

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **SLUHCV2017/0454**

Between

JOHAN DOMINIQUE

Claimant

and

ALLEN ABBOTT

**By his Administratrix, Latoiya Ezma Abbott nee St Clair
Defendant**

APPEARANCES:

Ms Maureen John- Xavier for the claimant

Mr. Daniel Francis holding papers for Francis Pierre for the defendant

2017: December 18

RULING

1. **ACTIE A:-** The claimant is seeking an order to strike out the defence filed by the defendant. The claimant avers that the defence is in breach of CPR 10.5 as it contains bare denials with no reasons given by the defendant to any of the allegations that he has denied.

Background

2. The claimant claims for damages arising out of a motor vehicular accident. The claimant avers that the accident was caused as a result of the negligence of the defendant who is now deceased.
3. The defence denies the claim in its entirety and contends that the accident was not caused by the deceased defendant's negligence as alleged.
4. The claimant filed an application to strike out the defence for failure to comply with CPR 10.5 (4) (5).

5. The application is opposed by the defendant. Counsel for the defendant referred the court to claim number SLUHCV 2017/0511 in which the defendant, Qua administratrix in the extant claim, filed a claim against one Marcus Mathurin. It is alleged that the said Marcus Mathurin caused the death of the defendant in the present claim resulting in the damages suffered by the extant claimant. The alleged particulars of negligence are all pleaded in statement of claim in SLUHCV 2017/0511 but not in the extant claim.

Law and Analysis

6. **CPR 2000 Rule 10.5** places a duty on a defendant to deal with each fact pleaded against it in a claim and statement of claim by either admitting or denying the facts. Where the defendant denies any of the allegations in the claimant's statement of case he or she must also state the reasons for doing so and if he/she intends to prove a different version of events that different version must be set out in the defence.
7. The defendant is under a duty to plead its case to give the claimant an opportunity to file a proper reply, if necessary or to know the facts that the claimant will have to face at trial.
8. The court notes that the particulars of the negligence are set out in claim number SLUHCV 2017/0511 filed against Marcus Mathurin for causing the death of the defendant. The claimant in the extant claim is not a party to claim SLUHCV 2017/0511 neither was Marcus Mathurin made an ancillary defendant to the present claim.
9. I find merit in the claimant's contention that the defence is a bare denial of the averments made in the statement of claim and is in breach of CPR 10.5 (4) (5).

Whether the defence be struck out

10. CPR 26.3(1) provides that the court may strike out a statement of case or part of a statement of case if it appears that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending the claim.
11. 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. This well-established principle was pronounced by

Court of Appeal in **Tawney Assets Limited v East Pine Management Limited**¹ citing **Baldwin Spencer v The Attorney General of Antigua and Barbuda**².

12. The striking out of a statement of claim is made in very rare circumstances where the court is convinced that the claim is unsustainable. The Privy Council in **Real Time Systems Limited v (1) Renraw Investments Limited (2) CCAM and Company Limited (3) Austin Jack Warner**,³ in relation to striking out states:

“17. 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 (My Emphasis).*** 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.

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.”

¹¹ BVIHCVAP 2012/007

² ANUHCVP 1997/ 0020A

³ [2014] UKPC 6

13. Counsel for the defendant at the hearing intimated his intention to file an application to consolidate the extant claim with two other related matters which would distill the factual matrix of the entire claim between all parties. Having heard counsel and having read the particulars of claim SLUHCV 2017/0511 filed against Marcus Mathurin, I am of the view that the defendant should be given an opportunity to put matters right in keeping with the Privy Council decision in **Real Time Systems Limited v (1) Renraw Investments Limited (2) CCAM and Company Limited (3) Austin Jack Warner** cited above. An amendment of the defence to give further and better particulars rather than striking out the entire defence would be more in keeping with the overriding objective. In the circumstances I will make an “unless order” to give the defendant an opportunity to file an amended defence failing which the defence shall stand dismissed and judgment entered in favor of the claimant.

ORDER

14. For the foregoing reasons, it is ordered and directed as follows that:
- i. Unless the defendant files an amended defence within Fourteen (14) days from today's date to comply with CPR 10.5 (4)(5), the defence shall be struck out in its entirety and judgment entered in favor of the claimant.
 - ii. The claimant may file a reply, if necessary, in accordance with CPR 10.9.
 - iii. The defendant shall pay costs to the claimant in the sum of \$750.00 prior to the next case management conference.
 - iv. The matter is adjourned 25th January 2018 to be heard together with Claims **SLUHCV 2017/0510** and **SLUHCV 2017/0511**, with liberty to apply.
 - v. Counsel for the defendant shall have carriage of the order.

**AGNES ACTIE
MASTER
BY THE COURT**

REGISTRAR