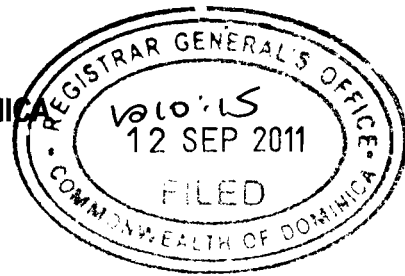


IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

DOMHCV2009/0054

[CIVIL]



BETWEEN:

LEVIE MAXIMEA

Claimant

and

Cpl. NICHOLAS GORDON

Defendants

Sgt. NATHALIE PACQUETTE

Insp. CLEVILLE MILLS

Supt. NICHOLAS GEORGE

THE CHIEF OF POLICE

THE ATTORNEY GENERAL

Before:

The Hon. Justice Brian Cottle

Appearances:

Mr. Levie Maximea Claimant in person

Mrs. Kathy Buffong-Royer for Defendants

[2011: May 27th
August 29th
September 12th]

JUDGMENT

- [1] **COTTLE J:** On 11th January 2010 the Claimant, with the leave of the court, filed an Amended Fixed Date Claim Form supported by evidence in affidavit. On 28th January 2010 the Defendants filed an Application to strike out the Claimant's Statement of Case. Because of administrative mishaps at the filing office of the Registry, the application to strike out was not listed for hearing until 28th July 2010. After hearing arguments from both sides, this court refused the application to strike out the Fixed Date Claim and ordered that the Defendants file a defence within 14 days.
- [2] The Defendants did not file any defence. Instead, on 20th August 2010, the Defendants sought the leave of the Court of Appeal to appeal the order refusing the application to strike out the claim. George Creque JA gave Leave to Appeal but did not grant a Stay of Execution of the order to file a defence.
- [3] On 11th November 2010 the appeal came up for hearing before Rawlins C.J. Edwards and Baptiste JJA. Having heard the appeal, the Court of Appeal dismissed the Defendants appeal with costs to the Claimant. It is to be noted that these costs have yet to be paid.
- [4] The Court of Appeal remitted the matter for hearing before the High Court. It came on before Stephenson – Brooks J on 20th December 2010. Despite the fact that the Defendants had still not filed any defence the learned judge made a mediation referral order. What was present before the judge was an application by the Claimant that judgment be entered in his favour for the failure of the Defendants to file any defence.
- [5] On 7th February 2011 the matter came up for the scheduled mediation session. The mediation had to be aborted because the Defendants failed to attend. They made no effort to negotiate a settlement with the Claimant. The matter was thus remitted to this Court. On 2nd March 2011 the Claimant filed the present application. He seeks judgment without trial as well as an order that damages in his favour be assessed along with an order that applicable costs be paid to him. The Defendants did not respond to the application.

[6] It came on for hearing before this court on 18th March 2011. The court was minded to grant the application which was premised on the Defendants' failure to file a defence, to attempt any negotiated settlement with the Claimant or to attend the court ordered mediation session. The court afforded the Defendants an opportunity to make written representations why the Claimant's application should not be granted. These representations were ordered to be filed within 14 days. Again the Defendants failed to comply. It was not until 8th April 2011 that written submissions were filed by Mrs. Kathy Buffong-Royer for the Defendants.

The Defendants Submissions

[7] Mrs. Buffong-Royer argues that judgment should not be entered for the Claimant. She advances several grounds

Ground 1

The Courts jurisdiction to grant judgment is limited by the Civil Procedure Rules 2000, and the court cannot exercise a discretion to enter judgment against a party outside those circumstances permitted by CPR 2000. She argues that part 12.2 prohibits the grant of default judgment where a matter is commenced by Fixed Date Claim Form. There is no admission by the Defendants to trigger judgment on admission under part 14 of the CPR. 2000. Mrs. Buffong- Royer urges that the court cannot grant summary judgment under part 15 because the Claimant has failed to establish that his case is bound to succeed on the facts.

[8] According to Mrs. Royer the Claimant's "statement of case consists of bare allegations and conclusions." Therefore, she concludes, "there is nothing to persuade the court that judgments should be entered under this rule." Additionally Mrs. Buffong-Royer argues that the nature of this claim, being a Fixed Date Claim in the nature of a constitutional motion, does not permit the court to consider summary judgment. She cites no authorities in support of these submissions.

- [9] This application is not an application for a default judgment under CPR 2000 part 12. Neither is it an application for judgment on admission under part 14. I understand the claimant to be saying to the court as follows. I filed my claim seeking relief. I have appended a supporting affidavit with myriad exhibits. The Defendants have failed to offer any defence. The Defendants have also been in flagrant disregard of all court orders designed to ensure the progress of this matter. The Defendants are the State who ought to exhibit exemplary conduct in litigation. It is on this basis the Claimant seeks relief.
- [10] As an alternative argument Mrs. Kathy Buffong-Royer argues that any inherent jurisdiction which this court has to grant the relief sought is inapplicable where it is inconsistent with CPR. 2000. She cites Texan Management Ltd et al v Pacific Electric Wire & Cable Co. Ltd PC Appeal 18 / 2009 as authority for the proposition that where the subject matter of an application is governed by the CPR it should be dealt with in accordance with the CPR. and not by exercising the court's inherent jurisdiction.
- [11] Under part 15.3 of C.P.R the court is prohibited from giving summary judgment where a matter is begun by Fixed Date Claim Form. Mrs. Buffong-Royer goes on to submit that part 26 does not permit the court to dispose of the claim summarily. Under part 26.2 the court may exercise its powers on an application "except where a rule or other enactment provides otherwise." Part 26.5 allows the court to enter judgment without trial after striking out a party's statement of case. Counsel argues that the court has not in fact struck out the Defendants statement of case.
- [12] According to Mrs. Buffong- Royer the proper course to be adopted is as indicated by the Court of Appeal in Richard Frederick v Comptroller of Customs
- "Dealing with the claim summarily under Part 27.2 and giving summary judgment under CPR 15 entails very different considerations and engages distinctly different procedures. Quite apart from the fact that summary judgment may not be obtained on a fixed date Claim form, it is similarly not obtainable in respect of proceedings for constitutional redress or I might add for proceedings or claims against the crown. Dealing with a claim summarily does not mean entering summary judgment. The claimant must still prove that he is entitled to the relief sought. Therefore a trial must be conducted albeit in a summary way."***

- [13] The question which now stands to be answered is what exercise, should the court now embark upon. The claimant has filed his claim. He has supported it with evidence on affidavit. That evidence remains unchallenged by pleadings or evidence by the defendants
- [14] In all the circumstances of this matter and proceeding under C.P.R 2000 part 27.2, I fix 21st October 2011 as the date for first hearing of this claim. No defence having been filed the court will on that date deal with this claim summarily.



Justice Brian Cottle
High Court Judge