

IN THE HIGH COURT OF THE SUPREME COURT OF UDICATURE
CIVIL JURISDICTION

1. JAMES RAMSAHOYE

Plaintiff

-and-

2. LINDEN MINING
ENTERPRISE LIMITED

Defendant

MS. JAMELA A. ALI, ATTORNEY AT LAW FOR PLAINTIFF

MR. ASHTON CHASE, S.C. FOR DEFENDANT

Ruling on whether the affidavit of defence discloses a triable issue

Before I rule on this matter, I must state that the Defendant had filed a Statement of Defence dated 29th May 2009 in this matter and had informed this Court that leave was granted to defend with pleadings. Counsel for the Plaintiff subsequently conceded that no such leave was granted to do so. The Statement of Defence was therefore struck out.

The claims by the plaintiff were based on a Court of Appeal judgment granted in favour of the plaintiff against the defendant and another on the 3rd March 2004. The judgment consisted of damages, pension and interest. In 2004, the Court of Appeal was the final Court of Guyana.

On the 22nd August 2005 the plaintiff caused to be entered a notice and reasons of opposition to the passing of transport of certain property by the defendant on the grounds that the defendant had failed to pay the plaintiff part of the judgment debt.

The Writ issued by the Plaintiff followed opposition proceedings and the claims were for the remaining sums of money due at the time of the filing of the claim.

The defendant filed an affidavit of defence.

In paragraph 2 of the affidavit of defence, the defendant alleges that the “purported Writ was not property issued or addressed and proceedings do not conform with the Rules of the High Court (Deeds Registry).” However, this preliminary objection was taken previously and on the 29th November 2006, Justice Winston Patterson dismissed the Motion filed on behalf of the defendant on the 20th September 2005 seeking to set aside the issue and service of writ of summons. There was no evidence before this Court of a stay of that order beyond six weeks from the date of the order.

In paragraph 3 of the affidavit of defence, the defendant alleged its total liability was paid in April 2004, by making a payment to the Plaintiff’s Attorney at Law and the balance to the Guyana Revenue Authority (GRA) and further stated that the payment to GRA is the subject of an appeal “still unresolved”. However, no appeal was shown to this court nor was any order indicating that a stay of execution of the order has been granted. Therefore the order of the 3rd March 2004 remains valid and enforceable. The plaintiff denied that there were any subsisting Appeals in relation to the GRA payment.

The defendant also alleged in paragraph 4 of the affidavit of defence that they are not liable to pay a pension to the Plaintiff. However a perusal of the Court of Appeal order of the 3rd March 2004 clearly shows that an order for the payment of pension was made.

The defendant has stated in the affidavit of defence a bare denial of the plaintiff’s claim without more, that it is not indebted to the Plaintiff in the sum claimed or in any sum.

There is nothing in the defendant's affidavit of defence that raises a defence to the plaintiff's claim or discloses any triable issue or any arguable point of law that would entitle the defendant to be granted leave to defend.

In the circumstances the affidavit of defence is hereby struck out.

However, after making the following ruling, Counsel for the Plaintiff informed the Court that all the monies claimed in the statement of claims had now been received by the Plaintiff as claimed and in the circumstances, an application was made by Counsel for the Plaintiff to withdraw the claims made at paragraph 7 (i), (ii), (iii) and (v) of the Statement of Claim.

Counsel for the Plaintiff submitted that since the monies claimed therein were due at the time of the filing of the claim, they were still seeking the declaration prayed for in paragraph 7 (iv) of the Statement of Claim.

In the circumstances, this Court granted leave to withdraw the said claims and also granted the declaration sought at paragraph 7 (iv) of the Statement of claim that the Opposition entered by the Plaintiff of the property described therein was just, legal and well founded.

The application for a stay of execution by Counsel for the Defendant was refused. No grounds were advanced by Counsel for the defendant.

Costs awarded against the Defendant in the sum of \$50,000.

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Diana F. Insanally
Puisne Judge
This day of March 2010.