[2019] JMSC Civ 258

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2015 HCV 02405

BETWEEN	**TANCOUR CONSTRUCTION JAMAICA LTD**	**1ST CLAIMANT**
AND	**LEWIS AND BLOUNT CONSTRUCTION DEVELOPERS**	**2ND CLAIMANT**
AND	**THE COMMISSIONER OF TAXPAYER APPEALS**	**1ST DEFENDANT**
	TAX ADMINISTRATION JAMAICA	**2ND DEFENDANT**
AND	**COMMISSIONER GENERL**	**3RD DEFENDANT**
AND	**REGISTRAR GENERAL**	**4TH DEFENDANT**

IN CHAMBERS

Ms. Khia Lamey instructed by CeCelin Chaplin Daley for the Applicants/The 1st 2nd and 3rd Defendants.

The Claimants/Respondent are un represented by council and appears by persons of Mr Courtney Lewis, and Mr. Tyrone Lewis

HEARD: 22ND SEPTEMBER AND 6TH DECEMBER, 2019

Application to strike out Claim - Whether the claim discloses any reasonable grounds for bringing the Action - Whether the Particulars of Claim is Prolix (Rule 26.3.)

Application for Summary Judgment by the Claimant - Statement of case - struck out - Whether there is any basis to grant Summary Judgment.

THOMAS, J.

INTRODUCTION

[1] There are two applications to be considered by this Court. One is an Application by the 1st,2nd and 3rd Defendants to strike out the Claimants' statement of case. The Claimants have also filed an application for Summary Judgment against the 1st,2nd and 3rd Defendants. However, I think it prudent to consider the application to strike out the claim first. This is in light of the fact that in the event that the Applicants are successful in the application to strike out the claim in its entirety, I believe that would essentially determine any issue in relation to the grant for Summary Judgment. Essentially, there would be no Claim on which the court could properly enter summary judgment.

[2] The 1st, 2nd and 3rd Defendants by Notice of Application for Court Orders applied to have the Further and Better Amended Claim Form and Particulars of Claim dated the 31st of October, 2018 struck out. The application to strike out is made on grounds that:

(i) The statement of case discloses no reasonable grounds for bringing this claim.

(ii) The statement of case is prolix.

(iii) The Claimants have no real prospect of succeeding on the claim or issue.

(iv) The 1st and 3rd Defendants/Applicants are not proper parties to the proceedings which is pursuant to Rule 26.3 (c), (d) and Rule 15.3 of the CPR.

HISTORY

[3] Several originating documents were filed by the Claimants, the last being the Further Revised Amended Claim Form and the Further Revised Particulars of

Claim which were filed on the 31st of October 2018. The 1st Claimant is a Limited Liability Company. The second Claimant existed as a partnership of Annette Blount and Tyrone Lewis trading as Lewis and Blount Construction Developers. The Particulars of Claim consists of 12 pages and 48 paragraphs. It has become necessary for me , throughout my discussion, to highlight aspects of the Claim Form and Particulars of Claim verbatim for there to be a full appreciation of the reasons for my decisions. .

The Claim

[4] The Further Amended Revised Claim Form at paragraph 7 reads, "The Claim was instituted by the Claimants against the Defendants following a dispute regarding intentionally and unfairly delay in the Claimants' Business". There is a heading, "**Particulars of Special Damages"** in which the Claimants seek:

(i) "Declaration that the 1st Claimant is the covert of TRN #0001-959-662,have the right to benefit from the reputation and goodwill of taxable activity history of TRN #001-959-662"

(ii) Damages for "projected expectation" for the years 2012 "continuing to date". Advice fees to date; paper work, record keeping and filing to date, Company's maintenance fund to date, Loss to vandalizing of equipment and vehicle to date,

(iii) Projected "miscellanies" up to date,

(iv) Damages for recovery of property or its face value to date.

(v) Damages for negligence for breach of arrangement and undertaking .

(vi) Breach of fiduciary duty.

(vii) Damage for breach of the Defendants' obligation to the Claimant during the period of service.

(viii) Damage for malicious destruction and injury to property."

The Particulars of Claim

[5] As was earlier indicated, the Further Revised Particulars of Claim is 12 pages long with 48 paragraphs. The following information is gleaned from wading through the very lengthy Particulars. There were two (2) different partnerships, (Herein after refer to as the Partnerships) registered as Louis and Blount Construction Developers with two different registration numbers and two different TRN numbers. The Registration and TRN numbers are as follows: The Partnership with partners Courtney Lewis and Tanya Ritch was assigned registration number 5436/08 and TRN 001-959-662:The Partnership with partners Annette Blount and Tyrone Lewis was assigned registration number 405/207 and TRN 001-831-844.

[6] The following is alleged in paragraphs 9-11: "In or around 2011-12 the partnerships agreed to hand over all their assets and liabilities , also their rights to their taxable activity to the partnership of Courtney Lewis and Tanya Ritch trading as Lewis and Blount Construction Developer (the 2nd Claimant) for an understanding to convert the partnership to incorporate under the Companies Act as a Limited Liability Company Tancour Construction Jamaica Limited". They submitted to the stamp office a document that they refer to as a legal binding agreement.

[7] At Paragraph 12 they allege that the legal binding agreement indicates that the 1st and 2nd Claimant were of the same understanding "as regards to the continuum benefit from the goodwill and good management practices of Lewis and Blount Construction Developers registration number 5436/2008 TRN # 001-959-662. In paragraph 13". The Claimants allege that they "engaged Tax Administration Jamaica (TAJ), the 2nd Defendant for its services so that the parties, TRN #001-959-662 can continue its' obligation of taxable activities through the 1st Claimant in relation to the Legal binding agreement. The Claimants seeks the

2nd Defendant to register the parties taxable activities and history on the item of information of the convert 001-998-676 now a limited liability Company being the 1st Claimant' Physical medium The Claimant seeks this to preserve its record so it can be available for future reference of transformation of the business".

[8] The Claimants further alleged that the engagement with TAJ was with one of its servants who informed Mr. Courtney Lewis to write to the Commissioner General of Tax (That is the Third Defendant). They submitted "the legal binding agreement, letter from Companies Office dated the 24th of February 2012 "confirming the transformation of the parties TRN #001959-62 into the 1st Claimant TRN #001-998-67"

[9] They further stated that further produced a letter from Companies Office to show TRN # 001-959-662 had not been closed and that it was a continuing entity The Registrar of Companies in that letter dated the 24th of February 2012 informed that a search was conducted and it revealed that the partnership of Courtney Lewis and Tanya Ritch, trading as Lewis & Blount Construction Developers #5436/2008 and #405/2007 under the Business Names Act had now been incorporated under the Companies Act as a limited liability Company.

[10] The Claimants allege that: they submitted documents to the agent of the 2nd Defendant not to close TRN number 0001 -959-662," with respect to its tax activity continuing on record. They informed the agent that the history is needed so that they can continue business with National Contracts Commission which require a financial history of 3 years , to continue to obtain credit from the bank , " through the parties TRN 001-959-662 financial reputation and good will".

[11] BNS closed the account with this TRN April 2012 and open a new account for the covert" The Claimants attribute this to the negligence of the 2nd defendant. They further aver that the Applicants separate the 1st Claimant from its financial history and its line of credit. They sent a letter to The Commissioner General requesting the transfer of "the taxable activity of the partnership to the Company Tancour.

[12] On the 21st of February, 2012, the Claimants sent a letter to the Commissioner of Tax. The letter stated that under section 32 of the General Consumption Tax Act, as of the 1st of February, 2012, Lewis and Blount Construction Developers #5436/2008 and #405/2007 was notifying the Commissioner that on**,** Lewis & Blount transferred ownership to form an incorporated a Company with limited liability. The letter also went on to say that Lewis & Blount #5436/2008 and #405/2007 have changed the name to Tancour Construction Jamaica Limited which was to carry on the same nature of the activity and upgraded to a limited liability company under the ***Companies Act of Jamaica***.

[13] They contend that "the 2nd Defendant has not registered the 1st Claimant as requested and has not notified the Claimant in writing that TRN 001 -959 662 is the same tax payer as 001 998 -676 in a manner adequate to requirements" This they say is Non-compliance of the 2nd Defendant of its duties and breaches of its obligation to the Claimants. They further aver that the 1st Claimant lost "its TRN 001-959-662. National Contracts Commissions honest rights to accounts that has been maintained satisfactory for years with credit arrangement with BNS that helped run the business for years"

[14] They claim that the "actions of the 2nd Defendant leave the 1st Claimant without getting work capital due to the fact that the 1st Claimant was not with its history. Furthermore they attempted to utilize the National Co-operative Bank for support but the co-operative would not provide any financial assistance without a financial history, or without the Claimant banking with them for 3-4 years. The 2nd Defendant's action was void and not in the interest of the Claimant or of good administration." It is their further claim that The 3rd Defendant was negligent in its duties being responsible by the general direction and supervision of the 2nd defendant . This they say amounts to dereliction of duties.

ISSUES

[15] The issues to be considered are outlined below:

Whether the Claim should be struck out on the bases that :

(a) The statement of case discloses no reasonable grounds for bringing a claim in negligence or breach of contract against the Applicants.

(b) The Particulars and the Further Revised Amended Particulars of Claim is prolix .

The Law

[16] Rule 26.3 (1) (c), (d) of the CPR outlines the basis for striking out a statement of case. It states that :

> *In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -*
>
> *(a) That the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or*
>
> *(b) That the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.*

SUBMISSIONS

[17] The following was submitted by Ms. Lamey for the Applicants:

The Claimants alleges in their Amended Further and Better Particulars that they engaged TAJ for its services. However, the Claimants are unable to engage TAJ

in the manner they claimed to have done. On the evidence TAJ is a body corporate established under the Tax Administration Jamaica Act, 2013, whose mandate includes the administration and collection of domestic tax and collection of revenue other than domestic tax, the collection of which is responsibility of the Commissioner General, the registration audit and assessment of taxpayers, the development and implementation of internal policies, systems and procedures to ensure proper implementation of revenue laws and promote public awareness of the importance of the efficient and effective collection of tax and its importance to national development. These functions are outlined in paragraph 5 of the Tax Administration Act, 2013.

[18] Further the evidence of the 1st, 2nd and 3rd Defendants clearly show that as part of effecting its function, TAJ maintains taxpayer registries and databases for the better functioning of the tax system including the issuing of Taxpayer Registration Numbers (TRN) to facilitate the identification and recording of information on taxpayers, to aid in the collection and enforcement of taxes due to the Government of Jamaica.

[19] Based on the foregoing, is it pellucid that, TAJ does not enter into contractual agreements with entities/associations so as to be 'engaged' to assist them in procuring a TRN or any other service which the public body is mandated to provide.

[20] The Claimants, of their own volition, decided to change the nature of their association from partnership to a company. This was effected when the partnership was closed and Tancour was incorporated. However, the Claimants have failed to appreciate that a TRN is personal to an individual or association, that is, to Tancour. In fact, if this was done it would be akin to a deceased person's TRN being assigned to a child.

[21] The TAJ did not have a duty to provide the Claimants with a letter stating that the partnership and Tancour are one and the same taxpayer. In fact, this is a legal anomaly and if TAJ had complied with the Claimants' request, it would have been

lying and thereby misleading the "unknown financial institution" to which the Claimant refers at paragraph 23 of their Further and Better Amended Particulars of Claim, which is the Bank of Nova Scotia Jamaica Limited ("Scotiabank").

[22] The Claimants' statement of case is tediously long. The Claimants' Amended Statement of Case is characterised by much ramblings rather than by bare and simple allegations. The kernel of simple facts is buried in a mound of allegations which are advanced as suggesting triable issues.

[23] The Claimant's case is not presented in an intelligible form and in fact, Counsel for the 1st, 2nd and 3rd Defendants have devoted considerable time to attempting to deduce the cause of action as alleged.

[24] Mr. Courtney Lewis deponed and submits on behalf of the Claimants that:

> "The Claimants requested information about its business, such as its goodwill, taxably activity handing over and their conversion records. The Claimants made a subject access request under the **Data Protection Act**, but the Defendant as a public authority gave no reasonable advice and assistance to the Claimants asking for information, so the Claimants could feel free to ask for help in making their request".

[25] "The Defendants being public bodies have 21 business days to respond to a request for information that is made for a commercial purpose".

[26] In the public law duty to consult, United Kingston Public Law Local government briefing notes Public 10-07-2015, two key principles were cited. The public law duty to consult is one aspect of the principle that public authorities should exercise fairness in the exercise of their function. Where the duty to consult is imposed by statute, then the procedure to be adopted is also likely to be prescribed by the legislation. In the contexts, the issues for a public authority will usually relate to:

i. whether there is a duty to consult anyone at all; and

ii. If so, what fair consultation entails in the circumstances".

[27] "The Claimants have sought the opinion and advice of the Defendants and guidance as to how those issues should be addressed. The Defendants do not prescribe any requirements for a valid consultation. The message the Defendants have sent to the Claimants is that the Defendants' governing principle is not harmonious and symmetrical to consultation on the potential impacts of its decision being taken, and thought should be given to achieving real engagement following bureaucratic process".

[28] 'In that respect, the Defendants' argument does not displace the general principles derived from case law as to how consultations should be conducted. Those principles are that consultations should occur when proposals are at a formative stage, give sufficient reasons for any proposal to permit intelligent consideration, and allow adequate time for consideration and response. These principles were recently reaffirmed by the court in the case of ***Draper v Lincolnshire CC"***.

[29] "Tax Administration Jamaica (TAJ) through its servants and/or agents acted below the reasonable standard and the Commissioner of Taxpayer Appeals had a delegable duty to care and has been a failure to indicate the source to appeal, no concerns to the compensation for harm to people's rights to appeal, property, their economic interests, or their reputations".

[30] "The Defendants were negligent in their duty of care and have breached that duty and those breaches have caused loss and damage sustained by the Claimants. The standard of care required by the Defendants was judged by applying an objective test, considering what a reasonable man would or would not have done in the same situation. The Defendants were negligent in allowing the Claimants' request to go on without reasonable advice and assistance to the Claimants asking for information because the "reasonable man" would have foreseen that the Claimant's business would be injured".

[31] "It is to be held that without reasonable advice and assistance to the Claimants the loss and damage sustained by the Claimants were foreseeable, given the knowledge of the request at the time. Thus, since no reasonable advice and assistance was given to the Claimants, it is appropriate to hold the Defendants liable for failing to advise and assist the Claimant".

[32] "The Defendants committed negligent tort by failure to act as a reasonable person to the Claimants, to whom the Defendants owe a duty, as required by law under the circumstances. Further, negligent torts are injuries resulting from the breach of the duty. In the recent case of ***Mosely v Haringey, London Borough Council*** [2014] UKSC 56, [2014] 1 WLR 3947, the Supreme Court also endorsed the Gunning principles and added two further general principles: the degree of specificity regarding the consultation should be influenced by those who are being consulted, and the demands of fairness are likely to be higher when the consultation relates to a decision which is likely to deprive someone of an existing benefit".

[33] "The TAJ through its servants and/or agents have promised to record the conversion and record Lewis and Blount Construction Developers with registration number 35438/2008 goodwill and taxable activity onto Tancour Construction Jamaica Limited Records. The Claimants consulted TAJ through its servant and/or agent before making a specific decision or type of decision to convert its business; and the Claimants held TAJ to that promise to record Lewis and Blount Construction Developers with registration number #5438/2008 goodwill and taxable activity onto Tancour Construction Jamaica Limited records".

[34] "Furthermore, if the Defendant had advised and assisted the Claimants on the relevant decision in the past, which would give rise to a legitimate case, expectations are that the Defendants will do so again. Conversely, the more serious or significant the impact on the Claimants' business, the more likely it is that the views and concerns of the Claimants should be consulted upon before the Court's decision is taken. The recent context in which this principle has been

considered was the case of ***R (on the application of Luton Borough Council and other) v Secretary of State of Education*** [2011] which concerned the Government's abandonment of the Buildings of Schools for the Future programme in 2010".

[35] "In the recent case of ***British Dental Council***, the BDC's public statements that it was committed to a transparent consultation on increases to dentists' annual retention fees gave rise to a legitimate expectation that it would carry out such a consultation again (and the exercise which had been carried out was inadequate)".

[36] "In ***Hall v Brooklands Auto Racing Club*** (1933) 1 KB 205, it was held that it was the duty of the operators to ensure that the racing track they had designed was as free from danger as reasonable care and skill could make it, but that they were not insurers against accidents which no reasonable diligence could foresee. Similarly, in ***Glasgow Corporation v Muir*** (1943) 2 AER 44 a defendant was not negligent in allowing a group to enter a tea room to escape bad weather, because the 'reasonable man' would not have foreseen that these invitees would be injured (scalded) upon entering the tearoom".

[37] "The Claimants have endorsed that fair consultation would be:

(a) Consultation must be at a time when proposals are still at a formative stage;

(b) The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;

(c) Adequate time must be given for consideration and response;

(d) The product of consultation must be conscientiously taken into account".

[38] "The degree and specificity of information which must be provided to the Claimant will depend on the context, including:

(a) The identity of the business being consulted;

(b) Whether the proposal would deprive the Claimants of an existing benefit;

(c) The purpose of the consultation, such as whether it is to ensure procedural fairness for individuals or to permit public participation in a democratic process; and

(d) Whether the Claimant can be expected to be familiar with the decision-making process".

[39] "It may be permissible to consult on the basis of a preferred option but fairness may require consultation on other, previously discarded options. It is proper to consult on a preferred option; proposers must not give the impression that other options are no longer on the table. Indeed, fairness may require passing reference to be made to other options. Even if the other options would have been reasonably obvious to those consulted, it may be necessary to explain why those other options were rejected. The key question is whether such reference or information is necessary to express meaningful views on the proposal".

[40] "The Defendants avoid unduly lengthy and complex consultation request documents. It is submitted that, on the facts, it is not surprising that the Claimants held that this consultation was unfair. The Defendants had given the clear impression that the Claimants were a foregone conclusion not of importance to seek the relief available. For that reason alone, the consultation seems clearly to have been defective".

[41] "On the facts of this case, it was incumbent on the Defendants not only to avoid suggesting that other options were closed off, but also to provide at least some information about those other options and why they did not find favour with the Claimants request".

[42] "The existence and extent of this obligation will depend on the facts of the particular case. However, the question appears to be whether 'sufficient reasons' have been provided so as to explain why the Defendants have not put forward any helpful guidance. In order to do this, it may be necessary to mention alternative options which have been considered and rejected".

Discussion

[43] In the case of ***Murray, George Murray, Karin v Petros, Sam***, 2014] JMCC Comm. 6 Edwards J, as she then was, at paragraph 30 had this to say on the issue:

> *"Much of the law on striking out of statement of case is now settled. It is admittedly a largely draconian step which a court ought to be reluctant to take and should take only in the clearest of cases. The consequence of a striking out is that the party against whom such an order is made is effectively barred from proceeding with his case. Usually this step will be taken either by way of sanction for a breach of the rules or non-compliance with an order which carries a consequential sanction or under rule 26.3 of the CPR. Rule 26.3(1) (b) and (c) of the CPR grants the power in the court to strike out a statement of case or part thereof which is an abuse of the process of the court or which disclosed no reasonable grounds for bringing or defending the claim. The first will be granted where the court's processes are engaged more than once in pursuit of the same subject matter or cause, unless in the interest of justice, the court determines it should not be struck down. The second will be granted where the claim is hopeless and has no chance of being successful or where there is no more than an arguable claim".*

(See also the case of ***See S&T Distributors Ltd. v CIBC Jamaica Ltd*** [2007] Civ. App. 112/04 CA).

[44] Therefore, in order for me to decide whether any reasonable grounds of bringing the Claim has been disclosed, I must examine the Claim and Particulars to determine whether the allegations disclose any action in negligence or breach of statutory duty or contract against the Defendants. The case of ***Donoghue v Stevenson*** [1932] AC 562 established the general principle of the duty of care. Lord Atkin stated:

> *"The rule that you are to love your neighbour becomes in law you must not injure your neighbour; and the lawyer's question " Who is my neighbour?" receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."*

[45] I must admit that I in fact found it quite difficult meandering through the Claimants' statement of case in order to decipher the allegations regarding the Claim of negligence against the Defendants. This difficulty was as a result of the particular expressions contained therein. However having done so I discovered that the substance of the Claim is that the Claimants are claiming a right to have not only the TRN but the Tax History, which would suggest that the information on the annual returns, the assessment and payment and or tax compliance and liability, if any, of the dissolved Partnership to be assigned or credited to the newly created limited liability company, Tancour. The Claimants say that consequent upon the Defendants' failure or refusal to comply with their request to do so, and having refused to provide written correspondence to their financial institution with the information as requested, they have suffered financial loss from losing lines of credit from at least two financial institutions and contracts from the National Contracts Commission .

[46] The Claimants contend that the Defendants have breached a duty of care to them on that basis. Despite not being clearly particularized, there seems to be an attempt to ground the claim in negligence, breach of statutory duty and contract.

[47] However when I examine the Letter which was written to the Commissioner General by Lewis and Blount Construction Developers dated the 21st of February 2012, it merely provided the information that the Claimants were mandated to provide in compliance with Section 32(1) of the ***General Consumption Tax Act,*** which requires a tax payer, within 21 days, to notify the Commissioner General in writing of any changes in that tax payer's activities. That is, whether there was cessation or transfer of the business. The section states that:

> *"Every person who is a registered taxpayer shall, within twenty-one days of a change in respect of, or cessation of any taxable activity or part thereof carried on by that registered taxpayer, notify the Commissioner General in writing thereof …"*

[48] The letter reads as follows:

> *"Under Section 32 of the General Consumption Tax Act, Lewis and Blount Construction Developers is notifying the Commissioner in writing of the transfer of ownership by Lewis and Blount Construction Developers of its taxable activity. On the 1st of February, 2012, Lewis and Blount Construction Developers #405/2007 transferred ownership to incorporate Tancour Construction Jamaica Limited by subscribing the partners name to a memorandum of association and complying with the requisitions of the Company Act in respect of Registration, to form and incorporate a Company with limited liability. The new name of Lewis and Blount Construction Developer #5436/2008 and Lewis and Blount Construction Developers #405/2007 is Tancour Construction Jamaica Limited.*
>
> *Lewis and Blount Construction Developers #5436/2008 and Lewis and Blount Construction Developers #405/2007 is changed in name to Tancour Construction Jamaica Limited on the 21st day of February, 2012 and carry on the same nature of activity and upgraded to a limited liability Company under the Company Act of Jamaica. The partners are the same and now the Directors of Tancour Construction Jamaica Limited."*

[49] There is nothing in the letter requesting a transfer of TRN of the partnership to the company Tancour. In light of the content of the letter submitted , when it is read in the context of Section 32 of the Act, the only reasonable interpretation the receiver could have had is that by submitting this letter, the Claimants were merely complying with the statutory provision. In that regard there was no basis on which a court could find that there was a duty for any response from the Commissioner General with regards to a request which was not in actual fact communicated to the Commissioner General.

[50] The General Consumption Tax Act, section 30 provides for the registration of partnerships. It states:

> *"Where a partnership is required to be registered under this Act -*
>
> *(a) The registration shall be in the name under which the partnership trades; and*
>
> *(b) The individual partners shall not be registered or be liable to be registered under this Act in relation to the taxable activity carried on by the partnership.*
>
> *(c) The supply of goods or services made or received in the course or furtherance of a partnership shall be regarded as being made or received by the partnership and not by any individual partner".*

[51] In relation to companies, Section 28 of the General Consumption Tax Act provides that:

> *"With effect from the date of commencement of the Companies (Amendment Act) 2013, any person applying to register a company under the Companies Act or a business name under the Registration of Business Names Act shall, if the company will be or the person is required to register as a taxpayer under this Act (and, in the case of a person applying for registration of a business name, if the person is not already registered as a taxpayer under this Act), complete and submit to the Registrar of companies the appropriate section of the*

form set out as Form BRF 1 in the Sixteenth Schedule of the Company".

[52] There is nothing in these provisions conferring upon the Claimants a right to the transfer of the TRN of the partnership of Lewis Blount to Tancour Construction Limited . The Claimants allege that they were denied the rights to contracts with the National Contracts Commissions and "honest rights to accounts that has been maintained satisfactory for years with credit arrangement with BNS that helped run the business for years". The impression I am gathering from these allegations is that the Claimants wanted to continue the account that was in the name of partnership , in the name of the newly created company Tancour, using the same TRN that was assigned to the dissolved partnership.

[53] However, I am inclined to agree with the Applicant's submissions with respects to the assignment of TRN. They have accurately pointed out that the Lewis & Blount Construction Developers was a separate entity from Tancour Construction Jamaica Ltd. More importantly, in keeping with the principles of company law, a company is recognised as a legal entity distinct from its members and has independent legal existence, separate from its shareholders, directors, officers and creators. Companies and corporations enjoy most of the rights and responsibilities that individuals possess in that they can enter contracts sue and be sued, own assets, and pay taxes (See ***Salomon v Salomon*** [1897] AC 22). Therefore, the Claimants have so far in their allegations, pointed to nothing in law that gives rise to a duty or an obligation on the part of the Applicants to assign the identity of the pre-existing entity, to a newly created entity which has a right to and possesses its own distinct personality.

[54] The Claimants have in their submissions raised the issue of consultation and legitimate expectation indicating that they had consulted with the agent of 2nd Defendant before and they had provided them with advice, so there was a legitimate expectation on their part to be so provided with information. They suggested that the Defendants had a duty to advise upon request

[55] However, if TAJ were to provide the information in the format suggested by the Claimants, that information would have been misleading to any third party seeking to rely on it, in order to make important financial decisions as it relates to the Company Tancour. I dare to say that this could not in any way have amounted to a legitimate expectation on the part of the Claimants. Essentially, it could never have been a legitimate expectation for the Defendants to expose themselves to liability in damages to any financial institution who would have relied on this misrepresentation to their detriment. This is especially so, in light of the fact that the Claimants have indicated that in order to access lines of credit the Company would have had to be in existence for three years. In assigning the same TRN and tax payment of the Partnership that was dissolved. TAJ would have been providing information that Tancour was in existence and carrying on taxable activities before the date of its incorporation. This would be especially dangerous in light of the fact that the viability of the company may not be the same as the partnership and where the individual partners can be held personally liable in law for matters involving the partnership.

[56] There can be no personal liability against the officers of the Company. Therefore it would have been in the purview of the financial institutions, having been provided with the correct information in relation to the TRN assigned to the pre-existing and current entity, to make observations in relation to the connections in order to determine whether they would wish to make an exception as it relates to their time stipulation, in light of their observations on the information so provided..

[57] In relation to the connection between the previous and the new entity, it is clear , on the Claimant's own allegations, that in addition to Mr. Lewis himself, the public body that was seized of the first-hand information about the transformation of ownership of the assets of the partnerships to Tancour was the Company's Office of Jamaica, from whom the TAJ itself was seeking conformation of that fact. Therefore to my mind, if one were to task anybody with the responsibility to provide such information, it would have to be the body with the first-hand information. That is, the body responsible for the registration and maintenance of records in relation

to the incorporation of Companies and the establishment and registering of businesses. In light of Mr. Lewis' evidence, that he was in fact in possession of this first-hand information from the Companies Offices of Jamaica by way of a letter, he was in a position to provide the bank with the information from an authorized source. In essence these allegations do not establish any ground in negligence or breach of statutory duty on the part of the Defendants in relation to the Claimants

[58] The Claimants also relies on section 5 (1) (g) of the ***Tax Administration Act*** which provides for, " ***the promotion of public awareness of the importance of the efficient and effective collection of tax and its importance to national development***". However, in light of the fact that there is no ambiguity in the section, the literal interpretation is that it outlines the functions of the Authority, which is to bring about awareness and educate the general population in relation to its general purpose. That is the collection of revenue on behalf of the state. This does not impose a duty to advise tax payers as it relates to business choices and business decisions.

[59] The Claimants allege that the reason for the request was for the preservation of the Claimants' record. It is my view that the Defendants do have a responsibility to preserve and maintain records in relation to businesses and transactions between themselves and the Claimants or any other entity. The method of preservation however cannot be dictated by the Tax Payer but has to be in accordance with the prescribed law.

[60] The Claimants/Respondents have relied on the several cases to seek to ground their allegations of negligence of the TAJ. The case of ***Corporation of Glasgow v Muir*** [1943] 2 All ER 44, the House of Lords found that the appellants were not liable in negligence to the respondents. The church members obtained permission for church members to have tea in the tea room owing to unfavourable weather. It was contended for the respondents that the manageress of the tea room should have anticipated that there was a risk of the contents of the urn being spilt and

scalding some of the children and that her omission to remove the children from the passage during the transit of the urn constituted a breach of her duty to take reasonable care of the children. This case considers duty owed to visitors. This does not apply to the case at hand where the duty of care being alleged by the Respondent is not in relation to occupation and visitors to a premises.

[61] In ***Hall v Brooklands Auto Racing*** [1933] 1 K.B. 205, a race car at a racing track meet shot into the air over the kerb and into the railing, killing two spectators and injuring others. In an action by one of the injured spectators against the owners of the racing track the jury found that the defendants were negligent in that having invited the public to witness a highly dangerous sport and they had failed by notices or otherwise to give warning of, or protection from, the dangers incident thereto, and to keep spectators at a safe distance from the track.

[62] I find that these cases echo the same principles that ***Donoghue v Stevenson*** has sought to establish for negligence, being: duty of care, breach of duty, damages and causation. However, these cases do not assist the Claimants.

[63] In ***R (on the application of Moseley v Haringey London Borough Council*** [2015] 1 All ER 495, until April 2013, there was a scheme in England for the payment of council tax benefit ('CTB') for the relief, in whole or in part, of certain persons from their annual obligation to pay council tax. As part of a central government programme to reduce the national deficit, local authorities were required to operate a new Council Tax Reduction Scheme ('CTRS') which they were required to have made for themselves. Before making a CTRS, authorities were obliged, pursuant to para 3(1)(c) of Sch 1A to the Local Government Finance Act 1992, to consult 'such other persons as it considered were likely to have an interest in the operation of the scheme'. Two single mothers, who resided in the authority's area and who had been receiving full CTB, sought judicial review of the lawfulness of the consultation. Their application was dismissed at first instance and on appeal. One of the single mothers appealed, but was subsequently substituted

by the claimant. The court considered whether the authority had complied with its statutory duty to consult.

[64] In the instant case the Claimants have pointed to no statutory provision which requires the Defendants to consult with the Claimants or any Taxpayer in order to determine what TRN should be assigned to a new entity.

[65] The ***Haringey London Borough Council*** case was a judicial review of the actions of the council tax under a scheme curated and targeted for a set of people of the population in England. Furthermore, the Local Government Finance Act required the public authority to consult with the individuals who would be affected by the decision. The tax scheme discussed in ***Haringey London Borough Council*** does not apply to this jurisdiction, nor is Tancour a beneficiary of a similar scheme. Furthermore, this action considers tortious liability and there is nothing in the claim to suggest that there was a breach of natural justice.

[66] It is from the duty of care principles laid down in ***Donoghue v Stevenson*** that the tort of Negligent Misstatement was established. However, without even delving too deeply into the law in relation to this issue, there is no information or instance supporting the allegations of consultation and advice and promise. That is a short statement of the subject matter of the previous consultation and a short statement of the advice that was given. In any event Mr Lewis in his affidavit filed on the 13th of June 2018 on behalf of the Claimants alleges *inter alia* that "the partnerships agreed to give up their activity rights and taxable activity rights over to the 1st Claimant (Tancour)".

[67] On the Claimants' own evidence this discussion and agreement was formed before the alleged conversation, information and agreement with the "alleged servant or agent of the Defendants. He said "we engaged TAJ so that we can continue to uphold our obligations under the agreement, so that we can register our taxable activity on the item of information of the incoming converted limited liability company Tancour Construction Jamaica Limited , permanent physical

medium for the purpose of preserving our original records and making it available for future reference of our transformation"

[68] Additionally, based on the evidence of Mr. Lewis for the Claimant he was in fact provided with the information by the alleged agent of TAJ. In relation to the transfer of the taxable activity. He alleges that he was told to write to the Commissioner General. The Claimants allege that "the engagement with TAJ was with one of its servants who informed Mr. Courtney Lewis to write to the Commissioner General of Tax (That is the 3rd Defendant)". In this averment there is no indication of any undertaking or commitment on the part of this anonymous "agent " of the 2nd Defendant to grant the request of the Claimants or that it was even possible for the request to be granted by the 2nd Defendant .

[69] The only possible inference that could be drawn from the alleged instruction is that the 2nd Defendant was not vested with the power to grant the request and that the Claimants should communicate with the 3rd Defendant regarding this request. In light of the content of the letter written by Mr. Lewis the only conclusion the Commissioner General could have formed, as was previously discussed was that the taxpayer was complying with the legal requirement under the Act. Essentially, the letter was in the form of transmitting information rather than making a request.

[70] I notice that in his submissions Mr. Lewis indicated that " Tax Administration of Jamaica, through its servant and/or agent has promised to record the conversion and record Lewis and Blount Construction Developers with Registration Number (35438/2008), goodwill and taxable activity onto Tancour Construction Jamaica Limited Records. The Claimants consulted TAJ through its servant and/or agent before making a specific decision or type of decision to convert its business;". However, this is inconsistent with the allegations of Mr. Lewis that he was told to write to the Commissioner General in relation to the request and that the Commissioner General had not responded to his letter.

[71] The allegations in relation to Negligent Misstatement is veiled in the Further Amended Revised Particulars of Claim dated 31st of October, 2018. The Claimants/Respondents allege at paragraph 22 that:

> "the Claimants acted out under the influence of the 2nd Defendant servants and/or agents' instruction at all times; not knowing that the 2nd Defendants servant and/or agent is misleading and/or being negligent in registering the request of the Claimants. That is to have the history and taxable activities and liability of the parties TRN #001-959-662 be recorded on the convert record, being the 1st Claimant, *so it can reflect on the 1st Claimant documents".*

[72] In the case of ***Hedley Byrne Co. Ltd v Heller & Partners Ltd.*** [1963] 3 WLR 101, the appellants were advertising agents who had placed substantial forward advertising orders for a company on terms by which they, the appellants, were personally liable for the cost of the orders. They asked their bankers to inquire into the company's financial stability and their bankers made inquiries of the respondents, who were the company's bankers. The respondents gave favourable references but stipulated that these were "without responsibility." In reliance on these references the appellants placed orders which resulted in a loss of £17,000. They brought an action against the respondents for damages for negligence.

[73] It was held that a negligent, though honest, misrepresentation, spoken or written, may give rise to an action for damages for financial loss caused thereby, apart from any contract or fiduciary relationship, since the law will imply a duty of care when a party seeking information from a party possessed of a special skill trusts him to exercise due care, and that party knew or ought to have known that reliance was being placed on his skill and judgment. However, since here there was an express disclaimer of responsibility, no such duty was implied.

[74] It was established in ***Hedley Byrne v Heller*** -

> *(a) persons professing some special knowledge or expertise who make representations implicitly presented as having been carefully considered may, at least in some circumstances, be held to owe a duty of care in tort to a person to whom the*

representation is made and/or to a person to whom they know the representations will be passed on, not to mislead him, provided that the representation is made in circumstances in which the representor knows, or should know, that the other person will rely on what he says, and

(b) a breach of this duty may give rise to liability in negligence, even though loss suffered is only financial loss.

[75] The test for negligent misstatement is laid down in the case of ***Caparo Industries Plc v Dickman and other*** [1990] 2 A.C. 605

(1) the damage caused must have been foreseeable;

(2) there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood'; and

(3) the situation should be one in which the court considers it fair, just and reasonable that the court should impose a duty of a given scope upon the one party for the benefit of the other.

[76] The facts of this case is that the plaintiffs, a public limited company, which had accomplished the take-over of F. Plc., brought an action against its directors alleging fraudulent misrepresentation and against its auditors claiming that they were negligent in carrying out the audit and making their report, which they were required to do. On appeal by the auditors and cross-appeal by the plaintiffs allowing the appeal and dismissing the cross-appeal, it was held that liability for economic loss due to negligent misstatement was confined to cases where the statement or advice had been given to a known recipient for a specific purpose of which the maker was aware and upon which the recipient had relied and acted to his detriment.

[77] The alleged agent of TAJ, with whom Mr. Lewis he spoke , has not been identified at all whether by name or any other description. Therefore there is nothing on the allegations on which any court could find that this agent in fact exists or that he/she professed to possess the required skill or expertise in relation any statement made and the knowledge that the Claimants were relying on such a statement.

Neither is there any clear indication of the alleged misleading statement which the Claimants would have acted on to their detriment. In ***Caparo Industries Plc v Dickman and other***, (Supra) the House of Lords reason that:

> *The damage which may be caused by the negligently spoken or written word will normally be confined to economic loss sustained by those who rely on the accuracy of the information or advice they receive as a basis for action. The question what, if any, duty is owed by the maker of a statement to exercise due care to ensure its accuracy arises typically in relation to statements made by a person in the exercise of his calling or profession*

[78] Their Lordships also established that in advising the client who employs him, the professional man owes a duty to exercise that standard of skill and care appropriate to his professional status and will be liable both in contract and in tort for all losses which his client may suffer by reason of any breach of that duty. I find that the Defendants, being statutorily created bodies with the mandate of collecting and administering the collection of revenue on behalf of the state, are not allowed, neither by themselves or their agents, to enter into any contractual relationship with any tax payer. Therefore, there is no way in law they could be contractually engaged by the Claimants.

[79] The Claimants/Respondents also contend that their request to the Applicants was made under the Data Protection Act. However this Act that they refer to is in fact still at the stage of a Bill . Therefore that Act having not yet come into operation , would have no bearing on these proceeding. In any event there is no allegation that they were denied access to their personal data. On their own allegations their request was for the personal data of one entity to be reflected as the personal data of another entity.

[80] In light of the fact that the Defendants are entities that are statutorily created, the Claimants have pointed to no legal authority that imposes on them a duty, obligation or even a discretion to do what the partnerships had previously decided. Section 32.C(1) of the ***General Consumption Tax Act*** gives power to the Commissioner General to grant an application, to approve as a GCT group, two or

more affiliate entities to the effect that they be treated as a single tax payer once certain conditions are satisfied. One of the conditions reflected in S. 32 (e) is that all the applicants in the group should make a joint application for one of the entities to be designated as representative entity of the group.

[81] Therefore, implicit in this provision is that the entities must be in existence as carrying on taxable activities in order to benefit from this provision. In light of the fact that all the assets from the partnerships were transferred to Tancour, it cannot be said, and it is not in fact being argued by the Claimants, that Tancour and Lewis and Blount were existing as a group. Additionally, the procedure laid down by the section 32(h) (2) states that all entities within the group "may claim as tax credit input tax paid or payable within the group" However, it clearly states that "all entities within the group shall be deemed registered tax payers for the purpose of the exercise of the power and duties of the Commissioner General under the Act."

[82] In any event there is no indication that there was any such application seeking approval, but rather an instruction to transfer the activity of the dissolved partnership (that is, the non-existing entity) to the new.

[83] Section 32 (i) of the ***General Consumption Tax Act*** states that if the Taxpayer is dissatisfied with the decision of the Commissioner General then the taxpayer should appeal to the Commissioner of Tax appeals within 30 days of the Decision. If the Taxpayer is dissatisfied with the decision of the Commissioner of Tax appeal then he should appeal to the Revenue Court. In any event the Claimants would have failed to follow the procedure as outlined by the Act.

[84] The S.32 (I) of the said Act also speaks about the sale, disposition or transfer of ownership of taxable activity. However the Act defines "taxable activity" as "activity carried on in the form of a business service or trade , profession , vocation, trade,…..for consideration". Therefore as it relates to the transfer of taxable activity, this does not refer to the history of tax compliance from the previous owner to the new but rather to the transfer of the business operation from which taxes

were previously being generated to a new owner In this event, the Act imposes a duty on the taxpayer to inform the Commissioner in writing of any such transfer. Additionally, the new owner is also obligated to inform the Commissioner in writing. This is clearly with a view to remove obligations from the previous owner as at the date of transfer and for the state through its agent , the Applicants ,to track and trace the revenue sources for the assessment and collection of revenue from the new owner .

[85] The obligation as gleaned from the Act in relation to the transfer of "taxable activity", is that the Applicants had the obligation not to impose on the partners of the dissolved Lewis and Blount the requirement for tax payment, except for outstanding taxes up to the date of the dissolution . In relation to Tancour , they would have to be registered as a new taxpayer, and assigned an identification number and records made of the nature of their "taxable activity", as previously defined, for future reference to aid in the assessment and collection of taxes.

[86] Nowhere have the Claimants pointed to any obligation or duty in any of these provisions on the part of the Applicants to assign the number of the previous entity to the new owner. As Counsel for the Applicants has correctly pointed out , no court can impose a duty where none exists. That is, the alleged servant or agent of TAJ had no general duty to act positively for the Claimants' benefit in the instant case. This was aptly discussed as indicated by the Applicants by the learned Professor Gilbert Kodiliyne in his seminal work ***Commonwealth Tort Law***, at page 85, where the author states that :

> *"Although Lord Atkin in Donoghue v Stevenson spoke of a duty to take care to avoid acts or omissions which were foreseeably likely to injure one's neighbour, it is [an] established principle that there is no general duty to act positively for the benefit of others and 'there is no liability for mere omission to act'.*
>
> *It seems that the omission referred to by Lord Atkin is an omission in the course of positive conduct..."*

[87] Integral to the Claim against the 2nd Defendant is the allegation that Mr. Lewis communicated with an agent of the 2nd Defendant who gave him information on which the Claimants acted to their detriment. Yet no particulars or information has being provided in relation to this agent. No name nor description has been provided, If such an agent exist the 2nd Defendant has been denied the opportunity to investigate the allegations and to provide and informed response as it relates to the alleged information or instructions given to the Claimants by this alleged agent.

Whether the Particulars of Claim is Prolix

[88] The Defendants/Applicants have not submitted any authorities to support their arguments made under Rule 26.3 (1)(d) of the CPR. However, in ***Eastern Caribbean Flour Mills v Ormiston St Vincent and the Grenadines*** Civil Appeal No 12/2006 delivered 16 July 2007, Barrow JA at paragraphs 43 and 44 also endorsed the principles laid out by Lord Woolf in ***McPhilemy v Times Newspapers Ltd*** [1993] 3 All ER 775, 792J-793A - He states that at paragraph 43 that:

> *"To prevent surprise at the trial, the pleading must contain the particulars necessary to serve that purpose. But there is no longer a need for extensive pleadings, which I understand pleadings to mean with a n extensive amount of particulars, because witness statements are intended to serve the requirement of providing details or particulars of the pleader's case.*

At paragraph 44 he continued:

> *"It is settled law that witness statements may now be used to supply details or particulars that, under the former practice, were required to be contained in pleadings. "*

[89] Therefore pleadings should contain the material facts that must be pleaded to allow for the opposing side to adequately respond to the claims by way of admission or denial of said facts. This would define the issues for the benefit of the parties and the court. Proper pleading of the material facts is essential for the orderly progress

of the case for its sound determination (See ***Boake Allen Ltd et al v HMRC*** [2006] EWCA Civ 25).

[90] The most fundamental rule is that pleadings must contain the statement of the material facts upon which the claim rests but not the evidence which is to be relied upon. Therefore, it can be discerned that only relevant facts must be pleaded. In the Bahamian case of ***Mitchell et al v Finance Corporation of the Bahamas Limited (RBC FINCO) et al*** BS 2014 SC 036, where the Rules are quite similar to our Rules the Court states:

> *"Every pleading must contain, and contain only, a statement in a summary form of material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the claim admits."*

[91] Rule 8.9 of the CPR states –

> *"(1) The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.*
>
> *(2) Such statement must be as short as practicable."*
>
> *"8.9A The claimant may not rely on any allegation or factual argument which is not set out in the particulars of claim, but which could have been set out there, unless the court gives permission."*

[92] I find that the Further Revised Amended Claim Form and Further Revised Amended Claim Particulars of Claim are replete with unnecessary repetitions and contain more than facts but include much of the evidence it appears that the Claimants intend to present to the court in their claim. However, having found that the allegations do not disclose any reasonable grounds for bringing the Claim, which is sufficient for the striking out of the entire claim, I do not find it necessary for me to make a decision with regards to striking out on the grounds of prolixity or any other ground.

[93] I must indicate that I am mindful of the fact that the Claimants are self-represented However in balancing the scales of justice and in order to ensure justice is done

between the parties, this should not be used as a tool to deny the Defendants the right that is afforded them within the rules or the Law. There is no expectation for the Claimants to function at the level of a trained attorney-at law., employing precise legal jargons. However, there are certain basic expectations of any litigant, despite being self-represented, as it relates to compliance with rules I find that the fact that there is non-compliances with the Rules cannot be overlooked on the basis that the litigant is not a trained attorney at law, and particularly where the non-compliance is not slight but egregious.

Conclusion

[94] In all the circumstances, I find that there is nothing on the allegations that would in law give rise to a duty or an obligation on the part of the Applicants to transfer the tax information, including the TRN from a dissolved partnership, to a newly created company with a distinct legal personality. That is essentially transferring the identity of a deceased person to a new born child. This is the foundation of the Claimants' case.

[95] Once this substratum is removed the entire claim fails. I see no evidential basis for a realistic case on the part of the Claimant. In light of the allegations and assertions of the Claimants, I find that there is sufficient grounds for me to find and I so find that on the Claimants' statement of case there does not emerge any sustainable cause of action against the Applicants/the 1st 2nd and 3rd Defendants. Therefore, I find that the Further Revised Claim and the Further Revised Particulars of Claim disclose no reasonable grounds of bringing this Claim against the 1st 2nd and 3rd Defendant. Therefore the Claimants' statement of case against the 1st 2nd and 3rd Defendant is struck out.

Summary Judgment

[96] In light of the striking out of The Claimants' statement of case against the 1st 2nd and 3rd Defendant I hold that the Claimants' application for Summary Judgment against the 1st 2nd and 3rd Defendant fails.

ORDERS

[97] For the reasons stated above , the following orders are made:

(a) The Claimants' statement of case against the 1st 2nd and 3rd Defendant is struck out.

(b) The Claimants' Application for Summary Judgment against the 1st 2nd and 3rd Defendants fails.

(c) Cost to the 1st 2nd and 3rd Defendants to be agreed or taxed.

(d) Leave to Appeal is granted.