

**THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHVC1997/0058

BETWEEN:

MALACHI WARNER

CLAIMANT

and

ENLEY KING

DEFENDANT

Appearances:

Mr. Sten Sergeant and Mr. Richard Williams for the Claimant;
Mr. Israel Bruce and Ms. Nelleen Bute for the Defendant

2017:Jan. 25

JUDGMENT

[1] **Henry, J.:** The judgment in respect of which the applicant/claimant is seeking to have an order for the sale of the defendant's property, was rendered by Justice Lannsby order dated 30th of January, 2015 in which it was ordered:

- '(1) Judgment be entered for the claimant against the defendant.
- (2) The claimant Malachi Warner is the owner and he is entitled to possession of twelve thousand, seven hundred and seventy-five square feet (12,775 sq ft) of land situate at Diamond's Village and which is more particularly described in the schedule to Deed number 193/1993 in favour of the said Malachi Warner.

The land described on the Survey Plan C24/4 as seven thousand, six hundred and ninety- six square feet (7,696 sq ft) be valued. That a evaluator be agreed by the parties and that the cost of the evaluation be borne by the claimant and the defendant equally.

(4) The defendant do pay the claimant the value of the seven thousand, six hundred and ninety-six square feet (7,696 sq ft) of land. Upon payment by the defendant the claimant is to execute a deed of conveyance to the defendant for the said portion of land.

(5) The defendant do pay the claimant costs in sum of five thousand dollars (\$5000.00).'

[2] In respect of this judgment, the claimant filed a judgment summons which was disposed of by this court on the 13th of April, 2016. The evidence of the claimant is that the defendant paid fifteen thousand dollars (\$15,000.00) of the judgment sum leaving a balance now of thirty-eight thousand dollars (\$38,000.00). It is that thirty-eight thousand dollars (\$38,000.00) which the claimant is seeking to recover by sale of the defendant's property, occupied by the defendant. The defendant in his evidence has indicated that, that property consists of land and a dwelling house in which he and his family lives. He has also indicated in his evidence that he owns a motor vehicle, an Escudo 1996 which is registered in his sole name. When asked by the court, the claimant indicated that in an effort to ascertain what properties if any, the defendant owns in the jurisdiction of Saint Vincent and the Grenadines, he asked the defendant and several other persons and learnt that the defendant owns no property other than the dwelling house which is the subject of this application.

[3] The defendant himself volunteered the information regarding a motor vehicle and he added that he does not own any savings and his employment involves farming for which he has secured a lease for planting agricultural produce. He is yet awaiting the fruits of his labour since the produce has not come to maturity as of the date of filing of his affidavit on the 24th day of January, 2017.

[4] If the court is to make an order for sale pursuant to Section 50 of the Civil Procedure Code must be satisfied:

(1) That judgment remains totally or partially unsatisfied I am satisfied that the judgment sum to some degree remains outstanding in the amount of thirty-eight thousand dollars (\$38,000.00) That aspect of Section 50 has been established.

(2) The Court must also be satisfied that there is no property of the judgment debtor other than the subject land against which the judgment can be enforced. I am satisfied having heard the defendant Enley King, that he is in possession of a 1996 Escudo motor vehicle which may be sold to defray the outstanding amount of the judgment debt.

No evaluation of the motor vehicle has been presented. The Court is not permitted to speculate as to the value of the motor vehicle. There is nothing before the court which establishes that the motor vehicle if sold would not realize the total amount of the judgment debt in those circumstances.

The claimant/applicant has failed to establish to the court's satisfaction that the defendant does not have other property within the jurisdiction of the State of Saint Vincent and the Grenadines which may be attached, sold or otherwise disposed of to realize the remaining balance of the judgment debt. In those circumstances:

ORDER

1. The claimant's application filed on the 15th of November, 2016 is dismissed.
2. No order is made:
 - (a) Issuing directions for sale of the subject property at Diamond Village.
 - (b) Granting access to evaluators to the subject property for the purposes of obtaining an evaluation.
 - (c) For sale of the subject property by private treaty.
 - (d) For an order that the Registrar of the High Court is to have conduct of the sale of the subject property.

3. Each party to bear his own costs.
4. Applicant/claimant has carriage of this order which must be filed on or before the 3rd of February, 2017.
5. Claimant is to file order of court dated 13th of April, 2016, on or before the 3rd February, 2017.
6. Non-compliance with the timelines in this order will attract wasted costs sanctions.

[5] I wish to add that the court in making its decision (although it was not necessary to consider it entirely) took into account that the subject property consists of the defendant's dwelling house where he said that he and his family lives. It is very doubtful that in circumstances, where the defendant indicates to the court he is not faithfully employed and likely to realize income from his farming that the court in those circumstances will make an order for sale of his home which will render he and his family homeless.

**JUSTICE ESCO HENRY
HIGH COURT JUDGE**