BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

Civil Suit No: 307 of 2019

BETWEEN:

KIM MEDFORD	**1st CLAIMANT**
KADIJA MEDFORD	**2nd CLAIMANT**

AND

BARBADOS COMMUNITY COLLEGE	**DEFENDANT**

Before: The Hon. Madam Justice Shona O. Griffith, Judge of the High Court

Date of Hearing:	**2020: 07th July**
Date of Oral Decision:	**2020: 10th August**
Date of Written Decision:	**2020: 17th August**

Appearances:

Ms. Kim Medford, 1st Claimant in person

Ms. Yasmin Brewster holding papers for Mr. Patterson Cheltenham Q.C. for the Defendant

DECISION

Application to Strike Out Statement of Case - Irregularities in Procedure - CPR 26.3(1) – Failure to Comply with Rule, Order or Direction of Court – CPR 26.3(3)(c) – No reasonable ground for bringing claim – Amendment of Statement of Case without leave after Application to Strike Out filed – Unrepresented Litigant.

INTRODUCTION AND PROCEDURAL BACKGROUND

[1] On the 1st March, 2019, Ms. Kim Medford filed a document titled 'Urgent Application' against the Barbados Community College. The document bore the reference 'Form #10'; its backing sheet contained a slip of paper adhered to it with the handwritten notation 'Affidavit'. The document bore no resemblance to a CPR Form 10 application, but did bear resemblance to an affidavit, having commenced by acknowledgment of an oath. The document comprised 70 paragraphs the last of which stated '*I Kim Medford certify that all facts set out in this statement of defence are true to the best of my knowledge information and belief.*' The reference to 'statement of defence' is overlooked with little difficulty. The document appears to have been intended as an affidavit. Appended to it are 39 exhibits.

[2] The contents of the 70 paragraphs can most aptly be described as a comprehensive narrative of the affiant's engagement and interactions with the Barbados Community College, which culminated with the unsatisfactory result that she had not to that date been able to graduate. The narrative commenced with the affiant's initial application for the program of Finance and Investment in 2005. It is helpful to illustrate a sample of the affidavit extracted as follows:-

> *"1. I applied to the Barbados Community College (BCC) in 2005 to pursue a program in Finance and Investment. I was informed*

that the program started in 2004 and that it runs every three years. I engaged myself in other activities migrated then applied again in February/March 2012 and was told that the current program began in 2011 and that this Batch would be the final offer as it will be discontinued because of being undersubscribed. I was determined to benefit from the information and skills of this program. I had just returned from Atlanta, Georgia where all the colleges were marketing their programs on every conceivable surface and inviting persons to transfer credits and ladder up to desired degree levels. I know I would be eligible for exemptions.

11. I registered to another program as a precaution with the option to transfer to Finance and Investment later. I followed up on my application with the Division of Commerce during the summer of 2012."

[3] The above was paragraph 1 of the affidavit. The next few paragraphs of the affidavit continued the narrative begun in paragraph 1, and chronicled the affiant's goals regarding her intended course of study; a detailed account of her application, registration and course selection processes. The ensuing paragraphs also included a continuum of the affiant's interactions with one Mrs. Skeete, the Head of Department for her course; and the Registrar, alluding to the difficulties and frustrations she experienced, as well as various irregularities she noticed occurring at the institution. Another illustration of the content of the affidavit is as follows:-

"12. Sometime during my studies too, I noticed that there were no Electives offered on the program though the Program Brochure stated that students must complete four Electives. I brought this to the attention of the Head of Department who told me that there was an elective but I just don't recognize it. I was amazed. I know there were no electives because all the courses

offered on the program were set: dictated. There were no options for students to make choices.

13. I continued to follow my agenda for my transfer credits paying attention to the requirements for the Finance and Investment program and monitoring the request to the Registrar. I requested the copy of the College Handbook. These books are never available at the time of application or registration to the College. Now that I had a copy of the Handbook I noticed that the College requirement for graduation was for Electives just as the Brochure stated. I had already been granted permission for extra courses so I considered incorporating some of those to this program as Electives so as not to be disadvantaged, should someone wake up and realise that there were no Electives slotted on the program."

[4] The affidavit continued with painstaking detail of the affiant's experiences and interactions with various personnel, including the Principal (new and old), previous and current Heads of Department, Registrar and Acting Registrar, and a typist clerk - all pertaining inter alia, to her selection of courses, failure to pass one particular course, attainment of credits approvals granted and not granted.

By way of illustration, paragraph 30 of the affidavit says thus:-

"30. I later contacted the Typist Clerk, Ms. Twena Cumberbatch, who informed me that the program Finance and Investment does not require nor carries [sic] *an Elective. She gave no explanation for why the Finance II was removed. This is after the Registrar had authorized these two courses and I had seen them entered on my student Record. This bothered me immensely. How can Student Records be manipulated in such a wanton fashion? How does the Registrar state that courses cannot be taken off of programs when the Typist Clerk, with or without authorization, is taking off, not one but two courses from a student's Record*

after that student has completed a program and left the College? Had I requested a Transcript sent to a College, believing a specific number of course were listed, I would have been seriously compromised."

[5] The next 40 paragraphs of the affidavit, at that point in time, the originating document filed with the Court, continued in similar vein, detailing the affiant's opinions as to the deficiencies of the Defendant's management and structure of its programs, and her unfavourable conclusions as to the motives and practices of the Defendant. The affiant also introduces her complaint of discrimination and breach of contract by the Defendant, details her inability to take up opportunities for further studies overseas because of the non-completion of her course of study with the Defendant. The affidavit further introduced complaint about the affiant's daughter's entry into and experience in the institution stemming from serious medical issues.

Still by way of illustration, two of the affidavit's final paragraphs is extracted as follows:-

"66. There is outstanding the three Electives I selected. The Management of BCC should want that any Transcript leaving their premises/Offices and going to other Colleges demonstrate that it is a College, positioned to be a serious contender in the Global sphere of Higher Education. All reputable colleges require that same template of Electives: Social Sciences, Natural Sciences, General Education and Humanities. They allow students a free reign of choices, stipulating only the level required to give students a wide base of knowledge. I know this because I have been prospecting, cataloguing and communicating with Colleges extensively for myself and Kadija

> *as well as other students that I coach. A sample of some of the very Colleges that BCC has articulation Agreements with bears this fact. KM(39). I am advised that Caribbean students struggle with timetabling because they often matriculate with many courses but not the required Social Sciences and Sciences or Humanities courses. This presents great challenges throughout their registration as some of these missed courses are prerequisites for others or are timetabled when the students have other courses for their areas of concentration.*
>
> *67. There is outstanding also, the matter of the failed course. This issue raises the question of why the Registrar forced me to sit that exam when I was no competent to do so, knowing that* ***there is a Clause in the Handbook that allows consideration for a student to be able to be given a grade according to Course work under the prescribed circumstances****. Not one of the BCC Managers seems to know of this Clause in their Handbook. I verily believe this course is redundant to me and the Finance and investment program, a fact confirmed by the new offering to replace it."*

[6] These extracts from the affidavit have been reproduced verbatim for purposes of illustration. On the 15th April, 2019 approximately 45 days after the filing of the affidavit detailed above, the Claimant filed a Form 10 'Notice of Application.' This Application now listed a second Claimant 'Kadija Medford' and professed the following against the Defendant:-

> *"The Claimants...claim against the Defendant...that the Defendant wilfully withheld considerations deserving of registered students and committed various breeches* (sic) *of Contract as per the college's Hand Book during the tenure of the Claimants"*

The Application continued on to seek pursuant to *"Part 26.3(3)(a) and (b) of the Civil Procedure Rules"* (which are the court's strike out powers), an order

for *specific performance* of thirteen listed demands followed by further relief, which are reproduced as follows:-

1. *Uphold the Rule for selection of electives and add nine (9) credits to the Record of the first Claimant for three courses (GEOG112, GEOG222 and SOC221) selected as per college requirement;*
2. *Review Grades for Corporate Finance and Database Management as should have been by a legally constituted Grade Appels (sic) Committee;*
3. *To apply Rule at page 31 – Other Assignments – which allows a Head of Department to give consideration to a student unable to perform due to circumstances where a medical Certificate is submitted.*
4. *Consider first Claimants' incapacity to attend and submit examination for Portfolio Management after suffering trauma and during which period no Counselling was offered or advise from an Academic Advisor;*
5. *That BCC be made to uphold Rule of offering Supplemental automatically, to students return after absence due to certified illnesses;*
6. *That the "General Education" listed be updated and extended to include courses applicable to new programs to include such courses from Fine Arts, liberal Arts, Culinary Arts and Technology that are sensible and relevant for transition and transfer to four year colleges;*
7. *That BCC make available at application the contents of Courses that students are clearly aufait with what they are entering in to;*
8. *That BCC practice moving students through the system as quickly as is feasible without unnecessary and wilful delays and setbacks;*
9. *That BCC, in the same manner it allows supplemental for failed courses, allow students supplemental or to redo courses they score a D grade in – during their tenure – if it is so desired;*
10. *That BCC prepare and issue the first Claimant a certificate for the Associate degree backdated to November 2014*

11. *Refund of Caution fee of $100 plus interest due and owing to the second Claimant;*

12. *That BCC remove the grade D from the second Claimants Record which was upgraded to a grade C, so as to correct the anomaly of Credits and repetition of Mathematics therein*

13. *Make the finance and investment program a full time option with the core Finance and investment courses scheduled one day a week in the evening as currently obtains.*

The first Claimant further claim (sic) for:

14. *Damages for willful acts that caused stress and mal health to first Claimant with the extended and strenuous efforts to get various courses applied to her Record;*

15. *Compensation of the inability to use the qualifications for academic advancement and economic pursuits for four years;*

16. *Compensation for discrimination against first Claimant in refusing to supply Other Assignment grade and graduate in a timely manner and the second Claimants (sic) for refusing her to sit exams in electives she selected although she attended the lectures and submitted a medical Certificate;*

17. *Costs to be paid by the Defendant*

18. *Such further or other relief as the Court thinks fit.*

Thc grounds of the Application were identified as:-

(a) *The Respondent willfully withheld course Credits and issuance of certificate for Associate Degree to the first Claimant thereby causing grief and loss of use for four years;*

(b) *The Respondent illegally withheld the Caution fees from the second Claimant;*

(c) *The Respondent negligently overlooked courtesies to first Claimant which would have benefitted her and avoided a grade F reflecting on her Record;*

(d) *The Respondent discriminated against both Claimants regarding*

opportunities that were allowable due to Medical Certificates being submitted;

(e) The Respondent discriminated against and victimized first Claimant with regards Grade Appeals as well as choices of electives.

[7] It was stated that an affidavit accompanied the Application. No affidavit accompanied the Application at that time, thus the affidavit filed some six weeks prior as extracted in parts in paragraphs 3 – 5 above, is assumed to be the affidavit in support referred to in the Application. The Notice of Application was signed by the first Claimant only but the Application named two claimants.

As a matter of procedural history, it is noted that on the 3rd July, 2019 the first Claimant filed a Notice of Intention to Remedy Default of Defence.

This Notice was signed by the 1st Claimant, and at that point also identified the 1st Claimant as power of attorney for the 2nd Claimant. On 17th July, 2019, the Defendant filed an Application to strike out the Claimant's Affidavit and the Notice of Application, pursuant to Rules 26.3(1), 26.3(3)(b) and 26.3(3)(c). The brief grounds of the Application to Strike were that the Claimant's statement of case failed to comply with the requirements of Part 8 of the CPR and that the statement of case disclosed no legal cause of action.

[8] An affidavit of service confirmed service of the Defendant's Application to Strike, on the 17th July, 2019. On the 24th July, 2019, one week after service

of the Application to Strike, the Claimants filed a claim form and statement of claim, which will be set out in brief below. The claim form and statement of claim were signed only by the 1st Claimant. The claim form set out the claim as follows:-

"The Claimants...claims (sic) *against the Defendant...for specific performance in fulfilling the Terms of the Contract as per Conditions contained in the College's Hand Book 2012/2013 for courses for Elective, for Graduation and the refund of Caution Fees:*

1. *The first Claimant claims that she registered at the Defendant's institution to pursue a program in finance and Investment 2012/2014 and entered into agreement with the Defendant to complete Core Courses and Electives as set out in the Program Brochure and the College Hand Book.*
2. *The second Claimant claims that she registered and pursued a Program in General Catering and Culinary Arts with the Defendant's institution 2012/2013 and 2013/2015 respectively with conditions as set out in the College handbook.*
3. *The Defendant is joined in this Claim because she represents the institution and they failed to honour their obligation to the Claimants as per agreement and terms as set out in the College Handbook.*

The Claimants seek the following Orders:

1. *A Declaration that the Handbook forms part of the Contract between the College and the Students;*
2. *That the Defendant comply with the Rules as set out in the College Handbook regarding Electives and apply the six Credits for the other two Electives to the first Claimant's Record;*

3. *A declaration that Graduation Requirements are a minimum of 48 Credits of the major area of study, 12 Credits of College Cores and 12 Credits of Electives if and when the Core Courses for any program is less than 63 Credits;*
4. *A declaration that a minimum of 70 Credits is required for graduation as per the Handbook;*
5. *A declaration that ALL Caution fees are refundable and that the Clause authorizing the withholding of Caution fees after one year is unreasonable and unjust;*
6. *Any Order which this Honourable Court deems fit.*

The statement of claim is an abbreviated version of the affidavit earlier highlighted, but manages to set out in no small detail, a history of the Claimant's experiences and dealings with the Defendant's officers;

her complaints regarding the treatment she received or didn't receive; there are allegations levelled of discrimination, malpractice, negligence and malice on the part of the Defendant towards the Claimants. The statement of claim sets out "**Particulars**" as follows:-

> *"The Defendant, College, discriminated against the Claimants with regards to allowing Credits for freely selected Electives;*
> *The College committed a Breach of Contract in failing to uphold the clause that speaks to minimum Credits for Graduation requirements, and assigning a determined grade for courses which the first Claimant was unable to complete because of illness authorized by medical certificates;*
> *The College Victimized the second Claimant in maliciously withholding her Caution fee because she did not redeem it within one year of completion of her first program.*

[9] The statement of claim concludes by claiming the following relief:-

1. *A declaration that the Caution Fee is refundable to the second Claimant;*
2. *That the Defendant return the sum of $100 plus interest to the second Claimant;*
3. *The College apply the principle of Other Assignments and correct the Grades for Budgetary Planning and Control and Portfolio Management;*
4. *Conduct legitimate Grade Appeals for Data Base Management and Corporate Finance and apply the changed grades to the first Claimant's Transcript;*
5. *Damages for the effects of the malpractice and victimization and discrimination as endured by the Claimants.*
6. *Damages for emotive and physical trauma sustained by the first Claimant and second Claimant respectively due to the inept conduct of management regarding the treatment and handling of the first Claimant on the College premises during illness.*
7. *Damages for the first Claimant's inability to use the qualifications over the last four years due to the Defendant's negligence and vindictiveness.*
8. *Costs*
9. *Further or other relief."*

Submissions on the Application to Strike Out

[10] The Defendant's initial submissions were filed with respect to the affidavit and notice of application filed by the Claimant in March and April, 2019. These submissions alleged that the affidavit and notice of application failed to comply with CPR Rule 8.1 which provides for commencement of proceedings. Specifically, Counsel for the Defendant submits that in order to

have commenced proceedings, the Claimant was obliged to have filed a claim form along with a statement of claim, (unless otherwise permitted)[1]. Reference was also made to Rule 8.12(1)(b) which requires that the prescribed forms of notes to the defendant be delivered along with the claim form. The submissions regarding commencement were supported by reference to **Maria Agard v Mia Mottley et anor**[2] and **Hannigan v Hannigan**[3].

In addition to the improper mode of commencement, Counsel for the Defendant alluded to the Court's power to put irregularities in procedure right pursuant to Rule 26.4, but contended that the statement of case failed to disclose any legal cause of action.

[11] More particularly with respect to the absence of a cause of action, Counsel for the Defendant submitted that whilst it was discernable that the Claimant was making a claim based upon breach of contract, the statement of case did not specify what contract existed or how it arose. There were no details in relation to the formation of the contract or the particulars of the contract or what terms were breached. Further, as required by Rule 8.5(2), the alleged contract was not attached to the statement of case and the case as set out does

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[1] Pursuant to Rule 8.1(1)
[2] BBHC CV1735 of 2015
[3] (2000) FCR 650

not enable the Defendant to know what case it has to answer. Counsel for the Defendant submitted that this position is also true in relation to what appears to be the claim for damages for personal injury arising from negligence.

[12] Those initial submissions applied only to the affidavit and notice of application but the Defendant's Application to Strike Out was extended to the claim form and statement of claim which were filed after the Application to strike. The Defendant firstly maintained its Application to Strike on the strength of the **Maria Agard**[4] decision, insofar as it decided that the existence of the strike out Application precluded the Claimant from amending her statement of case without the Court's permission. Counsel for the Defendant surmised that the claim form and statement of claim were filed by the Claimant as a result of the Defendant's Application to Strike. However, if the Court were to allow the claim form and statement of claim to stand, Counsel submits that they nonetheless contain irregularities and disclose no reasonable ground for bringing the claim and as such should be struck out.

[13] The irregularities identified by Counsel for the Defendant are as follows:-

(i) The statement of claim bears no suit number;

(ii) A claim is included for interest (on the sum of $100), but the details required by Rule 8.4(3) are not pleaded;

(iii) The documents are filed by the first claimant as power of

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[4] Fn 2 supra

attorney for the 2nd Claimant but the extent or authority of the power is not pleaded, nor is the instrument giving power annexed;

(iv) The material terms of the contract sought to be specifically performed are not pleaded nor is a copy of the contract annexed – both as required by Rules 8.5(1) and 8.5(2);

(v) As required by Rule 8.5(1), the claim of negligence is not identified with reference to the duty of care from which it arises; the particulars of breach nor the loss suffered as a result of the alleged breach;

(vi) The claim for damages for emotive and physical trauma is not pleaded in accordance with Rule 8.7, which provides special requirements for claims for personal injuries.

[14] The case for the Claimants was attended to only by the first Claimant. The second Claimant neither appeared before the Court nor executed any court documents. References to 'the Claimant' nonetheless include the case put forward on behalf of both Claimants. The Claimant's response to the Application to Strike in the round, was that she ought not to be deprived of the opportunity to have her claim ventilated on the basis of purely procedural deficiencies. She considered the allegations of procedural breaches identified by the Defendant as 'technical mistakes' and supported her position primarily by seeking to distinguish the authorities of ***Maria Agard*** and ***Hannigan v Hannigan*** which were relied on by the Defendant. With respect to

Hannigan, the Claimant considered that there were more procedural breaches identified therein, than the six breaches identified by the Defendant in this case. Further, even with the greater number of breaches, the striking out of the claim was overturned by the Court of Appeal as being disproportionate, relative to the technical nature of the breaches identified.

[15] The Claimant cited paragraph 25 of the said judgment, in which the court identified the English Rule (RSC O.2 R1(i)) as treating any failure to comply with the rules as an irregularity and not a nullity.

The Claimant commended this particular paragraph for the attention of the Court, as well as the statements therein regarding the overriding objective to deal with cases justly. Similarly, the Claimant in effect sought to distinguish the ***Maria Agard*** case from her case at bar. The Claimant considered that although the judge therein identified the technical defects in the filing of the claim, the larger issue was the authorization and the legal capacity in which the defendants were sued.

[16] In response to Counsel for the Defendant's submission that the claim failed to identify a cause of action, the Claimant points to the fact that she has identified the contract as arising out of the College Handbook and she appended pages from the Handbook to her affidavit. The Claimant is not of the opinion that her claim amounts to the standard referred to in her cited

authority of **Dylex Ltd (Trustee of) v Anderson**[5] -

- that it is 'plain and obvious' that there is no reasonable cause of action.

The Claimant acknowledged that there were technical deficiencies to her case which she attributed to her standing as a layperson. She however urged the Court that the deficiencies were not fatal and that in exercising its discretion whether to strike out her case or allow it to be amended, the Court should have regard to ***Hannigan v Hannigan*** at paragraph 19.

It was stated therein that the discretion of the court should be exercised considering – (i) the interests of the administration of justice; (ii) whether there is a good explanation for the failure; and (iii) the effect which the granting of relief (in this case to amend) would have on each party's case.

[17] The Claimant submits that she would suffer the greater prejudice as her claim would be statute barred if struck out. Finally, the Claimant referred to authority **Faiz Siddiqui v University of Oxford**[6], which she commends unto the Court as supportive of the viability of her case given its similarity to the case at bar. The similarity relied on was firstly that the claim was for damages for negligence (negligent teaching and treatment of the claimant), filed by the claimant as a former student of the University of Oxford. Further, the

[5] [2003] O.J. No. 833
[6] [2016] EWHC 3150

defendant filed an application to strike out (or for summary judgment against) the student's claim on the basis that the claim was statute barred. The Claimant submits that the case is relevant in that the application was refused and the claim allowed to proceed despite the limitation plea, as there was a serious issue of law to be tried against the university. Counsel for the Defendant addressed only one point in reply, namely that the Court of Appeal's reversal in **Hannigan** was based on the finding that the claim clearly set out the case to be met by the Defendants. Further, even though several, the procedural breaches were minor, thus the sanction of the strike out was excessive. Counsel for the Defendant says that the case to be answered by the Defendant in this matter, cannot similarly be said to be clear.

The Issues to be decided

[18] Having regard to the Application before the Court and the submissions made by and on behalf of the parties, the Court considers that the following issues arise for determination:-

(i) Was the Claimant obliged to obtain permission to file her claim form and statement of claim given the existence of the Defendant's Application to Strike Out her Affidavit and Notice of Application?

(ii) What procedural irregularities and/or substantive deficiencies are attributable to the Claimant's statement of case?

(iii) Should the Claimant's statement of case whether in whole or in part, be struck out on account of such irregularities and/or for disclosing

no reasonable ground for bringing the claim?

Discussion and Analysis

Issue (i) *Did the Claimant require permission to amend her statement of case (by filing the claim form and statement of claim)?*

[19] It is important to commence the Court's consideration of the Application with this issue, as the scope of the Court's enquiry (in terms of what is properly the subject matter of the Application to Strike Out, must first be determined). The first task is to establish what a statement of case is – (it is not infrequently misused interchangeably with 'statement of claim'). Counsel for the Defendant draws the Court's attention to the definition of 'statement of case' which is provided in Rule 2.3 as follows:-

> *"'statement of case' includes*
>
> *(a) An application, statement of claim, defence, counterclaim, third party (or subsequent) notice or other ancillary claim or defence, and a reply to a defence;*
>
> *(b) Any further information given in relation to any statement of case under Part 34 voluntarily or by order of the court;"*

As noted by Alleyne J in the ***Maria Agard*** case, this definition is expansive and albeit not specifically stated, a claim form (being a document in which a party's case is set out for the other parties and for the court[7]), is properly regarded as part of a party's statement of case. The

[7] **Maria Agard** supra per Alleyne J. @ paras 26, citing *Blackstone's Civil Practice 2011, para 23.2*

Court agrees with this position, as reinforced by **Rules 8.4 & 8.5**, which prescribe that the claim form is obliged to set out a party's case[8].

[20] More particularly, the claim form must (a) include a short description of the nature of the claim; (b) specify any remedy being sought by the claimant; or (c) expressly state a claim for interest.

The claim form is therefore to be regarded as part of a party's statement of case even though not specifically included in the definition. Still on the issue of what comprises the statement of case, it is also noted that an affidavit is not included in the definition. Having regard however to **Rule 8.1(1)(c)**, an affidavit would form part of a party's statement of case where filed along with a claim form, if required by any rule or practice direction. Alternatively, an affidavit where required to accompany an application, should also be regarded as part of a party's statement of case. Based on the foregoing, albeit not filed together, the Claimant's affidavit and notice of application respectively filed in March and April, 2019, form part of her statement of case.

[21] The relevance of this determination, relates to the Defendant's contention that the filing of the claim form and statement of claim by the Claimant, amounted to an amendment of her statement of case. Counsel referred to **Rule 20.1(1)**,

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[8] R 8.4(1) - 8.4(2) – interest to be stated; R 8.5(1) of (4)

by which a party may without the permission of the Court, amend a statement of case at any time prior to a case management conference or before the filing of a defence. By virtue of the filing of the Defendant's Application to Strike Out however, Counsel submitted that Rule 20.1(1) did not apply, and the Claimant was not at liberty to have amended her statement of case without the Court's permission.

Counsel once more relied on **Maria Agard v Mia Mottley et anor**[9] as having dealt with this very issue. In this case, Alleyne J. was confronted with conjoint applications to strike out a fixed date claim (FDCF) from two respective defendants.

[22] After the filing of the applications to strike, (as in this case), the claimant therein, filed without permission, an amended FDCF. The submissions on behalf of the respective defendants were the same as that of Counsel for the Defendant in the case at bar. Alleyne J. agreed that **Rule 20.1** was inapplicable, given that the FDCF was the subject of an application to strike. Alleyne J. endorsed the decision of the Jamaica High Court in **Index Communication Networks Ltd. v Capital Solutions et al**, in which a similar pronouncement was made by Mangatal J. At paras. 32-33 of ***Maria Agard***, Alleyne J. said:–

[9] BBHC CV1753 of 2015

> *"[32] To hold that CPR 20.1 is applicable in the circumstances of this case would be to encourage the injection of unfairness and disorder into proceedings which though not irremediable, might lead to an inefficient use of time. The defendants were not present to shoot at a moving target. They came to make out a case against the FDCF and the claimant's affidavit.*
>
> *[33] The amended FDCF must therefore be at risk of being struck out and can play no role in these proceedings except with the leave of the Court. The claimant made no application in that respect. I permitted the defendants to proceed with their submissions in respect of the FDCF. I considered it prudent to determine after hearing the arguments what ought to be the future position with respect to the FDCF."*

[23] Further in respect of this issue, the Court refers to the case of **Darrel Montrope v Public Service Commission et al**[10]; and its subsequent appeal **The Attorney-General for St. Lucia et al v Darrel Montrope.**[11] This case emanates from St. Lucia, where the OECS CPR2000 Rule 20.1(1) is similar, save for the time for amendment without permission being more narrowly limited by reference to the date fixed for the case management conference. The Barbados position is that an amendment is permitted without leave, prior to the case management conference. This difference is of no moment in terms of the analysis and relevance of the case. In **Montrope**, the proceeding in question was a claim for constitutional relief (OECS CPR Par 56) against the Attorney-General and others.

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[10] SLUHCV2017/0385
[11] SLUHCVAP2019/0021

[24] The defendants filed an application to strike out the claim on the basis that the court lacked jurisdiction (OECS CPR Rule 9.7). Before the hearing of that application, the claimant filed an amended claim.

The defendants contended inter alia, that the claimant was precluded from filing his amended claim without leave, having regard to the application to strike out. The defendants' counsel cited Jamaican ***Index*** and Barbadian ***Maria Agard***. The trial judge took issue with the position that leave ought to have been obtained, instead preferring the view that the claimant was free to amend in accordance with Rule 20.1(1) (CPR 2000). The trial judge expressly declined to follow the **Index** and **Maria Agard** cases[12], opining that they were contra to the spirit and objective of the OECS CPR 2000 endorsed by then Byron CJ in **Dr. Ralph Gonsalves v Ewardo Lynch et al.**[13]

[25] In that context then Byron CJ was alluding to the intention of the new CPR to as far as possible, dispose of interlocutory applications at the case management conference, instead of the continuance of multiple interlocutory applications throughout the trial process, causing delay and increasing expense. The ECSC Court of Appeal however, directly overruled this trial judge and instead affirmed both **Index** and ***Maria Agard*** as properly

[12] Darrel Montrope v PSC supra, @ para 27
[13] Saint Vincent and the Grenadines, Civil Appeal No. 9 2003

representing the position in the OECS.

That position was, that a party whose case is the subject of a strike out application, is not permitted to amend their case without the leave of the court[14]. This position was described as being entirely in keeping with the overriding objective of the CPR and not in fact counter to the approach that was being advocated by then Byron CJ.

[26] Perera CJ had this to say[15] in relation to the **Index** and **Maria Agard** decisions:-

> *"I hasten to add that although* Index *and* Maria Agard *are not decisions of the Eastern Caribbean Supreme Court, they emanate from other superior courts of the Commonwealth Caribbean and concern the application of rules of court similar to those being considered in this appeal. It is well-settled that such decisions may be persuasive authority, provided that there is no conflicting decision which is binding upon the High Court...."*

Further[16]

> *"In the premises, there is no doubt to my mind that the approach adopted in* Index *and* Maria Agard *is to be preferred."*

In the premises, the Court is of the firm view that the Claimant required leave before filing her claim form and statement of claim, given that, her existing statement of case was already subject to an application to strike out.

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[14] AG for St. Lucia v Darrel Montrope supra @ paras 37-42
[15] AG St. Lucia v Darrel Montrope supra, @ para 39
[16] Ibid, @ para 41

The only remaining question in this regard, is what is to flow from this finding that the Claimant ought to have obtained the leave of the Court before attempting to 'fix' her statement of case by filing the claim form and statement of claim.

[27] In ***Maria Agard***, Alleyne J.'s position was to permit the defendants to proceed with their application to strike out and determine after hearing arguments, what position was to be taken with respect to the unsanctioned amended FDCF[17]. It so turned out, that the learned judge found the original FDCF defective, and as such deserving of being struck out or subjected to a stay along with an order to remedy the deficiency. In determining whether to (a) stay the proceedings and direct a required amendment within a certain time, or (b) dismiss the proceedings, the learned judge considered that there were other technical or procedural deficiencies which plagued the original FDCF. The learned judge determined that the compounded effect of the extent of procedural deficiencies and lack of properly constituted defendants justified that the FDCF be struck out[18].

[28] Having determined that the original FDCF should be struck out, Alleyne J. thereafter addressed his mind to the unsanctioned amended FDCF, albeit

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[17] ***Maria Agard v Mia Mottley et anor*** supra, @ para 33.
[18] Ibid, @ paras 110 - 116

careful to acknowledge that he had heard no submissions on the issue of whether leave to file ought to have been granted. The learned judge considered however that it was firstly a matter of record that the amended FDCF had been filed in response to the application to strike out. He also considered that the amendment retained most of the flaws that characterized the original document, and concluded that it was '*pointless for this Court to contemplate allowing the amended FDCF to stand.*' Given the continued existence of the breaches and irregularities already found, Alleyne J concluded that it would be a waste of time and expense to invite any application to amend. The position was taken that having been filed without leave, the amendment ought to be, and was, accordingly struck out. This was the approach of Alleyne J. in treating with the amendment filed without permission.

[29] This Court however does ponder what the position or approach might have been, had the proposed amendment displayed an appropriate degree of merit, on its face. Would the application to strike nonetheless have proceeded on the original FDCF and the proposed amendment thereafter left as a subject for a fresh application for permission?

In this regard, the Court considers that a practical difficulty arises in enforcing the requirement that permission for an amendment to a statement of case must

be obtained, where a prior application to strike out the case has been filed. That practical difficulty is – what should the Court do when the amendment is nonetheless filed without permission? Should the amended statement of case immediately be struck out? Deferred for consideration until the completion of the application to strike out? Considered at the same time? Allowed to stand even where to do so would neutralize the application to strike?

[30] The Court observes, that in the three cases mentioned above – ***Index Communications; Maria Agard;*** and ***AG St. Lucia v Montrope*** – the underlying rationale for requirement for permission, was couched in language to the effect that the filing of the amended statement case without permission was like '*pulling the rug*'[19] from under the applicant; or resulting in the applicant having to '*shoot at a moving target.*'[20] Perera CJ built on these sentiments and added that to '*allow the amendment without leave as the trial judge did in that case would be to sanction one party* 'stealing a march' *on the other by curing the defects in its pleadings which the very application to strike sought to impugn...*"[21] or "*...render the application nugatory.*"[22] The rationales expressed for the requirement of permission, also spoke to

[19] Per Mangatal J. in ***Index Communication Networks Ltd. v Capital Solutions Ltd.*** @ para 44, supra
[20] Per Alleyne J, ***Maria Agard v Mia Mottley et anor*** @ para 32, supra.
[21] Per Perera CJ in ***AG St. Lucia v Darrel Montrope*** @ para 37, supra
[22] Ibid.

safeguarding proceedings against unfairness, further delay and expense, and inefficient use of judicial time.

[31] It is accepted that the principle advocated is that a party is not to file an amended statement of case for want of a better term 'in response' to an application to strike out that statement of case, without the leave of the court (as opposed to not at all). The sentiments expressed in the above cases however, seem to have focused on the idea that the time and expense incurred in preparing and filing an application to strike out a statement of case would amount to naught, were the other party to be allowed to file an amendment without the permission of the Court. The sentiments are all understandable, but where the amendment is already filed without permission, time and expense will be impacted regardless, and the Court will still have to treat with the unsanctioned amendment with reference to the same considerations of the overriding objective.

[32] In this regard, it is considered that there may be circumstances in which the filing of the amendment without leave was brazen and contumely, and deserving of being struck out without consideration. There may be circumstances where there was a genuine but mistaken construction that Rule 20.1 permitted the amendment. There may be circumstances where the application to strike out has brought to light deficiencies in a statement of

case and the opponent files the amendment without leave with the intended purpose to cut the legs off the application to strike just as expressed in the above authorities. The Court considers, that in terms of principles generally applicable in relation to amendment of pleadings, one of the overarching principles is that a party is entitled to put forward its case so that the real dispute between the parties can be adjudicated.[23]

[33] On this basis alone, the Court considers that if the amendment is already filed without having obtained the leave of the Court, unless circumstances warrant to the contrary, the sensible option is for the Court to consider the amendment at the time of hearing the application to strike out. The amendment however, would have to be considered with reference to the general principles which would have in any event been considered, had an application for leave been filed as required.

If the application to strike out is rendered nugatory or has to be amended to address the unsanctioned amended statement of case, the wasted time and expense of the application to strike is a matter that can be remedied by an award of costs.

[34] The Court finds support for this position from Perera CJ in ***AG for St. Lucia v Darrel Montrope*** who after expressing the same view in relation to costs

[23] Ketteman et al v Hansle Properties Ltd. [1988] 1 All ER 38

being awarded to the applicant for a wasted application to strike, stated that "*...Indeed, the issue of whether to grant leave to amend could suitably be determined at the hearing of the application to strike.*"[24] Perera CJ further made reference to English (CA) authority **Diamantis Diamantides v JP Morgan Chase Bank et al**[25], in which the defendant applied to strike out the claim and particulars of claim, in response to which the claimant filed an application for leave to amend the particulars of claim. The Court of Appeal addressed the manner in which a judge should exercise the discretion to strike out a claim in those circumstances, thus:-

> *"...on an application to strike out particulars of claim on the grounds that they disclose no cause of action the court will normally consider any proposed amendment since, if the existing case can be saved by a legitimate amendment, it is usually better to give permission to amend rather than strike out the claim and leave the claimant to start again."*[26]

[35] In the Court's view, the position where an amendment is filed without permission after an application to strike out, should be approached in the same manner as outlined in ***Diamantides*** above. The unsanctioned amended case once of some merit, would appropriately be subjected to an assessment of the same factors that a draft statement of case would have to be, upon an application to amend. If the amendment is of no merit, then it can be struck

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[24] AG for St. Lucia et al v Darrel Montrope @ para 40, supra
[25] [2005] EWCA 1612 @ para 16
[26] Diamantides @ para 16, supra.

out in any event, and there would then be an additional burden on the party amending, if minded or obliged to seek leave to make yet another amendment after the strike out. In other words, the fact of the prior non-compliance with the rules, would be a relevant factor in considering any permission to further amend.

[36] In either case, an award of costs in favour of the party put out by the unsanctioned amendment, ought to a sufficient remedy, according to respective circumstances of each case. In concluding its consideration of this issue, the Court rules that having regard to the Defendant's Application to Strike Out the proceedings filed on the 17th July, 2019, the Claimant was not at liberty to have filed the claim form and statement of claim on the 24th July, 2019, without the permission of the Court. In relation to the question of what role the claim form and statement of claim should play having nonetheless been filed, the Court rules that the documents must be subjected to scrutiny according to the same factors that would have appended to an application for permission to amend.

Issue (ii) The irregularities of the Claimant's statement of case.

[37] The Claimant's statement of case consists of the affidavit filed solo on the 1st March, 2019; the form 10 notice of application filed on the 15th April, 2019; and for now, the claim form and statement of claim filed without leave on the

24th July, 2019. In relation to the irregularities of the Claimant's statement of case, the Court will list those found to be significant. Typographical or truly trifling errors will not be listed, or if listed will be acknowledged as trifling:-

The Affidavit of March 1st, 2019

(i) Unless permitted by the court in circumstances accepted as urgent, an affidavit by itself does not commence proceedings[27]; this affidavit was filed in breach of Rule 8.1(1);

(ii) The affidavit comprises 70 paragraphs, (and whether intended to set out the Claimant's case as required by Rules 8.1, 8.2, 8.4 or meant to subsist as evidence in a vacuum), the affidavit is prolix;

(iii) Aside from being prolix, the content of the affidavit, whether as pleading or evidence, is embarrassing and for the most part scandalous (both in the legal sense of those terms[28]). The affidavit consists of excessive and discursive detail, emotive language, the Claimant's opinions,[29] complaints and comments regarding the competence of the Defendant's personnel and the management of the institution.

It is not considered necessary to illustrate with specific examples, as

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[27] Even in an urgent case, an affidavit filed alone would be filed in support of at the very least, an oral application which moves the court.
[28] **Decline Thomas v Victor Wilkins et al** ANUHCV2007/0530 @ para 34
[29] **Equity Development Inc. v Crow**, 2020 BCSC 546, para 30

that was the purpose of extracting the various paragraphs of the affidavit at the onset of this Decision.

(iv) The affidavit supports or establishes no discernible cause of action in accordance with any recognizable legal principles;

(v) The affidavit incorporates references to the Claimant's daughter, at that time, not a party to the proceedings, where aside from the relationship of consanguinity, there was no legal purpose established or foreshadowed in relation to the Claimant's daughter (breach of **Rule 8.3**);

Notice of Application, filed 15th April, 2019

(vi) **Rule 8.1(1)** is clear in how proceedings are started – i.e. by claim form supported by statement of claim or affidavit or other document (as required by rule or practice direction). There may however, be proceedings commenced by other means, but any circumscription of Rule 8.1 has to arise pursuant to some other rule - for example 8.1(5) in relation to fixed date claims; or Rule 8.1(6) in relation to remedies sought before commencement of proceedings. In relation to the latter, this Court considers that whilst an application is a proceeding and does commence proceedings, form 10 applications invite proceedings that are (i)

interlocutory by nature[30]; (ii) authorized or enabled to be filed before the filing of a claim form or fixed date claim, by express provision of Rule 8.1(6) or some other rule[31]; or (iii) otherwise rendered available to commence proceedings by virtue of statute.[32]

(vii) There was no statutory remedy sought which enjoined the filing of the form 10 application; there was no urgent interlocutory remedy sought which required a form 10 application; there was no proper basis to have commenced the claim in this case by notice of application. The application of 15th April, 2019 was therefore in breach of **Rule 8.1(1)**;

(viii) Irregular commencement aside, as per statement of case which is required to set out the nature of the claim – concisely – the April, 2019 application achieves neither objective. The application seeks specific performance of the 13 listed demands of actions to be taken by the Defendant in the Claimants' favour[33]. As an equitable remedy born out of contract, there is no contract

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[30] See Gordon QC JA in **Capital Bank International Ltd. v David Holukoff et al, HCVAP 2009/007 paras 13 – 14.**
[31] Application for leave for judicial review - OECS CPR 2000 Rule 56.3; Belize CPR 2005 Rule 56.3
[32] See discussion of this Court in **Delcina Yarde v Betty Roberts**, BBHC CV1427/2019 @ paras 5 - 12
[33] Extracted at para. 6 herein

attached, nor references to the particular aspects of the alleged contract which existed as executory terms or conditions of such alleged contract. (The Claimant pleads at some point that the terms of the Defendant's handbook provided to students is what forms the contract). The failure to specifically clearly plead the precise terms of the Handbook still remains, even if the Claimant's assertion regarding the handbook is taken at its highest.

(ix) Further, the 13 listed demands for specific performance, must all be capable of specific performance, based upon terms or conditions obliged to have been performed under the alleged contract. Save for paragraphs 10 and 11, the matters listed therein are incapable of specific performance according to the information pleaded by the Claimant, if at all. Paragraphs 10 and 11 would fall prey to disclosing any reasonable ground for bringing the claim.

(x) The reliefs claimed by the 1st Claimant in paragraphs 14 – 15 of the Application (aside from not being appropriate subject matter for an application) have not been grounded in any cause of action – i.e. – whether damages arising out of contract or tort. The

claims are also vague, as they do not arise out of any clearly articulated legal principles;

(xi) The relief claimed for compensation for discrimination in paragraph 16 of the Application is not anchored in any recognizable or pleaded cause of action in private law (such as any anti-discrimination legislation) and neither the Application nor circumstances alleged, seek to, or are capable of invoking any public law rights relating to discrimination;

(xii) The grounds of the Application are expressed as the Claimant's conclusions or opinions as to the conduct or omissions of the Defendant[34]. The proceeding should not have been presented in a form 10 application, but even discounting the incorrect form, the grounds of the application did not establish any legal basis for a claim. For example, the application seeks damages for negligence, but pleads no duty of care owed in tort, much less breach of that duty; and loss alleged to flow from that breach of duty. With respect to the plea of breach of contract, the specific terms of the handbook alleged to form the contract and the incidences of their breach have not been pleaded. Also the law

[34] Extracted at paragraph 6 herein

by which the claims of discrimination is to be sustained have not been pleaded;

(xiii) The Affidavit of March 1st, 2019 is treated as the Claimant's affidavit in support of this application. This affidavit however is of no assistance to the Claimant, having regard to its categorization as prolix, embarrassing and scandalous;

(xiv) The Application is not signed by the 2nd Claimant and fails to identify any basis in law of any representative capacity or other authority held by the 1st Claimant to bring the claim on behalf of the 2nd Claimant. The 2nd Claimant is presumed to be an adult thus her authorization of and consent to proceedings should have been evidenced in this document;

The claim form and statement of claim filed on July 24th, 2019

(xv) The claim form and statement of claim were filed without the permission of the Court;

(xvi) The backing sheet of the claim form states that the 1st Claimant acts as power of attorney for the 2nd Claimant. There is however no evidence of that representative capacity of the 1st Claimant in relation to the 2nd Claimant. The statement of claim should have appended a registered power of attorney authorizing the

Claimant to conduct proceedings on behalf of the 2nd Claimant, or at the very least recited the details of its execution and registration;

(xvii) The relief sought in the claim form for specific performance arising out of the College Handbook 2012/2013 is not adequately pleaded. There is no reference to any specific term or condition – the reference to 'specific performance in fulfilling the terms of the contract as per conditions contained in the College's Hand Book' might suffice for purposes of a claim form.

However the statement of claim, even if read along with the prolix affidavit, does not then conform with the requirement to specifically plead the terms of the asserted contract alleged to have been breached.

(xviii) The relief sought in the claim form is different from that set out in the notice of application, in that for the first time, declaratory relief is sought arising out of the alleged contract created by the Hand Book. Given the failure to adequately specify the terms of the Handbook breached, it cannot even be ascertained whether those terms are justiciable so as to invite declaratory relief;

(xix) The statement of claim sets out different relief than that claimed in the claim form. The relief prayed in the statement of claim is

no more capable of amounting to any reasonable ground for bringing the claim, and is subject to the same objections made in relation to the grounds of the application, stated at paragraphs (x)-(xiv) above.

(xx) The statement of claim is a condensed version of the prolix affidavit and runs afoul of rules of pleading as it consists of narrative, complaints, opinions, irrelevance, emotive language, comments, and does not specify the specific terms of the handbook relied on; the details narrated are for the most part without reference to dates, which are important in order to enable the Defendant to answer the claim. The Defendant cannot answer the comments, narrative, emotive language, opinion or other scandalous or irrelevant information;

(xxi) The reference to 'Particulars' does not specify what they purport to particularise; they are not particulars within the sense of legal pleading; the text under this head continues the tone and content of the statement of claim in respect of which the Court has as yet to find favour;

(xxii) The statement of claim, like the claim form does not properly establish the 1st Claimant's entitlement to sue in a representative

capacity on behalf of the 2nd Claimant.

(xxiii) The claim on behalf of the 2nd Claimant appears to amount to a claim for a return of the $100 caution fee. By the Claimants own case, the terms of the retention or return of the caution fee were known to them prior to entering the institution. The Claimant's position seems to be the call for an exercise of discretion in returning the caution fee, arising from circumstances the Claimant is of the opinion justifies the return. There is no contractual claim that is reasonably brought in relation to the caution fee.

[38] The above list of twenty-three procedural irregularities and deficiencies of the Claimants statement of case in all of its component parts omits issues which can still be taken. Items (i) and (ii) of paragraph 19 of the Defendant's supplemental submissions are not contained in the above list. The first, relating to the absence of a suit number on the statement of claim is trivial and typographical. The second – the failure to properly plead interest is a matter that a court would not take issue with at commencement of a case. Such a failure cannot prevent a cause of action from proceeding and is an issue that would ultimately operate to a Claimant's detriment in not being able to obtain interest on any judgment received. Further, the Court considers

that the claim on behalf of the 2nd Claimant for return of a $100 caution fee is not a claim that ought to have been filed in the High Court, nor was it conveniently joined with the claim attempted to be put forward on behalf of the 1st Claimant. All of the listed deficiencies now fall to be considered with reference to the third issue below.

Issue (iii) *Should the Claimant's statement of case be struck out in whole or in part?*

[39] The Court is firstly of the view that the Claimant's affidavit filed on the 1st March, 2019, the first component of her statement of case, is entirely deficient from the standpoint of legal pleading.

Even as an affidavit for purely evidentiary purposes, the greater percentage of the material would have to be struck out (see paragraph 37(iii) – (vi) above). An example of a statement of case struck out based on deficient pleading is the case of **Parry Husbands v Cable & Wireless.**[35] This was a short decision from the Eastern Caribbean arising out of an application to strike out a claim which had been filed by an attorney-at-law acting in person. The claim contained technical breaches such as a failure to swear to a certificate of truth and failure to contain all information in support of the claim, which was contractual.

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[35] SLUHCV2002/1193

[40] Hariprashad-Charles J. was willing to overlook the formal procedural irregularities, but having examined the totality of the claim, described it as 'vague, riddled and confusing.' The learned judge expressed the view that even the most distinguished of Queen's Counsel would have an insurmountable task in defending that claim.[36] The Court considers that whilst the affidavit in the case at bar is certainly not devoid of information (it as at the other end of the spectrum), it can similarly be described as riddled and confusing, relative to its required purpose of setting out a clear and concise nature of the claim.

The Court is of the view that standing on its own, the affidavit should be struck out for being prolix and embarassing. The Court will nonetheless however, pair the affidavit with the notice of application that was filed approximately six weeks thereafter. (There is no apparent reason for the interlude between the two filings, but knowledge of a reason would take the Court no further).

[41] The notice of application along with the affidavit attributed in support thereof was the incorrect procedure to move the Court. Overlooking this breach in procedure, the Court will turn to **Hannigan v Hannigan**[37] which the

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[36] Ibid @ para 8
[37] [2000] All ER (D) 693

Claimant sought to distinguish as more applicable in favour of her position. The Court is of the view that the Claimant quite effectively distilled that in **Hannigan**, the Court of Appeal reversed the strike out of the claim by the court below, on the basis that the irregularities were purely of a technical nature and the sanction of the strike out was found to be wholly disproportionate to the breaks in form. As pointed out by Counsel for the Defendant in her brief reply however, and as observed by Hariprashad-Charles J. in **Husbands v Cable & Wireless**, the Court of Appeal in ***Hannigan*** reversed the decision to strike out not only on the basis that the breaches were found to have been technical breaches.

More importantly, it was found that the claimant's case was not based on complicated facts and the case as pleaded to be answered by the defendants, was clear.

[42] The claim therein was a statutory claim by a widow, against her deceased husband's estate for failure to make reasonable financial provision. This claim was described by the Court of Appeal in terms that *'...the questions raised in the proceedings were not likely to involve a substantial dispute of fact...'*[38] Further, Brooke LJ said thus, in speaking of the exercise of discretion of the judge below:-

[38] Hannigan v Hannigan per Brooke LJ @ para 32

> "I *am in no doubt that the manner in which the judge exercised his discretion was seriously flawed, because he wholly failed to take into account the fact that in these proceedings, sealed by the county court within the relevant limitation period, the defendants were given all the information they required in order to be able to understand what order Mrs. Hannigan was seeking from the court and why she was seeking it.*"

In the instant case, the Court is quite certain that the Defendants are hard pressed to distill precisely what case they have to meet, in light of the lack of coherence or clarity that the Court ascribes both to the notice of application and the pre existing affidavit.

[43] Further, whilst the breaches in ***Hannigan*** could have been restricted to purely technical breaches, the irregularities, such as the failure to utilize an originating process to commence the claim and the embarrassing state of the case as pleaded, precludes the Court from coming to the same conclusion regarding the Claimant's case versus the technical irregularities found in ***Hannigan***. The Court is of the view herein that the notice of application and the preceding affidavit warrant the sanction of being struck out. The final consideration that remains for determination is whether leave should be granted for the claim form and statement of claim to stand as filed, having been filed without permission.

[44] In order to answer this question, the Court has to assess the claim form's and statement of claim's compliance with an acceptable standard of pleading that

should be allowed before the court, both substantively as well as procedurally. The Court must also consider however, a larger context that arises in relation to this case. The Court is treating with an unrepresented litigant; a person untrained in law, who despite best intentions and efforts will not be able to present a claim which can fully take into account the complexities of pleading, civil practice and procedure, and knowledge of substantive law.

The larger issue that has to be considered alongside the adherence to an acceptable standard of practice and pleading, is that of access to justice. If a person is unable to afford or for some other reason does not have an attorney-at-law to represent their interest in court, that person is nonetheless entitled to have recourse to the court in an attempt to have their dispute resolved.

[45] As usual, the Court is therefore faced with a task of balancing rights and interests, and is required to do so within the ambit of appropriate legal authority. In this regard the Court refers to **Barton v Wright Hassall LLP.**[39] This case concerned a litigant in person who issued proceedings for professional negligence against a solicitor. The litigant sought to make use of electronic service on the last day prior to expiry of his claim form, but failed to heed a practice direction that specified the conditions for electronic service

[39] [2018] 3 All ER 487

of a claim form. As a result, the claim form was not properly served, the claim form expired and the claim was also statute barred. Pursuant to permissible power, the claimant sought to have the service validated retrospectively, however each court so requested, had refused. The claimant's appeal advanced to the Supreme Court, but the prior lower court decisions refusing to validate service, were all affirmed.

[46] The leading judgment was that of Lord Sumption. The main reason for the appellant's failure to apprehend the requirements of the practice direction in relation to electronic service (namely, the requirement for prior consent to accept electronic service), was identified as the fact that the appellant was a litigant in person. Lord Sumption considered the issue thus[40]:-

> *"Turning to the reasons for Mr. Barton's failure to serve in accordance with the rules, I start with Mr. Barton's status as a litigant in person. In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules...The rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions, it is now well established that the fact that the*

[40] ***Barton v Wright Hassall LLP*** supra, @ para 18

> *applicant was unrepresented at the relevant time is not in itself reason not to enforce rules of court against him..."*

Further

> *"The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage to the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts, for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarize himself with the rules which apply to any step which he is about to take."*

[47] **Barton v Wright Hassall LLP** was applied in **Clutterbuck v Brook Martin & Co (a firm) et anor**[41]. In ***Clutterbuck***, the Claimant was an unrepresented litigant of some experience in that regard. Her action was against solicitors for inter alia, breach of fiduciary duty, breach of trust, and negligence. The Defendants' complaint in that case was against a POC (particulars of claim) that was 58 pages long with 2 appendices. Counsel for the Defendants also complained that the witness statements filed by the Claimant were "*prolix, yet lacking in important particulars, confusing and difficult to follow.*" Additionally, it was complained of the POC that *"one general respect in which the Particulars of Claim in this matter are flawed is the prevalence of*

[41] [2019] EWHC 1040

long and discursive paragraphs dealing with factual matters, often including statements made by, or dealing with the conduct of persons other than the defendants, which do not set out why or how such matters are alleged to be relevant to any claim."

[48] Following these submissions in an application to strike out, the claimant amended her particulars of claim, which was found by the court, to have suffered the same defects as the original. The court agreed with counsel for the defendant that the amended POC was incomprehensible. Ultimately, the court accepted that the POC was "*prolix, discursive, full of evidence rather than material facts, contained irrelevant references, lacking in proper particularity and difficult to follow*[42]. The particulars of claim of the unrepresented litigant in this case (**Clutterbuck**) was struck out. In terms of the description of the particulars of claim, the Court finds parallels with **Clutterbuck** in the instant claim.

[49] In the round, taking into account the findings listed in *Issue (ii)* above[43], the Court notes as follows with specific reference to the Claimant's case and circumstances:-

(i) Rule 8.1(1) which requires commencement of proceedings by

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[42] Clutterbuck v Brook Martin, supra @ para 62-65; para 77
[43] Paras 37-38 supra.

claim form supported by statement of claim (or fixed date claim as per Rule 8.1(5)), is a clear as opposed to obscure or complicated rule;

(ii) The Claimant in fact had already amended her statement of case by filing the notice of application some 45 days after wrongly attempting to commence the proceedings with her affidavit;

(iii) The Claimant's claim form and statement of claim filed without permission on the 24th July, 2019 was in fact a third attempt to plead her case;

(iv) The Court is able to discern that the Claimant's grievance with the Defendant is the fact that she has not been able to graduate from the Barbados Community College. However, the precise bases upon which she alleges her causes of action arising from contract on the one hand and tort on the other, are obscure and further obfuscated by pleadings aptly borrowed from ***Clutterbuck,*** as

'*prolix yet lacking in important particulars*', as well as '*confusing and difficult to follow.*'

(v) The Claimant is not a stranger to the civil courts. In this matter she filed a notice to remedy default of defence within a relatively

short time after the defence would have been due, which says to the Court that she is aware of and attentive to the Rules;

(vi) The order of the Court issued on 25th July, 2019, expressed that the Claimant was advised to seek the services of an attorney-at-law. It is patent that the judge would have made that suggestion given the clear deficiencies in procedure and pleading. The Application to Strike Out had already been filed. It has to be considered that the Claimant was on notice from the date of that order, that her case was deficient and that she had ample opportunity to at least seek legal advice, even if not able to obtain legal representation.

The state of the Claimant's case as described in issue (ii) and the Court's reckoning of the above authorities in issue (iii) perhaps already foreshadow that the Court takes a dim view of the claim form and statement of claim. The claim form and statement of claim filed without permission cannot be allowed to stand in the face of the Court's findings as to their deficiencies.

[50] The Court does however consider the Claimant's submission that she has a good case and should be allowed the opportunity to amend. The Claimant referred the Court to **Faiz Siddiqui v Oxford University**[44] as being of

[44] [2016] EWHC 3150 (QB)

assistance to her from the standpoint of the viability of her case. The claimant in this case, graduated with an upper second class honors degree from Oxford University. Whilst at Oxford the claimant perceived that a particular course was not being taught properly. The claimant also suffered from hay fever and had obtained some degree of accommodation as a result of his condition, during the sitting of his examinations. The claimant's claim was for damages for negligent teaching due to unavailability of teaching staff as well as negligence arising from a failure to handle his medical condition appropriately.

[51] The claimant alleged that both incidences of negligence led to him receiving a lower grade than he was capable of attaining, which thereafter affected his fortune in life. The claimant left the university in 2000 dissatisfied, and tried on several occasions in the ensuing years, to have university officials explain to potential employees that his transcript would have been affected by his medical issues.

Some years later in 2013, the claimant in conversation with a colleague, learned of a former student who attended at the same time as he did, who had protested the grades she received in the same course, on the basis that the course was poorly taught. That other student had been successful in 2000 in obtaining a review of her grade, and subsequently progressed on to become a

lawyer employed with a successful firm. The claimant was not as enamored with his own fortunes and sought to attribute responsibility to the university.

[52] Having heard of that student, the claimant tracked her down and learned of her written complaint in relation to the same course he had complained about. Armed as he thought with sufficient information, the claimant, in 2014 brought his action against the university. The defendant filed applications to strike out or alternatively for summary judgment, on the basis inter alia, that the claim was statute barred. These applications were refused and the Claimant herein, commends this case unto the Court on the basis that the claim was permitted to proceed in spite of being statute barred. This decision is not very helpful to the Claimant beyond illustrating that a case for negligent teaching may be brought against an educational institution.

[53] Further, there was no issue therein of the case being badly pleaded. More importantly however, the point about the case being allowed to proceed despite the limitation period having expired, is misconstrued. The date of expiry of the cause of action, hinged (as always), upon the question of when the cause of action accrued. The date of accrual of the cause of action, in turn, depended on when the claimant became aware of his cause of action – namely, when he became aware of the actions of the university in relation to the course he'd complained about. This issue of the claimant's knowledge

was a disputed fact in issue which had to be proven by evidence.

[54] The ruling of the court was therefore not that the claimant was allowed to pursue his case in spite of the limitation period. Rather, the ruling was that the issue of when the claimant's cause of action arose, i.e. when did the claimant obtain knowledge of facts giving rise to the University's liability - was an issue to be tried. In fact, the issue of limitation was scheduled to be tried as a preliminary issue along with the issue of liability. It should be noted that the claimant was unsuccessful in overcoming his limitation hurdle and his claim was ultimately dismissed.[45]

This case does not therefore assist the Claimant in overcoming the fatal defects found in her case.

[55] With reference to her oral request to be allowed to further amend her case, the Claimant stated that her claim would be statute barred, having arisen in 2014. On the one hand, the Court is of the view that the Claimant has had more than sufficient opportunity to present her case to the Court. Further however, even though the Claimant holds the view that her cause of action arose in 2014, the Court is unable determine when the cause of action arose, given the absence of specific allegations or particulars which contain dates relative to such allegations. It therefore cannot be said that the Claimant

[45] **Siddiqui v Chancellors, Masters and Scholars of the University of Oxford** [2018] EWHC 184 (QB)

would be driven from the seat of justice should she not be allowed the opportunity (for a fourth time), to attempt an amendment to her statement of case.

[56] Finally, the Court agrees with Counsel for the Defendant, that this is not a claim in which the Defendant stands to obtain a windfall from the strike out of the claim – such as might have been the case in a claim for money. The Court also agrees with Counsel for the Defendant that the state of the claimant's case is such that any amendment that cures the defects would be tantamount to commencing the claim afresh. The affidavit, notice of application, the claim form and statement of claim filed without leave, all individually and collectively warrant the sanction of being struck out. The Court does not grant any permission for the Claimant to make any further amendments to her statement of case. The Claimant was entitled to pursue her grievance against the Defendant, but it was her obligation to ensure that the matter was presented in conformity with the rules and established standards of law, practice and procedure.

DISPOSITION

[57] The Defendant's Application to Strike out the Claimants' case is disposed of as follows:-

(a) The Application to Strike Out is granted pursuant to both Rules

26.3(1) and Rule 26.3(3)(c), for the following reasons:-

(i) The Affidavit filed on the 1st March, 2019 fails to comply with Rule 8.1(1) on how to commence proceedings. The affidavit is prolix; and fails to disclose any reasonable ground for bringing the proceeding;

(ii) The Claimant's Affidavit and Notice of Application respectively filed on 1st March, 2019 and 15 April, 2019 collectively fail to comply Rule 8.1(1), and collectively fail to disclose any reasonable ground for bringing the proceedings;

(iii) The claim form and statement of claim filed on the 24th July, 2019 ought not to have been filed without the permission of the Court. The claim form and statement of claim in any event fail to disclose any reasonable ground for bringing the claim;

(iv) The Claimant is not granted permission to further amend her statement of case.

(b) Costs are awarded to the Defendant to be determined in accordance with Rule 65.11.

(c) The Defendant is to submit a statement on costs pursuant to Rule 65.11(5) on or before the **17th August, 2020**; the Claimant is at liberty to provide a response to the submission on costs, on or before the **24th August, 2020**.

(d) The Court will hear the parties on the issue of costs on the **28th August, 2020 at 1.30pm**.

SHONA O. GRIFFITH
Judge of the High Court