

**THE EASTERN CARIBBEAN SUPREME COURT
GRENADA**

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

Claim Number: GDAHCV2019/0295

BETWEEN:

Patty Williams

CLAIMANT/APPLICANT

AND

**Denver Gilbert
(Trading as Total Auto)**

DEFENDANT/RESPONDENT

Appearances:

Ms. Herricia L. Willis for the Claimant/Applicant

Ms. Hazel Hopkins for the Defendant/Respondent

2019: November 19

2020: November 23

JUDGMENT

- [1] Burnett, M (Ag.): This is an application by the claimant/applicant for summary judgment pursuant to part15 of the Civil Procedure Rules 2000. The claimant relies on the affidavit sworn to by Patty Williams.

- [2] The Applicant states: the respondent has no real prospect of successfully defending the claim as the respondent breached the terms of the contract which were expressly agreed upon by the parties and which became legally binding on the 3rd September, 2017
- [3] The respondent held himself out as an auto collision specialist but failed to honour his obligation to complete the work to a reasonable standard and in a professional and timely manner. The applicant further contends that the respondent's assertion that he was unable to complete the tasks as the applicant failed to provide the parts as requested, was untenable, as evidence of the tasks the respondent was obliged to perform as set out in an invoice marked "estimates".
- [4] The Applicant submits that on 3rd September, 2017 the respondent was paid the required amount of \$4,500.00 as requested confirmation of the parties' intention that the invoice should be legally binding. The applicant says that once both parties agree to an invoice it then becomes a legal debt. The applicant further state that she was not bound to pay the invoice until the respondent has satisfied all elements of the invoice which is the respondent has not.

THE APPLICANT'S CASE

- [5] The Applicant is employed as a nurse of the general public hospital. She is the owner of a Toyota Hiace passenger bus registration number H7617 (hereinafter referred to as "The Bus"), to supplement her income. The bus is employed along the St. George's to Greenville Bus route.
- [6] The respondent carries on a business as a total collision specialist and professes to have many years experience and conducts repairs in a professional and timely manner.
- [7] On the 20th of July, 2017, the bus was involved in a road traffic accident and as a result, sustained damage to its back and left side. Shortly after the accident, the applicant who was on extended sick leave from her employment, informed the respondent, as she was not receiving an income and wanted the repairs on the bus to be conducted as soon as possible. The Respondent confirmed his skill and experience to complete all necessary repairs to foreign and domestic cars in a

professional and timely manner. He thereafter, provided the applicant with an estimated invoice of the work.

The contract: written forms and oral terms

Express terms - essential repairs – 24th July 2017

- [8] The estimated invoice lists the parts to be replaced, the parts to be repaired and charges incurred, to include labor costs. The said estimated invoice amounted to \$4,450.00 for essential parts which the respondent confirmed would make the bus roadworthy. The said invoice, signed by the Respondent, confirmed he would replace the following:
- a. left side quarter panel
 - b. left tail light
 - c. back door
 - d. left side back bumper bracket
 - e. left tail light filter panel
 - f. back panel
- [9] The Respondent agreed to repair the left side inner panel and the flooring of the bus to include materials for \$950.00, with additional labour costs of \$1,350.00. The remainder sum of \$2,150.00 to permit the Respondent to obtain the replacement parts as set out at paragraph 8(a) to (f) above. Thus, the cost of repairs and for the Respondent to provide replacement parts, to include labour amounted to \$4,450.00 as set out in the estimated invoice exhibited as "PW1" to the Statement of Claim (hereinafter referred to as "PW1").
- [10] As stated at paragraph 7, the Applicant was on extended sick leave as she suffered injury at work. She notified the Respondent on several occasions that the bus was her only source of income and was immediately required to be roadworthy. The Respondent was aware of this fact. He knew the urgency of completing the repairs in a timely manner and so agreed to complete the said repairs within 10 days of receiving payment.

Oral terms: 3rd September, 2017

- [11] As a result of the Respondent's assurance of his capability to complete the essential repairs within

10 days, on 3rd September, 2017, the Respondent agreed to also perform non-essential repairs within the same time frame of 10 days. The said non-essential repairs amounted to \$3,550.00. To complete the non-essential repairs, the Respondent was not required to replace any parts but to:

- a. realign the front of the bus;
- b. remove a small amount of rust from inside and underneath the bus, and
- c. repaint and re-spray inside and underneath the bus.

[12] The essential repairs amounted to \$4,450.00 and non-essential repairs \$3,550.00 totaling \$8,000.00. The parties agreed the said payment of \$8,000.00 would be made in three (3) instalments. The first instalment at the start of the repairs, the second after the painting and respraying of the bus is complete and the final payment when the Applicant takes delivery of the bus. On 3rd September, 2017, the Applicant paid the Respondent the first installment of \$4,500.00 and as agreed, the Respondent took delivery of the bus.

Breach of contract:

[13] The Applicant contends that the Respondent knew time was of the essence but he failed to complete the said repairs within the agreed time frame. In fact, between September, 2017 and February, 2018, the Respondent failed, neglected or refused to complete the said repairs as set out in the invoice exhibited as "PW1". Notwithstanding the Respondent's agreement to repair and replace the said parts, he continually requested more time in which to conduct the said repairs as stated at paragraphs 5, 8 and 11 above.

[14] Notwithstanding the Respondent's breach of contract in March 2018 the Applicant reluctantly agreed to extend the time in which the Respondent should complete the said repairs. However, the Respondent failed, neglected or refused to complete the said repairs and would continually give excuses why neither the essential nor non essential repairs were completed, such as:

- a. injury to his hand;
- b. promises that the repairs would be completed within two (2) weeks;
- c. a request for more time;
- d. the gas tank at his garage bursts so he could not perform any repairs; and

e. insufficient funds to complete the repairs.

- [15] On an occasion when the Applicant and her Agent attended the Respondent's garage he was drunk and was abusive to her and her Agent.
- [16] After eighteen (18) months of taking delivery of the bus, the Respondent finally confirmed the repairs were complete. However, on 16th February, 2019, the Applicant's Agent went to collect the bus but found some repairs were not of a satisfactory standard and the non essential repairs were not undertaken. On a closer inspection, the Agent found the bus had accumulated substantial rust to its body as the bus was stored in an open space consequently, the bus was not roadworthy.
- [17] Several days thereafter, the Applicant, her Agent and two police officers attended the Respondent's place of business to request the return of the bus to its lawful owner. However, the Respondent falsely informed the police officers that his Attorney had written to the Applicant as payment was outstanding and, as he had stored the bus for the Applicant's benefit.
- [18] The Applicant applies for summary judgment under Part 15 of the Civil Procedure Rules 2000 (as amended) alleging the Respondent has no real prospect of successfully defending the Claim.

THE APPLICANT'S APPLICATION

- [19] The Applicant says the Respondent has no real prospect of successfully defending the Claim as he breached the terms of the contract which was expressly agreed upon by the parties and which became legally binding on 3rd September, 2017.
- [20] The Applicant further contends the Respondent holds himself out as an auto collision specialist but failed to honour his obligation to complete the work to a reasonable standard and in a professional and timely manner. The Respondent's assertion that he was unable to complete the tasks as the Applicant failed to provide the parts as requested is untenable as evidence of the tasks the Respondent was obliged to perform is set out in an invoice marked "estimate".
- [21] In any event, on 3rd September, 2017, the Respondent was paid the required amount of \$4,500.00 as confirmation of the parties' intention that the invoice should be legally binding. The Applicant contended, once both parties agree to an invoice, it then becomes a legal debt. The Applicant

further contended she is not bound to pay the invoice until the Respondent has satisfied all elements of the invoice, which the Respondent clearly has not.

The essential and non-essential parts

- [22] The Applicant says that she entered into an agreement that the Respondent would repair and replace specific parts to the bus in a timely manner. The invoice exhibited at “PW1” sets out the terms of the contract which relate to essential repairs which the Respondent alleges would make the bus roadworthy.
- [23] The Applicant says notwithstanding the existence of an invoice and receipt of the first installment of \$4,500.00, the Respondent alleges no written agreement exists. This is denied as the Applicant asserts the invoice marked “estimate” lists the parts to be replaced, parts to be repaired and the charges to include labour costs. Thus, the contents of the invoice are the written conditions of the agreement. Such conditions go to the heart of the contract which became binding between the parties on 3rd September, 2017. **Poussard v Spiers**¹
- [24] The Applicant further contends that the terms of any agreement are its contents. Such contents define each party’s obligations. Therefore, the Respondent is obliged to provide the services contained within and the Applicant is obliged to pay for the said services. Thus, contrary to the Respondent’s assertions, the Applicant was not required to provide any repair or replacement parts at the beginning of the contract or at all. The repair and replacement of the said parts is the Respondent’s sole responsibility as set out in the said invoice.
- [25] However, on the insistence of the Respondent, the Applicant reluctantly agreed to purchase the back bumper brackets which were the Respondent’s responsibility to provide. The purchase of the said part was to ensure the Respondent honoured his obligation to complete all repairs in a timely manner which he failed to do.
- [26] Contrary to the Respondent’s assertions, the Applicant was not required to perform the duties of a

¹ (1876) 1 QBD 410 [Tab1]

mechanic as all duties to be undertaken relate to the Respondent's professed expertise as set out in the said invoice and paragraph 8 and 11. In any event, although the Respondent professed to have the required skill, knowledge and expertise to complete the tasks he failed or refused to complete the said repairs in a timely manner. Also, the repairs so far undertaken were not of a reasonable standard. **Hancock and Others v B.W. Brazier (Anerley) Ltd²**.

Payment by instalments

- [27] Contrary to the Respondent's assertions, the Applicant agreed to pay the Respondent to complete the essential and non essential repairs as set out at paragraphs 9 and 11 in three (3) installments. The first installment was paid on 3rd September, 2017. The second was due after the bus was repainted and resprayed. Although the Respondent failed or refused to repaint and respray the bus in a timely manner he received the second instalment in January, 2019 as he demanded the said payment to complete the agreed repairs. Notwithstanding the Respondent's failure to complete all essential repairs within 10 days, he received the full payment for the essential repairs on 3rd September, 2017.
- [28] The Applicant submitted that the Respondent failed to complete the said repairs in a timely manner and so breached the said contract from September, 2017. Moreover, as at 24th November, 2019, the Respondent failed to complete all the repairs and refuses to deliver the bus to the Applicant. As a result, the payment of the third installment has not fallen due. This means the Applicant is not obliged to pay the invoice until the Respondent has satisfied all of the terms in the said invoice.

Time frame

- [29] Contrary to the Respondent's assertion, he knew the bus was the Applicant's sole income. He knew the Applicant was on long term sick leave and was not receiving an income. The bus is a public transport vehicle; hence, would put the Respondent on notice of the type of vehicle he is required to repair.
- [30] In any event, the Respondent knew time was of the essence as he acknowledged he could complete the said repairs within 10 days as set out in the invoice exhibited as "PW1". Thus, the

² [1966] 2 AER 901

time frame is a term of the contract. The Applicant contends, as time is of the essence, the courts should enforce time limits very strictly. **Union Eagle Limited v Golden Achievement Limited**³.

[31] The principles governing the issue of time being of the essence are succinctly stated in **Halsbury's Laws of England**⁴. Under the said principle, time was of the essence, as the nature of the subject matter of the contract and the surrounding circumstances show that time should be considered of the essence. The Applicant, who has been subjected to unreasonable delay, gave notice to the Respondent, making time of the essence.

[32] In any event, rather than rescind the contract, the Applicant affirmed the contract so the Respondent was given more time in which to complete the agreement. As the Applicant conceded to give the Respondent more time in which to complete the repairs, time is not of the essence but in any event the Respondent should complete the contract in a reasonable time. What is 'reasonable' will depend on the facts and circumstances of each particular case. **Cavalari v Premier Refrigeration Co Pty Ltd**⁵.

[33] The contract commenced in September, 2017 and as at March, 2019, the Respondent failed to complete the repairs.

THE RESPONDENT'S CASE AND LEGAL SUBMISSIONS

[34] Rule 15.2 empowers the Court to enter summary judgment in two limited circumstances. These are where:

- a) the Claimant has no real prospect of succeeding on the claim or the issue or
- b) the Defendant has no real prospect of successfully defending the claim or the issue.

[35] Generally, the court regards its power to strike out a Statement of Case as draconian and a step only to be taken in exceptional circumstances- **Baldwin Spencer v The Attorney General of Antigua et al**⁶. Indeed as per Byron CJ, as he then was at pages

³ [1997] 2 WLR 341

⁴ Volume 9 (1) at Paragraph 931

⁵ [1952] 85 CLR 20

⁶ Civil Appeal 21A of 1997

5 and 8 of the judgment:

This summary procedure should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court....

*... Regardless of the length or difficulty of the argument, which has already been concluded the operative issue for determination must be whether there is "**even a scintilla of a cause of action**".*

- [36] The point was made further in **Tawney Assets Limited v East Pine Management et al**⁷ where Mitchell JA opined at paragraph 22 of the judgment as follows:

The Applicable Legal Principles

*The striking out of a party's statement of case, or most of it, is a **drastic step which is only to be taken in exceptional cases**. The reason for proceeding cautiously has frequently been explained as that the exercise of this jurisdiction **deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information**. The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial. The proper approach to be taken in striking out a statement of case as disclosing no facts upon which the court can proceed has been described by Pereira CJ [Ag.], in her judgment in the interlocutory appeal in *Tan Peters v Robert George Spencer*, 11 where she found that a statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be determined by hearing oral evidence. In that case she set aside the master's order striking out the claimant's claim as containing no allegations of fact which supported the claim.*

- [37] Particularly helpful on the point is **Citco Global Custody NV V Y2K Finance Inc**⁸. At paragraphs 12 and 13 of the judgment, Edwards JA reiterated the relevant principles in striking out applications

⁷ HCVAP2012/0007

⁸ HCVAP2008/0022

as follows:

*Striking out under the English CPR, r 3.4(2) (a) which is the equivalent of our CPR 26.3(1) (b), 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.***

On hearing an application made pursuant to CPR 26.3(1)(b) the trial judge should assume that the facts alleged in the statement of case are true. 3 "Despite this general approach, however, care should be taken to distinguish between primary facts and conclusions or inferences from those facts. Such conclusions or inferences may require to be subjected to closer scrutiny."

[38] In ***SGL Holdings Inc v Aiham Shammās***⁹ the Court considered an appeal where the order of the learned Master entering summary judgment on the Respondent's Claim in breach of contract. In allowing the appeal and setting aside the Master's order, the court considered that the Learned Master was not entitled to draw the conclusions that she did in relation to supposed admission at paragraph 41 of the witness statement before her. Instead, this case amounted to one where facts were in issue and importantly, the construction of the Agreement between the Appellant and the Respondent was also in issue. This was, therefore, not a proper case for the grant of summary judgment.

[39] Further in ***Comodo Holdings Ltd v Renaissance Ventures Ltd***¹⁰ the Court found that:

The summary judgment procedure is unsuitable for claims or issues which would necessitate the court embarking upon a "minitrial" or to resolve issues which ought to be properly tried. Summary judgment will almost always be inappropriate where there are allegations of reprehensible conduct. Similarly, complex claims, cases relying on complex facts and issues involving questions of law and fact where the law is not simple, are likely, to be inappropriate for summary judgment.

[40] In ***Comodo*** the Appellate Court heard arguments from the Appellant and Respondent in relation to

⁹ HCVAP2010/0002

¹⁰

facts in dispute which clearly indicated that the matter could not have been determined without a mini trial on the facts. Blenman JA stated at paragraphs 97 and 98 that:

*Even on the appeal before this Court, both sides during oral arguments, presented the court with lots of submissions in relation to factual dispute and opposing interpretation of legal provisions and also which was the applicable law. I have no doubt that if ever there was a case that was unsuitable for summary disposal this was such a case. This is keeping with the Nilon judgment. In fairness to the learned judge, Nilon was delivered after the judge had rendered his judgment on **50 Brooks v Commissioner of Police of the Metropolis and others**¹¹ December 2014 even though he alluded to the fact that title to the shares was in issue, the case evidently could not have been brought to his attention. [98] In addition, there is a serious dispute as to whether the money that Renaissance received from third parties was impressed with a Quistclose trust and, if so, what effect if any it would have on the title to the shares. In my view, the learned judge impermissibly determined this issue as part of the summary judgment application. This issue is ideally suited to be determined by the court after it has had the benefit of full arguments.*

- [41] The Respondent submits that the case at bar is not one suitable for summary judgment. First, the Applicant relies on an invoice/estimate as a binding contract containing all the terms of the contract. Invoices/estimates are not regarded as binding documents on either a customer or a service provider. Had this been the case, commerce would have been most onerous and particularly uncertain.
- [42] It is trite law that a contract requires there to be an offer, acceptance, and an intention to create legal relations. A simple invoice is an invitation to treat and not a contract.
- [43] What is more, the said invoice/estimate expressly excludes the cost of parts but includes materials. The very document on which the Applicant relies does not support her case that parts were included in the moneys paid by her to the Respondent. The Respondent has disputed the Applicant's contentions regarding the interpretation of the oral contract that existed between them. He contends that, as is very clear from the invoice, parts are not included in the price quoted and that the Applicant was responsible for providing these to him.

¹¹ (2005) 1 WLR 1495

- [44] This raises a serious dispute as to what was actually agreed between the parties regarding the repair parts since the Applicant's invoice does not assist her own pleaded case.
- [45] Further reliance has been placed by the Applicant on the 10 day repair time estimated on the invoice as being the contracted period of completion. For the reasons above, this cannot be regarded as a contractual time period. At paragraph 8 of his Affidavit in response, the Respondent explained that the estimated time provides an indication of completion time once all repair parts are presented at once. Considering that, as per the Respondent's case, the Applicant was to provide the replacement parts to the Respondent. Whether or not the job was completed within the 10 days depended largely on the ready availability of the replacement parts.
- [46] Second, nowhere in her pleadings has the Applicant alleged by what means the Respondent has been made aware of the urgency of the repairs or the fact (alleged) that the said bus was the Applicant's only source of income at the time of the repairs. These are crucial facts that the Applicant must establish to justify the claim for loss of use. The Respondent has disputed this knowledge which the Applicant imputes to him {see paragraph 5 of the Respondent's Affidavit in opposition).
- [47] From the Applicant's pleadings, it appears that she claims damages for non-performance of the contract, for delayed performance and defective performance. In relation to the non-performance of the repairs pleaded the Respondent has averred that he did complete the works with the parts and material with which he had been provided and of which he possessed and the report of Global Consultants disclosed at paragraph 23 of his Affidavit in response bears this to be true.
- [48] In relation to the delayed performance claim, the Respondent has explained at paragraphs 7, 8, 11, 18 and 20 of his Affidavit in response, that the delay in completion was on account of the Applicant's failure to provide him with the necessary repair parts. This argument is more akin to the invoice on which the Applicant relies than the Applicant's own pleaded case that parts were included in the sums paid. Evidently, there is a case in dispute between the parties which makes this case unsuitable for summary judgment.
- [49] Regarding the defective performance claim, this is easily answered by the report from Global Consultants mentioned above.

- [50] Having considered the Applicant's submissions filed in the matter, the Respondent contends that the authorities relied upon do not assist the Applicant in the enquiry which is presently before the court. The Applicant attempts to prove a case as though the facts had been straightforward and undisputed. This is not the case in the Claim herein. There is clearly a dispute between the parties as to the terms of the oral agreement which must be determined before the court deals with compensation. Therefore, as was the case in **Comodo**, this matter is not one suitable for summary judgment.
- [51] The Court cannot simply accept the Applicant's contention and dismiss the Respondent's on the Applicant's say-so. For the purposes of summary judgments, the court must satisfy itself that there is nothing or no case to send to trial and that there is no viable defence open to the Respondent. It is respectfully submitted that in light of the pleadings before the Court, there is a very live dispute regarding the terms of the oral agreement, especially as the said invoice/estimate is not a contract and even so, it expressly rebuts the Applicant's own pleaded case.
- [52] The Respondent therefore prays that this Application be dismissed with costs to the Respondent.

Law and Analysis

- [53] CPR 15.2 provides that the court may give summary judgment on a claim or on a particular issue if it considers that the
- a. Claimant has no real prospect of succeeding on the claim or the issue.
 - b. Defendant has no real prospect of successfully defending the claim or the issue.
- [54] An application for summary judgment is decided by applying the test of whether the defendant has a case with a real prospect of success, which is considered having regard to the overriding objective of dealing with the case justly. In **Swain v Hillman**, Lord Woolf MR said that the words 'no real prospect of succeeding', did not need any explanation as they spoke for themselves. The word 'real' directed the court to the need to see whether there was a realistic, as opposed to be a fanciful, prospect of success. The phrase does not mean 'real and substantial' prospect of success. Nor does it mean that summary judgment will only be granted if the claim or defence is 'bound to be dismissed at trial'. This was echoed in the case of **Saint Lucia Motor & General**

Insurance Co. Ltd. v Peterson Modeste.

- [55] Lord Woolf in **Swain v Hillman** said that summary judgment applications have to be kept within their proper role. They are not meant to dispense with the need for a trial where there are issues which should be considered at trial. Summary judgment hearings should not be mini-trials. They are simply to be summary hearings to dispose of issues where there is no real prospect of success.
- [56] The court should be slow to entertain an application for summary judgment on certain issues where there is going to be a full trial in any event, particularly where dealing with such an application may delay (because of possible appeals) the final disposal of the claim.
- [57] In the case of **Munn v North West Water Ltd.**, it was held that where there are issues of fact, which if decided in the respondent's favour, would result in judgment for the respondent, it is inappropriate to enter summary judgment, even if there is substantial evidence to support the applicant's case. Primarily, the court will consider the written evidence adduced by the parties, and if it discloses a dispute with a real prospect of success, the summary judgment application will be dismissed.
- [58] In **Bank of Bermuda Ltd. v Pentium**, Saunders CJ [Ag.] stated that:
- "[15] A Judge should not allow a matter to proceed to trial where the defendant has produced nothing to persuade the Court that there is a realistic prospect that the defendant will succeed in defeating the claim brought by the claimant. In response to an application for summary judgment, a defendant is not entitled, without more, merely to say that in the course of time something might turn up that would render the claimant's case untenable. To proceed in that vein is to invite speculation and does not demonstrate a real prospect of successfully defending the claim"
- [59] In the Trinidadian case of **Western Credit Union Co-operative Society Ltd. v Corrine Ammon**. Kangaloo JA said that in reaching its conclusion, the court must not conduct a mini-trial. This he said does not mean that the court must take at face value and without analysis everything that a defendant says in his statements before the court. In some cases, it may be clear that there is no real substance in factual assertions made, particularly, if contradicted by contemporaneous

documents. However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment but also the evidence which can reasonably be expected to be available at trial.

- [60] From the pleadings to date the court is of the view that this case is in fact based and will rely on the assessment of the evidence presented to the court and the courts assessment of the credibility of the witnesses.
- [61] The respondent contends that the applicant is relying on an invoice/estimate as a binding contract containing all the terms of the contract. The respondent contends the invoice/estimate are not regarded as binding documents.
- [62] The respondent also disputes the applicant's contentions regarding the interpretation of the oral contract.
- [63] The respondent also challenges the applicant on the issue of loss of use.
- [64] These issues are for the court to determine after evidence is presented to the court and are not suitable for summary judgment.
- [65] I understand the respondent's defense to be how the court interprets the oral agreement as the invoice/estimate is not a contract.
- [66] The conduct of the claimant and the defendant suggests that there are issues between the parties that are unresolved with regards to the contract.
- [67] The court will rely and found the case of **Bolton Pharmaceutical Co 100 Ltd v Doncaster Pharmaceuticals Group Ltd and Others**¹² persuasive: Mummery LJ stated: "it is well settled by the authority that the court should exercise caution in granting summary judgment in certain kinds of case. The classic instance is where there are conflicts of fact on relevant issues, which have to

¹² [2006] EWCA Civil 661

be resolved before a judgment can be given. A mini-trial on the facts conducted under CPR 24 without having gone through normal pre-trial procedures must be avoided, as producing summary judgment.

- [68] In my judgment, the court should also hesitate about making a final decision without a trial where, even though there is no obvious conflict of fact at the time of the application, reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case."
- [69] The defense raised by the defendant was issues of fact and law which have to be decided at a trial and this makes this matter not suitable for summary judgment.
- [70] The court is of the view that the case at the bar requires that the pleadings be tested on evidence. It would seem that to give summary judgment in this matter would amount to a mini trial as Lord Woolf cautioned against in **Swain v Hillman** (Supra).
- [71] The court has the acts itself of whether the defense is viable one. Having so find, this Application for summary judgment is dismissed.
- [72] It would seem to me that the applicant's main ground for this application is that the respondent has failed to satisfy all the terms of the contract as outlined in the invoice and has been the contract for the applicant has suffered damages for the respondents negligence.

ORDER

In summary, it is ordered:

1. The application for summary judgment is dismissed with costs to the defendant in the sum of \$1500.00.
2. Accordingly the matter is to be remitted to the Master for further Case Management.



Rickie Burnett
MASTER (Ag.)

By the Court


Registrar
Deputy Registrar
Supreme court
Grenada West Indies