

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2012-03309

BETWEEN

PADMA DASS

Claimant

AND

RAMNATH BALLY

SHAZMIN BALLY

Defendants

Before the Honourable Justice Frank Seepersad

Appearances:

1. Mr. R. Ramsaran and Mr. D. Waithe for the Claimant.
2. Mr. K. Kamta for the Defendant.

Date of Delivery: 23rd January, 2014

REASONS

First application 02/12/2013

1. The first application before the Court for determination is the Claimant's application filed on the 2nd December 2013 seeking an extension of time for the filing of a Reply and the Defence to Counterclaim. In determining this application the Court considered Part 26 of the CPR (1998) as amended and noted that an order of the Court was varied on one previous occasion pursuant to an application filed by the Defendants.
2. The Court also had regard to the overriding objective of the CPR and considered all of the factors stated therein namely to the need to deal with matters justly, to have regard to the fact that any exercise of discretion must be proportionate and must take into account the value of the claim, the importance of the case, the complexity of the issues, the financial position of the parties and to ensure that the issues are dealt with expeditiously and allotting to the matter a proportionate share of the Court's resources.
3. The Court looked at the nature of the application and noted that it was a request for an extension of three days and while this Court usually determines such an application in Chambers immediately upon receipt, having regard to a request by Mr. Kamta that he be heard on any application with respect to any variation of the Court's timetable, the Court fixed the matter for hearing on the 8th January, 2014. On the 8th January 2014 the hearing was adjourned to the 23rd January 2014.
4. The Court considered the nature of the amended defence and counterclaim that was filed pursuant to the altered timetable at the request of the Defendants, and noted that there were substantial amendments which would have required the obtaining of detailed instructions from the Claimant. The Court also noted the time period within which the Court's varied order provided for the Claimant to file the Reply and defence to Counterclaim was not an inordinately long time period but in fact some twenty-two days.

5. The request did not appear to be unreasonable request and the requested extension was for a period of three days. If the request had been granted on the date of filing there would have been no need to vary and/or alter any of the other directions that the Court had given and in particular directions with respect to the filing of the list of documents.
6. Having considered all the matters hereinbefore stated the Court in the exercise of its discretion under Part 26 (1) (d) of the CPR as amended, is prepared to grant the Claimant an extension of time to file its Reply and Defence to Counterclaim. The Claimant is required to do so on or before 4 p.m. on the 24th January, 2014. The issue of the cost associated with this application will be addressed at the end of this judgment.

Second application filed 9/1/2014

7. The second application for the Court's determination is the Defendants' application filed 9th January 2014. In the said application the Defendants sought the following reliefs:
 - a. Abridging time for the service of this application
 - b. Discharging the current injunction entered in these proceedings on the 14th August 2012.
 - c. Stay all applications by the Claimant until the outcome of the default judgment entered on the 7th of January, 2014 of the Defendant is finalized.
 - d. Such other relief as may available to the Defendants at the hearing.
8. The Court noted there is no judgment in default entered against the Claimant. Mr. Kamta indicated to the Court that though he filed an over the counter request for judgment the Registrar denied that request.
9. The Court finds, that the Defendants, in the present circumstances, prematurely filed the request for default judgment. There was the application of the 2nd December 2013 which was before the Court and which was filed before the expiration of the time stipulated for compliance with the Court's order in relation to the filing of a Reply and Defence to

Counterclaim and the date for hearing had been listed 8th January 2014 and which was adjourned to the 9th January, 2014. Any of the reliefs prayed for in the application of the 9th January 2014 that were premised on the fact that there was either a request for and/or default judgment, is in the view of this Court irrelevant and ought not to be considered at this stage. Further the Defendants could not reasonably expect that the Court would entertain any application for judgment in default of a Defence to Counterclaim when the application of 02/12/2013 was pending. The Court also had to address its mind to the aspect of the application that sort a discharge on the injunction based on the grounds as stated at paragraphs 5-7 of the grounds of application at page 2 thereof.

10. The Court considered the said application together with the affidavit evidence filed by the Claimant in support of the injunction and also considered the re-amended Statement of Case. Having looked and considered at the said documents, the Court is of view that at this stage, it cannot be said that there is a complete 360 degree turn around between what was contained in the re-amended Statement of Case and what was contained in the affidavit what was used in support of the application for the injunction. In those circumstances and bearing in mind all the relevant law as it relates to the principles that ought to be considered when determining whether or not an injunction ought to be discharged. In the absence of any evidence of any material non disclosure or any manifest inconsistency or inherent implausibility on the Claimant's claim as pleaded, there is no reason for this Court at this stage to discharge the injunction. Accordingly the Defendant's application filed 9th January 2014 is dismissed. The issue of cost will be determined at the end of this judgment.

Relief from Sanctions Application

11. The third application that has to be determined is the Claimant's application for relief from sanctions filed on the 14th January 2014. Mr. Ramsaran and Mr. Dons Waithe on behalf of the Claimant accepted that part of the application was redundant in so far as reliefs were sought in relation to the filing of the Reply and Defence to Counterclaim. The aspect of the said application that had to be considered was the part that dealt with relief from sanctions for the

failure to file the list of documents on/or before 16th December 2013 pursuant to the amended and varied timetable of the Court's initial directions.

12. The Court considered the affidavit filed in support of the application as well as the relevant provisions of Part 26.7 1-5 of the CPR (1998) as amended was guided by the judicial decisions in **Trincan Oil Limited v. Chris Martin Civ. App. No. 65 of 2009** and **The Partition Ordinance Chapter 27 No.14...Rawto a/c Roopnarine, Rawti; Roopnarine, Kumar v Harripersad a/c Kissoo, Harripersad; Rakhunanan a/c Boodoo, Harry, Bhagmatic a/c Bhagmatiah a/c Boododdsingh, Bhagmattie; Chanerwali a/c Chanadaye a/c Roopsingh Chanadaye** the decisions of Mendonca JA. Having regard to the provisions in the CPR and the direction given by the Court of Appeal as well as the circumstances that prevailed in the instant case, the Court is of the view and is satisfied that the failure to comply was not intentional, that there was a good explanation for the breach and that the party in default has generally complied with all other relevant rules and orders. The Court is satisfied that the threshold test have been satisfied so as to allow the Court to exercise its discretion as to whether or not the relief ought to be granted.
13. In exercising its discretion the Court had regard to the interest of justice, whether the failure to comply was due to the party or the Attorney, whether the failure could be remedied within a reasonable time and whether the trial date which has been fixed in this matter for the 14th and 15th May, 2014 can still be met if the relief is granted.
14. In arriving at the positions stated at paragraphs 12 and 13 the Court considered the following:
 - a. That the application of the 2nd December 2013 sought an extension of time to file a Reply at Defence to Counterclaim.
 - b. That it was reasonable to form the view that the pleadings in the matter ought to have been closed, before the list of documents was filed.
15. Unless all the relevant pleadings had been filed, the Claimant could not properly formulate a position so as to address her mind as to the relevant documents that ought to be filed in the list of documents. The Court also noted that although the Defendant's list was filed in accordance

with the Court's Order notwithstanding that there is an issue as to whether or not the said list was served on the Claimant, no prejudice can be occasioned from the service of the Defendants' list on the Claimant since the list simply enumerates the documents relied on.

16. Having regard to the fact that when the list ought to have been filed on the 16/12/2013, and given the fact that the Court vacation intervened between the time when application was filed and listed for hearing on the 8th January 2014, the Court finds that it cannot be said that the application was not made promptly.
17. The Court also considered the fact that, if the extension sought had been granted in Chambers there would have been no need to extend the time table in relation to the filing of the list of documents. Ideally prior to the 16th December 2013 and/or upon notification that the application of 02/12/2013 was fixed for hearing for the 8th January 2014, the Claimant should have applied for an extension of time to file the list of documents but the Court is of the view that in the circumstances, that failure was not fatal, as it was logical to adopt the position that the list should not be filed until the issue in relation to the pleadings was determined. There is therefore a good reason for the failure to comply with the Court's direction and the decision was not intentional and there has been general compliance with all previous directions of the Court.
18. Having found that the threshold tests have been satisfied the Court, in the circumstances and for the reasons outlined the Court in the exercise of its discretion hereby grants the reliefs sought by the Claimant in the application 14th January 2014 and orders as follows:
 - a. The Claimant is relieved from sanctions and time would be extended for the filing of the listed documents.
 - b. Leave is granted to the Defendants to file and serve a reply to the defence to counterclaim on or before 4 p.m. 27/01/14.
 - c. The Claimant is to file and serve its list of documents on or before 4 p.m. 28/01/14 and leave is hereby granted to the Defendants to file and serve if necessary a supplemental list of documents on/or before 4 p.m. on the 30/01/14.

- d. The directions in the varied order remains as it relates to witness statements which must be filed and served on/or before 4 p.m. 28/02/2014.
- e. Parties are to file and serve either agreed or un-agreed bundles of documents on/or before 05/02/14.
- f. The Pre-Trial Review of this matter is fixed for 30/04/14 9:00 a.m. SF 04. Parties are to file and serve evidential objections on/or before 28/04/2014, the evidential objections are to be emailed to the Court's JSO. The trial is confirmed for the days previously fixed namely the 14th and 15th May 2014.

19. In relation to the issue of cost on the Notice of Application 2nd December 2013 the Court indicated that this is the type of application that the Court usually determines in Chambers upon receipt. In this case, such an approach was not adopted as a result of the Defendants' request through Mr. Kamta that he be heard on any application with respect to a variation of the timetable. The Defendants were given the opportunity to be heard and having regard to the ruling of the Court and its rejection of the arguments advanced by the Defendants in that regard, and bearing in mind that a similar application for extension was made by the Defendants, which was considered and granted in Chambers with no order to costs, the Court makes no order as to costs as it relates to the application of the 2nd December 2013.

20. With respect for the application filed by the Defendants on the 9th January 2014 for the reasons that have been outlined, the application was premised on a grounds that were ill founded as it relates to the judgment in default of defence and the Court found that there was no merit in relation to the application with respect to the discharge of the injunction. The Court also noted that the Claimant filed no submissions in response to the said application nor was any affidavit evidence filed in response to the said application, further the Claimant's Attorney did not refer the Court to any Authority that may have been of assistance with respect to the resolution of the issues raised in the said application. Accordingly the Court makes no order as to costs on application dated 09/01/2014.

21. On the application of the 14th January 2014 the Court orders that the Claimant is to pay to the Defendant the cost of that application. As a result of the inability of the Claimant to file the

Reply and Defence to Counterclaim in accordance with the Court's order and having regard to the order issued by the Court on the application of the 02/12/2013, the Defendants may have to incur the additional cost associated with the filing of a supplemental list of documents. The said application, did not involve any complex issue of law and the Court noted that 2 ½ hours were spent in Court, in relation to the three applications that were heard and determined. In those circumstances and having considered the hourly rate of the Attorney at Law for the Defendants, which is \$2,500.00, and having also noted approximately ½ hour was actually spent in court in relation to this application, this Court orders that the Claimant shall pay to the Defendants costs in the sum of \$2,500.00 on the said application.

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FRANK SEEPERSAD

JUDGE