



**ST. GEORGE WEST COUNTY
PORT OF SPAIN PETTY CIVIL COURT**

RULING ON STRIKING OUT THE STATEMENT OF CASE

CITATION: David Dyer v. Miriam Noble

TITLE OF COURT: Port of Spain Petty Civil Court

FILE NO(s): No. 421 of 2012

DELIVERED ON: 21st February 2013

CORAM: Her Worship Magistrate Nalini Singh
St. George West County
Port of Spain Petty Civil Court Judge

REPRESENTATION:

Mr. Ferguson for David Dyer

Mr. James for Miriam Noble.

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THE APPLICATION

1.1 This is an application to strike out the statement of case for failure to comply with the requirements of a statement of case as set out in **Part 8.6 of the Civil Proceedings Rules** (hereinafter referred to as the “CPR”).

INTRODUCTION

2.1 By ordinary summons dated and filed on the 12th October 2012, the claimant, David Dyer, claimed the sum of \$11,307.24TT from the defendant, Miriam Noble as outstanding monies under a construction contract between the parties. The details of the claim are set out below:

ITEM	COST (TT\$)
DEBT OF CLAIM	10,800.00
COST OF SUMMONS	7.00
PARTICULARS	0.24
ATTORNEY’S FEE	500.00
TOTAL	\$11,307.24

Since the application made before this Court is to strike out the statement of case, the appropriate place to start, on an examination of the pertinent facts, is with the particulars of claim filed.

THE PARTICULARS OF CLAIM

3.1 The claimant set out in his particulars of claim dated and filed on the 12th October 2012, his version of the events. It is this:

“1. The Plaintiff is a building and construction contractor who resides at 86 Byron Boulevard Union Park West Marabella and in or about late 2011 he was introduced to the Defendant who required certain building works to be completed.

2. The Defendant thereafter engaged the services of the Plaintiff as contractor in respect of certain construction works at a building situated at Einstein Avenue, Petit Valley (representing the same as hers) and thereby became the client of the Plaintiff pursuant to an oral contract between them made on or about the 14th day of December 2011.

3. The Plaintiff duly brought his workmen unto the premises in pursuance of the performance of the said works and proceeded to perform the same of good standard and quality.

4. The works which were performed by his six (6) workmen employed by the Plaintiff for that purpose at the direction and upon instructions of the Defendant and the costs thereof comprised the following:

Costs of building internal steps	\$10,000.00	
(Less down payment representing cost of labour on internal steps)	\$6,000.00	
Sub total outstanding as contractor's fees on internal steps		\$4,000.00
Plastering walls and casting thirteen (13) downstairs windows	\$32,200.00	
(Less down payment representing advance payment toward cost of labour on plastering and windows)	\$12,300.00	
Less final payment representing costs of labour on plastering and windows	\$13,900.00	
Sub-total	\$26,000.00	
Sub-total outstanding as contractor's fees on plastering and windows		\$6,000.00
Refund of costs of rental of one (1) outdoor toilet and tank paid for by plaintiff		\$800.00
Total balance outstanding representing contractor's fees		\$10,800.00

5. On or about the 2nd February 2012 the Defendant paid the Plaintiff the payment of \$13,900 representing the final balance of the costs of labour on plastering and windows.

6. On or about the 5th February 2012 the Defendant unilaterally and in breach of her contract with the Plaintiff and of her commitment to pay contractor's fees for the performance of the said works terminated the said agreement by wrongfully expelling the Plaintiff and his workmen from the premises and refusing to pay the contractor's fees claimed herein.

7. Pursuant to several letters to the Defendant from the Plaintiff respectively dated 16th February 2012 (which the Defendant falsely denied receiving), 15th March 2012 (with the former attached thereto) and 7th May 2012 the Plaintiff demanded that the Defendant pay the moneys due and outstanding for her (debit) account.

8. Furthermore by letter dated 11th April 2012 attaching a receipt dated 2nd February 2012 the Defendant falsely alleged that the said receipt represented payment in full of all moneys due to the Plaintiff including contractor's fees when in truth and in fact it only represented payment in full for the cost of labour on the plastering and windows.

9. In the circumstances the Defendant was liable to pay the Plaintiff the balance claimed herein and/or alternatively such sum as may be properly found to be due from the Defendant for the aforesaid breach of contract”.

THE SUBMISSION

4.1 Counsel for the defendant argued that the statement of case filed failed to comply with the requirements under **Part 8.6 of the Civil Proceedings Rules 1998 (hereinafter referred to as “the CPR”)**. Further, pursuant **Part 26.2 of the CPR**, it was contended that the statement of case should be struck out.

4.2 Counsel for the claimant responded by making the point that there was no need for the Court to exercise its discretion under **Part 26.2 of the CPR** because the statement of case filed complied with the requirement set out in **Part 8.6 of the CPR**.

4.3 This has given rise to one issue.

THE ISSUES

5.1 The issue which arises for determination by me is:

- (a) Whether there has been non compliance with **Part 8.6 of the CPR** which necessitates the Court striking out the statement of case pursuant to **Part 26.2 of the CPR**.

THE LAW

6.1 **Part 26.2(1) of the CPR** reads as follows:

“(1) 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, practice direction or with an order or 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;

(c) that the statement of case or the part to be struck out discloses no 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 Part 8 or 10”.

Counsel premises his application to strike out the statement of case in this matter on the basis that the statement of case does not comply with **Part 8 of the CPR** and in particular **Part 8.6 of the CPR**.

6.2 **Part 8.6 of the CPR** which deals with the duty of the claimant to set out his case, states that:

“The claimant must include on the claim form or in his statement of case a short statement of all the facts on which he relies”.

This provision is almost identical to the English position under the **Civil Procedure Rules 16.4 (1)(a)** which states that:

“Particulars of claim must include-

(a) a concise statement of the facts on which the claimant relies.”

6.3 This leads me to the question of exactly what then would qualify as “all the facts upon which a claimant relies”.

6.4 The learning in **Civil Procedure by Adrian Zuckerman (The Cromwell Press, London: 2003) at paragraph 6.10** suggests that this refers to “the facts that entitle the claimant to the remedy that he is seeking to obtain against the defendant”.

6.5 This approach accords with reason as it is stated in **Blackstone’s Civil Practice 2005 (Oxford University Press Inc. New York: 2005)** that a:

“good claim or defence should enable the parties and the court to narrow down and identify the central issues in dispute. This has always been the case. For example, a defendant is entitled to know not merely the cause of action against him, but also the manner in which it is alleged that he was in breach of his duty, thereby causing the claimant to seek redress against him”.

6.6 Indeed the point is made by Lord Millett in **Three Rivers DC v. Bank of England (No 3) [2001] 2 All ER 513 HL at paragraph 185** that the “function of pleadings is to give the party opposite sufficient notice of the case which is being made against him”. A similar sentiment is expressed in the case of **Barclays Bank plc v. Boulter [1999] 4 All ER 513 at page 517** where Lord Hoffmann made the point 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”.

6.7 These cases underscore the fact that thorough preparation and assiduousness are important prerequisites of a properly drafted statement of case. These sentiments were specifically expressed by His Lordship Mr. Justice Kokaram in the case of **Beverley Ann Metivier v. The Attorney General of Trinidad and Tobago, Evolving Technologies and Enterprise Development Co. Ltd (E-Teck) & Wendy Hoyte CV 2007-00387** at paragraph 4.1 to 4.2 where it was said that:

“The statement of case is a fundamental pillar to the Claimant accessing justice under the CPR. It must be carefully drafted so as to properly articulate the facts in support of the cause(s) of action or the basis on which the claim is being made against the Defendant... The duty to state material facts necessitates a careful attention to the details of the case that are material to establishing a claim”.

6.8 Applying the objective standard which is alluded to by His Lordship Mr. Justice Jamadar J.A. at paragraph 8 in **Real Time Systems Limited v. Renraw Investments Limited, CCAM and Company Limited & Jack Austin Warner also known as Austin Warner Trading as Dr. Joao Havelange Center of Excellence CA No. 238 of 2011** to the facts of the instant case, I have found that the facts which the claimant set out entitling him to the remedy he seeks or, put another way, the manner in which the claimant alleges the defendant breached his duty toward the claimant thereby entitling him to a remedy in the circumstances, are:

- There was an oral agreement between himself and the defendant.
- The agreement was entered into on the 14th December 2011.
- The agreement was for “certain construction works” to be undertaken by the claimant as contractor.

- The “construction works” were to be executed at the building which belonged to the claimant and was situated in Einstein Avenue Petit Valley.
- The claimant and six (6) workmen performed the “said works” in accordance with “good standard and quality”.
- The “construction works” which were undertaken by the claimant and his six (6) workmen included building internal steps, plastering walls and casting thirteen (13) windows.
- The claimant incurred the expense of renting an outdoor toilet facility at the cost of \$800.00TT
- The total cost of building internal steps, plastering walls and casting thirteen (13) windows as well as the outdoor toilet rental was \$42,800.00TT
- The defendant advanced to the claimant the sum of \$32,000.00TT as part payment.
- On the 5th February 2012 the defendant refused to pay the claimant the outstanding monies.
- The sum of \$10,800.00TT still remains payable to the claimant.

6.9 Unlike the case of **Real Time Systems Limited v. Renraw Investments Limited, CCAM and Company Limited & Jack Austin Warner also known as Austin Warner Trading as Dr. Joao Havelange Center of Excellence CV 2010-01412** where the claimant never pleaded whether the loan agreement was oral or written, I understand the claimant in this case to have pleaded firstly, that there was an oral agreement. Further, the claimant performed his obligations under the agreement and the defendant is now in breach of that agreement as he has not advanced to the claimant the sum of \$10, 800.00TT which remains

payable for the works performed pursuant to the oral agreement between the claimant and the defendant. This to my mind gives the defendant fair notice of the case he has to meet and is therefore sufficient to meet the requirements of **Part 8.6 of the CPR**.

6.10 I find that this is not the sort of case identified by Her Ladyship Madam Justice Jones in **Export-Import Bank of Trinidad and Tobago v. Water Works Limited & Water and Sewerage Authority of Trinidad and Tobago** CV No. 2010-03594 at paragraph 10 as one that lacks “sufficient particulars to allow a Defendant to properly defend the case” nor do I find that this is the sort of case with a “lack of particularity (which) has resulted in the Claimant failing to establish a complete cause of action”. Indeed the essence of what was pleaded can in no way be described as a “muddle” which was how Her Ladyship Madam Justice Gobin described the pleadings in the matter of **ABC Trinidad Customs Brokers Ltd v. Xando Distributors Ltd** CV 2011-00411 at paragraph 8.

CONCLUSION

7.1 The facts as set out in the statement of case are such that the defendant can properly prepare to defend the claim. The submission advanced by counsel for the defendant is accordingly overruled.

ORDER OF THE COURT

1. The application to strike out the statement of case pursuant **Part 26.2(1) of the CPR** is refused.
2. Leave is granted to defend this mater.

3. The defence is to be filed in the Petty Civil Court Registry Port of Spain, and served on the claimant on or before the 22nd March 2013. If this is not done an extension of time may not be granted and the matter may very well proceed undefended.
4. The reply if one is necessary is to be filed in the Petty Civil Court Registry Port of Spain, and served on the defendant on or before the 29th March 2013.
5. This matter is accordingly adjourned to the 1st April 2013 when the matter is set for trial.
6. The cost of this application shall be costs in the cause.

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Her Worship Magistrate Nalini Singh

Petty Civil Court Judge