

**THE EASTERN CARIBBEAN SUPREME COURT
GRENADA**

IN THE HIGH COURT OF JUSTICE

Claim No. GDAHCV2014/0451

Between:

B.B INC

Claimant

And

LEWIS HAMILTON

Defendant

Before:

Master Fidela Corbin Lincoln

Appearances:

Mr. Alban John with Ms. Thandiwe Lyle for the Claimant

Mr. James Guthrie QC with Ms. Linda Dolland and Ms. Karen Samuel for the
Defendant

2015: September, 28
November 30

Summary Judgment – Agreement for the Sale of Land - Section 4 of the Real and Personal Property Act (Special Provisions) Cap 273 – Whether an email signature satisfies the requirement that the written agreement or memorandum be “signed”

[1] **Corbin Lincoln M:** The application before the court is an application by the defendant for summary judgment or an order striking out the claimant's statement of case on the ground that it does not disclose any reasonable ground for bringing a claim.

Background

[2] The claimant owns land in Morne Rouge, Grenada, which it caused to be subdivided into lots for the construction of villas which were to be sold to interested

buyers. The statement of claim avers that the claimant company is wholly owned and operated by Bernardo Bertucci and by a series of emails exchanged between Mr. Bertucci and the defendant the parties entered into a binding agreement for the purchase of land and the erection of a building thereon.

[3] The claimant seeks, inter alia, :

- (1) a declaration that by a series of e-mails and the course of dealings and discussions between the claimant and the defendant, the defendant contracted with the claimant to purchase a parcel of land together with a building to be erected thereon (Villa 5) situate at Morne Rouge for the price of US\$4,000,000;
- (2) a declaration that the defendant breached the contract by declining to complete the contract and purchase Villa 5 ; and
- (3) damages for breach of contract.

[4] The defendant denies that he entered into the alleged contract or any agreement for the purchase of Villa 5 with the claimant. The defence avers further that there is no agreement in writing or memorandum in writing of an agreement signed by the defendant or any person authorized by him as required by section 4 of the **Real and Personal Property (Special Provisions) Act** Cap 273 (**"the Act"**).

[5] The claimant's reply avers that the existence of section 4 of **the Act** is not disputed, however, *"the law has advanced from that position to keep pace with modern reality. The claimant therefore relies on the provisions of the Electronic Evidence Act No. 13 of 2013, in particular on all relevant definitions of terminology contained in section 2 thereof and sections 13 to 18 inclusive thereof in compliance with the underlying requirements of section 4...to establish the contract claimed herein."*

The Defendant's Application

- [6] The defendant filed an application to strike out the claim or for summary judgment on the ground that the alleged contract of which breach is alleged by the claimant is a contract for the sale of land that does not satisfy the requirements of Section 4 of **the Act** in that there is no agreement, memorandum or note thereof in writing signed by the defendant.
- [7] The defendant submits that the claimant has not identified any document in writing signed by the defendant or with his authority which is sufficient to satisfy Section 4. In the absence of *"an agreement, memorandum or note thereof in writing signed by the Defendant"* as required by section 4 of **the Act** the claimant has no reasonable ground for bringing a claim.
- [8] The defendant submits further that even if a written agreement is relied on it must be complete *vis* it must contain all the terms that are agreed. Section 4 of **the Act** requires that the agreement or some memorandum or note thereof be in writing and there must therefore always be a written record of a concluded contract. The documents relied on by the claimant do not satisfy the further general requirements of section 4 of **the Act** since they do not contain all the terms of the contract

The Principles Governing Applications to Strike Out A Claim

- [9] The Civil Procedure Rules 2000 ("**CPR**") Part 26.3(1) states :

"... 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."

[10] In **Morgan Crucible Co. Plc v Hill Samuel & Co. Ltd** ¹ Slade L.J. stated that: “

“On an application to strike out a pleading under RSC, O 18, r 19(1)(a) ² no evidence is admissible and since it is only the pleading itself which is being examined, the court is required to assume that each and every one of the facts pleaded (unless manifestly incapable of proof) is true and will be capable of proof at the trial. In some instances the court may regard the assumption as somewhat unrealistic, but it nevertheless has to be made.”

[11] In **Citco Global Custody NV v Y2K Finance Inc** Edwards J.A, stated that:

“It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other court procedures such as requests for information; and the examination and cross-examination of witnesses often change the complexion of a case. Also, before using CPR 26.3(1) to dispose of ‘side issues’, care should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in every application must be exercised in accordance with the overriding objective of dealing with cases justly. “

Principles Governing Applications for Summary Judgment

[12] **CPR 15.2** states that the court may give summary judgment on the claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or the issue.

[13] In **Swain v Hilman and another** ³ Lord Woolf MR, in contrasting the court’s power under rule 3.4 (the English CPR equivalent of our CPR 26.3 (1)(b)) and rule 24.2 the English summary judgment rule which is similar to our CPR 15.2, stated ⁴.

¹ [1991] Ch 295

² comparable to rule 26.3 (1) of our CPR 2000

³ [2001] 1 All E.R. 91

⁴ *ibid* page 92

“Rule 3.4 makes provision for the Court to strike out a statement of case or part of a statement of case, if it appears that it discloses no reasonable grounds for bringing or defending a claim. Clearly there is a relationship between r. 3.4 and r. 24.2. However the power of the court under Pt 24, the grounds are set out in r. 24.2, are wider than those contained in r. 3.4. The reason for the contrast in language between r. 3.4 and r.24.2 is because under r. 3.4, unlike 24.2, the Court generally is only concerned with the statement of case which it is alleged discloses no reasonable grounds for bringing or defending the claim. Under r. 24.2 the Court now has a very salutary power, both to be exercised in a claimant’s favour or, where appropriate, in a defendant’s favour.”

The Issues Arising

[14] Having considered the parties’ respective contentions, there are two main issues arising:

- (1) Does an e-mail signature or what I will refer to as an electronic signature satisfy the requirement of section 4 of **the Act** that the agreement or memorandum or note thereof be “signed”?
- (2) Even if an email signature amounts to a signature under section 4 of **the Act** - do the documents relied on contain all the essential terms of the contract?

ISSUE 1 – DOES AN ELECTRONIC SIGNATURE SATISFY THE REQUIREMENT OF SECTION 4 THAT THE DOCUMENT BE “SIGNED”?

The Claimant’s Submissions

- [15] The claimant submits that there is a concluded agreement between the parties evidenced by the e-mails pleaded in the statement of claim and/or a sufficient memorandum or note thereof signed by the defendant.
- [16] The claimant submits that e-mail/electronic signatures have always been accepted at common law and cites, inter alia, the cases of **Golden Ocean Group Ltd. v**

Salgaocar Mining Industries PVT Ltd. & Anr⁵ **Evans v Hoare and Another**⁶
and **Caton v Caton**⁷.

- [17] The claimant submits that the negotiations in **Golden Ocean** were all carried out via e-mail and there was never any handwritten signature on any document alleged to be forming part of the contract. The claimant submits further that in that case :

“...the issue of signature, for the purposes of the contract, was anticlimactic, almost a non issue when the moment came. In fact, this is how it was dealt with in the judgment:

‘It was common ground both before the judge and before us that an electronic signature is sufficient and that a first name, initials, or perhaps a nickname will suffice.

Counsel for the defendants/respondents ...sought to make the argument that the affixing of the name to the email was not done in a manner intended to authenticate the document. The court rejected that argument and said the following:

“In my judgment Mr. Hindley put his name, Guy on the e-mail so as to indicate that it came with his authority and that he took responsibility for the contents. It is an assent to its terms. I have no doubt that that is sufficient authentication”

- [18] The claimant submits that there is no difference in the intent and import of section 4 of the 1677 Act and section 4 of **the Act** in that the purpose of both Acts is to authenticate contracts and to avoid fraud.

The Defendant’s Submissions

- [19] The defendant submits that an electronic signature does not satisfy the requirement of section 4 the **Act** which states that the agreement or memorandum thereof must be “**signed**”. The defendant relies on the case of **Nelson Lewis et**

⁵ [2012] 3 All E.R 842.

⁶ (1892) 1 Q.B 593

⁷ (1867) L.R 2 H.L 127

al v Dirk Birkhardt ⁸. This case will be examined later in the judgment.

[20] The defendant submits that the case of **Golden Ocean** is not binding on the court and, in any event:

- (1) It concerns a contract of guarantee not a contract for the sale of land.
- (2) The decision was made on the basis that a sequence of negotiating emails is commonplace in contracts relating to ship chartering and purchase. This is not the case for contracts for the sale of land, either in England or in Grenada.
- (3) It was common ground that the electronic signature was sufficient because section 7 of the English Electronic Communications Act 2000 so provides but there was no equivalent statute in force in Grenada at the relevant time.

Analysis

[21] Section 4 of the **Act** states:

“No action shall be brought whereby to charge any person upon any contract for sale of lands, or any interest in or concerning them, unless the agreement upon which the action is brought, or some memorandum or note thereof, is in writing, and signed by the person to be charged therewith, or some other person thereunto by him lawfully authorized.”
(emphasis mine)

[22] I have the task of considering whether **“signed”** as used in section 4 of **the Act** includes electronic signatures.

[23] The claimant submits that the court should look at the intent and import of **the Act** in interpreting the word “signed” and therefore appears to be urging the court to adopt the purposive approach to statutory interpretation.

⁸ GDAHCVAP2006/0007

- [24] I however start by reminding myself of the words of Byron CJ in **Universal Caribbean Establishment v James Harrison** ⁹ with regard to construing statutes:

"The first principle to affirm is to recognise the separation of power between the Legislature and the Judiciary. It is the province of Parliament to make the law and for the Court to interpret, without basing its construction of the Statute on a perception of its wisdom or propriety or a view of what Parliament ought to have done."

The dominant purpose in construing a Statute is to ascertain the intention of the legislature as expressed in the Statute, considering it as a whole and in its context. It is only where the words of the Statute are not clear and unambiguous [sic] that it is necessary to enlist aids for interpretation...."
(emphasis mine)

- [25] Sir Vincent Floissac C.J in **Charles Savarin v John Williams** (1995) 51 W.I.R. 75 at 78-79. C.J. stated:

"In order to resolve the fundamental issue of this appeal, I start with the basic principle that the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which that word or phrase should bear. That legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it concordant with the statutory context. In this regard, the statutory context comprises every other word or phrase used in the statute, all implications therefrom and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention. "

- [26] In **Abel v Lee** Willes J stated:

"No doubt the general rule is that the language of an Act is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy, or injustice.... But I utterly repudiate the notion that it is competent to a judge to modify the language of an Act of Parliament in order to bring it in accordance with his views as to what is right or reasonable."

- [27] The word "signed" is not defined in **the Act**. In seeking to ascertain the legislative intent from, firstly, the ordinary meaning of the words used in the statute, I also bear in mind that the **Act** was first enacted on 26th May 1897.

⁹ ANUHCVP1993/0021

[28] The Oxford Dictionary¹⁰ defines the verb **sign** as :

“write (one’s name, initials etc) on a document etc. indicating that one has authorized it”

[29] Webster’s Dictionary¹¹ defines **sign** as :

“To affix a signature to: to sign a letter; to write as a signature: to sign one’s name”

[30] Collins English Dictionary¹² defines **sign** as :

“to write (one’s name) as a signature to (a document, etc) in attestation, confirmation, ratification, etc.”

[31] Macmillan Dictionary¹³ defines **sign** as :

“to write your name on something in your own personal way” or “to write your full name on a document to show that you agree with what is written in it.”

[32] Common among all the definitions of **sign** is the verb “**write**”.

[33] The Oxford Dictionary¹⁴ defines the verb **write** as:

“ mark paper or some other surface by means of a pen, pencil etc with symbols letters or words”

¹⁰ The Concise Oxford Dictionary of Current English 9th ed Oxford University Press 1995

¹¹ 2nd Edition, Random House Inc., New York, 2000

¹² collinsdictionary.com

¹³ macmillandictionary.com

¹⁴ The Concise Oxford Dictionary of Current English 9th Edition, Oxford University Press 1995

[34] Collins English Dictionary defines **write** as:

“to draw or mark (symbols, words, etc) on a surface, usually paper, with a pen, pencil, or other instrument.”

[35] Webster’s Dictionary¹⁵ defines **write** as :

“to trace or form (characters, letters, words, etc) esp. on paper, with a pen, pencil, or other instrument or means.”

[36] The natural and ordinary meaning of the word ‘**signed**’ therefore connotes making a mark with a pen, pencil or similar implement. I can find no ambiguity or absurdity arising from the plain and natural meaning of the word “**signed**”. Indeed the claimant has not argued that any ambiguity or absurdity arises from the ordinary and natural meaning of the word “**signed**”.

[37] The ordinary and natural meaning of the word “**signed**” does not in my view encompass electronic signatures.

[38] Since the legislative intent is to first be ascertained from the natural and ordinary meaning of the words used in the statute unless some ambiguity or absurdity arises I find that it was not the intention of the legislature when **the Act** was enacted in 1897 to include electronic signatures within the meaning of the word “**signed**” used in section 4 of **the Act**.

[39] It is noteworthy that the Grenada legislature, like the legislature in other jurisdictions saw it fit to enact specific legislation for the legal recognition of electronic signatures. In Grenada this was done by way of the **Electronic Transactions Act** No. 21 of 2013 (the **ETA**) and the **Electronic Evidence Act** No 13 of 2013 (“**the EEA**”).

¹⁵ 2nd Edition, Random House Inc., New York, 2000

- [40] **The ETA** states that it is an Act to give legal effect to, among other things, electronic signatures. **The ETA** sets out the requirements for the use of electronic signatures. It is significant that section 4 of **the ETA** states that it does **not** apply to *“any written law requiring writing, signatures or original documents for- (b) the conveyance of real or personal property or the transfer of any interest in real or personal property.”*
- [41] The **ETA** therefore specifically excludes its application to any law requiring writing or signatures in relation to the transfer of any interest in property. The **ETA** therefore does not bring electronic signatures within the meaning of “signed” as used in section 4 of **the Act** since this section deals with the sale of land or any interest therein.
- [42] The claimant submits that while **the ETA** , which was enacted after the conclusion of the alleged contract, does not apply, **the EEA** - *which was also enacted after the conclusion of the alleged contract* - applies. The claimant’s position is that it is not fatal to the claim that the **EEA** came into force after the alleged contract was concluded since the **EEA** is merely a codification of the common law position espoused in **Golden Ocean Ocean Group Ltd. v Salgaocar Mining Industries PVT Ltd. & Anr** ¹⁶ *“with regard to electronic signatures and their efficacy for conclusion of contracts.”* ¹⁷
- [43] The main issue under consideration in **Golden Ocean** was whether documents could be read together for the purposes of determining whether section 4 of the UK Statute of Frauds was satisfied. With regard to the issue of “signature” the court noted that *“it was common ground both before the judge and before us that an electronic signature is sufficient”*. The court does not say why this issue was not in dispute and I do not propose to speculate. I do note however that this case was

¹⁶ [2012] 3 All E.R. 842.

¹⁷ Paragraph 19 of the affidavit of Mr. Bertucci Paragraph 32 (c) of the claimant’s submissions in reply filed on 3rd July 2015

decided in 2012 when the UK **Electronic Communications Act 2000** was in force and after the 2001 **UK Law Commission** advisory entitled **Electronic Commerce: Formal Requirements in Commercial Transactions**¹⁸ which opined that statutory requirements for “signature” are generally capable of being satisfied by the use of electronic signatures. The Law Commission advisory will be addressed later in the judgment.

[44] With respect to **UK Electronic Communications Act 2000**, even after the passage of this Act, there was uncertainty in the UK as to whether electronic writing or an electronic signature is sufficient to satisfy a requirement under various UK legislations for a document to be “in writing” or “signed”. This was because the UK 2000 Act did not include a blanket deeming provision by which these references would be deemed to permit electronic signatures or writing. Rather, the UK 2000 Act states that the Secretary of State may by statutory instrument modify any such provision to permit electronic equivalents of writing or signatures as is considered appropriate. Several statutory orders have been made to permit the use of electronic signatures under various pre-existing laws.¹⁹ The UK 2000 Act therefore requires the passage of secondary legislation to modify existing statutory provisions requiring documents to be “in writing” and “signed”. The result is that where parties purport to conclude a transaction, which needs to be “signed” according to relevant legislation, by way of an e-mail with an electronic signature, this might not be valid if secondary legislation has not been passed to allow for this.²⁰

[45] Returning to the claimant’s submissions, it is submitted that the **EEA** is merely a codification of the common law position espoused in **Golden Ocean “with regard to electronic signatures and their efficacy for conclusion of contracts.”** In my

¹⁸ http://www.lawcom.gov.uk/wp-content/uploads/2015/09/electronic_commerce_advice.pdf

¹⁹ For example, the Companies Act 1985 was amended by the Companies Act 1985 (Electronic Communications) Order 2000 (*SI 2000/3373*) to permit the use of electronic communication (the use of electronic communications is dealt with expressly in the replacement Companies Act 2006).

²⁰ Rob Sumroy and Brett Sherrard: Electronic Signatures- are we getting there?, PLC Magazine , April 2012.

respectful view, the issue before the court is not the position at common law “*with regard to electronic signatures and their efficacy for conclusion of contracts* “. Rather, the issue is what is required **as proof of** a contract for the sale of land or an interest therein if a party wishes to maintain an action. In other words, a contract for the sale of land may be concluded but to bring an action upon the contract the claimant must produce a written agreement or memorandum or note thereof which complies with section 4 of **the Act**. The contract exists independently of the agreement or memorandum but cannot be proved in court without the written agreement or memorandum thereof.²¹

- [46] The legislature, by section 4 of **the Act**, has set out specific requirements for bringing claims upon contracts for sale of lands or any interest therein. The agreement or a memorandum or note thereof must be in writing and “**signed**” by the party to be charged. As found earlier, the ordinary and natural meaning of “signed” does not include electronic signatures. I am not of the view that **Golden Ocean** assists the claimant’s case and, more significantly, that any findings in that case would cause the word “**signed**” as used in section 4 of **the Act** to be given a meaning other than its ordinary and natural meaning.

The Approach of the Courts in this Jurisdiction

- [47] In 2001, following the enactment of the UK 2000 Act with the stipulation that secondary legislation is necessary to modify existing statutory provisions requiring documents to be “in writing” and “signed, the UK Law Commission’s advisory paper on Electronic Commerce ²² examined the extent to which the statutory form requirements for “writing” and “signature” are satisfied by electronic means. The Law Commission acknowledged that the UK 2000 Act “*does not provide that electronic signatures will satisfy a statutory signature requirement*” and therefore does not, “*assist in determining to what extent existing statutory signature requirements are capable of being satisfied electronically.*” The Law Commission noted that the common understanding of a signature is the writing

²¹ Gordon J.A in *Nelson Lewis et al v Dirk Birkhardt* GDAHCVAP2006/0007

²² http://www.lawcom.gov.uk/wp-content/uploads/2015/09/electronic_commerce_advice.pdf

by hand of one's full name, or initials and surname but stated that there were cases prior to the passage of the UK 2000 Act where signatures by way of stamping and printing and other non personalised methods have been approved for various purposes. It acknowledged that there was a lack of consensus on these issues but stated that in its view, "*unless the statutory context dictates otherwise*", statutory requirements for "signature" are generally capable of being satisfied by the use of a digital signature, scanned manuscript signature, typing a name or initials, or clicking on a website button.

- [48] The Commission appears to have adopted a function over form approach in determining the validity of a signature or what appears to me to be a purposive approach in interpreting the legislation. The Commission noted however that :²³

"We are aware that our views in relation to electronic signatures are not universally accepted; others believe that a signature requires there to be a physical memorial. Again, we acknowledge the difficulties which the lack of a consensus on this issue presents when considering reform of the statute book."

- [49] The decision of the Court of Appeal in **Nelson Lewis et al v Dirk Birkhardt** ²⁴ does not suggest to me that our Court shares the sentiments of the UK Law Commission. In **Nelson Lewis** the proposed purchasers (respondents) and vendors of property (appellants) exchanged correspondence regarding the sale of the property. The first correspondence from the respondents to the appellants was an undated letter, dispatched electronically, making an offer to purchase the property. The appellants responded by electronic mail rejecting the offer and indicating the minimum offer which would be considered. By e-mail dated December 16, 2002, the respondents wrote to the appellants as follows:

"Thank you for your email. We apologise for not responding earlier, but (we) it was necessary to take some time to seriously consider your response. After taking everything in consideration, we hope that you will be willing to consider a compromise of 280,000.00US.

If you are in agreement with this offer we can pay you the usual 10% deposit immediately. We make this offer after considering the fact that there are some necessary repairs to be undertaken.

²³ ibid paragraph 3.40

²⁴ GDAHCVAP2006/0007

We look forward to a response as soon as possible.

May we take this opportunity to wish you and your family a happy Christmas and a prosperous new year.

Valerie and Dirk"

[50] The appellants responded on December 20, 2002 in the following terms:

"In response to your reply, although we are not enthusiastic about the offer, all things having been considered we have decided to accept your offer and would like to proceed as soon as possible. If we are in agreement then we can start discussing the mechanics of the transfer asap. We hope that all goes well and that your family will settle in ok.

*Kind regards
Nelson & Sheila"*

[51] The respondents responded on 23rd December 2002 as follows:

"Thank you (sic) for your prompt response and we are pleased that there has been no protracted delay in arriving at an agreement for the purchase of your property.

It is our intention to complete the process as soon as possible so we already have contacted our Bank which has advised us to ask you to forward the following documents to us:

- 1. Notarified (sic) sale agreement, pointing out that you are willing to sell your property in Morne Rouge to Valerie Daniel-Burkhardt and Dirk Burkhardt at a price of 200,000.00 USD for the house and land and 80,000.00 USD for furniture and air conditioning, an overall total of 280,000.00USD = 20*
- 2. Deed of the property = 20*
- 3. Name of your Attorney at Law or local representative acting on your behalf'.*

*Our address is: Valerie Daniel-Burkhardt
Dirk Burkhardt
P.O. Box 3521
St. George's
Grenada
West Indies."*

[52] The appellants responded to the e-mail of 23rd December as follows:

"Subject: Morne Rouge

Hello Dirk & Val,

Sorry for the delay in replying but as you might have guessed, almost everything closed here for the two weeks Christmas period and my computer crashed while I was sending a message to you yesterday. I have now contacted a solicitor and have deposited the deeds and relevant paperwork with him. He is:

*Mr. Ellis V. Hunwicks
Fenton & Hunwicks Solicitors
142 South Street
Romford
ESSEX RM1 1SX
United Kingdom
(Telephone: 01708 767916.
Email:solicitors@fentonhunwicks.co.uk)*

He will contact a local agent and will let you know as soon as possible. My computer will be back online today so you can still contact me on the normal email. All the best for the New Year.

Nelson Lewis"

[53] On 12th January 2003, the appellants wrote to the res respondents as follows:

"Sorry for the delay, but it took me longer to get back online than I anticipated. We have recent correspondence from our solicitor in this country and he has informed us that he had made contact with local lawyers in Grenada and they should be able to supply the required information.

Please note that I have informed my local rep (Mr. Clarence Baptiste) to:

- 1. Collect and store our personal belongings asap and*
- 2. to deal with the rest of the furnishings (some of which belong to him) at a time convenient to you both.*

*Kind regards
Nelson & Sheila Lewis"*

[54] On 14th January 2003 solicitors acting on behalf of the appellants wrote to the respondents in the following terms:

"Dear Mr & Mrs. Burkhardt,

Re: Sale of Mr. & Mrs. Lewis Property at Morne Rouge

We have been retained by Mr. and Mrs. Lewis to act on their behalf in the sale of their property to you.

We would be grateful if you could confirm to us the terms of sale contained in your email dated December 24, 2002, to Mr. & Mrs. Lewis.

Kindly also indicate the name/s of the attorney/s who would be acting on your behalf in this matter.

We shall forward a draft agreement for sale together with a copy of the title deed of the property in due course.

*Yours sincerely,
Dickon A. Mitchell
GRANT JOSEPH & CO
cc Mr. & Mrs. Lewis
c/o Fenton Hunswicks"*

[55] The defence filed by the appellants denied the existence of a contract and also raised Section 4 of the **Act**. The learned trial judge found that there was a contract as at 20th December 2002. The appellants appealed.

[56] Gordon J.A, with whose judgment the other Justices of Appeal concurred stated:²⁵

The memorandum is required only as evidence of a contract. Put another way, the contract exists independently of the writing or memorandum but cannot be proved in court without the memorandum or writing. It has been consistently held in England that no special form of memorandum in writing is required provided only that it contains the essential terms of the contract and is signed by the party to be charged, or by someone on his behalf.² It has further been held that where the memorandum in writing consists of more than one document, but only one document is signed by the defendant or on his behalf, then if that one signed document contains some implied or specific reference to another document, then oral evidence is admissible to identify the other document and the two may be read together.³

In this connection it is necessary once again to refer to the letter from Grant Joseph & Co, solicitors for the appellants, dated January 14, 2003 in which reference is made to the e-mail of December 24, 2002 both set out above at paragraphs 5 and 7 above respectively. I am of the view that the Grant Joseph letter, when read with the e-mail of December 23, 2002 provide a memorandum in writing containing the terms of the contract. To hold otherwise would, in my view, be to use section 4 of the Real and Personal Property Act as an engine of fraud rather than for its proper purpose, an inhibitor of fraud.

There is the further matter of the witness statement admittedly signed by Sheila Lewis. At paragraph 10 of that latter statement Mrs. Lewis states as follows:

²⁵ paragraphs 13 to 16

"By email dated December 16, 2002, the Burkhardts made a further proposal to us. By email dated December 20, 2002 we accepted their proposal and indicated that the mechanics of the transaction should be proceeded with quickly...."

I am therefore clearly of the view that not only was there a contract in existence between the appellants and the respondents in December 2002, but there is, before the court, a sufficient memorandum in writing signed by the appellants and on their behalf setting out the terms of that agreement. It is only if one party or the other repudiated or terminated that agreement that it could be said no longer to exist as an enforceable contract. I find no evidence of such repudiation or termination."

[57] The evidence disclosed numerous electronic correspondence between the parties some of which contained the electronic signature of the parties to be charged– the appellants. In particular, the e-mail on 20th December 2002 contained the electronic signature of the appellants and stated that it was *"in response to your reply"* which appears to me to be an implied reference to the e-mail of 16th December 2002. The e-mail correspondence of 20th December 2002 - when read together with the email of 16th December 2002 - could in my view have been sufficient to satisfy section 4 of the **Act** if electronic signatures were considered to fall within the definition of "signed" used in **the Act**.

[58] It is significant that in finding that there was a sufficient written memorandum of the agreement "signed" by the party to be charged or his agent to satisfy section 4 **the Act** the Court did not refer to or rely on the electronic correspondence containing electronic signature of the appellants but rather to:

(1) The letter signed by Grant Joseph & Co. (attorneys for the appellant) which referred to an earlier e-mail which the Court held could be read together with the signed letter; and

(2) The witness statement signed by one of the appellant's.

[59] While the Court did not make an express statement that electronic signatures did

not fall within the meaning of **'signed'** in **the Act**, in my view, the evidence relied upon by the court to find that there was a sufficient written document signed by the party to be charged or a person authorized by him to satisfy section 4 indicates that the court did not consider that an electronic signature fell within the definition of "signed" used in the **Act**.

- [60] Therefore, in addition to my finding that electronic signatures do not fall within the natural and ordinary meaning of **"signed"** as used in **the Act** I am also bound by the decision in **Nelson Lewis** which did not treat the word **"signed"** as used in **the Act** as including electronic signatures.

Effect of the Finding on the Claimant's Claim

- [61] Both **CPR** 15.2 and 26.3(1) give the court the power to summarily decide a case without the need for a formal trial. I am cognizant of the fact that these powers should be used sparingly and in clear and obvious cases. I must also bear in mind that in considering whether to exercise the power to strike out or grant summary judgment regard must be had to the overriding objective of the rules and its power of case management. As Conteh CJ stated ²⁶, in the exercise of the power,

"It is therefore necessary to focus on the intrinsic justice of the case from both sides: why put the defendant through the travail of full blown trial when at the end, because of some inherent defect in the claim, it is bound to fail, or why should a claimant be cut short without the benefit of trial if he has a viable case."

- [62] The averments in the statement of claim disclose that the claimant relies solely on email exchanges between the parties to prove the existence of a contract. Since by virtue of section 4 of **the Act** the claimant can only prove the existence of the contract for the sale of land by producing an agreement or a note or memorandum

²⁶ Belize Telemedia Ltd and another v Magistrate (2008) 75 WIR 138

thereof “**signed**” by the party to be bound (the defendant) and the statement of claim shows that the claimant relies solely on email correspondence containing the electronic signature of the defendant to prove its case, I find that the claimant has no real prospect of succeeding on the claim and would grant summary judgment to the defendant.

ISSUE 2 - EVEN IF AN EMAIL SIGNATURE AMOUNTS TO A SIGNATURE UNDER SECTION 4 OF THE ACT DO THE DOCUMENTS RELIED ON CONTAIN ALL THE ESSENTIAL TERMS OF THE CONTRACT

[63] Having decided to exercise my discretion in favour of granting summary judgment after consideration of issue 1, I do not find it necessary to go on to consider this issue.

Point in Limine

[64] For completeness, I will address the claimant's submission that paragraph 18 of the affidavit of Renee Johnson, filed in support of the defendant's application, goes beyond the grounds of the application and some of the issues raised therein were not taken in the defence. The claimant cites the case of **Beach Properties Barbuda Ltd & Ors v Laurus Master Fund Ltd**.²⁷ in which Barrow J.A addressed the unacceptable practice of applications which do not state the grounds of the application. In that case the applicants merely stated that the grounds of the application are “*As set forth the affidavits [filed in support]*”

[65] The defendant's application states :

“The grounds of the application for strike out our that the statement of claim does not disclose any reasonable grounds for bringing the claim, because of the alleged contract of which breach is alleged by the Claimant is a contract for the sale of land that does not satisfy the requirements of

²⁷ ANUHCVP2007/0002

section 4 of the Real and Personal Property (Special Provisions) Act (Cap 273) in that there is no agreement, memorandum or note thereof in writing signed by the defendant.

Alternatively, the grounds of application for summary judgment I thought the claimant has no real prospect of succeeding on the claim for the same reason.”

- [66] The succinctly stated grounds have put the claimant on notice of the basis on which the defendant claims to be entitled to the orders sought. The affidavit in support gives particulars of why it is asserted that there is no agreement, memorandum or note thereof in writing signed by the defendant.
- [67] I do not find that the defendant’s application falls foul of the unacceptable practice referred to by Barrow J.A. In any event, the matters contained in paragraph 18 relate to the second issue which arose but was not considered given the finding on the first issue.

Summary

- [68] In summary, I find that electronic signatures do not fall within the natural and ordinary meaning of the word “**signed**” used in Section 4 of **the Act**. I also find no ambiguity or absurdity arising from the natural or ordinary meaning of the word and that electronic signatures do not fall within the ordinary and natural meaning of the word “signed” used in **the Act**.
- [69] Since the legislative intent is to first be ascertained from the natural and ordinary meaning of the words used in the statute, unless some ambiguity or absurdity arises, I find that the legislature did not intend to include electronic signatures when it stated that the agreement or the note or memorandum thereof must be “**signed**”.
- [70] Since the claimant can only prove the existence of the contract for the sale of land by producing an agreement or a note or memorandum thereof “**signed**” by the

party to be bound (the defendant) and the statement of claim shows that the claimant relies solely on email correspondence containing the electronic signature of the defendant to prove its case, I find that the claimant has no real prospect of succeeding on the claim.

[71] I therefore grant summary judgment to the defendant.

[72] The effect of the determination of the application is that the proceedings have been brought to an end. The claimant shall pay the defendant prescribed costs pursuant to **CPR 65.5**.

[73] The value of the claim for the purposes of calculating prescribed costs shall be agreed by the parties within 14 days failing which the matter shall be listed for hearing for the court to stipulate the value of the claim.

Fidela Corbin Lincoln
Master