THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Port of Spain

Civil Appeal Number: P 031 of 2018

Claim Number: CV 2017-02463

BETWEEN

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Appellant

AND

MOOTILAL RAMHIT AND SONS CONTRACTING LIMITED

Respondent

****

APPEARANCES:

Mr. Martin G. Daly, S.C., Mr. Rikki A. Harnanan, Mr. Duncan Byam, Ms. Lesley Almarales, Ms. Sangeeta Latchan for the Appellant

Mr. Ramesh Lawrence Maharaj S.C., Mr. Prakash Deonarine, Ms. Odette Clarke for the Respondent

PANEL:

A. Mendonça JA

J. Jones JA

P.A. Rajkumar JA

DATE OF DELIVERY: 23 November 2018

I have read the reasons for decision by Justice of Appeal Rajkumar and I agree with them.

…….

A. Mendonça

Justice of Appeal

I also agree.

……

J. Jones

Justice of Appeal

TABLE OF CONTENTS

Delivered by P. Rajkumar JA

Background

1. The appellant is the Attorney General of Trinidad and Tobago. The respondent is a contractor that entered into a contract, (the contract), with Education Facilities Company Limited (EFCL), a wholly State owned Limited Liability Company. The contractor's claim is against EFCL for outstanding payments on an interim payment certificate (IPC), retention monies, and loss of profit. The respondent contractor claims that when it entered into the contract with EFCL, EFCL was the agent of the State, and the State, (represented by the appellant), was actually the principal of EFCL, whether undisclosed or otherwise. The respondent claims that as a consequence the State is directly liable to it under the contract between EFCL and the respondent.

2. Further, the respondent claims that the works that it contracted with EFCL to provide were in fact for the benefit of EFCL's principal, the State. It claims that the State, having received such benefit would be liable to reimburse the respondent. The respondent therefore now also (under an amended claim form and statement of case filed March 7 2018) seeks to attribute liability to the State on the basis of unjust enrichment.

3. The appellant's response, in summary, is that the Central Tenders Board Act (CTBA) prohibits any party, other than the Central Tenders Board (CTB), from being an agent of the State in respect of a contract such as the instant one, where none of the statutory exceptions applies. Therefore EFCL would be statutorily precluded from being an agent of the State under the contract. In consequence the State could not be the principal of EFCL under the instant contract so as to render it a party to whom contractual liability could be ascribed. Further, it contended that the principle of unjust enrichment could not apply as there was

no contract possible between it and the respondent contractor, unless effected through the CTB.

4. Notwithstanding the substantive arguments, the appeal before this court is in fact a procedural one. It arises from decisions of the Honourable Justice Honeywell on 15th January 2018. Those decisions were:

i. dismissal of the application of the appellant to strike out the respondent/ contractor's claim against it.

ii. the decision to grant an extension of time to the appellant to file and serve its defence, where allegedly no application or request for such extension was made on behalf of the appellant.

5. The appellant filed a procedural appeal against the first decision, and the respondent filed a cross appeal against the second decision.

Issues

6.

i. Whether the trial judge was wrong or plainly wrong to dismiss the appellant's application to strike out the respondent's claim against it.

ii. Whether trial judge was plainly wrong, in the exercise of her discretion, to grant an extension of time to the appellant to file and serve a defence.

Disposition

7. In relation to the first issue the trial judge was wrong to dismiss the application to strike out. The instant contract is between EFCL and the respondent. The CTBA, (subject to exceptions which are inapplicable here), by its express terms confers **sole and exclusive authority** on the CTB to act for, in the name or on behalf of the Government in accepting 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. Accordingly it does not authorize or permit any party or entity other than the CTB, to be an **agent** of the State for the purpose of a contract with the State, such as the instant contract, 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.

8. In the instant circumstances the express language of the CTBA does not permit any scope for agency on behalf of the State whether **actual** or **apparent**, other than by the CTB. Likewise for the same reason neither **estoppe**l nor **representation** could be invoked to establish such agency as the CTBA similarly will expressly preclude any such agency on behalf of the State by any party other than the CTB.

9. Neither does it permit the converse, because EFCL is statutorily precluded from being an agent of the State and the State is precluded from being the **principal** of EFCL under such a contract. Because the CTBA expressly does not permit the State to be a **disclosed** principal of any party other than the CTB, it equally therefore cannot permit the State to be an **undisclosed principal** under a contract such as the instant contract between EFCL and the respondent. Therefore none of the above mechanisms would have been effective in law to permit EFCL to have been an agent of the State in the instant circumstances so as to permit the creation of any contract between the respondent contractor and the appellant under which the State, (in addition to EFCL), could be liable as a principal.

10. Because, as a matter of law**,** the claim in agency against the State is precluded by the express terms of the CTBA, even evidence at trial of any such agency whether via actual, apparent or ostensible authority, representation, or estoppel was not capable of overriding the statutory prohibition against agency

on behalf of the State, in relation to the subject contract, by any party other than the CTB.

11. Accordingly such part of the Statement of Case that references or claims any agency by EFCL on behalf of the State, or asserts that the State was the principal of EFCL for the purpose of the subject contract, (being expressly precluded by the CTBA), should have been struck out as having no foundation in law. The statement of case should be and is therefore struck out against the appellant.

12. However the issue of **unjust enrichment**, (introduced after judgment by a proposed amendment to the claim form and statement of case), was not ventilated before the trial judge. The first Case Management Conference had not been concluded. The issue of unjust enrichment arising from that proposed amendment, including a possible application by the respondent to join the appellant based thereon, may be the subject of further consideration by the trial judge.

13. The second issue, (the trial judge's exercise of her discretion to grant an extension of time to the appellant to file and serve its defence), should not therefore have arisen. Were it not for the subsequent amendment, the striking out of the original statement of case would have removed the appellant as a party to this action, and no defence by it would have been necessary. The respondent's cross appeal therefore fails.

Order

14.

i. The appellant's appeal is therefore allowed.

ii. The order of the trial judge with respect to the costs of the appellant's application filed October 3rd 2017 is set aside.

iii. The respondent's cross appeal filed on January 30th 2018 is dismissed.

iv. It is ordered that the Statement of Case filed on the July 5th 2017 be struck out against the appellant and the claim against it be dismissed.

Analysis

Chronology

15.

i. July 5th 2017 - Claim form and statement of case filed

ii. July 6th 2017 - Claim form and statement of case served

iii. October 3rd 2017 - Service of defence due

iv. October 3rd 2017 - Application filed by Appellant to strike out the claimant's statement of case against it and for an order staying the proceedings until the application was determined. (No affidavit filed in support of the application. No defence filed)

v. November 6th 2017 - Submissions filed by appellant in support of the application.

vi. January 15th 2018 - Judgment of Honeywell J

vii. January 29th 2018 - Notice of appeal filed

viii. March 7th 2018 – Amended claim form and statement of case filed to include, inter alia, claim based on unjust enrichment.

Principles re striking out application

16. Part 26.2 (1) **Civil Proceedings Rules**

> **Sanctions—striking out statement of case**
>
> **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;

(Although the appellant relied also on Part 26.2 (1) (b) of the CPR (abuse of process) and Part 26.1 (1) (k) – (dismissal after decision on preliminary issue), these will be inapplicable as a. the action, being salvageable by amendment, was not an abuse of process, and b. dismissal of it at this stage would not be justified.)

Whether claimant's claim against the appellant discloses no grounds for bringing the claim

17. This would depend upon:-

(a) whether in the circumstances of this case as a matter of **law** CTBA section 20A (1) (c) permits agency on behalf of the Government by an entity other than the CTB;

(b) whether **evidence** was required to determine the applicability in law of section 20A (1) (c) of the CTBA. The trial judge considered that the effect of the judgment of the Honourable Nelson JA in **AG v Motilal Ramhit and Sons** CV App 124 of 1996 was also relevant to the determination of that issue;

(c) whether, (even if the CTBA applied so as to preclude any contractual relationship between the respondent and the appellant), could the principle of unjust enrichment apply notwithstanding the absence of a contractual relationship between respondent and appellant.

The Pleaded Case

18. The appeal was based on the pleaded case as it stood at the time of the judgment. It did not then contain a plea of unjust enrichment. The appellant contended that this court therefore had the option to strike out the pleading insofar as it related to an allegation of the existence of a contract with the State via agency on its behalf by EFCL. If so such part of the proposed amended statement of case as dealt with the newly introduced plea of **unjust enrichment** could be left for further consideration by the trial judge at the appropriate time.

19. Alternatively, it was contended that equally, this court could, at this stage, strike out **both** the aspects of the claim that dealt with alleged contract with the State via alleged agency through EFCL, as well as unjust enrichment.

The Central Tenders Board Act

20. It is not in dispute that a. there is a valid contract between the respondent contractor and EFCL and b. that CTB procedures did not apply to that contract. The appellant's argument is that under the CTBA the only body **authorized** "*to act for*, *in the name of and on behalf of the Government"* with sole and exclusive authority to accept offers for "*undertaking of works or services in connection therewith, necessary for the carrying out of the functions of government*" is the CTB. Section 4 is set out hereunder (all emphasis added).

> ***4.*** *(1) 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;*

(b) to dispose of surplus or unserviceable articles belonging to the Government or any of the statutory bodies.

(2) The Board shall have such other functions and duties as the President may by order prescribe from time to time.

"Necessary for carrying out the functions of the Government"

21. The respondent contends that the CTBA only deals with contracts necessary for carrying out the functions of the Government or (any of the statutory bodies), while the instant contract to build a school was neither. However, there is no reason why, in a State which:-

a. provides free secondary education, and;

b. in which the majority of teachers in the public school system are State employees under the jurisdiction of a Teaching Service Commission, (whose role, function, authority, and jurisdiction are enshrined in the Constitution),

the associated, (though not exclusive), non-commercial-provision of schools and their construction could be said not to be a function of the Government.

22. Because it is a function of Government, the procurement of works and services, if in the name of or on behalf of the Government itself, is required under the CTBA to be effected via the CTB, which alone is solely and exclusively authorised to do so.

23. There is no issue as to whether the appellant pleaded a cause of action against the State. Clearly it pleaded at paragraph 4 of the statement of case that the State was the principal and/or undisclosed principal of EFCL and that EFCL was its agent.

24. The effect of section 4 of CTBA is that while EFCL could enter into a valid contract with the Respondent, it could not be authorized to act for or in the name of or on behalf of the Government to accept offers for the supply of articles or for the undertaking of works or services in this regard.

25. The appellant contends that this is exclusively a matter of law. The respondent, with whom the trial judge agreed, contended that it could be a question of mixed law and evidence, and therefore inappropriate for summary disposition at this stage on a striking out application.

26. The issue assumes significance if recovery, or full recovery, against EFCL is in question. Otherwise the respondent contractor, if successful, could pursue recovery against EFCL on its contract, the validity of which has not been challenged.

Policy of the CTBA

27. The CTBA is quite specific in its language as to who can act in the name of and on behalf of the Government. The CTB, save for specified exceptions, shall have the sole and exclusive authority to do so in accepting offers for the supply of articles, or for the undertaking of works necessary for carrying out the functions of Government. Examination of the CTBA itself reveals:

a. an intention to largely insulate the Government from direct participation in the procurement process by the mechanism of the interposition of a separate independent body, the CTB[1]. (Section 4, 20, 26)

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[1] ***20.*** *(1) Subject to section 19, whenever articles or works or any services in connection therewith are required to be supplied to or undertaken on behalf of the Government or a statutory body to which this Act applies, the Government or such statutory body*
shall make written request to the Board to invite on its behalf offers for the supply of those articles or for the undertaking of the works or services in connection therewith.
(2) The request referred to in subsection (1) shall contain a sufficient description of the articles, works or services to be supplied or undertaken.
(3) On the receipt of any such request, the Board

b. an intention to provide transparency with respect to expenditure of State funds on non-excepted contracts by requiring the CTB to be interposed between a tenderer and the Government via the mechanisms of:

i. requiring the Government to make written requests to the CTB to invite on its behalf offers;

ii. requiring the CTB, not the Government to invite such offers;

iii. requiring acceptance of such offers to be notified by the CTB not the Government;

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shall either—
(a) invite members of the public in general to make offers for the supply of such articles or for the undertaking of such works or services, as the case may be, by Notice published in the Gazette and in local or overseas newspapers, or
(b) subject to the approval of the Minister, invite such bodies or persons as may be selected by the Board to make offers for the supply of such articles or for the undertaking of such works or services, as the case may be, whenever the Board considers it expedient or desirable so to do.
(4) The Notice shall contain—
(a) a sufficient description of the articles required or of the works or services to be undertaken and shall whenever necessary also contain the place where and the time when additional information relating thereto can be obtained;
(b) the form or manner in which an offer is to be made;
(c) the date and time within which an offer is to be made;
(d) the place where and the manner in which the offer is to be submitted; and
(e) the date and time for the opening of the offers.

***25.** (1) Where an offer has been accepted—*
(a) the person who has submitted the offer shall be notified by the Board of its acceptance, and the Board shall, whenever it deems it necessary so to do, inform him that he is required to enter into a formal contract with the Government or statutory body, as the case may be, at whose request offers were invited; and(b) the Government or the statutory body on whose behalf offers were invited, shall be notified by the Board of the Board's acceptance of the offer.
(2) The notification referred to in subsection (1) is to be in writing and signed by the Chairman or, in his absence, by the Deputy Chairman.

***26.** (1) Where an offer has **been accepted by the Board** or a committee acting for and on behalf of the Board, the Government or the statutory body at whose request the invitation to offer was issued and the person whose offer has been accepted shall **enter into a formal contract** for the supply of the articles or the undertaking of the works or services, as the case may be.*
(2) A formal contract shall be in such form, and contain such terms, conditions and provisions, as the Board may determine.
*(3) The Board shall **publish in the Gazette** the **name of the person or body to whom the contract is awarded**, the **amount of the tender** and the **date on which the award was made**.*

iv. only at that point requiring a formal contract to be entered into between the Government and the successful tenderer;

v. requiring publication in the Gazette (section 26) of the names of the parties to whom contracts are awarded, the date on which the award was made, and the amount of the tender.

28. The CTBA thus provides mechanisms for public procurement that minimize the possibility of collusion or favouritism in the award of contracts and the allocation of State funds. These mechanisms are consistent with a deliberate intention to avoid circumvention of its terms by mechanisms which evade the involvement of the CTB.

29. The purpose of section 4 of the CTBA was considered in the case of **Jusamco Pavers Limited v The Central Tenders Board** H.C.A. No. 1413 of 1999 delivered 31st January 2000 per the Honourable Mendonça J (as he then was). (all emphasis added)

> *Section 4 of the Ordinance establishes the Respondent and provides that it shall have the sole and exclusive authority to act on behalf of the Government and the Statutory Bodies to which the Ordinance applies in inviting, considering and accepting or rejecting offers for the supply of articles for the undertaking of works or any services in connection therewith necessary for carrying out the functions of Government or any of the Statutory Bodies.* ***The Ordinance seeks to place in the hands of the Respondent the responsibility for the procurement of goods and services on behalf of the Government*** *and the Statutory Bodies. The Board is made up of public officers and other members appointed under the Ordinance.* (page 9)

Quite clearly the Ordinance ***seeks to place the function of procuring goods and services on behalf of Government and Statutory Bodies in the hands of an independent body namely the Respondent****. The Board is made up of public officers and other members of the public appointed by the President****. The Government*** *and Statutory Bodies are* ***removed from the process****.* ***An indication of this*** *may be found in* ***Section 26(3) of the Ordinance*** *which* ***requires the Board to determine the terms and conditions of the contract*** *into which the successful tenderer may enter.* (page 10)

It is for the Board to determine the information necessary for the assessment of the offer and the tenderer's capacity to execute the offer. If apart from providing the description of the goods and services required, the Government or Statutory Body could also dictate the appropriate price of the articles and services and how the tenders are to be assessed ***that would deprive the Respondent of much of the purpose for its existence and would rob the Ordinance of its meaning.*** (page 11)

30. The CTBA is specifically drafted to avoid the State's bypassing its procurement procedures to directly incur liability (in a contract such as the instant one) except via the CTB, its sole authorized agent. Therefore, even if EFCL arranged for the provision of such works at the request and direction of the State, this cannot override the express statutory prohibition against any party, not being the CTB, being an agent of the State for this purpose.

31. If a wholly State owned company with a separate legal personality, such as EFCL, were to contract with a third party that, by itself, would not be impermissible. (See **NH v UDECOTT** infra). What is impermissible under the CTBA is such a State owned company being **also** deemed in law an agent of the State for the purpose of ascribing liability to the State.

32. In **WASA v Sooknanan Singh** Civ App 106 of 1989 delivered 14th March 1997 at page 14 the Honourable de la Bastide CJ as he then was , examined the equivalent to section 4 (1) (a) of the CTBA (section 35 of the Central Tenders Board Ordinance-CTBO). He considered that section 35 of the CTBO had no relevance in the context of that case. He did express the following view however "…while I hesitate in the absence of fuller argument to come to any firm conclusion on the matter, I am inclined to the view that if a contract is entered into by a statutory body directly with a contractor without the intervention of the Central Tenders Board, such a contract will **not be void** unless there is an awareness by the parties that they are acting **in breach of the Ordinance** and an intention by them to act in defiance of it". In that case WASA was a statutory body subject to CTBO procedures. The Honourable Chief Justice made it clear that this was his provisional view with regard to that issue which he emphasised was not discussed in any depth by counsel in that case.

33. However that case is distinguishable and those observations must be considered in their proper context. While in that case there was a purported contract with WASA, (which was subject to the CTBO), in the instant case:

(i) the Government did not purport to enter into any contract with the contractor. The instant contract is between the respondent and EFCL, a separate legal entity/corporate personality.

(ii) there is no contention that the CTBA applies to that contract.

(iii) there is no contention that the contract was void as a result of breach of CTBA procedures. Nothing precludes action for recovery by the respondent against the contracting party EFCL.

Trial Judge's Reasoning

34. The trial judge at page 3 of her Ruling referred to the possibility of the reasoning in **AG v Motilal Ramhit** Civ App 124 of 1996 delivered 24 January 2000

by the Honourable Nelson JA being applicable or distinguishable on the facts pleaded by the claimant and yet to be pleaded by the other parties and presented in evidence. That case is distinguishable both on the facts pleaded by the claimant and as a matter of law as there was in that case, on the face of it, **a contract between the State and the contractor**.

35. The issue there however was whether persons who purported to have entered into that contract on behalf of the State, had been properly **authorised** to do so on its behalf. It was in relation to that situation, where there was already a prima facie contract with the State, that the issue of the **authority** of persons purporting to act on its behalf was held to raise an **evidential requirement** on behalf of the State to displace it. In the instant case, however the State is not a named party to any contract. On the documentation EFCL is the contracting party. In the instant case there is no prima facie contract between the contractor and the State. It is not a case therefore where evidence is required to rebut a prima facie contract with the State.

36. Further, there is no contract with the State unless one can be imputed via **agency** through EFCL. However unlike in the earlier ***Ramhit*** decision, such an agency on the part of any party other than the CTB is precluded by the CTBA as a matter of law. There would therefore be no evidential onus on the State to disprove a prima facie contract with the respondent because the CTBA here, on its face, precludes any contract with the State via EFCL as agent coming into being in the first place.

37. The explanation by the Honourable Nelson JA at page 7, that "it is therefore manifest that a person relying on the Ordinance (CTBO) has initially an evidential burden to show that there is a lack of actual authority in the contracting officer" must be understood in its proper context. In that case the contracting

officers were persons employed by the State and fell within a class of persons who could conceivably have possessed delegated authority to enter into contracts on behalf of the State. Based on his finding that the works in that case were in respect of the several contracts each of a value not exceeding $5000.00, he concluded that it could not properly be contended that the sum claimed raised a presumption that the CTBO applied to those said works[2]. Not so in the instant case, where the CTBA applies, and where, because the CTB has the sole and exclusive authority to enter a contract such as the instant one, EFCL is precluded, as **a matter of law** from being the agent of the Government or the State.

38. The further observations, obiter, in relation to the preservation of civil remedies despite illegality of a contract would be inapplicable in the instant case. There is no contention that the instant contract was illegal as a result of non-compliance with CTBA procedures. As these are inapplicable, there is therefore no issue of any criminal default by any party. Neither is there any issue therefore of any party to the instant contract in consequence being deprived of civil remedies.

39. The trial judge therefore erred in considering that facts yet to be pleaded or presented in **evidence** could displace the effect of the CTBA in law on the issue of alleged agency by EFCL.

Failure to follow CTBA Procedures – relevance

40. In her oral reasons the trial judge had declined to grant the appellant's striking out application, as she considered *"the grounds for striking out put forward by the second defendant do not present an open and shut case. Instead* ***evidence*** *is required with regard to the lack of agency point. Also a great deal more* ***factual framework*** *and* ***legal analysis****, such as would emanate at trial, is required*

[2] And in particular regulation 12 of CTB regulations 1965

*to prove as alleged that **CTBA procedures were applicable and not followed** and **if so** there was **no contract**."* [Paragraph 5 oral reasons].

41. However the appellant's argument is not that the CTBA procedures were applicable and not followed. Its position is that in relation to a contract between the respondent contractor and EFCL, the CTBA procedures did not apply.

42. There is therefore no issue of *"CTBA procedures being applicable but not followed"* as being the reason for there being "no contract". In relation to the State there can only be a contract between the respondent contractor and the State through its only **statutorily authorized agent** the CTB. The CTB not being party to the contract with the respondent contractor, there could, in law, be no contract between the respondent contractor and the State. There is no dispute that there is a contract between the respondent and EFCL to which CTBA procedures did not apply.

43. Another issue identified by the trial judge at paragraph 6 of the oral reasons was expressed as follows *"is it that failure of a State Agency to apply CTBA procedures cannot deprive the other party of rights to sue on the contract"*. However, it is not part of the appellant's case that there was a failure of a State agency to apply **CTBA procedures**, or that any such failure invalidated the contract between the respondent contractor and EFCL or deprived the respondent contractor of rights to sue on that contract, or invalidated a contract between the respondent and the State. The appellant's case is that **in relation to the State** no contract came into being because no contract could be effected on its behalf by EFCL because EFCL could not in law be an agent of the State for such a contract.

44. None of these matters, even if supported by evidence at trial, would be capable of displacing the fundamental requirement of the CTBA that, as a matter

of law, only the CTB can be an agent for the State in a contract such as the instant one under consideration.

Whether exceptions are applicable

45. It should also be considered however,

a. whether EFCL is absolutely precluded by the express terms of section 4 of the CTBA from being an agent of the State so as to be capable of being affixed with liability as a principal under the contract between EFCL and the respondent, or,

b. whether any other provisions of the CTBA might be applicable to alter this result.

46. The trial judge raised the possibility of s. 20A (1) (c) being applicable if the ***Government could be seen to have contracted the works to EFCL*** (as a wholly owned State company), and **EFCL** in turn ***subcontracted (the works) to the claimant*/respondent**. She considered that this could have been a mechanism by which the Government would be authorised to enter into a contract with EFCL "without going through the CTB". In that case she considered that *"detailed **evidence** of the contracting mechanism would have to be considered as well as an analysis of the effect of the CTBA thereon **before** deciding whether the (*appellant's*) position is a good defence to liability".*

47. Section 20A[3] of the CTBA does provide for exceptions to section 20(1) and permits the Government to act on its own behalf in the circumstances specified

[3] ***20A.*** *(1) Notwithstanding the provisions of section 20(1), the Government may act on its own behalf where—*
(a) as a result of an agreement for technical or other co-operation between it and the Government of a foreign State, the latter designates a company to supply the articles or to undertake the works or any services in connection therewith;
(b) the articles or works or any services in connection therewith are to be supplied or undertaken by a company which is wholly owned or controlled by a foreign State;
(c) it enters into a contract with the National Insurance Property Development Company Limited or a company which is wholly owned by the State, for the supply of articles or for the undertaking of works or services in connection therewith;

therein. Section 20A (1) (a), (b), (d), (e) and (f) are clearly inapplicable. The trial judge considered the possible applicability of section 20A (1) (c) (set out hereunder).

Subcontracting

48. **Section 20A (1) (c) CTBA** (all emphasis added)

> ***20A.*** *(1) Notwithstanding the provisions of section 20(1), the Government may act on its own behalf where—*
>
> *(c) it enters into a contract with the National Insurance Property Development Company Limited or* ***a company which is wholly owned by the State****, for the supply of articles or for the undertaking of works or services in connection therewith;*

49. However, the respondent did not plead that the Government ever contracted with EFCL. Its pleaded case was that **EFCL** contracted with the respondent contractor. Nowhere did it plead the fundamentally different case that the Government contracted with EFCL, and that EFCL then contracted or subcontracted with the respondent. There is a plea at paragraph 7 (f) of the statement of case and amended statement of case, that the first defendant is "contractually accountable" to GORTT. However this is one of several particulars of a plea that the State was in **control** of EFCL. It is not a plea that the State had contracted with EFCL, and EFCL in turn subcontracted with the respondent.

> *(d) it enters into a contract with a company for the purchase of books for official purposes;*
> *(e) as a result of the occurrence or anticipation of flooding, hurricane, landslide, earthquake or other natural disasters, the Minister is of the opinion that an emergency situation has arisen in any part of Trinidad and Tobago, the abatement, prevention or alleviation of which necessitates the obtaining of articles or the undertaking of immediate works or services by the Government; or*
> *(f) items and services listed in the Third Schedule are approved by the Minister as being required for the purposes of the Trinidad and Tobago Defence Force or for the protective services.*

50. Further, this pleading was in support of the earlier pleadings at paragraphs4 and 5 of the statement of case that EFCL by virtue of such control was an agent of the appellant. It is not therefore necessary to consider whether, if that had been the case, the respondent's claim against the State under a **subcontract** with EFCL, based upon a **contract between the Government and EFCL**, could be sustainable as a matter of **facts** yet to be pleaded and evidence presented. This unpleaded subcontracting exception is also inconsistent with the exhibited written contract or the exhibited IPC which actually was exhibited in support of the respondent's pleading. The possibility therefore of evidence emerging of such a subcontracting mechanism (which might in turn provide a means of bypassing the CTBA, and permitting direct liability to be ascribed to the appellant), simply does not arise, as, on the respondent's pleading, there could be no such evidence in support. This would be so even on the statement of case as amended.

51. These were all matters that were pleaded in support of the contention that, apart from the written contract between EFCL and the respondent contractor, there existed a contract between the respondent contractor and the State. However, these were all matters that, even if supportive **evidence** were to be led at trial, would be directed to establishing **agency** by EFCL on behalf of the State, (such that the State would be liable as **principal** under the contract between EFCL and the respondent).

Disclosed or undisclosed principal - Apparent or ostensible authority – Representation – Estoppel

Disclosed or undisclosed principal

52. The CTBA precludes the Government/ State being the principal of EFCL as EFCL could not be its agent. Any **evidence** of the State being the **principal**, whether

disclosed or undisclosed, would also necessarily be via alleged **agency** on the part of EFCL.

Relevance of the fact that EFCL was wholly owned by the State

53. Further, the fact that EFCL is wholly owned by the State would not make it an **agent** of the State, or make the State its principal, whether disclosed or undisclosed. In fact its separate legal identity would be incompatible with a **presumption** of agency. See **Dave Persad v Anirudh Singh** [2017] UKPC 32 in particular at **paragraphs 17, 18, 20,** and **22.** [4] In that case Mr. Persad and Mr. Singh

[4] **Dave Persad v Anirudh Singh [2017] UKPC 32**

17. As the Court of Appeal rightly acknowledged, piercing the veil is only justified in very rare circumstances, a point which was implied in the UK Supreme Court's decision in VTB Capital Plc v Nutritek International Corpn [2013] 2 AC 337, paras 127, 128 and 147, and was expressed in terms in its subsequent decision in Prest v Petrodel Resources Ltd [2013] 2 AC 415, paras 35, 81-82, 99-100 and 106. As Lord Sumption explained in Prest at para 35, piercing the veil can be justified only where "a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control". In this case, Mr Singh cannot get near establishing any evasive or frustrating action on the part of Mr Persad. Mr Persad was under no relevant "legal obligation or liability" to Mr Singh at the time that he proffered to Mr Singh the draft lease executed by CHTL or at the time that the lease became binding. He had been negotiating for the grant of a formal lease and therefore there could have been no question of his having been bound as lessee prior to the formal completion of the Lease. In any event, the parties always envisaged a term of five years, and such a lease can only be granted by deed - see section 3 of the Landlord and Tenant Ordinance (Chapter 27, No 16).

18. The fact that Mr Persad proffered a draft lease with CHTL as the lessee, after he and Mr Singh had been negotiating on the assumption that Mr Persad would be lessee, does not assist Mr Singh's case. Mr Persad did not give any sort of assurance that he personally would take the lease or that he would not put forward a limited company as the lessee, when the proposed lease came to be drawn up. Further, it is not as if Mr Persad misled Mr Singh in any way: Mr Singh appreciated that the lease which he was being asked to execute involved the grant to a lessee which was not Mr Persad but was CHTL. It is not even as if Mr Singh failed to appreciate that a limited company was a different legal person from its shareholder or director.

20. In the light of the issues before the Judge, the fact that Mr Persad did not produce any documents relating to the creation or constitution of CHTL takes matters no further. The fact that CHTL was a "one man company" is also irrelevant: see Salomon v A Salomon and Co Ltd [1897] AC 22, which famously established the difference between a company and its shareholders. That case also exposes the fallacy of the notion that the court can pierce the veil where the purpose of an individual interposing a company into a transaction was to enable the individual who owned or controlled the company to avoid personal liability. One of the reasons that an individual, either on their own or together with others, will take advantage of limited liability is to avoid personal liability if things go wrong, as Lord Herschell said at pp 43 to 44. If such a factor justified piercing

were the parties in negotiation over a lease. When the lease was finalized, prepared by Mr. Persad and submitted to Mr. Singh, the named lessee was a company, CHTL, and not Mr. Persad. The lease was executed by Mr. Singh. It was held in an action to recover damages, arrears of rent and / or mesne profits that those circumstances did not justify piercing the corporate veil, so as to attribute personal liability to Mr. Persad.

54. i. As the case of **Persad v Singh** itself illustrated (at para 20 citing **Saloman v Saloman**), *the notion that the court can pierce the veil where the purpose of an individual interposing a company into a transaction was to enable the individual who owned or controlled the company to avoid personal liability*, is a fallacy. As explained at paragraph 20 "*One of the reasons that an individual, either on their own or together with others, will take advantage of limited liability is to avoid personal liability if things go wrong, as Lord Herschell said at pp 43 to 44. If such a factor justified piercing the veil of incorporation, it would make something of a mockery of limited liability both in principle and in practice.*

ii. it has been recognized, for example in **NH v UDECOTT** infra, that the State has utilised wholly owned State companies for the purpose of contracting for procuring of goods and services.

iii. the respondent, based on the documents exhibited to its pleading in support thereof, must have appreciated throughout that the formal written agreement

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the veil of incorporation, it would make something of a mockery of limited liability both in principle and in practice.

22. In the course of his able and spirited submissions, Mr Beharrylal suggested that the facts of this case were comparable with those in Gilford Motor Co Ltd v Horne [1933] Ch 935 and Jones v Lipman [1962] 1 WLR 832, whose facts are respectively set out by Lord Sumption in Prest at paras 29 and 30. The Board considers that those cases are readily distinguishable from the present case. Not only did the person who set up the company in those cases have an existing relevant legal obligation which he was trying to avoid by entering into a transaction involving the company, but also the involvement of the company was unilaterally effected by the person concerned, without the knowledge, let alone the consent, of the other party. In this case, as already mentioned, Mr Persad had no relevant obligation to Mr Singh at the time of the transaction involving the company, namely the grant of the lease, and furthermore Mr Singh, the person seeking to pierce the corporate veil, was directly involved in, indeed was a necessary party to, that transaction.

which it is being asked to execute by EFCL's letter dated November 28th 2018 was not with the Government but with EFCL. (See the analogous situation described in **Persad v Singh**[5]). As in **Persad v Singh**, the respondent was directly involved in and a necessary party to that transaction

Apparent or ostensible authority

55. It was not possible in law for EFCL to be clothed with apparent or ostensible authority, while itself entering into a contract with the Respondent, to also purport to be entering into such a contract on behalf of the State .As the **Persad** case demonstrates the fact that EFCL was a wholly State owned company would not alter that result.

56. In **NH v UDECOTT** Civ App 1995 of 2005 the creation of special purpose companies wholly owned by the State, and their utilization, were recognized. That case specifically dealt with the situation under 20A (1) (c) of the CTBA. This provided **an exception** to the applicability of the Central Tenders Board Act, in a case where the Government enters into a contract with a company wholly owned by the State. Nothing in that case therefore displaced the prohibition in non-excepted cases, against any party, other than the CTB, being statutorily recognised as an agent of the State. See paragraph 27 of the judgment therein of the Honourable Kangaloo JA

> *27. As I mentioned earlier, it was agreed on all sides that the Central Tenders Board Ordinance, 1961 has no application to the factual scenario which gave rise to the instant appeal because of the amendment to that legislation by Act No. 36 of 1979 which permitted government to enter into a contract with wholly owned state companies, like the respondent, without the need to invite tenders. To my mind, the consequence of this sequence of legislation is that, while prior to the 1961 legislation, the government's ability to tender*

[5] at paragraph 18

was firmly rooted in the common law right to contract, after the 1961 legislation, the necessity on the part of the government to tender became statutorily rooted. However by the amendment in 1979, Parliament, in effect, uprooted the obligation to tender in respect of contracts with wholly owned state companies and transplanted it back into the lush fields of the common law. It is therefore my respectful view that, tempting as it may be, for courts to arrogate unto themselves a supervisory role in the name of the protection of the public interest especially where vast sums of the public purse are involved, the role of the court is limited and jurisprudentially, courts must act in accordance with the established principles.

57. The Honourable Kangaloo JA recognized that (exceptions aside) after the 1961 legislation the necessity on the part of the Government to tender became statutorily rooted.

28. The judicature, as an arm of state must respect the legislature, another arm, and if the latter has dictated that government is free to contract with a wholly owned state company, which itself does not fall under the purview of the 1961 legislation, then that wholly owned state company is equally free to contract, with all its ramifications including tendering processes, firmly rooted in the common law. The amendment in 1979 may be called many names, including colourable device and sleight of hand, none of which changes the fact that it is what the Legislative arm of state has decreed and there has been no challenge to its legality or validity to date.

58. He recognized that an exception was carved out by the amendment to the CTBA in 1979 which was applicable in the case before him where Government contracted with a wholly owned State company, (in that case UDECOTT). Therefore CTBA tendering processes do not apply in the exceptional cases provided by section 20A (1), but they do apply in cases which do not fall under the

exceptions provided for in the CTBA, in all of which the Government/State is actually a contracting party.

59. This case confirmed and reiterated that a wholly State owned company was free to contract in its own right and on its own behalf, though in that case it did so with the State (see paragraph 28 supra). In the instant case EFCL, as a separate legal entity, contracted with the respondent contractor. There was no legal impediment to its contracting, in its own right, and on its own behalf, as a separate legal entity. It could not have done so as an agent of the State because the only agent of the State under the procurement legislation, the CTBA, was the CTB. It was expressly precluded by the CTBA from contracting as agent of the State.

Apparent or ostensible authority/representation

60. The case of **Attorney General for Ceylon v A. D. Silva** [1953] A.C. 461[6] at 479 makes it clear that **even a servant or agent of the State** without actual

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Held, that the Principal Collector of Customs had no authority, actual or ostensible, to enter into contract binding on the Crown for the sale of the goods to the respondent. The Customs Ordinance was not made binding on the Crown by an express term in the Ordinance (section 3 of the Interpretation Ordinance), and there was nothing in the provisions of the Ordinance or in the schedules thereto from which it could be inferred that the Crown was bound by the Ordinance by necessary implication. The provisions of the Ordinance were therefore inapplicable to property belonging to the Crown, and the collector had no actual authority to sell the goods.

Further, a public officer has not by reason of the fact that he is in the service of the Crown the right to act for and on behalf of the Crown in all matters which concern the Crown; his right to act for the Crown in any particular matter must be established by reference to statute or otherwise. It had not been shown that the collector had any authority to sell property of the Crown or to enter into a contract on its behalf for its sale; nor had it been shown that the Chief Secretary, who authorized the sale, had any such authority; his functions were defined by the Ceylon (State Council) Order in Council, 1931, under which he was authorized at most to deal with certain Crown property under the direct administration of the Government of Ceylon. The collector had, therefore, on that basis also, no actual authority to enter into the contract for the sale of the goods.

Nor had he ostensible authority so to do. All "ostensible" authority involved a representation by the principal as to the extent of the agent's authority, and no representation by the agent as to the extent of his authority could amount to a "holding out" by the principal. No public officer, unless he possessed some special power, could hold out on behalf of the Crown that he had the right to enter into a contract in respect of the property of the Crown when in fact no such right existed. The act of the collector in advertising the goods for sale could not be said to be

authority could not bind the State. In that case the Principal Collector of Customs purported to sell goods left in a warehouse because of unpaid arrears of warehouse rent. The goods belonged to the Crown. The statute which conferred the power on the Principal Collector of Customs to sell goods for unpaid warehouse rent did not bind the Crown. He purported to enter into a contract for the sale of goods to the respondent. It was held that he had no authority actual or ostensible to enter into a contract binding on the Crown for the sale of the goods and that his right to act for the Crown in any particular matter must be established by **reference to statute** or otherwise. All ostensible authority involved a representation by the principal as to the extent of the agent's authority, and no representation by the agent as to the extent of his authority could amount to a "holding out" **by the principal**.

61. As in that case, so too in the instant case:

a. EFCL is precluded by statute from having actual authority to enter into the instant contract as agent of the State;

b. there could be no holding out **by EFCL** that it had ostensible authority to act on behalf of the State;

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the act of the Crown, and nothing done by the collector or by the Chief Secretary amounted to a holding out by the Crown that the collector had the right to enter into a contract to sell the goods.

Lastly, even assuming that the property in the goods had passed to the Ceylon firm on January 23, 1947, and that no warehouse rent had been paid by the firm, still the collector would have had no right to sell the goods on March 4, 1947, because the period between those two dates was less than the three months prescribed by section 108 of the Ordinance as the period after which alone goods might be sold for the non-payment of rent. The sale to the firm would not therefore have altered the fact that the collector had no authority to sell the goods.

The judgment of the Supreme Court of Ceylon in favor of the respondent proceeded largely on the basis of an admission said to have been made on behalf of the Crown to the effect that section 17 of the Customs Ordinance applied to the Crown, but assuming that the Supreme Court had rightly understood the admission, the Board could not be bound on a question of law by an admission which, in their opinion, would involve an erroneous construction of the Ordinance.

Judgment of the Supreme Court of Ceylon reversed.

c. no representation **by the State** could negate the express terms of the CTBA, so as to render EFCL its agent or make the State its principal under that contract.

62. At page 480 their lordships discussed the case of **Russo-Chinese Bank v Li Yau Sam** [1910] A.C 174[7] in the following terms "*If the agent be held out as having only a limited authority to do on behalf of his principal acts of a particular class, then the principal is not bound by an act done outside that authority, even though it be an act of that particular class, because, the authority being thus represented to be limited, the party prejudiced has notice, and should ascertain whether or not the act is authorized."* They emphasised "that *in a statute* ***the limits of the authority conferred are fixed rigidly*** *and no recourse to* ***evidence*** *is necessary to ascertain them*".

63. At pages 480-481 their Lordships explained that "*to hold otherwise would be to hold that public officers have dispensing powers because they then could by unauthorized acts nullify or extend the provisions of the Ordinance*". So to in the

[7] Their Lordships think that the Principal Collector cannot be regarded as having any such authority. He had, no doubt, authority to do acts of a particular class, namely, to enter on behalf of the Crown into sales of certain goods. But that authority was limited because it arose under certain sections of the Ordinance and only when those sections were applicable. It was said by Lord Atkinson in Russo-Chinese Bank v. Li You Sam[1:] **"If the agent be held out as having only a limited authority to do on behalf of his principal acts of a particular class, then the principal is not bound by an act done outside that authority, even though it be an act of that particular class, because, the authority being thus represented to be limited, the party prejudiced has notice, and should ascertain whether or not the act is authorized."** With that view their Lordships respectfully agree. In that case the authority did not arise under a statute, but in their Lordships' view this fact makes no difference. If there is a difference at all it would lie in the circumstance **that in a statute the limits of the authority conferred are fixed rigidly and no recourse to evidence is necessary to ascertain them**. The Ordinance could no doubt have made the representation by the Principal Collector binding on the Crown, but it has not done so, and to read into it any such provision would be unduly to extend its meaning.

It may be said that it causes hardship to a purchaser at a sale under the Customs Ordinance if the burden of ascertaining whether or not the Principal Collector has authority to enter into the sale is placed upon him. This undoubtedly is true. But where, as in the case of the Customs Ordinance, the Ordinance does not dispense with that necessity, **to hold otherwise would be to hold that public officers had dispensing powers because they then could by unauthorized acts nullify or extend the provisions of the Ordinance. Of the two evils this would be the greater one**.

instant case if it were to be held that contrary to section 4 of the CTBA, (a public statute), EFCL had ostensible authority to act on behalf of the State, it would effectively confer on EFCL a power to dispense with the terms of the CTBA because it could by acts though unauthorized by the CTBA, nullify or extend the provisions of the CTBA.

64. While EFCL may have contracted with the respondent contractor for the provision of goods and services for the ultimate benefit of the State, EFCL was not capable in law of being an agent of the State. Therefore, as a matter of law it was not capable of lawfully representing that it was such an agent. Any such representation could not, as a matter of law, be effective to circumvent the express prohibition in the CTBA against any entity other than the CTB, (and that would include EFCL), from being the agent of the State for the purpose of entering into the instant contract.

Estoppel

65. The respondent raised the issue of estoppel in its reply filed April 19th 2018. That reply was filed after the decision of the trial judge. To the extent that the reply is allegedly illustrative of a matter which demonstrates that the pleadings, with possible amendments, were capable of raising an arguable case, it does not support that position.

66. Evidence of estoppel would be necessarily directed to precluding the State from denying liability incurred under the contract between EFCL and the respondent, or denying that EFCL contracted as agent on behalf of the State as principal. (See paragraph 2 of the Reply) However the estoppel pleaded cannot override the prohibition in the CTBA against EFCL being an agent of the State, (or its converse, the State being its principal), so as to make the State directly liable for payment under the contract between EFCL and the respondent. The lack of

agency between itself and EFCL is expressly imposed by the CTBA. Therefore such an estoppel in the face of that express statutory prohibition would be unarguable[8].

67. Therefore, because EFCL is not capable in law of being an agent of the State, any evidence of authority, representation, estoppel, or agency cannot alter the statutory prohibition against agency by any party, other than the CTB, on behalf of the State. Any pleading alleging such agency by EFCL on behalf of the State, either directly or indirectly could therefore have been struck out as disclosing no grounds for bringing a claim **in contract** against the State.

68. It is not in dispute that this would not affect the validity of any contract between EFCL in its own right and the respondent contractor. Neither would it subject EFCL to CTB procedures in the awarding of that contract.

[8] The case of **Kenora (Town) Hydro Electric Commission v Vacationland Dairy Co-operative Ltd [1994] S.C.J. No. 3** (Supreme Court of Canada) drawn to the attention of the Court by letter dated November 28th 2018 does not affect this conclusion. This case involved a claim by a power company against a consumer who had been underbillled for electricity. The sole issue in that case (page 4 - heading III) was whether Ontario Power Corporation Act (PCA) precluded raising estoppel in defence to negligent underbilling by a public utility.

The Supreme Court of Canada in its majority decision distinguished the principle established in the Privy Council case of Maritime Electric Co. v General Dairies Ltd. [1937] 1 D.L.R. 609 (P.C) that **estoppel was not available where it would nullify a statutory provision** requiring a public utility to collect amounts owing. It did so on the basis that "a statute can only affect the operations of the common law principles of restitution and bar the defence of estoppel or change of position where there arises a **positive duty** on the public utility **which is incompatible with the operation of those principles**"- (page 9 second paragraph).

In that case it was held (page 10) that the Ontario Power Corporation Act, (unlike the New Brunswick legislation at issue in *Maritime Electric),* did not express a policy of rate non-discrimination that excluded estoppel or change of position. In the instant case the CTBA, unlike the Ontario Power Corporation Act, imposes a positive statutory duty on the State, where it enters into non excepted contracts, to act through the CTB.

Unjust Enrichment

69. The issue of unjust enrichment was adverted to by the trial judge in her reasons as being a possible argument that might have been available to the respondent, should the claim be amended, and should the evidence emerging at trial support it. However it was only after judgment was delivered that such an amendment was filed. The issue of unjust enrichment arising from that proposed amendment, including a possible application by the respondent to join the appellant based thereon, may be the subject of further consideration by the trial judge.

Procedural Issues - cross appeal

70. The application to strike out was filed on the last day for filing a defence. The application was a matter of law. As it did not therefore require evidence, no affidavit was necessary. In so far as they allege any cause of action against the State, based upon contract, the original statement of case and claim form should have been struck out against it. Therefore no extension of time was required for the filing of the defence.

71. Given that the State's striking out application should have succeeded before the trial judge on the pleadings as they then stood, an extension of time to file its defence would not have been required. The respondent's objection on the cross appeal to such an extension being granted would therefore be academic.

Conclusion

72. In relation to the first issue the trial judge was wrong to dismiss the application to strike out. The instant contract is between EFCL and the respondent. The CTBA, (subject to exceptions which are inapplicable here), by its express terms confers **sole and exclusive authority** on the CTB to act for, in the name of or on behalf of the Government in accepting 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. Accordingly it does not authorize or permit any party or entity other than the CTB, to be an **agent** of the State for the purpose of a contract with the State, such as the instant contract, 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.

73. In the instant circumstances the express language of the CTBA does not permit any scope for **agency** on behalf of the State whether **actual** or **apparent**, other than by the CTB. Likewise for the same reason neither **estoppe**l nor **representation** could be invoked to establish such **agency** as the CTBA similarly would expressly preclude any such agency on behalf of the State by any party other than the CTB.

74. Neither does it permit the converse. Because EFCL is statutorily precluded from being an agent of the State, likewise the State is precluded from being the **principal** of EFCL under such a contract. Because the CTBA expressly does not permit the State to be a **disclosed** principal of any party other than the CTB, it equally therefore cannot permit the State to be an **undisclosed principal** under a contract such as the instant contract between EFCL and the respondent. Therefore none of the above mechanisms would have been effective in law to permit EFCL to have been an **agent** of the State in the instant circumstance so as to permit the creation of any contract between the respondent contractor and the appellant under which the State, (in addition to EFCL), could be liable as a principal.

75. Because, as a matter of **law,** the claim in agency against the State is precluded by the express terms of the CTBA, even **evidence** at trial of any such agency whether via actual, apparent or ostensible authority, representation, or estoppel was not capable of overriding the statutory prohibition against agency

on behalf of the State, in relation to the subject contract, by any party other than the CTB.

76. Accordingly such part of the Statement of Case that references or claims any **agency** by EFCL on behalf of the State, or asserts that the State was the **principal** of EFCL for the purpose of the subject contract, (being expressly precluded by the CTBA), should have been struck out as having no foundation in law. The statement of case should be and is therefore struck out against the appellant.

77. However the issue of **unjust enrichment**, (introduced after judgment by a proposed amendment to the claim form and statement of case), was not ventilated before the trial judge. The first Case Management Conference had not been concluded. The issue of unjust enrichment arising from that proposed amendment, including a possible application by the respondent to join the appellant based thereon, may be the subject of further consideration by the trial judge.

78. The second issue, (the trial judge's exercise of her discretion to grant an extension of time to the appellant to file and serve its defence), should not therefore have arisen. Were it not for the subsequent amendment, the striking out of the original statement of case would have removed the appellant as a party to this action, and no defence by it would have been necessary. The respondent's cross appeal therefore fails.

Order

79.

i. The appellant's appeal is therefore allowed.

ii. The order of the trial judge with respect to the costs of the appellant's application filed October 3rd 2017 is set aside.

iii. The respondent's cross appeal filed on January 30th 2018 is dismissed.

iv. It is ordered that the Statement of Case filed on the July 5th 2017 be struck out against the appellant and the claim against it be dismissed.

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Justice of Appeal

Peter A. Rajkumar