ST. GEORGE WEST COUNTY
PORT OF SPAIN PETTY CIVIL COURT

RULING

CITATION: Razaaq London v. Jafar Dickson, Anthony Williams & Motor One Insurance Company Limited

TITLE OF COURT: Port of Spain Petty Civil Court

FILE NO(s): No. 262 of 2012

DELIVERED ON: 18th February 2013

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

REPRESENTATION:

Mr. Sookhoo appeared for the claimant.

The defendants appeared in person.

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1.0 THE INTRODUCTION

1.1 By Ordinary Summons dated and filed the 13th June 2012, the claimant Razaaq London, commenced proceedings against the defendants Jafar Dickson, Anthony Williams and Motor One Insurance Company Limited for the sum of $9,577.00 TT as damages arising out of a motor vehicle collision which occurred on the 23rd February 2012. It was alleged by the claimant that the motor vehicle collision was caused because of the negligent manner in which Jafar Dickson drove the vehicle which belonged to Anthony Williams and was insured by Motor One Insurance Company Limited.

1.2 On the 11th January 2013, the trial into this matter commenced. The claimant was called as the first witness. The oath was administered to him and his evidence in chief was taken. Sometime after the evidence in chief of the claimant commenced, the Court suggested that the matter be adjourned to the 14th January 2013 to continue. This was done to accommodate the hearing of a number of other trials which were set to go on that day. The claimant and the defendants agreed to this course of action and the matter as accordingly adjourned to the 14th January 2013 to continue.

1.3 On the 14th January 2013, when the matter was called, the Court was informed by counsel for the Claimant Mr. Sookhoo that whilst the matter stood adjourned, the claimant and his family were threatened. Further, the claimant was now afraid for his safety and that of his family and he was not willing to return to court to continue his testimony in the matter. Against this backdrop counsel for the claimant sought to advance two submissions for the Court's consideration.

1.4 The first submission was that the defence which was filed on behalf of Jafar Dickson and Anthony Williams be struck out for failure to comply with the requirements set out in **Part 10 of the Civil Proceedings Rules of Trinidad and Tobago 1998 (hereinafter referred to as "the CPR**").

1.5 The second submission was that the evidence in chief of the complainant was not concluded so it was requested that the statement of the claimant be allowed to suffice as his evidence in the matter via the application of **Part 30 of the CPR**.

1.6 The defendants Jafar Dickson and Anthony Williams objected to both courses of action. The defendant Motor One Insurance Company Limited were served but never made an appearance in the matter.

2.0 THE ISSUES

2.1 The questions which therefore arise for my determination are:

1. Whether the defence of Jafar Dickson and Anthony Williams should be struck out on account of non compliance with **Part 10 of the CPR**, and,
2. Whether the witness statement of the claimant should be admitted pursuant to **Part 30 of the CPR**.

3.0 THE LAW

1. *Whether the defence of Jafar Dickson and Anthony Williams should be struck out on account of non compliance with Part 10 of the CPR.*

3.1 The appropriate place to start, on an examination of the sufficiency of the defence filed, is with an examination of the particulars of claim as well as the defence which were filed in this case.

3.1.1 The particulars of claim

3.1.2 The claimant set out in his particulars of claim dated and filed on the 13th June 2012 his version of the events. According to the claimant, on the 23rd February 2012, he was lawfully driving his Nissan Primera motor vehicle registration number PBO 5833 along the Laventille Road, East Dry River, in the vicinity of Mt. Zion Lane when Jafar Dickson negligently drove a Nissan Almera motor vehicle registration number PBT 8005 in the opposite direction along that same road and caused the vehicle to collide with the front of the claimant's vehicle as a result of which the claimant's vehicle was damaged (pleaded at paragraphs 1 and 2 of the particulars of claim).

3.1.3 At all material times the vehicle which was driven by Jafar Dickson was owned by Anthony Williams and insured by Motor One Insurance Company Limited (pleaded at paragraphs3 to 7 of the particulars of claim).

3.1.4 According to the particulars of negligence the claimant alleged that Jafar Dickson was negligent in the circumstances because he:

> "(a) Collided with the Claimant's car;
>
> (b) Drove on the wrong side of the road;
>
> (c) Drove into the oath of the Claimant's car;

(d) Drove too fast;

(e) Failed to keep a proper look-out in that if he had seen the Claimant's car being driven towards him, he would have stopped rather than overtake the parked cars;

(f) Failed to see the Claimant's car in sufficient time to avoid colliding with him or at all;

(g) Failed to heed the presence or approach of the Claimant's car;

(h) Failed to heed the traffic which was likely to be present upon the road and to drive with appropriate caution;

(i) Failed to stop, to slow down, or to steer, manage or to otherwise control the car in such a way as to avoid the collision".

3.1.5 The details of the claim are set out below:

PARTICULARS OF SPECIAL DAMAGES	**COST (TT$)**
PARTS AND LABOUR	8,066.00
ADJUSTER'S FEE	500.00
LOSS OF USE FOR 4 DAYS AT A RATE OF $100.00 TT PER DAY	400.00
TOTAL	**$8,966.00**

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

3.2.1 The defence

3.2.2 I think it best that I set out verbatim the defence which was dated the 26th November 2012 and filed on the 28th November 2012 on behalf of Jafar Dickson and Anthony Williams. It is this:

> "As I was heading up the road approaching the corner there was a vehicle parked on the left hand side of the road. I proceeded with caution over taking the vehicle, on the corner I notice a vehicle coming towards me.
>
> I signaled the by honking my horn, but the vehicle was still coming. His head was down, as he heard the alarm he raised his head and I tried to pull away but was too late. The vehicle came head on hitting my car and damaging my bumper.
>
> After the accident we both went to the Besson Street Police Station. After explaining the accident the officer, he stated that the driver of the vehicle was wrong, so we both decided that we would repair our own damages (this was said in front of the officer)".

3.2.3 I next set out the arguments which were advanced in respect of the question of the sufficiency of this defence.

3.3.1 The submissions

3.3.2 Counsel for the claimant argued that the defence filed amounted to a bare denial of the allegations leveled against the defendant.

3.3.3 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 **Raymond Alec Roberts v. Selwyn Herbert PCCA No. 252 of 2011** in support of his submissions.

3.3.4 The defendants were of the view that this submission should be overruled as they contended that the defence which was filed on their behalf was sufficient was did not amount to a bare denial of the allegations raised by the claimant.

3.3.5 Against this backdrop I must now decide whether the defence as filed is sufficient or should be struck out for non compliance with the rules set out in **Part 10 of the CPR.**

3.3.6 The matters raised by the claimant in his particulars of claim are essentially that the motor vehicle collision occurred because of the negligent manner in which Jafar Dickson was driving in that:

- Jafar Dickson overtook vehicles and drove on the wrong side of the road when it was not safe to do;
- In so doing he drove straight into the path of the claimant's vehicle and collided with him.

3.3.7 Jafar Dickson agreed that the motor vehicle collision occurred whilst he was in the process of over-taking but he states that:

- Before he overtook any vehicle he ensured it was safe to do so;
- The claimant was not looking at the road as he approached the vehicle driven by Jafar Dickson;
- This is why the claimant was unable to stop his vehicle before it collided with the vehicle driven by Jafar Dickson.

3.4.1 The Law

3.4.2 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)

3.4.3 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).

3.4.5 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"[1]. 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"[2].

3.4.6 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**[3] 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".

[1] Per Madam Justice Jones in **Andre Marchong & Trinidad and Tobago Electricity Commission v. Galt And Littlepage Limited CV2008-04045** at para 8.
[2] Per Madam Justice Jones in **Andre Marchong & Trinidad and Tobago Electricity Commission v. Galt And Littlepage Limited CV2008-04045** at para 9.
[3] A Zuckerman *Zuckerman on Civil Procedure: Principles of Practice,* Sweet and Maxwell Limited, 2012 at page 217 3rd ed

3.4.7 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".

3.5.1 The Finding

3.5.2 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, I find that it complies with the requirements set out in **Part 10.5 of the CPR.** In my view, the defence sets out a different version of the events which occurred on the 23rd February 2012. Further it was stated therein that the parties agreed to bear the costs of repairing their respective vehicles after being informed by the police officer at the Besson Street Police Station that the claimant was wrong in the circumstances. This in my view amounts not only to a bare denial but a proffering of an entirely different version of events to dispute liability as well as the question of quantum. In this regard the case of *Raymond Alec Roberts v. Selwyn Herbert (supra)* is distinguishable

because in that case, the Court's finding was that the defence did amount to a bare denial of the allegations.

3.5.3 For this reason I find that I must necessarily overrule the submission made by counsel for the claimant in respect of this point. I find that the defence as it stands discloses grounds for defending the claim and it will not be struck out under **Part 26.2 of the CPR.**

2. *Whether the witness statement of the claimant should be admitted pursuant to Part 30 of the CPR.*

4.0 The second submission which was made by counsel for the claimant is that the witness statement of the claimant should be treated as evidence in these proceedings as per **Part 30 of the CPR.**

4.1.1 The evidence of the claimant at the trial

4.1.2 The evidence which Razaaq London gave on the 11th January 2013 is this:

> "My name is Razaaq London. On the 2nd August 1984 I was employed as sales in Solo. I live at LP # 34 Laventille Road East Dry River Port of Spain. I own a motor vehicle PBO 5833 a Nissan Primera. On the 23rd February 2012 I was driving my vehicle along Laventille Road heading to Port of Spain. We proceeded along Laventille Road heading to Port of Spain when I observed a vehicle coming towards me on my side of the road. At the time I applied brakes. The vehicle collided with me in the vicinity of Mt. Zion.

The front of my vehicle was damaged. The bumper, bonnet and some other stuff. Jafar Dickson was the driver (The witness then identified the driver to the Court). His was an Almera. The insurance gave me $3000.00 TT plus. The estimate came up to over $11,000.00 TT. The insurance awarded me $8,000.00 TT but I only get $3,000.00 TT. I got an estimate from a garage in Barataria but I didn't receive a receipt.

I didn't get an estimate as to the length of time the repairs would take.

I had use of car.

I was unable to use the car for 4-5 days. I have no injuries. No one was in the car with me. I was insured at the time with Great Northern Insurance. I am still insured there".

4.1.3 The only evidence of the alleged negligence of Jafar Dickson is this:

"I observed a vehicle coming towards me on my side of the road. At the time I applied brakes. The vehicle collided with me in the vicinity of Mt. Zion".

Taken at its highest, this evidence as it stands, is to my mind, no different from the assertion of the Jafar Dickson and Anthony Williams that the collision occurred whilst Jafar Dickson was overtaking. So up to this point the case is taken no further than what is common ground between both parties.

4.1.4 The matters which remain to be cleared up in evidence in chief are:

- how far the claimant was from Jafar Dickson when he first saw the vehicle driven by him;
- whether the claimant was at any time prior to seeing the vehicle driven by Jafar Dickson not focused on the road and was instead looking down;
- whether he heard any horn being sounded by Jafar Dickson prior to the collision;
- whether the claimant saw Jafar Dickson do anything to avoid the collision such as try to pull away from the oath of the claimant's vehicle;
- whether there was an agreement by both drivers that each party would bear its own costs in repairing their respective vehicles.

4.2.1 The submission

4.2.2 Against this backdrop counsel for the claimant now seeks to have the claimant's witness statement be considered as further evidence in chief pursuant to **Part 30 of the CPR.**

4.2.3 Part 30.1(2) of the CPR defines hearsay evidence as a "statement made otherwise than by a person while giving oral evidence in proceedings which is tendered as evidence of the matters stated". The witness statement of Razaaq London would in my view, amount to hearsay evidence.

4.2.4 Counsel relies on the operation of **Part 30.2 of the CPR** in conjunction with **section 37 of the Evidence Act Chap 7:02** as the basis in law for the admission of the witness statement of the claimant.

4.2.5 Part 30.2 of the CPR provides that if a party wishes to rely on hearsay evidence in a trial, "which is admissible only by virtue of section 37, 39 or 40 of the Act (he) must serve on every other party a hearsay notice". From this is appears that if a party wishes to adduce hearsay evidence at a trial which falls under **sections 37, 39 or 40 of the Evidence Act Chap 7:02**, that person must serve on all other litigants a notice of his intention to do so.

4.2.6 Section 37 of the Evidence Act Chap. 7:02 reads as follows:

"**37.** (1) In any civil proceedings a statement made, whether orally or in a document or otherwise, by any person, whether called as a witness in those proceedings or not, shall, subject to this section and to Rules of Court, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person by whom the statement was made, the statement—

(a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the Court; and

(b) without prejudice to paragraph *(a)*, shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except—

(i) where before that person is called the Court allows evidence of the making of the statement to be given on behalf of that party by some other person; or

(ii) in so far as the Court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from doing so would adversely affect the intelligibility of his evidence.

(3) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it, but so however, that if the statement in question was made by a person while giving oral evidence in some other legal proceedings (whether civil or criminal), it may be proved in any manner authorised by the Court".

4.2.7 Counsel further submits that the fact that no hearsay notice was previously served on the defendants is not fatal to his application in light of **Part 30.8 of the CPR.** It provides that:

"The Court may permit a party to adduce hearsay evidence falling within sections 37, 38 and 40 of the Act even though the party seeking to adduce that evidence has-

(a) failed to serve a hearsay notice; or

(b) failed to comply with any requirement of a counter-notice served under rule 30.7".

For the reason counsel submits that nothing procedurally precludes the application at this stage for the admission into evidence of the witness statement of the claimant.

4.3.1 The law

4.3.2 The law appears to be that hearsay evidence can in certain instances be admitted in civil trials and certainly in this context, **Part 30 of the CPR** *may* be the vehicle through which the witness statement of the claimant is admitted.

4.3.3 The more pertinent matter however appears to me to be this. Were this witness statement admitted, what would be the weight that is to be attached to this type of evidence? This in my view is a legitimate concern in light of the learning in the **Halsbury's Laws of England Volume 9 (5th edition) at paragraph 807** the point is made that:

> "Hearsay evidence may very well not be of the same value as direct testimony; lack of opportunity for cross-examination, or of an oath, depreciation of the truth by repetition or embellishment, incentive to conceal or misrepresent and absence of contemporaneity may all diminish its probative effect. Regard must be had to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence in estimating the weight, if any, to be given to hearsay evidence" (emphasis mine).

Indeed Justice Nordheimer made the point in the case of **R v. Allan 64 O.R. (3d) 610 at paragraph 17** that:

"In my view, the concern ought to be less about the admissibility of hearsay evidence *per se* and more about the quality of the hearsay evidence that is offered and received. In this case, there are instances of hearsay evidence which, even if admissible, are of little assistance to the proper determination of the issues".

4.4.4 Further, at **paragraph 1042 of the Halsbury's Laws of England Volume 9 (5th edition)** it is specifically stated that:

"Any party may cross-examine any other party who gives evidence and his witnesses, and no evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross-examination" (emphasis mine).

This principle is borne out in the case of **Allen v. Allen [1894] P 248 at pages 253 to 254** where Lord Justice Lopes in delivering the judgment of the court said:

"It appears to us contrary to all rules of evidence, and opposed to natural justice, that the evidence of one party should be received as evidence against another party, without the latter having an opportunity of testing its truthfulness by cross-examination…In our judgment, no evidence given by one party affecting another party in the same litigation can be made admissible against that other party, unless there is a right to cross-examine…".

4.4.5 This is not surprising when one considers the fact that the ability to cross-examine witnesses has been elevated to a "right" of an opponent at trial. In the Canadian case of **Steel Space Construction Services Inc. v. Arbutus Meadows Investment Inc. 83 B.C.L.R. (2d)**

396, 14 C.P.C. (3d) 109 it was specifically held that at an ordinary trial there was a right to cross-examine in order that the evidence can be tested or amplified upon. It stands to reason therefore that a denial of this "right" would necessarily have far reaching consequences.

4.4.6 The problem which arises in this matter is that Jafar Dickson and Anthony London were never given the opportunity to cross-examine the claimant and this to me is the crux of the matter because, if I accede to the application to treat the witness statement of Razaaq London as evidence in this case, I would be depriving the defendants of the opportunity to cross-examine the claimant.

4.4.7 To compound matters, in the context of this case, the ultimate questions of liability and quantum can only be determined through the Court's assessment of the credibility or reliability of the claimant juxtaposed with that of Jafar Dickson and Anthony Williams. Indeed this is the core purpose of cross-examination. The importance of the function of cross-examination in the judicial process is aptly described in **Taylor on Evidence (10th edition) page 1032 at paragraph 1428**, as follows:

> "The exercise of this right [of cross-examination] is one of the most efficacious tests for the discovery of truth. By it, the situation of the witness with respect to the parties and to the subject of litigation, his interest, his motives, his inclination and prejudices, his character, his means of obtaining a correct and certain knowledge of the facts to which he bears testimony, the manner in which he has used those means, his powers of discernment, memory and description, are all fully investigated and ascertained, and submitted to the consideration of the jury,

who have an opportunity of observing his demeanour, and of determining the just value of his testimony. It is not easy for a witness, subjected to this test, to impose on a court or jury; for, however artful the fabrication of falsehood may be, it cannot embrace all the circumstances, to which a cross-examination may be extended".

Were the Court minded to accede to this limb of counsel's submission and admit the witness statement of the claimant as evidence in this case, the Court would in essence be depriving itself of the ability to assess the veracity of the claimant's evidence whilst being tested under the rigors of cross examination in a case where there is an acute dispute as to fact to be resolved. This is simply unacceptable.

4.4.8 This accords with the conclusion arrived at by her Ladyship Madam Justice Pemberton in the matter of **Jorsling E. Guide (trading as Guide's Funeral Home), Jorsling Emmanuel Guide and Enez Guide v. Richard Guide, Diane Bird and Guide Funeral Services and Crematoriun Limited Cv 2006-00214** where the matter to be determined was the weight which was to be placed on certain affidavit evidence after it was admitted pursuant to **Part 30 of the CPR** and the deponents did not present themselves in court to be cross-examined. It bears repeating the sentiments expressed by Her Ladyship (at paragraphs 50 to 55) in arriving at the conclusion that little weight would be placed on the affidavit evidence:

"[50] In deciding whether or not to exercise its discretion to permit the affidavits into evidence, the starting-point must be to understand the purpose of cross-examination. In this matter the Court is called upon to determine critical issues of fact. Its ability to do so lies in the weight to be attributed to the evidence provided

by the parties. When the factual picture painted by the parties differs, the weight that a Court would attach to the evidence before it, is usually determined during cross-examination.

[51] The significance of cross-examination can never be over-emphasized. This is the crucial stage of the trial process where evidence is tested. During cross-examination the Court has an opportunity to assess the value of the evidence based on the demeanour of the witness and the coherence and consistency in his responses.

[52] There are numerous authorities emanating from the local jurisdiction that support this contention. Primarily the Court is not mandated to accept a statement as true merely because it has not been tested by cross-examination. In essence, even if any of the abovementioned affidavits were to be accepted into evidence the Court would still have to determine the weight to be ascribed to the evidence therein.

[53] The need for cross-examination is particularly heightened when the Court is called upon to resolve issues of fact, as opposed to law. This is the task of the Court – to resolve the various claims made in this matter. The learning clearly indicates that in situations such as these, affidavit evidence, on its own, may not fully be of assistance. For these reasons any Court would require and I certainly required, the benefit of cross-examination.

[54] The result is that in the absence of cross-examination, the Court can place little or no weight on the affidavit evidence.

[55] As a result, even though I ordered the affidavits to be used as evidence-in-chief, I can attach little weight to the evidence contained therein. My reluctance to attribute any but little weight to the affidavit evidence is of course amplified in this instance where I am called upon to resolve conflicting issues of fact" (emphasis mine).

4.4.9 Similarly, in **Industrial Gases Limited v. Mitra Ramkhelawan and Sally Ramkhelawan (trading as "Optimum Energy Technologies")** H.C.A. No. 218 of 2002 Mr. Justice Tam noted that:

"The deponents… were never produced for cross-examination and it goes without saying that little, if any, weight should be placed on their respective affidavits".

4.4.10 Also illustrating this point is the case of **Alphonsus Mondesir v. The Attorney General H.C.A. No. 1903 of 1997** where witnesses were present during the trial but were not tendered for cross examination. In making the point that disputed issues of fact could not be resolved by untested testimony, Justice Sinanan observed at page 21 of the judgment that "(m)erely because an allegation is un-answered does not oblige the Court to accept it".

5.1 The Finding

5.1.1 Looked at in the round, the value of cross examination of the claimant in the context of this case necessitates that he present himself for cross-examination. Even if his witness statement were to be admitted into evidence it cannot be accorded with any measure of weight. In these circumstances it would therefore be pointless to admit the witness statement of the

claimant into evidence and so I find that I must necessarily overrule the submission made by counsel for the claimant in respect of this point.

6.0 THE ORDER

1. Both submissions of counsel for the claimant are overruled.
2. There will be no order as to costs of this application.

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Her Worship Magistrate Nalini Singh

Petty Civil Court Judge