IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2018-03730

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Claimant

AND

(1) KELVIN ALLEYNE
(2) RONDELLE RADGMAN
(3) ELIZABETH ALEXANDER
(4) JAHALIA DEBYDEEN
(5) JEVAUN LANCE HENRY
(6) ZECO D HERBERT
(7) SHAZAD KHAN
(8) AYOKA SAMUEL
(9) CHARLENE JOSEPH
(10) JADE CELESTE JOSEPH
(11)LENNY VICTOR MC CARTHY
(12) MARK NURSE
(13) RYAN RAJPAUL MAHARAJ
(14) SHERRY-ANN NATALIE HAYES
(15) STEFANO TRENT AUGUSTINE ROACH
(16) KEVIN KYLE JONATHAN HENRY
(17) CHAZ CHRISTOPHER DAVID DELZIN
(18) JONATHAN JASON BAPTISTE
(19) ANDISHIRE LEE ANNE BERNARD
(20) SHERWIN JAMAL-SALIM DEBYDEEN
(21) CAROL ANN GILDING
(22) CLARISSA JOSEPH
(23) ARNOLD ANTHONY LEWIS
(24) DONILLE VERSHAUN MARK
(25) AARON PATRICK

Defendants

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BEFORE THE HONOURABLE JUSTICE JOAN CHARLES

Appearances:
For the Claimant: **MrRavi Rajcoomar and Mr Jerome Rajcoomar instructed by Ms Shivana Nath**
For the Defendant: **Mr John Heath and Mr Kelston Pope instructed by Ms Niala Narine for the 7th Defendant**
Ms Karen Des Vignes for the 13th Defendant

Mr Alexander Prince for the 14th Defendant
Mr Chase Pegus and Mr Rishi Narine for the 15th Defendant
Mr Alvin Brazer for the 24th Defendant

Date of Delivery: July 24, 2020

ORAL RULING

INTRODUCTION

1. On Friday July 24, 2020, the court gave its oral ruling dismissing the claimant's application for summary judgment. Although primarily the facts and issues were not in dispute, some elements of the case were contested vehemently. These elements required deeper investigation and analysis at trial. Due to the complex and multifaceted aspects of this case, I found it prudent that the case should be allowed to go to trial.

BACKGROUND FACTS

2. By claim form filed on October 16, 2018, the claimant instituted this action against these 25 defendants. The claim alleged and sought reliefs for fraudulent misrepresentation and/or unlawful means conspiracy or, in the alternative, unjust enrichment perpetrated against the Republic of Trinidad and Tobago via the Ministry of Labour and Small Enterprise Development (MOSLED) and its On the Job Training Programme (OJTP). It was claimed that these defendants acting in concert, together defrauded the government of seven hundred thousand five hundred and ninety-nine dollars and twelve cents ($700,599.12). The reliefs sought included damages, restitution of stipends received by the defendants, exemplary damages, costs on this claim and a related claim CV2018-01794 on a full indemnity basis to be assessed, pre-judgment interest on the stipends and costs of CV2018-01794.

3. Some of the defendants did not contest the claim and judgment was entered against them. Some of the defendants gave partial admissions on unjust enrichment only. The present ruling is primarily aimed towards defendants number 7, 14, 15 and 24 who defended against the claimant's summary judgment application. The facts of the case are not in dispute, with the exception of one or two items, but the issue for determination before the court was the interpretation of the law to the applicable facts.

NOTICE OF APPLICATION

4. The application for summary judgment was filed on September 26, 2019. The grounds of the application was to recover the moneys stolen and/or unlawfully received. Several affidavits were filed in support of this application by Natalie Willis, Lakshmi Boodan, Deniece Serrette, Videsh Samaroo, Suresh Ramdal and Shivana Nath. The application was resisted by defendants 7, 14, 15 and 24 who all filed speaking notes and submissions made on behalf thereon.

5. The claimant sought an order for summary judgment against the defendants in respect of the whole of the claim in the sum of seven hundred thousand five hundred and ninety-nine dollars and twelve cents ($700,599.12), these sums representing monies that were misappropriated from the Republic of Trinidad and Tobago, the sum of two hundred and twelve thousand one hundred and eighty dollars ($212,180.00)representing special damages being costs incurred by the State in investigating the fraud, an order that the defendants pay the claimant's costs certified fit for two counsel and an instructing attorney on an indemnity basis for the following: the claimant's application filed on October 11, 2018, the instant application filed on September 25, 2019 and the claimant's costs, and exemplary damages. Part 15 of the Civil Proceedings Rules, 1998 (as amended) provides that the court may give summary judgment if it is of the view that the defence so claimed has no realistic prospect of success. The substance of the argument advanced on behalf of all the defendants was that the court ought not to grant judgment since there were issues of fact in dispute which ought to go to trial, and that the court ought not to draw inferences of fact when at trial the defendants may be able to adduce further evidence in support of their contention that they were not part of any conspiracy with the first defendant in order to defraud the government. In relation to the defendants' submission that in cases of fraud the court ought to be slow to give summary judgment, it was conceded, as submitted by the claimant, that there is no longer any bar upon the court in granting a judgment in cases where allegations of fraud or misrepresentation have been made out although caution ought to be exercised.

<u>LAW</u>

6. The relevant sections of Part 15 of the CPR are set out hereunder:

Grounds for summary judgment

15.2 The court may give summary judgment on the whole or part of a claim or on a particular issue if it considers that—

> *(a) on an application by the claimant, the defendant has no realistic prospect of success on his defence to the claim, part of claim or issue; or*
>
> *(b) on an application by the defendant, the claimant has no realistic prospect of success on the claim, part of claim or issue.*

Claimant's Submissions

7. The claimant claimed that the evidence contained in its affidavits was sufficient to secure summary judgment against the defendants. The claimant also relied on the failure to file a defence and/or the full or partial admissions made by substantively all the defendants in this matter. Further, the claimant submitted that the court was empowered to grant summary judgment even in cases involving fraud, deceit and misconduct. A passage from ***Blackstone's Civil Practice 2019 at paragraph 34.17*** was referenced as support. In reliance on ***Palmer Birch (a partnership) v Lloyd,*** the claimant set out to demonstrate that the elements of the various torts alleged were established on the evidence. According to the claimant, it was not required to plead or prove the specific terms of the agreement or conspiracy, since that was within the unique knowledge of the conspirators[1]. The claimant also averred that it was unnecessary to prove that each member of the conspiracy knew about every detail of the scheme[2]. In relation to the pleadings and the nature of the case, the claimant asserted that the burden was on the defendants to prove that they were not part of the conspiracy. While the claimant admitted that disputes of fact remained, it was suggested that where it is clear that the case is bound to fail, summary judgment may be granted. It was stated that a review of the defences filed would highlight inconsistencies, improbabilities and a lack of credibility, which all redounded to the grant of summary judgment. The claimant maintained that unlawful mean and loss had been established on the facts and evidence of this case.

Defendants' submissions

8. The main thrust of the submissions of defendants 7, 14, 15 and 24 highlighted the difficulty in obtaining summary judgment in matters of fraud and conspiracy to defraud. It was submitted

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L'Anse Fourmi Trust Holding Company Ltd v L'Anse Fourmi Beach and Rainforest Resort Ltd and others CV 2006-00659

2 *Kuwait Oil Tanker v Al Bader* [2000] 2 All ER (Comm) 271 paragraph 133

on behalf of the 7th defendant that he must be proven to have the common design of the conspiracy before inferences of intent or deceit can be made. It was further submitted that the claimant has not proffered any evidence on fraudulent misrepresentation against the second to twenty-fifth defendants. It was stated that the burden was on the claimant to prove that there was no realistic prospect of success and therefore no reason for trial. Once the claimant has produced credible evidence of this, the defendant must show that he has a real prospect of success or some other reason that the matter should go to trial.

9. The fourteenth defendant reiterated her defence that she had no knowledge of the unlawful acts or the fact of how the money came to be in her account. It was submitted that there was an obvious conflict of fact based on the pleaded cases. It was further stated that if the court had the benefit of oral evidence at trial, it might alter the court's position on liability and quantum.

10. It was submitted that the court should be cautious in granting summary judgment since plausible defences have been filed and the strength of these cases ought to be tested by cross-examination.

Discussion

11. In the case of ***Western Union Credit Union Cooperative Society Ltd v Coreen Ammon***[3] Kangaloo JA (as he then was) held that the provisions on summary judgment in the UK were in *pari materia* to our domestic provisions and that the learning to be gleaned from the UK decision of ***TheFederal Republic of Nigeria v Santolina Investment Corporation and others***[4]was instructive and applicable in this jurisdiction. This decision was relied on by all parties, with each inviting the court to draw different conclusions there from. The salient principles emanating from that case can thus be distilled as follows:

> *i) The court must consider whether the defendant has a "realistic" as opposed to a "fanciful" prospect of success: Swain v Hillman [2001] 2 All ER 91;*
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> *ii) A "realistic" defence is one that carries some degree of conviction. This means a defence that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472*
>
> *iii) In reaching its conclusion the court must not conduct a "mini-trial": Swain v Hillman*
>
> *iv) This does not mean that the court must take at face value and without analysis everything that a defendant says in his statements before the court. In some cases it may be clear that there is no*

[3] *Western Union Credit Union Cooperative Society Ltd v Coreen Ammon* CA CIV 103 of 2006

[4] *TheFederal Republic of Nigeria v Santolina Investment Corporation and others*[2007] All ER (D) 103 (Mar)

real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. ***Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case****: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63;*

vii) Although there is no longer an absolute bar on obtaining summary judgment when fraud is alleged, the fact that a claim is based on fraud is a relevant factor. The risk of a finding of dishonesty may itself provide a compelling reason for allowing a case to proceed to trial, even where the case looks strong on the papers: Wrexham Association Football Club Ltd v Crucialmove Ltd [2006] EWCA Civ 237 at [57].

12. Therefore, the first task, which the court had to undertake in determining this summary judgment application, was to assess the respective cases to see whether the defendants, or rather each defendant who contested the application, had a realistic defence. Secondly, it was necessary to determine whether the present application required the court to conduct a mini-trial. However, the sixth principle from the ***Santolina case***, is most apt and relevant to this case and deserves emphasis. Once there are reasonable grounds for believing that a fuller investigation is warranted and may reveal new or additional information and so affect the outcome of the case, these are more persuasive circumstances for letting the case go to trial.

13. Also instructive in the determination of this matter is the learning in ***Swain v Hilllman*** [5]wherein Judge LJ opined that *"to give summary judgment against a litigant on papers without permitting him to advance his case before the hearing is a serious step."* Nevertheless, the court's duty requires this in appropriate circumstances where the case has no realistic prospect of success.

5 *Swain v Hilllman*[2001] 2 All ER 91

14. In the ***Three Rivers District Council v Bank of England (No 3) case***[6], Lord Hope of Craigshead pronounced on this issue of summary judgment:

> *I would approach that further question in this way. The method by which issues of fact are tried in our courts is well settled. After the normal processes of discovery and interrogatories have been completed, the parties are allowed to lead their evidence so that the trial judge can determine where the truth lies in the light of that evidence. To that rule there are some well-recognised exceptions. For example, it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks. In that event a trial of the facts would be a waste of time and money, and it is proper that the action should be taken out of court as soon as possible. In other cases it may be possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance. It may be clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based. The simpler the case the easier it is likely to be take that view and resort to what is properly called summary judgment. But more complex cases are unlikely to be capable of being resolved in that way without conducting a mini-trial on the documents without discovery and without oral evidence.*

He summarised by saying that that was not the purpose of the rule, the purpose of the rule was to deal with cases that were not fit for trial at all.

15. On the facts of the present case, the claimant alleged that the first and remaining twenty-four named defendants conspired together in a scheme to deprive the State of monies by submitting false documentation relative to the OJT programs and thereby were able to receive funds in excess of $700,000.00. The State also alleged that all these defendants knew each other, they acted together and they formed a conspiracy in order to receive these monies unlawfully. Some of the defendants did not contest the claim and judgment was entered. However, these defendants, in particular defendant 7, 14, 15 and 24, while admitting to the unjust enrichment of the sums that were actually deposited in their accounts, have denied that they were party to a conspiracy to defraud the State and thereby obtain these sums of money. They also denied, as the claimant has alleged, that they knew the first defendant and that they worked together with

6 *Three Rivers District Council v Bank of England (No 3) case*[2001] 2 All ER 513

him. Their case is that although these monies were deposited into their accounts, and some of them did in fact access those monies and withdrew sums, they were not part of the conspiracy.

16. Ultimately, what the court had to determine was whether this was a case that should go to trial. The 7th, 15th, 24th and 14th defendants contended that this case should not go to trial because there were disputes of fact and the claimant has not been able to establish an important aspect of their claim with respect to the conspiracy or the plot to injure by unlawful means. There was significant argument on the issue of the principles to be applied and whether the claimant had satisfied that requirement of a conspiracy to injure by unlawful means. There is one case which speaks directly to this issue, which all parties accepted as the state of the law. That is the case of ***Palmer Birch (a partnership) v Lloyd***[7] whereby the principles were enunciated as follows:
"The necessary ingredients of any claim based upon unlawful means conspiracy are:
   (1) an agreement or combination between a given defendant and one or more others;
   (2) an intention to injure the claimant; and
   (3) unlawful acts carried out pursuant to the combination or agreement as a means of injuring the claimant; and
   (4) loss the claimant suffered as a consequence of those acts."

17. When these principles from ***Palmer Birch*** are applied to this case, it would appear from the evidence before the court that the unlawful acts, being the deposit of the monies into the respective defendants' accounts, and the withdrawal from those accounts, have been established. The loss to the claimant has also been established, even by the defendants' admission of unjust enrichment, which is an admission that the claimant suffered loss. On the issue of whether there was an agreement or combination and an intention to injure the claimant, those ingredients were not clearly established and; therefore, should go to trial.
18. Given the nature of the claim that was made against these defendants, the court would have to make a finding of dishonesty and deceit against them. In the circumstances therefore, the claim ought to go to trial in order for the issue as to the nature of the relationship among the first defendant and these defendants who are challenging the application for judgment, to be fully investigated. The defendants ought to be given the opportunity to prove, as they have asserted, that they were not close friends with the first defendant and they had not acted in concert with him or anyone. In the interest of justice, they ought to be given that opportunity to advance

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7 *Palmer Birch (a partnership) v Lloyd and another* [2018] EWHC 2316 (TCC)

their defence so that the court would have all the information before it in order to determine the claim fairly and in the interest of justice.

Order

19. The application for summary judgment in respect of the whole of the claim, in the sum 0f $700,599.12 and the claim for $212000.00 in costs are hereby refused.

20. With respect to the issue of unjust enrichment, based on the admissions by the 7th, 14th, 15th and 24th defendants, the court orders:
    a) With respect to the 7th defendant, that the 7th defendant do pay to the claimant the sum of $28,542.22;
    b) With respect to the 14th defendant, that the 14th defendant do pay to the claimant the sum of $21,397.95;
    c) With respect to the 15th defendant, that the 15th defendant do pay to the claimant the sum of $60,394.65;
    d) With respect to the 24th defendant, that the 24th defendant do pay to the claimant the sum of $14,491.16

21. The court reserves on the issue of the interest payable on these sums until trial. The issue of costs including the costs of this application is reserved until trial.

Dated July 24, 2020

JOAN CHARLES

JUDGE