



[2017] JMSC Civ 190

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2013 HCV 06621**

<b>BETWEEN</b>	<b>ZELA JAHARI</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MARIE ANGELINE STONER</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

Ms. Zuleika Jess for the Claimant

Defendant unrepresented and absent

**July 6, 2017**

**Striking out – Summary Judgment - Fraud**

**WINT-BLAIR, J (Ag.)**

This decision concerns an amended application for court orders filed on February 4, 2015 heard ex parte, the defendant having been served through her counsel Brady & Co. on February 4, 2015 at 2:50pm.

**[1]** The application sought orders as follows:

1. That the defence be struck out.
2. That summary judgment be entered against the defendant pursuant to rule 15.2 of the Civil Procedure Rules (CPR).
3. Futher and/or in the alternative, that paragraph 9 of the defence be struck out.

4. Costs of the application to the claimant to be agreed or taxed
5. Such further and or other relief as may be just.

[2] Rule 26.3(1)(b) of the CPR 26.3 (1)

*“In addition to any other powers 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 –*

- c) *that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or ...”*

*Rule 15.2 “The court may give summary judgment on the claim or on a particular issue if it considers that –*

- (a) *the claimant has no real prospect of succeeding on the claim or the issue; or*
- (b) *the defendant has no real prospect of successfully defending the claim or the issue.”*

*(Rule 26.3 gives the court power to strike out the whole or part of statement of case if it discloses no reasonable ground for bringing or defending the claim.)*

[3] The defendant in the instant case filed a defence on July 18, 2014. This defence alleges fraud on the part of the claimant in respect of certain documents purporting to transfer land to the defendant. She alleges that the her name has been forged on certain transfer documents.

[4] The settled legal position in respect of striking out a statement of case is found in **S & T Distributors Limited and S & T Limited v. CIBC Jamaica Limited and Royal & Sun Alliance** SCCA 112/04 delivered 31<sup>st</sup> July, 2007, a decision of the Court of Appeal in which Harris, J.A. said at page 29:

*“The striking out of a claim is a severe measure. The discretionary power to strike must be exercised with extreme caution. A court when considering an application to strike out, is obliged to take into consideration the probable implication of striking out and balance them carefully against the principles as prescribed by the particular*

*cause of action which sought to be struck out. Judicial authorities have shown that the striking out of an action should only be done in plain and obvious cases.”*

- [5] In **Drummond Jackson v British Medical Association and Others** [1970] 1 WLR 688, Lord Pearson said at page 695 that:

*“Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases.”*

- [6] The Rules declare that its overriding objective is to empower the court to save time and costs by dealing with matters expeditiously. If there are no reasonable grounds for bringing an action, the court ought to strike it out pursuant to rule 26.3(1)(c).
- [7] The allegation of fraud is sufficiently particularized for the purposes of the application, this is not a claim for damages for fraud, the defendant is raising a denial of the claimant’s case which is in this context is a defence. The defendant is not required, for the purpose of these proceedings to particularize how her signature came to be forged, she simply relies on the defence of forgery. The defendant is not making a claim based on fraud but is mounting a defence based on forgery. Both sides have raised triable issues which require a hearing. The application for striking out is dismissed.
- [8] The test for summary judgment is whether the respondent has a case with a real prospect of success, which is considered having regard to the overriding objective of dealing with cases justly.
- [9] In **Swain v Hillman**, [2001] All ER 91, Lord Woolf, MR said that the words “no real prospect of succeeding” did not need any amplification as they spoke for themselves. The word “real” directed the court to the need to see whether there was a realistic as opposed to a fanciful prospect of success. The phrase does not mean “real and substantial” prospect of success. Nor does it mean bound to be dismissed at trial. They are not meant to dispense with the need for a trial

where there are issues which should be considered at trial whether there is a serious issue to be tried.

**[10]** In the case at bar, there are triable issues of fact which are not to be resolved at the summary judgment stage.

Orders:

1. Claimant's Application for striking out of the defence dismissed.
2. Claimant's Application for summary judgment dismissed.
3. Costs of the application to strike out and for summary judgment to the defendant to be taxed if not agreed.
4. Defendant's Application to strike out the claimant's statement of case dismissed.
5. Costs of the Application to the Claimant to be taxed if not agreed.
6. Claim to be set down for case management conference.