

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. with him Mrs. Cheryl Bailey
and Ms. Mandela Campbell for the claimant.

Ms. Paula David for the defendant.

2018: May 15

DECISION

BACKGROUND

[1] **Henry, J.:** This case involves a disagreement between neighbours over ownership of property. Mr. Bowman has initiated this claim to seek enforcement of an agreement he alleged was made between him and Ms. Arrindell for the transfer and exchange of property located at Arnos Vale. Ms. Arrindell has resisted the claim.

[2] Mr. Bowman made an application in December 2016 to strike out Ms. Arrindell's defence on the grounds that it fails to disclose any reasonable cause for defending the claim. He was unsuccessful. Prior to the trial date Ms. Arrindell applied for leave to amend a witness statement to include a medical report through a lay witness. That application was denied on the morning of the trial.

[3] Mr. Bowman thereupon made an oral application '...that it cannot be logically argued that the defence has a chance of logically succeeding.' He argued that where there is not a scintilla of evidence in support of the defence and that in the circumstances he renewed his application to strike out the defence. Ms. Arrindell resisted the application and submitted among other things that the absence of medical evidence does not render her defence hopeless. She contended that she has pleaded unconscionable bargain and that there is a triable issue before the court.

ISSUE

[4] The issue is whether Ms. Arrindell's defence should be struck out?

ANALYSIS

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

[5] The court is empowered to strike out any part of a defence which discloses no reasonable ground for defending the claim.¹ This discretion is exercised 'sparingly and only in the most glaring cases.'² The court is not required to conduct a mini-trial of the issues. Instead it must carry out an examination of the particulars in the statement of case in assessing whether the defence is viable or whether it is defective or will fail 'as a matter of law'.³

[6] In doing so, it must also give effect to the overriding objective of the CPR to act justly. The analysis does not entail a detailed examination of the facts, allegations and documents. The court is not

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

² Julian Prevost v Rayburn Blackmore et al DOMHCV2005/0177, para. 6 (Rawlins J.)

³ Swain v Hillman [2001] 1 All E.R. 91.

required to decide whether Ms. Arrindell's defence will succeed, and it does not have to analyze evidence to evaluate her chances of success.

[7] Even if her defence is weak, if it raises a legal or factual question for the judge to decide, the court must consider the merits. The decisions in **Spencer v The Attorney General of Antigua and Barbuda**,⁴ **Swain v Hillman**⁵, and **Tawney Assets Limited v East Pine Management Limited**⁶ outline the foregoing applicable legal principles.

[8] The central factual and legal issues were outlined in the earlier decision on the previous application to strike out the defence. They were set out in the statement of claim and defence. I repeat them verbatim from that decision. '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...'.⁷

[9] He pleaded too:

'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

⁴ ANUHCVP1997/0020A.

⁵ Ibid. at note 2.

⁶ BVIHCVP2012/007.

⁷ At paragraphs 7, 9, 10, 11, 13 of his Statement of Claim.

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.⁷

[10] Ms. Arrindell refuted those allegations. She pleaded that she: "...remember some a di tings day say". She recollected:

- I. 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.
- II. 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...
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.⁸

[11] Ms. Arrindell asserted further 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

⁸ At paragraphs II, III, 3(a) (b) (c) (d), I. and VI.(d) of her defence.

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.’⁸

[12] As I indicated in the earlier decision Ms. Arrindell has admitted signing ‘some papers’. However she did not admit that among them were the agreement and Deed which Mr. Bowman alleged she signed. This is a live issue for resolution by the judge. I can make no decision on that until I have heard the witnesses and examined all of the evidence.

[13] She has also claimed that she did not have the mental capacity to understand the nature of the documents she signed. She filed her witness statement on 21st December 2017. I refer to it briefly for context only. In it, she averred at paragraph 3:-

‘3. I attended the Kingstown Methodist School, Sion Hill Government School and Peters Vale Primary School. I did not complete primary school because I had difficulty learning. I was never able to pass my end of year examinations at school but I was promoted to higher grades because of my age. I got as far as Junior 4 before I dropped out of school.’

[14] Ms. Arrindell's pleadings and proposed evidence coincide to some degree regarding her alleged mental capacity or lack thereof. It is not open to the court to make a finding on that issue without hearing the evidence. I agree with learned counsel Ms. David that the absence of medical evidence is not conclusive. It would be conclusive regarding a medical finding but it is not conclusive in respect of any observations which the court may legitimately make from hearing and observing the parties and their respective witnesses.

[15] Ms. Arrindell has raised the issue of unconscionable bargain as a live consideration. Mr. Bowman contended that it was not pleaded. During earlier part of the proceedings Ms. Arrindell submitted that Mr. Bowman correctly characterized the gravamen of her defence as a plea of *non est factum*. She argued then that Mr. Bowman's application is 'ill-conceived because her defence is arguable as a matter of law and that her factual claims are capable of vitiating the alleged agreement between the parties, if proved to the court's satisfaction.'

[16] A comparison of the respective pleadings will illustrate what each party claimed on that subject. The relevant portions of Mr. Bowman's have been outlined above. Ms. Arrindell asserted in the defence at paragraphs 2, I, V and VI:

'2. The Defendant does not admit paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Statement of Case and says (her words) "me remember some a di tings day say".

PARTICULARS

- I. The Defendant did know Mr. Bowman a long time. He and her mother used to speak too, up to when my mother died.
They never told me to give the house to Mr. Bowman. He, Mr. Bowman, is a high, high big man in the Seventh Days.
- V. The Guardian carried the Defendant to the house of his known church-member, Mr. Ricky Burnett, who looked at the papers (...) expressed concern, and advised to seek an attorney at Law at once.
- VI. The Guardian took the Defendant to the offices of Fredericks Attorneys and handed the exhibits to them. There was a discussion. At the end the Guardian

and the Defendant were advised to go to a Head Doctor to evaluate the Defendant.'

[17] The term '*non est factum*' is a plea raised by a litigant who contends that a document is not 'her deed'. Even if signed by her, she may avoid being bound by it if she can establish that when she did so, she thought that it had a particular character or effect which she has since discovered is not the case. It would be premature and improper for me to attempt to determine that issue on the pleadings without hearing the parties and their witnesses. I refrain from doing so.

[18] The learned authors of Atkins Court Forms⁹ state:

'A particular instance of circumstances in which equity will intervene to set aside a transaction is the category of bargain held to be 'unconscionable'. There is no general jurisdiction for a court to interfere with bargains between business people. However, in the case of certain established categories, where unfair advantage has been obtained of a person in such a way as to render a transaction unconscionable, the jurisdiction of the courts of equity as courts of conscience to grant relief from the transaction is long established. Such conduct constitutes a species of fraud.

The principal category likely to be met in practice is that of bargains with the vulnerable who require special protection by reason of their situation (normally poverty and ignorance) or the position and advantage of the other contracting party (commonly a power to exert undue influence).'

[19] One possible implication of Ms. Arrindell's Defence at paragraphs 2 I, II, III, V and VI, 3 (a) (b) and (d) is an assertion of unconscionable bargain. Mr. Bowman has responded to them and the plea of *non est factum* in his Reply at paragraphs 8, 9, 11 and 12. Those issues have been joined between the parties and require an examination and determination by the Court based on the evidence. An order to strike to Ms. Arrindell's Defence without allowing the parties to ventilate those matters would not be just in all the circumstances. I am satisfied that Ms.

⁹ Equitable Remedies Vol. 18(1) at para. 10; see also Halsbury's Laws of England Volume 22 (2012) at para. 298.

Arrindell has presented adequate grounds on which she may reasonable defend the claim, even without the medical evidence. Accordingly, Mr. Bowman's application for an order striking out her Defence is dismissed.

ORDER

[20] It is accordingly ordered:

- (1) Hillary Bowman's oral application to strike out Ms. Arrindell's defence is dismissed.
- (2) Hillary Bowman shall pay to Eudenia Arrindell costs to be assessed on an application to be filed and served on or before 30th May, 2018.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar