

SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(Civil)

No: 10 of 1997

Between:

LEONTINE PORTLAND

Plaintiff

.v

JOSEPH NICHOLAS

Defendant

Appearances:

Mrs. P. Jeffrey-Nelson for the Plaintiff
Mrs S. Lewis for the Defendant

1999: March 17, and 24.

DECISION

ALLEN J.

By a summons dated October 29, 1998 the Defendant, in this action, is seeking leave for extension of time in which to file a defence and counterclaim and to set aside a default judgment served on the same day, and the Plaintiff is resisting the application; her affidavit in opposition was sworn and filed on the 8th day of February 1999.

In paragraph 2 of the affidavit in support of the Defendant's summons, Counsel refers to a draft order dated the 21st March 1998. This order in paragraph 1 set aside a judgment entered on the 6th March 1998 and in paragraph 2 allowed the Defendant 7 days in which to file a defence and counterclaim.

It is immediately obvious that the order referred to by the Defendant is not referring to the same judgment as the one she seeks to set aside by her summons.

It is necessary therefore to carefully examine the court records of proceedings in this case:

On the 9th July 1997 the Plaintiff issued a writ of summons against the Defendant in which she claimed:

1. Special damages in the sum of \$21,420.
2. Arrears of rent in the sum of \$5,000
3. Income profits
4. General damages
5. Costs

The particulars of special damages include such items as:

- vii. Construction of a concrete flooring;
- viii. Construction of a 6" block wall
- ix. Removal of a lean-to-roof over side walk on timber frame.

On 18th February 1998 the Plaintiff entered judgment in default of appearance in the sum of \$27,420 indicating thereby that her claim was for a liquidated demand.

Two well known rules have been broken here:

1. In every case where the Court has to quantify or assess the damages or loss whether pecuniary or non-pecuniary, the damages are unliquidated.
2. Special damages must be strictly proven.

The judgment entered on the 18th February therefore was irregular, but for some strange reason this judgment was approved by the Registrar and judgment was formally entered for the stated sum on 6th March 1998.

On the 19th February 1998 appearance was entered for the Defendant but this entry of appearance was disregarded simply because, so it seems, the Plaintiff's judgment which was formally entered on the 6th March as I have stated above, was filed on the 18th February, that is, the day before appearance was entered. It is necessary to examine therefore the rules of the Supreme Court relating to entry of appearance and entry of judgment in default of appearance.

Order 13 Rule 7. Proof of Service of Writ

1. Judgment shall not be entered against a Defendant under this order unless-
 - (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the Defendant; or
 - (b) the Plaintiff produces the writ endorsed by the Defendant's Solicitor with a statement that he accepts service of the writ on the Defendant's behalf.

This is a strict rule and an obvious safeguard against injustice. I go back to Order 12.

Late Appearance.

5-(1) A Defendant may not enter an appearance in an action after judgment has been entered therein except with leave of the Court.

(2) Except as provided in paragraph (1) nothing in these rules or any writ or order thereunder shall be construed as precluding a Defendant from entering an appearance in an action after the time limited for appearing, but if a Defendant enters an appearance after the time he shall not, unless the court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

By order dated 8th April 1998 the Court heard an application to set aside the judgment in default of appearance. Counsel for the Plaintiff did not object and the learned judge was therefore not called upon to scrutinize the proceedings.

On 19th October 1998 a notice of change of Solicitor was filed on behalf of the Plaintiff. The new Solicitor quite astutely realized that the judgment for a liquidated sum could not stand, and on the 29th October 1998 entered judgment for the Plaintiff for damages to be assessed.

It is a golden rule that an order of the court remains in force until it has been obeyed or satisfied, varied or set aside.

It follows therefore that this new judgment is also irregular.

The order of the Court is:

- (1) The order of the Court dated 8th April 1998 is hereby set aside.
- (2) The judgment entered by and on behalf of the Plaintiff on 29th October 1998 is hereby set aside.
- (3) The Solicitor for the Defendant is hereby ordered to file and serve a notice of change of Solicitor on or before Friday, 26th March 1999 if she has not already done so.
- (4) The Defendant is hereby granted leave to serve and file a defence or a defence and counterclaim as the case may be, within seven days of the date hereof.
- (5) A draft of this order must be submitted for approval by the Court on or before Friday, 26th March 1999.
- (6) Cost in the cause.

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