

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2011-03758

BETWEEN

VITCO TT LTD

Claimant

AND

MOTILAL RAMHIT AND SONS CONSTRUCTING COMPANY

Defendant

Before the Honourable Mr. Justice V. Kokaram

Appearances:

Ms. Saajada Narine for the Claimant

Mr. Anthony Manwah and Mr. Ronald Dowlath for the Defendant

JUDGMENT

1. In this Claim the Defendant has filed an application seeking judgment in default of Defence on its counterclaim for the sum of \$203,442.45. The Defendant's claim that this sum is due and owing from the Claimant for works performed pursuant to an agreement made between the parties and evidenced by various invoices submitted by the Defendant to the Claimant. The Defendant filed its amended Defence and counterclaim on 13th February 2012. In answer, the Claimant filed its amended Reply and although dealing with each allegation of fact in the Defence and Counterclaim, strictly speaking there was no document filed by the Claimant which is described as a "Defence to Counterclaim".

2. I need not rehearse every averment in the amended Defence and amended Reply here but simply say that the Claimant's skeleton submissions filed on 2nd July 2012 is quite helpful in placing side by side the respective allegations of both parties in their respective claims. Importantly paragraph 20 of the Amended Reply deals directly with the counterclaim by reference to the facts pleaded in paragraphs 14 to 18 of the amended Reply. Further paragraph 20 (sic) of the amended Reply makes further allegations of "inflated invoicing".
3. In these circumstances the very simple issue that falls for determination is whether the Court should enter judgment against a Claimant for failing to describe its Reply as a "Reply and Defence to Counterclaim" when for all intents and purposes having regard to the content of the document it cannot be anything else except an answer to the Counterclaim.
4. The proposition needs only to be stated to be rejected. A court cannot in exercising its case management powers give effect to the overriding objective by turning a blind eye to the facts as pleaded. Civil litigation is court driven to the extent that the Court can exercise its wide case management powers to deal with a case justly. In my view the Defendant in this case is simply preying on a minor procedural deficiency in the Claimant's pleadings which could easily be dealt with by consent, that is, that the Reply be treated as a Reply and Defence to Counterclaim. Had that been done consensually then sensibly the parties would have been able to focus their resources in preparing for a trial. In the absence of any such consent the Court is capable of treating with the Reply as a Reply and Defence to Counterclaim and I have done so to give effect to the overriding objective. That approach satisfies the principles of proportionality, equality and economy enunciated in Part 1.1 CPR.
5. It is of note that recently the Court of Appeal in **Real Time Systems Limited v Renraw Investments Limited**¹ highlighted the duty of the court in this court driven exercise of case management:

¹ Civ App no. 238 of 2011

“Clearly judicial officers now have the responsibility not just for managing the pace of litigation but also the shape of litigation. Hence the ‘intense focus ... on the pre-trial stages.’ What then are the ‘noble objectives embodied in Part 25’? Simply put, the core objective is to ‘further the overriding objective by actively managing cases,’ which includes achieving, inter alia, the thirteen objectives listed in Rule 25.1, CPR, 1998. I have already identified that these include, the early identification of the issues and the sorting out of which issues need a full investigation and which ones can be dealt with summarily, and ensuring that no party gain any unfair advantage by reason of a lack of full disclosure of all relevant facts. In order to achieve the above, case management, which necessarily includes issue management, is central to achieving the Overriding Objective of the CPR, 1998, which is to deal with cases justly. And, to achieve success in this task the court is given certain general wide ranging powers of management. These are listed at Rule 26.1, CPR, 1998. Among these powers are several which are directly related to identifying issues and determining whether they should be heard and if so when and how. And critical to these powers of management is the specific power to: “take any other step, give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective.”

6. I have taken into account that default judgments within the meaning of Part 12 is not relevant to counterclaims, see rule 18.9 (3) CPR. Indeed the fact that the Defendant must seek the Court’s permission to enter judgment under the rule invests in the Court its case management powers to give any such direction to further the overriding objective see rule 26.1 (w) CPR. Furthermore rule 18.12 (2) (a) CPR which provides that a party is deemed to admit an ancillary claim where it fails to file a Defence in respect of an ancillary claim cannot realistically apply in circumstances where the Reply is in itself an answer to the counterclaim. There is nothing objectionable therefore in my view in treating this Reply as a Reply and Defence to counterclaim. For all intents and purposes that was what it is in substance though lacking in form. The new CPR was not designed to trap litigants in a maze of formalism. It does not mean to say that form and procedure is irrelevant or unimportant. But the Court must carefully balance proceduralism in the face of substantive justice and it would be wholly disproportionate to enter judgment in this case where there is absolutely no

prejudice to the Defendant, no surprise, no disadvantage in preparing for the trial. All the facts have been put between the parties. Conversely the attempt to obtain judgment is to engage in mere tactics and not a genuine pursuit of the overriding objective which the parties themselves must assist the court in furthering, See rule 1.3 CPR.

7. I cannot enter judgment as requested by the Defendant. The counterclaim has been answered and I will treat the Reply as a Reply and Defence to Counterclaim. For these reasons the Defendant's application is dismissed.

Dated this 31st day of July 2012.

Vasheist Kokaram
Judge