

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. NEVHCV 2019/0103

BETWEEN:

BLUE LAGOON MANAGEMENT LTD.

Claimant

and

PETRODEL INVESTMENT ADVISERS (NEVIS) LTD.

First Defendant

and

MICHAEL J. PREST

Second Defendant

Appearances:

Ms. Kayla Theeuwen and Ms. Farida Hobson for the Claimant
Mrs. Marlene Uter Bent for the Defendants

2020: November 13
December 14

RULING

- [1] **GILL, M.:** There are two applications before the court. The first in time is an application filed by the claimant ("Blue Lagoon") on February 21, 2020 to add the Bank of Nevis International Limited ("BONI") as a defendant, and to amend the amended claim form and amended statement of claim. The second application was filed by the defendants on March 20, 2020 to strike out the claim form and amended claim form and the statement of claim and amended statement of claim. Alternatively, the defendants seek an order that the action against the second defendant ("Prest") be struck out and that Prest be removed as a party to the claim, and that Blue Lagoon's application and the affidavit in support be struck out.

Background

The Claim

- [2] Blue Lagoon, a company incorporated pursuant to the laws of Belize with its registered head office in Belize City, filed the original claim on August 16, 2019 against the first defendant (“Petrodel”) only. The amended claim filed on November 19, 2019 added Prest as a defendant. The claim reveals that on March 25, 2019, Blue Lagoon entered into a share transfer agreement (“the transfer agreement”) with Petrodel. It was agreed that Petrodel would transfer shares from BONI, which it purchased from The Bank of Nevis Limited (“BON”) to Blue Lagoon for the purchase price of US\$150,000.00 on completion of certain conditions precedent. The claim states that Blue Lagoon paid the purchase price to Petrodel in nine (9) payments as directed by Petrodel through Prest, its sole director, shareholder and directing mind. It alleges that each of the nine (9) payments benefitted Petrodel or Prest as detailed in the amended statement of claim. The list of payments includes payments to educational institutions for Prest’s daughters’ educational costs.
- [3] The claim alleges breach of the transfer agreement. It alleges that the shares have not been transferred. As provided for in the transfer agreement, Blue Lagoon terminated the agreement. The agreement further provided that if Blue Lagoon terminated the transfer agreement, Petrodel would immediately pay to Blue Lagoon the full purchase price and a termination fee of US\$6000.00 by wire transfer. Blue Lagoon has made a formal demand to Petrodel for the repayment of the purchase price and the payment of the termination fee, which demand has not been responded to or satisfied.
- [4] The claim sets out that Prest has been unjustly enriched by the payments made in full satisfaction of the purchase price, to Blue Lagoon’s deprivation for no juristic reason. The claim asserts that Prest is therefore liable to Blue Lagoon by the amount of the purchase price together with interest.

- [5] In the alternative, the claim alleges that Petrodel was unjustly enriched in the amount of US\$156,000.00, together with interest, to Blue Lagoon's deprivation for no juristic reason. Therefore, Petrodel is liable to Blue Lagoon for this amount.
- [6] Blue Lagoon claims against Petrodel, *inter alia*, specific performance of the transfer agreement, in the alternative, damages in the amount of US\$156,000.00 or its equivalent EC\$421,597.80, for breach of contract or unjust enrichment.
- [7] Blue Lagoon claims against Prest, *inter alia*, damages in the amount of US\$154,913.00 or its equivalent EC\$418,660.13 for unjust enrichment.

Claimant's application to further amend the claim

- [8] Blue Lagoon is asking the court for permission to amend the amended claim to add BONI as a defendant to the claim and to amend paragraphs of the claim. As stated in the grounds of the application, the transfer agreement was conditional on the closing of a sale and purchase agreement between Petrodel and BON, pursuant to which Petrodel would purchase certain shares in BONI ("the sale and purchase agreement"). The transfer agreement was a follow-on transaction that contemplated the transfer of shares by Blue Lagoon upon completion or closing of the sale and purchase agreement.
- [9] At the time the amended claim was filed, the sale and purchase agreement had not been closed or terminated.
- [10] On or about December 2019, BON and Petrodel finalised an agreement for the purchase by Petrodel of the banking operations of BONI. Petrodel now owns 100% of the shares of BONI.
- [11] Now that Petrodel owns the shares of BONI, Blue Lagoon seeks to amend the amended claim to seek,
- (i) specific performance of the transfer agreement in accordance with sections 1 and 2 (of that agreement),

- (ii) a declaration that Blue Lagoon is the holder of 18,000 ordinary shares of the capital of BONI, and is entitled to be registered as such on the share register of BONI, and
- (iii) an order that the share register of BONI be updated to reflect the transfer of shares in BONI to Blue Lagoon.

[12] In the grounds of the application, Blue Lagoon states that BONI is a necessary party to the amended claim. The proposed amendments arise because of a change in circumstances following the delivery of the amended claim. The amendments sought will not affect any dates set by the court in this matter, including a trial date, which has not been set. It is in the interest of justice to permit the amendments sought.

[13] The application is supported by the affidavit of Shanel Neale, a legal assistant employed by Theodore L Hobson & Associates, the legal practitioners on record for Blue Lagoon. She states that as such, she has knowledge of the matters deposed. Her evidence includes the statements averred in paragraphs [8] to [11] above.

Defendants' application to strike out the claim

[14] Petrodel and Prest ask that the claim and the amendments thereto be struck out in that they do not disclose any reasonable ground for bringing the claim and are an abuse of the process of the court. The main grounds of this application are as follows:

- (i) The transfer agreement speaks to the transfer of 18,000 ordinary shares in BONI to Blue Lagoon for a consideration of US\$150,000.00 upon fulfillment of specified conditions.
- (ii) On March 25, 2019, the date Blue Lagoon commenced its claim, Petrodel owned no shares on BONI and could not transfer any shares to Blue Lagoon.

- (iii) The transfer agreement was in fact and in effect an option agreement to purchase shares by Blue Lagoon from Petrodel.
- (iv) The option to purchase shares could only have been exercised upon the fulfillment of the conditions precedent outlined in sections 10 and 11 of the transfer agreement.
- (v) As at the date of and up to the filing of Blue Lagoon's amended claim, no transaction had been consummated between Blue Lagoon and Petrodel under the transfer agreement to enable Blue Lagoon to sue for specific performance or breach of contract or unjust enrichment.
- (vi) Any option to purchase shares from Petrodel could not be exercised prior to December 31, 2019.
- (vii) No action for specific performance or breach of contract or unjust enrichment existed against the defendants in the circumstances.
- (viii) Blue Lagoon made no payment of US\$150,000.00 to the defendants.
- (ix) Blue Lagoon has breached the option agreement.
- (x) Petrodel has not breached the option agreement and has been put to great prejudice and expense by the premature actions of Blue Lagoon in commencing litigation.

[15] In the alternative, as stated earlier, the defendants ask the court to strike out the action against Prest and to strike out Blue Lagoon's application and the affidavit in support on the following grounds:

- (xi) No contractual relationship exists or ever existed between Blue Lagoon and Prest, and Blue Lagoon has no cause of action against Prest.
- (xii) The doctrine of privity of contract has been ignored by Blue Lagoon.
- (xiii) Prest is not the sole director or a shareholder of Petrodel and Petrodel is a separate legal entity.
- (xiv) Blue Lagoon cannot successfully meet the threshold for permission to further amend its claim.
- (xv) the affidavit of Shanel Neale is not in conformity with Rule 30.1 and Rule 30.3 and is an abuse of the process of the court.

[16] This application is supported by the affidavit of Prest.

Issues

[17] The court must determine the following:

- (1) whether the claim should be struck out;
- (2) in the alternative, whether the claim against Prest should be struck out and Prest be removed as a party to the claim;
- (3) if the claim is not struck out, whether Blue Lagoon's application to add a party and amend the claim and the affidavit of Shanel Neale should be struck out; and
- (4) if Blue Lagoon's application is not struck out, whether Blue Lagoon's application for leave to add a party and to further amend the claim should be granted.

The law

[18] Part 26.3 of the Civil Procedure Rules 2000 as amended (CPR 2000) empowers the court to strike out a statement of case in certain circumstances. The defendants' application is pursuant to CPR 26.3(1)(b) and (c). The Rule reads:

26.3(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) ...

(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 an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or

(d) ...

[19] In **Cedar Valley Springs Homeowners Association Incorporated v Hyacinth and Others**,¹ the Court of Appeal distilled the relevant principles from previous authorities of the Court² as follows:

- “(a) This summary procedure which calls for the exercise of a discretionary power, should only be used in clear and obvious cases as it is a drastic step. The result of such a measure is that it deprives a party of his right to a trial and his ability to strengthen his case through the process of disclosure and other procedures such as requests for information.
- (b) This procedure should only be used where it can be seen on the face of the claim that it is obviously unsustainable, cannot proceed or in some other way is an abuse of the process of the court. This has been expressed in terms that the claim should not be struck out if there is a ‘scintilla’ of a cause of action.
- (c) In treating with an application to strike out made pursuant to CPR 26.3(1)(b), the trier of the application should proceed on the assumption that the facts alleged in the statement of case are true.
- (d) The employment of this procedure is appropriate in the following instances: where the claim sets out no facts indicating what the claim is about, or if it is incoherent and makes no sense, or if the facts it states, even if true, do not disclose a legally recognisable claim against the defendant.
- (e) Conversely, this procedure would be inappropriate where the argument involves a substantial point of law which does not admit of a plain and obvious answer, or the law is in a state of development, or where the strength of the case may not be clear because it has to be fully investigated.”

¹ ANUHCVP2016/0009 and ANUHCVP2016/0010, per Pereira CJ at paragraph 6 of the judgment

² ANUHCVP1997/0020A *Baldwin Spencer v The Attorney-General of Antigua and Barbuda et al*, BVIHCVP2012/0007 *Tawney Assets Limited v East Pine Management Limited et al* and BVIHCVP2008/0022 *Citco Global Custody NV v Y2K Finance Inc.*

Defendants' application to strike out

- [20] In the event the claim is struck out, this will dispose of the matter. Therefore, it is prudent to deal with the defendant's application first.
- [21] The defendants submit that the remedy of specific performance is not available to Blue Lagoon. They assert that on August 16, 2019 when the claim was commenced, Petrodel did not own any shares in BONI and was not capable of transferring any shares in BONI. Further, they argue that by letter of July 31, 2019, Blue Lagoon gave notice of termination of the transfer agreement and there was no cancellation of that notice. Therefore, Blue Lagoon cannot thereafter seek specific performance of that which it has terminated. Accordingly, the defendants contend that the relief for specific performance must be struck out as it was not available to Blue Lagoon at the date the claim was issued.
- [22] The defendants take issue with the claim by Blue Lagoon that Blue Lagoon caused the purchase price to be paid to Petrodel. They insist that Blue Lagoon has not presented any evidence that it paid or caused any monies to be paid to either of the defendants. They point out that the list of payments exhibited on behalf of Blue Lagoon reveals that none of the payments was made by Blue Lagoon and Blue Lagoon has not provided any evidence of connection between Blue Lagoon and the entities shown as making the payments. Learned Counsel for the defendants, Mrs. Uter Bent, urged the court to scrutinise these facts in coming to a determination.
- [23] In the absence of consideration, the defendants submit that there can be no contract capable of being breached between Blue Lagoon and Petrodel and consequently, there can be no relief for unjust enrichment.

Unjust Enrichment

- [24] The defendants contend that the elements of the tort of unjust enrichment have not been made out in the claim. They cite the case of **Featherwood Trading**

Limited v Fraunteld Management Limited³ in which Mitchell JA (Ag.) restated the principles to be considered as stated in the court below. At paragraph 7 of the judgment, His Lordship stated:

“The learned trial judge recognised that to succeed in a claim for unjust enrichment, the claimant must, as Lord Steyne set out in his judgment in **Banque Financière de la Cité v Parc (Battersea) Ltd.**, demonstrate three things: (1) that the defendant has been enriched; (2) that his enrichment was gained at the claimant’s expense; and (3) that this enrichment at the claimant’s expense is unjust.”

[25] The defendants submit that Blue Lagoon has not established that the defendants have been enriched at Blue Lagoon’s expense.

[26] Blue Lagoon’s response to the application to strike out the claim starts with the principle that the court must proceed on the assumption that the facts alleged in the amended claim are true. It summarises the allegations stated in the amended claim as follows:

- (a) Blue Lagoon entered into a contract (the share transfer agreement) with Petrodel, who agreed to transfer shares in BONI that it was in the process of purchasing, for an advance payment of US\$150,000.00;
- (b) Blue Lagoon caused the purchase price of US\$150,000.00 to be paid to Petrodel, as directed by Prest, as consideration;
- (c) Petrodel, through Prest, acknowledged receipt of the purchase price, and benefitted from the payment of the purchase price, to the deprivation of Blue Lagoon;
- (d) When the share purchase agreement between Petrodel and BON did not close by 30 June 2019 as it was required to, Blue Lagoon gave written notice of termination of the share transfer agreement to Petrodel; and
- (e) Petrodel has not transferred the shares to Blue Lagoon, nor has it repaid Blue Lagoon any of the purchase price.

³ BVIHCVAP2012/0020, (2013) WIR 308

[27] Blue Lagoon contends that there is much more than a “scintilla” of a cause of action against Petrodel. Learned counsel for Blue Lagoon, Ms. Theeuwen, contends that the fact that learned counsel for the defence is asking the court to scrutinise the facts means that it is obvious that this application cannot succeed. Counsel posits that the primary relief sought by Blue Lagoon is the repayment of the purchase price along with the termination fee. Specific performance is an alternative remedy. Counsel further submits that the question as to who made the payments is a triable issue.

The application for Prest to be removed as a party

[28] The defendants rely on the tenets of the principle of separate legal entity to proffer that in the event the claim is not struck out, the action against Prest should be struck out and he should be removed as a defendant in these proceedings. The defendants argue that the landmark case of **Salomon v Salomon & Co. Ltd**,⁴ referred to by Byron CJ in **W. T. Western Limited et al v Jeffrey Colen**,⁵ is still good law. Lord Halsbury LC is quoted as follows:

“...once a company has been legally incorporated it must be treated like any other independent person with rights and liabilities appropriate to itself, and the motives of those who promote the company (e.g., to enable them to trade with the benefit of limited liability) are absolutely irrelevant in discussing what those rights and liabilities are.”

[29] Prest cannot be held personally liable as a director of Petrodel so the defendants argue that Blue Lagoon has not established a basis for joining him as the second defendant to the claim.

[30] Blue Lagoon clarifies that it is not seeking to pierce the corporate veil and that the claim is being brought against Prest in his personal capacity for unjust enrichment. It sets out that if the causes of action against Petrodel are not made out, and if

⁴ (1897 A.C. 22 at 30, (1895-9) All E.R. Rep. 33 at 35

⁵ Civil Appeal No. 9 of 2001 (Saint Christopher & Nevis, Nevis Circuit), at paragraph 8 of the judgment

payment of the purchase price did not benefit Petrodel, then such payment unjustly enriched Prest, for no juristic reason, to the deprivation and expense of Blue Lagoon. Blue Lagoon accepts that it does not have a contract with Prest, which is precisely why the cause of action against him is framed in unjust enrichment.

- [31] Blue Lagoon maintains that this is not a “clear and obvious” case that warrants the court “going nuclear” on the amended claim in relation to either Petrodel or Prest.

Discussion and ruling on the defendants’ application

- [32] The claim shows that Blue Lagoon caused US\$150,000.00 to be paid to Petrodel, as directed by Prest, for Petrodel’s shares in BONI. The shares have not been transferred and the purchase price has not been repaid. Blue Lagoon can only be made whole by either event, hence the reliefs claimed in the alternative. Notwithstanding the defendants’ assertion that when the claim was filed, specific performance was not available to Blue Lagoon, the amended claim alleges that Petrodel now has the shares in BONI. To my mind, it would be a question for the determination of the court, on the evidence before it, whether the remedy of specific performance, a discretionary remedy, is appropriate in the circumstances of the case. Whether the termination of the transfer agreement by Blue Lagoon bars Blue Lagoon from claiming that remedy is a matter for the court, bearing in mind the payment of the purchase price.

- [33] The payment of the purchase price clearly raises highly contested issues between the parties. The observation by the defendants that Blue Lagoon has not told the court how it caused monies to be paid comes into play, in light of the exhibited documents showing payments by entities other than Blue Lagoon. In order to succeed, Blue Lagoon has to establish by evidence that the payments were made on its behalf. To this end, Blue Lagoon must be given the opportunity to develop its case by standard disclosure, the filing of witness statements and requests for information. Likewise, the defendants are entitled, based on the evidence adduced

by Blue Lagoon, to maintain their position, or to produce evidence to discredit Blue Lagoon's case.

[34] The claim is against Petrodel for breach of contract or unjust enrichment, and against Prest for unjust enrichment only. The claim sets out a signed contract between Blue Lagoon and Petrodel for consideration, and alleges breach by Petrodel. It further sets out the elements of unjust enrichment in relation to both defendants.

[35] On the state of the amended claim, I cannot conclude that it is obviously unsustainable or in any other way an abuse of the process of the court. This is not a proper case for the court to exercise the nuclear option. Accordingly, this application must be refused.

The claimant's application to add a party and to further amend the claim

[36] The defendants have raised what is in effect a preliminary objection that this application is not properly before the court.

Affidavit of Shanel Neale

[37] The defendants submit that the affidavit of Shanel Neale purporting to support Blue Lagoon's application to add BONI as a defendant and to amend the amended claim should not be considered by the court as it is not in accordance with CPR 30.3. The relevant part of the Rule reads as follows:

30.3 (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.

(2) An affidavit may contain statements of information and belief –

(a) if any of these Rules so allows; and

(b) if the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates –

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information and belief; and

- (ii) the source of any matters of information and belief.*
- (3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of the affidavit.*

[38] At paragraph 1 of Ms. Neale's affidavit, she deposes that she is a legal assistant employed by the legal practitioner for Blue Lagoon and as such, she has knowledge of the matters therein deposed. The defendants point out that she does not state:

- how she arrived at that knowledge;
- that she is authorised to swear the affidavit;
- which matters are within her knowledge and which are not;
- which matters are of information or belief; and
- the source of any matters outlined in the affidavit.

The defendants are of the view that Shanel Neale is not competent to speak to the matters stated in the affidavit and the affidavit is no doubt in breach of CPR 30.3. They urge the court that the affidavit ought to be struck out and that the caution of the court in **Q Homes Ltd. v Al's Investment Ltd.**⁶ must be taken seriously. In that case, Cenac-Phulgence J found that an affidavit sworn by a clerk employed by counsel for the defendant in support of the defendant's application for extension of time to file witness statements and for relief from sanctions, and for leave to file expert evidence, breached CPR 30.3 in many respects. The clerk deposed that the failure to comply with the case management order was not intentional, that the claimant would not be prejudiced should an extension of time be granted, and that the justice of the case required that the defendant file witness statements to defend the case and to prosecute the counterclaim. Her Ladyship, while not striking out the affidavit, issued the following warning:

"There can be no excuse for not complying with CPR 30.3 and while I would not go so far as Thomas J [Ag.] and strike out the affidavit, I think it is of sufficient importance to caution legal practitioners against the growing practice, which has swept through the jurisdiction of the Eastern Caribbean Supreme Court of legal clerks and secretaries swearing to affidavits in support of applications where there is no statement that they are authorized

⁶ SLUHCv2017/0470

to do so, or speak to matters which cannot be and/or not within their knowledge.”

[39] The decision of Thomas J (Ag.) referred to by Cenac-Phulgence J is in **Development Bank of St. Kitts-Nevis v Osbert Chapman et al.**⁷ In that case, His Lordship struck out the affidavit in support of an application to amend the claim form on the basis that although certain paragraphs of the affidavit revealed what the affiant’s information was, the source of the information was not identified. As a consequence, the application was without evidence in support. Therefore, in this case, the Defendants ask the court to find that Blue Lagoon’s application is without affidavit evidence and cannot stand.

[40] Blue Lagoon indicates that the defendants have submitted that the affidavit does not comply with the Rules without particularising the alleged non-compliance. It posits that it is unfathomable that in the position of legal assistant employed by Blue Lagoon’s practitioners on record, Ms. Neale is not authorised or competent to provide evidence on Blue Lagoon’s behalf. Learned counsel for Blue Lagoon insists that as a legal assistant for Blue Lagoon’s attorneys, Ms. Neale is authorised to make the affidavit. Counsel submits that it is implied that Ms. Neale is authorised to swear this affidavit. Blue Lagoon states that substantively, and based on her knowledge of this claim in her role as a legal assistant at Theodore L Hobson & Associates, Ms. Neale’s affidavit:

- (a) provides a brief history of the litigation;
- (b) attaches a copy of the share transfer agreement;
- (c) summarises the share purchase agreement;
- (d) attaches press releases related to Petrodel’s purchase of the banking operations of BONI; and
- (e) attaches Blue Lagoon’s proposed second amended claim.

[41] Learned counsel Ms. Theeuwen argued that in relation to the facts stated in the affidavit, Ms. Neale does not have to state the sources of her knowledge because

⁷ SKBHCV2012/0168

there are within **her** knowledge. The documents exhibited to the affidavit are within **her** knowledge. She attaches public press releases. As legal assistant, she sees the court files, so obviously, she has knowledge of the information therein. Counsel submits that **Q Homes Ltd.** is easily distinguishable from the facts in the case at bar. Counsel explains that **Q Homes Ltd.** speaks to knowledge the deponent did not have. Here, everything Ms. Neale deposed is within her own knowledge, except for paragraphs 18 and 19 of the affidavit, which counsel concedes are legal arguments. These paragraphs state that there is prejudice to Blue Lagoon if the amendments sought are not granted and that there is no prejudice to the Defendants if the amendments sought are granted.

Discussion and ruling on Shanel Neale's affidavit

- [42] Shanel Neale swears that as a legal assistant employed by the legal practitioner for Blue Lagoon, she has knowledge of the matters deposed. As is standard, paragraph 2 of the affidavit reads:

"2. I say that insofar as the matters stated in this Affidavit are within my own knowledge, they are true, and insofar as they are not within my own knowledge, they are true to the best of my information and belief. Where I rely on information and belief, I state that to be the case. Where I am informed of information by other persons, I state that and verily believe that information to be true."

- [43] However, nowhere in the affidavit is it stated that Ms. Neale relies on information and belief or that she is informed by other persons in relation to any of the contents of the affidavit. Based on Blue Lagoon's position, all the information in the affidavit is within Ms. Neale's knowledge. Indeed, it can be accepted that the facts stated in paragraphs 4 to 15 of the affidavit can be gleaned for the court file. To my mind, however, the same cannot be said for paragraphs 16 to 19. As stated earlier, Blue Lagoon has conceded that paragraphs 18 and 19 are not within the knowledge of Ms. Neale. Clearly, neither is paragraph 16 nor paragraph 17. At these paragraphs, Ms. Neale deposes:

16. BONI is a necessary party to the Amended Claim....

17. The amendments proposed herein arise because of a change in circumstances following the delivery of the Amended Claim.

[44] Blue Lagoon submits, and the court accepts, that on an application to add a party, the essential question for the Court to consider is whether the respondent is a necessary party if the court is to resolve the real issues in dispute, or to which the respondent is connected.⁸ This is a crucial element of the application. This affiant cannot properly make these statements from her own knowledge. The source of her knowledge or information or belief must be stated in order to ground the application. In my view, the failure of the affiant to do so in this case is a flagrant breach of CPR 30.3 and fatal to the application. Paragraphs 16 to 19 of the affidavit are inadmissible. Consequently, the affidavit must be struck out.

[45] I do not consider any of the affidavits of Kristy Ross to contain all the information required to support the application. As pointed out by the defendants in relation to the first affidavit of Kristy Ross, whereas she states that the affidavit is in response to Petrodel's application to strike out, and in support of Blue Lagoon's application, there is no reference in this affidavit to any matter or aspect of Blue Lagoon's application to add BONI and amend. This affidavit therefore cannot be deemed to be in support of the application.

[46] Accordingly, Blue Lagoon's application is without evidence and must be struck out. It is unfortunate that after such occurrences as the striking out of the affidavit in **Development Bank of St. Kitts-Nevis v Osbert Charles et al**, and the pronouncements of the court in **Q Homes Ltd.**, serious breaches of CPR 30.3 continue to appear in applications before the court.

Order

[47] In light of the foregoing, it is hereby ordered as follows:

⁸ See SKBHCV2015/0283, Mohammad Sadek Atassi (by his Attorney Malek Atassi) and another v Raghd Murtada and others, per Ward J. at paragraph 33 of the judgment

- 1) The defendants' application to strike out the claim and/or to strike out the claim against the second defendant and to remove the second defendant as a party to the claim is refused.
- 2) The affidavit of Shanel Neale is struck out.
- 3) Consequently, the claimant's application to add a party and amend the claim is struck out.
- 4) Each party shall bear its/his own costs.

[48] I thank counsel for their assistance in this matter.

Tamara Gill

Master

By the Court

Registrar