

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW & EQUITY DIVISION

2024/CLE/gen/01011

IN THE MATTER OF MONIQUE BASTIAN et. al

AND

IN THE MATTER OF ALL THAT piece, parcel or lot of land and being Lot no.
344 situate in Eaton Road in Yellow Elder Gardens on the island of New Providence

B E T W E E N

**MONIQUE BASTIAN, PAULA PATTON, PEDERIKA EDWARDS PHILMORE
PRATT, ELVANIQUE SYMONETTE & ELVIS SYMONETTE JR.**

CLAIMANTS

AND

**The ESTATE OF VIOLA COKER (nee BAIN), KENISKA BAIN aka KENISKA
BAIN AND RICARDO NEWMAN**

DEFENDANT

Before: Hon. Chief Justice Sir Ian R. Winder

Appearances: Fedner Dorestal for the Claimants
Judith Smith for the Defendants

Hearing Date(s) 20 May, 2025

DECISION

SIR IAN WINDER, CJ

- [1.] This is the Defendants' application for striking out and summary judgment of the Claimants' action.
- [2.] The dispute relates to property situated at 344 Eaton Road, Yellow Elder. The property had been acquired by Viola Bain (later Coker) in 1981.
- [3.] The Claimants' case is that Monique Bastian moved into the property in 2010 as a rent paying tenant. They say that she subsequently entered into a lease to purchase agreement at a rate of \$500 per month. Bastian claims that she paid \$5,000 in cash directly to the Attorney for Coker, Richard Bootle. The Claimants also say that the property was derelict as the previous tenant had to be evicted. Bastian claims to have conducted extensive repairs to the property.
- [4.] Coker died on 22 December, 2014 leaving two children surviving her – Diedre Roberts and Ricardo Newman. Diedre Roberts died on 22 June, 2019. Ricardo Newman applied for and was granted Letters of Administration on January 23, 2024. Newman is a Bahamian citizen who lives in the United States and therefore (as required by law) appointed Keniska Bain, by power of attorney, to act for him.
- [5.] Bastian says that when she learnt that Coker had died, she approached Coker's Attorney, Bootle, who advised that he had not received any further instructions concerning the lease. Bastian alleges that Bootle acted for her and Coker in the transaction and but for the deaths of Coker, Diedre Roberts and Bootle, the commitment would have been completed. Bastian asserts that she only has limited documentation to prove her case as Coker, Roberts, Bootle and her contractor have died. She says that she has lost receipts, and no one else was present at the time the agreement was struck with Coker.
- [6.] In September of 2024, a Magistrate ordered the eviction of Bastian from the property. Bastian, who did not attend court, claims that she only became aware of the legal matter when the order of eviction was served on her residence, as she was out of the jurisdiction.
- [7.] The Claimants have commenced this action, by Originating Application, as against the Defendants seeking:
 - (a) Specific Performance of the contract for sale.
 - (b) A declaration that the Claimant Monique Bastian is the rightful owner of the said property.

- (c) Alternatively, the return of Forty-Eight Thousand Five Hundred Dollars (\$48,500) ... representing payments and monies spent to improve the said property.
- (d) Damages, costs and such other relief as the Court deems just.

[8.] The present application was brought by the Defendants by Notice of Application dated 16 December, 2024 and seeking relief as follows:

- (1) Summary judgment pursuant to Rule 15.2(a) on the ground that the Claimant has no real prospect of succeeding in the claim,
- (2) Striking out of the originating application pursuant to Rule 26.3(b) and (c) on the grounds that the claim discloses no reasonable ground for making the claim and it is frivolous, scandalous and an abuse of the process of the Court.

[9.] The application is supported by the Affidavit of Keniska Bain dated 12 December 2024 and the supplemental Affidavit of Keniska Bain. The Claimants have filed the affidavit of Bastian on 6 February, 2025 in opposition to the application.

[10.] The Court has wide case management powers under the **CPR** which include the ability to strike out all or part of a statement of case (under **Part 26**) and to grant summary judgment against a claimant or a defendant on a claim or a particular issue (under **Part 15**). The **Caribbean Civil Court Practice** explains at page 144:

“Together with CPR 26, [Part 15] provides the court with the power to dispose summarily of claims in furtherance of the overriding objective. Under its case management powers in CPR 26 the court has the power, acting on its own initiative, to direct that an application for summary judgment be heard. In an appropriate case an application for summary judgment may be combined with an application to strike out under CPR 26. Conversely, the court may treat a defendant’s application to strike out as if it were an application for summary judgment: *Taylor v Midland Bank Trust Co Ltd* 21 July 1999, BLD 230799916, [1999] All ER (D) 831. Similarly, where the defence merely contains bare denials, the court may equally make an order for summary judgment under Part 15 on the basis that the defence stands no real prospects of success: *Ed Jacob v Millenium Development Corporation Ltd* (TT: CV 2007 – 1668) (3 April 2008) (Justice Stollmeyer).”

[11.] In ***Partco Group Ltd v Wragg [2002] 2 BCLC 323***, a decision of the English Court of Appeal, ***Potter LJ*** at paragraphs 27 and 28 usefully summarized seven propositions that should be borne in mind whenever a court is called upon to consider exercising its powers of summary disposal which I reproduce (formatting mine):

- (1) The purpose of resolving issues on a summary basis and at an early stage is to save time and costs and courts are encouraged to consider an issue or issues at an early stage which will either resolve or help to resolve the litigation as an

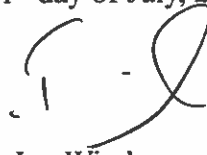
important aspect of active case management: see *Kent v Griffiths* (No 3) [2000] 2 All ER 474, [2001] QB 36. This is particularly so where a decision will put an end to an action.

- (2) In deciding whether to exercise powers of summary disposal, the court must have regard to the overriding objective.
- (3) The court should be slow to deal with single issues in cases where there will need to be a full trial on liability involving evidence and cross-examination in any event and/or where summary disposal of the single issue may well delay, because of appeals, the ultimate trial of the action.
- (4) The court should always consider whether the objective of dealing with cases justly is better served by summary disposal of the particular issue or by letting all matters go to trial so that they can be fully investigated and a properly informed decision reached. ...
- (5) Summary disposal will frequently be inappropriate in complex cases. If an application involves prolonged serious argument, the court should, as a rule, decline to proceed to the argument unless it harbours doubt about the soundness of the statement of case and is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of the trial itself: see the *Three Rivers* case per Lord Hope at paras 94–98 (pp 542–544), considering the *Williams & Humbert* case.
- (6) It is inappropriate to deal with cases at an interim stage where there are issues of fact involved, unless the court is satisfied that all the relevant facts can be identified and clearly established: see *Killick v PricewaterhouseCoopers* at 72 and 73.
- (7) It is inappropriate to strike out a claim in an area of developing jurisprudence. In such areas, decisions should be based upon actual findings of fact: see *Farah v British Airways plc* [1999] CA Transcript 2120) per Lord Woolf MR at para 35 and per Chadwick LJ at para 42, applying *Barrett v Enfield London Borough Council* [2001] 2 AC 550, [1999] 3 All ER 193 and *X (Minors) v Bedfordshire CC* [1995] 2 AC 633, [1994] 4 All ER 640 and [1995] 2 AC 633, [1995] 3 All ER 353–373.

[12.] At its highest, this is a claim by Bastian for specific performance or return of moneys paid, against the Estate of Coker. The Estate of Coker is represented by the Grant of Administration to Newman. In the circumstances, Paula Patton, Pederika Edwards, Philmore Pratt, Elvanique Symonette and Elvis Symonette Jr. have no interest or claim in the action and are improperly joined. I therefore order that they be struck from the action with costs.

- [13.] Likewise, Keniska Bain, as merely the agent for Ricardo Newman, is not a proper party to the action and I order that she be removed from the action, with costs.
- [14.] In my view, the finding by the Magistrate leading to the eviction, in an application which Bastian did not participate in, is not a bar to her pursuing this action. It cannot be said to be a case of *res judicata*.
- [15.] In the absence of supporting material, the claim of Bastian is indeed a weakened claim but a claim, nonetheless. Her counsel asserts that she is still pursuing the recovery of these documents from the firm of the deceased lawyer, Bootle. Otherwise, she is left with only her oral testimony, which a court can accept if believed. I bear in mind proposition #6 above, that it is inappropriate to deal with cases at an interim stage where there are issues of fact involved, unless the court is satisfied that all the relevant facts can be identified and clearly established.
- [16.] In the circumstances, save for the Orders made, removing the unnecessary parties, I make no order for summary judgment.
- [17.] I will proceed to case management and hear the parties as to the proper quantum of costs to the Defendants.

Dated this 1st day of July, 2025.

A handwritten signature in black ink, appearing to be 'I. Winder', written in a cursive style.

Sir Ian Winder
Chief Justice