[2025] JMCA Civ 8

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MR JUSTICE D FRASER JA
THE HON MRS JUSTICE G FRASER JA (AG)

SUPREME COURT CIVIL APPEAL NO COA2024CV00037

BETWEEN	**WAYNE ROBINSON**	**APPELLANT**
AND	**BASIL JARRETT**	**RESPONDENT**

B St Michael Hylton KC and Miss Timera Mason instructed by Hylton Powell for the appellant

Walter Scott KC, Weiden Daley and Miss Shaydia Sirjue instructed by Hart, Muirhead & Fatta for the respondent

18, 27 March and 4 April 2025

Civil Procedure – claim for accounting – Order striking out claim – Whether the fixed date claim form disclosed reasonable grounds for bringing the claim – Whether the judge erred in striking out the claim on the basis that the claimant had no locus standi – Civil Procedure Rules, 2002, rule 26.3(c)

MCDONALD-BISHOP P

[1] I have read, in draft, the reasons for judgment of G Fraser JA (Ag). I agree with her reasoning and conclusion and have nothing to add.

D FRASER JA

[2] I too have read, in draft, the reasons for judgment of G Fraser JA (Ag) and agree with her reasoning and conclusion.

G FRASER JA (AG)

[3] Mr Wayne Robinson ('the appellant') filed his notice and grounds of appeal on 15 March 2024, appealing against orders made on 8 March 2024 by O Smith J (Ag) ('the

learned judge') striking out his claim on the application of Mr Basil Jarrett ('the respondent'). The appellant has urged this court to set aside the orders made by the learned judge, in part, that:

> "1. The Fixed Date Claim Form filed May 4, 2022 is struck out.
>
> 2. Costs of the application and the claim to be taxed, if not agreed.
>
> 3. …"

[4] After hearing the parties, on 27 March 2025, we made the following order:

> "1. The appeal is allowed.
>
> 2. The orders made on March 8, 2024, by O Smith, J (Ag) are set aside.
>
> 3. The application to strike out the claim filed on June 2, 2023, is refused.
>
> 4. The claim is to proceed to hearing before a judge of the Supreme Court, other than O Smith, J (Ag) on a date to be fixed by the Registrar after consultation with the parties.
>
> 5. Costs of the appeal and in the court below to the Appellant, to be taxed if not agreed."

[5] We promised then to provide our reasons for our decision. This is in fulfilment of that promise.

[6] For present purposes, it is unnecessary to fully rehearse the factual background leading to this appeal. It suffices to provide a short chronicle of the litigation between the parties as a necessary context to the appeal. The claim was, in essence, a demand for an accounting by the respondent relative to uniforms and other merchandise purchased and received from Joseph Sports Inc in the United States of America.

[7] The appellant alleged in his claim that in 2018, by way of an oral agreement with Joseph Sports Inc, he contracted to purchase uniforms and other items for retail to the students at Jamaica College. Pursuant to this agreement, in 2020, the appellant appointed

the respondent, "in his capacity as President of the Jamaica College Old Boys' Association ("'JCOBA"), as his agent to handle the sale of the Merchandise, and the [respondent] accepted the appointment". The appellant's contention is that the respondent, as his agent in the venture, failed to account for proceeds from the sale of the uniforms.

[8] The respondent, upon being served the claim, filed his application for it to be struck out on the ground that the appellant did not have standing or *locus standi* to bring the claim against the respondent and the respondent was not the proper party to be sued and further the appellant's statement of case disclosed no reasonable grounds for bringing the claim.

[9] On hearing the respondent's application, the learned judge struck out the claim. No written reasons for the learned judge's decision were provided to this court, but there seemed to be a tacit consensus between the parties that the claim was struck out because no reasonable grounds were disclosed for bringing it, stemming from a lack of legal standing (*locus standi*) on the part of the appellant. The parties agreed that on the issue regarding *locus standi*, the learned judge opined that the appellant lacked *locus standi*, primarily on the following bases: (a) the Education Act and Regulations do not give a school principal the power to commence a claim on behalf of the public educational institution and he/she cannot do so in his/her personal capacity on behalf of the school; (b) the Education Act and Regulations do not authorise the principal of a public educational institution to appoint an agent; and (c) the board of management of public educational institutions is responsible for the management of the school and its affairs.

[10] The appellant, on being granted leave to appeal by the learned judge, consequently filed seven grounds of appeal, complaining that the learned judge erred in granting the respondent's application to strike out his claim, and further erred by her determination that the fixed date claim form ('FDCF') did not disclose reasonable grounds for bringing the claim. The grounds of appeal are as follows:

"a. The learned judge failed to appreciate that she was hearing an application to strike out the claim and not a trial or even a summary judgment application.

b. The learned judge erred in law by finding that the Appellant did not have standing to bring the claim.

c. The learned judge erred in law by finding that the principal of a public educational institution does not have the authority to appoint an agent to act on his/her behalf.

d. The learned judge erred in law when she failed to find that the issue of whether the relationship of agency existed between the Appellant and the Respondent is a matter to be determined at trial.

e. The learned judge erred in law when she failed to recognise that a Board of Management is not a legal entity capable of suing or being sued.

f. In particular, the learned judge failed to recognise that:

(i) an individual member of a board of management can file a claim; and

(ii) therefore, in circumstances where the Appellant was the member of the Board of Management of Jamaica College who entered into the agreement with Joseph Sports Inc. for the sale and supply of uniforms and appointed the Respondent as his agent for that purpose, the Appellant is in any event, a proper party to file the claim.

g. The learned judge erred in law by finding that the Fixed Date Claim Form filed May 4, 2022 does not have reasonable grounds for bringing the claim."

The appellant sought from this court the following:

"(a) The orders made on March 8, 2024 and set out at paragraph [3] above be set aside.

(b) The application to strike out the claim filed on June 2, 2023 be dismissed.

(c) Costs of the appeal and in the court below be awarded to the Appellant, to be taxed if not agreed."

[11] The appellant also sought an order from this court that the application made by the respondent in the court below, to strike out the claim, be dismissed.

[12] Each party filed written submissions in support of their respective positions, and I wish to thank counsel appearing for the parties for their very fulsome and extensive submissions, which I found to be quite helpful. Without doing any injustice to the industry of counsel, I will endeavour to capture the essence of the submissions that were imperative to the disposition of the identified issues in the appeal.

[13] King's Counsel, Mr B St Michael Hylton ('Mr Hylton'), for the appellant, advanced, in both written and oral submissions, that the claim brought by the appellant sought proper accounting from the respondent as the appellant's agent as it concerned arrangements made between them. The claim, therefore, concerned the alleged agency relationship between the parties. King's Counsel stated that the respondent did not deny receiving the merchandise, nor did he say he returned it. Instead, it was the respondent's case that the appellant lacked the authority to demand that he account for the money. In the circumstances, the appellant's submitted that the test the learned judge should have applied was whether the respondent's failure to give an account gave the appellant reasonable grounds to bring the claim. King's Counsel contended that the learned judge, however, erred when she "ventured into an examination of the evidence to determine whether there was a real prospect of success on this issue". Accordingly, King's Counsel submitted that the improper test was utilised by the learned judge, in that the test was not whether the appellant had a real prospect of proving the issue successfully at trial, but rather, whether the pleadings before the court disclosed reasonable grounds for the appellant to file the claim.

[14] Mr Hylton submitted that although the learned judge had the power, pursuant to rule 26.3 of the Civil Procedure Rules, 2002 ('CPR'), to strike out a claim, it is not a power that should be exercised lightly. King's Counsel conceded that since what was before the

learned judge was a FDCF, the affidavit evidence would be included as part of the pleadings, and it was, therefore, appropriate for the learned judge to look at it. However, on a striking out application, the learned judge's examination should not extend to a weighting of the evidence to determine factual issues. The learned judge's examination of the affidavit evidence was to have been confined to addressing her mind to determine whether or not the pleadings before the court disclosed a reasonable ground(s) for bringing the claim. King's Counsel relied on the authorities of **S & T Distributors Limited and another v CIBC Jamaica Limited and another** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 112/2004, judgment delivered 31 July 2007 ('**S & T Distributors Limited**'), **City Properties Limited v New Era Finance Limited** [2013] JMSC Civ 23 and **Delroy Foster v Jamaican Redevelopment Foundation Inc** [2024] JMCA App 5, in support of these submissions.

[15] Mr Hylton also argued that the learned judge failed to recognise that she had before her an application to strike out the claim, which did not require her to adjudicate on the evidence or indulge in a mini-trial. That even on a summary judgment application, where the prospect of success was in issue, this too did not require that level of assessment.

[16] Furthermore, the learned judge erred in her finding that the appellant did not have standing, primarily because the Education Act, 1965 ('the Act') and the Education Regulations, 1980 ('the Regulations'), did not confer authority on the appellant as principal of the institution to commence a claim. Neither did that law authorise the appellant to appoint an agent. King's Counsel relied on Halsbury's Law of England, Volume 1 (2022), para. 1, to support his position that the law on agency relationship was not so restricted as to attach to one's particular title at an institution.

[17] Mr Hylton concluded his submission with the argument that the parties' conflicting evidence could only be appropriately dealt with in a trial. Therefore, the question of whether there existed an agency relationship between the parties was a matter to be resolved at trial.

[18] King's Counsel for the respondent, Mr Walter Scott ('Mr Scott'), countered and submitted that the appellant's submission that the learned judge considered evidence, which she should not have, was flawed. Mr Scott pointed out that the claim was brought by way of FDCF, and the details of the allegations were encompassed in affidavits rather than particulars of claim. In the circumstances, Mr Scott submitted that the affidavit "have the dual role of at once being pleadings and also evidence". He, therefore, contended that the learned judge could only have considered the affidavits in her consideration of the pleadings, as she did. Mr Scott argued that the respondent's application before the learned judge, having been made under rule 26.3 of the CPR, required consideration in keeping with the cases of **Marilyn Hamilton v United General Insurance Co Ltd** (unreported), Supreme Court, Jamaica, Claim No 2007 HCV 01124, judgment delivered on 29 July 2008, **Foote-Doonquah v Jamaica Citadel Insurance Brokers Ltd** (unreported), Supreme Court, Jamaica, Claim No 2005 HCV 01078, judgment delivered on 18 August 2006. King's Counsel contended that in appropriate cases, the court may treat an application under rule 26.3 of the CPR as summary judgment under rule 15.2 of the CPR. Counsel placed reliance on the authority of **Taylor and others v Midland Bank Trust Co Ltd** (1999) 2 ITELR 439.

[19] Mr Scott stated that the appellant had no statutory authority under the Act or Regulations to bring the claim. He relied on para. 89(2) of the Regulations, which provides that "[t]he board may, if it sees fit, delegate to the principal of the institution, responsibility for the matters specified …". It was argued that para. 89(2) was necessary to avoid a breach of the general principle that *delegatus non potest delegare* (see **Camacho and Sons Ltd & Others v Collector of Customs** (1971) 18 WIR 159). Therefore, King's Counsel argued that the school board operated within the legislative and regulatory framework, under which the school board was the "authorised agent entrusted with the responsibility for ensuring that proper books of accounts and other matters in relation to the assets and liabilities of the institution are kept in strict accordance…". It was, therefore, his submission that the school board was responsible for the assets and liabilities of the school and the authorised body mandated to institute

measures to ensure its governance. The learned judge, he stated, was correct in striking out the claim since the appellant's stance in bringing the claim was that he is the agent of the Jamaica College Board. Mr Scott submitted that, on the basis of that admission, the claim must be struck out, for the reason that an agent cannot sue (see **Fairlie v Fenton and another** (1870) LR 5 Exch 169).

[20] Mr Scott further argued that to entitle the claimant to bring a claim, sufficient interest in the subject matter was required. It is on this ground that he submitted that the judgment was correctly entered in favour of the respondent for the appellant's lack of standing. This is so since the claim was brought in the appellant's name and in his personal capacity. In spite of this, Mr Scott submitted that the appellant contends that he appointed the respondent ("as President of JCOBA") as his agent. As a result, the respondent owed duties to him and Jamaica College. Reliance was placed on the authority of **Hunte v JW Evelyn & Transport & Harbours Department** (1970) 17 WIR 428, for the submission that the appellant was in no better position to bring the claim on behalf of Jamaica College than a director of a company has the right to bring the action in his name for the company. King's Counsel submitted that it is settled law that an unincorporated body has no legal identity separate from its members and, as such, cannot sue or be sued in its own name. This is important since the appellant's admission throughout has been that the respondent acted in his capacity as president of the unincorporated body JCOBA.

[21] It is certainly not my intention to resolve the many competing contentions of the parties, my aim was to determine whether the learned judge erred in law in determining the issues that emerged on the application before her. Having reviewed and considered the submissions of counsel, along with the grounds of appeal, it is my view that despite the many grounds of appeal, it is clear that the main contention and determinate issue before this court is whether the learned judge erred in her approach and the factors considered when she granted the respondent's application to strike out the appellant's claim.

[22] At the outset, I hasten to acknowledge that the learned judge had the authority to strike out the appellant's claim. The relevant rule for the consideration of this issue is rule 26.3 of the CPR, which provides:

> "(1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -
>
> (a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;
>
> (b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;
>
> (c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or
>
> (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10."

[23] Given the parties' indication of the oral reasons given by the learned judge for striking out the claim, this appeal is concerned with only rule 26.3(1)(c).

[24] A claim that is initiated by someone without the legal capacity to sue may be struck out under this provision, or alternatively stated, a claim can be struck out for lack of standing (*locus standi*), which refers to whether a claimant has a sufficient legal interest in the matter to bring a claim. Striking out is appropriate where it is obvious from the statement of case that the claimant has no legal right to bring the claim; the claimant is suing in a representative capacity without proper authority; or the claim is brought by someone who has no legal or equitable interest in the dispute. Standing ensures that only individuals or entities with a genuine, direct interest in the subject matter can pursue legal claims. If a person lacks standing, their claim may be struck out under rule 26.3(1)(c), as the claim would disclose no reasonable grounds for bringing it.

[25] If a claimant is not directly affected by the issue in dispute or lacks a legal or equitable interest in the proceedings, the court may strike out the case at an early stage. This is because if there is no realistic argument that the claimant has standing, it is in the interest of judicial efficiency to strike out the claim at an early stage.

[26] In cases such as this, where there is an application to strike out a party's claim form and proceedings, the court hearing the application must strike a balance between two competing principles. On the one hand, as courts exist to resolve disputes, it is preferable for cases to be decided on their merits rather than terminated for technicalities and trifles. On the other hand, the court, seeking to maximise the best use of judicial resources and weed out unwarranted claims, must ensure that the striking out mechanism is used judiciously while upholding the right of access to justice for claimants with legitimate interests. The aim is to secure a just result, and the court should adopt the most appropriate of the alternatives available to it in order to secure that result. It is in accordance with that principle that the overriding objective of the CPR requires that every civil case that is filed in the Supreme Court must be dealt with justly.

[27] Some cases illustrate that where standing is clearly absent, a claim should be struck out early to prevent unnecessary litigation (see **Jennes Anderson v General Legal Council** [2024] JMCA Misc 3). The Court of Appeal has consistently upheld the striking out of a claim where the claimant had no legal interest in the matter. In **First Union Financial Company Limited Appellant v Sharca Brown** [2024] JMCA Civ 41, the court emphasised that where a claimant's lack of standing is plain and obvious, the claim should not proceed to trial. At para. [116], Edwards JA cited with approval an extract from page 206 of the text, Commonwealth Caribbean Civil Procedure 4th edition, by Gilbert Kodilinye and Vanessa Kodilinye, where the authors stated "…In my view, this drastic step of striking out a statement of case should only be considered when such statement of case can be categorised as entirely hopeless". Edwards JA further enunciated that, "in essence, the power to strike out is a sword to be wielded with Solomonic wisdom. While judicial restraint should characterise its use, compelling cases

demand that it be employed without reticence". Other instances where claims are struck out are where a private individual attempted to bring a case to enforce public rights. In **Gouriet v Union of Post Office Workers** [1978] AC 435, the House of Lords ruled that the claimant lacked standing because he was not personally affected by the matter, leading to the claim being struck out. In these cases, the courts ruled that there was no arguable case for standing, making striking out appropriate.

[28] In some situations, however, the issue of standing is not clear-cut and may require a full trial. There are instances where standing is not immediately clear from the pleadings, and determining the same requires an analysis of facts and law, making summary disposal inappropriate. In such situations, standing is best resolved after evidence is presented at trial rather than through an early procedural ruling. Striking out may be premature in such circumstances. In **Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd** [1982] AC 617, the House of Lords held that standing should not be determined rigidly at the outset, as some cases require factual examination. In **Attorney General of Jamaica v John McKay** [2012] JMCA App, the Court of Appeal ruled that striking out should only be used where a claim is bound to fail. Where standing is uncertain but arguable, the court should allow the case to proceed to trial rather than striking it out summarily. These cases establish that courts should err on the side of allowing a claim to proceed to trial unless standing is clearly non-existent. These principles have guided my consideration of the issue regarding *locus standi* in the instant case.

[29] The next task is to assess the method by which the learned judge went about the exercise of her authority. The appellant complained that the approach taken by the learned judge, and her ultimate finding that the FDCF did not disclose reasonable grounds for bringing the claim, was premised on an incorrect test. Mr Hylton asserted that the learned judge was wrong to have utilised the affidavit evidence of the respondent to the extent that she had. He asserted that in considering the striking out application, there was no need for the learned judge to delve into the meat of the matter and evaluate the

weight of the evidence. While she was entitled to have regard to the fact of a dispute between the parties, there was no need to decide on the merits of the case.

[30] The appellant, through counsel, further complained that in considering the respondent's affidavit evidence, the learned judge took into account the provisions of legislation that were irrelevant to the issues raised in the claim. I reiterate that I am hampered in making any meaningful assessment of the learned judge's methodology because this court was not provided with any written reasons. However, there is no reason why the appellant's account cannot be accepted as an accurate recounting of what occurred in the court below, especially since the respondent makes no demurrer that this was, in fact, the approach utilised by the learned judge.

[31] Mr Scott submitted that the appellant's submission was "fatally flawed" and that the learned judge was correct in her consideration of the striking out application when she took into account the respondent's affidavit evidence. He expounded that the learned judge had to be mindful of the fact that the claim was brought by FDCF and, therefore, "the details of the allegation supposedly comprising the claim is, therefore, not contained in any particulars of claim but rather in affidavits". He relied on rules 18.1(1)(b)(ii), 8.8(2) and 41.1(2) of the CPR. It was his further submission that since an affidavit is evidence, it serves the dual purpose of being both pleadings and evidence. "Therefore, the learned judge, in considering the 'pleadings' in the instant case could only and had to consider affidavits, as she did".

[32] Given the approach taken by the learned judge in treating with the striking out application, and the test she apparently applied, this submission raises an issue worthy of investigation and resolution in light of this court's pronouncements on the differences in the approach required when treating with summary judgment and striking out applications (see **S & T Distributors Limited**, **Sebol Limited and another v Ken Tomlinson et al** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 115/2007, judgment delivered 12 December 2008 and **Gordon Stewart v John Issa** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 16/2009,

judgment delivered 25 September 2009, at para. 31). The court indicated that there were differences between the approach to be taken in a striking out versus a summary judgment application. In the former, it is the impugned pleadings that are to be the focus of the judge's enquiry for the purpose of determining whether the claim discloses a cause of action. In the latter situation, without resorting to a mini-trial, regard can be had to the evidence generally for determining whether the claimant's case has any "realistic prospect of success". The focus for summary judgment is on the outcome of the claim which is not the focus in an application for striking out pursuant to rule 26.3(c). In any event, summary judgment cannot be granted on a FDCF.

[33] In the case of **Sally Fulton v Chas E Ramson** [2022] JMCA Civ 21, invaluable guidance is provided regarding the use of affidavit evidence in circumstances where a FDCF is used to initiate proceedings. In deciding a similar issue at paras. [17] to [20], McDonald-Bishop JA (as she then was) stated:

> "[17] In response, Mr Braham QC submitted that, in considering whether to strike out the second leave application, the learned judge was correct to treat the fixed date claim form and the supporting affidavit of the appellant, as the relevant 'statement of case' within the meaning of rule 26.3(1). He argued that pursuant to rule 2.4 of the CPR, a statement of case includes a fixed date claim form.
>
> [18] I accept the position of the company as expressed by Mr Braham. Even though in the instant case, the fixed date claim form was not filed to commence a claim, strictly speaking, but rather as an application for leave to bring a claim, nevertheless, the filing of a fixed date claim form is in keeping with the general practice and procedure of the courts as reaffirmed by this court in **Chas E Ramson v Sally Ann Fulton**….
>
> [19] According to the CPR, a fixed date claim form is to be construed as a statement of case. Rule 2.4 of the CPR defines a statement of case to mean: '(a) a claim form, particulars of claim, defence, counterclaim, ancillary claim form or defence and a reply; and (b) any further information given in relation

> to any statement of case under Part 34 either voluntarily or by order of the court'
>
> [20] Rule 2.4 of the CPR further states that ' 'claim' and 'claim form' are to be construed in accordance with Part 8', and that a ' 'fixed date claim form' is a claim form in form 2 upon which there is stated a date, time and place for the first hearing of the claim'. Rule 8.8(2) of the CPR (as amended in 2011) requires a fixed date claim form to be accompanied by an affidavit. There is no longer an option for use of a particulars of claim as there was before the amendment. It also requires any response to the affidavit in support of the fixed date claim form to be by way of affidavit. Therefore, wherever a fixed date claim form is used, it is evidence in support that is required rather than pleadings of facts as in a particulars of claim."

[34] In this case, the FDCF and affidavit filed by the appellant would represent his pleadings and evidence in support of the claim; the takeaway from the **Sally Fulton v Chas E Ramson** case is that in a striking-out application utilising a fixed-date claim form, as in this case, it would not be wrong for the judge to utilise affidavit evidence. However, her enquiry would, only extend to the claim and evidence in support filed by the appellant as it was his statement of case that was under attack as disclosing no reasonable ground for bringing it. The learned judge's enquiry was to determine if the claim disclosed a cause of action known to law that would justify the claim for an accounting by the appellant from the respondent. She was not required to resolve disputed facts which arose on the respondent's affidavit. The learned judge, therefore, erred in her extensive consideration of the respondent's affidavit evidence.

[35] The respondent sought to strike out the claim on the grounds that the appellant's case disclosed no reasonable basis for bringing the claim because he lacked standing. In **Charmaine Bowen**, the principle stated by Brooks JA (as he then was) is that the court's fundamental role is to resolve disputes on their merits. Brooks JA acknowledged that courts should be reluctant to strike out claims. When considering such applications, judges must balance the claimant's right to be heard against the need for efficient and proportionate litigation.

[36] The appellant in his FDCF sought:

> "(1) An account in relation to all uniforms and other merchandise which the defendant received from Josephs Sports Inc. of 4517 Ave. D, Brooklyn, New York 11203, as the Claimant's agent.
>
> (2) An account of the proceeds of sale of uniforms and any other merchandise received from Josephs Sports Inc.
>
> …"

[37] The central issue is whether the appellant's claim for an accounting was a valid cause of action. In making the application for striking out, the respondent had to show that the impugned statement of case, *prima facie*, failed to disclose a claim which was sustainable as a matter of law. The learned judge, therefore, should have enquired whether the claim as pleaded satisfied the requirements for prosecution of the alleged cause of action (**Stewart v Issa**). Part 41 of the CPR provides clear guidance as to claims requesting an accounting:

> "41.1 (1) This Part deals with claims -
>
> (a) for an account; or
>
> (b) for some other relief which requires the taking of an account.
>
> (2) A claim for an account must be made by fixed date claim supported by evidence on affidavit."

[38] Based on this framework, the appellant's claim met the legal requirements for an accounting claim. An important consideration for a court hearing a striking out application is the assumption that the facts alleged in the statement of case are true (see **Morgan Crucible Co Plc v Hill Samuels & Co Ltd and Others** [1991] Ch 295). The key test, therefore, is whether, assuming all pleaded facts are true, the claim has a real legal basis. On the application of this test to the present case, it cannot be argued that the appellant had no legal basis for his claim. For this reason, the learned judge erred in striking it out.

[39] Additionally, a crucial question in this case is whether the relationship of agency existed between the appellant and respondent. Generally, the determination of agency is a matter for trial, as it involves both factual and legal considerations. The appellant asserted that he appointed the respondent as his agent in his role as President of JCOBA to manage the sale of merchandise and that the respondent accepted this role, thereby owing fiduciary duties. Mr Hylton highlighted that it was the appellant who negotiated the deal with Joseph Sports Inc and that failure to make payments to that entity would make him vulnerable to a lawsuit. Mr Hylton also pointed out that the respondent at no time denied receiving the goods and merchandise from Joseph Sports Inc, and neither was he denying that he failed to hand over those goods and or the proceeds of any sale over to the appellant.

[40] In my view, the learned judge should have assessed whether this issue was sufficiently material and required investigation at trial or whether the claim was so weak that it warranted striking out. Given the appellant's assertions, the issue of agency was neither frivolous nor plainly unarguable, it was a triable issue requiring a full hearing. In other words, the assertion of agency and the corresponding fiduciary obligations were disputed factual matters that necessitated adjudication. The learned judge's decision to strike out the claim prematurely circumvented this necessary judicial determination. In **Swain v Hillman** [2001] 1 All ER 91, the court emphasised that striking out a claim is a drastic remedy and should not be used where factual disputes require determination at trial.

[41] Finally, a related but critical issue is whether the parties were before the court in their correct capacity. The appellant insisted that the claim was brought in his personal capacity, not on behalf of the Board of Management of Jamaica College, and was initiated against the respondent in his personal capacity as well. The respondent strenuously challenged this position. Without attempting to traverse the extensive arguments mounted by both parties in relation to this issue, I would say that this procedural concern could have been resolved through an amendment of the FDCF.

[42] Part 8 of the CPR governs the content and clarity of a statement of case in civil proceedings and requires claimants to properly articulate their claims, including naming the proper parties to the dispute. While the rule demands precision, rigid formalism and technical defects in pleadings should not lead to unnecessary dismissals, especially when the case has merit. It is for that reason that judges of the Supreme Court have the discretion to allow amendments to defective pleadings. Furthermore, no claim should fail because of the adding or failure to add parties, as provided by rule 8.4 of the CPR, which states:

> "8.4 (1) The general rule is that a claim will not fail because -
> (a) a person was added as a party to the proceedings who should not have been added; or
> (b) a person who should have been made a party was not made a party to the proceedings.
> (2) However -
> (a) …
> (b) …
> (3) Any number of claimants or defendants may be joined as parties to the claim.
> (4) …"

[43] There is also the consideration of Part 19, which governs adding, removing, or substituting parties in a case. Courts have the discretion to amend claims to ensure that all relevant parties are properly before the court. The rule allows courts to correct errors in the parties' names or to add parties whose presence is necessary for the resolution of the dispute. This promotes substantive justice over procedural technicalities. Under Part 19 of the CPR, the learned judge had the discretion to invite an amendment to be made on her own initiative if it was necessary to ensure that all matters in dispute were properly adjudicated and it would accord with the overriding objective to do so.

[44] Given the foregoing available remedies, striking out the claim was neither the only nor the appropriate course of action. The judge's failure to consider these alternatives demonstrates a misapplication of the law governing the striking out of a claim.

[45] I concluded that the learned judge's decision to strike out the appellant's claim was premature and not in accordance with the principles governing such applications and the overriding objective. The claim had a legal foundation, met procedural requirements under the CPR, and raised substantive factual issues that required ventilation. Particularly, the issue concerning agency required resolution at trial. In the circumstances, the learned judge erred, as the requirement for striking out had not been satisfied. Given these considerations, the striking-out decision should be set aside to allow for a full hearing on the merits.

[46] It was for the foregoing reasons that I agreed that the appeal be allowed and the orders sought by the appellant from this court be granted as expressed at para. [4] above.