

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE (CIVIL) A.D. 1998

SUIT NO: 571 of 1997

BETWEEN:

**EUGENIO SERAFIN INC. (trading as E.S.T
HARDWARE)**

PLAINTIFF

and

CARIBCAN ENTERPRISES LTD

DEFENDANT

Appearances:

Mrs. Augustin for the Plaintiff
Mrs. Petra Nelson for the Defendant

JUDGMENT

1998: October 2
1999: January 8th

d'AUVERGNE, J.

By Writ of Summons filed on 1st day of July 1997 the Plaintiff sought the following relief:

- (1) the sum of \$5,522.36 United States Dollars
- (2) Interest thereon at the rate of 10% per annum from May 1996 to the date of payment and
- (3) the costs hereof.

An appearance was entered on behalf of the Defendant on the 18th day of August 1997 and a defence on the 1st day of September 1997. The gist of the defence is that the Defendant denies knowledge of the

Plaintiff's existence and of owing the Plaintiff any monies.

On the 20th day of March 1998 the Plaintiff applied by Summons supported by affidavit and list of Exhibits for final judgment against the Defendant. The supporting affidavit is reproduced in the entirety:

I ANTHONY FITZGERALD LE VARRIE BRISTOL, Associate in the firm of Floissac Fleming & Associates of Brazil/Mongiraud Streets, Castries, St. Lucia, solicitors for the Plaintiffs MAKE OATH AND SAY AS FOLLOWS:-

1. The Defendant CARIBCAN ENTERPRISES LIMITED are and were at the commencement of this action justly and truly indebted to the above-named Plaintiffs in the sum of U.S.\$5522.36, for the price of hardware items sold and delivered to the Defendants with interest thereon at the rate of 10% per annum. Now produced and shown to me as exhibit AB1 is a copy of the invoice #50206 for the above mentioned sum.
2. The particulars of the said claim appear by the indorsement on the Writ of Summons in this action.
3. I verily believe that the said debt was incurred and is still owing as aforesaid.
4. Now produced and shown to me as exhibit AB2 is a check by the Defendants to the Plaintiffs which serves to disprove the assertion in their defence that they have no knowledge of the Plaintiffs.
5. I verily believe that there is no defence to this action.
6. I am duly authorised by the Plaintiffs to make this affidavit.

The matter was heard in chambers on the 2nd day of October 1998.

ARGUMENTS

Counsel for the Plaintiff argued that the Summons, supporting affidavit and list of exhibits filed on the 20th day of May 1998 were served on the Defendant on the 21st day of May 1998 and to date no opposition to the Summons were filed and served, therefore the application should be granted.

Learned Counsel for the Defendant argued that Summary Judgment under order 14 Rule 1 is only granted after no defence has been filed and in the case under consideration a defence had been filed since the 1st of September 1997 and that the proper cause was to have the defence struck out under Order 18 Rule 19 as disclosing no proper Cause of Action, that when a Company sues it must be via an attorney and that Bristol does not state that he is an attorney. She quoted **Barclays Bank PLC V Piper 1995 The Times** dated 31st May 1995 Page 160. Case was not produced in Court.) Learned Counsel said Plaintiff failed to identify the Source of deponent's belief. She further argued that 10% cannot be claimed if there was no plea for 10% interest.

She concluded by stating that Plaintiff's application should be dismissed.

CONCLUSION

Order 14 Rule 1 of the Rules of the Supreme Court provides:

Where in an action to which this rule applies a Statement of claim has been served on the Defendant and that Defendant has entered an appearance in the action the Plaintiff may, on the ground that the Defendant has no defence to a claim included in a Writ, or to a particular part of such a claim, or has no

defence to such a claim or part except as to the amount of any damages claimed apply to the Court for judgment against the Defendant.

However there are conditions precedent for the Plaintiff employing the Summary process of Order 14

- (a) the Defendant must have given notice of intention to defend
- (b) the Statement of Claim must have been served on the Defendant and
- (c) the affidavit in support of the application must comply with the requirements of Rule 2, which states the manner in which the application under Rule 1 must be made.

A perusal of the application shows that the Plaintiff has abided by this rule, that the affidavit is sworn to, ~~by~~^{by} a responsible person.

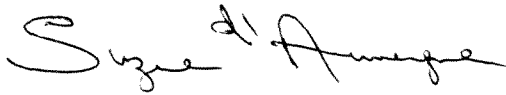
The Defendant in accordance with Rule 4 may show cause against the application "by affidavit or otherwise" to the satisfaction of the Court.

The Defendant did not file an affidavit in opposition but was allowed to defend "otherwise" showing cause on the merits.

Having heard both counsel I am of the view that the alleged facts are of such a nature as to entitle the Defendant to interrogate the Plaintiff. Moreover before the filing of the summons the defence filed indicated that the Defendant is disputing knowledge of, and the actual business transaction with the Plaintiff and is relying on an ^{therefore there is} arguable defence. ~~an~~ ^A.

This application is therefore dismissed.

There will be no order as to costs.

A handwritten signature in black ink, appearing to read 'Suzie d'Auvergne', written in a cursive style.

SUZIE d'AUVERGNE
HIGH COURT JUDGE