

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0001

BETWEEN

PATRICIA ANNE HUGGINS

CLAIMANT

and

LLOYD BROWNE

DEFENDANT

Appearances:

Ms. Danielle France for the claimant/respondent.

Ms. Suenel Fraser of counsel for the applicant/defendant.

2018: Feb. 21

Mar. 21

DECISION

BACKGROUND

[1] **Henry, J.:** Ms. Patricia-Anne Huggins has accused Mr. Lloyd Browne of trespassing on her property at Golden Vale in the State of Saint Vincent and the Grenadines ('the subject property'). She alleged that he did so in or around January 2014 and subsequently. She claimed that he has repeatedly dumped tree cuttings and other waste material on the subject land without her consent. Ms. Huggins filed a Fixed Date Claim Form ('FDCF') in the High Court on 4th January 2018 in which she seeks damages, an injunction and costs.

[2] Mr. Browne filed a Defence¹ denying those allegations. He also filed a Notice of Application¹ for an order striking out Ms. Huggins' FDCF and statement of claim, on the ground that they disclose no cause of action, no reasonable ground for bringing a claim and no subject matter against which to found a claim or cause of action. He alleged further that Ms. Huggins' claim is misconceived and offends against rules 8.6(1)(a) and 26.3(1) of the Civil Procedure Rules 2000.

[3] Mr. Browne seeks damages for nuisance and trespass, costs, interest and a perpetual injunction to restrain Ms. Huggins from dumping refuse or anything on his property. At the first hearing of the FDCF, the parties were invited to make oral submissions on the application. They were also directed to file skeleton arguments and list of authorities. The application is dismissed for the reasons set out below.

ISSUES

[4] The issues are:

1. Whether Ms. Huggins' FDCF and statement of claim should be struck out as disclosing no reasonable ground for bringing a claim? and
2. Whether Mr. Browne's application for damages, an injunction, costs and interest should be granted?

ANALYSIS

Issue 1 – Should Ms. Huggins' FDCF and statement of claim be struck out as disclosing no reasonable ground for bringing a claim?

[5] The Civil Procedure Rules 2000 ('CPR') empower the High Court to strike out a FDCF and statement of claim which disclose no reasonable ground for making such a claim.² However, such an order is seldom made as it is considered to be drastic and to be reserved for the most glaring

¹ Filed on 6th February 2018.

² Rule 26.3 (1) (b) of the CPR.

cases, and only if the court is satisfied that the claim cannot be sustained on the allegations³ or if 'the statement of case is just plain bad in law'⁴.

[6] The court is required to conduct an assessment of the respective pleaded cases of each party and in doing so, it assumes that the allegations are factual. Even when a statement of case is weak, the court generally errs on the side of allowing the case to proceed to trial. In exercising its discretion, the court must ask itself whether justice can best be served by ordering 'the claimant to supply further details or to serve an amended statement of claim.'⁴ It must also seek to give effect to the overriding objective to act justly.

[7] Mr. Browne filed submissions in which he rehearsed several of those principles. Ms. Huggins argued that the instant case raises live issues which the court cannot determine at this time. She submitted that the court is to be guided by the legal principles which emerge from the judgment in **Baldwin Spencer v Attorney General of Antigua**⁵.

[8] Mr. Browne referred to the decisions in **Michael Wilson et al v Temujin International Limited et al**⁶, **Tawney Assets Limited v East Pine Management Limited**⁷, **Attorney General of St. Lucia v Allen Chasten et al**⁸, **Didier et al v Royal Caribbean Cruises Ltd.**⁴, **Norde v Mannix**⁹ and **Real Time Systems v Renraw Ltd.**¹⁰ which rehearse the principles mentioned earlier. I will apply them to the facts of the case at bar.

³ Michael Wilson and Partners Limited v Temujin International Limited et al BVIHCV2006/0037.

⁴ Didier et al v Royal Caribbean Cruises Ltd. SLUHCVAP2014/0024 (unreported), at para. 24 per Pereira CJ.

⁵ ANUHCVP1997/20A, (unreported).

⁶ BVIHCV2006/0037 (unreported).

⁷ BVIHCVAP2012/007 (unreported).

⁸ SLUHCVAP2015/007 (unreported).

⁹ ANUHCVP2015/0034 (unreported).

¹⁰ [2014] UKPC 6.

- [9] Mr. Browne argued that Ms. Huggins' claim will fail as a matter of law and should be struck out as it is bad in law, has no real prospect of succeeding at a trial and should not be allowed to go past the initial stages. He contended that the statement of claim does not disclose any cause of action covered by Rule 8.1(5) of the CPR or at all.
- [10] He submitted that Rule 8.1(5) of the CPR makes it mandatory for fixed date claim forms to be used in specific types of proceedings, namely:
1. claims arising out of hire purchase or credit sale agreements;
 2. proceedings for possession of land;
 3. whenever its use is required by a Rule or Practice Direction; and
 4. where by any enactment proceedings are required to be commenced by originating summons or motion.
- [11] Mr. Browne reasoned that based on the pleadings filed by Ms. Huggins, her claim is not an action for possession of land but rather an action which touches and concerns land. He submitted that therefore it should properly to be commenced by way of regular claim form. He acknowledged that notwithstanding this irregularity, the court is authorized by rule 26.9 of the CPR to 'put matters right', and to treat the action as if it were properly begun by claim form. He submitted that he recognized that the court may exercise its discretion in Ms. Huggins' favour and not strike out the claim this ground.
- [12] Ms. Huggins countered that she utilized the FDCF as her claim is for 'proceedings for possession of land' referenced in the rule. She submitted that the CPR does not define the term. She argued that Mr. Browne has disputed her legal title to the subject property and her entitlement to its possession. She contended that by refuting her claim, Mr. Browne has brought it into the category of claims for possession of lands.
- [13] She submitted that even if she is found to have used the incorrect form, this would not invalidate her claim or justify an order striking it out. She cited the case of **Intrust Trustees (Nevis) Limited et al v Naomi Darren** in which George-Creque JA refused to strike out a

claim form and statement of claim and opined:

‘... to sacrifice substance by way of slavish adherence to form for the purpose of a genuine claim defeats the overriding objective of CPR rather than gives effect to it.’¹¹

[14] Ms. Huggins has correctly pointed out and Mr. Browne has accepted that the court will not lightly strike out a fixed date claim form or statement of case even if it was instituted by an incorrect originating process. His observation that Ms. Huggins’ action is not for recovery of land or any of the claims contemplated by CPR 8.1(5) is accurate. It should therefore have been instituted by a regular claim form.

[15] However, I am satisfied that such departure in the instant case does not warrant a step as drastic as striking out. An appropriate order would be one deeming the fixed date claim form to be a regular claim form or mandating the party to amend her pleadings accordingly.

[16] Mr. Browne contended further that Ms. Huggins’ claim discloses no subject matter against which to ground a claim and does not disclose any cause of action. Referring to paragraph 2 of the statement of claim he noted that Ms. Huggins alleged that she became the owner of a parcel of land situate in Golden Vale by Deed of Gift 1868 of 2014 from her my late husband Mr. Arthur Hoskins Huggins.

[17] He submitted that the schedule to the deed purports to describe the subject property allegedly conveyed to Ms. Huggins. He noted that it referred to property being ‘All the rest and residue ...’. He argued further that this choice of words suggests that part of the property was already disposed of and the part being conveyed comprises only a portion of the lands. He submitted that in such a case the description must clearly and accurately describe the property being conveyed, by reference to the area or such other descriptive language.

[18] Mr. Browne argued that in this regard the subject deed fell short, as a consequence of which the subject land is unidentified and unidentifiable from the instrument purporting to convey it.

¹¹ SKBHCVAP2009/001A, delivered 9th June 2009, (unreported).

He reasoned that the 'deed' is therefore an empty instrument incapable of conveying any property, has not conveyed any property and amounts to a sham or a farce. He contended that in the premises Ms. Huggins cannot definitively claim that he has trespassed on her property, since she has failed to establish her ownership to lot number 5 or any part of it.

[19] He submitted that the onus is on Ms. Huggins to properly establish a subject on which to found a claim and that she has failed to do so. He argued that as a result of this failure there is effectively no subject matter of the claim and it therefore has no real prospect of succeeding at a trial and should be struck out. He submitted that the court is not at liberty to correct such matters pursuant to CPR 26.9 because the issue is not merely procedural but rather substantive. Ms. Huggins rejoined that her statement of claim clearly identifies the disputed property as being land at Golden Vale.

[20] CPR 8.7 imposes a duty on a claimant to set out all facts on which he or she will rely at the trial. The statement should be as short as practicable and should identify any documents which he or she considers to be necessary to the case.¹² Fulsome details may be provided subsequently in a witness statement or summary or affidavit as part of the evidence.¹³

[21] It is now well-established that a party will be permitted to particularize his or her case by providing evidence to substantiate his or her claims. In **East Caribbean Flour Mills Ltd. v Ormiston K. Boyea**,¹⁴ the court explained that while pleadings circumscribe the broad issues and allegations which are particularized in witness statements or affidavit evidence. Accordingly, the court will not strike out a statement of case which outlines the broad factual and legal bases for a claim provided that it is one which is maintainable at law.

[22] Under this ground, Mr. Browne has highlighted issues which are best left to be resolved at a trial after all of the evidence has been adduced. The pleadings as they stand advance one or

¹³ CPR 29.5 and 30.3.

¹⁴ SVGHCVAP2006/0012.

more potential factual or legal bases on which Ms. Huggins may prosecute her claim for trespass. In this regard, she attached to her statement of claim a copy of a Deed of Gift which describes the subject property as comprising 10 acre, 2 rods, 10 poles 'being Lot number 5 on a plan drawn by Stinson Campbell'. It also describes the boundaries by reference to the names of adjoining occupiers or the nature of those properties (e.g. that they are roads).

[23] Further details may or may not be forthcoming as part of her evidence. I am satisfied that she has provided adequate material from which Mr. Browne and the court would have an appreciation of which lands are the subject of her claim. To make an order striking out her claim at this juncture would be premature and unwarranted.

[24] Mr. Browne submitted further that Ms. Huggins is not the owner of any land as claimed and therefore has no *locus standi* to bring an action of this nature against him and to seek the referenced remedies. He contended that the purported gift of the lands to her amounts to an empty gift which passes nothing. He argued further that if the court agrees that she is not the owner the next step is to determine whether in the circumstances there was possession sufficient to support a claim for trespass.

[25] He contended that Ms. Huggins has not shown in her pleadings that she was in actual possession or exercised any control over the land as required to found a claim for trespass. He argued that her pleadings are devoid of any assertion or evidence of actual possession or actual possession sufficient to justify the exclusion of everyone else; and if so for how long.

[26] Mr. Browne submitted that Ms. Huggins has not claimed or shown that she maintains any sort of fence around the perimeter of the land, or that she lives on it, farms it, cleans or clears it; pays for its upkeep or in any way exercises any control over it. He noted that paragraphs 4 and 5 of the statement of claim are the only paragraphs which hint at some limited and reactionary interaction by her with the land. He submitted that such interaction is limited to hiring workmen to erect a 'no trespassing' sign in late August 2017 and to paying her gardener around that same time to erect a "*barrier of Glorisia plants...to further prevent the defendant...*"

[27] Mr. Browne argued that it is trite law that in order to found a claim for trespass to land, the claimant must show that she was in actual possession at the time of the trespass. He submitted that actual possession is two pronged: the claimant must show that she had the necessary *animus possidendi* and must have exercised control over the subject land to the exclusion of all others. He cited in support Halsbury's Laws of England 3rd Edition, paragraph 1212 which states:

'The extent of the control which should be exercised in order to constitute possession varies with the nature of the land; possession means possession of that character of which the land is capable.'

[28] Mr. Browne contended 'it is clear that these acts by the claimant were done solely out of spite towards him to prevent him and him alone from allegedly continuing to "dump and burn refuse" on lot number 5. He argued that Ms. Huggins' actions were not designed to exercise any control over the land to the exclusion of all others'. He concluded that based on her pleadings, Ms. Huggins has done nothing in the eyes of the law, to illustrate her actual possession or occupation of lot number 5.

[29] Mr. Browne reasoned that she has therefore failed in discharging her burden of proving that she was in possession of lot number 5. He contended that she stands before the court, not as an owner of land as claimed or as an occupier but as a stranger with no legal or other title conveyed to her pursuant to Deed 1868 of 2014; and with no legal or other interest in lot 5 on which to base a claim in trespass. He argued further that she has no *locus standi* to bring or maintain this or any other similar action against him and that the claim must therefore be struck out. He submitted that in the premises, this is not a defect which is amenable to the court's remedial powers under CPR 26.9.

[30] Ms. Huggins maintained that the allegations pleaded by her if proved would constitute a factual and legal basis on which the court may grant the reliefs she has claimed. I agree. Mr. Browne's several submissions presuppose that the court is required to and must make factual findings on the basis of the claim form and statement of claim only. This is not accurate. The court is mandated by rules and practice to delay findings of fact until after the evidence is presented at trial, and legal arguments are made by all parties. We are not at that stage.

[31] To rule in favour of one party without hearing both sides of a dispute would run contrary to the rules of court, principles of natural justice and administrative law. I refrain from doing so. I hasten to add that for those reasons it would be unjust to make a finding about occupation, possession or ownership of the disputed land at this time. Mr. Browne has not supplied any justifiable basis on which the court may legitimately rule that Ms. Huggins does not have the requisite *locus standi* to pursue this claim. I therefore make no such finding.

River defence

[32] Mr. Browne submitted that Ms. Huggins' claim is misconceived because any river defence to be erected is the responsibility of the Government of St. Vincent and the Grenadines. He argued that the river defence is within the government's portfolio and that in 2016 the government was involved in constructing one further down from lot number 5 on the opposite side of the road. He contended that Ms. Huggins is therefore misguided in thinking that she can force him (by these proceedings) to foot the bill for any retaining wall or river defence she wishes to construct. He argued that on this point, her claim must be struck out as disclosing no reasonable ground for bringing it.

[33] Ms. Huggins responded that Mr. Browne misinterpreted the claim. She noted that her claim alleged that Mr. Browne's cumulative acts of dumping and burning refuse on her property (close to the riverbed) caused her land to erode as a result of which she would need to construct a wall to prevent further erosion. She submitted that she was seeking special damages from Mr. Browne to enable her to take such remedial action.

[34] Ms. Huggins pleaded that Mr. Browne's conduct has caused her property to erode significantly. She pleaded further that it has become necessary for her to construct a retaining wall to stem further erosion occasioned by Mr. Browne's trespass. She claimed the sum of \$15,000.00 as special damages for the purpose of building a retaining wall. The parties' opposing contentions highlight matters which can only be determined after the court has heard the evidence. It would be premature to decide the merits of those factual and legal assertions at this juncture. It would also be unjust. Accordingly, I defer a determination on such matters until a later stage.

Non-compliance with CPR 8.6 and 8.7

[35] Mr. Browne submitted that the claim offends against rules 8.6(1)(a), 8.7 and 26.3(1). He contended that Ms. Huggins has included only the remedies sought and a series of alleged incidents and has not provided a description of the nature of the claim. He acknowledged that instead of striking out the claim, the court is empowered under rule 26.9 to take corrective action to regularize any procedural defects.

[36] Ms. Huggins countered that she has met all of the requirements of CPR 8.6(1)(a) and has included a short description of the nature of the claim. In this regard, she referred to her allegations that she is the owner of the subject lands at Golden Vale on which Mr. Browne has allegedly trespassed; and the reliefs claimed in her statement of claim. She submitted that in compliance with CPR 8.7 she has outlined all the facts on which she intends to rely. She argued that even if the court finds that she has failed to do so, it should not strike out the claim for defects which can be remedied by an amendment pursuant to CPR 20.1.

[37] CPR 8.6(1) (a) and 8.7 state respectively:

‘What must be included in claim form

8.6 (1) The claimant must in the claim form –

(a) include a short description of the nature of the claim;

Claimant’s duty to set out case

8.7 (1) The claimant must include in the claim form 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 to be necessary to his or her case.

(4) If the claimant seeks recovery of any property, the claimant’s estimate of the value of that property must be stated.

(5) The statement of claim must include a certificate of truth in accordance with rule 3.12.’

- [38] Collectively, those rules mandate that a claimant supplies in the claim form, a short description of the nature of the case, brief details of the facts relied on, description of any supporting documentation, a certificate of truth and in claims for recovery of property an estimate of its value.
- [39] Trespass to land is a civil wrong recognized in law. It is actionable at the instance of the person(s) allegedly in possession of or who own the subject land. Ms. Huggins claimed that she owns the subject land and that Mr. Browne has trespassed on it. She attached a copy of the related deed to the Claim Form. She seeks a number of reliefs including damages as outlined in the prayer. By providing these details she has thereby satisfied the requirements of CPR 8.6 and 8.7 (1)(2) and (3).
- [40] CPR 8.7 (4) is not applicable because Ms. Huggins is not claiming recovery of land. She has affixed and signed the certificate of truth mandated by CPR 8.7 (5). Mr. Browne's objections on the ground of non-compliance with the referenced rules, are without merit.
- [41] Mr. Browne contended that the claim is baseless, oppressive and is being used by Ms. Huggins to punish him for making a report to the police about an incident which took place on December 5 2017. He submitted that Ms. Huggins is attempting to force him to pay the cost of constructing a retaining wall to support the bridge she wishes to build. He argued further that the claim is an act of spite and malice, is frivolous, vexatious, an abuse of the process of the court and must therefore be struck out.
- [42] Ms. Huggins has outlined in the claim form, allegations which, if proven are capable of establishing trespass by Mr. Browne. Without hearing the parties and their respective witnesses, the court is not in a position to determine the veracity of either party's position or whether the claim or any part of it is made out.
- [43] Likewise, the court is not positioned to make findings of fact by merely reading the pleadings. It is imperative that evidence be led and assessed in accordance with rules of practice and procedure

before arriving at a final determination. Mr. Browne's complaint under this limb of his argument invites the court to accept his affidavit testimony and find that Ms. Huggins' claim is actuated by malice or spite.

[44] Ms. Huggins' suit appears to be a legitimate claim. Having regard to the serious assertions made by her, her claim does not fit into the category of frivolous and vexatious. I find therefore that Mr. Browne has not satisfied the court that Ms. Huggins' case is an abuse of the court's process, frivolous, vexatious or actuated by malice or spite. I make no such finding.

Issue 2 – Should Mr. Browne's application for damages, an injunction, costs and interest be granted?

[45] Mr. Browne's application is essentially an application for summary judgment. It includes a prayer for:

1. damages for trespass and nuisance resulting from Ms. Huggins' action on December 5, 2017; and
2. perpetual injunctions restraining Ms. Huggins from committing any further acts of trespass and nuisance, because he fears that given the unforeseeable, unreasonable and malicious nature of her December 5, 2017 actions, she is likely to commit such future acts, if not restrained by the court.

[46] If it is satisfied that a party making a claim has no real prospect of succeeding on it or on that particular issue, the court may grant summary judgment to the other party in respect of the claim or part of it.¹⁵ When doing so, it must decide whether there is a 'realistic' as opposed to 'fanciful' prospect of success.¹⁶ The applicant is required to identify in his application, the issues which it is proposed that the court should deal with at the hearing. The judgment in **Swain v Hillman**¹⁷ distilled the applicable legal principles which guide the court when considering an application for summary judgment.

¹⁵ CPR 15.2.

¹⁶ Per Lord Woolf M.R. at paras. 7 and 20 of *Swain v Hillman*.

¹⁷ [2001] 1 All E. R. 91, (C.A.). see also *Geddes v. Mc Donald Milligen* (2010) 79 W.I.R. 376.

[47] It is well established that the summary judgment 'recourse' is not to be utilized to 'dispense with the need for a trial where there are issues which should be investigated at the trial'. Rather, it is reserved for cases where the court considers that it is just to dispose of them summarily because there is no real prospect of success.¹⁶ The court must exercise its discretion after careful consideration of the respective parties' statements of case, and should not grant summary judgment merely because it 'concludes that success is improbable.'¹⁸

[48] Most of the parties' respective allegations have been set out in the preceding paragraphs. Mr. Browne alleged further¹⁹ that he is familiar with the property which is the subject of Ms. Huggins' claim. He deposed that it contains no river or river bed. He pleaded²⁰ that Ms. Huggins' gardener dumped rotten tree branches in his yard on December 5, 2017. Mr. Browne made no similar assertions against Ms. Huggins and did not indicate how Ms. Huggins was connected to the acts of trespass and nuisance allegedly committed by her 'gardener'. The 'gardener' is not a party to the instant claim. However, in his ancillary claim, Mr. Browne sought damages from Ms. Huggins for trespass and nuisance in respect of the alleged acts of trespass and nuisance.

[49] Neither party made submissions regarding the application for summary judgment. The hearing of the application took place on 21st February 2018. Ms. Huggins had not filed a defence to the counterclaim on that date and has not done so since. She has pleaded factual assertions which conceivably could establish a *prima facie* case against Mr. Browne for trespass to land. Mr. Browne has denied all those allegations.

[50] On either side of the divide, each party is seeking relief from the other for trespass. At that superficial level, it is impracticable and impossible to ascertain where the truth of the matter lies without evaluating the evidence in this case. I am satisfied that Ms. Huggins' pleadings disclose a ground on which she may succeed against Mr. Browne. In the premises, I find that this is not appropriate case

¹⁸ Per Lord Justice Judge at para. 29 of *Swain v Hillman*.

¹⁹ In his affidavit in support of the application.

²⁰ In his defence and counterclaim filed on 6th February 2018.

in which to enter summary judgment. Mr. Browne's application for summary judgment is therefore dismissed.

[51] The parties were ordered to file skeleton arguments and list of authorities and to transmit electronic copies to the court office on or before 2nd March 2018. The order stipulated that non-compliance with the timeline would attract wasted costs sanctions. Ms. Huggins did not make electronic copies of her submissions available to the court. She provided no explanation for such default except to indicate that it was an oversight²¹ and made no application for relief from sanctions. It therefore attracts wasted costs sanctions. I consider the sum of \$500.00 to be reasonable having regard to all of the relevant considerations.

ORDER

[52] It is accordingly ordered and declared:

1. Lloyd Browne's application to strike out Patricia-Anne Huggins' statement of case is dismissed.
2. Patricia-Anne Huggins' Fixed Date Claim Form is deemed to be a regular claim form and going forward, will be processed in accordance with the applicable provisions of the CPR.
3. Lloyd Browne's application for summary judgment is dismissed.
4. Lloyd Browne shall pay to Patricia-Anne Huggins costs to be assessed on application to be filed and served by Ms. Huggins on or before 5th April, 2018.
5. For her non-compliance with the court's order to transmit electronic copies of her skeleton arguments and list of authorities to the court office on or before 2nd March 2018, Ms. Huggins shall on or before 5th April 2018 pay into the court office pursuant to CPR 64.9(2) wasted costs of \$500.00.
6. Adjourned to April 30th, 2018 for case management.

²¹ Through her lawyer, on March 21st 2018, at the hearing.

7. The Registrar is to issue notice of hearing to the parties at least 7 days in advance with proof of service.

[53] I am grateful to the parties for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar