THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

SLUHCV2016/0398

BETWEEN:

VANYA EDWIN-MAGRAS

Claimant

and

ST LUCIA ELECTRICITY SERVICES LIMITED

Defendant

APPEARANCES:

Rowana Kay Campbell and Renee St. Rose for the Claimant
Mark Maragh, Esther Greene-Ernest and Shervon Pierre for the Defendant

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2018: March 12th
March 13th

DECISION

[1] **Smith J:** The Claimant claims damages in negligence against the Defendant arising from an electrical fault which occurred on 16th June 2015 resulting in damage to the Claimant's Viking refrigerator. The Defendant denies that it was negligent and alleges that the failure of the refrigerator to cool properly was not as a result of the electrical fault but because of a malfunction of the refrigerator that existed prior to the electrical fault that occurred on 16th June 2015.

Does Claim Have any Prospect of Success?

[2] At the start of the trial, the Defendant took a preliminary objection, which was foreshadowed in its pre-trial memorandum filed on 29th November 2017, that the Claimant has failed to establish a recognizable claim against it in negligence and it therefore has no case to answer. Specifically, the Defendant states that, among the particulars of negligence pleaded, the only matter pleaded that amounts to a cognizable particular of negligence is at 10 (a) of the statement of claim: "Failure to ensure that their transformers were in good and proper working condition, especially since this was not the first fault occurring at the Claimant's house."

[3] I agree with Mr. Maragh, counsel for the Defendant, that the other matters pleaded as particulars of negligence such as "failure to replace the refrigerator immediately", "failure to provide adequate fridge space of the same size", "inability to stock up perishable items" and "general inconvenience" cannot amount to particulars of negligence but are really the consequences of the alleged negligence or the loss suffered by the Claimant.

[4] Clearly, the allegation at paragraph 10 (a) of the statement of claim that there was "failure to ensure that their transformers were in a good and proper working condition, especially since this was not the first fault occurring at the Claimant's house" is sufficient particulars of negligence to ground a claim in which it is specifically pleaded in the claim form that it is a claim in negligence. Mr. Maragh's complaint, as I understand it, cannot be that there is no recognizable claim (as set out in the Defendant's pre-trial memorandum) but rather that nowhere in any of the Claimant's witness statements is there any evidence related to the state of the Defendant's transformers so that the Claimant has no realistic hope of succeeding with its claim. This is what I understood his argument to be at the start of the trial. Indeed, a perusal of each of the witness statements filed in this matter discloses no evidence whatsoever – not even an oblique reference – to the Defendant's transformers. This is an attack that strikes at the heart of the Claimant's case

since, at this juncture, it is too late to adduce any new evidence as to the condition of those transformers.

[5] Ms. Campbell, counsel for the Claimant, responded that, in its defence, the Defendant admits there was an electrical fault, which caused some damage to the Claimant's refrigerator so that it is not necessary to adduce any evidence in relation to the transformers. Paragraph 4 of the Defendant's defence is as follows:

> "Paragraph 4 of the Statement of Claim is vehemently denied. The Defendant contends that the fault which occurred on 16th June, 2015 caused only a burnt fuse to the Claimant's refrigerator which was replaced, putting the refrigerator in the state it would have been in had the electrical fault not occurred."

[6] Further at paragraph 12 of its defence, the Defendant pleads that:

a. "Any damage caused to the Claimant's refrigerator by the electrical fault occurring on 16th June 2015 was repaired by the Defendant.

b. The refrigerator was therefore placed in the state that it would have been had the electrical fault not occurred."

[7] And the Defendant's witness, Allison Marquis, says at paragraph 7 of his witness statement:

> "I immediately contacted the Defendant's 'Trouble Call Unit' who confirmed that there had been an interruption in the supply of electricity to the Claimant's residence on that date."

[8] From those pleadings, taken together, it is plain that the Defendant is accepting that there was an electrical interruption or fault, which caused a burnt fuse to the Claimant's refrigerator. The Defendant goes on to state that it replaced the burnt fuse thereby putting the refrigerator in the condition it was prior to the fault. If the Defendant had pleaded that its transformers were in good working condition, put the Claimant strictly to proof and left it at that, the Claimant might have continued to bear the burden of proving that the transformers were not working properly.

[9] But the Defendant, having volunteered or otherwise accepted in its defence that an electrical interruption caused some damage to the Claimant's refrigerator, relieves the Claimant of the necessity of establishing that the transformers were not working properly. What remains to be decided is whether the electrical fault caused the refrigerator to not cool properly even after the burnt fuse was replaced or whether, as contended by the Defendant, the cooling problem pre-existed the electrical fault. The Defendant's case is that a thermostat that was not part of the original manufacturer's design was retrofitted to the refrigerator, which caused the cooling problem prior to the electrical fault. The Defendant, through its pleadings, has isolated the issue to be determined as whether the electrical fault caused the cooling problem or whether it was the retrofitted thermostat that caused it. The question of the state of the Defendant's transformers has therefore been completely eclipsed by what the Defendant pleaded and accepted in its defence.

[10] I therefore find that the Claimant has a cognizable claim and there is no basis to strike it out as disclosing no reasonable cause of action or as having no realistic prospect of success based on the state of the evidence.

Res Ipsa Loquitor

[11] Ms. Campbell also raised the maxim of *res ipsa loquitor* ("the thing speaks for itself") as an answer to the Defendant's assertion that there was not a sufficient cause of action made out on the pleadings. Since I have already found that the Claimant has a cognizable claim, there is no necessity to make a determination on this point. Nevertheless, since counsel both spent considerable time on it, I will attempt to deal with the point succinctly. Mr. Maragh responded that the Claimant, not having pleaded *res ipsa loquitor*, it could not be raised now at the start of the trial and that, based on the **Civil Procedure Rules** (CPR) Part 8.7, the Claimant would had to have pleaded it.

[12] In **Grenada Electricity Services Limited v Isaac Peters**[1], Byron CJ stated:

> "[26] The doctrine is set out in 33 Halsbury's Laws of England Fourth Edition (Reissue) Paragraphs 664-668. The basic proposition is set out at Para 664:
>
> > 'Under the doctrine of *res ipsa loquitor* a plaintiff establishes a prima facie case of negligence where (1) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; and (2) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety. There must be reasonable evidence of negligence. However, where the thing which causes the accident is shown to be under the management of the defendant or his employees, and the accident is such as in the ordinary course of things does not happen if those who have management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care."

[13] There is no dispute as to the circumstances where *res ipsa loquitor* may be raised. The relevant question is whether the maxim ought to have been pleaded in order to now be relied upon.

[14] Ms. Campbell relied on **Bennett v Chemical Construction (GB) Ltd**[2] as authority for the proposition that *res ipsa loquitor* does not have to be pleaded in order to be relied upon. In that case, Davies LJ stated:

> "I can say at once that I entirely agree with that conclusion of the learned judge. Counsel for the defendants has strenuously argued that really there was no evidence on which the judge could make a finding of negligence, since the plaintiff had failed to prove how the accident happened. He went further and said that it would be quite wrong for this court to approach the case on the basis of the well-know doctrine of res ipsa loquitur. He pointed out that, although it had been indicated in correspondence before the trial that the plaintiff was going to reply on that doctrine, no amendment to the pleading was made; and the learned judge never himself referred to res ipsa loquitur.

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[1] Grenada, Civil Appeal No. 10 of 2002.
[2] [1971] 3 All ER 822.

> In my view it is not necessary for that doctrine to be pleaded. If the accident is proved to have happened in such a way that prima facie it could not have happened without negligence on the part of the defendants, then it is for the defendants to explain and show how the accident could have happened without negligence. As I have said, they made no attempt to do that in this case. In my judgment this is really a classic case of res ipsa loquitur. Here one has the panel being moved by the defendants' men, and it falls. It should not have fallen. The defendants might, as Edmund Davies LJ said in the course of the argument, if it were so, have called evidence to show that one or more of the men had a sudden stroke or something of that kind, which no one could foresee. But there the panel fell, and I entirely agree with the learned judge that it could not possibly have fallen without some negligence on the part of the defendants.
>
> I have said that in my opinion it is not necessary to plead res ipsa loquitur. If the facts pleaded and the facts proved show that the cause of the accident was apparently and on its face some negligence, that is sufficient…"

[15] I do not find myself able to agree with Mr. Maragh when he submits that **Bennett** is a 1971 case which cannot prevail over the CPR 2000 which at Part 8.7 requires the Claimant to set out its case. Part 8.7 is as follows:

> "**8.7 Claimant's duty to set out case**
> (1) The claimant must include in the claim form or in the statement of claim a statement of all facts on which the claimant relies."

[16] I cannot, on a plain and ordinary reading of Part 8.7, discover any requirement or implied requirement that any maxim, doctrine or principle of law must be pleaded. It is expressly confined to "all of the facts on which the claimant relies". I therefore find that a claimant in Saint Lucia can raise the maxim without having pleaded it.

[17] I make the following matters clear. Firstly, I make no finding that *res ipsa loquitor* is a principle of law or that it raises any presumption. Indeed I think it is merely a maxim or a guide that might help to identify when a prima facie case is being made out. Secondly, reliance on the maxim raises an inference of negligence, in the absence of an explanation from the Defendant that the electrical fault that damaged the refrigerator arose from a want of care. Thirdly, I make no finding that

raising the maxim reverses the burden of proof. In the case at bar, the Defendant has offered an explanation for the failure of the refrigerator to cool. They say it is because of a retrofitted thermostat that was not part of the refrigerator's original design. The Claimant will not therefore be able to rely on the maxim in the circumstances of this case.

Expert Evidence

[18] Precious court time was dissipated on the question of whether the Claimant could attempt to rely on the witness statement of Mr. Edmund St. Mark as expert evidence. Finally, after the Court intervened, counsel for the Claimant, in answer to a question put by the Court, responded that the Claimant does not seek to rely on Mr. St. Mark as an expert witness. This could have been avoided if counsel on both sides had simply communicated with each other with a view to saving valuable court time. There is therefore no need to examine or make any determination on Mr. Maragh's extensive submissions on how expert evidence is to be admitted and whether Mr. St. Mark's witness statement is admissible as expert evidence.

Admissibility of Lay Opinion

[19] Mr. Maragh submitted that paragraphs 8 through 10 inclusive of the witness statement of Mr. St. Mark should be struck out on the grounds that: (1) they offend section 65 and 66 of the **Evidence Act**; (2) if those paragraphs are admitted, Part 32.8 of the CPR which allows a party to put written questions to an expert witness would have been lost to the Defendant; (3) they offend the hearsay rule at section 48 of the **Evidence Act** since there is no evidence of how Mr. St. Mark knew the matters he asserts at paragraphs 9 (a), 9(d), 9(h) through to 10 of his witness statement as he was not there when the refrigerator was being examined and repaired; (4) in any event, those paragraphs offend section 114 of the **Evidence Act** since their prejudicial effect outweigh their probative value: the Defendant was given no notice that the Claimant would be relying on the evidence of Mr. St Mark

as lay opinion and would therefore not have had the opportunity to respond to the opinions expressed in the witness statement;

[20] Tedious as it might be, it is perhaps best to set out the paragraphs of Mr. St. Mark's witness statement being complained against, in full:

1. "I am aware that Mr. Darryl Clyne visited the Claimant's residence to inspect the Viking refrigerator after the electrical fault on 16th June 2015 and that he subsequently did a report. I know this because this is stated in the report and the report was shown to me by the Claimant. In his assessment, Mr. Clyne stated that he discovered that there was no power to the compressor and the condenser fan and that the lights in the refrigerator were on. He concluded that there was a faulty display/ circuit board. At the end of his report by states that his discovery that the retrofitted thermostat and not the original sensors is connected to the circuit board, and the fact that the adjustments of its settings proved ineffective, questions whether the configuration permitted the fridge to attain optimal temperature before the circuit board was damaged. He then recommended that the retrofitted thermostat be removed and that the original sensors be connected back to the circuit board.

2. I wish to make the following comments on Mr. Clyne's report:

   a. Prior to the electrical fault on the 16th June 2015, and while the retrofitted thermostat was connected to the Claimant's Viking refrigerator, it was cooling between 35ºF - 40ºF which is an appropriate temperature for a commercial fridge of its kind. The Viking refrigerator was also functioning properly in all other aspects. I know this as a fact based on what I outlined in paragraph 6 of this witness statement.

   b. As stated in paragraph 5 above, the retrofitted thermostat was included in the kit sent by the manufacturers in 2012 with specific instructions on how the installation should be done. After I installed the products sent by the manufacturers, the refrigerator was cooling between 35ºF - 40ºF. I had set the temperature for the Viking refrigerator.

   c. The thermostat sent by the manufacturers is a commercial thermostat because the Claimant's Viking Refrigerator is a commercial refrigerator. The thermostat maintains the temperature required for the refrigerator to function properly.

   d. The electrical fault on the 16th June 2015, affected the compressor, which is the main part of the refrigerator, and as such the electrics and the motor in the Viking refrigerator would not function as it had done before.

e. Having changed the circuit board and added Freon, the only way Mr. Clyne could get the Viking refrigerator to cool at a lower temperature than 44.2 degrees Fahrenheit was by changing the compressor as the compressor was not working. Mr. Clyne acknowledged that the compressor was not working when he inspected the refrigerator, yet he did not change the compressor.

f. Without the compressor, the Viking refrigerator cannot work properly. The Freon is a liquid inside the refrigeration system that compliments the compressor that causes the Viking refrigerator to cool. Therefore, adding Freon without ensuring that the compressor in the Viking refrigerator was functioning properly is futile as the Viking refrigerator will not work.

g. If the Freon was too low, Mr. Clyne ought to have vacuum the system, check to see if the compressor was functioning efficiently by doing a compressor test before he added the Freon. That is good refrigeration practice. Mr. Clyne's report does not disclose that he did a pressure test to see if the compressor was working, nor did he disclose that he vacuumed the system.

h. Mr. Clyne did not state with certainty that the Viking refrigerator was not cooling properly before 16th June 2015. In fact, he is unsure in his conclusion.

i. Mr. Clyne did not repair the Claimant's Viking refrigerator and he did not do a proper assessment, that is the issue. He could not get the Viking refrigerator repaired.

3. Based on the above, the work done by Mr. Clyne on the Claimant's refrigerator was insufficient and his conclusion is wrong. I know personally that Mr. Clyne and by extension SERVITECH has vast experience in and is good at repairing domestic refrigerators. However, the Claimant's refrigerator is a commercial refrigerator which is different from domestic refrigerators and requires more experience and a more professional approach."

[21] What Mr. St. Mark is engaged in at paragraphs 8 through 10 of his witness statement is giving his lay opinion, based on his experience or knowledge as someone who works in refrigeration, of certain aspects of the report of Mr. Clyne. Is he permitted to do this?

[22] The **Evidence Act** provides as follows:

> "*Division 2*
> *Opinion Evidence*
> **64. Exclusion of opinion evidence**
> (1) Evidence of an opinion is not admissible to prove the existence of a fact as to the existence of which the opinion was expressed.
> (2) Where evidence of an opinion is relevant otherwise than as mentioned in subsection (1), that subsection does not prevent the use of the evidence of which the opinion was expressed.
>
> **65. Exception: lay opinions**
> Where—
> (a) An opinion expressed by a person is based on what the person saw, heard or otherwise noticed about a matter or event; and
> (b) Evidence of the opinion is necessary to obtain an adequate account of the person's perception of the matter or event,the opinion rule does not prevent the admission or use of the evidence.
>
> **66. Exception: opinions based on specialised knowledge**
> Where a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not prevent the admission or use of evidence of an opinion of that person that is wholly or substantially based on that knowledge.

[23] Section 59 of the **Evidence Act** deals with expert reports, section 65 deals with lay opinion and section 66 deals with opinions based on specialized knowledge. It is difficult to come to any other conclusion but that Mr. St. Mark, at paragraphs 8 - 10 of this witness statement, is commenting on Mr. Clyne's findings, using his specialized knowledge based on his experience in refrigeration, as permitted by section 66. Alternatively, even if he is not accepted as someone who has obtained specialized knowledge based on experience, my interpretation of section 65 is that it allows the use of lay opinion expressed by Mr. St. Mark based on what he observed in the report of Mr. Clyne that was shown to him by the Claimant. It seems to be a classic example of where lay opinion or opinion based on specialized knowledge may be admitted into evidence. The question of how much weight or reliance may be placed on what is expressed by Mr. St. Mark in those

paragraphs is an entirely different question to be answered after all the evidence has been tendered and the witnesses have been cross-examined.

Breach of CPR Part 32.8?

[24] I have no hesitation in dealing shortly with the submission that to admit paragraphs 8 - 10 of the witness statement of Mr. St. Mark would be to prejudice the Defendant's right to put questions to the expert under Part 32.8 of the CPR. In stating the complaint, the Defendant in fact dispenses with it: the right to put questions to experts. To accept Mr. Maragh's invitation to read Part 32 of the CPR as applying not only to experts but also to lay opinions or opinions based on specialized knowledge would be to cross the already sensitive border of judicial activism and venture into the forbidden realm of judicial adventurism. I recall the words of Lord Simonds who, when invited by Lord Denning to overrule the rule on privity of contract in **Scruttons v Midland Silicones Ltd** [1962] AC 446, 467-9, stated: "Nor will I easily be led by an undiscerning zeal for some abstract kind of justice to ignore our first duty, which is to administer justice according to law…"

Breach of Hearsay Rule?

[25] The fact that Mr. St. Mark did not himself examine the refrigerator does not prevent him from reading a report from a technician stating what had gone wrong with the refrigerator and offering his comments and views on what is stated in that report. I cannot see how to admit it into evidence would be in breach of the rule against hearsay. It is for the Court to make what it will of Mr. St. Mark's comments after all the evidence has been tendered and tested through cross-examination.

[26] **Prejudicial Effect outweighs Probative Value?**

Neither am I persuaded that any prejudicial effect in admitting paragraphs 8 through 10 of the witness statement of Mr. St. Mark outweighs the probative value. To begin with, I am not at all convinced that there is any prejudicial effect to complain about. Neither the **Evidence Act** nor the CPR requires a party to provide notice to the other party that it will be relying on lay opinion or opinion

based on specialised knowledge. As Ms. Campbell contends, the fact that the Claimant did not make application to have expert evidence admitted – or had otherwise failed to comport with the requirements of Part 32 to have Mr. St. Mark's evidence treated as expert evidence – should have led the Defendant inexorably to the conclusion that that evidence could only be admitted as lay opinion. In any event, as Mr. Maragh himself points out, there was a pre-trial trial review as well as a further case management conference to assess the state of readiness of the parties for trial. On either of those occasions, he could have made an application to file another witness statement to rebut anything in the witness statement of Mr. St. Mark which was by then seen by the Defendant. This was not done.

[27] I therefore find that there is no basis under the **Evidence Act**, the CPR or the rules against hearsay to strike out paragraphs 8 - 10 of the witness statement of Mr. St. Mark or to otherwise rule them inadmissible.

Admissibility of Mr. Marquis' Evidence

[28] Ms. Campbell then launched her own attack on the paragraphs 10, 11, 12, 13, 14, 18 and 20 of the witness statement of Mr. Allison Marquis, the Defendant's witness. Those paragraphs are as follows:

> "9. That however, following a visit to the Claimant's home by our technicians and the Defendant's routine investigations, it was revealed that the only items that could possibly have been damaged as a result of the fluctuations were the following:
>
> I. One Viking Refrigerator [3 years old] –burnt fuse
> II. Damage to several bulbs
> III. Damage to surge protector
>
> 10. Servitech was commissioned at the Defendant's expense to conduct repairs to the refrigerator. During these repairs, it was also discovered that the circuit board of the refrigerator was damaged. Both the fuse and the circuit board of the refrigerator were therefore replaced with new ones.
>
> 11. The refrigerator started working after the parts were replaced but malfunctioned some time thereafter prompting further investigation.

12. During those additional investigations, it was revealed that the thermostat, which appeared to be retrofit, was connected to the circuit board in place of the temperature sensors. The sensors were therefore completely disconnected from the circuit board.

13. I was advised by Servitech and do verily believe that this does not conform with the design configuration of the refrigerator and was the cause of the continued malfunctioning. Servitech therefore suggested that the retrofit thermostat be removed and the original sensors be reconnected. These findings are recorded in Servitech's report which is exhibited hereto and marked **"AM 2".** They were also communicated to the Claimant.

14. That the above clearly suggests that the Claimant's refrigerator was not in good working order before the fluctuation on 16th June, 2015 which necessitated the ill-advised installation of the retrofit thermostat.

18. The continued malfunctioning of the refrigerator as explained at paragraph 12 to 17 herein have no connection whatsoever to the electrical fluctuation experienced by the Claimant on 16th June, 2015.

20. Having already placed the refrigerator in the state that it was in before the fluctuation by replacing both the burnt fuse and the circuit board and having incurred unnecessary costs for rental of a replacement refrigerator for an extended period, I advised the Claimant by letter dated 12th November, 2015 that the Defendant could not accept responsibility for the continued malfunctioning of her refrigerator. The said letter is exhibited hereto and marked **"AM 4".**

[29] Ms. Campbell says those paragraphs are all inadmissible as being contrary to the hearsay rule. The essence of her contention is as follows:

(1) "Paragraph 9 is hearsay because Mr. Marquis does not state that he was at the Claimant's home doing the routine investigations; it is not original evidence; it is not known who the technicians were that are stated as having carried out the investigation.

(2) Paragraph 10 is inadmissible because Mr. Marquis does not state that he examined the refrigerator himself. Has not stated that he is a refrigeration expert or technician. Nor does he state how the report came to me. He therefore cannot give the evidence he attempts to give in this paragraph.

(3) Paragraph 11 is inadmissible as hearsay since Mr. Marquis does not say how he came to know the matters asserted therein.

(4) Paragraph 12 is objectionable for the same reason.

(5) Paragraph 13 is inadmissible because when one examines the report purportedly from Servitech it is not a Servitech report but a report from one Mr. Darrell Clyne to Servitech. This document offends Part 32.14 of the CPR concerning the requirements of an expert report. Further, what Mr. Marquis states at paragraph 13 of his witness statement is that the alleged report came to him and he is relying on it for the truth contained therein, but Mr. Cline is not a witness in this case; he will not be called by the Defendant and be cross-examined. It therefore cannot be relied upon, even as lay opinion, since Mr. Clyne will not be called. The whole report is inadmissible for this reason.

(6) Paragraph 14 and 18 are inadmissible because Mr. Marquis continues with to speak to reasons for the malfunctioning when he did not carry out any investigation himself and the report he relies upon is inadmissible.

(7) Paragraph 20 is not admissible since Mr. Marquis purports to give expert evidence that he is not qualified to give.

[30] Ms. Campbell further contends that: (1) the exceptions to the hearsay rule do not apply; (2) there is no evidence that Mr. Clyne, as the maker of the report sought to be relied upon, is not available; (3) the Defendant therefore cannot bring itself within the exception provided at Section 51 and section 56 (1) of the **Evidence Act**.

[31] Mr. Maragh's rebuttal was that the report from Mr. Clyne is exhibited to the witness statement of the Claimant as "VEM 15" and is part of the agreed documents in the bundle. This is indeed the case. The Claimant appears to have at least partially relied on Mr. Clyne's report when she stated at paragraph 25 of her witness statement that: "Further, the Servitech Technical Report stated that the Viking Refrigerator is not cooling to a satisfactory temperature of 38 degrees Fahrenheit."

[32] A perusal of the list of documents filed by the Claimant reveals that Mr. Clyne's report is listed at entry number 14 of schedule 1 to that list of documents. It is also listed in the Defendant's list of documents. I therefore agree with the contention of Mr. Maragh that the report of Mr. Clyne was agreed to by both sides. The Claimant had ample opportunity to make application to exclude the report or otherwise object to it and did not do so. It could hardly be considered as fair and just for the Claimant to attempt to do so now. I am not persuaded by Ms. Campbell's argument that while the Claimant is not objecting to the authenticity of the document, she is objecting to the contents of the document. I think the proper course is to rule the Clyne report as being admissible and to accord it the weight that it deserves, considering the Claimant's weighty observations that Mr. Clyne will not be called to be cross-examined and his report does not state that he is a refrigeration technician.

[33] I find that the assertions contained in paragraphs 9, 10, 11, 12, 13, 14, 18 and 20 of the witness statement of Mr. Marquis are based on the Clyne report which the parties, through their respective list of documents, agreed would be included in the documents placed before the Court. I therefore rule those paragraphs as admissible, reserving what weight is to be accorded to them for a later stage of these proceedings.

[34] I therefore make the following orders:

(1) The Defendant's application to strike out the Claimant's case is refused.

(2) The Defendant's application that paragraphs 8 through 10 of the witness statement of Edmund St. Mark be struck out is refused.

(3) The Claimant's application that the report of Mr. Darryl Cline be ruled as inadmissible is refused.

(4) The Claimant's application that paragraphs 9, 10, 11, 12, 13, 14, 18 and 20 of the witness statement of Mr. Allison Marquis be struck out is refused.

Godfrey P. Smith SC
High Court Judge

By the Court

Registrar