

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE
Civil Division

GRENADA

Claim Number: GDAHCV2021/0381
Formerly GDAHCV2020/0332
BETWEEN:

ROLAND HARFORD

Claimant

-and-

THE ATTORNEY GENERAL OF GRENADA

Defendant

Appearances:

Alban M. John and Vern Ashby for the Claimant; and
Laren Kay Simon for the Defendant

2021: November 08, 16;
November 22 – via email

DECISION

Application to Strike Out

[1] **PARIAGSINGH, M. (Ag.)** : - The very narrow issue which arises on this application to strike out is whether the Court should exercise its discretion to permit an amendment instead of deploying the draconian measure of striking out.

FACTS IN SUMMARY:

[2] By application filed on May 21, 2021 the Defendant applied to strike out the Claimant's Claim Form and Statement of Claim filed on August 28, 2020.

- [3] The Claimant's claim is framed as a claim to recover a shortfall in salary from the Defendant. The Claimant's case is based in contract and claims a specified sum of \$126,499.00.
- [4] The Claimant's case is that by virtue of certain representations made in the Recurrent Estimates of Revenue and Expenditure for 1996 he became entitled to be paid the salary applicable to a person appointed as a Grade F.
- [5] The Defendant contends that the Claimant was never appointed to Grade F and as such, he was not entitled to be paid the salary applicable to Grade F.
- [6] In answer, the Claimant says he was entitled to that salary range as his position of Draughtsman fell into Grade F salary range.
- [7] Counsel for the Defendant contends that; appointments in the Public Service are made by the Public Service Commission and any challenge to the Claimant's non-appointment to salary Grade F would have to be done via an administrative law claim; and if there was an appointment, any such entitlement would have arisen in 1995 when the restricting took place or at the latest in 2009 when the Claimant first complained. As such, if any entitlement arose, by virtue of Section 40 (1) of the Limitation Act, any such action would be statute barred.
- [8] Counsel for the Defendant submitted that the Claimant first has to challenge the decision of the Public Service Commission not to appoint him to a position with the applicable salary range of Grade F. This type of action if submitted would be an administrative claim and not a common law action as is before the Court.
- [9] In his submission in reply, the Claimant acknowledges that his case is that he was not placed in that grade, that is grade F, following the review. At the hearing Counsel

for the Claimant also accepted and agreed that the claim ought to have been brought in public law.

[10] At the hearing Counsel for the Claimant invited the Court to exercise its powers to grant permission to amend the claim so that an administrative claim could be mounted.

ANALYSIS:

[11] **Part 26 Rule 26.3 and 4 of the Civil Proceedings Rules 2000 as amended (CPR)** gives the Court the power to strike out a party's statement of case. The exercise of this power is however, sparingly used unless it is pellucid that the statement of case is doomed to fail or is otherwise abusive.

[12] Thom JA in **Agnes Danzie et al V Cecil Anthony SLUHCVP2015/0009** at paragraph 13 stated:

13. It is a well-established principle that the court's power to strike out a statement of case should only be used sparingly (**Real Time Systems Limited v Renraw Investments Limited and Others [2014] UKPC 6**). Also, in **Salfraz Hussain v Birmingham City Council and Others [2005] EWCA Civ 1570** the English Court of Appeal, in considering the exercise of discretion to grant relief from sanctions where judgment was entered in default, stated: 'it must be kept in mind that discretionary powers are not to be exercised in order to punish a party for incompetence—they must be exercised in order to further the overriding objective'. In exercising his discretion, the learned judge was required to consider what was the appropriate response having regard to all of the circumstances, including whether there were other alternatives available that would be just in the circumstances.

[13] The Court always leans in favour of allowing claims to be determined on its merits as opposed to determining it summarily. The dicta in **Real Time Systems Limited**

encourages the Court to look at any alternatives to preserve a claim and remedy any defects, if possible, as opposed to striking it out.

[14] In **Salfraz Hussain** the English Court of Appeal emphasized that the exercise of this power was discretionary. As such they must be exercised in order to further the overriding objective.

[15] In this case, the amendment sought to bring this claim into the realm of an administrative law claim changes the nature of the proceedings altogether. It does not change the form alone but it would also change the substance of the claim. The focus would shift from an entitlement to a shortfall of salary for Grade F to an entitlement to be appointed in a position which receives a salary in Grade F.

[16] This is a whole new different claim founded on public law considerations, quite different from the common law claim for damages now before the Court.

[17] Administrative claims are a different species of claim that involve different considerations including delay, an issue which the Defendant has raised. Should I accede to the request, the Claimant will be able to circumvent the procedural safeguards in public law matters such as leave and undue delay. This would parachute the Claimant into the public law court without observing the relevant procedural rules.

[18] In **Thakur Persad Jaroo v AG of Trinidad and Tobago [2002] UKPC 5** the issue arose whether it was appropriate for the appellant to invoke proceedings under the Constitution in circumstances where there was an alternative remedy available by way of a common law action in detinue. In that case the appellant's motor vehicle was seized by police on suspicion that the chassis number had been tampered with. The police detained the vehicle for six and a half months. The appellant alleged an infringement of his constitutional right to enjoyment of property under section 4(a) of

the Constitution and the right not to be deprived thereof except by due process of law and the right to protection of the law under section 4(b). The High Court rejected his claim. On appeal to the Court of Appeal Hosein JA in dismissing the appeal stated inter alia at page 10

“It is true that by section 14(1) of the Constitution the right of a person to apply under the Constitution is stated to be ‘without prejudice to any other action with respect to the same matter which is lawfully available.’ However, resort to the procedural right thereunder inevitably requires a consideration of the true nature of the right allegedly contravened, whether there are more appropriate procedures available dehors the Constitution (as indeed there were regulations applicable to the appellant in Harrikissoo supra which gave him a right to seek a review by the relevant commission of the order of transfer) and whether having regard to all the circumstances of the particular case, some other available procedure, either at law or pursuant to statute might not be more conveniently invoked...

[19] On further appeal to the Privy Council, the Board agreed with the Court of Appeal and said that before an applicant resorted to the procedure under the Constitution, he must consider the true nature of the right allegedly contravened. Lord Hope of Craighead gave some guidance on how such a matter should be approached. At paragraph 39 he stated:

“He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of the process to resort to it. If, as in this case, it becomes clear after the motion has been filed that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued use in such circumstances will also be an abuse.”

[20] In my view to permit the Claimant permission to amend his claim at this stage will be counter the overruling objective.

[21] The Claimant would be obtaining the tactical advantage of having a second bite at the cherry and stealing a march on the Defendant.

[22] Amending the claim will require the originating document to be amended and the also the Claimant to file evidence in support effectively abandoning his statement of claim which has been filed.

[23] The Defendant having already filed its defence would now have to in effect defend a second claim in the same proceedings.

[24] Whilst **Rule 26.1 (w) CPR** does give the Court the wide power to take any other step, give other directions, or make any order for the purpose of managing the case and furthering the overruling objective, I am of the view that this does not extend to converting the nature and effect of the proceedings filed given the unexplained delay. To allow the amendment, would be to allow a new claim to be filed in the existing claim. this is counter the overruling objective.

[25] The Claimant is free to bring his claim administrative claim by the proper procedure in the proper Court. No doubt all the issues telegraphed in this claim by both parties, can be properly considered.

COSTS:

[26] The general rule is that costs follow the event. There is no reason to depart from the general rule. The Claimant must therefore pay the Defendant's costs of this application to be quantified by this Court in default of agreement.

DISPOSITION:

[27] For these reasons, the Claimant's claim is struck out with costs.

ORDER:

[28] It is hereby ordered that:

- a. The Claimant's claim commenced by Claim Form and Statement of Claim both filed on August 28, 2020 is struck out; and
- b. The Claimant shall pay the Defendant's costs to be quantified by this Court in default of agreement.

POSTSCRIPT:

[29] The Court must record its appreciation for the very well researched, helpful and high standard of submissions of both parties in this matter.

**Alvin Shiva Pariagsingh
Master (Ag.)**

By the Court,

Registrar