

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Royal Caribbean Cruises -v- Medical Associates Limited & Others
SLUHCVAP2014/0024

INTERLOCUTORY APPEAL - CIVIL APPEAL - MEDICAL NEGLIGENCE - STRIKING OUT PURSUANT TO CIVIL PROCEDURE RULES ("CPR") 26.3(1)(B) - SUMMARY JUDGMENT PURSUANT TO CPR PART 15 - CONTRACT - AGENCY - TORT - DUTY OF CARE OWED TO MEDICAL PATIENT - WHETHER CLAIM BROUGHT BY RESPONDENT WAS STATUTE BARRED - INTERPRETATION OF ARTICLES 2121(7) AND 2122 OF CIVIL CODE - INDEMNITY - CONTRIBUTION - WHETHER RCC WAS JOINT TORTFEASOR FOR PURPOSE OF CLAIMING CONTRIBUTION PURSUANT TO ARTICLE 989C(1)(C) OF CIVIL CODE - LEGAL TEST FOR STRIKING OUT STATEMENT OF CASE OR PART OF IT - LEGAL TEST FOR SUMMARY JUDGMENT - WHETHER LEGAL TESTS FOR STRIKING OUT AND SUMMARY JUDGMENT DISTINCT AND SEPARATE

This is an Appeal concerning an unfortunate series of events relating to the medical treatment of an individual at a local hospital in St Lucia. An application to strike out and/ or dismiss a statement of claim which sought relief under four separate heads - contract; tort; claims under US law and the Civil code; and a contribution at common law - was brought before the Judge who found that the Claim did not disclose any cause of action in tort. The Judge subsequently struck out the claim for relief sought under that head.

The Appeal concerned whether the Judge had erred as to the proper test to be applied and/ or the application of such test in relation to the striking out of a case at a preliminary stage.

The Chief Justice, Dame Jane Pereira, set aside the decision of the Judge striking out the claim in tort and held that the legal

tests for entering Summary Judgment pursuant to CPR 15.2 and striking out a party's statement of case pursuant to CPR 26.3(1)(b) are not the same and should not be confused with each other. The summary judgment and strike out procedures are distinct - they have different procedural requirements, are used in different circumstances and have different legal consequences. In particular, the two cannot operate simultaneously. In disposing of a claim using the Part 15 summary judgment procedure, the legal issues in the case are considered by the court and then it is determined, on a balance of probabilities and in light of the affidavit evidence adduced by the parties, whether one party or the other has no real prospect of succeeding on the claim. A judgment entered on a summary judgment application is a judgment on the merits which operates as issue estoppel. No further litigation on the same issue(s) will be entertained by the Court. On the other hand, an application

for a party's statement of case to be struck out pursuant to CPR 26.3(1)(b) is decided by the Court solely on the parties' pleaded cases before it. All facts pleaded in the statement of case are assumed to be true for this purpose and no additional evidence is adduced. If the Court finds that the pleadings are untenable as a matter of law and disclose no reasonable ground for bringing or defending the claim, then the statement of case may be struck out. Striking out, however, does not produce a judgment on the merits and a party whose claim is struck out is not precluded from remedying its faults and bringing further legal proceedings in relation to the same dispute.

The Chief Justice held further that a party's statement of case should not be struck out where the argument between the parties involves a substantial point of law, which did not admit of a plain and obvious answer, or the law is in a state of development, or where the strength of the case may not be clear because it has not been fully investigated. The jurisdiction to strike out should be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial and its ability to strengthen its case through the process of disclosure and other court procedures such as requests for information. It should also be taken into account that the examination and cross-examination of witnesses often change the complexion of a case.

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