

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. HCV 1124 OF 2005**

BETWEEN	CLAUDETTE EDWARDS	CLAIMANT
AND	QUEST SECURITY SERVICES LIMITED	FIRST DEFENDANT
AND	GUARDIAN LIFE INSURANCE COMPANY LIMITED	SECOND DEFENDANT

IN CHAMBERS

Phoebe Lawrence instructed by Phoebe Lawrence and Company for the claimant

Jalil Dabdoub instructed by Dabdoub Dabdoub and Company for the first defendant

October 12 and 24, 2007

**APPLICATION TO STRIKE OUT CLAIM FOR NON-COMPLIANCE
WITH COURT ORDERS**

SYKES J.

- 1. This is an application by Quest Security Services Limited ("Quest") to strike out the claim for non-compliance with court orders. On October 12, 2007 I declined to grant the application and these are my reasons.**
- 2. Quest applied for the following orders:**
 - 1. that the claimant's claim be struck out and judgment be entered in favour of the first defendant.**
 - 2. that the insurance proceeds in the principal sum of \$920,019.95 held at the Bank of Nova Scotia in the names of Dabdoub, Dabdoub and Company and Phoebe Lawrence and Company be paid to the first defendant.**
 - 3. that the claimant be ordered to pay to the first defendant costs in the sum of five hundred and twenty two thousand three hundred and ninety two dollars and forty eight cents**

(522,392.48) as per the order of the court dated September 20th , 2005 (sic) and order of taxation dated 20th June 2007.

3. This claim is a contest between Mrs. Claudette Edwards and Quest. The prize is the proceeds of an insurance policy taken out by Quest on the life of Miss Lettera Thompson, a former employee of Quest who has since died. According to Mrs. Edwards, she (Edwards) was named by Miss Thompson as the beneficiary. On the death of Miss Thompson it was discovered that Quest was named the beneficiary. This led Mrs. Edwards to consult attorney who launched this claim alleging, among other things, Quest exercised undue influence over Miss Thompson and caused her to change the beneficiary from Mrs. Edwards to Quest.

4. Guardian Life Insurance Company ("Guardian") is the insurer. Guardian is not resisting paying out the money. It wishes to know which of the two claimants should receive the money and took out interpleader proceedings. Guardian is not an active participant in this claim and is now awaiting the outcome of this protracted contest.

5. This claim has had problems for its inception. The claim filed initially was not well thought out. The particulars of claim filed reflected the initial confusion. On May 26, 2005, it was ordered that the claim be amended to reflect the true cause of action. On July 8, 2005, the claimant's case had to be amended yet again. It appeared that counsel for the claimant was not quite sure of what to claim. This is not surprising given the nature of the allegations. The claimant believed that Quest, by some means unduly influenced Miss Thompson to change the beneficiary on the insurance policy or her signature was forged. One can immediately see why Quest would be nonplussed. Since the claimant was alleging that the company unduly influenced Miss Thompson and a company can only act through human agents, the claimant needed to specify which natural person was the source of the undue influence. The lack of specificity in this regard led Quest to ask for further information on this aspect of the case since August 19, 2005. To date this information has been disclosed.

6. The matter eventually came on for case management on September 20, 2005. A number of orders were made. The orders were:

1. that there be standard disclosure of documents on or before 27th day of January 2006;

2. that there be inspection of documents on or before the 24th day of February 2006;
3. that witness statements to be filed and exchanged on or before the 20th day of September 2006;
4. that witnesses be limited to a maximum of 5 for each party;
5. trial by Judge alone;
6. trial on 2nd, 3rd, and 4th of April 2008
7. ...
9. ...
9. pre-trial review to take place on 13th April 2007 at 10:00am for an hour;
10. that the claimant to provide the information requested by way of letter dated August 19, 2005. Request for information to be complied with on or before the 25th day of November 2005;
11. ...
12. the costs of Quest Security Services Limited up to the 8th day of July 2005 to be agreed or taxed. Costs to be paid on or before the 27th day of January 2006.

7. The claimant has not complied with a single one. The only order she could not have complied with was the order for costs because the costs were not quantified until June 2007. This state of affairs provoked the current application by Quest.

9. Mr. Dabdoub quite rightly pointed and stressed the claimant's persistent non-compliance with the orders made. He highlighted the fact that to date, the omission to file the witness statements means that Quest does not know the precise evidence it will have to meet. In particular, he stated that Quest is a corporate entity and if there is an allegation of undue influence the claimant must identify which human being committed the alleged acts which the claimant says amounts to undue influence. He added that until this is done his client is hamstrung. It may be that when that revelation comes the person

alleged to have committed the acts amounting to undue influence may well have left the company. This would place the defendant in an invidious position. Mr. Dabdoub added that when one looks at the sum in question and the agreed costs it may be that by the time of the trial the cost to his client alone may exceed the policy. Finally, he added that Quest has fully cooperated and has been the main mover behind getting the claim to the stage it is now. He reminded the court that it was at Quest's insistence that some clarity was brought to the pleadings.

9. The arguments raised by Mr. Dabdoub are indeed powerful ones. Mr. Phoebe Lawrence has not and could not effectively refute them.

10. The decision has to be made in light of the overriding objective. The court is required to deal with cases justly. A number of factors to be considered is listed in rule 1.1 (2) of the Civil Procedure Rules ("CPR"). The rule, however, is not exhaustive. The CPR has taken the position that the administration of civil justice has multifaceted and in making any decision the court must decide against the backdrop of the various dimensions that are brought to bear on the administration of law. This explains why rule 1.1 (2) lists considerations as (i) the amount of money involved; (ii) the allocation of an appropriate share of the courts' resources to the particular case; (iii) the necessity to see that other litigants are not deprived of their share of the courts' resources; (iv) the complexity of the case and (v) the expeditious hearing of cases.

11. Rule 1.1 (2) expressly states that dealing with cases justly includes the factors listed above. The rule therefore recognises that other considerations are important. One of the unarticulated considerations must be the right of access to the courts guaranteed by section 20 of the Constitution of Jamaica. The CPR could not have been intended to emasculate that right but merely to regulate how that right is exercised by prescribing rules of civil litigation. The consequence of this is that a litigant should not be barred from litigation unless he has committed some egregious sin.

12. In this particular case, the trial date was set from September 20, 2005. This means that the costs incurred by Quest to date, would have been incurred even if the claimant had complied with all case management orders. This is not a case in which a previous trial date has

been lost because of the claimant's tardiness. Had that been the case, then that would have to be a very very important consideration. There is still time to meet the trial date.

13. The claimant has not indicated that she is unable to find witnesses to support her case. Until she provides the witness statements Quest won't know which human agent, if indeed the person was an agent, of Quest is implicated. If the disclosure comes at a time when Quest cannot find the particular person, I have no doubt that Quest can make a very strong application that the claim be struck out because the late compliance by the claimant has irreparably prejudiced it.

14. In exercising my discretion not to strike out the claim I have taken the following matters into account:

- a. The trial date is in April 2008.
- b. The claimant has not complied with any of the orders made on September 20, 2005.
- c. There is sufficient time for the claimant to comply with the orders and still meet the trial date.
- d. It does not appear that the problem is an absence of witnesses but rather extreme tardiness in getting the statements prepared.
- e. Quest does not yet know the case it has to meet in terms of the evidence likely to be tendered at trial.
- f. Quest has incurred significant cost in defending the claim and much of those costs was precipitated by the less than helpful way in which the claimant's case was pleaded necessitating at least three court dates, two amendments and the engagement of an expert.
- g. The right of access to the courts

15. These factors fall to be considered in the context of the overriding objective. The conclusion I have come to is that the claimant should be made the subject of orders that will see her claim

being struck if she does not comply. She should also pay part of Quest's costs since much of the costs was incurred by the way in which the claimant went about the matter. The orders attempt to strike the balance between access to the courts on the one hand and bringing the claim to an end at a sufficient early time before the trial date so that those dates can be utilised by other persons. The following orders are made:

1. Time within which claimant to comply with paragraphs 1,2,3 and 10 of the case management orders made by Sykes J. on September 20, 2005 to be complied with by February 6, 2008 failing which the claimant's statement of case is struck out and judgment entered for Quest Security Services Ltd.
2. On paragraph 1 coming into effect all sums inclusive of any interest accruing up to and including the date of actual payment standing in account number 9696870 to be paid over to Quest Security Services Limited not later than February 14, 2008.
3. Costs of \$552,392.48 having been agreed between the claimant and Quest Security Services Limited the claimant to pay a minimum of \$150,000.00 of the agreed costs not later than February 28, 2008, failing which the claimant cannot rely on any evidence proposed to be used at the trial if the claimant has complied with paragraph one of this order.
4. Costs of today to Quest Security Services Limited assessed at \$12,000.00 and to be paid on striking out of the claim or the end of the trial whichever comes first.
5. Parties to file own statement of facts and issues not later than March 1, 2008 if claimant has complied with paragraphs one and three of this order.
6. Listing questionnaire to be filed not later than March 5, 2008, if claimant has complied with paragraph one of this order.
7. Claimant's attorney to prepare file and serve this order.
9. Leave to appeal granted.

