

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO 385 OF 1999

BETWEEN

RUPERT FLETCHER

Plaintiff

Vs

MAYOR & CITIZENS OF CASTRIES

Defendants

Appearances:

Mrs Lorraine Williams for the Plaintiff

Mr. Oswald Wilkinson Larcher for the Defendants

2000 March 6th
May 4th .

JUDGMENT

- [1] **d’Auvergne J.** On the 19th of May 1999 the Plaintiff filed a writ of Summons indorsed with a Statement of Claim seeking special damages for breach of Contract of employment in the sum of \$84,487.01 general damages, interest and any other relief that the Court may deem just.
- [2] The Writ of Summons was served on the first mentioned Defendant on the 1st of June 1999 and an appearance was entered on behalf of the Defendants eight days later viz 9th June 1999. No defence was ever filed

and on the 6th of August 1999 Default Judgment with damages to be assessed was granted to the Plaintiff.

[3] On the 10th of September 1999 **Summons for Assessment of Damages** was filed supported by an affidavit of even date which was served on the Defendants' Solicitors' Secretary on the 8th of October 1999.

[4] On November 4th 1999 the Defendants took out a summons upon an application to set aside the judgment in default. The summons was supported by an affidavit of Irvin John Mayor of the City of Castries, various exhibits were appended to that affidavit one of which is a draft defence.

[5] The said affidavit reads as follows:

I, IRVIN JOHN of the City of Castries, Mayor in the employ of the Castries City Council make oath and say as follows:-

1. That I am duly authorised to make this affidavit on behalf of the above-named Defendants.
2. That a Writ endorsed with a Statement of Claim was filed against the Defendants, on the 19th of May, 1999, claiming inter alia Special Damages of **\$84,487.01**, General Damages, Interest, further or other relief.
3. That the said claim for Special Damages, included inter alia:-
 - i. Loss of Salary from the 15th of January, 1998 – May, 1999 and continuing.

- ii. Traveling allowance from January, 1998 – May, 1999
- iii. Gratuity due and owing as of May, 1999 and continuing of

\$26,522.60

- 4. I am informed and verily believe that an Appearance was entered by the Solicitors for the Defendants on the 9th of June, 1999.
- 5. I am informed and verily believe that following the entry of Appearance, negotiations were taking place between the Plaintiff's Solicitor and the Defendants Solicitors, as to a manner of resolving and settling this suit, and in that regard numerous telephone calls and correspondence was exchanged between the parties. See exhibits marked "CCC 2", "CC3", "CCC4", "CCC5" and "CCC 6".
- 6. I am informed and verily believe that uncharacteristically the Plaintiffs Solicitor entered a Judgment in Default of Defence on the 13th July, 1999 against the said Defendants, even though negotiations were ongoing, and even though there was a real prospect of an amicable settlement.
- 7. That the said Judgment when initially filed by the Plaintiff's Solicitor was irregular, in that the said Judgment appeared to be a Final Judgment, though the Plaintiff's claim was for an unliquidated demand, and therefore, judgment should have been interlocutory. The said Judgment was made regular by the intervention of the Registrar of the Court.
- 8. That the essence of the Plaintiff's claim in **not** for wrongful dismissal unfair dismissal or otherwise but it is a claim solely for Quantum, claiming loss of wages and benefits, and as appears to be suggesting though not specifically saying so, that adequate notice or payment in lieu of notice, was not given to the Defendants.
- 9. I am informed and verily believe that the Defendants have a good and arguable defence to the claim filed, as can be seen from the defence exhibited hereto and marked **Exhibit "CCC1"** namely:-
 - (i) That the Plaintiff was employed with the Council for a period of six years from June 1991.
 - (ii) That the Plaintiff's employment was made redundant, as the Solid Waste Management Project had taken over the

disposal of garbage island wide and including within the City and therefore the Plaintiff's position with the City as a Garage Manager for the maintenance of garbage Trucks was made redundant.

- (iii) That despite several efforts to contract alternative employment for the Plaintiff, the Defendants were unsuccessful.
- (iv) That pay in lieu of notice was given to the Plaintiff in the sum of **\$1,000.00** and severance pay of **\$2,250.00**.
- (v) That the Defendants did pay the Plaintiff payment in lieu of notice and severance pay, but that they recognise that the proper payment in lieu of Notice was not given and have agreed to so correct however the Plaintiff's claim is excessive, and is not reflective of the present law as laid down by statute and the common law.
- (vi) That as the Plaintiff claim is one that is stipulating that improper notice was given, the Defendants defence is only necessary that must address the issue of Notice, and the Quantum that attaches.
- (vii) That the claim filed does not justify the damages claimed, and the Defendants in their defence stipulates that the proper amount to be paid is as follows:-
 - (i) 4 weeks – 10 weeks pay in lieu of notice being **\$2,948.67 - \$7,371.68**.
 - (ii) Travel allowance \$500-\$1,250.00
being allowance for 4 weeks – 10 weeks

- 10. That I am informed and verily believe that the Plaintiff did not justify in his pleadings the matter or method used to calculate is loss and damage or Special Damages, and his claim was arbitrary.
- 11. I am informed and verily believe that the claim is extreme and grossly overstated when consideration was given to over governing law namely the Contract of Services Act.
- 12. That The Defendant did not file any pleadings in this matter, as negotiations were taking place for settlement, and because there was a real prospect for a settlement suitable to the parties anticipated.

13. That if the judgment is allowed to stand the Defendant will suffer immensely, not only in damages, as The Plaintiff's claim is overstated, but that it will open up The Defendant to actions for damages from other previous employees, of The Defendant who will use this award as a precedent when in effect this award gave no consideration to the present law.
14. In the circumstances, I humbly urge this court to grant the application prayed for, and to set aside the judgment in default, and to grant The Defendant leave to enter a Defence.

[6] **Arguments**

The matter was heard in Chambers on the 6th of March 2000 and at the hearing Learned Counsel for the Defendants argued that the judgment should be set aside since the judgment was filed while attempts were being made by the parties, in particular, the Defendants to resolve the matter.

[7] He conceded that the judgment was regular but urged the Court to use its discretion and set aside the judgment so that a judgment may be obtained upon its merits or by consent of the parties. He argued that the defence has merit as can be gleaned from the affidavit of Irvin John and the draft defence.

[8] Learned Counsel for the Plaintiff made reference to the Plaintiff's affidavit in reply filed on the 14th day of December 1999 where the Plaintiff deponed that the last communication between the parties was May 1999 and that the Defendants procrastinated while he remained unemployed and without a salary. He denied most of the contents of Irvin John's affidavit

in particular that his post was made redundant and maintained that the Defendants had wrongfully terminated his services and therefore must compensate him for their wrongful action.

[9] **Conclusion**

There is no dispute that the judgment though obtained by default is a regular judgment. This being so, the applicants must therefore show grounds why the discretion to set it aside should be exercised in their favour. It has been held that the primary consideration is whether there is any merit in the case of those who wish to have the discretion exercised in their favour and in this instance the Defendants.

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[10] The Plaintiff's case as I see it, is that he is alleging that he was dismissed from his job wrongfully and unfairly and that he was not given adequate notice nor payment in lieu of notice; that the Defendants breached the Contract of Employment between them and have not compensated him in monetary terms nor with alternative employment.

[11] A perusal of the Court file shows that a copy of the Summons for assessment of damages with supporting affidavit as well as Default judgment were served on the Defendants on the 7th of October 1999 and the Summons under consideration was filed on the 4th of November 1999,

less than one calendar month. Consequently it cannot be said that the Defendants are guilty of delay in making the application to set aside the default judgment.

[12] In my judgment this case cannot be compared to the “Saudi Eagle” case reported at **Lloyd’s Law Reports Vol 2 Page 221** for the year **1986**. In that case it was held that though there was an arguable point it was not a meritorious one but in this case there are meritorious points to be argued.

[13] In **Bank of Nova Scotia v Emile Elias & Co Ltd 46 W I R Page 33** It was held that in order to set aside a default judgment a Defendant must show not merely that it has an arguable case but that its defence has merits to which the Court should pay heed.

[14] Finally having considered the principles as set out in paragraph 3/9/14 of the **United Kingdom Supreme Court Practice 1995** I am convinced that this application shows issues which the Court should try and it would be an injustice not to allow the Defendants to have a proper adjudication on the merits.

[15] In the exercise of my discretion I set aside the default judgment filed by the Plaintiff on 6th August 1999. I grant leave to the Defendants to file

and serve their defence on the Plaintiff within 10 days failing which judgment and Costs to be taxed shall be entered in favour of the Plaintiff.

I order the Defendants to pay to the Plaintiff Costs in any event to be agreed or taxed occasioned by the setting aside of the default judgment.

**Suzie d’Auvergne
High Court Judge**