

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 01728 OF 2006

BETWEEN	RICHARD VASCONCELLOS	CLAIMANT
AND	JAMAICA STEEL WORKS LIMITED (formerly JAMAICA STEEL & PLASTICS LTD)	1 ST DEFENDANT
AND	ISHMAEL GAFOOR	2 ND DEFENDANT
AND	AMELITA GAFOOR	3 RD DEFENDANT

✓ Mr. Lawrence Haynes for Claimant.

Mr. Anthony Pearson for 1st and 2nd Defendants.

Mr. Wentworth Charles for 3rd Defendant.

CORAM; D. MCINTOSH, J

HEARD: 2nd to 10th December, 2007 and 19th December, 2007

This matter preceded by way of Fixed Date Claim Form.

On 2nd October, 2007, Mr. Haynes submitted third defendant's application with affidavits, were filed on Friday last. Applicant filed affidavit which was served on him yesterday.

Affidavits of disclosure from 2nd and 3rd defendants filed on 1st October 2007 have not complied with order of court dated the 14th August, 2006.

Mr. Charles submits.

Mr. Pearson who represent 1st and 2nd defendants is absent for personal reasons, having to do with his son's illness. He holds for him. An affidavit was filed by 2nd defendant setting out defence of 1st and 2nd defendants.

In response to court, Mr. Charles indicated that no steps had been taken to set aside the judgment in Florida. That final judgment was obtained on the 30th November, 2005.

Mr. Charles contended that the 3rd defendant was never informed of the judgment. The 3rd defendant's matter was referred to mediation. The third defendant and her lawyer had a dispute and had parted company.

That the judgment which claimant seeks to enforce is one vitiated by fraud in that the Guarantee and Credit Agreement which form the subject of agreement between the Commercial Bank, "National Alliance" and Ark Enterprises.

Both the Credit Agreement and the guarantee were signed by the 3rd defendant. [Mr. Pearson enters]

Additionally, the Vasconcellos, who were defendants in the suit brought by Commerce Bank, alleged in their defence to that claim, that the Commerce Bank were guilty of fraudulent misrepresentation so that the subsequent assignment of the rights and liabilities of the Commerce Bank to Mr. and Mrs. Vasconcellos and Ark Enterprises, puts them into knowledge of the allegation of fraud.

The 3rd defendant at that stage indicated that her signature was forged. There was no allegation as to who forged her signature. The determination as to who may or may not have forged her signature was not made by the court.

There was no trial of the issue. Questions were put to her at the hearing as to whether she would have signed such documents as secretary. She said she had signed such document in the past. Other speculative questions were asked of her.

Exhibit 1 was faxed to her Ark Enterprises, A guarantee faxed to her to be signed on 30th December, 2002. She refused to sign same. This guarantee was faxed with an e-mail which is exhibited.

Ark is a company owned by the Vasconcellos. They approached Commerce Bank for a loan of US\$500,000 to purchase material on behalf of Jan Steel and Plastic Ltd., which had a running account with the Vasconcellos.

Reference:

1 – Conflict of Laws

By JAC Morris 1971, page 429.

See Aboaloff and Oppenheimer and Company 1888 – v 10 213 – 205.

First loan never lodge to defendant's account. – it was lodged to claimant's account to pay pre- credit facilities.

The last exhibit indicates the later date which is Lloyds of London which indicates their loan was insured so was the non-payment of loan.

The claimant was already alleging that the Commerce Bank had fraudulently represented to them that the claim was uninsured.

There is no where in mediation proceedings that the assignment of loan is mentioned.

At page 302 of Openheimers judgment, 1st paragraph.

Paragraph 16 of Defence.

Court:

Part-heard Adjourned 10th December, 2007 at 10:00 a.m. for 3 hours.

- 2 - 3rd defendant to set aside goal entered against her in this matter by that time or to enquire of court why that is not possible.
3. Parties to file and serve all submissions and authorities by the 30th November, 2007.
- 4 Any supplemental of submission to be fixed by the 3rd December, 2007.
5. Cost to be costs in case.
6. Claimant to prepare file and serve orders.

On 10/12/07

All parties present their attorneys.

Written submissions which had been filed were orally amplified.

Court reserved judgment to 19th December, 2007.

19/12/2007

REASONS FOR JUDGMENT

This is an application by claimant that judgment be entered against the defendants pursuant to a judgment handed down against them in favour of the claimant in Florida.

Claimant argues that the conditions for enforcement of the judgment have all been met in that (a) the defendants all submitted to the jurisdiction of the foreign court

(b) the judgment obtained was conclusive on its merits, (c) The claim is for a definite sum and (d) the judgment is not subject to enforcement for penal or reversed call and the defendants have no defence to the claim.

The defence counter by asserting:

- (a) To start the proceedings having been commenced by fixed date claim form is wrong and a claim form should have been utilized.
- (a) The judgment was obtained in breach of Natural Justice as the second defendant was not afforded an hearing nor a fair trial of the issues.
- (c) There was the issue of fraud on the part of the claimant and the assigner of the debt.

(1) that the judgment of the foreign court was initiated by fraud.

~~This court is of the view that the defendants have no defence for the action but are motivated by a desire not to pay to the claimant the monies owed by them to him.~~

~~There seems no real issue in respect to how these proceedings were brought. Rule 0.1 of the 25th, 2002,~~

Rule 8.1 (4) (d) puts the claim clearly within the ambit of this method of proceedings.

There was no breach of Natural Justice in respect of the third defendant. She was given every opportunity to be heard and at all times had legal representation. It is she who deliberately placed herself in contempt of court.

However, as repugnant as it is to me this court finds itself constrained to dismiss this application based on the authorities which maintain that once there

is an allegation of fraud made to impeach a foreign judgment, that judgment will not be enforced by our courts even if the foreign court purportedly dealt with the issue of fraud.

For these reasons this court will dismiss claimant's application with costs to the defendant to be taxed if not agreed.

Leave to appeal is granted.