

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2008/0736

BETWEEN:

PRUDENCE ROBINSON

Claimant / Respondent

and

**SAGICOR GENERAL INSURANCE INC.
Formerly Barbados Fire and Commercial Insurance Company Inc.**

Defendant/ Applicant

Appearances:

**Mr Mark Maragh for the Applicant
Mrs Lydia Faisal for the Respondent**

2013 April 11th

DECISION

[1] **BELLE J:** Following a motor vehicular accident the Claimant filed a claim against the Defendant's alleged insured a motor truck driver to recover damages in respect of the bodily injury that he suffered in the accident. He was successful in the claim. In this suit he seeks to recover the damages awarded to him pursuant to section 9 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 8.02 of the Revised Laws of Saint Lucia, from the Defendant Insurance company.

[2] The Claimant therefore claimed settlement in the flowing terms:

1. The sum of \$60,962.54 in special damages
2. Interest on Special Damages \$9,265.59
3. General Damages of \$190,000.00

4. Interest on the global sum of \$250,964.54 being \$47,662.57 to July 18th 2008 and continuing at the rate of \$47.53 per day.
5. The cost awarded in Claim SLUHCV2003/0794 being \$28,000.00
Total \$335,890.70 (to 18th day of July 2008 with interest accruing at the daily rate of \$47.53)
6. The Costs of this claim.

[3] The Applicant/ Defendant filed two applications on 10th July 2009. One application sought an order that:

- (1) The Applicant be permitted to rely at trial upon the witness summary filed on 16th February 2009 for and on behalf of the Applicant.
- (2) The Applicant be granted relief from any sanctions for the late filing of the said witness summary.

[4] The Second Application sought the following orders:

- (i) The court lacks jurisdiction or should not exercise any jurisdiction if may have to determine this claim, as the cause of action herein of breach of statutory duty under the Motor Vehicles Insurance (Third Party Risks) Act, 1988 is altogether prescribed and both the right and remedy thereof are absolutely extinguished;
- (ii) Alternatively, should the Court determine that it has jurisdiction, that the Court grants the Defendant Summary Judgment against the Claimant

[5] I choose to attend to the second application first since if it succeeds it brings the matter to an end. The issue before the court on this application can be framed as a question as follows:

"Is the action against Sagicor an action for damages in delict or is the right to file such an action governed by Article 2103 of the Civil Code?"

- [6] Counsel for the Applicant / Defendant argued that the Defendant's failure to pay is a delict which is a fault or the same as a tort pursuant to Article 989D of the Civil Code and becomes prescribed in 3 years.
- [7] Counsel for the Respondent Claimant argues that Article 2103 would be applicable since the action against Sagicor is in relation to enforcement of a judgement and a judgement becomes prescribed in 30 years pursuant to Article 2103 of the Civil Code.
- [8] I am of the view that whether or not Article 2103 applies it would be anomalous for Article 2122 to apply since the enforcement of other judgements is possible after 6 years with leave of the Court pursuant to Article 42 of the CPR 2000.
- [9] Secondly I hold that section 9 of the Motor Vehicles Insurance (Third Party Risks) Act ("the Act") does not create any obligation on the part of the insurance company to pay sums of money ordered by the court. That obligation arises on the judgement. The judgment would in turn become payable based on a legal determination of validity of the insurance policy if its validity is challenged.
- [10] Indeed section 9 of the Act deals with several circumstances which may arise after a certificate of insurance is delivered to an insured person which in turn may either make it possible for any judgement to be avoided based on the insurance policy or clear the way for such payment to be made in spite of certain kinds of circumstances which prior to the entry of judgement may have made it possible for the insurance company to avoid the payment.
- [11] The obligation to pay which is created by the judgement should be distinguished from a statutory obligation in the same sense as that created by the Factories Act for example. I rely also on the fact that Section 9 (2) (b) states:
- "No sum shall be payable by any insurer under subsection (1)-
- In respect of any judgement, so long as execution thereon is stayed pending an appeal."

[12] This provision clearly means that enforcement of a judgement can be delayed indefinitely pending an appeal and thereafter enforced if the appeal goes in the insured's favour. No three year limitation could apply in those circumstances. But the obligation to pay would still be operative.

[13] I do not find it necessary to hold that there is any limitation on this payment in the circumstances of this case. The claim was filed within six years after the judgment was obtained. Indeed in my view each case would turn in its own facts.

[14] Having made this determination I then hold that the application for Summary Judgment fails on the ground of prescription since the Claim was filed within six years and certainly within thirty years.

[15] As a far as the application for the court to decline jurisdiction is concerned I agree with counsel for the Claimant that where the defendant fails to meet the conditions laid down in CPR 2000 9.7 (5) because he did not make an application under the rule within the period for filing a defence but filed the application almost one year later, he would be deemed to have accepted the court's jurisdiction.

[16] In any event the foundation of the argument in support of the application to decline jurisdiction has failed and there is no further basis for the application.

Dorina Joseph v Nora St Louis is therefore not applicable to the circumstances of this case. The said case deals with a breach of trust which is easily identified as a delict. We are not dealing with the ordinary cause of action for a breach of statutory duty here.

[17] I would agree with the Applicant that to the extent that the reply raises the issue of dishonesty it should be struck out. But these allegations would have to be particularised in relation to each relevant paragraph of the reply.

[18] Late Filing of Witness Summary

- [19] Counsel for the Respondent / Claimant argued that there is no provision for filing a witness summary late, since a witness summary is supposed to take the place of a witness statement when it is not possible to obtain the witness statement.
- [20] I do not think that this interpretation of the rules is correct. Indeed Part 29.11 applies to a witness summary in the same way that it applies to a witness statement.
- [21] Part 29.11 provides for the court not to permit the witness to give evidence unless he has explained why he failed to apply to seek relief from sanction before the trial.
- [22] Parts 26.8 and 27.8 also apply to the late filing of a witness summary. Hence the applicant must apply for relief from sanction and for extension of time in which to file his witness summary.
- [23] Counsel in her submissions in relation to the Applicant's application for relief from sanction argues that the Applicant relies on bald assertions. This is true. Indeed Counsel relies on the case of Attorney General of Antigua and Barbuda v Antigua Limited et al ANUHCv 2005/0492. In that case Harris J referred to the applicant's attempt to have him accept that there was a heavy work load which prevented that Attorney General's office from filing the relevant documents on time pursuant to the Case Management timetable. Harris J did not think that the applicant had provided sufficient evidence of the workload which created the difficulty. However I think this case is distinguishable.
- [24] When applications for relief from sanction are made, there are matters which require some elucidation such as illness, where a medical certificate or medical report addressing the time of the illness and its seriousness can be helpful. In this case the reason being given is the change of personnel in a business place. It is logical to assume that it would not be possible to have the very person who is not available to make the witness statement swear to an affidavit explaining their unavailability. The explanation would more likely than not come from the person

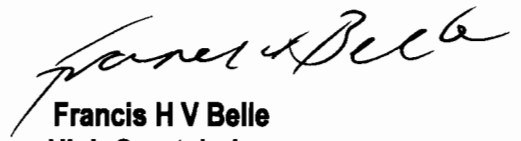
who has replaced the individual who is no longer available. In this case Ms Petrona King Insurance Administrator/ Claims Manager has signed the affidavit explaining the unavailability of Mr Pitcairn who formerly held the position of Claims Manager but who is no longer available. It would be difficult to challenge this statement.

- [25] I also agree that in a case where it is alleged that the work load has impeded the applicant's ability to meet the deadline such a scenario would also give rise to a need to explain the situation in some detail. All offices are assumed to have workloads which must be managed.
- [26] I am not of the view that the present circumstances require such detailed explanation unless there is some rebuttal of the evidence being given. In the circumstances I have no difficulty with the Applicant's explanation and I do not think that the delay was intentional.
- [27] The evidence in relation to general compliance with rules and court orders shows that there has been some non-compliance except at the time of filing a defence. However the non-compliance has been largely in relation to the case management timetable. It is noted that the Applicant has also failed to file legal submissions when required to do so. It is my view that these delays can be remedied by the payment of costs as long as the relief from sanction has been granted. In any event the court has previously granted extensions of time to file submissions.
- [28] When one considers that the trial date has previously been vacated because of an appeal which was granted it is the new trial date which must now be protected. That trial has been delayed by more than three years. However the Applicant's application, so far, does not impair any new trial date.
- [29] The other considerations raised in Part 26.8 now depend largely on the court's ability to deal with the outstanding applications and set the matter down for trial.

[30] The court will therefore grant relief from sanction to the Applicant for failing to file the witness summary on time. But the respondent is correct that the applicant must now file an application for an extension of time in which to file the witness summary.

[31] The court therefore orders as follows:

1. The application to move the court to decline jurisdiction is dismissed.
2. The application to declare the Claim prescribed is dismissed.
3. Application for summary judgement is dismissed.
4. The Application for relief from sanction for failing to file the witness summary on time is granted.
5. The Applicant is to pay the cost of the two applications in the sum of \$1500.00
6. The matter will be scheduled for further case management on 29th October 2013.


Francis H V Belle
High Court Judge