SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2008/037

BETWEEN:

[1] RICHARD FREDERICK
[2] LUCAS FREDERICK

Appellants/Claimants

and

[1] COMPTROLLER OF CUSTOMS
[2] ATTORNEY GENERAL

Respondents/Defendants

Before:

The Hon. Mr. Hugh A. Rawlins	Chief Justice
The Hon. Mde. Janice George-Creque	Justice of Appeal
The Hon. Mde. Rita Joseph-Olivetti	Justice of Appeal [Ag.]

Appearances:

Mrs. Petra Nelson, Ms. Lydia Faisal and Ms. Carol Gideon for the Appellants
Mr. Kenneth Monplaisir, Q.C and Ms. Rene St. Rose for the Respondents

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2009: March 6;
July 6.

Civil Appeal – Constitutional law – whether constitutional motions are civil proceedings – whether Comptroller of Customs has locus standi - Crown Proceedings Act Chap. 2.05 – Customs Control and Management Act Chap 15.05

Civil Procedure – fixed date claim – effect of late filing of acknowledgment of service - whether leave is required to withdraw acknowledgment of service – whether judgment may be entered in default of acknowledgment of service or filing of defence in a constitutional motion brought by fixed date claim – whether summary judgment may be entered in a constitutional motion brought by fixed date claim – summary trial – entry of judgment on a fixed date claim – whether a party may rely on the affidavit of another party to the proceedings - affidavit sworn by counsel – Eastern Caribbean Supreme Court (Saint Lucia) Act Chap. 2.01

The appellants (the claimants in the court below) filed a fixed date claim form against the Comptroller of Customs ("the Comptroller") and the Attorney General seeking redress for alleged breaches of the appellants' constitutional rights to personal liberty and protection from deprivation of property. On 16th July 2008, an acknowledgment of service was filed by the Comptroller. On 29th July 2008, an acknowledgment of service which admitted part of the claim was filed by legal practitioners for the Attorney General. The appellants filed an application for entry of judgment pursuant to CPR 27.2(3) on the ground that the acknowledgment of service filed by the Attorney General was out of time, admissions had been made and no defence had been filed. Legal practitioners for the Attorney General filed a notice of withdrawal of their acknowledgment of service of 29th July 2008 and stated that the Comptroller's acknowledgement of service was to stand unaltered. On 23rd September 2008, the Comptroller filed, out of time, an affidavit in answer to the appellants' affidavits, which was presented for filing by him "in person". On that date, legal practitioners for the Attorney General applied for the dismissal of the appellants' application for entry of judgment and relied in support on the Comptroller's acknowledgment of service and affidavit in answer. Legal practitioners for the Attorney General also sought an extension of time for filing the affidavit in answer and leave to adopt the Comptroller's affidavit as that of the Attorney General, which application was supported by the affidavit of a member of the firm acting on behalf of the Attorney General. The appellants filed an affidavit in response on 31st October 2008, which challenged the Comptroller's capacity to act and the procedural steps taken by and on behalf of the respondents. By a written decision dated 12th November 2008, the learned judge refused the application for "summary judgment" and held that no leave was required to withdraw an acknowledgment of service, the Comptroller had capacity to defend the action, and the defence of the Comptroller was effectively that of the Attorney General. The appellants have appealed against these findings.

Held: allowing the appeal in part with no order as to costs and ordering that the matter proceed to case management for the giving of directions in accordance with CPR 56.11:

1. The object of the Crown Proceedings Act Chap. 2.05 ("CPA") is to provide for the institution and maintenance of actions by and against the Crown in respect of liabilities arising in contract, tort or like actions committed by its servants or officers. The claim made in this case does not fall into those classes of civil proceedings being in the nature of a review of the exercise of the power used by a public officer (the Comptroller). Such claims for constitutional redress are not civil proceedings for the purpose of the CPA.

   Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd. [1991] 3 All ER 537, M v Home Office [1993] 3 All ER 537, Durity v Attorney General of Trinidad and Tobago [2003] 1 AC 405 and Gairy and another v the Attorney General [2002] 1 AC 167 followed. Monica Ross v Minister of Agriculture, Lands and Fisheries et al Saint Vincent and the Grenadines Claim No 255/2001 (unreported) considered and distinguished.

2. Whereas the Civil Procedure Rules 2000 ("CPR 2000") define civil proceedings to include judicial review and applications to the court under the Constitution of any member state or territory, it does not follow as a matter of principle that all proceedings brought against a public officer, such as the Comptroller, are civil proceedings for the purposes of the CPA. The CPR 2000 recognizes public law proceedings as a peculiar specie of civil proceedings which fall outside the ambit of the ordinary type of civil proceedings contemplated by the CPA and provides a regime of rules in Part 56 which are applicable only to proceedings of this kind.

3. A claim form seeking constitutional redress must be served on the Attorney General in accordance with CPR 56.9(2). This does not however preclude other persons being joined as defendants. In the instant case, the acts complained of are those of the Comptroller. Power is given to the court to direct that the Comptroller be heard whether or not he was named and served as a party to the proceedings. Having been made a defendant, there was no legal basis and otherwise no good reason for holding that the Comptroller could not be heard or could only be heard through the Attorney General.

4. An acknowledgment of service is not strictly necessary in civil proceedings of this specie, that is, administrative actions. However, a party may very well choose to file an acknowledgment of service, as in the instant case. (JOSEPH-OLIVETTI, JA [Ag.] dissenting).

5. The respondents were not barred from filing acknowledgments of service notwithstanding that the time for doing so had expired having been made before a request to enter judgment had been filed.

6. The leave of the court is required to withdraw an acknowledgment of service which has been filed.

   Christenbury Eye Centre and Another v First Fidelity Trust Limited Saint Christopher and Nevis HCVAP 2007/014 followed.

7. An admission contained in an acknowledgment of service of a non-money claim, and more specifically a claim in an administrative action made under Part 56, is not to be treated as an admission for the purposes of Part 14 entitling a party to obtain judgment on admissions pursuant to CPR 15. Further, a fixed date claim in the nature of a constitutional motion does not permit the entry of a judgment in default of acknowledgment of service or in default of a defence or for the entry of summary judgment. (JOSEPH-OLIVETTI, JA [Ag.] dissenting).

8. Dealing with a claim summarily under CPR 27.2 does not mean entering summary judgment but requires a trial of the issues between the parties to be conducted in a summary manner. The claimant must still prove that he is entitled to the relief sought.

9. The learned judge's reference to summary judgment was a phrase loosely used in respect of Part 27.2(3) of the CPR 2000 to which his mind was clearly directed in refusing the application for entry of judgment. The learned judge did not therefore err in giving case management directions for the trial of the matter.

10. A party may rely on an affidavit filed in proceedings by another party, including the opposing party, if it supports or strengthens that party's case. The Attorney General is accordingly not precluded from adopting the affidavit of the Comptroller.

11. It is most undesirable for counsel with conduct of a matter or application to swear an affidavit in that matter as it amounts to giving evidence from the bar table. The principle does not however apply in the circumstances of the case as the solicitor swearing the affidavit in support of the application to extend time to the defendants did not appear as counsel in the matter.

Casimir v Shillingford and Another (1967) 10 WIR 269 followed.

JUDGMENT

[1] GEORGE-CREQUE, J.A.: This appeal is against the decision of the learned judge made on 12th November 2008, wherein he refused to enter judgment for the claimants which was sought essentially on the grounds that the Attorney General had made admissions in his acknowledgment of service and had further failed to file a defence. The learned judge, on refusing the application, proceeded to make an order directing, in essence, case management of the matter for the purposes of trial. A brief summary of the nature and history of the matter is necessary in order to appreciate the issues that arise in this appeal.

The background

[2] On 17th June 2008, the claimants commenced an action by way of a fixed date claim form naming the Comptroller of Customs and the Attorney General as the defendants. The fixed date claim form is said to be on a constitutional motion, and seeks declarations and redress under the Constitution of Saint Lucia for alleged breaches of the claimants' constitutional rights under section 3 (protection of the right to personal liberty) and section 6 (protection from deprivation of property). The claim arises out of the alleged unlawful arrests and detention of the claimants and the seizure of the motor vehicles they had imported into the State of Saint

Lucia between 2004 and 2005, by the Comptroller of Customs. The arrests and detention by the Comptroller are said to have occurred sometime in and around June 2007. The first hearing of the claim was fixed for 25th September 2008.

[3] Annexed to the fixed date claim form was the claimants' statement of case in the form of affidavits (one sworn to by each claimant), the form of acknowledgment of service referable to a fixed date claim form, as well as a form of defence. These were served on both named defendants on 16th June 2008.

[4] On 16th July 2008, an acknowledgment of service was filed, admittedly, by Mr. Terence Leonard, who holds the office of Comptroller.[1] He gave the address for service as *'the Customs & Excise Department'.* In that acknowledgment of service he stated his intention to defend the claim and admitted no part thereof.

[5] On 29th July 2008, an acknowledgment of service was filed by Messrs. Monplaisir & Co as legal practitioners for the 'Defendant', the Attorney General. In that acknowledgment of service, the question: *"Do you intend to defend the Claim?"* has not been answered. The answer to the question: *"Do you admit the whole claim?"* is "No". The answer to the question: "*Do you admit any part of the Claim?"* is "yes" and goes on to state in the particulars: *"the unlawful detention of the vehicles, compensation, for unlawful arrest".*

[6] On 11th September 2008, the appellants filed an application for "Entry of Judgment" stated to be pursuant to CPR 27.2(3)[2] and relied on various grounds including the late acknowledgment of service, filed by the Attorney General, the admissions contained therein, and his failure to file a defence.

[7] No reference was made therein to the acknowledgment of service filed by Mr. Leonard in which he stated an intention to defend. This application was also fixed for hearing on 25th September 2008, no doubt given the appellant's reference in

[1] The acknowledgment of service carried a bare signature.
[2] CPR 27.2(3) gives the court power on a first hearing to deal with a fixed date claim summarily if the claim is not defended or it considers that the claim can be dealt with summarily.

their application to the first hearing of the claim. This application was supported by the joint affidavit of the appellants in support.

[8] Messrs. Monplaisir & Co. filed a '*Notice of withdrawal of the Acknowledgment of Service'* filed on behalf of the Attorney General and therein stated in effect that the "Acknowledgment of Service" of the Comptroller was to stand unaltered.

[9] On 23rd September 2008, Mr. Leonard filed an affidavit in answer. This affidavit is endorsed at the back as follows: *"Presented for filing by Terence Leonard Second Respondent in person whose address for service is Jeremie Street Castries".*

[10] On the same date Messrs. Monplaisir & Co. acting for "the Defendants" made application for the dismissal of the appellants' application for "entry of Judgment" in which, apart from relying on certain procedural grounds, also relied on the acknowledgment of service filed by the Comptroller and the affidavit in answer filed (admittedly late) by him. They sought also, an extension of time in respect of the late filing of the said affidavit and to adopt the Comptroller's affidavit as that of the Attorney General by way of answer.

[11] Under the heading "GROUNDS" the defendants went on to say that the claimants had filed for 'summary judgment'; that the first defendant who is a party to the claim was not served with the claimants' application for 'summary judgment' and in the case of Messrs. Monplaisir & Co. only after service of the filed affidavit (defence) of the first defendant [the Comptroller]. This application was supported by the affidavit of Ms. Marcellina John, a member of the firm of Monplaisir & Co.

[12] There followed an affidavit in response on behalf of the claimants filed on 31st October 2008. In essence, it took issue with the capacity in which Mr. Leonard appeared to be acting and generally the various steps purportedly taken and sought to be taken on behalf of the defendants and in particular the purported withdrawal of the acknowledgment of service of the Attorney General.

The judge's ruling

[13] Based on this chain of events the matter came up before the learned judge on 5th November 2008. In his written ruling given on 12th November 2008, the judge, after setting out a similar chronology of the steps taken in the proceedings, found that:

(i) No leave is required to withdraw an acknowledgment of service on the basis that the omission in CPR of a rule to this effect was intentional – *"not mere happenstance".*

(ii) Express averments of mala fides and other averments were made against the first defendant personally and therefore it was impossible to say that the first defendant had no right to respond to the claim filed against him and served on him with attached notes advising him of the consequence of failure to act.

(iii) It is impossible to find liability in the Attorney General without first finding liability in the first defendant. If the first defendant is permitted to defend – and he must be so permitted having been sued and served – that defence is effectively that of the Attorney General.

[14] The learned judge then ended, in part, as follows:

> "I therefore refuse the application by the Claimants for summary judgment. I direct that the matter be fixed for directions for the trial of this matter to be given."

The grounds of appeal

[15] The grounds of appeal though numerous are, in my view, encapsulated in the following contentions of the appellants:

(a) The Comptroller having entered an appearance and purporting to defend did so in his personal capacity and as such has no legal standing and cannot be a party to the proceedings without the fiat of the Attorney General, and accordingly his acknowledgment of service

and his defence being in his personal capacity ought not to have been allowed to stand.

(b) The acknowledgment of service filed on behalf of the Attorney General and in particular having regard to the admissions contained therein and being in conflict with the acknowledgment filed by the Comptroller could not have been withdrawn without the court's permission and no such permission was sought.

(c) The learned judge gave little or no weight to the admissions contained in the acknowledgment of service filed by the Attorney General.

(d) There was no basis or authority permitting the learned judge to treat the affidavit (defence) of the Comptroller as the defence of the Attorney General.

(e) The learned judge erred in treating the appellants' application as one for summary judgment when no such application had been sought, the application being for judgment on admissions and/or judgment pursuant to CPR 27.2(3).

(f) The learned judge failed to appreciate that the acknowledgments of service were filed out of time and the defence by way of affidavit of the Comptroller was also filed out of time and was wrong to refer the matter to case management there being no applications for extension of time to file a defence or for relief from sanctions or any such orders made.

The form of acknowledgment of service and effect of late filing

[16] It bears noting that the form of acknowledgment of service annexed and served with the claim form did not specify whether the defendants were to acknowledge service within 14 days or 28 days since the form gave on its face the period as

'14/28 days'. Similarly it stated the time for filing a defence as being '28/42 days'. This is an error commonly made by legal practitioners and which often times confuses the layman as to the time limited for acknowledging service, and for filing a defence to an action. CPR 9.3(1) specifies generally that the time limited for filing an acknowledgment of service where service is within the State is 14 days and for the defence to be filed within 28 days [CPR 10.3(1)]. It is not expected that the layman would be familiar with CPR and this was the object of the notes to the defendant contained in the acknowledgment of service – to clearly assist him in the steps he needed to take and within what time. It behooves the legal practitioner, in furthering the overriding objective of CPR, to ensure that the form of acknowledgment of service being served on a defendant assists rather than confuse.

[17] In any event, as rightly pointed out by the learned judge, a defendant may file an acknowledgment of service notwithstanding that the time for so doing has expired provided he does so before a request to enter judgment is filed. [CPR 9.3(4)]

The capacity and locus standi of Mr. Leonard.

[18] The acknowledgment of service filed on 16th July 2008, contained a bare signature and is unhelpful as it does not specify the capacity in which acknowledgment of service is made. It does not say, for example, that it is on behalf of the Comptroller. Indeed on its face it does not state who is acknowledging service. The affidavit in answer filed by Mr. Leonard on 23rd September confirms that it was his acknowledgment of service. In the affidavit he states that he is the Comptroller of Customs.

[19] The Comptroller is a creature of statute by virtue of the Customs Control and Management Act[3] ("the Act") enjoying various powers thereunder in relation to goods falling under the ambit of the Act. Section 133 of the Act[4] to my mind,

[3] Chap.15.05

[4] Sec. 133 speaks of proceedings being brought against the Government or the Comptroller on account of seizure or detention of anything liable to forfeiture.

makes it clear that the Comptroller is liable to suit. He would accordingly have the right to defend such suit as Comptroller, but not in his personal capacity. Section 129 of the Act makes it clear that suit may not be brought against a customs officer in his/her personal capacity for any acts done in pursuance of the powers granted under the Act. It follows that if it is not permissible to sue personally an officer in such circumstances then it must be equally impermissible for that officer to defend in his personal capacity. The acknowledgment of service and affidavit in answer filed by Mr. Leonard having been served on him as the Comptroller, can only be taken as having been filed by him in his capacity as Comptroller. The fact that the affidavit is endorsed as being in person, in my view, is merely with reference to not being represented by a legal practitioner.

[20] The appellants contend that the Comptroller has no locus standi either as Comptroller or in person. This, they say, is because of the operation of the Crown Proceedings Act[5] ("the CPA"). Section 13(2) of the CPA states that:

> "Civil proceedings against the Crown shall be instituted against the Attorney General."

The appellants accordingly argue that whereas the Comptroller may bring proceedings, he cannot defend proceedings brought against him. The only party who may defend, they contend, is the Attorney General. This seems untenable, in my view, and begs the question as to why the Comptroller was named as the first defendant in these proceedings if he cannot be a proper defendant. The issue that therefore arises is the applicability of the CPA to these proceedings.

Are these proceedings "civil proceedings" for the purposes of the CPA?

[21] An appropriate starting point in my view is the 'interpretation section' of the CPA. Section 2(3) of the CPA states as follows:

> "*Any reference in Parts 3 or 4 to civil proceedings by or against the Crown, or to civil proceedings to which the Crown is a party, shall be construed as including a reference to civil proceedings to which the*

[5] Laws of St. Lucia Chap.2.05

Attorney General, or any Government department, or <u>any officer of the Crown as such</u>, is a party." (my emphasis)

Section 4 of the CPA states that the office of Comptroller is a public office. It is also common ground that the Comptroller is an officer of the Crown.

[22] Section 3 of the CPA sets out the right to sue the Crown and states as follows:

RIGHT TO SUE THE CROWN

"Where any person has a claim against the Crown after the commencement of this Act, and, if this Act had not been passed, the claim might have been enforced, subject to the grant of the Governor General's fiat, <u>by petition of right,</u> (my emphasis) or might have been enforced by a proceeding provided by any statutory provision repealed by this Act, then, subject to the provisions of this Act, the claim may be enforced as of right, and without the fiat of the Governor General, by proceedings taken against the Crown for that purpose in accordance with the provisions of this Act".

Counsel for the appellants have helpfully referred to Halsbury's Laws of England[6] on what was considered a 'petition of right' which is described in the footnote to para. 111 as "the process by which property of any kind, including money or damages was recoverable from the crown."

A petition of right lay for the recovery of land as well as chattels. The money claims included claims for liquidated sums due under contracts, for unliquidated sums due under statute, for damages for breach of contract, for compensation for interference by the Crown with a subject's property and the like.[7]

[23] The term 'civil proceedings' however carries a limited definition under the CPA. Section 18(2) states as follows:

"Subject to the provisions of this section, any reference in this Part to civil proceedings against the Crown shall be construed as a reference to the following proceedings only—

(a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 2 of the Schedule;

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[6] 4th Edition (Reissue).

[7] See para. 194

(b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by an action against the Attorney General, any Government department, or any officer of the Crown as such; and

(c) all such proceedings as any person is entitled to bring against the Crown by virtue of this Act; [8]

The expression "civil proceedings by or against the Crown" shall be construed accordingly."

The types of proceedings referred to in paragraph 2 of the Schedule are:

"(i) Proceedings against Her Majesty by way of petition of right
(ii) Proceedings against Her Majesty by way of monstrans de droit."

[24] The appellants rely on the case of Monica Ross v Minister of Agriculture, Lands and Fisheries et al[9] where the learned judge struck out the claim as against the Minister and the Permanent Secretary of the Ministry of Foreign Affairs on the basis that the 'civil proceedings' in that case being *"claims for possession of property pursuant to an agreement with government and for damages for breach of contract" were in essence claims falling within the description of claims giving rise to 'petitions as of right'.*[10] The learned judge[11] accordingly held that the proceedings therein were 'civil proceedings' within the meaning of the CPA of Saint Vincent and the Grenadines and that the proper defendant was the Attorney General.

[25] In Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd[12], the Privy Council, on appeal from the Jamaica Court of Appeal, the question arose as to whether the Minister was a proper party on an application seeking leave for judicial review in respect of a decision taken by the Minister or whether the only proper party was the Attorney General by virtue of section 13 of the Crown Proceedings Act of Jamaica.[13] After referring to section 18 of the said

[8] Such other proceedings are set out in other parts of the CPA. See section 19
[9] Saint Vincent and the Grenadines Claim No. 255/2001 (unreported)
[10] See paras. 10 and 11 of the judgment.
[11] Webster J (Ag)
[12] [1991] 1 WLR 550
[13] Section 13 provided in similar terms as the section 13 of the Crown Proceedings Act of Saint Lucia

Act which it was accepted contained a restrictive definition of "civil proceedings" Lord Oliver stated at page 555 of the judgment that:

> "the Court of Appeal was correct in concluding that the proceedings were not "civil proceedings" as defined by the Crown Proceedings Act, and that the minister and not the Attorney General was the proper party to proceedings instituted for the purpose of reviewing the exercise of his statutory powers."

[26] In M v Home Office[14] Lord Woolf stated that the language of the Act (speaking of section 23 of the CPA – UK, similar to section 18) made it clear that the CPA does not generally apply to all high court proceedings and in particular, does not apply to the proceedings which would have been brought for prerogative orders. Byron CJ[15] in the case of Gairy and Another v Attorney General of Grenada[16] on appeal to this court adopted the interpretation of "civil proceedings" for the purposes of the CPA as propounded by Lord Woolf.

[27] On Gairy's appeal to the Privy Council, Lord Bingham of Cornhill in delivering the judgment at paragraph 19(2) had this to say in relation to the Constitution of Grenada:

> "The Constitution has primacy (subject to its provisions) over all other laws which, so far as inconsistent with its provisions, must yield to it. To read down its provisions so that they accord with pre-existing rules or principles is to subvert its purpose. Historic common law doctrines restricting the liability of the Crown or its amenability to suit cannot stand in the way of effective protection of fundamental rights guaranteed by the Constitution."

Later at paragraph 21 he expressed the view that:

> "Since the expression "civil proceedings" probably excludes what would now be called applications for judicial review, it is highly questionable whether it includes claims for constitutional redress … which may fairly be regarded as sui generis"

[28] In my view, Ross' case does not assist the appellants. On the facts they are quite distinguishable. Ross' claim was grounded, as the learned judge found, in

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[14] [1993] 3 All ER 537
[15] As he then was
[16] [2002] 1 AC 167, [2001] 3WLR 779

contract whereas the claim in the present case is one for redress under the Constitution. Furthermore, in Ross' case the leaned judge further opined that judicial review proceedings are not covered by the CPA and that constitutional proceedings are probably excluded as well in reliance on the cases of M v the Home Office and Gairy.

[29] In reviewing the legislative framework of the CPA it becomes obvious that the object of the CPA was to provide for the institution and maintenance of actions by and against the Crown in much the same way as between subjects (as distinct from as between a subject and the state or the Crown) in respect of liabilities arising in contract, tort or like actions committed by its servants or officers. The purpose was to take away the immunity from suit previously enjoyed to a large degree by the Crown and thereby rendering the Crown liable in respect of the acts of its officers. As earlier stated, the claim made in this case does not fall into those classes of 'civil proceedings' but is more in the nature of a review of the exercise of the power used by the Comptroller held up against the fundamental protections guaranteed by the Constitution as the benchmark for such review.

[30] Counsel for the respondents in their well reasoned written submissions on this aspect of the matter referred to the case of Durity v Attorney General of Trinidad and Tobago[17] in which the Privy Council considered whether the State Liability and Proceedings Act (the analogous Act to the CPA) is applicable to constitutional proceedings. They considered section 33 of the State Liability and Proceedings Act which echoed section 31 of the (UK) Crown Proceedings Act 1947 which provided that the state when sued, may rely upon any statutory defence which could be relied upon by the defendant "if the proceedings were between subjects". Section 26 of the CPA provides in similar terms. With reference to this provision Lord Nicholls of Birkenhead in delivering the opinion of the Board had this to say at paragraph 29:

> "If section 33 were sought to be applied to constitutional proceedings it would lead nowhere. It would achieve nothing. If

[17] [2003] 1 AC 405 (PC)

> section 33 were applied to constitutional proceedings, the defences thereby made available to the state would be those which would have been available to a defendant "if the proceedings were between subjects". But, in the case of constitutional proceedings, there are no such defences. Constitutional proceedings are not capable of being brought between subjects. Of their nature they concern claims brought by a claimant against the state in respect of the failure, or alleged failure, of the state to secure to the claimant the fundamental human rights and freedoms and protections enshrined in Chapter 1 of the Constitution."

Lord Nicholls concluded in essence that the State Liability and Proceedings Act (akin to the CPA) is not applicable to constitutional proceedings.

[31] CPR 2000 does not seek to define "civil proceedings". Rule 2.2(2) says in effect that "civil proceedings" for the purposes of the rules, include judicial review and applications to the court under the Constitution of any member state or territory under Part 56. However it does not follow as a matter of principle that all proceedings brought against a public officer, such as the Comptroller, are "civil proceedings" for the purposes of the CPA.

[32] In my view, the observation of Lord Bingham in Gairy to the effect that claims for judicial review and claims for constitutional redress may fairly be regarded as "sui generis" is apt as there is no doubt that public law proceedings are a peculiar specie of civil proceedings falling outside the ambit of ordinary types of 'civil proceedings' contemplated by the CPA. To my mind, CPR 2000 recognizes this peculiar specie of civil proceedings by providing a regime of rules in Part 56 which are applicable only to proceedings of this kind. For example it sets out, who is to be served;[18] the time within which service must be effected before the first hearing of the claim;[19] and requires the claimant to file an affidavit giving certain particulars as to the defendants and service at least 7 days before the first hearing[20]. When compared with the general rules relating to fixed date claims, one distinction which becomes readily apparent is the mandatory nature of the filing of an affidavit as

[18] CPR 56.9(2)
[19] CPR 56.9(1)
[20] CPR 56.9(4)

required by CPR 56.9(4) whereas under the general rules, such an affidavit need only be filed where the defendant has failed to acknowledge service.[21]

[33] Another peculiar feature appears at CPR 56.11 dealing with the first hearing. Under this rule, although the court's general case management powers at a first hearing are preserved; it goes further and gives the court additional powers. For example, the judge is empowered to allow any person or body appearing to have a sufficient interest in the subject matter to be heard whether or not served with the claim form as well as direct the manner in which such person or body may be heard.

[34] These specific provisions are clearly designed, in my view, to achieve a basic objective - that of ensuring the widest possible public participation, where warranted, in a matter involving public law considerations. Once such proceedings are viewed and placed in their proper context under CPR the argument as to whether the Attorney General alone can be a proper party loses force. By then, it ought to be readily apparent that the CPA has no applicability in such proceedings. What is clear is that a claim form seeking constitutional relief must be served on the Attorney General[22]. This however does not preclude other persons being joined as defendants. That is also clear from the general tenor of CPR 56. The case law of this jurisdiction is replete with such examples.[23] In the instant case the acts complained of are those of the Comptroller. Even if the Comptroller was not named and served as a party, power is given to the court to direct that he be heard. However, he has been made a defendant, in my view quite rightly, by the appellants. What is not right however is for the appellants to say: 'as Comptroller, he cannot be heard or that he can be heard only through the Attorney General'. There is simply no legal basis and less so good reason in

[21] See CPR 27.2(7)
[22] CPR 56.9(2)
[23] Asot Michael v The Attorney General and the Director of ONDCP and the Commissioner of Police HCVAP 2008/019, Bernard Richards et al v The Honourable Attorney General et al Civil Appeal No. 1 of 1992, Dolittle's Limited v The Attorney General and Valence Joseph Civil Appeal No. 5 of 2002

these proceedings as framed, for the imposition of such a restriction. This ground of appeal accordingly fails and I would dismiss it.

CPR 56 – Acknowledgment of Service

[35] After service of an administrative claim, rule 56 .10 says that any evidence filed in answer must be by affidavit and then applies the provisions of Part 10 (defence) to that affidavit. I have already alluded to the mandatory provisions contained in 56.9(4) for the filing of an affidavit by the claimant not less than seven days before the date fixed for the first hearing setting out the names and addresses of all defendants served, with details of the dates and places of service, as well as a statement regarding any defendants not served and the reason for lack of service. As I have pointed out above, the filing of an acknowledgment of service does not relieve the claimant of the duty to comply with this requirement. When these provisions are considered together with the wider powers of the judge set out in CPR 56.9(5) and 56.11 in the round, the irresistible conclusion to which one is drawn is that an acknowledgment of service is not strictly necessary in civil proceedings of this specie.

[36] This is not to be taken to mean that the filing of an acknowledgment of service in respect of this specie of claim is prohibited. A party may very well choose to file an acknowledgment of service. Rather the point being made is that an acknowledgment of service filed in this type of proceeding does not serve the same purpose as an acknowledgment filed pursuant to CPR 9. CPR 9, which regulates the procedure for acknowledgment of service of the ordinary civil claims (even for the purposes of CPA to which the Attorney General may be a party – for example, in tort or contract), is clearly designed to deal with disputes as if between private subjects where the focus is on evincing an intention to contest the proceedings so as to avoid judgment in default being entered against such defendant. In administrative actions, the default procedure under Part 9 is simply not triggered. The question of entry of a default judgment does not arise.

[37] In contradistinction, CPR 56 puts the focus not on acknowledgment of service but rather on the claimant proving service of the claim on interested or affected persons. In addition, it reserves to the court the further power [CPR 56.9(5)] to cause service to be effected on any other person who may not be a party to the proceedings but who the court considers should be served. The rationale, in my view, is the clear recognition that constitutional proceedings and judicial review proceedings are not "civil proceedings" properly so-called.

[38] In the instant case however, both defendants filed acknowledgments of service. Moreover, they conflicted with each other. The acknowledgment of service filed on behalf of the Attorney General was withdrawn. The question as to whether an acknowledgment of service, having been filed, can be withdrawn without the leave of the court, must be addressed.

The withdrawal of the acknowledgment of service filed on behalf of the Attorney General

[39] As the learned judge rightly pointed out, under the rules in force prior to CPR 2000, leave was required to withdraw an "Entry of Appearance". CPR 9 deals with acknowledgment of service in which one states his/her intention to defend or not. However, having filed such an acknowledgment, CPR is silent as to whether, an acknowledgment of service can be withdrawn. The rules in effect in the UK require that leave of the court be obtained for withdrawal of an acknowledgment of service.[24] A novel feature of CPR 2000 compared to the earlier rules is the provision that a defendant need not file an acknowledgment of service if a defence is filed within the time limited for acknowledging service. This is also the case in the UK.[25] The act of filing a conditional appearance is no longer a feature of civil procedure under CPR. However, filing of an acknowledgment of service is not *ipso facto* a submission to jurisdiction. Indeed, a party who wishes to dispute the court's jurisdiction is required to file an acknowledgment of service giving notice of intention to defend.

[24] UK 2008 10.PD 5
[25] [See UK 2008 10.1(3)].

[40] What then is the prejudice where a party withdraws an acknowledgment of service without permission? To my mind, this can very well leave the claimant confused as to the basis for withdrawal and thus the loss of an opportunity to the claimant and the court to test whether it was proper in the circumstances. This is all the more so, in respect of a money claim, where the acknowledgment of service may contain an admission of the claim. A withdrawal of the acknowledgment containing that admission[26] without more could cause serious prejudice to the claimant. The instant case also affords a ready example, where the acknowledgments of service are in conflict – one giving notice of intention to defend and the other containing admissions of the very matters the other seeks to defend.

[41] In my view, the silence of CPR 2000 must be treated as an inadvertent omission as it could not be intended to lead to such an undesirable result. I agree with counsel for the appellants that this silence creates a lacuna in our procedure which must be cured by invoking section 11 of the Eastern Caribbean Supreme Court (Saint Lucia) Act[27] and importing into our rules the relevant provision of the UK rules governing withdrawal of an acknowledgment of service. The court has sanctioned this approach to CPR in Christenbury Eye Centre et al. v First Fidelity Trust Limited et al[28]. Accordingly, an acknowledgment of service once filed, may not be withdrawn without the court's permission. This ground of appeal therefore succeeds, in my view, and I would allow it.

The admissions contained in the acknowledgment of service

[42] It is to be noted firstly, that the acknowledgment of service does not purport to admit the whole of the claim. Secondly, this is not a claim for money. CPR 14.1 (1) and (2) says in effect that a party may admit the truth of the whole or part of another party's case by notice in writing *('such as in a statement of case or by letter').* These must be construed as examples of notices in writing. An

[26] It is worthwhile also to note that CPR is silent on the question of whether an admission may be withdrawn without permission. By contrast see UK provision CPR 2008 14 PD.7
[27] Chap. 2.01
[28] HCVAP 2007/014 (St. Christopher and Nevis – unreported}

acknowledgment of service however is not included in the definition of "statement of case" under CPR 2000. The appellants argue however, that the acknowledgment of service is a notice and it is in writing and accordingly suffices for the purposes of sub rules (1) and (2) of Part 14.1. However, in order to arrive at a true construction of sub-rules (1) and (2), sub–rules (3) and (4) must be considered. They state, in effect, that a defendant may admit the whole or part of a claim for money (*my emphasis)* in accordance with rules 14.6 and 14.7, respectively, by filing an acknowledgment of service containing the admission. *(my emphasis). Does* the fact that CPR 14.1(3) specifically provides that in respect of a money claim a party may make an admission in his acknowledgment of service mean that an admission contained in an acknowledgment of service in respect of any other type of claim may not be treated as an admission?

[43] In my view, when one considers the types of proceedings which may form the subject matter of various claims, in particular those forming the subject of a fixed date claim, the only reasonable construction which may be placed on sub-rules (1) and (2) is that it is not intended that an admission contained in an acknowledgment of service of a non-money claim is to be treated as an admission for the purposes of Part 14 entitling a party to obtain judgment on admissions. That is all the more so in the peculiar context of Part 56 in respect of administrative proceedings for the reasons given above.

The application for Judgment based on the admissions and failure to file an acknowledgment of service and failure to file a defence

[44] The nature of this claim being a fixed date claim in the nature of a constitutional motion does not permit the entry of a judgment in default of acknowledgment of service or in default of filing a defence[29]. Accordingly, even in the absence of an acknowledgment of service or of defences by either defendant, judgment could not

[29] CPR 12.2

be obtained by use of the default procedure. Summary judgment is also unavailable on a fixed date claim.[30]

[45] I have already concluded that the admissions in the acknowledgment of service in this type of claim does not suffice as a notice in writing on which one can rely for obtaining judgment on admissions pursuant to CPR 15. The appellants clearly were not relying on CPR Part 15 for the Entry of Judgment but in essence were asking the judge to exercise his discretion in respect of his case management powers and enter judgment pursuant to CPR 27.2, which deals with the first hearing of fixed date claims in Part 56 proceedings.

[46] It does not appear that anyone directed their minds to CPR Part 15 (Judgment on admissions) or indeed to CPR 56.11 which specifically governs the first hearing of a fixed date claim in respect of an administrative action. No doubt this is where the confusion crept in with regard to the question whether the appellants had sought summary judgment as distinct from the request that the judge deal with the claim summarily as contemplated under CPR 27.2 where the claim is not defended. Dealing with a 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 nor, I might add for proceedings or claims against the Crown[31]. 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.

[47] Unfortunately this misdescription of the appellants' application for 'Entry of Judgment' and the resulting confusion carried over to the learned judge in concluding as he did at paragraph 29 of his decision as quoted above. I am satisfied however, that this was not a reference to summary judgment as provided

[30] CPR 15.3
[31] See CPR 15.3 (d) (i) and (v)

for under Part 15 but was a phrase loosely used in respect of part 27.2(3) to which his mind was clearly focused, which speaks of dealing with the claim 'summarily' on the first hearing.

The adoption of the affidavit of Mr. Leonard as the defence of the Attorney General

[48] At paragraph 28 of his judgment the learned judge determined that it would be quite impossible to find liability in the Attorney General unless liability is first found in the Comptroller and in the absence of any assertion that the Comptroller was not acting in the course of his duties then the defence of the Comptroller is effectively that of the Attorney General. There is no provision in CPR 2000 which precludes a party from relying on an affidavit filed in proceedings by another party if it suits their purposes. Indeed reliance may be placed on the affidavit of an opposing party if it supports or strengthens that party's case. In the circumstances of this case it is difficult to envisage the Attorney General putting forward a case other than that of the Comptroller. There is therefore no merit in this ground of appeal.

The affidavit sworn by counsel

[49] It is well settled and accepted that it is most undesirable for counsel with conduct of a matter or application to swear an affidavit in that matter for the reason given by Lewis CJ in Casimir v Shillingford and Pinard[32]. In common parlance it amounts to giving evidence from the bar table – an unacceptable and wholly inappropriate practice. Having so stated however, it is not applicable to the current circumstances since the solicitor swearing the affidavit in support of the application to extend time to the defendants did not appear as counsel in the matter. The other criticism leveled at the solicitor as to her authority from the Attorney General to so do is unjustified as it is open to the Attorney General in any cause or matter, to instruct a solicitor or counsel of his choice without a party seeking to peer behind such choice.

[32] (1967) 10 WIR 269

[50] It is quite difficult to reconcile how an administrative claim of this nature attracting specific considerations and wider powers of the judge, for the purposes intended, could give way to the more general provisions allowing for entry of judgment in a summary way as applied for by the appellants. The learned judge in the exercise of his discretion obviously allowed the defendants the extension of time for making answer to the claim in the form of the affidavit of the first defendant. Accordingly, in my view, the learned judge arrived at the right conclusion in refusing the appellants' application for entry of judgment and ordering case management albeit for the wrong reasons.

Conclusion

[51] For the foregoing reasons the appeal is allowed in part only to the extent that the acknowledgment of service filed on behalf of the Attorney General shall be treated as not having been withdrawn since the court's permission to do so was neither sought nor granted. In all other respects the appeal is dismissed.

[52] It is further directed that the matter proceed to case management for the giving of directions in accordance with CPR 56.11.

[53] There shall be no order as to costs.

Janice George-Creque
Justice of Appeal

[54] JOSEPH-OLIVETTI, J.A. [AG.] dissenting: In June 2007, the Comptroller of Customs of the State of Saint Lucia seized certain motor vehicles belonging to Mr. Richard Frederick and Mr. Lucas Frederick ("the Fredericks") which they had imported into the State between 2004 and 2005 and had the Fredericks detained for alleged infringements of the customs laws. The Fredericks were aggrieved and filed an action for constitutional redress against both the Comptroller and the Attorney General which has culminated in this appeal. To my mind, the central issues in this case, coming by way of appeal from the decision of Cottle J, concern

whether an acknowledgment of service filed in an action brought by way of fixed date claim form can be withdrawn without leave of the court and if not, the weight, if any, to be given to the statements contained in it.

Procedural History and Factual background

[55] I would not add to the length of this judgment by repeating the procedural history and facts of this case which have been fully and carefully recited in the judgment of my learned colleague. However, for the purposes of this judgment the following should be noted. The Fredericks began this action by way of a fixed date claim form for constitutional redress. They cited the Comptroller of Customs and the Attorney General as defendants. Unusually, the Comptroller apparently acted in person whilst the Attorney General retained lawyers, Messrs. Monplaisir & Co. ("Monplaisir"). Monplaisir filed an acknowledgment of service in which certain statements were made and then they purported to withdraw it by filing written notice after the Fredericks had applied for judgment based on those statements. They filed no defence within the time limited for so doing under the Civil Procedure Rules 2000 ("CPR 2000") but sought leave to extend the time for filing a defence and to adopt the defence of the Comptroller which he had filed late. The decision appealed against was taken at the first hearing. Essentially, the learned trial judge refused to give judgment as against the Crown, allowed the Attorney General to rely on the Comptroller's defence and gave case management directions for a trial.

Issues

[56] Again, the main issues have been stated by my learned colleague in paragraph 15 of her judgment. I will go directly to those issues which I consider to be the central issues. Those are, issue (b) which in essence is whether Monplaisir could withdraw the acknowledgment of service without the court's permission and issue (c) the weight if any, to be given to the statements contained in the acknowledgment of service filed by Monplaisir on behalf of the Attorney General.

Could Messrs. Monplaisir & Co. withdraw the acknowledgment of service without the court's permission?

[57] The short argument on behalf of the Attorney General is that no permission was needed as CPR 2000 did not so provide and that therefore this was a deliberate decision and not an omission by the framers of CPR 2000. The Fredericks' counter was that this was an inadvertent omission and that where there is a lacuna in CPR 2000, the court must apply the English practice and procedure.

Discussion

[58] The learned trial judge correctly noted that under the RSC 1970 (the rules of practice and procedure in force prior to CPR 2000) leave was required to withdraw an "Entry of Appearance" which is now replaced by the acknowledgment of service and that CPR 2000 makes no similar provision. The question then is whether this was a deliberate decision meaning that no leave was required, or an inadvertent omission meaning that we should look to the English practice and procedure for guidance.

[59] A closer examination of the provisions governing acknowledgment of service and the institution of proceedings would enable us to determine the true nature and effect of an acknowledgment of service and in particular whether they apply to the fixed date claim form procedure and to claims which fall within Rule 56 (administrative law) which rule, as 56.1(1) makes clear, applies to claims for relief under the Constitution of any member state or territory. This will then throw light on whether CPR 2000's silence on withdrawal of an acknowledgment of service is a deliberate decision or an inadvertent omission.

[60] CPR 2000 prescribes two methods for bringing claims - by use of a claim form or a fixed date claim form, that is "a claim form in Form 2 upon which there is stated a date, time and place for the first hearing of the claim"[33]. The usual

[33] See CPR 2.4

mode of commencing a claim is by way of a claim form. However, a fixed date claim form is to be used in the particular circumstances provided for in CPR 8.1(5). The rationale for this procedural divide is not readily apparent and has often led to confusion although one can discern from CPR 2000 that, claims brought by way of fixed date claim form are meant to be put on a fast track. This apparently seldom happens in practice as I understand that in some jurisdictions litigants have to wait for as long as three or four months before they can have a first hearing date before a judge as is required by this procedure.

[61] To state the obvious, from the definitions of "claim form" and "fixed date claim form" in CPR 2000 it is readily apparent that a fixed date claim form falls within the broader category of claim form. And, having regard to the general tenor of CPR 2000, it is abundantly clear that whatever the method utilized to commence an action, service of process on the defendant is necessary in order to progress the action. And that once process has been served each party has a course he or she should take to progress or participate in the action.

[62] The first obligation on a defendant in any action, however commenced, is to enter an acknowledgment of service and a defence, or just a defence. This is clear from Part 9 which deals with acknowledgment of service and which makes it obvious that an acknowledgment of service can be made in respect of all claims, however instituted. To put the matter beyond doubt, Form 4:A is a prescribed form of acknowledgment of service for use with a fixed date claim form. That the provisions on acknowledgment of service apply to fixed date claim forms is also borne out by the Notes to Defendant in the prescribed form of Fixed Date Claim Form, CPR 27.2 and the practice which has been followed by practitioners of filing an acknowledgment of service to a fixed date claim form.

[63] The Notes to Defendant in the prescribed form of fixed date claim form stipulate that the defendant should complete and return the form of acknowledgment of service to the court office within 14 or 28 days if he admits or disputes the claim[34].

[34] See Form 2

Also of importance is CPR 27.2 which deals with the first hearing of claims filed by way of fixed date claim forms. It is to be noted that Part 27 of the CPR 2000 is applicable to a claim for administrative orders[35] which is a claim which must be brought by way of fixed date claim.

[64] CPR 27.2(7) provides:

> "Unless the defendant files an acknowledgment of service the claimant must file evidence on affidavit of service of the claim form and the relevant documents specified in rule 5.2(3) at least 7 days before the first hearing" [My Emphasis]

This clearly contemplates that a defendant to a claim begun by way of fixed date claim form can file an acknowledgment of service if he/she so chooses.

[65] The practice which has been followed, as illustrated by this case, is that an acknowledgment of service form is served with the fixed date claim form. To my mind this is the proper course as the filing of an acknowledgment of service is the first opportunity a defendant has to indicate whether he or she is going to defend the matter or participate in it at all. Thus, to my mind it is beyond doubt that an acknowledgment of service form must be served with a claim be it claim form or fixed date claim form.

[66] With respect to administrative matters, the rules specify that a claimant must file an affidavit showing the names and addresses of all the defendants who have been served before he can progress the matter[36]. This rule does not mean that an acknowledgment of service is thereby rendered superfluous or that a defendant in an administrative action cannot file an acknowledgment of service if he/she chooses. The obligation to enter an acknowledgment of service is that of the defendant's and the obligation to prove service is that of the claimant's. The two obligations cannot be confused or the one substituted for the other. Further, CPR 56.10 requires that a defendant file an affidavit in answer to a claim for an administrative order and not a document termed defence. Again, this cannot be

[35] See CPR 56.11(1)
[36] See CPR 56.9(4)

read as dispensing with an acknowledgment of service as an affidavit in answer is the required mode in which the defence or evidence in response is usually given in claims brought by way of fixed date claim form which is accompanied by an affidavit sworn by or on behalf of the claimant[37]. It therefore follows that a defendant is entitled to file an acknowledgment of service in an action begun by way of fixed date claim form which includes an administrative action and that if he or she opts to do so then due regard must be had to it.

[67] The prescribed form of acknowledgment of service itself makes provision for several important matters. For example, a defendant can admit a part of or the entire claim in the acknowledgment of service, indicate whether he/she is acting in person or through lawyers and his address for service. And, if lawyers sign an acknowledgment of service, the court regards them as being on record and they cannot withdraw without leave[38]. If, despite these provisions, one can withdraw an acknowledgment of service or amend it willy-nilly without leave of court then what is the point of such provisions?

[68] Having regard to the purpose of an acknowledgment of service, namely to indicate to the court at the earliest opportunity whether one wishes to defend the claim in full or in part or not at all and the other matters that such an acknowledgment is intended to contain, it is pellucid, in my view, that one cannot withdraw an acknowledgment at one's whim and fancy and that the framers of CPR 2000 inadvertently omitted to address the subject of withdrawal.

[69] In this situation then, one must look for guidance to the English practice and procedure. This is the course indicated by section 11 of the Eastern Caribbean Supreme Court (Saint Lucia) Act Cap. 2.01 and endorsed by this Court in Christenbury Eye Center and Anr. v First Fidelity Trust Limited.[39] The rules in England provide that leave of the court must be obtained to withdraw or amend an

[37] See Notes to Defendant in Form 2 of the Prescribed Forms - Appendix to CPR 2000
[38] See CPR 63
[39] HCVAP 2007/014 (Saint Christopher and Nevis) - unreported

acknowledgment of service[40], The Practice Direction at paragraph 5.5 further states that an application under paragraph 5.4 must be made in accordance with Part 23[41] and supported by evidence.

[70] Accordingly, Monplaisir required leave to withdraw the acknowledgment of service. They did not seek permission and so did not obtain leave. Therefore, in my view, this ground of appeal succeeds with the usual consequences. Having so found, it means that the acknowledgment of service stands and the question then is what is the nature of the statements made therein and what weight, if any, must be given to them.

Nature of and weight, if any, to be given to the statements made in the acknowledgment of service

[71] Now, one must consider what the relevant words meant. In the acknowledgment of service, it is stated that the Attorney General admitted part of the claim, specifically:

> "The unlawful detention of the vehicles, compensation, for unlawful arrest."

To my mind, this statement means no more than that the Attorney General was accepting that the detention of the vehicles was unlawful and was admitting liability for that and for compensating the Fredericks for their unlawful arrest. What is more, this statement is contained in a court document signed by, I understand, experienced lawyers; and lawyers are presumed to be acting consistently with their instructions.[42]

[72] Now what must be obvious is that the Fredericks were not applying for judgment under rule 14 and therefore it was not strictly relevant whether the statements amounted to an admission or not within the meaning of that rule. They were

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[40] See paragraph 9, Practice Direction (P) 10 paragraph 5.4 at the Civil Court Practice 2008, Volume 1 p. 289.
[41] See CPR 2000, Part 11
[42] Warner v.Merriman White (A Firm) [2008] EWHC 1129

applying for judgment at the first hearing having regard to the statements which to my mind they properly regarded as an admission on liability.

[73] The learned judge in my view therefore ought to have gone on to consider the consequences of such statements in the context of the case and was not entitled to treat the entire matter as a simple case management exercise. Furthermore, the learned judge did not advert to the procedure prescribed for disposing of undefended claims brought by way of fixed date claim form. Part 27.2(3) provides that:

> "The court may, however, treat the first hearing as the trial of the claim if it is not defended or it considers that the claim can be dealt with summarily."

In my judgment, this was a misguided exercise of his discretion and the matter must be returned to him to consider what relief if any should be given to the Fredericks as against the Crown in light of the statements made in the acknowledgment of service.

[74] The appeal therefore should be allowed and having so found there is no need to deal with the other issues identified. However, in the interest of finality I shall still go on to consider the issue raised on Part 14 which concerns judgment on admissions as it was argued that the statement made in the acknowledgment of service did not amount to an admission for the purposes of Part 14 as it was not contained in a notice in writing as provided for by rule 14.1(2). And further that one could only obtain judgment on admission in respect of a money claim.

[75] Rule 14 .1. provides:

(1) "A party may admit the truth of the whole or any part of any other party's case.
(2) A party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings.
(3) A defendant may admit the whole or part of a claim for money by filing an acknowledgment of service containing the admission.
(4) The defendant may do this in accordance with the following rules- (a) rule 14.6 (admission of whole of claim for specified sum of money); (b) rule 14.7 (admission of part of claim for money only); or (c) rule 14.8

(admission of liability to pay whole of claim for unspecified sum of money)."

[76] First, CPR 14.1, in my view applies to **all kinds of claims**, not only to money claims and this is obvious from the very words of sub rules (1) and (2). This construction is cemented by CPR 14.4. CPR 14.4(1) provides that if a party makes an admission under CPR 14.1(2) (admission by notice in writing) any other party may apply for judgment on the admissions and CPR 14.4(2) states that the terms of the judgment must be such as it appears to the court the applicant is entitled to on the admission. CPR 14.5 to 14.11 are, however, devoted to admissions relating to money claims.

[77] I have also considered CPR 14.1(3) in the context of the whole rule and it seems to me that it is merely permissive in that it allows a defendant to admit the whole or part of a claim for money in an acknowledgment of service. The rule does not preclude or prohibit a defendant to a money claim from making an admission in any other way and it certainly does not stipulate that a defendant to a non money claim cannot admit the claim or part thereof in the acknowledgment of service. To my mind the salient requirement for an admission is that it must be **in writing**, that is, contained in a document. To construe the rule in this restrictive way will be to disregard the overriding objective which one is expressly mandated to consider in interpreting the rules. To place a construction on this rule which would prevent a party wishing to admit part of a non monetary claim from doing so in the acknowledgment of service would seem to go against the overriding objective as it would require the party to take steps which would entail an unwarranted increase in costs. Likewise to restrict a defendant to a money claim to making an admission only in the acknowledgment of service will have the same effect.

[78] It is true that much of the rule is concerned with money claims and that in hindsight the rule could have been more happily framed but looking at the rule as a whole I have no doubt that it applies to **all manner of claims**.

[79] Further, Mr. Monplaisir contended that an acknowledgment of service is not a "notice in writing" for the purposes of CPR 14.1(2) as that must be interpreted to mean something akin to a letter or a statement of case. To my mind, this is also misguided. The reference in the rule 14.1(2) to a letter and statement of case are clearly examples of what can amount to "a notice in writing". The two have nothing in common save that they are documents and that emphasises the requirement that an admission must be in writing.

[80] If an acknowledgment of service is not a document for the purposes of this rule, indeed I will go so far as to say for all of CPR 2000, then what is it? Having regard to the form, purpose and content of an acknowledgment of service to hold that it is not a document for this purpose would be to fly in the face of the obvious and to do untold harm to CPR 2000. The prescribed form of acknowledgment of service itself makes provision for a defendant admitting all or part of the claim. If it is not a document for these purposes and if one can ignore its contents at will then in my view this would make a veritable nonsense of an acknowledgment of service. To my mind, to treat statements made in an acknowledgment of service as of no moment and to be able to withdraw or amend an acknowledgment of service at will would be, to use the hallowed expression, so beloved by English judges, to drive a coach and four through CPR 2000. I have no hesitation in holding that an acknowledgment of service is a document and any admission made in it amounts to an admission by notice in writing for the purposes of Part 14.

[81] I note the Civil Court Practice 2008 Volume 1 and the commentary on the English CPR Rule 14 which contain similar provisions to ours on judgments on admission. This serves to bolster my conclusion. The learned authors comment that admissions may be contained in any document and that the rule applies to all manner of claims[43]. This Part provides the formal procedure for the service (after proceedings have commenced) of a notice of admission[44] of the truth and, in

[43] See page 316
[44] Similar to CPR 14.1(2)

effect, of liability in respect of all or part of another party's case[45]. The form for admission (Form N9 or N9C) must be served with the particulars of claim[46] but a party may make an admission in writing in any document. The word "case" in CPR 14.1(1) appears to equate with the word "claim" which is then used in CPR 14.1(3) and the subsequent rules referred to in it. The Practice form also refers to an admission of the whole or part of a "claim". If an admission is made prior to the commencement of proceedings, unless that admission is repeated in accordance with CPR Part 14, the first admission would be used simply as evidence in an application under CPR Part 24 (summary judgment). The purpose of CPR Part 14 is to allow the defendant to admit a claim as early as possible and in respect of money claims to take advantage then of the provisions in relation to time to pay (CPR14.9).

Conclusion

[82] To sum up, the relevant provisions of CPR 2000 and the prescribed forms require that an acknowledgment of service may be filed by a defendant to any claim whether initiated by fixed date claim form or by claim form. The claimant's obligation is to file an affidavit of service to prove service on the defendant in cases where an acknowledgment of service and/or defence is not filed by a defendant and in administrative claims this is required whether or not a defendant has filed an acknowledgment of service. In my judgment, therefore, having regard to the purpose of an acknowledgment of service and to the contents as stipulated for in the prescribed form, one cannot say that an acknowledgment of service has no place in an action initiated by fixed date claim form and by extension a claim for an administrative order. Accordingly, once an acknowledgment of service has been filed, leave is required to withdraw it. Further, an admission can be made in an acknowledgment of service whether the claim is a money claim or some other claim as an acknowledgment of service is a notice in writing for the purposes of CPR 14.1(2) and nothing in CPR 14 precludes a defendant to a non monetary

[45] Similar to CPR 14.1(1)
[46] See CPR 7.8(1)(b) and see paragraph CPR 7.8

claim from making an admission in an acknowledgment of service. Accordingly, the learned trial judge was not entitled to disregard the statements as to liability made in the acknowledgment of service as they amounted to an admission of liability. At the first hearing he ought to have considered the admission made by the Attorney General and determined whether the claim or part of the claim against the Attorney General could have been dealt with summarily.

[83] For the foregoing reasons I will allow the appeal with the usual consequences and remit the matter to the learned trial judge to consider the admission made by the Attorney General and determine whether the claim or part of the claim against the Attorney General can be dealt with summarily bearing in mind that there is no defence to the claim by either defendant.

Rita Joseph-Olivetti
Justice of Appeal [Ag.]

[84] RAWLINS, C.J.: I have had the advantage of reading the judgment of George-Creque, J.A. and Joseph-Olivetti, J.A. [Ag.]. I agree with the decision, the reasons for the same, and the order proposed by George-Creque, J.A. and do not think that there is much that I could usefully add. Suffice it to emphasize that, as the judgment of George-Creque J.A. indicates, it is critically important that this case is concerned with judicial review procedure which is a peculiar specie provided by Part 56 of CPR 2000. This matter is not amenable to default or summary judgment procedures. I agree with her interpretation of Part 14 of CPR 2000 in paragraphs 42 and 43 of her judgment. Inasmuch as rule 14.1(3) of CPR 2000 specifically permits a defendant to admit the whole or part of a claim for money in an acknowledgement of service, it does not intend that non-money claims may be admitted in that same manner. This may not necessarily preclude admission under rule 14.1(2) cross-referenced with rule 14.4, but this does not fall for

determination in this case. In the foregoing premises, the order on this appeal is as follows:

(1) The appeal is allowed only to the extent that the acknowledgment of service filed on behalf of the Attorney General shall be treated as not having been withdrawn since the court's permission to do so was neither sought nor granted.

(2) In all other respects the appeal is dismissed.

(3) It is directed that the matter proceed to case management for the giving of directions in accordance with CPR 56.11.

(4) There is no order as to costs.

Hugh A. Rawlins
Chief Justice