

**REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 2013-00852

BETWEEN

ECONO CAR RENTALS LIMITED

Claimant

AND

CINDY CHARLES

Defendant

GTM INSURANCE COMPANY LIMITED

Co-Defendant

NAGICO INSURANCE TRINIDAD AND TOBAGO LIMITED

Formerly known as

GTM INSURANCE COMPANY LIMITED

Co-Defendant/Ancillary Claimant

3K's SERVICES LIMITED

Ancillary Defendant

Before the Honourable Mr. Justice Boodoosingh

Appearances:

Mr. R. Otway for the Co-Defendant

Mr. G. Manwah held for Mr. Sanguinette for the Ancillary Defendant

Dated: 7 January 2015

REASONS

1. This is an Application to set aside a judgment in default of defence which was given in this matter. This Application was brought by Notice of 14th November, 2014. Submissions have been made by Mr. Manwah on behalf of the Ancillary Defendant and I have noted the objections to the Application from Mr. Otway on behalf of the Ancillary Claimant.
2. At this stage the Court must consider whether the claimant acted as soon as reasonably practicable after learning of the judgment or promptly; and whether there is a defence on the merits with a realistic prospect of success. I have also heard the submission of Mr. Manwah that the Court's judgment is an irregular judgment, but I have also noted that the Court does have power to correct an irregular judgment which has been issued. In respect of the application being made promptly, I accept Mr. Manwah's submissions that given the full factual matrix, this application can be considered to be prompt in the sense that it was brought shortly after there was notice by the Attorney for the Ancillary Defendant of the judgment having been granted.
3. The critical issue is whether there is on the merits a good defence to the claim in the sense of having a realistic prospect of success. In considering this matter the Court is entitled to look at the Claim. The Court is also entitled to look at all of the documents which have been put before the Court including the pleadings of all of the parties which form part of the records in this matter.
4. Essentially at paragraph 32 of the Affidavit of Mr. Ali in support of the Application, there is set out the basis on which the Ancillary Defendants says they have a good Defence. That suggests that there was no contract or agreement between the Ancillary Claimant and Ancillary Defendant at the material time. It is important in this context to return to

consider what is set out in the Third Party Statement of Case. The case as set out at paragraphs 4 and 5 is alleging that there was a contract for services and/or business dealing between the Ancillary Claimant and Ancillary Defendant and that the Ancillary Defendant carries out business as a Broker for the Ancillary Claimant and is in fact a Broker. At paragraph 5, it sets out the circumstances in respect of the course of business dealings between the parties. Paragraph 6 and continuing set out what they allege to be a breach either of the contract which is the failure to remit the payments and further paragraph 9 says that the Ancillary Claimant will contend it is not the Insurer. At paragraph 10, the Ancillary Claimant contends that it did not deliver a Certificate of Insurance to the Defendant and at paragraph 11, that in the alternative, the Ancillary Claimant is entitled to an indemnity of contribution and the reliefs required as set out at paragraphs 1 to 6.

5. While in an appropriate case a party saying that there has been no contract or agreement may amount to a good Defence, when one examines the circumstances of this Claim, clearly, it is my view that this would not be a good defence in respect to this claim.
6. First, this is not a full answer to the Claim of the Ancillary Claimant that there was a course of business dealings. The Ancillary Defendant has not set out in their application any facts which suggest what was the relationship between the parties or the nature of that relationship, or if any, existed at all. There is simply a bald assertion but there was no contract or agreement between the parties.
7. Another aspect of the Ancillary Claimant's case was the course of business dealings in which they set out in detail the process which existed between them and the Ancillary Defendant and in particular the position with respect to the insured Cindy Charles. This has not been responded to, to set out an alternative arrangement.

8. The Court's attention has also been drawn to what has been set out in the Defendant's Defence and Counterclaim which was filed on 3rd July, 2013. Both pleaded and attached to the Defence are documents which annexed the Certificate of Insurance of GTM Insurance Company.

9. Further, a receipt issued by 3K's Services Limited Insurance Brokers to Cindy Charles on 14th January, 2011 in respect of the motor vehicle in question is annexed. There is also in the body of the Defence details setting out the actions of Ms. Charles. At paragraph 3 of her counterclaim she sets out that for five years she paid her insurance premiums at the Ancillary Defendant's premises, they being Agents of the Ancillary Claimant and that she was insured at the material time and there was a copy of the Ancillary Defendant's receipt which was attached to that document.

10. Given these facts, therefore, which have been asserted by the Ancillary Claimant and as the Court has considered the pleadings and the attachments to the Defence and Counterclaim filed in this matter there is, in my view, no defence with a realistic prospect of success set out in the Affidavit of the Application of the Ancillary Defendant.

11. I do, however, agree that the judgment as been granted has to be varied given that there has been no determination of the Ancillary Claimant of the Defendant and the Ancillary Claimant's liability in this claim as matters now stand. As such pursuant to the Court's powers to vary a judgment I vary the Order of 1st October, 2014. Instead of 1(a), (b) and (c) would be replaced by the following:
 - (1) The Ancillary Defendant is to pay to the Ancillary Claimant any amount in respect of a judgment interest and costs awarded in this claim against the co-Defendant and the costs of the Ancillary proceedings.

(2) Cost of the Ancillary Claim to be assessed in default of Agreement.

**Ronnie Boodoosingh,
Judge**