

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 83 OF 2006

BETWEEN:

RODNEY ADAMS

Claimant

v

**DANIEL CUMMINGS
BDS LTD**

Defendants

Appearances: Mr. A. Astaphan S.C. and Mr. G. Bollers for the Claimant
Mr. Emery Robertson for the First Defendant
Dr. G. Friday and Mr. Bayliss Frederick for the Second Defendant

2008: January 10, 11

RULING

[1] **THOM, J (In Chambers):** This is an application by the Claimant for relief from sanctions and an Application by the First Defendant to strike out the Claimant's claim.

RELIEF FROM SANCTIONS:

[2] On November 22, 2007 the Claimant filed an application pursuant to Part 26.8 of CPR 2000 for relief from sanctions for non-compliance with the Case Management Order made by Master Cheryl Mathurin on May 16, 2007. The application was supported by an affidavit of Petra John, a secretary at the law firm of Hughes & Cummings, the legal practitioners for the Claimant.

BACKGROUND

- [3] On February 22, 2006 the Claimant instituted these proceedings in which he claims inter alia general damages for slander committed on the 12th day of December 2005.
- [4] On May 22, 2006 the Defendants filed their defence.
- [5] On July 13, 2006 a Case Management Order was made by the Learned Master which required the parties to inter alia exchange and file witness statements by the 30th day of November 2006. Trial of the claim was fixed for April 10, 2007.
- [6] On 8th December 2006 the Registrar notified the parties that the Claim would be heard on October 29, 2007.
- [7] On May 16, 2007 the Learned Master made the following Order:
- “1. That the time for compliance with trial directions pursuant to the Order of Master Cottle dated July 13, 2006 is hereby extended to 14th September 2007.
 2. Further pre-trial review on 28th September 2007.
 3. Trial date set for 29th October 2007.”
- [8] On 6th November 2007 the First Defendant filed an application to strike out the Claimant’s claim for failing to comply with the Case Management Order.
- [9] On 13th November 2007 a supplemental affidavit on behalf of the First Defendant was filed in support of the application to strike.
- [10] On November 22, 2007 the Claimant made application for relief from sanctions for failure to comply with the Case Management Order.

LAW

- [11] The granting of relief from sanctions for non-compliance is dealt with in Part 26.8 of CPR 2000. The relevant part of Part 26.8 reads as follows:
- “(1) 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."

[12] An applicant for relief from sanctions must satisfy the conditions set out in sub-rule (1) and (2). Was the application made promptly? The application was made on November 22, 2007 approximately nine (9) weeks after the time stipulated in the Case Management Order of Master Mathurin for witness statements to be filed had expired and one day before the First Defendant's application to strike out the Claimant's claim was scheduled to be heard, in fact the Claimant's application was filed at 3 p.m. on the day before the First Defendant's application was scheduled to be heard. The Order of Master Mathurin was made on May 16, 2007, the witness statements were to be filed by September 14, 2007. No reason was given by the Claimants for the delay in making the application. In view of the above I find that the application was not made promptly.

[13] I also find that the Claimant has not generally complied with all other orders and directions of the Court. It is not disputed that the Claimant did not comply with the Case Management Order made by Master Cottle (as he then was) on July 13, 2006. Having filed the claim on February 22, 2006 the only other step taken by the Claimant in this matter was to file the application for relief from sanctions on the day before the application to strike out the Claim was scheduled to be heard.

[14] I find that the Claimant has failed to satisfy all of the conditions set out in Part 26.8 (1) and (2). The court is prohibited from exercising its discretion under Part 26.8 if all of the conditions are not satisfied, see **Dominica Agricultural and Industrial Development Bank v Mavis Williams** Civil Appeal No. 20 of 2005 Commonwealth of Dominica; and **The Nevis Island Administration v La Corpropriete du Navire 53, et al** Civil Appeal No. 7 of 2005 Saint Christopher and Nevis.

[15] The application is dismissed. Cost to the Defendants in the sum of \$750.00.

APPLICATION TO STRIKE OUT CLAIM:

[16] In relation to the First Defendant's application to strike out the claim pursuant to Part 26.3 (1) (a) for failure to comply with the Case Management Order, the Claimant did not file any affidavit in response. It is not disputed that the Claimant did not comply with the Case Management Order. As stated earlier since the Claimant filed the claim on February 22, 2006 the Claimant took no further steps in the matter until the eve of the scheduled date of the hearing of this application. In view of the above, I will exercise my discretion and strike out the Claimant's statement of case.

[17] It is ordered that the Claimant's statement of case is struck out. The Claimant shall pay each Defendant costs in the sum of \$3,000.00.

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Gertel Thom
HIGH COURT JUDGE