

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No: SLUHCV 2010/0389

BETWEEN:

(1) BANK OF SAINT LUCIA LIMITED
(2) MORTGAGE FINANCE COMPANY OF SAINT LUCIA

Claimants

And

MADELEINE COUCHMAN

Defendant

Appearances:

Mr. Thaddeus Antoine and Ms. Thea Alexander for the Claimants.
Ms. Cynthia Martyr Combie for the Defendant

2010: December 14th
2011: January 14th

RULING

[1] **WILKINSON J.:** The Defendant on 9th November 2010 filed an application wherein she sought the following orders:

- (i) Judgment on admissions entered on the 13th August 2010, and registered at the Registry of Deeds and Mortgages on the 27th September 2010, in Vol. 163 A No. 201831 be set aside, on the basis that it was irregular and wrongly or improperly entered.
- (ii) Alternatively, a stay of execution of the judgment be made pending further order of the Court in March 2011.
- (iii) That the Defendant be paid her costs on the application.
- (iv) Any further order as to the Courts seems just be made.

The grounds of the application were stated to be:

- (i) The Defendant's application to pay by instalment and Claimants objections to the Defendant's proposal for the payment by monthly instalment of eight hundred dollars (\$800.00) were heard before the learned Master on the 20th and 21st September 2010.
- (ii) Judgment on admissions for the amount claimed was not entered by the Master and an interim order only was made by the Master accepting the payment of eight hundred dollars (\$800.00) commencing 31st October 2010, and thereafter, the parties to report and Court to review in six months –viz March 2011.
- (iii) Under CPR Rule 14.11 (3)-(5) only the "Court" and not the Registrar or the Court Office can enter judgment on admissions and accordingly judgment on admissions entered by the Registrar on the 13th August 2010, and registered at the Registry of Deeds and Mortgages on 27th September 2011 in Volume 163 A No. 201931, is irregular and wrongly or improperly entered, as it constitutes a breach of CPR 14.11 (3) –(5).
- (iv) Under the laws of Saint Lucia the Claimants having a registered judgment or judicial hypothec, in the absence of a stay of execution on the judgment and despite the interim order for payments made by the Master, are at liberty to and the Defendant fears that the Claimants will seize and sell the Defendant's property held as security for the debt which they are entitled to do.
- (v) The premature entry of judgment on admissions by the Registrar will:
 - (i) severely prejudice the Defendant's application to pay by instalment in which a final determination by the Court has not been made;
 - (ii) denies the Defendant any opportunity to negotiate with the Claimants or refinancing of the debt with other financial institutions;

- (iii) has deprived the Defendant of the full extent of the six months given by negotiations already started to refinance a debt, as the debt owed is no longer a debt, but has already crystallized into a judicial hypothec;
- (iv) will severely and adversely prejudice the Defendant's chances and ability to successfully negotiate the refinancing of the debt not only with the Claimants but also any other financial institution.
- (v) Judgment on admissions at this time will result in grave injustice to the Defendant and it is in the interest of justice and in furtherance of the overriding objective, that this Court ought to set it aside.

Facts

[2] The Claimants filed their claim form and statement of claim on 7th May 2010 and therein sought the following relief:

- (i) The sum of \$222,094.77.
- (ii) Interest on the said sum of \$21,662.48, and continuing at the rate of 7.5 percent per annum from 18th March 2010 until payment.
- (iii) Further or other relief as the Court thinks fit.
- (iv) Costs.

The First Claimant acts as managing agent for the Second Defendant which grants mortgages and demand loans. The Defendant was a borrower who pursuant to a commitment letter dated 31st July 2006, she borrowed two hundred and twenty five thousand dollars (\$225,000.00) with interest at the rate of 7.5 percent. Loan payments were not made by the Defendant despite repeated demands by the Claimants.

[3] On 10th June 2010, the Defendant by her counsel filed an acknowledgment of service. Therein she stated that did not intend to defend the claim and to the question of did she "admit the whole of the claim?" she responded "Yes." She further stated that she would complete the application form to pay the claim by instalments. On 9th June 2010, the Defendant filed an application to pay by instalments. In the application to pay by instalments the Defendant stated that she owed two hundred and forty three thousand, seven hundred and fifty eight dollars (\$243,758.00) and applied to the court for an order to pay the amount due by

instalments of eight hundred dollars (\$800.00) per month. She also filed on 9th June 2010, an affidavit in support of the application to pay by instalments exhibiting a letter to support her stated income and bills to support her stated expenses. She stated that at the time when the loan was granted she was employed by a former employer where she was paid substantially more salary. That job was terminated due to the economic downturn at Saint Lucia. At her present job she was earning substantially less salary, and she had three children to maintain including one who had special needs.

- [4] The first observation made about the Defendant's affidavit in support of the application is that it contains submissions on law. This Court has in the past referred counsel and parties to CPR 2000 Part 30.3 which clearly specifies the content of an affidavit is to facts.
- [5] The Defendant in her affidavit in support of her application made statements on the irregularity of the Registrar's judgment and said that she only became aware of the judgment about 25th October 2010, some 2 months after the judgment had been entered. She also said that she had not at the date of hearing before the Master been served with a copy of the Claimant's request for entry of judgment on admissions and wherein it were set out the reasons why her instalment offer had been rejected and so the Master ordered that it be served on her but service was not effected until 27th October 2010. She said that the Master accepted her proposal of eight hundred dollars (\$800.00) per month for 6 months, and urged her to go to the Bank and negotiate some acceptable arrangement for payment. She understood all this to mean that no judgment would be entered as no final order was made by the Master and she had 6 months to either negotiate with the Claimants or other financial institutions to take over the debt or put some other financial arrangements in place during the interim.
- [6] On 17th June 2010, the Claimants filed a request for entry of judgment on admissions. In the request for judgment on admissions, and as is required where an application to pay by instalments has been filed with a particular offer, the

Claimants stated that they did not accept the Defendant's instalment proposal because the proposed eight hundred dollars (\$800.00) neither met the regular monthly instalment of one thousand six hundred and sixty two dollars and seventy three cents (\$1,662.73) nor addressed the arrears outstanding. Further the Claimants held the property that secured the loan and the Claimants wished to sell it if a satisfactory arrangement could not be made.

[7] At 13th August 2010, the Registrar entered judgment on admissions and it read:

" UPON THE DEFENDANT'S ADMISSION OF THE WHOLE OF THE CLAIM, it is this day adjudged that the Defendant pay the Claimants the sum of EC\$222,094.77 together with interest at the rate of 7.5 % per annum from the 26th November 2008 to the date of payment and fixed costs in the sum of \$2510.50."

[8] On 20th September 2010, the matter came up before the Master with both parties presented and their respective counsel. The Master made the following order:

" IT IS HEREBY ORDERED BY CONSENT THAT

The Defendant do pay to the Claimant the monthly sum of eight hundred dollars (\$800.00) toward satisfaction of the outstanding debt commencing on the 29th October 2010 and continuing on the last business day of each and every month thereafter until further order. The matter to come up for review and report in 6 months time."

Issues

[9] Whether the Registrar was entitled to enter judgment where (a) there was an application to pay by instalments filed before the request for judgment on admissions, and (b) the Claimants had stated in their request for judgment on admissions that they were not prepared to accept the instalments offered.

Law

[10] CPR 2000 states the following:-

Part 2.4 In these Rules, unless otherwise provided for or the context otherwise requires –

"court" means the High Court and, where the context so admits and in Part 62, the Court of Appeal;

"court office" refers to –

- (a) the place where documents are to be filed, etc. and includes a Registry of the High Court and of the Court of Appeal; and
- (b) members of the court staff who carry out work of a formal or administrative nature under rule 2.6.(1);

Part 9.5(1) (c) states:

"9.5 (1) A defendant acknowledging service _

- (a)
- (b)
- (c) who admits all or part of a claim for specified sum of money – may file with the acknowledgment of service_
 - (i) details of the defendant's financial circumstances; and
 - (ii) proposals for payment of any sums admitted;

Part 14 states:

"14.1 (1)

(2)

(3) A defendant may admit the whole or part of a claim for money by filing an acknowledgment of service containing the admission.

(4) The defendant may do this in accordance with the following rules -

(a) rule 14.6 (admission of whole of claim for specified sum of money);

(b) ...; or

(c)

(5) A defendant may file an admission under paragraph (4) at any time before a default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing on acknowledgment of service has expired.

14.2

14.3

14.4

14.5

14.6(1) This rule applies where the –

(a) defendant admits the whole of the claim in the acknowledgement of service;

(b) defendant has not requested time to pay; and

(c) only remedy which the claimant is seeking is payment of a specified sum of money.

(2) The claimant may file a request for judgment in Form 8 for the

amount claimed, interest and fixed costs under rule 65.4 and may specify the –

- (a) date on which the judgment debt is to be paid: or
- (b) time and rate at which it is to be paid if by instalments.

(3) The **court office must** enter judgment in accordance with the request.

14.11(1) This rule applies where –

- (a) the only remedy which the claimant seeks is the payment of a sum of money together with interest and costs:
- (b) the defendant –
 - (i) admits the whole of a claim for a specified sum of money; or
 - (ii) offers to pay a specified sum; and
 - (iii) requests time to pay or makes an offer to pay by instalments; and
- (c) The claimant accepts sum admitted but does not accept the defendant's offer as to the amount, time and rate of payment.

(2) If this rule applies, the claimant must state in the request for judgment in Form 7 the reasons for rejecting objecting to the defendant's proposals as to payment.

(3) **The court** must consider the defendant's request and the claimant's objections **and enter judgment for the amount of the claim, interest and fixed costs under rule 65.4 on such terms as it sees fit.** (Emphasis mine)

(4) **The general rule is that the court should enter judgment under paragraph 3 without a hearing.** (Emphasis is mine)

(5) If the court decides to deal with the matter at a hearing, it must give the parties at least 7 days' notice of the hearing.

(6) If there is a hearing, the court must determine whether to make an order for the costs of the application and by whom the costs should be paid and assess such costs under rule 65.11.

14.13(1) Either a claimant or a defendant may apply to vary an order made under this Part.

(2) An application by a defendant must be made in accordance with

Part 47.

Part 47.1 This Part deals with –

- (a) variation of the terms of a judgment for payment of a specified sum of money as to the time and method of payment; and
- (b) suspension of orders for the seizure and sale of goods and writs of delivery.

47.2 (1) This rule applies to –

- (a) judgments for payment of a sum of money;
 - (b)
- (2) An application by the judgment debtor to vary the terms of the judgment as to the time or method of payment or to suspend a writ of execution under this rule must be supported by evidence in the appropriate practice form.

[11] The Civil Court Practice 2005 Vol.1 states that the purpose of Part 14 Admissions (United Kingdom) is:

“CPR 14[2] The purpose of CPR Pt 14 is to allow the defendant to admit a claim as early as possible and to take advantage then of the provisions in relation to time to pay (CPR 14.9)”.

Findings

[12] Where, as here, there is an admission of the whole claim, there is in effect an admission of liability for the debt claimed and so on an admission of liability a judgment in favour of the Claimants must follow. This position is supported by CPR Part 14.4 which states that once there was the admission, the Claimants were entitled to file a request for judgment.

[13] CPR Part 14.6 (1) – (3) is clear that if there is an acknowledgment of service wherein the sum claimed is admitted but there is no proposal for payment, then the Registrar has no discretion but must enter judgment for the sum claimed. This was not the situation before the Registrar. Instead before the Master at 13th August 2010 there were the application to pay by instalments, and a rejection of the Defendant's offer. Therefore pursuant to CPR 14.11 it was necessary to set the matter down before the Court.

- [14] Since against the background of the facts set out, namely that there was an application to pay by instalments at the time when the request for judgment on admissions was filed, and the instalments offered had been rejected by the Claimants, the Registrar did not have the authority to enter judgment for the sum claimed and therefore the order of the Registrar made 13th August 2010, is set aside.
- [15] Pursuant to CPR 14.11 (3) when the matter came on for hearing the Court was to consider the Defendant's request, the Claimants' objections, and enter judgment for the amount claimed together with interest and fixed costs on such terms as it saw fit. Indeed Part 14.11(4) reiterates that there is no dispute that the Claimants' are entitled to have their judgment as it states that the general rule is that the Court should enter judgment without a hearing. The Master had the authority to enter judgment for the Claimants prior to hearing the application to pay by instalments. The hearing before the Master is therefore not on the issue of whether or not to enter judgment or whether or not the Claimants are entitled to have their judgment promptly but rather only on the matter of the instalment repayment plan. The learning cited from The Civil Court Practice 2005 supports this position.
- [16] At 20th September 2010, when the Master would have been reviewing the application to pay by instalments, the judgment made by the Registrar on 13th August 2010 would have been part of the record. Presumably the Master was aware of the judgment and it was against this judgment that the Master ordered the interim payments. The order of the Master is silent on the matter of the Claimants' judgment and so I prefer not to draw any inferences.
- [17] On a reading Part 14 and in particular Part 14.11 (3) – (4) I don't believe that the Court could defer the Claimants' judgment upon receiving their request, and therefore since I have set aside the Registrar's judgment, I must enter judgment for the Claimants in the all circumstances.

- [18] It is also necessary to enter judgment so that there is a reference point against which the interim payments ordered must be made. Without this reference point it is unclear against what sum the payments would be deemed to be made. I therefore enter judgment for the Claimants in the sum of two hundred and twenty two thousand and ninety four dollars and seventy seven cents (\$222,094.77) together with interest at the rate of 7.5 percent from 26th November 2008 until date of payment and fixed costs in the sum of two thousand five hundred and ten dollars and fifty cents (\$2,510.50).
- [19] Since the matter is fixed upon the consent of both Parties to come up before the Master shortly for further review of the interim payments ordered, execution of the judgment is stayed until 31st March 2011.

ROSALYN E. WILKINSON
High Court Judge