

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO 895 OF 1999

BETWEEN

(1) ANDIE GREGOR GEORGE
(2) ALLAN GEORGE

Plaintiffs

And

NEW INDIA ASSURANCE CO. (T & T) LTD.
Jeremie Street
Castries.

Defendant

Appearance

Mrs. P. Nelson for Plaintiffs

Mr. K Monplaisir Q.C for Defendant

2000: February 16
April 14

JUDGMENT

[1] **d'Auvergne, J.:** On the 31st January 2000 the Plaintiffs filed

Summons on Application for attachment of monies payable by the

Crown seeking an order in these terms:

- (1) That the Defendant be restrained from receiving from the Registrar of Insurance monies due to the Defendant from the said Registrar.
- (2) That the said Registrar be directed to pay to the Plaintiffs a sum of money, including the cost of this Summons, to answer a judgment recovered by the Plaintiffs against the Defendant in this action by

Order of the court dated the 22nd day of December 1999 in the following terms:

- (a) Special Damages in the sum of \$28,000.00
- (b) General damages in the sum of \$8,000.00
- © Interest on the Special damages for the period 12 December 1997 to 30 September 1998 at a rate of 6% per annum.
- (d) Interest on the award from the date of the award at a rate of 6% per annum.
- (e) Costs in the sum of \$3,000.00
- (f) Arbitrator's fee \$3,000.00

Costs to be agreed or otherwise taxed.

3. That the Defendant do pay to the Plaintiffs the costs of this Application.

[2] **History**

The Plaintiffs had a Motor Insurance Policy with the Respondent on behalf of a motor vehicle which was subsequently involved in an accident and was severely damaged. The Plaintiffs informed the Respondent of the loss and claimed an indemnity under the said Policy.

- [3] The parties later agreed by an agreement in writing dated 30th April 1999 to submit all matters in dispute arising out of the Plaintiffs' claim for indemnification against the damage to arbitration, and Claudius Francis was chosen as the Arbitrator.

- [4] At the arbitration proceedings only the Plaintiffs and their witnesses attended, neither the Respondent nor any one acting on its behalf was present.
- [5] Consequently an award in writing dated 27th August 1999 was made in favour of the Plaintiffs. On the 11th of October 1999 the Plaintiffs wrote to the Respondent through their Solicitor requesting compliance with the decision of the Arbitrator. The Respondent did not comply.
- [6] On the 23rd day of November 1999 an originating summons with supporting affidavit, acknowledgment of Service and list of Exhibits was filed seeking leave to enforce the said award (of 27th August 1999) and on the 22nd December 1999 leave was granted to the Plaintiffs to enforce the award of 27th August 1999 which reads as follows:
- Special Damages in sum of \$28,000.00
- General Damages in sum of \$8,000.00
- Interest on the Special Damages for the period 12 December 1997 to 30th September 1998 at a rate of 6% per annum.
- Interest on the award from the date of the award at a rate of 6% per annum.
- Costs in the sum of \$3,000.00
- Arbitrator's Fee \$3,000.00
- Costs to be agreed or otherwise taxed.

[7] At the hearing of the application **Summons on Application for attachment of monies payable by the Crown** on the 16th February 2000 in Chambers, Leaned Senior Counsel for the Defendant took a **point in limine** and contended that there was no procedure for the application under review since it did not fall within any of the Rules of the Supreme Court nor under any article of the Code of Civil Procedure nor did it invoke the inherent jurisdiction of the Court. He argued that the redress sought could be appropriately dealt with by other procedures provided for by the Civil Code.

[8] He further contended that there was no provision under the Insurance Act for the Registrar to pay monies out of the deposit of Insurance Funds. He quoted **Section 84 of the Insurance Act No 6 of 1995** and said that if the deposits held by the Registrar were to be released in the manner requested it could mean depletion to the detriment of other policy holders and that moreover the registrar was not made a party to the proceedings for example made a garnishee to the proceedings.

[9] He argued that a Registrar is a trustee for the Crown and therefore should have been joined. He quoted **Order 54 Rule 13 of the Rules of the Supreme Court** and stressed “that every application by the Court for an order Restraining any person from receiving money payable to him by

the Crown and directing payment of the money to the applicant or some other person must be made by summons served at least four days before the return day on the Crown.....”

[10] He concluded by stating that the normal procedure for execution was not utilised and that the procedure used was nothing but an embarrassment.

[11] Learned Counsel for the Applicants argued that the application was proper since the application was supported by an affidavit and that the Insurance Company had assets.

[12] She quoted the Case No. 448 of 1996 **Windward Island Banana Growers association** and **West Indies General Insurance Company Ltd** in which **Matthew J** ordered that “the Defendant be restrained for receiving from the Registrar of Insurance monies due to the Defendant from the said Registrar.”

[13] She said that the case under review followed the exact format of the above quoted case and that a precedent had been set.

Learned Counsel quoted **Order 2 Rule 1** of the Rules of the Supreme Court 1970 which states that “irregularity shall not nullify the proceedings.”

She concluded that despite the fact that the Defendant was operating in St Lucia it was a foreign Company.

[14] Learned Senior Counsel replied by re-iterating his former argument that the wrong procedure was used; that garnishee procedure should have been used and that the procedure used was calculated to embarrass the Court and therefore the application should be dismissed.

[15] **Conclusion**

Under the **Insurance Act No 6 of 1995** an Insurer cannot carry on an insurance business unless he has made the necessary deposits. **Section 80 (1) and (2)** and that these deposits are part of the assets of the Insurer. **Section 80 (6)**.

[16] **Section 86 (1)** empowers the Registrar to increase the deposits of Insurers but I cannot find any section which specifically empowers the Court to attach the deposits of an insurer.

[17] **Section 84 (4)** however states that “notwithstanding this section if an insurer is in liquidation or a judgment of the Court is obtained, the deposits or part thereof may, on an order of the Court having jurisdiction under this Act or the Commercial Code, be released by the Registrar to the liquidator or Judicial Manager.

Provided that the liquidator or Judicial Manager shall first satisfy in full the claims of policy holders before making any other payment.”

[18] In the case of **Windward Island Banana Growers Association vs West Indies General Insurance Company Ltd** the Registrar was directed to pay to the Plaintiff a sum of money including the costs of summons to answer a judgment recovered by the Plaintiff against the Defendant.

[19] In my judgment **Order 54 Rule 13** does not apply for it is not an attachment of a debt due or accruing due from the Crown neither is the application a garnishee proceedings.

[20] As I see it, the money or deposit being held by the Registrar belongs to the Defendant and there is a Court Order dated 22nd December 1999 which orders the Defendant to pay certain monies to the Plaintiffs who are policy holders. Therefore that order should be obeyed and if disobeyed as is in this case the Plaintiffs have the right to seek an order from the Court to ensure that the Defendant honours his agreement and comply with the Court order of 22nd December 1999.

While I agree that there is some irregularity in the Service of the Summons, that irregularity does not nullify the proceedings.

[21] My order is there as follows:

- (1) That the Defendant be restrained from receiving from the Registrar of Insurance monies due to the Defendant from the said Registrar.
- (2) That the said Registrar be directed to pay the Plaintiffs a sum of money including the costs of this summons, to answer a judgment recovered by the Plaintiffs against the Defendant in this action by order of the Court dated the 22nd day of December 1999 for the sum of special Damages in the sum of \$28,000.00 General Damages in the sum of \$8,000 plus Interest on the Special damages for the period 12th December 1997 to 30th September 1998 at a rate of 6% per annum. Costs in the sum of \$3,000.00 Arbitrator's fee in the sum of \$,3000.00
- (3) That the Defendant do pay the Plaintiff the costs of this application to be agreed or otherwise taxed.

.....
Suzie d'Auvergne
High Court Judge