

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

SUIT NO: NEVHCV2006/0126

TDC (Nevis) Limited

Vs.

Percy Drew

APPEARANCES: Ms. Kalisia Isaacs for the Claimant

Ms. Dia Forrester for the Defendant

DECISION

2014: February 19

2014: February 25

[1] **WILLIAMS, J. (Ag):** The Claimant is a limited liability company duly incorporated under the Laws of Saint Christopher and Nevis.

[2] The Defendant is a Contractor and resides at Hardtimes Estate, Gingerland, Nevis.

- [3] This matter is in relation to a Notice of Application made by the Claimant pursuant to Part 42 of the Civil Procedure Rules 2000.
- [4] On the 30th November 2006, the Claimant issued a Claim Form and Statement of Claim against the Defendant for the sum of \$211,160.57.
- [5] Judgment on Admission was entered on the 9th March 2007 in the sum of \$102,892.71.
- [6] According to the Affidavit of Ernie France Managing Director of the Claimant company. The Defendant admitted liability with respect to part of the Claim in the amount of \$101,550.71. However the interest claimed by the Claimant in the amount of \$108,592.86 is disputed by the Defendant/Respondent.
- [7] The Court has reviewed the exchange of correspondence between Counsels for the Claimant and the Respondent over the years, whereby the Defendant apparently acknowledged the agreed debt with respect to the outstanding interest owed to the Claimant and has made payments towards the total figure.
- [8] By Notice of Application dated 27th November 2013, the Applicant/Claimant has now applied to the Court for a Consent Order to be entered for the Claimant in the sum of \$88592.86 plus cost of \$1017.00, and the Judgment by Admission in the sum of \$102,892.71 making a total debt of \$192,502.57. That

total Judgment debt is to be repaid by the Defendant by monthly payments of \$3000.00 commencing on the 30th December 2013 until the debt is fully repaid.

[9] The Respondent has filed an Affidavit dated 5th February 2014 in which he acknowledges the Judgment on Admission in favour of the Applicant on the 7th February 2007, but states that he did not instruct his Legal Practitioners to enter a Consent Order on his behalf but that he continues to periodically honour the terms of his Private agreement with the Applicant to settle the Judgment debt.

[10] Counsel for the Respondent in her submissions to the Court refers to Part 42 (7) of the CPR 2000 and posits the view that Part 42 does not Permit the Applicant to compel the Respondent to enter into a consent order and that if the Judgment is to be enforced, then Part 46 (2) of the CPR would apply.

[11] The Court has reviewed the authorities submitted by Counsel in particular the case of **McCallum vs. County Residences Ltd. [1965] I.W.L.R 657** where Lord Denning M.R held (on appeal by the Defendants) that where defendants had not consented to the making of a Tomlin Order (i.e.) “without prejudice” negotiations for settlement of a stated sum and costs, there was **NO** jurisdiction to make it, for where an action had been comprised by a settlement on Terms the compromise gave rise to a new cause of action and its terms could be enforced only by starting new proceedings. The Plaintiff/

Claimant has to sue on the compromise. That is the only course of action that the Plaintiff/Claimant can take in order to enforce the settlement unless he can get the Defendant to consent to an order of the Court.

[12] In Halsbury Laws- Disposal of Proceedings without Trial- Para 388 it states, that; “Except where a Judgment is given it is a usual and proper term of a settlement or compromise that there be a Judge’s or (Master’s) order of necessary, so that the settlement or compromise may be made a rule or order of the Court, otherwise the Court has no jurisdiction to make an order embodying the agreed term Green vs Rozen [1955] I.W.L.R 741 McCallum vs. County Residences Ltd. [1965] I.W.L.R 657.

[13] Part 42 (7) of the C.P.R 2000, states that “subject to Paragraphs (2) to (5), a consent order or Judgment must be:

- 1.(a) drawn in the terms agreed;
- (b) expressed as being “By consent”;
- (c) signed by the Legal Practitioner acting for each Party to whom the order relates
- (d) and filed at the Court office for sealing.
2. This rule applies where-
- (a) All relevant Parties agree to the terms in which Judgment should be given or an order made;

[14] Further in Part 46.2 (c) of the CPR 2000 the Rule states that a Writ of Execution may **not** be issued without permission of six years have elapsed since the Judgment was entered. The Judgment on Admission was entered on the 9th March 2007. Therefore the Judgment cannot be enforced without Permission of the Court.

[15] Having reviewed the CPR and the cases in this matter the Court is therefore of the view that the Consent Order that is being applied for cannot be entered at this stage as there is **NO** consent to the order by both Parties as provided for under the CPR 2000, as distinct from a consent to the agreement to liquidate a debt to the Claimant. The Claimant must start new proceedings on the agreement to make its terms enforceable.

[16] The Claimant is therefore not entitled to obtain the equivalent of a Judgment on the agreement by means of a Consent Order. The Rules of Civil Procedure and the cited cases are pellucid in this regard.

The Court hereby orders:

1. That the Applicant/ Claimant's Notice of Application be dismissed.
2. Costs to the Respondent in the sum of \$750.00

Lorraine Williams
High Court Judge (ag)