

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 152 of 2022

BETWEEN:

BELIZE BANK LIMITED

Claimant/Judgment Creditor

AND

**SHERLETTE LOUISE OGALDEZ
JOHN RAYMOND CHOCO**

First Defendant/Judgment Debtor
Second Defendant/Judgment Debtor

Appearances:

Mrs Andrea Mckoy – counsel for the judgment Creditor
No appearance by Defendant/Judgment Debtor

18 April 2024

22 April 2024

**RULING
IN RESPECT OF A JUDGMENT SUMMONS
(subject to editorial corrections)**

Practice and procedure – late and unsubstantiated requests for adjournments – legal practitioners’ duties - need for compelling grounds for adjournment requests – duty to attend scheduled hearings – duty to diligently represent client’s interests - striking out of judgment summons for non-compliance with the CPR 52.3(1)

[1] **HONDORA, J.** this is my ruling:

- (a) dismissing the claimant’s/judgment creditor’s application for an adjournment of the hearing of the judgment summons;
- (b) striking out the judgment creditor’s judgment summons; and
- (c) directing counsel for the judgment debtors, Mr Orson Elrington to provide an explanation for his and his clients’ non-appearance for the hearing on the judgment summons.

Key Facts

- [2] The claimant/judgment creditor (judgment creditor) was granted default judgment against the first and second defendants (judgment debtors) on 8 July 2022 for the sum of BZ\$91,833.23, plus interest at the statutory rate of 6% per annum.
- [3] It is the judgment creditor's case that the judgment debtors have not satisfied the judgment debt.
- [4] On 25 January 2024, the judgment creditor sought and obtained a judgment summons from the court office for the amount due on the judgment as well as interest and costs. In total, in its judgment summons, the judgment creditor is seeking payment of BZ\$98,603.39.
- [5] Pursuant to Rule 52.2(2) of the Civil Procedure Rules (CPR), the court office affixed a return date for a virtual hearing of the judgment summons and that date was 18 April 2023. The court office also sealed the judgment summons and returned it to the judgment debtor's legal representative, Messrs Balderamos Arthurs LLP for service upon the judgment debtors.
- [6] By letter dated 16 April 2024 received at the court office on 17 April 2024, Messrs Balderamos Arthurs LLP informed the court that counsel for the judgment debtor, Mrs Mahler *"is scheduled to be out of the country on a work commitment on the said date and will therefore be unable to appear on our client's behalf. As such, we respectfully request a short adjournment of the said hearing."*
- [7] By "said date", Mrs Mahler meant 18 April 2024, which was the date fixed for the hearing of the judgment summons.
- [8] The matter was called for hearing on 18 April 2024 at 10:30AM. Mrs Mckoy of Messrs Makoy Torres LPP appeared for the judgment creditor and informed the court that she was doing so on behalf of Ms Mahler of Balderamos Arthurs LPP who was unable to attend court as she was not in the country. Mrs Mckoy also appeared with a representative from Belize Bank Limited, the judgment creditor.
- [9] There was no appearance from the Defendants or their lawyer, Mr Orson Elrington of Elrington and Company. On 16 August 2022, Mr Elrington filed with the court office a "Notice of Acting" dated 28 July 2022, stating that he was the defendants' legal practitioner of record.

Request for adjournment

- [10] After informing the court of the circumstances under which she came to be representing the judgment creditor in the matter before the court, Mrs Mckoy proceeded to make an application for an adjournment on the basis that Mrs Mahler, who is the substantive counsel for the judgment debtor, was out of the country. In her submissions, she relied on Ms Mahler's letter to the Registrar dated 16 April 2024, which was received on 17 April 2024.
- [11] I dismissed Ms Mckoy's application for an adjournment of the hearing of the judgment summons on the basis that no good or proper reasons had been given for the request and, as appears below, an adjournment would be without purpose.

- [12] The reason given for the request for an adjournment is that Mrs Mahler of Messrs Balderamos Arthurs LLP is not in the country and is unable to personally represent the judgment creditor. That is neither a good nor sufficient reason to grant an adjournment.
- [13] For the hearing on the judgment summons, the judgment creditor is represented is Mrs Mckoy. It has not been argued and the facts do not support any argument that not granting an adjournment would result in an unfair trial.
- [14] That apart, the judgment creditor and its lawyers have known since 25 January 2024 that the judgment summons was due to be heard on 18 April 2024. In the letter dated 16 April 2024, Messrs Balderamos Arthurs LPP did not provide the court with any information on the “work commitment” that necessitated Mrs Mahler’s travel outside the country. In addition, the court was not informed of when Mrs Mahler became aware of the other unstated “work commitment” of which in the absence of any other information to the contrary, she must be presumed to have known for some time.
- [15] In the circumstances, it was not appropriate to request an adjournment of a hearing set for 18 April 2024 only on 16 April 2024 on the basis only that the lawyer handling the matter “is scheduled to be out of the country on a work commitment on the said date and will therefore be unable to appear on [the] client’s behalf.”
- [16] If, in advancing the overriding objective, a court is to properly exercise its discretion in favour of an application for an adjournment, a legal practitioner must do more than inform the court of their claimed inability to appear for the hearing of a matter. They must seek leave and their reason for their claimed inability to appear before the court for a scheduled hearing must be proper, compelling, and communicated in a timely manner.
- [17] In addition, a legal practitioner’s unstated “work commitments” outside Belize cannot without more trump their obligations to appear before the court for a scheduled hearing. If there is - as a matter of demonstrated fact - a genuine clash of commitments, a lawyer’s professional obligations to the court must take priority with leave sought on clearly compelling grounds. A legal practitioner must support their application for leave to be excused from appearing before the court for a scheduled hearing with relevant information and/or evidence and not on the basis of bare assertions of unstated other work commitments.
- [18] The Senior Courts of Belize are working to reduce case backlogs, which judges are beholden to resolve through, among others, active case management as set out in Part 25 of the Civil Procedure Rules (CPRs). Lawyers have a role to play in the reduction of case backlogs, which in turn promotes the just, timely and expeditious resolution of their clients’ cases. In this regard, and as officers of the court, lawyers have a duty to inform the court at the earliest opportunity of any matters that might adversely affect the realisation of set deadlines.
- [19] In the circumstances, it will be a rare and exceptional case in which the court will postpone a matter in response to or to accommodate a request for an adjournment made on unsubstantiated assertions of alleged work commitments and in circumstances where it has not been contended or where the facts do not establish that not granting an adjournment would adversely affect a litigant’s fair trial rights.
- [20] In fairness to Mrs Mckoy, I am sympathetic to her situation because she was given instructions at the last minute and, it would appear, with limited remit. She is to be commended for stepping in and representing the judgment creditor and for advancing compelling submissions in a challenging set of circumstances.

[21] That said, since no good reasons were provided for the request, I dismissed Mrs Mckoy's application for the adjournment of the hearing of the judgment summons.

Striking out of judgment summons

[22] In addition to dismissing the judgment creditor's application for an adjournment, I also struck out the judgment summons. I did so for the following reason.

[23] I enquired from Mrs Mckoy whether:

(a) the judgment creditor had served the judgment summons on the judgment debtors not less than 7 days before 18 April 2024, the date set for the hearing of the judgment summons (see CPR 52.3(1); and

(b) the judgment creditor had filed affidavits of service not less than 3 days before the hearing (i.e., 18 April 2024) (CPR 52.3(2)).

[24] Mrs Mckoy was unsure and requested time to consult, which request I granted. Pending her attempts to secure instructions, the court was able to confirm that two affidavits of service had been filed on the electronic case management system. But the judgment creditor did not submit and deliver hard copies of the judgment summons with the court office.

[25] In the circumstances, the judgment creditor did not comply with CPR 52.3(2) of the CPR, which stipulates "*The judgment creditor must file an affidavit of service not less than 3 days before the hearing*" and had not, as required by Rule 3.7 of the CPR, delivered at the court office any affidavit of service. As a result, Rule 52.3(2) of the CPR had not been complied with.

[26] In the circumstances, an adjournment of the hearing would have served no purpose since the judgment creditor had not complied with CPR 52.3(1).

Mr Elrington's non-appearance

[27] This matter also raises a rather concerning issue pertaining to Mr Elrington's conduct.

[28] As noted above, the hearing of this matter was scheduled for 10:30AM.

[29] At 10:33AM, my marshal sent Mr Elrington a WhatsApp message reminding him of the hearing before me. Mr Elrington responded at 10:33AM as follows: "This is for which matter?".

[30] In her response at 10:34AM, my marshal informed Mr Elrington of the details of the case.

[31] At 10:46, Mr Elrington responded stating: "The other party asked for an adjournment (*sic*). To which we agreed. So I did not think we had to attend."

[32] In her response at 10:47AM, my marshal informed Mr Elrington that "the adjournment was not granted by the court" to which Mr Elrington responded, "Ok, duly noted. I will have SC attend." And at 10:58, Mr Elrington texted my marshal again and stated: "I will sign in shortly. Kindly extend my apologies".

- [33] Mr Elrington did not log-on for the virtual hearing and the matter was concluded without any appearance by him. I find Mr Elrington's conduct less than impressive.
- [34] Mr Elrington must know that it is not the role of the court office or marshals to follow-up or remind legal practitioners on the hearing of their matters. The duty to diligently represent clients' interests and to appear before the court as scheduled lies squarely upon litigants and their lawyers. Lawyers who turn up late for either for in-person or virtual hearings and without any reasonable explanations or those who fail to attend may well face severe sanctions.
- [35] I asked Mrs Mckoy to address the court on the fact that the defendants and their lawyer were not in attendance. In response, Mrs Mckoy noted that in her letter dated 16 April 2023 addressed to the Registrar of the High Court, Ms Mahler indicated that she had "*conferred with Mr Orson Elrington, Counsel for the Defendants who has indicated that he has no objections to our request*" for a short adjournment.
- [36] It is, of course, commendable and Counsel are encouraged to consult each other on pending litigation, including on procedural matters. However, whilst constituting good practice, agreements on requests for adjournments are not binding on the court as aptly noted by Mrs Mckoy in her submissions to the court. Mr Elrington must know that he is not (and was not) excused from attending court and neither are his clients. Informing opposing counsel that he had no objection to a request yet to be made for an adjournment did not constitute a licence to not attend court on the hearing date.
- [37] Mr Elrington's failure to appear is to be contrasted with the approach adopted by Mrs Mahler who sought the assistance of Mrs Mckoy in discharging her professional and ethical duties to this court and to her client. For his part, Mr Elrington opted to not appear and offered no explanation for his failure to attend court and to make submissions advancing his clients' interests. This conduct and his glib responses to my marshal's overtures regarding his non-appearance are concerning.
- [38] Mr Elrington's retort that he did not think "we had to attend", by which he presumably meant that he did not think that his clients (the defendants) and himself needed to appear before the court for the scheduled hearing because the "the other party had asked for an adjournment (*sic*)" is surprising given that he is a seasoned legal practitioner.
- [39] It is unclear whether the two judgment debtors were informed by Mr Elrington to not appear before the court for the hearing on the judgment summons. That would be a serious matter indeed if that is indeed what transpired.
- [40] To be clear and for emphasis, the fact that Mrs Mahler indicated to Mr Elrington that she would be seeking an adjournment is not a good reason to not attend the scheduled hearing and/or to inform his clients to not attend court, assuming that to be the case.
- [41] There is no gainsaying that a deliberate failure to appear in court without good cause, even if it is on legal advice, following proper service and receipt of a judgment summons is prima facie contemptuous and may well result in the imposition of sanctions against errant litigants.
- [42] The facts of this matter and in particular Mr Elrington's conduct gives serious cause for concern. In the circumstances, I order Mr Elrington to write to the Registrar no later than 26 April 2024 providing an explanation for his and his clients' failure to attend the hearing that was scheduled for today 18 April 2024.

Order

[43] IT IS HEREBY ORDERED THAT

- (1) The judgment creditor's application for an adjournment of the hearing of the judgment summons is dismissed.
- (2) The judgment summons issued to the judgment creditor with a return date of 18 April 2024 is struck out without prejudice to the future reissuance by the judgment creditor of new judgment summons against one or both judgment debtors.
- (3) Mr Orson Elrington is ordered to write to the Registrar no later than 26 April 2024 providing an explanation for his and his clients' failure to attend the hearing that was scheduled for 18 April 2024.

**Dr Tawanda Hondora
Judge
High Court – Civil Division**