TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. Cv 296 of 1998

BETWEEN

I.M.H. INVESTMENTS LIMITED

PLAINTIFF

AND

TRINIDAD HOME DEVELOPERS LIMITED
(In voluntary liquidation)

DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE STOLLMEYER

Appearances:
Mr. E. Thorne for the plaintiff
Mr. F. Gilkes for the defendant

R E A S O N S

There were two applications before the Court for determination: the plaintiff's summons of 12th March, 1998 for judgment under the provision of Order 14 of the Rules of the Supreme Court; and the defendant's summons of 1st April, 1998 to strike out the plaintiff's statement of claim, and dismiss the action, under the provisions of Order 18 of the Rules of the Surpreme Court.

By Writ filed on 10th February, 1998 the plaintiff claimed from the defendant United States dollars $2,720,932.73 (Trinidad and Tobago dollars $17,139,155.00) being the award of a judgment, with interest, which the plaintiff had obtained against the defendant in previous High Court proceedings, High Court Action 3702 of 1986.

The plaintiff's application for summary judgment was supported by the affidavit of John Mair sworn and filed on 12th March, 1998. There was no affidavit on behalf of the defendant in opposition to this, nor was there any affidavit in support of the defendant's application.

As to the defendant's application, which I ordered to be heard and determined first, Mr. Thorne having no objection to this, I accepted that there is no reason why in principle a judgment creditor cannot sue on a judgment and obtain a second judgment, and that in certain circumstances it might do so in respect of a judgment previously obtained in the same court. But that principle, if it can be so described properly, is subject, in my view, to at least one qualification and that is that a court should not allow such a second judgment to be entered, or granted, or ordered, unless the Court is satisfied that the second action did not constitute an abuse of process, having regard to the availability of execution.

Mr. Thorne submitted that it is for the defendant to show that any second action constitutes an abuse of process and it is not for the plaintiff to justify the bringing of further proceedings. In so far as this submission is concerned I do see that this can be an unqualified statement of the true position. That principle, that position, must in my view ultimately depend upon the circumstances of each case. Regretfully, the Times report of 9th June, 1996 of ***E.D. & F. Mann*** in ***(Sugar) Ltd. v Haryanto*** to which Mr. Thorne referred me, is not as full as it should be. There is nothing to indicate there what steps, if any, were taken with a view to realising the arbitral award, nor are there full arguments as to the law which might assist this court. More significantly perhaps, and this is a distinction to be drawn between the ***Mann case*** and the instant case, is that in the ***Mann case*** there was a clear statement of the defendant having gone to great lengths to evade enforcement.

Turning to the other authorities which Mr. Thorne cited, many of them can in my view be distinguished either on the facts or on the law from the instant case. The position in these proceedings is that the claim is founded on a debt. That debt is the judgment obtained in 1987 and affirmed on appeal in 1993. Certain amounts of that judgment are yet to be quantified and I make specific reference to the question of interest payable on the original judgment. Not just the quantification of the interest itself but, it would also appear premature to have proceeded on the assumption that the base lending rate of interest of Republic Bank Ltd. would be

agreed by the parties. I understand the Court of Appeal's order to say that the rate should first be agreed by the parties and in default of agreement then it is to be determined by a Master. There is nothing before me to indicate any attempt to so agree or to show even so much as an inquiry or a request initiating the process by which the rate of interest might be determined. There is nothing to demonstrate any attempt, to agree to the rate of interest much less the quantification of the interest to be paid under the terms of the order made by the Court of Appeal.

Further, there was nothing before me to demonstrate that any attempt or effort had been made by the plaintiff to enforce, or realise, the original judgment. I do not accept that a plaintiff/judgment creditor can merely say that the defendant/judgment debtor has not paid a judgment debt without demonstrating that the debt has become due or that that at least some attempt has been made to have it realised.

Nor do I accept that a judgment creditor can merely sit back for 11 years and do nothing. Or do nothing that has been demonstrated, in any event, to the court. Unlike the ***Mann case,*** there is nothing before me in the instant case to demonstrate any attempt at evading payment of the judgment debt. Had there been any demonstration of these matters then there might well have been a different determination of this application.

In all of the circumstances I came to the conclusion based on what was before me that the statement of claim should be struck out as being an abuse of the process of the court. And I so ordered. I also ordered that the plaintiff pay the defendant's costs of the application certified fit for advocate attorney.

Mr. Thorne having applied for a stay of execution, I did not think it appropriate to order that the action be struck out as Mr. Gilkes suggested. I therefore granted a stay pending the filing of an appeal against my decision. Such appeal, however, was to be filed within 14 days of my order in default of which the action was to stand dismissed.

I also ordered that the summons of 12th March, 1998 be dismissed with no order as to costs.

Dated this 22nd day of September, 1998.

C.V.H.STOLLMEYER,
JUDGE.