

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV0091/2006

BETWEEN:

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Claimant/Respondent

And

LESTER BRYANT BIRD

ASOT MICHAEL

BRUCE RAPPAPORT (BY RUTH RAPPAPORT HIS NEXT FRIEND)

IHI DEBT SETTLEMENT COMPANY LTD

BELLWOOD SERVICES S.A.

PATRICK A MICHAEL CO. LIMITED

DEBT SETTLEMENT AMINISTRATORS LLC

JOHN E. ST. LUCE

ANTIGUA BARBUDA INVESTMENT BANK

Defendant/Applicant

DSA LLC

WEST INDIES OIL COMPANY LTD

Defendant/Applicant

Appearances:

Mr. Coniffe Clarke for Ninth Defendant/Applicant

Mrs. Nelleen-Murdoch for Eleventh Defendant/Applicant

Hon Attorney General Justin Simon QC with Mrs. Karen DeFreitas-Rait Deputy Solicitor General for the Claimant/Respondent

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2007: January 19th 24th
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REASONS FOR DECISION

In Chambers:

- [1] **Blenman J**; These are two separate applications by Antigua Barbuda Investment Bank (ABIB) and West Indies Oil Company Ltd (WIOC) respectively to strike out the Amended Claim brought against them by the Attorney General. Alternatively ABIB seeks to be removed as party to the Amended Claim.

[2] The Court heard both applications on the 19th January 2007 and delivered oral decisions on the said day, on the conclusion of the arguments. The following represent the reasons for the decisions.

[3] For the sake of convenience, I propose to deal with both applications in this ruling since they are in relation to the same Amended Claim.

Background

[4] The Claimant had filed the Claim Form against the first ten Defendants. The Claimant amended the Claim Form and the Statement of Claim. In addition, he was granted leave to join WIOC as a Defendant.

[5] The Claimant, by way of Amended Claim Form sued the first Eight-named Defendants and the Tenth-Defendant on the basis of protecting the public interest in circumstances of alleged fraudulent misappropriation and misuse of public funds. In the Amended Claim and Statement of Claim, the Claimant seeks several remedies including declarations that the First-named Defendant, Mr. Lester Bird, the Second-named Defendant, Mr. Asot Michael, and Mr. John St. Luce have committed misfeasance in public office and that they in breach of public trust “wrongfully enabled the public funds, held formerly at Swiss American National Bank and later at ABIB to be misappropriated by Mr. Bruce Rappaport (Mr. Rappaport) and two of the Companies named as Defendants herein.

[6] In the Amended Statement of Claim, the Claimant further averred that Mr. Bird who was the former Prime Minister of Antigua and Barbuda together with Mr. Michael who was then a Minister of Government together with Mr. Rappaport and the other Companies named as the Fifth, Sixth and Seventh Defendants, with the assistance of Mr. St Luce who was also a Minister, enabled Mr. Rappaport to fraudulent misappropriate or misuse public funds and caused those funds to be given to Mr. Rappaport and/or the two Companies.

- [7] In addition, it is alleged that monies were improperly diverted from accounts held by the Government of Antigua and Barbuda (GOAB) at ABIB. The Claimant alleged that ABIB is the successor in title to Swiss American National Bank.
- [8] The Claimant also averred that WIOC was controlled and managed by Mr. Rappaport through the instrumentality of National Petroleum Limited, the majority shareholder, who appoints five of the directors to the Board of WIOC and that Mr. Rappaport was instrumental in preventing various sums of money from being paid into the Consolidated Fund in accordance with WIOC's obligations. The Claimant further alleged that ABIB on the instruction of Mr. Rappaport paid monies into a Miami Bank account of the two Companies that are Defendants.
- [9] Based on those allegations, the Claimant sought a number of reliefs. These are as follows:
- (a) A declaration that the first-named Defendant, the second-named Defendant and the eighth-named Defendant are guilty of wrongfully committing public funds to the third, fourth, seventh and tenth-named Defendants in reliance on the fraudulent misrepresentation of the third-named Defendant;
 - (b) A declaration that the first through eighth and tenth-named Defendants are personally liable to make good all monies unlawfully received by them;
 - (c) A declaration that the third-named Defendant fraudulently misrepresented the terms of re-negotiated debts;
 - (d) An Injunction restraining Antigua Barbuda Investment Bank from making monthly payments to Debt Settlement Administrators LLC and/or its assigns at Wachovia Bank N.A. in Miami, Florida, U.S.A or to any other accounts under its control and/or directive from any account of the Government of Antigua and Barbuda at the said Antigua Barbuda Investment Bank;
 - (e) An Injunction restraining Antigua Barbuda Investment Bank from disposing of, dealing with, diminishing or transmitting any of the monies directly or indirectly received from Wachovia Bank, N.A. Miami, Florida in the accounts of the seventh-named Defendant and/or the tenth-named Defendant specifically in, but not limited to, account numbers 205030835 and 205030836;

- (f) An account of all monies belonging to the Government of Antigua and Barbuda and unlawfully come to the hands of the first, through seventh and tenth-named Defendants on the basis of the fraudulent misrepresentation of the third-named Defendant;
- (g) Alternatively or additionally an account of what money is due to the Government of Antigua and Barbuda from first, through seventh and tenth-named Defendants in respect of money received due to the fraudulent misrepresentation;
- (h) An order for payment by the first, through seventh and tenth-named Defendants to the Government of Antigua and Barbuda upon taking such account with interest thereon at such rate or rates as to the Court deems just from the date of receipt thereof until judgment or earlier payment pursuant to the equitable jurisdiction of the Court or alternatively pursuant to section 27 of the Eastern Caribbean Supreme Court Act, Cap. 143;
- (i) Such other orders and relief as to the Court seems just; and
- (j) Cost against all the Defendants except the ninth-named Defendant.

[10] The Claimant also applied for and obtained injunctive orders including orders restraining ABIB from making monthly payments to the account of DBSA and or its assigns to Wachovia Bank N.A, in Miami, Florida, USA or to any other accounts in any bank or from any account of the Government of Antigua and Barbuda that is held at ABIB. The Claimant also obtained an order restraining ABIB from disposing, dealing with diminishing or transmitting any monies received directly or indirectly from Wachovia Bank.

[11] The copy of the above order having been served on ABIB, it (ABIB) has complied with the terms of the Order.

[12] I propose firstly to address ABIB's application and thereafter to deal with the WIOC's application.

ABIB's Application

- [13] In support of ABIB's application for the Amended Claim against it to be struck out alternatively for it to be removed as a party, Mr. Hewley Richardson, Country Manager deposed to an affidavit. Mr. Richardson says that ABIB having been served with a copy of the interim injunction has complied with its terms and intends to continue to do so. He indicates ABIB's intention to give undertakings to comply with the Court's order. In addition, he complains that ABIB is embarrassed by the proceedings since persons may think it was complicit in the alleged fraud. He seeks to have ABIB struck out as a defendant to the Amended Claim on the ground that there is no cause of action.
- [14] The Claimant opposes ABIB's application and says that it has a cause of action against ABIB. In addition, there is the need for disclosures of documents which are in ABIB's possession and are vital to the case. The Claimant also addressed the allegations that ABIB has in its possession monies which belong to the GOAB.

ABIB's Submissions

- [15] Learned Counsel, Mr. Coniffe Clarke submitted that the Court should strike out the Amended Claim against ABIB on the ground that there is no reasonable cause of action disclosed against ABIB. In the pleadings, there is no wrong doing alleged against the ABIB. In support of his contention, Counsel referred the Court to Part 26.3(1)b of CPR 2000 which provides as follows:
- "In addition to any other power under these Rules, the Court may strike out a Statement of Case or part of a Statement of Case if it appears to the Court that:-
(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim..."
- [16] The White Book 2000 in its rubric to Part 3 3.4 (Power to Strike Out a Statement of Case) says that the said rule above covers cases which do not amount to a legally recognizable claim or defence. Further the power can be exercised at the stage of the filing of a Claim so that a Defendant against whom an ill-founded action is sought to be brought will be spared the needless expense in having to even initiate "striking out proceedings."

[17] Mr. Clarke stated that Statements of Case which are suitable for striking out for failure to disclose reasonable grounds include those which raise an unwinnable case where continuance of the proceedings is without possible benefit to the respondent and would waste resources on both sides. He referred the Court to **Harris v Bolt Burdon [2000] L.T.L February 2, CA**: He also stated that "*a Statement of Claim (or part thereof) is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence* **Bridgeman v McAlpine-Brown[2000] L.T.L. January 19, CA.**"

[18] **Halsbury's Laws of England, Fourth Edition, Vol. 37, Practice and Procedure** notes in its rubric to **paragraph 917**, "Power to strike out a statement of case" that under CPR 3.4(2)(a), the equivalent rule of the United Kingdom, examples of claims which may be struck out include those which lack particularity, those which are incoherent and make no sense and those which contain a coherent set of facts but those facts, even if true, does not disclose any legally recognizable claim against the Defendant (Practice Direction – Striking out a Statement of Case [2001] PD 3A para 1.4). Further paragraph 253 of the said Volume states that:

"No person can be a defendant unless the claimant claims some relief, even if only a declaration, against him..... The proper defendant to a claim in tort is the wrongdoer, or person who is liable for the actions of the wrongdoer, or whom the liability for the injury is passed" (**Adam v Naylor [1946] 2 ALL ER 241.**)"

[19] Mr. Clarke, next referred the Court to **Halsbury's Laws of England, Third Edition, Vol.12, Discovery, Inspection and Interrogatories**, Paragraph 11, "*Defendant for purpose of discovery only*", states that the practice of naming a person as a Defendant for the sole purpose of obtaining discovery against him when said person is not a necessary party to the proceedings and no substantive relief is claimed against him is practically extinct. It further states that the Court in exercise of its discretion will normally refuse discovery against such a Defendant who may also apply to be struck out from the said proceedings Counsel referred the Court to **Wilson v Church [1878] 9 Ch. D 552** in support of his proposition that ABIB should be struck out as a party.

[20] Mr. Clarke argued that ABIB is merely "*an incidental third party and no claim could be properly brought against ABIB*". Rather the correct way is to obtain an injunction against the relevant defendants restraining them from dealing with accounts held with ABIB, and ABIB will give an undertaking to abide by the Court's injunctive order.

[21] Mr. Clarke stated further that the Claimant does not even seek any declaratory reliefs against the Bank and does not require costs. Mr. Clarke argued that the only remedy the Claimant seeks against ABIB appears to be of an interim nature. The sole purpose of the Claimant joining ABIB as a party is in order to be able to obtain discovery and inspection of documents allegedly held by ABIB. He therefore argued that the Court should strike out the Claimant's Amended Claim against ABIB on the ground that it discloses no cause of action.

[22] Alternatively, Mr. Clarke argued that the ABIB is not a proper party to the Amended Claim and the Court should remove it as a party. Counsel referred to Part 19.3(1) and 2(a) of CPR 2000 which state as follows:

- (1) The Court may add, substitute or remove a party on or without an application.
- (2) An application for permission to add, substitute or remove a party may be made by:
 - (a) An existing party;
 - (b) Part 19.3(b) CPR 2000 states that where a Court makes an Order for the removal of a party, it must consider whether to give consequential directions about ...
 - (c) The management of the proceedings.

Claimant's Submissions

[23] Mr. Justin Simon QC, Learned Attorney General opposed ABIB's application to be removed as a party to the Amended Claim alternatively to have the Amended Claim against it struck out. Mr. Simon QC submitted that ABIB is a proper party to the action and the Amended Claim is quite properly brought against ABIB.

- [24] Mr. Simon QC stated that in the Amended Statement of Claim, the Claimant alleged that *"the unlawfully appropriated monies were paid into the Miami Bank Accounts of the Fourth and Seventh Defendants by ABIB from the Claimant's account (held at ABIB) and on the irrevocable instructions of the GOAB and Mr. Rappaport."*
- [25] Mr. Simon QC further said that the Claimant alleges that *"the unlawfully appropriated monies were then distributed by the named Defendant from its Miami Bank to the accounts of the Firth, Sixth and Seventh Defendants in Miami, Bermuda and Antigua. In May 2005 the amount of US\$1,500,000.00 was transferred by the Seventh Defendant from its Bank in Miami to the account of the Seventh Defendant at ABIB and that the sum of USD69,576.75 was similarly transferred in each month from June 2005 until February 2006 when an Interim Injunction was obtained against ABIB in terms which restrained ABIB from making any further payments from the Claimant's account in ABIB to the Seventh Defendant's bank account in Miami and from disposing of or transmitting any monies in the Seventh Defendant's account with ABIB."*
- [26] At a further hearing held on March 20, 2006, at which ABIB was represented, the terms of the Interim Injunctive Order granted on February 21, 2006 against ABIB (among others) were *"extended until the final determination of Claim No. 0091/2006 or until further order of the Court"*. Counsel for ABIB raised no objection to the Claimant's application for an extension of the Interim Injunctive Order.
- [27] Mr. Simon QC submitted that the Court's discretionary power to remove a party is contained in Part 19.3(2) of CPR 2000. He says this power is akin to the English CPR rule 19.2(3) where the Court is given power to remove a party if it is not desirable for that person to be a party to the proceedings.
- [28] Accordingly, Mr. Simon QC submitted that ABIB's presence is necessary because it retains possession of part of the subject matter of the claim and, in addition to its being privy to and in possession of documents and information relevant to the proceedings which can only be obtained under Part 28 of CPR 2000, it is a person who is necessary and

bound to satisfy any judgment given in the claim relating to the monies in the account of the Seventh Defendant.

[29] Queens Counsel, Mr. Simon said that the application to remove ABIB as party is akin to an application to strike out the entire statement of case against ABIB. The relevant CPR 2000 rule is Part 26.3(1)(b) and (c) which provides that the Court may strike out a statement of case if:

(b) The statement of casedoes not disclose any reasonable ground for bringing or defending a claim;

(c) The statement of case ... is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; ..."

[30] Mr. Justin Simon QC maintained that the Claimant's claim against the other named Defendants is inextricably linked to the actions of ABIB as ABIB is the vehicle utilized by the Third, Fourth, and Seventh Defendants in facilitating the transfer and maintenance of the funds alleged to have been fraudulently misappropriated. Much more than that, Mr. Simon QC said that some of these monies are with ABIB in the account of the Seventh Defendant and these monies constitute funds which were transferred from the Seventh Defendant's bank account in Miami which originally held the fraudulent proceeds. A defence from and the oral evidence from ABIB in respect of paragraphs 17,18,26,27,31,32, and 33 of the Amended Statement of Claim as to its knowledge and participation is necessary to allow the court to deal justly with the case and to give the appropriate relief particularly in respect of the monies allegedly being held by ABIB for the Seventh Defendant.

[31] Accordingly, Mr. Simon QC disagreed with Mr. Clarke and maintained that ABIB is a proper party to the Claim and stated further that the Claimant has a proper cause of action against ABIB. The Claimant seeks against ABIB a permanent injunction, restitution of any funds held by ABIB and consequential orders in respect thereof, which reliefs can only be obtained after a full trial of the case. Further, Mr. Simon said that "*should ABIB be struck out as a party, the continuing Injunction obtained against ABIB on March 20th 2006 would*

no longer be enforceable which would put the Claimant at risk in respect of funds/monies currently being held by ABIB and which constitute part of the subject matter of these proceedings.

[32] In view of those submissions, Mr. Simon QC also objected to Court granting ABIB's application to strike it out as a party to these proceedings."

Court's Analyses and Conclusion on ABIB's Application

[33] I have given careful and deliberate consideration to the very helpful submissions made by both Learned Counsel. I have no doubt that the Court is clothed with the power both under its inherent jurisdiction and by virtue of Part 26.3.1 CPR 2000 to strike out a claim if it discloses no reasonable grounds from bringing the action. I also accept the submissions of Learned Counsel Mr. Clarke that Part 19.3.1 of CPR 2000 empowers the Court to strike a party off from a claim.

[34] I however do not accept the arguments advanced by Mr. Clarke in support of ABIB's Amended Claim to have the cause of action against it struck out.

[35] It is well recognized that a Statement of Case is open to attack under CPR 2000 if it sets out no facts indicating what the claim is about. I am in total agreement with the submissions made by the Mr. Simon QC that the Court on reading the pleadings has no doubt what the claim is about and is able to discern the allegations made by the Claimant against ABIB. While I accept that no blame is cast on ABIB this fact by itself does not mean that it is not a proper party to the Claim. While it is not alleged that ABIB was involved in the alleged fraudulent transactions the Claimant clearly alleges that part of the material funds are held by ABIB in the accounts of the Seventh defendant and that monies from GOAB's accounts so held were fraudulently diverted to some of the named Defendants.

- [36] It is well settled that purely technical objections to the form of Statement of Case will not be entertained, provided the Statement of Case is sufficient to allow the other side to have a fair trial. See **Morris v Bank of America National Trust [2000] 1 ALL ER 954**.
- [37] It is also the law that in applications to strike out Statement of Case it is assumed that the facts alleged are true. Authority for this principle is **Morgan Crucible Co PLC v Hill Samuel and Co. Ltd [1991] Ch 295**.
- [38] In **Cornelius v Hackney London Borough Council [2002] EWCA Civ 1073**, an application to strike out a misfeasance claim was dismissed because liability turned on whether an official had abused his public office, which, was a question of fact conjoint, with the Amended Statement of Claim can properly glean the allegations that are made by the Claimant against the Bank.
- [39] In the case at Bar, it seems to me that the Claimant is alleging that ABIB was one of the main instruments through which the persons, who are alleged to have defrauded the GOAB, were improperly able to divert monies that belonged to GOAB. The Claimant also alleges and that ABIB is holding funds in accounts belonging to the seventh named Defendant. As stated earlier, based on these allegations the Claimant sought and obtained an injunction restraining ABIB from making monthly payments to the account of DBSA to Wachovia Bank N.A, in Miami, Florida, USA or to any other accounts in any Bank from any account of the Government of Antigua and Barbuda that is held at ABIB.
- [40] I accept Mr. Clarke's submissions that the Court should strike out a claim where it is unwinnable and where the continuance of the proceedings is without there being possible benefit to the Respondent and would waste resources on both sides See **Harris v Bolt Burdon [2000] 2 L.T.L February 2, 2000**. However, I am afraid that I cannot say that in the alleged circumstances that obtain there would be a waste of resources where the Claimant seeks to have an account made of moneys together with an order for restitution. I also agree with Mr. Simon QC that as part of the reliefs the Claimant seeks against ABIB is to have a perpetual injunction restraining ABIB from making monthly payments to the

- account of DBSA to Wachovia Bank N.A, in Miami, Florida, USA or to any other accounts in any Bank from any account of the Government of Antigua and Barbuda that is held at ABIB.
- [41] In view of the several allegations made by the Claimant, I am afraid that I am unable to say in those circumstances, that the Claimant has failed to disclose a reasonable cause of action against ABIB. Further, I am not of the view that the Claimant's failure to seek a declaration against ABIB in its Amended Claim Form is fatal to its case. In any event, the Claimant seeks such other reliefs as the Court deems just, this would in my respectful view, enable a Court to make any such declaration should it become necessary. I however, agree with Mr. Clarke, by implication that the Claimant ought properly to have sought to obtain declarations against ABIB. I am not of the view that it is too late in the day for the Claimant to do so should the Claimant so desire.
- [42] I am also equally of the view that a Statement of Case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence. See **Bridgeman v McAlpine Brown 2000 LTL January 19, 2000.**
- [43] As stated earlier in the case at Bar, the Claimant has raised several live issues in relation to ABIB and while it has not alleged that ABIB did anything wrong, it has averred that monies were improperly transmitted from accounts held by ABIB to other accounts held by Mr. Rappaport and/or other named Defendants. In addition, the Claimant seeks restitution of monies.
- [44] In view of the above allegations and applying the above stated principles, I am of the view that the interests of justice require that ABIB remain a party to the action.
- [45] Further and with respect, I do not accept Mr. Clarke's submissions in so far as he posits that ABIB is a third party. To the contrary, I find the argument advanced by Mr. Simon QC to be more persuasive in so far as he urged the Court not to strike out the Amended Claim against ABIB on the basis that there exists a reasonable ground for bringing the Amended Claim against ABIB.

- [46] For the sake of completeness, I must state respectfully, that I am not of the view that the Claimant has joined ABIB as a party for the sole purpose of obtaining discovery. Accordingly, ABIB cannot properly rely on the cases of **Wilson v Church** *ibid*.
- [47] It is the law that an injunctive order binds, everyone who is served with a copy and is in possession of the assets which form the subject matter of the injunction. It is also well recognized that a *mareva* injunction has immediate effect on every asset of the Defendant covered by the injunction, because it is a method of attachment which operates in *rem* in the same manner as the arrest of a ship and because any authority which third parties may have to deal with the asset in accordance with the instructions of the Defendant is revoked once such third parties have notice of the injunction See **Z Ltd v A and Others** [1982] 1 ALL ER 557.
- [48] In the case at Bar, based on the allegations that the Claimant has made in relation to ABIB, though not accusing ABIB of any unlawful act itself, by way of emphasis, I am of the considered opinion that the justice of this case requires that ABIB be retained as a party. This, in my respectful view, is necessary to enable the Court to deal with the matter justly and would enable the issues to be properly ventilated. I therefore accept the submissions made by Mr. Simon QC in support of his contention that ABIB is a proper party to the claim. I also accept Mr. Simon's submissions that the Claimant has reasonable grounds for bringing the Claim against ABIB.
- [49] Accordingly, I refuse ABIB's application to have the Amended Claim dismissed or for it to be removed as a party to the Amended Claim.
- [50] In the exercise of my discretion, I make no order for costs against ABIB.

WIOC's Application

[51] WIOC applied to the Court for an order that the Amended Claim against WIOC disclosed no reasonable ground for bringing the Claim. WIOC therefore applied to the Court for the Amended Claim to be struck out.

Claimant's Submissions

[52] The Claimant resisted WIOC's application to have the Amended Claim against it (WIOC) struck out as disclosing no reasonable cause of action. The Claimant argued that WIOC was obligated to remit sums of monies to the Consolidated Fund and in breach of its clear obligation WIOC has failed to do so.

[53] Initially, Mr. Justin Simon QC stated that the pleadings clearly alleged that WIOC had acted improperly. In support of his contention, Mr. Simon QC said that it is the Claimant's case that WIOC unlawfully dealt with monies that belonged to and were owed by WIOC to the Government of Antigua and Barbuda and caused the said monies to be diverted from the Consolidated Fund. Mr. Simon QC pointed the Court to several averments in relation to WIOC.

WIOC's Submissions

[54] Learned Counsel Mrs. Murdoch submitted that the Claimant has failed to establish any cause of action against WIOC. Mrs. Murdoch says the only claims in the Amended Claim Form that are made against WIOC are as follows:

"Paragraph "(8) An account of all monies belonging or owed to the Government of Antigua and Barbuda which unlawfully came into or was dealt with by the hands of theEleventh Defendant on account of the unconstitutional and illegal diversion and use of revenues from the Consolidated Fund on the basis of the fraudulent misrepresentation and/or conduct of the third-named Defendant in dealings and intromissions with the Ministers who are defendants herein;"

Paragraph "(12) An account of all monies which were properly to be paid into the Consolidated Fund by West Indies Oil Company Limited and which were diverted at the instance of the third-named Defendant and those of the other Defendants who were Ministers to his own use as purported and/or or ostensible trustee for the Government of Antigua and Barbuda and at his direction for the benefit of himself and others;"

Paragraph "(13) Restitution of all amounts found to be unlawfully diverted from the Consolidated Fund with interest including compound

interest as is allowed by law, equity, and statute including the Eastern Caribbean Supreme Court Act, Cap.143.”

[55] Further, Mrs. Murdoch argued that what was fatal to the Claimant's purported Amended Claim against WIOC is that in its Amended Statement of Claim the Claimant has failed to allege any wrong doing against WIOC.

[56] The relevant paragraphs of the Amendment Statement of Claim are:

“(11A) The Eleventh named Defendant West Indies Oil Company Limited (WIOC) is a limited liability company incorporated in Antigua and Barbuda in 1964 and was at all material times controlled managed and directed by Bruce Rappaport the third-named Defendant through the instrumentality of National Petroleum Limited the majority shareholder who appoints five of the seven directors on the Board of WIOC;”

“(18) In confirmation of the said instructions, GOAB through the Financial Secretary issued on January 27 1997 an irrevocable letter of instructions to Swiss American National Bank to remit to Bruce Rappaport, the third-named Defendant, the amount of USD403,334.00 from December 31 1996 and every month thereafter for the next 25 years from the funds generated through the West Indies Oil Company Limited (WIOC) the Eleventh-named Defendant consumption tax revenue. Contemporaneous with the said agreement and in contemplation thereof GOAB agreed to an extension of all rights privileges and concessions that had previously been granted to WIOC that were to expire in April 2001 for a further 20 years to April 2021.

“(33A) West Indies Oil Company Limited (WIOC) was liable to pay consumption taxes on its importation of fuel and petroleum products said taxes to be deposited in the Consolidated Fund established by the Constitution of Antigua and Barbuda from which monies could be withdrawn only on the authority of annual Appropriation Acts or other written laws.”

“(33B) Bruce Rappaport the third-named Defendant failed to direct payment of consumption tax revenues into the Consolidated Fund but instead caused and/or directed WIOC to pay consumption tax revenues under purported Ministerial agreements and/or arrangements and/or directives to himself as trustee for GOAB. The said agreements and/or arrangements and/or directives were unconstitutional and illegal and all consumption tax revenues so diverted or expended without the authority of a written law and are repayable to the Crown.”

[57] Mrs. Murdoch submitted that there is no averment that WIOC acted improperly in any way. The only allegations of impropriety are against the former Government functionaries. There is no allegation that WIOC failed to pay its consumption tax revenues or caused the revenues that were paid to the GOAB to be improperly diverted. In fact, WIOC had no control over the revenues that it paid to the GOAB

Court Findings and Analyses

[58] I have reviewed the submissions made by both Learned Counsel and I find the arguments advanced by Mrs. Murdoch to be very persuasive. As the arguments developed, Mr. Justin Simon QC reluctantly agreed with Mrs. Murdoch that the Claimant's averments in so far as they relate to WIOC do not specifically allege any wrongdoing by WIOC. At their highest the pleadings allege that Mr. Rappaport caused the monies to be improperly diverted and that he was enabled by other former public functionaries.

[59] Further, an examination of the Amended Claim Form clearly indicates that the Claimant seeks an account of all monies which were properly to be paid by WIOC into the Consolidated Fund and which were improperly diverted, at the instance of Mr. Rappaport and the Defendants (who were Ministers) for Rappaport's own use and to the benefit of others. The Claimant does not specifically state from whom the account is claimed. While the Claimant seeks restitution of all monies that were unlawfully diverted the gravamen of the complaint in the Amended Statement of Claim is that Mr. Rappaport failed to effect the payment of consumption tax revenues into the Consolidated Fund and he instead purporting to act in pursuance of Ministerial and/or arrangements and/or directives caused WIOC to pay consumption tax revenues to himself as trustee of the GOAB.

[60] Of importance, the Claimant alleges that the matters pleaded in paragraph 18 speak to the unlawful diversion of the consumption tax revenues by WIOC. However, Paragraph 18 of the Amended Statement of Claim states as follows:

“(18) In confirmation of the said instructions, GOAB through the Financial Secretary issued on January 27 1997 an irrevocable letter of instructions to Swiss American National Bank to remit to Bruce Rappaport, the third-named Defendant, the amount of USD403,334.00 from December 31

1996 and every month thereafter for the next 25 years from the funds generated through the West Indies Oil Company Limited (WIOC) the Eleventh-named Defendant consumption tax revenue. Contemporaneous with the said agreement and in contemplation thereof GOAB agreed to an extension of all rights privileges and concessions that had previously been granted to WIOC that were to expire in April 2001 for a further 20 years to April 2021.”

- [61] I agree with Mrs. Murdoch that nowhere in paragraph 18 above is it stated that WIOC did anything wrong. I also accept Mrs. Murdoch submissions that taken at its highest the Claimant’s averment is that either functionaries of the then Government of Antigua and Barbuda or the then Financial Secretary caused certain sums of money to be remitted from the Swiss American National Bank to Mr. Rappaport, and that these were from the funds generated through WIOC’s consumption tax revenue.
- [62] I also agree with Mrs. Murdoch that WIOC’s obligation was to pay the relevant tax and that WIOC appears on the face of the pleadings to have done so. It seems clear to me that there is no allegation in paragraph 18 or otherwise that WIOC owes GOAB any revenues or that it has failed to pay GOAB its (WIOC) consumption tax revenue. There is no allegation that WIOC having paid the consumption tax caused the revenues to be improperly diverted. I am therefore of the respectful opinion that on the face of the pleadings the Claimant has not disclosed that there is no reasonable ground for bringing any claim against WIOC. Indeed the Amended Statement of Claim does not state that WIOC is indebted to the GOAB. Therefore, having read the Amended Claim Form together with the Amended Statement of Claim, I am of the respectful view that the Claimant has not brought any specific claim against WIOC.
- [63] I am therefore to decide what is the appropriate order in the circumstances. I am aware that in deciding whether to strike out, I should consider the effect of the order. I am of the view that **Watson v Ian Snipe and Co [2002] EWCA Civ. 293 LTL 21/2/2002** is distinguishable from the Case at Bar. In that case it was held to have been inconsistent with sound management principles to have struck out the claim against one of the firms, because this added to the overall complexity of the proceedings.

[64] In contradistinction, in the Case at the Bar, the striking out of the case against WIOC, in my respectful opinion, will not add to the complexity of the proceedings. I am of the further opinion that Part 26.3(1)(b) of CPR 2000 is applicable to the Case at Bar. In view of the foregoing, I am of the view that the Claimant's Amended Claim against WIOC should be struck out on the basis that it has failed to disclose any reasonable ground for bringing the action against WIOC. Even if the facts as stated were to be correct, they do not disclose any recognizable claim against WIOC. See: **Taylor v Inntrepreneur Estate (CPC) Ltd (2001) LTL 7/2/2001**

Summary of Conclusions:

[65] The following represents the summary of my conclusions:

- (1) Antigua and Barbuda Investment Bank's application to have Amended Claim struck out is hereby refused. In the exercise of my discretion I make no order as to costs.
- (2) The Attorney General's Amended Claim against West Indies Oil Company Limited is hereby struck out. In the exercise of my discretion, I make no order as to costs.

[67] Based on request of Counsel for Antigua Barbuda Investment Bank, I hereby grant Antigua and Barbuda Investment Bank 30 days leave in order to file and serve its Defence.

[68] I thank all Learned Counsel for their assistance.

Louise Esther Blenman
Resident High Court Judge