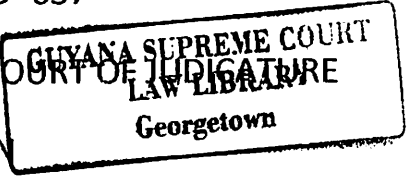


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2015- HC- DEM- CIV-D- 637

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE



CIVIL JURISDICTION

COMMERCIAL DIVISION

BETWEEN:

MASSY SERVICES (GUYANA) LTD, a company incorporated under the provisions of the Companies Act No. 29 of 1991 with a registered office at lot R5 Ruimvelt, Greater Georgetown, Guyana.

Plaintiff

-and-

BUDESH CHATTERPAUL trading under the name and style as Chatterpaul's Off Licence Store.

Defendant

Mr. E. Luckhoo, S.C. for Plaintiff

Mr. S. Sohan for Defendant

Ruling on tendering of exhibits.

This Court having reviewed the purpose of the Commercial Rules is of the view that the filing of Witness Statements were meant to ensure a speedy trial.

At the time of filing of Witness Statements the party making the Witness Statements must ensure that he has put forward all the facts that he/she relies on to support his/her case.

In addition to that disclosure must be made at this stage of any documents within the other party's possession that is required by the other party to support his/her case.

At the stage of Case Management all the evidence by way of documents must be disclosed to the other party who can at that stage state whether or not he/she objects to any of those documents.

A party can then say which documents are not acceptable and which have to be proved by a particular witness either, the maker of the statements or a party in whose custody those documents are ordinarily kept.

That then gives the party who is seeking to tender the documents an opportunity to call a relevant witness and provide a Witness Statement of that person who he/she is relying on to put in evidence a document.

Also at the filing of Witness Statements both parties are to annex all exhibits relied on and cannot after the filing of Witness Statements seek to tender a document that has not been filed and exchanged with his/her Witness Statement.

The purpose of Witness Statements is to ensure that the parties know what facts are in issue and what exhibits are being relied on.

At this stage Case Management is still in process and a party has the opportunity to object to any statements in the Witness Statement on any lawful ground and those parts can be struck out on not as required.

After Case Management the case for both parties must be in such a state of readiness that the party has only to go into the Witness box, tender his Witness Statement as his evidence in chief along with all exhibits not objected to at Case Management by the opposing party.

That party is then cross-examined. That party can then call his other Witnesses who must also have filed and exchanged their Witness Statements at the Case Management stage so that no objection can be made at the trial.

Looking at the matter before me and noting that the Defendant is now seeking to attack the Witness Statement and object to exhibits being tendered I will have to modify my approach in this instance and hope that my ruling will serve as a basis of the proper approach to Case Management and the trial of the matter.

The exhibits sought to be tendered by the Plaintiff are all photo copies. The Defendant did not object at the Case Management stage to any of these exhibits and therefore I will rule that the exhibits be tendered by the Plaintiff as evidence in this matter except for the requirement that certified copies of the Certificate of Registration be produced.

All other exhibits are to be tendered as if accepted by the Defendant since no objection was made at the Case Management stage.

I have also reviewed the issue of whether Witness Statements should be exchanged simultaneously, or whether the Plaintiff should first file his Witness Statement with the Defendant and thereafter the Defendant replies to that Witness Statement.

In my view the pleadings are supposed to define the respective parties cases but it has been observed that the Plaintiff on filing a Witness Statement more often than not includes additional facts to those pleaded and this can put a Defendant to disadvantage.

Since the Plaintiff is the party bringing the claim and the Defendant is the party answering the claim, then in my view the Plaintiff should go first, and lay out his claim, not hiding any facts from the Defendant.

The Defendant then has an opportunity to file his/her Witness Statement after seeing the Witness Statement of the Plaintiff and the claims made therein.

I would therefore advice that in future proceedings, the Plaintiff should file his Witness Statement first and serve on the Defendant and the Defendant will then file his Witness Statement and serve it on the Plaintiff.

At the Case Management stage before commencement of trial, a pre-trial review will be conducted in complicated matters, and if necessary a statement of agreed facts will be submitted by the parties, a statement of disputed facts, and a list of exhibits relied on by each party.

I hope this ruling will form a basis upon which the Commercial Court can operate and hence allow for speedy trials as is the basis upon which the Commercial Court Rules were formed.

Perhaps we need a practice Direction but I am not authorised to issue a practice direction.

I will call these guidelines for the operation of the process of Case Management.

Diana F. Insanally

Diana F. Insanally

7/11/2016