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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO 2006 HCV 02776

BETWEEN	SANDRA MOORE	CLAIMANT
AND	PATRICK CAWLEY	DEFENDANT

IN CHAMBERS

Marvalyn Taylor Wright instructed by Taylor Wright and Company for the claimant
Sherese Gayle instructed by Nicholson Phillips for the defendant

July 19 and 20, 2007

APPLICATION TO SET ASIDE JUDGMENT, AFFIDAVIT, JURAT AND PART 30 OF THE CIVIL PROCEDURE RULES

SYKES J.

1. This application to set aside judgment foundered, surprisingly, at the most elementary stage - an absence of evidence. One may say that the point taken by Mrs. Taylor Wright is a highly technical one. However, counsel is entitled to take all legitimate points in favour of her client.

2. The allegations against the defendant are not unusual. Miss Sandra Moore alleges that she was struck on or about July 23, 2005, by a vehicle driven by Mr. Patrick Cawley. The accident took place along Marcus Garvey Drive in the parish of St. Andrew. Miss Moore filed a claim on August 2, 2006. Service of all the relevant documents was effected on August 14, 2006. Mr. Cawley filed an acknowledgment of service through his then attorneys. No defence was filed. Miss Moore filed a request for judgment on November 3, 2006. Judgment was entered and the service of the formal judgment in default of defence served on the defendant's new attorneys on December 19, 2006.

3. The claim was set for assessment of damages but adjourned pending this application to set aside the judgment.

4. When the matter came up for hearing Mrs. Taylor-Wright raised the objection that the document filed in support of the application to set aside judgment was not an affidavit within part 30 of the Civil Procedure Rules, 2002. It is not often that this kind of objection is taken but if it is then, regardless of the opinion of the court, it must be dealt with.

5. The expression *affidavit* is not defined in the rules. Turning to Black's Law Dictionary (8th, 2004) an affidavit is:

> *A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public.*

6. This definition highlights two important factors necessary for a document to qualify has an affidavit. These are (a) it is written; (b) sworn before an person authorised to administer oaths. Although these are necessary they are not sufficient because there must be a third factor present which is the jurat. The jurat derives it importance from rule 30.4 (2) which reads:

> *The statement authenticating the affidavit ("the jurat") must follow immediately from the text and not be an a separate page.*

7. According to rule 30.4 (2) the statement authenticating the affidavit is the jurat. What does *authenticating* mean in the context of this rule? Perhaps a fuller and more accurate definition of jurat may be of assistance.

8. Again I turn to Black's Law Dictionary (8th, 2004) which defines a jurat in these terms:

> *A certification added to an affidavit or deposition stating when and before what authority the affidavit or deposition was made.*

9. This definition provides important clues of the purpose and importance of a jurat which leads to the meaning of *authenticating* in rule 30.4 (2). The jurat tells us when, where and before whom the affidavit was sworn. The jurat assists in determining whether the affidavit was sworn before a person authorised to administer oaths. Thus *authenticating* means giving validity. The jurat therefore gives authenticity to the document purporting to be an affidavit. When the person before whom the affidavit is sworn completes the jurat, that person is saying to the court or tribunal before which the affidavit is to be used that the court or tribunal can rely and act on the facts alleged in the affidavit. The person completing the jurat is certifying to the court or tribunal that on the stated date, at a stated place, the particular deponent swore or affirmed the truth of the facts alleged in the affidavit. In other words, the jurat is the seal of authenticity that guarantees that the evidence contained in the affidavit was properly taken upon oath or affirmation. The jurat, therefore, is not an empty formality. It is little wonder that rule 30.4 (1) begins with mandatory words, that is to say, *An affidavit must.*

10. Rule 30.4 (1) provides:

> *An affidavit* ***must*** *-*
>
> *(a) be signed by each deponent;*
>
> *(b) be sworn or affirmed by each deponent;*
>
> *(c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and*
>
> *(d) contain the full name of the person before whom it was sworn or affirmed.* (My emphasis)

11. Sub-paragraphs (c) and (d) of rule 30.4 (1) are obviously referring to the jurat. The affidavit filed in support of this application to set aside judgment only has a signature and a number. The signature is illegible. The name of the person administering the oath is not stated in full as required by the rule. The jurat does not indicate the place, parish or date when the document was prepared.

12. As Mrs. Taylor Wright emphasised, an affidavit takes the place, often times of the witness actually attending court. It is evidence being placed before the court. She added that she must insist on this technical point because a properly secured judgment is something of great value. The litigant who secures such a judgment should not be deprived of his valuable "possession" unless the formalities are strictly complied with. This, she submitted, is the reason for part 30 of the CPR is so detailed. I agree with her.

Conclusion

13. The document filed in support of the application to set aside judgment is not an affidavit within the meaning of part 30 because it does not have a jurat as required by rule 30.4 (1). The application to set aside is dismissed with costs of $15,000.00.