

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 130 OF 2018 (ASCJ)

BETWEEN:

PROJECT PANTHER, LTD.

Plaintiff

AND:

COMERICA BANK & TRUST, N.A. in its capacity as the  
Personal Representative of the Estate of Mr. Prince Rogers Nelson

Defendant

IN CHAMBERS:

Representations: Mr. Paul Smith and Mr. Aristos Galatoupalos of Maples and Calder for  
the Plaintiff (with them present in Court, Mr. Jordan W. Siev)

Before: THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

Heard: 30<sup>th</sup> October 2018

Judgment Delivered: 15<sup>th</sup> November 2018



**HEADNOTE**

**Application for rectification of corporate register of shareholders – rectification to be ordered where name of shareholder entered – “without significant cause” – whether invalidation of registration by subsequent agreement is sufficient cause – general principles applicable to an application for rectification - orders preserving the confidentiality of material filed in support of application – basis for such orders in the context of open justice.**

## Reasons for Judgment

### Introduction

1. On 30<sup>th</sup> October 2018 I heard the Plaintiff's application by its Originating Summons dated 19<sup>th</sup> July 2018. In brief, the Originating Summons sought an order pursuant to section 46 of the Companies Law (2018 Revision) ("**Companies Law**") that the Register of Members of the Plaintiff be rectified to remove the name of Prince Rogers Nelson as a holder of shares in the Plaintiff.
2. The application is supported by the Defendant, being the Personal Representative of Prince Rogers Nelson's estate, which, although not appearing, has provided a letter of support which formed part of the evidence before me. The Defendant also filed an Acknowledgement of Service indicating that it does not intend to contest or otherwise participate in these proceedings.
3. The application was also supported by the affidavit of Jordan W. Siev in which he provides the evidential foundation, important aspects of which are excerpted below. Mr. Siev is a partner at Reed Smith LLP, based in its New York office and lead counsel to the Plaintiff in relation to its dispute with the Defendant, which dispute will be explained below.
4. On 6<sup>th</sup> August 2018, I made orders to the effect: (a) that certain confidential documents on the Court file be sealed; and (b) that hearings in this proceeding be heard in private. In the hearing bundles accompanying its written submissions, the Plaintiff has properly nonetheless for the Court's assessment, included unredacted copies of these confidential documents. Mr. Smith submits on its behalf that, for the same reason that the Order dated 6 August 2018 was made, these unredacted copies should now again be ordered to either be sealed or not be placed on the Court file.

For the reasons which follow, I granted the order for rectification of the Register of Members as well as for the ongoing protection of the confidentiality of the documents, subject to conditions which are intended to allow for public access to some of the documents in redacted form.

## **Background to the Rectification Application**

### Parties

5. The Plaintiff, Project Panther, Ltd. ("**Project Panther**" or the "**Company**") is an exempted limited liability company which was incorporated in this jurisdiction on 7<sup>th</sup> January 2015 and is the parent company to certain other entities which operate the Tidal digital music streaming business ("Tidal"). As explained by Mr. Siev, Tidal users pay a monthly fee for access. Tidal's website describes this business as follows:

*"TIDAL is a global music and entertainment platform that brings artists and fans together through unique music and content experiences and is currently available in 52 countries.*

*TIDAL has over 56 million songs in our catalog and over 225,000 high quality videos, offering passionate music fans both a premium and high fidelity sound quality, along with high resolution video, and expertly curated editorial content.*

*TIDAL has the commitment of artist owners that believe in creating a more sustainable model for the music industry. The TIDAL artist-owners are Alicia Keys, Arcade Fire's Win Butler and Regine Chassagne, Beyoncé, Calvin Harris, Coldplay's Chris Martin, Daft Punk, Damian Marley, deadmau5, Indochine, J. Cole, Jack White, Jason Aldean, Shawn "JAY Z" Carter, Kanye West, Lil Wayne, Madonna, Nicki Minaj, Rihanna, T.I. and Usher."*

6. Prior to his death on 21<sup>st</sup> April 2016, Prince Rogers Nelson, more commonly known simply as "Prince", was one of the most famous musical artists in the world. Prince died intestate on 21<sup>st</sup> April 2016. A probate proceeding in respect of his estate with Court File No. 10-PR-16-46

("Probate Action") is pending in Carver County District Court, Minnesota, United States of America, ("Minnesota Probate Court"). The Defendant, Comerica Bank & Trust, N.A., has been appointed by the Minnesota Probate Court as the Personal Representative of Prince's estate ("Prince Estate").

#### Dispute between the Parties

7. The validity and authenticity of the agreement pursuant to which Prince may have become a shareholder of Project Panther, being an Artist Equity Term Sheet dated 19<sup>th</sup> July 2015 ("**Term Sheet**") between Project Panther and Prince, was a matter in dispute between Project Panther and the Prince Estate in the Probate Action and other litigation in the United States.
8. The Term Sheet, which states that it is governed by New York law, provides in relevant parts that:
  - 8.1 *"Binding Nature: Upon signature by each Party, this Term Sheet shall constitute a legally binding and enforceable agreement between the Parties hereto with respect to the provisions hereof (page 8 of the Term Sheet).*
  - 8.2 *Equity Pool: Artist Equity Ownership: In further consideration of the rights and restrictions granted and agreed to by Artist [i.e. Prince Rogers Nelson], Artist is hereby granted a number of shares equal to three percent (3%) of the ownership interest in the Company [i.e. Project Panther] (on a fully diluted basis) (hereinafter, 'Artist's Equity') (page 4 of the Term Sheet).*
  - 8.3 *Equity Vesting and Reversion: Artist's Equity will be deemed fully vested on full execution of this Term Sheet and issuance thereof as provided above, subject to the reversion provisions set forth below (page 4 of the Term Sheet)."*
9. Thus, if the Term Sheet was valid and binding according to its terms, it would appear *ex facie* that Prince Rogers Nelson became a shareholder of Project Panther upon full execution of the Term Sheet. This was, however, not accepted by the Prince Estate and litigation ensued.

10. The litigation in the United States between the parties may be described as follows:
- 10.1 On 11<sup>th</sup> November 2016, Project Panther and certain affiliated entities ("**Petitioners**") filed a Petition in the Probate Action. In this Petition, the Petitioners contended that they had certain agreements with Prince Rogers Nelson, including the Term Sheet. On 16<sup>th</sup> February 2017, the Petitioners filed a Supplemental Petition alleging that Prince Rogers Nelson and/or the Prince Estate had breached the Term Sheet. The Prince Estate denied the existence of the Term Sheet, any breach thereof or any wrongdoing.
- 10.2 On 15<sup>th</sup> November 2016, certain entities affiliated with the Prince Estate filed a law suit in the United States District Court, District of Minnesota, Case No. 16-cv-3909 JRT/FLN, alleging copyright infringement, which was later amended to name Project Panther as one of the defendants.
11. Thus, and in summary, as far as is relevant to this application, Project Panther claimed that the Term Sheet was a valid and authentic document, and that Prince and/or the Prince Estate had breached the Term Sheet. The Prince Estate disputed that claim, both as to the validity and authenticity of the Term Sheet, and as to any breach of the Term Sheet.

### Settlement Agreement

12. The disputes between Project Panther (and its affiliates) and the Prince Estate have been settled pursuant to a Settlement Agreement effective 16<sup>th</sup> February 2018 ("**Settlement Agreement**"). The Settlement Agreement was approved by the Probate Court on 9<sup>th</sup> May 2018. Of relevance to this application, paragraph 16 of the Settlement Agreement provides that (emphasis added):

*“... Tidal and the Prince Estate agree that the Term Sheet is null and void and that neither Prince Rogers Nelson nor his Estate ever owned equity or shares in Project Panther Ltd. As promptly as is practicable following the approval of the Probate Court, Tidal shall seek a rectification order from the Cayman Court permitting Project Panther to rectify its Register of Members to reflect that neither Prince Rogers Nelson nor his Estate ever owned shares in Project*

*Panther. The Prince Estate shall cooperate in good faith as requested by Tidal in connection with its application for a rectification order including, without limitation, providing an affidavit to the Cayman Court if requested or required”.*

13. Thus, pursuant to their settlement, Project Panther and the Prince Estate have agreed that neither Prince nor his Estate ever owned shares in Project Panther. However, the Register of Members of Project Panther presently records Prince as a holder of 3000 shares in the Company<sup>1</sup>.
14. Accordingly, the purpose of this application is to give effect to the Settlement Agreement and to obtain orders permitting Project Panther to remove the entry relating to Prince Rogers Nelson from its Register of Members to reflect the position agreed by way of the Settlement Agreement, that neither Prince nor his Estate ever owned shares in Project Panther.

### **Legal principles**

15. Pursuant to section 40 of the Companies Law, Project Panther is required to maintain a register of members.<sup>2</sup>
16. Pursuant to section 46 of the Companies Law, a company's register of members can be rectified by the Court. Section 46 provides (emphasis added):

*“If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved or any member of the company or the company itself may, by motion to the Court, apply for an order that the register be rectified; and the Court may either*

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<sup>1</sup> Exhibited as JWS-1 to Mr Siev’s affidavit, at page 1 is an unredacted copy of the Register of Members.

<sup>2</sup> Project Panther's Register of Members is maintained by Cummings & Lockwood, a law firm in the United States: Siev at [15]. As an exempted limited company, Project Panther is permitted, pursuant to section 44(1), to keep its Register of Members outside of the Islands. [That is, of course, subject to the requirements of the Cayman Islands Monetary Authority Law that regulated exempted limited liability companies (of which Project Panther is not one) must file lists of beneficial ownership with the Authority for access for law enforcement purposes. And subject also to the requirements of section 44(4) that the register is made available for the purposes of enforcement of the Tax Information Authority Law.

*refuse such application with or without costs to be paid by the applicant or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sustained. The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally, the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register:*

*Provided that the Court may direct an issue to be tried, on which any question of law may be raised”.*

17. Thus the question here is whether the name of Prince Rogers Nelson is without sufficient cause entered in the register of Members of the Company. The principles applicable to an application for rectification have been helpfully identified by counsel. They are manifold and well-established as a matter of English (Cayman) law. In summary, and as far as relevant to the present application, they may be summarized as follows:<sup>3</sup>
- It is of course, settled that jurisdiction to order rectification of the register of a company incorporated in the Cayman Islands is vested exclusively in the Cayman Islands Court irrespective of whether the register is kept outside the jurisdiction<sup>4</sup>.

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<sup>3</sup> See *Boyle and Marshall: Practice and Procedure of the Companies Court (1997)*, paras 5.2- 5.8 and *Gore-Brown on Companies* at 10A[14] ] Counsel advised of being aware of two Cayman Islands decisions concerning section 46 of the Companies Law, but those cases do not address the principles to be applied nor are they factually analogous. Those cases are (i) *In The Matter Of Fulcrum Utility Investments Limited* [2012] 2 CILR 46 (where the issuance of shares at a discount was void for being ultra vires as being an unauthorised reduction in share capital contrary to section 35 the Companies Law); and (ii) *Cannonball Plus Fund Ltd v Dutchess Private Equities Cayman Fund Ltd* (Unreported, Grand Court) FSD 185 of 2016 (RMJ), 12 June 2018 ] (where the court considered the distinction between a prospective claim to shares and a right to registration by virtue of a valid transfer of legal title).

<sup>4</sup> See, for instance, *160088 Canada Inc. v Socoa Int. Ltd* 1998 CILR 256.

- The summary remedy provided by the section (and initiated by originating summons) will usually be appropriate but ought not to be used where the case is particularly complex, where the rights of third parties intervene or where the applicant relies on allegations of misrepresentation or fraud which ought to be clearly set out in pleadings or where the applicant seeks further relief other than rectification<sup>5</sup>;
- Where the company has notice of a dispute it may itself apply to the court for an order under the section<sup>6</sup>;
- The court's power to order rectification is discretionary<sup>7</sup>;
- The power to remove the name of a person which is entered on the register of members "*without sufficient cause*" has been widely construed. The jurisdiction to order rectification is not restricted to cases where a person has been entered on the register improperly, but extends to all cases where the entry was without sufficient cause<sup>8</sup>;
- In other words, it is not necessary for the applicant to show any deliberate wrongful act or fault by the company - it is sufficient to show that the register of members is incorrect because an entry has been omitted or made in error;
- When the court entertains the application, it is bound to go into all the circumstances of the case, and to consider what proper reasons the applicant has to call for its interposition and the purpose for which relief is sought. In short, as section 46 explicitly recognises, it should have regard to the "*justice of the case*"<sup>9</sup>;
- Where the court orders the removal of a person's name from the register of members on an application for rectification of the register on the basis that the person has never been

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<sup>5</sup> See also again *160088 Canada Inc* (above).

<sup>6</sup> *Re Indo-China Steam Navigation Co* [1917] 2 Ch 100.

<sup>7</sup> Citing *Re The Diamond Rock Boring Co. Ltd, ex parte Shaw* 1876-77) 2 QBD 463 at 479.

<sup>8</sup> Citing *Re Imperial Chemical Industries Ltd* [1936] 2 All ER 463 at 469.

<sup>9</sup> Citing, inter alia *Trevor v Whitworth* (1888) 12 A.C. 409 at 440, see also again, *160088 Canada Inc* (above).



a member of the company, the order may operate retrospectively and not just from the date of the order<sup>10</sup>.

### **The present application**

18. Mr Smith advised that counsel's researches have not identified a case that is directly analogous, i.e. where (as in this case) all of the following factors are present:
- 18.1 the Register of Members of the company records the putative shareholder as a member of the company; and
  - 18.2 the company and the putative shareholder were in dispute about the validity and authenticity of the document by which the putative shareholder purportedly became a member; and
  - 18.3 in their dispute, the company takes the position that the document by which the putative shareholder purportedly became a member is valid and authentic and that the putative shareholder is therefore a member of the company; and the putative shareholder takes the contrary position; and
  - 18.4 the company and the putative shareholder then agree to settle that dispute on the basis that that document is null and void and that the putative shareholder never became a member of the Company; and
  - 18.5 The company and the putative shareholder then seek orders from the Court permitting the company to rectify its Register of Members to remove the putative shareholder from the Register of Members of the company on the basis that the putative shareholder has never been a member of the company.
19. In other words, this is not a case in which rectification is sought on any of the more traversed grounds apparent from the case law, such as deliberate or wrongful act on the part of a party or default or mistake on the part of the company in question.

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<sup>10</sup> *Barbour v Middleton* (1988) 4 BCC 681, Ct of Sess.

20. However, it is nonetheless instructive given the circumstances of this case, to consider cases where the courts have determined that the document by which the putative shareholder purportedly became a shareholder was *void*, and the outcome of those cases:

20.1 In *Beck's Case* (1874) 9 Ch App 392, an amalgamation was arranged between two companies with one acquiring the shares of the other. Mr Beck applied for shares in the buying company in the same value as his former shares in the divested company. He was then notified that the shares in the buying company had been allotted to him, credited with the proportionate part of the net assets of the divested company. His name was placed on the buying company's register of members but the shares were never delivered to him. However, the buying company was afterwards wound up and the liquidators applied to have Mr Beck's name placed upon the list of contributories so that he could be called upon to meet the outstanding amount of his subscription. It was found that the agreements purporting to effect the amalgamation were void. As a result, there was no valid contract between Mr Beck and the buying company to take the shares and, accordingly, his name was not to be placed on the list of contributories. A similar result was reached in *Wynne's Case* (1873) 8 Ch App 1002, a case in relation to the same void amalgamation.

20.2 In *Re Portuguese Consolidated Copper Mines, Limited* (1889) 42 Ch.D. 160, Mr Steele had applied for 100 shares. A meeting of the directors was held the same day at which the directors present resolved to allot him shares, and Mr Steele's name was entered on the register of members. It turned out that the meeting was inquorate. Mr Steele then repudiated the allotment and withdrew his application. There was a subsequent meeting of the directors, (which although quorate was held to be an invalid adjournment of the inquorate meeting and therefore itself also invalid), at which the directors purported to confirm the prior allotments, including that to Mr Steele. Mr Steele applied to the Court to have his name removed from the register of members. The court held that the allotment of shares to Mr Steele was invalid, and that it could not be ratified after he had withdrawn his application for shares, and consequently the register of members of the company was rectified.

20.3 In *Re Transatlantic Life Assurance Co. Ltd* [1980] 1 WLR 79, following the company's incorporation in the United Kingdom on March 21<sup>st</sup>, 1966, to carry on long-term insurance business, 50,000 ordinary shares of £1 each were issued to the American company of which it was the wholly owned subsidiary. The issue of such shares was made pursuant to permission obtained from the Bank of England under the Exchange Control Act 1947. In March 1974, the company purported to issue a further 200,000 shares to the American company in consideration of a payment of £200,000 from the American company. By an oversight the permission of the Bank of England for the second issue had not been obtained. The court held that the issue of 200,000 shares to the American company in 1974 was wholly invalid and void by reason of section 8(1) of the *Exchange Control Act 1947* and the name of the American company had been entered in the company's register of members "without sufficient cause" within the meaning of section 116 of the *Companies Act 1948*. The court held that rectification of the company's register of members was an appropriate remedy in that case.

21. These cases demonstrate that where (even in the absence of fraud or other improper conduct) there is in fact no contract or the contract under which the alleged shareholder is supposed to have taken his shares is found to have been void, the court will order that the putative shareholder be removed from the company's register of members.

22. In this case, following the commencement of litigation in the United States in which Prince's Estate denied the validity and authenticity of the Term Sheet under which Prince purportedly became a member of Project Panther, the parties settled their dispute by way of the Settlement Agreement. On the aspect of the dispute that the Term Sheet was a valid and authentic document, as noted above, the parties agreed, by way of clause 16 of the Settlement Agreement, that:

*"Tidal and the Prince Estate agree that the Term Sheet is null and void and that neither Prince Rogers Nelson nor his Estate ever owned equity or shares in Project Panther Ltd "*

23. The Settlement Agreement required the approval of the Minnesota Probate Court. Prince's heirs had standing to object to the Settlement Agreement, and some did so.<sup>11</sup> However, the Minnesota Probate Court nevertheless granted approval of the Settlement Agreement on the basis that it was in the best interests of Prince's estate to settle the litigation.<sup>12</sup>
24. It was submitted before me on behalf of the Company that this Court should not seek to look behind the Settlement Agreement or the Minnesota Probate Court's approval of it, and should therefore give effect to the parties' agreement that the "*Term Sheet is null and void and that neither Prince Rogers Nelson nor his Estate ever owned equity or shares in Project Panther Ltd*". If this Court does not do so, I am told that there may be further litigation in respect of the matters the parties have already agreed to settle, which settlement has been approved by the supervising Court in Minnesota. It is further submitted that not giving effect to the Settlement Agreement would be contrary to the public interest in allowing parties to reach a lawful and mutually acceptable settlement of disputes, as this saves Court resources, the resources of the parties and allows the parties to focus on productive activities.
25. I accept this argument as being axiomatic in the circumstances of this case and find that Prince's name has been entered on Project Panther's Register of Members without sufficient cause. This is, as a matter of legal principle, because the Term Sheet is agreed and declared by a Court of competent jurisdiction to be null and void, and that the justice of the case therefore dictates that Prince's name be removed from Project Panther's Register of Members to reflect that position.
26. A draft order was presented and approved, with appropriate amendments including as to the ongoing conditional confidentiality of the unredacted documents in the case.
27. As to this conditional confidentiality, I add the following observations.
28. First, it means of course, that the sealing or confidentiality is not meant to be permanent. As paragraph 1 of the Confidentiality Order states, the sealed documents will "*not be available for*

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<sup>11</sup> As shown in Exhibit 5, page 30 to Mr Siev's affidavit.

<sup>12</sup> A copy of the Order is in Exhibit 5 pp 26-28.

*inspection, without leave of the Court granted on notice to the parties in this matter except by the parties and their duly appointed legal representatives, until further order:”*

29. But the need for protection of confidentiality is in my view, obvious in this case.
30. The subject-matter in dispute between the parties in Minnesota and which required of examination before me was the Term Sheet. This document, as Mr Siev explains in his affidavit, is essentially based on a template which is replicated for each of the artist-owners of Project Panther, with certain artist-owner specific modifications. The unredacted document on its face contains commercially sensitive information and it is I accept, plainly in the interest of the individual artists and indeed of the parties themselves, including Project Panther, that this information be shielded from public disclosure. The commercially sensitive nature of the Term Sheet has already been recognised in that it has not been required to be filed in the public docket of the Minnesota Court or (according to the Siev affidavit) in any of the litigation with the Prince Estate.
31. The unredacted copy of the Settlement Agreement also contains commercially sensitive information relating to Project Panther, Tidal and the interests of the Prince Estate and which, in my view, also deserves protection from public disclosure. This is also the view of the Minnesota Court which made an order sealing the Settlement Agreement. A copy of this sealing Order was presented to me and is a matter of public record in Minnesota.
32. Perhaps more controversially, an order was also sought to seal the Project Panther Register of Members, in its unredacted form, from public disclosure. This, on the basis that information it contains such as the number of shares subscribed by each Artist Investor is disclosed on the Register and is itself commercially sensitive information. I was invited to accept that as this is the register of an exempted company, there is no requirement that it be filed at the Companies’ Registry but is held by the Company itself and is therefore not automatically a “public document” as would be the register of a company required to be filed at the Registry.
33. This is plainly true but is not itself conclusive of the issue of confidentiality – as noted above, section 44(4) of the Law explains that disclosure of the register of an exempt company will be

directed if required for law enforcement purposes. Thus, while not required to be filed publicly, the Register of Members of an exempted company such as Project Panther is not to be regarded inherently as a private document.

34. Whenever it is called upon to grant orders of this kind protective of the confidentiality of material filed in aid of proceedings, this court must conduct an assessment of the conflicting imperatives of the public rights to open justice and the receipt of information on the one side and the rights to privacy which are to be impacted by disclosure, on the other side.
35. Even while inevitably juxtaposed in that way, these are rights to which the Constitution accords equal recognition and protection.
36. Clear and cogent guidance for the conduct of the assessment was recently provided by this Court, per Kawaley J, in *Re a Settlement dated 16 December 2009*, Cause FSD 54 of 2018, in written reasons delivered on 25 July 2018. I am content to quote the following passages from those reasons as also explaining the principles to my approach, in the exercise of discretion, to the grant of confidentiality orders in this case. From paras 14 – 16:

*“14 In my judgment... the privacy rights guaranteed under section 9(1) of the Constitution are fully fledged fundamental protections which are entitled to be broadly interpreted and given effect to in their own right. It is fair to assume that some fundamental freedoms have more general importance than others because they underpin the main pillars of democracy. As Smellie CJ noted in Re Sphinx<sup>13</sup> (at para. 10) “the right to freedom of information about all aspects of the democratic process enables members of the public to exercise the right to freedom of expression and participation in good governance”. The fair trial rights including the right to a hearing before an independent and impartial court also forms part of the central underpinnings of the Bill of Rights. However, there is a danger that in placing of too much emphasis on the importance of open justice the countervailing protected rights of privacy will be diminished to an unacceptable degree. The*

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<sup>13</sup> [2017] 1 CILR 176

*various elements of the Bill of Rights form part of an interlocking system or code and must be construed so far as possible in a consistent manner.*

15. *I incline to the view that section 7 (10) of the Constitution is the most reliable guide as to the basic ground upon which the open justice principle may be limited, taking into account the allied rights to receive information under section 11 of the Constitution and of privacy under section 9, because these grounds are formulated as exceptions to the general rule that civil hearings should be heard in public. Embedded, implicitly, in section 7(10), is an acknowledgement of the fact that a judicial assessment must be made of the conflicting elements of open justice (section 11 (1)) and privacy rights (section 8(1)). Section 7 (10), it bears repeating, provides as follows:*

*“(10) Nothing in subsection (1) or (9) shall prevent the court from excluding from the proceedings persons other than the parties to them and their legal representatives to such extent as the court –*

*(a) may be empowered by law to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings,... [public morality], the welfare of minors or the protection of commercial confidence or of the lives of persons concerned in the proceedings; ...”*

*(b) [Thus] (t)he basic grounds upon which private hearings may take place are circumstances of necessity or expedience involving the following categories of cases:*

*(a) where publicity prejudices the public interest;*

- (b) *in interlocutory proceedings;*
- (c) *grounds of public morality;*
- (d) *the welfare of minors;*
- (e) *the protection of commercial confidence;*
- (f) *the protection of the private lives of persons concerned in the proceedings.”*

37. The ground which I regarded as being of obvious applicability here was ground (e) – the protection of commercial confidence. I was also satisfied - albeit I should note without the benefit of argument to the contrary such as a person seeking disclosure in the public interest might have advanced - that it would not be in the public interest in the due administration of justice in this case to require the disclosure of the information for which protection is sought because of its commercial sensitivity.
38. Nonetheless, it is in recognition of the public interest in open justice that the material filed in this case, suitably redacted will be available to the public in keeping with the Rules of Court.



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Hon. Anthony Smellie  
Chief Justice