

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2019-04722

BETWEEN

ERANDAYE JOHN

Claimant

AND

SHASAC ENGINEERING CONSTRUCTION LTD.

First Named Defendant

HAWEE'S GENERAL CONTRACTORS LTD.

Second Named Defendant

KAPRAJ CONSULTANCY SERVICES LTD.

Third Named Defendant

By original action

AND BETWEEN

SHASAC ENGINEERING CONSTRUCTION LTD.

Ancillary Claimant

AND

ZORENA KHAN ALEXANDER

**(In her personal capacity as Legal Personal Representative
of the estate of ANDREW ALEXANDER, deceased)**

First Ancillary Defendant

AND

J.D. SELLIER & CO

Attorneys at Law

(a Law Firm)

Second Ancillary Defendant

By Ancillary Claim

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Roger A. Ramoutar for the Claimant

Ms. Keisha Peters instructed by Ms. Sofiyyah Caliph for
the Defendants

Mr. Ian L. Benjamin S.C. leads Mr. Pierre Rudder
instructed by Ms. Annabelle R. Sooklal for the Second
Ancillary Defendant

Date of Delivery: 16th October 2020

DECISION

1. The claimant filed a claim on the 18th November 2019, together with a notice of application and a certificate of urgency.
2. The notice of application sought an injunction restraining the defendants inter alia, from entering and/or remaining and/or occupying, disposing, leasing, using, interfering the two parcels of land the subject of the claim.
3. By order dated 3rd December 2010, the court ordered the defendants to file and serve affidavits on or before the 13th December 2019 and the applicant was ordered to file a reply to those affidavits on or before the 6th January. The court also ordered that the injunction granted on the 18th November 2019 continue.
4. On the 6th January 2020, the applicant/claimant sought an extension of time to reply to the defendants' affidavit in response filed on the 16th December 2020 to the 20th January 2020. The application was granted on the 13th January 2020. The applicant/claimant's affidavit in response was filed on the 5th February 2020.

5. By order dated 6th February, 2020, the proceedings around the injunction were completed and the injunction was ordered to continue. The claim was then adjourned to 6th April 2020. Had there been a hearing on this date, this would have been the first case management conference. However, there was no first case management conference. The applications for extension of time and the filing of ancillary claims took over the management of the claimant's claim.
6. The first and second named defendants filed an appearance to the claim on the on the 22nd November 2019.
7. On the 10th January 2020, the first and second named defendants filed an application for an extension of time to file its defence to the 24th January 2020.
8. The defence and counterclaim of the first named defendant were filed on the 20th January 2020 together with an ancillary claim.
9. An appearance by second ancillary defendant was filed on 18th February 2020.
10. By agreement, on the 13th July 2020 the second ancillary defendant was granted an extension of time to file a defence to 27th July 2020.
11. On the 27th July 2020, the second ancillary defendant filed a notice of application for an extension of time to file a defence to 15th October 2020.
12. On the 9th October 2020, the second ancillary defendant filed a notice of application for an extension of time to file a defence to the 30th November 2020.

13. According to the Civil Proceedings Rules (as amended) (“CPR”) Rule 18.14, where a defence to an ancillary claim is filed, the court must fix a case management conference for all parties and try as far as practicable to ensure that the main claim and the ancillary claim are managed together.
14. An amended claim form and statement of case was filed on 12th October 2020. The CPR Rule 20.1 instructs that a statement of case may be changed at any time prior to a case management conference without the court’s permission. The court may give permission to change a statement of case at a case management conference.
15. Has there been a case management conference? The answer is no. As such, the claimant was free to file an amendment to the statement of case as allowed by Rule 20.1. The amended statement of case takes the position of the original statement of case. The amended statement of case now sets out the case that the defendant has to answer.
16. If the court had given leave for the filing of an amendment to the statement of case at a case management conference, the court would have likely given directions to the defendants regarding the filing of an amended defence to the amended statement of case. Where, as is the case, the amendment is made as of right without leave of the court being required, the court is of the view that defendants should not be prejudiced by being bound by their defence filed before service of the amended statement of case.
17. The rules make provision for this. Rule 10.3 (2) (b) provides that the service of a defence to an amended claim form is 28 days after the service of the amended statement of case. The amended statement of case having been filed on the 12th October 2020, the 28 days would be calculated from that date.

18. The time for the service of an amended defence to the amended statement of case having not yet expired, no issue arises with respect to the automatic striking out of the claimant's claim pursuant to Rule 27.3 (3). Under that rule, if the court does not give notice of a case management conference within 14 days of the filing of a defence, the claimant has 28 days thereafter to apply for a date to be fixed for a case management conference. If the claimant does not then make that application within the 28 days, then the claim is automatically struck out. As noted before, there is still time for the defendant to file a defence. Thereafter there would be 14 days and a further 28 days before the claim is struck out.

19. In any event, the court has already fixed the 26th January 2021 as a date for the first case management conference.

Notice of application filed on the 12th October 2020

20. On the 12th day of October 2020, an application was made by the claimant for an extension of time to file a defence to the counterclaim. The counterclaim was filed on the 20th January 2020; therefore the defence to that counterclaim was due to be filed 28 days thereafter. However, the defence to the counterclaim was filed on the 12th October 2020.

21. Base on stare decisis, the court is bound by the ratio descendi in the Privy Council judgment in *The Attorney General v Keron Matthews*¹. There is no sanction imposed by the rules for the failure to file a defence within the period for so doing allowed by rule 10.3(3) Re: *The Attorney General v Keron Matthews* (supra) (at para 14):

“...a defence can be filed without the permission of the court after the time for filing has expired. If the claimant does nothing

¹ [2011] UKPC 38

or waives late service, the defence stands and no question of sanction arises. If, as in the present case, judgment has not been entered when the defendant applies out of time for an extension of time, there is no question of any sanction having yet been imposed on him.”

Disposition

- 22. Application filed on 12th October 2020 is dismissed.
- 23. No orders as to costs

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran