

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
B E T W E E N

2022
CLE/gen/01521

GLENARD EVANS

Claimant

AND

AIRPORT AUTHORITY

Respondent

Before: The Honorable Madam Justice Carla Card-Stubbs

Appearances: Romona A. Farquharson and Samuel Taylor for the
Claimant/Respondent
Regina E. Bonaby for the Defendant/Applicant

Hearing Date: 12 May 2023

Practice and Procedure - Strike Out application – Part 26.3 (1) of The Supreme Court Civil Procedure Rules, 2022 (as amended) - Whether Duplication of action – Abuse of the Court’s Process - Whether statement of case discloses no reasonable grounds for bringing the claim - Public law allegation in private law claim - Part 1.1. - Overriding Objective, The Supreme Court Civil Procedure Rules, 2022 (as amended)

Introduction

1. This is the Defendants’ application to strike out the Claimant’s action in tort.

Background

2. On November 2, 2022 the Claimant, then styled “Applicant”, filed an Originating Summons seeking certain relief, including an “order to compel the Respondent to grant the Applicant the necessary and relevant passes/credentials to access Lynden Pindling International Airport and domestic facilities.” Damages were also sought as a relief.

3. By Court Order dated 7th December, 2022, it was ordered that the action be converted to an action begun by Writ of Summons.
4. On February 7, 2023, the Claimant filed a Statement of Claim. The Statement of Claim alleges at paragraph 4 that the Claimant was terminated from his employment with Jet Blue “when he was advised by JetBlue that they were giving him his last salary/wages via cheque until he received his badges/credentials from the Respondent.” The Respondent is described as a Statutory Authority, governed by the Airport Authority Act. The Statement of Claim avers that the Claimant applied for a position at Virgin Airlines and that, before applying, he was informed by “employees, servants and/or agents” of the Respondent that “once an application was made on his behalf, approval would be given and the badges/credentials would be re-issued.” The Claimant avers that the Defendant delayed in responding to his subsequent application and then only granted limited access (paragraph 13). The Complaint is that the Respondent failed to give reasons for that decision (paragraph 16), that the Claimant was not afforded an opportunity to be heard (paragraph 17) thus resulting in loss of a job opportunity (paragraph 18) when Virgin Airlines withdrew their offer of employment (paragraph 19). It is on this basis that the Claimant contends that the actions of the Defendant “were malicious and/or reckless and/or negligent”.
5. The reliefs as sought in the filed Statement of Claim are:

AND the Plaintiff claims:

1. Damages;
 2. Special Damages;
 3. General Damages;
 4. Damages for Loss of Reputation;
 5. Damages for Personal Injuries;
 6. Interest pursuant to the Civil Procedure (Award of Interest) Act;
 7. Costs; and
 8. Any other relief the Honourable Court deems just.
6. The Defendant filed a Defence on April 14, 2023.
 7. The Defendant filed a Notice of Application on May 16, 2023 to Strike out the Claimant’s Originating Summons and Statement of Claim.
 8. The grounds of the Application are stated as:
 - a) The Claimant seeking redress against a public authority by bring an ordinary claim instead of a claim for judicial review is an abuse of process.
 - b) The Claimant subjecting the Defendant to two identical actions simultaneously is an abuse of process.

- c) The Claimant has no reasonable ground for bringing this claim where on the Claimant's document there is no sustainable case that a contract and or tort was concluded between the parties.

9. In making their application, The Defendant/ Applicant relied on:

- a) Affidavit (Glenard Evans) filed 2nd November 2022
- b) Affidavit (Glenard Evans) filed 31st May 2023
- c) Affidavit of Dencle Barr filed 16th May 2023
- d) Statement of Claim filed 7th February 2023
- e) Affidavit (Glenard Evans) filed 31st May 2023

10. Issues

The issues before the court are:

1. Whether the present action is an abuse of process?
2. Whether the Claimant's claim discloses no reasonable grounds for bringing the claim or no reasonable cause of action?
3. Whether the court should exercise its discretion to strike out the present action?

11. Abuse of Process

12. Defendant/Applicant's Submissions

13. The Defendant's submission on this ground had two prongs.

14. The first thrust of the Defendant's submission is that the Claimant was attempting to enforce public law rights which "must be enforced by way of judicial review in the procedures provided for in Part 54 of CPR against public authorities rather than by way of writ or originating summons."

15. It is also the Defendant's submission that the current action and the judicial review action launched by the Claimant against the Defendant in Suit No. 2021/PUB/jrv/034 "have the same facts and are duplicity [sic] which constitute as an abuse of process of the court."

16. Reliance was made on the decision of Lord Diplock in *O'Reilly and Others Appellants And Mackman And Others Respondents [Conjoined Appeals]* [1983] 2 AC 237, paragraph 53 where he held that it would be "contrary to public policy" and "an abuse of the process of the court" for a person seeking to establish that a decision of a public authority infringed his public law to proceed by way of ordinary action.

17. The Defendant also relied on the case of *The Responsible Development for Abaco (RDA) Ltd. et. al. v Rt. Hon Hubert A. Ingraham et. al*, SCCivApp. No. 139 of 2010 The Defendant cited that case in which the local Court of Appeal affirmed that duplicitous cases were an abuse of process. Allen, P., at paragraph 62, stated

“Clearly, the constitutional relief claim and that of the judicial review application were based on essentially the same facts, and I agree with the learned judge that there was duplicity in launching both claims and consequently, the constitutional claim was an abuse of process of the court.”

18. Claimant/Respondent’s Submissions

19. In response to the Defendant/Applicant’s claim of duplicity, the Claimant/Respondent submits that the facts in the current case are different from those in the existing judicial review matter i.e. Suit No. 2021/PUB/jrv/034. The Claimant points out that the cause of action in the current matter accrued a year later than that in the previous matter.

20. It is helpful to set out what the Claimant submits is the factual background to both matters. The Claimant submitted that:

1. The Applicant’s employment with JetBlue Airlines was terminated and the Applicant sought new employment with Virgin Airlines.
2. The Applicant accepted the offer with Virgin Airlines and the said airline sought approval for the Applicant to have access to the restricted areas in the airport.
3. The badges that the Respondent gave to the Applicant only allowed the Applicant to access the Office of Virgin Airlines and not the restricted areas.
4. Due to the Respondent’s failure to grant the Applicant the requisite badges to access the unrestricted areas the Applicant lost the job opportunity with Virgin Airlines.
5. That on the 2nd day of November, A.D., 2022 the Applicant filed an Originating Summons, Certificate of Urgency, and Affidavit which indicated that on or about September 2022 the breach occurred which was more than one year after the initial breach (absence of fair hearing).
6. The Applicant’s present matter before this court concerns common law and equity and is different from the Applicant’s matter in another court concerning judicial review in that:
 - i. The initial breach of 2021 concerns judicial review and the present matter breach occurred in 2022 and is that of negligence.
 - ii. The breach in 2022 occurred when the Respondent took and refused to reissue the necessary badges to the Respondent.

21. The Claimant submits that while both actions concern the same parties and arise from the non-issuance of badges/credentials, the current action concerns common law remedies.

22. The Claimant sought to distinguish this case from *Responsible Development for Abaco (RDA) Ltd. et. al. v Rt. Hon Hubert A. Ingraham et. al.,*, above. The Claimant

submitted that the cases in that instance had the same factual pattern and so the launch of the second suit was seen to be an abuse of process by the court. The Claimant argued that the current case is distinguishable because the fact patterns of the suits brought by the Claimant are “intertwined but different”.

23. The Claimant/Respondent attempted to address the issue of the conflation of the public law rights action and the current private law rights action by distinguishing the two actions involving the parties thus:
- i. The initial breach occurred in 2021. The Respondent took the Claimant’s badges without awarding him a fair hearing, hence the judicial review matter in another court.
 - ii. The 2022 breach (present matter) occurred after the Respondent failed to issue the Claimant the necessary badges to access the unrestricted areas in the airport. This breach and cause of action is negligence which caused the Claimant to lose future employment and benefits with Virgin Airlines. Furthermore, the present matter is also based upon misrepresentation and breach of common law duties owed to the Claimant.
 - iii. The initial breach involves JetBlue Airlines while the present matter involves Virgin Airlines.

24. Law and Analysis

25. I will deal with the duplicity point first. Counsel for the Defendant was at pains to take the court through the Statement of Claim and the affidavits of the Claimant to show the several references to matters that are subject of the existing judicial review action. I note that there is a repetition of averments in the current action and a comingling of what are said to be two separate events involving the denial of badges/credentials to the Claimant. However, on review of the Statement of Claim filed on February 7, 2023, while much of the language is similar to the application for judicial review in the first matter, it is apparent that the relief being sought relates to a failure to supply full access badges/credentials in the Virgin Airlines job pursuit. The remedies sought are damages. In the first action the relief sought is a review of the decision made. The actions are not duplicitous.

26. The Defendant also contends that the subject matter before the court ought to be pursued by way of judicial review and that to continue by way of a private law claim is an abuse of the process of the court.

27. In *O’Reilly and Others Appellants And Mackman And Others Respondents* [Conjoined Appeals], Lord Diplock reviewed the differences between the vindication of private and public law rights, including the differences in remedies and the discretionary remedies available in public law rights as well as the procedural safeguards to prevent unwarranted litigation regarding public law matters. In that case, Lord Diplock noted, at page 283, that the then Rules of The Supreme Court in setting out the process “has provided a procedure by which

every type of remedy for infringement of the rights of individuals that are entitled to protection in public law can be obtained in one and the same proceeding by way of an application for judicial review, and whichever remedy is found to be the most appropriate in the light of what has emerged upon the hearing of the application, can be granted to him.”

28. Lord Diplock in that judgment went on to observe that while the rules for judicial review did not provide that those rules contained the exclusive procedure for the vindication of a person’s public law right, it would often be the case that it would be an abuse of the Court’s process to vindicate public rights by using a private law (ordinary action) process. He noted that a number of safe guards had been set up and to proceed by ordinary action would be to evade the safeguards.

29. At pages 286-287, Lord Diplock said,

The position of applicants for judicial review has been drastically ameliorated by the new Order 53. ...

*Now that those disadvantages to applicants have been removed and all remedies for infringements of rights protected by public law can be obtained upon an application for judicial review, as can also remedies for infringements of rights under private law if such infringements should also be involved, **it would in my view as a general rule be contrary to public policy, and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action** and by this means to evade the provisions of Order 53 for the protection of such authorities.*

*My Lords, I have described this as a general rule; for though it may normally be appropriate to apply it by the summary process of striking out the action, there may be exceptions, **particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law**, or where none of the parties objects to the adoption of the procedure by writ or originating summons. [My emphasis]*

30. Therefore, the law is that where the breach of public law is but one ingredient in a claim for an infringement of a private law right, it may be that, having regard to all of the circumstances of the case, a Claimant is not to be confined to having to proceed by way of judicial review.

31. As a general rule, it would be an abuse of process for a Claimant to avoid the judicial review procedure and the built-in safeguards (for example, getting leave for judicial review, limited discovery, no or limited cross-examination) and go by way of an ordinary procedure to vindicate a public law right or to challenge a public law act or decision. This is sometimes referred to as the ‘exclusivity principle’.

However, it would not be an abuse of the court's process where a Claimant pursues a claim by ordinary action to vindicate a private law right alleged to have been infringed and where the validity of the public law decision or act is but a *collateral issue*.

32. In other words, where a Claimant with an extant private law right seeks to enforce that right by ordinary action, he may do so even if the proceedings were to call into question the legitimacy of a public law decision or a public law act. So, for example, if a Claimant alleges that a contractual right or a statutory right is infringed by the decision of a lawmaker, that decision i.e. the public law element, is an issue that is collateral to the private law claim.
33. Necessarily, the Claimant ought to allege and plead the nature of the private law right as well as plead how the decision of the lawmaker is said to have infringed that legal right.
34. It is my view that this case does not fall within the category of exception to the exclusivity principle. What is before the court in this matter is a complaint that because the Respondent made a decision adverse to the Claimant, it caused the Claimant loss. The loss is the job opportunity at Virgin Airlines. There is not pleaded, nor could it be so pleaded based on the particulars alleged in the Statement of Claim, any entitlement to the contract with Virgin Airlines. There is no contractual relationship between the Claimant and the Respondent nor was there any statutory duty pleaded.
35. This is not a case where the public law issue is an issue collateral to the rights of the Claimant. The public law issue is the heart of the Claimant's case. It seems to me that for the Claimant to succeed, the Respondent's decision has to be impugned and, even if the decision were to be impugned, that could not *ipso facto* vest the Claimant with the rights which he seeks. The Respondent would have to be compelled to make a decision in the Claimant's favour. Until that point, the Claimant would have no entitlement on which to hang a claim for a remedy of damages. Compelling a public authority to make a decision is a public law remedy – usually an order of mandamus. Such a mandatory order is a prerogative remedy and is, by its very nature, discretionary. It is not a remedy to be pursued in a private law claim without more.
36. On reading the Statement of Claim, the averment is that a named and identified agent of the Respondent communicated the decision of the Respondent not to issue total access passes to the Claimant (paragraphs 5 and 6). However, unidentified servants and agents (at paragraph 9 and in the particulars of malicious, reckless/negligence) are said to have given the Claimant "assurances and/or false hope" that the desired badges/credentials would be issued. In oral submission, Counsel for the Claimant elevated this to a "representation" and "an inducement" for the Claimant to apply for the job at Virgin Airlines.

37. To my mind, at the time of the Respondent's decision to issue limited access badges/credentials to the Claimant, the Claimant had no vested private law right that that decision infringed. His allegation is that there were conversations. The Claimant had a hope and a desire but not a legally enforceable right. The Claimant has alleged no legal right of which the Defendant could have run afoul by coming to a wrong decision at the time that it made the decision.
38. On the Claimant's case, there ought to have been only one decision – a decision to issue full access badges/credentials when requested by his potential employer. The Respondent's decision is not unimpeachable. However, that decision has not been impeached or overturned. Nor has the Respondent, on its own reckoning, changed its decision. For the Claimant to have a prospect of success in this matter, not only must the decision set aside but it would be necessary for him to have a new decision in his favour - either upon review by the decision-maker or upon the issue of a mandatory order by the Court. In this case, the public law issue is not merely a collateral issue – it undergirds this Claimant's action. What is more, there is no pleaded existing private law right.
39. The pleaded cause of action is said to be negligence. It is difficult to see how the Claimant could go about proving negligence without first establishing whether the decision was lawful. This Court cannot consider a litigant's loss or move to award damages without the establishment of a legal wrong. It seems to me that the Claimant would have to establish legal duty and a breach of that duty. Negligence depends on a breach of duty of care. No viable breach of duty of care is apparent on the face of the Statement of Claim. This action brought by the Claimant concerns the lawfulness of the Respondent's decision although cloaked in language of "malicious and reckless negligence".
40. The decision of the Airport Authority, the Respondent, is the substance of this claim. A review of the pleadings makes that clear. I note here that the application for badges/credentials is made by an employer and not by an individual employee. The badges/credentials, as I understand it, are to facilitate the work of the employer through the employee. The employer is not before this court. The relevance of this is that the entity immediately affected by the decision (the potential employer) is not before this court. This is not to say that the Claimant has not been impacted by the decision. However, it seems to me that where a public authority makes a decision in relation to an application by a particular entity, there ought to be some check and balance as to who, apart from the applying entity, could trigger the Court's supervisory powers to interfere with that decision. Otherwise, to allow this sort of claim for "negligence", without more, would subject every public authority to legal suit based on any person claiming to be impacted by their decision or said to be within their contemplation. That sort of check and balance is within the safeguards built into the procedure for public law actions. Such safe guards do not serve to stymie a claim but to prevent excessive and unmeritorious challenges that would serve to halt public decisions and which could

create uncertainty in the public arena when, on preliminary review of the challenge to a decision, the challenge would not pass muster.

41. I come to the inescapable conclusion that this case falls squarely within the exclusivity principle category.

42. It is my view that this case, uncloaked, is a case for the review of the decision and the decision-making process of the Respondent. It is a case that rests upon a challenge to the decision made. The public law decision is not a collateral issue here – it is the main issue.

43. I find that to allow the Claimant to proceed in this action as constituted, is an abuse of process.

44. No reasonable cause of action/ No reasonable ground for bringing a claim

45. Defendant/Applicant's Submissions

46. The Defendant submits that:

1. There is no privity of contract between the Parties, as there were no contracts executed for employment between them or neither with Virgin Airlines.
2. Tort is a civil wrong that cause loss or harm resulting in legal liability for a person who committed the tortious act. Tort has three categories of intentional torts, negligent torts and strict liability torts. This instant matter does not encapsulate any of the categories as a public body.
3. It is submitted that the reliefs sought have continuously changed to which there is no ground for bringing the said claim. Additionally, there is no clearly defined cause of action against the Defendant.

47. The Defendant cited the case of *Dramiston Ltd. and others v Financial Intelligence Unit*, 2017/CLE/gen/1266. That case is authority for the proposition that a statement of case that discloses no cause of action, reasonable or otherwise, is bad in law.

48. Claimant/Respondent's Submissions

49. The Claimant submits that "the Claimant has a reasonable cause of action. That cause of action being negligence which arose in 2022 when the Respondent refused to issue the Claimant with the necessary badges to access the unrestricted areas of the airport. Because of this failure, the Claimant lost employment with Virgin Airlines."

50. The Claimant relied on the case of *Drummond-Jackson v British Medical Association and others* [1970] 1 All ER 1094 for the principle that striking out for no reasonable cause of action is only appropriate for plain and obvious cases. They also submit that a case which requires any prolonged and serious argument is not appropriate for striking out based on the principles in *Drummond-Jackson v British Medical Association and others* [1970] 1 All ER 1094 and *Williams & Humbert Ltd v W&H Trade Marks (Jersey) Ltd and others* [1986] 1 All ER 129.
51. The Claimant submits that the Court must have regard to all of the relevant circumstances when considering a striking out application as per *McPhee v Nesbitt and another*, 2014/CLE/gen/01654 .

52. Law and Analysis

53. The Application to strike out is made pursuant to Part 26.3 (1) of The Supreme Court Civil Procedure Rules, 2022 (as amended) ('CPR') which provides:
- “(1) In addition to any other power 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 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.”*
54. Under Part 26.3(1)(b) the Court has the power to strike out a statement of case, in whole or in part, on the ground that the statement of case (or part to be struck out) *does not disclose any reasonable ground for bringing a claim*. The rules do not displace the Court's inherent jurisdiction to strike out pleadings which are an abuse of the process of the court. Striking out is often described as a draconian step, as it brings a party's case (in whole or in part) at an end without adjudication on its merits. Therefore, it is said that striking out should be allowed only in plain and obvious cases. If the application to strike out is complex and requires extended argument and fact-finding, then the case is not appropriate for striking out and such matters are to be resolved at trial.
55. The CPR rules refer to the pleading failing to *“disclose any reasonable ground for bringing a claim.”* The new rule replaces the previous Order 18, Rule 19 (1) and Order 31A Rule 20(1), Rules of the Supreme Court, 1978, provisions which empowered a court to strike out a pleading which disclosed *no reasonable cause of action*.

56. A reasonable cause of action was defined in *Drummond-Jackson v British Medical Association* [1970] 1 All ER 1094 by Lord Pearson at p. 284, as follows

“No exact paraphrase can be given, but I think ‘reasonable cause of action’ means a cause of action with some chance of success, when (as required by r 19(2)) only the allegations in the pleading are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck out.”

57. The case of *Belize Telemedia Ltd and another v Magistrate Usher and another* (2008) 75 WIR 138, cited in *The Caribbean Civil Court Practice 2011* at page 250, is instructive in explaining the considerations of a court met with an application under Part 26.3(1). In that case, Chief Justice Conteh adopted the practice and learning in the Green Book, *The Civil Practice 2008*, CPR 3.4 [4] at p. 76 and *The White Book 2005: Civil Procedure* at paras. 3.4.1 and 3.4.2. In reviewing Belize’s equivalent to Part 26(3)(1)(b), Conteh CJ opined at paragraph 20:

This provision in the rules addresses two situations:

- (i) When the content of a statement of case is defective in that even if every factual allegation contained in it were proved, the party whose statement of case it is cannot succeed; or*
- (ii) Where the statement of case, no matter how complete and apparently correct it may be, will fail as a matter of law.*

58. To my mind, the statement of case must disclose on its face, a ground or cause of action known in law – for otherwise it is defective and doomed to fail. “No reasonable grounds for bringing the claim” also allows for a court to, on considering the statement of case, find that even if the allegations are proven, a party cannot succeed at trial. A court is empowered to strike out the statement of case on that basis.

59. I think that it is also the case that a court is empowered to strike out a statement of case even where a cause of action is pleaded - as in a case where the pleaded cause of action is not supported in the allegations or is not otherwise viable or where the pleaded cause of action is not justiciable. It seems to me that it is therefore not enough for a litigant to plead a cause of action. There ought to be a reasonable cause of action. Under the CPR there must be a reasonable ground for bringing a claim.

60. In the instant case, the Claimant styles the cause of action as negligence – “malicious, recklessness/negligence”. To constitute negligence, the statement of case ought to disclose a duty of care owed to the Claimant by the Defendant and a breach of that duty that resulted in some loss or damage. The Claimant’s case is that *“the Respondent breached its duty of care in not issuing the Claimant the necessary badges which caused him to lose employment with Virgin Airlines.”*

61. The Statement of Claim pleads the particulars of the cause of action as follows:

PARTICULARS OF MALICIOUS, RECKLESS/NEGLIGENCE

- i. The Defendant's refusal to issue full access to all areas, in particular any and all Domestic/Bahamian controlled areas within the Sir Lynden Pindling Airport.
- ii. The Defendant's refusal to give reasons in particular written reasons for its decisions and actions.
- iii. The Defendant's refusal to allow the Plaintiff to be heard and answer/defend any negative allegations or reports that may have been given to the Defendants and which acted on its mind when deciding whether to issue full access.
- iv. Some of the Defendant's employees/agents/servants expressed sympathy for the Plaintiff's position and assured him that he would receive the necessary access once it is applied for as they saw no reason and/or no good reason for a denial, yet they failed to have the same issued.
- v. The Defendant knowing the Plaintiff's employment required the requested access and failing to issue the same would certainly or must probably result in the Plaintiff's termination.
- vi. The Defendant, its servants, employees and/or agents toyed with the Plaintiff by giving him assurances and/or false hope that he acted upon knowing that they would not issue the access he previously held or no meaningful access at all sufficient for him to fulfill his job description.

62. At paragraph 21 of the Statement of Claim, the following is pleaded:

That as a result of the Defendant's malicious, reckless and/or negligence the Plaintiff has and continues to suffer personal injuries, damages, and loss.

63. The particulars of 'negligence' in essence allege that the Respondent was negligent in its failure to issue the badges knowing same to be necessary for the Claimant's desired employment. In oral submissions, Counsel for the Claimant contended that the Defendant made a representation that induced the Claimant to apply for the job and that this amounted to a misrepresentation. In written submissions, the Claimant argued that "*This breach and cause of action is negligence which caused the Claimant to lose future employment and benefits with Virgin Airlines. Furthermore, the present matter is also based upon misrepresentation and breach of common law duties owed to the Claimant.*"

64. These submissions on misrepresentation and inducement are not supported on a review of the statement of case. As regards negligence, what is patently absent is the duty of care that the Respondent owed to the Claimant. The Claimant's position is that the Respondent should have provided the badges/credentials. The

Claimant has not shown, on the face of the statement of case, how he became entitled to the provision of same such that the failure to issue the badges/credential would amount to a breach of a duty of care.

65. It seems undisputable that unless the decision of the Respondent is impugned, the Claimant has no legal right or entitlement that a court can pronounce upon in this suit. Without showing that the Claimant is entitled to the badges/credentials, there is no legal right to vindicate in this suit and therefore the Claimant cannot succeed on the statement of case in its current form.

66. I pause here to note the submission of Counsel for the Claimant on the appropriateness of striking out and the submission that the Court should consider that it has the discretion to allow the Claimant to amend the statement of case instead of deploying the draconian sanction of striking out. I note that there is no application for the amendment of the statement of case before me.

67. **Overriding Objective**

68. I also bear in mind what the Claimant refers to as “all the relevant circumstances”.

69. The Claimant also relied on *McPhee v Nesbitt and another*, above, citing the Honourable Madam Justice Charles, as she then was, at paragraphs 36 and 37:

“36 That being said, as a general rule, the court will not strike out a claim if it raises a serious live issue of fact which can only be determined by hearing oral evidence: Ian Peters v Robert George Spencer, ANUHC VAP2009/016 - Antigua & Barbuda Court of Appeal - per Pereira CJ [Ag.] - Judgment delivered on 22 December 2009.

37 In Walsh v Misseldine [2000] CPLR 201, CA, Brooke LJ held that, when deciding whether or not to strike out, the court should concentrate on the intrinsic justice of the case in the light of the overriding objective, take into account all the relevant circumstances and make 'a broad judgment after considering the available possibilities.' The court must thus be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the claim; or that it has no real prospect of succeeding at trial.”

70. The CPR sets out what is termed the “overriding objective” of the rules.

71. Part 1.1 provides:

1.1 The Overriding Objective.

(1) The overriding objective of these Rules is to enable the Court to deal with cases justly and at proportionate cost.

- (2) Dealing justly with a case includes, so far as is practicable:
- (a) ensuring that the parties are on an equal footing;
 - (b) saving expense;
 - (c) dealing with the case in ways which are proportionate to —
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
 - (d) ensuring that it is dealt with expeditiously and fairly;
 - (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases; and
 - (f) enforcing compliance with rules, practice directions and orders.

72. The overriding objective requires a court to take into account relevant circumstances. A court is not to be pre-occupied with bald technicalities but is to deal with a case justly and at proportionate cost. Dealing with a case justly includes saving expense and ensuring that the case is dealt with expeditiously and fairly and using no more than proportionate resources on a case.

73. The rule under consideration, viz Part 26.3 (1) CPR, is not merely a rule on technicality but it goes to furthering the overriding objective in an appropriate case. If, on review of a statement of case, it is clear that it is groundless, then it would be a waste of time and resources to allow the matter to proceed to trial and for the parties to incur further costs. Dealing with a matter expeditiously and fairly includes acceding to a party's application to pre-empt trial where a statement of case is defective or does not disclose a reasonable ground for bringing or defending a claim.

74. In this case, the Defendant is met with a case said to be in negligence. The statement of case discloses a complaint about the decision made by the Defendant. The decision has not been vitiated or overturned. There is no averment as to why the Defendant could not have, or ought not to have, made such decision as it did. The complaint is that it adversely affected the Claimant. There is no description of a duty of care owed by the Defendant to the Claimant. The statement of case does not disclose a reasonable ground for bringing this claim and it would be a waste of time and resources to allow the matter to proceed to trial and for the parties to incur further costs.

75. For completeness, I note that no cause of action or ground is alleged in the Originating Summons filed November 2, 2022.

76. Based on the overriding objective, and all the relevant circumstances, this is a fit case for striking out.

77. Conclusion

78. I find that this action is not a duplicate of the existing action, 2021/PUB/jrv/034, involving the parties.

79. I find that the current action is an attempt to engage what would amount to a judicial review process by an alternative procedure. It is, in essence, a claim seeking redress against a public authority concerning the lawfulness of the decision made. On review of the pleadings and affidavits of the Claimant, it becomes apparent that the complaint is about the decision-making process resulting in the failure of the Defendant to issue full access badges and credentials. In these circumstances, to proceed by way of private action and circumvent the procedure and safe guards of judicial review applications is an abuse of process.

80. I find that the Statement of Claim discloses no reasonable grounds for bringing the claim.

81. Considering all the relevant circumstances, this is a fit case for striking out.

82. ORDER

83. The order and directions of this Court are as follows.

1. The Claimant's Originating Summons, converted to a Writ of Summons by Court Order dated 7th day of December, 2022 and the Statement of Claim filed February 7, 2023 are struck out.
2. The Claimant shall pay the costs of this application to the Defendants, such costs to be assessed if not agreed.

Dated this 23rd day of November, 2023

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs, J.', with a stylized flourish at the end.

Carla D. Card-Stubbs, J