

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2010/0715

BETWEEN:

EMMA REID

Claimant

and

OWEN PETER

Defendant

Appearances:

Petra Nelson for the Claimant

Leslie Prospere for the Defendant

2012 June 11th

2012 July 4th

Decision

[1] **BELLE J:** On April 25th 2012 the Defendant Owen Peter filed an application seeking various orders. These orders were:

- (1) The Defendant/ Applicant be granted leave to file and serve Standard Disclosure in High Court Claim SLUHCV 2010/0715 within seven days after the Pre-trial Review date of 11th June, 2012.
- (2) The Defendant/Applicant be granted leave to file and serve a list of Documents in High Court Claim 2010/0715 within seven days after the Pre-trial Review date of 11th June, 2012.
- (3) The Defendant/Applicant be granted leave to file and serve the Witness Statements of Owen Peter. Petrus Desmond and Yan Joseph in High Court Claim SLUHCV 2010/0715 within seven days after the Pre-Trial review date of 11th June, 2012.
- (4) High Court claims SLUHCV2011/0760 and SLUHCV 2010/0175 be consolidated and tried together.

- (5) The Defendant/Applicant be granted leave to file and serve an Ancillary Claim Form with a Statement of Claim against St Lucia Motor and General Insurance Company Limited within seven days.
- [2] The Applicant's grounds for making the application can be summarized as follows:
- The Defendant was served with two claims in SLUHCV 2010/0715 on 24th August 2010 and SLUHCV 2011/0760 on 11th July 2011 respectively. He gave these claim forms to his lawyer with instructions to defend the suits against him. He retained counsel in the matter but his counsel failed to advise him as to the time limit for filing a number of documents in accordance with the Case Management order in Suit SLUHCV 2010/0715.
- [3] The Defendant did not hear from his lawyer for some time and was without his representation even at the Case Management Conference. After many attempts to contact his then lawyer without success the Defendant retained the firm of Gordon, Gordon & Co. to represent him in claims SLUHCV 2010/0715 and SLUHCV 2011/0760. Mr Leslie Prospere of Gordon, Gordon & co. advised the Defendant of the deadlines for Standard Disclosure and filing his List of Documents, and the time for filing his Witness Statements in claim SLUHCV2010/0715.
- [4] Mr .Prospere also advised the Defendant to apply to have claims SLUHCV2010/0715 and SLUHCV 2011/0760 consolidated. He also advised the Defendant to file an Ancillary Claim Form with Statement of Claim against the Saint Lucia Motor and General Insurance Company on the principles of breach of contract for an indemnity against any judgment for damages that the court may award against him.
- [5] At paragraph 17 of the Affidavit in support of the Notice of Application the Defendant stated that the delay in seeking the reliefs set out in his Notice of Application was not intentional. In paragraph 19 he said that he wished to avail himself of an opportunity to properly defend the claims against him. In Paragraph 20 he stated that he believed that the administration of justice shall be furthered if all the legal and factual issues arising among the parties were in this matter were properly determined by the Court.
- [6] I will address the issues of extension of time in which to comply with the case management order separately from the applications to consolidate and for leave to file an ancillary claim.
- [7] Under the rubric Case Management Timetable part 27.8 (3) of the CPR 2000 states:

A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the court, and the general rule is that the party must do so before that date

And (4) states:

A party who applies after that date must apply for (a) an extension of time; and (b) relief from any sanction to which the party has become subject under these rules or any court order.

[8] Part 26.8 (1) deals with Relief from Sanction and states:

An Application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be-

(a) Made promptly; and

(b) Supported by evidence on affidavit.

(2) The court may grant relief only if it is satisfied that –

(a) the failure to comply was not intentional;

(b) there is a good explanation for the failure; and

(c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.

(3) In considering whether to grant relief, the court must have regard to-

(a) the effect which the granting of relief or not would have on each party;

(b) the interests of the administration of justice;

(c) whether the failure to comply has been or can be remedied within a reasonable time;

(d) Whether the failure to comply was due to the party or the party's legal practitioner; and

(e) Whether the trial date or any likely trial date can still be met if relief is granted.

[9] It is common ground that the application made for extension of the case management deadlines was filed on 25th April 2012 and was not only made after the deadlines had expired but it was also made after the date ordered for further directions and orders which was 9th February 2012.

[10] The most clear-cut circumstance in which a sanction is imposed by the rules is Part 29.11 where it is stated that if a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, the witness may not be called unless the court permits ;29.11 (1).

- [11] It is clear that Part 29.11 provides a sanction for failure to comply with a case management order to file a witness statement by a certain time. Hence Part 27.8 (4) applies in relation to any variation of a case management timetable to file a witness statement. The Defendant in this case was required to apply for an extension of time, which he did and relief from sanction to which he became subject under these Rules which he did not.
- [12] The application for an extension of time in which to file a witness statement is therefore bound to fail. See Appeal No. 13 of 2007 **Wicliff Baird v David Goldgar** et al. St. Kitts & Nevis and **Kenton Collinson St. Barnard v The Attorney General** Civil Case No.0084 of 1999, Grenada. As far as the other aspects of the application for variation of the case management order are concerned there are two dates which have been breached. Firstly the Defendant breached the deadlines for making standard disclosure, 30th October, 2011 and for filing a List of Documents, 30th November, 2011 and then failed to make applications for further directions and orders by 9th February 2012.
- [13] In my view the latter date also applies to the applications for leave to file an ancillary claim and to consolidate the matter with another claim SLUHCV 2011/0760.
- [14] The Defendant says that the application was made promptly, the delay was not intentional, there would be no negative effect on the administration of justice, no effect on the trial date and the failures to comply were all as a result of the defendant's legal practitioner.
- [15] While it may have been possible to have remedied some of the failures to comply before the trial date, the defendant would not be permitted to call a witness without a witness statement at trial because he had not applied for relief from sanction.
- [16] I am aware that Part 26.1 (2) k provides for the extension of time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed. But the learned master provided in his order impliedly that that order was only available for providing extensions or further directions after 9th February 2012.
- [17] I am also aware of Part 26.9 of the CPR 2000. But this rule does not apply to a variation of a Case Management Order.

- [18] I also consider that although the overriding objective is to deal with cases justly, one cannot use that rule to avoid applying for relief from sanction in the case of the failure to file the witness statement. However the fact that the previous lawyer failed to properly represent the defendant /applicant would be a mitigating factor in the failure to comply with other orders and making the other applications for leave to file an ancillary claim and to consolidate the matter with SLUHCV 2011/0760.
- [19] In my view there would be no injustice to the other side caused by granting an extension of time in which to make standard disclosure and to file a list of documents. However the effect of the application to consolidate and to file an ancillary claim was not only caught by the February 2012 deadline, the effect of these orders would very likely upset the trial date.
- [20] A second reason for not granting leave to file an ancillary claim as was pointed out by the Claimant's counsel was that Part 18 (6) of the CPR 2000 states that the court may not give permission to file an ancillary claim after the first case management conference to any person who was a party at the time of that conference unless it is satisfied that there has been a significant change in circumstances which became known after the case management conference.
- [21] It must be noted however that the allied rule that a party may not amend a statement of case without the court's permission after the case management conference is a relaxation of the prohibition against such an amendment in the absence of changed circumstances. It is instructive that Part 20 .1 of the CPR has been amended to permit amendments after the Case Management Conference even where there may not be a change of circumstances. But no similar amendment was made to the Part 18 (6). It can only be concluded that the intention was to leave this rule as it is without any similar relaxation.
- [22] In the premises the court makes the following orders:
1. The Defendant is not permitted an extension of time to file witness statements because he has failed to seek relief from sanction and has applied for an extension of time even beyond the time for seeking further orders, set in the case management order, has expired.
 2. The Defendant is permitted to make Standard Disclosure and file a List of Documents by 20th July 2012.

3. The application to consolidate the matter with SLUHCV 2011/0760 is dismissed.
4. The application to file an Ancillary Claim is dismissed.
5. The Defendant is to pay the Claimant's costs of the application, pursuant to Part 65 of the CPR 2000.

Francis H V Belle
High Court Judge