

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. NO. 2597 of 1998

BETWEEN

ANTHONY PATRICK

PLAINTIFF

AND

D. RAMPERSAD & COMPANY LIMITED

DEFENDANT

Before the Honourable Mr. Justice Gregory Smith

Appearances:

Mr. Paul Wilson for the Plaintiff

Mr. Martin George for the Defendant

REASONS

This was an Application by summons dated 27th July, 2000 for leave to proceed with this matter pursuant to Order 3 Rule 6(A).

The Writ of Summons, a Statement of Claim and a Legal Aid Certificate were filed in this action on the 16th November, 1998. An Appearance was filed on the 11th January, 1999 and a Defence was filed on the 26th February, 1999.

There were no further steps in the proceedings before the summons herein, hence the matter stood abated.

The Plaintiff swore to and filed an affidavit on the 2nd October, 2000 where he stated that in or about mid November, 1998 he suffered a serious stroke, for which, he had to be taken to the hospital where he spent one week and afterwards, was confined to bed for about six months. He went on to depose that in May, 2000 he suffered another stroke and was confined to bed for three weeks. Again on the 22nd May, 2000 he had to be treated at the hospital for circulatory problems. He stated that he could no longer work and seldom left home except to go to church or to the Health Clinic. At paragraphs 7 and 8 of his affidavit he deposed as follows:

- “7. Because of my illness I have previously been unable to attend at my Attorney’s office to give further instructions to answer the Defendant’s explanations in its Defence. For all of this year I have been recuperating getting as much bed rest as possible as demanded by the Doctor in the Health Clinic.
8. Despite my illness I still wish to pursue my claim against the Defendant.”

In response, Nisha Cardinez, an Attorney-at-law acting on behalf of the Defendant, swore to an affidavit wherein the history of the Plaintiff’s claim against the Defendant is revealed. There was a prior High Court Action No. 579 of 1996 filed on the 16th February, 1996 in which the identical claim was propounded by the Plaintiff against the Defendant. In that prior action there had been substantial delay and the Plaintiff had made an Application to reinstate the matter under Order 3 Rule 6 but this Application had been dismissed on the 5th May, 1998 (no reason was given for that dismissal). The Plaintiff had also made another Application to proceed with that prior action but the same was withdrawn on the 26th June, 1998. The affidavit also alleges that in the present 1998 action, there has been no Reply denying or challenging the Defence that this matter is now statute barred.

Counsel for the Defendant submitted that the Plaintiff's explanation in his affidavit ought to be viewed disfavouredly since there were no medical reports attached in support of his contentions as to his illness. Counsel went on to submit that since the Defence had already been served and there was no counterclaim, there was no reason why Attorney-at-law for the Plaintiff could not proceed to take steps to set the matter down for trial, especially since this identical cause of action had been pursued since the prior 1996 Action. In fact, it was submitted that the Plaintiff's Attorneys did not even write a letter to the Defendant's Attorneys seeking extensions of time or explaining their position, and that they had also allowed the Plaintiff's claim to become statute barred. Counsel submitted that while no blame could really be ascribed to the Plaintiff, the real cause of the delay here was the inaction of the Plaintiff's Attorneys which delay was unexplained and unreasonable. In the circumstances, this Application ought to be dismissed.

Attorney-at-law for the Plaintiff submitted that even though there were no medical reports annexed to the Plaintiff's affidavit, this was not a valid ground for throwing doubt on the matters to which the Plaintiff deposed; further, the Plaintiff had presented himself at court and could have been cross-examined on his affidavit so as to test his veracity. In the absence of such cross-examination, there was no basis upon which the Defendant could contest the truth of the Plaintiff's allegations. Attorney for the Defendant went on to submit that the history of the matter showed clearly that it was only on the 20th March, 1998, that he had been appointed by the Legal Aid and Advisory Authority to act as the Plaintiff's Attorney-at-law, in place of the former Attorney who had been appointed by the Authority, but who had left practice, and that this accounted for some of the inaction in the prior matter. It was also submitted that as an Attorney, he was under no duty to attend on the client but that the duty was the other way around; in fact, it would have been improper for him to proceed with this matter, whether by way of filing a Reply or issuing a summons for Directions or even writing to the Defendant's Attorneys, without specific instructions from

the Plaintiff, which instructions were not forthcoming because of the Plaintiff's illness.

At this point the Court asked both Attorneys whether there was any duty on an Attorney to attend on his client for instructions, and both Attorneys admitted that they were unaware of any such duty.

Attorney for the Plaintiff also submitted that since part of the claim for loss of use in the Statement of Claim related to a period after November, 1994, this claim was not statute barred. Further, it was submitted that this was a claim for work done on several occasions to a truck, and that each occasion gave rise to a new cause of action; since one of those occasions was in or around November, 1994, the claim was not statute barred. In any event, Attorney submitted that further instructions may be obtained which could show that this Defence was not maintainable and that such matters would be included in a Reply. Therefore, it would not be fair at this stage to debar the Plaintiff from contesting the matter on the ground of limitation.

I accepted the submissions of Attorney-at-law for the Plaintiff on the issue of limitation and I found that this was not a ground upon which I could refuse leave to proceed. I also accepted Attorney's submissions that it would have been improper for him to proceed with this matter without instructions from the Plaintiff, and that he was not under a duty to attend on the client for instructions to proceed. Further, bearing in mind the uncontested allegations at paragraphs 7 and 8 of the Plaintiff's affidavit as set out on page two above, I found that the Plaintiff had stated good and sufficient cause for his delay in not prosecuting this matter and as such I was minded to give him leave to proceed with this action.

However, I was mindful of the considerable delay which had already occurred with respect to this claim and also of the delay, in the previous action, and I thought it fit to impose conditions upon the grant of leave so as to ensure the timely prosecution of this matter in the future. I therefore made the following Order.

Leave is granted to the Plaintiff to proceed with this matter upon the following terms:-

1. The Reply (if any) is to be filed and served on or before the 3rd November, 2000.
2. Discovery is to be by mutual exchange of lists verified by affidavit on or before the 20th November, 2000.
3. Inspection to be on or before 4th December, 2000.
4. The matter is to be set down for trial in Port-of-Spain before a judge without a jury on a date to be fixed by the Registrar. The Plaintiff is to ensure that all matters necessary for setting down are completed on or before the 1st January, 2001. If the Plaintiff should be at fault in complying with any of these Orders, the Plaintiff's claim is to stand dismissed.
5. There shall be liberty to apply especially with respect to the question of costs.

I noted that this was a legally aided Plaintiff and in consideration of section 29(3) of the Legal Aid and Advice Act, Ch 7:07, I made no order as to costs.

Dated this 12th day of December, 2000

Justice Gregory Smith
JUDGE