IN THE FULL COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

CIVIL JURISDICTION

2001-HC-DEM-CIV-FCA-88

BETWEEN:

1. MEER IMRAN RAHAMAN
2. MEER AMJAD RAHAMAN
3. MEER ANSARI RAHAMAN
4. RAJKUMANI RAHAMAN
5. SORAYA RAHAMAN

Appellants (Defendants)
Jointly and Severally

-and-

NATIONAL BANK OF INDUSTRY AND COMMERCE LIMITED

Respondent

The Honourable Justices Navindra A. Singh and Priya S. Sewnarine-Beharry, Puisne Judges

Mr. Roysdale A. Forde and Ms. Olayne D. T. Joseph for the Appellants

Mr. Rafiq T. Khan S.C. for the Respondent

**Delivered July 7th 2020**

## DECISION

### BACKGROUND

The Respondent, a commercial bank, instituted High Court Action No. 606-S of 2001 by a Specially Indorsed Writ against the Appellants on May 15th 2001 claiming the sum of $78,000,000.00 (seventy-eight million dollars) together with interest at the rate of 19.25% per annum from February 2nd 2001.

The claim is based on a written agreement dated October 28th 1996 between the Appellants and the Respondent whereby the Appellants guaranteed the payments of all debts and liabilities at any time owing to the Respondent by Republic Soda Factory Ltd. to a maximum of $78,000,000.00 (seventy-eight million dollars) together with interest at the rate of of the Respondent's prime interest rate plus 2.5% per annum from the date of demand for payment.

It was the Respondent's claim that a demand was made on the Appellants on February 2nd 2001 as a result of Republic Soda Factory Limited's default in payment of its indebtedness to the Respondent and such indebtedness had exceeded $78,000,000.00 (seventy-eight million dollars).

The Action came on for hearing on June 11th 2001 in Bail Court before Justice LaBennett and the Appellants appeared by Attorney-at-Law Oneige Walron who was holding the brief for Attorney-at-Law Oliver Valz S.C.

Attorney-at-Law Walron requested time for the Appellants to file an Affidavit of Defence, however, that application was refused and Justice LaBennett granted judgment to the Respondent in default of defence.

On June 18th 2001 Attorney-at-Law Oliver Valz S.C. applied by way of Summons for the judgment granted by Justice LaBennett to be set aside and for the Appellants to be granted leaved to file an Affidavit of Defence.

On October 9th 2002 Justice LaBennett set aside the judgment granted June 11th 2001 and granted the Appellants leave to file an Affidavit of Defence, which they did on October 16th 2002.

The Action then came on for hearing again in Bail Court before Justice Gregory-Barnes who, on February 19th 2003, ordered Counsel for the Appellants and Respondent to lay over written submissions addressing the Court on whether the Affidavit of Defence disclosed triable issues.

The Respondent laid over its submissions in March 2003 and the Appellants laid over their submissions on April 10th 2003.

Having given considerable deliberation to the written submissions, Justice Gregory-Barnes granted the Appellants leave to defend the claim with pleadings with respect to one of the matters raised in the Affidavit of Defence on March 12th 2004.

On March 24th 2004 the Appellants appealed the ruling of Justice Gregory-Barnes dated March 12th 2004.

On April 6th 2004 the Respondent filed a Motion to have the appeal struck out on the ground that the Full Court did not have jurisdiction to hear the appeal.

On April 13th 2004 the Respondent served a Notice on the Appellants to remedy their default in filing a Statement of Defence.

On April 26th 2004 Attorney-at-Law Oliver Valz S.C. applied by way of Summons for the Order of Court of the ruling of Justice Gregory-Barnes dated March 12th 2004 as entered, to be corrected on the basis that the Order entered did not correctly reflect the Judge's ruling, notwithstanding the fact that he had appealed the same order less than five weeks earlier and that appeal was extant.

The Appellants did not remedy their default in filing a Statement of Defence and as a result, on May 12th 2004, the Respondent filed a Request for Hearing in Bail Court.

On March 22nd 2005 the Full Court struck out the appeal filed by the Appellants on March 24th 2004.

On April 29th 2005 the Appellants withdrew the Summons filed on April 26th 2004.

The matter was then heard in Bail Court on July 5th 2005, July 25th 2005, and September 12th 2005 where Counsel for the Appellants made several applications to the Court to file a Statement of Defence out of time and was granted leave to so do on each occasion.

On October 28th 2005, Counsel for the Appellants and the Respondent signed a consent extending the time for the Appellants to file and serve a Statement of Defence and Counterclaim.

The Appellants filed and served a Statement of Defence and Counterclaim on October 28th 2005.

On November 22nd 2005 the Respondent filed a Summons to strike several paragraphs contained in the Statement of Defence and Counterclaim.

On November 22nd 2006 Justice Jai Narayan Singh ordered twenty five of the twenty eight paragraphs contained in the Statement of Defence and Counterclaim be struck out.

The Respondent filed a Request for Hearing on December 1st 2006.

In November 2010 the Appellants filed a Summons praying for an Order that the Action be deemed abandoned pursuant to **Order 32 of the Rules of the High Court; CAP 3:02**.

That Summons was dismissed on November 15th 2011 by Justice R. George (as she then was).

It is from that dismissal that this appeal lies.

Before addressing the appeal the Court is compelled to state on the record that the Record of Appeal prepared and filed by the Appellants is woefully incomplete and set out in improper sequence.

**ISSUE I**

Whether the Notice in Default of Defence filed by the Appellants on April 13th 2004 is a nullity.

**LAW**

**Order 25 r. 2 of the Rules of the High Court** provides that where a Defendant fails to deliver a Defence in the time allowed, a Plaintiff may apply for final judgment in Bail Court provided he has served a Notice in Default of Defence and the time for compliance with such Notice has expired, as required by **Order 25 r. 15**.

**ANALYSIS**

The Appellants submit, very simply, that since there was an interlocutory appeal pending, the matter could not become ripe for hearing in accordance with **Order 32 r. 3 (2)**, and further since the service of a Notice in Default of Defence would have the effect of making the matter ripe for hearing, the Notice in Default of Defence must be a nullity.

This submission is remarkably vacuous.

Nowhere in the rules does it provide that a party must stop prosecuting a claim because there is an interlocutory appeal. Such a position cannot even be inferred and in fact Counsel for the Appellants has failed to point to any rule or law that provides for such an interpretation.

The service of the Notice in Default of Defence in no way automatically means that the matter will become ripe for hearing.

The institution of an interlocutory appeal does not relieve a Defendant from complying with the provisions of the **Rules of the High Court** and therefore a Plaintiff in the diligent prosecution of his claim can, and should, serve a delinquent Defendant with a Default Notice.

**CONCLUSION**

The Notice in Default of Defence filed by the Appellants on April 13th 2004 is not a nullity.

**ISSUE II**

Whether the Request for Hearing in Bail Court filed on May 12th 2004 is a nullity.

**LAW**

**Order 32 r. 3 (2) of the Rules of the High Court** provides that if there are any interlocutory proceedings pending, a cause or matter shall not become ripe for hearing until the determination of such proceedings unless the Court or a Judge otherwise orders.

**ANALYSIS**

The Appellants submit that the Request for Hearing is a nullity because the matter could not have been ripe for hearing since the interlocutory appeal was still pending when the Request for Hearing was filed.

Counsel for the Appellants has seemingly purposely ignored the words "*unless the Court or a Judge otherwise orders.*" at the end of **Order 32 r. 3 (2)** and these words are very important in this Action.

The rules permit the Respondent to take the course of action that it did and having done so, it would be for the [Bail] Court or Judge to determine the next step/s.

In fact, the Bail Court did not set the matter down for hearing until the Interlocutory Appeal was determined and thereafter the Court granted the Appellants leave to file their Statement of Defence.

This clearly shows that the Court exercised its discretion, given to it by the very rule that Counsel seeks to rely on, to deal with the matter which demonstrates that the Court considered the Request for Hearing properly filed.

It is noteworthy that Counsel for the Appellants did not object at that time to the [Bail] Court's jurisdiction on the basis that the Request for Hearing in Bail Court was a nullity, but rather, requested further time to file a Statement of Defence.

Counsel for the Appellants also submits that **O 25 r. 2** required the Respondent to file a Request for Final Judgment in Bail Court as opposed to a Request for Hearing in Bail Court.

This submission really does not deserve serious consideration. In the simplest of explanations, it is clear that the Court conducts a hearing when considering whether to grant final judgment.

Quibbling over semantics is petty and unmeritorious.

**CONCLUSION**

The Request for Hearing in Bail Court filed on May 12th 2004 is not a nullity.

**ISSUE III**

Was the matter abandoned in accordance with the **Rules of the High Court**.

**LAW**

**Order 32 r. 1 of the Rules of the High Court** provides that when a matter becomes ripe for hearing, it shall be the duty of the Plaintiff to file a Request for Hearing within six weeks thereafter.

**Order 32 r. 2** provides that if the Request for Hearing is not filed within that time the Defendant may apply to the Court to dismiss the matter for want of prosecution.

**Order 32 r. 8** provides that a matter shall be deemed deserted if a Request for Hearing is not filed within six months of the expiration of the time for doing so.

**Order 32 r. 2** provides that a matter shall be deemed abandoned if no application or consent for revivor has been filed within six months after the matter has been deemed deserted.

**ANALYSIS**

Counsel for the Appellants submits that the matter became ripe for hearing six weeks after April 29th 2006 and therefore the Respondent should have filed a Request for Hearing within six weeks thereof.

Having not done that, the matter became deserted six months thereafter and abandoned six months after it became deserted.

Counsel for the Appellants has not explained on what basis the matter would have been ripe for hearing six weeks after April 29th 2006.

Assuming that Counsel for the Appellants was referring to April 29th 2005, the date the Appellants withdrew their Summons to [purportedly] correct the Order of Justice Gregory-Barnes, Counsel would still not have provided the basis for stating that the matter would have been ripe for hearing, having submitted that the Notice in Default of Defence is a nullity.

Solely on the failure to state the basis of the proposition that the matter would have been ripe for hearing when the Summons was withdrawn, Counsel for the Appellants convoluted submissions must fail.

Counsel, as stated before, has conveniently not addressed or acknowledged the fact that the matter was heard in Bail Court on on July 5th 2005, July 25th 2005, and September 12th 2005 and on those dates Counsel for the Appellants requested time to file a Statement of Defence.

Notwithstanding the foregoing, if it is accepted that the Notice in Default of Defence and the Request for Hearing in Bail Court were nullities, Counsel for the Appellants submissions must still fail since Counsel for both parties filed a consent to extend the time for the Appellants to file a Statement of Defence before the expiration of six months from the date the interlocutory proceedings would have come to an end, therefore the matter could never have been deemed deserted.

Counsel for the Appellants submissions on this issue was inconsistent, disjuncted and unintelligible.

**CONCLUSION**

The matter is not abandoned.

It is unfortunate that a matter of this nature could engage the Courts and avoid going to trial for almost 19 years on these unmeritorious propositions, accepting reluctantly that it even warrants a trial.

In these circumstances dismisses this Appeal in its entirety.

The Court awards costs to the Respondent against the Appellants in the sum of $1,500,000.00.

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Justice N. A. Singh

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Justice P. Sewnarine-Beharry