



[2013] JMSC Civ. 30

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. C.L. R-187 OF 1995

BETWEEN	BENTLY ROSE	1 <sup>ST</sup> CLAIMANT
AND	BENROS COMPANY LTD.	2 <sup>ND</sup> CLAIMANT
AND	MACRO FINANCE CORPORATION LTD.	3 <sup>RD</sup> CLAIMANT

**CONSOLIDATED WITH**

CLAIM NO. R-041 OF 1996

BETWEEN	BENTLY ROSE	1 <sup>ST</sup> CLAIMANT
AND	BENROS COMPANY LTD.	2 <sup>ND</sup> CLAIMANT
AND	MACRO FINANCE CORPORATION LTD.	3 <sup>RD</sup> CLAIMANT
AND	MELANIE TAPPER	DEFENDANT

Mr. Gayle Nelson instructed by Gayle Nelson & Co.  
for all three Claimants with Bently Rose, 1<sup>st</sup> Claimant  
and representative for the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants

Ms Malika Wong and Ms. Shani Nembhard instructed by  
Myers, Fletcher & Gordon for the second Defendant,  
Trafalgar Commercial Bank

Ms Melissa Cunningham instructed by Raphael Codlin  
& Co. for Melanie Tapper (who was present with her  
husband for the caption hearing on Monday 4/2/13)

Heard in Chambers 4<sup>th</sup> February 2013 CAV 4<sup>th</sup> March 2013

**Coram: D.O. McIntosh, J**

[1] Before this court is Claimants Application for summary judgment and interim payment in these consolidated matters.

[2] The court deplores the fact that the cases are of such antiquity and yet are still meandering their way slowly through our judicial system.

[3] An enquiry about the matter being at the Court of Appeal revealed that an application was made for consolidation of these matters with other matters involving the same claimant. The application for consolidation had been granted and was now on appeal. The Defendants who were of the view that there should be no further consolidations did not raise the issue instead counsel for the second Defendant, Trafalgar Commercial Bank raised other preliminary issues. This had to do with the evidence on which Claimant sought to rely i.e. that documents which were not supported by affidavits should not be considered in this application.

[4] Claimant was of the view that court could and should consider all the material before it, including witness statements and judgments of other courts and the related criminal case.

[5] No issue was taken in relation to the Claimant's statement of the law relevant to this application. The Defendants however, differed on how they thought it was applicable in the present case. Each party had a long list of authorities sometime they all relied on the same authorities.

[6] This court is of the view:

1. That the Application should not generally be heard while the consolidation matter is before the Court of Appeal. Any decision by this court of the newly consolidated matters would be a usurpation of the function of the Court of Appeal. It is for them to decide whether to consolidate or not (unless the parties agree otherwise).

2. This court will not consider at large witness statements and attached documents in an application of this nature. This is a summary application where on the face of the pleadings and affidavit of the Claimant the claim must be practically indefensible.
3. While one appreciates the need for speedy resolution Claimant's expectations of having a trial in two days of a matter set down on previous occasions for four weeks simply does not accord with the scope of the Rules.
4. There are obviously serious questions of law and facts to be tried.
5. Perhaps subconsciously the Claimants recognized this as the late filing of this application would suggest [note better paragraph 4 supra]. Had Claimant been of a different mindset this application would/should have been made as soon as pleadings were complete i.e filing of defence.
6. No effort has been made to go to mediation. This could be one way of expediting matters. Whether the parties choose to go to the Appeal Court or not this court recommends that they immediately go to Mediation. There is at present an able body of Mediators to choose from.

[7] In the mean while an early date should be reserved for the hearing of this matter preferably within the next six (6) months bearing in mind the fact that some eight (8) judges from the Supreme Court have already dealt with some aspect of this case and others may wish to recuse themselves.

[8] As a consequence of the above, this court orders:

- a) Application for summary judgment and interim payment refused;
- b) Costs to be costs in the case;
- c) Leave to appeal granted.