[**2025**] JMSC Civ 86

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2022CV01550**

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| **BETWEEN** | **RICHARD WILLIAMS** | **CLAIMANT** |
| **AND** | **BERCYN FARMS LIMITED** | **DEFENDANT** |

**IN CHAMBERS**

Ms Michelle Thomas instructed by Michelle Thomas & Associates for the claimant

Mr Lambert Johnson instructed by Johnson & Company for the defendant

**Application to strike out defence – Rules 3.12(1), 3.12(2), 3.12(3), 3.12(4), 3.12(8), 3.13(1) – Rules 10.5(5), 10.5(7), 10.7, 10.5(3)(c) – Rules 26.3(1)(a), 26.3(1)(b), 26.3(1)(c) of the Civil Procedure Rules**

**Heard: June 30, and July 7, 2025**

**PETTIGREW-COLLINS, J**

## INTRODUCTION

**[1]** The claimant alleges that on or about June 19, 2019, he was driving a motor truck which was a company vehicle assigned to him by the defendant company. He was travelling along the roadway in Lluidas Vale district heading to Worthy Park Estate. He said that while approaching the corner along the decent of a hill, he applied the

brake of the motor truck, but the braking system failed and the truck was unable to stop until it overturned repeatedly, with the claimant still inside the vehicle.

**[2]** Consequently, the claimant brought a claim in negligence against the defendant seeking damages for injuries sustained. He alleges that the owner of the vehicle is a limited liability company registered in Jamaica, is his employer, that he was acting in the course of his duties, and that his employer was negligent. He particularized the negligence as follows:

i. *Failing to inspect motor vehicle registration number CL 0304 to ensure it was fit, roadworthy and suitable for the purposes required by the claimant.*

ii. *Failing to have or maintain the said vehicle in a proper state of repair for the claimant to use.*

iii. *Failing to effect any or any proper repairs to a vehicle knowing that same was manifestly unsafe and defective.*

iv. *In all the circumstances, failing to take any precautions or to have any regard whatsoever for the employee's safety.*

v. *Failing to have and maintain a safe system of work.*

vi. *In all the circumstances, failing to exercise due care and attention*

**THE DEFENCE**

**[3]** A defence was filed in the claim on September 13, 2022, wherein it was admitted that the claimant was employed to the defendant as a driver of the 2011 twelve wheeler red truck bearing registration number CJ 0304. It was also admitted that the defendant is a limited liability company incorporated under the laws of Jamaica with its registered office at Hartford District, Petersfield P.O., in the parish of Westmoreland and that it is the registered owner of the 2011 twelve wheeler red truck bearing registration number CJ 0304.

**[4]** The defendant did not admit nor deny that the claimant was on duty as an employee while driving the truck in Lluidas Vale heading to Worthy Park.

**[5]** The circumstances surrounding the occurrence of the alleged accident as well as the injuries, loss and damages which allegedly occurred as a result of the accident, were neither admitted nor denied.

**[6]** It was averred that the defendant wishes for the claimant to prove that the overturning of the truck was due to the faulty braking system and not due to the claimant's own negligence. The defendant also averred that the truck was in proper working condition and that the brakes were working properly. Further, that safety is of utmost importance to the defendant and as a result, due care was taken to ensure that all safety systems are maintained, and a team of mechanics is employed to maintain the fleet of trucks.

**[7]** The defendant company also stated that it is unable to speak to any loss, injuries or damage suffered by the claimant and seeks for the claimant to prove his claim, as the claimant has maintained his work schedule as required and continued to work up to the time of the filing of this claim.

**THE APPLICATION**

**[8]** The claimant filed a Notice of Application for Court Orders on February 28, 2025, wherein the following orders were sought:

1. *The Defendant's statement of case is struck out*
2. *Judgment in favour of the Claimant*
3. *Matter to proceed to assessment of damages*

….

The grounds on which the orders were sought are:

(i) *Pursuant to Rule 10.5(7) of the Civil Procedure Rules, 2002, (Amended) hereinafter referred to as the "CPR", a Defendant who defends in a representative capacity must say what that capacity is and whom the Defendant represents.*

(ii) *Pursuant to Rule 10.5(5) of the CPR where, in relation to any allegation in the claim form or particulars of claim, the defendant does not admit it or deny it and put forward a different version of evets, the defendant must state the reasons for resisting the allegation.*

(iii) *Pursuant to Rule 10.7 of the CPR, the Defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission.*

(iv) *Pursuant to Rule 26.3 (1) (a) of the CPR, the Court is empowered to strike out a statement of case if it appears to the court 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 proceedings.*

(v) *Pursuant to Rule 26.3 (1) (b) of the CPR, the Court is empowered to strike out a statement or part of a statement of case if it appears to the court that the statement of case or the part to be struck out is an abuse of the process of the court.*

(vi) *Pursuant to Rule 26.3 (1) (c) of the CPR, the Court is empowered to strike out a statement of case if it appears to the court that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim.*

(vii) *Pursuant to Dueling Hinds v August McLean* [2022] JMSC Civ. 157*, it is a necessity for the Defendant to set out his own version of events in his defence because this is the only way that he can join issue with the Claimant's claim in order to challenge the Claimant at trial.*

(viii) *The Defendant's statement of case is an abuse of the process of the court.*

(ix) *The Defendant's statement of case does not disclose any reasonable prospect of success.*

(x) *The Defendant's statement of case does not disclose any reasonable grounds for defending the claim.*

(xi) *The application is in keeping with the overriding objective of the CPR to deal with cases justly.*

(xii) *It is in the interests of justice that the Court grants the orders sought herein.*

**WHETHER THERE WAS A FAILURE TO COMPLY WITH RULE 10.5(7)**

**[9]** Rule 10.5(7) of the **Civil Procedure Rules**, 2002, as amended, provides that a defendant who defends in a representative capacity must say what that capacity is, and whom the defendant represents.

**[10]** The claimant's complaint is that the defendant has not complied with rule 10.5(7) because the person who signed the defence acted in a representative capacity and it was not stated in what capacity he was acting. The complaint is also that it is not known who is defending the claim on behalf of the defendant company.

**[11]** Where a limited liability company is a party to a claim, someone must necessarily sign on its behalf, since the company, being an entity, must act through human beings. Section 33 of the **Companies Act** provides that a document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorized officer of the company, and need not be under its common seal. It would of course be prudent that the signatory indicates the capacity in which he signs. However, it would in my view be incorrect to say that a person who signs on behalf of a limited liability company is necessarily acting in a representative capacity.

**[12]** I do not accept that the issue of whether the person whose signature appears on the defence is that of a person who was acting in a representative capacity arises for consideration in this instance. Although the signature appears above the designation "defendant" on the defence that was filed, counsel for the defendant indicated during the hearing that it was in fact he who had signed the defence. In essence, the defendant's attorney-at-law indicated that he, the attorney, signed the certificate of truth. This is therefore not a case of someone signing in a representative capacity. This court is alert to the fact that, that information did not come by way of evidence, but it is not information which can be ignored. The court feels constrained to take that information into account.

**RULE 3.12 AND ITS APPLICABILITY**

**[13]** Rule 3.12(1) provides that every statement of case must be verified by a certificate of truth. Rule 3.12(2) states that the general rule is that the lay party must sign the certificate of truth.

**[14]** Rule 3.12(3) nevertheless, provides that a person's attorney-at-law may sign the certificate of truth, where it is impracticable for the lay person to personally sign. However, if the certificate of truth is given by the attorney-at-law, Rule 3.12(4) provides that the certificate of truth must set out a) the reason why it is impractical for the lay person to give the certificate; and b) that the certificate is given on the lay party's instructions. Rule 3.12(8) sets out the format that the certificate of truth should take if it is signed by a person's attorney-at-law.

**[15]** The certificate of truth appearing on the defence as filed was not set out in that format provided for in Rule 3.12(8). Rule 3.12(4) and Rule 3.12(8) were therefore not complied with in this instance.

**[16]** Rule 3.13(1) provides that the court may strike out any statement of case which has not been verified by a certificate of truth. The use of the word 'may' clearly suggests that a discretion is vested in the judge to determine whether or not the defence should be struck out for non-compliance.

**[17]** In **Peter Kavanaugh v The Attorney General and Detective Inspector Carey Lawes** [2015] JMCA Civ 9, the appellant had filed a notice of application for court orders seeking orders that the defence filed in the matter be struck out or ignored "*as not a Defence in law, not being in accordance with Rules of Court*". The learned judge refused the application and made the following order, "…*iii. The defendant is permitted to file and serve an amended defence within fourteen (14) days of service of the said particulars of claim, the said defence to contain a certificate of truth that complies with the requirements of rule 3.12(8)(a) of the CPR."* The learned judge said that the deviation from complying with Rule 3.12(8)(a) of the CPR did not warrant striking out the defence. The appellant contended that the

learned judge fell into error in making these orders. In determining, inter alia, whether the defence was rendered invalid for failure to comply strictly with rule 3.12(8)(a) of the CPR, McIntosh JA said that the learned judge exercised his discretion, as provided in Rule 3.13(1) and saw no basis for interfering with the exercise of the learned judge's discretion. The learned judge of appeal stated:

> *[34] … Additionally, although the appellant made no issue of the form of the certificate of truth utilized by the 1st respondent in the defence, the learned judge, on his own volition, questioned whether the certificate of truth complied with rule 3.12(8)(a) of the CPR. That rule requires the attorney-at-law certifying the facts contained in the document to certify that the party supplying the facts believe them to be true and that the certificate is given on that party's instructions. It should also state that the party is unable to give the certificate personally and should give the reason for the inability to do so.*
>
> *[35] However, in the defence, Miss Whyte, on behalf of the 1st respondent stated thus "I therefore certify on his behalf that all the facts set out in this Defence are true to the best of my knowledge, information and belief" which, to the learned judge, did not comply with rule 3.12(8)(a) of the CPR. It was his view that the belief referred to in the rule must be that of the person from whom the instructions are received. But, said the learned judge, that deviation, did not warrant striking out the defence and support for this view is to be found in Shakira Dixon, a judgment of this court relied on by Miss Whyte in her submissions.*
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> *[36]* ***As I see it, the learned judge was exercising the discretion provided in rule 3.13(1) which states that "[t]he court may strike out any statement of case which has not been verified by a certificate of truth". At paragraph [82] of his judgment the learned judge said that there had been substantial compliance with the provisions of rule 3.12 and "no ascertainable prejudice to the claimant and to strike out this statement of case on the basis of what amounts in the court's view to a technicality, would not be in keeping with the overriding objective". In my opinion, there was no misunderstanding of the law or of the evidence before him and no basis for interfering with the exercise of the learned judge's discretion*** *(see Hadmor Productions Ltd v Hamilton* [1983] 1 AC 191; [1982] 1 All ER 1042 HL) (emphasis added)

**[18]** Rule 1.2 requires that the court gives effect to the overriding objectives when interpreting the rules and exercising any power under them. The overriding objective includes dealing with cases justly and ensuring that cases are dealt with fairly. It is in the interests of justice that cases be dealt with on the merits. Striking out is a draconian sanction which should be sparingly exercised.

**[19]** I do not discern that any major prejudice would be occasioned to the claimant if the defendant were to be given an opportunity to amend the defence on account

of this irregularity. We are at a stage in the proceedings where the case management conference has not yet been held. An order for costs in favour of the claimant will be sufficient to address to cure any prejudice.

**WHETHER THERE WAS A FAILURE TO COMPLY WITH RULE 10.5(5)**

**[20]** Rule 10.5(5) provides that where, in relation to any allegation in the claim form or particulars of claim, the defendant does not admit it or deny it and put forward a different version of events, the defendant must state the reasons for resisting the allegation.

**[21]** The claimant asserts that the defendant has not complied with this provision since they have not set out any version of the events and has not put forward the gravamen of the defence. Counsel cited the case of **Dueling Hinds v August McLean** [2022] JMSC Civ. 157 as supporting the point that it is by setting out his version of the events that the defendant effectively joins issue with the claimant.

**[22]** Counsel for the defendant submitted that, in the circumstances of the accident as set out in the claimant's pleadings, the claimant is the only witness to the accident. Therefore, the defendant would not be in a position to put forward a different version of events. All the defendant is saying is that the motor truck was in proper working condition, that the brakes were working properly and that the defendant takes due care to ensure that all safety systems are maintained and that a team of mechanics is employed to maintain the fleet of motor trucks. Counsel contends that once the defendant pleads that the motor truck was in good working order and so was not defective, it would not be necessary for the defendant to set out a sequence of events which led to the vehicle overturning.

**[23]** Mr Johnson asked the court to permit the defendant to file an amended defence in the event the court took the view that the defence is defective.

**[24]** This court is mindful of the purpose of pleadings which is to alert the other party of his case. What Phillips JA said in **Akbar Limited v Citibank** NA [2014] JMCA Civ 43 in relation to pleadings by a claimant is equally applicable to a defence. She observed that:

> *The important point is that the defendant must not be taken by surprise. The defendant is entitled to know the type of claim being made by the claimant and the amount that is being claimed. However, as stated by Harris JA in* ***Grace Kennedy Remittance Services Ltd v Paymaster (Jamaica) Limited and Paul Lowe****, SCCA No 5/2009, judgment delivered 2 July 2009, endorsing Lord Woolf's judgment/dicta in* ***McPhilemy v Times Newspaper*** *[1999] 3 All ER 775, once the general nature of a claim has been pleaded, if the witness statements are exchanged those statements may supply particulars of a claim. There is thus no longer the need for extensive pleadings. They are not superfluous, they are still required to mark out the parameters of the case of each party and to identify the issues in dispute, but the witness statements and other documents will detail and make obvious the nature of the case that the other party has to meet.*

**[25]** In **Dueling Hinds v August McLean** (supra) a collision occurred involving the motor vehicle of the defendant, Mr McLean, and another motor vehicle in which the claimant was a passenger. The claimant filed a claim for negligence and damages for injuries he allegedly sustained in the motor vehicle accident. Mr McLean, in his defence, admitted ownership of the vehicle, that he was driving at the time of the accident and that there was a collision. He also denied the claimant's particulars of injuries and put the claimant to strict proof of same, as well as denying each and every allegation in the particulars of claim. The learned judge held that there were no facts pleaded in the defendant's case which raised triable issues on the claimant's statement of case, in order to justify the claim proceeding to trial. Consequently, it was the court's intention to strike out the defence, as the defence was in breach of Rules 10.5(1)(4) and (5) of the CPR, and enter judgment for the claimant. Orr, J (Ag) stated at paragraph 48:

> *"[48] The term 'bare denial' in keeping with the case law is, simply put, a denial with no substance. The mandatory requirements of Rule 10.5 are to ensure that the Defendant is not allowed to state simply that he disagrees with the Claimant's case and provide the court with nothing further to consider*."

**[26]** It is the claimant who must prove to the required standard that the overturning of the motor truck was due to the brakes malfunctioning and not his own negligence. The general rule is that it is he who alleges who must prove. Therefore, this court agrees with the submission of counsel for the defendant. This case involves an accident in which the claimant was driving a truck. His version is that he was approaching a corner, he applied the brake but realized that the braking system was faulty. He went on to say that the truck was unable to stop until it turned over repeatedly.

**[27]** The claimant should not be taken by surprise. He is entitled to know the defence on which the defendant relies. In the circumstances of this case, matters such as the last time the vehicle was checked and the frequency with which the vehicles are checked are matters that can properly be filled in by witness statements.

**[28]** In **Dueling Hinds** (supra) there was a bare denial. The same cannot be said for the defendant in the case at hand. It has already been established that in the case at hand, the defendant alerted the claimant as to what its defence is, i.e., that the truck was in proper working condition, that the truck's brakes were working properly and that a team of mechanics is employed to maintain the trucks and therefore the claimant should prove that the overturning of the truck was due to faulty brakes and not his own negligence. By so averring the defendant in my estimation, has put forward an adequate defence.

**WHETHER RULE 10.5(3) WAS COMPLIED WITH**

**[29]** The claimant's attorney at law did not make any specific complaint regarding a failure to comply with the provisions of rule 10.3. However, the court notes that there was not strict compliance with rule 10.5(3)(c) which requires that where a defendant avers that an allegation is neither admitted nor denied, the defendant should also add that that is so because the defendant does not know whether the allegations are true but wishes the claimant to prove those allegations.

**[30]** The defendant specifically admitted at paragraph 2 of the defence that the claimant was its employee. The defendant did not admit nor deny that the claimant was on duty and was acting in the course of his employment at the time of the accident. These are matters which a defendant may, or may not know. If it is that the defendant was not aware of whether or not the claimant was on duty or as to the location of the vehicle at the time of the accident, then it should be specifically pleaded that the defendant requires the claimant to prove these assertions. Although the inference is that the claimant is being put to proof of those assertions, the defendant by virtue of the provision, is specifically required to so state.

**[31]** Given that this omission does not affect the core of the defence, the defendant will be given the opportunity to address the issue in its amended defence.

**WHETHER THERE WAS COMPLIANCE WITH RULE 10.7**

**[32]** Rule 10.7 provides that the defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission.

**[33]** Counsel for the claimant also complained that the defendant did not put forward anything in the defence to say whether it is challenging or agreeing that the claimant reported to work or maintained his work schedule or was operating a company vehicle at the time of the accident. It is evidently inaccurate to say that it was not stated whether the claimant was operating a company vehicle at the time of the accident, as that matter was specifically addressed in the defence. As to whether he maintained his work schedule, reference was made in that regard only in so far as it spoke to his conduct after the accident.

**[34]** The defendant ought to be alert to all the provisions of the rules and for these purposes, specifically the provision of rule 10.7. The defendant also requires that the claimant prove that he suffered any loss, injuries or damages, as the claimant reported to work as usual. However implicit in the defence as stated, is that the

claimant was operating the defendant's motor vehicle at the time of the accident. It is also implicit that the defendant accepts that there was an accident.

**[35]** In any event, we are obviously not at a stage where a determination is to be made as to what allegation or factual arguments the defendant can, or cannot rely on, on account of absence of any averment in the defence as filed. It is therefore premature to make an application to strike on the basis of a failure to comply with Rule 10.7.

## COSTS

**[36]** The general rule is that the successful party should be awarded costs. Although the claimant did not succeed in his application to have the defence struck out, it was borne out that the defence as filed is defective. This court, in refusing to strike out the defence, exercised a discretion granted to it and instead, allowed the defendant the opportunity to file an amended defence.

**[37]** Rule 64.6(2) allows the court to make an order that a successful party pays all or part of the costs of an unsuccessful party, or make no order as to costs. The court should also take into consideration whether it was reasonable for the claimant to have made the application.

**[38]** In the case of **William Clarke v The Bank of Nova Scotia Jamaica Limited** [2014] JMCA Civ 32, the Court of Appeal delivered a ruling as to costs regarding the substantive matter, where the appellant brought a claim against the respondent seeking an order for payment of sums held by the respondent in trust for him, or alternatively, for damages for breach of contract. The parties had signed a settlement agreement that provided for how any disputes relating to the parties' affairs would be dealt with. In the substantive matter, the Court of Appeal was tasked with determining, firstly, whether the court had effective jurisdiction to try and determine the appellant's claim and secondly, if the court is seized of jurisdiction, whether it is obliged to exercise it. The appellant was successful on

the first issue, as the court found that it was endowed with jurisdiction, that the claim was not an abuse of process and that the learned judge was wrong to strike out the claim for want of jurisdiction. However, the respondent was successful on the second issue, that the claim was within the purview of matters relating directly or indirectly to the settlement agreement and the appellant having signed the agreement, had consented to the named arbitrator adjudicating on the disputes arising out of that settlement agreement.

**[39]** At paragraph 21 Phillips JA referred to rule 64.6 and stated that

> *"[21] The rule sets out certain factors that the court can take into consideration when exercising its discretion to make an award of costs, which include but are not limited to the conduct of the parties both before and during the proceedings; whether a party has succeeded on a particular issue although not successful on the whole of the proceedings; whether it was reasonable for the party to have pursued a particular issue and the manner in which the party has pursued the particular issue; whether the claim was exaggerated; and whether the claimant gave reasonable notice of his intention to issue the claim (rule 64.6(4)). The rule also permits the court to order a party to pay a proportion of another party's costs (rule 64.6(5))."*

**[40]** The court agreed with the appellant that since the claim had been struck out, the appeal had to be pursued in order to have it restored and that that would not have been necessary if the correct approach had been taken in the first place, which was to access the forum that the parties had chosen. Further, that having read the submissions and the material put before the court, the court did not believe that in the circumstances, either party should obtain all of its costs in that court and in the court below. Consequently, they stated that:

> *"[26]… The appellant has succeeded in part, as the claim has been restored, but the dispute has been referred for a hearing before the arbitral tribunal. The respondent has succeeded in part, as the claim has been placed in the forum of the parties' choice, but as indicated, the court has jurisdiction in respect of such a claim, and as a consequence, the claim was restored.*
>
> *[27] It seems therefore, that in the interests of the parties and in the interests of justice and in all the circumstances, that each party should bear its own costs both in this court and in the court below.*

**[41]** Likewise, in the case at hand, it is the failure of the defendant to properly file its defence that occasioned the claimant's application to strike out the defence. The

claimant has succeeded in part to the extent that she has established that the defence was defective and the defendant has succeeded to the extent that the claimant's application to strike out has not been granted. In the circumstances, I believe it is reasonable to order that the claimant be paid fifty percent of the costs of the application.

**CONCLUSION**

**[42]** The failure to comply with the relevant provisions of rule 3.12 does not in my view merit the draconian measure of striking out the defence with the result that the matter would not be heard on the merits. Neither should the defence, in my view, be struck out because of the failure to specifically state that the claimant is required to prove that he was acting in the course of his employment at the relevant time.

**[43]** There is no aspect of the defence that should be struck out on the basis that it is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings. Neither can it be said that the defence or any aspect of it ought to be struck out on the basis that it discloses no reasonable grounds for defending a claim.

**DISPOSITON**

**[44]** In the result, the orders sought by the claimant in the notice of application are refused. The court instead makes the following orders:

1.The defendant is permitted to file and serve an amended defence within fourteen (14) days of the making of this order.

2. In filing the defence, the defendant must comply with the relevant provisions of Rule 3.12 and with Rule 10.5(3) of the Civil Procedure Rules.

3. Fifty percent of the costs of this application is granted to the claimant, to be taxed if not sooner agreed.

**…….**
**Pettigrew-Collins, J**
**Puisne Judge**