

**BARBADOS**

**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE  
HIGH COURT  
CIVIL DIVISION**

**No. 514 of 2015**

**BETWEEN:**

**ANISE INGRID PHILLIPS**

**CLAIMANT**

**AND**

**AUDLEY CRONEY  
LYNNE CRONEY  
JEREMY CRONEY**

**DEFENDANTS**

**Before the Honourable Madam Justice Margaret A. Reifer, Judge of the High Court**

**Date of Hearing: 2016 July 13<sup>th</sup>**

**Date of Decision: 2017 January 12<sup>th</sup>**

**Appearances:**

**Mr. Pearson J. Leacock Attorney-at-Law for the Claimant/Respondent**

**Ms. Nicole C. Roachford Attorney-at-Law for the Defendants/Applicants**

**Ruling**

**The Application**

[1] The Application the subject of this Ruling is that filed May 18<sup>th</sup> 2016 by the

Defendants' attorney seeking an Order that:

- (1) The Claimant's statement of case filed on the 16<sup>th</sup> April 2015 be struck out pursuant to Part 26.3 (3) (b);
- (2) In the alternative the Claimant's statement of case filed on the 16<sup>th</sup> day April 2015 be struck out pursuant to Part 26 (3)(c) in that the Claimant failed to comply with the requirements of Part 8.7 (5).

[2] The Grounds of the Application were listed as follows:

1. The statement of case discloses no cause of action against the Defendants either severally or jointly.
2. The Claimant's statement of case does not comply with the requirements of Part 8.7 (5) in that it failed to annex a schedule of special damages claimed.

[3] The Application was supported by an Affidavit of equal date deposed to by Third Defendant Jeremy Crony to the effect that he has been advised that the statement of case discloses no cause of action and has failed to exhibit a schedule of special damage as required by Part 8.7 (5).

[4] Subsequent to the filing of the above Application the Claimant filed on June 20<sup>th</sup> 2016 an Amended Claim Form with Amended Statement of Case.

### **The Statement of Case**

[5] It is without doubt that the Statement of Case filed April 16 2016 disclosed no cause of action. It recites the parties, the accident (clearly inviting the Court to draw inferences from the pleaded fact that the Claimant's vehicle was struck from behind by the Defendants' vehicle), the injuries received, the Claimant's course of medical treatment and present medical condition. There is a Medical Report attached.

[6] The statement of case contains no Schedule of Special Damages, but the Claimant exhibits a quantified claim and amended quantified claim sent to the Defendants' counsel which contains this information.

[7] The Amended Claim Form which exhibited a Schedule of Special Damages, addressed the criticism of "No Cause of Action" by alleging further, that the vehicle O1365 was being driven 'negligently' by the Third Defendant, although the mystery of the First and Second Defendants' inclusion is not addressed.

[8] It recites at paragraph 3:

"The Claimant was driving her car travelling along Stanford Road in the parish of Saint Philip going toward East Point when a motor vehicle bearing registration number O1365 which was being so negligently driven by the Third Defendant Jeremy Croney that it struck her car from behind causing her personal injury and damage to her said motor car."

### **The Defendants' Submissions**

[9] The Defendants argue, that notwithstanding the amendment, the action should be struck out because it still discloses no cause of action. Counsel stressed the importance of pleadings in actions before the Court and argued that there should have been Particulars of Negligence in the Statement of Claim and there were none. Counsel argued, using **Janis Reynolds-Greene v The Bank of Nova Scotia et al** (below) as authority, that the fact that the word 'negligently' is used is insufficient to establish a cause of action against the Defendant.

[10] The following cases were cited by counsel for the Defendants in support of her submissions: **M4 Investments Inc v Clico Holdings (Barbados) Limited; Civil Appeal Nos. 2 & 4 of 2004, Pelter v The University of the West Indies (1994) 30 Barb. L. R 169; Jannis Reynolds-Greene v The Bank of Nova Scotia et al; and Anguilla Beach Development Co. v CIV Holdings Ltd., AG 2008 HC 3**

### **Discussion**

[11] The provisions of **Part 26** (to order the whole or any part of a statement of case to be struck out) comprise the core feature of the Court's case management powers. It's purpose appears to be to give teeth to the Court in ensuring compliance with the general provisions of the CPR.

[12] The exercise of the discretion to "strike out" is used sparingly and the Courts have mostly taken the position that there are "alternatives which will enable a case to be dealt with justly without taking the draconian step of striking the case out": **Lord Woolf MR in Biguzzi v Rank Leisure PLC [1999] 1WLR 1926**; applied by the **Jamaica Court of Appeal in Dixon v Jackson, Civil Appeal No. 120/2005**.

[13] A case can be strengthened in many ways, and in pursuance of the Overriding Objectives this Court supports the view that striking out should be limited primarily to plain and obvious cases where there is no point in having a trial.

(see the wording of 26.3 [3][b] iterating the Court’s power to strike out where “the statement of case or part to be struck out discloses no reasonable ground for bringing or defending a claim”. (See **Jannis Reynolds-Greene v The Bank of Nova Scotia** cited by counsel for the Applicants/Defendants).

[14] Rather than striking out, a Court may allow a statement of case to be amended, provided that the circumstances are such that amendment would accord with the Overriding Objective.

[15] Our Court of Appeal in **Paradise Beach Limited, Paradise88 Ltd v Edghill and Patel Civil Appeal No. 10 of 2011**, in an appeal against the order of Master Roberts given under **Rule 26.3 (3) (b)** and **(c)** spoke to the relevant considerations when a Court considers applications to “strike out”. The Court after identifying these considerations at paragraphs 20 to 24 of its decision expressed the view that “the master would have acted quite unjustly had he summarily struck out the claim in circumstances in which on the documents there were clearly issues to be tried”.

[16] A similar position was taken by our **Court of Appeal in M4 Investments Inc. v Clico Holdings (Barbados) Limited Civil Appeal Nos 2 and 4 of 2004** (above) where the Court found that it is permissible for a plaintiff to amend its statement of claim (this being an application under the “old Rules of the Court) in the course of striking out proceedings and to invite the court

to consider the claim as finally amended prior to the decision: see **Lonrho v Fayed (No.2) [1991] 4 All ER 961 at 966**. This case, relied on by our Court of Appeal, re-enforces the reluctance of the courts to deny a Claimant access to the courts in pursuing a claim in the said courts unless a Defendant can “demonstrate shortly and conclusively that the plaintiff’s claim is bound to fail or is otherwise objectionable as an abuse of the process of the court”.

[17] It is relevant to acknowledge, that for the purpose of considering an application to strike out a statement of case [claim] the truth is assumed of the allegations contained in the statement of claim. See **Citco Global Custody NV v Y2KFinance Inc. HCVAP 2008/022**.

[18] These issues are also explored in the case of **Seymour Cumberbatch v Commissioner of Police et al CV 1062 of 2013**, where my sister **Richards J**, spoke to the relevant consideration of the Overriding Objective in applications to strike, that is, the intrinsic justice of the case from both sides, (in that case to strike out the Amended Fixed Date Claim Form and the Amended Statement in Support filed by the Claimant) and, by doing so, to weigh the balance of the parties’ interest in the case. That case also explores the fundamental importance of determining whether the facts pleaded establish a cause of action. If a claim has been established, but it lacks particularity, then striking out is not the answer, but rather an order for better

particulars to be filed. However, where it does not present a claim at all, then the action should be struck out. In this case, the Court declined to strike out a claim of Legitimate Expectation.

[19] **Richards J.** in that case followed a two-step process as follows: (i) identifying the relevant assumed facts; and (ii) finding a legally recognizable claim.

[20] See also the **Jamaica Court of Appeal in Sebol Limited v Selective Homes & Properties Limited et al Civ. Ap. No. 115-/2007.**

[21] This Court distinguishes the case of **Anguilla Beach Development Co. v CIV Holdings Limited [2003] BHS J No. 130** relied on by counsel for the Applicants/Defendants. In that case the Court clearly held and expressed the view that there was no material before it which suggested that an amendment would cure the issue under consideration (there was no cause of action pleaded against a third Defendant who was simply the mortgagor of an Anguillan property with respect to which an ex parte injunction was granted). The facts and cause of action are distinguishable from this application and there were considerations of whether there was evidence supportive of a serious issue to be tried.

[22] The other cases cited can be also distinguished in this way, particularly on the facts and in some cases on an assessment of the relevant law. For example, in the **Jannis Reynolds-Greene Case Blenman J.** (as she then was) found that

on the pleaded allegations of fact there was no recognizable claim in law that arose from the Bank's action. Pleadings at its highest, the facts failed to establish a cause of action against the bank or that the Claimant suffered any damage or loss. The Court was at pains to state that even if the Claimant proved her allegations, she could not have succeeded in obtaining judgment. This is not the case here.

### **Disposal**

[23] On the strength of the factual matrix accepted (specifically a rear end collision in which the Claimant alleged the negligence of the Third Defendant), this Court accepts that a cause of action is evident. There is nothing to suggest that the cause of action will not succeed, only that it is inexpertly pleaded.

[24] The application under **Part 26.3 (3)(c)** has been rendered spent by the Schedule of Damages included in the Amended Claim and Statement of Case.

[25] In view of the premises, the application to strike out is dismissed, but in so doing this Court adopts the caution of the **Court of Appeal in M4**

**Investments Inc v Clico Holdings (Barbados) Limited** as follows:

“However, this judgment must not be interpreted as a discouragement of applications to strike out in appropriate cases, thereby saving time and costs. Applications to strike out are often appropriate in cases involving questions of law in which the facts are not in dispute and where discovery of documents and the oral examination of witnesses will not assist in determining the issues... This was not such a case.”

[26] Similarly, this was not such a case.

- [27] The Claimant must within 14 days remedy the defect in its pleading.
- [28] Liberty is given to the First and Second Applicants/Defendants to re-apply for an Order striking them out as Defendants after the filing of the Amended Claim if the same fails to lay an evidential basis for the existence of a cause of action against them.
- [29] No order is made as to Costs at this time.

**MARGARET A. REIFER**  
Judge of the High Court