

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

S208 of 1988

BETWEEN

SUNIL GOPAUL

Plaintiff

AND

GEEWAN POORAN

AND

HOME MAKERS LIMITED

Defendants

AND BETWEEN

SUNIL GOPAUL

Plaintiff/
Judgment Creditor

AND

CHANDAI GOPAUL AND INDIRA POORAN

(as Legal Personal Representatives of the Estate of Geewan Pooran)

AND

HOME MAKERS LIMITED

Defendants/Judgment Debtors

(By Original Writ and by Order to carry on proceedings dated the 13th October, 1995)

Before: Master Margaret Y Mohammed

Appearances:

Ms S Allahar for the Plaintiff/ Judgment Creditor

Mr W Seenath for the Defendants/Judgment Debtors

DECISION

1. On April 28, 2011 the plaintiff's attorney filed an ex parte application ("the instant application") under Order 48 Rule 1 of the Rules of the Supreme Court 1975 ("the RSC") to have Chandai Gopaul ("Chandai") and Indira Gopaul ("Indira") attend court to be orally examined to answer questions on any debts owing to them and other property or means they have to satisfy the judgment debt in this action. I granted this order ex parte on May 4, 2011 and fixed the hearing for June 30, 2011. At that hearing attorney for the defendants raised certain issues with attorney for the plaintiff and as a consequence since attorney for the plaintiff needed to obtain instructions from her client, the instant application was adjourned to July 11, 2011 to proceed.
2. On July 11, 2011 before the oral examination commenced, attorney for the plaintiff indicated that she would be examining Chandai and Indira on their personal assets and the assets of the estate. In support of this position attorney for the plaintiff referred the court to the authority of **Euphemia Bonair v Shamshudeed Charles**¹. Attorney for the defendant objected to questions being posed on the personal assets of Chandai and Indira since they were substituted in their capacity as the legal personal representatives of the estate of Geewan Pooran. I agreed with attorney for the defendant and I dismissed the oral application by the plaintiff/ judgment creditors to examine Chandai and Indira ("the defendants") on their personal assets and the oral examination of Indira proceeded. The instant application was adjourned to July 14, 2011 to continue.
3. On July 14, 2011 the attorney for the plaintiff indicated that she would not be proceeding with the examination of the Chandai and Indira since she intends to appeal my ruling. In order to appreciate the reasons for my ruling it is necessary that I briefly set out the factual background of the application.

¹ 1990 1 TTLR page 365

4. This action was commenced under the RSC on February 10, 1988 by the plaintiff whose action against Geewan Pooran (“Geewan”) for damages for severe injuries sustained in an accident which occurred on March 31, 1984.
5. Unfortunately early in the proceedings, Geewan died and on December 28, 1989 and on October 13, 1995 Master Morris-Alleyne ordered that Chandai and Indira, who were the legal personal representatives of the estate of Geewan, be substituted in place of Geewan. The action continued with Chandai and Indira representing the interest of the estate of Geewan.
6. On June 21, 2000 at the trial of this action, the Honourable Mr Justice Kangaloo J (as he then was) ordered the defendants to pay the plaintiff damages to be assessed by a Master in Chambers on a date to be fixed by the Registrar.
7. On March 18, 2010 Master Paray - Durity quantified the plaintiff’s damages and ordered that the defendants pay following:
 - (a) Special damages in the sum of \$57,678.00 TT and the sum of \$44,403.63 Canadian.
 - (b) General damages in the sum of \$400,000 TT.
 - (c) Diminution of Earning power in the sum of \$150,000 TT with no interest.
 - (d) Loss of opportunity in the sum of \$50,000 TT with no interest.
 - (e) Future medication in the sum of \$95,000 Canadian with no interest.

The sum of \$200,000 TT which was deposited into court on December 6, 2004 was also paid out to the plaintiff together with accrued interest. This sum was withdrawn on May 25, 2010 and applied towards the judgment debt.

8. On May 20, 2010 the Master made the additional order:
 - (a) Interest on Special Damages at the rate of 3 % per annum from March 31, 1984 to September 28, 2000 and thereafter at the rate of 4% per annum for 6 years.
 - (b) Interest on General Damages at the rate of 6 % per annum from February 10, 1988 to September 28, 2000 and thereafter at the rate of 9% per annum for 6 years.
 - (c) That the costs incurred in having to deal with the question of interest to be paid by the defendants to the plaintiff certified fit to be taxed in default of agreement.

9. On December 8, 2010 and March 2, 2011 the plaintiff's costs were taxed and the sums of \$13,178.75 and \$215,995.00 respectively were allowed by the Assistant Registrar.

10. The issue which I had to determine was whether a judgment obtained against a person in his capacity as a legal personal representative of an estate can be enforced against him personally.

11. Section 6 of the Wills and Probate Act Chapter 9:03 bestows on an executor or administrator the rights, actions and powers of the estate of the deceased and the responsibility for the same actions, suits and liabilities in respect of the estate of the deceased. Accordingly, under Order 15 rule 7 RSC where any party against whom proceedings were instituted has died but the cause of action has survived, the action continues against the estate of the deceased. The court has the power at any stage of the proceedings to make an order to substitute the representative of the estate.

12. In this regard, I dismissed the oral application for the following reasons:
 - (a) The order of Master Morris-Allyene on October 13, 1995 is clear. Chandai and Indira were substituted in their capacity as the duly appointed legal personal representatives of the estate of Geewan after having obtained a grant of probate.

The orders made in this matter on liability, quantum of damages and costs are binding on the estate of Geewan.

- (b) If it was the intention of the plaintiff that Chandai and Indira were to be personally liable then he should have also joined them as a party to the action in their personal capacity.
- (c) The case of **Bonair** can be distinguished from the instant facts on the basis that there is no reference in that case of the capacity of which the person was substituted for the deceased.
- (d) Chandai and Indira as the duly appointed legal personal representatives of the estate of Geewan were aware of this action since 1995 and by extension of the liability of the estate. They ought to be in a position to indicate how the estate of Geewan would satisfy the judgments obtained in this action.

Dated the 22nd day of July, 2011

Margaret Y Mohammed
Master (Ag.)