



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2023: No. 311

BETWEEN:

TIMOTHY J C STEWART

Plaintiff

v

**(1) MINISTER OF HOME AFFAIRS
(2) DEBBIE G N REID (LAND TITLE REGISTRAR)**

Defendants

RULING

*Ruling on application to strike out the Writ and Statement of Claim pursuant to RSC Order
18 rule 19*

Date of Hearing: 7 April 2025

Date of Ruling: 7 April 2025

Date of Reasons: 9 April 2025

Appearances: Brian Myrie of the Attorney General's Chambers for the
Defendants

Timothy JC Stewart in person (by zoom)

Ruling of Martin J

Introduction

1. This is an application by the defendants to strike out the writ and statement of claim on the grounds that the pleading does not disclose a reasonable cause of action and the claims are otherwise scandalous, vexatious or an abuse of the process of the court, pursuant to Order 18 rule 19 of the Rules of the Supreme Court (“RSC”) 1985.

Summary and disposition

2. For the reasons explained in this Ruling, the court granted the application at the end of the hearing and indicated that reasons for the decision would follow. These are those reasons.

Background

3. The plaintiff was employed by the Bermuda government in the capacity as Land Title Registration Officer (LTRO) between 2011 and 2021. He entered into 3 successive four-year contracts in 2011, 2014 and 2018. When his contract came up for renewal in 2022, the plaintiff refused to sign the contract on the terms offered on the basis that the terms offered were “insulting”.
4. Although the pleading is mostly a narrative history, the essence of the plaintiff’s claim can be extracted from the text along the following lines. The plaintiff says that the job description for the post of LTLO and the allocation of the pay grade in relation to the post do not reflect the true seniority and responsibility of the position. He says that the LTRO position is the equivalent to the post of either senior crown counsel (or at least crown counsel), and the pay scale for the post ought to have reflected that level of seniority and responsibility. The plaintiff claims that he was underpaid for the period of his employment and claims arrears of his pay and other benefits (including pension contributions) for the period of his employment all the way back to 2011.

The plaintiff's claims

5. The plaintiff has articulated his claims under 3 headings. First, he claims that there was a breach of contract. Second, he claims that he has a claim in tort either in misrepresentation or a breach of duty. Third, he claims that he has been the victim of unlawful discrimination by reason of his place of origin under section 6 (1) (bb) of the Human Rights Act 1981 (as amended).

The pleadings

6. The statement of claim does not set out the facts on which any of these claims depend in a logical or comprehensible way. That the facts which relate to each limb of each claim are muddled. Nor is any explanation offered as to why the facts alleged amount to the cause of action referred to in the statement of claim. In order to make sense of the claims, the Court has had to unscramble the story told in the pleading (and two affidavits filed by the plaintiff, one in opposition to the strike out application, and one in support of an adjournment, which was refused.)
7. It is basic to the system of pleading required by the RSC that every claim must set out the facts and matters relied upon in respect of each claim alleged. For the purposes of an application to strike out a claim, the court must assume that the facts alleged are true, and that they will be proved at trial, so that the plaintiff is given the benefit of any doubt concerning the viability of the claims made. However, those facts *must* amount to a cause of action in law and result in liability on the part of the defendants¹.
8. The test the court applies on an application to strike out a claim under RSC Order 18 rule 19 is whether the pleaded claim sets out the basis for a cause of action which has some chance of success when only the allegations in the pleading are considered². The power to strike out a claim will only be made in plain and obvious cases³.

¹ **West Rand Co v R** [1905] 2 KB 399

² **Drummond-Jackson v British Medical Association** [1970] 1 WLR 688

³ **Hubbock v Wilkinson** [1899] 1 QB 86

9. The court is not here assessing the merits of the case, it is simply evaluating whether a proper cause of action can be made out on the facts alleged⁴.
10. In this case, the writ and statement of claim fail to allege facts which amount to a cause of action in law in respect of each heading of the claims made. The court has also taken into account the factual assertions made in the affidavits and has read the materials exhibited thereto to determine if the substance of an arguable claim can be fashioned out of the materials as a whole: however, there is no justiciable claim even on the broadest reading of the affidavits. The plaintiff's claims are each briefly considered separately below.

Breach of contract

11. The plaintiff puts his main claim on the grounds of breach of contract. However, no facts are alleged as to how his three separate contracts of employment were breached. The plaintiff accepted the offer of employment in each separate contractual period on the terms offered, including the terms of salary and benefits (which is the main item of damage claimed).
12. It is not alleged that he was not paid according to the terms of his contract, nor that there was any breach of the terms of his employment contract according to their terms. Even if he did not understand the relative seniority of the post of LTLO compared to the other positions in government's legal service when he accepted the offer of his first contract in 2011, no explanation is given in the pleading as to why he accepted the position on the terms offered again in 2014 and 2018 without raising any of the complaints he now seeks to assert, or how it is that he is now entitled to claim retrospective compensation as a result of a breach of the terms of those contracts.
13. The gravamen of his complaint is that the post of LTRO ought to have carried the same level of compensation as to what he says are equivalent posts. He says that the job description for his post had been mistakenly treated as a lower grade of position, when

⁴ The principles set out in the Supreme Court Practice in relation to the exercise of this power are well known and have been regularly applied in Bermuda; see for example a recent example in **Tucker v O'Connor** BM 2024 SC 14.

he says that the post carried responsibilities that were equal to those of a senior crown counsel, and ought to have been paid at a similar grading level.

14. The plaintiff also alleges that the compensation benefits applicable to the posts of senior crown counsel (and crown counsel) were “concealed” from him until 2022, when he decided to refuse the offer of a renewed contract on terms which he felt did not recognize the appropriate level of seniority and responsibility.
15. However, he says that he “discovered” the difference in the terms of employment of those “equivalent” posts by diligent research, and that is why he refused to accept the offer of a renewal of his contract on terms he considered to be below the appropriate level in 2022. He did so by researching the information which is publicly available on the government website. It is therefore not open to the plaintiff to assert, as he does, that the information he needed to make the complaint was “concealed” from him by the government.
16. Therefore, there is (i) no claim that is pleaded that discloses a claim for breach of contract (ii) no factual basis for asserting an alternative claim in quasi-contract for equitable compensation and (iii) no basis for seeking to extend the limitation period by reason of a concealment of the true facts from him.
17. There is no cause of action disclosed by the pleading, and no amount of generous interpretation can clothe the claims the plaintiff wishes to make with any legal validity.

Misrepresentation

18. The plaintiff says that the scope of the responsibility of the post of LTRO was misrepresented, because he says the job description ought to have included additional responsibilities. For example, he cited in argument that he was the sole adjudicator of disputes relating to the registration of title on the Land Title Registry, and this responsibility alone raised the level of the post to the equivalent of an assistant justice.
19. However, no allegation is made that a misrepresentation was made to him as to the terms and conditions of his employment nor that he was induced him to accept the

position on the basis of a misrepresentation which caused him to suffer a foreseeable loss. He accepted the positions on the terms offered and took his pay and benefits without complaint for ten years.

20. In point of fact, the LTLO is not the sole or designated adjudicator: the Land Title Registrar is responsible for delegating the responsibility for adjudicating disputes to an appropriate person.
21. A claim in misrepresentation does not lie in the circumstances pleaded by the plaintiff.

Human Rights Act discrimination claim

22. The plaintiff says that he was discriminated against by reason of his place of origin, but no factual basis for making this claim is included in the pleading. In fact, the plaintiff accepted that he was the only post holder in the position of LTLO. It follows that he cannot assert that someone else was given better terms and conditions of employment for doing the same job, or that he was discriminated against in relation to his pay and terms of employment in the post by reason of his place of origin. This claim is unsustainable.

Breach of public duty

23. In the course of argument, the plaintiff asserted a claim that is not pleaded in the writ and statement of claim to the effect that the government is under a duty to ensure that the terms and conditions of employment offered to employees are fair, and to conduct regular audits to ensure that any inequalities are rooted out and corrected. He complained that when he raised his complaint in 2022, his protests were either ignored or overruled, and he said that this amounted to a breach of public duty.
24. However, as Mr. Myrie pointed out, even assuming that there is such a public duty (for which no authority was offered), the mere allegation of a breach of a public duty does not give rise to a private cause of action. *Wade & Forsyth's Administrative Law* explains that “a statutory power or duty can only ipso facto give rise to a duty of care

if, as a matter of construction, that power or duty locates an enforceable right in a private person”⁵.

25. Here, even if it exists, an alleged duty to conduct regular “audits” to ensure that the terms and conditions offered to employees are fair does not locate an enforceable right in the plaintiff. The plaintiff therefore has no private cause of action for breach of the public duty alleged.

Other allegations

26. In the course of argument, the plaintiff made a number of serious and unsupported allegations that a number of persons were guilty of dishonesty and criminality. None of these are included in the statement of claim, and rightly so, as they were entirely unsupported by any factual basis or justification.
27. The second defendant was added as a party because she was the plaintiff’s supervisor. However, she was not his employer and is not alleged to have done anything that was in breach of contract, nor is it alleged that she made any misrepresentation or otherwise took any step in breach of duty which allegedly caused the plaintiff loss. She obviously ought not to have been joined as a party.

Amendment cannot save the day

28. The court considered whether any of the technical deficiencies in these claims could be remedied by amendment, or whether any arguable claim could be fashioned out of the materials that the plaintiff has included in his affidavit materials. The court concluded that there is no amendment that can cure the defects in the pleadings or produce the elements of a justiciable cause of action.
29. Moreover, the Overriding Objective requires the court to consider the time cost and use of the court’s resources in exercising its powers. The plaintiff’s claim is hopeless and

⁵ (12th Ed) at page 616 citing **R (Robinson) v Chief Constable of West Yorkshire Police** [2018] UKSC 4 at para 36 per Lord Reed JSC.

unsustainable. As such it is a frivolous or vexatious claim and the prosecution of it amounts to an abuse of the process of the court.

30. The basic truth is that the plaintiff's complaint is simply that he feels he was undervalued and underpaid for carrying out the responsibilities of the post he occupied for ten years. That is a common complaint, but it is not one for which the court has yet devised a remedy.
31. It is therefore my duty to strike out the writ and the statement of claim as disclosing no reasonable cause of action. The plaintiff is to pay the costs of the action to be taxed if not agreed.

Dated this 9th day of April 2025



THE HON. JUSTICE MR. ANDREW MARTIN
PUISNE JUDGE