

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2012-04814

BETWEEN

L.J. CONSTRUCTION CO. LTD

CLAIMANT

AND

JANIS SOLOMON

DEFENDANT



REASONS

Before the Honourable Madam Justice C. Pemberton

For the Claimant: Mr M. George
Ms. S. Stewart - Principal Officer/Managing Director of Claimant
Company

For the Defendant: Mrs D. Moore-Miggins
Defendant present and Mr Pheon Solomon-son

[1] It is now *trite* that the provisions of the CPR must be adhered to.

[2] It is also, *trite* that neither the overriding objective nor the Court's Case Management powers can be prayed in aid to condone a departure therefrom.

[3] **MR GEORGE'S INVITATION**

I therefore, had to decline Mr George's invitation to place an interpretation of the CPR along the lines of his submission which took on the following flavour:

It is true that Part 8.3 stated that the general rule is that a claim form may be started in any court office in the High Court, but this is qualified by Part 8.3 (2) (a) which mandates that any proceeding relating to land in Tobago, must be started in the court office in Tobago.

However, the court has an inherent jurisdiction under Part 26 to depart from this and allow the Claimant's claim relating to land in Tobago which was commenced in Trinidad, to stand. The court simply has to transfer the matter to Tobago.

[4] **FINDINGS AND CONCLUSION**

In support of my declining of the invitation, I state that the proper interpretation of the CPR must be premised on the following:

1. The provisions of the CPR must be read as a whole;
2. One cannot use the powers granted to the court in Part 26 to detract or vary clear and express provisions and requirements of substantive rules;
3. In this case, the matter concerned land situate in Tobago;
4. Part 8.3(2) is clear;
5. The matter must first be commenced in Tobago, that is, be filed in the court office in Tobago to be in conformity with Part 8.3(2) of the Rules;
6. Then, upon cogent evidence by way of affidavit in support of the relevant application (none of which was evident in this matter), the court may exercise its Case Management powers under Part 26 to transfer the matter to Trinidad. It is not the other way around: start the matter in Trinidad, then crave the court's indulgence to regularise your position under Part 26 to bring you in conformity with Part 8.3.

7. Reliance on: Pre – CPR cases do not and cannot assist the practitioner in the interpretation of the CPR. This practice is to be deeply frowned upon;
8. On an application made by the Defendant such as the one in this case, the Claimant should have taken at the very least, the step of filing an affidavit in response. Evidence from the Bar table by Counsel is not proper.

Dated this 1st day of March 2013.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE