

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0061

BETWEEN:
IN THE MATTER OF: The *Bankruptcy and Insolvency Act* (CAP. 136 of the Laws of Saint Vincent
and the Grenadines, Revised Edition 2009)

AND IN THE MATTER OF: The Bankruptcy of Harlequin Property (SVG) Limited

SARITA MAMAN

APPELLANT

BRIAN GLASGOW (as Bankruptcy Trustee of the
Estate of Harlequin Property (SVG) Limited)

RESPONDENT

(GROUP 3)

Appearances:

Ms. Maya Carrington for the Appellant

Ms. Taylor Laurayne and Ms. Vynnette A. Frederick for the Respondent

2019: February 26

Addendum to Oral Decision of The 22nd February 2019

Byer, J.:

- [1] At the delivery of the oral decision made on the 22nd February 2019 in the above matter it was indicated to the court by Counsel for the Appellant that the submissions in reply from the Appellant due on the 15th February 2019 had instead been filed on the 21st February 2019.
- [2] **Having already delivered the oral decision before those submissions were brought to the court's** attention, I informed counsel that I would consider the same once an application had been filed for the time to be extended for the filing of such submissions.
- [3] The court has now had sight of the Notice of Application filed on the 22nd February 2019 for an extension of time to have the submissions filed on the 21st February 2019 deemed properly filed. This court granted the said application on the 26th February 2019.
- [4] This court has also had sight of the submissions in reply and says the following:
- i) It was extremely improper for reference to be made in submissions of evidence that is not before the court on the application. Nowhere in the evidence in support of the Notice of Motion were the

items listed at paragraph 5 of the submissions and in particular (a) through to (c).¹ It was for the Appellant **to bring to the court's attention documents or evidence upon which they sought to rely at the filing of the Notice of Motion.**

ii) Indeed this court accepts that perhaps the appellant may have fallen into the category where evidence may have existed but was unavailable² but once again the onus was on the appellant to show this. (This court therefore repeats its findings at paragraphs 10 and 11 of the Oral decision of the 22nd February 2019).

- [5] This court therefore states that these reply submissions have made no difference to the reasons contained in the oral decision and the order remains the same.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar

¹The case of Cutter can be distinguished from the present case as the Applicant took all reasonable and necessary steps before the deadline on the submission of proof of claims of December 15th 2017. The following steps were carried out by the Applicant to obtain her contract a) the applicant enquired of Kim Woodford via email from Harlequin whether Harlequin was in possession of the contract to which she was informed that it was not as there was no scanned copy and the hard file was with the Respondent; b) the applicant also requested whether her contract was in the investor records provided by the bankrupt from two of the Respondent's representatives via email and was informed that the Respondent was not in possession of her contract. These emails are referenced as document no 311 in the List of Documents and c) further the applicant enquired of her financial advisor in November 2017 whether he was in possession of her contract who at the time stated that he could not locate it.

² Paragraph 7 of the Reply submissions filed 21/2/19. "In Cutter the applicant did nothing to attempt to obtain the evidence though he knew that it was available. In the instant case the applicant knew the evidence existed, but that evidence was not available to her despite her diligent efforts in attempting to obtain it. There is a distinction between (1) evidence existing and available with reasonable diligence for the hearing below and (2) evidence being unavailable to the Applicant for use at the hearing below even in the face of reasonable diligence. In the circumstances it is the latter situation that applies to the applicant's case as the applicant acted diligently and prudently in her quest to obtain her contract."