

IN THE HIGH COURT OF BELIZE

CLAIM No. Civ 391 of 2024 (No. 1)

BETWEEN:

RICHARD ELLIS

Claimant/Respondent

AND

EDWIN REID
COMMISSIONER OF POLICE
ATTORNEY GENERAL OF BELIZE

Defendants/Applicants

Appearances:

Mr Orson Elrington for the Claimant
Ms Imani Burgess with Mr Stanley Grinage for the defendants

3 December 2024

4 December 2024

JUDGMENT

Practice and Procedure – Strike out – Statement of claim - Part 26.3(1)(b) and (c) of the Civil Procedure Rules (CPR) – Alleged abuse of process – No reasonable grounds for lodging claim – Police Officer’s alleged negligent driving causing motor vehicle accident – Claim for damages for personal injury and economic loss – Claim lodged after one year - Section 27 of the Limitation Act – Claims against public officials must be lodged within one year of accrual of cause of action – Whether a strike out is appropriate in a case in which there is a substantive and live dispute of fact and/or law between the parties and in an area of law characterised by developing jurisprudence

[1] **HONDORA, J.:** The defendants seek an order striking out the claimant's statement of claim on the ground that it does not disclose any reasonable ground for bringing the claim and constitutes an abuse of process.

[2] The claimant whose statement of claim is sought to be struck out (and consequently the respondent for purposes of the strike out application) is Mr Richard Ellis. The first defendant, Mr Edwin Reid is a police officer employed by the second defendant, i.e., the Belize Police Department. The third defendant is the Attorney General. In this judgment, save where stated differently, wherever I refer to Crown Counsel that reference is with respect to Crown Counsel Jorge Matus.

I. Context

[3] These proceedings arise from a motor vehicle accident that took place on **8 January 2023** along Faber's Road in Belize City, which the claimant blames on the first defendant. On the fateful day, the claimant was driving a Chevy Malibu motor vehicle while the first defendant was driving a Great Wall Wingle police pick-up truck.

(a) Mr Ellis' claim

[4] The claimant filed his claim and statement of claim on **11 July 2024**, in which he contends that Mr Reid failed to keep any proper lookout, drove without due care and attention, failed to keep control of his motor vehicle, drove without a driver's licence and was speeding.

[5] In his claim, Mr Ellis is seeking (a) damages in the sum of \$21,000 representing the replacement value of his motor vehicle; (b) damages in the sum of \$6,350 representing the cost of renting a replacement motor vehicle between 8 January 2023 and 24 May 2023; and (c) general damages for "pain to his back and body" arising from the traffic accident.

[6] Mr Ellis stated in his statement of claim that the second defendant's insurer, the Insurance Corporation of Belize, refuted liability on the ground that when the accident occurred, the first defendant, the driver of the motor vehicle, did not possess a valid driver's licence. Mr Ellis also asserted that the second and third defendants are vicariously liable for the injury and losses he suffered because when the accident occurred Mr Reid "*was acting as [their] agent and/or servant*".

[7] In support of his claim, the claimant attached a copy of a police report dated 3 April 2023 in which it is stated that:

"[the] Police investigation revealed that Edwin Reed (*sic*) was at fault for the accident. He was summons (*sic*) for the offence of (1) drove motor vehicle without due care and attention (2) drove motor vehicle without a valid Belize driving licence (3) fail to keep as close as possible to the right-hand side of the road."

(b) *Case management orders*

[8] The defendants who are represented by the Attorney General's department have not filed a defence. Rather, on **22 August 2024**, they filed an application to strike out the claimant's statement of claim pursuant to Part 26.3(1)(b) and (c) of the Civil Procedure Rules (CPR), which provides in the material part that:

"the court may strike out a statement of case or part of a statement of case if it appears to the court –

(a) []

(b) that the statement of case...is an abuse of the process of the court...;

(c) that the statement of case...discloses no reasonable grounds for bringing...a claim."

[9] On **16 October 2024**, I issued case management orders directing (a) the claimant to file and serve his answer to the defendants' strike out application; (b) the defendants to file and serve their reply to the claimant's answer by **8 November 2024**; (c) the parties to file and exchange written submissions by **22 November 2024**. I adjourned the matter to **27 November 2024** for oral submissions.

[10] Although served with the notice of hearing, Mr Elrington, the claimant's counsel, did not attend the hearing held on **16 October 2024** and neither did the claimant. As an alternative to proceeding with the defendant's application on an unopposed basis, I opted in my 16 October 2024 case management directions to order Mr Elrington to write to the court no later than **22 October 2024** explaining his and the claimant's non-appearance. Mr Elrington sent a letter explaining that he did not attend the hearing because he was in court in the criminal division attending to an urgent bail hearing. That explanation was not an adequate answer for the claimant's non-appearance. I note that I raised a similar concern with learned counsel in the case of [*Belize Bank Limited v Ogaldez and Another*](#), Claim No. 152 of 2022. To avoid sanctions, litigants or their legal representative must attend case management hearings and those who repeatedly breach court orders should not expect much leeway from the court.

[11] On 26 November 2024, Mr Elrington caused his paralegal to write to the court requesting the adjournment of the hearing of oral submissions which was set for the next day. The language used in the letter was not formal and was characterised by much spelling and grammatical mistakes. There was no explanation why Mr Elrington himself did not or could not have made the application. Although I granted the request, I must clarify that applications for adjournments must be made in a timely manner and in accordance with the

general rules on applications. Such applications must be made either by the attorney or the litigant and not a paralegal or any other person that is not entitled under the Legal Professions Act to discharge the responsibilities enjoyed by attorneys-at-law.

[12] I adjourned the hearing of oral submissions to **3 December 2024**. It was also the date on which learned counsel decided, without any application for leave or an explanation, to file the claimant's written submissions¹ - to which the defendants' counsel raised objections. After hearing learned counsel, I decided not to impose any sanctions.

(c) *The defendants' strike out application*

[13] The strike out application is supported by two affidavits dated 22 August 2024 and 8 November 2024 deposed by Crown Counsel, Mr Jorge Matus. In the earlier of his affidavits, learned counsel contended that the claimant's claim was time barred by virtue of section 27 of the Limitation Act, which provides:

"No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act or other law, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued." [Emphasis added.]

[14] According to Crown Counsel, the claimant's cause of action accrued on **8 January 2023** and the claimant instituted legal proceedings on **11 July 2024**, i.e., six months and three days out of time. The claimant does not dispute this fact.

[15] In his **8 November 2024** affidavit, Crown Counsel contended that when the accident occurred, the Belize Police Department, i.e., the second defendant, "*was conducting an authorised mobile patrol*". In support of that assertion, learned counsel referred to three statements dated **9 January 2023** allegedly drafted by (a) Mr Shaquille Moody, a police officer; (b) Mr Kevin Moro, a police officer; (c) the first defendant, Mr Edwin Reid. I say allegedly, because Crown Counsel did not attach affidavits or witness statements deposed by any of the three officers affirming the contents of the threestatements, which were used for the strike out application. The relevant statements merit recitation.

[16] In the statement attributed to Shaquille Moody, the officer stated that:

"...on Sunday 8th January, 2023 at about 7:55 pm I was conducting mobile patrol in a mark maroon police

¹ Strictly, permission was required to rely on written submissions filed out of time. But I considered that there was little to be gained on the facts as they stood to require submissions on why those written submissions should not be struck out.

Wingle license Plate number 3419. At the time I was along with Kevon Moro Dc 2261 and other members and I was driver of the mobile at the time. Whilst conducting patrol on Tibruce Street coming onto Mahogany Street my attention was drawn to a black in color heavily tinted Chevy Malibu car with the driver side window half way down being driven by Richard Ellis on Mahogany Street heading in the direction of Central American blvd. I could have easily recognized the driver to be Richard Ellis due to regular stop and search and also house searches conducted at his residence located 8714 curl Thompson Street, Belize city over the past five years. Upon seeing Richard Ellis in the vehicle, **Dc Moro inform me to pursue him**, whilst pursuing him and signaling him to pullover on Mahogany Street, I saw him raise his window all the way up and took off in high speed and refuse to stop. I then set chase at him where he tum down on flamboyant street heading in the direction of Vemon street thereafter he took a right tum onto Vernon street where I saw him throw an object outside of his vehicle in front of Cox Tire Shop located on Vemon street where he continue driving at a high speed overtaking other vehicles recklessly heading to the direction of George Price Highway. Dc Moro then call for assistance on a police hand held radio from control room for any mobile in the area to assist in pursuing the vehicle. Thereafter he also requested control room to send a police mobile to conducted searches in front of Cox tire Shop and surroundings to locate the object that I saw was thrown out of the black car. I continue to pursue him where he took a right tum onto George Price Highway heading in direction of the Chetumal street roundabout. Whilst pursuing him on George Price Highway he took a left tum onto Krooman Road heading in the direction of Fabers Road Extension. At this time he was stilling traveling in a high speed where he then took a left tum onto Fabers Road Extension now heading in the direction of Central American Blvd. I continued to set pursue on the vehicle on Fabers Road Extension where he started to recklessly overtaking other vehicles on the road again. Due to him overtaking other vehicles on the road he manages to get a distance from us where we could not have seen the vehicle again. However from a distance I could have seen a police flashing light coming from the direction of Central American Blvd. I continue driving down Fabers road where we saw the black car driven by Richard Ellis had collided into a green in color police mark Wingle at the comer of Baldwin Street and Fabers road extension, I also saw that Richard Ellis was outside the vehicle in police custody. In his presence a search was conducted on his vehicle where nothing illegal was found.” [Emphasis added]

[17] PC Kevin Moro’s statement is a cut and paste of PC Shaquille Moody’s statement save for the statement that he (PC Moro) informed DC Moody to pursue Richard Ellis whereas PC Moro’s statement states that “*Dc Moro inform me (sic) to pursue him*”. By “him” PC Moro meant, Richard Ellis. This raises questions regarding the reliability of, and the weight to be placed if any on, these two statements.

[18] In his statement “**Recorded at (Place: Pre.2 Raccoon Street Time: 3:49pm Date: 10. 01.2023**” the first

defendant, Edwin Reid is said to have stated:

"I am a Belizean Police Constable presently attached to Precinct 2 Quick response Team and presently residing at...Belize City. **I am the holder of Valid Belize's Driver's License** with License number 40709 issued to me by the Belize City Council Traffic Department on **the 11th day January of 2023 and will expire on the 27th day of October 2023** that allows me to drive class (A) Vehicles Only. **On Sunday January 08th 2022** I reported for duty 4:45pm at Raccoon Street Police Station and was deployed to work Mobile Patrol along with PC Cal, PC Myers and PC Armstrong. I was driving a green in Color police marked Great Wall Wingle...bearing license plate CYB3404. At about 0750pm we were patrolling in the Jane Usher Area, when we received a transmission from control room via radio stating that police needed assistance to intercept a vehicle on Faber's Road. We then made our way to Faber's Road, heading in a eastern to western direction to assist the police. When we got to the corner of Faber's Road and Baldwin Drive we slowed down because another vehicle was coming from the opposite direction, when the vehicle pass we came to a stop in our lane and that's when we saw the black Chevy Malibu car and a maroon SPU Mobile directly behind it, that drove into our lane and hit the front portion of the mobile that spin clockwise about 90 degrees. I heard a loud bang and the air bags deploy, couple minutes after I exited the vehicle and saw that then SPU had surrounded the vehicle and my partners PC Cal and PC Myers were slowly getting up from off the ground. Due to the impact they fell out of the pan of the Police truck. I then walk around the mobile to check for damages and that was when I saw that the front bumper was broken and dislocated, the left front fender dented and left front head light broken. I saw two cut wounds on my right hand that was swollen and I had sever pain on my right lower back, chest, neck and left shoulder. PC Armstrong who was also in the pan of the mobile was ferried by GI3 to the K.H.M.H via police mobile because he was bleeding from his left hand. Scenes Of Crime Personnel's and Pre2 Traffic Personnel arrived at scene. I can also state that during the incident the traffic was light, and the lighting condition was clear..."

[19] The defendants grounded their strike out application on a combination of the claimant's statement of claim and the above referenced three statements for the contention that the claimant's case was time-barred. The defendants' position is that when the accident occurred the second defendant, a public authority, was "*conducting an authorised mobile patrol*". They contended that the claimant accepts that fact because in para. 7 of his statement of claim, the claimant stated that "*when the 1st Defendant whilst on police patrol negligently drove...when he swerved into the claimant's lane*". Drawing on the above, the defendants assert that the claimant's case is based on the negligent discharge by the first defendant of his public duty as a public officer, which case ought to have been commenced within one year of 8 January 2023 as required by section 27 of the Limitation Act. And that in the circumstances, the claimant's case is barred by operation of law.

[20] In opposition to the strike out application, the claimant pleaded that (a) the overriding objective required the matter to be heard on its merits; (b) that the application is premature (and in this respect, the claimant prayed in aid the decision issued by Chabot J in the case of **Espat v Wayne and Others**, Claim No. 244 of 2022); and (c) strike out powers are discretionary. Regrettably, these contentions did not directly

engage with the main thrust of the defendants' strike out application. Grounds (a) and (c) are principles used in determining the court's exercise of its discretion and are not an adequate answer to the plea that the claimant's case does not demonstrate a reasonable ground for commencing the claim. Ground (b) applies only if the facts of this case are on all fours with that of the **Espat** case and is best harnessed if on the facts, the case is one that cannot be resolved without oral evidence. To be clear, there is no rule that a section 27 Limitation Act plea cannot be invoked in a strike out application.

II. Issue

- [21] The primary issue falling for resolution is whether the defendants have demonstrated that the claimant's case is unwinnable and is bound to fail and consequently constitutes an abuse of the process of the court (CPR 26.3(1)(b) because it discloses no reasonable grounds for commencing the claim (CPR 26.3(1)(c).

III. Discussion

- [22] In addition to its inherent power to control its proceedings, this court is expressly empowered by CPR 26 to strike out a statement of case (be it a claim or a defence) if, among others, it constitutes an abuse of the court's process or does not demonstrate a reasonable ground for lodging or defending the claim (see also **Price Meats Lit v Barclays Bank Plc** [2000] 2 ALL ER (Comms) 346, Ch. D)). Examples of claims that may be struck out include statements that (a) contain no facts indicating what the case is about; (b) which are incoherent and make no sense; (c) which do not disclose any legally recognisable claim against a defendant; and (d) which are barred by operation of law.

(a) Principles and approaches

- [23] Without intending to provide any exhaustive list, the following are some of the principles used to determine strike out applications. These principles must be considered in the context of the general rule that cases should be heard and determined on their merits to ensure, among others, that parties are not deprived of their rights to trial (see **Swain v Hillman** [2001] 1 ALL ER 91).
- [24] A strike out of a statement of claim is an exceptional remedy and the applicant bears the burden of showing that there is not set out in the statement of case a winnable case and that continuance of proceedings would unnecessarily waste resources (**Harris v Bolt Burdon** [2000] C.P. Rep 70). In short, the applicant must demonstrate that the respondent's case is unwinnable or bound to fail. As noted in the case of **Hughes v Colins** [2004] ECWA Civ 266, at para. 22, before striking out a statement of case, "the court

must be certain that the claim is bound to fail. Unless it is certain, the case is inappropriate for striking out.”

It is clear that the standard of proof, which is required to successfully sustain a strike out application is higher than the balance of probabilities standard utilised for purposes of resolving a civil case following a trial.

[25] A statement of claim may not be struck out if there is an apparent serious and live issue either of fact or law, which can only be properly determined on the basis of oral and/or other evidence. (See **Reynolds-Greene v Bank of Nova Scotia**, Claim No. ANUHCV 2005/0443; **Bridgeman v McAlpine Brown**, 19 January 2000, unrep., CA.)

[26] It is also well established that it is not appropriate to strike out a claim in an area of developing jurisprudence and that decisions in such matters must be determined on actual findings of facts. (**Barrett v Enfield London Borough Council** [2001] 2 AC 550 at p. 557 per Lord Browne-Wilkinson).

[27] Further, as reflected by the language used in CPR 26.3(1)(b) and (c) the focus in a strike out application is on the statement of case. In this regard, the applicant is usually bound to accept the accuracy of the facts pleaded in the statement of case unless if those pleaded facts are contradictory or wrong (See **MF Tel Sarl v Visa Europe Limited** [2023] EWHC 1336 (Ch), at para. 35). Relatedly, the court will usually proceed on the basis that the facts as pleaded by the claimant are true and that the claim will usually stand or fall based upon the case set out in the statement of case. (See **MF Tel Sarl**, at para. 10). Ordinarily, a strike out application should not turn into a mini trial of the facts. This is different, of course, from an application for summary judgment in which evidence may be led. As noted above, in a strike out application, it is for the applicant to demonstrate that the statement of case as articulated is unwinnable and/or is bound to fail. That is a high bar to overcome.

(b) Inadequate basis for any reasonable conclusion that the Limitation Act applies

[28] I am of the view that the defendants have not provided an adequate basis that supports the conclusion that section 27 of the Limitation Act applies to the facts of this case.

[29] The defendants correctly note that in para. 7 of his statement of claim, the claimant asserts that the accident was caused by the first defendant’s negligence while he (the first defendant) was on patrol. However, that statement is not dispositive of the questions whether (a) the first defendant had a duty of care to the

claimant, which he breached; and (b) section 27 of the Limitation Act provides the defendants with a defence to the claimant's case due to the circumstances in which the breach occurred.

[30] During oral submissions, I invited Ms Burgess to address me on whether a police officer who negligently causes an accident while driving on Philip Goldstone highway in an effort to get to his lunch date on time benefits from the time limitation period set out in section 27 of the Limitation Act. Ms Burgess conceded, and properly in my view, that any actionable wrong committed by such a police officer would fall outside section 27 of the Limitation Act.

[31] There is, in my view, a substantive live issue in these proceedings relating to whether when the accident occurred, the first defendant was involved in any investigation or hot pursuit of the claimant. That issue is incapable of resolution on the basis of the plea set out in the claimant's statement of claim or the third party opinions used by Crown Counsel in his 8 November 2024 affidavit in support of the defendants' strike out application.

[32] There is not before me any affidavit from the Commissioner of Police (as Head of the second defendant, i.e., the Police Department) affirming that on 8 January 2023, the second defendant was involved in a police operation to apprehend the claimant. The assertion by Crown Counsel, in his second affidavit, that *"I am advised by the Solicitor General and I verily believe that the 1st and 2nd Defendants acted in the bona fide execution of their duties in responding to an offence being executed and/or about to occur based on their reasonable suspicion being raised"* is an opinion attributed by learned Crown Counsel to the Solicitor General. It is not a statement of alleged fact asserted by the first and/or second defendants. An opinion attributed to a third party, which party is not personally before this court and that was not involved at all in the alleged discharge by the second defendant of its public law functions and duties cannot be an adequate basis for any conclusion by this court that section 27 of the Limitation Act operates as an automatic bar to the claimant's case.

[33] From a pleading perspective, an affidavit or witness statement that contains information said to have been provided by another person must state the source of that other person's information and belief. This is important because the accuracy, reliability and source of that information may be challenged and materially relevant to the just resolution of the dispute. It would not, as a general rule, be appropriate for a court to use third hand opinion evidence as any appropriate basis to strike out a statement of claim.

[34] Notably, Crown Counsel has not disputed the statement made in the **3 April 2023** police report (attached to the claimant's statement of claim) that as of 8 January 2023, Mr Reid (the second defendant) did not have a driver's licence. This leads to the question that cannot be answered at this stage of the proceedings, which is whether the Commissioner of Police authorised an unlicensed police officer by the name of Mr Reid to drive a police vehicle and engage in a hot pursuit and/or efforts to apprehend the claimant. If that be the defendants' plea, it raises the question to be determined following a full trial, whether the defendants were indeed discharging any public function and/or duty when Mr Reid is said to have negligently caused the motor vehicle accident, which caused the claimant injury and loss. It is for the defendants to demonstrate to the appropriate standard at trial if, and the extent to which, section 27 of the Limitation Act applies in the circumstances of the facts of the case pleaded by the claimant. In other words, the defendants may, if they are so disposed, raise the section 27 plea as their substantive defence. Whether that defence will provide an adequate answer to the claimant's plea is a matter of evidence to be resolved following a trial.

(c) *Credibility of assertions of alleged fact and the claimed discharge of a public duty*

[35] The defendants' case is that when the first defendant was involved in the accident, he was discharging a public duty. In his "recorded" statement said to have been given on **10 January 2023** (a day after the accident), Mr Reid stated that: "*I am the holder of Valid Belize's Driver's License [] issued to me by the Belize City Council Traffic Department on **the 11th day January of 2023 and will expire on the 27th day of October 2023** that allows me to drive class (A) Vehicles Only.*"

[36] Not to put a fine point on it, the first defendant could not as of **10 January 2023** have been in possession of a driver's licence "**issued on 11 January 2023.**" In her oral submissions and in response to my invitation for submissions on this incongruity, Ms Burgess recognised that that statement by the first defendant posed a challenge for the strike out application. Learned counsel was quite correct to recognise the difficulty since it relates to the credibility of the first defendant's evidence, which is a matter that is directly relevant to the question of whether the first defendant's wrongful actions come under the rubric of section 27 of the Limitation Act. This is a material issue, which must be determined at trial.

[37] In the above-mentioned 10 January 2023 report relied upon by Crown Counsel, the first defendant also states that he received a "*transmission from control room via radio stating that police needed assistance to intercept a vehicle on Faber's Road*". That statement is vague and can mean any one of a number of

things. Crown Counsel does not in his affidavit state that the first defendant was expressly required to participate in any police operation relating to the claimant. It is reasonable to assume – at this stage of the proceedings at least – that police radios offer an open channel of communication to those officers tuned in to a particular frequency. That said, the question whether the first defendant was authorised, instructed or expected to participate in what is claimed to have been a police operation is a matter for oral and other evidence not least because of the conflicting reports tendered by Crown Counsel Matus in support of the defendants’ strike out application. It is only through a trial that a proper determination can be made on (a) whether section 27 of the Limitation Act applies; and (b) if it does, whether section 27 of the Limitation Act operates on the facts determined at trial to bar the claimant’s claim.

[38] For current purposes, it is worth stating that if the litigation position attributed by Crown Counsel to the Commissioner of Police reflects the latter’s decisions as the Head of the second defendant, it begs the following questions that are best addressed at trial, which are:

- (a) why did the Commissioner open an investigation into the first defendant, if the accident was the direct result of a hot pursuit in an effort by the police force and the first defendant to arrest the claimant; and
- (b) whose evidence should this court believe, i.e., between (i) the first defendant who says in his 10 January 2023 report that the accident was caused by the claimant; and (ii) the second defendant whose investigations concluded (as reflected in the 3 April 2023 report) that “*Edwin Reed (sic) was at fault for the accident. He was summons (sic) for the offence of (1) drove motor vehicle without due care and attention (2) drove motor vehicle without a valid Belize driving licence (3) fail to keep as close as possible to the right-hand side of the road.*”

[39] The second defendant’s conclusion about the first defendant’s culpability and the criminal charges that were laid against the first defendant suggest that Mr Reid either acted without lawful authority, acted on a frolic of his own or simply, that as regards his actions, they were not related at all to any hot pursuit of the claimant and that Mr Reid was guilty of driving negligently and collided with the claimant and ought not – as a matter of law – to have been behind the wheel as he had no driver’s licence.

(d) *Legal question of general importance*

[40] This case raises a legal issue of general importance, which it would be inappropriate to decide on the basis of untested statements and an inchoate set of facts. That issue is whether as a matter of law and policy

any wrong, howsoever described, committed against a third party by a police officer engages section 27 of the Limitation Act, irrespective of (a) when during any 24 hours the wrong is committed; (b) whether the police officer is on duty; (c) whether or not the police officer acted on instructions or pursuant to a set of expectations that accompany the role; or (d) whether the alleged wrongful acts are only tangentially related to their role and duty as a police officer. If the answer is No, this begs the question of the wrongful acts that are covered by section 27 of the Limitation Act and those which are not. The resolution of these questions will depend on the facts and the parties' substantive submissions.

[41] If the question(s) to be addressed are more nuanced and narrower than I have outlined and are restricted to a much more limited category of wrongful acts that too would require substantive submissions by the parties. To mitigate against unintended consequences, this will require the facts underlying this dispute to be established via a trial. That will ensure that whatever rule or principle that is ultimately pronounced by this court is one that is predicated on a set of facts either accepted by the parties or following a trial and to which the competing legal principles as advocated by the parties are applied. The facts as relates to how and why Mr Reid acted as he did and caused injury to the claimant are unsettled and it would be inappropriate to use such a fact situation to make any definitive ruling on the application, if at all, of section 27 of the Limitation Act.

[42] In my judgment, this case presents an opportunity for a ruling on how section 27 of the Limitation Act applies to public authorities in relation to claims against public authorities for alleged wrongful acts attributed to them by third parties. To ensure precedential value and merit - that requires the facts of the matter to be definitively determined.

[43] Unlike in the Eastern Caribbean region in which the law on the limitation for suits against public authorities is regulated by what is called Public Authorities Protection Acts (see the case of ***Alves v Attorney General of the Virgin Islands*** [2017] UKPC 42) - in Belize this rule of law is contained in section 27 of the Limitation Act albeit that in Belize the rule is couched in much simpler but no less difficult to apply terms. But for the decision to change this jurisdiction's final appellate court from the Privy Council to the Caribbean Court of Justice (CCJ), I would have determined, without more, that the ***Alves case*** constitutes binding authority while acknowledging that that case did not provide a complete answer to the age-old problematic question of how to delineate conduct that should properly be protected from stale legal process and that which should be subjected to the general three year time limitation requirement.

[44] As noted in the **Alves case**, section 2 of the British Virgin Islands Public Authorities Protection Act (known by the acronym PAPA) and which is similar to numerous PAPA enactments in the Caribbean region and the English Public Authorities Protection Act 1893 (56 & 57 vict, c 61) provides

“Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Ordinance, or of any public duty or authority or of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect - (a) the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof; any action, prosecution, or any proceedings is commenced...”

[45] The question that arose for determination in the **Alves case** was whether the six month limitation period applied “*to any and every action performed by a person authorised to do it by statute, or only to some subset of such actions*” (see para. 6). After analysing the many conflicting decisions issued in relation to PAPA enactments in the different jurisdictions, the Privy Council held that the statute has always been and must be restrictively interpreted (see para. 37). The Board also held that the PAPA:

“...does not apply to all actions performed by public authorities, but only to those where the obligation sued upon is owed generally to the public or to a section of it. Where the obligation sued upon arises simply out of a relationship with the claimant which would be the same for any non-public person or body, and where there is no question of a public law challenge, the Act has no application.”

[46] I hold that the opinions outlined in **Alves** are highly persuasive if not binding. The parties will be invited to address the court on this issue should the case progress to trial. And if the test laid out in **Alves** represents the law in Belize or should be applied because it is persuasive, the parties will need to address the court on the effect of the test as applied to the facts either as agreed or as contended by each party.

[47] There is no question that the issue of duty of care of public authorities is an evolving area of law in many common law jurisdictions and so too in Belize. In this regard, I find Lord Brown-Wilkinson’s opinion in the case of **Barrett v Enfield London Borough Council** [2001] 2 AC 550 at p. 557 highly apposite in which he stated:

“[I]n an area of the law which [is] uncertain and developing (such as the circumstances in which a person can be held liable in negligence for the exercise of a statutory duty or power) it is not normally appropriate to strike out. In my judgment it is of great importance that such development should be on the basis of actual facts found at trial not on hypothetical facts assumed (possibly wrongly) to be true for the purpose of the strike out.”

[48] For completeness and subject to the parties’ submissions, it appears that this case will turn on whether (a)

the act that is the subject of these legal proceedings relates to an obligation owed generally to the public or a section thereof; or (b) the first defendant's actions constituted a breach of a duty that arises out of the first defendant's relationship with the claimant, which duty would be the same for any non-public person or body and in relation to which there is no public law challenge (see **Alves** at para. 37).

[49] Lastly, the defendants' plea on abuse of process was not substantiated. The defendants have not shown that the claimant has initiated litigation for an improper purpose (see **Attorney General v Barker** [2000] 1 F.L.R 759, DC) and consequently, this ground has no merit.

IV. Summary

[50] The defendants who bore the burden of proof in this strike out application have not demonstrated that the claimant's case is unwinnable or is bound to fail. In the circumstances, I am constrained to dismiss the application.

[51] The parties did not request the court to depart from the general rule on costs. Consequently, I order that the defendants, the one paying the others to be absolved, pay costs of suit, which if not agreed must be assessed.

V. Order

[52] Drawing on the above, I make the following orders:

- (a) The defendants' strike-out application is dismissed.
- (b) The defendants shall pay costs of the strike-out application on or before 30 January 2025, which if not agreed shall be assessed.
- (c) The defendants shall file and serve their defence(s) on or before 10 January 2025, failing which the claimant is at liberty to apply for default judgment.
- (d) This matter is set down for a virtual case management conference on 16 January 2025 at 3PM notice of which shall be issued by the court office.

HHJ Tawanda Hondora
High Court Judge
Civil Division