

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2017/CLE/gen/00535

BETWEEN

ROCKY FARMS NURSERIES LIMITED

Plaintiff

AND

BRETT STUBBS

Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Keith Major Jr with Oluwafolakemi Swain for the Plaintiff

Brett Stubbs pro se

Tavarrie Smith with Alton McKenzie, Amicus Curiae

7 February 2020

WINDER J

This is the plaintiff's application for summary judgment and in the alternative for the striking out of the defence pursuant to Order 18 rule 19 of the Rules of the Supreme Court.

1. The plaintiff has applied by summons dated 22 November 2018 seeking relief in the following terms:
 - (1) An Order pursuant to Order 14 Rule 1(1) of the Rules of the Supreme Court 1978 (RSC) and or the inherent jurisdiction of this Court that judgment be entered against the Defendant as prayed in the Writ of Summons filed against the for Summary Judgment against the Defendant ...;
 - (2) Further and/or Alternatively, an order pursuant to Order 18 rule 19(1)(a)(b)(c) and (d) of the RSC ... that the Defence filed herein on 24 March 2017 be struck out and dismissed on the grounds that the same fails to raise any reasonable cause of action and/or any triable issues between the parties. And the Defendant's conduct in filing the Defence is frivolous vexatious and otherwise an abuse of the process of the Court;
 - (3) ...
 - (4) ...

The application is supported by the Affidavit of Nia Rolle dated 22 November 2018. The Defendant has defended the application by a defence filed on 2 May 2017. The Defendant opposes the application and relies on Affidavits filed on 9 May 2017, 9 May 2017 and 13 November 2019.

2. The claim of the plaintiff is founded in trespass to certain property described in the Statement of Claim as being a portion of Sandilands Allotment No. 37 (the disputed property). The Statement of Claim alleges that between December 2016 and May 2017 the Defendant, who occupied land to the west of the disputed property, wrongfully entered and crossed the disputed property or caused to be deposited thereon debris and fill. The plaintiff seeks, inter alia, declaratory relief as to the entitlement to enter or cross the disputed property, injunctive relief and damages for trespass.
3. The Defence denies the claim of the plaintiff to ownership in the disputed property and asserts that he has an interest in the subject property. He cites a conveyance from FirstCaribbean International Bank. He also denies that:

- (1) the plaintiff or his predecessors in title was in possession of Lot 37A or any portion thereof for a period sufficient to defeat its documentary and possessory title or at all;
 - (2) that it had constructive or actual notice of the plaintiff's asserted claim to Lot 37A; and
 - (3) that it had any communication from the plaintiff concerning his alleged claim to the property prior to the commencement of these proceedings.
4. Order 14 rule 1 of the RSC provides as follows:
- "Where in an action to which this rule applies a statement of claim has been served on a defendant and the defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against the defendant."
5. To succeed on an application for summary judgment the plaintiff must demonstrate, inter alia, that: (1) the action began by Writ; (2) it is one in which the rule applies and, (3) the defendant has no defence to a claim included in the Writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed. The purpose of Order 14 is to enable the plaintiff to obtain summary judgment without a trial, if he can prove his claim clearly and if the defendant is unable to set up a bona fide defence or raise an issue against the claim, which ought to be tried.
6. Order 18 rule 19 (1) of the RSC provides that the Court "...may at any stage of proceedings order to be **struck out** or amended any pleading... on the ground that-
- (a) it discloses no reasonable cause of action or defence, as the case may be; or
 - (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.

In the relevant note of the Supreme Court Practice, at paragraph 18/19/15 it is provided as follows:

"Frivolous or vexatious" By these words are meant cases which are obviously frivolous or vexatious, or obviously unsustainable..."

7. The frivolous claim is reserved for cases which are obviously unsustainable. In the case of *West Island Properties Limited v. Sabre Investment Limited and others* - [2012] 3 BHS J. No. 57 The Bahamas Court of Appeal has provided some guidance on the question of striking out actions under Order 18 rule 19 (1). *Allen P.*, delivering the majority decision of the Court, at paragraphs 15, 30 and 57, stated:

15 In the case of *Drummond-Jackson v. British Medical Association* [1970] 1 W.L.R. 688, Lord Pearson determined that a cause of action was reasonable where it had some chance of success when considering the allegations contained in the pleadings alone. That is, beginning at page 695, he said the following:

"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.

...

In my opinion the traditional and hitherto accepted view - that the power should only be used in plain and obvious cases - is correct according to the intention of the rule for several reasons. First, there is in paragraph (1)(a) of the rule the expression "reasonable cause of action," to which Lindley M.R. called attention in *Hubbuck & Sons Ltd. v. Wilkinson, Heywood & Clark Ltd.* [1899] 1 Q.B. 86, pp. 90 - 91. No exact paraphrase can be given, but I think "reasonable cause of action" means a cause of action with some prospect of success, when (as required by paragraph (2) of the rule) only the allegations in the pleading are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be **struck out**.

...

Salmon L. J. said, at p. 651: 'It is well settled that a statement of claim should not be **struck out** and the plaintiff driven from the judgment seat unless the case is unarguable.' Secondly, subparagraph (a) in paragraph (1) of the rule takes some colour from its context in subparagraph (b) "scandalous, frivolous or vexatious," subparagraph (c) "prejudice, embarrass or delay the fair trial of the action" and subparagraph (d) "otherwise an abuse of the process of the court." The defect referred to in subparagraph (a) is a radical defect ranking with those referred to in the other subparagraphs. Thirdly, an application for the statement of claim to be **struck out** under this rule is made at a very early stage of the action when there is only the statement of claim without any other pleadings and without any evidence at all. The plaintiff should not be "driven from the judgment seat" at this very early stage unless it is quite plain that his alleged cause of action has no chance of success. The fourth reason is that the procedure, which is (if the action

is in the Queen's Bench Division) by application to the master and on appeal to the judge in chambers, with no further appeal as of right to the Court of Appeal, is not appropriate for other than plain and obvious cases.

...

30 Concerning *Order 18; rule 19(1)(d) R.S.C.*, both Bramwell B. and Blackburn J. in the cases of *Castro v. Murray* Law Rep. 10 Ex. 213;218 and *Dawkins v. Prince Edward of Saxe-Weimar* 1Q. B.D. 499;502 respectively, underscored the fact that the court possessed a discretion to stop proceedings which are groundless and an abuse of the court's process. The discretion, as Mellor, J. in *Dawkins v. Prince Edward of Saxe-Weimar* indicated, must be exercised carefully and with the objective of saving precious judicial time and that of the litigant.

...

57 Lindley, L.J. in the leading Court of Appeal case of the Attorney-General of the Duchy of Lancaster v. London and North Western Railway Company [1892] 3 Ch. 274, considered a similar order which allowed pleadings to be struck out and dismissed on the ground of being frivolous and vexatious. The learned judge at page 277 said that:

"It appears to me that the object of the rule is to stop cases which ought not to be launched - cases which are obviously frivolous or vexatious, or obviously unsustainable"

8. The plaintiff says that the defendant denied their claim of ownership and the basis of ownership was an indenture of conveyance dated 5 June 2014. They argue that their title was recorded prior to that of the defendant. They also argue that the title referred to in the plaintiff's deed is not the disputed property and is a different property from that referred to in the defendant's deed. Further, they say, the Defence fails to go on to demonstrate some valid grounds as to why and how the Defendant could assert a better title to the Property. They say that there was a failure to set up a possessory title to the property or suggest that the Defendant had dispossessed the Plaintiff by virtue of adverse possession. Finally, they say that notwithstanding the period in excess of twelve (12) years between the Defendant's purported farming of the disputed property, the defendant did not assert his possessory claim to the property in 2012 when FCIB listed the property for sale (as vacant) but purchased it.
9. The plaintiff case in this application is that the Court is entitled to strike out the Defences herein and grant summary judgment in favour of the plaintiff. The Defendant from the very beginning and all throughout, erroneously approached

the instant application as a contest between titles. The baseless averments of the Defendant are thinly veiled and unsubstantiated attempts to abuse the Courts process when the Defendant is or should be aware that he has no Defence.

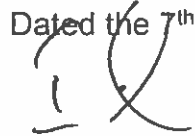
10. The Defendant says that it relies on section 16(3) of the Limitation Act which precludes claims to recover any land after the expiry of 12 years from the date on which the right of action accrued. He claims to have been engaged in farming and acquired a possessory title, in open free exclusive physical possession of the property. He claims also to have disposed the plaintiff's purported predecessors in title and to be the owner of the aforesaid land by virtue of a possessory title thereto, free and open exclusive physical possession.
11. Having considered the matter I am satisfied that this is not a matter of summary consideration. I am not satisfied that the defence is unsustainable having regard to the threshold observed by the Court of Appeal in *West Island Properties Limited*. The claim advanced must be unsustainable and the remedy of striking out is reserved for the unarguable, exceptional cases which are obviously frivolous and vexatious, I am not satisfied that this case falls in that category.
12. The defendant has advanced evidence, by his own account and of others, that he claims a possessory interest in the disputed property. Clearly the plaintiff disputes this. Whether or not the plaintiff's claims comes up to proof, sufficient to be successful at trial, is an entirely different matter. This is not the trial of the action but an application to strike out. It is not for me at this stage to settle factual issues
13. I am also satisfied therefore that this is not a proper case for the exercise of the summary jurisdiction under Order 14 rule 1 to enter judgment but a matter which raises issues to be tried. I am cognizant that the defence was settled by defendant as a layman and as such it cries out for amendment to bring it in line with the evidence in the affidavits. The Defendant is given leave to amend his defence within 14 days and the parties to return for case management upon the close of pleadings.

14. As no one has come on record formally for the Defendant, he is entitled to his costs but as a litigant in person.

Postscript

15. The Judgment of the Court will not take effect until Tuesday, 28 April 2020.

Dated the 7th day of April AD 2020

A handwritten signature in black ink, appearing to be 'I. R. Winder', written over a horizontal line.

Ian R. Winder
Justice