IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. SLUHCV2008/0448

BETWEEN:

WINDWARD ISLANDS BANANA DEVELOPMENT
AND EXPORTING COMPANY LIMITED

Claimant

and

SAINT LUCIA BANANA CORPORATION

Defendants

Appearances :

Mr. H. Deterville QC and Ms. S. Charles for Claimant
Ms. R. T. St. Rose for Defendants

2008: July 10.

RULING

[1] COTTLE, J.: On May 8, 2008 the Claimant filed a fixed date claim. On May 27, 2008 the Defendants filed an acknowledgement of service. They admitted that the fixed date claim form and the statement of claim were served on them on May 8, 2008. They indicated an intention to defend. Under CPR 2000 part 10.3 the period for filing a defence is fixed at 28 days. There are exceptions to this general rule but these exceptions do not apply in the present case.

[2] The Defendants failed to file a defence within the allotted time.

[3] There was no agreement between the parties to extend the period for filing a defence. No application for an order of the court extending the time to file a defence was made.

[4] On June 16, 2008 the Claimants filed an application for entry of judgment consequent upon the Defendants having failed to file a defence within the prescribed time.

[5] The application was listed for hearing on June 26, 2008, the same date as had been fixed for the first hearing of the claim. It must be noted that the defendants had been notified of the date fixed for the first hearing of the claim at the time the claim was served.

[6] At 10:00 a.m. on 25th of June the defendants filed a defence and counterclaim.

[7] No leave was sought or obtained for the late filing of the defence and counterclaim.

[8] At the hearing of the application Ms. St. Rose for the Defendant argued that the Claimants were in effect seeking judgment in default of defence. She points out that this is a fixed date claim and under CPR 2000 part 12.2 (b) judgment in default is not available to a claimant.

[9] Mr. Deterville QC for the Claimants urges the court to act under CPR 2000 part 27.23 which permits the court to treat the first hearing of a fixed date claim as the trial of the claim if it is not defended. Here he says no defence was filed within the period specified. No defence was filed prior to his application.

[10] For the purposes of this claim the court should consider the late defence filed without leave as never having been filed at all.

[11] Neither party was able to assist the court with any authorities.

[12] Had this matter been commenced by claim form there would have been no difficulty. Defendants who fail to file defences in time open themselves up to the risk of an application being made by the Claimant for judgment in default. Once the application is made the court office is bound to enter judgment for the applicant provided that the other requirements are met. This is an administrative act rather than a judicial one. The option of this administrative entry of judgment is not available when the matter is stated by a fixed date claim form. Does this then mean that a Claimant in a fixed date claim is to be disadvantaged in this way?

[13] The facts of the present case are particularly striking. It was only after the Claimants filed and served an application for judgment that the defendants put in any defence. They also put in a counterclaim less than twenty four hours before the matter was set for first hearing.

[14] The Defendants must have been aware that under CPR 2000 part 27.2 it is possible that a court can conduct a trial on the date fixed for a first hearing if the court considers that the matter can be dealt with summarily.

[15] The Claimants would have been very disadvantaged by having to meet a counterclaim of which they would have had no prior notice or very little notice – less than one day at most.

[16] In the absence of any authority it appears to me that there must be some consequences which attach to the defendants cavalier disregard of the CPR 2000 timelines in filing their defence.

[17] The rules make provisions for extension of time by consent or upon application for an order to that effect.

[18] I consider that in the absence of any agreement or leave of the court, the defence filed out of time is a nullity until and unless the Defendants obtain the leave of the court. It follows that at the first hearing of the claim the court is entitled to try the matter and in the absence of any defence the claimant must inevitably succeed.

[19] I therefore grant the application of the Claimants for judgment – not as an administrative matter – but as a judicial determination in favour of the claimant in the absence of any pleadings and thus any evidence by the defendant.

[20] Judgment is entered for the Claimant in the following terms:-

1.1 The Defendant go give up immediate possession of the warehouse and curtilage thereof situate at the Odsan Inland Reception and Distribution Centre, situate at Odsan in the Quarter of Castries (the "Premises") to the Claimant.

1.2 The Defendant is not entitled to enter or remain on or occupy the Premises.

1.3 The Defendant do immediately remove all its packaging materials, inputs and other products from the Premises.

1.4 Should the Defendant fail to remove any and all its packaging materials, inputs and other products as aforesaid, then the Claimant be authorized to remove the same, and the costs of such removal shall be a debt due by the Defendant and payable to the Claimant.

1.5 The Defendant be and is hereby restrained whether by itself, its servants and or agents from entering, remaining on or continuing in occupation of the Premises, save for the purpose of removing its packaging materials, inputs and other products as aforesaid.

1.6 The Defendant do pay to the Claimant damages for the Defendant's use and occupation of the Premises in the monthly sum of $441.00 from the date of the judgment herein to the date of delivery up of possession.

1.7 The Claimant be at liberty to deduct the sum due for damages for use and occupation as aforesaid from any sums due from the Claimant for whatever reason to the Defendant.

1.8 The Claimant is awarded general damages to be assessed.

1.9 Costs to the Claimant to be assessed.

[21] I also grant the Defendants leave to appeal this ruling.

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BRIAN S. COTTLE
HIGH COURT JUDGE