SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(Civil)

No:835 of 1997

Between:

SHORELANDS APARTMENT LTD

Plaintiff

.v

1. **EMSCO REMY**
2. **MEDICAL ASSOCIATES LTD**

Defendants

Appearances:

Ms Bella Shillingford for the Plaintiff
Mr. Michael Gordon for the Defendants

1999: February 05;
March 03.

DECISION

Allen J.

On the 29th October 1997 the Defendant sought by way of summons, to set aside the writ of the Plaintiffs on the ground of irregularity, the irregularity being that the length of the paper and the width of the margin did not conform with the provisions of 0.51.r.1 of the Rules of the Supreme Court.

In support of his summons, Counsel relied on the decision of His Lordship, **Matthew J.** in the case of **Rodney Bay Limited v Lester James Hippolyte** [St. Lucia Civil No.51/1995].

In this case His Lordship apparently found a double irregularity unforgivable that is, that the margin was 1 ¼ inches instead of 1 ½ and the paper was 11 12/16 instead of 13 inches long.

It does not appear from the judgment that Counsel for the Plaintiff was able to give the Court the assistance it needed. Although she urged (in my view quite correctly) that **Order 51 rule 1** was not mandatory, she apparently did not draw the Court's attention to **Order 2 rule 1(1)(2)** and did not urge upon the Court that **Order 51 rule 1** must be read with **Order 2 rule 1.**

Once a party to litigation has been guilty of failure to comply with the rules which have not been waived by the other party, the court has a general discretion under **Order 2 rule 1** to make such consequential orders dealing with the proceedings as he sees fit.

Again, the fourth paragraph of this short decision reads *"Counsel* (referring to Counsel for the Defendant) *further submitted that the legislature was saying that a litigant must use longer paper ....."* I think that referring to **Order .51 rule 1** as legislation is likely to mislead.

The matter before this court is one of simple debt and I find no difficulty in ruling that the Defendants cannot claim to be prejudiced by a narrower than regulation margin. Again, the debt has not been denied and there is now filed on behalf of the Plaintiff an affidavit which shows that since the 17th January 1998 the Defendant paid $29,171.18 towards the debt. There is now a balance of $24,125.25.

In **Cropper v Smith** [1883] 26 Ch D 700 at p.710 *Bowen L.J.* said:

> *"It is a well established principle that the object of the Court is to decide the rights of the parties and not punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct if it can be done without injustice to the other party. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy."*

I believe this is still good law.

With the escalating cost of litigation in the Courts to which our rules apply, the Court is unlikely to discourage persons from conducting their own legal proceedings. If such a litigant is told that he is out of Court because the margin on his document is short by one quarter of one inch, he may well lose faith in the justice system.

The application of the Defendant is refused.

KENNETH ALLEN Q.C. OBE
High Court Judge (Ag.)