

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. L113/1997

BETWEEN LATIN AMERICAN EXPORT & IMPORT INC. PLAINTIFF
A N D CARIBBEAN STEEL COMPANY LIMITED DEFENDANT

Mr. Christopher Honeywell for Plaintiff.

Mr. Maurice Manning for Defendant.

HEARD: 13TH & 14TH JULY 1998 and 8TH JANUARY, 1999

THEOBALDS, J.

By a Summons for Summary Judgment dated 21st November 1997 the Plaintiff herein made application for final judgment in Suit C.L. L113/1997 for the amount claimed in the Special Endorsement to the Writ of Summons along with interest thereon and costs, and damages under (1) the Bills of Exchange Act or.

(2) for Goods sold and delivered or.

(3) for Breach of Settlement Agreement.

This summons was supported by an Affidavit of one Patrick Foster Attorney-at-law sworn to on the 21st November 1997. Mr. Foster is a partner in the firm of Clinton Hart & Co. Attorneys-at-law for the Plaintiff. His Affidavit, some 44 pages in length inclusive of the Exhibits attached thereto, is based on the usual condition that his "knowledge of the facts and matters as deposed to herein in so far they are within my knowledge are true and in so far as they are not within my knowledge are true to the best of my information and belief, based on information given to me by Carlton Roberto Charur the Chief Executive Officer of the Plaintiff which I verily believe to be true". The underlining is mine. In response or opposition to this application for Summary Judgment a 69 page Affidavit dated the 2nd December 1997 inclusive of Exhibits attached thereto is filed by one Richard Lake, Chairman of the Board of Directors and Chief Executive Officer of the Defendant Company. He avers that "the facts and matters deposed (sic) to herein in so far as they are within my knowledge they are true to be best of my knowledge, information and belief". At no time does Mr. Lake

state the source of his information. Nor indeed is there any other Affidavit filed on behalf of the Defendant to fill this gap.

He became the Chairman and Chief Executive Officer of the Defendant Company in or about June 1996 shortly following the termination by the Defendant of the services of Mr. Glenn Harris in or about June 1996. Later on in his Affidavit, the said Glenn Harris is described as the former Chief Executive Officer of the Defendant company.

It would be appropriate here to set out what a Plaintiff must prove in any application for Summary Judgment.

The purpose of a Summary Judgment is to provide early judgment in those cases in which the Defendant has no hope of success and any defence raised will merely have the effect of delaying judgment. The rule enables the Court to grant Summary Judgment at an interlocutory stage without the delay and expense of a full trial if it is shown that no trial is necessary.

Under Section 79 (1) of the Judicature (Civil Procedure Code) law, the Plaintiff can apply for Summary Judgment on his claim after the Statement of Claim has been filed and served and the Defendant has entered an appearance. The Statement of Claim will usually be endorsed on the Writ (Special Endorsement) or it may be served as a separate document but together with the Writ.

The application is made by Summons which must be supported by an Affidavit verifying the facts on which the claim is based. The Affidavit must state that in the deponent's belief there is no defence to the action except as to the amount of damages claimed, if any. The Affidavit should be deposed to by the Plaintiff or someone who can swear positively to the facts. This Affidavit may contain knowledge based on information and belief and such belief must be stated therein. The Affidavit should not omit to state that in the deponent's belief the Defendant has no defence to the action.

Summary Judgment will be awarded unless the Defendant satisfies the Judge that:

- (1) he has a good defence to the action on the merits, or

- (2) he has disclosed such facts as may be deemed sufficient to entitle him to defend the action.

Consequently, as seen in the cases, if the Defendant satisfies the Judge that there is an issue or question which ought to be tried or that there ought for some other reason to be a trial of the Plaintiff's claim, then judgment will not be awarded. Once it is clear that there is no triable issue or other reason for trial, the judge will give judgment for the Plaintiff.

See: European Asian Bank A.G. V. Punjab & Sind Bank (No. 2 [1983] 1 WLR 642.

If the Defendant establishes that he has a good defence, he ought to be given leave to defend. This leave may be conditional or unconditional.

See: Frederick Hugh & Co. v. Jackson [1930] 2KB 340
Webster v. Alphonso [1980] 34 WIR 204.

In these cases, it should be noted that unlike the required stipulation for Jamaica of a good defence on the merits of the case or some facts are disclosed which may be deemed sufficient to entitle the Defendant to defend, the requirement is that of the Defendant establishing a triable issue. Thus if the Defendant satisfies the Judge that he has a genuine triable issue, the leave to defend should be granted unconditionally.

See: Williams v. Williams 30 WIR 77.

See: Fieldrank v. Stein [1961] 1 WLR 781.

If the Judge is of the opinion that the defence lacks good faith then conditions may be imposed. Thus if there is good ground on the evidence for believing that the so-called defence is being raised as a sham and it is a borderline case whether the Plaintiff should have Judgment forthwith, it is proper to give leave to defend conditionally upon payment into Court of the amount claimed. This will be so especially if it is clear that the Defendant's assets will be dissipated and injustices done to the Plaintiff if there is any delay.

See: Lonian Bank v. Coreus [1969] 1WLR 781.

Applying the principles above outlined it is my view that the Affidavits filed for and on behalf of the Plaintiff's application for Summary Judgment leave me in no doubt that there is no triable issue to go before the Court. In deciding whether the defence set up is a real defence or not all the circumstances must be looked at. Richard Lake's Affidavit of 26th May, 1996 is clearly inconsistent in that while at paragraph 12 he purports to reject the enforceability of the settlement agreement at the very next paragraph 13 he speaks of provision for late payment of installments and for the payment of interest. Lake's allegations of fraud on the part of Glenn Harris and conspiracy with Harris by the Plaintiff are not based on any particulars stated. Over payment on the order for steel made by Harris is equally consistent with bad management or no management at all. Likewise payment of a debt before the date it becomes due. The words of Megarry V-C in *The Lady Anne Tennant v. Associated Newspapers Group Ltd.* (1979) F.S.R 298 are particularly relevant to this case and I adopt them as my own.

"A desire to investigate alleged obscurities and a hope that something will turn up on the investigation cannot, separately or together, amount to sufficient reason for refusing to enter Judgment for the Plaintiff. You do not get leave to defend by putting forward a case that is all surmise and Micawberism".

Repeatedly in his Affidavit of the 10th October 1996 and elsewhere Richard Lake makes use of words that "the Plaintiff knew or is deemed to have known or ought to have known" that either Harris had no authority to act on behalf of the Defendant Company or that the contract for sale of goods was unenforceable against the Defendant and that the instruments were likewise unenforceable. A party contracting with the Chief Executive Officer of a Company is not only entitled to assume that that officer has the necessary authority to act on the Company's behalf but could well ask themselves who better to deal with. If ever there was "an abuse of the process of the Court," (words used by Mr. Lake with

reference to the Plaintiff's application for Summary Judgment), the exhibiting of at least 26 pages in type of the Memorandum and Articles of Association of the Defendant Company in order to prove that Harris had no authority to act as he did is as time consuming an exercise as anything this Court could conceive of. It is my view that on a preponderance of evidence, much of it emanating from the hapless Mr. Richard Lake, the Plaintiff is entitled to an Order in terms of Summons for Summary Judgment dated the 21st day of November 1997 with interest at the rate of 10.25% per annum from 9th October 1997 - the date of filing of the Writ-to date of payment.

Finally I wish to express my sincere regret for the delay in concluding this matter, but I was away from office on Circuit Court duties, away on medical grounds, and away on personal commitments between the 22nd December 1998 and the 2nd January 1999.