

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2006/0413

BETWEEN:

NICHOLAS FAISAL

Claimant

AND

SAINT LUCIA BANANA CORPORATION
(formerly Saint Lucia Banana Growers Association)

Defendant

Appearances:

Mrs. Lydia Faisal for Claimant
Mr. Horace Fraser for Defendant

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2007: May 7
October 23
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DECISION

[1] At the pretrial review Counsel for the Claimant brought an application under Parts 10.5 (1) and 10.7 (1), 2 and (3) CPR 2000 requesting the court to strike out certain paragraphs of the witness statements of a couple of the Defendant's witnesses Counsel also contended

that the Defendant is not permitted to include long quotations from documents in a witness statement since the documents have already been disclosed as exhibits.

[2] The grounds on which the application is based are:

- (1) that the Defendant's entire pleadings comprise a one page defence with a mere eight paragraphs which failed to set out the Defendant's defence;*
- (2) none of the matters alleged in the impugned paragraphs were referred to in the defence, neither were they even vaguely mentioned, nor were they generally introduced in the defence as primary facts upon which the Defendant could have expounded in the witness statements (into as many paragraphs as were necessary)*

[3] Counsel stated that the defence comprises only eight paragraphs and that the crucial issue of gratuity which was raised in the statement of claim was neither referred to nor responded to in the defence but surfaced in the witness statements.

[4] Counsel argued that the Defendant must respond to each and every item, that by introducing in the witness statements issues which had not been brought up before, prevents the Claimant from responding to or refuting them in the averments and amounts to an ambush.

- [5] The Defendant according to Counsel, is seeking to prove its case by default and where it has failed to make any defence, it cannot now be done through the witness statements. In this the court has no discretion.
- [6] Counsel also submitted that it is not appropriate to include long quotations in witness statements.
- [7] In response Counsel for the Defendant denied that the quotations from the documents were lengthy but suggested that even if the Court struck them out, that they have already been introduced as exhibits and are therefore already in evidence.
- [8] Counsel observed that there is a difference between pleadings and evidence, that the word "facts" included in Part 10.5 (1) is misleading because the CPR did not change the nature of pleadings. He contended that evidentiary matters ought not to be included in pleadings and suggested that the statements complained of by Counsel for the Claimant are factual matters which must necessarily be set out in the witness statements.
- [9] To deal first and briefly with the issue of the quotation in the witness statements: I am in agreement that there is no need for the inclusion of the quotations since the relevant document is already on record as an exhibit to which the witness can be directed or examined during trial as becomes necessary. I therefore make an order for its excision .
- [10] The effect of Part 10.5 CPR which is concerned with the Defendant's duty to set out its case is that the Defendant may not meet the Claimant's statement of claim with a bare

denial. The Defendant must set out all the facts on which the Defendant relies to dispute the claim in as short a statement as is practicable (10.5 (1) and (2)). The Defendant must in its defence identify which allegations are admitted or denied, those which are neither admitted nor denied and those which it wishes the Claimant to prove (10.5 (3)). Where the Defendant denies an allegation, there must be put forward a reason for doing so and if intended to prove a different version of events, set out that version (10.5 (4)).

[11] Part 10.7 establishes the consequences for failing to set out the defence: the defence will not be allowed to rely on any allegation or factual argument which could have been set out. If the court permits however, this can be dealt with at the case management conference. After the case management conference, the court's power in this regard is constrained by the proviso that the Defendant must satisfy the court that there has been a significant change in circumstances of which the Defendant was not aware at the time of the case management conference.

[12] While it is established that the Defendant should respond to each allegation made by the Claimant, I do not believe that it is necessary or expected that the Defendant will literally list the responses in the order that is set out in the statement of claim in order to be regarded as having complied with the rules. It is in my opinion a matter of style and provided that the defence has been made sufficiently clear, no more is required than a concise statement of the facts upon which the Defendant intends to rely. Additionally I do not consider that the length of the defence determines its relevance or affects its strength.

[13] I am satisfied that although the Defendant begins its defence by proffering a “blanket” denial of the Claimant’s claim, the defence is “redeemed” by the setting out of its version of events as is required by Part 10.5(4).

[14] Without seeming to resolve the case at this stage, it needs be observed that this is a claim for damages upon wrongful dismissal, which claim is inclusive of one for gratuity to which the Claimant considers himself entitled. The defence is a succinct response that the Claimant was never in its employ. Consequently not having specifically responded to the issue of entitlement to gratuity would not adversely affect the Claimant were he to be successful in his claim nor would it permit the Defendant to avoid the issue in such an event. It would however have been a problem for the Claimant had he not himself pleaded it.

[15] The purpose of witness statements is to provide in advance the evidence on which the parties will rely. It is open to Counsel at trial to cross examine on the contents of the witness statements. While permission will not be granted to introduce new matters or to let remain prolix statements, I am of the view that in light of the observations of Lord Woolf MR, in McPhilemy v Times Newspapers Ltd (1999) 3 All ER 775 at 792, 793 it is clear that it is in the witness statements that the details of the case will be made apparent.

“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statements, will make the

detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. 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. As well as their expense, excessive particulars can achieve directly the opposite result from that which is intended. They can obscure the issues rather than providing clarification. In addition, after disclosure and the exchange of witness statements, pleadings frequently become of only historic interest.Unless there is some obvious purpose to be served by fighting over the precise terms of a pleading contests over their terms are to be discouraged".

[16] In the circumstances I do not agree that the paragraphs complained of raise new issues and ought to be excluded because in my judgment those paragraphs serve only to elaborate the defence.

[17] The application for the striking out of the mentioned paragraphs is therefore dismissed while the application for the removal of the quotation from the witness statements is allowed.

SANDRA MASON Q.C.

High Court Judge