

SAINT LUCIA



IN THE HIGH COURT OF JUSTICE (CIVIL)

SUIT NO. 515 OF 1995

Between:

STERLING PUBLICATIONS LTD

- Plaintiffs

vs

(1) FIRST NATIONAL INSURANCE COMPANY LIMITED
(2) WILFRED FLETCHER

- Defendants

Miss Barbara Pierre for Plaintiff
Mr. N. John for Defendants

1996: May 24th
November 20th

JUDGMENT

d'Auvergne, J (Chambers)

By a writ of Summons indorsed with a Statement of Claim the Plaintiff claimed the following:

1. One thousand eight hundred and fifty pounds or the Eastern Caribbean Dollar equivalent at the date hereof.
2. Interest on the said sum at the rate of 3% per annum above Barclays Bank PLC base rate from time to time calculated on a day to day basis from the due date down to the date of actual payment.
3. Damages.

4. Costs.

On the 15th of August 1995 an appearance was entered on behalf of the Defendant then Caribbees Hotel.

On the 17th of August 1995 a defence was entered, - a total denial of the Statement of Claim and it further stated that Caribbees Hotel is not a legal entity capable of entering into contracts and contractual obligations and prayed that the Plaintiff's claim be dismissed with costs.

On the 21st September, 1995 the Plaintiff applied by Summons to amend the writ and Statement of Claim.

The application was granted and "Caribbees Hotel" was deleted as the Defendant and the following were substituted:

- (1) First National Insurance Company Limited.
- (2) Wilfred Fletcher

The amended Writ and Statement of Claim were served on the two new Defendants.

The amended prayer is as follows:

And the Plaintiff claims against the First Defendant, or in the alternative, from the Second Defendant.

1. L1,850.00 or the Eastern Caribbean Dollar equivalent at that date hereof.
2. Interest on the said sum at the rate of 3% per annum above Barclays Bank PLC's base rate from time to time calculated on a day to day basis from the due date down to the date of actual payment.

3 Damages *A*
4 Costs *A*

On the 6th December 1995 appearances were entered on behalf of the two Defendants by different Counsel.

The defence of the First Defendant is a general denial of all the averments made by the Plaintiff save that it is a company registered under the Commercial Code of St. Lucia. The gist of the Second Defendant's defence is that he acted on behalf of the First Defendant.

On the 8th February, 1996 a Summons to serve interrogatories on the First Defendant was filed, was granted on the 20th day of March 1996 and the order was filed on the 21st March, 1996. On the 2nd of April 1996 an Affidavit in answer to interrogatories was filed by the First Defendant and is hereby reproduced in its entirety.

AFFIDAVIT IN ANSWER TO INTERROGATORIES

I, **NOEL CADASSE** of Rodney Bay in the Quarter of Gros Islet in the Island of St. Lucia make oath and say as follows:-

1. That I am the Managing Director of the First Named Defendant.
2. That the First Named Defendant was at all material times the proprietor of the Parcel of land registered as 1049 F 226.
3. That the First Named Defendant was during the period 1993 to 1995 in possession of the parcel of land building erected thereon.
4. That the First Named Defendant is still in possession of the parcel of land referred to in the first interrogatories.
5. That the hotel known as "Caribbees Hotel" was during the period 1993 to 1995 located on the parcel of land referred to in the first interrogatories.

6. That the hotel known as "Caribbees Hotel" is not still located on the said parcel of land.
7. That "Caribbees Hotel" is unregistered as a limited liability company or as a business name under the Commercial Code, Chapter 244, Revised Laws of St. Lucia.
8. That the second Defendant was at all material times employed as General Manager of "Caribbees Hotel."

On the 16th April, 1996 the Plaintiff filed a Summons under Order 14 of the Rules of the Supreme Court 1970 for final judgment against the First Defendant supported by an Affidavit of Michael Bruce Garnet Gordon which I hereby reproduce.

AFFIDAVIT

I, **MICHAEL BRUCE GARNET GORDON**, Attorney at Law of Vigie, Castries, Solicitor for the above-named Plaintiff, make oath and say as follows:

1. The Defendant **FIRST NATIONAL INSURANCE COMPANY LIMITED** is, and was at the commencement of this action, justly and truly indebted to the above-named Plaintiff in the sum of L1850 and interest at the rate of 3% per annum above Barclays Bank PLC's base rate from March 31st, 1994 until payment for the value of services rendered by the Plaintiff pursuant to a contract between the Plaintiff and the said Defendant. The particulars of the said claim appear by the Statement of Claim in this action.
2. I am informed by instructions from the Plaintiff, correspondence and other documents, and verily believe that the said debt was incurred and is still due and owing as aforesaid. Copies of the correspondence and other documents

to which I refer are now shown to me marked "MBGG 1" - MBGG 13" and are exhibited hereto.

3. I verily believe that the Defendant FIRST NATIONAL INSURANCE COMPANY LIMITED has no defence to this action.

On 15th May, 1996 The Managing Director of the First Defendant filed an "Affidavit in Opposition to application for final judgment."

AFFIDAVIT OPPOSITION TO APPLICATION FOR FINAL JUDGEMENT

I, NOEL N.S. CADASSE of Rodney Bay in the Quarter of Gros Islet in the Island of St. Lucia make oath and say as follows:

1. That I am the Managing Director of the First Named Defendant herein.
2. That I am informed and verily believe that the Plaintiff is applying for final judgment in this action against the First Named Defendant only for the amount claimed in the Statement of Claim, with interest, if any, and costs.
3. That I am informed and verily believe that the basis of the Plaintiffs application is the allegation that the First Named Defendant has no defence to this action.
4. That on the 19th day of December, 1995 the First Named Defendant filed a Defence to the Plaintiff's Statement of Claim and served the same on the Plaintiff's solicitors on the 20th day of December 1995.
5. That I verily believe that there are issues and or questions in dispute which ought to be tried.

6. That in paragraph 1 of the Statement of Claim the Plaintiff pleads in the alternative and consequently a finding of fact must be made as to which of the alternatives is the true position before a decision can be made against the First or Second Defendant.
7. In paragraph 3 of the Statement of Claim the Plaintiff claims that the Second Defendant was acting as agent of the First Defendant or on his own behalf. The First Defendant has denied agency and consequently the Plaintiff must establish which of the alternatives advanced is the true and correct position.
8. Again, in Paragraph 4 of the Statement of Claim the Plaintiff's allegation is that the Second Defendant was acting as the agent of the First Defendant or on his own behalf.
9. That by the Plaintiff's pleadings alone it is clear that there is the legal issue to determine as to whether the Second Defendant was acting as an agent or acting on his own behalf.
10. The First Defendant has pleaded in paragraph 5 of the Defence that the Second Defendant did not have actual or apparent authority to enter into contracts for and on behalf of the First Defendant. That this is an issue to be determined by this Honourable Court.
11. That the First Defendant has pleaded in paragraph 6 of its Defence that the manner in which the Second Defendant signed and or executed the said Advertisement Order he did not purport to do so far and on behalf of the First Named Defendant or any body else. That I am informed and verily believe that this is an issue to be determined by this Honourable Court.

12. That the mere fact that the Plaintiff has pleaded its case in the alternative suggest that the Plaintiff is of the view that there are at least two (2) possible alternative interpretations to the set of facts upon which this case is based and that if the Court was to determine the matter in the alternative plea, the First Named Defendant would not be liable to the Plaintiff.

13. I verily believe that the First Named Defendant has a genuine defence to this action and that in the very least there are factual and legal issues to be determined, for example,

- (a) the existence of agency;
- (b) the extent of the actual and or apparent authority in this case;
- (c) whether the agent purported to act as agent or principal in the particular instance.

14. I am informed and verily believe that the Plaintiff is not entitled to summary judgment under Order 14 and therefore ask that this application be dismissed with costs.

On the 24th day of May 1996 the matter was heard in Chambers.

Learned Counsel for the Plaintiff commenced her arguments by reading from her written skeleton arguments. She said that the application was made under Order 14 Rule 1 of the Rules of the Supreme Court on the ground that the Defendant had no defence and quoted the cases of *Mc. Lardy v Slateum* 1890 24 Q.B.D 504 at 506 and *Home and Overseas Insurance Co. Ltd vs Mentor Insurance Co. (U.K.) Ltd (in liq)* 1989 3 ALL ER Page 74 at page 77.

"The purpose of Order 14 is to enable a plaintiff to obtain a quick judgment where there is no defence to the claim. If the defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived the

Plaintiff is entitled to judgment. If at first sight the point appears to be arguable but with a relatively short argument can be shown to be plainly unsustainable the plaintiff is also entitled to judgment....."

She argued that though the amended defence appears to raise points of law at first sight these points of law were plainly unsustainable and Counsel enumerated why she said so. She argued that during the period 1993 to 1995 the First Defendant owned "Caribbees Hotel" a non-legal entity but contended that the buildings in which the business of "Caribbees" was being carried out were on land belonging to the First Defendant and that during the period noted above the said First Defendant was in possession of the said land and the buildings thereon.

She contended that based on **Article 369 of the Civil Code of St. Lucia** "the ownership of soil carries with it ownership of what is above and what is below it....." and "products they may yield," the argument that the First Defendant is not the owner of "Caribbees Hotel" is misconceived and unsustainable.

She said that it was an undisputed fact that the Second Defendant was the General Manager of the "Caribbees Hotel" owned by the First Defendant and by applying the principle of Agency the conclusion to be arrived at is that the General Manager, the Second Defendant, had actual authority to enter into contracts on behalf of the First Defendant trading as "Caribbees Hotel."

She argued that a Company not being a physical person acts through its agents and quoted :

Article 139 (1) (i) Commercial Code Chapter 244 of Laws of Saint Lucia

Article 1605 of the Civil Code of St. Lucia and

Chitty on Contracts Vol. 11 26th Edition Paragraph 2545.

She also quoted:

**Freeman and Lockyer (A Firm) vs Buckhurst Park Properties
(Mangal) Ltd and another 1964 2 Q.B. Page 480 at Page
503.**

She said that one has to ascertain whether a contract entered by an agent on behalf of principal was made on the agent's own behalf or on behalf of the principal.

She argued that in the case under discussion the agent contracted in the name used by his principal to carry on its Hotel business and not in his own name.

Learned Counsel submitted that the Plaintiff may nevertheless enforce the contract entered into by the Second Defendant on behalf of the First Defendant even if the Defendants were in breach of the Business Names Ordinance and quoted **Registration of Business Names Ordinance Chapter 247, s.10(1)(b)**.

She concluded by stating that based on the above, the First Defendant's defence that it was not the owner of "Caribbees Hotel" at the time when the Second Defendant entered into the contract with the Plaintiff cannot be sustained in the light of its ownership and possession of the land and buildings, where the business was carried out and that neither could the second limb of its defence be sustained since it is within the general authority of a General Manager to enter into contracts on behalf of a company.

Learned Counsel for the First Defendant submitted that for the Plaintiff to succeed in the application it must be showed that points of law expressed and implied in the Defendant's defence are misconceived and that Learned Counsel's argument on behalf of the Plaintiff is a short one.

He submitted that Order 14 was not intended to be a detailed delivery of facts and comprehensive argument on points of Law.

He contended that the mere fact that Counsel had to submit four (4) pages of legal argument supports the submission that the matter does not entail relatively short argument but the contrary and therefore the case for the defence is sustainable rather than unsustainable.

He said that the legal arguments as submitted by Learned Counsel for the Plaintiff are not matters to be dismissed summarily; that Learned Counsel demonstrated by her submissions and arguments that this was a matter which involves triable issues.

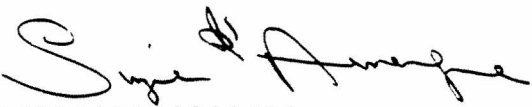
In reply Learned Counsel for the Plaintiff said that there is a distinction between clear principles and vague points of law.

CONCLUSION

Having listened to the legal arguments submitted by both Counsel and bearing in mind the "Affidavit in opposition to application for Final judgment by Noel N.S. Cadasse filed on the 15th day of May 1996 (reproduced at Page 5 of this judgment). It is my view that there are issues and questions in dispute which ought to be tried and that the matter cannot be disposed of under Order 14 of the Rules of the Supreme Court.

My order is as follows:

- (1) The application is dismissed.
- (2) Costs to be costs in the cause.


.....
SUZIE d'AUVERGNE
PUISNE JUDGE