

IN THE HIGH COURT OF BELIZE

CLAIM No. Civ 117 of 2024

BETWEEN:

HAROLD GEORGE JOSEPH DUFRESNE

Claimant/Respondent

AND

TERESA GAIL NICHOLSON

Defendant/Applicant

Appearances:

Ms Payal B Ghanwani for the claimant

Ms Robertha Magnus Usher SC for the defendant

1 October 2024

9 December 2024

JUDGMENT

Practice and Procedure – Strike out application re: a statement of claim – Pleadings grounds: alleged lack of jurisdiction owing to the fact that the dispute pertained to matrimonial property to which family law rather than contract and/or property law applied; claim that the case was frivolous and vexatious; claim that the claimant used a wrong form and not a petition to commence legal proceedings – **General principles** on strike out applications – onus on strike out applicant to demonstrate that the claim is unwinnable and is bound to fail – high threshold - standard of proof in strike out applications: certainty that the claim is unwinnable and bound to fail - strike out not appropriate if there is a real and live dispute between the parties – strike out not appropriate in an area of law that is uncertain and developing.

- [1] **HONDORA, J.:** This decision pertains to a strike out application filed by the defendant, Ms Teresa Gail Nicholson, in response to a claim form and statement of claim filed by Mr Harold George Joseph Dufresne (the claimant). Ms Nicholson alleges that Mr Dufresne's claim is frivolous and vexatious and was improperly instituted pursuant to the Civil Procedure Rules, which she argues ousts this court's jurisdiction.

1. Context

- [2] The background to this case can be briefly described as follows. The parties were once in a romantic relationship, which began in 2009/2010. At some point thereafter, the parties agreed to live together and make Belize their home. In 2012 the parties purchased a property in the popular holiday destination that is San Pedro, Belize. The property in dispute is known as Parcel 4227, Block 7, San Pedro Registration Section (the San Pedro property). The property is registered in both of the parties' names.
- [3] In his statement of claim, Mr Dufresne states that he sold his house in Canada (his country of origin) and used the proceeds to purchase the San Pedro property in the sum of US\$225,000. Ms Nicholson disputes that assertion.
- [4] In April of 2013, the parties entered into a Memorandum of Understanding in which (and I paraphrase) the parties affirmed that:
- (a) the claimant is the one that paid the purchase price for the San Pedro property;
 - (b) in event of their relationship failing, the San Pedro property would be sold;
 - (c) Mr Dufresne would receive from the proceeds of the sale the sum of US\$225,000, which sum represents the purchase price that he paid for the San Pedro property; and
 - (d) the remainder of the proceeds of the sale price would be split evenly between the parties.
- [5] The defendant alleges that she has no recollection of her signing the relevant Memorandum of Understanding.
- [6] The claimant makes several other claims, which are not material for purposes of this decision. Although I make no definitive pronouncement, it appears not to be in dispute between the parties that their relationship was in effect a common law union.
- [7] The parties' romantic relationship has ended and both parties agree that it has. However, they still live together in the San Pedro property albeit occupying different wings and living separate lives.
- [8] The claimant has instituted legal proceedings, and he seeks the enforcement of the Memorandum of Understanding. Ms Nicholson has not filed a defence. Instead, she has applied to have the case struck out on the grounds set out in para. 1 above. That application, which is opposed by Mr Dufresne, is the subject of my decision.

2. Issues arising

- [9] I will address the issues raised in the strike out application in the following order:

- (a) whether this court has no jurisdiction to hear the claimant's case and that it should be struck out because it was improperly commenced pursuant to the Civil Procedure Rules and not the Matrimonial Causes Rules; and/or
- (b) whether the claimant's case is frivolous and vexatious and consequently should be struck out.

3. Law and principles regulating strike out applications

- [10] I will, in the first instance, address the law and general principles on strike out applications.
- [11] It is unclear whether the defendant bases her strike out application on Part 26.3(1)(c) of the Civil Procedure Rules (CPR) or the court's inherent jurisdiction.
- [12] Rule 26.3(1) provides:
- "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 –
- (a) ...
 - (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."
- [13] There is also no gainsaying that the High Court in exercising its inherent power to control its procedures may strike out a statement of case on the grounds that it is frivolous and vexatious and constitutes an abuse of the court's process.
- [14] Examples of claims that may be struck out include those which do not demonstrate a reasonable ground for lodging the claim (*Price Meats Lit v Barclays Bank Plc* [2000] 2 ALL ER (Comms) 346, Ch. D)) because the statement of claim (a) does not contain any facts indicating what the case is about; (b) is incoherent and make no sense; (c) does not disclose any legally recognisable claim against a defendant; (d) is barred by operation of law; and/or (e) if the court has no jurisdiction over the matter.
- [15] As noted by Conteh CJ in *Belize Telemedia Ltd and Boyce v Magistrate Usher and Attorney General* (2008) 75 WIR138, at para. 19:
- "The provision of the rules in Part 26.3(1)(c) which enables the court to strike out a claim because it discloses no reasonable grounds for bringing or defending the claim is undoubtedly a salutary weapon in the court's armoury, particularly at the case management stage. It is intended to save the time and resources of both the court itself and the parties: why devote the panoply of the court's time and resources on a claim such as to go through case management, pre-trial review and scheduling a trial with all the time and expense that this might entail, only to discover at the end of the line that there was no reasonable ground for bringing or defending a claim that should not have been brought or resisted in the first place?"

(a) *Onus*

- [16] From a procedural point of view, the applicant bears the onus of demonstrating grounds, which justify the

striking out of part or all of a respondent's case. Succinctly put: an applicant must demonstrate that the statement of case does not set out a winnable case and that continuance of proceedings would unnecessarily waste resources (*Harris v Bolt Burdon* [2000] C.P. Rep 70). In other words, an applicant must demonstrate that the respondent's case is bound to fail and that it is just that it be struck out.

(b) *Certainty that a claim is bound to fail as standard of proof*

[17] As noted in the case of *Hughes v Colins* [2004] ECWA Civ 266, at para. 22, unless if a court is certain that a claim is bound to fail, it would be inappropriate to strike it out. Certainty is a high threshold. It is well established that the standard of proof, which is required to successfully sustain a strike out application is higher than the balance of probabilities standard utilised in resolving civil cases pursuant to a trial. This is to say, at the end of a civil trial, a judge has to be satisfied that a litigant has proven their case on the balance of probabilities. However, before striking out a statement of case, a judge must be certain that the claim or defence is bound to fail, and it falls on the applicant to satisfy that high threshold standard of proof. However, where a defendant has filed a defence, it is more likely than not that an application for summary judgment would be filed rather than a strike out application.

(c) *An exceptional remedy*

[18] A strike out order is an exceptional remedy and the bar to be scaled by an applicant must of necessity be high. This approach is informed in large part by the fact that the interests of justice require cases to heard and determined on their merits. This ensures, among others, that a litigant is not deprived of his or her right to trial (see *Swain v Hillman* [2001] 1 ALL ER 91). The overriding objective requires the just resolution of cases and at proportionate cost to litigants.

(d) *Strike out not appropriate if there is a serious and live issue in dispute*

[19] A statement of claim may not be struck out if there is a serious and live issue in dispute between the parties, which can only be properly following a trial. (See also *Reynolds-Greene v Bank of Nova Scotia*, Claim No. ANUHCV 2005/0443; *Bridgeman v McAlpine Brown*, 19 January 2000, unrep., CA.)

(e) *Strike out not appropriate in an area of developing jurisprudence*

[20] It is also well established that it is not appropriate to strike out a litigant's stated case in an area of developing jurisprudence and that decisions on such matters must be based on clear findings of fact. For a restatement and application of this principle, see *Barrett v Enfield London Borough Council* [2001] 2 AC 550 at p. 557 per Lord Browne-Wilkinson. This approach is key to the incremental development of the common law – a system based on judge-made rules that are applied and at times clarified and/or extended through interpretation and application of those rules of the common law by judges.

[21] I now turn to address the specific grounds pleaded by the defendant.

4. Whether this court has no jurisdiction

[22] The defendant contends that this court has no jurisdiction to hear the matter because the claimant filed his claim form and statement of claim pursuant to and using the claim form prescribed under the Civil

Procedure Rules and not Matrimonial Causes Rules, which refers to petitions.

[23] The strike out application begs the question: assuming it to be true that the claimant used a wrong form to institute his case before this court, does that oust this court's jurisdiction? To sustain its strike application the applicant needed, but has failed, to demonstrate the ground(s) that oust this court's jurisdiction.

(a) *The High Court derives its jurisdiction from the Constitution*

[24] It is worth clarifying that this court derives its jurisdiction from the constitution. Section 95 of the Constitution provides:

"The Supreme Court shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law." [Emphasis added]

[25] Certainly, statutes and applicable Rules of court will influence and at time determine how that constitutionally derived jurisdiction is exercised. However, being subsidiary legislation any such statute or Rule(s) of court cannot be read to oust this court's inherent jurisdiction in the absence of an amendment to section 95 of the Constitution. To put it differently, this court does not derive its jurisdiction from the Civil Procedure Rules or the Matrimonial Causes Rules – the latter of which it appears the defendant contends applies to this case. For a general discussion on inherent jurisdiction, see ***Fowler Works Enterprises Ltd v Minister of Natural Resources, Petroleum and Mining***, Claim No. Civ 725 of 2022 (No. 2).

(b) *Dispute over the applicable Rules of Court*

[26] As a general rule, in a strike out application the applicant is usually bound to accept the accuracy of the facts pleaded in the statement of case unless if those pleaded facts are inherently contradictory or wrong (See ***MF Tel Sarl v Visa Europe Limited*** [2023] EWHC 1336 (Ch), at para. 35). Relatedly, the court will usually proceed on the basis that the facts as pleaded by the claimant are true and the claim will usually stand or fall on the facts set out in the statement of case. (See ***MF Tel Sarl***, at para. 10).

[27] The facts as set out in the claimant's statement of claim engage the law of contract, property, trust and rules of equity. Those facts do not exclude the application of family law principles, i.e., on common law unions. It appears that the defendant's intended defence is that the claim should be resolved using the laws applicable to matrimonial matters.

[28] The defendant has neither explained nor demonstrated how a dispute over the law(s) to be applied ousts this court's jurisdiction and justifies a strike out order especially when the facts in dispute (as opposed to those stated by the claimant) are yet to be determined because the defendant has not filed a defence.

[29] In response to the strike out application, the claimant has made substantive submissions on the High Court's jurisdiction, including of the various divisions of the High Court's Civil Division as set out in the Senior Courts Act, 2022, i.e., its Constitutional and Administrative Law Division, Commercial Division, and the Family and Trust Division. However, at present these thematic sub-divisions of the High Court's Civil

Division are yet to be established. That said, even if these sub-divisions had been established, the lodging of a case in one and not the other division would not as a general rule require a statement of case being struck out on the grounds that the division before which proceedings were initiated lacks jurisdiction. If a court were to determine that another division of the High Court is best placed to hear the matter, an appropriate order would be made for the proceedings to be transferred to the appropriate division.

[30] In the exercise of its jurisdiction, this court will determine both the laws and the rules applying to the dispute between the parties be they regulated by the Civil Procedure Rules or the Matrimonial Causes Rules. In this regard, a party's alleged erroneous reliance on one set of rules instead of another does not oust this court's jurisdiction. It is also not a basis for a plea that this court lacks jurisdiction.

[31] The defendant has not argued that the facts as outlined in the claimant's statement of claim demonstrates that some other court has primary jurisdiction over the dispute. Patently, the dispute is one that falls to be determined by this court and not any other. Consequently, there is no merit in the applicant's contention that this court lacks jurisdiction to hear and determine the matter set out in the claimant's statement of claim.

5. Whether the claimant's case is frivolous and vexatious

[32] The applicant also contends that the claimant's case is frivolous and vexatious.

[33] As noted above, the high court has power to strike out a statement of case (be it a claim or a defence) if it is demonstrated to be frivolous, vexatious and/or constitutes an abuse of the court's process. This derives from this court's inherent jurisdiction, i.e., to say, the court's inherent power to control its proceedings. This inherent power is, of course, not limited to or enjoyed only by the High Court. Rather it is a power possessed and enjoyed by all courts of law.

[34] A statement of case may be struck out as frivolous, vexatious and/or an abuse of the court's process if it does not demonstrate the existence of any real and live dispute between the parties or is bound to fail and/or is unwinable on the facts as pleaded in the statement of case or the facts as demonstrated by the applicant.

[35] There is, by any estimation, a real and live dispute between the parties over the San Pedro property, which is of substantial value. It is also clear that the parties have failed to resolve the dispute, which explains the claimant's action. That there is a real dispute is also borne out by the submissions advanced by learned senior counsel on behalf of the defendant. Viewed objectively, it is difficult to see how the claimant's action can be regarded as frivolous, vexatious or an abuse of this court's process. The facts do not engage any of the typical scenarios that call for a strike out on the grounds of frivolity, vexatiousness or abuse.

[36] An unsubstantiated assertion that a claim is frivolous, vexatious or constitutes an abuse of this court's process will not satisfy the high threshold required to sustain a strike out application. For emphasis, this court must be certain that the claimant's case is frivolous, vexatious and/or constitutes an abuse of this

court's process before striking it out.

- [37] As noted above, the defendant's case appears to be premised on the contention that because the parties were in a common law union, the law and principles that should regulate the distribution of the proceeds of the San Pedro property if and when it is sold is family law and not the law of contract or some other rule of law. That submission points to the existence of a real and substantive dispute between the parties.
- [38] If that is indeed the defendant's case, that can be manifested as its defence as to the applicable law. The dispute over the applicable laws stands to be resolved by this court, including through an assessment of the evidence presented at trial.
- [39] In my view, it is not for the defendant to determine how the claimant articulates and prosecutes his claim or more specifically to insist that the claimant ground his claim to the proceeds on sale of the San Pedro property on Family law principles. Upholding the defendant's strike out application would result in the improper curtailment by the court of the claimant's right and privilege to determine and assert his cause of action and restricting it to a ground of law preferred by or favourable to the claimant. That, in my view, would be an improper exercise by this court of its discretion as exercised in the context of strike out applications.
- [40] Under this jurisdiction's adversarial system, it is for the claimant to assert his case and cause of action and for the defendant to counter the same, if it is so disposed, with the court resolving the dispute one way or the other. In short, the apparent dispute over the law that should be used to determine the outcome of the dispute demonstrates that the existence of a real and substantive dispute between the parties and that the issue is not one that can or should be disposed of in a strike out application in the absence of evidence provided by the parties pursuant to an adversarial trial.
- [41] The defendant's case appears to be predicated also on the contention that in Belize contractual arrangements between persons that are or were in a romantic relationship or that lived together in a common law union are either not binding on the parties or are unenforceable as a matter of law. In my view and considering the authorities cited by the parties in their respective written submissions, the answer to that question is yet to be properly addressed in this jurisdiction (see in general, the case of **Tabony v Tabony**, Claim No. 260 of 2019). That area of law and jurisprudence is evolving and not least in other sister jurisdictions whose final appellate court is the Caribbean Court of Justice. In view of that, it would be inappropriate for this court to strike out the claimant's case in the absence of a full hearing of the evidence and arguments in support of the competing rules of law and principles advanced (or to be advanced) by the parties.
- [42] In this regard, I associate myself with the statement of principle set out in the case of **Barrett v Enfield London Borough Council** [2001] 2 AC 550 at p. 557, in which it was held that:
"[I]n an area of the law which [is] uncertain and developing...it is not normally appropriate to strike out. In my judgment it is of great importance that such development should be on the basis of actual facts found at trial

not on hypothetical facts assumed (possibly wrongly) to be true for the purpose of the strike out."

[43] My attention has not been drawn to any binding authority in this jurisdiction that provides that all contractual disputes between persons who are or were in a romantic relationship (be it a marriage or a common law union) are regulated by and resolved through the application or consideration only of family law principles. I very much doubt that any such rule exists. However, if that be the contention, it ought not to be resolved through the mechanism of a strike out application based of an inchoate set of facts and in the absence of appropriate adversarial proceedings.

6. Alleged use of the wrong form to commence proceedings

[44] It would appear that the defendant's main or other main concern relates to the claim that the claimant used a claim form prescribed under the Civil Procedure Rules, 2005 to commence legal proceedings and not a petition as envisaged under the Matrimonial Causes Rules. If my understanding of the defendant's plea is correct that would not, in my view, be an adequate basis for a strike out order since that would be tantamount to prioritising form over substance. It would also not be a proportionate response to the use of an incorrect prescribed form.

[45] I am not of the opinion that the claimant has used an incorrect form in view of the different laws likely to fall for consideration in the resolution of the main matter.

[46] However, even if the claimant has used a wrong form, a strike out would not – on the facts of this matter - be an appropriate response or sanction since the statement of claim sets out all the details that enable the defendant to plead her defence, if she is so disposed. The defendant has not pleaded that she has suffered or will suffer any prejudice or that it would be unfair or unjust if the proceedings were allowed to continue with a defence filed in response to the statement of claim.

[47] Courts are increasingly reticent to uphold such pleas. In *Hannigan v Hannigan* [2000] All ER (D) 693, CA, the claimant's solicitors had used a wrong form to commence proceedings. The Court of Appeal set aside the district judge's decision striking out the claimant's statement of case. On appeal, Brooke LJ held that the district judge ought not to have struck out the claim form as the defendant was aware of the mistake and had not been misled and that striking out 'would be wholly disproportionate'. At para 36 Brooke LJ stated:

"... moreover, the judge was quite correct when he said that the Civil Procedure Rules were drawn to ensure that civil litigation was brought up to a higher degree of efficiency. But one must not lose sight of the fact that the overriding objective of the new procedural code is to enable the court to deal with cases justly, and this means the achievement of justice as between the litigants whose dispute it is the court's duty to resolve. In taking into account the interests of the administration of justice, the factor which appears to me to be of paramount importance in this case is that the defendants and their solicitors knew exactly what was being claimed and why it was being claimed when the quirky petition was served on them. The interests of the administration of justice would have been much better served if the defendants' solicitors had simply pointed out all the mistakes that had been made in these very early days of the new rules and Mrs Hannigan's solicitor

had corrected them all quickly and agreed to indemnify both parties for all the expense unnecessarily caused by his incompetence. CPR1.3 provides that the parties are required to help the court to further the overriding objective, and the overriding objective is not furthered by arid squabbles about technicalities such as have disfigured this litigation and eaten into the quite slender resources available to the parties.”

[48] As a general rule, in matters where it is found that a party has used a wrong form, the court will need to consider the most appropriate response and one that advances rather than undermines the administration of justice. Depending on the facts, the appropriate response may be an order directing the offending party to file an amendment (see *Soo Kim v Youg* [2011] EWHC 1781 (QB)), which order may be accompanied by an order for costs. Relatedly, there is no disputing that in the exercise of its inherent power and to ensure that cases are justly resolved at proportionate cost, this court can correct any demonstrated defect through an order directing that proceedings continue with the filed pleadings regarded as instituted under the relevant and applicable Rule(s).

[49] It is also likely to be disproportionate to strike out a statement of claim that discloses a real and substantive dispute between the parties following an inadvertent use of a wrong form. In my view, a hard and fast rule that the use of a wrong form will attract a strike out would serve no useful purpose. It will promote the proliferation of litigation on arid points of a procedural nature. In the real world, this would disproportionately penalise litigants in person.

7. Summary

[50] For the foregoing reasons, I dismiss the strike out application with costs against the defendant/applicant, which if not agreed must be assessed.

[51] Although not requested, I grant the defendant leave to file and serve her defence by **10 January 2025**.

[52] If the defendant intends to defend the claim and does in fact file a defence by **10 January 2025**, the parties' attorneys are required to cooperate and write to the court no later than **17 January 2025** with a proposed set of case management orders for my review. In view of litigation costs likely to be incurred in this matter, I encourage the parties to try and resolve this matter, including potentially through mediation or other settlement discussions facilitated by a third party. However, if the parties decide to continue with litigation, their attorneys should, prior to **17 January 2025**, file and exchange cost budgets.

8. Disposal

[53] I order as follows:

- (a) The defendant's strike out application is dismissed with costs, which if not agreed shall be assessed.
- (b) The defendant shall file and serve her defence by **10 January 2025**, failing which the claimant is at liberty to file any relevant applications.

**HHJ Tawanda Hondora
High Court Judge
Civil Division**