THE REPUBLIC OF TRINIDAD AND TOBAGO

In the High Court of Justice

Claim No**. CV2014-02621**

BETWEEN

JUNIOR FABIEN CREIGHTON

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Appearances:

Claimant: Kulraj Kamta instructed by Nisha Doolam

Defendant: Seenath Jairam SC leading Jagdeo Singh instructed by Khadine Matthews and Diane Katwaroo

Before The Honourable Mr. Justice Devindra Rampersad

Dated the 14th day of September 2017

RULING

Contents

Introduction

1. There are numerous applications filed by the claimant but this ruling seeks to address the applications for:

    1.1. The variation of the court's timetable; and

    1.2. An order under rule 34.9 of the CPR for a list of persons to be examined or alternatively an order pursuant to rule 40.6 for the court to issue a summons.

2. By notice of application filed 4 July 2017 the claimant also sought an extension of time to file submissions that were due 23 June 2017 in relation to the applications outlined above. The claimant requested an extension to file submissions on 4 July 2017. The defendant objected to this extension. The court was however minded to consider the submissions as it sought to provide the court with assistance in relation to a ruling it had not yet made.

Procedural Background

3. The relevant history in the context of the applications now being considered:

    3.1. On 20 January 2017 the court made an order permitting the claimant to file a reply and setting a timetable for the filing of lists of agreed and unagreed documents and issues as well as witness statements. A joint list of agreed and unagreed documents was ordered to be filed by 10 March 2017; a joint list of agreed and unagreed issues by 24 March 2017; and witness statements filed and exchanged by 24 April 2017 and in default no evidence would be allowed in respect of any witness for whom a witness statement had not been filed;

    3.2. On 7 March 2017 the court made an order extending the time to file the agreed and unagreed list of documents to 21 March 2017 and the witness statements to 2 May 2017. The time for filing pre-trial applications were also extended;

    3.3. By notice of application filed on behalf of the claimant on 21 March 2017, supported by the affidavit of the claimant, an extension was requested for the filing of the joint list of issues and the consequential amendment to the timetable for the filing of witness statements;

    3.4. By email dated 31 March 2017, the court inquired of the parties, through Assistant Registrar Ms. Cielto-Jones, what time was required for the filing of the joint list of documents (as it had not yet been filed); the joint list of issues; and the witness

statements. Attorney for the claimant responded that very day indicating that he required until the end of May 2017;

3.5. By email dated 04 April 2017 Ms. Cielto-Jones responded on behalf of the court and indicated to the parties that the end of May 2017 was unacceptable and that the said lists of agreed and unagreed documents and issues were to be filed by 28 April 2017. It was also directed that a draft order in respect of the application filed 21 March 2017 was required by 05 April 2017. No directions were given in relation to the filing of witness statements;

3.6. By application dated 28 April 2017, and supported by the affidavit of instructing attorney for the claimant, an extension of time was sought for the filing of the joint list of documents to 02 May 2017 and for the filing of witness statements to 30 May 2017;

3.7. On 1 May 2017 the parties filed a list of agreed and unagreed documents;

3.8. By application filed 12 May 2017, and supported by the affidavit of the claimant, an order was sought pursuant to rule 34.9 of the CPR for the examination of 12 named persons and for them to produce the original or certified copies of all state or state generated documents referred to in the pleadings and lists of documents as well as any other relevant official documents relating to the Agricultural Now Programme in 2013 and the Ministry of Works;

3.9. By order dated 17 May 2017 this matter was removed from the list of matters for trial in June/July 2017;

3.10. By notice filed 31 May 2017, supported by the affidavit of the claimant, an application was made to consolidate the claimant's applications dated 21 March and 28 April 2017 with respect to the extension of time to file witness statements;

3.11. Also dated 31 May 2017 was the claimant's application, supported by the affidavit of the claimant, to amend the application dated 12 May 2017 to include an alternative order pursuant to Part 40.6 of the CPR for the court to issue a summons to have the 12 persons identified attend court at the trial and produce such documents as revealed in the pleadings;

3.12. By order dated 13 June 2017 the court fixed a trial window from 5 October 2017 for the duration of the month of October 2017. By that order attorney at law for the claimant was also directed to provide the court with a list of all outstanding applications, which he indicated could be done by 16 June 2017. That list was not provided until 31 August 2017 and only after having been requested by the court.

4. For all the applications filed by the claimant there were no affidavits filed in opposition by the defendant.

5. The applications in relation to the witness statements and filing the lists of documents were made before the date for the filing for same. The applications then are rightly for an extension of time and not for relief from sanctions. Most of the documents have already been filed so the court now has to decide whether to validate same along with determining whether to grant the claimant's application for deposition or a summons,

The Law

Extension of time

6. The factors for consideration by the court in an instance such as this was comprehensively discussed by the Court of Appeal in the cases of ***Dr. Keith Rowley v Anand Ramlogan*** Civ. App. No. P215 of 2014 and ***Roland James v The Attorney General of Trinidad and Tobago*** Civ. App. No. 44 of 2014**.**

7. Rajnauth-Lee JA in the case of ***Dr. Rowley v Anand Ramlogan*** said at paragraphs 13 – 16:

> *"13. In the above cases, the Court of Appeal was disposed to the view, and I agree, that the trial judge's approach in applications to extend time should not be restrictive. In such applications, there are several factors which the trial judge should take into account, that is to say, the Rule 26.7 factors (without the mandatory threshold requirements), the overriding objective and the question of prejudice. These factors, however, are not to be regarded as "hurdles to be cleared" in the determination of an application to extend time. They are factors to be borne in mind by the trial judge in determining whether he should grant or refuse an application for extension of time. The trial judge has to balance the various factors and will attach such weight to each having regard to the circumstances of the case. Of course, not all the factors will be relevant to every case and the list of factors is not exhaustive. All the circumstances must be considered. In addition, I wish to observe that this approach should not be considered as unnecessarily burdening the trial judge. In my view, when one examines the principles contained in the overriding objective, it is not difficult to appreciate the relevance of the rule 26.7 factors.*
>
> *14. The following Rule 26.7 factors are therefore applicable without the restriction of the threshold:*
>
> *(a) whether the application was made promptly;*
>
> *(b) whether the failure to comply was not intentional;*
>
> *(c) whether there is a good explanation for the application;*
>
> *(d) whether the party in default has generally complied with all other relevant rules, practice directions, orders and directions;*
>
> *(e) the interests of the administration of justice;*
>
> *(f) whether the failure to comply was due to the party or his attorney;*
>
> *(g) whether the failure to comply has been or can be remedied within a*

reasonable time; and

(b) whether the trial date or any likely trial date can still be met if relief is granted.

15. Rule 1.1(1) sets out the overriding objective of the CPR which is to enable the court to deal with cases justly. Dealing justly with the case includes

(a) ensuring, as far as practicable, that the parties are on an equal footing;

(b) saving expenses;

(c) dealing with case in ways which are proportionate to -

(i) the amount of money involved;

(ii) the importance of the case;

(iii) the complexity of the issues; and

(iv) the financial position of each party;

(d) ensuring that it is dealt with expeditiously; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

16. In addition, inherent in the overriding objective to enable the court to deal with matters justly are considerations of prejudice. ***It is for the judge to consider on which party lies the greater risk of prejudice if the application is granted or refused. The court will take account of the various disadvantages to the parties should the application be granted or refused****."*

[*Emphasis added*]

8. The judgment in ***Ronald James v The Attorney General of Trinidad and Tobago*** was delivered on the same day as that in ***Dr. Rowley v Anand Ramlogan***. Mendonca JA gave the opinion in ***Ronald James*** and at paragraphs 22 to 24 the learned judge said:

> *"22. It is relevant to note that the list in 1.1(2) is not intended to be exhaustive and in each case where the Court is asked to exercise its discretion having regard to the overriding objective, it must take into account all relevant circumstances. This begs the question, what other circumstances may be relevant. In my judgment on an application for an extension of time, the factors outlined in rule 26.7(1), (3) and (4) would generally be of relevance to the application and should be considered. So that the promptness of the application is to be considered, so too whether or not the failure to comply was intentional, whether there is a good explanation for the breach and whether the party in default has generally complied with all other relevant rules, practice directions, orders and directions. The Court must also have regard to the factors at rule 26.7(4) in considering whether to grant the application or not.*
>
> *23. In an application for relief from sanctions there is of course a threshold that an applicant must satisfy. The applicant must satisfy the criteria set out at rule 26.7(3) before the Court may grant relief. In an application for an extension of time it will not be inappropriate to insist that the applicant satisfy that threshold as the treatment of an application for an extension of time would not be substantially different from an application for relief from sanction. Therefore on an application for extension of time the failure to show, for example, a good explanation for the breach does not mean*

that the application must fail. The Court must consider all the relevant factors. The weight to be attached to each factor is a matter for the Court in all the circumstances of the case.

24. Apart from the factors already discussed the Court should take into account the prejudice to both sides in granting or refusing the application. ***However, the absence of prejudice to the claimant is not to be taken as a sufficient reason to grant the application as it is incumbent to consider all the relevant factors. Inherent in dealing with cases justly are considerations of prejudice to the parties in the grant or refusal of the application. The Court must take into account the respective disadvantages to both sides in granting or refusing their application. I think the focus should be on the prejudice caused by the failure to serve the defence on time.****"*

[Emphasis added]

9. In giving judgment in the case of ***Ronald James***, Mendonca JA noted that the aim of the overriding objective is to deal with cases justly and reasoned:

> *"In this case the delay is not significant and* ***the absence of a good explanation should not outweigh the considerations that favour the grant of the application****."*

Deposition/Summons

10. Rule 34.9 of the CPR states that a party may apply for an order for a person to be examined ***before a hearing*** and that order may require the production of any document which the court considers is necessary for the purposes of the examination. Deposition evidence may be given in evidence at the trial pursuant to rule 34.17(1) of the CPR.

11. Attorney for the claimant noted that deposition was usually the method by which evidence was obtained by sick or bedridden persons but it was submitted that the CPR does not so restrict its application. Instead attorney for the claimant suggested that deposition is an option where (i) it would be impossible to bring a witness to court at the trial; or (ii) where the justice of the case require that the evidence be given.

12. Reliance was placed on learning from Atkins[1] and the case of ***Lester Bird v Observer Radio Limited & Ors*** CA No 5 of 2003 (Antigua and Barbuda) where Saunders JA expressed that the court can grant an application for deposition but should be satisfied, among other things, that the intended deponent is in possession of material evidence or that there are solid grounds for believing the same. Saunders JA warned however that it would be wholly improper for a claimant to seek such an order for fishing expeditions. In that vein, the trial judge's dismissal of the application for disclosure was upheld as there was a failure to prove that the information the intended deponents may have had was material to the case and also there were no prior attempts to elicit that information from those individuals. Saunders JA commented that the section permitting depositions was not

[1] 2014 Vol. 13(2)

designed to be used in the open-ended manner contended for by the appellant in that case.

13. Rule 34.10(1) of the CPR stipulates that a deposition must be conducted in the same way as if a witness was giving evidence at trial. The defendant suggested that in this way rule 34.9(8) replicates the normal trial practice by requiring advance service of a witness statement or summary. But it appears that the need for same is discretionary.

14. Reliance was also placed on Rule 40.6 which outlines the powers of a judge to summon witnesses and provides:

> ***40.6*** *(1) The judge may—*
>
> *(a) issue a witness summons requiring a party or other person to attend the trial;*
>
> *(b) require a party to produce documents or things at the trial; and*
>
> *(c) question any party or witness at the trial.*
>
> *(2) The judge may examine a party or witness—*
>
> *(a) orally; or*
>
> *(b) by putting written questions to him and asking him to give written answers to the questions.*
>
> *(3) Any party may then cross-examine the witness.*

15. According to attorney for the claimant, this rule is independent of any provision for depositions or instances in which there are witness statements or summaries. This power was recently subject to review by the Court of Appeal in the case of CA P 069/2017 ***Shariza Lalwah v Deodath Dookie***. The Court of Appeal there upheld the trial judge's order issuing a witness summons for a witness who had evidence that was directly relevant to an issue in the case and there was evidence that the claimants were having difficulty obtaining the evidence otherwise.

16. In the absence of guidelines from the CPR, it was held in the case of ***South Tyneside MBC v Wickles Building Supplies Ltd*** [2004] EWCA Civ 248 that regard should be had to authorities decided under the previous Rules of Court which found the applicable principles to be:

16.1. The object of a witness summons is to obtain production at trial of specified documents; accordingly, the witness summons must specifically identify the documents sought, it must not be used as an instrument to obtain disclosure and it must not be of a fishing or speculative nature;

16.2. The production of the documents must be necessary for the fair disposal of the matter or to save costs. The Court is entitled to take into account the question of whether the information can be obtained by some other means;

16.3. Plainly a witness summons will be set aside if the documents are not relevant to the proceedings; but the mere fact that they are relevant is not by itself necessarily decisive in favour of the witness summons;

16.4. When documents are confidential, the claim that their production is necessary for the fair resolution of proceedings may well be subjected to particularly close scrutiny;

16.5. The court has power to vary the terms of a witness summons but, at least ordinarily, the Court should not be asked to entertain or perform a redrafting exercise other than on the basis of a considered draft tendered by the party's advocate.

17. Notwithstanding these powers of the court, the defendant stressed that the court retains the discretion to make exception to the general rule that all competent witnesses are compellable[2] as individuals have a right not to be harassed or oppressed.[3]

Consideration of extension of time

18. Having established the legal sub-stratum, the court will consider the factors *seriatim*.

Promptitude

19. The initial application to extend the time for filing witness statements was made on 21 March 2017, more than a month before the court's deadline for the filing of same that being 2 May 2017 by order dated 7 March 2017. It can be no doubt therefore that the application was promptly made.

Intentionality

20. The defendant highlighted the fact that this matter was initiated in 2014 and as such the claimant and his attorney had ample time to get in contact with farmers but failed so to do.

21. Notwithstanding, there is nothing to suggest that the claimant intentionally failed to meet the deadline for the filing and exchange of witness statements so, in the circumstances,

[2] See ***Senior v Holdsworth ex p ITN*** [1976] QB 23, 35 CA
[3] See Morgan v Morgan [1977] Fam 122

this is not a factor which the court will consider as a negative in respect of the claimant's application.

Good Explanation

22. The explanations provided by the evidence in support of the applications centered on difficulty in locating witnesses for the claimant's case. According to the claimant, his witnesses/potential witnesses were farmers living in remote areas and his legal team were having difficulty securing witnesses which were needed to prove his case. The defendant denied its own documents save one which was only communicated the day before the application of 28 April 2017. It was also asserted that the claimant submitted its list of issues on 27 April 2017 and had received the defendant's response but same could not be filed as advocate attorney had an appeal. It appears that same still has not been filed. It was the claimant's assertion that the late settling of the issues and lists contributed in the delay in witness statements as those were needed to ensure the evidence was relevant. The court was also reminded that the claimant's attorneys were engaged in the other contract related matters[4] and that in relation to one of which he was required to attend to a procedural appeal.

23. In response the defendant argued, quite rightly, that the claimant ought to have been proactive and arranged interviews with farmers so that the statements could be done in a timely manner. This is taken in the context of the matter having been filed in 2014 and the duty of attorneys to ensure timetables set by the court are met.

24. The claimant suggested that the defendant's argument for front end loading of cases ignores the gradual progress of a case and if same were done costs could not be recovered in the event that the matter is not taken to trial.

25. The impression given by the affidavits and confirmed in submissions is that the claimant had to firstly locate and then relocate witnesses. He said he attempted to make contact many times but does not give details of when he would have done so. His explanation also does not explain why the witness statement of the claimant was not filed on time, same only being filed on 27 July 2017.

26. Lord Dyson, at paragraph 23 of the decision in ***Attorney General v Universal Projects Ltd*** [2011] UKPC 37, said:

> *"….To describe a good explanation as one which 'properly' explains how the breach came about simply begs the question of what is a 'proper' explanation. Oversight may be excusable in certain*

[4] of R&S Boodoo v The AG, JDR Construction v the AG and Hypolite v the AG

circumstances. But it is difficult to see how inexcusable oversight can ever amount to a good explanation. Similarly if the explanation for the breach is administrative inefficiency."

27. The court has considered what the claimant's attorney had to say with respect to front loading of cases but does not agree with it fully. Obviously, a party coming to court must know that there are costs involved and chances taken when the decision is made to litigate. Those chances relate to a court either believing or not believing the claimant's case if it is based primarily on evidence other than documentary evidence. In this case, it must have been obvious to the claimant that he would have to prove that the work he alleged that he had done was in fact done. That allegation would obviously require proof in the manner in which he now seeks to implore the court to allow him to do at this late stage i.e. by way of villagers. There would have been nothing stopping him at an early stage from obtaining at least some sort of preliminary evidence from these villagers whom he seeks to rely upon. Definitely, by the time the defence was filed, it would have been obvious to the claimant what type of evidence he would have required to prove his case in light of the allegations made in the defence along with the fact that whatever work was done may not now be visible through the effluxion of time. In any event, having regard to the strictures of the requirements of the CPR, the court cannot accept the claimant's evidence at paragraph 10 of his affidavit filed on 31 May 2017 which essentially amounts to conclusions rather than evidence. "Most of the witnesses" is not defined in that paragraph so the court has no idea what that means. If most live in remote areas then, logically, some do not. What happened to that "some"? He said that he made several trips to meet with the farmers without identifying when these trips were made and how many in fact were made. When he says that not all of the farmers who were farming in the area are still farming there, he failed to identify which of the farmers are no longer farming in the area and what efforts he made the search and find them. When one looks at this affidavit, therefore, one comes to the distinct impression that it is expressed in vagaries rather than specifics and is not a full and frank exposition of the applicant's evidence which he wishes this court to consider.

28. I do not accept, therefore, that the claimant has a good explanation for the failure to comply with the deadline given by the court.

General compliance

29. The claimant submitted that he has been generally compliant in this matter. The defendant has not provided any evidence to suggest otherwise.

30. The court bears in mind that general compliance does not mean absolute compliance.[5]

The interests of the administration of justice

31. Rajnauth-Lee JA, in ***Rowley*** said:

> *"34. The interests of the administration of justice involve consideration of the needs and interests of the parties before the court as well as other court users. As between the parties, the interests of the administration of justice would favour the grant of the application to extend time…"*

32. The administration of justice, in a case such as this craves adherence to a principle that both sides ought to be heard on the issue. In such an instance, the scales of justice seem to weigh in favour of the allowance of the application. However, the court bears in mind that this matter was initially meant to be heard in the months of June/July 2017 and even up to that date, there is no firm suggestion that the witness statements would in fact be ready for filing as suggested by the time frame contemplated by the application. In his affidavit, the claimant was rather nebulous as to when the witness statements could in fact be ready. However, the application contemplated it being ready three weeks after an order was made for an extension. Having regard to the fact that the application, as amended and consolidated, was filed on 31 May 2017 and that by 13 June 2017 the court had shifted the date of trial for all of the related contract matters including this one and fixed a new date for 5 October 2017, it must have been within the contemplation of the claimant's attorney at law that, at the very least, those witness statements ought to have been ready by the end of that term i.e. 31st of July 2017.

33. The administration of justice does not denote that the claimant's action is the ***sole*** matter that the court has to bear in mind. On 13 June, the court directed the parties to adopt a certain position i.e. to forward to the court a schedule in relation to this and another application pending in this matter. The parties failed to comply with that direction and, instead, the claimant proceeded to file witness statements on several dates including during the long court vacation. In those circumstances, having regard to the timeframe imposed by the court for the trial of this and the other related matters, the claimant now seeks to place pressure on the defendant's attorney at law and the court to set aside time during the long court vacation to deal with directions and submissions for evidential objections without taking into account the possibility of any procedural appeals which may arise from any order that the court may make.

[5] See ***The Attorney General v Miguel Regis*** Civ App No 79 of 2011; ***Roopnarine & Ors v Kissoo & Ors Civil Appeal No: 52 of 2012***

34. Any delay in the preparation of this case could very well mean that it may be excised from the rest of the contract related matters which are fixed for hearing in the month of October 2017 beginning from 5 October. This unduly and unfairly impacts upon the administration of justice and the resources available to the court and to the parties because it means that the very same witnesses who are appearing for the defendant in all of the other related contract matters and who, no doubt, would have been witnesses in relation to this matter would have to come on another occasion to deal only with this trial. It was always the court's stated position and preference that these common witnesses in all of the related contract matters would attend court and be cross-examined at the same time in all of the related matters by the different attorneys to save court resources along with the resources of the parties to have the same persons attend in separate trials all dealing with the same issue. Not only does this create resource problems but it gives an unfair advantage to parties who do not participate in the one consolidated trial – a point which this court made in previous rulings.

35. Consequently, the court is of the respectful view that, ordinarily, the administration of justice would not require the court to extend the time in the circumstances.

36. However, a crucial factor in the manner in which this application has been resolved is the fact that notwithstanding the filing of this application on 31 May 2017, and the court's direction of 13 June 2017, the court has been unable to deal with this application in a timely manner for various reasons including reasons emanating from the court in that it was not available due to illness towards the end of the term i.e. for the last two weeks or so of July 2017 and the fact of the long court vacation.

37. Therefore, balancing all of the factors dealing with the administration of justice, the weight tends to come down ever so slightly in favour of the claimant's application.

Whether the failure to comply was due to the party or his attorney

38. The duty to comply with the court's order is not restricted to the defendant's attorney at law but also to the defendant and its functionaries, servants and or agents and or representatives[6]. It was submitted that the failure to comply was neither the claimant's fault nor that of his attorney as the difficulty surrounding meeting the farmers was beyond the control of both parties. This assertion ignores the duty placed on attorneys to further the overriding objective.

[6] See ***Tiger Tanks Unlimited v Caribbean Dockyard and Engineering Services Limited*** CV 2008 – 0675 at paragraphs 3.3 and 3.4

39. In those circumstances, the court is of the respectful view that the failure was primarily due to the claimant's attorney at law rather than the claimant but also attaches blame to the attorney at law for the defendant in failing to further the overriding objective and to come to an earlier position on the agreed documents and issues to enable the matter to progress in a timely fashion.

Whether the failure to comply has been or can be remedied within a reasonable time

40. At this point yes. All documents with the exception of the list of agreed and unagreed issues have been filed and if the claimant is to be believed same should be capable of filing within a day of this order being made.

Whether the trial date or any likely trial date can still be met if relief is granted

41. Be that as it may, it is more likely than not that the trial date can still be met or, at the very least, any delay in same would not be as a result of granting this application.

The Overriding Objective and Prejudice

42. This case raises important issues for determination in an instance where serious allegations have been leveled against the claimant. It is also connected to other related contract matters. The obvious prejudice to the claimant if this court refuses its application would be to deny the claimant from being heard at the trial with respect to evidence in support of its position.

43. In this scenario, the court is of the respectful view that the overriding objective of the court dealing with the case justly in light of all of the factors under Part 1.1 (2) of the CPR warrants the grant of the extension sought. On the other hand, there is no obvious prejudice to the defendant if the court were to extend the time and having regard to the overriding objective, the court is of the respectful view that it should lean in favour of allowing the extension sought.

Analysis and Conclusion

44. The court has read all of the submissions by the parties and voices its concern that any order in favour the claimant's application may seem to be a license to return to the olden

and often maligned days of the failure to adhere to time lines - a return to the *"cancerous laissez-faire approach"* referred to by De Vignes J in ***Soodhoo v Epitome*** CV 2007-01678.

45. However, in keeping with the overriding objective and the need to deal with cases justly, the court has to balance the competing interests using the guidelines referred to above and set out in the authorities.

Should the court make an order for deposition/witness summons

46. The defendant wishes for the court to make either of these orders in light of the defendant's denial of almost all of its documents, documents the claimant asserts were prepared by the defendant. A detailed breakdown of the witness and his/her supposed relevance to the creation of the document is given in the claimant's application filed on 12 May 2017 but same was not reproduced in any affidavits filed on the claimant's behalf. It is the claimant's contention that all the state officials named in the application played a role in the awarding of contracts by issuing or generating official government documents, making field visits, giving oral instructions, producing audit reports and making payments.

Deposition

47. Following on from ***Bird***, the defendant submitted that the claimant has not put forward that the prospective deponents would have material evidence in their possession and that the claimant is on a fishing expedition as all relevant documents and evidence have already been put forward. It was submitted also that this exercise would be a colossal waste of time and court resources.

48. The claimant challenged the defendant's position and insisted that if the defendant was concerned about costs it would agree to the document.

49. The court agrees that the taking of depositions ought not to be ordered in this matter. First and foremost, the claimant has failed to establish by affidavit evidence what evidence the intended deponents would be likely to give and, instead of giving evidence as to the attempts made to contact these proposed deponents and their responses and therefore establishing why the courts very limited resources ought to be further impinged upon by way of a separate hearing for the taking of depositions prior to the trial, the claimant proceeded in his affidavit in support of the application to make a conclusion – *"Due to the positions held by those persons it is difficult for the Claimant to contact and persuade them to give witness statements regarding this matter. "* There was no evidence to support this conclusion.

50. At the very least, the court would have expected the claimant to have sought a variation of the order made for the filing and service of witness statements to include the filing and service of witness summaries to at least identify the nature of the evidence that these 12 proposed witnesses would be giving, or would have been expected to give, and how they would be assisting the court on the core issues for determination. Those core issues were whether or not there was a legitimate contract entered into between the claimant and the appropriate agency of the State and whether that contract was performed. In the event that it was performed, then what is the sum to be paid?

51. The claimant has provided no evidence in relation to how these 12 persons would assist the court in resolving those core issues. In any event, the court would be hard-pressed to fix a separate hearing for depositions under Part 34.9 prior to the trial in the circumstances of this case where a trial is fixed for 5 October 2017 and where there are already so many witnesses for both sides and the court has already set aside substantial time for the completion of this matter. The court therefore cannot consider this application favorably at all with the evidence before it.

Should the court permit the issuance of witness summonses

52. The defendant submitted, in line with the authorities above, that the claimant ought not to be permitted to require State officials to produce *all* documents relevant to the issue of the contracts. Additionally, it was contended that the claimant have not demonstrated that it would be in the interest of justice for the court to issue a summons. According to the defendant, the claimant cannot be allowed to merely state that the officials were involved.

53. The defendant's position on the documents has obviously created a predicament. The claimant has set out in his affidavit of 12 May 2017 that he had identified in his consolidated re-amended statement of case some of the officials and the significance of their roles in his contract. He then proceeded to identify a list of documents, including photos, at paragraph 5 (a) – (m), some of which include pleadings and lists of documents and issues. Save for the pleadings and lists of documents and issues, which are a matter of record, none of these documents have been agreed by the defendant. Therefore, the claimant has to prove documents which are in the domain of the State's various agencies and departments over which he has no control. There is no affidavit in response on behalf of the defendant indicating that the defendant did or did not have control of the documents referred to. Obviously, justice demands that the claimant be able to have those original documents produced and if the only way that can be done is to have the original documents brought to court by summons, then that is what it takes and the court will

accede to that request. There can be no prejudice to the defendant in that regard since the copies of the documents have already been disclosed according to the claimant and therefore the defendant's attorneys at law would have been put on notice with respect to the proposed use of these documents at the trial.

54. At paragraph 6 of his affidavit, he went on to identify the persons he wished to call. Regrettably, he has not said what roles any of them played in the contract or how they are relevant. In his Notice of Application filed on 12 May 2017, there are certain grounds mentioned therein which seek to explain the roles of each of the persons referred to in the accompanying affidavit but these grounds are not evidence before the court and are not bolstered by oath taken before a Commissioner of Affidavits. The claimant might well argue that his notice of application carries with it a certificate of truth but, quite clearly, a notice of application is not evidence and it would have been so easy to have put all of the information set out in the grounds on the affidavit to provide the court with the necessary evidence to that was not done and no explanation was given for this failure.

55. Therefore, the court is not in a position to accept the evidence set out in the notice of application and therefore finds that the claimant has failed to establish any reason for the summoning of the named parties other than in relation to their having signed any of the documents referred to in paragraph 5 of the claimant's affidavit of 12 May.

56. The court would therefore permit the claimant to issue witness summonses to the relevant parties to produce the documents referred to at paragraph 5 of the claimant's affidavit filed on 12 May 2017 and, in so far as any of those documents bear the signatures of any of the parties referred to in paragraph 6 of the said affidavit, permission is granted to the claimant to issue witness summonses to have those signatories attend court to give evidence.

57. Of course, in light of the fact that the documents have not been agreed and these parties are now being summoned specifically for the purpose of putting these documents into evidence, the costs of this application are reserved to be dealt with and for the court to consider whether the defendant ought to pay the costs of the same since it would have been within the defendant's purview to have determined the veracity of these documents and to have saved valuable time and costs in having the documents properly presented to the court.

The Order:

58. There will therefore be an order in the following terms:

58.1. That the claimant's Notices of Applications filed on the 21 March 2017 and 28 April 2017 and 31 May 2017 for the extension of time to file witness statements are consolidated;

58.2. That the time for the parties to file their witness statements be extended to 25th of August 2017 and that the time for the parties to exchange their witness statements be extended to 15 September 2017;

58.3. That the time for all pretrial applications including any application in respect of objections to the witness statements and or exhibits thereto be extended to 29 September 2017 – all such applications, if any, to be forwarded to the court by email copied to the other side on the day of filing and in default, the court will not consider any such application;

58.4. The costs of this application and the issue as to who will pay those costs and the quantification of those costs are reserved to be dealt with at the next hearing.

58.5. That the claimant's Notices of Applications filed on the 12 May 2017 is amended as per the notice of application filed on the 31 May 2017 for the taking of depositions under part 34.9 of the CPR or, alternatively for the issuance of witness summonses under part 40.6 of the CPR;

58.6. The application for depositions to be taken is dismissed for the reasons given above.

58.7. Permission is granted to the claimant to file and serve witness summonses:

58.7.1. To produce the documents referred to at paragraph 5 of his affidavit filed on the 12th of May 2017 at the trial of this matter fixed for 5 October 2017 save and except for the pleadings referred to therein and the lists of documents and issues to be settled by the attorneys for the parties, namely:

58.7.1.1. Photos from the URP Agriculture Launch – Flood Mitigation Program held at In Vader's Ground Felicity on the 23 July 2013;

58.7.1.2. Photos of Ministry of Food Production PS Myrna Thompson and Deputy Program Manager Mr. Joseph John

touring the site of Felicity while work was in progress during the URP NOW Program 2013;

58.7.1.3. Photo of Deputy Program Manager Mr. Joseph John and Ministry of Food Production PS Ms. Myrna Thompson at the Agriculture Now program tour of Felicity projects;

58.7.1.4. Letter dated 12 June 2013 from Dr. Bibi Ali, Coordinator, URP Agriculture Program to Junior Fabien Creighton professional painting;

58.7.1.5. Letter dated 1 October 2013 from Joshua Maynard, Assistant Engineer to Mr. Stephen Valere, Senior Civil Engineer URP;

58.7.1.6. Scope of Works [6] dated July 1, 2013 which were issued to the claimant under the hands of four officials, that is, the Permanent Secretary Ministry of Food Production, The Coordinator "Agriculture Now" the Program Manager URP and the Special Projects Coordinator for URP for:

(a) Maloney Food Crop farmers phase 1, 2 and 3;

(b) Flamingo Extension phase 1, 2 and 3;

58.7.1.7. Report on the review of Claims submitted by Contractors for the period June 2013 to September 2013 signed by the Director of Central Audit Committee, Senior Audit Analyst and Mr. Khemkaran Kissun and Mr. Varuna Ramdial dated the 15 April 2014;

58.7.1.8. Email correspondence between Minister Howai and Danny Persad, dated 1 July 2014 and 14 July 2014;

58.7.1.9. Letter dated 12 August 2014 to Permanent Secretary, Ministry of Works and Infrastructure Mr. eyes actually from Permanent Secretary Ministry of Finance and the Economy Vishnu Dhanpaul;

58.7.1.10. Letter dated 14 February 2017 to Mr. Cole Raj Kamta are from Chantal La Roche , Legal Officer II, Clerk of the House, Parliament;

58.7.1.11. Letter dated 25 April 2017 from Mrs. Dhano Sookoo , president of the Agricultural Society of Trinidad and Tobago;

58.7.2. To the signatories and or makers of the aforesaid documents to attend at the said trial and give evidence in relation to the circumstances surrounding their signatures/creation of the said documents and to be cross examined thereon.

58.8. The costs of this application and the issue as to who will pay those costs and the quantification of those costs are reserved to be dealt with at the next hearing.

/s/ Devindra Rampersad J

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Devindra Rampersad J

Assisted by Charlene Williams
Judicial Research Counsel
Attorney at Law