

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

SAINT LUCIA

Claim Number: SLUHCV2020/0096

BETWEEN

MARIA CHRISTOPHE

Claimant

-and-

SAGICOR LIFE INC

Defendant

Before Master Alvin Pariagsingh

Appearances: Ms. Floreta Nicholas holding for Mr. Andre Arthur for the Claimant; and
Mr. Deale A.L. Lee for the Defendant.

2023: April 06;
July 06.

DECISION

Claimant's application for relief from sanctions.

[1] **PARIAGSINGH, M:** - Before the Court is the Claimant's application for an extension of time to comply with case management directions given by this Court on December 02, 2021. For the reasons below, the application fails and is dismissed. There being no counterclaim, the claim is accordingly struck out and stands dismissed. I will hear the parties on the issue of costs.

HISTORY OF PROCEEDINGS:

[2] This claim was commenced on February 18, 2020. A defence was filed by the Defendant on August 14, 2020. At the first case management conference on November 10, 2020 the matter was referred to mediation. After spending just over one year in mediation, it

was reported that mediation was unsuccessful. Full case management directions were given on December 02, 2021 at which the Claimant's Counsel was in attendance. The matter was adjourned to March 28, 2022.

[3] On the adjourned date, there was no appearance of the Claimant or her Attorney. The matter was adjourned to May 04, 2022. On May 04, 2022 there was again no appearance by the Claimant and an 'unless' order was made under which the claim was struck out with costs if there was no appearance by the Claimant on July 05, 2023. On July 05, 2022 the Claimant appeared without Counsel and indicated that her attorney was unwell and out of the jurisdiction. It was indicated to the Claimant that she was already in precarious position and that she ought to obtain advice and make any application so advised post haste.

[4] The matter was adjourned to October 10, 2022. On October 10, 2022 Ms. Nicholas appeared and held papers for the Claimant's Counsel. Ms. Nicholas was forthright with the Court in indicating that she was merely assisting and up to that time was not seized of a file in the matter. I made another 'unless' order. By this order unless the Claimant made an application for relief from sanctions and an extension of time by November 14, 2022 the claim was struck out.

THE APPLICATION:

[5] On November 14, 2022 the Claimant made the application now before the Court. The grounds of the application are that the Applicant is of ill health since 2016 after having undergone medical surgery and continues to be reside in New York. The Applicant is wholly reliant on her Counsel in Saint Lucia. In February 2022 her Counsel had to leave Saint Lucia due to medical reasons only to return to the State for a brief period until May 2022 when he again left and has been out of State since then. The Claimant also submitted that due to her distressed financial situation she was unable to pay for the legal services of new counsel. The affidavit in support, sworn by the Claimant, mirrors what is said in the grounds of the application. In the affidavit, the Claimant refers to a

medical report exhibited as 'M.C.1.'" however only a certificate of exhibits was filed with no medical report attached.

SUBMISSIONS:

[6] The Claimant filed no written submissions pursuant to the order of the Court made on February 14, 2023. At the hearing on April 06, 2023 I did however permit the Claimant's Counsel to make oral submissions. The Defendant filed its written submissions on March 06, 2023. In it, the Defendant contends simply that the Claimant's evidence in support of the application has not met the threshold of any of the three requirements for the grant of relief from sanctions.

[7] The Claimant in oral submissions submitted that the reason for non-compliance was a good reason, the application was made soon after and within the time stipulated by the Court in its order for the making of the application and the Claimant has generally complied with all other orders, rules and practice directions.

ANALYSIS:

[8] **Part 26 Rule 26.7 of the Civil Procedure Rules 2000 (CPR)** as amended requires that an application for relief from sanctions must be made promptly and supported by evidence on affidavit. **Rule 26.8 (2)** CPR set out the conditions to be satisfied for the grant of relief. These conditions are conjunctive and relief will not be granted if any of them are not met, per **The Attorney General v Matthews**¹.

[9] Promptitude is contextual. It is case specific. As such, the period of delay must be sufficiently explained and accounted for to enable the Court to ascertain whether the delay in applying for relief was not inordinate. It has an evidential underpinning. In the instant case, there is no proper explanation for the delay in making the application. The period between February when witness statements were due to November when the

¹ [2011] UKPC 38

application was made is not properly explained. No supporting documents were adduced to evidence any of the bald statements made regarding the delay in the making the application.

[10] There seems to have been come conflating of the issue of delay and the Court making an 'unless' order that unless the application was made by a particular date the claim would be struck out. The 'unless' order was made in the context of two adjournments after the Claimant's default was brought to her attention she still had not made this application. There was no order for the application to be made by a particular day nor was there any concession or indication by the Defendant that the promptitude of the making of the application was not being challenged. For this reason alone, the application must fail.

[11] Nevertheless, the Claimant's application would still fail on a consideration of the conjunctive factors. The intentionality of the non-compliance is an inference to be made from the evidence, per the Court of Appeal in **Nicholas v Time Bourke Holdings Ltd**². There is insufficient evidence from which this inference can be made.

[12] The reason advance by the Claimant for non-compliance is not a good reason, even if she got pass the hurdle of having no proper evidence of her reason. Ill health of the Claimant or her Counsel is not a matter of record or a matter the Court can take judicial notice of. This is a reason that must be evidenced. The Claimant has not done so. The same has to be said about Claimant's financial position.

[13] The Claimant having not adduced any proper evidence of her reason still faced the barrage of Court of Appeal authorities such as **Robinson v Sagicor**³ and **Clyne v Guyana and Trinidad Mutual Insurance Company Ltd**⁴ which reinforce the point that failure to comply due to an attorney is generally not a good reason. In the case of the illness or incapacity of counsel, a duty is owed to pass the brief without dispatch.

² GDAHCVAP2015/0029

³ SLUHCVP2013/0009

⁴ GDAHCVAP2010/0011

[14] The third requirement of the Applicant having generally complied with all other rules, practice directions or orders only need be stated to be dismissed. The Claimant has not complied with the orders of the Court or the rules. This requirement is also not satisfied.

DISPOSITION:

[15] For all these reasons, the Claimant's application filed on November 14, 2022 is dismissed. There being no counterclaim, there is no utility in keeping this matter on the list. Accordingly the claim is struck out and stands dismissed. I will hear the parties on costs.

ORDERS:

[16] It is hereby ordered that:

1. The Claimant's application filed on November 14, 2022 is dismissed;
2. The claim filed on February 18, 2020 is struck out and stands dismissed;
and
3. I will hear the parties on costs.

**Alvin Pariagsingh
Master**

By the Court,

Registrar