IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2008-409-001744

BETWEEN	TANNADYCE INVESTMENTS LIMITED Plaintiff
AND	COMMISSIONER OF INLAND REVENUE Defendant

Hearing: 3 April 2009

Appearances: A J Forbes QC for Plaintiff
K Clark QC & P Courtney for Commissioner

Judgment: 12 May 2009

RESERVED JUDGMENT OF HON. JUSTICE FRENCH

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[1] The defendant applies for an order striking out the plaintiff's judicial review proceeding on the grounds that the statement of claim discloses no reasonable cause of action and amounts to an abuse of process.

[2] The key issue is whether the matters pleaded in the statement of claim are capable of constituting the sort of exceptional circumstances that are required before the Court will entertain judicial review of the process leading to a tax assessment.

Factual background

[3] The plaintiff Tannadyce Investments Limited (Tannadyce) is one of a group of development companies owned by a Christchurch developer Mr David Henderson.

[4] Tannadyce has been in a long running dispute with the defendant the Commissioner of Inland Revenue (the Commissioner) for some 15 years.

[5] The dispute centres on financial records which Tannadyce says it delivered to the Inland Revenue Department (IRD) in 1995 and 1996. According to Tannadyce, the documents were never returned and this prevented Tannadyce from being able to file its income tax returns for the years ended 31 March 1993 to 31 March 1998. The IRD however has consistently maintained it returned all the documents. It required tax returns to be filed.

[6] On 5 March 1999, after a number of meetings and letters, the IRD issued nil default assessments for the relevant years.

[7] Mr Henderson sought the assistance of the Ombudsman. The Ombudsman convened a meeting with the parties in June 1999 and later recorded his understanding of the agreement that had been reached at the meeting in the following terms:

> (i) David Henderson would within one month of the meeting file with the IRD annual tax returns for the plaintiff for 1993 to 1998;
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> (ii) Such returns would be supported by reasonably prepared sets of accounts on the basis of the information available to David Henderson;
>
> (iii) The IRD would inform David Henderson within one month of the receipt of the tax returns and supporting accounts of any areas of concern or issue assessments;
>
> (iv) On this basis the IRD would not institute any prosecution proceedings against the plaintiff for the late filing of the tax returns;
>
> (v) The IRD undertook to advise David Henderson as to who would be legally entitled to sign the tax returns and accounts of the plaintiff.

[8] On or about August 1999, Tannadyce filed tax returns on a global basis for the years 1993 to 1998 with such supporting accounts and information as Mr Henderson says he was able to provide on the basis of the information available to him. The tax returns filed claimed losses of $1,539,753.

[9] By letter dated 13 September 1999, the IRD acknowledged receipt of the tax returns but advised they gave rise to a number of queries to which it sought a response.

[10] Then followed further correspondence and meetings. Tannadyce did not ever answer the queries purportedly because of the absence of the missing records and because the IRD refused to provide copies of all the Tannadyce records it was holding.

[11] In May 2004, IRD issued default assessments and notices of loss determination for the period 1993 to 1999. The default assessments were made on an assets accretion basis, with Tannadyce's income for the period assessed at $6,523 and the assessed loss carried forward being $209,373. This latter figure was significantly less than the figure claimed by Tannadyce in the global tax returns it had filed in 1999 and had obvious implications for future years.

[12] In issuing the default assessment, the IRD advised for the first time that the tax returns filed by Tannadyce five years earlier were invalid because of their global nature. IRD asserted that individual tax returns for each year were required by law and had been agreed to as part of the Ombudsman agreement, something disputed by Tannadyce.

[13] That same year 2004, Mr Henderson applied to IRD under the Official Information Act 1982 for disclosure of information relating to Tannadyce but the application was declined on the basis of the secrecy provisions of the Tax Administration Act 1994.

[14] The next significant event was in October 2006 when the IRD advised that its 2004 assessment and notices of loss assessment were final. The Department then issued income tax assessments for the period 2000 to 2004 adopting the loss determination.

[15] Mr Henderson continued to dispute these matters in correspondence.

[16] On 3 April 2008, the Commissioner served Tannadyce with a notice of statutory demand under the Companies Act 1993 claiming $356,686.79 (inclusive of penalties and interest) for income tax for the 2002-2004 years.

[17] Tannadyce then filed an application on 17 April 2008 to set aside the statutory demand.

[18] The basis of Tannadyce's application was that had the past trading losses been calculated fairly and properly, there would be nothing owing for the 2002-2004 years.

[19] The application stated there was a substantial dispute as to whether the debt was owing or not and that Tannadyce intended to seek judicial review of the Commissioner's procedure in issuing the tax assessment.

[20] The judicial review proceedings were duly filed on 1 August 2008.

[21] Meantime, shortly after Tannaydce had filed its application to set aside the statutory demand, Mr Henderson made another request under the Official Information Act for copies of all documents held by the IRD relating to Tannadyce. In response to that request, IRD advised in August 2008 that it had collated a large volume of information which it was holding in some 200 Eastlight folders.

[22] From Tannadyce's viewpoint, this advice came after years of the IRD denying it was holding any information and vindicated Tannadyce's stance that its documentation had never been returned.

[23] The exact content of all of the 200 Eastlight folders is still unknown. Subsequent correspondence and affidavit evidence from the IRD states that it includes a substantial number of duplicates and material relating to Mr Henderson personally as well as his other companies, not just Tannadyce.

[24] The application to set aside the statutory demand came on for hearing before an Associate Judge on 27 August 2008.

[25] In his decision of 13 October 2008, at [69], the Associate Judge identified the core of the judicial review application as being allegations about the unreasonableness of the Commissioner in requiring returns to be filed when Tannadyce did not have access to the records. The Associate Judge regarded a submission that the IRD had deliberately withheld financial information as "nonsensical" (at [72]) and went on to say that in his view:

> [74] … an analysis of the allegations against the CIR reveals that, in substance, TIL's claims fail to meet the threshold demanded before a judicial review application would be entertained.
>
> [75] The judicial review proceeding, even if it provided the requisite compelling grounds, is only relevant to the income tax default assessments. I do not accept that individually, or collectively, TIL's case can constitute exceptional circumstances. It is the author of its own misfortune. Ms Clark's submission is apposite, i.e., that by TIL's own default, neglect and delay in pursuing remedies available to it in appropriate forums, and in a timely manner, it has sought to absolve itself from filing tax returns, challenging assessments, and paying tax assessed.
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> [76] For more than 10 years TIL has been raising issues concerning its ongoing income tax liabilities. These issues remain unresolved despite the fact that a statutory process exists for promoting a prompt and efficient resolution of such.
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> [77] TIL has consistently resisted following the statutory challenge procedure. Rather, it has elected to engage the CIR in a concerted campaign to challenge the legitimacy of its assessments and processes.

[26] The Associate Judge concluded that Tannadyce "did not have an arguable case much less a good arguable case" (at [78]) to set aside the statutory demand. The application to set aside was therefore dismissed.

[27] Tannadyce has appealed that decision to the Court of Appeal. The appeal has not yet been heard.

[28] Following the Associate Judge's decision, Tannadyce filed an amended statement of claim. In substance, it is similar to the statement of claim considered by the Associate Judge. The most significant change is the inclusion of allegations about the August 2008 acknowledgements regarding the 200 Eastlight folders.

[29] That has now become what counsel for Tannadyce Mr Forbes described as "the core allegation."

[30] The amended statement of claim pleads the following conduct as amenable to review.

> 42. The defendant (including the IRD) has:
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> (i) Not acted fairly and in accordance with the agreement reached through the Chief Ombudsman in June 1999, which was intended to be binding on both the plaintiff and the defendant (and the IRD) in particular by issuing default assessments and notices of loss determination against the plaintiff in May 2004 and a statutory demand for tax arrears claimed to be due in March 2008;
>
> (ii) Acted unlawfully in the tax assessment process and procedure it has adopted in respect of the plaintiff since August 1999. In particular, the defendant was required, pursuant to the Act s89C, but failed:
>
> (a) to issue a NOPA if he did not accept the tax returns filed by the plaintiff in August 1999 for the period 1993 to 1998;
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> (b) to issue a NOPA if he did not accept the tax returns filed by the plaintiff in October 2005 for the period 2000 to 2004;
>
> (c) to accept that he was not entitled to rely on the Act s89C(h) that the plaintiff had not provided a tax return when and as required by the tax laws.
>
> (iii) Not acted fairly or in good faith but has abused his statutory powers of decision since August 1999, including in terms of:
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> (a) the Act s6(1), which requires the defendant at all times to use his best endeavours to protect the integrity of the tax system;
>
> (b) the Act s6(2)(a), which provides that the defendant's obligations under s6(1) includes the taxpayer's perception of that integrity;
>
> (c) the Act s6(2)(b), which provides that the defendant's obligations under s6(1) includes the rights of taxpayers to have their liability determined fairly, impartially, and according to law;
>
> (d) the Act s6(2)(f), which provides that the defendant's obligations under s6(1) includes the responsibilities to administer the law fairly, impartially and accord to law.
>
> (iv) Not acted fairly or in good faith but as has abused his statutory powers of decision since at least August 1998 by making untruthful, inaccurate, incomplete and contradictory

statements as to the nature and extent of the plaintiff's documents held by the IRD and the extent to which these had been returned to the plaintiff, when he (and the IRD) knew that the plaintiff, through David Henderson, had repeatedly claimed, at least since 1998, that:

(a) the reason why annual tax returns for the plaintiff for each of the 1993-1998 years could not be filed was because the plaintiff did not hold the documents, records and information which it required for this purpose but that the IRD held the plaintiff's documents or had lost documents and records which had been provided by or obtained from the plaintiff;

(b) this was also the reason why the plaintiff and David Henderson could not answer the queries raised in the IRD's letter of 13 September;

(c) this was also the reason why the plaintiff, through David Henderson, had complained to the Office of the Ombudsmen, which had given rise to the involvement of the Chief Ombudsman and the agreement reached between David Henderson and the defendant as recorded in the Chief Ombudsman's letter of 29 June 1999;

(v) Knew that the plaintiff, through David Henderson, had made requests in 2003 and 2004 for the documents and records relating to the plaintiff which the IRD held, including a request under the Official Information Act 1992, both of which were refused;

(vi) Not acted fairly and in good faith but has abused his statutory powers of decision by failing, until August 2008, to disclose the true nature and extent of the plaintiff's records which the IRD holds but which he (and the IRD) failed to have regard to before issuing the assessment and notices of loss determination against the plaintiff in May 2004 and the statutory demand issued in March 2008.

43. The plaintiff had a legitimate expectation that:

(i) The agreement reached in June 1999 with the Chief Ombudsman would be adhered to by the defendant (and the IRD) and that any rejection of the tax returns filed by the plaintiff pursuant to that agreement would be advised in a timely way, in accordance with the agreement;

(ii) In the process leading up to the assessments and notices of loss determination the defendant (and the IRD) would not act inconsistently with that agreement and the implied acceptance, at least up until May 2004, by the IRD of the tax returns filed on behalf of the plaintiff in August 1999;

(iii) That statements made by the defendant (and the IRD) as to the documents and records held by the IRD relating to the plaintiff would be truthful, accurate and complete.

44. The process adopted by the defendant (and the IRD) since August 1999 falls to be assessed against the delay which has occurred since then, in particular before the IRD first claimed that the tax returns filed by the plaintiff in August 1999 were not in accordance with the agreement reached in June 1999 or in accordance with the plaintiff's legal obligations.

45. The process adopted by the defendant (and the IRD) since August 19999 also falls to be assessed against the plaintiff's rights to natural justice, including under the New Zealand Bill of Rights Act s27, in particular as to:

(i) Giving the plaintiff and David Henderson timely advice and reasons if it was going to reject the tax returns filed by the plaintiff pursuant to the June 1999 agreement as not being in accordance with that agreement or the plaintiff's legal obligations.

(ii) Giving the plaintiff and David Henderson truthful, accurate and complete information as to the documents and records held by the IRD relating to the plaintiff.

[31] The main plank of Tannadyce's case is that the Commissioner has been guilty of misleading and dissembling conduct as to:

(i) The extent of the documents and records held by the IRD relating or potentially relating to Tannadyce;

(ii) What it was prepared to disclose to Tannadyce in this regard both before and after the tax assessments issued in May 2004;

(iii) IRD knew Tannadyce was claiming it did not have the records required to complete individual returns or answer the queries raised in letter of 13 September 1999, yet all the time IRD may very well have had relevant documents and information.

[32] The amended statement of claim goes on to seek declarations that the following decisions made by the Commissioner are invalid and should be set aside:

(a) The defendant's decision that the tax returns filed by the plaintiff in August 1999 were not in accordance with the

agreement reached with the Chief Ombudsman in June 1999 or the plaintiff's legal obligations;

(b) The defendant's decision to issue a default income tax assessments and notices of loss determination in May 2004 against the plaintiff for the period 1993 to 1998;

(c) The defendant's decision to issue income tax assessments for the period 2000 to 2004, issued against the plaintiff in October 2006;

(d) The defendant's decision to refuse to provide the plaintiff with or copies of all documents, records and information held by it relating to the plaintiff;

(e) The defendant's statements made to the plaintiff over the period subsequent to at least August 1998 as to the nature and extent of the documents and records held by the IRD relating to the plaintiff not being truthful, accurate or complete as to the plaintiff's documents held by the IRD;

(f) The defendant's refusal to provide documents and records relating to the plaintiff which the plaintiff, through David Henderson, had requested in 2003 and 2004;

(g) The defendant's decision to issue a statutory demand for income tax arrears against the plaintiff issued in March 2008.

[33] It is this amended statement of claim which the Commissioner seeks to have struck out under r15.1 and the Court's inherent jurisdiction.

Relevant legal principles

The principles to be applied on strike out

[34] It is well established that in considering strike out applications, the Court proceeds on the assumption the pleaded facts are true.

[35] As is also equally well established, the threshold for strike out is high. Before the Court may strike out proceedings, the cause of action must be so clearly untenable it cannot possibly succeed. The jurisdiction is to be exercised sparingly. Striking out is a draconian step.

[36] In the words of the Supreme Court in *Couch v Attorney-General* [2008] 3 NZLR 725 per Elias CJ and Anderson J at [33]:

> It is inappropriate to strike out a claim summarily unless the court can be certain that it cannot succeed. The case must be "so certainly or clearly bad" that it should be precluded from going forward. Particular care is required in areas where the law is confused or developing.

[37] Although these comments were made in the context of a negligence claim, the same criteria apply in respect of an application to strike out a judicial review proceeding: *Southern Ocean Trawlers Ltd v Director-General of Agriculture & Fisheries* [1993] 2 NZLR 53 (CA).

The legal principles relating to judicial review in tax cases

[38] Sections 109 and 114 of the Tax Administration Act provide what has been described as a code for the resolution of tax disputes.

> **109 Disputable decisions deemed correct except in proceedings**
>
> Except in objection proceedings under Part 8 or a challenge under Part 8A,—
>
> (a) No disputable decision may be disputed in a court or in any proceedings on any ground whatsoever; and
>
> (b) Every disputable decision and, where relevant, all of its particulars are deemed to be, and are to be taken as being, correct in all respects.
>
> **114 Validity of assessments**
>
> An assessment made by the Commissioner is not invalidated—
>
> (a) through a failure to comply with a provision of this Act or another Inland Revenue Act; or
>
> (b) because the assessment is made wholly or partially in compliance with—
>
> (i) a direction or recommendation made by an authorised officer on matters relating to the assessment:
>
> (ii) a current policy or practice approved by the Commissioner that is applicable to matters relating to the assessment.

[39] These sections and their effect on the availability of judicial review in tax cases has recently been considered by the Court of Appeal in *Westpac Banking Corporation v The Commissioner of Inland Revenue* [2009] NZCA 24. The Court confirmed the following :-

1. The established principles in relation to applications for judicial review in tax cases should not be widened.

2. As a general rule, the correctness of a tax assessment can only be challenged in challenge proceedings under Part VIIIA of the Tax Administration Act.

3. To allow collateral challenge to assessments through judicial review can provide scope for gaming and diversionary conduct. It involves not just delay but diversion of effort and resources.

4. A challenge by way of judicial review is reserved for exceptional circumstances.

5. A challenge by way of judicial review in other than exceptional circumstances is an abuse of process.

6. Circumstances are exceptional for this purpose if they produce a situation in which the assessment can be fairly seen as not within the scope of ss109 and 114 of the Tax Administration Act.

7. Judicial review is essentially confined to two circumstances namely assessments that were not truly assessments at all and where there has been conscious maladministration.

[40] This approach has now effectively been endorsed by the Supreme Court, in that it has refused an application from Westpac for leave to appeal (*Westpac Banking Corporation v Commissioner of Inland Revenue* [2009] NZSC 36).

[41] At the time of the hearing before me, the outcome of Westpac's appeal to the Supreme Court was still unknown. Counsel for Tannadyce Mr Forbes therefore did not accept that conscious maladministration was necessarily required.

[42] However, that matter is now beyond all doubt and I must therefore approach this matter on the basis articulated in *Westpac*.

Application of the relevant legal principles to the circumstances of this case

The competing arguments

[43] Counsel for the Commissioner, Mrs Clark acknowledged that the threshold facing the Commissioner was very high but submitted that in the circumstances it was satisfied. Not surprisingly, Mrs Clark relied heavily on the reasoning of the Associate Judge. She even suggested the statutory demand decision "arguably" raised an estoppel, although accepted the better view was that it constituted a highly persuasive authority.

[44] Mrs Clark submitted that in applying the *Westpac* test it was important for me to look beyond the formulaic expressions used in the amended statement of claim to the actual substance. Further, that although I was required for the purposes of a strike out to assume that the pleaded facts were true, and was not able to engage in the facts in the same way as the Associate Judge, that did not mean I was bound to accept allegations that were demonstrably contrary to indisputable fact.

[45] In Mrs Clark's submissions, none of the allegations pleaded in the amended statement of claim are capable of satisfying the *Westpac* test of exceptional circumstances and accordingly the proceeding should be struck out.

[46] Mrs Clark contended that all of the various complaints pleaded in the amended statement of claim could and should have been pursued or raised through

the disputes and challenge procedure under the Tax Administration Act, and further that the delay in filing the judicial review proceeding was fatal given that what Tannadyce was seeking was a discretionary remedy. Mrs Clark also submitted that the core allegation about the deliberate withholding of the records was not something that related directly to the assessment.

[47] It is clear that from the Commissioner's perspective, this long running dispute bears all the hallmarks of diversionary and gaming tactics on the part of a taxpayer, something which the Court of Appeal has made clear is not to be countenanced.

[48] For his part, Mr Forbes accepted that some aspects of the amended statement of claim may require further amendment, but pointed out relying on *Couch* that this in itself is not fatal.

[49] Mr Forbes submitted that the circumstances of this case are at a different level to those at issue in *Westpac*. Whereas *Westpac* was about inconsistent practices, what the taxpayer in this case is saying is that the Department was requiring them to do something, while at the very same time itself knowingly preventing them from being able to do it. Mr Forbes further contended that if "exceptional" is to be equated with "rare", it must be rare for the Department to mislead a taxpayer repeatedly over a number of years as is alleged to have happened in this case. The issue is not so much whether the documents were or were not lost, but that up until August 2008, the taxpayer was misled.

[50] In Mr Forbes' submission, what is alleged to have happened must be conduct capable of amounting to conscious maladministration. He contended that the matter of the records did bear directly on the assessment because the inability to file individual tax returns had had an ongoing effect.

[51] As for the argument that judicial review was not available if the matter could have been dealt with in the disputes/challenge procedure, Mr Forbes submitted that could not be an absolute proposition because it would include even conscious maladministration and therefore judicial review would never be available. Mr

Forbes contended the argument could not be an answer in a case such as the present one where the correctness of the default assessment as such was not being challenged.

[52] Mr Forbes further submitted the statutory demand decision could not possibly create any estoppel and in any event, there is new information before me that was not before the Associate Judge.

The Court's ruling

[53] I am satisfied that with one exception none of the allegations made against the IRD in the amended statement of claim are capable of constituting exceptional circumstances within the meaning of *Westpac*.

[54] The one exception is the allegation that the IRD was knowingly in possession of the very documentation which it repeatedly and falsely denied possessing and which Tannadyce required in order to be able to file individual tax returns and avoid a default assessment.

[55] If that allegation could be proven, then, in my view, it would amount to conscious maladministration.

[56] In reaching this conclusion, I have not overlooked Mrs Clark's submission about there being an inconsistency in Tannadyce's argument. On the one hand, Tannadyce was arguing that the issue over the records directly bore on the assessment, while on the other hand denied it is disputing the correctness of the assessment. However, in my view there is no inconsistency. Correctly analysed, the proceeding would not be a challenge to the correctness of the default assessment as a default assessment. The claim would be that there should not have been a default assessment in the first place. Had the documentation been released, then Mr Henderson would have been able to file individual returns and/or able to answer the queries in the 1999 correspondence.

[57] I acknowledge following *Southern Trawlers* and *Couch* that I am not required to treat as true, pleaded allegations which are contrary to indisputable fact.

[58] However, the state of the evidence before me about the records is not yet at that point.

[59] As Mr Forbes pointed out, at this stage, there is no evidence about the type of information held by the IRD relating to Tannadyce, whether or not it includes any financial information about Tannadyce or its affairs, whether or not the information could have been material to Tannadyce and assisted it in filing the tax returns, whether the Department used any of the information in preparing the default assessments.

[60] Discovery may well establish that the allegations are as nonsensical as the Associate Judge thought but at this stage until it is known for certain exactly what documents are in the possession of the IRD, I am unable to have the degree of certainty required for strike out.

[61] It may also well be that in the exercise of its discretion, the Court could deny Tannadyce a remedy on the grounds of delay. However, in my view it would be wrong at this early stage of the proceeding to rely on that as a ground for striking out. In this case, both parties appear to have been guilty of inordinate delay, while the argument for Tannadyce would be that it was not until August 2008 that the true position was revealed.

[62] It follows I do not consider the statutory demand decision creates any form of issue or res judicata estoppel. Apart from anything else, it was a decision on an interlocutory application, and it concerned a different document.

[63] My reasons for finding Tannadyce's other complaints do not provide an arguable basis for judicial review are as follows:

The contention that the Commissioner breached the agreement with the Ombudsman

[64] This could have been the subject of a challenge under the statutory procedures and does not amount to conscious maladministration within the meaning of *Westpac*.

The contention that the Commissioner acted unlawfully in failing to issue a Notice of Proposed Adjustment under s89C

[65] There is established authority to the effect that the failure to issue a notice of proposed adjustment does not invalidate an otherwise valid assessment. This is not a ground for judicial review.

The contention that the Commissioner has breached his obligations under s6 of the Tax Administration Act

[66] The amended statement of claim simply asserts the existence of a breach without providing any particulars. For that reason alone, the allegation cannot stand. Further, unless the breach of s6 involved conduct that amounted to conscious maladministration, it could not in itself be a matter amenable to judicial review.

The contention that Tannadyce had a legitimate expectation the IRD would comply with the Ombudsman agreement, and that its statements about the records were truthful

[67] In so far as the pleading relies on alleged breaches of the Ombudsman agreement, it must fail for the same reasons as set out above.

[68] Mrs Clark further submitted the *Westpac* decision means the legitimate expectation doctrine is not available in tax cases. I agree that must be so as regards a breach of legitimate expectation that does not amount to conscious maladministration. Legitimate expectation is not an independent ground in its own right.

The contention that the Commissioner has been guilty of delay

[69] In the absence of any suggestion the delay has been deliberate and part of a strategy associated with the missing records, I agree with Mrs Clark's submission that delay is not a reviewable error. The issue of timeliness was also something that Tannadyce could have pursued through the statutory procedure.

The contention that the Commissioner has breached Tannadyce's rights to natural justice in failing to give timely advice about the returns and in failing to give truthful advice about the records

[70] As already mentioned, in my view delay or lack of timeliness per se is not a reviewable error. In so far as the financial records are concerned, the invocation of natural justice and the Bill of Rights Act is unnecessary.

Outcome of hearing

[71] For the reasons detailed above, I am not prepared to strike out the entire proceeding. However, the amended statement of claim requires further amendment so as to confine the alleged reviewable errors to deliberately misleading conduct related to the financial records. Any other alleged reviewable errors contained in the current pleading are not sustainable and are accordingly struck out.

[72] The further amended statement of claim is to be filed within ten working days, and a statement of defence 20 working days thereafter. The file is then to be referred to the Associate Judge for resolution of discovery issues.

[73] If leave is required, I reserve leave for the defendant to file a further application to strike out the proceeding if discovery reveals that the allegations about the financial records are entirely without foundation.

[74] As regards costs on this application, my provisional view is that costs should lie where they fall. It is however only a provisional view and is subject to submissions on the matter. If counsel are unable to agree on costs and require me to make an award, then submissions should be filed within 20 working days and be of no more than five pages in length.

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