SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. 596/1994

PATRICK MORILLE

Claimant

AND

PAUL PIERRE
JOSEPH RAMNAL

Defendants

Appearances:

Mr. Fraser Attorney at Law for the Claimant
Mr. Kenneth Foster Q.C. Attorney at Law for second Defendant

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2005: October 13
2006: March 20

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DECISION

MASON J:

[1] I begin by making an apology for the tardiness in rendering this decision. The application was heard on 13th October 2005 and almost immediately the Court's file went missing.

[2] The Application now before the Court is for leave to be granted to the Claimant to enforce the Default Judgment entered on the 27th November 1996 on the grounds that the Judgment of the Honourable Hariprashad Charles expressly stated that the Notice of the Applicant dated 26th March, 1999 which sought to withdraw the Default judgment duly entered on the 27th November, 1996, without the leave of the Court was a nullity

[3] This application was the order of the court resulting from the hearing of a previous application for a declaration that the effect of the judgment, the Honourable Justice Indra Hariprashad Charles dated the 2nd May, 2001 means that judgment in default entered by the Applicant on the 27th November 1996 still stands.

[4] In that previous application the Claimant had also sought leave to pursue his claim for general damages upon the fresh evidence obtained on the ground that the Applicant had quite recently received a medical report on his injuries which will enable him to pursue his action from general damages.

[5] This case has had a rather chequered history, the full facts and chronology of which can be gleaned from the decisions of Mitchell J on 6th November, 1998, Hariprashad Charles J on 2nd May 2001 and Master Cottle in November 2003.

[6] And so while it is not necessary to recount the facts, a few specific events are relevant.

[7] The writ of Summons was filed on 9th April 1994 and Default judgment entered on 12th December, 1996.

[8] The application for the Assessment of damages was dismissed as per the decision of Mitchell J.

[9] Without leave or order of the Court, that default judgment was withdrawn by the Plaintiff on 26th March, 1999.

[10] On 24th January, 2000, the Plaintiff obtained another default Judgment and this was followed by a second application for Assessment of Damages on 22nd March, 2000.

[11] That Application was dismissed by Hariprashad – Charles J.

[12] A third application for Assessment of Damages was brought before Master Cottle on 31st October 2003 who struck it out on 12th November, 2003.

[13] I make no reference to the events and incidents in the various intervening periods because I do not believe that the determination of this application necessitates an excursion into the effect of all the judgments and orders previously given.

[14] What has to be determined is whether the Claimant having unilaterally withdrawn the Default Judgment , and been found to be procedurally incorrect can now apply to have that same Default judgment recognized as valid and in effect.

[15} Counsel for the Claimant argued that in all of the applications which went before, the original judgment was never before the court which had to deal only with the question of assessment of damages.

[16] Counsel was of the view that a judgment of the court is a proper judgment unless set aside or overturned and since this judgment was never set aside, it should stand because the Court does not act in vain.

[17] Counsel for the Defendant opined that this application was tantamount to this Court being asked to set aside the judgment of at least six (6) judges including the Court of Appeal.

[18] He argued that the first default judgment having been withdrawn without leave of the Court, there is effectively no Default judgment capable of any enforcement. In addition given that no assessment of damages had taken place, the court having refused such assessment, there is no existing default judgment properly capable of any enforcement action, as there ought to be a money judgment before execution.

[19] In other words, the court could not be asked to enforce something that did not exist, this matter being res judicata, is an abuse of the process of the court.

[20] Counsel for the Claimant countered these arguments by saying that the judgments referred to all dealt with procedural aspects never with merit and that the issue of res judicata did not arise.

[21] Counsel for the Defendant contended that since the position of the Claimant had not charged, that the Claimant was now seeking to rely on purported fresh evidence but that this fresh of evidence does not satisfy the requirements and test as set out in the case of Ladd V Marshall (1954) 1 WLR 489 viz that the Claimant must show:

1. that the evidence now obtained could not have been obtained with reasonable diligence at the time the matter came before Justice Charles and
2. had that evidence been available then, that the result would have been different

[22] Counsel submitted that there must be finality to litigation, that parties to litigation required to put forward their entire case and not allowed to bring later proceedings raising matters that could have been resolved in earlier proceedings.

[23] Counsel was of the view that given the overriding objective, the lapse of time that is since 1996 when Default judgment was entered, that to grant the application would be unjust to the Defendant, that in any event, the Defendant was shut out by the limitation period of six (6) years for enforcing a judgment as provided for by Part 46.2 (i) of the Civil Procedure Rules 2000.

[24] In response Counsel for the Claimant stated that the Affidavit of the Claimant made reference to the fresh evidence viz that he had received a fresh medical report from the Orthopedic Surgeon in April, 2004 and that following the case of Duer V Frazer (2001) 1 WLR 919 he was seeking to satisfy the Court as to the reason for the delay.

[25] With reference to the question of the limitation period for the enforcement of judgment, Counsel for the Claimant stated that the question of limitation is statutory and that this law did not exist in St.. Lucian law.

[26] Stated very briefly it is the opinion of this court that to permit the Claimant leave to enforce judgment would be an abuse of the process of the court.

[27] While the case of Henderson V Henderson (1843) 3 Hare 100 which was applied in this case of Barrow V Bankside Agency Ltd et al (1996) 1WLR 257 does not apply to this application, the principle adumbrated therein is most apt: As stated by Sir Thomas Bingham in the Barrow case:

[28] When a matter becomes the subject of litigation in a court of competent jurisdiction, the parties are required to bring their whole case before the court so that all aspects of it may be finally decided once and for all. In the absence of special circumstances, the parties cannot return to court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise……..It is a rule of public policy based on the desirability , in the general interest as well as that of the parties themselves, that litigation should not drag on ……for ever and that a Defendant shall not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed.

[29] I could repeat the findings of Hariprashad Charles J in her decision of 2nd May 2001 as regards the contemplation of this rule, but I wish to apply it as a prima facie principle: Without recounting the history and chronology of this matter, it is evident that the actions of the Claimant being procedurally wrong from inception and he is now seeking to cure the defects.

[30] To give the Claimant leave to enforce a judgment which he unilaterally set aside and now wishes to have declared as still standing, would be in effect to give him yet another opportunity – a fourth – to seek to have his damages assessed (and no court should allow that) an application which would again have to be denied.

[31] There were at least three (3) opportunities when the Claimant could have asked the Court to declare the first default judgment as the judgment of the Court and he neglected to do so. The Defendant should not be oppressed by these successive applications of the Claimant.

[32] There has to come a time when the court must say enough is enough.

[33] It would be inconsistent with the overriding objections which while discretionary, is the yardstick by which the court must measure applications such as this:

[34] I am however of the opinion that the Claimant having set aside the default judgment as far back as 1999 and not having made any attempt to have the declaration made which he now seeks, must not be allowed to prejudice the position of the Defendant.

[35] If I am wrong in stating that this application is an abuse of process, I am of the opinion that although a claim can be allowed if fresh evidence has come to light since the decision of the court has been rendered provided strong grounds are adduced the introduction of a medical report given in 2004 cannot he regarded as strong evidence now in 2006, two (2) years later.

[36] The Claimant in his supplementary Affidavit deposes that the delay in bringing this action was due to the uncertainty of his previous lawyers as the legality of the application.

[37] I am not sure that this assertion could help his case. It is the duty of lawyers to test the question of legality in the courts of law.

[38] Nor does it help him to say that as a lay person, he depended on his lawyers for legal guidance. That is a non sequitur because if dissatisfied with his lawyers, there are avenues open to him.

[39] The Defendants should not be prejudiced by his delay whether or not due to his uncertainty.

[40] For as stated by Evans – Lombe J, in the above cited case of Duer V Frazer at p 925. The longer the period that has been allowed to lapse since the judgment, the more likely it is that the court will find prejudice to the judgment debtor.

[41] It would be against public policy to allow this matter to drag on any further and so oppress the Defendant.

[42] In the circumstances, I will dismiss the application with costs to the Defendant.

SANDRA MASON Q.C.

High Court Judge