

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION

CLAIM NO. 2009 HCV 06023

BETWEEN ANWAR WRIGHT CLAIMANT
AND THE ATTORNEY GENERAL OF JAMAICA DEFENDANT

IN CHAMBERS

Marvalyn Taylor-Wright for the claimant

Tasha Manley for the defendant

APPLICATION TO STRIKE OUT DEFENCE - ABSENCE OF CERTIFICATE OF
TRUTH - RULE 3.12 OF THE CIVIL PROCEDURE RULES

November 12 and 26, 2010

SYKES J.

1. To say that the point raised is a highly technical one would be an understatement. The submission of the claimant is that the certificate of truth required by rule 3.12 (1) of the Civil Procedure Rules ('CPR') is not on the defence filed by the defendant and as such the defendant's statement of case is defective. Mrs. Taylor-Wright's submission is that the statement of case should be struck out. Miss Manley contends that the remedy sought by the claimant, assuming that the correctness of the claimant's position, is too draconian and would be disproportionate to the breach.

The disputed certificate

2. The original defence filed by the Attorney General had these words:

I [name of counsel] instructed by the Director of State Proceedings, certify that the defendant, the Attorney General for Jamaica is sued in a representative capacity under and by virtue of the Crown Proceedings Act and that the instructions of this defence were given by the servants and/or agents of the defendant and in the circumstances the defendant cannot give the certificate because she has no personal knowledge of the allegations made in the claim form.

3. This certification prompted Mrs. Taylor-Wright to file a notice of application for court orders striking out the defence for non-compliance with rule 3.12. Mrs. Taylor-Wright's application precipitated an amended defence from the defendant. The amended defence had the identical certificate as the original defence but with this line added:

I certify that the facts set out in this defence are true to the best of my knowledge information and belief.

4. Mrs. Taylor-Wright attacked this new certificate with equal vigour. She submitted that this does not cure the defect of the previous defence.
5. The starting point has to be what the Civil Procedure Rules ('CPR') have to say about the certificate of truth. Rule 3.12 mandates that any statement of case must have a statement of truth. The rule contemplates that the presence or absence of a statement of truth is no light matter. The CPR expressly states that a judge is permitted to strike out a statement of case if the certificate of truth is missing. The rule does not say that this is the only remedy. Since striking out is one of the most serious sanctions that can be imposed and given that the rule does not say that it is the only sanction

permissible, it means that the court has, open to it, a range of sanctions, ranging from striking out the statement of case to ordering the defendant to refile the statement of case bearing the correct certification. All this raises this question: why does the CPR attach so much importance to this statement of truth when it is well known that, ultimately, it is for the court to determine whether any allegation is true? What is the value of the certificate of truth?

6. Patten J. of the High Court of England and Wales in the case of ***Clarke v Marlborough Fine Art (London) Ltd*** [2002] 1 W.L.R. 1731 provides the rationale with which I agree without reservation. At page 1742, his Lordship held that:

The purpose of the requirement that a party should verify the factual contents of his own pleadings was to eliminate as far as possible claims in which the party had no honest belief. The consequence of making a false statement in a document verified by a statement of truth are serious ... It is therefore important at the outset to identify what Part 22 does and does not require. In relation to a pleading the claimant or other relevant party who puts the document forward as a statement of his case is required to certify that he believes the facts alleged are true. He is not required to vouch for the legal consequences which he seeks to attach to these facts. That is a matter for argument and ultimately for the decision of the court. The purpose ... is simply to exclude factual allegations which to the knowledge of the claimant or other party are untrue or which the party putting forward the pleading to the court is unable to say are true. In the most simple case the requirements ... will, if observed, exclude untruthful or fanciful claims but the notes to Part 22 also indicate that the purpose of the new rule was to discourage the pleading of cases which when settled were unsupported by evidence and which were put forward in the hope that something might turn

up on disclosure or at trial.

7. This reasoning of Patten J. was endorsed by Carnwarth L.J. in ***Brinks v Securicor Omega Express Ltd*** [2003] 1 W.L.R. 2557, 2566:

I agree that one purpose of CPR Pt 22 is to deter or discourage claimants from advancing a case which is inherently untrue or wholly speculative.

8. The editors of ***The Caribbean Civil Court Practice*** (2008) (p.73) state:

The purpose of the certificate/statement of truth is to eliminate claims in which a party had no honest belief and to discourage the pleading of cases unsupported by evidence which were put forward in the hope that something might turn up

9. With the purpose of the statement of truth being established the court is now in a position to address Miss Manley's concern. Miss Manley was of the view that the certificate of truth as amended was sufficient because it indicated that counsel and not the learned Attorney General herself had an honest belief in the instructions. She also submitted that the learned Attorney General is sued by virtue of the Crown Proceedings Act - a representative capacity only - and thus cannot accept responsibility for the veracity of any instruction put forward because the instructions come from the allegedly tortious Crown servant. In this context, according to Miss Manley, the certificate of truth cannot have the Attorney General accepting responsibility for any allegation put forward because she does not have personal knowledge of the matter.
10. The court is of the view, that once the purpose of the certificate of truth is understood then Miss Manley's anxieties can be allayed. As Patten J. stated the purpose of the statement is to prevent any litigant advancing a case in which he or she knows to be false or does not believe to be true. The

certificate of truth is therefore directed to focusing the litigant's mind on whether he or she honestly believes in the assertions put forward. The litigant is not required to believe that his or her case is unassailable. What the certificate is asking is that parties present their case on a good-faith basis. The litigant is simply saying that to the best of his or her knowledge what is set out the statement of case is true. Whether the case is ultimately found to be true is not for the litigant but for the court. No more could be expected of the litigant because the Jamaican system of trial is an adversarial one in which it is expected that truth will emerge from the 'clash' of arms and evidence. The Attorney General is not being asked to vouch for the absolute veracity of the instructions received that are placed in the statement of case. What she is being asked to do is to say, by way of the certificate of truth, that she is not advancing a case she knows to be false or does not believe to be true or does not have an honest good faith basis for putting forward. It is well known that the Attorney General is not being sued in her personal capacity in cases like the present one and so no court could conceivably require that she has personal knowledge of every case in which she is a party by virtue of the Crown Proceedings Act.

11. If Miss Manley's position is correct, then the attorney who gave the certificate, in this case, is in the same position as the Attorney General, namely, that the attorney would not know whether the instructions given by the Crown servant are true. Taken to its ultimate conclusion, no attorney could ever give his own certificate of truth on behalf of a client because he or she would never know whether that is alleged is true.
12. From what has been said, the court is of the view that the form of the certificate of truth on the defence should be amended. The Attorney General is neither omnipresent nor omniscient. However, that does not prevent her from indicating that she has a good faith basis for putting forward a defence or claim. The court is not saying that the Attorney General must sign the statement of case herself in every case because that would be unworkable administratively.

13. Lest this judgment be stretched beyond its proper limits, the court wishes to say that there may well be cases where a certificate of truth may be omitted but that has not been argued.

Disposition

14. The court agrees with Mrs. Taylor-Wright that the present certificate is in not in compliance with the rule. However, a striking out would be disproportionate. All that is necessary is an appropriately worded statement of truth.

Order

15. Amended defence to be filed in accordance with the rules within seven days of this order failing which the defence is struck out and judgment to be entered for the claimant without further order. Half costs to the claimant. Costs to be agreed or taxed.