

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV0001 / 2001

BETWEEN:

- 1. ALSTON PENNISTON**
- 2. GEORGE OSBORNE**
- 3. HAYDOC DOMINIC**
- 4. ANSELM GORDON**

Claimant

and

**THE M.V. MISS TINI
OF THE PORT OF ST. EUSTATIUS, N.A.
AND**

THE OWNERS AND PARTIES IN THE M.V. MISS TINI **defendants**

**AND
C.C.Y.Y. LIMITED**

Judgment Creditor intervening

Appearances:

Mr. J. Bayliss Frederick for the claimants

Mr. Richard Williams and Miss Roxann Knights for the judgment creditor

No appearance for the defendants

2002:December 20
2003:January 16

JUDGMENT

ALLEYNE J.



- [1] In this action in rem the claimant obtained judgment in default against the defendants on the 24th April 2002, for \$32,573.72, and at the same time obtained an order that the vessel be sold after valuation.
- [2] The valuation, filed on 18th July 2002, placed a market value on the vessel of US \$110,000.00.
- [3] The claimant's Solicitor filed a Notice of Application on 22nd July 2002 seeking an order that the vessel be sold by private treaty. This application was supported by the affidavit of claimant's Solicitor's Managing Clerk. On 10th September 2002 the claimant's Solicitor filed a further application for an order authorising the sale of the vessel by private treaty at and for the price of U.S. \$75,000.00. This was supported by the Solicitor's affidavit indicating that he had had certain offers which averaged U.S. \$60,000.00.
- [4] The claimant's application was heard on 10th September 2002. The claimant's Solicitor represented to the court that the engines on the vessel needed repairing, that the cost of seizure was escalating, and that it was urgent that the vessel be disposed of given that the hurricane season was at its height and in the absence of a safe anchorage, in the circumstance that the vessel was without a functioning engine. No disclosure was made of any other interest or judgment with regard to the vessel. An order was made authorising the sale for U.S. \$75,000.00.
- [5] By Notice of Application filed 14th November 2002, the Solicitor for the claimant applied for an order that "the dumb and damaged vessel M.V. Miss Tini" be sold at the earliest possible time for the sum of \$50,000.00. This application was supported by the Solicitor's affidavit, in which he deposed that as a result of tropical storm Lilly, the vessel had been damaged and an earlier offer had been withdrawn.
- [6] This application was heard and an order was made as prayed on 15th November 2002. It appears that at this stage the claimant's Solicitor once again failed or

neglected to disclose to the court that there were other interests outstanding, a fact of which he admits he was aware from the very beginning. The court ordered that the vessel be sold "at the earliest possible time for the sum or price of \$50,000.00." This order, and the application on which it was granted, in contrast to the earlier orders and applications, does not specify a currency and the sum must be taken to be in Eastern Caribbean currency.

- [7] By Notice of Application filed the 20th November 2002, the judgment creditor sought an order setting aside the last order and "all ex parte orders made in relation to the sale of the Motor Vessel Miss Tini". By this time the order of the court made on 15th November had not been perfected and it appears even at this date not to have been perfected.
- [8] Paul Cyrus, the Manager of the judgment creditor CCYY Ltd., swore an affidavit in support of the application to set aside the orders for sale. In that affidavit he deposed that on 7th June 2002 the company CCYY Ltd., in suit No. SVG/HAD 2002/2001, obtained a judgment in rem against the ship Miss Tini for the sum of \$64,571.78 and interest. The deponent in his affidavit claimed that the claimant's Solicitor "was always aware of the claim and judgment of the judgment creditor". He further deposed that on or about 4th December 2001 the judgment creditor filed a praecipe for caveat against release and payment out of court of the proceeds of any sale of the vessel. All the above facts are admitted by the Solicitor for the claimant, who nevertheless says that he does not remember whether he did or did not disclose same to the court, but says that he, as an officer of the court, was under no obligation to do so, this notwithstanding the provisions of the **Civil Procedure Rules 2000 (CPR)**, Rule 1.3, the relationship of that rule to the overriding objective to deal with cases justly as stated in Rule 1.1 (1), and the duty of a legal practitioner to the court as elucidated in **Halsbury's Laws of England** fourth edition volume 3 paragraph 1371 under the rubric **Duties to client and to the court**:

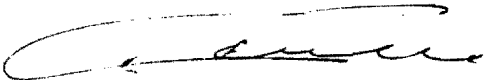
"In the interests of the administration of justice, however, a barrister has an overriding duty to the court, to the standards of his profession and to the public. Thus he must not knowingly mislead the court; this duty prevails over that he owes to his client. He must ensure that the court is not invited to enforce an illegal transaction; *he must inform the court of every relevant authority or decision of which he is aware, whether it be for or against his client*; and he should refrain from expressing his personal view or opinion of the case in court or from becoming personally involved in any way."

The fact is that at no point did the legal practitioner for the claimants disclose to the court any of the relevant facts concerning judgments of the court and competing legal interests emanating from matters filed in the court, which facts were known to him.

- [9] Rule 70.15 of the **CPR** provides that on the filing of a request, the court office must enter a caveat in the caveat book. Rule 70.16 establishes the validity of a caveat at 12 months beginning with the date of the entry of the caveat.
- [10] It is my view that the conduct of the Solicitor for the claimant in obtaining the order for sale of the vessel by private treaty at the price of \$50,000.00 E.C., without disclosing to the court the existence of another judgment in rem against the vessel, and of the caveat, of both of which he was aware, was reprehensible. There is no doubt in my mind that the Solicitor for the claimant, as an officer of the court, was under a duty to make disclosure of this very important fact to the court. The ancient rule of practice found in **Conduct and Etiquette at the Bar** third edition (1961) at page 71 that "Any deception of the court must be avoided" applies equally to deception by omission as to deception by active conduct, and is as much a governing rule for practice at the Bar today as it ever was. I have no doubt that the court might have adopted a different approach to the application had it been aware of the true state of facts.
- [11] The judgment creditor's application filed on 20th November 2002 was dismissed, and the judgment creditor has obtained leave to appeal that order. The present application appears to me to be a duplication of the earlier application which has

been disposed of, or otherwise to be of the nature of an appeal against the earlier order, which, of course, this court has no jurisdiction to entertain.

- [12] The order granting leave to appeal, made on 28th November 2002, includes an order for stay of execution, which order, unless and until it is set aside, subsists.
- [13] The judgment creditor's application filed on the 16th December 2002 is accordingly dismissed.
- [14] The claimant also filed a Notice of Application on 16th December 2002 for an order setting aside the order of the court made on the 28th November 2002, granting the judgment creditor leave to intervene in the proceedings, and the further order made on 29th November 2002, granting the judgment creditor leave to appeal against the orders made on 15th November and 25th November 2002, granting a stay of execution, and further orders. These applications are also dismissed for the same reason.
- [15] Each party is ordered to pay its own costs.



Brian G.K. Alleyne
High Court Judge