

1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS
3

4 CAUSE NOS: 27 AND 47 OF 2005

5
6 BETWEEN:

7 SOPHIE RAVEN

8
9 AND:

- 10 (1) CHARLES QUIN
- 11 (2) ANGELYN HERNANDEZ
- 12 (3) KENNETH FARROW
- 13 (4) GREG LINK
- 14 (5) HECTOR ROBINSON
- 15 (6) NEAL LOMAX
- 16 (7) QUIN & HAMPSON (A FIRM)



Defendants

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18
19
20 BEFORE: The Hon. Madam Justice Levers

21
22 APPEARANCE:

23 Counsel for the Plaintiff: S. Hall-Jones instructed by S. Diamond of Diamond Law
24 Associates

25 Counsel for the Defendants: M. Imrie of Maples & Calder

26
27 HEARD: May 5, 2005

28

RULING



29
30 Levers J.
31

32 There are two summonses before this Court. One in Cause No. 27/05 asking for
33 the following relief:

- 34 1. That the Plaintiff's Originating Summons be struck out or dismissed on the
- 35 ground that it is frivolous, vexatious or otherwise an abuse of the process
- 36 of the Court.

37 And the other in Cause No. 47/05 asking for the following relief:

- 1 1. That the claim by the Plaintiff against the Fourth Defendant be struck out
2 or dismissed on the grounds that it discloses no reasonable cause of
3 action and/or is frivolous, vexatious or otherwise an abuse of the process
4 of the Court;
- 5 2. That paragraph 87 – 89 of the Statement of Claim be struck out or
6 dismissed on the grounds that they disclose no reasonable cause of
7 action and/or frivolous, vexatious or otherwise an abuse of the process of
8 the Court;
- 9 3. That the Plaintiff be required to serve and Amended Statement of Claim
10 on the Defendants;
- 11 4. That the Defendants be granted an extension of time for filing their
12 Defence until after the hearing of this Summons;
- 13 5. For such further or other directions as the Court may deem just; and
- 14 6. That the Plaintiff do pay the Defendants' costs of an incidental to this
15 application, such costs to be taxed if not agreed.
16

17 **Background**

18

19 **The First Summons under Cause No. 27/05.**

20

21 The background to this is that the Plaintiff commenced an action against Quin
22 and Hampson and attempted to get an ex-parte injunction. That attempt
23 resulted in the following order being made:

24

- 25 1. Application dismissed as it relates to communication with the Chief
26 Justice; and
- 27 2. The balance of the application is to be made inter parties upon 4 clear
28 days notice to the Respondent.
29

1 By way of explanation, the first paragraph of that Order was in response to
2 injunctive relief sought by the Plaintiff endeavouring to stop the firm from
3 communicating with the Chief Justice as to the termination of the Plaintiff. The
4 order has not been complied with by the Plaintiff, instead she commenced a new
5 action, Cause No. 47/05. In that action she has now served her Statement of
6 Claim and by this Summons, the Defendants ask for Cause No. 27 to be struck
7 out on the grounds that the Plaintiff has not complied with the Orders made and
8 has no intention of continuing that action.

9

10 Mr. Hall-Jones on behalf of the Plaintiff argues that the Plaintiff is entitled to stay
11 that action and to proceed with the new one. Surprisingly, he submits that the
12 causes of action are not the same, although his instructing attorney wrote to the
13 Defendants' attorney saying they may consolidate.

14

15 It is well established that the jurisdiction to strike out must be sparingly used as
16 its exercise deprives the party of the normal procedure for establishing rights by
17 way of trial with discovery and oral evidence tested by cross-examination.

18

19 On an application, the Court's function is to decide whether the matter is so
20 plainly unarguable that there is no point in having a trial. Striking out for abuse of
21 process is a power **'which any court of justice must possess to prevent**
22 **misuse of its procedure in a way which, although not inconsistent with the**
23 **literal application of its procedural rules, would nevertheless be manifestly**

1 **unfair to a party to litigation before it, or would otherwise bring the**
2 **administration of justice in disrepute among right-thinking people'** (per Lord
3 Diplock in **Hunter v Chief Constable of the West Midlands Police** [1982] AC
4 529 at p. 536). In **Hunter's** case the House of Lords struck out a civil action
5 raising an identical issue to one decided against the Plaintiff in previous criminal
6 proceedings. It was found that the civil action was no more than a collateral
7 attack upon a decision of another court of competent jurisdiction, and an abuse
8 of process.

9

10 Further, it is an abuse of process to raise in a second action an issue which
11 should have been raised against someone who was a party to earlier
12 proceedings or which has already been raised in concurrent proceedings. In
13 **Buckland v Palmer** [1985] 1 WLR 1109 it was held to be an abuse of process to
14 commence a second action in respect of the same cause of action as raised in
15 an earlier action. In that case the plaintiff's car had been damaged in a motor
16 accident. Repairs cost £1,142. She claimed on her insurance and brought
17 proceedings against the defendant claiming the £50 excess not paid by her
18 insurer. This action was stayed when she accepted the payment into court. The
19 insurer then commenced a second action in the name of the plaintiff claiming
20 £1,092, and this action was struck out as an abuse of process.

21

22 I can find no greater example of abuse of process than that which is before me
23 today. The Plaintiff apparently not wishing to comply with the orders of the court

1 decided to leave Cause No. 27/05 on file and recommence another action based
2 on the same allegations. I therefore Order that Cause No. 27/05 be struck out.

3

4 I now turn to the Second Summons before me in Cause No. 47/05. I have
5 already outlined the relief sought in that matter and the background to the
6 commencement of Cause No. 47/05. Dealing with the first relief, that is that the
7 claim against the Fourth Defendant be struck out on the grounds that it discloses
8 no reasonable cause of action, and/or is frivolous, vexatious or otherwise an
9 abuse of the process of the Court. Careful scrutiny of the Statement of Claim is
10 necessitated for this relief. A cause of action with some prospect of success will
11 not be struck out provided the pleading raises some question fit to be tried. It
12 does not matter in my view that the case is weak or is unlikely to succeed. The
13 cause of action pleaded without some material averment however should be
14 struck out.

15

16 On an application to strike out it is my view that the Court's function is to decide
17 whether the case is so plainly unarguable so that there is no point in having a
18 trial. The leading case is **Williams and Humbert Ltd. v W and H Trade Marks**
19 **(Jersey) Ltd.** [1986] AC 368, HL, in which Lord Templeman said that:

20

21 "…if an application to strike out involves a prolonged
22 and serious argument the judge should, as a general
23 rule decline to proceed with the argument unless he
24 not only harbours doubts about the soundness of the
25 pleading but, in addition, is satisfied that striking out
26 will obviate the necessity for a trial or will substantially

1 reduce the burden of preparing for trial or the burden
2 of the trial itself.”
3

4 This is an application to strike out the cause of action against the Fourth
5 Defendant. I therefore need to look at the Statement of Claim and the relief
6 sought carefully. The Statement of Claim is divided into parts. Part One deals
7 with the facts of the matter and Part Two deals with the Plaintiff’s causes of
8 action.

9
10 The first cause of action is claim for breach of the express terms of the contract
11 of employment. It is established that Mr. Link was not a partner of the firm of
12 Quin and Hampson with which the Plaintiff entered into a contract. Therefore it
13 cannot be said that any claim can lie against Mr. Link for an breach of an express
14 term of the contract employment. The second claim is a claim for breach of the
15 implied terms in the contract of employment. The facts do not support this claim.
16 It cannot be said that Mr. Link was responsible for the contract of employment.
17 The third claim is for the claim for repudiatory breach of contract. There is no
18 allegation against Mr. Link, the Fourth Defendant made by the Plaintiff as regards
19 this cause of action. The next claim is for the claim for misrepresentation
20 regarding partnership admission. This cannot be said to involve Mr. Link who
21 was not a partner. The next claim is a breach for contract to admit to
22 partnership, this too cannot involve Mr. Link on the facts of the matter. The next
23 claim is the claim for conspiracy to cause economic loss. That claim is allegedly
24 based on the facts and matters pleaded in paragraph 69.1 – 69.7 of the

1 Statement of Claim and paragraph 69.1 – 7 deals with the action of Defendants
2 1, 2 and 3. Therefore, I cannot but hold that the fourth Defendant is not involved
3 in the Plaintiff's claim for conspiracy to cause economic loss. The next claim is
4 the claim for injurious falsehood. Once again that claim is based on the same
5 paragraphs 69.1 – 69.7. No tort claims have been made against Mr. Link. The
6 final claim is a claim of compounding a felony Mr. Hall-Johns confirms that he is
7 withdrawing this claim and will seek to file an Amended Statement of Claim.

8

9 Mr. Hall-Jones submits that evidence will show that Mr. Link was involved in
10 injurious falsehoods with respect I disagree. The Court cannot await the receipt
11 of witness statements in an application to strike out.

12

13 On an application to strike out a pleading on the ground that it discloses no
14 reasonable cause of action, no affidavit evidence is admissible. This Court is
15 required to assume that each and everyone of the facts pleaded is true and will
16 be capable of proof at trial. I am also mindful of the fact that the cause of action
17 with some prospect of success should not be struck out provided that the
18 pleadings raise some questions fit to be tried. There is simply no such pleading
19 against the Fourth Defendant in the Statement of Claim.

20

21 The Court is of the view that the question of costs needs to be addressed
22 specifically. Mr. Hall-Jones submits that on Cause No. 27/05, the Defendants
23 have not been put to any costs. The facts are that the Plaintiff did not

1 discontinue the action, but instead addressed the question of consolidation
2 thereby provoking the Defendants to take out this Summons. The Defendants
3 invited the Plaintiff to discontinue but no steps were taken by the Plaintiff until Mr.
4 Hall-Jones advised the Court that he would discontinue on condition that no
5 order for costs was made.

6

7 On Cause No. 47/05 as the Defendants have succeeded on all the relief sought
8 costs should follow.

9

10 I make the following Orders:

- 11 1. On Cause No. 27/05, the Plaintiff's Originating Summons is struck out on
12 the grounds that it is an abuse of the process of the Court and that the
13 Plaintiff be ordered to pay the Defendants' costs of and incidental to the
14 application, such costs to be in the sum of \$500;
- 15 2. On Cause No. 47/05 that the Claim by the Plaintiff against the Fourth
16 Defendant be struck on the grounds that it discloses no reasonable cause
17 of action. Costs to the 4th Defendant in the sum of \$500;
- 18 3. That paragraphs 87-89 of the Statement of Claim be struck out on the
19 grounds that they disclose no reasonable cause of action; and
- 20 4. That the Plaintiff be required to serve an Amended Statement of Claim on
21 the Defendants within 14 days of this Order hereof.
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23 Dated this 10th day of May, 2005

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26 Judge of the Grand Court

