

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 410/2023

BETWEEN:

NANCY HERRERA

Claimant

AND

POLLY ALFORD

Defendant

Appearances:

Mark E. Williams SC for Claimant

Aaron Tillette for the Defendant

2024: March 27

ORDER

[1] **GOONETILLEKE , J.:** The claimant filed this claim by way of a Claim Form dated 30th November 2023.
The defendant filed a defence dated 1st September 2023.

- [2] Consequently, court scheduled a case management conference 06th December 2023 and the following directions were given;
- i. Standard disclosure to be made on or before 20th December 2023;
 - ii. Service and exchange of witness statements on or before 15th January 2024;
 - iii. Objection to witness statements to be filed on or before 29th January 2024;
 - iv. Response to objections to witness statements to be filed on or before 09th February 2024;
 - v. Agreed statement of facts and issues to be filed on or before 19th February 2024;
 - vi. Pre-Trial memorandum to be filed on or before 19th February 2024;
 - vii. Trial Bundle/ Core bundle of documents to be filed on or before 29th February 2024;
 - viii. Pre-trial conference and hearing of objections to witness statements on 08th March 2024;
 - ix. Trial is scheduled for 25th and 26th March 2024 in person, commencing at 9 a.m.
- [3] On the 12th of January 2024, the counsel for the claimant by letter informed the court that he had not been able to get instructions and moved for time to comply with the case management directions.
- [4] When this matter was taken up for pre-trial conference on 8th March 2024, it was noted that none of the directions given by court at the case management conference had been complied with by the claimant. Counsel for the claimant informed that he had a difficulty reaching out to and communicating with his client and moved to have the trial dates vacated and moved for further time to obtain instructions. The court was inclined to grant this adjournment as the claim was in respect of an accidental death. The counsel for the defendant graciously agreed to waive costs for that date. The trial dates were vacated and the matter was then set for report on 27th March 2024 in regard to instructions of the claimant to proceed.
- [5] When this matter was taken up today, counsel for the claimant informed court that he had no instructions from the claimant and was not able to communicate with her and was unable to proceed.

[6] In terms of **Rule 26.3(1)** of the **Civil Procedure Rules**, the statement of case may be struck out if it appears that there is a failure to comply with the rules, practice directions or with an order or direction given by the court.

[7] As the claimant has been given an opportunity to comply with the case management directions and has not done so and has failed or neglected to give instructions to counsel to proceed with this matter; this court finds that claimant has not prosecuted the claim diligently and has not complied with the directions given by court. In the circumstances, the claim is struck out in terms of **Rule 26.3(1) (a)** of the **Civil Procedure Rules**; for failure to take any steps to comply with any of the directions given by court at the case management conference.

Costs

[8] As the defendant has filed a defence, the defendant is entitled to costs; for filing a defence, any other filings, and the appearance of counsel at the case management conference and for appearance of counsel today. As the counsel for the defendant graciously waived costs for appearance on 8th March 2024, no costs are awarded for that date.

[9] Costs are to be assessed by the Registrar. Nominal costs may be awarded as no submissions were made and this is a claim instituted for an accidental death.

[10] **IT IS HEREBY ORDERED THAT**

(1) The Claim is Struck out

(2) Costs are to be assessed by the Registrar.

Rajiv Goonetilleke
High Court Judge