

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

(ADMIRALTY DIVISION)

CIVIL SUIT NO. 462 OF 2000

BETWEEN:

BEATRICE SETZU MARCY
CHARLES STEWART

First Plaintiff
Second Plaintiff

and

CARLOS SIMMONS AND ALL OTHER PARTIES
INTERESTED IN THE BOAT CARLOS

Defendants

Appearances:

Mr. Richard Williams for the Plaintiffs
Mr. Emery Robertson for the Defendants

2001: March 27
Delivered April 10

RULING

1. **Webster, J.** (acting) On March 28, 2001 I made an order for separate trials of the two main issues raised by the pleadings in this action, and granted leave to the Plaintiff to file a cross-counterclaim to the Defendant's counterclaim. I promised to provide reasons for my decision which now follow.
2. This is an application by the Plaintiffs for an order pursuant to **Order 15 Rule 5 of the Rules of the Supreme Court, 1970** for the Court to order separate trials of the two or more causes of action included by the Defendant Carlos Simmons in his counterclaim.
3. The action was commenced on October 20, 2000 in the Admiralty Division of the High Court by specially indorsed Writ of Summons. The Statement of Claim discloses that the First Plaintiff purchased the boat "Carlos" in October 1996 for \$23,366.00. In February 2000 she sold the boat to the Second Plaintiff for \$15,000.00. In May 2000 the Defendant took possession of the boat claiming

that he was the owner, thereby suggesting that the First Plaintiff did not have authority to sell the boat to the Second Plaintiff.

4. The Defence filed on November 15, 2000 concedes that the First Plaintiff purchased the boat with her own funds. However, the Defendant contends that the First Plaintiff bought the boat with the intention of giving it to him as a gift. The boat was in fact given to him, and he retained possession.
5. The Defendant also counterclaimed for an accounting from the First Plaintiff for monies due to him from the business operations of the boat with Antillean Tours Limited which he carried on jointly with the First Plaintiff. There is also mention of monies spent by the Defendant for fuel and upkeep of the boat, but no claim is made for the repayment of these monies.
6. The Defendant also claims, as an alternative to the gift in the Defence, that he is entitled to ownership of the boat, or a share thereof, by virtue of having carried on business with Antillean Tours Limited jointly with the First Plaintiff.
7. The boat was arrested by the Admiralty Marshall pursuant to a Warrant of Arrest filed by the Plaintiff's on October 20, 2000. The boat is in storage at Howard's Marine Limited, St. Vincent, pursuant to an order of Mr. Justice Odel Adams made on December 20, 2000. The trial of the action is set for April 10, 2001.
8. On March 22, 2001 the Plaintiffs filed this application seeking an order that the issues relating to the ownership of the boat be tried separately from the issues relating to the claim by the Defendant for an accounting. The Plaintiff's objection to the joint trial of both issues are that:
 - (a) the First Plaintiff would like to, but is prohibited by the Rules of Court, from filing a further claim against the Defendant; and
 - (b) the joint trial will embarrass the Plaintiffs and delay the trial of the action, and is otherwise inconvenient.
9. The Plaintiff's first objection is easily disposed of by reference to the case of **The Normar** [1968] 1 All E.R. 753 in which the Court of Appeal in England had to interpret the identical provision to our Order 15 Rule 2. After referring to the Rule, Caines, J. continued:

"So the effect of that is clearly to give an express right to a plaintiff to counterclaim against a counterclaim, and a note in the Supreme Court Practice 1967, p.145, with the side note "15/2/5", interprets the rule in that way, because it reads:

"Counterclaim to counterclaim. Paragraph (2), supra, adopts and probably extends the previous law, and enables the Plaintiff to raise a counterclaim to the counterclaim raised by the defendant against him, even though the plaintiffs counterclaim may be more than a mere protection against the Defendant's counterclaim..."

10. Following the decision in **The Normar** this Court does not share the First Plaintiff's concern about counterclaiming against the Defendant's Counterclaim, although the Court's leave would be required for filing this unusual pleading.
11. The remaining issue is whether the court should allow the trial to proceed with the counterclaim, or order separate trials, on the ground that a joint trial will embarrass or delay the trial. The relevant Rule is **RSC Order 15 Rule 5** which reads:

"If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Courts that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such order as may be expedient.

If it appears on the application of any party against whom a counterclaim is made that the subject matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient."

12. Counsel for the Defendant also referred to the Court to **Section 20 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Cap. 18** which requires the Court to dispose of all matters in controversy between the parties to avoid the multiplicity of legal proceedings. However, **Section 20** is a general power which must be read subject to the Court's supervisory powers in **Order 15 Rule 5**.
13. It is clear that the Court can try a counterclaim even if it is not connected to the subject matter of the Plaintiff's claim. Equally, the Court has a discretion to exclude a counterclaim which may unduly delay the trial of the action. There are numerous authorities for these propositions including **Gray v. Webb** (1882) 21 Ch.D. 802.
14. I am satisfied that the acquisition of the boat by the First Plaintiff, and the alleged gift to the Defendant, constitute one event or series of events occurring in 1996. The facts relating to these events are pleaded in Statement of Claim and the Defence.
15. The alternative claim to a share of the ownership of the boat is largely in the Counterclaim. This claim is based on event's occurring after the boat was purchased and paid for by the First Plaintiff, and allegedly given to the Defendant. If I am to accept paragraph 6 of the affidavit filed in support of the application, and there is no reason why I should not, these events commenced in 1998, two years after the boat was purchased. It is difficult to see how the use of the boat in a business carried on jointly with the First Plaintiff two years after the boat was purchased, can give the Defendant a share of the boat. Any such claim, whether based on agreement or otherwise, has to be supported by allegations in the pleadings. And there are no such allegations. The Defence

and Counterclaim, read together, suggest that the Defendant has a claim for an accounting of the assets and profits of the joint business operations carried on with the First Plaintiff, and not a claim to ownership of the boat.

16. There are therefore two viable causes of action on the pleadings. The first relating to the ownership of the boat is set out in the Statement of Claim and the Defence, and is ready for trial. The second relating to the accounting is not ready. The First Plaintiff has stated in paragraph 9 of the affidavit in support of the application that she would like to make claims against the Defendant. The Court has power to give the First Plaintiff leave to file a cross-counterclaim, and such leave is hereby granted.
17. The filing of the cross-counterclaim will inevitably cause a delay in having the case ready for trial on the April 10, 2001. Further, the accounting claim is an *in personam* claim and the parties will need to go through the usual interlocutory proceedings, including discovery and directions for trial, before that claim will be ready for hearing. This will further delay the trial of the action if both causes of action are to be tried together.
18. The urgency of the trial is brought into sharp focus because the boat is under arrest and storage costs are being incurred.
19. The Court will therefore exercise its discretion by ordering that the issues raised by the Counterclaim, save and except the claim for a declaration that the boat was a gift to the Defendant, be tried separately. The trial of the issues raised by the Statement of Claim and the Defence will proceed on April 10, 2001.
20. The First Plaintiff is granted leave to file a Cross-counterclaim and the issues raised by the Counterclaim and Cross-counterclaim will proceed to trial according to the Rules of Court.
21. Having regard to the Plaintiff's delay in filing this application I order that the costs of the application be in the cause.

.....
 Paul Webster
 High Court Judge [Ag.]