

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

Civil Side

2015/FP/CLE/GEN/00164

BETWEEN

STEPHEN B. WILCHCOMBE

**(EXECUTOR OF THE ESTATE OF THE LATE REVEREND RAYMOND
JONES SR.)**

Plaintiff

AND

RAYMOND JONES JR.

Defendant

Before: The Honourable Justice Mr. Andrew D. Forbes

**Appearances: Mr. Stephen B. Wilchcombe appearing pro se
and Mrs. Zia Lewis- Adams on behalf of the
Defendant**

**Date of
Hearing Date: 16th January 2022, 22nd February 2022 and 1st
April 2022**

RULING

FORBES J

INTRODUCTION

1. There are two applications before the Court. The first application is an application by the plaintiff seeking an interim injunction against the defendant to restrain the defendant from collecting any rent from any premises, apartment or building owned by the estate of the late Reverend Doctor Raymond Jones, Sr.

The second application is an application by the defendant seeking to strike out the plaintiff's writ of summons and statement of claim as it fails to disclose a reasonable cause of action, is frivolous or vexatious and/or is otherwise an abuse of the Court's process.

BACKGROUND

2. The plaintiff filed a generally indorsed writ of summons on the 27th May 2015, whereby he claimed inter alia "the sum of Forty Thousand Dollars (\$40,000.00) being rent collected from buildings owned by the estate of the late Reverend Raymond Jones Sr. together with costs and such other relief as seemed just by the Court." He subsequently filed a statement of claim on the same date claiming:-

- "1. THAT the Rev. Raymond Jones Sr. died 16th June, A.D., 2012 leaving A Will wherein he named the Plaintiff his Executor.
2. THAT the Plaintiff is Probating the Will of the said Rev. Raymond Jones Sr.
3. THAT the Defendant is the son of the said Rev. Raymond Jones Sr.
4. THAT the Defendant without authority or consent is meddling in the estate of his deceased father; he is renting properties and collecting rent for said properties; he is occupying premises without permission, namely the dwelling house and shop space on the ground floor of the two-story building.
5. THAT the Plaintiff has requested and demanded that the defendant pay to the estate, the money he collected as rent from estate properties, but without success.
6. THAT by reasons of the matters aforesaid the Plaintiff has suffered lost of Forty Thousand Dollars (\$40,000.00).

PARTICULARS OF RENT

Green shop rent	\$ 7,000.00
Two Apartments rent	\$30,000.00
Three shops (on ground floor of the two-story building) rent	<u>\$ 3,000.00</u>
	<u>\$40,000.00</u>

AND the Plaintiff Claims:

1. The sum of Forty Thousand Dollars (\$40,000.00)
 2. Interest thereon
 3. Costs
 4. Such other relief as deemed just in the Court”
3. The defendant filed his defence on the 17th September 2015 having entered an appearance on the 3rd September 2015.

The defendant at paragraph four (4) said the following:

“Paragraph four (4) of the Statement of Claim is denied as the Plaintiff has failed to identify which properties he refers.

Further, the Defendant avers that he is the fee simple owner of the property he occupies, and the properties for which he collects rent.

The said properties were conveyed to him by the deceased. By virtue of a Conveyance dated the 23rd day of July, A.D., 1986 and recorded at the Registry of Records in Volume 4559 at pages 136 to 140 between the late Reverend Raymond Jones and Ramses International Limited, and another Conveyance dated 10th day of August, A.D. 2004 and recorded at the Registry of Records in volume 10242 at pages 60 to 66 between Reverend Raymond Jones and the Defendant, the Defendant became the fee simple owner of various properties described in the said Conveyances both of which will be fully relied on at trial.

The said two-story structure and dwelling house and an apartment complex sit on the said properties. Therefore, the said properties do not form part of the late Rev. Raymond Jones’ Estate.”

4. On the 13th January, 2022, the plaintiff filed a notice of intention to proceed. A summons seeking an interlocutory injunction pursuant to order 29 Rule (1) of the Rules of the Supreme Court (“the RSC”) and an affidavit in support of the Summons, sworn by the plaintiff, all filed on the same date.
5. The parties appeared before the Court on the 26th January, 2022 pursuant to the plaintiff’s summons for an injunction. However, the Court advised the plaintiff that

his application could not proceed as the requisite time from the filing of the said notice of intention to proceed had not elapsed.

Further, that the plaintiff also appeared in his capacity as Counsel and Attorney and had sworn an affidavit in the action giving evidence in support of the application.

The plaintiff had also filed a 2nd amended statement of claim on the 13th January, 2022 adding the defendant Ramses International Limited as a party to the action however, the defendant objected to such amendment as no application was made by the plaintiff to do so, neither was an order made by the Court granting him leave to add another party.

The plaintiff has subsequently filed a summons and affidavit of Jewelane Hamilton on the 7th February 2022, returnable before Madam Justice Mrs. Petra Weeks-Adderley seeking an order to add Ramses International Limited as a party to the action pursuant to Order 29 Rule 5 of the RSC.

6. The defendant has filed a Summons and the Affidavit of Sydney Rolle on the 29th March 2022, seeking a hearing for his application pursuant to Order 18 Rule 19(1)(a) &(d) of the RSC to strike out the plaintiff's writ of summons and statement of claim. The defendant also relied on his written submissions filed on the 1st April, 2022 in support of his application.
7. During the hearing on the 1st April 2022, the Court indicated that due to the multiple Summonses before it, the Court would deal with the defendant's application to strike first and any other applications would be heard following the determination of that application.

THE ISSUES

8. The Court in this application must consider
 - (i) whether the plaintiff's writ of summons and statement of claim discloses a reasonable cause of action or raises some question fit to be decided; and
 - (ii) is otherwise an abuse of the process of the Court.

THE LAW

9. The defendant makes his application pursuant to Order 18, Rule 19 (1) (a) and (d) of the RSC and under the inherent jurisdiction of the Court.

10. Order 18, Rule 19 of the RSC states:

“19. (1) 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

(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, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1) (a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.”

11. The power to strike out is a Draconian remedy which should be employed only in clear and obvious cases where it is possible to say at the interlocutory stage and before full discovery that a particular allegation was incapable of proof (per Allen, J in **Bettas Limited v Hong Kong and Shanghai Banking Corporation Limited and HSBC Bank Plc SCCiv App No. 312 of 2013**).

12. Auld, LJ in **Electra Private Equity Partners v KPMG Peat Marwick (a firm) & Ors [2001] 1 BCLC 589 at 613** stated that *“It is trite law that the power to strike out a claim under RSC Ord.18, r.19 or in the inherent jurisdiction of the Court should only be exercised in “plain and obvious” cases. That is particularly so where there are issues as to material primary facts and the inferences to be drawn from them, and when there has been no discovery or oral evidence...the court should proceed with great caution in exercising its power of strike-out on such a factual basis when all the facts are not known to it, when they and the legal principle(s) turning on them are complex and the law, as here, is in a state of development. It should only strike out a claim in a clear and obvious case.”*

ANAYLSIS & DISCUSSION

13. The crux of the plaintiff’s case from the pleadings found at paragraph four (4) of the statement of claim is that the defendant without the authority or consent is meddling in the estate of his deceased father, is renting properties and collecting rent for the said properties, is occupying premises without permission,

namely the dwelling house and shop space on the ground floor of the two-story building. Discloses No Reasonable Cause of Action

14. Lord Pearson in **Drummond-Jackson v British Medical Association [1970] 1 W.L.R. 688** stated that a reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleadings are considered. Additionally, once the statement of claim or the particulars disclose some cause of action or raise some question fit to be decided the simple fact that the case is weak and not likely to succeed is no ground to strike it out. **See Moore v. Lawson (1915) 31 T.L.R. 418, CA; Wenlock v Moloney [1965] 1 W.L.R. 1238**

15. Additionally, on an application to strike out a pleading under the ground that it discloses no reasonable cause of action, no affidavit evidence is admissible (Order 18, Rule 19(2) of the RSC).

16. Mrs. Lewis-Adams, Counsel for the defendant has submitted for the most part that the plaintiff's statement of claim falls short in particularizing his cause of action and fails to particularize the properties he refers to.

Further, she contended that a cause of action must comprise of all of those things necessary to give to a right of action and that the plaintiff has failed to show that as he has the locus standi to bring the action or alternatively his claim of title to the properties he claims are belonging to the estate.

17. In reviewing the said writ of summons and statement of claim, it must be discernable by the reader that on the face of the pleadings no cause of action is disclosed.

Further, that the pleadings themselves show that there is some question fit to be decided regardless of how weak the case may appear. The plaintiff in his writ of summons and statement of claim entitles the action STEPHEN B. WILCHOME (Executor for the Estate of the late Rev. Raymond Jones Sr.).

At paragraph two (2) of the statement of claim he states that he is probating the Will of the said Rev. Raymond Jones Sr. However, through the pleadings he does not state where he derived his authority to act on behalf of the estate of the said Rev. Raymond Jones Sr.

As I understand the plaintiff's case, he contends that he is so entitled to be paid the moneys collected as rent from the subject properties by the defendant. While he pleads that the deceased named him as executor of the Last Will and Testament of the deceased, he does not plead that he brought this action on behalf of the estate.

He also fails to plead the manner in which he alleges the subject properties are a part of the deceased's estate.

Lastly, at paragraph six (6), the plaintiff pleads that he has suffered loss of Forty Thousand Dollars (\$40,000.00).

18. I am of the opinion that the pleaded case before this Court is an action that does not disclose a reasonable cause of action on the basis that the entitlement of the action is incorrect and that while the plaintiff (at the time of the filing of the writ of summons and statement of claim was not given a grant of probate for the said estate) the estate itself is not enjoined as a party to the action.

Further, the pleadings disclose that it is the plaintiff who allegedly suffered loss however, the plaintiff fails to show what was the offending act or thing done or agreement that was breached that led to him suffering some loss.

Abuse of the Court Process

19. 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 Commentary at 18/19/18 on page 352 of the Supreme Court Practice 1, 1999 Castro v Murrery (1875) 10 Ex. 213.**

Further, the process of the Court must be used bona fide, and properly, and must not be abused.

20. Mrs. Lewis-Adams has submitted that the instant case is one relative to possession of land and that on a review of the evidence the plaintiff has failed to establish any evidence of the estate's documentary title to the properties he claims belongs to the estate.

She referred the Court to **Powell v McFarlane (1977) 38 P. & C.R. 425** at paragraph 470 in support.

Further, she submitted that the plaintiff was advised on more than one occasion of the defendant's title to the properties and that the plaintiff has had numerous opportunities to produce evidence of documentary title even failing to do so in his affidavit in support of another application before the Court in this same action. She referred the Court to Tab 1 of the affidavit of Sydney Rolle in support.

21. The evidence of Sydney Rolle in her affidavit was in part that the plaintiff's claim is in the vaguest terms with no particularizing of the properties claiming to belong to the estate. She deposes that she was informed that under cover of letter dated the 14th October, 2014 the plaintiff was served a cease and desist letter further to the plaintiff approaching occupants of an apartment complex owned by the defendant.

Further, that in the said letter the defendant's attorneys provided the plaintiff with recorded particulars of the title deeds relevant to the properties he claimed were estate properties.

Additionally, that in response to the said letter the plaintiff responded by letter dated the 17th October, 2014, requesting copies of the conveyances referenced in the cease and desist letter be provided and that should make a difference. She stated that after the defendant's attorneys did not provide the plaintiff with copies of the conveyances the plaintiff proceeded with the instant action despite having options available to him such as conducting a title search, or search of the Registry of Records.

The said letters were exhibited to her affidavit along with copies of the backing sheets of the said properties which show:

- (i) Deed of Conveyance dated 23rd July A.D., 1986 between the late Reverend Dr. Raymond Jones to Ramses International recorded in the Registry of Records in Nassau Bahamas at Volume 4559 at pages 136 to 140 and
- (ii) Deed of Conveyance dated 2nd July, A.D. 2004 between the late Reverend Raymond Jones and the Defendant recorded in the Registry of Records at Volume 10242 at pages 60 to 66.

22. The said correspondence is reproduced below:-

October 14, 2014

Mr. Stephen B. Wilchcombe
Stephen Wilchcombe & Co.
Counsel and Attorney- At- Law
Chambers
Suite 6,7 & 8 Regent Centre
Freeport, Grand Bahama

Dear Mr. Wilchcombe:

Re: Mr. Raymond L. Jones, Jr.

We represent Mr. Raymond L. Jones, Jr.

Our client has passed your letter addressed to him dated the 17th day of September, 2014 to us for response. He has also instructed us that you have contacted the occupants of an apartment complex situated on 1.47 acres of land being a portion of Tract A-1, in the vicinity of the Settlement of Seagrape on the Island of Grand Bahama and the occupants of a two story building and a dwelling house situate on land a portion of Tract A, in the Settlement of Eight Mile Rock, in the Island of Grand Bahama aforesaid and have informed them that he is not the fee simple owner thereof and that the property is owned by the Estate of the late Reverend Raymond L. Jones Sr. We are further instructed by our client that you have informed the occupants of the said premises that our client has no authority to collect rent from them. We understand that you have also advised our client's siblings that he is not the fee simple owner of the said properties.

Your verbal and written statements concerning the ownership of the properties and our client's "dealings" in respect thereof are utterly false and defamatory. By virtue of an Indenture of Conveyance dated the 23rd day of July, A. D. 1986 between Reverend Dr. Raymond Jones and Ramses International Limited ("the Company") recorded in Volume 4559 at pages 136 to 140 the late Reverend Jones conveyed a portion of Tract "A" in the Settlement of Eight Mile Rock, Grand Bahama to the Company. The Company is beneficially owned by our client. By virtue of an Indenture of Conveyance dated the 10th day of August, A. D. 2004 made between Raymond Jones, Sr. and Raymond Jones, Jr. recorded in Volume 10242 at pages 60 to 66. The late Reverend Jones conveyed 1.47 acres of land to our client. The said two story structure and

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siblings as a result of your uninformed conclusions. A routine search of the Registry of Records by you would have revealed who was vested with the fee simple ownership of the properties.

You are hereby warned to cease and desist from defaming our client's character and reputation forthwith. Further, our client demands a written apology from you on or before the close of business on October 20, 2014 failing which, our client will have no recourse but to file a Supreme Court action against you for damages for defamation and injunctive relief.

BE GOVERNED ACCORDINGLY.

Yours sincerely,
GRAHAMTHOMPSON


Petra M. Hanna-Weekes

Cc: Mr. Raymond L. Jones, Jr.

17th October, 2014

Ms. Petra M. Hanna - Welkes
Graham Thompson
Near General Insurance Building
2nd Floor
P.O. Box F-42451
Freeport, Grand Bahama

I am prepared to discuss and resolve the issues with you if you have an open mind to do

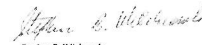
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Thank you

Re: Mr. Raymond L. Jones Jr.

Yours sincerely,

STEPHEN WILCHCOMBE & CO.



Stephen B. Wilchcombe

This is to acknowledge receipt of your letter of the 14th October and it is good to hear from you.

I did indeed speak to the occupants of the apartments and advised them about payments of rents. As Attorney for the estate, it was the correct thing to do. Ray Jr has told me about a Company and Conveyances and I asked him to show me the Conveyances. He is asserting, and so he should prove. Now that I have contact with you, the matter is a.b.c. Please send me copies of the Conveyances and it should make a difference.

I know of no malicious allegation I made against Mr. Jones. I know Ray and I have no reason to say anything malicious about him. Please tell me and I will apologise

With respect to the two disputed properties, I will hold off for a week for you to supply me with the two Conveyances.

With respect to the green shop that is rented to R.H., please tell your client to hand over all monies collected as rent for the green shop. Unless he owns this also

SBW:an

23. The evidence of the plaintiff in his affidavit in support of his application for injunctive relief was that, he is the attorney for the estate of the deceased and that the deceased named him as an executor of his estate in his Last Will and Testament.

He further deposed that the defendant and Ramses International Limited have been meddling in the estate of the deceased by renting properties and collecting rent, occupying properties and dissipating the estate without authority and that he had advised the defendant to stop and desist from doing any business with the deceased's estate until after the probate of the Last Will and Testament.

Lastly, he stated that the defendant's actions constitute a serious breach of the law and unfair to his sisters and brothers and that unless restrained, the defendant will dissipate the deceased's estate and commit an injustice against his sisters and brothers.

The plaintiff exhibited several documents which ultimately show this Court that this action in its present form cannot continue. One of those documents is the Grant of Probate given by this Honourable Court on the 25th June, 2020, whereby the plaintiff received a "Certificate as to Grant of Probate" for the estate of Reverend Doctor Raymond Jones M.B.E. and was given following the submission of a draft Will of

the deceased and the said grant was limited, until the original Will or a more authentic copy is proved.

The plaintiff also exhibited a lease agreement dated the 21st June, 2017 between Ramses International Limited and Jarol Investments Limited for the leasing of a building situated on Queens Highway, Jones Town, Eight Mile Rock for a determined period of time. The plaintiff does not state when he came into possession of the lease agreement.

24. The correspondence between the parties show that prior to the commencement of the plaintiff's action in 2015, the plaintiff was given notice and he subsequently acknowledged that the defendant held conveyances over the subject property and that the conveyances referred to in the defendant's letter dated the 14th October, 2014 were over the subject property.

25. The defendant did not provide the plaintiff with the said conveyances as requested by the plaintiff in his letter in response as Counsel for the defendant asserted that the plaintiff could have done his own title search to confirm the same.

Further, the defendant in his defence also pleaded the particulars of the said conveyances relative to the subject property. It is evident from the correspondence between the plaintiff and then Counsel for the defendant that the properties which he alleges forms the subject matter of this action were conveyed to another party prior to the testator preparing his will in 2008.

The plaintiff has not provided the Court with any evidence to refute the defendant's assertion that the legal and beneficial owner of the subject properties are the defendant and another party nor has the plaintiff provided the Court with any evidence to show that the subject property had been re-conveyed to the testator before his death, and thus the subject property would form a part of his estate.

26. The continuation of these proceedings I find as a result of the events outlined above, make this action doomed to fail and its continuation would amount to an abuse of the court process. **See Commentary at 18/19/22 on page 353 of the Supreme Court Practice 1, 1999; Domer v Gulf Oil (Great Britain) [1975] 119 S.J. 392**

27. Therefore, in the circumstances, I find that the plaintiff's writ of summons and statement of claim is hereby struck, pursuant to Order 18, Rule 19 (1)(a) and (d) of the RSC and the action is dismissed.

28. Further, the plaintiff's application for injunctive relief and other extant Summonses are all dismissed and/or fall away.

COSTS

29. The Court can of its own volition, in its own discretion, consider all manner of costs orders when determining the issue of costs.

The general principle is that costs usually follow the event and in most instances, the Court will not depart from this rule. However, before the Court makes an order as to costs, I will hear the parties on the same.

A handwritten signature in black ink, appearing to read 'A. Forbes', with a horizontal line underneath it.

Justice Andrew Forbes
Dated 6th May, 2022