

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D.1999**

Suit No: 376/1997

Between:

St Lucia Co-operative Bank Ltd

Plaintiff

And

**John Andy Regis
Ruth Regis**

Defendants

And

The Bank of Nova Scotia

Petitioner/Opposant

Mrs B Flossiac-Flemming for Plaintiff
Mrs K. Rohamar for Opposant/Petitioner
The Defendants were unrepresented

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July 8th 1999
September 15th 1999

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JUDGMENT

d’Auvergne J

This is a petition to annul a sheriff’s sale which took place on the 21st day of May 1999. This petition was filed on the 2nd of July 1999 and supported by an affidavit of even date which is reproduced.

AFFIDAVIT

I, FRANCIS FRANCOIS of Castries in the Island of Saint Lucia make oath and say as follows:-

1. I am the Manager of the Petitioner's Bank and duly authorised to make this Affidavit on its behalf.
2. The Defendants herein are justly and truly indebted to the Opposant in the sum of \$38,817.31 under and by virtue of Judgment in Default of Appearance dated 23rd December, 1998 and registered in the Office of Deeds & Mortgages on 20th January, 1999 in Vol. 152a No.179196.
3. On the 3rd day of April, 1999 the St. Lucia Gazette published an advertisement that the property of the Defendants which serves as security for the Judgment in Default of Appearance aforesaid will be put up for sale and adjudication by the Sheriff on the Friday the 21st day of May, 1999 in this suit.
4. The said advertisement makes no reference to the Plaintiff's rights under the said Judgment.
5. I am informed and verily believe that the sale was allowed to take place although Opposition to Secure Charges was filed within the prescribed time.
6. The Plaintiff holds a valuation of the property being the subject of the judicial sale at \$609,118.45.

A copy of the valuation is exhibited hereto and marked "A".

7. That by Affidavit filed 28th June, 1999 the Bailiff of the High Court Arthur Isidore depones that the property of the Defendants were sold to the Plaintiff herein for \$75,000.00.
8. The Petitioner prays that the judicial sale held on 21st day of May 1999 be annulled in Order that the Court may proceed with the application to Secure Charges.
9. To the best of my knowledge and belief and the statements contained in the Petition filed herewith are true and are made solely to obtain justice.

In order to appreciate what is requested in this petition one must be aware of the history of this case.

On the 29th day of April 1997 the Plaintiff filed an action against the Defendants claiming *inter alia* the sum of \$457,147.43 and on the 16th day of June 1997 the Plaintiff obtained judgment against the Defendants in the sum of \$457,147.43 and interest at 14% per annum from 1st April 1997 to date of payment and costs hereof.

On the 10th day of May 1999 the Petitioner acting as Opposant petitioned for an order permitting the filing of an opposition to secure charges against the immovable property advertised for sale in the St Lucia Gazette of 3rd April 1999. This summons was supported by an Affidavit of Francis Francois the Manager of the opposant and a list of exhibits.

The said manager deposed that the Defendants were indebted to the opposant in the sum of \$38,817.31 which judgment was registered; that on the 3rd day of April 1999 the St Lucia Gazette published an advertisement that the property of the Defendants which served as a security for the judgment would be put up for sale and adjudication by the Sheriff on the 21st day of May 1999 and that the advertisement made no reference to the opposant's rights under the above mentioned judgment; that if the sale be allowed to take place it would seriously prejudice the interest of the Opposant. He further deposed that the last valuation of the property was \$609,118.45.

On the 22nd day of June 1999 Ronald Alexander filed an affidavit to which he deposed that he was and is still a Clerk employed with the firm of Mc Namara and Company and on the 10th day of May 1999 he filed a summons and opposition to secure charges in respect of a

judicial sale advertised to take place on the 21st day of May 1999 but despite frequent visits to the High Court Registry he was unable to retrieve stamped copies of the above mentioned documents until after the 21st day of May 1999.

On the 23rd day of June 1999 Arthur Isidore, the Bailiff of the High Court filed an affidavit to which he deposed that the Plaintiff issued a writ of seizure and sale against the Defendants returnable on the 3rd day of June 1999 and advertised for sale on the 21st day of May 1999 and on that day the sale was effected in accordance with the law and the property was sold to the Plaintiff for \$75,000.00.

He concluded that he was not aware of and had not been served with the summons to secure charges filed on the 10th May 1999 by the Bank of Nova Scotia, the Opposant.

The matter was heard in Chambers on the 8th day of July 1999.

Arguments

Learned Counsel for the Petitioner told the Court that the Opposant/Petitioner had complied with the rules and had filed summons on the 10th day of May 1999 - eleven days before the date fixed for the sale but was unable to retrieve a stamped copy to serve on the Sheriff. She argued that the sheriff should not have effected the sale since there was filed opposition to seizure and sale.

She quoted Article 523 which provides

When oppositions are decided before the day fixed for sale, if the seizure is not set aside, and if no new notice of sale be required, the Sheriff on the day of sale may proceed upon the writ in accordance with the judgment of the Court.

But if the oppositions are not decided until after the day fixed for the sale, the Sheriff can only proceed to sell under a writ of venditioni exponas, and in conformity thereto, and after three further consecutive publications in the Gazette.

She further argued that since every case was decided on its merits and the Petitioner had done all that was required by law with regards the opposition to the sale then the sale should be annulled because it would be unconscionable to allow it to stand

Learned Counsel for the Plaintiff contended that the Sheriff's sale could only be annulled in accordance with Article 558 of the Code of Civil Procedure which provides.

At the instance of the judgment debtor, or of any creditor or other interested person:

If fraud or artifice was employed, with the knowledge of the purchaser, to keep persons from bidding;

If the essential conditions and formalities prescribed for the sale have not been observed; but the seizing party cannot annul the sale for any want of formalities attributable to himself or his solicitor;

2. *At the suit of the purchaser:*

If the immovable differs so much from the description given of it in the minutes of seizure, that it is to be presumed that the purchaser would not have bought had he been aware of the difference.

She further contended that Article 523 noted above presupposes the existence of opposition duly filed and served and that the Petitioner never filed or served any opposition but on the 10th of May 1999 filed for leave to file an opposition, and nothing else. She argued that the law clearly states that the opposition must be delivered to the Sheriff and this was not done.

She said that the Plaintiff was a primarily creditor who complied with the law of placing two publications of the judicial sale within a three month period.

There was much heated argument between both Counsel re-iterating the same points.

Conclusion

In my judgment the issue to be decided is whether the Opposant had filed an opposition to seizure and sale in the Sheriff's office ten days before the 21st day of May 1999.

I have read the affidavits and I have accepted the evidence stated therein.

The evidence is that the clerk Ronald Alexander was unable to retrieve a stamped copy out of the Registry of the High Court before the 21st day of May 1999 to serve on the Sheriff, Arthur Isidore who deposed that he was “not aware of and had not been served with the Summons to secure charges filed on the 10th May 1999 by the Bank of Nova Scotia, Opposant in the Suit herein.”

As I see it, the essential conditions and formalities prescribed for the sale had been observed.

It is rather unfortunate that the spate of closures at the Registry of the High Court of Justice may have caused much hardship to many people but I must apply the law as it is.

My order is therefore as follows:

Application dismissed.

The Petitioner is to pay costs to the Plaintiff to be agreed or otherwise taxed.


Suzie d'Auvergne
High Court Judge