

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2013/0325

BETWEEN:

ALIE BAPTISTE

Claimant

and

THE ATTORNEY GENERAL OF GRENADA

Defendant

Appearances:

Dr. Francis Alexis, Q.C for the Claimant

Mrs. Chevaugh Spencer-Joseph for the Defendant

2013: December 11

2014: March 17

DECISION

- [1] MOHAMMED, J.: On 11th July, 2013 (“the application to strike out”) the Defendant applied to strike out the Claimant’s Claim Form and Statement of Claim on the basis that they do not disclose any reasonable ground to bring or defend the claim; the prosecution of the claim is an abuse of process of the court and the Statement of Claim is prolix and does not comply with the requirements of Part 8 of the CPR 2000. Although the application to strike out challenged the Claim on three limbs it appeared to the Court that the Defendant only pursued the first two limbs in its submissions. In the circumstances, I will only deal with the grounds raised in the

first two limbs. To appreciate the application to strike out it is necessary at this juncture to briefly set out the nature of the Claimant's substantive claim.

- [2] The Claimant, a Grenadian national who was involved in the business of blending and selling rum and exporting seafood, was extradited on the 11th June 2012 to the United Kingdom to stand trial for the offence of "Conspiracy to evade the prohibition on the importation of a controlled drug of Class A, namely Cocaine". The Minister of Foreign Affairs of Grenada ("the Minister") issued an Authority to Proceed ("Authority to Proceed") on the 19th February, 2009 which initiated the extradition process and a Warrant of Extradition ("Warrant of Extradition") on 17th May 2012. He was tried in December 2012 in the United Kingdom for the said offence and was found not guilty by the jury. He returned to Grenada in late December 2012.
- [3] He instituted the instant proceedings where he alleges that the Minister failed in his duty of care to carry out proper enquiries before signing the Authority to Proceed and the Warrant of Extradition. He contends that as a result of the Minister's breach of his duty of care that the Claimant has suffered damages for deprivation of liberty, loss of reputation, loss of character, psychological hurt, humiliation, embarrassment, economic and financial loss. He has quantified his economic and financial loss as loss of a motor vehicle in the sum of \$35,000.00; rum flavour stock worth \$45,000.00; a lot of land situate at Mardigras, St. George's worth \$40,000.00 and his debts in the sum of \$80,000.00.
- [4] The Defendant's grounds for the application to strike can be summarized as: the Claimant is seeking to re-litigate issues previously dealt with at the Magistrate Court and the High Court; the Claimant failed to avail himself of the avenue of judicial review as provided under the Extradition Act of Grenada¹ ("The Extradition Act"); the pleaded facts do not disclose any legally recognizable claim against the Defendant; the Extradition Act provides specific procedures and remedies to an aggrieved person and the Claimant is estopped from raising an ordinary claim in

¹ Chapter 98 of the Laws of Grenada 2010 revision

negligence; the Minister acted within his powers and complied with his duty under the Extradition Act; and no fresh evidence has been adduced to show that the decision of the Minister would have been entirely different.

[5] Part 26.3 CPR confers a discretion on the Court to strike out a Statement of Claim in any of the following circumstances:

- (a) Failure to comply with a rule or practice direction, order or direction given by the court in the proceedings.
- (b) Failing to disclose any reasonable grounds for bringing or defending a claim.
- (c) Abuse of process of the court or is likely to obstruct the just disposal of the proceedings.
- (d) If it is prolix or does not comply with the requirement of paragraphs 8 or 10.

[6] There has been a wealth of guidance from the Court of Appeal in this jurisdiction on the factors which a Court ought to consider in exercising its discretion to strike out a claim. I will just refer to two which, in my view, captures the essence of the guidance. In *Citgo Global Custody v Y2K Finance*² Edwards JA stated:

“...the following circumstances are identified as providing reason for not striking out; where the argument involves a substantive point of law which does not admit of a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully developed. It is also well settled that the jurisdiction to strike out ought to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial and the ability to strengthen its case through the process of disclosure and other court procedures such as request for information; and the examination and cross-examination often change the complexion of the case. Also, before using CPR 26.3 (1) to dispose of ‘side issues’, one should be taken to ensure “that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in any application must be exercised in accordance with the overriding objective of dealing with cases justly.”

² BVICVA No. 22/2008

[7] More recently Mitchell JA in *Tawney Assets Limited v East Pine Management Limited* and Ors³ echoed similar sentiments on the approach the Court must adopt as:

“The striking out of a party’s statement of case, or most of it, is a drastic step which is only to be taken in exceptional cases. The reason for proceeding cautiously has frequently been explained as that the exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The court must thus be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial. The proper approach to be taken in striking out a statement of case as disclosing no facts upon which the court can proceed has been described by Pereira CJ [Ag.], in her judgment in the interlocutory appeal in *Ian Peters v Robert George Spencer*⁴ where she found that a statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be determined by hearing oral evidence.”

[8] At paragraph 23 in *Tawney Assets Limited* Mitchell JA drew an analogy with the approach under the CPR rule with the old rules when he said:

“Even under our old rules, the striking out of a claim was a jurisdiction which was to be exercised sparingly. In the words of Sir Dennis Byron in *Baldwin Spencer v The Attorney General of Antigua and Barbuda et al*⁵:

‘This summary procedure should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court⁶.’

There is no reason to believe that this is not still good guidance under the new CPR.”

³ Civ Appeal HCVAP 2012/007 at paragraph 22

⁴ Antigua and Barbuda High Court Civil Appeal No. 16 of 2009 (delivered 22nd December 2009, unreported) following *Citco Global NV v Y2K Finance Inc* Territory of the Virgin Islands High Court Civil Appeal No 22 of 2008 (delivered 19th October 2009, unreported)

⁵ Antigua and Barbuda High Court Civil Appeal No. 20A of 1997 (delivered 8th April 1998, unreported)

⁶ *Ibid*, p.5

Should the Claim Form and Statement of Claim be struck out for disclosing no reasonable ground for bringing the claim?

- [9] The Claimant's case is grounded in negligence and in particular his allegation that the Minister owed him a duty of care to carry out proper inquiries before he signed the Authority to Proceed and the Warrant of Extradition. At paragraph 32.1 of the Statement of Claim, he sets out the particulars of the Minister's alleged negligence as:

"Particulars of Negligence

1. The Minister was negligence (sic) in that he:
 - (ii) Failed to make proper inquiries, and/or have proper inquiries made, into the monies sent by Gibson to Baptiste; as –
 - (iii) Those monies were deposited by Baptiste in Baptiste's accounts at Grenada Co-operative Bank, Church Street, St. George's; Communal Co-operative Credit Union, H.A. Blaize Street, St. George's; and Grenada Building and Loan, Church Street, St. George's
 - (iv) From those accounts Baptiste spent sums on cheques written by him to individuals and business houses, none of which were involved or allegedly involved in the said conspiracy ;
 - (v) All the relationships between Baptiste and Moore and between Baptiste and Gibson, were bona fide, above-board, business transactions; in all which Baptiste was simply and only concerned about selling his rum and seafood;
 - (vi) Baptiste had never before been convicted of having been involved in any dealings in drugs."

- [10] There are primarily four reasons for the Defendant asserting that the Claimant's case discloses no reasonable ground for bringing the claim which are all based on points of law. They are (a) there is no common law duty for the Minister to make the type of inquiries which the Claimant alleges before he issued the Warrant to Surrender (Warrant of Extradition) since there is no special relationship between the Minister and any persons who may be committed to be extradited by the Court

which would give rise to a duty of care; (b) there is no duty under the Extradition Act for the Minister to make such inquiries and the Minister complied with his duties under the Extradition Act; (c) the Extradition Act does not confer a civil right of action in negligence against the Minister and a specific remedy is already provided for at section 16, and (d) a common law duty greater than that set out under the Extradition Act is impermissible.

[11] In striking out a claim where there is no reasonable ground for bringing, it Potter LJ in *Partco Group Ltd v Wragg*⁷ stated that cases where striking out are appropriate include:

- (a) where the statement of case raises an unwinnable case where continuing the proceedings is without any possible benefit to the respondent and would waste resources on both sides (*Harris v Bolt Burdon*⁸); and
- (b) where the statement of case does not raise a valid claim or defence as a matter of law (*Price Meats Ltd v Barclays Bank plc*⁹).

[12] While all the grounds for the striking out of the Claim is that it will fail in law, I have not been persuaded at this stage of the proceedings that the Claimant's case is bound to fail in law for the following reasons:

- (a) Categories of negligence not closed. In *Caparo Industries plc v Dickman*¹⁰ the House of Lords restated that for a common law duty of care to arise there are three criteria to be met, namely: foreseeability of damage; sufficient relationship of proximity of neighbourhood between the alleged wrongdoer and the person who suffered damage and the reasonableness or fairness of imposing such duty. I agree with the Claimant's submission that the categories of situations in which a duty of care is owed and in which a cause of action in negligence arises are not closed. While I agree with the Defendant that a cause of action that is unknown to the law ought to be struck out, in my view the Claimant's case raises a novel point of law. One of the issues which the Court will be called upon to examine is whether

⁷ [2002] EWCA Civ 594

⁸ [2000] CPLR 9

⁹ [2000] 2 All ER (Comm) 346

¹⁰ [1990] 1 All ER 568 (HL)

there was any special relationship between the Minister and any person to be extradited. In such circumstances, “where the argument involves a substantial point of law which do not admit to a plain and obvious answer, it may be best not to have it determined on a striking out application”¹¹. The Claimant’s action may be fraught with difficulties and challenges in proving his case but, in my view, this is not a good reason to strike out his Claim.

- (b) Common law duty of care and statutory duty. In *Home Office v Dorsal Yacht Co Ltd*¹² and later in *Murphy v Brentwood District Council*¹³ the Court recognized that a duty of care at common law may also arise even where there is a statutory duty of care. I therefore do not agree, at this stage before the issues are ventilated, with the Defendant’s submission that the Minister only had a statutory duty under the Extradition Act and such duty was exclusive and did not attract a common law duty of care.
- (c) Remedies under the Extradition Act. An aggrieved person under the Extradition Act is permitted under section 16 to apply to the Court for judicial review of the Minister’s decision to issue the Warrant to Surrender. The aggrieved person has 7 days from being informed of the Minister’s intention to issue the Warrant of Surrender to make such application. The Defendant has contended that this is the exclusive remedy which the Act confers. However, part of the Claimant’s pleaded case is he suffered loss and damage after he was extradited for an offence for which he was found not guilty. I therefore agree with the Counsel for the Claimant that the Extradition Act only provides a statutory remedy before the signing of the Warrant to Surrender but is silent on any remedy after the Surrender.
- (d) Minister’s duty under the Extradition Act. While the Defendant has contended that the Minister had complied with his duty under the Extradition Act, the Claimant seeks to challenge the extent of the Minister’s duty under the Extradition Act and the Common Law. Section 4 of the *Crown Proceedings Act*¹⁴ makes provision for a Minister who is acting under any Act to be also liable in tort for his actions. In my view, to strike out the

¹¹ Blackstone’s Civil Practice 2012 at page 503 para 33.9

¹² [1970] 2 All ER 294 (HL)

¹³ [1990] 2 All ER 908

¹⁴ Chapter 74 of the Laws of Grenada

Claimant's case at this early stage would deprive the Claimant of having this issue ventilated at a later stage of the proceedings.

- [13] I therefore conclude that the Defendant's application to strike out fails on this ground.

Is the Claimant's action an abuse of process of the Court?

- [14] The authors of the Caribbean Civil Court Practice 2011¹⁵ describe the concept of "abuse of process" as:

"The concept of 'abuse of the court's process' in the form of re-litigation is wider than res judicata or issue estoppel. It covers re-litigation where the party failed to bring his whole case forward in one go and wishes to supplement it or bring in other parties in a second set of proceedings. Observations by Sir James Wigram in *Henderson v Henderson* (1843) 3 Hare 100 at 115 to the effect that a person should bring his whole case against all possible parties 'in one go' do not mean that re-litigation is barred but rather that it may be demonstrated to be an abuse of process.... In deciding whether to permit the second action to proceed, the court will bear in mind the overriding objective and will consider whether the Claimant's wish to 'have a second bite at the cherry' outweighed the need to allot the court's limited resources to other cases."

- [15] The Defendant has contended that the Claimant is seeking to re-litigate issues that have already been dealt with in the Magistrate's Court and the High Court pertaining to the committal of the Claimant and that there is no fresh evidence (which could not by reasonable diligence have been obtained) that has been adduced by the Claimant in the Statement of Claim to show how the decision of the Minister would have been entirely changed.

- [16] There is no dispute that there were proceedings in the Magistrate's Court and the High Court concerning the Claimant's extradition. According to section 11 of the Extradition Act, the Magistrate's duty was to consider the evidence before her to determine if a prima facie case was made out to commit the Claimant for extradition. Under section 13 the High Court's powers were under judicial review

¹⁵ Page 254 Note 23.27

proceedings to consider the propriety of the Magistrate's action in making the order to commit.

[17] While there were proceedings in the Magistrate's Court and the High Court, the Defendant has failed to set out in its supporting affidavit what were the issues which were litigated before the Magistrate's Court and the High Court in relation to the Claimant's extradition, what evidence was adduced before and considered by each court in the determination of the issues and how the substantive issues in the instant action are similar to those determined in the Magistrate's Court and High Court.

[18] In the absence of such evidence being placed before this Court to support the application to strike out on the ground of abuse of process, the Court is not in a position to conclude that the issues which the Claimant is seeking to raise in the instant action are a re-litigation of the issues determined before the Magistrate's Court's and the High Court.

[19] I therefore find that the application to strike out fails on this ground.

Order

[20] The application to strike out is dismissed. The Defendant to pay the Claimant costs of the application. I will hear the parties on costs.

[21] Time is extended to 31st March 2014 for the Defendant to file and serve a Defence.

[22] Matter is transferred to the Master for Case Management.

Margaret Y. Mohammed
High Court Judge