

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Civil Appeal No. S228-2018**

**CV 2018-01141**

**BETWEEN**

**NICKHOLAS DHANRAJ ET AL**

**Claimants**

**V**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendants**

**Before the Honourable Madam Justice Nadia Kangaloo**

**Dated the 4<sup>th</sup> July, 2018**

**Appearances**

**Shalini Sankar for the Claimants**

**Candice Alexander with Monica Smith (absent) instructed by Anala Mohan and Ronelle Hinds  
for the Defendant**

**Parties:       The Claimants not appearing**

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**REASONS (EDITED FTR)**

Ms. Sankar:       Yes please My Lady. My Lady on the last occasion.

Court:            Yes we have these applications.

Ms. Sankar:       Yes please, the request for.

Court:            So have the parties had an opportunity to consider their positions.

Ms. Sankar: Apparently, the Defendants position remains the same.

Court: Apparently, you are not certain Ms. Sankar.

Ms. Sankar: Well that was the indication I got from them this morning.

Court: Yes Ms. Alexander.

Ms. Alexander: Yes please My Lady.

Court: So then no appearance Ms. Sankar. The Court has looked at the rule. Alright, so what is before the Court currently is the request for permission to obtain Judgment in default filed by the Claimant on the 18<sup>th</sup> May, 2018.

Ms. Alexander: Yes please My Lady.

Court: In answer to that the Defendant has referred back to the request for information that was made on the 15<sup>th</sup> of May, 2018.

Court: Gentlemen if you wish to have a conversation that entertains you to such a degree that it interrupts the Court perhaps you might wish to take it outside. Thank you.

Court: Yes, so it comes back to the request for information that was made on the 15<sup>th</sup> May, 2018. In the Affidavit in opposition to the application to which I referred, reference is made to the general rule on request for information under **Rule 35**, but also to the specific rule that relates to request for information made by the state under **Rule 58.4**. And in relation specifically to the effect of a request for information under **Rule 58.42** of the Civil Proceedings Rules. And just to remind us all what **58.42** said, so this is under the rubric of Claimants duty to give particulars, and this proceedings by and against the State of course.

This is in the face of a request for information at any time during the period for entering an appearance under **Rule 9.31**. “The Defendant may request

information under **Rule 35.1**". And there we have the May 18<sup>th</sup> request for information.

The Defendants time for entering an appearance is then extended until four (4) days after the Defendant gives notice in writing to the Claimant that he is satisfied with the information supplied or four (4) days after the Court on the application the Claimant decides that no further information is reasonably required. So Ms. Sankar in relation to your application, what do you say about the interpretation of that latter role that is **58.4**?

Ms. Sankar: My Lady I feel the interpretation of the first role comes into question first.

Court: What is request for information?

Ms. Sankar: The **CPR 35.1**. Yes please. That it has to be within a matter in dispute. And the Defendant on the last occasion did indicate to the Court when asked that the matter was not in dispute.

Court: That is the identity of the Police Officers and the Coast Guard Officers.

Ms. Sankar: Yes please.

Court: So one moment. So let's go back to **35.1**.

Ms. Sankar: So the first limb is not satisfied and therefore the application should fail.

Court: So **35.1.1** said, "This part enables a party to obtain from any other party, information about a matter which is in dispute in the proceedings and then it goes on to state how it might be held".

Now Ms. Alexander, we all know what the request for information, they are all to do with the identity of either the Police Officers or the Coast Guard Officers who are allegedly have been involved in this matter.

Ms. Alexander: Yes please My Lady.

Court: And I have seen the Affidavit in opposition where it indicates that, there you know, instructions are being sought. It seemed almost to be an Affidavit that one would expect to see in support of an application for an Extension of Time. I may say that, but it outlines the efforts that are being made to try and presumably source the information.

I remember that the Court had commented that the information ought properly to be in the bosom of the Defendant in any event, because they ought to have rosters for the days in question and be able to verify. But I am not certain whether that is so or not.

So what do you say about our friend's, are you having, well indicated on the last occasion and the Court recalls that that was not a matter in dispute. How then can we rely on the request for information as a reason for the failure to enter an appearance?

Ms. Alexander: My Lady the Claimant has a duty to give particulars under **58.4**.

Court: That duty is about any matter which is in dispute in the proceedings. So that is the primary basis upon which a party is entitled to make a request for information. So the duty flows from that. Unless you can show me in the Rules where there is a general all-encompassing duty. Which will really not make sense, because why would you otherwise give information unless it is for a matter that's in-dispute between the parties.

Ms. Alexander: My Lady this is a cause of action, in Detinue and Conversion.

Court: I am aware.

Ms. Alexander: And the timelines are important as to when the former demand is made. And there must be a demand and a refusal.

Court: Sorry, a formal. Are we getting now into the substantive cause of action?

Ms. Alexander: Formal demand. To justify the request for information.

Court: Yes. Yes let me hear you.

Ms. Alexander: Yes, there must be a demand and a refusal which would be sufficient to give rise to this cause of action. At Paragraphs 8 – 10 of the Amended Statement of Case, the Claimant alleges that they interacted with certain Officers of the Coast Guard on the 23<sup>rd</sup> September, 2016 and they made certain enquiries. They are alleging that the cause of action in Detinue and Conversion, accrues from that time. The onus is on the Claimant to let us know to whom they made this formal demand. If they cannot let us know, then the onus is on the Defendant to file the request for information which we did on the 15<sup>th</sup> May. Our instruction so far can only speak to a demand via Pre-Action Protocol Letter in November of 2017. This is why we have refiled this request for further and better particulars. And we are respectfully still awaiting this information from the Claimants. Because the names provided would assist with responding to Paragraphs 8 and 10 and to clarify the date of the formal demand.

The Defendant wishes to give the Court a holistic view of the case. The purpose of the Statement of Case is to give the Defendant a picture of the case which he has to meet or to answer to. Blanket statements like those pleaded in the initial Paragraph and especially at Paragraphs 8 – 10, severely prejudices the Defendant. As we do not know what case to answer.

As of this point we able to answer from November 2017, in which case there can be no claim in Conversion or Detinue, because the Claimant, the Coast Guard told the Claimants that they are free to retrieve their boat.

Court: Yes.

Ms. Alexander: This is evidenced by letter dated 26<sup>th</sup> January, 2018 at end the flow of the Statement of Case. Worst case scenario even if we have to settle this matter, we still need to know the Coast Guard Officers who initially

detained the boat, as these Officers would be able to speak to the condition of the boat when it was detained.

The Defendant respectfully submits that our request for information filed on 15<sup>th</sup> May is meritorious, warranted and goes to the heart of the cause of action for Detinue or Conversion in this matter.

Court: Full stop, yes.

Ms. Sankar My Lady.

Court: One moment. I suspect there maybe something else that Ms. Alexander wishes to submit.

Ms. Alexander: Further because the request is filed, the appearance is not due procedurally.

Court: Yes. That is clear. That part of it is clear. Anything else Ms. Alexander.

Ms. Alexander: No please My Lady.

Ms. Sankar: My Lady if I may.

Court: Yes.

Ms. Sankar: At "**ND4**" of the Claim Form and Statement of Case.

Court: Yes.

Ms. Sankar: You can see a response letter from the Coast Guard. Wherein they recite the information from the 20<sup>th</sup> September, 2016. So had the Defendant actually consulted with Lieutenant Colonel S. Rahamant, they would had information in relation to that date as he indicated some information to the Claimant in relation to the matter.

Court: Yes.

Ms. Sankar: So it is clear that they have information on the matter from 2016 on their file.

Court: From September 2016.

Ms. Sankar: From September 2016. And further there was no dispute again as you can see at Paragraph D that they both will take.

Court: Names of the individuals.

Ms. Sankar: The names of the individuals. It was the Cedros Police Station and that the Coast Guard had the boat from 2016.

Court: In terms of the Coast Guard is aware of the incident.

Ms. Sankar: Yes please.

Court: Is on the same page.

Ms. Sankar: The information.

Court: As it were, in terms of, in other words they are not saying we don't know anything about this incident or these individuals.

Ms. Sankar: Yes please.

Court: In fact, among the five (5) individuals named are the two Claimants in the instant action.

Ms. Sankar: Further My Lady in their response Affidavit in opposition at Paragraph 8, they indicated on the 16 that they requested information from the Coast Guard and at Paragraph 9, Nine (9) days later they had a meeting with the Coast Guard. So it was possible for them to be able to request the file from the Coast Guard in relation to the matter. And as I had indicated previously in our attachment end the 7<sup>th</sup> to the Statement of Case.

Court: Yes.

Ms. Sankar: Osha Maharaj, who is the Legal Officer for the Coast Guard. Her information is actually there. So the file is there, the Legal Officer's information is there. Their request had been made and the information was sufficient for the Coast Guard to give a response to our initial letter. So they do have enough information to provide the Attorney General with enough information in relation to the matter.

Court: Ms. Alexander is there anything to wish to say in response to what your friend has said.

Ms. Alexander: My Lady our instructions speak from November 2017. The Claimant is saying it is possible for us to request the file. I believe that's the Claimant's duty to give particulars at Paragraph 10. It is noted that the Claimant allegedly visited the Coast Guard Base with two Attorneys Hubert Charles and Jonie Jones.

Court: Yes.

Ms. Alexander: The Claimants may need to speak to those persons who may assist them. They have not adduced sufficient evidence to show the Defendant the case to answer.

Court: Is that all you wish in response to what your friend has said.

Ms. Alexander: Yes please My Lady.

Court: So I am looking at the Affidavit that has been filed in opposition to your friend's application on the 6<sup>th</sup> June, 2018 and again as I say, it struck the Court as rely being, while in answer to the application for Judgment. And it also appeared to combine factors that one might expect a Court to take into account in look, granting an Extension of Time for the filing of a Defence. So it is out of a chronology of attempts to secure information or instructions as it were.



Now on the last occasion nothing that Ms. Sankar has said this morning comes as a surprise to you Ms. Alexander because all of these matters were raised on the last occasion. And therefore the Court had expected in any Affidavit in the Affidavit in opposition that it gave permission to be filed. That there would have been, so for example I have at Paragraph 14. Let us see. It stated, "The Defendant intends to respond to this claim and has made diligent efforts to obtain instructions thus far and the Court assumes the diligent efforts are what are outlined above". It said, "However, due to the absence of quote un quote 'certain important instructions' and there is mystery apparently surrounding what these important instructions are". What are these certain important instructions? The Defendant is unable to make a proper assessment of the case, that doesn't mean that the Defendant. And you have indicated that in your submission Ms. Alexander. That your dual considerations are one whether you have filed a Defence and with a view to settling.

In other words if you have to settle you are saying you still need information from the Claimant to enable you to explore the possibility of settlement. So the Defendant is unable to make a proper assessment of the case and determine if and how it is to proceed in response to the Claimants case. Further with these instructions still outstanding the Defendant cannot say whether it has a reasonable prospect of success in defending this matter. And in order to obtain the outstanding instructions certain information is required from the Claimants.

Now I hear what you have said in relation to the duty of the Claimant. In a cause of action in Conversion and Detinue in relation to the information that is sought and therefore you are saying that in all of those circumstances it takes it out of the purview, your request that is out of the purview of 35.1 because it is a matter that is core to the case.

No one is giving me guidance on the question of, well you had indicated on the last occasion that the identity of the Officers was not a matter in dispute and that is what the Court is looking at. What does a matter in dispute mean?

I do not believe that the identity of the Police Officers and the Coast Guard Officers is the matter in dispute and that is the sole query contained in the numerous request for information repeated.

It is the element of the Tort of Conversion and the element of the Tort of Detinue. Obviously are well known, but I do not believe that the information sought by your request is such that it could not be secured as Ms. Sankar has said, as a result of information already received from the Trinidad and Tobago Defence Force by their letter of the 26<sup>th</sup> January, 2018. And further by the letter received from the Legal Officer.

In other words the Court is of the view that the Defendants had either sufficient information to enable them to enter the appearance and ought to file a Defence and or to make whatever application they wish to make in relation to either of those matters and or, they certainly had a path that was open to them to pursue without having to make the request for information and to place the burden on the Claimant in that regard. And to rely on that as a reason for not, for example making an application for an Extension of Time for filing a Defence. As opposed to relying on the request for information.

What the Court will say is that in reading 58.43 in particular. There is in this Court's view a Lacuna in the Rule in terms of what can be done, in the interim. In other words, when the request for information is made by the State, it allows only two things to happen. The Defendant to give notice in writing that he is satisfied with the information supplied or the Claimant

to make an application to the Court to decide that no further information is reasonably required.

There is no position for example where the Defendant may seek an order of the Court. Well there is and this is why I have a difficulty with the rules. There is the application that can be made to compel the information. But that is awkwardly placed in my view, in the chronology of proceedings. In that such an order can only be sought within the time for the filing, before the time for the filing of Witness Statements has expired.

That the Court considers to be an unfortunate Lacuna because frankly in this Court's view makes no sense. One should receive any response to a request for information before one files Witness Statements not before. Not after sorry.

Nevertheless, the Court is of the view that the request for information in the instant case, is not one that is a matter in dispute, in this matter and the Court is, relies on the correspondence to which it has referred as well as the submission by Counsel on the last occasion that indeed was not a matter in dispute. And in looking at the correspondence as it were matched with the Pleading in this matter, it is clear that the Coast Guard is well aware the incident in question and the information ought to be, to have been readily available upon diligent efforts made by the Defendants to seek the same.

The Court therefore does not think that the request for information could be relied upon as a mechanism to delay the matter or to avoid the entering of an appearance and or the filing of a Defence in this matter. And particularly in a situation where it is being used as an opportunity for the State to continue gather information and for it to conclude that it does not know whether it would have a reasonable prospect of success in the matter.

In the circumstances the Court considers that granting the Claimant's application that is for Judgment in default of Defence, does not prejudice the Defendants. Because there is always the opportunity if they do secure information through their own, as they continue to make attempts to do. To assist them in making their assessment of the matter, they can make the necessary application to set aside the Judgment in default.

The Court will be minded in relation to, the question however, of the default judgment is then Ms. Sankar. Can I in fact give judgment in the default in this matter?

Ms. Sankar: My Lady it's been now up to 72 days since the time filing an appearance and a Defence in this matter has passed. And I don't know if my friend still has, she was supposed to give you some instructions today as to whether or not they had a reasonable prospect of succeeding and defending this matter.

Court: That is not before the Court is it?

Ms. Sankar: The what?

Court: The time, what you have just indicated regarding.

Ms. Sankar: No please My Lady. With the date being set for today, it would have been 73 days later now. And there is no draft Defence prepared and in relation to whether or not the Defendant has a reasonable prospect of succeeding in defending their claim. You had requested on the last occasion, that the Defendant's Counsel speak to you in relation to that. So that you can make your ruling accordingly.

Court: So Ms. Alexander.

Ms. Alexander: Yes please My Lady.

Court: The question of judgment in default against the State of course is addressed in 12.2 (a) – “A Claimant needs permission from the Court if he wishes to obtain default judgment on any claim, which is (a) a claim against the State and an application for permission must be supported by evidence”. So your friend has made an application, she is not sought over the counter judgment as it were and she has supported the same by evidence. So from a procedural stand point this Court is of the view that she had satisfied those procedural rules as well.

So in the circumstances the Court proposes to grant the relief sought by your friend on her application. The difficulty however Ms. Sankar.

Ms. Alexander: My Lady if I may.

Court: Yes Ms. Alexander.

Ms. Alexander: The Claimant is applying for default judgment, in default of appearance.

Court: Yes.

Ms. Alexander: Not default of Defence.

Court: Yes.

Ms. Alexander: And there is the case of **Stanley Holder** where Justice Seepersad states at Page 6, that, he agrees that there is a problem with Part 58.4 and he said, “what is clear is that the intention is time is stayed until the Defendant’s request has been duly satisfied”.

Court: Right.

Ms. Alexander: The Court has just determined that it is not satisfied, that the request is satisfied. And therefore the Defendant.

Court: Do you have a copy of the case that you can pass up to the Court Ms. Alexander.

Ms. Alexander: It is attached as "**AM3**" to the Affidavit.

Court: Yes. I have it. What page are we looking at Ms. Alexander?

Ms. Alexander: Page 6.

Court: Yes.

Ms. Alexander: The Court has just decided that.

Court: "What is clear is that the intention is that time is stayed until the Defendant's request is been duly assessed, either by its own acceptance or by virtue and/or of the Court outlining that no further information is necessary. Only when the requested information has been reasonably supplied can the Defendant make a proper assessment of the case that it is called to answer. Or the circumstances in which it is alleged to be liable and so determined if and how it is to proceed in response to the Claimant's case, etc".

Now, how the facts of **Stanley Holder versus the Attorney General** sync with the facts in the instant case in relation to the request for information that was made in those circumstances. What was the nature of the request for information?

Ms. Alexander: The nature of the request for information state time, so that we are respectfully within the time for filing a Defence.

Court: Ms. Alexander do the hear the Court's query. What was the nature of the request for information made in the **Stanley Holder** case that would make it one that the Court would consider relevant or on all fours or closely on all fours with this instant case where your friend has indicated in her initial submission that the request for information is not concerning a matter in dispute. So that would have lead my brother Judge then to go on. In other words that would have been an issue that he would not have had to take

into consideration and therefore he could have gone on to make the interpretation that he did regarding what this Court also recognizes as an issue with **Part 58.43**.

Ms. Alexander: My Lady the Court did not look at the nature of the request, the Court looked at the interpretation of **Rule 58.42**.

Court: And that is because that may not have been an issue before the Court in that matter however, that is an issue before this Court. Ms. Sankar you have seen of course the case that your friend has referred to.

Ms. Sankar: Yes please.

Court: In regard to the excerpt that she has referred to, what do you have to say?

Ms. Sankar: My Lady if we go back to Page 6 of 7. Further down that paragraph.

Court: Yes.

Ms. Sankar: The Honourable Justice Seepersad had continued and he said Part 9.22 of the CPR as Amended, provided that the Defendant need not file an appearance, if he files a Defence within the times specified within 9.3.

Court: Yes.

Ms. Sankar: They did not file an appearance, nor did they file a Defence within the time specified.

Court: Yes.

Ms. Sankar: So I don't see any reason.

Court: They did. They in fact filed a Defence.

Ms. Sankar: No please My Lady. I mean in our case. In the instant case.

Court: Yes. Again that is another issue in this time hold a case within the time as the rules permit. Within the time due for filing an appearance a Defence

was indeed filed. So even though the rest of information was outstanding or some information has been received but I don't believe that the Defendant was satisfied. Nevertheless, they covered themselves if you want to call it that by filing a Defence, because they had before them what they figured was sufficient information.

Now Justice Seepersad and I can see where you have lifted language from Justice Seepersad's case to place it into your Affidavit. He does not go on to say apart from making the assessment of whether you have a case to meet or not. He did not go on to say that to determine whether or not you have a reasonable prospect of success that is something that has been included in the instant Affidavit. And yes it probably is a natural consequence of having to assess a case, that's one of the outlets. But again this Court is of the view that Stanley Holder cannot be relied upon in the instant case to say. Because we have no indication there that one of the issues before the learned Judge was whether the request for information concerned matters in dispute. And the Defendant in the instant case has been unable to convince this Court that the request for information does in fact relate to the same.

For all the reasons given and for in respect of the correspondence to which I referred which is annexed to the Statement of Case. So anything else before I complete my finding in this matter.

Ms. Alexander: No please My Lady.

Ms. Sankar: No please My Lady.

Court: So we go back to the Draft Order which is annexed to the application filed on the 18<sup>th</sup> May. Ms. Sankar there are several apart from the declaratory relief that is sought and the Order directing the Defendant to return the vessel. I will hear from the Defendants on, regarding a state in that regard



I am prepared to. Because in the then consequential claims for damages will be on a date to be fixed by the Registrar sought in your order, yes.

Ms. Sankar: Yes please.

Court: Before a Master in Chambers. And with regard to interest, I think that is also a matter to be dealt with by the Master, agreed.

Ms. Sankar: Yes please.

Court: As well as costs. So yes Ms. Alexander in relation to your friend's Draft Number, at Roman numeral one (b). As I say I am prepared to hear from your regarding the stay in relation thereto.

It starts with the Roman numeral one and then (b) is an order directing the Defendant to return the said vessel to the Claimants. Do you wish in that regard, if not I will simply make the Order as stated. If there is no time frame set out it means forthwith.

Ms. Alexander: My Lady are you granting the default judgment or are you giving the Claimant leave to apply for default judgment.

Court: This is a request for permission to obtain judgment in default. The Order states that permission be granted to the Claimants to obtain judgment against the Defendant in default of appearance in the following terms. So it is.

Ms. Alexander: My Lady we are at 12.51 states that.

Court: This will be the jumping off document from, on which that request will be based. I am asking if in that request you will wish time or whether you wish. It is simply say, simpliciter an order directing the Defendant to return the vessel to the Claimants.

Ms. Alexander: My Lady we need 28 days.

Court: So an order directing the Defendant to return the vessel to the Claimants within 28 days of the date of the default judgment. So in other words the request will be made it will go through the usual process and the 28 days and you will have heard the interpretation of within from your senior in the matter. Within 28 days of the date of the default judgment. So that has been added Ms. Sankar to Paragraph (b) of your Order.

Ms. Sankar: Yes please.

Court: And in relation to (g) interest be determined by a Master in Chambers on a date to be fixed by the Registrar. So in those circumstances there will be an order in terms of the Draft Order annexed to the Notice of Application filed on May 18<sup>th</sup> 2018. The Court will make available a written decision of this matter which will essentially be what the Court has indicated today but with fuller reference to the correspondence and those particular parts of the correspondence that it has relied upon and the Affidavits in relation thereto.

Ms. Sankar: Grateful My Lady.

Court: Yes Ms. Alexander the Court has made its order. Ms. Hinds. You make your submissions and you stand and you fall on them. In other words the application has been before us for some time. So all in relation to Stanley Holder, etc one would have expected that you would have referred the Court to that in your initial submissions. It was annexed to the Affidavits, yes. But given that the Court expressed its concerns about **58.4**, which it still holds and agrees whole-heartedly with Justice Seepersad in that regard. It finds that it is not helpful unfortunately because that case did not go into perhaps because it was not an issue for that Court. The question of whether the request for information was in relation to a matter in dispute. In fact some information was provided so it suggests that it wasn't an issue in that case. But I cannot say.

So that is the Court's order the parties may take such steps as they see fit to pursue the same.

Thank you and I am grateful to both parties for their endeavours and their continuous endeavours to persuade the Court on either side in relation to this matter. Thank you.

Dated the 4<sup>th</sup> July, 2018

**Nadia Kangaloo**

**Judge**

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Civil Appeal No. S228-2018**

**CV 2018-01141**

**BETWEEN**

**NICKHOLAS DHANRAJ ET AL**

**Claimants**

**V**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendants**

**Before the Honourable Madam Justice Nadia Kangaloo**

**Dated the 20<sup>th</sup> June, 2018**

**Appearances**

**Shalini Sankar for the Claimants**

**Ms. Candice Alexander for the Defendant together with Ms. Monica Smith (absent).**

**Instructed by Ms. Anala Mohan**

**REASONS (EDITED FTR)**

**Court:** You have seen your friend's application filed on the 18<sup>th</sup> May in this matter.

**Ms. Alexander:** Yes please My Lady.

**Court:** What is your position in respect of the same?

**Ms. Alexander:** We filed an Affidavit in opposition.

**Court:** Ms. Sankar you have seen the Affidavit filed by your friend.

Ms. Sankar: Yes please My Lady. My Lady there is also a request for information that was filed by the Defendant on the 15<sup>th</sup> May.

Court: Yes.

Ms. Sankar: I think both of them need to be dealt with. I don't know if you want to deal with the request for information first and then we could proceed to the.

Court: One moment. The request for information is filed by the Defendant on the 15<sup>th</sup> May and as I understand it, there has been no.

Ms. Sankar: My Lady we did respond to the Defendant indicating that we gave full particulars of all the information we had from our clients. We did indicate to them that although it would have been advantageous to their case to be able to tell them more that we won't able to do so because it was not relation to the essence of the claim. My Lady if I can just go through the Statement of Case please and some of the exhibits to just demonstrate that all of the information was provided to the Defendants.

Court: Well let me ask your friend first of all. Ms. Alexander do you dispute that contained in the pleading is all of the information that has been requested in your request for information.

Ms. Alexander: No please My Lady we are not satisfied with the Claimant's response to the request, yes.

Court: You believe that the Claimant does have information for whatever reason it has chosen not to supply to you in this matter.

Ms. Alexander: Yes please My Lady.

Court: Yes Ms. Sankar.

Ms. Sankar: Yes please My Lady. My Lady first I will go through some elements of the Statement of Case, some of the exhibits and then in relation to the Affidavit filed by my friend.

Court: Right, so we are at the Amended Statement of Case.

Ms. Sankar: Yes please.

Court: So where are we?

Ms. Sankar: So My Lady at Paragraph 6 of the Statement of Case, you can see that we indicated that it was the Cedros Police Station and the Coast Guard Base that the vessel went straight to the Cedros Police Station and the Coast Guard Base. Where they went to the Police Station to seek the assistance of Police Officials.

Further at Paragraph 7 we said that the Coast Guard never identified themselves. At Paragraph 8 we indicated that the vessel was transported by members of the Coast Guard from the Cedros Base to the Coast Guard Base in Chagaramas. And the information that we had in relation to the Narcotics Unit. The Acting Corporal Stoute in Paragraph 11. We indicated who he was and at Paragraph 12, Acting Corporal Carmody of the Cedros Police Station.

Court: Yes.

Ms. Sankar: In relation to who he was. And the request by the Defence Force. Further at Paragraph 18 we indicated that we were liaising with one Ms. Usha Maharaj from the Coast Guard. And we had correspondence in relation to same. My Lady if I could guide you to **"ND4"**.

Court: One moment. Yes.

Ms. Sankar: My Lady it is clear from **"ND4"** that we received a response from the Coast Guard. At the top you can see the address, the telephone number, the Fax number. You can see that it is from S. Rahamant, Lieutenant Counsel, whose is a Judge Advocate. You can see at Paragraph D that he did indicate

that the vessel was observed in front of the Cedros Security Complex, where the Cedros Police apprehended the crew of persons.

So My Lady at no point in time it was ever disputed that the persons were taken to the Cedros Police Station and that the Cedros Coast Guard had the vessel. The Coast Guard actually indicated that they only wanted proof of ownership in order to release the vessel to our clients.

Further, if I could take you to exhibits **"ND7"**. You can see again.

Court: One moment. Yes.

Ms. Sankar: You can see again at **"ND7"** that the address for the Coast Guard is there. The telephone number is there. Usha Maharaj is Legal Officer of the Coast Guard, is correspondence from her. So it is clear that they had every opportunity to be able to liaise with these individuals if they needed to get any information.

Court: They being the Defendant's Attorneys.

Ms. Sankar: Yes please. Further in their Affidavit in opposition that was filed on the 6<sup>th</sup> June.

Court: Paragraph.

Ms. Sankar: At Paragraph 7. They indicated that they only made contact on the 16<sup>th</sup> May, which was after the time for filing the appearance. At that point in time they made contact with the Commissioner of Police and they got a response within two days on the 18<sup>th</sup> May.

Court: Yes.

Ms. Sankar: So they waited 29 days until they actually made contact with the Commissioner of Police. They indicated at **"AM2"** that they were asking for certain documents. The Station Diary Extracts, the Telephone Log Book between Herbert Charles and Acting Corporal Carmody. The Telephone

Log Book with the Organized Crime and Narcotics Unit between Herbert Childs and the Acting Corporal Stoute and any reports, Pocket Diaries, Stationery Extracts, etc.

Court: Yes.

Ms. Sankar: My Lady therefore it is clear that they had sufficient information to be able to request the information from the Police Officials to be able to make their claim. They however waited until after the time for filing the appearance to request that information from those individuals. Further at Paragraph 8, they indicated that they needed further information from the Coast Guard. At Paragraph 9 they say that, 'We did not identify the person that we liaised with on the 22<sup>nd</sup> and 23<sup>rd</sup> May, 2016". However, that person is Ms. Usha Maharaj, which is indicated within the Claim Form and the Statement of Case and which correspondence has been attached with her phone number.

Court: Yes.

Ms. Sankar: And they obviously had the opportunity to be able to assess the claim. To be able to gather the information to assess the claim and they fail to do so. When we indicated that to them they indicated that it was not sufficient. But we had indicated to them that that was all the information that we had. We had given all the documents that we have in relation to the matter and we have complied with giving a Statement of all facts on which we rely and copies of all documents which we consider necessary for our case.

Court: Yes.

Ms. Sankar: We are asking the Court to be able to make 1. A decision that there is no further documents that we can provide as the Claimant in relation to this matter. As the Defendant has the opportunity to get this information and



has already made requests in relation to same from the Police and from the Coast Guard.

Court: Yes.

Ms. Sankar: Further given that the Coast Guard never disputed that the persons were taken to the Cedros Police Station and they had kept the vessel from the 20<sup>th</sup> September. Then that is not actually matter in dispute and they actually do not meet the criteria under Section 35.1, which states that the State could ask for any information which is in dispute in the proceedings. It is not actually a matter that is in dispute.

My Lady we are asking you to please make a ruling that we cannot provide any further information so that there is no further hiccup in us being able to make our default judgment claim. Further we are asking for permission to obtain the Judgment in default, on the basis that even in their Affidavit in response at Paragraph 14, the Defendant's said that they don't even know if they have a reasonable prospect of success in this case.

So maybe if we have the opportunity to put the Default Judgment before the Court then at least they have the opportunity to defend it at that point and determine whether or not they have a good success. A good chance of success in the case. So it does not prevent them from being able to bring a case before the Court at that point in time and say I dispute this and I want to say that I have a good prospect of success. But at this point in time they do not know and they have failed to meet their initial criteria. Everything has been served on time. They took too long to gather their information. My Lady that is my submission please My Lady.

Court: Ms. Alexander.

Ms. Alexander: Yes please My Lady. The request for information was filed within the time parenting the appearance. The request for information was filed pursuant

to **Rules 35.1** and **Rules 58.42**. The Claimant does have a duty to give particulars. The instructions from the Coast.

Court: Of matters that are in dispute in the proceedings. The information that you have sought in your request for information. Are those matters in dispute in this matter? The identities of the, because that is what you have asked for in your request for information. Is that an issue in dispute between the parties?

Ms. Alexander: My Lady.

Court: Actually what you have asked for, all of the information that you have asked for is in the character of the names, regimental numbers and/or descriptions of the Police Officers or the Coast Guard Officers in this matter. Is that a matter in dispute between the parties?

Ms. Alexander: My Lady it is not a matter in dispute.

Court: Well therefore your friend is not required pursuant to Part 35.1.

Ms. Alexander: But My Lady we made the application under **Part 58.4** as well.

Court: And **58.4** said what.

Ms. Alexander: "Where a claim is made in proceedings against the State, the Claim Form and Statement of Case must contain reasonable information as to the circumstances in which it is alleged that the liability of the State has arisen. And as to the Government Department and Officers of the State involved.

Court: And where do you say that your friends pleading is lacking in that regard.

Ms. Alexander: Reasonable information.

Court: Reasonable information. Where do you say that your friend's pleading is lacking in that regard.

Ms. Alexander: Yes please My Lady. When the initial demand was allegedly made on the 22<sup>nd</sup> and 23<sup>rd</sup> May, 2016. We do not have any instructions from the Coast Guard Officer with whom the Claimants alleged to have interacted with. Because we do not have any information as to...

Court: You have a letter that is exhibited and the name of a person that the Legal Officer from the Coast Guard, Usha Maharaj, with whom the Claimant's Attorneys were corresponding in March. Did you make contact with Ms. Maharaj to find out from her...

Ms. Alexander: March of 2018 please My Lady.

Court: Right.

Ms. Alexander: This is 2016.

Court: That was after the time due for entering an appearance in the matter.

Ms. Alexander: The time for entering the appearance was 15<sup>th</sup> May, 2018.

Court: So the enquiry of Ms. Maharaj was only made after the time due for entering an appearance.

Ms. Sankar, Ms. Alexander, the Court has to rise to deal with a Video Conference and you know how tight those times are among the Court. So I am going to rise for a short time. I also have a Trial to deal with at 11:30, but I am prepared to have you all come back so that we can complete this matter. What I will say though Ms. Alexander is apart from the question that I have just asked you about pointing out to this Court, where you consider your friend has not been able to provide reasonable information, that would permit you to make due enquiries to defend this claim. I am also very concerned to see the Statement that in your Affidavit in Opposition that you cannot at this stage make an assessment of whether you will have a reasonable prospect of success and expect you to draw the

Court to any authority, that would suggest that in those circumstances I should not permit the request for the default judgment to proceed. Unless you can tell me otherwise. There is no, well obviously if you don't think you have a reasonable prospect of success there is no draft defence attached to the application. There is no essence of any defence made out in the Affidavit, you have simply set out the efforts that you have been trying to make in order to secure information and relying on your request for information. Which as you have agreed does not, is not for information on matters that are not in dispute.

So I will expect to have some authority which will guide the Court as to how it is to proceed in those circumstances.

Ms. Alexander: Yes please My Lady.

Court: So I am going to stand the matter down. I have to stand the List down very shortly and I will return to deal with other matters on the List.

#### **List Stood Down**

#### **List Resumes**

Matter Recalled

Appearances as before.

Court: So let suggest this ladies. In terms of expediting the matter, you may either await the completion of the Trial which I am about to embark upon now or alternatively if you wish to provide the Court with brief written submissions in relation to the request for information and the request for Default Judgment, the Court can simply fix a date this side of the term depending on how quickly you can provide those submissions for its decision on the issues. What would you prefer?

Alternatively you may return on another day when I would probably have another Trial and await the completion of the Trial. Let me give you some guidance in terms of what. Actually the 4<sup>th</sup> July, one moment.

Ladies actually the Court does not have a Trial on the 4<sup>th</sup> July, so that if you were available at 11:15 a.m. on that day to come and make oral submissions.

Ms. Sankar: My Lady unfortunately in the afternoon I have a Court matter for 1:00 p.m. at Port of Spain. So it will be a little bit difficult to be here for 11:00. If we could get it earlier I would be able to make it.

Ms. Alexander: My Lady I have no problem with written submissions.

Court: Alright we can put you at 9:30.

Ms. Sankar: 9:30 is fine.

Court: What about you?

Ms. Alexander: My Lady I have no problem with written submissions.

Court: I am sorry, but are you available on the 4<sup>th</sup> July at 9:30.

Ms. Alexander: Yes please My Lady.

Court: So let's go that route and see if we can resolve this matter expeditiously. Of course in the interim it would allow the parties bearing in mind that they have heard the outline of each other's positions to have some discussion if at all, in an effort to resolve the matter between them. Failing which the Court will hear and determine the matter on the 4<sup>th</sup> July.

So we will say in no circumstances issues on request for information and on request for Default Judgment to be dealt with by Oral Submissions on Wednesday July 4<sup>th</sup>, 2018 at 9:30 a.m. in Courtroom SF 16.

So if you have any authorities apart from the rules that you wish to refer the Court too you may provide the same. And we will determine the matter on that day.

Thank you.

Dated the 20<sup>th</sup> June, 2018

**Nadia Kangaloo**

**Judge**