

**IN THE COURT OF APPEAL OF THE SUPREME COURT OF
JUDICATURE**

APPELLATE JURISDICTION

G U Y A N A

CIVIL APPEAL NO. 79/2000

BETWEEN:

LEWIS BURNETTE

Appellant/Plaintiff

- and -

- 1. GUYANA MINING ENTERPRISE LTD.**
- 2. LINDEN MINING ENTERPRISE LTD.**

Respondents/Defendants

BEFORE:

Hon. Madam Justice Desiree P. Bernard	- Chancellor
Hon. Madam Justice Claudette M.C. Singh	- Justice of Appeal
Hon. Mr. Justice Ian Chang	- Justice of Appeal

Mr. A. Chase, SC with Ms. D. Younge for Appellant
Mr. R. Ramkarran, SC with Mr. K. Ramkarran for second-named
Respondents
No appearance for first-named Respondents

2002: November 5

2003: March

J U D G M E N T

BERNARD, C.:

The Appellant was employed with the Respondents as a drill operator, and was dismissed summarily on 14th February, 1990. He was given twelve (12) days' pay in lieu of notice, but continued to reside in the Respondents' house which he had occupied as part of his conditions of service. In April, 1992 he alleged that he was forcefully removed from the house and his personal belongings detained by the Respondents. He instituted proceedings against the Respondents for wrongful dismissal, detinue and damages. On

30th June, 2000 his claim was dismissed on the ground that the first-named Respondent Company was dissolved prior to the institution of the Appellant's proceedings, and the second-named Respondent Company was not a juristic person when the cause of action arose. The Appellant appealed to this Court.

The main ground of appeal is that the learned trial judge misdirected himself on the issue of the existence of the second-named Respondent as a public corporation. Counsel for the Appellant contended that the intent of Order 19 of 1992 made under the Public Corporations Act 1988 and under which the assets of the first-named Respondents were transferred to Berbice Mining Enterprises Ltd. when it went out of existence from July, 1992 was to shield its assets from overseas creditors and to make arrangements for discharge of liabilities to the said creditors. He drew the Court's attention to the Preamble of the Order which made reference to the fact that the first-named Respondents were no longer able to operate in an efficient and profitable manner, and that it was necessary to carry out a programme for the rehabilitation of the Linden operations of the first-named Respondents. He pointed out that Clause 5(4) of the Order provided that it did not apply to amounts due to any employee of Guymine under his contract of employment with the said company; further, the second-named Respondent Company was a live and subsisting corporation when the Appellant's writ was issued, and under Clause 7(6) it was liable for sums payable to any employee of Guymine in respect of accrued rights relating to any outstanding leave or leave salary, vacation passage and other similar matters of those in employment after the appointed day. Counsel submitted that this Clause showed a clear intent to protect the interests of those in the employ of Guymine on the appointed day, and there was no provision in the Order

depriving an employee of earned benefits if he was not in the actual employ of Guymine on the appointed day. He also referred to Clauses 4 and 9 which he contended were not intended to exclude or debar further or new litigation in respect of non-scheduled debts or lawful claims nor to obliterate inchoate claims which local persons had against Guymine. If this were so it may have the effect of rendering Order 19 unconstitutional and an infringement of Article 142 of the Constitution. In any event, the Respondents in their Defence admitted that the first-named Respondents had paid the Appellant the equivalent of 31½ days' vacation leave, and he was entitled to his refund of pension contribution with interest. Further, the second-named Respondents had taken over responsibility for the Appellant's belongings and his rights, and Counsel contended that the Appellant could have proceeded against either Bermine or Linmine.

Counsel for the Respondents, however, submitted that a company once dissolved is dead, and judgment cannot be obtained against it. He agreed with the learned trial judge's finding that Order 19 extinguished the rights of the Appellant by not providing for them as there is nothing in the Order concerning rights of employees dismissed prior to the appointed day. He contended that when the Appellant's cause of action arose the second-named Respondent company was not in existence. He made reference to "Craies on Statute Law", 7th Edn., and the case of Lazard Bros. & Co. v. Midland Bank Ltd. (1932) ALL ER, Reprint, 571 to which Counsel for the Appellant also referred but distinguished; also Walsh v. Secretary of State for India (1863) 10 HLC, 367. He submitted, further, that if this Court reads into Order 19 that the Appellant's rights were preserved this would collide with corporate liability, and referred to the case of Morris v. Harris (1926) ALL ER Reprint, 15.

In determining whether the Appellant's action can be maintained against the Respondents jointly or severally one has to ascertain the import of Order 4 No. 19 of 1992 made under the Public Corporation Act 1988. The Preamble to the Order indicates that the Linden Bauxite Mines of the first-named Respondent company were no longer being operated efficiently and profitably and needed to be rehabilitated by divestment in order to discharge obligations to its creditors. It was intended that the operations at Berbice be severed from those at Linden, and in this regard all the property (including land and buildings) of the first-named company in Berbice was transferred to the Berbice Mining Enterprises Ltd. and all other property not specifically mentioned in the order was transferred to the second-named Respondent company.

Clause 5 of the Order provided for the adjudication of liabilities of Guymine by an adjudicating authority, but Clause 5(4) stipulated that the said clause did not apply to amounts due to any employee of Guymine under his contract of employment. Clause 7 provided for the employees of Guymine continuing in employment if they chose, and for Bermine or Linmine to pay severance pay to any employee of Guymine whose employment was terminated from the day immediately preceding the appointed day. Clause 7(6) stipulated that the liability for payment of pension benefits to employees of Guymine whose employment was terminated by the appointed day and who were allocated to Bermine or Linmine, and for the liability for sums payable to any such employee in respect of accrued rights relating to any outstanding leave or leave salary was transferred to Bermine or Linmine.

All of these clauses of Order 19 seem to relate to persons who were in the employment of Guymine on the appointed day which was the date on

which the order came into operation, this being 19th June, 1992. There was no express provision made for former employees who may have claims against Guymine. Clause 9(1) of the Order provides for actions and proceedings commenced before the appointed day in any court by or against Guymine and pending on that day in any court to be continued by or against Bermine or Linmine wherever appropriate, and for such actions or proceedings to be amended accordingly (emphasis mine).

It seems therefore that only actions or proceedings commenced against Guymine before the appointed day and pending in the courts may be continued against Linmine or Bermine with appropriate amendment of the parties. On the appointed day the Appellant had filed no action or proceeding against Guymine, and had none pending which could have been continued against Linmine or Bermine.

Counsel for the Appellants has sought to persuade this Court that the whole tenor of Order 19 was to protect the assets of Guymine from overseas creditors and to make arrangements for discharge of liabilities to the said creditors, and drew attention to the Preamble. This is accepted, but within the Order were clauses relating to the transfer of Guymine's property and arrangements for discharge of liabilities against it both by employees and creditors. In relation to employees provision seems to have been confined to those in employment with Guymine on the appointed day.

Counsel's reference to Clause 5(4) and his contention that it did not apply to amounts due to any employee of Guymine under his contract of employment must be read as a whole in relation to Clause 5 itself. This clause provided for the Minister appointing within one week of the appointed day a person called the "adjudicating authority" and who is or was a judge of the High Court to determine in accordance with the provisions of

the Order, the sums of money due from Guymine to its creditors. Clause 5(4) sought to exempt from this adjudicating authority amounts due to employees under their contracts of employment. This authority's mandate was only to determine the sums of money due to creditors. The jurisdiction of a court of law to determine the rights of employees under their contracts of employment cannot be ousted by an Order establishing an adjudicating authority. Clause 5(4) also exempted Clause 6 which provided for the sums due from Guymine or Bidco to be paid and discharged by Bermine, and did not relate to sums due to employees of Guymine.

In considering Counsel for the Appellant's contention that there was no provision in the Order depriving an employee of earned benefits if he was not in the actual employ of Guymine on the appointed day, and that the Order was not intended to exclude or debar further or new litigation in respect of non-scheduled debts or lawful claims, I make reference to "Craies on Statute Law", 7th Edn., Chap. 7, page 109 "Construction by Implication" where it is stated:

"If the meaning of a statute is not plain, it is permissible in certain cases to have recourse to a construction by implication, and to draw inferences or supply obvious omissions. But the general rule is "not to import into statutes words which are not to be found there", and there are particular purposes for which express language is absolutely indispensable. Words plainly should not be added by implication into the language of a statute unless it is necessary to do so to give the paragraph sense and meaning in its context."

At page 64 of the said text it is postulated that "the cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense".

I do not find that the words of **Order 19** are ambiguous. In my view they are plain, and there is no need to resort to implications or inferences. There is no provision in the Order for dealing with claims of employees who were not in actual employment with Guymine on the appointed day. **Clause 9** provided for proceedings commenced and pending before the appointed day, and the Appellant had not commenced any proceedings against Guymine on that day. His action was filed on 16th November, 1992, five months after the appointed day which was 19th June, 1992. On 16th November, 1992 Guymine had ceased to exist by virtue of **Clause 3** which stipulated that it should stand dissolved on the expiry of thirty days from the appointed day, i.e. from 18th July, 1992.

Counsel for the Respondents made reference to the case of **Lazard Bros. & Co. v. Midland Bank Ltd.** (supra) where it was held that a judgment must be set aside and declared a nullity by the court if it appears to the court that the person named as the judgment debtor was at all material times at the date of writ and subsequently non-existent. In the course of his judgment Lord Wright expressed the view that if the defendants cannot be before the court because there is in law no such person, the court must refuse to treat the proceedings as other than a nullity. This case concerned a judgment obtained by an English creditor against a Russian bank which was later nationalised by the Russian Government, and changed its identity. Although the facts of that case are different from those of the instant appeal the principle is the same.

At this juncture, one has to look at the original Defence filed on behalf of the Defendants pursuant to an order of court dated 15th March, 1993 in which the first-named Defendants admitted having in their possession articles belonging to the Plaintiff (Appellant) which were removed from the

Defendants' house which he occupied prior to his dismissal, and also stated that they had paid the Plaintiff (Appellant) the equivalent of 31½ days' vacation leave, and offered to refund his pension contribution with interest. However, on 30th June, 1999 pursuant to an order of court dated 3rd May, 1999 an amended Defence was filed by the second-named Defendants in which they denied that the Plaintiff (Appellant) was ever in their employ, and contended that the action was bad in law. There was no reference at all about the first-named Defendant Company, and the second-named Defendants were clearly disassociating themselves from the first-named Defendant Company which had gone out of existence even before the filing of the original Defence. It follows from this, therefore, that if Guymine was dissolved on 18th July, 1992 no Defence could have been filed on its behalf in 1993. The admissions made in that Defence could only have been made if Linmine had taken over the liabilities of Guymine. Under Schedule 1 of Order 19 all lands and buildings of Guymine in the County of Berbice were transferred to Bermine, and under Clause 8 all property of Guymine not included in the Schedules were transferred to Linmine from the appointed day.

The Appellant testified that at the time of his dismissal he was employed at Kwakwani, Berbice, and was provided with living accommodation there. Even though the Defence of the first-named Respondents had no validity as the company had been dissolved since 1992 there was an admission by the second-named Respondent that they had the Appellant's property in their possession even though they sought to renege from this in the Amended Defence.

In the circumstances it is incumbent on the second-named Respondents to hand over to the Appellant whatever personal property is in

their possession, and also to refund to him his pension contributions with interest. Fairness dictates that this be done. The Appellant ought not to lose his personal property and pension contributions because of the fictional demise of a company with which he was employed and the reluctance of its successor company to assume responsibility by hiding behind the fact that it was not in existence when the Appellant's belongings were stored for safe-keeping and the offer to pay the pension benefits was made. I urge strongly that these outstanding issues be resolved between the parties.

For all of the reasons discussed earlier in the judgment the appeal is dismissed and the judgment of the learned trial judge affirmed.

Each party will bear its own costs.

.....*D. P. Bernard*.....
Desiree P. Bernard
Chancellor.

Dated the 25th day of March, 2003.