REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-02909

BETWEEN

TRINIDAD SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

Claimant

AND

HUBERT DOLSINGH
JUDITH GONSALVES
The President and Secretary respectively sued on their own behalf
And on behalf of all members of the Trinidad and Tobago
Society for the Prevention of Cruelty to Animals
An unincorporated Association

Defendants

Before the Honourable Mr. Justice David C. Harris

Appearances:

Mr. F. Scoon **for the** Claimant

Mr. G. Delzin instructed by Ms. A. Goddard **for the** Defendants

Decision

1. These proceedings concern disputed lands at Mucurapo owned by the Port of Spain Corporation and purportedly leased to an incorporated body, the Claimant in the matter (TSPCA), which name has over time allegedly morphed into Trinidad and Tobago Society for the Prevention of Cruelty to Animals (TTSPCA).

2. There are two (2) applications before the court and they are dealt with separately, although in this one document:
    i. The Claimant's Notice of Application filed 22nd June 2016 for determination of whether the TSPCA is the same as the TTSPCA Northern Branch.

    ii. The Defendants' Notice of Application filed 4th December 2017 for Summary Judgment against the Claimant on the Defendants' Counterclaim filed 29th November 2016.

The Claimant's Notice of Application filed 22nd June 2016

3. The Claimant has asked the court for a determination on whether the TSPCA is the same as the TTSPCA Northern Branch.

4. This issue was raised in the Trial of the earlier substantive claim, CV2006-02039 and the resulting appeal, 181 of 2007. At the first instance trial, Gobin J concluded that the TTSPCA (1st Plaintiff) and the TTSPCA Northern Branch were in fact *rival* groups each claiming to be the incorporated society; "the society."[1] As a relevant historical fact: prior to the trial, the matter had been on the docket of another Judge, Tam J, who had disposed of several preliminary matters.

5. The matter went on appeal from Gobin J's decision. The Court of Appeal was of the view that this issue of the identity and distinction between the two entities was not earlier decided by Tam J as was there contended, and that *"it was possible that the Judge might have declined to decide the issue leaving it instead to be determined at the trial of the action"*[2] . Indeed, Gobin J. did tangentially address the issue at trial.

6. The Court of Appeal impliedly if not expressly upheld the decision of Gobin J. that the TSPCA and the T&TSPCA (Northern Branch) although closely allied, they are 'rival' entities; did not have the authority to suspend the executive of the Northern branch who were in undisputed occupation of the disputed premises at Mucurapo and dismissed the appeal.

7. While first raised as a preliminary issue, in fact the determination of the issue identified above is central to final findings that can be made by a trial court in the substantive action regarding the reliefs and declarations sought by both the Claimant in its claim/defence to counterclaim and the Defendants in their counterclaim. The issue raised here was not it appears, central to the determination of the earlier suit and related applications before Gobin J. This is likely to be what has led to the renewed contentions now before this court.

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[1] See judgment of Gobin J at para 21

[2] See para. 30 of Civ App. No. 181 of 2007; Tam J did not provide the Court of Appeal with reasons for his decision.

8. This court is of the view that the determination as to whether the TSPCA is one and the same as the TTSPCA (Northern Branch) has already been in part determined by both the High Court (Gobin J. and the Court of Appeal in the same case by Mendoça J.A. These findings were made after evidence and argument presented to the court including in the several applications arising in that matter and exhibits thereto, including what appears to be:

    a) The history of the evolution of the entity and name from the incorporated TSPCA to what may well be the *trading name* and entity, in the unincorporated "TTSPCA"; or from TSPCA to what may well be the *trading name* and entity, "TTSPCA Northern Branch";

    b) The proper constitution of the Claimant society – evidence of the legal entity existing as the TSPCA incorporated under the 1946 Ordinance and who are the bona fide members with the right to vote etc.;

    c) Who are the officers duly appointed and lawfully holding office and authorised to appear and present evidence on behalf of the Claimant;

    d) Legal and statutory implications of the incorporation ordinance of 1946 and the alleged 'change of name'.

9. There are two possibilities for the court. Firstly, if the court finds that the issue has been definitively determined it will not now be re-litigated, and what is left of the matter (if anything) moves forward to trial where it will not be re-litigated there either.

10. Secondly, if I were wrong on this first conclusion and the issue has not in fact been wholly determined, then, this court is of the view that the application as it presently stands does not raise or address the pertinent facts sufficiently or in a focused manner so as to enable the court to determine the matter in favour of the applicant or at all.

11. The court's conclusion in fact rest on a combination of the first and second 'possibilities' referred to above. Both Gobin J and the Court of Appeal have addressed the point

tangentially and have sought at the very least to recognize the umbilical cord as it were, between the two entities and at the same time determined their independence from each other. Paras 19, 28-32 of the Court of Appeal's decision are particularly (although not solely) relevant and elucidating on the issue of whether the point was dealt with and disposed of by the CA and the court below it[3]. The earlier decisions and judgments between these parties appear to establish that a suit can be sustained between them. In the instant interlocutory matter before me however, the legal status of the association between the two entities is not sufficiently definitive to provide the moorings upon which the trial court in the instant substantive matter likewise would later be able make a final determination on the issue now before the court[4].

12. In all of the circumstances, this court holds that the issue identified in the application has not been definitively or sufficiently determined in the previous matters. The detailed evolution of the respective organizations/entities from the incorporation in 1946 to the filing of this action is very important to the final resolution of all the pertinent and central issues in this substantive matter. The issue would best be determined at trial when all the further evidence is put before the court, both in-chief and under cross examination[5]. Having what in essence would be two trials – the preliminary determination and the substantive hearing – would not further the interest of the effective, fair and just disposition of the matter; a matter that already has taken up an inordinate amount of the time and resources of the Court, parties and counsel.

13. The application for a preliminary hearing to determine the issue is deferred to be determined at the end of the substantive trial. To be clear, in effect the substance of this application is now 'merged' in the trial of the substantive matter.

The Defendants' Notice of Application filed 4th December 2017 in the matter: CV 2009-02909

14. The Defendants' application here is based on its view that the Claimant's Reply and Defence to the Counterclaim rests entirely on the position that the High Court (Gobin J)

[3] It was not found by the Court of Appeal that this issue need be resolved in order to determine the central issue of the substantive cause of action in that matter.
[4] The earlier matter was a different cause of action.
[5] Or alternatively, as a preliminary point with evidence filed to provide the requisite facts and address the issues identified by a court.

and or the Court of Appeal (Mendonça JA) concluded that the Trinidad Society for the Prevention of Cruelty to Animals and the Trinidad and Tobago Society for the Prevention of Cruelty to Animals was determined in favour of the Claimant herein. The Defendants contend otherwise and refer this court to specific paragraphs of the judgments of Gobin J and Mendonça JA.

15. At the onset let me say that the para 32 of the Court of Appeal decision referred to by the Defendants is not determinative of the issue in this application. Mendonça JA in that para is referring to whether an earlier application before Tam J. who had conduct of that matter (not the instant action) at a preliminary stage, resulted in Tam J. determining the issue of whether the two parties in that action were one and the same such that the party would have been estopped from raising it again before Gobin J at the later trial stage. The issue was however later raised before Gobin J. and subsequently before the Court of Appeal (See Mendonça JA at para 45 of the Court of Appeal Judgment).

16. What is the law that guides this court on this application before it? The CPR Part 15.2(b) states that the court may give summary judgment on the whole or part of a claim or on a particular issue if it considers that:

> *"on an application by the Defendant, the Claimant has no realistic prospect of success on the claim, part of the claim or issue."*

17. The test for determining Summary Judgment applications is found in the combination of the ***Western Union Credit Union Co-Operative Society Limited v Corrine Ammon*** CA Civ 103 of 2006 and more recently in ***Wayne Yip Choy v Angostura Holdings Limited*** cases, HC 3884 of 2011. Both those cases refer to a line of authorities on point.

18. In its defence to the counterclaim, the Claimant contends: that the defence and counterclaim are an abuse of process and should be struck out; that the Defendants are re-litigating matters already decided by the High Court and Court of Appeal in favour of the Claimant – i.e. its right to occupy the Mucurapo premises. The Claimant contends further that while the Court of Appeal agreed with Gobin J. that the TSPCA and the

TTSPCA are rival organizations/entities, the preliminary issue remains undetermined – whether the TSPCA is the same as the TTSPCA (Northern Branch).

19. This court is not called upon at this stage to make a definitive finding on these areas of the substantive law and supporting facts, but really to determine:

    (i) *whether there are no grounds for defending the counterclaim and/or*

    (ii) *whether there is no realistic prospect of success on the defence to the counterclaim*.

20. On one issue, this court is of the view that the Applicant here is labouring under the mistaken view that the decisions of both Gobin J at the High Court (HCA 189/2004; CV 2006/02039) and Mendonça JA at the Court of Appeal (HCA No. 189/2004; C.App No.181 of 2007), dealt only with the narrow point of whether the TSPCA ant the TTSPCA (as opposed to the "Northern Branch") are one and the same. This court does not agree that this was the narrow point. Notwithstanding the text of the intitulement of the action at the High Court and subsequent Court of Appeal proceedings in the same matter, the context of the pleadings and content of the decisions are clear that the dispute and conclusions by the courts intended to and did in fact contemplate the Respondent (Defendant in the High Court action) as the TTSPCA (Northern Branch). All the conclusions with respect to the Respondent/Defendant which, without dispute, occupied the Mucurapo premises are in relation to and directed to the said TTSPCA (Northern Branch). Further and better particulars of this factual circumstance can be gleaned from the whole of the said two judgments, more particularly commencing with paras 5,6, and 7 of the Court of Appeal Judgment of Mendonça JA of the 31st October 2012; and para 2 of the High Court Judgment of Gobin J dated 7th November 2007.

21. It is not suggested by either party and in any event it has not been vigorously pursued, that the TSPCA is bringing an action against itself[6]. The various conclusions of the both courts in the other earlier matter must necessarily envisage the two parties having a sufficiently independent existence to moor the legal basis for bringing and sustaining

[6] This was noted in passing, in the evidence however.

the suit[7]. Neither court held that the parties could not sustain that action against the other save for the question of the role of the Attorney General in relation to 'Charities"[8].

22. Paragraphs 19 - 21 of the Judgment of Gobin J. allude to the issue, albeit not frontally, of the identity of the parties and the apparent independence sufficiently so to justify the sustenance of an action against each other. The issue in that matter as the Court of Appeal pointed out, was substantially one related to trespass and as such, to possession/occupation[9]. Indeed, a perusal of the said para 19 and paras 28 - 32 of the Judgment of Mendonça JA, go a long way in reflecting the Court's view as to whether the issue with respect to the identity of the entities was sufficiently dealt with so as to raise an issue estoppel before them. It did not in their view. Further still, the Court of Appeal was of the view that the narrow issue was not necessary to resolve in order to determine that trespass issue before that court.

23. Unlike the earlier matter before the Court of Appeal, the instant application has the additional appellate court tier to factor into the determination of whether the issue of the *issue estoppel* now arises. Further still, whereas the courts before were not satisfied that these *estoppel* and related issues were required to be resolved in order to dispose of the earlier matter, it is placed squarely before this court in the new substantive matter. The Claimant has presented an arguable defence to the counterclaim; these are issues of law and fact; that like the issue raised in the Claimant's application above, are best left for determination at the substantive trial. This matter and file is convoluted and beset with applications upon applications and consequent affidavits and exhibits and submissions. The issues for trial need now be identified anew, clarified and articulated in a joint memorandum before the trial court.

24. For the reasons provided above, **IT IS HEREBY ORDERED THAT**:

    I. The Claimant's Notice of Application filed 22nd June 2016 is dismissed;

    II. The Defendants Notice of Application filed 4th December 2017 is dismissed;

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[7] See the Court of Appeal Judgment generally and also see para 59 thereof.
[8] An issue no longer determinative of this application or of the substantive claim.
[9] See para 57 of the Court of Appeal Judgment.

III. Each party to bear its own costs.

IV. The matter to move toward the substantive trial;

V. A status hearing before a Judge in Chambers is to be fixed by the Court office forthwith upon written request/application by the Claimant and/or Defendants as the case might be, made within 21 days of notice of this decision on the respective party, failing which the **Claim and/or Counterclaim** as the case may be, stands struck out respectively, with no order as to costs.

DAVID C HARRIS

HIGH COURT JUDGE

MARCH 6TH, 2020