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

CLAIM NO: ANUHCV2008/0577

BETWEEN:

CHARLES THOMAS WATSON

Claimant/Applicant

and

STATE INSURANCE CORPORATION

Defendant/Respondent

Appearances:

Ms. Andrea Roberts for the Applicant
Ms. Veronica Thomas for the Respondent

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2011: November 4
2012: July 31

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JUDGMENT

[1] MICHEL,J: The Applicant, Charles Thomas Watson, instituted proceedings against the Respondent, State Insurance Corporation, in October 2008 seeking (inter alia) an order commanding the Respondent to pay the Applicant his pension entitlements under the terms of the Respondent's contributory pension plan and to continue to pay the Applicant his "government

pension". The Applicant also contended that the pension payments to be made to him under the contributory pension plan should be "enhanced pension payments" payable to "designated employees" of the Respondent (including the Applicant).

[2] The Respondent asked the court to find that the Applicant was only entitled to receive pension payments under the contributory pension plan and was not entitled to continue to receive the so-called government pension which was only an interim pension payment being made to the Applicant pending the regularization and implementation of the contributory pension plan. The Respondent also asked the court to find that the Applicant was not entitled to any enhanced pension payments, but was entitled to receive a pension at the same rate as all other employees of the Respondent.

[3] The trial of the matter took place on 12th October 2009 and judgment was rendered by the Court on 12th April 2010. In the judgment, the Court ruled that the Applicant was entitled to receive both the government pension and the pension payable under the contributory pension plan. The Court however ruled that the Applicant was not entitled to receive any enhanced pension payments.

[4] No evidence was led or no issue was raised at the trial as to whether the pension payable to employees of the Respondent under its contributory pension plan was to be calculated at the rate of 1% or 2%. Evidence was led and issue was raised at the trial, however, on the question of whether the so-called designated employees were entitled to enhanced pension payments calculated at the rate of 3%, which the Court pronounced against.

[5] On 28th April 2011, just short of one year after the judgment of the Court was delivered, the Applicant filed an application seeking (inter alia) a declaration that the pension payable to him under the contributory pension plan should be calculated at the rate of 2% of his "final average salary". (Subsequent to the judgment of the Court on 12th April 2010, the Respondent has apparently been making monthly pension payments to the Applicant under the contributory pension plan calculated at the rate of 1% of his final average salary.) In support of his application, the Applicant filed detailed affidavits sworn to by him and a supporting witness, giving evidence and exhibiting documents in support, with a view to persuading the Court that the Respondent should have made pension payments to him (following the Court's judgment) at the rate of 2% and not 1% of his final average salary.

[6] In opposition to the Applicant's application, the Respondent filed affidavit evidence disputing the factual assertions of the Applicant and his witness and asserting that the Court had already pronounced on the rate of the pension payable to the Applicant and so the issue was either res judicata or an issue for a separate trial.

[7] The application came before the Court on 4th November 2011 when it was ordered that both parties file and exchange written submissions within 7 days, after which the Court would make a ruling based on the affidavits and submissions filed on behalf of the parties.

[8] Written submissions were filed on behalf of the Applicant in which it was canvassed on his behalf that the Court should reject the Respondent's evidence and accept the evidence of the Applicant and to find "on a balance of probability … that the rate is 2% rather than 1%."

[9] Written submissions were filed on behalf of the Respondent in which it was canvassed that the Court should not entertain the Applicant's application, because - the Applicant having filed an appeal on 18th May 2010 - the Court is functus officio and no longer has jurisdiction to deal with the matter. The Respondent also submitted that Rule 42.10 of the CPR does not apply to the Applicant's application and the Applicant has provided no legal grounds on which the Court's jurisdiction can now be invoked to make any further declarations and orders in this matter.

[10] Without leave or order of the Court, the Applicant filed a "Skeleton Reply to Respondent's Written Submissions". In the so-called Skeleton Reply, the Applicant sought to counter all issues raised (directly or indirectly) by the Respondent and made certain specific assertions, including that: "The matter of the formula to be used to calculate the Applicant's pension was not canvassed in the case. It was not pleaded nor was the learned judge ever asked to resolve the issue. It was a matter which arose in the enforcement proceedings. Therefore his Lordship could not have included the issue in his judgment since it was not before him in any form." The Applicant also made the following assertion in his Skeleton Reply: "Any procedural error (perceived or real) was in the court's inherent jurisdiction to correct and the overriding objective to deal with matters justly and expeditiously would justify the procedure followed to resolve the issue which arose when the judge's order was being enforced."

[11] From the foregoing, it appears that the Applicant is contending that the issue of the rate of the pension payable to him was not pleaded or canvassed in the case and so could not have been addressed by the Court in its judgment; while the Respondent appears to be contending that the

issue was canvassed, addressed and appealed and is res judicata, so that it cannot now be re-addressed by the Court.

[12] I find it unnecessary to choose between the positions of the two parties, because whichever position prevails, the Court is unable to address the issue at this juncture, whether it is because it has already been addressed and so is res judicata or because it was not pleaded or canvassed at the trial and so never arose for resolution by the Court at the trial.

[13] I have not been able to locate in the affidavits and submissions of the Applicant the authority by which I could make the orders sought by the Applicant. It cannot be Rule 42.10 of the CPR, because the scope of this rule or its counterparts have been clarified several times and clearly cannot enable a court to correct an error in a judgment when, according to the party applying for the correction, the correction is to pronounce on a matter that was not before the Court . The Court's authority cannot be located either in the much-abused overriding objective which it has been emphasised time and again cannot be invoked to enable a court to do that which it is not otherwise able to do under any of the civil procedure rules. The court also cannot locate authority in any of the enforcement procedures contained in Parts 43 to 53 of the CPR, none of which was referenced by the Applicant.

[14] No authority having been located to make the orders sought by the Applicant, the Applicant's application is therefore dismissed, with costs to the Respondent in the sum of $1,000.00.

[15] Let me, in conclusion, apologise to Counsel and to the parties and to chastise them at the same time for the late delivery of this ruling, having only recently discovered that there was an outstanding ruling in relation to a case which concluded with a judgment delivered by me well over two years ago.

Mario Michel
High Court Judge