COMMONWEALTH OF DOMINICA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO DOMHCV 2010/0022

BETWEEN

[1] ANTHONY BURNETT-BISCOMBE
[2] ORLANDO ALLAN RICHARDS
[3] KIERON PINARD-BYRNE
[4] SOPHIE NASSIEF
[5] NORMAN PENNYCOOKE
[6] YVOR NASSIEF

Respondents/Claimants

AND

[1] MICHAEL F. FADELLE
[2] TREVOR BURTON
[3] RICHARD GREEN

Applicants/Defendants

Appearances
Mr Henry Shillingford for Applicants/Defendants
Ms Zara Lewis for the Respondents/Claimants

……
2011: March 3; December 30
……

Decision

Introduction and background

[1] LANNS, M: This matter comes before the court on an application by the Defendants for an order striking out the Claimants' Amended Statement of Case under CPR 26.3 (1) (a) and (b), and for an order dismissing the Claim and granting summary judgment to the Defendants and for assessed costs.

[2] The Dominica Club (the Club) is or was, an unincorporated members Club. It was established in 1902. The Club is located on its own property at High Street, Roseau. Although the Rules do not expressly say so, it appears that the Club is/was purely a Social Club. It provides/provided amenities for the benefit of its members. These amenities include a tennis court, squash courts, snooker table, table tennis, bar and a club room for socializing.

[3] The Club is governed by Rules, which provide, among other things for a Management Committee, (MC) the process and procedures by which one becomes a member, the annual dues which allow persons to participate in the privileges and duties of the Club once admitted as members. Rule 17 (iii) addresses the rights of members on dissolution.

[4] Over the past 10 to 13 years, the Club had been in decline. Its facilities reached a state of disrepair. Members no longer came to the premises. There were no facilities to enjoy.

[5] Club members began to think of dissolution.

[6] This state of affairs of the Club spurred a Petition, a Special General Meeting (SGM) and an Annual General Meeting (AGM) in 2004. At these meetings, it was unanimously agreed that those who needed it, be given an opportunity to bring their dues up to date. It was customary for members to be notified when there was an AGM. This notice of the AGM usually includes a reminder that members must pay up their dues to be eligible to vote and participate in the meeting.

[7] The gravamen of the Claimants' claim is that the Defendants allowed selected members of the Club to pay up their arrears and current subscriptions, while depriving the Claimants of the opportunity to settle their arrears and current subscriptions, which they were always willing and able to do. The Claimants allege that the reason they were so deprived was to allow the Defendants to table a resolution to dissolve the Club, and cause select persons to be able to attend the AGM to vote on the resolution. The Claimants claim that this move by the Defendants was ultra vires and of no legal effect as it fails to comply with Club Rules, conventions procedure and practice which have been adopted and practiced by the Club for numerous years.

[8] I glean from the Amended Statement of Claim that the activities of the Club declined during the years 1998 to 2004. During these years the Management committee failed to convene an Annual General Meeting (AGM) as required by the Rules. This decline and inactivity prompted certain members concerned with the non functional status of the Club to request by Petition that the Management Committee convene a Special General Meeting (SGM) to consider and act in relation to the following issues:

(i) Financial status of the Dominica Club
(ii) Business commitment of the Club
(iii) Election of a Board of Management
(iv) List of paid-up members
(v) Any other business

[9] As a result of the Request, a SGM was held at which meeting it was resolved that an AGM was to be held during the first week of August 2004, for the particular purpose of dealing with matters pertaining to the Club, including the way forward.

[10] It was also resolved that the members eligible to attend the AGM would be those who have paid up their subscription arrears for the period May 2004 and for the current year 2005. The Claimants assert that this procedure was inconsistent with rule 10 of the Rules of the Club. From the year 1986, to 2004, while the Second and Third Defendants were Honorary Treasure of the Club, the Club adopted a procedure for the collection of non-retired members arrears and current subscriptions whereby notice would be sent to them reminding them that their dues must be paid before the commencement of the AGM. By this procedure an opportunity was given to all non-retired members including the Defendants who were in arrears at May 2004, to fully pay up their arrears and current subscriptions in advance of the 2004 AGM

[11] At another AGM held on 28th September 2004, it was agreed that a four member sub committee be appointed to take a fervent look at the state of affairs of the Club and to formulate an action plan of the way forward. The sub-committee was given a date in October 2004 to report to the general membership of the Club. The report was not forthcoming. And there had been no AGM for the period 2005/2006; 2007/2008. So no notice was sent out to the Defendants to remind them to bring their subscriptions up to date. As such, the Defendants had fallen into arrears.

[12] On May 2008, the existing Management Committee convened an AGM without sending out the usual notice to the Claimants. The Claimants allege that the Committee did in fact send out notices to a select group of non-retired members, who paid up their arrears and brought their subscriptions up to date.

[13] When the Second and Third Claimants learned of the meeting held in May 2008, they attempted to pay up their arrears and current subscription, but their cheques were returned with an accompanying letter reminding the Claimants that the Club is not a trust and should not be viewed as such. The other Claimants attempted to pay up but they too suffered a similar fate.

[14] The Claimants say that the decision not to accept the Claimants' arrears and current subscriptions deprived the Claimants of their reasonable expectations that they would be notified to pay their arrears and current subscriptions and be invited to the AGM or SGM. The Claimants allege that the action by the MC is inconsistent with the Club's convention, procedure and practice.

[15] The Claimants allege that in May 2008, the MC prevented the Second and Third Claimants from carrying out their functions as Honorary Treasurer and Honorary Secretary and purportedly proceeded to dismiss them from their positions and replaced them. According to the Claimants, this action by the MC is in breach of Rules 17, 18 and 19, which provides for termination in accordance with rules 15 and 16. The Claimants allege that the action taken by the MC to dismiss the Honorary Secretary and the Honorary Treasurer is null, void and of no legal effect..

[16] The Claimants also say that the MC was not duly elected to serve in the Club year 2007-2008 and as such, it had no power to table a resolution for the dissolution of the Club and

to further cause a select group of non-retired members to vote on the said resolution and as such, the resolution is null, void and ultra vires the rules.

[17] Furthermore, the MC failed to report back to the members who elected them in 2004. Instead of reporting back, the MC purported to call a SM in May 2008 with the intention of dissolving the Club thereby running afoul of Rule 17 (iii). Therefore, says the Claimants, the action of the MC is ultra vires, null, void and of no legal effect as it fails to comply with the Club's Rules, convention, procedure and practice which have been adopted for a number of years.

[18] In the prayer for relief, the Claimants claim:

(1) A Declaration that the decision of the First, Second, and Third named Defendants /Management Committee to table a resolution to dissolve the Club and to cause a select group of Members to vote on that resolution is ultra vires and of no legal effect as it fails to comply with Club Rules, conventions procedure and practice which have been adopted and practiced by the Club for numerous years.

(2) A further Declaration that the appointment of Trustees to carry out the dissolution of the Club is ultra vires and void as it fails to comply with Club Rules;

(3) A further Declaration that the general membership of the Club comprises of all members that are listed on the Club List of members as at June 2004;

(4) An order that the AGM of the Club be called within 21 days of the date of the order and that the standard notice of the Club be served on all members of the Club as at the year ending June 2004; thereby notifying all members to pay their outstanding subscriptions at least 7 days prior to the AGM in order to be eligible to vote on matters that are on the agenda for consideration;

(5) Injunctive relief prohibiting the Accountant General of the Commonwealth of Dominica from making proceeds of compensation in respect of the intended compulsory acquisition of the Club's property situate at 49 High Street, until resolution of this matter

(6) Costs; and

(7) Further or other relief as the Court deems fit.

[19] By way of a joint Defence, the Defendants admit that during 2004 to 2005, the First and Second Claimants functioned as Honorary Secretary and Honorary treasure respectively. The Defendants further admit that the First and Second Claimants have not functioned in such capacities since 2008. This was in consequence of the fact that records produced by

the Second Claimant as Treasurer to the Second Defendant as Trustee revealed that all the Claimants herein (with the exception of the 1st Claimant) had failed to pay their annual subscriptions since the subscription period 2004-2005. The First Claimant had not paid since the subscription period 2005 to 2006. The Defendants also admit that certain members sought to pay cheques to cover their arrears and outstanding subscriptions. According to the Defendants, the MC was very surprised to learn of this and at a MC Meeting, the MC unanimously agreed that that these members had effectively resigned. Having so agreed, the MC then directed the First Defendant to write to the Claimants informing them that they were no longer members of the Club, and the reason why they were no longer members.

[20] The Defendants seem to be alleging that the 2nd, 3rd, 4th; 5th and 6th Claimants willfully refused to pay their annual subscriptions for three consecutive years, viz. 2004 to 2005; 2005 to 2006; and 2006 to 2007, and as such, the MC formed the view that they were no longer interested in being members of the Club and as such had resigned their membership as of 2005. As to the First Claimant, the Defendants say that that Claimant was taken to have resigned his membership in 2006 by 'willful' conduct in failing to pay two consecutive years – 2006 to 2007; and 2007 to 2008. The Defendants referred to certain actions and information within the knowledge of the "de factor treasurer," and maintained that the Claimants were not willing to pay. They asserted that the Claimants only became interested in continuing to be members when they learnt that there is a possibility of the Club being acquired. Having so learned, they offered payment without any notice of a meeting.

[21] In paragraph 7 of their Defence, the Defendants say that the First and Second Defendants cannot plead as Secretary and Treasurer because it will mean that they are pleading as MC against MC and they cannot maintain a claim that the MC has aggrieved the MC.

[22] The Defendants then took time out to address each and every paragraph of the Statement of Claim in a lengthy Defence consisting of 39 paragraphs of 13 pages. They seemed to have put forward their whole case in the Defence having on 19th November 2010 filed a document captioned "Affidavit of Exhibits to Defence of Amended Claim.

[23] In their penultimate paragraph 38, the Defendants plead:

> "Finally, as a point of Order, the Claimants have filed a new Claim form which the Defendants will contend is improper. The Claimants were given leave to amend their Statement of Claim. As such, the claim as found in the original claim No 22 of 2010 remains the claim that the matter is proceeding upon. In respect of the claim it was adjudged that claim 6 in the claim "an injunction restraining the accountant general…" is not available in law. Injunctions do not lie against the state."

The application

[24] Coming to the merits of the application.

[25] The application was filed on 21st February 2011. Mr Michael Fadelle, the 1st Applicant/Defendant swore to an affidavit in support of the application to strike. He was not cross-examined on the affidavit. The affidavit set out the history of the Club, and gave an insight into its operations and status over the years. It confirmed certain aspects of the Claimant's case, and repeats some aspects of the Defendant's case as stated in their Defence. It concludes by urging the court to grant the application to strike out the Claim in its entirety.

[26] In summary, the grounds of the application are that

i. The Claimant's Statement of Case discloses no reasonable grounds for bringing the claim. It is frivolous, vexatious and is an abuse of the process of the court.

ii. The first and second Claimants have no locus standi to make the claim as pleaded, as they are making the claim in the capacities of Honorary Secretary and Honorary Treasurer respectively and this means that as executive members of the Management Committee (MC), they are coming against themselves.

iii. The assertion that the Claimants have been derived of their rights to pay their dues is bad in law.

iv. The Claimants do not plead that they are still members of the Club. Only Club members can make a claim against the Club.

v. The pleadings cannot be remedied as they Claimants have admitted they are not members by their introduction of the term "non-retired members" – a term which is unknown to the rules and generally in the law of unincorporated corporations.

vi. The amended Statement of Claim fails to comply with the Order of Master Mathurin dated 9th September 2010 requiring the Claimants to specifically amend paragraphs 12, 13 and 14 of the Statement of Claim to add material particulars. The purported amendments are confusing. New allegations have been made and no further particulars have been included.

vii. The injunctive relief sought is not available in law as an injunction cannot lie against the State;

viii. The reliefs sought against the Defendants are not available because (a) the court cannot declare who are members of a Club; the court can only make a declaration as to law - not as to fact; (b) The Claimants have not pleaded any facts to support the claim that the Trustees dissolved the Club.

ix. The Claimants have failed to attach any specific wrong to the Defendants in the pleadings.

The court's power to strike

[27] The power to strike out a pleading which does not disclose any reasonable ground for bringing or defending a claim is conferred by CPR 26.3(1) (b) which provides:-

> "26.3 (1) In addition to any power under these Rules, the court may strike out a statement of case if appears to the court that -
>
> (a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;
>
> (b) that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
>
> (c) that the statement of case is an abuse of the court's process or is likely to obstruct the just disposal of the proceedings; or
>
> (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

[28] The fact that a judge or a master has the power to strike does not mean that the initial approach should be to strike out the statement of case. In many cases there will be alternatives which enable the court to deal with cases justly without taking the draconian step of striking the case out (Biguzzi Rank v Leisure plc [1999] 1 WLR 1926).

[29] The decision in Williams and Humbert Ltd v W and H Trademarks (Jersey) Ltd [1986] AC 368 cautions that the jurisdiction to strike out must be sparingly used, as its exercise deprives a party of the normal procedure for establishing rights by way of trial without discovery and oral evidence tested by cross examination.

[30] In this jurisdiction, the judgment of Sir Dennis Byron, CJ in the case of Baldwin Spencer v The Attorney General of Antigua et al (Civil Appeal No 20 A of 1997), is instructive. Sir Dennis cautioned:

> This summary procedure should only be sparingly exercised in clear and obvious cases, when it can clearly be seen, on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court.

[31] More recently in Ian Peters v Robert George Spencer, Antigua and Barbuda Civil Appeal 2009/016, the Hon Mde Janice George Creque, JA quoted the Hon Mde Ola Mae Edwards in Citco Global Custody NV v Y2K Finance, BVI Civil Appeal No 22 of 2009 as saying:

> '[18] On hearing an application made pursuant to CPR 26.3 (1) (b) the trial judge should assume that the facts alleged in the statement of case are true. Despite this general approach, however, care should be taken to distinguish between primary facts and conclusions or inferences from those facts. Such conclusions or inferences may require to be subjected to closer scrutiny."
>
> "Among the governing principles stated in Blackstone's Civil Practice 2009, the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit of plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its rights to a fair trial, and the ability to strengthen its case through the process of disclosure and other court procedures such as requests for information, and the cross-examination of witnesses, often change the complexion of a case. Also, before using CPR 26.3 (1) to dispose of 'side issues', care should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in every application, must be exercised in accordance with the overriding objective in dealing with cases justly."

[32] It is perhaps relevant to note that the English Rule 3.4 (2) (a) and (b) are almost on fours with the rules under consideration. According to the UK Practice Direction 3 A, the cases which fall under 3.4 (2) (a) include claims which set out no facts indicating what the claim is all about, for example "Money owed £5000. 00"; those which are incoherent and make no

sense; those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognizable claim against the defendant.; those that are vexatious, scurrilous or obviously ill-founded.

[33] Additionally, the Civil Court Practice 2007 (the Green Book) instructs that "when deciding whether or not to strike out, the Court [must] take into account all the relevant circumstances and make a broad judgment after considering the available possibilities."

Is the Claimants' claim deficient in any way?

[34] The required contents of a statement of case are set out in the Rules of Court. In CPR 8.7 (1) and (2) it is prescribed

> "The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies … The statement should be as short as possible."

The Claim against the Defendants

[35] It appears that the Claims against the Defendants are set out in paragraphs 14 to 22 of Amended Statement of Claim. They read in part:

> "14. In or about May 2008, the Management Committee elected at the 2004/2005 AGM convened a Special General Meeting of the club without sending out the usual notices to all non-retired members of the Club including the Claimants, requesting that non-retired members bring their arrears as at May 2008, and their current subscriptions up to date. In fact, the Management Committee did not invite the Claimants to the Special Meeting
>
> "15. The Defendants in fact sent out a list of members to a select group of non retired members of the Club. … "
>
> "16. Upon obtaining information on the said meeting, the 2nd and 3rd Claimants attempted to pay their arrears and current subscriptions … the 1st Defendant … refused to accept the said payment .

"17. The other Claimants also attempted to pay their subscriptions but their payments were also refused…."

"18. The Defendants allowed members who were not up to date with their subscriptions to pay their arrears and current subscriptions and further sent out notices to those members for the Special General Meeting in May 2008. Members who had outstanding subscriptions included Jeoffrey Harris, Eamon de Freitas, and Foued Issa. … These members were allowed by the Defendants to pay their subscriptions, while the said right or reasonable expectation was not extended or granted to the Claimants"

"19. The purported decision not to aaccept the Claimants' arrears and current subscription, having paid their subscriptions for the 2004 AGM, deprived the Claimants of their reasonable expectation that they would be notified to pay their arrears and current subscriptions and be invited to the next AGM or Special General Meeting. The action of the Management Committee is clearly inconsistent with the Club's convention, procedure and practice. "

"20. … In or about 2008, the Committee of Management locked out the duly elected Honourary Treasurer and Honourary Secretary of the Club from discharging their duties and purportedly proceeded to dismiss them from their posts and replace them. This action by the Committee is not in accordance with Rules 17 and 18 which establishes "Committee of Management" or Rule 19 which sets out the power of the Committee of Management.. … a Member's membership can only be terminated in accordance with Rules 15 and 16. …"

"21. … According to Club Rules, the next AGM was to be held … in August/September 2005. The AGM was not held in 2004/2005 as required by the Rule. The Management Committee further did not hold the AGM in 2005/2006; nor 2006/2007. The Claimants therefore dispute that the Management Committee not duly having been duly elected to serve in the year 2007/2008 had the power to table a resolution for the dissolution of the club and to further cause a select group of non – retired members to vote on the said resolution and as such the resolution is ultra vires the Rules, null and void.

> "22. The procedure for dissolving the club was not in accordance with Rule 17 (iii). Thus the action of the Management Committee is ultra vires, null and void and of no legal effect as it fails to comply with the Club's Rules, conventions, procedure and practice … "

[36] It is evident to me from a reading of the Claimant's Statement of Case that the Claimant's claim has set out a concise and coherent set of facts, which are not in dispute and which I must assume are true. The question is, whether those facts, as pleaded, disclose any reasonable ground for bringing the claim for the reliefs sought. If not, should the claim be struck out at this stage of the proceedings?

Mr Shillingford's submissions

[37] Mr Shillingford adopted the submissions of the Defendants filed on 27th September 2010 in respect of an earlier application by the Defendants to strike out the Claimant's Claim. The Claimant filed written submissions and both sides addressed the court - Mr Shillingford highlighting what he stated in the grounds of the application to strike, and Ms Lewis highlighting or amplifying her written submissions.

[38] Mr Shillingford posited that the Claimants have no locus standi as they are not members of the Club, they having failed to pay their dues. Mr Shillingford pointed to the fact that the Claimants admitted in their pleadings that they have not paid dues for three years and that they are in arrears.

[39] Next, Mr Shillingford argued that the Claimants have no right to be allowed to pay their arrears. This idea of a right to pay arrears is a concept that does not mesh in law, contended Mr Shillingford.

[40] As to the allegation of being "locked out" Mr Shillingford was of the view that the Claimants locked out themselves as they had failed to pay their dues.

[41] As to the allegation of dissolution of the Club being ultra vires, Mr Shillingford submitted that the Club has the right to unanimously change rules and make decisions as to how the Club functions. The dissolution was done by club members, argued Mr Shillingford. Even if the Claimants were included, the two thirds members would still be sufficient to allow dissolution.

[42] As to the allegation by the First and Second Claimants of membership and non acceptance of dues, Mr Shillingford submitted that they are claiming against themselves because they are the treasurer who accepts payment from, and secretary who issues notices to members. Mr Shillingford submitted that in those circumstances, the Claimants do not have a claim. Mr Shillingford concluded his submissions by submitting that on the face of the claim, the claim is not sustainable and cannot succeed.

Ms Lewis' submissions

[43] The argument for the Claimants is that the application should be dismissed because the application and grounds of that application have no merit in that

(i) The Claimant's claim is set out in sufficient detail to enable the defendants to answer it and they have in fact answered it in detail. The Defendants know perfectly well what the Claimant's case is all about. It is not appropriate to strike out at this stage of the proceedings where no disclosure has been made, and no witness statements have been filed and exchanged.

(ii) The failure of the Claimants to produce the "Rules" is a procedural error that can be rectified by invoking rule 26.9.(3).

(iii) The Defendants are asking the court to rule on an issue of fact as pleaded in relation to the AGM held on September 24th 2004. This is an issue of fact to be dealt with at the trial with the aid of evidence.

(iv) The Claimants have moved the court to consider whether the Defendants decision to bar them as members was a correct interpretation of the rules or the contract binding Club members. The interpretation of contractual provisions remains the purview of the Court, and cannot be contracted out by parties. Parties cannot use preliminary applications to prevent the Court from carrying out its lawful functions. The Claimants have pleaded that the Defendants have breached the Club Rules and conventions that governed the operation of the Club.

(v) A prima facie case has been set out against the Defendants in their representative capacities which should be determined at trial. The Claimants have set out a concise set of facts on which they intend to rely on at trial. The Claimants are not in breach of Rule 8.7 and the Claimants have espoused a reasonable ground for bringing the Claim.

(vi) As to alleged non-compliance with Master's Order, the master did not limit what material particulars were to be addressed. The master merely said

that she wanted the Claimants to pay particular attention to paragraphs 12, 13 and 14 of the Statement of Claim.

Discussion and Decision

[44] There is much force in the submissions of both Mr Shillingford and Ms Lewis.

[45] In particular, Mr Shillingford argues that on the pleadings, there is no case fit to go to trial. Ms Lewis on the other hand argues that there is sufficient material on the pleadings for the case to go to trial and that the court should consider whether the matter should proceed to disclosure and filing of Witness Statements and should be tested by cross examination. I prefer the submissions of Ms Lewis, and I propose to refuse the application to strike out.

[46] The authorities quoted above establish that a pleaded case should only be struck out if it clear and obvious that the claim is unsustainable and is bound to fail - (See Spencer v the Attorney General of Antigua and Barbuda, Antigua Civil Appeal No 20A of 1997); or if a party is unable to prove allegations made against a party; or that the statement of case is incurably bad; or that the statement of case discloses no reasonable ground for bringing the claim; and has no real prospects at trial -- See (Hector v Joseph Dominica Civil Appeal No 6 of 2003)

[47] In Three Rivers District Council v Governor and Company of the Bank of England [2001] UKHL l16; [2001] 2 All ER 513, Lord Hope of Craighead and Lord Hutton drew a distinction between striking out because when the pleaded allegations are considered, the claim is bound to fail, and striking out because when the court looks at what will happen at the trial, it is clear that there is no real prospect of success. In relation to the pleaded case, the position is that even if a case is weak, and not likely to succeed, it should not be struck out so long as the statement of case discloses some cause of action or raises some question fit to be tried.

[48] It is apparent that the Claimants' claim depends on:

(i) Whether the Claimants, at the time of the passing of the resolution to dissolve the Club, were existing members of the Club within the meaning of the rules, practice and conventions of the Club, so as to be entitled to be given notice of the AGM held on 24th September 2004, which notice would have afforded them the opportunity to pay up their arrears and current subscriptions, thus enabling them to vote on the resolution for dissolution of the Club, and which would have in turn enabled them to participate in the distribution and assets of the Club.

(ii) Whether the Claimants ceased to be members because they fell into arrears with their subscriptions within the meaning of the rules by reason of the circumstances; and were therefore not entitled to be notified of the AGM of 24th September 2004, and also not entitled to vote on the resolution to dissolve the Club passed on 24th September 2004; and hence, not entitled to any of the proceeds of the dissolution.

(iii) Whether the Defendants were in breach of the Rules of the Club when they proceeded to invite certain members or past members who were apparently in arrears for a certain period, to the AGM on 24th September 2004, to vote on a resolution to dissolve the Club, and excluded the Claimants and other members or past members;

(iv) Whether the Claimants had a right to be notified of the convening of the AGM of September 2004; and also had a right to be reminded as per practice and convention to pay up their arrears and current subscriptions.

[49] These questions to my mind, call for an interpretation of the relevant rules including rules pertaining to membership, subscription, expulsion of members, powers of the Committee of Management, alteration of rules etc.

[50] The Rules (which constitute the contract between the parties) and Bye-laws of the Club and other documents which the parties have exhibited, and are said to be relevant to their respective positions have all been pleaded and are before the court. But I do not agree that it is for me to determine whether any of those documents is devoid of any proof which sustains the claim for the reliefs sought by the Claimants. How the relevant rules are interpreted is a question of fact for the fact finder.

[51] In relation to the allegation that the Defendants allowed certain selected persons to pay up their arrears, (so as to become existing members) while disallowed others, it seems to me that this allegation raises an issue whether, and if so, when the Claimants allegedly took this step, they did so in breach of the rules pertaining to membership. This to my mind is a question of fact and can only be determined after evidence is considered. It is an issue that needs to be tried. The cases establish that facts need to be proved and evidence of those facts need to be filed and served. I am not inclined to the view that the case is a plain and obvious one for striking out at this stage when all the facts are not yet before the court. Assuming that witness statements will amplify the pleadings, and assuming that the process of disclosure and cross examination will strengthen the Claimants' case, I am not inclined to the view that the Claimants claim should be struck out. To do so will deprive them of an opportunity of having a fair trial on the issues.

[52] The Defendants are here asking the court to strike out a claim which they have already defended. This is not to say that an applicant cannot apply to strike out a statement of case which has already been defended. The CPR does not place any restriction on the time for filing an application to strike out a statement of case. However, to my mind, the Defendants by way of their statement of case have denied most of the allegations contained in the Claimants' statement of case thereby putting those allegations in issue. Where this is the case, the statement of case is not fit for striking out.

[53] In Ian Peters v Robert George Spencer Antigua High Court Civil Appeal 2009/016, supra, the Court of Appeal considered an appeal against the decision of the learned

master striking out the Claimant's statement of case in a situation where the Defence that had already been filed brought out live issues for trial. Justice of Appeal Mde Janice George-Creque (now Justice of Appeal Mde Janice Pereira), made reference to Bridgeman v Mc Alpine-Browne [2000] L.T.L Jan 10 C.A. in which her Ladyship found support for the view that a statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly be determined by hearing oral evidence. The court takes the view that the case at bar falls squarely within the principle enunciated in Bridgeman and is not suitable for striking out because there are live issues to be determined with the aid of oral evidence.

[54] The Claimants have cited cases dealing with the principles by which the court must be guided when exercising the draconian power of striking out a party's statement of case, as well as cases dealing with the law of clubs. I have already taken into consideration those cases pertaining to striking out. As to the cases cited pertaining to clubs, including Re St Andrew's Allotment Association [1969] 1 WLR 229, and the Junior Doctor's Association v The Attorney General for Jamaica, Jamaica Supreme Civil Appeal No 21 of 2000, I note that those cases were determined after full trial on all the issues.

[55] As to the claim by the Defendants that the Claimants have not complied with the master's order dated 9th September 2010, requiring the Claimants to specifically particularize paragraphs 12, 13 and 14 of the Statement of Claim, I do not see an order dated 9th September 2010. The notation on the file docket shows that on 21st September 2010, Master Mathurin made an order as follows:

> "Order
>
> Costs assessed $5500.00
>
> Appn Defendant considered with leave to Cl to add material particulars to Claim within 14 days Ref 12 – 14 SOC
>
> (2) Def to amend consequentially if necessary within 10 days thereafter
>
> (3) Reply to defence within 14 days
>
> (4) Adj for case management conference to 1st sitting of the Master in the new law term."

[56] Apparently, the order of 21st September 2010 has not been formally drawn up and perfected. In reviewing the order, I tend to agree with Mr Shillingford that the Master made specific reference to paragraphs 12 to 14; however, it would appear that the first case management conference had not been concluded, and as such it was open to the Claimants to file an amended statement of claim without an order of the court.

[57] I glean from my research that the law of Clubs is in a state of unsatisfactory condition. It is said to be a difficult area. The cases concerning unincorporated Clubs have been categorized as "contradictory even when they have managed to reach common conclusions; the reasoning have oftentimes been sparse and confusing".

[58] With this observation in mind, and taking into consideration the principles which guide the court in an application to strike as stated by Edwards JA, in Citco Global supra, considered and applied in Ian Peters, I am satisfied that the conclusion to which I must come is that the application must be denied and the case should proceed speedily to trial for a determination on all the issues raised in the pleadings.

Conclusion

[59] IT IS HEREBY ORDERED that

[1] The application by the Defendants to strike out the Claimant's Statement of case is denied.

[2] The matter shall be fixed for case management conference during the week of next sitting of the master.

[3] Costs of the application to be assessed if not agreed.

[60] I am grateful to counsel for their impressive and helpful submissions.

Pearletta E Lanns
Master

“