

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

San Fernando

Claim No. 2012 – 00641

Between

VERONICA OROSCO

1st Claimant

CAROL OROSCO

2nd Claimant

And

SHARLENE LEZAMA

RENEIL KHAN

Defendants

Before the Honourable Mr. Justice A. des Vignes

Appearances: Mr. R. Bunsee for the Claimants

Ms. L. Horrel holds for Mrs. R. Ramjit for the Defendants

REASONS

1. On the 18th January 2013, I heard the following applications filed in this action:
 - (i) The Claimant's Notice of Objection filed on the 9th November 2012;
 - (ii) The Defendant's Notice of application filed on the 26th November 2012

The Claimant's Evidential Objections.

2. The Claimant objections to parts of paragraphs 7, 8 and 12 of the witness statement of Dave Maharaj were primarily based on the ground that *"the witness was attempting to give evidence in support of material facts that are directly inconsistent with facts as pleaded in the Defence in respect of which no amendment has been sought"*.

3. The objection to paragraph 10 was based on the grounds that the matters contained therein were irrelevant to any substantial issue before the court and the objections to the document annexed as "A" were based on the grounds that it was hearsay.
4. In respect of paragraphs 7, 8 and 12, I considered paragraph 10 of the Amended Defence filed on the 25th May 2012 in which the First Defendant averred that *"the 1st claimant gave her instructions to Ms. H. Poonwassie, Commissioner of Affidavits who prepared the two Memoranda of Transfer which were executed in the presence of Attorney-at-Law, Mr. Dave Maharaj and Diane Gajadhar."*
5. In the light of this pleading which remained unamended despite the filing of an Amended Defence on the 25th May 2012, I was of the opinion that the evidence contained in paragraphs 7, 8 and 12 of the witness statement of Dave Maharaj to the effect that the First Claimant gave him instructions and he dictated those instructions to Ms. Poonwassie to be inconsistent with that pleaded case. The pleading was clear that the First Claimant gave her instructions to Ms. Poonwassie and the only involvement of Mr. Maharaj was that the two Memoranda of Transfers were executed in his presence. I was not satisfied that pleading as framed permitted Mr. Maharaj to come to give evidence that he was the person to whom the instructions were given.
6. Accordingly, I upheld the objections of the Claimant and made the Order striking out the offending parts of paragraph 7, 8 and 12.
7. In respect of the objections to paragraph 10, I also considered that there was no pleading to support this allegation and, in any event, the evidence was irrelevant to the issues raised on the pleadings. Accordingly, I struck out paragraph 10.
8. In respect of the objections to paragraph 12, I also struck out the reference to the dictation of the 1st Claimant's instructions to Ms. Poonwassie and the writing of those instructions in his Instructions Book because that evidence is also inconsistent with the pleaded case.
9. Further, in my opinion, the introduction of the pages from Mr. Maharaj's Instructions Book into evidence would be manifestly unfair when the Defendant's case, as pleaded, is that the 1st Claimant gave instructions to Ms. Poonwassie. Therefore, I also struck out

the reference to the Annexure marked "A" and the statement that Mr. Maharaj intended to tender his original Instructions Book into evidence.

The Defendant's application filed 26th November 2012

10. In respect of the Defendant's application for summary judgment or alternatively, to strike out the Statement of Case I refused to entertain such an application at the stage of the Pre-Trial Review after directions have been given and complied with in respect to witness statements, bundles of documents. In my opinion, there has been substantial delay on the part of the Defendants. Accordingly, I dismissed the application with no order to costs and fixed the trial for 25th and 26th February 2014.

Dated the 18th day of January 2013

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Andre des Vignes

Judge