[2015] JMSC Civ. 205

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2013 HCV 00765

BETWEEN	**DWAYNE MCGAW**	**CLAIMANT**
AND	**JAMAICA INFRASTRUCTURE OPERATOR LIMITED**	**1ST DEFENDANT**
AND	**UNITED MANAGEMENT SERVICES LIMITED**	**2ND DEFENDANT**

IN CHAMBERS

Kaysian Kennedy, instructed by Townsend, Whyte & Porter, for the Claimant

Georgia Gibson-Henlin & Kamau Ruddock, instructed by Henlin, Gibson & Henlin, for the Defendants

HEARD: September 18, 2015

RULE 27.8 (4) OF THE CIVIL PROCEDURE RULES (CPR) – INTERPRETATION – NEED FOR COMPLIANCE WITH CASE MANAGEMENT TIMETABLES – IMPORTANCE OF ATTENDANCE OF PARTY AT CASE MANAGEMENT CONFERENCE – EXERCISE OF COURT'S DISCRETION

ANDERSON, K. J

[1] This is written further to my written reasons which were provided orally to the parties' counsel, on September 18, 2015, during a hearing which was then held before me, in chambers.

[2] At the hearing, I had ruled on an application which was made by the defendants *inter alia*, to set aside an order which I made on July 17, 2015, when this claim came before me, for case management conference. Said application was partially denied insofar as this court then refused the defendant's application to set aside, but was also

partially granted, insofar as this court then granted leave to appeal its order of July 17, 2015.

[3] This court had, in its written reasons in response to the defendant's aforementioned application, provided fairly detailed reasons for the making of the orders which it had made on July 17, 2015. This court relies on those reasons, but, further to same, this court merely adds that which is set out below.

[4] Leave to appeal was granted on the sole basis as same was applied for, during the hearing which was held before me, on September 18, 2015, that being that, according to the defendants, the court had erred in making the case management orders which it did, instead of proceeding with the case management conference hearing, notwithstanding the absence from same, of any of the defendants' representatives.

[5] According to defence counsel – Mrs. Henlin, this court wrongly interpreted and applied **rule 27.8 (4) of the Civil Procedure Rules (CPR)** at that hearing.

[6] For the benefit of those who may be reading these reasons, but not have, prior thereto, read the earlier reasons as herein referred to, it may be of benefit to quote rule 27.8(4):

> *'Where the case management conference or pre-trial review is not attended by the attorney-at-law and the party or a representative the court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under part 26 (case management – the court's powers) or part 64 (costs).'*

[7] According to the learned defence counsel, this court had no power to act under **rule 27.8 (4) of the CPR** and to make case management orders, since the relevant case management conference was attended upon by counsel for the defendants, albeit, not also, by the defendants' representatives. She submitted, briefly, that **rule 27.8 (4)** could only have been utilized if both the attorney for a party and that party, or that

party's representative, were both absent from the scheduled case management conference hearing.

[8] This court, it must be said, entirely disagrees with that proposition, but since it is to my mind, an issue which our nation's Court of Appeal has likely never yet pronounced upon, leave to appeal was granted, in order that the defendants can pursue their interpretation of that particular rule of court, there.

[9] According to the learned defence counsel, as I understand it, this court's only option available to it, in circumstances wherein a party was not present at a case management conference, but that party's attorney was then present, was to have waived the presence of that party and proceeded with the case management conference, by then making the typical case management conference orders.

[10] This court disagrees with that proposition, firstly because, whilst this court did have the option of waiving the presence of the defendants and to proceed with the case management conference, this court deliberately chose not to exercise that option, which was one available to it, pursuant to **rule 27.8 (3) of the CPR**. This court did, to my mind, have the option to rely on **rule 27.8 (4) of the CPR** to make the case management orders, which it did, amongst which, were certain 'unless orders' and an order adjourning the case management conference to a new date.

[11] This court, firstly, had that option because, this court always has the option to make case management orders at any stage of civil proceedings before it and indeed, ought always to not cede those case management powers to either parties or their counsel – as it is the court's primary duty to effectively manage cases 'fairly and justly.'

[12] Secondly though, this court had that option because of the overall contextual wording surrounding **rule 27.8 (4) of the CPR**, particularly, that of **rule 27.8 (2)** thereof, which states that the general rule is that a party or person who is in a position to

represent the interests of that party, *other than the attorney-at-law* must attend the case management conference.

[13] In interpreting provisions in a statute or statutory instrument, the context of those words must always be considered, albeit that if the meaning of the particular words which the court is required to interpret, is clear, then the ordinary, natural and clear meaning of those words, ought to be the interpretation given to same by the court. Where those words are unclear in meaning, then undoubtedly, the context in which those words were written, must be of significant importance for the purpose of the task of statutory interpretation. On this point see: **Hume v Rundell** – [1824] 2 S & S 174, esp. at p. 177, per Sir John Leach, V.C.

[14] When considered in isolation, the wording of **rule 27.8 (4) of the CPR** may be viewed as being unclear. That lack of sufficient clarity though, is entirely dispelled, when one considers the context of that particular rule of court.

[15] The interpretation to be given to **rule 27.8 (4) of the CPR** is that if a case management conference is not attended by a party or party's representative and that party's attorney, the court may adjourn the said conference to a fixed date and make case management orders and orders as to costs. The court does not only have that power if both the attorney and the party, or party's representative, do not attend that conference. Indeed, if that were the correct interpretation, then this court would have to proceed with a case management conference, once the attorney for a party is present at that conference, even though that attorney's client (the litigant/party) is absent.

[16] If that were so, then **rule 27.8 (3) of the CPR** would be superfluous and devoid of any purpose and certainly also, would not have been expressed in discretionary terms, as far as the court is concerned. This court ought not interpret either **rule 27.8 (3) of the CPR** as being superfluous, nor should it interpret **rule 27.8 (4) of the CPR** in the manner suggested by the learned defence counsel.

[17] This court acted within its discretion and wholly within the ambit of **rule 27.8 (4) of the CPR** in making the orders which it did, on July 17, 2015. Whilst not every judge, confronted with the situation with which I, as the judge, was confronted with on July 17, 2015, when the case management conference first came up for hearing, may have made all, or even any of the orders which I then made, I am wholly satisfied that I acted within the bounds of the law and actively managed this case in having made the orders which I then did.

[18] Adjournments are the bane of justice system in Jamaica. As a country, we are by no means, alone, in having that problem. We must though, take active steps to overcome this problem. If we are to successfully do so, it will require the active participation, in different respects and active co-operation, of all persons who interact, have interacted, or will interact, with the justice system. On what this court should do, in order to assist in ensuring that court timetables are complied with and as to what attorneys and litigants are required to do, so as to ensure that such compliance occurs, see: **Morgage Corporation Ltd v Sandoes** – [1996] TLR 75**,** as referred to and applied by Mr. Justice K. Anderson, in: **Hugh & Jacqueline Bennett & Michael Williams** – [2013] JMSC Civ.194, esp. at para. 38. Whilst these cases primarily address the specific matter of compliance with timetables set at case management, it is to my mind, important to recognize that those cases emphasise the importance of adhering to the court's direction as to timelines.

[19] Accordingly, where a case management date is scheduled by the court, it is imperative that the parties and their attorneys and indeed, the court itself, do everything in their power to ensure that said case management conference will likely be held. The failure of an attorney to, in a timely way, inform their client of the need to be present at a case management conference, significantly hinders the court's objective of completing cases in a timely way.

[20] This is primarily so because, whilst the court may waive the non-attendance of a party, at a scheduled case management conference, it also may not do so. It may

choose not to do so, because of the overall importance for the parties to attend any such conference. Indeed judgment may be entered against that party in the event of non-attendance. See: **Rule 27.8 (5) of the CPR.** Why is that attendance so important? It is because of the importance of compliance with the court's case management timetables and also because, when one has to take an active part in following and knowing exactly what is happening in court as regards one's claim, or one's defence to that claim, it is likely that one will provide greater co-operation and assistance to one's attorney, in ensuring that the case management timetable is complied with.

[21] These therefore, along with my earlier written reasons, are sufficient to explain why this court acted as it did, in having made the orders which it did, on July 17, 2015.

.....
Hon. K. Anderson, J.