COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Side

2009/CLE/GEN/1367

2011/CLE/GEN/FP/00276

BETWEEN

INCORPORATED TRUSTEES OF ST. JOHN'S PARTICULAR CHURCH OF NATIVE BAPTISTS IN THE BAHAMAS

Plaintiff

AND

FREEPORT COMMERICIAL AND INDUSTRIAL LIMITED

1st Defendant

AND

GRAND BAHAMA DEVELOPMENT COMPANY LIMITED

2nd Defendant

AND

GODFREY R. WILLIAMS MINISTRIES

3rd Defendant

AND

GODFREY R. WILLIAMS

4th Defendant

AND

BANK OF THE BAHAMAS

5th Defendant

AND

GODFREY R. WILLIAMS

Judgement Creditor

AND

INCORPORATED TRUSTEES OF ST. JOHN'S PARTICULAR CHURCH OF NATIVE BAPTISTS IN THE BAHAMAS

Judgement Debtor

AND

ROYAL BANK OF CANADA LIMITED

Garnishee

APPEARANCES: Mr. Harvey Tynes KC with Ntshonda Tynes c/o Judgement Creditor

Dr. Peter Maynard KC with Ms. Tamika Pinder c/o Judgement Debtor

Ms. Tashana Wilson holding a watching brief c/o Royal Bank of Canada Limited

HEARING DATE: 20th December 2023

BEFORE: THE HONOURABLE MR.JUSTICE ANDREW FORBES

The Civil Procedure Rules 2023; The Rules of the Supreme Court 1978; Garnishee Proceedings & Appeals from the Registrar.

DECISION

FORBES, J

1. The Court would have heard the parties and read the Skelton arguments laid over by the respective parties and indicated its intention to render a decision in the matter and do so now. The Court considered the arguments advanced by Counsel for the Judgment Creditor and found that they are without merit for the reasons discussed below.

BACKGROUND

2. This Court will adopt the facts as identified by Madam Snr. Justice Evans (as she then was) from the Ruling published on the 16th November 2021 which were as follows:

> *"15. Reduced to their bare essentials, the facts that led to the commencement of this action are that, following a request for the donation of land on which to construct a place of worship ("the Cathedral") the second defendant, in a letter dated 1st November 1988, addressed to Rev. Godfrey Williams, Pastor of the St John's Native Baptist Church in Freeport ("the Coral Road Church" /"the Freeport Church"/"the Local Church"), informed him of the approval of a donation of land on Settler's Way for the construction of "your church". That land was, in fact, a 4.38-acre tract, being 4 Lot 2, at the northeast corner of Settler's Way in sections 29 and 32, Township 1 North, Range 1 East, in the area known "Fairfield East", Freeport, Grand Bahama ("the Property"). The letter also indicated that the donation was subject to a building commitment, which, I understand meant that a conveyance of the Property would not be issued until the building had been completed or a conveyance was needed for a lending institution as security for a loan to complete such construction.*
>
> *16. In or about 1997 the fifth defendant agreed to lend funds to the Coral Road Church to facilitate the completion of the construction of the building on the Property and the purchase of furnishings therefor. The fifth defendant required, inter alia, a mortgage over the Property*

as security for the loan. In a letter dated 23 September 1997 Mr. Wallace Allen of the firm of Christie, Davis & Co/Davis & Co wrote to Mrs. Willie A.M. Moss of the Grand Bahama Port Authority, Limited (""the Port"/"the Port Authority") and informed her, inter alia, that his firm acted for the fifth defendant and advised that title to the Property was to be taken in the name of the plaintiff.

17. by a conveyance dated 10th February 1998 ("first conveyance"/"FCIL conveyance"), the Property was purportedly conveyed to the plaintiff by the first defendant and by a mortgage of even date therewith, the plaintiff purportedly mortgaged the Property to the fifth defendant as security for the loan. The loan was further secured by the assignment to the fifth defendant of a fixed deposit in the sum of Five Hundred Thousand ($500,000.00).

18. In or about July 2001, the second defendant discovered that title to the Property was not vested in the first defendant at the date of the first conveyance and, therefore, the first conveyance was defective. In an attempt to rectify the situation, the second defendant prepared a confirmatory conveyance in favour of the plaintiff ("the second conveyance") "confirming and perfecting title to St John's" and sent the same to the firm of Christie, Davis & Co. firstly for "perusal and approval" on behalf of "St John's", then for execution by "your client" and return to the second defendant for its execution. The confirmatory conveyance was never executed.

19. The third defendant was incorporated on 11th December 2002 and the second defendant, at the request of the fourth defendant, conveyed the Property to the third defendant by a conveyance dated 12th December 2002 ("the third conveyance"). By the third conveyance, the first conveyance was declared to be null and void.

20. In or about 2003 the fifth defendant agreed to, and did, lend funds to the third defendant secured, inter alia, by a debenture/mortgage over the Property dated 26 September 2003. Proceeds from that loan,

along with the aforesaid sum of Five Hundred Thousand ($500,000.00) held on fixed deposit were used to pay off the said mortgage and a satisfaction thereof executed by the fifth defendant on 8th December 2003.

21. The third conveyance and the debenture/mortgage were lodged for record at the Registry of Records on 9th December 2003 and the satisfaction of mortgage was lodged for record on 12th June 2006.

22. The plaintiff claims that it was not informed of the error with the first conveyance or the actions taken, subsequent thereto, and asserts that all of those actions were done or taken without its knowledge or consent. Further, that it only discovered the third conveyance and the fact that the first conveyance had been declared null and void through a search conducted on its behalf at the Registry of Records on 9th December 2003."

3. That Madam Snr. Justice Evans then dismissed the Plaintiff's claims against the Fifth Defendant with cost to be taxed if not agreed. That the Counsel for the Fifth Defendant then filed their Application for taxation, commencing with their Notice of Taxation, Statement of Parties and Bill of Cost which were each filed on the 15th February 2022. The Summons to Review Taxation was then filed on the 17th November 2022. That the Fourth Defendant was subsequently awarded his cost in which the Deputy Registrar awarded an Interim Cost Award of Five Hundred and Eighty Nine Thousand Nine Hundred and Six Dollars and Fifty Eight cents ($589,906.58).

4. After which an Interim Certificate of Taxation was filed on 7th December 2022. That upon this award of the Cost, Fourth Defendant's Counsel made an Application to have the Awarded Cost reviewed by the filing of a Summons on the 17th November 2022, and upon review the Deputy Registrar made minimum adjustments to the Original Awarded Cost. Again the Fourth *Defendant's Counsel sought to have the Judge in Chambers intervene, it is unclear where that application stands at this time. Additionally the Fourth Defendant's Counsel filed an Application for Garnishee Order which was filed*

on the 21st December 2022 and supported by an Affidavit sworn by Tanisha Tynes Cambridge and also filed on 21st December 2022.

5. *The Garnishee Order Nisi was granted by the Deputy Registrar and filed on the 4th October 2023. While the Application for Garnishee Nisi was proceeding the 4th Defendant's Counsel likewise applied for the Judgement Debtor to attend Court pursuant to Part 44.3 of the Civil Procedure Rules (CPR). The records are unclear what transpired at that hearing, however, the 4th Defendant's garnishee nisi was set aside and the 4th Defendant Counsel filed an Appeal against the Deputy Registrar decision to set aside the Garnishee Nisi. That Notice of Appeal was filed on the 7th December 2023 and the sole ground is that "the Deputy Registrar wrongly applied the Supreme Court Civil Procedure Rules 2022."*

6. *That the Court heard from Counsel for the Judgement Creditor and the Judgement Debtor as they both laid over for the consideration of the Court, skeleton arguments, supplemental and authorities. The Court will seek to distill the essential arguments being advanced.*

SUBMISSIONS

7. *The Judgement Creditors arguments which I have extracted are as follows*

17. *Other than these two exceptions (noted at paragraph 2(1)(b)(i) and (ii) of the Preliminary paragraphs of the CPR), the CPR have no application whatsoever to the civil actions commenced before 1st March, 2023.*

18. *The Instant action was commenced before the 1st March, 2023. Therefore, unless the instant action falls within the two exceptions at 2(1)(b)(i) and (ii), the CPR have no application for it.*

19. In the instant action, the trial has not only been fixed, the trial has been concluded since November of 2021. Therefore, the instant action does not fall into either of the two exceptions found at Preliminary paragraph 2(1)(b)(i) and (ii) of the CPR.

20. In light of the provisions of Preliminary paragraphs 2(1)(b) and 4, applications made in the instant action are governed by the RSC and the CPR have no application whatsoever with respect thereto.

21. Accordingly, it is respectfully submitted that Order 58 of the RSC governs the Judgment Creditor's appeal from the decision of the learned Deputy Registrar and Order 49 of the RSC governs the Judgment Creditor's garnishee application.

22. In all the circumstances, it is respectfully submitted that the Garnishee Order Nisi ought properly to be made absolute.

8. Counsel for the Judgment Creditor in its Supplemental Submissions stated:

"19. Given the above, the **Savings and transitional rule** at **Preliminary rule 4,** (introduced by the *Supreme Court Civil Procedure (Amendment) Rules, 2023*) serves three functions.

1. it **mandates** that the **RSC remain in force** with regard to a specific category of **actions**;
2. it **acknowledges** that **the CPR do NOT apply** to the specific category of **actions** for which the RSC remain in force;
3. it **specifically identifies** the **actions** which **MUST continue** under the **RSC** as those falling into the general category identified at Preliminary rule **2(1)(b).**

Functions of Preliminary rule 2(1)(b) and exceptions

"20. The provisions of **Preliminary rule 2(1) (b)** and exceptions serve three principal functions:

1. Rule **2(1) (b) mandates** that the CPR do **NOT** apply to civil actions commenced prior to the start of the CPR ("old" actions);

2. Rule **2(1) (b) (i)** and **(ii) create two exceptions** to the general rule that the CPR do not apply to "old" actions;

3. Rule **2(1) (b) (i)** and **(ii) identify** the **two exceptions** to the general rule by reference to the status of the fixing of **trial dates**.

21. The combined effect of **Preliminary rules 4** and **2(1) (b)** is that the CPR do NOT apply to and the **RSC continue to govern** civil **actions commenced before the start of** the **CPR** except where those actions have not been given a trial date or that trial date has been adjourned; in the case of civil actions commenced before the start of the CPR where no trial date has been fixed or the trial date has been adjourned, the CPR applies.

22. In light of the above, it is respectfully submitted that a correct interpretation of **Preliminary rules 4** and **2(1)(b)** results in the **unavoidable conclusion** that the **instant action** falls into the general category of actions to which **the CPR do not apply** and which continue to be governed by the **RSC**."

9. **The Judgement Debtor advanced the following arguments which I have extracted those relevant for this discussion and they are as follows specifically paragraphs 18 & 19:**

"18. It is not by accident that the word "trial" is used. It is not meant to have a definition which Judgment Creditor attempts to place on it. It is remarkable that the Judgment Creditor has not provided a definition of the word "trial" although they rely upon it to place this application outside of the CPR.

19. The CPR does not contemplate Garnishee proceedings. The proper application by the Judgement Creditor should have been one of a Third Party Debt Order as set out in Part 45 of the CPR as the Garnishee Order Nisi was made in October 2023, after the enactment of the CPR. The Garnishee Application filed by the Judgment Creditor is not a mere procedural irregularity as to the correct form to use, grammatical error, or a wrong application of the CPR. The Garnishee Application, in its entirety, is an old application contemplated by the old Rules of the

Supreme Court, which have been revoked by Paragraph 3 of the CPR...."

10. Further, the Judgement Debtor laid over Supplemental Submissions in relation to the application. Expanding on the Submissions made, Counsel for the Judgment Debtor identified that the Judgment Creditor's Supplemental Skeleton Arguments turn on the definition of "trial" and allegations of dishonesty. In relation to the definition of trial , Counsel for the Judgement Debtor indicated that the meaning of "trial" is not a term of art and ought to be considered in the plain and ordinary meaning as no subsidiary law nor case law provide the definition of trial as posited by Counsel for the Judgment Creditor. In relation to the alleged dishonesty, Counsel for the Judgment Debtor made note that the Judgement Debtor was served with an Garnishee Order Nisi on the 6th October, 2023 (filed on the 4th October, 2023 in accordance with the RSC) and a Order to Attend Court (filed on the 4th October, 2023).

ISSUE TO BE DETERMINED

11. After considering the submissions laid over by counsels the clear issue to be determined is whether the Deputy Registrar's decision to dismiss the Garnishee proceedings, noting that they were no longer consistent with the CPR, was correct.

LAW

12. As this is a matter that arose from the appeal of a Registrars' judgment, this Court will establish its jurisdiction to hear the appeal by way of Part 58.1 of the Supreme Court Civil Procedure Rules which state:

> 58.1 Appeals from certain decisions of the registrar to judge in chambers.
>
> (1) Except as provided by rule 58.2, an appeal shall lie to a judge in chambers from any judgment, order or decision of the Registrar.
>
> (2) The appeal shall be brought by filing a Notice of Appeal and serving a copy thereof on every other party to the proceedings

in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice.

(3) Unless the Court otherwise orders, the Notice must be filed —

(a) if it is made by a party who was present or represented when the judgment, order or decision of the Registrar was given within five working days after the judgment, order or decision; or

(b) if it is made by a party who was not present or represented when the judgment, order or decision of the Registrar was given within five working days after receipt by the party of notice of the judgment, order or decision.

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

13. The order from that of the Registrar was to set aside the Garnishee Nisi order. Namely, Order 49 of the former Rules of the Supreme Court concerns Garnishee Proceedings. Order 49 Rule 1 and 2 state as follows:

1. (1) Where a person (in this Order referred to as "the judgment creditor") has obtained a judgment or order for the payment by some other person (in this Order referred to as "the judgment debtor") of money, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of

the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

2. An application for an order under rule 1 must be made ex parte supported by an affidavit —

(a) identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application; and

(b) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief.

14. Part 43.11 CPR lists the methods of enforcing judgments as follows:

43.11 Methods of enforcing judgments or orders.

(1) A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods —

(a) a writ of fieri facias or warrant of execution under Part 48;

(b) a third party debt order under Part 45;

(c) in relation to securities, a charging order, stop order or stop notice under Part 47;

(d) in relation to land, by a fixed date claim form to enforce the equitable charge created by section 63 of the Act under (Part 50);

(e) the appointment of a receiver under Part 53;

(f) a writ of sequestration under Part 50.

(Emphasis added)

15. Further, this Court is minded to consider Part 45 of the CPR which concern Third Party Debt orders which in effect operate similar to that of the order previously known as a Garnishee Order.

45.1 Scope of this Part and interpretation.

(1) This Part contains rules which provide for a judgment creditor to obtain an order for the payment to him of money which a third party who is within the jurisdiction owes to the judgment debtor.

(2) In this Part, "bank or credit union" includes any person carrying on a business in the course of which he lawfully accepts deposits in The Bahamas.

16. Part 44 of the Supreme Court Civil Procedure Rules concern the enforcement of a judgment. Specifically, Part 44.1 identifies the purpose of this part as:

44.1 Scope of this Part. This Part contains rules which provide for a judgment debtor to be required to attend court to provide information, for the purpose of enabling a judgment creditor to enforce a judgment or order against him.

17. Further, Part 44.2 requires a notice to be served on the judgment debtor by the judgment creditor:

44.2 Notice to judgment debtor to complete financial statement.

(1) A judgment creditor may serve on the judgment debtor a notice in Form EX6 with two copies of Form EX7.

(2) A notice in Form EX6 requires the judgment debtor to complete and serve on the judgment creditor a statement in Form EX7 of the judgment debtor's —

(a) receipts and payments for the preceding twelve months; and
(b) assets and liabilities; and
(c) income and expenditure; and
(d) means of satisfying the judgment.

(3) The judgment debtor must serve the statement in Form EX7 on the judgment creditor within fourteen days after the date on which the notice in EX6 is served on him.

18. Though this appeal stems from the quashing of the Garnishee Nisi the Court finds it relevant for reasons explained below to mention Part 44.3. Part 44.3

affords the Judgment Creditor the ability to apply for an order to attend court whether or not a notice to complete a financial statement was served. Part 44.3 states:

> 44.3 Order to attend court.
>
> (1) Whether or not a notice has been served under 44.2 above, a judgment creditor may apply for an order requiring —
>
> (a) a judgment debtor; or
>
> (b) if a judgment debtor is a company or other corporation or legal entity, an officer of that body,
>
> to attend court, either in person or by videoconference, to provide information about —
>
> (i) the judgment debtor's receipts and payments for the preceding twenty-four months, assets and liabilities, income and expenditure; and
>
> (ii) any other matter about which information is needed to enforce a judgment or order.
>
> (2) An application under paragraph (1) may be made without notice.
>
> (3) The application notice must be in the Form EX8.
>
> (4) An application under paragraph (1) may be dealt with by a Registrar without a hearing.
>
> (5) If the application notice complies with paragraph (3), an order to attend
>
> court will be issued in the terms of paragraph (6).
>
> (6) The judgment debtor or officer served with an order issued under this rule must —
>
> (a) attend court, either in person or by videoconference as provided in the order, at the time and place specified in the order;
>
> (b) when he does so, produce at court documents in his control which are described in the order; and
>
> (c) answer on oath or affirmation such questions as the court may require.

(7) An order under this rule must be in Form EX9 and will contain a notice in the following terms —

"You must obey this order. If you do not, you may be arrested and then sent to prison for contempt of court."

ANALAYSIS & DISCUSSION

Whether the Deputy Registrar's decision to dismiss the Garnishee proceedings, noting that they were no longer consistent with the CPR, was correct?

19. The Court notes the effect of the Appeal to the Judge in Chambers from the decision of the Registrar is dealt with by way of an actual rehearing of the Application which led to the order under appeal, and the Judge ought to treat the matter as though it came before him for the first time, save for the, that the party appealing, even though the original application was not by him but against him, has the right as well as the obligation to open the appeal. The Judge will of course give the weight it deserves to the previous decision of the Registrar but he is not bound by it. (**See Evans v. Bartlam [1937] A.C. 473**). The Judge in chambers is in no way fettered by the previous exercise of the Registrar's discretion (**See Evans v. Bartlam supra**). A judge hearing the Appeal from the Registrar is entitled if he thinks fit to adopt the Registrar's reasoning as his own judgement without setting out the reasoning himself and by doing so the Judge does not fail to exercise the discretion conferred upon him.(**See Rae v. Yorkshire Bank plc, The Times, October 16th , 1989, C.A.).**

20. The Court must note that the Judgement Creditor filed two (2) applications, the first being an Examination of Judgement debtor which was interestingly filed relying upon the CPR, whereas second application, the Garnishee proceedings, were filed relying upon the RSC. The timeline creates a very intriguing dynamic. The Garnishee Order was obtained in October 2023 and the Application for Examination of Judgement Debtor was filed in August 2023. Both filed substantially after the trial had been determined. Although not a part of these proceedings the Judgement Creditor had obtained an interim Certificate of Taxation and had filed a Notice to Review the Taxation in April 2023.

21. The Court also took note that during oral arguments Counsel for the Judgment Debtor noted the timeline, and Counsel for the Judgement Creditor sought to dismiss it as a non-issue. While the Court commented, it certainly was relevant as it goes to the substance of the Judgement Creditor's arguments. They are suggesting that the interpretation of the CPR and the Practice Directions thereto, allow them to have this bifurcated approach. In fact, they seek to suggest that the Supreme Court Civil Procedure (Amendment) Rules 2023 specifically Rule 4 which reads *"Notwithstanding rule 3, proceedings commenced in the Court prior to the commencement of the Rules, to which these Rules in accordance with rule 2(1) (b) do not apply, shall continue under the Rules of the Supreme Court (S.I. 48 of 1978)."*

22. This would appear illogical on its face, given that Counsel for the Judgement Creditor filed multiple applications both before and after the Garnishee proceedings utilizing the CPR. However, when pursuing the Garnishee process, elected to rely upon the RSC and now argue that it is not a new process and hence the CPR exempts this application in particular while not exempting the others.

23. However an actual reading of the Amendment suggest that the interpretation lacks credibility as the rule clearly refers to Rule 2(1) (b) specifically as matters for which Rule 3 wouldn't apply, but those matters would continue under the RSC. The Court finds that even the most generous interpretation would lead to an irrational application of the CPR. Further, in the hearing of the matter, the Counsel for the Judgment Creditor stated that where the rules and practice directions are not in compliance with each other, the Rules shall prevail. The Practice Direction No.9 of 2023 specifically says at 2.2, *"Any new interlocutory application which has to be made or any new document which has to be filed, including the Defence, must comply with the Rules."* Counsel for the judgement creditor also sought to suggest that the garnishee proceeding was not an interlocutory proceeding which appears contrary to Rule 11 which reads as follows: *"This Part deals with interlocutory applications for court orders being applications made before, during or after the course of proceedings..."*

24. Although pressed multiple times, Counsel for the Judgement Creditor did not concede that the Garnishee application was an interlocutory application. Also, a failure to concede to Rule 4.4 of the CPR which states: *"A party must comply with any relevant practice direction unless there is a good reason for not doing so..."* Other than Counsel's interpretation of the various parts of the amendments and what is considered a trial, which this Court has noted is not in agreement with, there was no reason put forth for the not complying with Practice Direction No. 9 of 2023.

25. Therefore, in holding that the CPR should have been complied with it is a necessary consequence that the Garnishee Nisi Order should've fallen away as it is no longer in being nor is it consistent with the CPR. Parties ought to have filed the appropriate application in compliance with the CPR.

DISPOSITION

26. The Court having heard the arguments and read the material supplied by Counsel for the Judgement Creditor and that of the Judgement Debtor is satisfied that the findings by the Deputy Registrar was, in fact, correct. The Registrar had invited the Judgement Creditor to file the application complying with the CPR and in fact that was the correct approach.

27. The Court will exercise its discretion and award cost to the judgement debtor to be taxed if not agreed and certified for Two (2) Attorneys.

Dated the 26th January, 2024

Andrew Forbes
Justice of the Supreme Court