

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV. 2011-02492

Civil Appeal No. P113 of 2013

BETWEEN

RANDY GLASGOW PRODUCTION LIMITED

APPELLANT/ FIRST DEFENDANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO FOR THE MINISTRY OF
SPORT AND YOUTH AFFAIRS

APPELLANT/ SECOND DEFENDANT

AND

HYACINTH SEATON

RESPONDENT/CLAIMANT

Dated May, 2013

REASONS FOR DECISION

Procedural History

1. By Claim Form and Statement of Case dated 5th July, 2011 the Claimant commenced proceedings against the Defendants.

2. By Notice of Application dated 12th January, 2012 the Claimant applied to the court for an order that judgment be entered against the First Defendant for default of appearance.
3. By Order dated 29th February, 2012 the Honourable Madam Justice Rajnauth-Lee (as she then was) ordered that:

“Subject to the filing of an affidavit of service that judgment be entered in default of appearance against the First Named Defendant with damages to be assessed and costs to be quantified; and

The Assessment of Damages and Quantification of Costs are adjourned to 28th May, 2012 at 11:00am Court Room POS 21.

4. By Notice of Application filed on the 25th May, 2012 the First Defendant, Randy Glasgow Productions Limited, applied to the Court to set aside a judgment obtained in default of appearance by the Claimant on the ground that it was irregular. The matter was subsequently docketed to this court.
5. By Order dated 6th March, 2013 the court granted the following orders:
 - i. The Judgment in default of appearance entered on the 29th of February, 2012 is set aside;
 - ii. The Defendant is granted leave to defend the action and is required to file and serve its Defence on or before the 20th March 2012.
 - iii. The cost of this application shall be cost in the cause.
 - iv. The Case Management Conference is fixed for the 2nd May, 2013.
6. On the 2nd of May, 2013, at the Case Management Conference, the court granted permission to the Claimant to file and serve an Amended Statement of Case on or before the 9th May, 2013.

7. On the 14th May, 2013 the First Defendant appealed against this direction to amend the Claimant's Statement of Case, stating that the direction was contrary to guidelines imposed by Rule 20.1(3) and 20.1(3A) as amended.

8. The Appellant is seeking the following orders:

- i. An order that the order/direction of the High Court be set aside and/or reversed;
- ii. That the re-amended Statement of Case be expunged from the court's record; and
- iii. That the Statement of Case be struck out.

9. The grounds of the appeal are as follows:

- i. The decision was wholly against the weight of the evidence;
- ii. That the decision cannot be supported having regard to the submissions of law proffered on behalf of the Appellant;
- iii. The Learned judge erred in the exercise of his discretion by failing to take all relevant matters properly into account and/or to give the same their due weight in assessing the likelihood of prejudice to the Appellant in granting permission for the amended statement of case.

Law

10. An application to amend a statement of case is governed by **Rule 20.1**(as amended) which provided as follows:

- 1) ***A statement of case may be changed at any time prior to a case management conference without the court's permission.***

- 2) *The Court may give permission to change a statement of case at a case management conference.*
- 3) *The Court shall not give permission to change a statement of case after the first case management conference, unless it is satisfied that-*
 - a) *there is a good explanation for the change not having been made prior to that case management conference; and*
 - b) *the application to make the change was made promptly*

(3A) In considering whether to give permission, the court shall have regard to-

- a) *the interests of the administration of justice;*
- b) *whether the change has become necessary because of a failure of the party or his attorney;*
- c) *whether the change is factually inconsistent with what is already certified to be the truth;*
- d) *whether the change is necessary because of some circumstances which became known after the date of the first case management conference;*
- e) *whether the trial date or any likely trial date can still be met if permission is given; and*
- f) *whether any prejudice may be caused to the parties if permission is given or refused.”*

- 4)
- 5) ...
- 6)

11. It is undisputed that **Rule 20.1** empowers the court to grant permission for the amendment of a Statement of Case. However, the procedure to be followed when amending a Statement of Case depends on whether or not the first case management conference has ended.

12. A claimant is entitled to amend his/her statement of case without the court's permission and without satisfying the threshold requirements under **Rule 20.1(3)** provided that the amendment is being made prior to the first case management conference. If the first case management conference has ended the court will be guided **Rule 20.1(3)** (threshold requirement) and **Rule 20.1(3A)**.

Whether the First Case Management Conference has ended?

13. It is well settled that the first case management conference does not necessarily come to an end at the conclusion of the matter on the first court appointed date. It depends on whether or not the court on the first court appointed date was able to deal with and dispose of matters referred to under **Part 25**. Therefore it is possible to have the first case management conference extended over several court appointed dates.

14. At paragraph 19 in the decision of *Premnath Bowlah v The Attorney General (H.C. 4924 of 2008)* Rampersad J stated as follows:

“to my mind the first case management conference is an event, a fact, not a name. The ritualistic administrative function of giving a date does not impose the judicial connotations of case management until there has been an actual exposition of the matters intended to be dealt with as referred to at Part 25. If those matters are not dealt with on the 1st court appointed date I see it necessary to consider at what point a judge has dealt with the matters. It is important to

note that Part 25.1 is not a check list but a guide to the matters which a court ought to consider.”

15. This case was applied by Rajkumar J in ***Tysa Company v Guardian General Insurance Company Ltd (CV No. 4349 of 2009)***. In that case, the court at the first CMC only gave directions that would have facilitated mediation which was raised at the court’s suggestion. The court found that other directions which would normally have taken place at the first CMC were specifically deferred. The court concluded that the first CMC had not been concluded since the possibility of mediation had been raised and the matter adjourned in accordance with the philosophy of Part 27.8 (2) in mind. It should be noted that the Court of Appeal dismissed the procedural appeal against the court’s order giving the Claimant permission to amend his statement of case.

16. In ***Molly Tirbaynee v Lennox Ling and Joan Chadee (CV No. 959 of 2006)***, the ***Learned Judge herein*** adjourned the first CMC on three separate occasions to facilitate a settlement at pages 8-9 it stated:

“In my view, the CPR presents an ideal opportunity for parties, with the assistance of the court, to get the real issues between them without the formality and stricture placed on them by the law, that the attorneys in this case failed to grasp the unique opportunity presented by the rules to advise their clients on the law and guide them towards a proper resolution of the dispute.

In this particular case recognizing the limitations placed by the pleading and the law on a resolution of the impasse between the parties, the case management conference was adjourned on three separate occasions to facilitate settlement.”

17. The appellant submitted that the judgment suggested that once settlement is being pursued by the parties, the CMC can be adjourned to facilitate the said settlement, with the result that the first CMC does not come to an end.

18. In *Tota-Maharaj v Hernandez (Civ. App. No. 247 of 2009)* the Court of Appeal stated that it was of the view that Part 26. (1)(w) was wide enough to incorporate a power to adjourn the first case management conference; but that even if it was not, the inherent jurisdiction of the court would allow the judge to have that power.
19. According to **Rule 27.3(2)** where there are two or more defendants and at least one of them files a Defence, the court shall fix a case management conference either when all the Defendants have filed a Defence or when the period for the filing of the last Defence has expired, whichever is sooner. The Second Defendant filed its Defence on the 22nd December, 2011.
20. By Notice dated 18th January, 2012, the Honourable Madam Justice Rajnauth-Lee (as she then was) informed the parties that the first case management conference was set for the 29th February, 2012. On the said date the Claimant and the Second Defendant appeared and no appearance was made by the First Defendant.
21. The first case management conference was adjourned to the 28th, May, 2012. However, on that date the First Defendant appeared, having filed on the 25th May, 2012, an application to set aside the Default Judgment entered against him. The court then gave orders for the Claimant and First Defendant to file submissions with respect to the application to set aside. But for the filing of the First Defendant's application to set aside the judgment entered in default, the court most likely would have made orders for the filing of witness statements etc, with respect to the Claimant and the Second Defendant and the first case management conference would have ended.
22. However, this was not the case, and the first case management conference was adjourned to the 17th October, 2012, and then for a few more times. It is therefore submitted that the first case management conference which began on the 29th February, 2012, was adjourned on several times to deal principally with the First Defendant's application to set aside the judgment entered in default of his appearance and eventually to give the First Defendant an opportunity to file its defence.

23. This court is of the view that when the Claimant was given leave to amend her Statement of Case on the 2nd of May, 2013, the first case management conference had still not come to an end. The authorities show that the first case management conference can be adjourned several times for many reasons, for example, to give the parties an opportunity to explore the possibility of settlement. A key feature that indicates that the first case management conference has ended is when the court makes the usual orders to file list of documents, witness statements, etc. To date, none of these orders have been made. What the court has done however was adjourn the first case management conference to deal with applications to enter default judgment, set aside default judgment and to amend. To date the pleadings have not closed and the first case management conference has not ended.

24. Inasmuch as the case management conference was not concluded within the meaning of the aforementioned authorities, it remained open to the Applicant pursuant to **Rule 20.1** to amend the Statement of Case even without the Court's permission. Beyond this, **Rule 20.1 (2)** empowered the Court to grant the application to amend at the Case Management Conference itself. The court being satisfied on the authorities that the words 'prior to' in that said **Part 20.1** were to be read as meaning "*prior to the conclusion of the first case management conference*". The court was firmly of the view that the proposed amendment was necessary to ensure that all the relevant factors were before the court. Accordingly permission was granted to amend the statement of case.

.....
FRANK SEEPERSAD
JUDGE