**NEGLIGENCE**

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**IN THE REPUBLIC OF TRINIDAD AND TOBAGO:**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2008-03412**

**BETWEEN**

**SOUTHERN SALES & SERVICE COMPANY LIMITED**

**Claimant**

**AND**

**CHRISTOPHER THOMAS**

**Defendant**

**Skeletal arguments filed on behalf of the Defendant pursuant to the order of the Honourable Mr.Justice D.Rampersad on 15th of January**

**Introduction:**

**On 15th of January 2010 the Honourable Mr.Justice Rampersad dismissed the Claimant’s application filed on 30th of Novemeber 2009 for relief from sanction under Part 26.7 and for an extension of time to file witness statements. Further to oral submissions on costs by Attorneys at Law for the Claimant and the Defendant, on the 15th January 2010, the Honourable Judge ordered and directed as follows;**

1. **Parties to file and exchange submissions on the issue as to whether the costs of this application for relief from sanction falls to be assessed at part of the prescribed costs under Part 67.7 or under Part 67.11 (3) (d) by the 22nd of January 2010**
2. **Soft copies of submissions to be forwarded to the court on the same day to** [**bbeepot@ttlawcourts.org**](mailto:bbeepot@ttlawcourts.org)
3. **Matter adjourned to 28th of January 2010 @ 10:00 am in court room POS 15 for decision.**

**The Law:**

**Part 67 of the CPR states the ways the costs can quantified**

1. **Part 67.3 gives the ways in which costs are quantified.**
2. **They could be fixed costs,(Part 67.4), Prescribe costs (part 67.5) budgeted costs (part 67.8) and where neither prescribed costs nor budgeted costs are applicable by assessment in accordance with rules 67.11 and 67.12**

**Fixed Costs**

1. **These are the costs fixed by the court and listed in Appendix A.**
2. **The Appendix A gives two tables where the costs are fixed and they include the costs where the defendant who does not defend must pay to the claimant, in addition to the amount claimed and interest and the court fees paid by the claimant, in order to avoid judgment being entered against him under Part 12**
3. **And Table 2 include the costs which a claimant is entitled to include as costs in any default judgment under Part 12 in addition to the costs set out in Table 1**
4. **This matter doesn’t fall under this part**

**Prescribed Costs**

1. **Part 67.7 states what are included in prescribed costs**
2. **Part 67.7 states “*Prescribed costs include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in instructing any expert, in considering and disclosing any report made by him or arranging this attendance at trial, and for attendance and advocacy at the* *trial including attendance at any case management conference or pre trial review but exclude***

**(a) the making or opposing of any application except at a case management conference or pre trial review.**

**(b) expert’s fees for preparing a report and attending any conference, hearing or trial and**

**(c)costs incurred in enforcing any order ( which are generally fixed in accordance with rule 67.4, but may in certain cases, be assessed in accordance with rule 67.12**

**The present doesn’t fall under this heading as well.**

1. **My submission is they should include the works required to prepare for trial.**
2. **This application is two pronged. One is seeking relief from sanctions of not being able to produce any witness where no witness statement has been filed and the other for extension of time to file the witness statements.**
3. **The first prong clearly is not an application which includes in the work that is required to prepare the the proceedings for trial and hence do not fall under this part.**

**Assessed costs under 67.11 and 67.12**

1. **On determining any application except at a case management conference, pretrial review or the trial, the court must**

**(a) decide which party, if any should pay the costs of that application**

**(b) assess the amount of such costs and**

**(c)direct when such costs are to be paid**

1. **In deciding what party, if any should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party**
2. **The court must however take account of all the circumstances including the factors set out in rule 66.6(5) but where the application is**
   1. **One that could reasonably have been made at a case management conference or pre trial review**
   2. **An application to extend the time specified for doing any act under these rules or an order or direction of the court**
   3. **An application to amend a statement of case**

**Or**

* 1. **An application for relief under rule 26.7**

**The court must order the applicant to pay the costs of the respondent unless there are special circumstances.**

1. **My submission is that this application clearly falls under this head.**
2. **This part deals with applications other than the applications included in the prescribed costs. As indicated the present application do not fall under that head and hence falls under this part.**
3. **Part 67.11(d) clearly states that the costs of the application for relief under rule 26.7 must be paid by the applicant to the respondent.**

**There are no special circumstances that are shown in making the application other than they are under the sanctions.**

**Conclusion:**

1. **Having regard to the above the defendant humbly submits that the costs of the application for relief from sanction falls under 67.11(d) and hence the must be paid by the applicant to the respondent.**
2. **Eventhough the application was decided at the pre trial review it was only coincidental and would have been decided at a separate hearing if the dates were not closer, when the application was made.**
3. **The issues would not be the usual issues that would have been dealt at the pretrial review.**
4. **Because of this application the pretrial review was adjourned or would be adjourned to a separate date and hence incurring costs for the attorney**
5. **The attorney for defendant did have to research in opposing the application and the time was spend in consulting the senior attorneys**
6. **The attorney for the defendant did put his arguments at the hearing of the application**

**Hence the it the submission of the attorney for defendant that he is entitled to the costs and order for cost must be made .**

**Dated this 25th day of January, 2010**

**Christopher Ross Gidla**

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**Attorney for the Defendant**

**To the Registrar**

**High Court of Justice**

**Knox Street**

**Port of Spain**

**And to Stephan Alexander**

**Attorney at Law**

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**Attorney at Law for the Claimant**