

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2008-04544**

**BETWEEN**

**HAJRA LENDOR**

**Claimant/Respondent**

**AND**

**CARIBBEAN UNION COLLEGE  
UNIVERSITY OF THE SOUTHERN CARIBBEAN**

**Defendant/Applicant**

**Before: Master Margaret Y Mohammed**

**Appearances:**

**Mr Joseph Camacho for the Claimant**

**Mr Colin Kangaloo instructed by Ms Natasha Bisram for the Defendant**

**DECISION**

1. The Defendant applied pursuant to Parts 26, 43 and 48.2 of the Civil Proceedings Rules, 1998 (“the CPR”) to clarify the order pronounced by this court at the Assessment of Damages on January 25, 2012 (“ Assessment Order”) where I made the following order:

*“IT IS ORDERED that the Claimant’s Damages are assessed as follows:*

*1 .Special Damages in the sum of \$21,380.40 with interest at the rate of 6% per annum from 18<sup>th</sup> August, 2006 to 25<sup>th</sup> January, 2012.*

- 2. General Damages in the sum of \$125,000 with interest at the rate of 9% per annum from 18<sup>th</sup> November, 2008 to 25<sup>th</sup> January, 2012.*
- 3. Loss of future earnings in the sum of \$600,000.00. No interest is awarded on this sum.*
- 4. Future medical expenses in the sum of \$5,000.00. No interest is awarded on this sum.*
- 5. Interim payment made pursuant to the order of Justice des Vignes is to be deducted from the award for General Damages.*
- 6. Prescribed costs in the sum of \$51,279.68.”*

2. The claimant has 2 objections to the application namely: that the application is out of time and not properly before this court and that a literal interpretation of paragraph 5 of the Assessment Order is clear and refers only to the interim payment ordered by the Honourable Mr Justice des Vignes on October 23, 2009 (“the first des Vignes Order”) which was the sum of \$108,000. The defendant asserts that the application is properly before this court for clarification and that paragraph 5 of the Assessment Order refers to the interim payment in the first des Vignes Order and to paragraph 6 of the order of the Honourable Mr Justice des Vignes on July 1, 2010 (“the second des Vignes Order”) which refers to the payment of arrears of salary in the sum of \$52,664.00 for the period November 1, 2009 to June 30, 2010 and subsequent monthly salary from July 28, 2010 and continuing thereafter .
3. There are 2 issues for determination (a) whether this Court has the power to clarify the Assessment Order and (b) what was the intention of paragraph 5 of the Assessment Order. I have found for the reasons set out hereafter that this Court has the power to ensure that its written up order reflects its intention. Therefore the application is properly before me. Having reviewed the Assessment Order I am certain that paragraph 5 is clear in that it reflects my intention that only the sum of \$108,000.00 which was the interim payment is to be deducted from my final award for damages.

**Is the instant application properly before the court?**

4. It was not in dispute that the application filed on July 24, 2012 was made outside the time frame within which any appeal can be filed against the substance of the order. While I agree with Counsel for the applicant that the application was not made in a timely manner I find that there is merit in with Counsel for the defendant's submission that the court has a limited inherent jurisdiction where there is ambiguity in its order to clarify same in order to ensure that the written up order reflects what the court intended. In my view Part 43 of the CPR is no different from Order 20 of the Rules of the Supreme Court. In both cases a party is entitled on an application to the court to vary or amend an order to clarify any ambiguity and makes its meaning clear when it is not.
5. I have noted the comments of Chief Justice Archie in the transcript in **Keith Schnake v Trincan Oil**<sup>1</sup> referred to me by Counsel for the claimant but I agree with Counsel for the defendant that there was no pronouncement by the Court of Appeal on the time for a party to make an application under the "slip rule". I could find no rule which seeks to place a time limit on such applications. In the circumstances, I am of the view that the instant application is properly before me.

**Is paragraph 5 of the Assessment Order ambiguous?**

6. The contentious paragraph of the order reads "*Interim payment made pursuant to the order of Justice des Vignes is to be deducted from the award for General Damages.*". While I agree with Counsel for the defendant that the term "interim payment" can be used to mean damages and other payments, in this particular case paragraph 5 is clear and unambiguous since it reflects my intention which was for the interim payment made in the first des Vignes Order to be deducted from the final award for damages. If I had intended otherwise to include the second des Vignes orders I would have said "payments" and "orders" since the payment made in the second des Vignes order was not

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<sup>1</sup> CA 123 of 2010 dated July 5, 2010

labeled by the judge as an “interim payment” In my mind the term “interim payment” in this case carried a particular meaning which was a payment made on account of the damages.

7. Further, in the interest of clarification, I did not include the payment in the second des Vignes order since there was no duplication of payment for the following reasons:

- (a) The claimant’s pleaded a claim for special damages for transportation, domestic assistance, medical, medication and medical report. There was no claim for past loss of earnings since the claimant continued to be paid her salary until she was retired on medical grounds in January 2011.
- (b) Paragraph 6 of the second des Vignes order took into account the claimant’s loss of earnings for the period November 1, 2009 to June 30, 2010 and thereafter for which she was entitled.
- (c) The claimant pleaded a claim for loss of future earnings which was awarded in the sum of \$600,000. This represented her loss of earnings from January 2011 until when she ought to have retired.
- (d) The claimant was entitled to loss of earnings from the time of her injury until she was due to retire. The loss of earnings before January 2011 was her past loss of earnings and the earnings awarded after represents her future loss of earnings. This sum cannot be deducted from the final award for general damages.

### **Order**

8. The notice of application filed July 24, 2012 is dismissed with costs to be assessed in default of agreement.

Dated this 18<sup>th</sup> October, 2012.

Margaret Y Mohammed  
Master (Ag).