

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2006-00454

BETWEEN

SHAIROON MOHAMMED  
SAIHEED MOHAMMED  
NAIM MOHAMMED

CLAIMANTS

AND

THE PRESIDENTIAL INSURANCE COMPANY LIMITED

(by original claim)

DEFENDANT

AND

THE PRESIDENTIAL INSURANCE COMPANY LIMITED

CLAIMANT

AND

SHAIROON MOHAMMED  
SAIHEED MOHAMMED  
NAIM MOHAMMED

AND

KULDEEP SINGH KOCHER  
RAVI RAMPERSAUD

(by counterclaim)

DEFENDANTS

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

**Appearances:**

For the Claimants:

Mr. A. Mohammed, Instructed by Ms. N. Baiju-Patrick

For the Defendant:

Mr. S. Parsad, Instructed by Ms. S. Marchand

**REASONS**

## BACKGROUND

[1] On the 16<sup>th</sup> June, 2004, an accident occurred involving a maxi taxi, HAY 3286, which ran off the Montrose Main Road, Chaguanas and collided with the Claimants' property. The maxi taxi was at the time of the accident owned by Kuldeep Kocher ("the Insured") and insured with Presidential Insurance Company Limited ("the Defendant") under a restrictive policy as to drivers, namely the Insured and Jagdeish Ramdial only.

- THE CLAIMANT'S APPLICATION

[2] Before me was the Claimants' Application of 28<sup>th</sup> October, 2010, under **PART 11** and **PART 15** of the **CIVIL PROCEEDINGS RULES 1998** (CPR) for Orders:

- i. Striking out the Amended Defence and Counterclaim filed by the Defendant;
- ii. Entering judgment against the Defendant; and,
- iii. Costs.

[3] The grounds of the Claimants' Application were that:

- i. The Defendant failed to served the Amended Defence and Counterclaim, filed on 4<sup>th</sup> July 2006, upon the Claimants together with supporting documents pursuant to **PART 8.15** of the CPR;

- ii. The Defendant has failed to serve the Amended Defence and Counterclaim, filed on 4<sup>th</sup> July 2006, upon the defendants, Kuldeep Kocher and Ravi Rampersad, together with supporting documents again in breach of **PART 8.1 (5)** of the CPR;
- iii. The Defendant has failed to serve the supporting documents pursuant to **PART 8.1 (5)** of the CPR as required, together with the Defence and Counterclaim filed on 19<sup>th</sup> April 2006 and served upon Attorney-at-law for the Claimants on the 26<sup>th</sup> April 2006;
- iv. The Defendant has failed to serve the Defence and Counterclaim, filed on 19<sup>th</sup> April 2006, upon the Defendants, Kuldeep Kocher and Ravi Rampersad, together with supporting documents pursuant to **PART 8.1 (5)** of the CPR;
- v. The Claimants are entitled to judgement against the Defendant pursuant to the **MOTOR VEHICLES INSURANCE (THIRD PARTY RISK) ACT, CHAP. 48:51 (as amended)**;
- vi. The Defendant has waived its right to repudiate liability on the ground that whilst being aware of the true facts of the accident herein, they accepted liability and agreed both orally and in writing to the Claimants commencing and continuing demolition works.
- vii. The Defendant is now estopped from raising a defence to the Claimants' claim.

- THE DEFENDANT'S APPLICATION

[4] The Defendant applied on the 4<sup>th</sup> October, 2010 to the Court for an Order pursuant to **PARTS 20.1(3), 26.1(d)** and **29.8** of the CPR that:

- i. The Defendant be granted leave to re-amend their Defence and Ancillary Claim filed on the 4<sup>th</sup> July, 2006;
- ii. The Defendant be granted leave to file a supplemental Witness Statement by Azard Hallim;
- iii. Permission be granted to the Defendant pursuant to **PART 34.3(2)** of the CPR to issue a Witness Summons to Mr. Ruben Cato, Transport Commissioner, Ministry of Works and Transport, to give evidence and to produce any documentation to the Court relating to any Taxi Drivers' Badge and/or License and/or Permit to operate a maxi taxi issued to the defendant, Ravi Rampersad;
- iv. The Defendant be relieved from any sanctions imposed by the Court and the CPR.

[5] The grounds of the Defendant's Application were that:

- i. The Defendant generally complied with all relevant rules, practice directions, orders and directions of the Court;
- ii. Pursuant to **PART 20.1(3)** of the CPR, there has been a significant change in circumstances since the matter came up for trial on the 15<sup>th</sup> June, 2010 which became known to the Defendant Company after the said date of hearing;

- iii. More particularly, on or about the month of September, 2010 the Defendant was informed by letter dated the 30<sup>th</sup> August, 2010 from the Ministry of Works and Transport that the defendant, Ravi Rampersad, does not appear on any of the registers as having being issued with a Taxi Drivers' Badge and/or License and/or a Permit to operate a maxi taxi;
- iv. As a result of this change in the circumstances the Defendant would have to put into evidence, by virtue of the Supplemental Witness Statement, the information received from the Ministry of Works and Transport;
- v. It has already been pleaded by the Amended Defence that:
  - a. On the 16<sup>th</sup> June, 2004, the Claimants and the Deceased's representative, Shazim Mohammed, and Ravi Rampersad ("the unauthorised driver") as driver of HAY 3286, owned by the Insured, went to the Chaguanas Police Station and the former reported that at about 6:30 a.m. on the 16<sup>th</sup> June, 2004, he was upstairs his business place, when he suddenly heard a loud crashing sound and saw that the maxi taxi had crashed into the shed of his business place causing the roof to fall on the maxi taxi;
  - b. The unauthorised driver also reported that he was driving the maxi taxi in an easterly direction along Main Road Montrose, Chaguanas, when, on overtaking a vehicle, he crashed into a shed on the right side of the road causing same to fall on the maxi taxi damaging it. He also reported that no one was injured. The authorised driver produced his Driving Permit No. 6689588B, issued on the 30<sup>th</sup> April,

1997, as well as the Certificate of Insurance No. CV TV 3101 issued by Presidential Insurance Co. Ltd. to the insured.

c. Subsequent to the matters above, the Insured with knowledge that the policy of the insurance was restricted to cover the Insured and Jagdesh Ramdial only and that Presidential Insurance Co. Ltd. was not as such liable to indemnify the unauthorised driver, together with the said Shazim Mohammed acting for and behalf of the Claimants' and/or the Deceased and the unauthorised driver wrongfully and maliciously conspired and combined amongst themselves to defraud and injure the Defendant in its business as insurers and the said parties in furtherance of the said conspiracy did the following overt acts:

i. On the 16<sup>th</sup> June, 2004, the Claimants requested of the Officer/s of Chaguanas Police Station that the prior entry made on the Diary page 56, paragraph 3, should be corrected and that the same should read that the driver of the maxi taxi was the Insured, and that it was the Insured who had produced the said Certificate of Insurance CV TV 3101;

ii. On the said date, the Insured further wrongfully received from Police Officer Gangram a warning of intended prosecution as though the Insured as in truth and in fact the driver of the maxi taxi at the relevant time;

- iii. The said parties further caused the said Police Officer Gangaram to visit and inspect the alleged damage to the property but both Shazim Mohammed and the Insured refused to give the Officer written statements and advised that the matter would be settled through Presidential Insurance Co. Ltd.,
- iv. On the 17<sup>th</sup> June, 2004, the Insured hoodwinked and deceived the Defendant when he attended the Office of the Defendant and gave a false statement that he was driving the maxi taxi at the relevant time and failed to disclose as was the fact that it was the unauthorised driver who was the driver;
- v. The Defendant shall refer to and rely upon the relevant entries in the Station Diary Day Duty entries at the Chaguanas Police Station for the 16<sup>th</sup> June, 2004.
- vi. In addition to the foregoing, it has since by the letter of 30<sup>th</sup> August, 2010 been discovered that the unauthorised driver was also in fact an unlicensed driver. This new evidence is crucial to the Defendant's Defence and serves to further expose the fraud already alleged in the Defence perpetrated against it to pay monies which it is clearly not liable to pay in this action. The new evidence also evinces what might have been the real reason for the complicity involving the amending of the accident report as referred to in the Defence and the missing pages from the Station Diary;

- vii. The re-amendment to the Defence is necessary for the Defendant to set out their case in the Defence;
- viii. The defendant, Ravi Rampersad, would not suffer any prejudice, inconvenience or hardship as a result of the proposed Amendment and the filing of a Supplemental Witness Statement.

### ANALYSIS

[6] The Amended Defence and Counterclaim referred to in the Claimants' Application related to leave to amend these pleadings granted by Jamadar J., as he then was, to the Defendants in order to correct some typographical errors therein. The Original Defence had been filed and along with the Counterclaim had been served on the Claimants with no complaints in relation to the supporting documents that had in fact been served with the Original Defence and Counterclaim. In response to this particular ground, the Defendant contended in their written submissions that the amendments were relatively minor and the Claimants were fully aware of the particulars of the proposed amendments; as such the court ought not strike out the Amended Defence and Counterclaim pursuant to **PART 8.15** of the CPR.

[7] The Court was mindful of the philosophy underpinning the creation and application of the Civil Proceedings Rules as explained in Trincan Oil Limited & Others v Chris Martin, Civ. App. No. 65 of 2009 and Ramesh Seebalack v Charmaine Bernard, Civ. App. 261 of 2008 - which is that of changing the culture of litigation in this country. In pursuance of this ideal, there has been a strict application of the Rules but the discretion of the

Court has not been taken away. These decisions illustrate that the Court should exercise its discretion in favour of a party in breach of the rules sparingly and carefully. The object of **PART 8.15** of the CPR, in my view, is to ensure that a party who is served with a statement of case/counterclaim is given the notes that should accompany these documents so as to enable the party thus served to take the next step to further advance the proceedings within the stipulated timelines as indicated in the accompanying notes.

[8] In the circumstances of this case where both parties were represented, and on the service of the Original Defence and Counterclaim the accompanying documents had been served, I exercised my discretion in favour of the Defendant by not striking out the Amended Defence and Counterclaim filed by the Defendant. I did so for the following reasons:

- (i) The litigation was well under way, the Claimants having been previously served with a Defence and Counterclaim together with the accompanying documents;
- (ii) The Claimants were represented by Attorneys and were not disadvantaged in any way by the Defendant's failure to serve the said documents;
- (iii) After the Defendant filed its amended defence and counterclaim the Claimants filed their reply and continued with the matter without raising any objection about not being served with the Amended Defence and Counterclaim;

- (iv) The amendments contained in the Amended Defence and Counterclaim aforesaid were minor and dealt with typographical errors in the main.

In all the circumstances, I held that no prejudice had accrued to the Claimants and I refused to grant the order.

[9] With respect to the failure of the Defendant to serve the Amended Defence and Counterclaim on the defendants, Kuldeep Kocher and Ravi Rampersad, I had regard to the fact that these defendants made no such complaint or allegation before me, nor sought to have the Amended Defence and Counterclaim struck out on that ground. In light of the fact that I have previously ruled that the failure by the Defendant to serve the Claimants with the accompanying notes to the Amended Defence and Counterclaim was not sufficient for me to strike out the Pleading, I also ruled against the Claimant on this ground of their Application. The defendants, Kuldeep Kotcher and Ravi Rampersad, are parties to the proceedings and it was within their purview to indicate whether or not they had been served with the Amended Defence and Counterclaim, and what prejudice, if any, had accrued to them. They, having failed to do so, I also declined to strike out the Defence and Counterclaim on this ground.

[10] With respect to paragraphs 5, 6 and 7 of the grounds of the Claimants' Notice of Application, I refused the order sought and indicated at this stage that the decision not to grant that order was related to my decision on the Defendant's application filed on 4<sup>th</sup> November 2010 in which they sought leave:

- (i) To re-amend their defence and counterclaim;
- (ii) To file a Supplemental Witness Statement by one Azard Halim;

And permission be granted pursuant to **Part 34.3 (2)** of the CPR to issue a Witness Summons to Mr. Rueben Cato, Transport Commissioner, Ministry of Works and Transport, to give evidence and to produce any documents relating to a taxi driver's badge issued to the unauthorized driver.

[11] The Defendant's primary application was to re-amend and put before the Court what they allege to be fresh evidence of the Claimants' fraudulent conduct which they only became aware of subsequent to the filing of the Amended Defence and Counterclaim and after the first Case Management Conference. The Defendant contended that the reason for the application to re-amend the Defence and Counterclaim were:

- (a) to prevent the court from being misled in considering the case as a whole;
- (b) to prevent the Defendant from having to file fresh proceedings in order to set aside the court's judgment in the event that the court finds for the Claimants based on the matters that they have asserted in their claim.

[12] What this court was concerned with at this stage was that an allegation of fraud had been made against the Claimants in that it is alleged that they conspired with other persons to defraud the Defendant and to cause them to admit liability and to agree to pay on a claim without the Defendant

being in possession of all the facts. This is an issue which the Court must give the Defendant an opportunity to ventilate in order for there to be a just outcome in this matter.

[13] In **Visham Boodoosingh v Richard Ramnarace**, PC. No. 50 of 2003, the court held:

*“There is no doubt that a judgment obtained by fraud can be set aside either by order made in a fresh evidence action brought in fraud to impeach or on appeal to the Court of Appeal by adducing fresh evidence sufficient to establish fraud. Sometimes the more appropriate remedy will be by original action.”*

Further, in **Meek v Fleming**, [1961] 2 QB 366, Holroyd Pearce LJ opined at p. 379:

*“Where a party deliberately misleads the court in a material matter, and that deception has probably tipped the scale in his favour ... it would be wrong to allow him to retain the judgment as unfairly procured ... Moreover, to allow the victor to keep the spoils so unworthily obtained would be an encouragement to such behaviour, and do even greater harm than the multiplicand of trials.”*

[14] The Court accepted the evidence of the Defendant that if it had received the information outlined above at the time the pleadings were originally drafted and/or amended the same would have been incorporated into the Defence and Counterclaim. Further, the original pleadings were premised

on the fact that defendant, Ravi Rampersad, was at the time of the accident the authorised driver; this new information, if believed would have the effect of introducing a new and important issue in the case which the court would have to consider in the round in determining the outcome of the matter. I accepted the evidence of the Defendant that the information relating to the alleged fraudulent conduct of the Claimants only came to its attention long after the first Case Management Conference and after the Amended Defence and Counterclaim had been filed.

[15] Although I dismissed the Claimants' application, I made no order as to costs on the ground that at the time of the filing of their Application the Defendant had not yet filed its Application seeking leave to re-amend their Defence and Counterclaim. As the Pleadings stood, the Claimants were entitled to make the application for judgment in default of defence on the ground that the Defendant was estopped from repudiating liability having previously accepted liability. I exercised my discretion in favour of having the Defendant pay the Claimants their costs on the Defendant's Application on the ground that their Application was made late in the proceedings and would necessitate the Claimants having to file a response to the new issues raised by the Defendant.

[16] I therefore held that these new matters ought to be before the court, so that it could properly taken into account when arriving at a decision in the round in this matter. In the circumstances, I made the following orders:

- i. Application filed on 28<sup>th</sup> October 2010 by the Claimants is hereby dismissed with no Orders as to costs;

- ii. Permission is granted to the Claimants to file an Amended Reply and Defence to Counterclaim on or before 15th July 2011;
- iii. Permission is granted to the Defendant to re-amend their Defence and Ancillary claim on or before 3rd day of June 2011;
- iv. Permission is granted to the Defendant to file a supplemental Witness statement by Azard Hallim on or before 3rd day of June 2011;
- v. Permission is granted to the Defendant pursuant to **PART 34.3 (2)** of the CPR to issue a witness summons to Mr. Ruben Cato, Transport Commissioner, Ministry of Works and Transport to give evidence and to produce any documentation to the court relating to any Taxi Drivers Badge and/or License and/or Permit to operate a Maxi Taxi issued to the Ancillary Defendant Ravi Rampersad; and,
- vi. The Defendant to pay to the Claimants the costs of this application as well as costs of the amendments.

JOAN CHARLES

JUDGE