

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB REGISTRY, SAN FERNANDO

H.C.A. No. S-1959 of 2003

Between

VICKRAM GOUTAM SINGH

Plaintiff

And

LENNOX PETROLEUM SERVICES LIMITED

Defendant

Before The Honourable Mr. Justice Geoffrey A. Henderson

Appearances:

Mr. Ashraph holding for Mr. Dhaniram for the Plaintiff.

Ms. Hasnain for the Defendant.

REASONS

1. On the 24th May, 2002 Vickram Goutam Singh was an employee of Lennox Petroleum Services Limited. On that day he alleged that while carrying a 110lb propane gas tank on a job site, he slipped and fell and that this resulted in him suffering personal injuries, damages, loss and expenses. Singh brought this action against his employer claiming that his injury was caused by the negligence and/or breach of contract of employment of the Defendant, its servants and/or its agents. On the 30th January, 2009 I dismissed the Plaintiff's claim with cost payable to the Defendant certified fit for counsel. The Plaintiff has appealed this decision.

HISTORY OF PROCEEDINGS

2. This action brought under the Rules of the Supreme Court, 1975 was commenced with the filing of a writ and statement of claim dated and filed the 29th October, 2003. The memorandum of appearance was filed on the 6th November, 2003 and the Defence on 9th March, 2004. The matter was set down for trial on the 22nd October, 2004.

3. On the 12th June, 2007 Aboud J gave the following trial directions:-

1. Trial on liability only.
2. Parties to make every effort to agree damages prior to trial.
3. Parties to make discovery by filing their list of documents within 28 days.
4. Each party to file their bundle of documents within 35 days.
- 4a. Plaintiff to file a bundle of up to date pleadings for the judge.
5. Witnesses – Plaintiff (The plaintiff and one other)
Defendant (Mr. Bacchus, Mr. Nagessar, one other)
6. E.L.T – half day.
7. FXT – 17/10/07 at 1:30 p.m. SF03.

4. On the 17th October, 2007 when the matter came up for trial, Attorney at Law for the Plaintiff was engaged in another part heard matter and with the possibility of a settlement, the Defendant needed time to get further instructions. The matter was then adjourned to the 30th October, 2007. On the adjourned date, the Defendant needed more time to get further instructions. The matter was again adjourned.

5. When the trial next came up for hearing on 26th November, 2007 Kangaloo J in fixing a new trial date of 10th January, 2008 gave the following directions:-

- (1) All witnesses shall give evidence by witness statement.
- (2) Witness statements to be filed and exchanged by “21/1/07” (this appears to be an error and the only sensible interpretation is 21/12/07).
- (3) No witness shall give evidence without a witness statement.

6. On the 10th January, 2008, the record reflects that the parties were poles apart and agreed to an adjournment to the 19th March, 2008. Additionally the Defendant would obtain other counsel. The trial was adjourned to the 19th March, 2008 for mention and on that date leave was granted to extend the time for complying with the previous directions to 31st October, 2008 and the trial was fixed for hearing on 30th January, 2009.

THE TRIAL

7. When the matter came up for hearing on 30th January, 2009 Mr. Ashraph holding for Mr. Dhaniram (who was then unwell) sought an adjournment. Ms. Hasnain for the Defendant opposed the application and instead invited the Court to dismiss the matter with cost. She prayed in aid of the Defendant, Part 29 of the Civil Proceeding Rules, 1998 and in support referred the Court to the decisions of **Kenton Collinson St. Bernard v The Attorney General of Grenada & Others Civil Case No. 0084 of 1999 (unreported)** and **John Rahael v TNT News Centre Limited CV 2005-00059 (unreported)**.

8. Part 29:13 is apposite. It deals with the consequence of a failure to serve witness statements and provides as follows:

- (1) **If a witness statement... is not served in respect of an intended witness within the time specified by the Court then the witness may not be called unless the Court permits.**
- (2) **The Court may not give permission at the trial unless the party asking for permission has a good reason for not seeking relief under 26.7 earlier.**

Part 26:7 provides for Relief from Sanctions. In this case no such application was made.

9. In support of his application for the adjournment Mr. Ashraph argued that medical correspondence dated 13th January, 2009 in respect of Mr. Dhaniram was the basis for the Court exercising its discretion to adjourn the matter. He argued that as a sole practitioner, there was a challenge in Mr. Dhaniram's chambers arranging for someone else to have the statements filed. Mr. Ashraph conceded that no cogent or any reason was given for the absence of witness statements or for the failure to file any application for

relief from sanctions. He also admitted from the bar table that when the matter came up in March, 2008 that the witness statement was in draft but not yet finalized in compliance with the order of the Court, that he advised Mr. Dhaniram in writing by letter dated 20th March, 2008 that the Court had extended time for compliance of its order to 31st October, 2008 and that the trial was adjourned for hearing to 30th January, 2009. He did however concede that it would be pure speculation why the drafts were not finalized in compliance with the order of the Court.

10. The thrust of the Plaintiff submission as the Court understood it, was that while no explanation was and could be advanced for the Plaintiff's non compliance between the 31st October, 2008 (the extended date for filing witness statements) and 13th January 2009 (the date of Mr. Dhaniram's medical), the medical correspondence provided sufficient basis for the application and that the right to apply for relief from sanctions was available up to the day before the trial and that Mr. Dhaniram's illness provided such a sufficient basis.

ANALYSIS

11. In treating with this application the Court was mindful of the medical correspondence relative to Mr. Dhaniram dated the 13th January, 2009 but also considered that neither had an application for relief from sanctions been made (with a supporting evidential basis providing a good explanation for the non-compliance) nor had any reason (oral or otherwise) been proffered to the Court accounting for the non-compliance between 31st October, 2008 and 13th January, 2009.

12. Parts 26, 27, 39 and Part 29 rules 4 to 5 and 7 to 14 (inclusive) apply to these proceedings by virtue of the **Supreme Court of Judicature of Trinidad and Tobago, Practice Directions, Trial of Civil Matters** dated 30th August, 2005 and the **Supreme Court of Judicature of Trinidad and Tobago Practice Direction, Witness Statements in matters under the Rules of the Supreme Court 1975** dated 18th July, 2007. The decisions of **Kenton Collinson St. Bernard v Attorney General of Grenada & Others (Supra)** and **John Rahael v TNT News Centre Limited (supra)** were considered.

13. In this case there being no application for relief from sanctions, and the Plaintiff being unable to proceed with its case, I exercised my discretion and refused the application to adjourn the matter. In so doing, I took into account the fact that the matter was listed for trial on four occasions (October 17 2007, November 26 2007, January 10 2008 and January 30 2009). Additionally, no application for relief from sanctions was made nor was there an evidential basis justifying the failure of the Plaintiff to file witness statements notwithstanding the fact that leave had been granted to extend time for filing such statements.

DISPOSAL

14. Accordingly, it was the Courts' order that the Plaintiff's claim be dismissed with cost certified fit for Counsel.

Dated this 7th day of July, 2010.

GEOFFREY HENDERSON
JUDGE