

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
Sub-Registry, San Fernando**

**Claim No. CV2020-00953**

**BETWEEN**

**KE-NET SERVICES LIMITED**

**Claimant**

**AND**

**PATRICK GORDON'S CONSTRUCTION LIMITED**

**Defendant**

**Before the Honourable Mme. Justice Jacqueline Wilson QC**

**Date of Delivery: March 9, 2021**

**APPEARANCES:**

Mr. Ronnie Bissessar instructed by Ms. Kezia Felix Attorneys at law for the Claimant  
Mr. Hendrickson Seunath instructed by Mr. Haresh Ramnath Attorneys at law for the Defendant

**DECISION**

1. On 12 February 2021, I dismissed the defendant's application for an order to strike out the claimant's statement of case or for summary judgment against the claimant. The written reasons are now provided.
2. The claimant is a limited liability company that seeks the payment of \$217,900.00 by the defendant as damages for breach of contract. The claimant alleges that it entered into an oral contract with the defendant for the performance of excavation works and that

the defendant has made part payment only for the works that were performed. The claimant alleges that the sum of \$217,900.00 remains due and payable by the defendant.

3. The defendant denies that it engaged the services of the claimant and asserts that the contract was made with Mr. Kewyn Lynch in his personal capacity and not as a director of the claimant. The defendant alleges that all of the requests for payment under the contract were made by Mr. Lynch and that all of the payments were made to him. The defendant states that it made six payments altogether to Mr. Lynch in the sum of \$393,600.00 which included an overpayment of \$45,200.00.
4. On 10 November 2020, the defendant filed an application to strike out the statement of case or for summary judgment against the claimant. The defendant alleges that the statement of case is an abuse of process of the court, discloses no ground for bringing the claim and has no reasonable prospect of success. The defendant alleges further that the claim is contrary to public policy.
5. In an affidavit sworn in support of the defendant's application, Counsel for the defendant states that the claimant expressly admits in the statement of case that payments under the contract were to be made to Mr. Kewyn Lynch and not to the claimant. Counsel asserts that an arrangement of this nature is contrary to public policy and constitutes a fraud on the company and tax evasion/ tax fraud.
6. In written submissions filed in support of the application, Counsel for the defendant relies on the well-established principle that a company has a legal personality that is distinct from that of its directors or shareholders. Counsel submits that mixing personal funds with company funds constitutes the offence of co-mingling and that the payment of company funds to a director diminishes the company's liability to income tax and is a fraud against the Board of Inland Revenue.

7. Counsel submits that if judgement were entered for the defendant it was unlikely that the claimant would be able to afford to pay the defendant's costs hence the reason for which the claim was brought in the name of the company.
8. Counsel for the claimant refutes the defendant's allegations of criminal conduct. Counsel submits that the defendant's allegations raise disputed issues of fact which must be resolved on the evidence.
9. In response to the claimant's submissions, Counsel for the defendant argues that the pleadings suggest that the claimant was a "paper company" that was unable to pay its employees and relied on the defendant's payments to meet its financial obligations.
10. There is no dispute that the contract between the parties was not reduced into writing. The claimant and the defendant disagree both as to the terms of the contract and the parties to it. These disputed facts cannot be resolved on an application for summary judgment and arise for determination on the evidence that is led at the trial.
11. Further, the allegations of criminal conduct made by the defendant are neither pleaded in the defence nor discernible from the facts that are so pleaded. To raise allegations of this nature in submissions when no material facts are pleaded to support them is a startling and egregious breach of the Civil Proceedings Rules and an abuse of the process of the court. The defendant's reliance on such allegations in support of the summary judgment application is misguided and the application therefore fails.
12. The court's power to strike out proceedings or grant summary judgment is an exceptional jurisdiction that enables the court to protect its procedures from misuse. Suitable cases include those that raise an unwinnable case or where the continuation of proceedings is without any possible benefit and a waste of resources: *Swain v Hillman* [2001] 1 All ER 91.

13. For the above reasons, I concluded that the defendant's application failed to satisfy the requirements for summary judgment or for an order striking out the statement of case. Therefore, I dismissed the application and ordered the defendant to pay the claimant's costs to be assessed by this court in default of agreement.

Jacqueline Wilson QC

Judge