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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM NO. CL 1997/F031

BETWEEN FIRST TRADE INTERNATIONAL
 BANK & TRUST LIMITED PLAINTIFF

AND CROWN MOTORS LIMITED 1ST DEFENDANT

Keith Bishop for the plaintiff.

Miss Carol Davis for the defendants.

Heard: 10th February and 9th March 2005

Campbell, J.

On a re-issued Notice of Application for Court Orders the applicant, Crown Motors, seeks the following Orders:

1. There be a stay of proceedings with respect to the order for sale of premises at 5 Marescaux Road, Kingston 5, made by the Honourable Mr. Justice Campbell on the 2nd April, 2004.
2. That the monies currently held in account 02m0b811294 at Dehring Bunting and Golding Limited be transferred into the joint names of the attorneys-at-law for the Claimant and the Defendants herein or in the alternative be transferred into an account in the joint names of the attorneys-at-law, Claimant and the Defendant at The Bank of Nova Scotia Jamaica Ltd., Commercial Banking Centre, until further order of this Honourable Court.

Background:

First Trade International Bank & Trust Limited (the Bank) is a financial institution registered in the Bahamas. Crown Motors (Crown) is an importer retailer of motor vehicles and is one of a group of three companies, all of which are involved in the business of importation and sale of motor vehicles. The matters arise as a result of payments made pursuant to letters of credit issued by the Bank to beneficiaries of the companies.

On 18th September 1997, Mr. Justice Courtney Orr ordered that this action be consolidated with Suits No. C.L. F-030/1997 and C.L F31/1997, those suits being matters involving the Bank and the two remaining members of the group of companies.

On the 25th June 1998, Mr. Justice Carl Harrison ordered that the Crown Motors (in a case brought against Crown Motors only) pays to the Bank, the sum of US\$209,669.21 within 90 days into a joint account in the names of the attorneys-at-law for the parties “to abide the outcome of the consolidated suits.”

On the 24th day of February 1999, the Bank filed a Writ of Seizure and Sale, and in an attempt to get the fruits of its judgment, wrote letters dated 30th November 1999 and the 14th January 2000 to the Registrar of the Supreme Court, requesting that the Writ be issued without further delay. In the event, the Writ was

not issued out of the Court until the 9th February 2000 and forwarded to the Bailiff that same day.

The Bank alleges that the first communication they received from Crown Motors representatives was by way of a letter dated 16th March 2000, in which the Bailiff was asked to stay his hand until the end of the month.

On the 12th April 2000 Crown Motors filed an affidavit, by Desmond Panton, Chairman of Crown Motors, in support of Summons Pursuant to Liberty to Apply, in which he deponed that the only assets of Crown Motors are premises at No. 29 Hagley Park Road and Honda car parts valued at approximately J\$20,000,000 and approximately J\$15,000,000 respectively. He further alleged that, "Crown Motors is unable at this time to lodge the sum of US\$209,669.21 as ordered by the Court."

The Bank's attorneys carried out a title search at the Registrar of Titles which revealed other assets of Crown Motors, namely freehold premises at 8 Marescaux Road, Kingston 5, 89 Constant Spring Road, Kingston 8 and 91 Constant Spring Road, Kingston 8.

Application for Stay of Order for Sale

This application is to stay the Order for Sale, made on 2nd April 2004.

Desmond Panton, in his affidavit dated the 8th December 2004 in support of the application, states at paragraph 3 that,

“The said premises is owned by Crown Motors, and is currently occupied by Executive Motors, another company in our group of companies, and has been so occupied since 1987.”

At paragraph 10, Panton gives the reason for non-compliance with the Orders of Justice Harrison of 25th June 1998, as follows:

“That at the time that the judgment and Order was made, we did not have sufficient monies to put on the account. However, since that time one of the other companies in the group has recently sold land that belonged to them, and because of the embarrassment that is being caused by the sale herein is willing to put up all the monies that are currently due to the claimant.”

This explanation raises the enquiry, why the course was not pursued earlier.

And at paragraph 12:

“That pursuant to the judgment that is being enforced, the monies are to be paid into a joint account in the joint names of the attorneys-at-law for the claimant and the defendant. To my knowledge, this is because the matter is one of three consolidated suits.”

That Crown Motors was not joined in the trial of matters consolidated pursuant to the Order of 25th June 1998. The appeal in respect of the Order for Sale has only stated Crown Motors as the appellant.

Keith Bishop, in an affidavit dated 19th January 2005 filed in response to Desmond Panton's affidavit, 8th December 2004, deponed at paragraph 11, inter alia;

“That to the best of my knowledge, information and belief, the Hagley Park premises were heavily mortgaged and the Honda parts were not very valuable. That what Mr. Desmond Panton did not disclose to the courts is that the defendant owned property at 8 Marescaux Road, Kingston 8 and this property had no mortgage.”

On the 2nd April 2004, I had before me the Bank's Summons for Sale of Land and Crown Motors Summons to Amend and/or Set Aside Judgment, and made Orders (on the bank's Summons), inter alia;

- (I) The premises known as No. 8 Maresaux Road, Kingston 5, in the parish of St. Andrew, registered at Volume 1114 Folio 308 of the Register Book of Titles be sold.
- (II) That such enquires be made by the Registrar of the Supreme Court as may be necessary for the proper execution of the Order for Sale.
- (III) That the proceeds of sale be applied in the satisfaction of the judgement herein, interest and all costs and the balance (if any) distributed to persons entitled to the proceeds, according to their respective priorities. Leave to appeal was granted to Crown Motors.

Miss Davis submitted on behalf of the applicant, that the Order for Sale was made to procure the monies required for satisfaction of the judgment made on the 25th June 1998. That Order required that the funds be paid into a joint account “to abide the outcome of the consolidated actions” and that trial is now complete,

judgment having been handed down on the 7th February 2005. The defendants in the consolidated suits Key and Executive Motors were successful, and the Bank now owed to Key and Executive Motors more monies than is due from Crown Motors to the bank.

It is clear to me that the Order of Harrison J, was in respect of Crown Motors alone. It was also clear that it was the judgment that was delivered on 7th February 2005, in the consolidated matters, that Harrison J had ordered the sum awarded to Crown Motors on the 25th June 1998, to await the outcome of. That judgement is now shown not to be binding on Crown Motors, who was not a party to the suit. Crown Motors was never joined with the other matters for the trial. The claim that the Bank owes Crown Motors more than Crown Motors owes the Bank hinges on an assignment to Crown Motors of the judgement debt awarded to Key Motors. It was open to Crown Motors to join the bank in the consolidated matters, if their presence before the Court was deemed necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions between the parties.

The Order of 25th June 1998 was to have been complied with within ninety days of that date, i.e. by the 24th September 1998. There was no appeal from that judgment.

The applicant has not demonstrated any good reason for its delay in complying with the Courts Order. The ground on which the application is based is that there have been (1) no compliance with the directions given in the Order for Sale; and (2) That *the defendants* have “suffered great prejudice by the advertisement of *their premises* and the impending sale thereof.” (emphasis mine)

In Keith Bishop’s affidavit dated 19th January 2005, in Response to affidavit of Desmond Panton, the affidavit states at paragraph 8; inter alia,

“That in response to paragraph 5, I disagree and wish to say that the Registrar conducted her inquiries on the 13th January 2005 and to the best of my knowledge, information and belief, the said Registrar was satisfied that the title was without caveat or any encumbrances, which would delay or prevent a transfer of the premises known as 6 Marescaux Road, Kingston 5 and registered at Volune1 114, Folio 308.”

The second ground of the application refers to the defendants. The notice of application in which the ground is contained mentions a single defendant, Crown Motors. In any event it is agreed that Crown Motors is the sole owner of the premises. Panton said that the property is owned by Crown Motors (see paragraph 3 of affidavit dated 8th December 2004). On the question of prejudice, if it does exist must be minimal to Crown Motors, which company is non-trading. In his affidavit dated 12th April 2004, Panton states at paragraph 11,

“The defendant, Crown Motors, is no longer trading. The said company previously held the dealership for

Honda motorcars, but lost that dealership on or about September 1997. Since that time the said Crown Motors has done little business.”

The applicant has failed to make out any special circumstance that would incline me to the view that it is inexpedient to enforce the judgment. The Bank has effectively been kept out of the fruits of its judgment since the Order was made.

The application is dismissed, with cost to the claimant to be agreed and or taxed.