

**IN THE COURT OF APPEAL OF BELIZE, A.D. 2026
CIVIL APPEAL NO. 34 OF 2025**

BETWEEN:

T&L SUGARS LIMITED

Appellant

and

BELIZE SUGAR CANE FARMERS ASSOCIATION

Respondent

and

BELIZE SUGAR INDUSTRIES LIMITED

Interested Party

Before:

The Hon. Madam Justice Hafiz Bertram	President
The Hon. Madam Justice Woodstock Riley, KC	Justice of Appeal
The Hon. Madam Justice Sandra Minott-Phillips KC	Justice of Appeal

Appearances:

Eamon Courtenay, SC and Iliana Swift for the Appellant
Magali Marin Young, SC and Allister Jenkins for the Respondent
Hector Guerra and Edgar Lord for the Interested Party

2026 March 30

June 9

JUDGMENT

- [1] MINOTT-PHILLIPS, JA:** At the outset an objection was made by the Respondent, Belize Sugar Cane Farmers Association (BSCFA), to the participation of the Interested Party, Belize Sugar Industries Limited (BSIL), in this appeal. After hearing counsel for and against the objection, the court noted that BSIL is a Defendant in the claim at first

instance and, although not a party to the strike out application of T&L Limited (T&L) - the decision on which is the subject of this appeal - it was, at Case Management, granted permission to make submissions in the appeal. We, therefore, overruled the objection.

[2] In the underlying claim BSCFA is the Claimant, BSIL is the first Defendant, and T&L is the 2nd Defendant. On 18 June 2024 the Hon Mr Justice Mansoor, on hearing an *ex-parte* application by the Claimant, made an order that:

- (1) The Claimant is granted permission to serve the Amended Claim Form and Amended Statement of Claim dated 5th June 2024 and the Second Amended Claim Form and Second Amended Statement of Claim dated 12 June 2024 on the second Defendant, T&L Sugars Limited, by personal service outside the jurisdiction at the office of its registered agent for the service of process: Thames Refinery, Factory Road Silvertown London E16 2 EW, United Kingdom;
- (2) All Claims and Statements of Claim, affidavits, orders and notices in the claim herein be served on the 2nd Defendant, T&L Sugars Limited, by personal service outside the jurisdiction at the office of its registered agent for the service of process: Thames Refinery, Factory Road Silvertown London E16 2 EW, United Kingdom;
- (3) The 2nd Defendant shall file an Acknowledgement of Service within 28 days from the date of personal service, and a Defence within 42 days from the date of said service;
- (4) The costs of this application be costs in the cause.

[3] This appeal is from the decision of Mansoor, J made on 4 July 2025 refusing T&L's application (dated and filed on 5 August 2024) that sought:

- a. an order that service of the Amended Claim Form and Amended Statement of Claim dated 5 June 2024 and the Second Amended Claim Form and Second Amended Particulars of Claim dated 12 June 2024 out of the jurisdiction on [T&L] is set aside;

- b. A declaration that the Court has no jurisdiction to try this Claim as between the [BSCFA] and [T&L], or, alternatively, that the Court should decline to exercise its jurisdiction to try this claim as between the [BSCFA] and [T&L];
- c. An order that the Claim against [T&L] be struck out; and
- d. Costs.

The request of the court by T&L to strike out the claim against it (at c above) would have been consequential on it succeeding on a above and on either of the alternative approaches in b above.

[4] By interlocutory order of this court made on 7 October 2025 leave to appeal was granted to T&L together with a stay of the proceedings in the court below pending the determination of this appeal.

[5] The grounds of T&L's application before the court below included its assertions that:

- a. BSCFA was guilty of material non-disclosure when it applied for an order to serve T&L with the claim forms and particulars of claim without notice to T&L of the application;
- b. Service of BSCFA's claim should be set aside by the court using its power under CPR 7.7 (2) (b) & (c) as BSCFA's case is not a proper one for the court's jurisdiction, and it does not have a good cause of action against T&L, respectively;
- c. BSCFA's claim against T&L is fanciful and there is no serious issue to be tried. Therefore, BSCFA does not have a good cause of action against T&L; and
- d. BSCFA's claim against T&L, no matter how complete and apparently correct it may be, will fail as a matter of law. Consequently, the claim should be struck out pursuant to Civil Procedure Rule (CPR) 26.3 (1) (c) and/or the court's inherent jurisdiction, because BSCFA has no reasonable grounds for bringing the claim.

[N.B. The applicable Civil Procedure Rules at the time were the Supreme Court (Civil Procedure) Rules, 2005, and all references in this judgment are to those rules.]

- [6] The factual background of the action is replete with, *inter alia*, details of :
- a. various historical and current contractual arrangements between the BSCFA and T&L and/or BSCFA and BSIL;
 - b. various certifications and regulations pertaining to the production and sale of sugar cane by BSCFA to BSIL;
 - c. the historical and current supply of sugar cane by BSCFA indirectly to T&L through BSIL;
 - d. the direct payments for premium sugar moving historically from T&L to BSCFA; and
 - e. the payments made historically and currently by T&L to BSIL and sugar cane producing organizations other than BSCFA.
- [7] For the purpose of this appeal it is sufficient to appreciate the broad outlines of the claim brought by BSCFA against T&L as understood by the judge below and as informed his decision not to set aside the order permitting service of the claim forms and statements of claim on T&L outside of the jurisdiction of Belize.
- [8] BSCFA's principal claims against BSIL are for damages for breach of contract for \$4.9m plus premiums due in respect of Q3 and Q4 for the year 2022/23; and for an accounting and payment of premiums payable for eligible sugar produced by BSCFA and sold by BSIL for the crop years 2021/2022 and 2022/2023. BSCFA's principal claims against T&L are for damages for the tort of unlawful conspiracy between it and BSIL resulting in loss to BSCFA; and, alternatively, for recovery *via* an accounting, of money allegedly held by T&L on constructive trust for BSCFA.
- [9] Mansoor, J was of the view that the claim by BSCFA against T&L, *ex facie*, was one over which the Belizean court had jurisdiction which it should not decline to exercise. He was also of the view that the order granting BSCFA permission to serve its claim

against T&L outside of the jurisdiction was properly made and that the claim should proceed to trial. Those views informed his refusal of T&L's application.

[10] T&L appeals his order on the following grounds:

- a. The learned judge erred in law in finding that the Belize High Court is the appropriate jurisdiction to try the claim. In arriving at his decision, the learned judge failed to appreciate that the expired Letter of Enhancement Agreement ("LOEA") was the sole contract between the Claimant and Second Defendant which required the Second Defendant to pay FT Premiums to the Claimant. Consequently, a claim for FT Premiums could only be pursued under the LOEA which contained an Arbitration Agreement to resolve all disputes between the parties.
- b. In arriving at his decision, the learned judge erred in law in failing to appreciate that the Claimant had not pleaded any contract for which the Claimant and Second Defendant were parties that would entitle the Claimant to FT Premiums from the Defendant.
- c. The learned judge erred in law in finding that the Claimant was not obliged to disclose the Arbitration Agreement when applying for permission to serve outside of the jurisdiction. The learned judge erred in law in finding that since the LOEA had expired and was inapplicable to the period claimed by the Claimant, the Arbitration Agreement was likewise inapplicable to the dispute between the Claimant and the Second Defendant. The learned judge found that since the Arbitration Agreement was inapplicable to the dispute between the parties there was no obligation on the Claimant to disclose the Arbitration Agreement.
- d. The learned judge erred in law in finding that the Second Defendant was required to provide evidence that the parties intended the Arbitration Agreement to apply to disputes arising after the expiration of the LOEA.
- e. The learned judge erred in law in refusing to set aside permission to serve outside the jurisdiction.

- f. The learned judge erred in law in finding that there was a real issue to be determined between the parties.
- g. The learned judge erred in law in refusing to strike out the Claim.
- h. The learned judge erred in law in awarding costs against the Second Defendant.

[11] Both parties to the application below accept the following facts¹:

- a. All parties to the claim are registered under Fairtrade International (FT), a non-profit, multi-stakeholder international organization made up of member organizations around the world, with a mission for supporting producers in developing countries.
- b. All parties to the claim were, at all material times, certified by FloCERT GmbH (FLO), established in Bonn, Germany (a subsidiary of FT) to engage in the sale of FT certified products. BSIL was certified as a **“Manufacturer/Processor/Premium Conveyor/Price Payer”** for its FT eligible sugar and the byproducts of sugar cane. BSCFA was certified as a **“FT Producer”** for its FT eligible sugar cane. T&L was certified as a **“sugar buyer, importer and licensee”** for FT sugar. Applicants for certification agreed to abide by the FT and FLO rules, regulations and standards.
- c. The BSCFA sold FT eligible sugar cane to BSIL. Title to the sugar cane passed to BSIL when the cane was delivered to BSIL.
- d. The BSCFA never sold FT eligible sugar to T&L.
- e. BSIL sold sugar to T&L under contract.
- f. T&L sold sugar received from BSIL, some of which qualified for payment of FT premiums.
- g. BSCFA’s claim for damages against BSIL relates to premiums for sugar crop years 2021/2022 and 2022/2023.

¹ Paragraph 3 of T&L’s speaking note filed on 27 March 2026 together with its footnoted references to the statements of case.

h. There was no LOEA between the BSCFA and T&L for sugar crop years 2021/2022 and 2022/2023.

[12] There was a Long Term Supply Agreement (LTA) between BSIL and T&L recording their agreement *“that the rules and regulations relating to the sale of Fairtrade sugar products shall apply to the sugar sold by the Buyer under the Fairtrade Mark.”*²

[13] Up until the end of the 2020/2021 crop year, T&L (as the FT payer) collected a premium from buyers of its FT eligible sugar cane, which premium, BSCFA contends, T&L was obligated to pass through to the FT Producer (under the rules and regulations relating to the sale of FT sugar products referenced in the LTA). The details of how these direct payments from T&L to the Producers were effected were set out in LOEAs between T&L and the various Producers. According to BSCFA the LOEA *“simply acknowledged that T&L was to pay them directly”*³.

[14] T&L maintains the absence of a LOEA between itself and the BSCFA covering the crop years 2021/2022 and 2022/2023 was an informed choice made by BSCFA, and it must live with the consequences of that choice – one of which is that T&L is not obligated to make a direct payment to BSCFA for its portion of the FT eligible sugar aggregated into the mass of FT eligible sugar that T&L bought from BSIL. The BSCFA counters with its contention that it refused to sign LOEAs with T&L for the crop years 2021/2022 and 2022/2023 for reasons that included T&L requiring that any dispute as to terms be addressed by arbitration in London, UK⁴. Before us T&L contended (BSCFA says for the first time as the point was not raised below nor is it the subject of a specific ground of appeal or an application to amend the grounds) the jurisdiction of the Belize court to try the claim against it was also ousted by a requirement in the FT regulations for an alternative dispute mechanism for the resolution of disputes. Aside from its procedural objection BSCFA challenged the

² Paragraph 20 of the Second Amended Statement of Claim.

³ Paragraph 38 of the Second Amended Statement of Claim.

⁴ Paragraph 26 of the Second Amended Statement of Claim.

assertion that anything in the FT regulations ousted the jurisdiction of the Belizean court. It is not appropriate for us to consider this point that was raised for the first time on appeal.

[15] The main thrust of T&L's submission to us⁵ was that as there was no LOEA contract in place between BSCFA and T&L for the crop years 2021/2022 and 2022/2023 there was nothing to which the FT standards applied as "*contracts are core requirements for the FT standards to operate.*" In any event, T&L said, FT standards are promulgated by an international NGO and have no force of law. Those standards do not form part of any contract, expressly or impliedly, between BSCFA and T&L. It was not in issue that up until the expiry of the last LOEA between BSCFA and T&L on 30 September 2021, T&L paid BSCFA directly for FT eligible sugar cane BSCFA sold to BSIL which it, in turn, on sold to T&L.

[16] The main thrust of BSCFA's submissions in response was that its claim against T&L does not involve the expired LOEAs. Rather, it is based a duty of good faith owed to it by T&L to pass through to BSCFA the part of the premium collected by T&L from having sold FT eligible sugar that is attributable to FT eligible sugar sourced from BSCFA (albeit acquired from BSIL). BSCFA contends that an LOEA is not a prerequisite for the payment of FT premiums. Its claim is brought in equity and asserts that T&L holds those FT premium payment sums in trust for BSCFA given that both of them are FLO certified and consequently subject to the rules and regulations applicable to FT sugar products requiring the pass through of the FT premium obtained by T&L directly to source. To the extent that T&L held on to those premiums, or passed them through to beneficiaries not entitled to receive them, BSCFA contends it remains liable to them for those monies. BSCFA also contends that the non-payment through to it by T&L of those FT premium funds it held on its behalf, coupled with the position conveyed to them by T&L that its entitlement to receive those funds is a privilege and not a right, gives rise to an alternative claim

⁵ In paragraph 9 of its Speaking Note

in the law of tort for damages arising from an alleged conspiracy between T&L and SCIL to unlawfully deprive the BSCFA of those funds.

[17] In determining the application before him, Mansoor, J did not then have to determine which of the parties' contending positions prevailed. His primary tasks were:

- a. To ascertain whether the court had jurisdiction to try BSCFA's claim against T&L and, if it did, whether it should exercise that discretion; and
- b. To see whether there was a valid basis for the grant of permission to BSCFA to serve T&L with its statements of case outside of the jurisdiction.

[18] In grounds a, b, e & f (set out in paragraph 10 above) the gravamen of T&L's submission is that the judge below erred in:

- a. Failing to appreciate that the expired LOEA was the sole contract requiring T&L to pay FT Premiums to BSCFA and that a claim to those premium payments could only be pursued under the LOEA (which had an arbitration clause ousting the court's jurisdiction);
- b. Failing to appreciate that BSCFA had not pleaded the existence of any contract between it and T&L that would entitle it to get FT premiums from T&L;
- c. Finding there was a real issue to be determined between the parties; and
- d. Refusing to set aside permission to serve outside the jurisdiction.

[19] I do not agree that the judge below failed to appreciate either of the things in grounds a and b (as set out in paragraph 10 above). He appreciated that the LOEA had expired at the end of the 2020/2021 crop year and that there was no issue of a contractual relationship between BSCFA and T&L covering the period of the claim.

At paragraphs [21] and [22] of his reasons, Mansoor, J said the following:

*"21. A dispute that arises out of or in connection with the agreement must mandatorily comply with the dispute resolution clause of the LOEA. That is how the parties have resolved to settle their disagreements and disputes. **The application to strike out is based on this reasoning. The claimant's contention opposing the strike out is that the agreement had lapsed and, therefore,***

the dispute resolution clause had no application to the dispute claim.

22. The rival contentions mean that the court must decide whether a dispute resolution clause existed in respect of sugar cane crop years 2021/2022 and 2022/2023. [T&L] contends that the dispute resolution clause has survived and would apply to the present dispute [my emphasis]. The court's decision on the issue will be based on the second amended statement of claim and the affidavits in support of and in response to the strike out application. Before examining the issue relating to the dispute resolution clause, reference will be made to the applicable rules concerning service out of jurisdiction as the objection to service rests mainly on the dispute resolution clause."

[20] The learned judge below followed and understood T&L's reasoning. Having adverted to the procedure set out in CPR 9.7 for disputing the court's jurisdiction, he went on to examine the rules⁶ applicable to setting aside an order made *ex parte* permitting service of a claim form *ex juris*. In paragraph 24 of his reasons he recited them correctly as allowing the court to set aside service where:-

- a. Service out of the jurisdiction is not permitted by these Rules;
- b. The case is not a proper one for the court's jurisdiction; or
- c. The claimant does not have a good cause of action.

To determine whether BSCFA had a good cause of action, he would have needed to base his conclusion in that regard (and expressly said he did) on the second amended statement of claim and affidavits filed in support of, and in response to, the strike out application. He was aware of, and recounted, the applicable rules setting out circumstances where a claim form may be served out of the jurisdiction. Having noted that a claim form may be served out of the jurisdiction if allowed by CPR 7.3 or 7.4 and the court gives permission, he proceeded to examine whether BSCFA's claim fell within those parameters and made special mention⁷ of CPR 7.3 (2) (c) which says that a claim form may be served out of the jurisdiction where:

- (a)....
- (b)....

⁶ At CPR 7.7

⁷ At paragraph 25 of his written reasons

(c) a claim is made against someone on whom the claim form has been or will be served, and—

(i) there is between the claimant and that person **a real issue which it is reasonable for the court to try** [my emphasis]; and

(ii) the claimant now wishes to serve the claim form on another person who is outside the jurisdiction and who is a necessary and proper party to that claim.

He also made special mention⁸ of CPR 7.3(7)(c) (speaking to trust claims) and it permitting service *ex juris* of a claim form in which a claim is made for a remedy against the defendant as constructive trustee where the defendant's alleged liability arises out of **acts committed within the jurisdiction** [my emphasis]. The judge below expressly applied his mind to both of the criteria I have emphasized.

Was there a real issue which it is reasonable for the court to try?

[21] There certainly was a real issue (in contract) between BSCFA and BSIL so the question was whether there was a real issue between BSCFA and T&L or whether T&L was a proper party to the claim against BSIL.

[22] The existence or not of a real issue between BSCFA and T&L first had to be determined outside of the context of a claim derived from contract as both parties agreed there was no contract in existence between them covering the relevant crop years (although T&L was contending that the contractual requirement to resolve disputes at arbitration survived the termination of the contract). I say 'first' because it is only if the court accepted that the arbitration clause survived the termination of the contract that the issue of jurisdictional ouster arose. In the events that happened the court did not find that the arbitration clause survived the termination of the contract. Mansoor, J made that finding because, as he said⁹,

"In the present case, the dispute does not relate to a transaction or anything else that happened during the currency of the contract. Both parties agree that the LOEA was not expressly renewed."

⁸ At paragraph 26 of his written reasons

⁹ At paragraph 30 of his written reasons

And later¹⁰,

*“There is no evidence that the parties intended the dispute resolution clause to apply to events after the expiry of the LOEA. There is no correspondence or documentation to that effect. In denying liability, [T&L] unequivocally states that it has no contract with [BSCFA]. **On the material before the court** [my emphasis], it is difficult to see how the dispute resolution clause could have survived. In that context, it was not necessary for [BSCFA] to have informed the court about the agreement to arbitrate when it applied to serve the claim outside of the court’s jurisdiction.*

The further question is whether it is proper for the court to exercise jurisdiction in this case. This turns on the question whether the cause of action based on conspiracy and the alternative cause of action based on constructive trust should be tried in Belize when the dispute resolution clause vests jurisdiction in the courts of England and Wales when the arbitrator refuses to act. The objection to service based on rule 7.3(7) of the CPR is related to this issue.”

[23] The court then considered¹¹ whether the allegation of conspiracy set out in paragraphs 59-80 of the second amended statement of claim as well as the allegations based on constructive trust set out at paragraph 82-89 of the second amended statement of claim fell within the parameters of CPR 7.3. While stating that findings on the issues **“will require deeper consideration and an evaluation of testimonies”**¹², it is clear that, at this stage, Mansoor, J was of the view that BSCFA cleared the threshold he applied¹³ for establishing a real issue. The judge was very careful to let the parties know (through his words highlighted in bold above) that he was not making any finding on the claims made by BSCFA, but merely saying that, on the material before him, he could not say that BSCFA has no real prospect of succeeding on its claim.

¹⁰ At paragraphs 32 & 33 of his written reasons

¹¹ At paragraph 37 of the written reasons of Mansoor, J

¹² At paragraph 38 of his written reasons.

¹³ At paragraph 27 of his written reasons.

Did the alleged liability of T&L as constructive trustee arise out of acts committed within the jurisdiction?

[24] The judge took the view that on the material before him the possibility of this was not negated. He said¹⁴

“[BSCFA] submits that [T&L], as an FT-certified payer, plays a crucial role in the alleged withholding of FT premiums. [BSCFA] submits that under FT Regulations, the FT payer is obligated to pay the FT producer directly in the country where they are situated, unless there is an FT conveyor. Since [BSIL], as FT conveyor, refused to take steps to collect the FT premium on behalf of the claimant, it is argued [T&L] is required to pay [BSCFA] directly.”

[25] Additionally, in his judgment Mansoor, J referenced the tortious conspiracy allegation made by BSCFA against BSIL and T&L.

[26] CPR 7.3 (4) allows a claim form to be served out of the jurisdiction when a claim in tort is made, and the damage was sustained within the jurisdiction, or the damage sustained resulted from an act committed within the jurisdiction.

[27] A question for this court is whether Mansoor, J erred in deciding on the material before him that he would not set aside the order made *ex parte* permitting service of the claim form on T&L. I am of the view that he did not err. He analysed the material before him and concluded, correctly in my view, that BSCFA's claim against T&L fell within the parameters of CPR 7.3, being the gateway through which it had to pass prior to the court exercising its discretion to allow service *ex juris*.

[28] For those reasons, grounds a, b, e & f of appeal (set out in paragraph 10 above) are not made out.

[29] Neither is ground c of appeal (set out in paragraph 10 above) made out. As both parties agreed there was no LOEA document applicable to the years 2021/2022 and 2022/2023, and that the failure to pay (that was the subject of complaint) did not

¹⁴ At paragraph 34 of his written reasons.

occur within any period covered by the last LOEA (containing the dispute resolution ouster clause) that covered the 2020/2021 crop year, we cannot say that the judge was wrong (plainly or at all) in saying¹⁵ it was,

“difficult to see how the dispute resolution clause could have survived. In that context, it was not necessary for the claimant to have informed the court about the agreement to arbitrate when it applied to serve the claim out of the jurisdiction.”

And later¹⁶,

“There was no false representation or suppression of material particulars when service out of the jurisdiction was applied for and supported in court. The court was not deceived into making an improper order.”

[30] I question the accuracy of ground d of appeal (as set out in paragraph 10 above). I’m not able to identify in his written reasons a statement by Mansoor, J. that T&L was required to provide evidence that the parties intended the Arbitration Agreement to apply to disputes arising after the expiration of the LOEA. What he did say¹⁷ is that:

- a. there is no evidence that the parties intended the dispute resolution clause to apply to events after the expiry of the LOEA.
- b. there was no correspondence or documentation to that effect; and
- c. in denying liability, T&L *“unequivocally states that it has no contract with [BSCFA]”*.

As there does not appear to be a basis for it in fact, ground d fails.

[31] BSCFA, having already successfully crossed the threshold for establishing that its claim against T&L contained real issues which it was reasonable for the court to try, and established that T&L was a necessary and proper party to its claim against BSIL, was bound to successfully (and consequentially) resist T&L’s application to strike out its claim pursuant to CPR 26.3(1)(c) made on the ground that BSCFA’s

¹⁵ At paragraph 32 of his written reasons.

¹⁶ At paragraph 39 of his written reasons.

¹⁷ At paragraph 32 of his written reasons.

statements of case disclosed no reasonable ground for bringing the claim. The outcome of the latter was the inevitable sequel to the outcome of the former. It is for that reason that ground g of appeal (as set out in paragraph 10 above) cannot succeed.

[32] I haven't referred to any of the authorities referenced by the court below because no issue was taken with any of the principles they illustrated. None of the grounds of appeal complains of an incorrect interpretation or application by the court of the case law. The judge accepted:

- a. That an arbitration clause would generally survive to settle disputes that arise during the contractual relationship (*Heyman v Darwins Ltd* [1942] AC 356 *Nestle Caribbean Incorporated v G Ayuso & Sons* Civil Appeal No 19 of 1996);
- b. That contracting parties agreeing to arbitration as the means of dispute resolution are to be held to their agreement (*Fili Shipping Company Limited and others v Premium Nafta Products Ltd and others* [2007] Bus LR 1719);
- c. The law applicable to a determination of where the cause of action arose (*Metall Un Rohstoff AG v Donaldson Lufkin & Jenrette Inc* [1989] 3 All ER 14);
- d. The elements to be established in the tort of unlawful conspiracy (*ED&F Man Capital Markets Ltd v Come Harvest Holdings Ltd* [2022] EWHC 229 (Comm);
- e. The importance of disclosing material information that could influence the court's decision. *Ahuja v Politika Novine I Magazini D.O.O and others* [2016] 1 WLR 1414.
- f. The law applicable to striking out a claim (*Channel Overseas Investment Ltd. v Belize Telemedia Limited et al* and *Keith Arnold v Belize Telemedia Limited* Civil Appeal Nos 14 and 15 of 2012).

It was just that Mansoor, J was of the view that this dispute between BSCFA and T&L did not arise during a contractual relationship and so the jurisdictional ouster clause agreed to at a prior time did not cover this dispute¹⁸. He applied the law correctly in determining where the cause of action arose¹⁹ and found that it was unnecessary, at this stage, to consider all the elements to be established in the tort of unlawful means conspiracy²⁰. He expressly said that the court was not deceived by material non-disclosure when approached by BSCFA *ex-parte* for permission to serve T&L *ex juris*²¹. And, lastly, he applied the law correctly when he determined that he ought not to strike out the claim and that the interests of justice will be served by allowing the parties to proceed to trial²².

[33] For the reasons I have given we find that Mansoor, J did not err in the order he made on 4 July 2025 that is the subject of this appeal.

Submissions of the Interested Party, BSIL

[34] BSCFA's claim against T&L is not a contractual claim. Its claims are grounded in tort and constructive trust. T&L's main argument is that, absent the existence of an LOEA contract between it and BSCFA, a claim by the latter against it is not maintainable. The court did not accept that and gave cogent reasons for its view—a view which I find was open to it on the material before the court. Although BSCFA's main claim against the Interested Party, BSIL, is for breach of contract and an accounting, it also alleges, as against BSIL, entitlement to relief based on an alleged conspiracy between BSIL and T&L to deprive it of the FT premium payments due to it for the FT eligible sugar BSIL sold to T&L for the crop years 2021-2023 that emanated, in part, from BSCFA's FT certified sugar cane sold to BSIL.

¹⁸ At paragraphs 29 and 32 of his written reasons.

¹⁹ At paragraphs 34, 38 & 40 of his written reasons.

²⁰ At numbered paragraph 36 of his written reasons.

²¹ At numbered 39 of his written reasons.

²² At numbered paragraph 43 of his written reasons.

[35] BSIL reiterated before us many of the submissions made on behalf of T&L in supporting its appeal. Its support of T&L's position was, understandably, informed by its view that the setting aside of the claim against T&L would result in the inevitable collapse of the conspiracy claim against it. BSIL's submissions seemed to go further than T&L's in saying the claim by BSCFA against T&L was "*legally incoherent*" because a claim founded on an un-pleaded contract cannot, as a matter of law, have a real prospect of success. Mansoor, J clearly was not of that view, and neither am I. The argument of both T&L and BSIL (that an underlying contractual nexus between BSCFA and T&L was necessary) floundered because, on the material before the court, it was not incontrovertible that the existence of non-contractual claims against them both was ruled out. BSIL's submissions before us did not add anything material to T&L's appeal and, as it is not a substantive party to the appeal, the resolution of its contractual and non-contractual issues with the BSCFA will, given our decision in this appeal, have to abide the trial.

Disposition of the appeal

[36] Our order is that:

- a. the appeal is dismissed;
- b. The period of 42 days set out in paragraph [3] of the order of Mansoor, J made on 18 June 2024 for T&L to file its defence in the underlying claim runs from the date of promulgation of this decision.
- c. The order of this court made on 7 October 2025 staying the proceedings below is spent.
- d. The costs of the appeal are awarded to the Respondent and are to be assessed if not agreed.

SANDRA MINOTT-PHILLIPS, KC
Justice of Appeal

[37] I concur.

MINNET HAFIZ BERTRAM
President

[38] I concur.

MARGUERITE WOODSTOCK RILEY, KC
Justice of Appeal