

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2011/0117

BETWEEN:

JAMISHA WRIGHT

CLAIMANT

-AND-

FITZROY GLASGOW

DEFENDANT

Appearances: Mr Jomo Thomas for the Claimant, Mrs Roxanne Williams for the Defendant.

2015: Jun. 22
Jul. 13
Sept. 23

JUDGMENT

BACKGROUND

[1] **Henry, J.:** It is alleged in the pleadings that Jamisha Wright and Fitzroy Glasgow were involved in a romantic relationship which ended with some rancor. During the currency of their relationship they admittedly collaborated in the management of a clothing boutique. Ms Wright alleges that the business was managed and controlled by Mr Glasgow who employed her for 22 months. She claims that he never paid her the agreed salary. Mr Glasgow denies these allegations. Ms Wright filed a claim¹ for outstanding salary and interest. Mr Glasgow filed a Defence².

¹ On August 8, 2011.

² On October 24, 2011.

[2] By Order dated May 24, 2012 the learned Master gave directions for filing of list of documents, witness statements and pre-trial memoranda by June 8, July 23, and September 28, 2012 respectively. Neither party complied. At the status hearing³, Ms Wright and Mr Glasgow were asked to provide satisfactory explanations in writing for these failures,⁴ failing which the respective statements of case would be struck out. The parties were also permitted to file written submissions in support of their respective explanation. Mr Glasgow filed no explanation, however Ms Wright filed submissions belatedly on July 13, 2015 in which she states that her counsel confused and conflated this case with a related one and for this reason failed to file a separate witness statement in the instant matter. She did not address the absence of the list of documents or pre-trial memorandum. Mr Glasgow sought and obtained a further extension of time, to July 21, 2015 to file his explanation. None was forthcoming.

ISSUE

[3] The issue is whether Jamisha Wright's or Fitzroy Glasgow's respective statements of case should be struck out for failure to comply with the case management order in the absence of satisfactory explanations?

ANALYSIS

Issue - Should Jamisha Wright's or Fitzroy Glasgow's statement of case be struck out for failure to comply with the case management order in the absence of satisfactory explanations?

[4] The court has wide power to strike out a statement of case for failure by a party to comply with a court order⁵, and it may do so on its own initiative.⁶ In the exercise

³ On June 22, 2015.

⁴ On or before July 1, 2015.

⁵ See Part 26.3 (1) (a) of the Civil Procedure Rules 2000 ("CPR") which provides:

of its discretion, the court must give effect to the overriding objective of the CPR, to deal with cases justly.⁷ The court must also give an affected party a reasonable opportunity to make representations.⁸ Both Ms Wright and Mr Glasgow were invited to make such representations and given 9 days initially to do so.⁹ Ms Wright made her representation belatedly¹⁰ in the form of a submission signed by her attorney. Mr Glasgow was granted a further 8 days.¹¹

Mr Glasgow's statement of case

[5] Neither party disputes that the learned Master issued case management directions directing them to file standard disclosure, witness statements, and pre-trial memoranda. Further, they do not deny that they have failed to comply with those directions. Mr Glasgow has made no effort whatsoever to explain his delinquency. I can only conclude that his failure to comply with the case management order was deliberate and intentional and I so find. The court's orders are effective unless varied or set aside. Mr Glasgow has complied with none of

26.3(1) In addition to any other power under these rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that-

(a) There has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings." (underlining mine)

⁶ CPR Part 26.2 (1) which states:

"26.2 (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative."

⁷ CPR Part 1.2 (a) which provides:

"The court must seek to give effect to the overriding objective when it –
(a) exercises any discretion given to it by the Rules;"

⁸ CPR 26.2 (2) which states:

"If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations."

⁹ By order dated June 22, 2015 directing that explanations be filed on or before July 1, 2015.

¹⁰ On July 13, 2015.

¹¹ By order dated July 13, 2015 extending the time to July 21, 2015.

the court's orders in this case. This cannot be ignored. In all the circumstances, this is a case which attracts and justifies the drastic sanction of striking out of a statement of case. It is accordingly ordered that Mr Glasgow's statement of case be struck out.

Ms Wright's statement of case

[6] Ms Wright lays the blame for failure to comply with the case management order squarely at the feet of her attorney. She claims that having filed witness statements in a related matter,¹² she thought she had filed her witness statement in this matter. The court takes judicial notice that the subject matter in that other case relates to alleged loans and not non-payment of salary. It is therefore unlikely that Ms Wright was confused about both matters as she claims. Further, Ms Wright's explanation addresses only the default in filing witness statements and does not include an explanation for failure to file standard disclosure and pre-trial memorandum. I do not accept Ms Wright's explanation as being a genuine one. It appears that her failure to file the respective documents was willful and without good reason or at the very least indicative of indifference. Such willful disobedience to a court order must be visited with a suitable sanction. I am satisfied that this is a fit case to strike out the statement of case. I so order.

ORDERS

[7] It is accordingly ordered that:

1. Jamisha Wright's statement of case be and is hereby struck out for failure to comply with case management directions to file list of documents, witness statements and pre-trial memoranda within the timelines limited in Master Taylor-Alexander's order dated May 24, 2012.

¹² Civil Claim No. 118 of 2011 involving Ms Jamisha Wright, Mr Glasgow and Ms Esther Wright.

2. Fitzroy Glasgow's statement of case be and is hereby struck out for failure to comply with case management directions to file list of documents, witness statements and pre-trial memoranda within the timelines limited in Master Taylor-Alexander's order dated May 24, 2012.
3. No order as to costs.

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Esco L. Henry
HIGH COURT JUDGE