

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV0005 of 1984

BETWEEN:

THE ST. LUCIA COCONUT GROWERS ASSOCIATION

Claimant

and

(1) PARK ESTATES (1962) LIMITED
(2) CARIBBEAN GENERAL INSURANCE COMPANY LIMITED

Defendants

Appearances:

Mr. Dexter V.O. Theodore for the Claimant

Mr. Peter I. Foster for No.2 Defendant

2003: April 01
May 27

APPLICATION TO SET ASIDE EXPARTE JUDGMENT AFTER PRESCRIBED TIME HAS ELAPSED...JUDGMENT BAD IN LAW...CASE SHROUDED IN ANTIQUITY...OVERRIDING OBJECTIVE OF CPR 2000...PARTS 11 AND 26 APPLICABLE...JUDGMENT SET ASIDE

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** On 16th April 2002, the claimant, St. Lucia Coconut Growers Association filed this application to set aside an *ex parte* judgment delivered on 6th December 1999. The application, supported by an affidavit deposed to by its General Manager, Mr. Kenneth Cazaubon contained the following grounds namely:

- (i) That the claimant is and has always been ready and willing to proceed with the claim.

- (ii) That the claimant was not notified of the trial of the claim.
- (iii) That at the date of judgment, the matter was not ripe for hearing because No. 2 defendant, Caribbean General Insurance Company Limited (Caribbean General Insurance) had not filed a defence or any pleading in the matter.
- (iv) That because there was no pleading filed by CGI, to make an order requiring the claimant to pay money was to adjudicate beyond the conclusions of the case, contrary to article 23 of the Code of Civil Procedure.
- (v) That the claimant only became aware of the judgment on or about November 2001.

The Facts

2. It is convenient to state in brief the core facts. This matter started in 1984 when St. Lucia Coconut Growers Association (SLCGA) issued a writ of summons endorsed with a statement of claim against No. 1 Defendant, Park Estate (1962) Ltd for specific performance for the sum of \$124,680.00. SLCGA was the majority shareholder of Copra Manufacturers Limited (CML). Both SLCGA and Caribbean General Insurance were interested in purchasing shares which Park Estate had in CML. Park Estate initially agreed to sell those shares to SLCGA but reneged on this agreement and instead, accepted money from Caribbean General Insurance. As a result, SLCGA instituted the present action.
3. About five years ago, CML went into receivership and its shareholders including SLCGA and Caribbean General Insurance lost their investment. After CML went into receivership, Caribbean General Insurance entered this action so as to recover the monies it had paid to Park Estate for shares in CML. So, on 12th February 1998, some 14 years later, Caribbean General Insurance filed a Summons seeking the following order:
 - (a) That proceedings in this action be continued between SLCGA and Park Estates and
 - (b) That Caribbean General Insurance be added as a claimant to the suit.
4. On 3rd April 1998, a judge in chambers granted the application. Caribbean General Insurance was added as a second claimant in the action.

5. Then on 18th day of November 1999, Caribbean General Insurance filed another Summons supported by an affidavit seeking an order that the name "Caribbean General Insurance" be struck out as a claimant and be added as a defendant pursuant to Rule 15 of RSC 1970. On 29th November 1999, in the presence of Mr. Leonard Riviere, Counsel for Park Estate, the order was granted. Caribbean General Insurance was now made a defendant in the action. At this hearing, SLCGA was absent and unrepresented.

6. On 6th day of December 1999, the matter came up before me for trial. The solicitor on record for SLCGA, Mr. Parry Husbands, QC was conspicuously absent even though he was properly served. Judgment was pronounced against the claimant as follows:
 - (a)
 - (i) The sum of \$137,148.00.
 - (ii) Interest thereon at the rate of 6% per annum from the 10th January 1984 to the date of payment and
 - (iii) Costs to be agreed or otherwise taxed.

(b) The shares numbered:

Certificate No. 837 – 6234 'A' class shares nos. 160621 to 166854	
503 – 1220	13609 to 14828
503 – 250	14939 to 15188
503 – 100	17084 to 17183
503 – 254	26067 to 26320
503-1039	38318 to 39256
503- 254	28344 to 28597
698 – 3117	81310 to 84426

are declared the property of the claimant together with all the rights, titles and interests therein.

7. Mr. Theodore tactfully criticized the Order as being bad in law and urged the court to set it aside. He submitted that Caribbean General Insurance never filed a defence and counterclaim warranting the court to make such an order. He next submitted that the only proper order the court could have reasonably made in the circumstances was to dismiss the claim for want of prosecution. The court went further to award shares to SLCGA which are non-existent. Mr. Theodore stated that SLCGA never received any monies from Caribbean General Insurance

for any shares in CML and at no time did SLCGA receive the shares that Park Estate had agreed to sell to it.

8. The point at issue, and it is the sole point for decision in this matter is whether the court could set aside the judgment pronounced on 6th December 1999 given these circumstances.
9. Mr. Peter Foster for Caribbean General Insurance submitted that SLCGA filed the application to set aside the order on 16th April 2002 even though it was served on Mr. Kenneth Cazaubon, the Company's General Manager since 16th January 2002. He argued that SLCGA did not file the application within the prescribed time stipulated by the Rules.
10. Mr. Foster contended that at the hearing of the said matter on 6th December 1999, final judgment was pronounced by the court and that final judgment can only be vacated upon an appeal being filed to the Court of Appeal or in the event of a final judgment being pronounced in the absence of a party, upon application by that party within 7 days thereafter under the Rules of the Supreme Court 1970 as it then was, or within 14 days under CPR 2000.
11. The present application to set aside judgment is made outside the prescribed time fixed by the Rules. But, under Part 26.1 (2) (k), the court has the power to extend time for compliance with any rule, even if the application for an extension is made after the time for compliance has passed. And under Part 26.9 (3), if there has been an error of procedure or failure to comply with a rule, the court may make an order to put matters right.
12. In this claim, judgment was pronounced in the absence of the claimant, SLCGA. Under Part 11.18 (1), a party who was not present when an order was made may apply to set aside or vary the order. Part 11.18 (2) states that in order to set aside such an order, an application must be made not more than 14 days after the date on which the order was served on the applicant. Part 11.18 (3) states as follows:

"The application to set aside the order must be supported by evidence on affidavit showing-

- (a) a good reason for failing to attend the hearing; and

(b) that it is likely that had the applicant attended some other order might have been made.”

13. It is clear from my reading of the affidavit of Mr. Kenneth Cazaubon that there was a good reason for the absence of SLCGA at the hearing. Caribbean General Insurance had not filed and served a defence to the claim so the claim could not be ripe for hearing. It is even clearer that had SLCGA attended on the day in question, some other order would (my emphasis) have been made. In my respectful judgment, to make an order for SLCGA to pay money was to adjudicate beyond the conclusions of the case, contrary to the Code of Civil Procedure.

14. Caribbean General Insurance submitted that the grounds upon which SLCGA relies is wrongful, of no merit and is against the overriding objectives of CPR 2000. Caribbean General Insurance contended that justice has been done between the parties in that SLCGA brought this action claiming that it is entitled to the ownership of the shares in CML. Caribbean General Insurance paid Park Estate the purchase price of the shares. SLCGA claimed to be the owner of the shares and Caribbean General Insurance is not opposed to the claim. It paid Park Estate for the shares and is entitled to be repaid the monies. The logic of the argument is impeccable but it leads to nowhere, as a matter of principle because, in reality, no shares exist. Caribbean General is prepared to give to SLCGA shares which do not exist.

Conclusion

15. Counsel stressed the overriding objective of CPR 2000. I am glad that they both did. The overriding objective is to do justice to the case. Matters have to be dealt with expeditiously and fairly. I am cognizant that this case is shrouded in antiquity but at the same time, the case cries out for justice. In my considered opinion, if this order is not set aside, it will reflect a sad day for justice in Saint Lucia. There were numerous factors which militate the setting aside of this order, above all, if SLCGA were properly represented at the trial, I do not think such an order would have been made.

16. Accordingly, the order of the court made on 6th December 1999 is hereby set aside. I order that the matter be set down for pre-trial review shortly after the prescribed time to appeal has expired if the claimant is still interested in pursuing the claim.

17. Even though SLCGA is the successful party, I think it should bear the costs of this application. It was responsible for the delays. I will order that SLCGA pays costs to Caribbean General Insurance in the sum of \$ 5,000.00.

Indra Hariprashad-Charles
High Court Judge