

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA

(CIVIL) -

DOMHCV 2015/309

BETWEEN:-

[1] MARK DOUGLAS

Claimant

And

[2] JOSEPH NIXON AKA PASWOE

**[3] JASON NIXON (Personal Representative of the estate
of Joseph Nixon)**

**[4] STEVER NIXON (Personal Representative of Gabriel
Nixon)**

[5] Johnnie Nixon

Defendants

Appearances: Mr. Mark Douglas acting Pro Se
Mrs. Singoalla Blomqvist Williams for the Defendants

2019: June 13

ON WRITTEN SUBMISSIONS

[1] **STEPHENSON J.:** This is an application to strike out part of the defence brought by the claimant Mark Douglas.

[2] Before I proceed with the ruling at hand it is necessary and important to apologise to all the parties and all concerned for the length of time it took for the ruling to be done but this was due to the passage of Hurricane Maria and the consequential chaos that ensued with files at the registry. The

file was recovered and presented to me for ruling but this was followed by my being unwell and unable to write as is required.

Background

- [3] This is a claim brought by the claimant against the defendants for specific performance and injunctive relief concerning and related to a piece and parcel of land located at Calibishie in Dominica. Briefly, the claimant contends that the parcel of land was bequeathed by Giraud Nixon to his son Joseph Nixon who sold the land to Heskeith Nixon in 1975 which conveyance was registered in book of Deeds 2 as No 10 Folio 221 – 223. That Joseph Nixon died before transferring the land to Heskeith Nixon.
- [4] In September 2015 the claimant purchased the said parcel of land subject to this case from Heskeith Nixon and a deed of conveyance was registered on Book of Deeds D as No14 Folio 7-10.
- [5] The claimant in his statement of claim goes on to claim that the defendants, at varying times have engaged in fraudulent activities as it regards the handling of the land originally belonging to Giraud Nixon in which by virtue of his will he devised to all of his children. This will was to be administered by Joseph Nixon Senior.
- [6] The claimant 's claims also extends to the fraudulent making and registering of statutory declarations and extracting of birth certificates to fraudulently include Joseph Nixon Snr as being the father of Gabriel Nixon, Jason Nixon and Johnnie Nixon. That there was further alteration of the marriage register by Johnnie Nixon changing his name of Johnnie Celestine to Johnnie Nixon.
- [7] The claimant claims that the second, third and fourth named defendants are not the heirs of Joseph Nixon Sr. or Giraud Nixon as they would want to allege and that they have used their false claims of being heirs to acquire title to the property which he the claimant has purchased thereby denying him the fruit of his purchase.
- [8] The claimant is seeking various declarations and orders based on his assertions.

[9] The defendants filed a defence and counterclaim. A reply and defence was also filed by the claimant.

[10] The defendants essentially contend that the land subject to the litigation in the case at bar is registered and forms part of the estate of Giraud Nixon and that Heskeith Nixon is not the registered proprietor and had no authority to sell the said land.

The application

[11] The claimant claims that the defendants in their defence have not disclosed any reasonable grounds for defending their claim as they have not established a cognizable defence. The claimant also submits that the purported defence as presented by the defendants more particularly at paragraphs 7 and 10 of their defence should not be permitted as it has no real prospect of success.

[12] The claimant's submission rests on the contention that the defendants' claim that Joseph Nixon Sr. lacked authority to sell the property contradicts well settled pronouncements of case law, governing statutes and the court's longstanding presumption in favour of freedom of alienation.

[13] The claimant placed great reliance on the case of **Wu Koon Tai –v- Wu Yau Loi**¹ to establish that a devisee of land in an unadministered estate is entitled to make a binding contract to sell it. Counsel further submitted that section 6(2) of the Title by Registration Act² (the Act) confirms that the 1975 Deed is specifically enforceable against any successor in title to Joseph N Nixon Sr. as the Act authorises a devisee of an equitable interest in land to contract to sell his or her interest in the said land to a third party.

[14] The claimant further claims that even if the 1975 Deed does not accord with the provisions of the Act it still conferred on him an enforceable right against Joseph Nixon Sr. and any persons claiming otherwise than as purchasers or mortgagees for value under him. That none of the defendant s claim to be purchasers or mortgagees for value under Joseph Nixon Sr. The claimant therefore contends that the 1975 Deed is specifically enforceable against the defendants.

¹ 1977 AC 179

² Cap 56:50 of the Laws of Dominica

[15] The defendants' response to the claimant's application was contained solely in a single affidavit filed by the fourth named defendant. There were no further affidavits to be relied on neither was there any submissions (in hard copy or soft copy) before the court at the time of writing.

[16] The defendants contend that the land subject to the issue in the case at bar is registered land which was registered in the name of Giraud Nixon who died testate and by his will he appointed Joseph Nixon as his executor. The said executor had *no locus standi* in the matter when he sold the land to Heskeith.

The applicable principles of law and disposition

[17] The principles which guide the court when considering an application to strike out a claim are well established. The applicable test to be used has been well settled. Byron C. J in **Baldwin Spencer v AG** of Antigua and Barbuda, ³explained that pleadings should be struck out only in clear and obvious cases when it can be seen on the face of it that the impugned pleading is obviously unsustainable, cannot succeed or in some other way is in abuse of the process of the court.

[18] The test has been articulated in several cases arising in territories comprising the Eastern Caribbean Supreme Court. The cases establish that a striking out order is seldom made. Where a claim raises an issue which the judge must decide, even if it is weak, the court will generally err on the side of permitting the case to proceed to trial. It is also expected to take all necessary steps to facilitate its expeditious progression to resolution of the issues at bar.

[19] In the often quoted and applied case *Tawney Assets Limited v East Pine Management*⁴, Mitchell J stated that:

"The exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of

³ Civil Appeal 20A of 1997

⁴ HCVAP 2012/007 Territory of the Virgin Islands

case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial."

[20] The court must give effect to the overriding objective of the CPR to act justly. It is important to note that this process does not call for a mini-trial of the issues, only for an examination of the particulars in the statement of case, to assess whether the defence is defective or will fail as a matter of law⁵.

[21] The court is not required to determine whether the defendants' defence will succeed, and it is not necessary to analyze evidence to evaluate their chances of success. The assessment does not include a detailed examination of the facts, allegations and documents⁶.

[22] These are the parameters within which a court will exercise its discretion to strike out a claim under this Part. It is well established law that this is a jurisdiction that is to be used sparingly and only in those plain and obvious cases.

[23] In this case the claimant says that as it regards the defendants' case as stated paragraphs 7 and 10 the law is totally and squarely in the corner of the claimant and the defendants have no chance of succeeding at trial. This court is of the view that the defence raises a question which the judge must decide and in the circumstances the court must consider the merits. Even if the defence is weak, these paragraphs must remain standing.

[24] I have reviewed the statements of case in this matter and it is clear to this court that there are a number of factual issues that have to be resolved. It is noted too that the claimant has made a number of serious allegations in his statement of case which the defendants must have every effort to defend. Therefore in the circumstances I will not accede to the claimant's prayer and will not strike out paragraphs 7 and 10 of the defendants' defence.

[25] It is accordingly ordered:

⁵ Julian Prevost v Rayburn Blackmore et al DOMHCV2005/0177, para. 6 (Rawlins J.)

⁶ M4 Investments v CLICO Barbados Ltd. (2006) 68 WIR 65.

- (1) The claimant's application to strike out paragraphs 7 and 10 of the defendants' defence is dismissed; and
- (2) There shall be no order as to costs.

[26] I wish to thank the claimant for his written submissions and for his along with counsel for the defendants' patience and understanding in the lengthy delay in rendering my decision.

M E Birnie Stephenson
High Court Judge

[SEAL]

By the Court

Registrar