

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2014**

CLAIM NO. SKBHCV2013/0343

BETWEEN:

Romeo Tweed

Claimant

and

**Florence Madina Tweed
(also known as Dolly Tweed)**

Defendant

Appearances:-

Mr. Nassibou Butler of Butler, Butler and Butler for the Claimant.
Mrs. D. Camila Cato for the Defendant.

On written submissions:

2014: December 15
2015: February 06

JUDGMENT

- [1] **CARTER J.:** This matter is brought by fixed date claim form. The claimant seeks against the defendant, possession of property and premises situate at Palmetto Point/Ottley's Yard in St. Kitts, (hereinafter referred to as "the property") as well as an order that the defendant do quit and deliver up forthwith possession of the said property.

[2] The matter has proceeded to decision by way of written submissions, the parties having agreed that the affidavit filed in support of the fixed date claim form by the claimant and that in response by the defendant, would stand as evidence in chief.

[3] It is a curious matter in that this Court has already pronounced upon the property rights as between these parties who were previously married. In the matter of **Tweed v Tweed**, Claim no. SKBHMT2005/0005, (hereinafter referred to as “the matrimonial proceedings”) a Decree Absolute was pronounced on the 20th day of October 2006 and the marriage between the present claimant and defendant was thereby dissolved. A summons for determination of property interest was filed in the matrimonial proceedings on the 2nd March 2006. On the 26th July 2013, after what the Learned trial Judge described as being “a long and complex case involving many issues and many attorneys-at-law”, Thomas J. (Ag.) in giving judgment on the summons declared inter alia, that:

“The Respondent [the claimant in the instant matter] is entitled to be registered as sole, legal and beneficial owner of the property situate at Palmetto Point/Ottley’s Yard as the Petitioner has failed to show a common intention and that she suffered detriment in this regard.”

[4] After judgment was delivered in the matrimonial proceedings, the defendant sought leave to appeal the decision of Thomas J. and for a stay of proceedings. On the 22nd day of October 2013, the Court of Appeal dismissed the application indicating that no leave was required since the decision of Thomas J. (Ag.) was a final judgment and refused the application for the stay of proceedings. The defendant then applied for leave to file an appeal out of time and for a stay of execution/possession. The Court of Appeal has also dismissed those applications.

[5] During the interim, the claimant’s attorneys wrote to the defendant seeking, in light of the judgment of Thomas J. (Ag.), that the defendant quit and deliver up possession of the property. The claimant contends that the defendant has

refused, failed or neglected to quit and deliver up possession of the property and that this has necessitated the filing of the instant claim.

[6] The defendant does not dispute the above facts. In her affidavit filed on the 6th February 2014, in response to the Fixed Date Claim form, the defendant refers to the application filed in the matrimonial proceedings before the Court of Appeal, seeking leave of the court for an extension of time to file an appeal and for a stay of execution/possession. At the time of filing of the defendant's affidavit, this second application to the Court of Appeal had not been heard. However, subsequent to the filing of the defendant's affidavit in this matter, this second attempt to appeal the decision in the matrimonial proceedings has been heard by the Court of Appeal. The Court of Appeal dismissed both of these applications on the 27th day of February 2014.¹

[7] This Court notes that Counsel for the defendant does not address the effect of the Court of Appeal decisions in her written submissions to this Court. Nor indeed does she address the status of the final judgment of Thomas J. (Ag.) in the matrimonial proceedings. Instead, the entirety of counsel's written submissions on behalf of the defendant in this matter, seek to impress upon the court that the defendant does have an equitable/beneficial interest in the property. The defendant's submission is that

*"...the Court has ruled that the Claimant is the sole legal and beneficial owner of the property. Mrs. Tweed contends that **notwithstanding that Order of the Court** that she has acquired an equitable interest in the property."*(emphasis mine).

[8] With due respect to Counsel for the defendant, a final judgment of the court is not so easily ignored. Part 42.8 specifies that a judgment or order takes effect from the day it is given or made. It is trite law that a court of concurrent or parallel jurisdiction does not have the authority to and cannot exercise an appellate jurisdiction to dismiss the final judgment of another judge that has been determined on the merits of the case. The only recourse of the

¹SKBHVCAP2013/0019

defendant who is aggrieved by the decision is to appeal and that final judgment stands unless and until it has been reversed on appeal.²

[9] The effect of this is that the Judgment of Thomas J. (Ag.) that the claimant is entitled to be registered as sole, legal and beneficial owner of the property is a final judgment of this Court heard on the merits, determining the rights of the parties in the property and that final judgment has not been overturned. This Court had no jurisdiction to re-litigate on matters concerning the property that have been finally determined by a court of concurrent or co-ordinate jurisdiction.

[10] The claimant as the sole legal and beneficial owner of the property is prima facie entitled to possession of the property. In his judgment with respect to this matrimonial property, Thomas J. did not make an order for possession. However, the effect of a finding that the claimant is the sole legal and beneficial owner of the property is that the defendant has no legal basis upon which to remain on the property.³ The defendant has not shown that she is entitled to possession in the face of the claimant's interest as legal and beneficial owner of the property. In order to do so, she would have to show that she has some superior claim to possession. The defendant has advanced no basis upon which this Court can find that she has any such superior claim that would entitle her to possession.

[11] Having considered all the facts on the present claim and the written submissions of Counsel for both parties, this Court declares and orders as follows:

1. This court is satisfied that the claimant as the sole legal and beneficial owner of the property is entitled to possession of the property;
2. The defendant shall quit and deliver up possession of the property to the claimant no later than 45 days from the date of this order;

²Privy Council Appeal No. 22 of 2004 – Leymon Strachan v The Gleaner Company Ltd et al.; SLUHCV 2008/0438 - Marie Clarke-Johnney v Evariste Ambrose

³SKBHCV2102/0163, Bass v Bass, delivered on the 27th November 2013

3. Pursuant to Part 64.6, costs will be awarded to the claimant, to be assessed if not agreed.

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Marlene I. Carter
Resident Judge