

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-02781

BETWEEN

**BOBBY MUNGAL
(Trading as BEST CHOICE MEATS**

Claimant

AND

**ELDORADO CONSUMERS'
CO-OPERATIVE SOCIETY LIMITED**

Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. K. Walesby instructed by Ms. A. Huggins for the Claimant

Mr. K. Scotland leads Ms. J. Chang instructed by

Ms. P. Sookhai for the Defendant

REASONS

1. The defendant is a Co-operative Society registered under the Co-operative Societies Act Ch.81:03, whose primary object is “to improve the economic and social conditions of its membership by purchasing and selling to members, goods, stores and consumer articles of all kinds for general use, of good quality, weight and measure from wholesalers, retail dealers and other Co-operative Societies.

2. The claimant was at all times a supplier of dry goods and meats which it sold to the defendant in the course of its business.

3. By claim form issued on the 31st July 2009 the claimant claimed the sum of \$4,668,876.61 being the amount due and owing on the sale of its goods. The claim form was served and the defendant neglected to an enter appearance within the time prescribed by the rules. Judgment in default of appearance was entered on the 10th December 2009.

4. The defendant filed an application on the 20th April 2011 to set aside the default judgment. It raised the issue of the court's lack of jurisdiction to hear and determine this matter. In the course of case management it was agreed that written submissions would be filed on two issues.

- (a) The jurisdiction point
- (b) The merits of the application to set aside

5. On the 26th April 2012 the court of its own motion struck out the claimant's action pursuant to Part 26.1 (k) and Part 15.4 of the Civil Proceedings Rules (CPR). Reasons for doing so were given orally but I shall now expand upon them only slightly.

6. In its first response to the claimant's pre-action letter, the defendant raised the issue of jurisdiction. The issue was identified again when directions were given for submissions to be filed. Somewhat surprisingly the claimant neglected to deal with the substantive issue. It focused on the effect of the defendant's failure to comply

with the relevant rule. There was therefore nothing to answer the submissions on the law on the jurisdiction point raised by the defendant.

7. After I had considered the submissions it seemed the sensible course to first rule on the matter of jurisdiction. In the event, because of my ruling on that point it became unnecessary to consider the outstanding application for leave to defend.

8. The defendant relied on S67(1)(f) of the Co-operative Society Act Ch.81:03 and several decisions of the courts to support its contention that the Commissioner of Co-operatives is the proper person to hear this dispute and not the Court.-

67. (1) provides –

If any dispute touching the business of a society arises-

(f) between the society and any of its creditors,

the dispute shall be referred to the Commissioner for decision.

9. Having regard to the objectives of the defendant I found the claim directly concerned its business.

10. I accepted the defendant's submissions as to the effect of S.67 above. I found the position to be well supported by the several authorities cited including most recently the Judgment of Jones J in CV 2006-02682 - First National Credit Union Co-operative Society Ltd of Trinidad and Tobago v Docs Homes.

11. The elucidating Judgment of Crane JA in the *Sowatillal v Kalika persaud et al 1971 18 WIR*, was particularly helpful in outlining the philosophy behind the provision of a specialized procedure to be followed in Co-operative Society disputes and the rationale for ousting the jurisdiction of the High Court. While that case dealt with an appeal to the Court from a decision of the Commissioner, the decision remained applicable and the learning relevant.

12. Crane JA concluded that a party was bound to access the procedure set out in the legislation. He relied on the Judgment of Asquith LJ in *Wilkinson v Burting Corporation 1948 1 All ER @ p.567* in which the learned Judge said-

*“It is undoubtedly good law that, where a statute creates a right and in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to this remedy or this tribunal and not to others. As the House of Lords ruled in *Pasmore v. Oswaldtwistle Urban District Council (11)*, per EARL OF HALSBURY, L.C. ([189 A.C.394]: ‘The principle that where a specific remedy is given by statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.’”*

13. The claimant stressed the failure of the defendant to comply with the relevant rule for taking a jurisdiction point. Its point appeared to be that the failure to comply with the rule barred the Court from considering it at all at this stage because it had not been taken at an appropriate stage. If I were to uphold this submission it would mean that the court’s jurisdiction to hear the matter would be conferred simply by the defendant’s failure to do as the CPR required.

14. The authorities clearly rule otherwise. In **Wilkinson's** case (cited in *Sowatillal* above), where a similar provision provided an alternative remedy outside of the Courts and a similar issue arose as to jurisdiction, at first instance, Morris J held that the fact that the defendant had entered an unconditional appearance to the writ did not preclude them from raising the point. The decision was affirmed in the Court of Appeal where Asquith J was in no doubt as to the position when he said-

“No act of parties, can create in the courts a jurisdiction which Parliament has said shall vest, not in the courts, but exclusively in some other body, and a party cannot submit to, so as to make effective, a jurisdiction which does not exist – which is, perhaps, another way of saying the same thing.”

15. The position can be no different in my view where a party fails to act. The defendant's failure to comply with the rules of Court cannot confer jurisdiction which S.67 of the Act removed from the courts and vested in the Commissioner of Co-operatives.

16. That having been decided, it followed that there was no need to consider anything further. There could be no question of an issue remaining as to granting leave to defend a matter that I had no jurisdiction to hear in any event.

17. There, however, remained a judgment on record. Since the Court and by extension the Court Office had no jurisdiction to deal with the matter, the default judgment could not stand. It was clearly obtained in error. I considered that the best course of action in the circumstances was to strike out the action, including the

default judgment. I deferred the issue of costs for the parties to attempt a compromise since the prescribed costs appeared to be on the higher side.

Dated is 9th day of May, 2012

CAROL GOBIN

JUDGE