

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
Civil Division

FEDERATION OF ST CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT

Claim No: SKBHCV2021/0211

BETWEEN:

ANSELM CAINES

Claimant

-and-

EVERTON ELLIOTT also known as
EVERTON POWELL

Defendant

Before Master Alvin Pariagsingh

Appearances: Mr. Perry Joseph for the Claimant; and
Mrs. Sherry – Ann Liburd – Charles for the Defendant.

2023: March 22
June 01;
June 12

JUDGMENT

Claimant's application to transfer proceedings; and
Defendant's application disputing jurisdiction and/or striking out the claim.

INTRODUCTION:

[1] **PARIAGSINGH, M:** - There are two applications before the Court. The first is the Claimant's application seeking an order transferring this claim to the Nevis circuit¹ and the second is the Defendant's application disputing the Court's jurisdiction to try this claim.² This is the Court's decision on both applications.

¹ Filed on February 01, 2022

² Filed on February 07, 2022

HISTORY OF THE PROCEEDINGS:

[2] By claim form and accompanying statement of claim,³ the Claimant seeks damages, including aggravated and exemplary damages, against the Defendant for libel. The Claimant also seeks a perpetual injunction, a retraction and apology, interest on any sums awarded and costs. In the claim form, the Claimant states the Defendant as *'formerly of Nevis but currently residing in the United States of America'*.⁴

[3] The subject matter of the claim are alleged defamatory posts on the social media platform Facebook made by the Defendant on January 17, 2019, January 21, 2019, January 23, 2019, January 28, 2019, February 01, 2019 and March 01, 2020. There were also several third party posts arising from the Defendant's posts and the sharing and commenting of and about the alleged defamatory posts.

[4] The offending post relate to allegations against the Claimant during a period of time that he was resident in Nevis and employed as a school teacher. For the purpose of this decision, it is not necessary to recite the allegations.

[5] On December 30, 2021, the Defendant filed an acknowledgment of service. In it, he indicated that he was served with the claim on December 17, 2021. It is also indicated that the Defendant's name was not properly stated on the claim form and that he intended to defend the claim. The Defendant gives his own address as a place outside the jurisdiction of this Court. In particular, he gives an address in Maryland, United States of America as his address.

THE CLAIMANT'S APPLICATION:

[6] On February 01, 2022, the Claimant applied to the Court for an order to correct a procedural misstep. This misstep the Claimant identified as the filing of the claim in

³ Both filed on December 17, 2021

⁴ First paragraph of page 1 of the claim form

the wrong circuit of the Court on the E-litigation portal. The Claimant contends that the matter ought properly to have been commenced in the Nevis circuit and not the St. Kitts circuit.

[7] In support of the application is an affidavit of the Claimant filed on February 01, 2022. In this affidavit, the Claimant explains that it was intended that this claim be filed in the Nevis circuit of the court. He contends that due to inadvertence, the claim was filed in the St. Kitts circuit. More importantly, the Claimant contends that the cause of action, relief sought and contents of the claim all refer to matters in Nevis.

THE DEFENDANT'S APPLICATION:

[8] On February 07, 2022, the Defendant filed an application disputing the Court's jurisdiction to try this claim. The Defendant also seeks an order that this claim be stayed or alternately that the claim be struck out as disclosing no grounds for bringing the claim as the statement of claim and/or is prolix.

[9] In the grounds of the application, the Defendant contends that at all times the Claimant was aware that the Defendant was a citizen of the United States of America and that he was residing there.⁵ He further contends that he was served with the claim while he was in this jurisdiction on vacation in December 2021⁶ and further, that he was wrongly named on the claim form.⁷

[10] The Defendant also contends in his grounds in support of the application, that the claim was issued in the St. Kitts circuit in breach of Rule 8.3 (3) of the Civil Procedure Rules 2000 as amended (CPR).⁸ He contends that any proceedings (other than

⁵ Grounds 1 and 2 of the application.

⁶ Ground 5 of the application.

⁷ Ground 6 of the application.

⁸ Ground 9 of the application.

those relating to land), may be commended only in the circuit where the cause of action arose or the Defendant resides or carries on business.

[11] The Defendant contends that the cause of action in this claim did not arise in this jurisdiction but rather the alleged tort was committed in the USA. The Defendant contends that the alleged posts were made on the worldwide web from the USA. The Defendant contends that the laws governing libel applicable to where the Defendant resides in the USA, Maryland, are the applicable laws to this claim. Accordingly, the Defendant contends that this jurisdiction is not the appropriate or convenient forum for this matter to be heard.

[12] Finally, the Defendant contends that the claim does not fall within the classes of cases for which permission to serve out may be given.

[13] The Defendant's application is supported by an affidavit of an Administrative Assistant to the Counsel for the Defendant. Save for indicating that the sources of the information in the affidavit is Counsel, the affidavit repeats the contents of the grounds of the application which are summarily set out above.

AFFIDAVIT IN OPPOSITION TO THE DEFENDANT'S APPLICATION:

[14] On March 24, 2022 the Claimant filed an affidavit in opposition to the Defendant's application. In this affidavit, the Claimant admits that the claim was served on the Defendant on December 17, 2021 whilst he was in Nevis. The Claimant contends that the Defendant presents his name interchangeably and regularly as 'Everton Powell'. It is contended that the Defendant published the alleged defamatory material under the Facebook name 'Everton Powell', the name by which he is sued.

[15] The Claimant contends that the publication of the alleged defamatory material injured his reputation professionally and personally in St. Kitts and Nevis and

elsewhere as the libel was published via social media accessible to persons in that jurisdiction.

[16] Further, the Claimant contends that the alleged defamatory statements were made to persons (knowingly) in Nevis where he resided at the time of the statements. He also contends that in any event, regardless of where he resided at the time of the publication, it was reasonably foreseeable that damages would be suffered by the Claimant in Nevis, as the Defendant's friends list comprises of several persons from Nevis, and the underlying subject of the posts all relate to a matter originating in Nevis.

AFFIDAVIT IN REPLY BY THE CLAIMANT:

[17] On April 29, 2022 an affidavit in reply was filed on behalf of the Defendant. As before, this affidavit was not sworn by the Defendant. It was deposed to by another Administrative Assistant of Counsel for the Defendant. Whilst the deponent indicates that she is authorized by the Defendant to make the affidavit on his behalf no reason for him not doing it himself was given. Most of the evidence is based on what the deponent says she was advised by the Defendant or his Counsel.

[18] The affidavit in summary repeats what was in the affidavit in support of the application save that it is denied that the Defendant had any knowledge of any previous attempts to serve him. The deponent also makes statements about several matters of law and gives an opinion on the applicability of Rule 26.9 CPR.

PRELIMINARY MATTERS:

[19] Before I go into the substance of the applications, something has to be said about:

1. The inappropriateness of Administrative Assistants to Counsel giving affidavits where the matters deposed to are factual and no explanation is given explaining why the litigant is not giving the evidence;
2. The contents of the Defendant's affidavits itself; and
3. Legal Practitioners taking the liberty to consent to extend the time for the filing of submissions on their own.

[20] Firstly, the point has been made time and time again that Administrative Assistants to Counsel ought not to be giving evidence of matters they have no personal knowledge of. Whilst the rules do permit a deponent to give evidence based on information and belief some level of partiality must be applied.

[21] Thought not the case here, a deponent to an affidavit is liable to be cross examined with leave of the Court in interlocutory applications. Allowing the staff of counsel to go on affidavit and give sworn evidence based on the information and belief of counsel, except for formal matters or matters within the knowledge of the deponent is strongly discouraged. Apart from Counsel having to sufficiently distance herself from the litigation and being a witness through staff, it may give rise to conflict of interest considerations and places the court in an embarrassing position given the proximity between the deponent and counsel on record for the party; per Moise J in **Christenbury v Lake & Anor.**⁹

[22] Secondly, the affidavits of the Defendant, more so the affidavit in reply is repetitive and gives the deponent's opinion on the applicability of Rule 29.6CPR. It is hardly fathomable that on any permutation that the opinions expressed are admissible evidence. Even more, the opinion expressed is not relevant or of any assistance to the Court. In the absence of striking out the affidavit altogether very little weight has

⁹ NEVHCV2009/0042 – Paras 6 & 7.

to be placed on it. This is again a practice that is discouraged. Affidavits are not a place for legal arguments and opinions on the rules.

[23] Thirdly, submissions are always for the assistance of the Court. The leeway afforded to counsel to file written submissions does not arrogate unto them the authority to change the Court's order by consent. Counsel ought not to consent to change an order of the Court on their own. An order for submissions was not a case management timetable which the rules allow to be varied.¹⁰ Orders of the Court are to be strictly complied with. Deadlines are given having regard to a number of factors including the time the Court would take to read submissions and prepare its decision. Any change to an order should only be made where there is a good or genuine reason to upset the Court's order on a proper application supported by evidence setting out that reason. This practice is contemptuous and is discouraged.

PRIORITY OF HEARING OF APPLICATIONS:

[24] The general rule is that applications are heard in priority of their filing. This rule is subject to there being a good reason to depart from it. One such reason is where a later application has the potential to dispense with the claim in its entirety. In **Attorney General of Saint Lucia v Montrope**,¹¹ this point was made by the Court of Appeal.

[25] In this claim, the Defendant's application to dispute jurisdiction and alternatively to strike out, was filed second in time. Notwithstanding, if it is determined in the Defendant's favour it can bring the claim to an end. There is greater utility therefore in departing from the general priority in hearing the applications and hear the Defendant's application first.

¹⁰ Order of Master Gill (as she then was) dated March 20, 2022.

¹¹ SLUHCVP2019/0021

THE DEFENDANT'S APPLICATION:

FORUM NON CONVENIENS:

[26] The Defendant in a separate matter, NEVHCV2020/0125, with similar allegations of defamation made against him took the point of forum conveniens. A written decision was delivered by Gill, M (as she then was) on September 26, 2022¹² in which the Court at paragraphs 24 to 28 set out the law and principles to be applied. Her Ladyship stated:

"[24] Included in the grounds of the defendant's application to set aside service is a challenge to the jurisdiction of this court to entertain this claim. Grounds 16 and 17 of the application read:

"16. This case is not a proper one for the Court's jurisdiction and Nevis is not the proper forum for the trial of this matter. The alleged tort was committed outside of the jurisdiction of the Court in Maryland, USA. According to the Claimant the alleged postings were done on the worldwide media on social media in the USA. The Defendant is domiciled in Maryland, USA. All of the third parties named in the claim by the Claimant as allegedly publishing or commenting of the allegedly defamatory posts reside in the USA outside of the jurisdiction of the Court. These individuals are not subject to the jurisdiction of this Court. At the time of the filing of this claim, the Claimant himself is ordinarily resident in St. Lucia outside of the jurisdiction of the Court. The law governing the dispute is prima facie the law in the place where the alleged tort was committed, that is Maryland, USA. Therefore, the laws governing libel in Maryland, USA are the applicable laws. This matter has no real and substantial connection with Nevis.

17. It would be seriously prejudicial and leads to injustice for the Defendant to have to defend this claim given the impediments/inconvenience and costs which would result in proceeding with this matter in Nevis."

[25] In opposition, the claimant avers that Nevis is the proper forum because publication occurred in Nevis where the defendant's

¹² There is a pending appeal of that decision.

words were read by many Facebook friends and followers of the defendant who reside in Nevis. He posits that the applicable law in these circumstances is the law with which the parties and the acts done have the most significant connection. The claimant contends that the subject matter of the alleged libel, the Nevis Island Assembly Elections, allegations of voter and other tampering, are germane to, and concern Nevis. He submits that the tone and tenor of the libel and third-party posts reveal that the defendant's primary target was a Nevis audience. The claimant points out that the statement of claim makes reference to a Facebook post made by the defendant immediately following the 2017 Nevis Island Assembly Elections where the defendant bragged about winning the "online social media propaganda war" and further boasted that "no other website or blog in all of SKN" (St. Kitts and Nevis) could claim to have garnered as many views, engagements or attracted the following that his Facebook page (and WhatsApp group) did during the election campaign period, which according to the defendant, garnered "a million views". The claimant further points out that both parties are Nevisian nationals. The claimant was in Nevis at the time of the publication where he lived all his life. He says that his potential witnesses are predominantly located in Nevis and all of the witnesses he intends to call, in fact, reside in Nevis. He insists that there is no prejudice incurred, nor is any provided, if the defendant is called to defend his case in Nevis.

[26] The parties agree on the established principles laid down in the seminal case of **Spiliada Maritime Corp v Cansulex Ltd** (the Spiliada principles) where Lord Goff set out as the underlying aim in all cases of disputed forum "to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice". Our courts have adopted the Spiliada principles.

[27] As to the issue of where publication occurred, Michel JA in **Lennox Linton and Others v Keiron Pinard-Byrne** opined:

"Publication would normally be considered to have taken place when the defamatory words were communicated to a third person, meaning a person other than the claimant or defendant in the defamation action, while communication would normally be considered to have taken place when the words were heard or read by the third person."

[28] At paragraph 57 of the judgment, His Lordship cited the case of **Bata v Bata** as authority for the proposition that "the tort of defamation is committed in the place where the publication of the

defamatory material was received by the hearer, reader or viewer". In relation to the internet, Michel JA drew attention to the Australian case of **Dow Jones & Co Inc v Gutnick** where the court "concluded that publication of internet content (whether words and/or images) takes place in the jurisdiction(s) where the content is downloaded from the website where it is posted." His Lordship went on and stated:

"Both the reasoning and the conclusion in **Dow Jones** are likely to be applied by the courts in the Commonwealth and it can be considered as having settled (for the time being) the issue of the place of publication of internet content."

[27] The learned authors of **Blackstone's**¹³ gives the following guidance on applications of this nature:

'The leading case is **Siliada Maritime Corporation v Cansulex Ltd.**¹⁴..... In any application for a stay there is a two-stage test. Defendants must show that there is another forum which is prima facie the appropriate form. If they do so, the court considers whether there is another forum which is prima facie the appropriate form. If they do so, the court considered whether there are special circumstances by reason of which justice requires the trial should take place in [England].....

The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate form for the trial of the action, i.e. which the case may be tried more suitably for the interest of all the parties and the ends of justice.....

The burden of proof rest on the defendant to show that there is some other clearly more appropriate forum. If there is no other more suitable forum, the stay should usually be refused.'

[28] The Defendant contends that there is another forum in which this matter ought to be tried with a greater connection to the matter than Nevis. The Defendant contends that the next jurisdiction, Maryland, has more connecting factors to the case. He contends that the tort was committed in Maryland where the Defendant is resident.

¹³ Blackstone's Civil Practice 2020 Page 428

¹⁴ [1987] AC [460].

Further, he contends that the domicile of the third parties who shared and commented on the post are unknown. It is also contended that there is no direct connection with damage allegedly suffered in this jurisdiction.

[29] The Claimant contends that the subject matter of the defamatory statements is connected to Nevis. In particular, he contends that the statements made involve a very serious allegation of a sexual nature involving a minor, a school child on a debating team and a teacher. There were also statements made about senior government officials in Nevis being involved in a cover up. The Claimant contends that the publication was geared to and had the biggest impact in Nevis.

[30] The learned authors of **Blackstone's**¹⁵ also provide the following guidance on determining 'real and substantial connection':

".....In a typical tort case the courts for the place where the tort occurred are likely to be the natural form, but this is just a useful rule of thumb or a prima facie starting point, according to the Supreme Court (VTB Capital plc v Nutritek International corporation [2013] UKSC 5, [2013] 2 AC 337; Cordoba Shipping Co Ltd v National State Bank [1984] 2 Lloyd's Rep 91). The place of residence or business of the parties must be considered..... The court will also consider the availability of factual and expert witnesses, the law governing the dispute and whether the parties have conferred jurisdiction on any particular court....."

[31] Having considered the evidence and the arguments, I agree with the Claimant. I do not accept the submission that the evidence shows a greater connection to Maryland than this jurisdiction. Save for the fact that the alleged post was made in Maryland, there are no other discernable connecting factors to that jurisdiction. The only other factor connecting the tort to that jurisdiction is that the Claimant lives there.

[32] On the other hand, the post was about an issue in a debating team comprising students from Nevis and a teacher. At the time of the statements, the Claimant was

¹⁵ Blackstone's Civil Practice 2020 page 429

resident in Nevis and has been for most of his life. The allegations relate to things done by the Claimant during the course of his employment as a teacher in Nevis.

[33] Further, the Defendant's alleged statements run far and deep. The statements also allege a Government cover up. I find difficult to conclude that such statements would be more connected to Maryland than Nevis.

[34] Even further, it is clear from the tenor of the statements that the post would have the greatest interest in Nevis. The pleaded case is that the post refers to the Claimant who the post identified as a 'Nevisian'. I do not accept the Defendant's submissions that these statements have a greater connection to Maryland than Nevis.

[35] The Claimant's pleaded case is that the Defendant is a social media personality in Nevis. It is also alleged that he is a national of Nevis who openly supports the Nevis Reformation Party and criticizes the Concerned Citizens Movement, the party in Government.¹⁶ In the affidavit in support of his forum application it is contended by an Administrative Assistant to Counsel that the Defendant is citizen of the United States of America who lived and worked in the USA for the past 25 years.¹⁷ I attached very little weight to this evidence as it does not come from the Defendant and further, it is not corroborated by any documents. Proof of citizenship and residence are two matters that could have and ought properly to have been supported by documents.

[36] More importantly, in the same affidavit, the Defendant admits to making the post. The deponent says "... He used his Facebook account from his home in Maryland, USA not in St. Kitts and Nevis".¹⁸

¹⁶ Paragraphs 2 and 3 of the Statement of Claim.

¹⁷ Paragraph 4 (k) of the Affidavit in support filed on February 07 2022.

¹⁸ Last sentence of Paragraph 4 (k) of affidavit in support filed on February 07, 2022.

[37] Whilst both parties cited authorities to support the point that where the tort was committed is the starting point, the decision of Michel JA in my view in **Linton and Ors v Pinard-Byrne**¹⁹ conclusively and comprehensively deals with this issue. For the purpose of a Facebook defamation, publication is deemed to have occurred where the post were downloaded or read.

[38] There can be no cause of action in defamation without publication. This is a basic principle of law. Least any authority need be cited, **Gatley** ²⁰states:

“No civil action can be maintained for libel or slander unless the words complained of have been published”

[39] It is clear from the pleadings that the publication complained of was in Nevis. The Claimant pleads that the post were targeted at Nevis audience and damages were suffered in Nevis. The evidence of these pleaded facts will come at a later stage. It is not for the Claimant to prove publication at this stage. Even if there is a contention that publication is not clearly pleaded, which I do not agree, pleadings are not yet closed. The claim is at its early stages. Striking out at this stage for any such ambiguity would be disproportionate. In my view, the cause of action only crystalized when publication occurred. On the Claimant's case, that was in Nevis. In my view therefore, Nevis is the appropriate forum for this case to be tried. This point alone disposes of this ground.

[40] I agree with the Claimant that the Defendant has made no suggestion that the potential witnesses will be from Maryland. On the other hand, the Claimant has set out in his pleadings that the effects of the defamatory statements were felt in Nevis.²¹ To this end, the inference is drawn that the potential witnesses for the Claimant will be from Nevis in the main.

¹⁹ DOMHCVAP2011/0017 – There was an appeal of this decision that was allowed by the Board of the Judicial Committee but that appeal was on a very limited point on the applicability of the Reynolds Privilege defence.

²⁰ Gatley on Libel and Slander 12th Edition , Chapter 6, 6.1 heading 'General Principles' page [187]

²¹ Paragraph 32(iv) of the Statement of Claim.

[41] The Defendant makes the submission that the Claimant is resident in Saint Lucia and accordingly both parties are out of the jurisdiction. That submission has no merit. Saint Lucia and Saint Kitts and Nevis are both Member States of this Court. Saint Lucia is a different State within the jurisdiction of this Court. . The Claimant having since moved from Nevis to Saint Lucia is immaterial to the jurisdiction issue in my view.

[42] At the time of the alleged tort, the Claimant was resident in Nevis. The Claimant's case is that both he and the Defendant are nationals of Nevis. It has been advanced by an Assistant of Counsel for the Defendant that he is a citizen of the USA with no proof forthcoming. That is an issue to be resolved at the trial. The damages allegedly suffered was based on persons having a lower perception of Claimant's character, primarily in Nevis. Most importantly, if the publication was in Nevis, there can be no doubt in my view that Nevis is the appropriate jurisdiction to try the claim.

[43] Accordingly I find that the appropriate forum for trial of this claim is Nevis.

STRIKING OUT:

[44] One of the relief sought by the Defendant is an order striking out the claim on the basis that it is prolix. Having considered the statement of claim, I disagree. Material facts must be pleaded in a concise manner.²² Material facts are those necessary to establish a complete cause of action. In my view the Claimant has set out all material facts to establish a complete cause of action.

[45] In respect of prolixity, the statement of claim comprises of 36 paragraphs. What makes it long is the extensive quoting verbatim of the posts and comments. There is also very particular pleadings in respect of reference. I find none of the paragraphs or the statement of the claim to offend the rule against prolixity. Significant details

²² Rule 8.6 CPR

do not make a statement of claim prolix. It is only if the statement of claim is 'incomprehensible or unascertainable' would the court consider striking out the claim; **Hilaire v Flavius**.²³

[46] In respect of the ambiguity of lack of pleading and lack of reference asserted by the Defendant, I disagree. The Claimant's case is clearly that the defamatory statements were primarily targeted to a Nevis audience who are capable of inferring reference. That much is clear. There has been no denial of these facts. No facts have been put in issue by way of a defence. The Claimant still has the opportunity to amend his claim without leave, as the first case management conference has not passed and further, will have the opportunity to file a reply. To exercise the draconian power of striking out at this stage, assuming the grounds existed, which does not, would be disproportionate.

[47] Further, the Defendant has the option of requesting further information under Part 34 CPR should he wish to obtain further clarification on the Claimant's case.

[48] Accordingly, I find no merit in the application to strike out the claim.

REFERENCE TO THE DEFENDANT:

[49] The Defendant has also taken issue with the fact that he is wrongly named on the claim form. In my view this is immaterial. The Defendant has corrected this when he stated his correct name in his acknowledgement of service. This is purely procedural at this stage and is of no moment as a basis to strike out the claim. The Defendant has not denied that he is the person referred to or intended to be referred to in the claim or more so, that he made the alleged defamatory statements.

[50] Accordingly, I find no merit in this ground.

²³ SLUHCV2012/0776 (Unreported)

SERVICE OUT:

[51] The Defendant has taken issue with the service on the Defendant whilst on vacation in Nevis. In my view this issue is now otiose. The Defendant has been personally served whilst he was in the jurisdiction. I have already ruled that Nevis is the appropriate forum for the trial and he has engaged the Claimant and obtained an extension of time to file his defence.

[52] Engaging in determining if an order for service out ought to have been granted at this stage is purely academic. The Defendant has been served and had participated in the claim in as much as he has sought and obtained an extension to file a defence after having filed his acknowledgment of service. There is no issue taken with being served. The issue is whether an order had to be made that he be served out of the jurisdiction. The Claimant contends that the Defendant is resident in both places; as found earlier this assertion is disputed. In my view there is no irregularity in service on the Claimant by the claim being served on the Defendant when he was in the jurisdiction. The objective of service has been achieved²⁴ and the challenge to jurisdiction has been resolved.

[53] Accordingly, I find no merit in this ground.

[54] For all these reasons, the Defendant's application filed on February 07, 2022 fails on all grounds advanced and must be dismissed.

COSTS:

[55] The general rule is that costs follow the event, there is no reason to depart from this rule. The appropriate regime is assessed costs and the approach will be a summary assessment.

²⁴ See *Abela & Ors v Baadarani* [2013] UKSC 44

[56] The Defendant shall therefore pay the Claimant's costs of the application filed February 07, 2022 to be summarily assessed by this Court in default of agreement between the parties within 28 days.

CLAIMANT'S APPLICATION

[57] The Claimant's application, although first in time comes into focus as I have ruled that the appropriate forum is Nevis.

[58] Nevis is part of the Federation of St Christopher and Nevis. Both islands comprise one Member State of the Court. The Court has the same jurisdiction in both islands.

[59] Whilst it is accepted that the claim ought to have been commenced in Nevis, there is in my view, no jurisdictional issue. It is simply a procedural error which the Court can correct pursuant to Rule 26.9 CPR.

[60] Accordingly, this claim is transferred to the Nevis circuit of the Court.

[61] This application was not vehemently objected to by the Defendant. In the circumstances, I exercise my discretion and make no order as to costs on this application.

ORDERS:

[62] For these reasons, it is hereby ordered that:

1. The Defendant's application filed on February 07, 2022 is dismissed;
2. The Defendant shall pay the Claimant's costs of the application filed on February 07, 2022 to be summarily assessed by this Court in default of agreement within 28 days from today's date on the application of either party;

3. This claim is transferred to the Nevis circuit of the Court; and
4. There be no order as to costs on the application filed on February 01, 2022.

**Alvin Shiva Pariagsingh
Master**

By the Court,

Registrar