



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2021: No. 160

BETWEEN:

VANETTA MARIA FURBERT

Plaintiff

and

KENNEDY EDWARDS

Defendant

RULING

Order 14 Application for Summary Judgment, Application for Order for Plaintiff to provide Further and Better Particulars, Order 18 Pleadings

Date of Hearing: 16 November 2021, 15 February 2022

Date of Ruling: 7 July 2022

Appearances: Phillip Perinchief, PJP Consultants, for Plaintiff

Julica Harvey, Canterbury Law Limited, for Defendant

Ruling of Mussenden J

Introduction

1. This matter appears before me on the following Summonses:
 - a. Defendant's Summons (the "**FBP Summons**") filed 16 July 2021 and issued on 9 August 2021 for an application for an order that the Plaintiff file and serve on the Defendant the Further and Better Particulars (the "**FBPs**") as set out in its Request for Further and Better Particulars dated 9 July 2021 (the "**RFBP**"), for production of the documents as requested and leave to serve an Amended Defence following service of the FBPs.
 - b. Plaintiff's summons (the "**SJ Summons**") dated 20 August 2021 for summary judgment against the Defendant pursuant to Order 14 Rule 1 on the basis that the Defendant has failed or declined to file a meritorious Defence or Counterclaim in this matter despite being served with further and better particulars. The Plaintiff applies for the Defence to be struck down as having no merit, legal force, or effect in response to the Plaintiff's pleaded, proven, meritorious, credible and legally valid claim. She also seeks indemnity costs because of the unnecessary delay, lack of communication and prevarication employed in the alleged defence of this matter.
2. The Plaintiff resists the application for an order for FBP and production of various documents.
3. The Defendant resists the application for summary judgment.

Background

4. The Plaintiff caused a Specially Endorsed Writ of Summons dated 14 June 2021 (the "**Writ**") to be issued in this matter against the Defendant. The Statement of Claim (the "**SOC**") set out that the Defendant had breached a loan agreement dated October 2017 (the "**Agreement**") by not repaying the loan in full.

5. The SOC set out the background to the Agreement which was that during a relationship between the Plaintiff and Defendant, the Plaintiff had made a loan to the Defendant in the sum of \$82,105.26 (the “**Loan**”) but with some minor repayment \$80,605.22 was still outstanding. Despite the Plaintiff’s repeated requests to repay the Loan in full, the Defendant had admitted owing the money, was not in a position to repay it but was keen to do so. The Defendant had promised to pay the Plaintiff in one lump sum once a fixed term deposit he held at Butterfield Bank matured in September 2018 but that date passed without repayment. The SOC set out that the Defendant owned or owns one property in the United Kingdom and two properties in Bermuda for which he has benefitted from either sale proceeds or rental income.
6. On 9 July 2021 the Defendant filed a Request for Further and Better Particulars (the “**RFBP**”) asking five (5) questions of particulars set out in the SOC and a Notice to produce some documents for inspection.
7. On 16 July 2021 the Defendant filed:
 - a. The FBP Summons for an application for an order that the Plaintiff file and serve on the Defendant the FBPs as set out in the RFBP, for production of the documents as requested and leave to serve an Amended Defence following service of the FBP. The FBP Summons was issued 9 August 2021. The Defendant did not accept the Plaintiff’s Affidavit and exhibited documents as a proper reply to the RFBP.
 - b. An Affidavit of Julica Harvey, counsel for the Defendant, sworn on 15 July 2021 in which she stated that it was necessary for the FBP and documents as requested to be provided in order to define the issues between the parties. She asked for leave to file an Amended Defence within 14 days of the FBP being served on the Defendant.
 - c. A Defence reserving a right to pursue the RFBP of the SOC. The Defence did not admit the claims and stated that various paragraphs in the SOC were not relevant and should be struck out.

8. On 28 July 2021 the Plaintiff filed her First Affidavit sworn on 28 July 2021 (“**Furbert1**”) along with her Exhibits providing the FBP along with supporting documents. In the Affidavit, the Plaintiff set out various details including as follows:
- a. In September 2017 the Defendant has asked the Plaintiff for the Loan in order to buy a house in the United Kingdom (the “**UK**”) for his daughters who were at that time attending university in the UK and then intending to remain there to live. It made more sense to buy than to rent. The Defendant told the Plaintiff that he had a fixed term deposit at Butterfield Bank (the “**FTD**”) that was due to mature in September 2018 but which would incur significant penalty charges if it was broken before the maturity date. Thus, the Defendant would repay the Loan from the proceeds of the FTD once it matured.
 - b. On that basis, the Plaintiff from her investment account loaned the Defendant \$78,000, incurring penalties herself for a total repayment amount by the Defendant to the Plaintiff of \$82,105.26.
 - c. On 21 August 2018 the Defendant, pursuant to the Agreement, made a payment to the Plaintiff of \$1,500. He made no more payments.
 - d. Prior to the FTD maturity date in September 2018, the Plaintiff inquired of the Defendant the status of the FTD when he told her that he had surrendered the FTD prior to the September 2018 maturity date and used the funds for other purposes including for purchasing property in the UK and mortgage payments for a house in Somerset, Bermuda. This was a breach of the Agreement.
 - e. The parties exchanged extensive correspondence directly and through counsel. The Plaintiff asserts that the Defendant admitted the Loan, promised to repay it starting in June-July 2019 at \$1,000 per month until he could pay more. That proposal was rejected as the Plaintiff sought full repayment of the Loan.
 - f. Proceedings were commenced in which the Defendant has failed to file a meritorious defence and in which he does not deny that he owes the Plaintiff the funds.
 - g. The Exhibited documents included bank statements and emails showing how the funds were paid, a schedule of reimbursement proposal and other information.

9. On 9 August 2021 the FBP Summons filed 16 July 2021 was issued for a hearing on 16 September 2021.
10. On 19 August 2021 the Plaintiff filed her Second Affidavit sworn 19 August 2021 (“**Furbert2**”) in which she stated that the Defendant had filed a Memorandum of Appearance and a purported Defence but asserted that they were delaying tactics as the alleged defence was devoid of any merit whatsoever and gave the impression that the Defendant knew nothing about the allegations in the SOC.
11. On 19 August 2021 the Plaintiff filed its SJ Summons which was issued 20 August 2021.
12. On 16 September 2021 in Chambers before me the parties agreed that some documents had been provided. I ordered that the Defendant provide an updated list for any outstanding items to the Plaintiff. On 30 September 2021 the Defendant filed the original RFBP with inserted explanations about what particulars had not yet been provided (the “**Amended RFBP**”).
13. On 13 October 2021 the Plaintiff filed an Affidavit sworn 13 October 2021 (“**Furbert3**”) with exhibits in support of its application for summary judgment and to address various matters in respect of the explanations in the Amended RFBP. The Plaintiff listed various complaints about the conduct of the Defendant in making its repeated requests for further and better particulars and alleged that the Defendant and her attorneys were engaged in silly and very expensive games in the litigation process. The Plaintiff exhibited a Plaintiff’s Response to the Amended RFBP setting out in blue ink its responses (the “**Furbert3 FBP**”) to the explanations provided in the Amended RFBP. The Plaintiff asserted that in light of all the affidavit evidence that she had provided she was opposed to any further delay and any application for leave to file an amended Defence, instead seeking summary judgment and costs on an indemnity basis.

Defendant's Submissions on application for order for RFBP

14. On 16 November 2021 the applications were brought on for hearing and continued on 15 February 2022.
15. Ms. Harvey complained that the Furbert3 FBP did not provide the answers for various questions including as an example whether the agreement was in writing or orally. She submitted that the Furbert3 FBP were obfuscation providing no clear answers. She went through the Plaintiff's affidavits pointing out where they provided context, pleaded law, were convoluted, were repetitive, were pleading evidence not facts, but still did not provide the answers to the questions in the Amended RFBP.
16. Ms. Harvey submitted that the Plaintiff's responses are not in compliance RSC Order 18 rule 7 by way of reference to the "four basic ingredients of materials of a legally binding contract". She noted that RSC Order 18 rule 11 allow a plaintiff to plead a point of law however a legal argument or a legal basis of the claim must not be set out in such a pleading.
17. Mr. Harvey referred to the White Book ("WB") Order 18 (Pleadings) pages 308 – 357 where she highlighted various rules and commentary as follows:
 - a. The purpose of the pleadings was to ensure that in advance of trial, the issues in dispute between the parties can be defined. (WB 18/0/2).
 - b. The pleadings should only contain the material facts relied on, but not evidence by which the facts are to be proved. (WB 18/7/2).
 - c. The need for compliance. – These requirements should be strictly observed. (WB 18/7/4)
 - d. The relevant matters must be stated briefly, succinctly and in strict chronological order. Pleadings should be as brief as the nature of the case will admit. The Court has inherent jurisdiction to deal with prolix documents. (WB 18/7/7)
 - e. Plead facts, not law. (WB 18/7/8)
 - f. Plead facts, not evidence. (WB 18/7/9)
 - g. Facts must be material. (WB 18/7/10)
 - h. Plead all material facts. (WB 18/7/11)

- i. Plead the necessary particulars; (WB 18/12)
18. Ms. Harvey argued that in light of these reasons the Court should order that the Defendant provide clear and unambiguous answers to the Amended RFBP.

The Plaintiff's Response

19. Mr. Perinchief submitted that the Furbert3 FBP set out the facts of the case sufficiently. It showed that initially the Agreement was oral and then it was evidenced in writing. He referenced various parts of the documents pointing out what was oral, what was in writing and what was in writing that evidenced something that was oral. He asserted that the Furbert3 FBP provided all the information that was requested by the Defendant.
20. Mr. Perinchief submitted that the question about the relevance of the properties as set out in the SOC was that it showed that the Defendant had assets and thus had the ability to pay the Plaintiff the funds that he owed her. Once the Defendant breached the Agreement then the properties became relevant.

Rule on Summary Judgment

21. The RSC Order 14 provide as follows:

“14/1 Application by plaintiff for summary judgment

1 (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.”

Plaintiff's Application for Summary Judgment

The nature and characteristics of an Order 14 procedure

22. Mr. Perinchief submitted that once the Defendant had filed its Defence it was open to the Plaintiff to bring an application for summary judgment on the basis that the Defendant did not have a meritorious or *bona fide* defence, or could not raise or is unable to argue successfully an issue against the claim which ought to be tried. He submitted it was also open to the Defendant to attack the claim on the basis that it does not fall within the Order 14 prescriptions or there is a question of law for which the Defendant would, could or should apply under Order 14A to be heard once that question or point of law had been precisely defined or stipulated.
23. Mr. Perinchief submitted that the Defendant had not brought a formal or any substantive application before the Court under Order 18 rule 19 seeking to strike-out the Writ and/or SOC. Therefore, he cannot be allowed to argue under Order 18 and must be confined to or limited to making any and all arguments under Order 24. In any event, in respect of the Defendant's only application being an application under Order 24 for further and better particulars to be provided by the Plaintiff, the Plaintiff has complied with the RFBP and has provided the FBP by way of oral advocacy, affidavit evidence and related exhibits. Thus, the application under Order 14 for summary judgment is wholly self-contained and does not allow any other orders of the RSC to be in play when it is being considered. Mr. Perinchief argued that to allow the Defendant to raise arguments under other rules would be to undermine the speedy nature of Order 14 proceedings, would be outside the jurisdiction of the Court, thus would be ultra vires. To do so, would be to transform the specially endorsed writ into a generally endorsed writ.
24. Mr. Perinchief submitted that the Defendant has embarked on an erroneous road of seeking further and better particulars when he should have only filed a conditional appearance, or applied under Order 14A on a point of law and applying to strike out all or part of the SOC. However, the Defendant has claimed that the SOC is vague and that he cannot properly

reply to it, which Mr. Perinchief argued was simply a ruse to mask the fact that the Defendant cannot positively deny that he owes the Plaintiff the monies claimed. If this was the case, Mr. Perinchief argues that the Defendant before filing a Defence should have brought an application under order 14A on a point of law.

25. However, Mr. Perinchief submitted that as a result of the affidavit evidence filed by the Plaintiff, the Defendant knew without a doubt that essentially an oral contract was in play subsequently evidenced in written e-mail correspondence. Thus says Mr. Perinchief, once the Defendant reviewed the Writ and the SOC he knew or ought to have known, unless he had amnesia, of the circumstances and particulars of what was being claimed against him by the Plaintiff. Thereafter the Defendant should have denied, traversed or otherwise answered the SOC in the usual manner, but he has done none of these things.

26. Mr. Perinchief argued that the Plaintiff had complied with the RFBP as can be seen in the Plaintiff's affidavits and exhibited documentation as filed in Furbert1 on 28 July 2021.

The factual and legal essentials that have been established or pleaded by the Plaintiff

27. Mr. Perinchief made submissions about the legally and binding oral contracts between two people in amorous or personal relationships. He asserted that the Agreement was sufficiently pleaded and corroborated in e-mail correspondence whereby the Defendant acknowledged and admitted the existence of a contract or agreement. He noted that the Defendant had not denied that the Agreement, whether written or oral, was legally correct or not, or whether he owes the Plaintiff monies as alleged or not. Mr. Perinchief argued that the Defendant was obliged and legally obligated to positively deny that there is a binding Agreement between the parties in order to escape his responsibility for repaying the monies. However, despite the ample information and opportunity to do so, he has not done so.'

28. Mr. Perinchief made submissions about the law and elements of a contract. He argued that the Plaintiff, by way of the Writ, the SOC and all the affidavit evidence and exhibits has supplied the Defendant with all the information necessary to evidence a binding contract

between the parties. Thus the Defendant has had ample time to amend his Defence or apply to strike out the Writ and SOC. On that basis, the Defendant should not be allowed to make an application for further and better particulars.

29. Mr. Perinchief submitted that the Agreement and the Defendant's breach has been established in the affidavits and exhibited documents.

Summary Judgment application

30. Mr. Perinchief submitted that in the case of *Home and Overseas Insurance Co. Ltd. v Mentor Insurance Co. (UK) Ltd. (In Liquidation)* [1990] 1 WLR 153, 158 Parker LJ stated:

".. the purpose of Order 14 is to enable the plaintiff to obtain a quick judgment where there is plainly no defence to the claim. If the defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived (or, if arguable, can be shown shortly to be plainly unsustainable) the plaintiff is entitled to judgment. Order 14 proceedings should not be allowed to become a means for obtaining, in effect, an immediate trial of an action, which will be the case if the court lends itself to deterring points of law that may take hours or even days and the citation of many authorities before the court is in a position to arrive at a final decision. If a point of law arises that can finally determine the case, an application under Order 14A should also be made, preferably in the same summons."

31. Mr. Perinchief argued that the scope of Order 14 was considered in the case of *C.E. Heath plc. v Ceram Holding Co.* [1998] 1 WLR 1219, 1228 where Neil LJ stated "*The scope of Order 14 proceedings is determined by the rules and the Court has no wider powers than those conferred by the rules nor any additional statutory power to act outside and beyond the rules or any residual or inherent jurisdiction to grant relief where it is just to do so.*"

32. Mr. Perinchief argued that the Defendant has failed or declined to file a meritorious Defence or make a timely application to amend the same, particularly after receiving the wealth of information and documentation on his request. He has also failed to file an Order 14A application on a point of law that if argued may have allowed him to dismiss the Plaintiff's claim. Accordingly, the Defence should be struck-down or out by the Court on

the basis that it has no merit, legal or lawful force or effect in these matters. Further, the Court should find that the Plaintiff has filed and pleaded a meritorious credible and legally valid claim with corroborating documentation, from both parties and therefore is entitled to summary judgment.

Indemnity Costs

33. Mr. Perinchief claimed for indemnity costs in this application on the basis that the Defendant has conducted his defence in a lethargic, reckless, negligent, non-transparent and cavalier manner. Further, he has made time-wasting, non-probative applications and requests which have caused huge and costly delays to the Court and to the Plaintiff.

Defendant's Reply to the Application for Summary Judgment

34. Ms. Harvey submitted that the Defendant could not properly respond to the allegations in the SOC because the Plaintiff had refused to: (a) produce requested documents referred to in the SOC; (b) provide particulars of the allegations in the SOC; and (c) provide particulars of relevance of the ownership of properties referred to in the SOC. Thus it appears that the Plaintiff is unwilling or unable to specify the terms of the alleged Agreement noting that no term of the loan was alleged, no interest rate is alleged and no payment schedule is alleged.
35. Ms. Harvey submitted that the Plaintiff's application for summary judgment was premature as the Court had issued an Order on 16 September 2021 for the Plaintiff to provide further and better particulars that had not yet been provided. The purpose of that order was allow the Defendant to present a properly pleaded Defence. Any deficiency in the Defence is because of the Plaintiff's refusal.
36. Further, Furbert3 FBP did not answer the questions as set out in the Amended RFBP and Order 18 required the pleadings to be in clear terms. Ms. Harvey submitted that the Defendant was not delaying the litigation but rather had been active in the litigation

process. She noted that the response to the RFBP should be in the pleadings form, not in affidavit form.

37. Ms. Harvey referred to Order 14 r. 1(1) submitting that the Plaintiff must satisfy the Court that there is no issue or question in dispute which ought to be tried or that there ought not to be for some other reason any issue or question to be determined in a trial of the subject claim or in part. She argued that an application for summary judgment must fail if the Defendant can show: (a) a defence to the claim being a *bona fide* defence; or (b) an issue or question in dispute which ought to be tried; or (c) that there ought for some other reason to be a trial of that claim.

38. Ms. Harvey argued that thus, the application for summary judgment must fail for several reasons namely:

- a. The Defendant has a *bona fide* defence and/or issue in dispute which ought to be tried, that being that the Plaintiff has not conclusively demonstrated that there was an intention to create a legal relation, which is fundamental to a contract;
- b. The issue of whether there was a meeting of the minds that provisions of the money was met with the understanding that it was (i) a loan; (ii) within the contemplation of both parties that the monies had to be paid back; and (iii) that the terms upon which the parties were entering into the agreement were understood by all. Ms. Harvey argued that in the absence of these three considerations the Court would have to treat the loan as domestic/social contract which gives rise to no presumption that there was an intention to create legal relations; and
- c. It would be in the interests of justice for the evidence proposed in this case to be tried and tested.

39. Ms. Harvey argued that additionally, the Plaintiff's refusal to provide clear and unambiguous FBP has prevented the Defendant from mounting any clearer defence than he has.

40. Ms. Harvey submitted that a party resisting summary judgment does not have to show a complete defence before leave to defend is given unless there is very clearly no defence.

The Defendant can show a fair case for the defence, reasonable grounds for setting up a defence, or a fair probability that he has a *bona fide* defence.

41. Mr. Harvey submitted that there must be no dispute as to the facts or law which raises a reasonable doubt that the Plaintiff is entitled to judgment without a trial. She referred to the cases of *Jones v Stone* [1984] AC 122 at 124 and *Darrell and Hardell Entertainment Ltd. v Bank of Bermuda Limited* [2002] Bda LR 25.
42. Ms. Harvey argued that in order to defeat an application for summary judgment it is only necessary for the Defendant to show that there is a real as opposed to fanciful (fictional or self-deceptive) prospect of success. She cited the case of *Pearman v Fray* [2015] BDA LR 48 at para 14 where Hellman J stated: “*A defendant may show that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of all or part of that claim. The court may give the defendant leave to defend all or part of the action either unconditionally or on such terms as it thinks fit.*”
43. Ms. Harvey also relied on the case of *Lecolia Caines (trading as “MJP Construction”) v Shannon Caines* [2017] SC Bda 22 Civ at para 20 where Subair Williams J stated: “*Summary judgment is reserved for cases where it is clear that there is no real substantial question to be tried (Codd v Delap (1905) 92 LT 519 HL) and there is no dispute as to the facts or law which raises a reasonable doubt that the plaintiff is entitled to judgment.*”
44. Ms. Harvey referred to her earlier arguments about the White Book Order 18 and reiterated the need for compliance with the Rules again noting that concise answers were required. On that basis, the Defendant had not been provided with sufficient information to set out a Defence.
45. In conclusion, Ms. Harvey submitted that the application for summary judgment should be dismissed and the Court should give an order for the Plaintiff to provide clear and precise answers to the Amended RFBP.

Discussion and Analysis

46. In my view, the circumstances call for the Court to make an order for the Plaintiff to provide clear and unambiguous FBP in response to the Amended RFBP and to decline to grant summary judgment for several reasons.
47. First, in my view, I do not accept Mr. Perinchief's submissions that I should only hear the Summary Judgment application and not consider other rules of Court when doing so. There are two summonses before me which call for consideration of various rules. The Summonses are connected in the following ways: (a) if I order that the Plaintiff provide the FBP, then it may affect my consideration of the application for summary judgment; and (b) if I do not order that the Plaintiff provide the FBP then I can move onto considering the application for summary judgment, still taking into account any deficiencies that may exist in the Plaintiff's pleadings.
48. Second, in my view the SOC is vague and unclear about the nature of the relationship between the parties, the nature of the Agreement and other facts to put the Defendant in a position to construct a purposeful Defence. The Defendant having reached this conclusion himself, served the RFBP to narrow down the issues in order to assist him in providing a proper Defence. He also served a Defence setting out its limitations and reserving a right to pursue the RFBP. In my view, it is not for the Plaintiff to say that unless the Defendant has amnesia, he must remember all the details relevant to this matter or must or ought to know what the Plaintiff's claims are. The onus is on the Plaintiff to set out a clear case in line with the principles set out in Order 18.
49. Third, the Plaintiff replied with three affidavits as described above. Furbert1 sets out a huge amount of detail in affidavit format. In my view, it is not a document in pleadings form that is consistent with Order 18 rules for pleadings. It contains a mixture of facts, evidence to support the facts, and argument. Furbert2 did not seek to plead further material facts or particulars as its purpose was to complain about the Defendant's lack of filing an amended Defence. Furbert3 contained an exhibit document with the Plaintiff's responses in blue ink to the Defendant's explanations of the Amended RFBP. This document was not a free

flowing affidavit but was at least anchored to the explanations in the Amended RFBP. Those explanations explained what was still missing and what was required. The Plaintiff's answers again contained a huge amount of detail consisting of facts, evidence to support the facts and argument. However, the purpose of pleadings is to define the issues and to plead the material facts and particulars rather than the evidence and the law. In my view, the Defendant, nor the Court, should be required to wade through the Writ, the SOC and two affidavits full of mixed fact, law and evidence to determine what the issues are. The Defendant simply requires by way of the RFBP a statement of the material facts that they can in turn consider a reply to with similar material facts and their position in their Defence.

50. Fourth, I accept that some information requested has been provided. However, I also accept the Defendant's submissions that some information has not yet been provided that is required for the Defendant to draft and file a proper Amended Defence. In the Order dated 16 September 2021 the Defendant was ordered to provide particulars of the request for FBP that had not been provided. The aim of that order was for the parties to get that issue resolved so that the litigation process could move on. The Plaintiff's reply in Furbert3 did not achieve that aim. In my view, the SOC and the FBP provided thus far do not provide the Defendant sufficient particulars to file his Amended Defence. Thus, the Defendant again seeks the Court's order for the Plaintiff to provide clear and precise answers to the Amended RFBP. In my view, it is appropriate to order the Defendant to provide particulars of those requests for FBP of the SOC that he contends have not been provided. I am minded to repeat the process that I undertook by way of Order dated 16 September 2021. It would be useful for the Defendant to draft a similar document as the Amended RFBP and thus I shall refer to that new document as the "Re-Amended RFBP". Thereafter, the Plaintiff shall provide a reply document providing clear and precise answers to what has been set out in the Re-Amended RFBP.

51. Fifth, I am cognizant of the Overriding Objective and I encourage counsel to remind themselves of the same taking into account saving expense and ensuring that this matter is dealt with expeditiously and fairly. I also remind the parties that they are required to help the Court to further the overriding objective particularly by the parties co-operating with

each other in the conduct of the proceedings. In my view, this matter requires counsel to co-operate on a common sense basis to resolve the issues of the particulars of the SOC and the Amended Defence and move on with a view to set the matter for a hearing if necessary.

52. Sixth, Mr. Perinchief submits that the Defendant should have availed himself of Order 14A to raise a point of law to be determined by the Court. The Bermuda RSC have an Order 14. I am not aware of the Bermuda RSC having an Order 14A as Mr. Perinchief submits or a relevant parallel provision. In any event, I have not been directed to any such parallel rule. Therefore, I am not able to consider Mr. Perinchief's submissions on that point.

53. Seventh, I stated earlier that if I order the Plaintiff to provide FBPs then it may affect my consideration of the application for summary judgment. I have now reached this point. As I stated earlier, the Plaintiff needs to provide the Defendant with FBP in order for an Amended Defence to be filed. The essence of the Plaintiff's application for summary judgment is that the Defendant has had ample information and opportunity to draft and file his Amended Defence. I have disagreed with that contention. On that basis, I am not prepared to grant summary judgment because the Defendant has not filed an Amended Defence.

54. Eighth, the Plaintiff invites the Court to consider the SOC and the affidavit evidence and to accept the assertions therein that the Defendant has no meritorious defence that he can mount. On that basis summary judgment should be granted. I am asked to accept the Plaintiff's position on everything including about the relationship between the parties, the Agreement and the elements of a contract, the Loan, the FTD and the correspondence between the parties which it is alleged contains admissions by the Defendant of his liability. However, the Defendant has not yet filed an Amended Defence for the reasons stated and because of the Plaintiff's conduct thus far. However, the Defendant has raised two issues that he says provide a *bona fide* defence: (i) that the Plaintiff has not conclusively demonstrated that there was an intention to create a legal relationship, fundamental to a contract; and (ii) whether there was a meeting of the minds that by providing the monies there was an understanding that it was a loan to be paid back and that was understood by both parties, a failure of which does not support an intention to create a legal relation.

55. RSC Order 14/3(1) provides as follows:

“14/3 Judgment for plaintiff

Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

56. In light of the reasons set out above, RSC Order 14/3(1) and the case of *Lecolia Caines v Shannon Caines*, I am not satisfied that it is clear that there are no real substantial questions to be tried and that there is no dispute as to the facts or law which raises a reasonable doubt that the Plaintiff is entitled to judgment. Further, a meritorious defence is available if the Court accepts the issues identified by the Defendant. On that basis, I dismiss the application for summary judgment and the claim is to be tried.

Conclusions

57. I order the Defendant to provide, within 14 days of the date of this Ruling, particulars of those requests for FBP of the SOC that he contends have not been provided. Thereafter, within 14 days, the Plaintiff shall provide, in accordance with the RSC, a reply document providing clear and precise answers to what has been set out by the Plaintiff as having not been provided.

58. The application for summary judgment is dismissed.

59. Unless either party files a Form 31TC to be heard on the subject of costs, I direct that costs shall follow the event in favour of the Defendant on a standard basis, to be taxed by the Registrar if not agreed.

Dated 7 July 2022

**HON. MR. JUSTICE LARRY MUSSENDEN
PUISNE JUDGE OF THE SUPREME COURT**