

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-01376

BETWEEN

CHARMIAN BERNADETTE FEARN

**(By virtue of her lawfully appointed Attorney, Rosemarie Esme Green by Deed registered
as No DE201602397575)**

Claimant

AND

FELIX GREEN

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: December 7, 2018

Appearances:

Ms. Candace Stacy Deen for the Claimant

Ms. Shalini Sankar instructed by Ms. Risa Rajnath for the Defendant

RULING ON EVIDENTIAL OBJECTIONS

[1] On 26th July, 2018, the Claimant filed objections to certain parts of the evidence which the Defendant is seeking to adduce in support of his case. The objections are in relation to the witness statements of Felix Green, Benjamin Green and Sookia Coolman.

On 27th July, 2018, the Defendant filed objections to certain parts of the evidence which the Claimant is seeking to adduce in support of her case. The objections were in relation to the witness statements of Dexter Brown, Lystra Iona Taylor, George Green, Rosemarie Esme Green and the supplemental list and bundle of documents filed on 29th June, 2018.

Both the Claimant and the Defendant filed submissions in response to each other's evidential objections on 30th August 2018.

[2] Having considered the submissions of the Defendants and the Claimant, the following are my rulings on the objections.

CLAIMANT'S EVIDENTIAL OBJECTIONS

Witness Statement of Felix Green

Paragraph 4

[1] The words "*A copy of which is hereto attached and marked "F.G.3".*" are permissible. The Court has given the Defendant permission to file a Hearsay Notice in relation to the exhibit attached as "F.G.3" to the witness statement of Felix Green on 18th October 2018.

Paragraph 10

[2] Paragraph 10 in its entirety is struck out on the basis that it is a material fact that ought to have been pleaded in the Defence/Amended Defence.

Paragraph 11

[3] The words "*Over the years, I continuously made repairs and renovations to the mini mart.*" are struck out on the basis that it is material fact which ought to have been pleaded in the Defence/Amended Defence.

Paragraph 12

[4] Paragraph 12 in its entirety is struck out on the basis that it is a material fact which ought to have been pleaded in the Defence/Amended Defence.

Paragraph 16

[5] The words “*The Claimant and her family never lived on the property as they lived abroad.*” are struck out on the basis that it is a material fact which ought to have been pleaded in the Defence/Amended Defence.

Witness Statement of Benjamin Green

Paragraph 7

[6] Paragraph 7 in its entirety is struck out on the basis that it is a material fact that ought to have been pleaded in the Defence/Amended Defence.

Paragraph 10

[7] The words “*When my Aunt came back to Trinidad...*” are struck out on the basis that it should have been pleaded in the Defence/Amended Defence.

Witness Statement of Sookia Coolman

Paragraph 6

[8] The words “*over the years Felix has upgraded and renovated the structure.*” are permissible. The witness is entitled to give evidence on observations that she made.

DEFENDANT’S EVIDENTIAL OBJECTIONS

Witness Statement of Dexter Brown

Paragraph 5

[9] Paragraph 5 in its entirety is permissible. In paragraph 6 of the witness statement, the witness goes on to specify on what date the pre-action letter was served – 10th October, 2016.

Paragraph 6

[10] The words “*I knew that Felix stayed in a house in Ashley Street*” are permissible. The witness goes on to state the observations that he made which made him come to the conclusion that Felix stayed in the house in Ashley Street.

Paragraph 7 and 8

[11] Paragraph 7 and 8 in its entirety are permissible. These facts are briefly pleaded in the Claimant’s Reply to the Amended Defence.

Witness Statement of Lystra Iona Taylor

Paragraph 2

[12] The words “*that used to be owned by Marcel*” are permissible. The witness is entitled to give evidence on the ownership of the property based on the observations that she made since she was 5 years old and the fact that her home is seven houses away from the property. The Court is of the view that the Defendant can test this evidence of ownership during cross-examination.

Paragraph 8

[13] The words “*However, I know he used to be by his grandmother Marcel and Aunt Esme when he was younger at the wooden house as Esme told me this.*” are permissible. This is not hearsay evidence. “Aunt Esme” is one of the witnesses likely to give evidence on behalf of the Claimant and in her witness statement at paragraph 13 she stated, “*...Felix... would always come and visit me and his grandmother at No 287 Southern Main Road.*”

Paragraph 9

[14] The words “*The talk around the neighbourhood was that he was deported back to Trinidad from the United States*” are struck out on the basis that it is irrelevant to the main issue to be determined to by the Court. It is also prejudicial and scandalous towards the Defendant.

Witness Statement of George Green

Paragraph 6

[15] Paragraph 6 in its entirety is permissible. The Claimant has filed a Hearsay Notice in relation to this paragraph of the witness statement.

Paragraph 9

[16] The words “*when I visited I would sometimes sit in the porch where I could see the four lots of land*” are permissible. The location of this porch can be tested by the Defendant during cross-examination.

Paragraph 12

[17] The words “*Felix also threatened to kill my Aunt when she asked him to move out from the land. My Aunt was very scared for her life. I know this as my Aunt told me.*” are permissible. This is not hearsay evidence. This Aunt (Rosemarie Esme Green) is one of the witnesses likely to give evidence on behalf of the Claimant and in her witness statement at paragraph 29 she stated, “*...when I approached Felix and asked him to leave the land he threatened to kill me.*”

Paragraph 13

[18] The words “*I know that the lot of land next to Sinceria’s lot that Felix put up the structure on is Charmaine lot as she bought this lot of land.*” are permissible. The witness is entitled to give evidence on what is within his personal knowledge. The accuracy of this statement can be tested during cross-examination by the Defendant.

Witness Statement of Rosemarie Esme Green

Paragraph 20

[19] The words “*I allowed my nephew Alvin Williams to February 2017*” are permissible on the ground that the witness when called to be sworn can rectify the inadvertence of the filing attorney-at-law.

Paragraph 23

[20] The words “*The talk around the neighbourhood was that Felix went to the United States and was then deported to Trinidad.*” are struck out on the basis that it is irrelevant to the main issue to be determined by the Court. It is also prejudicial and scandalous to the Defendant.

Paragraph 37

[21] Paragraph 37 in its entirety is struck out. This evidence is the opinion of the witness and not a statement of fact.

Supplemental List and Bundle of Documents filed on 29th June 2018

[22] The Claimant filed her list and bundle of documents on 28th February 2018. She then filed a supplemental list and bundle of documents on 29th June 2018 which included four photographs which illustrated ongoing construction on the northern front lot of the four lots.

These photographs are attached to the witness statement of Rosemarie Esme Green which was also filed on 29th June, 2018. In her witness statement, Rosemarie at paragraph 40 stated that between March and April 2018, she used the camera on her cell phone and took pictures of the workmen adding to the illegal structure which Felix was working on.

[23] As correctly stated by the Claimant in their response submissions, the duty of disclosure is continuous during proceedings: **Rule 28.12(1) of the Civil Proceedings Rules, 1998 as amended. Rule 28.12(2) of the CPR** goes on to state that if documents to which that duty extends come to a party’s notice at any time during the proceedings that party must immediately notify every other party and serve a supplemental list of those documents. However, the supplemental list must be served not more than 14 days after the new documents have come to the notice of the party required to serve it: **Rule 28.12(3) of the CPR**. The Rules, however, in this instance, do not state that permission is required.

Nevertheless, in this matter, the witness stated that she took the pictures between March and April 2018 but the photographs in the supplemental list of documents were filed on 29th June 2018. This is evidently more than 14 days. The Claimant had a duty to immediately notify the Defendant and serve a supplemental list into Court as stipulated in Rule 28.12(3) CPR. Accordingly, at that juncture, permission was required from the Court in order for the Claimant to file this supplemental list and bundle of documents. The Claimant has failed to request permission from the Court to file her supplemental list and bundle of documents.

Accordingly, the Court is of the view that the bundle of photographs attached as “W” to the witness statement of Rosemarie Esme Green ought to be struck out. Further, the words “*True copies these photographs are hereto annexed in a bundle and marked “W”.*” are also struck out.

Order

CLAIMANT’S EVIDENTIAL OBJECTIONS

Witness Statement of Felix Brown

- i. The Claimant’s evidential objection to the words “*A copy of which is hereto attached and marked “F.G.3”.*” in paragraph 4 is overruled.**
- ii. The Claimant’s evidential objection to paragraph 10 is upheld. That paragraph will be struck out.**
- iii. The Claimant’s evidential objection to the words “*Over the years, I continuously made repairs and renovations to the mini mart.*” in paragraph 11 is upheld. Those words will be struck out.**
- iv. The Claimant’s evidential objection to paragraph 12 is upheld. That paragraph will be struck out.**

- v. **The Claimant’s evidential objection to the words “*The Claimant and her family never lived on the property as they lived abroad.*” in paragraph 16 is upheld. Those words will be struck out.**

Witness Statement of Benjamin Green

- i. **The Claimant’s evidential objection to paragraph 7 is upheld. That paragraph will be struck out.**
- ii. **The Claimant’s evidential objection to the words “*When my Aunt came back to Trinidad*” in paragraph 10 is upheld. Those words will be struck out.**

Witness Statement of Sookia Coolman

- vi. **The Claimant’s evidential objection to the words “*over the years Felix has upgraded and renovated the structure*” in paragraph 6 is overruled.**

DEFENDANT’S EVIDENTIAL OBJECTIONS

Witness Statement of Dexter Green

- i. **The Defendant’s evidential objection to paragraph 5 is overruled.**
- ii. **The Defendant’s evidential objection to the words “*I know that Felix stayed in a house in Ashley Street.*” in paragraph 6 is overruled.**
- iii. **The Defendant’s evidential objection to paragraph 7 is overruled.**
- iv. **The Defendant’s evidential objection to paragraph 8 is overruled.**

Witness Statement of Lystra Iona Taylor

- i. **The Defendant’s evidential objection to the words “*that used to be owned by Marcel.*” in paragraph 2 is overruled.**

- ii. **The Defendant’s evidential objection to the words “*However, I know he used to be by his grandmother Marcel and Aunt Esme when he was younger as the wooden house as Esme told me this.*” in paragraph 8 is overruled.**
- iii. **The Defendant’s evidential objection to the words “*the talk around the neighbourhood was that he was deported back to Trinidad from the United States.*” in paragraph 9 is upheld. Those words will be struck out.**

Witness Statement of George Green

- i. **The Defendant’s evidential objection to paragraph 6 is overruled.**
- ii. **The Defendant’s evidential objection to the words “*When I visited I would sometimes sit in the porch where I could see the four lots*” in paragraph 9 is overruled.**
- iii. **The Defendant’s evidential objection to the words “*Felix also threatened to kill my Aunt when she asked him to move out from the land. My Aunt was scared for her life. I knew this as my Aunt told me this.*” in paragraph 12 is overruled.**
- iv. **The Defendant’s evidential objection to the words “*I know that the lot of the land next to Sinceria’s lot that Felix put up the structure on is Charmian lot as she bought this lot of land.*” in paragraph 13 is overruled.**

Witness Statement of Rosemarie Esme Green

- i. **The Defendant’s evidential objection to the words “*I allowed my nephew Alvin Williams to February 2017.*” is overruled.**
- ii. **The Defendant’s evidential objection to the words “*The talk around the neighbourhood was that Felix went to the United States and was then deported to Trinidad.*” in paragraph 23 is upheld. Those words will be struck out.**

- iii. **The Defendant’s evidential objection to paragraph 37 is upheld. That paragraph will be struck out.**

SUPPLEMENTAL LIST AND BUNDLE OF DOCUMENTS FILED ON 29TH JUNE 2018

- i. **The Defendant’s evidential objection to the supplemental list and bundle of documents filed on 29th June 2018 by the Claimant is upheld. The photographs exhibited in the supplemental list and bundle of documents are struck out.**
- ii. **Additionally, the words “*True copies these photographs are hereto annexed in a bundle and marked “W”.*” in paragraph 40 of the witness statement of Rosemarie Esme Green are struck out.**

**Robin N. Mohammed
Judge**