[2019] JMSC Civ. 25

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015 HCV 02544

BETWEEN	**MEDINE FORREST**	**CLAIMANT**
AND	**KEVIN ANTHONY WALKER**	**1st DEFENDANT**
AND	**JHANELLE SABRINA PITT**	**2nd DEFENDANT**

IN CHAMBERS

Ms. Roxanne Bailey instructed by Georgia Hamilton & Co for the Claimant

Mr. Ramon Clayton instructed by Samuda & Johnson for the Defendants

Heard: 19th February, 2018 & 5th March, 2019

Civil Practice and Procedure– Notice of Application for Summary Judgment - Rule 15.2 (b) of the Civil Procedure Rules - Whether the Defence has a realistic prospect of success - Whether the Defence contains bare denial and in breach of Rule 10. 5 of the Civil Procedure Rules.

Cor: Rattray, J.

[1] This action, brought by way of Claim Form and Particulars of Claim filed on the 12th May, 2015 is grounded in negligence, arising from a motor vehicle accident on the 2nd June, 2010. The Claimant Medine Forrest, alleges that she sustained personal injuries as a result of the collision between motor vehicle registered PE4209 owned by the Defendants, which collided into the rear of the stationary motor vehicle registered

PC9635, in which she was a passenger. The Claimant in her Particulars of Claim pleaded, in so far as is relevant that: -

> *1. The Claimant was at all material times a passenger in motor vehicle registered PC9635.*
>
> *2. The 1st and 2nd Defendants were at all material times the owners of motor vehicle registered PE4209 ("the Defendants said motor vehicle"). The 1st Defendant was operating the said motor vehicle in his own right as well as in his capacity as the servant and /or agent of the 2nd Defendant.*
>
> *3. The 1st Defendant was the driver of motor vehicle registered PE4209.*
>
> *4. On or about 2 June, 2010, the Claimant was a passenger in motor vehicle registered PC9635, which had stopped behind another motorist along the Exchange Main Road in the parish of St. Ann, when the 1st Defendant so negligently drove, managed and/or controlled his said motor vehicle that he collided into the rear of motor vehicle registered PC9635, which was stationary, causing the Claimant to sustain serious personal injuries and suffer loss and damage and incur expense.*
>
> ***Particulars of the 1st Defendant's Negligence***
>
> *a. Colliding into the rear of the motor vehicle registered PC9635;*
>
> *b. Colliding into the said motor vehicle, while it was stationary;*
>
> *c. Failing to maintain a proper braking speed distance;*
>
> *d. Failing to keep any or any proper look-out or to have any or any sufficient regard for the Claimant's safety;*
>
> *e. Failing to see the said motor vehicle in time or at all so as to avoid the collision;*
>
> *f. Failing to stop, slow down, to swerve or in any other way so to manage or control his said motor vehicle so as to avoid the collision; and*
>
> *g. Driving too fast in the circumstances.*
>
> *5. By reason of the matters aforesaid the Claimant, who was born on 12 December 1977, experienced and continues to experience pain and suffering, has suffered and continues to suffer loss and damage and incur expense.*
>
> ***Particulars of Pain & Suffering and Loss of Amenities***
>
> *a. Tenderness to neck;*
>
> *b. Whiplash injury;*
>
> *c. Bilateral weakness to hands;*

d. Neck pain radiating to hands with associated weakness and numbness;

e. Reversal of the cervical lordosis;

f. Large disc extrusion at C3/C4, which displaces and compresses the spinal cord within the spinal canal;

g. Mild to moderate central canal stenosis;

h. Left C5/C6 nerve root compression;

i. Decreased bulk left shoulder;

j. Power 4+/5 bilat upper limb;

k. Exaggerated reflex in left knee;

l. Decreased sensation C6 to T1 left and C6 to thoracic level on right; and

m. Cervical disc prolapse with cord compression."

[2] The Defence filed on behalf of the Defendants on the 28th September, 2015, admits ownership of the motor vehicle registered PE4209, as well as the date and place of the collision. It is further admitted that the 1st Defendant, Kevin Anthony Walker, was the driver of the said motor vehicle and was operating same, at the material time, in his own right, as well as in his capacity as the servant and/or agent of the 2nd Defendant, Jhanelle Sabrina Pitt.

[3] In their Defence, under the sub head *"**The following allegations are denied**"* it is pleaded that *"…the Defendants will challenge the Claimant's involvement in the accident and the alleged injuries, loss and damage she claims to have suffered."* The Defendants also denied that the Claimant's alleged injuries were caused by the accident and deny any negligence on the part of the 1st Defendant. Further, the Defendants pleaded that the collision was a minor impact and that both vehicles sustained minor damage and that no one was injured as a result of the accident.

[4] The contention raised by the Claimant is that the Defence filed on behalf of the Defendants, does not stand a realistic prospect of success. Consequently, her Attorneys-at-Law have filed the instant Notice of Application for Summary Judgment on Liability on the 7th June, 2017, seeking the reliefs as set out hereunder from this Court: -

a) That the following portions of the Defence dated 10th August, 2015 and filed herein on 28th September 2015 be struck out:

    1. The portion of the Defence at paragraph 3 which reads, “the Defendants will challenge the Claimant’s involvement in the accident”; and

    2. Paragraph 6 of the Defence which states that “The Defendants will say that no one was injured as a result of the accident;”

b) Summary Judgment against the Defendants on the issue of liability;

c) Damages against the Defendants to be assessed;

d) The matter be set down for assessment of damages;

e) Costs and Attorneys’ costs;

f) Such further and/or other relief as this Honourable Court deems fit.

[5] The grounds on which the aforesaid reliefs are being sought are set out hereunder: -

a) The Defence on the issue of liability comprises an unsubstantiated challenge and a bare denial even though the Defendants have been called on, for some time now, to substantiate this aspect of their Defence;

b) The Defendants have no real prospect of successfully defending this claim on the issue of liability, having regard to the portions of their Defence dealing with this aspect of the matter;

c) The granting of the Orders herein is in keeping with the overriding objective of the **Civil Procedure Rules (CPR)**.

[6] The Application was supported by the Affidavit of Medine Forrest in Support of Notice of Application for Court Orders filed on the 7th June, 2017. In her Affidavit the Claimant averred, *inter alia*, as follows: -

> *"5. On 2 June 2010, I was heading home from work when I boarded a taxi in Ocho Rios, St Ann. The taxi was a Toyota Caldina motorcar registered PC9635 ("the Caldina"). At the time, I was heading home to Mile End, Lodge in the parish. The Caldina was travelling in a line of traffic along Exchange Main Road in the parish of St. Ann with about three to four vehicles in front. The vehicle travelling immediately ahead of the Caldina came to a stop and the driver of the Caldina also stopped. Shortly after the Caldina came to a stop, I felt a bang to the back of the Caldina. I was sitting to the left in the back of the Caldina. I looked behind me and saw that it was a Toyota Corolla ("the Corolla") that had hit into the back of the Caldina. I immediately started feeling pains to my neck and as soon as I felt the pains, I complained to the driver of the Caldina. The driver of the Caldina then came out of the car as did the driver of the Corolla. Both drivers appeared to know each other, as they spoke with familiarity. During their exchange, I remember the driver of the Corolla telling the driver of the Caldina to meet him by the garage. The driver of the Corolla also asked if anyone got hurt and the driver of the Caldina told him that a lady was complaining about her neck. The driver of the Caldina came back into the car and I complained to him again about the neck pains I was feeling. While I was getting off at my stop, the driver of the Caldina suggested I go home, take a pain killer and relax.*
>
> *6. That I went home and took some pain killers but the pains only got worse, as both my head and neck were now hurting. I went to the St. Ann's Bay Hospital the following morning and as soon as I was seen, I was sent for x-rays. After I did the x-rays, the doctors admitted me to the hospital and I was kept until the following day. That a copy of my medical report from the St. Ann's Bay Hospital is exhibited at* ***page 1*** *of this Bundle.*
>
> *…*
>
> *8. That on the advice of my attorneys-at-law, I then paid for and obtained a police report speaking to the accident. That a copy of this report is exhibited at* ***pages 2 to 3*** *of the Bundle.*
>
> *…*
>
> *10. That on 12 May 2015, the claim herein was filed on my behalf. That the Defendants have since filed a defence saying they "will challenge the Claimant's involvement in the accident" and denying that I was injured in the accident by stating, "no one was injured as a result of the accident." That the Defendants have failed and/or refused to state on what grounds they are challenging my involvement in the said collision and/or the basis for saying no one was injured. That these appear to be the sole bases on which they have denied liability for the said collision and, by extension, the consequential damage and losses that I have suffered.*
>
> *11. That I have been reliably informed by my attorneys-at-law and do verily believe that the defence runs afoul of Part 10 of the Civil Procedure Rules and merely serves the unfortunate purpose of delaying the prosecution of my claim.*

…

13. That since the accident, I have been receiving medical care for my neck injuries, as my neck injuries have produced some grave effects. That apart from the St. Ann's Bay Hospital, I have received medical care at the Kingston Public Hospital as well as from Dr. Philip Waite, at his private practice. That I have received a medical report from Kingston Public Hospital, which is exhibited at ***page 7*** *of the Bundle. That my medical report from Dr. Philip Waite is outstanding."*

[7] In response, the Defendants relied on the Affidavit of Counsel Ms. Roydine K. Graham filed on the 31st August, 2017, in which she deponed: -

"1. I am an Attorney-at-Law at the law firm of Messrs Samuda & Johnson located at 15 Trinidad Terrace (Upstairs) New Kingston, in the parish of Kingston who are the Attorneys-at-Law for and on behalf of the 1st and 2nd Defendants herein and that I am duly authorized to swear to this Affidavit on behalf of both Defendants.

2. I swear to this Affidavit based on my personal knowledge of this file that is derived from my firm's conduct of the matter and I verily believe the contents stated herein to be true to the best of my knowledge, information and belief.

3. That said information that is not within my personal knowledge is true to the best of my knowledge, information and belief.

…

13. The Defendants herein object to the Claimant's Application for Summary Judgment as there are triable issues in law and fact as set out in its Defence filed September 28, 2015 which ought properly to be dealt with at trial.

14. It remains unclear whether the Claimant was a lawful passenger in the motor vehicle being driven by Old Man Stone Love and in fact whether she was a passenger in the motor vehicle.

15. It also remains unclear whether the Claimant received her injuries from the accident with the 1st Defendant herein and the motor vehicle being driven by Old Man Stone Love as the damage to his motor vehicle was a minor bump that was fixed for Three Thousand Jamaican Dollars by the said Defendant.

16. The issue of whether the Claimant received her injuries as a result of this motor vehicle accident is also a triable issue properly dealt with at the trial of this matter.

17. Further, this is a question of liability and to grant an order summarily will not inure to the benefit of justice in the circumstances.

18. The Defendants have a realistic prospect of successfully defending the claim herein and should be granted the opportunity at a trial of the issues of fact and law to challenge the validity of the claim."

[8] The Claimant also filed Written Submissions and Authorities in support of the Application on the 25th September, 2017 and the Defendants on the 19th September, 2017. These Written Submissions and Authorities as well as the respective Affidavits were all considered by the Court in coming to a resolution of this matter.

[9] Counsel Ms. Bailey on behalf of the Claimant contended that the Defendants' Defence filed on the 28th September, 2015, contained bare denials, in clear breach of Rule 10.5 of the **CPR**, which provides: -

> *"(1) The defence must set out all the facts on which the defendant relies to dispute the claim.*
>
> *(2) Such statement must be as short as practicable.*
>
> *(3) In the defence the defendant must say -*
>
> > *(a) which (if any) of the allegations in the claim form or particulars of claim are admitted;*
> >
> > *(b) which (if any) are denied; and*
> >
> > *(c) which (if any) are neither admitted nor denied, because the defendant does not know whether they are true, but which the defendant wishes the claimant to prove.*
>
> *(4) Where the defendant denies any of the allegations in the claim form or particulars of claim-*
>
> > *(a) the defendant **must** state the reasons for doing so; and*
> >
> > *(b) if the defendant intends to prove a different version of events from that given by the claimant,*
>
> *the defendant's own version must be set out in the defence.*
>
> *(5) Where, in relation to any allegation in the claim form or particulars of claim, the defendant does not -*
>
> > *(a) admit it; or*
> >
> > *(b) deny it and put forward a different version of events,*
>
> *the defendant must state the reasons for resisting the allegation.*
>
> *(6) The defendant must identify in or annex to the defence any document which the defendant considers to be necessary to the defence.*
>
> *(7) A defendant who defends in a representative capacity, must say-*

> *(a) what that capacity is; and*
>
> *(b) whom the defendant represents.*
>
> *(8) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with rule 3.12."*
>
> [Emphasis supplied]

[10] Additionally, Counsel contended that the Defence is in breach of Rule 26.3 (1) (a) and (d) of the **CPR** and in the circumstances, those portions of the Defence ought to be struck out. Rule 26.3 (1) of the **CPR** confers the discretionary power on the Court to strike out the whole or part of a party's Statement of Case. That Rule in so far as is relevant reads as follows: -

> *"(1) In addition to any other powers under these Rules, 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 or practice direction or with an order or direction given by the court in the proceedings;*
>
> *(b) ...;*
>
> *(c)…;*
>
> *(d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10."*

[11] In concluding her submissions Counsel insisted that were those provisions of the Defence to be struck out, there would be no Defence on the issue of liability. In light of that, she argued that the Defence would not have a realistic chance of success and in the circumstances, there ought to be judgment in favour of her client. She also indicated that the remaining issue of whether or not the Claimant was injured, as alleged, or at all, is one that is fit for an Assessment of Damages and not a full blown trial.

[12] Counsel Mr. Clayton on behalf of the Defendants strenuously opposed the submissions raised by Counsel for the Claimant. He submitted that Counsel has in fact admitted that liability remains a live issue, which was evidenced by the irregular request to strike out portions of the Defendants' Defence, in particular at paragraph 3, which he argued, challenges the Claimant's involvement in the accident. Further, Counsel Mr. Clayton insisted that there are several issues for the Court's consideration that should

be examined at a trial, the most prominent of which are the issues relating to his clients' liability for the Claimant's alleged injuries.

[13] In addition, he maintained that the Application was highly irregular as it appeared that Counsel for the Claimant has confused the principles pertaining to striking out pursuant to Rule 26.3 (1) (c) of the **CPR** with the principles with respect to Summary Judgment under Rule 15.2 of the **CPR**. Additionally, he submitted that to strike out portions of his clients' Defence would amount to the Court exercising a mini-trial, which would not accord with the principles of fairness and justice.

[14] In assessing the respective positions put forward by the parties in this matter, it is of importance to consider the obligations of the litigants, who approach the Court to have their respective contentions considered and resolved. The starting point is and must be, an examination of the pleadings filed on behalf of the respective parties.

[15] In the revered textbook, **Bullen and Leake and Jacob's Precedents of Pleadings**, 12th edn, the learned authors, over four (4) decades ago, indicated at page 3 that: -

> *"The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them. It thus serves the two-fold purpose of informing each party what is the case of the opposite party which he will have to meet before and at the trial, and at the same time informing the court what are the issues between the parties which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial."*

[16] In fast forwarding to the present time, the obligations of litigants who approach the Court to address and deal with their respective contentions have not essentially changed. They have instead been streamlined and encapsulated in the **CPR**. Rule 8.9 of the **CPR** addresses the duty of Claimants to set out their case, by including in their Claim Form or Particulars of Claim, a statement of all the facts on which they rely. In the case of **McPhilemy v Times Newspapers Ltd and others** [1999] 3 All ER 775, Lord Woolf MR expressed at page 793 that: -

> *"The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous.* ***Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader****."*
>
> [Emphasis supplied]

[17] The above mentioned dicta of Lord Woolf MR was cited with approval by Morrison JA (as he then was) in the case of **Gasoline Retailers of Jamaica Limited v Jamaica Gasoline Retailers Association** [2015] JMCA Civ. 23. At paragraph 48, his Lordship went on to state that: -

> *"…pleadings …remain important to make clear the general nature of the case which the other side should expect to meet…"*

[18] A similar obligation is imposed on persons or entities sued, pursuant to Rule 10.5 of the **CPR**, cited earlier in this judgment, which mandates Defendants to set out all the facts on which they rely to dispute the claim. Additionally, and of particular importance in this matter, where the Defendants deny any of the allegations in the Claim Form or Particulars of Claim, they must, in accordance with Rule 10.5 (4) (a) of the **CPR**, state the reasons for doing so. The word used in the said Rule is '**must**', emphasizing the mandatory element of the provision. If the Defendants intend to prove a different version of events from that given by the Claimant, they are obliged by the Rules to set out their own version of what occurred, in their Defence.

[19] The pleadings of the Defendants indicate that no one was injured in the accident. However, they have neither denied that the Claimant was present in the other motor vehicle at the material time, nor that if present, she was not injured in the collision. Instead, they have relied on an omnibus clause indicating that no one was injured in the said accident, without admitting the Claimant's presence. As a consequence, the Defendants have failed to put their case squarely before the Court, in order to alert the Claimant of the case, in respect of which she is called upon, if necessary, to respond.

What the Defendants have outlined in their Defence, in my view is simply an exercise in obfuscation. It is this state of affairs which has prompted the Claimant's Attorneys-at-Law to apply for the respective portions of the Defence to be struck out and for Summary Judgment to be entered in favour of the Claimant.

[20] It is a well-known and basic principle that the Court is empowered with wide discretionary powers pursuant to Rule 26.3 of the **CPR** to strike out the whole or a part of a party's Statement of Case. That rule, under the sub-head ***"Sanctions - striking out statement of case"***, clearly states that: -

> *"In addition to any other powers under these Rules, 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 or practice direction or with an order or direction given by the court in the proceedings*
> >
> > *(b) …*
> >
> > *(c) …*
> >
> > *(d) that the statement of case or the part to be struck out is prolix or does not comply with the requirement of Parts 8 or 10."*

[21] The power to strike out should only be utilised in plain and obvious cases and only as a matter of last resort. In the case of **Branch Developments Limited (t/a Iberostar Rose Hall Beach Hotel v The Bank of Nova Scotia Jamaica Limited** [2014] JMSC Civ. 003, McDonald-Bishop J (as she then was) emphasised that: -

> *"[29] Striking out of a party's case is the most severe sanction that may be imposed … under the court's coercive powers. It is draconian and so the power to do so must not be hurriedly exercised as it has the effect of depriving a person access to the courts which could result in a denial of justice."*

[22] The Claimant's argument is that the Defendants' Defence is in breach of Rule 10.5 of the **CPR,** in that it contains bare denial and as a result, the Court ought to strike out the respective portions of paragraph 3 of the Defence as well as paragraph 6, pursuant to Rule 26.3 (1) (a) and (d) of the **CPR**.

[23] The Defendants, although admitting that there was a collision between the two (2) motor vehicles at the date and place alleged by the Claimant, have not denied that the Claimant was a passenger in the other motor vehicle at the time of the accident or at all. They have denied that the Claimant's "alleged" injuries were caused by the accident or by any negligence on the part of the 1st Defendant. Further, they maintain that no one was injured as a result of the accident. However, they do go on to state that they *"will challenge the Claimant's involvement in the accident and the alleged injuries loss and damages she claimed to have suffered."*

[24] It is difficult to ascertain exactly what the Defendants are saying with reference to that *"challenge."* However, it is not for this Court, nor the Claimant for that matter, to have to attempt to read between the lines, in order to determine the Defendants' position as regards their Defence. It cannot be overstated that the Supreme Court is a Court of pleadings. It is for the parties, and in this case in particular, the Defendants, to set out **all** the facts on which they rely to dispute the claim (Rule 10.5(1)). Where there is a denial of allegations raised in the Claim Form or Particulars of Claim, *"the defendant must state the reasons for doing so;"* (Rule 10.5(4)).

[25] Rule 10.5 of the **CPR** indicates that bare denials do not constitute a good Defence. That particular Rule places an obligation on a Defendant to state all the facts on which he relies to dispute the claim, and in the circumstances a simple denial is not sufficient. Sykes J, (as he then was), in commenting on Rule 10.5 in the case of **Janet Edwards v Jamaica Beverages Limited**, Suit No. C.L 2002/E-037, a judgment delivered on the 23rd March, 2010, noted as follows: -

> *"32. Mrs. Sewell submitted that this method of pleading runs afoul of the CPR. I couldn't agree more. According to Part 10 of the CPR, it is no longer possible to have a series of bare denials. Rules 10.5 (1) says that the defendant must set out all facts on which it relies to dispute the claim. Rule 10.5 (3) says that the defendant **'must'** [that word again] say which (if any) of the allegations in the claim form or particulars are admitted; which (if any) are denied; and which (if any) are neither admitted nor denied, because the defendant does not know whether they are true, but which the defendant wishes the claimant to prove' (my emphasis)*
>
> *33. Rule 10.5 (4) specifically states that where the defendant denies any of the allegations in the claim form or particulars of claim the defendant **'must** state the*

reason for doing so; and if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence' (my emphasis).

*34. Rule 10.5 (5) specifically states that where a defendant does not admit an allegation or does not admit the allegation and does not put forward a different version of events, 'the defendant **must** state the reasons for resisting the allegation' (my emphasis). Neutrality is not a viable option under the CPR.*

…

*36. **It is obvious that the whole of rule 10.5 has relegated to the dust bin of legal history the phenomenon known as a bare denial that bedeviled civil litigation in times past**. Rule 10.5 is replete with the word **'must'**.*

*37. … **Simply to deny the particulars of claim is not a proper defence under the new rules***

…

48. The CPR represents an attempt to modernise civil litigation by emphasizing efficiency, proportionality and reduction of costs while maintaining principles of fairness. It does this by asking that the parties plead in a manner (Parts 8 and 10) which enables the court to carry out is (sic) duty to manage cases actively (rule 25.1) by identifying issues early (rule 25.1 (b)) and deciding which issues need a trial and which can be dealt with summarily (rule 25.1 (c)) or not dealt with at all (rule 26.1 (2) (k)). The vice of the bare denial defence is that no one knows which issues are joined; which issues can be resolved summarily; which issues need a trial and which issues do not need resolution. This is the era of cards-faced-up-and-on-the-table litigation so that all can see the cards…"

[Emphasis supplied]

[26] Similarly, the learned authors of the text, **Commonwealth Caribbean Civil Procedure**, 3rd edn, Gilbert Kodilinye and Vanessa Kodilinye, at page 22 posited that: -

*"**The requirement that a defendant must state reasons for his denial of the claimant's allegations and state any alternative version of the facts that he asserts was designed to do away with the practice of unparticularised 'bare denials', which are the hallmark of the so-called 'holding defences' much used under the RSC regime**. The 'holding defence' is a tactic whereby the defendant makes a number of bare denials in his pleading, in the hope that his opponent might decide to settle before he (the defendant) commits himself to a positive case. Such cynical, time-wasting tactics were anathema to the framers of the CPR and, if the provisions of Rule 10.5 are rigorously applied, this will certainly further the overriding objective of dealing with cases expeditiously and fairly, and the case management objective of identifying the issues at an early stage of the proceedings."*

[Emphasis supplied]

[27] I am satisfied, that the Defendants fall foul of the provisions of Rule 10.5 (5) of the **CPR** which states: -

> *"Where, in relation to any allegation in the claim form or particulars of claim, the defendant does not –*
>
> *(a) admit it; or*
>
> *(b) deny it and put forward a different version of events,*
>
> *the defendant must state the reasons for resisting the allegation."*

[28] The Defendants have failed to put their case in a fulsome manner before the Court, to ensure that as far as the awareness of their respective allegations is concerned, the parties are on an equal footing. If it is their case that the Claimant was not a passenger in the motor vehicle in which their driver admittedly collided, the Defendants ought to clearly and unequivocally say so in their Defence. The **CPR** require nothing less. I am therefore of the view, that the respective portions of the Defence complained of ought to be struck due to the Defendants' failure to state their reasons for resisting the Claimant's allegations, as required by Rule 10.5 of the **CPR**.

[29] The question now for the Court, once the respective portions of the Defence have been struck out, is whether Summary Judgment should be granted in favour of the Claimant. Part 15 of the **CPR** addresses the issue of Summary Judgment Applications. Of particular importance is Rule 15.2 (b) of the **CPR** which sets out the ground on which Summary Judgment may be granted against a Defendant, and provides: -

> *"The court may give summary judgment on the claim or on a particular issue if it considers that -*
>
> *(a) …*
>
> *(b) the defendant has no real prospect of successfully defending the claim or the issue."*

[30] In the case of **Marvalyn Taylor-Wright v Sagicor Bank Jamaica Limited (formerly known as RBC Royal Bank (Jamaica) Limited**, **formerly known as RBTT Bank Jamaica Limited)** [2016] JMCA Civ. 38, Phillips JA at paragraph 39 observed that: -

> *"The principles which ought to guide a court in determining whether there is a "real prospect of succeeding on the claim or issue" are those enunciated by Lord Woolf MR in* ***Swain v Hillman****."*

[31] In **Swain v Hillman and another** [2001] 1 All ER 91, Lord Woolf MR, in defining the terms 'no real prospect of succeeding on the claim', stated at page 92 that: -

> *"The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success… they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success."*

[32] The learned Master of the Rolls in commenting on the usefulness of Summary Judgment at page 94 noted that: -

> *"It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose, and I would add, generally, that it is in the interests of justice. If a claimant has a case which is bound to fail, then it is in the claimant's interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know that as soon as possible."*

[33] He went on to state at page 95 that: -

> *"…the proper disposal of an issue under Pt 24 does not involve the judge conducting a mini-trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily."*

[34] Phillips JA in the above mentioned case of **Marvalyn Taylor-Wright v Sagicor Bank Jamaica Limited**, expressed the opinion that: -

> *"[43] …it is evident that to succeed on an application for summary judgment, the prospects of success must be 'realistic' as opposed to 'fanciful' and in making an order on this assessment, regard must be had to the overriding objective, and the interests of justice.* ***However, if there are serious issues which require investigation, these ought to be determined in a trial and not on a summary judgment application****."*
>
> [Emphasis supplied]

[35] The said authors of the text **Commonwealth Caribbean Civil Procedure**, 3rd edn, in addressing the issue of Summary Judgment Applications have pointed out at page 64 that: -

> *"…the policy of the CPR is to knock out weak cases at an early stage of the proceedings, whether the weakness is on the defendant's or the claimant's side. It was felt by the framers of the CPR that it was not in the interests of litigants to pursue cases or to put up defences that were doomed to fail, and the result of which would be unnecessary costs burdens. As far as summary judgment against defendants is concerned, the test under the CPR is accordingly not whether there is an 'an arguable defence' or a 'triable issue' but whether the defence has a 'real prospect of succeeding', and it will be more difficult for a defendant to resist summary judgment under this test."*

[36] In **ASE Metals NV v Exclusive Holiday of Elegance Limited** [2013] JMCA Civ. 37, Brooks JA stated that: -

> *"[14] The overall burden of proving that it is entitled to summary judgment lies on the applicant for that grant (in this case ASE). The applicant must assert that he believes that that the respondent's case has no real prospect of success. In* ***ED & F Man Liquid Products Ltd v Patel and Another*** *[2003] EWCA Civ 472, Potter LJ, in addressing the relevant procedural rule, said at paragraph 9 of his judgment:*
>
> *"...the overall burden of proof rests upon the claimant to establish that there are grounds for his belief that the respondent has no real prospect of success..."*
>
> *[15] Once an applicant/claimant asserts that belief, on credible grounds, a defendant seeking to resist an application for summary judgment is required to show that he has a case "which is better than merely arguable" (see paragraph 8 of ED & F Man). The defendant must show that he has "a 'realistic' as opposed to a 'fanciful' prospect of success"."*

[37] Phillips JA in commenting on the approach to be taken on a Summary Judgment Application, in the case of **National Commercial Bank Jamaica Ltd and Anor v Toushane Green** [2014] JMCA Civ. 19, had this to say: -

> *"[28] …The court in assessing the parties' respective positions must do so on the basis of the affidavit evidence which must be filed if the parties intend to rely on it..."*

[38] In the present case, the Claimant's evidence is that she was involved in a motor vehicle accident that occurred on the 2nd June, 2010, in which she sustained personal injuries. She indicates that the accident involved motor vehicle registered PC9635, in which she was a passenger and another motor vehicle registered PE4209 owned by the Defendants. In order to substantiate her pursuit for Summary Judgment, the Claimant has exhibited to her Affidavit her Medical Report obtained from the St. Ann's Bay Hospital dated the 3rd February, 2011 and her subsequent Medical Report from the

Kingston Public Hospital. In her Medical Report from the St. Ann's Bay Hospital, it was stated that the Claimant was seen on the 3rd June, 2010 and found to have tenderness to her neck. She was then diagnosed by Dr. Ephraim Ingram as suffering from whiplash injury.

[39] The Claimant also exhibited to her Affidavit a Police Report dated the 7th December, 2010, regarding an accident involving motor vehicle registered PE4209 and motor vehicle registered PC9635 that occurred on the 2nd June, 2010. In that Report it was stated that the Claimant suffered injuries to her neck.

[40] The Defendants in their evidence indicate that it remains an issue as to whether the Claimant was a passenger in the motor vehicle registered PC9635 and whether she received any injuries from the accident. They further indicate that the issue of whether the Claimant received any injuries as a result of the accident is a triable issue.

[41] The Defendants, having denied that the Claimant's alleged injuries were occasioned by the accident and/or by any negligence on the part of the 1st Defendant, have failed to state their reasons for such denial. At no time have they contended in their evidence nor pleadings that the Claimant was not present in the other vehicle, which was hit from behind by their admitted servant and/or agent. The effect of the Defence filed appears apparently to invite the Claimant to come and prove her case. Whilst such a challenge is a hurdle that all Claimants have to clear, in a matter of this nature, the obligation imposed by the **CPR** remains on the Defendants to: -

(a) state their reasons for resisting the allegations of the Claimant;

(b) set out their own version of the alleged incident;

(c) indicate all the facts on which they intend to rely to dispute the claim.

[42] A denial of allegations made is merely the first step that Defendants may take in a matter of this nature. The **CPR** however, compels them, where they deny or make no admission to the allegations brought against them, to state the reasons for such

response. This they have failed to do. The Claimant in my view, has clearly shown that there are grounds to suggest that the Defendants' Defence has no real prospect of success. In resisting the Application, the Defendants' themselves have failed, based on their evidence and pleadings, to indicate that their Defence is one that would have a realistic prospect of success. It must be highlighted that the purpose of Summary Judgment is to "knock out" weak cases at an early stage so as to save expenses and to avoid wasting the Court's resources. In such circumstances, I am convinced that on the evidence before this Court, the Orders sought by the Claimant ought to be granted.

[43] The Court hereby orders as follows: -

(a) The portion of the Defendants' Defence dated the 10th August, 2015 and filed on the 28th September, 2015 in particular at paragraph 3 which reads, *"…the Defendants will challenge the Claimant's involvement in the accident"* and paragraph 6 which states that *"The Defendants will say that no one was injured as a result of the accident"* are struck out;

(b) Summary Judgment is granted in favour of the Claimant against the Defendants;

(c) The matter is to be scheduled by the Registrar for Assessment of Damages;

(d) Costs are awarded to the Claimant, such costs to be taxed if not agreed;

(e) Leave to appeal is refused.