



[2025] JMSC Civ. 45

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU 2022CV02732

BETWEEN TANYA PRAWL CLAIMANT

(Administratrix for the Estate of Gloria Prawl)

AND THE BANK OF NOVA SCOTIA JAMAICA LIMITED DEFENDANT

IN CHAMBERS

**Mr. Leonard S. Green and Mr. Nyron Wright, instructed by Chen, Green & Co.,
Attorneys-at-Law for the Claimant**

Ms. Analiese Minott, instructed by Livingston, Alexander & Levy, Attorneys-at-Law for the Defendant

Heard: December 16, 2024 and May 9, 2025

CIVIL PROCEDURE: Application by the claimant for summary judgment against the defendant and/or to strike out the defendant's defence - Whether summary judgment should be granted in favour of the claimant against the defendant in light of the orders sought in the claimant's claim form and particulars of claim, which were filed on September 1, 2022 - Whether the defendant's defence, which was filed on October 27, 2022, should be struck out - Application by the defendant to strike out the claimant's statement of case or, alternatively, for summary judgment in favour of the defendant - Whether the claimant's statement of case should be struck out, or alternatively, whether summary judgment should be entered in favour of the defendant against the claimant - Rules 1.1, 15.2, 15.6, 26.3(1) (b) and (c) of the CPR

ANDERSON K. J

BACKGROUND

Application by the claimant for summary judgment against the defendant and/or to strike out the defendant's defence, and application by the defendant to strike out the claimant's statement of case or, alternatively, for summary judgment in favour of the defendant

[1] On December 16, 2024, two applications were heard by the court.

[2] Those respective applications were made by the claimant and the defendant in this claim.

[3] The claimant's application was filed on May 2, 2024. She sought the following orders, inter alia, pursuant to **rule 15.2(b)** and **rule 26.3(1)(b)** and **(c)** of the **Civil Procedure Rules (CPR)**, against the defendant:

'1. That the defence filed, on behalf of the defendant bank on the 27th day of October 2022, be struck out.

2. That summary judgment for the claimant be granted with regard to the orders sought in the claim form and particulars of claim filed on the 1st day of September 2022.'

[4] The claimant's 'urgent' affidavit in support of application for summary judgment and to strike out defence, which was also filed on May 2, 2024, provided grounds for her application. Among the foregoing are:

'3. That the claimant, Tanya Prawl, is the administratrix of the estate of Gloria Prawl, deceased intestate...

*4. The instant claim was commenced by way of claim form and particulars of claim filed on the 1st day of September 2022, therein, the claimant sought inter alia, an order for the repayment of the deposit held in the deceased's account numbered 82093 held at the defendant bank's King Street branch (now Duke and Port Royal Street branch), totalling **Three Million Five Hundred Eighty-Five Thousand Seven Hundred Seventy-Eight Dollars and Thirty-Two Cents (\$3,585,778.32)** and, an order that the defendant bank disclose all documents in its possession relevant to the management of monies held on deposit for the estate of the deceased.*

5. *The relevant facts in support of the claim are that monies were held at the defendant bank's Duke Street and Port Royal Street branch on the deceased's behalf and that the said monies were removed from the deceased's account without proper authorization and that the defendant bank is presently unable to provide proper documentation accounting for their dealings with the said monies.*

6. *An acknowledgment of service of claim form and defence was filed on behalf of the defendant bank on the 15th day of September 2022 and the 27th day of October 2022, respectively, and in the said defence, at paragraphs seven (7) and ten (10), the defendant bank admitted to the sum of **Three Million Five Hundred Eighty-Five Thousand Seven Hundred Seventy-Eight Dollars and Thirty-Two Cents (\$3,585,778.32)** being debited from the deceased's bank account at the defendant bank's King Street branch (now Duke and Port Royal Street branch) and transferred to the Accountant General's Department on the 12th day of April 2019.*

7. *The paramount issue raised on the claimant's case is the defendant bank's failure to provide proof of the alleged transfer to the Accountant General Department and the defendant bank has failed to address this issue in their defence.*

8. *The claimant is therefore of the view that the defendant bank has no real prospect of successfully defending the claim against it and thus the defence filed on its behalf discloses no reasonable grounds for defending the present claim.'*

[5] The defendant, by way of application, which was filed on October 30, 2024, has sought the following orders, inter alia:

'1. The claimant's statement of case is struck out.

2. Alternatively, summary judgment is entered in favour of the defendant against the claimant.'

Some of the grounds on which the defendant applicant is seeking the aforementioned orders are:

*'(a) **Rule 26.3(1)(c) of the Civil Procedure Rules ('CPR')** empowers the court to strike out a statement of case if it discloses no reasonable grounds for bringing the claim.*

(b) The claimant has filed suit to recover, inter alia, damages for breach of contract, negligence and breach of statutory duty; however, she has failed to particularize these breaches and has not pleaded any facts which are supportive of these causes of action.

*(c) Under **rule 15.2(a) of the CPR** the court is empowered to grant summary judgment in favour of the defendant if it considers that the claimant has no real prospect of successfully bringing the claim.*

(d) The claimant has no real prospect of successfully bringing the claim against the defendant.

(e) The defendant relies on the facts set out in the affidavit of Ebunoluwa Akinladejo...'

[6] The matter came before me on December 16, 2024 and I made the following orders, among others:

'1. The claimant's application for court orders, which was filed on May 2, 2024, and the defendant's application for court orders, which was filed on October 10, 2024, shall both be heard on paper by Anderson J., and this court's rulings on these applications is reserved.

2. By or before December 19, 2024, the claimant shall file and serve a bundle of authorities as regards the claimant's application for court orders, which was filed on May 2, 2024.

3. By or before January 17, 2025, the claimant shall file and serve a bundle of authorities as regards the claimant's response to the defendant's said application for court orders...'

ISSUES

[7] The following issues are now before the court for determination:

1. Whether summary judgment should be granted; in favour of the claimant against the defendant in light of the orders sought in the claimant's claim form and particulars of claim, which were filed on September 1, 2022.
2. Whether the defendant's defence, which was filed on October 27, 2022, should be struck out.
3. Whether the claimant's statement of case should be struck out, or alternatively, whether summary judgment should be entered in favour of the defendant against the claimant.

The Claimant's Application:

The Claimant's Submissions

[8] On May 2, 2024, the claimant filed submissions in support of her application for summary judgment and/or application to strike out the defendant's defence. She has submitted that she is the daughter and administratrix of the estate of the deceased, Gloria Harris Prawl, late of number 1, Henry Morgan Boulevard, Port Royal, in the parish of Kingston, who died intestate. She has also submitted that on the 26th day of February, 2021, letters of administration were granted to her over the deceased's estate, by the Supreme Court, and that, by virtue of the said Grant, she had corresponded with the defendant in an effort to gather all funds, in the amount of **\$3,587,410.38**, being held therein on behalf of the deceased. In addition, the claimant has proffered that the defendant, in response to her enquiry, indicated that the balance in the deceased's account was **\$769.96**, as funds had been transferred to the credit of the Accountant General's Department (AGD) on the 12th day of April 2019. The claimant has further submitted that she made subsequent attempts at requesting official documented directives, authorization or confirmation that the funds had, in fact, been transferred to the AGD, but that, up until the date of this claim, no such documentation has been provided by the defendant.

[9] It is the claimant's contention that because of the defendant's inability or unwillingness to provide proof of the transfer, she has been unable to carry out her duties as administratrix of the estate of the deceased by recovering the aforesaid funds, due to the estate, from the account of the AGD. She also contends that summary judgment should be entered for the claimant on the basis that the defendant has no real prospect of successfully defending the claim, pursuant to **rule 15.2(b) of the CPR**. To ground that contention, she has relied on the case of ***Russell Holdings Limited v L and W Enterprises Incorporated and ADS Global Limited* [2016] JMCA Civ 39**, wherein Edwards, JA (as she then was), relying on ***Blackstone's Civil Procedure 2004 page 356, paragraph 34***, outlined the test for whether there exists a defence with a real prospect of successfully defending the claim.

[10] The claimant has submitted that if the court accepts that the defence has no prospect of success, it is also open to the court to invoke its powers provided under **rule 26.3(1)(b) and (c) of the CPR** to strike out the defendant's statement of case as being an abuse of process of the court and that, it is likely to obstruct the just disposal of the proceedings, as it discloses no reasonable grounds for defending the claim. She has relied on the case of **Godfrey McAllister v Christopher Webb [2022] JMSC Civ 135**, where at paragraph 91, Smith J cited from **A Practical Approach to Civil Procedure, 22nd Edition**, where the learned author pointed out that:

'...the jurisdiction to strike out is to be used sparingly, because striking out deprives a party of its right to a fair trial, and of its ability to strengthen its case through the process of disclosure and other court procedures. The result is that striking out is limited to plain and obvious cases where there is no point in having a trial.'

The claimant submits that, per the **Godfrey McAllister case (op. cit.)**, the case at bar is beyond plain.

The Defendant's Submissions

[11] In the defendant's submissions, which were filed on October 30, 2024, it has asserted that the party applying for summary judgment must show that he has a case that is *'better than merely arguable'*, as defined in paragraphs 25 and 27 of the case of **Somerset Enterprises Ltd. v Lindeerth Powell and National Export Import Bank of Jamaica Ltd. [2001] JMCA Civ, 12**. These paragraphs outline that:

'[25] The party that seeks summary judgment must assert that the respondent's case has no real prospect of success. If that party asserts that belief, on credible grounds, a respondent seeking to resist an application for summary judgment is required to show that he has a case "which is better than merely arguable". In order to successfully resist the other party's assertion, the respondent must prove that its case has a "realistic" as opposed to a "fanciful" prospect of success...In determining whether there is any real prospect of succeeding, the judge should not conduct a mini-trial...

[27] Although the judge considering a summary judgment application is not to conduct a mini-trial, he must carefully examine each party's statement of case and the supporting documents, in order to determine the merits. It is against this background that this matter is to be viewed.'

[12] The defence has also asserted that the claimant is claiming damages for breach of contract, negligence and breach of statutory duty, as well as repayment of the subject funds, but that, the claimant has failed to plead any facts that highlight reasonable grounds for bringing the claim against the bank. It is learned counsel's contention that the importance of pleading facts supportive of the cause of action was underscored at paragraphs 9 - 10 of the decision of Batts J in ***City Properties Limited v New Era Finance Limited [2013] JMSC Civ 23***, which states:

'...There must be reasonable grounds for bringing or defending a claim. These reasonable grounds must it seems to me be evident on a reading of the statement of case..." reasonable grounds" for bringing a claim...means nothing more or less than the claimant has disclosed in the pleading that he has a reasonable cause of action against the defendant. He does this by pleading facts supportive of the existence of a cause of action or defence as the case may be...' (emphasis added)

[13] The defence has further asserted that the power of the court to grant an order to strike-out a party's statement of case must not be exercised freely, as the overriding objective remains at the epicentre of every case. It is the defence's contention that the purpose of the court's power to strike out a statement of case is to dispose of unmeritorious claims or issues.

The Court's Analysis

Whether summary judgment should be granted in favour of the claimant against the defendant in light of the orders sought in the claimant's claim form and particulars of claim, which were filed on September 1, 2022.

[14] ***Rule 15.2 of the CPR*** provides for summary judgment as follows:

'The court may give summary judgment on the claim or on a particular issue if it considers that -
(a) the claimant has no real prospect of succeeding on the claim or the issue; or

(b) the defendant has no real prospect of successfully defending the claim or the issue.'
(Rule 26.3 gives the court power to strike out the whole or part of statement of case if it discloses no reasonable ground for bringing or defending the claim.)'

Rule 15.6 of the CPR provides for the powers of the court on application for summary judgment as follows:

'(1) On hearing an application for summary judgment the court may -

- (a) give summary judgment on any issue of fact or law whether or not such judgment will bring the proceedings to an end;*
- (b) strike out or dismiss the claim in whole or in part;*
- (c) dismiss the application;*
- (d) make a conditional order;*
- (e) make such other order as may seem fit.'*

[15] Rule 26.3(1)(b) and (c) of the CPR provide that:

'(1) In addition to any 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) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;*
- (c) that the statement of case or the point to be struck out discloses no reasonable 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 Parts 8 or 10.'*

[16] According to *Halsbury's Laws of England, 5th Edition, Volume 32 (2023), paragraph 702:*

'the court may grant summary judgment of either the whole of a claim or a particular issue if it considers that the respondent has no real prospect of succeeding on or successfully defending the claim or issue, and that there is no other compelling reason why the case or issue should be disposed of at trial.'

[17] In the case of **Swain v Hillman and another [2001] 1 All ER 91**, the English Court of Appeal opined on page 91, that:

'The court has the power to dispose summarily of claims and defences which have "no real prospect" of being successful. The "real" directs the court to the need to see whether there is a realistic prospect of success...It saves expenses, achieves expedition, avoids the court's resources being used upon cases where that serves no purpose and is in the interests of justice. If a claimant has a case which is bound to fail, it is in his 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. However, it is important that the power under Part 24 is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at trial. The proper disposal of an issue under Part 24 does not therefore involve the judge conducting a mini-trial.'

It is to be noted that **Part 24 of the English Civil Procedure Rules** referenced in **Swain v Hillman (op. cit.)**, is similar to our **Rule 15** mentioned above. **Part 24** reads:

'The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if - (a) it considers that - (i) that claimant has no real prospect of succeeding on the claim or issue; or (ii) that defendant has no real prospect of successfully defending the claim or issue; and (b) there is no other reason why the case or issue should be disposed of at trial.'

Whether the defendant has a real prospect of successfully defending the claim

[18] In order to determine whether the defendant has a real prospect of defending the claim at bar, the court has to analyze its defence, which was filed on October 27, 2022, as well as any other relevant evidence before the court. According to the case of **Fiesta Jamaica Limited v National Water Commission [2010] JMCA Civ 4**, at paragraph 31, *'the applicable test is that it must be demonstrated that the relevant party's prospect of success is realistic and not fanciful...'*

Having perused the defendant's defence, which was filed on October 27, 2022, paragraph 7 of the said defence outlines that the sum of **\$3,585,778.32** was debited from the deceased's account on April 12, 2019, due to inactivity since on or about April

2000. The defendant also claims that the aforesaid sum of money was transferred to the AGD, after being unclaimed for one year following publication in the Gleaner newspaper and the Gazette on February 24, 2018. Additionally, in paragraph 10 of the defence, the bank further claims that the subject funds became part of the revenues of Jamaica pursuant to **section 126 of the Banking Services Act**, and that, between 2018 and 2019, no claim was made by the defendant for the unclaimed bank balance in the deceased's account. Exhibited to the defence is a copy notice from the Gleaner dated February 24, 2018, indicating unclaimed bank balances featured in the Bank of Nova Scotia Current accounts, including the account of the deceased. No copy of a publication in the Gazette was exhibited to the defence.

[19] The court notes that there is no evidence before it to suggest that the claimant and/or anyone else authorized to deal with the subject account, had made any claim on the said funds within the fifteen year or more period stipulated by the **Banking Services Act**, or within the year of publication. However, the court also notes that the germane statute provides for the proper procedure to be adopted by deposit taking institutions before they remit unclaimed monies to the AGD. **Section 126 of Part XXIV of the Banking Services Act, 2014** concerning unclaimed moneys is instructive. It reads:

'(1) Where, by annual return required by section 82, it appears that any moneys have remained unclaimed in the possession or under the control of a deposit taking institution for a period of fifteen or more years, the Minister shall cause a notice to be published in the Gazette and in a daily newspaper circulated in Jamaica -

(a) giving full particulars of the money so claimed;

(b) stating the period during which the moneys have remained unclaimed; and

(c) stating that unless, within one year from the date of the first publication of the notice in the Gazette and on the website of the Ministry responsible for finance, a claim to those moneys is established to the satisfaction of the deposit taking institution concerned or, failing that, to the satisfaction of a court of competent jurisdiction, the moneys will be dealt with in accordance with subsection (2),

and the notice shall, during that year, be published twice or more often if the Minister thinks fit.

(2) Subject to subsection (3), upon the expiration of the year referred to in subsection (1)(c), any of the moneys to which the claim is established shall lapse to and become part of the revenues of Jamaica; and the Accountant-General shall keep a record of all moneys that have remained unclaimed in the possession or under the control of a deposit taking institution.

(3) Where -

(a) a claim has been duly made but not determined during the year; or

(b) before the expiration of the year the claimant lodges with the Accountant-General, a certificate to that effect signed by the Judge or Resident Magistrate, as the case may be, subsection (2) shall not have effect in relation to the moneys in question until the claim is settled.

(4) Any sum in respect of which subsection (2) takes effect shall be recoverable from the deposit taking institution as a debt due to the Government.

(5) Where subsection (2) takes effect as respects any sum, then not later than fifteen years after the year referred to in that subsection, the Accountant-General shall pay that sum to any person who establishes a claim thereto to the satisfaction of the Accountant-General.

(6) This section shall not apply to a building society.'

[20] From my reading of **section 126(1) of the Act**, it is my understanding that the notice regarding unclaimed monies should be two-fold, in that, it should have been published '*in the Gazette and in a daily newspaper circulated in Jamaica*'. Further, along with the other relevant information itemized in the applicable section, the notice should state that '*unless, within one year from the date of the first publication of the notice in the Gazette and on the website of the Minister responsible for finance...and the notice shall, during that year, be published twice or more often if the Minister thinks fit.*' It is the defendant's case, as outlined in the affidavit of Ebunoluwa Akinladejo, who is manager and legal counsel of the said bank, that:

'4. It is the bank's policy to report to the bank of Jamaica ('BOJ') all dormant accounts in excess of seven (7) years. Thereafter BOJ consolidates this information from the financial institutions

and sends same to the Ministry of Finance. The Ministry of Finance then contacts DTFIs requesting that all unclaimed balances in excess of fifteen (15) years be remitted to the AGD immediately. The bank then carries out its internal verification to ensure the list of unclaimed balances provided by the Ministry matches BNS' records. Once internal checks have been completed, accounts that are open and dormant in excess of fifteen (15) years are debited and the funds are deposited to the AGD's account.

5. On 24 February 2018 the bank's unclaimed bank balances for current accounts were published in the Gleaner newspaper. One of the accounts published belonged to Gloria Prawl (hereinafter 'the Deceased'). The deceased's funds in account numbered 82093, which was formerly at the defendant's King Street branch until the business there was closed and transferred to the Duke and Port Royal Streets branch, remained unclaimed for over one year. On or about 12 April 2019 the sum of Three Million Five Hundred Eighty-Five Thousand Seven Hundred Seventy-Eight Dollars and Thirty-Two Cents (\$3,585,778.32) was debited from the deceased's bank account and remitted to the AGD. Exhibited hereto and marked 'EA1' and 'EA2' for identification are copies of the Gleaner Publication dated 24 February 2018 and the Transaction History for the deceased's account showing the debit of Three Million Five Hundred Eighty-Five Thousand Seven Hundred Seventy-Eight Dollars and Thirty-Two Cents (\$3,585,778.32), which was transferred to the AGD respectively.'

[21] It is important to note that the deponent made reference to the transaction history of the deceased's account and to the publication dated February 24, 2018. Copies of the same are exhibited to the affidavit. However, there is no evidence before the court, which indicates that the defendant had published any other notice in the newspaper within the one-year period stipulated by **section 126 (1)** of the germane Act. Likewise, there is no evidence of any publication made in the Gazette, or on the website of the Ministry responsible for finance, with respect to the unclaimed monies, the subject of this claim.

[22] The lack of evidence to indicate that the bank had complied with the applicable Act has left the court to infer that the bank had acted in contravention of the **Banking Services Act**, with respect to unclaimed monies in the deceased's account. To my mind, there is a procedure outlined by the aforesaid statute, which deposit taking institutions are required to follow, before transferring unclaimed monies to the AGD, and

the bank did not properly adopt that procedure. Further, letter dated September 27, 2024, from the bank's attorneys-at-law to the claimant read, inter alia: *'To assist you with recovering the funds, the bank has prepared a letter to AGD, which is enclosed for your attention.'* The enclosure referenced was a letter bearing the said date from the bank to the AGD, requesting the AGD's assistance to facilitate recovery of the subject funds. These correspondence suggest that the defendant had not acted properly per the **Banking Services Act**, and as such, is desirous of helping the claimant recover the sum it had remitted to the AGD.

Burden of proof

[23] The claimant has asserted that the defendant has no real prospect of successfully defending the claim, because it cannot provide proof that it had lawfully remitted the funds from the deceased's account, to the AGD. Therefore, the bank must show that it has a case that is *'better than merely arguable'*, in that, it must prove that its case has a *'realistic'* as opposed to a *'fanciful'* prospect of success. Based on the bank's defence and supporting documents, I find that its prospect of success fits squarely in the fanciful domain, and that, the claimant has proven, on a balance of probabilities, that the defendant's defence is one which has no realistic prospect of success.

[24] I agree with the claimant that the **Russell Holdings case (op. cit.)** outlines the test for whether there exists a defence with a real prospect of successfully defending the claim. In that case, paragraphs 85 and 86 read:

'In Blackstone's Civil Procedure 2004 paragraph 34.13, the learned editors in reference to summary judgment applications argued that a defendant could show that the defence had a real prospect of success by:

- (a) showing a substantive defence, for example volenti non fit injuria, frustration, illegality etc.*
- (b) stating a point of law which would destroy the claimant's cause of action;*
- (c) denying the facts which support the claimant's cause of action; and*
- (d) setting out further facts which is a total answer to the claimant's cause of action for example an exclusion clause, agency etc...*

A defence will have little prospect of success if it is weak or fanciful and lacking in substance or if it is contradicted by documentary evidence or any other material on which it is based. A defence consisting purely of bare denials may have little prospect of success.”’

[25] Based on the above criteria, it is my view that the defendant has not presented a substantive defence to the claim at bar, nor has it set out further facts, which is a total answer to the claimant’s cause of action. I find that the bank’s defence is weak and lacking in substance, and therefore, has no realistic prospect of success. The bank’s defence could have been a substantive one, and it could have been a total answer to the claimant’s cause of action, if it had properly applied **section 126, Banking Services Act**. However, simply stating that it had acted lawfully is not enough, it needed to have led sufficient evidence before this court, in response to the claimant’s application, which is now under consideration, that it had acted legally in transferring the funds from the deceased’s account to the AGD. In the premises, I find that the court should give summary judgment in favour of the claimant, in light of the orders sought in the claimant’s claim form and particulars of claim, which were filed on September 1, 2022.

Conclusion

[26] I have not found it necessary, in the particular context of these particular, relevant applications, to address the defendant’s application, because it follows logically that same cannot be successful, in this court’s view, bearing in mind this court’s conclusion, that judgment ought to be granted, in favour of the claimant.

[27] Also, this court has carefully borne in mind that there is also, no need for it to consider the claimant’s application to strike out the defendant’s defence, since an order for summary judgment in the claimant’s favour, must of necessity, preclude an order of this court properly, also being made, striking out the defendant’s defence. For the distinction between the court’s approach towards a summary judgment and a striking out application, see: **Wayne Robinson v Basil Jarrett [2025] JMCA Civ 8**.

[28] It is this court's considered view that an order of summary judgment in the claimant's favour, is now appropriate, whereas on the other hand, an order striking out the defendant's defence, would not be. For a masterful consideration of the distinction of the bases on which summary judgment should be granted, as against an application to strike out, on the basis that there exists no reasonable ground for bringing a claim or defence (as the case may be), see: **Wayne Robinson (op. cit.)**.

Disposition

[29] The court, therefore, now orders as follows:

1. Summary judgment is granted in favour of the claimant as against the defendant, in respect of this claim, and the judgment orders as sought in this claim by the claimant, are granted to the claimant.
2. The orders sought in the defendant's notice of application for court orders, which was filed on October 30, 2024, are refused.
3. The costs of the claimant's application are awarded to the claimant. Such costs shall be taxed, if not sooner agreed.
4. The costs of the defendant's application are awarded to the claimant. Such costs shall be taxed, if not sooner agreed.
5. The claimant shall file and serve this order.

.....
Hon. K. Anderson, J.