

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
CIVIL CLAIM NO. 316 OF 2011**



BETWEEN:

ALLAN WALKER

Claimant

V

**RALPH WALKER
JAMES ARTHUR
MORRIS ARTHUR**

Defendants

Appearances:

Ms. L. John for the Claimant.

Mr. C. Dougan Q.C., for Third Defendant.

Mr. Akin John and Ms. K. Peters for First and Second Defendants.

REASONS:

- [1] I delivered a finding on 28th June 2012 and indicated that I would deliver brief written reasons. An application of the Claimant, made by notice of application filed on 25th June 2012, was supported by the Claimant's affidavit.
- [2] I ordered that the Applicant be exempted from appearing at the court for any interlocutory hearings until trial of this matter where the Applicant will attend with his witnesses. No costs order was made.
- [3] The defendants applied for security of costs, filed on 8th May 2012 supported by the affidavit of the first defendant Ralph Walker, and I ordered: Security of costs granted in the sum of \$70,000.00. That sum to be paid on or before 15th September 2012 and proceedings to be stayed until then. If by the 1st December 2012 the sum is not paid the

matter is struck out. Costs for the day \$4000.00 to be paid by the claimant on or before 1st September 2012.

- [4] Submissions were made by Mr. Dougan and Mr. John. Mr. Dougan submitted that in suit 39/2002 security for costs was ordered against the claimant and was never paid. The claim is a sham as the same sum is mentioned in both suits; this suit and 39/2002. Claimant lives in the United Kingdom, with no security in St. Vincent. He is impecunious. Affidavit shows that he could not meet costs in another suit. No affidavit in response was filed.
- [5] Mr. John gave the history of litigation between father first defendant and son claimant. In suit 39/2002 the first defendant claimed against the claimant Allan Walker and his sister for loss, damage and injunction. In turn, the claimant counterclaimed against the first defendant in the \$774,700.00, exactly the same amount he is claiming in these proceedings
- [6] First defendant Ralph Walker's affidavit deposed that his son, the claimant, has lived in the United Kingdom for the past thirty plus years. The claimant is presently unemployed after working for several years as a taxi driver in the United Kingdom. In the High court suit 39 of 2002 the claimant counterclaimed against him in the same sum of \$774,700.00. When ordered by successive Masters at Case Management to produce evidence to sustain his claim to date he has failed to do so. The prescribed cost in accordance with Part 65.5(2) of CPR 2000 is likely to be \$38,735.00. I have not seen an affidavit from the claimant denying those facts.
- [7] Second defendant James Arthur filed an affidavit filed on 28th March 2012, in support of the application for an order for security for costs. He deposed that the claimant is claiming \$774,700.00 which is the same sum he previously counterclaimed against the first defendant in suit 39 of 2002. The claimant failed to comply with the court's order to produce documentary evidence of his investment in support of his claim

[8] Pt 24 deals with security for costs. By Rule 24.3 the court may make an order for security of costs only if it is satisfied, having regard to all the circumstances that is just to make an order, and that by paragraph (d) and (g), the claimant is ordinarily resident out of the jurisdiction. The power is a discretionary one to be exercised taking into consideration all the circumstances of the case. Sir Lindsay Parkinson v Triplan (1973) 2 WLR 632 establishes the following principles:

- (i) The important word in the section is may. That gives the judge a discretion whether to order security or not. There is no burden one way or the other. It is a discretion to be exercised in all the circumstances of the case.
- (ii) The Court must consider whether the application for security is being used oppressively so as to stifle a genuine claim.

[9] I do not consider that the security costs application is made to stifle the claimant's claim. It seems to me that the claimant's claim is not made bona fides and seems to be a sham. Further if an award is made against the claimant the defendants might not be able to enforce the award against him.

[10] I accept the affidavit evidence given on behalf of the defendants. I exercise my discretion and grant the application for security costs.


MONICA JOSEPH
HIGH COURT JUDGE (Acting)
15th July 2012.