Mr. Glinton KC's best efforts, I am of the opinion that there are issues that ought to be decided at trial. In addition, notwithstanding the eloquence of Mr. Glinton KC's submissions, my broad assessment of the merits is that MOG & Co may well not be the successful party at trial. My preference is to deal with MOG & Co's claim compositely and the test for summary judgment under ***rule 15.2*** of the ***CPR*** is not satisfied in respect of the whole claim.

[97.] It is trite that, in order to succeed in negligence, MOG & Co will need to establish that the firm was owed a duty of care by the Defendants. Such a duty of care would be a

departure from the general rule that a lawyer acting on behalf of their client owes a duty of care only to their client. That general rule was acknowledged by ***Lord Goff*** in ***White v Jones [1995] 2 AC 207*** at page 256, a case relied upon by MOG & Co. None of the authorities relied upon by MOG & Co in support of the Summary Judgment Summons casts doubt upon the validity of the general rule and none clearly establishes the existence of a duty of care in circumstances such as the present as an exception to the general rule. The outcome in ***White v Jones***, in which their Lordships' House split 3:2, illustrates that establishing an exception to the general rule can be far from straightforward.

[98.] While I acknowledge that it is sometimes possible to reach a decision about whether a duty of care can be established as a matter of law before trial, it appears to me that the duty of care alleged to exist here ought to be the subject of "*detailed argument*" and "*mature consideration*", to adopt ***Lord Diplock's*** words in ***American Cyanamid Co v Ethicon Ltd [1975] AC 396***. Whether a duty of care was owed to Mr. Glinton KC and his firm is not a point that was seriously pursued in argument before me at the hearing of the applications, despite Mr. Adams KC questioning whether there was a tort at all on the facts. As a result, I do not have the benefit of counsel's submissions to enable me to decide the point. Moreover, I am heedful of the principle that it is not normally appropriate in a summary procedure to decide a controversial question of law in a developing area: ***AK Investment CJSC v Kyrgyz Mobil Tel Ltd [2011] 4 All ER 1027***.

[99.] Even if the Defendants were to have owed a duty of care to MOG & Co, I do not think that it inevitably follows that that duty was breached. Supposing the existence of a duty of care, the standard against which the Defendants' conduct would fall to be assessed is what a reasonably competent practitioner would have done having regard to the standards normally adopted by the profession. That is a standard which this Court would be required to determine. Because of the degree of judgment involved in counsel's work, an action against one who acts honestly and carefully is unlikely to succeed. Free from authority, it is far from obvious that Mr. Adams KC acted outside of the possible courses of action reasonably competent members of the profession might have chosen to take in advising his clients to secure a release before making payment of the taxed costs to MOG & CO or Mr. Glinton KC. No administrator had been appointed in respect of JTB's estate and there were limited local authorities on the attorneys' lien.

[100.] With regard to the allegation that there was unlawful interference with the performance of MOG & Co's contract with JTB, to the extent that the allegation relates to MOG & Co's performance of services to JTB, there appears to me to be considerable

force in the Defendants' submission that the actions alleged by MOG & Co on the part of the Defendants are incapable of constituting an interference with Mr. Glinton KC's performance of his contract to provide legal services to JTB because, by reason of JTB's death, MOG & Co's authority to act as counsel and attorney for JTB was placed into "suspense" as of 17 January 2020. That naturally follows as a consequence of the fact that the contract of retainer between attorney and client is a personal contract. However, I understood the allegation to focus more on the Defendants' alleged unlawful interference with MOG & Co's lien, which did not abate with JTB's death, and which MOG & Co says forms part of the contract for services with JTB.

[101.] In that connection, I accept Counsel for Mr. Adams KC's submission that the circumstances in which interference with a solicitor's or attorney's lien has traditionally been held to actionable were accurately described in ***Khans Solicitors*** and ***Gavin Edmonson*** and that the facts of this case do not appear to fall within those circumstances. Here, whether or not there was effective notice of the lien or knowledge of the lien, which is disputed, there is no evidence of any payment in the face of MOG & Co's lien and nothing in the Draft Deed of Release suggested collusion or conspiracy. MOG & Co must therefore argue for an extension of the existing law or at least for the novel application of existing principles. That inevitably bears upon my assessment of MOG & Co's prospects of success for the purposes of summary judgment.

[102.] There is also an additional, more fundamental point. It is not clear that there was any interference with MOG & Co's lien. The Draft Deed of Release could not prejudice MOG & Co's rights because the document was, by its nature, inchoate. As matters presently stand, it seems clear that JTB's estate has not been paid the costs due under the Costs Orders and MOG & Co's rights have been judicially recognized in my ruling in the Actions dated 26 April 2022. MOG & Co is therefore, at first blush at least, in a better position than it was in January 2020. Nonetheless, MOG & Co's real complaint is that payment of the costs due under the Costs Orders was not made by Mr. Adams KC's clients when it could have been due to his advice. It is not clear that this amounted to an actionable appropriation or deprivation of MOG & Co's rights or property. That is an issue better resolved after more detailed argument.

[103.] With respect to MOG & Co's claim of abuse of process, the tort of abuse of process is obscure but was recognized as a part of Bahamian law in ***Lionel Levine***. The tort is committed when legal process is used for an ulterior purpose which is not within the proper scope of the legal process and the legal process causes damage. Applying this definition, it is doubtful that there has been any legal process initiated by the Defendants

capable of founding the tort. Graham Thompson has initiated no process and, while Mr. Adams KC did initiate the Strike Out Summons, the natural inference would tend to be he did so to protect his own interests. In any case, the Defendants' motives, and intentions must be investigated at trial. Parenthetically, the same point may be made about MOG & Co's miscellaneous allegations of conspiracy and fraudulent or deceitful conduct, which are inappropriate for summary judgment.

[104.] Summary judgment having been addressed, I turn to the question of whether MOG & Co's statement of claim should be struck out and this action dismissed, I accept Mr. Malone's submission that the strike out application is properly before the Court. No conditional appearance was required. However, I am not persuaded that MOG & Co's statement of claim clearly fails to disclose any reasonable cause of action. Equally, while there is reason to question the viability of MOG & Co's claim against the Defendants, I cannot be certain on the material before me and based on the argument that I have heard, that the action is bound to fail. I was not invited to, and heard no submissions regarding whether I should strike out discrete parts of MOG & Co's statement of claim; while there are elements of MOG & Co's claim that are plainly more tenuous than others, Strike Out Summons was a strike at the jugular.

[105.] In my considered view, this matter should proceed to trial to enable MOG & Co to benefit from the processes of discovery and cross-examination, for each party to be able to lead their evidence and for the relevant issues of law, some of which are points that are not altogether easy to answer, to be comprehensively argued. I recognize that this may be an unsatisfactory outcome for Mr. Adams KC, who described the allegations made against him as "*scurrilous*", but ultimately this claim is not one to which the Court should shut its doors. Mr. Adams KC may be assured that in the event that the claim is found to be meritless, given the nature of some of the allegations made, this Court will mark its disapproval in its reasons.

Conclusion

[106.] For the foregoing reasons, I dismiss the Summary Judgment Summons and the Strike Out Summons.

[107.] The principles relevant to the discretion to grant an extension of time for the service of a defence were helpfully discussed by the Jamaican Court of Appeal in ***Hoip Gregory v Vincent Armstrong [2013] JMCA Civ 36***. Applying those principles, as both Defendants have a realistic prospect of successfully defending the claim and there were good reasons for their delay in filing a defence, namely, the Summary Judgment

Summons filed under the ***RSC***, I grant both Defendants an extension of time to file and serve their defences by 7 March 2024. The reasons weighing in favour of granting the Defendants' extensions of time outweigh those weighing against doing so.

[108.] I will adjourn this matter to 27 March 2024 at 10:00am for case management. I will also hear the parties on the costs of the applications at that time. Counsel are to confirm their positions on costs within seven days of this decision so that any further directions necessary, such as the filing of written submissions and directions for the service of MOG & Co's notice of application for a non-party costs order filed on 1 May 2023, may be given.

Dated the 16th day of February 2024

Sir Ian R. Winder
Chief Justice