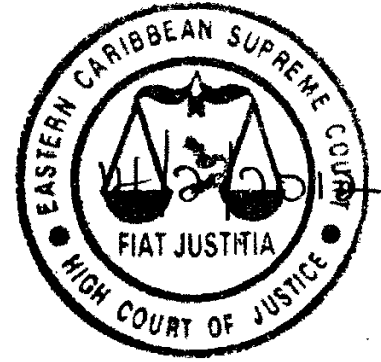


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 387/2009



BETWEEN:

JOHN BAYLISS FREDERICK

Claimant

V

KELECTRIC COMPANY LIMITED

Defendant

Appearances: Ms. S. Fraser for the Claimant

Mr. Richard Williams for the Defendant

2012: February 14th

FINDINGS

- [1] **JOSEPH, MONICA J. (Ag)** : On 6th October 2011, The Court commented after a finding was handed down on 29th September 2011 that the matter was filed as a Fixed Date claim. Written submission filed 14th October 2011.
- [2] Ms. Fraser submitted that the inclusion of the words "Fixed Date" appearing in the title of the document filed on his behalf on 26th November 2009 is purely a clerical error and an oversight. From the time of filing up to case management stage and subsequently the matter has been dealt with by the High Court and by both parties as one begun by claim form and not by fixed date claim form.
- [3] At first hearing no date was fixed by the court as required by rule 27.2(1) rather the claim proceeded pursuant to Rule 27.3(1) and at Case Management Conference both parties were required to submit witness statements by 25th June 2010.

[4] It was further submitted that the claim which was for damages for breach of contract does not fall within the purview of the type of matters required by the CPR 2000 to be commenced by fixed date form. Ms. Fraser submitted that under Rule 26.9 the court has power to make an order where there has been a procedural error. If the court considers that the claim should have been commenced by claim form then the court has the power to rectify.

[5] It was the defendant's submission that it was agreed by the parties that if the application for relief from sanctions failed, the judge would assess the damages suffered by the claimant

[6] I do not think there was a clerical error. I think the matter was filed as a fixed date claim as the suit dealt with possession of land under a lease and payment of rent under a lease. Rule 8.1 provides:

- (4) A claim form must be in Form 1 except in the circumstances set out in paragraph 5
- (5) Form 2 (fixed date claim form) must be used;
 - (a) in claims arising out of hire purchase or credit sale agreements;
 - (b) in proceedings for possession of land;
 - (c) whenever its use is required by a rule or practice direction; and
 - (d) where by any enactment proceedings are required to be commenced by originating summons or motion.

[7] 27.2 deals with the procedure under a fixed date claim;

- (1) When a fixed date claim is issued the court must fix a date for the first hearing of the claim.
- (2) On that hearing, in addition to any powers that the court may have, the court shall have the powers of a case management conference.
- (3) 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.

- [8] A history of the matter:
Remy J by order dated 4th February 2010 granted an application to file a defence -
Thereafter matter to follow CPR. On 26th May 2010 Thom J. at case management
ordered: witness for the claimant one, witness for the defendant four; witness statements
to be filed and served on or before 25th June 2010. Discovery to be made on or before
July 16th 2010, Pre trial review dispensed with. Registrar to fix date for trial. Parties may
agree on costs before commencement of trial. Thus the court had made orders as
authorized under Rule 27.
- [9] Then followed two applications - from the claimant filed on 19th August 2011 for judgment
of the claimant on the pleadings on the grounds that the defence filed by the defendant
discloses no defence in fact nor in law and offends Rule 10.5 and failure of the defendant
to comply with Thom J. order of 26th May 2010, to file witness statement Hearing date
was 29th September 2011. No details were given in the application and the supporting
affidavit as to the specific manner in which that rule was offended. The affidavit in support
of this application refers to the fact that a reply to defence was filed on 19th February 2010.
The reply to the defence denied certain allegations made in the defence. Therefore there
are issues as to fact between the parties. (Following this Thom J made an order on 26th
May 2010.)
- [10] On 26th September 2011 the defendant filed an application for relief from sanctions
and permission to file witness statement out of time; alternatively, in the event that the
defendant's application is denied, the matter be tried in relation to the claims for (a) failure
to clean up and repair farm house and (b) failure to repair water supply. Alternatively,
judgment be entered for the claimant in the sum of \$9,860.00. Both applications were
heard on 29th September 2011.

- [11] It is interesting that the court was invited by both parties to consider the entering of judgment for the claimant. They differ in the sum arrived at and the scope of the award. The defendant's sum is \$9680.00 for the whole claim – which I regard as an admission that that sum is due to the claimant. I have found in the sum of \$12,625.00.
- [12] The affidavit filed in support of the defendant's application is that the claimant's pleadings and witness statement have only pleaded and led evidence in relation to losses amounting to \$9,680, that is \$6000.00 (for plumbing) and \$3,860.00 (for tracing and repairing water lines). I gave judgment for the claimant in the sum of \$12,625.00, that is, \$8765.00. (for septic tank taken from Mr. Frederick's witness statement filed on 25th June 2010). and \$3860.00. (for tracing and repairing water lines.)
- [13] After withdrawing claim falling under para 8 (i) and (ii) of the statement of claim, Ms. Fraser amended the claim to \$293,280.00. The fixed date suit is for trial and the Registrar is to fix a date for trial. No further applications or documents are to be filed.
- [14] The objective of fixed date claims is to have matters heard expeditiously. This matter was instituted in 2009 and is ongoing in 2012. Having so commented, I apologise for the delay in delivering this finding. The file was misplaced.

ORDER

- (1) Registrar to fix date for trial of fixed date claim.
- (2) No further applications or documents are to be filed.
- (3) No order as to costs.



Monica Joseph

High Court Judge (Acting)

4th February 2012.