

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2007-04439

BETWEEN

RUPERT PETERS

CLAIMANT

And

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

FIRST DEFENDANT

JOEL PARSONS

SECOND DEFENDANT

DENNIS PULCHAN

THIRD DEFENDANT

Before the Honourable Madame Justice C. Pemberton

Appearances:

For the Claimant: Mr. G. Ramdeen

For the Defendant: Mr. K. Douglas

DECISION

- [1] Mr. Rupert Peters, the Claimant in this matter, alleged that on March 31, 2007, while incarcerated at the Golden Grove Prison he was assaulted and beaten by Mr. Joel Parsons and Mr. Dennis Pulchan, two Prison Officers at the institution. This claim was filed on November 23, 2007. The Defendants filed an application requesting that the claim be struck out

for non compliance with the **CIVIL PROCEEDINGS RULES 1998 (CPR 1998)**).

[2] **Claimant's Evidence**

Mr. Peters submitted an affidavit to the Court in which he offered reasons for his non appearance in Court. He stated that in April 2008 he was arrested, for a second time, for larceny and sentenced to serve six months in prison.¹ During Mr. Peters, incarceration, his attorneys' office was relocated from San Fernando to Port of Spain and he was unable to contact him because he lost the telephone contact number.² Mr. Peters stated he discovered this information in November 2008, after his release from prison. Mr. Peters then claimed that he enrolled himself in the New Life Ministries Drug Rehabilitation Center located at Mount St. Benedict drug rehabilitation program for three months.³ After leaving the program, he again attempted to contact his attorneys' office, but was unable to visit Port of Spain due to an injury prior to his incarceration which made walking long distances very difficult.⁴ Mr. Peters stated that he contacted his attorneys' office in May 2009, and has attended all hearings since then.⁵

[3] **Defendant's Evidence**

The Defendant submitted an affidavit by Ms. Hulsie Bhaggan, the Clinical Coordinator of New Life Ministries Drug Rehabilitation Center at Mount St. Benedict. Ms. Bhaggan stated that Mr. Peters entered the programme on May 21, 2008.⁶ She stated that Mr. Peters was dismissed from the programme on August 5, 2008 due to his unwillingness to comply with the

¹ Affidavit of Rupert Peters, para 4. Filed on Jan. 24, 2010.

² Id.

³ Id. at para 5.

⁴ Id.

⁵ Id. at para 6.

⁶ Affidavit of Hulsie Bhaggan, para 5. Filed on Feb. 26, 2010.

requirements of his treatment and rehabilitation programme.⁷ Additionally, Ms. Bhaggan stated that persons in the programme are allowed to make and receive telephone calls, as well as have conference meeting with their attorneys.⁸

[4] **Claimant's Submissions**

The Claimant made no submissions on this issue.

[5] **Defendant's Submissions**

The Defendant submitted to the Honourable Court that the Claimant's Statement of Claim should be struck out due to his non-compliance with the **CPR 1998**. The Defendant stated that the Claimant violated Parts 1.3 and 25.1 which provide that the actions of parties should further the overriding objective of the **CPR 1998** by actively managing cases⁹. It was also submitted that the Claimant was in non-compliance with Part 27.5(2) which requires the parties to attend the Case Management Conferences.¹⁰ To support these submissions, the Defendant directed the Honourable Court to several authorities including **ANDREW KHANHAI V. PRISON OFFICER DARRYL CYRUS AND THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO C.A. No. 158 of 2009**, and **TRINCAN OIL V. CHRIS MARTIN C.A. No. 65 of 2009**.¹¹

[6] **Analysis and Conclusion**

After reviewing the Defendants submissions I can find no fault with them. In my view the Defendant's submissions have been thoroughly presented and are in keeping with the mandate of the **CPR 1998**. This is expressed clearly by The Honourable Mr. Justice of Appeal Jamadar in **KHANHAI**. The Honourable Mr. Justice of Appeal Jamadar echoes the sentiments of

⁷ Id. at para 4.

⁸ Id. at para 5.

⁹ Written Submissions filed on Behalf of the Defendant. Pg. 5. Filed on Mar. 19, 2010.

¹⁰ Id.

¹¹ Id. at 12-15.

The Honourable Mr. Chief Justice Sharma's (former) foreword in the **CPR 1998**, stating:

*The CPR bring with them a new litigation culture – a paradigm shift in the administration of civil justice. Under the new CPR 1998, parties and their attorneys have a duty and responsibility to manage and monitor their matters. The CPR 1998 provide fair and reasonable timelines and the Rules were agreed to after wide and sometimes contentious consultation, which included the Law Association of Trinidad and Tobago and all attorneys-at-law.*¹²

KHANAI reflects the Court of Appeal's sentiments regarding the requirement that the Claimant **must** apply for relief from sanctions to be in compliance with the **CPR 1998**. In this matter, Mr. Peters' presence was requested in Court; however his attorneys were unable to locate him. This lack of communication and resultant disregard of the Honourable Court's time is demonstrative of the irresponsible behaviour which the **CPR 1998** is designed to address.

- [7] In addition the recent ruling in, **THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO V. UNIVERSAL PROJECTS LIMITED C.A. No. 104 of 2009** by The Honourable Mr. Justice of Appeal Jamadar refers to the **TRINCAN** matter and is reflective of the Court of Appeal's strict "no tolerance" position to non-compliance with the **CPR 1998**. The Honourable Mr. Justice of Appeal Jamadar states:

The circumstances of this case illustrate exactly the kind of 'laissez-faire' approach to civil litigation that undermines the good administration of justice and that can no longer be accepted. The

¹² **ANDREW KHANHAI V. PRISON OFFICER DARRYL CYRUS AND THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO C.A. No. 158 of 2009. Pg. 11, para 35.**

*overriding objective of the CPR 1998, to deal with cases justly, must also mean to deal with them justly in accordance with the rules of court.*¹³

Comparatively, in this matter Mr. Peters and his attorneys' unwillingness to adhere to the rules of the court cannot be permitted to endeavour endlessly. In pursuance of the overriding objective of the CPR 1998 and in the good administration of justice, Mr. Peters would be subjected to the sanctions of this Honourable Court.

- [8] Mr. Peters has not satisfied me that his failure to attend Court and his failure to comply with the orders of July 30, 2009 and January 21, 2010 are not fatal to the continuation of this claim.

CONCLUSION:

- [9] As a result, I find that I cannot permit this Claim to continue.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Application to strike out the Claimant's Claim filed on July 29, 2009 be and is hereby granted.
2. The Claimant is to pay the Defendants' costs assessed.

Dated this 16th day of April 2010.

CHARMAINE PEMBERTON
HIGH COURT JUDGE

¹³ THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO V. UNIVERSAL PROJECTS LIMITED C.A. No. 104 of 2009. Para 117.