[2020] JMCC Comm. 4

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO. 2016CD00159

BETWEEN	**POLYAMER CORPORATION**	**CLAIMANT**
AND	**FREE FORM FACTORY LIMITED**	**DEFENDANT**

IN CHAMBERS

Ms Kashima Moore instructed by Nigel Jones & Company, Attorneys-at-Law for the Claimant

Ms Tamika Jordan, Ms Michelle-lee Bell and Ms Kristina Thompson, instructed by Shelards, Attorneys-at-Law for the Defendant

Heard: 2nd, 3rd and 6th March 2020

Civil procedure- Whether the Claimant has *locus standi* to bring or continue claim where it has omitted to add its registered suffix "S.A." to its name in its statement of case.

Whether in considering the issue of *locus standi* the Court should consider whether the Claimant has sufficiently pleaded a legal assignment – Whether the claimant is required to plead an equitable assignment in the alternative.

LAING, J

The application

[1] The Defendant by a re-listed Notice of Application filed 7th June 2019, seeks an order that the claim be struck out and that judgment be entered in favour of the Defendant, as well as other orders in the alternative. The foundation on which this application rests, is the assertion that the Claimant has no *locus standi* to commence or continue this claim or to institute any further proceedings in this Court against the Defendant.

The original claim

[2] By its Claim Form and Particulars of Claim filed on 2nd June 2016, the Claimant averred that it was a company duly incorporated in accordance with the laws of Panama, with its registered address being Torre Financial Center P-35, Calle 50 / Elvira Mendez, Panama City, Republic of Panama. It claimed against the Defendant for the sum of US$270,714.72 along with interest and costs for breach of contract.

[3] The Claimant asserted that through its agent, Thorsten Andress, it negotiated an agreement with the Defendant's director Keith Edwards for the Claimant to supply raw material and machine accessories to the Defendant.

[4] The Claimant averred that between 10th July 2001 and 30th June 2015, it provided the Defendant with raw materials and machine accessories on 30 days credit but the Defendant failed to honour in full the invoices presented to it.

[5] The Claimant also filed an Amended Claim Form and an Amended Particulars of Claim on 11th November 2016, both retaining the essence of the claim for breach of contract as originally pleaded.

The revised claim

[6] On 4th December 2018 the Claimant filed a Further Amended Claim Form and a Further Amended Particulars of Claim. It was pleaded in the Further Amended Claim Form that:

> *Polyamer Corporation a company incorporated in Florida and the Defendant entered into an agreement for the Claimant to supply the Defendant with raw materials and machine accessories on credit. Polyamer Corporation in Florida from the commencement of the Contract until in or around June 2014 supplied the Defendant with goods and the Defendant took delivery of the goods. The Claimant was assigned the assets and liabilities of Polyamer Corporation in Florida on or about June 11, 2014.*

Is the Claimant a proper legal entity capable of bringing the Claim?

[7] The Defendant admits that there is a legal entity which has been duly incorporated in Panama which bears the name Polyamer Corporation S.A. It has produced an affidavit sworn to by Carlos Gabriel Olmos on 13th September 2019, in which he deponed that he is an Attorney-at-Law who has been practicing in Panama for over 16 years. He asserted that the legal name of the Company as registered in the Registry of Panama is Polyamer Corporation S.A. and therefore, this is the name that must be used in legal proceedings. The laws of Panama and the laws of Jamaica are similar in this regard, because it cannot be gainsaid that a company must use its full name including its proper suffix, especially in legal proceedings. He made a number of other assertions which I do not find to be of any assistance.

[8] The issue to be determined by this court is whether, as a matter of the law of Jamaica, the absence of the suffix "S.A." in the name of the Claimant amounts to an incurable defect which affects the Claimant's ability to have initiated or to continue this Claim.

[9] Ms Jordan submitted that the omission of "S.A." was a fatal error. Counsel relied on the English Court of Appeal case of **Best Friends Group and Another v**

Barclays Bank plc [2018] EWCA Civ 60. This case concerned an application to amend the claim form so as to substitute Mr Bennett as the named claimant in the place of The Best Friends Group after the limitation period for bringing the claim against Barclays Bank plc had expired. The application was pursuant to Part 17.4 of the English Civil Procedure Rules 'Amendments to statement of case after the end of the relevant limitation period' which is in similar terms as Part 20.6 of the Jamaica Civil Procedure Rules ("CPR") which provides as follows:

> *20.6 (1) This rule applies to an amendment in a statement of case after the end of a relevant limitation period.*
>
> *(2) The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was –*
>
> *(a) genuine; and*
>
> *(b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.*

[10] Counsel submitted that the amendment would create confusion and that it was not a genuine mistake. Counsel submitted that furthermore there has been an inordinate delay in making the application for an amendment of the name of the Claimant because it is clear from the affidavit of Mr Jovel Barrett sworn on 5th December 2018, that the Claimant was aware of the error and in such circumstances the court should not exercise its discretion in favour of the Claimant.

[11] Counsel also relied on the Canadian case of **Bernard Lotzkar and National Metal Corporation Ltd v Canadian National Railway Company and Others** 2015 BCCA 434, but I did not find that case to be of assistance because on the facts it concerned the issue of identity of the proper party to an agreement where there were two companies with the same name, the earlier one having been dissolved in 1996 and the new company, the plaintiff, having been incorporated in 2008.

[12] Ms Moore in her response submitted that a more relevant case is that of **Grace Turner v University of Technology** [2014] JMCA Civ 24. In that case, the issue concerned the fact that the correct name of the Claimant (the Respondent on the

appeal) was "The University of Technology Jamaica". Counsel submitted that the suit was not instituted in the Claimant's corporate name and the party who was named therein as the Claimant was not a legal person. The Claimant's application to the learned Master to amend its name pursuant to CPR 20.6 had been refused on the basis that the limitation period had not yet expired and on that basis, the Claimant filed an amended claim in its correct name. The Court of Appeal concluded at paragraph 29 of the Judgment that;

> *[29] There is clearly no mistake as to the identity of the respondent. There was no other entity referable to the amended name of the respondent, and the appellant, being an employee of the Respondent, would have been fully cognizant of this. There is little doubt that the respondent was the party which intended to bring the action in its name. No prejudice would have been occasioned by the amendment. The respondent had a right to bring the claim. In all the circumstances of the case it cannot be said that either the claim or the amendment to the claim form was an abuse to the court's process. The court was, therefore, entitled under rule 20.6, to allow the amendment to stand.*

[13] Ms Moore also relied on the case of **Auburn Court Limited v Jamaica Citizens Bank Limited** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 69/1990, judgment delivered 20th December 1990 which was referred to in the **University of Technology** case supra). In **Auburn Court** the Master had made an order that the writ be amended by deleting the name "Auburn Limited" and substituting "Auburn Court Limited". The order was not complied with and judgment in default of defence was entered against the Defendants including Auburn Limited. Auburn Limited sought to set aside the default judgement and argued, *inter alia*, that the writ was issued against a non-existent entity and was therefore null and void. The learned Judge rejected that argument and the Court of Appeal agreed with his conclusion that the writ was issued against an existing legal entity but due to inadvertence it was misnamed. The name Auburn Limited was therefore a mere misnomer.

[14] It is worth noting that the Court is not at this stage hearing a Notice of Application for an amendment of the name of the Claimant. A Notice of Application has been filed on 11th October 2019 seeking the substitution of the Claimant's correct name

"POLYAMER CORPORATION S.A." pursuant to CPR 20.6 (1), however, it has not yet been heard. In these circumstances it is therefore not necessary at this stage for me to consider whether the Claimant's pending Notice of Application is likely to succeed.

[15] The narrow issue for my determination at this stage is whether the omission of the "S.A." from the Claimant's name is fatal. I find that as a matter of law it is not. The suffix is an important feature of a company's name because it indicates whether for example the company is a limited liability company or not. In Jamaica, the appropriate suffix to indicate a limited liability company is "Limited". In other jurisdictions such as the British Virgin Islands, its Business Companies Act section 17 requires the name of a limited liability company to end with the word "Limited", "Corporation" or "Incorporated"; "Societe Anonyme" or "Sociedad Anonima", the abbreviation "Ltd", "Corp", "Inc", or "S.A.".

[16] An amendment to allow the addition of "S.A." to the Claimant's name, even after the end of the limitation period is permissible in principle. That mis-description is curable and without more, is not a sufficient ground on which this Court can properly hold that the Claimant has no *locus standi* to commence the Claim.

[17] Without making any findings of fact, I think it is not prejudicial if at this juncture I also make the observation that there is no assertion by the Defendant that there is another Polyamer Corporation in Panama which it may have confused with the Claimant. The evidence of Mr Olmos is that there is no legal entity registered in Panama by the name of Polyamer Corporation, the only registered entity there being Polyamer Corporation S.A.. Ms Jordan spent a considerable portion of her submissions highlighting confusion which she said the Defendant faced as between the Claimant and the Polyamer Corporation incorporated in Florida (hereafter referred to for convenience as "Polyamer Florida"). However, it is important that one recognizes from the outset that the Claimant clearly pleaded that it was incorporated in Panama. This is a critical element of the Claimant's case

which serves to crystalise its identity and to frame and give context to the rest its pleadings.

[18] The Claimant is not incorporated in Florida. Polyamer Florida is a distinct entity. If, (as was asserted by the Defendant), the Claimant made any assertions of conduct, rights and or obligations which were, in the Defendant's opinion, the conduct of Polyamer Florida, that ought not to confuse the Defendant as to who the Claimant is. The core pleading to which reference must be had as a starting point always, is that the Claimant asserted that it is incorporated in Panama. Therefore, if the Defendant was of the view that at all material times it was transacting with Polyamer Florida only, what that requires is appropriate pleadings challenging any assertions the Claimant has made as to conduct, rights and or obligations on its part, which on the Defendant's case, ought properly to be attributed to Polyamer Florida.

The issue of the legal assignment

[19] Ms Jordan highlighted the fact that it was only in its Further Amended Claim Form and Statement of Case that the Claimant raised the issue of an assignment. To the extent that the assignment issue has an impact on the Claimant's right to bring the Claim it is necessary to deal with this issue although it also raises the issue of the sufficiency of the Claimant's pleading. In this regard, it is necessary that I reproduce some of the important elements of the Amended Statement of Claim as follows:

> *5. Polyamer Corporation a company incorporated under the laws of Florida in the United States of America through its agent Thorsten Andress negotiated with the Defendant's Director Keith Edwards the supply of raw materials and machine accessories by the Claimant to the Defendant.*
>
> *6. Prior to June 2014 Polyamer Corporation incorporated in Florida provided the Defendant with supplies of raw materials and machine accessories and the Defendant took delivery of the raw materials and machine accessories.*

> *7. The Claimant was incorporated in or around March 2011 and or about June 11, 2014 the assets and liabilities of Polyamer Corporation incorporated in Florida were transferred to the Claimant.*
>
> *8. The Defendant was notified by the Claimant of the assignment and that payment should be made on it.*
>
> *(reproduced with underlined portions showing insertions by amendment)*

[20] Ms Jordan submitted that the pleading of an assignment is inadequate because it gives no details of the mechanism by which the assignment of the relevant debt was effected. Counsel also submitted that, furthermore, there is not sufficient pleading of the details of the notice in writing of the assignment which the Claimant asserts was given to the Defendant, save that "*the Defendant was notified*".

[21] The Judicature (Supreme Court) Act provides for a statutory assignment and Section 49(f) states as follows:

> *"Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or thing in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not been passed) to pass and transfer the legal right to such debt or thing in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor;"*

[22] The relevant portion of CPR 8.9 provides as follows:

> *(1) The Claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.*
>
> *(2) Such statement must be as short as practicable.*
>
> *(3) The claim form or the particulars of claim must identify or annex a copy of any document which the claimant considers is necessary to his or her case.*

Therefore, it follows naturally from these two provisions, when taken together, that where a claim for a debt is founded on a legal assignment, (which of necessity

must be effected by a written document), as a matter of good practice the relevant document should be sufficiently identified and other details such as the date of its execution should form a part of the pleadings. The question which remains is whether the form of pleading utilized by the Claimant is fatal, that is to say, that it does not sufficiently disclose the cause of action under which the claim is being made and/or does not indicate the Claimant's interest in the debt and is therefore incapable of supporting a finding by the Court at this stage that it has *locus standi.*

[23] Ms Moore in her response submitted that the Claimant's Claim is for a debt based on an assignment but is also for a breach of contract for the supply of goods. Counsel referred to paragraph 3 of the Further Amended Particulars of Claim which is in the following terms:

> *3. The Claimant's Claim is against the Defendant to recover the sum of Two Hundred and Seventy Thousand Hundred and Fourteen United States Dollars and Seventy-Two Cents (**US270,714.72**) plus interest being monies due and owing to the Claimant by the Defendant for breach of contract.*

[24] In paragraph 9 of the Further Amended Particulars of Claim the Claimant asserted the following:

> *9. The Claimant did business with the Defendant on the same terms as Polyamer Corporation Florida until the Defendant's debt continues to rise and it required the Defendant to pay for goods prior to them being released to it.*

Paragraph 9 could therefore lead one to reasonably infer that the Claim includes an amount which arose from the Claimant's direct agreement with the Defendant for goods supplied by it to the Defendant, which were not paid for, in breach of that agreement.

[25] However, nowhere in the Amended Claim Form or Amended Particulars of Claim is any pleading of an amount which arose in that manner. Paragraph 13 of the Further Amended Particulars of Claim uses as a starting point the sum of US$583,360.63 which was the original debt to Polyamer Florida. That paragraph is in the following terms:

> *13. On December 1, 2011, the Defendant's Director Keith Edwards signed a balance confirmation letter dated February 12, 2010 sent to the Defendant by, Botana Accounting Service being the Accountant for Polyamer Corporation in Florida. The Defendant agreed that it owes Polyamer Corporation in Florida the sum of US$583,360.63 as at December 31, 2009 as outlined in the Statements sent to the Defendant via email on January 15, 2010. A copy of the signed balance confirmation letter dated February 12, 2010, the email sent to the Defendant on January 15, 2010 and the two statements referred to in the letter dated February 12, 2010 are attached hereto as **"B", "C", "D"** and **"E"** respectively.*

[26] Importantly, paragraph 19 of the Further Amended Particulars of Claim accounts for the payments by the Defendant only by reference to the Defendant's original indebtedness to Polyamer Florida and states as follows:

> *19. The payments made by the Defendant and reflected in the statement when deducted from the agreed sum of US$583,306.63 leaves a principal sum of US$270,714.72.*

[27] Whereas the claim originated as a breach of contract claim for the sum of US$270,714.72 for goods supplied to the Defendant by the Claimant, since the amendments, that sum is on the face of the Claimant's statement of case, being claimed on the basis that it is the balance that remains of the original sum of US$583,306.63 (which the Claimant is claiming by virtue of what it alleges is an assignment.) On the face of the pleadings, I am unable to accept Ms Moore's submissions that there is a separate claim for an amount which is independent of the sum allegedly assigned which in and of itself gives the Claimant *locus standi*. In my opinion, the Claimant's *locus standi* is founded only on its claim which is based on an assignment of the debt and which it asserts was originally owed to Polyamer Florida. The assertion of the existence of a claim based on the breach of a separate contract cannot avail the Claimant.

Equitable assignments

[28] Ms Moore's second submission on this issue was that even if the Claimant cannot make out a proper case of a legal assignment, it can rely on an equitable

assignment. Counsel drew my attention to the case of **ISP Finance Services Ltd v E.W. Abrahams & Sons Ltd** [2015] JMCD CD 15.

[29] In **ISP Finance** (supra) the Court referred to the case of **New Falmouth Resorts Limited v International Hotels Jamaica Limited [2011] JMCA Civ 10**, in which the Court of Appeal in examining the law in relation to assignments in Jamaica stated as follows:

> *[53] Section 49 (f) prescribes the procedure for the statutory assignment of choses in action. It reflects a provision which was first enacted in England in substantially similar terms in 1873 (Judicature Act, section 25(6) and is now to be found in section 136(1) of the Law of Property Act, 1925. Before 1873, although there was no general right of assignment of contractual rights at common law, such rights were always assignable in equity, which took the view that "choses in action were property which ought, in the interest of commercial convenience, to be transferable" (Treitel, para. 15-006). In considering this question, it is important to bear in mind that the introduction of a statutory method of assignment did not affect the process of equitable assignment in any way, since, as Lord Macnaghten observed in **Brandt's Sons & Co v Dunlop Rubber Company** [1905] AC 454, 461, "The statute does not forbid or destroy equitable assignments or impair their efficacy in the slightest degree".*

[30] In **ISP Finance** this Court at paragraph 13 of the judgment made the following statement:

> *[13] There is no prescribed formulation for an equitable assignment. Where there is a contract between the owner of a chose in action and another person which shows a clear intention that such person is to have the benefit of the chose, there is without more a sufficient equitable assignment.*

I am of this view that this statement still accurately represents the position in equity. What should be noted for emphasis following from this principle, is that the equitable assignment does not refer to a particular method, or form, of transfer of rights. It refers to the process by which a person becomes entitled in the eyes of equity, to property rights in a chose in action. As a consequence, the equitable assignment must not necessarily be effected by an instrument in writing. Difficulty surrounds the definition of a chose in action, but a simplified explanation would be that it includes personal right of property which has no physical existence and so may be enforced by an action and not by taking physical possession. For our

purposes, fortunately, it is settled law that a debt such as the alleged debt in this case which the Claimant asserts originated with Polyamer Florida, is undoubtedly a chose in action.

[31] Ms Jordan complained that if the Claimant is relying on an equitable assignment, such pleading is absent from its Statement of Case. Counsel is quite correct in this regard but in my opinion if the equitable assignment arises from an assignment which although it purports to be a legal assignment has failed to satisfy the applicable statutory provisions, then the issue of whether it operates as an equitable assignment would be by virtue of the operation of equitable principles. Pleading an equitable assignment in such circumstances in the alternative would be prudent and would undoubtedly be good practice, however, I do not find that a failure to do so is fatal.

The effect of notice of the assignment or the absence of sufficient pleading of it

[32] One requirement which has to be satisfied in order for an assignment of a chose in action to be held to be a valid legal assignment is that written notice of the assignment was given to the debtor. It should be noted that in contrast to the statutory position, a notice is not usually required to perfect the title between the assignor and the assignee in equity. If such notice is not given, the assignment will take effect as an equitable assignment (subject of course to the other requirements such as proof of intention being fulfilled). The notice serves the purpose of alerting the debtor of the new payee and preventing the debtor from paying the assignor. But more importantly, the notice serves to give the assignee priority against the claims of later assignees in cases where there may be multiple assignees, (although the assignee of the chose in action always takes the chose subject to existing equities which exist at the time the notice of assignment is given).

Enforcement by assignees

[33] For the sake of completeness, I wish to state that I appreciate that the issue of the right of an equitable assignee of a chose in action to bring a claim in its own name

can sometimes not be a straightforward matter. This issue has not been raised by the parties. I take the view that on the pleadings before me it would be inappropriate for me to examine this issue any further in the context of the current application and that this is a matter which ought to properly be determined by the trial Judge.

Conclusion in respect of the *locus standi* issue

[34] The applicable principle in relation to *locus standi* is appropriately summarised in a case relied on by the Defendant, namely, **Allied Bank Limited v Celeb Dengu and Wilson Tendai Nyabonda** SC 52/2006 Civil Appeal No. SC 503/15, in which the Court of Appeal of Zimbabwe at page 6 of the judgment observed as follows:

> *…The principle of **locus standi** is concerned with the relationship between the cause of action and the relief sought. Once a party establishes that there is a cause of action and that he/she is entitled to the relief sought, he or she has **locus standi**. The plaintiff or applicant only has to show that he or she has direct and substantial interest in the right which is the subject matter of the cause of action…*

[35] I have earlier concluded that there is no reasonable basis for the Defendant's assertion that it is unsure of the identity of the Claimant. The Claimant is Polyamer Corporation S.A. incorporated in Panama and the name Polyamer Corporation used in this claim appears, *prima facie* to be a misnomer. The Claimant has asserted that it is owed US$270,714.72 plus interest which is the balance remaining on a debt of US$583,360.63 which debt was assigned to it by Polyamer Florida.

[36] Considerable time was spent on the issue of the pleading. The form of pleading of a legal assignment suggested by the authors of Bullen and Leake and Jacob's Precedents of Pleadings, 12th edition (an earlier edition of the work as it appears that the later editions do not provide examples related to assignments), although obviously not definitive authority, provides an interesting point of comparison and I reproduce it below:

Claim by Assignee of a Debt under an Absolute Assignment

1. On the _____ day of _____, 19 ____, the sum of £ _____ was due and owning from the defendant to A B for the price of goods sold and delivered by the said A B to him.

[Here state particulars of the said goods with dates and prices.]

2. On the said date by an assignment in writing the said A B absolutely assigned to the plaintiff the said debt due to him from the defendant.

3. Notice in writing of the said assignment was given by the plaintiff to the defendant by letter [or notice] dated the ____ day of ___, 19 ___, but the defendant has not paid the said sum.

The plaintiff claims £ ____.

[37] I find that notwithstanding the fact that the Claimant's pleading of a legal assignment is not ideal, it is adequate for purposes of this Claim and the Claimant will be entitled to assert an equitable assignment if it chooses, although it has not expressly so pleaded.

[38] I am therefore of the opinion and find that the Claimant has sufficiently identified that there was a debt in existence owed to Polyamer Florida (which I appreciate that the Defendant disputes), by pleading the manner in which the debt arose and the Claimant has sufficiently pleaded a known cause of action relying on an assignment. The Claimant has also demonstrated sufficiently, for purposes of establishing *locus standi*, that it has a "*direct and substantial interest in the right [and debt] which is the subject matter of the cause of action*".

[39] Issues relating to the duty of the Claimant to prove a legal or equitable assignment are matters of evidence which are most appropriately dealt with at trial on the witness statements and/or any amplification which may be permitted by the learned trial Judge. It is also helpful if one appreciates at this juncture that the application is on the basis that the Claimant does not have *locus standi* and that is the context in which the sufficiency of the pleadings has arisen. The challenge to the pleadings has not arisen in the context of an application for striking out of the

Claimant's pleading or an application for summary judgment on the basis that the claim was without any real prospect of success in which different considerations may operate.

The jurisdictional issue

[40] By Notice of Preliminary Objection filed 14th June 2019, the Defendant indicated that it intended to object to the claim continuing on the ground that Jamaica is not the proper jurisdiction and that either the State of Florida or Panama might be.

[41] Ms Jordan submitted that the usual procedure to challenging the jurisdiction of the Court pursuant to CPR 9.6 was not employed because the Defendant was not aware that the Claimant was relying on an assignment until the filing and service of the Further Amended Claim Form and Further Amended Particulars of Claim. Nevertheless, it seems to me that the proper procedure for a challenge to the jurisdiction of this Court, whether pursuant to CPR 9.6 or otherwise, ought to be by a Notice of Application and not by a "Notice of Preliminary objection".

[42] Ms Jordan submitted that the issue of jurisdiction can be raised at any time and Ms Moore concurred.The crux of Ms Jordan's argument is contained in her submission that :

> *The general principles of law surrounding forum differs when it concerns the validity of the assignment of debt. When a debt is assigned the **lex** is where the interest arose.*

Ms Jordan sought to rely primarily on the cases of **Kelly v Selwyn** [1905] 2 Ch 117 and **Republica de Guatemala v Nunes** [1927] 1 K.B. 669.

[43] I do not find that these cases support the position that this Court has no jurisdiction to hear the claim, nor have I been able to identify any other legal authority which supports this position. There may be issues relating to the law applicable to the assignment (if the Court finds that there was an assignment), and especially so if the Court finds an equitable assignment since the Court may not have the benefit of a deed of assignment with a valid governing law clause.

[44] It is arguable that the general rule is that transfers of property are governed by the *lex situs* of the property at the time of the alleged transfer (in contradistinction to the *lexi fori* which is the domestic law of the forum in this case, the laws of Jamaica). The *situs* has to be identified before its law can be applied. The authors of Stair Memorial Encyclopaedia/private international law (volume17)/6. property/(1) characterisation of property as moveable or immoveable at paragraph 17, ascertaining the *lex situs*.- express the issue as follows:

> *As was observed in the part of this title on the processes applied in conflict cases, interpreting the connecting factor is, generally, a matter for the **lex fori**. Where the property in question is corporeal, ascertaining its situs will create no real legal problem. However, where the situs of some right not connected with a specific corporeal object, such as a pecuniary debt, a copyright or a patent, has to be ascertained, the task is less easy. There is authority for the proposition that a debt is located where it can be enforced, that is, where the debtor resides.*

[45] However, even if the *lex situs* of the allegedly assigned debt is Florida or Panama, that in and of itself would not be sufficient to deprive this Court of Jurisdiction. I find that the general principles relating to jurisdiction/*forum non conveniens* as contained in cases such as **Spiliada Marine Corporation v Cansulex Ltd** [1987] 1 A.C. 460 apply to this claim. I am not satisfied on a balance of probabilities that there is another available forum (in this case potentially Panama or Florida), which is prima facie, the more appropriate forum for the trial of this claim because it is more suitable for the interest of the parties and the interests of justice. There are sufficient connecting factors with Jamaica to establish jurisdiction, including the residence of the Defendant and its main witness Mr Keith Edwards its director.

[46] It is also reasonable to conclude in the absence of any evidence to the contrary, that the contractual expectation of the Defendant when it entered into the contract with Polyamer Florida was that he would have been sued in Jamaica if there was a dispute arising from or under that contract and it ought not to be surprised if it is facing a claim in Jamaica arising from a liability which the Claimant is asserting has its genesis in the Defendant's contract which Polyamer Florida. Accordingly,

for the reasons expressed herein, I do not find that the Defendants preliminary objection to the jurisdiction of this Court succeeds.

Is the claim authorised?

[47] Ms Jordan submitted that the person executing the Claim Form and Amended Particulars of Claim in their various iterations is not a director of the Claimant and therefore the Claim is not authorised and ought to be struck out. There is no disputing that a claim which is proved to be unauthorised can be struck out on the application of the Defendant.

[48] However, it is equally settled law, that an initially unauthorised claim on behalf of, or in a company's name, is not doomed to failure and may be authorised subsequently by general meeting or other procedure approved by its constitutional documents. The Claimant has exhibited to the affidavit of Liane Chung filed 22nd November 2019 a copy of a special resolution authorising the claim. I note the defendant's objection to the use of this affidavit on the ground that, *inter alia,* it contains hearsay statements. However, I accept that the evidence contained therein on this issue is admissible, this being an interlocutory application and I accept on a balance of probabilities that the Claim has been duly authorised.

[49] I have considered the application for other relief in the alternative and I am of the view that these ought not to be granted. The Claimant is under an obligation to prove its case and is required to produce the evidence necessary to do so.

Conclusion and disposition

[50] For the reasons herein the Court makes the following orders:

1. The Defendants application to strike out the Claim and for other relief is refused.

2. The Defendants objection to the Court hearing the Claim on the ground that it does not have jurisdiction is refused.

3. Half costs of the application is awarded to the Claimant to be taxed of not agreed.

4. Leave to appeal is refused.