

SAINT LUCIA

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

Suit No. 714 of 1995

BETWEEN:

1. AUGUSTIN SYLVESTER
2. ADRIENNE FELICIEN

Plaintiffs

and

SAMUEL HEDLEY FELICIEN and
15 others

Defendant

Mr. D. Theodore for Plaintiffs
Mr. W. Hinkson for Defendant No. 1,
Samuel H. Felicien
Other Defendants absent and unrepresented

1996: September 25;
October 2.

J U D G M E N T

MATTHEW J. (In Chambers).

On October 11, 1995 the Plaintiffs filed a writ of summons indorsed with statement of claim against 16 Defendants.

On October 20, 1995 Elicius Ernest swore to an affidavit to the effect that he had effected service of the writ of summons on all

the Defendants except No. 8 - Veronica Eritagne;

No. 9 - Thomas Alexander; and

No. 14 - Ann Lamontagne.

In the meantime there were proceedings resulting in the granting of an injunction against the first Defendant on November 15, 1995.

On May 29, 1996 the Plaintiffs applied for judgment in default of appearance against all the Defendants except Defendants 8, 9, 14

and 16.

Before that summons was adjudicated upon, on June 27, 1996 Defendant No. 1, Samuel Hedley Felicien, obtained an order dated July 10, 1996 that notwithstanding the injunction he be granted permission to sell 8, 625 square feet of land from lot No. 1 to Winston Fevriere.

The summons for judgment in default came up for hearing on September 25, 1996. Learned Counsel for the Defendant No. 1, expressed surprise at the application since he said the Parties had engaged in compromises and concessions and that the land had been partitioned. I might observe that such compromises and concessions taking place out of Court cannot prevent the application of the Rules. At the end of the day Counsel asked for time to enter appearance and defence.

Learned Counsel for the Plaintiffs eventually agreed to give this Defendant time to enter appearance and defence but wanted judgment against the other Defendants.

This being the case I grant Samuel Hedley 21 days to file and serve appearance and defence on the Plaintiffs.

I go on to deal with the summons as regards the other Defendants. First of all the application was for judgment in default of appearance. The kinds of relief sought were for possession of premises, damages and costs.

Order 13 Rule 5 permits the Plaintiffs to enter judgment in default of appearance in respect of such claims.

So it follows the Court can equally make an order.

There is however one flaw. The Plaintiffs have not, it seems to me, complied with Order 10 Rule 1 (4) of the Rules of the Ssupreme Court. That paragraph states:

"Where a writ is duly served on the defendant otherwise than by virtue of paragraph (2) or (3), then, subject to Order 11, Rule 5, unless within three days after service the person serving it endorses on it the following particulars, that is to say, the day of the week and date on which it was served, where it was served, the person on whom it was served, and, where he is not the defendant the capacity in which he was served, the plaintiff in the action begun by the writ shall not be entitled to enter final or interlocutory judgment against that defendant in default of appearance or in default of defence."

I have not seen any such indorsement on the writ in my file.

The summons is dismissed in so far as the other Defendants are concerned.

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A. N. J. MATTHEW
Puisne Judge