

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2009/0109

BETWEEN:

(1) **BANK OF ST. LUCIA LIMITED**
(2) **MORTGAGE AND FINANCE COMPANY OF ST.
LUCIA LIMITED**

Claimants/Respondents

And

(1) **MANASAS SAIWAK** - First Defendant
(2) **DENISE SAIWAK** - Second Defendant/Applicant

Appearances:

Mr. Thaddeus M. Antoine with Ms. Thea J. Alexander for the Claimant/Respondent
Mr. Ermin Moise for the Second Defendant/Applicant

2009: March 10, 18

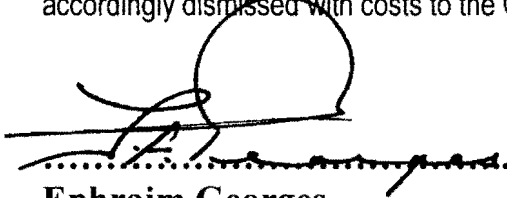
- [1] **GEORGES J:** By Notice of Application filed 12th January 2010 the Applicant herein applied for an extension of time within which to file her Defence to the Claimants' Statement of Claim filed on 3rd January 2009 as well as relief from sanctions.
- [2] The Claimants' Claim Form and statement of Claim together with the usual associated documents were personally served on the said Second Defendant/Applicant ("The Applicant") on the 14th February 2009 about 9:35am at Jn Marie Gas Station Sans Souci Castries.
- [3] The grounds of the application are:
- (1) That the failure to file a Defence within the requisite time was not intentional.
 - (2) That there is a good explanation for the failure to file a Defence in time.
 - (3) That the filing of a Defence out of time is in no way prejudicial to the Claimants or any other party to this matter;

- (4) That it is in the interest of justice to allow the Applicant the opportunity to defend this matter;
- (5) That the Applicant has a reasonable prospect of successfully defending this Claim.
- (6) That the Applicant has generally complied with all other relevant rules, practice directions, orders and directions.

- [4] It would be helpful at the outset to refer to paragraph 10 of the Judgment of Rawlins J.A. (as he then was) in PENDRAGON INTERNATIONAL LIMITED AND OTHERS and BACARDI INTERNATINAL LIMITED Anguilla Civil Appeal No. 3 of 2007 addressing the issue of the granting of extension of time in this case for filing appeal where respondent Counsel submitted on the authority of John Cecil Rose v Anna Maria Uralis Rose St. Lucia Civil Appeal No. 19 of 2003, at paragraph 2 that the grant of an extension of time is a discretionary power. Learned counsel stated that, according to this case, the court will only exercise the discretion in favour of an applicant for good and substantial reasons. They stated, further, that the factors which the court will consider in the exercise of this discretion are, first, the length of the delay; second, the reason for the delay; third, the chances of the appeal succeeding if the extension is granted; and, fourth, the degree of prejudice to the respondent if the applicant is granted.
- [5] Ex facie none of these grounds are to my mind of any avail to the Applicant in the circumstances of this case but I shall proceed to deal with each of them seriatim.
- [6] Firstly, to say that the Defendant's failure to file a defence within the requisite time was not intentional flies in the face of both logic and reason when Rule 10.3(1) CPR clearly states that the general rule is that the period for filing a defence is the period of 28 days after the date of service of the claim form.
- [7] Having been personally served with the claim form on 14th February 2009 the Defendant had a legal practitioner enter acknowledgment of service on her behalf on 16th February 2009. Well nigh a year later she applies for extension of time within which to file her defence.
- [8] I perceive no good and sufficient explanation for the Defendant's inordinate delay for failure to file her defence only then. The Defendant's huge delay in filing a defence is plainly inexcusable and indefensible and could no way have been unintentional.
- [9] That effectively disposes of the first two grounds.
- [10] I turn to Ground 3 in which the Defendant states that the filing of the defence out of time is in no way prejudicial to the Claimants. Rule 10.2(5) CPR states that:
If a defendant fails to file a defence within the period for filing a defence judgment may be entered if Part 12 allows it.

This not being a claim to which Rule 12.2 CPR applies the Claimants duly applied and filed for judgment in default of defence on 15th January 2010 in accordance with Rule 12.5 CPR.

- [11] It is my considered view that to grant an extension of time at this late hour to file a defence would in the circumstances be prejudicial to the Claimants as learned Counsel correctly urged in her written submissions.
- [12] I propose to deal with grounds 4,5 and 6 of the Applicant's grounds together as they are in a sense correlative.
- [13] In her supporting affidavit the Defendant avers that she was induced by her former husband the First Defendant into signing a letter of commitment on 12th March 2003 to secure a loan facility granted by the Claimant in respect of a mortgage loan for construction of their home.
- [14] In so doing she must be taken to have accepted the terms and conditions thereof. At paragraph 5 of her affidavit the Applicant declares that:
- "5. The First Defendant ...negotiated the loan with the Claimants without my knowledge and input. Subsequently the First Defendant informed me that we were both to sign a letter of commitment regarding the said mortgage. I was not familiar with the nature of the said letter but the First Defendant was persistent in his demand that I sign the said letter".
- [15] It is noteworthy that the Applicant failed to disclose in her draft defence that she had in actual fact signed a second letter of commitment on the 15th October 2004. Suppression of such a material fact by the Applicant could hardly have been unintentional and it is doubtful whether she was not familiar with the nature of its contents as she pleads at paragraph 6 and signed it without independent legal advice.
- [16] In all the circumstances I entertain no doubt that the Applicant has no real prospect of successfully defending this Claim.
- [17] The Application for extension of time to file the defence and for relief from sanctions is accordingly dismissed with costs to the Claimants/Respondents in the sum of \$1,000.00.

A handwritten signature in black ink, appearing to read 'Ephraim Georges', written over a horizontal line.

Ephraim Georges
High Court Judge (Ag)