

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2006-04031

BETWEEN

DONEY EVERETTE ISHMAEL

Claimant

AND

**PATRAJ PARASRAM
AND
KAMLA PARASRAM**

Defendants

BEFORE THE HONOURABLE MR. JUSTICE GREGORY DELZIN

Appearances

Mr. Farid Scoon for the Claimant.
Mr. Ravi Rajcoomar instructed by Ms. Khan.

REASONS

This Claim was filed on 12th December 2006. The Case Management Conference gave directions together with sanctions on the 5th July 2007. – There was no evidence led that prior to July 2007 when the Claimant was hospitalized

that he was unable to provide instructions. The Presumption of front end leading is displaced by the affidavit filed in November 2007.

The Affidavit of Farid Scoon filed on 26th February 2008 does not carry the issue further.

The Claimant also has not complied with the subsequent order of Jamadar J to file skeletal submission with authorities in support of the +application.

PART 26.7 (1) and (2) mandates that an application for relief of sanction must be made promptly and supported by evidence.

There is no explanation from the Claimant as to why the application was made more than one month after the Order dated 11th October 2007.

In order for the Court to exercise its discretion to order relief from sanctions the applicant must first satisfy the Court by evidence that the preconditions set out in

PART 26.7 (3)(a)(b) and (c) conjunctively have been fulfilled that is:-

- (a) That 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 other rules, practice directions, orders and directions.

In my view, the explanation by the affidavit of the Claimant filed in support of his application dated 30th November 2007 does not (i) set out anything new from the circumstances that led to the previous delay and extensions of time, (ii) rebut the assumption and underlying expectation of the CPR 1998 as amended, that practitioners must ensure full preparation of cases prior to filing (the presumption of front end leading) and (iii) explain why the application for extension of time could not have been made prior to the sanction being incurred.

Further, the Claimant has not complied with the subsequent order of Jamadar J of the 31st January 2008, that required the filing of written submissions in support of the Claimant application for inter alia, the relief of sanctions.

Accordingly, there is no basis for the exercise of the Court's discretion as set out in **PART 26.7(4)**.

I am also of the view that the Claimant is not entitled to seek an order to set aside the Order of Jamadar J. The application is limited to one for relief of sanctions. In this case, the Claim was dismissed under **PART 26.2** and not **26.4(1)** of the CPR 1998 as amended. In this case neither the Order of the 5th July 2007 or the Order of 11th October 2007 included an unless order.

Therefore Rule 26.5(3) of the CPR applies:-

Rule 26.5(3) refers to Rule 26.7 of the CPR 1998 which deals with applications for relief of sanctions.

Accordingly, the application is limited to an application for relief of sanctions. If the circumstances, facts and reason for failure to comply are the same as they were before the Order of the 5th July 2007, the applicant ought to have appealed the Order. **GLAUSER INTERNATIONAL SA V KHAN J/A KHAN DECISION**
CONSULTANTS (2002) EWCA CIV 268

COSTS

Neither party complied with the direction of the Trial Judge to file written submission with authorities. In fact the Defendant filed an application to extend the time for the filing of written submission 4 months past the deadline. The only substantive explanation being given on affidavit of the Defendant as to the cause of the delay was at paragraph 8 of the affidavit filed on the 3rd November 2008 where it was stated, *“because of the complexity of the issue this arose in the matter”*. No attempt was made to elaborate. Further the issue for determination on an application for relief of sanction are not complex, certainly not complex enough to require 1 year and four months for formulation.

In the circumstances, I dismiss the application by the Defendant for an extension of time. Having dismissed the application of the Claimant, I make no orders as to costs.

Gregory Delzin
Judge

24th June 2009.