



**IN THE SUPREME COURT  
TURKS AND CAICOS ISLANDS  
BETWEEN**

**CL - 47/2019**

**Arnold Sampath**

**1<sup>st</sup> Plaintiff**

**Marion Sampath**

**2<sup>nd</sup> Plaintiff**

**The Estate of Cliff Anderson Sampath (deceased)**

**Defendant**

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**RULING**

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**Before:** The Hon. Mr. Justice Carlos W. Simons OBE QC

**Appearances:** Mr. Conrad Griffiths QC and Mr. Devonte Smith of Griffiths and Partners, Attorneys for the Plaintiffs.

Mr. George C. Missick of Geordins for the Defendant.

**Trial Date:** 19 January 2022

**Venue:** Court No. 5, Graceway House, Providenciales

**Date Delivered:** 3 May 2022 at 4:00 pm.



## **The Applications**

1. There are two competing interlocutory Applications before the Court. One by the Plaintiffs for Summary Judgment under Order 14, and another by the Defendant for Security for Costs under Order 23. There is also the issue of an Amended Defence, which the Plaintiffs say was wrongly filed without leave. I shall take the Plaintiffs' Application First, on the basis that if it succeeds, the Defendant's Application for Security for Costs and the dispute regarding the filing of the Amended Defence without leave, will become otiose.
2. In taking this approach I expressly reject the suggestion of counsel for the Defendant in his skeleton argument that the Application for Security for Costs is in any way a "preliminary issue". Logic suggests otherwise. Security for Costs against a non-resident Plaintiff is effectively a Defendant's insurance against the risk of not having his costs paid in the event he is successful in the litigation and a costs order is made in his favor. But to make an order for Security for Costs where the Defence is being tested on an Order 14 Summons might serve only to delay the Plaintiff and increase the costs of the action. So, first to the Plaintiffs' Summons; but only after a brief background summary.

## **Parties and Background Summary**

3. The First and Second Plaintiffs are the father and sister respectively of the deceased, Cliff Anderson Sampath. The deceased died intestate on 10 February 2019. He was resident in Providenciales, Turks and Caicos Islands (TCI) at the time of his death. The Plaintiffs issued these proceedings on 17 April 2019 by which they seek against the estate the repayment of loans advanced by each of them to the deceased in the sums of \$303,070.62 (the First Plaintiff) and \$92,990.43 (the Second Plaintiff).
4. By order dated 6 June 2019, on the Application of the Plaintiffs, and apparently in her absence, Ms. Guillermina Rodriguez who is the mother of the deceased's daughter, Roselyn Danielle Sampath was appointed to represent the estate of the deceased for the purposes of these proceedings in the absence of an Administrator appointed by the Probate Court. Ms. Rodriguez, along with Pastor Rafael Velazquez of Our Lady of Divine Providence Roman Catholic Church, Providenciales has since, on 28 My 2019 petitioned the Probate Court for letters of administration intestate in the estate of the deceased.
5. That petition has been met with a caveat filed on behalf of the Second Plaintiff on 16 December 2021 and it apparently remains extant. However, that is of no concern on these Applications, except to note that with the order of 6 June 2019, the filing of a Defence on 18 July 2019 coupled with the petition for letters of administration intestate, Ms. Rodriguez is fully and properly engaged on behalf of the estate of the deceased, which is the Defendant before the Court.

## **The Plaintiffs' Summons under Order 14**

6. By their Summons, the Plaintiffs seek final judgment on the relief claimed in the Writ of Summons and Statement of Claim
  - i. for the First Defendant in the sum of \$298,842.10;

- ii. for the Second Defendant in the sum of \$92,990.43; and
- iii. for pre-judgment interest to be assessed as detailed in the Summons.

It should be noted that the prayer for relief in the Statement of Claim differs from the Plaintiffs' Summons in one minor respect – the sum claimed for the First Defendant is \$303,070.62, and not \$298,842.10.

- 7. The Plaintiffs' Summons is supported by the 1st Affidavit of Marion Sampath, the Second Plaintiff. That Affidavit was sworn on 20 October 2021 and bears a Registry stamp dated 5 November 2021. In the Affidavit Ms. Sampath descends into exhaustive details of the loans advanced to the deceased both by herself and by the First Plaintiff. In each case, particulars are given of the products and services purchased from various vendors for the use and benefit of the deceased, and there are particulars also of monies (cash) transferred directly to the deceased from the Plaintiffs' banks and via money transfer agencies. These details are supported by paid credit card and vendor receipts and by bank and money transfer agencies' transaction reports, all of which are exhibited to the Ms. Sampath's Affidavit.
- 8. The Plaintiffs' Summons is also supported by the 1st Affidavit of Jordan Bolton, a Fellow Chartered Accountant and business and finance professional practicing with WB Financial Group. Mr. Bolton's Affidavit was sworn and filed on 5 November 2021. In it he avers that he has seen the 1st Affidavit of the Second Plaintiff and the evidential documents that she exhibits including bank statements, invoices, receipts, and transfer documents that underpin the Plaintiffs' claims. Based on these documents he has prepared two reports, one in respect of each Plaintiff that essentially confirm what is being claimed in the proceedings by the Plaintiffs. He has also done a pre-judgment interest calculation. All of which are exhibited to his Affidavit.

### **The Defendant's Answer**

- 9. The Defendant has chosen not to condescend to answer these specific, documented and, on their face verifiable assertions by the Plaintiffs. The Defendant's Summons for Security for Costs and Ms. Rodriguez's 1st Affidavit in Support, and exhibit (and the Amended Defence, filed without leave) are date stamped into the Registry on 7 January 2021. In her Affidavit (and Amended Defence) and with full notice of what case the Plaintiffs make, the Defendant chose not to address with any specificity the allegations and averments made by the Plaintiffs. Rather, the Defendant's principal response to the Plaintiffs' Summons – an Application for Security for Costs seems to be more of an afterthought, calculated to head off the inevitable. The Court should never be in a mood to play footsie with stratagems that undermine the rules of Court that are intended to deliver justice as quickly and cheaply as possible.
- 10. Two examples will suffice to justify the harshness of this assessment, one from Ms. Rodriguez's 1st Affidavit and one from the Original Defence and Amended Defence (filed without leave). First, the Affidavit is concerned primarily with supporting the Security for Costs Application and the closest it comes to disputing the material offered by the Second Plaintiff's Affidavit in Support of the Summary Judgment Application is at Paragraphs 26 and 27. At Paragraph 26 Ms. Rodriguez she says that she has been by her Attorneys that the Plaintiffs' claim requires "further disclosure" and, at Paragraph 27, she says that she along

with a “Mr. Shepherd...and other witnesses” will provide evidence that the deceased sent the Plaintiffs “tens of thousands of dollars if not hundreds of thousands of dollars over the years”.

11. The Defence as originally filed, merely puts the Plaintiffs to proof of their claims. The Amended Defence differs only in that it asserts at Paragraph 8 that any money given to the deceased as a loan was paid back during his lifetime, and at the new Paragraph 10, which asserts any advance of funds by the Plaintiffs to the deceased were gifts and, in relation to the First Plaintiff, reliance is had to the presumption of advancement. The internal inconsistency of the pleading is inescapable.

### **The Order 14 Test**

12. Paraphrasing, Order 14, rule 3 requires a Defendant facing a Summary Judgment Application to satisfy the Court that there is an issue or question in dispute which ought to be tried, or that there ought for some other reason to be a trial of the claim. Otherwise, the Court may give such judgment for the Plaintiff as may be just. So, the bar is a high one. And that is not surprising as Order 14 is a case management tool, intended to separate the chaff from the wheat all in the overarching objective to deliver justice swiftly and cheaply. Save that it allows the Defendant slightly more leeway to get to trial, it is the virtual equivalent of a striking out Application.
13. Mr. Griffiths QC reminds me of this Court’s recent acquaintance with the Order 14 test, having applied it in the case of *Ira Riklis v. Pearls Villa Management, Ltd.* [CL-13/2021] in a Ruling delivered on 16 April 2021. There the Court emphasized the need for a Defendant, resisting an Order 14 Application to show “that there is a fair or reasonable probability of his having a credible Defence and not merely that there is a faint possibility that he has a Defence...”. In my judgment the rule does not allow the Defendant the opportunity to search for and deploy a Defence once found, or to promise a Defence upon further disclosure by the Plaintiff.
14. I therefore hold with Mr. Griffiths QC that based on the authorities, the Defendant must show a *bona fide* Defence to the claim that has a reasonable probability of success, and not merely a fanciful, implausible, or incredible case to refute a valid claim. On the papers before the Court, the Defendant has at best, promised a case upon further disclosure by the Plaintiffs and upon appointment by the Probate Court of Ms. Rodriguez and Pastor Velasquez as personal representatives of the deceased. That unfortunately, does not quite meet the mark to turn back a properly documented Order 14 Summons for Summary Judgment.

### **Decisions**

15. In the result I make the following orders on the Plaintiffs’ Order 14 Summons for Summary Judgment:
  - i. I grant final judgment for the First Plaintiff in the sum of \$298,842.10.;
  - ii. I grant final judgment for the Second Plaintiff in the sum of \$92,990.43;
  - iii. I refuse pre-judgment interest on the ground that the Second Plaintiff has averred that the loans now being pursued were advanced on an interest free basis; and
  - iv. I grant post-judgment interest at the statutory rate.

16. In light of the foregoing, the Defendant's Application for Security for Costs is academic and I decline to address it or to rule on it on the merits. For the same reason, there is no need for the matter of leave to file the proposed Amended Defence to be addressed, and I decline to do so.

**Costs**

17. The Plaintiffs are to have their costs of the action to be taxed if not agreed.

**Hon. Carlos W. Simons OBE QC**

**Judge of the Supreme Court**

**3 May 2022**

