

BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL JURISDICTION

No.2059 of 1995

BETWEEN :

PATRICIA BOURNE

(Plaintiff)

AND

GODDARD SUPERMARKETS LTD

(Defendant)

Before the Honourable Mr. Justice Lionel Greenidge, Judge of the High Court (in chambers).

2002: June 03 and 07.

Mr. C. Anthony Audain with Ms. Fiona Hinds for Plaintiff.

Ms. Wendy Straker holding for Sir Henry Ford Q.C. for Defendant.

DECISION

This is an application by summons made by Counsel on behalf of the defendant seeking an order to strike out the Action brought by the plaintiff on several grounds:

For want of prosecution; or by reason of the prolonged and/or inordinate and/or inexcusable delay and also on the ground that a fair trial is no longer possible in the particular circumstances of this case and/or the plaintiff's abuse of the process of the Court.

The plaintiff began this Action by writ generally endorsed on the 14th December, 1995. The defendant filed a notice of intention to defend on the 10th January, 1995. A Statement of [1] was not filed until 3rd September, 1996. The Court notes that this was in clear breach of Order 18 rule 1 in that the statement of claim was filed more than 14 days after the notice to defend and it was also filed without leave of the Court. The defendant contends that the statement of claim filed on the 3rd September, 1996 was in respect of an incident which allegedly occurred on the 5th January, 1991. The Court observes that this filing was nevertheless within the period of limitation of actions for personal injury. The defendant is now relying on the plaintiff's conduct of the action as cause for striking out. But the defendant did not file a defence to the statement of claim

filed on the 3rd September, 1996 until 2nd July 1997. Here too, the Court observes that the defendant was in breach of Order 18 rule 2. The defence should have been filed within 14 days. The plaintiff filed no reply to the defence. There was then an implied joinder of issue pursuant to order 18 rule 14 and the pleadings were deemed closed under order 18 rule 20. Thereafter it was open to either the plaintiff or the defendant to set the matter down for hearing, or alternatively the defendant may apply to the Court to dismiss the action for want of prosecution,

Neither the plaintiff or the defendant did take any further step to set the matter down for trial or to strike the action out until 23rd March 2000 when the defendant made this application which now engages the Court's attention. The matter was set down for

hearing of the summons on the 16th May, 2000. The defendant filed a supplemental affidavit on the 11th day of May, 2000. Since the lodging of the statement of claim by the plaintiff there had been a [2] further change of attorney and an affidavit in reply to the summons to strike out was filed on behalf of the plaintiff on December 5, 2001.

This affidavit disclosed that the plaintiff in the interim had been pursuing a claim for injury benefit from National Insurance with the knowledge of the defendant in which the defendant acknowledged that the injury did occur in the course of the plaintiff's employment. Also exhibited to the said affidavit is a letter dated 28th May, 1997 in which the plaintiff's attorney called upon the defendant's attorney to file its defence and which as before stated was not filed until the 2nd July, 1997.

In all the circumstances and given the conduct of both parties I am not prepared to exercise my discretion to strike the action out. The matter is to be set down before the Registrar at the next motions day hearing.

There will be no order as to costs on the application. [3]

Lionel D. Greenidge,

Judge of the High Court.