

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2000/0509

BETWEEN

CANOUAN RESORTS DEVELOPMENT LIMITED

CLAIMANT

AND

TERRANCE BYNOE

DEFENDANT

Appearances:

Mr. Grahame Bollers for the claimant.

Ms. Vynnette Frederick for the defendant.

2018: Sept.19
Nov. 7

DECISION

BACKGROUND

[1] **Henry, J.:** Canouan Resorts Development Limited ('Canouan Resorts') filed a claim against Mr. Terrance Bynoe on November 20th 2000. In it, Canouan Resorts applied for several reliefs including an injunction to restrain Mr. Bynoe from entering on, or committing any acts of trespass on its properties known as the Carenage Bay Beach and Golf Club, the Warehouse and the Tamarind Beach Hotel.

[2] In its Statement of Claim filed on 26th June 2001, Canouan Resorts alleged that Mr. Bynoe carried out a series of illegal acts against its properties, guests, officers, servants and agents between

October 1999 and December 2000. It charged that Mr. Bynoe created a blockade of the public roads leading to its properties; assaulted its servants and guests; trespassed on its properties and maliciously damaged them. In an amended statement of claim filed on 16th March 2016, Canouan Resorts made further allegations of trespass and other unlawful acts against Mr. Bynoe. It claimed that it suffered loss and damage as a result and sought general and special damages.

- [3] Mr. Bynoe filed an application on July 20, 2001 seeking an order dismissing the claim. He grounded his application on two contentions. He submitted that Canouan Resort's failure to serve its Statement of Claim within the time limited by the Rules of the Supreme Court 1970 was fatal. He claimed further that the inordinate delay in filing the Statement of Claim amounted to a delay of fair trial of the action and constituted an abuse of the court. The application was dismissed on July 27 2001 by Webster J. (Ag.).

- [4] Mr. Bynoe filed his Defence on 14th April 2016. From the information contained in the endorsements on the file it appears that the matter was subsequently scheduled for hearing on 2nd June, 23rd June, 7th July, 21st July, 3rd November and 8th December 2016 before Cottle J. It was adjourned on each occasion and removed from the hearing list by order dated 8th December 2016. When it re-appeared on the list it was before another Judge¹.

- [5] Mr. Bynoe filed an application on 19th May 2016 for the claim to be struck out on the grounds that it discloses no cause of action and for abuse of the process of the courts by Canouan Resorts. It appears that that application was not heard. By Notice of Application filed on 10th October 2016, Canouan Resorts sought an order that Mr. Bynoe to be committed to prison for his contempt in trespassing on its properties in breach of an interlocutory injunction entered by the court on 26th July 2001.

- [6] Mr. Bynoe filed another application on 10th August 2017 seeking an order striking out the claim against him. He complained that the matter was now in its 18th year without trial. He contended that the referenced interim injunction had a 'life ending on 12th January 2001.' He charged that the court had done nothing in respect of his application filed on '11th May 2016' for the matter to be struck

¹ Byer, J.

out. It appears that the reference to 11th May 2016 is erroneous. The case file contains no record of a May 11th 2016 application. It is more probable that he intended to refer to the application filed on 19th May 2016.

[7] The matter was next listed before Byer J. on 5th October 2017. It was adjourned to 9th November 2017. It came before me on 8th November 2017. It was adjourned on that date for among other reasons, the unfortunate incident of a bomb scare which mandated the evacuation of the court building. It was next scheduled for 23rd May 2018. At that hearing, the parties represented that they were in the process of holding settlement talks. They requested and were granted an adjournment to conclude those talks. On the adjourned hearing date of 4th July 2018, both parties urged the court to adjourn the matter yet again to enable the parties to attend a mediation session in an effort to resolve the dispute. A mediation referral order was made and the matter was adjourned to 19th September 2018. The parties reported that no mediation took place.

[8] When the matter resumed on 19th September 2018, Mr. Bynoe indicated that he wished to withdraw his Notice of Application filed on 19th May 2016. It was accordingly dismissed. The court proceeded to hear the instant 'strike out' application and heard arguments from both parties. Mr. Bynoe submitted that the matter should be struck out due to its age and in light of the lack of action by Canouan Resorts to advance it through the courts. Canouan Resorts countered that there is no merit to the application.

ISSUES

[9] The issue is whether Canouan Resort's case should be dismissed for want of prosecution or abuse of the court's process.

ANALYSIS

Issue – Should Canouan Resort's claim be dismissed for want of prosecution or abuse of the court's process?

[10] The Court is empowered to strike out a statement of case under specific circumstances. Rule 26.3(1) of the Civil Procedures Rules 2000 ('CPR') vests the Court with authority to strike out any part or all of a statement of case:

1. for failure by a party to comply with a rule, practice direction, order or direction given by the court;
2. if it discloses no reasonable ground for bringing or defending a claim;
3. if it is an abuse of the court's process or likely to obstruct the just disposal of the proceedings; or
4. is prolix or does not comply with the requirements of Part 8 or 10 of the CPR.

[11] The principles which guide the court when considering an application to strike out a claim are well-established. They have been articulated in several cases arising in this jurisdiction and from other States and territories served by the Eastern Caribbean Supreme Court. Notable among them are the judgments in **Didier et al v Royal Caribbean Cruises Ltd.**², **Real Time Systems v Renraw Ltd.**³ and **Attorney General of St. Lucia v Allen Chasten et al**⁴.

[12] The cases establish that a striking out order is seldom made. It is considered to be a mechanism of last resort and is deployed only if the court is satisfied that 'the statement of case is just plain bad in law'⁵; cannot be sustained on the allegations⁶; or is an abuse of the court's process. 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.

[13] Mr. Bynoe outlined 7 grounds on which his application was made. He stressed the length of time that the claim has been hanging without progress in the court. He also referred to the issue which he considers to be central in the case. It is appropriate to set out his grounds verbatim. They are:

'1. This herein matter filed on the 20th August 2000 now goes in its Eighteenth year (18 years) without trial.

² SLUHCVP2014/0024 (unreported).

³ [2014] UKPC 6.

⁴ SLUHCVP2015/007 (unreported).

⁵ Didier case at para. 24 per Pereira CJ.

⁶ Michael Wilson and Partners Limited v Temujin International Limited et al BVIHCV2006/0037.

2. On the said 20th August 2000 it is the Respondent who brought a complaint or dispute or a matter to the Court for redress, relief, remedy, settlement or otherwise.
3. On the 6th November, 1999 the Respondent produced a document described therein as “an Agreement.” On the 15th August, 2000 the Respondent produced a second document also described as “an Agreement.”

The said above agreements exhibited as “EG1” and exhibit “EG2” to an affidavit of Edan Giladi dated and filed herein on the 20th November, 2000 is an averment and there exists a dispute over the access to beaches and right of way over roads AND not any question of criminal breaches of trespass to rights given or guaranteed by law as the general endorsement on this said writ of summons suggests.

4. Writ of summons herein was filed on 20th November, 2000, the 24th November, 2000 Mitchell J. in chambers in this said hearing matter (sic) granted an interlocutory injunction with a life ending on the 12th January, 2001.
5. On the 16th, 26th, 27th February, 21st June and 18th July 2001 Webster J. hearing this said matter, granted a second interlocutory injunction. And every legal practitioner in the jurisdiction of the Supreme Court knows the rules or should. The mention of the lifespan of an interlocutory or interim order tells, reminds and warns practitioners that after the 28 days of the pronounced time span, to come back to court with the substantive matter or not at all.
6. (a) The applicant has been commanded to Defend the action by appointing a lawyer.
(b) Applicant has been put to discomfiting expenses to travel from Canouan to Kingstown and overnighting.
(c) The Applicant has been physically and mentally distressed by being arrested by the Police over Eighteen (18) occasions at the instance of the Respondent.
7. On the 11th May, 2016 the applicant made and filed application that the (sic) herein matter be Struck Out and to date; some FOURTEEN (14) Months the respondent has done nothing. AND the Courts have done nothing since July 2001.’

[14] Grounds 1 and 2 are purely historical and highlight the age of the claim. In ground 3, he describes the claim as one involving a contention surrounding access to beaches. In grounds 4 and 5 he

mentions two interim injunctions which were granted respectively on 24th November 2000 and 18th July 2001. He points out that the lifespan of both interlocutory injunctions would have lapsed 28 days after the grant. None of these matters were mentioned in his supporting affidavit. They are not considered.

[15] Mr. Bynoe claims in ground 6, that he has been inconvenienced by having to retain counsel to defend him and in incurring expenses to travel to mainland Saint Vincent. He also charged that at the instance of Canouan Resorts, he has been arrested by the police 18 times during the life of this claim. In ground 7 he concluded that although he filed an application to strike out the claim in May 2016, neither Canouan Resorts nor the Court has taken action with respect to the application. He claimed further that the court had taken no action since 2001.

[16] Mr. Bynoe did not in his application expressly identify any part of CPR 26.3(1) pursuant to which his application was made. It is however apparent that a substantive part of his complaint is that the claim had not progressed since July 2001. It appears from the record⁷ that he is correct on that score.

[17] Mr. Bynoe swore to⁸ and filed⁹ an affidavit in support of his application. He deposed that he is a native of Canouan and has lived there all of his life. He averred that he protests along with other natives but in a non-violent law-abiding manner. He alleged that sometime in or about 1999 Canouan Resorts began building houses which blocked off roads and cut off access to beaches and started dictating new social practices.

[18] He deposed that he was elected leader of a protest which conducted a march and chants demanding a cessation to the construction by Canouan Resorts of gates across the roads. He recalled being arrested and charged and taken before the Magistrate's Court. He stated that all

⁷ The endorsements on the file.

⁸ On 8th August 2017.

⁹ On 10th August 2017.

charges were dismissed. He claimed that Canouan Resorts is very rich and uses its power and riches 'to abuse the process of the law' by 'disregarding the law giving us access to all beaches by the Three Chains Act; roads that are used freely for over Forty (40) YEARS can never be made private – the right is indefeasible...'; Canouan Resorts 'either did not secure a good root of title OR if it did it ignored and disregarded the findings. Then to carry on an action in Court that touches and concerns Easements is an Abuse of the process of the Court.'

[19] Mr. Bynoe deposed further '...I believe the same to be true, that "the High Court has an overriding objective" which is basically "truth." The respondent has come to Court not to seek "truth" but to use the process of the Court to secure an overriding peculiar desire which is the determination to establish an exclusive private settlement in Canouan.' This assertion does not engage the court in considering the present application since it goes wholly to the central issues in the claim and not to issues of abuse of process or delay. It is irrelevant for this purpose and is not considered.

[20] Although Mr. Bynoe used the expression 'abuse of process' three times in his affidavit, that use referred to the merits of Canouan Resorts' claim and not the delay highlighted in the grounds in the application or other type of 'abuse'. However, Mr. Bynoe described incidents between 1999 and January 2017 in which he was arrested by the police based on reports by Canouan Resorts. He has not claimed that they have contributed to the delay. He did not relate those issues to his abuse of process complaint. Therefore those complaints are irrelevant to the issues of delay and abuse of process and are therefore disregarded for present purposes.

[21] Mr. Bynoe submitted that his application is based on CPR 26.1(3) (c). He contended that the age of the matter, in the absence of action by Canouan Resorts to advance it, amounts to an abuse of the court's process. He contended that the matter before the Court is of some vintage being 18 years and 9 months in the system. He argued that it has been used by Canouan Resorts to unfairly punish him.

[22] Mr. Bynoe argued that Canouan Resorts has sought to enforce injunctive relief against him from 2001 and to subject him to arrest and prosecution before the Magistrate's Court. He contended that it appears to have been Canouan Resorts' intention 'solely to activate the injunction against him by

resuscitating the claim', thereafter complain against him to the police in Canouan while the Claim in the High Court subsisted and in so doing, have him arrested and brought before an inferior court with the intention of dampening protest action against it in Canouan.

- [23] Mr. Bynoe contended further that in view of these assertions, Canouan Resorts' actions must be seen as abusing the process of the court. He reasoned that 'it cannot be that a matter can be started in 2000, go dormant for 14 years, then an injunction, which is dead after 28 days normally, gets life in 2016' so that he as the subject of the injunction 'is brought before the Magistrate's Court to answer a breach of that injunction while the Claim is amended without application ... before the civil court, in 2016.' He submitted that although the claim seeks injunctive relief none was granted. He argued that this further supports his contention that Canouan Resorts' actions are an abuse of the court's process. He reasoned that the just disposal of this matter has been obstructed.
- [24] The Court is unable to investigate this allegation at this stage of the proceedings, in the absence of evidence connecting the alleged causal connection between the referenced interim injunction and his repeated arrests and prosecution in the Magistrate's Court. Mr. Bynoe did not supply those details in his affidavit but instead introduced them in his submissions. Further, his testimony was not tested by cross-examination. In the circumstances, there is no factual basis on which the Court can conclude that his arrests are related to present proceedings and the interim injunction granted in this matter. He has therefore failed to establish abuse of process in relation to such allegations.
- [25] Mr. Bynoe contended that his arrest took place after he had filed a Defence in the instant claim. He argued that he would have been required to address the same live issues in this case at the same time, in the criminal and also in the civil jurisdiction. Mr. Bynoe submitted that this amounts in the civil jurisdiction, to what was characterized in a criminal case as 'taking advantage of a defendant'. He relied on pronouncements of the Honourable Chief Justice in the case of **Vynnette Frederick v. Commissioner of Police**¹⁰.
- [26] In further support, he quoted Chief Justice Pereira where she described the Crown's conduct in that case as:

¹⁰ SVGMCRAP2014/0009.

‘the deliberate and improper manipulation by the prosecution of the criminal process so as to take unfair advantage of the Defendant’.¹¹

- [27] My earlier observation that the Court is unable to render a final determination on such matters at this juncture, is just as applicable to Mr. Bynoe’s more detailed accusations of harassment. In that regard, he has not provided evidence in his affidavit but sought to do so in his submissions. It should also be noted that Mr. Bynoe’s avenue for relief from the alleged persecution and ‘malicious prosecution’ is perhaps by way of ancillary or unrelated claim or even appeal from the magisterial determination of which he complains. This Court is not engaged in an appellate hearing for present purposes. Mr. Bynoe’s complaints as presently framed regarding persecution and malicious prosecution do not invoke this Court’s jurisdiction pursuant to CPR 26.1(3).
- [28] Mr. Bynoe contended further that in view of the delay in prosecuting this claim, Canouan Resorts has demonstrated that it is no longer interested in seeing this matter properly adjudicated and has no interest in the claim’s prosecution. He submitted that in the circumstances, the claim must be struck out and an order for costs made. Mr. Bynoe contended that the claim was brought and resuscitated and used in such a manner as to abuse the court’s process. He argued that it lay dormant for fourteen years, without action by Canouan Resorts. He reasoned that the delay is unexplained, unreasonable and must be fatal to the claim.
- [29] Mr. Bynoe submitted that the delay amounts to an abuse of process. He contended that throughout the life of the claim from 2001 to 2016, no action was taken by Canouan Resorts to see it prosecuted. He submitted that the claim is eighteen years and nine months old and has ‘been through the enforcement of the penal notice attached to the court order of Justice Webster in 2001’. He argued that no reasons have been given for the inordinately long delay. He submitted further that the Court has an inherent jurisdiction to prevent misuse of its process and should do so by striking out this claim.
- [30] Mr. Bynoe cited the cases of **Myrna Norde v. Jacqueline Mannix**¹² in which the Court of Appeal considered and applied the decision in **Hunter v Chief Constable of the West Midlands Police**. In

¹¹ At para. [17].

the latter, Lord Diplock opined that the Court had the power under the rules and pursuant to its inherent jurisdiction to strike out a statement of case:

‘to prevent misuse of its procedure in a way in which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people.’¹³

- [31] Mr. Bynoe contended that there are specific circumstances in the case at bar which are aggravated by the inordinate delay and the filing of an amended statement of claim to resuscitate the claim in 2016 after protest action began. He submitted that the circumstances are also aggravated by the use of the injunction from 2001 to effect his arrest before an inferior court; Canouan Resorts’ absence from court since March 2016, except for one occasion; and its failure to file witness statements and attend mediation.
- [32] Mr. Bynoe submitted further that Canouan Resorts legal practitioner has indicated that he has no instructions from them. This was not deposed to or referenced in any affidavit. Mr. Bynoe argued that in all the circumstances it is fair to conclude that Canouan Resorts are not interested in pursuing the claim. He called on the court to defend its sense of justice and propriety and to strike out the claim and award him costs.
- [33] Canouan Resorts submitted that Mr. Bynoe’s application does not disclose which paragraph of CPR 26.3 (1) he seeks to rely. It argued that his affidavit is not helpful either. Canouan Resorts contended that its Amended Statement of Claim discloses a ‘cause of action in trespass/nuisance and/or economic loss in the amount of \$271,170.00. It submitted that although Mr. Bynoe filed a Defence in April 2016 and case management conferences have been held, no trial directions have been issued because of the instant application.
- [34] Canouan Resorts contended that by filing a defence, Mr. Bynoe waived his right to apply to dismiss the claim on the ground of inordinate delay. It argued that there is no suggestion that he is

¹² ANUHC VAP2015/0034.

¹³ [1982] AC 529.

prejudiced by the delay. Canouan Resorts cited in support the decision in see **Adnan Mkhoul v Guyana & Trinidad Mutual Insurance Company Limited**¹⁴. In that case, the judge noted among other things that each party to a dispute has a mutual obligation to assist the Court in actively managing cases. It pointed out that the Court also had a duty to scrupulously manage cases to bring them to an expeditious resolution.

[35] The Court opined that both parties and the Court had defaulted in not seeking to ensure that the matter progressed through the system in a timely manner. It opined further that the defendant had not established that the claimant's inaction wholly or substantially resulted in the difficulties which arose from the excessive delay or that the defendant's position was unsalvageable. The defendant's application to strike out the claim for abuse of the Court's process and want of prosecution was dismissed in that case.

[36] There are parallels between this case and the referenced case. However, they are not on all fours. The case file in the instant matter contains no documentation which suggests that either party attempted to have it placed on a hearing list between 27th July 2001 (when Mr. Bynoe's application to dismiss the claim was denied), and 16th March 2016 (when Canouan Resorts filed its amended Statement of Claim). The CPR provides that a party may apply to the court to fix a case management conference before the defence is filed.¹⁵ However, neither party took any step in the proceedings before March 2016. Mr. Bynoe did not file a Defence to the original Claim during that time.

[37] When the matter was listed on 17th March 2016 no case management directions were given. It is not clear what representations the parties made to the court that day. This Court cannot comment or speculate on what transpired. Even after Canouan Resorts filed its amended Statement of case in 2016, Mr. Bynoe did not immediately seek to have the claim struck out. Instead, on 14th April

¹⁴ SVGHCV2005/0114 (unreported, delivered on November 16, 2016).

¹⁵ CPR 27.3(4).

2016, he took the next sequential procedural step by filing a Defence to the Amended Statement of Claim.

- [38] In pursuance of its case management mandate, the Court should have scheduled a hearing long before then. In this regard, CPR 25 imposes a duty on the Court to further the overriding objective of dealing with cases justly. It does this by actively managing cases and among other things fixing timetables and otherwise controlling the progress of the case; giving directions to ensure a quick and efficient trial process and dealing promptly with the issues. The record reflects that the Court did not give effect to those duties between July 2001 and March 2016. Beyond the latter date, the Court was more diligent.
- [39] Pursuant to CPR 27.3, the court office was required to fix a case management conference at least 4 weeks after the filing of the defence and not more than 8 weeks later. This means that for practical purposes, the Court should have listed the matter for case management between 12th May 2016 and 9th June 2016.
- [40] It is conceivable that this was the reason for the fixtures on 2nd June, 23rd June, 7th July, 21st July, 3rd November and 8th December 2016. I do not know. It must be noted however that Mr. Bynoe's legal practitioner on record, Mr. Grant Connell applied to be removed as his attorney and an order to that effect was made on 2nd June 2016. The claimant was absent from the hearing on 23rd June 2016; both parties were present on 7th July 2016 and 5th October 2017. Mr. Bynoe was absent on 21st July 2016 and 3rd November 2016. The claimant was absent on 8th December 2016.
- [41] In any event, on 19th May 2016 Mr. Bynoe had filed an application to strike out the claim. He has since discontinued it. His next course of action was the filing of the present application on 10th August 2017. The parties both represented to the Court on 25th May 2018 and 4th July 2018 that they were seeking to settle all outstanding issues. They made joint verbal applications for adjournments to do so. Those representations suggest that Mr. Bynoe might have perceived the claim as a live one. I do not disregard the fact that he remained engaged in seeking a resolution in

conjunction with Canouan Resorts at that juncture. The present application was therefore not pursued and no case management directions were given.

[42] Mr. Bynoe's representations to the Court on both of those occasions suggest that he was perhaps not dissatisfied with the state of play. On the other hand, perhaps he was hoping for an out of Court resolution commensurate with his submissions and/or pleadings. The record from the September 10, 2018 scheduled mediation session reflects that Canouan Resorts did not attend. Based on the written record¹⁶, it appears that Canouan Resorts took no active steps to have this matter listed between 2001 and May 2016. Both parties defaulted in their duty to assist the Court by bringing the protracted 'oversight' to its attention.

[43] In deciding whether to grant the application, the Court must give effect to the overriding objective.¹⁷ In exercising its discretion, the court must remain cognizant of the overriding objective to act justly. In addition, it must act judicially, and have regard to any prejudice which either party might suffer as a consequence of its ruling. However a finding of prejudice to the applicant is not a pre-condition to the grant of his application. The Court must decide what is just in all the circumstances of the particular case.¹⁸

[44] It may order that Canouan Resorts' statement of case be struck out if the justice of the case is best served by such an order. If it finds that Canouan Resorts' inaction was not egregious enough to warrant such an order, it may apply such other sanction it might consider appropriate and just in the circumstances. Such sanctions include denial of interest or costs to the offending party.¹⁹

[45] As part of its case management function, the Court must schedule case management conferences and status hearings. Those hearings respectively enable the Court to determine if a case is liable to be struck off for any reason or what steps should be taken to advance it through the system.

¹⁶ As appears from the case file.

¹⁷ CPR 1.1 and 1.2.

¹⁸ AXA Insurance Co. Ltd v Swire Fraser Ltd [2000] CPLR 142

¹⁹ Annodius Entertainment Ltd v Gibson [2000] All ER 115.

From all appearances and accounts it seems that for over 15 years the case at bar did not benefit from such review. The Court office was delinquent in this regard. Both parties would probably have been prejudiced by such default. However, such default does not absolve either of them of their corresponding duty to alert the Court of such delays in a timely manner.

- [46] The learned authors of Blackstone's Civil Practice described the duty placed on the parties in this regard. They pointed out that the parties are to assist the Court in furthering the overriding objective. This finds expression at CPR 1.3. The learned authors observed further that this obligation imposed a duty on the parties:

'... to ensure that the court has the information required if effective directions are to be made, and must inform the court of events which may affect directions previously made which cannot be dealt with by the consent of parties.'²⁰

- [47] This approach has been endorsed by the English High Court of Justice (Chancery Division, where a similar provision was being considered. In **Hately v Morris**²¹ a striking out order by the Registrar was overturned on appeal. In that case, the proceedings were inadvertently suspended for a period of eight months. During that time neither party applied to the Court to relist a case management conference. The appellate Court reasoned that parties have a mutual duty to cooperate in progressing matters and that either one could have applied to have the matter relisted. That legal position also obtains within this jurisdiction.

- [48] It cannot be gainsaid that the primary responsibility for managing cases rests squarely on the Court's shoulders. However, the law recognizes the justice of holding parties to account for assisting in this regard. Accordingly, all litigants are required to alert the Court in a timely manner, in instances where matters have seemingly disappeared from the Court's radar. The foregoing principles will be applied in determining the application.

²⁰ Blackstone's Civil Practice, 2013, para. 42.1.

²¹ [2004] EWHC 252 (Ch).

[49] I have concluded that the Court, Canouan Resorts and Mr. Bynoe have all fallen short in respect of their duty to ensure that this case was actively managed. If Canouan Resort's statement of case is struck out Mr. Bynoe would immediately obtain a positive benefit by not having to defend the claim and could succeed on a costs application. On the other hand, Canouan Resorts would have to forego the chance to prosecute its claim. Canouan Resorts' claim outlines a recognizable cause of action: trespass.

[50] By filing his Defence when he did, Mr. Bynoe has engaged Canouan Resorts and the Court in what appears to be an arguable dispute. While I agree that Canouan Resorts should have taken action to get the matter back on the Court's hearing list, so too should Mr. Bynoe. Accordingly, Canouan Resorts cannot be made to suffer all the adverse consequences which arise from the prolonged delay.

[51] I have formed the opinion that this is not a case in which the Court should apply the severest sanction of striking out the statement of case. That would not be just. I therefore make no order striking out Canouan Resorts' statement of claim.

COSTS

[52] In light of my finding that both parties are equally to blame for not taking action sooner to bring this outstanding claim to the Court's attention, I make no order as to costs. This posture reflects the Court's dismay that neither party seemed to have noticed the Court's inaction during the extensive passage of time. It appears that they were not fazed or concerned enough to take proactive steps to regularize the state of proceedings. It would not be fair or just to reward one and punish the other in circumstances where they both failed in their duty. I am of the considered opinion that this is an appropriate case in which to make no order of costs in either party's favour.

Miscellaneous

[53] Mr. Bynoe argued further that there is no enforceable injunction against him. He elaborated on this

issue. I note however that those submissions relate principally to a pending application²² by Canouan Resorts. They will be fully ventilated at that stage. There is accordingly no need to address them in this decision. I refrain from doing so.

[54] Mr. Bynoe submitted further that Canouan Resorts' amendment of its Statement of Claim cannot subsist without the court's permission. He did not raise this issue on the face of his application or in his supporting affidavit. It therefore does not arise in the instant application and will not be the subject of any ruling at this stage.

ORDER

[55] It is accordingly declared and ordered:

1. Terrance Bynoe's application to strike out Canouan Resorts Development Limited's statement of case is dismissed.
2. Each party shall bear its or his own costs.

[56] I am grateful to both counsel for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

²² Filed on 11th October 2016 - for an order that Mr. Bynoe be committed to prison for his alleged contempt in violating the terms of an interlocutory injunction.