

BANK OF CREDIT & COMMERCE INTERNATIONAL, through its General manager, Appellant, v. **FATACO BUSINESS HOUSE**, through the Chairman of its Board of Directors, Appellee.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: December 7, 1989. Decided: January 9, 1990.

1. When a case is stricken from the docket of a court, the matter abates and the court loses jurisdiction over that matter, except where a new action is instituted and, of course, a new writ of summons is issued so as to re-institute that case on the court's docket.

The appellee filed an action of debt against the appellant to recover the sum of \$57,623.50 in the Debt Court of Montserrat County. When the case was called for the disposition of law issues, appellee moved the court to withdraw its complaint, reserving the right to amend and refile. The trial judge granted the appellee's motion/submission. The appellee later refiled its case in the debt court and the appellant filed an amended answer along with a motion to strike and dismiss the amended complaint on grounds that the previous writ of summons had been stricken off the records of the court and that since there was no writ, there was no complaint to amend. The trial judge denied the motion to dismiss and appellant excepted and announced an appeal to the Supreme Court.

On appeal, the Supreme Court held that the trial judge erred in denying appellant's motion to dismiss the amended complaint. The judgment of the trial court was *reversed* and the complaint *dismissed* without prejudice.

Moses Kron Yangbe and *Snonsio E. Nigba* appeared for the appellant. *Elijah Garnett* appeared for the appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court

The facts of this case are that on April 27, 1987, Fataco Business House, appellee, filed an action of debt against the Bank of Credit and Commerce International (BCCI), appellant, to recover the sum of \$57, 623.50. This amount represented the proceeds of several checks allegedly forged between the years 1983 to 1985 by one Samuel K. Ameyaw, appellee's former employee, against appellee's account kept with appellant. The appellant filed an answer and the appellee filed a reply. Pleadings rested thereby.

When the case was called for the disposition of law issues in the May Term of 1987, appellee, plaintiff in the debt court, requested permission to withdraw the case reserving the right to amend and refile. Although appellant, interposed no objection, it however brought to the attention of the court that appellee had first sued appellant in the Civil Law Court and then in the debt court. The trial judge, C. Aimesa Reeves, granted the request without stating whether she did so with or without prejudice.

During the August Term of 1987, appellee refiled the case in the debt court with the same judge, Her Honour C. Aimesa Reeves, presiding. Appellant filed an amended answer along with a motion to strike and dismiss the amended complaint on the ground that the previous writ of summons and the entire case had been stricken off the docket of the Debt Court, and since there was no writ before the Debt Court, there could be no complaint to amend.

Despite the fact that Judge Reeves commenced the trial of this case, it was Judge Francis Morris, successor to Judge Reeves, who completed it, of course, with the approval of both parties of this unusual procedure of two successive judges hearing the evidence in one case. During the argument before us the parties raised several issues.

As mentioned earlier, when this case was called for hearing on July 9, 1987 in the debt court, the appellee, moved that court for permission to withdraw and amend its complaint. The request was granted, but because we deem the ruling on the aspect of the case very important, we hereunder quote same: "... On July 21, 1987 plaintiff filed an amended complaint and defendant in this motion prayed for the dismissal of the said amended complaint because defendant contend that there was no case before the said court (writ of summons) to which plaintiff could file an amended complaint.

A careful perusal of the court's docket shows that this case (number 443) is still on the court's docket. We also note that plaintiffs amended complaint was filed within the same term of its withdrawal of the original complaint. If defendant wanted to take advantage of the court's ruling striking of the case from the docket the defendant should have ensured that the case was in fact stricken off the records. Having failed to do that, and with the case remaining on the docket of the court, defendant is estopped from saying that plaintiff could not file an amended complaint to the proceedings. For the fact is that the case is still on the docket and once it remains on the docket filing another action would have led to duplication of the action...."

On July 31, 1987, appellant filed a motion to strike and dismiss appellee's amended complaint on several grounds, amongst which are the following:

"3. The case was called on July 9, 1987, for disposition of law issues, which is the commencement of trial. Representations were announced and suddenly counsel for the respondent, in open court, withdrew his complaint, thereby curtailing and unreasonably delaying trial without any justifiable reason, contrary to section 9.10 of the Civil Procedure Law. Movant therefore submits that the withdrawal which entails the undue and unreasonable delay of the trial of the action, constitutes an abatement of the proceedings and therefore respondent cannot take advantage of the provisions of section 9.10 that permits amendments only if such amendment will not unreasonably delay trial.

4. The movant respectfully requests this Honourable court to take judicial notice of its ruling on the plaintiff's withdrawal of the complaint. The court's order was clear and unambiguous and was to the effect that the plaintiff's withdrawal was granted and confirmed. Plaintiff was ruled to pay the accrued costs and the clerk of the court was ordered to strike the case from the docket. The clerk of court was also ordered to prepare a bill of costs to be handed over to the sheriff for service on and payment by the plaintiff.

Defendant submits that when a case is stricken off the docket of the Court, the matter abates and the Court has no jurisdiction over the matter again except a completely new action is instituted and a new writ of summons issued, served and returns made. In the instant case, the entire case obviously including the writ of summons was ordered to be stricken off the docket. The original writ of summons therefore became a nullity and plaintiff cannot file an amended complaint when there is no valid writ of summons issued as to re-instate the case on the court's docket.

"In resisting the motion, appellee prayed for its denial on the following grounds:

"3. That further to the above, plaintiff/respondent says that when it withdrew the action on July 9, 1987, the defendant/movant on the records of the court did not interpose any objection whatsoever on the withdrawal. Also, plaintiff/respondent says that withdrawal of an action with reservation to re-file does not abate the entire action as erroneously asserted in count 3 of the motion.

4. That further to counts 1 and 5 of the motion, respondent concedes that the judge mistakenly struck the case off the docket without giving any reasons whatsoever.

However, plaintiff/respondent says that once the defendant/ movant filed returns or an amended answer to the amended complaint, it is estopped from challenging the process. The proper procedure would have been for the defendant to file a motion to dismiss the entire action without joining issues."

As we see it, the primary question presented for our determination is whether the judge erred in denying the motion to dismiss. Our answer is in the affirmative, particularly where, as here, the judge had ordered that the case be stricken off the docket and it was carried out. In other words, the judge was inconsistent in that while her express orders to have the case stricken from the docket was implemented, she maintained that the same case was still on the docket.

According to the practice hoary with age in this jurisdiction, when a case is stricken from the docket of a court as was in the instant case, the matter abates and the court loses jurisdiction over that matter except where a new action is instituted and, of course, a new writ of summons is issued so as to reinstate that case on court's docket.

We need not decide the other issues raised by the parties, in view of our holding that the trial judge erred in denying appellant's motion to dismiss the amended complaint.

Wherefore, in view of the foregoing, the final judgment of the trial court is hereby reversed and the complaint dismissed without prejudice. The Clerk of this Court is ordered to send a mandate to the court below informing it of this judgment. Costs are disallowed. And it is so ordered.

Judgment reversed; complaint dismissed without prejudice.