

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCv 2011/0167

BETWEEN:

ANTON TONGE

Claimant

and

**(1) THE ATTORNEY GENERAL
(2) NORMAN PARILLON GEORGE**

Defendants

Appearances:

Ms. E. Deniscia Thomas for the Claimant
Ms. Carla Brookes-Harris for the Defendants

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2011: May 26
June 10
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RULING

[1] **MICHEL, J.:** On 14th March 2011 the Claimant, Anton Tonge, filed a fixed date claim against the Defendants, the Attorney General and Norman Parillon George, for:

1. A declaration that the right of the Claimant to personal liberty as guaranteed under section 5 of the Antigua and Barbuda Constitution Order 1981 has been breached.
2. Damages for loss of the Claimant's right to personal liberty as guaranteed under section 5 of the Antigua and Barbuda Constitution Order 1981.
3. Further and/or alternatively, damages for false imprisonment.

4. Damages for malicious prosecution of the Claimant on the charge of using threatening language contrary to section 48(a) of the Small Charges Act, Chapter 405 of the Laws of Antigua and Barbuda 1992 Revised Edition.
5. Such further or other relief as to the Court seems just.
6. Interest.
7. Costs.

[2] The Claimant's Fixed Date Claim Form was filed together with a Statement of Claim setting out the Claimant's claim. Then on 18th March 2011 an Affidavit in Support of the Fixed Date Claim was sworn to by and filed on behalf of the Claimant.

[3] The First Named Defendant, having filed an Acknowledgement of Service of the Claim Form and Statement of Claim on 30th March 2011, filed written submissions on 28th April 2011 urging the Court not to consider or allow the Statement of Claim to be part of the claim. The First Named Defendant also filed an Affidavit in Response on 29th April 2011 to the Claimant's Affidavit in Support of the Fixed Date Claim.

[4] An Affidavit in Response (with exhibits) was sworn to by and filed on behalf of the Second Named Defendant on 10th May 2011.

[5] On 26th May 2011 written submissions (with authorities) were filed on behalf of the Claimant in response to the written submissions filed on behalf of the First Named Defendant on 28th April 2011.

[6] On the said 26th May 2011 the matter came before a Judge in Chambers whereupon the following orders were made:

1. An Acknowledgement of Service to be filed on behalf of the Second Named Defendant no later than 27th May 2011.
2. The Affidavit in Response filed on behalf of the Second Named Defendant on 10th May 2011 is deemed to be properly filed.

3. Written submissions filed on behalf of the Claimant on the said 26th May are deemed to have been properly filed.
4. Leave to the Claimant until 3rd June 2011 to file an affidavit in response to the affidavits filed on behalf of the First and Second Named Defendants on 29th April and 10th May 2011.

[7] The Court also, on 26th May 2011, heard argument by Counsel on behalf of the parties, and consistent with the written submissions filed on their behalf, as to whether the Statement of Claim should remain a part of the proceedings in this case.

[8] The Court reserved its judgment and now renders same.

[9] The Claimant commenced proceedings against the Defendants by way of a Fixed Date Claim Form based on the provisions of Rule 56.7 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (the CPR) which require that an application for an administrative order (including relief under the Constitution) must be made by fixed date claim.

[10] In accordance with Rules 9.1 and 9.2 of the CPR, a defendant who desires to contest a fixed date claim must file an acknowledgement of service within 14 days containing a notice of intention to defend, unless he files a defence within the 14 day period.

[11] It is worthy of note that the form of acknowledgement of service required to be filed by a defendant to a fixed date claim asks the question: "Did you also receive the claimant's statement of claim or affidavit in support?" This would indicate that the Rules contemplate that a claimant filing a fixed date claim form may also file a statement of claim or affidavit in support. It is also worthy of note that the form for fixed date claims contained in Form 2 of the prescribed forms in the appendix to the CPR states in the 'Notice to the Defendant' that: "A statement of claim or an affidavit giving full details of the claimant's claim shall be served on you with this claim form" and states in the 'NOTES FOR DEFENDANT (FIXED DATE CLAIM)' that: "The claimant is seeking an order from the court as set out in the claim form on the basis of the facts or evidence set out in the statement of claim or affidavit served with it." It is noteworthy too that the 'NOTES FOR DEFENDANT (FIXED DATE CLAIM)'

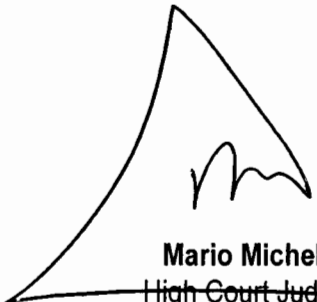
provide that if the defendant served with a fixed date claim form wishes to dispute the claim then he should file at the court office either "a defence if the claim form was accompanied by the claimant's statement of claim" or "an affidavit in answer if the claim form is accompanied by an affidavit sworn by or on behalf of the claimant." This would also indicate that the CPR contemplated that a claimant filing a fixed date claim form may file it with a statement of claim or an affidavit in support. Then there is Rule 10.2 (2) of the CPR which provides that if there is served with a fixed date claim form an affidavit instead of a statement of claim, the defendant may file an affidavit in answer instead of a defence. This too would indicate that the Rules contemplate that a claimant filing a fixed date claim form may also file a statement of claim or affidavit in support.

- [12] These references would suffice to establish that – in accordance with the CPR - a claimant can commence an action by fixed date claim form and accompany it with a statement of claim. The filing of a statement of claim along with a fixed date claim form cannot, therefore, be a basis for striking out or otherwise discarding or disregarding the statement of claim.
- [13] Counsel for the Defendants is correct when she states in her written and oral submissions that Rule 56.7 of the CPR requires a claimant who seeks constitutional redress to do so by way of a fixed date claim and to file evidence on affidavit along with the claim form. It does not, however, follow that because the claimant must file evidence on affidavit – in accordance with Rule 56.7 (3) of the CPR – that he cannot also file a statement of claim along with his fixed date claim form.
- [14] The issue which arises, however, is - how are the Court and the Defendant to treat with a statement of claim accompanying the fixed date claim form and an affidavit in support (subsequently filed) of the fixed date claim form. Both the form of acknowledgement of service of a fixed date claim form provided in the CPR and the form of the fixed date claim itself contained in the appendix to the CPR, as well as the language of Rule 10.2 (2) of the CPR, indicate that it was contemplated by the Rules that there could be either an affidavit in support of the fixed date claim form or a statement of claim filed with a fixed date claim form, but none indicated that it was contemplated that both a statement of claim and an affidavit in support would be filed by a claimant. The question which therefore arises is – how are the Court and the Defendant to deal with the fact that both were filed where either may have been contemplated.

[15] The Court does not consider that the answer to this question is that the Court should strike out, discard or disregard the statement of claim, as submitted by Counsel for the Defendants. I have already indicated that – in accordance with the CPR - there is no basis for this course of action, because a statement of claim can accompany a fixed date claim form. What the Court is minded to do though, arising from the fact that the Claimant has filed both a statement of claim accompanying his fixed date claim form and an affidavit in support of his fixed date claim, is to make further case management orders in relation to the matter so as to provide guidance and direction to the Defendants as to how to respond to the fact of both a Statement of Claim and an Affidavit in Support being filed by the Claimant in an action commenced by Fixed Date Claim Form.

[16] The Court accordingly orders that –

1. The Defendants shall file and serve a Defence to the Statement of Claim within 14 days of the date of this Order.
2. Leave is given to the Claimant to file and serve a Reply to the Defendants' Defence within 7 days of being served with the Defence.
3. The Affidavits filed by or on behalf of the parties to these proceedings shall be treated as evidence in the matter.
4. Leave is given to the parties to file further affidavit evidence within 28 days of the date of this Order.
5. The hearing of the fixed date claim shall take place on Thursday 14th July 2011 at 9 a.m.
6. All affiants are to attend the hearing on 14th July 2011 for cross examination unless excused (in writing) by the parties.



Mario Michel
High Court Judge