EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA
COMMERCIAL DIVISION

CLAIM NO. SLUHCV2009/0498

BETWEEN:

FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LIMITED

Claimant/ Applicant

And

1. PRAISE AND WORSHIP TABERNACLE INCORPORATED
2. DAVID TOMMY

Defendants/ Respondents

Appearances:

Mr. Sahleem Charles for the Claimant/ Applicant
Mr. Ramon Raveneau for the Defendant/Respondent

2018: March 21

DECISION IN CHAMBERS

[1] **ST ROSE-ALBERTINI, J. [Ag]:** Before the Court is an application filed by First Caribbean International Bank (Barbados) Limited (the applicant) to fix an up-set price of EC$2,200,000.00 for the judicial sale of immovable property owned by Praise And Worship-Tabernacle Incorporated, the second respondent. The property is registered in the Land Registry of Saint Lucia as Parcel Number 08458 168, in the registration Quarter of Castries.

[2] By Judgment in Default of Acknowledgement of Service dated 12th October 2009, the applicant bank had obtained judgment against the Praise And Worship Tabernacle Incorporated and David Tommy (the respondents). The respondents have failed to settle the judgment debt in full, which as at 30th March, 2017 stood at $538,910.40 together with interest and costs.

[3] To enforce its judgment, the applicant on 23rd May, 2017 filed (1) a Praecipe to issue a Writ of Execution, (2) a Writ of Seizure and Sale, (3) Instructions to Levy and (4) the application to fix an upset price.

[4] By letter dated 11th August, 2017 the Registrar of the High Court as Sheriff ("the Registrar") wrote to the applicant's Legal Practitioners indicating that 6 years had elapsed since judgment was entered and in order to continue processing the application for the writ of seizure filed on 23rd May, 2017 permission from the Court was required pursuant to Rule 46.2(c) of the Civil Procedure Rules 2000 ("CPR"). A copy of the letter was provided to the Court.

[5] On 28th August, 2017 the applicant filed an application without notice for leave to issue a writ of execution notwithstanding that 6 years had elapsed from the date that judgment was entered and by order of the Court dated 10th October, 2017 permission was granted.

[6] Acting on the documents filed on 23rd May, 2017 and the subsequent order the Registrar of proceeded to issue the writ of execution on 20th November, 2017 which was made returnable on 20th March, 2018. The property was purportedly seized by the Sheriff's Officer on 14th January, 2018.

[7] The parties are presently before this Court on the application filed on 23rd May, 2017 to fix an upset price.

The **Issues**

[8] The following issues have come to the fore and must be resolved:-

1. Whether the Registrar can issue a writ of execution where the praecipe to issue the writ was filed before permission to issue the writ was granted pursuant to CPR 46.2 (c)

2. Whether the Court is in a position at this juncture to fix an upset price on the basis of the application filed on 23n1 May, 2017.

The Law

[9] Article 499 of the Code of Civil Procedure[1] ("CCP") provides:

> *"The seizure of immovables can only be made in virtue of* a *writ, clothed with the same formalities as writs of execution against movables, ordering the Sheriff to seize the immovables of the defendant and to sell them in satisfaction of the judgment pronounced against him or her from principal, interest, and costs.*•

[1OJ Article 500 of the CCP states:

> *"The writ is addressed to the Sheriff and is executed by the Sheriff himself or herself or by one of his or her officers. It must be made returnable on a day certain within 4 months from its date, except in cases where the immovable is of no greater value than $280"*

[11] Article 511A of the CCP which states:

> *"The Judge or the Registrar may on an application made by the Judgment Creditor, notice of which shall be served on the Judgment debtor, fix an upset price for the sale of immovables seized by the Sheriff by virtue of* a *Writ of Execution.* "

[12] CPR46.1 states:-

> *"In these Rules* a *"writ of execution" means any of the following -*
> *(a) an order for the sale of land (or, in Saint Lucia,* a *writ of seizure and sale of immovable property).....*•

[1] Chapter 4:01Aof the Revised Edition of the Laws of Saint Lucia

[13] CPR46.2(c) states:

> *"A writ of execution **may not be issued** without permission if -*
> *(c) 6 years have elapsed since the date judgment was entered". [emphasis added]*

[14) CPR46.3 states:

> *"(1) An application for permission may be made without notice unless the court otherwise directs but must be supported by evidence on affidavit.*
>
> *On an application for leave the applicant must satisfy the court that it is entitled to proceed to enforce the judgment or order, and, in particular must satisfy the court -*
>
> *(a) if the judgment is a money judgment- as to the amount-*
> *(i) originally due; and*
> *(ii) due together with interest at the date of the application;*
> *(b) if rule 46.2 applies - as to the reasons for the delay;*
> *(c) .....;*
> *(d).....;*
> *(e) that the applicant is entitled to enforce the judgment; and*
> *m that the person against whom enforcement is sought is liable to satisfy the judgment.•*

[15) CPR46.10 states:

> *"(1) A writ of execution is valid for a period of **12 months beginning with the date of its issue** {emphasis added}* .
>
> *(2) After that period the judgment creditor may not take any step under the writ unless the court has renewed it."*

Analysis

Can the Registrar issue a writ of execution where the praecipe to issue the writ was filed before permission to issue the writ was obtained pursuant to CPR 46.2 (c)

[16] Mr Charles argued on behalf of the applicant that a praecipe is merely a request to the Registrar to issue a writ of execution, to which is attached a draft writ of execution and instructions to levy, which allows the sheriff to proceed to seize and sell the property. The issuance of the writ is an administrative act which the Registrar may not undertake unless permission had been obtained from the Court, if 6 years has elapsed since judgment was

entered. In the present case after the praecipe was filed the Registrar requested that the applicant obtain permission and then subsequently issued the writ.

[17] He submits that the Registrar was well placed to issue the writ requested in the praecipe filed on 23rd May, 2017 because the applicant had subsequently obtained permission for issuing that writ. A writ is only valid when issued and the date of filing of the praecipe is irrelevant to the validity of the writ. He further says that the praecipe merely evinces the intention of the applicant to enforce its judgment by seizure and sale of the property. It does not matter that the order granting permission did not expressly state that permission was granted in respect of the praecipe and documents filed on 23rd May, 2017 as the Registrar had always intended to issue the writ which was presented provided permission was obtained from the Court.

[18] The applicant further submits that the filing of a praecipe must not be confused or equated to the issuance of the writ. They are distinct and separate acts, with the former being carried out by the applicant and the latter being an act by the Registrar. **Laborie Co-Operative Credit Union v Peter Emmanuel**[2] was cited as authority for that proposition. Additionally it was submitted that CPR 46.2(c) speaks only to the "issue" of a writ and not the "filing" of a request for it. On that basis the rule is capable of one meaning only, which is that the writ may not be issued without permission if 6 years has elapsed. Consequenfly, Mr Charles says, mere filing of the praecipe before obtaining permission to issue the writ in no way affects the validity of the writ which can only be called into question after it has been issued.

[19] Mr Raveneau on behalf of the respondents contend that the very request for issuance of the writ is a nullity, in that the applicant sought to request something which it did not have leave to request and in law could not have requested at the time. The process was therefore flawed **ab initio.**

[2] Civil Appeal No. 4 of 2007 - delivered on 20th July, 2017, unreported

[20) He submits that using the purposive approach it is clear that the law intends that the praecipe and supporting documents be clothed with validity when filed. The intent, spirit and purpose of the CPR46.2 {c) cannot be that a request can be made for something which cannot be issued. Thus the request and everything connected to it was invalid as and when presented.

[21) The respondents further contend that the law does not envisage that the applicant can make the request, then ask the Registrar to hold on whilst leave is obtained and 5 to 6 months later as in the present case return with leave in hand to piggy back on the invalid request filed prior. Mr Raveneau agreed that the applicant files the praecipe and the Registrar acts on it to issue the writ, however the process does not envisage the surgical procedure that Counsel for the applicant has embarked upon by seeking to separate the filings, then obtaining the leave that should have been obtained in the first place and returning to deal with a writ presented in the flawed filings. Such a procedure he says, is inequitable, because it is improper and an abuse of process. Without having obtained the requisite leave the applicant was moving the Registrar to do something unlawful. If leave is required for the writ to be issued, to make the request before obtaining same is wrong and should not have been addressed or even looked at because it was invalid.

[22) Mr Raveneau went on to say that the applicant ought to have been informed that leave having not been obtained, the request could not be entertained and a fresh request should be made upon obtaining the requisite leave. He submits that the law would find this audacious and everything which flows from such request must find itself in the column of invalidity. The applicant cannot approach the Registrar unless it is veiled with permission and to do otherwise is an affront, is unacceptable and should be consumed in the fires of the law.

[23) On this issue the respondent relied on the case of **Milicent Bass v Julian Daniel3** in which an administrator sought to file a claim on behalf of an estate before obtaining letters of administration. The Master opined at paragraph 10 of her judgment that:

3 Claim No. MNIHCV2016/0024 - delivered on 5th May, 2017, unreported

"It is clear that the claim form with statement of claim filed before first obtaining Letters of Administration is incurably bad. It cannot be resurrected retrospectively even if the claimant was to obtain letters of administration subsequent to the filing of the claim. The personal representative if and when appointed, will have to initiate a new claim."

[24] In much the same way that an interlocutory appeal filed without leave or a divorce petition filed before the expiration of 5 years of the marriage without leave are both nullities, the very request for something (the writ of execution) which could not be issued for want of leave, is also a nullity and cannot be resurrected retrospectively even if leave is subsequently obtained. Applying the above principle to the facts at hand, Mr Raveneau invited the Court to find that all the documents filed on 23rd May, 2017 were "incurably bad".

[25] As I understand the arguments Mr Charles sought to separate the filing of the praecipe from the issue of the writ by saying that even if there was no permission when the praecipe was filed, by the time the accompanying writ was issued permission had already been granted, thus the writ was validly issued. Mr Raveneau's answer is that the writ which was issued flowed from the invalid request which was made prior to obtaining permission and that request cannot be separated from the issuance of the writ itself in the way that Counsel has attempted to do so.

[26] It is my considered opinion that the process cannot be dismantled in this way, as the ultimate intention for making the request is to cause the issuance of the writ. I agree with Mr Raveneau that the spirit and intent of CPR46.2 (c) is that a judgment creditor is only entitled to enforce a judgment in this way either within 6 years of obtaining the judgment or with permission from the court after 6 years has elapsed.

[27] I also accept that once the initial period has elapsed the right to enforce a judgment in this way remains in abeyance until permission has been granted. Thus the process should not be initiated until permission has been granted by a Court.

[28) I found nothing in the **Laborie Co-Operative Credit Union** case which lent support to applicant's position. In my view the administrative act to be performed by the Registrar flows from the request and if the request is invalid then everything which flows from it will also be tainted with illegality.

[29) A writ cannot be brought to life without the filing of a praecipe. In the absence of the lawful foundation for making such request the process can go no further. I found merit in the argument that for the writ to be lawfully issued a fresh process should have commenced after obtaining the order. To say that the date of filing is irrelevant is tantamount to saying that the legal authority and ability to issue the writ was irrelevant at the time that the applicant moved the Registrar to take this step. Such reasoning cannot be consonant with the purpose and intent of CPR 46.2(c).

[30) It must be implicit in the sub-rule that one ought not to file the request to issue a writ after 6 years has elapsed, unless armed with the requisite permission to cause that writ to be issued. It is for the applicant to ensure that it is properly clothed in law by taking the steps required by CPR 46.6 to arm itself with permission and be in right standing to invoke the jurisdiction of the Registrar for issuance of the writ.

[31] Filing the praecipe prior to obtaining permission as in this case will inevitability amount to a nullity because that request was asking for something to be done when there was no legal authority to do it. It cannot be proper to invoke an administrative act, without first obtaining the requisite permission to ground the act. I do not believe that the filings of 23rd May, 2017 could be saved by the later order of 10th October, 2017 as that order was not retroactive.

[32) Consequently I am satisfied that a writ could not have been issued on the basis of these filings and the proper course would be to file a fresh praecipe with supporting documents after permission was granted.

Is the Court in a position at this juncture to fix an upset price on the basis of the application filed on 23rd May, 2017

[33) Mr Charles submitted that the Court is in a position to fix the upset price as all the requisite conditions have been satisfied. A valid writ of execution is in existence and since the respondents had not filed an opposition to the seizure and sale, the property remains seized. Sale may proceed with or without an up-set price, however to avoid prejudice to the applicant it is imperative that the Courts fixes the up-set price on the application which is before it.

(34) Mr Raveneau's response is that the Court is unable to do so. The act of seizure by the sheriff on the 14th January, 2018 must be brought into question as the applicant was obliged to file a fresh praecipe with supporting documents after obtaining the leave of the Court and failed to do so. The order of 10thOctober, 2017 could not cure the defect in the original praecipe and documents filed on 23rd May, 2017 were for all intents and purposes dead, having been filed when leave was yet to be obtained for the procedure which the applicant was seeking to invoke.

[35) He contends that the purported seizure is invalid and must be impugned in the absence of a new request filed subsequent to the court order. If the process by which the writ was issued is invalid then a seizure based upon the said writ is also invalid. The proper legal platform upon which an upset price can be fixed has not yet been established and Court is not in a position to do so. Having put on the cloak of permission as required the applicant must now freshly approach this process in order to obtain the orders that it seeks.

[36) I considered the contending positions and formed the view that a writ can only be issued in response to a lawfully made request. That could not be said of the praecipe filed on 23rd May, 2017 because at that time the applicant had not moved the Court for permission to issue the writ. It was plainly wrong to file the praecipe and attendant documents without first obtaining permission. Without fresh filings to give this process legal credibility I concluded that the application to fix upset price filed on 23rd May, 2017 was a nullity. As such there is no proper application on which the Court can proceed to fix an upset price.

Conclusion

[37] In concluding I make the following orders:-

1. The application to fix upset price filed on 23rd May, 2017 is struck out.
2. There is no order for costs.

Cadie St Rose-Albertini
High Court Judge

BY THE COURT

REGISTRAR

[SEAL]