

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 552 OF 2002

BETWEEN:

DIANE CAROLINE O'NEAL

AND

DOREEN AMANDA COX nee O'NEAL

(acting herein by their duly constituted Attorney on  
Record, ALTHEA ELVIRA HENRY-O'NEAL)

Claimants

V

IVAN O'NEAL

Defendant

**Appearances:**

Mr. S. Commissiong and Ms. S. Commissiong for the Claimant

Mr. E. Robertson Snr. for the Defendant

2009: July 2nd  
August 6th

**RULING**

[1] On 19<sup>th</sup> March 2009, the defendant filed a Notice of application for leave to appeal against an order I made at a Pre Trial Review on 11<sup>th</sup> March 2009, and a stay of execution of the pre trial orders, until the hearing and determination of the appeal. That order reads:

- (1) PTR adjourned to 21<sup>st</sup> April 2009;
- (2) defendant's defence to be filed on or before 18<sup>th</sup> March 2009 ;
- (3) the claimants to file reply and defence to counterclaim, if necessary, not later than 25<sup>th</sup> March 2009 ;
- (4) all documents must be filed and exchanged by 27<sup>th</sup> April 2009;

(5) trial date 5<sup>th</sup> May 2009 ( repeated from Master's order made on 13<sup>th</sup> October 2008)

[2] Relief from sanctions is granted to all parties

[3] The Grounds of Appeal are:

- (1) The Learned Trial Judge Monica Joseph purported to grant relief from sanctions to the Claimant's solicitor without any written application being made for such relief and without any affidavit evidence explaining the reasons for non-compliance with the filing of the witness statement nor explaining any reasons for non-compliance with the said order made by Master Lanns dated the 12<sup>th</sup> day of October, 2008, to the following effect and by making such an order the defendant is greatly prejudiced in this matter as it allows the Claimant not to be able to give evidence from which she would otherwise have been excluded or debarred and the same amounted to an error of law.
- (2) The Learned Trial Judge Justice Joseph was wrong in holding that the Defendant had not filed a defence when the Court of Appeal had clearly ruled that the Affidavit filed by the Defendant was to stand as his defence.
- (3) The said Case Management orders never directed the Defendant to file any further defence in this matter as there was a defence on the file to the said Suit and there was no necessity to make any further order for the Defendant to file a defence and by so making the order the Learned Judge permitted the Claimants to escape the consequences for their failure to file a witness statement in time or without any application for relief from sanctions and this amounts to a gross error of law and a manifest injustice to the Defendant.
- (4) The Learned Trial Judge erred in law in not entering a judgment in favour of the Defendant in this matter as there was no defence filed to the counterclaim and by affording the Claimant an opportunity to file such a defence great prejudice and injustice has been done to the Defendant.

[4] The short history:

That PTR order was entered on 17<sup>th</sup> March 2009. On 18<sup>th</sup> March 2009, the Defendant filed a defence and counterclaim and on 27<sup>th</sup> March 2009, the Claimants filed a reply and defence to counterclaim. (That filed defence and counterclaim is identical to the draft defence and counterclaim endorsed "delivered on 6<sup>th</sup> July 2006", that is exhibited to the Defendant's affidavit filed on 6<sup>th</sup> July 2006.)

[5] Counsel for the Defendant submitted that the Court of Appeal 's Order of 20<sup>th</sup> May 2008, as indicated in the Certificate of Result of Appeal 20<sup>th</sup> May 2008, does not reflect the true ruling of the Court of Appeal, which was that the affidavit filed by the Defendant was to stand as his defence.

[6] The Court commented that it cannot amend or go behind that Court of Appeal Order. Counsel requested (and obtained) the Court of Appeal transcript and the matter was adjourned to facilitate that request. The Court of Appeal's Order:

- "1. Orders of the Master made on the 30<sup>th</sup> January 2004 and 4<sup>th</sup> July 2007 is set aside
2. The claim filed on the 19<sup>th</sup> February 2004 should proceed as fixed date claim.
3. The matter is remitted to the High court for Case Management."

[7] The Master on 13<sup>th</sup> October 2008 made this order:

- a) Standard disclosure on/before 13<sup>th</sup> December 2008
- b) witnesses statements to be filed and exchanged on or before 12<sup>th</sup> January 2009 and to stand as examination in chief
- c) Claimant and Defendant at liberty to call four witnesses and witnesses to attend for cross-examination unless attendance dispensed with by notice in writing
- d) Pre Trial Review on 11<sup>th</sup> March 2009.
- e) parties to comply with Part 38.5 of CPR 2000 with respect to preparation of pre trial memorandum
- f) estimated length of trial one day
- g) trial 5<sup>th</sup> May 2009

h) any further application for directions.....2<sup>nd</sup> February 2009.

[8] The Court of Appeal ruled that the claim is to continue as a fixed date claim. I understand the Court to be saying: we have looked at the documents and we find that the documents show that the Defendant may have a case, proceed as fixed date claim.

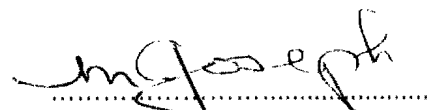
[9] I do not read the Court to be saying that the matter is a fixed date claim from filing but rather the matter is to proceed as a fixed date claim from the date of the ruling. From that date satisfy those rules. Based on my understanding of what the Court ruled - from the date of that order a defence (and counterclaim) is to be filed. (A failure to so file attracts a sanction.) At that date there was a draft defence and counterclaim exhibited on file as is seen from the Defendant's further affidavit filed on 6<sup>th</sup> July 2006, which reads:

"Further to my affidavit filed in support of my Application dated the 16<sup>th</sup> day of February 2006 to set aside the default judgment I have been advised by my solicitor..... that notwithstanding the fact that my affidavit filed on the 18<sup>th</sup> day of November 2004 does disclose a defence that it is also prudent to file a Draft Defence to further buttress my application which I exhibit to this affidavit marked Draft Defence."

[10] The Defendant has exhibited and filed a defence and counterclaim – exhibited on 6<sup>th</sup> July 2006 and filed on 18<sup>th</sup> March 2009, in compliance with the PTR Order.

[11] I have not seen on file an application for judgment to be entered for the defendant on his counterclaim, neither have I seen a counterclaim.

[12] Application for leave to appeal filed on 19<sup>th</sup> March 2009, against the PTR Order made on 11<sup>th</sup> March 2009, is granted. A stay of execution of the pre trial orders, until the hearing and determination of the appeal is also granted.

  
.....  
Monica Joseph  
High Court Judge (Acting)  
23<sup>rd</sup> July 2009