

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L.1998/W275

BETWEEN	WORKERS SAVINGS AND LOAN BANK	PLAINTIFF
A N D	HERON DALE	1ST DEFENDANT
A N D	MARJORIE DALE	2ND DEFENDANT

Mrs. Sandra Minott-Phillips
instructed by Myers, Fletcher & Gordon for Plaintiff

Mr. Norman Wright instructed by Wright, Dunkley & Co.
for the Defendants.

HEARD: 30th November, 1999, 1st December, 1999
and 21st January, 2000

JUDGMENT

Theobalds, J.

Before this Court is an application for Speedy Trial of this action filed and dated the 18th day of June, 1999. The application is supported by an affidavit dated 17th June, 1999, sworn to by Olive D. Lyn. She is an attorney at law and was at all material times an "in house" attorney at law engaged to provide legal services for the plaintiff. Indeed she filed the Writ of Summons dated 30th day of July, 1998 by which these proceedings commenced. The amount claimed is for One Million Five Hundred and Eleven Thousand Four Hundred and Forty United States Dollars and Forty Three Cents (\$1,511,440.43) and Ninety Three Thousand Six Hundred and Thirty Five Dollars and Eight Cents (Ja \$93,615.08) being the amount payable as at July 22, 1998

by virtue of a Foreign Currency Demand Loan facility guaranteed by the Defendants, which remains due and unpaid. The particulars of claim are as follows:

Principal	=	U.S \$1,055,000.01
Interest as at 98/07/22		<u>U.S \$ 456,440.42</u>
		U.S \$1,511,440.43
Valuation cost and Auctioneers fee		JA \$ 93,635.08

The facts cumulatively forming the background to these proceedings are simple and straight forward and can be gleaned by reference to the affidavits of Olive Lyn aforementioned and the first named defendant. The first and second named defendants are husband and wife and both are practising attorneys at law. An opportunity to invest in real estate came to the knowledge of the defendants. They were interested in acquiring a property known as Tiams in San San Portland. This property included several cottages which it was the intention of the defendants to rent to visitors to Jamaica, in particular to tourists from abroad who came to Jamaica for short term holidays. To this end a private company was formed in which the defendants were the only shareholders. The agreement and transfer were to be to this company. The defendants signed an instrument of guarantee dated the 4th October, 1997 to repay and satisfy to the plaintiff on demand all sums of money due and unpaid by the company to the plaintiff. The amount of U.S. \$1,511,440.43 due and unpaid is as set out in the particulars. This includes interest to

22nd July, 1998. Valuation costs and Auctioneers fees totalling JA \$93,615.08 are added to this sum.

The defendants deny that they entered into any instrument of guarantee with the plaintiff and also deny the particulars of claim set out above. Alternatively the defendants assert that if they did enter into the alleged agreement of guarantee there was no consideration to support the alleged agreement of guarantee. Alternatively the consideration for the alleged agreement of guarantee was a past consideration. Additionally, the defendants counterclaim seeking damages for fraud and misrepresentation; in compliance with the Civil Procedure Code particulars of fraud were duly given.

It is against this background that Olive Lyn above-mentioned filed a further Affidavit dated the 17th June, 1999 paragraph 6 whereof purports to indicate the involvement of Finsac Limited on behalf of the Government of Jamaica. It appears that the plaintiff is among those financial institutions which enjoyed the benefit of a "bail out" from public funds on the understanding that the plaintiff would with due despatch proceed against delinquent accounts with due despatch. The plaintiff asserts that this is one such account. There has been no Affidavit filed in response to this assertion but the pleadings filed by the defendants and the submissions made by the defence attorneys speak eloquently for themselves. I reject in its entirety that this Court has no jurisdiction under the Civil Procedure Code to make an order for speedy trial as sought. With no disrespect to learned counsel the many cases cited by

him do not alter this view. I have read them with interest but do not propose to embark on any critical analysis thereof. Indeed it is in the defendants interest to have their defence and counterclaim adjudicated on by the Court and to have this resolved with despatch.

Accordingly I make the order sought that there be a Speedy Trial of this action and that the costs of this application and order be costs in the cause.