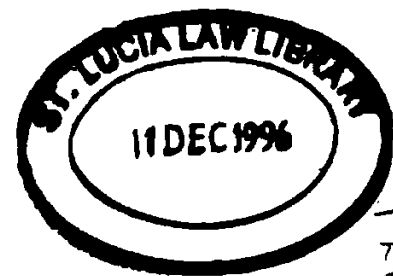


SAINT LUCIA



IN THE HIGH COURT OF JUSTICE

(CIVIL)

A. D. 1996

Suit No. 224 of 1994

Between:

JOSEPH FLORENVILLE

- Plaintiff

vs

DAMAZE SYLVAIN
CLARA ST. MARTHE

- Defendants

1996: February 7
March 20

Mrs. P. Jeffery-Nelson for Plaintiff
Mr. D. Theodore for Defendants

J U D G M E N T

d' Auvergne J

By a writ of Summons indorsed with a Statement of Claim filed on the 11th April, 1994 the Plaintiff claimed *inter alia* damages against the defendants including special damages in the sum of \$5,301.00.

An appearance was entered on the 19th of April, 1994 and a defence on the 28th April, 1994 by the defendants.

On the 13th July, 1994 a reply was entered.

On the 28th August, 1995 the second named defendant filed a Summons seeking an order that

- (1) The above mentioned action be declared abandoned.

(2) The Costs of the action and Costs of this application be paid by the Plaintiff or such other order or orders as may be just and expedient.

The matter was heard on the 7th day of February, 1996 in Chambers.

The court was informed that the first defendant is now dead.

Learned Counsel for the second defendant submitted that since the 13th of July, 1994, there has not been any document filed on behalf of the Plaintiff, that one year had elapsed since the last document was filed and therefore the matter must be deemed abandoned. He said that the application was under Order 34 Rule 11 (1) (a).

Learned Counsel for the Plaintiff strenuously argued that the matter should not be deemed abandoned and quoted **Barbuda Enterprises Ltd vs the Attorney General** Vol. 42 W 1 L R page 183.

She said that before a defendant can seek to rely on the strict provisions of Order 34 of the Rules of the Supreme Court to defeat the Plaintiff's action against him must be in a position to show that the requirements necessary to bring those provisions into operation have themselves been strictly complied with.

She quoted **Lord Bridge of Harwich at Page 190** of the above mentioned case and I quote:

"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 but only by the operation of Order 34 Rule 3(1) (c), when an order is made under Order 25 giving directions as to the trial of the cause or matter."

She argued that the case under review fell on all fours with the Privy Council case quoted above, that Summons for direction had not

been filed and therefore the case could not be considered ripe for hearing. She concluded by requesting that the application should be dismissed and that the second defendant, the applicant, be ordered to pay Costs to the Plaintiff.

Learned Counsel for the applicant replied by quoting Order 34 Rule 11 (1) (a) which provides as follows:

A cause or matter shall be deemed altogether abandoned and incapable of being revived if prior to the filing of a request for hearing or consent to judgment or the obtaining of judgment.

Any party has failed to take any proceeding or file any document therein for one year from the date of the last proceeding had or the filing of the last document therein.

He concluded by stating that despite the fact that adherence to the plain language of Order 34 Rule 11 (1) (a) has a draconian effect it was the law.

CONCLUSION

The issue in this case is whether a pending cause or matter can be deemed to have been abandoned under Order 34 Rule 11 (1) (a) stated above.

In my judgment,

Barbuda Enterprises Ltd vs Attorney-General of Antigua and Barbuda quoted above dealt with whether the cause or matter should be deemed to have been abandoned under Rule 11 (1) (b) and (c) both of which relate to a cause or matter which was deemed to have been deserted.

In Civil Appeal No. 21 of 1993 Saint Vincent and the Grenadines

Henry St. Hillaire

Railford Baptiste

vs

Ena Lewis

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 the 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."

I respectfully adopt this dictum of Sir Vincent Floissac, Chief Justice and conclude that the matter never became right for hearing.

My order is as follows:

That this action is hereby declared abandoned.

That the Plaintiff do pay the costs of \$500.00 to the second defendant.

SUZIE d'AUVERGNE
PUISNE JUDGE