

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. C.V. 2014-04246

Between

HOMaida NISSA SOOKOOR ALI

Claimant

And

AQUI CHUNG

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances:

1. Mr. Lucky holding for Ms. Mc Leod for the Claimant
2. Mr. Mungalsingh for the Defendant

REASONS

1. On the 25th February, 2015, this Court dismissed the Claimant's statement of case and claim form and the Claimant was ordered to pay costs in the sum of \$5,000.00.
2. The decision of the Court, was appealed by way of a substantive notice of appeal dated 9th April, 2015. The issue as to whether there is a proper appeal should be considered since this appeal was filed outside the period limited for a procedural appeal under the provisions of the Civil Proceedings Rules (1998) as amended and there seemed to have been no order of the Court of Appeal extending time of the filing of a procedural appeal. The aforementioned position, notwithstanding, the reasons of the Court's decision of the 25th February, 2015 are as follows:
 - a. On the 30th November 2014, a consent order was entered as between the Claimant and the Defendant herein in CV 2009-03459. The reliefs sought in that action were substantially the same as the reliefs sought in the instant action which was filed on the 7th November, 2014.
 - b. In the fixed date claim form filed 7th November, 2014 the Claimant asked for the consent order to be set aside and for a trial de novo.
 - c. The Claimant also filed on the 7th November, 2014 as statement of case as well as an affidavit. The statement of the claim had no information as to the particulars upon which the order sought to set aside the consent order was premised and contained only information in relation to the claim previously advanced, which was resolved by way of the consent order dated 30th April, 2014.
 - d. The Claimant also filed an affidavit on the 7th November, 2014. At paragraph 6 of the affidavit she stated that her instructing attorney in the previous action advised her that her sister should not give evidence and insisted that she had no option but to sign the consent order and that she was the recipient of bad legal advice
 - e. The Claimant filed an amended claim form on the 10th December, 2014 and the matter was listed for hearing on the 25th February, 2015. At the hearing of the fixed date claim form, the Court noted as follows:
 - i. The issues in the instant action were previously determined in H.C.A. CV 2009-03459
 - ii. The claim form, statement of case and affidavit failed to disclose a proper basis for the setting aside of the consent order and the statement of case

was devoid of any particulars that are necessary for an action to set aside a consent order.

- iii. On the substantive claim, the limitation period for the commencement of an action for breach of contract had expired.
 - iv. The Claimant's assertion that she received bad legal advice from her Attorney in the first action could not found a cause of action as against the Defendant and it was not the Claimant's case that the Defendant was alleged to have acted fraudulently or that he has misrepresented to her or that there was any mistake of fact.
 - v. The procedure adopted by the Claimant to file a fixed date claim was also irregular, as the cause of action outlined by the Claimant did not fall within the provisions of Part 8.1 (4) of the CPR.
3. At the hearing on the 25th February, 2015 Mr. Lucky Attorney at Law held for Ms. McLeod on behalf of the Claimant and the Defendant was present and represented.
 4. In the exercise of its case management powers under Part 26.2 of the CPR, the Court struck out the Claimant's claim form and statement of case for the reasons outlined. The Court was of the view that the statement of claim and/or affidavit disclosed no reasonable grounds for the institution of the claim and that same amounted to an abuse of the Court's process.

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FRANK SEEPERSAD
JUDGE