EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT VINCENT AND THE GRENADINES

SVGHCVAP2013/0003

BETWEEN:

SANDRA ANN-MARIE GEORGE
(Administratrix of the Estate of KARLOS GEORGE)

Appellant

and

NIGEL DON-JUAN GLASGOW

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE	Chief Justice
The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mde. Gertel Thom	Justice of Appeal

On written submissions:

Mr. S. Sten Mc N. Sargeant of Williams & Williams Law Chambers for the Appellant

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2015: May 5.

Interlocutory appeal – Application to strike out defence – Breach by defendant of rules 10.5(3) and 10.5(5) of the Civil Procedure Rules 2000 – Application for leave to amend defence – Whether the learned master erred in making an unless order for defendant to make another application for leave to amend defence – Whether the learned master erred in not striking out defence

On 21st December 2011, Ms. Sandra Ann-Marie George, in her capacity as Administratrix of the Estate of her son, Karlos George, commenced proceedings against Mr. Nigel Don-Juan Glasgow pursuant to the Compensation for Injuries Act.[1] In her claim, Ms. George pleaded that on or about 26th December 2008, Mr. Glasgow caused the death of her son by negligent driving. Mr. Glasgow filed a defence on 30th March 2012 in which he neither admitted nor denied the allegations of negligence made against him.

[1] Cap. 122, Revised Laws of Saint Vincent and the Grenadines 2009.

By notice of application filed on 10th October 2012, Ms. George applied to strike out Mr. Glasgow's defence ("the Strike out application") and for judgment to be entered on her claim and for damages to be assessed on the ground that, inter alia, the defence consisted of bare denials and did not disclose any reasonable grounds for defending the claim. On 1st November 2012, Mr. Glasgow filed a notice of application in opposition to the Strike out application which included an application to amend the defence should the court decide that his defence filed was a bare denial.

The learned master in the court below heard both applications on 21st November 2012 and by order of the court of even date, the master directed that Mr. Glasgow's defence be struck out unless he filed and served an application for leave to amend the defence by 6th December 2012 ("the unless order"). Ms. George was aggrieved by the learned master's decision and has appealed against the master's order.

Held: allowing the appeal, setting aside the unless order and costs order made by the learned master; striking out Mr. Glasgow's defence on the basis that it discloses no reasonable basis for defending the claim; remitting the matter to the High Court to be case managed by a different master in relation to damages to be assessed; and awarding costs to Ms. George in the court below assessed at $1,500.00 and in the appeal assessed in the sum of $1,000.00, that:

1. Under the **Civil Procedure Rules 2000** ("CPR 2000") it is impermissible for a defendant to simply state in a defence that he or she is unable to admit or deny an averment in pleadings without giving reasons for doing so. A defendant who adopts this posture is in violation of CPR 10.5(3) and 10.5(5). In this appeal Mr. Glasgow adopted a tactical position when he did not admit or deny the several allegations of negligence that were made against him. Further, it was not open to him to merely indicate that he could not recall the events that led to the occurrence of the incident and to put Ms. George to strict proof of the facts. Accordingly, the learned master was correct in her finding that Mr. George's defence violated the provisions of CPR 10.5 and was not viable.

   Rules 10.5(3) and 10.5(5) of the **Civil Procedure Rules 2000** applied; **Elwardo Lynch v Ralph Gonsalves** SVGHCVAP2005/0018 (delivered 18th September 2006, unreported) applied.

2. An appellate Court will be very slow to interfere with a trial judge's discretion unless the court is satisfied that in exercising his or her judicial discretion, the judge erred in principle by either failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.

Dufour and others v Helenair Corporation Ltd and others (1996) 52 WIR 188 applied; **Tafern Ltd v Cameron-McDonald and another (Practice Note)** [2000] 1 WLR 1311 applied; **Enzo Addari v Edy Gay Addari**, BVIHCVAP2005/0021 (delivered 23rd September 2005, unreported) applied; **Charles Osenton and Company v Johnston** [1942] AC 130 applied.

3. In the face of a defective application to amend a defence, it is not open to a court to order that another application to amend be filed. In this appeal, there was already an application by Mr. Glasgow before the learned master to amend his defence and at that stage the master was only entitled to determine whether or not the application before her should be granted. The learned master, having found that the application to amend did not meet the requirements of CPR 2000, ought to have dismissed it. In failing to do so, the learned master erred in the exercise of her discretion.

4. A court should not use the overriding objective of CPR 2000 to "fill the gaps" if there has been non-compliance by a party with the rules of procedure. In the present case the learned master seemed to have relied on the overriding objective to do justice, to buttress the exercise of her discretion in making the unless order when faced with several breaches by Mr. Glasgow of CPR 2000 and where there was no evidential basis upon which to do so. Consequently, in so doing, the learned master clearly acted outside the generous ambit of her discretionary powers and erred in principle.

   Ormiston Ken Boyea et al v East Caribbean Flour Mills Limited SVGHCVAP2004/0003 (delivered 16th September 2004, unreported) applied.

5. If a court, pursuant to its wide case management powers under Part 26 of CPR 2000, is minded to make an order of its own initiative, the court is required to give any party likely to be affected a reasonable opportunity to make representations. In this appeal, no application was made for the unless order and if the learned master intended to make an order of her own volition, she ought to have invited the parties to make submissions and given them leave to do so. In the circumstances, the master appears to have made the unless order in breach of the procedure stipulated by Part 26 of CPR 2000.

   Rules 26.1, 26.2 and 26.4 of the **Civil Procedure Rules 2000** applied.

6. A court may strike out a statement of case that does not amount to a viable defence. In this appeal, there was an obvious inconsistency in the learned master's reasoning since she found that Mr. Glasgow's defence ought not to have been allowed to stand, yet she refused to follow through on her own careful observation. Given the totality of the circumstances, the correct approach and the justice of the matter required the learned master to have struck out Mr. Glasgow's defence as it amounted to a bare denial and was not viable. In addition, Mr. Glasgow's application to amend the defence was devoid of merit. Accordingly, there was no basis for the learned master to

make any alternative order than to strike out the defence and she plainly erred in not doing so.

Rule 26.3 of the **Civil Procedures Rules 2000** applied; **Baldwin Spencer v The Attorney-General of Antigua and Barbuda et al** ANUHCVAP1997/0020A (delivered 8th April 2008, unreported) applied; **Robert Conrich (a.k.a. Bob Conrich) v Ann Van Der Elst (a.k.a. Alyzee-Anne Van der Elst) et al** AXAHCV2001/0002 (delivered 13th February 2003, unreported).

JUDGMENT

Introduction

[1] **BLENMAN JA:** This is an interlocutory appeal by Ms. Sandra Ann-Marie George against a case management order of the learned master in which the master directed Mr. Nigel Don-Juan Glasgow to file an application to amend his defence within 14 days of the order, failing which, his defence would be struck out.

[2] In so far as this is an order made by the master as part of her case management power, this appeal brings into focus the exercise of the learned master's discretion in general and in particular whether the learned master erred in the exercise of her discretion in granting Mr. Glasgow an unless order to apply for leave to file an amended defence in the face of the application by Ms. George to strike out the defence on the basis that it disclosed no reasonable cause for defending the claim.

[3] I propose now to state the relevant background to the appeal.

Background

[4] By claim form, filed together with statement of claim on 21st December 2011, Ms. Sandra Ann-Marie George in her capacity as the Administratrix of her son Karlos George's estate, brought proceedings against Mr. Nigel Don-Juan Glasgow pursuant to the **Compensation for Injuries Act**[2] ("the Act") for a fatal accident resulting in the death of her son which she alleges was caused by the negligent

[2] Cap. 122, Revised Laws of Saint Vincent and the Grenadines 2009.

driving of Mr. Glasgow. In her claim Ms. George pleaded that on or about 26th December 2008, Mr. Glasgow negligently drove his motor vehicle along the Pembroke Public Road causing the death of her son. Mr. Glasgow on 30th March 2012 filed a defence in which he neither admitted nor denied the several allegations of negligence.

[5] By notice of application filed on 10th October 2012 and supported by evidence on the affidavit of learned counsel, Ms. Sylvonne R. John, filed on even date, Ms. George applied to strike out ("the Strike out application") Mr. Glasgow's defence and also applied for judgment to be entered on her claim and for damages to be assessed subsequent to this.

[6] Mr. Glasgow filed, on 1st November 2012, a notice of application in opposition to the Strike out application and this was supported by evidence from him on affidavit filed on even date.

[7] The learned master heard both applications on 21st November 2012. In addition, oral submissions were made to the court. The learned master, after hearing counsel for Mr. Glasgow and counsel for Ms. George, by order of court dated 21st November 2012 and entered on 4th December 2012,[3] directed that the defence filed in these proceedings be struck out unless Mr. Glasgow files and serves an application for leave to amend on or before 6th December 2012. The learned master gave reasons within the order for her decision. Ms. George is very aggrieved by the directions of the learned master and has appealed. Mr. Glasgow has taken no steps in this appeal either by way of opposing the appeal or participating therein.

[3] The order was amended on 21st January 2013 and re-entered on 12th February 2013.

[8] I now turn to the grounds of appeal:

Grounds of Appeal

[9] The main ground of appeal is that the learned master erred in the exercise of her discretion in making the "unless order" granting Mr. Glasgow leave to file an application for leave to amend the defence on or before 6th December 2012.

[10] An ancillary ground of appeal is that the learned master erred in not striking out Mr. Glasgow's defence since that was the appropriate sanction for the breaches both in the defence and the notice of application to amend the defence.

[11] Before addressing the submissions and law in relation to the grounds of appeal, I propose to briefly refer to the claim and defence.

Nature of the Claim and Defence

[12] As stated earlier, the underlying claim was one brought by Ms. George on behalf of the estate of her deceased son for damages due to the fatal injury that he suffered as a result of the alleged negligent driving of Mr. Glasgow. In paragraphs 2, 3, 4, 5 and 6 of the statement of claim there were several allegations of negligence that were attributed to Mr. Glasgow.

[13] Mr. Glasgow's only response to the several allegations of negligence that were made against him could be found in paragraph 2 of the defence. Indeed, in this paragraph he stated that:

> "2. The **Defendant** neither admits nor denies paragraphs 2, 3, 4 & 5 of the Statement of Claim as due to the accident the **Defendant** is unable to recall the events that led to the occurrence of the incident and the Claimant is put to the strict proof of the facts"

[14] The above pleaded paragraph amounted to a bare denial and offended rule 10.5 of the **Civil Procedure Rules 2000** ("CPR 2000"). This much the master agreed with.

[15] It was as a consequence of the averment in paragraph 2 of the defence that Ms. George applied by notice of application for the defence to be struck out and for judgment to be entered in her favour in her representative capacity.

[16] Ms. George's Strike out application included the following grounds:

(a) The defendant has no real prospect of successfully defending the claim.

(b) The defence consists of bare denials and does not disclose any reasonable ground to defend the claim.

[17] As a result of that application by Ms. George, Mr. Glasgow filed an application in opposition to the Strike out application and included the alternative application that he be allowed to amend his defence. The posture that Mr. Glasgow took was that if the court were to hold that the defence filed amounted to no more than a bare denial, then the court should grant him leave to amend the defence. It is noteworthy that Mr. Glasgow's application did not have a draft defence attached to it.

[18] I will now briefly refer to some of the relevant statutory provisions.

The Law

[19] CPR 10.5(3) stipulates that:

> "(3) In the defence the defendant must say which (if any) allegations in the claim form or statement of claim –
>
> (a) are admitted;
> (b) are denied;
> (c) are neither admitted nor denied, because the defendant does not know whether they are true; and
> (d) the defendant wishes the claimant to prove."

[20] CPR 10.5(5) provides as follows:

> "(5) If, in relation to any allegation in the claim form or statement of claim, the defendant does not –
>
> (a) admit it; or
> (b) deny it and put forward a different version of events;
>
> the defendant must state the reasons for resisting the allegation."

[21] CPR 26.1 states as follows:

> "26.1 (1) The list of powers in this rule is in addition to any powers given to the court by any other rule, practice directions or any enactment.
>
> (2) Except where these rules provide otherwise, the court may –
> (a) adjourn or bring forward a hearing to a specific date;
>
> …
>
> (w) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective.
>
> (3) When the court makes an order or gives a direction, it may make the order or direction subject to conditions.
>
> (4) The conditions which the court may impose include a condition –
> (a) requiring a party to give an undertaking;
> (b) requiring a party to give security;
> (c) requiring a party to pay all or part of the costs of the proceedings;
> (d) requiring the payment of money into court or as the court may direct; and
> (e) that a party permit entry to property owned or occupied by that party to another party or someone acting on behalf of another party.
>
> (5) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.
>
> (6) In special circumstances on the application of a party the court may dispense with compliance with any of these rules."

[22] CPR 26.2 stipulates that:

> "**Court's power to make orders of its own initiative**
>
> 26.2 (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.
>
> (2) If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations.

(3) The opportunity may be to make representations orally, in writing, telephonically or by any other means as the court considers reasonable.

(4) If the court proposes to –
(a) make an order of its own initiative; and
(b) hold a hearing to decide whether to do so;
the court office must give each party likely to be affected by the order at least 7 days' notice of the date, time and place of the hearing."

[23] CPR 26.3 provides:

"Sanctions – striking out statement of case

26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –
(a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings
(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
(c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or
(d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

(2) If –
(a) the court has struck out a claimant's statement of case;
(b) the claimant is ordered to pay costs to the defendant; and
(c) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts;
the court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid."

[24] CPR 26.4 stipulates:

"**Court's general power to strike out statement of case**

26.4 (1) If a party has failed to comply with any of these rules or any court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the court for an "unless order".

(2) Such an application may be made without notice but must be supported by evidence on affidavit which –
(a) contains a certificate that the other party is in default;
(b) identifies the rule or order which has not been complied with; and
(c) states the nature of the breach.

(3) The court office must refer any such application immediately to a judge, master or registrar who may –
(a) grant the application;
(b) direct that an appointment be fixed to consider the application and that the court office give to all parties notice of the date, time and place for such appointment; or
(c) seek the views of the other party.

(4) If an appointment is fixed the court must give 7 days notice of the date, time and place of the appointment to all parties.

(5) An "unless order" must identify the breach and require the party in default to remedy the default by a specified date.

(6) The general rule is that the respondent should be ordered to pay the assessed costs of such an application.

(7) If the defaulting party fails to comply with the terms of any "unless order" made by the court that party's statement of case shall be struck out.

(8) Rule 26.9 (general power of the court to rectify matters where there has been a procedural error) shall not apply.
• Rule 11.16 deals with applications to set aside any order made on an application made without notice."

[25] CPR 26.5 provides that:

"Judgment without trial after striking out

26.5 (1) This rule applies where the court makes an order which includes a term that the statement of case of a party be struck out if the party does not comply with the "unless order" by the specified date.

(2) If the party against whom the order was made does not comply with the order, any other party may ask for judgment to be entered and for prescribed costs appropriate to the stage that the proceedings have reached."

Appellant's Submissions

Ground 1 - The learned master erred in making the unless order

[26] Learned counsel, Mr. Sargeant, argued that the learned master exercised her discretion improperly when she failed to strike out Mr. Glasgow's defence. He complained that it was brought to the master's attention that for the most part the defence did not address the material aspects of the claim and that it was only in paragraph 2 of the defence that Mr. Glasgow neither admitted nor denied the several allegations of negligence that were levelled against him. It was a bare denial and the defence ought to have been struck. This apart, the defence improperly pleaded matters of law, complained Mr. Sargeant.

[27] Learned counsel, Mr. Sargeant, complained that he had adverted the learned master's attention to the applicable rules and principles and invited her to strike out the defence since it offended CPR 10.5(3) and 10.5(5), yet even though the master agreed that the only pleaded averment to the several allegations of negligence violated CPR 10.5 and ought not to stand since it was a bare denial, quite surprisingly the master refused to strike it out. Counsel maintains that the master erred in so doing and this improper exercise of the master's discretion should be set aside.

[28] Mr. Sargeant indicates that the master's attention was drawn to the Court of Appeal decision of **Elwardo Lynch v Ralph Gonsalves**[4] in which it was held that the position of the trial judge was correct when she held that the defence was a violation of CPR 10.5(3) since it was impermissible for a litigant to merely state that he or she was unable to deny or admit an averment in pleadings. Mr. Sargeant says that the rules require a litigant who adopts the posture that he could neither admit or deny an averment in the pleadings to provide the reasons for so doing[5] and that in the appeal at bar Mr. Glasgow had provided no reasons in his defence for neither admitting or denying.

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[4] SVGHCVAP2005/0018 (delivered 18th September 2006, unreported).

[5] Learned counsel, Mr. Sargeant submitted the case of Dr. Ralph Gonsalves v Matthew Thomas et al SVGHCV2007/0064 (delivered 16th November 2009, unreported) in support.

[29] Mr. Sargeant said that since Mr. Glasgow had provided no reason for his contention that he could not admit or deny the allegations of his negligent driving on Boxing Day 2008, his defence should have been struck. In support of his contention, Mr. Sargeant relied on the well-known principles on striking out.[6]

[30] I am in full agreement with learned counsel, Mr. Sargeant, when he argues that Mr. Glasgow adopted a tactical position when he did not admit or deny the several allegations of negligence that were made against him, bearing in mind that the pleaded case was that he was driving the motor vehicle when it ran off the road and collided with a wall and caused Ms. George's son's death. It simply is not open to Mr. Glasgow to merely indicate that he could not recall the events that led to the occurrence of the incident and the claimant is put to strict proof of the facts. In doing so Mr. Glasgow not only violated the provisions of CPR 10.5(3) and 10.5(5) but he did not present a viable defence. This much was found by the learned master. In fact, the master quite properly ruled that the defence violated CPR 10.5 and agreed that the defence as presently filed ought not to be allowed to stand. However, the learned master did not stop there. The learned master, without any application being made to her to file another application to amend the defence, proceeded to make the unless order. It must however be borne in mind that Mr. Glasgow had already applied to amend his defence. I turn now to the application to amend the defence.

[31] Learned counsel, Mr. Sargeant, reminded the Court that as part of Mr. Glasgow's application in opposition to strike out, he urged the court to allow him to amend his defence should the court find that there was non-compliance with CPR 10.5(3) and 10.5(5). Mr. Glasgow was seeking to have the court exercise its discretion in his favour in accordance with Part 20 of CPR 2000 since he was in effect asking for permission to change the defence, as an alternative position.

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[6] Baldwin Spencer v The Attorney-General of Antigua and Barbuda et al ANUHCVAP1997/0020A (delivered 8th April 2008, unreported); Tawney Assets Limited v East Pine Management Limited et al BVIHCVAP2012/0007.

[32] Mr. Sargeant says that since Mr. Glasgow had failed to furnish the court with a purported draft defence and no evidential basis upon which the learned master could have exercised her discretion, the master ought not to have made the unless order. The Court is of the view that bearing in mind that it was in the application in opposition to strike that the alternative leave to amend was sought, it is important to examine the exact words that were used in the application to trigger the exercise of the master's discretion in favour of Mr. Glasgow. In the affidavit in support, Mr. Glasgow merely stated at paragraph 8 as follows:

> "Further, if the Court deems that the defence is a bare denial without particularization the **Defendant/Applicant** ought to be allowed to amend the defence."

[33] There was nothing by way of evidence before the master which could have enabled her to exercise the discretion in the way that she did. In view of the above, it was clear that there was no evidential basis upon which the learned master could have properly acted in directing Mr. Glasgow to file an application to amend his defence. On this basis, the master clearly erred in the exercise of her discretion. I agree with learned counsel, Mr. Sargeant, that the master was correct in stating at paragraph 7 of order on case management conference under the reasons for decision:

> "It is unfortunate that little time or effort was put into the application for leave to amend by the Defendant with the unfortunate consequence that the application falls short of meeting the requirements of **Practice Directions 5 of 2011 part 2.2**, and on that basis alone should be struck out."

[34] Also, Mr. Sargeant complains that the master ought not to have directed Mr. Glasgow to file an application to amend the defence. I am in total agreement with counsel. The master, at that stage was only entitled to determine whether or not the application that was before her should have been granted. There was already an application before her to amend the defence.

[35] In seeking the answer to this question the master should not only have taken cognizance of the relevant Practice Direction but ought to have applied it. Indeed,

Practice Direction 20 No. 5 of 2011 indicates a number of factors that the court must take into account when considering whether to grant an application to change a statement of case, these include the following:

> "(1) how promptly the applicant has applied to the court after becoming aware that the change was one which he wished to make;
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> (2) the prejudice to the applicant if the application were refused;
>
> (3) the prejudice to the other parties if the change were permitted;
>
> (4) whether any prejudice to any other party can be compensated by the payment of costs and or interest;
>
> (5) whether the trial date or any likely trial date can still be met if the application is granted;
>
> (6) the administration of justice."

[36] It is clear from a reading of the rule and the Practice Direction that Mr. Glasgow had failed to reach the threshold stipulated by the relevant rules and practice direction in order to benefit from an exercise of the court's discretion in his favour – I therefore do not agree with what the learned master stated at paragraph 8 of her order when she said:

> "I disagree however that striking out is a natural consequence of the failings of the defendant in its pleading and application. In applying the overriding objective the Court must ensure as far as practicable that cases are dealt with fairly. I have considered therefore that this case is in the early stages of its cycle and case management has not been held; I have further considered that the interest of Justice would require that facts that discount negligence should be adjudicated upon, and [that] any prejudice to the Claimant can be remedied by consequential amendments and orders in costs;"

I agree with Mr. Sargeant's complaint. I accept without any reservation that the learned master seemed to have relied on the overriding objective to do justice as the basis to buttress the exercise of her discretion in the manner in which she did and in so doing, erred in principle. There is a plethora of authorities from this Court for the proposition that the overriding objective cannot be used to "fill the

gaps" if there has been non-compliance with the rules of procedure.[7] In so far as the learned master seemed to have utilised the overriding objective of the rules including the need to deal with cases justly to direct Mr. Glasgow to file another application to amend the defence when faced with the several breaches by him, she clearly acted outside the generous ambit of her discretionary powers. While it is indisputable that the master has available a very wide range of case management powers, it is unclear upon what basis the learned master could have properly held that the defendant should be given an opportunity to file in these proceedings a proper application requesting leave to amend which application was to be made within 14 days of 21st November 2012 order.

[37] It is even more curious since it does not appear that any such application was made to the master. The master evidently erred in the exercise of her discretion in making the unless order; the error amounted to an error of principle. At the very least, the master ought to have refused the application to amend the defence since there was no evidential basis to support the application. It simply was not open to the master to make the unless order that she gave and indicate that Mr. Glasgow was given leave to file another application to amend the defence; if the master intended to make an order of her own volition, she ought to have invited the parties to make submissions and given them leave to do so.[8] The master appears to have granted an unless order of her own volition in breach of the procedure stipulated by Part 26 of CPR 2000. No application had been made for such an order. In dealing with cases justly, the court is required to take into account the respective position of both parties. There may have been an inadvertent leniency given to Mr. Glasgow. In the meantime, Ms George's claim could not progress in the circumstances where Mr. Glasgow has committed several infractions of CPR 2000, nor has he demonstrated, either in his defence or his application to amend, that he has any viable defence to the claim. Had the learned master not erred and refused the application to amend the defence, the

[7] See Ormiston Ken Boyea et al v East Caribbean Flour Mills Limited SVGHCVAP2004/0003 (delivered 16th September 2004, unreported).
[8] See CPR 26.1 and 26.2.

only extant matter would have been the appropriate relief that should be granted in the strike out application.

Ground 2 – The learned master erred in not striking out the defence

[38] I agree with Mr. Sargeant that there is an obvious inconsistency in the learned master's reasoning since she found that the defence ought not to have been allowed to stand, yet, the master refused to follow through on her own careful observation. Curiously, in her order the master did not address the Strike out application but rather proceeded to make the impugned "unless order". Implied in this order is the master's refusal to strike out the defence. It bears re-stating that the unless order appeared to have been made in violation of CPR 26.4(1).

[39] The law in relation to the interference of a judge's discretion is very clear. In **Dufour and others v Helenair Corporation Ltd and others**,[9] a decision of this Court, Floissac CJ succinctly laid down the principles an appellate court should follow:

> "We are thus here concerned with an appeal against a judgment given by a trial judge in the exercise of a judicial discretion. Such an appeal will not be allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."

The learned master clearly misapprehended the relevant applicable principles in exercising her discretion.

[40] It therefore falls to this Court to exercise its discretion afresh. In so doing there can be no doubt that given the totality of circumstances, the correct approach and the justice of the matter required the master to have struck the defence. The

[9] (1996) 52 WIR 188 at pp. 189 – 190; See also Tafern Ltd v Cameron-McDonald and another (Practice Note) [2000] 1 WLR 1311; Enzo Addari v Edy Gay Addari, BVIHCVAP2005/0021 (delivered 23rd September 2005, unreported); Charles Osenton and Company v Johnston [1942] AC 130.

application to amend the defence was devoid of merit and there was no basis for the master to make any alternative order than to strike it out.

[41] As indicated previously, there is no doubt that the defence advanced by Mr. Glasgow was not viable and ought to have been struck.[10]

[42] In all of the circumstances, I am ineluctably driven to agree with learned counsel, Mr. Sargeant, that the strike out sanction was appropriate for the defence which amounted to a bare denial. In the face of a defective application to amend the defence it is not open to a court to order that another application be filed to amend the defence. There is no doubt that the learned master plainly got it wrong and should have struck out Mr. Glasgow's defence.

[43] Based on the totality of circumstances, I would order that Mr. Glasgow's defence that was filed on 30th March 2012 be struck out and that judgment be entered in favour of the claimant, Ms. George, with damages to be assessed.

Conclusion

[44]
(1) In the premises, it is ordered that Ms. Sandra Ann-Marie George's appeal against the decision of the learned master dated 21st November 2012 is allowed.

(2) The unless order and costs order that were made by the learned master are set aside.

(3) Mr. Nigel Don-Juan Glasgow's defence that was filed on 30th March 2012 is struck out on the basis that it discloses no reasonable basis for defending the claim.

(4) The matter is remitted to the High Court to be case managed by a different master in relation to damages to be assessed.

[10] See Baldwin Spencer v The Attorney-General of Antigua and Barbuda et al ANUHCVAP1997/0020A (delivered 8th April 1998, unreported); Robert Conrich (a.k.a. Bob Conrich) v Ann Van Der Elst (a.k.a. Alyzee-Anne Van der Elst) et al AXAHCV2001/0002 (delivered 13th February 2003, unreported).

(5) Ms. Sandra Ann Marie George is to have costs in the court below assessed at $1,500.00 and in this appeal assessed in the sum of $1,000.00.

[45] The Court gratefully acknowledges the assistance of learned counsel.

Louise Esther Blenman
Justice of Appeal

I concur.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Gertel Thom
Justice of Appeal