

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2006-01057**

**BETWEEN**

**AUGUSTINE PRIME**

Claimant

**AND**

**THE ATTORNEY GENERAL OF**

**TRINIDAD AND TOBAGO**

Defendant

**Before Master Margaret Y Mohammed**

Appearances:

Mr Shastri VC Parsad for the claimant

Ms Monica Smith for the defendant

**DECISION- Preliminary objection**

**Introduction**

1. The claimant has applied at the assessment of damages to strike out paragraphs 6, 7 and 8 of the defendant's amended defence, to prevent the defendant from leading any evidence, cross-examining any of the claimant's witnesses and making submissions on matters relating to those paragraphs on the basis that it has failed to comply with Part 10.5 Civil Proceedings Rules, 1998 ("the CPR").
2. The defendant contends that the claimant is estopped from making this application since the amended defence was accepted as part of the pleadings by the trial judge, that the evidence in chief of Corporal Larry Alexander, one of the defendant's

witnesses was accepted at the trial and he was cross-examined by the claimant. Further, the defendant submitted that the claimant has failed to set out his case and the defendant should not be penalised for the claimant's failure.

3. The issues arising from this application are (a) can the court strike out paragraphs 6, 7 and 8 of the amended defence after evidence was led at the trial ; (b) how far should the defendant be allowed to defend the claim and (c) does the claimant still have to prove his damages if the claimant's facts are unchallenged.
4. I have concluded that the claimant has waived his right to strike out the said paragraphs since the evidence has already been led at the trial where there has been a finding of fact and it is now too late to do so. While I agree with the claimant that paragraphs 6, 7 and 8 of the defendant's amended defence have failed to provide an alternative version of the events, he has waived his right to prevent the defendant from leading any evidence, cross-examining any of the claimant's witnesses and making submissions on the said matters. Finally, while the facts pleaded by the claimant in paragraphs 6 and 7 of his amended statement of case are treated as proven this does not derogate from the claimant's duty to prove his loss.

#### **Can the court strike out certain paragraphs of the amended defence after the trial on liability?**

5. I have concluded that at this stage of the proceedings the court cannot strike out paragraphs 6, 7 and 8 of the defendant's amended defence. The particulars of the claimant's case which dealt with his claim for damages for personal injuries, his loss of expected future earnings and special damages were set out in paragraphs 6 and 7 of the amended statement of case filed October 3, 2006. The defendant's amended defence filed on January 31, 2007 addressed the claim for damages at paragraphs 6, 7 and 8. At the trial before Tiwary-Reddy J the claimant's evidence was both on liability and quantum, in particular with respect to his claim for special damages, general damages and loss of expected future earnings. Dr Stephen Ramroop who gave evidence on behalf of the claimant addressed the claimant's personal injuries and Mr Jeetendra Sookdeo's evidence addressed both the issue of liability and quantum. The defendant's witnesses at the trial - Corporal Larry Alexander's evidence addressed the claimant's claim for loss of expected earnings and Superintendent Seukeran Singh's evidence dealt with the issue of liability.
6. The claimant has relied heavily on the authorities of **M.I.5 Investigations Limited v Centurion Protective Agency Limited**<sup>1</sup> and **Andre Marchong v Trinidad and Tobago Electricity Commission**<sup>2</sup> in support of his application to strike out the said

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<sup>1</sup> Civ Appeal 244 of 2008

<sup>2</sup> CV 2008-04045

paragraphs. However the circumstances in those cases can be distinguished from the instant case. In **M.I.5 Investigations Limited** the defence was struck out *before* any evidence was led and in **Andre Marchong** the court dealt with the application to prevent the defendants from leading positive evidence or cross-examining the claimant on liability and quantum *before* the trial of the action. In **Andre Marchong Jones J** in addressing the issue of what is the appropriate time for a claimant to challenge a defendant's ability to lead any positive evidence or cross-examine the claimant on liability or quantum was of the view that while it may be more appropriate for the claimant to make such an application prior to the pre-trial review, the appropriate time for making such application is *prior to the receipt of the evidence*.

7. The instant case was a split trial where the evidence on liability and quantum has already been led before Tiwary-Reddy J by both parties and the court has made a finding of fact on the issue of liability. The case management conference was heard before Tiwary-Reddy J on 10 occasions after the amended defence was filed during the period July 4, 2006 to October 2, 2008 yet the claimant did not apply during this 2 year period to strike out paragraphs 6, 7 and 8 of the amended defence. At the trial before Tiwary – Reddy J which took place on April 22, 2009, June 18, 2009 and May 5, 2010 the claimant did not object to paragraphs 6, 7 and 8 of the amended defence or the evidence of the defendant's witnesses. In my opinion in determining the quantum of damages for the claimant the court cannot now choose to ignore evidence which is already before it.

#### **How far should the defendant be allowed to defend the claim ?**

8. Rule 10.2 of the CPR mandates a defendant to file a defence if it wishes to defend the claim or be heard on quantum. Rule 10.5 directs the defendant on the information which it must set out in its defence, namely all the facts upon which it relies. The relevant rules to this application are rules 10.5(3) and (4) which provide:

“10.5 (3) in his defence the defendant must say-

- (a) which (if any) allegations in the claim form or statement of case he admits;
- (b) which (if any) he denies; and
- (c) which (if any) he neither admits nor denies, because he does not know whether they are true, but which he wishes the claimant to prove.

(4) Where the defendant denies any of the allegations in the claim form or statement of case-

- (a) he must state his reasons for so doing; and

(b) if he intends to prove a different version of events from that given by the claimant he must state his own version.”

9. In **M.I.5 Investigations Limited v Centurion Protective Agency Limited**<sup>3</sup> Mendonca JA in interpreting the aforesaid provision was of the view that “where there is a denial it cannot be bare denial but it must be accompanied by the defendant’s reasons for the denial. If the defendant wishes to prove a different version of events from that given by the claimant he must state his own version. I would think that where the defendant sets out a different version of events from that set out by the claimant that can be a sufficient denial for the purposes of 10.5(4)(a) without a specific statement of the reasons for denying the allegation. Where the defendant does not admit or deny an allegation or put forward a different version of events he must state his reasons for resisting the allegation (see 10.5(5)). The reasons must be sufficiently cogent to justify the incurring of costs and the expenditure of the Court’s resources in having the allegation proved.”
10. I accept the claimant’s submissions that paragraphs 6, 7 and 8 of the amended defence run afoul of the provisions of Part 10 .5(3) and (4). However, the claimant’s failure to challenge the defendant’s defence before the parties’ evidence was given at the trial before Tiwary-Reddy J now prevents him from challenging the defendant’s ability to put forward its case by relying on witness statements already in evidence. The defendant is therefore permitted to lead positive evidence, cross-examine the claimant and make submissions on the issue of quantum.

### **Does the claimant still have to prove his damages?**

11. Jones J at paragraph 25 in **Andre Marchong** answered this question when she said “In my opinion Part 10 does not however obviate the need for a claimant to prove by credible evidence those facts which that claimant is required to prove in support of the damages claimed. In my view with respect to damages the Claimant is required to satisfy me as to the validity of his claims despite the fact that the allegations made by him may be undisputed. Neither does it prevent the Defendants from addressing me on aspects of the case which they are of the opinion the Claimant failed to prove”. In the circumstances, the claimant still has a duty to present evidence to prove his damages.

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<sup>3</sup> Civ Appeal 244 of 2008

**Order**

12. The claimant's notice of application filed November 29, 2011 is dismissed with costs to be assessed. The Court will now hear the parties' submissions on the costs of the application.

Dated this 13 March, 2012

Margaret Y Mohammed

Master (Ag)