

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SUIT NO.: SLUHMT 226/1990

BETWEEN:

Peter Fruend Trading as
P. Fruend and Partner

Petitioner

and

1. William Edgecombe
2. Bonair Resorts Limited

Respondents

Appearances:

Mr. Peter Foster of Counsel for Judgment Debtor/Applicant

Mr. H. Deterville QC and MS. D. Thomas for Judgment Creditors/Respondent

2004: February 18
February 26

JUDGMENT

[1] **EDWARDS J:** This was an Application for the Opposition to Seizure and Sale of
Immovables pursuant to Articles 513 to 518 of the Code of Civil Procedure Chapter 243 of
the Revised Laws of St. Lucia.

- [2] The Applicants were Mr. William Edgecombe and his Company Bonair Resorts Limited Judgment Debtors, whose property registered as Block No. 1052B Parcel 56 valuing \$7.5 million was seized by the Sheriff of the High Court under a Writ of Execution Returnable on the 3rd March 2004.
- [3] The grounds of the Application were that the Judgment Creditor Mr. Peter Freund gave perjured testimony at the trial of the claim which significantly and substantially influenced the Trial Judge in delivering Judgment against the Defendants, and therefore the Judgment obtained was obtained by fraud as particularized by the supporting Affidavit of Mr. William Edgecombe. I dismissed the Application on the 18th February 2004 and promised to give written reasons which I now give.
- [4] The supporting Affidavit of Mr. William Edgecombe refers to the portions of the evidence of Mr. David Gorman in Suit No. 226 of 1990 which he regards as perjurious.
- [5] He alleges that he has arrived at this conclusion by comparing the evidence of David Gorman in Suit No. 226 of 1990 with Mr. Gorman's evidence in Suit No. 322 of 1990.
- [6] Suit No. 322 of 1990 was a case in which Mr. Gorman sued Mr. William Edgecombe and Bonair Resorts for moneys owing to him for work done between 1st April 1989 and January 1990 as hotel consultant for his project Bonair Resorts.
- [7] Mr. Edgecombe alleges that as a result of this comparison he has made a complaint to the Director of Public Prosecution who is now reviewing the files for possible criminal charges.

[8] It is reasonable to expect that this complaint to the Director of Public Prosecution would have been in writing, since at paragraph 7 of his Affidavit Mr. Edgecombe sets out 5 different passages in the testimony of David Gorman in Suit No. 322 of 1990.

[9] However there is no such letter exhibited. What is exhibited as "**WE 3**" is the letter from the Director of Public Prosecution acknowledging Mr. Peter Fosters letter dated 19th November 2003.

[10] The letter discloses that further investigations will have to be carried out by the Police who will have to take statements from the persons present in Court at the time those untruth's were made, particularly from the Attorneys and Mr. Edgecombe.

[11] At paragraph 14 of Mr. Edgecombe's Affidavit he states:

"It is my respectful view that taking into consideration the serious and obvious disparity in the testimony given by David Gorman in Suits No. 226 pf 1990 and 322 of 1990, that he knew his testimony under oath in Suit No. 226 of 1990 was false. His intention therefore was to pervert the course of Justice by misleading the Court in order to improperly assist Fruend and therefore he committed per jury".

[12] At paragraph 75 he refer to the Notes of Evidence in Suit No. 226 of 1990 exhibited as exhibit "**WE 4**", and the Notes of Evidence in Suit No. 322 of 1990 exhibit "**WE 5**".

[13] On reading the Notes of Evidence exhibit "**WE 4**" I realize that they are the Notes

taken by Justice Mathew at the aborted trial on the 25th and 26th November 1996, and not those taken at the trial where Justice Charles presided on the 11th and 12th October, 1999 and subsequently delivered an Oral Judgment.

- [14] At the aborted trial which was discontinued, after taking the evidence of Mr. David Gorman on the 25th and 26th November 1996, and then the evidence of James White, the Plaintiff's case was closed.
- [15] The Defendants then led evidence from Mr. George Oliver O'Shaughnessy their Architect who designed the programme for Bonair Resorts, and thereafter the case was adjourned to the 2nd December for completion.
- [16] It was never completed on this day by Justice Mathew, as Mr. Edgecombe became ill and left St. Lucia for Puerto Rico.
- [17] The trial was subsequently rescheduled for completion on the 11th October 1999.
- [18] By then Justice Mathew had been elevated to the Court of Appeal.
- [19] The trial was therefore commenced anew before Hariprashad-Charles J. who heard the evidence of the witnesses for the Plaintiff Mr. Fruend, on the 11th and 12th October 1999.

- [20] The case was part heard by Charles J., and after an Order refusing leave to amend the Defence on an application heard on the 1st November 1999, the Defendants appealed against this decision.
- [21] Upon the Appeal being dismissed the trial resumed on the 30th January 2001 for the Defendants to call their witnesses.
- [22] The Defendants rested their case, called no witnesses and instead presented written submissions to the Court.
- [23] This strategy was tantamount to a concession by the Defendants. Obviously the Court had no difficulty in entering Judgment for the Claimants. In the absence of the Notes of Evidence taken at the trial by Justice Charles, I have compared the 5 portions of the testimony of Mr. David Gorman in Suit No. 226 of 1990 set out at paragraph 7 of Mr. Edgcombe's Affidavit, with the evidence that Mr. Gorman gave before Justice Mathew.
- [24] It is obvious to me from this comparison that there was no significant difference in his evidence before Justice Mathew and Justice Charles.
- [25] It seems quite clear on the totality of the Notes of Evidence exhibit "**WE 4**" and exhibit "**WE 5**", that Mr. Gorman had a working relationship with Mr. Peter Fruend before he began working for Mr. William Edcombe between April 1989 to January 1990. That during this period he was working as hotel consultant solely for Mr. William

Edgecombe. That during this period he worked with Mr. Peter Fruend who was also working for Mr. William Edgecombe.

[26] It seems very clear also from the evidence at the trial before Justice Mathew, and the Power of Attorney exhibited at the trial before Justice Charles, that from August 1992 Mr. Gorman was acting as Agent for Mr. Peter Fruend who lives in Switzerland.

[27] In entering Judgment for the Plaintiff on the 31st January 2001, the Court ordered payment of US\$58,824.29 with interest on the sum of US\$56,610.00 at the rate of 1% per month from the 20th April 1990 to date of payment, and interest on the sum of US\$2,214.29 at the rate of 6% per annum from the 10th September 1990 to date of payment, and costs to be agreed or otherwise taxed.

[28] An Application was filed on the 13th January 2003 for directions regarding the assessment of costs.

[29] From the files presented to me I have no information as to the Quantum for costs. Suffice it to say the costs appear to be very substantial based on the prescribed costs schedule in the Civil Procedure Rules 2000.

[30] It is obvious to me therefore that this Application has no merit. It is a vain attempt to stall the proceedings for the enforcement of this Judgment.

[31] It is important to state that I have noted the comments of the learned Justices of the Court of Appeal when dealing with the appeal against the decision of Redhead J.A. who refused leave to extend the time for filing an appeal. They assessed the evidence at the trial and agreed with Justice Redhead that the chances of success were less than minimal.

[32] I completely agree with the submissions of Queen's Counsel Mr. Deterville. The Application is frivolous and an abuse of process, and the Court, having dismissed this application, should take this into account in the award of costs.

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OLA MAE EDWARDS
High Court Judge

Dated this 1st day of March, 2004