

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV 2015/0002

BETWEEN:

**JENNY LINDSAY
dba JENNY LINDSAY & ASSOCIATES**

Claimant

and

THOMAS ARISTIDE FLEMING
(In a personal capacity and as Administrator of the Estates of the late Benjamin Fleming and Sarah Jane Connor aka Richardson, deceased)

First Defendant

SIMEON FLEMING
(In a personal capacity and as Administrator of the Estates of the late Sarah Ann Connor aka Richardson and Catherine Fleming, deceased)

Second Defendant

JOSIANE JUMINER
(In a personal capacity and as Administrator of the Estate of the late Drucilla Juminer, deceased)

Third Defendant

Before:

Ms. Agnes Actie

Master

Appearances:

Ms. Jenny Lindsay in person

Mr. Kerith Kentish with Ms. Ayana Tyrell counsel for the 2nd and 3rd Defendants

**2016: February 18
May 19**

JUDGMENT

- [1] **ACTIE, M.:** Before this court is an application filed by the 2nd and 3rd defendants seeking to strike out the claimant's claim form filed without an accompanying statement of claim.

Background Facts

- [2] Ms. Jenny Lindsay, an Attorney-at-Law practicing in Anguilla, had an Attorney-Client relationship with the defendants. On 5th January 2015, Ms. Lindsay filed a standard claim form against the defendants seeking among things payment for outstanding legal fees. Ms Lindsay did not file a statement of claim.
- [3] The claim form filed in name of “ Jenny Lindsay doing business as “Jenny Lindsay & Associates” as claimant referenced diverse dates on which the attorney provided legal services to the defendants in matters involving succession and distribution of assets to named beneficiaries. The claim form referenced agreements whereby the defendants would pay all outstanding legal fees, disbursements, expenses and interests out of the proceeds of sale of lands described therein.
- [4] The master, on 21st April 2015, granted Ms. Lindsay leave to serve the defendants with the claim form outside of the jurisdiction. The order granted the defendants thirty five (35) days to file and serve the acknowledgment of service and fifty six (56) days to file and serve a defence. The order directed that all the required accompanying standard court forms be served along with the claim form. The order also directed the claimant to comply with CPR 7.6 and to amend the accompanying court forms to reflect the periods within which the defendants were to file the acknowledgment of service and/or defence.
- [5] Ms. Lindsay failed to (1) serve the accompanying court forms and (2) amend the forms to change the periods for filing the acknowledgment of service and defence as directed. Notwithstanding Ms. Lindsay’s default, the 2nd and 3rd named defendants through counsel entered an acknowledgment of service.

The Application

- [6] The 2nd and 3rd defendants' contend that the claim form should be struck out as the claimant failed to comply with both CPR 8.1 and the master order resulting in no proper claim before the court.
- [7] Ms. Lindsay in response contends that the claim is properly before the court as the claim form satisfies the requirements of CPR 8.2.

The Law

- [8] The starting point to be decided is whether the failure to file an accompanying statement of claim with the claim form renders the claim invalid.

Commencement of a claim

- [9] CPR 8.1(1) as a general rule requires a claimant to commence proceedings by filing a claim form together with a statement of claim or with an affidavit, if any rule or practice direction so requires¹.
- [10] CPR Part 8.1 (1) provides for the filing in the court office the original and one copy (for sealing) of –
- (a) the claim form; and (subject to rule 8.2)
 - (b) the statement of claim; or
 - (c) if any rule or practice direction so requires – an affidavit or other document
- [11] CPR 8.1 (a) subject to CPR 8.2 allows a claimant to commence a claim by filing only a claim form without an accompanying statement of claim or any of the other documents as required by rule 8.1 (1) (b) or (c) if the claimant has included (i) all the information required by rules 8.6, 8.7, 8.8 and 8.9., or (ii) obtains leave of the court² or (iii) in an emergency situation when it is not practicable to obtain the court's

¹ CPR 8.1 (1)

² CPR 8.2 (1) (a) (b)

permission³. CPR 5.2 (2) permits the service of a claim form without the statement of claim in accordance with rule 8.2

[12] Rule 8.6. (1) which must be satisfied to proceed by way of claim form only requires the claim form to :

- (a) include a short description of the nature of the claim,
- (b) specify any remedy that the claimant seeks; and
- (c) give an address for service in accordance with rule 3.11.

[13] The defendants contend that the claimant failed to satisfy Rule 8.6(1)(c) which requires compliance with Rule 3.11. Rule 3.11 requires every statement of case to contain an address within the jurisdiction at which the party filing the statement of case will accept service of documents. Where the address is given by a legal practitioner, the name and reference of the person who is dealing with the matter along with the telephone number (if applicable) or fax number is required. The defendants contend that the claim form failed to provide an address for service and also failed to state the name of the legal practitioner with conduct of the claim in compliance with the rule.

[14] I am of the view that the defendants' contention is without merit as the claim form is headed as "Jenny Lindsay dba Jenny Lindsay & Associates" as the claimant. The claim form bears an endorsement which clearly states "filed by Jenny Lindsay & Associates, together with a postal address, telephone and facsimile number. It would be redundant to endorse the form to state "Jenny Lindsay" represents "Jenny Lindsay dba Jenny Lindsay & Associates". The purpose of CPR 3.11 is merely to provide the court and the opposite side with a reliable address for service of court documents and notices. The requirement to identify the name of a legal practitioner would apply in this case if the claimant was being represented by other counsel. It would be too illogical an approach to insist that the claim had to

³ CPR. 8.2 (2)

be otherwise endorsed. It does not follow that a claim would invariably fail for the non-endorsement of an address or the name of the legal practitioner.

[15] The defendants further contend that the claimant is in breach of CPR 8.7 as the claim form failed to set out any allegation or factual argument to enable the applicants to file a proper defence.

[16] CPR 8.7 speaks to the duty of the claimant to set out its case providing:-

- (1) The claimant must include in the **claim form (my emphasis)** or in the statement of claim a statement of all the facts on which the claimant relies
- (2) The statement must be as short as practicable
- (3) The claim form or the statement of claim must identify any document which the claimant considers is necessary to his or her case.
- (4)

Rule 8.7A provides that “the claimant may not rely on any allegation or factual argument which is not set out in the claim, but which could have been set out there, unless the court gives permission or the parties agree”. .

[17] The purpose of Rule 8.7 is to ensure that the claimant pleads the factual matrix of the case in the statement of case. A claimant at trial will be restricted to the allegations and facts as pleaded and would not be allowed to rely on any other allegation or fact not pleaded, except with the leave of the court or by consent of the parties. It is a settled practice under CPR 2000 that the need for extensive pleadings are no longer required as witness statements may now be exchanged to amplify or supply details contained in pleadings. Barrow J in **East Caribbean Flour Mills Limited v Ormiston Ken Boyea Saint Vincent and the Grenadines**⁴ referring to **British Airways Pension Trustees Ltd. Sir Robert McAlpine & Sons Ltd**⁵, quoted by Lord Hope in the **Three Rivers (No. 3)** case, said :

⁴ Civil Appeal No. 12 of 2006

⁵ Three Rivers DC v 3 Bank of England (No. 3) (Summary Judgment) [2001] UKHL 16 and McPhilemy v Times Newspapers Ltd. [1993] 3 All ER 775.

“The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this basic purpose and to seek particularization even when it is not really required. This is not only costly in itself, but is calculated to lead to delay and to interlocutory battles in which the parties and the court pore over endless pages of pleadings to see whether or not some particular point has or has not been raised or answered, when in truth each party knows perfectly well what case is being made by the other and is able properly to prepare to deal with it.”

[18] The simple facts as presented in the claim form are that the claimant provided legal services to the defendants/applicants. The claim form speaks to the failure of the defendants to pay outstanding legal fees, disbursements, expenses and interests. The claim form also particularized the reliefs sought by the claimant. The court has, since the filing of the claim, disposed of an interim relief sought by the claimant. The defendants have the option to avail themselves of the provisions of CPR Part 28 or Part 34 in order to assess the sustainability of the claim if there is any doubt as to the documents or evidence referred to in the claim form.

[19] I am of the view that the claim form before this court satisfies all the requirements of CPR 8.2 and the other attendant Rules. The claim form contains sufficient information to convey the nature of the claim and the reliefs being sought by the claimant to enable the defendants to file a defence.

Whether the claim fails for non-compliance with CPR 8.14 and CPR 7.6

[20] It is the defendants contention that the claim form should be struck out for the failure to comply with the master’s order which directed the claimant to: (1) serve all the accompanying court forms and (2) to amend the accompanying forms to state the periods within which the acknowledgment of service and defence are to be filed pursuant to CPR 7.6.

- [21] CPR 8.14 requires the claim form being served on a defendant to contain a defence form and a form of acknowledgement of service among other documents. CPR 7.6 requires a claim form being served out of the jurisdiction to be amended to state the period within which the acknowledgement of service and defence must be filed. The claimant failed to comply with both the master's order and the provision of the Rule 7.6. The issue is whether the claim fails for the claimant's non-compliance. .
- [22] In the cases **James H. Herbert v Nelisa Spencer**⁶ and **Anselm v Balthazar and Balthazar**⁷ Master Glasgow cited **Asia Pacific (HK) Ltd & Ors v Hanjin Shipping Co Ltd**⁸ where a copy of a claim form was forwarded by the claimant's solicitors to the defendant's solicitors by way of fax. The claimant's solicitor did not forward the forms usually attached to the claim which forms are referred to as the response pack. The defendants sought to argue that, for those reasons, there was no service of the claim form. Clarke J ruled that "***the failure to serve a response pack was a failure to comply with the rules but of itself, it signifies no more than that that which ought to have been done on service was not done. It was a procedural irregularity: a technical mistake of the kind that in Harrigan v Harrigan ... was not treated as affecting the real substance of the matter.***"⁹.
- [23] A short answer to the defendants' contention is that a claim will not fail for the failure to serve the accompanying court documents or to amend the timelines for filing an acknowledgment of service or a defence. Lord Collins in the Privy Council decision in **Texan Management Ltd v Pacific Electric Wire & Cable Company Limited**¹⁰ states "It has often been said that, in the pursuit of justice, procedure is a servant and not a master". The authorities clearly state that a claim will not fail for procedural irregularities. The failure to serve the accompanying documents or to change the dates for filing an acknowledgment/defence is a procedural irregularity that do not go to the substance of the claim. Both the rules and the master's order

⁶ ANUHCV 2014/0391

⁷ DOMHCV 2013/0201

⁸ [2005] EWHC 2443

⁹ [2005] EWHC 2443 at paragraph 36

¹⁰ [2009] UKPC 46

are silent on sanctions for non-compliance. Where there has been an error of procedure or failure to comply with a rule, the failure does not invalidate any step in the proceedings except where the consequence of failure to comply has been so specified. In such cases the court may consider awarding costs against the defaulting party who has flagrantly breach the rules or the order of the court. The court notes that the defendants have not been prejudiced by the claimant's breach as they have, though counsel, entered an appearance even in light of the procedural deficiency.

Striking Out

[24] Under CPR 26.3(1) the court may strike out a statement of case or part of a statement of case if it appears: (a) that there has been a failure to comply with a rule, practice direction, order or direction given by the court in proceedings or (b) the statement of case or part to be struck out does not disclose any reasonable ground for bringing or defending the claim. The striking out of a claim has been described as draconian as it deprives a party of an opportunity to present its case at trial. The Court of Appeal in **Tawney Assets Limited v East Pine Management Limited**¹¹ cited **Baldwin Spencer v The Attorney General of Antigua and Barbuda**¹² states

“The striking out of a party's statement of case, or most of it, is a drastic step which should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court. The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial”

¹¹¹¹ BVIHCVAP 2012/007

¹² ANUHCVAP 1997/ 0020A

[25] As stated above CPR 8.1 (a) subject to CPR. 8 .2 allows a claimant to commence proceedings by filing a claim form without an accompanying statement of claim once all the stipulated requirements are met. I am of the view that the claimant's claim form satisfies all the necessary requirements. The claim form discloses facts and issues of sufficient particularity to enable the defendants to put forward a defence. For this and the foregoing reasons the application to strike out the claim form is dismissed.

[26] The court notes that the claimant did not file any submissions in response to the defendants' application but only made oral submissions at the hearing and accordingly I shall award nominal costs against the applicants. The matter shall be listed for further case management on a date to be arranged and notified by the court office.

Order

[27] In summary it is ordered as follows:-

- (a) The application by the 2nd and 3rd named defendants to strike out the claimant's claim form is dismissed with costs to the claimant in the sum of ECD \$350.00
- (b) The matter shall be listed for further case management on a date to be arranged and notified by the court office.

**AGNES ACTIE
MASTER**