

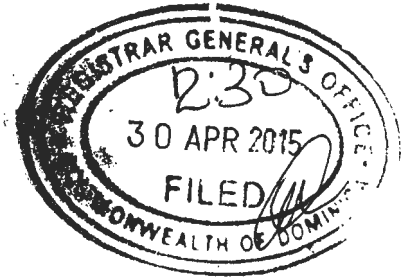
IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

DOMINICA

(CIVIL)

DOMHCV2012/0161

DOMHCV2012/0208



REYNOLD ELOI

RESPONDENT/CLAIMANT

and

JULES MARK

APPELLANT/DEFENDANT

AND

JULES MARK

APPELLANT/CLAIMANT

and

SINGOALLA BLOMQVIST - WILLIAMS

RESPONDENT /DEFENDANT

Matters consolidated by virtue of order of court dated 25 May 2013

APPEARANCES:

Mrs Singoalla Blomqvist- Williams In person and for Reynold Eloi

Mr Jules Mark in person

2015: January 14

2015: May 1

[1] **STEPHENSON J:** This is an application brought by Reynold Eloi and Singoalla Blomqvist-Williams (*the applicants*) in this action for certain paragraphs of Jules Mark's (*the respondent*) witness statement to be struck out on the ground that the offending paragraphs do not comply with the Civil Procedure Rules 2000 Part 29.5.(CPR)

[2] The applicants assert in their application that the offending paragraphs in the witness statements include matters of information and belief which are not admissible pursuant to the said Part 29.5 (1) (e) of CPR which states that:

*"A witness statement must ...
Not include any matters of information or belief which are not admissible or,
where admissible, must state the source of any matters of information or
belief."*

[3] The respondent to this application Mr. Mark accepts that some of the paragraphs fall foul of the CPR and agrees that they should be struck and expunged from the record.

[4] At the hearing of the matter, I heard Mrs. Blomqvist- Williams on each and every one of the paragraphs contained in the respondent's witness statement which she seeks to have struck and in turn I heard the respondent's response on each and every paragraph which the applicants sought to have struck out.

[5] The respondent accepted that paragraphs 27, 36 and 37(l) falls foul of the CPR and conceded that they should be struck and excised from the record. Therefore, I will not review same.

Background

[6] In claim number 161 of 2012, Reynold Eloi filed a claim against Mr. Mark, Mrs. Blomqvist-Williams appears as Counsel for Mr. Eloi in this matter and Mr. Mark appears for himself. In claim number 208 of 2012, Mr. Mark, appearing in person, filed a claim against Mrs. Singoalla Blomqvist-Williams and Mrs. Blomqvist-Williams appears for herself in defence of this matter.

[7] The applicant, Reynold Eloi, is the registered owner of a certain piece and parcel of land located at Point Mulatre Estate. He filed a claim against the respondent for possession of the said parcel,

for damages to a fence, damages for trespass and for an injunction for the respondent to remove from the said premises and to prevent him from entering the said property.

- [8] The respondent in turn brought a claim against the applicant, Mrs. Blomqvist-Williams alleging fraud on the part of Mrs. Blomqvist-Williams claiming that she fraudulently enabled Reynold Eloi to obtain title to the said piece of land the subject matter of the case at bar. He also claims damages and an injunction to remove Mr. Eloi from the land (*The same piece of land that Mr. Eloi has sued him for*) and from entering the said land. The respondent in his claim makes many serious accusations against Mrs. Blomqvist-Williams and is ultimately asking this court to have her removed from practicing law in the Commonwealth of Dominica.
- [9] The matters were consolidated by Master Georgis Taylor Alexander in 2013 and I believe that it was because the matters concerned the same piece of land and the same persons, that is, Mrs. Blomqvist- Williams, Mr. Eloi and Mr. Mark.
- [10]The pleadings in the matter were closed and the Pre Trial hearing was conducted and the parties have filed their witness statements. A trial date is to be set for the matter. The applicants filed an application for parts of the respondent's witness statements to be struck and expunged from the record.

The Application:

- [11]It is noted that the applicants brought their application under Part 29.5 (e) which deals with the inclusion of matters of information or belief which are not admissible, however at the hearing of the application the applicants mounted objections in the following terms and areas:
- a. That the statements made in paragraph 10 of the witness statement are separate causes of actions in and of themselves and were not pleaded in the respondents Counter Claim. The respondent contends that the matters as stated are relevant and that anything to do with fraud will involve things that are scandalous to persons as that is the whole nature of fraud. The respondent contends that the witness statement speaks of that which happened to him and that he can say what happened to him and whether or not he decides to bring another case is no reason why he cannot say what he has to say as a witness.
 - b. That the statements contained in paragraph 11 of the witness statement are hearsay and are inflammatory of the Police Officer and that it has no bearing on the case. The

respondent contends that the statements are not hearsay and that he was present when the statements were made and they affect him directly. According to the respondent he was present and that he heard what that officer said as the words were directed to him and he is relating his experience which is what he, as a witness has to do and that it is the truth.

- c. That the statements made in paragraph 13 of the witness statement contains a new cause of action for damage to his property and there is no such action before the court. Counsel Mrs. Blomqvist-Williams submitted that to have this included is to have the court think a certain way and the respondent should not be allowed to say this. The respondent contends that everything stated in the paragraph is factual, relevant and the truth and that he was present when the incident took place and that there was destruction and loss which he can prove.
- d. That the statements in Paragraph 14 are inflammatory and scandalous in that, to describe Mr. Eloi as a mad man is too graphic. The respondent contends that this is relevant to the case and the statements are his impression of Mr. Eloi as a result of what he has seen and the words paint a picture which is appropriate. The respondent contends that he must be able say it, as it is important to his case that he use certain words which would paint a certain picture which is the appropriate picture.
- e. That the statements in Paragraph 15 and 27 are scandalous and libelous against Inspector Mills who is not a party to the matter; that this matter ought not to be drawn into this case, further there is another libel matter between the respondent and Mrs. Blomqvist- Williams which matter is currently awaiting assessment of damages.¹ The respondent's response was that the statement should be allowed in the witness statement because he is reporting of his personal experience and that the case is about fraud and the key point for him is that the statement is relevant to his case.
- f. That the statements in Paragraph 17 are not relevant to the case at bar; that the question of fraud is for the court to find and that the contents of this paragraph is not evidence but submissions and the stated opinion of the respondent. Further that the contents of this paragraph is conjecture and amounts to the witness venting and this has no bearing on the case whatsoever and is in fact irrelevant to the case at bar. The respondent's response is

¹ DOMHCV2013/0025

that his statements are relevant because it identifies the persons involved and gives the context which will assist the court in coming to its decision that there is fraud being committed. The respondent further contends that this is what happened at the point in time and it relates to the discussions he had with Mr. Austrie and Mr. Lestrade and the effect of that conversation. The respondent also points out that he was present at the point in time.

- g. That the averments in paragraph 18 refer to another matter that is before the court². Further, that the accusation of forgery is a separate cause of action to be dealt with by the court and that the statements paint Mrs. Blomqvist- Williams in a bad light. The respondent submitted that the statements are relevant in that, he has accused Mrs. Blomqvist- Williams of fraud and he is bringing out the character of the person he has experienced firsthand. Further, he is seeking to point out the strategy that is being used to prevent him from presenting his case.
- h. That the contents of paragraph 24 are irrelevant to the case at bar in that it should properly be a criminal complaint to the relevant authority and does not form part in the trial of the matter at bar. The respondent contends it is a fact and should be allowed.
- i. As it regards paragraphs 30, 31 and 36 (c) the applicants contend that these paragraphs should be struck out on the grounds that they are scandalous, vexatious and irrelevant. Further that the language used is inflammatory and should be expunged from the witness statement. The applicants also contend that the statements contain hearsay. The respondent contends that these statements are not scandalous and they are relevant because there is a conflict of interest which must be addressed.

The general principles of law:

[12] It is the law that the legal burden of proof in any case is on the person making the claim, that is, the person who asserts must prove. In civil cases it is normally the claimant who has to prove his or her case and the standard of proof is on the balance of probabilities.

[13] The laws of evidence dictate the type of evidence that is admissible in all cases. A witness statement is a written statement signed by a person which contains the evidence, and only that evidence, which that person would be allowed to give orally. A court may strike out any

² DOMHCV2012/0172

inadmissible, scandalous, irrelevant or otherwise³ oppressive matter contained in a witness statement.

“a witness statement should not contain inadmissible evidence. ... irrelevant evidence (i.e. which has no bearing on the facts in issue) should not be included in the witness statement in effect. ...”⁴

[14] It is well established law that a court will strike out any unnecessary or immaterial allegations if they contain any imputation of the opposite party or make any charge of misconduct. If they are allegations which charge dishonesty, immorality or outrageous conduct it cannot be struck out if it is necessary or relevant to the issue at hand.

[15] A witness statement under CPR 2000 is admitted and accepted at trial as the evidence in chief of the witness and therefore should contain the evidence which that person would be allowed to give orally and it should not contain inadmissible evidence. A witness statement should not include legal arguments or opinion evidence unless the witness states his or her qualifications and can do so based on that. A witness statement must also speak to matters which relate to the facts in issue and the statements made therein must be relevant.

[16] It is important that a witness must address all the factual issues in the case especially those matters upon which the witness is in a position to reference. A court will hold that a statement is irrelevant or scandalous if it states matters which are indecent or offensive or if they are made for the simple purpose of injuring, abusing or prejudicing the other party.

[17] Matters that amount to unnecessary and immaterial allegations and make imputations on the opposite party or if they contain accusations of misconduct, they should form no part of a witness statement and will be struck out as being scandalous.

Decision and analysis:

[18] It is well established law that the jurisdiction to strike out is to be used sparingly since the striking out of a person's case/witness statement/statements of case can deprive that person of a fair hearing. It is also well settled law that care ought to be taken to ensure that a party is not deprived of the right to trial on issues essential to his or her case.

³ Part 29.5(2) of CPR 2000

⁴ Re: Joseph W Horsford –v- Geoffrey Croft ANUHCVP2014/0006 Per Blenman JA page 12 at Paragraph 12

[19] In deciding to strike out it is incumbent on the sitting judge to consider the effect of the order on the proceedings and it is important that in every application the court must exercise its discretion in accordance with the overriding objective in dealing with cases justly.⁵

[20] In relation to the paragraphs of the Witness Statement of the respondent that are under attack on the grounds that they are either hearsay, inflammatory, have no bearing on the case of fraud, scandalous, irrelevant, conjecture, opinion and vexatious, I am of the considered view that these matters can be addressed at the trial of this matter as at trial the sitting judge will be in a better position to weigh all the evidence and assess the relevance and indeed the admissibility of the matters raised. Indeed some of the concerns and complaints raised by the applicants can be dealt with by cross examination thereby providing the court with the opportunity to determine whether in all of the circumstances it would be just to exclude the challenged paragraphs.

[21] I am of the considered view that the dicta of Lord Justice Mummery in **Beazer Homes Limited –v- Peter Stroude**⁶ is applicable to the case at bar. Lord Justice Mummery said:

“In general, disputes about the admissibility of evidence in civil proceedings are best left to be resolved by the judge at the substantive hearing of the application or at the trial of the action, rather than at a separate preliminary hearing. The judge at a preliminary hearing on admissibility will usually be less well informed about the case. ...”

and also the dicta of Mr Justice Mann J in the case of **Wilkinson –v- West Coast Capitol et al**⁷

when he stated that

“However desirable though the power to control evidence obviously is, particular care must in my view be taken when it is sought to exercise the power before trial... (at trial⁸) ... the judge is likely to have a much fuller overall picture of the issues in the case and of the evidence which is going to be adduced in support of them. In a larger number of cases, he or she is likely to be in a better position to make judgments which turn on the real value of the line of evidence in question and its proportionality and in very many cases it admissibility. A court which is asked to approach these questions at the interlocutory stage is much less likely to have the picture and should be that much more careful in forming a view that the evidence is going to be irrelevant, or if relevant, unhelpful and / or disproportionate. One must also bear in mind the extent to which it is desirable to consider matter at all at an interlocutory state. One must be on one’s guard, in applications such as this, not to allow case management in relation to

⁵ Re: Citco Global Custody NV –v- Y2k Finance BVIHCVAP2009/22

⁶ [2005] EWCA Civ 265

⁷ [2005] EWHC 1606 (Ch) at Paragraph 5

⁸ My words

witness statements to give rise to significant time and cost wasting applications; those should not be encouraged. ..."

[22] I also make reference to the Antigua Case of **Joseph W Horsford -v- Geoffrey Croft** ⁹ which though not on all fours with the case at bar is in a similar vein. This case to my mind illustrates the need for the court to exercise great restraint in striking out impugned statements in a witness statement, particularly, when the party is a self-represented litigant and I adopt the words of Blenman JA in that case when she noted *inter alia* that

*"... in circumstances where litigants appears in person accommodation should be made to the drafting style of the lay person which may well be different from that of a lawyer. ..."*¹⁰

[23] I am of the view that this is such a case where I have to consider and make accommodations for the respondent who is acting pro se and is a layman which no doubt awkward drafting of his witness statement. It is important to bear in mind also that a witness statement should be couched in the very own words of the witness and should represent the witness' usual mode of expression and language.

[24] It is important also for the respondent to be able to present his best possible case to the court. In the case at bar, one of the causes of action is fraud.

[25] To allow the application at this stage, in my view, would amount to allowing one party to dictate how the other party should present his evidence in his case. It would appear to me that the state of mind of the defendant in this matter is material and consequently all possible evidence should be placed before the court. Evidence that is crucial to the claimant's case should be allowed.

[26] It is noted that allegations which appear to be scandalous such as those making charges of dishonesty, immorality or outrageous conduct cannot be struck out if it is necessary or relevant to any issue in the action. In the case at bar, based on the cause of action as pleaded and which is before the court, any such evidence would be necessary and relevant to the issue of the type of compensation which may be considered and awarded to the claimant and in the circumstances, the respondent ought to be allowed to present such evidence to the court. This was so held in the **Joseph W Horsford** ¹¹ case and is applicable to the case at bar.

⁹ ANUHCVP2014/0006

¹⁰ *Ibid* para 37

¹¹ *Op cit*

[27] Accordingly and for the above reasons I would not allow this application as it regards the impugned paragraphs that were contested by the applicant. Costs to the Respondent in the sum of \$500.00

[28] I would like to apologise for taking so long to deliver this ruling as the respondent is unrepresented and a review of the files it is clear that he is litigious and I felt it was prudent that great care ought to be taken to explain in detail the reason for my ruling which took some time to do.



M E Birnie Stephenson
High Court Judge