

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Claim No. 2023/PRO/cpr/00010

In the Estate of KATHERINE LESLIE SCRIMGEOUR, also known as KATHERINE SCRIMGEOUR, late of Angel Cove, Palmetto Point in the Island of Eleuthera, one of the Islands of the Commonwealth of the Bahamas

AND

In the Matter of a Last Will and Testament of KATHERINE SCRIMGEOUR, also known as KATHERINE SCRIMGEOUR, deceased, dated the 17th day of December, A.D., 2021

AND

In the Matter of a Last Will and Testament of KATHERINE SCRIMGEOUR, also known as KATHERINE SCRIMGEOUR, deceased, dated the 4th February, A.D., 2014

HAROLD CARTER SCRIMGEOUR

1st Claimant

AND

KEVIN BRUCE SCRIMGEOUR

2nd Claimant

AND

MACGREGOR KIRK SCRIMGEOUR

3rd Claimant

AND

TIMOTHY ATWATER

Defendant

**Before: The Honourable Madam Justice C.V. Hope Strachan,
Justice of The Supreme Court of The Commonwealth of The
Bahamas**

**Appearances: Miss Margaret Gonsalves - Sabola for the Claimants
Mrs. Gail Lockhart – Charles K.C. and Ms. Tatyanna Maynard for
the Defendant**

**Hearing date: 27th August 2025; 22nd September 2025; 23 September 2025; 24th
September 2025; 26th February 2026; 27th February 2026**

Contentious probate proceedings, multiple Interlocutory applications, challenge to testatrix's will, fraudulent calumny, undue influence, proprietary estoppel, remedies, constructive trust, breach of promise, whether statement of claim discloses no reasonable grounds or is frivolous, vexatious, or an abuse of the process of the court, striking out parts of defense, pleading no knowledge, failure to deny in defense, relief from sanctions.

RULING

C.V.H. STRACHAN, J

Background Facts:

[1.] Katherine Leslie Scrimgeour (“the Testatrix”) was a 79-year-old lady who, for several years leading up to her death on 8th February, 2022, resided on the island of Eleuthera in The Bahamas, at a place called Angel Cove. She preferred the company of animals over humans. For this, she was known in the community as eccentric, preferring to spend her resources on feeding and harboring hordes of stray dogs and cats. She lived alone. Her three (3) adult sons (“the Claimants”) resided in the United States, and the times of their visits varied. The 1st Claimant frequently, the 2nd and 3rd hardly at all. She befriended Mr. Timothy Atwater (“the Defendant”), who was her neighbor, and they apparently remained friends for Ten (10) years. Upon Katherine’s death, a Will materialized dated 17th December, 2021, which appointed the Defendant as Executor and Beneficiary of Angel Cove and another property, Lubbers Quarters Cay on Eleuthera, which Katherine also owned. The newly discovered Will disinherited the Claimants from Angel Cove contrary to promises they allege Katherine made to leave that property to the 1st Claimant in satisfaction of numerous loans he made to her over the years.

[2.] The Claimants are the proponents of Wills signed by the deceased on 5th September 2013 and 4th February 2014, leaving Angel Cove to the 1st Claimant with directions for disposition of the bequests. They are also proponents of Three (3) Promissory Notes signed by the Testatrix in 2007 for **Four Hundred and Fifteen Thousand Dollars (\$415,000.00)**; in 2010 for **Thirty-Five Thousand Dollars (\$35,000.00)** and April 2014 for **Forty Thousand Dollars (\$40,000.00)** executed by the Testatrix in favour of the 1st Claimant also to pay back the same several loans he made to her over the years. There is, in addition, a Deed of Gift dated 16th November 1999, wherein the Testatrix granted and conveyed to the 1st Claimant, all of her interest in property situated at Lubbers Quarters Cay, situated on the Island of Abaco, in The Bahamas. When the Testatrix conveyed that property to the 1st Claimant, he paid to have the property surveyed, he paid the government stamp duty, but lodged the Deed in his Attorney’s office without attending to the recording thereof. Notwithstanding the Deed of Gift, the property was nonetheless included in the bequests in the 2021 Will.

[3.] The Defendant is the propounder of and the sole Executor and beneficiary under the Testatrix’s Will dated 17th December, 2021 (“the 2021 will”). The Claimants allege that the Defendant exerted undue influence and/or fraudulent calumny against the Testatrix, thereby procuring the 2021 will from her. The focus of the controversy between the parties involves the bequests made in the 2021 Will of those Two (2) properties, Lubbers Quarters Cay and Angel’s Cove (“Angel’s Cove”). Angel’s Cove is situated at Palmetto Point, Eleuthera, and consists of Twenty-eight (28) acres with a homestead and three partially-constructed structures erected thereon.

[4.] This ruling concerns competing interlocutory applications in these contentious probate proceedings relating to the deceased Testatrix's estate, and in particular the validity and effect of the 2021 Will, the Claimants' challenge to that will, and the competing claims concerning Angel's Cove and Lubbers Quarters Cay.

The Defendant's Applications

[5.] The Defendant applied under CPR 26.3(1)(b) and (c) and the inherent jurisdiction of the court to strike out the Claimants' claims for fraudulent calumny, undue influence, and constructive trust, and also challenged the Angel's Cove bequest on the ground of proprietary estoppel. They say that by virtue of the previous Wills and the said Promissory Notes, the Testatrix is estopped from bequeathing Angel's Cove to anyone other than the 1st Claimant. As far as the Lubber's Quarter's Cay property is concerned, the Deed of Gift, the claimants say that, notwithstanding the delay in recording, the Deed of Gift should stand as a legitimate conveyance, requiring only recording, or that the Defendant should be made to convey the property outright to the 1st Claimant under the 2021 Will.

The Claimant's Application

[5.] The Claimants, in turn, applied to strike out paragraph 2 and part of paragraph 3 of the Defense, on the ground that those responses disclosed no reasonable defense to the claim in proprietary estoppel, and sought judgment accordingly.

[6.] The court approached both applications by reference to CPR 26.3 and 26.4, and identified the principal issues as whether the Statement of Claim disclosed no reasonable grounds, whether it was frivolous, vexatious or an abuse of process, whether constructive trust and breach of promise had been pleaded as causes of action or only as remedies, whether the proprietary estoppel claim was sustainable, whether there was a sustainable claim for breach of promise, and whether portions of the Defense should be struck out.

Strike Out Generally

[7.] As to strike out generally, the court adopted the familiar principles that the jurisdiction is a salutary but severe case management power, to be exercised consistently with the overriding objective. A pleading may be struck out where, even if its facts were proved, the claim or defense cannot succeed, or where it is bound to fail as a matter of law, as explained in **Belize Telemedia Ltd. v Magistrate Usher (2008) 75 WIR 138**. [Emphasis mine]

[8.] Halsbury's Laws of England helps provide a guideline for the method to employ when considering whether to strike out on such an application. It provides that the court assumes the

pleaded allegations to be true and first determines whether a reasonable cause of action or defense appears on the face of the pleading. [Emphasis mine]

[9.] While a strike out is discretionary, it is also draconian, is not the default starting point under the overriding objective, and there will often be other ways to do justice without taking the draconian step of striking out the case **Biguzzi v Rank Leisure Plc [1999] EWCA Civ J0726-23 ([1999] EWCA Civ J0726-23.** [Emphasis mine].

[10.] On the use of evidence for strike out purposes, the court held that a conventional strike-out application for no reasonable grounds should not become a mini-trial and that ordinarily the court is confined to the pleading itself, relying on **Barrett v Universal-Island Records Ltd [2003] All ER (D) 427 (Mar)**, **Three Rivers DC v Bank of England (No. 3)**, **Wenlock v Moloney [1965] 2 All ER 871**, and **Partco Group Ltd v Wragg [2002] EWCA Civ 594**. However, where abuse of process or the court's inherent jurisdiction is invoked, witness evidence may be considered, though not to resolve substantial factual controversies that ought properly to be tried. [Emphasis mine]

Fraudulent Calumny

[11.] In relation to fraudulent calumny, I accept the Defendant's submission that allegations of fraud must be distinctly pleaded and distinctly proved, and with sufficient particularity, in accordance with **Three Rivers District Council v Bank of England [2001] UKHL 16**. This includes setting out the precise false statements alleged, the maker, the time, place, content of falsity, and intent. See *Lord Millet*.

184. It is well established that fraud or dishonesty (and the same must go for the present tort) must be distinctly alleged and distinctly proved; that it must be sufficiently particularized; and that it is not sufficiently particularized if the facts pleaded are consistent with innocence....]

"186. ...an allegation of fraud or dishonesty must be sufficiently particularized, and that particulars of facts which are consistent with honesty are not sufficient.... There must be some facts which tilt the balance and justify an inference of dishonesty, and this fact must be both pleaded and proved."

[12.] It was further stated that "The starting point is that fraud or dishonesty must be distinctly alleged and supported by particulars; a party is not entitled to a finding of fraud where the pleading is equivocal or where the facts are equally consistent with innocence, **Three Rivers District Council v Governor and Company of the Bank of England (No 3) [2001] UKHL 16**. *The House of Lords* also explained that although the pleader need not always use the word fraud or dishonesty, the pleading must make the allegation clear and not leave it ambiguous."

[13.] **Eco Quest plc v GFI Consultants Ltd (in Liquidation) and others** [2016] EWHC 57 (QB) and **Jinxin Inc. v Aser Media Pte Ltd and others** [2022] EWHC 2988 (Comm) were also referred to.

[14.] Applying these foregoing principles, I am of the view that, although the Statement of Claim captured the essence of fraudulent calumny, it failed to plead the necessary specifics: no particular false statements were identified, no sufficient allegation was made as to why any statement was false, and there was no proper pleading that the Defendant knew the statements were false or was reckless as to the truth. The court assessed the Statement of Claim and determined that, in the circumstances, it disclosed no reasonable cause of action and was therefore bound to fail at trial. The court steered away from conducting a mini-trial and did not use strike-out as a starting point. However, I found the fraudulent calumny pleading totally deficient as it disclosed no reasonable ground for bringing the claim. I regarded it as appropriate at this stage, having regard to the overriding objective to be just and fair to the parties, to **strike out** the claim for fraudulent calumny, though it did not amount to abuse of process.

[15.] The Claimants argued that suspicious circumstances surrounding the 2021 Will required the court's vigilance and placed weight on authorities dealing with the burden on the propounder of a will, including **Key & another v. Key and others** [2010] EWHC 408, **Wintle v Nye** [1959] 1 W.L.R. 284 (1958), and **Fuller v Strum** [2002] 1 W.L.R. 1097. In **Key Briggs J** discussed the burden of proof at para. 97 of his judgment: -

“The burden of proof in relation to testamentary capacity is subject to the following rules:

(i) While the burden starts with the propounder of a will to establish capacity, where the will is duly executed and appears rational on its face, then a court will presume capacity.

(ii) In such a case, the evidential burden then shifts to the objector to raise a real doubt about capacity.

(iii) If a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity nonetheless.”

The principle is well established but **I am of the view** that, in this instance, since neither the Testatrix's testamentary capacity or the due execution of the will and the rationality thereof were challenged, the Testatrix's capacity is presumed, and the burden shifts to the Claimants to plead and prove fraud as required by the well-established principles of strict compliance and specificity if they sought to rely on fraudulent calumny. **They have failed in that regard.**

Undue Influence

[16.] On undue influence, the court applied the principles set out in **Schrader v Schrader** [2013] EWHC 466 (Ch) and **Edwards v Edwards** [2007] EWHC 1119 (Ch). Those authorities

establish that in the case of testamentary dispositions, there is no presumption of undue influence; that the issue is one of fact. The burden lies on the person asserting it; that undue influence means coercion or fraud which overbears the testator's free agency; and that, in practice, the case may often depend on circumstantial rather than direct evidence. The court also referred to **Re Good (deceased) Carapeto v Good** [2002] EWHC 640 (Ch) and **Re H (Minors)** [1996] AC 563 on the seriousness of such allegations and the need for cogent evidence. [Emphasis mine]

Per Lord Nicholls, at p. 586:

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence... Built into the preponderance of probability standard is a generous degree of 6.

*Defence counsel asserted that the court made clear in **Hubbard and Scott** [2011] EWHC 27590 (Ch) a finding of Undue influence requires "positive proof of coercion." She said that in this case, no specific facts are pleaded showing coercion or exploitation by the Defendant or at all. The First Claimant's witness statement attests to this: "I do not know Timothy Atwater. I never met him nor spoke to him during my mother's lifetime. I know that he is the owner of a property near to my mother's home in Eleuthera, which is his residence in the Bahamas...."*

[17.] The Claimant's counsel challenged that assertion, relying on **Schrader v Schrader**, where *Mann J* considered the evidential issues that can arise in cases of undue influence and stated:

"It will be a common feature of a large number of undue influence cases that there is no direct evidence of the application of influence. It is of the nature of undue influence that it goes on when no one is looking. That does not stop it from being proved. The proof has to come, if at all, from the circumstantial evidence. The present case has those characteristics. The allegation is a serious one, so the evidence necessary to make out the case has to be commensurately stronger, on normal principles."

[18.] The Claimants say that the circumstantial evidence is contained in the evidence of the Claimants and is referred to in the submissions made by their counsel in support of their position that the Statement of Claim in the existing circumstances should not be dismissed pursuant to the Defendant's present application. The evidence includes, but is not limited to:

- a) Under the 2021 Will, the Testatrix has left her entire estate to someone who is not related to her but who had moved in next door to her in 2015.

- b) The Testatrix was elderly and in failing health when the 2021 Will was allegedly made;
- c) The Testatrix lived alone in a relatively remote location on the Island of Eleuthera without family members close by;
- d) The Defendant told his brother that he had been nursing the Testatrix;
- e) The extensive involvement of the protracted communication between the Defendant and the attorney who allegedly took instructions from the Testatrix for the preparation of the 2021 Will, in the absence of the Testatrix and before the attorney met with the Testatrix;
- f) The fact that those communications went well beyond what was necessary for the Defendant to arrange an appointment for the Testatrix to meet with the attorney;
- g) The statement of the Defendant in his email to the attorney that the choice of attorney to prepare the Testatrix's Will was his.
- h) The fact that the Defendant did not know or admits that he did not know that the testatrix no longer owned an interest in Lubbers Quarters Cay because she had gifted it to 1st Claimant in 1999, but the Testatrix knew and had not referred to that property in either the 2013 Will or the 2014 Will;
- i) The fact that the Defendant admitted that he had no knowledge about loans made to the Testatrix by the 1st Claimants, or the three promissory notes that she had executed in favour of the 1st Claimant, and the 2nd and 3rd Claimants, or the monies that the Testatrix owed the 2nd and 3rd Claimants, all of which matters were reflected in the 2013 Will and the 2014 Will but not in the 2021 Will.

[19.] Having examined the pleading, the court finds that the undue influence case was factually detailed and structurally sufficient, in that the alleged coercion was pleaded. The Defendant's involvement in the preparation of the 2021 will was also pleaded. The Testatrix's condition and the replacement of the First Claimant as executor and beneficiary were also pleaded. Together, those circumstances all contributed to excite the vigilance of the court. It therefore **could not be said** that the Statement of Claim disclosed no reasonable grounds or amounted to an abuse of process in that respect. **The issue of undue influence should therefore go to trial.**

Proprietary Estoppel

[20.] As to proprietary estoppel, the Defendant argued that the claim failed for want of clear assurance, detrimental reliance and unconscionability, relying on **Thorner v Major** [2009] UKHL 18 and referring also to **Gillett v Holt** [2000] Ch 210. The pleading alleged promises by the Testatrix that Angel's Cove would belong to the 1st Claimant, relied upon by him in making and continuing loans and in forbearing to secure or enforce repayment, detriment in loss of use

of the monies and in expenditures made, and the renegeing on the asserted promise by the 2021 Will. It is important to set out the Claimant's pleadings in this regard:

- i) The 1st Claimant forbore to perfect his rights as lender and to secure the loans he made to the Testatrix by a mortgage over Angel Cove because the Testatrix promised him to leave Angel's Cove to him upon her death and her execution of the 2013 Will and the 2014 Will.
- ii) The Claimant forbore to press the Testatrix for repayment of principal sums and interest during her lifetime because she promised to leave Angel's Cove to him and the bequests contained in the 2013 Will and the 2014 Will.
- iii) The 1st Claimant has been deprived of the use of the principal amounts loaned to the Testatrix for several years and the opportunity to invest the same.
- iv) The 1st Claimant was induced to make and continued to make loans to the Testatrix before and after the Testatrix made the 2013 Will and the 2014 Will in reliance on the promise the Testatrix made to him to give Angel's Cove to him absolutely upon her death.

Extracted from the pleadings in support of the Proprietary Estoppel is the following:

"12. By a Deed of Gift dated 16th November, A.D., 1999, the Testatrix granted and conveyed to the 1st Claimant all her interest in property situated at Lubbers Quarters Cay (referred to herein as "Lubbers Quarters Cay"). In reliance on the Testatrix's promise to give Lubber's Quarters Cay to him, the 1st Claimant paid all legal and surveying costs associated with the gift to him by the testatrix of Lubbers Quarters Cay. The Testatrix knew and remembered that she had given Lubber's Quarter's Cay to the 1st Claimant and did not make a bequest of Lubber's Quarter's Cay to anyone under either the 2013 Will or the 2014 Will. Notwithstanding that the Testatrix executed the Deed of Gift, the 1st Claimant has never received the original Deed of Gift.

'13. The Testatrix, in directing the Defendant under the 2021 Will to sell Lubbers Quarters Cay and distribute the net proceeds of sale to her three sons equally, reneged on her promise to give Lubbers Quarters Cay to the 1st Claimant, to his detriment. The particulars of detriment are 1. Causing the 1st Claimant to expend monies on survey fees, legal fees, and disbursements related to the transfer of Lubbers Quarters Cay to him, and 2. Deceiving the 1st Claimant about the gift to him of Lubbers Quarters Cay.

"14. The 2013 Will and the 2014 Will were voluntarily executed by the Testatrix, who intended to give effect to them and who understood the nature and extent of the property that she owned and the beneficial interest of the 1st Claimant in Angel Cove to which she ought to give effect. During her lifetime, the Testatrix promised the 1st Claimant that Angel Cove would belong to him absolutely, once the Testatrix died.

"15. The 2021 Will was not executed voluntarily by the Testatrix but was made under the undue influence of the Defendant."

[21.] In the premises, **I am satisfied that the Proprietary Estoppel Pleading sets out** clear assurances, reliance, detriment, and unconscionability, consistent with **Thorner v Major** *supra*. Moreover, I am satisfied that the contention that the constructive trust and breach of promise are pleaded as causes of action, as opposed to a remedy, is misconceived. The breach of promise is, as Counsel for the Claimants put it, an element to be established in a claim for proprietary estoppel. Constructive trust is one of the remedies that a court can employ to redress a broken promise; **Thorner v Major** *supra*.

[22.] Together, the pleadings disclose reasonable causes of action under both doctrines. They are complementary: undue influence attacks the validity of the 2021 Will, while proprietary estoppel seeks to enforce promises made to the 1st Claimant despite the Will. There are matters to be resolved at a trial of this matter.

Constructive Trust and Breach of Promise

[23.] Having reviewed the Statement of Claim and the Witness Statements and the Claimant's submissions, **I accept** the Claimant's submission that constructive trust and breach of promise were not pleaded as freestanding causes of action. Constructive trust was treated as a remedy the court could employ to redress a broken promise, and breach of promise as no more than part of the factual and legal matrix within the proprietary estoppel case.

[24.] Halsbury's Laws of England Trusts and Powers (Volume 98 (2024)) describes it in this way; –

“Usually, the justification for the imposition of a constructive trust will be some original common intention of the parties that is subsequently denied or reneged on, where the law would allow this, but equity finds this to be unconscionable. Sometimes, a constructive trust is imposed contrary to any intention of the defendant.”

[25.] **In Pascoe v Turner** [1978] EWCA Civ J1201-4 – Per Lord Justice Cumming-Bruce, a Property dispute over a house at 2 Tolgarrick Road, Tuckingmill, where the judge at first instance found that a trust existed. The Court of Appeal had to consider what was the appropriate remedy when a promise to gift a house is made but not legally transferred, and the recipient changes their position based on that promise, having spent money and personal effort to improve and maintain the property. The court found after weighing the considerations that the equity to which the facts in the case gave rise could only be satisfied by compelling the promisor to give effect to his promise and the promisees' expectations. They were of the view that he had so acted that he must now perfect the gift;

“The court must grant a remedy effective to protect her against a future manifestation of his ruthlessness...”

[26.] The principle is well established in several decisions even prior to **Pascoe**; In **Inwards v Baker** [1965] EWCA Civ Jo113, we have had the advantage of cases which were not cited to the County Court Judge, cases in the last century, notable **Dillwyn v. Llewelyn(1862) 4 De Gex, Fisher & Jones**, p. 517, and **Plimmer v. The Mayor etc. of Wellington**, in 1884, 9 Appeal Cases, p. 699. This latter was a decision of the Privy Council which expressly affirmed and approved the statement of the law made *by Lord Kingstown* in the case of **Ramadan v. Dyson Law Reports, 1 House of Lords**, p. 129. It is quite plain from those authorities that if the owner of land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay.

Lubbers Quarters Cay

[27.] With respect to Lubbers Quarters Cay and the Deed of Gift, the court noted its earlier ruling that the Deed of Gift dated 16 November 1999 was incomplete and ineffective because it had not been stamped and recorded and had not been delivered to the First Claimant at the date of the earlier decision. The Defendant relied on **Xenos v Wickham** (1867) LR 2 HL 296 and **Milroy v Lord** (1862) 4 De GF & J 264 for the propositions that delivery is indispensable to validity and that equity will not perfect an imperfect gift. **I am of the view** that the surrounding facts, including the existence of the deed and the later bequest in the 2021 Will, required explanation, and that the issue of conveyance was premature and must be fully ventilated at trial.

The Claimant's Application to Strike Out Parts of the Defense

[28.] Turning to the Claimants' Strike-out Application against the Defense, the court relied principally on **Estate of Coral Louise Gooding In the Matter of the Estate of Coral Louise Gooding, deceased** [2020] CLE/gen/00272, **Ralph Gooding (In his capacity as Widower, Heir-at-Law and Administrator of the Estate of Coral Gooding, deceased)** and **Elizabeth Ellis v National Workers Co-operative Credit Union Ltd. (NWCCU)** and the authorities cited there, including **Bahamas Ferries Limited v Charlene Rahming, Montague Investments Limited v Westminster College Ltd and Mission Baptist Church, M.I.5 Investigations Limited v The Centurion Protective Agency Limited** [Civil Appeal No. 244 of 2008], **Elwardo Lynch v Ralph Gonsalves, and Bernard Christopher v Roosevelt Skerrit**).

[29.] In **Estate of Coral Louise Gooding** supra per *Charles J* as she then was, where the defendant filed a defense that neither admitted nor denied allegations but simply put the plaintiff to "strict proof," provided a clear roadmap for the treatment of Defenses challenged on the basis that no grounds for defending the claim are disclosed therein, when she held that:

"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: Bahamas Ferries Limited v

Charlene Rahming SCCivApp & CAIS No. 122 of 2018 and Montague Investments Limited v (1) Westminster College Ltd and (2) Mission Baptist Church [2015]/CLE/gen/00845] relied upon.

2. O. 18, r. 13(3) appears to be geared towards minimizing the mischief created by vague and evasive pleadings. The modern approach to pleadings requires a more structured approach to a proper pleading in order to avoid vague and evasive pleadings.

*3. It is well-established that a defendant simply cannot deny an allegation and ask the plaintiff to prove it. Those bad days are long over. Where there is a denial, it must be accompanied by the defendant's reasons for the denial. If the defendant wishes to put forward a different version of events from that given by the plaintiff, he must state his own version: **Mendonca JA in M.I.5 Investigations Limited v The Centurion Protective Agency Limited [Civil Appeal No. 244 of 2008] [Trinidad & Tobago] and Elwardo Lynch v Ralph Gonsalves (St. Vincent & The Grenadines Civil Appeal No. 18 of 2005) (Judgment delivered on 18 September 2006) applied.***

4. The Defense must set out all the facts on which the defendant relies to dispute the claim. Such a statement must be as short as practicable. A defendant is under a positive duty to admit or deny pleaded allegations where he can do so and could only put the plaintiff to proof of a fact where he was unable to admit or deny it.”

[30.] Applying the principles expounded in these authorities that the pleadings must identify the real issues, that a defendant cannot simply deny allegations, or repeatedly say he has no knowledge without giving reasons or an alternative version, and that bare denials and evasive non-admissions may be struck out as disclosing no reasonable defense **I find** that the Defense failed to meet the established criteria as is examined hereafter:

[31.] Applying those principles, the court found that paragraph 2 of the Defense and the bare denial in paragraph 3, insofar as they responded to the proprietary estoppel allegations, pleaded no real or reasonable defense. The repeated plea of “no knowledge” across the several substantive allegations, coupled with the absence of evidence refuting the matters alleged in paragraphs 5–7, 9–14 and 22 of the Statement of Claim, meant that the Defendant had no proper answer to the pleaded indebtedness, the alleged promises concerning Angel’s Cove, the transfer relating to Lubbers Quarters Cay, the Claimants’ reliance and detriment, and the estoppel case advanced against the Testatrix. As a consequence and notwithstanding the admonishment that in strike out applications, while the judge’s discretion is wide yet draconian (**Biguzzi supra**) and that mini-trials ought to be avoided (**Barrett / Three Rivers supra**), in examining the Defense related to the subject paragraphs, in conjunction with the witness statements (**Three Rivers / Partco Group supra**), and not using Strike-out as a starting point (**Biguzzi supra**) and assuming the claimants allegations to be true (**Harlsbury supra**), **I am of the view** that The Defense is bound to fail (**Belize Telemedia supra**). Accordingly, I find that the Claimants’ application has merit and **I accede** to their application to **strike out** those parts of the Defense and enter judgment for the Claimants on proprietary estoppel. Moreover, in adherence to the overriding

objective to deal with this case justly and at proportionate costs pursuant to Part 1.1 (1) – 2 (a) – (f) of the CPR, I deem it appropriate to do so at this time.

[32.] Finally, on the application for relief from sanctions, the court considers CPR 26.8 and the principles in **Denton and others v TH White Ltd. and another**; and also the Claimants' reliance on **AIC Ltd v Federal Aviation Authority of Nigeria** [2022] UKSC 16 concerning finality. **I am of the view** that the omission of Mr. Fletcher's handwritten note and draft Will was not particularly serious. I accept inadvertence as the explanation. I find that the delay did not materially prejudice the Claimants or disrupt the efficient conduct of the case. I reject the allegation of deliberate ambush. I grant the relief from sanctions, with the result that Mr. Fletcher's notes and draft Will shall be admitted at trial.

Conclusion

There are a number of scenarios that are presented based on the findings of the applications.

[33.] The claim for fraudulent calumny is struck out, and all evidence related thereto is excluded from trial.

[34.] The claim to strike out parts of the Statement of Claim for Undue Influence is refused.

[35.] The trial of this matter is to proceed. If it is determined that the undue influence was exerted on the Testatrix in making her Will, the 2021 Will shall be defeated, and the Claimants would be granted leave to admit the 2014 Will to probate. alternatively;

ii) If it is determined that undue influence was not exerted upon the Testatrix, the 2021 Will shall prevail, entitling the Defendant to apply for probate.

[36.] The claim to strike out parts of the Statement of Claim that deal with Proprietary Estoppel is refused.

[37.] The claim for the Defendant to execute a conveyance of Lubbers Quarters Cay is refused. A trial of this issue must be had. There are three (3) possible scenarios: if the Will is found to have been executed validly, the validity of the Deed of Gift will nevertheless be an issue that requires ventilation at Trial. If the Deed of Gift is valid, the gift under the Will fails, and the 1st Defendant will be deemed the owner. If the 2021 Will is found to have been obtained by undue influence, the validity of the Deed of gift will nevertheless be an issue that requires ventilation at trial.

[38.] While the court found that the parts of the Statement of Claim alleging proprietary estoppel was pleaded with sufficiency to defeat the strike out application entitling the

Claimants to proceed to trial, the application by the Claimants to strike out paragraphs 2 of the Defense and that part of paragraph 3 of the Defense consisting of a bare denial of paragraph 22 of the Statement of Claim is **struck out** as disclosing no reasonable defense to the claim of proprietary estoppel. This leads to the finding that the Testatrix was estopped from conveying Angel's Cove to anyone and held the property on constructive trust for the 1st Claimant. **Angel's Cove must be conveyed** to the 1st Claimant.

[39.] The application for relief from sanctions is granted, and Mr. Peter Fletcher's witness statement, notes and draft Will shall be admitted at trial.

[40.] The Disposition of Lubber's Quarters Cay must still be decided based on the recording deficiency against the issue of undue influence and the validity of the Will, and the bequest of Lubber's Quarters Cay therein.

Disposition

1. The Defendant's application pursuant to Part 26.3 (1)(b) CPR to strike out Parts of the Statement of Claim, set out at paragraph 20 of the Statement of Claim, which alleges fraudulent calumny, is acceded to, and the paragraphs are struck out.
2. The application pursuant to Rule 26.3 (1) (b) CPR to strike out that part of the Statement of Claim set out at paragraph 15 of the Statement of Claim, which alleges undue influence, on the basis that the claim discloses no reasonable grounds, is denied. Trial on this issue is to proceed.
3. The Defendant's application pursuant to Part 26.3 (1)(c) CPR to strike out Parts of the Statement of Claim, set out at paragraph 20 of the Statement of Claim, which alleges the Statement of Claim is frivolous, vexatious, and an abuse of the process of the court, is dismissed.
4. The application to strike out that part of the Statement of Claim which alleges proprietary Estoppel is denied.
5. The claims for constructive trust and breach of promise are deemed to be remedies sought for proprietary estoppel.
6. The Claimant's application to strike out paragraphs 2 of the Defense and that part of paragraph 3 of the Defense consisting of a bare denial of paragraph 22 of the Statement of Claim is granted, and those paragraphs are struck out as disclosing no reasonable defense to the claim of proprietary estoppel.
7. The Failure to plead a defense to paragraphs 2 of the Defense and that part of paragraph 3 of the Defense consisting of a bare denial of paragraph 22 of the Statement of Claim is fatal to the defense on the issue of proprietary estoppel, therefore the Testatrix held Angel's Cove as a constructive trustee for the 1st Claimant and was estopped from bequeathing it in her 2021 Will to anyone other than the 1st Claimant.

8. Judgment is entered for the Claimants that Angel's Cove was held by the Testatrix on constructive trust for the 1st Claimant, and the issue of its conveyance is reserved to the decision on the validity of the 2021 Will to determine the person with authority to convey.
9. The disposition of Lubber's Quarters Cay is reserved for Trial and determination based on the validity of the Deed of Gift as opposed to the validity under the 2021 Will.
10. The Defendant's application for Relief from Sanctions is granted. Costs of the respective applications are reserved until the conclusion of the trial.

Dated this 31st day of March, A. D. 2026



The Honourable Justice C.V. Hope Strachan

