



**ST. GEORGE WEST COUNTY  
PORT OF SPAIN PETTY CIVIL COURT**

**RULING**

**CITATION:** Raymond Alec Roberts v. Selwyn Herbert

**TITLE OF COURT:** Port of Spain Petty Civil Court

**FILE NO(s):** No. 252 of 2011

**DELIVERED ON:** 4<sup>th</sup> April 2012

**CORAM:** Her Worship Magistrate Nalini Singh  
St. George West County  
Port of Spain Petty Civil Court Judge

**REPRESENTATION:**

Mr. Raymond Alec Roberts appeared in person

Mr. Selwyn Herbert appeared in person

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**1. THE APPLICATION**

1.1 This is an application to strike out the defence for failure to comply with the requirements of a Defence as set out in **Part 10 of the Civil Proceedings Rules** (hereinafter referred to as the “CPR”).

**2. INTRODUCTION**

2.1 By ordinary summons dated and filed on the 25<sup>th</sup> July 2011, the claimant, Raymond Alec Roberts; attorney at law/judicial research assistant, claimed the modest sum of \$2850.00 from the defendant, Selwyn Herbert; fireman/contractor, as reimbursement for labor costs and material costs under an incomplete contract between the parties. The details of the claim are set out below:

<b>ITEM</b>	<b>COST (TT\$)</b>
<b>3 GALLONS OF PUTTY AT \$150.00 EACH</b>	450
<b>36 PIECES OF GLASS FOR 4X6 FRENCH WINDOW</b>	300
<b>REIMBURSEMENT OF LABOUR COSTS</b>	1100
<b>REIMBURSEMENT OF MATERIAL COSTS</b>	1000
<b>TOTAL</b>	<b>\$2850.00</b>

Since the application made before this Court is to strike out the defence, the appropriate place to start, on an examination of the pertinent facts, is with the particulars of claim filed.

### **3. THE PARTICULARS OF CLAIM**

3.1 The claimant set out in his particulars of claim dated the 22<sup>nd</sup> July 2011 and filed on the 25<sup>th</sup> July 2011, his version of the events. According to the claimant, the defendant held himself out to the claimant to be a fireman and a tradesman/contractor and on or about the 4<sup>th</sup> July 2011, the claimant entered into a contract with the defendant to do repairs to his home (pleaded at paragraph 3 of the particulars of claim).

3.2 On the advice of the defendant, the claimant purchased:

- 2 4x6 metal French windows, 1 4x8 metal French window and 1 36x80 burglarproof gate from the Scaffold King Company Limited. The total cost of these items amounted to \$6250.
- 120 panes of bronze colored glass and 3 gallons of putty from Ramsingh's Glass Specialists Limited. The total cost of these items amounted to \$1400.

The claimant authorized the defendant to collect the items on his behalf and same were delivered to the defendant's home (pleaded at paragraphs 4-5 of the particulars of claim).

3.3 After a site visit it was agreed that the claimant would pay the defendant:

- \$1200 for cement, sand, paint, transportation costs and scaffolding costs, and
- \$3000 for labor to cover using the putty to fit the bronze colored glass panes into the 3 windows, installation of the finished windows into the walls of the claimant's home, and the installation of the metal gate in the claimant's home.

The total cost of the contract was therefore \$4200 and it was agreed that the claimant would pay the defendant in advance, the full material/transport/scaffolding cost of \$1200 and half of the

labor cost. In these circumstances, the sums of \$1200 and \$1500 and a further \$300 (in excess of the agreed sum to paid in advance), were handed over by the claimant to the defendant on the 8<sup>th</sup> July 2011 (pleaded at paragraphs 7-8 of the particulars of claim).

3.4 The 13<sup>th</sup> July 2011 was set as the date by which the works were expected to be completed and the 16<sup>th</sup> July 2011 was set as the date on which the installation of the windows and gate would take place (pleaded at paragraph 9 of the particulars of claim).

3.5 It was only on the 20<sup>th</sup> July 2011 that the defendant delivered two of the three windows, and the gate to the claimant's home. The defendant assured the claimant that the other window would be delivered later that day. The defendant installed the two windows which had been delivered, as well as the gate. During the process, the claimant observed that these items were improperly painted and the glass panes in the windows were not adequately sealed with the result that 8 glass panes fell from the frames and were broken (pleaded at paragraph 15 of the particulars of claim).

3.6 In the process of installing one of the windows, the glass from that window was removed to facilitate easy installation. The glass panes were placed one on top the other and the glass panes stuck together. Attempts to separate them resulted in the glass panes being scratched and in some instances broken. It was also observed that the glass panes which were installed in this window were not the bronze colored glass panes which had been purchased. Further, in the process of installing the second window, one of the window crabs was broken and another one

was damaged. Additionally, the handle for one part of the window was broken (pleaded at paragraphs 16-17 of the particulars of claim).

3.7 It is against this backdrop that the claimant claims the sum of \$2850 from the defendant as compensation for the cost of labor, material, 3 gallons of putty and 36 pieces of glass for a 4x6 French window (pleaded at paragraph 20 of the particulars of claim).

3.8 I turn now to an examination of the defence filed.

#### **4. THE DEFENCE**

4.1 The defendant agreed that he entered into a contract with the claimant to install 120 pieces of bronze colored glass panes into three windows and to paint said items as well as a 36x80 inch door and to install all four items at the claimant's home. The agreement was that the claimant would pay him \$3000 as a down payment and upon completion of the job he would receive a further \$1200 amounting to a total of \$4200 for the entire job (pleaded at paragraph 5 of the defence).

4.2 The defendant admitted that the claimant paid him the down payment of \$3000 (pleaded at paragraph 8 of the defence).

4.3 The defendant acknowledged that he installed two of the three windows as well as the 36x80 inch door. He also stated that one of the handles on one of the windows installed was broken (pleaded at paragraph 15 of the defence).

4.4 The defendant denied that:

- On the 20<sup>th</sup> July 2011, he assured the claimant that the third of the three windows would be delivered to the claimant's home that day (pleaded at paragraph 14 of the defence).
- The paint job on the windows and door was incomplete (pleaded at paragraph 14 of the defence).
- The application of putty on the windows was negligent (pleaded at paragraph 14 of the defence).
- The glass panes stuck together after being placed one on top the other and that attempts to separate them resulted in the glass panes being scratched and in some instances broken (pleaded at paragraph 15 of the defence).
- In the process of installing the second window one of the window crabs was broken and another was damaged (pleaded at paragraph 15 of the defence).
- The glass panes which were installed were not the bronze colored glass panes which had been purchased (pleaded at paragraph 16 of the defence).

4.5 The defendant further stated that on the 21<sup>st</sup> July 2011, the remaining putty, window panes and the 4x6 window were returned to the claimant (pleaded at paragraph 18 of the defence).

4.6 In light of the above the defendant asserted that he was not liable to the claimant for a breach of contract (pleaded at paragraph 21 of the defence).

4.7 I next set out the arguments advanced for the Court's consideration.

## **5. THE SUBMISSIONS**

5.1 The claimant argued that the defence filed amounted to a bare denial of the allegations leveled against the defendant. At no point in the defence did the defendant put forward his version of the events -by stating for instance, that the contracted works were either completed in a manner that a competent workman would have done or, that the contracted works were not completed for a specified reason.

It was submitted that since the **Petty Civil Courts Act Chap 4:21** made no provision for the striking out of a defence, reliance was therefore placed on **Part 10 of the CPR**. In this regard, it was stated that since there was non-compliance with **Part 10.5 of the CPR**, pursuant to **Part 26.2 of the CPR**, it was contended that the defence should be struck out. The claimant relied upon the case of **Thadeus Clement v. The Attorney General of Trinidad and Tobago CV2009-03208** which in turn cited **Ed Jacob, Leisl Polar (trading as “Gemini Inks”) & Verdemundo Limited v. Millennium Development Corporation Limited CV2007-1668** and **James Philip Wragg & Christopher George Scott v. Partco Group Limited & UGC Limited [2002] EWCA Civ 594** in support of his submissions.

5.2 The defendant responded by making two points. The first point was if a Court formed the view that the defence as filed was not in the prescribed form, there was no need for recourse to the **CPR** in light of the provisions of **sections 27(1) and (2) of the Petty Civil Court Act Chap 4:21** which state that “all summonses and other process” shall not be deemed invalid by the Court once it “substantially contains the prescribed information, details and particulars” and,



if same prove “insufficient or substantially defective” the Court has the power to permit the party in default to amend it.

5.3 The defendant went on to submit in response to the claimant’s arguments that if the Court was of the view that **Part 10 of the CPR** applied to the instant matter, then on the facts of the case there was no need for the Court to exercise its discretion under **Part 26.2 of the CPR** because the defence filed was not a bare denial of the allegations raised by the claimant.

5.4 This has given rise to two main issues.

## 6. **THE ISSUES**

6.1 The two issues which arise for determination by me are:

- (a) Whether the Court can rely on **section 27 of the Petty Civil Courts Act Chap 4:21** to amend the defence filed, and
- (b) Whether there has been compliance with **Part 10 of the CPR.**

## 7. (a) **WHETHER THE COURT CAN RELY ON SECTION 27 OF THE PETTY CIVIL COURTS ACT CHAP 4:21 TO AMEND THE DEFENCE FILED**

7.1 **Section 27 of the Petty Civil Courts Act Chap 4:21** states that:

“(1) All summonses and other process shall be in the prescribed form, but no process which, in the opinion of the Judge, substantially contains the prescribed information, details, and particulars shall be deemed invalid or insufficient by reason of any want of form or variation in form.

(2) Where any process is, in the opinion of the Judge, insufficient or substantially defective, the Judge may, in his discretion, on such terms (if any) as to adjournment, costs, and otherwise as he thinks fit, amend the same or permit the party in default to amend the same; but such power of amendment shall not be exercised where the Judge is of opinion that the omission or irregularity has been intentional for purpose of delay, evasion, or deception, or otherwise not in good faith”.

The defendant submitted that having regard to this provision, if the Court forms the view that the defence is “invalid or insufficient by reason of any want of form or variation in form”, then the procedure to be adopted by the Court is to allow the amendment of same unless the Court forms the view that the “omission or irregularity has been for the purpose of delay, evasion or deception or otherwise not in good faith”.

7.4 The phrase “process” is defined in **section 2 of the Petty Civil Courts Act Chap 4:21** as including:

“summons, notice, execution, summons under the Debtors Act, and any other step in any action or founded on any judgment in an action”.

It follows logically that a defence which has been filed in a Petty Civil Court matter is “any other step in any action”. That said, **section 27 of the Petty Civil Courts Act Chap 4:21** allows for the amendment of a defence once the “summons and other process” “substantially contains the prescribed information, details and particulars”.

7.5 There is no provision in the **Petty Civil Courts Act Chap 4:21** which prescribes the form that a defence should take so the format set out in **Part 10 of the CPR** becomes directly applicable. Once the form of a defence substantially conforms with the guidelines set out in **Part 10 of the CPR**, if there is “any want of form or variation of form”, same may be amended as per the terms of **section 27(2) of the Petty Civil Courts Act Chap 4:21**.

7.6 A determination of whether the defence in this matter, substantially conforms with the prescribed format and can therefore be amended if there is “any want of form or variation of form”, would therefore entail a consideration of the second issue which arises for determination in this matter. This is because if this Court finds as a fact that there has been non compliance with the prescribed format for a Defence as per **Part 10 of the CPR**, then amendment as per **section 27(2) of the Petty Civil Courts Act Chap 4:21** will not be an option that is available to the defendant in this matter.

**8. (b) WHETHER THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF PART 10 OF THE CPR**

8.1 The matters raised by the claimant in his particulars of claim were that he entered into a contract with the defendant for the defendant to install bronze colored glass into three windows and then paint and install same at the home of the claimant. It was also agreed that the defendant would paint and install a gate at the home of the claimant. The claimant was to pay to the defendant a total of \$4200 for the contacted works which were expected to be completed by the 16<sup>th</sup> July 2011.

8.2 The claimant stated that:

- The defendant actually commenced work on the 20<sup>th</sup> July 2011,
- only two of the three windows were installed,
- the bronze colored glass was never installed in the windows,
- the glass panes which were actually installed in the windows were inadequately sealed with the result that some panes fell out of the frame and broke,
- in the process of installing one of the windows, the glass from that window was removed to facilitate easy installation. The glass panes were placed one on top the other and the glass panes stuck together and attempts to separate them resulted in the glass panes being scratched and in some instances broken,
- in the process of installing the second window, one of the window crabs was broken and another one was damaged and the handle for one part of the window was broken, and
- the windows and the gate were not completely painted.

8.3 The defendant admitted that there was a contract between himself and the claimant. He agreed with the scope of works set out by the claimant as well as the contracted price for same. He also agreed that only two of the three windows as well as the gate were installed. It was also acknowledged that one of the handles on one of the windows was broken.

8.4 The defendant then denied that:

- the bronze colored glass was never installed in the windows
- the glass panes which were actually installed in the windows were inadequately sealed

- in the process of installing one of the windows, the glass from that window was removed to facilitate easy installation. Further that the glass panes were placed one on top the other and the glass panes stuck together and attempts to separate them resulted in the glass panes being scratched and in some instances broken,
- in the process of installing the second window one of the window crabs was broken and another was damaged, and
- the paint job on the windows and door was incomplete .

8.5 According to **Part 10.5 of the CPR:**

- “(1) The defendant must include in his defence a statement of all the facts on which he relies to dispute the claim against him.
- (2) Such statement must be as short as practicable.
- (3) In his defence the defendant may say-
- (a) which (if any) allegations in the claim form or statement of case he admits;
  - (b) which (if any) he denies; and
  - (c) which (if any) he neither admits nor denies, because he does not know whether they are true, but which he wishes the claimant to prove.
- (4) Where the defendant denies any of the allegations in the claim form or statement of case-
- (a) he must state his reasons for doing so; and

- (b) if he intends to prove a different version of events, from that given by the claimant, he must state his own version.
- (5) If, in relation to any allegation in the claim form or statement of case the defendant does not-
  - (a) admit or deny it; or
  - (b) put forward a different version of events, he must state each of his reasons for resisting the allegation.
- (6) The defendant must identify in or annex to the defence any document which he considers to be necessary to his defence.” (emphasis mine)

8.6 The cumulative effect of these rules was concisely stated by Hamel-Smith JA in **M.I.5 Investigations Limited v. Centurion Protective Agency Limited** CA No. 244 of 2008 at para. 7 as this:

“In respect of each allegation in a claim form or statement of case therefore there must be an admission or a denial or a request for a claimant to prove the allegation. Where there is a denial it cannot be a bare denial but it must be accompanied by the defendant’s reasons for the denial. If the defendant wishes to prove a different version of events from that given by the claimant he must state his own version. I would think that where the claimant sets out a different version of events from that set out by the claimant that can be a sufficient denial for the purposes of 10.5 (4) (a) without a specific statement of the reasons for denying the allegation. Where the defendant does not admit or deny an allegation or put forward a different version of events he must state his reasons for resisting the

allegation (see 10.5 (5)). The reasons must be sufficiently cogent to justify the incurring of costs and the expenditure of the Court's resources in having the allegation proved." (emphasis mine).

Further, since the "use of the word 'must' throughout the rule... indicates(s) that the requirements of the rules are mandatory... the court has no recourse to the overriding objective or discretion in its application"<sup>1</sup>. As such it is the understanding of this Court that the effect of **Part 10 of the CPR** and in particular **Part 10.5(4)** is that "a defendant must, by its defence, provide a comprehensive response to the claim and state its position on each relevant fact or allegation put forward in the claim in the manner required by the rules"<sup>2</sup>.

8.7 Put simply, a defendant 'must' explain why he may wish to dispute a claim and, in these circumstances as Kokaram J put it in **Thadeus Clement v. The Attorney General of Trinidad and Tobago CV2009-03208** at para 4.5, "a simple denial is not enough". The reasoning behind this approach is stated in **Zuckerman on Civil Procedure: Principles of Practice**<sup>3</sup> at page 217 as this:

"The old system of bare denials and 'holding defences' was wasteful and no longer acceptable. Today, the function of the defence is to provide a comprehensive response to the particulars of claim so that when the two documents are read together one can learn precisely which matters are in dispute".

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<sup>1</sup> Per Madam Justice Jones in **Andre Marchong & Trinidad and Tobago Electricity Commission v. Galt And Littlepage Limited CV2008-04045** at para 8.

<sup>2</sup> Per Madam Justice Jones in **Andre Marchong & Trinidad and Tobago Electricity Commission v. Galt And Littlepage Limited CV2008-04045** at para 9.

<sup>3</sup> A Zuckerman *Zuckerman on Civil Procedure: Principles of Practice*, Sweet and Maxwell Limited, 2012 at page 217 3<sup>rd</sup> ed

8.8 I have scrutinized the defence which was filed in this matter and in so doing, I was mindful of the warning issued by His Lordship Mr. Justice Devindra Rampersad in **Shane Williams Dyer v. Jermain Roachford & Marlon Dorwich CV2008-04742** at page 6 that:

“A court ought not to be burdened with the responsibility of having to engage in any extended interpretation or construction exercise in respect of pleadings. Part 10.5 of the CPR is quite clear as to the requirements and responsibilities of the... Defendant in pleading his case. The statement of facts set out in the defence ought to be clear and unequivocal as to its meaning and purport to avoid placing the opposing party in an embarrassing position in relation o the case to be met at trial. A reading of the pleading ought, at first glance, to disclose the party’s case without need for quasi voire dire proceedings for interpretation purposes”.

## **9. CONCLUSION**

9.1 With respect to the second issue before me, after considering the authorities in some detail and according the most generous interpretation that could be given to the defence which was filed in this matter, the inescapable realty is that it fails to comply with the requirements set out in **Part 10.5 of the CPR** because it amounts to a bare denial of the claim which has been made against the defendant. In my view, the submissions of the claimant are well founded. The defendant simply denied each and every allegation of shoddy workmanship which was leveled against him and gave no reasons for these denials. Furthermore, he did not even put forward a different version of the events.



9.2 I return to the first issue before me and find that I must necessary decline permission to amend as per **section 27(2) of the Petty Civil Courts Act Chap 4:21**.

9.3 The question remains as to what is to be done with a defence which fails to meet the requirements of **Part 10 of the CPR** and which cannot be amended as per **section 27(2) of the Petty Civil Courts Act Chap 4:21**. I find that the defence as it stands discloses no grounds for defending the claim and it is accordingly struck out under **Part 26.2 of the CPR**.

9.4 In arriving at this conclusion, I accept the fact that striking out a defence is a draconian step. Indeed it is the ultimate sanction. At the same time however one cannot ignore the wise counsel offered by his Lordship Mr. Justice Stollmeyer in **Ed Jacob & Leisl Polar (Trading As ‘Gemini Inks’) & Verdemundo Limited v. Millennium Development Corporation Limited CV2007-1668** where he struck out a defence for failure to comply with the requirements of **Part 10.5 of the CPR**. At page 5 of that judgment, he concluded by highlighting the stark reality that “(A)ll this serves to emphasise the almost absolute necessity to comply with the requirements of Rule 10.5 when settling a defence”.

9.5 The striking out of a defence for failure to comply with the requirements set out in **Part 10 of the CPR** does not relieve the claimant in this matter of the onus to prove his claim on a balance of probabilities. Further, the defendant is not precluded from addressing the Court on aspects of the case which in his opinion, the claimant has failed to prove. This matter is accordingly set down for trial at the earliest date that is convenient to the parties.

**10. ORDER**

For these reasons I make an order striking out the defence of Selwyn Herbert which was dated and filed on the 3<sup>rd</sup> January 2012.

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**Her Worship Magistrate Nalini Singh**

**Petty Civil Court Judge**