

C.J.

OPEN COURT

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO:44/1997

BETWEEN:	CAROLYN CUPIDON	Plaintiff
AND:	RE/MAX FIRST REALTY OF CAYMAN LTD.	First Defendant
AND:	KIM DOUGLAS LUND	Third Defendant

Appearances:

Ms. Samuels-Brown and Mr. Peter Polack for the Plaintiff
Ramon Alberga Q.C. and Mrs. Linda DaCosta for the Defendants

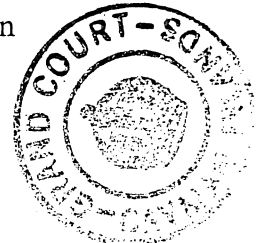
Before Sanderson, J.

RULING

April 7th, 2000

There were 3 issues before me this morning . On Wednesday April 5th at noon it was agreed by all counsel that the trial would be adjourned by consent to this morning. This was to allow the Plaintiff the opportunity to prepare an amended Statement of Claim.

Counsel for the Defendants was to examine a proposed amended Statement of Claim and advise whether or not he agreed with the proposed amendments. He would be given time to file his Statement of Defence if necessary and to object to any proposed amendments if he saw fit. He also reserved his right to speak to the question of costs.



Plaintiff's counsel prepared a revised or draft Statement of Claim and delivered it yesterday afternoon to the Defendants' counsel. Defendants' counsel has agreed with the proposed amendments except for two.

He does not consent to the amended Statement of Claim which would continue to name as Defendant, "Remax First Realty of Cayman Ltd.," because it is not a legal entity.

There is no dispute that the correct legal name should be "First Realty of Cayman Ltd."

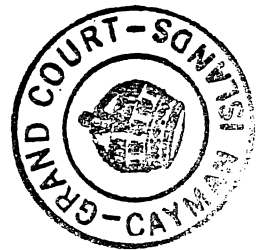
This company trades or carries on business under the name of "Remax First Realty".

The Defendant did not object to an amendment to change the name of the Defendant and neither does the Plaintiff. However the Plaintiff did resist the application primarily on the basis of costs and that the error was the fault or responsibility of the Defendants.

I order that the name of the first Defendant be changed from "Remax First Realty of Cayman Ltd." to be substituted with the correct name of "First Realty of Cayman Ltd." and that the appropriate references be made throughout the Statement of Claim and Defence. There will be no costs in respect of that application.

The second objection to the amended Statement of Claim is the Plaintiff's proposed claim for exemplary damages.

The Defendants say that the Plaintiff's case, even if proved, would not result in a successful claim for exemplary damages and that exemplary damages must be



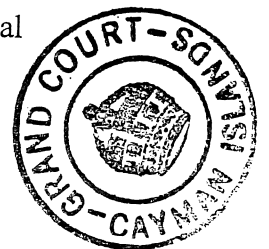
specifically pleaded in the body of the Statement of Claim itself. Plaintiffs' counsel points to paragraph 14 and says that the facts pleaded are sufficient to justify a claim for exemplary damages. With respect I disagree.

Paragraph 14 of the proposed Amended Statement of Claim may give rise to a claim for punitive damages but not, in my opinion, exemplary damages as outlined by Lord Devlin in Rookes v. Barnard ; [1964] A.C. at p.1130.

Both counsel rely on that authority and the Plaintiff says she falls within the second category numerated by Lord Devlin. I do not believe that the Statement of Claim in its revised draft form and in particular paragraphs 13 to 17 therein, even if proved, would be sufficient to fall within Lord Devlin's second category.

If proved, it would entitle the plaintiff to rescission of the January 12th Agreement and perhaps damages arising out of breach of the first Agreement, or alternatively damages for fraudulent or negligent misrepresentation. But there is not, in my opinion, a factual pleading that can sustain a claim for exemplary damages and so that amendment is not allowed.

With respect to the question of costs, the first two days of trial were taken up with motions dealing with discovery of documents and an application under the Confidential Relationships Law and the costs of those days have already been dealt with.



On Tuesday afternoon and part of Wednesday morning we dealt with the issue of the order of Mr. Justice Murphy and whether or not he had made an order directing the change of name of the Defendant and ordering that the claim of fraud be deleted. On Wednesday morning I met with counsel in Chambers and this difficulty was discussed and apparently resolved by noon on Wednesday. For this resolution the Court is most grateful.

I make no order as to costs in respect of that half day on Wednesday.

The Plaintiff prepared and filed an Amended Statement of Claim which took the balance of the day Wednesday and Thursday. Mr. Alberga then had to review the proposed Amended Statement of Claim and deal with those proposed amendments today. The defendants' position on those amendments has been accepted. In addition the Defendants will have to re-prepare for the continuation of this trial as well as dealing with the amendments both now and at trial. I accordingly award the costs for two days as costs thrown away, payable by the Plaintiff to the Defendants in any event of the cause.

Finally I direct that the Defendants have until Friday May 5th, 2000 to file its Statement of Defence and that the Plaintiff have until Friday May 19th to file a reply.

Sander

D.Sanderson
Judge of the Grand Court

