

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2020/0005

BETWEEN

CARMELITA SAMUEL

CLAIMANT

AND

GWENDOLYN GRANT

ALISHA GRANT

DEFENDANTS

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances: Ms. Patina Knights of counsel for the claimant.
Mrs. Kay Bacchus-Baptiste of counsel for the defendants.

2020: Nov. 18
Dec. 2

DECISION

BACKGROUND

- [1] **Henry, J.:** This is an application by Gwendolyn Grant and Alisha Grant for a stay of execution of a judgement delivered on June 18th, 2020 after summary trial in the referenced matter. The Grants are the sister and niece respectively of Carmelita Samuel. Ms. Samuel alleged that they were trespassers in her property located at Calder in the State of Saint Vincent and the Grenadines.
- [2] The Grants did not defend the claim and did not attend court on the trial date. Judgment was entered against them. They were directed to deliver possession of the property to Ms. Samuel who

was declared to be the true owner. They have filed¹ an application ('initial application') for orders setting aside the judgment; extension of time to file an Affidavit in Defence; relief from sanctions; and an order striking out the claim for failure by Ms. Samuel to file a statement of claim on the ground that this constituted non-compliance with Civil Procedure Rules 2000 ('CPR') Part 8.2.

- [3] They subsequently filed² a further application (second application') for 'stay of execution of the said order made on 18th June 2020 for eviction until further order'. About 2 weeks later¹ they filed another application headed 'Amended Notice of Application for Stay of the Proceedings in this matter' ('Amended Application'). They thereby sought a 'stay of proceedings ... pending the hearing of the Notice of Application filed herein on 3rd July 2020'. Ms. Samuel opposed the applications.

ISSUES

- [4] The issues are whether:
1. Gwendolyn Grant and Alisha Grant should be granted a stay of proceedings in this matter pending the outcome of the Notice of Application filed on July 3rd, 2020.
 2. The judgment delivered on 18th June 2020 should be set aside.
 3. Gwendolyn and Alisha Grant should be granted an extension of time to file an affidavit in defence and relief from sanctions.
 4. Carmelita Samuel's Claim should be struck out for non-compliance with CPR 8.2.

LAW AND ANALYSIS

Issue 1 – Should Gwendolyn Grant and Alisha Grant be granted a stay of proceedings in this matter pending the outcome of the Notice of Application filed on July 3rd, 2020?

- [5] The court proposes to deal with all three applications in this decision. In the circumstances, there is

¹ Filed on 2nd July 2020; Amended Notice of Application filed on 21st July 2020.

² On July 3rd 2020.

no need to grant a stay pending the outcome of the application filed on July 3rd, 2020. That application is therefore not entertained.

Issue 2 – Should the judgment delivered on 18th June 2020 be set aside?

- [6] Gwendolyn Grant and Alisha Grant outlined 17 grounds on which this part of the second application was based. Those grounds consist largely of factual assertions and are repeated in the supporting affidavit of Alisha Grant filed on July 2nd, 2020. The Grants contended that they were served with the Fixed Date Claim Form in or about March 2020. The Acknowledgment of Service reflects that they were served on 24th February 2020.
- [7] They pleaded that their legal practitioner completed the Acknowledgment of Service, asked them for certain documents to assist him with preparing a Defence, and awaited receipt of the same. They indicated that they could not find a death certificate although they thought they had at home. They represented further that they did not appreciate the urgency of the matter and therefore did not return to the lawyer's office. They pleaded that they did not know that the Defence had to be filed within 28 days of service of the Claim Form on them.
- [8] They indicated that on May 27th 2020, learned counsel Ms. Dannielle France saw that the matter was on the court list for that day and then notified learned counsel Mr. Richard Williams that the firm was listed as the defendants' legal practitioners. The Grants pleaded that learned counsel Mr. Williams responded that he had not filed an acknowledgment of service, that he was not on record for them and would so indicate to the court at the hearing. They added that on the morning of the hearing he told learned counsel Ms. France to so notify the court because he had a meeting out of the office.
- [9] The Grants outlined that learned counsel Ms. France presented that information to the court when the matter was called whereupon the court drew her attention to the acknowledgment of service bearing the signature of learned counsel Mr. Richard Williams. At that juncture Ms. France represented to the court that there was some confusion; intimated that the defendants were not told that the matter was scheduled to be heard that day; applied for an adjournment, an extension of time and relief from sanctions which were denied. The matter proceeded to summary trial in the defendants' absence and judgment was entered for Ms. Samuel.

[10] The Grants averred that they did not receive the mandatory 14 days' notice of hearing of the first hearing, pursuant to CPR 27.4. They contended that this rule can only be circumvented in urgent cases or where the parties agree to a shorter notice period. The record reveals that the hearing on May 27th was indeed the first hearing. No affidavit of service of notice of hearing on the defendants personally or on their legal practitioners was supplied or is on file. The Grants' contention that they received no notice, or the requisite notice cannot be disputed in those circumstances. It seems fair therefore to set aside the orders as prayed, notwithstanding the absence of a defence by the defendants.

[11] In view of how this matter has proceeded, it is appropriate to order that the case be transferred to another judge for determination. This is so especially since the issues between the parties have already been determined by judgment delivered on June 18th, 2020.

Issue 3 – Should Gwendolyn and Alisha Grant be granted an extension of time to file an affidavit in defence and relief from sanctions?

[12] The Court has extensive case management powers. The scheme of the CPR leans towards a trial judge exercising those powers, particularly in cases started by Fixed Date Claim Form. In light of the disposition immediately above, it is prudent to defer consideration of this issue for determination by the succeeding judicial officer. I therefore make no order on this issue but refer it for later resolution before the trial judge.

Issue 4 – Should Carmelita Samuel's Claim be struck out for non-compliance with CPR 8.2?

[13] Gwendolyn Grant and Alisha Grant anchored this part of their application in paragraph 17 of the initial application. There they pleaded that CPR Part 8 mandates that a Statement of Claim must accompany the Fixed Date Claim. They pleaded further that a Fixed Date Claim can only be issued and served without a Statement of Claim if the court gives permission, and further that no such permission was given.

[14] Ms. Samuel submitted that her affidavit supported the Fixed Date Claim Form. Ms. Samuel's affidavit was filed on 21st January 2020, the same date as the Fixed Date Claim Form. She argued that the relief claimed is vexatious and without substance.

[15] CPR 8.1(1) provides that a claimant may institute a claim by filing the claim form and statement of claim. Instead of the statement of claim, the claimant may file an affidavit or other document if a rule or practice direction permits this. Practice Direction 8³ states that a judge may direct that an affidavit or statement of claim be filed and served in addition to the claim form. It is to be noted that this is not a mandatory provision. Further, no such order was made in the case at bar.

[16] CPR 8.2 provides:

‘8.2 (1) A claim form may be issued and served **without the statement of claim or affidavit** or other document required by rule 8.1 (1) (b) or (c) only if the –
(a) claimant has included in the claim form all the information required by rules 8.6, 8.7, 8.8 and 8.9; **or**
(b) court gives permission.’ (emphasis supplied)

It clearly allows for the filing with a claim form of either an affidavit, or a statement of claim. It does not exclude the use of an affidavit without the court’s permission as submitted by the Grants.

[17] The CPR contains no express provision that an affidavit must be filed in support of a Fixed Date Claim Form in any particular case, except in relation to claims for administrative orders⁴. Significantly, the CPR prescribes the form that is to be used for initiating claims by fixed date process. It is set out as Form 2 in the Schedule to the CPR. Embodied in the Form are notices and notes to the defendant. Paragraph 4 of the notice to the defendant states:
‘A statement of claim or an affidavit giving full details of the claimant’s claim should be served on you with this claim form. If not and there is no order permitting the claimant not to serve the statement of claim or affidavit you should contact the court office immediately.’

[18] The record reveals that the Fixed Date Claim Form issued in the instant claim contained the notice referenced including that paragraph. In their acknowledgment of service filed on 5th March 2020,

³ No. 2 of 2011.

⁴ CPR 56.7.

Gwendolyn Grant and Alisha Grant represented that they had been served with an affidavit. In this regard, at paragraph 3 of the Acknowledgement of Service the question posed is 'Did you receive the claimants' Statement of Claim? On the filed acknowledgement, the response selected is 'yes' and the last 3 words are deleted and replaced by 'Affidavit' in pen. The Acknowledgment of Service gives the address for service of Williams & Williams; is signed and bears an office stamp of Williams and Williams, Barristers, Solicitors and Notaries Public.

[19] I am satisfied that while no statement of claim was filed with the Fixed Date Claim Form in the case at bar, a supporting affidavit was filed and served, receipt of which was acknowledged by Gwendolyn and Alisha Grant. The court takes judicial notice that quite often litigants who file Fixed Date Claims in the Supreme Court routinely file affidavits in support without obtaining a prior order granting permission to do so and without objection from opposing parties. This is now an established and accepted practice.

[20] I harbour no doubt that Ms. Samuel's supporting affidavit (that was served with the claim form) satisfies the requirements of CPR 8.1 and 8.2 and that no permission was needed from the court to permit service of the Fixed Date Claim Form without a statement of case are contended by the Grants. I therefore make no order striking out the Fixed Date Claim Form for non-compliance with CPR 8.2.

Costs

[21] In proceedings before the court, the successful party is as a general rule, entitled to recover her costs. This case in my opinion is one in which it is justifiable to depart from the general rule. In this regard, the court reminds itself of the provisions of CPR 64.6(6) which enjoins the court to take all circumstances into account in deciding who should pay costs. Among the matters to which the court must have regard is the conduct of the parties.

[22] The court observes that Ms. Samuel has pursued her claim fully and was present in court at each hearing whereas the defendants absented themselves except for 18th November 2020 when Ms. Alisha Grant appeared. Furthermore, by their own admission they ignored the notice on the Fixed

Date Claim Form and failed to maintain contact with their legal practitioner to ensure that the matter proceeded in an efficient and expeditious manner. The parties have each had partial success on their respective cases. It is just that no one party be made to pay costs. I therefore ordered that each party shall bear her own costs.

ORDER

[23] It is accordingly ordered:

1. Gwendolyn Grant's and Alisha Grant's application for an order striking out Carmelita Samuel's claim is dismissed
2. The judgment delivered on June 18th, 2020 is set aside.
3. Gwendolyn Grant's and Alisha Grant's application for a stay of proceedings falls away.
4. The learned Registrar shall transfer this matter for consideration and determination by another judge. Such consideration would include the application filed by Gwendolyn Grant and Alisha Grant for an extension of time to file their defence and for relief from sanctions.
5. Each party shall pay her own costs.

[24] The court is appreciative to counsel for the written submissions.

**Esco L. Henry
HIGH COURT JUDGE**

By the Court

Registrar