



# In The Supreme Court of Bermuda

CIVIL JURISDICTION

2018 No: 129

**BETWEEN:**

**DOUGLAS KELLEY**

**(In his capacity as the Trustee of the PCI Liquidating Trust)**

Plaintiff

**And**

**Steven G. Stevanovich; Paragon Management Ltd. n/k/a Bermuda Administrative Services Ltd; Marshall Diel and Meyers a/k/a Marshall Diel & Meyers; Talisman Capital Talon Fund a/k/a Talisman Capital Talon Master Fund Ltd.; Westford Global Asset Management Ltd.; Westford Asset Management, LLC f/k/a/ Bridgewater Capital Management, LLC; Monahan and Biagi PLLC; Berkeley Square Management Ltd; Groen Brothers Aviation Inc.; Groen Brothers Aviation Global Inc.; Clean Fuels Technology, Inc.; Rudolf W Gunnerman; MLO Products, Inc. n/k/a Genisoy Food Company, Inc.; John Does #1 – 9,999**

Defendants

## REASONS FOR RULING

(In Chambers)

Dates of Hearing: 09 July 2018

Date of Ruling: 12 October 2018

Counsel for the Plaintiff: Jennifer Haworth (MJM Limited)

Counsel for the Defendant: Steven White (Appleby (Bermuda) Limited)

*Application to set aside order for examination – RSC O. 70 of the Rules of the Supreme Court  
Powers of the Court to order examination under section 27Q of the Evidence Act 1905  
Fishing Expedition- Discretion*

RULING of Shade Subair Williams J

**Introduction**

1. This matter came before the Court on the Defendant’s contested summons application dated 2 July 2018 to set aside my ex parte Order made on 26 April 2018 (“the ex parte order”) for Bermuda Administrative Services Ltd. (“BAS”) to comply with the terms of a Request from the United States Bankruptcy Court for the District of Minnesota (“the Request”) for International Judicial Assistance for a proper representative of BAS to submit to examination under oath by a Bermuda appointed examiner.
2. Having heard arguments from Counsel on both sides, I reserved my ruling and indicated that I would provide written reasons. Regrettably, the delivery of this ruling was necessarily delayed on account of my medical leave from office during the months of August and September 2018.
3. I am particularly grateful to Counsel for their patience and understanding and for their most able and helpful written and oral submissions.

**The Background Evidence**

4. There were no factual disputes which arose for me to resolve, so the evidence may be summarized briefly. Various companies filed for voluntary bankruptcy in the United States Bankruptcy Court District of Minnesota under Chapter 11 proceedings following the discovery of their involvement in the Thomas Petters’ Ponzi Scheme (“the Ponzi Scheme”).
5. Several special purpose vehicles (“SPVs”) were formed as part of the Ponzi Scheme to entice investors to lend or invest money in the SPVs for bonds entitling them to an interest in receivables due to these SPVs. It is alleged that between 2003 and 2009 over a US\$83,000,000 in fraud proceeds were paid to the bank account of Paragon Management Ltd (“Paragon”), now known as BAS.
6. The PCI Liquidating Trust was created under a liquidating plan of reorganization for the purpose of recovering the fraud proceeds. The Plaintiff, Mr. Douglas Kelly, having been appointed by the US Bankruptcy Court to recover these proceeds which were paid to third party creditors/investors commenced a series of ancillary legal proceedings against third

parties on the basis of their allegations that those third parties were recipients of proceeds of the fraudulent scheme. The Plaintiff's tracing claims name one Mr. Steven Stevanovich as a Defendant in those ancillary proceedings where it is alleged that he and/or his family and associates were the ultimate beneficiaries of monies which emanated from the Ponzi Scheme.

7. The Plaintiff avers that the monies from which Mr. Stevanovich and others benefitted were channeled through both named and unnamed defendants but more relevantly to these proceedings, through BAS. Capital Strategies Fund Limited ("Capital Strategies") (now known as Barrington Capital Group Limited ("Barrington")) is in voluntary liquidation in the British Virgin Islands. In the affidavit evidence of Mr. Andrew Martin, he deposes that the Plaintiff '*will require production of evidence concerning the relationship amongst and the transfers between Capital Strategies..., Paragon and other parties who are alleged to be the ultimate beneficial owners of Capital Strategies/Barrington and for whose benefit Paragon Management Ltd...received transfers from Capital Strategies/Barrington.*' This is the evidential basis for the Plaintiff's interest in the beneficial owners on whose behalf Paragon held shares in Capital Strategies.
8. The BAS Defendant filed affidavit evidence in support of its summons sworn by its director and sole shareholder, Mr. Luciano Aicardi, and by Counsel Mr. Steven White.
9. BAS was initially a named defendant amongst the Plaintiff's various actions for recovery of fraudulent proceeds. However, the action against BAS was dismissed on a without prejudice basis while the same litigation against 14 other named Defendants (and 9,999 unnamed John Doe defendants) has matured into an advanced post-discovery stage. It is against this factual background that the Defendant opposes the US Court's request for assistance.

### **The Application to Set Aside the Ex Parte Order**

10. In addition to the requirement for a BAS representative to be examined under oath, the ex parte Order also required the Defendant to produce various documents specified in paragraph 18 of the Request which stated:
  - a) *Particulars of the beneficial owners on whose behalf Paragon held shares in Capital Strategies during the period April 30, 2001 to October 14, 2010, the latter being the date Capital Strategies was placed into voluntary liquidation.*
  - b) *Copy of the custodian or nominee agreement between Paragon and the beneficial owners of the shares in Capital Strategies.*

- c) *For the period February 1, 2003 to September 20, 2005, bank statements for Paragon's bank account number ... with Bank of N.T. Butterfield & Son Limited into which Capital Strategies made the following transfers to Paragon*

(A tabled chart setting out dates ranging between 27 February 2003 and 31 May 2005, and providing the originating bank account details in addition to various amounts transferred under eight separate transactions is inserted at this part of the Request. These transfers total \$8,300,000.00.)

- d) *For the period April 1, 2006 to October 31, 2009, bank statements for the Paragon bank account(s) into which Capital Strategies made the following transfers to Paragon:*

(Again, a tabled chart setting out the dates, originating bank account details, and the various amounts transferred is inserted at this part of the Request. These transfers totaled \$72,116,147.15)

- e) *Particulars of to whom Paragon paid the monies referred to at (c) and (d) above, including copies of all checks, withdrawals debit vouchers, electronic or written transfer application and all other documents relating to such transfers.*

- f) *Details of to whom Paragon distributed the limited partnership units in Capital Strategies Cayman L.P., a Cayman Islands exempted limited partnership, which it received as a distribution in specie on October 14, 2010, together with all documents relating to such transfers.*

11. The application to set aside the ex parte order is made on the following grounds:

- (i) *The Application for foreign judicial assistance is an attempt to gather information from Bermuda Administrative Services Ltd speculatively as part of a 'fishing expedition', for the purposes of pre-trial discovery and/or to establish new lines of enquiry in the present proceedings before the US Bankruptcy Court District of Minnesota; and*
- (ii) *Further or alternatively the Application contains requests which do not meet the strict requirements of Bermuda law for the grant of such requests, as further set-out in the Second Affidavit of Luciano Aicardi sworn on 8 June and filed in support of this Summons.*

12. Alternative grounds for the variation of the ex parte Order are pleaded in the following terms:

- (i) *The examination should take the form of examination-in-chief;*
- (ii) *The evidence taken and documents so produced should only be used for the purposes of the relevant overseas proceedings in which the Application for foreign judicial assistance has been made and the hearing of such examination should be made conditional upon the Plaintiff providing an undertaking to this effect;*
- (iii) *That any documents to be put to the proper officer appearing on behalf of Bermuda Administrative Services Ltd ought to be served on the attorneys for Bermuda Administrative Services Ltd not less than 14 days before the date of examination (or such other reasonable period as may be proposed);*
- (iv) *That the expenses of the proper officer appearing on behalf of Bermuda Administrative Services Ltd should be paid by the Plaintiff as required by the Evidence Act 1905 and the Curt Fees and Expenses Act 1971 (or as may be agreed);*
- (v) *That the reasonable legal fees of Bermuda Administrative Services Ltd in providing for its legal representation at the examination should be paid by the Plaintiff; and*
- (vi) *In regard to (iv) and (v) above, the hearing of the examination should be made conditional upon the Plaintiff providing an undertaking fortifying these conditions;*
- (vii) *Costs*

## **The Relevant Law**

### The Court's General Approach to Letters of Request:

13. As a starting point, it should be observed that this Court has historically aligned itself (see *Edward C. Abell, Jr. & Carey Walton v Ptoomac Insurance Co. of Illinois, National Union Fire Insurance Co. et al Civil Jurisdiction 1986 No. 421*) with the dicta of Viscount Dilhorne and Lord Keith in *Rio Tinto Zinc and Westinghouse (1978) 1 All E.R. 434* (at p.449):

*“In the interests of comity, it is our duty and our pleasure to do all we can to assist the requesting court... (and at p. 477-478) it is the duty of the court of request to do its best, consistently with the provisions of justice in the court from which the request comes, and to do so in such a way as will cause minimum delay... and that court should not be too astute to examine the issues of the action and the circumstances of the case with excessive particularity for the purpose of determining in advance whether the evidence of that person*

*will be relevant and admissible. That is a matter essentially for the requesting court. Should it appear necessary to apply some safeguard against an excessively wide-ranging examination, that can be achieved by making an order for examination subject to a suitable worded limitation.”*

#### Applicable Bermuda Statutory Provisions

14. Order 70 of the Rules of the Supreme Court (RSC) governs the procedural law for obtaining evidence in Bermuda for use by overseas courts. Orders compelling a party to provide evidence are made pursuant to section 27Q of the Evidence Act 1905.
15. In the first instance, save in limited circumstances where an application is brought by the Attorney General, the application for an order under s. 27Q must be made on an ex parte basis and must be supported by affidavit evidence exhibiting a copy of the relevant request from the foreign court.
16. Before an order may be properly made under section 27Q, the Court must satisfy itself in accordance with section 27P of the Evidence Act which reads:

#### ***Application to Supreme Court for assistance in obtaining evidence for civil proceedings in other court***

*Where an application is made to the Supreme Court (in this Part referred to as “the Court”) for an order for evidence to be obtained in Bermuda, and the Court is satisfied—*

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (hereinafter referred to as the “requesting court”) exercising jurisdiction similar to that of the Supreme Court in a country or territory outside Bermuda; and*
- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which have been instituted before the requesting court,*

*the Court shall on being further satisfied that there is an intention that the proceedings should continue to trial, have the powers conferred on it by the following provisions of this Part.*

17. Section 27Q of the Evidence Act provides:

#### ***Power of Court to give effect to application for assistance***

*27Q (1) Subject to this section, the Court shall have power, on any such application as is mentioned in section 27P, by order to make such provision for obtaining evidence in Bermuda as may appear to the Court to be appropriate for the purpose of giving effect to the*

*request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the Court may consider appropriate for that purpose.*

*(2) Without prejudice to the generality of subsection (1) but subject to this section, an order under this section may in particular, make provision—*

- a. for the examination of witnesses, either orally or in writing;*
- b. for the production of documents;*
- c. for the inspection, photographing, preservation, custody or detention of any property including any land, chattel or other corporeal property of any description;*
- d. for the taking of samples of any such property and the carrying out of any experiments on or with any such property;*
- e. for the medical examination of any person;*
- f. without prejudice to paragraph (e), for the taking and testing of samples of blood from any person.*

*(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the Court (whether or not the proceedings are of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony, either orally or in writing, otherwise than on oath where this is asked for by the requesting court.*

*(4) An order under this section shall not require a person—*

- a. to state what documents relevant to the proceedings to which the application for the order relates are or have been in this possession, custody or power; or*
- b. to produce any documents other than particular documents specified in the order as being documents appearing to the Court to be, or to be likely to be, in his possession, custody or power.*

*(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the Court.*

18. The Court is empowered under O. 32/6 to set aside an order which was made *ex parte*. The discharge of an order made under s. 27Q is an exercise of the Court's power of discretion.

Requests for Production of Actual and Specified Documents vs A call for a Fishing Expedition

19. The bottom-line basis for an application to discharge at least parts of my *ex parte* Order which gave full effect to the Request is made on the ground that the request for the production of documents is lacking in requisite particularity and consequently amounts to a wide discovery request and a fishing expedition.
20. Counsel for the Defendant relied on the judgment of the learned Justice Ian Kawaley (as he then was) in *NetBank v Commercial Money Center [2004] LR 46*. In that case, the Court was also concerned with an application to set aside *ex parte* orders made for the examination of a witness and production of documents for a foreign court. The letter of request was issued in US proceedings and observed by the Kawaley J to be ‘*formulated very widely, explicitly in the form of discovery requests, as opposed to requests for specified documents known to be in the witnesses’ possession...*’ Counsel in *NetBank* conceded at the outset of the hearing for the discharge of the *ex parte* orders that the document requests were unsustainable. The issues for resolve were thus focused on the oral evidence aspects of the Order.
21. The Court summarized the objecting party’s narrowed submissions in *NetBank* as follows:

*“The Applicants’ Counsel advanced two broad grounds for setting aside the Orders. Firstly, as a matter of law, no jurisdiction to compel a witness to give oral evidence by way of discovery existed under Bermuda law. And, secondly, as a matter of discretion, even if evidence was properly sought for the purposes of trial and not discovery, the Court should decline to accede to requests that amounted to mere “fishing” expeditions. One could only summon a witness who was demonstrably likely to be able to give relevant evidence, not summon a witness to discover whether they could give such evidence or not.”*

22. At pages 11-12 of the Court’s judgment:

*“So the English decisions on identical legislative provisions to our own are highly persuasive as to the proper approach to letters of request under Bermuda law. And these decisions bring with them two broad philosophical goals, which can (depending on one’s perspective) be seen to be either complementary or contradictory in nature. Firstly there is the internationalist goal of cooperation between courts in different national jurisdictions, the dominant theme of the 11<sup>th</sup> Conference on Private International Law, which gave birth to the 1970 Convention itself. Secondly there is the narrower nationalist right of courts receiving requests to define the scope of requests so as to exclude pre-trial discovery, a right equally guaranteed by the Convention.*

*It is easier to define when as matter of law a documentary request is impermissible than is the case with an oral examination request. Thus, it fairly well understood in the Bermudian context that wide-ranging requests for documents which are not known to be in the*



*possession, custody or power of the witness fall afoul of section 27Q (4). Typically, perhaps, oral examination relates almost exclusively to the requested documents, so if the documents are not properly sought, oral examination falls away. Thus in the Potomac Insurance Co. case, this Court did not consider the oral testimony issue in its own right at all.*

*Two statutory provisions are central to an understanding of the scope of oral examination which may properly be requested. Firstly, section 27P of the Evidence Act...*

*It is a threshold requirement of an application for assistance pursuant to letters of request not just that this Court be satisfied that the foreign proceedings are intended to proceed to trial. As, Lord Fraser observed with respect to the counterpart United Kingdom provisions in the *In re Westinghouse* case: “The first question ... is whether the court should be satisfied, as required by paragraph (b) ..., that the requests made in the letters rogatory are for ‘evidence’ in the sense which that word is used in the paragraph or whether they are truly for a wider discovery.” (At page 641H) And secondly, and more specifically, section 27Q (3) provides:*

***“An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the Court (whether or not the proceedings are of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony, either orally or in writing, otherwise than on oath where this is asked for by the requesting court.” [emphasis added]***

23. To illustrate the degree of precision and particularity required to be identified in the request, Counsel cited *Marjorie S Dean et al v Skadden, Arps, Slate Meagher & Flom et al [1998] Bda LR 43* where Ward J (as he then was) stated at page 217 of his judgment:

*“The law is that the request must be for particular documents, that is to say, individual documents separately described, so that the exact document in each case is clearly indicated. Further, the particular documents requested must in fact exist. They must be actual documents as opposed to conjectural documents which may or may not exist. On the other hand, I can approach the problem realistically drawing proper and reasonable inferences about the existence of documents such as replies to letters, where replies must have been sent.”*

24. This Court (in *NetBank* and also in *Marjorie s Dean et al*) has also cited with approval the description of the term ‘fishing’ as outlined by Kerr L.J in *Re Norway’s Application [1987] 1 QB 433 at 482*:

*“...although ‘fishing’ has become a term of art for the purposes of many of our procedural rules dealing with applications for particulars of pleadings, interrogatories and discovery,*

*illustrations of the concept are most easily recognized than defined. It arises in cases where what is sought is not evidence as such. But information which may lead to a line of inquiry which would disclose evidence. It is the search for material in the hope of being able to raise allegations of fact, as opposed to the elicitation of evidence to support allegations of fact, which have been raised bona fide with adequate particularization.”*

## **Analysis and Decision**

25. The Defendant submitted that section 27P limits the scope of the Court’s powers to make an order under section 27Q for evidence to be used at trial in the requesting court and not for discovery.
26. The Court’s order for the production of documents should be restricted to particular and specified documents known to be in existence and those documents must appear to the Court to be, or to be likely to be, in the witness’ possession, custody or power. Requests for documents outside of this nature will likely be refused on grounds that the requesting party is embarking on a fishing expedition. This Court must also be further satisfied that there is an intention that the foreign proceedings should continue to trial.
27. Mr. White, at paragraph 26 of his written arguments, advanced three sub-grounds on which he submitted that the Request amounts to a fishing expedition:
  - a. *The pleadings in the US proceedings provided to this Court by the Plaintiff are drafted in very broad and speculative terms.*
  - b. *They are strikingly devoid of particularized allegations of fact which would justify the disclosure of the List of Requested Documents (The Defendant refers to paragraphs 54 to 58 of the Amended Complaint...Likewise, the Defendant refers to the Second Complaint, filed in separate adversary proceedings in the United States, which does not deal with, or include BAS as a defendant...) (NetBank) Moreover, they fail to demonstrate any intention by the Plaintiff to use the List of Requested Documents in the existing US proceedings (section 27P(b) of the Evidence Act) as supporting evidence.*
  - c. *The Plaintiff has made express admissions that the Request has been made for a wider discovery and tracing exercise. A number of examples have been outlined at paragraph 12 of the Second Affidavit of Luciano Aicardi...as well as Exhibit SW1...annexed to the Affidavit of Steven White...*
28. In this case, the US adversary proceedings against BAS were dismissed. However, the litigation in the same civil proceedings for recovery of the fraud proceeds has continued

against 14 other named Defendants before the requesting Court. I reject the suggestion hinted behind Mr. White's submissions that the removal of BAS as a defendant disqualifies those ongoing proceedings from compliance with s.27P of the Evidence Act where it is required that there be an intention that the proceedings continue to trial. The US adversary proceedings are visibly proceeding towards trial and so the real question turns to whether the requested material is of evidential support to those trial proceedings or merely wider pre-trial discovery.

29. No real dispute arises on the construction of section 27Q(4)(b) which requires document specification for documents ordered for production. On this point, the dispute is more factual and comes down to whether the request and my *ex parte* Order provided sufficient particularity for the documents requested and whether the request for those documents amounts to a call for a fishing expedition.
30. The Defendant made various pleadings and correspondence references, all of which I have considered but do not propose to recite. At the heart of the objections, the sufficiency of the document specificity is challenged and it is complained that some of the requests deal with purely conjectural documents. It is necessary to deal with each of these objections separately:

Decision on the Objections:

31. Paragraph 18a) of the Request called for the "*particulars of the beneficial owners on whose behalf Paragon held shares in Capital Strategies during the period April 30, 2001 to October 14, 2010, the latter being the date Capital Strategies was placed into voluntary liquidation*".
32. I accept that this portion of the Request seeks information rather than a specified document known to be in the possession, custody or power of the Defendant. Such information may very well be obtainable through the oral examination process. However, the request does not support a proper demand for a particular document to be produced. I accordingly find that this part of my *ex parte* order should be set aside.
33. Paragraph 18b) of the Request is in pursuit of a "*copy of the custodian or nominee agreement between Paragon and the beneficial owners of the shares in Capital Strategies*".
34. Similarly, the Defendant submits that this request is speculative and does not seek a document of known existence evidenced by the vague description of the document and the fact that the Plaintiffs have also asked for the identity of the beneficial owners on whose behalf Paragon held shares in Capital Strategies. I agree that the Request falls outside of the permissible boundary in that it does not seek the production of a known document of trial evidential value. For this reason, I am inclined to set aside this term of my *ex parte* order also.

35. The Defendant further objected to the terms of the *ex parte* order which required the production of various Paragon bank statements. The Request provided tabled charts specifying date ranges for the transactions of interest in addition to the originating bank account details and the various amounts transferred under separate transactions.
36. I am persuaded by Ms. Hayworth's submissions, on this part of the Request. It is clear to me that these bank statements are known to exist and are in the custody or power of BAS. Further, I find that the requested statements are relevant and of real evidential value. Additionally, they have been sufficiently particularized and identified. For these reasons, I will not set aside the terms of my *ex parte* order which call for the production of the bank statements reporting on the specified transactions between the period of 27 February 2003 and 31 May 2005 inclusively and for the period 1 April, 2006 to October 31, 2009 inclusively.
37. Where the Request seeks '*particulars of to whom Paragon paid the monies referred to at (c) and (d) above, including copies of all checks, withdrawals debit vouchers, electronic or written transfer application and all other documents relating to such transfers*' there is a valid cause for complaint that the Request has been constructed in the form of a request for wider discovery as opposed to a request for known documents of evidential value. Mr. White correctly submits that this part of the Request engages an information gathering exercise and improperly bypasses the statutory requirements of sections 27P and 27Q.
38. Initially, I was also inclined to set aside the portion of my *ex parte* order where I ordered the production of '*details of to whom Paragon distributed the limited partnership units in Capital Strategies Cayman L.P., a Cayman Islands exempted limited partnership, which it received as a distribution in specie on October 14, 2010, together with all documents relating to such transfers.*' However, on closer examination, I find that this term of the *ex parte* order may be cured by a 'blue pencil' amendment so to simply require the production of the instruments of transfer of the Capital Strategies Units (which invariably exist) by which Paragon divested its limited partnership units. This rewording is intended to exclude any discovery-type requests for general information on those to whom Paragon made such distributions.
39. The *ex parte* order also acceded to the part of the Request in pursuit of '*details of to whom Paragon distributed the limited partnership units in Capital Strategies Cayman L.P., a Cayman Islands exempted limited partnership, which it received as a distribution in specie on October 14, 2010, together with all documents relating to such transfers*'. I find that the offending portions of this term of the *ex parte* order are cured by the amended wording in the preceding paragraph. I therefore set aside this part of the order.

Decision on the Conditions sought in respect of the Oral Evidence:

40. Counsel sensibly agreed to the majority of the alternative proposals prayed in the Defendant's 2 July 2018 summons in the event that any part of my ex parte order is confirmed. I approve the following conditions which were agreed between the parties:

- (i) *The examination should take the form of examination-in-chief;*
- (ii) *The evidence taken and documents so produced should only be used for the purposes of the relevant overseas proceedings in which the Application for foreign judicial assistance has been made and the hearing of such examination should be made conditional upon the Plaintiff providing an undertaking to this effect;*
- (iii) *That any documents to be put to the proper officer appearing on behalf of Bermuda Administrative Services Ltd ought to be served on the attorneys for Bermuda Administrative Services Ltd not less than 14 days before the date of examination (or such other reasonable period as may be proposed);*
- (iv) *That the expenses of the proper officer appearing on behalf of Bermuda Administrative Services Ltd should be paid by the Plaintiff as required by the Evidence Act 1905 and the Court Fees and Expenses Act 1971 (or as may be agreed);*

41. It only remains for me to resolve the following condition which Ms. Hayworth correctly submitted is unsupported by known or reported legal authority:

- (v) *That the reasonable legal fees of Bermuda Administrative Services Ltd in providing for its legal representation at the examination should be paid by the Plaintiff*

42. In my judgment, a witness is not ordinarily expected to be represented by Counsel for the purpose of giving evidence in trial proceedings. Of course, it is open to any such person to secure the services of an attorney should they so choose. However, the expenses of a witness in engaging legal representation ought not to be imposed on the Plaintiff. On this basis, I refuse the Defendant's request for coverage of BAS legal fees.

**Conclusion**

43. The *ex parte* order of 26 April 2018 shall be amended so to set aside the parts of the order which acceded to paragraphs 18a) and 18b) of the Request.

44. The terms of my *ex parte* order which call for the production of the bank statements reporting on the specified transactions between the period of 27 February 2003 and 31 May 2005 inclusively and for the period 1 April, 2006 to October 31, 2009 inclusively shall remain in place.
45. Where the *ex parte* order grants the request for '*particulars of to whom Paragon paid the monies referred to at (c) and (d) above, including copies of all checks, withdrawals debit vouchers, electronic or written transfer application and all other documents relating to such transfers*' those parts of the *ex parte* order shall be set aside.
46. The parts of the *ex parte* order which required the production of '*details of to whom Paragon distributed the limited partnership units in Capital Strategies Cayman L.P., a Cayman Islands exempted limited partnership, which it received as a distribution in specie on October 14, 2010, together with all documents relating to such transfers*' and '*details of to whom Paragon distributed the limited partnership units in Capital Strategies Cayman L.P., a Cayman Islands exempted limited partnership, which it received as a distribution in specie on October 14, 2010, together with all documents relating to such transfers*' are set aside. In place thereof, the Defendant is required to produce the instruments of transfer of the Capital Strategies Units by which Paragon divested its limited partnership units.
47. Subparagraphs 2(i)-(iv) of the Defendant's 2 July 2018 summons are granted as prayed and the order for the examination is confirmed on the condition that the Plaintiff provides an undertaking to the Court in respect of 2(iv).
48. The Defendant's application for an order for the Plaintiff to cover any part of the legal fees of BAS at the examination is refused.
49. All other parts of my *ex parte* order are otherwise confirmed.
50. If either party wishes to be heard on costs, a Form 31D shall be filed within 14 days of the date of this Ruling.

Dated this 12<sup>th</sup> day of October 2018

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**SHADE SUBAIR WILLIAMS**  
**PUISNE JUDGE OF THE SUPREME COURT**