

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2023/0343

BETWEEN:

BEVERLEY RAMSAY
BARRINGTON REID

Claimants

And

DONNA LAWRENCE

Defendant

Appearances:

Mr. Septimus Rhudd for the Claimants
Mr. Jarid Hewlett for the Defendant

2024: March 12th;
September 27th

JUDGMENT

[1] **WILLIAMS, J.:** This matter is a dispute between former friends in relation to a house located at Tristan Drive, Cedar Valley, Antigua. The Claimants Ms. Beverley Ramsay and Mr. Barington Reid are the owners of the property. The Defendant Donna Lawrence was until recently in occupation of the property.

[2] Essentially the Claimants allege that the Defendant occupied their home pursuant to a lease agreement which contained an option to purchase the property. They allege that the Defendant has since failed to pay the agreed monthly rent of US\$1500.00. They thus commenced proceedings by Fixed Date Claim filed on 28th September 2023 seeking possession of the premises.

[3] The Defendant by Defence and Counterclaim filed on 26th October 2023 disputed the claim. The Defendant alleges that she entered into an arrangement with the First Claimant to purchase the property for EC\$900,000.00. Rather than finance the purchase through a bank or other financial institution, the Defendant would pay by instalments through her “box hands.” It is necessary to outline the concept of a “box” for those who may be unfamiliar.

[4] A “box” is an informal community savings scheme where a group of people pay an agreed sum of money on a periodic basis. At each period one member of the group takes all the money that has been paid.¹ This payment is referred to as a “hand.” These savings schemes are common in Antigua and Barbuda and the Eastern Caribbean where they are known by various names.

[5] The Defendant alleges that she made to the following payments to the First Claimant pursuant to their agreement and counterclaimed for refund of the same as follows:

- (i) EC \$32,800.00 as purchase deposit
 - (ii) EC \$50,000.00 as box hand payments towards the purchase price
 - (iii) EC \$1,116.25 as property tax
- Total: \$83,915.25

[6] At trial on 19th March 2024, the Defendant stated under oath that she was seeking a refund of the monies paid and was willing to vacate the property. Accordingly, after trial I gave judgment for the Claimants in the following terms:

1. The Defendant shall vacate the premises located at Tristan Lane, Cedar Valley on land registered as Registration Section: Hodges and Thibous; Block 43 1896A; Parcel 612 on or before 31st May, 2024;
2. Should the Defendant fail to vacate the premises as aforesaid, mesne profits to be assessed by the Court will be imposed.
3. The Parties to file written submissions with authorities on the Defendant’s counterclaim by 15th April 2024.

¹ See generally Caribbean Dictionary <https://wiwords.com/words/box-money> Accessed 18th September 2024

4. A decision on the Defendant's counterclaim will be delivered on a date to be notified by the court office.

[7] In accordance with the above directions the Claimants filed their written closing submissions on 15th April 2024. The Defendant sought an extension of time to comply with the said order and filed closing submissions on 26th April 2024.

The Counterclaim

[8] The Defendant's Counterclaim filed on 26th October 2023 is pleaded as follows:

"23. And as to the Counterclaim, the Defendant repeats paragraphs 1-11 and 15 of the Defence filed herein.

24. Pursuant to the oral agreement for sale, evidence of which is contained in the signed draft lease, the parties had agreed that payment of the purchase price of \$900,000.00 would be made in instalment payments of varying amounts upon the Defendant receiving her "box hand" money. Due to the financial problems of the 1st Claimant, she breached the said oral agreement and has now filed a claim falsely claiming that there was a lease agreement and demanding that the Defendant vacate the premises.

25. As there was never any agreement to rent, and the only agreement between the parties was for the purchase of the property; if the Claimants want the Defendant to vacate the premises, she is willing to do so once the sums expended by her i.e. \$83,916.25 are refunded to her."

26. In the circumstances, the Defendant-Ancillary Claimant claims

1. An order that the Claimants do pay the Defendant the sum of \$83,916.25 which sum represents payments made pursuant to an agreement for sale of property.
2. Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act from May 2022 until judgment
3. Interest at 5% per annum pursuant to section 7 of the Judgments Act from the date of judgment until liquidation of the judgment sum.
4. Costs
5. Any further and other relief the Honourable Court deems fit.

Defence to Counterclaim

[9] The Claimants in their Defence to Counterclaim filed on 17th November 2023 stated as follows:

“The Claimants dispute the Counterclaim on the following grounds:

1. The Claimants deny that there is any agreement for the sale of the Claimants, property to the Defendant as is alleged in Paragraph 24 of the Counterclaim. The first Claimant denies that she is in breach of a non-existent agreement upon which the Defendant relies. The Defendant will be put to strict proof of the existence of a valid sales agreement for the purchase of the Claimants' property.
2. The Claimants deny that there was any valid sales agreement for the purchase of the Claimants, property as is asserted in Paragraph 25 of the Counterclaim. The only agreement is an oral agreement made between the first Claimant and the Defendant for the rental of the Claimants, property at a monthly rental of US\$1,500.00. The Defendant has failed or refused to make the agreed payment and is in breach of the said oral agreement, Further, the Claimants deny that the Defendant is entitled to the sum of \$83,916.25 or any other amount as a refund for payments made.
3. The Claimants deny that the Defendant is entitled to any of the reliefs claimed in Paragraph 26 of the Counterclaim.

[10] In his written closing submissions Mr. Hewlett framed the counterclaim as a claim in unjust enrichment. However, he readily admits that unjust enrichment was not specifically pleaded by the Defendant.² He relies on the Privy Council decision of **Samsoondar v. Capital Insurance Company Ltd.**³ to support his submission that it is not necessary to use the exact words “unjust enrichment” in pleading such a claim.

[11] Before examining **Samsoondar v. Capital Insurance Company Ltd** in greater detail it is first necessary to generally outline the role of pleadings in civil litigation. In **Saint Lucia Motor and General Insurance Co. Ltd v. Peterson Modeste**⁴ the Court of Appeal outlined the purpose of pleadings as follows:

² Defendant's Closing Submissions- paragraph 20

³ [2020] UKPC 33

⁴ Saint Lucia Motor and General Insurance Co. Ltd v. Peterson Modeste, SLUHCVP2009/0008 (delivered 11th January 2024) at paragraph 19

“...In **British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd** Saville LJ said that the basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. This was a pre-CPR case, but the principle nonetheless essentially remains intact under the current CPR regime.”

[12] Ellis J. (as she then was) stated the following with respect to pleadings in **Shankiell Myland v. Commissioner of Police**⁵:

“[37] Litigation proceeds on the basis that the court is a court of pleadings. They are critical in that they give fair notice of the case that has to be met, so that the opposing party may direct its evidence to the issues disclosed and they assist the court in adjudicating on the allegations made by the litigants. Not only should they define the issue(s) between litigants with clarity and precision, but they also serve as a record of the issues involved in the action which can (if necessary) be referred to at a later date.”

[13] With these general principles in mind, the central issue of whether a claim for unjust enrichment has been sufficiently pleaded in the Defendant’s Counterclaim will now be examined. The Privy Council in **Samsoondar v. Capital Insurance Co. Ltd**⁶ stated the following with respect to pleading unjust enrichment:

“It has now become conventional to recognise (see, e.g., *Benedetti v Sawiris* [2013] UKSC 50; [2014] AC 938, para 10 and *Investment Trust Companies v Revenue and Customs Comrs* [2017] UKSC 29; [2018] AC 275, paras 24, 39-42) that a claim in the law of unjust enrichment has three central elements which the claimant must prove: that the defendant has been enriched, that the enrichment was at the claimant’s expense, and that the enrichment at the claimant’s expense was unjust. If those three elements are established by the claimant, it is then for the defendant to prove that there is a defence. The ideal pleading of a statement of case by the claimant should indicate that the claim is for restitution of unjust enrichment and should identify facts that satisfy each of those three elements. While it may be desirable, it is not essential, that the words “unjust enrichment” are used but the claimant must identify sufficient facts to show how those three elements are satisfied: see *Goff and Jones, The Law of Unjust Enrichment* (eds Mitchell, Mitchell and Watterson, 9th ed (2016), para 1-38). The important purpose of a statement of case is to ensure, as a matter of fairness, that the defendant knows the case it has to meet.”

⁵ *Shankiell Myland v. Commissioner of Police*, GDAHCV2012/0045 (delivered 9th May 2014)

⁶ [2020] UKPC 33 at paragraph 18

[14] Do paragraphs 25 to 26 of the Counterclaim sufficiently identify the elements of an unjust enrichment claim as outlined in **Samsoondar v. Capital Insurance Co. Ltd?** In terms of the first requirement, namely whether the Claimant has been enriched, I believe that the Defendant has satisfied this element. The Defendant's pleadings satisfy this requirement as she alleges that she has paid \$82,300.00 to the First Claimant plus the sum of \$1,116.25 in respect of property taxes for the property.

[15] The second element is also satisfied as the monies (except for the property taxes) have directly from the Defendant to the First Claimant. Thus, it is apparent from the pleadings that the First Claimant has received a benefit at the Defendant's expense.

[16] It is the final element of an unjust enrichment claim namely the identification of an unjust factor which I doubt has been sufficiently articulated. In **Samsoondar** the Privy Council examined this element of an unjust enrichment claim in great detail. The Board stated at paragraph 19 of the decision as follows:

"Moreover, as regards the third of those elements, the claimant must identify what was referred to by counsel for the claimant - using the term coined by Peter Birks (see, e.g., "Unjust Enrichment - a Reply to Mr Hedley" (1985) 5 Legal Studies 67, 71; Restitution - the Future (1992), p 41) - as the "unjust factor" and is sometimes alternatively referred to as the ground for restitution. See Goff and Jones, The Law of Unjust Enrichment (eds Mitchell, Mitchell and Watterson, 9th ed (2016), para 1-21). Examples of unjust factors are mistake, duress, undue influence, failure of consideration, necessity and legal compulsion. For judicial acceptance of the need for, and terminology of, an unjust factor, see, e.g., Kleinwort Benson Ltd v Lincoln City Council [1999] 2 AC 349, 408-409 per Lord Hope; Chief Constable of the Greater Manchester Police v Wigan Athletic AFC Ltd [2008] EWCA Civ 1449; [2009] 1 WLR 1580, paras 50, 62 and 67; Test Claimants in the FII Group Litigation v Revenue and Customs Comrs [2012] UKSC 19; [2012] 2 AC 337, para 81, per Lord Walker."

[17] The Defendant's Counterclaim does not sufficiently identify the unjust factor which is necessary in a claim for unjust enrichment. As outlined in **Samsoondar** quoted above, examples of unjust factors are mistake, duress, undue influence, failure of consideration and legal compulsion. Mr. Hewlett in his written submissions attempts to identify the unjust factor in this case as failure of consideration. However, closing

submissions do not replace pleadings and the facts which prove the alleged failure of consideration must therefore be contained in the Counterclaim itself.

[18] Is it possible to identify failure of consideration or to use the modern terminology “failure of basis”⁷ in the Counterclaim? In **Barnes v. Eastenders Cash and Carry PLC**⁸ the UK Supreme Court accepted the following definition of failure of consideration:

“A succinct summary of the meaning of failure of consideration was given by Professor Birks in his *An Introduction to the Law of Restitution* (1989), p 223 (cited with approval by the Court of Appeal in *Sharma v Simposh Ltd* [2013] Ch 23, para 24):

Failure of the consideration for a payment . . . means that the state of affairs contemplated as the basis or reason for the payment has failed to materialise or, if it did exist, has failed to sustain itself.”

[19] In my view the Counterclaim does not identify the alleged failure of consideration. Paragraph 24 of the Counterclaim simply states that the First Claimant has breached the oral agreement between herself and the Defendant. This could be construed as a claim for breach of contract and not an unjust enrichment claim.

[20] Paragraph 25 simply states the Defendant’s intention to remain in possession of the premises unless she is refunded the sums allegedly paid. This does not identify an unjust factor but is simply stating the condition upon which the Defendant is willing to vacate the premises.

[21] As previously stated, the purpose of pleadings is to give the other party sufficient notice of the case which he or she has to meet. In this case it is noteworthy that in the Defence to the Counterclaim and in written closing submissions Mr. Rhudd on behalf of the Claimants made no mention of unjust enrichment. This is not surprising

⁷ *Barnes v. Eastenders* [2015] AC 1 at paragraph 105

⁸ *Barnes v. Eastenders* [2015] AC 1 at paragraph 107

as this cause of action was not sufficiently pleaded to permit Mr. Rhudd to adequately respond.

[22] In **George W. Bennet Brysons & Co v. George Purcell**⁹ the Court of Appeal stated:

“It is trite law that a party is bound by its pleadings. The importance of the court taking a neutral stance and adjudicating only the pleaded case was reiterated by the Malaysian Federal Court in **RHB Bank BHD v Kwan Chew Holdings SDN BHD** where James Foong FCJ said:

“...it is not the duty of the court to invent or create a cause of action or a defence under the guise of doing justice for the parties lest it be accused of being biased towards one against the other. The parties should know best as to what they want and it is not for the court to pursue a cavalier approach to solving their dispute by inventing or creating cause or causes of action which were not pleaded in the first place. Such activism by the court must be discouraged otherwise the court would be accused of making laws rather than applying them to a given set of facts.”

[23] Applying the above-guidance I find that unjust enrichment has not been sufficiently pleaded in the Defendant's Counterclaim. Were I to permit the Defendant to advance a claim in unjust enrichment, I would be in effect permitting the Defendant to argue case which the Claimant has not had an adequate opportunity to respond to. Accordingly, I have no alternative but to dismiss the counterclaim.

Costs

[24] Although costs usually follow the event, I note that I did not order costs in respect of the Claimants' claim. Accordingly, I will similarly make no order as to costs in respect to this counterclaim.

Order

[25] The court therefore orders as follows:

⁹ George W. Bennet Brysons & Co v. George Purcell, ANUHCv2011/0023 (delivered 28th February 2018) at paragraph 39

1. The Defendant's counterclaim filed on 26th October 2023 is dismissed.
2. No order as to costs.

Rene Williams

High Court Judge



By The Court

Registrar