

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2012/0062

BETWEEN:

THE INCORPORATED TRUSTEES OF THE
SEVENTH DAY ADVENTIST CHURCH

Claimant

and

JESTER EMMONS
JERRY EMMONS
GODWIN EMMONS

Defendants

Appearances:

Ms. Kimber Guy-Renwick for the Claimant
Mr. Deloni Edwards for the Defendants

2014: July 23

REASONS IN ORAL RULING

- [1] **MOHAMMED, J.:** By notice of application filed on 5th February 2014 (“the application”), the Claimant (“the Claimant”) applied to strike out the Defendants’ Defence and Counterclaim pursuant to CPR 26.3 on the basis that they do not disclose any reasonable ground for defending the Claim and are an abuse of process. The grounds of the application are:
- (a) the Defence of proprietary estoppel has not been established on the face of the pleading and the Court (decision of Ellis J dated 27th May 2013)

had already ruled that the material elements of proprietary estoppel, namely that the Defendants in constructing and rebuilding the church did so in the belief that they had a proprietary interest or would obtain such as interest, was not pleaded; and

(b) The Counterclaim in respect of proprietary estoppel is statute barred which this Court had already ruled on¹, and neither ruling has been appealed.

[2] On the 27th May 2013 Elis J granted the Claimant injunctive relief restraining the Defendants and their servants and or agents from entering and or using the Carriacou property or in hindering its enjoyment pending the outcome of the trial or further order of the Court.

[3] The Respondents/Defendants have opposed the application for the following reason: there are still issues to be determined by the Court arising from the pleaded case, such as the construction of the church rules, proprietary estoppel and irrevocable licence.

[4] Both parties provided authorities which referred to the principles the Court must apply when considering whether to strike out a pleading. It is settled law that striking out a pleading is a very drastic step which a Court should use sparingly and would only do so in exceptional circumstances. In **Partco Group Ltd v Wragg**¹ Potter LJ stated that striking out cases would be appropriate in cases:

- (a) Where the statement of case raises an unwinnable case so that continuing the proceedings is without any possible benefit to the defendant and would waste resources on both sides;
 - (b) Where the statement of case does not raise a valid claim or defence as a matter of law;
 - (c) If the facts set out do not constitute the cause of action or defence alleged;
- or

¹ [2002] EWCA Civ 594

- (d) If the relief sought would not be ordered by the Court.
- [5] Edwards JA in **Citgo Global Custody v Y2K Finance**² provided the following as circumstances when the Court ought not to strike out a claim as:
- “... where the argument involves a substantive point of law which does not admit of a 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 developed ...”
- [6] The reliefs sought by the Claimant in its Fixed Date Claim are:
- (a) A declaration that the Defendants are not permitted to enter a lot of land and church building situate at Hillsborough, Carriacou (“the Carriacou property”);
 - (b) An injunction to restrain the Defendants, their servants and or agents from entering or using the Carriacou property or in any way hindering the Claimant’s use of its enjoyment;
 - (c) Delivery of the Treasurer’s Book;
 - (d) Delivery of tithes and offering due from January 2007 to 5th June 2011;
 - (e) Mesnes profits at the rate of \$2,000.00 per month from June 2011 until possession is delivered up and further or other relief.
- [7] In paragraph 1 of the Statement of Claim, the Claimant asserts that it is the owner in fee simple of the Carriacou property. This was admitted by the Defendants at paragraph 1 of their Defence and Counterclaim. The Claimant’s paper title is not in dispute.
- [8] In paragraph 2 of the Statement of Claim the Claimant asserts that the Defendants were its members of the congregation situated in Carriacou. The first Defendant was the First Elder, the Second Defendant was the Treasurer and the Third Defendant the Head Deacon. The Defendants have denied this since their position is that they were members of the Carriacou Congregation of the Adventist Church

² Unreported Court of Appeal decision in BVICVA No. 22/2008

(paragraph 2 of the Defence and Counterclaim) and that the Grenada Conference of Seventh Day Adventist is not an organization known to law. The effect of the Defendants' position is it places as an issue to be determined by the Court the legality of the Grenada Conference of Seventh Day Adventist and its consequential actions. In my view this issue is tied in to the Claimant's relief for delivery of Treasurer's Book and delivery of tithes and offering due from January 2007 to 5th June 2011.

[9] In paragraphs 3 to 7 of the Statement of Claim, the Claimant asserts that the relationship between its members is governed by a manual ("the Church Manual"). In July 2003 it formed an organization called the Grenada Conference of Seventh-Day Adventist ("the Conference") pursuant to Chapter 3 of the Church Manual and that the Conference consists of the Claimant's local Churches in Grenada. The Claimant's position is that the Defendants are bound by the Church Manual and that they have breached the Church Manual such as from January 2007 to 5th June 2011 by failing to comply with the authority of the Conference by withholding tithes and offering due to the Conference's treasury, and for the period September 2007 to 5th June 2011 by failing to recognize the authority of the Conference's Committee, Administrators, Directors and Pastors and failing to comply with the authority of the Conference by refusing to accept and read to the Carriacou Congregation any correspondence from the Conference and refused to send reports to the Conference's office.

[10] Paragraph 7 of the Defence challenges the Manual and calls upon the Claimant to prove that it produced it. The Defendants also go further at paragraph 8 to deny breaching any church rules and instead contend that the Carriacou Congregation was wrongly expelled from the Seventh Day Adventist Church. Given the Defendants position, the legality of the expulsion of the Carriacou Congregation is also an issue to be determined by the Court and given the deep seated differences between the parties on this issue, it is critical that a determination is made at trial.

[11] Paragraphs 11-15 and 19 of the Defence, which are tied in with the Counterclaim, set out the facts upon which the Defendants ground their plea of proprietary estoppel and irrevocable licence. In examining the issue of whether the Defendants had an arguable Defence at the inter partes hearing of the Claimant's application for injunctive relief as set out in paragraph 2 aforesaid, Ellis J examined in detail the doctrine of proprietary estoppel at paragraphs 26-29. The learned judge found that the Defendants had failed in its Defence and Counterclaim to demonstrate that they had an arguable case which goes beyond mere assertion that they personally have a legal or equitable right to enter and remain on the Carriacou property³. She ruled that the material element of proprietary estoppel, namely that the Defendants in constructing and rebuilding the church did so in the belief that they had a proprietary interest or would obtain such an interest, was not pleaded.

[12] Indeed I have found that the facts relied on by the Defendants in support of its plea of proprietary estoppel and irrevocable licence are the same. The failure by the Defendants' pleading to satisfy the constituent elements of proprietary estoppel and irrevocable licence, in my view, cannot be fixed by any evidence since the Claimant is entitled to know the case it has to meet in addressing this plea before any evidence is produced. The Defence of proprietary estoppel has not been established on the face of the pleading. In addition, this Court determined on the 12th December 2013⁴ that the facts relied on to support the Defendants' Counterclaim of proprietary estoppel was statute barred. In my view, the Defendants have failed to establish any reasonable ground for its Defence and Counterclaim of proprietary estoppel and irrevocable licence, and to allow this to go forward as an issue to be determined is a waste of resources.

[13] For the aforesaid reasons, paragraphs 11-15 and 19 of the Defence and the Counterclaim are struck out since they fail to disclose any reasonable ground for

³ Paragraph 53 of the Ellis judgment

⁴ Ruling by Mohammed J

the Defendants' Defence and Counterclaim based on proprietary estoppel and irrevocable licence.

[14] However, the issues of the legality of the Grenada Conference of Seventh Day Adventists and its consequential actions and the legality of the expulsion of the Carriacou Congregation are still relevant to the Claimants' relief of delivery of the Treasurer's Book and tithes and offering for the period January 2007 to June 2011 are still to be determined by the Court from the remaining paragraphs in the Defence.

[15] I am mindful that the application was to strike out the Defence and Counterclaim and not one for summary judgment, which is not permitted in proceedings commenced by Fixed Date Claim (CPR 15.3(c)). Therefore, the Court is not in a position to pronounce on the first and second relief sought in the Fixed Date Claim. In my view the onus is still on the Claimant to prove that it is entitled to the said reliefs.

[16] I will hear the parties on costs.

[17] Both parties agree that no order as to costs.

Margaret Y Mohammed
High Court Judge