

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2023/CLE/gen/FP/00084

B E T W E E N

JEVAN HOLLINGSWORTH

Claimant

AND

FREDICIA CHRISTINA HARVEY HOLLINGSWORTH

Defendant

Before: The Honourable Justice Constance Delancy (Acting)

Appearances: Osman Johnson for the Claimant

Sharanna Bodie for the Defendant

Hearing date(s): 5 April, 2024

DECISION

DELANCY, J (ACTING)

1. This is an application by the Defendant's to strike out the Claimant's standard claim form. The Defendant also seeks to have access to the records of these proceedings restricted.

Background

2. The parties were married 10 October 2010 in the Turks & Caicos Islands and cohabited in that jurisdiction.

3. On 2 May, 2023, the Defendant was granted a Judgment of Divorce from the Superior Court in Quebec, Canada where she and the minor child of the parties are domiciled. The Defendant was also granted sole custody and parental responsibility of the minor child.

4. On 26 May, 2023, the Claimant filed a Standard Claim Form claiming damages for slander, libel and defamation of character. The Claimant's allegations of slander, libel and defamation are as set forth in paragraphs 3 to 9 of the Standard Claim Form.

5. On 11 October, 2023 the Defendant filed a Notice of Application to strike out the Claimant's Standard Claim filed herein pursuant to Parts 8.7, 8.24 and 26 of the Supreme Court Civil Procedure Rules, 2022 (CPR) on the grounds that:

- i. It failed to comply with Parts 8.7 and 8.24 of the CPR
- ii. It does not disclose any reasonable grounds for bringing the claim
- iii. It is frivolous, vexatious, scandalous and an abuse of the process of the Court
- iv. Access to the Court record of these proceedings be restricted.

6. On 11 October, 2023 the Defendant filed an Affidavit in support of her strike application. On 2 April, 2024 the Claimant filed an Affidavit and on 12 April, 2024 filed an Affidavit of Janice Hollingsworth opposing the Defendant's application.

Law

7. Part 8.7 of the CPR provides that a Claimant has a duty to include all the relevant facts that the he intends to rely on to prove his case:

- (1) The claimant must include in the claim form or in the statement of claim a statement of all the relevant facts on which the claimant relies.
- (2) The statement must be as short as practicable.
- (3) The claim form or the statement of claim must identify any document known to the claimant which the claimant considers to be necessary to his or her case.
- (4) If the claimant seeks recovery of any property, the claimant's estimate of the value of that property must be stated.
- (5) The statement of claim must include a statement of truth in accordance with rule 3.8.

8. Part 8.24 of the CPR provides that claimant has a duty to file and serve any written evidence upon which he intends to rely:

- (1) The claimant must file any written evidence on which he intends to rely when he files his claim form.
- (2) The claimant's evidence must be served on the defendant with the claim form.
- (3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgement of service unless otherwise ordered by the Court on an application without notice.
- (4) If a defendant files written evidence he must forthwith serve a copy of his evidence on the other parties.
- (5) Any evidence filed at the time of filing his acknowledgement of service must be served when the acknowledgement of service is served on the claimant and any other party.
- (6) The claimant may, within fourteen days of service of the defendant's evidence on him, file further written evidence in reply.

- (7) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.
- (8) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.

9. Part 26.3(1) of the CPR provides:

- (1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that —
 - (a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;
 - (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
 - (c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
 - (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

10. Part 26.9 of the CPR provides for instances where a rule does not provide a specific provisions for the consequences of a party failing to comply with a rule, practice direction, practice direction or order:

- (1) This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction, court order or direction.
- (2) An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the Court so orders.
- (3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the Court may make an order to put matters right.
- (4) The Court may make such an order on or without an application by a party

Issue

11. The Court must determine in exercise of its case management powers whether:

- i. the Claimant failed to comply with the provisions of Parts 8.7 and 8.24 of the CPR;
- ii. the Standard Claim Form discloses a reasonable ground(s) for bringing the claim against the Defendant; and
- iii. Whether the Standard Claim Form or the part(s) thereof is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings

Evidence

Evidence relied upon by the parties as contained the pleadings and in their respective Affidavits and the Affidavit of Janice Hollingsworth may be summarized as follows:-

- i. That the parties were husband and wife who married 10 October 2010 and co-habited in the Turks & Caicos Islands. The Defendant filed a Petition for Dissolution of the marriage in Turks & Caicos Islands on 22 September, 2020 and discontinued those proceedings on 4 February, 2022;
- ii. That the Defendant and the minor child of the marriage re-located to Canada on 19 March, 2020;
- iii. That the Defendant, being domiciled in Canada, filed for and obtain a dissolution of the marriage on 2 May, 2023;
- iv. That the Claimant alleges that the Defendant published or caused to be published statements on Bahamas Press and Facebook to defamed his character in or about June 2020;
- v. That the Claimant claims that the alleged statements are untrue and exhibited a Certificate issued by Police Records in The Bahamas indicating that he has not been convicted of a criminal offence in The Bahamas;
- vi. That the Defendant exhibited a Certificate issued by the Royal Turks & Caicos Islands Police Force indicating convictions for criminal offences in Turks & Caicos Islands.

Submissions

12. Counsel for the Defendant submitted that the Claimant failed to adequately set of his case in accordance with the requirements of Parts 8.7 and 8.24 of the CPR. Further that the Claimant did not file any evidence along with the Standard Claim Form upon which he intended to rely on at trial. The Defendant submitted the Claimant's claim, that the Defendant was responsible for publications of statements in Bahamas Press and Facebook as set out in paragraphs 5 and 6 of the Standard Claim Form, is a bare allegation. Further there is no evidence attached to the Standard Claim Form to support the assertions as is required. There are no Facebook posts, there are no Bahamas Press posts, there is nothing exhibited to the Standard Claim Form besides the bare

allegations that adequately tie the defendant to the allegations. Counsel relied on the case of **Bentech Limited v First Caribbean International Bank (Bahamas) Limited** 2018/CLE/gen/00884.

13. Counsel for the Defendant submitted that the Standard Claim Form as pleaded does not disclose any reasonable ground for bringing a claim for slander, libel or defamation against the Defendant. That the Claim Form does not show that the Defendant was responsible for the publication of libelous information or that she promoted or procured the publication of the same.

14. In opposition to the Defendant's application the Counsel for the Claimant submitted that the Court ought to take note of Parts 1.1 and 1.2 of the CPR, which speaks to the overriding objective, dealing with cases in way which are proportionate. That the Claimant relied on the well known dictum of *Fletcher Moutin LJ* in **Dyson v Attorney General** [1911] 410 at page 419:

...our judicial system would never permit a plaintiff to be 'driven from the judgment seat' in this way without any Court having considered his right to be heard, excepting in cases where the cause of action was obviously and almost incontestably bad.

15. Counsel for the Claimant relied on the provisions of Part 26.9 of the CPR, which speaks to instances where the consequence of failure to comply with a rule has not been specified. Counsel argued that in Parts 8.7 and 8.24 of the CPR, there are no automatic penalties of dismissal of an action. Further, that an error of procedure or failure to comply with Parts 8.7 and 8.24, does not invalidate any step in the proceedings unless the Court so orders. Further, that in the event the Court concluded that the provisions of 8.24 were not complied with the court has the authority to rectify that any oversight or error in procedural application. Counsel also relied on the case of **Bentech Limited v First Caribbean International Bank (Bahamas) Limited** (*Supra*), **B. E. Holdings Limited v Piao Lianji** [2014] CLE/gen/01472 and **Walsh v Misseldine** [2000] CPLR 201, CA.

Analysis

16. In determining whether to strike out the Standard Claim Form the Court is required to examine the pleadings. The rules also provide that an application for strike be supported by Affidavit; therefore, affidavits are admissible. Both parties relied on the dicta of *Charles, J.* in the case of **Bentech Limited v First Caribbean International Bank (Bahamas) Limited** 2018/CLE/gen/00884 at para. 17 and 20 thereof:

[17] **In Montague Investments Limited v (1) Westminster College Ltd. and (2) Mission Baptist Church** [2015/CLE/gen/00845], Judgment delivered on 31 May 2020,

this Court dealt with the purpose of pleadings. At paragraph [15] to [18], it was stated as follows:

[15] The purpose of pleadings in civil cases is to identify the issue or issues that will arise at trial. This is in order to avoid the opposing parties and the court taken by surprise. The pleadings must be precise and disclose a cause or causes of action. Evidence need not be pleaded, because that will come from the affidavits and cross-examination thereon or by oral evidence.

[16] In *Bahamas Ferries Limited v Charlene Rahming* SCCivApp & CAIS No. 122 of 2018, our Court of Appeal held that the starting point must always be the pleadings. At para. 39 of the judgment, *Sir Michael Barnett JA* (as he then was) stated:

“The starting point must always be the pleadings. In *Loveridge and Loveridge v Healey* [2004] EWCA Civ. 173, *Lord Phillips MR* said at paragraph 23:

“In *Mcphilemy vs Times Newspapers Ltd.* [1999] 3 ALL ER 775 *Lord Woolf MR* observed at 792-793:

‘Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.’

[17] At paragraph 40 of the Judgment, *Sir Michael* went on to state:

“It is on the basis of pleadings that the party’s decide what evidence they will need to place before the court and what preparations are necessary for trial.”

[18] Thus, pleadings are still required to mark out the parameters of the case that is being advanced by each party so as not to take the other by surprise. They are still vital to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader and the court is obligated to look at the witness statements to see what are the issues between the parties”. [Emphasis added]

[20] In *B. E. Holdings Limited v Piao Lianji* [2014] CLE/gen/01472, this Court set out the powers of the court to strike out at paras. [7] to [11] as follows:

“[7] As a general rule, the Court has the power to strike out a party’s case either on application of a party or on its own initiative. Striking out is often described as a draconian step, as it usually means that either the whole or part of that party’s case is at an end. Therefore, it should be taken only in exceptional cases. The reason for proceeding cautiously has frequently been explained as that the exercise of this discretion deprives a party of his right to a trial and his ability to fortify his case through the process of disclosure and other procedures such as requests for further and better particulars.

[8] In **Walsh v Misseldine** [2000] CPLR 201, CA. *Brooke, LJ* held that, when deciding whether or not to strike out, the court should concentrate on the intrinsic justice of the case in the light of the overriding objective, take into account all the relevant circumstances and make ‘a broad judgment after considering the available possibilities.’ The court must thus be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the claim; or that it has no real prospect of succeeding at trial.

[9] It is also part of the court’s active case management role to ascertain the issues at an early stage. However, a statement of claim is not suitable for striking out if it raises a serious live issue of fact which can only be determined by hearing oral evidence: **Ian Peters v Robert George Spencer**, ANUHCVP2009/016 – Antigua & Barbuda Court of Appeal – per Pereira CJ [Ag.] – Judgement delivered on 22 December 2009

[10] The court, when exercising the power to strike out, will have regard to the overriding objective of RSC O.31A r.20 and to its general powers of management. It has the power to strike out only part of the statement of claim or direct that a party shall have permission to amend. Such an approach is expressly contemplated in the RSC: See Order 18 Rule 19.

[11] An application to strike out is essentially a summary procedure and it is not suitable for complicated cases which would require a mini trial” [Emphasis added].

17. Part 8.7 of the CPR provides that the Defendant ought to know the case to be met. Therefore, it is required that the Claimant particularize the allegations, ‘slander, libel and defamation.’ The particulars of claim ought to provide the words, or document and/or publication which contains the words, being relied upon in the Standard Claim Form filed herein or by the attachment of documents or articles referred to therein. Further as provided by Part 8.24 such documents and or articles ought to be served with the Standard Claim Form. The provisions of Part 8.7 and 8.24 are mandatory by the use of the word “must” as to what are requirements under those parts. A perusal of the records shows that no documents, evidence or statement of claim was either attached to or served with the Standard Claim Form filed herein. Therefore the Claimant has failed to fully comply with Parts 8.7 and 8.24.

18. It is well established that the Court’s power to strike out a party’s pleadings is a drastic step and one that ought to be exercised sparingly and plain and obvious cases. In this case the claim is based on the Claimant’s allegations of defamation against the Defendant. Upon examination of the Standard Claim Form, viewed through the lens of the overriding objectives, the Court must be

persuaded that the Claimant is unable to prove the allegations of defamation against Defendant as it discloses no reasonable ground(s) for bringing the claim; or that it contains allegations which are frivolous, vexatious, scandalous, an abuse of the process of the Court.

19. In the case of **Maria Daxon v Donell Brown and others**, 2018/PUB/Con/00022 as per *Klein, J.* at para.49:

As a matter of general legal principle, in order to succeed in a defamation action, a plaintiff must establish that (i) the words were defamatory; (ii) they refer to him; and (iii) that they were published to one other person other than himself. On even a cursory analysis of the pleadings, it does not appear that the plaintiff has pleaded a cause of action in defamation. Firstly, the pleadings do not even identify the words that are said to be defamatory, although it appears that this is a vague reference to the fourth defendant's written report requesting "investigation and prosecution of Maria Daxon for libel and slander". While imputation of a criminal offence punishable by imprisonment might constitute defamation, it is impossible to see how a report of an alleged offence to the police can amount to such. Secondly, to the extent that the plaintiff relies on publication of the allegations against her in the newspapers, there is no allegation that the fourth or fifth defendant were the publishers of such information; in fact it is clear that they were not. And, even if any of the media reports could be said to be defamatory of the plaintiff—and they are not, since the fair reporting of court proceedings is covered by absolute privilege—the plaintiff has not named any of the publishers as the proper party. [Emphasis added]

20. A Statement of Case or parts thereof may be struck out for failing to disclose a reasonable cause of action. In the case of **Drummond-Jackson v British Medical Association** [1970] 1 All ER 1094, CA, per *Lord Pearson* at p. 1101-f.

...a cause of action with some chance of success, when...only the allegations in the pleadings are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck out

21. The contents of paragraphs 5 and 6 of the Claimant's Standard Claim Form amount to bare allegations that the Defendant was responsible for or was the publisher of the alleged statements on Bahamas Press and Facebook. Further, the aforementioned paragraphs do not contain any averments that indicate that defamatory words were used by the Defendant in respect of the Claimant. The Court takes note that there are print outs exhibited to the Claimant's Affidavit of alleged media posts however there is no evidence therein that the Defendant was either author or publisher of those posts. The Court also considered the Certificates issued by the Police in The Bahamas and the Turks and Caicos Islands exhibited in the parties' Affidavits and note the contents thereof.

22. It is not sufficient that the Claimant plead a cause of action against the Defendant he must prove whether there is a factual basis on the face of the pleadings to support the cause of action. In the case of **Glenard Evans v Airport Authority** [2022] CLE/gen/01521 *Card-Stubbs, J.* set out what a Court ought to consider in strike applications under the CPR at paras. 58 and 59:

58. To my mind, the statement of case must disclose on its face, a ground or cause of action known in law – for otherwise it is defective and doomed to fail. “No reasonable grounds for bringing the claim” also allows for a court to, on considering the statement of case, find that even if the allegations are proven, a party cannot succeed at trial. A court is empowered to strike out the statement of case on that basis.

59. I think that it is also the case that a court is empowered to strike out a statement of case even where a cause of action is pleaded - as in a case where the pleaded cause of action is not supported in the allegations or is not otherwise viable or where the pleaded cause of action is not justiciable. It seems to me that it is therefore not enough for a litigant to plead a cause of action. There ought to be a reasonable cause of action. Under the CPR there must be a reasonable ground for bringing a claim. [Emphasis added]

23. The Court may also conclude that particulars in a claim are frivolous, vexatious or scandalous if they are obviously unsustainable, spurious, or brought to harass or embarrass a party. The allegations contained in paragraphs 3 and 4 of the Standard Claim Form impute dishonesty or misconduct designed to embarrass the Defendant and are irrelevant to the Claimant’s claims of defamation.

24. The particulars in paragraphs 7 and 8 of the Standard Claim Form are a part of family court proceedings in Canada involving the dissolution of the parties’ marriage and issues involving the parties’ minor child. Any response to those allegations arising out of those proceedings ought to be litigated in that forum and not brought before this Court under the umbrella of defamation proceedings.

25. In the case of **Marrinan v Vibart and another** [1963] 1 QB 528, CA as per *Sellers, JL* witnesses before a Court or tribunal are immune from slander and libel of statements made in proceedings:

I do not propose to review those authorities in any detail. The principles can be found in the cases already referred to in the judgment, going back to (*Revis v. smith* 18 Common Bench), through *Henderson v. Broomhead* and down to *Dawkins v. Lord Rokeby* (reported in 8 Queen’s Bench), in which one finds some of the earlier authorities conveniently summarised by Chief Baron Kelly at page 263 of that report, which commences on page 255. The Chief Baron said: “The authorities are clear, uniform and conclusive, that no action of libel or slander lies, whether against judges, counsel, witnesses or parties, for words written or spoken in the ordinary course of any proceeding before any court or

tribunal recognised by law. The principle which pervades and governs the numberless decisions to that effect is established by the case of *Floyd v. Barker* and many earlier authorities....down to the time of Lord Coke and which are to be found collected in *Yates v. Lansing* and *Revis v. Smith*. These two decisions, *Yates v. Lansing* and *Revis v. Smith*, are themselves direct authorities that no action lies against parties or witnesses for anything said or done, although falsely and maliciously and without any reasonable or probable cause, in the ordinary course of any proceeding in a court of justice". [Emphasis added]

26. The Rules provide that the Court in exercising its discretion, Part 1.2 of the CPR, must seek to give effect to the overriding objective when (a) exercising any powers under these Rules; (b) exercising any discretion given to it by the Rules; or (c) interpreting these Rules.

27. Although the Rules are to be “liberally construed to give effect to the overriding objective” it does not mean that the Rules are to be used to get around or misapply specific and existing rules in the CPR. In the case of **Treasure Island Co. v Audubon Holdings Ltd.** [2004] Court of Appeal, ECS (British Virgin Islands), Civ App No.22 of 2003, *Saunders, JA* at para. 24 states that:

..... it must not be assumed that a litigant can intentionally flout the rules and then ask the Court's mercy by invoking the overriding objective.... the overriding objective does not in or of itself empower the Court to do anything or grant to the Court any discretion. It is a statement of the principle to which the Court must seek to give effect when it interprets any provision or when it exercises any discretion specifically granted by the rules. Any discretion exercised by the Court must be found not in the overriding objective but in the specific provision itself...

[Emphasis added]

28. Having considered the written and oral submissions I do not find that the Claimant's pleadings have disclosed a reasonable ground for bringing the claim for defamation against the Defendant. I hereby strike out the Claimant's Standard Claim Form in its entirety. Further that the Claimant failed to comply with the provisions of Parts 8.7 and 8.24 of the CPR. In light of the nature of contents of the parties' respective Affidavits filed herein I hereby order this file be placed under seal. The Claimant is hereby ordered to pay costs of this application to the Defendant to be assessed if not agreed.

Dated 25 day of April, 2024

Constance A. Delancy
Justice (Acting)