

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: SLUHCV2019/0536

BETWEEN:

REGIS HIPPOLYTE

Claimant

And

MESHANA HIPPOLYTE

Defendant

BEFORE: His Lordship, the Honourable Justice Rohan A Phillip
(Judge via Zoom)

APPEARANCES: Mrs Andra Gokool-Foster of Counsel for the Claimant
Ms Mertle John of Counsel for the Defendant

PRESENT: Regis Hippolyte, Claimant
Meshana Hippolyte, Defendant

2021: March 5;
2023: August 24.

DECISION

Background/Nature of Proceedings

[1] This is the joint hearing of two applications. On 7th October 2020, the defendant applied according to CPR 26.4 for an ‘unless order’ against the claimant for breach of the court order dated 27th February 2020 or that the claimant’s application to strike out the amended defence be dismissed. On the other hand, on 5th February 2021, the claimant applied for, among other things, the defendant’s defence and counterclaim, amended defence and counterclaim, and notice of application for an unless order filed herein to be struck out and dismissed.

- [2] Following is a brief chronology that would be helpful to understanding how we arrived at this stage: On 6th November 2019, the claimant filed a fixed date claim and statement of claim against the defendant, to which the defendant filed a defence and counterclaim on 4th December 2019. The claimant filed a reply and a defence to the counterclaim on 24th December 2019, and the defendant filed a reply to the defence to the counterclaim on 7th January 2020. On 29th January 2020, the defendant filed an amended defence and counterclaim.
- [3] The matter was initially fixed for the first hearing on 30th January 2020, but the court office rescheduled it to 27th February 2020. When the case came up for hearing, the claimant objected to the defendant's amended defence and counterclaim and indicated that it should be struck out. The court declined to entertain an oral application. It adjourned the case to 23rd April 2020, indicating it will consider then any application before it for determination.
- [4] The case was rescheduled to 8th October 2020 and further rescheduled to 24th November 2020 and 14th January 2021 without a hearing due to the disruptions caused by COVID-19. By 8th October 2020, the claimant had not taken any further steps in the interim, so the defendant applied for the unless order. The claimant subsequently applied on 5th February 2021 to strike out the defendant's defence and counterclaim, amended defence and counterclaim and the unless-order application.

Application for Unless Order

- [5] I propose dealing first with the defendant's application for the unless order. It was filed first in time and could be disposed of shortly. The grounds of the application were that the claimant, who had ample opportunity to comply, had failed to set out the application to strike out the defendant's amended defence and counterclaim in writing and to serve the defendant with the application in the stipulated timeline.
- [6] I believe this application was misconceived because there was no order mandating the claimant to apply to strike out the defendant's amended defence, and there was no pending application (oral or otherwise) before the court. The court had decided not to entertain an oral application from the claimant and indicated its willingness to consider such an application before it on the next occasion. This was the nature of the court order dated 27th February 2020, which states:

“UPON the matter coming up for hearing of the Claim

AND UPON HEARING Counsel for the parties

AND Counsel for the Claimant indicating that her client resides overseas due to employment purposes and could not be here; and that the Claimant objects to the filing of the amended Defence that should be struck out.

AND UPON THE COURT not being able to consider an oral application by the Claimant directed that the application to strike out the amended Defence be put in writing.

IT IS HEREBY ORDERED

1. The matter is adjourned to the 23rd April 2020 for hearing at which point the Court will consider any application that is before it for determination.”

[7] Consequently, this application is dismissed with no order as to costs.

Application to strike out and dismiss the defence, etc.

[8] The claimant’s application seeks the following orders:

1. An order that the defence and counterclaim and the amended defence and counterclaim, together with the notice of application for an unless order filed by the defendant in the action herein, be struck out and dismissed.
2. An order that the defence and counterclaim and amended defence and counterclaim of the defendant demonstrate no reasonable grounds for defending the claim and are otherwise an abuse of the process of the court.
3. If deemed necessary by the court, an order that the claimant’s reply to the defence and defence to the counterclaim filed on 24th December 2019 stands as his reply to the amended defence and defence to the counterclaim of the defendant filed on 29th January 2020.
4. The court grants the claimant the reliefs sought in the fixed date claim and statement of claim filed on 12th December 2019.
5. The defendant bears all of the claimant’s costs of and occasioned by this application and these proceedings.
6. Such other order as the court deems fair and expedient for the just disposal of the case.

[9] The grounds of the application are as follows:

1. The defendant's defence demonstrates no reasonable grounds for defending the claim.
2. The defendant's defence was an abuse of the process of the court as it was intended to obstruct the just disposal of the claimant's claim and to thwart the ends of justice.
3. The defendant's defence is clad in frivolities as it is abjectly hopeless and clearly lacking in *bona fides*.
4. The defendant's defence is pointless and wasteful in that the objective the defendant seeks to achieve is merely to prevent the inevitable handing over of the claimant's property.
5. There is no triable issue as there can conceivably be no dispute between the parties, which requires a fully conducted trial to hear evidence to determine where the truth lies.
6. The case involves no point of law in dispute or for which there is a grey area of law that requires legal submissions and authorities in support.
7. The defendant has no legal/equitable/beneficial interest in or to the claimant's property.
8. The defendant is not a *bona fide* purchaser for valuable consideration.
9. The defendant never acquired an overriding interest under section 28 of the Land Registration Act¹.

[10] On 12th February 2021, the defendant filed a notice of objection to the claimant's striking-out application, among other things, contending as relevant to this application that: The claimant's application is an obstruction to the proper administration of this case and an attempt to prevent the matter from being properly ventilated in the court and allowing the defendant access to justice. It is an attempt to silence the defendant and prevent the full disclosure of the facts of the case. The claimant's application is frivolous, an abuse of the court process and an attempt to deny the defendant access to justice and her day in court. Therefore, the court should strike out or dismiss the claimant's application.

The claimant's case

[11] The claimant filed on 26th February 2021 written submissions on the application and skeleton arguments in response to the defendant's notice of objection to the strike-out application. He advanced that the pleadings, as contained in the defence and counterclaim and amended defence

¹ Cap 5.01 of the Revised Laws of Saint Lucia

and counterclaim, disclose no viable issue of fact, law or mixed fact and law which necessitates a trial, and the High Court ought not to order that the matter be proceeded with. Therefore, the High Court ought to make a resolute stand and strike out the case.

- [12] Furthermore, the claimant asserts that the fundamental question which arises for deliberation on the claim form and statement of claim is whether the defendant has an interest in the property of the claimant, which is raised in the defence and amended defence, and which requires the court to determine the veracity of the defence and amended defence. Nothing can be elucidated and clarified in the defence and amended defence by standard disclosure, listing questioners, pre-trial memorandum, witness statements, evidence-in-chief, cross-examination, re-examination and submissions. Therefore no useful purpose can be served by continuing the matter.
- [13] The initial defence of the defendant contained no factual basis for concluding that there was an arguable case with a realistic prospect of success, as nothing resembles the slightest bit of evidence that showed either a beneficial, legal, equitable or proprietary interest which the defendant held in the property of the claimant. The amended defence is a recent invention, an afterthought, a novel fabrication and a new-fangled concoction in the hope of embellishing a tenuous defence which was never alluded to in the first defence. Thus, an estoppel arises against the defendant as there is an approbation that she was prepared to vacate the premises, clearly demonstrating the lack of interest in the property and now reprobation that she has a proprietary interest.
- [14] The defence and amended defence has failed to controvert the assertions and claims made in the statement of claim regarding the claimant's absolute interest in the property under the laws of Saint Lucia. They failed to raise that: (1) There is a triable issue on the critical matter of property ownership, as there can conceivably be no dispute between the parties, which requires a fully conducted trial to hear evidence to determine where the truth lies; (2) The case involves a point of law in dispute or for which there is a grey area of law that requires legal submissions and authorities in support; (3) The defendant has a legal/equitable/beneficial interest in or to the claimant's property as there is not a fleck or fragment of evidence capable of raising a proprietary interest in the defendant; (4) The defendant is not a bona fide purchaser for valuable consideration; and (5) The defendant acquired an overriding interest under section 28 of the Land Registration Act or the Law of Property Act.

[15] The law on the issue of proprietary estoppel is well and truly settled by the highest appellate court, the Privy Council²; therefore, no jurisprudential grey area needs resolution. For proprietary estoppel to arise, there must be an unequivocal assurance made by one party to another that the other party must have relied on the assurances made; that as a consequence of the reliance made, there was detriment suffered; and there must be a mutual understanding between the parties regarding the assurances and its consequences. The claimant submits that there is no evidence in the pleadings alleging the proprietary interest that shows the fundamental factual prerequisites for establishing a proprietary interest. Moreover, the Privy Council accepted and fashioned its conclusion on establishing a proprietary interest and the pleading necessary to give rise to the equity. The promise must include an interest in the land itself which is the reward for the obligations the beneficiary must prove to have operated upon his mind.

The Defendant's Case

[16] By the notice of objection to the claimant's striking-out application and written submission filed on 1st March 2021, the defendant submitted the defence and counterclaim, and the amended defence and counterclaim disclosed reasonable grounds for defending the claim. The defendant had acquired a proprietary interest in the property based on the representations made to her by the claimant. Thus, the defence and counterclaim and the amended defence and counterclaim are not an abuse of the court's process or likely to obstruct the just disposal of the proceedings.

[17] The defendant submitted that the defendant's amended defence and counterclaim stand as the defendant's response to the claim; therefore, the claimant's application to strike out of the defence and counterclaim is frivolous. It has not met the requirements as per CPR 26.3 (1). The amended defence and counterclaim disclose reasonable grounds for defending the claim in that the documents disclose that the defendant has a right as per the proprietary estoppel established by her reliance to her detriment on the assurance/representations of the claimant. The amended defence and counterclaim is not an abuse of the process of the court or not likely to obstruct the just disposal of the proceedings. The defendant submitted that the amended defence and counterclaim was filed as per the CPR and have not obstructed the court process. Instead, the

² (1) Theresa Henry (2) Marie Ann Mitchell v Calixtus Henry, [2010] UKPC 3 (17 February 2010), paras 21-23

claimant's actions in filing the strike-out application were an abuse of the court process and an obstruction to the just disposal of the proceedings.

[18] The defendant further submits that the amended defence and counterclaim do not create fanciful situations but set out facts that occurred, and the case is not one where it is plain and obvious that a strike-out is appropriate. There are extensive issues that need to be dealt with at a trial. The claimant alleges that the defendant is a trespasser on his property and has failed to leave the same. However, the defendant's position is that she occupied the property at the behest of her father, who told her numerous times that the property he owned was hers. The defendant acted to her detriment in reliance on this representation and repeated assurances of the claimant by spending money and constructing her home on the property. Relying on ***Calixtus Henry v Theresa Henry and Marie Ann Mitchel***, SLUHCVP2007/027, the defendant's case is that the claimant is estopped from evicting her based on the representation/assurances and causing the defendant to act to her detriment and that it would be unconscionable to allow the claimant to go back on his representations/assurances.

[19] The defendant's amended defence and counterclaim do not contain bare denials but set out the defendant's case and answer the claimant's claim. The defendant submitted that the claimant's application is an abuse of the court process and an attempt to frustrate the court process. It is not meritorious but an abuse of the court process and a delay tactic intended to frustrate and silence the defendant and should be dismissed with costs to the defendant.

Discussion

[20] The claimant's application seeks to strike out both the defence and counterclaim and the amended defence and counterclaim; however, for purposes of the discussion, I would focus on the amended defence and counterclaim as it is subsumed in the defence and counterclaim and reflects the position or case of the defendant.

[21] The provision of CPR dealing with striking out a statement of case states:

- "26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –
- (a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings

- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or
- (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.”

[22] Both sides correctly submitted the applicable test and now well-settled principles with authorities³ that the court must apply in determining whether it should exercise its powers to strike out a statement of case. These were succinctly set out by The Hon. Mde. Janice George-Creque, JA (as she then was) in *Ian Peters v Robert George Spence*⁴, thus:

- The court must approach the matter assuming that the primary facts pleaded in the statement of case are true.
- The court may strike out if the facts disclosed reveal no legally recognisable claim, even if the court has proceeded on the assumption that the facts pleaded are true.
- The court should not strike out where a substantive point of law arises that does not admit a plain answer; or where the applicable law is in a state of development.
- The court should not strike out where it will deprive a party of the right to a trial on issues essential to its case.
- The court should ultimately use its power of strike-out sparingly. It must be mindful of the overriding objective of dealing with cases justly.
- A statement of case is unsuitable for striking out if it raises a serious live issue of fact that can only be appropriately determined by hearing oral evidence.

[23] The common position of the parties from their pleadings and submissions is that: The claimant is and was, at all material times, the lawfully registered owner of the portion of land situated at Monier registered in the Land Registry in the Registration Quarter of Gros Islet as Block 1250B Parcel 193. By a verbal agreement made on or about 2016, the claimant granted permission to the defendant to place a house on his property. On 15th March 2019, on the claimant’s instructions, his Attorney-

³ Baldwin Spencer v The Attorney General of Antigua and Barbuda et al. (Civil Appeal No. 20A 1997); Hector v Joseph (Dominica Civil Appeal No. 6 of 2003); Lennox Linton et al. v Anthony W. Astaphan et al. DOMACV 2008/0436 (delivered 4th June 2010); Citco Global Custody NV v Y2K Finance Inc, BVIHCVAP2009/0022; Ian Peters and Robert George Spence ANUHCVP2009/016; W and H Trade Marks (Jersey) Ltd. [1986] AC 368; Johnson v Gore Woods & Co [2002] 2 AC 1; Re Morgan (1887) 35 ChD 492; Charles Church Development Plc v Cronin [1990] FSR 1; Tawney Assets Limited v East Pine Management Limited BVIHCVAP2012/0007

⁴ ANUHCVP2009/016, paras [16] to [19].

at-Law served the defendant with a notice to quit and deliver up vacant possession of his property within three (3) months of service.

- [24] The parties parted ways when the claimant stated that, due to the defendant visiting his home battered, bleeding and homeless after being assaulted by an abusive live-in boyfriend and out of compassion, he permitted her to place a chattel house on the property on the stipulated conditions that she would remove her chattel house from the property and move to another location (1) within a short period of time and (2) any time she decided to have her abusive boyfriend to co-habit with her in her chattel house. Further, the defendant would be required to pay a monthly rental of \$300.00 until she vacated the property once she remained in occupation in breach of the stipulated conditions. The claimant alleged that from on or about 2017, the defendant breached the agreement, having brought her abusive boyfriend to co-habit with her in her chattel house on the property and by her failure and refusal to pay the monthly rental and to date remaining in unlawful occupation of the property.
- [25] On the other hand, the defendant denied these allegations and countered that in 2016, the claimant agreed that she would build her home on the property. They continued to speak about her building on the property until she did so in August 2019 at the claimant's behest. Further, the claimant permitted her to build her house on the property because she was his daughter and would gift the property to her if she built her house on it. There were no conditions that the defendant would pay for the property or that she would be required to vacate it at any time whatsoever.
- [26] The defendant continued that she acted to her detriment in reliance on the claimant's promise and representation by erecting a wooden structure with concrete pillars on the property. The construction began in August 2019, with the claimant's knowledge, after the defendant had resided in the claimant's house on the property from 2016. The claimant permitted the defendant to build her house on the said property and unjustifiably withdrew the permission after the defendant acted to her detriment in reliance of the same by erecting concrete pillars at the cost of about \$5,000.00 and erecting the said house thereon and utilizing labour cost of approximately \$3,000.00 in so doing. Therefore, the defendant avers that by her detrimental reliance on the claimant's promise and representation, she has acquired an interest in the property and is not a trespasser or in unlawful occupation.

- [27] Clearly, the parties have joined issues on the matters on which they have parted ways in their pleadings. I am satisfied that the defendant pleaded sufficient facts in the amended defence and counterclaim⁵ to raise a proprietary estoppel case for determination. In presenting the claimant's case, there is the suggestion of no evidence in the amended defence and counterclaim. It may well be a misnomer, but the rules of pleadings do not require that. The statement of case must allege or state facts, not evidence. The evidence supporting the pleaded allegations comes from the disclosure and witness statements that will follow, which will then be a matter for determination at a trial after both sides' evidence has been tested. Therefore, the defendant must plead the facts that raised the proprietary estoppel. I am satisfied she has done so, as I have already stated.
- [28] The defendant's proprietary estoppel case raises live issues such as the true nature of the claimant's promise or assurance; was it substantial that it would be unjust, inequitable or unconscionable not to allow the defendant to acquire a positive interest or right in the property, considering the detriment the defendant suffered on her reliance on the said assurance. Indeed, the Privy Council in **(1) Theresa Henry (2) Marie Ann Mitchell v Calixtus Henry**⁶ opined that a trial court must undertake a weighing process by inquiring into the nature and quality of the promise or assurance and the proving party's conduct or course of conduct on the reliance/detriment to decide whether the party established the proprietary estoppel. In my view, the court cannot do this without hearing evidence on the issues. This court cannot properly exercise its coercive powers, which must be used sparingly to strike out the defendant's amended defence and counterclaim.
- [29] Regarding the claimant's allegation of the defendant's approbation and reprobation, which I am doubtful arises in the circumstances of the case. However, this, too, is a matter for trial upon evidence whether there has been approbation and reprobation, and if so, what are the consequences, if any, in this case?

⁵ Paras 3, 5, 6, 7, 10, 13, 20 21, 24 and 28 thereof

⁶ Supra footnote 2, paras 51 et seq

Conclusion

[30] In the circumstances, and for the reasons given above, IT IS ORDERED THAT:

1. The claimant's application to strike out the defendant's defence and counterclaim and the amended defence and counterclaim is refused.
2. The claimant's reply to the defence and defence to the counterclaim filed on 24th December 2019 shall stand as his reply to the amended defence and defence to the counterclaim filed on 29th January 2020.
3. The claimant shall pay the defendant the costs of this application of \$750.00.
4. The court office shall schedule the case for further case management of the fixed date claim.

**Justice Rohan A Phillip
High Court Judge**

By the Court



Dp. Registrar