

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2007-01895

BETWEEN

ALISON SLATER

First Claimant

ALVIN JONES

Second Claimant

AND

RICARDO SUBERO (Also known as Donnie)

Defendant

BEFORE THE HONOURABLE MR JUSTICE GREGORY DELZIN

Appearances

Mr. S. Maharaj for the 1st and 2nd Claimants.

Ms. K. Berkeley instructed by A. Ali for the Defendant.

REASONS

1. On the 18th April 2008 Jamadar J made the following order:-

“.....bundle of pleadings to be filed on or before 30th April 2008. List of documents to be filed and served on or before 16th May 2008. Agreed Bundle to be filed on or before 30th May 2008. Witness Statement to be exchanged on or before 20th June 2008 and filed on 23rd June 2008 in default matter to proceed on whatever witness statement an filed on the 23rd June 2008.

Adjourned 27th June 2008.

COMPLIANCE

Claimant

List of documents filed 10th June 2008.

No agreed bundle filed.

No Claimants bundle filed.

No witness statements filed or exchanged.

Defendant

Defendant's list of documents filed 16th May 2008.

Defendant Bundle of documents filed 29th May 2008.

Witness Statement filed 23rd June 2008.

No exchange of Witness Statement – Sealed copied filed.

- 2.** On the 27th June 2008.

Application of Defendant dated 27th June 2008 to extend time for filing witness statement. Leave granted to file, at Defendant's request a supplemental affidavit in support of application. Application adjourned to 5th December 2008.

- 3.** 4th December 2008.
Matter re-scheduled.

- 4.** 15th January 2009
Matter Re-scheduled 11th February 2009.

5. 11th February 2009.

Applications

(1) To extend time for:-

- (a) Remaining list of documents.
- (b) Filing agreed bundle of documents.
- (c) Filing of Claimant Witness Statements.

(2) In leave to issue Witness Summons for Venture Credit Union.

The grounds of the application were stated as follows:-

- (a) Delays in accumulating the documents due to personal difficulties at the workplace of the 1st Claimant.
- (b) The 1st Claimant was the person with the knowledge care and control of the document.
- (c) The list of documents is prepared and filed.
- (d) The witness statements are ready since the 24th June save for one of the Claimants major witness Kerwin Godwin.
- (e) The trial date will not be affected.
- (f) The Defendant will suffer no prejudice.

The application was supported by the affidavit of the 1st Claimant.

At paragraph 4 it was stated:-

“The said order was not complied with because just around that time I was having severe difficulties at my workplace and was unable to put my mind towards locating all of the documents in time for the deadline given by the Honourable Court... I have only just been able to recover all of the documents in the matter since I was the one who had control of them and knew where they were.

At para 5 – My witness statements are ready and are available for signing today One in particular. Mr. Kerwin Godwin was reluctant to get involvedHe then re-considered and he only signed his witness statement this morning.....All other statements are ready.

REASONS

The basic reason given by the Applicant for the failure to comply with the Court's time schedule was that she was unable to put her mind towards locating the document due to difficulties at work. She explained that having been forced to leave her employment, the situation left her depressed.

The basic presumption of the Civil Proceeding Rules 1998 is front-end loading which informs the detail of **PART 1** – The overriding objective. There is an expectation that, prior to filing, adequate preparation including the marshalling of documents and evidence has been done.

The details of the Application show the opposite approach. Attorneys did not have in their possession the documents relevant to the claim prior to filing nor had any witness proofs been taken. In fact the affidavit of the Applicant shows post-filing preparation with a gap of just under two (2) years.

There was no explanation as to why the application could not have been made prior to the elapse of the deadline dates. The reason given by the Applicant at paragraph 4 of her affidavit were vague and did not appear to give due weight to the need to obey the time frames set by the Court in the light of the overriding objective.

The Defendant objected to the Application. The Defendants were forced to file Unagreed Bundle of Documents and complied with the Court's orders.

Excising my discretion there was no reason to remove the sanction imposed by Jamadar J on the 18th April 2008, that in default of the filing of witness statement, the matter was to proceed on whatever witness statement had been filed. I therefore refused the application for an extension of time.

In the light of the default clause, the Claim was therefore dismissed; there being no Counterclaim and no possibility of the Claimant being able to lead evidence at the trial.

Costs were calculated as prescribed costs.

Gregory Delzin
Judge

Dated 12th March 2009