

IN THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2021/0058

BETWEEN

ALMADA WILLIAMS

CLAIMANT

and

ROHAN TESHEIRA

DEFENDANT



Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Ms. Michelle Fife of Alpha Law Chambers for the defendant/applicant

Mr. Ronald Marks for the claimant/respondent.

2022: Jul. 27
Dec. 19

DECISION

BACKGROUND

[1] **Henry, J.:** This is an application¹ by the defendant Rohan Tesheira for an order striking out paragraph 16 of the claimant Almada Williams' Reply to Defence and Counterclaim; for orders that Desiree Tesheira-Singh and Dudley Tesheira are properly added as parties to the proceedings pursuant to CPR rule 18.8(1) and that they be deemed properly served or alternatively that they be deemed served from the date of the hearing and final determination of this application; and for costs.

¹ Filed initially on 27th May 2022, amended on 17th June 2022 and amended further on 17th June 2022.

- [2] The proceedings in this case arose from a Fixed Date Claim² by Ms. Williams in which she seeks among other things, recovery of possession of land ('disputed land') at Carriere from Mr. Rohan Tesheira; a declaration that she owns the disputed land; an injunction restraining Mr. Rohan Tesheira from altering, distributing or selling the disputed land; and an order directing him to execute a Deed of Gift of the disputed land to her. Ms. Williams claimed that she purchased the disputed land from Edgar Davis in 2000 but had title registered in Mr. Tesheira's name on the understanding that he would hold the property in trust for her, until it could be transferred to her.
- [3] Ms. Williams pleaded further that she gave Mr. Tesheira \$7,700.00 towards the construction of his home in Nutgrove, Gomea in consideration of a room being provided for her in the home. She claimed that the relationship has broken down, as a result of which she left the house in Gomea. She asserted that she has caused her lawyer to write to Mr. Tesheira to demand that he convey the disputed lands to her, and that he has failed or refused to do.
- [4] In the heading of his Defence and Counterclaim³, Mr. Rohan Tesheira re-characterized Ms. Williams as 'Claimant/1st Ancillary Defendant' and himself as 'Defendant/Ancillary Claimant'. He also purported to add Desiree Tesheira-Singh and Dudley Tesheira as 2nd and 3rd Ancillary Defendants respectively, by simply adding their names and those descriptors in the heading.
- [5] Mr. Rohan Tesheira refuted the claim. He averred that Ms. Williams is his mother. He alleged that he supplied the purchase price for the disputed land. He asserted that at the time of purchase, he was a sailor and that he habitually transmitted money to Ms. Williams through friends and acquaintances, and that his mother held those funds in her banking account on his behalf. He pleaded further that Ms. Williams made no contributions towards the purchase price or contributed in any way to acquisition of the disputed land. He seeks among other things repayment of monies allegedly expended in transporting her supplies while she lived with him.
- [6] In his Counterclaim, Mr. Tesheira made several allegations against Desiree Tesheira-Singh and Dudley Tesheira. He pleaded that Ms. Tesheira-Singh owes him for a loan she received from him

² Filed on 3rd June 2021.

³ Filed on 12th July 2021.

and has not repaid. As to Mr. Dudley Tesheira, he claimed that he has constructed a house on the disputed land with his consent based on their agreement that he would have paid for the portion of the disputed land on which the house is constructed. Mr. Rohan Tesheira included a claim for payment for the parcel of land.

[7] Ms. Williams took issue with this approach to launching an ancillary claim. At paragraph 16 of her Reply to Defence and Defence to Counterclaim⁴, she pleaded:

'16. The Claimant asks that the purported 2nd and 3rd Ancillary Defendants be removed from the Claim as the Defendant has failed to comply with CPR 19.3 which provides that an application for permission to add a party is to be made to the court for leave to do so.'

Mr. Tesheira desires to have that paragraph excised. His application is refused for the reasons set out in this decision.

ISSUES

[8] The issues are:-

1. Whether to strike out the impugned paragraph of the Reply to Defence and Defence to Counterclaim?
2. Whether Desiree Tesheira-Singh and/or Dudley Tesheira have been properly added as parties to the claim?
3. Whether to grant Mr. Tesheira's application to deem Desiree Tesheira-Singh and/or Dudley Tesheira served from the date of hearing of the application or properly served?

LAW AND ANALYSIS

Issue 1 – Should the impugned paragraph of the Reply to Defence and Defence to Counterclaim be struck out?

Striking out - legal principles

[9] This issue engages consideration of the applicable principles dealing with strike out applications and also the procedural rules governing initiation of ancillary claims. The court is empowered by Civil Procedure Rules 2000 ('CPR') 26.3(1) to strike out a statement of case or part thereof, if it

⁴ Filed on 5th October 2021.

appears to the court that there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings; where the impugned statement of case or the part objected to does not disclose any reasonable ground for bringing or defending a claim; if the applicable part of the statement of case is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or if it is prolix or does not comply with the requirements of Part 8 or 10.

- [10] The guiding principles on the circumstances in which the court will strike out pleadings are well-established. They have been recited innumerable times including in **Spencer v The Attorney General of Antigua and Barbuda**⁵ and **Tawney Assets Limited v East Pine Management Limited**⁶. During such an exercise, the court must seek to give effect to the overriding objective of the CPR to act justly, It is not required to conduct a mini-trial of the issue, but rather an evaluation of the details of the statement of case to determine whether it is defective or will fail as a matter of law. The striking out tool is utilized rarely and only in the most clear and obvious cases.

Filing an ancillary claim

- [11] CPR Part 18 outlines the procedure for filing and service of an ancillary claim. If such a claim is being made by one defendant against another for indemnity or contribution it is to be initiated by written notice outlining the nature and grounds of the claim.⁷ If the ancillary claim is by way of counterclaim against the original claimant, it is to be filed with the defence.⁸ Neither of those scenarios apply to the case at bar.
- [12] In all other cases, the ancillary claim must be filed before the case management conference⁹ or alternatively only if the court grants permission.¹⁰ An ancillary claim form (Form 9) is prescribed for use and must be deployed in such cases¹¹. In those cases, the ancillary claim is made against the

⁵ ANUHCVP1997/0020A.

⁶ BVIHCV2006/0037.

⁷ CPR 18.3.

⁸ CPR 18.4(1)(a).

⁹ CPR 18.4(1)(b).

¹⁰ CPR 18.4(2).

¹¹ CPR 18.2(2).

ancillary defendants only when the court issues the ancillary claim form.¹² It must be served on all parties along with the ancillary statement of claim (if any).¹³ If no permission is required for service of the ancillary claim, it must be served on the person against whom it is made, within 14 days after the defendant files a defence.¹⁴ If permission is granted by the court for issuance of the ancillary claim, the court must issue directions for its service.¹⁵

- [13] The party initiating the ancillary claim is constituted as the 'ancillary claimant' even if he is the original defendant. If the ancillary claim is being served on someone who was not party to the claim, he must also be served with every statement of case that has already been served in the proceedings and any other documents ordered by the court.¹⁶ I remind myself of those principles as I assess the merits of this application.

Submissions

- [14] In the instant case, Mr. Rohan Tesheira contended that Ms. Williams has misapplied CPR Part 19.3 in paragraph 16 of her Reply to Defence and Counterclaim; has thereby argued law and not fact; and that this renders the statement of case prolix and liable to be struck out. He submitted that he is permitted to initiate the ancillary claim pursuant to CPR Part 18 by joining new defendants and they are therefore properly added.

- [15] In his supporting affidavit¹⁷ Mr. Tesheira indicated that the claimant and other named ancillary defendants were served with his affidavit, Acknowledgement of Service, defence and counterclaim on 16th July 2021. He submitted that in accordance with the overriding objective to deal with cases justly, it is appropriate that all issues between the parties be dealt with at the same time as illustrated in **Lorna Hospedales (As Administratrix of the Estate of Emanuel Phillip Thomas, Deceased)**

¹² CPR 18.4(7)(b).

¹³ CPR 18.5(3).

¹⁴ CPR 18.5(1).

¹⁵ CPR 18.5(2).

¹⁶ CPR 18.13.

¹⁷ Filed on 17th June 2022.

v Anthony Cheltenham (Polaris Enterprises and Reynold Phillips¹⁸.

- [16] Mr. Deavon Murray filed an affidavit of service¹⁹ in which he averred that he served the Defence and Counterclaim on Ms. Tesheira-Singh and Mr. Dudley Tesheira at 2.30 pm and 2.53 pm respectively on July 16th 2021. As to how he identified them, he stated simply, 'I knew who the Defendants were because I had received instructions from senior counsel.' I make the observation that this averment falls short of the satisfying the identification requirement of CPR rule 5.5(1)(c) and (d) and (2), as Mr. Murray did not indicate either the precise manner by which Ms. Tesheira-Singh and Mr. Dudley Tesheira were identified or precisely how the claim form was served. This is relevant to the issue of whether the court can deem the ancillary claim properly filed.
- [17] Mr. Tesheira argued that the impugned paragraph ought to be struck out pursuant to CPR 26.3(1) for being prolix and constituting a statement of law. He cited in support **Dr. Ernest Hilaire v Deldridge Flavius²⁰** and **Pinneys Hotel Development Ltd v St. Kitts Nevis and Anguilla National Bank Ltd²¹**.
- [18] He submitted further that no permission is needed to add a party to a Defence and Counterclaim if the Defence is filed with the Counterclaim. He contended that in accordance with CPR 18.1(1) the ancillary defendants may be added as parties. He asserted that the ancillary claim against Ms. Tesheira-Singh and Mr. Dudley Tesheira seeks contribution in relation to the original claim. I am constrained to interject that his pleadings made no connection between Ms. Williams' cause of action and the ones purported to exist between him and Ms. Tesheira-Singh and Mr. Dudley Tesheira. Mr. Rohan Tesheira's pleadings in his Defence and ancillary claim neither expressly nor implicitly seek contribution or indemnity from them.
- [19] Ms. Williams argued that it is not contrary to the CPR for her to point out in her Reply to Defence and

¹⁸ BVIHCV2019/0075.

¹⁹ On 21st July 2021.

²⁰ SLUHCV2012/0776.

²¹ SKBHCV2017/0002.

Defence to Counterclaim that Mr. Tesheira has deviated from the court's rules of procedure in the filing of his ancillary claim. While this is so, I note that she has made no formal written application (supported by affidavit) to strike out the names 'Desiree Tesheira-Singh' and 'Dudley Tesheira' as parties, or for striking out the alleged irregular pleadings, by reason of Mr. Rohan Tesheira's failure to comply with CPR Part 18. This is the established procedure for accomplishing what she has sought to do by the impugned paragraph – see CPR Part 11. However, the court cannot ignore that she has raised an issue which requires the court's consideration in resolving Mr. Tesheira's application. It is an implicit application to strike out the impugned portions of Mr. Tesheira's Defence and Counterclaim.

- [20] In the impugned paragraph Ms. Williams cited CPR part 19.3 which deals with adding a new party to claim. In her written and oral submissions, she accepted that the applicable rules are set out in CPR Part 18. She submitted further that Mr. Tesheira cannot commence an ancillary claim by merely inserting the names of the proposed new ancillary defendants (Ms. Tesheira-Singh and Mr. Dudley Tesheira) in the heading and failing to file an Ancillary Claim form in Form 9. I agree.

Discussion

- [21] In deciding whether to strike out the impugned paragraph, I must consider of the merits of Ms. Williams' objections. I address them in tandem. The CPR is quite clear about the procedure for launching an ancillary claim against persons who were not party to the original claim. In the case at bar, the case management conference had not yet been held when Mr. Tesheira filed his Defence and purported to file an ancillary claim. Therefore, he did not need to apply to the court for permission to file the ancillary claim. However, he had to use Form 9 to do so. He did not.
- [22] Mr. Tesheira grounds his application in his assertions that the impugned statement of case is prolix and deviates from the rules by reason that it pleads propositions of law. In my opinion, the impugned paragraph is not prolix as submitted by Mr. Tesheira. Accordingly, I do not consider that to be a viable objection to that paragraph.
- [23] As to the assertion that it pleads legal contentions, I note that the point taken in the paragraph is a procedural one which would perhaps have been more appropriately taken by way of Notice of

Application to strike. However, I do not find it odd or inappropriate for Ms. Williams to highlight a perceived deviation from the procedural rules in this manner, especially as it relates to a purported attempt to bring someone before the court in an unorthodox and procedurally irregular fashion.

[24] Ms. Williams has focused one aspect of her submissions on the prejudice that could be occasioned to the named ancillary defendants if Mr. Rohan Tesheira is permitted to disregard the rules with respect to initiating and service of his purported ancillary claim. As alluded to before, I am satisfied from the affidavit testimony that there is no sufficient evidence that Ms. Tesheira Singh or Mr. Dudley Tesheira have been properly identified and served with the purported ancillary claim or the other statements of case and other documents filed in this matter. To permit Mr. Rohan Tesheira to proceed without taking account of and addressing those serious concerns would fall short of dispensing justice to them.

[25] For all of the foregoing reasons, I find that Mr. Rohan Tesheira failed to launch an ancillary claim against Ms. Tesheira Singh or Mr. Dudley Tesheira in accordance with the CPR. His pleadings are to that intent, are irregular, defective, null and void and incapable of being validated. They must be struck out or remedied. In the premises, I consider that it would be unjust and inappropriate to strike out paragraph 16 of Ms. Williams' Reply to Defence and Counterclaim. I make no order striking it out.

Issue 2 – Have Desiree Tesheira-Singh and/or Dudley Tesheira been properly added as parties to the claim?

[26] Mr. Rohan Tesheira conceded during the hearing that he did not utilize Form 9 when purporting to file his ancillary claim against Ms. Desiree Tesheira-Singh and Mr. Dudley Tesheira. He accepted that he did not deploy a regular claim form or a Fixed Date Claim form. It is clear to me that he failed to comply with the clear procedures outlined in CPR 18. This non-compliance is not minor. In my opinion, it is a substantive and substantial departure from the procedural rules and is not capable of being cured by an order under CPR 26.9. I find therefore that they have not been properly added as ancillary defendants to the claim.

[27] Notwithstanding, it appears that the claims purportedly made against Desiree Tesheira-Singh and Dudley Tesheira may conveniently be dealt with as part of the original claim. In view of the overriding objective of the CPR, it would be just to afford Mr. Tesheira one further opportunity to make his defence and file any ancillary claim. I consider that a period of 24 days would be adequate. He is permitted to amend and re-file his Defence and Counterclaim, and any ancillary claim(s) on or before January 13th 2023.

Issue 3 – Should Mr. Tesheira’s application be granted to deem Desiree Tesheira-Singh and/or Dudley Tesheira served from the date of hearing of the application or properly served?

[28] In light of my earlier observations as to service, I am satisfied that no valid proof of service of the Defence and Counterclaim and the purported ancillary claim have been filed in these proceedings. Accordingly, I find that Ms. Tesheira Singh or Mr. Dudley Tesheira have not been served with the purported ancillary claim and other requisite documents, and further that this is not an appropriate case in which to dispense with service. In the circumstances, it would not be just or convenient to deem that service of the purported ancillary claim has been effected on Ms. Desiree Tesheira-Singh and/or Mr. Dudley Tesheira. I make no such order.

Costs

[29] The parties have agreed costs of \$500.00 to be awarded to the successful one. Ms. Williams has prevailed in this encounter. She is therefore entitled to costs.

DISPOSITION

[30] It is accordingly ordered:-

1. Rohan Tesheira's application for an order striking out paragraph 16 of Almada Williams' Reply and Defence to counterclaim is refused.
2. Rohan Tesheira's application for an order that Desiree Tesheira-Singh and Dudley Tesheira are properly added as parties; or for an order deeming them to have been properly served or served from the date of hearing and final determination of the application is refused.
3. Rohan Tesheira shall on or before January 13th 2023 file and serve an amended Defence and Counterclaim removing all references to Desiree Tesheira-Singh and Dudley Tesheira as ancillary defendants.

4. Rohan Tesheira is at liberty to file and serve an ancillary claim against Desiree Tesheira-Singh and Dudley Tesheira on or before January 13th 2023.

5. Rohan Tesheira shall pay to Almada Williams agreed costs of \$500.00.

[31] I am grateful to counsel for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court
REGISTRAR'S OFFICE
Deleene L. Dwyer
St. VINCENT AND THE GRENADINES
Deputy Registrar

