

THE EASTERN CARIBBEAN SUPREME COURT  
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: 256 of 1987

|                 |                       |                              |
|-----------------|-----------------------|------------------------------|
| <b>BETWEEN:</b> | <b>PAUL THOMAS</b>    | Judgment Creditor/Respondent |
|                 | and                   |                              |
|                 | <b>JOHN LIVERPOOL</b> | Judgment Debtor/Applicant    |

Before: **Honourable Madam Justice M E Birnie Stephenson**

**Cara Shillingford Marsh of Cara Shillingford Chambers** for the Judgment Debtor/ Applicant

**Hazel Johnson of de Freitas, de Freitas & Johnson** for the Judgment Creditor/Respondent

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2020: December

2021: January

2022: January 20  
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**Ruling On written submissions**

[1] **Stephenson J.:** Before the court is an application brought by the judgment debtor John Liverpool to set aside a judgment summons which has been filed in the matter and to declare that the said judgment summons filed on the 11<sup>th</sup> July 2020 is statute barred under the Limitations Act 1980<sup>1</sup> (The Limitation Act) and section 11 of the Eastern Caribbean Supreme Court (Dominica) Act<sup>2</sup> (The ECSC Act).

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<sup>1</sup> Limitation Act 1980 UK Chapter 58

<sup>2</sup> Chapter 4:02 of the 2017 Revised Laws of the Commonwealth of Dominica

- [2] This is a case of some antiquity. It is to be noted that this case has been considered at some stage or the other by all the judges sitting in the civil jurisdiction of the court in Dominica since 1989 commencing with the judgment of Madam Justice Monica Joseph. The court as currently constituted is the seventh judge to address the enforcement of the judgment debt.
- [3] The court has reviewed the submissions of both learned Counsel and has perused the pleadings together with all authorities that have been submitted in this matter.
- [4] Before considering the issues raised in the application at bar it is useful to look at a chronology based on the examination of the court file as it relates to the proceedings at bar so as to place the matter into proper context:
- a) on the 14<sup>th</sup> April 1989 judgment after trial was entered against the judgment debtor, he was ordered to pay the sum of \$42,419.50 plus costs.<sup>3</sup> The judgment was originally obtained against John Liverpool and Joseph Liverpool jointly and severally; (Father and son, the father is now deceased)
  - b) on the 14<sup>th</sup> May 1993 it was ordered by Justice Odel Adams<sup>4</sup> *inter alia* after the examination of the judgments debtors that they jointly and severally pay the sum of \$51,000.58 being the judgment debt and interest up to the 13<sup>th</sup> day of May 1993 and interest on the sum of \$42,419.50 at the rate of 5% per annum from the 14<sup>th</sup> May 1993 until satisfaction as follows:
    - 1) the sum of \$5,000 on or before the 31<sup>st</sup> July 1993;
    - 2) thereafter in monthly installments of \$400.00 commencing the 31<sup>st</sup> August 1993 and continuing until satisfaction;
    - 3) In default of the payment of the aforesaid sum of \$5,000.00 within the time specified herein or any monthly installment, the whole amount owing shall be come due and payable.
  - c) the order made on the 14<sup>th</sup> May 1993 was amended by order of court under the hand of Justice Odel Adams when it was ordered *inter alia* that the judgment debtor John Liverpool would pay the monthly sum of \$200.00 by way of salary deduction<sup>5</sup>;

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<sup>3</sup> Order after judgment dated the 14<sup>th</sup> April 1989

<sup>4</sup> Order of Court dated the 14<sup>th</sup> May 1993 and entered on the 27<sup>th</sup> May 1993

<sup>5</sup> Order of Court dated 30<sup>th</sup> June 1997 and entered on the 10<sup>th</sup> July 1997

- d) on the 17<sup>th</sup> April 2002, Justice Dunbar Cenac ordered the judgment debtor John Liverpool *inter alia* to pay the monthly sum of \$200 towards the judgment debt which stood at \$60,184.19 with costs, the order was indorsed with a penal notice;<sup>6</sup>
- e) on the 20<sup>th</sup> October 2005<sup>7</sup> Justice Claire Henry Wason ordered that the judgment debtor John Liverpool pay the judgment debt of \$67,765.08 plus interest on the following terms and conditions:
  - i. That the sum of \$7,000.00 be paid on or before the 21<sup>st</sup> November 2005 and thereafter payment of a the monthly installment of \$200.00 starting at the end of December 2005 and continuing at the end of each month until satisfaction;
  - ii. In default of any installment the full amount shall become due and payable and in default the Defendant shall be imprisoned for 14 days.
- f) on the 18<sup>th</sup> March 2009<sup>8</sup> Justice Davidson Baptiste made an order for oral examination ordering the judgment debtor Mr John Liverpool to attend before the judge of the High Court on the 19<sup>th</sup> June 2009 to be examined under oath as to his financial circumstances including what property or other assets;
- g) on the 19<sup>th</sup> June 2009<sup>9</sup> Justice Francis Cumberbatch ordered the judgment debtor to attend court on an adjourned order for oral examination;
- h) on the 9<sup>th</sup> October 2009<sup>10</sup> Justice Brian Cottle adjourned the hearing of the application for oral examination to 4<sup>th</sup> December 2009 and issued an arrest warrant for the judgment debtor John Liverpool for him to appear before the court on the 9<sup>th</sup> December 2009;
- i) on the 16<sup>th</sup> November 2009 the notice of adjourned to be heard on the 9<sup>th</sup> December 2009 was served on the judgment debtor<sup>11</sup>;
- j) on the 23<sup>rd</sup> December 2009, a notice of hearing requiring the judgment debtor to appear in court on the 29<sup>th</sup> January 2010 was served on the judgment debtor;<sup>12</sup>
- k) on the 10<sup>th</sup> July 2020 a judgment summons was issued in the matter pursuant to part 52 of the CPR 2000 returnable on the 30<sup>th</sup> July 2020. According the to the judgment debtors

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<sup>6</sup> Order of Court dated the 17<sup>th</sup> April 2002 and entered on the 22<sup>nd</sup> April 2002

<sup>7</sup> Order of Court dated the 20<sup>th</sup> October 2005 and entered on the 14<sup>th</sup> day of November 2005

<sup>8</sup> Order of Court dated the 18<sup>th</sup> March 2009 and entered on the 1<sup>st</sup> April 2009

<sup>9</sup> Order of Court dated the 19<sup>th</sup> June 2009 and entered on the 24<sup>th</sup> June 2009

<sup>10</sup> Order of Court dated the 9<sup>th</sup> October 2009 and entered on the 2<sup>nd</sup> November 2009

<sup>11</sup> Affidavit of service sworn to and filed on the 19<sup>th</sup> November 2009

<sup>12</sup> Affidavit of service sworn to and filed on the 30<sup>th</sup> December 2009

summons filed the judgment debt stood at \$80,357.30 with daily interest being accrued at the rate of \$7.77 per day; and

- l) this application was served on the judgment debtor John Liverpool on the 15<sup>th</sup> July 2020 as was sworn by the bailiff Ivor Emanuel.<sup>13</sup>

[5] On the 6<sup>th</sup> October 2020 the judgment debtor John Liverpool filed the application currently under review by the court. The stated grounds for his application are that:

- 1)the time limit for enforcing a judgment is six(6) years and the enforcement action being pursued is statute barred under section 24 of the Limitations Act 1980;
- 2)the judgment creditor's right to apply for a judgment summons on the failure of the judgment creditor to make payment of instalment payment was no more than six years after his last payment in 2010 of the judgment debt; and
- 3)the court has no discretion to waive the applicant's failure to enforce his judgment within the time limits prescribed by statute.
- 4)the judgment debtor swore to an affidavit in support of his application and the relevant averments are as follows:
- 5)he is the judgment debtor
- 6)he was involved in a motor vehicle accident in 1986. At the time of the accident he was 21 years old;
- 7)a claim was filed against him arising out of the accident which claim he defended as he felt he was not at fault;
- 8)judgment was entered against him more than 20 years ago;
- 9)the judgment creditor did not pursue the insurance company for compensation;
- 10) the insurance company HHV Whitchurch did not accept responsibility or liability because of his age at the time of the accident;
- 11) judgment was entered against him and due to the circumstances attendant on his life was unable to pay the judgment;
- 12) he made several payments towards the debt including monthly installments of \$200.00 as ordered by the court in October 2005 and commencing at the end of December 2005;

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<sup>13</sup> Affidavit of service sworn on the 28<sup>th</sup> July and filed on the 29<sup>th</sup> July 2020

- 13) he was ordered to continue making those monthly payments up until the judgment debt was fully paid;
- 14) he complied with the court order and made monthly payments up until around the 20<sup>th</sup> October 2010 when his familial circumstances (financial and medical) caused him to stop making the payments; and
- 15) he was served with a JDS in July of 2020 and that he has been advised by his Counsel Cara Shillingford that the JDS is statute barred as it was filed more than 9 years since his last payment and that after the expiration of the statutory period the court has no jurisdiction and should dismiss the JDS.

[6] The judgment creditor filed his response to the application brought by the judgment debtor on the 6<sup>th</sup> November 2020 and in response he stated:

- 1)that it is not true that the judgment debtor made the monthly payments as ordered on the 20<sup>th</sup> October 2005, he in fact made a total of 16 payments between the years 2005 and 2010;
- 2)on the 11<sup>th</sup> March 2009 there was an application for oral examination of the judgment debtor which was duly served on him on the 9<sup>th</sup> April 2009. On the 19<sup>th</sup> June 2009 the hearing of this oral examination was adjourned to the 9<sup>th</sup> October 2009;
- 3)a notice of the adjourned hearing was duly fled and served on the Judgment debtor on the 9<sup>th</sup> July 2010;
- 4)the judgment debtor did not turn up on the adjourned date and an arrest warrant was issued to secure his attendance. That hearing was adjourned to the 4<sup>th</sup> December 2009. A notice of hearing for this date was duly served on the judgment debtor on the 16<sup>th</sup> November 2009;
- 5)the hearing of the 4<sup>th</sup> December 2009 did not take place and a new date was fixed for 29<sup>th</sup> January 2010 which notice was duly served on the judgment debtor. This hearing did not take place and thereafter the matter was frustrated as the court could not find the file.
- 6)that a judgment debtor's summons was lodged at the registry on the 8<sup>th</sup> January 2020 and that he has been informed by his counsel Hazel Johnson and verily believes that

due to the continued difficulty in locating the court's file the JDS was only filed on the 10<sup>th</sup> July 2020.

7)that the enforcement proceeding as filed by way of the order for oral examination has not been heard and adjudicated to date;

8)that he has been advised by his counsel Hazel Johnson and verily believes that Limitation Act 1980 (UK) is not received into and does not form part of the laws of Dominica; and

9)that the application brought by the judgment debtor is dismissed and a date fixed for the hearing of the pending Oral Examination of the judgment debtor.

[7] The parties were ordered to file written submissions in support of their cases. Those submissions were filed in December 2020 and January 2021. Thereafter the file was filed away and was not brought to the attention of this court. It was upon a request being made for the file by this judge that it made its way to the judge. This court does apologise to counsel and the parties for the apparent tardiness in the delivery of this ruling but the circumstances which has impinged on the proper functioning of the registry and court is well known to the counsel. I now rule.

[8] A good starting point would be to review what is the law regarding the statute of Limitations and whether or not the Limitation Act of 1984 (UK) was received into and forms part of the Law of The Commonwealth of Dominica.

[9] Section 11(1) of the Eastern Caribbean Supreme Court (Dominica) Act<sup>14</sup> provides as follows:

*"The jurisdiction vested in the High Court in civil proceedings and ...shall be exercised in accordance with the provisions of this Act of any other law in operation in the state and of the ruled of court; and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice administered on the 1<sup>st</sup> June 1984 in the High Court of Justice in England."*

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<sup>14</sup> Op cit

[10] Counsel Mrs Cara Shillingford Marsh on behalf of the judgment debtor submitted that the applicable law in the case at bar is Limitation Act 1980 UK more particularly section 24(1) of the Act. Counsel cited and relied on the case the **National Bank of Dominica v Purple Turtle Development Co Ltd**<sup>15</sup> where Justice Thomas said; *"It is common ground that by virtue of section 11 of the Eastern Caribbean Supreme Court (Dominica) Act, the Limitation Act 1980, U.K. is applicable to Dominica."*<sup>16</sup>

[11] Counsel submitted that there are conflicting decisions on the exact scope of legislative provisions similar to section 11 throughout Commonwealth Caribbean. She went on to say that the conflict pertains to whether this section imports merely procedural law or whether it imports both substantive and procedural law.

[12] It was contended by Mrs Shillingford Marsh on behalf of the judgment debtor that this debate however, does not affect the present case since it is beyond doubt that laws that address time limits are procedural laws.

[13] Counsel Shillingford Marsh on behalf of the judgment debtor further submitted that the Civil Procedure Rules 2000 for example sets various time limits for filing various documents since these are procedural matters. No authority was cited by Counsel in support of her submission in this regard.

[14] Mrs Shillingford Marsh set out her arguments in her written submissions and also submitted that section 11 of the Eastern Caribbean Supreme Court Act ("the ESCA") is the relevant provision which establishes 1<sup>st</sup> June 1984 as the reception date in Dominica. Further, that alternatively if the court does not accept the 1980 Limitation Act as being received under section 11 of the ESCA, there would be lacunae in the law. Counsel suggested that if that were to happen would create a state of chaos as the law which has been understood and practiced for years would be radically changed;

[15] Counsel submitted that if the 1980 Limitation Act is not accepted, the court would have to rely on the law prior to 1763 to determine what is the applicable law in Dominica, because under the Proclamation

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<sup>15</sup> DOMHC 2013/0180

<sup>16</sup> Ibid at paragraph 6

dated 7th October 1763 contained in the 1990 Revised Laws of Dominica the reception dated for the Commonwealth of Dominica is 7th October 1763<sup>17</sup>. Counsel submitted that this would lead to further chaos as persons concerned will encounter great difficulties in finding and ascertaining what the law was at that time. Further, that the applicable law would be the Limitation Act of 1623 which existed prior to 1763 and that legislation is inaccessible.

[16] Counsel then went on to briefly submit that on what is to be considered to be the difference between procedural law and substantive law and referred to what was in fact the submissions made by counsel in **KCL Capital Market Brokers Limited v The Attorney General**<sup>18</sup>. In his submissions counsel in that case pressed the dicta of Persad J in **R –v- Andre Penn**<sup>19</sup> when he said 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.”*

[17] Counsel Mrs Hazel Johnson on behalf of the judgment creditor submitted that section 24 of the Limitation Act 1980 UK does not apply to Dominica. Counsel submitted that the debate as to whether section 11 allows for the reception of both the substantive and procedural laws of England or either of them was dealt with in the Court of Appeal decision of **Veda Doyle –v- Agnes Deane**<sup>20</sup> where it was held that

*“The English law intended to be imported by section 11(1) of the Supreme Court Act is the procedural law administered in the High Court of Justice in England and not English substantive law, nor English procedural law which is adjectival and purely ancillary to English substantive law. The wording of section 11(1) indicates that the focus*

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<sup>17</sup> Commonwealth Caribbean law and Legal Systems by Rose Marie Belle Antoine 2<sup>nd</sup> edition at page 77

<sup>18</sup> NO. SLUHCV2016/ 0696

<sup>19</sup> Criminal Case 31 of 2009 of the BVI

<sup>20</sup> HCVAP2011/0020 (Grenada), 2012] ECSCJ No. 95

*on the importation of any law, rule or practice from England is in respect of the exercise of the jurisdiction as distinct from the importation of English law so as to give jurisdiction.”*

[18] The findings in **Panacom International Inc. v Sunset Investments Ltd. and Another**<sup>21</sup> and the words of Floissac CJ were quoted and applied by Justice of Appeal Pereira who delivered the judgment of the Court of Appeal in the case of **Veda Doyle –v- Agnes Dean**<sup>22</sup>.

[19] In the **Panacom case**<sup>23</sup> Floissac CJ said

*“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 ‘provisions’, ‘law’ and ‘law and practice’ appearing in section 11 are evidently intended to be references to procedural (as distinct from 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 to import English substantive law nor English procedural law which is adjectival and purely ancillary to English substantive law.”*

[20] Pereira JA in the **Veda Doyle** case said

*“In my view, this pronouncement of the scope of section 11 of the Supreme Court Act (which is a provision 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*

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<sup>21</sup> (1994) 47 WIR 139 at page 148

<sup>22</sup> (2012) 82 WIR 287

<sup>23</sup> Op cit

*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"*<sup>24</sup>

[21]Pereira JA went on to opine that *"the statement by Sir Vincent Floissac C.J. 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."*<sup>25</sup>

[22]It is to be noted that the **Dominica Agricultural Industrial and Development Bank –v- Mavis Williams**<sup>26</sup> case was distinguished by the Court of Appeal.<sup>27</sup>

[23]Counsel Mrs Johnson on behalf of the judgment creditor also referred to the decision of the Justice Davidson Baptiste in the case of **Dominica Agricultural Industrial and Development Bank –v- Bernard Etinoffe and John Mendes**<sup>28</sup> where he applied the dictum of Floissac CJ in the **Panacom Case**. In considering the applicability of section 11 of the ESCS Act and applying the Panacom decision it was held that *"the 1980 Limitation Act of the United Kingdom being substantive law could not have been imported into Dominica by virtue of section 11 of the Eastern Caribbean Supreme Court (Dominica) Act and as such does not form part of the Laws of Dominica"*<sup>29</sup>. Baptise J went on to state *"The 1980 Limitation Act of the United Kingdom being substantive law, was not imported into Dominica and does not form part of the laws of Dominica"*

[24]Counsel noted the dicta of **Thomas J in the National Bank of Dominica Ltd v. Purple Turtle Development Co. Ltd et Al** <sup>30</sup> when he said *"It is common ground that by virtue of section 11 of the Eastern Caribbean Supreme Court (Dominica) Act the Limitation Act 1980 UK is applicable in*

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<sup>24</sup> Op cit at paragraph 9

<sup>25</sup> Para 10 of the Panacom decision

<sup>26</sup> DOMHCVAP2006/0090, [2006] ECSCJ NO 90

<sup>27</sup> Ibid at paragraph 10

<sup>28</sup> DOMHCV2006/0093

<sup>29</sup> Ibid at paragraph 7

<sup>30</sup> Supra at paragraph 6

*Dominica*" and noted that in that case the court was not referred to the **Panacom Case**<sup>31</sup> and the **Dominica (Aid) Bank –v- Ettinoffe Case**<sup>32</sup> which addressed the applicability of the Limitation Act 1980 as occurred in the **Dominica (AID) Bank –v- Mavis Williams** case.

[25] Counsel Mrs Johnson drew the court's attention to the averments made by the judgment creditor and noted that there is a pending application by the judgment creditor for oral examination fixed for hearing in June 2009 and it is noted by the court that in October 2009 an arrest warrant was issued for the judgment debtor which was clearly never executed. Counsel Mrs Johnson noted this pending application was never heard due to the fact that the court file was misplaced. Counsel also submitted that *"The Judgment Creditor did not stand by idly and do nothing to enforce his rights. As early as March, 2009 he took steps, as permitted by the Rules of Court to enforce the Order, and continuous efforts at follow-up were made but were frustrated by the inability to locate the Court's file. Later the Judgment Summons was filed"*<sup>33</sup>.

[26] Counsel Mrs Johnson on behalf of the judgment creditor submitted that "It has therefore been judicially determined in this jurisdiction that the Limitation Act 1980 UK is substantive and not procedural law. Further the Limitation Act goes to a litigant's right of action"<sup>34</sup>

[27] Counsel concluded her submissions by stating that the judgment debtor's application ought not to be granted firstly that the Statute of Limitations is substantive law and in the circumstances was not received into the laws of Dominica and secondly should the court not agree with her submission in that regard then the court should proceed on the long outstanding application for Oral Examination.

### **Court's considerations**

[28] In reviewing the law in the region the court came across the BVI case of **Stichting Nems v Igor Borisovitch Gitlin**<sup>35</sup> where Adderly J was called on to consider section 11 of the BVI legislation and the question of reception. It is noted that in his judgment he was referred to and commented on section

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<sup>31</sup> Supra

<sup>32</sup> Supra

<sup>33</sup> Re: Para 15 of Submissions filed on behalf of the Judgment creditor

<sup>34</sup> Written submissions on behalf of the judgment creditor at paragraph 11

<sup>35</sup> BVIHC (COM) 0001 OF 2018 Territory of the Virgin Islands (Commercial) Court

7 of the BVI legislation which is similar to the Dominica Legislation. This case was not referred to the court by either Counsel in the case at bar but it is an extremely helpful case and lends guidance to this court along the lines of the **Veda Doyle, Panacom and Dominica Aid Bank –v- Ettinoff**, cases cited by counsel.

[29] Section 7 of the Dominica legislation provides

*“The High Court shall have and exercise within the State the same jurisdiction and the same powers and authorities incidental to such jurisdiction as may be vested in the High Court of Justice of England on the 2<sup>nd</sup> November 1978.”*

[30] Justice Adderly opined that the difference between legislation conferring jurisdiction and that setting out the procedure in exercising that jurisdiction is clearly demonstrated in the two sections of the West Indies Associated States Supreme Court Act, that is, section 7 and 11 of the BVI Legislation which is similar to the legislation in Dominica. The same holds for the provisions in Dominica.

[31] Justice Adderly went on to say

*“Section 7 clearly allows importation of legislation conferring the jurisdiction (existing as at 1 January 1940), and section 11 (1) allows, where there is a void, the importation of legislation setting the procedure for exercising that jurisdiction. Each of the Territories in the Eastern Caribbean has the provision of section 11(1) verbatim in its Supreme Court Act except for the Territory's name”<sup>36</sup>*

[32] In the BVI case Justice Adderly also said that

*“It stands to reason that section 11(1) cannot be construed as importing the substantial legislation of England as opposed to the procedure and practice; to interpret the section otherwise would be ceding the substantive law making powers of the BVI Parliament to England. That would be inconsistent with the constitution of the Constitution of the Virgin Islands which gives the power to make laws to the BVI Legislature. Article 72 states: “Subject to this constitution, the Legislature shall have the power to make laws for the*

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<sup>36</sup> Ibid at paragraph 13

*peace, order and good government of the Virgin Islands." There does not appear to be a reservation in the BVI constitution for the United Kingdom to make laws subject to the consent and approval of the Privy Council, and even if there was there is no evidence that the process has taken place.*

[33] Justice Adderly's words echo the opinion of Justice of Appeal Perreira in the **Vida Doyle**<sup>37</sup> case which decision is in fact binding on this court. I could do no more than to adopt the reasoning of the learned judge.

[34] This court accepts, is bound by and applies the judicial interpretation of the section 11 of the ECSC Act as is found in **Panacom and the Veda Doyle** cases<sup>38</sup> and the conclusion of the court that this section provides for the reception of procedural law and that the English law to be imported is the procedural law administered in the High Court of Justice in England. Further that section 11 of the ECSC Act it is not intended to import English substantive law or English procedural law that is adjectival or purely ancillary to English substantive law.

[35] I therefore agree with the submissions made on behalf of the Judgment Creditor that based on the ruling of the Court of Appeal and other authorities referred to this court, that section 11 of the ESC (Dominica) Act provides a gateway for the application of only English procedural law that is adjectival or purely ancillary to English substantive law.

[36] In the **Dominica Aid Bank –v- Bernard Etinoffe et anor** Baptist J in considering the applicability of section 11 of the ECSC (Dominica) Act applied the Court of Appeal ruling in the **Panacom Case** and stated *"In like manner the 1980 Limitation Act of the United Kingdom being substantive law could not have been imported into Dominica by virtue of section 11 of the Eastern Caribbean Supreme Court (Dominica) Act and as such does not form part of the Laws of Dominica."*<sup>39</sup>

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<sup>37</sup> *supra*

<sup>38</sup> *supra*

<sup>39</sup> Claim No. DOMHCV2006/0093 at paragraph 7

[37] **Baptiste J went on to say** “Section 11 does not however import into Dominica English substantive law nor procedural law which is adjectival and purely ancillary to English substantive law. The 1980 Limitation Act of the United Kingdom being substantive law, was not imported into Dominica and does not form part of the laws of Dominica”<sup>40</sup> (emphasis mine)

[38] This court therefore does not accept the submissions of Mrs Shillingford Marsh that the Limitation Act is applicable to the case at bar and that based on that legislation the judgment summons as filed by the judgment creditor is statute barred.

[39] Ultimately it is the court’s duty to seek to give effect to the overriding objective of CPR 2000 that is to deal with cases justly. In exercising its discretion the court must therefore have regard to the nature of the proceedings before it, the factual context of the application and this court cannot help but notice that the judgment debtor has in a large way contributed to the delay in the hearing of this matter having been served multiple times personally and refusing to and or failing to turn up to court and refusing and failing to obey the orders of court.

[40] It is noted that though even though some time has elapsed between the last hearing and the new filing of the judgment summons the judgment creditor has over the years been making effort to enforce his judgment.

[41] It is important for the court to hold a balance of the rights of the parties appearing before it. There must be good and proper reasons to deprive a successful party of the right to enforce his judgment. In his affidavit the judgment creditor has recited the times this matter has been before the court and this is in fact corroborated by the record of the case as in what physically appears on the court’s file as stated earlier in my ruling.

[42] It is the court’s duty to manage cases efficiently and cases ought to be decided and dealt with, with minimum delay. Unfortunately this case fell through the proverbial cracks with a pending application which was listed for hearing many times and which it is noted the judgment debtor failed to attend in

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<sup>40</sup> Ibid at paragraph 8

spite of evidence of personal service. The delay by the court itself ought not to be permitted to prejudice litigants.

[43] The judgment debtor's application is therefore dismissed with costs in the sum of \$1,200.00 to be paid to the judgment creditor.

[44] This court wishes to thank counsel for their helpful submissions and once again to apologise to counsel and the parties in this matter for the length of time it took for this ruling to be delivered.

[45] This court adjourns this matter to the 18<sup>th</sup> of February 2022 for the hearing of the long outstanding application for oral examination.

**M E Birnie Stephenson**  
Resident Judge

**BY THE COURT**

**REGISTRAR**