EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA
COMMERCIAL DIVISION

CLAIM NO. SLUHCV2016/ 0696

BETWEEN:

KCL CAPITAL MARKET BROKERS LIMITED

Claimant/ Applicant

And

THE ATTORNEY GENERAL

Defendant/ Respondent

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini High Court Judge

Appearances:
Mr. Leslie Prospere with Ms Kristian Henry for the Claimant/ Applicant
Mr. Rene Williams with Mr George K. Charlemagne for the Defendant/Applicant

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2019: January 31
February 14

DECISION

[1] ST ROSE-ALBERTINI, J. [Ag]: In September 2017 KCL Capital Market Brokers Limited (the "applicant) obtained a substantial money judgment against the Crown in the sum of $1,335,892.78 together with interest on the said sum at the rate of 6% per annum from 15th November 2015 until payment in full and costs in the sum of $7,000.00. The Attorney

General (the "respondent") appealed the decision and made an application for stay of execution, pending the outcome of appeal.

[2] In December 2017 the Court of Appeal refused the stay. The applicant then wrote to the respondent several times requesting payment of the judgment debt. These requests went unanswered.

[3] As the next procedural step for satisfying the judgment, the applicant wrote to Registrar of the High Court requesting that a certificate be issued pursuant to subsection 20 (1) of the Crown Proceedings Act[1] (the "CPA"). The Registrar responded that there was in fact no prescribed form for such certificate. Based on the absence of a form the applicant has filed this application for leave to be granted to the Registrar to use a prescribed form proposed by the applicant.

[4] The prescribed form to be used under subsection 20 (1) was previously contained in the Supreme Court Rules 1970 (the "SCR"). When these rules were repealed and replaced by the Civil Procedure Rules 2000[2] (the "CPR"), the form was not retained. Thus the CPA authorizes the Registrar to issue a certificate in a prescribed form, but that form no longer exists. The applicant claims that the ability to pursue satisfaction of its judgment is stymied by the absence of the form and seeks the Court's intervention to remedy the omission by (1) adopting a certificate which is currently in use under similar statute in the Republic of Trinidad and Tobago ("Trinidad"), or (2) importing a certificate used under the Crown Proceedings Act 1947 in the United Kingdom (UK), or (3) as a last resort a certificate can be created.

[5] The respondent says there is no lacuna in the law and although the absence of the form might lead to a harsh result for the applicant, in that no certificate can be issued to facilitate satisfaction of its judgment, such is the current state of the law and the court can do no more than uphold the law, until the designated authorities act to correct it.

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[1] CAP 2.01 of the Revised Edition of the Laws of Saint Lucia
[2] S.I. No. 95 of 2001

[6] In the event that the Court should find that a certificate may be issued, the respondent urges that a condition be included to suspend payment of the judgment debt pending the outcome of appeal.

The Issues

[7] The issues for determination are as follows:-

1. Can the Court adopt Form No. 24 contained in the Supreme Court (Crown Liability and Proceedings) Rules 1967 in Trinidad?

2. Alternatively can the Court import Form No. 95 contained in the Rules of the Supreme Court 1965 in the UK?

3. If the above methods are not permissible should leave be granted to the Registrar to produce a certificate?

4. If leave is granted should a condition for suspension of payment be included, pending the outcome of appeal?

[8] The section of the CPA which has ignited this debate states:-

> "20. *Satisfaction of orders against the Crown*
>
> *(1) Where in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, any order (including an order for costs) is made by any court in favour of any person against an officer of the Crown as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of 21 days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order.*
>
> *However, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.*

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney General.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Director of Finance and Planning shall, subject as hereinafter provided, pay to the person entitled or to his or her solicitor the amount appearing by the certificate to be due to him or her together with the interest, if any, lawfully due thereon.

However, the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted therein.

(4) Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Crown, or any Government department, or any officer of the Crown as such, of any such money or costs.

(5) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter." [Emphasis added]

The Applicant's Submissions

[9] Counsel for the applicant Mr Prospere submits that the prescribed form previously existed as Form No. 55, in the SCR and was in force until the SCR was repealed and replaced by the CPR. The applicant should not be denied the right of satisfaction of its judgment, on account of the omission of the form and the Registrar may be granted leave to either adopt

a prescribed form from a jurisdiction with equivalent legislation or create the certificate, in furtherance of the legislative intent of the section 20.

[10] Counsel submits that the starting point is an examination of the difference between procedural and substantive law. He referred the Court to the case of R v Andre Penn[3] in which Persad J stated that such distinction is not always easy to draw and adopted the definition given in Short & Ors v Ireland HCA 167/04 as follows:-

> *"…….There is the distinction to be drawn between substantive law and procedural law. Substantive law creates the rights and obligations and determines the ends of justice embodied in the law, whereas procedural law is an adjunct or an accessory to substantive law. It is by procedure that substantive law is put into motion, and it is procedural law which puts life into substantive law gives it its remedy and effectiveness and brings it into being."*

[11] He submits on the basis of the above definition that the matter before the court concerns procedural and not substantive law. The applicant's right to the judgment debt is embodied in the earlier decision of the Court and having adjudicated on the issue between the parties and determined that the applicant is entitled to the sum owed, it is the applicant's right to seek to satisfy the judgment. Section 20 of the CPA has set out the procedure for doing so and the Court has a duty to resolve the apparent lacuna brought about by the absence of the form.

[12] The applicant says it has found a parallel provision in section 27 of the State Liability and Proceedings Act of Trinidad. The certificate required to satisfy a judgment against the state is contained in the Supreme Court (Crown Liability and Proceedings) Rules 1967 in that jurisdiction, and it is Form No. 24. It is similar to the missing form and may be adopted on the ground that it is purely procedural and will assist the court in fulfilling its mandate in giving effect to subsection 20 (1). Counsel referred to Articles 9 and 10 of the Civil Code[4]

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[3] Criminal Case 31 of 2009 of the BVI

[4] CAP 4.01 of the Revised Edition of the Laws of Saint Lucia

(the "Code") in conjunction with Article 37A of the Code of Civil Procedure[5] (the "CCP") as authority for adopting the form.

[13] The full text of the respective articles are reproduced below:-

> *"9. The Court or Judge cannot refuse to adjudicate under pretext of the silence, obscurity or insufficiency of the law.*
>
> *10. When a law is doubtful or ambiguous, it is to be interpreted so as to fulfill the intention of the legislature and to attain the object for which it was passed."*
>
> " *37A. In all cases of procedure not provided for by the Code of Civil Procedure or any rules of court or otherwise, the procedure or practice shall be such as the Judge may direct or approve."*

[14] Counsel further submits that if the applicant is wrong on the ability to adopt the form under these provisions, then the Court may invoke section 11 of the Eastern Caribbean Supreme Court (Saint Lucia) Act[6] (the "ECSCA") to import Form No. 95 enacted under the English RSC O.77 r.15. This form gives effect to section 25 the UK Crown Proceedings Act 1947 (which is the equivalent of section 20 of the CPA). The applicant maintains that the form is within the scope of procedural law and does not contemplate that substantive law is received.

[15] Section 11 of the ECSCA states:-

> "11. *Practice of High Court in Civil proceedings and in probate causes*
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> *The jurisdiction vested in the High Court in civil proceedings including matrimonial causes and in probate causes shall be exercised in accordance with the provisions of this Act, the Civil Code, the Code of Civil Procedure, any other law in force in the State and rules of court, and, where no special provision is therein contained,*

[5] Cap 4.01A of the Revised Edition of the Laws of Saint Lucia
[6] CAP 2.01 of the Revised Edition of the Laws of Saint Lucia

such jurisdiction shall be exercised as nearly as may be administered for the time being in the High Court of Justice in England."

[16] Mr Prospere progressed the argument further by stating that judicial interpretation of the section 11 is found in Panacom International Incorporated v Sunset Investments Limited eta al[7].There Sir Vincent Floissac CJ writing for the Court of Appeal considered the corresponding provision of the Supreme Court Act in St Vincent and concluded that the section permits reception of procedural law and the English law to be imported is the procedural law administered in the High Court of Justice in England. Additionally the section it is not intended to import English substantive law or English procedural law that is adjectival or purely ancillary to English substantive law. The ruling was endorsed and applied in the subsequent case of Veda Doyle v Agnes Dean[8].

[17] He suggests however that these cases are to be distinguished from the instant case because in both instances the issue before the Court of Appeal concerned importation of substantive law as opposed to procedural law. He then urged the Court to apply instead the reasoning in Richard Fredrick et al v Comptroller of Customs et al[9], a decision from this jurisdiction, where the Court of Appeal imported a rule from the English Civil Procedure Rules to cure a defect in the CPR, in circumstances where the CPR was silent on whether the leave of the court was required for withdrawal of an acknowledgment of service. The requirement for leave was previously contained in the SCR which was not captured in the CPR. The court held that this silence must be treated as an inadvertent omission, as it could not be intended to lead to such an undesirable result. The lacuna was alleviated by invoking section 11 and importing into the CPR the relevant English rule so that once filed, an acknowledgment of service could not be withdrawn without the leave of the court. Counsel submits that similarly the CPR has not retained the prescribed form to be used under section 20 and in much the same way the Court can import Form No. 95 which is premised on the English RSC Order 77, which is a procedural rule.

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[7]. [1994] 47 WIR 139.
[8] GDAHCVAP2011/ 0020
[9] HCVAP2008/037; unreported

[18] In concluding this point Counsel advocates that section 20 clearly intended to provide a judgment creditor with the gateway for satisfying a judgment against the Crown and pointed out that the CPA is expressly referenced in CPR59.1 (2) (g), as well as CPR59.7(2) which speaks to an application for a similar certificate with respect to costs against the Crown.

[19] Counsel then went on to argue that in the event the above propositions fail the applicant seeks to rely on Articles 9 and 10 of the Code because a court or judge cannot refuse to adjudicate under the pretext of silence, obscurity or insufficiency in the law. Further any doubt or ambiguity in the law should be interpreted to fulfill the intention of the legislature, to attain the purpose for which the section was enacted. Moreover Article 37A of the CCP stipulates that in cases where procedure is not provided for, such procedure shall be as the judge may direct or approve. He contends on behalf of the applicant that it could not have been the intention of parliament to allow the Crown to enjoy a windfall by the absence of the form.

[20] Mr Prospere concluded by saying if the Governor General or Rules Committee has not acted to reinstate the form, justice still has to be served, hence the reason for these the Articles which empower the Court to adjudicate until the designated authorities do act. He submits that one should cringe at the thought that parliament would deliberately set out to deprive all judgment creditors of the right to receive payment, whereby the Crown becomes an extraordinary judgment debtor, with no judgment creditor having the capability of satisfying a judgment. The practical and social implications of this are unfathomable and present an ideal case for invoking the referenced Articles, to remedy the absence of the form.

The Respondent's Submissions

[21] Counsel for the respondent Mr Williams has argued that before a judgment against the Crown can be enforced, a certificate must be obtained. The transitional provisions of the CPR made no provision for saving Form No. 55.

[22] The power to enact this form is vested in the Governor General under section 28 (2) of the CPA. Alternatively rules of court for carrying out any of the provisions of a statute may be made by the Chief Justice and two Judges under section 19 of the ECSCA. While section 20 permits satisfaction of judgments against the Crown, this can only be done in accordance with the provisions of law and adopting a form from a foreign jurisdiction would be in conflict with the express provisions of the legislation.

[23] He accepted the distinction between substantive and procedural law as laid out in R v Andre Penn but says that both of the forms relied on are purely ancillary to substantive law in the respective jurisdictions. Form No. 24 from Trinidad is enacted to give effect to substantive law in Trinidad, namely the State Liability and Proceedings Act and cannot be adopted or imported, unless specifically legislated. Form No. 95 is designed to give effect to section 25 of the Crown Proceedings Act 1947, which is English substantive law and falls outside the parameters established in the Panacom case, where the Court of Appeal has clearly stated that this sort of procedural law is not caught by section 11 of the ECSCA.. The English RSC O.77 r.15, under which the form is created, expressly states that it is made pursuant to the statute; consequently it is not the sort of procedural law contemplated under section 11. It is to be distinguished from the rule which was received in the Richard Frederick case, which concerned a procedure in the English Civil Procedure Rules, which did not give effect to or was dependent upon any substantive law for its validity.

[24] Counsel submits further that it is not possible to rely on Form No.24 from Trinidad without adducing expert evidence on the laws of that country and referred the Court to the case of Attorney General of Saint Christopher and Nevis v Dr Denzil Douglas[10] in support of the proposition. There Ward J examined section 126 of the Evidence Act of Saint Kitts which is identical to section 117 of the Saint Lucia Evidence Act[11] and concluded that matters of law for which proof was not required only applied to domestic law. Therefore foreign law was a question of fact, to be proven by expert evidence. In the absence of

[10].SKBHCV2018/ 0008 delivered on 2nd July, 2018, unreported
[11] Cap 4.15 of the Revised Edition of the Laws of Saint Lucia

expert evidence on the laws of Trinidad the applicant is unable to rely on a form from that country.

[25] Mr Williams contends further that to adopt or create a form would directly offend section 28 the CPA and 19 of ECSCA, which says how rules to support section 20 of the CPA should be made and to do so would be in conflict with the expressed words of the statute. He relied on the authority of Jamaat Al Muslimeen v Bernard and others (1994) 46 WIR 429 to demonstrate the posture of the Court of Appeal in Trinidad in a ruling that the High Court had no jurisdiction to extend the scope of the Rules of the Supreme Court 1975 by awarding interim payment for damages, where the Rules Committee as the designated authority under that statute had made no rules for such award. This, he says, is similar to what currently obtains with section 20 and until the form is enacted by the designated authority the section is of no effect.

[26] Counsel then dealt with Article 37A of the CCP, stating that it is an amendment to the Code, which was enacted in 1916, prior to the CPA enacted in the 1957 and the SCR in 1969. In both instances the later statutes prescribe how rules are to be made and based on the doctrine that a later law impliedly repeals an earlier law the power under Article 37A no longer exists to cure a gap in procedure. With respect to Articles 9 & 10 of the Code they do not assist the applicant as the form which existed previously was repealed and it may well have been the deliberate intent of parliament to do so. Under Article 9 the Court may adjudicate but it would simply mean that there is nothing more that can be done as the court cannot take on the role of the designated authorities to create the form.

[27] In concluding Mr Williams urged that if the Court should find that a certificate may be issued, subsection 20(3) of the CPA permits conditions to be included in the certificate to suspend payment of the debt and such condition should be included, pending the outcome of the appeal. The reasons given were that (i) the applicant has no assets in the jurisdiction; (ii) the appeal has a realistic prospect of success and is slated for the week of 8th April, 2019; and; (iii) the applicant will not be prejudiced as interest is payable in the interim. Moreover, Counsel says, the object and purpose on this application are not the same as the earlier application for a stay. Thus there can be no identity of cause in the two

applications and res judicata as raised by the applicant is not applicable. The Court still has discretion to consider any application made under the proviso in subsection 20 (3). Counsel posited that notwithstanding that the doctrine of res judicata and stare decisis would require a lower court to yield to the earlier decision of a superior court, there is no decision from the Court of Appeal or the Privy Council which has considered this point in relation to an application under section 20, to preclude the request from being made.

[28] Mr Prospere in responding to these submission articulated that the Denzil Douglas case was of no relevance to the issue at hand as the matter before Ward J concerned a factual dispute as to whether the court in St Kitts could consider Dominican law in determining a case there and how that law should be received. The court held that when sitting as the High Court in St. Kitts, Dominican law was a question of fact to be proved by expert evidence. The instant case does not concern admissibility of foreign law on questions of fact or the requirement of proof thereof, nor does it necessitate the importation of substantive law. Rather it concerns the adoption of a form which falls squarely within the scope of procedural law.

[29] He countered further by submitting that in Panacom and Doyle v Deane the court identified that the central issues as being importation of substantive law as opposed to procedural law and on that basis held that section 11 did not apply. In the instant case this Court is dealing purely with a question of enforcement where the applicant's right crystalized when the judgment was delivered and it concerns adoption of a form created under a procedural rule. The purpose is not to give jurisdiction but to enable the court to exercise the jurisdiction which already exists under section 20 of the CPA.

[30] Mr Prospere resisted the respondent's request for suspension of payment on the ground that such condition would only serve to undermine the refusal of a stay by the Court of Appeal and would directly offend the principles of res judicata and stare decisis. This would only have the effect of undermining the decision of the superior court. Factually the demand for payment and this application only arose after the Court of Appeal had settled the issue of stay of execution, thus the relief has already been adjudicated upon, between

the same parties and culminating in a given a definitive judgment, albeit on a different application. To say that the applicant would not be prejudiced if denied payment for a few more months is unreasonable, as judgment was granted since September 2017 and the applicant has been denied the fruits of a substantial judgment for over one year. The applicant is a financial institution and this cuts to the core of its business of lending funds to customers and the prejudice is in fact significant.

Analysis

Can the Court adopt Form No. 24 from Trinidad?

[31] It is not disputed that the prescribed form referred to in subsection 20(1) of the CPA originally existed as Form No. 55 in the SCR and it was not retained in the CPR. Additionally the Governor General who is empowered under section 28 of the CPA has to date not promulgated any rules, neither has the Rules Committee re-enacted the form.

[32] The question for the Court is whether Form No. 24 constitutes foreign law and if it does can it be adopted in this jurisdiction and in what manner. It is obvious that it is part of territorial law in Trinidad and as such must be considered foreign law in this jurisdiction. Can it then be said that the Articles referred to in the Code and CCP and section 117 of the Evidence Act permits the Court to adopt or take judicial notice of the form, without more.

[33] Matters of law to which the Court may have judicial notice is addressed in section 117 of the Evidence Act which states:-

> *Judicial Notice*
>
> 117. *Matters of law*
>
> *(1) Proof shall not be required about matters of law, including the provisions and coming into operation, in whole or in part, of—*
>
> *(a) an Act;*

(b) an instrument of a legislative character, including regulations, statutory rules, and by-laws, made or issued under or by authority of such an Act, being an instrument—

(i) that is required by or under an enactment to be published in the Gazette, or

(ii) the making or issuing of which is so required to be notified in the Gazette.

(2) The Judge may inform himself or herself about those matters in any manner that the Judge thinks fit.

[34] The Court is not required here to adjudicate upon a factual issue involving the laws of Trinidad for which evidence must be adduced, in the manner required in the Denzil Douglas case. Nonetheless the applicant is asking that a form which is premised on a parallel provision of substantive law in Trinidad be adopted. I am not persuaded that this can be done within the scope of the Articles or section 117 of the Evidence Act. I do agree that section 117, as it stands, does not permit the Court to take judicial notice of foreign law. The scope for receiving foreign procedural law in this jurisdiction is as contained in section 11 of the ECSCA and it is well settled that the section permits reception of English procedural law only.

[35] In relation to Form No. 24 the applicant's request is tantamount to asking the Court to adopt or take judicial notice of foreign law in a manner which does not accord with the relevant provisions of law in this jurisdiction. I therefore conclude that the Court is unable to adopt this form in the manner suggested by the applicant.

Can the Court import Form No. 95 from the UK?

[36] The parties both agree on the definition of substantive as opposed to procedural law as stated in R v Andre Penn. The point of departure comes where the applicant says the form is purely procedural and should be imported under section 11 of the ECSCA, whereas the respondent says it is procedural law enacted under the UK RSC O.77 r.15 to give effect to section 25 of the Crown Proceedings Act 1947 and as such is procedural law which is ancillary to English substantive law, which cannot be imported under the section.

[37] It is the law that procedural law which can be received under section 11 is procedural law administered in the High Court of Justice in England, which must be unrelated or ancillary to English substantive law. The position was laid clearly out by Sir Vincent Floissac CJ in Panacom when he examined the equivalent provision in the Supreme Court Act in St Vincent and said the following:-

> "*Section 11 of the Supreme Court Act relates solely to the manner of the exercise of the jurisdiction of the High Court. It is therefore an intrinsically procedural provision. The words "provision", "provisions", "law" and "law and practice" appearing in section 11 are evidently intended to be references to procedural (as distinct to substantive law.*
>
> *The English law intended to be imported by section 11 is the procedural law administered in the High Court of Justice in England. In enacting section 11, the legislature of St Vincent and the Grenadines could not have intended English substantive law or English procedural law which is adjectival and purely ancillary to English Substantive law." [Emphasis added]*

[38] In that case the respondent sought to incorporate a rule from the English RSC Order which rule was ancillary to the English State Immunity Act and in that regard Sir Vincent Floissac CJ went on to say:-

> "*The English State Immunity Act 1978 is substantive law and the English R.S.C. Order 11 rule 7 and Order 13 rule 7A are procedural laws adjectival and purely ancillary to that substantive law. These procedural English laws are therefore not caught by the Supreme Court Act. Consequently, the objections to the extra-territorial service and the default judgment on the grounds of breach of these English procedural laws are untenable"*

[39] That ruling was later cited with approval by Periera JA in Doyle v Dean at paragraph 9 of the judgment, where she said:-

> *"In my view, this pronouncement of the scope of section 11 of the Supreme Court Act (which is found in the Supreme Court Acts of all member States and*

Territories making up the jurisdiction of the Eastern Caribbean States Supreme Court) is an accurate and as clear and succinct a statement on section 11 as there could be. Furthermore, the notion that all Member States are subject to the importation of English substantive law by virtue of section 11 would leave much to be desired in any sovereign State not to mention the state of uncertainty as to what laws a citizen of the State may be subject at any given point in time and without regard to its own parliament which is charged with the making of laws for the State as it may deem necessary for that State's good governance. Section 11 certainly could not have been intended to have this effect. The emphasized words in the section indicate that the focus on the importation of any law, rule or practice is in respect of the exercise of the jurisdiction as distinct from the importation of English law so as to give jurisdiction." (Emphasis added)

[40] She went on to say at paragraph 10 of the judgment:-

"……In my humble view the statement of Sir Vincent Floissac CJ in Panacom represents the correct approach to be taken on the operation of section 11 and is the approach which ought to be followed whenever importation of an English provision is being considered under that section."

[41] Counsel for the applicant has argued vigorously that Form No. 95 is purely procedural and seeks to equate it with the importation of an English procedural rule into the CPR, in the Richard Fredrick case. In my view while that rule was not ancillary to any provision of English substantive law, the same certainly cannot be said of Form No. 95 which was created under the English RSC O.77 r.15 specifically to give effect to a provision in the Crown Proceedings Act, which is English substantive law. Applying the rulings in Panacom and Dean v Doyle, there is no contest that the form is one which is part of procedural law that is adjectival and purely ancillary to substantive law and is precisely the sort of procedural law not caught by section 11. A further qualification was added in Dean v Doyle, such that the focus of importation must be in respect of the exercise of jurisdiction as distinct from giving jurisdiction. The applicant says the form is solely for the exercise of

jurisdiction which already exists under section 20(1) of the CPA. I am not at all persuaded that the qualifications placed on section 11 by these authorities can be bifurcated. In the circumstances because the form is purely ancillary to a substantive statute, I conclude that it cannot come within the realm of section 11.

Should leave be granted to produce a certificate?

[42] On this point the respondent's main contention is that there is no authority to act under Articles 9 & 10 of the Code to remedy the omission as it is only the Governor General or the Rules Committee to enact the form. Further Article 37A of the CCP was impliedly repealed by the section 28 of the CPA and section 19 of the ECSCA.

[43] The applicant's counter argument is that there is jurisdiction to produce a form to avoid a manifest injustice to the applicant. Section 20 of CPA already sets out a procedure for satisfying a judgment and there is no deficiency per se in the procedure. It is only that the absence of the form precludes the procedure from coming to its logical conclusion. There was and still is a clear intention by parliament to place a judgment creditor in the position to satisfy a judgment against the Crown. However through inadvertence the certificate under the old rules was not carried forward into the new rules. Mr Prospere posited that the legislature acknowledged that from to time whether through inadvertence or otherwise there would be deficiencies in the law and provided the Court with the necessary tools in Articles 9 & 10 of the Code

[44] I accept the respondent's position with respect to Article 37A of the CCP but not in relation to Articles 9 and 10 of the Code, because the latter deal specifically with a residual jurisdiction in the Court for fulfilling the object and purpose for which an enactment was passed. Where the facts of a case so require, the court is mandated to give effect to the legislative intent.

[45] I find merit in the applicant's argument that it could not have been the willful intent of the legislature to deny a judgment creditor the gateway for satisfaction of orders against the Crown, for if that was the intention, it is logical to assume that section 20 of the CPA would

have been repealed in entirety. It is noteworthy that Part 59 of the CPR references the CPA continues to speak of the same certificate with respect to cost orders against Crown[12].

[46] It is true that the Governor General or Rules Committee are the designated authorities for re-enacting the form, but it is also inexplicable that the form which was previously enacted to give full effect to the legislative intent of section 20 it is now missing and has resulted in a complete bar to judgment creditors of the Crown. Such outcome cannot be said to be the legislative intent of section 20. Article 9 of the Code says that the Court cannot refuse to adjudicate on grounds of insufficiency of the law and Article 10 says where there is doubt the law is to be interpreted to give effect to the legislative intent of the statute. It is not disputed that the procedure was complete under the old rules and that would have been indicative of an unequivocal intent on the part of the legislature to place a judgment creditor in the position to satisfy judgment. The continued existence of section 20 and the introduction of Part 59 of the CPR is confirmation that the enforcement procedure has not been aborted or repealed and from all appearances is intended to confer the right to satisfaction of orders against the Crown.

[47] To interpret section 20 to fulfill the intention of the legislature and to attain the object for which it was passed, the absence of the form must be deemed an unintentional omission. Anything less would defeat the very purpose and existence of the section. It is not unusual that from time to time there will be deficiencies brought about by accidental omissions when a statute is repealed. In my view the Court is clothed with the ability to resolve this issue in a manner which attains the object of section 20, until such time as the omission is cured.

[48] I disagree that to do so would amount to usurping authority or extending the scope of the statue, as obtained in the Jamaat case. There the Rules Committee in Trinidad had

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[12] Enforcement against Crown
59.7 (1) ……
(2) Any application under the Act for a direction that a separate certificate be issued with respect to costs (if any) ordered to be paid to the applicant may be made without notice.

legislated for payment of an interim award for a specific class of cases (personal injuries). To extend awards outside the scope of that class to include a constitutional motion would undoubtedly be outside of the scope of the legislation. In contradistinction section 20 of the CPA has fully laid out a procedure and gives jurisdiction to an officer of the court to issue a certificate to facilitate satisfaction of orders against the Crown. I am not persuaded that the legislature would have willfully intended the undesirable result of a complete bar to satisfaction of a judgment, through the inadvertent omission of a form which previously existed. Such an interpretation would amount to a dismal abdication of the true purpose of section 20.

[49] Can the Court turn away a judgment creditor on that basis, when the jurisdiction to issue the certificate is expressly contained in the section? To my mind this is precisely what Articles 9 and 10 say should not be permitted. The respondent says the only permissible outcome is to turn away the judgment creditor, in keeping with the outcome in Doyle v Dean. On examination of that decision I do not believe that the prognosis was as dire. There was no bar to satisfaction of the judgment debt, which was in fact fully satisfied and the judgment creditor was only denied interest of a negligible sum, because the law or the judgment itself had made any provision for accrual of interest, at the time the judgment was obtained. In my opinion the case is not comparable to the instant case and certainly not in the face of the precise wording of section 20.

[50] Interestingly, the Interpretation Act[13] at section 24[14] stipulates that even where a form is prescribed or *specified by an enactment*, deviations which do not mislead or materially affect the substance of the form would not invalidate the form used.

[51] Undoubtedly Form No. 55 existed for several years and sub-subsection 20(1) expressly specifies what should be contained in it. It is simply the particulars of the order made against the Crown, inclusive of costs. Subsection 20(4) further specifies that if the order

[13] Cap 1:06

[14] 24. Deviation in forms - Where a form is prescribed or specified by any enactment, deviations therefrom not materially affecting the substance nor calculated to mislead shall not invalidate the form used.

made against the Crown provides for any payment of money by way of damages or otherwise and costs, the certificate shall state the amount so payable and such amount shall be paid together with interest if any. The subsection goes on to specify that a certificate may also include conditions concerning suspension of payment pending appeal. In my opinion as long as a certificate captures the particulars specified in these subsection and is not misleading, it should not be invalidated for lack a prescribed form.

[52] Form No. 55 was provided among the respondent's exhibits and required the heading as in the cause or matter, particulars of the order made against the Crown and any conditions for payment set by a court.

[53] Recognizing the detailed procedure outlined in section 20, which also provides additional safeguards to the Crown in subsection 20 (4), it is my considered opinion, that on the facts of this case, there can be no prejudice to the Crown if leave is granted to the Registrar to produce a certificate in the terms specified in section 20.

[54] For the above reasons the Court will grant leave to the Registrar to issue a certificate which contains the full heading of the claim and the particulars of the order against the Crown.

Should the Court include conditions for a suspension of payment pending appeal?

[55] The respondent has asked the Court to include conditions for suspension of payment until the appeal is determined, pursuant to subsection 20 (3).

[56] The applicant's short answer is that the Court of Appeal which is the appellate and superior court has already refused a stay of execution. To place such condition in the certificate would undermine the decision of the superior court and offend the principle of stare decisis whereby a lower court is bound by the decisions of a superior court, in this jurisdiction.

[57] It cannot be said that subsection 20(3) affords the respondent a second opportunity at suspension of payment, which equated to a stay, after having pursued that application before the appellate court and failed. The respondent cannot now request of that this Court override what the appellate court has already refused and the Court is precluded from considering the same factors and granting the same relief that the appellate court has already declined. It matters not that the request is being made in response to a different kind of application.

[58] The net effect of the appellate court's decision is that the applicant is left with the ability to pursue satisfaction of its judgment through the procedure laid down in the CPA. Except for the absence of the certificate there would have been no obstacle to the object and purpose of section 20 and the parties would not here been here.

[59] In light of the forgoing I conclude that a condition for suspension of payment should not be included in the certificate

Conclusion

[60] Accordingly, I make the following orders:-

1. Leave be and is hereby granted to the Registrar of the High Court to produce a certificate under section 20 (1) of the Crown Proceedings Act, which sets out heading of the claim and particulars of the order against the Crown.

2. No condition for suspension of payment shall be included in the certificate.

3. The respondent shall pay to the applicant its cost on this application in the sum of $1,500.00.

Cadie St Rose-Albertini
High Court Judge

By the Court

[SEAL]

Registrar