

IN THE HIGH COURT OF BELIZE A.D. 2024

CLAIM NO. 323 of 2022

TYLER CRUZ HERRERA

CLAIMANT

AND

MIGUEL MARTINEZ

1<sup>ST</sup> DEFENDANT

JULIO SHAL

2<sup>ND</sup> DEFENDANT

ALEXANDER SHAL

3<sup>RD</sup> DEFENDANT

JOSE UH

4<sup>TH</sup> DEFENDANT

MATEO CARILLO

5<sup>TH</sup> DEFENDANT

BELIZE POLICE DEPARTMENT

6<sup>TH</sup> DEFENDANT

ATTORNEY GENERAL OF BELIZE

7<sup>TH</sup> DEFENDANT

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7 May 2024

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**JUDGMENT**

*(subject to editorial corrections)*

*Practice and procedure – request for default judgment struck out – no proof of service – non-compliance with for non-compliance with CPR 12.4(a) – need for clarity in pleadings filed in without notice applications*

[1] **HONDORA, J.** on 19 March 2024, the claimant, Mr Tyler Cruz Herrera made an application through his legal practitioner, Mr Leeroy Banner of Messrs Myles and Banner, for default judgment on the grounds that the defendants were served with the claimant's Claim Form and Statement of Claim but did not file and/or serve Acknowledgements of Service.

[2] I have considered Mr Herrera's request for default judgment. Unfortunately, the request is defective, and I have struck out it out.

## Brief background

- [3] In his Claim Form and Statement of Claim issued and sealed by the court office on 13 May 2022, Mr Herrera claimed
- “1. Damages, including aggravated and exemplary damages for unlawful arrest and false imprisonment;
  2. Damages, including aggravated and exemplary damages for malicious prosecution;
  3. Damages, including aggravated and exemplary damages for assault and battery;
  4. Special damages \$3,500 (sic);
  5. Interest
  6. Cost (sic) and/or
  7. Such further or other relief as this Honourable Court deems just.”
- [4] Mr Herrera’s case is that he was arrested by the police in 2018 for the alleged unlawful killing of a Mr Thomas Henry. He alleges that he was assaulted, tortured, made to sign a false confession, and was maliciously prosecuted. He also says he was acquitted of the charge of murder by Cumberbatch J in May 2021 by which time, per his calculation, he had spent “three (3) years, three (3) months, two (2) weeks and five (5) days in custody (1205 days).”
- [5] Messrs Myles and Banner applied for default judgment on behalf of Mr Herrera on the basis that the Defendants did not file acknowledgements of service. That request, which is dated 22 November 2023 was filed with the court office on 19 March 2024.
- [6] The court office placed the claimant’s request for default judgment before me in part, I suppose, because in his statement of claim, Mr Herrera averred that his constitutional rights were violated. However, the remedies section of his claim form does not indicate that he is seeking any constitutional relief against the government.
- [7] After a careful review of the claimant’s pleadings, I have decided to strike out Mr Herrera’s request for default judgment application as it is fatally defective.

## The law

- [8] Requests for default judgment are initiated pursuant to Civil Procedure Rule (CPR) 12.4, which provides:
- “The court office, at the request of the claimant, must enter judgment for failure to file an acknowledgement of service, if –*
- (a) the claimant **proves** service of the claim form and statement of claim;
  - (b) the period for filing an acknowledgement of service under Rule 9.3 has expired;
  - (c) the defendant has not filed –
    - (i) an acknowledgement of service; or
    - (ii) a defence of the claim or any part of it;
  - (d) the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it, where the only claim is for a specified sum of money, apart from costs and interest;
  - (e) the defendant has not satisfied in full the claim on which the claimant seeks judgment; and
  - (f) the claimant has permission to enter judgment (where necessary). [Emphasis added]

- [9] Clearly, a claimant's entitlement to secure default judgment for failure by a defendant to file an acknowledgment of service is strictly conditional on the claimant proving on the papers that they effected service of the claim form and statement of claim upon a defendant (see **CPR12.4(a)**).
- [10] In this matter, Mr Herrera's lawyers were required to prove that they effected service of the claim form and statement of claim upon each defendant against whom they seek default judgment. For this, Messrs Myers and Banner needed to comply with CPR 5.5(1) and file relevant affidavits of service sworn by the server stating:
- (a) the date and time of service;
  - (b) the precise place or address at which it was served;
  - (c) the precise manner by which the person on whom the claim form was served was identified; and
  - (d) precisely how the claim form was served."
- [11] However, Messrs Myers and Banner did not file any affidavits of service and consequently, the statement made in their Form 7 that "*Evidence of service of the Claim Form and Statement of Claim [] is filed with this form*" is not true.
- [12] I therefore strike out the request for default judgment for failure to provide proof of service of the claim form and statement of claim.
- [13] That said, this matter raises related issues of practice and procedure with respect to which it is useful to make a few remarks.
- [14] Pleadings must be clear, concise and accurate. This applies with equal force to pleadings filed in relation to undefended proceedings such as these.
- [15] In relation to prescribed forms, such as Form 7, completion of the same should not be a clerical exercise. Rightly, **CPR 3.10** requires the forms in the Appendix to the Rules to be used in all relevant instances. However, as noted in **CPR 3.10(2)**, the forms must be adapted to as relevant to suit each case. This ensures that averments on the law and facts made in that form are strictly relevant to the issues arising for determination in the matter. This is more so in cases that raise potentially complex issues of law. Irrelevant statements in a prescribed form should be deleted as they increase the chances of confusion and/or misinterpretation.
- [16] By way of example, in addition to the statement included by Messrs Myles and Banner in the request for judgment in default that "*we certify that (a) the time for the defendant to file and serve an acknowledgement of service has expired*", they should have gone further to identify in clear and simple terms:
- (a) the date on which the claim form and/or statement of claim were served upon each defendant;
  - (b) the date by which each defendant ought to have filed an acknowledgement of service; and
  - (c) each defendant that failed to file and/or serve their acknowledgment of service.
- [17] As a general rule, a request for default judgment that does not contain essential averments will likely be struck out. Certainly, certification by a lawyer or litigant in Form 7 is not in and of itself dispositive of the question whether a claimant is entitled to be granted judgment in default. The claimant must make essential averments and the court will in the interests of justice base its decision on the party's case as pleaded and the law.

- [18] I also note that in the request for default judgment, Messrs Myles and Banner used the word “**Defendants**” once and in all other instances, used the word “**Defendant**”. Yet, there are seven defendants in this matter. For example, they state “*we certify that (a) the time for the **Defendant** to file and serve an Acknowledgement of service has expired.*” They also state “*(c) the **Defendant** has not paid any monies in settlement of the claim.*”
- [19] I would also strike out this case on this basis, i.e., that the claimant has not established why the court should issue default judgment against any of the seven defendants since its request refers to one unidentified defendant as being in default both of filing an acknowledgement of service within the prescribed timeframe and of payment of any money in settlement of the claim.
- [20] Clarity in drafting of pleadings is important. It contributes to the overriding objective, reduces costs, and permits the early identification of legal and factual issues falling for determination. It also promotes early resolution of disputes at proportionate cost, including through settlements once the real dispute between parties to litigation has been identified.
- [21] In the circumstances, I hold that the request for default judgment is defective. Consequently, I have struck it out. I make no order as to costs.

#### **ORDER**

- [22] It is hereby ordered that:
- (1) The application for default judgment is struck out.
  - (2) No order as to costs.

**Dr Tawanda Hondora  
Judge  
High Court**