



**IN THE SUPREME COURT  
TURKS AND CAICOS ISLANDS**

**ACTION NO. CL-53/20**

**BETWEEN:**

**THE HONOURABLE ATTORNEY GENERAL  
OF THE TURKS AND CAICOS ISLANDS**

**PLAINTIFF**

**-and-**

**SEAN SULLIVAN**

**DEFENDANT**

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**DECISION**

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**Before:** **The Hon. Mr Justice Anthony S. Gruchot**

**Appearances:** **Mr Lawrence Harris of Cooley (UK) LLP for the Plaintiff**  
**Mr Conrad Griffiths KC of Griffiths & Partners for the Defendant**

**Hearing Date:** **17<sup>th</sup> May 2023**

**Venue:** **Court 5, Graceway Plaza, Providenciales**

**Handed Down:** **22<sup>nd</sup> May 2023**



1. On 11<sup>th</sup> May 2023 I granted leave to the Defendant to amend his Defence, however amendments to the proposed amended defence were required to be filed by Monday 15<sup>th</sup> May 2023 with a further short hearing listed on 17<sup>th</sup> May 2023 in the event that any issues arose from the amended pleading.
2. Mr Harris takes issue with just 4 paragraphs of the re-drafted proposed amended defence which appear as follows:

99. *e. From 2016 to 2019 the River (represented by the Defendant) and the Defendant worked with Minister Higgs and Premier Robinson to obtain approval for the resort (in Salt Cay). The River (represented by the Defendant) and the Defendant was directed to work with James Bursey of TC Invest to finalise the plans for the resort development but despite strong indications that the Salt Cay resort would be approved by the Cabinet. the approval was rejected on the recommendation of Mr Mitchell (on the direction of Mr Campbell).*

106. *The plans for the Salt Cay resort were approved by the Crown Land Advisory Panel in June 2018. The plans were then submitted for Cabinet approval in August 2018 but were not approved. It is averred that the plans for the Salt Cay resort were rejected by the Cabinet because:*

*a) Mr Campbell had improperly intervened so as to cause the proposal to be rejected and the Plaintiff is put to proof as to communications between Mr. Campbell and Mr. Mitchell KC of SIPT and with representatives of the Plaintiff; and*

*b) Mr Campbell requested further payments from the Defendant. which the Defendant did not pay:*

108. *The River (represented by the Defendant) and the Defendant then contacted Mr Campbell and was informed by Mr Campbell that he had influenced Mr Mitchell KC and this was the reason why the Salt Cay resort was rejected by the Cabinet. Mr Campbell disclosed to the River (represented by the Defendant) what he said was his text messages exchanged with Mr Mitchell in order to demonstrate the level of influence he had over Mr Mitchell KC and the extent of his relationship.*

109. *It is to be inferred that the rejection of the Salt Cay plan and the refusal to further negotiate with the River and the Defendant by the Plaintiff is due to the matters now alleged in the Statement of Claim and on the grounds that the Plaintiff (wrongly) does not regard the Defendant as a fit and proper person with whom to enter into a development agreement.*

110. *(gg) In August 2018. the Salt Cay development project was considered by Cabinet and deferred (but not rejected).*

3. Mr Harris argues that paragraph 110. (gg) is inconsistent with paragraph 109 in that the Salt Cay project is said to have been “deferred” in paragraph 110, but “rejected” in 109. He takes no issue with paragraph 109 (to the extent Mr Griffiths KC wants to put his case that way, not that he accepts it) but with the inconsistency.
4. Mr Griffiths submits that the approval was deferred, but that the application effectively hit a brick wall and as such the deferral ultimately amounted (in practice) to a rejection of the project, however, he accepted that the pleading should be tidied up, in reference to the Cabinet deferring the application and that he would make the required changes.

5. The next point Mr Harris takes is in relation to paragraphs 106 and 108 which he says are unnecessary and contradictory to paragraph 109. The issue he takes is the averment that Mr Campbell had influenced Mr Mitchell KC with respect to the Salt Cay project.
6. The point he takes is that in paragraph 109 the reason pleaded for the 'rejection' of the project was that Cabinet had formed a view that the Defendant was not 'a fit and proper person' but in paragraphs 106 and 108 the averment is that Mr Mitchell KC has 'improperly' intervened in the Cabinet decision. This he says is contradictory and, further submits that no facts support the allegations against Mr Mitchell KC.
7. He further submits that these allegations must be taken as an allegation that Mr Mitchell KC acted improperly, which he submits, has been dealt with, by the striking out of the counterclaim. It is perhaps worthwhile for me to repeat my previous finding that on reading the decision of Lobban-Jackson J it is unclear on what basis she struck out the counterclaim<sup>1</sup>.
8. Mr Harris submits that in light of paragraph 109, paragraphs 106 and 108 are unnecessary.
9. Mr Harris also submits that if what is being averred is that Mr Mitchell KC acted improperly that that should be properly pleaded, and it is not. He goes on that there is no plausible claim against Mr Mitchell KC and that it had been struck out by Lobban-Jackson J. He suggests that as there is no proper evidence to support the allegation, it should go.
10. Mr Griffiths KC submits that it is not right to say that there is no evidence to support the averment of there being an intervention by Mr Campbell and subsequent communication between Mr Mitchell KC and the Special Investigation and Prosecution Team, however, he points out that at this stage of the proceedings, I am not looking at the evidence, but merely addressing the pleadings. Notwithstanding, he refers me to the decision of Agyemang CJ in this matter<sup>2</sup>, in respect of a previous application to have, *inter alia*, Mr Harris and his firm removed from this case. In that matter, the Chief Justice references email communication between Mr Mitchell KC and Mr Harris, in which Mr Mitchell KC introduces Mr Campbell to Mr Harris.
11. Mr Griffith KC submits that what the Defendant is doing is pleading an explanation as to why the projects he was involved with ultimately ran into a metaphorical brick wall, the reason for which he submits was because of the conduct of Mr Campbell, which caused Mr Mitchell KC to communicate with Mr Harris. This he submits ultimately led to this project being deferred in name, but in practice entirely blocked, because the Defendant was considered by Cabinet not to be a fit and proper person for the grant of a development agreement.
12. Mr Griffiths submits that the effect of striking out the counterclaim does not mean that Mr Mitchell KC cannot be referred to in a pleading. He refers to paragraph 99 e. of the proposed amended defence and submits that there is nothing improper to say that the approval was rejected on the recommendation of Mr Mitchell KC, on the direction of Mr Campbell, whether or not that recommendation was sound or unfair. He suggests that it does not say more than that.

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<sup>1</sup> See (CL 53/20) [2023] TCASC 55 (11 May 2023) at paragraph 15.

<sup>2</sup> 3<sup>rd</sup> March 2021 – unreported at paragraphs 41 & 42.

13. Mr Griffiths KC submits that he has not raised the claim against Mr Mitchell KC or inferred impropriety against him, but that he is pleading that Mr Mitchell KC was influenced by Mr Campbell. He submits that what is pleaded is an explanation as to why matters have come to pass as they have, and why the Defendant has conducted himself as he has for so many years, which is relevant to his Defence. He goes on that there clearly is evidence that Mr Mitchell was communicating with the Plaintiff's civil recovery team lawyers on this matter and that is relevant to why the Salt Cay project was rejected. He suggests that it is not enough just to say the Salt Cay project was rejected. He submits that the project could have been rejected because the Defendant was not a good fit for Salt Cay, but the fact that it was rejected because of the allegations of impropriety which were raised in 2018 and 2019 but that had existed (albeit denied) in 2012 and 2013.
14. Mr Harris submits that his objection is, subject to the agreed tidying up of the tension between deferment and rejection, to paragraphs 106, 108, and the words "*on the recommendation of Mr Mitchell (on the direction of Mr Campbell)*." In paragraph 99 e. of the proposed amended pleading and in essence to the reference to Mr Mitchell KC. He submits that the amendments should not be allowed because:
- a. they are internally inconsistent with each other and they go much further than they need to for the plea of estoppel. He submits that Mr Griffith's KC does not need to go further than saying the Salt Cay development was not approved following representations that it would be;
  - b. that bringing in Mr Mitchell KC without proper evidence is completely unacceptable; and
  - c. that if Mr Griffiths KC is relying on paragraph 109, then it does not matter if Mr Mitchell KC had some completely different or separate motive. He refers to Hargreaves and anor. -v- The Chief Constable of Greater Manchester<sup>3</sup> in His Honour Judge Anthony Thornton QC stated with respect to misfeasance in a public office:  
  
*"...This type of claim is rarely brought and, if brought, is rarely successful. To succeed in a claim for misfeasance in public office in this case, CH or RH must prove that the officers or social workers that they complain about caused him or her harm by conduct which was specifically intended to injure him or her. Negligent or grossly negligent acts are not sufficient for this purpose. CH or RH must prove that the actions complained about were specifically taken to harm them and that their predominant purpose was to inflict that harm. The actions must, therefore, amount to what is called "targeted malice". They must also have been unlawful so that an officer who arrests someone because he hates that person and wants to harm him would have a defence if it turns out that the officer could have lawfully arrested the victim because he was in the course of committing an arrestable offence..."* (Emphasis added)
15. It is not clear to me what the allegation against Mr Mitchell KC adds to the Defendant's case, but it is also not clear to me what the objection is to those pleadings, such that they should not be allowed.

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<sup>3</sup> [2013] EWHC 2478 (QB) at paragraph 85.

16. O. 20 of the Civil Rules 2000 deals with amendments to pleadings. The guiding principle is that amendments will be allowed as long as the amendment does not give rise to prejudice or injury which cannot be compensated for by costs.
17. The proposed amended defence has in the region of 79 additional paragraphs or subparagraphs along with substantial amendments to pre-existing paragraphs which survived the strike-out application. The Defence now totals 116 paragraphs.
18. The significant amendments are perhaps understandable in the circumstances of Mr Griffiths KC having only been instructed to take over the conduct of this matter in late March 2023, the original Defence and counterclaim not having been drafted by him.
19. Out of all of the amendments the only objection that is being taken is in respect of the reference to Mr Mitchell KC and his alleged involvement. It appears to me that Mr Griffiths KC requires the inclusion of the allegations of Mr Mitchell KC's involvement to show how Cabinet came to the opinion that the Defendant was not a fit and proper person. I do not see that the impugned paragraphs do anything more than that, and I do not find them objectionable.
20. There is an argument as to whether there is evidence to support the allegations, but I am not concerned with evidence in looking at the pleading. Mr Griffiths KC suggests that the impugned amendments may lead to some further disclosure, but he also submits that the response from the Plaintiff may simply be that there is nothing to disclose. In any event, he submits that such disclosure will be minor and, notwithstanding Mr Harris's concern about losing the trial fixture, there is no suggestion by Mr Griffiths KC that he intends to seek any kind of an adjournment of the trial, quite the opposite. He has confirmed that he was proceeding on the basis that the trial will go ahead on 26<sup>th</sup> June 2023.
21. The impugned paragraphs shall remain. Subject therefore to the agreed tidying up, the Defendant has leave to amend his Defence in the terms of the draft submitted.
22. The Plaintiff shall pay the Defendant's costs of and occasioned by the hearing on 17<sup>th</sup> May 2023.

**22<sup>nd</sup> May 2023**

**The Hon. Justice Anthony S. Gruchot  
Judge**

