IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2011 HCV00547

BETWEEN	***WINSTON JOHNSON***	***CLAIMANT***
A N D	***NORBERT LAWRENCE***	***DEFENDANT***

Mr. Richard R. Reitzin instructed by Reitzin and Hernandez for the Claimant.

Nicosie R. Dummet for the Defendant

Heard:September 21st, & December 20th, 2011

Coram: Anderson, K. (J)

[1] This matter came up for hearing before me on September 21st, 2001 in the form of an Application to set aside or vary a Default Judgment. The Notice of Application seeking to set aside or vary the Default Judgment, was filed by the Defendant on April 19th 2011 and thereafter, an amended Notice of Application was filed by the Defendant on September 19th, 2011. The latter-mentioned document as well as the original Application were both served on the Claimant's attorneys – Messrs. Reitzin and Hernandez, albeit that the amended Application was short-served. Nonetheless, counsel for the Claimant – Mr. Reitzin, had no objection to the amended application being heard by the Court. Thus, the Court proceeded to hear and decide upon the amended application. That amended application was supported by two affidavits, one of which was deposed to by the Defendant and the other, by the Defendant's counsel – Ms. Nicosie

Dummet. In opposition to the amended application, two Affidavits were filed, one of which was deposed to by the Claimant himself and the other, by his counsel. This Court has taken into account all of these documents as well as the respective written submissions filed by both parties in respect of the amended Application.

[2] On the 21st September, 2011 after having heard both parties quite extensively and indeed, well beyond the 15 minutes period which was actually scheduled for the hearing of the amended application, I dismissed the Application and also made certain case management orders vis-à-vis the assessment of damages hearing. I then gave brief oral reasons for my Judgment and promised to specify in more detail, my reasons for Judgment in my written Judgment which would follow. This written Judgment is now being provided to the parties, in accordance with my promise so to do.

[3] In the amended Application as filed, the reliefs which were sought were as follows: "(1) That Default Judgment filed March 28th, 2011, be set aside/varied to enter judgment on admission. (2) The Defence filed on April 5th, 2011, be allowed to stand as if filed in time. (3) That the Defence be granted relief from sanctions."

The grounds upon which the Applicant sought the Orders, were as follows – "(a) The Defence was not filed as a result of an administrative oversight on the part of the Defendant's legal advisors. (b) The Claimant will not be prejudiced as there will be no need to adjourn that Assessment of Damages hearing which has been set for the 27th September, 2011; (c) The Defendant would be prejudiced through no fault of his; (d) The Defendant wishes to be heard on the issue of quantum.

[4] For the sake of brevity, suffice it to state that neither of the Affidavits filed on the Defendant's behalf vis-à-vis his amended application provided any evidentiary basis whatsoever, for this Court to properly have been enabled to set aside the Default Judgment. This is the for the simple reason that there was in no respect whatsoever, insofar as either of the Affidavits filed on the Defendant's behalf is concerned, any evidence put forward vis-à-vis liability, such as to suggest either that the Defendant wished to, or could have, contested same. Indeed, there was no evidence even put forward upon the amended application, to satisfy this Court that the Defendant had any particular grounds upon which he would wish to contest even the issue of quantum of damages, much less liability.

[5] Clearly, the Rules of Court as amended in September 2006, require that a Defendant applying to set aside or vary a Default Judgment, satisfy the Court that the Defendant, "has a real prospect of successfully defending the claim." Whilst this is not the only consideration which is to be taken into account by the Court, as Rule 13.3 (2) sets out other pertinent considerations, nonetheless, there can be absolutely no doubt that it is the pre-eminent consideration.

[6] This Court cannot be expected to exercise its discretion in a party's favour, in a vacuum. Evidence must be provided to the Court to suggest that the Defendant has a real prospect of successfully defending the claim. In that regard, it is necessary for the Defendant to show more than that he has a merely arguable case. On this point, see: Civil Procedure, Vol. 1 (Spring 2000) and also **Alpine Bulk Transport Co. Inc. v. Saudi Eagle Shipping Co. Inc. (1986) 2 Lloyd's Rep. 221.** This Court cannot act on mere sympathy. In the circumstances, this Court felt itself obliged to leave the Default Judgment intact and not set it aside.

[7] As regards varying the Judgment, so as to enter instead of a Default Judgment, a Judgment on admission, this Court found itself also unable to do so. The Acknowledgement of Service as filed, does not admit to liability. Further, there was no evidence placed before this Court, to suggest that correspondence were exchanged either between the parties or their counsel, in which the Defendant accepted liability. In the circumstances, none of that which constitutes, the "making of an admission" as per Rule 14.1 of the Civil Procedure Rules is applicable to the matter at hand. In the circumstances, I cannot properly enter a Judgment on admission. In any event though, I could only properly have varied the Default Judgment, if I were to have concluded that the Defendant has a real prospect of successfully defending the Claim, as in that regard, Rule 13.3 (1) of the Civil Procedure Rules expressly so provides. Read along with Rule 13.3 (3) this position is made all the more clear. This Court in a Judgment rendered by Brooks, J. in **Henry Harris and Mario Fyffe and Marie Lopez-Gordon – Claim No. 2005 HCV 2562,** has dealt with an attempt to vary a Default Judgment, so as to instead enter a Judgment on admission, in a similar manner. See pages 13 and 14 of the Court's Judgment in that case, in that regard. In the circumstances, I also was obliged to not vary the Default Judgment and enter in place thereof, a Judgment on admission. This Court made enquiry of counsel for the Defendant as to why she had felt it necessary, in the circumstances, to make the amended application on her client's behalf. Counsel then informed me that she did so because her client wished to be heard on the assessment of damages, albeit that he did not wish to be permitted to call any evidence upon the assessment of damages hearing. There certainly was the view in this Court at one time, that if a Judgment in Default were to be entered against a Defendant for failing to file a Defence or failing to file a Defence within time, then the Defendant's rights upon an assessment hearing would be severely

restricted, such that no evidence could be challenged by the Defendant and overall, the Defendant could not be heard on quantum, at the assessment hearing. See pages 3-5 of this Court's Judgment as rendered by Brooks, J. in the Henry Harris case (op. cit), in this regard. Rule 12.13 **seems** to make this point clear, by stating that – "Unless the defendant applies for and obtains an order for the judgment to be set aside, the only matters on which a defendant against whom a default judgment has been entered **may be heard** are – "(a) costs; (b) the time of payment of any judgment debt; (c) enforcement of the judgment; and (d) and application under Rule 12.10 (2)." (Emphasis mine) This Rule (12.13) must, to my mind, be read along with Rule 10.2 (4), which provides that – "In particular, a defendant who admits liability, but **wishes to be heard** on the issue of quantum must file and serve a defence dealing with that issue." (Emphasis mine). With these provisions of the Rules of Court in mind, the question which must be answered is, what amounts to '**being heard**' insofar as Rules 10.2 (4) and 12.13 are concerned?

[8] This question has been answered by Jamaica's Court of Appeal in the case of: **Rexford Blagrove and Metropolitan Management Transport Holdings Ltd. and Lloyd Hutchinson – Supreme Court Civil Appeal No. 111/2005, Motion No. 6/2006** (which was heard by the Court of Appeal following on the Judgment of Smith J.A. sitting as a single Judge in rendering the first Judgment on Procedural appeal) arising from the grant of leave to appeal by P. Harrison J.A. (as he then was) Smith J.A. (as he then was) sat as a single Judge and dealt with the appeal and dismissed it. In his Judgment, he stated that – "the rules in part 10 of the Civil Procedure Rules concern the procedure for disputing a claim whether in whole or in part. The rules in this part apply where the defendant wishes or intends to defend the claim or to be heard on an issue. They do not apply where the defendant does not intend to defend the claim or adduce

evidence on any issue, as in the instant case. Rule 10.2 (4) (supra), in my view, speaks to a situation where the defendant although he admits liability, wishes to rely on any factual argument on the issue of quantum. The words "wishes to be heard on the issue of quantum" should be interpreted to read "wishes to advance a position on the issue of quantum" and not merely to cross-examine..... I would venture to say that, in my view, it would be absurd if, pursuant to rule 10.2 (4) a defendant who admits liability but merely desires to cross-examine the claimant and/or his witnesses on the issue of quantum must file and serve a defence. One might ask 'defence to what?' Indeed the contention of Mr. Reitzin is inconsistent with Rule 16.3 (6) to which I will return." (See pages 6 and 7 of Judgment) Smith J.A. also concluded that where a Defendant in his Acknowledgement of Service stipulates that he does not intend to defend the claim, the claimant must proceed to apply for Judgment on admission pursuant to part 14. The Default Judgment procedure is not applicable in such a case. (Paragraph 7 of Judgment).

[9] In fairness to the Claimant in the case at hand, it must be recognized and accepted that Smith J.A. in his Judgment, strongly suggested that the right to cross-examine witnesses on a quantum of damages (assessment) hearing and overall, to take an active part in the assessment proceedings, perhaps would only apply in a circumstance where there has been no dispute as to liability, in a circumstance wherein a Judgment on admission has been entered, as distinct from a Default Judgment. To my mind though, it would be, at the very least, odd, if not also incompatible with a party's fundamental right under Jamaica's recently enacted Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011, to equality under the law - (See Section 2 (3)(g) of Charter), if arising solely from a difference in approach for example, in terms of whether you fail to file an Acknowledgement of Service at all (thereby creating the

likelihood of there being a Default Judgment entered against you), or instead, in your Acknowledgement of Service, you state in clear terms, that you do not intend to defend the Claim (thereby enabling a Judgment on admission to be entered against you), or in a situation wherein you file no document whatsoever, in response to the Claim, but simply write a letter to opposing counsel prior to the expiration of the time limited for the filing of an Acknowledgement of Service, stipulating therein that your client accepts liability, then in the latter-type situation, you will be entitled to take an active part in an assessment of damages hearing, by cross-examining witnesses and making submissions as to quantum of damages, whereas, on the other hand, in a situation wherein a Default Judgment has been entered, because, as a Defendant, you filed no response in the form of any documentation whatsoever, vis-à-vis the Claim and you did not even write to the Claimant/Claimant's Attorney, expressly admitting liability, than in such case, you are expressly precluded from even so much as cross-examining witnesses upon the assessment of damages hearing and/or making submissions as to quantum of damages, this because, as Mr. Reitzin has suggested to this Court on his client's behalf, in such a latter-type circumstance the Defendant does not have a right to be heard. Thankfully though, by virtue of the Court of Appeal's Judgments in the Blagrove case, this is not the way in which the words – "a right to be heard," in the context of Rules 10.2 (4) and 12.13 of Jamaica's Civil Procedure Rules are to be interpreted. A 'right to be heard' insofar as those Rules are concerned, relates to a desire on the part of a Defendant to advance a factual issue as to quantum, by means of calling evidence, as distinct from merely cross-examining or making submissions as to quantum, arising from the evidence as presented at the assessment hearing on the Claimant's behalf and the applicable case law vis-à-vis damages awards in similar type cases.

[10] In the case at hand, the Claimant filed a request Default Judgment, on March 28th, 2011 and in that request, the Default Judgment was sought on the basis that the Defence had been filed out of time. In that request, it was stated that the Claimant was then in a position to prove the amount of his damages. Following on that request for Default Judgment having been filed, an Interlocutory Judgment in Default of Defence was granted by the Deputy Registrar and was filed on March 28th, 2011. A notice of Assessment of Damages was given by the Registrar to the Defendant and to the Attorney acting on his behalf through his vehicle insurer – N.E.M. Insurance Company. The notice of hearing of the assessment of damages, apart from setting the date of the hearing and the length of the hearing, made only one other Case Management Order, this being that a Listing Questionnaire was to have been filed within fourteen (14) days after the receipt of the notice. Once again, it is important to note here, that this notice was provided by the Registrar to the Defendant, this even though Rule 16.2 (2) of the Civil Procedure Rules as presently worded, makes it clear that unless, in the application for Default Judgment to be entered, which is made under part 12 of the Rules by the filing of a request for Default Judgment, it is stated that the Claimant is not in a position to prove the amount of his damages, "the registry must fix a date for the assessment of damages and give **the Claimant** no less than fourteen (14) days' notice of the date, time and place fixed for the hearing." (Emphasis mine) This case is one which concerns a Judgment for an "unspecified sum of money" as it relates to a claim for damages for negligence and thus the precise quantum of damages to be recoverable would not be capable of being determined solely as a matter of arithmetic, since general damages would not be calculable in this manner. Thus, Rule 16.2 (2) suggests that notice should be given of the date, time and place for the assessment hearing, only to the Claimant. No doubt though, such notification was given by the Registrar to the Defendant also, in view of

the provisions of Rule16.2 (4) – which were only inserted into the Rules by way of amendments effected in September 2006 -- this therefore having been after Rule 16.2 (2) already existed in the Rules. There is though, admittedly, some incongruity between Rules 16.2 (2) and 16.2 (4) of the Rules. Nonetheless, as 16.2 (4) was inserted into the Rules after Rule 16.2 (2), it is clear that Rule 16.2 has to be interpreted and applied in a manner which is consistent with the amendment by insertion into the Rules, of Rule 16.2 (4).

A footnote to Rule 12.10 (1) (a) and (b) states that – "Rule 16.2 deals with the procedure for assessment of damages where judgment is entered under the paragraph." Thus, it seems clear to me that it is to Rule 16.2 that we must look, in seeking to determine the extent to which, if any, there can be participation by a Defendant following upon the entry by the Court, of a Default Judgment against him, in an assessment of damages hearing. Is it that a Defendant can only participate actively in an assessment of damages hearing, in the form of, at the very minimum, cross-examining witnesses and making submissions to the Court on quantum, in a situation wherein the Defendant has filed a Defence making therein, positive assertions vis-à-vis the facts surrounding the quantum of damages to be awarded to the Claimant? Clearly the decision of Smith J.A. - then sitting alone, on the hearing of the Procedural Appeal in the Blagrove case, impliedly suggested that this was so. In fact Smith, J.A. made it clear, that once a Defence had been filed which made positive assertions vis-à-vis the quantum of damages, the Defendant could also call evidence. The Court of Appeal in Supreme Court Civil Appeal No. 111/2005, upon Motion No. 6 of 2006, fully agreed with the Judgment made by Smith J.A. in the same case. It is to be noted and accepted though, that in so having done, the Court of Appeal treated that case as one of Judgment on admission, rather that as one of Default Judgment, this even though, it was in fact a Default Judgment that had been entered

against the Defendant in that case. The Court of Appeal was of the view that in the particular circumstances of that particular case, insofar as the Defendant had not indicated in his Acknowledgement of Service, any intention to challenge liability, a Default Judgment procedure was not the appropriate procedure to have adopted. Rather, it was, in those circumstances a Judgment on admissions procedure that ought to have been adopted and in those circumstances, the procedure as set out in Rule 16.3 (6) of the Civil Procedure Rules were of particular importance. That procedure as there set out, makes it clear that where there has been a Judgment on admission, for an unspecified sum of money, the Defendant can only call evidence at the assessment hearing, and thereby "be heard," if he has filed a Defence making positive factual assertions therein, vis-à-vis the sum of damages to be awarded to the Claimant.

[11] Accepting the Court of Appeal's Judgment in the Blagrove case, as indeed I must, and having no doubt, in my own mind, that the same is fully correct, what is clear, is that Rule 10.2(4) and Rule12.13 of the Civil Procedure Rules, ought not to be viewed as expressly precluding a Defendant, against whom a Default Judgment has been entered, from cross-examining witnesses or making submissions on quantum, upon an assessment of damages hearing. When considered along with other Rules of Court, such Rules are to be considered as only precluding the calling of any evidence by a Defendant against whom a Default Judgment has been entered, as this is how, "the right to be heard" is to be understood.

[12] In the case at hand, the Defendant wishes to cross-examine witnesses at the assessment hearing, but not to call any evidence on his behalf. This was made known to me during the hearing in Chambers, of the Defendant's application to set aside or vary the Default Judgment. I have permitted the Defendant to do so.

This case is one applicable solely to Default Judgment, insofar as there was never, at any time prior to Judgment having been entered against him, any admission of liability on the Defendant's part. In the Defendant's Acknowledgement of Service, he stated that he intended to contest the Claim. However, he failed to file his Defence within time. Interestingly enough, in the draft Defence as was appended as an exhibit to the Affidavit of Norbert Lawrence, as was filed in support of the Application, it was made clear by the Defendant that he wished only to contest quantum of damages, in terms of requiring the Claimant to prove the losses and damage alleged. This is interesting because, had the same been filed within time, then a Judgment on admission would likely have had to have been entered and clearly, the Court of Appeal's decisions in the Blagrove case would have unquestionably applied to the matter at hand. Unfortunately for the Defendant though, that Defence as drafted, was not filed within the requisite forty-two (42) day time period after service of the Particulars of Claim upon him and therefore it was the Default Judgment procedure which was followed both by the Court and by the Claimant, through his counsel, and rightly so. That being the case, it is Mr. Reitzin's strongly expressed position that, to put it simply, the Defendant has no right to cross-examine witnesses and/or to make any submissions to the Court on quantum, at the assessment of damages hearing. Is this view correct? There certainly does exist, authority from this Court, in support of that proposition. See: **Henry Harris v. Mario Fyffe and Marie Lopez Gordon – Claim No. 2005 HCV 2562.** Indeed, the Judgment of Smith J.A. sitting as a single Judge in the Blagrove case, also appears to support the position as advanced by Mr. Reitzin. This to my mind however, must now be reconsidered, particularly in view of the change to the Rules vis-à-vis the procedure to be followed in assessing damages following upon a Default Judgment, as came about subsequent to the Court of Appeal having, by single Judge first, on January 10th, 2006, ruled

in favour of the Defendant's right to cross-examine witnesses and make submissions to the Court on quantum, even following upon default Judgment. The Court of Appeal ruled in same manner in a Judgment given in writing on November 10th, 2006, in the Blagrove case. In that Judgment though, the law being considered in terms of the applicable Rules of Court, were the Rules of Court that existed prior to the amendment of those Rules in September of 2006.

[13] Rule 16.2(4) was inserted in the Rules, amongst various other amendments, which were made to Jamaica's Rules of Court in September, 2006. It was pursuant to this Rule, that in the Notice of Assessment of Damages, the Registrar had required that a Listing Questionnaire be filed. Rule 16.2 (4) also requires the Registrar to set a date by which witness statements must be filed and exchanged, as also, a date by which standard disclosure and inspection must take place.

[14] I should state here, that it does not, from my experience in this Court thus far, appear to me that as a matter of course, the Registrar complies with Rule 16.2(4), to the extent as expressly required. If I am correct in this regard, than it is hoped by me that this will be regularized by the Registrar in the shortest possible order hereafter.

[15] Considering Rule 16.2 (2), the question which I have to answer is this: Why would there be a need to disclose documents, exchange witness statements, or file a listing questionnaire, if it is that the Defendant, following upon the entry of a Default Judgment against him, is not even so much as entitled to cross-examine or make submissions as to quantum? Is this provision (Rule 16.2 (4) just in place so as to allow a Defendant to know the nature of the case against him, insofar as the assessment of damages is concerned? Or is it to enable him to effectively

participate in the assessment hearing, by at the very minimum, enabling the Defendant, to a worthwhile and useful extent, to be able to cross-examine witness and make submissions vis-à-vis quantum? I believe that it is the latter. Why would there need to be disclosure of documents, to a Defendant, who may not have even so much as filed an Acknowledgement of Service? Why would a Listing Questionnaire need to be filed by the Claimant? Why would witness statements of the Claimant have to be provided to the Defendant? It seems to me that these things are required to be done, not only by the Claimant, but even by a Defendant against whom a Default Judgment has been entered, if that Defendant intends to play any active role whatsoever, in the assessment of damages hearing. That active role can take the form, at the very least, of cross-examining the Court's witnesses and making submissions on quantum and at most, in addition, calling evidence (once a Defence in the form as suggested above in this Judgment has been filed). This is an interpretation which accords with the principles of natural justice and is one which, to my mind, is at the same time, in harmony with all of the Rules of Court referred to above. All legislation, whether subordinate or primary should always be interpreted in a manner which accords with natural justice. Fairness to my mind, demands that the Defendant against whom a Default Judgment has been entered, not only 'know' of the case against him, in terms of the assessment, in the sense of being provided with filed documents pertaining to the same, but also, that he should be entitled to cross-examine the Claimant's witnesses and make submissions on quantum, to the Court. In the absence of there being any Rule of Court expressly precluding my adoption of such an approach, I am of the opinion that this Court may, in accordance with the over-riding objective, interpret and apply the Rules of Court, vis-à-vis what it is the Defendant can and/or cannot do on an assessment of damages hearing following upon a Default Judgment. Rule 26.1 (2) (v) provides that – "Except

where these Rules provide otherwise, the court may – (v) take any other step, give any other direction for the purpose of managing the case and furthering the overriding objective." I should also mention at this juncture, that there is caselaw which appears to support the position that I have taken. See for example, the Judgment of the England and Wales Court of Appeal in **Pugh and Cantor Fitzgerald International (2001) EWCA Civ. 307, at paragraphs 26-29** of the Court's Judgment in that case, as was delivered by Lord Justice Ward: Also, there is the **unreported Judgment of the England and Wales Court of Appeal as dated 1st July, 1999 – Lunnun Singh,** which has been referred to in the text – **A Practical Approach to Civil Procedure – Stuart Sime, 12th edition (2009), at paragraph 12.28.** In referring to that case, the learned author states that – "On an assessment of damages the defendant can raise any point which goes to quantification of the damage, provided that it is not inconsistent with any issue settled by the Judgment." This is exactly the point which was made by the Justices of the Court which rendered Judgment in the **Lunnun case** and this was made clear in the Court of Appeal's Judgment in **the Pugh case** at paragraphs 26 and 27 thereof. In the **Lunnun case** therefore, Peter Gibson L.J. expressed the view that – "the true principle is that on an assessment of damages any point which goes to quantification of the damage can be raised by the defendant, provided that it is not inconsistent with any issue settled by the Judgment." Clarke L.J. in the **Lunnun case**, also expressed a similar view. Is the situation any different because a Judgment in default has been entered? Once again, I think not. The Privy Council Judgment in **Kok Hoong v. Leong Cheong Kweng Mines Ltd. (1964) A.C. 993**, suggests otherwise. In that case, Viscount Radcliffe, in rendering his Judgment, stated at page 1012. that – "....Default Judgments, though capable of giving rise to estoppels, must always be scrutinized with extreme particularity, for the purpose of

ascertaining the bare essence of what they must necessarily have decided and, to use the words of Lord Maugham, L.C. (in **New Brunswick Railway Company British and French Trust Corporation Ltd. (1939) A.C 1, 21)** "they can estop only for what must necessarily and with complete precision have thereby been determined." With this in mind and applying it, it seems to me, to be abundantly clear that no issue vis-à-vis damages and/or the need for the proof thereof by the Claimant, had yet, at the date when I heard the Defendant's application, been determined in this matter. This is why there was an assessment of damages hearing then scheduled to come, at which the Claimant would be expected to prove the extent of damages being sought. Why then should the Defendant be precluded from cross-examining the Court's witnesses and/or making submissions as to quantum of damages, at the assessment of damages hearing? Such could not, to my mind, be an approach in accordance with the overall interests of justice. My conclusion would though, undoubtedly have been different if there existed a Rule of Court which expressly precluded the Defendant's participation in an assessment of the damages hearing, even to that limited extent. From my reading of the Court of Appeal's Judgment in the Blagrove case, I do not understand that there either now exists or existed at any time prior to now, any such Rule of Court. In fact the amended Rules, as per the insertion in September, 2006, into the Rules of Court, of Rule 16.2 (4), seem to me, to suggest otherwise and I so state, for reasons advanced above. Also, as suggested by the England and Wales Court of Appeal at paragraph 28 of its Judgment in the Pugh case, the views as expressed by that same Court in the Lunnun case, as to what could be challenged on an assessment hearing, in a case where liability has been determined, whether such liability was determined following on a full hearing, or on a default Judgment, have, "survived the introduction of the new Common Procedure Rules." (Paragraph 28 of the Court's Judgment).

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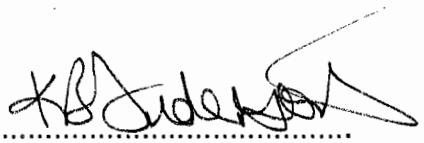
[16] In the circumstances therefore, I made the following Orders:

1. Defendant's Application set aside or vary Default Judgment refused.
2. Defendant's Application for relief for sanctions is refused.
3. Defendant shall be permitted to attend upon the Assessment of Damages hearing and challenge by means of cross-examination, the evidence of the Claimant and/or the Claimant's witnesses at that hearing.
4. Witness Statements for Claimant in respect of Assessment of damages hearing are to be filed and served on Defendant on or before September 26th, 2011, before 4 p.m.
5. Costs of the Application to the Claimant to be taxed if not agreed.
6. Leave to Appeal is granted to the Claimant.



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Hon. Kirk Anderson (J.)