

Filing Cabinet

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E. 63 OF 1983

BETWEEN	SONNY GOBIN	PLAINTIFF
A N D	MOTOR & GENERAL INSURANCE COMPANY LIMITED	DEFENDANT

Mr. Dennis Morrison & Mr. A. Morgan for plaintiff.
Mr. P. Beswick & Mr. C. Dunkley for defendant.

April 2, 1993

Judgment

Theobalds, J

By Writ of attachment of Debts and other Property dated 15th July, 1992 addressed to Eagle Commercial Bank and Scotia Bank Jamaica Ltd the plaintiff herein sought an Order that the Property of the above named defendant Motor and General Insurance Company Limited as was in the custody and control of the respondent Banks be attached in satisfaction of a judgment debt due by the defendant to the plaintiff.

The matter is of some antiquity. Judgment was entered for the plaintiff on 17th December 1983 by his Lordship Mr. Justice wolfe as he then was. Reasons for judgment were subsequently put in writing in accordance with an undertaking given by him at the time of judgment. So far as this Writ of Attachment is concerned, the relevant part of the judgment was that the defendant Motor and General Insurance Company Limited was ordered to pay the plaintiff the sum of T & T\$650,000.00 with interest at the rate of 16% per annum from 11th February 1983 until payment of the said sum. This judgment and order are not an issue between the parties. Indeed there is an express admission to this effect by the defendant though the Principal Officer of the defendant company, one Mr. Winston Murray. This officer had been duly authorized to make this admission on behalf of his company. The real and only difference between the parties revolves around the computation of the balance now due and owing to the plaintiff. Computation is used in its widest possible sense for while the defendant asserts that its payments to the defendant over the many years exceed the amount of the judgment debt of \$650,000.00 T & T with interest and costs, the plaintiff is merely asserting that he has not been paid the full amount due to him in accordance

with the order of Wolfe J. Having heard that the defendant had certain money deposited in the Respondent Banks, the plaintiff quite naturally seeks to have these sums attached in satisfaction of the amounts long over due and owing to him. Parenthetically no where in the Affidavits filed on their behalf have the defendants demonstrated any interest in collecting the amount(s) they claim to have been overpaid by them or on their behalf to the plaintiff. Their interest appears to be more with a concern that minus the amounts on deposit in the respondent Banks their right to carry on the business of Insurers within this jurisdiction might well be open to question.

In opening his submissions on behalf of the applicant learned counsel referred to the affidavits of Sonny Gobin and of Winston Murray. Both these gentlemen were present at the hearing in Chambers. Gobin's affidavit dated 3rd July 1992 is brief, straight forward and to the point. Indeed it contained no extraneous matter. It dealt simply with the judgment debt, the terms of the order of Wolfe J, the compilation of the interest thereon, and the balance due and owing at the time of the swearing of the affidavit. In his submissions counsel of necessity had to enlarge some what on Gobin's laconic statements. Counsel's submissions were calm candid and convincing. Three c's - somewhat reminiscent of the style of the three w's back in the 1950's - and he scored with equal success. He moved off the stumps only briefly when reference was made to the order of the late Alexander J of the 7th August 1985. This reference was necessary to establish not only the existence of other garnishees, their discharge after payment of the amounts due to the plaintiff, but more importantly to the deposit with the Jamaica Citizen Bank to secure a stay of Execution pending the hearing of an appeal against the judgment of Mr. Justice Wolfe. This deposit was made on a Summons filed by the defendant. The defendant expressly consented to this order. The amount involved is the exact amount in respect of which this Writ of Attachment has been issued. The Principal Officer of the abovenamed defendant files an affidavit in opposition to this Application for Garnishee Order. He is duly authorized to make this affidavit on behalf of the defendant. No where in this affidavit does the deponent make any reference to this order much less that it was made on the motion of and with

the consent of the defendant. I find this affidavit and its maker to be lacking in good faith. Highly relevant matter is being concealed from the Court. The thrust or gravamen of the plaintiff case is that the payment of money to the Jamaica Citizen Bank Limited in compliance with a consent order made by the court on the 5th day of March 1984 could not be described as a payment to the plaintiff yet the affidavit while mentioning holding "on deposit in the name of Sonny Gobin" does not indicate the circumstances under which such payment to the Jamaica Citizen Banks to be made. Whatever the circumstances there is no way that such payment could be classified as a payment to the plaintiff and once this is conceded the entire thrust of the submission on the defendant's behalf breaks down. The Court was asked to accept that once the defendant (in compliance with the consent order abovementioned) made the payment to the Jamaica Citizens Bank then having lost control of such funds which were debited directly from the defendant's accounts then the payment to the Jamaica Citizens Bank amounted to payment to the plaintiff from the date of the lodgment or transfer to Jamaica Citizens Bank. Mere loss of control by X does not mean acquisition of control by Y. One has to look to the terms which are expressly incorporated or expressed in the consent order. It is not unusual for Consent Orders, Orders for payment of money into an account to abide the outcome of an appeal to contain express provision for the interest earned on such an account to be credited towards the judgment debt in the event the appeal is dismissed. Whether through inadvertence or lack of experience this was not done in the instant case. It is too late to attempt to secure the benefit of such interest now. Indeed not even by misquoting the terms of the consent order can this be achieved. Reference is made to the submission that "the order of the Court on 5th March 1984 indicated that the interest earned on same (Commercial interest as distinct from judgment interest) would be dealt with in accordance with the rights of the parties as determined by the Appeal". Indeed no where does the Court order of 5th March 1984 deal with the question of interest as submitted by the defendant. What the defence lacks in judicial sense it makes up for with the zeal with which it was presented. Not surprisingly no judicial precedent or authority for the startling propositions propounded has been

forthcoming or produced. I have myself been unable to unearth any. Reference has been made to the rules of Equity and it has been urged that the plaintiff having brought his suit in Equity is bound by the rules of Equity and cannot after a delay of so many years seek to enforce his rights as against the defendant. The rule of Equity which would apply here is "where equities are equal the law prevails". The plaintiff is legally entitled to the fruits of his judgment. Both parties had a right to proceed. The plaintiff to collect and the defendant a corresponding right or obligation to pay. The plaintiff is castigated for not proceeding to enforce his right; but what about the corresponding obligation to repay? The defendant has for many years had the benefit of the plaintiff's \$650,000.00 T & T. This position has remained unchanged in spite of a judgment of this Court from as far back as 17th December 1983. This judgment was followed by the furnishing of reasons for judgment which deal comprehensively and logically with all possible issues between the parties. None the less an appeal was filed and a stay of execution of the judgment afforded to the defendant on his application and on terms to which he expressly consented. That stay of execution expired on the 21st June 1985 with the dismissal of the defendant's appeal by the Court of Appeal. It is in these circumstances that the defendant seeks to invoke principles of equity.

The application for Garnishee Order is granted. Garnishee Order sought is made subject to presentation of an up to date computation of the amounts due. The guide lines to follow are that payments must be computed at the rate of exchange in existence at the date of payment. Interest must of course be calculated at the figure stipulated in the judgment of the Court of Appeal. Costs of these proceedings to be taxed if not agreed are to be paid by the defendant to the plaintiff. The delay in handing down this decision is regretted, but careful perusal of the file on this ancient matter and the relevant orders and judgments made therein was necessary in order to form a correct picture of the issues involved.