

**BAKER HOMEGROWN POULTRY FARM, INC.**, represented by its President and Director, CHRISTIAN BAKER, CHRISTIAN BAKER, and AMELIA BAKER ,  
Petitioners, v. **HER HONOUR C. AIMESA REEVES**, Judge, Debt Court, and **CHASE MANHATTAN BANK, N.A.**, represented by its Vice President and General Manager, KIRBY BRODERICK, Respondents.

APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS DENYING THE PETITION FOR A WRIT OF CERTIORARI.

Heard: June 29, 1989. Decided: July 14, 1989.

- 1 . Ordinary and necessary expenses incurred during the taxable year, in carrying on any activity for gain or profit, are allowable deductions.
2. Where the creditor has written off the whole or any portion of the debt and received tax deductions from the Ministry of Finance, to the extent of said tax deductions, the creditor may not recover against the debtor in a court of law.
3. A petitioner for the writ of certiorari shall pay all the accrued costs as condition for issuing the writ and may be required to give a bond, conditioned on paying the respondent such damages as he may sustain if the writ is dismissed.
4. Certiorari is a special proceeding to review and correct decisions of officials, boards or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court.
5. An appeal from the ruling of a Chambers Justice serves as a supersedeas to the enforcement of the ruling from which said appeal is taken.
6. The authority to enforce a judgment of the Supreme Court is not left to the discretionary right of any judge or justice, as the exercise of such discretion would destroy the very essence, intent and purpose of an appeal.

In June 1984, Chase Manhattan Bank, N.A. filed an action of debt against petitioners for an amount of \$1,067,141.95. Prior to the enforcement of the judgment for the amount sued for, it was discovered that a total of \$840,736.22 had been written off by Co-respondent Chase Manhattan Bank. Predicated upon this write-off, the petitioners moved the trial court to stay execution of and to grant relief from judgment. In its resistance to the motion, the co-respondent bank did not deny the write-off. Notwithstanding, the court denied the motion and ordered the enforcement of the judgment. The petitioners registered their exceptions and petitioned the Chambers Justice for a writ of certiorari. The alternative writ having been issued and served; the petition was heard and denied. An appeal from this denial was taken to the Bench *en bane*.

While the appeal was pending before the Bench, the trial court proceeded to enforce its judgment. The petitioners therefore filed a bill of information to the effect of the pendency of the appeal and the enforcement of the ruling appealed from. While no action had yet been taken on the bill of information, informants were obliged to make a submission. The submission was heard and denied by the Chambers Justice, whereby an appeal was announced to the Supreme Court.

At the call of the case for hearing of the various appeals, the ruling of the Chambers Justice, denying the issuance of the peremptory writ and quashing the alternative writ of certiorari, was affirmed on the ground that the petitioner neglected to pay the accrued costs as mandatorily required by law as a condition for issuing the peremptory writ. The bill of information and the submission were consolidated; and in ruling thereon, the Supreme Court held that the trial judge erred in denying the petitioners' motion to stay the enforcement of the court's judgment in light of the write-off which had not been denied and the pendency of the appeal. The Court opined that the enforcement of a judgment or ruling is not a discretionary exercise of the authority of a judge or justice, and that the announcement of a appeal by a defendant serves as a supersedeas and stay to the execution and/or enforcement of the judgment from which said appeal had been taken. Petition for writ of certiorari denied, information and submission granted.

*Philip A. Z Banks, III*, and *Joseph Findley* appeared for the petitioners/appellants. H. Varney G. Sherman appeared for the respondents/appellees.

MR. AD HOC JUSTICE PEARSON delivered the opinion of the Court.

These proceedings grew out of the filing of an action of debt on June 21, 1984 by Co-respondent Chase Manhattan Bank against the petitioners designating them as "1st defendant, 2' defendant and 3' defendant respectively. The petitioners appeared and filed an answer confessing judgment. According to petitioners, they acted "in utmost good faith, submitted to the jurisdiction of the court without contesting the claim based upon a deliberate misrepresentation that Co-respondent/Co-appellee Chase Manhattan Bank would not seek enforcement and that the only desire of the co-respondent was to have an affiliated company to take over the assets of the 1" defendant. Corespondent Chase Manhattan Bank does not deny that it had written off \$840,736.22 of the debt and "had requested and obtained from the Government of Liberia tax credits to offset the full value of the write-off..."

Thereupon, the Debt Court of Montserrado County entered judgment against petitioners for \$1,067,141.95, the sum sued for. When the debt court proceeded to enforce its judgment, petitioners came to know of the write-off of the \$840.735.22 and on August 25, 1987, filed a motion to stay execution of and to grant relief from judgment.

In its resistance to the motion, Co-Respondent Chase Manhattan Bank did not deny but admitted the write-off of \$840,735.22.

The debt court heard arguments and denied the motion. Petitioners excepted to the said ruling and removed the case to this Honourable Court by a petition for certiorari. An alternative writ was ordered issued and served on the respondents who filed their returns. The petition was heard and denied. Petitioners excepted thereto and announced appeal to the Bench *en banc*. Even so, the co-respondent judge of the debt court proceeded to enforce the judgment. This led petitioners to file a bill of information before the Justice in Chambers. The records show nonetheless that no action was taken on the information. Hence, petitioners found themselves obliged to file a submission. The submission was heard by Mr. Justice Belleh who denied it.

When the case was called upon for hearing before us, the parties agreed that both the appeal from Mr. Justice Junius's ruling denying the petition for certiorari and quashing the alternative writ and the appeal from the ruling on the submission by Mr. Justice Belleh be consolidated, heard and determined together.

Before proceeding with the issue raised in the petition for certiorari and respondent's returns thereto, this Honourable Court finds it necessary to refer to the law controlling what is allowable as deductions. Under Chapter 11 of the Revenue and Finance Law, "ordinary and necessary expenses incurred during the taxable year in carrying on any activity for gain or profit..." are allowable deductions. The Revenue and Finance Law, Rev. Code 36: 11.31, provides:

*"Deductions related to income producing activities.*

Except as otherwise provided, there shall be allowed as deductions, all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any activity for gain or profit (including without limitation any business, profession, vocation or holding of property for the production of income or for investment). Such expenses shall include, without limitation, the following

- (a) losses sustained during the taxable year not compensated for by insurance or otherwise;
- (b) bad debts, actually sustained and charged off during the taxable year, or in lieu thereof and subject to such regulations as may be prescribed, an allowance for a reasonable addition to a reserve for bad debts;
- (c) reasonable allowances for depreciation and amortization of property used, or other capitalized costs incurred, in carrying on such activity, such allowance to be computed under the straight-line method except as may otherwise be permitted by regulations;
- (d) interest on indebtedness; and

(e) taxes."

It is clear from the above quotation that "charge offs" are not "merely for internal auditing purposes and its consequent tax credits do have some effect on bad debts, actually sustained and charged off during the taxable year in lieu thereof..." In this respect, the debt court judge erred in denying the motion without giving effect to the write off of \$840,735.22; and we hold that the ruling is reversible and should be reversed. Now, to the certiorari.

In the Chambers Justice's ruling under review, Mr. Justice Junius ruled as follows:

"That the peremptory writ of certiorari is denied and the alternative writ of certiorari quashed for the following reasons: (1) that petitioners did not comply with the statutory requirement that the payment of accrued costs is a requisite for the issuance of the writ; (2) that a motion for relief from judgment does not suspend the operation of a final judgment to prevent the issuing and execution of final process, since final judgment had been rendered in the debt court, a regular appeal, not certiorari, is the proper relief to be sought; (3) that in a debt case in which judgment has been rendered based upon a trial had and confession made by petitioners in open court, under INA: Decree Nos. 6 and 12 and also *Farhat v. Reeves*, 34 LLR 24 (1986), execution and enforcement of the judgment debt should not have been stayed upon the petition for the writ of certiorari." He held that the accrued costs had not been paid before the issuance of the alternative writ and secondly, certiorari would not lie where final judgment has been entered.

The Civil Procedure Law provides that "the petitioner shall pay all the accrued costs and may be required to give a bond... conditioned on paying the respondent such damages as he may sustain if the writ is dismissed." Civil Procedure Law, Rev. Code 1: 16.23(3). The current practice is that such payment is made before the issuance of the alternative writ and there are numerous reported cases on this point. Our holding is that the Justice did not err in his ruling on that point.

The ruling of the Justice that certiorari would not lie to stay the execution of a final judgment is also sustained by this Honourable Court. "Certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court." Civil Procedure Law, Rev. Code 1: 16.21(1). This Court therefore affirms the ruling of Mr. Justice Junius denying the petition for certiorari and quashing the alternative writ, as the debt court did have jurisdiction to hear and determine the action of debt; and she heard and determined same by rendering final judgment. Under such circumstances the writ will seldom issue. This is what the law says on the matter:

"If a tribunal possesses jurisdiction to hear and determine a case, the writ will seldom issue until the proceedings has terminated, and then only if it appears that the tribunal has entered an illegal judgment or order." *Dennis v. Hamidi and Tecquah*, 13 LLR 34 (1957).

We have also reviewed the Submission made by petitioners, the resistance thereto by the respondents, and Mr. Justice Belleh's ruling thereon. We have not been able to observe any conduct or acts on the part of Counsellors Joseph Findley and Philip A. Z. Banks, III, that would warrant their being fined, not to mention \$500.00 each.

We also find that the contention of petitioners that an appeal from the ruling of a Justice in Chambers serves as a supersedeas to the enforcement of the judgment is also in order. This Court has held that an appeal from a Justice in Chambers serves as a supersedeas to the enforcement of the ruling from which said appeal is taken. The law states thus:

"An appeal to the full court from a ruling of the Justice presiding in Chambers in contempt proceedings operates as a supersedeas and stay of execution and enforcement of a penalty under the ruling." *In re James Doe Gibson, Counsellor-At-Law*, 16 LLR 202 (1965).

The Court also said in that case:

"We desire to remark that the statute which prohibits the enforcement of a ruling, or judgment of a court from which an appeal is announced and taken cannot but *be* general in character and makes no exceptions under which a rule vests in any court from which an appeal can be taken. If the authority to enforce a ruling or judgment were held to be a discretionary right of any judge or justice, this would be an abuse that would destroy the very essence, intent and purpose of an appeal." *Idem.* text pp. 204-205.

Besides, the Civil Procedure Law, Rev. Code 1:51.20, provides, as follows:

"On announcement of an appeal by a defendant, no execution shall issue on a judgment against him nor shall any proceedings be taken for its enforcement until final judgment is rendered, except that on an appeal from an order dissolving an order granting a preliminary injunction, such preliminary injunction shall be in force pending decision on the appeal."

This Court holds therefore that Co-respondent Chase Manhattan Bank having charged off during the taxable years from 1981 to 1983, \$840,735.22, it cannot now recover said amount.

Looking through the files, the Court observes that in respect of petitioners' contention, only \$43,657.14 was the balance due Co-respondent Chase Manhattan Bank after write-off of the \$840,735.22.

In view of the foregoing, we are of the opinion that the ruling of Mr. Justice Junius denying the petition is hereby affirmed. That Co-respondent Chase Manhattan Bank having received tax benefits in lieu of the \$840,735.22, for the balance \$43,657.14 due on account, petitioners

must be held and are hereby adjudged liable to Co-respondent/appellee Chase Manhattan Bank for the said \$43,657.14. Costs are disallowed. And it is hereby so ordered.

*Petition denied.*