

IN THE FULL COURT OF THE HIGH COURT OF THE SUPREME COURT
OF JUDICATURE

On appeal from the interlocutory decision of a Judge in Chambers in Writ
proceedings No. 248-CD of 2014

BETWEEN:

INSTANT SECURITY SERVICES
INC., A Company incorporated in
Guyana with its registered office at Lot
BB1 Nelson Mandela Avenue, East La
Penitence, Georgetown.

Appellant/ Defendant

-and-

CITIZENS BANK GUYANA INC.

Respondent/ Plaintiff

The Honourable Chief Justice Roxane George and Justice Navindra A. Singh.

Mr. Roysdale A. Forde representing the Appellant.

Mr. Kamal Ramkarran representing the Respondent.

Delivered May 28th 2018.

DECISION

The Respondent instituted Civil High Court Action No. 248-CD of 2014 on March 10th, 2014 against the Appellant claiming monies owed on loan facilities totalling in excess of one hundred and ninety nine million dollars.

The Appellant requested further and better particulars which were provided by the Respondent after which the Appellant filed an Affidavit in Defence. The Respondent then filed an Affidavit in Reply.

The Appellant then filed a Summons on January 8th 2015 seeking an Order striking out the Writ of Summons as “*it discloses no cause of action known to law, is misconceived and bad in law*”.

That Summons was heard and dismissed by the Honourable Justice Rishi Persaud on February 8th 2016.

It is from that dismissal that this Appeal lies.

The Respondent has submitted, as a matter of a preliminary issue, that a Writ does not have a cause of action. That a cause of action is pleaded and found in a Statement of Claim and as such the Appellant seeks relief that cannot lawfully be granted.

While this is indeed an infallible submission by the Respondent, in the interest of efficiency and with the goal of trying to bring finality to the proceedings before the Court, the matter will be dealt with in the Full Court as it was dealt with by the Trial Judge, that is to say, the application will be treated as an application to strike out the Statement of Claim as having not disclosed a cause of action.

ISSUE

Does the Statement of Claim disclose a cause of action?

FACTS

In the Statement of Claim the Respondent claims from the Appellant a certain sum of monies “*being the amount due, owing and payable by the defendant to the plaintiff as monies advanced by the plaintiff to the defendant at the defendant’s request ...*”

The Appellant in its Affidavit of Defence denies being indebted to the Respondent. “*Moreover, the Defendant Company denies that it is indebted to the Plaintiff Bank in the amounts claimed or at all.*” [Paragraph 4 of the Affidavit of Defence].

Further in its Affidavit of Defence the Appellant tacitly acknowledges the loan facilities but contends that **if** they are in default in payment on those accounts, (amazingly **they** don’t know if **they** are in default), the Respondents are restricted to claiming the monthly instalments which **may** be in default. They are not entitled to accelerate the repayment of the loan/s and claim the entire sum owed.

LAW

“Cause of Action” is defined as “A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person.” [Black’s Law Dictionary, Ninth Edition].

ANALYSIS

The Respondent claims the repayment of monies loaned to the Appellant.

The Appellant avers in its Affidavit of Defence that either it is not indebted to the Respondent at all, which gives rise to a fact in issue, or, the Respondent's claim is premature, which gives rise to a contention of fact and law.

In what amounts to a third position, the entire thrust of the Appellant's submissions in support of the Summons to strike out the Writ and in this appeal is that the documents that the Respondent seek to rely on to establish its claim cannot legally be relied upon, which is also a contention of fact and law.

It may well be that either or both of the defences raised in the Affidavit of Defence or even the proposition raised in the Summons, should it be advanced as a defence, will succeed, however, what is undeniable is that those are issues for the Trial Judge to consider.

The Trial Judge may very well determine that the Claim ought to be dismissed after arguments on the Affidavit of Defence or at a trial, however, this would simply mean that the Respondent would have been unable to prove its claim, not that the claim did not disclose a cause of action.

In other words all of the propositions advanced by the Appellant, whether in its Affidavit of Defence or in the Summons, the subject of this appeal, are defences, which, by that fact alone, demonstrate that the Respondent has disclosed a Cause of Action in its Statement of Claim.

CONCLUSION

The Appellant has clearly confused **its belief** that it has good defences to the Respondent's claim with the concept of whether sufficient facts are pleaded in the claim to establish a cause of action.

The Statement of Claim does disclose a legal Cause of Action.

In the circumstances this appeal is dismissed with costs to the Respondent in the sum of \$250,000.00.

JUSTICE N. A. SINGH