

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)**

SUIT NO: NEVHMT2003/0009

BETWEEN:

**Angelo Gabriel Le Blanc – Judgment Debtor/Petitioner
and
Jessica Idona Le Blanc - Judgment Creditor/Respondent**

APPEARANCES:

Ms. Kalisia Isaacs for the Judgment Creditor/Respondent.

Ms. Midge Morton for the Judgment Debtor/Petitioner

DECISION

2014: May 15

2014: May 27

[1] **WILLIAMS, J. (Ag):** By Notice of Application dated the 7th of April 2014 and pursuant to Part 53 of the CPR 2000, the Respondent in Claim No. NEVHMT2003/0009 filed for an order committing the Judgment Debtor to Her Majesty's Prison for contempt of Court.

[2] The grounds of the Application are;

1. That by virtue of an order of Court dated 17th May 2010, the Judgment Debtor was ordered to pay the Judgment Creditor \$200,000.00 in full and final settlement of Ancillary Proceedings as follows, \$108,000.00 is to be paid within three months and the remaining \$92,000.00 by the 31st December 2012.

2. The Order was endorsed with a Penal Notice and personally served on the Respondent in compliance with Part 53 of the CPR 2000.

3. The Respondent is now in breach of the said order having failed to make payment within the time specified. The outstanding balance on the Judgment debt is \$115,990.85 plus statutory interest.

4. The Respondent is the proprietor of Caribbean Smiles Dental Labs and Clinic. Despite having the means to settle the debt, he is wilfully refusing to do the same.

[3] The Notice of Application was supported by an Affidavit deposed to by the Judgment Creditor and filed on the 7th April, 2014. The Affidavit contains similar grounds to that contained in the Notice of Application.

The Judgment Creditor petitions the Court to order the Judgment Debtor to pay the Judgment Creditor the sum of \$115,990.85 together with accrued interest, or in the alternative to commit the Judgment Debtor to prison for contempt for failing to comply with an order of the Court.

- [4] On the 9th of May 2014 the Judgment Debtor Angelo Le Blanc filed an Affidavit in Opposition to the Affidavit of the Judgment Creditor Jesica I. Le Blanc in which he states that he has been unable to comply with the Terms of the Order of the Court as a consequence of his inability to raise the monies to satisfy the Judgment Debt.
- [5] The Judgment Debtor further stated that he offered to transfer his interest in two parcels of land as an alternative to the cash amounts but the Judgment Creditor has unreasonably refused to accept the offer.
- [6] Counsel for the Judgment Debtor contended that the Affidavit in Support of the Notice of Application filed by the Judgment Creditor does not live up to the standards required by the Court in that;
- (a.) the Rules are clear on Procedure to be followed for enforcement of Money Judgment in particular Part 45 (2) of the CPR.
- (b.) That the Judgment Creditor has ignored Part 45 (2) and brought the Judgment Debtor into Court on a committal application, which is a draconian step and a last resort measure.
- [7] Counsel for the Judgment Debtor referred to the case of **Fitzroy Warner vs. Hotel Equity Fund VLLC HCVAP/2009/0002** and **Birchfield Osbourne vs. Carol Galloway ANUHCV193/0307** where the Court referred to cases of the nature of the case at bar and the procedure to be followed, in respect of Enforcement of Money Orders.

[8] Counsel submitted that the Judgment Debtor had nothing to prove and it was the Judgment Creditor to prove that he had the means to satisfy the Judgment. Notwithstanding this the Judgment Debtor had filed an Affidavit and has indicated that although he could pay the cash amount, he could find alternative means to satisfy the debt, although this was not his responsibility to provide proof of means.

[9] Counsel for the Judgment Creditor in her reply to the submissions, argued that the Judgment Debtor was attempting to vary the order of the Court, and has denied the Judgment Creditor the fruits of her Judgment.

Counsel referred to the case of Isaacs vs. Robertson P. Council [1984] 3 A.E.R 140 and the case of Hadkinson vs. Hadkison [1952] 2 A.E.R 567 to substantiate her contention that an Order made by a Court of unlimited jurisdiction must be obeyed unless and until it has been set aside by the Court. As long as the Order of the Court exists, anyone who disobeys an order of the Court is in contempt and may be punished by committal or attachment or otherwise.

THE LAW

[10] Section 4 of the Debtor's Act Cap. 5.07 of the Laws of St. Christopher and Nevis provides that;

1. Subject to the provisions hereinafter mentioned and to the prescribed rules, the Court may commit to prison for a term not exceeding six weeks, or until

payment of the sum due from him or her in pursuance of any order or Judgment of that or any other competent Court; provided that:

(a) The Jurisdiction by this Section given of committing a person to prison shall, subject to any rules be exercised only by a Judge or his or her Deputy and by an order made in open Court and showing on its face the ground on which it is issued.

(b) Such Jurisdiction shall only be exercised where it is proved to the satisfaction of the Court that the person making default has or has had since the date of the Order or Judgment, the means to pay the sum in respect of which he or she has made default, and has refused or neglected or refuses or neglects to pay the same.

2. Proof of the means of the person making default may be given in such a manner as the Court thinks first, and for the purposes of such proof, the debtor and any witnesses may be summoned and examined on oath according to the prescribed rules.

3. For the purposes of this section, any Court may direct any debt due from any Person in pursuance of any order or Judgment of that or any other competent Court to be paid by instalments, and may from time to time rescind or vary such other order.

[11] The Learned Edwards J.A in the case of **Fitzroy Warner vs. Hotel Equity Fund V LLC C.A. 2009/002** explained the provisions of Section 4 of the **Debtor's Act 1888**

of the Leeward Islands which is similar to the **Debtor's Act [2002] Cap 5. 07** of the Laws of St. Christopher and Nevis. At paragraph 13 of her well reasoned Judgment, the learned Judge stated that the Judgment Creditor must prove that the Judgment Debtor had been

1. both refusing or neglecting to pay the debt and that
2. he had or had had since the date of the Judgment, the means to pay.

The burden of proving the means of the Judgment Debtor was placed squarely on the Judgment Creditor, and the Judgment Debtor had nothing to prove.

The result was that after 1888, the only way that a Judgment debtor in Civil Proceedings in the High Court could be committed to Prison for failure to pay his debt, was if the Judge had been satisfied in a hearing in Chambers of a Judgment Summons issued under the Debtor's Act as to the means of the Judgment debtor, and the Judge had as a result made an Order for periodic or other payment by the Judgment Debtor, and that Order had been served personally on the Judgment Debtor and an Affidavit of Service filed, and the Judgment Creditor had subsequently in Open Court proved to the Judge in committal proceedings that the Judgment Debtor having had the means to pay had neglected or refused to pay the amount so ordered.

The Learned Judge further stated that the procedure was the same as that at Part 52 of the CPR 2000 and that a summons was required by Part 52 to be served on

the Judgment Debtor giving him the details of the debt and of any payments made, and the date, time , and place to appear.”

The Procedure to follow on the hearing of the summons is set out at Rule 52.4 and I need not recite it here.

- [12] At Paragraph 20 of the same Judgment the learned Judge was emphatic that the Power of the Court to make the Committal Order under CPR 53.9 is not mandatory, but discretionary. The Power is triggered upon the Judgment Creditor satisfying the criteria for the application under CPR 53.7 and 53.8 which included that the Judgment Debtor has been served with the order to be enforced or has had notice of the terms of the Order.

Thereafter the Court has the discretion to exercise in accordance with the CPR 53.9 and may decide not to punish the Judgment Debtor at all. (My emphasis)

ANALYSIS

- [14] I adopt the language and reasoning of the learned Edwards J.A in the cited case along with the dicta of Lord Denning M.R in **Re W (B) (an Infant) [1969] A.E.R 594** when he said that the “Court has a discretion analogous to a suspended sentence in the Criminal Courts. Imprisonment is not the inevitable consequence of a breach. The Court has a discretion to do what is just in all the circumstances.

It can reduce the length of the sentence or can impose a fine instead or it may indeed not punish at all. “

[15] It is pellucid that under CPR 52.5 the punishment of 14 days imprisonment does not come into operation immediately or automatically on the occurrence of the Judgment Debtor’s default in paying the instalment by the date specified in the Order.

[16] Therefore the contention by Counsel for the Judgment Creditor that a Court Order made on the 17th May 2010 ordering the Judgment Debtor to pay the Judgment Creditor \$200,000.00 in full and final settlement of Ancillary Proceedings as follows, \$108,000.00 to be paid within three months and the remaining \$92,000.00 by 31st December and that said Court Order was breached within the time period specified, made the Judgment Debtor liable in contempt of Court and had to be committed to Prison was wholly untenable in the light of the cited cases.

[17] Further no oral evidence was properly conducted by the Court and carried through to its intended and logical conclusion on the Judgment Debtor. In echoing the dicta according to Mitchell J. in the **Interlocutory Appeal filed pursuant to CPR 62.10 between Ashandi Edwards (by his mother and next friend Alman Edwards vs. Rholda Bhola (2) Lenore Bhola** **GDAHCVAP2013/0021.**

I am of the considered opinion that while the oral examination is not itself a method of enforcement, its sole purpose is to find out from the debtor whether he or she has any assets and other debts and to provide the Creditor with the Information needed to select one of the methods of enforcement. This procedure was also not pursued by the Judgment Creditor.

- [18] The Rules are clear on the procedure for Enforcement of Money Judgments and Part 45.2 illustrates the methods to be used on enforcement of Money Judgments, none of which the Judgment Creditor has chosen to employ to enforce her Judgment.

The Cases cited by learned Counsel for the Judgment Creditor are not applicable to this instant case at bar in light of CPR 52.4 and the Debtor's Act.

- [19] It is my considered decision therefore that the Notice of Application with supporting Affidavit filed on behalf of the Judgment Creditor on the 7th April 2014, to commit the Judgment Debtor to Prison for contempt is flawed and is in fact the incorrect procedure to petition the Court for enforcement of a Money Order. The Judgment Creditor must proceed by the methods outlined in the Debtor's Act and Part 52.4 of the CPR 2000.

- [20] Taking in account the totality of the circumstances the Court is not of the view that this type of debt can properly attract a custodial sentence where there is default. **[See Elsee Cranberry vs. Grenada Telecommunications Ltd. Civil Appeal 1 of 1997]**

Accordingly the Order is as follows:

1. The Notice of Application with supporting Affidavit filed on behalf of the Judgment Creditor on the 7th April 2013 is hereby struck out.
2. The Affidavit in Opposition to the Affidavit of the Judgment Creditor filed on behalf of the Judgment Debtor on the 9th May 2014 is also struck out.
3. Costs in the sum of \$750.00 to be paid to the Judgment Debtor within one month of the date of this Order.

Lorraine Williams
High Court Judge (ag)