In The Supreme Court of Bermuda

CIVIL JURISDICTION
2023: 428

GREGORY EDWARD TROY BURGESS

Plaintiff

And

FIRST BERMUDA GROUP LIMITED
(A Subsidiary of Clarien Bank Limited)

First Defendant

CLARIEN BANK LIMITED

Second Defendant

CANTERBURY LAW LIMITED

Third Defendant

CONYERS DILL AND PEARMAN LIMITED

Fourth Defendant

NARINDER KUMAR HARGUN

Fifth Defendant

RULING

VIA ZOOM

Date of hearing: **20 March 2025**
Ruling delivered: **8 May 2025**

Appearances: **The Plaintiff was not present and was not represented.**

Paul A Harshaw, Canterbury Law for the 3rd Defendant

Introduction

1. This judgment will address an application made by the 3rd Defendant for the strike out of proceedings brought against it.

2. Previously the Plaintiff was assisted by Ms LeYoni Junos of the Civil Justice Advocacy Group. Although she was formally appointed as a McKenzie friend, she was effectively the Plaintiff's representative. For example, she entered into correspondence on his behalf and made submissions on his behalf. Ms Junos wrote to the Court on 20 March 2025 (the day this matter was listed for hearing). This letter stated the Plaintiff and Ms Junos were not attending the hearing. She stated that was because she had been advised that the proceedings 'are not legally valid proceedings under Section 11 of the Supreme Court Act 1905.' She also stated that there was a criminal investigation ongoing into 'defendants, attorneys and matters overlapping this civil action.'

3. I decided to proceed in the absence of the Plaintiff and Ms Junos:

    a. There was no suggestion that the Plaintiff and Ms Junos were unaware of the hearing. I accept that the letter dated 20 March 2025 that showed an awareness of the hearing was written by Ms Junos and not the Plaintiff. However, there is no reason to believe that Ms Junos was not acting on behalf of the Plaintiff. Indeed, she has stated that she had a power of attorney over the Plaintiff's legal affairs. The letter made it clear that they had made a deliberate decision that they would not attend. No application was made for an adjournment. The Plaintiff and Ms Junos had no reason to believe that the matter would not proceed.

    b. I have considered section 11 of the Supreme Court Act 1905. It is concerned with the places where the Supreme Court may sit. I assume that the Plaintiff objects to me sitting by video link while physically within England (and on one occasion Northern Ireland). I have not heard argument about section 11. However, on the material before me, I can see no reason why I cannot conduct remote video hearings. Video hearings are now common in this and other jurisdictions. The Evidence (Audio Visual Act) Link Act 2018 facilitates this. While issues can arise where hearings involve people participating from jurisdictions outside of the United Kingdom and its Overseas Territories (e.g.

Raza v Secretary of State for the Home Department [2023] EWCA Civ 29), that is not an issue in this case. I have not heard full argument regarding section 11 and so have not reached any firm conclusion about the validity of proceedings. However, it appears to me that a mere reference to section 11 is not a sufficient reason for me to adjourn these proceedings or conclude that I have no jurisdiction.

c. There is no rule that I am aware of that requires civil proceedings to be stayed pending a criminal investigation. I understand that specific prejudice has to be established before civil proceedings are stayed. No specific prejudice has been alleged.

d. In light of the matters above, it appears to me that the Plaintiff had no good reason for his deliberate decision not to attend the hearing listed for 20 March 2025.

e. Further, as I believe that the procedural history below demonstrates, it is my opinion that the Plaintiff has had plenty of opportunity to amend his case to ensure that his strongest case is pleaded against the 3rd Defendant.

4. Although the Plaintiff failed to attend the hearing, I did consider all arguments that appeared to me to be properly open to him. In particular, I considered carefully his skeleton argument filed on 27 February 2025.

Factual background

5. The Plaintiff has issued a generally endorsed writ of summons dated 21 December 2023.

6. The statement of claim essentially alleges that the Plaintiff was the victim of fraud. The fraud is alleged to have been associated with a consent order issued in proceedings involving the Plaintiff.

7. Relevantly the statement of claim states that:

> *28. On 30 July 2018, Canterbury Law Limited filed a "Consent Order" in Case No. 59 of 2018 at the Supreme Court Registry which is time stamped*

9:40PM. The "Consent Order" proposes to show the signatures of the Plaintiff and his cousin, as well as others.

29. The "Consent Order" appears to be a hybrid Tomlin order, in two parts, with an Order signed by a Judge of the Supreme Court, as well as the Plaintiff and others; and a Schedule laying out a purported agreement between the parties.

30. Canterbury Law Ltd's name is on the back page of the "Consent Order" as being the attorneys that drafted and filed the said Order. Mr. Harshaw and Canterbury Law are signatories.

31. Paragraph 1-2 of the Order (1) stays the proceedings and (2) puts a seal on the Schedule so that it may not be inspected by anyone, without the collective consent of all parties (or by order of the court).

32. Paragraph 1 of the Schedule states:

"THE PLAINTIFF hereby promises and undertakes to each of the Defendants and to the Court

as follows:

"1.1 he has had a reasonable and proper opportunity to take legal advice in respect of the terms of this agreement and he declines to inform the Defendants or the Court whether he has in fact taken any such legal advice or [sic] the content thereof."

The Plaintiff believes that he saw the "Consent Order" for the first time sometime around the end of 2019, beginning of 2020, when he was first shown a digital copy of the Order by Ms. Junos of CJAG.

34. At no time was the Plaintiff ever given a copy of any document - and certainly not by Canterbury Law - to take away in order to obtain legal advice before signing. The Plaintiff was homeless, had no attorney (and no financial means, in any event) to obtain legal advice – which had been made clear to the Court under Justice Hellman in the presence of Mr. Harshaw of

Canterbury Law. (Hence the appointment of Ms. Junos of CJAG by Justice Hellman to represent the Plaintiff.) The Plaintiff was a vulnerable person, anxious to get his home back.

35. Neither was a draft of the "Consent Order" ever sent to the Plaintiff's court-ordered address for service - constituting a contempt of court by the Defendants. It is alleged that the Third and Fourth Defendants, collaborated with Justin Williams, to take advantage of an extremely vulnerable litigant, by isolating him away from those the Court had appointed to assist him – in order to protect their own interests.

36. At no time did the Plaintiff ever attend the Canterbury Law offices - nor was he ever invited to attend the Canterbury Law offices - to sign a legal document, which would have had to have been read to him and explained to him, in any event, to make sure he understood what he was signing.

37. At no time did the Plaintiff ever attend a court hearing with respect to the "Consent Order" to make such representations directly to the Court as are falsely attributed to him in Paragraph 1.1 of the Schedule.

38. There is one of two scenarios at play here:

i. Either the document that the Plaintiff was presented with and signed at Harbour Front Restaurant was actually the "Consent Order" – strangely without anyone from Canterbury Law present - the legal import of which was not properly explained to him. In any case, paragraph 1.1 of the Schedule renders the document as obtained by fraud, since the Plaintiff was NOT given a copy of the document beforehand to take to ANYONE in order to obtain legal advice before signing - making the statement attributed to the Plaintiff in paragraph 1.1 a deliberately false statement

ii. Or, the document that the Plaintiff was presented with and signed at the Harbour Front Restaurant was NOT the "Consent Order", but a different document - from which his and his cousin's signatures were copied and transferred to be placed on the "Consent Order". This would be a

compounded fraud on top of the deliberately false statement attributed to the Plaintiff in paragraph 1.1

39. In any event, the Third Defendant has committed a fraud on the Plaintiff and a fraud on the Court by filing and concealing a document obtained by fraud in order to obstruct the course of justice in a civil court proceeding. [Emphasis added]

8. In summary it appears to me that it is alleged that:

   a. The 3rd Defendant drafted and filed a consent order.

   b. The consent order was not sent to a 'court-ordered address for service'.

   c. The Plaintiff did not attend the offices of the 3rd Defendant to sign the consent order. However, it appears to be accepted that the Plaintiff did sign a document at the Harbour Front Restaurant. It is not suggested that the 3rd Defendant was present at the Harbour Front Restaurant when that document was signed.

9. That statement of claim was amended on 30 August 2024. There is nothing to indicate that any further amendment is being contemplated.

10. Subsequently, further and better particulars were filed. These stated, among other matters, that:

    a. On 5 April 2018 Hellman J had directed:

       ... "pursuant to Order 65 Rule 5, service of all process on Defendant [sic] to be by way of email at bdaciviljustice@gmail.com" .... "and/or at the following address"...

       The consent order had not been sent to this address.

    b. The alleged dishonest acts were that the 3rd Defendant:

       (i) Did not send a draft of the consent order to the Plaintiff's court-ordered address for service;

(ii) Did not contact the Plaintiff to legitimately acquire his signature on the consent order;

(iii) After filing the consent order in the court with the Plaintiff's signature, did not send the sealed consent order to the Plaintiff's court-ordered address for service;

(iv) Did not otherwise directly provide the Plaintiff with his own copy of first a draft, and then a sealed copy of the consent order.

11. It is striking that the details of dishonesty alleged in the further and better particulars do not directly include any allegations regarding the signing of a document at the Harbour Front Restaurant.

12. The 3rd Defendant issued a strike out application dated 28 November 2024.

13. A 3rd affidavit of Ms Junos was filed in response to the strike out application. This exhibited, among other matters, an order of Hellman J dated 5 April 2018. This stated that:

> *The Plaintiff <u>may</u> be served documents, other than documents which are required to be served on him personally, from this day forward by way of e-mail at bdaciviljustice@gmail.com and / or by post at 10 Bridge View Lane, Sandys MA 01, Bermuda* [Emphasis added]

Arguments of the parties

14. I have carefully considered the arguments of the parties. The matters set out below are a summary of the arguments. Any failure to expressly reference a matter relied on in argument does not mean that I have not considered it.

15. The 3rd Defendant argues that:

    a. Based on a skeleton filed by the Plaintiff dated 25 October 2024, the Plaintiff's own case is that 'The Third Defendant was not present and played no role in the discussions' about the consent order. In addition, the Plaintiff's own case is that 'The Third Defendant was not the attorney for Mr. Williams'.

b. The order of Hellman J is permissive. It does not require a particular method of service.

c. It is unacceptable to essentially say that further particulars will be provided after discovery if the existing particulars are inadequate.

16. The Plaintiff argues that:

a. Paragraphs 28-39 of the statement of claim are key. That is why I have set them out in full in this judgment.

b. The judgment in *Sofer v Swissindependent Trustees SA* [2020] EWCA Civ 699 demonstrates that: (a) there can be the inference of dishonesty based on the facts pleaded; and (b) the Plaintiff does not necessarily have to name specific individuals of defendant corporate bodies at the outset of pleadings, but can do so after discovery.

Legal Framework

The tort of fraud

17. *Clerk and Lindsell on Torts*, 22nd edition, states that:

> *The tort [of fraud] involves a perfectly general principle: where a defendant makes a false representation, knowing it to be untrue, or being reckless as whether it is true, and intends that the claimant should act in reliance on it, then in so far is the latter does so and suffers loss the defendant is liable.* [18-01]
>
> *To found an action in deceit the claimant must show a misrepresentation of present fact or law (or, at the very least, something done which was aimed at inducing action on the basis of false information). However, a representation may be either express or implied from conduct.* [18-05]

18. The passages of *Clerk and Lindsell on Torts*, 22nd edition, set out above make clear that 2 important aspects of the tort of fraud are a misrepresentation and a loss flowing from it. I will consider the adequacy of the pleaded case in relation to these matters later.

The approach to strike out

19. Rule 19 of order 18 of the Rules of the Supreme Court 1985 (GN/1985) provides that:

> *(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—*
>
> *(a) it discloses no reasonable cause of action or defence, as the case may be; or*
>
> *(b) it is scandalous, frivolous or vexatious; or*
>
> *(c) it may prejudice, embarrass or delay the fair trial of the action; or*
>
> *(d) it is otherwise an abuse of the process of the court;*
>
> *and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.*
>
> *(2) No evidence shall be admissible on an application under paragraph (1)(a).*

20. In *David Lee Tucker v Hamilton Properties Limited* [2017] Bda LR 136 (SC) Subair Williams R (as she then was) held:

> *The Court's determination of a strike-out application is a component of active case management. Essentially, the Court is required to identify the issues to be tried at an early stage of the proceedings and to summarily dispose of the others. This is aimed to spare unnecessary expense and to ensure that matters are dealt with expeditiously and fairly.* [14]

21. In this case there is a particularly strong reason to identify matters that can be disposed of at an early stage. The litigation seeks to set aside a consent order. As a consequence, it seeks to undermine the finality of that order. Although orders can be undermined for good reason, it is important that courts prevent claims seeking to set aside an order where there are no good reasons for setting aside the order. In *Finzi v Jamaican Redevelopment Foundation Inc* [2023] UKPC 29 the Privy Council held that:

> *Where the transaction which the claimant is seeking to unmake is the entry of judgment by a court or the making of a settlement agreement, there is a wider principle at stake than in the ordinary case of a claim to rescind a contract. In the case of an ordinary contract the only principle at stake is that agreements should be kept. But a settlement agreement engages not just this principle but the principle of finality in litigation, since its very purpose is to put an end to further disputation in the same way as a judgment …* [65]

The obligations in relation to pleading fraud/dishonesty

22. Rule 12(1) of order 18 of the Rules of the Supreme Court 1985 (GN470/1985) states that:

> *… every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—*
>
> *(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and*
>
> *(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.* [Emphasis added]

23. In *Robert Sofer v Swissindependent Trustees SA* [2020] EWCA Civ 699 Arnold LJ identified the following principles as governing the pleading of dishonesty:

> *(i) Fraud or dishonesty must be specifically alleged and sufficiently particularized, and will not be sufficiently particularized if the facts alleged are consistent with innocence …*
>
> *(ii) Dishonesty can be inferred from primary facts, provided that those primary facts are themselves pleaded. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be pleaded …*

(iii) The claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence …

(iv)*Particulars of dishonesty must be read as a whole and in context …* [23]

24. In *Intercontinental Natural Resources Ltd v Conyers Dill & Pearman* [1982] Bda LR 1 the Court of Appeal held that:

A Fundamental Fallacy

141. Mr. Lightman rightly states that the Court on a striking out summons must assume that the facts pleaded are true. This is no doubt correct; but facts may be of two sorts. There may be primary facts and there may be conclusory facts; the latter are really no more than conclusions which it may or may not be right to deduce from primary facts…It seems manifestly clear that a statement of claim founded largely on a series of conclusory facts does not inform the defendant of the case he has to meet and is in clear breach of O19, r 4 which requires the party pleading to state in summary form the material facts on which he relies; and in this context material facts mean primary facts; i.e., those facts which the party needs to be informed of in order to know what case he has to meet. Unless the primary facts are pleaded the statement of claim must necessarily be deficient. This is a case in which serious allegations are made against reputable professional men and they are entitled to know what it is that each respondent is charged with wilfully doing or wilfully omitting in the knowledge that he was doing wrong. If they are charged with mismanagement of the company's affairs then facts must be pleaded from which the actual mismanagement complained of can be understood. If a statement of claim is so deficient in particulars that a defendant cannot tell what is the case he has to meet then it becomes a vexatious pleading and should not be allowed to stand. [141]

25. In *The Ampthill Peerage* [1977] AC 547 Lord Simon held that:

A person is not permitted merely to allege fraud in the hope of discovering it as the case develops.

"You cannot go to your adversary and say, 'You obtained the judgment by fraud, and I will have a rehearing of the whole case until that fraud is established." (at 591C)

26. The fact that a party is a litigant in person does not excuse a failure to comply with the obligations set out above in relation to the pleading of fraud (*Lines and Blades v PricewaterhouseCoopers and Clarien Bank Limited* [2021] SC (Bda) 42 Civ at [63]).

Reasonable cause of action

27. In *Pedro v Department of Child and Family Services* [2019] SC (Bda) 85 Civ Alexandra Wheatley AJ cited (with apparent approval) the White Book (1999 Edition) which states that:

> *A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered ... So long as the statement of claim or the particulars ... disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak and not likely to succeed is no ground for striking it out* ... [18/19/10] [Emphasis added]

28. In *Calvin Simons v The Minister of Public Works* [2021] Bda LR 123 Jeffrey Elkinson AJ held that:

> *There have been various expressions used in the case law concerning Order 18, rule 19 as to when the court should exercise its power to strike out a claim. The language used is a variation on the proposition that it should be exercised in either plain and obvious cases, where there is no realistic possibility of the Plaintiff establishing a cause of action consistent with his pleading and the possible facts of the matter when they are known, or where the evidence relied upon by the Plaintiff can properly be characterised as shadowy or where the story told in the pleadings is a myth and has no substantial foundation. It is clear that the power to strike out is a draconian*

> *remedy and should only be employed in clear and obvious cases where it is possible to say at an interlocutory stage and before full discovery that a particular allegation is incapable of proof.* [8] [Emphasis added]

29. In light of the case law above, I said in *Williams and Trott v Chief Inspector Stableford and the Attorney General of Bermuda* [2024] SC (Bda) 16 Civ:

> *... the case law ... demonstrates that any strike out application must be reviewed with care to ensure that the draconian step of denying a party a trial is only used in clear cases where an action is bound to fail. In considering whether an action is bound to fail, it is necessary for me to remind myself that I have not heard oral evidence and so am not in a position to make findings regarding disputed issues of fact.* [17]

This still appears to me to be the correct approach.

Frivolous or vexatious

30. The White Book 1999 states that:

> *The pleading must be "so clearly frivolous that to put it forward would be an abuse of the process of the Court" (per Jeune P. in Young v. Holloway [1895] P. 87 at 90; and see Whitworth v. Darbishire (1893) 68 L.T. 216).* [18/19/16] [Emphasis added]

Abuse of process

31. In *Michael Jones v Stewart Technology Services Ltd* [2017] Bda LR 117 Hellman J cited with approval the following passage of the judgment of Lord Diplock in *Hunter v Chief Constable* [1982] AC 529 at 536C holding that:

> *[Abuse of process] concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-*

thinking people. The circumstances in which abuse of process can arise are very varied… (at [26] of *Michael Jones*).

32. The House of Lords held in *Lawrance v Lord Norreys* (1890) 15 App Cas 210 that:

> *It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases. I do not think its exercise would be justified merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved. But the Court of Appeal did not proceed on that ground. They took into consideration all the circumstances of the case. We have, to begin with, a statement of claim which, if it discloses a concealed fraud within the meaning of the statute, does so in the barest fashion, with much that is most material left vague and undefined, when there ought to have been distinctness and precision. Moreover, this is not the first but the third edition of a statement of claim delivered with the object of recovering the Towneley estate; and when we review the history of the litigation there is much to lead to the belief that important allegations now made were an afterthought, the result of criticisms of the earlier form in which the charges of fraud were presented, and that the charges thus raised against persons long dead are wholly incapable of proof. These impressions might have been dissipated by the affidavits filed on behalf of the appellant; but they have not been. On the contrary, I think they have been strengthened. Both in what it says and in what it does not say, Colonel Jaques' affidavit confirms in my mind the impression that <u>the case has not a solid basis capable of proof</u>, but that the story told in the pleadings is a myth, which has grown with the progress of the litigation, and has no substantial foundation. For these reasons, I concur with the Court of Appeal in thinking that the action is an abuse of process of the Court…* (at 219) [Emphasis added]

33. It appears to me that the passage of the judgment in *Lawrance* set out in the paragraph above demonstrates that abuse of process can be established where there is a vague allegation of fraud or dishonesty that, on the basis of facts pleaded and any evidence, cannot be established. That is because the claim has 'no substantial foundation'.

Conclusions

34. I have already identified how the case law makes it clear that a strike out is a draconian step. It denies a party the opportunity to have their case proceed to trial. As a consequence, it is important that I consider with care the arguments of both parties before concluding that there are grounds for strike out. Careful consideration of the issues has not been assisted by the decision of the Plaintiff and his McKenzie friend to decline to attend. I have already made clear that I have sought to take account of any arguments that might have been advanced by the Plaintiffs. I also need to take account of the fact that I have not heard oral evidence.

35. Despite the need for caution, it appears to me to be clear that the problem with the pleaded case is that it does not establish dishonesty. Nothing has been pleaded that suggests or would allow a trial judge to find that the 3rd Defendant was aware that the circumstances in which the consent order was obtained amounted to a fraud. I should make it clear that at this stage I have assumed the consent order was obtained by fraud. However, I have heard no evidence and reached no conclusions regarding that. I have assumed that the consent order was obtained by fraud in an attempt to take the Plaintiff's case at its highest.

36. I have concluded that nothing has been pleaded that suggests or would allow a trial judge to find that the 3rd Defendant was aware that the circumstances in which the consent order was obtained amounted to a fraud in light of the following matters:

    a. The pleaded case makes clear that it is alleged that the consent order was obtained by fraud when the Plaintiff signed a document at the Harbour Front Restaurant. The pleaded case fails to link the 3rd Defendant directly to whatever took place at the Harbour Front Restaurant. There is nothing pleaded that would allow a judge to find that the 3rd Defendant knew anything about the circumstances in which the Plaintiff signed a document at the Harbour Front Restaurant.

    b. The pleaded case appears to allege that the 3rd Defendant was subject to some sort of duty to ensure that the Plaintiff understood and signed the consent order. I am not sure what the basis of such a duty is. It is apparently accepted that the 3rd Defendant was not the Plaintiff's representative. However, even assuming such a duty existed, I am not sure how a breach of it demonstrates dishonesty.

Lawyers can and do make errors. I accept that in principle, it might be possible to infer dishonesty where there is a breach of a rule that is so obvious that it can be inferred that the breach was deliberate and dishonest. However, it cannot be said that is this case.

c. I should add that I have considered the order of Hellman J. I don't read this as imposing a requirement to serve documents on bdaciviljustice@gmail.com and / or by post at 10 Bridge View Lane, Sandys MA 01, Bermuda. It provides that the documents 'may' be served this way. That does not rule out alternative forms of service. It is not pleaded that there was not service using some other mechanism. That supports the finding that there was no dishonesty but is not essential for it.

d. The acts alleged to be dishonest are not acts that would appear to have been ones that are said to have been intended to induce actions of the Plaintiff to his disadvantage. For example, failing to send a copy of the sealed order could not have induced the Plaintiff to do anything. The order had already been issued.

e. Fundamentally it appears to me that conclusions of dishonesty are alleged. However, the underlying principle facts that justify those conclusions are not pleaded. That is the flaw that was found to mean that the pleadings were inadequate in *Intercontinental Natural Resources Ltd.*

f. I accept the arguments of the Plaintiff that: (a) there can be the inference of dishonesty based on the facts pleaded; and (b) the Plaintiff does not necessarily have to name specific individuals of defendant corporate bodies at the outset of pleadings. However, that misses the point. For dishonesty to be inferred, there must be facts pleaded that provide a basis for drawing an inference. As was held in *Robert Sofer,* the issue is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. It appears to me that is no basis for an inference of dishonesty.

37. Even assuming, contrary to my previous findings, that there is some basis for finding dishonesty, it appears to me that the pleaded case fails to demonstrate that the dishonesty caused loss. Suppose that the 3rd Defendant had dishonestly failed to send a draft of the order to the Plaintiff, the statement of claim makes clear that it was events at the Harbour

Front Restaurant that caused a signed consent order to be filed. It was that which caused any loss. As I have already indicated, there is nothing to indicate that the 3rd Defendant was involved in events at the Harbour Front Restaurant.

38. I have considered whether the Plaintiff should be given a further opportunity to amend his pleadings. It appears to me that the Plaintiff has been given several opportunities to state his best case. I have no reason to believe that he will be able to plead a better case.

39. In light of the matters above, it appears to me that the case against the 3rd Defendant is not one that has a reasonable prospect of success. This is not merely a weak case. On the pleaded case, it has no prospects of success.

40. Alternatively, it appears to me that the claim against the 3rd Defendant is an abuse of process. There is a vague allegation of fraud or dishonesty that, on the basis of facts pleaded and any evidence, cannot be established. The allegation has no substantial foundation.

41. I will hear that parties regarding the orders that follow this judgment on 26 May 2025.

Postscript

42. I am concerned that the Plaintiff and Ms Junos appear to have deliberately decided not to attend the hearing that led to this judgment. There was no adjournment application and no reason to believe that I would not proceed to determine then strike out application in their absence. I am concerned that Ms Junos appears to effectively represent the Plaintiff. However, she does not appear to have appreciated a basic principle. That is that a mere objection to matters proceeding does not necessarily mean that the Court will agree that they should not proceed. If matters were to proceed, it was in the Plaintiff's interest that arguments were put on his behalf. I continue to keep Ms Junos's role under review.

Dated this 8th day of May 2025

HUGH SOUTHEY KC
ASSISTANT JUSTICE