ST VINCENT AND THE GRENADINES
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO 377 OF 2006

BETWEEN:

SHARON SPROTT

Respondent/Claimant

AND

[1] CORPORAL 599 FOSTER SCOTT OF THE ROYAL SAINT VINCENT AND THE GRENADINES POLICE FORCE

[2] THE HONOURABLE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES

Applicants/Defendants

Appearances:
Ms Ruth-Ann Richards for Applicants/Defendants
Mr Duane Daniel holding for Mr Jaundy Martin for Respondent/Claimant

.....
2010: February 11, 24; November 8
2011: June 3
.....

Introduction

[1] **LANNS, M**: Pending before the court is an application by the Defendants to strike out the Amended Claim filed in this matter. The application is opposed.

[2] It has been over four years since the Claim Form, Statement of Claim and Defence were filed and served. Since the filing of the Defence, the matter seemed to have languished in the system and only came up for first case management conference three years after the filing of the Defence.

[3] At the first case management conference, held on 18th November 2009, Master Mathurin ordered that the Claimant, amend her claim to exclude the constitutional reliefs sought. The Claimant was given ten days within which to made the amendment.

[4] The Defendants were given permission to amend their Defence, if necessary. The matter was adjourned to 16th December 2009 for further case management.

[5] The Claimant duly filed an Amended Claim Form and Statement of Claim.

[6] To date, the Defendants have not amended their Defence. Nor have they indicated whether or not they intend to rely on the extant Defence.

[7] Instead of amending their Defence, the Defendants filed an application to strike out the Amended Claim two days before the matter was set to be called up for further case management conference. The application to strike was short served and thus, Master Mathurin gave the Claimant leave to respond by 15th January 2010. The Defendants were at liberty to reply if necessary by 21st January 2010. The application was adjourned for hearing on the 11th February 2010.

[8] On 11th February 2010, the application fell to be heard by me.

[9] Both parties addressed the court. They also filed written submissions.

Factual Background

[10] The facts giving rise to the present application as gleaned from the Claimant's Statement of Claim are as follows:

[11] On 11th September 2005, the Claimant was seated in the Departure Lounge of the FT Joshua Airport awaiting the boarding call of Caribbean Airline Flight No 793 scheduled to depart for Saint Lucia at 8:05 am that day. Corporal Scott (now Sergeant Scott) approached the Claimant and identified himself as a police officer and requested to search

her luggage for drugs. The Claimant denied involvement in drugs but consented to the search. She informed Corporal Scott of her departure time and of the importance of her being able to make her connection to Canada.

[12] Corporal Scott then took the Claimant to an enclosed room at the airport where he and another police officer proceeded to search the Claimant's luggage. By the time they were, done, the aircraft was on the ground and passengers were already boarding. Corporal Scott insisted on another search. He then took the Claimant and her luggage to the Arnos Vale Police Station. There, Corporal Scott and other police officers took apart the Claimant's suitcase, having emptied it of its contents. As a result, the suitcase was damaged beyond repair.

[13] The Claimant was then taken to another room where Woman Police Constable Kharla Burgin (WPC Burgin) was present. She was wearing latex gloves. WPC Burgin told the Claimant to remove all her clothing and squat three times. The Claimant expressed her displeasure but WPC Burgin told her in no uncertain terms that she had no choice. The female officer conducted an intimate search of the Claimant's person. By the time she was finished, it was about 9:00 a.m.

[14] The Claimant was then taken to the Milton Cato Memorial Hospital and told that she had to undergo an X-ray examination. The Claimant again voiced her displeasure, but she was met with the response that she had no choice or she will be forced. By the time the X-ray examination was completed, it was well past 11:00am. Caribbean Airline Flight No 793 would have long departed.

[15] In the end, no cocaine was found – not on the Claimant's person – not in her luggage - and nothing unusual showed up in the X-ray. The Claimant was eventually taken to her home and released.

[16] The Claimant asserts that she endured a horrifying and prolonged period of detention over and beyond what is permitted by the law in the circumstances. Her privacy was invaded.

She suffered embarrassment. She felt humiliation and anxiety. She suffered loss and damage as a result of the conduct of the Defendants.

[17] Furthermore, the Claimant was unable to board her flight to Saint Lucia. So she was unable to make the connection to Toronto to attend her cousins wedding and a family reunion.

[18] Hence the suit.

The application

[19] The application to strike was filed on 14th December 2009. It was supported by the affidavit of Judith Jones-Morgan, (the Hon. Attorney General), as well as the Affidavit of Corporal Scott. WPC Burgin also swore to an affidavit in support of the Defendants' Notice of Application to strike.

[20] Five grounds of application have been advanced. They are lengthy, spanning 5 pages. They may be summarized thus:

(1) The Claimant's statement of case does not disclose reasonable grounds for bringing the claim, because, based on information received from Senior Officer Michael Charles, Corporal Scott had reasonable suspicion to believe that the Claimant may have been in possession of cocaine.

(2) Sections 24 (2) and 24(6) of the Drugs Prevention and Misuse Act Cap 219, clothed Corporal Scott with authority to search the Claimant's luggage and the Claimant's person where there are reasonable grounds to believe that a person is in possession of a controlled drug. As well, Sections 11 and 12 of the Police Act Cap 280 give Corporal Scott authority to exercise general powers of search for the purpose of detecting and preventing crime.

(3) The statement of case fails to comply with a rule pursuant to Part 26.3(1)(a) in that the Claimant **served Corporal Scott** with notice of intention to bring proceedings but failed to serve the Attorney General with notice of intention to bring proceedings in 2006. The Claimant failed to serve the required notice two calendar months prior to the institution of proceedings as mandated by section 3 of the Act. The Claimant has failed to prove notice as required by Section 5 of the Act

(4) The matter should be struck out so as to further the overriding objective of the rules to facilitate the just disposal of the matter, to save expense and to expedite the matter.

(5) The court has an inherent jurisdiction to exercise case management powers relating to the application.

[21] Grounds 1 and 3 seem to be the substantive grounds.

[22] The affidavit of the Hon Attorney General in support of the application restates the grounds of the application.

[23] However, the supporting affidavits of Corporal Scott and WPC Burgin made no mention of Rule 26.3. Nor did they address the issue of Notice under the Public Officers Protection Act. Rather they focused on issues of fact and law pertaining to the substantive case for the Defendants including the evidence. I summarize their contents:

[24] Sergeant Scott's Affidavit consists of 72 paragraphs, of 9 pages, plus exhibits, while WPC Burgin's consists of 27 paragraphs of 4 pages.

[25] The officers tell of their rank and position in the Police Force, the intelligence received, the retrieval of the Claimant's luggage from the aircraft; the searches carried out of the Claimant's luggage; the manner of search; the specifications of the scanner used; how the

scanner works; how the scanning was carried out; the result of the scanning; the transporting of the Claimant to the Arnos Vale Police Station; the direction given by Officer Scott to Officer Burgin to search the Claimant's person; the results of the search of the Claimant's person; that the strip search was carried out as a matter of routine policy; the responsiveness of the Claimant to the various requests for search; the escort to the Milton Cato Memorial Hospital to be X-rayed; the consent of the Claimant to be X-rayed; the result of the X-ray; further scanning of the Claimant's luggage; the escort of the Claimant back to the Airport and eventually to her home.

[26] In paragraph 71 of his affidavit Corporal Scott deposed that he was advised and do verily believe that as a consequence of the above facts, the Claimant's claim discloses no reasonable grounds to bring the claim.

[27] I pause here to note that the application to strike did not say expressly which Claim the Defendants were seeking to strike out – whether it was the original claim or the amended claim. However, at a further hearing, learned counsel for the Defendants, Ms Richards confirmed that the application was intended to be an application to strike out the Amended Claim and Statement of Claim.

[28] These proceedings had progressed to the stage of the first case management conference. By order of Master Mathurin, the Claimant has filed and served an Amended Claim and Statement of Claim. The Defendants, on the other hand have not yet complied with the Order to file an amended Defence, if necessary. And, as previously stated, they have not indicated whether or not they intend to rely on the extant Defence. In the absence of such notification, the inference to be drawn is that they intend to rely on the extant Defence.

[29] Perhaps it can be said that the time for filing an Amended Defence could not run because the application to strike was filed before the time to file the amended Defence had expired, **(St Kitts Nevis Anguilla National Bank v Caribbean 6/49).** However, the time for the Defendants to file an acknowledgement of service of the Amended Claim has certainly

expired; so the Defendants may be entitled to apply for a judgment in default of Acknowledgement of Service in relation to the amended Claim.

The power to strike

[30] The power to strike out a pleading which does not disclose any reasonable ground for bringing the claim is conferred by Part 26.3 (1) which provides:-

> "26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case under Rule 26.3 (1) (b) and (c), if it appears to the court that-
>
> (a) there has been a failure to comply with a rule, practice direction order or direction given by the court in the proceedings;
>
> (b) that the statement of case discloses no reasonable grounds for bringing the claim;
>
> (c) that the statement of case is an abuse of the court's process or is likely to obstruct the just disposal of the of the proceedings; or
>
> (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[31] The fact that a judge or a master has that power does not mean that the initial approach will be to strike out the statement of case. In many cases there will be alternatives which enable the court to deal with cases justly without taking the draconian step of striking the case out (**Biguzzi Rank v Leisure plc** [1999] 1 WLR 1926).

[32] The decision in **Williams and Humbert Ltd v W and H Trademarks (Jersey)** Ltd [1986] AC 368 makes the point that the jurisdiction to strike out must be sparingly used, as its exercise deprives a party of the normal procedure for establishing rights by way of trial without discovery and oral evidence tested by cross examination.

[33] In this jurisdiction, the judgment of Sir Dennis Byron, CJ as he then was, in the case of **Baldwin Spencer v The Attorney General of Antigua et al** (Civil Appeal No 20 A of 1997), is instructive. He cautioned:

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

[34] More recently in **Ian Peters v Robert George Spencer**, Antigua and Barbuda Civil Appeal 2009/016, the Hon Mde Janice George Creque, JA quoted the Hon Mde Ola Mae Edwards in **Citco Global Custody NV v Y2K Finance,** BVI Civil Appeal No 22 of 2009 as saying:

> '[18] On hearing an application made pursuant to CPR 26.3 (1) (b) the trial judge should assume that the facts alleged in the statement of case are true. Despite this general approach, however, care should be taken to distinguish between primary facts and conclusions or inferences from those facts. Such conclusions or inferences may require to be subjected to closer scrutiny."
>
> "Among the governing principles stated in **Blackstone's Civil Practice 2009,** the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit of plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its

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

[35] It is perhaps relevant to note that the English Rule 3.4 (2) (a) and (b) are almost on fours with the rules under consideration. According to the UK Practice Direction 3 A the cases which fall under 3.4 (2) (a) include claims which set out no facts indicating what the claim is all about, for example "Money owed **£5000. 00";** those which are incoherent and make no sense; those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognizable claim against the defendant.; those that are vexatious, scurrilous or obviously ill-founded.

[36] Additionally, the Civil Court Practice 2007 (the Green Book) instructs that "when deciding whether or not to strike out, the Court [must] take into account all the relevant circumstances and make a broad judgment after considering the available possibilities."

Is Ms Scott's claim deficient in any way?

[37] The required contents of a statement of case are set out in the Rules of Court. In CPR 8.7 (1) and (2) it is prescribed

> "The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies ... The statement should be as short as possible."

[38] I have examined Claimant's statement of case and I am fortified in my opinion that the Claim Form, Statement of Claim set out a coherent set of facts and are sufficiently

particularized in respect of the reliefs sought. I take the view that on the face of the Claimant's pleadings, it cannot be said that they disclose no reasonable ground for bringing the claim. She has set a concise set of facts which can establish that she has suffered loss and damage, as a result of the strip search as well as the search of her luggage. These facts may be subject to closer scrutiny. The court is not inclined to deprive the Claimant of her right to a fair trial, and her ability to strengthen her case through the process of disclosure and other court processes such as witness statements and cross examination.

[39] I therefore find and hold that ground 1 of the application has no merit and thus I refuse to set aside the claim under 26.3(1) (b).

[40] I now turn to the issue as to whether the claim should be struck out for failure to give the requisite notice in accordance with the Act.

Relevant Statutory Provisions

[41] Sections 3 and 5 of the Public Officers Protection Act provide:

> "3. No action shall be brought against any public officer for anything done, or purported to be done in the exercise of his office unless and until two calendar months after notice in writing has been delivered to him or left at his usual place of residence with some person there, by the party who intends to bring such action or his legal practitioner or agent, and in every such notice shall be clearly and explicitly stated---
>
> (a) the cause of action;
>
> (b) the name and address of the person who is bringing the action; and
>
> (c) the name and address of his legal practitioner or agent , if any,
>
> and no evidence of the cause of such action shall be produced, except in so far as the cause of action has been spelt out in the notice."

5. In every proceeding for an action as referred to in section 3, it shall be incumbent upon the party bringing the action to prove –

(a) that the notice as required under section 3 has been given;

(b) that the action has been brought within the time specified in section 4; and

(c) the cause of action;

and upon the failure to establish any of the same, the action shall be dismissed or otherwise terminated and a verdict shall be given against the person who brought the action, with or without costs."

Are the Defendants Public Officers?

[42] Section 2 of the Act defines "public officer" to mean "any person holding any public office (which shall include the office of a minister) in Saint Vincent and the Grenadines, whether permanent or temporary and whether with or without salary or remuneration."

[43] That the Defendants are all public officers, there is no dispute. They are all public officers, who are employed by the government and are paid by the State of St Vincent and the Grenadines

Have the Public Officers been served with Notice?

[44] This issue is addressed in paragraph 12 of the Original Claim, and the Amended Statement of Claim, the Affidavit of the Hon Attorney General filed in support of the applications to strike, and the Affidavit of Mr Derick Black (Mr Black) in opposition to the application to strike.

[45] In paragraph 12 of the Statement of Claim, the Claimant pleaded service of the notice in the following terms:

"On the 7th day of October 2005, the Claimant through her solicitors issued the Defendant with notice in accordance with the provisions of the

Public Officers Protections Act. A copy of the notice is exhibited hereto marked "A".

[46] Alas! no such notice was exhibited.

[47] The Hon Attorney General swore an affidavit stating that she has not been served with notice of the proceedings as required under section 3 of the Act. The relevant paragraph is reproduced hereunder:

> "14. ... [A]lthough the Claimant through her attorney claims to have served the First Defendant with notice of intention to bring proceedings, the Claimant ... failed to serve the Attorney General's Chamber with the requisite notice of intention to bring proceedings against the Government of St Vincent and the Grenadines."
>
> "15. The Attorney for the Claimant has failed to comply with sections 3 and 5 of the Public Officers Protection Act."

[48] The Claimant filed an answering affidavit sworn to by one, Mr Black, a Law Clerk in the Chambers of the Claimant's solicitor. This affidavit specifically addressed the issue as to notice. It sought to confirm that notice was in fact served on Corporal Scott and the Hon Attorney General. The relevant paragraph reads:

> "6. The records show that the notice dated the 7th day of October 2005 [was] served upon the Honourable Attorney General, Corporal Foster and the Commissioner of Police on the 12th day of October 2005. The record shows that the documents were signed for as having been received."
>
> "7. A true copy of the notice dated the 7th day of October 2005 and an extract from the records of service are now produced and shown to me and are exhibited hereto marked DB1 and "DB2"."

"9 ... I am advised that there is sufficient evidence available to prove that notice was appropriately given pursuant to the Public Officers Protection Act."

[49] The Defendants' reply to Mr Black's affidavit was in the form of a document captioned **"Further Notice of Application in support of the application to Strike out the Claimant's Claim".** It was filed on 24th February 2010. This 'Further Notice of Application' was supported by a further affidavit of the Hon Attorney General. In that affidavit, the Attorney General referred to the documents exhibited to Mr Black's affidavit and pointed out what she opined as defects therein.

Discussion and decision

[50] The only issue left to be decided on the application to strike is whether or not notice was given, and if so whether or not the notice was defective. No notice or defective notice is fatal. (**Peter Clarke v The Attorney General** – Claim No SLUHCV1999/0475)

[51] Sections 3 and 5 of the Public Officers Protection Act are concerned with the issue of notice of intended proceedings against public officers.

[52] Where proceedings are contemplated against a public officer, the intended Claimant must give the intended Defendants two months notice of those proceedings. The notice must contain the information set out in section 3 of the Public Officer's Protection Act. The Defendants allege that the notice as shown in Exhibit "DB1" is defective because it does not explicitly state the cause of action, and the name and address of the Claimant.

[53] Exhibit "DB1" is a letter dated 7th October 2005, addressed to the Commissioner of Police and copied to the Hon Honourable Attorney General, Sharon Sprott and Corporal Foster Scott.

[54] It will be instructive to reproduce the contents of the letter.

"October 7, 2005

The Commissioner of Police
The Police Headquarters
Bay Street
Kingstown
SAINT VINCENT AND THE GRENADINES
Dear Sir,

We are the Solicitors for Ms Sharon Sprott of Redemption Shapes in the State of St Vincent and the Grenadines.

Our client instructs that on Sunday the 11th day of September 2005 at about 7:30 a.m. she arrived at the FT Joshua Airport with the intention of boarding a Caribbean Star Airline Flight #792 to St Lucia with connection to Toronto, Canada. After she had cleared immigration and was about to enter the waiting area, Corporal Foster Scott of the Narcotics Division of the Royal Saint Vincent and the Grenadines Police Force identified himself to our client and requested permission to search her luggage. Our client readily consented but informed Foster Scott that her flight was due to depart at 8:05 a.m. and that if she missed it she would lose her connection to Canada. She further informed him that her ticket was non-refundable.

Constable Scott took our client and her luggage into an enclosed room at the airport where he proceeded to conduct a search of her luggage in the presence of another male police officer. At the conclusion of the search Corporal Scott and the other officer without having regard to our client's flight departure, escorted her to the Arnos Vale Police Station where he took apart her suitcase without her consent thereby rendering it permanently damaged.

Our client was then taken into a separate room where a female police officer was present. That officer commanded our client to remove all her clothing. In the absence of a doctor she then proceeded to conduct a full cavity search.

After this, our client was transported to the Milton Cato Memorial Hospital where an X-ray examination was performed on her without her consent. At the time it was well past 9:00a.m. After the X-ray results were obtained our client was released. By this time, it was well past 11:00a.m.

Our client went through a very horrifying ordeal during which the only person who identified himself was Corporal Foster Scott. During it our client's liberty was curtailed, there were many trespasses to her person over and above all what is permissible in law and she has suffered loss and damage.

To date her losses have been calculated as follows:

(a)	Cost of air ticket	$1,699.00
(b)	Airport Service Charge	$ 40.00
(c)	Value of suitcase	$ 120.00
	Total	$1,759.00

We are of the view that this matter can be resolved without resorting to litigation. As such, although we believe that we would be able to obtain a much higher award of damages through litigation we are suggesting an amount of $5000.00 as damages in addition to the amount of $1,759.00 itemized above plus costs as per CPR 2000.

We would appreciate if you can indicate your position within fourteen (14) days of receiving this letter.

We have in the meantime copied this letter to the Attorney General.

If in any event we do not receive a reply within the prescribed time we shall pursue our alternatives as is appropriate.

In that event, this letter shall stand as notice pursuant to the provisions of the Public Officers Protection Act Cap 209 of the Laws of St Vincent and the Grenadines Revised Edition 1990.

Thanking you for your urgent attention.

Yours sincerely
MARKS, MARTIN & ASSOCIATES
PER: JAUNDY O.R. MARTIN

C.c. - The Honourable Attorney General of Saint Vincent and the Grenadines
- Sharon Sprott
- Corporal Foster Scott of the Narcotics Division of the Royal Saint Vincent and the Grenadines Police Force."

[55] It is evident to me that this letter, though not addressed directly to the Attorney General or Corporal Scott, and though on the face of it appears to be a letter before action, contains all the elements of the notice required by Section 3 of the Act and I so find.

[56] The solicitors address is stated boldly in the Letter Head. The Claimant's address is set out in Paragraph 1 of the letter. The intended cause of action can be easily discerned from paragraphs 6, 7 and 8 of the letter. And the penultimate paragraph indicates that the letter is intended to stand as a section 3 notice.

[57] Now, it must be remembered that the Statement of Claim was amended by court order of Master Mathurin. It would appear that the Defendants position is that the Claimant was required to given them notice of the filing of the Amended Claim and Statement of Claim,

in a situation where they were ordered to amend the Claim within a specific period of time. If that is the case, then one must again refer to the letter by which notice is said to have been given, and which the Defendants claim to have been defective notice. Learned counsel for the claimant, Mr Martin insisted that the requisite notice had been given. He pointed to the letter and the office mail book with signatures of recipients of the letter.

[58] Even if it can be said that that letter was defective, in that it was not addressed to the Hon Attorney General or to Corporal Scott, or fails to explicitly set out the cause of action, the Defendants were in fact given notice, or did in fact have knowledge of the proceedings since 19th September 2006 as evidenced by the endorsement of the Claim by one, Michele Maloney of the Attorney General's Chambers, on 13th September 2006; second, by the Acknowledgement of Service of the original Claim Form and Statement of Claim filed on 29th September 2006, third, by the subsequent filing of a joint Defence way back in October 2006.

[59] The Act does not require the notice to be in a precise format. So I am of the view that both the letter dated 7th October 2005 and the original claim filed 4th September 2006 adequately provided the requisite notice which the Act calls for since they contain the relevant information required by the Act.

[60] In the circumstances, I do not agree that the Defendants have not been given notice of the proceedings. I find that in the circumstances of this case, notice of the intended proceedings had been given to the both Defendants 4 years ago on two separate occasions, in two different formats.

[61] I am fully aware of the learning and principles in respect of the issue of notice set forth in the cases of: **Peter Clarke v The Attorney General** – Claim No SLUHCV1999/0475; **Richard Mac Leish et al v Donald John and the Attorney General-** Civil Suit No 305 of 1998 – St Vincent and the Grenadines); **Castillo v Corozal Town Board** (1983) 37 WIR; and **Life Rafts and Inflatables Centre (St Lucia) Ltd v The Honourable Attorney**

General et al, Claim No SLUHCV2005/0593; **Ricardo Bascombe** v **The Attorney General of St Vincent and the Grenadines et al** Claim No. 302 of 2007.

[62] However, given the peculiar facts and circumstances of the instant case, I do not think that I should follow those cases slavishly or wholeheartedly.

[63] Despite my finding that notice had been given to the Defendants, it would be for the Claimant to prove at the trial that the requisite notice had been served. As the court in **Mac Leish** (supra) and **Castillo** (supra) observed, Section 5 is not a matter for pleading. Proof has to be given at the trial the same way as proof of any fact in issue relevant to the action has to be given. The onus will be on the Claimant to provide the proof. If the Claimant fails to prove at the trial that she has given notice of the proceedings under section 3 of the Public Officer's Protection Act, the trial judge will have no discretion in the matter and will be bound to enter judgment for the Defendant with or without costs.

[64] I am of the view that the Claimant will be able to prove at the trial that notice had been given or served as required by section 5 of the Public Officers Protection Act.

[65] In the result, the application to strike out under sections 3 and 5 the Public Authorities Protection Act is refused.

[66] This matter has been met with considerable inordinate delay and should proceed speedily to trial on the issues. I therefore propose to order that the Defendants file their amended Defence, if necessary within 7 days of today's date or notify the court as to whether they intend to rely on the extant Defence filed on 23rd October 2010, in which case the matter will proceed to further case management conference after the time for filing of a Reply has expired.

[67] Notwithstanding all of that, I am of the opinion that this case is a good candidate for mediation. Therefore, I invite the parties to consider mediation in an effort to save time and expenses.

Conclusion

[68] **IT IS HEREBY ORDERED** that:

[1] The application to strike out the Amended Claim be and the same is hereby refused.

[2] The Defendants shall file and serve an amended Defence, if necessary within 7 days of today's date.

[3] The Claimant may file and serve a Reply to the amended Defence, if necessary, within 14 days of service.

[4] Thereafter, the matter shall proceed to case management conference.

[5] The Defendants shall pay the Claimant costs of an incidental to the application to be assessed if not agreed.

[6] Notwithstanding paragraph 4 of this Order, the parties are at liberty to apply jointly for a mediation referral order before the amended Defence is filed.

[69] I am grateful to both counsel for their helpful submissions and appreciate their patience and understanding.

Pearletta E. Lanns
Master