

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. G0169 of 2015

IN THE MATTER of Rule 11 (5) of the Court of Appeal Rules (2014 Revision)

AND IN THE MATTER of the Application for Leave to Appeal

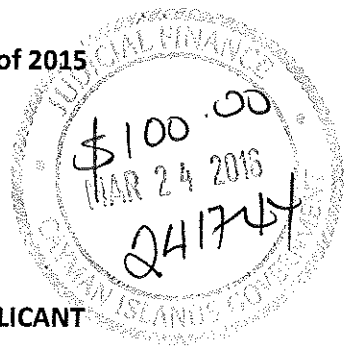
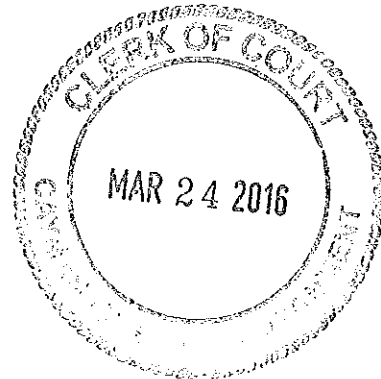
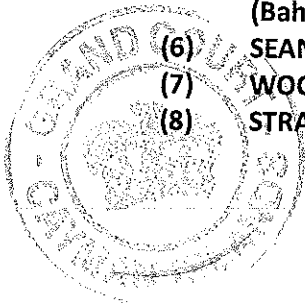
BETWEEN: FRANK SWARRES McFIELD

PLAINTIFF / APPLICANT

AND:

- (1) CAMPBELLS ATTORNEYS AT LAW
- (2) KIRSTEN HOUGHTON
- (3) JOHN ROSS McDONOUGH
(incorrectly named in the Writ as Ross
Macdonough)
- (4) RBC ROYAL BANK (CAYMAN) LTD
(incorrectly named in the Writ as RBC
(Bahamas) & (Cayman) Limited
- (6) SEAN MINITER
- (7) WOODWARD (WOODY) DACOSTA
- (8) STRAND PROPERTY LIMITED

DEFENDANTS / RESPONDENTS



NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on 28th June, 2016 at 9.30 (am)pm or as soon thereafter as counsel can be heard, by counsel on behalf of the Applicant for leave to appeal the order of Honourable Justice McMillian dated 29 February 2016 and filed 11 March 2016 and for the following relief, namely for an order setting aside the order of the Honourable Judge dated 29 February 2016 and that the Respondents pay the Applicant / Appellants' costs at first instance and of the appeal (including any ancillary applications).

AND FURTHER TAKE NOTICE that the grounds of this application are:

1. The Learned Judge erred in law in finding that the pleadings disclosed no reasonable cause of action. The Learned Judge failed to appreciate the established case law and legal principles in this area which support the view that a strike out order should succeed only in cases where it is plain that an action will certainly fail and that no further particulars could assist the cause or where there was an explicit refusal to provide further and better particulars or disregard of Court Orders. These principles are clearly set out in the decision of *Grupo Torras SA v Bank of Butterfield International (Cayman) Limited* [2000 CILR 441] and other such authorities on which the Applicant/ Appellant intends to rely.

2. The Learned Judge inappropriately exercised his discretion in a manner that is not recognised by the rules. The Learned Judge agreed with and based his reasons for granting the strike out order on the basis of the Defendants' Written Submissions of 25 February 2016, which heavily relied on affidavit evidence, specifically Affidavit evidence of Kirsten Houghton, without having regard to due process as outlined by the rules, specifically provisions for discovery or cross examination in order to test such evidence before him. These procedural irregularities make the decision incorrect in law. The Learned Judge acted outside his jurisdiction and was only required, based on established precedent and case law to examine the pleadings themselves and decide on the face of the pleadings if there was a cause of action as set out in the authority of *Grupo Torras SA v Bank of Butterfield International (Cayman) Limited* [2000 CILR 441].
3. The Learned Judge innocently misdirected himself as to the appropriate criteria for wholly striking out the pleadings for want of form and particulars. The Learned Judge placed undue weight on the Defendants' Written Submissions of 25 February 2016 and failed to give effect to or sufficient weight to appropriate case law or authorities of the Grand Court and the Court of Appeal and/or properly consider making alternative orders in line with these authorities. Had the requisite authorities been duly considered and applied the Judge should have made the more appropriate order/s, such as order/s under GCR O. 18, r. 12 or grant leave for the amendment of the pleadings or sections thereof.
4. The Learned Judge misdirected himself as to the principles of the bankers duty of confidentiality and the concept of equitable duty of confidentiality. In coming to his decision as to whether this was a reasonable cause of action the Learned Judge placed undue weight on the Defendants' Written Submissions which relied heavily on affidavit evidence specifically the Affidavit evidence of Kirsten Houghton, which sought to define the legal relationship/s and/or obligations between the parties. The foregoing is more appropriately examined and decided on a full trial of the issues where there is due process and the opportunity for evidence to be appropriately tested under the rules.

DATED the 24th day of March 2016.

Symons & Symons
SYMONS & SYMONS, ATTORNEYS-AT-LAW
Attorneys for the Applicant

TO: The Clerk of the Court

AND TO: Goldfield Cayman Attorneys Limited
4th Floor, Cardinal Plaza
Cardinal Avenue
George Town
Grand Cayman
Attorneys for the 1st to 4th, 7th and 8th Defendants / Respondents

THIS NOTICE OF ORIGINATING MOTION was issued by Symons & Symons, Attorneys-at-Law attorneys for the Applicant whose address for service is 4 Tropic Centre, 18 Earth Close, PO Box 30783 SMB, Grand Cayman KY1-1204, Cayman Islands [Our ref: 4891-0001 PGS/SPS]