



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2012: No. 391

BETWEEN:

LINDA SHARON SWAN

Plaintiff

-v-

PHOENIX LAW CHAMBERS

Defendant

EX TEMPORE RULING

(in Chambers)

Date of hearing: January 16, 2015

Ms. Stephanie Hanson, Conyers Dill & Pearman Ltd., for the Plaintiff

Mr. Gordon Ricky Woolridge Jr. appeared in person¹

¹ Although the firm was named as Defendant, the action has always proceeded on the basis that the true legal Defendant is Gordon Ricky Woolridge Jr. trading as Phoenix Law Chambers.

Introductory

1. By Summons dated November 24, 2014, the Defendant issued a Summons seeking a declaration that the Plaintiff had committed perjury and setting aside the Judgment dated February 14, 2014². The applicant, Mr. Woolridge, filed his own Affidavit in support of that application dated November 17, 2014. The pivotal paragraph is paragraph 2 where the particulars of perjury are set out in the following terms:

“2. I make this Affidavit in support of the Plaintiff’s Application to set aside the Judgment of September 2013 given against the Defendant on the basis that the Plaintiff committed perjury in her evidence to this Honourable Court when she testified inter alia that:

- a. She was not aware of the rate of interest that she had been charged,*
- b. That she made no agreement with respect to the 5% per calendar month interest charged,*
- c. That she had never engaged in discussions with me and my then office manager re: the interest rate and the mounting fees owed,*
- d. That she had not promised to deliver to the bank our fee note for her final bill.”*

2. The Affidavit seeks to support those very serious allegations by exhibiting certain invoices which were said to have been found by employees or agents of the Defendant since the trial. The Court gave directions on the first return date of the Summons and made the following Order:

“(1) The Defendant shall serve his Statement of Claim on or before 3 January 2014;

(2) The matter shall be listed for a two hour hearing before a Judge of the Supreme Court on 16 January 2014 at 10.00 A.M to determine whether the Defendant has a reasonable cause of action against the Plaintiff...”

Findings: should Defendant’s application to set aside the judgment on the grounds of perjury be summarily dismissed?

² *Swan-v-G. Woolridge* [2014] SC (Bda) 7 Civ (14 January 2014); [2014] Bda LR 9.

3. The Defendant did not avail himself of the opportunity to file a Statement of Claim and has therefore not amplified the allegations save to the extent that he filed an Affidavit dated January 5, 2015 which sets out various general matters which relate to the background facts which were addressed at trial. I found nothing in this Affidavit which supported the allegations of perjury which were supported in the First Affidavit to any or any plausible extent.
4. In dealing with the allegations Ms. Hanson made the following submissions. As regards subparagraphs (a) and (b) of paragraph 2 of the Defendant's First Affidavit in this matter, she submitted that these allegations mischaracterised the evidence given at trial and referred the Court to paragraph 13 of the February 14, 2014 Judgment. She submitted that subparagraph (c) was incorrect on its face and queried the relevance to these issues of the allegations made in subparagraph (d).
5. Having considered the material before the Court, I am bound to conclude that there is no arguable case of perjury. What Mr. Woolridge is in effect seeking to do is to argue that the Court was wrong to decide against him at trial and to reargue the matter which was fully argued in late January last year, before the same trial judge. The case that was rejected was substantially the same as the case that is being asserted again. Namely, the assertion that the Plaintiff had in fact entered into a conscious agreement that the interest she was paying was 60% per annum or 5% per month. That argument was roundly rejected by the Court, in part on the basis of the Defendant's own witness. One only has to look at paragraphs 12 to 13 of the Judgment to see that the Court applied its mind to the matters which were argued against the Plaintiff and found in the Plaintiff's favour.
6. What do these supposed 'new' invoices disclose? Carefully analysed in light of the evidence that was at trial in the form of the Witness Statement of the Plaintiff herself, which was referred to in the course of argument, it seems clear that the bulk of the supposedly 'new' invoices are not new invoices at all. They are simply somewhat different versions of invoices which it was common ground the Plaintiff had in fact received. There was only one invoice which was accepted by the Plaintiff's counsel as being entirely new. That was an April 10 2009 invoice which does in fact set out a list of interest payments which the Defendant (as I understand it) seeks to contend demonstrates the following. That had the Plaintiff analysed these statements, she must have known she was being charged 5% interest a month on the basis of an aggregate annual interest rate of 60% per year.
7. A similar argument was made (at trial) in respect of similar documents. For instance, the January 7, 2011 'new' invoice corresponds to the invoice at page 14 of the Plaintiff's Witness Statement in terms of date, but is different in terms of the amounts set out. Oddly, the amounts set out in the new version recently produced are far higher than the amounts produced in evidence at trial. But the important point from my perspective is that in both cases the interest which is set out in that statement

is of an amount that if properly analysed would have put the Plaintiff on notice that she was being charged at a high rate. The Court in rejecting the argument that the Plaintiff must have known what she was being charged because she could decipher this from the statement said this at paragraph 12 of the Judgment:

“12. Based in part on the Defendant’s Office Administrator’s evidence, I find that the Plaintiff was under considerable financial stress flowing from the litigation and over and above her legal fees when she was paying the relevant bills. It is entirely plausible that in these circumstances she struggled to pay as much as she could, not querying the amounts claimed until [she] realised what the scale of her payments was as demands for further payments kept coming. In addition, I find that the Plaintiff did not receive regular bills or statements from which she could easily ascertain either (a) how much she had paid altogether as against how much money was still outstanding, or (b) what interest rate was being charged.”

8. So even if the Defendant were to be given an opportunity to adduce evidence to the effect that the statements which were subsequently discovered (and it seems to me that there was only one statement) should have been taken into account at trial, it does not bear on the question of whether the Plaintiff perjured herself; because the Court rejected a corresponding argument at trial.
9. I agree that the assertion that the Plaintiff perjured herself in saying that she had not promised to deliver a fee note for her final bill is not sufficiently connected to the basis on which the Judgment was obtained to be arguably capable of justifying setting aside the judgment, even if the perjury allegation in that respect was proved. But all of the other matters, it seems to me, in effect relate to matters which were considered at trial and are based on a mischaracterisation of the evidence.
10. I have mentioned subparagraphs (a) and (b); (c) alleges perjury in denying entering into discussions on interest and rising fees. That allegation is wholly misconceived because that was not the Plaintiff’s evidence at trial. It was common ground that discussions took place in relation to interest and mounting charges and the only dispute was what the precise character and nature the interest was in financial terms.
11. And so for those reasons I am bound to strike-out the Summons seeking to set aside the Judgment on the grounds of perjury.

Costs

[The Court then heard the parties on the issue of costs and the basis of taxation.]

12. This is an application where the Court has found that there is no proper basis for the perjury allegation which was made. Undoubtedly the ability of Mr. Woolridge to analyse the merits of this application was impaired by the fact that he was acting in person rather than as counsel for an independent client. It seems to me that the Plaintiff should not be penalised in any way for Mr. Woolridge's inability to be an effective advocate in his own cause.
13. Costs are awarded to the Plaintiff on an indemnity basis. Obviously the stay which was ordered on December 11, 2014 is discharged.

Dated this 16th day of January 2015 _____
IAN R.C. KAWALEY CJ