THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT

(CIVIL)

CLAIM NO. SKBHCV2001/0191

SUSAN BARBARA DODGE, Appointed Trustee of the Estate of Raymond Arnold Dodge aka Ray Dodge	
And	
TONY ZAPPAROLI	***Applicants/Claimants***
And	
MICHAEL SIMANIC	***1st Defendant/Respondent***
ROYAL ST. KITTS CASINO LIMITED	***2nd Defendant/Respondent***
And	
ALCEO ZULIANI	***3rd Defendant/Respondent***
LEO TOFOLI	***4th Defendant/Respondent***
TRANS-AMERICAN INVEST (ST. KITTS) LIMITED	***Respondent***
And	
ST. KITTS-NEVIS-ANGUILLA NATIONAL BANK LTD	***1st Garnishee***
FIRST CARIBBEAN INTERNATIONAL BANK (Barbados) LTD	***2nd Garnishee***

Appearances:

Mr Anthony Ross, QC and Ms Dolrita Cato *for the Claimants*
Ms Angela Cozier *for Respondent in Garnishee Proceedings*

2011: July 8
2012: January 13

DECISION

[1] **THOMAS J**: This matter arose out of a hearing with respect to two applications for a provisional attachment of debts order. In this connection, on 17th August, 2010 an order was made which required Royal St. Kitts Casino, Alceo Zuliani and Trans-American Invest (St. Kitts) Limited ("TA1") to pay the Applicants, jointly and

severally, the amount of CDN$58,783.77 plus disbursements of CDN$10,843.92, a total of CDN$69,627.69. On the date of the hearing, being 6th May, 2011, directions were giving for the conduct of the said hearing and the matter was adjourned to 3rd June, 2011.

[2] On 3rd June, 2011 the matter of the provisional garnishee order was further adjourned to 8th July 2011. However, the matter did not proceed on the day on account of new proceeding filed by the Respondents. This prompted the Applicants to apply for costs thrown away and submissions were ordered to be filed given the circumstances.

Submissions

[3] The following are the main submissions on behalf of the Applicants.

1. TA1 never gave any indication to the Applicants or its counsel if any new action was to be commenced.
2. Had TA1 given notice of the new action attendance on 8th July 2011 costs would not have been thrown away.
3. To date TA1 has not served the new action on the Applicants.
4. The Applicants are entitled to get paid as submitted in their application for the provisional attachment of debts order, and that the circumstances of this case warrant thrown away costs being awarded in their favour.

[4] The submissions on behalf of the Respondent raised the following issues

1. TA1 not being a proper party to the proceedings and as such was improperly joined.
2. The matter of costs being premature in light of the new action filed by the Respondent on 8th July 2011.
3. The nature and extent of prior proceedings culminating in the setting aside of the transfer of 14455 square feet of land from the Defendant, Royal St. Kitts Casino Limited to the Respondent, and to vest title in the Applicants even though the Respondent who had held indefeasible title to the lands in question since 1996, was not afforded any opportunity to be heard on the matter.

Analysis

[5] In view of the issued identified above in the submissions filed on behalf of TA1, the Respondent, it is necessary for the Court to re-state two principles. The first is that an order of any Court is good until it is set aside[1]. Consequently, the order of this Court dated 17th August 2010, the subject of the two applications for the provisional attachment of debts order as far as the Court is concerned, is still valid and subsisting.

[6] The second principle or rule is that by virtue of Part 19.3(1) of CPR2000 the Court can add or substitute a party with or without an application.

[1] Isaac v Robertson [1984] 43 WIR 126 (Pc)

Costs

[7] As far as the Respondent is concerned: "In light of the action filed by the Respondent, it would be patently premature at this stage to assess and determine costs in relation to the hearing of the 8th July, 2011, at these Garnishee Proceedings in general, without first hearing and determining the substantive issues.

[8] This brings the Applicants Bill of Costs into focus. It is divided into two parts, Counsel's fees and disbursements.

Counsel's fees

[9] On 8th July 2011 the issue was a final order having regard to the interim order made on 24th March 2011. With this is mind the total fee for US$43,120.00 is difficult to comprehend. Indeed, some seventy hours of preparation is advance to justify the fee. This includes fees for a person who is not even called to the local Bar.

[10] The Court very much doubts that this level of preparation was required for this matter and accordingly the fees claimed are disallowed.

[11] It is of some importance to note that in a provisions decision on wasted costs in this matter Mr Justice Francis Belle had this to say at paragraph 3 of this decision:

"This Court has no difficulty accepting the circumstances of the adjournment and wasted time were the fault of the Respondents but I cannot appreciate how the fees for aborted examination of two judgment debtors affecting the same subject matter could be CDN$72,700.87. Firstly, the ordinary principle of awarding costs would not apply to this procedure because there is no winner or loser. The Respondent pays the costs because the procedure was required to investigate the Respondents' ability to pay since they had failed to pay in accordance with the Court's Order or Judgment".

Disbursements

[12] The Court is of the view that in light of the circumstances created by the Respondent, the Applicants are entitled to the reasonable disbursements detailed in the Bill of Costs which amounts to US$2607.91.

[13] Order accordingly.

ERROL L. THOMAS
High Court Judge (Ag)

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