



[2018] JMSC Civ 84

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016 HCV 00911

| | | |
|----------------|---|---------------------------------|
| BETWEEN | ROBERT DALE BRODBER | CLAIMANT |
| AND | E.W. ABRAHAMS & SONS LIMITED | 1ST DEFENDANT |
| AND | MAXELL ORMSBY | 2ND DEFENDANT |

IN CHAMBERS

**Mr. Neco Pagan and Ms. Kalisia Miller instructed by Caroline P. Hay & Co.
for the Applicant/Claimant**

**Mr. Makene Brown instructed by Chen Green & Co. for the
Respondents/Defendants**

Heard: March 16 and 23, 2018

**Civil procedure – Summary judgment – Whether contract arrived at by the
parties – Breach of employment contract – Trespass - Detinue –
Conversion – Factual disputes – Whether summary judgment appropriate
in the circumstances – Part 15, Civil Procedure Rules, 2002**

CORAM: A. NEMBARD, J (AG.)

INTRODUCTION

[1] By way of an amended Claim Form filed on 9 January 2017, the Claimant, Robert Brodber, claims against the 1st Defendant, E.W. Abrahams & Sons Limited (Abrahams & Sons), for the following relief: -

- (1) Damages for breach of contract by the wrongful withholding of sums due to the Claimant upon the cessation of the Claimant's employment with the 1st Defendant as at May 29, 2015;
- (2) Damages for breach of contract for the sale of a 2002 Toyota Sprinter motor car;
- (3) As against the 1st and 2nd Defendants jointly and severally: - Damages and Aggravated Damages and/or Exemplary Damages for trespass to the Claimant's property;
- (4) Damages and Aggravated Damages and/or Exemplary Damages for detention and conversion of a 2002 Toyota Sprinter;
- (5) Damages and Vindictory Damages for breach of the Claimant's fundamental right to privacy of the dwelling/property guaranteed by section 13(3)(j) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011;
- (6) Interest;
- (7) Costs;
- (8) Such further and other relief as this Honourable Court may deem fit.

BACKGROUND

- [2] Robert Brodber was employed to Abrahams & Sons as a Sales Representative and was so employed since March 2002.
- [3] The parties entered into an agreement for Abrahams & Sons to sell to Robert Brodber a 2002 Toyota Sprinter.
- [4] The offer to sell the said Toyota Sprinter was made by way of letter dated 23 January 2015 addressed to Robert Brodber. The current valuation of the said Toyota Sprinter was in excess of Five Hundred and Ninety Thousand Dollars (\$590,000.00), while the suggested purchase price was Four Hundred Thousand Dollars (\$400,000.00).
- [5] The terms of the offer were further that Robert Brodber would pay to Abrahams & Sons the sum of Six Thousand Dollars (\$6,000.00) per week, by way of salary deduction, towards the purchase price in respect of the said Toyota Sprinter.
- [6] The completion of the payment of the purchase price would take place within three (3) years.
- [7] The ownership of the said Toyota Sprinter would be transferred in January 2016 upon the expiry of the Insurance coverage. (As indicated in letter dated 20 February 2015).
- [8] Robert Brodber gave notice to Abrahams & Sons of his intention to leave its employ with effect from May 29, 2015.

THE SUBMISSIONS

- [9] It was submitted, on Robert Broder's behalf, that the Defendants' case, taken at its highest, has no 'real prospect of success'.

- [10]** In respect of the alleged breach of the Employment Contract and Pensions Act, it was submitted that Robert Brodber is a former Sales Representative of Abrahams & Sons and was so employed for approximately thirteen (13) years. He was so employed during the period March 2002 to May 2015.
- [11]** It was submitted that Notice was given to Abrahams & Sons by Robert Brodber of his intention to have the employment relationship severed. This said Notice was accepted by Abrahams & Sons, as is set out in paragraph 4 of the Affidavit of Robert Brodber, which has not been challenged by Abrahams & Sons.
- [12]** It was further submitted that upon separating from Abrahams & Sons, it failed and/or refused to pay to Robert Brodber all such sums lawfully due and payable to him arising from the employment contract, namely, his final week's salary, unused vacation and lawful entitlements, savings and pension emoluments.
- [13]** In or around September 2015, Robert Brodber formally demanded of Abrahams & Sons the payment of all sums lawfully due to him, arising out of the said employment contract.
- [14]** A total of Ninety Eight Thousand Four Hundred and Thirty Dollars and Fifteen Cents (\$98,430.15) was paid to Robert Brodber while the sum of Three Hundred and Eighty Six Thousand Seven Hundred and Twenty Six Dollars and Twenty Two Cents (\$386,726.22) was withheld.
- [15]** It was therefore submitted that Robert Brodber is entitled, upon his separation from the employ of Abrahams & Sons, to his salary and/or unused vacation and/or lawful entitlements and/or savings. It was also contended that Abrahams & Sons has withheld from the Claimant his final week's salary as at May 29, 2015, unused vacation leave pay, pension refund entitlement and savings refund entitlement.
- [16]** In respect of the Agreement to sell and purchase the 2002 Toyota Sprinter motor car, it was submitted, on behalf of Robert Brodber, that, in or around

January 2015, Abrahams & Sons offered to sell a 2002 Toyota Sprinter motor car to Robert Brodber, who agreed to purchase same. The terms of the Agreement were set out in letters written by Abrahams & Sons and signed by its Managing Director, Mr. Michael Abrahams and its General Manager, Mrs. Jean Fraser, respectively.

- [17] These letters are dated January 23, 2015 and February 20, 2015, respectively.
- [18] It was also submitted that Robert Brodber understood that this said Agreement for Sale was unconditional and as such he treated the said Toyota Sprinter motor car as his own.
- [19] Robert Brodber was put in immediate possession of the said motor car and it remained in his exclusive possession and care and under his exclusive control. He made several improvements to the said motor car, paid all expenses relative to same and made all the weekly payments by way of salary deduction.
- [20] Since the cessation of Robert Brodber's employment to Abrahams & Sons, the former continued to make the weekly payments in accordance with the Agreement for Sale. These payments were refused by Abrahams & Sons.
- [21] It was submitted that Robert Brodber asserted that he maintained an interest in the said motor car and that the terms of the Agreement for Sale were in full force and in effect.
- [22] Robert Brodber was invited to return the said motor car to Abrahams & Sons, failing which the latter would forcibly remove the said motor car from the possession of the former.
- [23] Finally, it was submitted that there was a binding contract between Robert Brodber and Abrahams & Sons for the sale and purchase of the said Toyota Sprinter motor car. Robert Brodber faithfully performed the said Agreement for Sale and continued to do so after separating from the employ of Abrahams & Sons.

- [24] The Court also heard submissions, on behalf of Robert Brodber, in respect of the alleged trespass onto his property as well as the alleged breach of his Charter right to privacy.
- [25] It was submitted that Abrahams & Sons engaged the services of Mr. Maxell Ormsby, the 2nd Defendant in the instant case, to forcibly remove the said motor car from Robert Brodber's premises.
- [26] It was submitted that Abrahams & Sons has admitted in its Defence that Maxell Ormsby was at all material times acting as its agent and on its instructions.
- [27] It was also submitted that on or about 2 July 2015, Mr. Maxell Ormsby, along with others, attended at Robert Brodber's home and forcibly removed the locks to the said home in order to gain access to the garage where the said motor car was parked.
- [28] The said motor car was removed without Robert Brodber's prior knowledge and/or consent and/or permission.
- [29] Abrahams & Sons subsequently claimed a 'wrecker fee' from Robert Brodber.
- [30] It was therefore submitted, on behalf of Robert Brodber, that the Defendants' actions were deliberate, contumelious and violent and that those actions caused damage to Robert Brodber's home. It also caused him to be in fear for the safety of his family and embarrassment.
- [31] The Defendants contend, on the other hand, that it has always been prepared to pay to Robert Brodber any sums found to be due and owing to him, pursuant to his contract of employment.
- [32] It was submitted that the issue of Robert Brodber's entitlement to a return of his pension contributions, upon his having terminated his contract of employment with Abrahams & Sons without notice, requires an examination by the Court of the employment relationship between the parties.

- [33] The same principle, it was submitted, applies to the contract for the sale and purchase of the said 2002 Toyota Sprinter motor car. It was submitted that this too requires an examination by the Court.
- [34] It was submitted that whether the Defendants' conduct amounts to trespass, detinue or conversion and warrants an award of Aggravated and/or Exemplary Damages, is for the consideration of the Court. The Court must have regard to the Defendants' motives, conduct and the manner of committing the alleged wrong.
- [35] It was further submitted that the Court must determine whether the Defendants' conduct, in committing the civil wrong, as alleged, is so outrageous that an order for payment of compensation would not be an adequate response. It was submitted that the question of whether something more is needed from the Court, to demonstrate that such conduct is altogether unacceptable to society, is a question for the Court, after examining the alleged conduct of the Defendants.
- [36] It is only then that the wrongdoer may be ordered to make a further payment, by way of condemnation and punishment, it was submitted. The Court was referred to the authority of **A v Bottrill** [2002] UKPC 44.
- [37] It was submitted on behalf of the Defendants, in the final analysis, that they had lawful justification for entering Robert Brodber's property in order to regain the said motor car, the property of Abrahams & Sons and in respect of which Robert Brodber had failed to complete payment.

THE LAW

- [38] Summary Judgment is governed by Part 15 of the Civil Procedure Rules, 2002, ("the CPR"). This Part sets out the procedure by which the Court may decide a Claim or a particular issue without a trial.

[39] Rule 15.2 of the CPR provides that the Court may give summary judgment on the claim or particular issue if it considers that: -

“(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.

(Rule 26.3 gives the Court power to strike out the whole or part of [sic] statement of case if it discloses no reasonable ground for bringing or defending the claim)”

[40] The Court may give summary judgment except in: -

(a) Proceedings for redress under the Constitution;

(b) Proceedings against the Crown;

(c) Proceedings by way of Fixed Date Claim Form;

(d) Proceedings for –

(i) False imprisonment;

(ii) Malicious prosecution; and

(iii) Defamation;

(e) Admiralty proceedings in rem; and

(f) Probate proceedings other than under rule 68.56.

[41] Rule 15.4 of the CPR establishes the procedure for the application and rule 15.5 of the CPR the evidence for the purpose of the hearing of the application for summary judgment.

[42] Rule 15.5 provides as follows: -

“15.5 (1) The applicant must: -

(a) file affidavit evidence in support with the application; and

(b) serve copies on each party against whom the summary judgment is sought, not less than 14 days before the date fixed for the hearing of the application.

(2) A respondent who wishes to rely on evidence must –

(a) file affidavit evidence; and

(b) serve copies on the applicant and any other respondent to the application, not less than 7 days before the summary judgment hearing.”

- [43]** In this case Robert Brodber is the Applicant for Summary Judgment and as such, the burden rests on him to establish that there are grounds for his belief that the Defendants have no real prospect of success in defending the Claim.
- [44]** The phrase ‘no real prospect of succeeding’ has been given judicial interpretation in the case of **Swain v Hillman** [2001] 2 All ER 91. Lord Woolf MR stated that the expression ‘no real prospect of succeeding’ did not need any amplification. The words spoke for themselves. The word ‘real’ meant that the question for the Court was whether there was a ‘realistic’ as opposed to a ‘fanciful’ prospect of success. A claim will be fanciful where, for example, it is clear that a statement of case is contradicted by all the documentary evidence or other material on which it is based or where the defence advanced is clearly a sham or where in previous litigation the Defendant has advanced similar defences which have been shown to have been false. Where there are issues to be resolved a trial becomes necessary.
- [45]** The proper approach to the application is not to endeavour to assess whether the Claim was bound to be dismissed at trial, as “that would be putting the matter incorrectly because that did not give effect to the word ‘real’.”

[46] Lord Woolf MR set out the parameters as well as the rationale for the powers of Part 24 of the English Civil Procedure Rules, which is equivalent to part 15 of the CPR. At page 94b of the judgment he is quoted as follows: -

“...it is important that a judge in appropriate cases should make use of the powers contained in Part 24. In doing so he or she gives effect to the overriding objectives contained in Part 1. It saves expense; it achieves expedition; it avoids the court’s resources being used up on cases where this serves no purpose, and I would add, generally, that it is in the interests of justice. If a Claimant has a case which is bound to fail, then it is in the Claimant’s interests to know as soon as possible that that is the position. Likewise, if a Claim is bound to succeed, a Claimant should know that as soon as possible.”

[47] Lord Woolf MR continued as follows: -

“...Useful though the power is under Part 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial...the proper disposal of an issue under Part 24 does not involve the Judge conducting a mini trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily.”

[48] In the case of **International Finance Corporation v Utefafrica S.P.R.L** [2001] EWHC 2008, the principle was enunciated that the word ‘realistic’ as opposed to a ‘fanciful’ prospect of success means that the case must be more than arguable.

[49] The merits of the Respondents’ case are therefore only relevant to determine whether there is sufficient evidence on which to proceed to trial.

[50] In **Nigeria v Santolina Investment Corporation and others** [2007] EWHC 437 Ch, the Court provided guidance as to the considerations to be had in determining whether or not to grant an application for summary judgment.

[51] The relevant principles governing applications of this nature may be summarized as follows: -

- (a) The Court must consider whether the Defendant has a 'realistic' as opposed to a 'fanciful' prospect of success; (**Swain v Hillman** (supra));
- (b) A 'realistic' defence is one that carries some degree of conviction. This means a defence that is more than merely arguable; Potter LJ, in addressing the relevant procedural rule, said at paragraph 9 of his judgment "...the overall burden of proof rests upon the claimant to establish that there are grounds for his belief that the respondent has no real prospect of success." (**ED & F Man Liquid Products v Patel** [2003] EWCA Civ 472 at paragraphs 8 & 9, respectively);
- (c) In reaching its decision the Court must not conduct a mini trial. This does not mean that the Court accepts at face value and without analysis everything that a Defendant advances before the Court. In some cases, it may be clear that there is no real substance in the factual assertions made, particularly if contradicted by contemporaneous documents; (**Swain v Hillman** (supra)).

[52] In **Lyle v Lyle** JMSC 2005 HCV 02246, judgment delivered 10 May 2005, Sinclair-Haynes J, (as she then was), also provided guidance as to the approach to be adopted by the Courts in applications of this nature.

[53] Sinclair-Haynes J stated that an Applicant for summary judgment should satisfy the Court of the following: -

- (a) That all substantial facts relevant to the Claimant's case, which are reasonably capable of being before the Court, are before the Court;
- (b) That those facts are undisputed or that there is no reasonable prospect of successfully disputing them; and
- (c) That there is no real prospect of oral evidence affecting the Court's assessment of the facts.

[54] Beswick J., in **Shakira Dixon v Donald Jackson** Claim No. CLD 042/2002, is quoted as saying: -

"It is a very serious step to deprive a litigant of the opportunity to have his matter heard at a trial, to fully ventilate the issues. This should only occur where the case is not fit for trial at all."

[55] Orders dismissing or striking out a claim at the interlocutory stage ought only to be resorted to 'where on an examination of the claim or defence it is plain and obvious that the claim or answer is on the face of it obviously unsustainable. **Fong & Fong v Bent** (1997) 34 JLR 453.

ANALYSIS

BREACH OF EMPLOYMENT CONTRACT AND PENSIONS ACT

[56] It has been submitted on Robert Brodber's behalf that he terminated his contract of employment with Abrahams & Sons, having given the requisite Notice.

[57] It was further submitted that no issue has been taken with this in the Affidavit filed on behalf of Abrahams & Sons and as such, should be accepted by the Court as the uncontradicted evidence before it.

[58] A careful examination of the Affidavit of Mr. Michael Abrahams, which was filed on 20 July 2017, reveals that what he says in this regard, at paragraph 4, is as follows: -

“The 1st Defendant, in reply to paragraph 7 of the Brodber Affidavit, contends that, upon separation, the Claimant only had his pension to benefit from, this money was used to set off the debts of the Claimant owed to the 1st Defendant as shown by the Statement of Account dated 31 August 2015...”

[59] It is therefore pellucid that it is the contention of Robert Brodber that he terminated his employment to Abrahams & Sons, having given it the requisite Notice. Upon the cessation of his employment, he further contends that he was owed his salary and/or unused vacation and/or lawful entitlements and/or savings.

[60] Abrahams & Sons, on the other hand, does not agree with that contention. It was stated, on behalf of Abrahams & Sons, that all that Robert Brodber was entitled to was his pension benefits.

[61] In these circumstances the question of Robert Brodber’s entitlement, upon the cessation of his employment, would be a question of fact for the Court.

THE CONTRACT FOR THE SALE OF THE TOYOTA SPRINTER MOTOR CAR

[62] Section 2 of the Sale of Goods Act reads as follows: -

“2 (1) A contract for the sale of goods is a contract whereby the seller transfers or agrees to transfer the property or goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in goods is to take place at a future time or subject to some condition thereafter to be fulfilled the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.”

[63] Section 4 of the Sale of Goods Act falls within the section of the said legislation that is entitled “Formalities of the Contract”.

[64] Section 4 reads as follows: -

“Subject to the provisions of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

Provided that nothing in this section shall affect the law relating to corporations.”

[65] This Court is of the view that the letters dated 23 January 2015 and 20 February 2015, respectively, contain the terms of the offer made by Abrahams & Sons to Robert Brodber.

[66] There is no documented acceptance of these terms of offer on the part of Robert Brodber but rather, is evidenced only by his subsequent conduct.

[67] The Court does not find that the letters dated 23 January 2015 and 20 February 2015, respectively, are contracts as is contemplated by the Law. It does not speak to the Claimant’s acceptance of the terms of the offer. These are letters of offer in which Abrahams & Sons has set out the terms of its offer to Robert

Brodber, in respect of the sale and purchase of the said 2002 Toyota Sprinter Motor car.

- [68]** Robert Brodber's acceptance of these said terms is evidenced by his subsequent weekly payment of Three Thousand Dollars (\$3,000.00).
- [69]** Was it the 1st Defendant's intention to make these types of offers to employees only? Was it intended for the said contract to come to an end upon the cessation of Robert Brodber's employment to Abrahams & Sons?
- [70]** The terms set out in both letters are silent as to that.
- [71]** The construct to be applied to the agreement between the parties would therefore have to be determined by a tribunal of fact based on the expressed understanding and subsequent conduct of each party.
- [72]** It is understood that Robert Brodber contends that his understanding has always been that the said Agreement for the sale of the said 2002 Toyota Sprinter motor car was an unconditional one. It is his contention that the said Agreement was never contingent upon his remaining in the employ of Abrahams & Sons.
- [73]** Conversely, Abrahams & Sons contends that it only ever intended to enter into these types of Agreements for Sale with its employees. In fact, it is in that context that Abrahams & Sons contends that it entered into this agreement with Robert Brodber, for the sale and purchase of the said 2002 Toyota Sprinter motor car.
- [74]** The objective was to seek to ensure that the employees of Abrahams & Sons were able to carry out their duties, while reducing the operational cost of the company in relation to the mobility and transportation of its employees.
- [75]** The Court is of the view that the construct or the interpretation to be applied to the terms of the Agreement for Sale arrived at between Robert Brodber and

Abrahams & Sons is a question of fact for a tribunal of fact. These are disputes as to fact which are not suitable for resolution summarily.

[76] This is the very contention of Abrahams & Sons, as is evidenced by paragraph 5 through to paragraph 9 of the Affidavit of Michael Abrahams, which was filed on 20 July 2017.

[77] At paragraph 5 of the said Affidavit, Mr. Michael Abrahams stated that it was understood by all its employees that this arrangement (for the sale and purchase of motor vehicles belonging to Abrahams & Sons) was subject to their employment to Abrahams & Sons.

[78] At paragraph 6 of the said Affidavit, Mr. Michael Abrahams stated that the letters referred to as 'letters of agreement' were merely an offer letter dated 23 January 2015, that allowed Robert Brodber and the other employees to whom this offer was extended, to accept or reject the offer of Abrahams & Sons to sell its vehicles to its employees.

[79] At paragraph 7 of the said Affidavit it is stated that the arrangement was never 'unconditional'.

[80] At paragraph 8 of the said Affidavit Mr. Michael Abrahams stated: -

"...I am informed by Mrs. Jane Fraser and verily do believe that she had informed the Claimant after returning the Three Thousand Dollars (\$3,000.00) paid by the Claimant, from the Company, that he could keep the car on the basis that he pays to the 1st Defendant the sum of Eighty Thousand Dollars (\$80,000.00), for the five month period following the return of the funds to pay off the balance of the purchase price."

[81] At paragraph 9 of the said Affidavit, Mr. Michael Abrahams stated that the said sum of Eighty Thousand Dollars (\$80,000.00) was never paid by Robert Brodber and that it was subsequent to that that Robert Brodber was asked to

return the said 2002 Toyota Sprinter motor car, the property of Abrahams & Sons.

THE CLAIM IN TRESPASS, DETINUE AND CONVERSION

[82] Conversion is described as an act or complex series of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another whereby that other is deprived of the use and possession of it (1) by wrongly taking it, (2) by wrongly detaining it, and (3) by wrongly disposing of it.

[83] The resolution of the Claimant's claim for damages for the alleged trespass onto Robert Brodber's property as well as that for damages in detinue and conversion would also flow from the construction and/or interpretation to be applied to the terms of the agreement for the sale and purchase of the said 2002 Toyota Sprinter motor car arrived at between Robert Brodber and Abrahams & Sons.

THE CLAIM FOR VINDICATORY/EXEMPLARY DAMAGES

[84] In the instant case the Court finds that Vindicative/Exemplary Damages are constitutional redress that are not suitable for Summary Judgment.

[85] Whether the Defendants' conduct amounts to trespass, detinue or conversion and warrants an award of Aggravated and/or Exemplary Damages, is for the consideration of the Court. The Court must have regard to the Defendants' motives, conduct and the manner of committing the alleged wrong.

[86] The Court must determine whether the Defendants' conduct, in committing the civil wrong, as alleged, is so outrageous that an order for payment of compensation would not be an adequate response. The question of whether something more is needed from the Court, to demonstrate that such conduct is altogether unacceptable to society, is a question for the Court, after examining the alleged conduct of the Defendants.

[87] It is only then that the wrongdoer may be ordered to make a further payment, by way of condemnation and punishment. (See - **A v Bottrill** [2002] UKPC 44).

CONCLUSION

[88] In concluding, the Court found that the issues raised on behalf of Robert Brodber are not ones that could be resolved summarily.

THE ISSUE AS TO COSTS

[89] Having concluded that the issues raised in this Application for Summary Judgment were not ones that could properly be resolved summarily, the Court was asked by Learned Counsel Mr. Pagan, on Robert Brodber's behalf, not to impose an Order as to costs but to make an Order that the Costs of this Application for Summary Judgment be costs in the Claim.

[90] Where the Court decides to make an order about the costs of any proceedings the general rule is that it must order the unsuccessful party to pay the costs of the successful party. The authority for that is Rule 64.6 (1) of the CPR.

[91] In deciding who should be liable to pay costs the Court must have regard to all the circumstances. (See - Rule 64.6 (3) of the CPR).

[92] In particular, the Court must have regard to the conduct of the parties both before and during the proceedings; whether it was reasonable for a party to raise a particular issue; and/or the manner in which a party has pursued that party's case or a particular issue. (See - Rule 64.6 (4) (a), 64.6 (4) (d) (ii), 64.6 (4) (e) (i) and (iii) of the CPR).

[93] In the instant case the Court has regard to the fact that the Defendants' Attorneys-at-Law have prepared themselves to respond to this Application for Summary Judgment. To that end they have prepared, filed and served Written Submissions in Opposition to the Application for Summary Judgment as well as a Defendants' Bundle of Authorities.

[94] Learned Counsel Mr. Makene Brown has also appeared before the Court and has made oral submissions to the Court in response to the Application for Summary Judgment.

[95] In those circumstances the Court is of the view that the appropriate Order, in relation to the costs of this Application for Summary Judgment, should be that Costs be awarded to the Defendants to be taxed if not sooner agreed.

DISPOSITION

[96] It is hereby ordered that: -

- i. The Amended Notice of Application for Court Orders filed on 21 March 2017 is refused;
- ii. Costs to the Respondents/Defendants to be taxed if not sooner agreed;
- iii. Leave to Appeal is granted;
- iv. Applicant's/Claimant's Attorneys-at-Law to prepare, file and serve the Orders herein.