

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2010/0152

BETWEEN:

KENRICK GEORGE

Claimant/Applicant

and

CLICO INTERNATIONAL LIFE INSURANCE LTD.

1st Defendants/1st Respondent

and

WILBUR HARRIGAN

(as Administrator of Clico International Life Insurance Ltd.)

2nd Defendant/2nd Respondent

Appearances:

Mr. Hugh Marshall and Ms. Kema Benjamin for Claimant

Mrs. Eunica Anthony-Victor for Respondents

2014: February 26
February 27

Ruling

- [1] Cottle, J.: This is one of three actions against the Respondents. The others are claim ANUHCV 2010/0203 and ANUHCV 2010/0156 where the Claimants are Hensworth Jonas and The East Caribbean Baptist Mission, respectively. The relevant facts which give rise to the litigation are the same in the three claims and so while this application was heard and considered with regard to one matter, all parties understand that the result of one claim will apply to the other claims as well.

- [2] The Claimant brought a claim against the First Respondent who permitted judgment to be entered against it in default of acknowledgement of service. The First Respondent was ordered to pay \$978,057.43 to the Claimant. This judgment was entered on 17th May, 2010. Over seven months later this judgment remained unsatisfied. The Claimant then applied for an order to sell certain lands, said to belong to the First Defendant, to satisfy the judgment. This application was made to the court on 25th January, 2011.
- [3] Unfortunately, the application was not considered by the court. On 29th August, 2011, the Superintendent of Insurance applied to the court to have the First Defendant placed under Judicial Management. On 12th September, 2011, the High Court appointed Judicial Managers of the First Defendant, in the persons of Messrs Patrick Toppin and Olliver Jordan of Barbados. The Second Respondent was made the local representative for the Judicial Managers and has now been added as a party in that capacity.
- [4] The effect of the appointment of Judicial Managers, as per paragraph 10 of the order, was that all actions and the execution of all writs, summonses, and other process against the First Defendant are stayed and not to be proceeded with, without the prior leave of the court.
- [5] The Claimant now seeks the leave of this court to proceed with his application for sale of the First Defendant's real property, to enforce his judgment. This is required not only by the court order but also by Section 61 (4) of the Insurance Act 2007 which reads:-
- "Where an application is made under this section for an order in respect of a company, all actions and the execution of all writs, summonses and other processes against the company shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the court or unless the court directs otherwise."
- [6] Under rule 2.2 of the Civil Procedure Rules 2000 "CPR2000", insolvency proceedings, including winding up of companies are exempted from the scope of the CPR 2000. The Insurance Act 2007 does not have any accompanying rules yet made. Consequently, one must turn to section 11 of the Eastern Caribbean Supreme Court Act, Cap 143 of the Laws of Antigua and Barbuda. This

section permits the application of the rules applicable to the High Court of Justice in England in similar circumstances as nearly as possible. Thus in the absence of local rules and with the CPR 2000 expressly disappplied, one turns to the law and practice as it obtains in England. Counsel for the Applicant submits that section 43 of the UK Insolvency Act 1986, provides the needed regime.

- [7] In considering which factors a court should pay attention to in deciding whether or not to grant leave to proceed, Mr. Marshall submits the position is analogous to that which obtains in winding up cases. Under the companies legislation, the leave of the court is required to proceed with litigation against the company being wound up. The learned authors of **Derek French: Applications to Wind Up Companies**¹ (Second Edition) 916 at paragraph 11.9.8.2 put the leaning in this way:

"The general rule is that a judgment creditor of a company is not permitted to put in force execution of the judgment after commencement of the winding up of the company. In particular:

- (a) While a winding-up petition is pending, a judgment creditor will, under s 126(1), be restrained from putting execution in force except in very special circumstances..."

- [8] As I understand the Claimant's case, he invites this court to find that there are very special circumstances which should influence the court to permit his application to enforce. The special circumstances are that the Claimant had judgment long before the appointment of the Judicial Managers. He applied to the court to enforce his judgment long before the Judicial Managers were appointed. Through no fault of his own, the hearing of his application was not placed before a Judicial Officer in a timely fashion. Had this been done, it is likely that the application would have been heard and determined before the Judicial Managers were appointed. It would be inequitable to force him to join the queue of other creditors at this stage. Mr. Marshall points out that the judgment was entered on the land register as a legal change since 25th January, 2011. It expired

¹ Applications to Wind Up Companies
Oxford university Press
Ed. Derek French
Second Edition

on 25th July, 2011. The Applicant thus is prejudiced by the failure to have his application promptly dealt with by the courts.

- [9] Counsel for the Respondents contends that the claimant is not in a unique position. Many other policyholders and creditors of the First Defendant exist. The appointment of the Judicial Managers was premised on the inability of the First Defendant to satisfy all its liabilities. For the orderly and equitable conduct of the First Defendant's business for the benefit of all creditors, it is sensible that no one creditor be able to remove assets from the administration estate for his sole benefit. That is the very reason for Judicial Management, to secure the most advantageous outcome for the policyholders as a whole.
- [10] It is noted that the Claimant does not make his application for leave to proceed qua policyholder. He simply says:

"I have judgment. I sought to enforce it. The court delayed my enforcement without explanation for many months and subsequently appointed Judicial Managers. I wish to be put in the position I would have been had it not been for the default of the court."

- [11] Having carefully considered both submissions and looked at the facts, I conclude that it is inequitable to visit the claimant with the consequences of the delay of the court. I considered this to amount to the kind of exceptional circumstances which merit the grant of leave. I order that leave be granted to the Claimant to proceed with his application to enforce his judgment by sale of the property of the First Defendant. As noted above, this reasoning will apply equally to the other matters involving the Respondents and the other two Claimants where the facts are identical.

Brian Cottle
High Court Judge