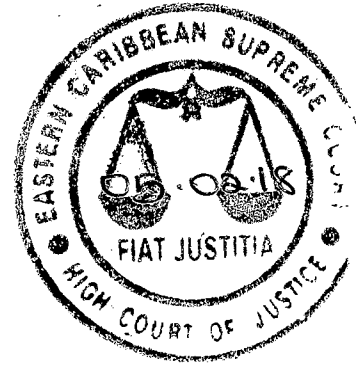


**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES**



**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **SVGHCV2011/0382**

Between

MAC Construction INC

Claimant

and

**BAF Financial & Insurance (Bahamas) Limited
Formerly British American Insurance Company Ltd.**

Defendant

Before:

Ms. Agnes Actie

Master

Appearances:

Mr. Samuel Commissiong for the claimant

Mr. Grahame Bollers for the defendant

2018: February 5

RULING

ON WRITTEN SUBMISSIONS

1. **ACTIE M.:** On 7th October 2011, the claimant filed a claim against the BAF Financial & Insurance (Bahamas) Limited formerly British American Insurance Company Limited for money due and owing under a under a building contract.
2. In an application dated 14th October 2011, British American Insurance Company Limited (in Judicial Management) applied to strike out the claim with costs. The applicant contends that the claim was brought in violation of a Court Order dated 30th July 2009. The Order directed that the affairs, business and property of British American Insurance Company Ltd in Saint Vincent and the Grenadines be placed in Judicial Management. Paragraph 5 of the Order provides that all actions, proceedings and any claims whatsoever and whosoever initiated against the company be stayed

and no person, shall bring or continue with a claim or proceeding against the company without leave of the court.

3. The claimant acknowledges that leave is required to file a claim if a company is under Judicial Management. However, counsel contends that the defendant company with which the claimant entered into a contract is a separate and distinct entity from the company which has been placed under Judicial Management and as a result, the claimant does not require leave to pursue its claim.
4. Before proceeding with the substance of this application, I would like to express my sincerest apologies to the parties for the inordinate delay in dealing with this application. The matter came on before the court on 11th December 2013 at which counsel for the claimant requested and the court granted an extension of time to 12th December 2013 to file submissions and authorities in reply to the application to strike out. The order directed that the matter was to be determined on paper. The claimant filed the submissions but the court office did not bring the matter to my attention neither was the matter listed on the roster for the next master's sitting. It was only on 14th December 2017 that the Registrar of the High Court brought to my attention a letter from counsel for the claimant making enquiries about my decision on the matter. The matter should have been listed for determination on the next available sitting after the last order made in December 2013 after the submissions were filed or the file and submissions should have been made available to me at the earliest to avoid this protracted delay.

Whether the claimant's statement of case should be struck out?.

5. CPR 26.3 grants the court an express discretion whether or not to strike out. Striking out is limited to plain and obvious cases where there was no point in having a trial. The striking out of a statement of case has been described as draconian as it deprives a party a right to trial.
6. The defendant avers that the defendant company (BAICO) is incorporated in Bahamas and registered as an external company in Saint Vincent & the Grenadines with licence to conduct long term insurance business. The defendant contends the claimant is seeking to confuse the court as BAICO is a subsidiary of CL Financial Ltd, a Trinidad and Tobago conglomerate which experienced liquidity problems in 2009 and was placed in judicial management by the Supervisor of Insurance.

7. The parties in this claim have raised issues of disputed facts which are to be resolved after full disclosure. The defendant has filed a defence since its application to strike out. The defence admits the claim but contends that the defendant is in Judicial Management and the exact amount owed to the claimant has not been independently confirmed by the Judicial Manager.
8. The only issue left to be determined is whether the company, British American Insurance Company in (Judicial management) and BAF Financial & Insurance (Bahamas) Limited are distinct or one of the same as contended by the respective parties. This can be achieved after full disclosure of all the relevant documents to prove the parties assertions.
9. In considering applications to strike out a statement of case, the Court ought to bear in mind that "so long as the statement of claim or the particulars disclose some cause of action, or raises some question fit to be decided by the judge or jury the mere fact that the case is weak and not likely to succeed is no ground for striking out" See **Wenlock -v-Maloney [1965] 2All E R 871 (CA)**.
10. To strike out the claim at this point will deprive the claimant its ability to strengthen its case through the process of disclosure and other court proceedings. The evidence when produced will establish whether or not the claimant requires leave to proceed with its claim.
11. I am of the view that the claimant should not be shut out at this point with the draconian sanction of striking out. The pleadings are now closed and the claim should be listed for case management conference to progress the matter to pre-trial review stage at which time all the necessary evidence will be before the pre-trial review Judge to facilitate the determination of any further applications, if necessary.

ORDER

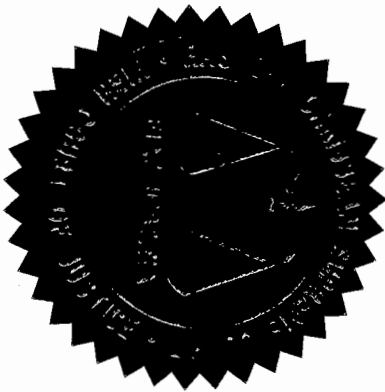
12. In summary and for the reasons given above it is hereby ordered;
 - (1) The defendant's application to strike out the claimant's statement of case is dismissed.
 - (2) Costs in the cause

(3) The mater shall be listed for case management conference on a date to be arranged and notified by the court office.

13. Once again I wish to extend my profound apologies to the parties.

AGNES ACTIE

MASTER



BY THE COURT
REGISTRAR'S OFFICE
[Handwritten Signature]
ST. VINCENT AND THE GRENADINES
REGISTRAR