

CHASE MANHATTAN BANK, N.A., represented by its General Manager, **KIRBY BRODERICK**, Petitioner, *v.* **BAKER HOMEGROWN POULTRY FARM, INC.** represented by its President and Director, **CHRISTIAN BAKER**, Respondent.

PETITION FOR RE-ARGUMENT.

Heard: December 11, 1995. Decided: January 26, 1996.

1. The opinion of each Justice reflects his theory of what the law and circumstances of the case demand and it does not have to be expressed in the language or diction of a party litigant.
2. The purpose of re-argument is to call the Court's attention to points or principle of law and some issues of facts previously raised and argued before the Court and which would have had a controlling effect but were inadvertently omitted or overlooked in the opinion; it is not to challenge the legal soundness of the Court's opinion
3. The Supreme Court will review and pass only on those facts and points of law which are vital to the issue at bar.

From the denial of a motion to stay execution and grant relief from judgment on grounds of newly discovered evidence, respondent petitioned the Chambers Justice for a writ of certiorari. The Justice in Chambers denied the petition from which respondent appealed. Upon hearing of the appeal, the Supreme Court upheld the ruling of the Chambers Justice. It is from this ruling that petitioner petitioned the Court for re-argument alleging, among other issues, that palpable mistakes were made and some points of law and important facts were inadvertently overlooked and not discussed in the Court's opinion.

The Supreme Court upon review of the records held that it did consider and pass upon all the issues raised in the petition. The Court stated that it has a variety of means to express its concerns in a given case, and the opinion of each Justice reflects his theory of what the law and circumstances of the case demand, and that the Court's opinion does not have to be expressed in the language or diction of a party litigant to settle the issue before it. Holding that it did not inadvertently omit or overlook any point or principle of law or issue of fact previously raised and argued before it, which would have had a controlling effect on the case, the Supreme Court *denied* and *dismissed* the petition.

No one appeared for petitioner. *Joseph P. H. Findley* appeared for respondent.

MR. JUSTICE BADIO delivered the opinion of the Court.

The Chase Manhattan Bank of Monrovia closed its operations in Liberia many years ago. However, before winding up its banking activities, one Kirby Broderick, the Vice President and General Manager of the bank in Monrovia, Liberia, instituted an action of debt against the Baker Homegrown Poultry Farms Inc. for an aggregate debt of \$1,067,141.95. The case was tried by Judge Francis N. Pupo on July 10, 1984 and the defendant adjudged liable. On February 4, 1988, Judge C. Aimesa Reeves denied appellant's motion to stay execution and grant relief from judgment because of newly discovered evidence.

On March 23, 1988 the Baker Homegrown Poultry Farms Inc., appellant, petitioned the Chambers Justice for a writ of certiorari. On July 21, 1988, Justice J. D. Baryogar Junius, then presiding in Chambers, denied the peremptory writ of certiorari and quashed the alternative writ. From this ruling, appellant announced an appeal to the Bench *en banc*.

On July 14, 1989, during its March 1989 term, this Court heard the appeal taken from the Chambers Justice's ruling, and on July 18, 1989 confirmed the ruling. The petitioner/appellee, alleging palpable mistakes, filed a motion for re-argument. It is this motion that is now before us.

Many assignments were issued by the Clerk of this Court and served on Christopher Felite, Chase Manhattan Bank International Division, Chase Metro Tech Center, 7th Floor Brooklyn, N. Y. 11245, U.S.A., through our Foreign Affairs Ministry in Monrovia. The records of this Court confirmed that these assignments were served during the October 1994 Term through the March and October 1995 Terms, but that the petitioner refused to honour them. The petition for re-argument, filed by Chase Manhattan Bank, was therefore called for hearing on December 11, 1995. The petitioner's reasons for requesting for re-argument are as follows:

“1. That palpable mistakes were made and that some points of law, also important facts inadvertently overlooked and not discussed in the Court's opinion; particularly that this court should have dismissed the writ of certiorari and avoided discussing the merits of the case.

2. That the opinion of the Court inadvertently omitted passing on whether or not submission is a process from which an appeal will lie before the Full Bench, and if so, by what statute or rule of Court.

3. That the Court inadvertently went into the merits of the case.

4. That the Court inadvertently failed to pass upon the issues raised, such as whether or not the writing-off of an overdue indebtedness as bad debts, discharged the debtor from obligation to pay the debt.

5. That “assuming *arguendo* that the charged off could be deducted from the total amount owed if there was need for court to do so, that would have been the deduction of \$840,735.22 from \$1,067,141.95 which will leave a balance of \$226,406.73 and not \$43,657.14.”

These points have made it necessary that we revert to the opinion of Ad Hoc Justice, Mr. Justice Pearson, which the movant contends inadvertently overlooked some points of law and important facts. The question to be determined firstly, is whether or not this court dismissed the writ of certiorari. Ad Hoc Justice Pearson declared that “the Court therefore affirms and confirms the ruling of Justice Junius denying the petition for certiorari and quashing the alternative writ..... that certiorari would not lie to the stay execution of a final judgment is also sustained by this Court”. The issue of the dismissal of the certiorari was therefore discussed and not overlooked.

It should be noted that this Court has a variety of means to express its concerns in a given case which demands special judicial review and determination. The opinion of each Justice reflects his theory of what the law and circumstances of the case demand and it does not have to be expressed in the language or diction of a party litigant to settle the issue. The question of whether or not a submission before a Justice in Chambers is a process which allows appeal to this Bench *en banc* was discussed briefly in that opinion. In fact, the opinion considered the appeal from the submission necessary and relevant to determine the rights of the counsellors for the petitioner/appellant. Be that as it may, that point of objection is no ground for re-argument and it is therefore dismissed.

There were factual and legal issues raised in the petitioner/appellee’s amended brief regarding its accounting exercise which in effect recorded a charge off by the tax division of the Finance Ministry during the Bank’s taxable years from 1981-1983, totaling \$840,735.22. That issue was raised and argued and the Court correctly and legally passed upon it.

The Chase Manhattan Bank, petitioner/appellee herein, asserted in count 3 of its petition for re-argument that this Court’s opinion inadvertently discussed the merits of the case “when that was not the issue at bar”; yet, under the same breath, the petitioner contends in count 4 of the petition that the Court’s opinion failed to discuss the issue of whether or not the writing off of a bad debt discharges the debtor from the obligation to pay the debt. It must

be emphasized that this type of pleading raises a doubt as to the petitioner's seriousness with respect to its request for re-argument.

First of all, we must emphasize that the purpose of re-argument is to call the Court's attention to points or principle of law and some issues of facts previously raised and argued before the Court and which would have had a controlling effect but were inadvertently omitted or overlooked in the opinion; the purpose is not to challenge the legal soundness of the Court's opinion. The petitioner has done in his petition, an act we consider contemptuous.

It must be noted, with emphasis, that petitioner/appellee received a tax credit and write off in the amount of \$840,735.22 from the Tax Division of the Ministry of Finance, thus reducing the debt liability of the appellant. Consequently, the total of \$43,657.14, mentioned in petitioner's statement of account receivables and referred to by it as nonaccrual overdraft, was specifically attached and mentioned in its brief only to have the Court take judicial notice of that statement of account and the balance indebtedness indicated therein. In fact, the petitioner's amended brief mentioned that amount as the general ledger balance and it was therefore accordingly discussed in the opinion as the un-paid balance due the petitioner. The petition for re-argument cannot be upheld under the circumstance and is therefore dismissed.

It is a long established policy of the Supreme Court to identify and pass on the issues of facts raised and argued before Court, and to recognize also the relevancy of citations advanced in the context of some pertinent or isolated cases referred to as well as the rules of court invoked by a party. But this Court has maintained the responsibility of reviewing and passing only on those facts and points of law which are vital to the issue at bar and to the determination of the case.

It is necessary therefore that we quote verbatim the issue of write-off discussed and passed upon in the previous opinion. This is what the Court said in that opinion:

“It is clear from the above quotation that a charge off is not merely for internal auditing purposes; its consequent tax credits do also 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”.

In view of the foregoing, the petition for re-argument is hereby denied and dismissed. The unpaid debt of \$43,657.14 must be paid by Respondent Baker Homegrown Poultry Farms

Inc. to Petitioner Chase Manhattan Bank, and all of the respondent's collaterals now in petitioner's possession be released to the respondent. The Clerk of this Court is hereby ordered to send a mandate to the debt court ordering the judge presiding therein to enforce this judgment. Costs are ruled against the petitioner. And it is hereby so ordered.

Petition denied