

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2010-02370

BETWEEN

**PROFESSOR COURTENAY BARTHOLOMEW
DR. MARIA BARTHOLOMEW**

Claimants

AND

DR. STEVE SMITH

Defendant

Before the Honourable Madame Justice Rainauth-Lee

Appearances:

Mr. Michael Quamina instructed by Ms. Helen Alves for the Claimants.
No appearance on behalf of the Defendant.

REASONS

1. Before the Court was the notice of application filed by the Defendant on the 19th November, 2010 [“the Defendant’s application”] seeking *inter alia*:

- (i) relief from sanctions for failure to file a Defence and
- (ii) that time be extended for the Defendant to file and serve his Defence.

2. The Defendant's application was supported by the affidavit of Ms. Anica Ghent, Attorney at Law and an associate of the firm of Messrs. N.D. Alfonso and Co., Instructing Attorneys, which affidavit was also filed on the 19th November, 2010.

3. According to the grounds of the Defendant's application and Ms. Ghent's affidavit, the Defence became due on or before the 15th October, 2010.¹

4. At paragraph 6 of Ms. Ghent's affidavit, she deposed that as a consequence of the professional commitments of both Counsel and Ms. Nyree Alfonso (all of whom were involved at the material time in, *inter alia*, two expedited appeals before the Court of Appeal relating to the extradition of two Trinidad and Tobago nationals) the firm, by letter dated the 15th October, 2010, sought a six-week extension of time (that is, up to the 26th November, 2010) to file and serve the Defence herein.

5. By facsimile correspondence of the same date, the Claimants' Instructing Attorneys indicated that their clients were only willing to accede to an extension of time of approximately three (3) weeks, that is, to the 8th November, 2010.²

6. Ms. Ghent further deposed that Counsel was not able to complete drafting and settling of the Defence herein by the extended deadline as the breadth of the allegations made by the Claimants and the complexity of the issues raised in the said pleadings necessitated an exhaustive search of the archives and files of the Medical Board of Trinidad and Tobago as well as the files of other medical practitioners. Having regard to the difficulty in amending pleadings

¹ See paragraph 5 of Ms. Ghent's affidavit.

² See paragraph 7 of Ms. Ghent's affidavit.

at this stage, Counsel informed her that sufficient time was required to put the Defendant's full defence before the Court.³

7. The Defendant's application was listed for the 14th February, 2011 and on that date it was fixed for hearing for the 1st April, 2011. On the 1st April, 2011, the Defendant's application was adjourned pending talks between the parties to the 25th July, 2011. On the 25th July, 2011, Mr. Rishi Dass on behalf of the Defendant sought an adjournment of the Defendant's application which was granted. The Defendant's application was adjourned to the 24th October, 2011. On the 24th October, 2011, the Defendant's application was again adjourned to the 18th January, 2012 for a status hearing.

8. On the 18th January, 2012, the Defendant's Instructing Attorneys filed an application to cease to act. According to the affidavit of Ms. Nyree Alfonso, since the meeting of the 5th July, 2011 [convened with Senior Counsel, Ms. Alfonso and the Defendant] the Defendant had identified Mr. Khristendath Neebar as his new legal advisor.

9. The Defendant's application and the application to cease to act were both adjourned on the 18th January, 2012 to the 7th February, 2012. On the 7th February, 2012, Mr. Krishendath Neebar appeared with the leave of the Court *amicus curiae* and indicated to the Court that he and Mr. Haresh Ramnath agreed to look at the documents and that Senior Counsel had been approached in the matter. Mr. Neebar also indicated that it was not certain that he and Mr. Ramnath would go on record in this matter. The Defendant was before the Court on the 7th February, 2012, and the Court specifically warned him that he must have an Attorney on record and be ready to do his application on the adjourned date. The application to cease to act was granted and the Defendant's application was fixed for hearing on the 14th May, 2012.

³ See paragraph 8 of Ms. Ghent's affidavit.

10. On the 14th May, 2012, when the matter was called at 1.35 p.m. the Defendant was not present and no Attorney appeared on his behalf. The Court stood the matter down until 1.45 p.m and called the matter once again. There was still no appearance of the Defendant or his legal representative. Mr. Quamina appearing on behalf of the Claimants submitted that the Defendant's application should be dismissed with costs in all the circumstances of the case. Having regard to the history set out above, the Court dismissed the Defendant's application. The Court assessed the costs of the Defendant's application in the sum of \$25,000.00. The assessment was carried out on the following basis:

No. of appearances in court - 7

Mr. Quamina is in Band C [\$2,000.00]; No of hours [court and preparation] = 7 hours; total for Mr. Quamina =\$14,000.00.

Ms. Alves is in Band D [\$2,250.00]; No. of hours = 7 hours [court and preparation]; total for Ms. Alves = \$15,750.00. The Court assessed the costs at \$25,000.00.

11. Mr. Quamina then made an oral application for judgment. Part 11.4 of the Civil Proceedings Rules, 1998 (as amended) ("the CPR") allows the Court to dispense with the requirement for the application to be made in writing. I considered this was a fit and proper case to dispense with the requirement for the application to be made in writing, given the history of delay and given the fact that there was no defence filed on behalf of the Defendant. To adjourn simply for the Claimants to put their application in writing would have in my view been contrary to the overriding objective of the CPR. Accordingly, I exercised my jurisdiction under Part 11.4 of the CPR and considered the oral application. The Claimants' claim was begun by an ordinary claim form filed on the 11th June, 2010 accompanied by a Statement of Case filed on the said 11th June, 2010, seeking *inter alia* damages for libel. Further, since nothing in the CPR or in Parts 11 or 12 thereof prevented my so doing, I granted the oral application for judgment with damages to be assessed and costs to be quantified. I also ordered the filing of witness statements by the Claimants and adjourned the assessment of damages and quantification of costs to the 26th November, 2012.

12. As to the ground of appeal that the Court erred in law in granting judgment to the Claimants in that the Claimants' case stood dismissed having regard to Legal Notice 126 of 2011⁴, in my view, it would be harsh and oppressive for a court to hold in the circumstances of this case that the Claimants' case stood dismissed pursuant to that amendment⁵. In my view, the Civil Proceedings (Amendment) Rules, 2011 [Legal Notice No. 126 of 2011] were published on the 1st July, 2011 and could not apply retroactively to this matter without more. It is noteworthy that at the time of the publication of the Legal Notice, there was already before the Court the Defendant's application which had been filed on the 19th November, 2010 and which engaged the attention of the Court until the 14th May, 2012.

Dated the 30th October, 2012.

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MAUREEN RAJNAUTH-LEE
JUDGE

⁴ See the amendment to Rule 8.13 of the CPR.

⁵ The limitation period for this claim expired in June/July 2010.