

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. **CV2016-00938**

BETWEEN

**ROYCHAND SINGH also called  
ROYCHAND RAMDHANSINGH**

AND

**ROYCHAND SINGH also called  
ROYCHAN RAMDHANSINGH  
(as the administrator ad litem of the estate of  
Boodram R. Singh also called Boodram Ramnarinesingh)**

Claimants

AND

**MICHAEL RAMNARINESINGH**

Defendant

Before the **Honourable Madame Justice Mira Dean-Armorer**

Appearances:

Ms. Soraya Nanan attorney-at-law for the Claimant

Mr. Prem Persad Maharaj, instructed by Ms. Andelle Arnold, attorneys-at-law for the Defendant

**REASONS**

1. By Notice of Application filed on the March 24, 2017, the Claimant applied for permission to file further witness statements pursuant to part 29.1(3) (2) **CPR**<sup>1</sup>. The Claimants also

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<sup>1</sup> Civil Proceedings Rules 1998

applied for relief from sanctions. On September 19, 2018, I dismissed the application. My reasons for so doing are set out below.

2. The Claimant's Notice of Application was supported by his affidavit which was also filed on March 24, 2017. By his affidavit the Claimant set out the history of the proceedings in respect of which there is no dispute. The Claimant filed a Fixed Date Claim on March 24, 2016, seeking an order for possession<sup>2</sup>, an injunction<sup>3</sup>, damages and costs. At the first hearing of the Fixed Date Claim, on April 27, 2016, the court gave general pre-trial directions, which included an order that witness statements be filed and served on or before November 30, 2016.
3. The Claimant complied with this direction and filed three witness statements. Witness statements were also filed by the Defendant. I then gave directions for the filing of notices indicating evidential objections, the hearing of which was originally fixed for May 03, 2017, but which was rescheduled to October 04, 2017. Before evidential objections could be heard, however, the Claimant filed this application to adduce further witness statements.
4. The Claimant deposed that in the new year of 2018, he had an opportunity to discuss the witness statement of the Defendant, with two other brothers Mervyn Ramnarinsingh and Arnold Ramnarinsingh (Mervyn and Arnold). It was upon reading the witness statement of the Defendant, that Mervyn and Arnold expressed an interest for the first time in filing witness statements to support the claim.

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<sup>2</sup> " An order of possession of All and Singular that property situate at No.9 Warner Road, Point Fortin (hereinafter called "the said property") which the Defendant, his servants and/or agents continue to occupy notwithstanding the notices to quit dated 6<sup>th</sup> February, 2012, 12<sup>th</sup> April, 2014 and 10<sup>th</sup> February, 2015.

<sup>3</sup> To restrain the Defendant whether by himself or by his servants and/or agents or otherwise howsoever for entering the said property.

5. It was in this context, that the Claimant sought the orders listed in the Notice of Application. The court has had the benefit of two sets of written submissions: firstly, the Claimant's written submissions filed on December 04, 2017, opposed by the Defendant filed of the December 12, 2017, following which the court requested additional submissions on the case of ***Ava Solomon v. Caleb Phillips***<sup>4</sup>. Further written submissions, were filed on the case ***Ava Solomon*** by the Defendant on the March 08 , 2018 and by the Claimant on June 22, 2018<sup>5</sup>.

### ***Issues***

6. The first issue that arose was whether the Court indeed has the power to permit a litigant to file further witness statements, after witness statements have been filed and exchanged by both parties.
7. A secondary issue which arose was whether the Claimant was entitled to an extension of time for the filing of witness statements and relief from sanctions.

### ***Relevant Provisions of CPR***

8. Part 29 provides rules concerning evidence.

At part 29.8, one finds provisions as to the use of supplemental witness statements:

*"29.8 (1) Where—*

*(a) a party has served a witness statement;*

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<sup>4</sup> CV.2013-0027

<sup>5</sup> As an interlude to the Application to adduce further witness statements, the Claimant applied for an extension of time to file submissions. This extension was granted to May 29, 2018

*(b) further matters on which the witness can give evidence arise or become relevant or known to the party after it has been served; and*

*(c) the party who served the witness statement proposes to call the witness to give evidence on those further matters, that party must serve a statement of the further evidence which the witness will give.*

*(2) Such a statement is referred to as a “supplemental witness statement”.*

*(3) A party who serves a supplemental witness statement must do so as soon as possible after the further matters arise or become relevant or known.*

9. Part 29.10 provides for amplification:

*“Amplifying witness statements at trial*

*29.10 A witness giving oral evidence may with the permission of the court—*

*(a) amplify the evidence as set out in his witness statement if that statement has disclosed the substance of the evidence which he is asked to amplify; or*

*(b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties and which could not reasonably have been contained in a supplemental witness statement.”*

## **Discussion**

### **The First Issue**

10. The court's jurisdiction to permit additional witness statements was considered by Justice Stollmeyer (as he then was) in **Nandalal Balroop v. TTMF**<sup>6</sup>. In the course of his ruling in **Nandalal Balroop** Justice Stollmeyer (as he then was) held that there was nothing in **CPR** that contemplates or permits additional witness statements as opposed to supplemental witness statements. Stollmeyer J had this to say:

*“Additional witness statements are to be distinguished from supplemental witness statements which are provided for under the provisions of Rule 29.8. These allow a witness who has already given evidence in the form of a witness statement to supplement what has already been said by evidence on further matters which arise, or become relevant or known to him, after the original – initial – witness statement has been served on the other party.”<sup>7</sup>*

Justice Stollmeyer refused the application to file further witness statements, holding that the **CPR** did not contemplate additional witness statements. There was therefore no room for the exercise of a discretion.

11. I found myself in respectful agreement with Stollmeyer J in **Nandalal Balroop**. An examination of Part 29 of the **CPR** discloses that, following the filing and exchange of witness statements, parties are allowed to add to their evidence in only two ways: by filing a supplemental witness statement by a witness, whose statement has already been

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<sup>6</sup> H.C.535/2007 (an authority referred to and relied upon by Learned Counsel for the Defendant)

<sup>7</sup> H.C.535/2007 at pages 4-5 of the judgment

filed and by amplifying at trial. It was clear that neither of these situations obtained in the instant claim. The claim had not yet progressed to trial, so the question of amplification did not arise. Similarly, the Claimant was not seeking to file supplemental witness statements, since the witnesses Mervyn Ramnarinesingh and Arnold Ramnarinesingh, in respect of whom permission was being sought, had not yet signed any witness statements, which were capable of being supplemented.

12. As observed by Stollmeyer's in *Nandalal Balroop*, the *CPR* omitted altogether, the possibility of additional or further witness statements. It was my view that this omission was part of a larger scheme to require parties to exchange witness statements rather than to file them sequentially, as in matters where affidavit evidence is used. One of the effects of this scheme is that parties are not allowed to see the evidence of the opposing side before filing their witness statements. They are therefore not allowed to tailor their evidence in order to contradict the opposing side. This scheme is borne out by Rule 29.7 (2), which caters for a party, who is willing and able to exchange, but is unable to do so because the opposing side is not prepared to exchange. In such a situation a party may file the witness statement in a sealed envelope, while awaiting the witness statement of opposing side.<sup>8</sup>

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<sup>8</sup> "Procedure where one party will not serve witness statement by date directed

29.7 (1) This rule applies where—

(a) one party is able and prepared to serve his witness statements; but

(b) the other party fails to make reasonable arrangements to exchange statements.

(2) The first party may comply with this Part by filing his witness statements in a sealed envelope at the court office by the date directed.

(3) The filed statements must not be disclosed to the other party until he certifies that he has served his witness statements or summaries in respect of all witnesses upon whose evidence he intends to rely.

13. The Claimant applied to file further witness statements, after having had an opportunity to see the defendant's statements and to consult other family members. This in my view, would have been unfair to the Defendant and contrary to the spirit of **CPR**, to have the playing field levelled, if parties are allowed to adjust their evidence after having seen that evidence of the opponent. It also, in my view, operated against the principle that there must be an end to litigation, because logically, it leads to the filing of further evidence by the opposing party.
14. Accordingly, it was my view that the application before me was not for an extension of time but an attempt to file additional witness statements. Persuaded by **Balroop v. TTMF**, I held the view that Part 29.8 empowered me to permit supplemental and not additional witness statements. I therefore held that the application should be refused.
15. In the event that I am wrong however I proceeded to consider the application for relief from sanctions. Rule 26.7 **CPR** provides for applications for relief from sanctions in these terms:

- "26.7** (1) *An application for relief from any sanction imposed for a failure to comply with any rule, court order or direction must be made promptly.*
- (2) *An application for relief must be supported by evidence.*
- (3) *The court may grant relief only if it is satisfied that—*
- (a) *the failure to comply was not intentional;*
  - (b) *there is a good explanation for the breach; and*

(c) *the party in default has generally complied with all other relevant rules, practice directions, orders and directions.*

(4) *In considering whether to grant relief, the court must have regard to—*

(a) *the interests of the administration of justice;*

(b) *whether the failure to comply was due to the party or his attorney;*

(c) *whether the failure to comply has been or can be remedied within a reasonable time; and*

(d) *whether the trial date or any likely trial date can still be met if relief is granted.*

(5) *The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown."*

16. It was my view that defendant's application for relief from sanctions was doomed to fail for two reasons. The first was that the Claimant failed at the threshold. One of the threshold requirements of part 26.7 is that there be a good explanation for the breach which attracted the sanction. It was my view, that the Claimant did not advance a good explanation for failing to file the witness statements in the allotted time. The explanation offered by the Claimant was that the information from the Claimant's two brother had not been forthcoming until the New Year holiday, at the beginning of the year 2017 when the two brothers had the opportunity to examine the witness statements of the



Defendant. No good reason has been put forth for the failure of the Claimant to consult those two brothers before preparing the witness statements or even before filing the claim.

17. This is not a case of new evidence being unearthed, but one where a litigant, the claimant was seeking an opportunity to respond to the evidence of the opposing party, the defendant, after having examined the Defendant's evidence and after the date of filing has passed.
18. The second reason was that the Court had not imposed any sanction for failing to file witness statements in time. There had been full compliance by the Claimant with the direction for witness statements. Witness statements were due to be filed by November 30, 2016. Parties complied fully by that date. The exercise of filing witness statements was completed and closed. The Claimant did not need extension of time, but a revival of permission for the filing of witness statements.
19. It was my view that both the application to adduce further witness statements, as well as the application for relief from sanctions were misconceived. I therefore dismissed the Notice of Application dated March, 24, 2018 and directed the Claimant pay the Defendant's cost.

Dated this 23<sup>rd</sup> day of November, 2018

Judge  
Mira Dean-Armorer