

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Claim No: SLUHCV2025/0194 formerly
SLUHCV2018/0503; 0504; 0505; 0506; 0507; 0508 & 0509

CONSOLIDATED CLAIMS:

**[1] SLUHCV2018/0503
BETWEEN:**

CLETUS JAMES

Claimant

-and-

PORTIA ST. CROIX

Defendant

**[2] SLUHCV2018/0504
BETWEEN:**

CLETUS JAMES

Claimant

-and-

JENIE GRANT EMMANUEL

Defendant

**[3] SLUHCV2018/0505
BETWEEN:**

CLETUS JAMES

Claimant

-and-

ANGELA LEWIS

Defendant

**[4] SLUHCV2018/0506
BETWEEN:**

CLETUS JAMES

Claimant

-and-

SHERMAIN ST. MARTHE

Defendant

[5] SLUHCV2018/0507
BETWEEN:

CLETUS JAMES

Claimant

-and-

PHILOMENA ALEXANDER

Defendant

[6] SLUHCV2018/0508
BETWEEN:

CLETUS JAMES

Claimant

-and-

SOPHIA JAMES

Defendant

[7] SLUHCV2018/0509
BETWEEN:

CLETUS JAMES

Claimant

-and-

LENA DALSON

Defendant

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances:

Mr. Thaddeus M. Antoine and Mr. Kenroy Justin for the Claimant.
Mrs. E. Petra Nelson, KC leading Mr. Sahleem Charles for the First,
Second, Third, Fourth, Sixth and Seventh Defendants.

2026: February 12 – Hearing
March 26 – Decision

JUDGMENT

Application to Strike Out/ Application for Extension of Time

INTRODUCTION:

[1] **PARIAGSINGH, J:** - By Fixed Date Claim Form filed on 15 October 2018, the Claimant seeks possession of property occupied by the Defendants. He also claims arrears of rent, mesne profits, interest and costs.

- [2] The Defendants filed their Acknowledgments of Service and their Defences and Counterclaims on 21 November 2018.
- [3] By their Counterclaims, the Defendants seek declaratory relief that they have made improvements to the property and are entitled to compensation for those improvements. Alternatively, they contend that they are entitled to purchase the portions of land which they occupy, taking into account the value of those improvements. They also claim damages, interest and costs.
- [4] By affidavit of service filed on 26 November 2018, it is deposed that the Defence and Counterclaim were served on the Claimant's legal practitioner on 22 November 2018 at 3:55 p.m.
- [5] At the time the claim was commenced, possession proceedings were brought by Fixed Date Claim Form. The first hearing, initially scheduled for 19 May 2019, was rescheduled and heard on 18 July 2019. At that hearing, the matters were consolidated, and the parties were referred to mediation.
- [6] On 30 October 2019, the Defendants applied to strike out the Claimant's Reply and Defence to Counterclaim, which had been filed on 23 October 2019. On 31 October 2019, the Claimant filed an application seeking an extension of time pursuant to Rule 26.9 of the Civil Procedure Rules 2000.¹ The matter was adjourned, and directions were later given for the hearing of both applications.

THE APPLICATIONS:

The Application to Strike Out

- [7] The Defendants² apply to strike out the Reply and Defence to Counterclaim on the basis that it was filed out of time and without leave, and that it disclosed no reasonable ground for defending the Counterclaim.

¹ Hereinafter "CPR/ the Rules".

² All references to the Defendants mean all Defendants except the Fifth Defendant.

The Application for Extension of Time

[8] The Claimant seeks an order pursuant to CPR 26.9 that he be permitted to put matters right and that his Reply and Defence to Counterclaim be deemed properly filed. The explanation advanced is that there were difficulties obtaining instructions from an overseas agent and that there were attempts at settlement.

ISSUES:

[9] The issues for determination are:

- 1) Whether there was non-compliance with the Rules;
- 2) Whether the Reply and Defence to Counterclaim discloses a reasonable ground for defending the Counterclaim;
- 3) Whether the delay should be excused and time extended under CPR 26.9;
- 4) Whether the balance of justice and proportionality lies in favour of granting the application.

APPLICABLE LAW:

[10] The Court's power to strike out a statement of case is governed by CPR 26.3. The rule permits the Court to strike out where there has been non-compliance with the Rules, where the statement of case discloses no reasonable ground for bringing or defending a claim, or where it amounts to an abuse of process. This jurisdiction must be exercised cautiously. As stated in **Barbados Rediffusion Services Ltd v Mirchandani**³, striking out is a serious step which deprives a party of a hearing on the merits and should not be lightly taken. The Court must therefore consider whether a less drastic remedy would suffice, as emphasised in **Real Time Systems Ltd v Renraw Investments Ltd**.⁴

[11] In determining whether a pleading discloses any reasonable ground for defending the counterclaim, the Court is concerned with the content of the pleading itself. Under CPR

³ [2005] CCJ 1 (AJ).

⁴ [2014] UKPC 6.

10.5, a party must set out the facts on which it relies, provide reasons for any denial and, where appropriate, advance its own version of events. A pleading consisting of bare denials or general non-admissions will ordinarily be regarded as defective.

[12] It is also important to distinguish a strike-out application from one for summary judgment.

In **Didier et al v Royal Caribbean Cruises Ltd**⁵, the Court of Appeal made clear that a strike-out application is determined solely on the pleadings, with the pleaded facts assumed to be true, and does not require affidavit evidence. The Court is not engaged in a fact-finding exercise but rather in assessing whether the pleading is legally sufficient.

[13] Where no specific sanction is prescribed, CPR 26.9 gives the Court a broad discretion to rectify procedural failures. As explained in **Guy Eardley Joseph v MBC**⁶, this discretion is to be exercised in accordance with the overriding objective and involves consideration of factors such as the length of delay, the reasons for the delay, the prospects of success and the degree of prejudice.

[14] Finally, although the Rules do not impose an automatic sanction for failure to file a defence within time, as clarified in **Attorney General v Matthews**⁷, such failure exposes the defaulting party to procedural consequences. The Court retains control over its process and may intervene to ensure fairness and efficiency.

ANALYSIS:

Non-Compliance with the Rules

[15] The starting point in this matter is the question of whether there was non-compliance with the Rules in relation to the filing of the Defence to Counterclaim. On the evidence before the Court, that issue admits of little controversy. The Defence and Counterclaim were served on 22 November 2018. In accordance with CPR 10.14, the Claimant was required to file a Defence to Counterclaim within 28 days of service. That period expired

⁵ SLUHC VAP2014/0024 (unreported).

⁶ [2023] CCJ 15 (AJ) LC.

⁷ [2011] JCPC 38.

in or about December 2018. The Claimant, however, did not file his Defence to Counterclaim until 23 October 2019, some eleven months after the prescribed time.

[16] This delay is not insignificant. It is, by any measure, substantial. The Rules governing timelines for pleadings are not merely aspirational, they are intended to ensure that litigation proceeds in an orderly, efficient and fair manner. When a party fails to comply with those timelines, particularly for such an extended period, it disrupts the procedural framework within which the case is to be managed and determined.

[17] It is also material that the Claimant took no steps to regularise his position within the time prescribed by the Rules. The Rules expressly permit a party to seek an extension of time, either by agreement with the opposing party or by application to the Court.

[18] No such step was taken prior to the expiry of the relevant period. Indeed, the Claimant's application for an extension of time was only filed on 31 October 2019, after the Defendants had already filed their application to strike out on 30 October 2019. That sequence of events is significant. It suggests that the Claimant's application was reactive rather than proactive, and that the failure to comply was not addressed until it was brought into sharp focus by the Defendants' application.

[19] In any event, the Claimant's application, although clearly an afterthought, was filed after the application to strike out. Once an application to strike out is filed, the claim treated as stayed according to the Court of Appeal in **The Attorney General of Saint Lucia v Darrel Montrope**⁸.

Prospects of Success and Sufficiency of the Pleading

[20] In determining whether the Defence to Counterclaim should be struck out, the Court reminds itself that this is not an evidential exercise. The Court is not concerned, at this stage, with whether the Claimant can prove his case. Rather, the Court must examine the pleading itself, assume the pleaded facts to be true and determine whether, on its face, it discloses a reasonable ground for defending the Counterclaim. This approach

⁸ SLUHCVP2019/0021

was affirmed by the Court of Appeal in **Didier et al v Royal Caribbean Cruises Ltd**, which makes clear that a strike-out application is decided solely on the pleadings and not on evidence.

[21] Against that framework, the Court has carefully considered the content of the Reply and Defence to Counterclaim. The difficulty for the Claimant is that the pleading does not meaningfully engage with the substance of the Counterclaim. The Defendants' case, as pleaded, is that they carried out improvements to the property and have thereby acquired an equitable entitlement, whether by way of compensation or a right to purchase. That is the central issue raised for determination.

[22] The Defence to Counterclaim, however, does not confront that issue in any substantive way. Instead, it adopts a generalised approach. It repeats earlier pleadings and states that no admissions are made to various paragraphs of the Counterclaim, putting the Defendants to strict proof. Importantly, while the Claimant does state generally that some unsanctioned improvements were made, he does not make any admissions to the specific improvements particularised by the Defendants in their Counterclaim and whether each was authorised or not. Further, there is no indication of what legal consequence is said to follow from them.

[23] This manner of pleading falls short of the requirements of CPR 10.5. The Rules require a party not only to deny allegations but to provide reasons for those denials and, where appropriate, to set out its own version of events. The purpose of this requirement is to ensure that the issues between the parties are properly defined at an early stage, thereby enabling the Court to manage the case efficiently and fairly. A pleading which consists merely of broad denials and non-admissions does not fulfil that function.

[24] The Court is mindful that not every deficiency in a pleading will justify striking it out. In some cases, defects can be cured by amendment, and the Court will ordinarily favour that course where a viable case is discernible. However, this is not simply a case of imperfect drafting. The Defence to Counterclaim, even when read generously and in the context of the Claimant's overall case, fails to articulate any coherent or positive

response to the Counterclaim. It does not identify the factual or legal basis upon which the Claimant resists the Defendants' asserted entitlement arising from improvements.

[25] In those circumstances, the Court is unable to conclude that the Defence to Counterclaim discloses any reasonable grounds for defending the counterclaim. Even taking the pleading at its highest, it does not advance a recognisable defence to the claim being made. It leaves the Defendants, and the Court, without any clear understanding of the case that is being put forward in answer to the Counterclaim.

[26] Accordingly, the deficiency is not merely technical but substantive. It goes to the heart of the pleading. In a case such as this, where the Defence to Counterclaim fails to engage with the essential issues and does not comply with the basic requirements of the Rules, it is properly to be regarded as disclosing no reasonable ground for defending the Counterclaim. That is a matter which squarely engages the Court's jurisdiction under CPR 26.3 and supports the order for striking out.

[27] Accordingly for these reasons, the Defendants' application must succeed.

[28] In the event that I am wrong, and the Claimant's application for an extension falls to be determined. Having considered same and the evidence in support, I would not have exercised my discretion to grant it for the following reasons.

Length and Explanation for the Delay

[29] In this case, the Defence to Counterclaim was filed approximately eleven months after the prescribed time. That delay is plainly substantial and cannot be regarded as minor or technical. It represents a clear departure from the timelines established by the Rules and calls for a satisfactory and credible explanation.

[30] The explanation offered by the Claimant is that his agent was overseas and unavailable, and that there were ongoing efforts at settlement. However, this explanation is not supported by any sufficient or cogent evidence. There is no evidence before the Court detailing the nature or duration of any settlement discussions, nor is there evidence demonstrating that such discussions prevented compliance with the Rules. As the

Defendants have submitted, assertions made in submissions, without supporting affidavit evidence, cannot be treated as proof of the matters alleged.

[31] Further, even if the Court were to accept that there were some difficulties in obtaining instructions, that does not explain the entirety of the delay, nor does it justify the complete failure to take procedural steps within the time required.

[32] The Rules provide clear mechanisms for addressing such situations, including seeking an extension of time either by agreement or by application to the Court. No such steps were taken within the relevant period. Instead, the Claimant only moved to regularise his position after the Defendants filed their application to strike out. That sequence of events significantly undermines the credibility of the explanation offered.

[33] It is also important to note that the mediation referral, which occurred in July 2019, does not assist the Claimant. By that time, the Claimant had already been in default for several months. Participation in mediation cannot retrospectively justify or excuse an earlier failure to comply with the Rules.

[34] In all the circumstances, the Court finds that the delay is inordinate, and that the explanation provided is inadequate. This is a factor which weighs heavily against the exercise of the Court's discretion in favour of the Claimant.

Effect of Mediation

[35] The Claimant places some reliance on the fact that the parties were referred to mediation and engaged in settlement efforts, suggesting that this somehow mitigates or excuses the delay in filing the Defence to Counterclaim. The Court is unable to accept that submission.

[36] The chronology is important. The Defence to Counterclaim was due in or about December 2018. The referral to mediation did not occur until July 2019, at which point the Claimant had already been in default for several months. The mediation process therefore arose well after the breach had occurred and cannot retrospectively justify or cure that earlier non-compliance.

Balance of Justice and Proportionality

[37] The final matter for consideration is where the balance of justice lies, having regard to the overriding objective and the need for a proportionate response. The Court is required to consider whether, in all the circumstances, it would be just to permit the Claimant to rely on the late-filed Defence to Counterclaim.

[38] In the present case, several factors weigh against granting the indulgence sought by the Claimant. The delay is substantial and unexplained, no timely steps were taken to regularise the default, and the explanation advanced is inadequate. More importantly, the Defence to Counterclaim itself discloses no reasonable grounds of defending the counterclaim. To permit it to stand would be to allow the proceedings to continue on the basis of a pleading that does not properly engage with the issues in dispute.

[39] The Court must also consider the position of the Defendants. They are entitled to have the proceedings conducted in accordance with the Rules and to know the case they have to meet. To require them to defend a claim against a deficient and belated pleading would occasion unnecessary delay and expense and would not further the overriding objective.

[40] In these circumstances, the Court is not persuaded that a lesser remedy, such as granting an extension of time or permitting an amendment, would be appropriate. There is no indication that the deficiencies in the Defence to Counterclaim could be cured in any meaningful way, and to allow further time would serve only to prolong the litigation without advancing its resolution.

[41] Accordingly, the Court finds that the balance of justice and proportionality favours the refusal of extension sought. While the Court remains slow to deprive a party of the opportunity to be heard, this is not a case in which the interests of justice are served by extending that indulgence.

[42] Given that this is a fixed date claim, the issue of default judgment does not arise. I will therefore give directions geared a disposition by trial of this claim.

ORDERS:

[43] For the reasons above, I make the following orders:

- 1) The Defendants' application to strike out is granted.
- 2) The Claimant's Reply and Defence to Counterclaim filed on 23 October 2019 are struck out.
- 3) The Claimant's application for an extension of time is refused and is accordingly dismissed.
- 4) The Claimant shall pay the Defendants' costs of both applications to be summarily assessed in default of agreement within 21 days.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar of the High Court