Zaliah binti Kurus	**…**	**1st Appellant**
Puasa binti Haji Kasim	**…**	**2nd Appellant**

AND

Hj Ahmad Bujang Bin Abdullah	**…**	**1st Respondent**
Hadiah Binti Hj Abd Rahim	**…**	**2nd Respondent**

(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 7 of 2011)

Before: Mortimer, P.; Davies and Leonard, JJ.A.
8th December, 2011.

Judgment for specific performance of transfer of land by legal owners to purchasers from contractor who became entitled to that land from owners upon fulfilment of certain conditions –failure of conditions- doubt as to fault, as between contractor and owner, for failure – questions of fact and construction – whether specific performance was rightly ordered – appropriate directions for trial.

Lim Li Hui Christina and Robin Cheok Van Kee of Cheok Advocates and Solicitors for Appellant
Shamila Subramaniam and Mr Rudi Lee Kim Boon of Fathan, Rudi Lee, Annie Kon & Associates for the Respondents

Cases cited in the Judgment:

Prenn v *Simmonds* [1971] 1 WLR 1381
Kheng Ah Beng v *Hj Roney bin Hj Roslee @ Roni bin Hj Rosli*, Civil Appeal No 9 of 2009
Pekan Nenas Industries Sdn Bhd v *Chang Ching Chuen and ors* [1998] 1 CLJ 793
Butler v *Fairclough* (1917) 23 CLR 78
Abigail v *Lapin* (1934) 51 CLR 58

Davies, J.A.:

This is an appeal from a judgment of the Chief Justice given on 9 April, 2011 in which he declared that the respondents had beneficial interests in Plots A, B and C as shown on a proposed survey plan of land referred to below; and orders that the plots be transferred to the respondents. The appellants, who were two of the respondents to those proceedings before the Chief Justice, were the legal owners of the land from which it was proposed that Plots A, B and C would be subdivided. The other respondents to those proceedings, but not parties to this appeal, were Perusahaan Lesger, a firm, and Wong Sui Khong and Lim Sui Hock, the members of that firm.

The declaration and orders made by the Chief Justice can be correct only if, pursuant to a development agreement dated 1 June, 2001 between the appellants as owners of the said land and Perusahaan Lesger, the latter acquired an equitable interest in Plots A, B and C, or was authorised by the appellants to sell those plots on their behalf; and pursuant to sale and purchase agreements dated 1 August 2001 and 21 November 2002 the respondents acquired equitable interests in those plots.

In order to consider the correctness of that judgment it is necessary to examine those documents in some detail to ascertain their true meaning and effect.

A contract dated 1 June 2001 (the development contract) between Zaliah binti Kurus and Puasa binti Haji Kasim (the appellants), described as "the Owners" and Perusahaan Lesger, a firm, (the contractor), recited that the owners, as owners respectively of two adjoining parcels of land, lot 29308 and lot 29306 were desirous of amalgamating the parcels, subdividing the amalgamated parcel into five sub lots in accordance with an annexed site plan and of engaging the contractor to construct two residential houses, one on each of two of those sublots, described on the site plan as Plots D and E.

We pause here to note that the owner, as shown on the title to lot 29306 is Kumah binti Haji Kasim. However we were told without opposition that that is the same person as Puasa binti Haji Kasim.

The contract then provided:

1. by clause 1.1 that the owners appointed the contractor to construct those houses;

2. by clause 1.2 that the owners would apply for approval to amalgamate the parcels and to subdivide the amalgamated parcel into five sublots in accordance with the plan; and that the contract was subject to the amalgamation and the subdivision;

3. by clause 3.3 that in lieu of payment for construction of the houses, the owners agreed that the contractor should be entitled in perpetuity to the other three sublots, Plots A, B and C on the plan, upon completion of the construction of the houses.

It might reasonably be inferred from this last provision, taken alone, that, before the completion of the construction of the houses, no equitable interest in Plots A, B or C was intended to pass to the contractor. This construction of clause 3.3 appears to be supported by clause 11 (c) which provided as follows:

> *"RIGHT OF OWNERS UPON REPUDIATION BY CONTRACTOR*
>
> *11. In the event that the Contractor should be in default of this agreement and fails to complete the construction of the said houses, the Owners may: --*
>
> ……

(c) the Owners shall have the right to apply for a re-transfer back to the Owners of "PLOTS NO. A, B & C".

……."

This rather odd provision appears to contemplate that, if the contractor fails to complete construction of the houses, but has already obtained a legal transfer of any of Plots A, B or C to itself, it shall be obliged to transfer it back to the owners, the appellants. This appears to assume that, until such completion, equitable ownership remained in the owners for it envisages that, until completion, the owners have a right to specific performance of such re-transfer. How this clause could operate in the event of transfers to third parties is not clear but it seems that a question of competing equities would then arise, For reasons which we will explain we think it unnecessary to consider this question here.

What we have said does not mean that, on entering the development contract, the contractor did not acquire a right to specific performance of that contract, enforceable, initially by an injunction. But because equitable ownership of any of Plots A, B or C by the contractor arose only on completion by it of the houses, that right did not become unconditional until then. Moreover it was lost once the contractor became unable to complete that construction.

We should add that, by clause 4, the contractor's obligation to construct the houses did not arise until six months after completion of the amalgamation and subdivision.

The contract then contained the following further provisions:

"TRANSFER

7. The Owners shall execute Borang A upon the signing of this agreement to be held in escrow to make applications to the Land Office to transfer the "PLOTS A,B & C" to the Contractor or its nominee or assignees or purchasers, in addition to the Power of Attorney and Trust Deed over "PLOTS A, B & C" to the Contractor in escrow to be registered either when required to finance the end purchaser or upon the completion of fifty (50) per cent of the works on the said houses. On the commencement by Contractor of the works on the said houses, the Owners shall transfer and execute a Power of Attorney over one parcel of the subplots identified as "PLOT A" to the Contractor or assigns, nominee or purchasers.

8. FINANCE

8.1 the Owners agree that the Contractor shall be allowed to sell the sublot marked as "PLOT A" and the proceeds of sale shall be used by the Contractor to finance the development of the remaining four (4) sublots.

8.2 in the event that the Contractor shall dispose of the Sublots Plots B and C, it is agreed that the Owners and Contractor shall open a joint account in which all cheques shall be signed jointly by the Contractor as one of the signatories and either one of the Owners shall be the other signatory. All proceeds of the

> *sale of plots B and C shall be paid into this joint account. The funds from this joint account shall be paid out to the Contractor in accordance to the progress of work done on the houses on Plots D and E and to be certified by the architects in charge as per the schedule herein."*

These provisions are badly drawn and difficult to construe. Like all contractual provisions they must be construed in the light of the objective facts known to both parties at the time they came into effect, but excluding the subjective intentions of the parties: *Prenn* v *Simmonds* [1971] 1 WLR 1381 per Lord Wilberforce at 1385. We must, if possible, give them a sensible meaning and one which is consistent with the other clauses in the contract, in this case especially clause 3.3.

By the first sentence of clause 7 the owners were required to execute a power of attorney in favour of the contractor over Plots A, B and C to be registered either

-when required to finance the end purchaser or

-upon completion of 50% of the works on the houses.

It may well be that the copy power of attorney document in evidence is the power of attorney referred to in that clause.

Presumably it was the intention of the parties in that sentence, in either of the events contemplated in it, to confer on the contractor the powers contained in that power of attorney notwithstanding that, at that time, no equitable ownership in any of Plots A, B or C would then have passed to the contractor.

However, there is no evidence that either of these events occurred. Indeed, it appears to have been common ground that the contractor did not ever commence work on construction of the houses.

The second sentence of clause 7, by providing that, on commencement of the works the owners would execute and transfer to the contractor a power of attorney over Plot A, contemplated that, by doing so, the owners would be conferring on the contractor a power to sell Plot A, again notwithstanding that the contractor did not then have any equitable ownership of Plot A.

As already mentioned, it is common ground that the construction of the works did not commence.

It should be noted about clause 8 that it is headed *"FINANCE*" and that it does not, in terms, confer on the contractor any equitable interest in any of Plots A, B or C or any authority to sell any of them.

Clause 8.1 appears to reiterate the power conferred by the second sentence of clause 7 and make provision for how the proceeds of sale of Plot A must be utilised. Clause 8.2 similarly provides for what must be done with respect to the proceeds of sale of either of Plots B or C. Clause 8 therefore has no effect on the proper construction of clauses 3.3 or 7.

In summary:

1. by clause 3.3 no equitable ownership was intended to pass to the contractor in respect of any of the Plots before completion of construction of the houses;

2. Notwithstanding this, the contractor was to have power to sell

   - Plot A on the commencement of the construction of the houses and
   - Plots B and C, presumably also only after such commencement, when required to finance the purchase thereof or upon completion of 50% of the construction of the houses.

3. There is no evidence that any of the events giving rise to the contractor's right to sell any of the Plots ever arose.

Each of the respondents, in his affidavit, has affirmed that the members of the contractor were Wong Sui Khong and Lim Swee Hock who were the second and third respondents in the application but are not parties to this appeal; and that Wong was declared bankrupt in Bankruptcy No 62 of 2010, presumably in 2010.

It is not clear whether either power of attorney referred to in clause 7 was ever properly executed or ever deposited in the office of the Registrar pursuant to section 3 of the *Powers of Attorney Act*, Cap 13. A copy of a form of power of attorney is included in the documents annexed to the affidavit of Hj Ahmad Bujang bin Abdullah, the first appellant, and in paragraphs 9 and following of that affidavit referred to as if it had been executed and registered. However the present respondents in the proceedings before the learned Chief Justice, in order to rely on this as a valid power of attorney, had to prove that

-it had been executed and

-it had been deposited in the office of the Registrar is provided by section 3.

This section provides:

> *"Deposit of power of attorney.*
>
> *3. (1) No instrument purporting to create a power of attorney shall, after the commencement of this Act, have any validity to create such power within Brunei Darussalam until –*
>
> *(a) such instrument; or*
>
> *……..*
>
> *(c) a true copy of the said instrument or office copy, as the case may be,duly compared therewith and marked by the Registrar with the words "true copy",*
>
> *has been deposited in the office of the Registrar:*

……."

In view of the fact that none of the events giving rise to a right to register either such power of attorney appears to have arisen, at least on the evidence before this court, it is unsurprising that there is no evidence that any such power of attorney has been registered. The above document therefore has no validity as a power of attorney. We will, in any event, refer to its terms in case its validity should be later be proved; or in case it is relied on by the respondents as ostensible authority from the appellants to the contractor to sell Plots A, B and C.

The trust deed referred to in clause 7 is not before us. It is therefore impossible to say what effect it had, if any, on the granting of that relief. Nor is Borang A.

The power of attorney document in evidence provided that the owners, the appellants, appointed Wong Sui Khiong, the nominee of the contractor as their attorney to act for them and to perform the following acts among others:

> *"2. To receive and retain the new document of titles to the said Contractor's share [defined as Plots A, B and C] from the Land Office on our behalf.*
>
> *……..*
>
> *4. To exercise all rights and privileges and perform all duties which may now or hereafter belong to us as co-registered owners of the said Contractors share.*
>
> *……*
>
> *6. To sell, assign, transfer, to grant lease(s), licence(s) or otherwise dispose of all or any part or parts of the said Contractor's share as our Attorney shall deem fit and to enter into agreements for sale, leases, or submit such application for transfer.*
>
> *……*
>
> *8. To receive and take the purchase money rent and fee payable in respect of such sale, lease and licence or any part income due or accruing to the said Contractor's share or any part thereof of any payment from insurance claims and to give good and effective receipts for the same.*
>
> *……..*
>
> *13. To make and sign applications to the appropriate government department local authorities or other competent authorities for all and any licences permissions or consents required by any Act order statutory instrument regulation by-law or otherwise in connection with the management development and improvement of the said Contractor's share including the recovery of compensation where such is recoverable with power to give receipts and full discharge therefore.*

……

15. To apply, sign, execute and submit all applications to the competent authorities for approval of His Majesty in Council for the sale, lease, charge or transfer of the said Contractor's share or any part thereof.

……"

A sale and purchase agreement dated 1 August 2001 described the contractor as *"the Vendor"* and the respondents as "the Purchasers". It recited, in recital 1, that the appellants were the registered owners of lots 29308 and lot 23906 respectively "which are subsequently amalgamated and sub-divided into five (5) sub-lots, shown on the layout plan annexed hereto as Appendix A and thereon marked "A", "B" "C", "D" and "E"." Recitals 2 and 3 were in the following terms:

"2. By an agreement dated the 1st of June 2001 made between the owners of the said parcels of land and PERUSAHAAN LESGER, the owners appointed PERUSAHAAN LESGER as their contractor to construct 2 units of semi-detached houses on that two sub-lots marked as "D" and "E" and in lieu of payment for the construction cost, the Contractor shall be entitled to the three sub-lots "A", "B" and "C". The documents of titles to the new sub-lots have not been issued.

3. The Contractor, as Vendor, is desirous of selling the sub-lot marked "A" to the Purchasers at the price of B$70,000 and upon the terms and conditions hereinafter appearing."

It then provided:

"1. The Vendor shall sell and the Purchasers shall purchase all that said SUBLOT "A" as recited above being a vacant lot and comprising of 0.1448 acre more or less …… free from all encumbrances whatsoever, whether legal or equitable, and with vacant possession and in perpetuity at the purchase price of B$70,000 ……,for which the Purchasers had paid a deposit of B$10,000……."

Three points should be made about this agreement. The first is that, at the time of that agreement, sublot "A", called herein Plot A, was not in existence and may not be even now. It is not clear whose fault, if any, that was. As we have mentioned, clause 1.2 of the development contract cast the obligation to apply for amalgamation and subdivision into five Plots upon the appellants. However more facts would need to be known before liability for the failure to obtain these must be cast on the appellants.

The second is that the contractor's obligation to commence construction of the houses had not, therefore, arisen; and that it had not commenced construction of the houses and has never done so. It therefore did not then have any equitable ownership of Plot A.

That does not mean that the respondents did not, on the date on which they signed the agreement for sale, acquire a right to specific performance thereof. On the contrary they did. But it was, like that of the contractor under the development contract, a

conditional one, and the conditions thereof were never fulfilled because, it seems, the land was never amalgamated and subdivided and the contractor never commenced construction of the houses. Plainly the respondents could not have acquired any greater interest in or to Plot A under this agreement than the contractor then had under the development contract.

And the third is that the contractor appears to contract as equitable owner of the Plot, not as agent for the owners.

The true significance of these points will appear more clearly from what we say below.

By a sale and purchase agreement in similar form dated 21 November 2002 between the same parties, the vendor purported to sell to the purchasers Plots B and C for $85,000 by instalments.

The purchasers, the respondents, have affirmed that they have paid the whole of the purchase price under both contracts to the contractor, the vendor. However the appellants say that the receipts produced by the respondents to prove full payment do not do so. In particular they say that, under the second sale and purchase agreement, the respondents and the contractor had purported to set off part of the purchase price for Plots B and C against payments made by the respondents to a related company of the contractor for a different parcel of land. They refer to some receipts which appear to support this.

However the learned Chief Justice, in paragraph 2 of his judgment, described as a *"ruling"*, records that the parties had agreed that the respondents had made payment, by which we assume he meant full payment, to the appellant for the transfer of Plots A, B and C to the respondents. If the appellants' contention in the previous paragraph were the only basis on which it could be contended that the learned Chief Justice's judgment should be set aside we would be reluctant to reopen that question. However, as we will indicate, it is not.

This action was commenced by originating summons dated 13 April, 2010. It claimed relief in much the same terms as the orders made on 9 April, 2011. Why the matter took a year to be heard is not explained.

Before turning to the judgment of the learned Chief Justice we should put on one side a matter which we think has no bearing on the correctness of that judgment; the appellants' contention that the purchase moneys for Plots B and C were not paid into a joint bank account pursuant to and subject to the conditions imposed by clause 8.2 of the development contract. It was not an obligation to which the respondents were parties or by which they could otherwise be bound. Whether this factual assertion was correct or not, we do not think that it could affect the correctness of that judgment.

The learned Chief Justice appears to have made orders against all of the then respondents for specific performance of the transfer of Plots A, B and C to the present respondents who were the applicants for those orders and the purchasers under each

of the above sale and purchase agreements. Specifically those orders are recorded in the following terms:

(1) the first and second applicants are the legal and beneficial owners of plots A, B and C of those two parcels of land described as lot number 29308 and lot number 29306;

(2) the aforesaid plots be transferred in the names of the first and second applicants with immediate effect forthwith;

(3) the fourth and fifth respondents [the present appellants and the owners respectively of lots numbers 29308 and 29306] to disclose, provide, furnish all details and/or documents as may be required to complete Borang A and/or such other details and/or documents as may be required by the relevant authorities for the purpose of effecting the transfer of the aforesaid plots to the first and second applicants;

(4) if in the event the fourth and fifth respondents fail or refuse to effect the transfer of the said plots to the first and second applicants, the Registrar or the Official Receiver or other duly authorised registrar of the Supreme Court be at liberty to execute Borang A and/or the memorandum of transfer and/or Borang Sekatan and any other instruments of documents of transfer to facilitate and complete the transfer of the aforesaid plots to the first and second applicants;

(5) the costs and court fees in favour of the first and second applicants.

The notes of proceedings do not record the learned Chief Justice as having made any of these orders. What he said, by way of orders, is recorded as follows:

> *"I, therefore, make the order that first applicant and second applicant both have beneficial interests in Plots A, B and C in the abovementioned land. The interests should be transferred in accordance with the usual procedure under the Land Code and that the Official Receiver to be notified of this order."*

It should be first be noted that the Chief Justice did not say that the first and second applicants were the legal and equitable owners of Plots A, B and C. Indeed, given that legal title appears to have remained in the present appellants, he could hardly have done so. Nevertheless, if that were the only problem with the orders recorded as made, they could no doubt be rectified. And, for present purposes, we accept that the second sentence in the Chief Justice's order justifies the other orders (2), (3), (4) and (5) provided that he was correct in concluding that the respondents were the beneficial owners of Plots A, B and C.

As already mentioned, there is no evidence that the proposed amalgamation and subdivision ever took place. On the contrary, what appear to be extracts from the register of titles indicate that neither had occurred by the time that those extracts were obtained. Any such amalgamation and subdivision was subject to the prior approval of the competent authority under section 6 (1) of the *Town and Country Planning (Development Control) Act* Cap 143. It does not appear that any of this has ever taken place; or at least there is no evidence that it has.

We should say, for the sake of completeness, that we think that, other necessary requirements being satisfied, it unlikely that section 27 of the Land Code would stand in the way of the acquisition by the respondents of equitable interests in Plots A, B and C: see *Kheng Ah Beng* v *Hj Roney bin Hj Roslee @ Roni bin Hj Rosli*, Civil Appeal No 9 of 2009, at paras 22 to 25.

The respondents were entitled to orders against the appellants for specific performance of the transfer of Plots A, B and C only if, at the time that this action commenced, one of two conditions is satisfied. The first is that the contractor had an equitable interest, capable of sale, in each of the plots which it purported to sell; or at least has a right to specific performance of a transfer to it of each of them.

And the second is if it had actual or ostensible authority of the appellants to sell those plots on their behalf.

We now turn to those alternative possibilities, neither of which appears to have been addressed by the parties to this appeal.

Was the contractor, at the time of commencement of this action, entitled to specific performance of a transfer of each of Plots A, B and C under the development contract?

The development contract was, by clause 1.2, made subject to approval of the amalgamation of lots 29308 and 29306 and the subdivision of the amalgamated parcel into 5 plots as already indicated. Accordingly clause 1.2 appears to have made that approval and subdivision a condition precedent to the passing of any equitable interest to the contractor under that contract. And until that subdivision had occurred, the contractor's right to specific performance was limited to a right to enforce the performance of the appellant's obligation to apply for it. And even that right would have been lost by the time of commencement of this action if, by then as we suspect, the contractor had put it out of its power to perform its obligation to construct the houses. The true meaning and application of these provisions must be determined in the light of the application of equitable principles to that contract as a whole in the light of the surrounding objective facts known to both parties as at 1 June, 2001.

For reasons which we have given, it appears to be likely from the evidence so far adduced before this court, that, at the time of commencement of this action, the contractor had no equitable interest in any of Plots A, B or C; and had lost any right to specific performance of a transfer of any of those Plots, if or when they came into existence, because it was no longer capable of performing its obligation to construct the houses.

Did the contractor, at the time it entered into the sale and purchase agreements, have the respondents' actual or ostensible authority to sell Plots A, B and C?

We should, at the outset, say that this was not the basis on which the contractor purported to sell either Plot A or Plots B and C.

Each of the respondents, in paragraphs 4 and 18 of his affidavit, asserts that, at all material times, Wong acted for and on behalf of the appellants in negotiating and transacting with the respondents in respect of the sale and purchase agreements of 1 August 2001 and 21 November 2002. No basis in fact is given for this important assertion and, though it was not contradicted in the proceedings before the Chief Justice, the appellants were then unrepresented. We do not think that it should have been accepted, or should now be accepted, without such basis. As appears from what we say below, we think that the power of attorney may have been relied on as that basis. We deal with that below.

Whether and if so when the contractor (or Mr Wong) was actually authorised to sell Plots A, B and C depends, in the absence of other evidence, on the proper construction of clause 7 read with clauses 8.1 and 8.2 of the development contract. On the evidence before the court it does not appear that any of the events which would have given risen to that authority has ever arisen.

Plainly the power of attorney could not confer any greater authority than the development contract to which it was ancillary. The respondents' apparent reliance on it for that purpose (see paragraph 21 of each of their affidavits) is therefore misplaced. However it may have been possible to rely on it to prove ostensible authority.

The only arguable evidence before the court of ostensible authority is the power of attorney document. It is possible that the power of attorney document, if properly executed by the appellants, conferred ostensible authority on the contractor, at the time of each sale, to act as the agent of the appellants authorised to sell plots A, B and C to the respondents and the respondents relied on that authority. This would be so only if:

1. the respondents did, in fact, rely on the power of attorney document as conferring such authority;

2. the power of attorney, if in the form before us, did purport to confer such authority: see especially clauses 2, 4, 6 and 8; and

3. the power of attorney was valid and , if not, section 3(1) of the *Powers of Attorneys Act* had no effect on that ostensible authority.

The first of these has not been proved as a fact. Moreover it appears to be inconsistent with the express terms of the contract as we have already pointed out. And the second and third were not argued before the learned Chief Justice and were argued only cursorily before this court and only after this court had called for such argument

We are unable to be satisfied, on the evidence so far adduced and the arguments so far advanced, that at any relevant time the contractor had any right to specific performance of the transfer by the appellant of any of Plots A, B or C or that the contractor or Mr Wong had the authority of the appellants, actual or ostensible, to sell any of those Plots.

Lest it be raised again, we should address and dispose of the argument of the respondents that they are protected because they are bona fide purchasers for value

without notice, in reliance on the Malaysian decision of *Pekan Nenas Industries Sdn Bhd* v *Chang Ching Chuen and ors* [1998] 1 CLJ 793.

bona fide purchaser for value without notice

In its application to Torrens system land, the notion of a bona fide purchaser for value without notice applies generally only to competing equities. Once one of the holders of such competing equities becomes registered, his title is indefeasible except in the case of fraud or of equities arising from some act of his. And fraud, under the Torrens system, must include actual dishonesty; mere knowledge of a prior equitable interest is insufficient.

This is not a case of competing equities. It is a dispute between the registered proprietors (the appellants) and persons claiming an equitable estate or interest (the respondents). Even between competing equitable interests, it is well settled that, other things being equal, the first in time is entitled to priority. He will lose that priority only if, by some act or omission his own, he has induced a claimant later in time to act to his prejudice. See *Butler* v *Fairclough* (1917) 23 CLR 78, cited with approval by the Privy Council in *Abigail* v *Lapin* (1934) 51 CLR 58. The principle therefore has no application to the present case. Moreover we doubt whether the Malaysian decision referred to above was an application of this principle.

Conclusion

We are far from saying that, provided all relevant facts are clear, difficult questions of law should not be decided in a summary way as they were here. And it is certainly understandable that, after such long delay, the learned Chief Justice saw merit in doing so here. But where the resolution of such questions depends on facts which are either disputed or unclear, the need for speedy justice should give way to the need to resolve those facts. That is the case here.

It follows from what we have said that we think that the orders should not have been made and should, accordingly, be set aside. The proceedings should continue as an action by way of writ and statement of claim seeking specific performance and, in the alternative, damages for breach of contract.

Orders

1. Allow the appeal;

2. Set aside the orders made by the learned Chief Justice;

3. Remit the proceeding to the High Court to proceed as an action commenced by writ and statement of claim;

4. Make the following directions for the speedy trial of the issues between the parties:

   (a) that the respondents file and serve a statement of claim within 14 days;

(b) that the appellants file and serve a defence within a further 14 days;

(c) any further pleadings within a further 14 days;

(d) mutual discovery within 28 days of the date specified in (b);

(e) any summons for directions within a further 14 days.

5. Either party to have liberty to apply to a Judge of the High Court for variation or working out of these directions.

6. The respondent to pay the appellant's costs of this appeal.

Mortimer, P.

Davies, J.A. **Leonard, J.A.**