

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV2002/1193

BETWEEN:

PARRY HUSBANDS

Respondent/Claimant

and

CABLE & WIRELESS

Applicant/Defendant

Appearances:

Mr. Parry Husbands QC in person
Mr. Mark Maragh for the Defendant.

2003: May 28
May 29

APPLICATION TO STRIKE OUT STATEMENT OF CLAIM AS DISCLOSING NO REASONABLE GROUND FOR BRINGING CLAIM...PART 26.3 (1)(b) ...NO CERTIFICATE OF TRUTH UNDER PART 8.1 (5)... CASE OF HANNIGAN v HANNIGAN (2000) REFERRED TO.

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** On 20th December 2002, Mr. Parry Husbands filed a claim form with a statement of claim seeking refunds in respect of telephone, facsimile and e-mail services which he alleged were disconnected by Cable & Wireless. He also claims a "compromise sum offered by Cable & Wireless and accepted by him for flooding his bedroom with water by an employee of Cable & Wireless."

2. Two months thereafter, Cable & Wireless applies to the court to strike out Mr. Husbands' statement of claim on two grounds namely:
 - (i) That the statement of claim discloses no reasonable ground for bringing the claim [Part 26.3(1) (b) of CPR 2000 and
 - (ii) That the statement of claim is defective for non-compliance with Parts 8.7 (1) and (5) of the Rules.
3. Mr. Maragh for Cable & Wireless submitted that he is unable to defend the claim because the statement of claim is unclear, confusing, unintelligible and bare and it does not disclose any cause of action.
4. Mr. Maragh next submitted that the statement of claim should also be struck out in that Mr. Husbands has failed to include in the claim form or in the statement of claim a statement of all the facts on which he relies: see Part 8.7 (1) and that the Certificate of Truth as mandated by Part 8.7 (5) is visibly missing.

Part 8.7 (5)- Certificate of Truth

5. A court is unlikely to strike out a party's case if the Certificate of Truth is missing. The failure to include the Certificate of Truth could be rectified by the court making an order that unless Mr. Husbands take the required step by a specified date, his statement of case will be struck out.

Part 8.7 (1)

6. Part 8.7 (1) mandates a claimant to include in the claim form or in the statement of claim a statement of all facts on which he relies. It would seem that the court is unlikely to exercise its power under this rule to strike out a statement of case where there has been a technical failure to comply with the rules but the party in default has provided all the necessary information about their case to the other party. In the case of *Hannigan v Hannigan (2000) ILR 3*, a party started proceedings in the wrong form and committed many other breaches of the rules in presenting their case. The Court of Appeal held that the defendants knew precisely what was being claimed, and the administration of justice would have been better served if the defendant

had pointed out the procedural defects to the claimant in accordance with the duty of the parties to help the court further the overriding objective.

7. So, it is essential to look into Mr. Husband's statement of claim to ascertain whether he has provided all the necessary information about his case to Cable & Wireless. In other words, does Cable & Wireless know exactly what is being claimed? The Statement of claim contains 9 unnumbered paragraphs. It contains no prayer. The first sentence and paragraph states as follows: "the claimant claims refunds in respect of telephones numbers 458-1404, 451-6625/6/7 and 452-6262 as follows." And nothing followed. The next paragraph states: "Fax dated 6/7/00 to disconnect tel. No. 458-1404 from PBX and direct it to tenant Abdul Qadir Algilani. Nothing followed. The remaining 7 paragraphs are similar in structure and nature. My attention is focused on the last paragraph which reads: "compromise sum offered by Defendant and accepted by claimant for flooding bedroom with water by defendant's employee." .No date is stipulated.
8. There is little doubt in my mind that the statement of claim is vague, riddled and confusing. Mr. Maragh lamented that he is unable to put in a defence to the claim. I share his concerns. I would imagine that even distinguished Queen's Counsel would have an insurmountable task to defend this claim.
9. My initial inclination is to make an order that unless Mr. Husbands take the required step to amend the statement of claim by a specified date, his statement of claim will be struck out despite his catalogue of procedural errors. But, I think that I need to bear in mind that there have been previous defaults by Mr. Husbands and in particular, in another action involving the same defendant in which he sought an interim order against Cable & Wireless. I also observe Mr. Husbands reluctance to comply with the Rules.

Part 26.3 (1) (b)

10. Under Part 26.3 (1) (b) the court has the power to strike out a statement of case or part of a statement of case if that statement of case does not disclose any reasonable ground for bringing a claim. Looking at the statement of claim in its totality, it seems to me that Mr.

Husbands has had several unpleasant experiences with Cable & Wireless in respect of delinquent accounts with the company and which necessitated the intervention of the Credit Controller, Mr. Mark Coureur. (paragraph 3 of Mr. Coureur's affidavit). As I see it, the statement of claim does not disclose any reasonable ground for bringing a claim. If he has a good claim, he must include all the facts upon which he relies in his statement of claim. He is a Queen's Counsel with years of experience. Only recently in Her Majesty's Privy Council, he was described by *Lord Bingham of Cornhill* as " a distinguished man and a former Attorney-General of St. Lucia, who has now been a silk for 15 years and a senior partner in a firm of barristers, solicitors and notaries." –see: *Parry Husbands v Warefact Limited (Privy Council Appeal No. 74 of 2001)*.

11. Based on the submissions advanced by Counsel and the evidence in its entirety, I will strike out the statement of claim. To do otherwise, would be to open the floodgates for non-compliance with the Rules and encourage sloppiness by legal practitioners.
12. In his exuberance, Mr. Maragh failed to pursue any application for costs. I therefore make no order as to costs.

Indra Hariprashad-Charles
High Court Judge