

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

GDAHCV2010/0520

BETWEEN:

BANK CROZIER LIMITED (IN LIQUIDATION)
(THROUGH GARVEY LOUISON LIQUIDATOR OF
BANK CROZIER LIMITED (IN LIQUIDATION))

Claimant

and

RBTT BANK GRENADALIMITED

Defendant

Appearances:

Ms. Gennilyn Etienne for the Claimant/Applicant

Ms. Laureen Griffith for the Defendant/Respondent

2017: April 13.

RULING

- [1] **GILFORD, J.:** This matter having come on for the hearing of an application pursuant to rules 26.3 1(a) and clause 4 of the Order dated the 19th September of 2012 filed on the 26th day of February of 2015 on behalf of the defendant, and having read the affidavit in support, and having read the application for stay filed on the 14th day of May of 2015 filed on behalf of the claimant, the Court now considers the application that is first in time, that is the application for the claim to be struck out.
- [2] The Court having noted the Order of the Court dated the 21st day of November of 2014 ruling, that the ruling of the Court does not preclude the defendant from making a further application for the claim to be struck out. The Court having read the submissions filed on behalf of the parties in this matter, the claimant having failed to pay into court the security for costs that was ordered by the Learned

Master dated the 15th day of October of 2013, and the said order giving “the defendant the liberty to approach the Court on an application seeking a dismissal of the claimant’s claim.” The Court does not agree with Counsel for the claimant that the Order of the **Learned Magistrate** is irregular and is to be set aside, and even if that is the case there is no application before the Court to have that Order set aside.

- [3] The claimant having failed to comply with the Order of the Master should have applied for an extension of time for compliance with the Order; and having failed to do so the defendant is entitled to move to the Court to strike out claim as was ordered.
- [4] The claimant having failed to comply with the Order of the Master, the Court in the exercise of its powers under rule 26.3 (1) of the CPR 2000, which gives the Court in addition to any other power under these rules, the Court may strike out a statement of claim or part of a statement of claim if it appears to the Court that there has been a failure to comply with a rule, practice direction, order or direction given by the Court in these proceedings. This is in the light of the fact the Order of the Master gave the defendant liberty to approach the Court on an application seeking a dismissal of the claimant’s claim. Further, the claimant’s perpetual non-compliance with the orders of the Court cannot be viewed lightly and cannot pray in the overriding objective of CPR 2000.
- [5] The Court has come to this position having reviewed the authority of **Kyle David v the Attorney General of Dominica** as cited by Counsel for the defendant. The claimant having failed to comply with the Order of the Master and having failed to apply for an extension of time in a timely manner cannot be heard to say at this point that the defendant is not entitled to the fruits of its judgment. The defendant at all times acted in compliance with the Orders of the court.
- [6] The Court hereby orders:

- (i) The application is allowed. The claim is struck out for failure to comply with the Order of the Master.
- (ii) In terms of the costs for this matter, costs to the defendant in the sum of \$750.00.
- (iii) And in light of the ruling of the Court, the Court does not see the need to address its mind to the application of the claimant for a lifting of the stay.

Paula Gilford
High Court Judge