

2015

No. 78 - W

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
CIVIL JURISDICTION

BETWEEN:

GUYANA SUGAR CORPORATION INC.

Plaintiff

-and-

1. SHARONA PERSAUD
2. NANDRANIE SEODATT
3. CHAMPA BOODWAH
4. GOPAUL KAYDARNATH
5. SARRAN SEODATT

Defendants

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Hari N. Ramkarran S.C. representing the Plaintiff

Ms. Abiola Wong-Innis representing the Defendants

**Delivered July 13<sup>th</sup> 2020**

RULING

BACKGROUND

The Plaintiff is a State owned company with which the First Named Defendant [FND] was employed as a Personnel Clerk.

The Plaintiff claims that between May 2010 and April 2011 the FND prepared false leave passage claims for twenty-four senior staff members totalling \$18,931,761.00.

It was permissible under the Plaintiff's leave passage scheme for senior staff entitled to leave passage to receive and apply their leave passage allowance to the construction or repair of properties owned by them.

The Plaintiff claims that the FND fraudulently prepared applications for the twenty-four senior staff members for leave passage allowances, without their knowledge, for the construction and/ or repair of their properties and then “appropriated” the said sums which were then paid over to the Second, Third, Fourth and Fifth Named Defendants.

### **ISSUE I**

Counsel for the Defendants has submitted that the cause of action was statute barred on the date that it was instituted, so the first issue to be determined by the Court was whether the cause of action was statute barred on the date that this action was instituted.

### **FACTS**

This action was commenced by a Generally Indorsed Writ which was filed on March 3<sup>rd</sup> 2015.

The Plaintiff’s witness, Kubear Ramharak, who is the Plaintiff’s Audit Officer testified that he prepared a report with respect to this allegation of fraud on July 5<sup>th</sup> 2011. He further testified that the alleged fraud was discovered about 2 months prior to his report.

### **LAW**

In accordance with **section 8 of the Limitation Act; CAP 7:02** of the Laws of Guyana, the Plaintiff was required to institute the Action within 3 years of the date that the cause of action had arisen, which would have been the date that the alleged fraud was discovered.

## ANALYSIS

Based on Ramharak's testimony with respect to the date of discovery of the alleged fraud by the Plaintiff, the Action would have had to have been instituted at the latest in May 2014.

Counsel for the Plaintiff submits that the Defendants ought not to be allowed to rely on this defence since it was not specifically pleaded as is required by **Order 19 rule 4 of the Rules of the Supreme Court; High Court Act; CAP 3:02** of the Laws of Guyana.

While this may be a correct statement of the law under those Rules, the Court cannot ignore the fact that the Plaintiff specifically stated in paragraph (a) of its Indorsement of Claim dated March 3<sup>rd</sup> 2015 that the alleged fraud was "*discovered by the Plaintiff in June 2012.*"

The true date of discovery of the alleged fraud only became known to the Defendants' Counsel at the trial, so it is disingenuous for Counsel for the Plaintiff to insist that this defence should have been pleaded when the Plaintiff wilfully misled the Defendants as to the date of discovery of the alleged fraud prior to the trial.

## CONCLUSION

The Cause of Action in this Action was statute barred on the date that this Action was instituted on March 3<sup>rd</sup> 2015, therefore recovery on the Plaintiff's claims herein are statute barred.

## ISSUE II

Counsel for the Defendants has submitted that upon a perusal of the record she now recognises that this action was abandoned prior to the commencement of the trial, so the second issue to be determined is whether this action was abandoned prior to the commencement of the trial.

## FACTS

This action was commenced by a Generally Indorsed Writ which was filed on March 3<sup>rd</sup> 2015. It was then served on March 20<sup>th</sup> 2015 and an Entry of Appearance was filed on behalf of the Defendants by Attorney **Basil Williams** on March 24<sup>th</sup> 2015.

Thereafter, on July 1<sup>st</sup> 2016 the Plaintiff filed a Statement of Claim and an Extension of Time which was signed by Attorney **Hughley Griffith**.

## LAW

**Order 32 rule 9 (1) (a) of the Rules of the High Court; High Court Act; CAP 3:02** of the Laws of Guyana, which provides;

“A cause or matter shall be deemed altogether abandoned and incapable of being revived if prior to the filing of a request for hearing or consent to judgment or the obtaining of judgment - any party has failed to take any proceeding or file any document therein for one year from the date of the last proceeding had or the filing of the last document therein.”

**Andrews v Moore [2013] CCJ 7 [AJ]** issue can be taken at anytime before judgment.

### **ANALYSIS**

It is clear that the Extension of Time is improper and of no legal effect since it was not signed by the authorised legal representative of the Defendants and, more significantly, it was filed more than 3 months after the action would have been deemed **Abandoned** by operation of the **Rules of the High Court**.

### **CONCLUSION**

This Action became abandoned and incapable of revival on March 25<sup>th</sup> 2016.

In the circumstances, the Action herein against the Defendants is dismissed in its entirety.

The Court awards costs to the each Defendant against the Plaintiff in the sum of \$100,000.00.

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Justice N. A. Singh