

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0064

BETWEEN:

TRELDON CONNELL

CLAIMANT

and

GEOFFREY CREESE

of Twenty Hill

(Executor of the Estate of Claribelle Connell, Deceased)

FIRST DEFENDANT

and

MARCELLE ALEXANDER FINDLAY

of 14 Winbourne Road, Tottenham

N17 6HL London, United Kingdom

SECOND DEFENDANT

Appearances:

Mrs. Kay Bacchus- Baptiste for the Claimant/Counter Defendant

Mr. Sten Sargeant for the Defendant/Counter Claimants

2018: March 22

May 8

ORAL JUDGMENT

BACKGROUND

- [1] **BYER, J.:** By fixed date claim form filed 3 May 2017, the Claimant/Defendant sought certain reliefs under the Status of Children Act Number 21 of 2011.
- [2] By decision issued by this Court on the 17th day of December 2017, I dismissed the claim on the basis of *Res Judicata*.
- [3] The Defendant/Counterclaimant in defending the fixed date claim form included a counterclaim seeking the following:
- a) A Declaration that the Claimant is estopped by record from claiming any interest in respect of the Estate of Selwyn Connell deceased;
 - b) A Civil Restraint Order made against the Claimant pursuant to part 26 of CPR applying the Practice of the High Court of England and Wales as set out in Practice Direction 3CPD.4 of the CPR1998, from initiating any proceedings against the First and Second Named Defendants in respect of the Estate of Selwyn Connell, deceased and/or the Estate of Claribelle Connell, deceased.
 - c) Costs.
 - d) Further such or other reliefs as the court thinks fit.
- [4] Upon the dismissal of the claim, the Defendant/Counterclaimant opted to pursue their counterclaim as against the Claimant/Defendant seeking the orders as contained in the counterclaim and refined in written submissions.
- [5] The Court gave the parties an opportunity to file evidence by way of witness statements and written submissions on the point.
- [6] At the hearing of the matter on the 6th day of March 2018, the Claimant/ Defendant (hereafter referred to as for "Dr. Connell") by his counsel indicated to the Court that they did not wish to avail themselves of giving any evidence as the Counterclaimants had but to rely on written submissions.
- [7] The hearing was adjourned to facilitate this and the parties at that adjourned hearing indicated that no evidence was necessary in terms of cross examination and the matter would proceed on the legal submissions as submitted.

- [8] The pleadings of the Counterclaimant disclosed that between 2003 and 2016, Dr. Connell had caused whether as Claimant or as Defendant right up to the doors of the Privy Council, litigated the issue of his entitlement to certain property in Barrouallie, St. Vincent as part of the estate of his putative father Selwyn Connell deceased.
- [9] It was these very actions and in particular the Judgment of Lanns, J in 2015 that led this Court to the inescapable conclusion of the application of *res judicata* and the Counterclaimant's persistence of their present claim.
- [10] Thus even without an evidentiary basis that is by way of witness statements, it was clear to this Court that the Counterclaimants were entitled to pursue their counterclaim.

Submissions by the Counterclaimant

- [11] The Counterclaimants submitted before this Court that the jurisdiction of the Court to entertain a claim of this nature is without question.
- [12] They based their submission on three (3) limbs. Firstly, that the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act and Section 26 thereof makes provision for the Attorney General to make an application to have an individual deemed as vexatious litigant. Secondly, that the inherent jurisdiction of the Court allows the Court itself, even without a statutory regime to protect its own processes and thirdly, that pursuant to the reception of laws in St Vincent by virtue of Section 11 (1) of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, the practice and procedure of the United Kingdom encapsulated in Rule 3.11 of the English CPR as supplemented by its own Practice Direction 3CPD 1 – 6 can be imported into this jurisdiction.

Submissions by Dr. Connell

- [13] In response, Counsel for Dr. Connell sought to simply ask this court not to make a drastic and draconian order barring Dr. Connell and to ask itself the question whether in all the circumstances, the Court would be entitled to declare “any future claim to have Mr. Selwyn Connell's estate administered according to law totally devoid of merit in the circumstances”.¹

¹ Claimant/Defendant's Submission filed 16 March 2018 at para 14

Court's Analysis and Considerations

- [14] First and foremost, this Court accepts that there must be a mechanism, whether by legislation or by the wider tenets of the inherent jurisdiction of the Court to protect itself from those who would abuse its processes.
- [15] What that may be is what this Court is being asked to decide and to what extent if any this Court can do so.
- [16] In looking at the statutory regime that exists, it goes without saying that the Attorney General is the person who has been given the power to approach the Court as the principal law officer of the jurisdiction and the person who must take responsibility in protecting the Courts.
- [17] However, it is clear that this statutory regime is strict and the conditions to establish someone as a vexatious litigant must be met, failing which the Court has no discretion to make any such order as may be sought by the Attorney General.
- [18] In the case of **Attorney General v. Barker**², the Court held that “the hallmark of a vexatious proceeding was that it had little or no basis in law, that it subjected the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the Claimant and that it involved an abuse of the process of the Court”.
- [19] Thus, it is clear that even under the statutory regime, the benchmark to establish someone or proceedings as vexatious is high but additionally there must also be established by necessity the hallmark of a repetitive nature to those proceedings. In the same **Barker** case, Lord Bingham of Cornhill LCJ said this, “The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop.”³
- [20] In this case at bar before an analysis is done of the nature of the litigation undertaken by Dr. Connell the Court accepts that this statutory regime is obviously of no assistance since the Attorney General is not a party to this application and the Counterclaimant does not seek to invoke those provisions.

² 2000 1 FLR 759

³ At page 764

- [21] Therefore, the question must be whether the Court has any other jurisdiction to entertain this application.
- [22] It would indeed have been helpful if the Counsel for Dr. Connell had weighed in on this aspect of the matter but having failed to do so, this Court will examine the further submissions of Counsel for the Counterclaimant.
- [23] The “jurisdiction of the court which is comprised within the term “inherent” is that which enables it to fulfill properly and effectively its role as a court of law”.⁴ Thus it is this “reserve or fund of powers” vested in the Court that the Counterclaimant invites this Court to use to protect its processes.
- [24] While this court accepts this, this “reserve fund” cannot be used to widen or invent a jurisdiction that does not exist.
- [25] It has long been recognised that each court has the power to protect its own processes. In the case of **Cocker v. Tempest**⁵ Brown Alderson had this to say “the power of each Court over its own processes is unlimited, it is a power incident to all Courts inferior as well as superior, were it not so the Court would be obliged to sit still and see its own process abused for the purpose of injustice. The exercise of the power is certainly a matter of the most careful discretion” and again in **Metropolitan Bank v Pooley**⁶ Lord Blackburn pronounced, “the court had the right to protect itself against ... an abuse...although it should not be lightly done, yet it may often be required by the very essence of justice to be done”.
- [26] I therefore accept that the Court has an inherent jurisdiction to protect itself, thus I also accept that “the advent” of the Civil Procedure Rules makes the nature of those functions by necessity more transparent”.⁷
- [27] Therefore, in this regard, we have Parts 26 and 27 of the CPR, which codifies this very basic jurisdiction. However, as the earliest of cases recognizes, this discretion has to be utilised sparingly and only in the most apparent cases.

⁴ Halsbury’s Laws of England 4th Ed.

⁵ 1840 – 41 7M & W501

⁶ 1885 HL210 at 221

⁷ Per Brooke, Dejson LJ in *Bhamjee v Forsdick & others* No. 2 [2003] EWCA CW1113

[28] Additionally the Courts also sought in the United Kingdom to create a jurisdiction by reliance on what have become known as the Grepe v Loam⁸ type of orders. It would appear that the Courts in the United Kingdom have sought to widen the inherent jurisdiction of the Court to make declarations as against litigants restricting their access to the Court.

[29] The unfortunate aspect of this is that the original case decided in 19th century was not even concerned with vexatious litigants but rather concerned an order made by the Court against a litigant ordering costs, which had to be paid in order to continue to pursue litigation. From that simple point, much furore has been made with regard to these orders and writers have recognised⁹ that there has been no regulation or oversight of these types of orders but rather that the Courts have adopted them without more under the rubric of the inherent jurisdiction of the Court.

[30] Having considered this ever expanding jurisdiction, I am satisfied that this is not one that should be applied or utilised in the manner being sought by the Counterclaimant in these proceedings

Yes indeed, it can be said without dissension that the Court retains its inherent jurisdiction to protect itself but I do not accept that it can be properly invoked in the present circumstances.

[31] The final basis submitted by the Counterclaimant is the use of Section 11 (1) of the Eastern Caribbean Supreme Court (St. Vincent and the Grenadines) Act, which provides:

*“(1) The jurisdiction of the High Court in **civil proceedings** in the probate, divorce and matrimonial causes shall be exercised in accordance with the provisions of this Act and any other law in operation in Saint Vincent and the Grenadines and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered in the High Court of Justice in England on the 27th of December, 1989.”*

[32] It has long been recognised that this provision relates to the incorporation of English procedural law and not to “matters of english substantive law or english procedural law which is adjectival and purely ancillary to english substantive law.”¹⁰

⁸ [1887] 37ChD 168

⁹ The Growing Use of the Inherent Jurisdiction of the Court Part Two – Ursula Piniker (2000) 164 JPN 418

¹⁰ The Queen v Andre Penn Criminal Case 31/2009 BVI para 36

[33] Thus, in that regard there is no comparable law within this jurisdiction, which makes provision for the matters dealt with under CPR Rule 3.11 in making what is called “Civil Restraint Orders” and the PD known as 3CPD 1-6.

[34] It is this practice direction that recognizes that there are three (3) different types of Civil Restraint Orders that can be made, the Limited Civil Restraint Order, the Extended Civil Restraint Order and the General Civil Restraint Order. They all provide for applications to be made where a party has persistently filed claims, which are without merit.

At each stage, the restraint on the litigant so determined becomes more draconian and widespread. Given the nature of the same, I reproduce it in its entirety for ease of reference:

“Practice Direction – Civil Restraint Order

3CPD.1 *1. This practice direction applies where the court is considering whether to make –*

- a) a limited civil restraint order;*
- b) an extended civil restraint order; or*
- c) a general civil restraint order,*

against a party who has issued claims or made applications which are totally without merit.

Rules 3.3(7), 3.4(6) and 23.12 provide that where a statement of case or application is struck out or dismissed and is totally without merit, the court order must specify that fact and the court must consider whether to make a civil restraint order. Rule 52.10(6) makes similar provision where the appeal court refuses an application for permission to appeal, strikes out an appellant’s notice or dismisses an appeal.

Limited Civil Restraint Orders

3CPD.2 *2.1 A limited civil restraint order may be made by a judge of any court where a party has made 2 or more applications which are totally without merit.*

2.2 *Where the court makes a limited civil restraint order, the party against whom the order is made –*

- (1) will be restrained from making any further applications in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;*
- (2) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and*
- (3) may apply for permission to appeal the order and if permission is granted, may appeal the order.*

2.3 *Where a party who is subject to a limited civil restraint order-*

- (1) makes a further application in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, such application will automatically be dismissed-*
 - (a) without the judge having to make any further order; and*
 - (b) without the need for the other party to respond to it;*
- (2) repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application will be final and there will be no right to appeal, unless the judge who refused permission grants permission to appeal.*

2.4 *A party who is subject to a limited civil restraint order may not make an application for permission under paragraphs 2.2(1) or 2.2(2) without first serving notice of the application on the other party in accordance with paragraph 2.5.*

2.5 *A notice under paragraph 2.4 must-*

- (1) set out the nature and grounds of the application; and*

(2) provide the other party with at least 7 days within which to respond.

2.6 *An application for permission under paragraphs 2.2(1) or 2.2(2)-*

(1) must be made in writing;

(2) must include the other party's written response, if any, to the notice served under paragraph 2.4; and

(3) will be determined without a hearing.

2.7 *An order under paragraph 2.3(2) may only be made by-*

(1) a Court of Appeal judge;

(2) a High Court Judge or master; or

(3) a designated civil judge or his appointed deputy.

2.8 *Where a party makes an application for permission under paragraphs 2.2(1) or 2.2(2) and permission is refused, any application for permission to appeal-*

(1) must be made in writing; and

(2) will be determined without a hearing.

2.9 *A limited civil restraint order-*

(1) is limited to the particular proceedings in which it is made;

(2) will remain in effect for the duration of the proceedings in which it is made, unless the court otherwise orders; and

(3) must identify the judge or judges to whom an application for permission under paragraphs 2.2(1), 2.2(2) or 2.8 should be made.

Extended Civil Restraint Orders

3CPD.3

3.1 *An extended civil restraint order may be made by-*

- (1) a judge of the Court of Appeal;*
- (2) a judge of the High Court; or*
- (3) a designated civil judge or his appointed deputy in the county court,*

where a party has persistently issued claims or made applications which are totally without merit.

3.2 *Unless the court otherwise orders, where the court makes an extended civil restraint order, the party against whom the order is made-*

(1) will be restrained from issuing claims or making applications in-

- (a) any court if the order has been made by a judge of the Court of Appeal'*
- (b) the High Court or any county court if the order has been made by a judge of the High Court; or*
- (c) any county court identified in the order if the order has been made by a designated civil judge or his appointed deputy,*

Concerning any matter involving or relating to or touching upon or leading to the proceeding in which the order is made without first obtaining the permission of a judge identified in the order;

(2) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and

(3) may apply for permission to appeal the order and if permission is granted, may appeal the order.

3.3 *Where a party who is subject to an extended civil restraint order-*

(1) issues a claim or makes an application in a court identified in the order concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, the claim or application will automatically be struck out or dismissed-

(a) without the judge having to make any further order; and

(b) without the need for the other party to respond to it;

(2) repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal.

3.4 *A party who is subject to an extended civil restraint order may not make an application for permission under paragraphs 3.2(1) or 3.2(2) without first serving notice of the application on the other party in accordance with paragraph 3.5.*

3.5 *A notice under paragraph 3.4 must-*

(1) set out the nature and grounds of the application; and

(2) provide the other party with at least 7 days within which to respond.

3.6 *An application for permission under paragraphs 3.2(a) or 3.2(2)-*

(1) must be made in writing;

(2) must include the other party's written response, if any, to the notice served under paragraph 3.4; and

(3) will be determined without a hearing.

3.7 *An order under paragraph 3.3(2) may only be made by-*

(1) a Court of Appeal judge;

(2) a High Court judge; or

(3) a designated civil judge or his appointed deputy.

3.8 *Where a party makes an application for permission under paragraphs 3.2(1) or 3.2(2) and permission is refused, any application for permission to appeal-*

(1) must be made in writing; and

(2) will be determined without a hearing.

3.9 An extended civil restraint order-

(1) will be made for a specified period not exceeding 2 years;

(2) must identify the courts in which the party against whom the order is made is restrained from issuing claims or making applications; and

(3) must identify the judge or judges to whom an application for permission under paragraphs 3.2(1), 3.2(2) or 3.8 should be made.

3.10 *The court may extend the duration of an extended civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than 2 years on any given occasion.*

3.11 *If he considers that it would be appropriate to make an extended civil restraint order-*

(1) a master or a district judge in a district registry of the High Court must transfer the proceedings to a High Court judge; and

(2) a circuit judge or a district judge in a county court must transfer the proceedings to the designated civil judge.

General Civil Restraint Orders

4.1 *A general civil restraint order may be made by-*

(1) a judge of the Court of Appeal;

(2) a judge of the High Court; or

(3) a designated civil judge or his appointed deputy in a county court,

where the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate.

4.2 *Unless the court otherwise orders, where the court makes a general civil restraint order, the party against whom the order is made-*

(1) will be restrained from issuing any claim or making any application in-

(a) any court if the order had been made by a judge of the Court of Appeal;

(b) the High Court or any county court if the order has been made by a judge of the High Court; or

(c) any county court identified in the order if the order has been made by a designated civil judge or his appointed deputy,

Without first obtaining the permission of a judge identified in the order;

(2) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and

(3) may apply for permission to appeal the order and if permission is granted, may appeal the order.

4.3 *Where a party who is subject to a general civil restraint order-*

(1) issues a claim or makes an application in a court identified in the order without first obtaining the permission of a judge identified in the order, the claim or application will automatically be struck out or dismissed-

(a) without the judge having to make any further order; and

(b) without the need for the other party to respond to it;

(2) repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss that

application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal.

4.4 *A party who is subject to a general civil restraint order may not make an application for permission under paragraphs 4.2(1) or 4.2(2) without first serving notice of the application on the other party in accordance with paragraph 4.5.*

4.5 *A notice under paragraph 4.4 must-*

- (1) set out the nature and grounds of the application; and*
- (2) provide the other party with at least 7 days within which to respond.*

4.6 *An application for permission under paragraphs 4.2(1) or 4.2(2)-*

- (1) must be made in writing;*
- (2) must include the other party's written response, if any, to the notice served under paragraph 4.5; and*
- (3) will be determined without a hearing.*

4.7 *An order under paragraph 4.3(2) may only be made by-*

- (1) a Court of Appeal judge;*
- (2) a High Court judge; or*
- (3) a designated civil judge or his appointed deputy.*

4.8 *Where a party makes an application for permission under paragraphs 4.2(1) or 4.2(2) and permission is refused, any application for permission to appeal-*

- (1) must be made in writing; and*
- (2) will be determined without a hearing.*

4.9 *A general civil restraint order-*

- (1) will be made for a specified period not exceeding 2 years;*

(2) must identify the courts in which the party against whom the order is made is restrained from issuing claims or making applications; and

(3) must identify the judge or judges to whom an application for permission under paragraphs 4.2(1), 4.2(2) or 4.8 should be made.

4.10 *The court may extend the duration of a general civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than 2 years on any given occasion.*

4.11 *If he considers that it would be appropriate to make a general civil restraint order-*

(1) a master or a district judge in a district registry of the High Court must transfer the proceedings to a High Court judge and

(2) a circuit judge or a district judge in a county court must transfer the proceedings to the designated civil judge.

General

3CPD.5

5.1 *The other party or parties to the proceedings may apply for any civil restraint order.*

5.2 *An application under paragraph 5.1 must be made using the Part 23 procedure unless the court otherwise directs and the application must specify which type of restraint order is sought.*

5.3 *Examples of a limited civil restraint order, an extended civil restraint order and a general restraint order are annexed to this practice direction. These examples may be modified as appropriate in any particular case.*

[35] I have also assessed this jurisdiction and accept that this English rule can be imported into the practice of the Court in Saint Vincent and the Grenadines. That being said and in light of all the circumstances, I do find that Dr. Connell may be considered a vexatious litigant. It is clear that he

'feels that he has been unfairly treated and he cannot understand when the Courts are unwilling to give him the redress he seeks".¹¹ So Dr. Connell comes to the Court and seeks to re-litigate the same issues. A fourteen (14) year span of such litigation is in this Court's mind unreasonable and in at least three (3) of these claims, the same issue – declaration of paternity – has been sought to be litigated.

- [36] I do not think that he should be however banned completely but rather that he seek the guidance of the Court in whether what he proposes will be a waste of judicial time or legal costs and accordingly as to whether he should proceed.

IT IS HEREBY ORDERED AS FOLLOWS:

ORDER

- [i] Dr. Trelton Everet Connell is restrained from issuing claims or applications to the High Court in the Estate of Selwyn Connell deceased without first obtaining the permission of a Judge of the High Court sitting within the jurisdiction of Saint Vincent and the Grenadines.
- [ii] Any such order may be amended or discharged upon application being made to a Judge of the High Court sitting within the jurisdiction of Saint Vincent and the Grenadines.
- [iii] If the said Dr. Trelton Everet Connell wishes to appeal any such order, he may apply for permission to so appeal pursuant to Part 62.2 of the CPR2000.
- [iv] If the said Dr. Trelton Everet Connell files any claim or application without first obtaining permission then the same shall stand dismissed without the necessity of a hearing.
- [v] Any application for permission to issue a claim or application shall be served in the Chambers of Williams and Williams pursuant to Part 11 of CPR 2000 who shall be entitled to file a Notice of Application to the same.
- [vi] This order shall remain in place for a period of one year from the date of this order.
- [vii] All such applications shall be dealt with on paper unless the Court directs otherwise.

¹¹ Bhamjee v Forsdick op at para 4

[viii] No order as to costs.

[37] This Court sincerely hopes that this order will now bring some order to this obviously heated heartfelt litigation and that the parties find a way to resolve the same otherwise.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar