

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Civil Appeal No. P230-03852

CV 2016-03852

BETWEEN

BACHAN SAMAROO, YAWANTIE SAMAROO

Claimants

AND

DEONARINE SAMAROO, SUSCILLA SAMAROO

Defendants

Before the Honourable Madam Justice Nadia Kangaloo

Dated the 9<sup>th</sup> July, 2018

### **APPEARANCES**

Shastri Ramtahal for the Claimants

Kijana Da Silva for the Defendant instructed by Saajida Mohammed

Parties: The Claimants appearing in person

The Defendants appearing in person

### **REASONS (EDITED FTR)**

Court: So we have one as it were. I take it that the Defendants are also not here.

Mr. Da Silva: I beg your pardon My Lady.

Court: I take it the Defendants are also not here.

Mr. Da Silva: Yes please My Lady that is correct.

Court: The Court has one outstanding housekeeping matter before we proceed to the Trial which we have a date already fixed for. And that is for the

decision on the second part of the striking out application which had to do with the striking of certain paragraphs of the Reply in this matter.

The Court therefore went back to the original Pleadings in the matter, the Claim Form and Statement of Case, because the allegation is of course that the Paragraphs that are complained of are in fact repetitions and/or second bites of the cherry as it were, of matters that are properly to have appeared in the Statement of Case.

The Court having reviewed the Statement of Case and the Reply and Defence to Counter Claim in this matter. As examined those paragraphs that have been complained of and gone back to the Statement of Case and is wholly in agreement with the application made by the Defendants in this matter, that the paragraphs 2, 3, 4, 5, 7, 8, 9, 10, 11, and 12 are either, and they in fact expressly do say in some of those paragraphs and repeat matters that have already been raised in the Statement of Case. In two instances or three. There are issues raised for the first time which this Court sees as issues that ought to have been raised on the Statement of Case, and could have been raised on the Statement of Case. There are not new information. And in relation to other matters in relation to the references to the Real Property Ordinance. Those are matters that this Court considers that the Claimant would not be prejudiced by, if they are struck out because they can be dealt with in submissions and frankly ought properly not to be found in a Pleading in any event.

It is for all of those reasons therefore that the Court finds full favour with the Defendant's Notice of Application which was filed on April 11<sup>th</sup>, 2017 and therefore Paragraphs 2, 3, 4, 5, 7, 8, 9, 10, 11 and 12 of the Reply will be struck out.

It said, reply in Defence to counter-claim, but these Paragraphs are of course all found in technically in the Reply. And in these circumstances the

Defendants have found themselves to be successful on the application. The general rule is that the successful party will pay the unsuccessful party's costs.

What this Court will say is that, that is indeed the case and it sees no reason to depart from that time on a rule and in the circumstances the Claimant will pay the Defendant's costs of this Notice of Application to be assessed in default of agreement at the conclusion of this Trial. So Mr. Da Silva it will be for you to remind the Court when in relation, at the conclusion of the Trial that there is an outstanding Order for costs. So if you and your friend have not resolved the issue before then, the Court will deal with the assessment at that point.

Just to remind the parties therefore that Order having been made in relation to the Reply, that if there are any matters raised in the Witness Statements that you feel ought properly not now to be before the Court on the basis of this ruling, we can treat with that on the day of Trial. Or you and your friend can speak and deal with those matters. So that when Counsel is preparing for Trial there won't be troubled unduly by irrelevant matters.

We have a Trial fixed as a say for Tuesday the 9<sup>th</sup> October at 10:00 a.m. in this Courtroom. So is there anything else I can do to assist the parties further.

Mr. Ramtahal: Just is just one more thing please My Lady. I was just briefly discussed it with my friend this morning. As I was thinking about it. Seeing as My Lady has said that the decision on the Evidential Objections will be given on the morning of the Trial.

Court: Yes.

Mr. Ramtahal: I was wondering if My Lady will accept from us just some basic skeletal submissions to assist in advance.

Court: Certainly.

Mr. Ramtahal: Maybe a month before, or at the opening of the Law Term.

Court: Yes, if you would wish, too. Well a month before is in the Court Vacation. So if you wish to file and serve any submissions in relation to Evidential Objections, I would say on or before Friday the 21<sup>st</sup> September. That would be sufficient time.

Mr. Ramtahal: Obligated My Lady.

Court: That is opened to the parties. Court is always grateful for submission in that regard.

Other than that gentlemen is there anything else I can assist you with.

Mr. Ramtahal: No please My Lady.

Mr. Da Silva: No My Lady.

Court: Thank you.

Dated 9<sup>th</sup> July, 2018

**Nadia Kangaloo**

**Judge**