

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B341/1994

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| BETWEEN | BANK OF NOVA SCOTIA JAMAICA LTD. | PLAINTIFF |
| A N D | COLLIN HUSBANDS | DEFENDANT |

Mr. Edward Miller for plaintiff

Mr. R. Codlin for defendant

IN CHAMBERS

Heard: December 14 and 20, 1995

PANTON, J

Before me are two summonses for determination - one by the defendant for leave to file defence out of time, the other by the plaintiff for summary judgment. The history of the matter is important and is accordingly set out below.

The plaintiff filed a writ endorsed with a statement of claim against the defendant on August 11, 1994. Appearance was entered on November 2, 1994. Then followed the filing of a summons for summary judgment on November 30, 1994.

The parties, represented as they are now, appeared before the Court on December 15, 1994. The matter was adjourned *sine die*. It was next before the Court on October 2, 1995. The matter was again adjourned *sine die*; on this occasion, the adjournment was clearly at the request of the defendant. On that said occasion, the Court ordered the defendant to file his affidavit within fourteen days - that is, by October 16, 1995. That Court order was disobeyed. No reason has been offered for the disobedience.

On November 27, 1995, that is fifty-six days after the Court Order, and forty-two days after the Order should have been obeyed, the defendant filed a summons seeking leave to file his defence out of time. He also filed an affidavit. He didn't bother to serve that affidavit on the plaintiff.

It has to be clearly stated that the Court will not treat lightly any unexplained disobedience of its Order, particularly in a situation in which the Order was made at the request of the disobedient party.

No reason, good bad or indifferent, has been offered for the disobedience. Indeed, it indicated disrespect for the process of the Court. In the instant case, there is no good reason for any further indulgence in favour of the defence. The summons seeking leave to file defence out of time is accordingly dismissed.

So far as the summons for summary judgment is concerned, the plaintiff's affidavit and the exhibit attached indicate plainly that the defendant is bound by a promissory note. There is nothing irregular. There is nothing to afford a defence.

The summons, it seems to me, is well-founded. The Court therefore makes an order in terms of the summons, in that leave is granted to the plaintiff to enter final judgment, based on the contents of the promissory note marked exhibit 'A'. The Court awards costs to the plaintiff, such costs to be agreed or taxed.