

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-02213

BETWEEN

WAYNE GREAVES

Claimant

AND

JOSEPH WILSON

First Defendant

ALMA GREAVES

Second Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Friday 2nd June 2017

Appearances:

Mr. Ken Wright instructed by Ms. Carsha Peter for the Claimant

Mr. Lemuel Murphy instructed by Ms. Natalie Sanchez-Andrews for the First Defendant

JUDGMENT

1. At the Pre-Trial Review (PTR) held on 18th May 2017, the First Defendant applied for an “extension of time” to file the witness summary of Ms. Alma Greaves, the witness statement of Ms. Alma Greaves and the witness statement of Mr. Joseph Wilson pursuant to Part 29.6(1) of the Civil Proceeding Rules 1998 as amended (CPR).
2. The witness statements were due on 20th April 2017 pursuant to the Court’s case management Order made on 22nd February 2017. The Defendant’s application is however riddled with procedural errors. Firstly, the application was seen for the first time by the Claimant’s attorney at the PTR. Second, the First Defendant seeks an application for an extension of time with

respect to two (2) witnesses but the grounds of the application referred to only one witness, that of Ms. Alma Greaves. There is no mention of the reasons for an extension of time to file a witness statement for Joseph Wilson. Third, the First Defendant failed to annex the witness summary of Ms. Alma Greaves which he purported to annex in his principal affidavit of Mr. St. Clair Michael O'Neil filed on the 20th April 2017 (the principal affidavit). Fourth, the First Defendant filed a supplemental affidavit on the 25th April 2017 (the supplemental affidavit) (5 days beyond the deadline date) annexing the witness summary of Ms. Alma Greaves and the witness statement of Mr. Joseph Wilson. He also provided reasons for the first time why the witness statement of Mr. Wilson was not filed on the deadline date proffering belatedly one of the worst reasons for failing to meet the deadline discussed later in this judgment. All this is in the context of the PTR being scheduled to deal with the evidence before trial and against the backdrop of injunctive relief having been granted on the 30th June 2016 in which the Court was engaged to bring this matter to an expeditious resolution.

3. For the reasons set out in this judgment the application for an extension of time is dismissed.

The grounds

4. The grounds of the application were stated as follows:

“(i) Despite the best efforts of the First Defendant and his Attorney at Law, they were unable to receive the signed witness statement of the said Alma Greaves;

(ii) Arrangements were made with Ms. Greaves to sign her witness statement on the 19th day of April, 2017. However, there was an unexpected delay in having Ms. Greaves attend the office of the First Defendant’s Attorney at Law and therefore she was unable to sign same in time for the deadline.”

5. In the affidavit in support of the application¹ it was deposed that Ms. Alma Greaves is blind and special arrangements were required to have her attend his office to finalize and sign her witness statement. The arrangements were made to have her attend the office on the 19th April 2017 but she was unable to attend. There is no evidence as to when instructions were taken by the attorney to draft the witness statement and what steps were taken from 22nd February 2017

¹ Affidavit of St. Clair Michael O’ Neil filed on the 20th April 2017.

to the day before the deadline to have the witness sign her statement or why it was left for the last minute. There are no particulars as to the “unexpected delay” in having Ms. Alma Greaves attend the office.

6. At the time when the application was made there were no grounds nor any evidence to explain the reason why an extension of time was needed for Mr. Wilson’s witness statement. Indeed a Notice of Application must provide the grounds or reasons why the application is being made. See Rule 11.5, 11.7(1) (b) and Form 10 CPR. There was no application made to the Court to amend the application to include the grounds for the extension of time for Mr. Wilson’s witness statement. It was only by the supplemental affidavit it was deposed as follows at paragraph 5:

“In my principal affidavit, I also omitted to give a reason for the inability of the 1st Defendant to file his witness statement. I now state arrangements were made with Mr. 1st Defendant to sign his witness statement on the 20th day of April, 2017. However, he was called to his workplace unexpectedly and is therefore unable to return to our office in time to sign same in time for the deadline.”

7. In the supplemental affidavit the previous Attorney at Law also acknowledged his error in failing to annex the witness summary of Ms. Alma Greaves in his principle affidavit and also in failing to provide reasons for the inability of the First Defendant to file his witness statement. However, again, the reasons advanced for not complying with the deadline or for the need to file a witness statement are lacking in details and particulars and leaves the Court with the reasonable inference that the witness statement was prepared on the last day and the last minute. Even so it also demonstrated that Mr. Wilson himself did not appreciate the urgency of dealing with his own matter.

Brief Procedural History

8. On 29th June 2016 the Claimant applied for injunctive relief. The Court granted the injunctive relief by Order dated the 30th June 2016. The claim was eventually filed on the 5th July 2016 and the Statement of Case was filed on 21st July 2016. The Defence was filed on the 7th October 2016 and the amended Defence was filed on 21st November 2016. The first Case Management was held on the 17th November 2016. The Court encouraged the parties to settle the matter but

those attempts failed and at the Case Management Conference on the 22nd February 2017, the Court made the following order:

“IT IS HEREBY ORDERED that:

1. The Claimant to file and serve a joint statement of agreed and unagreed documents, statements of facts and statement of issues for determination on or before 20th March 2017.
 2. The parties do file and exchange their witness statements on or before 20th April 2017. No witness shall give evidence unless he has complied with this Order.
 3. The Pre Trial Review is fixed for 18th May 2017 at 10:00am in Court Room POS22, Hall of Justice, Knox Street, Port of Spain.
 4. Trial is fixed for 4th July 2017 at 9:30am in Court Room POS16, Hall of Justice, Knox Street, Port of Spain.”
9. The Claimant did not see the First Defendant’s Notice of Application nor affidavit in support of the application. The Claimant was only served the supplemental affidavit on the 25th April 2017. In response to that affidavit, the Claimant filed an affidavit in opposition² in which the Claimant’s attorney deposed that the First Defendant failed to act promptly in providing reasons for the Court since the supplemental affidavit of the First Defendant’s attorney providing the reasons for the delay of one of the witnesses was filed five (5) days after the time limit. He further contended that the First Defendant’s principal affidavit was not even served unto the Claimant.

Extension of time: The Approach

10. At the Pre-Trial Review on the 18th May 2017, the Court noted that the application was not an application for relief from sanctions since it was filed on the day the witness statements were due to be filed. The Court at the PTR indicated that there were no good reasons advanced by

² Affidavit of Ken Wright filed on 3rd May 2017.

the First Defendant in failing to file on time but there were other factors the Court had to take into consideration in deciding whether to grant the extension of time.

11. In **Roland James v The Attorney General of Trinidad and Tobago** Civ App No. 44 of 2014 laid down the factors which should be considered in determining whether to grant an extension of time on an application. Mendonca JA had this to say:

“In my judgment on an application for an extension of time, the factors outlined in rule 26.7(1), (3) and (4) would generally be of relevance to the application and should be considered. So that the promptness of the application is to be considered, so too whether or not the failure to comply was intentional, whether there is a good explanation for the breach and whether the party in default has generally complied with all other relevant rules, practice directions, orders and directions. The Court must also have regard to the factors at rule 26.7(4) in considering whether to grant the application or not.

In an application for relief from sanctions there is of course a threshold that an applicant must satisfy. The applicant must satisfy the criteria set out at rule 26.7(3) before the Court may grant relief. In an application for an extension of time it will not be inappropriate to insist that the applicant satisfy that threshold as the treatment of an application for an extension of time would not be substantially different from an application for relief from sanction. Therefore on an application for extension of time the failure to show, for example, a good explanation for the breach does not Page 11 of 19 mean that the application must fail. The Court must consider all the relevant factors. The weight to be attached to each factor is a matter for the Court in all the circumstances of the case.

Apart from the factors already discussed the Court should take into account the prejudice to both sides in granting or refusing the application. However, the absence of prejudice to the claimant is not to be taken as a sufficient reason to grant the application as it is incumbent to consider all the relevant factors. Inherent in dealing with cases justly are considerations of prejudice to the parties in the grant or refusal of the application. The Court must take into account the respective disadvantages to both sides in granting or

refusing their application. I think the focus should be on the prejudice caused by the failure to serve the defence on time.”³

12. In **Dr. Keith Rowley v Anand Ramlogan** Civ App No. P215 of 2014, delivered on the same day of **Roland James**, Rajnauth-Lee J.A noted at paragraph 13:

“13. In the above cases, the Court of Appeal was disposed to the view, and I agree, that the trial judge's approach in applications to extend time should not be restrictive. In such applications, there are several factors which the trial judge should take into account, that is to say, the Rule 26.7 factors (without the mandatory threshold requirements), the overriding objective and the question of prejudice. These factors, however, are not to be regarded as "hurdles to be cleared " in the determination of an application to extend time. They are factors to be borne in mind by the trial judge in determining whether he should grant or refuse an application for extension of time. The trial judge has to balance the various factors and will attach such weight to each having regard to the circumstances of the case. Of course, not all the factors will be relevant to every case and the list of factors is not exhaustive. All the circumstances must be considered. In addition, I wish to observe that this approach should not be considered as unnecessarily burdening the trial judge. In my view, when one examines the principles contained in the overriding objective, it is not difficult to appreciate the relevance of the rule 26.7 factors.”

13. In exercising its discretion in granting or refusing an application for an extension of time the court is guided by “The Rule 26.7 factors” without the mandatory threshold requirement which would have been applicable in an application for relief from sanctions. The Rule 26.7 factors is not a rigid checklist but serves as a guide to the Court to give effect to the overriding objective.⁴ In short, therefore, the Court takes into account the circumstances of the relevant

³ **Roland James v The Attorney General of Trinidad and Tobago** Civ App No. 44 of 2014 page 10 paragraphs 22-24

⁴The overriding objective of the CPR is to deal with cases justly. Dealing with cases justly includes:

“(a) ensuring, so far as is practicable, that the parties are on an equal footing;

(b) saving expense;

(c) dealing with cases in ways which are proportionate to—

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously; and

case and considers the features of promptitude, intentionality, good explanations, compliance, administration of justice, blameworthiness, remedying the breach, trial date certainty and prejudice. Justice Des Vignes (as he then was) neatly summarized the principle in **Crown Pointe Beach Hotel Limited v Fariza Shaama Seecharan** CV 2013-03309 as follows:

“The correct approach to be adopted is as follows:

- i. Consider the Rule 26.7 factors without the mandatory threshold requirements as well as the overriding objective of the CPR [Rule 1.1 (2)]. However, these factors are not an exhaustive list and the Court is required to consider all the relevant circumstances of the case;
- ii. Consider the prejudice likely to be suffered by either party in order to determine where the greater risk of prejudice would lie if the extension of time is granted or refused; and
- iii. Weigh up the material considerations that favour the granting the extension as against those which favour its refusal to give effect to the overriding objective of dealing with cases justly.”⁵

Extensions of time: Exercise of discretion

14. In weighing these considerations stated above the Court is not minded to exercise its discretion in favour of an extension of time for the following reasons.

Promptitude

15. In **Dr. Keith Rowley v Anand Ramlogan** it was stated that “Where an application for an extension of time is made before the sanction takes effect, it should be regarded generally as a prompt application.”⁶ The First Defendant’s application for an extension of time was made on the 20th April 2017, the same day of the deadline for filing witness statements. However, as stated before, the First Defendant failed to provide reasons for failing to file the witness statement of Mr. Wilson. This he sought to rectify by his supplemental affidavit filed on the

(e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.”

⁵ **Crown Pointe Beach Hotel Limited v Fariza Shaama Seecharan** CV 2013-03309, paragraph 20.

⁶ **Dr. Keith Rowley v Anand Ramlogan** Civ App No. P215 of 2014 Paragraph 20.

25th April 2017. The Claimant's contended that this indicated that the First Defendant failed to act promptly in providing reasons to the Court for the failure to file the witness statements on time. The fact remains that the application was made on the 20th April 2017 and further reasons given five (5) days after and made before a PTR. It was therefore made promptly.

Intentionality

16. Although the application itself referred to the witness summary of Ms. Alma Greaves and the witness statement of Mr. Wilson, there was nothing to suggest in that application that the Attorney for the First Defendant was genuinely seeking an extension of time for the witness statement of Mr. Wilson. There was absolutely no reference of this made in the evidence nor in the grounds of the application.

Good explanation

17. As stated above, the Court found that the reasons advanced by the First Defendant were not satisfactory. To his credit this was in fact conceded by Counsel for the Defendant who only recently came on record. The First Defendant's contention that Ms. Alma Greaves was blind does not detract from the obligation to ensure that proper arrangements are to be put in place to take instructions and to meet the deadlines. Further, the arrangements made for Ms. Alma Greaves and Mr. Wilson to attend the attorney's office on the 19th and 20th April 2017 respectively, were virtually on the heels of the deadline of the filing of the witness statements which were due on the 20th April 2017. This may be forgiven if there was a good reason to wait until the last minute to do so or there were a series of exchanges with the witness or several preparatory meetings or that evidence was difficult to obtain. There could be a number of circumstances but generally, attorneys who wait for the last minute do so at their peril. See **John Bruce Milne v Trinidad Dock and Fishing Services Ltd and John H. Duberg** CV 2007- 03438 per Gobin J. The Order for the filing and exchanging of witness statements was made on the 22nd February 2017 giving the parties approximately two months and ample opportunity to make arrangements to finalize the witness statements.

18. Importantly, the Order expressly provided a sanction which the Court is not minded to disregard unless a good explanation is provided with the First Defendant failed to do. The failure to file a witness statement on the deadline date carries with it the express sanction under

Rule 29.13. However when this Court makes the order expressly setting out the sanction this is done to make it absolutely clear to the parties that the compliance with the timelines are critical to the smooth and efficient progress of meeting the trial date.

General Compliance

19. There has been general compliance by the First Defendant in this matter.

The interests of the administration of justice

20. This involves the consideration of the needs and interests of the parties. In considering the application to extend time, the interests of the administration of justice cannot be served by last minute applications which derails the litigation path. There was the PTR fixed to deal with the evidence before trial and a trial date set. If an extension of time is now granted, the trial date will have be further rescheduled to accommodate a PTR. July dates are at a premium as they are in high demand before the close of the law term. These dates are set aside for scheduled work and when that is aborted it deprives other deserving litigants of precious time in a busy Court month. This will increase the costs of the proceedings and may prolong the determination of issues in the claim.

Whether failure to comply was due to the party or his attorney.

21. Both the parties and the Attorney are at fault in these proceedings. In his principal and supplemental affidavit it was recognized that the arrangements made between then Attorney at law on record and the witnesses to meet at his office were close to the deadline of filing the witness statements. These last minutes arrangements could have been avoided since the Order was made approximately two months prior on the 22nd February 2017. Further, the parties also failed to show any interest in meeting the deadline.

Whether the failure to comply has been or can be remedied within a reasonable time.

22. At the Case Management Conference on 22nd February 2017, the PTR was fixed for 18th May 2017 and the Trial date was fixed for the 4th July 2017. A PTR is not a mere stock taking exercise. It is where parties have the opportunity to make applications to strike out evidence from witness statements, make other applications such as summary judgment based on the

available evidence or conduct a reality test with the trial Judge ultimately leading to an amicable resolution if possible. Given the nature of these proceedings a PTR is important for the management of this claim and cannot be waived. However, given the change in circumstances the Defendants' failure to comply cannot be remedied within a reasonable time as if the extension of time is granted the Court will now have to schedule another PTR date which can only be accommodated on the trial date.

Whether the trial date can still be met if relief is granted.

23. For the reasons set out above, the trial date will not be met if an extension of time is granted as the Court will have to re-schedule its PTR date to meet trial date taking into account the Court's schedule and the other demands of litigants in other cases.

Prejudice

24. At the Pre-trial preview, the Claimant's attorney informed the Court that if an extension of time is granted to the First Defendant it will be prejudicial to the Claimant because of the nature of the Claim, it being one for injunctive relief. The Court is mindful of this and is also cognizant of the fact that its Order of 22nd February 2017 contained a double sanction should parties fail to file and exchange their witness statements on time. For the Court to now disregard its Order without good reason proffered by the First Defendant would be gravely unfair to the Claimant who has complied with the Orders of the Court.

The Overriding Objective

25. This is a matter for injunctive relief which requires an expeditious resolution of the disputes in the interest of the parties. The parties were unable to settle this claim and to now abort a trial date to accommodate a PTR would not bring a resolution to the dispute nor further the overriding objective.

Conclusion

26. In light of the aforementioned considerations, I will not grant the extension of time. Though I am of the view that the application was prompt, it failed to satisfy other important factors which affects the timely resolution of this dispute.

Vasheist Kokaram
Judge