COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2016/CLE/gen/00698

BETWEEN

ROBERT CHRISTOPHER CARTWRIGHT

Plaintiff

-AND-

JUST DANCE BAHAMAS LTD

First Defendant

-AND-

ROBYN A. GAPE

Second Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Moses Reginald Bain of Country Talk Law Chambers for the Plaintiff
Mr. Luther McDonald and Ms. Keri Sherman of Alexiou, Knowles & Co. for the Defendants

Hearing Date: 13 September 2017

Practice and Procedure - Summons to strike out Writ and Statement of Claim - Court granted leave to Defendants to file Defence – Pleadings raised question of law - No contractual relationship between Plaintiff and Defendants - Plaintiff sued wrong party - Whether Statement of Claim and entire action frivolous or vexatious and/or an abuse of the process of the court – Action doomed to fail – Order18 Rule 19(1) of the Rules of the Supreme Court

On 9 May 2016, the Plaintiff instituted these proceedings against the Defendants seeking, among other things, compensation in the sum of $60,000 from the Defendants. On 16 August 2016, the Defendants filed a Summons to strike out the Statement of Claim on the grounds that it discloses no reasonable cause of action; it is frivolous or vexatious and/or an abuse of the process of the court. The Summons was supported by an affidavit of the Second Defendant. On

1 May 2017, the Court granted leave to the Defendants to file a Defence within fourteen days. On 15 May 2017, the Defendants complied with the Court's Order and filed their Defence.

In the Defence, the Defendants alleged that the First Defendant is the tenant of Andol Holdings Ltd. and rents the said premises from Andol. As it relates to fixtures and fittings, the Defendants alleged that if there is any dispute as to the value of improvements to the premises, the Plaintiff has no cause of action against the Defendants and ought to have sought redress against Andol. Further, the First Defendant purchased equipment and furniture from the previous tenant who operated Live 2 Dance. The Defendants allege that the Plaintiff's claim ought to be against the previous tenant as the Defendants are bona fide purchasers for value. Accordingly, say the Defendants, the Plaintiff has sued the wrong party and consequently, any trial of this action is bound to fail.

HELD:

1. **Striking out is often described as a draconian step, as it usually means that either the whole or part of that party's case is at an end. Therefore, the summary power to strike out a pleading should be exercised only in plain and obvious cases when the alleged cause of action is certain to fail: *Walsh v Misseldine [2000] CPLR 201, CA* referred to.**

2. **In deciding whether or not to strike out a case, the court should take into account all the relevant circumstances of the case and make a broad judgment after considering the available possibilities. The court must be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the claim; or that it has no real prospect of succeeding at trial.**

3. **In this case, the Plaintiff has sued the wrong Defendants. Therefore, any trial of this action is doomed to fail: *South Hetton Coal Co. v Haswell* [1898] 1 Ch. 456 applied.**

RULING

Charles J:

Introduction

[1] On 16 August 2016, the Defendants filed a Summons to strike out the Plaintiff's Statement of Claim on the grounds that it discloses no reasonable cause of action and that it is frivolous or vexatious and/or an abuse of the process of the court. The Summons is supported by the affidavit of the Second Defendant ("Ms. Gape").

Pleadings in a nutshell

[2] On 9 May 2016, the Plaintiff ("Mr. Cartwright") filed a Writ of Summons endorsed with a Statement of Claim in which he seeks the sum of $60,000 as compensation, interest and costs.

[3] At paragraph 2 of his Statement of Claim, Mr. Cartwright alleges that he owned and operated the business ("Live 2 Dance") situated at #20 Shirley Street Plaza from September 2011 to January 2016. In his affidavit filed on 9 June 2017, he corrected the location to # 21 Shirley Street Plaza. At paragraph 3, he avers that he paid for and installed all of the fixtures, furnishings, equipment and all the goods in Live 2 Dance. At paragraph 4, he states that he and his estranged (now divorced) wife operated the business.

[4] At paragraph 6, Mr. Cartwright alleges that Ms. Gape obtained a business licence in January 2016 in the name of 'Just Dance Bahamas Ltd' to operate a dance studio at the said location. He further avers that Ms. Gape is utilizing the fixtures, furnishings, equipment and all the goods of Live 2 Dance without his consent.

[5] Mr. Cartwright alleges that, despite a letter to Mrs. Michaela Barnett-Ellis of Graham Thompson which was copied to Ms. Gape wherein he sought compensation, Ms. Gape has failed and refused to pay such compensation and as a result, he has suffered loss.

[6] On 16 August 2016, the Defendants filed a Summons to strike out the entire action. On 1 May 2017, the Court granted leave to the Defendants to file a Defence within fourteen days. On 15 May 2017, the Defendants filed their Defence.

[7] At paragraph 1 of the Defence, it states that the First Defendant ("Just Dance") is and was at all material times, a company incorporated pursuant to the laws of the Commonwealth of The Bahamas and carries on the business of a dance school

at Unit 21 in the Shirley Street Shopping Plaza ("the premises"). The premises are owned by Andol Holdings Ltd ("Andol") and leased to Just Dance. Ms. Gape is the principal and beneficial owner of Just Dance.

[8] The Defendants deny paragraph 1 of the Statement of Claim and state that Mr. Cartwright's ex-wife ("Mrs. Price-Cartwright") was the owner and operator of Live 2 Dance. The Defendants further state that Just Dance purchased various items and equipment from Mrs. Price-Cartwright on 15 February 2016. The Defendants deny that they owe Mr. Cartwright any compensation of $60,000. They say that their use of fixtures and fittings are leased from Andol and the furniture was purchased from Mrs. Price-Cartwright.

[9] The Defendants seek an order for the entire action to be dismissed with costs of $12,500. They have electronically submitted a bill of costs to the court.

Court's power to strike out

[10] The Summons to strike out is made pursuant to Order 18 Rule 19(1) of the Rules of the Supreme Court ("RSC") and/or pursuant to the inherent jurisdiction of the Court.

[11] Order 18 Rule 19 (1) of the RSC states:

> **"The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –**
>
> **(a) it discloses no reasonable cause of action or defence, as the case may be; or**
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> **(b) it is scandalous, frivolous or vexatious; or**
>
> **(c) it may prejudice, embarrass or delay the fair trial of the action; or**
>
> **(d) it is otherwise an abuse of the process of the court."**

[12] The learned authors of the Supreme Court Practice 1988 (the "SCP") address the inherent jurisdiction of the court at paragraph 18/19/1 as follows:

> **"Apart from the rule, the Court has an inherent jurisdiction to stay or dismiss actions, and to strike out pleadings which are vexatious or frivolous, or in any way an abuse of the process of the Court, under which it could deal with all the cases included in this rule (Reichel v. Magrath (1889) *14 App.Cas. 665*; Remmington v. Scoles *[1897] 2 Ch. 1, C.A.*; Stephenson v. Garnett *[1898] 1 Q.B. 677*)."**

[13] As a general rule, the court has the power to strike out a party's case either on the application of a party or on its own initiative. Striking out is often described as a draconian step, as it usually means that either the whole or part of that party's case is at an end. Therefore, it should be taken only in exceptional cases. The reason for proceeding cautiously has frequently been explained as that the exercise of this discretion deprives a party of his right to a trial and his ability to fortify his case through the process of disclosure and other procedures such as requests for further and better particulars.

[14] In **Walsh v Misseldine** [2000] CPLR 201, CA, Brooke LJ held that, when deciding whether or not to strike out, the court should concentrate on the intrinsic justice of the case in the light of the overriding objective, take into account all the relevant circumstances and make 'a broad judgment after considering the available possibilities.' The court must thus be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the claim; or that it has no real prospect of succeeding at trial.

[15] The court, when exercising the power to strike out, will have regard to the overriding objective of Order 31A of the RSC and to its general powers of case management. It has the power to strike out only part of the statement of claim or direct that a party shall have permission to amend. Such an approach is expressly contemplated in the RSC: see Order 18 Rule 19.

[16] An application to strike out is essentially a summary procedure and it is not suitable for complicated cases which would require a mini-trial. I hasten to add that this is not a complicated case.

Submissions by the parties

[17] Learned Counsel Mr. Bain who appeared for Mr. Cartwright was very laconic in his submissions. He submitted that Mr. Cartwright was at all material times the owner of Live 2 Dance and he provided all of the fixtures, furnishings and infrastructural costs and after the studio was closed, he did not give anyone permission to utilize the facility and to use the fixtures which he placed there. He said that no-one besides himself is in a position to grant permission as the business licence of Live 2 Dance is solely in his name.

[18] Learned Counsel Mr. McDonald who appeared for the Defendants submitted that the Statement of Claim, and indeed, the entire action is frivolous, vexatious or an abuse of the process of the court as there is no relationship, contractual or otherwise between the Plaintiff and the Defendants.

[19] Mr. McDonald submitted that at paragraph 6 of the Statement of Claim, the Plaintiff states that Ms. Gape is "…*utilizing 'Live 2 Dance' Fixtures, Furnishing, Equipment and all the goods, without the Plaintiff's consent*." But, as learned Counsel correctly pointed out, Just Dance is the tenant of Andol and rented the said premises from Andol, "as is".

[20] Mr. McDonald also correctly submitted that, in relation to fixtures and fittings, if there is any dispute as to the value of improvements to the premises, the Plaintiff has no cause of action against the Defendants and ought to have sought redress against Andol.

[21] Further, say the Defendants, Just Dance purchased equipment and furniture from the previous tenant, Mrs. Price-Cartwright, who operated Live 2 Dance. It is their position that, in the event that ownership of the said items is in dispute, Mr.

Cartwright's claim ought to be against Mrs. Price-Cartwright as the Defendants are bona fide purchasers for value. I agree with these submissions.

[22] As I see it, the Statement of Claim and the entire action are clearly frivolous or vexatious and/or an abuse of the process of the court. Any trial of this action is doomed to fail. The wrong defendants are before the court.

[23] In arriving at this conclusion, I am guided by the following passages in the Supreme Court Practice 1988 at 18/19/3 and 18/19/4:

> 18/19/3 - **"The summary procedure under this rule can only be adopted when it can be clearly seen that a claim or answer is on the face of it "obviously unsustainable" (Att.-Gen. of Duchy of Lancaster v. L. & N. W. Ry. Co. [1892] 3 Ch. 274, C.A.). The summary remedy under this rule is only to be implied in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process or the case unarguable (see per Danckwerts and Salmon L.JJ. in *Nagle v. Feilden* [1966] 2 Q.B. 633, pp.648, 651, applied in *Drummond-Jackson v. British Medical Association* [1970] 1 W.L.R. 688; [1970] 1 All E.R. 109, C.A.**
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> 18/19/4 - **"…It has been said that the Court will not permit a plaintiff to be "driven from the judgment seat" except where the cause of action is obviously bad and almost uncontestably bad (per Fletcher Moulton L.J. in *Dyson v. Att.-Gen*. [1911] 1 K.B. 410, p.419). On the other hand, a stay or even dismissal of proceedings may "often be required by the very essence of justice to be done" (per Lord Blackburn in *Metropolitan Bank v. Pooley* (1885) 10 App. Cas. 210, p.221) so as to prevent parties being harassed and put to expense by frivolous, vexatious or hopeless litigation (cited with approval by Lawton L.J. in *Riches v. Director of Public Prosecutions* [1973] 1 W.L.R. 1019, p.1027; [1973] 2 All E.R. 935, p.942).**
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> > **"…the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent the improper use of its machinery, and will, in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation (see *Castro v. Murray* (1875) 10 Ex. 213; *Dawkins v. Prince Edward of Saxe Weimar; Willis v. Earl Beauchamp* (1886) 11 P. 59, per Bowen L.J. p.63)"**

[24] The learned authors continued at [18/19/7]:

> **"So if in action of contract it appears clearly that there is no contract between the plaintiff and the defendant (*South Hetton Coal Co. v Haswell***

> **[1898] 1 Ch. 456; or no contract valid in law (*Humphreys v Palak* [1901] 2 K.B. 385; or an illegal contract *(Shaw v Shaw* [1965] 1 W.L.R. 537; [1965] 1 All E.R. 638, C.A.)…the statement of claim will be struck out, and the action dismissed."** [Emphasis added]

Conclusion

[25] For all of these reasons, I will strike out the Statement of Claim and dismiss the entire action with costs to the Defendants. Costs are to be taxed if not agreed The Defendants have provided written submissions to the court on costs. They seek the amount of $12,500. The Plaintiff is at liberty to submit written submissions to the court within twenty-one days hereof. Taxation of Costs will take place on 2nd day of November 2017 at 2.30 p.m.

Dated this 19th day of September, A.D. 2017.

Indra H. Charles

Justice