

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2017-04473

Between

KERON CHARLES

Claimant

And

JERMAINE RAYMER

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: March 6, 2019

Appearances:

Claimant: Mr. M Brooms

Defendant: Self represented

REASONS

1. On November 12, 2018 the Court dismissed two applications of the defendant and ordered that the defendant pay to the claimant the costs of both applications to be assessed upon the determination of the claim. The following are the reasons for that decision.

THE APPLICATIONS

2. The first was Notice of Application dated June 11, 2018 by virtue of which the defendant sought the following relief;
 - i. An order that the claimant's claim and statement of case be struck out according to Part 26.2(1)(a)(b)(c)(d) of the CPR as it discloses no grounds for the bringing of a claim against the defendant, is an abuse of process, is vexatious and unmeritorious and discloses no cause of action against the defendant.
 - ii. An order that the claimant's claim is breach of the CPR Part 8 and is hereby struck out.
 - iii. An order that the jurisdiction of this matter be transferred to Trinidad.
 - iv. The cost of the application be paid by the claimant.

3. The second application which was before the court was Notice of Application dated July 9, 2018 by virtue of which the defendant sought the following relief;
 - i. A declaration that the claimant's amended claim and amended statement of case filed on June 12, 2018 are not standing before the court and cannot stand without first the court giving permission.
 - ii. An order that the amended claim and the amended statement of case be struck out pursuant to the CPR; or

- iii. An order for the extension of time for the filing and service of an amended defence in response to the amended claim and amended statement of case.

THE APPLICATION DATED JUNE 11, 2018

4. On December 20, 2017 the defendant was served with the Claim Form and Statement of Case herein and on December 21, 2017 she entered an appearance. The defendant by an application filed on **January 16, 2018** sought the following relief;
 - i. An order for an extension of time to file a defence;
 - ii. An order for jurisdiction to Trinidad; and
 - iii. No order to costs.

5. On **February 8, 2018** the defendant filed a further application wherein she sought the following relief;
 - i. An order that the claimant's claim and statement of case be struck out according to Part 26.2(1)(a)(b)(c)(d) of the CPR as it discloses no grounds for the bringing of a claim against the defendant, is an abuse of process, is vexatious and unmeritorious and discloses no cause of action against the defendant.
 - ii. An order that the claimant's claim is breach of the CPR Part 8 and is hereby struck out.
 - iii. An order that the claimant's Claim and Statement of Case is in breach of CPR Rules and service of the Claim Form and Statement of Case be set aside.
 - iv. The cost of the application be paid by the claimant.

6. As can be seen from the above, the relief claimed in the two applications filed by the defendant on January 16, 2018 and February 8, 2018 were in essence for the same relief claimed by the defendant in her application of **June 11, 2018**.

7. On April 5, 2018 the claimant filed an application for entry of judgment in default of defence as the defendant up to that time had not filed a defence nor served her application of February 8, 2018 on the claimant. April 20, 2018 was set for the court to hear applications dated January 16, 2018, February 8, 2018 and April 5, 2018.
8. On April 20, 2018 the court began to consider the defendant's application of February 8, 2018. The court informed the defendant that it did not agree with her on the service point. It expounded that under the old common law rules there was a requirement to explain the nature of the documents being served whereas under the CPR there was no requirement for the documents being served to be explained. As such, the court ruled that the manner in which the defendant described the service of the Claim Form and Statement of Case on her in her affidavit in support of the application dated February 8, 2018 was good service.
9. Thereafter, the court was informed that the defendant did not serve the application of February 8, 2018 on the claimant. Consequently, the court adjourned the hearing of the applications dated January 16, 2018, February 8, 2018 and April 5, 2018 to May 14, 2018.
10. On May 14, 2018 the court enquired from the claimant whether there was any objection to an extension of time for the defendant to file a defence. The claimant responded by stating that there was no objection. Thereafter, the court enquired from the defendant whether she would be pursuing relief one and two of her application dated February 8, 2018. In response to the court, the defendant stated that she was seeking leave to withdraw that application. Consequently, the court gave the defendant leave to withdraw application dated February 8, 2018. The claimant also withdrew his application of April 5, 2018 which was for default judgment and the defendant was given an extension of time to file her defence.

11. Consequently, as can be gleaned from the aforementioned, the court properly disposed of the defendant's applications of January 16, 2018 and February 8, 2018 and therefore the principle of *res judicata* applied to the defendant's application of June 11, 2018 since 1) the parties were the same, 2) it is in the same court of competent jurisdiction, 3) the applications relate to the same subject matter, 4) the issues raised were identical and 5) the relief sought were identical.

12. Further, the court found that this application was an abuse of the process of the court. That the defendant having voluntarily withdrawn her previous application for the identical relief sought in this new application was seeking to have a second bite of the cherry. The court therefore agreed with the submission of the claimant that the defendant cannot now reapply to the court for relief without offending the processes of the court and the over-riding objective of the CPR.

13. In relation to the application for the transfer of this matter to Trinidad, the defendant at paragraph 4 of her affidavit in support of this application stated that having this matter heard in Tobago has caused and will cause deep prejudice against her as she is originally from Trinidad. At paragraph 29, she stated that she is already prejudiced by the hearing of this matter in Tobago as since the claimant has filed this matter, she and her children have been harassed by persons representing themselves as agents of the claimant. The defendant failed to mention any dates, times or the frequency of those alleged harassments. At paragraph 30, she stated that she has a child with cerebral palsy who has doctors in Trinidad and has to continue treatment in Trinidad. That being the primary caregiver of the child, it would be easier to attend court, if the matter is transferred to Trinidad.

14. The defendant resides in Tobago. On April 20, 2018 the court enquired from the defendant whether her son lives in Trinidad. She responded by saying that he is back and

forth between Trinidad and Tobago. As such, the court found that the defendant did not provide any reasonable ground for having the matter transferred to Trinidad.

15. Consequently, the court dismissed the defendant's application of June 11, 2018.

NOTICE OF APPLICATION DATED JULY 9, 2018

16. The claimant filed an Amended Claim Form and Statement of Case on June 12, 2018. By this application, the defendant sought to have the claimant's Amended Claim Form and Statement of Case struck out on the ground that the claimant was required to seek permission from the court to amend as the hearing on May 14, 2018 was the first Case Management Conference ("CMC").¹ According to the defendant, as the court gave directions for disclosure on May 14, 2018 same was an indication that the first CMC had been concluded.

17. On May 14, 2018 the court did in fact order that standard disclosure was to be made by all parties by July 12, 2018. However, May 14, 2018 was not the first CMC. As mentioned above April 20, 2018 was set for the court to hear applications dated January 16, 2018, February 8, 2018 and April 5, 2018 but as the defendant failed to serve her application of February 8, 2018 on the claimant, the court adjourned the hearing of those applications to May 14, 2018.

18. In the Privy Council case of **Super Industrial Services Ltd and another v National Gas Company of Trinidad and Tobago Ltd**², Lord Briggs had the following to say at paragraphs 32 and 39;

¹ See Part 20.1 of the CPR

² [2018] UKPC 17

“32. Read together, these detailed provisions establish the following, in relation to the CMC:

i) It is the single most important event in the court’s active management of each case, and in its integration of individual case management with its duties to manage its case-load as a whole.

ii) It is an event with very important procedural consequences for the parties, of which they are therefore to be given reasonable notice, and sufficient time to prepare.

iii) Even if the CMC is (for any reason) spread over more than one hearing, it is an event at the end of which there will definitely be a trial date or window, together with a full timetable for preparation.

iv) It is an event without which no claim (other than a fixed date claim) is to be permitted to proceed a significant distance beyond the exchange of statement of case and defence, unless the court, for good reason, orders otherwise.

...

39. Nothing in the Saiscon case conflicts with the foregoing analysis. The issue in that case, as explained by Jamadar JA at para 3, was when did the first CMC in that case end. He concluded at para 21 that, for the purpose of rule 20.1(3), a first CMC was an event which could only start by being specifically scheduled for the purposes of exercising active judicial case management, and that this was to be distinguished from an occasion when, at a hearing of proceedings not specifically scheduled for active judicial case management, the judge actively exercises any such case management powers for the first time...”

19. The general rule is that the court office shall fix a CMC immediately upon the filing of a defence to a claim other than a fixed date claim form.³ **Rule 27.3(3) of the CPR** provides as follows;

“If the court does not—

³ See Rule 27.3(1) of the CPR

(a) dispense with a case management conference under rule 27.4(1) and give directions under rule 27.4(2); or

(b) give notice of a case management conference within—

(i) 14 days of the filing of a defence, where there is only one defendant;

(ii) 14 days of the filing of the last defence, where there are two or more defendants; or

(iii) 14 days of the expiration of the period for the filing of the last defence, where there are two or more defendants,

the claimant shall within 28 days of the relevant period identified in subparagraph (b) apply for a date to be fixed for the case management conference.”

20. Further, **Rule 27.3(13) of the CPR** states that all parties must be given no less than fourteen days' notice of the date, time and place of the CMC. No such notice was given to the parties that the hearing on May 14, 2018 was a CMC. Also, at the hearing on May 14, 2018 the court did not dispense with the CMC under Rule 27.3(3)(a) but in fact, gave the parties notice that a CMC would be held on July 16, 2018.

21. Additionally, on May 14, 2018 the defendant asked the court whether same was the first CMC and the court responded by stating it was not and could not be since her defence was not filed at the time when the hearing for May 14, 2018 was fixed. The defendant filed her defence on May 10, 2018 however, it was at the hearing on May 14, 2018 that she was granted an extension of time to file her defence.

22. Consequently, due to the aforementioned, the court dismissed the defendant's application to strike out the claimant's Amended Claim Form and Statement of Case.

23. For these reasons, the court therefore dismissed both applications of the defendant.

Judge
Ricky Rahim