

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

DOMHMT2003/0032

BETWEEN:

JEFFREY CHARLES

Respondent/petitioner

and

LOVETTE CHARLES

Applicant/Respondent

Appearances:

Mrs. Dawn Yearwood-Stewart of Dawn Yearwood Chambers for the Applicant

Mr. David Bruney of David Bruney Chambers Respondent

2014: March 26th

June 6th

June 10th Re-Issue

DECISION

[1] **THOMAS, J [AG]:** Consequent on the respondent's failure to comply fully with orders of this court, the applicant, on 22nd March 2013 filed a Further Judgment Summons in which she seeks to have the respondent examined on oath as to his means.

[2] By way of what amounts to a point *in limine*, learned counsel for the respondent, Mr. David Bruney has raised the issue as to whether or not the court has jurisdiction to hear this application, having regard to the nature of the previous order of this court in the matter and the law. Learned counsel quotes **Rule 42.8** of CPR 2000 which says that:

“A judgment or order takes effect from the date it is given or made, unless the court specifies that it is to take effect on a different date.”

[3] According to learned counsel:

“The terms of the order were already stated that by consent that the Petitioner would pay the Respondent \$3,000.00 by a date specified with monthly installments of \$500.00 thereafter until further notice. There was a further statement that ‘the matter was to be reviewed in six (6) weeks’”

[4] Reference is also made to the decision of the Board in **Strachen v The Gleaner Co. Ltd and Anor**¹ in which it was re-stated that a court of co-ordinate jurisdiction has no appellate powers to set aside or vary an order made without jurisdiction. Reliance is also placed on **Padstow Total Loss and Collision, Assure Association**² to the same effect regarding the setting aside of an order by a court of co-ordinate jurisdiction

[5] Learned counsel ends his submissions in this way:

“Clearly Honourable Justice B. Cottle was of the view that he had jurisdiction to make the said order. If learned counsel for the Respondent/Applicant believes the contents of such order to be wrong or not in keeping with her client’s desires relating to compensation then following the aforesaid determinations in Strachen and Padstow, it is clear that the decision of Justice B Cottle can only be reversed by the Court of Appeal and as such the Honourable Justice Errol Thomas has no power to set it aside.”

[6] Learned counsel for the Applicant/Judgment Creditor in arguing that this court has jurisdiction to vary the order made by Justice B. Cottle quotes section 4 (4) of the **Debtors Act** which says that:

“... [A]ny court may direct any debt due from any person, in pursuance of any order or judgment of that or any other competent court to be paid by installments, and may from time to time rescind on the order.”

¹ [2005] UKPC 33

² [1882] 20 CHD 137

- [7] Learned counsel contends that the framers of the **Debtors Act** foresaw the need to vary or rescind an order of 'any other competent court.' The contention is that given the history of the various orders made by the learned judge, the order was to continue until further order. On that basis, the case of **Strachen v Gleaner Company Ltd** "does not apply as that case dealt with final orders being set aside by a judge of co-ordinate jurisdiction."
- [8] Learned counsel for the Judgment Debtor acknowledged that the order in issue was by consent as to the payment of the debt. And it follows that the further statement that the matter was to be reviewed in six months was also consented to. Further, by definition the order of 5th June, 2013 cannot be considered a final order.
- [9] There is also no doubt that section 4 (4) of the **Debtors Act**³ places the matter on an entirely different footing since it is an Act of Parliament. And section 4 thereof bears the following marginal note "Saving of power of committal for judgment debt."
- [10] It is therefore the conclusion of the court that the power to vary an order of a co-ordinate court by virtue of section 4 (4) of the **Debtors Act**. Plus the said order was a consent order and was not a final order.

Further Judgment Summons

- [11] The Further Judgment Summons is supported by an affidavit sworn to by the applicant on 20th December, 2013.
- [12] In the affidavit the applicant deposes as to the history of the non-compliance with the order of this court for the payment of \$200,000.00 in relation to ancillary proceedings. The order is dated 29th November 2011.

³ Chap 7:07 Laws of Dominica

- [13] The applicant deposes further that on hearing of a Further Judgment Summons on 17th May 2013, it was ordered that the respondent pay her the sum of \$3,000.00 by 21st May 2013 and \$500.00 monthly thereafter until further notice, but to be reviewed in six months.
- [14] The applicant says that the Judgment Debtor continues to pay the \$500.00 without more towards the debt and that it will take more than 30 years to pay off the debt.
- [15] The applicant contends further that “[t]here have been noticeable changes in the judgment debtor circumstances which permit him to increase the monthly installments or settle the amount in full...”
- [16] In summary the “noticeable changes” identified by the applicant are as follows: (a) rental by the respondent’s wife of car from sometime in March/April 2013, (b) being verily informed that the judgment debtor has made significant improvements to his business place; (c) extensive decorations to the judgment debtor home over the Christmas season; (d) the judgment debtor has been victorious in another property matter; (e) the judgment debtor owns 3 buses used to transport students and tourists; (f) the judgment debtor is the registered owner of 10.05 acres of land at Craig registered in Book of Titles W4 Folio 11.
- [17] Even further, the applicant deposes that the monthly payment is barely enough to pay her electricity bill among other monthly expenses.
- [18] In the premises the applicant seeks the monthly payments of \$3,000.00 towards the liquidation of the debt aforesaid.
- [19] The respondent/judgment debtor in his affidavit in response filed on 11th February 2014 seeks to lay waste the contents of the applicant’s affidavit in support.
- [20] The respondent does this by deposing that there have been no noticeable changes in his circumstances that would convince the court to change the monthly installments of five hundred dollars which has been paid dutifully since 21st May, 2013.

[21] The respondent then responds, seriatim, to the contents of paragraph 1 of the applicant's affidavit in support: (a) his wife does not rent a car from Bonus Car Rentals; (b) the improvement to his business place consists of the laying of 220 tiles each costing \$1.00 each; (c) over the Christmas season some lights were donated; (d) the victory alluded to by the judgment creditor was the removal of a caveat on property already secured by a mortgage; (e) there is extensive security over the 3 buses which are owned by his sister, wife and himself; (f) the land at Craig is subject to a mortgage at the National Bank of Dominica.

[22] Finally, the respondent denies that he ridiculed the applicant, and further that he can barely afford to pay the five hundred dollars ordered by the court.

Evidence as to means

[23] The respondent was examined on oath as to his means to pay the judgment debt. In the course of the following is a summary of what was revealed:

1. Business man dealing in wholesale and retail of goods
2. Owns two large buses and one small one
3. Buses were purchased with the proceeds of a loan from National Commercial Bank
4. Sister made part of the payment on buses
5. The two coaster buses operate during the tourist season
6. The smaller bus transports school children
7. The Government of Dominica pays \$3,000.00 per month to transport the school children
8. The transportation of school children has been going on 2 years now
9. The tourist season lasts six months November-March
10. Has been transporting tourists for 10 years
11. Never had 5 buses at one time and had 3 buses from 2011
12. The bus drivers are paid EC \$300.00 per week, sometimes \$500.00
13. The buses also travel from Marigot to Roseau
14. Lives in Marigot with his wife, Andra Charles
15. The property in Marigot is in his name and that of his wife.
16. The loan for the house was obtained 3 years ago. It is valued at more than \$500,000.00

17. The property in Craig is more than 10 acres. It has a lot of produce on it: grapefruits and avocados. Part of it is rented. It is caveated by the National Bank.
18. My wife is not involved in the buses. But later said his wife was involved with the buses
19. Has two loans: National Bank \$130,000.00 5 years ago; and \$150,000.00 with Marigot Credit Union
20. The loans were consolidated
21. My wife does the accounts
22. Built a house costing \$500,000.00 3 years ago. Sister is in part of the house.
23. Did not ask for any contribution to pay the \$200,000.00
24. Makes \$2,000.00 per day in the wholesale and retail business. It is \$60,000.00 per month.
25. Business operates each day of the week.
26. Indebted to 7 suppliers, including Auto Trade.
27. When he makes \$2,000.00 the next day \$1,000.00 is paid out
28. Owes Josephine Gabriel \$6,000.00 or \$7,000.00
29. Did not bring papers [for the examination on oath]
30. Now buys \$600.00 per week from Josephine Gabriel.
31. Still sells Kubuli and buys \$800.00 - \$900.00 per week. The profits is \$200.00
32. Still owes Auto Trade for spare parts. Don't know how much is owed.
33. Sometimes cannot sleep- the minister comes home
34. The \$200,000.00 awarded was a mistake.
35. Paying the \$500.00
36. Buses take different routes. Not aware of the payments. The company pays me
37. Tours for tourist cost \$360.00 and scenic tours \$320.00
38. If more than \$500.00 is to be paid something else would have a problem
39. The family has 5 persons- 2 kids plus my wife and me
40. I am suffering
41. Never rent 4wheel drive Suzuki
42. My wife had a ventura which she traded in
43. Wife does not have Lexus- she has a CRV
44. We married 4-5 years ago. We lived by my mom. A year ago we moved into the new house.

45. Wife traded in the CRV and took a Lexus.
46. My wife is involved in the business with me.
47. My wife took a loan to purchase the Lexus
48. Cannot pay more than \$500 per month.
49. The \$2,000.00 per day in the business is the gross and the profit would be \$200.00 to \$300.00
50. The bus drivers get \$80.00 for a tour. Depends on the cost of the tour.
51. The land at Craig has a debt of \$125,000.00 and about \$130,000.00 in equity.

Submissions

[24] The submissions on behalf of the applicant centers on the following:

1. Based on the evidence adduced the respondent can pay \$2,000.00 per month because he
 - (a) Earns approximately \$2,000.00 per day from his wholesale and retail business
 - (b) Earns \$3,000.00 per month from the Government of Dominica for the transport of school children;
 - (c) Owns two other buses used to take tourist on tours, and is paid by the Dominica Tourist Association whenever his buses are used.
 - (d) Owns 10.5 acres of land at Craig which he used as security for a loan which he now owes \$130,000.00
2. Based on his assets and income the judgment debtor can increase the monthly payments, pay off the amount owed on the Craig land by selling it and pay the applicant the equity obtained.
3. The judgment debtor is not being truthful to the court by saying that his wife and sister have an interest in his properties.
4. The judgment debtor has assets which he can divest so that his debt to the judgment creditor can be realized.

Conclusion

- [25] In the absence of submissions on behalf of the judgment debtor the matter leads to the consideration of the submissions on behalf of the applicant/judgment creditor. The court agrees with the submissions entirely.
- [26] The respondent has revealed the sources of his income and the extent of his real estate holdings, personal properties and his liabilities. No documentation was provided. What the court notes is that, the respondent when it is convenient, his wife and sister are brought into the equation as owner of buses and the house. This is sometimes contradicted.
- [27] The evidence is that the respondent earns \$2,000.00 gross seven days per week from his wholesale and retail business, \$3,000.00 per month for the transport of school children, an income also comes from his two other buses engaged in taking tourist on tours and general transport of persons resident in Dominica. Then there is the 10 acre parcel at Craig which is encumbered to the extent of some \$130,000.00.
- [28] As noted before, the judgment debtor provided very little by way of accounts as he contends that these are within the province of his wife; who did not give evidence. This can only be towards the judgment-debtor's disadvantage.
- [29] The court is satisfied that the judgment debtor/respondent has the means to pay the applicant \$3,000.00 per month in furtherance of ancillary proceedings. In addition the land at Craig is considerable and despite the encumbrance, it is open to the judgment debtor to seek to sell the said land in whole or in part subject to the encumbrance.
- [30] It is the judgment debtor who has thus far acted contrary to the order of the court with impunity, but the further order of the court is that the judgment debtor/respondent must pay the applicant \$3,000.00 per month on the last working day of each month commencing June 2014, until the remainder of the debt of \$200,000.00 is satisfied. A penal notice must be attached to this order

Justice Errol L. Thomas
High Court Judge [AG]