

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2019-04322

BETWEEN

STACY ANN MARSHALL

1<sup>st</sup> Claimant

VICTOR SALAZAR JR

2<sup>nd</sup> Claimant

AND

THE OCCUPATIONAL SAFETY AND HEALTH AUTHORITY & AGENCY

1<sup>st</sup> Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

2<sup>nd</sup> Defendant

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BEFORE THE HONOURABLE JUSTICE JOAN CHARLES

Appearances:

For the Claimants: Mr Farai Hove Masaisai instructed by Ms Atonya Pierre

For the Defendant: Mr Raphael Ajodha instructed by Ms Tamilee Budhu

Date of Delivery: June 13, 2023

DECISION

BACKGROUND FACTS

1. The claimants are and were at all material times, employees of the defendant holding various positions under different contracts of employment throughout the period. The claimants claim that the defendant has failed to pay to them certain benefits under their respective contracts, specifically vacation leave and gratuity for different periods. Despite several requests and attempts to retrieve the monies owed to them, these several sums remain due and outstanding. As a result, the claimants claim that the defendant is in breach of its contractual obligations towards them

and have thus commenced this action in order to obtain their proper compensation as contractually promised.

### **NOTICE OF APPLICATION**

2. By Notice of Application filed on March 23, 2022, the claimants sought the court's permission to file and serve a reply. In support of this application, Ms Antonya Pierre, instructing attorney-at-law on behalf of the claimant, filed an affidavit on even date. In response, the First Defendant filed a Notice of Objection to the Claimant's Draft Reply, particularising objections to various paragraphs therein on June 10, 2022.
  
3. The grounds of the Claimants' application were as follows:
  - By Order dated February 9, 2022, this Court ordered by consent that:
    - i. The 1<sup>st</sup> Defendant to send draft objections to the Claimants' draft reply, if any to the Claimant on or before the 25<sup>th</sup> February 2022;
    - ii. The Claimants to file the reply as agreed to or application for permission to file a draft reply on or before the 11<sup>th</sup> March 2022;
    - iii. The 1<sup>st</sup> Defendant to file objections to draft reply on or before the 25<sup>th</sup> March 2022;
    - iv. The Court to give a decision on the draft reply to be sent to parties via email on or before 25<sup>th</sup> April, 2022
    - v. Case Management Conference is adjourned to 14<sup>th</sup> June, 2022 at 10 am via a virtual hearing.
  
  - The Claimants emailed the First Defendant's attorney-at-law to obtain the position in response to the Claimants' draft reply on March 7 and 8, 2022.
  - The First Defendant responded by email on March 8, 2022 and replied with objections to the draft reply by letter dated March 9, 2022.
  - The Claimants sought to reply to paragraphs 2, 3, 4, 5, 6, 9, 10, 15, 18, 19, 20, 23, 38, 40 and 44 of the Amended Defence filed on April, 2021.

- At paragraphs 2 and 3 of the amended Defence, the 1<sup>st</sup> Defendant pleaded as a new issue that the Guidelines for Contract Employment in Government Ministries, Departments and Statutory Authorities were not applicable to them.
- The Claimant could not have reasonably foreseen this denial since the 1<sup>st</sup> Defendant was a statutory body as the first Defendant was a statutory body. The Claimant's response to this new pleading was brief and in keeping with the original pleadings.
- At paragraphs 4 and 5 of the amended defence, the 1<sup>st</sup> Defendant pleaded as a new issue that the 1<sup>st</sup> Claimant failed to address her concerns to relevant persons prior to these proceedings and the signing of the contract.
- This issue was not previously raised including in pre-action correspondence and so the Claimants could not have reasonably foreseen this allegation by the First Defendant.
- At paragraph 6 of the amended defence, the 1<sup>st</sup> Defendant pleaded the sum which they averred that the 1<sup>st</sup> Claimant was entitled to which could not reasonably have been foreseen by the Claimants. The Claimants' response thus addresses the relevant calculation and is consistent with what the Claimants have already pleaded.
- At paragraphs 9 and 10, the 1<sup>st</sup> Defendant raised a new issue alleging that the 1<sup>st</sup> Claimant failed to raise any issue with the terms and conditions of her employment. This issue was not previously raised including in pre-action correspondence and so the Claimants could not have reasonably foreseen this allegation by the First Defendant.
- At paragraph 15, the 1<sup>st</sup> Defendant denied the 1<sup>st</sup> Claimant's entitlement to gratuity and payment based on her being on month to month contracts. In response, the Claimant's draft reply sets out a legitimate expectation based on six (6) years of previous continuous employment.
- At paragraph 18, the 1<sup>st</sup> Defendant denied the 1<sup>st</sup> Claimant's entitlement to gratuity based on her resignation. In response, the 1<sup>st</sup> Claimant pointed out that her resignation was merely in order to assume a new position within the 1<sup>st</sup> Defendant's employ and she continued working there continuously and remains employed there up to the present time. The Claimants averred that this was not an issue that was reasonably foreseeable.
- At paragraphs 19 to 21, the 1<sup>st</sup> Defendant alleged that the 1<sup>st</sup> Claimant never brought it to their attention that the workload was too much for her. The Claimants averred that this was a new allegation and is addressed in the reply in a manner, which is not inconsistent with what has already been pleaded.

- At paragraph 23, the 1<sup>st</sup> Defendant took issue that the Claimants have failed to give evidence of their entitlement to backpay. In response, the 1<sup>st</sup> Claimant sought to demonstrate that her entitlement to backpay was acknowledged by a servant and/or agent of the 1<sup>st</sup> Defendant.
  - At paragraphs 38 to 40, the 1<sup>st</sup> Defendant denied the quantum sought by the Claimants and pleaded a different quantum. The Claimants could not reasonably have been foreseen this pleading. The Claimants' response thus addresses the relevant calculation and is consistent with what the Claimants have already pleaded.
  - At paragraph 44, the 1<sup>st</sup> Defendant raised the allegation that there was no evidence as to the Claimants' entitlement to backpay. In response, the 1<sup>st</sup> Claimant sought to demonstrate that her entitlement to backpay was acknowledged by a servant and/or agent of the 1<sup>st</sup> Defendant.
  - The Claimants sought an opportunity to reply to the new issues raised by the Defendants' amended defence.
  - The Claimants pointed out that none of these new matters were raised the pre-action stage.
  - The Claimants averred that it was in the interest of the administration of justice that the Reply be allowed.
  - The Claimants further averred that the 1<sup>st</sup> Defendant would not be prejudiced as a trial date has not yet been set.
4. The affidavit in support sworn to by Atonya Pierre echoed the averments contained in the Notice of Application.
5. The First Defendant's objections to the Claimant's Draft Reply are particularised below:
- 1) The defendant objected to the 'Chapeau' in the draft reply, which stated: "Save as to any admission expressly made herein the Claimant deny each allegation and/or implication of fact contained in the contents of the Amended Defence filed by the 1<sup>st</sup> Defendant on the 7<sup>th</sup> day of April 2021." The defendant averred that this was unnecessary and amounted to a 'defence to the amended defence.

- 2) PARAGRAPH 1: *“Paragraphs 2 and 3 is denied in so far as the 1<sup>st</sup> Defendant’s assertions that the 1<sup>st</sup> Claimant is unaware to the vacation leave which she was entitled and that the 1<sup>st</sup> Defendant was not required to follow the Guidelines for Contract Employment in Government Ministries, Departments and Statutory Authorities. Once the first claimant became aware that the leave entitlement that she was receiving for her then monthly salary of \$12,000 was contrary to the 20 vacation days stipulated in the Guidelines for Contract Employment in Government Ministries, Departments and Statutory Authorities; which stipulated a vacation leave entitlement of 20 vacation days for salaries over \$5000 a month. The first claimant found it strange that when her salary was \$8000 she enjoyed 20 days vacation leave, and with an increased remuneration from \$8000 to \$12,000 her vacation leave entitlement was cut from 20 days to 15 days.”* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issue of whether the Claimants were entitled to compensation for alleged withheld vacation leave, amounted to an argument/submission as opposed to a pleading, was a restatement of what was pleaded at paragraph 7 of the Amended Statement of Case.
- 3) PARAGRAPH 2: *“The Claimants further aver that the Guidelines for contract Employment in Government Ministries, Departments and Statutory Authorities applies to Government Ministries, Departments and Statutory Authorities. The 1<sup>st</sup> defendant claims to be a statutory body to the Ministry of Labour, as indicated in the Occupational Safety and Health Authority and Agency’s Administrative Report which states that: “The Occupational Safety and Health Agency (The OSH Agency) is the Executive arm of the Authority, and also a Statutory Body of the Ministry of Labour and Small and Micro Enterprise Development (MOLSMED)”.* Additionally, the Ministry of Labour is a Government Ministry and is the line Ministry for the Defendant and, the Accounting Officer for the Occupational Safety and Health Agency as indicated in the Agency’s Administrative report, which states that: *“...The Permanent Secretary of the MOLSMED remained responsible for the expenditure of the Agency.”* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issue of whether the Claimants were entitled to compensation for alleged withheld vacation leave, amounted to an argument/submission as opposed to a pleading, was an attempt to bolster what was pleaded at paragraph 7 of the Amended Statement of Case.

- 4) PARAGRAPH 3: *“Paragraphs 4 and 5 are denied that the 1<sup>st</sup> Claimant failed to address her concerns to the relevant persons as it pertains to vacation leave or that same ought to have been addressed to the Chief Personnel Officer and not the 1<sup>st</sup> Defendant who is her employer.”* The First Defendant averred that this was unnecessary and amounted to a defence to a defence.
- 5) PARAGRAPH 4: *“The first claimant did raise concerns regarding the incorrect vacation leave that she was receiving in formal correspondence to the defendant in the form of a letter dated 18<sup>th</sup> June 2012, and titled: Incorrect vacation leave approved for Technical Assistants and Administrative Assistants at the OSH Agency. A true copy of the letter dated 18<sup>th</sup> June 2012 is hereto attached and marked “A”.* The First Defendant averred that this paragraph amounted to a defence to a defence, did not further define the issue of whether the Claimants were entitled to compensation for alleged withheld vacation leave, was an attempt to bolster the claim and, should have been pleaded in the Amended Statement of Case.
- 6) PARAGRAPH 5: *“The letter indicated that the claimant: “Would be most grateful if some recourse could be sought by the Human Resources Department for employees who were wrongfully deprived of their full entitlement of vacation leave when terms and conditions for contract workers at the Agency were negotiated for the period 2009 – 2012 ...”* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issue of whether the Claimants were entitled to compensation for alleged withheld vacation leave, was an attempt to bolster the claim as it related to the alleged breach of trust and confidence and fairness, and should have been pleaded in the Amended Statement of Case.
- 7) PARAGRAPH 6: *“The letter also indicated that at the time the first claimant signed her contract she was “Oblivious to the fact that there was a document titled Guidelines for Contract Employment in Government Mninistries, Departments and Statutory Authorities subject to the statutory Authorities Act Chapter 24:01 and that the 15 days’ vacation leave approved for Technical Assistants and Administrative Assistants, whose monthly salaries are higher than \$5000,00 was in contravention of these guidelines...”* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issue of whether the Claimants were entitled to compensation for alleged withheld vacation leave, was an

attempt to bolster the claim for breach of trust and confidence and fairness, and should have been pleaded in the Amended Statement of Case.

- 8) PARAGRAPH 7: *“Further to the correspondence, an email dated Thursday 21<sup>st</sup> June 2012, was sent to the Executive Director Ms Carolyn Sancho which stated: “Good Morning Mrs Sancho, Further to your correspondence with regard to – the Incorrect vacation leave approved for Technical Assistants, and Administrative Assistants at the OSH Agency. I am requesting the file number on the correspondence received from the CPO containing the approved terms and conditions of employment for contract staff at the Agency for the period 2009 – 2012. This information is being requested to provide personnel at the Chief Personnel Department so that they can easily locate the file with the relevant information to determine what transpired and what course of action can be taken. Thanking you in advance, Stacey Ann Marshall. A copy of the email dated 21<sup>st</sup> June 2012 is hereto attached and marked “B”.”* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issue of whether the Claimants were entitled to compensation for alleged withheld vacation leave, was an attempt to bolster the claim for breach of trust and confidence and fairness, should have been pleaded in the Amended Statement of Case.
- 9) PARAGRAPH 8: *“The Executive Director acknowledged the email, and forwarded it to the Human Resources Officer with a message stating: “Hi Brian can you please facilitate this request for Ms Marshall. Thank you, C Sancho” No response from the Human Resources Department was forthcoming. A true copy of said email is hereto attached and marked “C”.”* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issue of whether the Claimants were entitled to compensation for alleged withheld vacation leave, was an attempt to bolster the claim for breach of trust and confidence and fairness, and should have been pleaded in the Amended Statement of Case.
- 10) PARAGRAPH 9: *“The matter of the incorrect vacation leave was again discussed with the Human Resources Manager, Mr Corey Harrison and subsequent to the conversation with Mr Harrison, a follow-up email was sent on Tuesday October 21<sup>st</sup>, 2014. The content of the email is as follows: “Good Day Mr. Harrison, regarding our discussion some time ago regarding the 5 vacation days a year that I was wrongfully denied due to an error at CPO which gave me 15 vacation days instead of 20, over the course of two 3 year contracts totalling (30 lost vacation days); although my salary grade entitles me to 20*

*vacation days. I would like to know if there has been any feedback with regard to when I will be recompensed my vacation days. Regards, Stacey-Ann Marshall". A true copy of said email is hereto attached and marked "D".* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issue of whether the Claimants were entitled to compensation for alleged withheld vacation leave, was an attempt to bolster the claim for breach of trust and confidence and fairness, and should have been pleaded in the Amended Statement of Case.

- 11) PARAGRAPH 10: *"In light of the aforementioned, the defendant was first made aware of the matter regarding Ms. Marshall's withheld vacation leave on 18<sup>th</sup> June 2012; over nine years ago. Due to the fact that the Executive Director forwarded the matter for the attention of the Human Resources Department; and as a result of verbal discussions and email correspondence with the Human Resources Manager, Mr. Corey Harrison on the matter, the claimant was optimistic, that the defendant was genuinely taking steps regarding redress on her behalf, as it pertains to, the matter of the withheld vacation leave."* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issue of whether the Claimants were entitled to compensation for alleged withheld vacation leave, was an attempt to bolster the claim for breach of trust and confidence and fairness, and should have been pleaded in the Amended Statement of Case.
- 12) PARAGRAPH 11: *"Paragraph 6 is denied that the sum submitted by the 1<sup>st</sup> Claimant is incorrect and it is averred that the 1<sup>st</sup> Defendant was well aware regarding new terms and conditions for employees for the period 2011 to 2014 as it regards the first claimant's salary for that period increasing from \$12,000 per month to \$15,000 per month as outlined in the letter dated "terms and conditions of employees at OSHA". As such any calculations for gratuity during that period would have to be done utilizing the new salaries; the new salary of \$15,000 should have taken effect from November 2012. Furthermore there were revised terms and conditions for the period 2015 – 2018, which resulted in a further salary increase and a new salary of \$16,000 which should have taken effect from November 2015."* The First Defendant averred that this paragraph amounted to a defence to a defence, should have been pleaded in the Amended Statement of Case, amounted to an argument/submission as opposed to a pleading, was an attempt to bolster the claim by referencing matters beyond the period 2011 – 2014 and that the claimants failed to properly plead the documents on which these assertions were based.



- 13) PARAGRAPH 12: *“As such gratuities for the period 2011 to 2014, would have to be calculated using a salary of \$12,000 per month from July 2011 to October 2012 (15 months) and a salary of \$15,000 from November 2012 to July 2014 (21 months).”* The First Defendant averred that should have been pleaded in the Amended Statement of Case, amounted to an argument/submission as opposed to a pleading, and that the Claimants failed to properly plead the documents on which these assertions were based.
- 14) PARAGRAPH 13: *“This would have resulted in the three-year total being (\$495,000) 20% of this figure would more accurately reflect the gratuity figure claimed for the 1<sup>st</sup> claimant for the period 2011 – 2014. Also, gratuities for the period 2015 – 2018 would have to be calculated using a salary of \$16,000 per month.”* The First Defendant averred that this paragraph should have been pleaded in the Amended Statement of Case, amounted to an argument/submission as opposed to a pleading, was an attempt to bolster the claim by referencing matters beyond the period 2011 – 2014 and that the claimants failed to properly plead the documents on which these assertions were based.
- 15) PARAGRAPH 14: *“The same principle would also apply for the second claimant, whose salary would have also increased during the respective contract periods, as such the new salaries should also be utilized in the calculation of the gratuity for 2<sup>nd</sup> Claimant.”* The First Defendant averred that this paragraph was unnecessary, amounted to an argument/submissions as opposed to a pleading, and that it was an attempt to bolster the claim referencing matters related to the second claimant and not the first.
- 16) PARAGRAPH 15: *“Paragraphs 9 and 10 are denied and paragraphs 3 to 10 as above are repeated.”* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, should have been pleaded in the Amended Statement of Case, did not further define the issue of whether or not the Claimants are entitled to compensation for alleged withheld vacation leave, was an attempt to bolster the for breach of trust and confidence and fairness.
- 17) PARAGRAPH 16: *“Paragraph 15 is denied as at the time the 1<sup>st</sup> Claimant was placed on month to month contracts, she had already worked for the 1<sup>st</sup> Defendant for over six (6) years continuous*

*employment during which she had enjoyed sick leave and vacation leave entitlements.”* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not help to define any issue in the matter, was a restatement of matters already pleaded in the Amended Statement of Case.

18) PARAGRAPH 17: *“Paragraph 18 is denied in so far as it is averred that at the time the 1<sup>st</sup> Claimant assumed the position of Safety and Health Inspector I, she had worked for the 1<sup>st</sup> Defendant for nine (9) years continuous employment. It is a requirement of the 1<sup>st</sup> Defendant that positions be resigned to assume new positions within the organization as promotions do not exist.”* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not help define any issue in the matter, and was a restatement of matters already pleaded in the Amended Statement of Case.

19) PARAGRAPH 18: *“Paragraph 19 to 21 are denied and the Claimant avers that the issue of increased workload was brought to the attention of her supervisors on numerous occasions. Additionally, email correspondence submitted, indicated that discussions took place between the first claimant and her then supervisor Mr Colin Gaskin regarding workload. Furthermore, the organizational chart of the Occupational Safety and Health Agency indicates positions for nine Technical Assistants. Ms Marshall worked as the lone Technical Assistant at the Occupational Safety and Health Agency during the period 2012 to 2017, and was subject to horizontal loading, and by extension an increased workload. True copies of the email correspondence and organizational chart are hereto attached and marked “E”.* The First Defendant averred that this paragraph amounted to a defence to a defence, should have been pleaded in the Amended Statement of Case, was an attempt to bolster and expand the claim and contradicted the Amended Statement of Case.

20) PARAGRAPH 19: *“Paragraph 23 is denied as the entitlement to backpay was acknowledged by the Executive Director of the Pt Defendant, Carolyn Sancho in letter dated 12<sup>th</sup> June 2019 to the Deputy President of the Banking, Insurance and General Workers’ Union indicating that the Pt Defendant was proposing to pay the back pay in three instalments. A true copy of said letter is hereto attached and marked “F”.* The First Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issues and was a restatement of matters already pleaded in the Amended Statement of Case.

21) PARAGRAPH 20: *“Paragraphs 38 to 40 are denied and paragraphs 11 to 13 as above are repeated.”*

The First Defendant averred that this paragraph was unnecessary, dealt with only the first and not the second claimant, amounted to a defence to a defence, should have been pleaded in the Amended Statement of Case, amounted to an argument/submission as opposed to a pleading, and that the claimants failed to properly plead the documents on which these assertions were based.

22) PARAGRAPH 21: *“Paragraph 44 is denied and paragraph 19 above is repeated.”* The First

Defendant averred that this paragraph was unnecessary, amounted to a defence to a defence, did not further define the issues, and was a restatement of matters already pleaded at paragraph 23 of the Amended Statement of Case.

## **LAW**

6. Replies are governed by ***Part 10.10 of the Civil Proceedings Rule, 1998 (as amended)***, which is set out hereunder for convenience:

### ***Reply to defence***

*10.10 (1) A claimant may not file or serve a reply to a defence without—*

*(a) the permission of the court; or*

*(b) if it is to be filed before a case management conference, the consent of the defendant.*

*(2) The court may only give permission at a case management conference.*

## **DISCUSSION**

7. In ***Mayfair Knitting Mills (Trinidad) Limited v Mc Farlane’s Design Studios Limited***<sup>1</sup>, Pemberton J (as she then was) in analyzing the aptness of a reply stated: *“It is therefore clear that the ability of the claimant to reply is based on **necessity**, all with a view to saving costs a component of the court’s duty to further the overriding objective of dealing with cases justly.”* (emphasis mine) Replies are neither mandatory nor automatic. In fact, **rule 10.10** sets out that either consent or permission is required to file a reply. The rule, however, does not clarify what matters are or are not permissible in a

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<sup>1</sup> *Mayfair Knitting Mills (Trinidad) Limited v Mc Farlane’s Design Studios Limited* CV2007-02865

reply, or what factors are to be considered in determining such. Assistance in this regard can be gleaned from the following learning from **Blackstone's**<sup>2</sup>:

*“... a reply may respond to any matters raised in the defence which were not, and which should not have been, dealt with in the particulars of claim, and exists solely for the purpose of dealing disjunctively with matters which could not properly have been dealt with in the particulars of the claim, but which require a response once they have been raised in the defence. ... Once, however, a defence has been raised which requires a response so that the issues between the parties can be defined, a reply becomes necessary for the purpose of setting out the claimant’s case on that point. The reply is, however, neither an opportunity to restate the claim, nor is it, nor should it be drafted as, a ‘defence to a defence’.”*

As this excerpt emphasizes, the question of whether or not to allow a reply is one, which hinges on and must be considered in conjunction with, the original pleadings. This is because, as a foundational aspect, it is the duty of the claimant to set out his claim fully and plead all relevant facts as required under Part 8.6 of the CPR:

***Claimant’s duty to set out his case***

*8.6 (1) The claimant must include on the claim form or in his statement of case a short statement of all the facts on which he relies.*

*(2) The claim form or the statement of case must identify or annex a copy of any document which the claimant considers necessary to his case.*

8. Therefore, the time and place for the claimant to plead all relevant facts is the statement of case and the reply is not intended to give the claimant a ‘second bite of the cherry’ or allow him to cure deficiencies in his case which is shown up by the defence. The reply exists to allow the claimant to respond to new matters raised in the defence that were not and should not have been part of the claimant’s pleadings. In assessing the claimant’s duty to set out his case, Mendonca JA in ***First Citizens Bank Limited v Shepboys Limited and another***<sup>3</sup> opined, “[t]his must at least refer to facts necessary to formulate a complete cause of action”. As such, in considering whether the matters

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<sup>2</sup> Blackstone’s Civil Practice 2001 para 27.2 page 257

<sup>3</sup> *First Citizens Bank Limited v Shepboys Limited and another* Civil Appeal No P231 of 2011

dealt with in the reply should have really been included in the statement of case, I think it might be helpful to consider whether these matters are material facts that are necessary to establish the claimant's claim or convey a complete cause of action.

9. I will now rule on the defendant's objections to each of the paragraphs in the claimant's reply.
  - As to the Chapeau, I agree that is unnecessary. This paragraph is struck out.
  - As to paragraph 1, I find that it is in response to new issues raised in paragraphs 3 and 4 of the amended defence. This paragraph is allowed.
  - As to paragraph 2, I find that it is in response to new issues raised in the amended defence. This paragraph is allowed.
  - In relation to paragraph 3, this amounts to a bare denial and is struck off.
  - As to paragraph 4, this is in response to new issues raised in the amended defence. This paragraph is allowed.
  - As to paragraph 5, this is in response to new issues raised in the amended defence. The paragraph is allowed.
  - As to paragraph 6, this is in response to new issues raised in the amended defence. The paragraph is allowed.
  - As to paragraph 7, this is in response to new issues raised in the amended defence. The paragraph is allowed.
  - As to paragraph 8, this is in response to new issues raised in the amended defence. The paragraph is allowed.
  - As to paragraph 9, this is in response to new issues raised in the amended defence. The paragraph is allowed.
  - As to paragraph 10, this is in response to new issues raised in the amended defence. The paragraph is allowed.
  - As to paragraph 11, this is in response to new issues raised in the amended defence. The paragraph is allowed.
  - As to paragraph 12, this is in response to new issues raised in the amended defence. The paragraph is allowed.
  - As to paragraph 13, this is in response to new issues raised in the amended defence. The paragraph is allowed.

- As to paragraph 14, this is in response to new issues raised in the amended defence. The paragraph is allowed.
- As to paragraph 15, this is a bare denial. This paragraph is struck off.
- As to paragraph 16, this is in response to new issues raised in the amended defence. The paragraph is allowed.
- As to paragraph 17, this is in response to new issues raised in the amended defence. The paragraph is allowed.
- As to paragraph 18, this is in response to new issues raised in the amended defence. The paragraph is allowed.
- As to paragraph 19, this is in response to new issues raised in the amended defence. The paragraph is allowed.
- As to paragraph 20, this is a bare denial. The paragraph is struck off.
- As to paragraph 21, this is a bare denial. The paragraph is struck off.

**ORDER**

10. It is hereby ordered that:

- (i) The Chapeau and Paragraphs 3, 15, 20, and 21 of the reply are struck out.
- (ii) The remainder of the paragraphs are allowed.

11. There be no order as to costs.

Dated June 13, 2023

**JOAN CHARLES**  
**JUDGE**