

Supp. to the order for entry of judgment - Failure to comply with order on Summons for Directions - order includes speedy trial - whether delay prolonged, inordinate and irreparable - delay over 4 years - whether court should allow time to comply or dismiss action straight away as requested.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO A3 OF 1983

BETWEEN

VALEF YACHTS LIMITED

PLAINTIFF

A N D

THE OWNERS OF THE MOTOR VESSEL
"DASKA" FORMERLY "ANGELLA" AND
THE MOTOR VESSEL "DASKA" FORMERLY
"ANGELLA".

DEFENDANTS.

Summons for Leave to strike out
Defence and Counter Claim

Charles Piper for Plaintiff instructed by Clinton Hart and Company.

Nancy Anderson instructed by Crafton Miller and Company for the Defendant owners of the Motor Vessel "Daska" formerly "Angella" and the Plaintiff in A11/83.

Actions Consolidated

Hearing in Chambers on February 12 & 15, 1989

JUDGMENT

BINGHAM J.J.:

By summons dated 3rd February, 1989, the Attorneys for the Plaintiff in A3/83 and for the fifth named defendants in A11/83 sought the following reliefs:-

A3/83

An order that:

- "1. The Defence filed herein on 10th June, 1983 by Thwaites, Fairclough Watson and Company as Attorneys for the defendants be struck out.
2. The Defence filed herein on 28th July, 1983 by Messrs. Crafton S. Miller and Company as Attorneys for Richard Mellicke otherwise called Richard Compton be struck out.
3. Judgment be entered for the Plaintiff on its claim herein with costs to be paid by the defendant to the plaintiff to be agreed or taxed.
4. There be such further or other reliefs as to the Court may seem just."

A11/83

An order that:

- "1. The Action herein be dismissed and Judgment be entered for the fifth defendant with costs to be paid by the plaintiff to be agreed or taxed.
2. There be such further or other relief as to the Court may seem just."

The grounds upon which these applications were made in these matters were that the respondents have neglected and/or refused to comply with the order on Summons for Directions made in Suit A/83 on 19th December, 1984.

It may be convenient at this stage to set out the order made on the Summons for Directions so as to set the tone to the background to the applications which has been fully narrated in the Affidavit deposed to by Charles Piper sworn to on 3rd February, 1989. The facts set out in this Affidavit have not been traversed by the respondents and are not in dispute.

At the hearing of the said summons referred to the Court ordered inter alia that:-

"a. this action be consolidated with the actions in Suit A8/1983 and Suit A11/1983.

b. the plaintiff and defendants prepare a statement of the issues in dispute between them, and in the event of the plaintiff and defendants being unable to agree on such a statement that such statement be settled by the Court;

c. by agreement of the parties, the evidence in support of their respective cases may be given by the production of document of entries in books;

d. there be speedy trial of these actions; and that

e. a bundle or bundles of documents be prepared by agreement of the parties for use at the hearing of the actions."

The facts deposed to in the Affidavit of Charles Piper in support of the reliefs sought in the two summonses taken out by the applicant, who is the plaintiff in Suit A/1983 and the fifth named defendant in Suit 11/1983 speak volumes as to the extent of the delay occasioned by the conduct of the Attorneys-at-Law having charge of the suits on behalf of the respondents to this application. Although it has been strongly urged on their behalf by the Learned Counsel appearing for the plaintiff in Suit A11/1983 that the reliefs now sought in these applications ought not to be entertained lightly, there is no gainsaying that the facts disclosed in the Affidavit filed in support of the summonses which are uncontroverted amount to what is in substance and effect, prolonged, inordinate and inexcusable delay on the part of these Attorneys-at-Law in respect of an order of the Court which sought inter alia that the matter be determined expeditiously by

way of a speedy trial. This fact which they no doubt were all well aware of meant that without due compliance with the order made at the hearing of the Summons for Directions, there could be no proper hearing of these actions.

The delay occasioned thereby has been of such a nature as clearly to amount to a denial of justice to the applicant who on the facts deposed to in Mr. Piper's Affidavit have done everything on their part to bring the matters to a state where the issues could be identified and the cause determined. That this is so has been solely as a result of the respondents' conduct which has resulted in the trial not taking place.

The facts and circumstances surrounding this application when examined fall squarely within those which were the subject matter of similar proceedings in two English cases to which the rule governing the matter relates.

For guidance see Allen vs. Sir Alfred McAlpine & Sons Limited (1968) 2 Q.B. 229, and Clough vs. Clough 1968 1 AER 1179.

These are judgments of the Court of Appeal in England and although in both instances the party at fault was the plaintiff's Solicitors, whereas in the instant case the defaulting parties are the Attorneys-at-Law having the conduct of the respondents case, the principles of law in so far as they have been definitely stated by that Court are of general application to this matter, as the rules in so far as they allow either of the parties to an action where there is a delay of such a nature to seek the leave of the Court to dismiss the action in event of the conduct of the other party to the Suit.

(See Supreme Court Practice 1973 Volume 1. Order 19 Rule 1, Order 25 Rule 1, Order 34 Rule 2).

It was contended before me by Learned Counsel for the respondents that I should refrain from taking the extreme course of granting the reliefs sought but rather ought to fix a time frame within which the order sought should take effect if the respondents fail to comply with the order made on the summons for Directions. I do not agree with such a course. This clearly does not apply to cases in which there has been excessive delay.

For as Lord Denning M.R. said in the McAlpine case (referred to supra) pg. 245 G:

"When the delay is prolonged and inexcusable and is such as to do grave injustice to one side or the other or to both the Court may in its discretion dismiss the action straight away, leaving the plaintiff (defendant) to his remedy against his own solicitor who brought him to this plight; Whenever a solicitor, by his

inexcusable delay, deprives a client of his cause of action the client, can claim damages against him; as for instance when a solicitor does not issue a Writ in time, or serve it in time or does not renew it properly."

Cases involving situations where an Attorney-at-Law is dilatory in prosecuting a claim such as in the instant case in my view also can properly be included in this category referred to above.

On an examination of the record and in the light of what I have sought to express above it is clear that the directions of the Court in so far as it laid down a condition which required an exchange of documents by both sides in order to lead to a proper identification of the issues to be resolved at the consolidated hearing of the actions coupled with the total failure on the part of the respondents to comply with such an order which has resulted in the matter not proceeding to a trial stage. Such is the nature of the conduct on the part of the respondents in so far as it relates to a prosecution of their claims in A8/1983 and A11/1983. It may be mentioned in passing that there has already been a notice of discontinuance filed in the former action.

Needless, to say, the total inaction on the part of the respondents to prosecute the claim in A11/1983 by their neglect at compliance with the order made by the Court is of such a nature that even without the application of the relevant rules, falling as it does within what on the evidence clearly amounts to an abandonment of their authority to actively bring the matter to a stage where the issues could be identified and the cause determined, would lead a Court examining the matter to invoke its inherent jurisdiction thus bringing the matter to a finality and dismissing the action for want of prosecution or striking out the claim.

To allow any other course to be adopted would in my opinion be tantamount to causing such conduct as is evident in this matter to go without judicial sanction and would result in a license being given to litigants through their Attorneys to treat an order of the Court with impunity and would equally lead to a grave injustice being done to a party who by their conduct is concerned with having his claim prosecuted expeditiously.

Accordingly, in the light of the above reasons, this Court is left with no other course than to grant the reliefs sought in both summonses with such order for costs to the applicants as prayed for.

Cases referred to
 ① Allen v Sir Alfred McAfee & Son Ltd [1968] 2 Q B 299
 ② Clough v Clough [1968] 1 All ER 1179