

**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**



Action No: CL 57/18

BETWEEN:

EVANGELISTA MESA

Plaintiff

AND

1. MARTINEZ LEONTE VEGA

2. STANLEY HAROLD WILLIAMS

Defendants



JUDGMENT

Before: **The Hon. Mr. Justice B. St. Michael Hylton QC (Ag)**

Appearances: **Ms Chloe McMillan for the Plaintiff**

Mr Clayton Greene for the 2nd Defendant

Hearing Date: **10 August 2022**

Venue: **Court No. 5, Graceway Plaza, Providenciales**

Date Delivered: **29 August 2022**

1. On 10 August 2022 I gave an oral decision in which I made an unless order against the 2nd Defendant. I promised to provide written reasons, and I now do so.

2. This claim is an action in negligence against the defendants. Both defendants have filed defences. On 21 June 2022, the Plaintiff applied pursuant to Order 18, rule 19 and Order 24, rule 16 for orders that the 2nd Defendant's defence be struck out and for judgment on liability to be entered against the 2nd Defendant with damages to be assessed. The Plaintiff argued that the 2nd Defendant has not actively participated in these proceedings and has failed to comply with an order for directions made on 16 March 2022, which included directions for discovery and inspection ("the Directions Order").

Order 18, rule 19

3. Order 18, rule 19 provides:

19. (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

- (a) it discloses no reasonable cause of action or defence, as the case may be;
- or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

4. The Plaintiff did not suggest that the 2nd Defendant's pleadings were defective. Counsel for the 2nd Defendant argued that Order 18, rule 19 addresses the pleadings themselves and defects in the pleadings and is therefore not applicable in this case.

Order 24, rule 16

5. Order 24, rule 16 provides:

16. (1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to, make discovery of documents or to produce any documents for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 11 (1) the Court may make such order as it thinks just including,

in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

6. The Plaintiff relied on **Habib Bank Ltd v Abbeyppearl Ltd** [2001] EWCA Civ 62, where the claimant had failed to comply with timetabled directions and there had been an extensive delay of over four years. The 2nd Defendant admitted that he had not complied with the Directions Order, but argued that the order was not a peremptory order. The 2nd Defendant relied on **Star News Shops v Stafford Refrigeration Limited and UPO (UK) Limited and Others (third parties) and Unite Hermitique (fourth party)** [1998] 4 All ER 408 (Court of Appeal (UK)), an appeal against a decision of a trial judge to strike out a defence for failure to comply with a non-peremptory order for discovery. In *Star News Shops*, Otton LJ commented:

Accordingly, I have come to the conclusion that although the terms of Ord 24, r 16(1) gave the judge jurisdiction to make the order that he did, he none the less erred in principle in striking out a defence for breach of a non-peremptory order, that he should have made a final or 'unless' order and that he was plainly wrong in the exercise of his discretion in making such an order.

7. The Plaintiff admitted that the Directions Order was not a peremptory order.
8. The Plaintiff also properly conceded that notwithstanding the 2nd Defendant's failure to comply with the Directions Order, a fair trial was still possible.

Disposition

9. The 2nd Defendant is right as to the non-applicability of Order 18, rule 19. It is a rule that addresses the pleadings themselves and not the conduct of the parties, or non-compliance with directions. Turning to Order 24, there was non-compliance with the Directions Order. However, the Directions Order was not a peremptory order. In my view it would be a very extreme case where a defence will be struck out for failure to comply with a non-peremptory order. *Habib Bank* may have been such a case, where there had been a very long delay and

a fair trial was no longer possible. In the circumstances of this case, given the relatively short period of delay and the fact that a fair trial was still possible, I was not minded to make an immediate strike out order.

10. The parties have a trial date, and the 2nd Defendant must comply with the Directions Order for the Plaintiff to be able to prepare for trial. In the circumstances, the appropriate order was an unless order; for the 2nd Defendant's defence to be struck out unless the 2nd Defendant complies with the Directions Order. I ordered compliance during the vacation period. Finally, on question of costs, given the circumstances I ordered the 2nd Defendant to pay the cost of the summons.

Orders:

11. It was ordered:
 - a. Unless the 2nd Defendant complies with the Court Order dated 16 March 2022, by 24 August 2022, the 2nd Defendant's Statement of Defence filed on 9 September 2019 be struck out and judgment on liability be entered against the 2nd Defendant with damages to be assessed in respect of the Plaintiff's unliquidated claim for damages.
 - b. Cost of the Summons to be borne by the 2nd Defendant.

B. St. Michael Hylton QC
Acting Judge of the Supreme Court
29 August 2022

