BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

Civil Suit No: 705 of 2016

BETWEEN:

NAKEISHA WILTSHIRE	**CLAIMANT**

AND

NATIONAL HOUSING CORPORATION	**FIRST DEFENDANT**
MARCIA WILTSHIRE	**SECOND DEFENDANT**

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

Date of Hearing:	**2021:**	**18th March**
Date of Oral Decision:	**2021:**	**18th March**
Date of Reasons for Decision	**2021:**	**16th August**

Appearances:

Mr. Rudolph Greenidge for the Claimant.

Ms. Nicole Gibson for the First Defendant and Ms. Vonda Pile for the Second Defendant.

Civil practice and procedure – Striking out of case – CPR Rules 26.3(1) & 26.3(3)(b) – Failure to Comply with Order of Court and No reasonable ground for bringing claim - Tenantries Freehold Purchase Act, Cap. 239B, section 2 – Qualification as Tenant

REASONS FOR DECISION

[1] This Court delivered an oral decision in this matter (*ex tempore*) on the 18th March, 2021 whereby the Claimant's case was struck out for want of reasonable ground for bringing the claim, as well as for failure to comply with case management orders. At the conclusion of the proceedings, Counsel for the Claimant indicated his intention to appeal and a notice of appeal was indeed filed on the 21st April, 2021. As a consequence the Court now reduces its reasons into writing.

Background and Procedural History

[2] This matter concerns a parcel of land described as Lot 20 Campion Land, Martindale's Road, St. Michael, ('Lot 20') which was conveyed by the 1st Defendant, the National Housing Corporation (NHC), to the 2nd Defendant Marcia Wiltshire in March, 2014, in accordance with the provisions of the Tenantries Freehold Purchase Act, Cap. 239B ('the Act'). The Claimant Nakeisha Wiltshire, by way of Fixed Date Claim (FDC) on the 19th May, 2016, filed a claim asserting a right to purchase Lot 20, as a qualified tenant under the Act. The proceedings were initially brought against the NHC only, but by amended FDC filed on the 27th May, 2016, the claim was constituted against both Defendants. The Statement of Claim (SOC) as amended, pleaded that along with her brother, the Claimant was and had been the occupier of

Lot 20, since the death of the previous occupant, some 25 years prior (to May, 2016).

[3] The Claimant's occupation of Lot 20, (in respect of which no specified dates have been specified), is alleged to have been a fact known by the 1st Defendant, by reason of the Claimant having informed the 1st Defendant of this fact for many years. The SOC alleged that the Claimant visited the 1st Defendant's premises on many occasions and received from its officers, '*positive and encouraging comments*'. The nature or content of such comments was not specified, but the SOC continues, and alleges that the Claimant '*acted on the assurances of the officers and agents of the 1st Defendant and spent substantial sums on renovating the old structure on the premises…*' The Claimant also alleged that by affidavit, she'd informed the 1st Defendant '*that she was willing to pay the rent for the property and also signed the Form I form under the Tenantries Freehold Purchase Act*.' The Claimant pleaded that in spite of 1st Defendant's knowledge of her occupation and presumably the assurances that were given to her, the 1st Defendant proceeded to convey Lot 20 to the 2nd Defendant (the 2nd Defendant is the Claimant's mother).

[4] With respect to the 2nd Defendant, the Claimant alleges that the 2nd Defendant had already been conveyed the adjacent Lot 19 and as such ought never to have been permitted to receive conveyance of a further lot. Additionally, that the 2nd Defendant had never resided on Lot 20 and as such could never have been the qualified tenant and so receive conveyance of same. Even further, that the 2nd Defendant received the conveyance with knowledge that (i) she never occupied Lot 20; (ii) that the Claimant was in occupation of Lot 20, and (iii) the 2nd Defendant and her Attorney were under a duty to inform the NHC of the Claimant's occupation of Lot 20 and to requisition on the Claimant's right to occupation. Lastly, the Claimant pleaded that '*any confusion, error, mistake or omission in this matter was caused by the negligence of the 1st Defendant in failing to carry out its due diligence to ascertain the name of the tenant or person actually residing on Lot 20*.'

[5] Against these allegations, the claim sought relief to (i) set aside the conveyance of Lot 20 between the NHC and the 2nd Defendant, (ii) for the Claimant to retain possession of the property, and (iii) for the property to be conveyed by NHC to the Claimant instead. In its defence to the Claim, the 1st Defendant pleaded that the Claimant communicated her occupancy of Lot 20 to them only on the 12 July, 2013 by way of an affidavit, (the said affidavit was attached to the Defence). The 1st Defendant denied ever having

received a signed Form 1 under Cap. 239B from the Claimant and averred that (i) the Claimant indeed never paid rent to the NHC; and (ii) there had never been a tenancy between the parties, by virtue of a lease, contract or licence, as required by the Act. As such, the Defence asserted that the Claimant had never been a qualified tenant in respect of Lot 20.

[6] The 1st Defendant also denied that its officers gave the Claimant any positive or encouraging comments as alleged; that the 2nd Defendant's occupancy of Lot 20 had been communicated to it by its predecessor, the Urban Development Commission; and that the Claimant's occupancy of the property had been the subject of a requisition during the process of the sale, in respect of which the 2nd Defendant answered that the Claimant occupied the property by virtue of the 2nd Defendant's permission to do so. The 2nd Defendant did not file a defence to the Claim, but filed an affidavit on the 8th February, 2017. On the 10th April, 2017, the Claimant filed a Reply to the 1st Defendant's Defence in which she insisted that she had issued a Form 1 to the 1st Defendant; acknowledged that she was never a rent paying tenant but maintained that she'd been in occupation of the property for a sufficiently long period of time to have been the sole person entitled to purchase the property in law or in equity.

[7] The file's written record depicts that the case management conference was held on 22nd November, 2018 before a Master, and case management orders made, however no physical order arising from the CMC was lodged or filed. According to Counsel for the 2nd Defendant (in respect of which there was no disagreement), by that November, 2018 case management order, the parties' witness statements were to have been filed on or before the 15th March, 2019. The Defendants more or less complied with the CMC Order having filed their standard disclosure, witness statements and statement of facts and issues between December, 2018 and May, 2019. It is noted that the 2nd Defendant had filed no defence, but had answered the claim in her affidavit of February, 2017[1]. When the matter first came before the Court as presently constituted on the 16th July, 2020, there had been nothing filed by the Claimant in compliance with the case management orders or otherwise. The last document on file was the Claimant's Reply filed on the 10th April 2017.

[8] On the 16th July, 2020, the Court directed the Claimant to file an application for permission to extend time for compliance with the case management orders. The Court also raised certain questions as to the sufficiency of the cause of action and afforded the Defendants liberty to apply and gave

[1] The 2nd Defendant ought to have been directed to convert the affidavit to a defence, given that a statement of claim had been filed with the FDC (Rule 10.2(2)).

directions for filing of responses and submissions to the applications when filed. The Claimant filed her application for extension of time for compliance with the order on case management and the 1st Defendant filed an application to strike out the claim. The Claimant appended a draft witness statement to the affidavit filed in support of her application for time. The affidavit in support of the Claimant's application stated that the Claimant was in financial dire straits; had received information from relatives that her mother had agreed that they should no longer pursue the matter in the interest of harmony; having not heard anything negative from her mother she no longer regarded the witness statement as necessary; and that she'd made several efforts over the past 4 months (presumably prior to the swearing of the affidavit in July, 2020), to contact her Attorney, who she'd been informed because of health concerns, was rarely in office.

[9] The draft witness statement repeated that the Claimant had paid no rent to the 1st Defendant in relation to the property, but maintained a right to purchase in law or in equity, by virtue of her occupation. The 1st Defendant's application to strike out the claim was supported by Counsel for the 2nd Defendant. The application to strike was made on the basis of Rule 26.3(3)(b), that the SOC disclosed no reasonable ground for bringing the claim; and Rule 26.3(1), the Claimant's failure without good reason, to comply with the Case Management

Order of 22nd November, 2018. The 1st Defendant's affidavit in support of its application to strike was filed by an officer of the 1st Defendant, who deponed as to the history of the conveyance of Lot 20 to the 2nd Defendant and asserted that according to its records (documentary evidence was attached), the Claimant had never been a tenant of the 1st Defendant.

Legal submissions in respect of both applications

Claimant's Application for Extension of Time

[10] In support of the Claimant's application for further time to comply with the case management order, Counsel submitted (i) the case management order was interlocutory in nature and not final; (ii) there was no sanction for failure to comply; (iii) the Claimant remedied the default to the satisfaction of the Court within days of being told to do so; and (iv) there was a genuine issue for trial and the Claimant would suffer irreparable harm if not permitted to file her witness statement. Further, that the case was a unique one deserving of ventilation on its merits and that the grant of further time to file witness statements was not an uncommon occurrence. Counsel cited no authorities in support of his submissions. Counsel for the 1st Defendant's position was that having regard to the Claimant's affidavit, there was no good reason advanced for the Claimant's failure to comply with the case management order.

[11] Particularly, that the Claimant's reason of financial hardship was not to be countenanced given that the matter was already in the hands of her Attorney. Further, the delay of 16 months before applying for the extension of time was significant and had disrupted the trial process, and relative to the significant length of the breach, the reasons advanced could not be accepted as good reasons. With respect to the reasons advanced, Counsel for the 1st Defendant submits that the Claimant's reliance on information from relatives regarding the 2nd Defendant's position could not be accepted as a good reason failing to comply with a court order. Moreover, the application for extension was made upon the direction of the Court and not of the Claimant's own volition, and even if the Claimant as she alleges was unable to reach her attorney for four (4) months, there still a period of an entire year of non-compliance which was not accounted for.

[12] Counsel referred to the English Court of Appeal case of **Denton v TH White Ltd**[2]. in support of her submissions. It was acknowledged that that case applied to the UK provision for relief from sanctions which is absent from the Barbados CPR, however Counsel submitted that the principles therein were nonetheless applicable in order to further the CPR's overriding objective. The specific principles submitted as applicable arising from this case were that

[2] [2014] EWCA Civ 906

(i) the seriousness and significance of the breach of the order should be identified and assessed; (ii) the reason for the failure or breach, where said failure or breach is significant; and (iii) balancing the need for compliance with rules and orders against the efficiency and proportionate cost of litigation. In applying these principles, Counsel for the 1st Defendant submitted that the Claim should not be permitted to advance any further.

[13] Counsel for the 2nd Defendant also objected to the Claimant's application for permission to extend time to comply with case management directions. Counsel submitted that notwithstanding the absence of a perfected order, all counsel were present in November, 2018 when the case management directions were issued. Further, the reasons advanced by the Claimant could not be accepted as good reasons for the failure to comply. In relation to the impecuniosity alleged, Counsel submitted that the Claimant had been represented by counsel from the commencement of the matter. The assertion of the ill health of counsel also was not a reason which could properly account for the delay in this matter. In relation to the delay, Counsel for the 2nd Defendant referred to **Arbuthnot Latham Bank Ltd. v Trafalgar Holdings et al**[3] as authority for striking out based on delay in prosecuting a claim after commencement.

[3] 1998 WLR 1426

1st Defendant's Application to Strike Out Claim

[14] The 1st Defendant's application to strike out the Claimant's case was filed pursuant to Rule 26.3(3)(b) – that the statement of case discloses no reasonable ground for bringing the claim; as well as Rule 26.3(1) – the Claimant's failure to comply with the case management order made on 22nd November, 2018. In relation to the latter ground (Rule 26.3(1)), the Court considers this ground to have already been covered in relation to the Claimant's application for extension of time – as the 1st Defendant's application to strike was in effect their response in objection to the application for extension of time. Respective Counsels' submissions in relation to the application to strike based on Rule 26.3(3)(b) only, will now be highlighted. Counsel for the 1st Defendant identified the standard to which the ground advanced (no reasonable ground for bringing the claim), is regarded, with reference to Barbados Court of Appeal decision **American Life Insurance Co v Ainsley**,[4] particularly, the reference therein to ***Belize Telemedia Limited & Boyce v Magistrate Usher & Attorney-General***[5].

[4] Barbados Civ. Appeal No. 35 of 2014
[5] (2008) 75 WIR 138

[15] The reference in ***Alico v Ainsley*** was to the Belize Supreme Court's explanation of the same rule[6], that '*the content of a statement of case is defective in that even if every factual allegation in it were proved, the party whose statement of case it is cannot succeed or where the statement of case, no matter how complete and apparently correct it may be, will fail as a matter of law.*' Counsel for the 1st Defendant submitted that the Claimant's statement of claim was to be categorized in that manner for reason that her claim asserts a right to purchase Lot 20 on the basis of being a qualified tenant under the Tenantries Freehold Purchase Act, Cap. 239B. However, Counsel submits that according to the facts pleaded by the Claimant, particularly that she never paid rent to either Defendant, the Claimant cannot satisfy the definition of a tenant under section 2 of the Act. Counsel cited several Barbadian cases in support of the requirement to pay rent in order to be a qualifying tenant under the Act, namely **Lynch v Birch**[7], **Leacock v Hinds et al**[8], and **Hood v Edwards**[9].

[16] Accordingly, Counsel submitted that the Claimant cannot possibly establish that she was a qualified tenant and thereby entitled under the Act to purchase Lot 20. Counsel referred to the case of ***Burnham v Burnham*** per Husbands J. in support of her submission that inasmuch as the Claimant

[6] Belize CPR 2005, Rule 26.3(1)(c)
[7] High Court No. 459/1983
[8] High Court No. 71/1985
[9] Magisterial App. No. 14/2007

alleged she was resident on the property, residence under the Act meant residence as a tenant. The Claimant was not a tenant as she never had a relationship with the 1st Defendant, nor did she pay rent as a sub-tenant, to the 2nd Defendant. Counsel referred to the evidence filed on behalf of the 1st Defendant which asserted that according to their records, the Claimant was never a tenant of that nor its predecessor agency. Counsel for the 2nd Defendant in support of the 1st Defendant's Application to Strike, restricted her argument to the case pleaded by the Claimant vis-à-vis the requirements of a qualified tenant as defined under sections 4 and 5 of the Act. With economy, Counsel illustrated that even if accepting the facts pleaded by the Claimant as true, the Claimant would be unable to satisfy the requirements for occupation or payment of rent.

[17] Counsel for the Claimant's response to the Application to Strike Out the claim was that the Claimant's cause of action was grounded in negligence, which was a well-established cause of action. The negligence alleged was that the 1st Defendant failed to conduct its due diligence when conveying the property to the 2nd Defendant, in circumstances where the Claimant's occupation was known to them and as a result of this lack of due care, caused loss to the Claimant. Alternatively, Counsel submitted that the Claimant's right under the Act to purchase Lot 20 had been superior to that of the 2nd Defendant.

In relation to the exercise of the Court's discretion, Counsel submitted that the Court should be slow to apply the drastic remedy of striking out the Claimant's case, and that deficient pleading was not a ground to strike out. Further, that the Court should not lightly strike out a case, without granting leave to amend, especially where any deficiencies could be cured by amendment. By his submissions in response to the Application to Strike Out, Counsel invited the Court to grant leave to amend the Claimant's case.

The Court's Consideration

[18] The Court considers that the Application to Strike Out for want of reasonable grounds for bringing the Claim should be determined first, given that it would substantively determine the matter. The standard to be applied upon consideration of an application pursuant to Rule 26.3(3)(b), is accepted as that referred to by Counsel for the 1st Claimant in ***Alico v Ainsley***[10]. The Court also refers to **Three Rivers District Council v Bank of England (No. 3)**[11], in relation to the test to be applied on a strike out application which alleges no reasonable ground for bringing a claim. The test to be applied is whether the case would be bound to fail even if taken at its highest; or, bound to fail even if all the facts alleged in the statement of case were to be proven.

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[10] Supra
[11] [2001] 2 All ER 513 HL

[19] Applications to strike out a statement of case pursuant to Rule 26.3(3), should normally be taken at or before the case management conference. In this case, however, the case management conference yielded only pro forma case management directions, which were apparently issued and accepted with no contemplation of a patent opportunity for summary disposal on the face of the Claimant's pleaded case. In furtherance of conserving judicial time and saving the expense of a trial, the Court enquired as to the sufficiency of pleadings, especially considering the Claimant's need for permission to remedy her non-compliance with the case management directions in the first place. Further, whilst the Claimant was obliged, on the Court's direction, to file her application for extension of time, it remained open for the Claimant to file (without requiring any permission from the Court to do so), an application to amend her case, if felt necessary.

[20] As a matter of law, the subject matter of the Claimant's case is land, the entitlement to which is governed by statute (the Tenantries Freehold Purchase Act, Cap. 239B). The Claimant's complaint concerned the alleged invalidity of a conveyance of land, pursuant to the Act. The claim was filed against the prior statutory owner of the land, and the purchaser thereof. The remedies sought by the Claimant were primarily (i) avoidance of the transfer to the 2nd Defendant of Lot 20; and (ii) declaration of her entitlement to purchase

and remain in possession of the said Lot 20. The transfer to the 2nd Defendant having (on the Claimant's case) been executed since March, 2014, as a matter of law, any person attempting to set aside that transfer must establish (i) the requisite standing to do so, namely by their own entitlement to the land; and (ii) a cause of action capable of invalidating the purchaser's ownership and title.

[21] There are no statutory causes of action in this regard[12] which are prescribed by the Act, therefore the Claimant's recourse is to the common law. At common law, the set aside of any such conveyance would have to be based on fraud or mistake[13], or other good reason. Taken at its highest, the Claimant's pleaded case in support of her entitlement to Lot 20, alleges or asserts the following:-

(i) That she resides at Lot 20;

(ii) The 1st Defendant was the prior owner, and the 2nd Defendant as of March, 2014 is the current owner of Lot 20, by conveyance pursuant to the Act;

(iii) Lot 20 was previously occupied by an old gentleman who died 25 years prior *(i.e. in 1991),* thereafter by her brother for 'a few years';

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[12] As in the case of rectification of the land register for fraud or mistake, under section 40 of the Land Registration Act, Cap. 229.

[13] Akin to the position in relation to a Registrar's conveyance, Wiltshire v Cain (1960) 2 WIR 12 @ 15-16.

(iv) The Claimant for many years *(such number of years neither identified nor quantified)* made it known to the 1st Defendant that she was in occupation of the property;

(v) The Claimant informed the Defendant by way of affidavit that she was willing to pay rent and also signed a Form 1 (under the Act);

(vi) The Claimant visited the 1st Defendant's premises on many occasions *(period of time not identified)* and received positive and encouraging comments (*the nature of such comments not specified*) from their officers, who were aware of her occupation;

(vii) The Claimant acted on the assurances of the 1st Defendant's agents and officers *(neither such assurances nor officers and agents specified or identified)* and spent substantial sums on renovating and outfitting a structure on the premises;

(viii) The 2nd Defendant Marcia Wiltshire never resided on or occupied Lot 20, at any time;

(ix) The 2nd Defendant purchased Lot 20 with full knowledge that

(a) She never occupied it;

(b) The Claimant was in occupation of it;

(c) She or her attorney-at-law were under a duty to inform the 1st Defendant of the Claimant's occupation;

(x) Any confusion, error, mistake or omission in the matter was caused by the negligence of the 1st Defendant in failing to carry out its due diligence to ascertain the name of the tenant or person actually residing on Lot 20;

(xi) The 1st Defendant at no time during the transfer of Lot 20 requested that the Claimant give vacant possession to the 2nd Defendant and as such she remains in possession;

(xii) The Claimant accepts that she never paid rent but maintains that she was in occupation of the property for a sufficiently long time to make her entitled as an occupant to be the sole person entitled to purchase the property in law or equity;

(xiii) The 2nd Defendant was not a rent paying tenant of Lot 20 and as such had no right or interest superior to that of the Claimant;

(xiv) The Claimant was never given permission by the 2nd Defendant to occupy Lot 20.

[22] The remedies sought by the Claimant based on the case pleaded above are as follows:-

(i) An order for the conveyance of Lot 20 to the 2nd Defendant to be set aside;

(ii) An order that she remain in possession of Lot 20;

(iii) An order that a conveyance to Lot 20 be executed by the 1st Defendant, in the Claimant's favour.

[23] In accordance with the accepted standard for assessing an application to strike out a statement of case on the basis of there being no reasonable ground for bringing the claim, the Court must accept the allegations of fact pleaded by

the Claimant, at their highest.[14] Obviously, such facts must bear relevance to establishing the cause of action and remedies claimed; and also, conclusions of fact or law as pleaded or arising from such alleged facts need not be accepted, unless correct or appropriate. The Court therefore assesses the Claimant's case as pleaded against the legal requirements for the causes of action asserted, or the causes of action attributable to the remedies claimed. As stated above, given that the Claimant's underlying remedy is for the conveyance by the 1st Defendant to the 2nd Defendant be set aside, she must have the requisite interest to seek that remedy. Further, given the absence of a statutorily prescribed basis upon which a conveyance under the Act can be set aside, the Claimant has to be alleging fraud, mistake or some other very good reason (for example, misrepresentation or perhaps an overriding interest, if applicable in law).

[24] Firstly, the Claimant has not pleaded fraud, which must be clearly and distinctly pleaded, and particularised[15]. The allegations made by the Claimant at paragraph 15 of her Statement of Claim regarding the 2nd Defendant's knowledge of her occupation, do not amount to a plea of fraud. Further, if both Defendants knew of the Claimant's occupation, the nature of how fraud

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[14] Three Rivers District Council (No.3) supra, @ paras 53-55
[15] ***Seaton v Seddon [2012] 1 WLR 3636*** @ paras 45-49

is being alleged must be pleaded as it could not be a matter of an allegation of fraud by concealment of the Claimant's occupation[16]. The statement of claim also mentions the words confusion, error, mistake and omission. There are no particulars of what the mistake was; or who's mistake is being referred to. In any event, within the context of a conveyance of land, the basis upon which the Claimant as a stranger to the conveyance could plead mistake as a basis to set aside the conveyance, would rest upon the Claimant having an interest in the land conveyed. Further, like a plea of fraud, a plea of mistake (including here error and omission) is also subject to a strict standard, which can be extraced from the case of **Pitt et anor v Holt**.[17]

[25] In the instant case, given that the Claimant alleges that both Defendants knew of her occupation on the land, it is not a matter of concealment, and there is no clear or express pleading in relation to either cause of action. Albeit mentioned, the Claimant does not distinctly or even effectively purport to set out any case for misrepresentation, in relation to any statements of fact made by officers or agents of the 1st Defendant. With respect to Counsel for the Claimant's submission that the claim was one of negligence against the 1st Defendant, and that negligence is a clear cause of action which could not

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[16] ***Best v Kinch Barbados Civ App. No. 37/2012*** per Mason JA @ paras 39-40. In relation to conveyance of land, the two principal circumstances in which fraud is established is by way of concealment of rights of other third parties.
[17] [2013] 2 AC 108 @ 110

be disputed - clearly, negligence is a cause of action and the categories of negligence are not closed. A claim based on negligence however is rooted in basic legal principles, including the existence of a duty of care and a breach of that duty. According to the case pleaded, the 1st Defendant was negligent in failing to carry out due diligence regarding the Claimant's occupation of the land.

[26] At the same time however, the claim alleges that the 1st Defendant was quite aware of the Claimant's occupation to the point where its officers gave her assurances and encouragement. What the duty of care was within the context of a statutory conveyance of property has not been defined by the Claimant's case and it is not for the Court to presume, therefore the Court cannot accept Counsel's assertion of a cause of action in negligence. Further, a cause of action in negligence is quite inconsistent with the remedies sought by the Claimant, namely, setting aside and reconveyance of the property. A claim in negligence gives rise to damages. There is no reasonable ground alleged in the Claimant's case, to support a cause of action of negligence in these circumstances. The Court considers that even if a contrary view were to be taken in relation to fraud, mistake or negligence being sufficiently or reasonably pleaded, the Claimant's pleaded case reveals that she lacked the requisite standing in law, to make any claim under the Act.

The Claimant affirmatively pleads (and re-pleads) that she paid no rent to the 1st Defendant, who would have been the statutory landlord under the Act. The definition of 'tenant' as identified by respective Counsel for both Defendants, speaks to a tenancy whether established by lease, contract or licence, whether at law or at equity. This definition is exclusive to Cap. 239B, unlike other definitions under this Act.[18] In relation to a lease and contract, it is clear that in order to subsist, they require on the one hand, the payment of rent, and on the other hand, some form of consideration.

[27] In relation to a licence (in this context, to occupy land), the Court is of the view that this relationship must also be underpinned by some form of consideration, which arises by virtue of a contractual licence, as opposed to a bare licence. The Claimant's case excludes her as a tenant of the 1st Defendant as she admits never having paid rent to the 1st Defendant and there is no plea of any other form of consideration which gives rise to a direct relationship via lease, contract or licence with the 1st Defendant. Accordingly, before the Claimant can be a qualified tenant under section 4(2)(b) of the Act, she must be a tenant as defined by section 2. By the Claimant's own case she has excluded herself as a tenant of the 1st Defendant.

[18] For example, 'lot', which engages the Security of Tenures of Small Holdings Act, Cap. 237 and 'conveyance' which engages the Land Registration Act, Cap. 229

[28] In relation to any question of the Claimant being a sub-tenant, so as to be a qualifying tenant under section 4(3) of the Act, a precondition of such qualification is prescribed by section 4(3)(d) of the Act. That precondition is the payment of rent, either to (i) the landlord (the 1st Defendant) in the name of the tenant; or (ii) the payment of rent to the tenant. The Claimant's case pleads that she did not pay rent to the 1st Defendant; the Claimant's case pleads that the 2nd Defendant (whom she would have to be claiming under, in order to be a sub-tenant), was not a tenant of Lot 20; and the Claimant's case pleads that she never paid rent to the 2nd Defendant (who would have to be a tenant in order for the Claimant to be a sub-tenant).

Conclusion

[29] The Court finds that the Claimant cannot on the totality of her statement of case establish herself to be a tenant, much less qualifying tenant within the terms of the Act and therefore cannot advance a claim on the basis of any entitlement under the Act. Further, the Claimant's allusion to the 2nd Defendant having knowledge of her occupation of the land, does not rise to the level of a pleaded case of fraud, but moreso is ineffective in the absence of any legal standing as a qualified tenant under the Act. Insofar as the Claimant's case mentions mistake, this has not been definitively pleaded as her cause of action nor supported by the facts pleaded. The claim of

negligence does not arise on the face of the Claimant's pleadings. In the circumstances, the Court finds that the Claimant's case discloses no reasonable grounds for bringing the Claim and therefore must be struck out.

[30] In light of this finding, it is unnecessary to embark upon a substantive consideration of the Claimant's application for extension of time to comply with the case management directions. The Court does however rule that in any event, the reasons advanced by the Claimant for failure to comply are not accepted as good reasons. These reasons were impecuniosity (the Claimant was at all times represented by Counsel and compliance with case management directions need not have depended on an attorney-at-law); illness of Counsel (this was alleged in relation to a time period over a year past the expiration of the date for compliance); misinformation regarding the 2nd Defendant's intention of proceeding with the matter (it was the Claimant's case to pursue and imprudence is not a good reason for excusing non-compliance with the Court's directions or prosecution of a claim).

[31] Reference is made to the Privy Council decision arising out of Trinidad & Tobago - **Crick v Brown; Phillips v Commissioner of Police et anor**[19], in relation to the enforcement of directions and orders under the CPR, the duties of the parties to further the overriding objective of the Rules, as well as the

[19] (2020) 97 WIR 396 @ 402 (para 19 et seq.)

Court's function in engaging in active case management. This case underscores that in an appropriate case, the overriding objective of the Rules, warrants the Court's exercise of its power to strike out a case. Further, this case underscores, that the availability of the exercise of the power to strike out, does not require a specific sanction to have been included in the court's order or direction.[20] This case dealt with the failure to file submissions pursuant to case management directions in an appeal (***Crick's case***), however the *ratio* is equally applicable to the exercise of powers at the High Court. In ***Crick's Case***, the Privy Council upheld the Trinidad & Tobago's Court of Appeal's dismissal of the appeal without a hearing on the basis of a failure of counsel to file submissions, in circumstances where it was appropriately concluded that the appeal was in any event unsustainable.

[32] This Court considers the exercise of its power to strike out the Claimant's case without the benefit of extension of time to comply with the case management directions, to be appropriate in this case, for the same reason. The Court is aware of the option to have ordered an amendment, or to have issued on unless order. It is however, considered that on the facts pleaded, there is no amendment capable of remedying the absence of any cause of action available to the Claimant under the Act. Any amendment would require either entirely

[20] Crick et anor, supra, @ paras 25-33

new causes of action to be pleaded and remedies claimed, so as to remain in keeping with the facts alleged; or would require entirely new facts to be pleaded, in order to support the cause of action pleaded and remedies claimed. In addition to the degree of amendment which would be required to remedy the pleaded case, the following circumstances must also be considered in relation to the Claimant's case. Namely - (i) there has been a failure to comply with the case management directions; (ii) there has been no good reason advanced for that failure to comply; (iii) the Claimant's application for extension of time had to be directed by the Court as opposed to filed by the Claimant, much less filed in due recognition of her non-compliance; (iv) there was no application filed or even made orally, for permission to amend the Claim, instead the issue of amendment was addressed in Counsel's submissions. In the totality of these circumstances, there is no good reason to grant permission to amend, nor to have imposed an 'unless order' on the Claimant. The Claimant's case is therefore struck out with costs to the Defendants.

Disposal

[33] The following orders are made on disposal of the Applications before the Court:-

(i) The Claimant's Application for an extension of time within which to comply with the case management directions issued by order of the court on the 22nd November, 2018, is refused;

(ii) The 1st Defendant's Application to strike out the claim pursuant to Rule 26.3(3)(b) is granted;

(iii) Costs are awarded to the Defendants to be assessed if not agreed.

SHONA O. GRIFFITH
Judge of the High Court