

2015

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 02246/2004

BETWEEN	ALLAN LYLE	CLAIMANT
AND	VERNON LYLE	DEFENDANT

Ms. Tasha McDonald instructed by Lyn-Cooke Golding & Company for Claimant

Mr. George Traile instructed by Phillips Traile & Company for Defendant

Heard: May 10, 2005

Sinclair-Haynes, J

Mr. Allan Lyle (claimant) is the son of 74-year-old Vernon Lyle (defendant) who is presently very ill. His extensive list of illnesses includes Alzheimer's. On September 22, 2004, Mr. Allan Lyle sued his father for the sum of \$4,800,000.00 with interest in the sum of \$384,000.00. The defendant was served with the proceedings on September 25, 2004. Mrs. Evadney Lyle, the defendant's wife, on November 12, 2004, filed a defence, which was outside the time prescribed by the Civil Procedure Rules (CPR), 2002.

The defendant did not obtain the consent of the claimant to file the defence out of time; nor was the leave of the court sought as required by the CPR. The defence was signed by the defendant's wife who had no *locus standi* so to do. She was merely armed with a limited Power of Attorney, which did not authorise her to defend the matter.

Claimant's claim

It is the claimant's claim that in October 1988 whilst he resided in the USA, he remitted the sum of US\$100,000.00 to his father to purchase a house for him. Upon his

I will first consider the ground advanced by the claimant that the defendant's defence was filed in contravention of the CPR and that Mrs. Lyle was not authorised to defend the matter.

The Law

The CPR Rule 10.3(1) states:

“The general rule is that the period for filing a defence is the period of 42 days after the date of service of the claim form.”

The defendant's defence was filed outside of the prescribed time.

Rule 10.3(5) states:

“The parties may agree to extend the period for filing a defence specified in paragraphs (1) (2) (3) or (4).”

Rule 10.3 (9) states:

“The defendant may apply for an order extending the time for filing a defence.”

The defendant did not comply with the requirements of the rules.

In determining whether to dismiss the defence on the ground that it was filed in breach of the rules, I must be cognizant of the overriding objective of enabling the court to deal justly with cases. In so doing, some important considerations include ensuring that the case is dealt with expeditiously and fairly and the need to allot resources to other cases (See Rule 1.1).

In acceding to the claimant's request, would I be dealing justly, fairly and expeditiously with the matter? On the other hand, should I allow the defendant added time to file his defence, would that amount to the proper allocation of the court's limited resources? In attempting to do justice between the parties, I will consider the following:

The comments of Smith JA in **Norma McNaughty v Clifton Wright et al.** Civil Appeal No. 20/2005 delivered May 25, 2005 at page 12 enlightens as to our Court of Appeal's position with regards the non-compliance of the rules:

“Nonetheless, I am constrained to repeat what Court of Appeal has said *ad nauseam* namely that orders or requirements as to time are made to be complied with and are not to be lightly ignored. No court should be astute to find excuses for such failure since obedience to the orders of the court and compliance with the rules of the court are the foundations for achieving the overriding objective of enabling the court to deal with case justly.

(See also **Keith O'Connor v Paul Haufman et al** Civil Appeal No. 33/2002 delivered April 7).

Lord Lloyd in **UCB Corporate Services Ltd. v Halifax (SW) Ltd.** (unreported 6th December 1999) stated:

“It would indeed be ironic if as a result of the new rules coming into force, and the judgment of this court in **Biguzzi** case, judges were required to treat cases of delay with greater leniency than they would have done under the old procedure. I feel sure that that cannot have been the intention of the Master of the Rolls in giving judgment in the **Biguzzi** case. What he was concerned to point out was that there are now additional powers which the court may and should use in the less serious cases. But in the more serious cases striking out remains the appropriate remedy when that is what justice requires.”

Although the defendant's failure to comply with the requirements of the rules should not be regarded lightly, it was *per se*, not very serious. The delay cannot really be considered to have been inordinate or contumelious. The claimant has not provided any evidence that the defendant's failure to file the defence has resulted in any prejudice to him nor is there any evidence that the said failure amounts to an abuse of process: (See

- c. Letter dated February 16, 2004 which was written by her attorneys-at-law, Clark Robb & Company, to the claimant's attorney-at-law which she requested that the claimant waived the payment of interest on the sum of \$80,000.00.

Nor has she questioned the authenticity of a letter dated the 6th July 2004 in which the defendant confirmed his instructions to Mr. Gordon Brown.

In light of her confessed ignorance as to the allegations contained in the defence and the above-mentioned reasons, I conclude that the defendant has no real prospect of successfully defending the claim.

Re: Summary Judgment

Part 15.2 of the Supreme Court of Jamaica Civil Procedure Rules states:

“The court may give summary judgment on the claim or on a particular issue if it considers that –

- (b). the defendant has no real prospect of successfully defending the claim or the issue.”

In **Swain v Hillman** [2001] 1 All ER 91 Lord Woolf considered Rule 24.2 of the English Civil Procedure Rules, which is identical to ours and remarked:

“Under part 24.2 the court now has a very salutary power, both to be exercised in a claimant's favour or where appropriate, in a defendant's favour. It enables the court to dispose summarily of both claims or defences, which have no real prospect of being successful. The words “no real prospect of being successful or succeeding,” do not need any amplification, they speak for themselves. The word “real” distinguishes fanciful prospects of success or as Mr. Bidder submits, they direct the court to the need to see whether there is a realistic as opposed to a fanciful prospect of success.”

In the circumstances:

- 1 The defendant's defence is hereby struck out.
- 2 Judgment for the claimant in the sum of \$4,800,000.00 with interest in the sum of \$384,000.00.