

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2020/0368

BETWEEN:

EUSTACE LEE CHERRY

Claimant

And

(1) SHERIFF OF THE HIGH COURT OF JUSTICE

(2) ATTORNEY GENERAL OF SAINT LUCIA

Defendants

Appearances:

Mr. Horace Fraser of Counsel for the Claimant/Applicant

Mr. George K. Charlemagne, Crown Counsel and Mr. Seryozha Cenac, Senior Crown Counsel, Attorney General's Chambers of Counsel for the Defendants

2023: September 29;
: November 13.

JUDGMENT

- [1] **INNOCENT, J.:** In the present claim, the claimant seeks to recover from the Sheriff of the High Court ('Sheriff') the deposit paid on a judicial sale of property conducted by the Sheriff which was forfeited due to the claimant's failure to complete the sale within the period stipulated. The facts giving rise to the claim are not in dispute.
- [2] The claimant had successfully bid upon the judicial sale of the property consequent on the adjudication. The sale was conducted by the Sheriff on 25th February 2020.
- [3] In accordance with the terms and conditions of the judicial sale, the claimant was required to deposit the sum of \$18,342.21 representing 10% of the price of the property prior to the judicial sale and the balance of the price of \$147,647.79 on or before 15th August 2020 or six months subsequent to the date on which the judicial

sale was conducted. It was also a stipulation of the judicial sale that if the balance was not paid within the 6 months period that the deposit would stand forfeited.

- [4] The claimant alleged that he was unable to pay the balance within the time stipulated because of his inability to obtain loan financing from financial institutions because of the lending policy of the commercial banks having been altered by the effects of the COVID-19 pandemic and the resulting emergency measures legislated from on or about March 2020.¹
- [5] By letter dated 19th June 2020 the claimant wrote to the Sheriff providing reasons why he was unable to complete the sale and sought reimbursement of the deposit and waiver of the interest accruing on the said sum. The Sheriff responded to the claimant by letter dated 28th July 2020 wherein the claimant was informed that by virtue of Article 539 of the Code of Civil Procedure the Sheriff had no discretion or authority to return the deposit or to award interest on the same. By letter dated 26th August 2020, the Sheriff wrote to the claimant informing him that the deposit had been forfeited in accordance with the provisions of Article 539 of the Code of Civil Procedure. The claimant commenced the present proceedings on even date.
- [6] The claimant was granted leave to amend his statement of case. In his amended claim the claimant sought the following declarations and relief:
- (1) A declaration that performance of the contract to purchase the subject property had become impossible and incapable of further performance.
 - (2) A declaration that the claimant was not in breach of the contract for failing to pay the balance of the purchase price and therefore the Sheriff was not entitled at law to invoke the forfeiture clause in the agreement in accordance with Article 539 of the Code of Civil Procedure.
 - (3) A declaration that the Sheriff has the power to waive the statutory right granted to the Crown by Article 539 of the Code of Civil Procedure.
 - (4) Rescission of the contract.
 - (5) An order that the deposit be refunded to the claimant with interest.

¹ At paras 6-10 statement of claim

- [7] Based on the parties' pleaded case, the evidence presented to the court and the written and oral submissions made to the court by Counsel for the respective parties, it appears that the following issues arise for determination:
- (1) whether the Sheriff was empowered to waive forfeiture of the deposit paid upon a judicial sale of property;
 - (2) whether the claimant was entitled to the return of the deposit paid and forfeited under a judicial sale; and
 - (3) whether the claimant was entitled to claim or maintain an action in respect of any of the reliefs claimed at paragraphs (1), (2) and (4) mentioned at paragraph [6] above on a judicial sale.
- [8] The answer to issues (1) and (2) mentioned above, in the court's view, are entirely dispositive of the present claim. The other relief sought by the claimant have their genesis purely in the private law of contract and do not interrogate anything related to judicial sales.
- [9] The above-mentioned distinction arises by implication of both law and procedure. The Sheriff's power to conduct a judicial sale emanates from the exercise of the Court's jurisdiction to enforce its orders and judgments. This is the case because at first there is a judgment of the Court to be enforced and secondly the judicial sale is conducted with the sanction of the Court pursuant to the procedure set out in the Code of Civil Procedure.
- [10] To this extent, the Sheriff conducts the sale in the exercise of the mandate conferred on him by the Court. To the foregoing extent, a judicial sale cannot be equated with a sale by private treaty under the ordinary civil law. Therefore, the ordinary law of contract does not operate and apply to judicial sales in the same way as it applies to sales by private treaty or sales conducted between private individuals. The Code of Civil Procedure is specific as to judicial sales and sets out a specific procedure that must be adhered to in the case of all judicial sales. These procedures are crafted in such a way to provide a degree of protection to both the judgment creditor and the judgment debtor.

[11] In the present case, the claimant has not sought to vacate the judicial sale on the grounds of irregularity. What the claimant is seeking is to vitiate a judicial sale that has been regularly conducted in conformity with the procedure laid down in the Code of Civil Procedure. The Code of Civil Procedure sets out specific requirements regarding the procedure for setting aside judicial sales. The present case does not fall within the category of instances where this can be done and the claimant has not asserted any right to have the judicial sale set aside.

[12] If it were indeed the case that the deposit could be refunded in the circumstances and on the grounds relied upon by the claimant, the overall effect would be to undermine the confidence of litigants in the process of enforcing judgments and orders regularly obtained of the Court in the administration of justice and would indeed strike a serious blow to the administration of justice.

[13] The concerns expressed by the Court are themselves implicit in provisions of Article 539 of the Code of Civil Procedure which provides that:

“The purchaser shall pay the Sheriff the purchase price less the deposit referred to in article 530 within 6 months of the date of sale with interest thereon at the rate of 6% per annum. In default of such payment, the deposit paid by the purchaser shall be forfeited and shall be applied towards the judgment debt.”

[14] In this case, there is no reason to doubt that the forfeited deposit was applied towards the judgment debt. The Sheriff also has certain obligations under the Code of Civil Procedure as respect judicial sales for which a sanction is imposed.²

[15] Article 550 speaks to the plight and destination of the money recovered upon a judicial sale and reads:

“The Sheriff is allowed, out of the monies which he or she has levied, all costs incurred by him or her to effect the sale, and all fees belonging to his or her office, after they have been taxed by the Judge or the Registrar. He or she holds the amount levied subject to the order of the Court or Judge.”

² Article 549

- [16] Now it is more than just mere speculation that the claimant must have been aware of the terms and conditions of the sale. He has in fact not denied that he did. The claimant has not at all asserted that the procedure set out under the Code of Civil Procedure for conducting Sheriff sales had not been adhered to which caused him to misapprehend the nature of the undertaking that he was embarking upon particularly with regard to the payment of the deposit and the conditions upon which it would stand forfeited. He entered into the process of sale by highest bidder of his own free will and accord. Nowhere has he asserted not to have understood the procedure in which he chose to partake. In fact, by participating in the Sheriff's sale, having paid the required deposit, the claimant undertook to abide by the terms and conditions of the sale.
- [17] At the trial the claimant testified in cross-examination that he had participated in previous judicial sales. He also testified that being the successful bidder he was fully aware that he had to pay the balance of the purchase price and he was told so. In re-examination he testified that it was his understanding was that his deposit would have been forfeited if he did not proceed with the judicial sale.
- [18] The procedure to be adhered to on a Sheriff's sale is set out at Articles 525 to 535 of the Code of Civil Procedure which provide:
- “525. On the day and at the place appointed for the sale, the officer conducting the same, after reading the notice, the charges and conditions of the sale, offers the immovable for sale.
Every bid implies an undertaking to buy the property at the price of such bid, subject to the condition that no higher valid bid will be given.
527. The conditions of the Sheriff's sale must express all those contained in the advertisements.
530. Before receiving the first bid of every bidder, the officer conducting the sale shall require from the bidder a deposit or a certified bankers cheque of an amount of money equal to 1/10 of the debt (in principal, interest and costs) due to the seizing party.
534. If a bidder fails to deposit forthwith the amount required by article 530, his or her bid shall be disregarded, and the proceedings shall be resumed upon the previous bid.

535. The Sheriff, or other officer conducting the sale, is bound, immediately after the adjudication, to refund to every bidder except the purchaser, the amount deposited by each, and the deposit made by the purchaser is retained as part of the purchase money.”

[19] It is clear from the abovementioned provisions of the Code of Civil Procedure, in particular Article 535, that the Sheriff is only obliged to refund the unsuccessful bidders and not the purchaser. This provision of the Code affords no discretion to the Sheriff to refund to the purchaser his deposit. The Code of Civil Procedure sets out explicitly how the money derived upon the adjudication ought to be applied. The court is reminded of the fact that adjudication by the Sheriff takes place at the time of sale and not at the time of execution of the sale.

[20] In a previous ruling given by the Court in this matter on a procedural application made by the claimant, the Court made the following observation at paragraph [62] of its ruling which undoubtedly explains the posture which the Court has adopted in relation to the present Claim:

“Therefore, it is on this basis that the importance of protecting the Sheriff's sale should be emphasized. It attacks one of the most important acts of procedure of any court of record - the enforcement of its own judgment, and puts in issue not only the regularity of that procedure, but jeopardizes the rights of innocent third parties, particularly judgment creditors who in enforcing their judgment have property put up for public judicial sale under all the solemnities and formalities of the law. So an attack upon a Sheriff's sale is in the court's view, an attack upon the jurisdiction conferred on the court and the justice system as a whole.”

[21] In the premises, the claimant has failed to direct the Court to any provision in the Code of Civil Procedure or any other principle of law respecting sales by adjudication by the Sheriff which empowers the Sheriff to refund the deposit in circumstances such as obtain in the present case. Therefore, the claimant fails to succeed in his claim.

[22] In light of the reasons that the court has given for dismissing the claim herein there is no necessity to go on further to consider the other issues raised by the claimant. The court finds no merit in any of the grounds upon which the claimant has pursued his claim. Judicial sales are not to be equated with private contracts for the sale of

land. The claimant's reliance on Article 985 of the Civil Code on the question of fault is indeed unfortunate. So too is his reliance on the provisions Articles 1132 and 1132A of the Civil Code.³

[23] The claimant not having succeeded in the present claim is obliged to pay costs to the defendant. The court will make award of prescribed costs to the defendant in the sum of \$2,751.00.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar

³ Temenos Development Inc. v Luxury Properties LLC and others [2013] ECSCJ No. 378; per Mathurin J. at paras [12] and [13] citing Tandrin Aviation Holdings Ltd v Aero Toy Store LLC and others [2010] EWHC 40