

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No: CV2017-02194

Between

**GLOBAL COMPETITIVE STRATEGIES LIMITED**

Claimant

And

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

First Defendant

**TOBAGO HOUSE OF ASSEMBLY**

Third Defendant

**Before the Honourable Mr. Justice R. Rahim**

Date of Delivery: November 26, 2019

Appearances:

Claimant: Ms. M. Burgess

First defendant: Mr. D. Byam instructed by Ms. K. Seenath

Third defendant: Mr. T. Afonso instructed by Ms. L. Mollenville

## **REASONS**

1. On November 4, 2019 the court dismissed the first defendant's application filed on February 28, 2019 to have the Statement of Case against it struck out and the case against it dismissed on the ground that the Statement of Case revealed no grounds for bringing the case against the first defendant. Costs of both applications were reserved. The following are the reasons for this decision.
  
2. The court wishes to make it clear that the truth of the contents of the evidence in support of the claim is presumed only for the purpose of making a decision on the issue before this court. The court makes no finding of fact as evidence from the defendants has not yet been heard.

## **THE CLAIM**

1. By its further Amended Claim Form filed on January 16, 2018 the claimant seeks recovery of outstanding payments for project management services it rendered to the third defendant in the sum of \$8,826,004.07 VAT exclusive. According to the claimant, the services it rendered to the third defendant were provided under an agreement which was supplemental to a contract executed on July 12, 2006 to provide project management services to the Ministry of Education ("MOE").

## **PROCEDURAL HISTORY**

2. The first defendant filed a Defence on March 23, 2018. The Defence was filed without prejudice to any application for an order of the court to strike out all or any part of the claimant's Further Amended Statement of Case pursuant to Rule 26.2, Part 19.5 of the CPR.

3. On February 11, 2019, the court gave reasons for dismissing the applications of the defendants filed on December 21, 2018 and October 24, 2018 respectively pursuant to Parts 20.1(3) and 26.1(1) (d) of the CPR. The applications sought the court's permission to amend their respective Defences.
4. Those applications followed the fifth case management conference in this matter which was held on October 16, 2018. In each case, the defendants sought permission to amend their Defence to plead that the claim is barred by the provisions of **Section 3(1) of the Limitation of Certain Actions Act Chap. 7:09.**
5. The third defendant filed a Notice of Appeal on January 30, 2019 against the decision of January 22, 2019. The Notice of Appeal was determined on April 8, 2019, and the Court of Appeal set aside the order of January 22, 2019 and granted leave to the third defendant/appellant to amend its Defence to plead limitation only in respect of the claims arising out of the pro forma invoices set out in Schedule One, filed on July 13, 2018, numbers 25 to 56.

#### **THE APPLICATION OF THE FIRST DEFENDANT**

6. The first defendant filed a Notice of Application on February 28, 2019, with no supporting affidavit, to dismiss the claim against it pursuant to Rule 26.2 (1) (c) and 26.1 (1) (k) of the CPR and that the proceedings in relation to it be stayed pursuant to Rule 26.1 (1) (f) of the CPR pending determination of the instant application. The grounds of the application, pursuant to Rule 26.2 (1) (c) of the CPR were that the Re-Re-Amended Statement of Case filed on January 16, 2018 discloses no grounds for bringing the claim

against the first defendant as the first defendant is not a proper party to the proceedings.

## ISSUES

7. The issues for determination are as follows;
  - i. Whether the first defendant is a proper party to this action;
  - ii. Whether the Further Amended Claim Form and Statement of Case discloses no grounds for bringing or defending the claim.

### **Issue 1- whether the first defendant is a proper party to this action**

#### **The application of the first defendant**

8. The first defendant submitted that it is not a proper party to this action.
9. The first defendant argued that it admitted the claim was made pursuant to **Section 19 (2)<sup>1</sup> of the State Liability and Proceedings Act Chapter 8:02** (“The Act”), but that admission is not a material fact and is the law when instituting matters against the State. Counsel for the first defendant further argued that the MOE is not a servant and/or agent of the State whose servants are covered by the Act. The first defendant also admitted to the contracts, that a project took place, but stated that it is a stranger in respect of the outstanding sums of money<sup>2</sup>.
10. Counsel for the first defendant also argued that the facts pleaded by the claimant in its Re Re-Amended Statement of Case, do not give rise to any viable cause of action against it. To bring a claim against the State, the

---

<sup>1</sup> Section 19 (2) the Act, “Subject to this Act and to any other written law proceedings against the State shall be instituted against the Attorney General.

<sup>2</sup> See paragraph 2 of the Defence filed March 23, 2018

claimant would have to say the contract was made by agents of the State with the power to enter into the contract on behalf of the State. Further, those were questions of law and did not have to be stated in the pleadings.

11. The court notes that counsel for the defendant later agreed with the court that the first defendant should have gone a bit further in paragraph 1 of its Defence and stated that doing so would amount to a concession of law and not an admission of fact.
12. The claimant's argument in opposition was that paragraph 1 of its Re-Amended Statement of Case, provided sufficient identification of an alleged contract between the parties.

## **Findings**

### **Law and Analysis**

13. The proper interpretation of Section 19 (2) of the Act was considered by the Privy Council in the case of **The Attorney General of Trinidad and Tobago v Carmel Smith**<sup>3</sup>, that is the Attorney General is to represent and be the representative of the State.
14. **Section 76(2) of the Constitution** provides as follows for the office of Attorney General;

*“The Attorney General shall, subject to section 79 [relating to temporary incapacity], be responsible for the administration of legal affairs in Trinidad and Tobago and legal proceedings for and against the State shall be taken – (a) in the case of civil proceedings, in the name of the Attorney General; (b) in the case of criminal proceedings, in the name of the State”.*

---

<sup>3</sup> [2009] UKPC 50

15. The claimant averred at paragraphs 3-5 of its further amended statement of case, that following discussions with the Central Tenders Board (“CTB”)<sup>4</sup> and representatives of the Ministry of Education and the Ministry of Finance, the funding for the projects in Tobago would be transferred to the third defendant.
16. As such, the claimant entered into a supplemental agreement with the MOE<sup>5</sup>. The claimant averred that it assisted the CTB with all the post tender procurement management services which was approved by the CTB<sup>6</sup>.
17. The MOE is neither a body corporate nor is it a legal entity that is clothed with the capacity to be sued<sup>7</sup>.
18. Where therefore, the factual allegations are accepted, the first defendant must demonstrate that the claimant cannot succeed either on those facts or as a matter of law.
19. At the first Case Management Conference, the court established that there was a contract with the MOE, and there was a certain sum outstanding so it meant there was a breach of contract existing, in that the work was done.

---

<sup>4</sup> The CTB is an agent of the State. Section 4 (1) of the CTA reads; *“There is hereby established a Central Tenders Board which save as is provided in section 20A and in section 35 of this Act shall have the sole and exclusive authority in accordance with this Act— (a) to act for, in the name and on behalf of the Government and the statutory bodies to which this Act applies, in inviting, considering and accepting or rejecting offers for the supply of articles or for the undertaking of works or any services in connection therewith, necessary for carrying out the functions of the Government or any of the statutory bodies;”*

<sup>5</sup> See paragraph 10 of the Further Amended Statement of Case

<sup>6</sup> See paragraph 43 of the Further Amended Statement of Case

<sup>7</sup> Section 19 (8) of the Act provides; *“Proceedings against an authority established by the Constitution or a member thereof arising out of or in connection with the exercise of the powers of the authority or the performance of its functions or duties are deemed to be proceedings against the State”.*

The determination for the court is where the breach lies, whether with the first defendant and the third defendant or with one instead of the other.

20. Even though, the claimant has asserted that there was a contract with the MOE and does not directly relate to the first defendant, the court found that the first defendant is a proper party to this action. That on a practical point, the first defendant should remain as a party to ensure that the claimant, if successful would be able to recover damages and costs awarded to it. Any damages awarded would be payable by the Government of Trinidad and Tobago<sup>8</sup>.

**Issue 2- whether the Further Amended Claim Form and Statement of Case discloses no grounds for bringing or defending the claim**

21. Counsel for the first defendant argued that the first defendant is not specifically mentioned in the Further Amended Statement of Case, where the first defendant entered into a contract or breached a contract with the claimant. He further argued that the claimant is asserting a contract with the MOE, not the State and it is not for the first defendant to make an inference on the pleadings.

22. The claimant's argument in opposition was that if there is a defect in the pleadings, an amendment can be made and there is a triable issue to be tried.

---

<sup>8</sup> See *Jhagroo v Teaching Service Commission [2002] UKPC 63*, paragraph 45; "Mr Knox pointed out that since any damages would be payable by the Government (rather than by the TSC) the Attorney-General of Trinidad and Tobago is a necessary party to any further proceedings for the assessment of damages. Both sides accept that the joinder of the Attorney-General, and directions for pleadings on the issue of damages, should be dealt with by the High Court".

## **Findings**

### **Law and Analysis**

23. In Civil Proceedings Rules, 1998, as amended (“CPR”), **Rule 26.2 (1) (c)** provides;

*26. 2 (1) The court may strike out a statement of case or part of a statement of case if it appears to the court—*

*.....*

*(c) that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim.*

24. The court considered **Rule 26.2 (1) (c)** and its interpretation in the case of **Real Time Systems Limited v Renraw Investments Limited and Others**<sup>9</sup> where Lord Mance opined;

*“The court has an express discretion under rule 26.2 whether to strike out (it “may strike out”). It must therefore consider any alternatives, and rule 26.1(1) (w) enables it to “give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective”, which is to deal with cases justly. As the editors of The Caribbean Civil Court Practice (2011) state at Note 23.6, correctly in the Board’s view, the court may under this sub-rule make orders of its own initiative. There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period (at paragraph 17)”.*

---

<sup>9</sup> [2014] UKPC 6



25. In discussing the court's power to strike out pleadings, the learned authors of ***Halsbury's, Laws of England, 4th Edition***, at paragraphs 430-435, stated the following;

*".....the powers are permissive.....and they confer a discretionary jurisdiction which the court will exercise in light of all the circumstances concerning the offending pleading. . . Where a pleading discloses no reasonable cause of action... it would be ordered struck out or amended, if it is capable of amendment.....No evidence including affidavit evidence is admissible on an application on this ground and since it is only the pleading itself which is being examined, the court is required to assume that the facts pleaded are true and undisputed.....However, summary procedure....will only be applied to cases which are plain and obvious, where the case is clear beyond doubt, where the cause of action or defence is on the face of it obviously unsustainable, or where the case is unarguable....Nor will a pleading be struck out where it raises an arguable, difficult or important point of law."*

26. In ***Terrence Charles v Chief of the Defence Staff and the Attorney General CV2014-02620***, Justice Jones (as she then was) stated the following at paragraph 11;

*"A decision made by the Court under Part 26.2 (1)(c), that the statement of case discloses no grounds for bringing the claim, amounts to a decision on the merits of the case. The burden of proof in this regard is on the applicant. At the end of the day the Defendants, as applicants, must satisfy me that no further investigation will assist me in my task of arriving at the correct outcome. That said the rule ought not to be used except in the most clear of cases. Where an arguable case is presented or the case raises complex issues of fact or law its use is inappropriate."*

27. In **Zuckerman in Civil Procedure: Principles of Practice 1<sup>st</sup> Ed. at paragraph 8.51** the learned author stated that; *“in applications for striking out the court is mainly concerned with the adequacy of the parties’ statements of case, with whether they disclose reasonable grounds for bringing or defending the claim.”* Zuckerman goes on to say that *“in an application for summary judgment the court may look beyond the statements of case and consider the evidence and whether a party has a real prospect of success”*.
28. On examination of the pleadings, the court found that serious issues have been raised, in that there is a link between the MOE, the first defendant and the third defendant; and that those issues can only be properly determined at a trial. Further, although there may be a defect in the pleadings, **Part 25** of the CPR mandates that the court further the overriding objective of the rules by actively managing its cases. Such duty includes deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others.
29. For these reasons, the court therefore dismissed the application of the first defendant filed on February 28, 2019.

Ricky Rahim  
Judge