

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007- 01224

BETWEEN

CLARENCE ASHBY

CLINTON ASHBY

WAYNE ASHBY

LYNTON ASHBY

CLAIMANTS

AND

STEPHEN MOSES

(LEGAL PERSONAL REPRESENTATIVE OF THE ESTATE OF RUTH BURKE, DECEASED) DEFENDANT

BEFORE THE HONOURABLE MR JUSTICE RONNIE BOODOOSINGH

APPEARANCES:

MR MARTIN GEORGE FOR THE CLAIMANTS

MR RONNIE BISSESSAR AND MS JESSICA MAICOO FOR THE DEFENDANT

Dated: 13 June 2012

DECISION ON APPLICATION

1. At the start of the trial, counsel for the claimant indicated he would wish to make an application to have the issues of liability and quantum be tried separately since he had recently come into the matter and he was reviewing the papers. After some discussion involving the court and both counsel, I indicated that I would consider the issue when an application was made.
2. At the end of the trial, counsel for the claimant indicated that he would wish to put a proper application before the court. Assuming an application would be made, I gave directions for submissions on the issue. The application was filed and submissions were also filed by both sides.
3. I have considered the application and the submissions filed.
4. The Civil Proceedings Rules (CPR) intends that cases should be dealt with justly in keeping with the overriding objective. The objective spells out a number of factors which the court is expected to balance in its determination of cases. As far as this application goes, certain basic principles can be summarised based on the CPR and various cases which have sought to interpret the rules.

5. The first is that the courts should generally deal with both liability and quantum together. In exceptional cases, the court will make an order for separate trial of these matters. **Part 27.7 of the Civil Proceedings Rules, 1998** provides:

27.7 The court may direct a separate trial of the issues of liability and quantum only where –

(a) the costs of preparing the issue as to quantum are substantial and there is a significant dispute on the question of liability; or

(b) the claimant is not likely to be able to proceed with the issue as to quantum because of difficulties of determining the prognosis or for any other reason by the time that the issue as to liability should reasonably be determined.

6. The second principle is that such applications, if they are to be made, should be made at the earliest opportunity. A third principle is that of trial date certainty, which means that when a trial is fixed, it is only in limited circumstances that the court will adjourn the trial. A fourth principle is active case management. The court is duty bound to manage cases actively and effectively. This implies that parties will also do what they are required to do at the appropriate stage. This includes making necessary applications. If separate trials are being contemplated, this should generally be made known early on.

7. Emerging from the cases, also, is that the courts will not generally find the failure of attorneys to do what is required through inadvertence or inability or even lack of sufficient care and competence to be excusable. Clients too have obligations even though in practical terms they will be guided by their lawyers. Clients are expected to take an active interest in their cases and act with reasonable diligence and prudence. The rules are meant to be interpreted with reasonableness and with the aims of justice in mind in keeping with the overriding objective.

8. How do these principles then apply to this case? Much of what has been put into the application by the claimant's present counsel, who came into this matter mere days before the trial, in effect point to the failure of the attorneys who represented the claimants previously to do what was expected of them. This, however, must also reflect on the claimants. They too must have been prepared to do their part in terms of providing documents and instructions, understanding, of course, that they would be guided by their attorneys.

9. The record of this case, throughout the lengthy case management stage, does not show any application for a separate trial of liability and quantum. In fact, all the directions appear to be consistent with the trial of these issues together. There is reference, for example, in the witness statements, to damage suffered. It may not be as detailed as the claimants' present attorneys may think it should have been, but there is reference.

There are omissions too in what may have been expected of the claimants in proving their damages claim.

10. But none of these perceived failures are good enough reason for the court to grant this application at the trial stage. Whatever prejudice the claimants may have been put to cannot come within the requirements of the law to give rise to exceptional circumstances to make the order. I should note also that throughout the progress of a case from case management to pre-trial, the rules provide avenues for additional evidence to be brought by way of supplemental witness statements or even amplification.

11. In **Sunil Chankersingh and Another v Crystal Morton Gittens, Civ App No. 10 of 2011**, Smith JA noted the court's discretion to order separate trials of the liability and quantum issues, but as was noted, this recognition of the judge's discretion is not an open charter to make orders to split trials. It was noted that such an order should be the exception rather than the rule.

12. The reasons advanced in the claimants' application amount essentially to the failure of the previous attorneys. This is not a good enough reason for granting the application at this stage. The clear intention all along is that both issues would be dealt with together.

I emphasise that it is now, and always was, the claimants' obligation to prove their case, and all aspects of it, in the context of a more open, but still adversarial, system.

13. In the event the court makes a finding on liability against the defendant, the court will have to do its best in light of the evidence before it. This is no different from many other cases, where when, at the trial, the cases are looked at more carefully, certain omissions become more apparent. The CPR contemplates front-end preparation. This matter had a long history and the claimants had a considerable time to put their houses in order.

14. The application of 3 February 2012 for quantum to be assessed separately in the event of a finding on liability is refused. The issue of costs of this application will be considered in the round when the court gives judgment.

Ronnie Boodoosingh

Judge