

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2015

CLAIM NO. SKBHCV2012/0154

BETWEEN:

Gerald Lou Weiner and Kathleen Weiner

Claimants

and

Adam Bilzerian

Defendant

Appearances:-

Ms. Jean Dyer of Keithley, Lake and Associates for the Claimant.

Ms. Sandra Maynard holding for Dr. Dennis Merchant for the Defendant.

2015: July 17th

REASONS FOR DECISION

[1] **CARTER J.:** This matter was set down for pre-trial review on the 17th of July 2015.

[2] On the 10th of July 2015 the defendant filed an application for an adjournment of the pre-trial review hearing. The application was supported by the affidavit of Mr. Paul Bilzerian. The relevant grounds set out in the application were that:

1. *There is a hearing in this case that is scheduled for July 17th, 2015.*
2. *Counsel for the applicant had a death in the family on July 5th, 2015 and is presently out of the country attempting to deal with, among other things, the personal issues and arrangements related to the loss.*

3. *In addition to the death mentioned above, Counsel for the applicant recently had unscheduled surgery on both his legs out of the country. Counsel for the applicant is attempting to obtain a letter from his physician con[[ir]ming the surgery on his legs and his inability to work during the remaining of the month of July 2015.*
4. *Rescheduling the July 17th, 2015 hearing will not prejudice the respondents.*

[3] On the hearing date, the 17th of July, Ms. Sandra Maynard appeared, holding for Dr. Merchant, Counsel for the defendant. She indicated to the court then, that she had no further instructions than to seek an adjournment.

[4] Counsel for the claimant, Ms. Dyer, opposed the application for the adjournment. Counsel indicated to the court that she had travelled from Anguilla for the Pre-trial review hearing. Also, her client Mr. Gerald Weiner had travelled from the United States for the pre-trial hearing. Counsel submitted to the court that the defendant had not communicated to her that he would be seeking an adjournment of the hearing, previous to her having arrived in St. Kitts.

[5] The court noted that an affidavit of service had been filed on the 16th July 2015 in which it was indicated that one Yulanda Vanterpool, who was not a party to the proceedings and gave no indication of how she came by the filed documents, deposed that she had sent an email to the claimant's attorney "*effecting on her electronic service of documents in relation to these proceedings*" and that documents which included an "*a. affidavit in Support of Adjournment and b. Certificate of Exhibits*" were attached to the e-mail. The court placed no reliance on this affidavit as it was unclear to the court what was Yolanda Vanterpool's position or involvement in the instant matter. Further, Counsel who appeared holding for Dr. Merchant, Ms. Maynard's position was that she had no instructions about this matter at all and was therefore unable to assist the court in this regard.

[6] In any event the court notes that service of filed court documents by email is not prescribed and in this case would have necessitated agreement by opposing Counsel as to their acceptance of service of documents by that medium. There was clearly no such agreement in this case and there was nothing therefore before the court to indicate other than what Ms Dyer advanced, that the

defendant had not effected proper service of the application for the adjournment and supporting affidavit on the claimant, and the claimant had no proper notice of the application.

[7] In **Andrew Fahie, et al v National Bank of the Virgin Islands**¹ Justice Edwards JA stated that:

*“The **Civil Procedure Rules 2000** envisage the PTR as an integral part of case management. CPR 38.2 contemplates that the PTR will “enable the court to deal justly with the claim.” The rules distinguish the PTR from a Case Management Conference. Significantly, Part 27 governs Case Management Conferences while the PTR is governed by Part 38. CPR 38.3 states that “Parts 25 and 26, where appropriate, apply to Pre-Trial Review as they do to a case management conference”. The PTR seeks to prepare the case for trial from the court’s perspective, and it provides an opportunity for the judge who may be conducting the trial to set a program and timetable for the trial. CPR 38.6 stipulates the matters to be considered at the PTR hearing which may include the time estimate for the trial, the time required for examination and cross-examination of witnesses, contents of and the time for filing the trial bundles, other administrative matters, how the case should be conducted at the trial in any particular respect, and any other matter that the court considers appropriate for the fair, expeditious and economic trial of the issues and the efficient conduct of the trial.*

[8] Further Justice Edwards continued:

“I am of the view that there are no limits on what can be raised at the PTR. The court has power until the trial is concluded, to give and continue to give suitable directions in order to properly and adequately manage and direct the cases on the lists. Any outstanding matters including procedural applications can be resolved before a judge conducting the PTR, who may be the trial judge.”

[9] Following those principles, the court considered the following:

- (i) The Pre-trial hearing was essentially to ensure that the Orders made by the court at the Case Management Conference had been complied with by both parties. The court satisfied itself that there were no outstanding or pending applications which fell to be dealt with at the Pre-trial hearing and therefore there was no prejudice to the defendant by his Counsel on record not being present, albeit that Ms. Maynard was present and holding for Dr. Merchant.
- (ii) An adjournment of the Pre-trial review coming as it did at the end of the law term, on 17th of July 2015, would have had the effect that another Pre-trial review date could not be set until October 2015. This Court considered that this would have prejudiced the claimant as they sought to fix a trial date in the matter, as it would have been very likely that another

¹ HCVAP 2009/009

suitable trial date would not be available until April 2016, and such was the submission of Counsel for the claimant.

- (iii) This Court noted that this matter had previously been set for Pre-trial review on the 17th of April 2015 and that Pre-trial hearing date had been vacated because of an application filed by the defendant, which application had been filed some seven (7) days before that date of hearing, but had not been properly served on the claimant.
- (iv) The court was therefore well seized of the issues surrounding the trial and was prepared “to set a program and timetable for the trial” especially in light of the there being no extant applications at that stage.

[9] Bearing these matters in mind the court ordered that the matter be stood down and invited Ms. Maynard to speak by phone to Dr. Merchant, to ascertain from him when he would be available for trial within the trial window of end of November into early December 2015. Ms. Maynard did speak to Counsel and upon resumption informed the court that Dr. Merchant was agreeable to a trial date being set of the 1st of December 2015. The court therefore sought and obtained Dr. Merchant’s input as to a suitable trial date. There was no complaint to the court of any prejudice to the defendant by the court adopting this course.

[10] The court proceeded to give directions relating to the trial and in light of the fact that Dr. Merchant was not present at the Pre-trial review hearing, ordered that the parties were to have liberty to apply for further directions or orders on or before the 16th of October 2015, allowing Dr. Merchant time to raise any further issues and to file any other necessary applications on behalf of the defendant well before the trial date.

[11] For these reasons the court denied the application for the adjournment and proceeded with the Pre-trial review hearing on the 17th of July 2015.

Marlene I. Carter
Resident Judge