REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-01760

BETWEEN

AZARD MOHAMMED

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Friday 30th June 2017

Appearances:
Ms. Balgobin holding for Mr. Edwin Roopnarine for the Claimant
Mr. Sean Julien instructed by Ms. Elena Da Silva for the Defendant

JUDGMENT

1. At a Pre-Trial Review (PTR) the Court ordered inter alia, that the Claimant's claim for malicious prosecution be struck out. This arose when the Court identified for the parties the issue whether there was disclosed on the evidence of the Claimant any sustainable claim for malicious prosecution or one with a realistic prospect of success. The witness statement for the Claimant omitted entirely to state the nature of the offence for which he was charged or the prosecution which was allegedly improperly set in motion by the Defendant. It failed therefore to establish the first ingredient in the tort of malicious prosecution and it would be a hopeless exercise to have such a claim set down for trial.

2. Incidentally, the Claimant's original statement of case was simply for damages for assault and battery and false imprisonment. It was amended only to include the new relief of malicious

prosecution without any further changes to the statement of case. As it stands that claim for damages for assault and false imprisonment will now be determined at the trial.

3. Parties are reminded that a PTR is not a sterile exercise where automatic directions are given by the Court for a trial. That is not in keeping with the philosophy of Court driven case management nor the ethos of the rules that a trial of a claim is the last resort to its determination. Every case needs to be assessed and re-assessed at every opportunity of case management by the Court and indeed by the parties. Active case management requires the Court to deploy several strategies towards an expeditious and just disposition of a dispute. One such strategy is to encourage what I would loosely label as "information exchange" that is, early and continuous disclosure. This can take the form of formal orders and directions under Part 28 of the Civil Proceeding Rules 1998 as amended (CPR) or informal voluntary exchanges between the parties even on a "without prejudice" basis. In most cases exchanging information narrows the gap between parties and assists them to better understand their dispute. Another important task of active case management is the identification and refining of issues for determination. The Court must seek to engage the parties in determining the issues in dispute. A proper understanding and distilling of issues may result in the realisation by the parties themselves that a trial is not necessarily required for the determination or resolution of the issues which live at the core of their dispute. Third is a task which I describe as "risk assessment". The Judge in actively managing cases is no longer the "silent sphinx" and probing questions that may be asked are reality checks for the parties to ensure that their resources are not being wasted by managing their cases to a trial. In **Super Industrial Services Limited v National Gas Company of Trinidad and Tobago** Civil Appeal No. P-190 of 2016, Jones JA in commenting on active case management noted:

> "50. To properly answer this question it is necessary to examine the role of the case management conference under the CPR. Without question one of the major benefits of the system under the CPR is that it accommodates a court driven process directed at bringing the parties to an expeditious resolution of the dispute. Active case management is the means by which the court achieves such a resolution. One of the benefits of the post-CPR system is that, unlike the pre-CPR system, it is not geared towards facilitating a trial of the action

but rather facilitating a resolution of the dispute in a manner that does not necessarily result in a trial."

4. These three main strategies are not exclusive nor do they rank in priority to the other. It represents a core feature of the exercise of active case management represented by the objects and powers set out in Parts 25 and 26 CPR informed by the overriding objective. Indeed such features of case management is a continuing process "that can unfold overtime." See Jamadar JA in **Estate Management and Business Development Company Limited v Saiscon Limited** Civil Appeal No. P 104 of 2016 where he stated at paragraph 19:

   "19. In my opinion, active judicial case management occurs whenever a CPR judge deliberately exercises any of the above stated actions (as per Rules 25.1 and/or 26.1 and/or 27.6 or otherwise), in purported management of proceedings properly before him/her and in furtherance of the goal of a fair and just disposition of a matter."

5. The PTR is perhaps the "last stop" on the journey to a trial or resolution of a claim. In most cases, if not all, it is at this event that witness statements are now exchanged and puts the "flesh on the bones" of the parties' case. This is perhaps the most unique and important revolution of the civil proceedings rules: seeing your opponents entire case long before a trial is confirmed. Far too often parties do not take the opportunity to use the PTR as a helpful event to critically examine their respective cases, to make an informed determination of their chances at trial or to revise their own case plans. The Court certainly is in a better position to engage with the parties in an assessment of the necessity for trial and at this stage to further refine the triable issues, obtain agreement on facts based on what has been disclosed and narrow the field of dispute between the parties. Indeed in this case, the Court engaged Counsel for the Claimant on the case being advanced on the Claimant's evidence in malicious prosecution. The fact that in this case the attorney was "holding" for Counsel and needed Counsel's advice is an unhelpful approach to a PTR having regard to what I have pointed out above. It was in this exercise of discussing this issue with both parties that Counsel for the Claimant was unable to point to any reason why the claim for malicious prosecution should be advanced to trial. In short, with such an exercise, the Court ultimately left the Claimant with his claim for false

imprisonment to be determined and by so doing allotting a proper share of the parties' and Court's resources for the just resolution of the real dispute between the parties[1].

6. The dispute can be described briefly and neutrally by examining the pleaded cases. The Claimant's pleaded case is that on 26th May 2012 around 3:00pm, he was driving his motor vehicle when Police Officer Ramsundar motioned for him to stop. Officer Ramsundar then proceeded to slap the Claimant in his face and informed the Claimant that a woman made a report against him that he had touched her breast.

7. The Claimant was handcuffed and taken to the Siparia Police Station. He was later released on bail with no reason provided as to why he was not granted bail earlier. Thereafter, he was charged for assaulting Officer Ramsundar, making use of obscene language and making use of violent language. The matters were dismissed in the Siparia Magistrates' Court but the certificate of dismissal was not presently available.

8. In its defence the Defendant pleads that, PC Ramsundar and PC Ramdath were on road block duty when PC Ramdath stopped the motor vehicle driven by the Claimant for a routine check. PC Ramdath interviewed the Claimant by enquiring if he consumed alcohol that day to which the Claimant insulted the police officer. PC Ramdath cautioned the Claimant but by that time the Claimant had left his vehicle and was behaving in an "antagonistic manner." PC Ramsundar tried to explain to the Claimant that they were conducting a routine traffic exercise but he continued to behave an in aggressive manner.

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[1] Order 30th June 2017:
IT IS HEREBY ORDERED that:

1. The Claimant's Claim for malicious prosecution is struck out.

IT IS ALSO ORDERED that:

1. On the Defendant's Application filed on 23rd June, 2017, Paragraph 8 of the witness statement of Azard Mohammed filed on 16th June, 2017 from "I was placed in a cell…I felt sick." is struck out.

2. On the Claimant's Application filed on 23rd June, 2017,

a) Paragraph 11 lines 4-9 of the witness statement of Ravi Ramdath filed on 16th June, 2017 are struck out.

b) Paragraphs 4 lines 2-4, 5, 10 lines 4-7 and 13 lines 4-6 of the witness statement of Billy Ramsundar filed on 16th June, 2017 are struck out.

9. The Claimant was then arrested for the offence of insulting language to a police officer. He was not handcuffed at the time of his arrest. He was informed of his constitutional rights and privileges and taken to the Siparia Police Station.

10. The Claimant was later formally charged with the offence of using insulting language and served with a notice to prisoner. He was granted his own bail. His matter was heard on 31st May 2012 but was subsequently dismissed[2].

11. Interestingly, the Claimant did not specifically plead proof of lack of reasonable and probable cause but pleaded the following particulars of **malice**:
    a. Knew that the Claimant did not commit any offence;
    b. Failed to carry out proper investigations;
    c. Acted hastily, angrily and violently;
    d. Act on the basis of pre-formed opinion of the Claimant.

12. At the PTR, the parties had filed their witness statements and evidential objections. The Claimant filed his witness statement and the Defendant filed two witness statements[3]. Upon examining the Claimant's witness statement the Court was of the view that there was no claim made out for malicious prosecution.

13. At the PTR the case management powers of the Court pursuant to Part 25 and Part 26 CPR are applicable and are quite extensive. See Rule 39.3[4] CPR[5]. The Court may at the PTR identify the issues and decide which issues require a trial and which do not, consider the cost benefits of taking a particular step, give directions to ensure the trial proceeds quickly and efficiently. See Rule 25.1 (a) (b) (h) (i) (k) (l) CPR. The Court has the wide discretion to give any other direction or make any other order for the purposes of managing the case, a power which was

[2] Thereafter, the Claimant made a report against PC Ramsundar to the Police Complaints Division (PCD) that he was beaten by PC Ramsundar. Upon investigation, the complaint was deemed to be frivolous and PC Ramsundar was exonerated. He also made a cross charge of assault against PC Ramsundar but the matter was eventually dismissed.
[3] Witness statement of PC Ravi Ramdath filed on 16th June 2017 and witness statement of PC Billy Ramsundar filed on 16th June 2017.
[4] Rule 39.3 of the CPR states:
"**39.3** Parts 25 and 26 apply to a pre-trial review as they do to a case management conference."
[5] **Estate Management and Business Development Company Limited v Saiscon Limited** Civil Appeal No. P 104 of 2016.
Super Industrial Services Limited v National Gas Company of Trinidad and Tobago Civil Appeal No. P-190 of 2016

analysed by Jamadar JA in **Real Time Systems Limited v Renraw Investments Limited et al** Civ App No. 238 of 2011. See Rule 26.1 (w) CPR. The Court may strike out a statement of case or part of a statement of case if it appears that the statement of case or the part to be struck out is an abuse of the process of the court or it discloses no grounds for bringing or defending a claim. See Rule 26.2(1) CPR. The Court can dispose of an issue summarily and determine if there is any realistic prospect of success on the claim. Where there are no reasonable grounds to suggest that a full examination at a trial will unearth or alter the present evidence a Court should not flinch at the prospect of striking out a baseless claim.

14. At the PTR stage with witness statements having been filed, the question the Court and parties are entitled to "re-examine" are the issues raised on the pleadings or as agreed by them to be determined at a case management conference. They are now to discern whether these or any of the issues so raised or agreed remain live ones for consideration at a trial having regard to the state of the proposed evidence.

15. The Court's powers to strike out a statement of case is "part of the Court's active case management role to identify the issues at an early stage and to decide which issues need full investigation at trial and to dispose summarily of others."[6]

16. The proactive, rather than passive role of the Judge in refining issues for determination as an exercise of active case management was noted by Dyson LJ in **Al-Medenni v Mars UK Ltd** [2005] EWCA Civ 1041 at paragraph 21:

> "It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by the other. The function of the judge is to adjudicate on those issues alone. The parties may have their own reasons for limiting the issues or presenting them in a certain way. The judge can invite, and even encourage, the parties to recast or modify the issues. But if they refuse to do so, the judge must respect that decision. One consequence of this may be that the judge is compelled to reject a claim on the basis on which it is advanced, although he or she is of the opinion that it would have succeeded if it had been

[6] Blackstone's Civil Practice 2015 paragraph 33.6.

advanced on a different basis. Such an outcome may be unattractive, but any other approach leads to uncertainty and potentially real unfairness."

17. Recently my brother Boodoosingh J in **Eastern Engineering and Marketing Service (1994) Ltd v The Attorney General of Trinidad and Tobago** CV2012-02045 demonstrated the type of robust case management at a PTR in conducting an assessment of the parties' cases and the issues that may have to be resolved if at all. He noted:

"4. In a contested claim, facts are proved or refuted by evidence. Parties set out their respective cases in their statement of case and defence. However this is not evidence. Evidence must be advanced where a party must prove a fact. In respect of positive averments in a defence, a party has at least an evidential burden to advance evidence on the facts advanced. Where a party does not put forward evidence, the Court looks at the evidence presented, that is to say, the evidence of the other side to see if the facts pleaded are proved by the evidence. When the evidence appears to be reasonable and plausible and there is no contrary evidence on the issue, the Court ordinarily finds no difficulty in making the appropriate findings of fact. That is part and parcel of the Court's consideration of a civil claim.

5. Put another way, if there is no contest, then essentially there is no defence. Having regard to the CPR as a whole including Part 26.2, the overriding objective, Part 39.3 and Part 8.6, the Court undoubtedly has power to grant judgment at a pre-trial review without the need to fix a trial date and order cross examination on appropriate cases. In this regard, I agree with the decision of my brother Justice Kokaram in the case of Deonarine -v- Harripersad, CV 2010-01662.

6. The Defendant in this case would not have been able to assert anything positive in cross-examination. When the Defence is considered there has been nothing advanced on it. It would therefore be no point in putting this matter for trial."

18. The authors of the Caribbean Civil Court Practice 2011 noted:

"It is similarly open to the court on a case management conference or a pre-trial review (at which the court has all the powers available to it as at a case management conference) to strike out a case."[7]

19. In **Bobby Ramesar v Chandrabhan Maharaj and The Attorney General of Trinidad and Tobago** H.C.A 1502 of 1997, Jones J observed:

> "Part 26.1(x), the "catch-all" section, allows the court to take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective. It would seem to me that I do have the power to apply the overriding objective in proceedings such as these in order to ensure that the case is dealt with justly.
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> Dealing with the case justly includes dealing with the case in a manner which saves expense; is proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each of the parties; ensuring that it is dealt with expeditiously and allotting to it an appropriate share of the court's resources while at the same time taking into account the need to allot resources to other cases. Uppermost in my mind is the length of time this matter has taken to come to trial and the fact that at the end of the day the Plaintiff is spared the cost of a full scale trial."

20. Having defined the issue in this case of whether there is a case to answer on the proposed evidence of the Claimant in the claim for damages for malicious prosecution, the Court can exercise its discretion to strike out the claim at the pre-trial stage. The Court in exercising its discretion to strike out the claim must give effect to the overriding objective. In **UTT v Ken Julien and others** CV2013-00212 it was observed that striking out a claim "is a draconian remedy only to be employed in clear and obvious cases where it is possible to demonstrate at an early stage before further management of the claim for trial that the allegations are incapable of being proved or the Claimant is advancing a hopeless case, either accepting the facts as pleaded as proven or as a matter of law."

[7] Note 23. 14 of the Caribbean Civil Court Practice 2011.

21. In **Belize Telemedia Ltd and another v Magistrate Usher** (2008) 75 WIR 138, Abdulai Conteh CJ was however equally robust in the approach to the management of what may manifest themselves to be hopeless cases. He noted:

"**[13]** *Rule 26.1(2)(j)* empowers as well the court to dismiss or give judgment on a claim after a decision on a preliminary issue. This power is among the general powers of the court at case management of a case. It is however, in my view, only applicable *after* a decision on a particular issue.

[14] *Rule 26.3(1)* however, speaks to the armory of sanctions available to the court at case management. In particular, it provides in terms as follows:

> '**26.3.**—(1) 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) that there has been a failure to comply with a Rule or practice direction or with an order of direction given by the court in the proceedings;
>
> (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;
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> (c) *that a statement of case or part to be struck out discloses no reasonable grounds for bringing or defending a claim; or*
>
> (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.' (Emphasis added.)

[15] An objective of litigation is the resolution of disputes by the courts through trial and admissible evidence. Rules of court control the process. These provide for pre-trial and the trial itself. The rules therefore provide that where a party advances a groundless claim or defence, or no defence, it would be pointless and wasteful to put the particular case through such processes, since the outcome is a foregone conclusion.

[16] An appropriate response in such a case is to move to strike out the groundless claim or defence at the outset.

[17] Part 26 on the powers of the court at case management contains provisions for just such an eventuality. The case management powers conferred upon the court are meant to ensure the orderly and proper disposal of cases. These in my view, are central to the efficient administration of civil justice in consonance with the overriding objective of the Supreme Court Rules to deal with cases justly as provided in r 1.1 and Pt 25 on the objective of case management."[8]

22. Of course the Claimant's claim in malicious prosecution is a grave and serious one as it insinuates that the agents of the State entrusted with the duty to safeguard justice and the wellbeing of those they are sworn to protect, misused or abused their authority in the execution of their duties thereby threatening the foundation of fairness, justice and the rule of law. Fundamentally, however, the Claimant must demonstrate that key elements of the tort are extant for the case to progress to trial[9]. These principles were demonstrated in the case of **Hicks v Faulkner** (1881-1882) L.R. 8Q.B.D 167 and in the Court of Appeal case of **Manzano v The Attorney General of Trinidad and Tobago** Civ. App. No.151 of 2011. Mendonca JA noted these elements as follows:
    (i) That the law was set in motion on a charge for a criminal offence by the Defendant.
    (ii) That the Claimant was acquitted of the charge or that the proceedings were otherwise determined in his favour.
    (iii) That in instituting and continuing the prosecution the Defendant did so without reasonable and probable cause.
    (iv) That the Defendant was actuated by malice. And;
    (v) As a consequence the Claimant suffered damage.

23. The burden is on the Claimant to prove all of these elements. The Claimant must show that there was a deliberate effort on the part of the Defendant to abuse his office and the process of criminal justice. The starting point to accomplish this task by the Claimant is in his Statement

[8] See note 23.23 The Caribbean Civil Court Practice 2011, page 249.
[9] Lord Hoffman in **Barclays Bank v Boutler [**1999] I W.L.R at 1923, [1999] 4 All E.R. 513 at 517 articulately expressed that "the purpose of pleadings is to define the issues and give the other party fair notice of the case which he has to meet."

of Case setting out the sufficient particulars to plead his case of malicious prosecution and ends with his witness statement.

24. Such allegations of serious misconduct "must be set out clearly and with adequate particularity" in the Claimant's witness statement.[10] The witness statement should provide the further details of the pleaded facts which set out the claim for malicious prosecution. In **East Caribbean Flour Mills Ltd v Ormiston Ken Boyea** (St Vincent and the Grenadines Civil Appeal No 12 of 2006) Barrow JA commenting on witness statements made the following observations at paragraphs 43 and 44:

> "[43] Lord Hope's reproduction and approval of the exposition by Lord Woolf MR in McPhilemy v Times Newspapers Ltd on the reduced need for extensive pleadings now that witness statements are required to be exchanged, should be seen as a clear statement that there is no difference in their Lordships' views on the role and requirements of pleadings. The position, as gathered from the observations of both their Lordships, is that the pleader makes allegations of facts in his pleadings. Those alleged facts are the case of the party. The "pleadings should make clear the general nature of the case," in Lord Woolf's words, which again I emphasize. To let the other side know the case it has to meet and, therefore, to prevent surprise at the trial, the pleading must contain the particulars necessary to serve that purpose. But there is no longer a need for extensive pleadings, which I understand to mean pleadings with an extensive amount of particulars, because witness statements are intended to serve the requirement of providing details or particulars of the pleader's case.
>
> [44] It is settled law that witness statements may now be used to supply details or particulars that, under the former practice, were required to be contained in pleadings. The issue in the Three Rivers case was the need to give adequate particulars, not the form or document in which they must be given. In deciding that it was only the pleadings that she should look at to decide what were the issues between the parties the judge erred, in my respectful view. If particulars were given, for instance, in other witness statements the judge was obliged to look at these witness statements to see what were the issues between the parties."

[10] Blackstone's Civil Practice 2016 paragraph 51.5.

25. There have been seminars by the Law Association of Trinidad and Tobago on the drafting of witness statements. Reference to the Western Australian Bar's guide was made which pointed out that witness statements should follow:

> "***An organised, logical structure-*** Before preparing a witness statement, careful consideration should be given to the matters that are of importance to the case that can be addressed by the witness. An overall structure for the statement should be planned. The plan should be informed by the audience for the statement, namely the trial judge… Usually, a witness statement should be arranged as a chronological narrative. It should tell a story as a series of events from the personal experience of the witness…"[11]

26. Justice Boodoosingh's presentation made reference to the four (4) golden rules which are:
    (i) The witness statement should "tell the story" in chronological order;
    (ii) The factual issues in the case should all be dealt with;
    (iii) The witness statement is a statement of fact, not opinion; and
    (iv) The witness statement must be true.[12]

27. In this case, the witness statement begs the question what was the case plan to ensure that the Court has been given the evidence to demonstrate that a specific criminal prosecution was put in motion. To be fair to the Defendant in a malicious prosecution claim, the Claimant must articulate the nature of that prosecution or charge. Indeed in the statement of case the Claimant contends that the law was improperly set in motion for three offences of assault, obscene language and violent language. The Defendant contends that the only charge laid was that of insulting language. There is no reply and there is a joinder on the issue of what prosecution was improperly set in motion by the Claimant. With that having been defined as a live issue for determination on the pleadings, the Court expects the Claimant in planning the drafting of his witness statement would lead evidence to prove his case to establish the ingredients of the tort of malicious prosecution in particular that the law was improperly set in motion for the

[11] Western Australian Bar Association, Best Practice Guide 01/2009-2011. Preparing Witness Statements for use in Civil Cases.
[12] Law Association of Trinidad and Tobago Witness Statement in Civil Cases 11th October 2014.

three charges which he identified in his statement of case and that it was determined in his favour.

28. There is however absolutely no evidence adduced in the witness statement of the Claimant of the matter he alleged in his statement of case that he was charged for assaulting PC Ramsundar, making use of obscene language and making use of violent language and that those charges were dismissed. He simply deposes that he was "given a Notice of Prisoner outlining his offence". He does not say what it contained nor what was the offence.

29. Examining the Defendant's evidence in their witness statements revealed that the Claimant was only charged for using insulting language and that it was eventually dismissed. Is it that the Claimant conceded that that was the only charge which was laid against him? The Claimant should not at this stage have the Court speculate as to what is his case.

30. There is no agreed statement of facts by the parties and the obligation is on the Claimant to make out his case for malicious prosecution. He cannot simply at this stage rely on his statement of case as evidence to be adduced at trial. The case of malicious prosecution cannot succeed on the Claimant's evidence. If this evidence is led at trial the question must be asked where is the proof of the first two ingredients of the tort? There is none and therefore there is no case for the Defendant to answer.

31. For these reasons, the claim for malicious prosecution was struck out by the Court.

Vasheist Kokaram

Judge