

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 86A OF 2004

IN THE MATTER OF THE EASTERN CARIBBEAN SUPREME COURT (SAINT VINCENT AND THE GRENADINES) ACT CHAPTER 18 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES, REVISED EDITION 1990, SECTION 76 AND PARAGRAPHS 3 AND 4 OF THE BARRISTERS AND SOLICITORS RULES BOOKLET 4

AND

IN THE MATTER OF UNPROFESSIONAL CONDUCT BY OTHNEIL R. SYLVESTER A BARRISTER AND SOLICITOR

AND

IN THE MATTER OF THE APPLICATION FOR A RULE TO ISSUE OTHNEIL R. SYLVESTER BARRISTER AND SOLICITOR TO SHOW CAUSE WHY HE SHOULD NOT BE SUSPENDED OR STRUCK OFF THE ROLL OF BARRISTERS AND SOLICITORS

AND

IN THE MATTER OF THE APPLICATION OF FAESELLEJE A PRIVATE COMMERCIAL FOUNDATION OF DENMARK

BETWEEN:

FAELLESJE, A PRIVATE DANISH FOUNDATION

Claimant

AND

OTHNEIL SYLVESTER

Defendant

Appearances:

Mr. Karl Hudson Phillips Q.C., Mr. Stanley Marcus S.C., Mr. Bertram Commissiong Q.C. and Ms. Mira Commissiong for Claimants

Sir Henry Forde Q.C., Mr. Russel Martineau S.C. and Mr. E. Robertson for the Defendant

2004: 11th November
2005: 16th February

DECISION

- [1] The defendant has applied for a stay of the proceedings in this matter. He has also raised a preliminary objection as to the jurisdiction of the Master to deal with this matter at all. He says that the jurisdiction to suspend or strike a legal practitioner from the rolls is a special one. Section 76 of the Eastern Caribbean Supreme (Saint Vincent and the Grenadines) Act Cap 18 provides:

“Any two judges of the High Court may for reasonable cause suspend any Barrister or Solicitor from practicing in Saint Vincent and the Grenadines during any specified period, or may order his name to be struck off the “Court Roll””

- [2] The procedure is set out in Booklet 4 the Barristers and Solicitors Rules. An initial application is made to a judge in Chambers for a rule to issue to the legal practitioner to show cause why he should not be suspended or struck off the roll. In the event of such a rule being granted, further proceedings thereunder shall be in open court. The defendant says that only the judges of the High Court may exercise this jurisdiction and not the Master.

- [3] The claimants point to amendment of the principal act by Act 18 of 2000 which introduces section 12 A. This I believe answers the question. It clothes the Master with jurisdiction to deal with any matter which may be dealt with by a Judge in Chambers. It is worth recalling that at this stage the application is only for a rule to issue. The disciplinary proceedings if any will then be done in open court before two judges. The defendant further asks that claim 86A/2004 be stayed or struck out on the grounds that it is an abuse of process. This he says is because:

- (1) The issues raised are identical to those raised in 86 of 2004

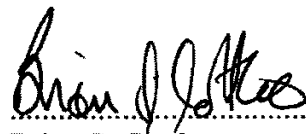
- (2) The proceedings being disciplinary in nature fail to set out charges which the defendant can be made to answer
- (3) The procedure is wrong in law
- (4) The defendant is being exposed to an unnecessary series of trials.

[4] A perusal of the statement of claim and the affidavit in support in the two claims reveals that the claimants base their complaints on the same set of facts. However, the relief claimed in both cases is not identical. Indeed it would not be possible to obtain the relief sought in 86A/2004 unless separate disciplinary proceedings are brought. I do not consider that claim 86A/2004 amounts to abuse of process on this basis.

[5] At this stage, all that is before the court is an application for a rule to issue. The disciplinary proceedings have yet to commence. If and when they do, it is at that stage that the claimant will have to fully inform the defendant of the case he will have to answer. The matters raised in the affidavit satisfy me that there is a prima facie case to require that a rule issue to the defendant to show cause.

[6] I note that no procedure is laid out in Booklet 4 for making the application. In the circumstances it is open to the claimant to approach the court by any means known to law.

[7] In all the circumstances I refuse the application of the defendant for a stay. I decline to strike out the claim. I direct that a rule issue to the defendant to show cause why he should not be suspended or struck off the roll.



Brian S. Cottle
MASTER