REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-01326

BETWEEN

NIGEL SPRINGER **Claimant**

AND

CARIBBEAN COMMUNICATIONS NETWORK LTD **Defendant**

Before The Honourable Madam Justice Margaret Y. Mohammed

Dated the 3rd July, 2018

APPEARANCES:
Mr. Mathew Gayle instructed by Ms. Sheriza Khan Attorneys at law for the Claimant.
Mr. Farrees F Hosein Attorney at law for the Defendant.

RULING

1. Before the Court is the Claimant's application filed 13th March 2018 ("the Application") to grant summary judgment to the Claimant and/or to strike out the Defendant's Defence.

2. In support of the Application were two affidavits by the Claimant. The first affidavit was filed on the 13th March 2018 ("the Claimant's First Affidavit") and the second filed on the 30th April 2018 ("the Claimant's Second

Affidavit"). The Defendant filed an affidavit by Mr Mark Peters ("the Peters Affidavit") to oppose the Application.

3. Based on the pleaded facts, it was not in dispute between the parties that the Claimant is employed by the Defendant as a debt collector pursuant to an agreement dated 1st October 2012 ("the Agreement"). According to the terms of the Agreement, the Claimant was assigned certain accounts to collect payments. The Government Information Services Limited (GISL) account was assigned to him. The GISL account consisted of outstanding debts for services provided by CCN TV 6 and Trinidad Express Newspaper. The Claimant was initially entitled to a commission of 8% on all collections over 180 days which was later varied to 120 days for government debts by memorandum dated 1st March 2013. The GISL debt was assigned to him upon it accruing over 120 days. The sum of $4,256,953.50 ("the GISL debt") was owing to the Defendant from Government agencies after 120 days and it was received by the Defendant.

4. The Claimant's case is he was able to obtain a commitment from GISL to make payment of its debt to Trinidad Express Newspapers Limited in the sum of $3,167,916.38 and the GISL debt to CCN TV 6 in the sum of $1,392,295.94 totaling $4,560,212.32. This commitment was received through a letter dated 22nd April, 2016 from GISL to the Claimant (paragraph 17 of Statement of Case). After the Defendant received the commitment from GISL to make payment on its debt of $4,560,212.32 the Claimant was able to collect a substantial amount of the payments for the Defendant (paragraph 18 of Statement of Case). The Claimant submitted cheque vouchers dated 18th October, 2016 and 29th November, 2016 along with his commission sheets, and GISL's listing of all invoices and receipts acknowledging payments. In the past there has been assistance by senior personnel in the collection of outstanding debts from GISL and in such cases the Defendant did not seek to pay the Claimant less than the agreed commission of 8%. The Claimant referred to assistance in March 2015

rendered by the then President of the Trinidad and Tobago Publishers and Broadcasters Association.

5. According to the Claimant there is no express or implied term of the Agreement which permits the Defendant to withhold payment or to disallow his commission if there is assistance from senior personnel. The Claimant claims that the Defendant unilaterally sought to alter the terms of the Agreement. As such the Claimant has instituted the instant proceedings for the followings sums:

   a. The total sum of $278,290.57 representing the value of remuneration owed and payable by the Defendant to the Claimant for collection of monies owed to the Defendant under cheque vouchers dated 10th October 2016 and 29th November 2016;

   b. The total sum of $17,845.32 representing the value of remuneration owed and payable by the Defendant to the Claimant for collection of monies on 10th February 2017 owed to the Defendant;

   c. The total sum of $10,703.42 for sick leave taken for the period 2nd December 2016 to 9th December 2016; 23rd December 2016 and 28th December 2016 to 30th December 2016;

   d. Interest on the amount of the said remuneration at the rate of 12% per annum from the date of the Claim until payment or judgment;

   e. Costs;

   f. Such further and/or other relief as the Court may deem fit.

6. The Defendant's Defence is that the Claimant is not entitled to the sum which he has claimed as commission since he was not instrumental in the collection of the GISL debt. According to the Defendant, by Clause 6 of the Agreement the Claimant is and was entitled to compensation of a travelling

allowance of $1500.00 per month and a commission of 8% on all collections over 180 days. The Claimant's performance is assessed using the Balance Scorecard tool which is used to define the Claimant's goals and objectives and measure his achievements. The terms of Clause 6 of the Agreement were modified by Memorandum dated the 1st March 2013 the collection period for receivables from the Government was changed to 120 days.

7. According to the Defendant, the change in the collection period was due to a significant increase in the receivables owed to the Defendant in particular to the receivables owed by the Government of Trinidad and Tobago ("the Government").The change in the collection periods and the commissions payable on the collections was to incentivise the collection of receivables by the Claimant in a timely manner as well as to assist the Defendant in reducing its receivables. Some of the receivables assigned to the Claimant for collection were long standing and some were nearing the limitation period for recovery.

8. The GISL debt was an account where the receivables for collection had been outstanding for a considerable time. With respect to GISL, in the event of a change of Government, the incoming administration routinely posed difficulty to settle the receivables with the Defendant for the past administration. There was a change in September 2015, after which the Defendant sought to have settlement of its receivables prior to the change of administration and encountered difficulties in collection, which included the GISL debt. GISL did not have purchase orders and invoices to support the claim for payment by the Defendant and as such purchase orders and invoices had to be supplied by the Defendant to GISL. Upon receipt of the purchase orders and invoices, there was a further delay in collection caused in large part by the GISL management structure. Once the sums payable were agreed there was a delay on account of a lack of funding of GISL by the Government since GISL is and was completely reliant on the Government to meet its liabilities.

9. The Defendant's position was that the letter dated 22nd April, 2016 from GISL to the Claimant, was a statement of account which stated that the sum of "$4,560,212.32 may be due to you". According to the Defendant the letter dated 22nd April, 2016 was an invitation for a meeting. The meeting was held on 13th May, 2016 between the executives of GISL, the Chief Financial Officer (CEO) of One Caribbean Media ("OCM"), the holding company of the Defendant, the credit manager of the Defendant and the Claimant and it was not any legal commitment to pay as alleged by the Claimant or at all. In any event, the Defendant contended that the letter dated 22nd April, 2016 cannot constitute in law any agreement by GISL to pay to the Defendant any sum as commissions as no sum was then ascertained. The Defendant attached a copy of the Minutes of the meeting recorded by the Defendant's credit manager as "B".

10. Arising out of the meeting on the 13th May 2016 and discussions between the Defendant's executives and the GISL executives, discussions took place between the CEO of OCM and the Minister of Information, the line minister of GISL, with a view to seeking his intervention and having the GISL debt settled and paid to the Defendant. In or about October 2016 to February 2017 the Defendant was paid the following sums:

Month	**Amount ($)**
October 2016	2,585,956.87
October 2016	802,381.76
October 2016	41,233.25
October 2016	18,988.80
October 2016	43,176.75
October 2016	83,760.25
October 2016	63,108.56
October 2016	5,422.25
October 2016	106,317.50
November 2016	250,081.00
February 2017	256,526.51
TOTAL PAYMENTS	**$4,256,953.50**

11. Contrary to the position asserted by the Claimant, the Defendant relied on the aforesaid pleaded facts to assert that the Claimant played no role in the collection of the GISL debt and as such his claim is unmaintainable for the sums claimed as commissions. The Defendant stated that it would refer to and rely on various items of correspondence evidencing the meetings and discussions between the CEO of OCM and members of Government as well as GISL which will be disclosed at the time of standard disclosure.

12. According to the Defendant, in an effort to resolve the dispute between the Claimant and the Defendant with respect to commissions, the Defendant through its Financial Controller, Karlene Ng Tang proposed to the Claimant by email dated 16th December ,2016 a payment of 4% commission on the monies paid to the Defendant for the GISL debt in acknowledgment of the Claimant's preliminary work on the account with GISL To date the Claimant refused to accept the said sum.

13. The Defendant also pleaded that any other claim made by the Claimant with respect to his treatment by the Defendant does not in law constitute an estoppel and/or a waiver in law of the Defendant's rights under the Agreement.

14. The Claimant did not file a Reply.

15. The Court is empowered under Rule 26.2(1) (c) CPR to strike out a Defence for disclosing no reasonable grounds for bring or defending a claim. Rule 15.2(a) CPR, empowers the Court to give summary judgment on the whole or part of the claim if the Defendant has no realistic prospect of success on his Defence or part of the Defence. The test which the Court is to apply under each rule is different. In **University of Trinidad and Tobago v Professor Kenneth Julian and Ors**[1] Kokaram J summed up the difference

[1] CV 2013-00212

in the approach under the two respective rules which I respectfully adopt as:

> "6. There is of course a fundamental difference between the two tests under CPR rule 26 and rule 15. When invoked simultaneously by a party the Court is engaged in an exercise of testing and assessing the strengths of the Claimant's case on what I will term a "soft" and then a more rigorous standard. If a claim discloses some ground for a cause of action it is not "unwinnable" and should proceed to trial. It may be a weak claim but not necessarily a plain and obvious case that should be struck out and the claimant "slips past that door". The Court is however engaged in a more rigorous exercise in a summary judgment application to determine of those weak cases, which may have passed through the "rule 26.2 (c) door" whether it is a claim deserving of a trial, whether the evidence to be unearthed supports the claim and whether there is a realistic as opposed to fanciful prospect of success. If there is none, the door is closed on the litigation and brings an end to its sojourn in this litigation".

16. The Application calls upon the Court to consider both tests. If I find that the Defendant's defence does not disclose reasonable grounds for defending the instant claim, then it would mean that there would be no realistic prospect of the defence succeeding. On the other hand, if I find that the Defendant's defence discloses reasonable grounds for defending the instant claim, then I would still have to determine whether the Defendant's grounds for defending the claim have a realistic prospect of succeeding.

17. The Claimant relied on the same grounds for striking out the Defence and the summary judgment.

18. The Claimant's grounds in support of the Application and the information deposed in the Claimant's First Affidavit were similar. According to the Claimant, the Defendant has not disputed the Terms of the Agreement and the collection of the GISL debt. The Defendant's Defence is premised on

the contention that the Defendant collected the GISL debt since its senior executives held discussions with the Minister of Information, and the line Minister of GISL. The Defendant has not disclosed any documentary evidence that payments made were as a result of any intervention on their part and were not attributed to the Claimant's efforts to collect the outstanding receivables. As such there is no material dispute of facts in this matter and the only issue for the Court is a question of law, which is whether the Claimant is entitled to the 8% commission as stated in the Agreement.

19. The Peters Affidavit disputed the Claimant's allegation that the Defendant did not disclose any documentary evidence to support its pleading that the GISL debt was collected as a result of the intervention of the Defendant's senior executives. The Peters Affidavit referred to the following documents as the proof which it relied on:

(a) An email dated the 16th December 2016 sent to him by the Defendant's Financial Comptroller, Karlene Ng Tang, in which she referred to a meeting that took place between representatives of GISL and representatives of the Defendant, namely the Claimant, the Chief Financial Officer and Mr Peters. In the said meeting the GISL representatives indicated that they had no funding to settle the GISL debt to the Defendant. She reiterated to the Claimant that the collection of debt from GISL was primarily as a result of the involvement of its senior executives in OCM and that since the Defendant had acknowledged that the Claimant had done work on the said account, the sum of 4% commission of the money which was collected was approved by the Defendant. The said email was in the Statement of Case as exhibit "J" and he annexed a copy of it "A".

(b) The Minutes of the meeting between the GISL representatives and the Defendant's representatives on 13th May, 2016 which he made. Notably, the Claimant was

present at the meeting. The said Minutes were annexed and marked "B" to the Defendant's Defence and to the Peters Affidavit.

(c) A letter dated the dated 19th May, 2016 between the CEO of OCM and the Minister of Finance which was annexed as "C". In the letter, the CEO of OCM wrote to the Minister of Finance requesting a meeting with him to discuss options for the settlement of aged receivables of the Defendant.

(d) Another letter dated 14th July 2016 where the CEO of OCM wrote to the Permanent Secretary to the Prime Minister and Head of the Public Service thanking her for an update on the payment of all outstanding Government receivables. He annexed a copy of the letter dated 14th July, 2016 as "D".

20. According to the Peters Affidavit, the letters dated the 19th May 2016 and the 14th July 2016 were disclosed in the Defendant's List of Documents dated and filed 29th September 2017 as Items 10 and 11. He annexed a copy of the List of Documents as "E".

21. The Peters Affidavit deposed that payments were received from GISL between October 2016 and February 2017. The said payments were the same which were pleaded in the Defence.

22. As such, the Peters Affidavit deposed that it had presented sufficient facts and evidence to demonstrate that it has a realistic prospect of success with its Defence since the issue which the Court has to decide at trial is whether the Claimant played any role in the collection of the GISL debt to which he claims an entitlement to a commission.

23. In response to the Peters Affidavit, the Claimant deposed in the Claimant's Second Affidavit that the Minutes of the Meeting of the 13th May 2016 were

not a true reflection of the nature and outcome of the meeting. In particular he deposed that this meeting was arranged by him in the course of conducting his normal collection duties in respect of the GISL account. In support of his contention he annexed as " NS 1" a copy of a letter dated the 22nd April 2016 sent by the GISL CEO, John Barry, to him making the commitment to honour their outstanding debts and requesting that he and the Claimant meet to discuss *'an appropriate way forward'*. The Claimant annexed the following documents:

(a) "NS 2" which was an email dated 26th April 2016 to the GISL Corporate Secretary Mrs Maharaj whereby the Claimant suggested that the meeting include *'relevant persons from both organisations'*.

(b) A chain of emails from the 27th April 2016 to 12th May 2016 in a bundle marked "NS3" showing that the meeting requested by the CEO of GISL and agreed to by him was the 13th May 2016 meeting.

24. The Claimant disputed the letter dated the 19th May 2016. His position was that it was not exhibited nor disclosed. He deposed that said letter was not relevant since it did not refer to GISL but rather to the debt previously owed by the Ministry of Education, which was not previously raised in these proceedings. According to the Claimant, the Defendant paid his full commission for the Ministry of Education debt which fell within his portfolio, including the debt of $967,662 which was mentioned in the letter dated 19th May 2016. He annexed a bundle marked "NS4" of documents which showed that he was paid his full commission.

25. Further, the Claimant deposed in the Claimant's Second Affidavit that the letter dated 14th July 2016 in the Peters Affidavit did not mention the GISL debt but the debts owed by the Ministry of Transport and Works, in the sum of $114,601.64 to the Express and $1,070.07 to CCN. The debt to the Ministry of Transport and Works had not previously been raised in these proceedings.

26. He deposed that he had also been paid his full commission based on the Agreement after the debt was collected from the Ministry of Transport. He annexed a bundle marked "NS5" to support his contention.

Striking out the Defence

27. The Court's power to strike out a statement of case or defence is set out in Part 26.2 (1) of the CPR which states:

1. "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, 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;
    c. that the statement of case or the part to be struck out discloses no 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 Part 8 or 10."

28. Abdulai Contej C.J. in **Belize Telemedia Limited v Magistrate Usher**[2] considered the interaction between striking out under the court's case management powers under Part 26 as:

"15. An objective of litigation is the resolution of disputes by the courts through trial and admissible evidence. Rules of Court control the process. These provide for pre-trial and trial itself. The rules therefore provide that where a party advances a groundless claim or defence or no defence it would be pointless and wasteful to put the particular case through such processes, since the outcome is a foregone conclusion.

[2] (2008) 75 WIR 138

16. An appropriate response in such a case is to move to strike out the groundless claim or defence at the outset.

17. Part 26 of the powers of the Court at case management contains provisions for just such an eventuality. The case management powers conferred upon the Court are meant to ensure the orderly and proper disposal of cases. These in my view, are central to the efficient administration of civil justice in consonance with the overriding objective of the Rules to deal with cases justly as provided in Part 1.1 and Part 25 on the objective of case management."

29. In the English Court of Appeal case of **Partco Group Lyd v Wragg**[3]**,** Potter LJ considered the Court's powers to strike out a claim under the equivalent UK rule and stated that cases should only be struck out: (a) where the statement of case raises an unwinnable case where continuing the proceedings is without any possible benefit to the respondent and would waste resources on both sides; and (b) where the statement of case does not raise a valid claim or defence or a matter of law.

30. Rule 10.5 CPR sets out the Defendant's duty to set out his case if he intends to defend. It states that:

> "(1) The defendant must include in his defence a statement of all the facts on which he relies to dispute the claim against him.
>
> (2) Such statement must be as short as practicable.
>
> (3) In his defence the defendant must say –
>
> (a) which (if any) allegations in the claim form or statement of case he admits;
> (b) which (if any) he denies; and

[3] [2002] EWCA Civ 594

(c) which (if any) he neither admits nor denies , because he does not know whether they are true ,but which he wishes the claimant to prove

(4) Where the defendant denies any of the allegations in the claim form or statement of case –

(a) he must state his reason for doing so;

(b) if he intends to prove a different version of events from that given by the claimant, he must state his own version.

(5) If, in relation to any allegation in the claim form or statement of case the defendant does not-

(a) admit or deny it, or

(b) put forward a different version of events,

he must state each of his reasons for resisting the allegation.

(6) The defendant must identify in or annex to the defence any document which he considers to be necessary to his defence."

31. In **Andre Marchong v T&TEC and Galt and Littlepage Limited**[4] Jones J (as she then was) at page 5 described the duty of the Defendant under Rules 10.5 and 10.6 CPR as:

"The effect of part 10.5 and 10.6 is that a defendant must, by its defence, provide a comprehensive response to the claim and state its position on each relevant fact or allegation put forward in the claim in the manner required by the rules. In particular the defendant must (i) state those facts that are admitted, (ii) state those facts that are denied and (iii) state those facts which it neither admits or denies because it does not know whether they are true but wishes the

[4] CV 2008--04045

claimant to prove. In a personal injuries case there is a further requirement a defendant is required in the defence to state whether it agrees with any medical report attached to the statement of case and where any part is disputed the reasons for so doing: Part 10.8 (2).

The rule therefore puts a duty on a defendant to deal with each fact pleaded against it by either admitting or denying the facts and will only allow a defendant to avoid that duty where the defendant has positively stated that he or she cannot do so because he or she does not know. Only in the latter case is the defendant allowed to put the claimant to the proof of the facts relied on by the claimant. In my opinion this accords with the policy of full disclosure and an avoidance of litigation on issues which are unnecessary and a waste of resources. A Defendant can no longer avoid dealing full frontally with facts by merely requiring them to be proved and may now only require proof where that defendant has stated positively and verified by a statement of truth that the facts cannot be admitted or denied because the defendant does not know whether they are true or not.

In this regard the Court of Appeal decision in the case **M.I.5 Investigations Ltd v Centurion Protective Agency Limited Civ App No 244 of 2008** is of relevance .This is an appeal from the striking out of a defence on the grounds that it did not disclose a defence to the claim. The defence as presented was a bare denial of the facts alleged in the Statement of Case. The court here was of the opinion that the Appellant had clearly failed to comply with Part 10.5(4) In those circumstances it was stated:

> "Where a defence does not comply with Rule 10.5(4) and set out the reasons for denying the allegation or a different version of events from which the reasons for denying the allegation will be evidence, the Court is entitled to treat the allegation in the claim

form or statement of case as undisputed or the defence as containing no reasonable defence to the allegation "per Mendonca JA paragraph 10."

32. It was submitted on behalf of the Claimant that the Defendant did not meet the requirements of Rule 10.5 and that the Defence amounts to an admission of the allegations set out in the Statement of Case in so far as they agree that the Agreement states that the Defendant is to pay the Claimant a commission of 8% on all outstanding receivables collected which are over 180 days or 120 days for outstanding receivables from the Government.

33. In my opinion, there is no merit with the Claimant's assessment of the Defendant's Defence since the Defendant has set out the facts that it relies on to dispute the Claimant's claim.

34. In considering an application to strike out a defence under Rule 26.2 (1) (c) all the Defendant has to do is to demonstrate reasonable grounds for defending the claim. In my opinion, the Defendant has crossed the threshold since it has set out its admissions of the allegations. It has clearly indicated the matters it denies and the reasons for denying the Claimant's entitlement to the 8% commission with a different version of the events. It also indicated that it will disclose all the documents at the time of standard disclosure which it has and which it intended to rely on to support its pleaded facts. In so doing the Defendant has demonstrated there are disputes of facts which are to be determined by the Court. In particular there is a factual dispute over the role of the Claimant, if any, in collecting the GISL debt. For these reasons the Claimant's application to strike out the Defence has failed.

Summary judgment

35. The test which the Court is to consider in determining a summary judgment application is well settled. In **Western Union Credit Union Co-operative**

Society Limited v Corrine Amman[5] Kangaloo JA was dealing with an application for summary judgment by the Claimant. The learned Judge applied the English approach on applications for summary judgment and gave the following guidance:

> "The court must consider whether the Defendant has a realistic as opposed to fanciful prospect of success: **Swain v Hillman** [2001] 2 AER 91
>
> 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 and Patel** [2003] EWCA Civ 472 at 8.
>
> In reaching its conclusion the Court must not conduct a mini trial **Swain v Hillman** [2001] 2 AER 91:
>
> This does not mean that the court must take at face value and without analysis everything the Defendant says in his statements before the court. In some cases it may be clear there is no real substance in the factual assertion made, particularly if contradicted by contemporaneous documents: **ED & F Man Liquid Products v Patel** EWHC 122
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> 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 which can reasonably be expected to be available at trial **Royal Brompton NHS Trust v Hammond** (No 5) [2001] EWCA Cave 550
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> 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

[5] CA 103/2006 Kangaloo JA

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."

36. The onus is on the Defendant to demonstrate that its Defence has a realistic prospect of success without the Court conducting a mini trial. At the time the Application was filed the parties had completed disclosure of documents but no directions were given for witness statements as yet.

37. The Defendant disclosed the following documents in its List of Documents dated and filed 29th September, 2017:

(i) Copy of letter dated 1st October, 2012 from the Defendant to the Claimant;

(ii) Copy of letter dated 27th March, 2013 from the Defendant to the Claimant;

(iii) Minutes of the meeting dated 13th May, 2016 held between representatives of the Defendant, the Claimant and representatives of GISL;

(iv) Copy of letter dated 13th May, 2015 from the Group Chief Executive Officer of the Defendant to the Honourable Prime Minister, Mrs. Kamla Persad Bissesssar;

(v) Copy of letter dated 25th May, 2015 from the Deputy Permanent Secretary Ministry of Trade, Industry, Investment and Communications to the CEO of GISL;

(vi) Copy of letter dated 26th June 2015 from the Group Chief Executive Officer of the Defendant to Senator Vasant Bharath Minister of

Trade Investment and Communications and Acting Minister of Finance:

(vii) Copy of letter dated 29th June ,2015 from the Group Chief Executive Officer of the Defendant to Senator Vasant Bharath Minister of Trade Investment and Communications and Acting Minister of Finance;

(viii) Copy of letter dated 22nd July 2015 from the Group Chief Executive Officer of the Defendant to Senator Vasant Bharath Minister of Trade Investment and Communications and Acting Minister of Finance;

(ix) Copy of letter dated 24th November,2015 from the Group Chief Executive Officer of the Defendant to Honourable Colm Imbert Minister of Finance;

(x) Copy of letter dated 19th May, 2016 from the Group Chief Executive Officer of the Defendant to Honourable Colm Imbert Minister of Finance; and

(xi) Copy of letter dated 14th July, 2016 from the Group Chief Executive Officer of the Defendant to Honourable Colm Imbert Minister of Finance;

38. In examining the realistic prospect of the Defendant successfully defending the claim the Court is required to go further than simply examining the pleadings but to examine in greater detail the facts, the documents and any other proposed evidence which it seeks to support its Defence. At this stage of the proceedings, the Court does not have the benefit of any evidence since witness statements have not been filed as yet.

39. However, the Defendant has attached documents in its Defence and disclosed several other documents to support its position that there were discussions on going between senior officers of the Defendant and senior government officials to settle debts owed to the Defendant by GISL and other government departments. In my opinion at this stage of the proceedings where there are no witness statements, the documents which the Defendant has disclosed are sufficient to demonstrate that it has a realistic prospect of successfully defending the action. I am also mindful that it would be wrong to conduct a mini trial at this stage of the proceedings without any evidence before me which the Court would be engaging in . I am of the view that the Court should not shut out the Defendant at this stage and deprive it from placing its evidence before the Court.

40. Further, the Claimant has placed much reliance on his role with respect to the meeting of the 13th May 2016. There is a dispute with respect to the Claimant's role and whether or if his intervention resulted in the collection of the GISL debt by the Defendant. From the Minutes of the Meeting there were other persons who were present. In my view based on the dispute on the Claimant's role, the Defendant ought to be permitted to lead evidence on this issue.

Order

41. The Claimant's Application filed on the 13th March 2018 is dismissed.

42. The Claimant to pay the cost of the Application to be assessed by the Registrar in default of agreement.

Margaret Y Mohammed
Judge