

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial Division

Claim No. COM/ lab/ 00049 of 2020

BETWEEN

KIM RAHMING

Claimant

AND

BMG INSURANCE AGENTS & BROKERS LIMITED

Defendant

Before: The Honourable Madam Justice Simone I. Fitzcharles

Appearances: Mrs. Tanya Wright for the Claimant

Mr. V. Moreno Hamilton for the Defendant

10 October 2023; 18 October 2023

RULING

FITZCHARLES J:

[1.] This is an application by the claimant for an order that the defendant make an interim payment on account of damages claimed in this action pursuant to Rule 17.15.1 of the Supreme Court (Civil Procedure) Rules 2022, Chapter 53 (the “CPR”). The application is brought by Notice of Application filed on 21 September 2023 and is supported by the Affidavit of Kim Rahming filed on 2 August 2023.

[2.] The defendant contests the application and relies upon the evidence contained in the Affidavit of Darren Bastian filed on 5 October 2023.

Background Facts

[2.] The claimant was employed by the defendant from 18 November 2015 through 24 September 2020, as an Account Executive. Her duties were, amongst others, to sell insurance products. This action originated by a specially indorsed writ of summons filed on 26 October 2020, by which the claimant sought against the defendant, amongst other claims, damages for wrongful and/or unfair dismissal. Additionally, the claim was for an accounting in relation to lost commissions allegedly due to the claimant for new business, renewals and business within the BMG Group, of which the defendant is a part.

[3.] The defendant filed no defence to the claim and the claimant sought leave to enter judgment. By a Consent Order made on 21 June 2021 (the “Consent Order”), the Court ordered inter alia:

- (1) that the defendant pay to the plaintiff the sum of \$30,000.00 for unfair dismissal;
- (2) that an “account” be taken by the Registrar of certain commissions on premiums due and owing under the contract of employment dated 18 November 2015 between the plaintiff and the defendant in relation to a “5% commission on premiums for new business, 3% on renewals and 1% for renewals for business within the BMG Group”; and
- (3) that the defendant shall pay to the plaintiff legal fees and costs then due in the amount of \$15,000.00.

[4.] The Consent Order stipulated that the defendant lodge with the Registrar an account of all premiums paid to the defendant for new business and business within the BMG Group from 18 November 2015 until 20 September 2020 along with supporting vouchers. It was also ordered that the defendant pay any assessed amount due to the plaintiff “at such rate and for such period as the Court shall think just” with costs to be taxed if not agreed.

[5.] Some time has elapsed since the Consent Order was made. There is apparently a dispute amongst the parties as to what evidence should be introduced at the hearing for the taking of an account. Specifically, the parties are at odds as to whether an accounting pursuant to the terms of the contract dated 18 November 2015 (as stipulated in the Consent Order) should be the only

evidence adduced, or whether certain evidence as to an alleged variation of the contract (purportedly done in 2017) should be adduced for the Court's consideration. The defendant states that the Deputy Registrar before whom the Consent Order was made, had subsequently clarified in a hearing on 4 May 2022 that "all cards should be placed on the table" by the parties in the assessment, to the effect that all evidence relevant to the assessment of damages would be taken into consideration by the Court. These matters, along with an application by the claimant for recusal of the learned Deputy Registrar, apparently forestalled the assessment / account hearing.

[6.] The claimant has stated in her evidence that she is experiencing financial hardship as a result of the "defendant's withholding since 2020 of her commissions earned and due to her." She states that she is responsible for paying a portion of the tuition and related college expenses for her child and her means of doing so are meagre since she lost her position with the defendant. She opines that pursuant to her contract of employment with the defendant she is owed over \$100,000.00 in commissions up to the time of her dismissal. She seeks an interim payment from the defendant of \$50,000.00. The Learned Deputy Registrar had set a date in November 2023 to hear the assessment, but given the claimant's objection to his hearing the application, she believed that the hearing would not take place at the appointed time. It did not.

[7.] The defendant compromised a part of the claim and paid the claimant \$30,000.00 in settling her unfair dismissal claim. The defendant also paid the claimant legal costs in the amount of \$15,000.00, and has agreed that there be an assessment of the quantum of commissions due and owing under the contract of 18 November 2015 between the plaintiff and the defendant. In this application, the defendant has indicated that: (1) it has paid the plaintiff all commissions due to her, and (2) the plaintiff accepted payment pursuant to a new agreement in 2017 by which the contract dated 18 November 2015 was amended to exclude commissions for insurance business within the BMG Group.

Preliminary Issue

[8.] By the Submissions of the Defendant, a preliminary issue is raised as to which procedural law governs the application currently before the Court.

[9.] Counsel for the defendant, Mr V. Moreno Hamilton, argues that the **Rules of the Supreme Court 1978** (the "RSC") apply to this application and not the current **Supreme Court Civil Procedure Rules 2022** (the "CPR"). Counsel asserts that this will determine the Court's approach to the granting of the relief sought because the RSC appears to confine the situations in which the Court may grant interim payments. In contrast, the CPR are more permissive of such payments in the sense that CPR-governed interim payments may be ordered in a broader category of matters.

[10.] The jurisdiction of the Supreme Court to grant interim payments is fundamentally statutory. The Supreme Court Act (which is closely modeled on the English Supreme Court Act 1981 and its predecessors) provides the enabling authority for the creation of rules of court pursuant to which the Supreme Court may order in its proceedings that an interim payment be made by one party to another. These rules are the mechanism by which the Court may exercise its power order interim payments. According to **section 22(1)** of the Supreme Court Act, Chapter 53:

“As regards proceedings pending in the Court, provision may be made by rules of court enabling the Court in such circumstances as may be specified to make an order requiring a party to the proceedings to make an interim payment of such amount as may be specified in the order whether by payment into court or (if the order so provides) by payment to another party to the proceedings.”

[11.] Such provision is therefore made in the RSC, where the procedure for obtaining an interim payment is set out. The RSC also provides a definition of ‘interim payment’ which conveys the circumstances in which such payment may be ordered. According to **RSC Order 29 rule 9:**

“Interim payment”, in relation to a defendant, means a payment on account of any damages in respect of personal injuries to the plaintiff or any other person or in respect of a person’s death which that defendant may be held liable to pay to or for the benefit of the plaintiff...”.

[12.] Readily, the defendant posits the preliminary argument that this application must be governed by the RSC and not the CPR. Counsel for the defendant argues that no interim payment would be permissible (in the circumstances of this matter) under the RSC since this claim is not one for personal injuries or death for which the defendant is liable to pay to or for the benefit of the plaintiff.

[13.] Mr Hamilton focuses on the procedural timing of events in this matter. Counsel contends that the question of liability had long been determined as early as June 2021 when the Consent Order was entered into. Further, the account hearing had already been fixed at the time that the CPR came into operation on 1 March 2023. The defendant argues that liability has been determined (and admitted by the defendant), yet the defendant contends it owes the claimant nothing for commissions, which is the sole item left for assessment.

[14.] Relying on the claimant’s Skeleton Arguments, Counsel for the claimant, Mrs Tanya N. Wright, recounted that after several adjournments of the account hearing, in January 2023 the parties received a mention date for 6 March 2023. On the mention date the parties were given another date to deal with the framing of an Order made by the Deputy Registrar in 2022. On the other hand, Counsel for the defendant stated that the assessment was to take place on 6 March 2023 and it was adjourned to 6 July 2023.

[15.] Mrs Wright argues that the CPR repealed the RSC. Further she submits that the Court should be guided by the Preliminary Part of the CPR as to the Application of Rules which provides in part:

“2. Application of Rules

“(1) Subject to paragraph (4), these Rules shall –

(a) ...

(b) Not apply to civil proceedings commenced in the Court prior to the date of commencement of these Rules except where –

(i) a trial date has not been fixed for those proceedings; or

- (ii) **a trial date has been fixed for those proceedings and that trial date has been adjourned.”**

[16.] The Court considers that this is a matter which commenced before the CPR came into force. It is clear to the Court that no trial date was set as the defendant filed no defence and the parties entered into a Consent Order by which liability was admitted, at a minimum, for unfair dismissal. However, there was to be an “account” taken by the Court, which the parties have also referred to in argument as an assessment of damages. The date for the taking of this account, although initially set for a date before 1 March 2020, was adjourned after the CPR came into effect. The account hearing reasonably could involve a trial of sorts with the taking and testing of evidence in order to ascertain whether the claimant was entitled to the commissions she claimed and, if so, the specific amount of the same. The Notice of Application for an interim payment currently before the Court was filed after the CPR came into effect and was heard before any account hearing took place.

[17.] The Court also considers **Practice Direction No. 9 of 2023** which clarifies that, where the CPR applies to proceedings commenced before 1 March 2023:

(a) any new interlocutory application which has to be made or any new document which has to be filed, including a defence, must comply with the CPR; and

(b) where the CPR applies to an application which has been filed prior to the commencement date of the CPR but which has not been heard by the Court, the parties are not required to file a new application. The Court may proceed to determine the application on the document already filed with the Court. However, the Court may permit the parties to file any additional material which may be required for the application to be properly considered under the CPR.

[18.] In the Court’s view, the only substantive hearing which was left to be heard in this matter after the Consent Order was the account hearing, which would involve the taking of evidence from the parties. Albeit this account taking was originally fixed to be heard before the CPR came into effect, it was adjourned to be heard after 1 March 2023. It therefore falls within the exception carved out by **CPR 2(1)(b)(ii)**. Further, against that background, the application for an interim payment is a new interlocutory application filed after the commencement of the CPR. In those circumstances, applying **CPR 2(1)(b)(ii)** and **Practice Direction No. 9 of 2023**, in my opinion, the application currently before the Court is governed by the CPR and must comply with the same.

Issue

[19.] I turn now to the main issue for the Court’s consideration, namely whether or not, in the circumstances of this case, an Order for an interim payment in favour of the claimant should be made. The evidence and submissions of the parties and the law are considered below.

Evidence of the Claimant

[20.] The claimant, in her supporting affidavit, states in part:

(1) There was a delay in the assessment of damages primarily due to a dispute between the parties over the wording and intent of the Consent Order on the issue of which contract between the parties should govern the assessment.

(2) The claimant also filed an application for the recusal of the Deputy Registrar who had carriage of the Assessment.

(3) The defendant has not denied that commissions are owing from the defendant to the claimant but seeks to have evidence of some other alleged verbal or otherwise unwritten contract for commissions introduced at the hearing notwithstanding that the Consent Order limits the Court's consideration to the contract of employment dated 18 November 2015 at any assessment hearing.

(4) The defendant is an insurance company "owned by Bahamian multimillionaire moguls of the gaming industry of considerable wealth and resources. The claimant is a wife and mother and of relatively meagre means."

(5) The minor child of the claimant is still attending college abroad and the claimant bears some of the financial responsibility for the tuition and related college expenses of that child. When the claimant was wrongfully dismissed, the defendant deprived her of her commissions since 2020. The withholding of the commissions has caused the claimant financial hardship.

(6) Under the contract of employment dated 18 November 2015 the defendant owes the claimant over \$100,000.00 in commissions from the date of her contract until her employment was wrongfully terminated.

(7) The claimant believes that her situation meets one or more of the requirements for obtaining an interim payment, and asks that the Court favourably consider ordering the defendant to make an interim payment in the sum of \$50,000 or some other sum the Court deems just.

Evidence of the Defendant

[21.] The affidavit relied upon by the defendant states, in part, the following:

(1) The terms of the Consent Order caused much back-and-forth communication between Counsel for the parties. The Consent Order is challenged by an application of the defendant by which it seeks that the Consent Order be varied to specify that an accounting of commissions be taken, if any, on premiums due and owing to the claimant by the defendant. Following the making of the Consent Order when a dispute arose as to whether the Court should only consider the 2015 agreement between the parties, the Court (in the person of then Deputy Registrar Turner) directed that "all cards should be laid on the table" for the assessment hearing.

(2) Since the Consent Order was made, the reason that the assessment of damages hearing has not been heard is due to the fact that the claimant has filed multiple interlocutory applications in the matter rather than allow the matter to proceed to a simple taxation. The

claimant filed: (a) a strike out application, (b) an application to disallow the defendants from relying on their witness statements filed in the assessment hearing, (c) an application for recusal of the Deputy Registrar, and (d) an application for an interim payment.

(3) The defendant agreed to judgment on liability with respect to the employment claim of the claimant for wrongful/unfair dismissal with the understanding that all issues as to commissions owed (if any) would be determined by the Court.

(4) The main issues between the parties centre around a 2015 agreement that allowed the claimant to earn commission based on related businesses that were insured with the defendant. Shortly after this contract was signed it was decided based on common sense and the practice in the insurance industry that the claimant should not earn commission on businesses related to the defendants and its principals as she would not have done any work to bring in those businesses. For BMG related business, the claimant would not have used any industry or efforts to bring that insurance business in to the defendant. The record shows that commissions that the claimant received were always paid on the basis of the 2017 agreement and the understanding that commissions would not be paid on BMG related businesses.

(5) The position of the defendant is that if commission is owed to the claimant, it would be very negligible having regard to monies that the claimant owes the defendant for an insurance policy. The defendant's claim for outstanding monies under the insurance policy and the unnecessary legal costs it has incurred would have to be set off and subtracted before a determination can be made as to what if any commission is owed to the claimant. Although commissions are paid on business from which premiums have been fully paid up the defendant is prepared to give the claimant the benefit of the doubt in calculating commissions by making payments on business for which premiums were not fully paid.

(6) The references to the defendant being owned by Bahamian multimillionaire moguls is immaterial to this matter. Any hardship the claimant has suffered is a consequence of the unreasonable position she has taken in not allowing the matter to be determined with "all cards on the table". The claimant never received commission based on the 2015 agreement and therefore should not be asserting a claim to commission on that basis.

(7) The defendant does not accept that the claimant is owed \$100,000.00 in commission and the claimant has provided no evidence to support this. The matter should be set down for an assessment of damages instead of wasting judicial time with interlocutory applications.

Arguments of the Claimant

[22.] The planks of the claimant's arguments are that – (a) the defendant has no defence to the claimant's claim on the issue of liability, (b) the claimant has obtained judgment against the defendant for damages to be assessed or for a sum of money, including costs, to be assessed, (c) the claimant has obtained an order for an account to be taken and for judgment for any amount to be certified due, (d) the claimant will likely obtain judgment against the defendant without any

substantial reduction of the damages for fault on her part, and (e) the claimant is currently experiencing extreme financial and emotional hardships and difficulties as a result of the defendant's breach.

[23.] The claimant relies upon the CPR, specifically CPR17.15.1 and the Overriding Objective which facilitates the just and cost-proportionate dealing with cases by the Court. Some salient factors for consideration by any Court, according to the Overriding Objective, are (amongst others) to ensure the parties are on an equal footing, to save expense and to deal with cases in ways which are proportionate to the money involved, the complexity of the issues, the financial position of each party, due fairness and expedition and the enforcement of compliance with rules, practice directions and orders.

[24.] Additionally, the claimant relies upon and the Court has considered the cases of **Yvonne Rahming v Super Value Food Stores Limited and Francisco Francois** 2016/CLE/gen/1424, **Best v Smyth Practice** [2010] EWHC 1541 (QB), IHQ/10/0373 (Transcript), **Eeles v Hire Services Ltd** [2009] EWCA Civ 204 and filed pleadings in the case.

Arguments of the Defendant

[25.] The defendant contends that the sole issue to be determined at an account hearing is what, if any, commission should the claimant receive from the defendant. This will depend on whether the Court finds the claimant is entitled to commission under her 2015 agreement or under the 2017 variation of the agreement. When the dispute arose as to which agreement should be considered at the account taking, the Deputy Registrar resolved it by directing that all the cards should be laid on the table for the assessment of damages hearing. The defendant asserts that the claimant never appealed the Deputy Registrar's decision.

[26.] The defendant argues that if the Court is of the view that this application is governed by the CPR and not the RSC, the claimant has failed to make out a case for an interim payment because –

- (1) The claimant has not shown that she would be entitled to receive a substantial amount of money and costs on assessment. In fact, she has not provided evidence of what she is claiming and what she is likely to receive.
- (2) The claimant has not provided evidence of hardship that would warrant the making of an order for an interim payment. She has provided no evidence of her income and expenditure to show that she is experiencing hardship.

Discussion and Disposition

CPR on Interim Payments

[27.] CPR 17.4 provides the general procedure for applying for an order for an interim payment. It states that more than one application may be made for an interim payment but any such application must be lodged after the period for entry of an acknowledgement of service has elapsed. A notice of application for an interim payment order must be served at least 14 days before the hearing of the application and must be supported by evidence. The respondent to an application

may rely upon affidavit evidence also, but must serve such evidence on every other party to the application at least 7 days before the hearing of the application.

[28.] CPR 17.14(4) requires in part that the affidavit in support of the application must –

“(a) exhibit any documentary evidence relied on by the claimant to support the application;

“(b) state the claimant’s assessment of the amount of damages or other monetary judgment that are likely to be awarded...”.

[29.] Materially, CPR 17.15 prescribes the conditions which must be satisfied and matters to be taken into account by the Court in determining whether to award an interim payment. The CPR provides:

“(1) The Court may make an order for an interim payment only if –

- (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;**
- (b) the claimant has obtained an order for an account to be taken as between the claimant and the defendant and for judgment for any amount certified due on taking the account;**
- (c) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money, including costs, to be assessed;**
- (d) except where paragraph (3) applied, it is satisfied that, if the claim went to trial, the claimant would obtain judgment against the defendant from whom an order for interim payment is sought for a substantial amount of money or for costs; or ¹**

...

“(4) The Court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

“(5) The Court must take into account –

- (a) contributory negligence, where applicable; and**
- (b) any relevant set-off or counterclaim.”**

(Emphasis added).

[30.] On a close reading of the Consent Order the defendant admitted liability in relation to the unfair dismissal claim of the claimant and settled the same. Further, it was ordered that an account be taken by the Registrar of the commissions on premiums due and owing under the contract of employment dated 18 November 2015 between the parties. The Consent Order was rounded off with a further order that the defendant pay the claimant (plaintiff) the amount which the Registrar

¹ These conditions are to be read disjunctively as indicated by the insertion of the word ‘or’ between conditions (d) and (e).

may certify to be due upon the taking of the account, along with interest and costs. In this regard, it is clear that the requirements of CPR 17.15(1)(b) have been met by the claimant.

[31.] The parties do not contest that the grant of an interim payment is a matter which is within the broad discretion of the Court. As the test of CPR 17.15(1)(b) has been met, the emerging issue is whether there is any other factor which may weigh against the making of an order for an interim payment in these circumstances.

Financial Hardship

[32.] As a reason for the refusal of an interim payment to the claimant, the defendant has raised the issue of whether the claimant has actually proven on the evidence that she suffers financial hardship. The Court notes that the claimant has offered her financial hardship as a reason for bringing the application. She states that the defendant dismissed her unfairly and that she bears a part of the responsibility of paying fees for her minor child's education abroad. She states that she is experiencing difficulty in doing so.

[33.] In relation to her alleged financial difficulty the claimant has exhibited to her evidence a print out of an account which appears to relate to fees and expenses for a student. The print out does not demonstrate the identity of the student or students to whom the account relates or that the claimant is paying the fees or a part thereof in relation to the account shown. Further, it does not demonstrate any obligation on the part of the claimant or that the claimant is experiencing financial hardship.

[34.] The answer to this issue, however, lies in whether or not financial hardship need be shown by the claimant to justify an order for an interim payment in her favour. The Court has considered the statutory requirements for granting interim payments. Notably, no need that the claimant must also suffer or demonstrate financial hardship is numbered amongst those statutory requirements. Instead, by the language of CPR 17.15(1)(a) through (e), the rules indicate a focus on the merits of the claim, the prospects of success of the claimant and the quantum of damages likely to be recovered. The control mechanism, as provided by CPR 17.15(4) is that the Court cannot order an interim payment of more than a reasonable proportion of the likely amount of the final judgment. If the Court has a high degree of confidence that the claimant will recover damages, the rules permit the claimant to receive a part of his or her entitlement before the case is finally determined. The control mechanism is geared towards ensuring that the risk of overpayment to such a claimant is minimized.

[35.] The Court recognizes that there may be exceptional cases in which the financial difficulty of a claimant may affect whether the Court exercises its discretion and/or the amount of the interim payment that may be ordered. However, the absence of any reference to financial need in the CPR suggests that it is not mandatory or even a relevant consideration. In this case, I am not convinced that financial hardship must be proven for the applicant to be successful in being awarded an interim payment.

Prospects on Final Judgment

[36.] The control mechanism, that is, ensuring that no order is made for more than a reasonable proportion of the likely amount of the final judgment, gives rise to another task. It obviously prompts a requirement to assess the likely amount of the final judgment. The Court must therefore first be satisfied that the claimant is almost certain to recover an award upon the taking of the account.

[37.] As discussed, by the Consent Order the defendant admitted and settled its liability on the unfair dismissal claim. The parties agreed to receive an account by the Registrar on commissions due under the 18 November 2015 contract. By that Consent Order, the parties were also ordered to file evidence in relation to certain premiums paid to the defendant for new business and business within the BMG Group from 18 November 2015 through 20 September 2020.

[38.] So as to exercise the Court's discretion, the question looms whether the Court can develop an appropriate degree of confidence that the claimant will recover damages in relation to the commissions claim. I also ask whether, based on the evidence relied upon in this application, the Court is in a position to assess the likely amount of the damages the claimant will receive, if any. These are the matters upon which, in my view, the outcome of the claimant's application turns.

[39.] At this stage, there are several issues yet to be resolved before the Court will be able, with any confidence to come to the conclusion that the claimant is likely to recover damages, and further, to estimate with any soundness the likely quantum, if any. To begin with, there is a question whether the defendant has admitted liability to pay commissions. The claimant asserts that the defendant has done so. However, the defendant has not expressly in the Consent Order admitted such liability. The defendant has, rather, agreed that an account be taken, but its stance in argument is that it questions whether any sums are owed at all to the claimant for commissions. Further the defendant asserts that the claimant owes money to the defendant which must be the subject of a set-off, if any sums are found due to the claimant.

[40.] While an order for an accounting, by its nature, may help resolve factual issues and determine the extent of potential liability, such an order does not inherently preclude a defendant from denying liability in a legal dispute. The Court notes that no defence has been filed but a positive case has been put forward in the witness statement for the defendant and other pleadings. There may be difficulties for the defendant in such an approach, but these matters must be confronted in the taking of the account between the parties.

[41.] There are further issues which affect the necessary exercise of gauging the entitlement, if any, of the claimant to further damages. Amongst those issues are the following:

- (1) whether the 18 November 2015 contract was effectively amended in 2017 by the parties;
- (2) whether the claimant was ever paid pursuant to the 2015 agreement or, as alleged, whether she was only paid commissions pursuant to the terms of compensation as amended by the 2017 agreement;

(3) whether the claimant accepted any amendment of the 18 November 2015 contract expressly or by acceptance of payment pursuant to the 2017 adjusted terms or by other conduct;

(4) whether by the Consent Order or any subsequent Order, the evidence to be considered on the taking of an account amongst the parties was confined specifically to the 18 November 2015 contract, or alternatively, all relevant evidence would be admitted.

[42.] These, and conceivably other, issues would have to be dealt with before any entitlement to payment (and if so any quantum of the same) could be assessed with the degree of confidence needed to make an order for an interim payment.

[43.] Typically, if a court cannot be satisfied that the claimant would obtain a suitable judgment at trial, due to undetermined issues of liability, quantum or other aspects of the case, an interim payment will not be suitable. See **Oaxaca Ltd T/A Wahaca v QIC Europe Ltd** [2024] EWHC 394 (Comm) in which Cockerill J sitting in the High Court of England and Wales (Commercial Division) refused an interim payment application on the basis that there remained unresolved factual issues and a lack of certainty on loss. The court considered that the requirements for an interim payment were not met due to the existence of these open issues, which would have to be resolved on a trial. A similar conclusion was arrived at by Brathwaite J in **Lakeisha Pinder v Ministry of Foreign Affairs and another** [2023] 1 BHS J. No. 202. In that case where, on an application for an interim payment, there were yet undetermined issues of liability, the Court was constrained to refuse the application.

[44.] In my judgment, a trial with witnesses is necessary to ascertain the basic facts as to the true agreement between the parties. Only then can the terms of the relevant compensation package be identified and/or the details as to what has been paid and what amount, if any, is owed be established. What may amount to fairly voluminous contested evidence of competing accounts will have to be evaluated by the Court with a keen eye. The appropriate time for doing so is during the hearing of the taking of the account. These unresolved issues impede the Court's ability at this point to be satisfied, on the balance of probabilities, that the claimant would obtain an award for commissions.

[45.] In the circumstances, the parties must abide the outcome of the hearing to take an account amongst them. The Court is constrained to refuse the application for an interim payment. I therefore dismiss the application for an interim payment with costs in the cause.

Dated 30 September 2025



Simone I. Fitzcharles

Justice