

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2014/0147

IN THE MATTER OF THE CO-OPERATIVE SOCIETIES ACT CAP 451 OF THE REVISED EDITION OF
THE SAINT VINCENT AND THE GRENADINES 2009

and

IN THE MATTER OF THE BILLS OF SALE ACT CAP 38 OF THE REVISED LAWS OF SAINT VINCENT
AND THE GRENADINES 2009

ANGUS DENNIE

CLAIMANT

and

SAINT VINCENT AND THE GRENADINES SMALL BUSINESS
AND MICROFINANCE CO-OPERATIVE LTD

DEFENDANT

Appearances:

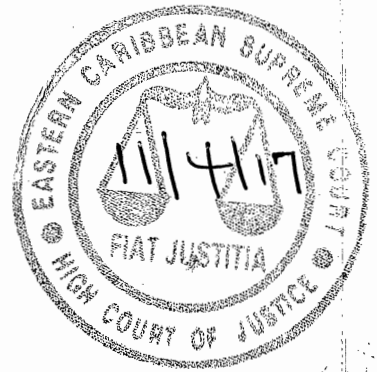
Mr. Emery Robertson Snr. for the claimant/defendant.
Mr. Julian Jack for the defendant/applicant.

2017: Apr. 3
Apr. 11

DECISION

BACKGROUND

[1] **Henry, J.:** The parties in this case are a lending institution – St. Vincent and the Grenadines Small



Business and Micro-Finance Co-op. Ltd. ('the Co-operative') and one of its customers - Mr. Angus Dennie. Mr. Dennie alleged that in 2013, he assigned a Toyota Hiace minibus¹ to the Co-operative by a 'purported bill of sale'. He asserted that the assignment was 'purportedly' done to secure the payment of money. He contended that the bill of sale was executed contrary to the law because among other things, it was witnessed by the Co-operative through its Business Loan's officer. He submitted that it was invalidated by that signature. He also denied that the signature attributed to him was his.

- [2] Mr. Dennie alleged that the Co-operative unlawfully seized the bus and sold it. He claimed loss of use from the date of the alleged seizure, loss of earnings, damages and costs. The Co-operative refuted that the bill of sale was void. It countered that it granted Mr. Dennie a loan of \$26,000.00 to purchase the bus subject to the terms of repayment outlined in the bill of sale, which he voluntarily signed. The Co-operative alleged that Mr. Dennie defaulted on the loan and it re-possessed the vehicle and sold it as provided in the bill of sale. It counterclaimed for \$20,069.92 plus interest and has applied for summary judgment. It also seeks an order that Mr. Dennie's claim be struck out. Both applications are partially granted.

ISSUES

- [3] The issue are whether:

1. Mr. Dennie's claim should be struck out? and
2. The Co-operative should be granted summary judgment?

ANALYSIS

Issue 1 – Should Mr. Dennie's claim be struck out?

- [4] The court may strike out a claim where it discloses no reasonable grounds for bringing it.² The governing principles on which the court exercises its discretion have been repeated by the Eastern

¹ Registration number H976, engine number 5L-478908, chassis number LH172-0012449.

² Rule 26.3 (1) (b) of the Civil Procedure Rules 2000 ('CPR').

Caribbean Supreme Court, in a number of cases including **Tawney Assets Limited v East Pine Management Limited**³ and **Sandra Ann-Marie George v Nigel Don-Juan Glasgow**⁴.

[5] It is accepted that striking out of a statement of case is a measure of last resort which is reserved for instances where the claim 'has no real prospect of succeeding at trial'³ or in some other way is 'an abuse of the process of the court'⁵. Even if the case being challenged is weak, the court errs on the side of allowing the parties to proceed to trial, if the statement of case raises an issue which the judge must decide. This affords the parties an opportunity to supplement their pleadings and witness statements as necessary at trial during cross-examination of the opponent's witnesses.

[6] In the case of **Michael Wilson and Partners Limited v Temujin International Limited et al**⁶ Hariprashad-Charles J. opined:

'the expression "discloses no reasonable grounds for bringing or defending a claim" addresses two situations:

1. where the content of a statement of case is defective in that, even if every allegation contained in it were proved, the party whose statement of case it is, cannot succeed; or
2. where the statement of case, no matter how complete and apparently correct it may be, will fail as a matter of law.'

[7] The foregoing principles will accordingly be applied in assessing the merits of the application for striking out. In doing so, the court will seek to give effect to the overriding objective of the CPR to act justly as stipulated by the CPR.

³ BVIHCVAP2012/007.

⁴ SVGHCVAP2013/0003.

⁵ Spencer v The Attorney General of Antigua and Barbuda, ANUHCVAP1997/0020A.

⁶ BVIHCV2006/0037.

[8] The Co-operative submitted that Mr. Dennie's claim form does not disclose any real prospect of success as it outlines no reasonable claim in relation to the facts in issue. It contended that Mr. Dennie has not placed all relevant facts before the court which are necessary to support his claim for special damages. Mr. Dennie made no submissions on this issue.

[9] The Co-operative's Notice of Application was filed on 10th February, 2017. It was supported by affidavit of its General Manager Simone Murray. The application outlined 13 grounds, 12 of which rehearsed the factual allegations on which the Co-operative relies to establish its defence and claim respectively. It is not necessary to itemize the 'factual grounds' on which the application is brought since the primary factual allegations and contentions are set out in this decision. The Co-operative's sole legal ground was that Mr. Dennie has no real prospect of succeeding 'on the claim'.

[10] In the statement of claim, Mr. Dennie alleged that he made a purported bill of sale⁷ with the co-operative dated 7th October 2013, by which he assigned to the Co-operative a Toyota Hiace minibus registration number H976 by way of security. He claimed further that he 'purportedly assigned' it to the Co-operative as outlined in the schedule to the bill of sale.

[11] Mr. Dennie contended that the bill of sale was not made in accordance with the Act because:

1. it was witnessed by the Co-operative acting through its Loans' Development Officer, Donette Lyttle contrary to section 31 (1) (a) of the Act;
2. it is not prospective but retrospective in that it is dated 7th October 2013 and refers to payment on the 30th July, 2013; and
3. the signature on the bill of sale is not his.

He claimed that the Co-operative unlawfully seized and sold his motor vehicle H976. He repeated those assertions in his Reply and defence to counterclaim.

[12] In its defence and witness statement⁸ the Co-operative responded that Mr. Dennie obtained a loan from it for \$26,000.00 on the terms set out in the impugned bill of sale. It acknowledged that Donette

⁷ Number 652 of 2013.

⁸ Provided by its General Manager Simone Murray.

Lyttle witnessed Mr. Dennie's signature on the bill of sale but denied that her signature was effectively the Co-operative's. The Co-operative asserted that Mr. Dennie signed the bill of sale and at that time, provided his national identification card from which the number was affixed to the bill of sale. Mr. Dennie pleaded in his reply, that he presented his ID when the loan was being negotiated, a photocopy was then taken and there was no issue of bill of sale at that time.

- [13] The Co-operative denied that the subject vehicle belonged to Mr. Dennie. It claimed that it was financed subject to the terms, conditions and covenants set out in the bill of sale, whereby Mr. Dennie undertook to repay the loan, in default of which the vehicle would be repossessed and sold. It contended that after making numerous unsuccessful requests for Mr. Dennie to service the loan it repossessed and sold it at the value assessed by Auto Care Limited. It alleged that the van was considered to be 'scrapped'.
- [14] The Co-operative pleaded further that Mr. Dennie instructed legal counsel Mr. Olin Dennie⁹ to write on his behalf seeking a reprieve to 30th October 2013 to pay off the outstanding sums due on the bill of sale. In that letter dated 16th September 2013, Mr. Olin Dennie allegedly acknowledged that his client was indebted to the Co-operative, represented that he was selling a vehicle for him, the proceeds of which would be used to liquidate the arrears. A copy of the letter in those terms was exhibited to the defence. It referenced a letter from the Co-operative dated 4th September, 2013 in which the Co-operative demanded payment of \$3,268.96 in loan arrears for the months of July and August, 2013. The Co-operative has counterclaimed for \$20,069.92 with interest at the daily rate of \$10.77 being the balance allegedly outstanding on the loan account.
- [15] In his reply and defence, Mr. Dennie pleaded that the Co-operative is estopped from relying on the bill of sale because of the referenced legal defects. He did not deny that Mr. Olin Dennie had made representations to the Co-operative on his behalf. He contended however that those representations could not clothe the bill of sale with legal efficacy and validity which it inherently lacked. He claimed \$34,000.00 being the value of the motor vehicle, loss of use of \$33,000.00 and loss of earnings of \$99,000.00, a total of \$166,000.00.

⁹ Now deceased.

[16] Mr. Dennie pleaded that the amount of \$26,000.00, less the sum of \$6,300.00 which he paid on his personal promissory note is deductible from the sum he has claimed. He did not refute that he obtained a loan from the Co-operative. Neither did he expressly admit that he did. By failing those respects he has run afoul of the stipulations in CPR 10.5 which mandate that he indicate which allegations are admitted and which are denied and to state the reasons for such denial. The import of his claim for a set-off is self-evidently an acknowledgment that he secured the loan as alleged. Moreover, in his witness statement, Mr. Dennie acknowledged that he received a letter from the Co-operative giving approval for a \$32,000.00 loan for the purchase of the subject vehicle. He admitted that he was obliged to repay by euphemistically averring in his witness statement that the Cooperative gave him 'an incentive to pay to make the payment of \$1600.00 a month for the next two years.'

[17] Quite tellingly, in his witness statement, Mr. Dennie averred;

'7. Mr. Dennie tried to assist me by sending a letter to St. Vincent and the Grenadines Small Business and Micro-Finance Co-operative Ltd to have the payments put on hold until the end of September, 2013 but it did not work out for me.'

This averment is sufficient confirmation that Mr. Angus Dennie instructed Mr. Olin Dennie to write to the Co-operative to acknowledge the arrears and to grant him additional time to pay it off. The obvious implication is that he borrowed the money as claimed by the Co-operative. I infer that he did. In those circumstances, Mr. Dennie has admitted the claim on the basis of the acknowledgement as pleaded and admitted in his witness statement.

[18] Mr. Dennie's denial that he signed the bill of sale and his objections to its validity cannot assist him to avoid liability for the balance due on the loan. His acknowledgement of the arrears in the letter and of the outstanding balance in his reply was unequivocal. Part of his claim is premised on the notion that he owned the vehicle at the time it was re-possessed and sold. His acknowledgment of the debt is inconsistent with that claim.

[19] While theoretically Mr. Dennie might have gained some interest in the van based on sums repaid up to the date it was repossessed, the Co-operative's interest substantially exceeded and eclipsed any

such interest, even without a bill of sale. That aspect of his claim is therefore baseless and has no chance of success.

- [20] The second part of Mr. Dennie's claim relates to the validity of the bill of sale. His challenge to its validity is grounded in three legal contentions outlined in his pleadings. They relate specifically in relation to his denial of execution, the alleged retroactive effect of the bill of sale and execution by Ms. Lyttle. Mr. Dennie supplemented them in his submission by querying whether the bill of sale was registered and whether the vehicle was unlawfully seized. They are addressed sequentially.
- [21] The contention that a vehicle is seized unlawfully and contrary to the provisions of the Act is not a legal or factual basis on which a bill of sale could be deemed invalid. Mr. Dennie did not plead that the bill of sale was not registered and therefore void. He is not permitted to introduce that challenge unless it is specifically pleaded. These referenced bases for challenging the bill of sale's validity either do not arise on the pleadings or are not legal or factual grounds for doing so. They are accordingly not considered.
- [22] The issue of whether Mr. Dennie signed the bill of sale is to be determined based on the testimony of the witnesses. The resolution of facts in issue is achieved either through evaluation of documentary evidence, the credibility of witnesses or both. This is a live issue which can be determined only at trial.
- [23] Mr. Dennie contended that Ms. Lyttle was the Co-operative's duly authorized signatory with all necessary authority to sign binding documents on the Co-operative's behalf. The Co-operative denied this. A determination of this sub-issue cannot be resolved without evidence. It will turn largely on the evidence adduced at trial.
- [24] The exhibited bill of sale is expressed to have been made on 7th October 2013 and it provided for payment of 17 successive monthly installments from 30th July, 2013. The Co-operative did not dispute this. Mr. Dennie contends that it is thereby rendered void. He made no submissions regarding severability or its effect in respect of payments which fall due after 7th October 2013.

Neither did the Co-operative. This aspect of the claim may be disposed of without a trial based on submissions.

- [25] If Mr. Dennie prevailed in establishing at the trial that the bill of sale or part of it was void, for contravention of the Act or retroactivity, such finding would not negate his admission of the Co-operative's claim or absolve him from paying off his debt. It would also not bestow on him as at the date of the re-possession, full beneficial ownership of the vehicle.
- [26] Irrespective of whether the bill of sale was valid or invalid, the Co-operative had a superior beneficial interest in the vehicle at that time, which it was entitled to protect and realize. Mr. Dennie cannot be heard to complain that the bank sought to mitigate its losses by selling the vehicle. Even if his submission prevails he would be entitled only to a declaration as to whether the bill of sale was valid or not. He is unlikely to obtain any monetary or other relief.
- [27] In light of the foregoing, it is just in all the circumstances that Mr. Dennie's claim for special and general damages, loss of use and loss of earnings, be struck out. Accordingly, paragraphs (a), (b) and (c) of the claim form; paragraphs (7) (i) (ii) (a) (b) and (c) of the statement of claim and paragraphs 2., 6 and 7 of his Defence and Counterclaim are struck out. His claim as to the validity of the bill of sale will proceed to trial.

Issue 2 – Should the Co-operative be granted summary judgment?

- [28] The court is empowered to enter summary judgment where it considers that the relevant party has no real prospect of succeeding on or defending the claim or issue.¹⁰ The legal principles governing such a grant are well-established. They were enunciated by Lord Woolf MR in the celebrated case of **Swain v Hillman**¹¹. In determining such applications the court is required to consider whether the defendant has a realistic chance of succeeding.¹¹ It carries out this evaluation by assessing the parties' respective statements of case, but refrains from conducting mini-trial.

¹⁰ Rule 15.2 of the Civil Procedure Rules 2000, ('CPR').

¹¹ [2001] 1 All ER 91.

- [29] The summary judgment regime empowers the court to enter judgment for a party where that party has established that the other party has no real prospect of succeeding. It is not to be entertained to 'dispense with the need for a trial where there are issues which should be investigated at the trial or because the court concludes that success is improbable'.¹¹ If there are issues which can only be resolved at trial the application for summary judgment must be denied.
- [30] In the words of Saunders CJ [Ag.] in **Bank of Bermuda Ltd. v Pentium (BVI) Limited**⁶¹²: 'a matter should not be allowed to proceed to trial where the defendant has produced nothing to persuade the court that there is a realistic prospect that the defendant will succeed in defending the claim brought by the claimant.' Similarly, if the defendant has a real chance of success, the application must be granted. In rendering its decision, the court must give effect to the overriding objective to act justly.
- [31] The material factual allegations have already been outlined. The Co-operative relied on the cases of **McMaster v The Attorney General and Brenton Caine**¹³ and **National Asset Loan Management Ltd. v Barden**¹⁴ for the proposition that a person who brings a claim for damages must discharge the evidentiary burden by supplying a sufficient degree of evidence.
- [32] Mr. Dennie submitted that there are real and substantial issues to be tried between him and the Co-operative, namely:
1. Was the Bill of Sale valid?
 2. Was the Bill of Sale executed in accordance with the Act?
 3. Was the Bill of Sale registered in accordance with the Act so as to bind him?
 4. Was the purported seizure of the vehicle done in accordance with the Act, and if not, was it valid?
 5. Did the Co-operative have any legal right to re-possess the vehicle, apart from the Bill of Sale?
- He submitted that these are triable issues which are not suited for summary judgment. He contended that the application should be dismissed with costs.

¹² BVIHCVAP2003/0014.

¹³ SVGHCV2009/00236.

¹⁴ [2013] IEHC 32.

[33] The findings on and order to strike out aspects of Mr. Dennie's statement of case are relevant to a determination of the application for summary judgment. The questions surrounding the validity of the bill of sale have survived the application to strike. For the same reasons, they are preserved for consideration at trial in connection with this aspect of the case.

[34] Having found that Mr. Dennie's acknowledged his indebtedness to the Co-operative in the sum of \$26,000.00, less his payment of \$6,000.00 there is no further issue regarding his indebtedness. I am satisfied that Mr. Dennie has no reasonable chance of defending the Co-operative's claim for \$20,069.92. Judgment is accordingly entered for the Co-operative in the amount of \$20,069.92. The Co-operative relies on the impugned bill of sale to establish interest. That component of the claim is therefore reserved for determination at trial.

COSTS

[35] The Co-operative has prevailed during this phase of the proceedings. It is entitled to prescribed costs pursuant to CPR 65.5.

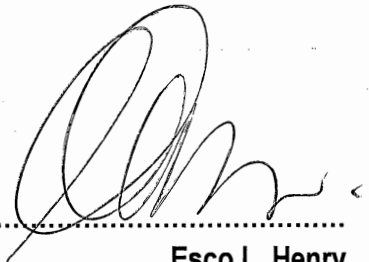
ORDER

[36] It is ordered:

- (1) The application by Saint Vincent and the Grenadines Small Business and Microfinance Co-operative Ltd. to strike out Mr. Angus Dennie's claim form is granted in part.
- (2) Paragraphs (a), (b) and (c) of the claim form; paragraphs (7) (i) (ii) (a) (b) and (c) of the statement of claim and paragraphs 2., 6 and 7 of Mr. Dennie's Defence and Counterclaim are struck out.
- (3) Angus Dennie's claim for general and special damages, loss of earnings and loss of use is dismissed.
- (4) The application by Saint Vincent and the Grenadines Small Business and Microfinance Co-operative Ltd. for summary judgment is granted in part.

- (5) Judgment is entered for the Saint Vincent and the Grenadines Small Business and Microfinance Co-operative Ltd. in the amount of \$20,069.92.
- (6) The issue relating to the validity of the impugned bill of sale is reserved for trial on the merits.
- (7) Angus Dennie shall pay to Saint Vincent and the Grenadines Small Business and Microfinance Co-operative Ltd. prescribed costs of \$2,257.90 pursuant to CPR 65.5.

[37] I wish to thank counsel for their written submissions.



Esco L. Henry
HIGH COURT JUDGE