

**IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
SUIT NO.: 290 OF 1997**

**IN THE MATTER OF THE COMMONWEALTH COUNTRIES JUDGMENTS
(ENFORCEMENT) ACT CAP. 82 OF THE LAWS OF SAINT VINCENT AND
THE GRENADINES REVISED EDITION 1990**

AND

**IN THE MATTER OF THE FOREIGN JUDGMENTS (RECIPROCAL
ENFORCEMENT) ACT CAP. 87 OF THE LAWS OF SAINT VINCENT AND
THE GRENADINES REVISED EDITION 1990**

BETWEEN:

STEVEN STEEL SUPPLY

JUDGMENT CREDITOR

AND

**DINO TRADING AND SERVICES PTE LIMITED
DORA SONG CHOO KAM also called DORA
PROCHILOR joined pursuant to Order of Court made
on 8th August 1997**

JUDGMENT DEBTOR

Appearances:

Mr. Joseph Delves for the Claimant

Mr. Emery Robertson for the Judgment Creditor

2003: September 30

2004: March 30

JUDGMENT

[1] **BLENMAN, J.:** This application is based on an interpleader summons in which Ashford Cole asserts his ownership or title to goods that have been seized on a Writ of Execution issued on behalf of Steven Steel. Steven Steel obtained judgment, against Dino Trading and Services Limited (hereafter Dino Trading) on the 16th September 1995 in Singapore, for breach of contract in the sum of

US\$125,000.00 together with damages to be assessed. The judgment has remained unsatisfied. Steven Steel sought to levy on property belonging to Dino Trading and Services PTE in order to satisfy the debt. A Writ of Execution was issued. Ashford Cole is claiming the property that was seized as his own.

- [2] A summons for interpleader was issued and in a ruling on 10th April 2003 Bruce Lyle J directed the procedure to be adopted.
- [3] Steven Steel disputes that Ashford Cole owns the Isuzu Rodeo vehicle or the factory building and related scrap metal. As a consequence, these proceedings are brought in an effort for the Court to determine whether Ashford Cole owns the property in dispute.
- [4] Learned Counsel for the Mr. Cole contends that the Writ of Execution cannot be properly issued in this matter unless the Singaporean judgment has been registered in Saint Vincent and the Grenadines. Meanwhile, Learned Counsel for Steven Steel submits that Mr. Ashford Cole cannot assert any right to the property in dispute since the receipt which he exhibited in support of his purchase of the property is insufficient to satisfy the Court that he has acquired any interest in or title to the property.
- [5] Three issues arise for determination:
 - (1) Whether the Singaporean judgment was registered in Saint Vincent and the Grenadines and is therefore enforceable
 - (2) Alternatively, whether the non-registration of the Singaporean judgment is fatal
 - (3) Whether the items which are the subject of the dispute belongs to Mr. Ashford Cole.

REGISTRATION OF THE SINGAPOREAN JUDGMENT

- [6] Learned Counsel for Ashford Cole contends that in order for the Steven Steel to be able to issue the Writ of Fife it must have registered the Singaporean judgment. Failure to do so is fatal. He relies on Section 3(3) of the Commonwealth Countries Judgment (Enforcement) Act Cap. 82 of the Laws of Saint Vincent and the Grenadines which states that where a judgment has been obtained in a United Kingdom court and has been registered in Saint Vincent and the Grenadines the judgment shall as from the date of the registration, be of the same force and effect and proceedings thereon, as if the judgment was originally obtained or entered upon the date of registration in the court. This provision is clear in that it requires a foreign judgment to be registered in order for it to be given efficacy in Saint Vincent and the Grenadines. The judgment thereafter takes effect from the date of its registration.
- [7] Section 6 of the Act states that when the Governor General is satisfied that reciprocal provisions have been made by the legislature of any Commonwealth Country for the enforcement within that country of judgments obtained in the court, he may, by order in the Gazette, declare that country as one whose judgments can be registered in Saint Vincent and the Grenadines.
- [8] It is not disputed that Section 3(3) (a) of the Act has been extended by Section 6 to apply to Singapore. Therefore the Singaporean judgment could have been registered in Saint Vincent and the Grenadines and enforced. A Writ of Execution cannot be properly issued unless it emanates from a judgment that is enforceable in the court which issues the Writ of Execution. Execution can only be carried out in relation to a judgment which is recognized and enforced. The registration of the judgment would serve to give life to the Writ of Execution.
- [9] Was the Singaporean judgment registered in Saint Vincent and the Grenadines? In ascertaining this, I must examine all of the relevant evidence and a bit of the

background circumstances. In suit No. 290 of 1997, by way of Originating Summons dated August 1997 together with affidavit in support thereof, Steven Steel applied to the court for the registration of the foreign judgment obtained in the High Court of the Republic of Singapore on the 16th September 1996. It also sought injunctive reliefs against Dino Trading and Dora Song Choo Kan who was joined as a party.

[10] By Order of Court dated 8th August 1997 and entered on 11th August 1997 Cenac J directed as follows:

AND UPON HEARING COUNSEL on behalf of Steven Steel Supply, the above judgment creditor

And upon reading the Affidavit of Nicole Sylvester sworn herein together with the exhibits thereto and the Originating Summons on the said action

AND UPON the Judgment Creditor by their counsel undertaking –

To forthwith register the final judgment dated the 16th September 1996 of the High Court of the Republic of Singapore and to serve same on the Judgment Debtor and Dora Song Choo Kam

IT IS ORDERED THAT:-

1. The JUDGMENT DEBTOR and DORA SONG CHOO KAM also called DORA PROCHILA and each of them be restrained and an injunction is hereby granted restraining them and each of them until after satisfaction of the Judgment hereby registered, whether in the case of the JUDGMENT DEBTOR and DORA SONG CHOO KAM also called DORA PROCHILO by themselves or by each of them or by their respective servants, agents, nominees or any of them or otherwise howsoever and whether in the case of the JUDGMENT DEBTOR by their directors, officers, subsidiary

companies, servants or nominees or agents or any of them or otherwise from removing from the jurisdiction of this Court any of their or her assets, money or goods within the said jurisdiction or from disposing of, transferring, mortgaging, assigning, charging, diminishing or in anyway howsoever dealing with such assets within or without the jurisdiction and without prejudice to the generality of the foregoing, in particular:

- (a) One Ford Dump Truck licenced in Saint Vincent and the Grenadines as TA 871;
- (b) One Isuzu Pick-Up Truck licenced in Saint Vincent and the Grenadines as TA 867
- (c) One Isuzu Rodeo licenced in Saint Vincent and the Grenadines as PA 868;
- (d) All scrap metal comprising the factory buildings and related machinery scrap of the Saint Vincent Sugar Industry Limited (In Liquidation); and
- (e) All vehicles belonging to the Defendants in Antigua.
- (f) Residential home in Barbados;
- (g) One Toyota Pick-Up truck licenced in Barbados as L-1239;
- (h) One International Dump Truck;
- (i) One Ford Crane Truck;
- (j) One Toyota Pick-Up;

save in so far as the unencumbered value of those assets exceeds US\$3,150,000.00.

[11] It is clear that Cenac J granted the order on condition that Steven Steel would register the Singaporean judgment. Is there any evidence before the Court that the judgment was registered in Saint Vincent and the Grenadines? The only evidence

on this issue is that of Shantal Samuel the legal secretary to Counsel for Mr. Cole. She has filed an affidavit in which she states that the Singapore judgment was not registered. There is no other evidence before the Court that the Singaporean judgment was registered.

- [12] Steven Steel has not addressed this important issue in the affidavit filed on its behalf and deposed to by Peter John. Be that as it may, Learned Counsel for Steven Steel submitted that the Singaporean judgment was registrable by virtue of the judgment of Cenac J dated 8th August 1997 and therefore it is enforceable. He asserts that until it is set aside it is valid and enforceable.

- [13] Ashford Cole's Counsel has vigorously opposed this submission and posits that Steven Steel undertook to register the Singaporean judgment as a pre-condition to obtaining the injunctive reliefs that were granted by Cenac J. He argued that the Singaporean judgment has not been registered and therefore the Writ of Execution and everything that flows from it is invalid.

- [14] The order of Cenac J enabled the Steven Steel to register the Singaporean judgment. The burden of proof lies on Steven Steel to establish that it registered the Singaporean judgment. It has not reached the threshold of discharging this burden since it has not provided me with any evidence in this regard. The fact that the Singaporean judgment is registrable without more cannot avail Steven Steel if it has failed to register the judgment. In order to properly issue the Writ of Execution it was obliged to register the judgment. Based on the only evidence in this regard, that of Shantal Samuel, I find as a fact that Steven Steel has not registered the Singaporean judgment.

- [15] Counsel for Ashford Cole contends that the non-registration of the Singaporean judgment is fatal to Steven Steel's case. He asserts that Steven Steel cannot properly seek to take the property in dispute on the basis of the Writ of Execution. Counsel for the Steven Steel however did not deal with this sub-issue but

questioned whether the claimant can properly seek to assert his title and ownership of the property some three years after the writ of execution was issued. He stated that on 29th April 1999 Steven Steel disputed Mr. Cole's title to the goods and it was not until 6th August 2002 that the interpleader was filed. On the 23rd August 2002, Ashford Cole filed an affidavit setting out the basis of his claim. I am not convinced that the delay is a factor that I need to trouble myself with since the evidence shows that as early as 30th March 1998 after the Writ was executed Ashford Cole had asserted his rights even though the matter was not pursued expeditiously. I will say no more on this matter.

- [16] Civil Procedure Code Cap 81 Section 24 states that when the judgment debtor's property consists of goods and chattels or other moveable property of the judgment debtor, the Registrar shall, on the filing of the praecipe for that purpose, issue a writ of seizure and sale. There is nothing in the above section that indicates, in relation to chattels, the judgment takes effect from the date of judgment. In contradistinction, section 23 clearly states that in relation to real property the judgment attaches to the land and hereditaments from the date of judgment.

- [17] I reiterate that in the absence of the registration of the Singaporean judgment in Saint Vincent, the writ of execution could not have been lawfully issued. A judgment that has been granted subject to a condition cannot be enforced unless the condition has been fulfilled.

- [18] My determination of this issue should put the matter at an end. However, in view of the fact that Counsel have addressed me at length on the issue of the ownership of the property in dispute, I will examine this issue.

OWNERSHIP OF THE GOODS

- [19] Ashford Cole deposed that the goods referred to in the summons dated 6th August 2002 belonged to him since he bought them from Dino Trading at a price of \$35,000 on the 1st February 1997. He states that he is the owner of the chattels. Mr. Cole has exhibited an unstamped receipt to this affidavit as proof of his payment to Dino Trading the sum of \$35,000 U.S. for the Sugar Mill factory, structure and all contents situate in Mount Bentick in the parish of Charlotte, Saint Vincent. The receipt appears to have been issued by Dino Prochilo. This is the only documentary evidence before the court on the issue of Mr. Cole's ownership of the property.
- [20] Peter John a senior Law Clerk of the firm of O.R. Sylvester & Co has deposed to an affidavit in support of Steven Steel. He puts Ashford Cole to the strict proof in relation to the authenticity of the receipt Mr. Cole has exhibited and his ownership of the chattels. Mr. John also states that the receipt Mr. Cole tendered reveals that Dino Prochilo and not Dino Trading received money from Ashford Cole. He also objects to the receipt being admitted into evidence since it is unstamped. The purported receipt does not state that the said Dino Prochilor received the money on behalf of Dino Trading and Services PTE or on behalf of Dora Song Choo Kam also known as Dora Prochilo. Dino Prochilo is separate from Dino Trading and Services PTE Limited.
- [21] Learned Counsel for Steven Steel placed heavy reliance on the fact that the receipt exhibited was unstamped and violated section 37 of the Stamp Act Cap 318 of the Laws of Saint Vincent is fatal to the claimant's case. Section 37 of the Stamp Act states that no instrument made liable by this Act to any duty shall be pleaded or given in evidence in any court, unless the same be duly stamped, excepts as the judge provides.

- [22] Learned Counsel for Ashford Cole submitted that Section 38 of the Stamp Act Chapter 35 permits the affixing of stamps after execution of a receipt. Section 38 of the Act states that upon the production of any instrument as evidence in any section or other proceeding in any court or in judge's chambers, it shall be the duty of the Registrar or Clerk of the Court to call the attention of the judge or court to any omission or insufficiency of stamp upon such instrument and same shall not be received in evidence, or otherwise used in any such action; until the stamp duty imposed by law together with a penalty shall have been paid. The proviso to Section 38 enables the Court to adjourn the matter to enable the stamps to be affixed. Section 39(1) enables the Registrar or Clerk of Court upon payment to him of the Stamp Duty on any such instrument; give a receipt for the amount of the duty and the instrument shall be admissible in evidence.
- [23] The statute is clear. Section 34 of the Act requires a person who receives a payment to give a receipt which should be stamped before its final completion or execution. Section 37 prevents the admission in evidence of an unstamped document which is liable to be stamped except if the judge has adjourned the matter to enable it to be stamped. Even though section 37 enables the affixing of a stamp after the execution of the receipt, there is no evidence before the Court that the receipt was stamped even up to the date of trial. I am therefore of the view that this amounts to a breach of the Stamp Act. It is passing strange that Ashford Cole did not see it fit to have the requested stamps affixed to the receipt before the trial date; neither did he make any request of the Court for an adjournment to have the receipt stamped and to seek to put in a stamped receipt as proof of its ownership of the property.
- [24] The failure of Ashford Cole to produce a stamped receipt for the purported purchase means that the receipt cannot be admitted in evidence. Does this mean however that there is no evidence that he owns the property in dispute? In his affidavit Ashford Cole states that "the goods and chattels seized by the sheriff were and are my property." He further stated that "the said goods were bona

fides sold, transferred and assigned to me by the first-named Judgment Debtor for and in consideration of US\$35,000, then paid by me to the said Defendant/Judgment debtor for the same.” He was clear in saying: “I claim the said goods and chattels as my property and I verily believe them to be mine.”

- [25] Learned Counsel for Steven Steel submits that Ashford Cole will be unable to establish his ownership of the property if the receipt on which he relies was rejected by the Court as being inadmissible. Having rejected the receipt, (Exhibit A.C. 1) as being inadmissible, the Court must proceed to examine the other evidence in order to determine the true ownership of the property in dispute.

- [26] It is very unfortunate that the evidence provided by both sides on the issue of the ownership, even though by way of affidavit, was so minimal. The Court would have expected to be provided by Ashford Cole with at least a few paragraphs detailing the circumstances of the purported purchase and ownership of the property. This was not to be. Similarly, it is usual for the Judgment Creditor to provide some concrete evidence as to Dino Trading’s ownership of the property. This also was however not to be.

- [27] The receipt is documentary proof which Ashford Cole seeks to utilize in support of his affidavit evidence that he owns the property in question. The Court’s rejection of the receipt as being inadmissible does not prevent Ashford Cole from relying on his assertion of ownership as stated in his affidavit. There remains evidence before the Court which is uncontroverted, though bare. Counsel for the Steven Steel rightly stated that the burden of proof lies on Ashford Cole to establish ownership or title to the property. I therefore have to determine whether Ashford Cole is able to establish his ownership of the property in the absence of the receipt, based on his depositions.

- [28] In civil matters the standard of proof is on the balance of probabilities. While Steven Steel has put Ashford Cole to the strict proof of the authenticity of the

receipt and his consequent ownership of the property, there is no evidence before me on which I can properly come to the conclusion that Ashford Cole does not indeed own the property.

CONCLUSION

[29] On the balance of probabilities, based on submissions and the evidence before me I am satisfied that Ashford Cole has proven that he is the owner of the property in question.

[30] In the premises, it is hereby declared and ordered that Ashford Cole is the owner of the One Isuzu Rodeo recreational vehicle bearing licensed number PA 868 and the Sugar Mill Factory shell, structure and related scrap metal and machinery situate at Mount Bentick, Saint Vincent and the Grenadines.

[31] The goods seized should be released to Mr. Ashford Cole.

[32] Mr. Delves suggested that costs should be awarded in the sum of \$14,000.00 E.C. Mr. Robertson suggested the sum of \$10,000.00 E.C. The court is of the view that the sum of \$1,200.00 E.C. is a reasonable sum to be awarded as costs. Accordingly, I order that Steven Steel do pay Ashford Cole costs in the sum of \$12,000.00 E.C.

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 Louise Esther Blenman
 HIGH COURT JUDGE