THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0029

BETWEEN

HILLARY BOWMAN

of Richland Park

CLAIMANT

and

EUDENIA ARRINDELL

also known as

SHIRLEY EUDENIA ARRINDELL

of Arnos Vale

DEFENDANT

Appearances:

Mr. Parnel R. Campbell Q.C. for the claimant, with him Ms. Mandela Campbell.
Ms. Paula David for the defendant.

2016: Dec. 7

2017: Mar. 3

DECISION

BACKGROUND

[1] **Henry, J.:** The parties in this case are neighbours. The claimant Mr. Hillary Bowman and the defendant Ms. Eudenia Arrindell (a.k.a.Shirley Eudenia Arrindell) own adjoining parcels of land at Arnos Vale. Ms.

Arrindell allegedly inherited hers from her mother Claudine Veronica Arrindell deceased. Mr. Bowman alleged that he had pursued an arrangement with the deceased whereby she would transfer her parcel to him in exchange for lands he undertook to acquire for her elsewhere. He claimed that he and Eudenia Arrindell concluded an agreement to that effect after her mother's death, whereupon he purchased property at Cane Hall which Ms. Arrindell represented was satisfactory.

[2] Mr. Bowman alleged that Ms. Arrindell agreed to accept the property at Cane Hall and the sum of $40,000.00 in consideration for her conveyance to him of the Arnos Vale property. He pleaded that in furtherance their agreement he delivered the keys to the Cane Hall property to her and the sum of $20,000.00 which she deposited into her account in his presence. He contended that Ms. Arrindell has failed or refused to deliver the keys to her property to him or to accept the outstanding $20,000.00 although he has made repeated attempts to finalize the payment.

[3] He sought an order for specific performance, a mandatory injunction compelling Ms. Arrindell to deliver the Arnos Vale property to him, or alternatively damages for breach of contract and costs. Ms. Arrindell has resisted the claim. She countered that whenever she spoke to or was in contact with Mr. Bowman, she was incapable of understanding the transaction because she was mentally impaired and Mr. Bowman must have known that she would be confused. She contended that Mr. Bowman procured her signature to an unsigned, undated and 'legally unspecified' agreement. She claimed that he took her to RBTT bank and personally deposited $20,000.00 into her account. She denied receiving 'cash, money or money's worth' from him or appointing anyone to be her agent except one Mr. J. Verol Soleyn.

[4] Mr. Bowman has applied for an order:

1. striking out Ms. Arrindell's defence on the grounds that it fails to disclose any reasonable cause for defending the claim; and as being frivolous and vexatious and otherwise an abuse of the process of the Court;
2. compelling the Ms. Arrindell to accept a cheque in the sum of $20,000 from him;
3. compelling her to deliver vacant possession of the Arnos Vale property to him with immediate effect; and
4. costs.

Mr. Bowman has effectively sought specific performance of the impugned agreement and summary judgment. Ms. Arrindell opposed his application. She contends that she has an arguable case which should be fully ventilated.

ISSUE

[5] The issues are whether:

(1) Ms. Arrindell's defence should be struck out?

(2) summary judgment should be entered for Mr. Bowman?

ANALYSIS

Issue 1 – Should Ms. Arrindell's defence be struck out?

[6] The court may strike out any part of a defence which discloses no reasonable ground for defending the claim or which is an abuse of the court's process.[1] When considering the application, the court must give effect to the overriding objective of the CPR to act justly. The process does not call for a mini-trial of the issues, only for an examination of the particulars in the statement of case, to assess whether the defence is defective or will fail 'as a matter of law'.[2] The court exercises its discretion to strike out a defence 'sparingly and only in the most clear and obvious cases.'[3]

[7] The court is not required to determine whether Ms. Arrindell's defence will succeed, and it is not necessary to analyze evidence to evaluate her chances of success. The assessment does not include a detailed examination of the facts, allegations and documents.[4] Even if the defence is weak, if it raises a question which the judge must decide, the court must consider the merits.[2] Essentially, those are the legal principles which govern disposition of applications to strike out a statement of case.

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[1] Civil Procedure Rules 2000 ('CPR') 26.3 (1) (b) and (c).

[2] Swain v Hillman [2001] 1 All E.R. 91.

[3] Julian Prevost v Rayburn Blackmore et al DOMHCV2005/0177, para. 6 (Rawlins J.)

[4] M4 Investments v CLICO Barbados Ltd. (2006) 68 WIR 65.

[8] Both parties made submissions which echoed those principles. In this regard, Mr. Bowman relied on the cases of **Spencer v The Attorney General of Antigua and Barbuda**,[5] **Swain v Hillman**[6], **Tawney Assets Limited v East Pine Management Limited**[7] and **Sandra Ann-Marie George v Nigel Don-Juan Glasgow**[8]. The learned justices in those cases stressed that striking out will be ordered only where the defence is 'obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court'[5], 'bound to fail'[6], 'is incurably bad … has no real prospect of succeeding at trial'[7] or consists primarily of bare denials, puts the claimant to strict proof and fails to present a viable defence[8].

[9] Mr. Bowman accepted that striking out of a statement of case is a drastic step which is reserved for exceptional cases, and it is not appropriate to utilize that sanction if the defence 'raises a serious live issue of fact which can only be determined by hearing oral evidence'[7]. He adopted the language of Mitchell J.A. in the **Tawney Assets Limited case** where he said:

> 'The reason for proceeding cautiously has frequently been explained as that the exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or …'[9]

[10] Ms. Arrindell placed reliance on the case of **Michael Wilson and Partners Limited v Temujin International Limited et al**[10] and agreed that striking out is a 'draconian step. Adopting the phraseology of Hariprashad-Charles J. she submitted that:

> 'the expression "discloses no reasonable grounds for bringing or defending a claim" addresses two situations:

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[5] ANUHCVAP1997/0020A.

[6] Ibid. at note 2.

[7] BVIHCVAP2012/007.

[8] SVGHCVAP2013/0003.

[9] At para. 22.

[10] BVIHCV2006/0037.

1. where the content of a statement of case is defective in that, even if every allegation contained in it were proved, the party whose statement of case it is, cannot succeed; or
2. where the statement of case, no matter how complete and apparently correct it may be, will fail as a matter of law.'

[11] I turn now to examine the striking out application in view of those established legal principles. Mr. Bowman's application is supported by affidavit testimony in which he repeated the 'grounds of his application and portions of his statement of claim. Ms. Arrindell filed no affidavits. In response to Mr. Bowman's claim for specific performance of an agreement allegedly made between them Ms. Arrindell refuted the validity of the impugned agreement on the basis that she is mentally challenged. The central issue is whether Ms. Arrindell's defence raises a viable defence.

[12] The kernel of the case is captured in the statement of claim and defence. Mr. Bowman pleaded:

'7. The claimant and defendant then entered into a formal contract by way of an Amended Sales Agreement signed before a Notary Public on 21st October 2015 … whereby the claimant undertook to purchase the Cane Hall property, and then to exchange it with the defendant for the defendant's Arnos Vale property, and to pay the defendant the additional amount of $40,000.00.

9. By a Deed of Exchange … made between the claimant and the defendant … the claimant transferred the Cane Hall property to the defendant and the defendant simultaneously transferred the Arnos Vale property to the claimant in execution the contract evidence by the amended sales agreement…'.

[13] He pleaded further:

'10. The claimant presented the sum of $20,000.00 to the defendant, the money was deposited by the defendant into her bank account at RBTT Caribbean Bank Limited in the presence of the claimant and her architect.

11. …the estate broker Dannol Charles informed the defendant that she should arrange to collect from him a cheque for $20,000.00 which he had been holding in escrow… and

requesting the defendant to contact him for that purpose. The defendant failed or refused to do so.

12. … a full set of keys for the Cane Hall property were delivered … to the defendant at her home… The defendant accepted the keys…

13. …Bailiff Mulcaire took the cheque for $20,000.00 which Mr. Dannol Charles had been holding in escrow … and presented it to the defendant… but the defendant refused to accept the cheque… the defendant has still not handed over the keys for the Arnos Vale property to the claimant or anyone acting on behalf of the claimant.'

[14] Ms. Arrindell did not admit those allegations. She indicated that she: "…remember some a di tings day say". She supplied particulars of her recollections as follows:

'II. Sometime last year, but before Christmas, Mr. Bowman tell the defendant that he would give her plenty "tousan" dollars and another house to live in if she would sign the house to him. She agreed to sign a paper.

III. The next day Mr. Bowman come for her to go to sign. He had with him Mr. Dannol Charles. They went to an office where she, the defendant, sign some papers. She was handed some papers…

VII. The defendant visited Dr. Amrie Morris-Patterson, a psychiatrist, whose report is hereto attached…

3. At all material times, particularly at the several times the claimant spoke or had physical contact with the defendant she was not capable of understanding and did not understand the clamant and the witnesses and exhibits of and on behalf of the claimant by reason of her mental condition and this was known to the claimant.'

[15] Ms. Arrindell also asserted in her defence:

'(a) The claimant by his own confession is … by occupation a "Director of Education for the Caribbean Union Conference of Seventh Day Adventists and is responsible for 52 School and one University"… Of such education and day to day practice, the claimant is a repository of knowledge and an intelligent professional who must have evaluated the defendant's mental capabilities and must have discovered her incapacity to understand a

transaction, in which the intelligent claimant handed the defendant a photocopied cheque which he must know, is of no value whatsoever.

(b) The claimant knowing the meaning of the word "amendment" procures the signature of the defendant to an unsigned, undated, legally unspecifiable paper-writing labeled by him as a "substitute" for an invalid paper-writing bearing the signature of the defendant labeled and Agreement.

(c) … the claimant personally took the defendant to the RBTT Bank of Kingstown and personally:-

I. deposited the sum of $20,000.00 to the account of the defendant…

VI. … The Defendant has never received any "cash" "money" or money's worth from the claimant of (sic) from any person on his behalf. And further states that she never appointed anyone to be her agent or advisor save Mr. Soleyn…

(d) And further the claimant must have known and by bringing the above mention of meaningful money to the defendant, she must become confused and not understand any transactions by reason of her mental incapacity.'

[16] By her defence, Ms. Arrindell has admitted that she signed 'some papers'. She has stopped short of acknowledging that among them were the agreement and Deed which Mr. Bowman alleged she signed. This remains a live issue for the court to decide. It is not at liberty to do so until it has heard the evidence. Ms. Arrindell has also raised the issue of her capacity to understand the nature of the papers she signed. She claimed that she was mentally unable to comprehend the transaction. She attached a letter purportedly signed by one Dr. Amrie Morris-Patterson, Psychiatrist. Neither the identity of the person preparing and signing that document nor that person's qualification and expertise have been established. The contents of that letter therefore have no probative value and are excluded from consideration. Suffice it to say that the 'doctor's letter' is suggestive of some neurodevelopmental disorder which could impair Ms. Arrindell's mental capacity to understand legal documents. It is not possible to make a determination as to Ms. Arrindell's mental capacity without hearing expert medical testimony.

[17] In the grounds for the application, Mr. Bowman contended that the only matter raised by Ms. Arrindell by way of defence is the allegation that she lacked the mental capacity to contract with him. He pointed out that she made no allegation that she had not received a fair deal. It is worth noting that it has been legally established that a deed executed by a mentally incapacitated individual is void[11]. Accordingly, the law does not require that a defendant must challenge the fairness of an agreement as part of her defence of mentally incapacity.

[18] Mr. Bowman contended in another ground that Ms. Arrindell filed a medical report of psychiatrist Dr. Amrie Morris-Patterson. He argued that the report does not satisfy the legal threshold for a plea of *non est factum*, and therefore the defence should be struck out. He submitted that Dr. Morris-Patterson's report does not reveal evidence of the quality which would otherwise be required to sustain a plea of mental incapacity. He contended that the challenge to the 'viability of the defence falls to be decided wholly upon the viability of the said medical report'. He posited that the question to be asked is 'do the findings of Dr. Patterson create any necessity for a trial so as to have it determined whether the defendant did not have the requisite mental capacity to understand the effect of the contract, when she signed it, even if it was fully explained to her?'

[19] Ms. Arrindell submitted that Mr. Bowman correctly characterized the gravamen of her defence as a plea of *non est factum*. She added that her defence amounts to an assertion that her intellectual capacity is compromised by a learning disability, in that she was not capable of understanding and did not understand the legal implications of her dealings with Mr. Bowman.

[20] Ms. Arrindell contended further that Mr. Bowman has invited the court to conduct a mini trial without the benefit of "discovery, oral examination and cross examination when he asked the Court to "rule that Dr. Morris-Patterson's report "does not satisfy the legal threshold for a plea of *non est factum*". She argued that Mr. Bowman's application is ill conceived because her defence is arguable as a matter of law and her factual claims are capable of vitiating the alleged agreement between the parties, if proved to the court's satisfaction.

[11] Ball v Mannin (1829) 3 Bli NS 1, HL.

[21] I agree with Ms. Arrindell. As defendant, she was under an obligation to include in her defence those facts on which she relied to dispute the claim in as short a statement as practicable[12]. She would be expected to fill in the details in witness statements subsequently if the matter proceeded to trial. As explained by the Court of Appeal in the case of **East Caribbean Flour Mills Ltd. v Ormiston K. Boyea**[13] pleadings such as a defence serve to delineate the broad issues and allegations. The learned Justices of Appeal stressed that a litigant need not set out all the particulars in his defence. He need only supply sufficient details to inform the other party of the general nature of his case. I am satisfied that Ms. Arrindell has articulated her defence in clear and unambiguous terms and she is at liberty to further particularize them in witness statements. There is accordingly no basis on which Mr. Bowman can properly complain that he has not been made aware of the defence.

[22] Mr. Bowman also submitted that Ms. Arrindell made no attempt to invoke any provisions of the Mental Health Act Cap 294 of the Revised Laws of St. Vincent and the Grenadines 2009. This is true. Such omission does not invalidate or dilute a plea that the defendant did not have the requisite mental competence to execute a deed. This submission does not assist Mr. Bowman.

[23] Mr. Bowman submitted that the court should consider that:

> '1. Ms. Arrindell apparently had no mental difficulty in giving instructions to her original legal advisers; understanding and signing the Acknowledgment of Service; understanding the Defence; and understanding and signing the Certificate of Truth.
>
> 2. No allegation of fraud or undue influence has been levelled against Mr. Bowman.
>
> 3. Mr. Bowman has been waiting for over one year to get the benefit of the contract and has incurred enormous expenses.
>
> 4. Three of Ms. Arrindell's children have sworn affidavits on Mr. Bowman's behalf.
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> 5. Independent advisers to Ms. Arrindell have sworn affidavits on Mr. Bowman's behalf.
>
> 6. The valuation evidence illustrates that the Defendant has not been disadvantaged.

[12] CPR 10.5.

[13] SVGHCVAP2006/0012.

7. In paragraph 2 VII of the defence it was stated that a Report from Dr. Wayne Murray was *"not yet available"* (in March 2016). No report of the kind has become available by December 2016. It is submitted that the promised report was a figment of someone's imagination; that it was part of the deception attempted by Ms. Arrindell's original legal advisers; and that the Court ought to see through the subterfuge which has been attempted to thwart Mr. Bowman's quest for justice.

[24] Ms. Arrindell did not address those matters in her submissions. In relation to the absence of a claim of undue influence or fraud, Mr. Bowman appears to be suggesting that a defence of mental incapacity must be coupled with undue influence or fraud in order to be considered or that their absence renders Ms. Arrindell's allegations suspect. Neither is logically or legally correct. His other statements all relate to real or potential factual contentions which the court is not at liberty to resolve at this stage. They are therefore not relevant and are ignored.

[25] Mr. Bowman based his application on 6 other grounds which outlined some of the factual background to his claim. He also contended that Ms. Arrindell did not deny any of his allegations. He reasoned that there is therefore an executed contract between them. He averred that Ms. Arrindell had the benefit of the advice and support from her children Kendall, Forrell and, Claudette Arrindell, architectural draftsman Dwayne Charles and real estate broker Dannol Charles. He submitted that Ms. Arrindell filed no response to any of the Affidavits filed and served on his behalf in support of the application. He also described events involving Ms. Arrindell's former lawyer, Mr. Bayliss Frederick.

[26] Ms. Arrindell did not response to those submissions. Although she did not use the term 'deny' in her defence, her entire defence comprised a frontal refutation that she entered into an agreement with Mr. Bowman as alleged. She explained that no such agreement existed because she did not have the mental capacity to participate. Her defence meets the requirements of the CPR regarding denial of a claimant's allegations.

[27] By inviting the court to examine the affidavit testimony of Ms. Arrindell's children, Dwayne Charles and Dannol Charles, Mr. Bowman is requesting the court to try the case on the testimony contained in the affidavit. If the court were to proceed in that fashion, it would be short-circuiting

the process without considering Ms. Arrindell's case. This would be contrary to law and procedure as enunciated in the referenced cases. I refrain from doing so.

[28] Ms. Arrindell submitted that this case cannot reach the threshold which is required to justify a striking out of the defence. She added that it simply cannot be maintained that "even if every allegation" in her defence is proved she cannot succeed. She argued that if she is able to establish that she suffers from a learning disability which made it impossible for her to understand the nature of her dealings with Mr. Bowman and that she did not understand those dealings, her case is bound to succeed. She concluded that it cannot be maintained that a plea of *non est factum* will fail as a matter of law.

[29] For the reasons set out before, I agree with Ms. Arrindell. References to Mr. Frederick's conduct are irrelevant and were therefore omitted from consideration. I am satisfied that Ms. Arrindell's defence discloses a reasonable ground for defending the claim. It is not an abuse of the court's process. Mr. Bowman's application for an order striking out her defence is dismissed.

Issue 2 – Should summary judgment be entered for Mr. Bowman?

[30] In support of his application for summary judgment, Mr. Bowman's relied on the grounds and evidence chronicled above. In this regard, he has satisfied the mandatory requirement to provide affidavit testimony and identify the issues[14]. The court is authorized to give summary judgment if the Defendant has no real prospects for successfully defending the claim. This is one of the bases of Mr. Bowman's application.

[31] The legal principles governing the grant of summary judgment were elucidated in **Swain v Hillman**[2] and were repeated by Mr. Bowman and Ms. Arrindell. Ms. Arrindell cited additionally the case of **Saint Lucia Motor and General Insurance Co. Ltd. v Peterson Modeste**[15] and the **Temujin** case[10] while Mr. Bowman quoted from the case of **Bank of Bermuda Limited v Pentium (BVI)**

[14] CPR 15.5.

[15] SLUHCVAP2009/008.

Limited et al[16]. When considering such applications the court is mandated to conduct an exercise to ascertain whether the defendant's chance of success is realistic or merely fanciful. An order for summary judgment should be made where is no real prospect of success and not simply to 'dispense with the need for a trial where there are issues which should be investigated at the trial or because the court concludes that success is improbable'.[2] When making a determination, the court is required to consider the respective parties' statements of case.

[32] Mr. Bowman submitted that on the face of Dr. Patterson's report there is nothing remotely suggesting that Ms. Arrindell was under any mental disability and the viability of the medical report is critical to determination of the central issue. He referenced the case of **Re BEANEY**[17] in which he indicated that the Justice Martin Nourse Q.C. had occasion to examine the degree of understanding required by a person for the valid transfer of property, and opined:

> '… it is unusual for a person who is, or may be, of unsound mind to make a gift of any substance without his affairs having first been subjected to the jurisdiction of the Court of Protection. It is established that a patient cannot, even during a lucid interval, make a valid disposition of his property inter vivos, since that would raise a conflict with the court's control of his affairs. … A patient can make a valid will during a lucid interval.'

This pronouncement does not assist the court in the case at bar.

[33] A consideration of whether Ms. Arrindell has a realistic prospect of success is similar to the earlier exercise conducted in respect of the application to strike out her defence. Having already found that Ms. Arrindell's defence discloses a reasonable basis for defending the claim, the court must now consider whether she has a real prospect of succeeding. A determination of medical competence would be essential to resolving the central contention between the parties. Much would turn on the content of any medical evidence advanced by them. Neither party has provided such testimony at this stage.

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[16] BVIHCVAP2003/0014.

[17] [1978] 1 W.L.R. 770.

[34] It is therefore impossible at this juncture to evaluate the factual basis for Ms. Arrindell's or Mr. Bowman's opposing contentions on this matter. It seems to me that if Ms. Arrindell can establish her averred lack of mental competence, she would be entitled to prevail in defending the claim. Accordingly, in my estimation she has a real prospect of successfully defending the claim. The justice of this case requires that each party be given a fair opportunity to fully ventilate their assertions at trial. At that time, presumably one or both parties will present medical expert testimony which would be indispensable to a finding about Ms. Arrindell's mental capacity. I am satisfied that Mr. Arrindell's defence has a realistic chance of success if she supplies the requisite proof. Mr. Bowman's application for summary judgment is dismissed. Ms. Arrindell is entitled to costs to be assessed pursuant to CPR 65.11.

ORDER

[35] It is accordingly ordered:

(1) Hillary Bowman's application to strike out Ms. Arrindell's defence is dismissed.

(2) Hillary Bowman's application for summary judgment is dismissed.

(3) Hillary Bowman shall pay to Eudenia Arrindell costs to be assessed on an application to be filed and served on or before 31st March, 2017.

[36] I wish to thank counsel for their written submissions.

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Esco L. Henry
HIGH COURT JUDGE