

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: SLUHCV2016/0050

Between

1st National Bank St Lucia Limited

Claimant

AND

1. Tropical Rental And Investments Limited
2. Ralph Frederick
3. Elisabeth Frederick

Defendants

Appearances: Ms. Daniella Chambers of counsel for the Claimant
Mrs. Esther Greene - Ernest of counsel for the Defendants

2019: April 17, 25

JUDGMENT

1. **ACTIE M:** The matter came up for case management conference and the court, being mindful of entering summary judgment against the 2nd and 3rd defendants, and in keeping with the requirements of CPR 26.2 (4), directed the parties to file submissions as to whether or not summary judgment should be entered in favor of the claimant pursuant to CPR 15.2.

Background

2. The claimant filed a claim with a statement of claim against its principal debtor, Tropical Rental And Investments Limited (Tropical Rental), the first defendant, and against the 2nd and 3rd defendants who are sureties for a loan granted by the claimant to Tropical Rental. The defendants filed a defence in which Tropical Rental admitted the debt and judgment on admission was entered in favor of the

claimant against Tropical Rental. The 2nd and 3rd defendants contend that Tropical Rental having assets over and above its indebtedness should be pursued first in satisfaction of its liability before seeking to enforce the guarantee against them.

3. The 2nd and 3rd defendants submit that summary judgment should not be entered as the defence is viable and sustainable in law in that they have not renounced the benefit of discussion and are entitled by law to the right of discussion under the Civil Code. The 2nd and 3rd defendants aver that they have not bound themselves jointly and severally with the first defendant but as guarantors where the debt is not recovered from Tropical Rental, the principal debtor.

Law and Analysis

4. Suretyship is the act by which a person engages to fulfill the obligation of another in the case of its non-fulfilment by that other who is termed the principal debtor¹.
5. Under **Article 1837 of the Civil Code**, the surety is liable only upon the default of the debtor, who must previously be discussed, unless the surety has renounced the benefit of discussion, or has bound himself jointly and severally with the debtor.
6. **Article 16** defines the “Right of Discussion” as a right with respect to property of compelling a creditor to proceed in the first instance against the property liable for the debt. To discuss is the right to exercise that right.²
7. The “Right of Discussion” is a dilatory exception; it delays the course of action until the creditor has discussed the property of the debtor and of those, including the sureties, who are personally liable for the payment of the debt, so as to obtain payment from them. The action resumes its course when the discussion has not procured the entire payment of the debt³.
8. **Article 1839 of the Civil Code** provides that the surety who demands the discussion must point out to the creditor, the property of the principal debtor and advance the money necessary to obtain the discussion.

¹ Article 1825 of the Civil Code

² Article 17 of the Civil Code

³ The Law of Real Property by William De Marler para 952.

9. The “Right of Discussion” is subject to conditions namely; that those personally bound have some property; that the holder indicates what the property is and advances the money necessary to obtain its discussion.
10. It is not enough for the defendants to indicate the property to be discussed or allege the existence of the property liable to discussion; the defendants are also required to offer to defray the expenses of discussion accompanied by the actual deposit of the necessary funds⁴. It is not enough to allege that he is ready and willing to pay the money necessary to obtain discussion⁵.
11. The 2nd and 3rd defendants have boldly stated in their defence that Tropical Rental has assets to enable it to pay its debt and the claimant ought to pursue first in satisfaction before seeking to enforce its guarantee against them.
12. It was necessary for the claimant, the hypothecary creditor, to sue his principal debtor and sureties to obtain judgment and to execute against the debtors property. The claimant has since obtained judgement on admission against Tropical Rental, the principal debtor. The 2nd and 3rd defendants as sureties have personally bound themselves for the payment by the principal debtor of the hypothecary claim. It is for the 2nd and 3rd defendants to satisfy the conditions so as to benefit from the defence of discussion in order to avoid enforcement against their personal property.
13. The claimant referred the court to the Quebec case of **Reindeau v Campbell**⁶ where the court, applying Article 1943 which is in Pari Materia to **Article 1839 of the Civil Code of Saint Lucia**, held that a plea of “Right of Discussion” is insufficient, for the law requires property to be pointed out and money to be tendered.
14. **Rule 15.2 of the Civil Procedure Rules (CPR 2000)** provides that the court may give summary judgment on a claim or on a particular issue if it considers that the: claimant has no real prospect of succeeding on the claim or the issue or the defendant has no real prospect of successfully defending the claim or the issue.

⁴ Panton v woods 11 L.C. J. 168

⁵ ,the defendant is to indicate the property

⁶ 1893 CarswellQue 312

15. The rule granting the court jurisdiction to enter summary judgment is designed to deal with cases which are not fit for trial. Summary Judgement should only be granted in cases where it is clear that a claim on its face obviously cannot be sustained, or in some other way is an abuse of the process of the court⁷.
16. I am of the view that the 2nd and 3rd defendants do not have a realistic prospect of successfully defending the claim. The claim can be disposed summarily as there is no other reason why the case or issue should be decided by a trial.

ORDER

17. Summary judgment is entered against the 2nd and 3rd defendants in the sum of \$158,530.59 together with interest continuing on \$124,479.78 at the rate of 14% per annum from 19th November 2015 until payment in full.
18. Prescribed Costs pursuant to CPR 65.5.

Agnes Actie
Master, High Court

By The Court

Registrar

⁷ HCVAP2009/008 - Saint Lucia Motor & General Insurance Co. Ltd. v Peterson Modeste

