

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2005/0443

BETWEEN

JANNIS REYNOLDS-GREENE

Claimant/Respondent

AND

THE BANK OF NOVA SCOTIA

Defendant/Applicant

Appearances:

Mrs. Nelleen Rogers-Murdoch for the Applicant

Mrs. Jannis Reynolds-Greene in person

.....
2008: April 14

October 9

November 20
.....

RULING

[1] **Blenman J:** This is an application by the Bank of Nova Scotia (the bank) to have the amended fixed date claim brought against it by Mrs. Jannis Reynolds- Greene struck out.

[2] Mrs. Reynolds-Greene has filed an amended fixed date claim against the bank and seeks damages, a stay of execution of the Notice to Pay Off, and the full account of all moneys that she has paid. She also seeks a number of declarations that the bank has acted illegally, unconscionably and with malice in issuing the Notices to Pay Off dated September 1st 2004 and July 19th 2005 respectfully. Mrs. Reynolds-Greene also seeks declarations that the bank has acted illegally and negligently. She did not file a statement of claim with the amended fixed date claim. Instead, she filed an Amended Notice of Application and an amended affidavit in Support of Application (the affidavit).

[3] The bank has filed an application, supported by an affidavit, in which it seeks to have the Court strike out the amended fixed date claim as disclosing no reasonable cause for bringing it. The bank also says that Mrs. Reynolds-Greene in filing the amended claim has abused the Court's process. Further, the bank says that the amended fixed date claim and the affidavit in support of the claim do not disclose any cause of action or any loss suffered by Mrs. Reynolds-Greene that would entitle her to an award of damages or interest.

[4] The bank states further, that in so far as Mrs. Reynolds-Greene's application for a stay of execution of the issued Notices to Pay is an application for injunctive relief, the claim does not disclose any imminent threat that they will be acted upon, nor in fact does the amended fixed date claim disclose what, if any, action was taken by the bank on the notices subsequent to the payments which Mrs. Reynolds-Greene made.

[5] The bank contends that Mrs. Reynolds-Greene has failed to indicate how the bank has acted with gross negligence, ill-will and bad faith. In fact, the amended fixed date claim discloses no action by the bank that would entitle Mrs. Reynolds-Greene to any of the reliefs sought.

[6] Mrs. Reynolds-Greene has filed an extensive affidavit in opposition to the bank's application to strike out the claim.

[7] **Issue**

The issue that arises for the Court's determination is whether the Court should strike out the amended fixed date claim on the grounds that it discloses no reasonable cause of action.

[8] **Mrs. Reynolds-Greene's submissions**

In seeking to persuade the Court not to strike out her amended fixed date claim and the affidavit in support, Mrs. Reynolds-Greene has filed copious submissions and referred to numerous legal principles, some of which do not touch and concern the application at bar.

The Court proposes however, to refer only to those aspects of her submissions that are relevant to the application to strike, with no disrespect intended.

[9] Mrs. Reynolds-Greene stated that she has a just cause for instituting proceedings against the bank and that there are triable issues stated in her amended fixed date claim and supporting affidavit for full account of all moneys paid, declarations that the bank has acted illegally, unconscionably and with malice in the wrongful issuance of Notices to Pay Off.

[10] Mrs. Reynolds-Greene said that the Court in determining whether to strike out her claim must ascertain if there is a serious issue to be tried. It is the duty of the Court to satisfy itself that the claim is not frivolous or vexatious. She referred the Court to **Keppie v The Marshal Fuel Group Ltd [1997] SLT 305, 308 K** PER Lord Hamilton. She said that Lord Hutton made much the same point in **Three Rivers District Council v Governor of the Bank of England No.(3) (2003) 2 AC 1 p 278** when he said:

‘But at this stage in the proceedings a Court is not concerned to try to assess which side will probably succeed if there is a trial; it is noted the question is whether there is material which shows that there are issues which should be investigated at a trial’.

Mrs. Reynolds-Greene said that the Court should give due regard to the above principle, as indeed there are issues in the amended fixed date claim which ought to be investigated.

[11] Mrs. Reynolds-Greene argued that the test for striking out is laid down by Lord Wolfe in the case of **Swain v Hillman (2001) 1 All ER 91 The Times** when he said that “care should be taken to ensure that a party is not deprived of the right to trial”.

[12] It is the duty of the Court to give effect to the overriding objective in Part 1.1 of the CPR 2000 for the primary concern of the Court is to do justice. It is well settled that the jurisdiction to strike out must be used sparingly, the reason being that the exercise of the jurisdiction deprives a party of the right to a trial, and of its ability to strengthen its case through the process of disclosure and other Court procedures, such as requests for further information. She says that it is the bank’s intention to deprive her of her lawful rights to “the

just disposal” of her claim and “the Court ought not to be party to such gross injustice, which can result in a miscarriage of justice”.

[13] Mrs. Reynolds-Greene said that where a claim is arguably so speculative that it discloses no reasonable cause of action or amounts to an abuse of process, (it must be noted this is not the case in the instant matter), instead of striking out, the Court may be prepared to allow the claim to proceed to enable the claimant to obtain disclosure from the defendant to see whether there is evidence substantiating the claim. If it does not, the defendant would be allowed to re-apply for striking out. In support of her contention, she referred the Court to **Arsenal Football Club Plc v Elite Sports Distribution Ltd (2002) The Times, 27 December 2002**. In that case, she said where the circumstances pointed towards the defendant having committed some tort, but it was unclear which one; the case was allowed to proceed. There is a real likelihood that on disclosure a further act of tort may be established in the case at bar, so the Court should not strike it out.

[14] Mrs. Reynolds-Greene said that if the bank considers its actions “a mere prank” which was not executed and is evidently inviting her to wait until it unlawfully threw her and her family on the streets then for her to seek legal redress to protect her rights after that act, the bank not giving full effect to its intentions was not mitigated by any act whatever on its part, but in consequence of her incurring additional debts. The bank has a question to answer in proceeding by a second notice issued again in a period of less than three months to auction her husband’s property. These are without doubt triable issues.

[15] Next, Mrs. Reynolds Greene posited that it is for the Court to determine whether the defendant owed her a duty of care to ensure that she obtained independent legal advice. Further, she says that she was not advised to get independent legal advice with respect to the loan transactions. Mrs. Reynolds-Greene said that a question for the Court to determine is whether it is a “conflict of interest” for the attorney preparing the instruments, crafted outside those prescribed in statute, to act on behalf of the lender and borrower without finding the bank in breach of its fiduciary duty and duty of care in failing and/or

refusing to ensure its customer obtains independent legal advice. This is a matter for the Court to decide.

- [16] Finally, she said that she has a good claim against the bank and in keeping with Part 66 of the CPR 2000, the bank, among other things, should be ordered to provide her and the Court with a full account of moneys she has paid.

[17] **Mrs. Rogers-Murdoch's submissions**

Learned Counsel Mrs. Rogers-Murdoch first argued that Mrs. Reynolds-Greene's amended fixed date claim, together with the supporting affidavit do not confirm to Part 8.1 (4) of CPR 2000. Mrs. Rogers-Murdoch said that Mrs. Reynolds-Greene has utilised the wrong procedure in bringing her claim.

- [18] Next, Learned Counsel Mrs. Rogers-Murdoch stated that the power to strike out a claim is a power to strike out in whole or in part any aspect of a statement of claim and to make consequential orders for the continuation or otherwise of the proceedings. A statement of case may be struck out in whole or in part if (a) it discloses no reasonable grounds for bringing or defending a claim; (b) it is an abuse of process of the Court or is otherwise likely to obstruct the course of the proceedings; or (c) there has been a failure to comply with a rule, procedure, direction or Court order. The power under grounds (a) and (b) above are statements of case which are unreasonably vague, irrelevant, vexatious, scurrilous, or obviously ill founded and also includes cases which do not amount to a recognizable claim or defence. Statements of case which are suitable for striking out under Part 26.3 of CPR 2000 include those which raise an unwinnable case where the continuation of the proceedings would be a waste of resources on both sides: **Harris v Burdon [2000] L.T.L. Feb 2, CA.**

- [19] Mrs. Rogers-Murdoch learned Counsel said that it is the bank's case that Mrs. Reynolds-Greene's claim does not disclose a cause of action against the bank. There are in fact no allegations of negligence against the defendant which are particularized and the mere use of the word "negligence" cannot by itself establish the existence of the alleged tort without

specific particulars. The statement of case should be struck out on the additional basis that the claim is scurrilous and an abuse of the process of the Court.

[20] **The affidavit**

Mrs. Rogers-Murdoch said that the statements in paragraph 2 of the affidavit are irrelevant and should be struck out as they have no bearing on a claim that Mrs. Reynolds-Greene could bring before this Court, pertaining as it does to Mrs. Reynolds-Greene's employment with the bank.

[21] Paragraphs 9 and 10 of the affidavit merely state that the bank is "wrongfully seeking to obtain a material advantage" and include no particulars that would suggest that the bank's action is in fact wrongful. Mrs. Reynolds-Greene alleges that several loans included in the Notice to Pay Off were unsecured but has failed to include any details or particulars of the said loans save and except to state that they were unsecured.

[22] Mrs. Rogers-Murdoch said that paragraphs 11 and 12 of the affidavit mention no allegation against the bank but merely recite matters which Mrs. Reynolds-Greene alleges she recalls and offers her opinion on the matters relating to the notice. They contain and disclose no factual situation that would require the bank to make a response.

[23] Paragraph 13 of the affidavit discloses no cause of action against the bank and merely expresses Mrs. Reynolds-Greene's opinion or state of mind regarding matters with which it is alleged she is familiar.

[24] Mrs. Reynolds-Greene alleges in paragraph 14 of the affidavit that the bank has acted negligently and in breach of Eastern Caribbean Central Bank guidelines; failed to apply moneys paid to the bank to reduce the principal or her loan. Mrs. Reynolds-Greene has however provided no particulars regarding this allegation and merely states that the bank acted negligently. Mrs. Rogers-Murdoch said that Mrs. Reynolds-Greene cannot establish the tort of negligence or indeed any cause of action simply by using the word "negligent"

but must present allegations which show negligence on the part of the bank, none of which has been provided. This paragraph should be struck out.

[25] Paragraph 16 of the affidavit alleges that the bank attempted to sell her property in breach of its statutory duty but discloses no basis upon which this breach is alleged. Mrs. Reynolds-Greene asserts that the attempted sale was done without the good faith that is required by section 75 of the Registered Land Act Cap 374 Laws of Antigua and Barbuda, but discloses no allegations or particulars that would indicate a lack of good faith on the part of the bank. Mrs. Reynolds-Greene also alleges that the bank breached sections 77 and 78 of the Registered Land Act in attempting to sell her property, but has disclosed no particulars or makes no allegations in respect of the alleged breaches of the law, which would give rise to a cause of action against Mrs. Reynolds-Greene.

[26] Section 77 of the Registered Land Act addresses the variation of chargee's power under the charge in the event of a default. No allegations have been made that the bank as chargee sought to or in fact varied the exercise of its powers under the charge, nor has any allegation been made of the manner in which the bank did so. Neither has any allegation been made of the chargee's right of foreclosure or entry into possession of charged land. The amended fixed date claim makes no allegations that the bank took any steps to either foreclose or to enter into possession of the charged property, nor have any particulars been included that could reasonably lead to the inference that the bank did so.

[27] Learned Counsel Mrs. Rogers-Murdoch said that paragraph 17 of the affidavit is irrelevant to any cause of action which Mrs. Reynolds-Greene may bring against the bank. The particulars given are also irrelevant to any allegations regarding the sale of Mrs. Reynolds-Greene's property. The paragraph should therefore be struck out.

[28] Mrs. Reynolds-Greene alleges in paragraph 18 of the affidavit that she was not advised to get independent advice but alleges no duty on the part of the bank to so advise her, nor does she allege any particulars that would entitle her to a remedy or relief from the bank if indeed such a duty has been established.

- [29] Mrs. Reynolds-Greene alleges in paragraph 19 of the affidavit, a breach of a fiduciary trust on the part of the bank, but has established no relationship nor provided any fact which would suggest that the bank was in a fiduciary relationship with her or in any relationship other than that of employer and employee. This paragraph discloses no cause of action against the bank.
- [30] Paragraph 20 of the affidavit alleges that the bank acted out of spite, malice and ill-will in issuing the Notices to Pay Off debt but has stated in the paragraph no facts or particulars that would suggest the allegation of malice, spite or ill-will. This paragraph should be struck out.
- [31] Mrs. Rogers-Murdoch submitted that on a careful consideration of the affidavit filed with Mrs. Reynolds-Greene's amended fixed date claim, paragraphs 2,9,10,11, 12, 13, 14, 17, 18, 19 and 20 are either irrelevant, make allegations against the bank unsupported any particulars, are statements of opinion, without factual data to support these opinions and disclose not even remotely a factual situation the existence of which would either (a) entitle Mrs. Reynolds-Greene to a remedy from the bank, or (b) reasonably require the bank to give a statement in answer.
- [32] Mrs. Rogers-Murdoch further submitted that the remaining paragraphs 1, 3-8 and 15 raise only the issue regarding the amount of Mrs. Reynolds-Greene's indebtedness to the bank in respect of loans secured by a charge and that she is seeking an order that the bank give an account of the said loan.
- [33] Further, the amended fixed date claim neither alleges nor does it include particulars of any loss or damage which Mrs. Reynolds-Greene has suffered as a result of any action taken by the bank in respect of the subject matter of the claim. The amended fixed date claim ought to be struck out.
- [34] **Court's analysis and conclusions**

The Court proposes to deal briefly with the claim. Part 8.7 of CPR 2000 states that fixed date claim form must be used:

- (a) In claims arising out of hire purchase or credit sale agreements;
- (b) In proceedings for possession of land;
- (c) Whenever its use is required by a rule or practice direction;
- (d) Where by any enactment proceedings are required to be commenced by originating summons or motion.

Therefore, it is clear that Mrs. Reynolds-Greene ought to have utilised claim form to institute her action, instead of a fixed date claim form. Her claim does not form within any of the heads mentioned above.

[35] **Pleadings**

The Court proposes to examine Mrs. Reynolds-Greene's pleadings. In the grounds for her application, Mrs. Reynolds-Greene said that no valid Notice to Pay Off was served on her. In the Notices to Pay Off dated September 1st 2004 and July 19th 2005 respectfully, which are purported to be issued pursuant to Section 72 of the Registered Land Act Cap 374 of the Laws of Antigua and Barbuda, the bank has acted with gross negligence. On the face of both documents the bank wrongfully included sundry unsecured loans, contrary to the provisions of Section 72 Cap 374 of the Registration of Lands Act Revised Edition of the Laws of Antigua.

[36] The Notices to Pay Off seek to deal with a number of instruments which included several charges and Consolidations and Variation of Charges as a result they are subject to the provisions of Cap 374 Sec 77 of the Registered Land Act which the bank has failed to comply with. Further, Section 78 precluded the bank from a right of re-entry.

[37] **The affidavit**

It is important that the Court examines the relevant paragraphs of the amended affidavit in support. Paragraph 3 of the affidavit states that on or about February 11th, 1986 Mrs. Reynolds-Greene became the registered proprietor of a parcel of land situated at Upper

Gambles in the parish of St. John in Antigua. This parcel of land is registered as Parcel 66; Block 61-1793; Registration Section Gambles.

- [38] Paragraph 4 of the affidavit states that the parcel of land is charged to the bank by way of several legal charges and variation and consolidation of charges to secure the repayment of several loans. Among the charges is one for a mortgage facility in the amount of \$128,000.00 which was granted on or about March 19th 1986 in accordance with the bank.
- [39] In paragraph 5 of the affidavit, Mrs. Reynolds-Greene complains that she was served with a Notice to Pay Off dated 1st September 2004, in the amount of \$347,352.37. On Thursday 14th of April 2005, a Notice of Auction of the property was advertised in The Daily Observer Newspaper for the day at 3:00 pm. In paragraph 6 of the affidavit, she days that as a result, she requested an officer of RBTT Bank Caribbean Limited to ascertain her exact indebtedness to the bank with a view to settling the indebtedness. She was advised by the officer that the amount was \$102,101.52. Payment of that amount was made by cheque No. 0030307 dated 21st April 2005.
- [40] Paragraph 7 of the affidavit states that on September 16th 2005, she was served with another Notice to Pay Off dated July 19th 2005 in the amount of \$324,582.27. On close examination of the two Notices to Pay Off, she observed a few things. Firstly, that the payment made on her behalf by RBTT Bank Caribbean Limited seemed not to have made any material difference to her indebtedness to the bank, in that the amount claimed was not significantly reduced by that payment when it should have been. Secondly, the bank is wrongfully seeking to obtain a material advantage by gross negligence in that included in the Notices to Pay Off were the unsecured loans.
- [41] Paragraph 10 of the affidavit states that included in the said Notices to Pay Off are amounts for which no charge instrument was ever prepared; particularly Promissory Note dated 7.12.99 for the amount of \$47,827.22. She is advised and do verily believe that the loans being unsecured, no charges ought not to have been included in the Notice to Pay

Off pursuant to the provisions of Section 72 of the Registered Land Act, which provides for charges only.

- [42] Paragraph 11 of the affidavit states that when she was dismissed in March 2003 by the bank, she recalls that the Book Value with respect to the Mortgage Loan was in the amount of \$277,000.00. If the amounts representing the Promissory Notes of 7.12.99 (\$18,062.78 and \$47,827.22) together with amount of \$102,101.52 which was paid were deducted then she may only be indebted to the bank in the amount of \$109,008.48.
- [43] Paragraph 12 of the affidavit says that based on her Employee Loan Application contracted as at November 2002 that her loan has been fully repaid to November 2005 with a partial payment made for December 2005. For the above reasons, the Notice(s) to Pay Off appears to be null and void.
- [44] Further, paragraph 13 of the affidavit states that as the Senior Mortgage Officer in charge of the mortgage portfolio, she knows the Eastern Caribbean Central Bank guidelines to all banks operating in the O.E.C.S over which the central bank has the jurisdiction. Included in these guidelines are the provisions that payment to loans in arrears 90 days and over are to be applied to principal and that the interest thereof is to be held in suspension as prescribed in Eastern Caribbean Central Bank Prudential Credit Guidelines 3 under the caption Suspension of Interest revised June 1997.
- [45] Paragraph 15 of the affidavit states that Mrs. Reynolds-Greene believes it is just that the bank be ordered to supply this Court with full and complete accounts of all monies paid by her to the bank in respect of the loans and sums charged to the said loan account subsequent to the payment made on April 21st 2005.
- [46] Paragraph 16 of the affidavit says that the bank in attempting to auction her property is in breach of the statutory provisions as laid down in the Registered Land Act Cap 374 Sections 75 which require that the chargee acts in good faith. Further, Section 77 provides that where the chargee proposes to act upon a Variation of a Charge, he must seek the

sanction of the Court before doing so. This provision is mandatory. In addition, Section 78 deprives the chargee/the bank of the right to enter into possession of the charged property. Hence the consolidation and variation of charge cannot be enforced as the bank is minded to do.

[47] Further, paragraph 17 of the affidavit states that she was not advised to get “Independent Legal Advice” with respect to the loan transactions, which no doubt would have been of assistance to her in deciding whether to enter into these loan agreement with the bank or to seek financial assistance else where.

[48] Paragraph 20 of the affidavit states that in light of all of the foregoing facts, Mrs. Reynolds-Greene verily believes that the conduct of the bank in issuing the Notices to Pay Off was rooted in spite, malice and ill-will.

[49] **Law**

The Court now addresses its power to strike out a claim. The Court’s power to strike out a pleading which does not disclose any reasonable ground for bringing a claim is conferred by Part 26.3(1) of CPR 2000:

“In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that:

- (a) The statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (b) The statement of case or the part to be struck out does not disclose any reasonable ground for bringing the claim;
- (c) The statement of case or the part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
- (d) The statement of case or part to be struck out is prolix or does not comply with the requirements of Part 8.

- [50] The Court has given deliberate consideration to the submissions of both sides. It is the law that if a party believes that he can show without a trial that his opponent's case has no real prospect of success on the facts, or that the matter is bound to succeed or fail, as the case may be, because of a point of law (including the construction of a document), that party may apply to have the matter struck out. See **Taylor v Midland Bank Trust Co. Ltd (1999) L.T.T August 21**. A statement of case is not suitable for striking out if it raises a serious live issue of fact which can only properly be determined by hearing oral evidence; **Bridgeman v McAlpine-Brown (2000)L.T.L January 19**. As to the principles upon which a Court may strike out an allegation of fraud or dishonesty see **Three Rivers DC v Governor and Company of the Bank of England (No.3) [2001] 2 All E.R. 513**.
- [51] Blackstone's Civil Practice 2004 at paragraph 33.7 states that applications to strike out a claim under CPR may be made on the basis that the statement of case under attack fails on its face to disclose a claim or defence which is sustainable as a matter of law. On hearing such an application it will be assumed that the facts alleged are true, see **Morgan Crucible Co. plc v Hill Samuel and Co Ltd. [1991] Ch 295 per Slade LJ**.
- [52] Paragraph 33.4 of Blackstone's Civil Practice 2004 states as follows:
Cases where striking out is appropriate according to Potter LJ in **Partco Group Ltd v Wragg [2002] EWCA Civ 594, [2002] 2 Lloyd's Rep 343** include:
- (a) Where the statement of case raises an unwinnable case where continuing the proceedings is without possible benefit to the respondent and would waste resources on both sides; **Harris v Bolt Burdon [2000] CPLR 9**;
 - (b) Where the statement of case does not raise a valid claim or defence as a matter of law, see **Price Meats Ltd v Barclays Bank Plc [2000] 2 All ER (Comm) 346**.
- [53] A cause of action that is unknown to the law will be struck out. A statement of case ought also to be struck out if the facts set out do not constitute the cause of action or defence alleged, or if the relief sought would not be ordered by the Court. However, purely

technical objections to the form of statements of case will not be entertained, provided the statement of case is sufficient to allow the other side to have a fair trial.

[54] In **Taylor v Intreprenuer Estates (CPC) Ltd (2001) LTL 7/2/2001** the claimant brought a claim seeking a declaration that a lease agreement had come into force, damages for breach of the lease, and damages for misrepresentation resulting from having entered into the alleged lease. On the documents it was clear that throughout the parties had negotiated on a 'subject to contract' basis. It was held that as no written agreement had been signed, no lease had been entered into. It followed that there was no reasonable cause of action, and the claim was struck out.

[55] In the Civil Court Practice 2007 page 74 states that CPR 3.4 [4] "Discloses no reasonable grounds for bringing or defending the claim" addresses two situations:

- (1) Where the content of a statement of case is defective in that, even if every factual 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.

The above provision is similar to the one under consideration in the present application.

[56] A case in contract may be struck out, for example, if the central issues are not justiciable because they relate to issues of academic or pastoral judgment: **Clark v University of Lincolnshire and Humberside [2000] 3 All ER 752, [2000] 1 WLR 1988, CA**. A case may also be non-justiciable because it turns on ministerial judgment as to when to make an announcement, e.g. warning of the health risks associated with a licensed drug: **Smith (by her mother and next friend) v Secretary of State for Health [2002] EWHC 200 (QB), [2002] All ER (D) 196 (Feb), (2002) Times, 11 March**. On the other hand, a case should not be struck out where the claim is in an area of developing jurisprudence and the facts need to be investigated before conclusions can be drawn about the law: **Farah v British Airways plc and the Home Office (2000) Times, 26 January, CA**. For this

reason the Court refuses to strike out a claim by an acquiring company alleging breach of duty by directors of the company acquired: **Partco Group Ltd v Wragg** *ibid*.

[57] **Law and pleadings**

In view of the foregoing, the Court has reviewed the pleadings in its entirety. As stated earlier, the Court has also given considerable attention to both the amended fixed date claims and to the affidavits in support. I am afraid that the Court is unable to glean any cause of action that arises.

[58] The Court accepts learned Counsel Mrs. Rogers-Murdoch's submissions. The Court is unable to ascertain from the pleadings any cause of action that Mrs. Reynolds-Greene has against the bank. The situation would have been quite different had the bank improperly sold the property, or had sold it at a great undervalue. In the case at bar, there is no pleaded allegation which can lead the Court to conclude that there is any sustainable claim that can give rise to a cause of action. Try as the Court did, it is unable to discern the cause of action that arises on the pleadings.

[59] On the pleaded case, the Court is not of the respectful view that any tortious action or breach of fiduciary duties (recognizable at law) arises. The principles stated in **Clark v University of Lincolnshire** *ibid*, **Harris v Bolt Burdon** *ibid*; are very helpful and the Court can do no more than apply them to the application at bar. Equally important is **Price Meats Ltd v Barclays Plc** *ibid*.

[60] In order to defeat an application to strike out a claim, there must be a sufficiency of pleadings that, on their face, give rise to a cause of action. The gravamen of Mrs. Reynolds-Greene complaints appear to be that the bank loaned her various sums of money some of which were secured by mortgages. She defaulted in repaying the loans and as a result the bank sent her notices to pay off. She holds the view that the notices were unlawful both in form and substance since among other reasons they included

moneys that she had borrowed from the bank for which there was no security. She was unable to liquidate her indebtedness and as a result, the bank advertised the auction of the charged property. However, she was able to obtain a loan to pay off the arrears that she owed the bank and the auction/sale of the property was cancelled. The bank subsequently sent her another notice to pay off. Mrs. Reynolds-Greene complains that the figure stated there is incorrect. In those circumstances, she says that the bank is acting out of spite and ill-will and is negligently issuing the notices to pay off, and seeks damages.

[61] In reaching my conclusion in the application at bar, I am also guided by the judgment of Rawlins J (as he then was) in **Robert Conrich v Ann Van Der Elst AXA HCV 2001/0002** in which His Lordship stated that it is only where a statement of case does not amount to a viable claim, or is beyond cure that the Court may strike it out.

[62] Applying the principles to my findings, the Court is of the respectful opinion that the amended fixed date claim and the amended affidavit in support do not disclose any reasonable grounds for bringing the claim against the bank. In a word, Mrs. Reynolds-Greene has not alleged any viable claim against the bank.

[63] **Conclusion**

In view of the foregoing, the Bank of Nova Scotia's application to strike out Mrs. Jannis Reynolds-Greene's claim is granted.

[64] Accordingly, the Court orders as follows:

- (a) Mrs. Jannis Reynolds-Greene's fixed date amended claim against the Bank of Nova Scotia is struck out on the basis that there is no reasonable ground for bringing the claim.
- (b) Mrs. Jannis Reynolds-Greene is to pay the Bank of Nova Scotia costs in the sum of \$1000.00.

Louise Esther Blenman
High Court Judge