

IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO. 667 OF 2011

BETWEEN:

CARLOS JEX	Claimant
AND	
REEF VILLAGE ESTATES LIMITED	Defendant
AND	
TIGER AGGREGATES LIMITED	Third Party/ Interpleader

In Chambers.

BEFORE: Hon. Chief Justice Kenneth Benjamin.

May 21 & June 5, 2013.

Appearances: Mrs. Julie-Ann Ellis Bradley for the Claimant.
Mrs. Alifa Elrington-Hyde for the Defendant.
Mr. Darrell Bradley for the Third Party/Interpleader.

JUDGMENT

[1] Judgment in default of acknowledgement of service has been entered by the Claimant against the Defendant in the sum of \$89,377.50 together with interest at the rate of 6% per annum from the date of judgment until paid. On February 13, 2012, a writ of execution was issued at the request of the Claimant for the recovery of the

judgment debt. Pursuant to the said writ of execution the marshal marked the following items:

“1 Black & yellow Barge ‘Jerry B’

1 Black & yellow Tug Boat ‘Bodacious’ “

The said marking, according to the record, took place on March 26, 2013.

[2] On March 28, 2013, the Tiger Aggregates Limited filed a notice of application seeking relief by way of interpleader in respect of the said chattels on the basis of being the legal and beneficial owner by virtue of a Bill of Sale dated March 10, 2013. The application was supported by the affidavit of Ronald Sutherland, a director of Tiger Aggregates. The purported Bill of Sale was exhibited to the said affidavit. In response, the Claimant swore to and caused to be filed an affidavit disputing the Bill of Sale as being void and opposing the grant of relief by way of interpleader sought by Tiger Aggregates.

[3] Both affidavits acknowledged that prior to the signing of the purported Bill of Sale on March 10, 2013, the chattels had been taken in execution to satisfy a judgment obtained by Carey Paul against the Defendant in Claim No. 236 of 2009. The Claimant also adduced evidence of a writ of execution dated the 21st day of March, 2013 issued at the request of Nationwide Cash Express Ltd. (“Nationwide”) in Claim No. 537 of 2011 against the Defendant and of the said chattels having been marked by the marshal on March 21, 2013.

[4] Tiger Aggregates contended that it had acquired legal title to the chattels by virtue of the Bill of Sale dated March 10, 2013 entered into with the Defendant for the purchase of the chattels. The said Bill of Sale is best reproduced in full:

"BILL OF SALE

FOR BOAT AND BARGE

FOR GOOD CONSIDERATION and in payment of \$125,000 US receipt acknowledged, the undersigned (Seller) Reef Village Estates Ltd., Reef Village Drive, San Pedro, Belize, CA

hereby sells and transfers to

(Buyer) Tiger Aggregates Ltd., Belmopan, Belize, CA the following Boat:

Make: Aluminium Tug Boat and Steel Barge is 100 ft x 35 feet

Model: Custom

Engine Number: 6A044195 & 6A0444266

Vessel Identification Number: BZ 1022 and SPR 0262 Jerry B & Bodacious

Seller warrants that it is the legal owner of said Boat, that Boat is being sold free and clear of all claims and incumbrances, that seller has full right and authority to sell and transfer same, and will protect and indemnify Buyer from all claims adverse thereto.

Said Boat is being sold "as is" without any express or implied warranty as to condition or working order.

Terms of payment are \$81,268 US for the assumption of accounts payable of Reef Village to Tiger Aggregates.

\$43,732 US cash payment to Barrow & Co.

Total Payment: \$125,000 US

Signed this 10th day of March, 2013.

Signed (seller) (Reef Village Estates Ltd) Reef Village Estates Ltd., Jeff Pierce, Director

Signed (buyer) (R Sutherland) Tiger Aggregate, Ron Sutherland, Director.”

In his affidavit, Ronald Sutherland explained that the sum of US \$43,732.00 representing the balance owed on the judgment debt to Carey Paul was paid over to the auctioneer acting on behalf of the judgment creditor’s Attorneys-at-Law. In this regard, evidence of a payment voucher dated March 22, 2013 in the equivalent sum of BZ \$88,229.29 was exhibited. It was further stated that the balance of US \$81,268 remaining on the purchase price of \$125,000 US was applied to liquidate a debt owed by the Defendant to Tiger Aggregates.

[5] It is plain that on the date of the execution of the Bill of Sale the chattels were already marked towards execution in respect or the judgment debt owing to Carey Paul. Further, the chattels were again marked on March 21, 2013, which predated the liquidation of the debt to Carey Paul, and such liquidation was subsequent to the issue of the writ of execution at the request of Nationwide.

[6] It was argued by learned Counsel on behalf of the Interpleader Claimant, Tiger Aggregates, that it acquired an equitable interest in the chattels upon the execution of the Bill of Sale and that the said interest was perfected on March 22, 2013 when payment was made in respect of the judgment debt to Carey Paul. In response to a question, learned Counsel stated that the marking of the chattels pursuant to the writ of execution requested by Nationwide did nothing to alter the status of Tiger Aggregates as a purchaser for value in good faith. In her submissions, learned Counsel for the Defendant supported the contention that the interpleader Claimant, Tiger Aggregates, had obtained title to the goods as a bona fide purchaser for valuable consideration.

[7] The affidavit of the Claimant highlighted that contrary to the Defendant warranting in the Bill of Sale that the chattels were “free and clear of all claims and encumbrances” at the date of signing, the chattels were already taken in execution to satisfy a judgment obtained by Carey Paul. Ergo, the Defendant was not at liberty to

deal with the chattels as it purported to do in entering into the Bill of Sale. Indeed, the chattels would have been further encumbered by the marking at the instance of Nationwide on March 21, 2013.

[8] The Claimant went on to depose that he believed that Ronald Sutherland was aware of the unsatisfied judgments in favour of Nationwide, himself and others in respect of which writs of execution were issued. However, the source of the Claimant's belief was not stated. However, the Claimant went on to state that from correspondence with the Defendant and conversations with its director, Jeff Pierce, he believed that Ronald Sutherland was a director of the Defendant around the time when the Bill of Sale was signed. A search by his Attorney-at-Law confirmed that Sutherland is currently a director of the Defendant. The asserted fact of the directorship has not been denied by Tiger Aggregates or the Defendant and, as such, I have accepted that to be the case.

[9] Having regard to Ronald Sutherland being a director of both Tiger Aggregates and the Defendant, it seems plain to me that more likely than not he was aware of the unsatisfied writs of execution in particular and the indebtedness of the Defendant in general. Thus, Tiger Aggregates cannot be regarded on the facts as a bona fide purchaser for valuable consideration without notice.

[10] The legal effect of a writ of execution is provided for in section 28(1) of the Sale of Goods Act, Chapter 261 of the Revised Edition, 2000 of the Laws of Belize. The said section 28(1) enacts:

“28(1) A writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the Registrar to be executed and for the better manifestation of such time, it shall be the duty of the Registrar without fee, upon receipt of any such writ, to endorse upon the back thereof the hour, day, month and year when he received it, but no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time he acquired his title notice, that such

writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the Registrar.”

This provision mirrors section 138 of the Supreme Court Act, 1981 [UK] which replaced section 26 of the Sale of Goods Act, 1893. The effect of property being ‘bound’ is that the judgment creditor retains the property in the goods until execution sale; in the interim, he can legally deal with the goods himself until they are seized or, until the sale, he can pass property to others (see para. 468 of Halsbury’s Laws of England, 4th ed. Volume 17.) However, any transfer or assignment of the goods would be subordinate to the right of the marshal to seize the goods under the writ. In cases where there is a sale in market overt or purchase by a person in good faith for valuable consideration without notice of a writ of execution, the proviso to section 28(1) provides protection to such a purchaser.

[11] The approach to be taken in dealing with the proviso to section 28(1) can be gleaned from the dicta of Phillimore, J in **Murgatroyd v Wright [1907] 2 K.B. 333**. His Lordship had this to say (at p. 339) -

“... Now the burden of proof of that proviso which is a defeasance of the earlier part of the section, rests upon the holder of the bill of sale. He has to prove that he acquired the title to the goods in good faith and for valuable consideration after the goods had been bound by the writ, and before the seizure. If he does so prove, the burden is then shifted, and the execution creditor must prove that the holder of the bill of sale had notice of the writ of execution.”

In the present case, Tiger Aggregates did not through the affidavit of Ronald Sutherland address the question of notice. In point of fact, Ronald Sutherland stated that he was well aware of the existence of the judgment debt and the chattels being marked by the marshal in respect of the judgment debt owing to Carey Paul and of the subsequent marking by the marshal before the debt to Carey Paul was liquidated.

[12] The state of the evidence is that as at March 10, 2013, when the Bill of Sale was executed, the chattels were already marked and were again marked on March 21, 2013. Accordingly, inasmuch as the debt to Carey Paul would have been liquidated on March 22, 2013, the judgment debt to National remained unsatisfied. Of both debts, Tiger Aggregates admitted knowledge of the unsatisfied judgments and thus cannot avail itself of the proviso in section 28(1). The result in law is that Tiger Aggregates has not acquired ownership of the chattels.

[13] By virtue of the foregoing Tiger Aggregates is not entitled to the relief sought by way of interpleader having failed to establish ownership of the chattels. Accordingly, the application by Tiger Aggregates shall stand dismissed. Tiger Aggregates shall pay the costs of the Claimant fixed in the sum of \$1,500.00.

KENNETH A. BENJAMIN
Chief Justice