

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

IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0017

BETWEEN

FRANK JAMES

CLAIMANT

AND

DYAN JOHN

DEFENDANT

Appearances:

Mrs. Kay Bacchus-Browne for the Applicant/Defendant.

Mrs. Zhingha Horne-Edwards for the Respondent/Claimant.

2016: Mar. 2
Mar. 23

DECISION

BACKGROUND

[1] **Henry, J.:** By Fixed Date Claim Form ("FDCF")¹ Mr. Frank James seeks recovery of possession of property at Belvedere occupied by Dyan John. He alleges that he owns the land and dwelling house. Mr. James also seeks costs of \$3500.00 which were awarded to him in 2014,² in another civil claim.³

¹ Filed on 13th February, 2015.

² By order dated 26th February, 2014.

³ SVGHCV2011/0037.

Ms. John has filed an application⁴ to strike out Mr. James' Claim Form. She contends that it is an abuse of the court's process. On the hearing date, Ms. John submitted that her application to strike out is restricted to Mr. James' claim for the referenced costs. In this regard, she has abandoned her formal attack on the rest of the claim.

ISSUE

[2] The issue therefore is whether Frank James' claim for costs should be struck out.

ANALYSIS

Issue – Should Frank James' claim for costs be struck out?

[3] Ms John contends that Mr. James' attempt to secure execution under Suit No 37 of 2011 by filing a new claim is an abuse of the court's process. She submits further that 'execution of the judgment ought to be done in the suit in which the judgment was obtained.' Those are outlined as the grounds of her application. She filed an affidavit⁵ in support in which she repeats these statements.

[4] CPR 26.3 empowers the court to strike out a statement of case or part of it, if it appears to be an abuse of the process of the court or likely to obstruct the just disposal of the proceedings.⁶ The court may make the order of its own initiative or on an application, provided it gives any party likely to be affected, an opportunity to make representations.⁷ In exercising its discretion, the court must consider the overriding objective to deal with cases justly.⁸

⁴ By Notice of Application filed on 1st April, 2015.

⁵ Sworn to by Dyan John on 1st April, 2015 and filed on even date.

⁶ See CPR 26.3(1)(c).

⁷ See CPR rule 26.2(1) and (2) which states:

"26.2 (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application of its own initiative.

(2) If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations."

⁸ See CPR 1.2 which states:

"1.2 The court must seek to give effect to the overriding objective when it-

[5] As articulated by Rawlins J. in **Julian Prevost v Rayburn Blackmore et al**,⁹ the court will strike out a statement of case “*only in the most clear and obvious cases ... because it errs on the side of having trials on the merits of cases.*”⁹ Even where the case is weak and not likely to succeed, this is not a basis for striking it out. The court is required to examine the statement of case to ascertain if a cause of action is made out. However, it does not have to conduct a detailed or of facts and allegations the statement of case or the documentary exhibits.¹⁰ If it raises a question for the judge to decide or discloses a cause of action it will not be struck out. At this stage, the court does not concern itself with evaluating whether the claimant can prove his case.¹¹ This application will be considered in light of the stated rules and guiding principles.

[6] By his FDCF, Mr. James seeks ‘costs awarded in possessory title proceedings in the sum of \$3500.00.’ He rehearses in his statement of claim that Ms. John’s application for a declaration of possessory title was dismissed on 26th of February, 2014, following which she was ordered to pay costs of \$3500.00 to him. He exhibited to the FDCF a copy of the order. In it, Thom JA. ordered Dyan John to pay Frank James agreed costs of \$3500.00. Are those costs recoverable as a civil debt in a fresh action?

[7] The Civil Procedure Rules 2000 (“CPR”) 43.4 provides:

‘A judgment creditor who has judgment with costs may
enforce the judgment and the costs separately.’

Part 45 of the CPR deals with enforcement of orders including money judgments, but makes no specific reference to enforcement of costs. CPR 45.2 establishes the different procedures to be followed to enforce a judgment for payment of a sum of money (except in cases for payment of

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- (a) exercises any discretion given to it by the Rules; or
 - (b) interprets any rule.”

⁹ Commonwealth of Dominica High Court Claim DOMHCV2005/0177 at para. 6.

¹⁰ M4 Investments v CLICO (Barbados) Ltd. (2006) 68 WIR 65 at page 82.

¹¹ Wenlock v Maloney [1965] 2 All E.R. 871, (CA); Lonhro Case [1991] 4 All E.R. 965.

money into court). Costs orders are captured by that rule. It provides for enforcement by a charging order; garnishee order; judgment summons, order for seizure and sale of goods and appointment of receiver. Although they do not expressly refer to the costs component of a judgment, the combined effect of CPR 43.4 and 45.2 is to permit the enforcement of a costs order in the manner prescribed. No provision is made in the rules for execution of costs order by new proceedings.

- [8] A fundamental guiding principle which the court observes in disposing of matters, involves discouraging multiplicity of legal proceedings. Likewise, pursuant to the overriding objective, the court has a duty to allot to each matter only such of its scarce resources as appropriate in all the circumstances. In this regard, the court does not re-adjudicate identical issues between the same parties. By bringing a claim for recovery of the costs, Mr. James is seeking an order that was already made by Thom JA. following a trial. He only need enforce it. By bringing a fresh claim for those costs, Mr. James is applying for relief he sought before and received. It does not give rise to a separate cause of action and is unnecessary. It also constitutes an abuse of the court's process. The FDCF and statement of claim do not disclose a reasonable ground for bringing an action for those costs and is accordingly struck out.

ORDER

- [9] It is therefore ordered:

- (1) Dyan John's application for an order striking out Frank James' entire claim form is dismissed.
- (2) Dyan John's application for an order striking out the Frank James' Claim for costs of \$3500.00 awarded in the possessory title proceedings is granted.
- (3) Frank James' Fixed Date Claim Form be and is hereby amended by deleting the words: 'costs awarded in possessory title proceedings in the sum of \$3500.00;'
- (4) Frank James' statement of claim be and is hereby amended by deleting:
 - (a) paragraph 8; and
 - (b) the prayer for the sum of \$3500.00.

- (5) Frank James shall pay agreed costs of \$500.00 to Dyan John.

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Esco L. Henry
HIGH COURT JUDGE