

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2009-00689**

**BETWEEN**

**SHAH MOHAMMED**

**Claimant**

**AND**

**TRINIDAD AND TOBAGO ELECTRICITY COMMISSION**

**Defendant**

**Before: Master Margaret Y Mohammed**

**Appearances:**

**Mr. Rishi Dass instructed by Mrs. T Hadad- Maraj for the Claimant  
Mr. Ravi Nanga instructed by Ms. S Rahaman for the Defendant.**

**DECISION**

**Introduction**

1. The claimant has sought the court's permission to file and serve a bundle of documents, a supplemental witness statement limited to the issue and proof of damages, to call Tony Beepath as an expert witness at the trial and to file a witness statement attaching a valuation report prepared by Mr. Beepath within 14 days from the order. Alternatively the claimant has sought the court's permission to direct a separate trial of the issues of

quantum and liability. The application was heard at the 11<sup>th</sup> hearing of the case management conference (CMC).

2. The defendant did not object to the first limb of the application. However, the defendant objected to the application to file and serve a supplemental witness statement since it was of the view that the claimant failed to set out the further matter he discovered since the filing of his witness statement and the intention of his former attorney at law to proceed on liability was not a sufficient reason. The defendant's objection to the application to adduce expert evidence of Toney Beepath was on the basis that the claimant had already obtained permission to adduce expert evidence from one Seecharan Jadoonanan in 2009 and in the absence of an explanation it was too late to grant such permission. Finally, the defendant submitted that the court did not have the power to direct a separate trial on liability and quantum and even it had, the circumstances of this case, did not warrant the making of such an order.
3. The issues based on the order of submissions by the claimant are: (a) can the court direct a separate trial of the issues of liability and quantum at the CMC and if so is this case deserving of such an order; (b) has the claimant satisfied the court that he should be given permission to file a supplemental witness statement; and (c) can the claimant still be permitted to call Tony Beepath as an expert witness where permission was previously granted to call another expert.
4. In the management of a case Part 26.1 bestows on the judicial officer the power to direct a separate trial of issues of liability and quantum. However this is not an appropriate case to make such an order for the reasons set out hereafter. I have not been persuaded by the claimant that he has satisfied the test to be permitted to file a supplemental witness statement and I therefore refuse this limb of his application. Finally, I accept that there is no time limit set out in the CPR fettering the court's discretion to grant permission for a party to call an expert at the trial and as such I grant the claimant permission to call Toney Beepath as an expert on quantum of damages and to file a witness statement within 14 days of this order

**Should the court direct a separate trial on liability and quantum at the CMC of this matter?**

5. The court has the power to direct a separate trial on liability and quantum at the CMC stage. Rule 26.1 of the CPR bestows very wide powers on the judicial officer managing a case. Such powers include the power to decide the order in which issues are to be decided (rule 26.1 (1) (g)) and to direct a separate trial on any issue (rule 26.1 (1) (h)). Rule 27.7 CPR gives the court the power to direct a separate trial of the issues of liability and quantum where 1 of 2 conditions is satisfied namely either where the costs of preparing the issue on quantum are substantial and there is a significant dispute on the question of liability or the claimant is not likely to be able to proceed with the issues of quantum because of difficulties in determining the prognosis or for any other reason by the time that the issue of liability should reasonably be determined. This provision is not to be confused with rule 16.4 CPR which deals with assessment of damages *after* the issue of liability has been tried. In this case neither the issue of liability nor quantum has been determined as yet. Therefore in my view rule 16.4 of the CPR is irrelevant.
6. In my opinion, this is not an appropriate case where the court should exercise its discretion to direct a separate trial of liability and quantum. The issue to be determined at the trial is simple. The main issue on liability to be determined is what caused the fire at the claimant's residence situate at 106 Soledad Road Claxton Bay and whether the defendant was responsible in any way for the cause of the fire. If the claimant is successful in proving that the defendant was liable for the fire which destroyed his house then the next issue which flows as a consequence is whether he can prove his loss as set out in his claim. There is no evidence to indicate that the costs of preparing the issue on quantum is substantial. Indeed it appears that the information to be used by the claimant on quantum has already been compiled.
7. Further, in this case the benefits of preparing both the issues of liability and quantum far exceed the costs of having a separate trial since it is in the interest of the claimant to be aware of his exposure in costs if he fails to prove his case against the defendant. In the case of the defendant, to be aware of its exposure in damages if it loses on liability to the

claimant. In any event, it is clear to me that the claimant already had in his possession since 2009 the information upon which he intends to rely to prove his damages namely the valuation report by Mr Beepath.

8. The philosophy of the CPR is the early identification of the issues at the pre-trial stages. In **Real Time Systems Limited v Renraw Investments Limited and Ors**<sup>1</sup> Jamadar JA set out the approach which ought to be adopted by judicial officers in actively managing cases :

“21. As Chief Justice Sharma explained, the CPR, 1998 introduced a “new civil procedural code governing the civil justice system”. And further, pointing to what is at the heart of the new rules:

The CPR are founded on a system of case flow management with active judicial case management.

Case management under the CPR is predicated upon a system which gives control and management of the pace and shape of litigation to the courts removing it from the hands of the parties and their attorneys. Under the traditional adversarial system promoted by the 1975 Rules the pre-action process was exclusively occupied with preparation for the trial and was largely controlled by the parties with minimal court intervention. In fact, the final outcome of cases was shaped not during the pre-trial stages but at the trial itself primary because the decision-making process formed no material part of the pre-trial process. With the advent of the new system there has been a functional convergence of the pre-trial and trial process. The intense focus will be on the pre-trial stages since the adjudicative process begins as soon as the court assumes control over the case, which is at the case management conference.

The case management conference, therefore, is at the heart of the new procedural code and is central to the success of the noble objectives embodied in Part 25.

22. I have quoted Chief Justice Sharma at length, because his introduction to the CPR, 1998 is a secondary interpretative source which assists in ascertaining both the intention and meaning of

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<sup>1</sup> Civil Appeal 238 of 2011

the Rules themselves. 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.

23. 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.”

9. To direct a separate trial on the issue of liability and quantum at the case management stage of this matter only because the claimant’s former attorney chose for some reason to put before the court evidence on liability and not on quantum would defeat the overriding objective of how this court chooses to actively manage this case. In my view active management of this case mandates that there is preparation of both liability and quantum.

**Should the claimant be granted permission to file a supplemental witness statement?**

10. The claimant has failed to persuade me that he has satisfied the conditions in Rule 29.8 CPR to be granted permission to file a supplemental witness statement. Rule 29.8 states :

“(1) Where-

- (a) A party has served a witness statement;
- (b) Further matters on which the witness can give evidence arise or become relevant or known to the party after it has been served; and

- (c) The party who served the witness statement proposes to call the witness to give evidence on those further matters,

That party must serve a statement of the further evidence which the witness will give.

(2) Such a statement is referred to as a “supplemental witness statement”.

(3) A party who serves a supplemental witness statement must do so as soon as possible after the further matters arise or become relevant or known.”

11. The claimant’s witness statement was filed on September 23 2009. On June 16, 2011 the court extended time for the claimant to serve his witness statement on or before September 15, 2011. In May 2011 the previous attorney on record for the claimant passed away and the present attorney came on record on September 27, 2011. The main reason advanced by the claimant for seeking this permission was set out at the latter part of paragraph 8 and at paragraph 9 of the affidavit of Theresa Hadad-Maraj which states:

“8.....I therefore respectfully submit that it would appear that Mr. Premchand Dass strategically planned the Claimant’s case on the belief that the trial would be split into liability and quantum. This is not uncommon even under the CPR and was the norm under the RSC 1975 as amended.

9. Similarly, the Claimant’s Witness Statement addresses the issue of liability but not quantum and in this regard leave is sought to file a Supplemental Witness Statement.”

12. There is no evidence to persuade me that the information which the claimant now seeks permission to place before the court was not in his or his previous attorney’s possession before his witness statement was filed. Indeed it is not unreasonable for me to presume that the information was in their possession but for some unknown reason the claimant’s previous attorney chose not to place this evidence before the court. In this regard, I have not been persuaded that the claimant should be granted permission to file a supplemental witness statement.

**Can the claimant be granted permission to call an additional expert witness?**

13. The court's power to restrict expert evidence is set out at rule 33.5 of the CPR. The general rule is the court's permission should be given at the CMC and that the party wishing to put in that evidence has served a report of the evidence. The nature of the evidence which the proposed expert wishes to give addresses the issue of quantum of damages. The claimant's other expert witness Mr. Jadoonanan is a witness on liability and not quantum. In my view the defendant was notified with the report when it was served with a copy which was attached to the instant application since November 2011. I can envisage no prejudice to the defendant if it has this information available to it at this pre-trial stage of the process. Therefore, I would permit the claimant to call Toney Beepath as an expert at the trial on the issue of the claimant's quantum of damages and for the claimant to file and serve a witness statement of this expert annexing a copy of his valuation report within 14 days from the date of this order.

**Order**

14. The claimant's application to direct a separate trial of liability and quantum is refused.
15. The claimant is not permitted to file a supplemental witness statement limited to the issue and proof of quantum.
16. Permission is granted to the claimant to call Toney Beepath as an expert witness at the trial to address the claimant's quantum of damages and for the claimant to file and serve a witness statement of this expert annexing a copy of his valuation report within 14 days from the date of this order.
17. I will now hear the parties on the costs of this application.

Dated this 29 June, 2012.

Margaret Y Mohammed  
Master (Ag).