

**THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2021/0006

BETWEEN:

DWAYNE DeCOSTA trading as ZUMMIE'S GARAGE

Claimant

and

LEVAR FLANDERS

Defendant

Appearances:

Mr. Jason Hamilton for the Claimant

Mr. Christopher Forde, Crown Counsel, for the Defendant

2023: December 4;

2024: January 22.

JUDGMENT

[1] **GILL, J.:** By a claim form and statement of claim filed on 12th January 2021, the claimant, Dwayne DeCosta trading as Zummie's Garage, instituted proceedings against the defendant Levar Flanders, a bailiff employed by the Government of the Federation of Saint Christopher and Nevis and assigned to the Basseterre Magistrate's Court. The claimant seeks damages for negligence, unlawful detention of property and breach of statutory authority in respect of a Writ of Execution whereby the defendant detained the claimant's flatbed truck.

[2] The claimant's case is that the defendant acted in excess of his jurisdiction in the execution of the Writ of Execution ("the Writ") when he seized the claimant's flatbed

truck ("the truck"). The Writ dated 13th August 2019 was issued against the claimant by the Magistrate's Court. It commanded the defendant bailiff to levy the sum of \$26,552.83 on the claimant's goods, chattels and other effects. The claimant avers that the Writ specifically stated that the apparel, bedding, and tools and implements of his trade were exempted.

- [3] On 9th October 2020, the defendant seized and took the truck registration number P241 to Camp Springfield. The claimant submits that the truck was seized in breach of the terms of the Writ as the truck is used by the claimant to tow vehicles and other chattels and is therefore exempted from seizure as a tool of the claimant's trade.
- [4] The truck was detained from 9th October 2020 until 15th October 2020 so that the claimant was unable to use the truck for six days. On 15th October 2020, the claimant paid the sum specified in the Writ and the truck was released to him.
- [5] The defendant admits seizing the truck pursuant to the Writ. His defence is that the Writ commanded him to levy the goods, chattels and effects of the claimant, excepting the wearing apparel and bedding of the claimant or his family, and the tools and implements of his trade, to the value of \$300.00. The defendant states that he was permitted to levy on the claimant's apparel, bedding, tools and implements of his trade so long as no less than the cumulative value of \$300.00 remained, and the defendant denies that such articles were exempted from being levied upon.
- [6] At trial, the defendant told the court that he left with the claimant, tools of trade of the claimant more than the value of \$300.00. He testified that although he did not visit the claimant's place of business on the day he seized the truck, he knew the claimant to own his business for about five years, and he had tools such as spanners, jacks and a pulley he used to pull crashed vehicles. He said that he had visited the claimant's place of business on numerous occasions to serve summonses and other court documents.
- [7] The Writ issued by the District "A" Magistrate reads (inter alia):

WHEREAS DWAYNE DE COSTA T/A AS ZUMIE'S GARAGE the above-named Defendant [claimant here] has failed to satisfy a decree made against him in the above Suit on the 6th day of February 2019 in favour of the above-named Plaintiff [DC] for \$24,512.83 together with \$2,000.00 costs

YOU ARE HEREBY COMMANDED to levy the sum of \$26,522.83 of the goods, chattels and effects of the said Defendant, excepting the wearing apparel and bedding of the said Defendant or his family, and the tools and implements of his trade to the value of \$300.00, including money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money belonging to the said Defendant, and to return this writ into the said court with an endorsement thereon of the date and place of execution.

Issues

- [8] The court must determine whether the defendant acted in excess of his authority when he detained the claimant's truck, and if so, to what remedy is the claimant entitled.

Claimant's submissions

- [9] Learned Counsel for the claimant, Mr. Hamilton, cited **Sunrose Limited v Othneil Martin and Felix Mitchell**,¹ a case out of the Supreme Court of Judicature of Jamaica, which reasoned that a bailiff is liable for any act done in excess of his authority under a writ, in that case, a writ of possession.
- [10] Mr. Hamilton submitted that on a literal reading of the Writ, the words "to the value of \$300.00" cannot be used to qualify wearing apparel and bedding, tools and implements of the claimant's trade. Learned counsel contended that such an interpretation would mean that the bailiff would be compelled to engage in a valuation exercise of apparel, bedding and tools and implements of the trade of the

¹ Claim No. C.L.S. 195 Of 2001, delivered April 25, 2008

claimant. He argued that this interpretation relies exclusively on the subjective judgment of the bailiff and could result in inconsistency in the execution of Writs in the Federation.

[11] Therefore, Counsel submitted that the words “to the value of \$300.00” seek to qualify the words “including money or bank notes, and any cheques, bills of exchange....” He posited that this interpretation lends itself to a more objective application of the bailiff’s job.

[12] Mr. Hamilton argued that the execution of the Writ excludes taking of the claimant’s tools and implements of his trade, since by so doing, the claimant would be denied the opportunity to work. Counsel further argued that if the defendant’s interpretation of the wording of the Writ is adopted, this would lead to the bailiff employing his subjective analysis of the value of the claimant’s tools of trade, and lends itself to a discriminatory application of the Writ.

[13] Mr. Hamilton explained that a Writ of Execution is a court order that directs a bailiff to take possession of the property of a judgment debtor to satisfy the debt of the judgment creditor. However, Counsel submitted that the purpose of the Writ is to secure the payment of the judgment debt and not to deprive a judgment debtor from making a living.

[14] Mr. Hamilton submitted that the words used in the Writ are not plain and unambiguous, and that if the application of the said words lead to an ambiguous/absurd result, the court is obliged to look to the mischief behind the intention of the Writ. Counsel maintained that the defendant bailiff acted outside his authority when he sought to levy on the truck which is a tool of the claimant’s trade.

Defendant’s submissions

[15] Learned counsel for the defendant, Mr. Forde, submitted that the starting point in the construction of the Writ is that the words of the Writ must be read in their plain and literal sense and in the context in which they were used. Mr. Forde submitted that the Writ was directed against the claimant and his commercial enterprise. The

Writ excepted “the wearing apparel and bedding of the claimant or his family, and the tools and implements of his trade, to the value of \$300.00.” Counsel explained that the Writ directed the bailiff that in the process of executing the levy, he must refrain from levying on the wearing apparel and bedding of the claimant or his family, and the tools and implements of his trade, but only to the value of \$300.00. Counsel further explained that this warns the bailiff that in the execution of the Writ, he must not levy on the wearing apparel and bedding of the claimant or his family, and the tools and implements of his trade to the value of \$300.00. However, once these items are excepted at this value, the bailiff was entitled to levy on the other items and personal effects of the claimant to satisfy the Writ.

[16] Mr. Forde argued that if the Writ were interpreted to exempt all the tools and implements of the claimant, it would result in an absurdity. The bailiff would then be curtailed from levying from any entrepreneur or any commercial enterprise by the means of a Writ, as all the goods and assets of the business may be tools and implements of the trade.

[17] Learned counsel submitted that levying on the claimant by detaining the truck was in accordance with the directions on the Writ. Counsel pointed out that it is the claimant’s pleaded case that at all material times he was the owner of, and carried on and operated, a full-service automotive body work repairs and mechanic shop located at St. Mary’s Parish, Cayon. Mr. Forde contended that the towing/wrecker service the claimant provided was only part of the services offered by the claimant’s garage. The defendant levied on the truck only.

[18] Learned counsel urged the court to dismiss the claim with costs to the defendant.

Law and analysis

[19] This case turns on the proper interpretation of the Writ. Section 218 of the Magistrate’s Code of Procedure Act² reads:

² Cap. 3.17 of the Laws of Saint Christopher and Nevis

218. The wearing apparel and bedding of a person and his or her family, and, to the value of three hundred dollars, the tools and implements of his or her trade, shall not be taken under a distress issued by a Magistrate.

[20] The legislation provides the form of the Writ.³ The actual wording in the form follows section 218. It reads in part:

...you are hereby commanded forthwith to seize the goods of the said defendant or plaintiff (except the wearing apparel and bedding of him or her and his or her family, and, to the value of \$24, the tools and implements of his or her trade);...

[21] I am guided on the applicable rules of construction discussed in authorities provided by both parties. In the Court of Appeal decision in **Global Education Providers Inc v The Honourable Petter Saint Jean and Ors**,⁴ Blenman JA, as she then was, analysed leading authorities on the literal rule. Paragraphs 41 to 44 of the judgment read as follows:

“[41] This brings me now to address the principle issue in this case frontally. In seeking to resolve the main issue raised, there is no doubt that this case brings into sharp focus the statutory interpretation or construction of section 96(g) of the Act. It is common ground that the resolution of that issue turns to a large extent on the meaning of the word in “material resources”. This requires this Court to interpret and give effect to the meaning of those words. I am guided by the very helpful pronouncements in **Re: Bidie Bidie (deceased); Bidie v General Accident, Fire and Life Assurance Corporation Ltd**⁵, where Lord Greene MR stated:

“The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural ordinary meaning. Few words in the English language have a natural ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and to attribute to them a sort of prima facie meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question: In this state, in this context, relating to this subject matter, what is the true meaning of that word?”

The above is also known as the literal rule.

³ Form 43

⁴ DOMHCVAP2012/0009, delivered May 4, 2018

⁵ [1948] 2 All ER 995

[42] Further, the words whose meaning is being ascertained must be read in the context of the whole statute. The words are not to be read in isolation of colour and context. This was given judicial recognition by Viscount Simmonds in **AG v Prince Ernest Augustus of Hanover**.⁶

[43] In **The Sussex Peerage**⁷ it was held that the literal rule stipulates that in interpreting or construing an Act of Parliament, if the words are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense.

[44] It is also equally trite that the sentence structure determines the meaning that is intended to be conveyed bearing in mind the idea that is intended to be expressed.”

[22] Subsequently, Blenman JA in **Althea Maynard & Anor v Eastern Caribbean Asset Management Corporation (as receiver of ABI BANK LTD)**⁸ applied the literal rule when Her Ladyship, in examining several cases, explained where a departure from the literal rule would suffice.

“The common thread running through these authorities is that the court, in interpreting statutes, ought to give effect to the intention of Parliament. Where the words read in their plain and literal sense and in the full legislative context accord with the legislation’s object and purpose, then there is no need to go beyond their ordinary meaning. If the application of the literal rule would produce an undesirable and absurd result, then the court is permitted to apply a purposive construction to enable the object and purpose of the legislation to be fulfilled.”

[23] In **Becke v Smith**,⁹ Parke B (as he then was) opined:

“It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.”

[24] Section 218 of the Magistrate’s Code of Procedure Act excludes from any distress order issued by a Magistrate the following:

⁶ [1957] AC 436

⁷ (1844) 8 ER 1034

⁸ ANUHCVP2018/0047, delivered February 13, 2020, at paragraph 35

⁹ (1836) 2 M & W 191 at 195

- (i) The wearing apparel and bedding of a person and his or her family, and
- (ii) The tools and implements of his or her trade to the value of \$300.00.

[25] In my view, the language of the statute is clear. There is no prohibition on the levying of a person's tools of trade. Such items can be seized as long as tools of trade to the value of \$300.00 are left with that person. That is the plain and ordinary meaning of the words in section 218. It appears that the intention of the legislature was that a person, whose items are levied upon, should not be stripped bare of his or her livelihood and the basic tools that would allow him or her to continue to make a living. Had Parliament intended that all tools of trade of a person be exempted from seizure, there would have been no need for the inclusion of an exception in the legislation.

[26] I am further of the view that the ordinary, grammatical meaning of the words in section 218 does not lead to absurdity or repugnance. Tools of trade to the value of \$300.00 for the claimant's business may seem inordinately low. However, I note that the Act, formerly Act 10 of 1891, came into force on 10th February 1892. In fact, in the form of the Writ, Form 43, the tools of trade exempted from distress amounted to a mere \$24.00. It may well be that the law is slow to catch up with inflation and innovation as regards tools of trade. I see no reason to depart from the literal rule in this case. The clear meaning of the statute and the Writ is to protect from seizure the claimant's tools of trade to the value of \$300.00.

[27] I accept the evidence of the defendant bailiff that he left the claimant with tools of his trade in excess of \$300.00. In my view, the assessment by the bailiff of items he was aware the claimant had at his workplace, in the circumstances of this case, did not require a clinical or professional valuation of the items.

[28] The prohibition to levy on tools of the claimant's trade is limited to items of the claimant to the value of \$300.00. The claimant's evidence is that he is the owner and operator of an auto body repair and mechanic shop, and that he provides

towing/wrecking services. The defendant seized only one of the claimant's tools of trade, the truck.

[29] I note that the Writ is somewhat at variance with section 218 and Form 43 of the Magistrate's Code of Procedure Act, in that the Writ lends itself to a possible interpretation that allows or authorises the bailiff to levy on items other than tools of trade to the value of \$300.00. That is not what section 218 says. Section 218 and Form 43 are clear that the value of \$300.00 is specific to a person's tools of trade. Therefore, by virtue of the statute, wearing apparel and bedding are totally exempted from seizure.

Conclusion

[30] On the evidence before the court, the defendant bailiff did not act in excess of the powers granted to him by the Writ. He seized the truck, a tool of trade of the claimant, leaving the claimant with the rest of his equipment and items in his business, in excess of \$300.00, in compliance with the Writ. I am satisfied that the Writ did not exempt all the claimant's tools of trade, only those to the value of \$300.00, in accordance with the clear meaning of the applicable statute.

Order

[31] Based on the foregoing, it is hereby ordered as follows:

- 1) The claimant's claim is dismissed.
- 2) The defendant is awarded costs agreed in the sum of \$5,500.00.

Tamara Gill
High Court Judge

By the Court

Registrar