

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: SLUHCv2018/0613
Between

Peterson Francis

Claimant

AND

1. Christopher Hunte
2. Choice News Now

Defendants

Appearances: Mr. Horace Fraser for the claimant
Mr. Levie Herelle for the defendants

2019: April 17, 29

JUDGMENT

1. **ACTIE M:** A comedy of procedural errors have brought this matter before the court for the determination of two applications to strike the statement of claim filed by the claimant and the defence filed by defendants, respectively.

Background

2. A brief background will put the matter into perspective. On December 5, 2018, the claimant filed a claim form with statement of claim for defamation against Christopher Hunte and "Choice News Now" as defendants for words published in a television program "Politically Incorrect".
3. Firstly "Choice News Now" is not a legal entity. Secondly, Christopher Hunte was served with the claim form, statement of claim and the accompanying forms which did not bear the Court's stamp.
4. On December 20, 2018, the Chambers of Leevie Herelle filed an acknowledgment of service on behalf of the defendants. In response to question 5 of the Acknowledgment of Service form where it

asks: "Are your names properly stated on the Claim Form? The defendants answered "Yes". The defendants also answered "Yes" to question 6: " Do you intend to defend the claim?"

5. On January 14 2019, the claimant filed an amended claim form with statement of claim changing the 2nd defendant to read "Choice TV/Media Zone Production Incorporated".

Applications to strike out

6. By notice of application filed on January 15, 2019, Chrstopher Hunte and Wayne Whitefield Managing Director of Choice TV Ltd, owners of the television news programme entitled "Choice News Now" applied to the court for an order that (i) the claim form with statement of claim be struck out;(ii) Judgment on the claim be entered against the claimant in favor of the defendants;(iii) the claimants claim against the defendants be dismissed with costs.
7. The grounds of the application as stated in the affidavit in support are: (i) the claimant has no real prospect of succeeding on the claim against the defendants in that the statement of claim does not disclose any reasonable grounds for bringing the claim (ii) the first named defendant was not served with a valid claim properly issued out of the High Court of Saint Lucia (iii) the second claimant is not a legal entity capable of being sued (iv) permitting the claim to continue would be an abuse of process subjecting the defendants to unnecessary costs and hardship.
8. Despite the application to strike out the claim, the defendants filed a defence on January 14, 2019 denying the claim in its entirety and giving their version of facts in relation to the matters pleaded in the statement of claim.
9. The claimant did not file a response to the defendants strike out application but on January 30, 2019, filed an application to strike out the defendants defence on the ground that the defence does not disclose any reasonable grounds for defending the claim and fails to comply with CPR 69.3.

Analysis

10. The first ground of the defendants' application is premised on the fact that Christoher Hunte was not served with a valid claim properly issued out of the High Court of Saint Lucia as the claim did bear the required Court seal.
11. **Rule 8.1** provides that a claimant starts a claim by filing in the court office the original claim form with statement of claim and is issued on the date entered on the claim form by the court office and is brought on the day on which the claim form is filed at the court office.
12. **CPR 3.9** requires sealing of all court documents and specifically the claim form (Rule 3.9 (1) (a)). A claim form which does not bear the court's stamp is not a valid claim. The claim form to be served on a party must bear the seal of the Court to be a valid claim. It stands to reason that the unsealed claim form with statement of claim served on Christopher Hunte is of no effect. Christopher Hunte having not been served with a claim form in compliance with the CPR 2000 need not subject himself to the court's jurisdiction. There was no need to file an acknowledgment of service or defence.
13. The second issue is that the second defendant was not a legal entity capable of being sued. **CPR 8.5** states the general rule that a claim will not fail by adding or failing to add parties. A claim would not fail because a person who should have been made a party was not made a party. The Rule applies to persons who are capable of being made a party.
14. In **Lazard Brother & Company v Midland Bank Ltd**¹, Lord Wright in answer to the question whether an order nisi should not be set aside as a nullity, the said order nisi having been signed against a non-existent defendant as the bank had ceased to exist as a juristic person before the date of the writ ' responded in these terms:

“... a judgment must be set aside and declared a nullity by the court in the exercise of its inherent jurisdiction if and soon as it appears to the court that the person named as the judgment debtor was at all material times at the date of the writ and subsequently nonexistent. If the Defendants cannot be before the Court, because there is in law no

¹ [1933] A.C. 289

such person , I think by parity of reasoning the court must refuse to treat these proceedings as other than a nullity”

15. The dicta is instructive to the situation at bar with regards to the 2nd defendant named as “Choice News Now” who is not a legal entity capable of being sued. A party to be sued must have a legal capacity to be sued. “Choice News Now” is not a legal entity and could not have been made a party to the proceedings. The claim having been brought against the 2nd defendant, a non-existent defendant is a nullity.
16. The defendants although seeking a declaration disputing the court’s jurisdiction filed a defence on January 14, 2019. Counsel avers that the defence was filed in an abundance of caution. The defendants, although not proper parties before the Court, i.e, the first defendant not having been served and the 2nd defendant, non-existent in law, having filed an acknowledgement of service and then an application to strike out have engaged **Rule 9.7 of the CPR 2000**.
17. **CPR 9.7** permits a defendant who disputes the Court’s jurisdiction to try the claim to apply for a declaration to that effect. The filing of the application to strike out a claim after the filing the acknowledgment of service by the defendants acts a stay of the proceedings without the need for filing a defence. The Court of Appeal in **St Kitts Nevis Anguilla National Bank v Caribbean 6/49 Limited**², held that an application to strike out a statement of claim, if made within the period for filing a defence, operates as a stay of the proceedings until the application is heard and determined.
18. The defendants Rule 9.7 application, seeking a declaration that the court should not exercise its jurisdiction to hear the claim acted as an automatic stay of the proceedings and the time for filing a defence does not run. Once the application has been filed before the time to file the defence expires, the defendants would be entitled to a hearing of the application before the requirement for filing of a Defence could arise.
19. The claimant has filed and served an amended statement of claim since the defendants’ application to strike out the claim. The amended statement of claim filed on January 14, 2019 names the second defendant as “Choice TV Media Zone Production Incorporated”.

² Civil Appeal No 6 of 2002

20. The issue now arising is what is the effect of the amended claim which has now removed "Choice News Now" and replaced it with a legal entity "Choice TV Media Zone Production Incorporated"? The decision of Blenman JA in the Court of Appeal case in **The Attorney General v Allen Chastanet etal**³ is apposite. The Court of Appeal decision had to deal with the issue of whether the learned judge erred in striking out the appellant's amended statement of claim in view of the fact that a further amended statement of claim had been filed. There, the further amendments were made after an application to strike out had been filed and heard, and responded to issues raised with respect to the pleadings in the application to strike out. The proceedings had also not reached the stage of case management conference but the appellant had sought and obtained permission to make the further amendments. In his judgment, the learned judge did not refer to the further amended statement of claim. He made findings thereon and referred only to the amended statement of claim.

21. At paragraph 143, Blenman JA held:

"The mere fact that the further statement of claim was filed before the learned judge had rendered his decision, the learned judge would have been obliged to consider the further amended statement of claim had he been aware that it had been filed. The further amended statement of claim had overtaken the amended pleadings that were filed.

.....

"In my view once the latter pleadings had been filed and served in accordance with the leave that was granted by the learned judge, whether or not a cause of action arose on the amended claim and amended statement of claim was no longer a live issue. Indeed, the filing of the further amended statement of claim would have effectively brought an end to the application to strike out the amended claim.

In so far as the amended statement of claim was further amended, it is clear to me that the application to strike the amended claim as distinct from the further amended statement of claim became otiose.."

³ SLUHCVP2015/0016

"It was not open to the learned judge to pronounce on whether the amended claim and the amended statement of claim disclosed a cause of action in so far as they had been overtaken by the further amended statement of claim".

22. The Court of Appeal decision in **The Attorney General v Allen Chastanet et al** case gives much guidance to the issues arising in this scenario. The claimant has filed an amended statement of claim in an attempt to cure the defects in the claim first filed on December 5, 2018. The amended claim being filed prior to the determination of the defendants' application renders the striking out application otiose. The amendment of the statement of claim duly made pursuant to CPR 20.1 takes effect not from the date when the amendment was made, but from the date of the original claim which it amends i.e December 5, 2018.

The claimant's application to strike out the defence

23. On January 30th 2019, the claimant filed an application to strike out the defence on the ground that the defence to a claim for defamation does not comply with the requirements of CPR 69.3.
24. As I indicated before, the defendants application to strike out the claim acted as an automatic stay of the proceedings and the time for filing a defence would not run. The original claim was a nullity and the defendants could not have filed a defence as the first defendant had not been served and the second named defendant was non-existent. It is axiomatic that there could not be a defence to a non-existent claim.
25. The amended claim filed on January 14, 2019 has now subsumed the claim filed on December 5, 2018. The court having now made a ruling on the defendants' application to strike out the claimant's claim makes the time for filing the defence in accordance of CPR 10.5 to run from the date of the decision. The Court is not at this point required to rule on the merits of the amended claim.

26. In the circumstances and for reasons given above both applications to strike out filed by the respective parties stand dismissed.

ORDER

27. For the foregoing reasons, it is ordered and directed as follows:

1. The defendants' application to strike out the claimant's statement of claim stands dismissed with cost in the cause.
2. The claimant's application to strike out the defendants' defence stands dismissed with no order as to costs.
3. The defendants shall file and serve a defence within 28 days from today's date. Thereafter, the matter shall proceed for case management conference in accordance with the **CPR 2000**.

Agnes Actie
Master, High Court

By The Court

Registrar