

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

SAINT LUCIA

CLAIM NO. SLUHCV2002/0139

BETWEEN:

CAP ESTATE ST.LUCIA LIMITED

Claimant

and

(1) GATEWAY DEVELOPMENT LIMITED
(2) PHILIP REEVE

Defendants

Appearances:

Mr. Geoffrey A. DuBoulay for the Claimant
Mr. Lorne Theophilus for the Defendants absent
Defendants absent

2003: December 08
December 09

**DEBT...DEFENDANTS' FAILURE TO COMPLY WITH CASE MANAGEMENT
ORDER...DEFENDANTS' FAILURE TO APPEAR AT TRIAL...TRIAL PROCEEDED
WITH IN THE ABSENCE OF DEFENDANTS...JUDGMENT FOR THE CLAIMANT**

JUDGMENT

- (1) **HARIPRASHAD-CHARLES J:** This claim arises out of a refusal and/or neglect of the Defendants, Gateway Development Limited and Philip Reeve to honour their obligations and pay the sum of \$468,640.00 and interest at the rate of 15% per annum being the balance due on moneys loaned by way of promissory note by the Claimant,

Cap Estate St. Lucia Limited ("Cap Estate Limited") to the Defendants at the Defendants' request on or about 6th September 1999.

- (2) Cap Estate Limited has made numerous demands for payment of the said sum and when it had exhausted that means, it turned to the court for assistance. So, on 13th February 2002, Cap Estate filed a claim form supported by a statement of claim seeking the balance due on the loan.
- (3) On 20th March 2002, the Defendants, through their legal practitioner, Larcher, Barnard, Taylor & Associates filed an acknowledgement of service. On 5th April, Cap Estate Limited obtained a Default Judgment in accordance with Part 12.4 of CPR 2000. On 25th June, the Defendants filed an application to set aside the default judgment which they claimed, was irregularly obtained. On 9th October, the parties consented and the Default Judgment was set aside. A Defence and Counterclaim was subsequently filed. For purposes of this judgment, I do not think it is necessary to comment on the merits of the Defence and Counterclaim.
- (4) On 15th July 2003, the matter came up for Case Management Conference before the Master. By this time, the Law Firm of Larcher, Barnard, Taylor & Associates had ceased to be the legal practitioner for the Defendants. At this hearing, they were represented by the effervescent Mr. Lorne Theophilus. Directions were given and dates for a pre-trial review conference and trial of the action were established. At the pre-trial review conference, the Defendants and their Counsel were notably absent. Edwards J. ordered, among other things:
 - i. That the Claimant be relieved from sanctions.
 - ii. That the deadline for filing and serving witness statements is extended to Monday, 1st December 2003.
 - iii. The Defendants are to comply with standard disclosure directions made by the Master by Tuesday, 28th November 2003 and
 - iv. Any further non-compliance with any of the directions in this Order will result in the statement of case of the defaulting party being struck out and the Court will proceed to enter judgment in favour of the other party.

- (5) The matter came before me for trial yesterday. The Defendants were conspicuously absent. So was their Counsel. Suffice to say, the Orders of the Court were not complied with. Thereafter, the matter proceeded on the basis of the evidence as led by the Claimant particularly, as contained in the witness statement of Mr. Ronan Jerson, their accountant as well as oral submissions advanced by Mr. DuBoulay. Judgment was accordingly reserved.
- (6) On an analysis of the evidence as adduced by the Claimant, I will enter judgment for the Claimant in the sum of \$356,276.00 together with interest of \$166,718.71 to 18th November 2003 and continuing thereafter at the rate of 15% per annum.
- (7) The matter does not end here. The important issue of costs was vigorously pursued by the youthful and exuberant Mr. DuBoulay. He gave me a number of reasons including the fact that we are in the peaceful season of 'joy and giving' to award him the full prescribed costs of \$47,649.40. However, under Part 65.5 (4), the court may award a proportion only of such sum having taken into account the matters set out in Part 64.6(5) and (6). In the exercise of my discretionary powers, I will award 75% of the prescribed costs taking into consideration that the matter has reached trial and the Claimant has complied fully with the Orders of the Court. If my calculations are correct, this should amount to \$35,737.05.

Conclusion

- (8) There will be judgment for the Claimant in the sum of \$356,276.00 together with interest of \$166,718.71 to 18th November 2003 and continuing thereafter at the rate of 15% per annum and costs of \$35,737.05.

INDRA HARIPRASHAD-CHARLES

High Court Judge