

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

Civil Division

**FEDERATION OF ST. CHRISTOPHER AND NEVIS  
NEVIS CIRCUIT**

Claim No. NEVHCV2021/0004

**BETWEEN:**

**EARL FREEMAN**

Claimant

-and-

**[1] THEO FREEMAN**

**[2] THE NEVIS ISLAND ADMINISTRATION**

Defendants

**Appearances:**

Patrice Nisbett for the Claimant; and  
Dé- Jono Liburd and Rhonda Nisbett Browne for the Defendants

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2022: June 03  
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**DECISION**

Claimant's application to strike out

[1] **PARIAGSINGH, M.**:- Before the Court is the Claimant's application seeking an order that the Defendant's amended defence filed on September 23, 2021 be struck out.

[2] By claim commenced on January 07, 2021 the Claimant seeks damages against the Defendants for personal injuries, loss and damages arising out of an accident which occurred on July 07, 2020.

[3] The Claimant's case is that the First Defendant acting as the servant and/or agent and/or employee of the Second Defendant reversed a loader and collided with the

front of his motor vehicle. The Claimant contends that the accident was caused by the negligence of the First Defendant. He seeks to recover the cost of repairs of his vehicle and loss of use.

[4] The Defendants filed a joint defence to this claim on February 02, 2020 in which they denied negligence. This defence was amended on September 23, 2021 to simply include the words "Further the Defendants deny liability in this claim". What follows is a narrative which suggests several things. The Defendants contend that:

- a. The area was marked with signs;
- b. The work area was closed off;
- c. The First Defendant took all necessary steps to ensure his safety and the safety of those around him;
- d. The Claimant has a history of driving through work zones at a high speed and causing accidents;
- e. The Claimant wrongfully blamed the Defendants for the accident;
- f. No prudent driver would drive into a no entry zone, heading downhill, towards a Front-End Loader while it is backing, then come to a complete stop, without even attempting to reverse out of the way of the Front-End Loader.

[5] In addition to the above, the Defendants also raised the defences of limitation and that this claim is vexatious and frivolous as a Magistrate has found the First Defendant not guilty of driving without due care and attention.

[6] The issue of limitation was dealt with in a previous application to strike out which I dismissed.

[7] The issue of the findings of a Magistrate being a defence or bar to a claim in the High Court was also dealt as a matter of law. It is accepted that a finding of a Magistrate is not binding on the High Court. At its highest, a dismissal of the charge

against the Defendant is simply evidence of the disposition of the charge. No findings made by the Magistrate are binding on the High Court.

[8] All that remains live on the defence is narrative regarding the matters set out in paragraph 4 above.

[9] The Claimant contends that the defence discloses no grounds for defending this claim. In summary, the Claimant contends that the defence amounts to a bare denial of liability.

[10] The Defendants contend that the defence they have raised is that they are not liable and that the Claimant contributed to any liability.

[11] The Court will only deploy the remedy of strike out when it is proportionate to the breach committed. Thom JA in **Agnes Danzie et al V Cecil Anthony SLUHCVP2015/0009** at paragraph 13 stated:

“It is a well-established principle that the court’s power to strike out a statement of case should only be used sparingly (Real Time Systems Limited v Renraw Investments Limited and Others [2014] UKPC 6). Also, in Salfraz Hussain v Birmingham City Council and Others the English Court of Appeal, in considering the exercise of discretion to grant relief from sanctions where judgment was entered in default, stated: ‘it must be kept in mind that discretionary powers are not to be exercised in order to punish a party for incompetence—they must be exercised in order to further the overriding objective’. In exercising his discretion, the learned judge was required to consider what was the appropriate response having regard to all of the circumstances, including whether there were other alternatives available that would be just in the circumstances.”

[12] The crux of the application is whether the pleaded defence meets the requirements of **Part 10 Rule 10.5 of the Civil Proceedings Rules 2000** as amended.

[13] Gone are the days of bare denials. Having denied, the pleader must go on to say why liability is denied. The Claimant has set out at paragraph 5 particulars of the

negligence being contended. The Defendant denies this negligence but does not go on to say why.

[14] The Defendant does not go on to say that liability is denied because the Claimant caused the accident, or that he contributed to the accident. Instead in bits and pieces scatters through paragraphs 4 to 7 it has put matters that when considered in the whole give rise to a suggestion of contributory negligence.

[15] I use the word 'matters' because facts are not asserted. What is put is a mixture of facts, evidence and assumptions. The Defendants plead what the First Defendant saw, heard and did. They also plead what it was probable for him to hear.

[16] There is a fundamental difference between a fact and evidence of a fact. Pleadings are not a place for evidence. It is the opportunity to put facts in issue. When the disputed facts are known, the parties would know what evidence they need to lead to prove a fact.

[17] **Halsbury's Laws of England , Negligence (Volume 78 (2018))** states:

'In an action for injuries arising from negligence it was a complete defence at common law if the defendant proved that the plaintiff, by some negligence on his own part, directly contributed to the injury. However, the Law Reform (Contributory Negligence) Act 1945 provides that where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage is not to be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof are to be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage. The provision applies to contractual liability where this is based on a failure to take reasonable care and that failure also constituted negligence actionable as such in tort, but it does not operate to defeat any defence arising under a contract.'

[18] To determine what a fair amount to reduce any award of damages, the court has to make a finding of the Claimant's share of the responsibility. To lead evidence to meet this, the Claimant must know exactly what are the allegations of fact that the

Defendants are relying on to assert that he contributed to his damage. The Claimant should not be left guessing or to anticipate what exactly the Defendants is saying. To ensure that there is no doubt, the rules of pleading impose an obligation on the party asserting contributory negligence to give particulars. In other words, say exactly why it is contended the Claimant caused or contributed to his damage.

[19] The Defendants' pleading fall far below what has to set out to properly mount the defence of contributory negligence. Whilst this is so, it cannot in with any good conscience be said that the allegation of contributory negligence is not here. Counsel's submission that the allegations can be fully ventilated in witness statements does not find favour with this Court. Witness statements are not to bridge gaps in deficient pleadings. Pleadings must be in such a state as to allow a Claimant to know what the complete defence is being asserted against his case.

[20] Henry J in **Donald Findlay v Wendell Walters, SVGHCV2012/0151** at paragraph 28 stated:

"He also raised the issue of contributory negligence but it was not pleaded. The law requires that contributory negligence be pleaded if it is being relied on as a defence. The defence of contributory negligence is therefore not considered."

[21] Without specifically pleading that the Claimant caused the accident and/or contributed to it, the Defendants have no defence to this claim except for a bare denial. Having found that the pleaded defence is deficient, I am not of the view that striking out is the appropriate response to the breach. As stated above, the defence when read as a whole does suggest a denial of liability and contributory negligence. As such, the breach can be remedied by an amendment. This amendment will be limited to properly pleading negligence and/or contributory negligence on the part of the Claimant and providing particulars of negligence.

[22] On the issue of costs, the Defendants are getting the opportunity to properly plead their defence in response to an application to strike out. Accordingly, the

Defendants must pay the Claimant's costs of this application to be assessed in default of agreement.

**ORDER:**

[23] In the circumstances, it is hereby ordered that:

1. Unless the Defendants file and serve a re-amended defence, confined to pleading negligence and/or contributory negligence on the part of the Claimant and providing particulars of negligence on or before June 21, 2022 the Defendants' defence is struck out;
2. The Defendants shall pay the Claimant's costs, in any event, of this application to be assessed by this Court in default of agreement between the parties within 21 days on the application of either party; and
3. Upon the filing of a re-amended defence in accordance with this order this matter is to be relisted before a Master for case management.

**Alvin Shiva Pariagsingh  
High Court Master**

**By the Court.**

**Registrar**