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**

DECISION ON HALF TIME ELECTION

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

Appearances: **Mr Lawrence Harris and Mr Oliver McGlashan of Cooley (UK) LLP and Ms Clemar Hippolyte of the Attorney General's Chambers for the Plaintiff**

Mr Conrad Griffiths KC of Griffiths & Partners for the Defendant

Hearing Date: **15th to 19th January 2024**

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

Handed Down: **17th January 2024**

1. At the close of the Plaintiff's evidence in the afternoon of the second day of the trial in this matter Mr. Griffiths KC raised the question as to whether I was to put the Defendant to his election.

2. By this he indicated that he was desirous of making an application of no case to answer. He referred me to the authority of **Neina Graham v Chorley Borough Council** [2006] EWCA Civ 92 which he submitted is the leading case on this issue.

3. He submits that this is an exceptional case such that he should be allowed to make his submission of no case to answer, before the Defendant elects whether to call evidence.

4. At paragraph 6 of **Graham** Lord Justice Brooke, giving the judgment of the court said this:

> "*I am sorry that there is still any lingering uncertainty as to the practice to be followed if a defendant's advocate wishes to persuade a judge to enter judgment in his client's favour at the conclusion of the claimants evidence. In pre CPR days the rules were quite clear*."

5. I pause there as this was a case from England and Wales in 2006 following the introduction of the Civil Procedure Rules in 1999. Those Rules are not applicable to the Turks and Caicos Islands which operates under the Civil Procedure Rules 2000. Guidance to those Rules is taken from the White Book of England and Wales 1999.

6. Lord Justice Brooke continues:

> *"In Alexander v Rayson [1936] 1 KB 169 this court said (at p 178) that this was not only irregular but a most inconvenient procedure; and (at p 180) that it sincerely trusted "that the like may never occur again". In Lawrie v Raglan [1942] 1 KB 152 Lord Greene MR said in a similar situation that it was unfortunate that the trial judge did not follow the practice*
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> > *"which ought to be followed in such cases, as has been quite clearly laid down in this court, of refusing to rule on the submission unless counsel for the defendant said he was going to call no evidence. That must be regarded as the proper practice to follow." "*

7. The White Book 1999 at Note 37/7/3 states:

"… it is inconvenient for the Judge to rule there is no case for a jury without hearing the defendant's evidence … as to the inconvenience of asking a judge sitting alone to hold that there is no case to answer at the conclusion of the evidence of the party on whom the owners lies, see Alexander v Rayson. The judge should generally refuse to rule on such a submission by the defendant unless he makes it clear that he does not intend to call evidence (Laurie v Raglan Co.) … in non-jury trials, the Judge ought to put the defendant to his election where though he accepts the plaintiff's evidence he submits that in law the case is not made out, but if the defendant does not accept the plaintiff's evidence and submits that it is. A submission of no case may be made either if no case has been established in law or the evidence led is so unsatisfactory or unreliable the court should hold that the burden has not been discharged."

8. In Phipson on Evidence (20th Edition at 11-20):

"In civil cases where the judge sits without a jury, the submission of no case to answer is increasingly becoming obsolete. The judge should only exceptionally rule on such a submission without putting the defendant to his election as to whether to call evidence; if the claimant has advanced even a weak prima facie case which is unlikely to succeed without the evidence from the defendant's witnesses or without adverse inferences drawn from a subsequent failure by the defendant to give evidence, the judge should refuse to rule on the submission. … whilst it is possible to exercise this power without putting the defendant to election, such a power is to be exercised sparingly. … the test for a judge to apply in cases not involving a jury has been described as whether there was no such case for the judge to put to himself wearing his jury hat."

9. Mr. Griffiths KC says that this is an exceptional case as the Plaintiff has elected to call no witnesses but relies just on documentation submitted by notices served under the Evidence (Special Provisions) Ordinance (Cap. 2.07). Whilst there are issues to be decided with respect to the validity of the notices which have been served, at this stage in the proceedings no decision has been made on that issue, and Mr. Griffiths KC

concedes that even if he is correct that the notices are defective they would still be admitted under section 16(4) of the Evidence (Special Provisions) Ordinance.

10. In **Graham**, reference is made to 4 unreported decisions where the Court of Appeal made observations "*about the (rare) circumstances in which it might be appropriate for a judge to receive a submission of no case to answer without putting the defendants to their election*". I have not been provided with those authorities nor to any practitioner text which refers to their circumstances.

11. Again, from **Graham**, reference is made to **Benham v Kythira Investments Ltd** [p2003] EWCA Civ 1794 in which Simon Brown LJ said in authoritative terms (at para. 32)

> *"Let me state my central conclusion as emphatically as I can. Rarely, if ever, should a judge trying a civil action without a jury entertain a submission of no case to answer. That clearly was the court's conclusion in Alexander v Rayson and I see no reason to take a different view today, the CPR notwithstanding. Almost without exception the dangers and difficulties involved will outweigh the supposed advantages … Any temptation to entertain the submission should almost invariably be resisted."*

12. I am not persuaded that there are any special circumstances in this matter which would allow me to accede to the request to hear a submission of no case to answer, without putting the Defendant to his election to call no evidence, the weight of the authority being against allowing such.

17th January 2024

The Hon. Justice Anthony S. Gruchot
Judge of the Supreme Court