COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2016/CLE/gen/00807

BETWEEN

LEO INTERNATIONAL HOLDINGS LIMITED

First Plaintiff

-AND-

ALLURE BAHAMAS LIMITED

Second Plaintiff

-AND-

STERLING ASSET MANAGEMENT LIMITED

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mrs. Mary Bain-Charlton of Ian D. Cargill & Associates for the Plaintiffs
Mr. Timothy Eneas and Ms. Vanessa Hall of McKinney Bancroft & Hughes for the Defendant

Hearing Date: 13 October 2016

Ethics and Advocacy – Attorney -at- Law - Court's Supervisory Role – Jurisdiction of the Court to disqualify an attorney from acting for a party to litigation - Attorney subsequently undertaking work for party with interests adverse to Plaintiffs - Duty to former client - Conflict of interest - Disclosure of confidential information - Whether Defendant's attorney in possession of relevant confidential information - Burden of proof – specific and not general facts must be pleaded

On 7 May 2009, the director of the First Plaintiff, Leo International Holdings Limited, engaged a firm of Counsel and Attorneys ("MBH") to advise the company in connection with certain legal issues arising from the purchase of two condominium units in the Allure Estates development ("the Units") and to represent the company in legal proceedings relating to the Development ("the 2009 Action"). The First Plaintiff did not actively participate in the 2009 Action and MBH's primary focus during the earlier engagement was to advise the director of the First Plaintiff of

any claims it had against the stakeholders in relation to the release of funds paid under the Agreements for sale relating to the condominium units. The engagement was terminated in or about the year 2011 or 2012. MBH never represented the Second Plaintiff (Allure Bahamas Limited) in the 2009 Action or any other proceedings.

On 2 June 2016 the First Plaintiff filed an *Ex Parte* Summons and supporting affidavit seeking an injunction against the Defendant restraining it from *inter alia* exercising its power of sale to dispose of property in the Development which included the condominium units. The Defendant engaged the legal services of MBH and on 12 July 2016, an appearance was entered in the action by MBH on behalf of the Defendant.

On the Plaintiffs' Summons for an order disqualifying MBH from representing the Defendant or any other defendant in the action:

HELD: dismissing the application:

1. The court has an inherent jurisdiction to regulate its proceedings which includes the power to disqualify an attorney from acting in a matter.

2. MBH was not automatically disqualified from representing the Defendant merely because of the previous representation of the First Plaintiff in the 2009 action. Following the termination of the retainer the only duty to the First Plaintiff which survived the termination of the retainer was the duty to preserve confidential information obtained during the professional relationship.

3. It is the burden of the party seeking the disqualification order to establish that the attorney is in possession of information which is confidential to the applicant and that the information is or may be relevant to the matter in which the attorney is proposing to act for another party with an interest adverse to the applicant and that there was a risk that the information will come into the possession of those in the firm working for the other party. General allegations claiming that the attorney is in possession of confidential information are insufficient to establish the requirement in the absence of specific points being relied upon or a very long and close connection between the attorney and the applicant.

4. The First Plaintiff did not specify what confidential information is in the possession of MBH and there was no evidence of the nature of the earlier engagement from which a reasonable inference could be drawn to establish that MBH was in possession of information confidential to the First Plaintiff and relevant to the present action.

5. MBH never represented the Second Plaintiff and accordingly, there was no basis to grant the relief prayed in favour of the Second Plaintiff. Apart from its general demurral to MBH's representation of the Defendant in paragraphs (d) and (e) in the Summons, none of the remaining grounds could be asserted by the Second Plaintiff as against MBH.

6. The right to the attorney of the client's choice should not be interfered with by generalized allegation of conflict of interest.

7. There is no rule which provides for the immunity of counsel from being subpoenaed to testify at trial and in the same way as any other person counsel may be called as a witness.

The following cases are referred to in the Judgment:

1. **Bimini Blue Coalition Limited v Rt. Hon. Perry Christie Prime Minister et al** Bahamas Civil Court of Appeal No. 35 of 2014 *mentioned*
2. **Prince Jefri Bolkiah Appellant v. KPMG (A Firm)** [1999] 2 AC 222 *applied*
3. **Re A firm of Solicitors** [1997] Ch. 1 *applied*
4. **PhotoCure ASA v Queen's University at Kingston** [2002] WL 1613863, Federal Court of Australia *applied*
5. **Fortis Fund Services (Bahamas) Limited v. Lennox Paton (a firm)** 2001/CLE/gen/315 *mentioned*
6. **Raul Alfonso v. Mercantile Land Resources Limited et al,** Bahamas Civil Court of Appeal No. 46 of 2003 *applied*
7. **Halewood International v. Addleshaw Booth & Co.** [2000] Lloyd's Rep. P.N. 298 *applied*
8. **St. George and Others v Hayward and Others** CLE/gen/FP/0223A and 223B/06 *mentioned*
9. **In the matter of Mosaic Composite Limited now Mosaic Composite Limited (U.S.) Inc; in the Matter of The International Business Companies Act** 2006/COM/bnk/00015 *mentioned*

JUDGMENT

Introduction

[1] **Charles J:** On 15 July 2016, the First Plaintiff, Leo International Holdings Limited ("Leo International") and the Second Plaintiff, Allure Bahamas Limited ("Allure Bahamas") (collectively "the Plaintiffs") filed a Summons seeking an Order disqualifying and/or recusing McKinney, Bancroft & Hughes ("MBH") and more particularly, Sean N. C. Moree as legal representatives for Sterling Asset Management Limited ("the Defendant") in Supreme Court Action No. 2016/CLE/gen/00935 ("the substantive action") and Supreme Court Action No. 2016/CLE/gen/00807 ("the injunction").

[2] In support of their Summons, the Plaintiffs relied upon two affidavits of Jean Paul Michielsen filed on 15 July 2016 and 19 July 2016 respectively. Appended to Mr. Michielsen's first affidavit are the unsworn affidavits of Dr. Fabrizio Zanaboni and Alison Zanaboni which are also relied upon by the Plaintiffs. The Defendant relied upon the affidavit of Sean N.C. Moree filed on 18 July 2016.

Background facts

[3] The background facts are not largely disputed. On or about 7 May 2009 BSI Trust Corporation (C.J.) Limited ("BSI"), as the sole director of Leo International and former trustee of the Nietzche Settlement, entered into an agreement ("Early Engagement") with MBH to advise and represent BSI in connection with certain legal issues arising from the purchase of two condominium units situate in a condominium development known as Allure Estates situate on West Bay Street in the Island of New Providence ("the Units"). The Units are the subject of both matters which are now before the Court.

[4] Action No. 2009/CLE/gen/0805 ("the 2009 Action") was commenced on 5 May 2009 by Allure Bahamas against North Andros Assets Limited and Cordell Funding LLLP ("Cordell Funding*"*) seeking, among other things, (i) the release of certain property from a debenture upon the payment of US$2.2 million and (ii) an injunction restraining Cordell Funding from disposing of the said property.

[5] Leo International joined those proceedings on 2 October 2009 and was represented by MBH. However, Leo International did not actively participate in the 2009 Action in that it made no applications or submissions in the proceedings (other than to join the proceedings). No claims were made against Leo International and no counterclaims were made. As can been gleaned from the Engagement Agreement dated 7 May 2009, the primary focus of the Early Engagement was to advise BSI on any claims it had against Evans & Co., specifically as it related to its role as stakeholders and their release of the funds paid to it by BSI under the Agreements for Sale relating to the Units. The Early Engagement ended in early 2011.

[6] MBH commenced Action 2013/CLE/gen/01515 ("the 2013 Action") on 6 September 2013 against Leo International and two other defendants including Dr. Zanaboni. Judgment was entered on 19 December 2013 against the three defendants including Leo International and quantum was assessed on 18 March 2014. The judgment debt has since been settled.

[7] On or about 7 July 2016, MBH was retained by the Defendant to defend it in the extant actions ("Present Engagement").

[8] The Plaintiffs are not pleased with MBH representing the Defendant and seek to disqualify MBH on six discrete grounds namely:

(a) The Defendant is also a Defendant (5th Defendant) in the substantive action (which is the broader suit that is tied to the application for an injunction).

(b) MBH represented Leo International for over four (4) years between 2008 and 2013 in the 2009 Action, in respect of the property, which is the subject of this injunction and the substantive action, in which Messrs. J. Oliver Liddell Esq. and Sean N. C. Moree Esq., Partners, in MBH, represented Leo International, which invokes lawyer/ client privilege which need to be protected in the interest of justice.

(c) As legal representatives, MBH, through Attorneys Messrs. Liddell and Moree, were privy to private and confidential information. If MBH are allowed to represent the Defendant in the substantive action as well as the injunction, there is nothing stopping them from using this privileged information against the Plaintiffs. Further, as former legal representatives, the Plaintiffs reserve the right to subpoena Messrs. Liddell and Moree in the substantive action and feel that to allow MBH to represent the Defendant in this matter or any of the five (5) Defendants in the substantive action, will give them immunity from being subpoenaed to testify at the trial.

(d) The Plaintiffs vehemently object to MBH being allowed to represent the Defendant in the substantive action or the injunction.

(e) The Plaintiffs consider that MBH are in a compromised position and are relying on lawyer/client privilege for protection.

(f) Significant legal fees and costs were paid to MBH for legal representation. On or about $235,091.13 was charged to Leo International who later filed an action against MBH, in protest of the last installment payment of around $65,000.00. The suit was unsuccessful. Needless to say, that they did not part on good terms.

Relief to Allure Bahamas

[9] At the outset, learned Counsel for the Defendant, Mr. Eneas submitted that there is no basis for granting the relief prayed to Allure Bahamas. Apart from its

general demurral to MBH's representation of the Defendant in paragraphs (d) and (e) above, none of the remaining grounds can be asserted by Allure Bahamas as against MBH. MBH has never represented Allure Bahamas and therefore its application ought to be dismissed with costs. I agree.

Ground (a) – Substantive action and Injunction

[10] In my opinion, ground (a) is a submission and not a ground or objection to disqualify MBH. That being said, I shall briefly address it. On 2 June 2016, the Plaintiffs filed an Ex-parte Summons supported by the affidavit of Deneyka Basden seeking an injunction. On 23 June 2016, the Plaintiffs filed a Summons seeking, among other things, an injunction against the Defendant. By Order dated 28 June 2016, the Plaintiffs were directed to file and serve a Writ of Summons and Statement of Claim in that action on or before the 30 June 2016. On 29 June 2016, as ordered by the Court, the Plaintiffs filed a Writ of Summons and a Statement of Claim which named North Andros Assets Limited, Cordell Funding LLLP, The Palm West Bay Limited, Ocean Terrace by Sterling Limited and Sterling Asset Management Limited ("the defendant") as defendants. The action in which those documents were filed is numbered 2016/CLE/gen/00965. The defendant argued that it is uncertain as to why two separate actions have been commenced by the Plaintiffs and it is assumed that it was their intention to commence a single action. Notwithstanding that intention, as matters presently stand there are two separate actions being 2016/CLE/gen/00965 and 2016/CLE/gen/00807. With respect to the latter action, no Writ of Summons or Statement of Claim has been filed.

[11] Learned Counsel Mr. Eneas submitted that in view of the presumed intention to commence a single action, Ground (a) appears to be an erroneous statement.

[12] As learned Counsel for the Plaintiffs, Mrs. Bain-Charlton pointed out, when she first appeared before this Court seeking an injunction, the Court directed that she filed a Writ of Summons and a Statement of Claim as free-standing injunctions are unknown to the laws of The Bahamas: **Bimini Blue Coalition Limited v Rt.**

Hon. Perry Christie Prime Minister et al (SCCivApp Side No. 35 of 2014), the Court of Appeal, per Adderley JA stated at [29] of the judgment:

> **"The learned judge also correctly made the observation in accordance with jurisprudence in The Bahamas that a free standing injunction should not be granted, and if granted should not be allowed to stand."**

[13] As a result of this pronouncement by the Court, learned Counsel complied and filed a Writ of Summons with the Statement of Claim. The Registry ascribed No. 2016/CLE/gen/00965 to the documents filed. No culpability could be attributed to Counsel for the new number. As it stands now, this court will order the consolidation of 2016/CLE/gen/00807 and 2016/CLE/gen/00965. The consolidated action will now take its natural course in accordance with the Rules of the Supreme Court and Case Management Rules.

The remaining grounds

[14] The remaining grounds may be subsumed under the broad sub-heads of disqualification for conflict of interest and duty of confidentiality.

[15] In written and oral submissions, learned Counsel Mrs. Bain-Charlton submitted that a court, in the exercise of its inherent powers of supervision, may disqualify Counsel found to be in conflict of interest with respect to a case before the Court. When opposing counsel is in a serious conflict of interest, it is clearly the duty of an attorney to move for disqualification.

[16] Mrs. Bain-Charlton further submitted that in analyzing a conflict of interest situation, it is useful to ask what relations of Counsel give rise to the conflict and who stands to be harmed by that conflict. The relations giving rise to conflicts of interest in disqualification cases include personal relations of the Attorney; present representation of a potentially adverse party; and prior representation of an adverse party. Parties who may be injured by the conflict of interest include the present client of the Attorney moving to disqualify opposing Counsel, the present client of the Attorney who is the target of the motion, and third parties. The law with respect to disqualification varies depending on the conflict relation

and the potentially harmed party. In this regard, Counsel relied on a plethora of case from the U.S. Courts.

[17] Learned Counsel next submitted that the Court may disqualify Counsel when the subject matter of a case bears a "substantial relationship" to a matter in which Counsel previously advised or represented the presently adverse party. A “substantial relationship” should be understood as a relationship in which it is possible that the Attorney obtained confidential information from the former client.

[18] Learned Counsel argued that the "substantial relationship" to the subject matter of this case (the sale of the same two Units and funds spent outfitting the Units), is one in which MBH previously advised and/or represented the Plaintiffs and now MBH wishes to represent the Defendant who stand opposite to the Plaintiffs. In this “substantial relationship", it is **possible** that MBH obtained and did obtain confidential information from the former client. The Plaintiffs submitted that this protection of client confidences is irrebuttable.

[19] It cannot be disputed that the Court has an inherent jurisdiction to regulate its proceedings and this power includes the power to disqualify an attorney from acting in a matter before it. While every litigant has a right to counsel of his own choice, that right is not an absolute one, but it must be subject to the powers of the court to remove counsel for breach of the rules of professional conduct and for other good reason to protect the interests of justice and to ensure that public confidence in the administration of justice is not undermined. Where the question relates to the public confidence, the issue is whether a fair-minded reasonably informed member of the public would conclude that the proper administration of justice required the removal of the solicitor.

[20] Learned Counsel Mr. Eneas submitted that when MBH represented Leo International in 2009, it [Leo International] did not actively participate in the proceedings and based upon the claims in those proceedings no claim for relief was made by or against Leo International during that period. As explained in the

Moree Affidavit, the primary focus of the engagement was to advise the BSI Trust Corporation (as the sole director of Leo International) on the claims it had against Evans & Co. The engagement lasted for approximately two years and not for over four years as asserted by Mr. Michielsen. Following the termination of the Early Engagement the fiduciary relationship which existed between MBH and Leo International came to an end on the termination of the retainer.

[21] In the present case, the primary allegation of the Plaintiffs is that MBH, through Messrs. Liddell and Moree, were privy to private and confidential information in respect of the same property. They are worried that MBH will disclose their confidential information and they stand to lose much more than the Defendant. This, to my mind, is a grave concern and calls for cautious inquiry.

The law regarding disqualification: protection of confidential information

[22] An application for the court's intervention to protect confidentiality may be made by either the present or the former client as the obligation to maintain the confidentiality of the client information survives the termination of the retainer agreement. In the landmark House of Lords case of **Prince Jefri Bolkiah Appellant v. KPMG (A Firm)** [1999] 2 AC 222, Lord Millett stated at page 235 [C] – [F]:

> **"Where the court's intervention is sought by a former client, however, the position is entirely different. The court's jurisdiction cannot be based on any conflict of interest, real or perceived, for there is none. The fiduciary relationship which subsists between solicitor and client comes to an end with the termination of the retainer. <u>Thereafter the solicitor has no obligation to defend and advance the interests of his former client. The only duty to the former client which survives the termination of the client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence</u>.**
>
> **Accordingly, it is incumbent on a plaintiff who seeks to restrain his former solicitor from acting in a matter for another client to establish (i) that the solicitor is in possession of information which is confidential to him and to the disclosure of which he has not consented and (ii) that the information is or may be relevant to the new matter in which the interest of the other client is or may be adverse to his own. Although the burden of proof is on the plaintiff,**

it is not a heavy one. The former may readily be inferred; the latter will often be obvious. I do not think that it is necessary to introduce any presumptions, rebuttable or otherwise, in relation to these two matters. But given the basis on which the jurisdiction is exercised, there is no cause to impute or attribute the knowledge of one partner to his fellow partners. Whether a particular individual is in possession of confidential information is a question of fact which must be proved or inferred from the circumstances of the case."

[23] It follows that MBH is not automatically disqualified from representing the Defendant merely because of its previous representation of Leo International in the 2009 Action. As noted by Lord Millett in **Bolkiah**, the only duty to Leo International which survives the termination of the retainer is the duty to preserve the confidentiality of information obtained during the professional relationship. This duty however does not preclude MBH from acting on behalf of the Defendant against Leo International.

[24] In **Re A firm of Solicitors** [1997] Ch. 1, Lightman J., in discussing the restraints imposed upon solicitors acting against the interest of former clients, had this to say at page 9 [B]:

> **"The law regulating the freedom of a solicitor who, or whose firm, has at one time acted for a client subsequently to act against that client reflects the need to balance two public interests. First there is the interest in the entitlement of that client to the fullest confidence in the solicitor whom he instructs and for this purpose that there shall be no risk or perception of a risk that confidential information relating to the client or his affairs acquired by the solicitor will be disclosed to anyone else. Confidential information includes not merely information communicated in confidence by the client to the solicitor but also confidential information acquired by the solicitor on behalf of his client, e.g. on consulting experts, as well as advice communicated in confidence by the solicitor to the client. Second there is the interest in the freedom of the solicitor to obtain instructions from any member of the public, and of all members of the public to instruct such solicitor, in all cases where there is no real need for constraint: <u>there must be good and sufficient reason to deprive the client of the solicitor or the solicitor of the client of his choice.</u> A similar balancing is required in determining whether a barrister who has at one time acted for one party may subsequently act against him. The same principles plainly should and do apply in both cases: see Bricheno v. Thorp (1821) Jac. 300 and Pavel v. Sony Corporation (unreported), 12 April 1995; Court of Appeal (Civil Division) Transcript No. 336 of 1995."** (Emphasis added)

[25] He continued at page 9 [H]:

> **"For the purpose of the law imposing constraints upon solicitors acting against the interests of former clients, the law is concerned with the protection of information which (a) was originally communicated in confidence, (b) at the date of the later proposed retainer is still confidential and may reasonably be considered remembered or capable, on the memory being triggered, of being recalled and (c) relevant to the subject matter of the subsequent proposed retainer. I shall refer to information that satisfies these three qualifications as "relevant confidential information."**

[26] At page 10 [E], Lightman J stated:

> **"…it is in general not sufficient for the client to make a general allegation that the solicitor is in possession of relevant confidential information if this is in issue: some particularity as to the confidential information is required…[b]ut the degree of particularity required must depend upon the facts of the particular case, and in many cases identification of the nature of the matter on which the solicitor was instructed, the length of the period of original retainer and the date of the proposed fresh retainer and the nature of the subject matter for practical purposes will be sufficient to establish the possession by the solicitor of relevant confidential information."**

[27] In dealing with the issue of confidentiality, three points need to be considered. First, it must be shown that the firm or the attorney is in possession of information which is confidential to the former client. Secondly, whether the information is, or may be, relevant to the matter in which the attorney is proposing to act for another party with an interest adverse to the former client and thirdly, whether there is any risk that the information will come into the possession of those persons in the firm working for the other party: **PhotoCure ASA v Queen's University at Kingston** [2002] WL 1613863, Federal Court of Australia.

[28] Learned Counsel Mr. Eneas submitted that the Plaintiffs have not sought to specify the confidential information in the possession of MBH but merely state that MBH's engagement invokes lawyer/client privilege which requires protection in the interest of justice.

[29] I agree with Mr. Eneas that the generalities of this allegation do not show the existence of information which is confidential and which may be relevant to the matter in which the dispute has arisen. Where no specific reference to confidential information is made it is unsustainable to simply contend that because of the Early Engagement, MBH is precluded from representing the Defendant particularly in circumstances where there is no specific evidence regarding the nature of the 2009 Action. The two affidavits of Mr. Michielsen in support of the Summons make no attempt to identify any confidential information in the possession of MBH nor do the affidavits indicate how the information in possession of MBH is relevant to this matter.

[30] The **Bolkiah** case was heavily relied upon in the Bahamian cases of **Fortis Fund Services (Bahamas) Limited v. Lennox Paton (a firm) [2001/CLE/gen/315]** and **Raul Alfonso v. Mercantile Land Resources Limited et al,** Bahamas Court of Appeal No. 46 of 2003· In the latter case, Churaman JA at pp. 2-3 of the judgment said:

> **"The short point in it is that there is absolutely no basis on which relevant evidence was submitted to the learned judge to indicate the** nature of any confidential information **that may have been entrusted to Callenders and Company in an action in which Callenders and Company previously represented these respondents, and** any possible conflict of interest **which may arise by Callenders and Company representing the present man Raul Alfonso in an action against the respondent in this appeal.**
>
> **Suffice it to say that it appears to us that the present respondents seemed to be labouring under some belief that because Callenders and Company had previously acted for them, whether in one or more than one action, that this in itself resulted in Callenders and Company being obliged, for some unimaginable reason, from not accepting a brief against them."**

[31] In my opinion, in the absence of (i) any evidence of the confidential information in the possession of MBH; (ii) any evidence of the nature of the Early Engagement from which any reasonable inferences can be drawn concerning information in the possession of MBH which is confidential to Leo International and (iii) any risk

that the information will come into the possession of those persons in the firm working for the other party, the objection to disqualify MBH is woefully unfounded.

[32] Furthermore, the contention by Leo International that MBH's representation of the Defendant somehow renders Mr. J. Oliver Liddell Esq. and Mr. Sean N. C. Moree, Esq. immune from being subpoenaed is misconceived. There is no rule which provides for the immunity of counsel from being subpoenaed to testify at trial and like any other person, counsel may be called as a witness: see **Halsbury's Laws of England 4th edition Volume 3(1)**.

[33] With respect to Ground (e), Mr. Eneas correctly submitted that the mere objection to the Present Engagement is a factor for the Court to consider but is not dispositive of the matter. The Plaintiffs must establish that (i) there is confidential information in the possession of MBH; (ii) the information is or may be relevant to these proceedings and (iii) the information will come into the possession of those persons in the firm working for the other party. The Plaintiffs have not even begun to do so.

Other considerations

[34] In considering the issue as to whether there is a basis for the disqualification of MBH the Court ought to have regard to the entitlement of a lay person to the representation of his choice. The right is recognized by Lightman J in **Re A firm of Solicitors** [1997] Ch. 1 at page 9 [C] where in the context of discussing the competing interest in circumstances where a solicitor acts for a new client against a former client, he stated:

> **"Second there is the interest in the freedom of the solicitor to obtain instructions from any member of the public, and of all members of the public to instruct such solicitor, in all cases where there is no real need for constraint: there must be good and sufficient reason to deprive the client of the solicitor or the solicitor of the client of his choice. A similar balancing is required in determining whether a barrister who has at one time acted for one party may subsequently act against him."**

[35] Thus, the right to the attorney of the client's choice should not be interfered with by generalized allegations of conflict of interest. In the case of **Halewood International v. Addleshaw Booth & Co.** [2000] Lloyd's Rep. P.N. 298 Neuberger, J. noting the gravity of encroaching on the rights of the attorney and client, stated as follows:

> **"Any solicitor who acts for a client can, in my view, be said to have some information of that sort in relation to his client: in the absence of specific points being relied on, or in the absence of a very long and close connection between the solicitor and the client, it seems to me that it would impinge too greatly on the freedom of other parties to instruct the solicitor, and on the freedom of the solicitor to act in other proceedings, simply to rely on generalised allegations in this context."**

The Bahamas Bar Association (Code of Professional Conduct) Regulations Practice Regulations

[36] Learned Counsel Mrs. Bain-Charlton referred to the Bahamas Bar Association (Code of Professional Conduct) Regulations Rules IV (Sections 1, 2 & 4) – Confidentiality and V (Sections 1, 2, 5 & 11) – Impartiality and Conflict of Interest to bolster up her submissions on the ethical principles governing Bahamian attorneys and his duty of confidentiality. As Mr. Eneas perceptively pointed out, they are Rules which guide the Bahamian Bar but they do not have the force of law.

[37] Learned Counsel also substantiated her arguments by relying heavily on the Supreme Court cases of **St. George and Others v Hayward and Others** CLE/gen/FP/0223A and 223B/06 and **In the matter of Mosaic Composite Limited now Mosaic Composite Limited (U.S.) Inc; in the Matter of The International Business Companies Act** 2006/COM/bnk/00015. These authorities are very helpful. However, the Court of Appeal decision in **Raul Alfonso,** binding on this Court, provides the necessary guidance on the issue at hand.

[38] Learned Counsel also relied on a number of U.S. authorities. It is noteworthy to mention that the English Courts have expressly stated that our courts ought not to follow the jurisprudence of the United States on this subject matter. In **Bolkiah**, Lord Millett opined at page 235 that "*In this respect also we ought not in my opinion, to follow the jurisprudence of the United States*."

Conclusion

[39] In the premises, I dismiss the Plaintiffs' Summons seeking to disqualify MBH as legal representatives of the Defendant with costs to be taxed if not agreed.

[40] Last but not least, I am indebted to Mrs. Bain-Charlton and Mr. Eneas for their comprehensive submissions.

Dated 17th day of October A.D. 2016

Indra H. Charles

Supreme Court Justice