IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. G 43 of 2015

BETWEEN

CAYMAN STRUCTURAL GROUP LTD

Plaintiff

AND

DAVID MOFFITT

Defendant

IN OPEN COURT

Appearances: Mr. J Kennedy of KSG Attorneys on behalf of the Plaintiff
Mr. David Moffitt, Defendant in person

Before: **The Hon. Justice Ingrid Mangatal**

Heard: **7 December 2018**

Draft Judgment Circulated: **9 January 2019**

Judgment Delivered: **16 January 2019**

HEADNOTE

Breach of Contract - Trespass to Goods - Whether Contracting party Director in person or Company, whether Director liable in any event – Sections 52 and 53 of the Companies Law (2016 Revision)

JUDGMENT

Introduction

1. The Plaintiff, Cayman Structural Group Limited ("**the Plaintiff**") is described in paragraph 1 of the Statement of Claim as "*an ordinary company incorporated in the Cayman Islands*". It brings a claim under a written contract for monies due and owing for construction work and materials supplied by the Plaintiff for the Defendant David Moffitt

("**Mr. Moffitt**") in late 2013 and early 2014. The Plaintiff further claims for trespass to goods subsequent to the termination of the contract.

2. Mr. Moffitt's case was originally, (as filed in person), that the agreement was cancelled as a result of a split in the legal ownership of the Plaintiff. That he then contracted with the Caymanian shareholder of the Plaintiff to complete the work and that the issue was one of internal management of the Plaintiff.

3. Mr. Moffitt then changed his case, (as presented by his then lawyers), to plead that:

a. He entered the contract as a result of a mistake and that he believed that the scope of the work agreed by the contract was for three floors of the building and not for the second floor alone.

b. In the alternative, there was a mutual misunderstanding (as to the scope of the work) rendering the contract void ab initio.

c. That the Plaintiff had abandoned the contract and cancelled the agreement.

4. Mr. Moffitt had also counterclaimed for a declaration that the agreement is void *ab initio* or that the agreement be rectified to reflect the alleged mistake.

5. The Attorneys-at-Law on record for Mr. Moffitt obtained an order removing their names from the record as appearing for him, on 30 November 2017. The trial of the matter on the pleaded issues as set out above was listed for 25 April 2018. At the trial Mr. Moffitt attended in person representing himself and informed the Court that he had another new defence. This Court permitted an adjournment to allow him to file his new defence, with costs awarded in favour of the Plaintiff against him.

6. The new defence was duly filed. It alleges that the proper defendant to the action is a company known as Turtle Cove Limited and not Mr. Moffitt personally.

7. The Plaintiff denies that the proper defendant is not Mr. Moffitt as named personally and in any event avers that Mr. Moffitt is personally liable if Turtle Cove Limited was the

contracting party, but failed to have its full registered name on the construction agreement.

8. Although on 25 April 2018, Mr. Moffitt's application for an adjournment was granted in order for him to seek legal representation, as well as to allow for the new defence alleged, on the new trial date, 7 December 2018, Mr Moffitt appeared representing himself.

9. It is to be noted that at the trial, there were, yet again, major changes, to Mr. Moffitt's case. Firstly, he abandoned the case based upon mistake. Secondly, he claims that he paid the contract sum due, to Mr. Sofield's former Cayman Partner, Mr Forbes, indeed, that he paid Mr. Forbes over $200,000.

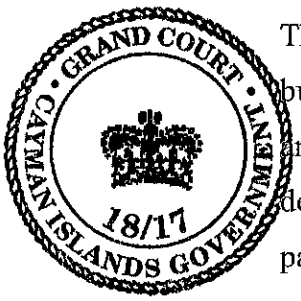
10. At the trial, by consent, the Court struck out the witness statement ("**W.S**") of Brent McComb dated 29 February 2016, which had been filed on behalf of Mr. Moffitt. The reason for striking it out was because Mr. McComb was unable to attend on the trial date.

The Plaintiff's Evidence

11. Robert Thomas Sofield III, nickname "Tommy" ("**Mr. Sofield**"), is the sole witness for the Plaintiff.

12. Mr. Sofield describes himself in his W.S., dated 29 February 2016, as Construction Project Manager. He gives evidence that he is an American National, who has lived and worked in the Cayman Islands since 2007. He indicates that he has been involved in the construction industry for in excess of nine years, and his family is involved in the construction industry.

13. The witness indicates that in 2006, before he moved to the Cayman Islands, he formed a Cayman Islands company to begin trading in Cayman and the company was called D & S Holdings. Mr. Sofield worked under that company name until 2009. In 2009 he had a change of local partner to Mr. Upton Forbes and the name of the company was also changed to Cayman Structural Group Limited. Mr. Forbes was a Caymanian and was also involved in the construction business.



14. It was Mr. Sofield's evidence that, in addition to being a shareholder of the Plaintiff, he was also an employee, and held the role of Project Manager from inception to the present. This role involved him overseeing all aspects of the business, including quoting for business, agreeing terms of business with clients, oversight of the work on the ground, and occasionally helping with the actual work there. In addition, Mr. Sofield says that he dealt with internal administrative business of the company, for example, hiring and payroll. He indicates that Mr. Forbes' role in the company was more hands on, in terms of the construction work itself.

15. Mr. Sofield gave details of his relationship and previous interaction with Mr. Moffitt prior to the business dealings in issue in this case. He had known Mr. Moffitt from 2007 and had had business dealings with him in the past. In 2009 Mr. Sofield's family was involved in a project to build condominiums in Frank Sound, Grand Cayman. He claims that Mr. Moffitt was to provide the infrastructure and architectural plans, but never did so, and was ultimately bought out of the deal. The witness says that in 2012, he brought Mr. Moffitt in as a contract negotiator on a demolition job which the Plaintiff had contracted for at the Hyatt Hotel property.

16. The Plaintiff's evidence in essence is that it carried out work up to a value of CI$87,404.90 out of a total contract sum of CI$109,561.12 when Mr. Moffitt indicated that he needed two weeks to pay for the work completed up to that date. This was the entire contract sum less the provision for concrete pouring of CI$22,560.00. The Plaintiff ceased to work pending payment and when Mr. Sofield returned at the end of the two weeks, Mr. Moffitt had taken upon himself the remainder of the work and repudiated the contract.

17. The Plaintiff also claims that at the end of the contract his equipment (or material rented by him) remained on the site and could not be returned to him as Mr. Moffitt used the equipment in order to carry out his own construction work. The Plaintiff claims the total sum of CI$17,718 for intentional trespass to goods.

18. Not only did Mr. Moffitt not pay the Plaintiff, but he also asked the Plaintiff for a loan of $200,000 in July 2014.

19. The Plaintiff claims that as a result of the termination of the contracts:

    a. It is entitled to damages for breach of contract,

    b. It is entitled to damages for trespass to goods.

20. The Plaintiff also claims interest in accordance with the ***Judicature Law (2013 Revision)*** and the ***Judgment Debt (Rates of Interest) Rules*** as amended, from time to time.

21. In amplification of his W.S, Mr. Sofield was asked what his response was to the amendment to the Defence, to the effect that the Plaintiff was aware that the other contracting party was Turtle Cove Limited, and not Mr. Moffitt. Mr. Sofield indicated that the first he was aware that this was what Mr. Moffitt would be saying was when the matter was in Court in April 2018. The witness indicated that he had never heard of Turtle Cove Limited prior thereto.

22. Mr. Sofield indicated that in his previous dealings regarding Frank Sound and the family development, it was always Mr. Moffitt that he dealt with in his personal capacity.

23. Mr. Sofield was cross-examined by Mr. Moffitt. He was asked whether there was a corporation set up called "*Driftwood Development*". The witness stated that he did not know about that; he always dealt with Mr. Moffitt, and it was Mr. Moffitt in person that he brought into the project. He indicated that the development was called "*Driftwood*", but it was Mr. Moffitt who was to provide everything, for example, the plans, and architectural input.

24. Mr. Moffitt suggested to Mr. Sofield that the Agreement in issue was entered into by the Plaintiff and Turtle Cove Limited and was never intended to be with Mr. Moffitt personally, as he acted and signed documents as President of Turtle Cove Limited. In response, Mr. Sofield remarked that he does not know what Mr. Moffitt's angle is, but that every transaction he has done has been with Mr. Moffitt. Further, whilst the Agreement mentioned "*Turtle Cove*", that is the name of the area, in the same way in which if one walks into West Bay, it is West Bay. The Agreement does not mention Turtle Cove Limited.

25. Mr. Sofield agreed with Mr. Moffitt that on the signature page, Mr. Moffitt put in the name "*Turtle Cove*" and signed as David Moffitt and also that he Mr. Sofield signed and that the name of the Contractor he inserted was Cayman Structural Group.

26. Mr. Sofield was also cross-examined about the words "*TURTLE COVE HAS OPTION TO CANCEL AGREEMENT AFTER SECOND FLOOR*", which were inserted into the Agreement by Mr. Moffitt. He agreed that those words were added by Mr. Moffitt when he signed the Agreement however, he Mr. Sofield never initialed that page of the Agreement. The only comment that he wanted to make sure was added were the words "*Payment in Full Before Pour concrete slab*", which words he did add and were initialed by both men.

27. In response to the suggestion that Turtle Cove Limited should be the Defendant and not David Moffitt, Mr. Sofield said that Mr. Moffitt is trying to get the Plaintiff to go after a company that no longer exists, that Mr. Moffitt has closed down and which has no assets. Mr. Sofield said that the men employed by the Plaintiff have been paid by it, but that the Plaintiff has received no payment, "*not even a dollar*".

28. As regards the issue of the effect of the split in the partners of the Plaintiff and the scope of work, Mr. Sofield indicated as follows in paragraphs 47-52 of his W.S.:

"47. We were almost complete the work when the split occurred and the split did not stop us working. The split resulted in Mr. Forbes walking away from the business as a shareholder but we continued to trade and I continued to work and manage the company. He transferred his share in the business to me on 9 January 2014 ...

48. If Mr. Forbes accepted any payment on behalf of the plaintiff company he should not have done so as he was not a member or director of the plaintiff company.

49. Whilst the Defendant stated that Mr. Forbes completed the contracted work I don't believe that to be the case, Mr. Forbes continued to work for the plaintiff company as a salaried employee

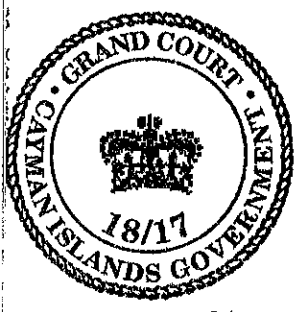
until August 2014 so he could not have worked at Turtle Cove until after August 2014.

50. *At no time did I ever discuss the change of the shareholders of the company with the defendant and he had no reason to be involved in the business of the company. The company was always ready and able to complete the pouring of the concrete and all that was lacking was payment from the defendant.*

51. *In late July 2015 the defendant obtained an Attorney to represent him and in October 2015 he filed an amended defence and I understand he claims that we had agreed that the Construction Agreement as signed was for installation of 3 slabs, i.e. the 2nd and 3rd floor and the roof all for the price of CI$109,561.12.*

52. *The defendant at no time between filing his amended defence and the carrying out of the work ever stated to me that this was his understanding. I must have spoken with him on 30 occasions about the overdue money between January 2013 [sic] and July 2015 and not once did he say this to me. The only conversation he ever had with me was to say that he didn't have the money to pay me and he would pay it when he could alongside actually seeking a loan from me."*

29. In relation to the scaffolding issue, Mr. Sofield said that the cost of hiring the scaffolding was CI$5,175 from Massive Equipment and CI$12,453.80 from Pro Builders Ltd. The Plaintiff was able to produce the Pro Builders Invoices, but not those from Massive at this time. Both were paid. Mr. Sofield indicates that at no time after January 2014 did Mr. Moffitt have his consent to keep the scaffolding or to use it and he was unable to take it back because Mr. Moffitt had incorporated it into his building construction on the site, to which he Mr. Sofield had no access.



30. As regards questions about Rhino Rebar, Mr. Sofield says that that was a company he was involved in long ago, so he does not know if payment was made to them, and even if it was, that was not part of the Agreement. The Court also notes that there was no evidence produced by Mr. Moffitt of payment to Rhino Rebar in any event.

Mr. Moffitt's Evidence

31. In his W.S., signed 26 February 2016, Mr. Moffitt says that he has worked with the Plaintiff Company Cayman Structural Group Limited and its sister company Rhino Rebar, on several occasions prior to the present dispute and in particular, at the old Hyatt hotel demolition. While on the Hyatt project he worked mainly with Mr. Forbes on a daily basis. Up to the date of the W.S., he says he has known Mr. Forbes professionally for 4 years and Mr. Sofield professionally for 8 years.

32. Mr. Moffitt indicates that by the start of December 2013, he had already begun the construction of Building B at the project and the ground floor was in place as well as first floor walls. In order to complete Building B at the Project, three further slabs for the second floor, the third floor and the roof had to be poured and it was on this basis that he commenced negotiations with the Plaintiff, Mr. Moffitt originally said.

33. Mr. Moffitt said that in accordance with his understanding that the Agreement referred to three slabs, he made a written addition to the Agreement at clause 2, stating that " *Turtle Cove has option to cancel agreement after second floor"*, the second floor being the first of the elevated slabs to be poured for Building B at the Project. He says that this note was made under the assumption that the $109,561.12 was for all three slabs and he claims he asked Mr. Sofield to change the wording to reflect this, but he told him to just write in the note to save him having to make more changes.

34. At trial, Mr. Moffitt did cross-examine Mr. Sofield about the words Mr. Moffitt added, referred to in paragraph 33 above. However, he abandoned the case based on mistake, and this argument and evidence about 3 floors, (which originally constituted significant portions of his W.S.), was withdrawn.

35. Mr. Moffitt places emphasis on the fact that Mr. Forbes and Mr. Sofield had a dispute. At paragraph 29 of hisW.S., Mr. Moffitt states as follows:

> *"29. I do not think that the timing of the Plaintiff's internal dispute and the inability of the Plaintiff Company to commence the work on time or to maintain an appropriate work force at the Project site was a coincidence. I believe that the former had a direct impact on the latter and that this is the reason why the Plaintiff Company was unable to progress the works on time and subsequently abandoned the Project site."*

36. Mr. Moffitt indicated that his concerns were underscored by the terms of a Settlement and Release Agreement (**"the CSG Settlement Agreement"**) for the Plaintiff Company which was shown to him at the end of January 2014, which he says was the same time as the Plaintiff Company withdrew its final two workers from the Project site.

37. He noted that the CSG Settlement Agreement made no reference to the Turtle Cove Project, whereas other jobs that the Plaintiff had on-going were specifically dealt with.

38. The witness indicates that after the Plaintiff abandoned the Project site, he took what he considered to be prudent steps to complete Building B at the Project. In the W.S. he claims that he paid Mr. Forbes for the scaffolding which he said was his, and not that of the Plaintiff, and then Mr. Moffitt engaged his own work crew to complete the formwork for the second floor slab and to provide labour for the concrete work and purchased the associated materials himself, including plywood for the formwork from Cox Lumber.

39. Mr. Moffitt claims that he paid Rhino Rebar for the rebar that had already been delivered to the Project site and purchased additional rebar from Cox Lumber for the second floor slab. He then engaged Collier Construction to install the rebar.

40. In the Conclusion of his Witness Statement, at paragraphs 50, 51 and 54, Mr. Moffitt states as follows:

"50. I believe that Mr. Sofield was well aware of this confusion, but nevertheless went ahead and signed the Agreement in an attempt to secure a ridiculously high price for the reduced scope of work, which he had included in the Agreement and which I was not aware of.

51. If Mr. Sofield genuinely believed that we both intended to contract for the installation of just one slab, then I can only say that we were very much at cross-purposes....

54. After the Plaintiff Company abandoned the Project site, I did what was necessary to complete the work. In so doing, I believe I paid all monies owed."

41. In cross-examination, Mr. Moffitt conceded that CI$10,957 was to be paid upon signing of the Agreement, but that he did not pay it. He agrees that Mr. Sofield kept asking him to pay. As regards his email requesting that Mr. Sofield loan him $200,000, he agrees that he sent it, and that they had a number of pieces of correspondence between them over the years. The email was sent from email address demoffitt@yahoo.com; he couldn't recall whether this was a company request or personal, but that this was the email address he used for all his business.

42. Mr. Moffitt also admitted that although for years he has maintained that the CI$109,561.12 was to cover three floors of work, he has now abandoned that claim. When Mr. Kennedy suggested to him that this was a demonstration of sleight of hand, Mr. Moffitt claimed that it was as a result instead, of a mix-up between him and his lawyers.

43. Further in cross-examination, Mr. Moffitt said that he had made payments to Mr. Forbes when he signed the Agreement, and Mr. Forbes came as separate partner and finished the work and he paid him over $200,000 in all. At the suggestion that this was untrue, and

that he had no receipt to show this, Mr. Moffitt conceded that he had no receipt to evidence this alleged payment.

44. He indicated in response to Mr. Kennedy's question that he does not know if Mr. Forbes is still on the Island, but he assumed that he is.

45. Mr. Moffitt accepted that until the Re-Amended Defence was filed by him there was nothing whatsoever in the Agreement, any pleading or other document that mentioned "*Turtle Cove Limited*".

The Issues

46. The issues involved in this case are as follows:

The contracting party issues:

(a) Who is the party contracting with the Plaintiff?

(b) If that contracting party is Turtle Cove Limited, is Mr. Moffitt still liable as a result of the failure of Total Cove Limited to comply with section 52 of ***the Companies Law (2016 Revision)*** (***"the Companies Law"***) by failing to have its name in legible characters on an order for goods purporting to be signed on behalf of the company?

The damages issues

(a) Is the Plaintiff entitled to payment for work done under the contract?

(b) Is the Plaintiff entitled to damages for trespass to property?

The contracting party issues

47. As Mr. Kennedy conceded, the terms of the Construction Agreement signed in December 2013 are "*a bit messy*". However, he maintains that nowhere in the Agreement or any other documents is there reference to Turtle Cove Limited, by either party. He asserts that

there is no evidence to show that Mr. Sofield had knowledge of Turtle Cove Limited. Indeed, Mr. Sofield's evidence is that the course of dealings between himself and Mr. Moffitt that took place in the past, at no time involved Turtle Cove Limited.

48. Mr. Moffitt maintains that the Agreement was with Turtle Cove Limited and that that company should be the Defendant named so that it could have its own lawyers. He argues that the reason why people have corporations is so that liabilities and work can be done separately and that if the Court were to rule in favour of the Plaintiff against him personally, this Court would be ruling that every company in the Cayman Islands would be subject to individuals being held liable for the Company's actions.

49. Mr. Kennedy's counter was direct; he argued that this Claim does not invalidly lift the corporate veil. What the case does do, he submits, is to hold people to account where they sign personally, and without being or making it clear that they wish to contract through a limited company. Mr. Kennedy relied upon a number of authorities.

50. It was further submitted, that even if the Court found as a fact that Turtle Cove Limited was the contracting party, because the Agreement does not state "*Turtle Cove Limited*" as the name of company or as the contracting party, Mr. Moffitt is in any event responsible as a director who signed the Agreement.

51. Reliance was placed upon sections 52 and 53 of the ***Companies Law***, and the decisions in authorities, including ***Scottish and Newcastle Breweries Limited v Blair and Others*** 1967 S.L.T. 72, and ***Blum v OCP Reparation SA*** [1988] BCLC 170.

The Agreement

52. The clauses of the Agreement relevant to the issues in this case are as follows:

*"**Construction Agreement***

This Agreement is made between Davis Moffitt ("Client"), with a principal place of business at Turtle Cove, and Cayman Structural

Group ____("Contractor"), with a principal place of business at 199 Seymour drive

1. Services to be performed

Contractor shall furnish all labor and materials to construct and complete the second floor slab shown on the contract documents contained or specified in Exhibit A, which is attached to and made part of this Agreement.

Scope of work

1. *Supply and install required false work to support wet concrete.*
2. *Supply and install required reinforcement bars*
3. *Supply and place required concrete for slabs as shown on affixed construction drawings*

2. Payment *(TURTLE COVE HAS OPTION TO CANCEL AGREEMENT AFTER SECOND FLOOR)*- (Written and added in Mr. Moffitt's handwriting but not initialed by any party)

Owner shall pay Contractor for all labor and materials the sum of $CI $109,561.12 for carrying out and completing the contract works as detailed in appendix A and in accordance with the Contract Terms.

3. Terms of Payment

Contractor shall be paid $10,957 upon signing this Agreement and the remaining amount shall be paid before the rebar abd concrete to upper floor is installed.

4. Time of Completion

The work to be performed under this Agreement shall commence on Dec 22 2013 and shall be substantially completed on or before March 1 .

5. What constitutes Completion

The work specified in Clause 1 shall be considered completed upon approval by Owner; however, Owner's approval shall not be unreasonably withheld.

.....

11. Applicable Law

This Agreement will be governed by the laws of the Cayman Islands.

Signatures

Contractor: Cayman Structural Group

By:.....

Signature

Typed or Printed Name: Turtle Cove--------

Title: PRES

Date: 17/12/13

Owner: David Morritt.....

By:__

Signature

Typed or Printed Name: Tommy Sofield

Title: owner

Date: Dec 19, 2013

(Payment in Full Before Pour Concrete Slab) (Initialed by both Tommy Sofield and David Moffitt)"

The Law

53. Sections 52 and 53 fall within Part IV of ***the Companies Law***, "***Management and Administration of Companies and Associations***", and provide as follows:

> "***Publication of name by a limited company***"
>
> *52. Every company, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, or in any corridor, passage or hallway adjacent or proximate thereto, in a conspicuous position, in letters easily legible, and shall have its name in legible characters on any*

seal it uses, and shall have its name set out in legible characters in all notices, advertisements and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts and letters of credit of the company and its name may be followed with or preceded by, at the discretion of the company, its dual foreign name or its translated name, if any, or both.

Penalties on non-publication of name

53. *Any company which does not paint or affix, and keep painted or affixed, its name in manner directed by this Law is liable to a penalty of ten dollars for not so painting or affixing its name, and for every day during which such name is not so painted or affixed, and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty; and any director, manager or officer of such company, or any person on its behalf, who uses or authorizes the use of any seal purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bills of exchange, promissory note, endorsement, cheque or order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not set out in the manner aforesaid, is liable to a penalty of one hundred dollars,* ***and further shall be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.****"*

(emphasis mine)

54. In the ***Scottish and Newcastle Breweries*** decision, judgment was granted against directors of a company personally, pursuant to section 108 of the English Companies Act of 1948, which is in essentially the same terms as section 53 of ***the Companies Law***.

55. On the second page of the judgment, Lord Hunter describes the circumstances and some of the issues joined, as follows:

"The pursuers are a company incorporated under the Companies Acts. The first and second-named defenders were, at the date of acceptance of the bill of exchange mentioned on record, directors of Anderson & Blair (Property Development) Limited (hereinafter referred to for convenience as "the Company"), having its registered office at 114 Cadzow Street, Hamilton, and a place of business at Windmill Hotel, Arbroath. The third-named defenders comprise the partnership of Messrs Hay, Cassels & Frame, solicitors, who carry on business at 114 Cadzow Street, Hamilton, and were at the said date secretaries of the Company. The Company is now in liquidation and the fourth-named defender is official liquidator thereof. ...

On or about 19th October 1965, the pursuers drew a bill of exchange, No. 8 of process. The said bill was admittedly signed by the first and second-named defenders, as directors, and by the third-named defenders, as secretaries, and, having regard to the form of the written pleadings and to the nature of the argument presented by counsel for the competing defenders, it must, in my opinion, be taken as admitted that the said bill, which was for payment on demand to the order of the drawers of the sum of £7,500 with interest thereon at the rate of 6 per cent per annum from the date thereof till paid, was drawn upon the Company, that the Company was therein described as "Messrs. Anderson & Blair, Windmill Hotel, Arbroath", and that the said bill was signed on behalf of the Company as acceptors by the first and second-named defenders, as directors of the Company, and by the third-named defenders, as secretaries thereof.

.....

The pursuers contend that, since the name of the Company is not mentioned in the said bill, the defenders, as signatories on behalf of the Company, are personally liable jointly and severally or severally for payment of the same in terms of s.108(4) of the Companies Act 1948, and that the pursuers are accordingly entitled to decree de plano against the third named-defenders in terms of the conclusion of the summons. The competing defenders maintain that on a proper interpretation of the statutory provisions they are not so liable..."

56. Having set out the relevant portions of section 108, and in the course of discussion, Lord Hunter continued as follows on the third to fifth pages of the judgment:

> *"...That provision, which is in absolutely plain terms, was not in my opinion complied with in the present case. Nowhere in the said bill, No. 8 of process, did the Company have its name so mentioned, and indeed nowhere in the bill was the name of the Company so mentioned. In that event in my opinion the provisions of subs. (4)(b) of the said section,*

which has been quoted above and also on record, and which are mandatory, were brought into effect. ...

It was submitted by counsel for the compearing defenders that it was necessary to the operation of the statutory provisions in the present case that the pursuers should have been deceived or misled by the failure to mention the correct name of the Company in the said bill, and that, in the absence of any averment to that effect, the pursuers' case was irrelevant. I can find nothing in the language of the statutory provisions which lends any support to such an argument, and the only shadow of support for it to be found in the authorities cited to me is one sentence in the judgment of Crompton, J., in Penrose v Matryr (supra) at p. 503. I am far from clear that the sentence to which I have referred necessarily supports counsel's submission, and in any event no trace of such a view is to be found in either of the judgments in that case. The ratio of the decision in Penrose v Martyr appears to me to be that the defendant signed a bill on behalf of the Company without their name being mentioned on it. (See per L. Campbell, C.J., at p. 503). I notice that the author of Gower on the Principles of Modern Company Law, 2nd edition, at p. 187, expresses the following opinion:-"It seems clear that it makes no difference that the third party concerned has not been misled by the misdescription." With that opinion, having regard to the terms of the statutory provisions and to the authorities cited to me, I agree. In Atkins & Co. v. Wardle, the plaintiff was himself a shareholder of the company, and there was nothing to show that he was not well aware of its correct name when he drew the bill. I refer on this matter to the passage from the judgment of Denman, J., at the top of the right hand column at p. 378 and at the bottom of the right hand column at p. 379, as well as to the later passages at pp. 380-381. It is no doubt true that in the present case the pursuers did not name the Company correctly in the address, but it was for those who undertook the responsibility of accepting the bill to see that the name of the Company was mentioned in it in legible characters as required by the statute. To do so presented no difficulty, but, unfortunately for the defenders, the acceptance in the present case, to borrow the language of Mathew, J., in Nassau Steam Press v. Tyler, adopted the misdescription in the address. It may be observed that in such a situation interests of parties, other than the drawers and the acceptors, may be affected, which makes it all the more difficult to accept the submission made on behalf of the compearing defenders to which I have referred.

Thus, although one may have some sympathy with the compearing defenders in their misfortune, the terms and the clear meaning of the

relative statutory provisions have, in my opinion, been too much for them. As Denman, J., pointed out in the passage from his judgment in Atkins & Co. v. Wardle, at pp.380 to 381 to which I have already referred:-"The intention of the Act was to insure extreme strictness in all the transactions on behalf of limited companies as regards the use of the registered name of the company, not only in enforcing the use of the word 'limited', but in all other respects. ... Whatever, however, may be the justification for the statutory provisions, their terms are in my opinion plain and unambiguous and clearly cover the circumstances of the present case, to the effect of making the compearing defenders personally liable to the pursuers as holders of the said bill"

57. In the ***Blum*** case, a decision of the Civil Division of the English Court of Appeal, the Headnote accurately relates the following:

> *"B was the director of Bomore Medical Supplies Ltd (the company). The company ordered pharmaceutical supplies from a French company (OCP). The company paid OCP by cheques which were personalized in the name of Bomore Medical Supplies and which were signed on behalf of the company by B. The company went into liquidation and OCP brought an action against B alleging that B was liable under s 108 of the Companies Act 1948 in that the name of the company did not appear properly on the cheque as the word Ltd had been omitted. B appealed against the decision of the judge dismissing an appeal against the order of the master giving OCP leave to enter judgment against B.*
>
> ***Held-*** *Appeal dismissed. There was no basis for rectifying the cheques so as to insert the word limited on the grounds that they had been drawn on the basis of a common mistake shared by the parties that the cheques were to be cheques of a limited company. B had no standing to obtain rectification of the cheques as he was never a party to them as they involved the company and OCP. As there was no dispute between the parties to the arrangement that the cheques were to be paid out of an account of a limited company there was no issue between the parties and therefore no need for rectification. In addition B was seeking rectification not because this was necessary to give effect to the true intentions of the parties but so as to escape liability under s. 108 of the 1948 Act and this was not a ground on which the court would order rectification of a written instrument. As there was no other basis making it inequitable to impose*

liability on B under s. 108, or for granting a stay of execution, the appeal would be dismissed and the order of the master enforced.

58. At page 175 of the judgment, May L.J. discusses the relevant statutory provisions and a further argument of counsel for the appellant (which was rejected) and who submitted that:

> *"....it is clear that the purpose of s.108 was intended to protect persons dealing with limited companies from the consequences of deceit of officers of those limited companies. There was no deceit here. Everybody was aware of what the situation was and that consequently rectification should be allowed, in the manner I have indicated, to relieve the appellant against the consequences of the statutory provision.*
> *In my view, to do so would clearly drive a coach and horses through the statutory provision. It is a conclusion which I do not think is justified in any way by the wording of the section which has been applied in many cases over the last hundred years. The section in the same or similar terms appeared in earlier relevant legislation.*
> *An example of the application of the statutory provisions is contained in another authority to which we were referred, Atkins & Co. v Wardle (1889) 5 TLR 734. It is unnecessary to refer to the facts or quote from the judgment. In it Lindley LJ said that the relevant sections (the predecessors of the modern ones) 'were two of the most important sections in the Act, and the Court must take care not to relax them.'*
> *In all those circumstances and on those authorities I for my part see no reason to think that in the circumstances of the present case one should not follow the same approach. One may have sympathy for the appellant in the predicament in which he finds himself, but the statutory provision is clear. The facts in this case are not in dispute and as a matter of law, for the reasons I have indicated, I do not think that the claim to rectification can afford him any defence. I respectfully agree with the submission which was made on behalf of the respondent that the true fallacy which lies behind the appellant's contentions based upon rectification is that they are based on the premise that the respondent's rights arise from the cheques themselves. They do not. They arise from the application of the statutory provision to the signature of the appellant in person."*
> (My emphasis)

Resolution of the Issues

The contracting party issues:

(a) Who is the party contracting with the Plaintiff?

(b) If that contracting party is Turtle Cove Limited is Mr. Moffitt still liable as a result of the failure of Total Cove Limited to comply with section 52 of the ***Companies Law*** by failing to have its name in legible characters on an order for goods purporting to be signed on behalf of the company?

(a) Who is the party contracting with the Plaintiff?

59. In my judgment, the correct contracting party that entered into the Agreement with the Plaintiff was David Moffitt. It is true that the wording of the Agreement could have been clearer, but in my view it was David Moffitt who was party to the contract. Emails and other documents in addition to the first page of the Contract suggest that this was the case. The fact that Turtle Cove is mentioned is completely distinguishable from having the name of the limited liability company Turtle Cove Limited inserted or mentioned in the Agreement. Nowhere is "*Turtle Cove Limited*" stated or mentioned. In my judgment, describing himself as "*Pres*" after the name "*Turtle Cove*" is not enough to take Mr. Moffitt's case in the direction in which he has attempted to channel it at this eleventh hour.

(b) If that contracting party is Turtle Cove Limited is Mr. Moffitt still liable as a result of the failure of Total Cove Limited to comply with section 52 of the Companies Law by failing to have its name in legible characters on an order for goods purporting to be signed on behalf of the company?

60. However, even if I am wrong and the contracting party is Turtle Cove Limited, on the authority of sections 52 and 53 of the ***Companies Law***, and the decision in ***Scottish and Newcastle Breweries***, the intention of ***the Law*** was to ensure extreme strictness in all the transactions on behalf of limited companies as regards the use of the registered name of the company, not only in enforcing the use of the word 'limited', but in all other respects. Once the company has not paid the sums outstanding to the Plaintiff, (which in this case it plainly has not), then Mr. Moffitt as signing director is personally liable. As reasoned in

the ***Blum*** decision, the Plaintiff's rights arise from the application of the statutory provision to the signature of Mr. Moffitt in person.

The damages issues

(a) Is P entitled to payment for work done under the contract?

61. Mr. Kennedy argues on behalf of the Plaintiff, that it is remarkable that many years after this law suit was filed in 2015, and at previous times when Mr. Moffitt had attorneys-at-law appearing for him, it is only on the day of trial, that Mr. Moffitt claims for the first time that he has paid the money claimed, indeed, he says that he has paid over $200,000.00 to the Cayman Partner, Mr. Upton Forbes.

62. However, that is not strictly so in the sense that the Defence which was filed by Mr. Moffitt in person on 8 April 2015, stated that Mr. Moffitt intended to defend the Claim based on the following statements:

> "*1. There was an agreement with CSG that was cancelled.*
> *2. During the construction period, CSG had a split with partners.*
> *3.* ***The Cayman partner that owned 60% of CSG was retained to complete work and was paid.***
> *4. This is a matter between CSG partners and not David Moffitt."*
> (my emphasis)

63. However, in the Amended Defence and Counterclaim filed 23 October 2015 by Attorneys-at-law retained by Mr. Moffitt at the time, and indeed, in the Re-Amended Defence and Counterclaim filed by Mr. Moffitt in person on 9 May 2018, it is stated that the original Defence, should be considered a nullity, struck through in red and replaced in its entirety. It is noteworthy that in neither of these amended pleadings is it averred that Mr. Moffitt has paid the money claimed by the Plaintiff, to Mr. Forbes. Even more importantly, Mr. Moffitt has not produced, or made any attempt to produce to the Court, a receipt evidencing such payment.

64. In my judgment, it is plain that the Plaintiff has been owed the sum claimed on the contract for a long time. I found Mr. Sofield to be a very straight-forward and convincing witness. Mr. Moffitt on the other hand, did not enhance his credibility at all, what with all the shifts in his case, from saying the contract was for 3 floors and that the Plaintiff had abandoned the work, to disavowing that position, then claiming he had paid Mr. Forbes, without a shred of evidence in support of that stance. All of this Mr. Moffitt claims, while admitting he was at a later point seeking a loan from the Plaintiff to complete other aspects of the Project. That would be a strange thing to do if one had contracted with a party that had failed to do the work which it had been agreed be performed. Further, ultimately Mr. Moffitt was relying upon the Defence as to the correct contracting party being Turtle Cove Limited and not himself, which as I have said, has failed.

(b) Is the Plaintiff entitled to damages for trespass to property?

65. It is plain that as the hirer of the scaffolding the Plaintiff had the right to control and possession of this equipment. I accept that Mr. Moffitt deliberately used the scaffolding for his own purposes and deprived the Plaintiff of its right to it, thereby causing it loss and damage.

66. I am satisfied of the amounts claimed regarding the Invoices from Pro Builders Limited in the sum of $12,453.80. However, regarding the amounts paid to Massive, the figures claimed in the Statement of Claim (at paragraph 16) and in Mr. Sofield's W.S. (at paragraph 56), differ slightly from the figure claimed in the letter from Mr. Kennedy to Mr. Moffitt dated 13 February 2015 ($5,175 as opposed to $5,715 - possibly a typographical error - and no receipt or invoice produced). However, as the figures seem reasonable in the circumstances, I am prepared to allow the lower amount of $5,175.

67. There will therefore be judgment for the Plaintiff against Mr. Moffitt as follows:

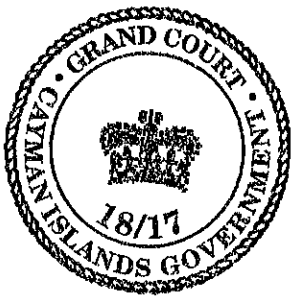
(a) Damages for breach of contract in the sum of CI$87,404.90;

(b) Damages for trespass in the sum of CI$17,628.80;

(c) Interest on damages totaling CI$105,033.70, at the rate of 2 3/8 % per annum, as claimed in the Statement of Claim, from the date of demand for payment, 1st February 2014 to the date of judgment.

(d) Costs.

(e) The Counterclaim is dismissed.



THE HON. JUSTICE INGRID MANGATAL
JUDGE OF THE GRAND COURT