THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2010/0934

BETWEEN:

ROCK JEAN

Claimant

and

1ST NATIONAL BANK OF SAINT LUCIA
FORMALLY KNOWN AS SAINT LUCIA CO-OPERATIVE BANK

Defendant

2012: FEBRUARY 29th

2012: JULY 31st

JUDGMENT

MASTER V. GEORGIS TAYLOR-ALEXANDER

Striking out of a statement of claim; CPR Rule 26.3(b); the court's power to strike out of its own initiative, CPR Rule 26.2; procedure to set aside a settled consent order; apparent or ostensible authority of a legal practitioner.

INTRODUCTION

[1] It is open to a litigant to apply to strike out a statement of case under the Civil Procedure Rules 2000 as amended where he thinks the opponent's case does not disclose any reasonable ground for bringing or defending a claim; is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; is

prolix or does not comply with CPR 8 or 10; or for a failure to comply with a rule, practice direction, order or direction given by the court in proceedings. Under CPR 26.2 the court of its own initiative and in keeping with its objective of active case management has a similar power.

[2] This is the fate that has befallen the claimant in these proceedings. By court order dated the 22nd December 2011, the court directed the filing of submissions on the issue of whether the claimant has any real prospect of succeeding on the claim as filed.

[3] I propose to consider whether pursuant to CPR 26.3 (b) there are reasonable grounds for bringing the claim.

Civil Procedure Rules 26.2

[4] The Defendant obtained judgment in default of defence in case number **SLUHCV2007/0996** a case concerning the default of a loan facility allegedly granted by the defendant in these proceedings to the claimant.

[5] The claimant who was represented by counsel filed an application to set aside the default judgment, whereupon the parties through their counsel sought to negotiate the amicable settlement of the proceedings. The conclusions of the meeting are in dispute.

[6] By consent order dated the 17th November 2009 and filed on the 1st of April 2010 in the original claim it was ordered that:-

(i) That the application to set aside the judgment in default of defence filed on the 30th April 2009 is hereby withdrawn.

(ii) That the Judgment Debtor shall pay the sum of $250.00 per month towards the judgment debt commencing from 30th November 2009 and continuing thereafter at the end of each succeeding month for a period of six months only, after which time the matter shall come up for review with respect to the defendant's effort to clear the debt.

(iii) In default of any one instalment the entire judgment debt then outstanding becomes due and payable forthwith.

[7] By application dated the 8th July 2010 the claimant sought to set aside the consent order negotiated by his attorney on the basis that the consent order dated the 17th November 2009 was negotiated and agreed without his consent. He further argued that the agreement reached was unreasonable and unconscionable.

[8] By decision of the court dated the 18th October, 21st December 2010 and 15th April 2011 and relying on the authority of **De Lasala v De Lasala [1980] AC 546,** the application to vary the consent order was refused.

[9] On the 22nd October 2010 the claimant filed these instant proceedings being fresh proceedings for an order setting aside the consent order entered on the 17th November 2010 on the ground of mistake. The matter came up for case management on the 22nd December 2011, when the court invited submissions on whether there was a real prospect of the claimant succeeding on the claim as filed.

[10] Submissions and authorities were filed by the claimant and defendant on the 26th and 27th January 2012, respectively.

The Test on Striking Out

[11] CPR 26.3 is identical in its wording to Rule 3.4 (2)(a) of the UK Civil Procedure Rules. The notes to CPR 3.4 Civil Procedure Vol.1 Autumn 2001 offer some

clarification as to when such a rule may be invoked. It states that this ground applies inter alia to (i) statements of case which raise an unwinnable case where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides (ii) a claim or defence which is not a valid claim or defence as a matter of law.

ISSUES

[12] The claimant commenced the fresh action, on the ground that the parties were never ad idem at the time of the execution of the consent order in **SLUHCV2007/0996** , and that the consent order was entered by the court on the 17th November 2009 by mistake of counsel on the apprehension that the parties had reached a binding agreement**.**

[13] The claimant relies on the authority of **De Lasala v De Lasala PC Appeal No.14 of 1977** as the authority for his cause of action. I have no quarrel with the authority relied on by the claimant and I am satisfied that the manner in which a consent order that is a final order is challenged, is by appeal or by initiating a fresh claim to set aside the order.

[14] The claimant in his brief and nebulous submissions relies on the authority of **Huddersfield Banking Co. Ltd v Henry Lister and Sons Ltd [1895] 2Ch 273, 276-277** in support of the contention that the court has jurisdiction to set aside a consent order upon any ground which would invalidate an agreement between the parties. This is merely a restatement of the law with which I am in agreement.

[15] The defendant in its brief and focused submissions addressed the elements of rule 26.3 and its application to these proceedings. The defendant submits that the claimant's action as filed is deficient and without hope of a success as:-

(a) It failed to discount the apparent or ostensible authority of a legal practitioner to act on behalf of the claimant; and submits that

(b) The statement of claim does not discount mutual mistake of a material fact.

[16] I find that the two issues identified by the defendant are an adequate basis on which the continuity of these proceedings can be challenged.

Mutual Mistake of a Material Fact

[17] Although the claimant relies on **Huddersfield Banking Co. Ltd v Henry Lister and Son Ltd** (ante) to support his contention of the court's authority to impeach a consent order where common or mutual mistake has been established, his pleading wholly depart from the proposition and fails at all to establish any basis on which common mistake can be established. The claimant's flawed submission is simply that his counsel mistakenly compromised his case. This to my mind is unsupported by the authority of **Huddersfield Banking Co Ltd v Henry Lister** and only speaks to the authority of the claimant's counsel as legal practitioner to act on his behalf, an issue I have dealt with below.

Apparent or Ostensible Authority of the Legal Practitioner.

[18] The claimant submits in his pleadings that his counsel on record at the time entered a consent judgment which did not reflect his instructions and compromised the litigation between the parties.

[19] Though the claimant at paragraph 9 of his statement of case acknowledges that the consent order was negotiated and executed by his duly retained counsel, he contends that the order must be set aside as invalid as his counsel failed to consult him and obtain his consent to the terms of the consent order.

[20] Counsel for the defendant relied on the authorities of **Sheppard v Robinson [1919] 1 K.B. 474 (C.A)** **and Waugh v H.B Clifford & Sons (1982) 1 ALL ER 1095** which establish that counsel retained in an action has an implied authority as between himself and his client to compromise the suit without reference to the client , provided that the compromise does not involve matters collateral to the action and ostensible authority as between himself and the opposing litigant to compromise the suit without actual proof of authority.

[21] I find force in the defendant's submissions. Assuming the facts pleaded to be true, I am satisfied that order filed met the requirements for a consent order as set out in CPR 42.7(1). I am satisfied that the claimant pleaded that at the time the consent order was negotiated Mr. Gerard Williams was his retained counsel and in my view he would have had the implied authority to act on his behalf. In the face of **Waugh v H.B Clifford & Sons (1982) 1 ALL ER 1095** and **Cecilia Francis v Louis Boriel Saint Lucia Civil Appeal No.13 of 1995** the claimant is challenged to discount his counsel's implied authority to negotiate the consent order and I am challenged to find the merit of his claim.

[22] In summation, upon an overall consideration of the facts and matters pleaded I am satisfied that the statement of case raises an unwinnable case and continuance of the proceedings is without any possible benefit to the claimant and would waste resources on both sides. I accordingly direct that the claimant's claim is struck out and order costs to the defendants in the sum of $750.00 to be paid forthwith.

HIGH COURT MASTER

V. GEORGIS TAYLOR-ALEXANDER