

REPUBLIC OF TRINIDAD AND TOBAGO  
IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-00760

BETWEEN

**MUSTAPHA ALI**  
[Trading as Ali's Hot Doubles]

Claimant

AND

**THE NATIONAL INSURANCE BOARD OF TRINIDAD AND TOBAGO**

Defendant

**BEFORE THE HON. JUSTICE JOAN CHARLES**

**Appearances:**

For the Claimants: Simbhoonath Sawh  
Instructed by Navindra Ramnanan

For the Defendant: Mr. Vijai Deonarine  
Instructed by Krystal Kawal

Date of Delivery: 10th December, 2019

**REASONS**

On the 27th July 2018, I dismissed the Claimant's Fixed Date Claim with costs. I have outlined my reasons below.

- [1] By Fixed Date Claim form, the Claimant claimed against the Defendant that there had been breaches or likely to be breaches of his fundamental rights and freedoms enshrined in Sections 4A, 4B and 4D of the Constitution of Trinidad and Tobago, by reason of the fact that he claimed to be entitled to an amnesty with respect to contributions to the Defendant which had been granted in September 2011 by the then Minister of Finance. This is contained in the NIB Act Section 39C thereof.
  
- [2] On the 12th June 2009, the Defendant commenced legal proceedings against the Claimant for the sum of one million one hundred and fifty thousand, two hundred and thirty nine dollars and seventy four cents (\$1, 150, 239.74), being arrears of contributions in the sum of three hundred and seventeen thousand three hundred and fifty six dollars and eighty one cents (\$370, 356.81), penalty in the sum of two hundred and twenty eight thousand three hundred and forty two dollars and eighty seven cents (\$228,342.87) and interest in the sum of six hundred and four thousand, five hundred and forty dollars and six cents(\$640,540.06) for the period April 1st 1998 to July 8th 2006.
  
- [3] The Defendant obtained judgment against the Claimant for the above sum, the total of one million one hundred and fifty two thousand nine hundred ninety eight dollars and seventy four cents (\$1,152,908.74) on the 11th August 2009. Pursuant to the terms of the judgment, the Claimant was

required to liquidate that amount by monthly instalments of thirty five thousand dollars (\$35,000.00).

[4] The Claimant made those monthly instalments until May 2011. In October the amnesty was granted with respect to the payment of contributions and the Claimant indicated that after the amnesty was announced, he went in to the offices of the Defendant to enquire or confirm as to whether the amnesty applied to him. He was assured that it was and so he stopped payment.

[5] His claim is, subsequent to the above confirmation, he received correspondence from the Defendant demanding that he pay the balance owed on the debt and threatening him with proceedings to enforce the debt. It is in those circumstances that the Defendant submitted that he was owed this sum.

[6] Both sides relied upon Section 39 (C) of the NIB Act; in the Claimant's case to say that in fact he is entitled to the waiver and in the case of the Defendant to say that he does not qualify.

[7] Section 39 (C) reads:

*(1) Notwithstanding any written law to the contrary, there shall be a waiver of all penalties and interest due and payable under section 39B in respect of contributions outstanding as at 16th September 2011 by employers under this Act, where the contributions are paid during the period 10th October 2011 to 30th June 2012.*

*(2) The waiver under subsection (1) applies to— (a) employers who were registered with the Board prior to 10th October 2011; and (b) contributions due for periods on or before 5th September 2011 in respect of employees who were determined to be employed by the respective employer prior to 10th October 2011.*

*(3) The waiver under subsection (1) shall not affect the obligation of an employer to pay contributions in accordance with sections 38, 39, 39A and 39B.*

[8] The argument of the Claimant, as contained in his submissions is that by the date of the waiver, September 16th 2011, he had paid a sum in excess of five hundred thousand dollars (about five hundred and ninety five thousand dollars.) He argued that the principal, that he was obliged to pay under the order was three hundred and seventeen thousand odd dollars and therefore the excess that he would have paid to make up the five hundred and ninety five thousand dollars, should have been restored to him, because he would have already paid the contributions and therefore the waiver of interest and penalty was applicable to him.

[9] The Defendant on the other hand argued, that the Claimant was not entitled to the waiver since he had already paid the contributions, that is, the principal sum of three hundred and seventeen thousand odd dollars by 16th September 2011. The waiver did not therefor apply to him. Where the Claimant had not made the contributions by the date of the waiver, then pursuant to the terms of 39C, he was obliged to make payments from October 2011 to June 2012. The Defendant contended that on the Claimant's case he had made no such payments and therefore in the circumstances, the waiver would not have applied to him and there would have been no breach of his constitutional rights.

- [10] The Claimant also argued with respect to the breach of the right to equality before the law that even though he did not name comparators, he did not have to do so because other persons who would have had the benefit of the waivers would have been in a more advantageous position than he was.
- [11] I looked at the plain reading of Section 39C, which provided that there would be a waiver of all interest and penalties due as at the 16th September 2011. I think it is agreed by both sides that the Claimant under the terms of the judgment obtained by the Defendant was liable to pay contributions as well as penalty and interest at that date.
- [12] The Claimant's case is that there were no contributions outstanding as at 16th September 2011. In my view if there are no contributions outstanding then the Claimant would not be entitled to the benefit of this waiver. If there were contributions outstanding as at the aforementioned date, no payments had been made by the Claimant from October 2011 to June 2012 in accordance with S 39(C) of the NIB Act.
- [13] Unfortunately, I cannot agree with the interpretation contended for by Mr. Ramnanan. In the circumstances, I found for the Defendant and so I dismissed the Claimant's Fixed Date Claim Form and I also Ordered that the Claimant pay the Defendant's costs of the Application to be assessed in default of agreement by the Registrar.

**Joan Charles**

**Judge**