

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. A-118/1987

BETWEEN	AVALON INVESTMENTS LIMITED	PLAINTIFF
A N D	SANDRA ATLAS BASS	FIRST DEFENDANT
A N D	ROBERT ZABELLE	SECOND DEFENDANT

Dr. Lloyd Barnett and Mr. Wendel Wilkins instructed by Miss Michalene Lattore of Messrs. Clinton Hart and Company for defendants/applicants.

Mr. Crafton Miller and Miss Nancy Anderson, instructed by Messrs. Crafton Miller and Company for plaintiff/respondent.

HEARD: JANUARY 28 AND 29, 1991

PANTON, J.

The trial of the substantive action herein began on March 19, 1990. It was adjourned nine days later pending settlement. Since then, negotiations have taken place with a view to a settlement.

The defendants now seek, by means of this motion, an order to halt all further proceedings in this action on the terms set out "in the schedule to the Minutes of Order attached" to the notice of motion.

The terms alleged to be agreed between the parties include the payment by the plaintiff of a total of US\$472,472.52 by the expiration of 120 days from December 10, 1990. Failure to do so would give the defendants the right to forfeit the deposit of US\$45,000.00.

Issue has been joined as to whether a settlement has been arrived at.

The defendants are relying heavily on a letter dated October 8, 1990, as being evidence of an agreement. They say that a consensus was arrived at and that subsequent efforts to seek clarification have not destroyed that consensus.

The plaintiff is challenging the defendants' stance as it claims that time is an essential ingredient and there was no specific agreement on that aspect. In any event, says the plaintiff, its attorney-at-law had always stressed to the attorney-at-law for the defendants the need for the former to consult with the plaintiff.

In the important letter of the 8th October, 1990, the plaintiff's attorney-at-law confirmed the plaintiff's agreement to the terms of their last draft agree-

ment, and requested confirmation by the defendants. There were subsequent discussions with the plaintiff's attorney-at-law as to the time for payment, and there was also a conference call involving a Mr. Finzi, a representative of the plaintiff.

The affidavits of Mr. Millingen and Mr. Hylton have led me to the view that no genuine compromise has been arrived at. I note the challenge that has been made by Mr. Hylton of paragraphs 14 to 18 of the affidavit of Mr. Millingen. Clearly, there is no agreement as to the factual situation relating to these subsequent discussions.

It seems to me that, on a balance of probabilities, the various sums for payment have not been divorced or isolated from the time for their payment. There being no agreement on the time for payment, there does not seem to be any genuine compromise.

I note that the attorney-at-law for the defendants was advised on December 10, 1990, of a change of attorney-at-law by the plaintiff. I note further that on the day following the notification of this change, the attorney-at-law for the defendants decided to formally respond to the letter of October 8. This hesitancy in responding formally to the letter of October 8 further indicates to me that up to the time of the notification of the change of attorney-at-law, the position being advanced by the defendants had not crystallized - as discussions were still in progress.

There being, in my view, no genuine compromise, it seems to me that the proper course is to dismiss the motion and allow the action that has been part-heard to proceed.

The motion is accordingly dismissed. Costs to the plaintiff to be agreed or taxed. On the application of the attorney-at-law for the defendants, leave to appeal is granted.