EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: DOMHCV2016/0096

Between Jennifer Darroux ,Personal Representative of Venillia Diannne Jno Pierre

Claimant

and

1. Attorney General
2. Chief Medical Officer
3. Medical Director

Defendants

Before: Ms. Agnes Actie Master

Appearances:
Mr. Teyani Behanzin for the claimant
Ms. Jo-anne Xavier- Cuffy with Ms. Tamika Hyacinth-Burton for the defendants

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2016: October 24.

RULING

1. ACTIE, M.: Upon noting the order of master Glasgow made on the 1st July 2016 where he expressed his concerns of the lack of particularity of the claimant's case and taking into account that the statement of case fails to disclose the cause(s) of action. The court notes that the issue was raised on the master's own initiative and he allowed the parties to file submissions to address his concerns. The defendants in response filed their submissions and request to strike out substantial paragraphs of the statement of claim and the claim in its entirety.

2. The claimant also filed a notice of application on 1st July 2016 to include expert evidence and to rely on the medical report and observations of Dale Dangleben MD.

3. CPR 2000 8.7 (3) allows the claimant to identify any document which the claimant considers necessary for the case. CPR 8.9 provides special requirements for claims for personal injury matters. CPR 2000 8.9 (3) requires the claimant to attach a report from the medical practitioner on the personal injuries alleged in the claim. The filing of a medical report does not restrict the right of the claimant to call additional or other medical evidence at the trial of the claim (Rule 8.9(4).

4. The claimant having attached a medical report now seeks permission to include the report as evidence. I am of the considered view that the application is premature and irrelevant at this point as the Rules as stated above allow the claimant to identify documents which he/she seeks to rely on at trial and to attach a medical report as was done in this case.

5. Counsel for the claimant's contends that a request made for a medical report from the hospital was denied. The letters of 14th January 2016 making the request and the letter of denial were shown to the court at the hearing. CPR 2000 provides the procedure for a request for information and disclosure of documents which are essential for the proper conduct of the case. Counsel for the claimant has not engaged the court with any of the applications as prescribed by the Rules. Further in the oral evidence, counsel for the defendants avers that information was withheld as the request was not properly made by a person with any standing at the time of the request. This is not evidence before the court and I do not make any ruling on the matter.

6. The defendants in response to the claimant's application for the expert witness state that the alleged medical practitioner is not registered under the Medical Act[1]. The defendants referred to the provisions of the Medical Act which proscribes a medical practitioner from practicing medicine or surgery, giving medical opinion or advice in which he receives a fee or gratuity or any compensation and is liable to a fine as stipulated in the Act .

[11] Ch 39.02.

7. CPR 8.7 (3) and 8.9 (3) require the claimant to identify and to present a medical report in support of personal injuries matters. The claimant has submitted a medical report by an alleged medical practitioner as required by the Rules. I am of the view that the document submitted by the claimant is in keeping with the requirements of Rules. The breach of the Medical Act, if any, is a matter to be pursued in other proceedings in another forum. The pleadings as this stage are still being challenged. It will come to the point in the future for the calling of witnesses and expert witnesses, if necessary. The deeming of an expert witness and the preparation of a report is guided by CPR 32. The relevance and admissibility of witnesses and expert witnesses, if so deemed, as are now being challenged by the defendants are matters for consideration by a judge at pretrial review or at the trial.

8. The Court of Appeal in Joseph W. Horsford v Geoffrey Croft[2] per Blenman JA states:

> " It is noteworthy that the issue of whether or not a case management judge (my emphasis) should deal with the question of admissibility of evidence at a preliminary hearing was addressed in *Stroude v Beazer Homes Ltd.*[10] In this case the Court of Appeal of England answered the question in the negative *(my emphasis*). It held that:
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> "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..."

9. The defendants in their submissions filed on September 16, fittingly highlighted paragraphs in the claimant's statement of claim which affront the provisions of the CPR 2000. The defendants request that the offending paragraphs be struck out which would result in the striking out of the case in its entirety.

10. Counsel for the claimant admits both in oral and written submissions that the statement of claim is deficient in pleadings and not in keeping with the requirements CPR 2000 and the statutes governing survival actions. Counsel informs that an amended statement of claim has since been filed, a matter that is not before this court. The court also notes that

[2] ANUHCVAP2014/0006

counsel for the claimant has responded to the factual requirements in his submissions rather than in the statement of claim as is required by the Rules and the governing statute.

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11. The court frowns on striking out matters. Striking out of a statement of case has been described as draconian and should only be engaged in extreme circumstances. The court when faced with an application to strike out must consider the overriding objectives of the CPR 2000 in dealing with cases justly. The decision of the Privy Council in Real Time Systems Limited (Respondent) *v* (1) Renraw Investment Limited (2) CCAM and Company Limited (3) Austin Jack Warner in an application to strike out a statement of claim for lack of particularity which, other than a few exceptions, raised somewhat similar issues as the matter before this court and provides useful guidance. The Privy Council states:

> "17. In that connection, the court has an express discretion under rule 26.2 whether to strike out (it "may strike out"). It must therefore consider any alternatives, and rule 26.1(1)(w) enables it to "give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective", which is to deal with cases justly. As the editors of *The Caribbean Civil Court Practice* (2011) state at Note 23.6, correctly in the Board's view, the court may under this sub-rule make orders of its own initiative. There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period. Having regard to rule 26.6, the court would quite probably also feel it appropriate to specify the consequences (which might include striking out) if the details or amendment were not duly forthcoming within that period.
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> 18. The Centre could in the present case have applied not under rule 26.2 to strike out, but under rule 26.3 for an "unless" order, requiring Real Time to serve an amended statement of case or adequate details within a specified period, failing which the statement of case would be struck out. Since the Centre's interest was in getting rid of the proceedings, it did not so apply. But it would again be very

strange if, by choosing only to apply for the more radical than the more moderate remedy, a defendant could force the court's hand, and deprive it of the option to arrive at a more proportionate solution."

12. The matter in Renraw (above) was not at case management stage and the changes could have been made to the statement of case without the leave of the court. The matter before this court is already at case management and is governed by our CPR 20.1. Changes to a statement of case can only be made once before the date set for the first case management conference. Any subsequent changes to a statement of case must be made with the leave of the court. The court in promoting the overriding objectives should always allow a party to put its case forward. The claimant's right of action is governed by the procedures outline CPR 2000 and in the legislation governing survival action. The claimant is under an obligation to plead her case succinctly setting out all the facts on which she relies so as to give the defendants an opportunity to properly defend the case against them.

13. Counsel for the claimant has in his submissions acceded to the insufficiency of the pleadings but avers that the breach should not engage the draconian effect of striking out. I agree and would accordingly grant leave to amend the statement of case rather than exercising the nuclear weapon of striking out.

14. In the circumstances and on reliance on the Privy Council's decision in Real Time Investments (above) I will engage the provisions of CPR 26.9 and 26.4(5) and accordingly grant an unless order allowing the claimant to file an amended statement of claim within 14 days of today's date.

15. In relation to costs, it is noted that the defendants' application to strike out arose in their submissions in response to the master's order made on his own initiative. I consider the principles enunciated by Webster JA in BERTRAND BURKE v MILDRED KIRWAN[3] and accordingly awards costs in the cause to the defendants to be to be paid by the claimant in the trial.

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[33] **MNIHCVAP2015/0001**

16. The defendants also filed an application to expunge offensive paragraphs from the submissions filed by counsel for the claimant. The defendants' contend that the paragraphs are frivolous, vexatious and irrelevant.

17. Legal practitioners before the court should seek to uphold the integrity of the court and the legal profession. They are expected to conduct proceedings before the court in a respectable manner. Offensive, inflammatory, emotive language or comments as stated in the submissions cannot be countenanced by the court. However my short response to the application is that the alleged offensive paragraphs requested to be expunged are in submissions and not as evidence on affidavit or witness statements. Accordingly, I will not make any ruling on the application except to admonish counsel for the claimant to desist from such a practice.

ORDER

18. .For the reasons given above I make the following order:

(1) Unless the claimant files an amended statement of claim within 14 days of today's date to comply with the provisions of CPR 2000 and taking into consideration all the issues raised by the master in his order of 1st July 2016 and the submissions for the defendants in relation to the cause(s) of action against the respective defendants, the statement of claim shall be struck out for want of prosecution.

(2) The defendant when served may file an amended defence in accordance with CPR 2000.

(3) The matter shall thereafter proceed in accordance with CPR 2000 and shall be listed for further case management directions on 24th January 2017.

(4) Costs in the cause to the defendants to be paid at trial.

AGNES ACTIE
MASTER