IN THE SUPREME COURT OF BELIZE A.D. 2019

CLAIM NO. 536 OF 2019

(HOME PROTECTOR INSURANCE CO. LTD. CLAIMANT
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BETWEEN (AND
(
(VISION ARCHITECTS AND
CONTRACTORS LTD. DEFENDANT

BEFORE THE HONORABLE MADAM JUSTICE MICHELLE ARANA

Ms. Erin Quiros of Balderamos, Arthurs LLP for the Claimant/Applicant

Ms. Naima Barrow for the Defendant/Respondent

1. This is a claim for Summary Judgment in favor of the Claimant/Applicant for a debt allegedly owed to it by the Defendant/Respondent. Home Protector Insurance Co. Ltd. ("Home Protector"), the Claimant, alleges that Vision Architects & Contractors Ltd. ("Vision Architects"), the Defendant, owes the sum of $69,510 plus interest to Home Protector for unpaid premiums on insurance policies issued to Vision Architects on a Performance Bond and a Contractors All Risk Insurance Policy. Home Protector resists this

Application for Summary Judgment and seeks to Strike Out this Application, alleging that Vision Architects was at all times acting as agent for a Third Party, one Wilhelm Lopez. Vision Architects also denies having any contractual relationship with Home Protector and puts Home Protector to strict proof of the contract.

2. ISSUE

Is Home Protector entitled to summary judgment on this application against Vision Architects, or should this application be struck out, and should the court exercise its discretion and order that the issues be thoroughly ventilated in a full trial?

3. Legal Submissions on Behalf of the Claimant/Applicant

Ms. Erin Quiros, on behalf of the Claimant, submits that Home Protector is entitled to summary judgment on this application. By Notice of Application dated the 10th day of February, 2020, the Claimant/Applicant applied to the Court for an Order that:

(a) Summary judgment be entered in favor of the Claimant/Applicant pursuant to Rule 15 of the Supreme Court (Civil Procedure) Rules;

(b) Costs;

(c) Such further or other relief as this Court deems fit.

The application is supported by an Affidavit of Mr. Norman Moore dated the 10th day of February, 2020. It is the Claimant/Applicant's position that summary judgment should be entered as the Defendant/Respondent does not have a reasonable ground for defending the claim or has no real prospect of successfully defending the claim and has not filed a Counterclaim against the Claimant/Applicant.

4. BACKGROUND

On the 17th day of June, 2014, the Defendant/Respondent entered into a construction contract ("**the contract**") with the Ministry of Natural Resources and Agriculture and the Solid Waste Management Authority. The contract required that the Defendant/Respondent provide a Performance Bond guaranteeing that the Defendant/Respondent would perform the work under the contract according to the terms and conditions as well as obtain insurance covering any loss and damage to works, plants and materials, equipment and property. The Defendant/Respondent therefore obtained from the Claimant/Applicant a Performance Bond issued in its own name, signed by a director of the Defendant/Respondent and dated 8th July, 2014 as well as a Contractors All Risks Insurance Policy issued in its name with a period of cover from 8th July, 2014 to 7th July, 2015. Since the issuance of both the Performance Bond and the Contractors All Risks Insurance Policy dated 8th July, 2014, the Defendant/Respondent has failed or refused to pay the premium payments for both. These premiums remain outstanding to date. The Claimant/Applicant therefore filed a claim against the Defendant/Respondent for the payment of $69,510.00 by the Defendant/Respondent which is money owed to the Claimant/Applicant for the issuance of a Performance Bond and Contractor's All

Risks Insurance policy to the Defendant/Respondent pursuant to a construction contract entered into by the Defendant/Respondent and government entities.

5. AGENCY

Halsbury's Laws of England (Volume 1 (2017)) **[TAB 1]** at para 1 states that:

"*The relation of agency typically arises whenever one person, called the 'agent', has authority to act on behalf of another, called the 'principal', and consents so to act. Whether that relation exists in any situation depends not on the precise terminology employed by the parties to describe their relationship, but on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent*."

In the case at hand, the Defendant/Respondent, at paragraph 3 of its Defense, states that the Defendant/Respondent "*signed the Bond and Policy not on its own account but as the agent of Wilhelm Lopez.*" However, all documentation disclosed by the Claimant/Applicant expressly describes the relationship between the Claimant/Applicant and the Defendant/Respondent as that of either "Surety and Principal" or "Insurer and Insured" respectively.

6. The issue of agency therefore does not arise as the Performance Bond and the Contractor's All Risks Insurance Policy are prima facie evidence showing that the Defendant/Respondent was at all times the primary contracting party with the Claimant/Applicant. Even if the Defendant/Respondent could establish an agency relationship between themselves and the third party, an agency relationship still would not exempt them from being liable for the premium payments owed to the Claimant/Applicant as it is their signature and company stamp that is

placed on the Performance Bond and it is their name located on the Schedule for the Contractor's All Risks Policy.

7. It is the Claimant/Applicant's position that the decision in ***Higgins and others v Senior*** [1835-42] All ER Rep 602 **[TAB 2]** is conclusive on this point. It was held in this case that the rule is that a person is bound by any written contract to which they have appended their signature, and it is not competent for the party to discharge himself from liability by proving that the agreement was made by him by the authority of and as agent for a third person, and that the other contracting party knew those facts at the time when the agreement was made and signed.

8. The Claimant/Applicant maintains, however, that there is no documentation nor any other type of evidence disclosed by the Defendant/Respondent that supports the notion that the Defendant/Respondent acted as an agent for a third party to the Claim at bar, nor is there any documentation supporting the notion that Claimant/Applicant entered into any contract or any other type of agreement with anyone other than the Defendant/Respondent.

9. Further to that, the documentation annexed to the Claimant/Applicant's Statement of Claim, which supports both the Bond and Policy, has not been challenged nor disputed by the Defendant/Respondent nor has the Defendant/Respondent stated at any point that the documentation supporting the Bond and Policy is a sham or fraudulent in any way.

10. As such, the Claimant/Applicant relies on the documentation annexed to its Statement of Claim as prima facie evidence that a contract was made solely between the Claimant/Applicant and the Defendant/Respondent and states that the picture presented by these supporting documents is clear and shows the true nature of the agreement between the Claimant/Applicant and the Defendant/Respondent. The annexed documents also show that the Defendant/Respondent was not at any point in time acting as agent for a third party to the Claimant/Applicant's claim.

PRIVITY

11. Further, ***Halsbury's Laws of England*** (Volume 22 (2019)) at para 128 **[TAB 3]** provides that:

"The doctrine of privity of contract is that, as a general rule, a contract cannot confer rights or impose obligations on strangers to it, that is, persons who are not parties to it. The parties to a contract are those persons who reach agreement…

The Claimant therefore relies on the common law principles of privity that a third party is not privy to a contract to which he is not a party to. It is a fact, which has not been disputed, that the documentation supporting the contracts between the Claimant/Applicant and the Defendant/Respondent are solely between the said parties and that nowhere in the said documentation reveal the existence of a third party who may be obligated to perform on those contracts. It is the Claimant/Applicant's position that Wilhelm Lopez, who is named in the Defendant/Respondent's Defence at

paragraph 3, is not only a third party to the contracts which the Claimant/Applicant is relying on, but is also notably a third party to these proceedings.

12.<u>SUMMARY JUDGMENT</u>

Rule 15.2 of the ***Supreme Court (Civil Procedure) Rules*** **[TAB 4]** states that:

The court may give summary judgment on the claim or on a particular issue if it considers that –

(a) The Claimant has no real prospect of succeeding on the claim or the issue; or

(b) The Defendant has no real prospect of successfully defending the claim or the issue.

In ***Swain v Hillman*** [2001] 1 All ER 91 **[TAB 5]**, Lord Woolf at page 92 states:

"The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success or, as Mr. Bidder QC submits, they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success."

13. However the learned Justice of Appeal notes at page 95:

"Useful though the power is under Pt 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at trial. ... the proper disposal of an issue under Pt 24 does not involve the judge conducting a mini-trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily."

14. And, at page 96, Judge LJ (as he then was) stated:

"To give summary judgment against a litigant on papers without permitting him to advance his case before the hearing is a serious step. The interests of justice overall will sometimes so require. Hence the discretion in the court to give summary judgment against a claimant, but limited to those cases where, on the evidence, the claimant has no real prospect of succeeding. This is simple language, not susceptible to much elaboration, even forensically. If there is a real prospect of success, the discretion to give summary judgment does not arise merely because the court concludes that success is improbable. If that were the court's conclusion, then it is provided with a different discretion, which is that the case should proceed but subject to appropriate conditions imposed by the court."

15. Further, as noted in ***Royal Brompton Hospital NHS Trust v Hammon*** (No. 5) [2001] EWCA Civ 550 **[TAB 6]**:

"The test under Part 15 (ENG CPR 24) is whether there is a real prospect of success in the sense that the prospect of success is realistic rather than fanciful; when undertaking this exercise, the court should consider the evidence which can reasonably be expected to be available at the trial – or the lack of it…"

16. Additionally, the summary judgment rule is designed to deal with cases which are not fit for trial at all. The test of 'no real prospect of success' requires the judge to undertake an exercise of judgment

in that he or she must decide whether to exercise the power to decide the case without a trial and give summary judgment. It is a discretionary power and the judge must carry out the necessary exercise of assessing the prospects of success of the relevant party. The criterion which the judge has to apply under CPR Part 24 is not one of probability; it is the absence of reality.

17. In the Claimant's opinion, the Defence of the Defendant/Respondent is fanciful and/or likely to fail. It is the Claimant's position that there are facts put forward to the Court which show that the Defence has no real prospect of succeeding as it is the sole evidence of the Defendant/Respondent put forth in their Defence is that:

(a) The Defendant/Respondent signed the Bond and Policy not on its own account but as the agent of a third party not named on those contracts, namely, Wilhelm Lopez.

(b) The Defendant/Respondent says that the Claimant had been negotiating the costs and payment for the Bond and Policy with Wilhelm Lopez, an allegation, be it true or not, that has nothing to do with the contractual obligations of the parties to the contracts.

(c) The Defendant/Respondent denies that it was a party to the agreements as alleged in the Claimant's Particulars of Claim or at all, despite being expressly named on the agreements/contracts.

(d) The Defendant/Respondent has stated that it was not acting on its own account but as the agent of a third party, yet the Defendant/Respondent is expressly named on the agreements/contracts as “Principal” or “Insured”.

18. Furthermore, it is the Claimant’s position that the Claimant’s documentary evidence supports the Claimant’s Statement of Claim as its evidence is that:

(a) The Defendant/Respondent entered into a Belize Solid Waste Management Project Contract with the “Ministry of Natural Resources and Agriculture” and the “Solid Waste Management Authority” for the “Closure of the Caye Caulker dumpsite and the design and construction of a transfer station and material drop off facility and associated works.”

(b) The Belize Solid Waste Management Project contract required the Defendant/Respondent to obtain a Performance Bond and a Contractor’s All Risks Insurance Policy.

(c) The Claimant/Applicant issued a Performance Bond in the Defendant/Respondent’s name which the Defendant/Respondent agreed to by placing the signature of one of its directors of the Bond as well as its Company stamp.

(d) The Claimant/Applicant also issued a Contractors All Risks Insurance Policy in the Defendant/Respondent's name with a period of cover from 8th July 2014 to 7th July 2015.

19. Based on the evidence submitted, the Defendant/Respondent is estopped from now disputing that:

a. it was part of the agreement made between the Claimant/Applicant and the Defendant/Respondent, and

b. that the Defendant/Respondent owed the Claimant/Applicant based on those said agreements.

CONCLUSION

20. It is the Claimant's respectful opinion that the Defendant/Respondent has no real prospect of successfully defending the claim, particularly given the Claimant/Applicant's documentary evidence which has not been challenged nor disputed.

21. Legal Submissions on Behalf of the Defendant

Ms. Naima Barrow contends on behalf of Vision Architects that Home Protector is not entitled to summary judgment and that this application should be struck out with costs to Vision Architects.

<u>Summary Judgment</u>

The Applicable Rule

Rule 15.2 of the Supreme Court (Civil Procedure) Rules 2005 provides that*:*

"The court may give summary judgment on the claim or on a particular issue if it considers that –

(a) the claimant has no real prospect of succeeding on the claim or the issue; or

(b) the defendant has no real prospect of successfully defending the claim or the issue."

The Instant Case

22. The Claimant's instant claim is for the payment of monies allegedly owed by the Defendant for insurance provided to the Defendant by virtue of a bond and a policy of insurance. These allegations are not admitted and are not capable of being substantiated or disproven by inference from the documentary or written evidence adduced thus far. Thus, the cases say, it is not an appropriate case in which to grant summary judgment.

Case Law

23. *The provision of our rules are similar to the English rules and the test is the same, i.e "no real prospect of succeeding". The English case law on the test for granting summary judgment is extensive and includes considerations by the House of Lords.*

In ***Three Rivers District Council and others v Bank of England (No. 3)***[1]**,** The House of Lords adopted the reasoning of Lord Woolf MR in *Swain v Hillman*[2] *as it relates to summary judgments*. In *Swain v Hillman*, Lord Woolf MR said that the following of the words "*no real prospect*"

See Tab 4

> *"do not need any amplification, they speak for themselves. The word "real" distinguishes fanciful prospects of success or, as Mr Bidder QC [counsel for the defendant] submits, they direct the court to the need to see whether there is a "realistic" as opposed to a "fanciful" prospect of success."* [3]

24. In *Swain*'s case Lord Woolf MR also said that it is important that the court's power to give summary judgment be "*kept to its proper role*." He cautioned that summary judgment is not meant to dispense with the need for a trial where there are issues which

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[1] [2001] UKHL/16 513, 2 ALL ER 513 at para. [90]
[2] [2001] 1 All ER 91
[3] Ibid at p. 92 – found at p. 514 of the Three Rivers Case

should be investigated at the trial and does not involve the judge "conducting a mini-trial". [4]

25. *In the Three Rivers Case, Lord Hope of Craighead said*[5] *that* "*more complex cases are unlikely to be capable of being resolved in that way* [summary judgment] *without conducting a mini-trial on the documents without discovery and without oral evidence*" and "*that is not the object of the rule. It is designed to deal with cases that are not fit for trial at all.*" [6]

26. *Most application for summary judgment made after a defence has been filed are decided on the basis of the facts which are not disputed by the respondent together with the respondent's version of the disputed facts.* ***Associated Newspapers Ltd v His Royal Highness the Prince of Wales***[7]

See Tab 5

[4] Ibid at p. 94-95 – found at p. 542 of the Three Rivers Case
[5] At para. [95]
[6][2001] UKHL/16 513, 2 ALL ER 513, 543 a
[7] - *[2006] EWCA Civ 1776 at para. [23]*

Conclusion

27. As the Defendant has refuted any knowledge of the facts alleged it is for the Claimant to prove its case.There are no undisputed established facts substantiating the Claimant's bare allegation of a debt due from the Defendant.

28. In the premises, this Honourable Court is respectfully asked to dismiss the application for summary judgment with costs to the Defendant.

29. **Reply Submissions filed by The Claimant Resisting the Strike Out Application**

These submissions are made by the Claimant in opposition to the Defendant's application to have the claim against it struck out as an abuse of the process of the court. The Defendant has made its application on solely one ground, which is that the Claimant has failed to provide any evidence in support of its claim that a debt is due from the Defendant.

BACKGROUND

30. On the 17th day of June, 2014, the Defendant entered into a construction contract ("**the contract**") with the Ministry of Natural Resources and Agriculture and the Solid Waste Management Authority. The contract required that the Defendant provide a Performance Bond guaranteeing that the Defendant would perform the work under the contract according to the terms and conditions as well as obtain insurance covering any loss and damage to works, plants and materials, equipment and property. The Defendant therefore obtained from the Claimant a Performance Bond issued in its own name, signed by a director of the Defendant and dated 8th July 2014. The Defendant also obtained a Contractors All Risks Insurance Policy issued in its name with a period of cover from July 8th, 2014 to July 7th, 2015.Since the issuance of both the Performance Bond and the Contractors All Risks Insurance Policy on 8th July, 2014, the Defendant has failed or refused to pay the premium payments for both. These premiums remain outstanding to date.

THE LAW ON STRIKING OUT

31. Rule 26.3(1)(b) empowers the court to strike out a statement of case where "*the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings…*"In **Ray George v Attorney General of the Virgin Islands (Claim No. BVIHCV2012/0161) [TAB 1]**, Tabor (M) Ag. stated at paragraphs 10 and 11,

"[10] The striking out of a statement of case or defence is a draconian step which a court would only take in exceptional circumstances. In ***Baldwin Spencer v The Attorney General of Antigua and Barbuda et al (Civil Appeal No. 20A of 1997)*** *Dennis Byron CJ (Ag.), as he then was, restated the seminal test that should be applied by the court on an application to strike out when he said: "This summary procedure should only be used in clear obvious cases, when it can be seen on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court… Striking out has been described as 'the nuclear power' in the court's arsenal and should not be the first and primary response of the court." [emphasis added]*

[11] In his judgment in the interlocutory appeal in ***Tawney Assets Limited v East Pine Management et al(BVI High Court Civil Appeal No. 7 of 2012)****, Mitchell JA (Ag.) in underscoring the need why the court should proceed cautiously when dealing with an application to strike out noted that: "The exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The court must therefore be persuaded either that a party is unable to prove allegations made against the other party; or*

that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case or that it has no real prospect of succeeding at trial". [emphasis mine]

32. The court will therefore exercise restraint in striking out a statement of claim, and will only do so in the clearest of cases where the claim is "incurably bad". In **Blackstone's Civil Practice 2015 at paragraph 33.13 [TAB 2]** under the heading "General examples of abuse of process", it was stated that,

*"According to **McDonald's Corporation v Steel [1995] 3 All ER 615**, it is considered an abuse of process where the statement of case is incurably incapable of proof. The fact that a party's case may be incapable of proof may become more apparent after disclosure of documents or after exchange of witness statements. However, it was said that striking out on this basis will be fairly unusual, as there are few cases which are sufficiently clearly and obviously hopeless that they deserve the draconian step of being struck out."*

33. The court should therefore be concerned and hesitant to strike out a statement of claim so early in the proceedings, especially where a disclosure of documents or exchange of witness statements have not yet occurred, as it cannot be determined so early in the proceedings that a case is completely unwinnable or 'incurably incapable of proof'.

34. In **Kodilinye's Commonwealth Caribbean Civil Procedure (3rd Edn) [TAB 3]** examples specific to striking out for abuse of process were succinctly set out at page 175 under the heading "*Abuse of process*" which states that,

"The power in Rule 26.3(b) to strike out a statement of case which is an abuse of the court's process is one which 'any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people'. Examples of striking out for abuse of process include:

(a) starting a claim with no intention of pursuing it;
(b) issuing a claim after expiry of the relevant limitation period;
(c) issuing a claim where the description of the claimant does not disclose any entitlement to sue;
(d) issuing a claim that is res judicata;
(e) issuing a claim that is vexatious, scurrilous or obviously ill-founded;
(f) subjecting a defendant to two or more identical actions simultaneously;
(g) seeking redress against a public authority by bringing an ordinary claim instead of a claim for judicial review; and
(h) destruction of evidence before proceedings are commenced, with intent to pervert the course of justice, or destruction of evidence after issue of proceedings, if a fair trial can no longer be achieved.

Further, it was pointed out by Cross J in a Trinidadian case, ***Sookdeo v Barclays Bank of Trinidad & Tobago Ltd****, that the court also has an inherent power to stay or dismiss actions which are obviously frivolous and vexatious or an abuse of process, but this was a jurisdiction which 'should be exercised with great care, and only in cases where the court*

is absolutely satisfied that no good can come of the action'." [emphasis mine]

35. In the instant case, it is respectfully submitted therefore, that an order of striking out is not appropriate in the circumstances.

36. Furthermore, striking out is not an appropriate remedy where the suggested defect in pleading is capable of being cured by amendment. In **Cedar Valley Springs et al v Hyancinth Pestaina (ANUHCVAP2016/0009) [TAB 4]** the OECS Court of Appeal set aside an order striking out a statement of case where the application had been made before Case Management and the defect in pleading could be cured by amendment. The Court of Appeal held on page 2 that,

"The learned master erred in principle in striking out the appellant's claims, having already found that the appellant's cause of action was sufficiently pleaded to enable the claims to proceed. Furthermore, his basis for striking out the claim – that there was a need to plead additional facts – could have been adequately and proportionately addressed through alternative means (for instance, by directing the appellant to amend the claims to address the failure), particularly since the respondents' applications to strike out had come up for determination prior to the claims being case managed."

37. In arriving at her decision, Pereira CJ placed reliance on the Privy Council decision in *Real Time Systems Ltd v Renraw Investments Ltd and Others,* where the application to strike out had been made on the ground of abuse of process due to the claimant's failure to provide particulars of a loan. Pereira CJ quoted extensively from

paragraphs 15 to 18 of the decision, from which the following have been excerpted:

"15 The present proceedings have never reached the stage of a case management conference. Rule 20.1 enables a party at any time prior to a case management conference to change its statement of case. Since Real Time's statement of case was insufficiently particularised, it seems that it could without permission have changed it by adding the required details: see Bernard v Seebalack, para 27. And, even if a more restricted view of "change" were taken, that would lead to the odd consequence, on the Centre's case, that a party could, without permission, correct a major omission by "changing" its statement of case under rule 20.1, but could not remedy a more minor error consisting of failure to include sufficient details in its statement of case.

16 ...

17 In that connection, the court has an express discretion under rule 26.2 whether to strike out (it 'may strike out'). ***It must therefore consider any alternatives, and rule 26.1(1)(w) enables it to 'give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective', which is to deal with cases justly****. As the editors of The Caribbean Civil Court Practice (2011) state at Note 23.6, correctly in the Board's view, the court may under this sub-rule make orders of its own initiative.* ***There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period****. Having regard to rule 26.6, the court would quite probably also feel it appropriate to specify the consequences (which might include striking out) if the details or amendment were not duly forthcoming within that period.*

18 ... (My emphasis)."

38. Pereira CJ added at paragraph 15 of her decision,

> *"This failure to plead all the facts or, put another way, the need to plead additional facts could have been adequately and proportionately addressed by the learned master by alternative means, having been faced with the application to strike out at a time when case management had not yet occurred, by invoking his case management powers and fashioning an order under CPR 26.1(2)(w) which could no doubt have directed the appellant to amend its case to address this failure within a specified period. If considered necessary, the learned master could have gone further, when ordering an amendment, by directing the imposition of a sanction for failure to amend. This was an approach open to the master to adopt even in the absence of the respondents themselves utilising this less draconian approach available under CPR 26.4 in seeking to address this perceived omission to fully plead the facts of the claim, rather than having immediate resort to this measure which should only be engaged as a weapon of last resort."*

The decision of Pereira CJ is commended to the court.

39. Similar to the situation in Cedar Valley Springs, the Defendant/Applicant herein alleges that the statement of case should be struck out as there is a failure to adduce evidence to support its claim. Furthermore, like the instant case, the application had been made at a very preliminary stage of the proceedings, i.e., before the Case Management Conference. Pereira CJ rightly pointed out that in such circumstances, it is not appropriate to strike out the statement of case. If the court does agree that the statement of case in this instance is lacking in sufficient evidence to prove its case (an allegation that is denied in its entirety), it is the Claimant's submission that the court should look at alternative means and use its case management powers to

fashion an order directing the party to amend his statement of case since the defect in pleading could be cured by amendment. This point is even more relevant where the strike out application is made before the case management conference, as the party is able to amend the statement of case without the leave of the court. In the circumstances, it is respectfully submitted that the instant case is not appropriate for an order of striking out, even if the Court agrees that there is a need to adduce further evidence.

SOLE GROUND OF DEFENDANT'S APPLICATION: FAILURE TO PROVIDE EVIDENCE

40. In the circumstances, it is the Claimant's respectful submission that the Claimant, at this stage of the proceedings, has entered all the material facts necessary to bring forward and support its claim against the Defendant. In the instant case, the Claimant has pleaded the following material facts:

a. That the Defendant entered into a contract with the "Ministry of Natural Resources and Agriculture" and the "Solid Waste Management Authority" (*para. 3*);

b. That the said contract required the Defendant to obtain a Performance Bond which the Defendant obtained from the Claimant (*para 4 with copy of Performance Bond signed by the Claimant and Defendant annexed*);

c. That the said contract also required the Defendant to obtain a Contractor's All Risks Insurance Policy which the Defendant obtained

from the Claimant (*para 5 with copy of the insurance policy issued to the Defendant annexed*)

d. That the premium payments for both the Performance Bond and the Contractor's All Risks policy remain outstanding (*para 6*);

e. That the Claimant has made demands for payment of the outstanding sums however the Defendant has refused to pay the said sums (*para 7*).

41. It is a well-known rule that when drafting a claim form and statement of claim, only material facts are to be put forward, as concisely as possible, as the basic objective of particulars of claim should be to inform the court and the other party what the case is all about. It is submitted that there is no requirement that a claim form and its particulars should contain all the evidence it has to support its claim. **Rule 8.7 of the Supreme Court (Civil Procedure) Rule 2005 [TAB 5]** instructs that a Claimant has a duty to set out their case and provides that,

"(1) The Claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.

(2) Such statement must be as short as practicable.

(3) The claim form or the statement of claim must identify or annex a copy of any document which the claimant considers necessary to his or her case.

(4) ....

(5) ...."

42. Additionally, ***Halsbury's Laws of England*** **(Volume 11 (2015)) at para 348 [TAB 6]** provides guidance in relation to what should be included/annexed to statements of claim where, similarly to the instant claim, the said statement of claim is based upon a contract and states that:

"Where a claim is based upon a written agreement, a copy of the contract or documents constituting the agreement should be attached to or served with the particulars of claim and the original(s) should be available at the hearing…"

43. Most notably, **Blackstone's Civil Practice 2015 at para 24.3 [TAB 7]** provides commentary explaining what kind of content belong in the particulars of claim, where it states that,

"The body of the particulars of claim must include:

(a) A concise statement of facts on which the claimant relies… The rules should not be read or interpreted as suggesting that the particulars of claim should contain evidence. The distinction between material facts (relevant), and the evidence by which those facts are to be proved (irrelevant) still remains good practice…

The purpose of statements of case is to elucidate the facts. A party is not obliged to particularize or explain its legal arguments in its statement of case (that is the function of skeleton arguments)." [emphasis mine]

44. It is therefore submitted that the claim form is allowed to contain facts which are open to proof or disproof, facts in issue and relevant facts, and not necessarily the evidence to prove those facts.

45. The point also must be made that the court plays a clear role in regards to how evidence is to be admitted. **Rule 29.1 of the Supreme Court (Civil Procedure) Rule 2005 [TAB 8]** provides that *"the court may control the evidence to be given at any trial or hearing by giving the appropriate directions as to –*

(a) the issues on which it requires evidence; and
(b) the way in which any matter is to be proved,

at a case management conference or by other means."

46. It is our humble submission that Rule 29.1 vests the court with an extraordinarily wide power whereby it can override the views of the parties not only as to the nature of the evidence suitable to decide the issues in the case, and as to the way the evidence should be given, but also as to the very issues that do or do not call for evidence.

47. The Claimant also submits that the facts currently put forward, together with the documentary evidence annexed, is sufficient to show the Court that it has a reasonable prospect of proving its case against the Defendant. Any further evidence required to prove that a debt is indeed owed to the Claimant can be adduced during disclosure, via witness statements, and via oral evidence provided by witnesses at trial. Based on the foregoing, it is again respectfully submitted that the instant case is not appropriate for an order of striking out.

OVERRIDDING OBJECTIVE

48. In **Kevin Millien v BT Trading Limited et al (Claim No. 325 of 2014) [TAB 9]**, Chief Justice Kenneth Benjamin, as he then was, at paragraph 10, made note of the importance of applying the overriding objective in achieving a result that meets the justice of the case by providing dicta from Belize Telemedia Ltd v Magistrate Usher (2008) 75 WIR 138 para 20 where it was stated that,

> *"It is important to bear in mind always in considering and exercising the power to strike out, the Court should have regard to the overriding objective of the rules and its power of case management. It is therefore necessary to focus on the intrinsic justice of the case from both sides: why put the defendant through the travail of full blown trial when at the end, because of some inherent defect in the claim, it is bound to fail, or why should a claimant be cut short without the benefit of trial if he has a viable case?"* [emphasis mine]

49. In determining whether the claim should be struck out, the court should therefore consider the overriding objective of the Civil Procedure Rules.

CONCLUSION

50. The Claimant respectfully submits that the instant claim is not appropriate for striking out for the following reasons:

a. Striking out the claim form at this early stage of the proceedings would amount to a deprivation of the Claimant's right to strengthen his case through disclosure and other modes which elicit evidence in various stages of the proceedings.

b. The Defendant's only complaint is that the Claimant has failed to produce evidence to support its claim that a debt is due from the Defendant. Any defect in pleading can be cured by amendment.

c. The application has been made before the case management conference, and so the Claimant is entitled to amend or recast its claim, if necessary, without the leave of the court.

d. In any event, the claim is not incurably bad. The documentary evidence expressly shows that the Claimant entered into a contract with the Defendant and an obligation to pay a premium was created. The material facts have been pleaded and the court can order that further evidence, if necessary, be put forward. The Claimant therefore submits that the strike out application is premature, that the application cannot succeed on the ground it was brought upon and requests that the strike out application be dismissed.

51.DECISION

I wish to thank both counsel for their submissions on this application for Summary Judgment. I have considered the submissions for and against this Application, and I agree with the Claimant that it is entitled

to summary judgment. The affidavit evidence of the Claimant's Director has set out the terms of the contract between Vision Architect and Home Protector. It is quite clear from the documentary evidence provided thus far that the parties were the Claimant and the Defendant with no third party involved. I see that the Defendant affixed the seal of Vision Architect to the insurance policy provided to it by Home Protector. These policies enabled Vision Architects to enjoy the benefit of a contract with the government of Belize. It is therefore patently clear that Home Protector is entitled to the sum claimed from Vision Architects for the payment of premiums on the insurance policies issued in their favor. In these circumstances, the court finds that the defence advanced by the Defendant has no likelihood of success. The Defendant's Application to strike out the Claimant's summary judgment application is refused.

Summary Judgment is hereby ordered in favor of Home Protector.

Costs awarded to the Claimant to be paid by the Defendant to be agreed or assessed.

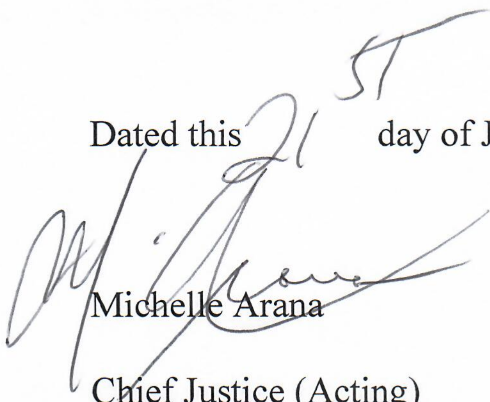
Dated this day of June, 2021

Michelle Arana

Chief Justice (Acting)

Supreme Court of Belize

Dated this 21st day of June, 2021



Michelle Arana

Chief Justice (Acting)

Supreme Court of Belize