

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0081

BETWEEN

DONNESSIA SANDY
(By her lawful Attorney on Record Stephen Sandy)

FIRST CLAIMANT

AND

YANNIC SANDY
(By his lawful Attorney on Record Stephen Sandy)

SECOND CLAIMANT

AND

RAWLE OLLIVIERRE

DEFENDANT

Appearances:

Mr. Roderick Jones for the claimant.

Ms. Vynnette Frederick and Mr. Michael Wyllie for the defendant.

2019: May 15
May 22

DECISION

BACKGROUND

[1] Henry, J.: Ms. Donnessia Sandy and Mr. Yannic Sandy alleged that they bought a parcel of land situated at Southwood from Joseph George in March 2016. They attached to the claim a copy of

the Deed on which they relied to establish their title. In the first recital, the Deed chronicled that Joseph George became seized of the subject property through Indenture 832 of 2002 made between him (**as Administrator of Vernie George's Estate**) and him in his personal capacity.

- [2] Ms. and Mr. Sandy averred that Mr. Rawle Ollivierre has been trespassing on the land even before they acquired it. They have brought a claim¹ seeking an order for possession among other reliefs.
- [3] Mr. Ollivierre denied that he is a trespasser. He filed a Defence and Counterclaim on 12th July 2017. He contended that he has acquired an interest in the subject land by virtue of his possession for a **period in excess of 28 years. He claimed damages for Stephen Sandy's trespass on the subject land and cancellation of the Deed by which Mr. and Ms. Sandy claim ownership of the said land.**
- [4] Case management and pre-trial review directions were issued respectively on 4th October 2017 and 6th December 2017. The parties were directed to file standard disclosure on or before 31st October 2017. The record reveals that none were filed. Witness statements were filed by the parties. By court order dated 11th April 2018 the parties were granted an extension of time to 30th April 2018 to file any necessary interlocutory applications. The order stipulated that non-compliance with that timeline would attract wasted costs sanctions.
- [5] By application filed on 30th April 2018, Mr. Ollivierre applied for an:
1. extension of time to file an amended defence and counterclaim and an amended skeleton argument;
 2. order that the amended defence and counterclaim and an amended skeleton argument filed on 30th April 2018 be deemed properly filed.
- [6] **The Sandys oppose Mr. Ollivierre's application on all counts. They argued that** amendment of the skeleton argument in no way advances the matter at bar and that the application should be dismissed. **They submitted further that the Civil Procedure Rules 2000 ('CPR') does not empower** the court to enlarge time to amend and file skeleton arguments. They contended that denial of further time to Mr. Ollivierre to amend his Defence and Counterclaim would not prejudice him

¹ Through their lawful attorney on record Stephen Sandy.

because the proposed amendment is of no moment. The applications for extension of time to file an amended skeleton argument and to file an amended Defence and Counterclaim are respectively granted and denied.

ISSUES

[7] The issues are whether Mr. Ollivierre should be granted an extension of time to file and serve an amended:

1. Defence and Counterclaim; and
2. Amended Skeleton arguments.

ANALYSIS

Issue 1 – Should Mr. Ollivierre be granted extension of time to file an amended Defence and Counterclaim?

[8] The court may enlarge time for a party to comply with a rule of court or court order, even if the time for compliance has passed.² If the application is made after the compliance date, the applicant must apply for relief from sanctions, if breach of the applicable rule or court order attracts a sanction.³ The court must act judicially⁴ in the exercise of its discretion and in accordance with well-established principles. It must also give effect to the overriding objective of the CPR to act justly.⁵

[9] In the exercise of its discretion, the court is required to consider all relevant factors related to the breach, including the length of the delay, the reasons for it and the degree of prejudice its decision would have on the respective parties.⁶ The court may in appropriate cases make an order to put things right where there is a failure to comply with a rule.⁷

² Rule 26.1 (2) (k) of the Civil Procedure Rules 2000, (“CPR”).

³ CPR 26.7 (2) and 27.8 (4).

⁴ Fok Hei Yu and John Howard Batchelor v Basab Inc. et al BVIHCMAP2014/0010.

⁵ CPR Part 1.2 (a).

⁶ John Cecil Rose v Anne Marie Uralis Rose SLUHCVAP2003/0019.

[10] CPR 20.1 permits a defendant to amend his defence once, without the court's **permission, before the first case management conference. After that time, he must seek the court's leave.** Such leave may be granted at any time.⁸ In determining whether to grant leave to amend the defence, the Court is required to take into account whether any prejudice to either party can be compensated by payment of costs and or interest; whether the trial date can be met notwithstanding any amendment; and the impact on the administration of justice. I will apply the foregoing principles in considering the referenced applications.

[11] **Mr. Ollivierre's** application was made a little over a year after he had filed his Defence. In the grounds underpinning his application, he averred that when he was served with the witness statement of Sylvia George on April 5th 2018 he became aware then that the Sandys were relying on Deed No. 832 of 2002 and Statutory Declaration **No. 13 of 1989 as the 'root title'** to their Deed. Mr. Ollivierre argued that he was therefore denied the opportunity to address this issue in his defence and should be granted an extension of time to amend it. His application is supported by the affidavit of Niasha Joseph⁹ (Senior Clerk of Fredericks Attorneys) which echoed those contentions.

[12] Mr. Ollivierre filed an amended Defence and Counterclaim on 30th April 2018. He purported to amend paragraphs 11 and 12 to address this issue. The contents of the proposed paragraph 12 are identical to the original paragraph 11. The proposed paragraph 11 is entirely new. They state respectively:

'11. The Claimants purported Deed No: 848 of 2016 is of no effect because it cannot and does not vest legal title to the Claimants in the disputed land, because Statutory Declaration No: 13/1989 obtained by Vernie George is the root of title the said Deed No: 848/2016. The Statutory Declaration No: 13/1989 obtained by Vernie George is

⁷ CPR 26.9 (3).

⁸ CPR 20.1(2).

⁹ Filed on 30th April 2018.

merely a declaration of possessory title and dose (sic) not vest legal property in real **property and is only declaratory of the maker's intent. Therefore, Joseph George's** Deed of Assent No: 832/2002, for the disputed land, which he purportedly inherited from Vernie George is voidable and of no effect in conveying legal title to the Claimants.

12. The Defendant claims that any paper title or other proprietary interests have been extinguished by his continuous, exclusive, and undisturbed occupation of the dispute lands for come 28 years, from 1993 to the present day, and as such a consequence, the Defendant seeks the following reliefs:- ...'

[13] Mr. Ollivierre referred to CPR 2.4, 20.2(2), 26.1(2) (k), 26.2. He argued that the need for his proposed amendment arose by reason of the late disclosure of the Statutory Declaration exhibited **to Sylvia George's witness statement**. He cited the case of First Personnel Service Ltd. v Halfords Limited¹⁰ **as authority for the proposition that the 'late disclosure of a witness statement'** would provide a basis to grant leave to amend a Defence, even where the application is late. In that case, the learned Deputy Judge Mr. Jeremy Cousins QC stated:

'The reason why Halfords finds itself in the position in which it finds itself is not that it failed to get on properly and timeously with the preparation of its case, but that its preparation of the case was hampered and disrupted by the late production of information **which should have been provided long ago.'**

[14] Ms. and Mr. Sandy countered that the court must consider any potential prejudice which may be occasioned to them by the grant of the requested extension of time to file an amended Defence and Counterclaim. They argued that any arguments regarding the validity of the impugned Deed would be rendered moot and that Mr. Ollivierre would not be prejudiced by a denial of his application. They advanced the decision of Master Corbin-Lincoln in Denise Violet Stevens v Luxury Hotels International Management et al¹¹ in support. The learned Master opined:

¹⁰ [2016] EWHC 2155 (Ch).

¹¹ SKBHCV2013/0069.

'Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendments can be compensated for in costs and the public interest in the efficient administration of justice **is not significantly harmed.**'¹¹

[15] Mr. Ollivierre and the Sandys also embarked on a discussion the legal force of the impugned statutory declaration and Deed of Assent. Such matters are properly to be reserved for the trial. I therefore refrain from exploring the merits of those arguments for present purposes.

[16] **Mr. Ollivierre's application if granted would have the effect of outlining a legal argument as to the** legal force of the impugned Statutory Declaration and Deed No. 832 of 2002. He does not argue that he will be precluded from making such an argument or eliciting relevant evidence in the absence of the proposed amendment. I am of the considered opinion that he would labour under no such impediment and would suffer no prejudice.

[17] On the other hand, the Sandys may quite likely seek an extension of time to amend their statement of case to respond to the proposed amended Defence and Counterclaim. They could reasonably expect to have such an application approved. This turn of events could lead to further applications for extension of time to file further witness statements. It is to be noted that had the parties **complied with the court's order for standard disclosure**, this development would likely have been avoided. Furthermore, the court cannot ignore that the Sandys disclosed Deed 848 of 2016 at the inception of the case and that Mr. Ollivierre appeared not to have pursued his right to inspect it in accordance with CPR 28.16. It seems to me that he should not be rewarded with an order at this stage which could prolong the conclusion of the proceedings unnecessarily. To do so would in my mind be inimical to the due administration of justice.

[18] Moreover, **the Court's earlier observation that the Deed No. 848 of 2016 was attached** to the Claim Form is significant. That Deed referred to Deed No. 832 of 2002 in the recital. This would have provided Mr. Ollivierre with actual notice of the Sandys alleged title to the disputed land, from as early as 15th June 2017¹². Accordingly, his assertion that he became aware of this only in April

¹² The date of service of the claim form on him; see Acknowledgment of Service filed on 27th June 2017.

2018 is not supported by the record. He had an entire year from the filing of his Defence to make inquiries and craft an Amended Defence well in advance of the present application. His delay in doing so **is therefore inexplicable and cannot be justified by referring to the 'late disclosure' in Sylvia George's witness statement.** In the circumstances, I consider his delay to be inordinate and unjustified.

[19] A trial date has not been set at this stage. Scheduling of this matter for trial was delayed in part by the filing of the instant application. If the application is granted, it is unlikely that the trial would proceed before sometime in 2020. If it is denied, the trial may take place as early as September 2019. In any event, it seems to me that neither party would be prejudiced by the denial of the order sought.

[20] Mr. Ollivierre could still launch his attack against the impugned Deed and Statutory Declaration at the trial, during cross-examination of witnesses and again in his submissions. In any event, any prejudice can be adequately compensated by the payment of costs. It is therefore ordered that Mr. **Ollivierre's application for leave to amend his Defence and Counterclaim is denied.** The Amended Defence and Counterclaim filed on 30th April 2018 is therefore struck out.

Amended Skeleton Argument

[21] Skeleton arguments are used by parties to present their legal arguments based the pleadings and written testimony. They assist the **court to gauge each party's position** even before the trial starts. Parties are at liberty to supplement their skeleton arguments after the trial through oral or written submissions. The Court is always keen and has a duty to understand and take full account of the **parties'** respective arguments. It would not be giving effect to the overriding objective if it prevents a party from making fulsome and comprehensive submissions within the timelines stipulated and indeed right up until the delivery of the judgment.

[22] Mr. Ollivierre filed an Amended Skeleton argument on 30th April 2018. In light of the foregoing analysis of the developments in this case, I am of the view that Mr. Ollivierre should be permitted to file and serve the proposed Amended Skeleton argument. **It is ordered that Mr. Ollivierre's application for leave to amend his Defence and Counterclaim is granted.** The referenced Amended

Skeleton argument is deemed properly filed. Mr. Ollivierre is to serve the Amended Skeleton argument on Ms. and Mr. Sandy on or before 30th May 2019.

Costs

[23] The **parties'** respective fortunes have been mixed. I therefore order that each party bears his or her own costs.

ORDER

[24] It is accordingly ordered:

1. Rawle Ollivierre's application for extension of time to file an Amended Defence and Counterclaim is dismissed.
2. **Rawle Ollivierre's** application for extension of time to file an Amended Skeleton Argument is granted.
3. The Amended Defence and Counterclaim filed on 30th April 2018 is struck out.
4. The Amended Skeleton Argument filed on 30th April 2018 is deemed properly filed.
5. Rawle Ollivierre shall serve the Amended Skeleton Argument on Donnessia Sandy and Yannic Sandy on or before 30th May 2019.
6. Each party shall bear his or her own costs.

[25] I am grateful to counsel for their written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar