

SAINT VINCENT AND THE GRENADINES

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

CLAIM NO 80 OF 2012
BETWEEN:

IVAN O'NEAL

Claimant

AND

ST VINCENT ELECTRICITY SERVICES LIMITED (VINLEC)

Defendant

Appearances:

Mr Emery Robertson for the Claimant
Ms Paula David for the Defendant

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2014: May 14; September 30
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RULING

INTRODUCTORY

- [1] **LANNS, MASTER:** This case has had a checkered history.
- [2] On the 14th May 2012, the Claimant, Mr Ivan O'Neal, commenced proceedings against the Defendant St Vincent Electricity Services Limited (VINLEC) by way of a Notice of Application supported by an Affidavit sworn to by him. In the Notice of Application, Mr O'Neal sought an "Order that judgment be entered for him for a (a) A Declaration that the Defendants must disclose a schedule, detailing how, when and where the significant amount of money \$13,832,312 listed as Other Operating Expenses on page 37 of VINLECS's 2009 Audited Financial Statement was spent, and disclose the number of disconnections and reconnections of electricity to customers for the period 2006 to 2010".
- [3] After two adjournments, the Application came on before Her Ladyship Thom J on 8th June 2012. Justice Thom invited Mr O'Neal (who was then an unrepresented litigant) to commence his proceedings in the usual manner.
- [4] Mr O'Neal withdrew the Application and on 22nd June 2012, he filed a "Fixed Date Claim Form" together with Statement of Claim, Particulars of Claim, Affidavit in support, along with attachments spanning 55 pages. From what I can decipher from the several pages, Mr O'Neal has claimed: (a) financial loss and injury caused to him by VINLEC's "false operating expenses in the year 2009, and overcharging of its customers to cover these false operating expenses" ; (b) the sum of \$1,104.00, being 13.46 % of what the Claimant paid to the defendant in 2009 for electricity supply charges. ..."

- [5] The Defendant, by way of Defence, has disputed the Claim on several grounds, including: 1) that the claim is not properly before the court, it having been instituted by way of Fixed Date Claim Form; 2) that the claimant, having claimed special damages in the sum of \$1,104.44, ought to have filed his claim in the Magistrate's Court where the jurisdiction limit is \$15,000.00. VINLEC specifically denies that it is indebted to Mr O'Neal in the sum of \$1,104.44 or any other sum. It has also specifically denied that there is any mathematical correlation between the sum of \$13,813,312 applied toward "other operating expenses" and 13.46% of the payments made by Mr O'Neal to VINLEC in 2009. Wherever, VINLEC denies an allegation, it has specifically put forward its own version of the facts, and has identified and attached documents to support its case.
- [6] The matter came before Justice Thom on 31st October 2012 apparently for first hearing of the Fixed Date Claim. At that hearing, Justice Thom ordered that the matter is to be "treated as an ordinary claim although it is styled as a Fixed Date Claim", and the learned Judge referred the matter to the Master for Case Management.
- [7] At a Case Management Conference held on 21st November 2012, Master Taylor-Alexander, opined that the statement of case filed was laden with conjecture and embarrasses VINLEC in the filing of a Defence. She was satisfied that the claim does not identify a cause of action, and does not come within the jurisdiction of the High Court, and ought to be struck out. Nevertheless, the Master directed Mr O'Neal to retain Counsel and return to court on 11th December 2012. It is apparent that there were intervening adjournments to allow Mr O'Neal's Counsel to place himself on the record and to allow him to peruse the file.
- [8] At a further Case Management Conference held on 18th March 2013, the Master made an unless order that "The Claim Form and statement of Claim are to stand dismissed UNLESS the claimant within 21 days hereof files an amended claim." VINLEC was given liberty to file an amended defence to the amended claim within 14 days of service of the amended claim form.
- [9] On the 8th April 2014, Mr O'Neal filed an Amended Claim consisting of 50 paragraphs, with six documents exhibited thereto. Mr O'Neal stated that he was also relying on the documents filed previously. Essentially, Mr O'Neal, in his Amended Claim, (as he did in his original claim), has taken issue with VINLEC's Annual Report/Financial Statements for the year 2009, describing parts of it as "false" and has formulated his pleadings in much the same prolix manner as he did previously.
- [10] Paragraph 1 of the Amended Claim sets out Mr O'Neal's qualifications.
- [11] Paragraph 2 discusses "Management Responsibility for the Financial Statements.
- [12] Paragraph 3 discusses "Auditor's Responsibility"
- [13] Paragraphs 4-8 speak to the "Amended Claim". Here, Mr O'Neal's pleaded case, in essence is that
- (1) Management failed to comply with International Financial Reporting Standards;
 - (2) Management failed to provide a schedule, note, and disclosure under "Materiality and Aggregation" for Administrative Expenses amounting to \$18,235,767.

- (3) Management failed to comply with International Financial Standards "Materiality and Aggregation" ; in that it did not produce a schedule and note and disclosure for Other Operating Expenses amounting to \$13,831,312 and these operating expenses are false.
- (4) The Claimant has suffered financial injury owing to management 's non-compliance with International Financial Reporting Standards under "Materiality and Aggregation". Other operating expenses are false due to inadequate accounting and non-compliance with the International Reporting Standards and lack of transparency.

[14] Paragraphs 9-20 are discussed under the sub-heading "Inadequate Accounting"

[15] Paragraphs 21 - 26 are pleaded under the sub-heading "Materiality and Aggregation";

[16] Paragraphs 26-50 cover "Other matters"

[17] Mr O'Neal prayed for the following reliefs:

- (1) A Declaration that the other operating expenses of \$13,831,312 as set out on page 2 of VINLEC's 200 (sic) audited statement are false;
- (2) \$1,104.44 for being overcharged in 2009;
- (3) Interests; (4) Costs; and (5) Further or other relief as the court as may seem just to the court.

APPLICATION BY VINLEC TO STRIKE OUT AMENDED CLAIM

[18] VINLEC has not filed an Amended Defence. Instead, it has filed a Notice of Application for an order that Mr O'Neal's Amended Claim be struck out with costs to VINLEC, on the ground that the Amended Claim discloses no cause of action and it is prolix.

[19] Mr Stephen Mc.A. Huggins swore to an Affidavit in support of the Application. In it, Mr Huggins has chronicled the events leading up to VINLEC's Application to strike.

[20] At paragraphs 9 and 10 of his Affidavit, Mr Huggins deposes:

"9. The Claimant filed and served his Amended Claim on 8th April 2013. The amended Claim filed on behalf of the Claimant contains the same conjecture, and illusory notions contained in the Notice of Application filed by the Defendant on the 12th day of May 2012. It makes allegations similar to those made in the document entitled "Fixed Date Claim Form" ... with the notable exception that the Claimant appears to have abandoned his claim that the Defendant billed him \$1,104.44 in excess of what he surmises is his true electricity bill. Instead, at paragraph 7 of the Amended Claim, the Claimant makes an even murkier allegation that he has suffered financial injury owing to (sic) management did not comply with International Financial Reporting Standards under "Materiality and Aggregation" Nowhere in the Amended claim does the Claimant particularise what financial injury was caused to him."

"10. As the Defendant cannot decipher what wrong it is alleged to have committed against the Claimant, and what injury the Claimant alleges he has suffered from the alleged wrong, the Defendant finds itself unable to construct a defence to the rambling, nebulous unintelligible Amended Claim filed on behalf of the Claimant."

APPLICATION BY MR O'NEAL TO DETERMINE THE TERMS OF A JUDGMENT IN DEFAULT OF DEFENCE

[21] Curiously, on 10th May 2013, Mr O'Neal filed a Notice of Application for an order that judgment be entered for him on his Amended Claim as VINLEC has not filed and served a Defence.

[22] The grounds of application can be summarised thus:

- (1) VINLEC is in breach of CPR10.3 (1); 10.5 (1) - (8).
- (2) The Court issued an order giving VINLEC 14 days within which to file an Amended Defence.
- (3) Mr O'Neal served the Amended Claim on VINLEC on 8th April 2013 and VINLEC has not even filed an Acknowledgement of Service. VINLEC was to file its Amended Defence by 22nd April 2013, but has failed to do so.
- (4) Mr O'Neal did not agree to extend the period for filing a Defence and VINLEC has not applied for an order extending time for filing a defence.

[23] Mr O'Neal swore to an Affidavit in support of his application repeating the grounds of application adding, that he has been advised by his solicitor Mr Emery Robertson and verily believe that by not filing a defence, VINLEC concedes that it has no realistic prospect of success. Mr O'Neal also deposes that he has also been advised and verily believes that VINLEC could have asked for further and better particulars, or make a request for information; and that any defect in the matter could be remedied by oral examination and cross examination.

[24] Mr O'Neal claims that the matter is a new field and should not be struck out, but allowed to go forward as it would develop the jurisprudence as to the method and fairness to the consumers of VINLEC's services, as well as to know how their charges are arrived at, and if their accounting process is accurate and false.

[25] In resisting Mr O'Neal's application, learned Counsel Ms David pointed out that the order of the master was not mandatory as it said that VINLEC was "at liberty" to file an amended defence, and in any event, it cannot file an amended Defence because it cannot understand what Mr O'Neal is seeking. Counsel then referred to a judgment of this court in the case of **Lennox Linton v Anthony Astaphan et al**, Claim No. DOMHCV 2008/0436, particularly paragraph 4 where the court described the pleadings in the case as being "confusing and unfocused" and went on to strike it out in its entirety with leave to file a fresh statement of claim.

[26] It was counsel's further submission that the Amended Claim is replete with comments and arguments without identifying a cause of action. Counsel was of the view that Mr O'Neal has not conformed to the requirement that every pleading must contain a statement in summary form of the material facts on which the party pleading relies for his claim or defence as the case may be but not the evidence by which those facts are to be proved.

[27] I can readily and conveniently dispose of both applications.

DISPOSITION OF THE APPLICATIONS

[28] Having read the Application by VINLEC to strike out the Amended Claim; AND having read the Application by Mr O'Neal for the entry of Judgment for failure to Defend; And having considered the Affidavits in support of, and in opposition to the Applications; AND having considered the submissions of the parties: in respect of both applications;

IT IS HEREBY ORDERED that both applications are refused for the following reasons:

In relation to Mr O'Neal's Application for Judgment in default of Defence

- (1) The order the Master made on 18th March 2013 was not mandatory in its terms as to the filing of an Amended Defence.
- (2) A Defence filed in respect of an original claim would be efficacious in respect of an amended Claim, although the Defendant may file an Amended Defence if he so desires.

(Per Dame Janice M. Pereira, Chief Justice, in **Adam Bilzerian v Weiner and Weiner, SKBHCAP2012/0028**)
- (3) A fulsome Defence having already been filed, that extant Defence can be treated as the Defence to the Amended Claim; and thus, it would be open to the Claimant to seek the permission of the court to file a Reply to the extant Defence if necessary.
- (4) Where there is an effective Acknowledgement of Service filed to an original claim, and the original claim was subsequently amended, the Acknowledgement of Service remains valid and effective in respect of the Amended Claim and another Acknowledgment of Service need not be filed. (Per Dame Janice M. Pereira, Chief Justice, in **Adam Bilzerian v Weiner and Weiner, SKBHCAP2012/0028**)
- (5) Where an application has been made to strike out a statement of claim, the application stops time from running in relation to the period within which a Defence should have been filed provided that the application is filed before the time to file the Defence expires. Once the application has been filed before the time to file the Defence expires, the Defendant would be entitled to a hearing of its application before the requirement for filing of a Defence could arise, and certainly before a judgment could be entered for failure to file a Defence

(See **St Kitts Nevis Anguilla National Bank v Caribbean 6/49 Limited, St Kitts and Nevis Civil Appeal No 6 of 2002**)

In relation to the Application by VINLEC to strike out the Amended Claim:

- [1] An application to strike out a statement of claim, if made within the period for filing a defence, operates as a stay of the proceedings until the application is heard and determined. (**St Kitts Nevis Anguilla National Bank v Caribbean 6/49 Limited, St Kitts and Nevis Civil Appeal No 6 of 2002**)
- [2] By the date the Application to strike out was filed, time to file the Amended Defence had already expired, and its effect of stopping time from running was too late.
- [3] Based on the dictum of Dame Janice Pereira in the case of **Adam Bilerian**, supra, the extant Defence can be, and is treated as the Defence to the Amended Claim.

[29] AND IT IS FURTHER ORDERED that:

- [1] The Court Office be and is hereby directed to set down the matter for further case management conference during the week of the next sitting of the Master in St. Vincent and the Grenadines.
- [2] Success was divided so there shall be no order as to costs.

[30] I am grateful to Counsel and to Mr. O'Neal for their assistance.

PEARLETTA E LANNS
Master.

