

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2013/0021

INTERLOCUTORY APPEAL FILED PURSUANT TO CPR 62.10

BETWEEN:

ASHANDI EDWARDS
(By his mother and next friend Alma Edwards)

Appellant

and

[1] RHOLDA BHOLA
[2] LENORE BHOLA

Respondents

Before:

The Hon. Mr. Don Mitchell

Justice of Appeal [Ag.]

Appearances on paper

Mr. Derick F. Sylvester for the Appellant

Ms. Celia Edwards, QC for the Respondent

2013: August 16.

Interlocutory appeal – Enforcement of a judgment debt – Procedure for sale of land – Judgment Summons procedure – Oral examination of judgment debtor procedure – Power of master to hear application for sale of land – Civil Procedure Act, Cap 55 – CPR Part 44 – CPR Part 52 – PD 2 of 2007

In May 2011 the appellant obtained a judgment against the respondents for special damages, general damages, future medical expenses, prescribed costs, and interest. In June of the following year, the appellant filed an application for sale of land owned by the second respondent to satisfy the judgment debt. The learned master dismissed the application on the ground that the appellant had not satisfied the court that the respondent had no other property in Grenada against which the decree could be enforced as was

required by section 50(2) of the Civil Procedure Act.¹ The appellant appealed to this Court, challenging the master's decision on the grounds that the master erred in her interpretation of section 50(2), and that pursuant to Practice Direction No. 2 of 2007, the master had no jurisdiction to hear an application for sale of land.

Held: dismissing the appeal with costs to the respondents assessed at \$2,500.00, that:

1. Section 50(2) of the Civil Procedure Act prohibits the sale of land to satisfy a judgment debt unless the judgment creditor has satisfied the court that there is no other asset owned by the judgment debtor sufficient to meet the judgment debt. In this case, the judgment creditor not having completed the process of oral examination, or not having obtained, by some other means, information as to any other assets of the judgment debtors, the master was correct in striking out the application on the basis that the judgment creditor had not satisfied the requirements of the Act.
2. Only a judge may proceed to enforce an order made under a judgment summons for committing a judgment debtor to a term of imprisonment. It is this power of imprisonment under the judgment summons procedure that causes the Civil Procedure Act, the Rules of Procedure, and Practice Direction No. 2 of 2007 to provide that a master may not deal with a judgment summons. A master is not prohibited however from dealing with any other type of method of enforcement of a judgment debt in chambers, such as, the sale of the judgment debtor's land.

JUDGMENT

- [1] MITCHELL JA [AG]: This is an interlocutory appeal against the decision of the master to dismiss an application by the appellant for the sale of land in the enforcement of a judgment. The record reveals that in May 2011 the appellant obtained a judgment against the respondents for special damages, general damages, future medical expenses, prescribed costs, and interest. On 29th June 2012 the appellant filed an application for sale of land owned by the second respondent. The application came up before Master V. Georgis Taylor-Alexander for hearing and determination on 9th October 2012. The master dismissed the application on the ground that it did not address the requirements of section 50(2)

¹ Cap. 55, Revised Laws of Grenada 2010.

of the Civil Procedure Act.² The appellant obtained the leave of the High Court to appeal this decision, and the appeal, being an interlocutory one, has been put before me for determination on written submissions pursuant to rule 62.10 of the Civil Procedure Rules 2000 (“CPR”). Both the appellant and the respondents have duly filed written submissions.

[2] The appellant has put forward two grounds for challenging the decision of the master. The first is that the master erred in her interpretation and application of section 50(2). The second is that pursuant to Practice Direction No. 2 of 2007 the master has no jurisdiction to hear an application for sale of land. The position of the respondents is that the master correctly applied section 50(2); and in relation to the second ground of appeal, that the Practice Direction applies to the hearing of judgment summonses by a master, which is specifically prohibited, and not to an application for sale of land.

[3] In Grenada, applications for sale of land in enforcement of court proceedings are made under the authority of sections 49 and 50 of the Civil Procedure Act. This is a Windward Island procedure for what in the Leeward Islands would be an application for sale of land under the provisions of the Judgments Act. The Judgments Act does not apply in Grenada, but instead its equivalent provisions are found in the Civil Procedure Act. In particular, section 49(2) provides that the ‘holder of a decree’ who wishes to enforce it against a judgment debtor’s land may apply to the court by way of a summons in chambers for the sale of the land in execution of the judgment or order of the court. Section 50(2) of the Act provides that:

“(2) If the Court is satisfied by oath or affidavit that the decree remains wholly or in part unsatisfied, and that the judgement debtor is beneficially entitled to any land in Grenada and has no other property in Grenada against which the decree can be enforced, the Court may order his or her interest in the land or any part thereof to be sold.”

² Cap. 55, Revised Laws of Grenada 2010.

Section 50 then proceeds to set out the procedure that must be followed. It provides for service of the notice of application for sale, advertisement, search by the Registrar in the court records for any other unsatisfied judgments, and service on those judgment creditors of notice of the application for sale, etc. The respondents submit that, from the wording of the section, the sale of land of a judgment debtor is a last resort. It is incumbent on the judgment creditor to establish the steps that he has taken to ascertain that the judgment debtor has no other assets against which he can move. And, in this case, the judgment creditor had not done that.

- [4] The reason given by the learned master for striking out the application was that the application did not address the requirements of section 50(2) so that the court was unable to satisfy itself of the respondents' ownership of property other than land. She found that there was in fact an indication from the affidavit and from the pleadings that the respondents owned a supermarket which may well imply ownership of property other than land. If this is a reference to the business and assets of R.M. Bhola Ltd. conducted on the land, then the assets of that company would clearly not be available to satisfy the debts of one or more of its shareholders. If it is a reference to the shares in the company, then those might be personal property amenable to a charging order.
- [5] The affidavit in question before the master was sworn by Ms. Jacinta Williams, a legal secretary in the firm of the appellant's attorneys. She deposed that after the judgment had been obtained, an order for oral examination of the judgment debtors was obtained and served on the judgment debtors. The judgment debtors had not since then, she deposed, paid any monies. There is no indication in the affidavit or otherwise that the requisite hearing of the oral examination of the judgment debtors ever took place before either a master or a judge, or that any such hearing resulted in the judgment debtors being examined as to their means of satisfying the judgment. Instead, the affidavit proceeds to state that a search of

the Land Registry revealed an indenture dated 6th May 2009 by which a 'a parcel of land with building thereon known as R.M. Bhola Ltd' was conveyed to Raulda Bhola, who is stated to be the first defendant. The affidavit does not depose to any attempt to have the bailiff of the High Court proceed to levy execution on any of the goods of either of the judgment debtors. It recites only the discovery of this parcel of land on which this business was conducted, and another parcel of land which was not involved in the application for sale.

- [6] The appellant objects to the application being dealt with by the master on the ground that Practice Direction No. 2 of 2007 states that a master has no jurisdiction to hear or determine applications for judgment summonses. The appellant submits that this rule must be equally applicable to all applications for the enforcement of judgments. Such a submission suggests an unawareness of the jurisdiction and history of the judgment summons.
- [7] A judgment summons is a statutory creation of the Debtors Act which abolished imprisonment for judgment debtors as a means of enforcement of money judgments. Its procedure is generally governed by CPR Part 52. The Debtors Act is not found as such in the Windward Islands. Instead the judgment summons jurisdiction is now incorporated into the various Civil Procedure Codes. However, it is a clearly distinct procedure from other methods of enforcement of judgments. The judgment summons provides a procedure for a judgment creditor to establish that a judgment debtor has the means to meet a judgment debt but is refusing to pay the debt in contempt of court. That contempt of court is punishable with imprisonment, provided the strict provisions as to evidence are met by the judgment creditor, as an exception to the general prohibition against imprisonment of judgment debtors.
- [8] It is that power of imprisonment under the judgment summons procedure (long ago abolished in the United Kingdom) that causes the Civil Procedure Act, the

rules of procedure, and the practice direction to provide that a master may not deal with a judgment summons. Only a judge sitting in open court may proceed to enforce an order made under a judgment summons for committing the debtor to a term of imprisonment. There is no such prohibition on a master dealing with any other type of method of enforcement of a judgment debt in chambers. Indeed, that is one of the functions of a master of our Court. Practice Direction No. 2 of 2007 applies only to the special procedure of a judgment summons and not to any other method of enforcement of a judgment debt.

[9] It is not completely clear from the filings before me what happened to the oral examination of the judgment debtors, the procedure for which is set out at CPR Part 44 where it is not otherwise provided for by statute. It appears to have been aborted halfway through the process. The affidavit in this case indicates that the order for oral examination having been obtained, the judgment creditor served it on the judgment debtors. The debtors not having met the amount of the judgment debt, the creditors proceeded forthwith to the issuing of the application for sale. That is not how an oral examination procedure is conducted.

[10] The oral examination is not itself a method of enforcement. Its sole purpose is to find out from the debtor whether he or she has any assets and other debts, and to provide the creditor with the information needed to select one of the methods of enforcement. The order for the oral examination of the judgment debtor contains a return date for appearing before the master in chambers. The debtor is examined orally and on oath before the master, usually by the attorney for the creditor. The master, or a clerk under the direction of the master, writes down the testimony of the debtor about his or her assets and proposed means for satisfying the judgment debt. He or she is asked to sign the deposition when it is complete. That deposition is then placed on the file and is available for the purpose of selecting the method of enforcement. It is even available for exhibiting with an application for sale in satisfaction of section 50(2). The failure or refusal of the judgment

debtor to attend for oral examination may itself constitute the necessary evidence of a lack of other means of satisfying the debt.

[11] If the oral examination had been properly conducted here, and carried through to its intended conclusion, there may well have been no evidence of other assets provided by the judgment debtors which would have satisfied the condition in section 50(2). On the other hand, it might have produced evidence of cash in a bank, furniture, vehicles, shares in a company, or other personal property of the judgment debtors which could have been proceeded against by way of one of the various types of execution process provided for in the Civil Procedure Rules 2000 and the Civil Procedure Act as applicable.

[12] While I would not necessarily describe, as submitted by the respondents, that the section 49 and 50 procedure is a means of enforcement of last resort, certainly a sale of real estate, when there exists personal property sufficient to satisfy a judgment debt, is an extreme method of enforcement, and one capable of abuse. The Legislature of Grenada has seen it fit to prohibit it, unless the judgment creditor satisfies the court that there is no other asset owned by the debtor sufficient to meet the judgment debt. The judgment creditor in this case, not having proceeded to complete the process of oral examination, or by some other means to obtain information as to any other assets of the judgment debtors, the master was correct in ruling that the judgment creditor had not satisfied the requirements of the Act and in striking out the application.

[13] For the reasons set out above, the appeal is dismissed with costs to the respondents which I assess at \$2,500.00.

Don Mitchell
Justice of Appeal [Ag.]