

Seizure
Order of Court

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)



Suit No.559 of 1994

Between:

NEW RIVER YACHT SALES INCORPORATED

- Plaintiff

and

ANDREW T. PRINSTER

- Defendant

and

ANDREW T. PRINSTER

- The Opposant

Mr. P. I. Foster and Mrs. Clare Malaykhan for Plaintiff
Mrs. B. Floissac-Flemming for Defendant

1997: March 14th & 21st

JUDGMENT

d'Auvergne, J

By a Summons to file Opposition to Seizure and Sale supported by an Affidavit of the Defendant Andrew T. Prinster filed on 13th March 1997 and served on the Plaintiff, the Defendant who is also the opposant sought to oppose the seizure and sale advertised on pages 99 and 100 of the issue of the Saint Lucia Gazette dated 8th February, 1997.

The subject matter of the seizure and sale mentioned above is a parcel of land known as Lot 18 comprising of 14,348 sq feet with a building erected thereon at Saline Point, Cap Estate and registered in the Land Registry of St. Lucia as Block 1259 B Parcel 9 in the names of Andrew T. Prinster and Genevieve C. Prinster.

Background

The Plaintiff filed a Writ of Summons against the Defendant claiming damages in the sum of US\$216,216.00 or E.C.\$587,437.25 with interest on the 22nd day of July 1994.

On the 16th day of November 1994 an Ex Parte Order of Injunction was granted against the Defendant in these terms:

ORDER

UPON READING the Summons and Affidavit filed herein on the 9th day of November, 1994 and

UPON HEARING Counsel for the Plaintiff/Applicant.

IT IS HEREBY ORDERED

1. That the Defendant be restrained and an Order of Injunction is hereby granted restraining the Defendant from removing or causing or permitting to be removed or taking any steps to remove out of the jurisdiction of this Court any of his assets within the jurisdiction or from disposing of or transferring charging or diminishing or in any way howsoever dealing with any of his assets within the jurisdiction and without prejudice to the generality of the foregoing, in particular:

(a) the property known as Block No. 1259B Parcel No. 9 owned by the Defendant or the interest of the Defendant therein.

(b) the property known as Block No. 1259B Parcel No. 8/1/1 owned by the Defendant or the interest of the Defendant therein.

Save insofar as the value of such assets exceed the sum of US\$216,216.00 or EC\$587,437.25

2. The Defendant is to be served with a copy of the Order forthwith together with a copy of the Summons for Injunction,

the supporting Affidavit and the Writ of Summons.

3. The Defendant shall have liberty to apply to set aside this Order and the return day given for that purpose shall be November 24th, 1994.
4. The Defendant shall pay the cost of this application in the sum of \$750.00.

On the 8th December 1994 a further Order was granted and it reads as follows:

ORDER

UPON HEARING Counsel for the Plaintiff.

IT IS HEREBY ORDERED

That the Order made on the 16th day of November, 1994 remains in force and paragraphs 2 and 3 of that Order are accordingly spent.

On the 13th of June, 1995 Judgment in default was filed and on the 26th July 1995 was granted against the Defendant.

No further action was taken in the matter except that a caution dated 18th November 1994 was placed by the Plaintiff against the property of the Defendant at the Land Registry.

I note *en passant* that on that Land Register for the property in question, Block 1259 B Parcel 9 is noted, **Restriction. Land is owned with right of Survivorship. No dealings in 1/2 shares except to other co-owners.**

On the 25th February 1997 an application for **Leave to file an Opposition to Seizure and Sale** was entered.

On the 10th March 1997 leave was granted and the matter was heard on the 14th March 1997 in Chambers.

At the hearing Learned Counsel for the Defendant/Opposant argued that the opposant was the owner of an undivided half share of all that lot of land with building known as Lot 18, Saline Point, Cap Estate quarter of Gros Islet, registered in the Registry of Lands, St. Lucia as Block 1259 B Parcel 9.

She contended that the Defendant/Opposant had title to only an undivided half share, and that his wife Genevieve Prinster was the owner of the other undivided half share of the property in question, registered as Block 1259 B Parcel 9 at the Land Registry.

She quoted **Articles 1493, 1923 and 1917** of the **Civil Code** to emphasise and confirm her argument that a Creditor cannot seize immovables other than that belonging to the judgment debtor.

The said Articles of the Civil Code provides as follows:

Section 1493

"The creditor who has a judgment against his debtor may take in execution and cause to be sold, in satisfaction of such judgment, the property of his debtor, movable and immovable, except only the articles specially exempted by law; subject to the rules and formalities provided in the Code of Civil Procedure."

Section 1917

"Legal hypothec affects generally the present and future immovables of the debtor."

Section 1923

"(Am. 20-1918). Judicial hypothec results from judgments of the courts of the Colony ordering the payment of a specific sum of money. Such judgments likewise involve hypothec for

interest and costs without specifying the amount subject to the restrictions contained in the Book respecting Registration of Real Rights

It also results from judicial suretyship and from any other judicial act creating an obligation to pay a specific sum of money.

Judicial hypothec affects generally the immovables owned by the debtor at the time of the registration of such hypothec and those subsequently owned by him unless the same are exempt from seizure or are incapable of alienation otherwise.

But the order of the Judge authorising the amount of advances or supplies for cultivation, crops and otherwise under **Article 1904** confers judicial hypothec from its registration as prescribed in **Article 2002** only on the immovables respecting which the order was made and in so far only as the same are the property of the debtor who applied for, or of any person who consented to, the order."

She further argued that the Judgment Debtor could oppose the seizure and sale and that the right to do so did not only belong to the other party in this case namely, Genevieve Prinster.

She quoted **Section 519** of the **Code of Civil Procedure** which provides:

OPPOSITIONS TO ANNUL

"The party whose immovable or rents are seized may oppose the seizure or the sale thereof, whether his opposition be founded on matters of form or on matters of substance.

Third parties may likewise file similar opposition when they have an actual interest therein."

She further argued that by **Article 420** of the **Code of Civil Procedure** a Judge may order the sale of the whole property after a

petition has been made for the sale of the whole property. She said that no such petition had been made and therefore, in the absence of that petition, neither property of judgment debtor nor the other 1/2 share of property can be sold at a judicial sale.

She also quoted **Article 658 (7)** of **The Code of Civil Procedure of Lower Canada** Second Edition by **Thomas P. Foran, M.A., B.C.L.** which is the same as **Article 520** of the **St. Lucia Code of Civil Procedure**

Article 520 of the **Code of Civil Procedure** provides as follows:

OPPOSITIONS TO WITHDRAW

"Opposition to withdraw may be filed by third parties who claim as their property part of any immovable or rent under seizure.

When the property is undivisible the Judge may order the sale of the whole property upon the petition of a creditor of the defendant, such petition having been previously served upon the opposant and the other known proprietors of the property seized. If the sale be so ordered, each undivided proprietor has a claim on the proceeds, according to his share in the property.

Article 658(7) of the **Canadian Code** mentioned earlier provides:

"Where the opposant claimed part of the immoveable seized by an opposition to withdraw, the seizing creditor was not allowed to proceed with the sale of the part unaffected by the opposition, especially as he had given no notice of his petition to proceed to the debtor. *Chinic et vir v. Trust and Loan Co. of Canada*, 3 Q.B.R. 259, Q.B. 1883."

She concluded her argument by stating that in light of the passing of the Constitution of St. Lucia there was great doubt as to whether **Article 520** of the **Civil Code of Procedure** was still good

law.

Section 6(1) of the Constitution of St. Lucia reads as follows:

"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation."

Learned Counsel for the Plaintiff Creditor commenced his arguments by making reference to similar cases decided by the Courts in St. Lucia.

He quoted Suit 237 of 1992

Renwick vs Chaussee Enterprises Ltd

In that case the wife of the judgment debtor filed an opposition to seizure and sale stating that the property to be sold was Community property. The decision in that case was that the application was dismissed.

He also quoted Case 299 of 1985

National Commercial Bank of st. Lucia

and

Austin Jude et al

In that case like the Suit 237 of 1992 the wife was seeking to protect her share and interest in the Community. Matthew, J held that, "in the light of Article 520 of the Code of Civil Procedure that the sale proceed against the properties..... that the Petitioner first gets her share of the proceeds in the proportion to her interest and remainder to the Plaintiff/Respondent after all the necessary deductions have been made.

Learned Counsel for the Opposant replied that the opposant was never served with a writ of seizure and that bearing in mind Article 1914 of the Code mentioned earlier the property must be first partitioned.

CONCLUSION

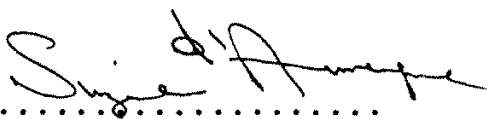
In my judgment the Judgment Creditor must file and serve a petition in accordance with Article 520 of the Code of Civil Procedure upon the judgment debtor and Genevieve Prinster the owner of the other 1/2 of Block 1259B 9.

Moreover, an upset price should be fixed on the property before it is sold.

My order is as follows:

That the sale for all that piece of land with building situate at Cap Estate in the quarter of Gros Islet in the State of St. Lucia, and known as Lot 18 Saline Point registered in the Registry of Lands, St. Lucia as Block 1259B 9 scheduled for sale and adjudication by the Sheriff on the 27th day of March 1997 at 10.00 a.m in the forenoon is hereby set aside.

There will be no order as to Costs.


.....
SUZIE d'AUVERGNE
HIGH COURT JUDGE