

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

GRENADA

GDAHCVAP2020/0014

BETWEEN:

**Jacqueline Charles (PERSONAL REPRESENTATIVE OF
THE ESTATE OF JOSHUA THORNE, DECEASED)**

Appellant

and

EMERY THORNE

Respondent

CONSOLIDATED WITH

GDAHCVAP2021/0038

BETWEEN:

**JACQUELINE CHARLES (PERSONAL REPRESENTATIVE OF
THE ESTATE OF JOSHUA THORNE, DECEASED)**

Appellant

and

EMERY THORNE

Respondent

Before:

The Hon. Mde. Vicki-Ann Ellis
The Hon. Mr. Paul Webster
The Hon. Mr. Gerard St. C Farara

Justice of Appeal
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Mr. Ian Sandy for the Appellant
Mr. Deloni Edwards for the Respondent

2023: July 7.

Civil Appeal – Committal application – Failure to comply with order of the court – Contempt of court – Certainty of court order – Strict interpretation of court order - whether a person can be in breach of a court order that is ambiguous – Inherent jurisdiction of the court – Whether the court is limited to making orders listed in rule 53.9 of the Civil Procedure Rules 2000

DECISION

- [1] These appeals arise out of a dispute between the Appellant and the Respondent regarding monies held in a joint bank account in the names of the Appellant and her late father, Joshua Thorne (“the Deceased”), at the former RBTT Bank Grenada Ltd, now the ACB Grenada Bank Ltd (“the Bank”)
- [2] In or about 2004, the Appellant and the Deceased opened a joint bank account in their names at the Bank (“the Disputed Account”). The Deceased passed away in June 2010 and Letters of Administration to his Estate were granted to the Appellant on 14th July 2010. The Disputed Account was set up with, or at some stage contained, ECD \$500,000.00.
- [3] At a later stage the Respondent produced a codicil to the will of the Deceased which, among other things, bequeathed ECD \$100,000.00 to the Respondent. The codicil refers to a will of the deceased dated 29th October 2001. However, the will has not been produced and has not been found. Based on the codicil, the Respondent claimed the ECD \$100,000.00 from the Estate. His request was denied on the grounds that the Deceased died intestate and that he was not a person entitled to a share of the Estate on the intestacy of the Deceased. Further, there was no will and the validity of the codicil was disputed.

- [4] In May 2012, the Respondent and Joselle Thorne brought proceedings against the Appellant by a fixed date claim form (“the Action”) claiming an account from the Appellant of her administration of the estate. Joselle Thorne eventually withdrew as a claimant in the Action. When the Action did not produce the desired results, the Respondent applied for information regarding the Disputed Account and for an order that the Appellant deposit the sum of ECD \$100,000.00 into court pending the resolution of the Action. The ECD \$100,000.00 is obviously a reference to the bequest of ECD \$100,000.00 to the Respondent in the codicil.
- [5] The application was heard by Aziz J on 10th July 2015. The learned judge ordered that the Respondent produce an up-to-date account of the estate and, importantly for the purposes of these appeals, that “(t)he sum of \$100,000 ...be deposited in the court in an interest-bearing account, until final determination of the substantive claim.” (“the July 2015 Order”). There was confusion regarding the meaning of the second part of the Order requiring the deposit of ECD \$100,000.00, but Aziz J held another hearing on 11th July 2016 to clarify the meaning of the July 2015 Order. Whatever the judge decided was not recorded in a formal order of the court. Instead, what was recorded was a note by the court clerk in a manuscript at the back of the file as follows:
- “Monday, 11 July 2016. In Chambers No 1. Before J S. Aziz. Ms C Joseph for the Deft. Ms Edwards QC for the second (claimant) - Clarification of the order 10/7/15. As to paragraph 2 – the sum of \$100,000 to be deposited into court to be held into an interest-bearing a/c from the joint a/c held at RBTT which contained the sum of \$500,000 according to the codicil. As to paragraph 1 – to provide an amended a/c as it was at the time of the order as of 10 July 2015 when the (sic) order was made showing when it was open and an up to date balance. Matter to be listed for court 3 by the Registrar. (Sgd) C Charley.”
- [6] The Appellant had produced an account dated 7th October 2015 and an amended account dated 15th January 2016 in purported compliance with the first part of the July 2015 Order of Aziz J. However, she did not comply with the second part of the Order. Her response to the second part of the Order was that it was impossible for

her to comply because there was no account that fit the description in the July 2015 Order.

[7] On 18th November 2015 the Respondent applied to the court for an order that the Appellant be punished for her contempt of court for failing to comply with the July 2015 Order. The stated ground of the application is that the July 2015 Order directed, inter alia, that there be an account of the monies in the Disputed Account and the Appellant had not complied with the Order by paying the ECD \$100,000.00 into court. The committal application came up for hearing on different occasions and was adjourned from time to time for reasons that this Court does not need to address for the purposes of these appeals.

[8] In support of her position for not paying the ECD \$100,000.00 into court, the Appellant produced a letter from the Bank dated 21st November 2016 stating that as at May 2015 the Appellant did not hold any joint accounts with the late Joshua Thorne at the Bank. Further, there was another account in the name of the Estate of Joshua Thorne which contained \$5,179.37.

[9] At a further hearing of the committal application on 27th October 2020 another judge, Glasgow J, ordered inter alia:

“In respect of the joint account established in the name of Joshua Thorne and Jacklyn (sic) Charles in the month of December 2004 with (the Bank) in the sum of \$500,000, the (appellant) is to provide a statement along with documents as to the amount in that account immediately before the death of Mr Thorne and the amount in that account on the date of the court’s order dated 10 July 2015. Any disparity between the 2 accounts must be explained and in particular dates provided, supported by documents as to when the funds were removed from the account.”

[10] The Appellant adopted a similar position with regard to this order claiming that it was impossible for her to comply with its terms because there was no account at the Bank that matched the description of the account set out in the June 2015 Order. At a further hearing of the committal application on 29th November 2021, Glasgow J made

another order, this time ordering the Bank to produce details about the Disputed Account.

[11] The Appellant was dissatisfied with the orders of Glasgow J and appealed to this Court. The grounds of appeal in summary form assert that:

- (i) The July 2015 Order as clarified by the further order on 11th July 2016 had been fully complied with and that it was impossible to comply with the order for the payment of ECD \$100,000.00 into court because all joint accounts in the name of the Deceased and the Appellant had already been closed by the time the July 2015 Order was made.
- (ii) The learned judge erred in law in making an order by which he sought to clarify the July 2015 Order and part 53.9 of the CPR did not give the learned judge the power to make the order which he did.
- (iii) The learned judge erred in making an order that the Appellant produce more detailed accounts when there was no such application before him. All that was before the learned judge was the committal application in respect of the alleged breach of the July 2015 Order. The learned judge should therefore have determined strictly whether the Appellant was in breach of the July 2015 Order of Aziz J.

Grounds iv, v and vi are generally relevant but it is not necessary for the Court to set them out in this decision to dispose of the appeals. They relate to the right of survivorship between the Appellant and the Deceased, the nonexistence of the alleged joint account from which to pay the ECD \$100,000.00, and the allegation that the codicil is invalid.

[12] Learned counsel for the respondent argued fervently that the orders made by Glasgow J are material and necessary to determine what happened to the ECD \$500,000.00 in the disputed joint account. He submitted that the material dates for the Court to consider in terms of the monies in the account are the date of death of

the Deceased and the date of the July 2015 order. The learned judge was therefore correct to order that this information be provided and the appeal should therefore be dismissed. The Court does not accept this submission. The relevant date for the court to consider in the committal application is 10th July 2015 when the July 2015 Order was made. The state of the Disputed Account on that date will be important in determining whether the July 2015 Order was breached by the Appellant.

[13] Learned counsel also submitted that the information ordered by the learned judge was necessary to understand the meaning of the July 2015 Order which needed clarification. This argument does not assist the Respondent. If the July 2015 Order was not clear and needed clarification by further orders of the court, that is sufficient for the judge in the lower court to dismiss the committal application. A person can only be committed for contempt of an order if the meaning of the order is clear and unambiguous. If authority is needed for this basic principle, it can be found in the judgment of Alleyne JA in **William Harry and another v Phillip Mark Vaughn**¹ where the learned justice of appeal set out the basic principles relating to the interpretation and enforcement of orders in committal applications.

[14] This Court has not lost sight of the fact that the lower court was dealing with an application for committal in respect of a breach of the July 2015 Order. The application was not for tracing the monies that were in the Disputed Account or for the Appellant to account for the monies in the Estate of the Deceased. Therefore, what is important is for the lower court to interpret the July 2015 Order either in its original form or as clarified in July 2016, and determine whether the conduct of the Appellant in complying or not complying with the Order was a contempt of court. If it was a contempt, the lower court will determine the appropriate punishment to be imposed on the Appellant.

[15] This Court also bears firmly in mind that the proceedings before the lower court are quasi criminal for contempt of court which could result in the imprisonment of the

¹ SVG Civil Appeal No. 22/2001 (delivered 6th March 2003, unreported).

Appellant. Therefore, the Respondent is required to prove his case not just on a balance of probabilities but to the criminal standard of beyond a reasonable doubt (per Ellis J in **Liao Hwang Hsaing v Liao Chen Toh**²). In construing the Order the judge of the lower court will be required to focus on the words used by Aziz J in the July 2015 Order. There appears to be an issue whether the words recorded by the court clerk in July 2015 reflect what transpired in court on that day. Regrettably there is no transcript or other note of what the judge actually said in court other than the clerk's note. It will be for the judge below to interpret the July 2015 Order primarily with reference to the words used in the Order while having regard to the court clerk's clarification note on the back of the court file as an aid to interpretation. Applying these basic rules of interpretation the judge, trying the committal application, will then have to decide whether it was impossible for the Appellant to have complied with the July 2015 Order (as she contends), and if so, whether she should be found to be in contempt of the court's order. This is not to say that ground (i) succeeds, only that the July 2015 Order is to be construed strictly in accordance with the words used by the Judge, and, if necessary by reference to the clarification recorded by the court clerk.

[16] Ground (ii) is dismissed. In dealing with the committal application the Judge who was managing the case was not constrained by part 53.9 of the **Civil Procedure Rules 2000** in terms of the orders that he could make. The judge had an inherent jurisdiction to manage the case as he saw fit and he was not constrained to make only the orders listed in part 53.9.

[17] The Court has said enough to make it clear that ground (iii) must succeed. In dealing with the committal application, the learned judge should have strictly determined whether the Appellant was in breach of the July 2015 Order. He was not required to and should not have made additional orders regarding production of information about the Disputed Account. Such information may be very helpful in tracing the monies that were in the Disputed Account and other accounts that form a part of the

² BVI claim No. 2011/222 (delivered 6th May 2013, unreported).

Deceased's Estate, but that is not the issue before this Court. The committal application should be decided on the basis of the proper interpretation of the July 2015 Order and the circumstances that prevailed at the time, and whether the Appellant's conduct in not providing information about the disputed account other than it had been closed was sufficient compliance with the July 2015 Order to avoid a finding of being in contempt.

[18] To be clear, this Court is not making findings on the proper interpretation of the July 2015 Order or any other orders that were made by the lower court. The findings of this Court are limited to how the committal application should be dealt with and whether the orders of Glasgow J should not have been made and considered in the committal proceedings.

[19] This is sufficient for the Court to decide that the learned judge erred in making the orders dated 27th October 2020 and 29th November 2021 and these orders must be set aside.

[20] The court therefore orders that -

- (1) The appeals are allowed.
- (2) The orders dated 27th October 2020 and 29th November 2021 are set aside.
- (3) The committal application is remitted to lower court for trial.
- (4) The Respondent shall pay the costs of the appeal of \$750 by 11th August 2023.

[21] The assistance of counsel is greatly appreciated.

By the Court

Deputy Chief Registrar