

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)

SUIT NO: NEVHMT2003/0009

BETWEEN:

Angelo Gabriel Le Blanc – Judgment Debtor/Petitioner
and
Jesica Idona Le Blanc - Judgment Creditor/Respondent

APPEARANCES:

Ms. Kalisia Isaacs for the Judgment Creditor/Respondent.

Ms. Midge Morton for the Judgment Debtor/Petitioner

DECISION

2014: October 30

2014: November 21

[1] WILLIAMS, J. (Ag): The matter before the Court is a Request for Oral Examination of the Judgment Debtor supported by an Affidavit of the Judgment Creditor of the same date filed by the Judgment Debtor dated the 27th June 2014 pursuant to Part 44.5 of the CPR 2000.

- [2] The Judgment Creditor Jesica Idona Le Blanc has applied to the Court for
1. An Order that the Judgment Debtor Angelo Gabriel Le Blanc attend Court to provide Information about the Judgment Debtor's means and any other information needed to enforce the Order of the Court dated the 17th May 2010.
 2. An Order that the Judgment Debtor within fourteen (14) days complete, file and serve the Record of Examination set out in Practice Direction 44 No. 8 of 2011.
- [3] The Judgment Debtor was required by an Order of the Court dated the 17th May 2010 to pay the Judgment Creditor \$200,000.00 exclusive of Interest in final settlement of Ancillary proceedings. The amount that was due and owing was \$117,011.45 with interest accruing daily at a rate of \$12.60.
- The said Order also required the Judgment Debtor to liquidate the debt in two instalments. An amount of \$108,000.00 was to be paid within 3 months of the date of the said Order and the remaining \$92,000.00 was to be paid by the 31st December 2012.
- [4] On the 17th January 2011, the Judgment Debtor paid to the Judgment Creditor a sum of \$54,338.00 being part payment of the initial \$108,000.00; on the 14th December 2011, the Judgment Debtor paid the sum of \$53,661.20 which represented the final payment on the first Order of \$108,000.00. The remaining \$92,000.00 plus interest has been reduced to \$59,891.73 as a result of a payment of the Judgment Debtor of \$58,278.92 on the 24th September 2014.

- [5] The Judgment Creditor also claims that the Judgment Debtor has failed to comply with the Order of the Court of the 9th November 2007, where by the Judgment Debtor was ordered to pay \$650.00 monthly as maintenance to the child of the family Jeson Le Blanc until the child attained eighteen years or continuing beyond that age should the said child pursue higher education.
- [6] The Judgment Creditor states that the said child "Jeson Le Blanc" is over 18 years but is presently pursuing his undergraduate degree at the University of the Virgin Islands and therefore the Judgment Debtor must comply with the Orders of the Court of the 9th May 2007 and 17th May 2010.
- [7] In relation to this issue the Judgment Debtor stated in Oral examination on the 30th October 2014 that the said Jason Le Blanc is pursuing his University studies through a fully funded scholarship. Mr. Le Blanc provided no documentary evidence of his statement that a full scholarship was awarded to his son. Notwithstanding this omission by the Judgment Debtor he is still mandated by Order of the Court to provide maintenance of \$650.00 per month to his son until he completes his University undergraduate degree. Therefore since Mr. Le Blanc suspended the payment of \$650.00 from April 2011 he would now have to pay arrears of Maintenance from that period until his son completes his University undergraduate degree.
- [8] The Judgment Debtor Mr. Le Blanc also provided Oral Evidence to the Court on the status of his Assets and liabilities in response to the Judgment Creditor's

request to the Court for an enforcement of the Order of the Court of the 17th May 2010. Essentially the Judgment Creditor Mrs. Le Blanc now seeks payment of the balance of the Judgment debt of \$59,891.73.

[9] The Court now has to determine how this Judgment debt is to be paid applying the principles of fairness to the parties.

The Issue

[10] The issue for determination by the Court is whether the Judgment Debtor has the means to liquidate the debt owed to the Judgment Creditor pursuant to the Order of the Court of the 17th May 2010.

The Statutory Provision

[11] The Court's jurisdiction to grant financial provision to a spouse and any child or children of the Marriage, on Divorce is contained in the Divorce Act No. 32 of 2005 of St. Kitts and Nevis.

Section 13 (4) expressly stipulates that the Court shall in making an Order under this Section take into consideration, the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought.

Section 13 (6) states that an Order made under this Section that provides for the support of a spouse shall

- (a.) Recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown.
- (b.) Apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to Section (7).
- (c.) Relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d.) In so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable time.

Evidence

[12] In Oral Examination of the Judgment Debtor, Mr. Le Blanc was referred to the several exhibits that he had tendered in evidence by Counsel for the Judgment Creditor Ms. Kalisia Isaacs in particular a bill of the 28th May 2014 from Cable & Wireless. The Judgment Debtor stated that the account holder is Caribbean Smiles and that his name does not appear on any of the bills from Cable & Wireless.

- [13] In relation to the bills from Caribbean Cable Communications, Mr. Le Blanc stated that the account holders are Melissa and Rodney Flemming the persons from whom he rents a house.
- [14] Mr. Le Blanc claimed that he paid all his utility bills from Income derived from his Lab, and that his Lab and Caribbean Smiles were two separate entities. He kept repeating that he paid his bills as they came to him and that his average Income was not fixed. He stated further that when he took his earnings from the Lab, he paid himself by way of cash.
- [15] Mr. Le Blanc admitted that he had taken a loan from RBTT, and that the Judgment Creditor did not get anything from that loan. He claimed he had shown the same evidence to the Bank in Dominica that he had showed to the Court to get the loan.
- [16] When cross examined by Counsel for the Judgment Creditor about his Bank accounts in Dominica, Mr. Le Blanc stated that he did not have a savings account in Dominica, but he had a Loan account which he serviced from Nevis. Mr. Le Blanc did not provide any documentary evidence of the servicing of the Dominica Loan transaction and responded to questioning from Counsel that "you only have my word".
- [17] In his Affidavit of the 14th October 2013, at paragraph 15 Mr. Le Blanc detailed his monthly expenses at \$9502.12 and at paragraph 16 of the said Affidavit, he listed his Income from October 2013 to September 2014. Mr. Le Blanc stated in

Oral examination that his average income was \$8279.85; and that he took as his wages 80% of the Income from the Lab.

[18] Mr. Le Blanc also stated that he owned Caribbean Smiles Dental Clinic and that he was the sole owner of that business. He claimed that there were no profits from that business, but if there were any he would receive them, and disclose it to the Court.

[19] Mr. Le Blanc was cross-examined at length on a series of Bank statements which showed Bank accounts belonging to the Judgment Debtor (Exhibit ALB5) with small amounts of funds in them. Mr. Le Blanc agreed that his total savings is \$19,064.78.

[20] Mr. Le Blanc was also referred to "ALB5" the National Bank Checking Activity account which showed a balance of \$13,655.78 as at the 10th September 2014.

Mr. Le Blanc stated that this Account was that of Caribbean Smiles, and the monies in that account were being used to pay the suppliers of Caribbean Smiles for Dental Material supplied to them.

Mr. Le Blanc reiterated in his oral testimony that 20% of his earnings was being used to acquire materials for his Lab as distinct from Caribbean Smiles Dental Clinic which generated its own income. However although his name was on the National Bank Account as the owner of Caribbean Smiles Dental Clinic, it was his Lab which generated the Income from which he was paid.

- [21] In relation to the 900 shares from Cable & Wireless, Mr. Le Blanc while admitting he did not have the share certificates, he agreed that he would be entitled to half the shares in Cable and Wireless; while denying that the dividends derived from these shares were not a source of Income for him.
- [22] Mr. Le Blanc also claimed that he had offered to the Judgment Creditor his half share in the land that the parties owned at Brazier's Estate as part of the settlement and the Judgment Creditor had refused his proposal. He stated further that the Court had by Order of the 17th May 2010 awarded the Judgment Creditor a 50% share in the Caribbean Smiles Dental Clinic and he had been trying to settle this matter with her since that time.
- [23] Under re-examination by his Counsel Ms. Morton, Mr. Le Blanc stated that he paid three employees and two contracted Dentists on a fortnightly basis from Caribbean Smiles Dental Clinic's account at National Bank and for the last seven years he had made no profit from Caribbean Smiles Dental Clinic.
- [24] Mr. Le Blanc also stated that he had a parcel of land at Ramsbury which he assessed at \$66,000.00 and another parcel of land at Brazier's Estate which he had assessed at \$80,000.00 and had offered both parcels of land to the Judgment Creditor to finally settle the matter but she had refused. He had also gone to the Credit Union two years ago to secure a loan to pay off the Judgment Creditor, but the land could only support a loan of \$61,000.00. Subsequently he had started

an office building for Caribbean Smiles Dental Clinic and did not want to tie up the land in more loans.

Court's Analysis

[25] From my observation of the Judgment Debtor during his cross examination and on a review of the Evidence, I have found as a fact that contrary to the submissions made on his behalf, the Judgment Debtor has not provided sufficient and adequate disclosure of his earnings and earning capacity.

[26] I have also found that the Judgment Debtor was not a credible witness in these Oral Examination proceedings. He has stated repeatedly in his oral evidence and his Affidavit of the 14th October 2014 that he has no means to satisfy the outstanding sum owned to the Judgment Creditor, yet he admits that the funds in the National Bank are not his personal funds and are that of Caribbean Smiles Dental Clinic yet the Bank account is and remains in his name and there are debits and credits to that said account up to the 10th September 2014.

There has been a disturbing intermingling of personal and business Income by the Judgment Debtor which has impacted on the Court's ability to determine the true extent of the Judgment Debtor's means. I state categorically that I do not believe the Judgment Debtor's evidence. The Judgment Debtor knows the extent of his earnings and his earning capacity but has refused to properly disclose his Income and has deliberately put himself in a position of a man who is in financial

jeopardy and whose expenses outweigh his Income. The duty to make full disclosure to the Court is imperative and the Court frowns upon the Judgment Debtor's attempt to hoodwink the Court.

[27] In the case of **Fitzroy Warner vs. Hotel Equity Fund VLLC C.A 2009/002** the learned J.A Edwards explained the provisions of Section 4 of the Debtor's Act 1888 of the Leeward Islands which is similar in wording to the Debtor's Act Cap 5.07 of the Laws of Saint Christopher and Nevis.

At paragraph 13 of her Judgment the Learned J.A stated that the Judgment Creditor must prove that the Judgment Debtor had been

1. Both refusing or neglecting to pay the debt and
2. That he had or had had since the date of the Judgment the means to pay.

The burden of proving the means of the Judgment debtor was placed squarely on the Judgement Creditor, and the Judgment Debtor had nothing to prove.

[28] The Court is of the opinion however that the Judgment Debtor must provide Information about his earnings, earning capacity and Income, as this Information is peculiarly in the realm of knowledge of the Judgment Debtor. The Judgment Creditor has done everything she could do to provide the Court with evidence to show that the Judgment Debtor has the means to settle the Judgment Debt.

The power of the Court to draw inferences adverse to the Judgment Debtor in such circumstances was stated in **Payne vs. Payne [1968] 1AllER 1113** by

Willmer J. in the following manner;

“It is well established that the Court is entitled to draw inferences adverse to a husband who has not made a proper disclosure of his available resources.

It was also held by Lloyd Jones J in Ette vs. Ette [1965] 1 All.E.R 341 that it was proper to draw inferences adverse to the husband from the fact of his failure to make a proper disclosure.

[29] In his Affidavit of the 9th May 2014 at paragraph 8 the Judgment Debtor claims that Caribbean Smiles Dental Clinic has made NO profits, and that the Clinic is heavily indebted and has a myriad of expenses and high overhead costs including salaries for Employees and the maintenance of Dental Equipment. According to the evidence the Clinic was operational from 1996 until this present time. I therefore find the Judgment Debtor’s evidence unbelievable in that the Clinic which has not been making profits for the last seven years, has not been closed down, however the Judgment Debtor has been granted a loan according to his evidence to build an office building for Caribbean Smiles Dental Clinic. The Loan amount is for \$61,778.92 and his first payment was on the 30th September 2014.

[30] I have no doubt in my mind that the Judgment Debtor is hiding evidence especially in relation to his Bank Accounts. It appears that the Judgment Debtor only claims the accounts with minimal funds as his own, and the accounts with substantial funds as belonging to Caribbean Smiles Dental Clinic, although his name alone appears on all the Bank accounts. I therefore draw the inference

adverse to the Judgment Debtor, that he has deliberately hidden his earnings and means from the Court. I am of the view that the Bank accounts that have exhibited by the Judgment Debtor do not reflect his true Income or earning capacity, and that he has deliberately diminished the extent of personal Income to avoid payment of the balance of the Judgment debt, to the Judgement Creditor.

[31] At paragraphs 15 & 16 of his Affidavit of the 14th October 2014 the Judgment Debtor itemised his monthly expenses and his personal monthly Income, but produced no Invoices or receipts from his Lab to substantiate or corroborate this Income from the Lab. I therefore do not accept that his answers are truthful in this regard, and he has therefore chosen to hide his earnings and Information that would assist me in ascertaining his earning capacity. I am therefore at liberty to continue to make findings adverse to him.

[32] In making a determination of this matter, I am guided by the principles adumbrated by Lord Nicholls in the case of Miller vs. Miller [2006] 2WLR 1268. He stated; "When Marriage ends, fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties housing and financial needs, taking into account a wide range of matters, such as the parties ages, their future earning capacity, the family's standard of living, and any disability of either party."

[33] In applying the principles of Fairness to this matter, and in examining the exhibits of bills tendered by the Judgment Debtor, I am of the view that the Cable, Electricity and Telephone bills submitted are all paid for by the funds and account of Caribbean Smiles; there is no account holder appearing on the Nevis Electricity Co. Ltd. Bill and the Telephone bills submitted do not detail the Cable charges which is the standard procedure in LIME bills. I therefore disallow those items as monthly expenses of the Judgment Debtor. I am of the view that the Judgment Debtor has presented circumstances to the Court of his financial position which have been manufactured to show that he is not in a financial position to pay off the balance of the Judgment debt.

[34] In relation to the land at Brazier's Estate which is jointly owned by the parties and valued at \$80,000.00 the evidence is that Mr. Le Blanc had offered Mrs. Le Blanc the lot of land two years ago, and still continued to offer her, but she has refused the offer. The Judgment Creditor, Mrs. Le Blanc is entitled to 50% of the value of the parcel of land.

I accept the valuation of Hamoron Services that the land is valued at \$81675.00 and therefore order the Judgment Debtor to pay to the Judgment Creditor the sum of \$40,837.00 which is 50% of the value of the land, upon receipt of the said sum the Judgment Creditor will transfer her interest as joint tenant in the land to the Judgment Debtor.

[35] In applying the principles of Fairness and Equality to this matter I also order that the Judgment Debtor pay the sum of \$30,000.00 to the Judgment Creditor by the 31st January 2015, and the balance of \$29,891.73 plus interest be paid by monthly instalments of \$2500.00 commencing the 1st March 2015, until the debt is fully and finally liquidated.

[36] The Judgment Debtor is ordered to pay the arrears of maintenance for his son Jeson Le Blanc from May 2010 and continuing until the son Jeson Le Blanc has completed his University undergraduate studies at the University of the Virgin Islands pursuant to the Order of the Court dated the 17th May 2010.

Conclusion

[37] In arriving at my Decision, I am guided by the following:

1. The failure by the Judgment Debtor to disclose his true earnings and earning capacity.
2. My finding that the Judgment Debtor deliberately attempted to hide or prevent an assessment of his means earnings and earning capacity by the Court.

Having regard to the totality of the Evidence and to the Statutory Provisions of the Divorce Act No. 32 of 2005.

My Order is as follows:

1. That the Judgment Debtor do pay the sum of \$30,000.00 to the Judgment Creditor by the 31^s January 2015 and the balance of the Judgment Debt of \$29,891.73 by monthly instalments of \$2500.00 commencing on the 1st March 2015 and continuing until the Judgment Debt plus interest is fully and finally liquidated.
2. That the Judgment Debtor pay to the Judgment Creditor the sum of \$40,837.00 by the 31st May 2015 which represents a 50% share of the value of the land at Brazier's Estate which is held in joint tenancy by the parties. Upon receipt of that sum the Judgment Creditor will immediately transfer her rights and interest in the said property to the Judgment Debtor.
3. That the Judgment Debtor do pay arrears of Maintenance of \$650.00 monthly for his son Jeson Le Blanc from May 2011 to the date of this Order and will continue to pay that sum until the said Jeson Le Blanc completes his undergraduate studies at the University of the Virgin Islands.
4. Liberty to apply.
5. That each party bear their Costs for this Application.

Lorraine Williams
High Court Judge (ag)

