

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**In the High Court of Justice**

**Port of Spain**

**Claim No. CV 2018-00740**

**Sita Maharaj**

**Manohar Ramnarine**

Claimants

And

**The Attorney General of Trinidad and Tobago**

Defendant

**Before the Honourable Madam Justice Eleanor Donaldson-Honeywell**

Delivered on: February 8, 2019

**Appearances**

**Mr. Gerald Ramdeen and Ms. Dayadai Harripaul, Attorneys at Law for the Claimants**

**Ms. Vanessa Gopaul and Ms. Savitri Maharaj, Attorneys at Law for the Defendant**

**Oral Ruling**

1. Having considered the Claimants' Notice of Application filed on February 1, 2019 as well as the email correspondence between the parties and the Court, Oral submissions were heard on February 8, 2019.

2. A determination is made in this Ruling as to the application to strike out the claim pursuant to Part 26.2 of the Civil proceedings Rules, 1998 [“CPR”]. My findings are as follows.

a. Re CPR 26.2 (1)(c) - The contention that the Statement of Claim discloses no grounds for bringing the action against the Defendant

3. Having heard the submissions of both sides, I have considered the Defendant’s contention that there is no pleading in the Statement of Claim as to consideration for the alleged contract. Further the Defendant’s argument is that if there is anything to be gleaned from the pleadings regarding possible consideration it would be past consideration, which is no consideration at all. I have concluded that the Claimants’ case does indeed meet the very low threshold of arguability. There does appear, based upon the statements of Rajkumar JA in the recent Appeal in this matter CV2018-00740, to be grounds for bringing an action disclosed in the Statement of Case. This is so as it is arguable that forbearance on the part of the Claimants can be sufficient consideration.

4. That such adequate ground for a contract claim with sufficient consideration is disclosed is also supported by learning in the Halsbury’s Laws of England on Contract Vol.22 (1212) at 322:

“Where the promise forbears from suing without expressly promising to do so it may be possible to imply a promise to forbear, particularly if it follows an express or implied request from the promisor to forbear from suing...”

5. It is not unquestionably obvious to me that the Claimants’ pleadings are insufficient to show such a forbearance. Counsel for the Claimants has helpfully highlighted some reference in the pleadings to a forgone benefit.

6. Counsel for the Defendant suggests that the law on past consideration is clear and unchallengeable. However, Halsbury's laws of England, in summarising the law on past consideration, makes it clear at paragraph 320 that there are considerations of fact to be taken into account when determining whether something should be considered past consideration:

“A so-called ‘past consideration’, that is, something done by the promisee before the promise was made, may constitute a motive for the promise, but it is not valuable consideration. However, the courts do not take a strict chronological view, so that, provided the promises are part of one transaction, it does not matter in what order they were given. The question whether consideration is past, or merely executed, is essentially one of fact.”

7. These factual considerations on past consideration also point to potential arguability of the Claimants' case if the matter were to have progressed further than this stage.

b. CPR 26.2 (1) (b)-The contention that the Statement of Claim is an abuse of process of the Court

8. I do not agree with the submission of counsel for the Defendant that the fact that the pre-action protocol letter sent in 2016 was grounded in public law means that it is now an abuse of process to have filed the claim as a breach of contract matter. The reason for this change of approach was fully explained by Counsel for the Claimants.

c. CPR 26.2 (1)(d) -The contention that the Statement of Claim is Prolix and does not comply with the requirements of Part 8 of the CPR

9. Having reviewed the Claimants' pleadings, there is in my view no basis for finding them prolix. Further the detailed information provided is relevant to establishing the contract relied upon by the Defendant.
  
10. It is therefore ordered that the Notice of application is dismissed with costs payable to the Claimants to be assessed by the Registrar.

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Eleanor Joye Donaldson-Honeywell  
Judge

Assisted by Christie Borely JRCI