

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

Civil Suit No. 130 of 1994

HUBERT STEPHEN MELIUS

Plaintiff

and

(1) CANADIAN IMPERIAL BANK OF COMMERCE

(2) HARVEY I. MORRIS

(3) ACTING SUPERINTENDENT EUDOXIE

Defendants

Appearances:

Mr. Evans Calderon for the Plaintiff

Mr. Kenneth Monplaisir, QC along with Mr. Deale Lee for the first and second-named Defendants

Ms Vicki Ellis, Crown Counsel for the third-named Defendant.

1999: October 8

JUDGMENT

HARIPRASHAD-CHARLES J. [Ag.]

1. This matter came on for hearing on 8th October 1999 and I dismissed it for want of prosecution and indicated that the reasons therefor would be reduced into a written judgment. I do so now.

2. In this action, the Plaintiff, a businessman residing in England claims against the three Defendants Special Damages for expenses incurred including loss of earnings as well as General Damages for false imprisonment and Costs.

3. On 25th February, 1994, the Plaintiff caused a Writ of Summons indorsed with Statement of Claim to be filed against the Defendants. On 28th September, 1998, the matter was fixed at a Call-Over for a "pre-trial" hearing on 12th October, 1998. On that day, Mitchell J [ag] gave the following pre-trial Directions:
 - (1) That a list of proposed exhibits be filed and served by each party on the other by 12th November, 1998.
 - (2) That copies of the exhibits be exchanged by the parties on or before 19th November, 1998.
 - (3) That a notice be served by the Plaintiff on Defendant No.3 and the Attorney General's Chambers to the effect that unless the third-named Defendant serves and files his defence by 26th October the Plaintiff shall be entitled to apply for Judgment in default of defence.
 - (4) Application for judgment in default of defence.

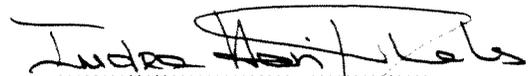
4. It is interesting to observe that Counsel for the Plaintiff, Mr. Evans Calderon was the one present when the "pre-trial" hearing took place. . But it seems clear from a letter filed on 17th November, 1998 from Ms Miriam Samaru, then Solicitor General that the said Chambers were not served with a notice of the call-over or any document pertaining to the "pre-trial " hearing. Despite what appears to be an anomalous situation, the defence of the third-named Defendant was filed on 18th November, 1998. The matter was subsequently listed for hearing on Monday, 15th February, 1999. A letter from the Solicitor General dated 9th February, 1999 and filed on the said day requested an adjournment on the ground that she would be in the United States of America on urgent private affairs. In that letter, she also indicated that she had written confirmation from Mr. Evans Calderon, Counsel for the Plaintiff that there would be no objection to an adjournment and oral confirmation from Counsel for the first two Defendants, Mr. Kenneth Monplaisir, QC as well. In fact, annexed to her letter was the written confirmation from Mr. Calderon. A subsequent adjournment

was given to Tuesday, 16th March, 1999. On 10th March, 1999 Mr. Calderon, Counsel for the Plaintiff wrote to the Registrar of the High Court seeking an adjournment. In that letter, Mr. Calderon stated that the Plaintiff was present in Saint Lucia when the hearing was advanced to 2nd December, 1998. On that day, the matter was adjourned to 15th February, 1999 and then to 16th March, 1999. He wrote thus:

"After much expense and reschedule of work it is regrettable that the Plaintiff cannot be in Saint Lucia for 16th March, 1999. I therefore request an adjournment on behalf of the Plaintiff for the matter to be put on the next call-over list."

5. On the Call-Over Day, d'Auvergne J in Open Court adjourned the matter to 8th October, 1999. On 8th October, 1999 when the matter came up for hearing, all parties to the Suit with the exception of the Plaintiff were present. Mr. Calderon then sought an adjournment on the ground that his client lives in England and was not able to be present. Counsel admitted to the Court that the Plaintiff was aware of the hearing as he had informed him of the new hearing date about a month ago.
6. Counsel for the first and second-named Defendants, Mr. Kenneth Monplaisir, Q.C. vehemently opposed the adjournment on the ground that the second-named Defendant who also lives abroad, in the Bahamas was present. Learned Queen's Counsel informed the Court that Counsel for the third-named Defendant intended to raise some points in limine. He further urged the Court to dismiss the case against the first and second-named Defendants as the Statement of Claim disclosed no cause of action against them.
7. With equal vigour, Ms. Vicki Ellis, representing the third-named Defendant opposed the request for an adjournment and she based her opposition on two grounds namely:
 - (1) That the Court should be reluctant to grant adjournments. According to her, "it is the Plaintiff who brought the Defendants here and if he cannot prosecute his matter, then it should be dismissed."
 - (2) Secondly, she argued that her submissions in limine do not necessitate the presence of the Plaintiff as Counsel for the Plaintiff had knowledge that the third-named Defendant intended to do so since March, 1999.

8. Mr. Calderon indicated that he would not like to proceed with the points in limine in the absence of the Plaintiff.
9. Owing to the backlog of matters before the Court, some dating back to 1954, the Court has taken a firm approach not to adjourn cases particularly when matters have been given a firm hearing date as in this case unless there is a good and substantial reason. In the instant case, the fact that the Plaintiff lives in England is not a good reason. It is not substantial, to say the least.
10. The Court adopted the guidelines as laid down by the Court of Appeal in the case of **Parry Husbands v Warefact Limited [No. 6 of 1997] [unreported]** emanating from this jurisdiction. The Plaintiff sought an adjournment on the grounds that he was not ready to prosecute his appeal as his Counsel had withdrawn from the matter the said morning of the hearing. In spite of that reason, their Lordships dismissed the appeal for want of prosecution although the Plaintiff was present in Court. This decision sent a strong message to legal practitioners with respect to the approach of the Appellate Court as it relates to adjournments.
11. For these reasons, I dismissed the matter for want of prosecution and made no order as to Costs.



Indra Hariprashad Charles

High Court Judge [ag.]

12th October, 1999.