



[2015] JMSC Civ. 14

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2011 HCV 01188

BETWEEN	NEVILLE ATKINSON	CLAIMANT
AND	OLAMAE HUNT	DEFENDANT

Mr. Andrew George Cowan instructed by Austin L. Francis and Co. for the Claimant.

Lelieth D. Lambie -Thomas instructed by Lelieth D. Lambie-Thomas for the Defendant

HEARD : 10th JULY, 2013 & 10TH FEBUARY 2015

CORAM: KING, J

Background

[1] A Fixed Date Claim Form and Affidavit in support were filed on the 16th March 2011 in which the Claimant claims that the Defendant holds property on trust for both their benefits in shares proportionate to their respective contributions. The property is located at Lot 9, 95 Hagley Park Road in the parish of Saint Andrew and registered at Volume 1286 Folio 786 of the Registered Book of Titles in the names of the parties as tenants in common in equal shares.

[2] The parties attended their first mediation session on May 31, 2012 where they arrived at a partial settlement. The Defendant agreed to the following inter alia:

Para 3] 1 To give up possession of the room identified on the diagram as Room 31 and that the delivery of that would take effect on the 30th June 2012

Para 3] 4 to refund the Claimant half of all the National Housing Trust contribution refunds paid by the Claimant towards the mortgage on the property for the benefit of both parties.

Para 3] 5 the parties agree to a final mediation session to mediate the issues of the mortgage arrears, deposit and closing costs.

[3] The second mediation session was held on 21st January 2013 where a further mediation agreement was made to include the terms stated in the mediation agreement on 31st May 2012. The further mediation agreement added the following:

Para 3] 1 Further to mediation agreement dated May 31, 2012, parties agree:

- the property at 18 Wattley Avenue, Kingston 10 registered at Volume 1280 Folio 768, which is the subject matter of this claim is to be sold to a third party and the proceeds of sale shared equally between them.

[4] At the case management conference scheduled for the 30th January 2013, the Claimant sought to withdraw from the mediation agreement and for the case management conference to proceed. The Defendant opposed this application and the matter was set for hearing on the 10th July 2013. The application was subsequently heard and the decision reserved. The decision now follows.

Issue

[5] What action is the Court required to take in accordance with the interpretation of **CPR 74.12?**

The Claimant's Version of the Law

[6] That Rule 74.12 states that where an agreement is reached, the Court must make an order in terms of the report pursuant to Rule 42.7. The plain meaning of the sentence is that the Court must turn to Rule 42.7 and if the order cannot be made in compliance with Rule 42.7, then the Court cannot take action under 74.12(1). Further the Claimant contends that the agreement regarding sale of property does not fall within

the ambit of Rule 42.7. And that the Court therefore is not empowered to make a Consent Order regarding the sale of land or an agreement to sell land under the strict provision of Rule 42.7.

[7] The Claimant seeks guidance from the Practice Direction of the United Kingdom Civil Procedure Rules, which seeks to explain Rule 40.6, which the Claimant submitted is similarly worded to our Rule 42.7. UK Civil Procedure Rule 40.6, in outlining the use of consent judgments and orders states:

- 40.6. (1) *This rule applies where all the parties agree to the terms in which a judgment should be made;*
- (2) *A court officer may enter and seal an agreed judgment or order if:*
 - (a) *the judgment or order is listed in paragraph (3);*
 - (b) *none of the parties is an litigant in person and;*
 - (c) *the approval of the court is not required by these Rules, a practice direction or any enactment before an agreed order can be made;*
- (3) *The judgments and orders referred to in paragraph 2 are:-*
 - a) *a judgment and order for –*
 - (i) *the payment of an amount of money (including a judgment or order for damages or value of goods to be decided by the court; if*
 - (ii) *the delivery of goods with or without the option of paying the value of the goods to be assessed or the agreed value.*

The Defendant's Version of the Law

[8] The Defendant contends that the Court is empowered by Rule 74.12 to make an Order when an agreement has been reached at Mediation. Further, that where an agreement is such that it falls within the ambit of Rule 42.7 then the Order should conform to the requirements of that Rule. Where the agreement does not fall within the ambit of Rule 42.7 the Court need not conform to the requirements of that Rule but the

Court is still empowered to and required to make an Order.

The Law

[10] Civil Procedure Rule 74.12 (1), states that:

- 1) Where an agreement has been reached, the court must make an order in terms of the report [pursuant to Rule 42.7]

This Rule is perfectly clear up to the word “report”. What therefore is the import of the words “*pursuant to Rule 42.7*”?

[11] Part 42 contains rules about judgments and orders made by the Court.

[12] Civil Procedure Rule 42.4 sets out the **Standards Requirements for Judgments and Orders** as follows:

- 42.4 (1) Every judgment or order must state the name and judicial title of the person who made it unless it is-
- a) a default judgment under Part 12;
 - b) a judgment entered on an admission following a court order under rules 14.6, 14.7, 14.8, 14.10; or
 - c) a consent order under rule 42.7

(It should be noted that no name or judicial title is necessary in respect of the instances mentioned in (a), (b) and (c) above since these are cases in which the judgments or orders are entered or made by ADMINISTRATIVE ACTION)

- 42.4 (2) Every judgment or order must-
- a) be signed by the registrar or by the judge or master who made it
 - b) be sealed by the court ; and
 - c) bear the date on which it was given or made.

DRAWING UP AND FILING THE JUDGMENTS AND ORDERS

[13] Civil Procedure Rule 42.5 states:

Rule 42.5 (2) Subject to paragraph 5 , every judgment or order must be drawn up and filed at the registry by the party on whose claim or application the order was made, unless-

- a)
- b)
- c)
- d) it is a consent order under 42.7

(In which case it is not made on the claim or application of any one party)

Consent Judgments and Orders

[14] Rules 42.7 (1), (2), (3) and (4) describes the applicability of rule 42.7. The rule itself is stated at 42.7(5). Where rules 1-4 apply the rule as stated at 42.7 (5) requires that the order must be-

- a) drawn in the terms agreed
- b) expressed as being by consent
- c) signed by the attorney-at-law action for each party to whom the order relates; and
- d) filed at the registry for sealing.

Such orders are therefore completed by a mere administrative act without the need for judicial intervention.

[15] Rule 42.7 applies to judgments listed in 42.7(2) (a) and orders listed in 42.7 (2) (b) until September of 2006 these were the only instances in which judgments and orders could be completed without the intervention of a judge.

[16] On the 18th September 2006 rule 74.12 added to the list of the orders which could so be made, orders made in terms of a mediation report. The words “pursuant to rule 42.7” refer to the rule as stated in 42.7(5), thus adding orders made on a mediation agreement to the list of orders which can be made administratively without the need for judicial intervention.

[17] Thus such an Order must be-

- a) drawn in the terms agreed
- b) expressed as being by consent
- c) signed by the attorney-at-law acting for each party to whom the order relates; and
- d) filed at the registry for sealing.

[18] Of course if for example any party to the agreement is unrepresented or is a minor or patient or if any of the other circumstances described in rule 42.7(3), rule 42.7 would not apply and a judge’s intervention would be necessary for the making of the consent order.

[19] In the instant case, none of the provisions of rule 42.7(3) apply. No judicial intervention is therefore necessary. The judgment must be entered by a mere administrative act.

[20] The court is neither empowered nor obliged to intervene in the conversion of the mediation agreement in these circumstances into an order for the Court.

[21] In the event that neither party refuses to cooperate in having the agreement converted to an order of the court, the court can then be asked to order the unwilling party to sign nor alternatively the agreement can be enforced by an action as indicated by Clause 2b of the agreement.

[22] In light of this ruling there will be no order as to costs.