

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA**

CLAIM NO. DOMHCV2019/0069

BETWEEN:

**ISABELLA ROBINSON
IRVIN ROBINSON**

Claimants

and

MERVIN ROBINSON

Defendant

APPEARANCES:

Ms. Jodie Luke for the Claimants

Ms. Cara Shillingford for the Defendant

2019: September 26
November 21

GILL, M. (Ag.)

[1] This is an application to strike out the Claimants' statement of claim, alternatively, to strike out paragraphs of the Claimants' statement of claim, alternatively, for an order for summary judgment in favour of the Defendant.

The Background

[2] The First Claimant Isabella Robinson ("Mrs. Robinson") is the estranged wife of the Defendant Mervin Robinson ("Mr. Robinson"). The Second Claimant Irvin Robinson ("Irvin") is their adult son.

[3] On 21st January 2016, Mrs. Robinson obtained a Final Protection Order pursuant to the Protection Against Domestic Violence Act, No. 22 of 2001. From paragraph 3, the order reads as follows:

"3. The Applicant to occupy solely the marital home. The Respondent to occupy adjacent property. Permanent separation to be erected on both sides.

4. The Respondent is to remove his personal effects with the assistance of a Police Officer on January 22, 2016.

A power of arrest is attached for breach of any of the conditions.

If you the said Mervin Robinson fail(s) to comply with any of the terms of this order you shall be liable to imprisonment pursuant to section 26 of the Act."

[4] Mrs. Robinson and Irvin occupy the matrimonial home.

[5] By Claim Form and Statement of Claim filed on 27th March 2016 Mrs. Robinson claims damages for trespass and unlawful entry and Irvin claims damages for assault and battery against Mr. Robinson as a result of an alleged incident at the matrimonial home on 27th March 2016. Paragraphs 8 to 10 of the Statement of Claim are as follows:

"8. At all material times the matrimonial home consisted of, inter alia:

(a) Bedrooms located on the upstairs; and

(b) Bathroom and laundry room located on the downstairs.

9. On or about 27th March, 2016, the Defendant, acting in breach of the Final Protection Order unlawfully trespassed upon the matrimonial property. The said Defendant having so trespassed did arm himself with a ripping iron and concealed himself in the laundry room referred to above.

10. At or about 10:00am on 27th March 2016 the Second Claimant was lawfully entering the said laundry room when he was unlawfully, violently and maliciously assaulted and battered by the Defendant. At all material times the said Defendant was armed with a ripping iron and utilized the same to strike and batter the Second Claimant separately on his arm and his head."

[6] The Defendant made this application to the Court on the following grounds:

1. The Second Claimant's case is statute barred;
2. The First Claimant is unable in law to maintain a claim of trespass against the Defendant since the Defendant is the registered proprietor of the portion of land

which is the subject of the alleged trespass. The First Claimant has no legal basis for filing this claim.

3. This case is an abuse of the Court's process.
4. The Claimants have no prospect of succeeding in this claim.

[7] However, at the hearing of the application on 26th September 2019, Counsel for the Defendant opted not to proceed with the application in relation to the claim being statute barred as it relates to the Second Claimant but proceeded with the application in relation to the ground that the First Claimant is unable to maintain a claim for trespass against the Defendant.

Defendant's Submissions

[8] Learned Counsel for the Defendant contended that the First Claimant's case for trespass, being premised upon a final protection order is an abuse of the process of the court and that the paragraphs in the claim relating to trespass should be struck out. Further, the First Claimant should be struck out as a party to the claim.

[9] Counsel submitted that a protection order is a unique creature of statute and strictly governed by the legislation which created it. The purpose of a protection order is to protect the person of an applicant. The legislation contains provisions for enforcement of a protection order and the consequences of breach. There is nothing in the Act which gives an applicant who obtains a protection order the right to file a claim for trespass. Counsel emphasised that this purported right does not exist under the common law and was not created by the legislation.

[10] Counsel argued that a protection order does not vest any proprietary right in an applicant against the registered proprietor which is capable of forming the basis of a claim for trespass. Restrictions placed on the respondent are merely incidental to the protection of the person of the applicant.

[11] On the common law, Learned Counsel submitted that in order to sue for trespass, a plaintiff must have an exclusive legal right to possession of the property and must not be a mere licensee. The First Claimant is neither the owner of the property nor a lessee. The Defendant, being the registered proprietor of the land, is the only one capable of being recognised as the legal owner of the property. By virtue of the Title by Registration Act, he has an indefeasible title to the land.

[12] The Defence submitted that the claim is frivolous, vexatious and has no prospects of success and should be struck out with costs.

Claimants' Submissions

[13] Learned Counsel for the Claimants countered that the Defendant cannot rely on the fact that he is the sole proprietor of the property in question. She stated that he cannot claim an exclusive right as the property was the matrimonial home and subject to a final protection order. The First Claimant has an equitable interest in the property and at the material time had sufficient possession of the property by an order of the Court. Therefore, the First Claimant is able to maintain a claim for trespass.

Issues

[17] Given the Defendant's concession in relation to the Second Claimant, the Court must determine:

- (1) whether the parts of the statement of claim in relation the First Claimant should be struck out;
- (2) consequently, whether the First Claimant should be removed as a party to the claim;
- (3) alternatively, whether summary judgment should be entered in favour of the Defendant against the First Claimant.

The Law

[18] Rule 26.3(1) of the Civil Procedure Rules (CPR 2000) deals with the striking out of a statement of case. The relevant provisions are as follows:

“26.3(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –

(a) ...

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;

(c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;

(d)”

[19] Courts have warned that the power to strike out is one that should be used sparingly. In **Citco Global Custody NV v Y2K Finance Inc.**,¹ Edwards JA set out the guidelines a Court should adopt in an application to strike out a party’s statement of case when she stated:

“Among the governing principles stated in Blackstone’s Civil Practice 2009 the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit of a plain and obvious answer; or the law is in a state of development or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other court procedures such as requests for information; and the examination and cross-examination often change the complexion of a case. Also before using CPR 26.3(1) to dispose of “side issues”, one should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally in deciding whether to strike out, the judge should consider the effect of the order

¹ Civil Appeal No. 22 of 2008, British Virgin Islands

or any parallel proceedings and the power of the court in any application must be exercised in accordance with the overriding objective of dealing with cases justly.”

[20] Alternatively, the Defendant applies to the Court for an order for summary judgment in favour of the Defendant. Rule 15.2 of CPR 2000 empowers the Court to give summary judgment on the claim or on a particular issue if it considers that the Claimant has no real prospect of succeeding on the claim or the issue.

[21] The entering of summary judgment was addressed by George-Creque JA. in **Saint Lucia Motor & General Insurance Co. Ltd. v Peterson Modeste**² when she had this to say:

“Summary judgment should only be granted in cases where it is clear that a claim on its face obviously cannot be sustained, or in some other way is an abuse of the process of the court. What must be shown in the words of Lord Woolf in **Swain v Hillman** is that the claim or the defence has no “real” (i.e. realistic as opposed to fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the claimant or the defendant could establish its case then it is open to the court to enter summary judgment.”

² Claim No. HCVAP 2009 at paragraph 21

Analysis

Claim for Trespass

- [22] The Court can find no authority to answer the specific question as to whether an applicant who has obtained a protection order under domestic violence legislation can sue for trespass where breach of the order involves entering premises owned by the respondent (in some jurisdictions referred to as an “occupation order”). As pointed out by Counsel for the Defendant, the legislation provides penalties for breach of a protection order, including a fine or imprisonment on conviction for an offence.³
- [23] The Court is well aware that in criminal cases where a defendant has been convicted of an offence, for example, wounding, damage to property, stealing etc., a virtual complainant or victim may also sue the defendant for damages in the civil jurisdiction, either at the magisterial level or at the High Court. This occurs especially in cases where it is felt that the jurisdiction of a Magistrate to award compensation in criminal cases is limited. This begs the question the Court is required to consider: If a person is convicted of breach of a protection order for entering premises of which he is the sole registered owner, can he be sued for trespass as well?
- [24] Owing to the dearth of authority on the particular subject area, the answer is to be sought in general legal principles of property law and the learning under headings such as *‘Who Can Sue in Trespass?’* Under that caption in **Halsbury’s Laws of England**⁴, it is stated:

“Trespass is an injury to a possessory right and therefore the proper claimant in a claim for trespass to the land is the person who was or is deemed to have possession at the time of the trespass. The owner has no right to sue in trespass if any other person was lawfully in possession

³ Protection Against Domestic Violence Act, Section 26

⁴ 4th Edition, Volume 45, paragraph 1384

of the land at the time of the trespass, since a mere right of property without possession is not sufficient to support the claim.”

[25] In **Celestina Adams v Coreen Franklyn**,⁵ Mitchell J., in making a declaration that a plaintiff was the co-owner of property, ordered her to pay special and general damages to the defendant who had been in possession of the property when the plaintiff employed illegal force to evict the defendant from her premises. The learned judge said:

“The property owner using illegal force will be deemed to have chosen to accept all the loss arising on a balance of probabilities directly from his illegal use of force. He will be made to compensate the tenant for that loss, in addition to paying for the trespass committed.”

Conclusion

[26] The Court, in a protection order, in excluding a respondent from his dwelling house, gives the successful applicant exclusive possession of the premises for the duration of the order. On that basis, in my view, a breach of a protection order by entering the premises can also attract an action in trespass. In light of the fact that a claim in trespass is premised on lawful possession, the First Claimant has a real prospect of succeeding on that aspect of the claim.

[27] Applying the dictum of Edwards JA. in **Citco Global Custody v Y2K Finance Inc.**,⁶ this is not a proper case to strike out the statement of claim or the parts of it in issue. The argument on this point of law does not admit a plain and obvious answer. Further, the Court should be allowed to develop this aspect of the law as domestic violence legislation is a relatively new advancement in the States and Territories under the jurisdiction of the Eastern Caribbean Supreme Court.

⁵ Civil Suit No. 343 of 1995, St. Vincent and the Grenadines

⁶ Supra at note 1

ORDER

1. The application to strike out the Statement of Claim or parts of the Statement of Claim and/or to enter summary judgment in favour of the Defendant is refused.
2. The Defendant shall pay costs of this application to the Claimants in the sum of \$750.

Tamara Gill
Master (Ag.)

BY THE COURT

REGISTRAR