



[2019] JMCC Comm 4

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. 2013 CD 00088

| | | |
|----------------|--|------------------|
| BETWEEN | SUPREME VENTURES LIMITED | CLAIMANT |
| AND | VERNA ANDRIA JACOBS (t/a) JACOB'S ENTERPRISES LIMITED | DEFENDANT |

Mr. John G. Graham and Mr. Josemar Belnavis instructed by John G. Graham and Company for the Claimant.

Ms. Lisamae Gordon and Ms. Chantal Williams instructed by Malcolm Gordon Attorneys-at-Law for the Defendant

Heard: November 25, December 4, 2018, and January 28, 2019

Contract - Breach of Contract - Agent's failure to pay sum due under a contract

Evidence - Whether sufficient evidence of the integrity of the system which is being relied upon to establish debt

Defamation - Whether sufficient evidence adduced on counterclaim

LAING, J

The Claim

[1] By Claim Form and Particulars of Claim filed on 5th November 2012, the Claimant claims against the Defendant, Verna Jacobs for the sum of One Million Six

Hundred and Fifty-Four Thousand Nine Hundred and Six Dollars (\$1,654,906.00) plus interest and costs, being monies due and owing by the Defendant to the claimant for goods, supplied by the Claimant which were sold by the Defendant as an agent for the Claimant pursuant to contract dated 18th September, 2010 (the “2010 Agent Agreement”).

- [2] The Claimant, Supreme Ventures Limited is a company duly incorporated under the Laws of Jamaica has its registered office at 28-48 Barbados Avenue, Kingston 5 in the parish of Saint Andrew which is engaged in the lottery industry. The Claimant sells various products including tickets for various games including Cash Pot, Lotto and Pick 3. These games are sold throughout the island by a number of agents of Supreme Ventures Limited. The Claimant asserted that the Defendant was one such agent who was contracted by Supreme Ventures Limited pursuant to the 2010 Agent Agreement.

Is the proper defendant named in the claim?

- [3] The Defendant, is named in the Claimant’s statement of case to be “*Verna Andria Jacobs (t/a Jacob’s Enterprises Limited)*”. At the commencement of the trial Counsel for the Defendant raised the objection that the Defendant had been improperly sued. Counsel made submissions, (which were repeated in her closing written submissions), that there is no such entity as “*Verna Andria Jacobs t/a Jacob’s Enterprises Limited*” and this entity did not sign any of the documents that were being relied upon. It was contended that it was either Verna Andria Jacobs or Jacob’s Enterprises Limited which entered into an agreement with the Claimant and if Ms. Jacobs had signed as an agent of Jacob’s Enterprises Limited then she has been improperly sued and the claim must fail in accordance with the principles in **Saloman v Saloman and Co Ltd** [1897] AC 22. It was further argued that the agent agreement dated 9th June 2001 (the “2001 Agent Agreement”) named “Jacob’s Enterprises” as the agent.

- [4] In his response, Mr Graham highlighted the fact that this issue was not pleaded and that the issue as to whether the Defendant was the correct defendant and the case not proved against her was a matter for the Court to decide at the end of the day. Counsel also noted that at paragraph 33 of the Counterclaim, the Defendant pleaded “*that she was an agent of the Claimant for eleven years without dispute*”.
- [5] The Court ruled that the trial should proceed subject to the Court’s findings at the end of the trial. It is convenient to dispose of this issue at this juncture by confirming that the Court’s conclusion is that that the Claim is one against Verna Andria Jacobs. The addition of the words (t/a Jacob’s Enterprises Limited) does not affect that conclusion. To the extent that it may be relevant, the Court notes that the 2001 Agent Agreement purports to be between Supreme Ventures Limited and “*Jacob’s Enterprises*”. The Defendant’s statement in her Counterclaim “*that **she** was an agent of the Claimant for eleven years without dispute*” (emphasis in bold supplied), is clear acknowledgment by the Defendant that the Claim is against Verna Andria Jacobs. The only way in which “*She*” (Verna Andria Jacobs) could have been the agent of the Claimant for 11 years (up to the time when the Defence and Counterclaim was filed on 27th December 2012), as the Defendant asserted, would be if “*she*”, (Verna Andria Jacobs) was the party to the 2001 Agent Agreement.
- [6] It is also of significance that the Defendant in her witness statement filed 31 May 2018 commenced the statement with the words “*I, Verna Andria Jacobs, of Jacobs’ Enterprises Ltd. Certify and say as follows;*”. In the first paragraph she states that “*I entered into a contract with Supreme Ventures Limited to sell Recharge Pin codes ...etc.* This assertion in this first paragraph is further evidence that Verna Andria Jacobs was the party who contracted with the Claimant and I find that her reference to being “*of Jacobs’ Enterprises Ltd.*” is of no moment.

[7] The Claimant's pleading is in respect of the 2010 Agent Agreement. Having regard to the absence of any pleading by the Defendant asserting that the proper party to the 2010 Agent Agreement was Jacob's Enterprises Limited, the Court is of the opinion that the 2010 Agent Agreement was between the Claimant and Verna Andria Jacobs the named Defendant and that this is unaffected by the inclusion of the descriptive words (t/a Jacob's Enterprises Limited).

The Claimant's Case

A. Summary of the evidence of Ms Lorna Gooden

[8] The Claimant called two witnesses in establishing its case. The first witness was Ms. Lorna Gooden, the Claimant's Corporate Secretary, who was the Assistant Vice President Group Finance and Reporting at the time the cause of action arose. She indicated that it was her responsibility to monitor the Agent Agreement that Supreme Ventures Limited had with various persons and entities amongst other duties.

[9] She stated that the Defendant Verna Andria Jacobs trades under the name Jacob's Enterprise Limited and first entered into an agreement with Supreme Ventures Limited on 9th June, 2001 to sell tickets for various games as well as recharge pin codes for various mobile phone companies. The Defendant then entered into the 2010 Agent Agreement, the terms of which were similar to the previous contract.

[10] The Defendant was assigned an agent number 5013 and furnished with terminal numbered 588 (the "Terminal"). Both these numbers are uniquely assigned and are used to identify the agent and the terminal respectively.

[11] She also explained that there is a customer tracking software that processes all commands inputted into the Supreme Ventures Limited terminal and verifies all transaction. This said software produces an Agents Activity Report.

- [12] Ms Gooden also stated that Ms Jacobs was provided with a unique bank account number 601-8020-762-840226 referred to as the CCP number. This number is the number used by agents of Supreme Ventures Limited to deposit weekly payments due to Supreme Ventures Limited, through any branch of Bank of Nova Scotia. This CCP number was used by the Defendant on numerous occasions to deposit the weekly payments.
- [13] The Defendant was required to print the invoice report for the previous week's activities from the terminal each Monday morning. This invoice gives the net amount to be paid over to SVL using any branch of Bank of Nova Scotia using the CCP number assigned to the agent, by the close of banking day Tuesday.
- [14] At the end of the banking hours on a Tuesday an electronic sweep of the agent accounts is carried out which matches the net amount due, with the deposit made by the agents. If the agent account does not reflect the correct amount due and payable, then the agent is barred from conducting any transaction on the terminal. This is known as an agent being suppressed.
- [15] She explained that once the machine is suppressed the account would not be reactivated until proof is provided that the net amount due has been paid. Ms Gooden explained that the Defendant's account was suppressed on forty-one occasions and Supreme Ventures Limited wrote to her first on 19th July 2010 to warn her of her unacceptable practice of making late payments. She was sent another letter on September 14, 2012 and her agreement was terminated on 5th October 2012. The Agent Activity Report produced by the terminal on the 13th October 2012 showed that the agent had amassed a balance on sales totalling \$1,669,666.00 which has not been paid over to Supreme Ventures Limited.
- [16] She also stated that the agreement between Supreme Ventures Limited and the agent anticipated that there would be interruption in service and terminal malfunction. However, she was adamant that the suppression process was not automatic.

[17] She also stated under cross examination that she was aware of a complaint made by Ms Jacobs but did not agree that the complaint was that what the terminal indicated was outstanding was not what she sold. She agreed however that the nature of the complaint of Ms Jacobs was that what the Claimant said she owed is not what she owed.

[18] Ms Gooden gave crucial evidence that the machine was suppressed on May 12, 2012 and that the amount owed went up to the month of October 2012, she said during the time the machine was suppressed it would continue to generate a report. She explained that there are two sides to the machine being a weekly service fee of \$900.00 and also whilst the machine was suppressed Ms. Jacobs had in her possession instant tickets due and payable in June 2012. She stated that whilst the machine was suppressed, a sum kept on accruing on the outstanding balance owed.

B. Summary of the evidence of Mr O'Neil Lynch

[19] The second witness for the Claimant Mr. O'Neil Lynch, Management Information Administrator/Operations Supervisor, gave evidence that Interactive Gaming Technology ("IGT") has been contracted by Supreme Ventures Limited locally to provide the Computerised Gaming System, the agent network and to service both the agent assigned terminals and computer systems. He stated that at the time the cause of action arose, he was responsible for maintaining the connection between the agent network and the Computerized Gaming System; and visit various locations in order to rectify the communications issues.

[20] His evidence as contained in his witness statement was that the agent assigned Terminal is equipped with a user interface/ dial pad (which is on the monitor), as well as a printer and modem. Whenever information is inputted, the terminal is configured to communicate the information inputted through the dial pad with the Computerized Gaming System located in IGT's head office in response to the commands imputed through the dial pad. When a customer requests a ticket

from the terminal operator/cashier, that request is inputted into the terminal which sends a message to the Central Computerized Gaming System via an encrypted GPRS signal which decrypts and processes the information and sends back a response to the terminal which produces a lottery ticket.

- [21]** He explained that the Terminal serves as a user interface while the Computerised Gaming System operated by IGT processes the commands in order to verify and complete each transaction. He noted that the exchange between the terminal and the Computerised Gaming System is conducted via an encrypted network connection and the effect of this is that if the signal is intercepted it cannot be read by the interceptor.
- [22]** Mr Lynch asserted that the Computerised Gaming System is built to various international standards and based on these standards and the manner in which it operates, the system provides sufficient safeguards and protection against viruses and or hacks and is not easily susceptible to the data it reproduces being inaccurate. Notably, Mr Lynch stated that over the nine years he has been working with the company he has never seen the Computerized Gaming System produce inaccurate information. He explained that the information processed in relation to transactions that take place on a specific terminal is recorded on an Agent's Activity Report which is produced by the Computerised Gaming System.
- [23]** Mr Lynch gave evidence stating that IGT also ensures that routine service visits are made to the agent's location at intervals in order to check the equipment to do preventative maintenance as well as restock tickets. He confirmed during cross examination that he did not personally do any inspections or servicing of the Terminal assigned to the Defendant.
- [24]** He gave evidence stating that over time, the number of terminals increased but the server remained the same up to the time of the incident. He clarified the information to say that there is one central processing unit.

[25] When questioned as to the results of the audits of the system, he stated that as far as he is aware Supreme Ventures Limited always received a perfect score. He also stated that the system to his knowledge was not experiencing any problems. He stated that there are no complaints on record for Ms Verna Jacobs and there has never been any complaint from anyone about their terminal.

The case for the defence

Summary of the Defendant's Evidence

[26] The Defendant in her witness statement filed 31st May 2018 refuted the allegations that “...*Jacobs Enterprises owes Supreme Ventures Limited One million Six Hundred and Ninety Six Thousand Eight Hundred and Eighty Six Dollars and Twenty Cents (\$1,696,886.20) or any other sum claimed*”. Her specific reference to Jacob's Enterprises Limited sets the tone for the remainder of her witness statement and her repeated reference to and use of plural pronouns, no doubt in an attempt to distance herself personally from the 2010 Agent Agreement.

[27] The Defendant gave evidence that on 15th May 2012 she advised Mr Thevar Harris, an employee of the Claimant that “*we*” were having fictitious amounts generated on the weekly settlement account. She said that Mr Harris advised “*us*” to write to Mr Bucknor explaining the dilemma, which “*we*” did by a way of letter dated 3rd June 2012. She stated that the Claimant was advised of the defective Terminal and the Claimant advised that the company's head office should be contacted to reconcile the amounts which were due and payable on a weekly basis. This was done and the practice continued in that fashion until two letters dated 14th September 2012 and 5th October 2012 were received from the Claimant. The Defendant asserted that notwithstanding the fact that the Claimant was advised of the defective terminal, the Claimant did not remedy the situation.

- [28]** One main feature of the Defendants position is reflected in her witness statements where she asserted that pursuant to the accounting arrangements, “we” could not owe the Supreme Ventures for several months the sums indicated because under the contract, if the agent failed to pay the previous weekly amount, the machine would be suppressed and would not issue lottery tickets.
- [29]** The Defendant stated that she requested and received printouts of the Terminal accounts which were sent in the form of a spreadsheet. After receiving the printout, the Claimant was contacted by way of letter for it to clarify the amounts stated, in respect of which there was strong disagreement as they were incorrect. The Defendant gave evidence that the Claimant did not respond to the letter but instead placed her name in the newspaper of 14th October and 5th November 2013.
- [30]** The Defendant has sought the Court’s permission to amplify her witness statement and permission was granted. The Defendant in amplifying her evidence stated that her average weekly sales were \$240,000.00 or less. She denied ever having sales of \$1,600,000.00.
- [31]** During cross examination Ms Jacobs testified that she was not the only person that handled Supreme Ventures Limited sales. She stated there were other persons that were trained by Supreme Ventures Limited who would handle the sales in her absence. She stated that only three persons, including herself, were trained by Supreme Ventures Limited.
- [32]** The Defendant under cross examination said that she kept a daily book of all sales each day so at the end of each day her figures were accounted for. She further testified that she has not disclosed this book in the court proceedings. The Defendant gave evidence that she obtained daily slips generated from the terminal and used them along with the cash from daily sales to balance at the end of each day. She also testified that she did not take those daily slips to the Claimant when she was having the problem with the Claimant because she had

written to them about the issue. She said she had printed the slips showing the fictitious amounts of which she advised Mr. Thevar Harris on 15th May 2012 (referred to in paragraph 4 of her witness statement) but did not take copies of them to the Claimant because the Claimant had copies, so she simply reported it.

The Issues

[33] The Claimant through its Counsel submitted that it has proved its case on a balance of probabilities that the debt which it claims has accrued and that the Defendant has failed to pay the indebted sums over the Claimant. An important component of the Claimant's case was the Agent Activity Report. The Claimant submitted that it is admissible and was agreed by both parties and tendered into evidence and that it has also satisfied the criteria of 31F of the Evidence (Amendment) Act 2015. The Claimant asserted that the Court should accept the Agent's Activity Report as permitted under section 31F of the Evidence Act as there is case law in support of this contention. The case of **National Water Commission v VRL Operators Ltd et al** [2016] JMCA Civ 19 was relied on by the Claimant.

[34] The Defendant has challenged the accuracy of the Agents Activity Report and the integrity of the system used in producing the Agent's Activity Report, starting with the Terminal. I find that the Agent's Activity Report is admissible there not having been any objection to its admission into evidence and I will concentrate on the issues raised as to its accuracy.

Whether the terminal or the Computerised Gaming System had malfunctioned or was defective, which caused it to produced inaccurate or inconsistent totals to be paid by the Defendant?

[35] Mr Lynch gave evidence as to process involved in completing the sale of a lottery ticket and there are a number of key elements in respect of which it is necessary to appreciate. Whenever a customer requests a ticket, that information is inputted

into the terminal, which is configured to communicate the information inputted through the modem, via an encrypted message to the central server/the Computerized Gaming System located in IGT's head office in Kingston. In response the central server there decrypts and processes the information and sends back a response to the terminal which produces a lottery ticket.

[36] The Court accepts and it is important to understand that the Agent's terminal only acts basically as a dial pad in the sense that it does not process information. There is only one single processing unit. The CPU's at payment centres are only used to print cheques for winning tickets of large amounts. Counsel for the Defendant suggested that the fact that Lorna Gooden claimed that the terminal was a dummy device goes against the grain of the equipment which needs to be constantly serviced as inferred in clause (d) of the Agent Agreement. I do find that the requirement for servicing is sufficient to reasonably infer that the Terminal was "intelligent" in the sense that it had a processing function as Counsel for the Defendant suggested and certainly this evidence is insufficient to discredit the evidence of Mr Lynch.

[37] Mr Lynch rejected the suggestion that one of the complaints from agents was that the terminal would sometimes display inaccurate information. He explained and the Court accepts that one of the issues experienced by agents was the unusually long time it took for a ticket to be printed on certain occasions but that this was because of slow communication of the data and not because of any problem on the part of the Central Computerised System or the Terminal. The Court also accepts his evidence that issues regarding the speed of printing a ticket, or cancellations of tickets would not affect the accuracy of any information produced by the Terminal.

[38] Mr Lynch's evidence, which I accept, was that in his over nine years working at IGT (Previously GTECH), he had never seen the computerised Gaming System produce inaccurate information.

[39] The Defendant asserted that she had daily slips generated by the Terminal, which she used to reconcile her accounts with her cash from daily sales. Notwithstanding her possession of this evidence she did not present these daily slips to the Claimant when she was having a dispute with the Claimant and when she was alleging that the Terminal was defective. I do not find the Defendant's evidence in this regards to be credible since one would expect that as a reasonable businessperson she would have presented this conclusive evidence to the Claimant in order to prove her assertion that the Terminal was defective.

[40] After assessing the evidence on the issue and in particular the evidence of Mr Lynch, which I accept, I do not find that a malfunctioning of the Defendant's Terminal resulted in the generation of sales of lottery tickets which were not inputted into the terminal. I also do not find that the Defendant's Terminal otherwise caused fictitious amounts generated on the weekly settlement accounts.

Areas of possible weakness in the Claimants Accounting System

[41] Although the Court has accepted the integrity of the Terminal and Computerised Gaming system to the extent that the Court finds that they did not generate fictitious numbers or amounts, that is not the end of the matter. It was ably demonstrated by Counsel for the Defendant that the production of the Agent's Activity Reports on which the Claimant's placed heavy reliance was not totally automatic but was subject to the involvement of the Bank and the intervention of the Claimant by a manual adjustment

[42] The evidence of Ms Gooden was that the Claimant would send manual adjustments to be posted to the Agent's Terminal which included late fees and penalties and credits to be applied such as bank deposits that were not automatically credited. The accuracy of the Accounts in respect of the Defendant would therefore depend on there being an accurate record of the deposits she made at the Bank of Nova Scotia. There was therefore, potentially, room for

error, caused either by the Defendant not correctly assigning her unique agent number to the deposit so that she could be credited for deposits she made, or as a result of the Defendant not being credited for deposits through no fault of her own but as a result of the inefficiency of the Bank and/or the Claimant in the manual adjustment process.

[43] Counsel for the Defendant suggested to Ms Gooden that the number of manual adjustments to the Defendant's account such as the manual adjustments totalling \$893,770 is evidence that the Claimant's system does not work and that is why those adjustments had to be made. The system is not fully automatic and it appears to me that the manual adjustments were necessary to ameliorate some of the potential difficulties such as an agent lodging money which was not credited to its account where for example the proper agent number was not used to identify the lodgement when made at the Bank. I do not find that the manual adjustments without more is evidence of the system not working. Similarly I do not find that the manual adjustments resulted in inaccurate figures. My conclusions would of course likely be otherwise if the Defendant had demonstrated that manual adjustments were made which were not justified or which resulted in inaccurate figures and there was no evidence to this effect. Counsel for the Defendant spent a considerable time cross examining Ms Gooden as to various entries (including manual entries) appearing on the spreadsheets prepared by the Claimant and in each case, in the Courts opinion Ms Gooden satisfactorily explained the entries in a logical and cogent manner.

[44] I accept the evidence of Ms Gooden that there were no general problems involving the Bank but that there was only one instance in October or November 2011 when there was a problem in that deposits made by Agents (including the Defendant) were not properly coded with the unique number assigned to the agents.

[45] I also accept her evidence that the arrangement for the Agents to fax in confirmation of their lodgement slips to Mr Bucknor to do reconciliation exercises

was to ensure any inaccuracy caused by the agents not properly completing the deposit forms with the unique numbers and was not as a result of any problem with the Bank.

[46] I reject the evidence of the Defendant that the problem of her account not being credited for payments she made. I also do not accept that there was an ongoing problem of inaccuracy in the Claimant's accounts as it relates to the debt she allegedly owed. It is significant that in paragraph 5 of her witness statement the defendant stated as follows: "*We, advised the Claimant of the defective terminal machine and was advised that we were to call the Claimant Company's offices to reconcile the amounts which were due and payable on a weekly basis, which we did. We continued in that fashion until we received two letters dated September 14, 2012 from the claimant and October 5 2012.* During cross examination when pressed as to what the words "*which we did*" referred to, she stated that it did not refer to the reconciliation with the Claimant. She also stated that the words "...*we continued in this fashion...*" did not relate to reconciliation and "*there was no reconciliation with the weekly statement from Supreme Ventures*".

[47] Ms Jacobs claimed that she had lodgement slips in respect of the deposits she made at the Bank although some of the slips had faded. Notwithstanding being in possession of lodgement slips, she did not present them to the Claimant in an effort to do a reconciliation because the Claimant did not invite her to do so. I do not find her evidence credible in this regard. One would expect that as a reasonable businesswoman, if she were in a dispute as to the accuracy of accounting figures (as far as it relates to the payments that she had made), she would have presented the relevant lodgement receipts which she had in order to reconcile the figures and prove that the inaccuracy was on the part of the Claimant, whether or not she was invited to do so. Her failure to do so, leads me to the conclusion that she did not have any lodgement slips which was capable of so demonstrating.

[48] I also find that the unchallenged evidence that the Defendant's Terminal was suppressed for forty one times before it was suppressed for the final time on account of the debt claimed is evidence which demonstrates a pattern of late payments by the Defendant which resulted in those instances of suppression. For the avoidance of any doubt I appreciate that this finding does not affect the need for the Claimant to prove that the sum claimed is in fact due and owing.

Suppression of the Terminal

[49] Counsel for the Defendant noted that Ms Gooden testified that at the end of banking hours on a Tuesday, Supreme Ventures Limited does a sweep and matches the amount due with the deposits made by the agents. The Agent's terminal would be suppressed if there were any amounts due and owing. Counsel pursued a line of questioning aimed at demonstrating that, accordingly, the true figure owing by the Defendant could only be the difference between the amount owing for sales on the 40th time the machine was suppressed and the amount which had accrued since then leading up to the 41st suppression (since presumably the Defendant would have cleared the outstanding balance in order to have the terminal reactivated). Counsel also sought to demonstrate that having regard to what Ms Gooden indicated was the average net weekly sales by the Defendant of \$331,000.00 - \$350,000.00, the amount of the claim \$1,669,266.00 would represent over three weeks of net weekly sales. Unfortunately, Ms Gooden was unable to say from the reports before the Court what was the date or the amount that was owing by the Defendant on that date and as a result the force of this point did not assist the Defendant. She explained that her failure to include this information or the amount owing and date of any other suppression in her witness statement was not deliberate but was because she did not know that it was relevant. The Court accepts her explanation in the circumstances and does not draw any adverse inferences noting that it was open to the Defendant to pursue this information through discovery.

[50] The Court accepts the evidence of Ms Gooden that the suppression of an agent's terminal is not automatic as was suggested without any supporting evidence by Counsel for the Defendant. This finding further weakens the Defendant's theory that the outstanding debt could only have been accrued between the penultimate and the final suppression of her terminal.

Destruction of the Terminal

[51] The Defendant has submitted that the terminal is integral in producing information. The Defendant contended that since the terminal was destroyed critical evidence was destroyed and therefore the reproduction of the required information was impossible. Having regard to my findings in relation to the absence of any documentary evidence or credible oral testimony which would weaken the evidence as to the unlikelihood of their having been a problem with the Terminal which could have caused inaccurate figures to be generated by it, I do not draw any adverse inferences from the destruction of the Terminal sine it resulted from the upgrading process and was not done with any malicious ulterior intent. I have also not been presented with any evidence which would lead me to conclude that its unavailability has negatively affected the Courts ability to determine the issues before it or has prejudiced the defendant.

The Counterclaim

[52] The Defendant has filed a Counter Claim against the Claimant claiming that the act of publishing the Defendant's name in the Sunday Gleaner and Sunday Observer in the following words: *"Anyone knowing the whereabouts of Verna Andria Jacobs are kindly being asked to contact Supreme Ventures Limited"*, were defamatory and caused immeasurable distress of the Defendant.

[53] The Defendant also claims that the Claimant breached the Agent Agreement by terminating the Agent Agreement without lawful cause or excuse. The Claimant

breached the contract with the Defendant insofar as it failed to give a proper account of the statements, failed to properly maintain the Terminal and unlawfully terminated the Agent Agreement causing loss and damage to the Defendant.

[54] The Claimant, Supreme Ventures Limited filed a Defence to the Counter Claim filed on 11th February 2013 in which it denies that the notice was capable of being defamatory. The Claimant also denied that the contract was terminated without lawful cause or excuse.

[55] Counsel for the Claimant has correctly submitted that the Defendant failed to call any evidence to support the cause of action of defamation as pleaded and accordingly the Defendant should fail in relation to the Counter Claim. Accordingly, the Court finds for the Claimant as it relates to this item of the Counterclaim. I also find that the Defendant has failed to establish the other elements of her counterclaim relating to breach of contract. This is based largely on the Court's finding that she was indebted to the Claimant and had failed to make the payment of the outstanding debt within the time she was contractually obligated to do, thereby entitling the Claimant to terminate the 2010 Agent Agreement. The Counterclaim therefore fails on a balance of probabilities

The Applicable Law

[56] The parties have agreed that the applicable law in this area is well settled and not in dispute. A principal can sue his agent for breach of contract. The Claim is based on the Defendant's obligation to make the appropriate payments pursuant to an Agreement between the parties for which the Claimant is alleging that the Defendant breached these obligations in that the Defendant has not paid over the sums due which form the subject of this Claim. In these circumstances, I do not find it necessary for the purposes of this judgment to discuss the applicable law in any greater detail.

Conclusion and disposition

[57] Having regard to the aforementioned analysis and findings of the Court, I find that the Claimant has provided cogent evidence as to the reliability and operation of the Computerized System and its accounting system. I am therefore satisfied on a balance of probabilities that the debt claimed was in fact due and owing pursuant to the Agent Agreement.

[58] For the reasons expressed herein the court makes the following orders:

1. Judgment for the Claimant on the Claim in the sum of One Million Six Hundred and Fifty-Four Thousand Nine Hundred and Six Dollars (\$1,654,906.00) with interest at the rate of 6% per annum from October 27, 2012 until the judgment is satisfied.
2. Costs of the Claim are awarded to the Claimant to be taxed if not agreed.
3. Judgment to the Claimant/Defendant to the Counterclaim, on the Counterclaim with costs of the Counterclaim to be assessed if not agreed.