

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1995



Suit No. 51 of 1995

BETWEEN:

RODNEY BAY LIMITED

Plaintiff

and

LESTER JAMES HIPPOLYTE

Defendant

Mrs. E. Greene-Ernest for Plaintiff

Mr. D. Theodore for Defendant

1995: April 12 and 26

J U D G M E N T

MATTHEW J. (In Chambers).

On January 20, 1995 the Plaintiff filed a writ of summons indorsed with statement of claim asking for judgment for the sum of \$6,090.41 representing sewer charges plus interest at 14 per cent per annum and costs.

The Defendant was served personally on January 23, 1995. On March 8, 1995 the Defendant obtained an order to enter conditional appearance and on March 21, 1995 the Defendant issued a summons to set aside the writ of summons on the ground that the writ did not comply with Order 51 Rule 1 of the Rules of the Supreme Court.

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The summons was supported by an affidavit of Giselle Prospere, a secretary employed in the Chambers of Messrs Cenac and Theodore. In that affidavit the deponent stated that she measured the writ of summons and found that it was 11 12/16 inches long and that it had a margin of 1 1/4 inches.

In his submissions in support of the summons to set the writ aside learned Counsel for the Defendant referred to Order 51 Rule 1 and said that the only room for discretion is in the use of the phrase "approximately 13 inches long, by 8 inches wide". Counsel further submitted that the legislature was saying that a litigant must use long paper for a writ and this writ was on short paper.

Counsel submitted that the rule further required that the margin be not less than 1 1/2 inches wide and in this case no approximation was allowed.

Counsel further submitted that the proviso to Rule 1 did not apply for although the writ in this case was longer than 10 inches specified in the proviso, the whole of the document could not be produced on one side of the paper.

Learned Counsel for the Plaintiff submitted that the Plaintiff relied on the word "approximately" in the Rule. Counsel stated it was not mandatory for a writ to be 13 inches long by 8 inches wide. Counsel conceded the accuracy of the measurements of Prospere in

her affidavit. She submitted that the measurements of the Plaintiff's writ were about what was in the proviso, that is 10 inches long by 8 inches wide.

Prospere in her affidavit did not challenge the width of the Plaintiff's writ so presumably she must have found that to be in order.

Counsel further submitted that the defect was not fatal and an amendment can cure the defect.

Order 51, Rule 1 of the Rules of the Supreme Court states -

"Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court must be on paper of durable quality, approximately 13 inches long, by 8 inches wide, having a margin, not less than 1 1/2 inches wide, to be left blank on the left side of the face of the paper and on the right side of the reverse:

Provided that paper approximately 10 inches long by 8 inches wide may be used where the whole of the document can be produced on one side of the paper".

Prospere in her affidavit stated that the Plaintiff's writ measured 11 12/16 inches long. The Rule requires that the length should be approximately 13 inches long. If that were the only defect the

Court would be in the unavoidable position of having to accept or reject a writ which fell short of a mere 1 1/4 inches in length. The Court would have to say whether 11 3/4 is approximate to 13. But there is another defect to which learned Counsel for the Plaintiff made no answer. The Rule requires that the margin of the document be not less than 1 1/2 inches and this writ has a margin of 1 1/4 inches. In my view that requirement is even more important for official purposes. It says the margin must be left blank on the left side of the face of the paper and on the right side of the reverse.

The writ in my view is defective and there is nothing to amend. It must be set aside with costs of \$150.00 to the Defendant.

A.N.J. MATTHEW

Puisne Judge