

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2013/0362

BETWEEN:

**MABLE PHILLIPS
(Acting through her Attorney Nancy McKenzie Greene)**

Claimant

and

CORRINE CLARA

Defendant

Appearances:

Ms. Pauline Hannibal for the Claimant
Ms. Celia Edwards, QC and Mr. Deloni Edwards for the Defendant
Ms. A. Bullock as a watching brief for Republic Bank

2015: June 1;
June 2.

DECISION

- [1] **AZIZ. J.:** This matter came up for hearing as a result of a judgment summons dated and filed on the 27th April 2015. On the 27th January 2015, the claimant herein obtained judgment against the defendant/judgment debtor in an interlocutory appeal and by that judgment, the judgment debtor was ordered to pay costs.
- [2] The interlocutory appeal was determined as mentioned above on the 27th January 2015 by Her Ladyship, The Honourable Dame Janice M. Perriera, DBE, Chief Justice, and Justices of Appeal, Her Ladyship, The Honourable Madam Justice Louise Blenman, and His Lordship, The Honourable Mr. Justice Mario Michel.

- [3] This appeal was determined on the written submissions filed by Ms. Pauline Hannibal for the appellant and Mr. Deloni Edwards for the respondent.
- [4] The order was certified in the following terms¹ and signed by the Chief Registrar:
- “The costs orders made in the court below are set aside; and it is ordered that the respondent pay the costs of the appellant below assessed in the sum of \$2,500.00 in respect of both applications and costs on this appeal fixed at two thirds of that sum.”
- [5] On the 9th February 2015, Learned Counsel, Ms. Hannibal, wrote to the Registrar informing her of the outcome of the appeal, and quoted paragraph 3 of the decision of the Court of Appeal². A request for urgent attention to be given to the matter to be returned to the court was sought, so that the order could be made. It was pointed out that the claimant was 96 years old and therefore sought an urgent trial. The letter was copied to the law office of George E.D. Clyne who were the attorneys on record for the defendant.
- [6] On the 12th March 2015, an order granting the witness summons was issued pursuant to part 33 of the Civil Procedure Rules (CPR 2000), and directed to Garnet Ross, Retail Manager of Republic Bank, St George's, for documents to be brought to the High Court pertaining to account number 11123778, in the names of Mable Phillips and Corrine Clara.
- [7] The witness summons was served on Garnet Ross on the 8th April 2015 at Melville Street, St. George's.
- [8] The judgment summons was issued as stated in paragraph 1 herein on the 27th April 2015, and Corrine Clara was required to attend court on the 1st June 2015 at 9:00 a.m. to be examined on oath as to her means, in order to comply

¹ Paragraph 4 of the Order quoted.

² “The order of the Learned Trial Judge dismissing the Witness Summons application is set aside and it is ordered that the same be issued subject to a Judge in the Court below fixing the date and place for the attendance of the witness for the purpose of producing the document.”

with the order and to give good reasons why she should not be committed to prison for failing to comply. The amount stated to be due on the 27th April 2015 was \$4,828.50.

- [9] The process server, Mr. Johnson Cornwall, swore to an affidavit setting out that he did personally serve Corrine Clara at True Blue, St George's on the 14th May 2015 with the Judgment Summons, affidavit of Nancy McKenzie Greene and the exhibits in this action.
- [10] The defendant, Corrine Clara, swore to an affidavit on the 19th May 2015, and filed the affidavit on the same day. This affidavit set out that she had been served with the judgment summons filed on the 27th April 2015 and furthermore, indicated that she had been advised by her attorneys, that the costs awarded were \$2,500.00 and not \$4,166.00 as alleged by her (referring to Mable Phillips acting through her attorney Nancy McKenzie Greene).
- [11] It was contended by the defendant that the suit was still ongoing and that she (the defendant) believed that she would be successful, and therefore prayed to the honourable court, to defer payment of the costs to the determination of the matter, at which time the relevant set off and adjustments would be made.

Hearing on the 1st June 2015

- [12] At the hearing of the judgment summons today 1st June 2015, Learned Counsel, Ms. Edwards Q.C, indicated that she had filed an application challenging the ability of Nancy McKenzie Greene as the lawful attorney for Mable Phillips.
- [13] Ms. Edwards Q.C indicated that there was a criminal case that was being or had been heard at which time the Prosecution had indicated that the claimant is senile, therefore an issue arose as to the ability of the lawfully appointed attorney to continue to act. The submission was that the application to deal with the lawful attorney and her capacity to act, ought to be dealt with first.

- [14] Learned Counsel, Ms. Hannibal, quickly and vociferously objected to the court being informed of any information relating to matters and issues raised in the Criminal Court.
- [15] It must be made clear that it was this Court, that enquired as to when this information (about the senility of the claimant), had become known and that the court has wide powers and discretion, to hear evidence that would assist in determining any matter, ensuring that all parties are on equal footing, and furthermore to ensure that not only the overriding objectives of the CPR 2000 are met, but most importantly that justice is done between the parties. I remind all Counsel that it is their duty to help the court to further the overriding objectives of the CPR 2000.
- [16] Ms. Hannibal submitted that any finding of senility would not affect the judgment of the Court of Appeal and neither will it affect the order that was made by the Court of Appeal. Ms. Hannibal argued that a stay of proceedings cannot be granted and that this is enforcement of a final judgment.
- [17] Learned Counsel, Ms. Edwards Q.C, further submitted that Mable Phillips cannot act through her attorney if she is mentally incompetent. The Court was informed that the criminal case referred to above, was heard on the 22nd May 2015, after the affidavits filed on the 19th May 2015 by Corrine Clara.
- [18] This Court looked further into the matter of Ms. Nancy McKenzie Greene, the lawful appointed attorney for the claimant. It seems to me, that the position is as follows:
- a. Ms. Mable Phillips is 96, and physically frail;
 - b. Ms. Nancy McKenzie Greene (the Attorney) is the step-daughter of the claimant;
 - c. The power to act came as a result of two Powers of Attorney granted by the claimant;
 - d. Those Power of Attorneys are dated the 11th and 18th March 2013;
 - e. The claimant was resident at St Martin's Home for the Aged in St Andrews;

- f. In 2006, the claimant had authorized the respondent to act on her behalf by way of a Power of Attorney;
- g. This 2006 Power of Attorney to the respondent was revoked in March 2013;
- h. Ms. Nancy McKenzie Greene was appointed in March 2013, soon after the revocation of the Power of Attorney of the respondent, (Corrine Clara);
- i. It would seem that part of the reason for revoking the Power of Attorney of Corrine Clara was that there was an allegation that Ms. Clara had been withdrawing large sums of money from her account number 11123778 and not use it for the benefit of Ms. Phillips;
- j. Ms. Clara asserted that it was one Ruby Gilbert with whom Ms. Phillips operated a joint account, as the person who withdrew the large sums of money.

[19] The court has been referred to several pieces of law by Ms. Edwards Q.C, those being Halsbury's Laws of England, Vol. 1 Agency, page 420, dealing with Competency of Principles, and also the case of **Drew v Nunn** [1874-80] ALL E.R. in which it is stated that:

"The insanity of a principal, if so great as to render him incapable of contracting for himself, puts an end to an authority to contract for him previously given to an agent; but where a principal has held out an agent as having authority to contract for him, and afterwards becomes insane, he is liable on contracts made by the agent after the insanity with a person to whom the authority has been so held out, and who had no knowledge of the insanity."

[20] It seems to me that Learned Counsel, Ms. Edwards Q.C, is heavily reliant upon the first proposition in the paragraph quoted above. This Court would whole heartedly agree that subject to any exception, once a person is inflicted with any mental disorder and has no lucidity then he is not in a position to contract with anyone, and any acts done in furtherance of authority from a mentally ill person has no standing. If the principal cannot act then it

must follow that the agent cannot act in any capacity on his behalf. If authority is granted while the principal has capacity then the agent can act within the confines at that authority to carry into effect any contracts in existence.

[21] Ms. Hannibal submits that the respondents are seeking a stay or suspension of execution. I have also been referred to Halsbury's Laws, Volume 17, paragraph 195, which deals in general with the proposition of staying execution. Paragraph 195 was read and Ms. Hannibal stressed that the court's power to stay proceedings ought not to be confused with a power to stay the execution of a final judgment or order. It was submitted that the court has an inherent jurisdiction to control its own proceedings so as to prevent an abuse of process. Ms. Hannibal also referred the court to the case of **Burnet v Francis Industries plc**.³

[22] This case seems to me to enunciate, that where one party had a judgment in their favour, but there is an unresolved matter outstanding against the successful party, a stay may be granted to await the outcome of that persons claim, if there were special circumstances, and the relationship between the parties were one in which a stay ought to be granted. It is clear, that such special circumstances included:

- a. Nature of the plaintiff's claim;
- b. Extent of the identity between the defendant and other parties;
- c. The interrelationship of the claims;
- d. Strength of the party's claim;
- e. Likely delay;
- f. The extent of prejudice to the plaintiff if he was denied the fruits of his judgment until the others party's claim was determined;
- g. Risk of prejudice to the other party if the defendant were to make payment to the plaintiff under the judgment.

³ [1987] 2 All ER 323

[23] I have to ask whether in the circumstances of the case at bar, where the defendant alleges that the claimant is senile and as a follow on, whether the lawful attorney can no longer act, is sufficient to cause a stay pending the determination of any further application.

[24] I think that where a person is appointed to act on behalf of a principal, who at the time of the appointment is capable of so doing, then the acts carried out by the appointee/lawful attorney is lawful and binding on the principal. If a person's mind was so affected so that they had no capacity to give instructions or was suffering from some disease or mental illness so that they did not have a contracting mind then it would be clear that anything done by an agent purporting to act on behalf of that person would not be lawful.

[25] I furthermore agree with what Brett, L.J said:

“Where there is lunacy ... such lunacy so great that the person who suffers from it has no contracting mind, and cannot contract or do any legal act for himself for want of mind – then as the principal at law is incapable of doing any act for himself, his agent cannot do it for him. Such lunacy, therefore, puts an end to the authority of the agent, and if any agent acts for his principal after such lunacy is brought to his knowledge, that agent would be doing a wrongful act to both the principal and the person with whom he dealt, and he would be so liable to any person with whom he had so acted for the principal.”

[26] So the next question therefore is who has liability, where the authority of the agent has been held out to a person who has not had any notice of any mental impairment on the part of the principal? It must be right that a third party or agent or lawful attorney must be able to act with authority, where there is a document, which entitles the third party or agent to act. One such document can be a Power of Attorney, which sets out various powers, rights and obligations.

- [27] If a document or Power of Attorney has been previously given to an agent or third party, that is, prior to the knowledge of any mental illness which causes any serious and/or significant mental incapacity, then it must be right that the existence of a properly executed document (such a valid Power of Attorney) purporting to entitle someone to act on their behalf, must assert that lawful authority. It therefore follows that as long as the third party or agent has acted within that lawful authority then the principal is bound.
- [28] There is, it seems to me, another way in which the principal will be bound by the agent or third party. That would be where the principal acted while not under any undue influence and with full capacity to do so and/or not suffering from any illness or disease of the mind. This would cover, it seems to me, cases like the one at bar, in which there were several Power of Attorneys, those being revoked and the principal with all mental faculties causing a new document/Power of Attorney to be executed. In this case in favour of Nancy McKenzie Greene which holds her out to have the power and authority to act on behalf of Mable Phillips.
- [29] It also seems to me, that a person who has dealt with the principal via an agent and is unaware of the principal's mental capacity is well within their rights to so deal, and that principal is bound by having provided that lawful authority to the agent or third party.

Brief History/Chronology

- [30] On the evidence before this Court, for consideration and certainly upon reading the several documents, it has become clear that the defendant herein was given a Power of Attorney by the claimant on the 29th April 2006 to manage the financial affairs of the claimant in Grenada. This Power of Attorney was recorded in the Deeds and Land Registry of Grenada in Liber 16-2006 at page 285.
- [31] This Power of Attorney was thereafter revoked by the claimant by Deed of Revocation dated the 11th March 2013.

[32] The defendant must have been served with a Deed of Revocation of the Power of Attorney. It would seem that on the face of the documents the defendant then filed a claim in suit GDAHCV2013/0099, seeking to be appointed as the legal guardian of Mable Phillips on the ground that Mable Phillips was mentally incompetent to handle her own affairs, and also preventing her from returning to the USA with her step daughter Nancy McKenzie Greene.

[33] On the 11th March 2013, Mable Phillips executed a new Power of Attorney⁴, witnessed by Mr. George Bernard of Mt Gay, St George's. This Power of Attorney nominated and appointed the current lawful attorney, Ms. Nancy McKenzie Greene, to deal with her financial affairs, legal proceedings and execution of documents.

[34] Thereafter there were several applications made including freezing orders supported by affidavit of Nancy McKenzie Greene.

[35] On the 17th May 2013, the court upon hearing both Counsel for both parties, the claimant was declared⁵ to be mentally competent to handle her affairs, and by agreement of the parties the proceedings were hereby discontinued⁶.

Application to strike out parts of Nancy McKenzie Greene Witness Statement

[36] There was an application, dated the 12th March 2014 and filed on the 17th March 2014 by the defendant to strike out several parts of the witness statement of Nancy McKenzie Greene (filed on the 27th February 2014). The application was based on the statement containing hearsay.

⁴ Prepared by Ms. Pauline Hannibal, Attorney at Law

⁵ Order of Persad.J dated the 17th May 2013 and entered on the 27th May 2013

⁶ There may still be a challenge to this order. It seems as though the defendant may seek to have this order set aside.

[37] The matter was determined by Mohammed, J on 30th June 2014, and paragraphs 31 and 32 dealt with the striking out application. In short, the application to strike out various sentences and paragraphs were successful. For completeness sake it is only right that I mention that there was a further application for a witness summons, which was dismissed.

Interlocutory Appeal

[38] As already mentioned there was an interlocutory appeal on behalf of the claimant, which was successful. Costs were ordered and in relation to those costs, a judgment summons was filed and issued in the sum of \$4,166.00. This sum is made up of the \$2,500.00 plus two thirds of this \$2,500.00 for costs of the appeal, which amounts to \$1,666.00. Added together is how the sum of \$4,166.00 has been arrived and for which the judgment summons has been issued.

Application to substantiate mental competence

[39] I have also had sight of an application⁷ for the claimant to substantiate her mental health by a medical certificate of two doctors pursuant to the Mental Health Act, UK. This notice of application is supported by an affidavit of Corrine Clara, a retired nurse. In paragraph 4 of the affidavit the defendant states that she has been advised that the Power of Attorney does not operate during the senility of the claimant.

[40] I paused to review the notice of application, and took note of the fact that the application seemed to be hinged on proceedings in the Magistrate's Court, on Friday 22nd May 2015, in which the Prosecutor indicated that the claimant was senile.

[41] There is nothing more before this Court to substantiate that particular claim. It is in my view, a bald assertion, and hearsay to a certain extent. There has

⁷ Dated the 29th May 2015

been nothing presented by way of evidence at this stage for the court to consider, other than the notice of application and supporting affidavit. At the time of hearing, there was no filed copy of the application, or filed and evidenced by the Registry stamp.

[42] I have considered all of the submissions by both Learned Counsel, the evidence, the documents, and the state at which the proceedings in relation to the judgment summons, had gotten to. To date, there is a valid Power of Attorney in place and that remains so until the substantive claim and or any other application is determined. I have also reminded myself of fiduciary relationship between principal and agent.

[43] At the time of the award of costs by the Court of Appeal, the claimant was represented by a valid and lawfully appointed attorney. I have considered any potential delay before the merits of the application by the defendant is dealt with. I have considered the risk of prejudice to the parties if the defendant was to make a payment of costs. I have also considered the risk of prejudice in denying the claimant the fruits of a decision in her favour as far as costs are concerned. The claimant was successful in the appeal and again she is 96 years of age and ought to have her fruits.

Conclusion

[44] In the circumstances of this application, I can find no reason or merit in staying or suspending proceedings relating to the judgment summons pending the outcome of the mental competence application filed on the 29th May 2015.

[45] I also award the claimant costs of the application to be determined.

Shiraz Aziz
High Court Judge