

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2019/0520

BETWEEN:

ALISON WILSON

Claimant

and

[1] LIZ-ANNE DEBAUVILLE-JONES

[2] HELEN TELEVISION SYSTEM LIMITED

Defendants

Appearances: Eghan Modeste for the Claimant; and
Thaddeus M. Antoine for the Second Defendant.

2021: July 29;
August 25 – via email

DECISION

Second Defendant's application to strike out

[1] **PARIAGSINGH, M (Ag.):** Before the Court is the Second Defendant's amended application to strike out this claim. The only ground of the application is that this claim is barred by prescription. The cause of action is in defamation which has a prescription period of one year from the accrual of the cause of action in this jurisdiction. To avoid prescription, a claim must be filed and served within the time prescribed. In this application the issue in contention is; whether the claim was served on the second defendant within the prescribed time. There is no dispute that it was filed within the prescribed time.

[2] For the reasons set out hereunder, I hold that the claim was not served within the prescribed time. This claim is accordingly, struck out and dismissed as against the second defendant. These are my reasons.

PRELIMINARY ISSUES:

[3] The first preliminary issue is; whether the second defendant can rely on an affidavit in filed on May 19, 2021 in support of the original application filed on the same day which was subsequently amended on July 01, 2021.

[4] The amendment changes a few words in the first ground. It does not alter the relief sought or add or remove any of the grounds originally claimed. In my view it is inconsequential. Even if the absence of the amendment, on the original application I still would have come to the same conclusion and made the same orders.

[5] In **Ensor and another v Archer and another [2004] EWHC 1541 (QB)** , Keith J at paragraph 31 stated:

.....under the law applicable to the Rules of the Supreme Court, an amendment takes effect from the date of the document which it amended, and I see no reason why that should not apply to amendments made under the Civil Procedure Rules.

....

[6] The general rule is that an amendment takes effect on the day the original document which is amended was filed. Applying this rule, the amended application filed on July 01, 2021 is effectual as of May 19, 2021. The amended application in effect replaces the original application and is not a stand-alone document or a new application. The affidavit filed in support of the original application can properly in my view be read and used in support of the amended application as the second defendant has sought to do.

[7] The second defendant at the end of the amended application gave notice that it was relying on the affidavit filed in support of the original application in support of the amended application. I see no difficulty in this approach. It seems quite proper to me. I

disagree that not refiling an affidavit or filing a fresh affidavit in support of the amended application is improper or in any way impacts the second defendant's amended application in the circumstances of this case.

[8] The second preliminary issue is; whether the court can rely on affidavits filed in a separate application in the same proceedings in this application in circumstances where another Court has received those affidavits in evidence, heard and seen the deponents cross examined on same affidavits and has made an order after considering that evidence.

[9] The general rule is that applications are to be supported by evidence on affidavit. Prior to the application at bar there was an application to set aside a default judgment obtained against the Second Defendant. That application engaged the attention of a previous Master who held that service was not proper on the second defendant.

[10] In the order of October 09, 2020 made by the previous Master on the application to set aside, that Court's finding on the issue of service after testing the affidavit evidence is stated as follows:

AND THE COURT BEING OF THE VIEW and it is therefore my finding on a balance of probability with respect to the first Issue, that the requirement for personal service as prescribed under CPR Rules 12.4 and 12.5 were not met and as such pursuant to CPR Rule 13.2(1) (b) the judgment **MUST** be set aside as of right.

[11] In the circumstances of this case, it is not necessary for me to consider any of the affidavits in the previous application or dissect the affidavit evidence and pull from it facts which may be relevant to this application. A previous court of concurrent jurisdiction has already considered that evidence and made an order on it regarding service. That order was not appealed and I am not prepared to revisit or consider that evidence.

[12] The only matter which is relevant to this application from the previous application to set aside default judgment is that by order made on October 09, 2020. By that order the

Court held that the service on the second defendant as not proper service and set aside the default judgment obtained against the second defendant.

APPLICATION TO STRIKE OUT:

[13] The principles applicable to an application to strike out have been stated in many permutations over the years.

[14] The power of the Court to strike out a party's statement of case and the circumstances in which that power ought to be exercised is now well settled. One of the most recent statement of the law was set out by Thom JA in **Agnes Danzie et al V Cecil Anthony SLUHCVP2015/0009** at paragraph 13 where it is 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.

[15] It is clear that the Court will only strike out a party's case in the most obvious cases where there are no alternatives available.

[16] Prescription is different from limitation. They are distinct concepts. A complete and thorough analysis of the what stops time for running was conducted the Court of Appeal in **David Sweetnam et al v The Attorney General of Saint Lucia et al, Civil Appeal No: 42 of 2005** Gordon JA at paragraph 11 of the judgment succinctly stated the law in this jurisdiction as:

The law in St. Lucia has never been amended to harmonise with either the Quebec or Louisiana laws as amended. It must therefore follow that prescription in St. Lucia is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction and the proper service of such suit on the party whose prescription it is sought to interrupt. This conforms absolutely with plain ordinary meaning of the language of article 2085

[17] Applying the law as set out in **Sweetnam** to the facts of this case, in the context of a judicial finding that there was not proper service on the second defendant and the absence of an appeal of that decision, the inescapable conclusion is that there was no proper judicial demand within the time prescribed time.

[18] At the time the application to set aside the default judgment was determined, the life of the claim form had already expired, and there was accordingly no claim in respect of the second defendant before the Court. Further, the time was already prescribed. The granting of time for the second defendant to file a defence and the filing of a defence cannot in my view be constituted as a waiver or acquiesce in light of the clear and unambiguous language of article 2085.

[19] For these reasons, the claimant's claim against the second defendant is struck out and accordingly dismissed.

[20] I will hear the parties on the issue of costs of the application and costs of the claim.

Alvin Shiva Pariagisngh
Master (Ag.)