

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008 – 04679

IN THE MATTER OF

CHARLENE FORDE

Claimant

AND

PUBLIC TRANSPORT SERVICE CORPORATION

Defendant



## JUDGEMENT

**Before The Hon. Madam Justice Pemberton**

Appearances:

For the Claimant: Mr A. Ashraph

For the Defendant: Mr R. Persad and Ms N. Jaggernauth instructed by Ms S. Boodoosingh

[1] I have waited as long as I could have and even longer for the Claimant in this matter to put her house in Order to comply with any directions. I must now proceed to give my decision on the Defendant's application to strike out or dismiss the Claimant's Claim Form and or Statement of Case as being an abuse of the court's process.

[2] The nature of the abuse as stated by the Defendant is two-fold:

- (1) Claimant has failed to effectively prosecute her claim through her undue delays between necessary steps in the litigation; and
- (2) Having received an interim award for an avowed specific purpose, the Claimant misapplied and or misappropriated same and failed to use the sums for the purpose for which it was disbursed.

[3] The court's record will reveal that the case commenced by way of Claim Form filed on 28<sup>th</sup> November 2008 through Attorney C & Co. The Defence was filed and in keeping with the court's

responsibility under CPR a Case Management Conference was held on 6<sup>th</sup> July 2009 during which time an amended Statement of Claim and a Notice for interim payment were filed by the Claimant.

- [4] At the Case Management Conference, Defendant agreed to pay to the Claimant the sum of One Hundred and Sixty-Five Thousand Dollars (\$165,000.00) by way of Interim Payment and the Order was so recorded. The specific purpose for the payment was to allow the Claimant to “undertake hip replacement surgery and rehabilitation”. A long adjourned date for Case Management Conference was applied for and granted to facilitate the surgery and rehabilitation.
- [5] On 13<sup>th</sup> January 2010 C & Co appeared for the Claimant. Attorney with some embarrassment, informed the court that Claimant did not undertake the surgery. He intimated his inability to continue the representation. In the premises he filed an application to cease to act. A lengthy adjournment was granted to facilitate Claimant’s change of Attorney.
- [6] On 18<sup>th</sup> January 2012, the Defendant attended a further Case Management Conference. Neither the Claimant nor her representative was in attendance. At that Case Management Conference, the court revealed that the Legal Aid and Advisory Authority informed that K & Co were appointed Attorneys. On 27<sup>th</sup> April 2012, K & Co appeared, but stated they had not to date received instructions from the Claimant despite many requests for same from her. By 18<sup>th</sup> July 2012, A & Co attended and asked to be recorded as “*amicus*”. By then there was some movement which saw a joint parties conference. The Court was informed that negotiations had broken down.
- [7] This application was filed.

#### **ISSUE NO. 1 – ABUSE OF PROCESS**

It is clear that the court has wide powers and a responsibility to check that its processes are not being abused by any litigant. In this case, the court has bent over backwards to service the Claimant, but what of the Defendant? Must this action be forever, held as the sword of Damacles over its head? I think not.

[8] In relation to the Court's resources, Part 1.1 mandates that in dealing with cases justly, the court must proportionately apply its resources to each case filed in the court. Can keeping this case on the docket be so justified? I think not.

[9] The Claimant has a duty to prosecute his/her claim with diligence. This is **not** evident in this case. There is inordinate delay which cannot be supported any longer. I therefore find merit in the Defendant's first leg of the argument of abuse of process.

[10] **ISSUE NO. 2 – MIS APPLICATION OF MONIES PAID ON INTERIM PAYMENT APPLICATION**

He who comes to equity must come with clean hands. Even though the Defendant found no authorities to support this ground, I find it difficult to support any activity speaking to admitted misapplication of funds paid by way of interim payment for a specific purpose. I need go no further. The Claimant did not approach the court with clean hands and the matter rests there.

[11] **CONCLUSION**

As I stated to this date the Claimant has **NOT** complied with my Order of 31<sup>st</sup> July 2013. Instead I received an application of extension of time for no good reason.

In the premise, I am constrained to grant the Orders prayed by the Defendant in its application.

**ORDER:**

- (1) **That the Claim Form and Statement of Claim filed on 28<sup>th</sup> November 2008 be dismissed as an abuse of the Court's process.**
- (2) **That there be no order as to costs.**
- (3) **That the Claimant be debarred from filing further proceedings in relation to this incident without leave of the court.**

Dated this 20<sup>th</sup> day of May 2014.

/s/ CHARMAINE PEMBERTON  
HIGH COURT JUDGE