[2023] JMSC CIV123

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014HCV04977

BETWEEN	**DENNIEHAL MYERS**	**CLAIMANT/APPLICANT**
AND	**BYRON FLETCHER**	**DEFENDANT/RESPONDENT**
CONSOLIDATED	**WITH CLAIM NO. 2014HCV04978**	
BETWEEN	**TANICA JONES**	**CLAIMANT/APPLICANT**
AND	**BYRON FLETCHER**	**DEFENDANT/RESPONDENT**

IN CHAMBERS

Mr. Nicholas Granger instructed by Bignall Law for the Claimants/Applicants.

Mrs. Racquel Dunbar instructed by Dunbar & Company for the Defendant/Respondent.

Heard: June 7, 2023 and June 20, 2023

APPLICATION FOR SUMMARY JUDGMENT – APPLICATION TO STRIKE OUT STATEMENT OF CASE- WHETHER DEFENCE IS A BARE DENIAL – WHETHER DEFENCE OF INEVITABLE ACCIDENT ESTABLISHED - LIABILITY FOR NEGLIGENCE

TRACEY-ANN JOHNSON, J (AG.)

THE APPLICATION

[1] The Claimants, **Denniehal Myers** and **Tanica Jones** (hereinafter "the Applicants") in Claim number 2014HCV04977 and Claim number 2014HCV04978 respectively, filed separate applications in this court for Summary Judgment or alternatively for

the Defendant (hereinafter the Respondent), Byron Fletcherôs statement of case to be struck out. Both claims were consolidated on June 7, 2023 pursuant to an application by the ApplicantsôAttorneys-at-Law. Therefore, the Court heard the applications for both claims together and this ruling is applicable to both applications. In the Notices of Application for Court Orders both filed on June 14, 2021, the Applicants seek the following orders that: -

> *"1. Summary Judgment be entered for the Claimant on the issue of liability with damages to be assessed;*
>
> *2. A declaration that the Defendant has no reasonable prospect of successfully defending the claim on the issue of liability;*
>
> *3. Alternatively, that the Defendant's statement of case be struck out;*
>
> *4. The cost of this Application and costs herein be to the Applicants; and*
>
> *5. There be any such further and other relief as this Court deems just."*

[2] The grounds upon which the Applicants seek the Orders are as follows:

> *1. Pursuant to Rule 15.2 (b) the Defendant's Defence has no real prospect of successfully defending the issue of liability;*
>
> *2. Pursuant to Rules 16.4(1) and 16.4(2) (b) which empowers this Honourable Court to give directions for the trial of an issue of quantum on the hearing of an application for Summary Judgment;*
>
> *3. Pursuant to Rule 26.3(1) (b) and (c) the court may strike out a statement of case or part of a statement of case if it appears to the court that the statement of case is an abuse of the process of the court and is likely to obstruct the just disposal of the proceedings, and that the statement of case discloses no reasonable grounds for defending the claim; and*
>
> *4. Pursuant to Rule 1.1 and in particular, Rule 1.1(2) (b) and (d) the granting of the orders herein will enable the court to proceed with the claim fairly and expeditiously."*

[3] The Applications are supported by the Affidavits of Vaughn O. Bignall in Support of Notice of Application for Court Orders for Summary Judgment filed on the 14th day of June 2021. Counsel for the Claimants also made written and oral submissions. The Respondent did not file any Affidavit in Response. However, he opposed the application and set out his reasons for doing so in the form of written and oral submissions made by his Attorney-at-Law.

BACKGROUND/THE CLAIM

[4] The Applicants both filed claims in this court against the Respondent by way of a Claim Form and Particulars of Claim, which were filed on the 22nd day of October 2014 in which they seek damages for negligence. They allege that on or about the 19th day of August 2013, they were passengers in the Respondentôs motor vehicle, which the Respondent was driving along the Discovery Bay Road, in the parish of St. Ann. The Defendant negligently drove, managed or controlled the vehicle that it lost control and ran off the roadway, causing the Claimants to suffer injury, loss, damage and incur expenses. They assert that the accident was wholly caused and/or contributed to by the negligence of the Defendant. Both Claimants annexed separate interim medical reports dated 8th July 2014 prepared by Dr. George W. Lawson.

[5] The Respondent filed a Defence in claim number 2014HCV04978, **Tanica Jones v Byron Fletcher**, on the 17th day of February, 2017 and in claim number 2014HCV04977, **Denniehal Myers v Byron Fletcher** on the 15th December, 2017, which were in similar terms. In his Defence, he indicated that he admits that the Claimants were passengers in his motor vehicle and that they were lawful users of the roadway. He further admitted that on or about the 19th day of August 2013, he was the driver of his vehicle at the time of the accident and that his vehicle ran off the roadway. He denied that he was negligent together with the Particulars of Negligence. He averred that the accident was an inevitable one in that he was driving along the Liberty Hill main road, St. Ann when his car ran over an object that caused it to run off the roadway. He indicated that the roadway was dark and

it was foggy so he had no opportunity of seeing the object his car ran over. He further indicated that if, which is not admitted, the Claimants suffered injuries, loss and damage, same was not caused by or contributed to by any negligence on the part of the Defendant. In relation to the Particulars of Injury and Particulars of Special Damage, he denied that the Applicants suffered the alleged personal injuries, loss and damage as a result of the accident on the 19th day of August 2013. He objected to the medical reports of Dr. George Lawson dated the 8th day of July 2014 as they are not contemporaneous with the accident on the 19th day of August 2013 and required that Dr. Lawson attends for cross-examination. In relation to the Claimant, Denniehal Myers, he indicated that the injury she sustained was trauma to her breast from the seatbelt squeezing it. He further stated that Miss Myers was his girlfriend and they were going home at the time of the accident. He saw her daily in the days, weeks and months after the accident and she did not suffer from any of the injuries alleged in her claim.

SUBMISSIONS ON BEHALF OF THE APPLICANTS

[6] Counsel on behalf of the Applicants made written submissions which were amplified by oral submissions which can be summarised as follows:

(i) He cited the relevant rules of the Civil Procedure Rules (ñCPRò) that are applicable to the application which are, Rules 15.2 (b), 10.5 (4),26.3(1) (b) and (c) and 1.1(2)(b).

(ii) He directed the court to a number of authorities that deal with applications for summary judgment and which can provide guidance to the Court. These were **Swain v Hillman** [2001] 1 All E.R 91, **Ocean Chimo Ltd. v Royal Bank (Jamaica) Ltd. (RBC) et al** [2015] JMCC Comm. 22, **Sagicor Bank Jamaica Limited v Taylor-Wright** [2018] UKPC 12, **Gordon Stewart, Andrew Reid and Bay Roc Limited v Merrick (Herman) Samuels** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 2/2005, judgment delivered 18 November 2005.

(iii) Counsel submitted that in assessing whether the test has been satisfied, there must be shown a defence on the merits; a defence of substance and quality with a high threshold of real prospect of success: **Forrest v Walker and Pitt** [2019] JMSC Civ 25. He posited that the defence is a bare one and does not display a real prospect of successfully defending the claim.

(iv) Paragraphs 17 to 19 of the written submissions dealt with negligence in circumstances where the Defendant collided into the back of a vehicle, which is different from the circumstances of this case. Therefore, the authorities cited in these paragraphs, although considered, were not relied on by the Court.

(v) No evasive action was taken by the Respondent to avoid the [accident]. The extent of the case put by the defence is that the Respondent acted at a necessary level of skill as a roadway user. Such a defence is a weak one and does not display a real prospect of successfully defending the claim.

(vi) Under the general principles of negligence, the Defendant breached his duty of care to the Applicants which arose under the proximity ingredient in proving negligence: **Le Lievre v Gould** [1893] 1 QB 491.

(vii) The defence does not equate to a defence with a reasonable prospect of success, as it is not sufficient for a trial. He asked that the Court give effect to the overriding objective in the CPR of enabling the court to deal with cases justly, saving expense, achieving expedition and ensuring that the courtôs resources are not used up on cases, which are unmeritorious.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

[7] Counsel on behalf of the Respondent made written submissions which were amplified by oral submissions which can be summarised as follows:

(i) In a claim for damages for negligence in order for liability of the Defendant to be properly established it must be proven that the Defendant was

negligent and that the Defendantôs negligent actions caused the Claimant harm arising from which the Claimant suffered loss and damage.

(ii) In relation to the definition and elements of negligence, she pointed the court to the text of **Commonwealth Caribbean Tort Law**, 4th Edition by Gilbert Kodilinye at page 61. She also relied on **Lochgelly Iron & Coal Co. Ltd. V McMullan** [1934] A.C. 1.

(iii) To determine whether a duty of care is owed to the Claimant in question, she pointed the Court to the case of **Anns v London Borough of Merton** [1977] 2 All E.R 492 at 498.

(iv) In relation to the test and approach to be applied in summary judgment applications, she relied on **Swain v Hillman** [2001] 1 All E.R. 91; **Sasha Gaye Saunders v Michael Green and Others** Claim No 2005 HCV 2868 delivered February 27, 2002; **E.D.F. Man Liquid Products Ltd. v Patel & Anor** [2003] All E.R. 75; **Jamaica Creditors Investigation & Consultant Bureau Ltd. v Michmont Trading Limited** SCCL 2002/J-015 delivered May 9, 2003.

(v) Counsel submitted that in the case before the court, the Claimants make unfounded and untested allegations. The Claimants allege that they were passengers in a motor vehicle but they have been put to strict proof that they were injured as a result of the accident and the extent of those alleged injuries. For this reason, the Defendant objected to the medical reports of Dr. G. Lawson dated 8th July 2014 and required his attendance at trial for cross-examination. She relied on the case of **Clifton Beckford v Winston Blackwood** [2013] JMSC Civ 162 and **Blundell v Rimmer** [1971] 1 All E.R. 1072.

(vi) She further submitted that both the Defendantôs liability and the Claimantsô injuries are being contested and those are live issues that must be proved. As such, the matter ought not to proceed to summary judgment. It really

cannot be said that the Defendant filed a bare defence, as the Defendant provides details as to what he says was the cause of the accident and there are obviously triable issues.

LAW AND ANALYSIS

[8] The submissions advanced by both sides focused primarily on whether or not the Court should grant Summary Judgment. These submissions also alluded to Rule 26.3 (1) (c) of the CPR but no submissions were made in relation to Rule 26.3 (1) (b). The Court will examine the issue of whether or not summary judgment should be granted or whether alternatively, it should exercise its power to strike out the Respondentôs statement of case.

The Application for Summary Judgment

[9] Part 15 of the CPR permits the Court to determine a claim or a particular issue in a claim without undergoing a trial. Rule 15.2 states as follows:-

> *ñ15.2 The court may give summary judgment on the claim or on a particular issue if it considers that ñ*
>
> *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.ò*

[10] Rule 15.6(1) outlines the courtôs powers in granting summary judgment. It states that:-

> *ñ15.6 (1) On hearing an application for summary judgment the court may-*
>
> *a) Give summary judgment on any issue of fact or law whether or not such judgment will bring the proceedings to an end;*
>
> *b) Strike out or dismiss the claim in whole or in part;*
>
> *c) Dismiss the application;*
>
> *d) Make a conditional order; or*

e) Make such other order as may seem fit."

[11] Rules 16.4 (1) and 16.4 (2) (b) of the CPR provide that: -

> *"16.4 (1) This rule applies where the court makes a direction for the trial of an issue of quantum.*
>
> *(2) The direction may be given at –*
>
> *a) …*
>
> *b) The hearing of an application for summary judgment; or*
>
> *c)* é ò

[12] In **Swain v. Hillman** [2001] 1 All E.R. 91 Lord Woolf MR explained the meaning of ñreal prospect of successò He stated that:-

> *"The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success…they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success...Useful though the power is…, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at trial."*

[13] Lord Hutton in **Three Rivers DC v. Bank of England** [2001] 2 All ER 513 stated:-

> *"The important words are 'no real prospect of succeeding'. It requires the judge to undertake an exercise of judgment. He must decide whether to exercise the power to decide the case without a trial and give Summary Judgment. It is a 'discretionary' power; that is, one where the choice whether to exercise the power lies within the jurisdiction of the judge. Secondly, he must carry out the necessary exercise of assessing the prospects of success of the relevant party. If he concludes that there is no 'real prospect' he may decide the case accordingly."*

[14] In the case of **Gordon Stewart et al v Merrick Samuels** SCCA no. 2/2005 at page 94, Harrison J.A stated that: -

> *"The prime test being "no real prospect of success" requires that the learned trial judge to do an assessment of the party's case to determine its probable ultimate success or failure. Hence it must be a real prospect not a "fanciful one". The judge's focus is therefore in effect directed to the ultimate result of the action as distinct from the initial contention of each*

> *party. "Real prospect of success" is a straightforward term that needs no refinement of meaning".*

[15] I cannot conduct a mini-trial at this stage but this does not mean that the Respondent is free to make any assertion and I must accept it. I have to conduct some evaluation of the proposed defence and decide whether it has a real prospect of success: see **Sasha Gaye Saunders v Michael Green and Others** Claim no. 2005HCV2868 delivered February 27, 2007.

[16] In **Easton Lozane v Junior Beckford** [2020] JMSC Civ. 106, Jackson-Haisley J stated at paragraph [18] of the judgment that:-

> *"…the question of whether there is a real prospect of success is not approached by applying the usual balance of probabilities standard of proof as illustrated in the case of **Royal Brompton Hospital NHS Trust v Hammond** [2001] BLR 297…the burden of proof upon an application for summary judgment rests with the applicant, to adduce sufficient evidence, that the Respondent's Defence has no realistic prospect of success, if it were to proceed to trial. To have a real prospect of success, a case has to carry some degree of conviction and has to be stronger than merely arguable as seen in the case of **Bee v Jensen** [2007] RTR 9."*

[17] In the instant application, the Applicants are seeking to recover damages for negligence. The Respondent in his Defence, raised the defence of inevitable accident. He has also joined issue with the Applicants on whether as a consequence of the Respondent's negligence, the Applicants suffered the injuries alleged. In the case of **Clifton Beckford v Winston Blackwood** [2013] JMSC Civ. 162, K. Anderson J pointed out at paragraph [8] of the judgment as follows:

> *"[8] In a claim for damages for negligence, unlike a claim for trespass to the person, loss is not presumed. Thus, whenever one claims damages for negligence, it must always be proven, in order for liability of the defendant to be properly established, that the negligent actions of the defendant in relation to the claimant, caused the claimant's loss and indeed also, it must be proven by the claimant that he suffered loss, arising from the defendant's negligent actions in relation to him, in order for liability for the tort of negligence, to have been properly established. Thus, in the text – Winfield and Jolowicz Tort, 13th ed. [1989], the learned authors have stated, at page 72, that:*
>
> *'Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff. Thus its ingredients*

> *are: (a) a legal duty on the part of A towards B to exercise care in such conduct of A as falls within the scope of that duty; (b) breach of that duty; (c) consequential damage to B.'*

[18] The learned judge continued at paragraphs [9] to [11] of the judgment as follows:

> *"[9] It is abundantly clear to this court, that the defendant has joined issue with the claimant, on two particularly important aspects of his claim…The second issue…is the critical one and it, of course, to some extent, would follow from the first, that being, whether, as a consequence of the defendant's negligence, the claimant has suffered any loss and/or damage.*
>
> *"[10] If a trial were to hereafter be proceeded with therefore, it is apparent to this court that the claimant will have to prove damage and/or loss suffered by him as a consequence of the relevant accident. This is an issue of liability and not a matter that should be, or indeed even can lawfully and properly be addressed by the parties on an assessment of damage hearing. The claimant, at a trial, must prove that the defendant's negligent wrongdoing was a cause, albeit not necessarily the sole cause, of the claimant's injuries. See Halsbury's Laws of England, vol. 34 para 3 and See: Hyman and Williams v. Schering Chemicals Ltd [1980] Times, 190th June. See also Halsbury's Laws of England, 4th ed., vol. 12, paragraph. 1141.*
>
> *[11]…an admission of negligence in a particular case where the claim is for damage for negligence, should not be acted on by a court in such type of case, as constituting a basis for the entry by that court, of a Judgment in admission. See: Rankine v. Garth Son & Co. Ltd. [1976] 2 All E.R 1185; and Blundell v. Rimmer [1971] 2 All E.R. 1072…"*

[19] In relation to the defence of inevitable accident, in the case of **Administrator General for Jamaica (On behalf of the Near Relations and Dependents as Representative Claimant for the Estate of Mark Henry, Deceased) v Lloyd Lewis and Urline Lewis (also known and referred to as Eriene Lewis)** [2015] JMSC Civ. 116, F. Williams J (as he then was) at paragraph 2 of the judgment, relied on an excerpt from **Charlesworth & Percy on Negligence**, 7th Edition on page 196, paragraph 3-83 to explain the substance of the defence of inevitable accident, which was stated as follows: -

> *"**Generally**. In an action, based on negligence, it is open to a defendant to establish that there was no negligence on his part, in which event he will then succeed in defeating the claim. Where the facts proved by the plaintiff raise a prima facie case of negligence against the defendant, the burden of proof is then thrown upon the defendant to establish facts, negativing his*

> *liability, and one way, in which he can do this, is by proving inevitable accident.*
>
> ***Meaning of inevitable accident**. Inevitable accident is where a person does an act, which he lawfully may do, but causes damage, despite there having been neither negligence nor intention on his part…"*

[20] At paragraph 3-86, the text further indicates what the Defendant must do to discharge the burden of proving inevitable accident:

> *"They must either show what was the cause of the accident, and show that the result of that cause was inevitable; or they must show all the possible causes, one or other of which produced the effect, and must further show with regard to every one of these possible causes that result could not have been avoided."*

[21] In **Rumbold v London County Council** (1909) 25 TlR 541, 53 SOL LO. 502, CA., it was established that in a case of negligence the defence of inevitable accident need not be specifically pleaded: See paragraph [30] of **Miriam Barrett v Fredrick Truman** [2020] JMSC Civ 182.

[22] In the case of **Ritchie's Car Hire Ltd. v Bailey** (1958) 108 LJ 348, the Defendant advanced the defence of inevitable accident. The Defendant disclosed that his early-morning collision with a kerbside tree had occurred as a result of a cat that suddenly and unforeseeably scurried out in the road in front of him from his near side. The Defendant stated that he had swerved in an effort to avoid the said collision. The defence of inevitable accident which he advanced succeeded. In the case of **The Albano** [1892] P 419 Lord Esher, MR indicated that for the defence of inevitable accident to succeed, the Defendant must satisfy the court that something over which he had no control happened, and the effect of which could not have been avoided by the exercise of care and skill.

[23] In the case of **Bolton v Henry et al** [2012] JMSC Civ. 25, the Claimant was a passenger in a public passenger motor vehicle. Further, she was injured after the motor vehicle being driven by the 4th Defendant collided with the motor vehicle driven by the 2nd Defendant. Counsel for the Defendants sought to rely on the

defence of inevitable defence. However, in analysing the evidence before the court, Campbell J stated that:

> *"The essence of the defence is whether the failed actions or precautions taken to prevent or avoid the accident were reasonable in all the circumstances of the case. It is clear that the definition excludes a circumstance where the cause of the*

[24] In the instant application, the Respondent indicated that the accident was an inevitable one, in that, his vehicle ran over an object that caused it to run off the roadway. While he has not indicated the specific or approximate speed at and the particular manner in which he drove, that is, whether he took any specific action to avoid running off the road, he has denied the Particulars of Negligence averred by the Applicants. Additionally, he stated that he had no opportunity to see the object as the roadway was dark and it was foggy. In these circumstances, he could neither prevent nor avoid the accident. Therefore, arising from the circumstances of this case, are questions regarding the specific or approximate speed at which the Respondent drove at the time of the accident; at what point, did the Respondent see the object? What was the nature and size of the object? Materially, did the Respondent exercise sufficient care, caution and skill to prevent the accident having regard to the lighting and weather conditions of the roadway at the material time as averred by the Respondent in his Defence, which would have required extra care and caution? These are triable issues that in the Courtôs view will be impacted by the credibility of the witnesses, as well as any accident and/or police reports, which may be adduced at trial.

[25] It is the Courtôs further view that at this stage, looking solely at the pleadings, one cannot tell how the matter will eventually be resolved. It depends on how the evidence unfolds. However, I am satisfied that at this stage, the Respondent has properly raised the defence of inevitable accident in that he provided, albeit in a very succinct manner, the circumstances of how the accident happened and asserted that he had no control over the accident.

[26] However, even if I am wrong in this assessment, it is clear that the Respondent is contesting the issue of liability as it specifically relates to whether the Respondentôs negligence caused the injuries allegedly suffered by the Applicants. This is within the context of the medical reports stating that the doctor saw the Applicants almost one year after the incident. The Respondent has averred that this is not contemporaneous with the accident and requires that the doctor attend for cross-examination. Therefore, causation is a live issue in this case. Were there any intervening circumstances or factors that caused the injuries observed by the doctor at the time of examination of the Applicants? These are issues on which both the doctor and the Applicants will have to be tested either through cross-examination or by relevant questions posed.

[27] Based on the authority of **Clifton Beckford v Winston Blackwood** (supra), ñthis is an issue of liability and not a matter that should be, or indeed even can lawfully and properly be addressed by the parties on an assessment of damage hearing. The claimant, at a trial, must prove that the defendantôs negligent wrongdoing was a cause, albeit not necessarily the sole cause, of the claimantôs injuriesò Additionally, I find that the Respondent has set out, albeit succinctly, the facts on which he relies to dispute the claim and, therefore, has complied with Rule 10.5 of the CPR. He has put forward reasons for resisting the allegation of negligence. Therefore, I do not agree that the Defence is a mere denial of the Applicantsô Claim. In the circumstances, the Applicantsôapplication for Summary Judgment must fail and consequently, Rules 16.4(1) and 16.4(2) (b) are rendered inapplicable.

STRIKING OUT THE RESPONDENT'S STATEMENT OF CASE

[28] Rule 26.3(1) (b) and (c) of the CPR provide that:

> *ñ26.3(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 ñ*

(b) That 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;

c) That the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or..."

[29] The established legal position in respect of striking out a statement of case can be found in **S & T Distributors Limited and S & T Limited v. CIBC Jamaica Limited and Royal & Sun Alliance** SCCA 112/04 delivered 31st July, 2007, in which Harris, J.A. stated at page 29: -

> *"The striking out of a claim is a severe measure. The discretionary power to strike out 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 is 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."*

[30] In the case of **Drummond Jackson v British Medical Association and Others** [1970] 1 WLR 688, Lord Pearson opined 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."*

[31] In **Branch Developments Limited (t/a Iberostar Rosehall Beach Hotel) v. The Bank of Nova Scotia Limited** [2014] JMSC Civ. 003 McDonald Bishop, J (as she then was) stated at paragraph [29] that;-

> *"Striking out of a party's case is the most severe sanction that may be imposed under the court's coercive power. It is draconian and so the power to do so must not be hurriedly exercised as it has the effect of depriving a person access to the courts which could result in the denial of justice."*

[32] In **Godfrey McAllister v Christopher Webb** [2022] JMSC Civ 135 at paragraph [91], O. Smith J cited from **A Practical Approach to Civil Procedure**, 22nd Edition, where the author Stuart Sime pointed out that:-

> *"…the jurisdiction to strike out is to be used sparingly, because striking out deprives a party of its right to a fair trial, and of its ability to strengthen its case through the process of disclosure and other court procedures. The result is that striking out is limited to plain and obvious cases where there is no point in having a trial."*

[33] **In Sebol Limited and Select Homes v Ken Tomlinson et al Claim no. HCV 2526/2004** Sykes J (as he then was) dealt with the interpretation of Rule 26.3 (1) (c). His approach was endorsed by the Court of Appeal in their judgment in the case on appeal. At paragraph 24 of the judgment, he stated that:-

> *"Let us look at what rule 26.3 (1) (c) actually says. The rule does not speak of a reasonable claim. It speaks of reasonable grounds for bringing the claim. It would seem to me that simply as a matter of syntax the instances in which a claim can be struck out against a Defendant are wider than under the old rules. The rule contemplates that the claim itself may be reasonable, that is to say, it is not frivolous, unknown to law or vexatious, but the grounds for bringing it may not be reasonable. Clearly the greater includes the lesser. Thus if the claim pleaded is unknown to law then obviously there can be no reasonable grounds for bringing the claim. It does not necessarily follow, however, that merely because the claim is known to law the grounds for bringing it are reasonable. The rule focuses on the grounds for bringing the claim and not on just whether the pleadings disclose a reasonable cause of action."*

[34] In relation to Rule 26.3(1) (b), to make a determination as to what constitutes an ñabuse of the process of the court or a claim that is likely to obstruct the just disposal of the proceedingsò, the court has to examine the particular facts of the case, as the CPR does not specifically define what is meant by either. The court in **Attorney General v Barker [2000] EWHC 453 (Admin) at paragraph 19** defined ñabuse of the process of the courtòas *"the use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process"*. ñLikely to obstruct the just disposal of the proceedingsò has been viewed as contemplating a situation where a litigant has demonstrated

that he is determined to pursue proceedings with the object of preventing a fair trial: See **Arrow Nominees v Blackledge and others** [2001] B.C. 591.

[35] For the reasons previously stated and having thoroughly examined the Respondentôs statement of case, I am of the view that the Respondent has a realistic prospect of successfully defending the claim or at the very least, he has more than just an arguable case. There is no evidence presented before the court that the Respondent is likely to ñobstruct the just disposal of the proceedingsò Further, I am of the view that the Respondentôs statement of case is not an abuse of the process of the Court as it raises questions of fact and liability, which can only be properly determined by hearing oral evidence. At this stage, he has sufficiently raised his defence of inevitable accident and in keeping with the overriding objective of the CPR of dealing with cases justly, he should be allowed the opportunity to contest liability as alleged.

ORDERS AND DISPOSITION

[36] In the circumstances, I make the following Orders:

1) The application for Summary Judgment is refused.

2) The application to strike out the Respondentôs Statement of Case is refused.

3) Costs of the application to the Respondent to be taxed, if not agreed.

4) The Applicantsô Attorneys-at-Law to prepare, file and serve the Formal Order herein.