In The Supreme Court of Bermuda

CIVIL JURISDICTION

2023: No. 50

BETWEEN:

TICOE WILLIAMS

Plaintiff

and

BERMUDA HOSPITAL BOARD

Defendant

RULING

Date of Hearing: 12 August 2024
Date of Ruling: 20 December 2024

Plaintiff: Bruce Swan of Bruce Swan & Associates
Defendant: Paul Harshaw of Canterbury Law Limited

RULING of Cratonia Thompson, Acting Puisne Judge

INTRODUCTION

1. The Defendant is seeking an order that these proceedings be struck out due to the Plaintiff's failure to provide proper responses to the Defendant's requests for further and better particulars as subsequently required by an order of this Court.

2. Unsurprisingly, the application is opposed by the Plaintiff. The Plaintiff invites the Court to dismiss the Defendant's application, with costs awarded to the Plaintiff. It is suggested

in the Plaintiff's written submissions that should the Court accept the Defendant's position that the Plaintiff's pleadings are insufficient, the proper course is for Senior Counsel (assumingly Counsel for the Defendant) to advise the amendments that should be made to correct the Plaintiff's pleadings.

3. The Defendant's alternative position, should the Court not strike out these proceedings in their entirety, is to strike out certain paragraphs of the Plaintiff's Statement of Claim.

4. The relevant factual and procedural history to the application presently before the Court follows.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

5. The Plaintiff filed its Specially Indorsed Writ (with Statement of Claim) in these proceedings on 3 February 2023 (the **Writ**).

6. In his Statement of Claim, the Plaintiff alleges *inter alia*, as follows:

   (1) That he, whilst employed with the Defendant, suffered bullying and workplace harassment from another employee of the Defendant, Mr Miguel Bean.
   (2) That this behavior was brought to the attention of the Defendant but the conduct was not addressed in a satisfactory manner.
   (3) That on 5 January 2019, the Plaintiff and Mr Bean engaged in a fist fight. Following an investigation into the matter, the Plaintiff was dismissed, however Mr Bean maintained his employment.
   (4) That the Defendant has a policy of zero tolerance for fighting in the workplace, and it was a breach of that policy to dismiss the Plaintiff whilst Mr Bean maintained his employment.

   As a result the Plaintiff is claiming loss of wages and other monetary relief.

7. The Defendant entered an appearance on 24 February 2023. On that same date, the Defendant made a request for further and better particulars (the **Initial Request**). The Initial Request sought *inter alia* further and better particulars relating to the Plaintiff's

allegation of workplace bullying and harassment, and requested the Plaintiff to identify what conduct of Mr Bean amounted to bullying and harassment in the workplace, and also requested the Plaintiff to set out when, where and the circumstances in which each such act (or conduct) of bullying and harassment occurred. The Defendant also requested that the Plaintiff state the material terms of the alleged policy of zero tolerance for fighting in the workplace, and if the policy is written, to provide a copy of that policy.

8. On 16 March 2023, the Defendant made a supplemental request for further and better particulars of the Statement of Claim (the **Supplemental Request**). The Supplemental Request sought further and better particulars also relating to the allegations of workplace bullying and harassment, and in particular the Plaintiffs claim that the conduct was brought to the attention of the Defendant. The Supplemental Request requested details regarding who the complaints were made to, and whether the bullying and harassment was made the subject of a complaint under the Defendant's Harassment, Bullying and Incivility ("HBI") Policy.

9. The Plaintiff replied to both the Initial Request and the Supplemental Request on 4 April 2023, however the Defendant took the view that the particulars provided were defective. The Defendant consequently sought further and better particulars of the further and better particulars (the **Final Request**) on 4 April 2023.

10. The Plaintiff provided its response to the Defendant's Final Request on 15 June 2023. Once again, the Defendant considered the Plaintiff's responses insufficient.

11. The Defendant filed its provisional Defence on 29 September 2023. The Defendant denies the Plaintiff's claims, and avers that the Plaintiff initiated the fist fight, and that because the Plaintiff initiated and committed violence against a coworker, the Plaintiff's employment was terminated in accordance with the Defendant's workplace policy.

12. By Summons dated 8 December 2023, the Defendant made an application to the Court seeking an order that the Plaintiff be compelled to provide proper responses (i.e. accurate particulars) to the Defendant's various requests for further and better particulars (the **Application to Compel**).

13. The Application to Compel was heard on 11 January 2024 and it was ordered, *inter alia*, that the Plaintiff shall on or before 24 January 2024 serve on the attorney for the Defendant the further and better particulars requested on 24 February 2023, 16 March 2023 and 4 April 2023 (that is the Initial Request, Supplemental Request and Final Request, together the **Defendant's Requests**). The costs of the Application to Compel were reserved.

14. On 25 January 2024, the Plaintiff filed its Amended Reply to the Request for Further and Better Particulars (the **Amended Reply**).

15. The Defendant did not consider the responses contained in the Plaintiff's Amended Reply sufficient, and on 26 January 2024 the Defendant made an application to strike out the Plaintiff's claim (the **Strike-out Application**). The Strike-out Application seeks an order that the Plaintiff's claim be stuck out by reason of the Plaintiff's failure to provide proper responses to the Defendant's Requests as required by the order of the Court made on 11 January 2024 (the **Order to Compel**). The Defendant also seeks its costs of the Strike-out Application.

THE LAW

16. The law as it relates to the Court's power to strike out a claim for insufficient pleadings was set out in the Defendant's written submissions, which I accept and have largely adopted below.

17. The Supreme Court of Bermuda has the inherent power, in addition to the power contained in Order 18 of the Rules of the Supreme Court 1985 ("**RSC**"), to strike out a pleading that is inherently bad. Bullen and Leake and Jacob's Precedents of Pleadings (Twelfth Edition), provides the following at page 16:

> *The summary powers of the court to strike out pleadings are collected in one Rule and have been extended to "abuse of the process of the court", which itself is derived from the inherent jurisdiction of the court.*

18. Bullen and Leake also records the following words of Scrutton L.J. in *Blay v. Pollard and Morris* [1930] 1 KB 628 at page 8:

Cases must be decided on the issues on the record; and if it is desired to raise other issues they must be placed on the record by amendment. In the present case, the issue on which the judge decided was raised by himself without amending the pleading, and in my opinion he was not entitled to take such a course.

19. Also found on page 8 of Bullen and Leake, is the following commentary found in an article entitled "The Present Importance of Pleadings", which was published in Current Legal Problems in 1960:

As the parties are adversaries, it is left to each of them to formulate his case in his own way, subject to the basic rules of pleadings ... For the sake of certainty and finality, each party is bound by his own pleading and cannot be allowed to raise a different or fresh case without [due amendment properly made]. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as much bound by the pleadings of the parties as they are themselves. It is no part of the duty or function of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by their pleadings. Indeed, the Court would be acting contrary to its own character and nature if it were to pronounce upon any claim or defence not made by the parties. To do so would be to enter the realms of speculation. ... Moreover, in such event the parties themselves, or at any rate one of them, might well feel aggrieved; for a decision given on a claim or defence not made, or raised, by or against a party is equivalent to not hearing him at all and may thus be a denial of justice. The court does not provide its own terms of reference or conduct its own inquiry into the merits of the case but accepts and acts upon the terms of reference which the parties have chosen and specified in their pleadings. In the adversary system of litigation, therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called 'Any other business' in the sense that points other than those specified may be raised without notice."

20. As to the purpose of pleadings, a party's pleadings must inform the opposing party of the case they have to meet in sufficient detail to enable that party to properly prepare an answer to the case made against them, not only in another pleading, but also at trial. This position is helpfully summarised in the Supreme Court Practice (1999) (**The White Book**) as follows:

The requirement to give particulars reflects the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly, without surprises and, as far as possible, so as to minimise costs (a view approved by Edmund-Davies LJ. in Astrovlanis Campania Naviera SA v. Linard [1972] 2 Q.B. 611; [1972] 2 All E.R. 64 7). The function of particulars is accordingly:

(1) to inform the other side of the nature of the case that they have to meet as distinguished from the mode in which that case is to be proved (per Lindley L.J. In Duke v. Wisden (1897) 77 L. T. 67 at 68, per Buckley LJ. in Young & Co. v. Scottish Union Co. (1907) 24 T.L.R. 73 at 74; Aga Khan v. Times Publishing Co. [1924] 1 K.B. 675 at 679);

(2) to prevent the other side from being taken by surprise at the trial (per Cotton L.J., in Spedding v. Fitzpatrick (1888) 38 Ch.D. 410 at 413; Thomson v. Birkley (1882) 31 W.R. 230);

(3) to enable the other side to know with what evidence they ought to be prepared and to prepare for trial (per Cotton L.J. ibid.; per Jessel M.R. in Thorp v. Holdsworth (1876) 3 Ch.D. 637 at 639; Elkington v. London Association for the Protection of Trade (1911) 27 T.L.R. 329 at 330);

(4) to limit the generality of the pleadings (per Thesiger L.J. Saunders v. Jones (1877) 7 Ch.D. 435) or of the claim or the evidence (Milbank v. Milbank [1900] 1 Ch. 376 at p.385);

(5) to limit and define the issues to be tried, and as to which discovery is required (Yorkshire Provident Life Assurance Co. v. Gilbert [1895] 2 Q.B. 148, per Vaughan Williams LJ. in Milbank v. Milbank [1900] 1 Ch. 376 at 385);

(6) to tie the hands of the party so that he cannot without leave go into any matters not included (per Brett L.J. in Philipps v. Philipps (1878) 4 Q.B.D. 127 at 133; Woolley v. Broad [1892] 2 Q.B. 317) seen. "All material facts" para. 18/7 /11; and Woolley v. Broad [1892] 2 Q.B. 317). But if the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings (Dean of Chester v. Smelting Corp. [1902] W.N. 5; Hewson v. Cleeve [1904] 2 Ir.R. 536).

21. In *Pinson v. Lloyds and National Provincial Foreign Bank Limited* [1941] 2 KB 72, C.A. Scott, L.J. said, (at page 75):

It is a well-recognized canon of pleading that the defendant need not, and, indeed, ought not to, plead to "particulars," whether contained in or delivered with the statement of claim. The reason for that canon is plain. All the material facts constituting the cause of action ought already to have been plainly stated in the pleading itself, as required by Order XIX., r. 4, the plainest and most fundamental of all the rules of pleading. The proper function of particulars is not to state the material facts omitted from the statement of claim in order, by filling the gaps, to make good an inherently bad pleading, however common that pernicious practice may have become.

[Emphasis added]

22. Further, *per* Stable J. in Pinson (at page 83):

> *'It must be remembered that the function of a pleading is not simply for the benefit of the parties, but also and perhaps primarily for the assistance of the court by defining with precision the area beyond which, without the leave of the court and consequential amendment of the pleadings, the conflict must not be allowed to extend.'*

23. For completeness, I have set out below the provisions of Order 18, rules 7 and 12 of the RSC, which deal with the matters to be pleaded (facts, not evidence), as well as the particulars to be pleaded:

> ***18/7 Facts, not evidence, to be pleaded***
>
> *7 (1) Subject to the provisions of this rule, and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.*
>
> *(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.*
>
> *(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.*
>
> *(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.*
>
> ***18/12 Particulars of pleading***
>
> *12 (1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—*
>
> *(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and*
>
> *(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.*
>
> *(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed three folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.*

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party—

(a) where he alleges knowledge, particulars of the facts on which he relies, and

(b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

THE DEFENDANT'S POSITION

24. It is the Defendant's case that the Plaintiff is in breach of the Order to Compel. The Defendant argues that as a result of the Plaintiff's breach of the Order to Compel, the Defendant is unable to properly answer the allegations made against them in the Statement of Claim and is unable to properly defend the action.

25. The Defendant went to great lengths to assert that the responses received from the Plaintiff to its requests for further and better particulars were not sufficient. The Defendant provided at the hearing an in-depth analysis of the requests and the responses that were received.

26. Whilst the Defendant accepts that the Plaintiff's alleged failure to comply with the Order to Compel does not *automatically* cause this action to be dismissed, the Defendant asserts that the Court must come to grips with the fact that the Plaintiff (as shown by his inability to provide sufficient responses to the Defendant's Requests) is unable to plead a coherent cause of action. The Defendant argues that the Defendant has just as much a right to a fair trial as the Plaintiff, and if the Defendant has no chance of properly defending the allegation (i.e. answering the claim with cogent evidence) then the action should be struck out.

27. The Defendant offered the following in its written submissions as a starting point for the Court to consider whether a party, and in this case the Plaintiff, has sufficiently pleaded its case:

> "*In the ordinary course a defendant can identify the cause of action and plead to it. If the claim is in tort, the alleged duty, the breach of that duty and the loss resulting from that breach would be pleaded.* ***In the case of an alleged breach of contract, the contract will be identified, such as by pleading that 'by an agreement in writing dated …', and then the relevant provision of that contract will be alleged****, such as by pleading that 'by clause 4 of the said agreement the Plaintiff agreed to purchase from the Defendant and the Defendant agreed to sell to the Plaintiff the said property …' and then the alleged breach would be pleaded, but none of that exists here.*" [Emphasis added]

28. As to the purpose of pleaded particulars in accordance with the law (as set out in The White Book), the Defendant singled out the following as being relevant to the case at hand, and argues that the Plaintiff's pleadings are not sufficient to:

    (1) enable the other side (the Defendant) to know with what evidence they ought to be prepared and to prepare for trial;
    (2) limit and define the issues to be tried, and as to which discovery is required; and
    (3) tie the hands of the party (the Plaintiff) so that he cannot without leave go into any matters not included.

29. To illustrate the Plaintiff's alleged failure to proper plead his case, the Defendant notes that the Plaintiff in its Statement of Claim asserts that the Defendant '*has policy of zero tolerance of fighting in the workplace*', but the Plaintiff appears to resile from this allegation in his replies to the requests for further and better particulars. The Defendant then notes that the terms of the purported '*policy of zero tolerance of fighting in the workplace*' are not alleged (pleaded), and referred the Court to the Plaintiff's response to the Defendant's express request to set out the material terms of the policy. The Plaintiff's reply to their request was simply, '*The Plaintiff understands that the Defendant has a policy that states a zero tolerance for fighting*'.

30. The Defendant argues that this is no small issue, and also highlights that the Plaintiff alleges that he '*is aware Mr. Bean has maintained his employment with the Defendant notwithstanding his involvement in the fight at the workplace*' and that he '*reasonably believes that both he and Mr. Bean should have been dismissed*'. The Defendant argues

that there is no basis for the Plaintiff's alleged belief that both he and Mr Bean should have been dismissed as pleaded, and as a result no defence to it can be made.

31. The Defendant also argues that the Plaintiff's allegation concerning a purported policy as to fighting in the workplace, and the Plaintiff's position (brought out in his replies to the Defendant's Requests) that the policy provides that both the aggressor and victim of the fight must be dismissed, suggests that the Plaintiff has more knowledge of the purported policy than he has admitted. Therefore, if the Plaintiff wants to assert that the Defendant's purported policy on fighting in the workplace provides that both the aggressor and the victim of the fight must be dismissed, the Plaintiff must say so in his Statement of Claim, but the Plaintiff has not done so. In the absence of this amendment to the Statement of Claim, the Defendant invites the Court to strike out paragraphs 11 through 16 of the Statement of Claim, if the action is not dismissed entirely.

32. The Defendant refers to the following commentary of Scott L.J. in support of its arguments to strike out the Plaintiff's action in its entirety, which appears in ***Pinson*** at page 75:

> "*The proper function of particulars is not to state the material facts omitted from the statement of claim in order, by filling the gaps, to make good an inherently bad pleading, however common that pernicious practice may have become. On this topic I made some observations in Bruce v. Odhams Press, Ld. [1936] 1 K.B. 697, 712, and will not repeat them beyond saying that I still hold the opinion that it is not the function of particulars to take the place of necessary averments in the pleading. Their function is to put the opposite party on his guard and prevent him being taken by surprise at the trial of an action, the "material facts" of which should have been already averred. Nor have mere statements of evidence as such a place in particulars, any more than in the pleading, although the dividing line between statements which contain sufficient indication to prepare the opponent's mind for what he will have to meet at the trial and mere statements of evidence is sometimes hard to draw and should not invite meticulous criticism. The essential rules of modern pleading embody a common-sense view of litigation, and, if complied with substantially and in accordance with their real intention, are well calculated to keep the cost of litigation down. … Insufficient instructions are no excuse for bad pleading. If a plaintiff does not, after advice, know whether he has got a cause of action or not and his pleader cannot discern one, the pleader is not for that reason entitled to plead badly, however much sympathy he may deserve for being called on to make bricks without straw.*" [Emphasis added]

33. It is the Defendant's case that the Plaintiff has had multiple attempts to cure his '*seriously defective Statement of Claim*', and that the only conclusion that can be properly reached by his failure to make good his pleading is that he is unable to do so.

34. The Defendant invites the Court to consider the following in determining this application to strike-out the Plaintiff's claim: (i) the Statement of Claim discloses no identifiable cause of action against the Defendant; (ii) the allegations (as they stand) may prejudice, embarrass or delay the fair trial of the action; (iii) the allegations set out in the Statement of Claim do not comply with the provisions of Order 18, rules 7 and 12 of the RSC; and (iv) the allegations are otherwise an abuse of process of the Court.

THE PLAINTIFF'S POSITION

35. The Plaintiff opposes the application, and as stated in the introduction to this Ruling, invites the Court to dismiss the appliction with costs awarded to the Plaintiff.

36. As to the Defendant's submissions regarding the Plaintiff's responses to the Defendant's Requests, the Plaintiff refutes any suggestion that responses have not been provided. The Plaintiff avers that while the Defendant might not *like* the responses that have been provided, the Defendant has received responses nonetheless, and where the Plaintiff has not been able to provide certain information (such as specific dates and times of the alleged bullying and harrassment), the Plaintiff has indicated that he cannot recall the specifics.

37. Similarly, the Plaintiff refutes any suggestion that the Plaintiff's responses to the Defendant's Requests are not sufficient, and avers that if there responses are not sufficient at this stage of the proceedings there are provisions in place to allow the Plaintiff to provide clarity and '*sure up*' his case through witness statements and discovery. The Plaintiff did not refer the Court to these provisions, but argues that the Defendant's records as to what incidents were reported to the Defendant can be a subject of cross-examination at trial.

38. According to the Plaintiff, the Defendant has in its control all the necessary information to respond to the allegations as pleaded. The Plaintiff argues that the Defendant, in receiving the Plaintiff's complaints regarding the allegations of bullying and harrassment, would have notes and official reports of the pleaded incidents. It is therefore unreasonable to expect the Plaintiff to recall every incident complained off, particularly in the level of detail (specific dates and times) requested by the Defendant.

39. It is the Plaintiff's case that the proper course, should the Court accept the Defendant's submission that the Statement of Claim is not sufficiently pleaded, is for opposing Counsel

to suggest ways to amend the Writ so that the claim is more effectively pleaded. The Plaintiff argues that striking out the claim in its entirety due to any perceived defects in the Statement of Claim should be the last option.

APPLYING THE FACTS TO THE LAW

40. The Court has been asked to resolve the following questions:

    (1) Is the Plaintiff in breach of the Order to Compel?
    (2) Does the Statement of Claim disclose an identifiable cause of action against the Defendant that is capable of being answered?
    (3) If the Statement of Claim discloses no identifiable cause of action, should the action be dismissed?

    I will consider each question in turn.

    Is the Defendant in breach of the Order to Compel?

41. The terms of the Order to Compel (in respect of the provision of a reply to the Defendant's Requests) is set out in paragraph 13 of this Ruling. The Defendant took little issue with the Amended Reply having been filed late, and argued that the Plaintiff was in breach of the Order by virtue of his failure to provide in his Amended Reply *proper* responses to the Defendant's Requests.

42. Throughout the course of his submissions, the Defendant's Counsel referred to a number of insufficiences in the Plaintiff's responses to the Defendant's Requests. The purpose of doing so was to show to the Court the Plaintiff's inabilty to plead a coherent cause of action.

43. I agree that the Plaintiff's responses to the Defendant's Requests were lacking in some respects. For instance, the Plaintiff has failed to set out any dates whatsover (or even an approximate time period) on which the alleged incidents of bullying and harrassment occired. That said, I do not accept that the Plaintiff is in breach of the Order to Compel as so robustly argued by the Defendant. In some instances, that Plaintiff did provide the further particulars that were sought, and in fact, went as far as setting out material facts that should have been in pleaded in the Writ.

44. Consequently, I do not agree that the Defendant has made out its case that the *only* conclusion that can be properly reached from any insufficiencies in the Plaintiff's responses is that the Plaintiff is unable to plead a coherent cause of action.

45. I would add, for completeness, that I also agree with the Defendant's Counsel that any failure by the Plaintiff to comply with the Order to Compel does not automatically cause the action to be dismissed. Therefore, I am of the view that had I accepted that the Plaintiff was in breach of the Order to Compel, that would not have been the end of the matter in any event.

Does the Writ disclose an identifiable cause of action against the Defendant?

46. It is evident from the authorities submitted by the Defendant that the Court can strike out an inherently bad pleading. The Defendant has clearly set out the requirements of a pleading by making reference to Order 18, rule 7 and 12 of the RSC, Bullen and Leake, The White Book and Pinson.

47. Having reviewed the Writ, having in mind the requirements set out in the aforementioned authorities, I regrettably agree that the Statement of Claim does not sufficiently set out the particulars of the Plaintiff's claim.

48. Not only did the Defendant argue that the Writ does not disclose an identifiable cause of action, the Defendant also argued that the Plaintiff, in his replies to the Defendant's Requests, brought out material facts that should have been pleaded in the Writ. I agree and accept this assertion. In my view, this was made out not only in the analysis of the Plaintiff's replies, but also at the hearing of this application. Counsel for the Plaintiff stated in his submissions that he has now had sight of documents that show complaints were to in respect of the Plaintiff's allegations of bullying and harassment, and an investigation into those complaints was commenced.

49. As highlighted by the Defendant's Counsel, the proper function of further and better particulars is not to state material facts omitted from the statement of claim in order to cure a "*bad pleading*". Material facts must be pleaded in the Statement of Claim, which is clearly, on the admission of the Plaintiff's Counsel, the case here.

Should this action be dismissed?

50. As to whether or not this action should be dismissed as a result of my finding above, I agree with Plaintiff's Counsel that striking out the entirety of a claim due to deficiencies in the Writ should be the last option, particulary where those deficiencies can be cured by an amendment. As set out in Order 18, rule 19 (1) of the RSC, the Court has the power to order at any stage of the proceedings that any pleading be struck out, or amended:

> ***18/19 Striking out pleading and indorsements***
> *19 (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indoresement, on the ground that –*
>
> *(a) it discloses no reasonable cause of action or defence, as the case my be*... [Emphasis added]

51. It is noted, that while the Plaintiff has not filed an amended writ, nor has the Plaintiff sought leave to amend the Writ, the Plaintiff under cover of a letter dated 26 September 2023 provided to the Defendant a *proposed* amended writ. The proposed amended writ set out changes to the Statement of Claim[1]. It is clear from this, and also from the Plaintiff's submissions at the hearing of this application, that the Plaintiff is willing to make any necessary amendments to the Writ.

52. In light of the above, I am not of the view that the action should be dismissed, nor am I of view that paragraphs 11 – 16 of the Statement of Claim should be struck out in line with the Defendant's arguments in the alternative. Rather, I would allow the Plaintiff leave to amend the Writ.

53. For the avoidance of any doubt, I do not accept the Plaintiff's assertion that it is the responsibility of opposing Counsel (or the Court) to suggest the amendments to be made to the Writ. However, I would note that the Defendant's Counsel (in the context of his submissions) provided a helpful indication of how the Plaintiff's pleadings should be set out.

54. Similarly, I do not accept the Plaintiff's argument that he can '*sure up*' his case through witness statements and discovery. As stated, the authorities are clear on the requirements

[1] A copy of the proposed amended writ is appended to the First Affidavit of Paul Andrew Harshaw filed on 20 November 2023

and purpose of pleadings. Pleadings are intended *inter alia* to (i) enable the other side (the Defendant) to know with what evidence they ought to be prepared and to prepare for trial; (ii) limit and define the issues to be tried, and as to which discovery is required; and (iii) tie the hands of the party (the Plaintiff) so that he cannot without leave go into any matters not included. The law does not support the position that the Plaintiff need not properly plead his case from the outset.

CONCLUSION

55. For the reasons set out above, I dismiss the Defendant's application to strike out the Plaintiff's claim in its entirety. Additionally, I dismiss the Defendant's alternative position, which sought to strike out paragraphs 11 – 16 of the Plaintiff's Statement of Claim. Instead, I order the Plaintiff to file an Amended Writ within 21 days of this Ruling.

56. As to the costs of this application, I am minded to order that costs be in the cause, however as anticipated at the hearing of this application, should either party wish to be heard on the issue of costs that party should make an application. Given the upcoming holiday season, such application should be made within 21 days of this Ruling.

Dated this **20th** day of **December 2024**

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HON. MRS. CRATONIA THOMPSON
ACTING PUISNE JUDGE