

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port-of-Spain

Claim No. CV2008-00635

BETWEEN

PRIMIS CORPORATION LIMITED

First Claimant

AND

NIGEL THOMAS also known as

NIGEL RICHARD THOMAS

First Respondent

SUZANNE SINGH also known as

SUSAN THOMAS

Second Respondent

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: April 29, 2019

Appearances:

1. Anthony V. Manwah for the Claimant.
2. Leisa Kisto and Jennifer Rogers for the Defendant.

DECISION

1. On the September 27, 2012 in this matter the Honourable Justice Rajnauth-Lee ordered Nigel Thomas Architecture Limited (NTAL) to pay to Primis Corporation Limited (PCL) its costs to be assessed by a Master.
2. These cost were assessed at \$188,324.50 on June 18, 2015.
3. PCL thereafter had the right to enforce its costs judgment against NTAL. PCL subsequently filed an application on August 29, 2018 to add Nigel Thomas and Suzanne Thomas as parties to the substantive claim and the application was listed before this court. This application was not served and at an ex parte hearing, the Court granted the relief sought. Having obtained the said order PCL enforced the costs order against the added parties.
4. Thereafter, an application to set aside this Court's order was filed by Nigel and Susan Thomas and directions for submissions were issued .
5. Having reviewed the submissions and having considered the relevant law, the Court is resolutely of the view that the substantive litigation between NTAL and PCL came to an end on the September 27, 2012 and there was no outstanding issue to the Court's determination when the instant application was determined Ex- Parte.
6. The purpose of the application was to add parties to the substantive action, to enable the outstanding costs order to be paid by the Thomas' as opposed to NTAL, presumably because that company is no longer on the Register.
7. Recovery of a judgement debt is not a cause of action and the substantive cause of action had already been determined. The Court considered part 19 23 of the CPR and formed the view that there was no issue for its determination and the application did not fall within the ambit of part 19 of the CPR.

8. In order for a person to be added as a party pursuant to CPR 19, the Court must identify the issues in dispute between the existing parties and then determine the efficacy of joining of the proposed persons and the impact which such an addition would have on the court's ability to resolve the issues in dispute.
9. The effect of the order, which was erroneously issued by this court, resulted in a circumstance where the court without evidence, pierced the corporate veil and attached the defunct company's liability for costs, unto the named parties and they were not even afforded an opportunity to be heard.
10. Subsequent to the assessment of costs order, NTAL was struck off the Company's register. Under the Company's Act there was a process which could have been engaged by PCL but no such steps were taken. An application could also have been made to the Court to have NTAL restored on company's record but no such application was made.
11. Prior to its being struck off the record, the liability to pay the cost order vested in NTAL and not its directors.
12. The court also noted that prior to its order to add the named parties, no action was instituted and no court order was granted so as to transfer NTAL's liability to its directors nor did the Court find that the added parties were guilty of having breached their fiduciary duty.
13. Consequently the application to add them was devoid of merit and should have been dismissed.
14. Accordingly, the Court must set aside its flawed order dated January 8, 2019.
15. In the circumstances the Claimant shall pay to the Applicants, Nigel Thomas and Susan Thomas, the cost of the instant application, assessed by the Court in the sum of \$11,400.00.

Frank Seepersad

Judge