

COMMONWEALTH OF THE BAHAMS
IN THE SUPREME COURT
Common Law and Equity Division
2020/CLE/GEN 00011

BETWEEN

ELRENE JONES EDWARDS

Plaintiff

AND

DEANSER SMITH

First Defendant

AND

THE PUBLIC HOSPITALS AUTHORITY

Second Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mrs Bridget Ward for the Plaintiff
Miss Lynette King for the Defendants

Hearing Date: 19th January, 2024

Practice – striking out – Claimant seeking to strike out certain paragraphs of the Amended Defence on grounds that they are bare denials – unable to file a Reply

RULING

Darville Gomez, J

Introduction and Background

1. The Claimant commenced this action against the Defendants for injuries sustained as a result of a traffic accident. The First Defendant was the ambulance driver. The Claimant sought medical attention after the accident and received a diagnosis. She was discharged a few hours later. As a result of suffering extreme pain, she was forced to return to the Second Defendant on the following day where she received a second diagnosis. She has alleged that she has suffered injury because of the negligent driving

of the First Defendant and suffered pain and damage as a result of the negligence of the Second Defendant in not having properly diagnosed on her first visit after the accident.

2. A Statement of Claim was filed on April 14, 2021 and an Amended Statement of Claim on September 16, 2022. The Defendants filed an Amended Defence on August 8, 2023

The Instant Application

3. By Notice of Application filed on August 29, 2023, the Claimant sought to strike out paragraphs 6, 10, 11, 13, 14, 15, 16, 17, 19, 20, 23, and 24 of the Amended Defence.

Issues

4. The Claimant has identified three issues for the Court's determination:
 - (i) Whether the Plaintiff should file a Reply?
 - (ii) Whether the relevant paragraphs set out in the Notice of Application constitute bare denials?
 - (iii) Whether the relevant paragraphs set out in the Notice of Application should be struck out as being bare denials.

HELD: For the reasons hereinafter set out I have acceded to the Claimant's application to strike out the following paragraphs of the Amended Defence viz., 6, 23 and 24.

The Law

5. The Claimant relied on Rule 10.5 and 10.9 of the Civil Procedure Rules, 2022.

Issue 1 – Whether the Claimant should file a Reply?

6. There is no requirement to file a Reply as submitted by the Claimant's Counsel. Rule 10.9 of the CPR is clear that a Plaintiff "may" file one.
7. The authorities relied upon included Hugdon Bowe et al v Shanique Rolle, Rudy Taylor et al & Shavago McPhee et al 2018/Cle/Gen/01171 and Glendon E. Rolle v Scotiabank which demonstrated the importance of filing a Reply to a Defence and Counterclaim. In the instant action there is no counterclaim therefore, it is not critical or necessary.
8. Further, the Defendants have relied on Blackstone's Civil Practice, 2002 which states as follows:

“Although a claimant may file a reply to a defence, he does not have to do so, and failure to file a reply must not be taken as an admission of any of the matters raised in the defence...”

9. Therefore, this has fortified the position as it related to the need to file a Reply and has made it obvious that it does no harm to the claimant if it is not done.
10. However, I do accept the submission of the Claimant’s Counsel that the bare denials do not assist the Court in knowing what Defence is being put forth by the Defendants.

Issue 2 – whether the following paragraphs constitute bare denials

Issue 3 - Whether the relevant paragraphs set out in the Notice of Application should be struck out as being bare denials.

11. I will address these two issues simultaneously.
12. I refer to Rule 10.5(1) of the CPR and Rule 10.5(4) which states respectively:
 - (i) The defence must set out all the facts on which the defendant relies to dispute the claim”.
 - (ii) If the defendant denies any of the allegations in the claim form or statement of claim –
 - (a) the defendant must state the reasons for doing so; and
 - (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant’s own version must be set out in the defence.

13. Having examined the Amended Defence and the paragraphs referred to by the Claimants, I have found that paragraphs 6, 23 and 24 consist of bare denials by the Defendants. They have neither offered no different version of events, nor have they have proffered any reasons for their denial of the Claimant’s version of events.

14. Accordingly, I have struck out those paragraphs of the Defendant’s Defence and award costs to the Claimants which I have fixed in the sum of \$1,500.

Dated this 13th day of February, A. D., 2024



**Camille Darville Gomez
Justice**