

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: SKBHCV2017/0002

Between

PINNEYS HOTEL DEVELOPMENT LTD

Claimant

and

ST KITTS NEVIS AND ANGUILLA NATIONAL BANK LTD

Defendant

Before:

Ms. Agnes Actie

Master

Appearances:

Ms Angella Cozier with Ms Emily Prentice for the claimant

Mr Damian Kelsick with Ms Danni Maynard with for defendant

2017: December 12

2018: June 27

Judgment

1. **ACTIE M.:-** Before the court is an application filed by the claimant to strike out parts of the defendant's defence on the grounds that that the purported offending paragraphs:-

- (a) Do not disclose any reasonable ground for defending the claim and/or
- (b) Are an abuse of the process of the court and/or
- (c) Do not comply with Rule 10.5

2. It is necessary to describe in a little detail the allegations made by the parties in their pleadings.

Background

3. The claimant filed a statement of claim with claim form on 6th January 2017 and amended on 5th May 2017, against the defendant, (St. Kitts Nevis Anguilla National Bank limited) "the

Bank”, for damages for repudiatory breach of a loan contract. The claim alleges that the Bank approved a loan to assist the claimant to purchase of a property from Nevis Club Company Ltd (NCCL). The claimant avers that the Bank repudiated the contract when it failed/refused to disburse the proceeds of the loan but retained the commitment fees and other related fees.

4. The Bank admits that the loan funds were not disbursed but denies that there was a repudiatory breach or otherwise as alleged by the claimant. The Bank contends, on the contrary, that it is the claimant who was in breach of the terms of the loan agreement as it failed to provide effective security.

The application to strike out

5. Firstly, the claimant’s seeks to strike out sub-paragraphs 3 (iv) and (v) of the defence on the grounds that the paragraphs are an abuse of process, prolix and fail to disclose any reasonable ground for defending the claim. The claimant also contends that the pleadings are irrelevant to a defence of repudiatory breach of contract.
6. The purported offending paragraph 3 of the defence is in response to paragraph 4 of the claimant’s amended statement of claim which reads :
“ (4) The defendant failed and /or refused to disburse the proceeds of the loan funds to the claimant, in fundamental breach of the loan agreement between the parties.”

7. The defence at paragraph 3 reads;-

- “ (3). In relation to paragraph 4 the Defendant admits that it did not disburse the loan but denies that this was a breach, fundamental or otherwise, of the Loan Agreement .The defendant states further :
(a) In breach of the terms and/or conditions set out in paragraph 2, the Claimant failed to provide effective security for the loan.

Particulars

- (i) The loan was agreed to be secured by an equitable mortgage over 35,478 square feet of land situate at Pinney’s Road, Charles tow (the Property) to be purchased by the claimant from Nevis Club Company Limited (“NCCL’)

- (ii) NCCL was the registered proprietor of the property by virtue of a certificate of Title registered in Books 6 Folio 69 of the Register of Titles for the Island of Nevis.
- (iii) NCCL is a limited liability company incorporated, originally under the Companies Act Cap 335 of the Laws of St Kitts and Nevis, on 28th May 1941
- (iv) **No original corporate documents for NCCL whatsoever are available for search at the Financial Services Department, which now serves as the Company Registry of St Kitts and Nevis.**
- (v) **It is therefore not possible for any person to determine by a public register search who the shareholders and directors of NCCL were as disclosed by its original documents.**

Analysis

8. The pleadings in paragraphs 3 of the defence is in response to the claimant's averment that the Bank failed or refused to disburse the proceeds of loan funds thereby constituting a fundamental breach of the loan agreement.
9. The Bank admits that it did not disburse the loan but denies that there was a fundamental breach or otherwise. The Bank contends that the claimant's ability to provide a good marketable security was a condition precedent to its obligation to disburse the loan. The Bank went further to provide particulars of the claimant's inability to provide the required security.
10. A defendant may not meet the claimant's statement of claim with a bare denial. CPR 10.5 places a duty on the defendant to set out all the facts on which it relies on to dispute the claim. Rule 10.5 (4) requires a Defendant who denies an allegation to put forward a reason for doing so and if it intends to prove a different version of events to set out that version.
11. The Bank having denied repudiatory breach was under a duty to give reasons for the denial and provide its version of facts. I am of the view that the Bank's defence is in keeping with the requirements of Rule 10.5. Accordingly, the application to strike out paragraphs 3 (a) (iv) and (iv) is dismissed.

Res Judicata/ Issue Estoppel – Paragraphs 3(a) (vi) to (xxiv)

12. The claimant avers that the pleadings in paragraphs 3 (a) (vi) to (xxiv) of the defence are res judicata, specifically issue estoppel. The claimant contends that the paragraphs are an abuse of the court's processes as the bank is seeking to re-litigate issues already raised and determined in claims SKBHCCV2010/0348 and NEVHCV2015/0080.
13. The defendant in response avers that it was not a party to the claims and cannot therefore be subject to any estoppel based on res judicata.
14. A brief background of the aspects of the two decided claims will provide a better appreciation of the issues challenged under this head.
15. Claim SKBHCCV2010/0348 was between the Nevis Club Company Ltd (NCCL) v Spencer Howell, the Attorney General and Registrar of Companies. On 11th March 2011, Thomas J. set aside the order of the Registrar of Companies made on the 28th December 2000, striking Nevis Club Company Ltd (NCCL) off the register of companies and granted NCCL an extension of six (6) months to be re-registered in accordance with the provisions of the Companies Act.
16. Claim NEVHCV2015/0080 was an *ex-parte* application filed on August 6, 2015 with supporting affidavit of Eric Evelyn, acting on behalf of the Crown, to maintain a caveat placed on registered title of the Nevis Club Company Ltd (NCCL) on the ground that there was no viable or legal registered proprietor. On 28th October 2015, Williams J, made an order dismissing the application on the ground that the applicant had not provided the court with evidence to substantiate the claim in accordance with the Act.

Analysis

17. As a general rule, a party should not be allowed to litigate issues which had already been decided by a court of competent jurisdiction. The principle of *res judicata* is founded upon the twin principles that there should be an end to litigation and justice demands that the same party shall not be harassed twice for the same cause¹.

¹ per Lord Upjohn in **Carl Zeiss Stiftung v Raynor and Keeler Ltd [No. 2]**.

18. Issue Estoppel arises when the issues raised in an earlier claim are identical or central to the issues raised in a latter claim, the later/second claim will be struck out. The claimant relying on the decision of **Jeffrey Frost et al v Thomas baker etal** where Master Lanns, (as she then was), cited with approval the dictum in **MCC Proceeds v. Lehman Brothers International** ²:

“ In that case the court of appeal in England made it clear that although the parties were different, the essential factual basis of the claim was the same in both cases. In that case the common denominator was the issue of title to shares. As such res judicata kicked in. **Mcc Proceeds Inc** made it quite clear that the identity of the parties does not have to correspond exactly for the **Henderson v Henderson** principle to apply, the focus should be on substance not form”.

19. As indicated previously, paragraph 3 of the defence denies any repudiatory breach as the claimant was unable to provide the necessary security. The Bank outlined the facts on which it relies to prove the claimant's inability to provide the necessary security. It is the evidence that the claimant intended to purchase the property from NCCL, a company which had been struck off the register in December 2000. The Bank also referenced claim NEVHCV2015/0080 giving the details of the supporting affidavit which resulted in the order made by Thomas J, permitting the re-registration of NCCL. The Bank also referenced the fact that the NCCL was re-registered on 15th February 2013 and the removal of the caveat in SKBHCCV2010/0348.

20. In my view, the references to claims NEVHCV2015/0080 and SKBHCCV2010/0348 are to bolster the Bank's allegation that the claimant was unable to provide the required security for the loan.

21. The parties to the extant claims were not parties in the decided cases to bring the existing facts within the realms of res judicata or issue estoppel. It is necessary to prove that the parties in the extant claim could have been parties or in privity to the claims to establish issue estoppel. However, having said this, I find merit in the claimant's contention that paragraphs 3 (a) vi) to (xxiv) are prolix and in breach of CPR 10.5 (2).

² SKBHCV2012/0005

22. **CPR 2000** requires particulars of a claim to be concise statements of the facts relied upon for the purpose of clarifying the issues between parties. The statement of the facts need not contain the evidence by which the averments are to be proved.

23. In **McPhilemy v Times Newspapers**³ Lord Woolf MR, commented, at page 793:

“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. 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 providing clarification.”

24. The court notes that a large or most parts of the Bank’s pleadings from paragraph 3 a (vi) to (xxiv) consist of detailed reference of the facts of previous litigation between NCCL v Attorney General. The detailed particulars are to support the bank’s assertion that the claimant was unable to provide security for the loan. These are all matters which could be reduced in witness statements or submissions for trial. I am of the view that the extensive particulars fail to comply with the requirement for economy and brevity in keeping with CPR 2000 and the principles espoused in **McPhilemy v Times Newspapers**.

25. CPR 26.3 (1) (d) gives the court jurisdiction to strike out the statement of case or part of the statement of case which is prolix or does not comply with the requirements of Part 8 or 10. In keeping with Rule 26.3 (1) and for the foregoing reasons, paragraphs 3 (a) (vi) to (xxiv) of the defence are struck out.

³ [1999] 3 All ER 775

Paragraph 3 (b)

26. The claimant further contends that paragraphs 3(b)(i) to (iii) of the defence disclose no reasonable grounds for defending the claim. The claimant contends that the defendant attempts to introduce a conditions precedent as an implied term in the loan agreement which is not known in law in a case for repudiatory breach.
27. The court's simple response is that the defendant has clearly pleaded that there was not any repudiatory breach. Accordingly, the application to strike out paragraphs 3 (b)(i) to (iii) is refused.

Paragraphs 3 (C) (iii) A,B,C,D,E; 3 (C) iv – vii; 3 (C) (vi)A,B,C,D,E,F,G and (iv) (v) (vi) (vii)

28. The claimant seeks to strike out paragraphs 3 (c) (iii) A,B,C,D,E; 3 (c) iv – vii; 3 (c) (vi)A,B,C,D,E,F,G and (iv) (v) (vi) (vii) of the defence on the grounds that they are irrelevant, unsubstantiated, lack particularity and an abuse of process in breach of Rule 10.5 (5).
29. The entire paragraph 3 of the defence is in response to paragraph 4 of the statement of claim whereby the Bank admits the rescission of the loan agreement with detailed reasons for its course of action.
30. At paragraph 3 (c), the Bank avers that it was induced into the loan agreement as a result of false representations and warranties made by the Angella M. Cozier, Director of the claimant company. At paragraph 3 (c) (iii), the Bank lists the alleged false representations and warranties and detailed the alleged falsehoods at paragraphs 3 (iv) (v) (vi) (vii).
31. The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer. This rule was established by Saville LJ in **British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd**⁴ and approved in **East Caribbean Flour Mills v Ormiston Ken Boyea et al**⁵.
32. It is trite law that a party must state with particularity the circumstances constituting any alleged fraud or fraudulent misrepresentation. A party alleging fraud has to plead the allegations

⁴ (1994) 72 BLR 26, 33-34

⁵ Civil Appeal No. 12 of 2001)

precisely and the case will be confined to those pleaded allegations. The Bank's defence is tied to its pleaded case, namely that the claimant's director made fraudulent representations to induce it to enter into the Loan Agreement and that those fraudulent representations are those as pleaded in defence.

33. To strike out the pleadings at this point will prevent the Bank from raising any issue of fraud at the trial. I am of the view that the Bank has pleaded factual statements to support its averments of fraudulent misrepresentation against the claimant's director. The evidential burden lies on the defendant at trial to substantiate its allegations.

34. On the basis of the foregoing analysis, the application to strike out paragraphs 3 (c) (iii) A,B,C,D,E; 3 (c) iv – vii; 3 (c) (vi) A,B,C,D,E,F,G and (iv) (v) (vi) (vii) is refused.

Paragraphs 11-12

35. Finally, the claimant contends that paragraphs 11 and 12 of the defence do not, in any way, defend the allegations of repudiatory breach of the contract between the parties as pleaded. The claimant also avers that the paragraphs lack particularity contrary to CPR 10.5 (4) (5) and (6).

36. Again, the defendant's challenge is wholly misconceived as the Bank has categorically denied any repudiatory breach. The purported offending paragraphs merely referenced the paragraphs which the Bank rely on to refute the claimant's averments. This is the accepted procedure to avoid prolixity in keeping with the provisions of CPR 10.5. The court finds no merit in the application to strike out paragraphs 11 and 12 and is accordingly refused.

Observations

37. It appears for most parts, that the claimant's application is seeking to determine issues which should properly be left for trial after full disclosure of facts and evidence to prove the case of the respective parties. Fairness and judicial efficiency are always paramount in attaining justice. The draconian tool of striking out of statements of case is made in very clear and obvious circumstances. Parties should be less eager to make spurious applications in an effort to save time and costs in keeping with the overriding objective of CPR 2000. Pleadings are intended to help the court and the parties. However, the Rules require that pleadings to be concise and not drafted in interminable length.

ORDER

38. In summary and for the foregoing reasons, it is ordered and directed that the claimant's application to strike out parts of the defendants defence is successful in part :-

1. Paragraphs 3 (a) (vi) to (xxiv) of the defence are struck out pursuant to CPR 26.3 (1) (d).
2. The defendant shall file and serve an amended defence to reflect paragraph (1) of the order, within seven (7) days of the delivery of the judgment.
3. The claimant may file an amended reply within fourteen (14) days of service in accordance with CPR 10.9.
4. Thereafter the matter shall be listed for Case Management Conference.
5. No order as to costs as both parties had some measure of success.

**AGNES ACTIE
MASTER, HIGH COURT**

BY THE COURT

REGISTRAR