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23 OCT 1995

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CHAMBER)
A.D. 1995

Suit No. 614 of 1993

BETWEEN:

DANIEL GIRARD

v.

1. RICK WAYNE
2. THE STAR PUBLISHING CO. (1987) LTD.

Mr. K. Monplaisir Q.C. and Miss Ali for Plaintiff
Miss C. Greene for Defendants

1995: October 11 and 18.

J U D G M E N T

On October 8, 1993 the Plaintiff issued a writ for libel against the Defendants. The Defendants entered appearance on October 15, 1993 and filed a defence on April 13, 1994.

On February 21, 1995 the Plaintiff filed a request for hearing.

On August 1, 1995 the Plaintiff took out a summons asking for certain relief including one that this action has been altogether abandoned and is incapable of being revived as no revivor was filed within six months after the matter was deemed deserted.

The summons was supported by an affidavit filed on the same day. The argument of the Defendants is that the matter became ripe for hearing 14 days after defence by virtue of Order 34 Rule 3(1)(b) that is on 27/4/94.

That the Plaintiff should have set down a request for hearing by 8/6/94 - six weeks after the matter became ripe for hearing by virtue of Order 34 Rule 1(1).

That matter became deserted on 8/12/94 six months after the time for filing by virtue of Order 34 rule 7(1) and the effect of the desertion is that no proceedings could be taken until there was a revivor by virtue of Order 34 Rule 7(2);

And that matter became abandoned by order 34 Rule 11(1) (b) by 8/6/95 that is six months after the matter was deemed deserted.

This would seem to be the result of a careful reading of the rules and that was the view of Mitchell J. and the entire Court of Appeal in BARBUDA ENTERPRISES LTD. v. ATT. GEN OF ANTIGUA AND BARBUDA 1993 WLR 1052 at Page 1055 letters A and c.

Learned Counsel for the Plaintiff has relied on the Privy Council decision in that case.

I note this is one of the cases where a party succeeds on appeal even though his arguments are not entertained. See Page 1055 letter E.

The JCPC referred to the effect of our rule unknown to the U.K. Rules as DRACONIAN. See Page 1053 letter H and 1056 letter C.

The Privy Council held that if the construction they put on Order 34 should lead to any unforeseen difficulty in its effect on the practice and procedure of the Eastern Caribbean Supreme Court this can readily be met by amendment of the Rules. See Page 1056 letter D.

They held however that harsh as it may seem, in their judgment, the inescapable consequence of the plain language of Order 34 is that a Plaintiff's action can become deserted thereafter abandoned and cannot be restored to life in certain circumstances and they held the Court has no discretion to relieve against it. See Page 1055 letter H.

The Court criticised the judgment of Mitchell J. where he seems to be stating that in the action there were two dates on which the matter became ripe for hearing. See Page 1057 letters D - H.

The J.C.P.C. considered that there was difficulty in application of Rule 3(1) (b) and Rule 3(1)(c). They recognized that events under

paragraph (b) would precede those under paragraph (c) and in their view the only way to resolve the difficulty was to look at Order 25.

The crux of their decision was that in any case which is governed by Order 25 Rule 1(1) the action will not become ripe for hearing at the close of the pleadings in accordance with (Rule 3(1)(b), but only by the operation of Rule 3(1)(c) when an order is made under Order 25.

Order 25 Rule 1(2) gives the exception where a summons for directions would become unnecessary and this case is not one of them.

The Court further held that under the summons for directions there must be an order as to the place or mode of trial and if this is not done the action never became ripe for hearing.

It follows that if the matter never became ripe for hearing then there would be no need to file a request for setting it down and so it could never become deserted and consequently it could not be deemed abandoned under Order 34 Rule 11(1)(b).

On the strength of the Privy Council case the application must be dismissed with costs in the cause.

There was a slight suggestion by learned Counsel for the Plaintiff that in Civil Appeal No. 21 of 1993 HENRY ST. HILLAIRE v. ENA LEWIS originating from St. Vincent the Court of Appeal followed the Barbuda case. That is not correct. In fact the Court of Appeal on February 6, 1995 came to a different result and they distinguished the Barbuda case. In the Saint Vincent after often the Plaintiff had filed a writ of summons the Defendant entered appearance on November 4, 1991. The next document filed was on August 31, 1993. It was a summons to deem matter abandoned under Order 34 Rule 11 (1) (a).

The Court of Appeal held the matter never became ripe for hearing under Order 34 Rule 3 and so it could not be deemed abandoned under Rule 11(1)(b) or (c) but was caught by Rule 11(1)(c).

Sir Vincent Floissac, Chief Justice, stated at Page 6 that the importation of the concept of ripeness for hearing into Order 34 Rule 11(1)(a) would have the effect of rendering that rule otiose For this reason Order 34 Rule 11(1)(a) must be understood and held to apply to causes or matters which never became ripe for hearing and which consequently could not be deemed to have been deserted.

The application of that rule is not free from difficulty for in a later Court of Appeal case No. 2 of 1995 FRETT v. DANIEL decided on September 18, 1995 on the application of Rule 11(1)(a) there were some differences in reasoning by a differently constituted

Court of Appeal. That case dealt with waiver of the application of the effect of Rule 11(1)(a) and the Court unanimously decided that could be done.

A.N.J. MATTHEW

Puisne Judge