

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVAP2023/0027

BETWEEN:

[1] HARBOR CLUB LIMITED
[2] SUNROD PROPERTY INC
[3] PARCEL HOLDINGS INC

Applicants

and

MC MILLAN MONROSE dba TROPICAL DECORATION

Respondent

Before:

The Hon. Mr. Mario Michel
The Hon. Mr. Trevor M. Ward
The Hon. Mde. Esco L. Henry

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Mark Maragh and Ms. Vanessa Pinnock for the Applicants

2024: March 11;
December 9.

Civil Appeal - Application for leave to appeal – Dismissal of application for summary judgment – Test for granting leave to appeal – Rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023 (“CPR”) – Whether the intended appeal has a realistic prospect of success – Whether there is some other compelling reason why the appeal should be heard – Exercise of judicial discretion – Whether master’s refusal to enter summary judgment was plainly or blatantly wrong – Breach of Contract - Privity of contract – Whether there are no causes of action which have been made out against the applicants - Unjust enrichment not pleaded – The court’s power to make orders of its own initiative - CPR 26.2 - Whether the learned master erred in law and misdirected himself by failing to note from the pleadings that the respondent limited his claim to one for breach of contract only and claimed remedies in

relation to that cause of action only and it was therefore not open to the learned master to hold that the issues of estoppel and unjust enrichment arise - Whether it is necessary to seek specifically the remedy of restitution in order to make out a claim for unjust enrichment - Whether, a claim for unjust enrichment can subsist with one for breach of contract – Natural Justice – Whether master erred by not giving the parties an opportunity to be heard before making a determination on the issue of whether estoppel or unjust enrichment formed part of the respondent's case - Application for a stay of execution

The respondent, Mc Millan Monroe dba Tropical Decoration, filed a claim in the High Court on 15th October 2019 against Harbor Club Limited ("Harbor Club" or the "first applicant") and Parcel Holdings Inc. ("Parcel Holdings" or the "second applicant") (together "the applicants") and Sunrod Property Inc ("Sunrod") seeking damages and other reliefs for breach of a contract of employment. The respondent alleged that he executed a written contract with Harbor Club and Sunrod dated November 2017, agreeing to carry out certain landscaping works as their employee at the Harbor Club Hotel ("the premises") at an agreed contractual price. It is now common ground among the parties that the written contract was dated November 2015. The respondent claimed that he completed the works by 23rd February 2018, which, he asserted, obligated Harbor Club and Sunrod to pay him the agreed contractual sum. He alleged that in breach of the contract they failed to pay him the total amount. The respondent averred further that subsequently, Parcel Holdings bought the premises from Sunrod and through its Director acknowledged receipt of the benefit of the works and promised to pay the outstanding contractual sums.

In a joint defence filed on 28th October 2022, the applicants denied that any contract or other relationship existed between them and the respondent. They contended that the respondent had no cause of action against them and that they were wrongfully made parties to the claim. On this basis, they filed an application on 31st March 2023 for summary judgment. The applicants grounded their application for summary judgment on their contention that the respondent had no real prospect of succeeding with the claim against them because it was based entirely on an alleged contract with them even though there was no privity of contract between the respondent and them and no other relationship between them. They contended that they were wrongly sued in light of Sunrod's acknowledgment in the defence that the alleged contract was between it and the respondent.

The learned master heard the application for summary judgment and by oral decision delivered on 10th October 2023, dismissed it. The master was satisfied that the respondent's claim was not limited to the written contract between the respondent and Sunrod but could involve a claim against the applicants by virtue of the allegations that certain promises were made by the second applicant to the respondent, as well as the possibility of an oral agreement between the applicants and the respondent. He determined that these were matters that could not be disposed of summarily but had to be explored and resolved at trial. The learned master took into account that the refusal of summary judgment would not prejudice the applicants because they would be entitled to recover costs if the respondent's case turned out to be hopeless and was dismissed following a trial.

The applicants applied to the learned master for leave to appeal his decision. That application for leave to appeal was refused by order dated 3rd November 2023. By application filed on 15th November 2023, the applicants renewed before this Court their application for such leave. They also seek a stay of execution of the decision, the order and all proceedings in the matter in the High Court.

The singular issue to be decided is whether leave should be granted to the applicants to appeal the learned master's decision not to grant summary judgment.

Held: dismissing the application for leave to appeal, making no order for a stay of execution of the learned master's order dated 10th October 2023 and making no order as to costs, that:

1. The Court is empowered by CPR 62.2(8) to grant leave to a litigant to appeal a decision of a lower court if: a) it considers that the appeal has a realistic prospect of success; or (b) there is some other compelling reason why the appeal should be heard. Where the impugned decision involves the exercise of judicial discretion, such as the learned master's refusal to enter summary judgment, the Court is required to scrutinise the impugned decision to assess whether the judicial officer erred in principle and as a result made a blatantly wrong decision.

Rule 62.2(8) of the **Civil Procedure Rules (Revised Edition) 2023** applied; **Othneil Sylvester v Faelleseje, A Danish Corporation** Saint Vincent and the Grenadines Civil Appeal No. 5 of 2005 (delivered 20th February 2006, unreported) followed.

2. The purpose of pleadings is to enable the opposing party to know in sufficient detail what is the case being made against it so that that party can prepare to answer it. Ultimately and fundamentally, the Court in each case is not concerned with how much factual details are set out in the pleadings but more so with their adequacy for the purposes of placing the opposing litigants on notice of the factual and legal issues on which the pleader relies. No specific formula has to be employed for such purpose, provided that the particulars embody the essential components of the cause of action or defence. Additionally, in furtherance of its mandate to dispense justice, the court may, even in the absence of an express pleading regarding a specific remedy, grant relief to an aggrieved party provided that he or she has pleaded a particular cause of action.

Section 17 **Eastern Caribbean Supreme Court (Saint Lucia) Act** Cap 2:01 of the Revised Laws of Saint Lucia applied; Rule 8.6(2) of the **Civil Procedure Rules (Revised Edition) 2023** applied; **Halsbury's Laws of England** Vol. 100 (2024) Unjust Enrichment, paragraph 9 applied.

3. In the instant case, it cannot be said that the respondent's claim is one for breach of contract only, limited to the written agreement between Sunrod and the respondent. On a closer examination of the statement of claim (when read in light of the defence and counterclaim); the reply to defence and defence to counterclaim;

and the respondent's affidavit in response, it is quite clear that the issues are more complex. Significantly, the pleadings effectively delineate clear factual and legal disputes as between the respondent on the one hand and each of the applicants on the other hand. The pleadings level discrete causes of action against each of the three named defendants, in particular, allegations against the first applicant for breach of the written agreement; as well as claims against the second applicant of unjust enrichment and estoppel which allegedly flow out of Sunrod's breach of the written agreement. Contrary to the applicants' assertions, this is not a proper case in which summary judgment should be granted to the applicants. Accordingly, the applicants are not assured a realistic prospect of success on this point.

Halsbury's Laws of England Vol. 88 (2019), paragraph 410 applied; **Halsbury's Laws of England Vol 47 (2021)** Nature, Classification and Principles of Estoppel paragraph 301 applied.

4. The criticism of the learned master's ruling that the respondent's claim is not confined to the written agreement but could extend to an oral contract and also representations by the applicants, hinges on the applicants' contentions that: a) there are no pleadings as to an oral contract or of such representations; and b) that the master failed to engage with the import of Articles 1163(2) and 1164 of the Civil Code of Saint Lucia. The argument as to absence of pleadings ignores paragraphs 8 and 9 of the statement of claim which are open to being interpreted as evidence of an oral contract. It is to be noted that Articles 1163(2) and 1164 respectively prohibit oral testimony: a) being given to contradict a written instrument; and b) in respect of matters where the value in question exceeds \$48.00. Neither provision is applicable because the learned master made no finding that a term in an oral contract contradicted an express term in the November 2015 (or November 2017) written contract or in any way amended or attempted to amend it.
5. It is settled that a claim for unjust enrichment and breach of contract can subsist together. The authorities merely caution against doing so where the parties to the contract and to the claim of unjust enrichment are the same persons. Here, the applicants have denied the existence of a contractual relationship with the respondent. The respondent's claim against the second applicant is largely for unjust enrichment or based on estoppel. In either case, in the event of a finding that no contractual relationship exists between the opposing parties or even if one existed it has been discharged, the respondent may yet be able to rely on his assertions of unjust enrichment against either. The exhortation against merging breach of contract and unjust enrichment actions would not be applicable to the claims made against the applicants.

Halsbury's Laws of England Vol. 100 (2024) Unjust Enrichment, paragraph 24 applied; **Macdonald v Costello** [2011] EWCA Civ 930 distinguished; **Barton and others v Morris and another** [2023] UKSC 3 distinguished.

6. As to the applicants' contention that the respondent failed to specifically plead unjust enrichment as a cause of action, all that is required to capture the essence of a

pleading for unjust enrichment is that the essential factual ingredients that are necessary to establish that cause of action are set out. The respondent outlined the elements of unjust enrichment in his claim. The fact that he did not use the term 'unjust enrichment' or any specific formulation is not fatal. It was therefore open to the learned master to find that unjust enrichment was pleaded. It is correct that the claim form does not include any remedies or other particulars that utilise the terms 'unjust enrichment' or 'estoppel' or even obliquely makes reference to them. However, having particularised such claims in the statement of claim, the respondent satisfied the requirement to set out his case shortly as required by CPR 8.7. Furthermore, it is important to note that the procedural rules do not impose an obligation on a claimant to mention the cause of action in the claim form provided that it is particularised in the statement of claim.

East Caribbean Flour Mills Limited v Ormiston Ken Boyea Saint Vincent and the Grenadines Civil Appeal No. 12 of 2006 (delivered 16th July 2007, unreported) followed.

7. The applicants complain that the learned master did not invite them to address him regarding whether estoppel or unjust enrichment formed part of the respondent's case. It is trite law that a judge who intends to make a ruling of his own volition that is adverse to one party, must first give that party an opportunity to make submissions. The master ought to have invited the applicants to make submissions on that issue before making a ruling contrary to them. The learned master erred in principle by not affording the applicants that opportunity. However, the Court is of the view that this error was not fatal to the learned master's determination.

Rule 26.2 of the **Civil Procedure Rules (Revised Edition) 2023** applied.

8. The applicants' contention that the learned master erred in law by failing to find that the issues of an acknowledgment of the benefit of works done and a promise to pay by the second applicant were not supported by any of the evidence presented by the respondent, is an attempt to disguise as legal issues, matters which fall squarely within the realm of fact finding. In the Court's view, the applicants' criticisms on this score do not afford them a real prospect of success on appeal.
9. In view of the conclusions that the applicants do not have a realistic prospect of success on appeal and consequently the dismissal of their application for leave to appeal, the application for a stay of execution falls away and is dismissed.

JUDGMENT

Introduction

- [1] **HENRY JA:** This is an application filed on 15th November 2023 by Harbor Club Limited ("Harbor Club" or the "first applicant") and Parcel Holdings Inc. ("Parcel

Holdings” or the “second applicant”) (together “the applicants”) for leave to appeal the order and decision of the learned master made on 10th October 2023, in which he dismissed their application filed on 31st March 2023 (under rule 15. 2 of the **Civil Procedure Rules**) for summary judgment against Mc Millan Monroe dba Tropical Decoration (“the respondent”). They also seek a stay of execution of the decision, the order and all proceedings in the matter in the High Court. For the reasons set out in this judgment the applications for leave to appeal and for the stay of execution are refused.

Background

- [2] This matter involves a claim filed in the High Court on 15th October 2019 by the respondent¹ against the applicants and Sunrod Property Inc (“Sunrod”) seeking damages and other relief for breach of a contract of employment. The respondent alleged that he executed a written contract with Harbor Club and Sunrod dated November 2017, agreeing to carry out certain landscaping works as their employee at the Harbor Club Hotel (“the premises”) at an agreed contractual price.² It is now common ground among the parties that the written contract was dated November 2015.
- [3] The respondent claimed that he completed the works by 23rd February 2018. This, he asserted, obligated Harbor Club and Sunrod to pay him the agreed contractual sum. He alleged that in breach of the contract they failed to pay him the total amount. The respondent averred further that subsequently, Parcel Holdings bought the premises from Sunrod and through its Director, Mr. Wes Hall, acknowledged receipt of the benefit of the works and promised to pay the outstanding contractual sums.
- [4] The proceedings were suspended for a period in excess of 2 years pursuant to a consent order³ by which the parties agreed to pursue settlement of the dispute

¹ Claimant in the court below.

² See para. 2 of Statement of Claim filed on 15th October 2019.

³ Dated 18th December 2019.

through arbitration. The matter was returned to the court's management by order dated 28th September 2022.⁴

[5] In a joint defence filed on 28th October 2022, the applicants denied that any contract or other relationship existed between them and the respondent.⁵ They contended that the respondent had no cause of action against them and that they were wrongfully made parties to the claim. On this basis they filed an application on 31st March 2023 for summary judgment.

[6] For its part, Sunrod admitted that it owned the hotel known as Harbor Club. It acknowledged having entered into an agreement with the respondent dated November 2015 for the provision of landscaping and irrigation works on the grounds surrounding the premises, at a full contract price of \$244,010.00 plus VAT of \$36,601.50. The applicants and Sunrod asserted that any sums paid to the respondent under the contract were paid solely by Sunrod.

[7] In its Defence, Sunrod pleaded that the works were done unsatisfactorily, the respondent breached the contract through his unacceptable and poor workmanship. Consequently, Sunrod terminated the agreement in November 2017 and engaged another contractor to rectify a substantial part of those works. It asserted that the termination date is evidenced by the final certificate of payment (i.e. number 16) issued on 29th November 2017 and exhibited by the respondent.

[8] Sunrod pleaded that not only was the respondent paid in full for the services he rendered up to that date; he also received more payments than he was entitled to under the contract. Furthermore, by reason of the poor and unsatisfactory workmanship he was not entitled to any additional payments. Sunrod pleaded further that the respondent is indebted to it for failure to comply with the terms of the agreement which resulted in significant loss and damage to it.

⁴ See pg. 441 of the Appeal Hearing Bundle.

⁵ See pg. 443 of the Appeal Hearing Bundle, Defence of the Defendants at para. 2.

- [9] Sunrod counterclaimed⁶ for special and general damages due to the respondent's alleged breach of contract for among other things, his alleged failure to complete the agreed works within the time stipulated and by producing poor and unsatisfactory work. Sunrod also pleaded that in further breach of the contract the respondent failed to exercise the care and skill expected of a prudent landscaper in carrying out the agreed works and that he carried out substitutions and variations contrary to the original plans and without Sunrod's approval.
- [10] The applicants grounded their application for summary judgment on their contention that the respondent had no real prospect of succeeding with the claim against them because it was based entirely on an alleged contract with them even though there was no privity of contract between the respondent and them and no other relationship between them. They contended that they were wrongly sued in light of Sunrod's acknowledgment in the defence that the alleged contract was between it and the respondent.
- [11] The application for summary judgment was supported by the affidavit of Lester Scott, the first applicant's Managing Director. He essentially repeated the grounds for the application. He referenced an email dated 22nd August 2017 from Mr. Wes Hall to the respondent which he surmised was the basis on which the second applicant was sued. Mr. Scott denied that the email confirms the respondent's claims.
- [12] In his affidavit in response,⁷ the respondent set out certain explanations as to why the applicants were made defendants to the claim. He said that there was intermingling and confusion regarding who was responsible for paying him for the works carried out pursuant to the contract; for example, the written agreement refers to the applicants and Sunrod and he was paid 'under the watch of agents of [the second applicant]'. Additionally, he asserted that his claim was not limited to the

⁶ See Counterclaim filed on 28th October 2022.

⁷ Filed on 13th April 2023.

contract but also extended to other works done on the premises based on instructions he received from and in reliance on representations made by the second applicant's agents including Mr. Wes Hall. He contended further that the second applicant promised to pay him for work done but only made partial payment.⁸

[13] The learned master heard the application for summary judgment and by oral decision on 10th October 2023 dismissed it. As to what were the issues in dispute, he concluded that they were fivefold: a) whether the first applicant and Sunrod were the respondent's employers; b) whether the written agreement between the respondent and the Sunrod was the full agreement of the parties; c) was Sunrod the only one to make payments; d) did the second applicant acknowledge receiving the benefit of works done by the respondent; and e) did the second applicant promise to pay the respondent for work done before it became the owner of the premises.

[14] The learned master reasoned that the case was not a classic privity of contract matter because it also engaged issues relating to: a) employment obligations that fell outside the written contract; b) the alleged acknowledgment by the second applicant that it benefitted from the work done; and c) the alleged promise by the second applicant to pay the respondent for the benefit of the work it received. The learned master concluded that in addition to privity of contract, estoppel and unjust enrichment were pleaded.

[15] The learned master noted that summary judgment is not a means of conducting a mini trial to ascertain one limb of a party's claim. Instead, it is reserved for those cases where the evidence points to only one conclusion and the case under consideration did not qualify.

[16] He was satisfied that the respondent's claim was not limited to the written contract between the respondent and Sunrod but could involve a claim against the applicants by virtue of the allegations that certain promises were made by the second applicant

⁸ See pg. 465 of the Appeal Hearing Bundle, Affidavit in response filed 13th April 2023 at para. 10.

to the respondent, as well as the possibility of an oral agreement between the applicants and the respondent. He determined that these were matters that could not be disposed of summarily but had to be explored and resolved at trial. The learned master took into account that the refusal of summary judgment would not prejudice the applicants because they would be entitled to recover costs if the respondent's case turned out to be hopeless and was dismissed following a trial. He ruled that in all the circumstances, in view of the overlapping and competing allegations as to who paid what to the respondent and in respect of what services, this case had to be determined at trial and not on the pleadings by the entry of summary judgment.

[17] The applicants' application to the learned master for leave to appeal that decision was refused by order dated 3rd November 2023. The applicants have renewed before this Court, their application for such leave.

[18] The singular issue to be decided is whether leave should be granted to the applicants to appeal the learned master's decision not to grant summary judgment.

Test for Leave

[19] The Court is empowered by rule 62.2(8) of the **Civil Procedure Rules (Revised Edition) 2023** ("CPR") to grant leave to a litigant to appeal a decision of a lower court if: a) it considers that the appeal has a realistic prospect of success; or (b) there is some other compelling reason why the appeal should be heard. Where the impugned decision involves the exercise of judicial discretion, the Court is required to scrutinise the impugned decision to assess whether the judicial officer erred in principle and as a result made a blatantly wrong decision.

[20] In **Othneil Sylvester v Faelleseje, A Danish Corporation**⁹ this Court addressed this realistic prospect gateway and the additional consideration that is engaged

⁹ Saint Vincent and the Grenadines Civil Appeal No. 5 of 2005 (delivered 20th February 2006, unreported).

where the impugned judgment involves the exercise of discretion. In delivering the judgment Barrow JA explained:

“The appellant needs to show that the intended appeal has a real prospect of success (Smith v Cosworth Casting Processes Ltd [1997] 4 All ER 840), which is a heavier burden than showing only that he has an arguable appeal, according to the view, which I respectfully adopt, of the English Court of Appeal in ED&F Man Liquid Products Ltd v Patel [2003] EWCA Civ 472. But in addition, because he seeks to appeal against the exercise of a judicial discretion, he needs to show a real prospect that he will be able to persuade the appellate court that the master’s decision did “not consider the case to be sufficiently plain and obvious to warrant striking out at this stage”, was clearly or blatantly wrong.”¹⁰

[21] It is important to note that the learned master’s refusal to enter summary judgment was an exercise of a judicial discretion. Accordingly, in order to satisfy this Court that leave should be granted to appeal, the applicants must demonstrate that their chances of success on appeal are realistic and not just fanciful. In addition, they need to demonstrate that they will more than likely be able to persuade the Court that the learned master’s decision to refuse summary judgment was plainly or blatantly wrong. For present purposes, it is necessary to highlight the guiding principles for the grant of summary judgment.

[22] When considering an application for summary judgment, the court’s powers are circumscribed by CPR 15.2. It empowers the High Court to grant summary judgment on a claim or on a particular issue in a claim 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. This discretionary power has been deployed in many cases. The parameters of the exercise of that power were described in **Saint Lucia Motor and General Insurance Co. Ltd. v Peterson Modeste**¹¹ by George-Creque JA. She opined:

“What must be shown in the words of Lord Woolf in Swain v Hillman is that the claim or the defence has no “real” (i.e. realistic as opposed to a fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at

¹⁰ Ibid at para. 1.

¹¹ SLUHCVP2009/0008 (delivered 11th January 2010, unreported) at para. 21.

trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the claimant or the defendant could establish its case then it is open to the court to enter summary judgment.”¹²

- [23] Bearing the foregoing legal principles in mind, I turn next to the proposed grounds of appeal. In considering whether leave should be granted to appeal, the proposed grounds of appeal will be assessed seriatim to ascertain whether it amounts to a good arguable point such that the applicants stand a real chance of success on appeal in relation to it.

The proposed Grounds of Appeal

- [24] The applicants set out the following eight proposed grounds of appeal in their draft Notice of Appeal:

“1. The learned Master erred in law by failing to have due or any regard to the pleadings and the evidence adduced by affidavit and documentary evidence, which clearly showed that the Respondent had not alleged or proven the existence of any [Joint Contracts Tribunal Standard Form of Building] JCT contractual relationship with the Applicants or otherwise;

2. That the Learned Master failed to appreciate that any alleged contract made orally or by way of any representations with the Applicants, a matter not asserted on the pleadings, cannot contradict an express written term of an agreement.

3. The Learned Master erred in law and misdirected himself and descended into the arena, by inferring causes of action not pleaded, in finding that there is an issued (sic) to be tried in relation to the inferred cause of action of “unjust enrichment” when the cause of action was not pleaded but was referred to for the very first time in the judgment of the Master now under appeal.

4. ...The Learned Master erred in law and misdirected himself, by basing his decision on matters erroneously inferred by him from the pleadings, without first affording the parties an opportunity to be heard on said issues and by failing to comply with the requirements of CPR 26.2.

¹²See also *Three Rivers District Council v Governor and Company of the Bank of England (No. 3)* [2001] UKHL 16.

5. The Learned Master erred in law by failing to find that the issues of an acknowledgment of the benefit of works done and a promise to pay by the Third Defendant were not supported, by any of the evidence presented by the Respondent.

6. That the Learned Master failed to appreciate that all of the evidence adduced, namely the contract between the Second Defendant and the Claimant, the invoices and proof of payments clearly show the existence of a contract between the Respondent and the Second Defendant and not with the Applicants. In doing so, the Learned Master erroneously found and allowed, against the thrust of the Respondent's own pleadings and the evidence, that the claim is not confined to the written agreement only.

7. The learned Master erred in law and misdirected himself by failing to note from the pleadings, that the Claimant limited its claim to one for breach of contract only and claimed remedies in relation to that cause of action only and it was therefore not open to the Learned Master to hold that the strength of the Respondent's case will not rest simply on the issue of privity (sic) of contract but goes deeper into issues of estoppel and unjust enrichment "though not very succinctly set out".

8. The decision is against the weight of the evidence and the pleadings."

Analysis

Proposed Grounds of Appeal 1 and 6 – Privity of Contract

[25] The first and sixth proposed grounds of appeal raise similar issues and may conveniently be dealt with together. In those proposed grounds, the applicants submitted that the learned master erred in law by not having sufficient regard to the pleadings and the affidavit and documentary evidence which collectively demonstrated that the respondent neither alleged nor established that any JCT contractual relationship existed between him and them. Therefore, the learned master failed to appreciate that no privity of contract existed between them. The applicants pointed out that the November 2015 contract named Sunrod and the respondent as the only parties. They contended that the evidence (by way of certificates of payment attached to the claim) showed that Sunrod was the sole defendant that made payments to the respondent. They reasoned that the respondent produced no evidence to substantiate his claim that the applicants were party to the 2015 contract and this was enough basis for entering summary

judgment against the respondent on the ground that he had no reasonable chance of making out a claim against them.

[26] The Court's attention was directed to the Claim Form where the respondent pleaded:

"The Claimant Mc MILLAN MONROSE of Mon Repos in the Quarter of Micoud in Saint Lucia **claims against the Defendants** (1) THE HARBOR (sic) CLUB LIMITED (2) SUNROD PROPERTY INC and (3) PARCEL HOLDINGS INC of Rodney Bay, in the Quarter of Gros Islet in Saint Lucia, **in that the Defendant did cause loss to the Claimant in that the Defendant did breach contract dated November 2017.**

The claim is for:

1. The sum of \$59,811.48;
2. Interest from 23rd February 2018 until payment in full;
3. Damages;
4. Costs."¹³ (Emphasis added)

[27] The applicants submitted that by framing his claim in this manner, the respondent limited it to one for breach of a contract dated November 2017 and therefore no other causes of action can be gleaned from his Statement of Claim. They argued further that the respondent is expected to be clear as to what remedies he seeks and having not sought restitution for unjust enrichment, that cause of action is not pleaded. Additionally, citing **Halsbury's Laws of England**,¹⁴ **Lexis Nexis – Restitution and unjust enrichment - overview**, **Macdonald v Costello**¹⁵ and **Barton and others v Morris and another**¹⁶ they submitted that a claim for unjust enrichment cannot co-exist with a claim for breach of contract. They contended that in any event, even if unjust enrichment arises on the claim it is not sustainable against the first applicant. They argued that in all the circumstances the learned master erred in law and they have a real prospect of succeeding on these proposed grounds of appeal.

¹³ See pg. 337 of the Appeal Hearing Bundle, Claim Form filed 25th October 2019.

¹⁴ Vol. 88 (2019) para. 424.

¹⁵ [2011] EWCA Civ 930.

¹⁶ [2023] UKSC 3.

[28] Two distinct questions arise from these proposed grounds of appeal. Firstly, what causes of action if any, are advanced by the respondent against the applicants in his pleadings and foreshadowed in the evidence. Secondly, can a claim for unjust enrichment subsist with one for breach of contract. On the question of whether the respondent claimed restitution, judicial notice is taken of section 17 of the **Eastern Caribbean Supreme Court (Saint Lucia) Act ("Supreme Court Act")**¹⁷ and CPR 8.6(2) which empower the Supreme Court without reservation, to grant all remedies to which a party may appear entitled in respect of any claim properly advanced by him.

[29] In this regard, section 17 provides:

"17. Extent of remedies

The High Court and Court of Appeal respectively in exercise of the jurisdiction vested in them by this Act, shall, in every cause or matter pending before the Court, have power to grant, and shall grant, either absolutely or on such terms and conditions as the High Court or Court of Appeal may think just, all the remedies or relief whatsoever to which any of the parties appear to be entitled in respect of any and every claim properly brought forward by him or her or them respectively in the cause or matter; so that, as far as possible, all matters in controversy between those parties respectively may be completely and finally determined, and all multiplicity of proceedings concerning any of those matters avoided."

Similarly, CPR 8.6(2) states:

"8.6 (2) Notwithstanding paragraph (1) (b) the court may grant any other remedy to which the claimant may be entitled."

[30] It follows that even in the absence of an express pleading regarding a specific remedy, the Court may, in furtherance of its mandate to dispense justice, grant relief to an aggrieved party provided that he or she has pleaded a particular cause of action. This is a complete rebuttal to the applicants' contention that the respondent did not expressly seek restitution in his claim form.

¹⁷ Cap 2:01 of the Revised Laws of Saint Lucia.

[31] As to whether the pleadings capture the essentials of the cause of action and the appropriate remedy in a claim for unjust enrichment, guidance is extracted from **Halsbury's Laws of England**¹⁸ where the authors explain:

“... all that is required is to plead the unjust enrichment claim and the material facts on which the claimant relies to establish each element of that claim, ... It suffices for the claimant to plead the material facts on the basis of which it is alleged that the defendant has been unjustly enriched at their expense and the grounds for restitution relied upon. **The claimant is also required to specify the remedy which they seek, and that will usually be an order for the payment of a sum of money by the defendant to the claimant which will have the effect of reversing the unjust enrichment.**”
(Emphasis supplied)

It is noted that the authors cited the English equivalent of CPR 8.6(2) as the basis for requiring a specific pleading of the remedy sought.

[32] The facts on which unjust enrichment arises in the respondent's claim are set out in paragraphs 8 and 9 of his Statement of Claim. There, he makes reference to the third defendant (Parcel Holdings) purchasing the Harbor Club Hotel and thereby receiving 'the benefit of the work done under the agreement' with Sunrod, acknowledging receipt of such benefit, being 'the fruits of the unpaid labor of the Claimant' but not paying for it. At paragraph 6 of the Statement of Claim, the respondent identifies the unpaid labour figures as being: 'a) the retention of \$14,279.78; b) the sum of \$9,093.58 being the balance due and owing on an approved certificate of payment of \$34, 093.58 of which only \$25,000.00 had been paid; and c) an amount of \$10,496.00 representing the balance of irrigation installation, a total of \$33,896.36'. Presumably, this would be the quantum of restitution recoverable if he succeeds with his unjust enrichment claim, unless the trial discloses other pertinent and contrary information.

[33] I make the observation that the applicants' submissions ignore the fact that at the end of his Statement of Claim, the respondent outlined the reliefs sought as '1. The sum of \$59,811.48; 2. Interest from 23rd February 2018 until payment in full; 3.

¹⁸ Vol. 100 (2024) Unjust Enrichment, para 9 -The modern significance of the forms of action.

Damages; 4. Costs'. I note further that he did not expressly seek restitution as a remedy and did not specify an amount of \$33,896.36. Notwithstanding this, or the difference of \$25,914.76 between the amount pleaded and what is presumptively legally recoverable, it cannot be ignored that the sum claimed is wide enough to encompass a restitution award of \$33,896.36, without eliminating or otherwise doing violence to the breach of contract cause of action against the other parties.

[34] As regards the imprudence of pleading breach of contract and unjust enrichment in the same claim, it is settled that a claim for unjust enrichment and breach of contract can subsist together. The legal authorities on which the applicants rely merely caution against doing so where the parties to the contract and to the claim in unjust enrichment are the same persons. **Lexis Nexis**¹⁹ warns:

“... there is limited scope for a party being able to pursue a claim for unjust enrichment in the face of a subsisting contractual relationship: the courts will not permit a claim for unjust enrichment to subvert a contractual relationship or the contractual allocation of risk between the parties (Macdonald v Costello, Barton v Morris). You cannot bring a claim for unjust enrichment to try and achieve a different result from that provided for under the agreement.”

Similarly, in **Halsbury's Laws of England**²⁰ the learned authors note:

“The courts will not permit a claim for unjust enrichment to subvert a contractual relationship or the contractual allocation of risk between the parties. Whether or not the contract has in fact been discharged or set aside is a matter for the law of contract. However, once the contract has been discharged, the law of unjust enrichment may and often does determine the remedial consequences of the discharge or the setting aside of the contract.”

[35] Bearing those cautions in mind, what is immediately apparent is that the applicants have denied the existence of a contractual relationship with the respondent. The respondent's claim against the second applicant is largely for unjust enrichment or based on estoppel. In either case, in the event of a finding that no contractual

¹⁹ Lexis Nexis PSL Dispute Resolution Overviews. Restitution and Unjust Enrichment-Overview.

²⁰ Vol. 100 (2024), Unjust Enrichment. The Structure of the Modern Law, para 24 - Relationship between unjust enrichment and contract law.

relationship exists between the opposing parties or if one existed it has been discharged, the respondent may yet be able to rely on his assertions of unjust enrichment against either. As I understand it, the authorities relied on do not forbid such an approach. Importantly, in multiple narratives, Sunrod is the sole contracting party with the respondent. As such, the exhortation against merging breach of contract and unjust enrichment actions would not be applicable to the claims made against the applicants.

[36] Turning next to what causes of action arise, I am mindful that it is now settled law that the purpose of pleadings 'is to enable the opposing party to know what case is being made in sufficient detail to enable that party to prepare to answer it'.²¹ In the words of Lord Woolf MR: 'Pleadings are ... required to mark out the parameters of the case that is being advanced by each party. ... they are still critical to identify the issues and extent of the dispute between parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.'²² Ultimately and fundamentally, the court in each case is concerned not with how much factual details are set out in the pleadings but more so with their adequacy for the purposes of placing the opposing litigants on notice of the factual and legal issues on which the pleader relies. No specific formula has to be employed for such purpose, provided that the particulars embody the essential components of the cause of action or defence.

[37] As is apparent from the particulars in the Claim Form, the respondent refers to 'contract dated November 2017'. The use of the singular may suggest 'a contract' as argued by the applicants. However, on close examination of the Claim Form, it is readily discernible that the respondent similarly refers to the defendants twice by the singular 'defendant' by pleading '... that the Defendant did cause loss to the

²¹ Per Saville LJ in *British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd* (1994) 72 BLR 26, quoted with approval by Barrow JA in *East Caribbean Flour Mills Limited v Ormiston Ken Boyea Saint Vincent and the Grenadines* Civil Appeal No. 12 of 2006 (delivered 16th July 2007, unreported) at para. 41.

²² In *McPhilemy v Times Newspapers Ltd*. [1993] 3 All ER 775, 792-793A; quoted approvingly and applied in *East Caribbean Flour Mills Limited v Ormiston Ken Boyea Saint Vincent and the Grenadines* Civil Appeal No. 12 of 2006 (delivered 16th July 2007, unreported) at para. 41.

Claimant in that the Defendant did breach contract dated November 2017', although the claim was against three parties. This suggests a measure of inadvertence in the description of those terms in the Claim. This is neither unusual nor unforgiveable. In fact, the applicants take no issue with the respondent's incorrect entry of the date of the contract as 2017 which he subsequently accepted²³ to be 2015.

[38] Notably, the respondent did not use the expression 'written contract' in the claim from. It was only at paragraph 2 of the Statement of Claim that he mentioned a 'written agreement'. He then subsequently refers to a promise by the second applicant to pay for the benefit received. In all of the circumstances, the respondent's seeming inadvertence regarding the use of singular when the plural appears to have been intended could conceivably apply to the noun 'contract' in the Claim Form. This is a reasonable inference in light of his subsequent elaboration in the Statement of Claim of what allegedly transpired between him and the applicants and Sunrod. Conceivably, it could explain among other things his later reference to the second applicant's promises to him on the basis of receipt of the benefits of the works.²⁴

[39] In his Statement of Claim, the respondent particularised his engagements with the applicants and Sunrod. Firstly, he alleged at paragraphs 2- 4 that the first applicant and Sunrod are parties to the written agreement for landscaping and irrigation works at the premises. Those paragraphs state:

"2. At all material times the Claimant was the contractor and the **1st and 2nd Defendants the employer** with respect to certain works (landscaping and irrigation) to be undertaken and more particularly described in a written agreement dated November 2017.

3. The said works were to be and **were undertaken at the 1st and 2nd Defendant's premises at Rodney Bay**, Gros Islet, specifically Block 1255 Parcels 156, 157, 505, 739, 792 and 740.

²³ In his Reply to Defence and Defence to Counterclaim filed 8th November 2022.

²⁴ See pg. 350 of the Appeal Hearing Bundle, Statement of Claim at paras. 8 and 9.

4. The parties agreed that the full contract price **to be paid by the 1st and 2nd Defendants** to the Claimant was the sum of \$244,010.00 plus VAT of \$36,601.50.” (Emphasis added)

[40] In paragraph 1 of the Statement of Claim, the respondent links the first applicant to Sunrod by asserting that Sunrod owns the first applicant. He reprises this point again in his Reply to the Defence. Paragraphs 2, 6 and 7 of the Reply to Defence state:

- “2. The Claimant states ... that the property on which the works were carried out benefitted the 1st Defendant and indeed the 1st Defendant was a party to the agreement, as is apparent on the face of the agreement itself.
6. The Defendants admit that the works were conducted on the premises of the 1st Defendant, or as they have stated “Harbor Club Hotel” when in fact the properties were registered in the name of the 2nd Defendant.
7. This fact reveals that the intention of the parties [was] to identify the 1st and 2nd Defendants as one party or as parties and the Claimant [as] the other or third party with respect to the agreement.”

[41] These pleadings disclose a clear breach of contract cause of action as between the respondent on the one hand and the first applicant and Sunrod on the other hand, relative to the written agreement which the parties agree was executed in November 2015. No such cause of action is pleaded against the second applicant.

[42] Secondly, the respondent asserted that the second applicant accepted the benefit of the works and agreed on that basis to pay him for the unpaid portion of such works. In this regard, paragraphs 8 and 9 of the Statement of Claim state:

- “8. The properties were subsequently sold to the 3rd Defendant who by their director promised to pay to the Claimant all monies due under the agreement, on the premise that the 3rd Defendant has received the benefit of the work done under the agreement and has not paid for the same. That much has been acknowledged by the 3rd Defendant.
9. The claimant maintains that the Defendants are in breach of the said agreement whereby the Claimant has suffered great loss and damage as stated above, and the 3rd Defendant who has acknowledged receipt of the benefit, the fruits of the unpaid labor of the Claimant and having

promised so to pay cannot now refuse to pay for a benefit of which he has not paid for.”

[43] Here, the respondent alleged an undertaking (evidenced by memoranda in writing)²⁵ between the second applicant and him whereby the second applicant undertook to pay for the works already done, for which no payment was made to him by Sunrod or the first applicant; and for works yet to be done. These factual assertions are developed further in the Reply²⁶ and his Affidavit in response to the Application²⁷ where he alleged that the second applicant issued instructions to him with which he complied and for which he received part payment regarding execution of certain aspects of the written agreement. Further, he describes the first applicant as one of the beneficiaries of the works at paragraph 18 of the said Affidavit. These assertions adequately frame the basics of a cause of action against the second applicant for unjust enrichment based on alleged commitments to pay (for completed parts of the works) referable to the written contract, that were issued by an avowed principal of the second applicant; and against the first applicant as a beneficiary of the works.

[44] Paragraphs 13 to 18 of the Reply to Defence state:

- “13. After the 3rd Defendant took over the management of the works, the Claimant was prepared to make necessary changes to the agreement, to reflect the obvious changes, but was informed by Kurt Elibox of the 3rd Defendant, that he could simply continue in accordance with the terms of the written agreement.
14. That when Kurt Elibox instructed the Claimant to add more colour to the pool area, he did so as an agent of the 3rd Defendant.
15. That when Kurt Elibox threatened to terminate the agreement if the Claimant did not add colour around the pool area he was acting as an agent of the 3rd Defendant.
16. That when Joel Jones told the Claimant to undo all what the Claimant was instructed by Kurt Elibox to do, regarding the pool area and revert to what the original plans had, he was acting as an agent for the 3rd Defendant.

²⁵ Email dated 22nd August 2017 from Wes Hall to the respondent and the approved certificate of payment referred to in para. 6 of the Statement of Claim.

²⁶ Reply to Defence and Defence to Counterclaim filed 8th November 2022 at paras. 9, 13- 18.

²⁷ Filed on 13th April 2023 at paras. 2-14. He exhibited to it the referenced email authored by Wes Hall [pg. 380 of the hearing bundle].

17. That all works conducted was so done to the satisfaction of Daniel Buchler by letter dated the 15th day of May 2018.
18. The Claimant denies that the Defendants have suffered in any way whatsoever and in fact have only reaped the benefit of the hard work of the Claimant and so have been enriched without the corresponding burden of paying for the same.”

[45] Additionally, by way of evidence the respondent asserted in his Affidavit in response,²⁸ at paragraphs 3, 4 and 6:

- “3. Contrary to the statement in paragraph 7 of the affidavit, the works were carried out not only in accordance with the said written contract, but also on property owned by the 1st and 2nd Defendant and as a direct result of representations made by agents of the 3rd Defendant, including Wes Hall and acted upon by me.
4. Moreover, the payment referred to in paragraph 6 of the statement of claim was in fact made in accordance with a document in which Wes Hall is stated as “The Client”. That document is the last document exhibited in the exhibits of the statement of claim.
6. Regarding paragraphs 11 and 12, since Wes Hall was mentioned as “the client” in the document representing the payment mentioned in paragraph 6 of the claim and also the fact of the existence of the email dated 22nd August 2017, from Wes Hall, it was reasonable to assume that when the said payment was made, it was made on behalf of the 3rd Defendant.”

[46] The respondent exhibited an email dated 22nd August 2017 that allegedly was authored by Mr. Wes Hall. It reads in part: “... I recently acquired the remainder of the Harbor Club project from Daniel Buchler and therefore [am] the new owner. ... The current plan over the next month is to assess the situation, get a full understanding of where we are, and work systematically to pay off outstanding invoices provided that contracts and work performed can be substantiated. Given that I was not involved with the project from the beginning I am unsure as to where each of you fit into the project so I will rely on you to reach out to the project team members copied on this email in particular Fadi Guirgis and Stephen Pinto who are

²⁸ See Appeal Hearing Bundle, pg. 464.

my personal representatives and Kurt Elibox the Project Manager. For those continuing on with the project you will be required to sign a new agreement with my company Parcel Holdings, Inc. Your previous agreements were with Daniel under Sunrod Properties. **It is imperative that you send us a new contract under my company name Parcel Holdings, Inc. if you are continuing on with the project. This MUST be done asap.** Without a new contract I will assume that you will not be continuing on with the project. ...”. (Underlining supplied).

- [47] Undoubtedly, the underlined words are capable of being interpreted as an undertaking to pay invoices in respect of work completed pursuant to contracts with Sunrod. They could also have been construed along with the words in bold to the opposite effect. Without testing at trial, it would in my opinion, be foolhardy for a court to find this meaning was or was not intended. This factual dispute was glaring and was among the reasons that militated against the grant of summary judgment.
- [48] More pointedly, it is clear that the respondent’s several allegations against the applicants relative to them enjoying the benefits of the works carried out on the premises, give rise to a cause of action for unjust enrichment that is quasi-contractual in nature. If proven by a claimant a claim for unjust enrichment renders a defendant liable to pay restitution as reasonable remuneration for services provided to the defendant by the claimant or as reasonable value of the goods so provided.
- [49] The constituent elements of a claim in unjust enrichment are identified in **Halsbury’s Laws of England**²⁹ as being (a) enrichment of the defendant; (b) at the claimant’s expense; (c) the enrichment must be unjust; and (d) the defendant has no defence to the cause of action. On the face of the pleadings the respondent has supplied those ingredients in his Statement of Claim and Reply to the Defence as it relates to the applicants. Likewise, in his Affidavit in Response the respondent alludes to

²⁹ Vol. 88 (2019), para. 410. See also *Dargamo Holdings Ltd and another v Avonwick Holdings Ltd and others* [2021] EWCA Civ 1149 and *Barton and others v Morris and another* [2023] EGLR 17; [2023] UKSC 3.

the fact that all three defendants have benefitted from those works (executed under the written contract) and are refusing to pay him. He expressly asserts a prior right based on 'worker's privilege' against all those who have any legal or beneficial interest in the property. These contentions point irrefutably towards a claim against the applicants for compensation for the benefit of work had and received and is based on unjust enrichment, although that expression is not used in the pleadings.

[50] A third claim is captured in paragraph 9 of the respondent's Statement of Claim, where he asserted that the second applicant 'cannot now refuse to pay for the benefit' having already promised to pay. He thereby raises an issue of estoppel as against the second applicant which is a legitimate equitable legal principle (that attracts relief) or potentially a cause of action that has been adequately pleaded. Neither can be ignored in determining whether the respondent has a viable claim against the applicants.

[51] According to the learning in **Halsbury's Laws of England**:³⁰

"'Estoppel' has been described as a principle of justice and equity which prevents a person who has led another to believe in a particular state of affairs from going back on the words or conduct which led to that belief when it would be unjust or inequitable (unconscionable) for him to do so. The person making the statement, promise or assurance is said to be estopped from denying or going back on it; 'estopped' means 'stopped'. ... Reliance based estoppels (estoppel by representation of fact, estoppel by convention, estoppel by culpable silence, estoppel by negligence, promissory estoppel and proprietary estoppel) may now be seen to be separately developed and overlapping applications of this one general principle of law that protects reliance against an unfair change of position which has been described as one of the most flexible and useful doctrines in the armoury of law. With the exception of proprietary estoppel, estoppel cannot be used as a cause of action, but it may ensure the success of a cause of action by preventing a party from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear."

[52] From the foregoing, it is readily apparent that while at first blush the Statement of Claim may appear to be restricted to a simple claim for breach of contract as

³⁰ Vol 47 (2021) - Nature, Classification and Principles of Estoppel, para. 301 - Meaning of 'estoppel'.

between the respondent on the one hand and Sunrod on the other, on closer examination when read in light of the Defence and Counterclaim and the Reply to Defence and Defence to Counterclaim and the respondent's Affidavit in Response, it is quite clear that the issues are more complex. Significantly, the pleadings effectively delineate clear factual and legal disputes as between the respondent on the one hand and each of the applicants on the other hand. The pleadings level discrete causes of action against each of the three named defendants. The respondent has in his pleadings set out cogent allegations against the first applicant for breach of the written agreement; as well as claims against the second applicant of unjust enrichment and estoppel which allegedly flow out of Sunrod's breach of the written agreement.

- [53] It is pellucid that the respondent has articulated a cogent case against the applicants for breach of contract, unjust enrichment and estoppel respectively each of which has a reasonable chance of success. Contrary to the applicants' assertions, this is not a proper case in which to grant summary judgment, even if the claim for breach of the November 2015 written agreement might appear to be unsustainable against the applicants. On these first proposed grounds of appeal, I am satisfied that the applicants are not assured a realistic prospect of success.

Proposed Grounds of Appeal 2 and 7 – Oral Contract or Written Contract and Remedies

- [54] The second proposed ground of appeal is a criticism of the learned master's ruling at paragraph 16 of the order that the respondent's claim 'is not confined to the written agreement only' and the dispute about whether 'a contract was made orally or whether there were any representations made by the Third Defendant are all issues to be resolved at a trial'.³¹ It is not too dissimilar from the 7th proposed ground of appeal which asserts essentially that the learned master erred by ignoring that the claim was limited to a contractual breach both as to particulars and with respect to the remedies sought. Accordingly, both grounds are dealt with together.

³¹ See pg. 326 Appeal Hearing Bundle at para. 16 of the impugned order dated 10th October 2023.

[55] Earlier in this judgment, I addressed the applicants' concern that none of the reliefs claimed were referable to restitution for unjust enrichment. It is not necessary to repeat them here.

[56] The learned master ruled at paragraph 16:

“[16] I find that it is not plainly obvious that the Claimant has no real prospect of succeeding on his claim. His claim is not confined to the written agreement only. The dispute about the scope of the contract, whether there was a contract made orally or whether there were any representations made by the Third Defendant are all issues to be resolved at a trial.” (Underlining added)

[57] The first point to note is that the applicants assert that there were no pleadings as to an oral contract or about representations made with the applicants. Suffice it to state that paragraphs 8 and 9 of the Statement of Claim could be interpreted (rightly or wrongly) so as to allow for an oral contract between the parties. Likewise, those paragraphs refer to representations ('promises') made by the second applicant to the respondent regarding payment for portions of the completed works. The learned master may have had these statements in contemplation when he mentioned 'oral contract' and 'representations' in his paragraph [16]. On one possible interpretation of those statements, he would have been entitled to conceptualize them as such.

[58] The second point of note is that the learned master made no finding that a term in an oral contract contradicted an express term in the November 2015 (or November 2017) written contract or in any way amended or attempted to amend it. As I understand it, he was simply making the observation that there existed competing narratives among the parties as to what transpired among them in relation to the undertaking to carry out the works and as to who was liable to pay for them. He concluded (as he was entitled to do on the evidence before him) that the evidentiary materials did not point to only one conceivable determination and the case was therefore not amenable to summary judgment in light of the several disputed matters. In the circumstances, the applicants' criticism that he failed to engage with

the import of Articles 1163(2) and 1164 of the **Civil Code of Saint Lucia**³² (which respectively prohibits oral testimony a) being given to contradict a written instrument; or b) in respect of matters where the value in question exceeds \$48.00) is of no moment.

- [59] In summary therefore, the criticism of the learned master's ruling that the respondent's claim is not confined to the written agreement but could extend to an oral contract and also representations by the applicants, hinges on the applicants' contentions that: a) there are no pleadings as to an oral contract or of such representations; and b) that he failed to engage with the import of Articles 1163(2) and 1164 of the **Civil Code of Saint Lucia**. The argument as to absence of pleadings ignores paragraphs 8 and 9 of the statement of claim which are open to being interpreted as evidence of an oral contract. It is noted that articles 1163(2) and 1164 respectively prohibit oral testimony a) being given to contradict a written instrument; or b) in respect of matters where the value in question exceeds \$48.00). Neither article 1163(2) nor 1164 of the Civil Code is applicable to the case at the appeal bar because the learned master made no finding that a term in an oral contract contradicted an express term in the written contract or in any way amended or attempted to amend it. Therefore, in my estimation neither proposed ground of appeal 2 nor 7 has a real chance of success on appeal.

Proposed Ground of Appeal 3 – Unjust Enrichment Not Pleaded

- [60] As noted earlier, the applicants made heavy weather of the contention that unjust enrichment was not pleaded. It is trite law that pleadings do not have to be formulaic. All that is required to capture the essence of a pleading for unjust enrichment is that the essential factual ingredients are set out that are necessary to establish that cause of action.³³ The respondent outlined the elements of unjust enrichment in his claim. The fact that he did not use the term 'unjust enrichment' or any specific

³² Cap 4.01 of the Revised Laws of Saint Lucia.

³³ *East Caribbean Flour Mills Limited v Ormiston Ken Boyea Saint Vincent and the Grenadines Civil Appeal No. 12 of 2006* (delivered 16th July 2007, unreported).

formulation is not fatal. It was therefore open to the learned master to find that unjust enrichment was pleaded.

- [61] It is correct that the Claim Form does not include any remedies or other particulars that utilise the terms ‘unjust enrichment’ or ‘estoppel’ or even obliquely makes reference to them. However, having particularised such claims in the Statement of Claim, the respondent satisfied the requirement to set out his case shortly as required by CPR 8.7. Furthermore, it is important to note that the procedural rules do not impose an obligation on a claimant to mention the cause of action in the Claim Form provided that it is particularised in the Statement of Claim. Equally significant as stated before, is that a claimant who fails to include a relief in the Claim Form is nonetheless entitled to recover such remedy – CPR 8.6. In addition, the court cannot ignore the fact that the applicants had adequate opportunity to study the Statement of Claim and therefore cannot justifiably claim to be prejudiced by its contents. For those reasons, I am satisfied that the third proposed ground of appeal does not have a realistic prospect of success.

Proposed Ground of Appeal 4 – Non-compliance with CPR 26.2

- [62] The nub of the proposed fourth ground of appeal is that the learned master was duty bound to invite the applicants to consider that unjust enrichment and estoppel were pleaded by the respondent and to seek submissions from them. They relied on **John Oliver Dyrud v Palmavon Jasamin Webster et al**³⁴ and **George W. Bennet Bryson’s & Co. Ltd trading as Bryson’s Shipping v George Purcell trading as Hortico Landscaping and Nursery**.³⁵
- [63] Indeed, it is trite law that a judge who intends to make a ruling of his own volition that is adverse to one party must first give that party an opportunity to make submissions. This stipulation is codified in CPR 26.2 and has been applied in numerous cases including those cited by the applicants.

³⁴ AXAHCVP2021/0010 (delivered 27th April 2022, unreported) paras. [64] – [65].

³⁵ ANUHCVP2011/0023 (delivered 28th February 2018, unreported).

[64] CPR 26.2 states:

“(1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(2) If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations.

(3) The opportunity may be to make representations orally, in writing, telephonically or by any other means as the court considers reasonable.”

[65] The applicants’ complaint that the learned master did not invite them to address him regarding whether estoppel or unjust enrichment formed part of the respondent’s case is borne out by the record. In my opinion, the learned master erred in principle by not affording the applicants that opportunity. The question that has to be determined is whether this error was fatal to his determination?

[66] Although estoppel and unjust enrichment were patently obvious as part of the respondent’s case they were evidently not in contemplation by the applicants when they made the application for summary judgment. The learned master was obligated to invite them to make submissions on that issue before making a ruling contrary to them. However, in my estimation, his consideration of them in all of the circumstances appears to have been in furtherance of the overriding objective of the CPR to do justice between the parties. For that reason, although he did not invite the applicants to address him on this issue, in my estimation this was not fatal to his decision. Accordingly, I am satisfied that the fourth proposed ground of appeal has very little chance of success.

Proposed Ground of Appeal 5 – Evidence of Acknowledgement and Promise to Pay

[67] In the proposed fifth ground of appeal, the applicants attempt to disguise as legal issues, matters which fall squarely within the realm of fact finding. On one view of the evidence, the learned master was entitled to find as he did that the evidence led by the respondent supported a finding that the second applicant had acknowledged receipt of the benefit of the works done by the respondent and had promised to pay

him for the same. The applicants' criticisms on this score do not afford them, in my opinion, a real prospect of success on appeal.

Proposed Ground of Appeal 8 – Decision against Weight of Evidence and Pleadings

- [68] This last proposed ground of appeal encapsulates matters already addressed under the other proposed grounds. For all of the reasons already set out I am satisfied that this too has slim chance of success on appeal. Consequently, for all of the reasons articulated above I would refuse the applicants' application for leave to appeal.

Stay of Execution

- [69] The principles governing the grant or refusal of a stay of execution are settled and have been rehearsed by this Court in numerous cases including **C-Mobile Services Limited v Huawei Technologies Co. Limited**.³⁶ They are that:

- (a) a stay is the exception rather than the general rule;
- (b) the Court should take into account all the circumstances of the case;
- (c) the party seeking a stay must provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted;
- (d) in exercising its discretion, the court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered; and
- (e) the prospect of the appeal succeeding, but only where strong grounds of appeal or a strong likelihood the appeal will succeed is shown.

- [70] In view of the conclusions that the applicants do not have a realistic prospect of success on appeal and of the dismissal of their application for leave to appeal, the application for a stay of execution falls away and I would dismiss it.

³⁶ BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported).

Disposition

[71] For all of the reasons set out in this judgment, I would refuse the applicants' application for leave to appeal the learned master's order dated 10th October 2023 in which he dismissed their application for summary judgment. I would make no order for a stay of execution of the said order. No order is made as to costs.

I concur.

Mario Michel
Justice of Appeal

I concur.

Trevor M. Ward
Justice of Appeal

By the Court

Chief Registrar