

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CIVIL)
A. D. 2016**

CLAIM NO. SKBHCV2012/0162

**In the Matter of the return of money paid by mistake
or in the alternatively for consideration that has wholly failed.**

and

In the Matter of the Supreme Court Rules, 2000.

BETWEEN:

SHAVORN CASEY

Claimant

and

SHERALEE HERBERT

Defendant

Appearances:-

Mr. Hesketh W. Benjamin for the Claimant.

Ms. Natasha Grey for the Defendant.

2016: February 23rd

JUDGMENT

[1] **CARTER J.:** The complexities of modern relationships and the interaction of these and the law are both glaringly highlighted by the facts of this case. This matter

was brought by fixed date claim form filed on the 27th of April 2012 where the claimant sought “...the return of monies paid to the defendant by mistake, mistakenly believing that the claimant was the biological father of the defendant’s male child named D, born of the defendant’s body on 24th August 2007 or alternatively the return of money paid to the defendant for a consideration which has wholly failed.

[2] The claimant sought::

1. The sum of \$50,640.00
2. Interest at the rate of 5% per annum in accordance with Act 17/1975 No. 17 of 1975
3. Costs
4. Any further or other relief as to the Court seems just”¹

[3] The claimant and the defendant were involved in an intimate relationship that the parties agree spanned some eight (8) years. The claimant’s Statement of Claim outlined that during the course of their relationship, sometime in 2007, the defendant informed him that she was pregnant “for him”.

[4] The claimant further pleaded that as soon as he was made aware of the pregnancy he immediately started to give the defendant sums of money in connection with her changed biological circumstances. He asserts that ‘these additional monies were requested by the defendant for such requisites as doctor’s fees, medical attention, prescriptions, periodic medical examination, clothing, shoes, diapers, vests, food, baby bottles, etc.’²

¹ Statement of Claim filed on 27th April 2012

² Paragraph 5 (ii) of Statement of Claim filed on 27th April 2012

[5] On 24th August 2007 a male child named D, was born of the body of the defendant. The claimant asserts that without having any thought or reason of the child not belonging to him, that he continued to support both mother and baby. The claimant would give the defendant \$350.00 biweekly for their maintenance, pay the day care fees, transport fees and provide weekly snacks. The claimant alleged that for a period of three (3) years and nine (9) months he supported the defendant and D in this manner.

[6] Sometime in 2011 when D was three years old, the claimant confronted the defendant and the defendant confirmed to the claimant that he was not the father of the male child he had been supporting. That the claimant was not D's father was further confirmed some weeks later by the results of a DNA Test.

[7] As a result of that revelation, this present claim is brought on the basis that the defendant under "*false pretense, knew the true situation regarding her pregnancy and unjustly mulct and extracted from the claimant considerable amounts of money, having led the claimant to believe that he was the father of the child.*"³

[8] In his statement of claim, the claimant particularized the sums of money given to the defendant by way of misrepresentation as follows:

<i>"Doctor/medical fees</i>	<i>\$ 900.00</i>
<i>Child's education and necessities</i>	<i>\$ 3170.00</i>
<i>School Fees</i>	<i>\$ 2400.00</i>
<i>Bi weekly payments of \$350.00 for 3 years and 9 months</i>	<i>\$39,470.00</i>
<i>Fees for Paternity Test (DNA Report)</i>	<i><u>\$ 1500.00</u></i>
	<i><u>\$47,440.00</u></i>

³ Paragraph 7 of Statement of Claim filed on 27th April 2012

[9] In her defence, the defendant asserts that that for a brief period she and the defendant ended their relationship and had short intimate relationships with other persons. After a month passed, the defendant and claimant resumed their prior relationship and became intimate again.⁴ According to the defendant's pleadings, she honestly believed that the child she carried belonged to the defendant.

[10] The defendant further adds that the claimant did not have a steady job at the time that she fell pregnant and that she sometimes had to assist the claimant financially. In relation to monies given to her by the claimant for the purposes relating to the pregnancy, the defendant asserts that even though the claimant gave her monies, he never directed her to use the money in relation to expenses regarding her pregnancy. Sometimes the claimant would give her money every three (3) weeks and was at times inconsistent in the amounts he gave to her.

[11] Though the defendant admits that on a few occasions she used some of the money given to her by the claimant to obtain baby items and to pay medical bills in relation to the pregnancy, she maintains that the money given to her by the claimant was a gift; that there was never any intention to enter into legal relations with the claimant when she accepted his money.

[12] In her defence, she adamantly denied that she was misrepresenting the true state of affairs and that at all material times she honestly and on reasonable grounds believed that the claimant was the biological father of D.

[13] At trial the parties' evidence did not deviate significantly from their witness statements, admitted at trial as their Evidence in Chief. The claimant under

⁴ Paragraphs 3 and 5 of Defence filed on 6th July 2012

cross-examination stated that, *"Over the eight years I use to give her money because we were girlfriend and boyfriend I wouldn't count it as gifts. The money I gave her I was not looking back for it."*

[14] The claimant however insisted that the reason that he provided monies to the defendant after the child was born was for the maintenance of the child. He repeatedly stressed that: *"After I gave her money, I told her what it was for. I don't know if she spent it differently. That is what I gave and that is what it was for. When I gave the money, the most conversation would be 'this is the \$350.00 for D'...After I gave her \$350.00 sometimes she would say 'How I could be your girlfriend and you only giving me money for child. That would be when I gave her beyond the \$350.00'"*

[15] The claimant's evidence on cross-examination was also consistent with his evidence in chief on the matter of the pregnancy. He stated that: *"When I found out she was pregnant, she told me 'I am pregnant'. At that stage, we did discuss whether I was the father or not. She explained that we were finally having a child. It may not have been the exact words. We were trying to have a child before her pregnancy and she was happy to say we finally did it. She never explained and said 'Shavorn I am pregnant for you.' She explained more than once that the child she was carrying was for me. Not those exact words but to the same effect."*

[16] Significantly in relation to the instant matter, the claimant stated in answer to Counsel for the defendant that: *"There was no contractual relationship. I am entitled to what I put into looking after D while I was under the understanding that he was my biological child."*

[17] The claimant also called Sheila Casey, his mother in support of his claim. Mrs. Casey's evidence supported that of the claimant with regard to those matters which she stated were within her knowledge: the course of the relationship and the claimant's generosity toward the defendant, including, specifically, payments made to the defendant by the claimant after D was born.

[18] The defendant was cross-examined by Counsel for the claimant. She reiterated that the claimant: *"He gave me one set of money. He started giving me monies before the child was born sometimes and during the pregnancy sometimes. He did not give me \$350.00 every two weeks. He gave me money but did not specifically say it was for the child."*

[19] The defendant related that she paid for the doctor's visits leading up to the birth of D and that she also received financial support from members of her family. She stated that to her knowledge that it was the claimant that she was pregnant for. She admitted in answer to the court that she truly believed this and that she did not make any false representation to him in those circumstances because they both believed that D was the child of the claimant.

The Issues for The Court's Determination:

Issue 1: Did the Claimant Plead the Cause of Action Upon Which He Seeks To Rely in the Instant Case?

[20] As stated at paragraph 1 above, the claimant sought by his statement of claim monies: *"paid to the defendant by mistake, mistakenly believing that the claimant was the biological father of the defendant's male child named D or alternatively the return of money paid to the defendant for a consideration which has wholly failed."*

In written closing submissions filed by the claimant, the claimant sought to rely on misrepresentation as a cause of action and invited the court to find that: *'the law which ought to be applied is the relevant aspect of the law of misrepresentation.'*⁵

[21] In written submissions filed on behalf of the defendant, Counsel for the defendant highlighted to the court that, *"The Claimant did not plead misrepresentation as a cause of action against the defendant but instead has sought to rely on the cause of action in the latter part of his Statement of Claim."*⁶

[22] It is settled and accepted law that a party must adequately plead its case and that issues between the parties are established by way of the pleadings.⁷

[23] As has been pointed out by Barrow J.A.: *"The pleader makes allegations of facts in his pleadings. Those alleged facts are the case for the party ...The 'pleadings should make clear the general nature of the case,' in Lord Woolf's words, which again I emphasize. To let the other side know the case it has to meet and, therefore, to prevent surprise at the trial, the pleadings must contain the particulars necessary to serve that purpose. But there is no longer a need for extensive pleadings, which I understand mean pleading with an extensive amount of particulars, because witness statements are intended to serve the requirements of providing details or particulars of the pleaders' case."*⁸

[24] A court will not permit a claimant to pursue a case at trial, *"...that is not fully reflected in the way that party's case was previously put in its statement of case. A*

⁵ Claimant's written submissions, filed on the 7th December 2015, page 3

⁶ Defendant's written submissions, filed on the 7th December 2015, page 1

⁷ Lord Woolf in *Mc Philemy v Times Newspapers Ltd* [1999] 3 All ER 775; *Three Rivers District Council and others v Bank of England (No.3)* [2001] 2 All ER 513

⁸ Barrow J.A at para. 43 in, *Eastern Caribbean Flour Mills Limited and Ormiston Ken Boyea; Eastern Caribbean Flour Mills Limited and Hudson Williams CIVIL APPEAL No.12 of 2006*

*judge is not permitted to give judgment on the basis of a claim that is not included in the statements of case.”*⁹

[25] The evidence, oral testimony led at trial, merely buttresses the pleadings. This oral testimony together with the witness statements and documents, particularize the allegation that has already been made in the pleadings before the court.

[26] The provisions of **CPR 8.7(1)(3)** are also instructive:

“8.7 (1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.

3) The claim form or the statement of claim must identify any document which the claimant considers to be necessary to his or her case.”

[27] The claimant has set out in his claim form as supported by the statement of claim, that the defendant misrepresented to the claimant the true situation about the pregnancy and extracted sums of money from the claimant having led him to believe that he was the father of the child. At paragraph 8 of the statement of claim he asserts clearly:

“That at the time the defendant represented to the claimant that she was carrying the claimant’s child the defendant well knew that she was misrepresenting and or ought to have known that she was misrepresenting the true state of affairs (the true facts) in connection with the said matter.

The claimant has therefore paid to the defendant the aforementioned monies by way of misrepresentation and or mistake; or alternatively, for a consideration that has wholly failed.”

⁹ Blackstone’s Civil Practice, 2003 at para. 31.7. See also First Caribbean International Bank (Barbados) Limited (formerly CIBC Caribbean Limited) v Laurel Thomas-Egan, Claim No: ANUHCv 2005/0497

[28] Having considered the pleadings, the claim form and the statement of claim, this Court finds that the cause of action is sufficiently particularized and evident on the pleadings.

Issue 2:

[29] At the end of the evidence in this matter Counsel for the claimant indicated to the court that he would be relying on misrepresentation, innocent misrepresentation as the basis of his case. He was clear that he was not relying on mistake or upon a consideration that has wholly failed.

[30] The further issue for the court's consideration is therefore whether the claimant has proved misrepresentation on the evidence led in support of the claim. Counsel for the claimant in written submissions¹⁰ stated that it was the law of misrepresentation which was to apply and defined misrepresentation for the court as follows:

"Misrepresentation is:

(a) A statement of material fact;

(b) Made by one party to the other;

(c) Before or at the time of formation of the contract;

(d) Was intended to act as an inducement to one other party to enter the contract, and was such an inducement; and

(d) Was falsely and or negligently stated."

[31] This definition is substantially the same as that advanced by Counsel for the defendant in her written closing submissions. It is evident that Counsel for the claimant accepts that there must be a false statement of fact, made by one party to the other *"before or at the time of formation of the contract"* before misrepresentation can be established. While it may appear that the first two

¹⁰ Page 4 of Claimant's submissions filed on 7th December 2015.

prerequisites of the definition above are satisfied: there was a false statement of material fact made by one party the other, it is not so apparent to this court that such statement of fact was made before or at the time of formation of a contract or was intended to act as an inducement to enter into a contract or that the statement of fact was such an inducement.

[32] The claimant's pleadings and evidence must establish that he and the defendant were parties to a contract. Without such evidence, a court has no basis upon which to consider when the false statement was made in relation to the aggrieved party entering the contract, whether it was intended to act as an inducement or whether it was such an inducement.

[33] The court's difficulty is with regard to the seeming lack of evidence from the claimant on this point. In his Evidence in Chief, the claimant makes no mention of having entered into a contract with the defendant. He revealed what occurred when he learnt that the defendant was pregnant but never states that the monies paid to the defendant were any thing other than that which a responsible father would provide for the intended mother of his child and then for the young child itself when it was born.

[34] Under cross examination his clear reply to Counsel for the defendant as has been outlined earlier at paragraph 17 was that, inter alia:

"There was no contractual relationship."

[35] Similarly, the defendant was very clear in her evidence. In her Evidence in Chief she stated:

"Mr. Casey and I was in an intimate relationship, we never had any other relationship, neither contractual or otherwise. Anything that Mr. Casey gave me during our relationship was always a gift, it was nothing that I

had require of him or demanded of him. Whatever items Mr. Casey gave me, when I accepted them, I always accepted them as gifts.”¹¹

[36] In written submissions to this Court the claimant has invited the court to find that: *“the Defendant was aware that the Claimant would rely on her representation that she was pregnant and by extension that the Claimant did act upon the said representation to his detriment, inconvenience and financial loss. It would therefore not be unreasonable on the balance of probability that the Defendant be made liable in damages for the Claimant.”*

[37] Counsel for the claimant does not seek in his submissions to point to any evidence arising from the trial of this matter upon which a court can rely to find that there was a contract formed or even that there was a contract within the contemplation of the parties at the time that the defendant informed the claimant that she was pregnant or at any time thereafter. Instead the submissions focus on different types of misrepresentation.

[38] It appears that there has been a failure on the part of the claimant to appreciate that, whether fraudulently, negligently, or innocently made, a false statement of fact in and of itself is not a cause of action. A claim for misrepresentation arises where one party to a contract makes a false statement of fact that induced the other party to enter into the contract. An actionable misrepresentation entitles the innocent party to rescind the contract unless the court determines otherwise, though it may award damages in lieu of rescission. Damages are also available where the misrepresentation has caused the innocent party loss.¹²

¹¹ Witness Statement of Sheralee Herbert filed on 25th November 2013, paragraph 13

¹² Howard Marine & Dredging Co v Ogden & Sons [1978] QB 574.

[39] Having considered the whole of the evidence in this case, the court agrees with the submission of Counsel for the defendant that: *“The Claimant has not established a cause of action against the Defendant, what the Claimant seeks to rely on is something akin to the law of misrepresentation outside of a contract.”*¹³ A claimant cannot be allowed to fling as many legal terms that he may envision in the hope that one of them asserts itself as a cause of action by dint of it, by chance, sticking and thereby aligning itself to some bit of stray evidence.

[40] It is the court's finding that the claimant's evidence does not support a cause of action for misrepresentation. On the basis of the evidence adduced by the claimant the claim cannot succeed.

The Court's Order

[41] The claim is dismissed. Costs to the defendant to be prescribed costs or as otherwise agreed between the parties within twenty eight (28) days of this Order.

Marlene I. Carter
Resident Judge

¹³ Post-trial submissions on behalf of the Defendant, filed on 7th December 2015, page 2.