

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV No. 2011-04480

Between

STANLEY HOLDER

Claimant

And

THE ATTORNEY GENERAL

Defendant

Before the Honourable Mr. Justice Seepersad

Appearances:

Mr. Bindra Dolsing instructed by Mr. Ivan Daniel for the Claimant

Ms. Stephanie Sobrian for the Defendant

Judgment delivered 26th July, 2013

DECISION

This action involves a claim for damages for false imprisonment including aggravated and exemplary damages. Before the Court for determination is a procedural application filed by the Claimant on the 10th August 2012 for an order that no further information was reasonably requested from the Claimant pursuant to the Defendant's request for information made under parts 35.1 and 58.4(2) of the CPR as amended. The Claimant filed submissions in support of the said application on the 27th March 2013 and the Defendant filed submissions in response on the 17th April 2013. In the said submissions the Defendant submitted inter alia that the Claimant's claim pursuant to rule 27.3(4) of the CPR as amended has been automatically struck out and there is therefore no application before the Court. The Claimant filed Submissions in Response to this issue on the 4th June 2013 and the Defendant's filed Submissions in Reply on the 17th June 2013.

Procedural History

Date	Event
17 th November 2011	Claim Form and Statement of Case filed and served
13 th December 2011	Request made for further and better particulars
19 th January 2012	Reply given to request for further and better particulars
10 th May 2012	Claimant applies for leave to enter judgment in default
20 th June 2012	Application heard before the Honourable Madame Justice Rajnauth Lee (as she then was) and order was made giving the Claimant leave to withdraw his application filed on 10 th May 2012
10 th August 2012	Application filed by Claimant pursuant to part 58.4(3) (b) that no further information is reasonably required (no determination of same)
15 th August 2012	Claimant again applies for leave to obtain judgment in default
7 th December 2012	Defence filed and served by Defendant
17 th December 2012	Application came before this Court and an order was made that Claimant file and serve submissions in support of applications on or before the 12 th January 2012, the Defendant to reply on or

	before 31 st January 2013. Court also noted that if the Claimant did not wish to pursue the issues, then there was no need to comply with directions
11 th March 2013	Claimant filed an application to strike out Defence
12 th March 2013	Application for default hearing – Court noted non compliance with its previous order and gave further directions for the filing of submissions. Matter adjourned 20/05/13
20 th May 2013	Application filed 11 th March 2013 and 15 th August was withdrawn and other pending application adjourned to the 27 th July 2013.

The issues that must be considered and determined are as follows:

- i. Whether a defence can be filed before an appearance is entered and whether the Defendant's defence fell due in the circumstances of the case.
- ii. Whether the instant claim has been struck out by virtue of the Claimant's non compliance with Part 27.3 (3) of the CPR (as amended) or whether having regard to the procedural history of this matter and in particular the provisions of Part 58.4 of the CPR as amended, whether part 27(3) of the CPR (as amended) is not applicable.
- iii. Whether a determination needs to be made on the Claimant's application filed 10th August 2013.

Resolution of issues

Issue I

The Claimant submitted that Part 9.2 (2) and Part 9.3 of the CPR as amended are not applicable having regard to the request for information that was made under Rule 35.1. To resolve the issue at hand consideration must be given to Parts 9.2 (2), 9.3, 58.4 (2) and 58.4 (3) of the CPR (as amended) as well as section 20 (2) of the State Liability and Proceedings Act Chp. 8.02.

Part 9.2 (2) clearly provides that a Defendant need not enter an appearance if a defence is filed within the period specified in Part 9.3. Part 9.3 outlines the general rule that the period for entering an appearance is eight (8) days after the service of the Claim Form or eight (8) days

after service of the Statement of Case where permission was given to serve the Claim Form without a Statement of Case. Further the rule provides that an appearance may be entered at any time before a Defendant judgment is entered.

As outlined at Part 9.2 (1) the purpose of entering an appearance is to give to the Claimant notice of whether or not the Defendant's intends to defend the claim either in whole or in part or at all. It is not disputed that the Defendant failed to file an appearance. The Defendant filed a defence on the 7th December 2012. It is also not disputed that the said defence was duly served on the Claimant's Attorneys at Law on the 7th December 2012.

Notwithstanding the provisions of Part 9.3 of the CPR as amended, See 20 (2) of the State Liability and Proceedings Act Chp. 8.02, provides that the State has in any civil proceedings where it is a Defendant, not less than 28 days to issue a notice of intention to defend. The state unlike other defendants therefore has 28 days to enter an appearance. In this case, the Defendant made a request for information under Part 35.1 of the CPR as amended. Part 58.4 (1) of the CPR states that the Claim Form or Statement of Case must contain reasonable information as to the circumstances in which it is alleged that the liability of the State has arisen and 58.4 (2) of the CPR states that the request for information can be made at any time during the period for entering an appearance under 9.3 (1).

In accordance with Part 58.4 (3), once a request is duly made under 58 (4) 2 of the CPR as amended, the Defendant's time for entering an appearance is then extended until –

- a) 4 days after the Defendant gives notice in writing to the Claimant that he is satisfied with the information supplied or
- b) 4 days after the Court on the application of the Claimant decides that no further information is reasonably required.

The Defendant's request for information was made on the 13th December 2011, and a reply to the said request was issued by the Claimant on the 19th January 2012. The Defendant having received the information did not inform the Claimant that it was satisfied with the information as provided under Part 58.4 (3) a. The time for the Defendant's entry of an appearance did not therefore fall due as neither the requirements of 58.4 (3) a or b had been met. The Claimant filed

an application for Judgment in default against the Defendant on the 16th May 2012 and this application came up for hearing on the 20th June 2012 and leave was granted to withdraw same.

On the 10th August 2012 the Claimant then applied under 58.4 (3) b of the CPR as amended for an order of the Court that no further information is reasonably required. On the 15th August 2012 the Claimant filed another application for leave to obtain judgment in default and this was withdrawn on the 20th May 2013. The Claimant's applications were first listed for hearing before the Court on the 17th December 2012 and prior to the hearing date the Defendant filed and served its defence.

The Court must therefore determine whether the Defendant ought properly to have filed a defence in the circumstances where it failed to inform the Claimant that it was satisfied with the information supplied by the Claimant and/or in circumstances where the Court had not ordered that no further information was reasonably required. It is clear that part 58.4 (3) stipulates the time for the entry of an appearance in the circumstances where a request for further information is made by the State and the time for the entry of appearance begins to run when either of the conditions of Part 58.4(3) (a) or (b) are satisfied.

The rule is however silent as to when a defence would fall due. It is clear however that a defence is not required to be filed before the entry of appearance falls due. The Court should always ensure that rules are interpreted in such a manner so as to avoid the creation of an absurdity. The Rules committee therefore ought to revisit Part 58.4 (2), since a literal interpretation of same can lead to an absurd result. The rule clearly failed to have regard to section 20(2) of the State Liability and Proceedings Act. The Defendant in its submission outlined a hypothetical situation where a claim is filed and served on the 1st of the month, the State then makes a request on the 8th day after service under Part 58.4. The Claimant responds 5 days after the request is made. Three days after the response is received the State writes to the Claimant indicating that it is satisfied with the information provided. In such a situation the Defendant would then have 4 days to enter an appearance. The appearance would therefore be required to be filed twenty (20) days from the date of service and eight (8) days less than the twenty-eight (28) days outlined at sec. 20 (2) of the State Liability and Proceedings Act Chp. 8:02.

Notwithstanding the aforementioned problem with Part 58.4, what is clear is that the intention is that time is stayed until the Defendant's request has been duly satisfied either by its own acceptance or by virtue of an Order of the Court outlining that no further information is necessary. Only when the requested information has been reasonably supplied can the Defendant make a proper assessment of the case that it is called to answer or the circumstances in which it is alleged to be liable and so determine if and how it is to proceed in response to the Claimant's case. Part 58.4 (3) places the burden on the Defendant to inform the Claimant that it is satisfied with the information provided and it is then up to the Claimant to monitor the time period and ensure that an appearance is filed within 4 days and that thereafter a defence is duly filed. On the 7th December 2012, the Defendant filed and served a defence, Part 9(2)2 of the CPR (as amended) provides that a Defendant need not file an appearance if he files a defence within the period specified in Part 9.3. In this case, the time for the filing of an appearance was not yet due and so within the time for filing an appearance, the Defendant filed a defence. In filing a defence the Defendant clearly signaled to the Claimant that it was satisfied with the information that was provided. It cannot be said that the defence was premature or that same ought to have been filed only when an appearance had been entered. The Defendant took a decision to file a defence and thereby clearly indicated to the Claimant that the claim was being resisted.

Issue II

Whether the claim has been automatically struck out.

Part 27.3 clearly requires that if the Court does not give notice of a Case Management Conference (CMC) within fourteen (14) days of the filing of the defence, where there is only one Defendant, the Claimant shall within twenty-eight (28) days of the relevant period identified in sub paragraph (b) apply for a date to be fixed for the Case Management Conference. If the Claimant does not so apply, the claim shall be automatically struck out.

In the instant case, no Case Management Conference was ever fixed by the Court. All the hearings before the Court were in relation in the Claimant's Notices of Application. The defence was filed and served on the 7th December 2012 and the Court did not issue a notice fixing a CMC date within fourteen (14) days of the 7th December 2012. The Claimant was therefore required to apply for a Case Management Conference within 28 days of the period identified at 27.3 (3) b of

the CPR (as amended) and this was not done. Further the Claimant failed to apply for relief from sanction as provided under part 27.3(5) of the CPR. Accordingly under Part 27.3 (4) the claim was automatically struck out.

The matter was therefore duly struck out prior to the hearings that occurred on the 12th March and the 20th May 2013. Further, once the Defendant filed the defence on the 7th December 2012 there was no longer any need to determine the application filed 10th August 2012 and the said application is formally hereby dismissed.

The Court however notes that the action in this matter arose in November 2010 and it is therefore still open to the Claimant to re-file a claim. This Court is of the view that if the Claimant so elects, save for the issue as to whether the costs of the instant action have been paid, the issue of an abuse of the Court's process would not arise, since the matter was struck out prior to the listing of a Case Management Conference and all the hearings before the Court were in relation to procedural applications that did not directly relate to the substantive issue that the Claimant sought to have determined before the Court.

For the reasons that have been outlined the Court hereby declares that the Claimant's Statement of Case was automatically struck out in accordance with Part 27.3(4) of the CPR (as amended). The Claimant is to pay to the Defendant the costs of the application filed 10th August 2012 which is to be assessed in default of agreement.

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FRANK SEEPERSAD

JUDGE