

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION
CRI/102/5/2016

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

AND

BRANHILDA COOPER

CARMICA SMITH

Suretors

AND

BRANDON COOPER

Defendant

Before: The Honourable Madam Justice Weech-Gomez

**Appearances: Mrs. S. Carey for the Director of Public Prosecutions
Mr. Jairam Mangra for the Defendant**

Hearing Dates: 27th September 2023; 6 November 2024.

RULING

Escheat of Surety – What Are the Duties and Obligations of Sureties? – Did the sureties breach their obligations as sureties?

WEECH-GOMEZ, J.

BACKGROUND

[1.] This decision arises from an Application by the Crown seeking to escheat the forfeiture of the recognizance for Ms. Branhilda Cooper of Plantol Street and Ms. Carmica C. Smith of White's Lane. Both of whom were sureties for the Defendant, Brandon Cooper, who has not returned to Court and cannot be found.

[2.] The Defendant is charged with Armed Robbery. He was arraigned along with Selwyn Seymour, co-defendants, on 17 June 2016 before Turner, J, and pleaded not guilty. He was granted bail by the Honourable Senior Justice Mr. John Isaacs (as he then was) on 15 February 2018, in the amount of nine thousand dollars (\$ 9,000.00) with two (2) sureties. His trial was set for hearing on 14th August, 2023.

[3.] The Defendant's conditions of bail were as follows:

- a. The Defendant was to report to the Quakoo Police Station every Tuesday and Friday before 6:00 pm;
- b. The Defendant was not to interfere with any witnesses in the case; and
- c. That any breach of these conditions shall result in the forfeiture of bail.

[4.] On 6th March 2019, Mrs. Branhilda Cooper and Ms. Carmica C. Smith ("the sureties") both signed a Bail Bond on behalf of the Defendant. They became sureties in respect of Criminal Bail Number 00267/2016 in the amount of nine thousand dollars (\$9000.00) for which they were jointly and severally liable.

[5.] On 10 September 2022, the Defendant made an Application for Bail Variation before Turner Snr. J, on the basis that he got a job in Abaco and would like the conditions for signing in to be transferred to the Marsh Harbour Police Station. The Court granted the Application on the following terms:

- a. The Defendant was to report to the Marsh Harbour Police Station every Monday and Friday before 6:00pm;
- b. The Defendant was not to interfere with any witnesses in this case.

[6.] On 6 September 2023, the matter was transferred before me after both Braithwaite J and Grant-Thompson J recused themselves. The Court thereafter heard Mrs. Branhilda Cooper's, mother of the Defendant, Application for removal, who stated that the Defendant had relocated to the island of Abaco and she was unable to ensure his attendance at Court. The Defendant was not present at this hearing.

[7.] The Court deferred Ms. Cooper's request for removal and adjourned for two weeks, for her to ensure the Defendant appeared in Court, when her request will then be considered.

SUBMISSIONS

Crown's Objection

[8.] When the matter came for hearing on 27 September 2023, the Court heard the oral submission of Ms. Carey, Crown Counsel, who submitted that it is the responsibility of the surety to ensure that the Defendant shows up in court. She further contends that when a warrant of arrest is issued, it does not remove the responsibility of the surety to show cause. She submits that both sureties should be called upon to show cause, as they are both jointly and severally liable.

Suretors Submission

[9.] Mr. Mangra, Counsel for Mrs. Cooper, submitted that a warrant of arrest issued by the Court places the obligation on the police to bring the Defendant before the Court and that Mrs. Cooper, as surety, ought not to be called upon. Counsel asserts that this action is of a punitive nature and that Ms. Cooper, as surety, bears no fault. He contends that Mrs. Cooper's circumstances have changed; she is experiencing financial hardship.

[10.] On 3 September 2024, Branhilda Cooper filed an Affidavit setting out the following:

1. That I am the mother of the Defendant, Brandon Cooper (“Brandon”).
2. That I am 59 years old, having been born on 19 March 1965.
3. That I am employed at Munroe & Associates as a Receptionist/Office Clerk and have been with the firm for the past 23 years.
4. That sometime in 2016, Brandon was arraigned on one count of Armed Robbery.
5. That Brandon was granted bail in the sum of \$9000.00 with two suretors. Given that I met the requirements, I signed as one of Brandon’s suretors.
6. That after the granting of bail, Brandon relocated to Abaco for employment and the Court varied his bail conditions to accommodate the same.
7. That Brandon was permitted to attend Court via Zoom and he appeared on every occasion save for when there was a disruption in the internet services.
8. That on the 2nd August, 2023 I was advised by Brandon’s Counsel, Ms. Sonia Timothy, that the next Court hearing on the 16th August, 2023 will be held in person.
9. That I informed Brandon of Ms. Timothy’s instructions that he needed to appear in person. One week later, I reminded Brandon of the Court hearing, and the questioned why he had to attend in person given that the trial date had not been fixed and having to incur extra expenses to travel to Nassau. I emphasized that his presence in person was what the Court directed.
10. That I attended Court on the 16th August, 2023 and there was no appearance by Brandon.
11. That at the time of signing Brandon’s bail, I was confident that he would appear for his Court hearings. Given his non-appearance, I could no longer guarantee his attendance at Court. Consequently, I sought to be removed as Brandon’s suretor.
12. The matter was adjourned and as there was no appearance by Brandon, the Court issued a warrant for Brandon’s arrest.
13. That after signing Brandon’s bail, my home was repossessed, and my husband and I were forced to seek other accommodations. We presently reside in an apartment that is challenging to maintain.
14. That my husband is a self –employed electrician and he does not have a steady income. Thus, we are living from the remainder of my paycheck as most of it is allocated to salary deductions.
15. That to supplement my income, I have taken babysitting jobs over the holidays and whenever I am need to assist with the family expenses.

16. That we are experiencing grave financial hardship as most of the time we are unable to meet our basic expenses.
17. That to assist in bringing Brandon before the Court, I wrote a letter to the Minister of National Security, the Hon. Wayne R. Munroe, KC, on the 29th July, 2024 inquiring on the status of the warrant and what steps were taken to bring Brandon before the Court. However, to date, I have not received an acknowledgment or reply. A true copy of the letter and service receipt are attached hereto and collectively marked "Exhibit BC-1."
18. That I understand that there are consequences for Brandon's failure to attend Court and I am no longer able to guarantee his appearance, I humbly request to be discharged as his suretor.
19. That I also understand my role as Brandon's suretor and the consequence attached thereto; however, given my change in circumstances, I humbly seek the mercy of this Honorable Court.

[11.] On 6 November 2024, the Court heard submissions on behalf of surety Carmica Smith. Counsel adopted the arguments submitted for Mrs. Cooper. He argued that Ms. Smith did not know the Defendant or Branhilda Cooper. He averred that Ms. Smith was persuaded by a co-worker to sign the Defendant's bail bond, who was the girlfriend of the Defendant. He further submits that she was oblivious to the serious obligation she had undertaken to sign the Defendant's bail bond.

ISSUES

[12.] The issues for this Court's consideration are:

- a. Whether they are in breach of their obligations as sureties; and
- b. Whether they should be called upon to forfeit the security.

[13.] As a starting point, it is first necessary to set out the functions of a surety. In this regard, I adopt the approach taken by my learned sister Justice Grant-Thompson in **Director of Public Prosecutions v Marissa Rolle BS 2024 SC 21** at paragraphs 13 – 15, where she stated:

"Functions of a Suretor

13 A suretor ensures that the accused person attends Court every time he is instructed by the Court to be present. It is a major undertaking. If a suretor fails to produce the Defendant for his trial or hearings, or if any other condition is broken, the recognisance of the suretor is subject to be forfeited. In order to prevent this the suretor ought to stay in touch with the Defendant to ensure that he appears in Court. The suretors duty is to keep himself informed of the adjourned date of each hearing. They should not rely on the memory of the Defendant or anyone else. This Defendant has missed Court hearings. His trial is in eight (8) weeks and he can not be located.

14 The Court cited with approval the consideration of the suretors duties in the case of **R. v. Wells Street Magistrates' Court ex parte Albanese [1981] All E.R. 769** at page 776. Paragraph d-g explained the nature of the obligation of a surety on a bail recognisance. The Learned Ralph Gibson, J stated that:

“ The first point is that the public duty of the court is to grant bail unless, inter alia, it considers that there are substantial grounds for believing that the respondent will

fail to surrender to custody. If there is thought to be risk of his not surrendering, the court may, and will, impose such requirements or conditions as appear to the court to be necessary to secure that he surrender to custody

Next, the surety on a bail recognisance, as counsel for the respondents submitted, undertakes a special obligation. He does so voluntarily. Failure to fulfil the condition (that is to say, non-appearance of the man bailed) gives rise to a debt which is enforceable like a fine. At common law, if the condition was not fulfilled, the surety automatically forfeited the sum secured by the bond. Forfeiture is no longer automatic but is subject to the discretion given to magistrates

Apart from that discretion ... the obligation remains in nature the same as it always has been. It is the duty of the surety to stay in touch with the bailed prisoner to see that he will appear at court. The court, in “considering the culpability of the surety in the event of the failure of the bailed man to surrender, will look to what the surety did to see that the man did surrender and what he did to alert the police if there was any known risk of his absconding ...”

15 From whom much is given, much is expected. If the suretors had done everything that they were supposed to then the Court would have favourably consider an application not to pay anything. If the suretors made any valid attempts to discharge their duty as surety then the Court would have reduced the amount owed to the Crown on a proportional basis, based on the level of action, involvement and contribution of the suretors. However, these suretors did nothing, therefore, nothing will be reduced. The means of the suretors are relevant. This Court understand that the suretors, are of modest means of a lower middle-income level. Thus, this Court will order the suretors to pay the security in staggered payments.”

[14.] Based on the facts in **DPP v Marissa Rolle**, the actions of the sureties are somewhat similar. In that case, the two sureties had not kept in touch with the Defendant, and the Court held that there had been no due diligence by the sureties.

[15.] Upon reviewing the evidence, this Court is satisfied that both sureties were informed of their obligations, which were to ensure the attendance of the Defendant at Court. It is clear that both Mrs. Cooper and Ms. Smith were advised of the same and the serious consequences they would face if the conditions of the bail bond were not observed by the Defendant.

[16.] Accordingly, Mrs. Cooper applied to be removed as surety on the grounds that the Defendant had relocated to Abaco and she was no longer able to contact him.

[17.] Ms. Smith's testimony is concerning, it is clear from her testimony that she had no interaction with the Defendant from the time she executed the bail bond. If she had, she would have realized he was not attending court. Being a surety is a serious commitment, not something trivial or merely a generous act. It requires thoughtful consideration, as the surety must assess the risks, responsibilities, and potential repercussions of breaching the agreement. Once a surety signs a bail bond, they cannot escape their obligations and duties, which should not be taken lightly.

Forfeiture of Security

[18.] **Section 14 of the Bail Act, Chapter 103** provides:

“(1) Where a person has given security in pursuance of section 9(4), and the Court is satisfied that the person failed to surrender to custody, then, unless it appears that he had reasonable cause for his failure, the Court may order the forfeiture of the security.

(2) Where a Court orders the forfeiture of a security under subsection (1), the Court may declare that the forfeiture extends to such amount less than the full value of the security as thinks fit to order”

[19.] The factors which the Court ought to take into consideration when determining whether the amount of recognizance should be forfeited were also discussed by Grant-Thompson J in **DPP v Marissa Rolle [Supra] at paragraphs 20, 22 and 24**, where she states:

“20 When it comes to determining what is considered to be reasonable cause, the case of Alexander Beckles v. The Magistrate, Mag. App. No. 253/67 denotes the standard that a suretor must attain in order to show good and sufficient cause why the amount of the recognisance should not be forfeited. In this case, Wooding CJ stated that:

“ In matters such as the present, it would be almost impossible for a bondsman successfully to show cause why his bond should not be forfeited when in fact the condition for the vacation of the bond was breached, and even now nothing has been put forward before us to suggest that there will be the remotest hope of any real cause being shown. If, for example, it could have been shown that the person bailed or any one of them had died some time previous to the matter coming on in court and his death was the reason for his nonappearance, there would then be something which would require us to give the appellant an opportunity to put that before the magistrate. But in the absence of some such compelling circumstance, it would be impossible to show any cause which would be valid in law. It has not been suggested that the appellant may be able to show any such exceptional cause.”

22 However, before a Court can order the forfeiture of the recognisance, it must first allow the suretor an opportunity to make representations to the Defendant to surrender himself, in accordance with their obligations, and also to make representations to the Court, as to why the Court should not order the forfeiture of the security. This was seen in the case of R v Uxbridge Justices, ex p Heward-Mills [1983] 1 All ER 530, where the Applicant entered into a recognisance in the sum of £7,000 to secure the Defendant's appearance in Court. The Defendant failed to surrender to his bail and the Applicant was summoned to show cause as to why the recognisance of £7,000 should not be forfeited. At the hearing the Magistrates heard evidence regarding the Applicants culpability for the Defendants non-appearance in Court, but declined to hear evidence or submissions regarding the Applicants means. This Court has on six (6) separate occasions asked the suretors to produce the body of the Defendant (29/01/2024; 31/01/2024; 07/02/2024; 13/02/2024; 19/02/2024; 24/02/2024).

...

24 The following was stated McCullough J. in Uxbridge Justices, ex parte Howard-Mills (supra) with respect to the principles governing forfeiture of a suretors recognizance:

“ When a defendant for whose attendance a person has stood surety fails to appear, the full recognizance should be forfeited, unless it appears fair and just that a lesser sum should be forfeited or none at all. The burden of satisfying the court that the full sum should not be forfeited rests on the surety and is a heavy one, it is for him to lay before the court the evidence of want of culpability and of means on which he relies.”

[20.] The seriousness of the obligation placed on the surety to ensure the attendance of the defendant at Court was discussed by Butter-Sloss L.J. in her judgment in **R.v. Maidstone Crown Court exp. Lever and Connell [1996] 1 Cr. App. R. 524**, her Ladyship stated:

“The general principle is that the purpose of a recognizance is to bring the defendant to court for trial. The basis of estreatment is not as a matter of punishment of the surety, but because he has failed to fulfil the obligation which he undertook. The starting point on the failure to bring a defendant to court is the forfeiture of the full recognizance. The right to estreat is triggered by the non-attendance of the defendant at court. It is for the surety to establish to the satisfaction of the trial court that there are grounds upon which the court may remit from forfeiture part or, wholly exceptionally, the whole recognizance.”

[21.] The Court notes from the record that the Defendant had a history of attending Court up to 2022 when his bail was varied. However, the record does not reflect whether or not any of the sureties ever appeared prior to Mrs. Cooper's application to be removed. The record further reflects that on more than ten (10) occasions from 6 September 2023 to October 2024, both sureties were given more than ample opportunity to ensure the Defendant's attendance at Court. To date, the Defendant has not appeared in court, having been brought in by the sureties or on a warrant of arrest.

[22.] In applying the principles discussed in **Alexander Beckles v The Magistrate (supra) and R v Maidstone (supra)**, both sureties were provided with the opportunity to show cause why the amount of bail ought not be forfeited and whether they should be made to pay the security. In the circumstances, Mrs. Cooper's attempt to withdraw on the ground that the Defendant relocated to Abaco and she has no means of communicating with him. The Courts find this extremely troubling, especially since Mrs. Cooper is the mother of the Defendant and she speaks to him, having relocated to Abaco, another Family Island.

[23.] On the other hand, the facts suggest Ms. Smith never assumed her duties and/or undertook her responsibilities as a surety, even after being given more than ample opportunities to bring the Defendant in. She appeared to have taken a hands-off approach.

[24.] Whilst I note in the Affidavit of Branhilda Cooper that since her signing as surety, she has experienced some financial hardship. It is the Court's position that notwithstanding the same, I am not satisfied that the financial constraint is sufficient to cause her not to be called upon to forfeit the bond. Ms. Smith, on the other hand, has not provided any financial consideration for the court to consider on her behalf.

[25.] In the circumstances, I hereby order both Branhilda Cooper and Carmica Smith liable to pay the security the recognizance of Nine Thousand Dollars (\$9000.00).

[26.] This Court hereby orders that both **Mrs. Branhilda Cooper** and **Ms. Carmica Smith** shall be responsible for the recognizance payment of **Four Thousand Five Hundred Dollars (\$4500.00)** each, to be paid in full and receipts provided to the Court, payment to be made within 45 days from the date of this Ruling or in the alternative for the parties to return to Court on the 26th June 2025 with an offer of a payment plan, for the Court to approved the same.

Justice Jeanine Weech - Gomez

Delivered this 1st day of May 2025