COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2018/CLE/gen/FP/00102

B E T W E E N

ALPHA AVIATION LIMITED

Claimant

FRED KAISER

Second Claimant

AND

SCOTT FERGUSON

Defendant

Before: The Honourable Mr. Justice Andrew Forbes

Appearances: Marnique D. C. Knowles, for the Claimants

Jacy Whittaker, for the Defendant

Hearing Dates: 1 March, 2024

JUDGEMENT

Background

[1.] On the 1 July 2022, the Claimants filed an Amended Specially Endorsed Writ and instituted this action for Breach of Agreement. The Defendant filed an Amended Defence on the 5 July 2022. On 12 May 2023, the Claimants completed the case management questionnaire to move to case management. On the 9 August, 2023 the Case Management Order was perfected.

Introduction

[2.] The applications from both Counsels stem from the breach of the Case Management Conference Order filed on 9 August 2023 which states:

> The parties shall file their witness statements and exchange them on or before January 17th, 2024... that the failure to serve witness statements on the stipulated date will attract the sanctions set out in Rule 29.11. Specifically, a party may not call any witness whose witness statement has not been filed at the time specified unless the Court otherwise orders.

[3.] On 12 February, 2024 the Defendant filed a Notice of Evidential Objection ("First Application"). The First Application was supported by the Affidavit of Machel Hepburn filed on the 12 February, 2024.

[4.] In brief, the First Application objected to the use of:

i. A Promissory Note in the sum of $175,000 dated 3 September, 2023;
ii. A Promissory Note in the sum of $50,000 dated 4 September, 2023;
iii. A Letter to Mr. Scott Ferguson from Aisha Z. Stuart-Smith dated 14 February, 2023; and
iv. A Letter to Mr. Scott Ferguson from Aisha Z. Stuart-Smith dated 10 April, 2019

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

i. That the Promissory Notes dated 3 September, 2023 and 4 September, 2023 in the sum of $175,000 and $50,000, respectively, do not comply with section 29 of the Stamp Act.
ii. That the Promissory Note dated 3 September, 2023 is a loan in US Dollars which is contrary to the Exchange Control Regulations Act and Regulations. As without admitting nor denying the existence of the document, there appears to be no approval granted for the issuance of such a document from the Exchange

Control department and there appears to be no approval granted for the repayment of such a document from the Exchange Control department.

iii. That the Letters dated 14th of February, 2023 and 10 April 2019 relate to matters not admissible due to the aforementioned documents failure to comply with the Stamp Act.

[6.] Subsequently, the Claimants' Counsel filed an application seeking relief from sanctions pursuant to Part 26. 8 and 26.9 of the CPR filed on 18 January, 2024 ("Second Application") and an Amended Notice of Hearing on 21 February, 2024 ("Third Application"). The Applications are supported by the Affidavit of Marnique D. C. Knowles filed on the 21st February, 2024.

[7.] In brief, the Third Application sought:

i. an Order for Summary Judgement pursuant to Part 15.2(b) of the Civil Procedure rules, 2022;

ii. an Order to strike out the Defendant's Defence and an order or judgement to be entered for the Claimants pursuant to Part 12.5 of the Civil Procedure Rules; and

iii. Costs.

[8.] The grounds of the Third Application were that the Defence had no real prospect of success. Further, the Claimants argue that the Defence does not comply with Part 10.5 namely, 26.3 (7) in that it did not comply with a rule, order, or direction given by the Court.

[9.] It is noted that though Counsel for the Claimant has several applications before the Court, there was one substantial Submission laid over addressing Relief from Sanctions, Summary Judgment, and Strike Out.

Evidence in Support of the First Application

[10.] The evidence of Machel Hepburn in brief is:

i. that on 17 January, 2024 Counsel for the Plaintiffs sought an extension to submit their witness statements by the 18 January, 2024. That the case management order required the witness statements to be filed by the 17 January 2024;

ii. that Claimants' Counsel requested an extension on the 8 January, 2024 that the filing period of the witness statements be extended to the 18 January, 2024 because their client is currently out of the country.

iii. that an email sent by the Defendant's Counsel on the 18 January, 2024 to the Claimants' Counsel emphasized the deadlines set by the Court and that the deadlines should be strictly adhered to.

iv. that a formal application for relief from sanctions ought to be sought in accordance with the procedures

[11.] The remainder of the evidence mirrored that of the Submission of Counsel. Exhibited to the affidavit were a number of the communications between Counsels as summarized above.

Evidence in Support of the Second and Third Application

[12.] The evidence of Marnique D. C. Knowles is:

i. that on 30 September, 2012 the Second Claimant agreed to lend the Defendant $175,000.00 executed by way of Promissory Note and on the 4 September 2012 the First Claimant agreed to lend the Defendant $50,000.00 also executed by way of Promissory Note.

ii. That there were numerous attempts made to retrieve repayment of the Loans.

[13.] The remainder of the 'evidence' given mirrored that of the Counsel's submissions mentioned below.

Submissions of the Claimants' Counsel

[14.] As it relates to relief from sanctions, the Counsels for the Claimants submit:

i. That the Court must determine whether the breach is serious or materially significant; why the breach occurred and consider all the circumstances of the case (see **Denton and others c TH White Ltd and another** [2015] 1 All ER 880 **and Mitchell v News Group Newspapers Ltd** [2014] EWHC 210 (Comm)).

ii. That the delay of 24 hours is neither serious nor significant and the Defendant relied upon authorities that are not applicable and the breach is minor but still falls within the Case Management framework.

iii. That the deponent of the witness statement was out of the country and unable to execute the Witness Statement.

iv. That there was no history of non-compliance and to not allow the short extension with a view of striking out would be disproportionately draconian.

v. That the Defendant has not filed any witness evidence himself.

[15.] As it relates to summary judgment, the Counsels for the Claimants submit:

i. That the applicable test for an application for summary judgment pursuant to Part 15.2(b) is that the Claimant must show that the defendant has no real prospect of success at trial that is not fanciful nor without substance or more than merely arguable **(See Swain v Hillman** [1999] EWCA Civ 3053**; Three Rivers District Council v. Bank of England** (No. 3) [2001] UKHL 16**; ED&F Man Liquid Products Ltd v Patel** [2003] EWCA Civ 472**).**

ii. That the Court must analyse the evidence on the face of it that the defendant has a claim that is not merely arguable but also has a reasonable chance at being successful **(See ED&F *supra*).**

iii. That the Defendant has not supported his assertions of illegality, nor is the Defence sufficiently pleaded.

[16.] Finally in addressing the strike-out application, the Claimants submits:

i. that the application is not solely due to the failure to file evidence in time but also the failure to particularize each proffered defence

ii. that the Defendant's Defence is not adequately particularized and are in non-compliance with Part 10.5 of the CPR and therefore should be struck pursuant to section 26.3(1) of the CPR.

iii. that the breach is materially significant and serious and can only be cured by allowing the Defendant to Re-Amend it's defence which it should not be afforded such an opportunity at this late stage (See **Denton *supra***).

Submissions of the Defendant's Counsel

[17.] As it relates to the Relief for Sanctions application Counsel for the Defendant states:

i. that the current applications relate to the Claimants' failure to file witness statements in accordance with the Case Management Conference order which states:

> *The parties shall file their witness statements and exchange them on or before January 17th, 2024... that the failure to serve witness statements on the stipulated date will attract the sanctions set out in Rule 29.11. Specifically, a party may not call any witness whose witness statement has not been filed at the time specified unless the Court otherwise orders.*

ii. that the Claimants are purporting that the breach is trivial and the applications stemming from the breach are, in essence, an attempt or measure used to delay this trial.

iii. that the affidavit made for the relief for sanctions are from the counsel in the matter, Ms. Knowles.

iv. that the claimants have not furnished the Court with good reason for their breach.

v. that the power to grant relief from sanctions may be found in Rule 26.8 of the CPR but the approach which the court should take is found in the case of **Andrew Smith, Sophia Smith v First Caribbean International Bank Bahamas and Insurance Management Bahamas Limited** BS 2023 SC 143. The case states firstly, the court must identify and assess the seriousness and significance of the "Failure" to comply with any rule, practice direction or order; secondly, consider why the default occurred and thirdly all the circumstances of the case to enable the Court to justly determine the application.

vi. that the parties must comply with court orders and deadlines that have been set **(See. Durrant v Chief Avon & Somerset Constabulary [2014] WLR 4313)**

vii. that the filing of witness statements is a matter of obvious importance **(Newland Shipping & Forwarding Ltd. V Toba Trading FZC [2014] EWCH 210 (Comm)).**

viii. that overlooking a deadline, whether on account of overwork or otherwise is not a good reason (See **Andrew Smith *supra***).

ix. that a party facing difficulty complying with an unless order should come back to the court and explain the problems they face as soon as they arise **(See Phillip John Eaglesham v Ministry of Defence [2016] EWCH 3011 QB.)**

x. there was further reliance on the case of **William Thompson v Fredricka Thompson.**

xi. that during the drafting of the CMC Order and establishment of the deadlines the Claimants were or ought to have foreseen that the First Claimant would be outside of the jurisdiction and there ought to have been communication with counsel.

[18.] As it relates to the objection of Summary Dismissal Counsel for the Defendant states:

i. It is incumbent that the judicial process resolves a material factual dispute at trial **(See Real time Systems Limited v Renraw Investments Limited and Others [2014] UKPC 6);**

ii. That there exists factual disputes between the parties and it would be inappropriate to grant summary judgment. **(See Mills v British Colonial Development Company BS 2015 SC 43;)**

iii. That the Amended Defence outlined the case against the claimant, which is that the Claimants alleged agreement was illegal and should be barred from recovery;

iv. That it is not necessary for a defence to be substantiated and particularized with documentary evidence. **(See Bahamas Ferries Limited v Charlene Rahming SCCivApp&CAIS No.122 of 2018.)**

v. That a triable issue was raised based on the defence and that the Claimants' application for Summary Judgment is without merit andand the application for Strike Out of the Defendant's Amended Defence is disproportionate and unjust.

Issues

[19.] Therefore, in light of the evidence before this Court, the issues to be determined are:

i. Whether the Claimants ought to be granted relief from sanctions pursuant to Rule 26.8 and Rule 26.9?

ii. Whether the Affidavit complies with the Supreme Court Civil Procedure Rules and Practice Directions of the Court;

iii. Whether the Court should grant Summary Judgment pursuant to Rule 15.2 ; whether the Defendant's Amended Defence should be struck pursuant to Rule 26.3?

iv. Whether the Defendant's Defence is properly pleaded pursuant to Rule 10.5;

Issue 1: Whether the Claimants ought to be granted relief from sanctions pursuant to Rule 26.8 and Rule 26.9?

[20.] The Claimants make an application for relief from sanctions due to failure to file the appropriate witness statement within the specified period made by this Court.

[21.] Part 26.8 of the rules states:

26.8 Relief from sanctions.

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or Court order, the Court will

consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need —

(a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.

(3) The Court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

[22.] Further, Rule 26.9 states:

26.9 General power of the Court to rectify matters.

(1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction, court order or direction.

(2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the Court so orders.

(3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the Court may make an order to put matters right.

(4) The Court may make such an order on or without an application by a party.

[23.] The principles as laid down in **Denton *supra*** are clear; first the Court must access the seriousness and significance of the breach or noncompliance; secondly, the Court must address its mind as to why the breach occurred and finally, the Court should consider all circumstances in the case before it.

[24.] The Court accepts the judgments of **Denton *supra*** and **Mitchell *supra.*** In the case of **Denton *supra*** at paragraph 28 the Court held:

> "If a judge **concludes that a breach is not serious or significant**, then **relief from sanctions will usually be granted** and it will usually be unnecessary to spend much time on the second or third stages. If, however, the court **decides that the breach is serious or significant, then the second and third stages assume greater important**."

Further, it is noted that a breach could be seen as serious even if it does not effect the efficient progress of litigation (see. **Denton *supra*** at para 26). Therefore, the Court finds that the breach was significant and serious as the filing of the witness statement is an essential step in the

progress of the case. The Court notes the cases laid over by the Defendant's Counsel to support this point namely, **Durrant *supra* ; and William Thompson v Fredricka Thompson** are applicable in principle but are distinguished based on the facts, i.e. **Durrant** had a prior extension in relation to the directions order before the breach; and in the case of **William Thompson** the trial date had to be vacated. Therefore, the significance and seriousness of the breach are not mirrored in the cases laid over in this regard in the cause at hand.

[25.] However, when applying the three-step test as described in **Denton *supra*** the Court must address its mind as to why the breach occurred. At paragraphs 41 & 43, the case of **Andrew Mitchell MP *supra*** listed what may be considered good reasons for a serious breach:

i. If a party, or his solicitor, suffered from a debilitating illness or was involved in an accident (paragraph 41);
ii. If "later developments in the course of the litigation process are likely to be a good reason if they show that the period for compliance originally imposed was unreasonable, although the period seemed to be reasonable at the time and could not realistically have been the subject of an appeal" (paragraph 41); and
iii. That "good reasons are likely to arise from circumstances outside the control of the party in default" (paragraph 43).

[26.] The Court is not satisfied with the reason for the breach of the Case Management Conference Order; that the said breach was due to the fact that the witness, the Second Claimant, was out of the jurisdiction away on business dealings and could not execute the documents. From the evidence put forth by Defendant's Counsel it is evident that from at least January 8, 2024 the Claimants were aware that they could not comply with the Case Management Conference Order and did not formally move the Court or communicate with the Court of this dilemma which it ought to **(see Phillip John Eaglesham v Ministry of Defence [2016] EWCH 3011 (QB))**. Counsel ought to have formally requested an extension for time as allowed for in their Case Management Conference Order per paragraph 7. The excuse provided by Counsel for the Claimants does not fall within any of the categories as laid down by **Andrew Mitchell MP *supra*** which the Court notes is not an exhaustive list. Therefore, the Claimants application would too fail on this ground.

[27.] The considerations of the Court as it relates to the last stage were, too, ventilated at paragraph 32 in the case of **Denton *supra.*** In essence, for the Court to deal with the case justly it must determine whether the sanction imposed is proportionate to the breach; and whether an application for relief from sanctions was made promptly. To the credit of the Claimants, the application for relief from sanctions was made promptly and there were no prior breaches of

the rules or any court orders. However, the Court is of the view that the sanctions laid down in the Case Management Conference Order, are proportionate and clear as it relates to the breach.

[28.] Therefore, due to the following reasons above and considerations mentioned the Court will not grant relief from sanctions and the witness statements are not permitted to be entered as evidence.

Issue 2: Whether the Affidavit complies with the Supreme Court Civil Procedure Rules and Practice Directions of the Court?

[29.] Before ventilating this issue, the Court notes that the Notice of Evidential objection was made by the Counsel for the Defendant; however, it can only be considered or determined based on the view that the Court allows the Relief from Sanctions application or order that the matter to proceed to trial, which this Court is not minded to do so.

[30.] As stated previously, the Claimants are seeking Summary Judgement, or in the alternative Strike Out. The application was made by way of form G14 and supported by the Affidavit of Marnique D. C. Knowles.

[31.] Part 15.5 mandates that for the purposes of summary judgment the applicant must file affidavit evidence in support of the application. Specifically, Rule 15.5(1)a states:

> 15.5 Evidence for the purpose of summary judgment hearing.
>
> **(1) The applicant must —**
>
> **(a) file affidavit evidence in support with the application**; and
>
> (b) serve copies of the application and the affidavit evidence on each party against whom summary judgment is sought,
>
> at less than fourteen days before the date fixed for hearing the application.

[32.] This mandatory requirement is not explicitly stated as it relates to Default Judgments in Part 12. However, Part 12.4 states the conditions to be satisfied and state:

> The claimant may enter judgment for failure to file an acknowledgement of service if —
>
> **(a) evidence has been filed proving service of the claim form and statement of claim on the defendant;**
>
> (b) the defendant has not filed —
>
> (i) an acknowledgement of service; or
>
> (ii) a defence to the claim or any part of it;
>
> (c) the defendant has not satisfied in full the claim on which the claimant seeks judgment; …. (Emphasis mine).

[33.] Moreover, the Court notes Practice direction No. 10 of 2023 3.1 which in essence state the 2 forms in which an application for default judgment can be made; which are by application in the relevant practice forms dealt with administratively or by application made by way of notice of application. In this instance Counsel for the Claimants chose the latter.

[34.] Further, for a Strike Out and Default Judgment application to be considered under Part 26, evidence in the form of an affidavit is required as the application falls within the definition of an interlocutory application as defined in Part 11. As interlocutory applications are those which seek an order of the Court, applications pursuant to Part 26 are governed by Part 11 of the rules. Part 11.1 states 'This Part deals with interlocutory applications for court orders being applications made before, during or after the course of proceedings.' Further, Rule 11.9 states:

> **Evidence in support of an application must be contained in an affidavit unless otherwise provide by —**
>
> (a) court order;
>
> (b) a practice direction; or
>
> (c) rule.

[35.] Therefore, an interlocutory application as described in Part 11 must be supported by evidence of an affidavit.

[36.] The Court notes that the application is supported by an affidavit of Marnique D. C. Knowles. Who appears as Counsel on the record and gave submissions to this Court on the hearing of this application on 1 March 2024.

[37.] The Court notes Practice Note No. 1 of 1995 which states:

> *"Instances have occurred where, in matters heard in Chambers, an attorney has sought to rely on affidavits sworn by himself, as to contentious matters between the parties."*
>
> While there may be little objection to affidavits sworn by an attorney deposing to purely formal matters, it is well to bear in mind the following instruction which appears in paragraph 3 of the Commentary to Rule VIII of The Bahamas Bar Code of Professional Conduct.
>
> ***"If the attorney is a necessary witness he should testify and the conduct of the case should be entrusted to another attorney."***
>
> *"An attorney who is acting as an advocate in a case should therefore advise himself accordingly."*

[38.] The Affidavit in support of the application for Summary Judgement or in the alternative Strike Out and Default Judgement is supported by the affidavit of the attorney on the record who has carriage of this matter. The Affidavits used were not done so to just move the matter along, it was to provide evidence in this application that is to be relied upon by this Court for determination. Therefore, the Affidavit in support of this application is not in compliance with the rules of the Court. In the circumstances, the Court does not rely upon the contents and would rely on the pleadings and other materials filed in this matter.

Issue 3&4: Whether the Court should grant Summary Judgment or in the alternative Default Judgement; Whether the Defendant's Defence is properly pleaded pursuant to Rule 10.5;?

[39.] The Court has the responsibility to steer the proceedings so that the overriding objective is achieved. In the case of **Ashmore v Corp of Lloyds** (1992) 2 All ER 486 at 493 *Lord Templeton* describes the responsibility of the Court to control proceedings; in which he states:

> *"The control of the proceedings rest with the judge and not with the plaintiffs .... An expectation that the trial would proceed to a conclusion upon the evidence to be adduced is not a legitimate expectation. The only legitimate expectation of any plaintiff (party) is to receive justice. Justice can only be achieved by assisting the judge and accepting his rulings."*

[40.] As previously stated, the Claimants requested one or a combination of several judicial remedies. The Claimant sought either 1) summary judgment or in the alternative 2) strike out and a judgment for failure to defend on the grounds that Defence discloses no reasonable prospects of success and that the Defence does not comply with Part 26.3 (1)

[41.] The Court notes the grounds for summary judgment in Part 15.2 which states:

> The Court may give **summary judgment** on the claim or on a particular issue if it considers that the —
>
> (b) defendant has **no real prospect of successfully defending the claim or the issue**. *[Emphasis mine]*

[42.] Therefore, the consideration for the Court to strike a claim or in the alternative grant summary judgment are the same; the consideration being "whether there is a real prospect to defend the claim." The case of **Three Rivers District Council v. Bank of England (No. 3) [2001] UKHL 16** in which *Lord Hope* laid the requirements for a real prospect of success. He stated:

The rule is designed to deal with cases which are not fit for trial at all; The test of no real prospect of succeeding requires the Judge to undertake an exercise of judgment. He must decide whether to exercise the power to decide the case without trial and give summary judgment. It is a discretionary power, he must then carry out the necessary exercise of assessing the prospects of success of the relevant party. The judge is making an assessment not conducting a trial or fact finding exercise, it is the assessment of the case as a whole which must be looked at accordingly, the criterion which the judge has to apply under CPR Part 24 is not one of probability it is the absence of reality."

Therefore, it is necessary for the party opposing summary judgment to prove to the Court that there is some real and not fanciful prospect of success to defeat the application **(See Swain v Hillman [2001] 2 All ER 91).** Further, the burden of proof rests with the applicant to prove that the respondent has no real prospect of success **(See ED & F Man Liquid Products Lts. V Patel [2003] EWCA Civ 472.)**

[43.] The Court also notes Part 12.5 of the Supreme Court Civil Procedure Rules state:

The claimant may enter judgment for failure to defend if —

(a) the claimant proves service of the claim form and statement of claim or an acknowledgement of service has been filed by the defendant against whom judgment is sought;

(b) the period for filing a defence and any extension agreed by the parties or ordered by the Court has expired;

(c) the defendant has not —

(i) filed a defence to the claim or any part of it, **or the defence has been struck out or is deemed to have been struck out under rule 22.1(6);**

(ii) if the only claim is for a specified sum of money, filed or served on the

claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or

(iii) satisfied the claim on which the claimant seeks judgment; and

(d) where necessary, the claimant has the permission of the Court to enter judgment. *[Emphasis mine.]*

[44.] Part 26.3 (1) states that a statement of case may be struck where it appears to the court that:

(a) **there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;**

(b) the statement of case or the part to be struck out does not disclose any **reasonable ground for bringing or defending a claim**;

(c) **the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process** of the Court or **is likely to obstruct the just disposal of the proceedings**; or

(d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10. *[Emphasis mine].*

[45.] Moreover, the Court also has the inherent power to make an order/judgement on its own prerogative. Specifically, **Halsbury's Law of England/ Civil procedure (Volume 11 (2015), paras 1-503: Volume 12 (2015), paras 504-1218); Volume 12A (2015), paras 129-1775)/1. Civil Procedural Law Sources and Framework/(4) Sources of Civil Procedural Law para 23** describe the "inherent jurisdiction of the court" as:

> reserved or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial. *[Emphasis mine]*

[46.] The general rule for strike out is that it should only be done in the most plain and obvious cases that cannot succeed or are in some way an abuse of the process of the court **(see Nagle v Feilden (1966) 2 Q.B. 633 at p 648)**. Further, Part 26.3 (1) a allows for the Court to strike any part or whole of a statement of case where it is apparent to the Court that there is "failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings."

[47.] When exercising the discretionary power whether a statement of case should be struck, the Court must view the rules through the lens of the overriding objective **(see Walsh v Misseldine [2001] CLPR 201.)**

[48.] In this instance, the Amended Defence of the Defence does not properly particularize any of the alleged defences raised and as such should be struck. Nor has there been any witness statements nor evidence filed by the Defendants in support of his Defence to this date. There has been no application made by the Defence for relief from sanctions. Moreover, should the Amended Defence stand there is no evidence or relevant particulars nor material filed in the form of witness statements etc. to move on to trial and there would be no reasonable prospect of success at trial.

Disposition

[49.] The Court disallowing relief from sanctions pursuant to Rule 26.8 and in its inherent jurisdiction orders that the Amended Defence is struck and granting summary judgment be awarded to the Claimants. The use of witness statements disallowed. As costs usually follow the matter, in this application there is no order as to costs due to Counsel for the Claimants' non compliance with the Practice Notes and Rules of this Court. Each party is to bear own costs. Parties aggrieved by the findings of this decision can appeal within the statuatory time.

Dated the 12th June, 2024

Andrew Forbes
Justice of the Supreme Court