

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996



Suit No. 746 of 1995

BETWEEN:

JOSEPH POLEON

Plaintiff

and

1. LOUISA POLEON
2. HAROLD MOSES

Defendants

Mrs. C. Malaykhan for Plaintiff
Mr. R. Frederick for Defendants

1996: September 25;
October 2.

J U D G M E N T

MATTHEW J. (In Chambers).

On October 23, 1995 the Plaintiff filed a writ indorsed with statement of claim asking for repossession of certain lands from the Defendant. The writ was issued by Foster, Foster and Foster.

On January 25, 1996 Charles Quinlan, clerk of the solicitors, filed an affidavit to the effect that he had served the Defendants on January 24, 1996.

On May 22, 1996 the Defendant was granted leave to enter a conditional appearance and it was ordered that his application to set aside the writ should be served within 14 days after entering the conditional appearance.

The conditional appearance was entered on May 24, 1996.

On the Defendant's application to set the writ aside owing to default of Order 6 Rule 4 by the Plaintiff learned Counsel for the Plaintiff submitted that the Defendant did not comply with the

Order of the Court to serve on the Plaintiff the application to set the writ aside within 14 days of the entry of conditional appearance and he in fact did so on June 24, 1996, one month after he entered the conditional appearance.

Counsel conceded that the writ did not contain the Plaintiff's address but she submitted that it did contain the solicitor's address and so the Defendant was not prejudiced.

Counsel asked for leave to amend the writ of summons.

Order 6 Rule 4(1) (a) requires that before a writ is issued it must be indorsed, where the Plaintiff sues by solicitor, with the Plaintiffs' address. There is no dispute that the Plaintiff has not complied with that provision.

It is true the Defendant has not complied with the order of the Court. It seems that his failure to do so could only result in his conditional appearance becoming unconditional unless the Court orders otherwise but that would not validate the issuing of the writ.

The only issue is as to whether I should grant leave for the amendment as requested by learned Counsel for the Plaintiff or strike off the writ as advocated by learned Counsel for the Defendant.

Learned Counsel for the Defendant mentioned a matter where this Court indicated that there was nothing to amend but he could not refer to the particular case or circumstances. In the United Kingdom Practice 1979 under the corresponding rule at Page 50, it makes provision for amendment if the address is not truly or correctly stated.

The address of the solicitor was stated and Order 4 (2) indicates that the address for service of a Plaintiff shall be, where he sues by a solicitor, the business address of the solicitor indorsed on the writ.

I shall therefore grant leave to the Plaintiff to amend the writ by inserting the Plaintiff's address in order to comply with Rule 4 of Order 6.

In passing I notice that there also seems to be default by the Plaintiff in complying with Order 10 Rule 1 (4).

I also order that total costs be paid to the Defendant in the sum of \$250.00 inclusive of the order of costs made on May 22, 1996.

This matter shall be stayed until compliance is made with my orders.

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A. N. J. MATTHEW
Puisne Judge