



IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit. 366 of 1990

ST. LUCIA DEVELOPMENT BANK

- Plaintiff

VS

ELDRIDGE CHARLES

- Defendant

Miss H. Ali for Plaintiff
Mr. M. Michel for Defendant

1996 : February 28
April 26

JUDGMENT

d'Auvergne J.

On the 28th day of June, 1995 the Applicant/Plaintiff filed a Summons for leave to issue writ of execution against Camella Gloria Erica Charles (nee Michel) the Administratrix of the estate of the Defendant Eldridge Charles upon a Judgment in the sum of \$127,948.10 with interest at the rate of 11.5%, 10% collection fee and that the Defendant do pay the costs of the application.

This summons was supported by an affidavit of Guy St. Rose who deposed that Eldridge Charles (hereinafter called the Defendant) was indebted to the Plaintiff in the sum of \$127,948.10 with interest and collection fee and that no part of the said sum had been paid and therefore the judgment remains in full force and is wholly unsatisfied.

He further deposed that the Defendant died on the 21st of August, 1991 and by the 10th of October, 1991 letters of Administration

were duly granted to Camella Gloria Erica Charles (nee Michel). On the 14th of November 1995 Trevor Lamontagne deposed to a Supplementary Affidavit in which he stated that he has assumed the duties of Guy St. Rose.

He further deposed that the statement by the said Guy St. Rose that "No part of the said sum of \$127,948.10 has been paid and the said judgment remains in full force and is wholly unsatisfied" was an erroneous statement; that, infact after judgment was obtained, several payments were made and that the last payment was made on the 17th December, 1992.

He concluded by deposing that the balance now outstanding under the said judgment, is \$121,255.78 being principal and interest to 30th September, 1995.

The Summons was heard on the 28th of February, 1996.

At the hearing Learned Counsel for the applicant stated that the application was made under Order 67 Rule 2(b) of the Rules of the Supreme Court 1970.

Order 67 Rule 2 of the Rules of the Supreme Court 1970 reads as follows:

When leave to issue any writ of execution is necessary

- (a) where six years or more have been elapsed since the date of the judgment or order.
- (b) where any change has taken place, whether by death or otherwise in the parties entitled or liable to execution under the judgment or order.
- (c) where the judgement or order is against the assets of a deceased person coming into the hands of his executors or administrators after the date of the judgment or order,

and is sought to issue execution against such assets;

(d) where under the judgment or order any person is entitled to relief subject to the fulfillment of any condition which it is alleged has been fulfilled;

(e) where goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or sequestrator.

She further quoted Rule 4(1) and (2) of the said order which reads:

- (1) An application for leave to issue a writ of execution may be made ex-parte unless the Court directs it to be made by Summons.
- (2) Such an application must be supported by an Affidavit.

She drew reference to the affidavits of Guy St. Rose and Trevor Lamontagne and the Letters of Administration granted to Camella Gloria Erica Charles (nee Michel), dated 10th October, 1991 and entered on the 28th October, 1991.

She concluded by stating that her application was in conformity with the requirements set by Law.

Learned Counsel for Camella Gloria Erica Charles, the Administratrix of the estate of the Defendant objected to the application being granted and quoted Article 417 of the Code of Civil Procedure which states as follows:

"Judgment can only be executed upon the party against whom it is rendered.

If he changes his Civil Status or dies before judgment is executed, it cannot be executed against him nor against his representatives, unless a notice be previously served upon his representatives to

show course why execution should not issue, and judgment be given thereon by the Court or Judge.

But if the party dies or changes his Civil Status after execution has commenced, the execution continues."

He also quoted Rule 2(2) of the said Order which provides:

"Paragraph (1) is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution.".....

He further quoted Order 46 Rule 2 paragraph 46/2/3 of the Rules of the Supreme Court 1988 Vol 1 (White Book).

Paragraph 46/2/3 of the **Rules of the Supreme Court 1979 (White Book)** states "where the judgment debtor has died, notice of the application must be served on the personal representative."

Learned Counsel for the applicant replied by informing the Court that by Schedule 2 of the Rules of the Supreme Court 1970 Article 417 was repealed.

CONCLUSION:

In my Judgment the applicant has abided by the rules of the Supreme Court 1970 which state how writs of execution may be issued and that reference should only be made to the English Rules of the Supreme Court when our own Rules are silent.

Moreover letters of administration were granted to Camella Gloria Erica Charles on the 28th day of October, 1991 and the payment on the judgment debt was made on the 17th of December, 1992 which indicates that she is well aware of the judgment debt.

My order is therefore as follows:

That leave be and is hereby granted to the applicant to issue writ of execution against Camella Gloria Erica Charles administratrix of the estate of the late Eldridge Charles.

That there will be no order as to costs.

.....
SUZIE d'AUVERGNE
PUISNE JUDGE