

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2022/CLE/gen/FP/00097

B E T W E E N

FREEPORT BAHAMAS ADVENTURES LIMITED

Claimant

AND

BUSCO LIMITED

Defendant

Before: The Honourable Justice Constance Delancy

Appearances: Jacy Whittaker for the Claimant

Samuel Rahming for the Defendant

Hearing date(s): On the Papers

RULING

DELANCY, J.

[1.] This is the Claimant's application for summary judgment filed on 23 July 2024 which parties agreed to be decided on the papers with parties relying on their respective written submissions.

Background

[2.] On 8 July 2022, the Claimant filed a Specially Endorsed Writ of Summons with a Statement of Claim seeking, inter alia, breach of contract and trespass to property and goods.

[3.] On 2 August 2022, the Claimant filed a Judgment in Default of Defence.

[4.] The Defendants filed a Notice of Appearance and Memorandum of Appearance on 31 October, 2022.

[5.] On 20 February 2024, the Judgment in Default was set aside and the Defendant directed to file its Defence.

[6.] On 27 February 2024, the Defendant filed a Defence and Counterclaim seeking, a declaration that the Letter of Intent dated 26 November 2013 and oral agreement between the parties is binding, an order that the Claimant remove its chattels from the Defendant's property, damages for unlawful interference and trespass of the Defendant's property.

[7.] On 14 August 2024, the Claimant filed a Notice of Application for Summary Judgment an Affidavit of Sheila Taylor ("Taylor Affidavit") in support thereof.

[8.] On 7 April 2025, the Defendant filed an Affidavit by Terrance Gape ("Gape Affidavit") in opposition to the Claimant's application.

[9.] The Claimant relied on the Taylor Affidavit, a paralegal employed by the Claimant's Counsel. The Defendant relied on the Gape Affidavit, Vice President, Director and Corporate Counsel of the Defendant, in opposition to the Claimant's application.

[10.] The Court read the parties' submissions (and the authorities contained therein) and the pleadings filed herein which will not be produced in detail; however, they have been fully considered.

Law and Discussion

[11.] The Court may grant summary judgment under Part 15.2, 15.5 and 15.6 of the Bahamas Supreme Court Civil Procedures Rules, 2022 ("CPR"). Part 15.2 of the CPR provides:

- (2) The Court may give summary judgment on the claim or on a particular issue if it considers that the—
 - (a) Claimant has no real prospect of succeeding on the claim or the issue; or
 - (b) defendant has no real prospect of successfully defending the claim or the issue.

[12.] Part 15.5 of the CPR states:

- (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 the summary judgment is sought, at less than 14 days before the date fixed for hearing the application.
- (2) A respondent who wishes to rely on evidence must—
 - (a) File affidavit evidence, and
 - (b) Serve copies on the applicant and any other respondent to the application; At least seven days before the summary judgement hearing.

[13.] Rule 15.6 of the CPR provides that:

- (1) The Court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end.
- (2) Where the proceedings are not brought to an end, the Court must also treat the hearing as a case management conference.

[14.] In **Swain v Hillman and another** [2001] All ER 91, *Lord Wolff* laid out the test to be applied to summary judgment applications under Part 24 (comparable to Part 15 of CPR):

Under Pt 24.2, the court now has a very salutary power, both to be exercised in a claimant's favour or, where appropriate, in a defendant's favour. **It enables the court to dispose summarily of both claims or defences which have no real prospect of being successful.** The words **'no real prospect of being successful or succeeding'** do not need any amplification, **they speak for themselves.** **The word 'real' distinguishes fanciful prospects of success** or, as Mr. Bidder submits, they **direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success.**

....It is important that a judge in appropriate cases should make use of the powers contained in Pt 24. In doing so he or she gives effect to the overriding objectives contained in Pt 1. **It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose,** and I would add, generally, **that it is in the interests of justice. If a claimant has a case which is bound to fail, then it is in the claimant's interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know that as soon as possible.**
[Emphasis added]

[15.] The Court must therefore determine whether the Defendant has a realistic prospect of successfully defending the claim. The Court ought not engage in a mini trial to arrive at a conclusion but rather confine its enquires to the pleadings filed herein. As per *Danckwerts LJ* in **Wenlock v Moloney** [1965] 2 All ER 871 at p.874

....**this summary jurisdiction of the court was never intended to be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action. To do that is to usurp the position of the trial judge, and to produce a trial of the case in chambers, on affidavits only,** without discovery and without oral evidence tested by cross-examination in the ordinary way.

[16.] The Claimant submitted that (a) the Defendant has admitted that there was no formal lease agreement, thereby dismissing their position on the lawful termination of the lease; (b) the Defendant failed to follow statutory procedures for eviction and distress for rent, which presents a strong argument for procedural impropriety; (c) the Defendant's actions of placing a lock on the property without a court order contrary to Statute, thereby causing loss and damage to the Claimant's goods, further supports the Claimant's case.

[17.] The Defendant submitted that there was an oral agreement between the parties and that the issue of whether there was an agreement is not an issue to be determined on a summary basis but one which ought to be investigated at trial.

[18.] The Court accepts the submission of Defence Counsel and takes the view that, when examining the pleadings, the defence raised by the Defendant has a realistic prospect of success that can only be determined on the evidence produced at trial.

Disposition

[19.] The Court finds that there is an issue to be tried and on that basis summary judgment should not be granted to the Claimant. Further, that the Defendant's Counterclaim and Defence does have a realistic prospect of success and that the matter proceed to trial on the dates fixed by the Court.

[20.] The Claimant shall pay the Defendant's costs on this application to be assessed summarily by this Court. The Defendant is hereby directed to prepare and deliver a pro forma bill of costs and brief submissions to the Court and the Claimant within 21 days. The Claimant to responded within 14 days of receipt of such pro forma bill of costs and submissions. The costs to be assessed on the papers.

Dated the 18 day of July, 2025

[Original signed and sealed]

Constance A. Delancy
Justice