

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. J-015/2002

BETWEEN

JAMAICA CREDITORS
INVESTIGATION &
CONSULTANT
BUREAU LTD.
(Suing as agent for EX-IMPORT
BANK OF TRINIDAD & TOBAGO
& ROYAL BANK OF TRINIDAD
& TOBAGO)

PLAINTIFF

AND

MICHMONT TRADING
LIMITED

DEFENDANT

H. Charles Johnson instructed by H. Charles Johnson & Co for plaintiff.

Miss Brandie Anderson instructed by Raphael Codlin & Co. for defendant

Heard: May 5, and 9, 2003

JONES, J. (Ag.)

The plaintiff in this case is represented by its agent the Jamaica Creditors Investigation & Consultant Bureau Limited. The defendant is a company under and by virtue of the Companies Act. On February 27, 2002, the plaintiff filed a writ of summons in the Supreme Court of Jamaica against the defendant claiming an amount of \$1,719,332.53 together with cost and interest. The defendant entered an appearance through its attorney on March 12, 2002, but filed no defence. The plaintiff now brings a summons for summary judgment to this court, asking for a judgment against the defendant pursuant to Sec. 79 (1) of the Judicature Civil Procedure Code Law in respect of the claim, and for cost, on the grounds that there is no defence to the claim.

The evidence of the plaintiff was given through the affidavit of Margaret Carter in support of the summons for summary judgment. The relevant portions are set out below:

- (1) "...
- (2) *That I am the Manager of Jamaica Creditors Investigation & Consultant Bureau Limited, who acts as agent on behalf of the Plaintiff and I am duly authorised to swear to this Affidavit on its behalf.*
- (3) *That in my capacity as the Plaintiffs agent, I have personal knowledge of the transaction between the Plaintiff and the Defendant that give rise to this suit.*
- (4) *That between July 15, 1999 and November 22, 1999, 2200 bales toilet paper were shipped to the Defendant by Premium Paper Products Limited of Trinidad & Tobago.*
- (5) *That the shipment of 2200 bales toilet paper received by the Defendant was financed by Royal Bank and Export - Import Bank of Trinidad and Tobago in agreement with the exporter Premium Paper Products Limited and the importer Michmont Trading.*
- (6) *That the financing was provided and an amount of JA One Million Five Hundred and Sixty-three Thousand and Twenty-nine Dollars, Fifty- seven Cents (JAS\$1,563,029.57) is now due and outstanding for 2200 bales toilet paper which were paid for by the Plaintiff Export-Import Bank of Trinidad and Tobago on behalf of the Defendant herein.*
- (7) *That up to the present time the Defendant has made no payment on the amount owing and is therefore justly and truly indebted to the Plaintiff for the principal sum of United States Twenty-five Thousand Five Hundred and Forty Dollars, Twenty-eight Cents (US\$25,540.28) together with discount interest of United States Three Hundred and Seventeen Dollars, and Seventeen Cents (US\$317.17) and penalty interest of United States Seven Thousand Three Hundred and Ninety- eight Dollars, Fifty Cents (US\$739850) which when converted to Jamaican currency amounts to JA One Million Two Hundred Thousand Three Hundred and Ninety-three Dollars, Sixteen Cents (JAS\$1,200,393.16) plus discount interest of JA Fourteen Thousand Nine Hundred and Six Dollars, Ninety - one Cents (JAS\$14,*

916.91) from the 14 day of July, 1999 to the 22' day of December 1999 and penalty interest of JA Three Hundred and Forty - Seven Thousand Seven Hundred and Twenty - nine Dollars, Fifty Cents (JAS347,729.50) from the 18 day of September 1999 to the 15 day of November 2001 and continuing.

(8) That is:

• 2200 bales toilet paper	\$1,200,393.16
• Discount Interest 11.5% from the 14-7-99 to 22-12-99	\$14,906. 91
• Penalty interest at 14% per annum from 18-9-99 to 15-11-01 and continuing	\$347,729.50
• Cost of investigations	\$ 156,302.96
TOTAL	\$1,719,332.53

(9) Investigations were carried out by Plaintiffs Agent and fees were charged amounting to One Hundred and Fifty-six Thousand Three Hundred and Two Dollars, Ninety-six Cents (\$156,302.96). Since the debt the Defendant made no payments on account of its indebtedness to the Plaintiff and there is now bona fide due and owing the sum of One Million Seven Hundred Nineteen Thousand, Three Hundred and Thirty-two Dollars, Fifty-three (\$1,719,332. 53). "

No attempt was made by the defendant to apply for leave to file defence out of time or to put forward any explanation of its failure to put up a case. The CPR 2002 applies to this matter by virtue of r.2.1 (2) which provides that the new rules come into force on January 1, 2003, subject to the transitional provisions. What then are the principles guiding the granting of an order for summary judgment under the new CPR 2002?

Under the CPR 2002 r.15 (2) a court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if it considers that that claimant has no real prospect of succeeding on the claim or issue or that the defendant has no real prospect of successfully defending the claim or issue.

The proper approach to be taken in the present case may be discerned from the judgment of the U.K Court of Appeal in the case of *Swain vs. Hillman* [2001] All ER 91. In dealing with a similar issue under the United Kingdom CPR Part 24 - which is similar

to our CPR Part 15 - the court said that the words "no real prospect of being successful or succeeding" do not need amplification, elaboration or explanation. A convenient synopsis of the applicable principles appears in the following passage which is taken from the head note:

"The word 'real' directs the court to the need to see whether there is a realistic as opposed to a fanciful prospect of success. It is important that judges in appropriate cases should make use of the power contained in Pt 24. In doing so, they will give effect to the overriding objectives contained in Pt 1. It saves expense, achieves expedition, avoids the court's resources being used up on cases where that serves no purpose and is in the interests of justice. If a claimant has a case which is bound to fail, it is in his interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know that as soon as possible."

However, Lord Woolf MR in delivering the judgment of the court sounded a note of caution at pg 94-95:

"... Useful though the power is under Pt 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial. As Mr. Bidder put it in his submissions, the proper disposal of an issue under Pt 24 does not involve the judge conducting a mini-trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily."

Applying these principles to the present case - once it is accepted that the defendant filed no defence to the claim, and gave no evidence to answer the claimant's application for summary judgment - it seems to me, that there is no issue of fact and of interpretation to be resolved by trial in this matter. So then, in giving effect to the overriding objectives in CPR Part 1, of enabling the court to deal with cases justly, saving expense, achieving expedition, and ensuring that the court's resources are not used up on cases which are

unmeritorious; this court cannot resist the inevitable conclusion that the claimant is entitled to summary judgment on its claim. For these reasons, there shall be judgment for the plaintiff in the sum of One Million Seven Hundred Nineteen Thousand, Three Hundred and Thirty-two Dollars, Fifty-three (\$1,719,332. 53), with interest at the rate of 14% from November 15, 2001, to the date of this judgment, with cost in accordance with the CPR 2002.