



*IN THE SUPREME COURT OF JUDICATURE OF JAMAICA*

*IN COMMON LAW*

*SUIT NO. C.L. B058/76*

<i>BETWEEN</i>	<i>LILIAN ESTELLA BRUCE</i>	<i>PLAINTIFF</i>
<i>A N D</i>	<i>HAMLIN URIAH BRUCE</i>	<i>DEFENDANT</i>

*Miss Carol Vassall instructed by  
C. M. Vassall & Co. for the Plaintiff.*

*Mrs. S. Usim instructed by Chancellor & Co.  
for the Defendant.*

*IN CHAMBERS*

*Heard: 19<sup>th</sup> May, 1998, 25<sup>th</sup> October, 2000  
16<sup>th</sup> November, 2000, 18<sup>th</sup> December 2000  
& June 14, 2001*

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**MARSH, J.**

By writ of summons dated the 25<sup>th</sup> day of February, 1976, the Plaintiff claimed from the Defendant a declaration of Title to, an account for the rents and profits received from, an order for the payments of such rents and profits and the recovery of possession of lands purchased by the plaintiff in or about

the years 1955 and 1959 from one Charles Gordon in the district of Mt. Olivet in the parish of St. Elizabeth.

The Plaintiff also claims a 'one half' interest in a house erected by the Plaintiff and the Defendant on the said lands, an account of the rents and profits received by the Defendant therefrom and an order under the Partition Act in respect of the said building.

Summons for Further and Better Particulars dated 22<sup>nd</sup> June 1979, were filed on 17<sup>th</sup> July 1979. This came up for hearing in chambers on the 17<sup>th</sup> day of September 1979, whereupon the following order was made: -

1. *That the Defendant do serve on the Plaintiff within 14 days of*  
*The Further and Better particulars set out hereunder, to wit: -*  
*Re paragraph 8 of the Defence please state: -*
  - (a) *When the said lands were purchased by the Defendant from*  
*Charles Gordon;*
  - (b) *Whether the said purchases were evidenced by any papers or*  
*instruments in writing – if so please forward copies thereof;*
  - (c) *The purchase prices paid therefor by the Defendant, setting out*  
*the details of the payments made by the defendant and the date*  
*or dates of each payment.*

2. *Re paragraph 10 of the Defence copies of receipts for payments of the taxes made by the Defendant.*
3. *By paragraph 13 of the Defence-please stated whether the Defendant claims that :*
  - (i) *the Plaintiff did not repay any part or portion of the said loan referred to at paragraph 12;*
  - (ii) *the date and the amounts paid by the Defendant to the said Loan Bank to meet the said sum of \$220 (£110).*
  - (iii) *Copies of any receipts received by the Defendant for payment made by him to the said Loan Bank in respect of the said loan.*
4. *Re paragraph 4 of the Defence please:-*
  - (a) *say what negotiations the Defendant entered into with the Malvern People's Co-operative Bank Ltd. To obtain title to the said lands in his name;*
  - (b) *furnish copies of any documents that evidence these negotiations;*
  - (c) *furnish a copy of the title to the said lands – obtained by the Defendant in respect of the said lands;*
  - (d) *forward copies of the documents tendered by the Defendant when he applied for the said title.*

5. *That the costs of and occasioned by this application be the Plaintiff's in any event.*

Summons to Strike out Defence for non-compliance with Order for particulars dated 28<sup>th</sup> September, 1984 was filed on behalf of the plaintiff.

In the interim, it became necessary for Plaintiff to “pursue her former Attorneys-at-law through the General Legal Council Disciplinary Committee” to recover original documents to pursue “this case to a successful conclusion.....”

This pursuit was for “over a period of years” and ended in Plaintiff's favour by an order made on July 3, 1993. Subsequent to this Miss Carol Vassall instructed by the firm Carol M. Vassall & Co. was retained by the Plaintiff.

An amended Summons for Interlocutory Injunction and to strike out Defence and enter judgment dated 14<sup>th</sup> October, 1997 was reissued.

Up to this date, the order made against the Defendant on the 17<sup>th</sup> of September, 1979 was not obeyed in any particular thereof.

Like the situation with the Plaintiff, the Attorney-at-Law who had entered appearance for the Defendant was not the Attorney who appeared for the Defendant when the hearing of the instant summons began.

Summons to amend defence dated 15<sup>th</sup> May 1998 was filed by Messrs. Grant, Stewart, Phillips and Co. for the Defendant.

Hearing of the summonses began on 18<sup>th</sup> day of May 1998, continued to 19<sup>th</sup> May, 1998 when it was adjourned for continuation to a date to be arranged by the Registrar.

On October 20, 2000, Notice of change of attorney was filed by Chancellor and Company for the Defendant.

The Plaintiff's Summons (amended) for Interlocutory Injunction and to Strike out Defence and enter judgment dated October 14, 1997 sought the following relief: -

1. That Paragraphs 4, 8, 10, 15 of the Defence be struck out by reason of the non-compliance of the Defendant with the order of the Master made herein on the 17<sup>th</sup> day of September 1979, that the Further and Better Particulars of the defence asked for by Summons dated the 22<sup>nd</sup> day of June, 1979 be served on the Plaintiff within (14 fourteen days of the said order);
2. That in the consequence of the said Striking out of the said paragraphs of the said Defence he struck out as no longer disclosing any reasonable cause of action:

3. That the Plaintiff be at liberty to enter judgment herein in Defence of Defence and for the costs of the action including this Application.
4. The Defendant be restrained whether by himself or by his servants or agents or otherwise from selling, transferring, conveying, alienating or otherwise disposing of or dealing with:
  - (1) one half acre of land in the district of Mt. Olivet in the parish of St. Elizabeth with the boundaries set out hereunder, to wit:-
    - (a) on the east by lands occupied by Edward Allen;
    - (b) on the south by lands occupied by Charles Gordon;
    - (c) on the north by lands occupied by Samuel Bennett;
    - (d) on the west by the parochial road.
  - (ii) a parcel of land approximately three-quarter acres in extent adjoining the parcel of land referred to at I above.
  - (iii) A parcel of land approximately one half acre in extent purchased from one Charles Gordon on October 19, 1959 until trial of this action or further order.
5. Such further order, as this Honourable Court seems just.

The Defendant, by Reissued Summons to amend Defence dated the 15<sup>th</sup> day of May, 1998 sought an order that: -

1. Pursuant to Section 259 of the Judicature (Civil Procedure Code) Act the Defendant be granted leave to amend Defence in the manner set out in the Draft Defence attached hereto..... And to file and deliver the same within seven days of the date hereof.
2. That the Plaintiff be granted leave to amend her Reply, if she so desires, within fourteen days of the filing and delivery of the Amended Defence.
3. The costs of this Application be costs in the cause.
4. That either party has liberty to apply.

The affidavits of Plaintiff Lillian Bruce, sworn to on 15<sup>th</sup> October, 1996 and 30<sup>th</sup> April 1998 respectively were relied upon by the Plaintiff.

There was no response from Defendant to any of the aforementioned affidavits of the Plaintiff, nor was there any explanation or reason advanced as to why the Court's order for Defendant to supply Further and Better Particulars was not obeyed.

On April 27 1998 the Amended Summons for Interlocutory Judgment, filed October 14<sup>th</sup> 1997 came before Her Ladyship Mrs. Justice Marva

McIntosh (Ag.) (as she then was), in chambers and an order was made for the day's cost to be paid to Plaintiff, by Defendant, after agreement or taxation. This was not done.

The facts referred to by Plaintiff Lillian Estella Bruce in her affidavits remain uncontested.

The Order made on September 17, 1979 has not been complied with. Counsel for Plaintiff, Miss Vassall, has argued before me inter alia, that

- (i) Defendant's conduct needs to be looked at in the context of O.24 v. 16 (1) of the Rules of the Supreme Court. This speaks to Failure to comply with requirements for Discovery – Order for Further and Better Particulars is a “discovery mechanism.”
- (ii) Defendant has remained inactive for such a great length of time, done nothing about complying with an Order of the Court, laches in the matter being so grave and continuous, Court is prevented from exercising any discretion in favour of Defendant.
- (iii) Defendant had also failed to comply with another order of the Court, i.e. the order made by Her Ladyship Mrs. Marva McIntosh on April 27, 1998, for Defendant to pay costs to Plaintiff prior to May 18, 1998.



- (iv) Since there was non-compliance by the Defendant of the Order of September 1979, which would go to the root of the Defence, the Court should strike out the Defence in this matter as
  - (a) it discloses no reasonable cause of Defence;
  - (b) it will prejudice, embarrass and delay a fair trial of the action and
  - (c) it is an abuse of the process of the Court.

Mrs. Usim for the Defendant countered thus: -

1. Plaintiff 's Summons to strike out is based on the non-compliance of an order of the Court made on the 7<sup>th</sup> day of September, 1979, not pursuant to Order 18 rule 19 of the Supreme Court Practice, which gives Court power to strike out Defence for
  - (a) disclosing no reasonable cause of action;
  - (b) Tending to prejudice, embarrass and delay the fair trial of the action
  - (c) Abuse of process
2. The Court does not generally strike out immediately – it usually makes an “Unless Order” to strike out unless the party complies

with the order within a specified time. To support the proposition, reliance is placed by counsel on Order 24/16/1 1988 Supreme Court Practice.

3. Delay by itself is not enough.

*Carey P. (Ag.)* (as he then was), in the case *Manteca Warehouse Ltd.*

*V. Anthony Chin Quee etal (1988) 25 JLR.* At *p. 377* stated, inter alia

***“..... in order that a litigant should be driven from the judgment seat, some very good reasons should be shown to allow that to take place. Delay by itself ..... is not in my judgment enough.”***

4. Defendant’s possession of Title should not be distributed lightly he ought to be allowed to defend if he has a good and arguable defence on its merits.
5. Plaintiff has also been guilty of laches, as she sat on her rights between 1979 and 1987 “and did nothing”.
6. Complaint of hardship and prejudice have been made but no real evidence of prejudice has been provided. No evidence placed before the Court that the evidence required to prove Plaintiff’s case is no longer available.

***The paramount function of a judicial tribunal is to determine***

***“the substantive rights of the parties in accordance with the law***

***applicable to the true facts of any particular matter. Hence is***

*derived the necessity for the liberal approach adopted by the Court in granting of leave for the amendment of pleadings.”*

Per *Phillips J. A. at page 513 paragraph C, Pierre v. Walker (1973) 22*

*W.I.R.*

Where however there is any ground for believing that the application is not made in good faith, there will be difficulty.

A litigant should not be driven from the judgment seat, unless some very good reasons can be shown for that to take place. (*Manteca Warehouse Ltd. V. Chin Quee et al (supra)*).

It is patently clear that a Court may grant leave to amend where it is of the view that pleadings are redeemable by amendment then application to strike out the pleadings ought not to succeed. A court however has power at any stage of the proceedings to order to be struck out or amended any pleading or anything in any pleading and to order the action to be stayed or dismissed or judgment to be entered accordingly as the case may be.

In the instant case the Plaintiff's summons is essentially based on the fact that the Defendant has failed to comply with an order for Further and Better Particulars, which went to the root of the defence. This order was made in 1979 and has remained not complied with, by the Defendant for more than twenty years.

There has been no explanation or excuse proffered by the Defendant. By any yardstick, a delay of more than twenty years is a long time. It is conceded that during the period Plaintiff was having her own problems with her attorneys – a problem, which caused her to seek the assistance of the General Legal Council's Disciplinary Committee.

This however, cannot be relied upon by the Defence, as that fact does not account for why the Order made on September 17, 1979 was never complied with.

Besides Defendant's Counsel submitted that the Plaintiff also shared in the laches alleged, but there was no evidence to suggest that this prevented Defendant complying with an order of the Court. It is therefore in contested that the defendant simply elected to disregard the order of the Court. This default has been intentional and contumelious. I can only conclude Defendant's intention as no attempt has ever been made to explain or excuse Defendant's inactivity.

His disobedience of the Court Order – a peremptory order of the Court, which has not been stayed or appealed from, amounts to an abuse of the process of the Court.

Defendant's Counsel urged that this court should made an “unless order”, not granting Plaintiff the reliefs sought, but rather to fix a time frame

within which the order sought should take effect, should the Defendant fail to comply with the Order made on the 17<sup>th</sup> day of September, 1979. I will not be impelled to agree as this course of action does not apply to cases such as this where delay has been both inordinate, excessive and without reasonable explanation.

To agree to the course suggested by Defendant, would give the Court's sanction to conduct which should be encouraged in no litigant. No litigant should treat an order of the Court with such patent contempt.

In consequence therefore, the course which this Court has been led to take is as follows:

- (i) Order is made in terms of paragraphs 1 – 4 of the Amended Summons for Interlocutory Injunction and to strike out Defence and enter Judgment dated October 14, 1997.
- (ii) Summons to amend Defence dated 15<sup>th</sup> May, 1998 is dismissed.
- (iii) Costs to be the Plaintiff's to be agreed or taxed.