

THE EASTERN CARIBBEAN SUPREME COURT  
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE  
(CIVIL)

DOMHCV 2018/0109

BETWEEN:-

MELITE DAVID

Claimant/Caveator

And

LEONARD DARROUX

(As Personal Representative of Philomena Darroux)

Defendant /Caveatee

**Appearances:**

**Rose-Anne Charles** for the Claimant/Caveator

**Lisa de Freitas of de Freitas, de Freitas &Johnson** for the Defendant/Caveatee

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2020: December 14<sup>th</sup>

2021: January 4<sup>th</sup> & 11<sup>th</sup>

: March 18  
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**JUDGMENT**

[1] **STEPHENSON J:** This is an amended notice of application to strike out a fixed date claim form and for the removal of caveat filed on behalf of the defendant/caveatee (*the defendant*) filed on the 14<sup>th</sup> December 2020<sup>1</sup>.

[2] The stated grounds for the application are as follows:

a. That the Fixed Date Claim filed on the **June 7<sup>th</sup> 2018** fails to disclose a cause of action;

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<sup>1</sup> An initial application to strike out the claim was filed on the 6<sup>th</sup> November 2019 with affidavit in support. An amended application was filed on the 14<sup>th</sup> December 2020

- b. The caveator does not have a caveatable interest in the property described in the Certificate of Title registered in Book of Titles L9 Folio 1000;
- c. That the caveator has not pursued her alleged claim with reasonable promptitude; and
- d. The fixed Date Claim prays for interim relief only.

[3] By order of Court dated the 23<sup>rd</sup> November 2020 it was ordered that the application would be dealt with on written submissions and the parties were ordered to file full written submissions. In compliance with the court's directions and orders the following submissions were filed to be considered by the court:

- a. Submissions by the applicant /defendant, on the 14<sup>th</sup> December 2020;
- b. Submissions in response by the respondent /claimant on the 4<sup>th</sup> January 2021; and
- c. Submissions in reply by the applicant/defendant on the 11<sup>th</sup> January 2021.

[4] These are the submissions considered by the court in this ruling.

[5] An affidavit in support of the application to strike out was filed for and on behalf of the applicant on the 14<sup>th</sup> December 2020 and the relevant averments are as follows:

- a. The defendant is the son and the executor of the estate of the Late Philomena Darroux, he having obtained a grant of probate on the 28<sup>th</sup> October 2015, his mother having died on the 22<sup>nd</sup> May 2015;
- b. That Philomena Darroux was the registered proprietor of a portion of land situate at Lot 105 Soufriere Housing Scheme and registered in Book of titles L9 Folio 100. (*'the Property'*);
- c. By an agreement which agreement was amended Philomena Darroux agreed to sell the property to the claimant for a purchase price of EC\$176,000.00 being equivalent to £45,000.00. (one hundred and seventy six thousand Eastern Caribbean Dollars= forty five thousand Pounds Sterling);
- d. The agreed terms of payment were amended by subsequent agreement between the parties and the claimant was to pay Philomena Darroux a deposit of £4,000.00 and the balance by monthly installments of £1,000.00 to be paid on the last day of each consecutive month from the 31<sup>st</sup> December 2009 to the 31<sup>st</sup> July 2010 (8 *payments*), the

sum of £5,000.00 on the 31<sup>st</sup> August 2010 and the balance of £27,000.00 to be paid and the purchase completed on the 31<sup>st</sup> January 2011. A copy of the written agreement between the claimant and Philomena Darroux was duly exhibited to the affidavit and marked "ID4";

- e. That it was a term of the agreement that *"Should the Purchaser failed to pay the Deposit or any installment as stated above or to complete the payment of the purchase price within the period mentioned above, the Vendor shall be entitled (without any prejudice to any other right or remedy available to her) to repudiate the contract and/or forfeit the deposit of four thousand pounds (£4,000.00) or 10% of whichever is the greater, and to resell the property if she so desires after crediting the amount forfeited, to recover from the purchase any deficiency in price which may result on and all expenses incurred in such resale"*;
- f. The claimant defaulted in her payments and failed to make the payment as agreed during the period 24<sup>th</sup> November 2009 and the 14<sup>th</sup> September 2010;
- g. A total of £13,000.00 was paid not in compliance with the agreement the claimant having missed a number of the promised and agreed payments the last payment being made on the 14<sup>th</sup> September 2020 in the sum of £1,000.00;
- h. The claimant lodged a caveat against the Certificate of Title to the property on the 24<sup>th</sup> February 2011 claiming that she had paid EC\$58,000.00 towards the purchase price and that she was fearful that Philomena Darroux (the Vendor) would dispose of the property before the full amount of the purchase price was paid;
- i. That a letter was sent to the claimant by Philomena Darroux's then solicitor informing the claimant of her breach of the contract and advising her that the caveat should be removed. The claimant did not remove the caveat as requested;
- j. An order of removal of caveat was subsequently filed on the 22<sup>nd</sup> September 2011;
- k. On the 15<sup>th</sup> May 2012, the claimant was once again written to by a solicitor on behalf of Philomena Darroux informing her of Philomena Darroux's repudiation of the contract;
- l. The first caveat lodged was subsequently removed;
- m. The claimant caused a second caveat to be lodged against the title to the property on 27<sup>th</sup> November 2013 and an order of removal of caveat was filed on behalf of the defendant on the 5<sup>th</sup> January 2016, this order was never removed;

- n. The claimant filed a fixed date claim in the case at bar against the defendant on the 7<sup>th</sup> June 2018 wherein the claimant sought an order that the caveat dated the 13<sup>th</sup> November 2013 be sustained and continued until the parties rights were determined by the court;

[6] The defendant further averred that he has been advised by his legal practitioners and verily believes that the claimant as a caveator is required to act with reasonable promptitude and that although the caveat was presented since November 2013 just over seven years ago he has not been served with any documents initiating proceedings which would address and allow for the parties rights to be determined.

[7] The defendant further averred that the claimant has no proprietary interest in the property that would warrant the lodging and or sustaining a caveat in her favour.

[8] The defendant also contends that there is a prospective purchaser of the property who has been making payments towards the purchase of the price and the presence of the caveat on the title to the property is hindering the sale.

[9] The defendant went on to point out in his affidavit that the claimant has stated in her affidavit that monetary compensation would be sufficient to settle her alleged claim against the estate of Philomena Darroux.

[10] An affidavit in response<sup>2</sup> to the amended application was filed on behalf of the claimant on the 6<sup>th</sup> January 2021 and the relevant averments are as follows:

- a. That the claimant disputes the claims made by the defendant and that the claim made, read in its entirety discloses that the claimant has an interest in the property;
- b. That the application to sustain the caveat is based on her claim that there was an agreement for sale of the property between her and Philomena Darroux and that she has already paid part of the purchase price for the property and that it is the defendant who is the personal representative of Philomena Darroux who has failed to complete the transfer

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<sup>2</sup> This affidavit was filed by Dorothy Cynthia Nisbett who is the attorney in fact for the claimant by virtue of Power of Attorney granted on the 18<sup>th</sup> October 2018 and Registered in Book of Deeds O16 Folios 120-121

of the property to her and has shown an unwillingness to refund the money paid by her thus far;

- c. That her rights and interest in the property are to be determined by the court at the hearing of the caveat matter;
- d. That several of the statements made by the defendant in his affidavit sworn to on the 14<sup>th</sup> December 2020 are incorrect;
- e. That she denies that she is in breach of the agreement for sale of the property and maintains that she has been very willing to complete the contract and to perform her obligations under the contract;
- f. That it is Philomena Darroux who failed to provide her the claimant with an account in her sole name rather than a joint account in the name of herself and her son in which she the claimant could make the agreed payments. That this was requested (allegedly) by the solicitor who prepared the agreement of sale at the time of the negotiations. It is noted that this was not an express provision in the contract;
- g. That Philomena Darroux also failed to inform her of defects in the premises prior to them entering into the agreement of sale;
- h. That there was discussion between her and Philomena Darroux and additionally that there has been correspondence between the claimant's solicitors in the United Kingdom and Philomena Darroux and also her solicitors in Dominica in an effort to resolve the matter<sup>3</sup>;
- i. That the claimant has taken all reasonable steps to protect her interest in the property and to seek to enforce her rights under the agreement of sale and to have this matter resolved.
- j. That there were previous proceedings taken by the claimant to have the matter resolved that is DOMHCV342/2011 and therefore it is not accurate to say that there was no prior legal claim made by the claimant;
- k. That she has paid money towards the purchase of the property and has an interest in the property and would like to complete the purchase of the said property or in the alternative to have the money which she has paid returned to her; and
- l. That should the caveat be lifted the claimant has very reasonable grounds to believe that the sale will not be completed nor with the money which she has paid under the agreement for sale will be returned to her by the defendant and she would like to have the opportunity

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<sup>3</sup>The deponent exhibited correspondence in this regard between the 25<sup>th</sup> October 2010 and March 2012

to have the facts and issues placed before the court for the court to decide the matter on its merits.

[11] On an application to strike out a claim on the grounds that the statement of case does not disclose any reasonable ground for bringing the action the Court is concerned with the statement of case as pleaded.<sup>4</sup>

[12] Part 26 of the Civil Procedure Rule 2000 ('CPR') empowers the court to strike out the whole or part of a statement of case. Such an order can be made based on an application being brought by any party before the court who is seeking to attack the statement of case of the other side. The power may be exercised on the application of an opposing party in the litigation where (a) the statement of case in this case the Fixed Date Claim does not disclose a cause of action, such that there is no reasonable ground for bringing the claim<sup>5</sup>.

[13] The Court is also obliged when dealing with these kinds of applications to exercise whatever discretion it is clothed with to deal with cases justly. It is trite law that a statement of case is not suitable for striking out if it raises a live issue of fact which can be properly determined at the trial of the matter.

[14] It is well established that the power to strike is considered a "*nuclear action*" on the part of the courts and must only be allowed in obvious cases. In **Citco Global Custody v Y2K Finance**<sup>6</sup> Edwards JA warned that:

"It is also well settled that the jurisdiction to strike out ought to be used sparingly since the exercise of the jurisdiction deprives a party of as right to a fair trial and the ability to strengthen as case through the process of disclosure and other court procedures such as request for information; and the examination and cross-examination often change the complexion of the case. Also, before using CPR 26.3 (1) to dispose of 'side issues', one should be taken to ensure "that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in any application must be exercised in accordance with the overriding objective of dealing with cases justly."

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<sup>4</sup>Re: M4 Investments Inc –v-CLICO Holdings Barbados Ltd. Barbados Civil Appeal nos. 2 & 4 of 2004

<sup>5</sup> CPR 2000 Part 26.3 (b)

<sup>6</sup>BVI CVA 2212008

[15] A court may be inclined to exercise its power to strike out the whole or part of a statement of case where that statement of case discloses no reasonable grounds for bringing the claim. Such cases include particulars of claim which do not set out facts indicating what the claim is about, or they, do not disclose any legally recognisable claim against the other party.

[16] In making the assessment, the court will assume that each of the allegations pleaded are true. The court is not at this stage required to do an extensive or indepth analysis of the facts as pleaded or carry out a full investigation or trial<sup>7</sup>. In fact the court in dealing with these applications is encouraged to take a “*broad brush*” approach and look simply to see whether the case is a plain and obvious one for striking out rather than considering each ground in detail.

[17] When a strike out application is successful, either the proceedings are struck out in their entirety or some part of the pleading is struck out. A successful strikeout application may lead the court to enter judgment in favour of the other party, bringing an end to the issues and disputes before the court.

#### **The Claimant's pleaded case-**

[18] The particulars of claim as stated in the Fixed Date Claim form filed on the 7<sup>th</sup> June 2018 states that the claimant's claim against the defendant is as follows:

- 1) For an order sustaining or continuing the caveat which she caused to be registered against that portion of land known as Lot 105 situate in the Soufriere Housing Scheme and registered in Book of Titles L9 Folio 100 registered in the name of Philomena Darroux;
- 2) For an order that the caveat dated the 27<sup>th</sup> November 2013 registered against the portion of land be sustained until the question of the parties' rights to the said portion of land has been determined by the court or until further order of the court.

#### **The ingredients of the cause of action**

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<sup>7</sup> Re: **Citco Global Custody NV –v- Y2K Finance** Inc BVIHCVAP2008/0022

[19] The claimant must have a caveatable right to be able to proceed with her action.

[20] Very briefly this court proposes to examine what is a caveat? And its applications and uses.

[21] The word "Caveat is a Latin word meaning *"let him beware"*. It is a term used in the Torrens System or the Land Titles System and is a statutory notice of a claim of an interest in land that has been brought under the relevant the **Land Titles Act**.

[22] A caveat is a warning to anyone that the caveator is claiming an interest in that parcel of land. The interest claimed may or may not be a valid interest in the land but if its validity is disputed and upheld by the courts, any person dealing with the land subsequent to the registration of the caveat is subject to the interest claimed.

[23] The function and purpose of the caveat in the Torrens system has been described as by Duff J in his dissenting appeal judgment in the case of **Alexander v. McKillop & Benjafield**<sup>8</sup>

"The fundamental principle of the system of conveyancing established by this and like enactments is that title to land and interests in land is to depend upon registration by a public officer and not upon the effect of transactions inter partes. The act at the same time recognizes unregistered rights respecting land, confirms the jurisdiction of the courts in respect of such rights and furthermore makes provision - by the machinery of the caveat - for protecting such rights without resort to the courts. This machinery, however, was designed for the protection of rights and not for the creation of rights. A caveat prevents any disposition of his title by the registered proprietor in derogation of the caveator's claim until that claim has been satisfied or disposed of; but the caveator's claim must stand or fall on its own merits. If the caveator has no right enforceable against the registered owner which entitles him to restrain the alienation of the owner's title, then the caveat itself cannot and does not impose any burden on the registered title."

[24] Section 114 of the Title By Registration Act<sup>9</sup> provides:

*"Any person claiming to be entitled to stay the registration of any dealing in land, until his rights therein shall be recognised and registered may present a caveat to the Registrar of Titles"*

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<sup>8</sup>1912 CanLII 31 (SCC), 45 SCR 551, [1912] 1 W.W.R 871 S.C.C. @page 886-886,

<sup>9</sup> Chapter 56.50 of the Laws of Dominica

[25] The question therefore would be, does the caveator in the case at bar have an enforceable right against the registered owner which entitles her to restrain the registered owner from dealing with his title?

[26] It is the defendant's contention that the claimant does not have such a right. Counsel Ms. Lisa de Freitas on behalf of the defendant referred to and relied on the decision of the Court in **Municipal District of Concord –v- Coles**<sup>10</sup>.

[27] At first blush it would appear as though the claimant has such a right as a purchaser of beneficial owner pursuant to an agreement for sale which can be considered to have an acceptable interest warranting a caveat.

[28] The claimant in the case at bar is a purported purchaser of the property, it is clear to the court that the terms of the agreement and the amended agreement of sale as exhibited were very plain and straight forward.

[29] In the first agreement dated the 23<sup>rd</sup> October 2009 it was agreed between the parties that the property would be purchased for the total sum of EC\$176,000.00 being equal to £45,000.00, The agreement clearly spelt out the terms of the payment including that *"upon payment of the final installment of £27,000.00 to paid and the purchase completed on the 2<sup>nd</sup> January 2011, whereupon the purchaser shall be let into possession of the said property"*

[30] The agreement also made provision for how the closing or completion of the sale was to take place, the conditions applicable to the sale and how the costs for preparing and registering the agreement and the transfer of title to the claimant was to be done.

[31] At paragraph 9 of the sale agreement, it was specifically provided that *"Should the purchaser fail to pay the deposit or any installment as stated above or to complete the payment of purchase price within the period mentioned above, the vendor shall be entitled (without prejudice to any other right or remedy available to her) to repudiate the contract and/or to forfeit the deposit of £4,000.00 or 19% of whatever amounts have been paid to her which is the greater and to resell the property if*

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<sup>10</sup> [1905] HCA 35, 3 CLR 96 – High Court of Australia

*she so desires after crediting the amount forfeited to recover from the Purchase any deficiency in price which may result on and all expenses incurred I such resale.”*

[32] There was a further agreement exhibited by the defendant dated the 15<sup>th</sup> December 2009 (it is noted that on the face of the agreement before the court no stamp duty was paid on this additional agreement which means that this agreement cannot be entered into evidence as provided for in Section 20 of the **Stamp Act**<sup>11</sup>, be that as it may, the second agreement entered into between the parties herein sought to extend the completion date of the sale to the 31<sup>st</sup> January 2011 that is the balance of the purchase price of £27,000.00 (twenty seven thousand pounds) was to be paid to complete the purchase and the claimant was to be let into possession of the property.

[33] It is to be noted that nowhere in the agreement was there any provision that the vendor was to have a particular account or type of account or an account in any particular name available for the payments to be made. This must also be viewed against the fact that the claimant seemingly made a number of payments and failed to make all the payments as agreed in the sale agreement. It is also to be noted that the claimant never claimed to have made the full payment of the purchase price in compliance with the agreement entered into by her and Philomena Darroux.

[34] It is also noted based on the documentary evidence placed before the court that Philomena Darroux extended the completion period to March 2011 by virtue of a letter to her written under the hand of Francine Baron-Royer her then Attorney and that the Claimant was also formally informed by Counsel Mrs Baron Royer on behalf of her client that Philomena Darroux was officially repudiating the contract in keeping with the terms of the agreement between the Claimant and Philomena Darroux. This letter was dated 15<sup>th</sup> May 2012.

[35] Counsel on behalf of the claimant has submitted to this court that in the statement of case placed before the court the claimant is seeking to have a caveat which has been lodged against the title

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<sup>11</sup>Chapter 68:01 Volume 10 of the Revised Laws of the Commonwealth of Dominica at Section 20. “*Save and except as aforesaid, no instrument executed in any part of the State, or relating, wheresoever executed, to any property situated, or to any matter or thing done or to be done, in any part of the State, shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful or available in law or in equity, unless it is duly stamped in accordance with the law in force at the time when it was first executed.*”

held by the Philomena Darroux sustained or continued “until the question of the parties rights to the said portion of land has been determined by the court or until such further order of court”. However the claimant has failed make a claim to the court for the determination of the rights of the parties.

[36] It is established law that a caveat does not and would not create an interest for the claimant in the case at bar but would operate to protect any interest which she may have in the property. The question to be answered then is, does the claimant have a right that could be enforced against the estate of Philomena Darroux? If the claimant has no right, then the filing of the caveat therefore, was a wrongful interference with the proprietary rights of the registered owner of the property for which the claimant might be answerable in damages if the owner has sustained any loss as a consequence of it.

[37] The onus was on the claimant to demonstrate that in all the circumstances she would be entitled to a caveat as claimed. This necessitates consideration of whether there is a serious question to be tried or prima facie case, and the balance of convenience.

[38] For the present purposes the claimant to this court’s mind has not demonstrated in her statement of case that is the fixed date claim filed on her behalf that there is a serious question to be tried. It is necessary for the claimant to demonstrate that she has an arguable case of any kind before the court.

[39] The claimant has failed to place before the court any cause of action that will give rise to an interest in land capable of supporting a caveat. The interlocutory evidence adduced by the defendant in his affidavits in support of his application to strike out the fixed date claim has established without more that there was an agreement of sale for the property between Philomena Darroux and the claimant which agreement was repudiated by Ms Darroux in keeping with the terms of the written contract.

[40] It is noted that it is only in response to the defendant’s averments in support of his application to strike that the claimant sought to establish and raise possible triable issues between the parties.

The onus is on the claimant to state her cause of action and to establish and demonstrate that there is a serious question to be tried. The claimant, in this court's view has failed to do so.

[41] The claimant based on the fixed date claim as filed has failed to establish that she has a case and that there is a sufficient likelihood of success to justify in the circumstances of the presentation of the status quo by sustaining the caveat pending trial and determination of the case.

[42] There is nothing in the fixed date claim as filed to indicate what case the defendant has to meet let alone whether there is a triable issue with a sufficient likelihood of success.

[43] It is worth stating that the question which arises is as to whether or not a caveat is available to protect the interest of the claimant purchaser in the circumstances of the case at bar. A review of the fixed date claim as filed reveals no definitive cause of action or indeed a cause of action known to law. It is noted that although the argument was not expressly raised by the defendant, there is no pleading or statement of case placed before this court by the claimant that indicates what is the case that the defendant has to meet.

[44] It is this court's view that the fixed date claim as filed by the claimant is incurably deficient and it would not be appropriate in the circumstances of the case to allow it to stand or to grant leave to the claimant to sustain the caveat lodged herein. The deficiency in the fixed date claim as filed and served has completely failed to disclose the interest or the right being claimed by the claimant.

[45] A claim should only be struck out if it is certain to fail; **Barrett v Enfield LBC**<sup>12</sup> and **Richards v Hughes**<sup>13</sup>.

[46] One has to always bear in mind that the purpose of a statement of case that is to enable the party on the other side to know what case they have to meet. In the case at bar it would be that the claimant has to in her fixed date claim state with sufficiency a case so that the defendant would know what case he has to meet. This she has wholly failed to do and in the circumstances the fixed date claim as filed in this case at bar is struck out.

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<sup>12</sup> [2001] 2 AC 550, 557

<sup>13</sup> [2004] PNLR 35

[47] The defendant in their application also submitted that the claimant did not have a caveatable interest and cited in support of their contention the decision of the Australian case of **Municipal District of Concord –v- Coles**<sup>14</sup> which approved the decision of the New South Wales Full Court in **Tierney –v- Loxton** Griffith CJ that *“It is only a person who has a legal or equitable interest in land, partaking of the character of an estate in it, or equitable claim to it, who can lodge a caveat”*. Further reference was made to the Tasmanian decision of **“Woodbury –v- Gilbert”** where the court ordered that a caveat be removed as in the court’s view the caveat claimed a purely personal right and not an estate of interest in the land.

[48] In the case at bar the purchase price was never fully paid by the claimant and it is upon completion of the payment of the purchase price that the claimant would have acquired an equitable interest in the property. In the Australian Case of **Mc Williams –v- Mc Williams Wine Pty Ltd**<sup>15</sup> it was said that *“...where the purchase money specified in the contract has been paid the purchaser becomes entitled in equity to the land and the vendor becomes a bare trustee”*. In **Re: Bosca Land Pty Ltd’s Caveat**<sup>16</sup> the question of whether a purchaser’s interest under a contract of sale was sufficient to support a caveat was considered. It was held that the caveator/purchaser in that case did not have a caveatable interest in the land based on the nature of the purchaser’s interest.

[49] In order to maintain a caveat a caveator must prove facts which indicate prima facie that he or she has an interest in the land. **Re: Piles Caveats**<sup>17</sup> per Justice Durn.

[50] From the documents before the court it would appear that Philomena Darroux repudiated the contract between herself and the claimant hereby based on the terms of the contract entitling the claimant to some refund of the monies paid by her. It has been held in **EM Buxton and another – v- Packaging Specialist SdnBnd**<sup>18</sup> will not give rise to any caveatable interest.

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<sup>14</sup>[1905] HCA 35; 3 CLR 96; 12 ALR 87

<sup>15</sup> (1964) 14 CLR 656

<sup>16</sup> [1976] Qd.R. 119

<sup>17</sup> [1925] QD 81

<sup>18</sup> [1987] 1 MLJ 342

[51] Therefore taken at its highest if the claimant can lay a claim before the court for a return of the monies she has already paid which she is fully entitled to do, however her claim and that right does not appear to give her a caveatable interest.

[52] Based on the averments placed before the court by both parties. There is without a doubt a conditional contract of sale. The conditions of the contract in the case at bar appears to be the payment schedule as provided in the agreement in the Philomena Darroux's performance under the contract was suspended until the claimant completed payment of the agreed purchase price. In other words Philomena Darroux had an obligation to transfer the property to the claimant which would have become enforceable when the purchase price was paid in accordance with the terms of the terms of the written agreements between the parties. It is to be noted that Philomena Darroux also had an obligation to repay the claimant in the event of repudiation.

[53] The settled legal position in respect of striking out a statement of case has been stated in many cases in our jurisdiction is that it is a harsh measure. It has been established by many authorities in our court that the power to strike out a statement of case as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases. The court in exercising its power in this regard should maintain its focus on the Overriding Objective of CPR 2000 and in this case at bar the court is mindful of one of the reasons for striking out a case is to stop the proceedings and to prevent a waste of precious court time and resources.

[54] It is trite law which is in the circumstances of this case is worth repeating, that a claimant should plead material facts which constitutes his or her cause or causes of action and not evidence by the cause of action will be proved at trial. Material facts are facts which a claimant proposes to prove at trial to obtain relief stated in the claim form, that is, all facts which are necessary to constitute a complete cause of action.

[55] If a statement of case fails to state or plead the necessary material facts it fails to plead a cause of action. The statement of case ought to show the reader and the other side to the case the point of the allegations being made. In the case at bar, the fixed date claim filed by the claimant is bald and bare of any such statements of fact which should necessarily be stated to constitute a

complete cause of action. This court therefore accepts the criticisms leveled against it and the submissions by counsel for and on behalf of the defendant that the claim discloses no cause of action against the defendant and will therefore be struck out.

[56] In the case at bar, the fixed date claim which has been filed in DOMHCV109 of 2018 has been, it would appear, be overtaken by events namely that the claimant has apparently commenced new proceedings against the defendant in DOMHCV2021/0016 and in a very unorthodox manner has sought to file a document entitled "*Certificate of documents relied on*" on the 1<sup>st</sup> February 2021 which includes a copy of a Claim form and Statement of Claim filed on behalf of the claimant. This court is not too sure what to make of this filing as it appears to this court to be quite a novel procedure adopted by the claimant.

[57] Be that as it may, the Fixed Date Claim as filed by the Claimant in DOMHCV109 of 2018 on the 7<sup>th</sup> June 2018 is struck out as disclosing no reasonable cause of action. I do not think it is now necessary for me to rule on any further points made by the defence in their application.

[58] The order of this Court, therefore, is that the Claimant's case is struck out. Costs of these proceedings in the sum of \$1,500.00 is granted to the Defendants in this matter and the application that the caveat be continued is therefore not granted.

**M E Birnie Stephenson**

High Court Judge

[SEAL]

BY THE COURT

REGISTRAR