

**IN THE HIGH COURT OF BELIZE, A.D. 2022**

**Claim No. 176 of 2022**

**BETWEEN**

**COROZAL SUGAR CANE  
PRODUCERS ASSOCIATION**

**CLAIMANT/RESPONDENT**

**AND**

**EVERALDO UK  
GUSTAVO KU  
JUDITH SALAZAR  
SALUSTIANO TECK  
URBANO LOPEZ  
DANIEL EDUARDO ESPINOZA  
GUILLERMO CHI  
LEONARDO KU  
AURELIO TUN  
ANTONIO ZETINA**

**FIRST DEFENDANT/APPLICANT  
SECOND DEFENDANT/APPLICANT  
THIRD DEFENDANT/APPLICANT  
FOURTH DEFENDANT/APPLICANT  
FIFTH DEFENDANT/APPLICANT  
SIXTH DEFENDANT/APPLICANT  
SEVENTH DEFENDANT/APPLICANT  
EIGHT DEFENDANT/APPLICANT  
NINTH DEFENDANT/APPLICANT  
TENTH DEFENDANT/APPLICANT**

**Before** the Honourable Madam Justice Geneviève Chabot

**Date of Hearing:** October 18<sup>th</sup>, 2022

**Appearances**

Virginia L. Requeña, for the Claimant/Respondent

Allister T. Jenkins, for the Defendants/Applicants

**RULING ON APPLICATION TO STRIKE OUT**

**Introduction**

1. This is an Application to Strike Out the Amended Claim filed by the Claimant. The Claimant (the “Respondent” in this Application, or the “Association”), the Corozal Sugar Cane Producers Association, seeks declarations in relation to a petition, a Special General

Meeting, and an election held on January 9<sup>th</sup>, 2022, as well as certain orders against the Respondents individually, including orders to cease and desist from presenting and conducting themselves as members of the Association, from interfering with the business of the Association, and from spreading false and misleading information against the Association. The Claimant also seeks general and special damages, as well as damages for misrepresentation and tortious interference.

2. The Defendants (the “Applicants” in this Application) filed an Amended Defence to the Claim and an Amended Ancillary Claim seeking declarations in relation to the Bylaws governing the Association and the results of elections held on November 10<sup>th</sup>, 2021. They also seek a declaration related to the expulsion of members of the Association, and an order that the Association calls a general meeting and holds an election.
3. On August 23<sup>rd</sup>, 2022, the Applicants filed an Application to Strike Out the Claim pursuant to Rules 26.3(1)(b), (c), and (d) of the *Supreme Court (Civil Procedure) Rules, 2005* (the “Rules”). The grounds of the Application are the following:
  - 1) The Claimant filed the claim herein seeking several declarations and reliefs in relation to a petition, a special general meeting, an election, for damages for distress and inconvenience, damages for misrepresentation and breach and damages for tortious interference.
  - 2) Parts of the Claimant’s claim particularly for declarations in relation to the election petition, the special general meeting, election of Board of Directors and Surveillance Committee and for an injunction have become academic and therefore amount to an abuse of process of the Court.
  - 3) There is no independent cause of action for distress and inconvenience at common law and the Claimant’s claim fails to disclose any reasonable cause of action for the same or for damages in relation to the same.
  - 4) The Claimant’s Statement of Claim fails to disclose a cause of action for libel and defamation.
  - 5) The Claimant’s Statement of Claim fails to disclose a cause of action or actionable cause of action for misrepresentation and breach.
  - 6) The Claimant’s Statement of Claim fails to disclose a cause of action or actionable cause of action for tortious interference.
  - 7) The Claimant has failed to properly plead a cause of action in relation to any of the foregoing matters.

- 8) Based on the foregoing, the Claimant has no real prospect of succeeding on the claim.
  - 9) Paragraphs 13 to 35 of the Claimant' Statement of claim are prolix.
  - 10) The Claimant's claim ought to be struck out with cost to the Defendants.
4. Rule 26.3 of the *Rules* empowers this Court to strike out a claim in any of the following circumstances:
- 26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -
- (a) that there has been a failure to comply with a Rule or practice direction or with an order or direction given by the court in the proceedings;
  - (b) that 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;
  - (c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or
  - (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.
5. As noted by James J. in *Michael Bogaert v The Commissioner of Lands & Surveys et al.*,<sup>1</sup> striking out a claim “is considered a nuclear option and the rule ought not to be used except in the clearest of cases where a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court”.
6. The issues for determination in this Application are:
1. Whether the Claim amounts to an abuse of process because it is moot;
  2. Whether the Statement of Claim discloses any reasonable ground for bringing the Claim; and
  3. Whether the Statement of Claim is prolix.

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<sup>1</sup> Claim No. 317 of 2019 at para. 4, citing *Brian Ali v The Attorney General of Trinidad and Tobago*, CV 2014 02843 at para. 13 and *Baldwin Spencer v The Attorney General of Antigua and Barbuda et al*, Civil Appeal No. 20A of 1997.

## Analysis

*Whether the Claim amounts to an abuse of process because it is moot*

7. The Association was formed in 2015 and adopted a first set of Bylaws at that time (the “2015 Bylaws”). The Association alleges in the Claim that the 2015 Bylaws were replaced by a new set of Bylaws in 2019 (the “2019 Bylaws”). At the 6<sup>th</sup> Annual General Meeting (“AGM”) of the Association held on December 7<sup>th</sup>, 2019, the Board of Directors who presided over the AGM became the inaugural Board of Directors under the 2019 Bylaws. On October 7<sup>th</sup>, 2021, during the COVID-19 pandemic, the Association applied to the Minister of Health and Wellness for permission to gather to conduct elections. However, the permission was not received before the dates set for the nominations and elections had passed. On November 10<sup>th</sup>, 2021, the Board of Directors decided to dissolve the Board and to elect a new Board of Directors.
8. It is not disputed that on November 23<sup>rd</sup>, 2021, the Defendants signed a petition demanding that elections under the 2015 Bylaws be held. On January 2<sup>nd</sup>, 2022, the First Defendant wrote to the Minister of Health and Wellness seeking permission to gather, which permission was received on January 5<sup>th</sup>, 2022. On January 9<sup>th</sup>, 2022, a Special General Meeting was held and a Board of Directors and Surveillance Committee comprised of the Defendants in this matter were purportedly elected. The results of these elections are contested by the Association.
9. The Association seeks the following reliefs in the Claim:
  1. A declaration that:
    - a. The petition to hold a Special General Meeting on 9<sup>th</sup> January 2022 contravenes sections 53(1), (2), (3)(i) of the Claimant's 2019 Bylaws and in effect the petition is invalid.
    - b. The Special General meeting held on 9<sup>th</sup> January 2022 contravenes sections 51(1), 52, 54(1)(b), 54(2) and 55(1)(2) of the Claimant's 2019 Bylaws and in effect is invalid.
    - c. The election of the Board of Directors and Surveillance Committee held at the Special General Meeting on 9<sup>th</sup> January 2022 contravenes sections 16, 17, 21 and 34 of the Claimant's 2019 Bylaws and in effect is invalid.
10. The Applicants submit that this part of the Claim has become academic because there is no live dispute in relation to these matters. A decision on these matters will not have the effect of resolving any live controversy affecting the rights of the parties. In support of their contention, the Applicants note that the Association did not accept the validity of the

purported Special General Meeting or the election of the purported new Board of Directors and Surveillance Committee; that the Association never lost control and has retained control and access to the Association itself and its premises; that the Association was able to conduct its business at all material times; that no further steps were taken by the Applicants because they obtained legal advice; that the Applicants have not maintained the validity of the election petition, the Special General Meeting, or the election of the Board of Directors and Surveillance Committee; and that by letter dated February 4<sup>th</sup>, 2022, the Defendants requested that a proper General Meeting be held.

11. The Applicants submit that this Court should not exercise its discretion to continue this matter as there are no circumstances which would justify allocating scarce judicial resources to resolve the moot issues raised in this Claim.
12. The Respondent denies that the Claim is moot. The Respondent argues that a decision from this Court on the issue of whether the Special General Meeting contravened the 2019 Bylaws will help determine the Ancillary Claim. It will also bring clarity to the members of the Association.
13. The Respondent notes that it is not until the filing of this Application that the Applicants conceded that the petition, the Special General Meeting, and the election of the Board of Directors and Surveillance Committee were not valid. According to the Respondent, such concession does not mean that the issues created by the holding of the Special General Meeting and the elections do not exist. In addition, the injunction granted by this Court in Claim No. 30 of 2022 is an interim injunction. Without a permanent injunction, the parties might find themselves “back at square one”.
14. I agree with the Respondent that the issues created by the petition, the Special General Meeting, and the election of the Board of Directors and Surveillance Committee are not moot. First, the Respondent is correct in noting that the Applicants only for the first time in this Application conceded that the petition, the Special General Meeting, and the elections were not valid. The Defence admits that these events have taken place, without acknowledging whether or not they were valid. In their Reply to the Respondent’s submissions on this Application, the Applicants maintain that “contrary to what the Claimant asserts, the Claimant was made aware even prior to the filing of the claim herein, that the Defendants did not maintain the validity of the election petition, the Special General Meeting, and the election of the Board of Directors and the Surveillance Committee”. That sentence is not supported by any evidence, and the following sentence refers to letters sent from the Association to the First Defendant denying that the Association recognized these events as having any validity. It was therefore not an abuse of process for the Respondent to craft the Claim as it did because the validity of the petition, the Special General Meeting, and the elections remained a live issue.

15. Second, despite the Applicants' contention that their concession resolves the issues, there is a risk of uncertainty and confusion should this Court fail to make a definitive pronouncement on these issues. Following the January 9<sup>th</sup>, 2022 purported Special General Meeting and elections, the First Defendant/Applicant presented himself to the Association as the Chairman of the Association, and sought to take control of the Association's premises and bank account. While these attempts were not successful and the Applicants maintain that no further attempt to take control was made after they sought legal advice, it is unclear when that advice was obtained. This Court infers from the fact that the Association filed an Application for an Interim Injunction on January 19<sup>th</sup>, 2022, and that the Applicants wrote to the Association demanding a proper election on February 4<sup>th</sup>, 2022, that the legal advice was sought as a result of the filing of the Application for an Interim Injunction. The Interim Injunction was granted by this Court on April 4<sup>th</sup>, 2022 following an *inter partes* hearing. According to the orders made by this Court, the Interim Injunction is only applicable "until the trial of the Claim or further Order of the Court". It is not an abuse of process for the Respondent to seek a definitive pronouncement from this Court with respect to the parties' legal standing as it relates to the petition, the Special General Meeting, and the election of the Board of Directors and Surveillance Committee. The absence of such a pronouncement may lead to uncertainty and confusion once the Interim Injunction is lifted.
16. Finally, I agree with the Respondent that these issues will in any event be considered by this Court in the context of the Ancillary Claim. Indeed, the underlying issue which gave rise to the events of January 2022 is whether the Association is currently governed by the 2015 Bylaws or the 2019 Bylaws. The Claim is built on the assumption that the 2019 Bylaws are valid, and that the Applicants have acted in violation of the 2019 Bylaws. The Ancillary Claim seeks declarations to the effect that the 2019 Bylaws are invalid and of no effect, and that the 2015 Bylaws still govern the Association. The events which culminated in the Applicants' attempt to take control of the Association in January 2022 are part of the broader factual context which this Court will have to consider in resolving the Ancillary Claim. Therefore, this Court disagrees that striking out these issues will save scarce judicial resources.

*Whether the Statement of Claim discloses any reasonable ground for bringing the Claim*

Distress and Inconvenience

17. The Association seeks general damages for distress and inconvenience in the Claim. The Association alleges that the First Defendant caused distress and inconvenience by publicly making false and misleading statements about the Association on social media and radio broadcasts; representing himself as a registered member of the Association in letters, petitions and in public; failing to adhere to the Surveillance Committee's letter of

expulsion; acting without authority in a letter dated January 2<sup>nd</sup>, 2022 to the Minister of Health and Wellness; acting without authority to convene the Special General Meeting on January 9<sup>th</sup>, 2022; failing to adhere to the Association's 2019 Bylaws; and acting without authority in a letter to the bank.

18. The Applicants submit that there is no independent cause of action for distress and inconvenience. They note that in the Affidavit of Vladimir Puck filed in response to the Application to Strike Out, the Respondent argues that the compensatory damages sought are “rooted in the tort of Trespass to Person – Battery, Misrepresentation and Breach”.<sup>2</sup>
19. The Applicants argue that this part of the Claim will fail as a matter of law. They cite *Regina v Secretary of State for Transport, Ex parte Factortame Ltd and others*,<sup>3</sup> a case brought by shareholders and directors of a company for damages for injury to feelings and aggravated damages on the basis of alleged discrimination. In *Factortame*, the court stated that the following principles apply in English law:

In summary I conclude that the following general principles apply:

1. The general rule remains that damages for injury to feelings or distress will not normally be awarded in English law unless the injury to feelings has resulted in physical or mental harm.
  2. Damages to compensate a claimant for distress caused as a direct consequence of the tort are confined to those torts where the claimant's loss of self-esteem is an important part of the damages for which compensation is awarded [...]<sup>4</sup>
20. The Applicants also rely on *McGregor on Damages*,<sup>5</sup> in which the author states, in relation to claim of damages for inconvenience:

Where the claimant is physically injured he may also suffer from inconvenience, but such a loss will generally be included in the damages for pain and suffering and loss of amenities of life. But where the tort has resulted in some interference with the claimant's person short of physical injury yet has caused him physical inconvenience, the latter must necessarily appear as a separate head of damage. Although the expression “damages for inconvenience” is not generally to be found in tort, damages have been expressly awarded under this head in deceit and there are other torts where damages are in effect awarded under this head. One is false imprisonment, where the claimant recovers for the loss of his liberty, though

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<sup>2</sup> Undated Affidavit of Vladimir Puck filed on September 12<sup>th</sup>, 2022 at para. 26.

<sup>3</sup> [2001] 1 WLR 942 (*Factortame*).

<sup>4</sup> *Factortame*, *supra* at para. 226.

<sup>5</sup> 18th Ed., Sweet & Maxwell / Thompson Reuters.

involving injury neither to health nor to pocket. Another is nuisance, where one of the principal complaints of a claimant is that he has been inconvenienced and annoyed by noise, smell, interference with easements and the like. And even where the action is in negligence there has been recovery for the discomfort of living in damaged property.”

21. The Applicants submit that contrary to what is alleged in the Affidavit of Vladimir Puck, no claim is pleaded or being made for compensatory damages for the tort of trespass to person or battery. In any event, the Association does not have any *locus standi* with respect to the alleged trespass to the person of the Chairman of the Association. With respect to the claims in damage for misrepresentation and breach, these are the subject of separate claims and therefore do not form part of the claim for distress and inconvenience. Even if it was so, the Respondent would not be entitled to any damages for distress or inconvenience because it has pleaded no loss of self-esteem or loss of enjoyment, and the Association sustained no physical or mental harm because it is not a physical person.
22. In response to the Applicants’ submissions on this point, the Respondent simply emphasizes the draconian nature of the strike out, and pleads that this Court should allow it to amend its Statement of Claim should it be found to be deficient.
23. I have not been persuaded that an amendment to the Statement of Claim would cure the defects noted by the Applicants under this head of damages. Damages for distress or inconvenience must be grounded in a cause of action in tort. The Association does not have the required *locus standi* to ground an action for trespass to the person on behalf of the Chairman of the Association. With respect to the cause of action grounded in misrepresentation and breach, they are the subject of a separate head of damages. Further, as a legal person, the Association cannot suffer from physical or mental harm. No amendment can cure these defects. The Association’s claim for “general damages for distress and inconvenience” must be struck out.

#### Special Damages

24. The Association seeks “special damages in the sum of \$1,567.50 and continuing” in the Claim.
25. The Applicants submit that the claim for special damages, as pleaded, is not grounded in any cause of action for which the Association would be entitled to an award of special damages. The Respondent’s answer is that the special damages were pleaded and receipts were provided.



26. The claim for special damages will not be struck out. The particulars of this claim are pleaded at paragraph 61 of the Amended Statement of Claim. Whether the Respondent is entitled to these damages will be determined following a trial of this Claim.

### Misrepresentation and Breach

27. The Association claims that the Second, Third, Seventh, Eighth, and Ninth Defendants fraudulently misrepresented themselves as members of the Association, including in the petition demanding for an election and in a letter to the Minister of Health and Wellness seeking permission for a gathering. The Association also claims that by affixing their signatures on the petition, the Fourth, Fifth, Sixth, and Tenth Defendants breached the 2019 Bylaws and are now subject to disciplinary action by the Surveillance Committee. As a result, the Association seeks damages for misrepresentation and breach in the Claim.
28. The Applicants contend that the particulars of the alleged misrepresentation fail to establish a cause of action for which the Association would be entitled to damages. In *Caye International Bank Limited et al. v Tommy Lynn Haugen*,<sup>6</sup> the Belize Court of Appeal described the tort of misrepresentation as follows:

[56] Misrepresentation is an untrue or misleading statement of fact (sometimes of law), made by one party to the other in the course of negotiating a contract, that induces the other party to enter into the contract. The meaning of fraudulent representation was developed in the old case, *Williams Derry JC. Wakefeild, M. M. Moore, J. Pethick and S.J. Wilde v Sir Henry William Peek (1889) 14 App Case 337*. It is commonly referred to as *Derry v Peek*. It was an action in the tort of deceit. Their Lordships considered fraud an essential element in the tort of deceit. Fraud is conveyed by a representation, a fraudulent representation at that. A fraudulent representation is relevant to the present appeal because it is an essential part in a claim in contract founded on misrepresentation. On page 374, Lord Herchell stated this:

“I think the authorities established the following propositions: First, in order to sustain an action in deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made, (1) knowingly or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false... To prevent a false statement being fraudulent, there must, I think always be an honest belief in its truth...”

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<sup>6</sup> Civil Appeal No. 8 of 2016 at para. 56. See also *Alvin Stephenson Sr. v Audrey Faye Pyne*, Civil Appeal No. 38 of 2018 at para. 36.

29. The Applicants submit that the Claim does not allege any of the essential ingredients of the tort of misrepresentation: there was no contract between the Association and the Defendants, and no misrepresentation which induced the Association to enter into any such contract. The Claim is therefore bound to fail.
30. With respect to the breach, the Applicants argue that even if this Court were to find that the Bylaws have been breached, there has been no loss occasioned by the breach, and none is alleged or pleaded. In addition, the Bylaws themselves provide for a remedy in the case of a breach, in that the Association can launch disciplinary proceedings, as it did in this case.
31. The Respondent alleges that there are contractual relationships to be considered. For example, the Association is bound by contract to the Sugar Industry Control Board. In addition, the Defendants' misrepresentation had a rippling effect. The Association had to put out statements to defend its image with its stakeholders. The Respondent argues that the particulars of the tort of defamation and libel are pleaded, and it should be allowed to amend its Statement of Claim accordingly.
32. With respect to the breach of the Bylaws, the Respondent maintains that the Bylaws constitute a contract, the breach of which can cause losses. At the hearing, counsel argued that, for example, a member's expulsion from the Association may result in a loss of revenue from the cane that is not delivered. Counsel noted that these losses are not yet quantifiable, but that damages have been pleaded.
33. In reply, the Applicants argue that if the issue for which the Respondent is seeking damages is the expulsion of the members, the Association should have sought declarations to that effect in the Claim.
34. I agree with the Applicants that the part of the Claim alleging misrepresentation should be struck out. For the tort of misrepresentation to be made out, the misrepresentation must have been relied upon by a party to enter into a contract with another. The Respondent has not provided any case law showing that the tort of misrepresentation exists outside of the contractual context, and this Court was unable to find any on its own. The Association has not relied upon any statement made by the Defendants to enter into any contract with anyone. This part of the Claim is bound to fail and must be struck out.
35. The Respondent argues that it has pleaded the elements of the tort of defamation or libel, and should be allowed to amend its Statement of Claim to reflect the proper cause of action. I agree. In order to recover in an action for defamation, a claimant must prove the following three elements:

1. That the words about which the claimant complains are defamatory;

2. That they referred to the plaintiff; and
  3. That they were published by a third person.<sup>7</sup>
36. A defamatory statement is one that has a “tendency to injure the reputation of another person [...] if it tends to lower him in the estimation of right thinking members of society generally or if it exposes him to public hatred, contempt or ridicule or if it causes him to be shunned or avoided”.<sup>8</sup>
37. The Association claims that the First Defendant made “false accusations against the Claimant regarding its 2019 Bylaws” and that “with an intention to tarnish the name of the Claimant and its Board of Directors, the First Defendant spoke on a national radio show, Despierta Belice, misrepresenting facts and spreading misleading information about the Claimant and its Board of Directors”.<sup>9</sup> The ingredients of the tort of defamation are pleaded, but are not sufficiently particularized. The Court will allow the Respondent to further amend its Amended Statement of Claim to plead the particulars of the tort of defamation or libel.
38. This Court will not strike out the part of the Claim related to the breach of the Bylaws. The Respondent is granted leave to amend its Amended Statement of Claim to particularize the damages alleged to have been caused by the alleged breach.

### Tortious Interference

39. The Association alleges in the Claim that the First Defendant tortiously interfered with the business of the Association by making false accusations against the Association regarding its 2019 Bylaws, which prompted the Chairman of the Sugar Industry Control Board to issue a letter alluding that the Association was negligent in not providing a copy of the 2019 Bylaws to the Sugar Industry Control Board as mandated by the *Sugar Industry Act*. The Association also alleges that the Defendants spread misleading information about the Association and its Board of Directors in the media, which caused stakeholders such as Fairtrade International, the Association’s largest donor, to question the integrity and stability of the Association. The Association alleges that it had to “shift its interest in business to addressing misinformation in the public domain” and to write to the Minister of Agriculture, Food Security and Enterprise to clarify the misinformation.

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<sup>7</sup> Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States, 2nd Ed. § 1:5

<sup>8</sup> Halsbury’s Laws of England, Vol 28, Butterworths, London (1978) paragraphs 42, 43 and 44, cited in *Sittee River Wildlife Reserve et al. v. Thomas Herskowitz and anor*, Claim No. 131 of 2016.

<sup>9</sup> Amended Statement of Claim at paras. 45-46.

40. The Applicants argue that the elements of the tort of tortious interference have not been pleaded. Relying on *OBG Ltd. and another v Allan and others*,<sup>10</sup> they allege that the elements of the tort are:
1. A wrongful interference with the actions of a third party in which the claimant has an economic interest;
  2. An intention to cause loss to the claimant; and
  3. An actual loss cause to the claimant.
41. At paragraph 49 of the judgment, Lord Hoffman explains that the acts against the third party count as unlawful means only if they are actionable by that third party. Here, none of the alleged actions pleaded amount to unlawful means or unlawful actions against any third party which would be actionable by that third party. In addition, the Association has pleaded no loss as a result of any of the alleged actions. The Association is still in control of its operations, and no third party lost its freedom to enter into any business with the Association. The pleadings therefore fail to establish any claim for damages for unlawful interference with business.
42. In response, the Respondent points to a breach in the conduct of the Association's business with its bank. According to the Respondent, it is only after the bank conducted its due diligence that it reestablished the Association's access to its account. Business was halted during due diligence. The Respondent argues that the actions of the Defendants had a rippling effect on the Association's business, which is not captured by a single act.
43. I agree that all of the elements of the tort of tortious interference are not pleaded. The only interference with a third party's action pleaded by the Respondent is the letter sent by the First Defendant to the Respondent's bank advising that he was now the Chairman of the Association and requesting access. While the parties dispute whether the Respondent actually lost access to its bank account, the Respondent has not pleaded any economic loss resulting from its alleged inability to access its bank account. An essential element of the tort is therefore missing.
44. None of the other acts pleaded by the Respondent amounts to a wrongful interference with the actions of a third party in which the Association has an economic interest. Providing misleading information is not an actionable act if the third party did not rely on that information to its detriment. There is no allegation in the Claim that any of the Respondent's stakeholders relied on the alleged misleading information in a manner that

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<sup>10</sup> [2008] 1 AC 1.

resulted in the Respondent incurring any economic loss. This part of the Claim must therefore be struck out.

*Whether the Statement of Claim is prolix*

45. The Applicants submit that paragraphs 13 to 35 of the Amended Statement of Claim should be struck out as prolix.
46. This Court will not strike out these paragraphs as prolix. These paragraphs provide some relevant background to the issues raised in this matter. Given the parties' disagreement about which set of Bylaws govern the Association, the background provided in these paragraphs, which includes the Respondent's account as to how the 2019 Bylaws came to be, is relevant.

**IT IS HEREBY ORDERED**

- (1) The Application is granted in part;
- (2) The following claims are struck out:
  - a. General damages for distress and inconvenience;
  - b. Damage for misrepresentation; and
  - c. Damages for tortious interference
- (3) The Respondent is granted leave to amend its Amended Statement of Claim in order to particularize the allegations of defamation or libel, and the damages resulting from the alleged breach of the Bylaws within 14 days of this decision;
- (4) The Applicants are granted leave to amend their Amended Defence within 14 days of the filing of the Amended Amended Statement of Claim;
- (5) A further case management conference will be held on February 17<sup>th</sup>, 2023 at 1:00pm;
- (6) Each party is to bear their own costs.

Dated December 29<sup>th</sup>, 2022

Geneviève Chabot  
Justice of the High Court