

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2005 0488/0489

BETWEEN

JANNIS REYNOLDS-GREENE

Claimant/Respondent

And

THE BANK OF NOVA SCOTIA
E. PATRICIA SIMON—FORDE
LUCINE HANLEY
NATHANIEL PADDY JAMES

Defendants/Applicants

Appearances:

Ms. Nelleen Rogers-Murdoch for the Defendants/Applicants
Mrs. Jannis Reynolds-Greene in Person/Respondent

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2008: April 14
November 20
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RULING

[1] **Blenman J:** This is a ruling based on an application to strike out two amended fixed date claims.

[2] **Background**

Mrs. Jannis Reynolds-Greene was employed by the Bank of Nova Scotia (the Bank) and she secured substantial mortgage facilities from the bank. She defaulted on the repayment of the mortgages, and the bank requested that she liquidate her indebtedness, which was quite substantial. Even though she had made significant payments, Mrs. Reynolds-Greene was unable to liquidate her indebtedness to the bank. She is the registered owner of a parcel of land which is registered as Parcel 66; Block 61 1793E: Registration Section

Gambles, which she used as security for the mortgages. She had also obtained unsecured loans from the bank.

[3] As a consequence of her failure to pay off the debts, the bank instructed its Attorney-at-Law Mrs. E Patricia Simon-Forde to act on its behalf. Mrs. Simon-Forde sent Mrs. Reynolds-Greene a notice to pay off the debts. Mrs. Reynolds-Greene was still unable to pay off the debts. The bank desired to recoup the moneys that Mrs. Reynolds-Greene owed. Mrs. Simon-Forde retained Mr. Lucien Hanley to value Parcel 66 that secured the mortgages. Mr. Lucien Hanley made requests of Mrs. Reynolds-Greene's daughter to visit the premises in order to conduct the valuation. He eventually visited the premises and was able to inspect the property. Mr. Hanley valued the property and prepared a report in that regard. He also suggested the forced sale value of the property. The bank intended to exercise its power of sale as chargee. Accordingly, Mrs. Simon-Forde also instructed Mr. Nathaniel 'Paddy' James to act as the auctioneer. The auctioneer caused the property to be advertised in the daily newspaper and he informed Mrs. Reynolds-Greene's daughter that he was going to visit the premises to put up a "For Sale" sign, which he did.

[4] Indeed, a date and place of the auction was fixed by the auctioneer. However, on the date of the scheduled auction, Mrs. Reynolds-Greene paid the bank the areas on the mortgage and the auction was aborted. (The property was not sold).

[5] Also, on the date of the auction, the bank debited Mrs. Reynolds-Greene's account with the sum of \$15,522.69, which represents the fees and costs associated with the auction and the collection of the outstanding moneys.

[6] It was against that background that Mrs. Reynolds-Greene has filed two separate amended fixed date claims against the defendants and they have been treated as if they are consolidated. This is understandable due in large measure to the manner in which they were presented. Also, the claims arise out of the same set of circumstances.

[7] **Issue**

The issue that arises for the Court's determination is whether the Court should strike out the amended fixed date claims on the grounds that they disclose no reasonable cause of action.

[8] **Pleadings**

Mrs. Reynolds-Greene seeks damages and reimbursements in the sum of \$15,522.69 together with interest against the defendants. She also seeks a number of declarations that they have acted illegally and unreasonably. She has brought the amended fixed date claims against the Bank of Nova Scotia, Mr. Lucien Hanley who is a valuator, Attorney-at-Law Mrs. E Patricia Simon-Forde and Mr. Nathaniel Paddy James, who is the auctioneer. Mrs. Reynolds-Greene says that the defendants have trespassed on her property and she seeks damages. Mrs. Reynolds-Greene says that the defendants acted illegally by attempting to auction her property. She complains that Mr. James telephoned her daughter, harassed her and left harsh messages with her that he would be putting up a "For Sale" sign. She claims that he harassed her daughter and she seeks compensation.

[9] **Amended affidavit in support (affidavit in support)**

In the affidavit in support, Mrs. Reynolds-Greene says that she was employed by the bank and had a senior position.

[10] Mrs. Simon-Forde employed a bailiff, the latter who served her with a Notice to Pay Off.

[11] In her affidavit in support, Mrs. Reynolds-Greene says that Mr. Hanley negligently set the market value of her property way below the value and that his appraisal of her property was totally inaccurate and that he owed her "a special duty of care". She complains that neither the bank nor Mrs. Simon-Forde had the authority to instruct anyone to enter her premises.

[12] It is also Mrs. Reynolds-Greene's further claim that Mrs. E Simon-Forde acted negligently, in not ascertaining the true value of her property. Further, she says that Mr. Hanley, in valuing her property and also in setting the forced sale value of her property, acted

negligently. She further complains that the bank and Mrs. Simon-Forde have acted unreasonably in attempting to sell Parcel 66 at the auction.

[13] Further, Mrs. Reynolds-Greene said that the defendants have all acted negligently.

[14] In her affidavit in support, she specifically states that Mr. James, in advertising the sale of her property in several issues of The Daily Observer, has acted negligently.

[15] Mrs. Reynolds-Greene's final contention is that the defendants have acted in breach of Section 77 Registered Land Act Cap 374 of the Laws of Antigua and Barbuda, when they attempted to auction her property at a price below its value.

[16] **Affidavits in reply**

The defendants caused affidavits in reply to be filed and they dispute Mrs. Reynolds-Greene's claims.

[17] In their affidavits in reply, the defendants state that the bank granted Mrs. Reynolds-Greene several loans that were secured by mortgages. From February 2003, Mrs. Reynolds-Greene made no payments to her mortgage. The mortgage was secured by charges over Mrs. Reynolds-Greene's property. The bank wrote several letters to Mrs. Reynolds-Greene requesting her to liquidate her indebtedness to the bank. Mrs. Reynolds-Greene failed to honour her financial commitments, and as a consequence, the bank decided to sell Mrs. Reynolds-Greene's property, pursuant to its power of sale as chargee under Section 75 of the Registered Land Act. As a result, the bank instructed Mrs. Simon-Forde to send Notice to Pay Off dated 1st September 2004. These were served on Mrs. Reynolds-Greene but she failed to make good her indebtedness. Mrs. Simon-Forde caused Mr. Hanley to value the property.

[18] Mr. James in his affidavit in reply, says that he visited Mrs. Reynolds-Greene's property and told her daughter who was 18 years old at the time of the impending sale of the property. In addition, he admits that he advertised the sale of the property in the

newspaper and placed “For Sale” signs on her property. Mr. James says that he also told Mrs. Reynolds-Greene’s daughter that he would visit the property in order to erect a ‘For Sale” sign. He denies that he neither harassed nor spoke harshly to her. The sale was scheduled for the 21st April 2005 and on that day, Mrs. Reynolds-Greene paid the bank \$102,101.52 in respect of the amounts owed on the mortgage and the bank deferred the sale and instructed Mrs. Simon-Forde to take no further steps. The property was therefore not sold.

[19] The bank, in its affidavit in reply, states that on the same 21st April 2005, it debited Mrs. Reynolds-Greene’s account with the sum of \$15,522.69 which represents fees and costs incurred in relation to the aborted sale. The fees represented \$860 for advertisement costs; \$1,900 for valuation fees; \$2,552.54 for auctioneer fees and \$10,210.15 which represents the solicitor’s collection commission and which latter figure, it is the bank’s case, Mrs. Reynolds-Greene agreed to pay in the event of default.

[20] In view of the above, the defendants deny that they acted negligently, maliciously or unreasonably as alleged by Mrs. Reynolds-Greene, or that they trespassed on her property.

[21] **Application to strike**

Subsequently, the defendants filed an application together with affidavits in support and they seek to have both of Mrs. Reynolds-Greene’s amended fixed date claims struck out on the basis that they fail to disclose any reasonable grounds for bringing them.

[22] The defendants also complain that Mrs. Reynolds-Greene has failed to provide them with sufficient particulars of her claims and therefore they are unable to ascertain any loss or detriment suffered by her which would entitle her to bring a claim against them.

[23] **Mrs. Reynolds-Greene’s submissions**

Mrs. Reynolds-Greene says that she has reasonable grounds for bringing the amended fixed date claims and the Court should not strike them out. The fundamental principle of the overriding objective of CPR 2000 enjoins the Court to deal with cases justly.

[24] Mrs. Reynolds-Greene says that it is the duty of the Court to satisfy itself that the claims are not frivolous or vexatious. She referred the Court to **Keppie v The Marshal Fuel Group Ltd 1997** SLT 305, 308 K per Lord Hamilton. Also, in **Three Rivers District Council v Governor of the Bank of England No. 3 (2003) 2 AC 1** in which LJ Hutton said:

“But at this stage in the proceedings a Court is not concerned to try to assess which side will probably succeed if there is a trial; it is noted the question is whether there is material which shows that there are issues which should be investigated a trial”.

Mrs. Reynolds-Greene asserts that the Court should give due regard to the above principle, as indeed there are issues in the claims which should be investigated.

[25] In **Swain v Hillman (2001) 1 All ER 91 The Times**, it was stated that care should be taken to ensure that a party is not deprived of the right to trial.

[26] It is the duty of the Court to give effect to the overriding objective in Part 1.1 of the CPR 2000 as it is the applicants' intention to deprive her of the lawful right to the justice of her claim. Mrs. Reynolds-Greene referred the Court to **Arsenal Football Club Plc v Elite Sports Distribution Ltd (2002) The Times, 27 December 2002**, in which it was said that where the circumstances pointed towards the defendant having committed some tort, but it was unclear which one. There is a real likelihood that on disclosure in due process a further act of tort may be established in those circumstances; therefore the Court should not strike out the claim.

[27] Mrs. Reynolds-Greene maintained that the amended fixed date claims do disclose reasonable grounds for bringing them. There are substantial and triable issues before the Court. The Notices to Pay off is fundamentally different in form, nature, character and

effect to the requirements under statute, namely the Registered Land Rules Act Cap 374 1975. It is left to be determined under which law these instruments fall.

[28] Next, Mrs. Reynolds-Greene submitted that the chargee's remedy to foreclose or enter into possession is derived from Section 72 of the Antigua and Barbuda Registered Land Act Laws of Antigua and Barbuda. Section 72(3) of the Registered Land Act states that, "The chargee shall be entitled to sue for the money secured by the charge in the following cases only where the chargor is bound to repay the same". Mrs. Reynolds-Greene argued that the defendants failed to comply with Section 72 of the Registered Land Act and have therefore acted improperly.

[29] In the application at bar, Mrs. Reynolds-Greene said her property was put up for sale by Mr. James at a gross undervalue, based on Mr. Hanley's inaccurate appraisal. There would be a breach of the duty by the bank to act in good faith, as the bank would not be attempting to realise the full market value of her property. In the totality of the circumstances, the chargee has not acted in good faith as required under Section 75 of the Registered Land Act Cap 374, 75(1) which states that "A chargee exercising his power of sale shall act in good faith and have regard to the interests of the chargor. Mrs. Reynolds-Greene referred the Court to **K & Or v Global Natural Resources (1984) 1 All ER 225**.

[30] Next, Mrs. Reynolds-Greene submitted that the recent authority **Dominica Agricultural and Industrial Development Bank**, the Court of Appeal acknowledged the principle in **Choratia v Sethia**, which states that before a Court strikes out a case for abuse of process, or for any reason, the Court must be satisfied that it is fair to do so. Mrs. Reynolds-Greene contends that in the totality of the circumstances, it would be a breach of natural justice to strike out her claim.

[31] Mrs. Reynolds-Greene then said that on the basis of the materials filed in this case, including her affidavits, she has demonstrated that "she has a good arguable case against the defendants". She posited that where it is evident that a party has behaved in a manner that either invades or threatens to invade a legal or equitable right of the other, or where

one party to an action has behaved or threatens to behave in a manner which is unconscionable, the Court has the jurisdiction to exercise judicial authority”.

[32] Finally, Mrs. Reynolds-Greene says that it is clear from her submissions and from various orders she has sought, that her claims are not unfounded and have merit. It will be unjust for the Court to strike out her claims.

[33] **Mrs. Rogers-Murdoch’s submissions**

Learned Counsel Mrs. Rogers-Murdoch stated that the power to strike out can be exercised at any stage of the proceedings either on an application by the claimant or defendant or by the Court in its own initiative. The power given to the Court encompasses statements of case which are unreasonable, vague, incoherent, vexatious, scurrilous, and obviously ill founded, and other cases which do not amount to a legally recognizable claim or defence.

[34] Statements of case which are suitable for striking out under Part 26.3 of CPR 2000 include those which raise an unwinnable case where continuation of the proceedings would be a waste of resources on both sides; **Harris v Burdon [2000] L.T.C. Feb 2, CA.**

[35] Learned Counsel Mrs. Rogers-Murdoch stated that Mrs. Reynolds-Greene’s claims consist of mere assertions which are unsupported by particulars which give rise to a cause of action. The assertions of illegality and non compliance with statutory provisions are ill-founded and do not establish a basis upon which a claim can be successfully asserted. The claims are based on an attempted sale of the her property and no particulars of loss or damage are alleged to have caused to or suffered by her as a result of the alleged actions of the defendants.

[36] Mrs. Rogers-Murdoch invited the Court to find that on a consideration of the pleadings as a whole and on a further consideration of the specific paragraphs pleaded against each of the defendants that no reasonable grounds exist for bringing the claim, that the pleadings such as they are, are vague and unsupported by particulars which would reasonably

require the defendants to make a response, and that the claims in their entirety should be struck out as against each of the defendants.

[37] **The Bank**

Learned Counsel Mrs. Rogers-Murdoch said that Mrs. Reynolds-Greene alleges that the bank was negligent and acted unlawfully in retaining the services of Mr. Hanley and Mr. James with respect to the bank's power as chargee of Mrs. Reynolds-Greene's property. Mrs. Rogers-Murdoch said that Section 75 of the Act gives the bank the power of sale over charged land in the event of a default and that the bank's engagement of the Mr. Hanley and Mr. James as its agents in connection with its powers under the Act is consistent with its powers under the section. The statement contains no particulars which would suggest that the bank's engagement of Mr. Hanley and Mr. James was negligent, save and except the bald statement that it was negligent.

[38] Mrs. Rogers-Murdoch examined the affidavit in support filed by Mrs. Reynolds-Greene. Paragraph 18 alleges that the bank unlawfully and illegally and in breach of the mortgage agreement, debited Mrs. Reynolds-Greene's mortgage account in the sum of \$15,522.69 on the 5th May 2005. No particulars are disclosed of the circumstances under which the debit was done by the bank, nor are the terms of the mortgage agreement provided which it is alleged were breached. Counsel therefore said that this paragraph is vague and non specific and discloses no cause of action.

[39] In paragraph 19, the bank is alleged to have acted negligently in charging Mrs. Reynolds-Greene interest at a rate higher than market rate. It is also alleged that the charge was in violation of the Banking Act Cap 40. No allegation is made of the rate which it is alleged is the market rate, nor indeed does Mrs. Reynolds-Greene specify the rate which it is alleged the bank charged her. Further, no particulars of the Banking Act are disclosed, neither is any particulars disclosed of when and the circumstances under which the said rate was charged. Here again, Mrs. Rogers-Murdoch submitted that this paragraph is so vague that the bank cannot reasonably be required to respond to the same.

- [40] In paragraph 21, the bank is alleged to have acted unreasonably and in bad faith with improper motives. No particulars are disclosed regarding any of these allegations. Mrs. Rogers-Murdoch stated that Mrs. Reynolds-Greene cannot disclose a cause of action merely by making bald assertions without particulars to support the assertions.
- [41] Mrs. Rogers-Murdoch submitted that the amended fixed date claims taken as a whole makes no allegations against the bank, which the bank can reasonably be called upon to answer. Such allegations that are made are bald assertions which are unsupported by any material particulars. Further, where on a generous interpretation Mrs. Reynolds-Greene has provided particulars, they are vague, unspecific and in several cases entirely irrelevant. Accordingly, learned Counsel Mrs. Rogers-Murdoch submitted that the fixed date claims as a whole should be struck out as against the bank.
- [42] **Mrs. Simon-Forde**
Paragraph 2 of the affidavit alleges that Mrs. Simon-Forde employed the services of the Court bailiff to serve a notice on Mrs. Reynolds-Greene. Mrs. Rogers-Murdoch said that no claim is disclosed against Mrs. Simon-Forde here.
- [43] Mrs. Simon-Forde is alleged to owe Mrs. Reynolds-Greene a duty of care. No allegation of wrong doing is made against Mrs. Simon Forde here.
- [44] The defendants are alleged to have acted unlawfully and in breach of the statutory requirements of the Registered Land Act Sections 3, 75, 77 and 161. There are no particulars given as to how this alleged breach occurred.
- [45] Mrs. Simon-Forde is alleged to have acted unlawfully and without authority in retaining the services of Mr. Hanley and Mr. James in respect of the charged property. No particulars are disclosed that would warrant a conclusion that the mere hiring of an agent by Mrs. Simon-Forde could be unlawful. No particulars are disclosed of any law or circumstance that would render the agreement unlawful. Further, Mrs. Reynolds-Greene discloses no

particulars to suggest that Mrs. Simon-Forde lacked the authority to engage the services of Mr. Hanley and Mr. James.

[46] Accordingly, Mrs. Rogers-Murdoch argued that the claim against Mrs. Simon-Forde is blatantly lacking in substance. No allegations of wrong doing are made against Mrs. Simon-Forde. Such allegations as are made are not attended by any particulars which would require Mrs. Simon-Forde to make a response. Mrs. Rogers-Murdoch submitted that the whole claim against her is scurrilous and vexatious and should be struck out.

[47] **Mr. Hanley**

The defendants are alleged to have acted unlawfully and in breach of the statutory requirements of the Registered Land Act Sections 3, 75, 77 and 161. There are no particulars of the alleged breach provided.

[48] Mr. Hanley is alleged to have harassed Mrs. Reynolds-Greene with constant phone calls and to have trespassed on her property. No particulars are disclosed regarding the alleged phone calls. Further, no particulars are disclosed regarding Mr. Hanley's presence of Mrs. Reynolds-Greene's property, nor of any matter which would constitute Mr. Hanley's alleged presence there a trespass.

[49] Mr. Hanley is alleged to have acted negligently and unlawfully in complying with the instructions of the bank and Mrs. Simon-Forde in respect of Mrs. Reynolds-Greene's property. No allegations are made as to what instructions were given to Mr. Hanley. No particulars are given as to the unlawful nature of the said instructions, nor are any particulars given of the actions taken by Mr. Hanley which would lead to a conclusion that he acted unlawfully. No particulars are provided of the actions taken by Mr. Hanley which would constitute the tort of negligence.

[50] Mr. Hanley is alleged to have negligently set a market value for Mrs. Reynolds-Greene's property at an amount below an earlier appraisal of the property, and to have negligently set a forced sale price below an earlier appraisal value. No particulars are disclosed of a

want of care or lack of skill on the part of Mr. Hanley in either performing the appraisal or indeed in setting the value of the property. In the circumstances, the allegations are not particularized and raise no cause of action. Paragraphs 8, 9, 10, 11, 14, and 17 allege that Mr. Hanley failed and/or neglected to include in his valuation report, certain measurements regarding Mrs. Reynolds-Greene's property, and further falsely reported on the state of repair and condition of the property. Further that Mr. Hanley negligently used the minimum of the scale for establishing forced sales and further that the valuation was defective since certain values in respect of walls and paved areas were not assessed. Paragraph 17 specifically alleges that Mr. Hanley was unqualified to perform the tasks he was engaged.

[51] The fixed date claim contains specific allegations of wrongdoing against Mr. Hanley, Mrs. Rogers-Murdoch said, could form the basis of a cause of action against him. Counsel however submitted that an allegation of wrongdoing would form the basis of a cause of action and give rise to an occasion for a response only in the circumstances where Mrs. Reynolds-Greene could assert some loss or damage suffered as a result of the actions of Mr. Hanley. Learned Counsel Mrs. Rogers-Murdoch said that the amended fixed date claims contain no allegations of any loss or damage suffered by Mrs. Reynolds-Greene due to the alleged wrongs of Mr. Hanley. There are no allegations that the alleged failings of Mr. Hanley led to a lower sale price on the sale of Mrs. Reynolds-Greene's property than would have occurred but for his wrongdoing. In fact, the fixed date claim nowhere states that a sale of the property was actually concluded, and or that Mrs. Reynolds-Greene suffered a loss or detriment as a result of the said sale.

[52] Learned Counsel Mrs. Rogers-Murdoch therefore submitted that no cause of action is disclosed against him despite the allegations of wrongdoing, since no loss, damage or detriment or particulars specifying loss, damage or detriment have been asserted by Mrs. Reynolds-Greene as a result of Mr. Hanley's alleged wrongdoings.

[53] **Mr. James**

Mr. James is alleged to have acted unlawfully and in breach of the statutory requirements of the Registered Land Act Sections 3, 75, 77 and 161.

[54] Mr. James is alleged to have harassed Mrs. Reynolds-Greene by leaving a message with her daughter regarding the auction sign he placed on her property, and his presence on the property for the purpose of placing the sign thereon is alleged to be trespass. No particulars are disclosed regarding the alleged harassment save and except that it is asserted that Mr. James left a message with Mrs. Reynolds-Greene's older daughter. Mrs. Rogers-Murdoch submitted that the fact that Mrs. Reynolds-Greene may have felt harassed by the impending sale of her property does not give rise to a cause of action against him for harassment in law. Further, learned Counsel Mrs. Rogers-Murdoch said that Mrs. Reynolds-Greene's allegation that his presence on her property for the purpose of affixing the auction sign was illegal and constituted a trespass, is unsupported by any particulars which would lead to a conclusion that he was in law, a trespasser or that he in fact, acted illegally. Counsel advocated that in so far as Mrs. Reynolds-Greene's case is in any event unwinnable, and that continuation of the same would be a waste of resources for both sides; the claim should therefore be struck out.

[55] Mr. James is alleged to have acted negligently and unlawfully in complying with the instructions of the bank and Mrs. Simon-Forde in respect of Mrs. Reynolds-Greene's property. No allegations are made as to what instructions were given to Mr. James. No particulars are given as to the unlawful nature of the said instructions, nor are any particulars given of the actions taken by Mr. James, which would lead to a conclusion that he acted unlawfully. No particulars are provided of the actions taken by Mr. James which would constitute the tort of negligence.

[56] Mr. James is alleged to have used improper marketing and auctioneering practices in advertising Mrs. Reynolds-Greene's property and in placing signs on her property advertising that sale. No particulars have been disclosed in regard to the "proper marketing practices" or advertising guidelines which the Mr. James is alleged to have breached in performing his function as auctioneer.

[57] Mrs. Rogers-Murdoch reiterated that on a totality of the pleadings, the claim against Mr. James ought to be struck out. The claim makes allegations which are not supported by any particulars which would give rise to a cause of action. Further, where the claim makes an assertion that could give rise to a claim, the claim is unwinnable and it would be a waste of resources to permit Mrs. Reynolds-Greene to continue with the same.

[58] Finally, Mrs. Rogers-Murdoch requested the Court to strike out the amended fixed date claims against all the defendants as they make bald allegations unsupported by particulars necessary to ground the claims. Further, where assertions are supported by particulars, Mrs. Reynolds-Greene's case is unwinnable, so that to permit the claims to proceed to trial would be a waste of resources on both sides.

[59] **Court's analysis and conclusions**

In the application before the Court, as stated earlier, the applicants are seeking to have the Court strike out the amended fixed date claims that Mrs. Reynolds-Greene filed.

[60] **Procedure**

The Court does not propose to deal at length with the issue as to whether Mrs. Reynolds-Greene has utilised the correct procedure in instituting her claims. It is settled that fixed date claim forms are only to be utilised in specific circumstances. Indeed, Part 8.7 of CPR 2000 states that fixed date claim form must be used:

- (a) In claims arising out of hire purchase or credit sale agreements;
- (b) In proceedings for possession of land;
- (c) Whenever its use is required by a rule or practice direction;
- (d) Where by any enactment proceedings are required to be commenced by originating summons or motion.

Except as specifically provided in CPR 2000, all claims must be instituted by claim forms. It stands to reason that in order to initiate a claim such as the one at bar, a claim form must be utilised. The Court now turns its attention to the applications at bar. Therefore, it is clear that Mrs. Reynolds-Greene ought to have utilised claim form to institute her actions.

[61] I now turn to address the amended fixed date claims in so far as is relevant to the applications to strike. Part 8.6(1) of CPR 2000 requires the claimant to provide the following in the claim form:

- (a) a short description of the nature of the claim;
- (b) specify any remedy that the claimant seeks.

[62] The claimant must make allegations of facts in her pleadings. However, there is no longer the need for pleadings to be extensive since witness statements are required to be exchanged. The facts alleged in the pleadings form that party's case. The pleading should however make clear the general nature of the case.

[63] **Law**

Indeed, it is well settled that a party no longer has to plead all of the particulars of his case, since the discovery process as well as the witness statements that will be filed will serve the very useful purpose of revealing the entire case, see **Eastern Caribbean Flour Mills Ltd v Ormiston Ken Boyea Civil Appeal No.12 of 2006** per Barrow JA.

[64] In **Three Rivers District Council and others v Bank of England (No.3)** *ibid*, it was acknowledged that the witness statement provide an important role of providing details relating to the issue that arise from the pleadings.

[65] In **Mc Philemy v Times Newspapers Ltd [1999] 3 All ER 77** Lord Wolf stated that "the parties to a claim have the duty to plead the case so that the issues between them are established". The pleadings should make clear the general nature of the case.

[66] It is therefore imperative that the Court determines based on the pleaded allegations what, if any, cause of action arises against each of the named defendants. The Court will, in so doing, examine both the amended fixed date claims and the amended affidavits in support filed by Mrs. Reynolds-Greene in order to determine whether there is a cause of action against the defendants individually. The Court will also review the relevant legal principles.

[67] In so far as learned Counsel Mrs. Rogers-Murdoch have very helpfully examined all of the pleadings, the Court does not propose to embark on such a detail examination. This does not negate the fact that the Court will address Mrs. Reynolds-Greene's claim against each of the four defendants, in determining whether to strike out the fixed date claim.

[68] The power to strike out a pleading which does not disclose any reasonable ground for bringing a claim is conferred by Part 26.3(1) of CPR 2000:

“In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that:

- (a) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing the claim;
- (c) the statement of case or the part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
- (d) the statement of case or part to be struck out is prolix or does not comply with the requirements of Part 8.

[69] This “no reasonable ground for cause of action” addresses two situations:

- (1) Where the content of the statement of case is defective in that, even if every allegation contained in it were proved, the party whose statement of case it is cannot succeed; or
- (2) Where the statement of case, no matter how complete and apparently correct, it may well fail as a matter of law.

The above summary procedure should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that a claim is obviously unsustainable, or cannot succeed.

- [70] In **Robert Conrich v Ann Van Der Est AXA HCV 0002/2001**, Rawlins J (as he then was) stated that it is only where a statement of case does not amount to a viable claim, or is beyond cure that the Court may strike it out.
- [71] It is worth emphasizing that Mrs. Reynolds-Greene's property was never sold since she paid off the arrears on the mortgage and the auction was aborted.
- [72] It bears repeating that in the applications at bar, the defendants are seeking to strike out the claims at an early stage, before discovery has taken place and before the facts are known. It is therefore necessary to proceed on the basis that the facts alleged in the statement of claim are true.
- [73] It is the law that an action can only be struck out where it is clear that in law the claim cannot succeed. If a party believes he can show without a trial that an opponent's case has no real prospect of success on the facts, he could apply to have the case struck. If the Court is of the view that the claim is so weak that there is no reasonable ground for bringing the claim, the claim should be stopped before great expense is incurred.
- [74] It is well settled that extreme care must be taken in striking out claims. It is also to be remembered that it is only in plain cases that recourse should be had to the summary process of striking out a claim at an interlocutory stage. In determining whether to strike out a claim Courts ought to examine whether on the facts the claims can succeed and have held that unless it was possible to give a certain answer to the question whether the claimant's case would succeed, the case was inappropriate for striking out.
- [75] The approach the Court should take to an application to strike out is that the request should only be granted if the impugned facts of the pleading disclose no cause of action. If the pleading is arguably good then the matter must be left for trial. See judgment of Byron CJ **Baldwin Spencer v The Attorney General of Antigua and Barbuda et al Civil Appeal No.20A of 1997**.

[76] The test that the Court applies is to ask the question, is the claim bound to fail? If the answer is in the affirmative the Court will strike it out.

[77] It is essential that the Court examines the pleaded claims against each defendant.

[78] **The Bank**

I propose to briefly examine Mrs. Reynolds-Greene's pleaded case against the bank. The effect of Mrs. Reynolds-Greene's claim against the bank is that it unlawfully attempted to auction her property and that it acted unreasonably and negligently in instructing the valuator to value the property and the auctioneer to advertise its sale. The fact that the word "negligently" is used is insufficient to establish a cause of action against the bank. It is unclear what, if any, tort Mrs. Reynolds-Greene is alleging that the bank committed. There is no claim that is recognised at law that arises based on the pleadings. Even if the notices to pay improperly included incorrect figures, there is no recognizable claim in law that arises from the bank's action.

[79] **Mrs. Simon-Forde**

Mrs. Reynolds-Greene's major complaint is that Mrs. Simon-Forde improperly served her with a Notice to Pay Off and that she unlawfully instructed Mr. Hanley to value her property. She complains that the property was grossly undervalued and Mrs. Simon-Forde owed her a duty of care and ought to have ascertained the true value of the property. Another complaint is that Mrs. Simon-Forde unlawfully advertised the sale of her property. Here again, those pleaded facts do not give rise to any cause of action, recognizable at law. There is no pleaded allegation of any breach of any law or duty by Mrs. Simon-Forde. Neither is any loss or damage pleaded.

[80] **Mr. Hanley**

Here, Mrs. Reynolds-Greene's complaints are that Mr. Hanley was not qualified to value her property; that he owed her a duty of care and that he breached the duty when he grossly undervalued the property. She complains also, that his assessment was defective and that he failed to assess the value of several aspects of the property. Importantly, Mrs.

Reynolds-Greene says that Mr. Hanley negligently recommended a low forced sale value of her property.

[81] Even assuming that Mr. Hanley breached any duty of care that he may have had to Mrs. Reynolds-Greene, with respect, the Court is unable to determine what loss, if any, Mrs. Reynolds-Greene has suffered as a consequence. This is so, particularly since the property was not sold.

[82] **Mr. James**

Mrs. Reynolds-Greene complains that Mr. James acted unlawfully in advertising the sale of her property. She also complains that he harassed her daughter by telephoning her to go to her property to place "For Sale" signs on the property. On the pleadings, and here again, there is no cause of action pleaded.

[83] **Cause of action**

The Court accepts the submissions urged by Mrs. Rogers-Murdoch and states that Mrs. Reynolds-Greene's pleaded case taken at its highest, does not establish any cause of action against the bank, Mrs. Simon-Forde, Mr. Hanley and Mr. James. All of Mrs. Reynolds-Greene's allegations suffer the following defects, even though they allege that any of the defendants owed her a special duty of care, generally there is no pleaded case of breach.

[84] Even assuming that there was a duty, it is not clear how each of the defendants breached their respective duties to Mrs. Reynolds-Greene; except for Mr. Hanley. In any claim based on tortious liability, the onus is on the claimant to establish by way of pleaded allegations the specific tort which forms the subject of the claim. With respect, the Court is unable to determine any tort on which Mrs. Reynolds-Greene is seeking to rely in her fixed date claims. Further, the Court has been unable to conclude that Mrs. Reynolds-Greene has alleged that any of the defendants has done acts or refrained from doing acts which give rise to a cause of action.

[85] More importantly, it is not apparent on her pleaded case that Mrs. Reynolds-Greene has suffered any damage or loss. The Court accepts in their entirety the very lucid and helpful submissions of Mrs. Rogers-Murdoch which examined the entire pleaded case and can do no more than to adopt them without repeating them.

[86] By way of emphasis the Court's focus is to ascertain whether there is even a scintilla of a cause of action. If the pleadings disclose any viable issue for trial, then the Court should order the trial to proceed but if there is no cause of action, the Court should be equally resolute in dismissing the claim. Applying the legal principles above, the Court has no doubt that the claims made against the defendants are not viable. There is no allegation which would support judicial intervention. To put another way, even if Mrs. Reynolds-Greene proved her allegations, she could not have succeeded in obtaining judgment. The Court therefore finds that the totality of pleadings do not disclose any cause of action against any of the defendants.

[87] **Conclusion**

In view of the foregoing reasons and acting in accordance with Part 26 of the Civil Procedure Rules, the Court orders as follows:

- (a) Mrs. Jannis Reynolds-Greene's amended fixed date claims against the Bank of Nova Scotia, Mrs. Emily Simon-Forde, Mr. Lucien Hanley and Mr. Nathaniel "Paddy" James are struck out as disclosing no reasonable grounds for bringing the claims.
- (b) Mrs. Jannis Reynolds-Greene is ordered to pay each of the defendants' costs in the sum of \$1,000.00.

Louise Esther Blenman
High Court Judge