



[2026] JMCC Comm 24

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2025CD00312

BETWEEN	JENCARE SKIN FARM COMPANY LIMITED	CLAIMANT
AND	LLOYD SAMUDA	DEFENDANT

Mr. Kevin Powell KC and Ms. Timera Mason instructed by Hylton Powell, Attorneys-at-law for the Claimant.

Mr. Andre Earle KC and Ms. Keon Green instructed by Earle and Wilson, Attorneys-at-law for the Defendant.

Civil Practice and Procedure - Rules 26.3, 28.6 and 28.7 of the Civil Procedure Rules 2002 - Application to Strike out - Whether Claimant has legal authority to bring the claim - Whether proceedings authorized in breach of section 174A of the Companies Act - Application for Specific Disclosure

IN CHAMBERS

Heard on: 7th July and 17th September 2026

STEPHANE JACKSON-HAISLEY J.

THE CLAIM

[1] The Claimant Jencare Skin Farm Company Limited (Jencare) is a company involved in the business of offering skin care services to the public. The Defendant

Lloyd Samuda is a Director of Jencare. The Claimant alleges that the Defendant in his capacity as Director has conducted himself in a manner that is in breach of his fiduciary duties to the company. Among the allegations made against him is that he has failed to act honestly and in good faith by refusing to deposit revenue generated by the company into the company's National Commercial Bank's accounts but has instead opened another account without authorisation and has deposited company funds into that account. It is also alleged that he has for more than six (6) months absented himself without permission from meetings of the Directors and has thereby vacated his office as Director.

[2] The Claimant seeks certain declarations and injunctive reliefs against the Defendant which include:

1. *A declaration that the Defendant is liable to the Claimant for breach of his fiduciary duty as director by failing and/or refusing to lodge cash transactions and card transactions to the Claimant's designated bank accounts.*
2. *An account of profits and an order for payment of all sums found due.*
3. *A declaration that the Defendant is disqualified and his office as director of the Claimant is vacant as at May 2025.*

[3] The Defendant filed a Defence on October 17, 2025 and an Amended Notice of Application for Court Orders filed June 22, 2026 seeking striking out orders among others as follows:

1. *The Claimant's Statement of Case be struck out as the Claimant did not have legal authority to bring the claim.*
2. *Specific Disclosure to be made by the Claimant of the following documents:*
 - a. *All Notice of Board Meetings held from January 2020 to December 2025.*

- b. *All Agenda for Board Meetings held from January 2020 to December, 2025.*
 - c. *All confirmed Minutes of Board Meetings held from January 2020 to December 2025.*
 - d. *All documents surrounding the May 13, 2025 and June 2025 Board Meetings.*
 - e. *A copy of the audited/unaudited Financial Statements of Jencare Skin Farm Company Limited if any for the period ending December 2012, December 2013, December 2014, December 2019, December 2020, December 2021, December 2022.*
 - f. *A copy of Cash flow projections for the year ending December 2020, December 2021, December 2022, December 2023 and December 2024.*
 - g. *A copy of every balance sheet (including every document required by law to be annexed thereto) which was prepared by the company for the period ending December 2019, December 2020, December 2021, December 2022, December 2023 and December 2024.*
 - h. *A copy of every profit and loss account which was prepared by the company for the period ending December, 2019, December 2020, December 2021, December 2022, December 2023 and December 2024.*
 - i. *A copy of all withdrawals made by Michael Samuda from the Company's Bank Accounts whether online or physically and all references on how those withdrawals were utilized for business from January 1, 2020 to March 2025*
- 3. *Costs of the application to be costs of the claim.*
 - 4. *Such further and/or other relief as this Honourable Court deems fit.*

[4] After considering written submissions and hearing from the parties orally, the main issue to be determined is whether to strike out the Claimant's case on the basis that the Claimant has no authority to bring the claim or whether the claim is an abuse of process. There is also the issue of whether specific disclosure is to be

ordered. In respect of the issue regarding striking out, several subsidiary issues arise as follows:

1. Whether the meeting at which the decision was made to bring the claim was properly constituted?
2. Whether there was in fact a proper resolution passed to bring the Claim?
3. Whether Directors Michael Samuda and Peta-Gaye Samuda faced conflicts of interest in breach of section 174A of the Companies Act?

Whether the meeting at which the decision was made to bring the claim was properly constituted

- [5] According to the Defendant the meeting at which the decision was taken to bring the claim was not properly constituted as it lacked a proper quorum. The Defendant has asked the Court to consider the question as to whether the Claimant has the authority to bring the claim given the unresolved dispute as to the composition and leadership of the Board of Directors.
- [6] On behalf of the Defendant, affidavit evidence was provided from Mr. Lloyd Samuda and Mr. Hugh Wayne Powell and submissions advanced to support the contention that any resolution passed to initiate the claim is invalid because the meeting was not properly convened and conducted and the Board of Directors was not properly composed and constituted.
- [7] It was submitted that the Claimant is in breach of Article 103 of the Company's Articles of Incorporation which requires that at least three (3) days' notice of every meeting be given to each Director unless notice is waived. The Defendant challenges the validity of the meeting held on May 13, 2025 and the resolutions passed, as Director Hugh Wayne Powell was not given notice of it. It was at that meeting that the purported resolution was made to authorise commencement of these proceedings.

- [8] Reliance was placed on the case **All Island Banana Growers Association Ltd v Bryon Henry et al** [2022] JMSC CIV 94 to support the argument that proper notice to directors is a fundamental precondition to the validity of board decisions. The exception to this is where failure to give notice was due to an “accidental omission” and there is no evidence capable of amounting to “accidental omission” here.
- [9] According to Mr. Powell, he received a letter dated March 10, 2025 from the Chairman stating that his office of Director was vacated and that he was disqualified pursuant to Article 98(g) of the Articles of Incorporation in that he was absent without permission from meetings held over a period exceeding six (6) months. He avers that this condition was unsatisfied as the trigger of vacation of office for a period exceeding six (6) months was not satisfied thereby placing in issue, the validity of the Claimant’s asserted corporate authority to commence these proceedings.
- [10] The applicant Mr. Lloyd Samuda, by way of memorandum dated October 23, 2024 expressly rejected the composition of the company’s governance structure and thereby raises the question as to whether any change in the Board’s leadership was implemented in accordance with the Articles. He also questions his alleged disqualification.
- [11] It was submitted that the corporate authority to bring the claim is contingent upon the resolution of the interpretation of Article 98(g) which is a matter before the court. Where the status of a director entitled to participate in the decision-making process is in dispute, the Claimant cannot assert that a majority vote was achieved without proving that all persons entitled to participate were properly included. Therefore, the claim is premature and constitutes an abuse of process and should be struck out.
- [12] In response, King’s Counsel Mr. Powell contended that the Claimant treated the Defendant’s office as vacated due to his absence from meetings for over six (6)

months. Further that as at March 20, 2025 the Claimant treated Mr. Hugh Powell's office as director as vacated as he was absent from two (2) meetings over a six-month period.

- [13] Mr. Powell King's Counsel also argued that the Defendant was absent from the meetings of board of directors for a period of six (6) months, however the time period of this alleged six (6) months absence is dated from November 21, 2024 to May 13, 2025 which does not amount to six (6) calendar months. In any event though, despite the Claimant's position that the Defendant was disqualified as a director the undisputed evidence is that he was given notice of the meeting held on May 13, 2025. Mr. Lloyd Samuda has not successfully challenged the fact of being given notice.
- [14] There is therefore some challenge to the fact of both Mr. Powell's and Mr. Lloyd Samuda's position as directors. This is unlike the **Banana Growers'** case, in which the fact of the composition of the Board of Directors was undisputed. It was undisputed that persons who were not directors had voted on the resolution. It was undisputed that no notice was given. The court made the observation at paragraph 70 of the judgment that *"There is sufficient undisputed factual evidence for the court to decide whether the claim was properly instituted"*.
- [15] The Claimant's position is that it has treated the Defendant's office as a director as vacated. Further, that in light of Mr. Powell's absence from two (2) meetings over a period of six (6) months, they treated his office as Chairman as vacated and proceeded to elect a Chairman for the subsequent meetings. The Defendant's position is that the fact that approximately one (1) year elapsed between two (2) meetings is not equivalent to being absent from meetings during a six-month period. These issues bring into question the interpretation of Article 98(g).
- [16] I agree with the Defendant's observation that the corporate authority relied upon by the Claimant is contingent upon the resolution of the interpretation of Article

98(g) as the issues surrounding the exclusion of Mr. Powell and the disqualification of Mr. Lloyd Samuda remain unresolved. The Defendant had contended that the Claimant cannot rely on the undetermined board composition as its source of authority to commence proceedings while seeking relief from the court that would determine the composition, however the converse is also true.

[17] Based on the material before the court, and the unresolved issues, the court could not, without more, determine these issues and come to a decision and strike out the Claimant's case. The resolution of these issues would require the court to embark on the examination of the documentary material in support of the parties' positions alongside the tested viva voce evidence from the parties. This would amount to a mini-trial as it could not be said here that there is sufficient undisputed evidence regarding these allegations. There remain issues that would be best ventilated through the trial process.

[18] Had this been the only issue, I would not have been prepared to order that the claim be struck out, however there also arises the issue as to whether there was in fact a proper resolution passed to bring the claim.

Issue 2: Whether there was in fact a proper resolution passed to bring the claim?

[19] The Defendant argues that there was no proof that there was a valid Board Resolution permitting the filing of the Claim on July 24, 2025. A Resolution was made at a Board Meeting held on May 13, 2025 where the Directors present unanimously resolved that "if the Defendant failed to provide an account by May 23, 2025, the Company would initiate proceedings against the Defendant". The Minutes recorded that the Board further resolved to issue a formal demand to the Defendant for a full accounting of all cash, debit card transactions and other deposits by May 23, 2025. Further, that the legal action would be initiated if the requested accounting was not provided by that date and that the demand for the records be issued by May 16, 2025.

- [20] In the letter dated May 28, 2025 signed by Mrs. Peta-Gaye Samuda in her capacity as Chairperson, in the final sentence she writes that “WE HEREBY FORMALLY DEMAND that you comply with this request by close of business on June 6, 2025 failing which the Company reserves its right to commence legal proceedings against you”. This is in contrast to Item 6 of the Minutes of the Board Meeting which stipulated that “The board of directors resolved to issue a formal demand to Director Lloyd for a full accounting of all cash, debit and credit card transaction, and other deposits by May 23, 2025”. Further, under Next Steps it was stipulated that “Issue demands for records by May 16, 2025 and Engage legal counsel for potential litigation in the event that there is no satisfactory response by May 23, 2025”. At the time of the Chairperson’s formal demand, this time had already passed.
- [21] The Defendant argues that as no notice was given by May 16, 2025, then the trigger event to comply by May 23, 2025, the condition became legally impossible and thus the condition precedent for the lawsuit failed, thus rendering the lawsuit unauthorised by the Board Minutes.
- [22] In the Particulars of Claim, the Claimant referred to letter dated May 28, 2025 issued by the Chairperson demanding that the Defendant provide an account by June 6, 2025. The Chairperson unilaterally issued a notice which operated to alter the deadline and there was no evidence of ratification of the Chairperson’s letter and no delegation of authority permitting the Chairperson to vary the Board’s resolution of May 13, 2025. This omission is compelling evidence that the purported extension was never adopted as an act of the company and so it remained the unilateral act of the Chairperson, unsupported by any corporate authority. Reliance was placed on the authority of **Northover v Northover et al** [2014] JMCC Comm 15 for the principle that corporate decisions taken outside a properly constituted meeting are invalid and that unilateral or procedurally non-compliant exercises of power are a breach of the Articles.

- [23] In response, King's Counsel on behalf of the Claimant submitted that although the resolution included a deadline for the Defendant to provide a full resolution, it is not the deadline that gave the authority to commence the claim. The important and only condition for the Claimant commencing this claim was the Defendant's failure to provide an accounting as requested. The Claimant acknowledged a delay in sending the letter, indicating that it comes down to a question of fairness to the Defendant and whether he was given reasonable time to respond. Further, that this is just a mechanism for fixing a reasonable time period and not a jurisdictional trigger and the real issue was the demand for the accounting which came later and which gave the Defendant a reasonable time within which to respond. I don't agree with King's Counsel Mr. Powell in this respect. I am of the view that both the time element and the failure to provide the accounting are jurisdictional triggers.
- [24] The meeting resolved to give the Defendant notice by a certain date which was not done. It was incumbent on the Chairperson before issuing a letter to the Defendant to go back to the drawing board and convene a new meeting to issue a new resolution. The actions of the Chairperson in doing this, without a resolution rendered the decision a unilateral one.
- [25] I agree with the Defendant's contention that the original board resolution was highly specific and that the Chairperson by changing the deadline unilaterally acted outside the scope of the Board's precise directive. There was no authority to impose a new deadline, and no evidence of any unanimous consent of the directors. The subsequent extension is unsupported by any pleaded Board Resolution, delegation of authority, unanimous consent or subsequent ratification and nothing to show any approval of the Chairperson's variation of the Board's decision. By changing the deadline, the Chairperson acted outside the scope of the Board's precise directive.
- [26] To compound the issue, paragraph 16 of the Particulars of Claim incorrectly stated that "By unanimous agreement, in a Board meeting held on May 13, 2025, the

Board decided to demand an account from the Defendant and resolved that if he did not provide that account by June 2, 2025, the company would initiate proceedings against him. This was incorrect as the Resolution made at the meeting was this: "Resolution 1: Demand full accounting by May 23, 2025, Resolution 2: Authorize lawsuit if non-compliance". It was the Chairperson in a letter dated May 28, 2025, after the date of compliance, who wrote to Mr. Samuda demanding compliance by June 6, 2025.

[27] The cases relied on by the Defendant provide support for its arguments. The case of **Northover v Northover et al** enunciates the principle that unilateral or procedurally non-compliant exercises of power are a breach of the Articles. The Defendant's contention that the action of Chairperson Mrs. Peta-Gaye Samuda was unilateral has not been met by any evidence or argument to the contrary. The Defendant acknowledges that there are circumstances in which an apparent defect in corporate authority may be cured, as recognised in the case of **John Plummer and Another v Phene Plummer and Others** [2020] JMCA Civ 16. In that case, there was no formal board resolution authorising the commencement of proceedings, but the Court of Appeal held that the defect was overcome because there was clear evidence that all the non-conflicted directors and shareholders had unanimously approved and adopted the litigation. Applying the Duomatic principle, the Court concluded that the company's decision to sue had been validly authorised notwithstanding the absence of a formal meeting.

[28] I agree with the Defendant that this case is distinguishable. Simmons JA in setting out the decision of the Court observed that although decisions of the Board are usually in writing and subject to certain procedural requirements, where a company is a small one, the reality is that the decision making process may not always follow the technical requirements of meetings and resolutions. Further, that the fact that the present directors elected to continue the account, in her view, appeared to be sufficient basis on which a finding could be made that the present directors elected to adopt and continue the claim. This is different from the instant case which lacks

evidence of any election on the part of the other directors to commence or continue the claim. Further, this is not a case where an informal decision was made which was subsequently ratified, in this case a formal decision was made by way of Resolution in a meeting, a decision which had specific dates, which dates were not complied with.

- [29] The Claimant has not been able to successfully contest the averments set out by the Defendant. This situation is similar to the situation met by the Court in the **Banana Grower's** case where at paragraph 75 the court said, "The situation seems clear enough without this court having to decide any question of fact which is in dispute. I agree with the Defendant that there is an absence of any legally authorised corporate decision capable of sustaining the proceedings and that the Particulars of Claim fails to identify any legally authorised corporate decision capable of sustaining the proceedings.

Whether the proceedings were authorised in breach of section 174A of the Companies (Amendment) Act and are therefore a conflict of interest?

- [30] Section 174A(1) of the Companies (Amendment) Act provides that "it shall be the duty of a director of a company to avoid circumstances which, whether directly or indirectly, constitute a conflict of interest or may result in a conflict of interest with the interests of the company". The section imposes a duty upon directors to avoid conflicts of interest. Subsection (2) further imposes a requirement that where a director is interested in a matter which constitutes or may constitute a conflict of interest, he is obliged to disclose the nature of the interest and shall not take part in deliberations in respect of the matter.
- [31] According to the Defendant both Michael Samuda and Peta-Gaye Samuda have a personal interest in the subject matter of the decision to commence proceedings. On behalf of the Defendant, affidavit evidence was led to establish a conflict of interest, which included the fact that both Michael Samuda and Peta-Gaye

Samuda are directors in a company which is a competing skin care business and the fact that Michael Samuda was alleged to have used company's funds. These assertions raised triable issues which are best left for determination during the trial process.

[32] The Claimant relied on the authority of **Colin Gwyer & Associates v London Wharf (Limestone Ltd)** [2002] EWHC 2748 (Ch) where the Court observed that “the fact that one director acted in breach of fiduciary duty when exercising his vote on a resolution should not invalidate the resolution if the other directors acted in accordance with their duties. The vote of the single director will simply be disregarded”.

[33] Even if the issues raised were proven to be a conflict, when the section is scrutinized, the existence of a conflict does not invalidate a resolution once it is shown that there was still a quorum of directors present who could vote on the resolution.

[34] The very question of the composition of the quorum of directors would be an issue in these proceedings which would best be left to be resolved during the trial process. If the conflict of interest issue was the only issue raised, I hardly think it would have been sufficient to amount to the basis for striking out.

Whether the Applicant has established a basis for striking out?

[35] In light of my finding that the decision to bring the action in the manner in which it was brought was not supported by a Resolution of the Board and is inconsistent with the Particulars of Claim, I must consider whether this meets the test for striking out. Rule 26.3(1) of the CPR provides for the circumstances under which a party's case can be struck out. The Defendant has sought striking out on the basis that the Claimant's statement of case is an abuse of the process of the court and for want of authority. Rule 26.3(1) gives the Court power to strike out where the

statement of case is an abuse of the process of the court or where the statement of case discloses no reasonable ground for bringing the claim.

[36] The Claimant's Particulars of Claim at paragraph 16 referred incorrectly to the unanimous agreement made in a Board meeting on May 13, 2025 when it was the Chairperson who unilaterally made that resolution in her letter to Mr. Samuda on May 28, 2025. The fact that no demand was made during the time contemplated by the Board rendered the provision of accounts incapable of being performed within the time stipulated in the resolution. Therefore, the premise on which the claim was brought was incorrect and so the Claimant did not have the legal authority to bring the claim. On this basis, there appears to be no reasonable grounds for bringing the claim (26.3(1)c) at the time and in the manner in which it was brought. As a result, it would amount to an abuse of the process of the court (26.3(1)b as has been argued by the Defendant. The case could be struck out on either limb 'b' or 'c' however, the Defendant's request is that it be struck out as it is an abuse of the process of the court and I am prepared to grant that order.

[37] The Claimant's case is struck out. In the event I am wrong, I will consider the next issue raised which deals with Specific Disclosure.

Whether Specific Disclosure should be ordered?

[38] Specific Disclosure is provided for by virtue of the provisions of Rules 28.6 and 28.7 of the CPR. Rule 28.6 provides that an order for specific disclosure may require disclosure of documents that are directly relevant to the matters in issue in the proceedings. Rule 28.7 requires the court to consider whether specific disclosure is necessary to fairly dispose of the claim or to save costs. In doing so, the court must have regard to the likely benefits and costs of specific disclosure and also whether the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.

- [39]** The Defendant argues that all specific documents sought are directly relevant to the case and to the pleaded issues and necessary for the fair disposal of the matter. Further, that where the Defendant already possesses isolated copies of certain documents they cannot be evaluated in a vacuum, so the outstanding documents are required to provide the necessary context, continuity and chronological integrity allowing the court to evaluate the evidence as a complete, uninterrupted whole.
- [40]** The Claimant's response is that the Particulars of Claim delimited the claim in relation to the period between September 2022 to May 2025 and so the request for documents preceding that period are not directly relevant to the issues in these proceedings. Further that the category of documents being requested is vague and imprecise and the Defendant has not established with sufficient specificity the relevance of "all the documents surrounding the May 13, 2025 Board Meeting and Written Resolution of June 10, 2025. The Claimant further contends that the evidence is that the cash flow projections were never prepared.
- [41]** The Claimant's contention that disclosure should be limited to the time contemplated in the Claim has merit. The claim seeks orders relating to the time period spanning from September 2022 to May 2025. The Particulars of Claim however, references a period dating back from December 8, 2020 when the Defendant was appointed as Co-Managing Director to when he was purportedly removed on October 20, 2023. Thereafter, the assertions relate to events that commenced in or around September 2022 and continued up to June 2025.
- [42]** I am of the view that disclosure should be limited to the period referred to in the Claim Form and Particulars of Claim which is from 2020 to 2025. Outside of that time period, the Defendant would have to specifically show how documents dating back from 2012 are relevant to the Defence. Having failed to show specific relevance, the question of their disclosure has to be carefully considered.

[43] Disclosure must be considered in the context of costs implications. The cost and resources to be expended to secure documents dating back for over a decade would no doubt be significant and it has not been shown that they are directly relevant to the Claim or the Defence so as to justify their disclosure. Therefore, I would not be prepared to order that audited/unaudited Financial Statements for the periods ending December 2012, 2013, 2014 be disclosed. I am however prepared to order that they be disclosed for the period December 2019 (as this time is sufficiently proximate to the relevant time 2020 to 2022).

[44] I also agree with the Claimant's submission that the request for all documents surrounding the May 13, 2025 and June 2025 Board Meeting amounts to a vague request. In the submissions advanced by the Defendant they suggested a more attractive approach which is that all documents relating to the meetings be disclosed. This makes the request less vague but still uncertain. I think a more appropriate formulation would be that all documents that were referred or used in the Meetings be disclosed.

[45] The Claimant has provided affidavit evidence that cash flow projections were never prepared and that searches were conducted and these documents not found. The Court would not seek to make an order that is impossible to comply with. The Defendant has not responded to counter this and provide any evidence of the existence of these documents. I would not be prepared to order the disclosure of any cash flow projections. I would have been prepared to make an Order for Specific Disclosure as follows:

Specific Disclosure to be made by the Claimant of the following documents:

- a. All Notice of Board Meetings held from January 2020 to December 2025.*
- b. All Agenda for Board Meetings held from January 2020 to December, 2025.*
- c. All confirmed Minutes of Board Meetings held from January 2020 to December 2025.*
- d. All documents referred to or used in the May 13, 2025 and June 2025 Board Meetings.*

- e. *A copy of the audited/unaudited Financial Statements of Jencare Skin Farm Company Limited if any for the period ending December 2019, December 2020, December 2021, December 2022.*
- f. *A copy of every balance sheet (including every document required by law to be annexed thereto) which was prepared by the company for the period ending December 2019, December 2020, December 2021, December 2022, December 2023 and December 2024.*
- g. *A copy of every profit and loss account which was prepared by the company for the period ending December, 2019, December 2020, December 2021, December 2022, December 2023 and December 2024.*
- h. *A copy of all withdrawals made by Michael Samuda from the Company's Bank Accounts whether online or physically and all references on how those withdrawals were utilized for business from January 1, 2020 to March 2025*

[46] However, in view of my finding that this is an appropriate case for striking out, my Orders are as follows:

1. The Claimant's Statement of Case is struck out as the Claimant did not have legal authority to bring this claim.
2. The Claimant's application for leave to appeal is refused.
3. Costs of this application to be apportioned in the ratio 80% to the Defendant and 20% to the Claimant.

.....
Stephane Jackson-Haisley
Puisne Judge