



Drawn and Prepared by:

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BARBADOS

**SUPREME COURT OF BARBADOS
IN THE HIGH COURT OF JUSTICE**

CLAIM NO. 1975 of 2011

BETWEEN

LAGAN CONSTRUCTION LIMITED

CLAIMANT

AND

BARBADOS TOURISM INVESTMENT INC

FIRST DEFENDANT

ATTORNEY GENERAL

SECOND DEFENDANT

DEFENCE

1. The Second Defendant admits that Lagan Construction Limited (the Claimant) is a company incorporated and registered under the Laws of the United Kingdom having its registered office at Rosemount House 21-23 Sydenham Road, Belfast, Northern Ireland, BT39 OHN. The Second Defendant however makes no admission or denial as to whether the Claimant has delivered high quality service in markets in which it has worked because the

Served on 02/03/12.

Second Defendant does not know whether the capabilities of Lagan are as stated in paragraph 1 of the Statement of Claim (Claim) are true.

2. The Second Defendant admits paragraphs 2 and 3 of the Claim save and except that the Office of the Attorney-General is situated at the Jones Building, Webster Business Park, Wildey, St. Michael.
3. The Second Defendant admits paragraphs 4, 5, 6, 9, 10 and 12 of the Claim.
4. The Second Defendant admits paragraph 7 of the Claim save and except that SMI is wholly owned and controlled by Signature Management Inc. as this fact is not known to the Second Defendant.
5. The Second Defendant admits paragraph 8 of the Claim save and except that the Second Defendant makes no admission or denial as to whether Halcrow is a leader in the field because the Second Defendant does not know whether this statement is factual or not.

6. With respect to paragraph 11 of the Claim the Second Defendant admits that only two companies met the pre-qualification criteria one of which was the Claimant. The Second Defendant denies that the second bidder VECO was a stand alone entity. The VECO team included Commonwealth Construction, Baird and Associates and Signature Management Inc.
7. The Second Defendant admits with respect to paragraph 13 of the Claim that the Claimant submitted a bid for the project in or around 18th December, 2006. No admission is made in respect of the sum of USD \$28,105, 807 and USD 346,444.00 being claimed as profit and expenses respectively because the Second Defendant does not know whether these sums being claimed are true.
8. With respect to paragraph 14 of the Claim no admission is made by the Second Defendant save and except that VECO submitted an alternative bid.
9. The Second Defendant admits that subsequent to the initial bid additional information was sought to support the bids as stated in paragraph 15. It is not admitted that the request for and submission of the information involved an appreciable amount of

additional work on the Claimant's part including further visits to Barbados and the recalculation and re-estimation of its bid.

10. With reference to paragraph 16 of the Claim the Second Defendant denies that Halcrow in the discharge of its duties to the First Defendant and having evaluated the bids, recommended that the Claimant be the preferred bidder
11. The Second Defendant denies paragraph 18 of the Claim and states that the Bid validity period had expired in 2007 and Cabinet in keeping with standard practice was within its rights to make a decision.
12. The Second Defendant admits that a Project and Tenders Committee was appointed on 2nd June, 2009 or thereabouts as stated in paragraph 19 of the Claim but denies that it was established to review bids for the Marina Project and to select a preferred bidder.
13. As to paragraph 20 of the Claim the Second Defendant admits that the Permanent Secretary wrote to the First Defendant and informed it that it should undertake the work required to enter into an agreement with Signature Management Inc. for the

execution of the Pierhead Development Project. However by letter dated 12th August, 2009 the acting Permanent Secretary referred to the correspondence dated 2nd June, 2009 and advised the First Defendant that Cabinet agreed to the construction of the Marina and not the execution of the entire Pierhead Development Project.

14. Further with respect to paragraph 20 of the Claim the Second Defendant denies that the said letter dated 2nd June, 2009 shows that the Government had deliberately determined to subvert the tendering process for the Project and by so doing acted in bad faith. The Second Defendant also denies that Cabinet intended to harm and / or was reckless as to whether or not it harmed the Claimant and that its acts caused the Claimant to suffer injury and loss as particularised in paragraph 46 of the Claim or at all. It is also denied that the direction given in the said letter was wrong and unlawful and in excess of the powers of a minister or the Cabinet for the following reasons:

- The second Defendant would have had the right to direct the First Defendant since there was no ongoing tendering process as this had been determined since July 17, 2007 when the bid validity period had ended.

- The Second Defendant as the sole shareholder of the First Defendant had the right to issue directions to the First Defendant and had done so from the inception of the company.

15. The Second Defendant denies that the acting Permanent Secretary reconfirmed to the First Defendant the directive of 2nd June, 2009 that the contract for the Project be awarded to Signature Management Inc. as alleged in paragraph 21 but advised that Cabinet agreed to the Construction of the Marina and not the entire Pierhead Development Project.
16. As to paragraph 22 of the Claim the Second Defendant states that the bid validity period had expired since July 17th 2007 and there was no ongoing public tendering process. By letter dated 26th November, 2009 the Permanent Secretary was informed by the Chairman that the directors were incapable and unwilling and unable to approve a draft Memorandum of Understanding between BTI Signature Management Inc for reasons as set out in the narrative attached to the said letter dated 26th November 2009. The Chairman further requested that the matter be brought to the attention of Cabinet for further consideration and directions as required.

17. The Second Defendant makes no admission with respect to paragraph 23 of the Claim.
18. With respect to paragraphs 24 and 25 the Second Defendant admits that the Project and Tenders Committee met on 13th November, 2009. However this meeting was not properly convened since the non attendance of the CEO and Recording Secretary was in clear contravention of the policies of the First Defendant. Further the decision of the said meeting was not confirmed by the Board of the First Defendant.
19. The Second Defendant admits paragraph 26 of the Claim but states that the actions taken by the Project and Tenders Committee and its Chairman Dr. Thorne were not approved by the Board of the First Defendant and thus *ultra vires*. Further the award of the contract to Design Collaborative to be the First Defendant's representative to assist in finalizing the BOLT contract with the Claimant was also not approved by the Board and *ultra vires*.
20. The Second Defendant makes no admission with respect to paragraph 27 of the Claim.

21. The Second Defendant admits paragraph 28 of the Claim and states that the Permanent Secretary advised members of the Board and the Chief Executive Officer that:

From: Powlett Permanent Secretary [<mailto:pspowlett@gob.bb>]

Sent: Wednesday, November 18, 2009 8:09 AM

To: Marcia Arthur; angella@sunbeach.net;
jamarry@hotmail.com; jtpowlett@hotmail.com;
julian.jordan@aaaltman.com; mprescott@caribsurf.com;
pbeesean@caribsurf.com; Erskin47@hotmail.com

Cc: j.thorne@caribsurf.com; Stuart Layne;
mandev@caribsurf.com; thompy@caribsurf.com;
mosfinance@caribsurf.com

Subject: RE: Special Board Meeting - BTI

Dear All

Section 109 of the Companies Act provides for notice of meetings to be given within a specified time. I am unhappy with the way in which meetings of the BTI are being convened. Such short notice makes it very difficult to rearrange a schedule to attend. In accordance with the Act, I object to the convening of the meeting and I am hereby stating that my objection must be acknowledged and the meeting properly scheduled. I am hereby requesting that the Company Secretary be requested to provide advice on this matter. I am not available to attend this meeting.

Juanita Thorington-Powlett

22. The Second Defendant admits the communication by the Permanent Secretary and states that the directive given therein was lawful and not an intentional interference with the contractual and/or business relationship between the Claimant and the First Defendant nor an act to cause harm by unlawful means which amounts to an actionable tort. The action did not amount to an act of misfeasance in public office by both Mr. Boyce and the Prime Minister acting through the Permanent Secretary. It was usual at the start of the year to set dates for meetings and for directions to be given by Ministry representatives. The Chairman was aware of this and subsequently requested this matter to be referred to Cabinet.
23. With respect to paragraph 30 of the Claim the Prime Minister acted in a way that is usual and representative of the way Cabinet and its Ministers as representatives of the Government and the sole shareholder of Government owned companies have always performed. This direction and guidance was and is consistent with the practice with respect to companies owned by the Government.
24. The Second Defendant admits paragraph 31 of the Claim.

25. With respect to paragraph 32 the Second Defendant denies that the directions of the Prime Minister are further and manifest evidence of the tort of intentionally causing loss by unlawful means and tortuous interference by the Cabinet and/or the Prime Minister with the contractual or business relations between the First Defendant and the Claimant. It is further denied that the said directions amounted to acts of coercion and intimidation of the Board which were deliberately designed and intended to hurt the Claimant and constitutes acts of misfeasance in public office. It is also denied that the Prime Minister and the Cabinet were reckless as to whether they caused the Claimant harm. The Prime Minister acted in a way that is usual and representative of the way Cabinet and its ministers as representatives of the Government and the sole shareholder of Government owned companies have always performed. The direction and guidance was and is consistent with the practice with respect to companies owned by the Government.

26. With respect to paragraph 34 of the Claim the Second Defendant denies that the tone and substance of the options given to the Board by the Prime Minister at the meeting referred to therein were unlawful and constituted acts of intimidation and/or coercion of the First Defendant. Further there was no manifest and further

acts of misfeasance in public office or act of tortuous interference. The Prime Minister acted in a way that is usual and representative of the way Cabinet and its ministers as representatives of the Government and the sole shareholder of Government owned companies have always performed. The direction and guidance was and is consistent with the practice with respect to companies owned by the Government.

27. The Second Defendant denies that the directions set out in paragraphs 31 and 34 of the Claim constituted an unlawful stratagem adopted by the Prime Minister and/or Cabinet and/ or Mr. Boyce to subvert the tender process and ensure the award of the contract to SMI regardless as alleged in paragraph 35. The Prime Minister acted in a way that is usual and representative of the way Cabinet and its ministers as representatives of the Government and the sole shareholder of Government owned companies have always performed. The direction and guidance was and is consistent with the practice with respect to companies owned by the Government.

28. The Second Defendant does not admit that the withdrawal from the meeting was intended to deprive the meeting of a quorum and so prevent the Board from formally confirming that it had agreed

not to enter into an agreement with SMI. The Permanent Secretary was careful to point out the proper procedure in bringing matters to the Board for decision.

29. With respect to paragraphs 41, 42 and 43 of the Claim the Second Defendant denies that the submission of a bid, the communication referred to and the appointment of a preferred bidder creates a contract as alleged or at all.
30. With respect to paragraphs 45 and 46 of the Claim the Second Defendant states that the selection of a preferred bidder does not give rise to a contract therefore this claim and quantification is not properly grounded in law.
31. The Second Defendant denies as alleged in paragraph 49 of the Claim that the Prime Minister and/or the Cabinet and/or Mr. Boyce knew of any agreement between the Claimant and the First Defendant and wrongfully induced and procured the First Defendant, by means of wrongful threats and intimidation and in breach of its obligation to, among other things, act in bad faith, to enter into discussion with SMI to revoke the Claimant's preferred bidder status and to enter into a Memorandum of Understanding with SMI and award preferred bidder status to another contractor

who did not submit a bid for the Project. At the time the Memorandum of Understanding was under discussion the bid validity period had expired.

32. Save as herein expressly admitted or not denied the Second Defendant denies each and every allegation contained in the Claim.

I, JUANITA THORINGTON-POWLETT, Permanent Secretary (Investment) and Board member of the Barbados Tourism Investment Inc. certify that I believe that the facts stated in this Defence are true.

My address for service is: Attorney General's Chambers
Spencer Building
Webster Business Park
Willey
St. Michael, BB14006

Dated the 1st day of MARCH 2012.

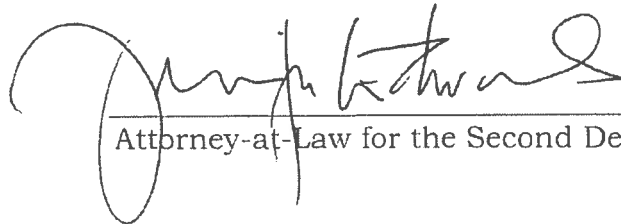


JUANITA THORINGTON-POWLETT
Permanent Secretary (Investment)

We are acting for the Second Defendant, and our address for service is:

Attorney General's Chambers
Spencer Building
Webster Business Park
Willey
St. Michael, BB14006

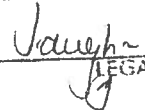
Dated the 1st day of March 2012.



Attorney-at-Law for the Second Defendant

The Registry is located at The Law Courts, Bridgetown, telephone number (246) 434-9970, FAX (246) 426-2405. The office is open to the public between 8:15 a.m. and 3:30 p.m. Mondays to Fridays except on public holidays.

CERTIFIED A TRUE COPY


LEGAL ASSISTANT

This Defence is filed on behalf of the Second Defendant by **Jennifer C. Edwards, Q.C.** of and whose address for service is The Attorney General's Chambers, Spencer Building, Webster Business Park, Willey, St. Michael.

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