IN THE SUPREME COURT OF BELIZE A.D. 2017
(CIVIL)

CLAIM NO. 546 of 2017
BETWEEN

JOHN PALACIO **CLAIMANT**

AND

FOOTBALL FEDERATION OF BELIZE **DEFENDANT**

Before: **The Hon. Mde. Justice Shona Griffith**
Date of Hearing: **18th December, 2017.**
Appearances: **Mrs. DeShawn Arzu-Torres, McCoy Torres LLP for the Claimant and Ms. Darlene Vernon, D. Vernon & Co. for the Defendant.**

RULING

Civil Practice and Procedure – Failure to file defence to counterclaim – CPR 2005 Part 18 Rules 18.9 and 18.12 - Application for judgment on counterclaim and to strike out claim – Application for extension of time to file defence to counterclaim – Appropriate application to be filed.

Introduction

1. The Claimant John Palacio filed a claim against the Defendants, the Football Federation of Belize ('the Defendant' or 'the Federation') on the 31st August, 2017. The claim essentially was one for damages for breach of contract arising from an alleged wrongful dismissal of the Claimant from the employ of the Federation. The Defendant filed its defence along with a counterclaim on 4th October, 2017 denying the claim of wrongful dismissal and breach of contract and in turn alleging the Claimant to have fraudulently altered his employment contract and seeking declarations that the Claimant's dismissal was lawful. The Claimant filed no reply to the Federation's defence, nor defence to its counterclaim and as a result, by application filed pursuant to CPR Parts 11 and 18, the Federation sought judgment on its counterclaim. This application for judgment was supported by evidence on affidavit and filed on the 13th November, 2017.

2. At the scheduled case management conference on 15th November, 2017, Counsel for the Claimant orally requested an extension of time within which to file a defence to the counterclaim, however Counsel for the Defendant objected to the Court entertaining an oral request for extension of time. The application for judgment on the counterclaim having been filed just 2 days prior, the Court adjourned the case management conference, ordered Counsel for the Claimant to file its application on or before the 27th November, 2017 and directed a hearing on what would then be both applications on the 18th December, 2017. The Claimant filed an application for permission to extend the time for filing his defence to the counterclaim supported by an affidavit. The Defendant filed a further affidavit in support of its application for judgment on the counterclaim and opposing the Claimant's application for extension of time. This is the Court's ruling having heard both applications.

Issues

3. The issues for determination in this ruling are as follows:-
    (i) Should the Claimant be granted an extension of time to file a defence to the counterclaim?
    (ii) If not, is the Defendant entitled to judgment consequent upon the failure of the Claimant to file a defence to the counterclaim.

The Applications and Submissions of Counsel

4. The Defendant's application for judgment on its counterclaim was styled as having been filed pursuant to CPR Parts 11 and 18, the former being that Part which governs the procedure, form and content generally to be observed in relation to any application filed before, during or after court proceedings; and the latter, being that Part specifically applicable to ancillary claims, of which a counter claim is one. In particular, the application was based upon Rule 18.12(2)(a) which provides that a party who fails to file a defence to an ancillary claim within the time permitted, is deemed to admit the ancillary claim and is bound by any judgment or decision in the main proceedings insofar as is relevant to any matter arising in the ancillary claim.

Counsel for the Defendant illustrated the operation of Rule 18.12(2)(a) by reference to the decision of **Marva Rochez v Clifford Williams**[1]. Counsel for the Defendant submitted that based upon this decision, upon expiration of the 28 days limited for filing a defence, a right to judgment arises through operation of law without any action on the part of the counter claimant.

5. This it was submitted by Counsel, is tantamount to an automatic default judgment, save that a written (Part 11) application is necessary in order to obtain such judgment. Counsel for the Defendant further submitted that the application must also be filed in order for the court to be able to determine whether or not a judgment on the counterclaim would effectively dispose of the main claim. In respect of this proposition Counsel relied upon **Miguel Angel Mestizo v Roberto Gabourel et al.**[2] in which reference was made to the judgment of the Trinidad and Tobago Court of Appeal[3] considering an appeal in respect of the identical rule to Belize's Rule 18.12. The thrust of the submission based upon those two judgments is that because in this case the claim and counterclaim are inextricably bound, the deemed admissions against the Claimant are such that they effectively dispose of the allegations of the claim. Specifically with respect to the allegations of the claim and counterclaim, that the deemed admissions of the counterclaim impugn the very employment contract upon which the claim is based so that the claim can no longer be maintained.
6. Counsel for the Claimant's application for extension of time to file the defence to the counterclaim was more or less the response to the Defendant's application for judgment on the counterclaim. The application for extension of time itself identified no particular rule upon which it was based, but Counsel for the Claimant in her oral submissions, referred to the Court's general powers on case management to extend time pursuant to Rule 26.1(2)(c).

[1] Belize Supreme Court Claim No. 179 of 2009
[2] Belize Supreme Court Claims (Consol.) Nos. 668, 670, 671 & 699 of 2016.
[3] **Satnarine Maharaj v Great Northern Insurance Co. Ltd**. Trinidad & Tobago Civ. App. No. P198 of 2015

Counsel also referred to the decision from the Eastern Caribbean Supreme Court - **Lewis & Lewis v Bardouille**[4] as illustration of the factors the court ought to take into consideration in determining whether to extend time. Counsel also noted that the Rule fails to define any factors which are to inform the exercise of the Court's discretion. In relation to the grounds of her application, Counsel for the Claimant cited the overriding objective of the Rules and the fact that the grant of leave to file the defence to the counterclaim would not cause any prejudice to the Defendant.

7. By way of evidence, the Claimant's affidavit filed in support of the application alluded to the fact that the Claimant had sought a default judgment by filing a request which had not been accepted by the Court office[5]; and that because such a request had been filed, his attorney inadvertently did not file a defence to the counterclaim. Additionally, the Claimant's affidavit referenced an alleged conversation via WhatsApp message with an official of the Defendant as indicative of the strength of his claim, and that the counterclaim and claim are interconnected and overlap, as reasons why he should be allowed to file his defence to the counterclaim out of time. Finally, Counsel for the Claimant stressed the discretionary nature of the power available to the Court in determining the application to extend time, in conjunction with the overriding objective to dispose of cases justly and likewise referred to **Satnarine Maharaj v The Great Northern Insurance Co. Ltd.**[6], as illustration of the application of Rule 18.12.

8. In response to the Claimant's application to extend the time for filing its defence to the counterclaim, Counsel for the Defendant submitted that the application was clearly being sought pursuant to CPR 26.1(2)(c), which affords the Court power to extend time for compliance with any rule even where time for compliance has already expired. Counsel referred to Jamaican decision **Bennett & Bennett v Williams**[7] in support of her submission that albeit not expressly provided, the exercise of the court's discretion to extend time pursuant to Rule 26.1(2)(c) (the rule is identical in Jamaica), is subject to several factors.

[4] DOMHCV 2011/0158
[5] The defence had already been filed the same day.
[6] Supra, n 3
[7] [2013] JMSC Civ 194

As submitted, these factors are (i) whether the party has a realistic prospect of success; (ii) the length of delay; (iii) the extent of any prejudice that may be caused to the other party, if at all; and (iv) if there is delay, whether there is good reason for the delay. Counsel for the Defendant alleges that the Claimant has failed to satisfy the Court in respect of any of the factors listed.

9. In the first instance, Counsel for the Defendant submits that the Claimant having failed to file a draft defence provided no basis upon which the Court could assess the strength or otherwise of its intended defence to the counterclaim. Further, that in the circumstances, the time in excess of one month which elapsed from the expiration of time for filing a defence to the counterclaim to the making of the application for extension was significant. In particular it was alleged that the application for extension of time arose only as a result of the Defendant's own application for judgment on the counterclaim. With respect to delay, counsel for the Defendant also alleged that there was no good reason put forward for the failure to file the defence to the counterclaim and that all that was alleged was the inadvertence of counsel which has been held in numerous cases, not to amount to good reason.[8] Finally in respect of the question of prejudice, Counsel for the Defendant reverted to her submission that the effect of Rule 18.12 is tantamount to the Defendant being entitled to a default judgment as a result of the deemed admission of the counterclaim upon failure to file a defence within the time stipulated. Counsel for the Defendant concluded by submitting that the Claimant had not satisfied the Court that the application to extend time for filing a defence to the counterclaim should be granted.

Discussion and Analysis

10. It is more convenient for the Court to consider the Defendant's application based on the operation of Rule 18.12(2)(a) prior to determining whether to exercise its discretion in favour of affording the Claimant time to file his defence to the counterclaim. The Rule is set out in its entirety as follows:-

[8] Counsel cited Belize Supreme Court Claim No. 242 of 2014 Belize Electricity Limited v Rodolfo Gutierrez

18.12 *(1) This rule applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within the permitted time.*

(2) The party against whom the ancillary claim is made

(a) is deemed to admit the ancillary claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim; and

(b) Subject to paragraph (5), if judgment under Part 12 is given against the ancillary claimant, he or she may apply to enter judgment in respect of the ancillary claim.

(3) However paragraph (2) does not apply in ancillary proceedings against the Crown unless the court gives permission, subject to Rule 18.7;

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise;

(5) The ancillary claimant may not enter judgment under paragraph (2)(b) without the court's permission if the ancillary claimant wishes to obtain judgment for any remedy other than a contribution or an indemnity for a sum not exceeding that for which judgment has been entered against the ancillary claimant.

(6) The court may at any time set aside or vary a judgment entered under paragraph (2) if it is satisfied that the ancillary defendant

(a) applied to set aside or vary the judgment as soon as reasonably practicable after finding out that judgment had been entered;

(b) gives a good explanation for the failure to file a defence; and

(c) has a real prospect of successfully defending the ancillary claim.

11. Counsel for the Defendant's submission in respect of the operation of Rule 18.12(2)(a) is that the admission of the claim having been adjudged as occurring by operation of law, the Defendant's right to judgment on the counterclaim was automatic and in the nature of a default judgment, except that an application to the court was necessary in order to secure the judgment. It is found that the characterisation of the effect of the deemed admission of the counterclaim as an automatic right to judgment moreover in the nature of a default judgment, is misplaced. Where an ancillary defendant fails to file a defence, the right afforded an ancillary claimant is by no means considered to be automatic.

The Court, has to determine effect of the deemed admissions on the counterclaim vis-à-vis the main claim. The approach in ***Satnarine Maharaj***[9] which Counsel for the Defendant herself relied on is found to be most instructive. At paragraph 21 of the judgment, the Court of Appeal firstly acknowledged the plain wording of the rule in Trinidad[10] to mean that the deemed admissions applied to the averments contained in the counterclaim in addition to the relief claimed. The Court therein described the question of the effect of the admissions, as the crux of the dispute and lying at heart of determining the appeal.

12. As accurately identified by Counsel for the Defendant, the Court of Appeal approached its determination of the effect of the deemed admissions of the counterclaim on the claim in the following terms[11] (emphasis mine):-

> *"It is necessary for the court to carefully consider the admissions and ask itself whether any of the allegations in the claim can exist consistently with the deemed admissions. <u>If there are allegations that cannot stand in view of the deemed admissions the court must assess how that impacts on the claim</u>."*

Additionally at paras 23-24 of the judgment

> *"There of course need be no connection between the claim and the counterclaim…In such case it is unlikely that the failure to defend the counterclaim will have any significant impact on the claim. Where however the counterclaim is wrapped up in the claim and intimately connected to it the position can be expected to be different…"*
>
> *"<u>We think it must be right that there would be cases where the deemed admissions arising from the failure to defend the counterclaim can result in the dismissal of the claim</u>. One such case is where the effect of the claimant admitting the counterclaim would lead to a contradictory outcome on the claim if it were allowed to continue. <u>To permit the claimant to proceed with the claim in those circumstances would be an abuse of process</u>."*

13. Counsel for the Defendant applied the above approach to the facts of the instant case and urged the conclusion upon the Court that the effect of the deemed admission of the counterclaim was that the subject contract of the claim was deemed invalid and unenforceable.

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[9] [9] ***Satnarine*** *n. 5 supra*

[10] Trinidad & Tobago's CPR 1998 Rule 18.12(2)(a) is identical in terms to Belize's CPR 18.12(2)(a).

[11] ***Satnarine*** *n. 5 supra* @ para. 22 et seq.

Upon examination of the allegations and relief claimed in the counterclaim the Court agrees with Counsel for the Defendant that the effect of a deemed admission of the counterclaim renders the claim for wrongful dismissal and breach of contract unsustainable. Having so found in relation to the effect of the deemed admission of the counterclaim, the question now arises as to the appropriate order to be made in favour of the Defendant. At this juncture however the Court will now consider the Claimant's application for extension of time and return to the disposal of the Defendant's application for judgment arising from the failure to defend the counterclaim.

14. The Claimant's application for extension of time to file a defence to the counterclaim is accepted as having been filed pursuant to Rule 26.1(2)(c) - the Court's general power on case management to extend time. In the Court's view, it must first be recognised that Rule 18.12(2)(a) imposes a sanction for a failure to comply with a rule of the CPR – namely - Rule 18.9 which prescribes the period of 28 days within which to file a defence to a counterclaim. Rule 18.12(2)(a) then imposes a sanction for non-compliance with the time period for filing a defence to the counterclaim - that the party is deemed to admit the counterclaim. From this perspective, the operative rule in respect of any action the claimant is permitted to take, becomes Rule 26.7(2) which states as follows (emphasis mine):-

> *"Where a party has failed to comply with any of these Rules, a direction or any order, <u>any sanction for non-compliance imposed by the Rule</u>, direction or the order <u>has effect unless the party in default applies for and obtains relief from the sanction, and Rule 26.9 shall not apply</u>[12]."*

An application for relief from sanctions is of course made pursuant to CPR Rule 26.8 which will be considered shortly.

15. With respect to the Court's view on the appropriateness of the Claimant's application for extension of time, reference is made to **The Attorney-General of Belize v Florencio Marin & Jose Coye**.[13]

[12] Rule 26.9 empowers the court to put right an error of procedure or failure to comply with a rule, practice direction or order subject to a consequence not having been specified by the rule, practice direction or order.
[13] Belize Supreme Court Claim No. 49 of 2009 @ para. 2.

The learned Chief Justice in this case remarked that Rule 26.1(2)(c) was, in addition to all other powers of the court listed under Rule 26.1(2), qualified by the opening words of the Rule which state 'except as otherwise provided by these Rules'. This position was restated by the learned Chief Justice in **Steve Fuller v Fort Street Tourism Village et al**.[14]in the following terms (emphasis mine):-

> *"The Court is empowered by Rule 26.1(2)(c) to extend the time for compliance with an order of the Court whether before or after the time for compliance has passed. However, before exercising the discretion so to do it is circumscribed by the mandatory requirement of Rule 26.8(1) and (2) visited upon any application for failure to comply with any Rule, order or direction of the Court."*

It is acknowledged that the Claimant's application was not filed pursuant to 26.8 as ought to have been done. However, it is not proposed to dismiss the Claimant's application for an extension of time without consideration, by reason only of the fact that it was not an application for relief from sanctions. The application will instead have to be assessed against the standards and criteria applicable to an application for relief from sanctions.

16. An application for relief from sanctions pursuant to Rule 26.8 provides as follows:-

26.8 (1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be –

(a) made promptly; and

(b) supported by evidence on affidavit.

(2) The court may grant relief only if it is satisfied that –

(a) the failure to comply was not intentional;

(b) there is a good explanation for the failure; and

(c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.

(3) In considering whether to grant relief, the court must have regard to –

(a) the effect which the granting of relief or not would have on each party;

(b) the interests of the administration of justice;

(c) whether the failure to comply has been or can be remedied within a reasonable time;

(d) whether the failure to comply was due to the party or the party's legal practitioner; and

(e) whether the trial date or any likely trial date can still be met if relief is granted.

[14]Belize Supreme Court Claim No. 661 of 2012 @ para. 11

17. There is no shortage of judicial pronouncement on the operation of this Rule but a fine starting point is Barrow JA (as he then was) in the Eastern Caribbean Court of Appeal's decision of **Nevis Island Administration v La Copropriete Du Navire J31**.[15] It bears mention that Belize's CPR 2005 are almost a replica of the OECS' CPR 2000 but in any event Belize's Part 26 including Rule 26.8 on relief from sanctions is identical to its OECS counterpart. In relation to the application for relief from sanctions, Barrow JA firstly favourably distinguished the criteria for relief under Rule 26.8 from what was referred to as the pre CPR 2000 criteria for exercise of the court's discretion to extend time. Barrow JA observed that the previous criteria (in the same terms as those identified by Counsel for the Defendant herein at para 8 as judge made and susceptible to inconsistencies in application by the court. More pertinently however, with respect to the criteria of Rule 26.8 Barrow JA said as follows (emphasis mine):-

> *"In contrast, certain of the criteria that are set out in rule 26.8 are made conditions precedent to the grant of relief and the court is expressly precluded from granting relief if certain of them are not satisfied."*[16]
>
> *"Rule 26.8 (1) (a) stipulates that an application for relief must be made promptly. Further, rule 26.8 (2)(a) requires that an applicant must provide a good explanation for the failure to comply with a rule when he seeks relief. Each of these is a mandatory requirement. In the case of the latter it is ordained that the court may not grant relief unless it is satisfied that there is a good explanation for the failure*[17]*."*

18. What is evident therefore is that the requirements of Rule 26.8(1) must first be satisfied and thereafter those of Rule 26.8(2) in order for the application for relief to be granted. The Court will also be required to consider the factors listed in Rule 26.8(3) if the application gets beyond the stages of sub-rules (1) and (2). This decision was cited with approval by the learned Chief Justice here in Belize in ***Attorney-General v Florencio Marin & Jose Coye***[18]and will be applied by the Court in the instant case.

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[15] Civ. App. No. 7 of 2005
[16] Ibid @ para 5
[17] **Nevis Island Administration v La Copropriete Du Navire J31** supra no. 15 @ para 14.
[18] *Supra* n. 12

It was particularly stated by the Chief Justice in ***Marin & Coye*** that the court must assess the evidence in determining whether or not the conditions of Rule 26.8(1) and (2) are satisfied. It can also be observed from the ***Nevis Island Administration*** case that Barrow JA subjected the evidence in support of the application for relief, to robust scrutiny[19]. It has already been stated that the Claimant's application, albeit not presented as an application for relief from sanctions, will nonetheless be assessed against the requirements of Rule 26.8. The first condition to be assessed therefore is the question of the promptness of the application.

19. As was discussed in the ***Nevis Island Administration case***[20], the question of promptitude is relative to each particular case as the court must examine the reason for the delay. Counsel for the applicant in that case sought to rely on the UK Court of Appeal decision of ***Sayers v Clarke Walter***[21] in which an application for extension of time for leave to appeal was granted after almost two (2) months had elapsed from the expiration of the time limited for appeal. The circumstances were that in the face of application of new CPR rules, solicitors unfamiliar with the rules were erroneously advised by the court office as to the date from which time started to run against their application. This resulted in time expiring. The information was later corrected by the court office and the solicitors filed their application three (3) days after receiving the correct information. Barrow JA found those circumstances to be clearly distinguishable from those in the case before him and adjudged the 5 month delay attributable to the attorneys' own misapprehension of the law and for no other reason. In those circumstances the application for relief from sanctions was found lacking for promptitude.

20. In the instant case, the application in question was filed approximately 7 weeks after service of the Defendant's application for judgment on the counterclaim. The actual period of 7 weeks is not the most prompt but as far as delay can be measured it need not be found to be unduly tardy. In this case it is considered that the reason for the delay is relevant to the determination of promptness.

[19] Ibid paras 6 - 13
[20] Ibid.
[21] *[2002] EWCA 645*

The Claimant's affidavit stated that his attorney inadvertently failed to file the defence to the counterclaim given that the request for judgment in default of defence had been filed. Albeit the word 'inadvertent' is used, what is fairly inferred by the Court is that a defence (to the counterclaim) was not filed because it was thought that the request for judgment in default of defence on the claim obviated the need to do so. As it so happened, the court office clearly differed with the Claimant on the calculation of time, thus the defence was actually filed on the same day the Claimant's request for judgment in default was presented. Thereafter, only after the Defendant filed for judgment on the counterclaim, was an oral application made, (then reduced to the written application), for extension of time to file the defence to the counterclaim). In these circumstances, the application is not found to be prompt as the time elapsed when the Claimant (via his attorney) would have had full knowledge that his request for judgment in default of defence had not been filed.

21. In giving due consideration to the Claimant however, the court nonetheless continues on to the second condition of Rule 26.8 – whether the failure was intentional; whether there is a good explanation for the failure; and whether there has otherwise been general compliance of the rules, directions or orders of the court in the matter. There can be no denying that these conditions are cumulative and must all be satisfied.[22] With respect to whether the failure was intentional, unfortunately for the Claimant, it comes from his own admission, that the reason that the defence to the counterclaim was not filed, was because their request for entry of judgment in default had been filed. It turns out the request for judgment in default was not filed, however even if it had been filed and judgment in default of defence entered, the counterclaim stands on its own even upon the disposal of the main claim[23]. The Claimant would have nonetheless been obliged, if he intended to defend the counterclaim, to have filed a defence in answer to the claim. It is found that the failure to file was intentional by the Claimant's own admission.

[22] Eastern Caribbean Supreme Court **- Richard Frederick v Owen Joseph et al Civ. App. No. 32 of 2005** per Rawlins JA @ para. 20.
[23] Rule 18.6

22. This view notwithstanding, even if the opposing view were to be taken and the Court goes on to consider the question of a good explanation, the dictum of Barrow JA in the ***Nevis Island Administration***[24] case would be placed squarely in answer to this issue. The misapprehension of law on the part of attorneys in that case on the need to apply for leave to appeal was rejected outright as excusing the failure to apply promptly for an extension of time. It goes without saying therefore that such a misapprehension of law cannot amount to a good explanation. At this juncture therefore having assessed the Claimant's application against the criteria for the grant of relief from sanctions, the application is found wanting. As stated before, the application was so considered in light of the Court's view that the deemed admission of the counterclaim by virtue of Rule 18.12, is a clear sanction for failure to comply with the requirement to file a defence to a counterclaim within 28 days pursuant to Rule 18.9(2). Even absent the strict criteria imposed by Rule 26.8, were the Court to consider the application for extension of time with reference only to Rule 26.1(2)(c) and Rule 10.3(8), the factors of delay and good explanation would still have to be considered, as would the question of there being a good defence to the counterclaim.

23. The Court would obviously be disposed in the same manner in respect of first two factors and in relation to the question of a good defence, the Claimant failed at the time of filing his application, to exhibit a defence to the claim. Rather, on the morning of the hearing of the applications, the Court was informed by Counsel for the Claimant that there had been a draft defence filed. This was viewed as wholly unacceptable given the nature of the application and the fact that there was no attempt to provide any reason as to why a draft defence had not been filed up to that time. In the circumstances, the Court refused to entertain the late draft defence which at the time of the hearing had yet to be put before the Court. The Claimant's application for an extension of time within which to file and serve his defence to the counterclaim is therefore refused.

[24] Supra @ paras 6-13.

24. The residual question of the relief to be afforded the Defendant which the Court temporarily diverted from now arises for determination. The Defendant has by its application sought judgment arising from the Claimant's deemed admissions on the counterclaim. It has already been determined by the Court (following the approach in ***Satnarine Maharaj v The Great Northern Insurance Co. Ltd***[25]) that the effect of the deemed admissions is that the Claimant's case that he was wrongfully dismissed cannot be sustained. This is because he has been deemed to admit that he fraudulently altered his original contract to include benefits not validly approved by the Defendant, as well as to have excluded the clause entitling the Defendants to determine the contract with notice. On the whole, the Claimant has been deemed to admit that his dismissal was lawful and that he has been paid all the benefits to which he was entitled on the contract he originally entered into. Therefore, should the Court proceed to grant judgment as sought?

25. The Claimant has requested judgment on the counterclaim but the mechanism by which any such judgment is given is not in the Court's view clearly prescribed in Part 18. As was noted by the learned Chief Justice in **Indira Bowen v Geoffrey Austin Arzu & Malcolm Sobers**[26] save for in very narrow terms as provided under Rule 18.12(2)(b), judgment in default is not available on a counterclaim. These narrow terms arise only where a claimant has obtained judgment in default against the ancillary claimant in the main proceedings and even then the ancillary claimant may obtain judgment in default only in respect of a claim for contribution or indemnity. Outside of this narrow basis for default judgment as stated above, the only other means of disposal of the counterclaim (armed with the deemed admissions), is by trial or summary judgment under CPR Part 15. If summary judgment is not available because the counterclaim is a type of proceeding excluded from its application[27] then the counterclaimant would have to seek a disposal by way of summary hearing.

[25] *Supra n. 5. Paras 21-24 therein*
[26] Belize Supreme Court Claim No. 407 of 2013 @ para
[27] Rule 15.3

In addition to the disposal of the counterclaim, if the deemed admissions render the claim unsustainable, the defendant should also seek to have the claim struck out, whether also by way of summary judgment (no reasonable prospect of success) or by way of Rule 26.3(1)(c) (that the proceedings are an abuse of the court's process).

26. In the instant case, the application filed by Counsel for the Defendant seeks judgment on the counterclaim but has not been filed pursuant to Part 15. In determining whether to grant such judgment, the Court must consider whether the application nonetheless complied with the requirements of an application for summary judgment under Part 15 and whether the proceedings afforded the Defendant all rights or opportunities to which he would have been entitled thereunder. Rule 15.4 provides that notice of an application for summary judgment be served at least fourteen (14) days prior to the date fixed for hearing and that the application must identify the issues to be dealt with on the application. Additionally, the application must be supported by evidence on affidavit similarly served not less than 14 days before the date fixed for the application. The Defendant is at liberty to file affidavit evidence if he or she wishes to rely on same at the hearing. The Defendant's application for judgment on the counterclaim satisfies the requirement for service both in respect of the application itself and the affidavit evidence. The application also identified the issue to be dealt with which was the effect and relief of judgment sought consequent upon the admission of the counterclaim pursuant to Rule 18.12(2)(a). The Claimant (qua counter defendant), was afforded all opportunity to respond to and be heard on the application.

27. The Claimant's response primarily in the form of the application for extension of time to file his defence has been unsuccessful and there is no prospect of the Claimant defending the counterclaim in the absence of a defence. In the circumstances, pursuant to the Court's powers under Part 15, judgment on the counterclaim is ordered without need for a trial. In the face of the deemed admissions of the claim, it is also found that the claim has no reasonable prospect of success and is accordingly dismissed.

Disposition by the Court

28. The following orders are made upon disposition of the Applications:-

(i) The Claimant's application for extension of time to file his defence to the counterclaim is refused.

(ii) Pursuant to Rule 18.12(2)(a) the Claimant is deemed to admit the counterclaim.

(iii) As a consequence of the deemed admissions on the counterclaim the Defendant is awarded summary judgment on the counterclaim and the claim is struck out by the Court as having no reasonable prospect of success.

(iv) The Defendant makes no claim for costs.

Dated the day of February, 2018.

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Shona O. Griffith
Supreme Court Judge.