



## Introduction

1. There are two applications before the court in these proceedings. The first application is made by the plaintiff, Mr Moulder, who seeks an injunction and/or a stay of the enforcement proceedings commenced by the defendants to recover the taxed costs of the action in this case. The second application is made by the defendants, who seek an injunction against Mr Moulder to restrain him from bringing further proceedings in this court arising out of the underlying facts in these proceedings for a period of two years without first obtaining the leave of the court. This is the court's decision in respect of both of these applications.
2. This action was struck out by Ground CJ in 2011 as (i) being an abuse of process because it was statute barred and (ii) because the writ and statement of claim did not disclose a reasonable cause of action<sup>1</sup>. The costs of the proceedings were awarded to the defendants. Mr Moulder appealed Ground CJ's decision to the Court of Appeal and his appeal was dismissed on the grounds that the action was statute barred and the Court of Appeal also would have held (had it been necessary to do so) that the pleadings disclosed no reasonable cause of action. The Court of Appeal awarded the costs of the appeal to the defendants<sup>2</sup>. The awards of costs at first instance and on appeal have been taxed.
3. Further applications were later made by Mr Moulder which have also resulted in adverse costs awards against Mr Moulder. These awards have not yet been taxed but it is estimated that the total accumulated costs bills against Mr Moulder now far exceed BD\$800,000<sup>3</sup> (including interest). Mr Moulder has not paid anything towards these costs awards. The defendants have sought to recover their costs by way of writ of execution and for an order for the sale of Mr Moulder's property at 15 Bridge View Lane Somerset in Sandys Parish. The Deputy Provost Marshall General has attempted to levy execution on the property, but for various reasons those steps have been suspended pending the outcome of a number of claims made by Mr Moulder in these and in other proceedings.
4. Mr Moulder has made the present application for an injunction to restrain enforcement and/or to stay further enforcement pending the determination of a separate claim Mr Moulder has brought against the Attorney General in action 2023 No 191 seeking declaratory relief and/or relief under section 15 of Schedule 1 to the Bermuda Constitution Order 1968 ("the Constitution") to the effect that Ground CJ's decision to strike out his claim in this action was unlawful and unconstitutional in that it deprived him of a right to a fair trial. He says this because he says the strike out application proceeded on assumed facts and, as a result, he was deprived of the opportunity to call evidence in support of his claim and have a full trial of his claim against the defendants in these proceedings. He contends that this has resulted in a breach of his constitutional right to a fair trial.
5. It is right to mention that Mr Moulder also made an ancillary threshold application to his main application for an injunction and/or stay arising out of the directions order for the hearing of his summons. Mr Moulder sought the determination of a preliminary issue as to whether he could advance constitutional issues without a separate application being made under Order

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<sup>1</sup> [2010] SC (Bda) 62 Civ.

<sup>2</sup> [2011] CA (Bda) 12 Civ

<sup>3</sup> Mr Moulder's affidavit dated 18 May 2023 at paragraph 3.

114 of the Rules of the Supreme Court 1985 (“the RSC”). For reasons that will be explained in the procedural history below, this application was based on a misunderstanding of what had been ordered, and his application was refused for the reasons that are set out in this Ruling.

6. The second application that was made was an application by the defendants for an order prohibiting Mr Moulder from commencing any further proceedings (or making any new applications in existing proceedings) that arise out of the same facts as the claims made in these proceedings without the prior permission of the court for a period of two years. This was based on the history of Mr Moulder issuing multiple sets of proceedings which are all directed at the same objective of setting aside the decision of Ground CJ or re-opening the claim that lies at the heart of these proceedings. The details of these other applications and their results will be described in more detail below.
7. It is also right to mention that Mr Moulder made an application to strike out the defendants’ application, and the court directed that these two applications would be heard together for most effective use of time and resources because they are in reality the opposite sides of the same coin, albeit that a failure to strike out the application would not necessarily mean that the defendants’ application would succeed.

### **Summary and disposition**

8. For the reasons more fully explained in the detailed reasons given below the court has refused Mr Moulder’s application. The first and essential reason for refusing the application for an injunction and/ or a stay of enforcement action is that the premise of Mr Moulder’s application is unsustainable because his claim against the defendants has been struck out and he has exhausted his rights of appeal in relation to it. The second and independent reason is that the balance of justice does not require or support the notion that the enforcement of the costs awards made in the defendants’ favour should be held in abeyance pending the outcome of Mr Moulder’s proceedings in Action 2023 No 191 against the Attorney General.
9. The defendants have been awarded their costs of a case which was held to be an abusive and unsustainable on the pleaded allegations of fact and law on which it was based. The defendants are entitled to enforce those awards of costs without undue delay. The court has a strong policy to ensure that its orders and awards are enforceable and that litigants are not deprived of the fruits of the judgments they have obtained without good and sufficient reason.
10. For the reasons also more fully explained below, the court has granted the defendants’ application for an order restraining Mr Moulder from commencing any further proceedings against the defendants (or any of them) or making any new applications in these proceedings or issuing any new proceedings against the defendants (or any of them) that arise out of the same facts as the claims by Mr Moulder in these proceedings without the prior permission of the court for a period of two years from the date of the order.
11. The essential reasons for this are that (i) there must be an end to litigation (ii) the underlying factual basis of the claim has been determined against Mr Moulder in accordance with law and he has exhausted his rights of appeal in relation to that decision (iii) the wider doctrine of *res judicata* applies to restrict a litigant’s rights to make new claims that could have been made in earlier proceedings (iv) the court has an obligation to ensure that the process of

litigation is not abused to harass or oppress defendants and expose them to additional costs which they may not be able to recover and (v) the court has an obligation to protect Mr Moulder against the consequences of his own actions in running up obligations in costs which he cannot meet arising out of hopeless or vexatious litigation. This is an unusual order, but it does not prevent Mr Moulder coming to court and exercising his normal rights as a litigant in respect of other matters. Nor does it prevent him from seeking relief in relation to the matters which are the subject of the underlying claim in this case, provided he satisfies the court that the claim is a proper claim that is justiciable in the court.

12. It follows that Mr Moulder's application to strike out the application is refused. The reason for this is that the provisions of section 23 of the Supreme Court Act 1905 which give the Attorney General the power to seek an order declaring a person to be a "vexatious litigant" are not exclusive rights that operate to preclude a party to proceedings from seeking relief from the court to restrain an abuse of the court's process by another party. The long-established case law shows clearly that the court has jurisdiction to make the type of order sought by the defendants which is on a more limited basis and for a specific period of time. The details of the relevant case law are in more detail below.
13. It follows from these decisions that the costs of these applications must be borne by Mr Moulder because he was unsuccessful in making his own applications and unsuccessful in resisting the defendants' application. The costs of all the applications are to be taxed on the standard basis if not agreed.

### **Background**

14. The background history to this matter goes back to the mid-1990s<sup>4</sup>. The narrative starts with a boundary dispute between Mr Moulder and his then neighbour Mr Cranfield (the third defendant) over a right of way across Mr Moulder's land. Mr Cranfield's property (called "Hillcrest") was landlocked but had a right of way across Mr Moulder's land for vehicular access to the road. Hillcrest did not have a rear garden. Over time Mr Cranfield encroached on Mr Moulder's land and created a hedged garden space at the rear of the house.
15. In 1999 Mr Cranfield sold Hillcrest to Mr and Mrs Slaughter (the fourth and fifth defendants) and purported to convey to the Slaughters both the right of way across Mr Moulder's land as well as the rear garden area. Mr Cranfield asserted that he had acquired the rear garden by way of adverse possession and supplied affidavit evidence to that effect to support his conveyance of the title to the Slaughters.

### **Action 2004 No 63**

16. In early 2004, Mr Moulder asserted his title to the rear garden area in connection with an application for permission to develop his own land. The Slaughters applied to court to establish their title to the rear garden area of the land they had bought from Mr Cranfield in Action 2004 No 63. That case came on for trial and in a judgment dated 6 June 2005 Wade-Miller J held that the adverse possession claim failed and the land still belonged to Mr Moulder. The Slaughters appealed to the Court of Appeal, but their appeal was denied. The

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<sup>4</sup> The summary is a digest of the facts recited in Ground CJ's judgment at paragraphs 3-4 [2010] SC (Bda) 62 Civ.

case was remitted to address a point that the learned trial judge had omitted. Wade-Miller J conducted a second trial and decided the case in favour of the Slaughters in a second decision dated 5 December 2006. Mr Moulder appealed to the Court of Appeal which set aside Wade-Miller J's decision. Mr Moulder won the case.

### **Action 2010 No 53**

17. Mr Moulder issued these proceedings on 17 February 2010. In these proceedings Mr Moulder made 12 different claims which included claims for "*fraudulent, deceitful and /or negligent drafting execution and concealment*" fraudulent and/or negligent misrepresentation, damages for loss of use of land and increased costs, damages for trespass, *mesne* profits, damages for wrongful building works, damages for mental and physical injury and reputation, aggravated damages and indemnity costs<sup>5</sup>.
18. The defendants applied to strike out the proceedings on the basis that the proceedings constituted an abuse of process because the writ had been issued more than 6 years after the causes of action had accrued and therefore the claims set out in the writ and statement of claim were barred by limitation under section 4 of the Limitation Act 1984. The defendants also applied to strike out the claim on the basis that the pleaded claims failed to disclose a reasonable cause of action because they failed to state the necessary averments that would constitute a claim in fraud, fraudulent misrepresentation, negligence or negligent misstatement were wholly insufficient and would be liable to be struck out.
19. In a careful judgment which analysed all of the causes of action, Ground CJ concluded that the cause of action upon which Mr Moulder relied arose in December 2003 at the latest, and therefore the claims were all statute barred at the time the writ was issued in 2010<sup>6</sup>. It is relevant to note here that the date of the accrual of the causes of action was based on the facts alleged by Mr Moulder in his own affidavit in which he stated that he discovered the essential facts necessary to give rise to his claim "*in mid-December 2003*"<sup>7</sup>. Ground CJ went on to analyse the claims in fraud and negligence and held that the pleadings were insufficient to support a claim under those heads, and the other claims were claims which ought to have been pursued in the earlier proceedings. Accordingly, the entire case was dismissed with costs on 26 November 2010<sup>8</sup>.
20. Mr Moulder appealed to the Court of Appeal. The Court of Appeal held that Ground CJ's judgment was right on the limitation point and that the action was rightly dismissed. The Court of Appeal also indicated that if it had been necessary to consider the pleading issues, they too would have come to the same conclusion as Ground CJ. The appeal was therefore dismissed with costs on 17 June 2011<sup>9</sup>.
21. Mr Moulder sought leave to appeal to the Privy Council from the Court of Appeal, but leave was refused on 17 November 2011. It is unclear whether Mr Moulder petitioned for special

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<sup>5</sup> Ground CJ's judgment at paragraph 5.

<sup>6</sup> Ground CJ's judgment at paragraph 30.

<sup>7</sup> Ground CJ's judgment at paragraph 8 quoting Mr Moulder's affidavit in the earlier proceedings at paragraph 34.

<sup>8</sup> Ground CJ's judgment at Paragraphs 41-3.

<sup>9</sup> [2011] CA (Bda) 12 Civ paragraphs 34-6.

leave to the Privy Council directly. In his oral address to the court he said that the Privy Council had “accepted” his appeal, but it is unclear what he means by this: it may mean that he received confirmation that he could petition for special leave but did not do so, or it could mean that he obtained special leave to appeal. It is more likely to be the former rather than the latter because there would (normally) be some written record that would show that leave to appeal was granted. In any event Mr Moulder confirmed that he did not pursue the appeal to the Privy Council because of the cost associated with doing so. The result is that Mr Moulder exhausted his rights of appeal.

22. The costs of the proceedings awarded against Mr Moulder were taxed in different amounts in favour of each defendant. When aggregated and allowance is made for accumulated interest, Mr Moulder estimates the costs may be as much as BD\$800,000 or more. It is not necessary to calculate the exact amount for present purposes, but it is sufficient to note that the outstanding costs liability owed by Mr Moulder to the defendants is very substantial and remains unpaid.
23. The defendants issued enforcement proceedings in respect of the taxed costs and on 8 May 2012 the Deputy Provost Marshall attached Mr Moulder’s property at 15 Bridge View Lane Somerset Sandys Parish. On 16 December 2012 the court authorised the Bailiff to sell the property by private treaty or public auction with or without vacant possession. Mr Moulder obstructed the levying of execution and the sale process, but eventually steps were taken by the Deputy Provost Marshall General to try to sell the property at Bridge View Lane which were unsuccessful.
24. It is relevant to note here that the independent valuations of the property at Bridge View Lane in 2015 valued the property at between BD\$500,000 and BD\$565,000 in 2015<sup>10</sup>. This almost certainly means that the value of the property against which the claims for costs are to be enforced is substantially less than the estimated amount of Mr Moulder’s costs liability to the defendants, even allowing for increases in property values in the meantime.

#### **Action 2016 No 491**

25. Mr Moulder issued a new set of proceedings in Action 2016 No 491 to set aside Ground CJ’s decision of 26 November 2010 striking out his claim on the grounds that the decision had been procured by fraud and asserting that he had discovered “new evidence”.
26. On 27 July 2017 Kawaley CJ struck out Action 2016 No 491 on the grounds that it was an abuse of the process of the court based on a frivolous and vexatious claim which was bound to fail and that the obvious purpose of the claim was to litigate the same claim that had been struck out by Ground CJ almost seven years before<sup>11</sup>. Kawaley CJ also rejected the “new evidence” as being entirely immaterial<sup>12</sup>. The “new evidence” was the pleadings filed in a claim brought by the Slaughters in 1999 against Mr Cranfield alleging fraud. Costs were awarded against Mr Moulder<sup>13</sup>.

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<sup>10</sup> Referred to in Mussenden CJ’s ruling of [2024] Bda LR 22 paragraph 11.

<sup>11</sup> Unreported judgment of Kawaley CJ dated 27 July 2017 at paragraph 26.

<sup>12</sup> Kawaley CJ’s judgment at paragraph 23.

<sup>13</sup> These are untaxed.

27. Mr Moulder sought leave to appeal against this decision, and his application was refused in an *ex tempore* ruling of Clarke JA<sup>14</sup>. This ruling stated that Mr Moulder had no realistic prospect of persuading the Court of Appeal that Kawaley CJ should have set aside Ground CJ's decision of 26 November 2011. First, it was unclear what the fraud alleged was; second, the discovery of the 1999 pleadings in the Slaughters' action was immaterial to the decision made by Ground CJ; third, Ground CJ would not have made a different decision even if those pleadings had been disclosed<sup>15</sup>. Costs were awarded against Mr Moulder<sup>16</sup>.
28. An auction for the sale of the property was scheduled for the sale of the property by the Deputy Provost Marshall General in April 2019 pending the determination of a contested hearing over the validity of the writ of *venditioni exponas*. On 10 August 2021 Mussenden J (as he then was) issued a ruling confirming that the relief was part of the law of Bermuda and was a valid and constitutional remedy<sup>17</sup>. Costs were awarded against Mr Moulder<sup>18</sup>.

### **Action 2023 No 191**

29. The next relevant step taken by Mr Moulder for present purposes is that Mr Moulder issued proceedings against the Attorney General in Action 2023 No 191. The precise relief that is claimed in these proceedings remains a little unclear, but in his presentation to the court (both at the hearing of these applications and at prior directions hearings) Mr Moulder confirmed that the claim that is made in those proceedings is to the following effect. Mr Moulder asserts that Ground CJ's decision violated the Constitution in that a strike out application proceeded without examination of the facts, which were assumed, and the pleadings were dismissed without a trial at which Mr Moulder should have been able to present his evidence. He says that this means that the strike out procedure provided for in RSC Order 18 rule 19 is unconstitutional. As a result, he asserted in Action 2023 No 191 that Ground CJ's decision of 26 November 2011 must be set aside or struck down. If he is right, he says that this will reverse his liability to costs which is the subject of the present enforcement proceedings.
30. The Attorney General has apparently issued an application to strike out the claim, but that application has never been listed for hearing. The date Action 2023 No 191 was issued is not certain, but it seems that it must have been issued shortly after Mr Moulder issued his present application for an injunction and/or a stay of the enforcement proceedings against his property on 23 May 2023. This is because his affidavit in support of this application which was dated 18 May 2023 referred to a claim he was about to make, and he summarised the grounds on which he was launching those proceedings. This affidavit is described below.
31. On 7 June 2023, Mr Moulder issued an application requiring Mussenden CJ (as he had by then become) to recuse himself from hearing the matter further on the grounds of apparent bias. On 25 April 2024, Mussenden CJ issued his ruling refusing Mr Moulder's application

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<sup>14</sup> Unreported judgment of Court of Appeal 12 March 2018.

<sup>15</sup> Clarke JA's reasons at paragraphs 27-9.

<sup>16</sup> These are untaxed.

<sup>17</sup> [2021] Bda LR 74.

<sup>18</sup> These are untaxed.

for his recusal<sup>19</sup>. Costs were awarded against Mr Moulder<sup>20</sup>. Mr Moulder sought leave to appeal to the Court of Appeal against that decision.

### **Directions hearings in relation to the enforcement proceedings in Action 2010 No 53**

32. When the defendants relisted their application for directions to require the Deputy Provost Marshall General to progress the sale of Mr Moulder's property, Mussenden CJ directed that it was administratively expedient to assign the case to another judge. The matter came before me on 7 August 2025. At that hearing, the defendants sought directions for the sale. However, in opposition to those directions Mr Moulder referred to the summons he had issued in May 2023 seeking an injunction and a stay of enforcement proceedings, which had been left in abeyance in the meantime. He submitted that until the issues he had raised in the proceedings in Action 2023 No 191 had been determined, no further steps could be taken in these proceedings to give effect to the order for sale.
33. The defendants submitted that if Mr Moulder was going to seek an injunction and/or a stay on the strength of the claims he had made in Action 2023 No 191, then it was only right that Mr Moulder should serve copies of those proceedings (and any relevant evidence filed therein) on the defendants so that they could answer the points raised in those proceedings. The defendants submitted that they ought to have been made parties to those proceedings in any event since the relief sought in them directly affected their interest.
34. The court accepted the submission that if Mr Moulder intended to rely upon the matters he has raised in Action 2023 No 191 in support of his application in these proceedings for an injunction or a stay he must serve copies of those proceedings on the defendants so that they can at least know the basis of the claim for an injunction and/or stay, and answer it. The court also considered that Mr Moulder should get on with advancing his claims in those proceedings. Therefore, the court ordered Mr Moulder (i) to serve copies of the 2023 No 191 proceedings on the defendants in these proceedings and (ii) to take steps to progress his claim for constitutional relief in those proceedings. Mr Moulder was given 60 days in which to take those steps.
35. When the matter came back before this court on 23 October 2025 for directions, Mr Moulder indicated to the court that he had taken legal advice and that he had not served copies of the pleadings in Action 2023 No 191 on the defendants in these proceedings and had no intention of doing so. He said that the defendants in these proceedings were not parties to Action 2023 No 191 and had no right to see those documents.
36. This was not a satisfactory position because it meant that both the defendants and the court would not have before it the precise nature of his application for an injunction and/or stay was based on. This could affect the court's assessment of whether there were genuine issues which needed to be taken into account in support of the application, and the defendants would not be able to address fairly any reasons why the injunction and/or stay should not be granted. The court indicated that the proceedings in Action 2023 No 191 were not properly before this court on this application, and if Mr Moulder did not intend to comply with the court's

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<sup>19</sup> [2024] Bda LR 22

<sup>20</sup> These are untaxed.

directions, then he would have to make sure that all materials upon which he intended to rely in support of the injunction and/or stay application had been filed with the court in these proceedings and served on the parties to these proceedings so that they could answer those materials and address them properly and fairly at the hearing of his application. The court indicated that Mr Moulder had to follow the proper procedure if he intended to raise constitutional issues in his application for an injunction and/or a stay.

### **Preliminary issue**

37. This exchange is relevant only to explain that Mr Moulder seems to have interpreted this as a restriction on his ability to raise constitutional arguments on the hearing of his stay application. Mr Moulder issued an application for the determination of a preliminary issue that he was entitled to raise constitutional arguments on his application for a stay without invoking the procedures under RSC Order 114 which relate to proceedings to enforce fundamental freedoms under the Constitution. This was an apparent misunderstanding on his part. The point at issue was that if Mr Moulder intended to raise constitutional arguments he needed to disclose what his arguments are based on so that the other parties (and the court) are properly alerted to (i) what the constitutional point or freedom is at issue (ii) who has infringed it and (iii) why Mr Moulder is entitled to the relief sought.
38. As a result of Mr Moulder's apparent misunderstanding, Mr Moulder made an application for the determination of a preliminary issue at the outset of the hearing aimed at declaring that he had the right to raise constitutional issues as part of his application. That was never an issue, nor had the court ever suggested that he could not do so: he was told that if he wished to raise constitutional arguments he had to do so in proper way, that is to say by giving notice of the grounds upon which he intended to rely and serving any appropriate materials in support thereof.
39. At the outset of the hearing of Mr Moulder's application for an injunction and/or a stay, the court declined to grant Mr Moulder's application for the determination of a preliminary issue for two reasons. First, the court will generally only grant leave for the determination of a preliminary issue when the outcome of the preliminary issue will be dispositive of the main or a significant issue in the case<sup>21</sup>. It is obvious that the application would not be dispositive of the case, which has already been decided.
40. Mr Moulder was entitled to (and did) present his arguments about why he says that his constitutional rights have been infringed in the course of making his presentation to the court on the injunction application. Noone contended that he was not entitled to do so, provided he gave due notice of the material he intended to rely upon for that purpose.

### **The hearing of the injunction and/or stay application**

41. Although Mr Moulder's presentation would have been aided by the disclosure of the claims he has made in Action 2023 No 191, because this would have added some clarity, the main points he relied upon were set out in his affidavit of 18 May 2023 in support of the application (which is summarised below). In that affidavit Mr Moulder explained the essential nature of

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<sup>21</sup> See the commentary in the Supreme Court practice in relation to RSC Order 33 generally and (e.g.) **McGloughlin v Grovers** [2001] EWCA 1743 Civ at paragraph 66 and **Steele v Steele** [2001] CP Reports 106 per Neuberger J (as he then was).

the constitutional objections that have been raised in those proceedings. Mr Moulder also supplemented those points in his oral argument and his explanations of the background history in submissions.

42. The court allowed Mr Moulder a wide latitude in the presentation of his case, and the defendants addressed those arguments. Almost all of the matters that Mr Moulder raised have been the subject of prior court rulings so there was an established record upon which the court could assess the points which Mr Moulder raised. The main themes of these arguments are set out below.
43. Mr Moulder’s application for an injunction and/or a stay centred around the premise that the procedure adopted by Ground CJ at the hearing of the strike out application in November 2011 was fundamentally wrong and in breach of his right to a fair trial under the Constitution because (i) the learned Chief Justice dealt with the issues without allowing Mr Moulder the opportunity to call evidence and cross examine witnesses called by the defendants and (ii) proceeded to determine the issues on the pleadings without any investigation into the true facts behind his allegations.
44. At the outset of his address to the court, upon the court’s request for clarification, Mr Moulder confirmed that his application for an injunction and/or stay of enforcement proceedings was for relief pending the determination of his claim in Action 2023 No 191. This clarification was necessary because Mr Moulder’s summons simply seeks an injunction and/or a stay of the enforcement proceedings generally.
45. Mr Moulder then read his affidavit and his written arguments into the record. These included the following submissions:
  - (i) The court is required to avoid conducting a mini-trial on the facts before a judgment can be given<sup>22</sup>. In striking out his claim on the pleadings, Ground CJ abused its powers under RSC Order 18 rule 19.
  - (ii) The Court of Appeal failed to remedy this injustice.
  - (iii) The strike out hearing was a mini trial without a trial of the facts and issues. The writs of execution derive from the costs awarded in the strike out application and the injustice that it caused to Mr Moulder.
  - (iv) The Court of Appeal did not give Mr Moulder a fair hearing.
  - (v) Justice must both be done and be seen to be done.
46. It is clear that these submissions were all addressed at setting aside the decision of Ground CJ and the Court of Appeal’s decision refusing to allow Mr Moulder’s appeal. Mr Moulder submitted that

*“Having been obstructed by the Court of Appeal in obtaining his court records to move to the next appeal stage, the plaintiff’s case is that he is left to plead his*

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<sup>22</sup> Reliance was placed on **Doncaster Pharmaceuticals Group Ltd v The Bolton Pharmaceutical Company 100 Ltd** [2005] EWCA Civ 661 and a statement of Mummery LJ at paragraph 17: *“It is well settled ...that the court should exercise caution in granting summary judgment in certain kinds of case. The classic instance is where there are conflicts of fact on relevant issues, which have to be resolved before a judgment can be given.”*

*fundamental rights in the Bermuda Constitution—the right to a fair hearing (section 6 (8) , and other rights laid out in his affidavit of 18 May 2023.”*

47. In his affidavit of 18 May 2023 in support of this application Mr Moulder referred to the following matters:
- (i) he had been the victim of a fraud in relation to the proceedings in Action 2004 No 63;
  - (ii) the costs orders were made in relation to the strike outs in this action and in Action 2016 No 491;
  - (iii) the Court of Appeal was biased against him;
  - (iv) he had fresh evidence in the disclosure of the pleaded claims in he relied upon in Action 2016 No 491 (which was also struck out);
  - (v) he had filed a new claim against the government in Action 312 of 2020 in which he sought declaratory relief against the Attorney General, the Commissioner of Police and others (this is a reference to proceedings relating to the alleged withholding of the court recordings relating to his court of appeal hearing);
  - (vi) he was about to file a new claim against the Attorney General “*under the Constitution*” (which was a reference to Action 2023 No 191) in which he said that he was applying to set aside the strike out decisions on the grounds that they were:
    - (a) an abuse of the power under RSC Order 18 rule 19;
    - (b) a breach of the Overriding Objective to deal with the case justly;
    - (c) a breach of the right to a fair hearing which includes the right to test evidence and cross examine witnesses;
    - (d) a breach of his right not to be unjustly deprived of his home and his property;
    - (e) a breach of his common law right to natural justice.
48. It is evident that the claims he is making in Action 2023 No 191 are those set out in (vi) (a) to (e). Mr Moulder later went on his oral address to speak to those issues and did not raise any other new issues relating to the breach of his constitutional right to a fair trial.
49. However, during the course of argument Mr Moulder sought to suggest (although the basis of this was very unclear) that his cause of action was not complete until sometime later than December 2003 because of some negotiations that he had conducted with Mr Cook (presumably) after 2003. There was no direct evidence advanced of what this involved. The court’s note of Mr Moulder’s submission is set out below:
- “When I offered to settle they directed me to lawyer, Mr Cook. I had a reason to rely on what Mr Cook said to me. Mr. Cook told me to let him know when I would start my development and he said he would encourage them to buy. That became part of the time limit. I was not (e)stopped until I started developing my property. CA did not take into account what I have said and I should have been able to rely on Mr Cook and the limitation period was not explored by the court.”
50. Mr Moulder submitted that the balance of convenience favoured the grant of an injunction against the defendants because the sale of his home to meet the costs awards that were made

against him in breach of his rights would cause irreparable loss to him. The unspoken premise of the balance of convenience was that because the defendants' costs awards were unjustly made, a delay in allowing enforcement pending the hearing of Mr Moulder's claim in Action 2023 No 191 is justified.

### **The defendants' position**

51. The defendants took the position that Mr Moulder's claims in Action 2023 No 191 (which is the basis of the application for an injunction and/or stay) are fundamentally bad points and amount to an abuse of the process of the court because Mr Moulder has run all of these points before, and has twice been struck out, his appeal was dismissed in relation to Action 2010 No 53 (in these proceedings) and leave to appeal against Kawaley CJ's decision in Action 2016 No 491 was refused on the basis that his appeal was doomed to fail.
52. In relation to the assertion that Mr Moulder did not get a proper hearing before Ground CJ, the defendants say that the decision was made on the assumption that all the facts alleged by Mr Moulder in his pleadings were true and capable of being proven. It was pointed out that Ground CJ took as his factual assumption from what Mr Moulder had himself alleged, namely that he knew of all the relevant facts which completed his cause of action by mid-December 2003. Therefore, Mr Moulder's claim on his own case was barred by the effluxion of time: the limitation period for all of Mr Moulders' claims expired by mid-December 2009, and so the proceedings were out of time because they were not launched until February 2010.
53. In addition, the defendants submitted that both Ground CJ and the Court of Appeal considered that the claims in fraud and negligent misrepresentation were fatally flawed because the necessary averments to support an allegation of fraud were missing and there was no reliance on any of the alleged misrepresentations to support a claim in tort.
54. As to the new limitation point raised by Mr Moulder during argument, apart from being entirely obscure in its meaning, the defendants submitted that if this was to be relied upon, it should have been put forward at the time the matter was before Ground CJ: the 'wider' doctrine of *res judicata* requires parties to advance all points on which they rely at the same time. It was submitted that it is not legally permissible to raise new arguments which could have been raised at the time after the conclusion of the hearing (and certainly not 15 years later and after the critical witness has died).

### *Issue estoppel*

55. In order to avoid coming back to deal with point as a 'side issue' later in this Ruling, I should expressly say that I accept the defendants' submission that if Mr Moulder had a point to raise in relation to when the limitation period arose on the facts of his case, the time to have raised it was before Ground CJ (or possibly the Court of Appeal). This flows from the general rule that all claims and causes of action must be determined at the same time in the same proceedings, except where the facts or other material relied upon could not have been adduced in the original proceedings by 'reasonable diligence'. This rule is often referred to as 'issue estoppel' or the application of the 'wider' doctrine of *res judicata*.
56. In this case all the facts that Mr Moulder has referred to in his submissions were known to him at the time he launched these proceedings in 2010. Therefore, the exception to the

principle that allows new issues to be raised if they could not have been discovered earlier by reasonable diligence does not arise, and Mr Moulder cannot now rely upon a new argument that he could and should have raised at the time the strike out application was heard by Ground CJ.

### **Mr Moulder's reply**

57. Mr Moulder's reply was in effect a repetition of the arguments he had earlier made but with some additional detail and considerable fluency and so it is not necessary or helpful to the understanding of his case to repeat those arguments again. However, one aspect of Mr Moulder's reply is relevant to the defendants' application for an order restraining Mr Moulder from issuing new applications or proceedings in relation to the same subject matter, for reasons that are explained later. It is therefore necessary to touch upon that aspect of his address to the court.
58. The substance of Mr Moulder's address in reply can only be described as an angry tirade directed at the injustice that he has suffered at the hands of a corrupt legal system. The exact details are not necessary to record but in essence Mr Moulder asserted that the legal system in Bermuda is one in which all the lawyers are corrupt, dishonest and money hungry, and the judiciary are part of that corrupt system, are biased against him and seek only to protect the corrupt and dishonest lawyers. He alleged fraud and dishonesty against Mr Cook, Mr Cranfield, and the Slaughters, as well as their lawyers who he said should all be permanently disbarred. He alleged that corruption is "*here in this courtroom*" and that "*judges are filthy to the core*". Mr Moulder alleged corruption and a dishonest cover up on the part of the Court of Appeal, the Supreme Court Registry staff, the Commissioner of Police and the Attorney General.
59. None of these allegations were supported by any evidence, despite Mr Moulder asserting that he had plenty of evidence to support his claims. The allegations appeared to flow from his frustration and anger at being the victim of what he perceives to be a scheme to take his property away from him and to silence his claims of a systemic cover up. When the court later raised concerns over his allegations of dishonesty and corruption, Mr Moulder conceded that he was feeling frustrated when he made those statements and offered his apology for being "*a little aggressive*" because he felt "*powerless*", but he did not withdraw the remarks or apologize for what he had said.

### **The court's assessment**

60. The court has considered all the arguments advanced by Mr Moulder, including those which were not grounded in evidence, in support of his application for an injunction to restrain the defendants from taking steps to enforce their costs awards by the sale of Mr Moulder's property or to stay further enforcement pending the determination of his claims in Action 2023 No 191. These arguments all depend on first establishing that Mr Moulder has a judiciable claim to relief that will have the effect of setting aside the decision of Ground CJ and the Court of Appeal decision made in these proceedings and second on showing that the balance of justice favours the grant of relief pending a trial of those arguments in Action 2023 No 191.

61. In the present circumstances, the injunction and the stay amount to the same relief, and it may be that the use of the word ‘injunction’ in Mr Moulder’s application may simply reflect an inaccurate understanding on the part of Mr Moulder as to the legal distinction between the two remedies.
62. However, in case Mr Moulder’s application was deliberately framed under two distinct heads of relief, it is relevant to explain that while an injunction to restrain a party from taking steps to enforce a judgment and a stay of enforcement proceedings may have a similar effect, they are not the same thing. This is because different principles apply in the court’s assessment as to whether it is appropriate to grant relief in either case. I have therefore separately assessed the application on the basis of the relevant principles that apply to each type of relief, lest it be said that the court failed to appreciate that these two alternative applications involve different considerations.

### *Injunction*

63. The basic theory of ordinary legal process is that a decision of a superior court judge can only be set aside by a Court of higher jurisdiction, and in Bermuda this means either the Court of Appeal or the Privy Council. In this case, the Court of Appeal has decided that Ground CJ’s decision was correctly made in law. Mr Moulder has not appealed the Court of Appeal’s decision to the Privy Council, and so his rights of appeal have been exhausted. This means that Mr Moulder is bound by that decision. The costs of those proceedings were awarded against Mr Moulder, and various other orders for costs have been made against him and he is bound by those decisions. Some of those awards of costs have been taxed and his total liability to those costs is admitted to exceed BDS\$800,000. Mr Moulder has not paid a penny towards satisfying those obligations in 15 years.
64. The court has a vital interest in ensuring that the orders that have been made by the court are enforced, otherwise the rights that are guaranteed by the legal process, including the right to a fair trial after due legal process and the right to enforce the rights awarded in a judgment would be thwarted and rendered without value.
65. The defendants are entitled to enforce their rights to recover the costs that have been awarded against Mr Moulder in legal proceedings which have been conducted in accordance with the legal procedure that has been created under the Supreme Court Act 1905 and the rules of procedure made thereunder.
66. It is not necessary for this court to address the arguments that Mr Moulder intends to raise in Action 2023 No 191 in order to justify refusing his application for an injunction. In case it is ever necessary to address those arguments in the future in Action 2023 No 191, it would be premature for this court to express any view as to their merits or prospects of success. For present purposes, it is sufficient to decide the injunction application by determining where the ‘balance of justice’ falls.
67. On one side of the scale sits the question whether it is in the interests of justice to allow the defendants to enforce their indisputable present right to enforce their costs awards against Mr Moulder. On the other sits the question whether those rights should be deferred in order Mr Moulder to set aside the judgment of Ground CJ because it is said that a summary

determination of the limitation issue did not allow Mr Moulder the chance to put his case at a trial where evidence was called and witnesses could be cross-examined.

68. In my view it is clear that the balance of justice falls on the side of allowing the defendants to enforce their present rights to recover the costs awarded in their favour. There are numerous factors that support this conclusion.
69. The first of these factors is that the defendants' rights have been established by both the Supreme Court and the Court of Appeal and Mr Moulder has exhausted his rights of appeal. The second factor is that Mr Moulder's attempt to re-open the issue in *these* proceedings (i.e. Action 2010 No 53) was made more than 10 years after the question was finally determined, and after another attempt to re-open the matter was struck out in 2017. The third factor is that a question of limitation of action is not a matter of procedural fairness that arises in the judge's conduct of a trial. It is a statutory limitation imposed by Parliament which is supreme. It is true that the judge makes the analysis of whether the limitation period has run, but that is the application of the law to the facts, and in this case those facts were stipulated by Mr Moulder. There was no need for the court to establish the facts by a trial (by calling evidence or cross-examining witnesses) because the facts (on this point) were undisputed. The fourth factor is that the judge's analysis of the pleaded claims, which was upheld by the Court of Appeal, did not require any findings of fact to be made: the issue was whether the facts and averments pleaded by Mr Moulder amounted to a proper cause of action, assuming everything in the statement of claim was (a) true and (b) capable of proof. The fifth factor is that justice is administered according to law, and the principles that apply to striking out abusive claims and defective pleadings were applied according to conventional and well-established principles.
70. Against these weighty factors, Mr Moulder's claim as to the infringement of his constitutional rights is unpersuasive. Mr Moulder's claim is that the procedure provided for in the RSC to enable the court to deal summarily with claims that constitute an abuse violates his right to a fair trial. Whether or not this may be an arguable claim, no authority has been cited in support of the existence of a principle that supports it, so the court must treat it with no little circumspection. In my view, even assuming that such an argument is possible, this court should not displace the enforcement of the defendants' established rights in favour of a principle that has yet to be established.
71. The third factor that I have taken into account is that Mr Moulder has not taken any steps to advance his constitutional claims in Action 2023 No 191 since launching them. It is of course true that the Attorney General has (according to Mr Moulder) issued an application to strike those proceedings out but has not set that application down for a hearing. No explanation has been given as to why the proceedings are in limbo, but Mr Moulder says he is powerless to do anything until the Attorney General sets down the application for hearing. This is obviously incorrect. Mr Moulder can apply to dismiss the application for want of prosecution or seek further directions in those proceedings to have it set down for hearing. Mr Moulder was directed by this court to take steps to progress those proceedings (by making such application as he thought fit) within 60 days last August, but he refused to do so. Mr Moulder also refused to serve copies of those proceedings on the defendants for the purposes of addressing the

arguments in favour of or against the grant of relief in these proceedings, despite being ordered to do so by this court.

72. Rather than address Mr Moulder's refusals to comply with the court's directions in another way, I decided it was more expedient to direct that Mr Moulder must serve anything he intended to rely upon in support of his application on the defendants. This was to avoid the potential situation that Mr Moulder would later claim that the decision of this court was not binding on him because it did not include matters which he may later put before the court in Action 2023 No 191. Mr Moulder filed another short affidavit to the same effect as his affidavit of 18 May 2023.
73. In assessing these factors, the court considers that Mr Moulder's reliance on his claims in Action 2023 No 191 in support of his claim for relief in these proceedings is strategic, and that he has deliberately chosen to ignore the direction to progress his claims in Action 2023 No 191 for the purpose of preserving the argument that he has claims of infringement of his fundamental rights that are yet to be determined, in order to support his application for injunctive relief in these proceedings.
74. In the course of his submissions Mr Moulder has made serious accusations about the integrity of the legal system as a whole and the conduct of both Ground CJ and the Court of Appeal, but these are entirely unsupported by any evidence filed in these proceedings. I therefore do not accord any weight to these imputations in my analysis of whether the balance of justice falls in Mr Moulder's favour.
75. In refusing Mr Moulder's application for injunctive relief, I have assumed in Mr Moulder's favour that the court has power to grant an injunction in the terms that he has sought. The injunction Mr Moulder seeks is not in aid of a cause of action because his cause of action has been struck out, nor is his application for relief in aid of execution of a judgment or order of this court. However, I have *assumed* that if the court can give injunctive relief in aid of execution of an order of the court (which it can), it can also restrain its execution.
76. This may seem an obvious point, but it involves some legal nuance. The traditional view used to be that an injunction is a remedy that can only be granted in support of a cause of action or in aid of execution of a judgment, based on the speech of Lord Diplock in **The Siskina**<sup>23</sup>. However, the law has moved on since then, and it is now established that the court has power to grant a free-standing injunction, as confirmed by the Privy Council in **Broad Idea International Limited v Convoy Collateral Limited**<sup>24</sup>, a decision which is binding on this court.
77. It is also pertinent to observe that the powers conferred on the court under section 19 (c) of the Supreme Court Act 1905 are (in substance) expressed in the same terms as the English equivalent provision in section 37 of the Supreme Court Act 1981, which contains an unrestricted power to issue injunctions. Kawaley J (as he then was) expressed the view in **Masri v Consolidated Contractors International SAL** in an *obiter dictum* that the power to

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<sup>23</sup> [1979] AC 210.

<sup>24</sup> [2021] UKPC 24.

appoint a receiver under section 19 (c) was ‘unconstrained’<sup>25</sup>. It follows in logic and in principle that the court’s power to grant an injunction under that same provision must also be ‘unconstrained’.

78. Because I have refused Mr Moulder’s application for an injunction, it is strictly not necessary for the court to reach a final view on this point. The court was not addressed by counsel, and so I am reluctant to express a concluded view as to the power of the court to issue a free-standing injunction until a future occasion when the court has had the benefit of full argument, generously seasoned with supporting authority.

*Stay*

79. I have also considered separately whether the court should grant a stay of execution pending the outcome of the proceedings in Action 2023 No 191. I am reluctant to apply the analogy implicit in Mr Moulder’s submissions that the relief sought in Action 2023 No 191 is in effect an appeal, because that would confuse or at least conflate two very different concepts. However, for completeness, I have addressed Mr Moulder’s points on this briefly below.
80. First, if this had been an application for a stay of execution pending appeal, the court would weigh whether the appeal has a realistic prospect of success and whether the failure to grant a stay would render the appeal nugatory<sup>26</sup>. There is no appeal pending in these proceedings and so these considerations do not apply.
81. Second, there is no clear timeline for the progression of the proceedings in those other proceedings that would allow the court to apply the stay pending appeal principles, even if that were to be an appropriate analogy. If no further steps are taken in Action 2023 No 191, the stay Mr Moulder seeks would be in effect an indefinite stay of execution.
82. Third, the conventional approach taken in applications for a stay pending appeal (if that were an appropriate analogy) is that a money judgment will not be stayed if the funds can be repaid with interest if the appeal is successful. In this case, Mr Moulder says the sale of his house to pay his costs liability represents an irreparable harm, applying the stay pending appeal analogy.
83. Mr Moulder could have paid the costs if he had other assets with which to pay them, and the ordinary principles that would require him to satisfy a monetary liability pending his appeal would apply. In my view, he should not be allowed to rely upon his own impecuniosity to refuse to pay the costs pending the outcome of Action 2023 No 191 on the basis that the sale of his property would be an ‘irreparable’ harm. To take that approach would in effect make Mr Moulder ‘judgment proof’.
84. Turning to the application of what I consider to be the correct principles, the power to stay a writ of execution is conferred by RSC Order 47 Rule 1. This Rule provides that where there are ‘special’ circumstances which render it inexpedient to enforce a judgment or order or the debtor is unable from any cause to pay the money, the court may order a stay the execution

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<sup>25</sup> [2010] Bda LR 21 at paragraph 60.

<sup>26</sup> See the principles described in the commentary in the Supreme Court Practice at Order 59 rule 13 which are applied by analogy to the Bermuda rules that govern stay of execution pending appeal.

absolutely or for such period and subject to such conditions as the court thinks just. These principles are of wide import and application and are in the discretion of the court. I have approached the application for a stay of execution by asking whether the justice of the case requires a stay to be granted and have concluded that it does not. There are several reasons for reaching this conclusion.

85. Applying the criteria specified in RSC Order 47 rule 1, in my view there are no ‘special circumstances’ that would justify the grant of a stay of execution in this case. There is an indisputable liability to pay the costs: even though Mr Moulder does not wish to pay them, this does not amount to a legitimate basis for claiming there is a ‘dispute’: the court has ordered him to pay the costs.
86. Even if Mr Moulder is ‘unable’ to pay the costs out of his liquid assets, he has assets which can be realised to pay the costs, and he has had 15 years in which to take steps to realise his property at Bridge View Lane to meet his obligations. On the contrary, Mr Moulder has not (for example) put forward a payment plan that would show a credible basis on which the debt will be paid off over time, which might justify the court taking the view that it is appropriate to stay the sale of Mr Moulder’s property pending fulfilment of the proposed payment terms. By his conduct and his failure to make any offer to settle the costs, Mr Moulder has made it clear that does not intend to meet his obligations.
87. In weighing all the competing factors as to whether it is ‘just’ or ‘expedient’ to grant a stay, I have concluded that it is not, for all the same reasons that the court has refused an injunction set out above. Therefore, the court also refuses Mr Moulder’s application for a stay.

#### **The defendants’ application for an order to restrain Mr Moulder**

88. The defendants have made an application to restrain Mr Moulder from commencing any new applications or any new proceedings arising out of the same facts that underlie his claims in these proceedings. This application is founded on the court’s inherent powers to control its own process and to prevent abuse.
89. The defendants point to the multiplicity of proceedings that have been generated by Mr Moulder out of the same background facts and in respect of which he has been refused relief four times already. These have been set out briefly above, but they include the present proceedings (2010 No 53) in which his claims were struck out by Ground CJ and the Court of Appeal, as well as the claims made in Action 2016 No 491 which were struck out by Kawaley CJ and the Court of Appeal. Furthermore, Mr Moulder has issued the claim in Action 2023 No 191 which is a repeat of the same claim, albeit made against the Attorney General: it seeks to set aside the decision of Ground CJ in these proceedings as being unconstitutional.
90. The defendants submitted that the grounds for making such an order are that (i) Mr Moulder’s claims in relation to those facts are hopeless (ii) the claims have already been determined against Mr Moulder (iii) Mr Moulder has been ordered to pay the costs of the proceedings in Actions 2010 No 53 and the appeal therefrom and Action 2016 No 491 and the appeal therefrom but has failed to do so, and those costs are substantial in amount (iv) Mr Moulder has no assets from which to pay any additional adverse costs orders arising from the pursuit of claims based on the same facts and (vi) the defendants have already been put to the trouble,

expense, and anxiety of defending these claims needlessly and ought not to be exposed to the risk of further meritless applications or proceedings based on the same facts.

91. The defendants do not seek an absolute ban on Mr Moulder from having access to the seat of justice. They seek a limited order that would require Mr Moulder to apply to the court for leave to commence proceedings based on or arising out of the underlying facts in this case. If leave is granted because he can show an arguable claim that is justiciable, then he will be able to pursue the claim. If not, then he will not be allowed to issue the proceedings. Nor will the restriction be for an unlimited period of time. The defendants have asked for an order that will last for a period of two years.
92. The defendants relied on a long line of authorities that show the court has the inherent jurisdiction to make such an order. These are cases that start with the principle established in **Grepe v Loam**<sup>27</sup> and applied in more recent cases such as **Ebert v Birch & Others**<sup>28</sup> and **Bhamjee v Forsdick (No 2)**<sup>29</sup>.
93. It is convenient to address here the point that was taken by Mr Moulder in opposition to the application. Mr Moulder applied to strike out the application for the order restraining his ability to bring proceedings on the grounds that the only person who has the power to make such an application is the Attorney General when exercising the power granted under section 23 of the Supreme Court Act 1905. This section which permits the Attorney General to apply for an order declaring someone to be a vexatious litigant, the effect of which is to bar that litigant from issuing any proceedings in the Supreme Court without leave. The section provides:

***Restriction on institution of vexatious actions***

23 (1) *If, on an application made by the Attorney-General under this section, the Supreme Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious civil legal proceedings, whether in the Supreme Court or in a court of summary jurisdiction, and whether against the same person or against different persons, the court may, after hearing the person or giving him an opportunity of being heard, order that no legal proceedings shall without leave of the Supreme Court or a Judge thereof be instituted by him in any court, and that any legal proceedings instituted by him in any court before the making of the order shall not be continued by him without such leave; and such leave shall not be given unless the court or judge is satisfied that the proceedings are not an abuse of the court and that there is prima facie ground for the proceedings.*

(2) *A copy of an order made under this section shall be published in the Gazette.*
94. Mr Moulder took the point that the defendants have no standing to bring such an application because standing to do so is vested exclusively in the Attorney General.
95. In answer to this objection, the defendants submitted that the established case law shows that this is not a correct interpretation of the principles which were stated in **Ebert v Birch**. There is a provision equivalent to section 23 above in section 42 of the English Supreme Court Act

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<sup>27</sup> [1879] G 78.

<sup>28</sup> [2000] BPIR 14.

<sup>29</sup> [2003] BPIR 1252.

1981. The case law has addressed the interrelationship between the section 23 and the court's inherent powers and explains that the two are not mutually exclusive.

96. The relevant principles are set out in the leading judgment of Lord Woolf MR in **Ebert v Birch** in the following terms<sup>30</sup>:

*“It will be observed from Section 42 that, if an order is made, it may prevent either all civil proceedings or all criminal proceedings or all civil and criminal proceedings being initiated without the leave of the High Court. Such an order is considerably wider than the conventional Grepe v Loam order. It is also wider than the two orders made by Neuberger J against Mr Ebert which have given rise to the point now being considered. An order under Section 42 is, however, subject to safeguards. The application has to be made by the Attorney General and the application has to be heard and determined by a divisional court (a court consisting of at least 2 High Court judges) in accordance with the requirement of Order 94 rule 15 (1). The Attorney General is not normally involved in the making of a Grepe v Loam order and not only can that order be made by a single High Court judge, it can be made in the county court [see E Wayte v Slocombe and Rose CA (unreported) 15 June 1994 and s 76 County Courts Act 1984].*

*Section 42 of the Supreme Court Act 1981 can be traced back to the Vexatious Litigants Act 1896. Its present form is derived from the Judicature Act 1925, s. 51, as subsequently amended.*

*....the court gave the Attorney General leave to intervene [in this case]. In fact, the Attorney General chose not to do so. Instead, he instructed Mr Ian Burnett QC to appear as amicus curiae in relation to points of principle which we have identified at the outset of this judgment. Mr Burnett was of great assistance to the court....*

*Mr Burnett did not suggest that the existence of the statutory power to make an order prevented the court exercising its inherent jurisdiction under Grepe v Loam. Bearing in mind the period during which the Grepe v Loam jurisdiction has been exercised alongside the statutory jurisdiction, such a submission would have had no possible prospect of success....It is accepted that existence of the statutory power has not supplanted the power of the court to make a limited Grepe v Loam order....*

*....If there was an application for an order of the same width as the statutory jurisdiction, the court could only appropriately deal with such an application under the statutory jurisdiction. The inherent power to make an order is now more restricted. The question is how much more restricted?*

*However, until a statutory is made, if there is jurisdiction to make the existing orders, they should not at the present time be set aside because the protection they provide is necessary and enables any applications under the orders to be dealt with in a sensible manner.*

*But the making of unwarranted and vexatious applications in an action which is pending in the court is, in our opinion, a matter over which there is an inherent power in the court to exercise control. There is an essential difference, in our opinion, between regulating the conduct of such an action so as to prevent the court's process from being abused, on the one hand, and impeding a particular person in the exercise of the right to access the court on the other hand.*

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<sup>30</sup> At page 17.

*In our opinion, we should hold that the court has power to make an order in this application, insofar as the application relates to the bringing of applications in these proceedings, but not otherwise.”*

97. It appears that the court in that case was only prepared to restrain Mr Ebert from making applications in those particular proceedings. However, the court went on to deal with new proceedings.

98. Lord Woolf MR went on to say:

*“In relation to specific anticipated proceedings both in this jurisdiction or abroad, the court can and does grant an injunction to stay the proceedings. Where the injunction is in relation to foreign proceedings, the jurisdiction is not exercised by interfering with the foreign court stop. Instead, the injunction is granted against an individual and is enforceable personally against that individual. The ability of the court to operate in this way when the proceedings are only anticipated is no more than an example of the court being prepared to protect an applicant from anticipated damage when that damage is sufficiently imminent and serious. The court undoubtedly has the power to stay or strike out vexatious proceedings when they are commenced under its inherent power. We can see no reason in principle why it should not also, in accord with the general approach to the granting of quia timet injunctions, exercise that power to prevent the serious loss anticipated but unidentified proceedings could cause the defendants to those proceedings.*

*The making of an extended Grepe v Loam order in its usual form does involve a serious inhibition on a prospective litigant exercising his normal rights to access to the courts. However, the extent of this interference should not be exaggerated. First it is only an inhibition for bringing proceedings without the leave of the court. If the proceedings are arguably meritorious leave will be forthcoming. Secondly, the court will not make an order unless there is serious grounds for doing so and if there are no serious grounds, the order will be capable of being set aside on appeal. The general approach of the courts in recent years has not been to restrict the inherent jurisdiction but to adopt a broad approach where this is appropriate.*

*In the course of argument reference was also made to article 6 of the European Convention on Human Rights. Article 6 does no more than reflect the approach of the common law indicated by Laws J in R v The Lord Chancellor ex parte Witham [1998] QB 575. As long as the inherent power is exercised only when it is appropriate for it to be exercised, no contravention of article 6 is involved.”*

99. Pausing here to reduce these statements to their substance, the following points can be drawn:

- (i) There is no restriction on the court’s inherent power to make orders restraining a litigant from making vexatious applications in ongoing proceedings as long as the restriction does not go as far as barring a litigant from commencing litigation generally.
- (ii) The standing to bring specific applications to control a litigant’s abuse of the court process or his conduct of ongoing proceedings is not vested exclusively in the Attorney General. Therefore, the defendants have standing to make the application and the court has power to grant relief.

- (iii) The court's inherent powers of control over its own proceedings extend to restraining a litigant from bringing new proceedings that are anticipated or threatened if they would constitute an abuse.

100. Following **Ebert v Birch**, just two years later, the English Court of Appeal again considered the exercise of the court's inherent jurisdiction to control the conduct of litigation in **Bhamjee v Forsdick (No 2)**<sup>31</sup>. There are two passages which are relevant for consideration in this case.

101. The first is to explain in modern terms what is meant by the term 'vexatious' when used in this context. Lord Phillips of Maltravers MR quoted a statement of Lord Bingham of Cornhill CJ in **Attorney-General v Barker**<sup>32</sup> to the following effect<sup>33</sup>:

*"The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."*

102. The second passage is to illustrate the problems created by vexatious claims and the need for the court to control abusive proceedings appropriately. Lord Phillips said<sup>34</sup>:

*"In short, the courts are facing very serious contemporary problems created by the activities of litigants like Mr Bhamjee who are bombarding them with applications which have no merit at all. Many of these litigants have no fees disincentive because they automatically qualify for fees exemption. The problem created by these hopeless applications is not only a serious financial one, for the reasons set out in paragraph 25 of the judgement in Bhamjee (No 1). It is also said that the court is having to divert the skilled attention that ought to be paid to cases of real merit which warrant early hearings to cases which have no merit at all. A further problem is created by the fact that these litigants are often without the means to pay any costs orders made against them, and the parties in whose favour such costs order are made are disinclined to throw good money after bad by making them bankrupt, particularly as the vexatious conduct may spill over into the bankruptcy proceedings themselves.*

*We must stress that in many, if not most, of these cases the litigant in question has been seriously hurt by something that has happened to him in the past. He feels that he has been unfairly treated, and he cannot understand it when the courts are unwilling to give him the redress he seeks. Judges must, as always, listen to his case carefully and be astute to see whether there is any point of legal merit in what he is saying to them. And if they are unable to help him, they must give their reasons clearly, in language he will understand. In most cases, particularly after an unsuccessful appeal has been handled in the same way, that will be the end of the matter so far as the courts are concerned, even if the litigant's sense of unfair treatment will often linger on. But in a tiny minority of cases he will not take 'no' for an answer. He may start collateral litigation about the same subject matter. He may sue the judge. He may sue the lawyers on the other side. He may bombard the court in the same case with further applications and appeals. He may sue the Lord Chancellor, or the Home*

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<sup>31</sup> Cited above.

<sup>32</sup> [2000] 1 FLR 759 at para 19.

<sup>33</sup> Paragraph 7.

<sup>34</sup> Paragraphs 3-4.

*Secretary, or some other public authority whom he thinks may be legally liable for his misfortune.”*

103. After reviewing a long line of cases explaining the court’s powers to regulate abuses of its process, Lord Phillips continued<sup>35</sup>:

*“The court therefore has power to take appropriate action whenever it sees that its functions as a Court of Justice are being abused. The advent of the CPR makes the nature of those functions more transparent. The court’s overriding objective is to deal with cases justly. This means, among other things, dealing with cases expeditiously and allotting to them an appropriate share of its resources (while taking into account the need to allot resource to other cases). This objective is thwarted and the process of the court abused if litigants bombard the court with hopeless applications. They thereby divert the courts resources from dealing with meritorious disputes, delay the handling of those disputes, and waste skilled and scarce resource on matters totally devoid of any merit.”*

### **The court’s assessment**

104. In this case it is clear that Mr Moulder is convinced that his rights have been infringed by the summary dismissal of his claim against the defendants. He exhausted his rights of appeal against the decision. He later commenced a new proceeding (Action 2016 No 491) about the same question on the same facts alleging he had new evidence. That application was struck out. In the enforcement process in the present proceedings, Mr Moulder has raised the same argument again. Mr Moulder’s claims in these proceedings have been found to be devoid of legal merit, as have his claims (based on the same factual background) in Action 2016 No 491. Mr Moulder has also issued proceedings against the Attorney General in Action 2023 No 191 which raise the same point. Mr Moulder simply refuses to take ‘no’ for an answer, in the words of Lord Phillips quoted above.
105. It is clear that Mr Moulder’s claim for a stay of enforcement is devoid of legal merit in the sense that his arguments have been heard and he has lost. He is bound by the prior judgments of the court, and he is liable to pay the taxed costs of the proceedings, as well as the other subsequent unsuccessful applications in which costs have been awarded against him where the costs remain untaxed.
106. In the course of Mr Moulder’s address to the court he alleged systemic corruption across the courts, dishonesty on the part of the defendants, their lawyers, a cover up by the court staff, the Police service, and the Attorney General and corruption on the part of all the judges who have ruled against him, both at first instance and in the Court of Appeal. In one telling moment, Mr Moulder exclaimed “This is War!”.
107. The court is satisfied that Mr Moulder has lost sight of any appropriate proportion in relation to these legal proceedings, and is prepared to do anything, say anything, or allege anything that he thinks will advance his cause, or defeat the enforcement of the defendants’ claims to recover the costs of resisting his claims. Mr Moulder’s claims have been found, after due process according to law, to be devoid of legal merit. A clearer example of a litigant who is abusing the process of the court to further his own agenda at the expense of the defendants and misusing the court’s resources it would be hard to find.

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<sup>35</sup> At paragraph 15.

108. I am therefore satisfied that it is appropriate to grant relief to the defendants in the exercise of the court's inherent powers to control abuses of its process which are clearly established by the extracts from the cases quoted above. The question remains: how far it is appropriate to impose restrictions?
109. In the first place, it is obvious that Mr Moulder should not be permitted to make any further applications in these proceedings that are intended to prevent the orderly enforcement of the costs awards that have been made against him by relying on the underlying facts about which he has complained in his pleadings in this action. This includes applications to stay, restrain, obstruct or interfere with the process of execution in aid of enforcement of the taxed costs awards and any other awards of costs which have been made but which remain untaxed.
110. This is because any application that seeks to repeat the same arguments (or raise new arguments which could and should have been raised before) involves a waste of the court's resources and exposes the defendants to additional costs which they will not be able to recover from Mr Moulder who has no significant assets with which to meet those costs if awarded against him. Mr Moulder has also shown his determination not to comply with any orders for the payment of costs, such that enforcement proceedings to recover the costs already awarded have been necessary and have been protracted by Mr Moulder over a period of almost 15 years.
111. However, Mr Moulder should still to be entitled to put in objections in respect of the taxation of the costs awards which have yet to be taxed in the ordinary way.
112. It seems to me that these restrictions fall well within the limited scope of an injunction to restrain abuse of process that are explained in **Ebert v Birch**, and does not amount to a general restriction on Mr Moulder's right of access to the court in respect of other matters or rights which do not touch upon or affect the issues in these proceedings or the parties to these proceedings. Therefore, the provisions of section 23 of the Supreme Court Act 1905 are not engaged.
113. In relation to future proceedings, Mr Moulder has not threatened to bring specific new proceedings, but in my judgment there is a reasonable fear that such proceedings may be brought by Mr Moulder based on the fact that Mr Moulder has brought three sets of proceedings in relation to the same subject matter already, and has made his intention to resist the enforcement proceedings at all costs ("This is War!"). I therefore consider that it is proportionate and appropriate to restrain Mr Moulder from bringing any new proceedings *against these defendants (or any of them)* which arise out of or are connected to the facts alleged in the Statement of Claim in these proceedings.
114. In relation to the proceedings that have been brought by Mr Moulder against the Attorney General in Action 2023 No 191, it seems to me that it is outside the proper scope of an application in these proceedings by these defendants to restrain Mr Moulder from continuing those proceedings if he genuinely wishes to do so.

115. The injunction is subject to Mr Moulder's right to apply to the court for leave to issue new applications in these proceedings, or issue new proceedings arising out of the same facts or subject matter that is set out in the Statement of Claim in these proceedings. Application for leave will be made *ex parte* in the first instance without service of the application on any of the defendants.
116. However, any application or proceedings which Mr Moulder issues in breach of the court's order will be stayed automatically pending the grant of leave, and no party affected thereby shall have any obligation to appear or defend such applications or proceedings until leave has been sought and granted to Mr Moulder by the court to make that application or issue those proceedings.
117. The restriction on Mr Moulder's ability to issue new applications or proceedings arising out of the same facts or subject matter alleged in the Statement of Claim in these proceedings will last for a period of two years from the date of this Ruling. This period seems appropriate in view of the extraordinary delay in enforcing the obligations and to enable the taxation of any untaxed costs to be completed. The court has been guided by the English practice in setting limits on the time of granting orders to restrain abusive applications because there are no practice directions in this jurisdiction that apply to regulate orders of this kind<sup>36</sup>.

#### **Conduct of the proceedings in this case**

118. Finally, it is appropriate for the court to record that at the outset of the hearing Mr Moulder sought permission to allow the court to be addressed by Mr Moulder's *MacKenzie* friend, Ms Junos, on his behalf. The court refused that application.
119. A *MacKenzie* friend is not a lawyer and is not qualified to represent someone else and is not regulated by a professional body or subject to disciplinary procedure, nor can he or she be made liable to costs awards for inappropriate conduct or for wasting the court's time. The traditional role of a *MacKenzie* friend is limited to offering a litigant in person moral support, assisting the litigant in preparing the relevant documents, taking notes, and quietly advising the litigant on the conduct of the case. This might include reminding the litigant to ask particular questions or to address particular issues of fact or law.
120. In this case, Mr Moulder was assisted by Ms Junos in preparing his submissions and his written materials as well as his affidavits, and he was assisted by Ms Junos in putting his points across by quiet advice in the course of his submissions. There was no reason why Mr Moulder needed Ms Junos to speak on his behalf.
121. Although Mr Moulder said he was 'confused' and unfamiliar with the court's processes in support of his application for Ms Junos to speak on his behalf, his conduct in the proceedings showed that he was very well able to address the court and fully understood the court's procedure. His address to the court covered all the points he wanted to make. He was articulate and fluent, albeit he made intemperate and unsupported allegations about being the victim of a systemic conspiracy to take away his property and silence his objections.

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<sup>36</sup> Cf English court CPR 3 practice directions in relation to Civil Restraint Orders.

122. These observations are made in case it is later said that Mr Moulder was wrongly refused the assistance of a *MacKenzie* friend or that he was in some way unfairly disadvantaged in the conduct of his application.

### **Conclusions**

123. For the reasons given above, Mr Moulder's application for an injunction to restrain the defendants from enforcing the costs awards by the sale of the property by way of execution under the writs of execution and writs of *venditioni exponas* in aid thereof and/or a stay of execution thereunder are hereby refused.
124. For the reasons given above, the defendants' application for an injunction to restrain Mr Moulder from issuing applications and new proceedings which arises out of touches upon or is otherwise related to the causes of action alleged in these proceedings is granted on the terms set out below.
125. The court hereby orders that Mr Moulder is hereby restrained from making new applications or commencing any new proceedings against the defendants in these proceedings (or any of them) alleging claims or causes of action or otherwise seeks relief of any sort which arises out of or touches upon the facts or causes of action alleged in the Statement of Claim in these proceedings without obtaining the prior permission of the court, provided that this order:
- (i) is limited in its effect to a two-year period from the date hereof;
  - (ii) shall not prevent Mr Moulder from participating in any taxation proceedings relating to the assessment of costs to be paid by Mr Moulder in relation to any untaxed awards of costs;
  - (iii) shall not affect Mr Moulder's right to progress his claim in Action 2023 No 191 against the Attorney General or any claims he has asserted against parties other than the defendants to these proceedings.
126. It is further ordered that if Mr Moulder intends to issue a new application or proceedings which are restrained by the foregoing order, he shall do so on an *ex parte* basis in the first instance and without serving notice thereof on the defendants or proposed defendants or other parties.
127. It is further ordered that in the event Mr Moulder issues any application or proceedings which are restrained by the foregoing terms, that application or those proceedings shall be stayed automatically without the need for any party to apply for a stay and no party shall be required to enter an appearance or otherwise participate in those proceedings until leave has been granted by the court for Mr Moulder to issue and serve that application or those proceedings on the relevant defendants or other parties.
128. For the avoidance of any doubt, the terms of the above orders shall not prevent or prohibit Mr Moulder from seeking leave to appeal against the terms of the order or seeking leave to appeal from the Court of Appeal against the order if leave to appeal is refused by the Supreme Court in the first instance.

129. The costs of the applications are awarded to the defendants to be taxed on the standard basis if not agreed.
130. The defendants shall draw on order to reflect the terms of the order and conditions set out above.
131. To avoid the need for any further application for directions, and avoid any further delays, the court authorizes and directs the Deputy Provost Marshall General to proceed with the execution of the writ of execution and *venditioni exponas* to proceed with the orderly sale of Mr Moulder's property at 15 Bridge View Lane Somerset, Sandys Parish in the ordinary course of the performance of his duties.

25 February 2026



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**THE HON. MR. JUSTICE ANDREW MARTIN**  
**PUISNE JUDGE OF THE SUPREME COURT**