IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCV2016/0002

BETWEEN

SYLVESTER SOLOMON	**Claimant**
AND	
JULIAN ROMEO	**Defendant**

APPEARANCES

Mr Jean Kelsick for the defendant Romeo.

Mr Rushaine Cunningham for the claimant Solomon.

2021: JANUARY 7

RULING

On whether a writ of execution is still valid

1 **Morley J**: The claimant Solomon lost this action on 23.03.17 and was ordered on 01.03.19 to pay costs of $7575ec. There is a long history to proceedings. Solomon has almost always been unrepresented. There was a ruling on 13.11.20 which sets out some of the narrative and complications, to be read in conjunction. Solomon still owes about $5000ec to Romeo.

2 By way of background, items were seized and auctioned on 09.10.20 under a writ of execution sought on 05.03.19, (it appears issued in April 2019). Curiously, the shelf value of the items seized ought in theory to have more than covered the debt, meaning once seized Solomon has thought the debt covered, but in fact, regrettably, the auction process, when it finally occurred, raised little of arguably the true value. The fact the seizures have not settled the debt, as Solomon expected, so that he remains trapped in this continuing litigation, has led to consternation on his part.

3 Then during hearings in November 2020, some as yet unsold items were said by Solomon to have been pilfered, though by police report of 07.12.20 the bailiff has been exonerated, which means in principle a 'Microsoft Surface' and an 'Onkyo receiver' can now be sold, along with a seized fridge.

4 However, further complication now arises, which is the point of this ruling, over whether the writ of execution of April 2019, sought on 05.03.19, became defunct by April 2020, meaning any items sold under it, on 09.10.20 - interalia a bike, sofa, slicer, dell computer, and fridge, raising $3150ec - should be recovered and given back to Solomon, or if not recoverable, should result in the Registry being possibly sued for their value as wrongly auctioned. Further, if defunct, the Onkyo and Surface, plus the fridge, it is now said cannot be auctioned, (irrespective of the pilfering mystery).

5 In short, Solomon is presently making an argument everything seized and sold must be returned to him, or he will sue Registrar Meade as the Registry in loco the bailiff.

6 To assist him, while he says he is without funds, Solomon has retained the help of Counsel Cunningham, of much ability, who has mounted argument why the writ of April 2019 is now defunct. The argument is simple, filed on 10.12.20, supplemented on 16.12.20. Under the **CPR 2000** it says:

> **Rule 46.10**
> (1) A writ of execution is valid for a period of 12 months beginning with the date of its issue.
> (2) After that period the judgment creditor may not take any step under the writ unless the court has renewed it.

7 Counsel Cunningham suggests any items seized under the writ should all have been sold within a year of the writ's issue, meaning by April 2020, very probably by 05.03.20 as when first sought, so that any later auction, and further seizure and further auction, are ultra vires.

8 Initially on 11.04.19 a bike and leg press were seized, but inexplicably, until enquiry from Counsel Kelsick, no auction occurred until 21.08.20, when neither sold, leading to further items, as noted, being seized on 16.09.20 under the original writ sought on 05.03.19, some of which sold, including now the bike, the leg press was returned to Solomon as unsellable, and there are the Surface, Onkyo, and a fridge left.

9 Counsel Kelsick counter-argues the writ is activated once items are seized, so that once seized the time limit of one year stops running. In other words, the writ requires seizure, not sale, within a year, and once seizure is effective the writ is timeless as to sale or further seizure.

10 Both counsel were tasked with finding any authority directly on point, namely, when is a writ of execution no longer valid – is it if after 12 months nothing is seized, or is it after 12 months items seized have not been sold; none could, so the point seems ripe for adjudication, and may likely go to the Court of Appeal either way.

11 In my judgment a writ of execution requires seizure and sale, not just seizure, otherwise there may be the mischief of seizure eternally without resolution, creating endless limbo, neither party being satisfied owing to inefficiency by the Registry, where the goods still vest in the debtor pending sale, but in the control of the bailiff, and therefore unusable, while no monies will transfer to the creditor as there has been no sale.

12 From a simple construction of **rule 46.10,** the items seized in April 2019 should have been sold before April 2020, perhaps even before 05.03.20, and not put up for auction 16 months late on 21.08.20, the writ was by then defunct, there could and should have been no further seizure 16.09.20, the writ being defunct as above, so that any items auctioned on 09.10.20 have been wrongly so.

13 Support for this view appears to lie in the old authority of **Grover v Giles et al 1824-32** AER 547, where Alderson J opined, concerning a writ of 'fi fa', with same effect, reflecting on an older authority:

> The rule is thus expressly laid down by Garrow B...in *Higgins v McAdam* (36) (*3 Y & J at p 13*):
>
> > "The rule is, that when execution is executed, the property is changed; and execution is said to be executed when a sale has taken place."
>
> Underlining added

14 The fundamental problem has been the Registry seized items and did nothing for more than a year.

15 That the writ became defunct by April 2020 was not a point raised by Solomon, the Registry, the Court, or Counsel Kelsick, until December 2020, with the arrival of Counsel Cunningham, to whom the court is indebted, for he has drawn attention to something the Registry may not have been monitoring, namely the time limits associated with a writ of execution.

16 The implication, wearily, is Solomon may now have an action against the Registry for wrongful sale. However, the money, being $3150ec, has gone already to Romeo against the debt, which has been reduced by the sale sum. A successful suit may have the curious and embarrassing effect of making the Registry pay to Solomon monies it has paid to Romeo following auction, in effect subsiding Solomon's debt. Alternatively, the Registry would have to recover the items sold from the purchasers, reimbursing them, if they agreed (bearing in mind they may counterclaim to be bona fide purchasers without notice of no title), while Counsel Kelsick has already said he will not advise Romeo to return to the Registry the $3150ec raised. There may even be an argument by the Registry as a defendant party to fresh proceedings this ruling is wrong. It is an understatement this may get more complicated.

17 The lesson here is seized items need selling, quickly, not left lying around in a room in the court building.

18 Meanwhile, Solomon will next be deposed under a judgment summons, originally filed on 12.09.19, to ascertain his ability to pay the outstanding costs, notwithstanding his possible present pursuit of satellite litigation concerning the Registry, the proceedings for all of which

will doubtless cost more than the original debt, while throughout he maintains he is without funds.

19 Regrettably, in a sense this case shows up the ineffectiveness of debt recovery on Montserrat, for want of timely auction, then fetching good prices, leading to protracted and increasingly complicated litigation over relatively minor sums.

20 There shall be no order as to costs concerning this ruling as the point ought to have been raised long ago by all concerned.

The Hon. Mr. Justice Iain Morley QC
High Court Judge
7 January 2021