Judgment Book

IN THE SUPREME COURT OF JUDICATURE

IN COMMON LAW

SUIT NO. C.L. C002 OF 1995

BETWEEN	WINSTON CHOW	PLAINTIFF
A N D	WEBSTER GRANT	DEFENDANT

Wendel Wilkins for defendant/applicant
Stacey Mitchell for plaintiff-respondent

IN CHAMBERS

Heard: December 18 and 19, 1997

PANTON, J.

On January 3, 1995, the plaintiff filed a writ of summons and statement of claim in which he alleged that the defendant had, one year earlier, negligently caused damage to the plaintiff's vehicle to the amount of $219,993.75. The defendant entered an appearance. The document evidencing this is dated June 23, 1995; and it was served on the plaintiff on June 29, 1995.

Having entered an appearance, the defendant apparently went to sleep. He had done his duty. The plaintiff was, however, wide awake. He entered interlocutory judgment in default of defence on July 26, 1995. This was entered in binder No. 703 Folio 141.

The defendant now seeks to set aside this judgment. He awoke from his slumber for a period that was long enough to allow him to file an affidavit. In that affidavit, he included what I regard as an amazing paragraph. It reads thus:

> "7. That since retaining Mr. Henry to represent me in this suit I visited his office several times but he was not in office therefore I did not get to see him. I sometimes left messages for him that I came by and would return. Further, for several months between 1995 and 1997 I was off the island and do not know if Mr. Henry had tried to contact me during that time as on my return to the island I did not receive nor was I told of any communication from him."

The paragraph is amazing in the sense that the impression has been created that the defendant and his attorney-at-law studiously avoided each other even when the defendant was not on one of his trips abroad.

The defendant sprang to life when the bailiff and a police officer turned up on his doorstep to execute the judgment nearly three years after the filing of the writ. No sooner had the bailiff arrived, the defendant succeeded in contacting the attorney-at-law whom he had been unable to contact for at least two years.

In his affidavit (paragraph 4), the defendant states that his vehicle came "slightly in contact with the rear of the plaintiff's motor vehicle". In my view, that is a clear admission of negligence.

The defendant is, by making this application, merely seeking to abuse the process of the Court. The nature of the abuse is apparent when it is considered that the defendant has waited for three years to give proper instructions to an attorney-at-law in respect of the suit.

Parties to an action need to understand that there are rules governing the filing as well as the defending of an action. Those rules prescribe time limits. Parties ignore such time limits at their peril. In this case, the ignoring of the time limits was obviously due to, among other things, the defendant's lack of confidence in his so-called defence. Even if the defence was a real one, it would seem that by waiting so long to act in his own interest, the defendant had abandoned any right he may have had. The Court ought not to be seen to be too indulgent to the nonchalant or the indolent. After all, the plaintiff also has rights and he, having followed the rules, should not after such a long time be denied his rights by a defendant who has deliberately slept on his rights. This is not a mere matter of costs.

In all the circumstances, there is no room for any indulgence to this defendant. The summons is dismissed with costs to the plaintiff to be agreed or taxed.