



[2015] JMSC Civ. 27

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2010/A0002

BETWEEN	O. AUGUSTUS SHERRIAH	INTERPLEADER
AND	DYC FISHING LIMITED	FIRST RESPONDENT
AND	THE OWNERS OF M/V DEVIN	SECOND RESPONDENT
	AND M/V BRICE	
AND	SEAFOOD & TING	THIRD RESPONDENT
	INTERNATIONAL LIMITED	

IN CHAMBERS

Wendell Wilkins instructed by Robertson Smith Ledgister for the interpleader

Dr Raymond Clough instructed by Dabdoub, Dabdoub and Dabdoub for second respondent

William Panton, Cindy Lightbourne and Christopher Brown instructed by DunnCox for Krustanord SAS

Tana'ania Small Davis and Miguel Williams instructed by Livingston Alexander and Levy for third respondent

January 14 and March 2, 2015

CIVIL PROCEDURE – CONSOLIDATION – RULE 26.1 (2) (b) OF THE CIVIL PROCEDURE RULES

SYKES J

[1] Mr Augustus Sherriah, the bailiff for the Resident Magistrate's Court for the parishes of St Andrew and Kingston, is a bailiff with a problem. This is the problem. He has an order for seizure and sale to execute. This order came after one Mr Stanley Mohammed, owner of the MV Brice and Devine, successfully brought a claim against DYC Fishing Limited ('DYC'). This was in **Claim No 2010/A00002**. While this claim was going on DYC suffered the misfortune of being sued by Perla Del Caribe Inc ('Perla') in **Claim No 2010HCV 02228**. DYC also lost that case and ordered to pay very significant sums of money. DYC has not yet satisfied the judgment debt in either case. In respect of **Claim No. 2010HCV02228**, there is an application for a final charging order, a provisional one having been made earlier.

[2] Let us get back to Mr Sherriah. He began to execute the order by marking items for taking and ultimate sale if the judgment debt was not satisfied. This was in respect of **Claim No. 2010/A00002**. The bailiff's activities were interrupted by Seafood & Ting International Limited ('SFT') which claimed that some of the items marked by the bailiff were not the property of DYC but were the property of SFT.

[3] The bailiff applied to the court by way of interpleader for the court to determine which of these two entities, DYC or SFT, have property in the goods marked for seizure and sale. In the midst of this there are other persons who are claiming to have a security interest in the same good or some of them under a debenture executed by DYC.

[4] What is clear is that there are two claims which have ended in judgment adverse to DYC. There are two judgment creditors. One judgment creditor, Mr Mohammed who has been identified as the owner of the MV Devin and Bryce is further along in the enforcement process than Perla.

[5] In addition to these two successful litigants there is a company known as Krustanord SAS. This company claims that it has a security interest in some, if not all, of the property earmarked by the bailiff for seizure and sale. Krustanord has indicated, through its counsel, that DYC executed debentures giving Krustanord a security interest in the earmarked property. To the best of this court's understanding, Krustanord has not applied for any relief but is clearly an interested party in its capacity, it says, as a secured creditor.

[6] Mr Sherriah's interpleader has been placed on hold because of an application made by the judgment creditors. They have applied for consolidation of the two matters, that is to say, they have applied for consolidation of the interpleader hearing with final charging order hearing. The basis of this application is that both claims involve (a) the same property and (b) DYC and therefore ought to be dealt with in one proceeding. Can consolidation be done at this stage?

Consolidation

[7] Rule 26.1 (2) (b) of the Civil Procedure Rules (CPR) permits the court to consolidate proceedings. There is no definition of consolidation in the rules and so it is prudent to use the definition that has been used over time. It is an expression that has been used in the law for over one hundred years. The usual meaning is this: different claims or causes of action are joined together and treated as if they were all one claim. One of the primary consequences of consolidation is that all findings of fact bind all the parties to the consolidated claim. The purpose of consolidation is to save time, costs and effort. The application is usually made before a trial of any of the matters has commenced.

[8] It is necessary to go back to first principles. A claim is brought to determine the rights and/ or persons. When the trial takes place the court gives judgment which is captured in the form of an order or declaration. Unless appealed that determination between the parties is final and conclusive in respect of the issues raised for decision in the particular claim. The conclusion of the court is called judgment. Judgment is the final determination of the rights and obligations of the parties in a case (**Black's Law Dictionary**, 9th). Once judgment is rendered, then the principle of merger takes over. Merger means that the claim which existed prior to judgment no longer exists and is now absorbed into the judgment. The only right the party who brought the claim has, assuming he was successful, is the right to enforce the judgment because the claim no longer exists. No other rights exist in relation to the litigated claim because the claim ceases to exist once judgment is give. The same principle applies if there is a consent judgment. The rights of the parties are confined to the judgment that has now absorbed the claim. It follows that once judgment is given, there is no claim in existence which can be consolidated with any other claim.

[9] In both claims, judgment has been given. They no longer exist as claims. There is now the judgment which is to be enforced. From what has been said so far, the conclusion is that the application for consolidation must fail because the concept of consolidation applies only to the circumstance where there are pending claims, that is to say, claims in which no trial has commenced and no judgment has been entered.

[10] The court should point out that Dr Raymond Clough was prevailed upon at short notice to present the application. Counsel cited two cases. These are **Blue Cross of Jamaica v Veronica McGregor** [2010] JMCA Civ 30 and **University Hospital of the West Indies v Dr Sandra Williams Phillips** [2014] JMCA Civ 117. Nothing has been said in these two cases that is contrary to what this court has stated to be its understanding the law.

[11] The court wishes to record that counsel for the bailiff and Krustanord neither opposed or supported the application. The opposition came from Mrs Small Davis.

[12] The research done so far has not revealed any instance where consolidation has been ordered in a post judgment circumstance. Application for consolidation is dismissed with costs to SFT to be agreed or taxed.

