

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

(CIVIL)

A.D. 1999

Suit No. 352 of 1998

Between

GABRIEL ST CYR

Plaintiff

And

(1) **SHELL OIL COMPANY**, a corporation registered under the Laws of Delaware, USA of 4856 One Shell Plaza, P.O. Box 2463, Houston, Texas, USA.

(2) **DOW CHEMICAL COMPANY**, a corporation registered under the Laws of Delaware, USA OF 2030 Dow Centre, Midland, Michigan, 48674, USA

(3) **OCCIDENTAL CHEMICAL CORPORATION**, a corporation registered under the Laws of New York, USA of 5005 L.B.J. Freeway Dallas, Texas, 75244, USA.

Defendants

Appearances

Mr. R. Frederick for Plaintiff

Mr. W. Cenac Q.C. with Miss I.O. Shillingford for the Defendants

JUNE 25th 1999

OCT 22nd 1999

JUDGMENT

D'Auvergne J

On the 28th day of September 1998 the second named and third named

Defendants filed a Summons to set aside the writ of Summons filed on 20th

April 1998 and all subsequent proceedings on the following grounds.

- (1) That at the time of commencement of this action the Plaintiff in this action was also Plaintiff in a pending suit No. 593/95 between **RAPHAEL ELEUTHERE** also known as **RAFAEL ELEUTHERE** suing on behalf of himself and a number of other persons including the Plaintiff herein, namely, **Gabriel St. Cyr** and that in the said Suit No. 352/98 the issues raised for determination of the Court were and are the same issues as are set out in the Statement of claim herein.
- (2) that the Plaintiff has received from the Second-named and the Third-named defendants monies in full settlement of his claim in the said suit No. 352/98 following which on 6th August 1998 a Judgment by Consent dismissing the said Suit No. 593/95 was entered by the Court against the Plaintiff in full settlement of the said suit No. 593/95 and was registered in the Registry of Deeds and Mortgages on 7th August 1998 in Volume 151A No. 178397.

AND that the Plaintiff do pay to the Second-named and the Third-named Defendants their costs of this action and of and occasioned by this application to be taxed.

This Summons was supported by an Affidavit of Barbara Myers which is reproduced

I, **BARBARA MYERS** of St Louis Street, Castries Law Clerk employed at the Chambers of Messrs CENAC & Co., do hereby make oath and say as follows:-

1. I am a Clerk employed at the Chambers of Messrs Cenac & Co and in the course of my duties I deal more particularly with documents filed in the High Court.

2. I am acquainted with Suit No. 593 of 1995 in which **RAPHAEL ELEUTHERE** also known as **RAFAEL ELEUTHERE** is Plaintiff in a representative action on behalf of himself and on behalf of a number of other persons including the Plaintiff in this action namely, **GABRIEL ST. CYR**, being persons alleged to be adversely affected by the use of Nematocide products containing a chemical known as **DIBROCHLOROPHOPANE** commonly called **DBCP**. **A true copy of the Statement of Claim in suit 593 of 1995 is exhibited hereto and marked "A".**

3. The Plaintiff the said **GABRIEL ST. CYR** has received monies from the second and third named Defendants in satisfaction of his claim against the second and third named Defendants in Suit No. 593 of 1998 and pursuant thereto on 6th August 1998 the parties to the said suit including the Plaintiff represented by his Counsel therein executed a Judgment by Consent which was registered in the Registry of Deeds and Mortgages on 7th August, 1998 in vol. 151A No. 178397. A true copy of the said Consent Judgment is exhibited hereto and marked "B".

A perusal of the said **writ No. 593 of 1995** shows that the two hundred and thirtieth named Plaintiff (out of 264 Plaintiffs) in that case is one **Gabriel**

Silyr and that the first three named Defendants (out of 13 Defendants) are the same three Defendants in this case.

The consent order referred to in the affidavit was entered into by Counsel Leonard Riviere for the Plaintiff Raphael Eleurthere also known as Rafael Eleuthere who sued on behalf of all persons adversely affected by the use of the nematocide products containing the chemical dibrochloropropane commonly called DBCP.

Mr Winston Cenac Q.C and Veronica Cenac for the Second named and Third – named Defendants and Mr. Anthony Mc Namara for the first, twelfth, thirteenth and fourteenth named Defendants.

On the 11th of November 1998 the Plaintiff Gabriel St Cyr filed an affidavit in response which is reproduced.

I, GABRIEL ST. CYR of Millet in the quarter of Anse La Raye in the State of St Lucia do make oath and say as follows:-

1. I am a Justice of the Peace.
2. That I am aware of the suit number 593/95.
3. That subsequent to that suit, I caused my solicitor to issue another writ against the same defendants for the following reasons:
 - (a) Suit No. 593/95 was a class action and I know and verily believe that most of the plaintiffs in that suit had been compensated albeit insignificantly.
 - (b) That I was offered the sum of U.S \$974.00 in full and final settlement.

- © I did not accept, nor did I sign any document indicating that I had received any monies, as indeed, I was totally dissatisfied with the offer.
- (d) I was informed by the solicitor having conduct of suit no. 593/95 that the matter had been fully settled, and so would have been discontinued.
4. Having caused another writ to be issued at my instance in this suit (No.352/98) I was called on telephone by Mr. Thomas Hart, an American solicitor based in St. Croix and acting on behalf of the defendants, who informed me that he had come to St Lucia to see me.
5. At the time I asked him to speak to my solicitor but he refused saying that he wanted to speak to me personally.
6. He said that he knew I was upset when the offer of U.S \$974.00 was made and that he was currently offering me U.S. \$10,000.00.
7. I did not accept the U.S \$100,000.00.
8. I am indeed surprise at the allegation that I, GABRIEL ST. CYR received monies from the defendants in full and final settlement. This I categorically deny and would even venture to say that if anyone has a receipt which was purportedly signed by me, this is fraudulent as I have never signed any document.
9. Further, the offer of U.S. \$10,000.00 would have never been made to me if I had indeed released the defendants from further liability.
10. As far as the time of commencement of the subsequent action the former was still in existence, I reiterate that I was acting on the instructions of the solicitor in the class action who advise me that the matter was over.

On the 22nd day of June 1999 a further affidavit was filed by Barbara Myers the gist of which is the exhibiting of an affidavit by Michael L. Brem an attorney who represented the second named Defendant in lawsuits brought in the United States of America by individuals alleging personal injuries for their exposure to the pesticide known as DBCP.

This said affidavit of Michael L Brem sets out the facts concerning the suit by Gabriel St Cyr and others against the Defendants in Texas, United States of America; that Gabriel St Cyr testified under oath that Mr Hart who signed in Texas on his behalf the document entitled “the compromise settlement and Hold Harmless Indemnity Agreement”, was his lawyer.

Arguments

The matter was heard in Chambers. Learned Senior Counsel for the Applicants, the Second named and Third named Defendant argued the two grounds noted at the commencement of the judgment.

He exhibited the consent order of 6th August 1998 in **Case 593/95**.

He contended that the issues raised in **Suit 593/95** were the same, the parties were the same and that moreover the Plaintiff was paid in full settlement by cheque No 10014 at the National Commercial Bank of St. Lucia Ltd.

He argued that Mr Leonard Riviere who acted as Counsel for the Plaintiff signed on his behalf and that he had full authority to do so, moreover **Suit 593/1995** was a representative action.

Learned Counsel for the Plaintiff/Respondent contended that the Plaintiff's name **Gabriel St Cyr** does not appear on the list in **Case 593/95** but the name Gabriel Silyr and that he never authorised anyone to act on his behalf. He further contended that the Plaintiff had never before seen the cheque and never received any monies.

He said that it was inconceivable that the Plaintiff would accept a cheque for U.S\$100.00, One hundred dollars when he rejected Mr Hart's (a United States Attorney offer) of U.S\$10,000.00 Ten thousand dollars.

He concluded that there was no evidence to prove that the Plaintiff was the one who cashed the exhibited cheque.

Conclusion

Order 15 Rule 12(1) provides

Where numerous persons have the same interest in any proceedings not being such proceedings as are mentioned in Rule 13 (Representation of interested persons who cannot be ascertained) the proceedings may be begun, and unless the Court otherwise orders, continued, by or against anyone or more of them are representing all or as representing all except one or more of them.

The Plaintiff in his affidavit said that he knew of **Suit 593/95** but that he was not a party to it. A perusal of the said suit shows that one Gabriel Silyr was entered as the two hundred and thirtieth Plaintiff. The consent judgment entered on the 6th of August 1998 clearly states that the term "Plaintiffs.....shall include all other Plaintiffs which he represents and are listed in **Suit No 593/95** filed on 21/8/1995."

The exhibited cheque 10014 in the sum of US\$100.00 one hundred dollars is made out to St Cyr Gabriel Caribbean St Lucia and was paid to Gabriel St Cyr on the 17th day of February 1998.

The Plaintiff has argued that he never gave Raphael Eleuthere or anyone to Sign on his behalf.

Order 15 Rule 12 (1) shows that Raphael Eleuthere could represent all the other Plaintiffs mentioned in the list filed except one or more of them indicated that they did not wish to be included as Plaintiffs. There is no such letter or pleading on file to indicate this.

Halsbury's Laws of England vol 3(1)

Paragraph 518 states:

Implied authority of counsel. Apart from such express authority as is conferred by his instructions, a barrister is ordinarily instructed on the implied understanding that he is to have complete control over the way in which the case is conducted. Unless and until his instructions are withdrawn, counsel has, with regard to all matters that properly relate to the conduct of the case, unlimited authority to do whatever he considers best for the interests of his client. This authority extends to all matters relating to the action, including the calling and cross-examination of witnesses, challenging a juror, deciding what points to take, choosing which of two inconsistent defences to put forward, and even to agreeing to a compromise of the action, or to a verdict, order or judgment.

The implied authority of counsel to agree a compromise is limited, however, to the issues in the action, and a compromise affecting collateral matters will not bind the client unless he expressly assents.

Paragraph 519 states:

Limitation of authority by client. It is open to the client expressly to limit counsel's implied authority, as, for instance, by agreeing a compromise of the case, or, if the client considers that counsel is taking a course contrary to his interests, by withdrawing his instructions. If counsel accepts any limitation on his authority, he must act accordingly; but he is not bound to do so, and, if the client attempts to fetter counsel's discretion as how the case is to be conducted, counsel is entitled to return the brief. It is objectionable for a barrister to undertake the conduct of a case giving up his discretion as to how to conduct it, or to share the conduct of the case with the client. A litigant must elect either to conduct the case entirely in person or entrust the case entirely to his counsel, even if the litigant is himself a barrister. If the litigant instructs counsel, he cannot himself be heard, unless he revokes his counsel's authority and himself assumes the conduct of the case.

The Plaintiff in his affidavit states at Para. 3(d) "I was informed by the solicitor having conduct of Suit N0. 593/95 that the matter had been fully settled, and so would have been discontinued."

It is to be noted that the consent order was signed on the 6th of August 1998 and this case was filed on the 20th of April 1998. It was therefore incumbent on the Plaintiff to put in his objection to the settlement before the consent

order was signed. The filing of **Case 352/98** cannot by any stretch of the imagination be regarded as an objection to a consent order. The objection should have been made to the then Counsel for the Plaintiffs in Case 593/95 limiting his authority to act on his behalf.

If he has infact done so then he has filed the wrong action.

Gabriel Silyr and Gabriel St Cyr has been proved on a balance of probabilities to be the same person. The list of Plaintiffs notes Gabriel Silyr but the cheque was signed by Gabriel St Cyr.

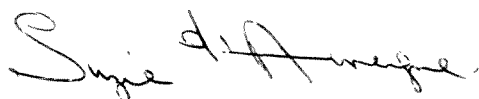
Learned Senior Counsel for the Second named and Third named Defendants laid much emphasis on a similar Suit argued before and determined by **Lake J** in the High Court of Texas but as I see it this is surplusage to the matter under review.

Therefore having considered all the evidence and the arguments, I find that the Defendants have proved to the satisfaction of this court the grounds stated for the setting aside of **writ 352/98**.

Mr order is as follows:

Writ 352 filed on 20th April 1998 is hereby set aside.

Costs to the Second and Third named Defendants to be agreed or otherwise taxed.

A handwritten signature in cursive script, appearing to read 'Suzie d'Auvergne'.

Suzie d'Auvergne
High Court Judge