THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-04560

BETWEEN

D LALL

G LALL

Claimants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Thursday 5 December 2019

Appearances:

Mr. Gerald Ramdeen instructed by Ms. Dayadai Harripaul for the Claimant

Ms. Monica Smith instructed by Ms. Savitri Maharaj for the Defendant

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DECISION ON DEFENDANT'S APPLICATION TO STRIKE OUT

Introduction

[1] On 19 December 2017, the Claimant filed a Claim Form and Statement of Case in which he claimed the following relief:

i. Damages in the sum of One Hundred and Forty Thousand Four Hundred and Sixty Three Trinidad and Tobago Dollars, and Thirty Nine Cents ($140,463.39 TT);

ii. Further and/or alternatively, damages for breach of contract and/or monies due and owing to the Claimants by virtue of a Compensation Package dated 8 April 2015 the specific terms of which are set out in a Cane Farmers Statement of Payment dated 9 May 2015;

iii. Interest pursuant to **Section 25 of the Supreme Court of Judicature Act Chapter 4:01** on the sum of One Hundred and Forty Thousand Four Hundred and Sixty Three Trinidad and Tobago Dollars, and Thirty Nine Cents ($140,463.39 TT) at a rate to be determined by the Court for such period to be determined by the Court;

iv. Costs pursuant to the Civil Proceedings Rules 1998; and

v. Such further orders and/or other reliefs as the Honourable Court may deem just in the circumstances of the case.

[2] The Defendant entered an appearance on 15 February 2018. On 28 February 2018, the Defendant filed a Notice of Application for an extension of time to file and serve the Defendant's Defence pursuant to **Part 10.3(5) of the Civil Proceedings Rules 1998 as amended (the "CPR")**. By Order dated 13 March 2018, the Defendant was granted an extension of time to file and serve its Defence by 16 May 2018. On 16 May 2018, another Notice of Application was filed seeking a further extension of time for the filing and serving of a Defence. By email dated 21 May 2018 addressed to this

Court's Judicial Support Officer, the Claimants' attorney-at-law objected to the extension of time and requested that the said application be fixed for hearing. On 26 June 2018, the said application was heard and dismissed with costs to the Claimants.

[3] Incidentally, on 25 May 2018, the Defendant had filed and served its application to strike out the Claim and Statement of Case which also came on for hearing on the 26 June 2018. In that application, the Defendant also applied for an order to stay this action until the determination of the application under **Section 18(2) of the Supreme Court of Judicature Act, Chapter 4:01**. The Court directed that all submissions be filed and served by 10 August 2018.

The Defendant's Application to strike out the Claim

[4] By way of Notice of Application filed on 25 May 2018, the Defendant sought an order that:

i. This action be dismissed against the Defendant; and
ii. Costs of the application to be paid by the Claimants to the Defendant to be assessed in default of agreement.

[5] The grounds of the Application are as follows:

i. The Statement of Case is an abuse of the process of the court under **Part 26.2(1)(b) of the CPR**;
ii. The Statement of Case does not reveal a ground for bringing an action against the defendant and may be struck out for that reason under **Part 26.2(1)(c) of the CPR**; and
iii. The Statement of Case is prolix or does not comply with the requirements of **Part 8 under Part 26.2(1)(d) of the CPR**.

Nature of the Claim

[6] The Claimants indicated that they were private sugarcane farmers before the closure of Caroni (1975) Limited and sold sugarcane under a joint contract for sale to Caroni (1975) Limited. The contract between the Claimants and Caroni (1975) Limited was contract No. 70313.

[7] It was stated also that Caroni (1975) Limited has been closely associated with Trinidad and Tobago's sugar industry. It was initially owned by a foreign-based company called the Tate and Lyle Sugar Company until the year 1975. In 1975, the Government of Trinidad and Tobago (the "Government") acquired the "Caroni Conglomerate" from its foreign ownership. However, the industry continued under Caroni (1975) Limited until it was replaced by the Sugar Manufacturing Company Limited.

[8] In 2002 the Government decided to close Caroni (1975) Limited. Upon its closure, the Government allegedly developed and adopted a National Adaptation Strategy (the "Strategy"), with the aim of providing support to all the former participants, such as the Claimants, in the sugar industry who were displaced. The Strategy included the allotting of lands for agricultural, residential and industrial development. This plan was believed to be funded in part by the European Union and the Government. The Claimants expressed that an essential part of the Strategy was the provision of support mechanisms to private sugarcane farmers who supplied sugarcane to Caroni (1975) Limited and thereafter to the Sugar Manufacturing Company Limited.

[9] The Claimants stated that during the developmental stages of the Strategy, they suffered tremendously due to the lack of support from the Defendants, its servants and/or agents. However, in 2007 the Defendant

began to satisfy its obligation to former private sugarcane farmers and agreed to make a payment based on an agreed formula. It was stated that the Defendant agreed to pay each farmer a sum representing two and a half years of the tonnage produced for the past two years when sugarcane was sold at a price of Seventy Dollars ($70) per tonne. Further, the Claimants indicated that the Defendant, its servants and/or agents paid the sum of Eighty Two million ($82,000,000.00) to the 3,240 sugarcane farmers who benefitted from the agreement as a first payment of the transitional payment out of the sugar industry. The Claimants affirmed that they received One Hundred and Five Thousand Five Hundred and Fifty Six Dollars and Fifty Six Cents ($105,556.56) from said agreement.

[10] The Claimants indicated that after the initial transitional payment no other assistance was rendered. They claimed that several pleas were made to the Defendant between 2007-2014. However, it was stated that on or around December 2014 the Defendant through Cabinet agreed to approve a compensation package in the sum of One Hundred and Thirty Million Dollars ($130,000,000.00) for the sugarcane farmers as final settlement to the 2007 transitional payment. It was further agreed that the payment of $130,000,000.00 would be distributed in three tranches:

(i) 27 Million in the first tranche in 2015;

(ii) 75 Million in the second tranche in 2015; and

(iii) 28 Million in the third tranche in 2016.

[11] The agreement for the payment of the three tranches to the sugarcane farmers was contained in the "Cane Farmers Statement of Payment" issued by the Permanent Secretary of the Ministry of Finance dated 9 May 2015. The Claimants referred also to a letter of acceptance of the payment, which was drafted by the Defendant and signed by the Claimants dated 8

April 2015. By this agreement, the Defendant agreed to pay the Claimants the sum of One Hundred and Fifty Eight Thousand Three Hundred and Forty Nine Dollars and Ninety-Eight Cents ($158,349.98) in three tranches, as full and final settlement[1].

[12] Pursuant to the agreement between the parties, the Claimants affirmed that the first tranche of compensation ($17,866.58) was received in July 2015. However, the second tranche ($102,279.17) and third tranche ($38,184.22) became due and owing on 31 December 2015 and 31 December 2016, respectively. To-date the Defendant did not make any payments. As such, the Claimants alleged a breach of contract.

Submissions

[13] The Defendant contended that the Claimants' Statement of Case filed 19 December 2017 ought to be struck out and the Claimants' claim be dismissed as frivolous and/or vexatious and/or an abuse of process and/or not containing any ground for bringing this action. To reinforce this contention, the Defendant submitted that on the face of the pleadings, there was no contract, but a payment due under an agreement, which was not supported by consideration. As such, it was submitted that an agreement is not a contract unless it is supported by consideration, that is, the person suing on it must be able to show that he has either given or promised to give something of value in the eyes of the law, in return for the unfulfilled obligation of the other party on which he is suing: **Thomas v Thomas**[2].

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[1] Also stated in the Cane Farmers Statement of Payment dated 9 May 2015

[2] Thomas v Thomas (1842) 2 QB 851

[14] The Defendant argued that where one party promises the other to pay him a sum of money, if the other party promises to accept, this does not amount to an agreement supported by consideration[3]. The Defendant referenced the case of **<u>Dunlop</u>** <u>v</u> **<u>Selfridge</u>**[4] that described the giving of consideration to support a contract as, *"an act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable*."

[15] The Defendant posited that the Claimants referred to a contract in the Statement of Case at paragraph 1, with no reference to the terms of said contract. Additionally, the pleadings contained no statement that the Defendant, his servants and/or agents, breached the said terms. It was also submitted that not every arrangement under which recurrent sales occur, amounted to a contract, but can be considered as a standing offer.

[16] The Defendant advanced that in the instant case, there was no claim for breach of contract following the alleged termination of the agreement, so it maintained that there is no cause of action for the breach. The Defendant advanced also, that it was not a party to the agreement between Caroni (1975) Limited and the Claimants. Therefore, the Defendant ought not to be held liable for any claims against the company and any such claims would have had to be met out of the company's assets[5].

[17] The Defendant submitted also that the payments described in the "Cane Farmers Statement of Payment" were not described as payments made in respect of any claim for breach of contract and/or monies due and owing.

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3 The Law of Contract, 12th Edition by Treitel, para 3-008 pg. 77 and 88

4 Dunlop Pneumatic Tyre Company Ltd v Selfridge and Co Ltd (1915) AC 847 at 855

5 Dave Persad v Anirudh Singh [2017] UKPC 32

Instead, it should be seen as a formula for payment based on what the Claimants sold to the company whilst the parties were engaged in business, but not as a debt due and owing on those sales and/or damages for breach of contract. Further, the Defendant argued that even if the said payments were stated to be in consideration for those sales, it would not be contractually binding, as it would be past consideration[6]. Therefore, the Defendant stated that the statement of payment and the "Acknowledgement and Agreement to Compensation Package[7]" does not bring about an implied or expressed contract or any evidence of the Defendant's liability for breach of contract. Instead, it disclosed a payment to be made to the Claimants as a consequence of the closure of the company due to business relations prior to its closure. The Defendant maintained that the payment was clearly designed to lessen the hardship caused by the closure of the company, and therefore the failure to keep a promise under those circumstances is essentially a failure to honour a gratuitous promise, which is not enforced by the courts[8].

[18] Conversely, the Claimants submitted that the exercise of the court's power to strike out claims must be used sparingly: **Real Time Systems v Renraw**[9]. Further, it was advanced that the Claim Form set out the two particulars of the contract that were being relied upon in support of the claim. The Claimants affirmed that it was relying on the statement of payment as the contract, which was breached by the Defendant.

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6 Re McArdle (1951) Ch 669

7 Contract referred to by the Claimants and dated 8 April 2015

8 Rann v Hughes (1778) 7 term Rep 350; Eastwood v Kenyon (1840) 11 Ad and El 438; Williams v Roffey Bros and Nicholls (Contractors) Ltd (1991) QB 1 pg. 19

9 Real Time Systems Limited v Renraw Investments Limited, CCAM and Company Limited and Austin Jack Warner [2014] UKPC 6

[19] With regard to the issue of consideration for the contract, the Claimants posited that the consideration for payment of the three tranches was simply the Claimants' foregoing their entitlements under the exit strategy of the government and accepting the payment as settlement of all losses and claims that they could have had against the government. The Claimants rely upon documents "DL1" – "DL5" attached to the Claimants' Statement of Case, documents that they argue make plain the consideration for payment, namely:

(i) "DL1" in which it is stated that the payment represents payment due for 2 ½ years at $105 per tonne;

(ii) "DL2" which is signed by the Permanent Secretary of the Ministry of Planning shows the main features of the Compensation package; and

(iii) "DL3" – "DL5" demonstrate clearly from the terms and contents thereof that payment by the government represented by the three tranches was clearly in discharge of an obligation had to the eligible cane farmers.

[20] The Claimants argued that pursuant to **Section 19 of the State Liability and Proceedings Act** and **Section 76 (2) of the Constitution of Trinidad and Tobago**, the Attorney General is in fact the proper party to these proceedings, thereby refuting the Defendant's submission that the company (Caroni (1975) Ltd) and not the State should be held liable for the purported breach. Further, the Claimants contended that the Permanent Secretary of the Ministry of Planning issued said statement of payment.

[21] With respect to an alternative remedy in public law, the Claimants contended that pre-action proceedings were issued against the Prime Minister, proposing a claim for administrative relief. To date, there has

been no response to the pre-action protocol letter. In public law proceedings (in particular, judicial review) it is a recognized bar to the grant of permission where the Claimants fail to have recourse to any available alternative remedy. In this case it is submitted that the Claimants have a remedy in contract law hence their choice to pursue the case at bar.

Law and Analysis

[22] Pursuant to **Part 26.2(1) (b) and (c) of the CPR** the Court may strike out a Statement of Case or part of a Statement of Case if it appears to the court that it is an abuse of process or discloses no grounds for bringing or defending a claim.

[23] The case of **Attorney General** v **Barker**[10] defines an abuse of the court's process as "using that process for a purpose or in a way significantly different from its ordinary and proper use". Jamadar J[11] (as he then was) stated that the onus of proving an abuse of process rests on the party who is alleging said abuse. Further, the power to strike out proceedings should be considered in light of the overriding objective of the CPR[12]. In other words, if the court finds that there has been an abuse of process, striking out the proceedings should not be the only course of action. This is especially so, where the more appropriate course may be to order the Claimant to supply further details or amend their Statement of Case[13]. Jamadar J sought to provide three common categories of an abuse of process. He stated that the categories may include but are not limited to: (i) litigating issues, which have been investigated and decided in a prior case; (ii) inordinate and inexcusable delay, and (iii) oppressive litigation

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10 Attorney General v Barker [2000] 1 F.L.R. 759.

11 Danny Balkissoon v Roopnarine Persaud and J.S.P. Holdings Limited CV 2006-00639;

12 Part 1, CPR

13 Real Time Systems Limited v Renraw Investments Limited (Supra)

conducted with no real intention to bring it to a conclusion. It must be noted however, that the Defendant did not discharge its burden by advancing any arguments to illustrate how the Claimants' Statement of Case amounted to an abuse of process.

[24] This court must now determine whether the Statement of Case and Claim Form disclosed any ground for bringing the claim. According to Kokaram J, the principles for striking out a claim are clear and the interpretation of **Part 26.2(1) of the CPR** should be read generously[14]. Therefore, as long as the Statement of Case discloses a ground for bringing the claim, it ought not to be struck out[15]. The court considered also **Part 8.5(1) of the CPR**, which states that the Claim Form must include a short description of the claim and specify any remedy that the Claimant is seeking. The Claimants had a duty[16] to set out their case to provide the Defendant with an opportunity to respond and defend the allegations made. This court found that in the case at bar, the Claim Form adequately described the claim and the remedy sought. The Statement of Case, however, set out an extensive historical background as opposed to concise statements of fact as required in the CPR; nonetheless, it referenced an agreement between the parties and an alleged breach of said agreement. This is what constituted the ground for the claim.

[25] With regard to consideration, in keeping with the case of **Alliance Bank Limited** v **Broom**[17], forbearance can amount to valid consideration. Forbearance is the act of refraining from enforcing a right or obligation. As such, the promise of payment by the Government was made in exchange

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[14] Brian Ali v The Attorney General CV2014-02843

[15] Supra

[16] Part 8.6 (1) of the CPR

[17] Alliance Bank Limited v Broom [1864] 2 Drew and Sm 289

for the discharge of all obligations under the Strategy. This was evinced by the Government's intention to make a full and final payment to the Claimants.

[26] It is the Court's view that these pleadings would have constituted a *prima facie* case of valid consideration for the proposed payment for which the Claimants sue. It was for the Defendant to file a Defence to dispute these averments rather than file an application to strike out for want of consideration.

Decision

[27] In light of the above analyses and findings, this Court orders as follows:

ORDER:

1. **The Defendant's application for the striking out of the Claimants' Claim and Statement of Case pursuant to Part 26.2(1)(a),(b),(c) and (d) of the CPR is hereby dismissed.**
2. **The Defendant shall pay to the Claimants costs of the Notice of Application to strike out filed on 25 May 2018, to be assessed in accordance with Part 67.11 of the CPR, in default of agreement.**
3. **In the event that there is no agreement on the quantum of costs, then the Defendant to file and serve a Statement of Costs for assessment on or before 19 December 2019.**
4. **The Defendant to file and serve objections to items of costs on the Statement of Costs on or before 14 January 2020.**
5. **Thereafter, the Court shall quantify costs and announce its decision without a hearing.**

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Robin N Mohammed
Judge