

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
ANTIGUA AND BARBUDA

CLAIM NO.: ANUHCV2006/0177

BETWEEN:

**MYRON ROBERTS HAYDT**  
(As Agent for William H. Grube, Jr.)

Claimant

and

**(1) EDMUND GREEN**  
**(2) JANIS REYNOLDS GREEN**  
(Trading As Carapes Inc.)

Defendants

**Appearances:**

Mr. Alex Fearon for the Claimant

Dr. David Dorsett for the 1<sup>st</sup> Defendant

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2009: November 13, 27  
2010: January 15  
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**JUDGMENT**

- [1] **MICHEL, J:** On 3<sup>rd</sup> April 2006 the Claimant filed a Fixed Date Claim Form with an accompanying Statement of Claim claiming against the Defendants specific performance of a written agreement entered into between the parties in about June 2005 whereby the Defendants agreed to sell and the Claimant agreed to purchase three parcels of land, or alternatively, damages for breach of the agreement.

- [2] The First Defendant filed a Defence to the claim on 31<sup>st</sup> July 2006 and a Reply to the Defence was filed on 10<sup>th</sup> March 2008.
- [3] There were several applications made by the parties to these proceedings and several orders made by the Court in these proceedings. Among the orders made by the Court was an Order by Harris, J. made on 8<sup>th</sup> May 2009 that skeleton legal submissions be filed along with the Trial Bundle and a later Order made by me on 16<sup>th</sup> October 2009 that unless the Claimant shall by 30<sup>th</sup> October 2009 file the Trial Bundle and Skeleton Legal Submissions as per the Order of Harris, J. of 8<sup>th</sup> May 2009, this case shall stand dismissed as of 30<sup>th</sup> October 2009.
- [4] The Claimant did file the Trial Bundle on 30<sup>th</sup> October 2009 but failed to file Skeleton Legal Submissions by that date or at all.
- [5] The matter came before the Court on 13<sup>th</sup> November 2009 whereupon Learned Counsel for the 1st Defendant submitted that the failure by the Claimant to fully comply with the unless order made by the Court on 16<sup>th</sup> October 2009 resulted in the Claimant's case being struck out.
- [6] At the hearing, Learned Counsel for the Claimant sought to explain the reason for the failure of compliance and sought an extension of time within which to comply.
- [7] The Court invited both Counsel to file written submissions by 20<sup>th</sup> November 2009 on the effect of Rule 26.4 (7) of the Civil Procedure Rules 2000 (CPR) and the unless order made by the Court on 16<sup>th</sup> October 2009.
- [8] The submissions were filed on 25<sup>th</sup> November 2009 with authorities in support and both Counsel agreed to rely on their filed submissions.
- [9] Having perused both the written submissions and the accompanying authorities, this Court takes the view that when once the Claimant had as of 30<sup>th</sup> October 2009

failed to comply with the unless order made on 16<sup>th</sup> October 2009, in that no skeleton legal submissions were filed by the Claimant by 30<sup>th</sup> October, the Claimant's case was dismissed as of that date. The cited authorities do conclude that it would have been open to the Court, on application, or even of its own initiative, to have extended the time for compliance with the order of 16<sup>th</sup> October, but they do not leave any doubt about the fact that come 30<sup>th</sup> October, once there had been material non compliance with the unless order of 16<sup>th</sup> October, the sanction imposed by the order of 16<sup>th</sup> October automatically took effect.

[10] Notwithstanding the explanation given by Counsel for the Claimant of his ailment at or approaching the time for compliance with the Order of 16<sup>th</sup> October 2009 that inhibited the Claimant's capacity to comply with the unless order, the fact is that the whole history of this matter, began by Fixed Date Claim in April 2006, was a tale of delaying, deferring and dithering on the part of the Claimant in the pursuit of this case, leading the Court in the first place to make an unless order so as to spur forward movement of the proceedings. The history included a previous application on the part of the 1st Defendant for the case against him to be struck out for the failure of the Claimant to prosecute the claim in a timely manner and to comply with orders made by the Court and an application by Counsel for the Claimant for his removal from the record as legal practitioner for the Claimant on the ground that the Claimant had not been in contact with him for over a year.

[11] In those circumstances, even if the Court had the discretion after the fact to extend the time for compliance with the Order of 16<sup>th</sup> October 2009, this Court would have declined to do so based on the previous history of this matter.

[12] If the Claimant is still desirous of pursuing this matter it may yet be open to him to start afresh because the limitation period with respect to the cause of action involved has not elapsed and the case would not previously have been determined on its merits.

[13] The Court notes that the 1<sup>st</sup> Defendant has proceeded, as he is entitled to by virtue of Rule 26.5 of the CPR, to apply for and obtain a Judgment Without Trial After Striking Out, which judgment addresses the issue of costs. This court need not therefore concern itself with the issue of costs.


[14] The following authorities were referred to by Counsel in their written submissions to the Court:

By Counsel for the Claimant –

1. Blackstone's Civil Practice (2008) - Page 803, Paragraph 61.8
2. The Civil Court in Action (Second Edition) by David Barnard – Pages 330-331, Paragraph 6 (1)
3. **Gordon v Yorke**<sup>1</sup>

By Counsel for the 1<sup>st</sup> Defendant –

1. **Pacific Electric Wire & Cable Company Ltd. v Texan Management Ltd.**<sup>2</sup>
2. **Marcan Shipping (London) Ltd. v Kefalas**<sup>3</sup>



**Mario Michel**  
High Court Judge

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1. (1985) 35 WIR 312  
2. Eastern Caribbean Supreme Court Civil Appeal No. 19 of 2006  
3. [2007] 3 All ER 365.