

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY SAN FERNANDO**

Claim No. CV2019-02494

BETWEEN

HARISH BALKARAN

Claimant

AND

THAKUAR RAMKHALAWAN

(erroneously sued as THACKUR RAMKHALAWAN)

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery August 17, 2021

APPEARANCES

No appearance for the Claimant

**Mr Shaun Teekasingh instructed by Ms Renu Teekasingh Attorneys at Law for the
Defendant**

REASONS

1. On 6 August 2021, two applications were before me for determination, namely the Defendant's Notice of Application filed 22 January 2020 ("the Defendant's Application") and the Claimant's Notice of Application filed 13 February 2020 ("the Claimant's Application"). The Defendant's Application was to obtain judgment in

default of a Defence to the Defendant's Counterclaim and the Claimant's Application sought permission to file and serve a Reply.

2. At the hearing, I dismissed the Claimant's Application and ordered the Claimant to pay the Defendant's costs, which I assessed in the sum of \$2,925.00. I also made the order granting the Defendant judgment in default of a Defence to the Defendant's Counterclaim, namely the Claimant to pay the Defendant the sum of \$22,670.00 as the outstanding salary due and owing. I ordered the Claimant to pay the Defendant the costs of the Defendant's Application, which I assessed in the sum of \$1,950.00 and the prescribed costs of the Counterclaim in the sum of \$3,740.55. I now set out my reasons for the said orders.

The Defendant's Application

3. In support of the Defendant's Application to obtain judgment in default of a Defence to his Counterclaim was an affidavit of Renu Teekasingh filed on 6 August 2021. There was no affidavit filed in opposition to the Defendant's Application.
4. The claim was for payment of the sum of \$75,000.00 as the amount due and owing by the Defendant to the Claimant, based on an oral agreement that they entered into in or around February 2018. The Claimant also had an alternative claim for damages for breach of contract and he sought his costs. In the Defendant's Counterclaim, he sought an order that he was entitled to the sum of \$22,670.00 as the outstanding salary due and owing to him, interest and costs.
5. At the hearing of the Defendant's Application, I was satisfied that the Claimant was notified of the hearing as both parties and their respective Attorneys at law were present at the virtual hearing before me on 9 March 2021. On that occasion, I indicated that I would hear the parties on the Claimant's Application and the Defendant's Application on 6 August 2021 at 11:00 am. Both parties had indicated to the Court that the time fixed for the hearing on 6 August 2021 was convenient for them. Further, the link for the virtual hearing on 6 August 2021 was sent by the Court's

JSO to the Attorney at law on record for the Claimant by way of an email to the address, which was stated on the filing forms of the matter for the said Attorney at law. There was no communication from the Claimant's Attorney at law, Mr Rampersad, to the Court prior to the hearing, indicating that he would not be able to attend.

6. In granting the relief sought in the Defendant's Application, I was satisfied that the conditions set out in Rule 12.2 CPR were met, as this was an action started by a claim form. Further, I was also satisfied that the nature of the Counterclaim was for a specified sum ; and the prescribed time for filing a Defence to the Counterclaim which was 28 days after service of the Counterclaim had long expired, as the Defendant's Defence and Counterclaim had been filed and served since 19 August 2019.
7. I also took into account that the Claimant failed to comply with two orders of the Court. At the hearing of the case management conference before Aboud J (as he then was) on 17 October 2019, the parties had agreed that the Claimant would file his Reply and Defence to the Counterclaim on or before 18 November 2019. The Claimant had failed to comply with the Court's Order. Further, when the matter came up before Aboud J (as he then was) on 30 January 2020, the Court ordered the Claimant to file affidavits in opposition to the Defendant's Application on or before 14 February 2020 and in default there would be judgment on the Counterclaim against the Claimant. There were no affidavits filed in opposition by the Claimant by the 14 February 2020.
8. I followed the general rule that the losing party has to pay the costs of the Defendant's Application, as I was not satisfied that there were any exceptional circumstances to justify departing from the general rule. I assessed the costs in the sum of \$1,950.00 as this was for 1 hour's work by the Attorney at law for the Defendant. The quantum for the costs of the Counterclaim was determined using the prescribed basis as set out in Rule 67.5(1) CPR and the prescribed costs was calculated as \$3,740.55.

The Claimant's Application

9. The order sought in the Claimant's Application was for permission to file and serve a Reply. In support of the Claimant's Application was an affidavit by the Claimant. The Defendant filed an affidavit of Ms Renu Teekasingh on 6 August 2021 in opposition to the Claimant's Application.

10. As stated previously, I was satisfied that the Claimant's Attorney at law had notice of the hearing. I dismissed the Claimant's Application for the following reasons. Firstly, he had failed to comply with the Order dated 17 October 2019 of Aboud J (as he then was) when he was given until 18 November 2019 to file his Reply and Defence to the Counterclaim. Secondly, the reasons he gave in the Claimant's Application for seeking permission to file a Reply were more or less the same reasons he had advanced before Aboud J(as he then was) when he was granted the first extension of time to do so. Lastly, the Claimant did not even annex a draft of the proposed Reply which he was seeking permission to file, despite a delay of 4 months from 18 November 2019 to the time he filed the Claimant's Application in February 2020. I was of the opinion that the Attorney at law for the Claimant had sufficient time to obtain instructions to formulate a draft Reply within that 4-month period.

11. Again, I followed the general rule that the losing party is to pay the cost of the application. In the instant case, I ordered the Claimant to pay the Defendant's costs of the Claimant's Application, as I was not satisfied that there were any exceptional circumstances to justify departing from the general rule. I assessed the costs in the sum of \$2,925.00 as this was for 1.5 hours work by the Attorney at law for the Defendant.

/s/ Margaret Y. Mohammed
Judge