

EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2012/0336

JOSEPH W. HORSFORD

Claimant

and

GEOFFREY CROFT

Defendant

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Claimant in person

Ms. E. Ann Henry, Q.C. of counsel for the Defendant

2014: January 21,
February 14.

JUDGMENT

- [1] **ACTIE, M. [AG.]:** This is an application to strike out portions of witness statements pursuant to Part 29.5 of the **Civil Procedure Rules** (CPR 2000).

Background

- [2] The claimant by claim form and statement of claim filed on 15th May 2012, claims against the defendant damages for humiliation, assault and battery with a deadly weapon, to wit, a motor car. The claimant is also seeking aggravated and exemplary damages, costs and such other reliefs as the court may deem fit.

- [3] The defendant by notice of application with accompanying affidavit in support filed on 21st November 2013 applied to strike out portions of the witness statements of the claimant and Mr. Robert Jackson pursuant to **CPR 2000** Part 29.5(2).
- [4] The defendant contends that paragraphs 1 to 16, paragraphs 23 to 26, the last sentences of paragraphs 20 and 22 of the claimant's witness statement and paragraphs 5 to 12 and paragraphs 20 to 22 of the witness statement of Mr. Robert Jackson are irrelevant and scandalous.
- [5] It is the defendant's contention that the claim is for damages for trespass to the person namely assault and battery and the sole issue to be considered by the court is whether or not the defendant assaulted or committed battery against the claimant as alleged or at all. The defendant further contends that the statements sought to be struck out will unnecessarily protract the proceedings by reason that they introduce matters which are not the subject of the proceedings but which may have already been adjudicated upon by the court. The defendant avers that the portions of the witness statements sought to be struck out are utterly irrelevant to the issues and have no probative value but are likely to be highly prejudicial to the defendant. The defendant in support relies on the authority of **John Duggan, (qua administratrix) v HMB Holdings Limited et al**¹.
- [6] The claimant in response to the application states that all the facts in his witness statement and witness statement of Mr. Robert Jackson are true and relevant to the claim. The claimant states that the defendant has filed a defence in which he has admitted much of what he now seeks to strike out.

Joseph Horsford's Witness Statement

- [7] The claimant's claim is for damages and other reliefs arising out of assault and battery where the claimant alleges that he was struck by the defendant with his motor vehicle. Upon review it is noted that the claimant's witness statement is

¹ Antigua & Barbuda ANUHCV 2002/0055 delivered on 29th May 2009.

replete with details which are irrelevant for the determination of the issues in the claim. Paragraphs 1 to 10 and paragraphs 23 to 26 contain information relating to issues of succession from which the claimant obtained title to the parcel of land on which the alleged trespass was committed. The paragraphs also relate to letters of administration and evidence from previous disputes in relation to the ownership of the land, issues already litigated between the parties which in my considered view are not relevant in the extant claim. It has been accepted that statements in pleadings in previous litigation are not evidence against the party pleadings in subsequent proceedings and are therefore inadmissible. Paragraphs 1 to 10 and 23 to 26 are superfluous and irrelevant for the determination of cause of action in the extant claim form. Accordingly paragraphs 1 to 10 and 23 to 26 of the witness statement of Mr. Joseph Horsford are irrelevant and scandalous and are hereby struck out.

[8] The defendant is also seeking to strike out paragraphs 11 to 16. Upon review I am of the humble view that the paragraphs outline the circumstances which gave rise to the alleged assault and battery. The witness referred to the statements made by the defendant and also gave a summary of what transpired in the presence of the surveyor who is said to have been on site at the time of the incident. Statements made in the presence and hearing of a party may be admissible in civil proceedings.² Such statements are admissible to show the conduct and demeanour of the party when the statement was communicated to him. I am of the humble view that the paragraphs 11 to 16 are relevant to the claim as it appears that they merely regurgitate what transpired on the date of the incident.

[9] I accept the defendant's contention that the last sentence in paragraphs 20 is superfluous and irrelevant to the issue of assault and battery and should be struck out. I also accept that the last sentence in paragraph 22 refers to previous litigation between the parties which are also irrelevant to the issue to be determined on the claim.

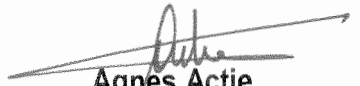
² May v Taylor (1843) 6 man & G 26; Re Whitley and Roberts Arbitration 91891) 1 Ch 558 at 563.

Witness Statement of Mr. Robert Jackson

- [10] The defendant seeks to strike out paragraphs 5 to 12 and 20 to 22 of the witness statement of Mr. Robert Jackson.
- [11] I am of the view that paragraphs 5 to 12 and paragraph 21 are admissible and should not be struck out as they are merely statements of the witness giving his version of what transpired on the date of the alleged trespass against the claimant. I am of the view however that paragraph 20 deals with an issue prior to the event which is of no consequence to the claim for assault and battery. Paragraph 22 is opinion evidence which is more prejudicial to the character of the defendant and is irrelevant in the proceedings before the court.
- [12] **Civil Procedure Rules 2000** Part 29.5(2) states:
"29.5. (2) The Court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.
- [13] In **John Duggan, qua administratrix v HMB Holdings Limited et al**³ Harris J at para 30 states:
"the witness statement is really a witness proof. It foreshadows the oral testimony of a witness. Pursuant to the CPR 2000 and in furthering the objectives of the said CPR 2000. Not least of which, for saving of time, the court may order that the witness statement stands as evidence in chief".
- [14] In the circumstances and upon review of the evidence before the Court it is ordered that:
(1) Paragraphs 1 to 10 and paragraphs 23 to 26 of the Witness Statement of Mr. Joseph Horsford are hereby struck out.

³ Antigua & Barbuda ANUHCV 2002/0055 delivered on 29th May 2009

- (2) Paragraphs 11 to 16 of the Witness Statement of Mr. Joseph Horsford are not struck out.
- (3) The last sentence in paragraphs 20 and 22 of the Witness Statement of Mr. Joseph Horsford are struck out.
- (4) Paragraphs 5 to 12 and paragraph 21 of the Witness Statement of Mr. Robert Jackson are not struck out.
- (5) Paragraphs 20 and 22 of the Witness Statement of Mr. Robert Jackson are struck out.
- (6) No order as to costs as both parties had some level of success in the application.


Agnes Actie
Master [Ag.]