

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Side

2019/CLE/gen/FP/00150

BETWEEN

KEVIN M. RUSSELL & CO.

(A FIRM)

Plaintiff

AND

DR. MONIQUE N. PRATT

Defendant

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Ms. Constance McDonald for the Plaintiff

Mr. Jacy A. Whittaker for the Defendant

HEARING DATE: September 10, 2020

RULING

Hanna-Adderley, J

This is an application to strike out the Plaintiff's Statement of Claim

Introduction

1. This is an application by the Defendant by way of a Summons ("Summons") filed August 16, 2019 and supported by the Affidavit of Sheila Taylor filed on the same date seeking pursuant to Order 18, Rule 19(1)(a), (b), (c) and (d) of The Rules of the Supreme Court ("RSC") and the inherent jurisdiction of the Court an Order that (1) the Plaintiff's action be struck out on the grounds that it does not disclose a reasonable cause of action, it is scandalous, frivolous and/or vexatious, it may prejudice, embarrass or delay the fair trial of the action and is an abuse of the Court's process; (2) the Plaintiff's action is time-barred under the Limitation Act and costs.

2. The Defendant's application is opposed by the Plaintiff and relies on its Affidavit filed herein on August 27, 2020 ("the Plaintiff's Affidavit").
3. The Court must first determine whether the Plaintiff's Statement of Claim discloses a reasonable cause of action and as such it should not be struck out and whether the Plaintiff's claim is statute barred by the provisions of the Limitation Act.

Statement of Facts

4. The Plaintiff filed a Generally Indorsed Writ of Summons on June 21, 2019 whereby it claimed for the payment of the amount of \$19,958.00. In its Statement of Claim filed herein on July 26, 2019 the Plaintiff claims inter alia:-
 1. At all material times the Plaintiff was and is a Law Chambers offering legal services to the public at large.
 2. At all material times the Defendant was a client of the Plaintiff who acted on her behalf in the purchase of Apartment Unit #55 Silver Point Condominiums in the City of Freeport on the Island of Grand Bahama one of the Islands in the Commonwealth of the Bahamas.
 3. The Defendant was advised by the Plaintiff of the possibility of obtaining an exemption on her one-half portion of the applicable Stamp Duty on the Conveyance with regards to her purchase of the Unit.
 3. As a result of the contents set out in paragraph 3 herein the Plaintiff was instructed by the Defendant to make an application to the Treasury Department of the Ministry of Finance for a possible exemption of the Defendants portion of the applicable stamp duty owed on the Conveyance and on the 22nd day of March, A.D., 2010 an application was made that Ministry in that regard.
 5. By letter dated the 11th day of August, A.D., 2010 the Plaintiff was advised by the Treasury Department that the Defendant's application for the said exemption on her portion of stamp duty as the amount set out in the Conveyance in her favour exceeded the amount under the provisions of the Stamp Act.
 6. By Letter dated the 14 June, A.D., 2013 the Plaintiff advised the Defendant (who was in the process of relocating back to the Bahamas) of, inter alia the status of the matter and the amount on account in the Plaintiff's possession and the balance needed to complete.
 7. On the 21st day of June, A.D., 2013 the appropriate stamp duty in the amount of \$46,526.40 was paid to the Public Treasury on the documentation with regard to the purchase of the said unit.
 8. By e-mail transmission dated the 25th June, A.D., 2013 the Defendant advised the Plaintiff of her intention to attend the Chambers of the Plaintiff to discuss the finances and moneys owed to the Plaintiff and that "all can be taken care of in a timely manner".
 9. The Defendant did not attend the Plaintiff's Chambers as promised and by letter dated the 26th May, A.D., 2015 the Plaintiff advised the Defendant of outstanding amount of \$19,958.00 due and owing to the Plaintiff with regards to the stamp duty payable on the transaction.

10. To date the Defendant has refused and continues to refuse to pay to the Plaintiff the said amount of \$19,958. despite demands for her to do so.

11. By reason of the matters set out herein the Plaintiff has suffered and is bereft of the monies owed by the Defendant.

AND the Plaintiffs claims

1. Payment of the sum of \$19,958.00

2. Damage

3. Interest

4. Cost

5. Such further or other relief that the Court deems just.”

5. The Defendant filed her Defence on August 6, 2019 whereby she denied the allegations contained in the Plaintiff's Statement of Claim. Moreover, she pleads that it is her intention to make an application to strike out the Plaintiff's claim as it is time barred by the Limitation Act and that she is unable to plead to paragraphs 2 to 11 of the Statement of Claim as they contain insufficient particulars of a contract and/or a breach of contract.
6. The Defendant now seeks pursuant to Order 18, Rule 19 of the RSC and the inherent jurisdiction of the Court for an Order that the Plaintiff's action be struck out on the grounds that it does not disclose a reasonable cause of action, it is scandalous, frivolous and/or vexatious, it may prejudice, embarrass or delay the fair trial of the action and is an abuse of the Court's process; the Plaintiff's action is time-barred under the Limitation Act and that the costs of this application be paid by the Plaintiff to the Defendant.
7. In support of the Defendant's application the Affidavit of Sheila Taylor filed on August 16, 2019 states in part that she has seen the Plaintiff's Statement of Claim and notes that the date of accrual of the Plaintiff's cause of action is time barred under the Limitation Act. That a claim for breach of contract is being made by the Plaintiff; that the date of accrual of the claim was on or about June 21, 2013 and that the instant claim was filed on July 26, 2019 over six years and one month outside of the statutory limit for contract claims. She also states that Section 5 of the Limitation Act must be brought within six years of the date on which the cause of action accrued in actions in contract and tort.
8. The Plaintiff filed an Affidavit on August 27, 2020 whereby he stated in part that he is the Senior Partner of the Plaintiff and that the Plaintiff was retained by the Defendant to act on her behalf in the purchase of Apartment Unit #55 Silver Point Condominium in Freeport, Grand Bahama. That at the time of the transaction the Plaintiff advised the Defendant of the possibility of obtaining an exemption on her one-half portion of the applicable stamp duty with regards to her purchase of the unit. That the Plaintiff was instructed by the Defendant to make an application to the Treasury Department of the Ministry of Finance for a possible exemption. That by letter dated the 11th August, 2020 the Plaintiff was advised by the Treasury Department that the Defendant's application for the said exemption was not approved as the consideration set out in the Conveyance exceeded the allowable amount set out in the provisions of the Stamp Act. That by letter dated the 14th June, 2013 the Plaintiff advised the Defendant of the status of the matter and the amount needed to complete and the amount on account in the Plaintiff's

possession and the balance needed to make up her portion of the Stamp Duty. That no funds were received by the Plaintiff from the Defendant and on the 21st June, 2013 the Plaintiff paid the appropriate Stamp Duty in the amount of \$46,526.40 to the Public Treasury with regard to the documentation with regards to the purchase of the Unit. That by an e-mail dated the 25th June, 2013 the Defendant advised the Plaintiff of her intention to attend the Plaintiff's Chambers to discuss the finances and moneys owed to the Plaintiff and that "all will be taken care of in a timely manner." That the Defendant did not attend the Plaintiff's Chambers as promised and by letter dated the 26th May, 2015 advised the Defendant of the outstanding amount of \$19,958.00 due and owing to the Plaintiff. That the Defendant did not respond to that letter and as a result the Plaintiff subsequently filed its Writ of Summons on the 21st June, 2019.

Submissions

9. Counsel for the Defendant, Mr. Jacy Whittaker relies on his Revised Skeleton Arguments in support of his application. He submits in part that the Plaintiff's claim appears to be a claim for breach of contract and refers the Court to the relevant paragraphs of the Plaintiff's Statement of Claim in particular paragraphs 3 to 9. He submits that the Plaintiff's pleadings do not support or give sufficient particulars to establish that there was a contract between the parties and as such the Plaintiff cannot allege a breach of such contract. Mr. Whittaker further submits that paragraphs 3-3, 5 and 6 show that a law firm represented someone in 2010 and a letter was sent to the clients requesting funds to pay Stamp Duty and seven days later that money was paid. He states that the money was then paid to the Public Treasury and the attorney wrote to the client requesting to be repaid the money. It is his submission that that is the essence of the Plaintiff's claim however there is no indication in the Statement of Claim that there was an agreement and there was an offer to advance the funds. He submits that the pleadings do not show there was any intention whatsoever between the Plaintiff and the Defendant to create an agreement and further no consideration in that advancement was pleaded.
10. Mr. Whittaker submits that the framing of the issues in this matter has left a lot of questions as they do not provide any factual foundation. Moreover, he submits that both the Plaintiff and Defendant are prejudiced as the Defendant is unable to frame her defence as it relates to an allegation of breach of contract or explore other defences if such an agreement was pleaded. Mr. Whittaker refers the Court to **Bridgland v Earlsmead Estates Limited [2016] EWHC B9 (TCC) and Boake Allen Ltd & Ors v Revenue and Customs Rev 1 [2006] EWCA Civ 25** in support of his submission. He further submits that Order 18, Rule 19(1)(a) of the RSC requires the Court to only look at the pleadings and where the Plaintiff must use an Affidavit in support it's obvious that it does not disclose a reasonable cause of action.
11. Mr. Whittaker also submits that since the filing of the Defendant's Summons, the Plaintiff has made no attempt to amend its claim to include the particulars of the agreement and as such the Plaintiff therefore does not see anything wrong with its Statement of Claim and an unless order will not serve the intended purpose.

12. In addition to his submissions pursuant to Order 19, Rule 18 of the RSC, Mr. Whittaker submits that the Plaintiff's claim is statute barred by the provisions of the Limitation Act. He submits that the Plaintiff has agreed that the instant action is a contractual matter and there is a six-year limitation period but the Plaintiff has failed to provide the particulars of the contract. He refers the Court to Section 5 of the Limitation Act in support of his submission. Moreover, he submits that the Defendant has an absolute defence if proceedings are commenced outside the prescribed limitation period unless the time limit is subject to an extension or exclusion. He refers the Court to **RB Policies at Lloyd's v Butler [1950] 1 KB 76** and **Cave v Robinson Jarvis & Rolf (a firm) [2003] 1 AC 384**, HL in support of his submission.
13. Mr. Whittaker submits that the Court must first determine when the breach occurred and time began to run before it can determine when the limitation period ends. He further submits that the cause of action alleged accrued in June 2013 and refers the Court to **Coburn v College [1897] 1 QB 702 at 706, 707, CA** per Lord Esher M, as authority the Court uses when determining when a cause of action accrues. Based on that authority it is his submission that the Courts have constantly held that a cause of action accrues when every fact exists which would be necessary for the Claimant to prove if set out in his statement of case in order to support his right to judgment.
14. He also submits that the Plaintiff has admitted to sitting on its claim for over six years and was fully aware of all of the facts that existed at the time that may have been necessary to prove his claim. Therefore, he submits the Plaintiff's claim as such is now statute barred.
15. Lastly, Mr. Whittaker submits that the entire action amounts to an abuse of the Court's process as it is frivolous, vexatious and unsustainable. He submits that based on the pleadings it fails to show that there was an agreement between the parties to advance the "owed" sum in the absence of such agreement. He also submits that the Defendant suffers prejudice as had the Defendant been notified in 2010 regarding her being unsuccessful in obtaining the exemption, things may have gone differently. He relies on the text found in Halsburys Laws of England at paragraph 434 which he states that if a party acts with an ulterior motive to the prejudice of the opposite party he may be guilty of an abuse of process and where subsequent events render what was originally a maintainable action, one which becomes inevitably doomed to failure, the action may be dismissed.
16. Counsel for the Plaintiff, Ms. McDonald submits that the instant action is the case of principal and agent. She submits that the Defendant employed the Plaintiff to act on her behalf in a real estate transaction which is pleaded at paragraphs 1-3 of the Statement of Claim. She further submits that it is trite law that a principal has to reimburse an agent for all sums of money lawfully extended on behalf of the principal. Moreover, she submits that although the transaction i.e. the sale between the vendor and the purchaser was completed in 2010, the attorney's duty did not stop at that time as the relationship between the parties in a real estate transaction does not end until the documents are sent to the Registry for recording.

17. Ms. McDonald also submits that the Plaintiff was advised by letter dated August 11, 2010 by the Treasury Department that the Defendant's application for exemption was unsuccessful and the Plaintiff therefore advised the Defendant that there was insufficient money and thus the agent had a duty to inform the principal of such and the Plaintiff did in the instant case.
18. She further submits that the Defendant's failure to attend the Plaintiff's Chambers after informing Kevin Russell, the attorney of the Plaintiff via e-mail dated June 25, 2013 that she would constitute a breach of the duty of a principal in relation to an agent and that duty is to reimburse your agent for all sums lawfully extended. She further submits that the principal has the duty to reimburse the agent which she has failed to do.
19. Ms. McDonald submits that the Plaintiff's claim is not statute barred because time does not start to run until after a reasonable time when the principal, despite assurances to the contrary, fails to reimburse the agent. Moreover, she submits that time did not begin to run until after there was an acknowledgement of the debt.
20. She also submits that this action is not frivolous or vexatious as this action deals with an attorney who was acting as the agent and paid out over \$19,000.00 as this payment was a government responsibility and the duty of the purchaser. She further submits that the Defendant was aware of how the \$19,000.00 arose from June 2013 and cannot now say that there is no cause of action.
21. In response to Counsel for the Plaintiff's submissions, Mr. Whittaker submits that the e-mail of June 25, 2013 is not an acknowledgment of a debt or a promise to pay, instead it is an acknowledgement that the Defendant was going to have a discussion about what was going on and as such Section 38 of the Limitation Act that deals with the fresh accrual of an action on the date of the acknowledgement or part payment of the Defendant does not extend to the Plaintiff as that provision only extends where there is a right of action including a foreclosure action to recover land or the right of a mortgagee for person property.
22. He also submits that the Statement of Claim in this action fails to plead the principal agent relationship and that when an agent is employed to carry out a transaction which involves a payment to him, on the principal's behalf, he must not compromise his principal's right or part with the property until he has received payment unless authorized to do so by instruction. He refers the Court several authorities in support of his submission. **See Papey v West de Cord (1894) 1 QB 272; Brown v Gorman; Gorman and Wilds and Wilshire and Simms (1808) All ER Rep 694.** Mr. Whittaker submits as found in Halsburys that the relationship of agency is created by the express agreement of a principal and agent and as such the Statement of Claim fails to show that. More so he submits that the Statement of Claim in its current form cannot be maintained.

Issues

23. The issues to be determined before the Court on this application are whether the Plaintiff's Statement of Claim discloses a reasonable cause of action or raises some question fit to

be decided and if so, is the Plaintiff statute barred by virtue of the provisions of the Limitation Act.

Analysis and Conclusion

The Law

24. Order 18, Rule 19 of the RSC states:-

“19. (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).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.”

25. The power to strike out is a Draconian remedy which should be employed only in clear and obvious cases where it is possible to say at the interlocutory stage and before full discovery that a particular allegation was incapable of proof (per Allen, J in **Bettas Limited v Hong Kong and Shanghai Banking Corporation Limited and HSBC Bank Plc SCCiv App No. 312 of 2013**).

26. Guidance on how this rule should be applied is set out by **Osadabey, JA** in **Hamby v Hermitage Estates Ltd SCCiv App No. 21 of 2008** and also by **Auld, LJ** in **Electra Private Equity Partners v KPMG Peat Marwick (a firm) & Ors [2001] 1 BCLC 589**. Osadabey, JA states in Hamby: “It is well settled that the jurisdiction to strike out is to be used sparingly and limited to plain and obvious cases where there is no need for a trial. There is no doubt that the exercise of that jurisdiction may deprive a party of the examination and cross examination of witnesses which can change the result of a case.” At page 613 of **Electra Private Equity Partners**, Auld LJ stated: “It is trite law that the power to strike out a claim under RSC Ord.18, r.19 or in the inherent jurisdiction of the Court should only be exercised in “plain and obvious” cases. That is particularly so where there are issues as to material primary facts and the inferences to be drawn from them, and when there has been no discovery or oral evidence. In such cases, as Mr. Aldous submitted, to succeed in an application to strike out, a defendant must show that there is no realistic possibility of the plaintiff establishing a cause of action consistently with his pleading and the possible facts of the matter when they are known. Certainly, a judge, on a strike-out application where the central issue is one of determination of a legal outcome

by reference to as yet undetermined facts, should not attempt to try the case on the affidavits. See **Goodson v Grierson [1908] 1 KB 761, CA**, per Fletcher Moulton LJ at 764-5 and Buckley LJ at 766; **Wenlock v Moloney**, per Sellers LJ at 1242G-1243D and Danckwerts LJ at 1244B ([1965] 1 WLR 1238); and **Torras v Al Sabah & others(unreported) 21 March 1997 CA**, per Saville LJ. There may be more scope for early summary judicial dismissal of a claim where the evidence relied on 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”; see eg **Lawrance v Lord Norreys (1890) 15 App Cas 210**, per Lord Herschell at 219-220. However, the court should proceed with great caution in exercising its power of strike-out on such a factual basis when all the facts are not known to it, when they and the legal principle(s) turning on them are complex and the law, as here, is in a state of development. It should only strike out a claim in a clear and obvious case. Thus, in **McDonald’s Corporation v Steel [1995] 3 All ER 615, [1995] EMLR 527, CA**, Neill LJ, with whom Steyn and Peter Gibson LJJ agreed, said, at 623 e-f of the former report, that the power to strike out was a Draconian remedy which should be employed only in clear and obvious cases where it was possible to say at the interlocutory stage and before full discovery that a particular allegation was incapable of proof.

Discloses No Reasonable Cause of Action

27. As highlighted by Lord Pearson in **Drummond-Jackson v British Medical Association [1970] 1 W.L.R. 688 as found at 18/19/10 Commentary of The Supreme Court Practice 1999 on page 349**, a reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleadings are considered. Moreover as long as the statement of claim or particulars disclose some cause of action or raise some question fit to be decided by a Judge or jury, the mere fact that the case is weak and not likely to succeed is no ground for striking it out (**18/19/10 Commentary of The Supreme Court Practice 1999 on page 349**).
28. In contemplation of the above, I can accept Mr. Whittaker’s submission that for an application grounded pursuant to Order 18, Rule 19(1)(a) of the RSC the Court’s duty is to look at the pleadings and the pleadings alone. Therefore, the Court must now determine if the pleadings disclose a reasonable cause of action with some chance of success or raises some question fit to be decided. To my mind, although both Counsel have stated what they believe the cause of action to be, at this juncture, the Court is only required to look at whether on the pleadings it shows a reasonable cause of action or raises some question fit to be decided by this Court.
29. Counsel for the Defendant, Mr. Whittaker has submitted that the Plaintiff’s Statement of Claim fails to plead the necessary elements of a breach of contract and in response, Counsel for the Plaintiff, Ms. McDonald submitted that the pleadings show a principal/agent relationship. Mr. Whittaker submitted that the pleadings also fails to plead the necessary elements to establish a principal/agent relationship.

30. In the present case the Plaintiff claims that it was engaged by the Defendant to act on her behalf for the purchase of Apartment Unit #55 Silver Point Condominium, Freeport, Grand Bahama. That the Plaintiff advised the Defendant about obtaining an exemption on the applicable stamp duty on the conveyance but was advised on the August 11, 2010 that the Defendant was unsuccessful in obtaining the exemption. That by a letter dated June 14, 2013 the Plaintiff advised the Defendant about the status of the transaction and the balance owing to complete the transaction. That on June 21, 2013 the appropriate stamp duty was paid to the Public Treasury in the amount of \$46,526.40 with regard to the purchase of the said unit. That on June 25, 2013 the Defendant advised the Plaintiff of her intention to attend the Plaintiff's Chambers to discuss the finances and moneys owed to the Plaintiff. That the Defendant did not attend the Plaintiff's Chambers and by letter dated May 26, 2015 the Plaintiff advised the Defendant of the outstanding amount of \$19,958.00 due and owing to the Plaintiff which to date she has failed to pay.
31. The principal/agent relationship is grounded in contract whereby one person known as the agent has the authority to act on behalf of another otherwise known as the principal and as such consents to act (**Halsbury's Laws of England (2017), Agency, Vol 1. Nature and Formation at paragraph 1**). Moreover, the principal/agent relationship can also be used to describe the position of a person who is employed by another to perform duties of a professional nature which he discharges as that other's alter ego and not merely as an intermediary between the principal and the third party, therefore an attorney may be his client's agent for the purpose of instituting or continuing legal proceedings on his/her behalf (**Halsbury's Laws of England (2017), Agency, Vol 1. Nature and Formation at paragraph 2**). The relation of agency is created by the express or implied agreement of principal and agent, however it can also be created by ratification by the principal of the agent's acts done on his behalf (**Halsbury's Laws of England (2017), Agency, Vol 1. Nature and Formation at paragraph 14**).
32. I am of the view that the Statement of Claim before me pleads the elements of a principal and agent relationship and as such is a relationship grounded in contract. The Plaintiff has the burden to prove the terms of such contract and whether these terms were express or implied or through conduct.
33. I am not of the view that the Statement of Claim before me fails to plead the elements of a contractual relationship between the parties nor does it fail to plead the elements of a principal/agent relationship.
34. By striking out an action at this juncture in essence drives the Plaintiff from the seat of justice before discovery or giving the parties the opportunity to cross-examine and test the evidence before the Court, and goes against what the case law establishes.
35. Any deficiencies in this Statement of Claim can be cured by simple amendment to ensure that all particulars to which the Plaintiff intends to rely upon during the instant case are properly before the Court.

Abuse of the Court's Process, Frivolous and Vexatious

36. The Defendant's application as it relates to Order 18, Rule 19 (1)(a) of the RSC fails in that the pleadings do disclose a reasonable cause of action. However, the application before me is also made pursuant to Order 18, Rule 19 (1)(b)(c) and (d).
37. Counsel for the Defendant has submitted that the instant action before the Court is frivolous and vexatious and as such is an abuse of process.
38. Lindley L.J. **in Attorney General of Duchy of Lancaster v L. & N.W. Ry [1892] 3 Ch. 274 at 277** stated that the words "frivolous or vexatious" are meant for cases which are obviously frivolous or vexatious, or obviously unsustainable (**18/19/16, the Commentary of the Supreme Court Practice, 1999 at page 350**). Moreover, 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 (18/19/16, the Commentary of the Supreme Court Practice, 1999 at page 350)**.
39. Counsel for the Defendant submits that while the Plaintiff suffers prejudice, so does the Defendant as he submits had she been made aware earlier of the denial of her application for exemption, things may have gone differently. Therefore he submits that if a party acts with ulterior motive to the prejudice of the opposite party he may be guilty of an abuse of process and where subsequent events render what was originally a maintainable action, the action may be dismissed. Counsel for the Plaintiff submits however that the instant action is not frivolous or vexatious as the Plaintiff acting as agent paid out the monies as it was a Government responsibility and duty of the purchaser to do so. She further submits that the Defendant admitted that she owed the Plaintiff the money as stated in an e-mail dated June 25, 2013.
40. Overall, the Court will prevent the improper use of its machinery, and will in the proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. Looking at the relevant circumstances of the instant case and the submissions laid over by Counsel and finding that the Statement of Claim discloses a reasonable cause of action, I do not find that the said Statement of Claim is frivolous or vexatious or obviously unsustainable, and is therefore not an abuse of the Court process.
41. It is also noted that the Affidavit of Sheila Taylor failed to state in which manner the Statement of Claim is frivolous, vexatious or an abuse of the court process which is required to support this ground for strike out.

Limitation

42. Although the Plaintiff's Statement of Claim discloses a reasonable cause of action, the Court must also determine based on the pleadings whether the Plaintiff's claim is statute barred by virtue of the provisions of the Limitation Act.

43. Counsel for the Defendant, Mr. Whittaker has submitted that the Plaintiff's claim as pleaded is statute barred. He submits that the Plaintiff's claim appears to be for breach of contract and therefore Section 5 of the Limitation Act is relevant. He further submits that the Plaintiff has failed to provide particulars of the contract, i.e. the terms and conditions and that without the particulars of the contract the Plaintiff in its pleadings only pointed to a payment advanced by it to the Public Treasury as the date of the alleged breach. He also submits if proceedings are commenced outside the prescribed limitation period then, unless the time limit is subject to extension or exclusion, the defendant has an absolute defence. Lastly, it is his submission that in order to determine when the limitation period ends, the Court must first determine when the breach occurred, and time began to run.
44. Section 5 of the Limitation Act states:-
- "5. (1) The following actions shall not be brought after the expiry of six years from the date on which the cause of action accrued, that is to say —
- (a) actions founded on simple contract (including quasi contract) or on tort;
 - (b) actions to enforce the award of an arbitrator where the submission is not by an instrument under seal;
 - (c) actions to recover any sum recoverable by virtue of any written law;
 - (d) actions to enforce a recognisance."
45. After reviewing the Affidavit evidence, in particular the Affidavit of Sheila Taylor and the pleadings before me, I do not find that the Plaintiff's action is statute barred.
46. The Plaintiff filed a Generally Indorsed Writ on June 20, 2019 and the Defendant entered her appearance by filing a Memorandum and Notice of Appearance on July 9, 2019. Having considered the evidence contained in the Affidavit of Shelia Taylor she states that after her review of the Plaintiff's Statement of Claim she noted that the date of accrual of the Plaintiff's claim for breach of contract was on or about June 21, 2013.
47. Noting that the action was commenced by way of Generally Indorsed Writ on June 20, 2019, the Plaintiff's action falls within the six-year limitation period.
48. In light of this, Counsel for the Defendant's submission that the Plaintiff's claim is statute barred fails.

Conclusion

49. Therefore, having found that the Plaintiff's Statement of Claim discloses a reasonable cause of action and raises a question fit to be tried and it is not statute barred, the Defendant's application for strike out is denied and dismissed.
50. Having heard the parties on the issue of costs, costs shall follow the event and awarded in favour of the Plaintiff to be taxed if not agreed. The Plaintiff may file its Bill of Costs within the requisite 3 months period but shall not set the matter down for hearing until the completion of these proceedings.

Dated the 20th day of October, 2020

Petra M. Hanna-Adderley
Justice