IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

(CIVIL) -

DOMHCV2016/0094

IN THE MATTER OF THE PARTITION ACT CHAPTER 54:09 OF THE REVISED LAWS OF DOMINICA

BETWEEN:-

CHERYL BLAIZE

Claimant/Applicant

And

KIRK SPENCE

Defendant/Respondent

2017: January 30

Mrs Heather Felix Evans for the Claimant/Applicant

Mr David Bruney on behalf of the Defendant/Respondent

RULING ON WRITTEN SUBMISSIONS:

[1] **Stephenson J.:** "Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular, they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules.As well as their expense, excessive particulars can achieve directly the opposite result from that which is intended. They can obscure the issues rather than provide clarification."[1]

[2] This is an application filed by the claimant/applicant("applicant") to strike out a defence unless it is amended to comply with Civil Procedure Rules 2000 ("CPR ").

[3] The applicant in her application contends that paragraphs 4,5,and 7 to 24 of the Defencefall foul of the provisions of Part 10.5(4) CPR 2000.[2]

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[1] Per Lord Woolf in McPhilemy –v- Times Newspaper Ltd [1993] 3 ALL E R 775, 792-793

[1] [2]Part 10.5 of CPR 2000 provides as follows:

Defendant's duty to set out case

10.5(1) The defence must set out all the facts on which the defendant relies to dispute the claim.

(2) Such statement must be as short as practicable.

(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.

(4) If the defendant denies any of the allegations in the claim form or statement of claim – (a) the defendant must state the reasons for doing so; and (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.

(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.

(6) The defendant must identify in or annex to the defence any document which is considered to be necessary to the defence.

(7) A defendant who defends in a representative capacity must say – (a) what that capacity is; and (b) whom the defendant represents. (8) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with rule 3.12.

[4] The following represents the salient aspects of the applicant's submissions:

a) that the amended defence filed by the defendant/respondent ("respondent") is prolix in that it contains unnecessary and superfluous facts and arguments in pleading and evidence;[3]

b) that this is not a case that is appropriate for striking out as striking out is a draconian measure and appropriate only in particular instances where the pleadings are incurably bad that is where the claim sets out no facts showing what the claim is about or that no cause of action appears from thefacts[4];

c) that Part 10.5.2 makes no provision as to a sanction to be imposed for non-compliance, that this does not, however, weaken the court's power to act in the circumstance of the case at bar;

d) that in the circumstances of this case an application can be made for an unless order as provided for by Part 26.4 of CPR particularly in subparagraphs (1), (2), (5) & (7)[5]. That the applicant, therefore, applies to the court for an unless order being made against the respondent that he amends his defence to bring it within compliance of the CPR and should respondent fail to do so that the defencebe struck out.

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[3] Prolix as defined in Blacks Law Dictionary 8th Edition

[4] Re: AG of St Lucia –v- Allen Chastanet& Kenneth Cauzaunon SLUHCV2016/0016

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

[5] The respondent contends the defence[6] as filed is compliant with part 10 of CPR 2000. Learned Counsel Mr. David Bruney on behalf of the respondent relied on the dicta of MendoncaJA in the case of **M15 Investigations Ltd. The Centurion Protective Agency Ltd.**[7]which he contends the way a defence should be drafted pursuant to the stipulations of Rule 10.5 of CPR 2000 as follows:

> "*The days when a Defence may be filed containing a bear denial are over.*
>
> *…*
>
> *In respect of each allegation in a claim form or statement case, therefore, there must be an admission or denial or a request for a claimant to prove the allegation. Where there is a denial, it cannot be a bear denial, it must be accompanied by the Defendant's reasons for the denial. If the defendant wishes to prove a different version of events from that given by the claimant, he must state his own version. I would think that where the claimant set out a different version of events from that set out by the claimant, that can be a sufficient denial for the purposes of 10.5 (4)(a) without a specific statement of the reasons for denying the allegation*."

[6] Learned Counsel Mr David Bruney submitted that in the circumstances of this case paragraphs 3,4,5, and 7 to 24 are necessary for the specific purpose of putting forward the respondent's version of events as transpired also the statements are necessary and

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[6] It is noted that the defence has been amended however those amendments are not in relation to the application currently before the court.

[7] Civil Appeal No 244 of 2008 per Medonca JA

have to be given based on the particulars of the case and the areas of law under discussion.

[7] Learned Counsel further submitted that in the circumstances of the case at bar rule 10.5 of CPR 2000 would require more than bare assertions and further, that it is in the interest of justice that the claimant/applicant is put on notice as to the specifics of the defendant's/respondent's defence.

[8] Mr.Bruney submitted that the term prolix is not of any relevance to the paragraphs under review. That these paragraphs as pleaded address the heart of the issue under consideration which is an equitable principle delving into the intention of the parties at the time of construction of the building which is the subject matter of the case at bar. Learned counsel went on to say that he could not see how any embarrassing situations could have been caused by the inclusion of these paragraphs.

[9] Learned Counsel offered a different definition of 'prolix' as stated in the Oxford English Dictionary which reads *"of long duration, lengthy, wordy, tedious".* For the avoidance of doubt I will state here and now that the meaning of the word Prolix in legal proceedings is known and in this matter is taken to mean a pleading which is unnecessarily long which contains superfluous statements or allegations of fact.

[10] Learned Counsel Mr. Burney contended that the length of the defence filed is necessary as a consequence of the nature of the claim and the respondent's responsibility to fulfill the obligations required by Part 10.5(4) of CPR 2000 which provides

> *"If the defendant denies any of the allegations in the claim form or statement of claim –*
>
> *(a) The defendant must state the reasons for doing so: and*
>
> *(b) If the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence." …*

[11] Learned Counsel further submits that the averments contained in the paragraphs complained of by the applicant provides the court with the pertinent details which are necessary for the validity of the defence. Learned Counsel also posits that the defence as filed affords "the claimant with theentirety of the facts on which the respondent relies on and is thorough in its presentation"[8].

[12] Mr. David Bruney further contended that the respondent has presented "a clear case withreal substance contained in the factual assertions made and supported bycogent explanation of the conduct of the parties[9]".

[13] Learned Counsel submitted that to strike out the defence is a draconian step which ought not to be in this case and he urged the court to reject the application for an unless order and allow the defence to stand as pleaded.

Court's discussion and decision

[14] Part 10.5.1 of CPR 2000 states

> "*10.5 (1) Thedefence must set out all the facts on which the defendant relies to dispute the claim.*
>
> *(2) Such statement must be as short as practicable. "*

[15] It is clear that a defendant in civil proceedings ought to set out his defencefully and he must at the same time be as short as practicable. In the court's view, the question to be asked is, does the defence as filed contain unnecessary and superfluous facts, arguments and evidence?

[16] CPR seeks to prohibit prolix pleadings as existed under the previous regime governing civil litigation and practice. One of the often stated purposes of theCPR is to promote at the earliest state of the proceedings a clear and concise exposition of

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[8] See paragraph 14 of the Defendant's/respondent's submissions

[9] Ibid paragraph 15

the facts of the case supporting the party's respective case, so that of the other side is aware of the cases they have to meet.

[17] It is trite law and practice that it is incumbent upon the defendant to state the full particulars of his case. If the defendant desires to put forward a different version of events from that given by a claimant he must state his own version in sufficient detail to ensure the claimant can prepare for trial and understand the case which he has to meet[10].

[18] In the case of **Baxter Healthcare Corporation –v- Abbott Laboratories**[11]it was held *inter alia* that since the advent of the CPR (in the UK) parties were required to plead a positive case, along with various other matters which they had not been required to plead prior to the coming into force of the CPR, so that the case might be properly met and litigated. Further, it was held that it would be highly unsatisfactory if the defendants' case were to become apparent only with the exchange of witness statements or even skeleton arguments. I am of the considered view that the same applies in our jurisdiction.

[19] The learning in Blackstone's on Civil Practice states that a defence must give full details of any stand-alone defence relied on and in the examples cited included equitable and legal defences. The learning continues to state that "The obligation is to set out sufficient facts to establish the elements for the defence based on the circumstances of the case."[12]

[20] The applicant, in short, seeks *inter alia* to obtain a declaration that she and respondent are equal owners of property located at Union Estate containing 4.58 acres of land and a declaration that she is entitled to a 50% share of the house located on the said property. She also seeks to have the parcel of land subject of

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[10] See Blackstone's Civil Practice 2009 paragraph 26.8 at page 371

[11] [2005] EWHC 2878

[12] Blackstone's op cit at paragraph 26.8 at page 372

the proceedings partitioned to reflect the ownership in the proportion that she is seeking to have declared.

[21] The respondent does not deny that the applicant has an interest in the property in question,he, however, denies she is entitled to any share in the building on the said property.

[22] A quick review of the pleadings shows that the applicant is basing her claim on the existence of a constructive trust arising out of a relationship she shared with the defendant. The respondent denies this and his Counsel submits that given the nature of the case, bare denials and assertions would not suffice and that it is in the best interest of justice that the applicant is put on notice as to the specifics of the respondent's defence.

[23] Part 10.7(1) provides that a defendant may not rely on any allegation or factual argument not set out in the defence which could have been set out there unless the court gives him permission.

[24] "*Good drafting involves the concise and clear identification of the subject matter of the claim, the issues in the case, the parties respective positions in respect of those issues."*[13]I ask the question does the defence in the case at bar conform to this statement. It is acknowledged thatthe bedrock of the respondent's defence is to establish the intention of the parties in acquiring the property subject of the litigation. However, does the somewhat lengthy and detailed defence filed convey the thrust of his defence in conformity with the requirement for the defence to narrow down and identify the central issues in the dispute and to set out properly detailed particulars as opposed to evidence and in the process setting out his case in response? I think not. The defence as filed is way too detailed and is prolix as claimed by the applicant.

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[13] Blackstone's Civil Practice 2009 op cit

[25] This court is of the view that the respondent could have filed a defence with just sufficient detail as opposed to evidence so that the applicant would be made aware what precisely his defence would be.

[26] Having agreed with learned counsel for the applicant that the defence is prolix what is the best way forward in light of the overriding objective.

[27] The applicant seeks an order that the respondent be ordered to file an amended defence that would be in conformity with CPR by way of unless order. However is that the best way to proceed at this stage when the information is already out there.

[28] I do not think this will take the case any further forward by taking that course. In the circumstances I am minded that even though I agree that the defence is prolix, not to have the respondent file an amended defence but to order that the matter continues to take its normal course.

[29] This case highlights the need for precision in drafting statements of case which is paramount and ought to remain at the forefront of pleading that comes before the court.

[30] From a review of the facts as stated thus far in this case, I have come to the considered view that it is clear that the parties ought to make a serious effort to settle this matter and I am minded to make a mediation order in this matter.

[31] The application therefore in this matter is not granted and the court will make a mediation order in terms to be agreed between the parties herein.

[32] There shall be no order as to costs.

……..…….

M E Birnie Stephenson

High Court Judge