

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

Civil Suit No. CV274 of 2016

BETWEEN:

TARA ALLEYNE

CLAIMANT

AND

THE QUEEN ELIZABETH HOSPITAL BOARD

DEFENDANT

Before Master Deborah Holder, BSS, Master of the High Court

**2017: March 2
 September 21**

Appearances:

Ms. Lani Daisley, Attorney-at-Law for the Claimant

Mr. Ivan Walters, Attorney-at-Law for the Defendant

DECISION

Introduction

[1] This application was made by the Claimant at case management conference. In the application the Claimant did not mention the Rule or Act pursuant to which it was made nor the specific order being sought.

[2] (Written submissions were filed by the parties.)

Claimant's Arguments

[3] In this application it was stated that the Claimant requested that judgment in default be entered against the Defendant for failure to file and serve its

Acknowledgment of Service pursuant to **Part 12.4** of the **Supreme Court (Civil Procedure) Rules 2008**.

- [3] The request was refused by the Deputy Registrar because “proof of proper service of the said Claim Form and Statement of Claim was not established until the Acknowledgement of Service filed on 18th April, 2016 was filed”.
- [4] The Claimant argued that the Defendant was required to file its Acknowledgment of Service by 19th March, 2016, notify the Claimant forthwith of the filing and then serve its defence on or before the 4th April, 2016, or in the alternative file and serve its defence on or before 19th March, 2017 if it did not file an Acknowledgment of Service. She relied on **Part 9.1** and argued that the Defendant did not comply with **Part 9. (2) (a) and (b)** and **Part (9.4)**, therefore the Registrar was required to enter judgment in default.
- [5] The Claimant stated that the Defendant filed its Acknowledgment of Service thirty days after it was obliged to do so.
- [6] The Claimant denied that proper service was not effected but submitted that in such a case the proper procedure to be followed was that set out in **Part 5.13**. She asserted that the Deputy Registrar had acted ultra vires her power and that once the requisite time had elapsed she was duty bound to

either “issue default judgment or comply with the mandatory provisions of **Part 5.13.**”

[7] The Claimant also referred to irregularities in the Civil Ledger book.

Defendant’s Arguments

[8] In his extensive response Mr. Walters urged the court to dismiss the Claimant’s application. He argued that the Claimant failed to satisfy the conditions to obtain judgment in default. He stated that the Claimant was required to satisfy four conditions in order for the Registrar to enter judgement in default of the Defendant filing its Acknowledgment of Service. (**Part 12.4 (a) (b) (c)**). He also argued that the Defendant still had two to three days left to file when the Deputy Registrar rejected the application.

[9] He submitted that the Acknowledgment of Service which was filed by the Defendant was a genuine preliminary to the defence of the case and that the Defence demonstrated a real prospect of defending the case.

[10] He said that it would be disproportionate to enter judgment in default against the Defendant when there was an arguable defence on file. Moreover, taking the overriding objective of the C.P.R. into account the court should dismiss the application.

- [11] He indicated that the Claimant raised this matter with the Deputy Registrar, the Registrar and copied the letter to the Chief Justice and the Registrar rejected her application. Consequently, she was not entitled to renew this application before the Master.
- [12] Mr. Walters said that **Part 9.3.(3)** allowed the filing of an Acknowledgment of Service any time before a request for judgment in default was received in the Registry. Also, that the Registrar had the discretion to grant or deny the application and that entry of judgment in default was not automatic. This was based on the use of the word “may” in **Part 12.4** and **Part 9.2.(4)**. In addition only the Registrar and no other court functionary had the jurisdiction and discretion to enter judgment in default under **Part 12.4**.
- [13] According to the Defendant the correct procedure was to appeal to the High Court or Court of Appeal. The Master was a creature of statute with no appellate or inherent jurisdiction and therefore could not vary or set aside the Registrar’s decision.
- [14] Counsel described the application as an abuse of process of court and asked that it be dismissed with costs.
- [15] With respect to the contents of the Civil Ledger book mentioned by the Claimant, he submitted that these were “administrative matters of the

Registry over which the Defendant has no control.”

- [16] He stated that the Registrar’s decision remained in force unless it was set aside by the High Court or Court of Appeal.

Reply

- [17] In her oral response Ms. Daisley submitted that under the **Supreme Court (Civil Procedure) Rules 2008** the court had extensive powers where there was non-compliance with the rules. She said that the Defendant did not comply with the time table to file an Acknowledgement of Service and that its Defence should be struck out. She also said the Defendant did not notify the Claimant that it had filed an Acknowledgment of Service as required.

With respect to costs, she suggested that costs are not generally awarded at case management unless the matter is determined by the court.

Discussion

- [18] This is essentially an application to review the decision of the Deputy Registrar/Registrar who refused the Claimant’s request to enter judgment for failure to file an acknowledgement of service.
- [19] Before any discussion on the merits of the submissions made by the parties is entertained, the issue raised by the Defendant as to whether the

Master has jurisdiction to review the decision of the Registrar must be addressed.

[20] There can be no disagreement with the Defendant's assertion that the Master is a creature of statute and therefore the powers of that office are derived from statute. Likewise, there can be no disagreement with the Defendant's assertion that the Master has no appellate jurisdiction.

[21] **Part 12. Rule 12.4 of the Supreme Court (Civil Procedure) Rules 2008** provides:

“The Registrar may, at the request of the claimant enter judgment for failure to file an acknowledgment of service where

- (a) the claimant proves service of the claim form and statement of claim;
- (b) the period for filing an acknowledgment of service has expired;
- (c) the defendant
 - (i) has not filed an acknowledgment of service;
 - (ii) has not filed a defence to the claim or any part of it;
 - (iii) where the only claim, apart from costs and interest, is for a specified sum of money, has not filed or served on the claimant an admission of liability to pay all of the money claimed together with a request for time to pay it; and
 - (iv) has not satisfied the claim on which the claimant seeks judgment, and

- (d) necessary, the claimant has the permission of the court to enter judgment.”

[22] There is no doubt that under **Rule 12.4** the Registrar is the sole functionary authorized to exercise the discretion to enter judgment for failure to file an acknowledgment of service where the relevant conditions are satisfied. Consequently the Defendant’s assertion on this matter is also accepted.

[23] Finally, it is also agreed that **section 72** of the **Supreme Court of Judicature Act Cap 117A** provides that a person aggrieved by an order or decision of the Registrar sitting in Chambers may appeal to the High Court or the Court of Appeal in such cases as may be provided for by the rules of court.

[24] However **section 72** falls under Part VII of the Act which deals with the judicial functions of the Registrar. I therefore query whether a purely administrative act can be properly described as a decision made by the Registrar “sitting in Chambers”.

“In most cases the entry of judgment in default is purely an administrative act, not involving any judicial determination on the merits of the claim.” Blackstone’s Civil Practice 2011. Chapter 20.1.

[25] *What is the source of the Master’s authority to review this matter?*

In answering this question, I believe that it is necessary to briefly examine the history of the Master of the High Court.

The **Supreme Court of Judicature Act Chapter 117A** was amended to make provision for the Master of the High Court. (S.I 2006–4).

Section 69 A (3) provides:

“A Master shall exercise such authority and jurisdiction of a judge of the High Court sitting in Chambers as is assigned to the Master by this Act or rules of court.”

Section 69 B (2) provides:

“Where under this Act or the rules of court a Master exercises jurisdiction in relation to any matter, then

- (a) in relation to that matter, the Master shall have all the rights, powers, immunities and privileges of a Judge; and
- (b)”

Section 82 was also amended. It provides:

“**82 (2A)** Rules of court shall prescribe the matters in which the powers, authority and jurisdiction of a Master may be exercised”.

The **Rules of the Supreme Court (Amendment) Rules, 2007** amended Order 32 of the **Rules of the Supreme Court 1982**. The powers, authority and jurisdiction of the Master were inserted.

“**Rule 16 A (1)** Subject to the provisions of this rule, a Master shall have power to transact all such business and exercise all such authority and jurisdiction as may be transacted or exercised by a Judge sitting in Chambers, including:

(f) default judgments;

Rule 16 A (4) The power given to a Master by this section shall not include

(e) appeals from the Registrar;”

The above quoted amendments are clear. Historically, there is no basis on which one can infer that the Master was given the power to review a decision made by the Registrar pertaining to default judgments or hear appeals from the Registrar.

This is not the end of the matter. The court still has to consider whether the **Supreme Court (Civil Procedure) Rules 2008** allow the Master to review this decision.

[26] Ms. Daisley argued as stated previously that the Deputy Registrar/Registrar, in exercising her discretion, exceeded her power. In addition, she did not comply with the “mandatory provisions of **Part 5.13**”.

[27] “**5.13 (1)** Instead of personal service a claimant may choose an alternative method of service.

(2) Where a party

(a) chooses an alternative method of service;
and

(b) the court is asked to take any step on the basis that the claim form has been served,

the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.

(3) An affidavit under sub-rule (2) must

(a) exhibit a copy of the documents served;

- (b) give details of the method of service used;
 - (c) show that
 - (i) the person intended to be served was able to ascertain the contents of the documents; or
 - (ii) it is likely that the person would have been able to do so;
 and
 - (d) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents.
- (4) The Registrar must immediately refer any affidavit filed under sub-rule (2) to a judge or master who must
- (a) consider the evidence; and
 - (b) endorse on the affidavit whether it satisfactorily proves service
- (5) If the court is not satisfied that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the Registrar must fix a date, time and place to consider making an order under rule 5.14 and give at least 7 days' notice to the claimant.
- (6) An endorsement made pursuant to sub-rule (4) may be set aside on good cause being shown.”

[28] Under **Part 5 Rule 5.13.(4)** there is a limited role for the Judge and Master. The Registrar must immediately refer the affidavit to the Judge or Master who must consider it and endorse on the affidavit whether it satisfactorily proves service. However neither the Judge nor the Master is authorized to enter judgment in default under this part.

- [29] **Rule 5.14** mentioned above, deals with the power of the court to make an order for service by a specified method.
- [30] I make no finding as to whether or not in the circumstances of this matter the Registrar was obliged to follow **Rule 5.13**.
- [31] Nevertheless, the Master is only authorized to be involved in the process of entering judgment in default under this rule, if the Registrar refers the affidavit to her. The Registrar has not done so, therefore the Master is not empowered to unilaterally consider the matter.
- [32] To enter or refuse judgment in default is an administrative act. If the Claimant is satisfied that the Registrar has exceeded her authority and that she has been adversely affected as a result, she is entitled to make an application for judicial review to the High Court. (**the Supreme Court (Civil Procedure) Rules, 2008, Part 56 Rules 56 (1) and (2)**).
- [33] This will give the parties the opportunity to provide affidavit evidence for the court's consideration. As things stand only the Claimant's perspective has been placed before the court. And, although the Defendant responded to the Claimant's submissions, the crux of the matter is an administrative act which is best explained by the Deputy Registrar/Registrar.
- [34] Moreover, purely on the basis of the reason for refusal which was given it is not clear why alternative service would have arisen.

Conclusion

- [35] The Master's authority, jurisdiction and powers are assigned by the **Supreme Court of Judicature Act Cap 117A** and the rules of court. From the inception the Master's jurisdiction included default judgments but "appeals from the Registrar" were expressly excluded.
- [36] **Rule 12(4)** of the **Supreme Court (Civil Procedure) Rules, 2008** is clear. Only the Registrar has jurisdiction. The Judge and Master are not mentioned and if **Rule 5.13** is applicable as argued, their role is limited. The **Supreme Court (Civil Procedure) Rules, 2008** do not confer any authority or power on the Master to review, substitute or set aside the Registrar's decision.
- [37] The Claimant has not demonstrated that the Master has jurisdiction to review this matter. Consequently, the application is dismissed.
- [38] I make no order as to costs.

MS. DEBORAH HOLDER, BSS
Master of the High Court