

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 405 of 2015

BETWEEN:

**[1] ALFREDO ACOSTA
[2] ANGELIQUE ACOSTA**

Judgment Creditors

and

**[1] MARCO CARUSO
[2] PLACENCIA LAND AND DEVELOPMENT COMPANY LTD.**

Judgment Debtors

Appearances:

Wayne Piper for the Judgment Creditors

John Nembhard for the Judgment Debtors

2023: July 7
October 16

DECISION

[1] **FARNESE, J.:** Alfredo and Angelique Acosta (the Acostas) received a judgment against Marco Caruso and the Placencia Land and Development Company Ltd. (Placencia Land) for \$707,525.00 in 2015. The Acostas say that when interest and fees for collection are included, \$395,350.38 remains outstanding. In response to the judgment summons, Mr. Caruso and Placencia Land allege that the debt has been paid. They say that the Acostas are not accounting for payments and

transactions made in lieu of direct payment of the debt, including the purchase of a truck and the offsetting of a debt owed by the Acostas' family to the Placencia Hotel.

- [2] I find the Acostas have failed to meet the burden required for the court to issue an order after hearing the judgment summons. The Acostas have not addressed whether Mr. Caruso and Placencia Land have the means to pay the judgment debt and have neglected or refused to do so. The Acostas have also not satisfied the court that money remains owing on the judgment debt.

Analysis

- [3] Rule 45.2 the Supreme Court (Civil Procedure) Rules, 2005 (CPR) provided the Acostas with 5 options for enforcing their judgment against Mr. Caruso and Placencia Land. They could have sought an order to seize and sell goods, a charging order, a garnishee order, the appointment of a receiver, or a judgment summons. If a judgment summons is pursued, the Debtors Act¹ applies and restricts the circumstances of when a person can be committed for debts.² The Debtors Act requires the judgment creditor to prove that the judgment debtor has the means to pay and refuses or neglects to do so.³
- [4] The Acostas elected to proceed by way of a judgment summons and applied under CPR 52.2(1) for a judgment summons. CPR 52.2(1) provides that:

- 52.2 (1) An application to commit a judgment debtor for failing to pay all or part of the judgment debt must be made by way of judgment summons in Form 21 and must state –
- (a) the date and details of the judgment or order requiring payment of the debt;
 - (b) what payment has been made by the judgment debtor; and
 - (c) the amount of interest claimed to the date of the application and the daily rate thereafter.
- (2) The court office must –
- (a) fix a date for hearing of the judgment summons; ii
 - (b) seal the judgment summons; and
 - (c) return the order to the judgment creditor for service.

¹ Cap. 168, The Substantive Laws of Belize, Rev. Ed. 2020.

² CPR 45.2(e).

³ Debtors Act at s.4(1)(b).

CPR 52.4(b) and (c) outlines the power of the court and the factors the court must consider at the hearing of the judgment summons:

52.4 At the hearing of the judgment summons, the court may –

...

(b) receive evidence as to the means of the debtor in any manner that it thinks fit; and

(c) if satisfied that all statutory requirements have been met –

(i) commit the judgment debtor for such fixed term as is permitted by law;

(ii) suspend such committal upon payment of the judgment debt on such dates and by such instalments as the court may order;

(iii) make an order for payment of the judgment debts by a particular date or by specified instalments and adjourn the hearing of the judgment summons to a date to be fixed on the application of the judgment creditor;

(iv) adjourn the hearing of the summons to a fixed date; or

(v) dismiss the judgment summons.

Proof of service is the only statutory requirement other than those listed in CPR 52.2(1). The Acostas' application satisfies the statutory requirements.

[5] A judgment summons is a quasi-criminal proceeding because committal is a possible outcome, therefore, the Acostas have the burden to prove that Mr. Caruso and Placencia Land have failed to pay all or part of the judgment debt, that they have the means to pay the debt and refuse or neglect to do so. The Acostas cannot avoid the Debtors Act requirements, by saying that they seek only an order under CPR 52.4(c)(iii), because they have not restricted their application in such way. Moreover, I have found no authority that would permit a party to limit the discretion given to a judge by the CPR on hearing a judgment summons.

[6] In **Tower Hill Merchants Ltd and Central Marketing Corporation**,⁴ the learned judge explained that the judgment summons is widely misunderstood. A judgment summons is often used improperly by judgment creditors to ensure the judgment debtor will attend court for examination instead of applying under Part 44 of the CPR for an oral examination of the judgment debtor.⁵ While a judge hearing the summons may permit the judgment creditor to lead evidence learned at the oral examination, the judgment summons is not to be used as a fact-finding exercise to

⁴ Claims No. ANUHCV2014/0281 and 0561 [Tower Hill].

⁵ Tower Hill at para 13.

determine whether the judgment debtor has the means to pay the debt and has failed or neglected to do so. The judgment creditor is required to prove those facts.

[7] Part of the confusion as to what the judgment creditor must prove likely arises because judgment debtors, facing committal, often arrive with a proposal for how they will satisfy the judgment debt. This proposal serves as admissions that debt is outstanding, they have the means to pay, and they have neglected to do so. In those circumstances, the judge generally tries to help the parties agree to a payment schedule or hears arguments as to whether that amount proposed by the judgment debtor is reasonable. Obtaining an order for committal is generally not the first consideration. The judgment creditor's principal objective is usually to receive payment of the judgment debt unless there are concerns that the debtor may not comply with an order for payment. In those cases, committal may be ordered but immediately suspended provided payments are made.

[8] I was unable to find any Belizean cases which address the standard of proof required on a judgment summons. British authorities have started to debate whether the criminal standard of proof applies because the judgment debtors' fundamental right to a fair trial is invoked when their liberty is at risk.⁶ Subsections 6(2) and (3) of the Belize Constitution⁷ similarly guarantee a person charged with a criminal offence a fair hearing and the right to be presumed innocent. Therefore, the quasi-criminal nature of the judgment summons process may invoke these constitutional guarantees. For reasons which will become clear, it is not necessary for me to resolve this question at this time. I nonetheless wish to alert future litigants to this issue as it is ripe for consideration.

[9] If the criminal standard applies, a further question arises as to whether the judge has discretion to order that payments be made under CPR 52.4(c)(iii) where the judgment creditor fails to meet the higher standard, but meets the lower, civil standard. In **Fitzroy Warner v Hotel Equity Fund V, LLC**⁸ the Eastern Caribbean Court of Appeal decided that the right to appeal a decision without leave of the court did not apply to a suspended committal order following a judgment summons. The Court of Appeal held that the court retained the right to exercise discretion not to punish the

⁶ Prest v Prest [2016] 1 FLR 773 at para 55.

⁷ Belize Constitution Act, Cap. 04, The Substantive Laws of Belize, Rev. Ed. 2020.

⁸ HCVAP 2009/002 [Fitzroy].

judgment debtor, therefore, the order did not involve the restriction of liberty.⁹ **Fitzroy** offers support for the argument that orders that directly restrict liberty should be treated differently than those that do not. It may follow that the standard of proof differs as well.

[10] The Acostas have failed to meet their burden, whether the civil or criminal standard applies, because they have not addressed the mandatory preconditions of an order under CPR 52.1(1). No evidence was led as to Mr. Caruso or Placencia Land's ability to pay. The entire hearing focused on whether an outstanding debt remains. Consequently, even if I find that the judgment debt has not been paid, the Acostas cannot receive the order for payment or committal they seek.

[11] Mr. Acosta and Mr. Caruso were cross examined at the hearing of the judgment summons. As explained, their evidence differed as to whether there remains an outstanding amount to be paid. The most compelling evidence in support of the Acostas' claim is the fact that no notice of satisfaction of the debt was ever filed. I find several other factors that mitigate against a finding of an outstanding debt outweigh the absence of a notice of satisfaction.

[12] First, the parties agree that Mr. Caruso made regular payments in satisfaction of the judgment debt from May 2016 to November 2017. Mr. Acosta alleges that no further payments on the judgment debt were made after November 2017 and that \$201,426.62 remained owing. Despite the significant amount he alleges was owing, Mr. Acosta says he waited until 2022 to bring this claim because he was involved in another, bigger lawsuit with Mr. Caruso. The particulars of that lawsuit were not shared with the court. While this fact may explain why he did not pursue enforcement, it does not explain why no inquiries were made when the payments stopped. In support of his claim, Mr. Acosta submitted into evidence WhatsApp messages with Mr. Caruso from around the time the payments stopped. If debt was outstanding, it is reasonable to conclude that Mr. Acosta would have asked why the payments had unexpectedly stopped. In the circumstances, I find it reasonable to draw a negative inference from this absence of evidence.

[13] I also prefer the evidence of Mr. Caruso to Mr. Acosta over the circumstances of the transfer of money to purchase a truck in 2017. Mr. Acosta says Mr. Caruso loaned him money to purchase a

⁹ Fitzroy at para 20.

truck from a person who relocated to the USA. Mr. Acosta claims that he needed the temporary loan because he was having cash flow problems. He subsequently received a bank loan for a near equivalent amount to the cost of the truck, in which he used the truck as collateral. Mr. Acosta says he reimbursed Mr. Caruso for the loan by paying Mr. Caruso directly, but also made payments to third parties. Mr. Acosta asks this court to accept his claim as credible because the amount of the loan was close to the value of the truck. Mr. Caruso says that paying for the truck was deducted from what he owed on the judgment debt. Mr. Caruso says payments made to him by Mr. Acosta were not for the truck loan, but were payments for a small gambling debt, further hospitality charges, and expenses associated with the truck vendor's relocation.

[14] I find several things about this loan troubling. First, it is not surprising that the loan reflected the value of the truck. The truck was used as collateral to secure the loan. Next, the evidence establishes that Mr. Acosta had cash flow issues when he purchased the truck. The court also notes that Mr. Acosta is alleging he acquired a bank loan to purchase the truck. If I accept Mr. Acosta's claims at face value, I find it difficult to believe that any reasonable person would repay Mr. Caruso for the truck purchase if \$201,426.62 was owing on the judgment debt unless there was a compelling reason to do so. Mr. Caruso has not offered a compelling reason.

[15] In addition, prior to commencing payments in 2016, Mr. Caruso took aspects of this claim to the Court of Appeal in an attempt to avoid paying the judgment. Having successfully defended against Mr. Caruso's efforts to avoid repayment, I find it difficult to imagine that without a substantial portion of the debt having been paid, there would be sufficient good will and trust between the parties to facilitate either the truck loan or an additional loan the parties agree Mr. Acosta made to Mr. Caruso in 2017 through corporate entities each controlled. Mr. Acosta's evidence that he was in another, bigger lawsuit with Mr. Caruso further supports my conclusion that the parties would be unlikely to agree to further loans with one another if \$201,426.62 was still owing on the judgment debt.

[16] Finally, the Acostas ask this court to disregard the evidence of hotel charges because those debts predate the judgment and have not been proven to have been owed by the Acostas. While it was in Mr. Caruso and Placencia Land's interest to bring forward this evidence to challenge the claim that the judgment debt was not paid, they were not obliged to do so. The burden of proof is on the Acostas. For reasons I have already explained, the Acostas failed to meet their burden before I

considered Mr. Caruso and Placencia's evidence of payment of the judgment debt. Therefore, making findings on how the debt was paid is unnecessary and, in the circumstances, unwise as it suggests that the burden shifts to Mr. Caruso and Placencia Land to prove they have paid the debt.

Disposition

[17] The court orders and declares:

- a) The judgment summons is dismissed.
- b) Costs are awarded to Mr. Caruso and Placencia Land in the amount of \$2500.

**Patricia Farnese
High Court Judge**