In The Supreme Court of Bermuda

CIVIL JURISDICTION
2014 No: 105

BETWEEN:

LECOLIA CAINES
(Trading as "MJP Construction")

Plaintiff

And

SHANNON CAINES

Defendant

EX TEMPORE CHAMBERS RULING

Date of Hearing: 16 March 2017
Date of Ruling: 16 March 2017

Kentisha Tweed, Amicus Law Chambers Limited for the Plaintiff
Sara-Ann Tucker, Trott & Duncan Limited for the Defendant

Application for Summary Judgment (RSC O.14)

RULING of Registrar S. Subair Williams

Introductory

1. This matter has come before the Court on the Plaintiff's summons dated 13 January 2017 to strike out the Defence and/or for Summary Judgment.

Background

2. By a Specially Indorsed Writ of Summons filed on 13 March 2014 the Plaintiff claimed for the liquidated sum of $20,010.00 plus interest at the statutory rate arising out of an unpaid loan.

3. A memorandum of appearance was filed on 16 April 2014.

4. Notwithstanding, judgment in default of an appearance from the Defendant was entered by my predecessor, the Learned Acting Registrar, Peter Miller, on 21 April 2014 in the sum of $26,815.13.

5. The Defendant then filed a summons to set aside an irregular judgment on 30 April 2014 returnable for 12 June 2014 when judgment was set aside by the learned Justice Norma Wade-Miller.

6. On 11 December 2014 the parties attended Court on a summons for pre-trial directions which were issued.

7. The next stage of proceedings brings the matter to the summons of 13 January 2017 on which summary judgment is sought.

The 16 March 2017 Hearing:

The Defendant's Application to Adjourn

8. The Defendant's Counsel sought an adjournment on the Plaintiff's application for summary judgment on the basis that the Defendant intended to join a third party defendant (the father of the parties) to the proceedings.

9. The Plaintiff objected to the adjournment arguing that a joinder application should have no impact on the application for summary judgment. Having accepted the Plaintiff's submission, I refused the adjournment request and proceeded to hear the application for summary judgment.

The Defendant's Admission to part of the Claim

10. Ms. Tucker for the Defendant, by way of formal admission, agreed to judgment on part of the claim being entered in the sum of $10,005.00.

11. The Defendant, however, maintains that no liability arises in respect of the balance of the claim.

The Facts in Dispute

12. The affidavit evidence filed in support of the application for strike out principally contends that the monies claimed were advanced to the Defendant under a legally enforceable oral loan agreement. The Plaintiff argued that the admission that the full sum claimed was given to the Defendant was enough to rid the Defence of an arguable case.

13. However, at paragraph 9 of the First Affidavit of the Defendant, which stood as the affidavit evidence in reply to the Plaintiff's application, the Defendant, Shannon Caines, deposed to the following:

"*In late October 2007, on and of her own volition, my sister approached me and presented me with a cheque in the amount of $20,010.00. she said she was giving it to me to help pay the award. I had not asked her to give me the money. The Plaintiff gave me $20,010.00 toward the project, and it was understood that I would pay the money back to her at some point, but at no time was it my intention or understanding that, if the money was not repaid to her she would have rights to legal recourse*."

The Law:

<u>*Strike out*</u>

14. Order 18, rule 19(1) of the Rules of the Supreme Court 1985 ("RSC") provides that the Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of the 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;
    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 the Court may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

15. Reference to the 1999 edition of the White Book at 18/19/10 provides further guidance as follows:

"*A reasonable cause of action means a cause of action with* <u>***some chance of success when only the allegations in the pleading are considered***</u> *(per Lord Pearson in* <u>*Drummond-*</u>

Jackson v British Medical Association [1970] 1 WLR 688; [1970] 1 All ER 1096, CA). So long as the statement of claim or the particulars (Davey v Bentinck [1893] 1 QB 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, ***the mere fact that the case is weak and not likely to succeed is no ground for striking it out*** *(Moore v Lawson (1915) 31 TLR 418, CA; Wenlock v Maloney [1965] 1 WLR 1238; [1965] 2 All E.R. 871, CA): …*"

Summary Judgment

16. Mr. Durham, properly referred me to Order 14/1(1) of the Rules of the Supreme Court 1985:

"*Where in an action to which this rule applies a statement of claim has been served on a defendant and that 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 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 that defendant*."

17. I was not persuaded to interpret this rule in the manner as invited by Mr. Durham, who suggested that a liberal or broad reading would translate to an assessment as to the prospects of success of the defence. In my view, such a test is reserved for the assessment of an application to set aside a judgment which is to be distinguished from the test to be applied in deciding whether to grant summary judgment.

18. RSC Order 14/3(1) reads as follows:

"*Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates* ***that there is an issue or question in dispute which ought to be tried*** *or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed*."

19. RSC Order 14/5 provides that where a defendant to an action begun by writ has served a counterclaim on the plaintiff, then, subject to certain exceptions which do not apply to this case, the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.

18. "*A defendant may show cause against an application for summary judgment by affidavit or otherwise to the satisfaction of the Court. What the defendant must show is that there is an*

issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of all or part of that claim. The Court may give the defendant leave to defend all or part of the action either unconditionally or on such terms as it thinks fit". (See Hellman J's ruling in *Pearman v Fray [2015] Bda LR 48*).

20. Summary judgment is reserved for cases where it is clear that there is no real substantial question to be tried (*Codd v Delap (1905) 92 LT 519 HL*) and there is no dispute as to facts or law which raises a reasonable doubt that the plaintiff is entitled to judgment (*Jones v Stone [1894] AC 122*).

21. In my view, a meritous defence is available if the Court accepts the Defendant's version of the disputed facts.

Decision

22. Judgment in the sum of $10,005.00 may be entered against the Defendant.

23. The application for summary judgment is refused and the balance of the claim is to be tried.

24. Costs for the application in favour of the Defendant.

Dated this 16th day of March 2017

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SHADE SUBAIR WILLIAMS
REGISTRAR OF THE SUPREME COURT