

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-4393

IN THE MATTER OF THE DECISION OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT MADE UNDER SECTION 67 OF THE CO-OPERATIVE SOCIETIES ACT CHAPTER 81:03 IN DISPUTES NOS. CU 030404 AND CU 311582 BETWEEN JOSHUA HENRY AND CEMCU CREDIT UNION CO-OPERATIVE SOCIETY LIMITED FORMERLY TRINIDAD CEMENT EMPLOYEES' CREDIT UNION CO-OPERATIVE SOCIETY LIMITED

and

IN THE MATTER AN APPEAL MADE UNDER SECTION 74 OF THE CO-OPERATIVE SOCIETIES ACT CHAPTER 81:03 TO THE HONOURABLE MINISTER OF LABOUR AND SMALL ENTERPRISE DEVELOPMENT AGAINST THE DECISION OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT DATED THE 6TH DAY OF DECEMBER 2005 IN DISPUTES NOS. CU 030404 AND CU 311582

and

IN THE MATTER OF THE DECISION OF THE HONOURABLE MINISTER OF LABOUR AND SMALL ENTERPRISE DEVELOPMENT MADE UNDER SECTION 74 OF THE CO-OPERATIVE SOCIETIES ACT CHAPTER 81:03 AGAINST THE DECISION OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT IN DISTURES NOS. CU 030404 AND CU 311582 continued as APPEAL NO. 001/2006 BETWEEN THE ESTATE OF JOSHUA HENRY, DECEASED, (APPELLANT) and THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT (RESPONDENT) MADE ON THE 9TH day of NOVEMBER, 2016.

BETWEEN

CEMCU CREDIT UNION CO-OPERATIVE SOCIETY LIMITED

Claimant

AND

**The HONOURABLE MINISTER OF LABOUR AND
SMALL ENTERPRISE DEVELOPMENT**

Defendant

Before The Hon. Madam Justice C. Gobin

Date of Delivery: February 27, 2019

Appearances:

Mr. H. Ramnath for the Claimant

Ms. J. Baptiste Mohammed for the Minister of Labour and Small Enterprise Development

Ms. Gibbons-Glen for the Attorney General of T&T

REASONS

Background

1. By 29th November 2018 following a course of Case Management, the short point which was left to be determined in these proceedings was the Interpretation of S.42 (2) of the Co-operative Societies Act. Ch. 42:2 **Chap. 81:03** (the Act).

S 42 provides: -

“(1) The liability of a past member for the debts of a society as they existed at the time when he ceased to be a member, shall continue for a period of two years from the date of his ceasing to be a member.

(2) The estate of a deceased member is liable for a period of two years from the date of his decease for the debts of a society as they existed at the time of his death.”

2. Mr. Joshua Henry, a former member of the Claimant Credit Union was at the date of his death on 10th December 2011 indebted to CEMCU, in the sum of \$1,951,414.54. Prior to his death, Mr. Henry referred certain matters touching and concerning, inter alia, the alleged debt to Commissioner for Co-operative Development.
3. Disputes Nos. CU 311582 and CU 30404 between Mr. Henry and CEMCU were filed. These disputes were eventually determined and Mr. Henry being dissatisfied with certain aspects of the rulings appealed the decision of the Commissioner. Between the time of the filing of appeal and the hearing, Mr. Henry died. Mr. Henry’s LPR (his widow) pursued his appeal and on 9th November 2016, the Honourable Minister of Labour and Small Enterprises Development delivered her ruling.
4. It did not appear that attorneys for either side raised the issue of limitation for the recovery of the debt with reference to S 42 (12) or at all, in the course of arguments on the appeal. The Honourable Minister however considered it relevant. She invited parties including the Claimant as an Interested Party to make submissions on it. CEMCU did not file submissions or

attend the hearing to which it was invited to do so, Counsel for the Commissioner however submitted the S.42.2 was not relevant to the appeals but in any case urged a construction consistent with the Claimant's in these proceedings. The Honourable Minister proceeded notwithstanding, to consider the impact of S.42 (2).

5. In her written ruling the Hon. Minister purported to construe the section by applying the literal rule of statutory interpretation. The Hon. Minister considered that the intention of S.42 (2) was clear and explicit. She indicated her thoughts on the matter in the following extract from her ruling: -

5.2 "At the oral hearing, Counsel for the Appellant stated that **Section 42 (2)** of the CSA is clear. In applying it to this scenario, it states that the estate of a deceased member (meaning Ms. Henry in this instance) is liable for a period of two years from the date of Mr. Henry's decease for the debts of CEMCU as they existed at the time of his death. In December 2013, the two year period of liability for Mr. Henry's debts elapsed. Thus, in applying the literal meaning, it can be concluded that Mr. Henry's liability to CEMCU extinguished after December 2013."

6. As I said before, the sole issue for this Court was the proper construction of S.42 (2) of the Act. In the course of case management the Minister as well as the Commissioner for Co-operative Development joined as Interested Parties to be heard on this aspect of the matter. A proper construction of S.42 (2) is a matter of importance to Co-operative Societies generally. It affects the liability of the representatives of the estates of deceased members for debts to the Society and conversely the period of limitation for recovery by Co-operative Societies of debts owed by members at the time of their demise. Clarification on the issue, may also be of assistance to the Commissioner should similar disputes arise.
7. My task in construing the provision has been made simpler through the efforts of Counsel. On the face of it, it seemed fairly obvious that the Hon. Minister misdirected herself on the literal meaning of S. 42 (2). The language plainly addressed the liability of a member estate for the **debts of the Society to others** as opposed to the member's **debts to the society**.

8. Counsel for the Minister and for the Commissioner for Co-operative Development both very helpfully referred to ruling in the case of **Chander Singh and others v. Kamalpore Co-operative Society (AIR) (33) 1946 Patna 130.**
9. In that case **CJ Fazil Ali** was called upon to interpret S. 32 their Co-operative Societies Act which seems to incorporate both S. 42 (1) and S 42 (2) of our Act.

S.32 provided: -

“The liability of a past member or of the estate of a deceased member for the debts of a registered society as they existed on the date of his ceasing to be a member or of his decease as the case maybe, shall continue for a period of two years from such date.” Its effect is the same as our S.42 (1) and S. 42 (2).

10. In the course of his Judgment in considering whether the liability of a deceased member of the **Kamalpore Co-operative Society** had extinguished two years after his death the learned Chief Justice said: -

The crucial words in the Section are **“debts of a registered society which clearly mean the debts owed by the Society and not the debts owed to the Society. This S. 32 refers only to those cases where the society is a debtor and not to those where it is a creditor.”**

The ruling in the **Kamalpore** case supports and confirms what seems to be the obvious construction.

Disposition

11. In the circumstances, the Court declares:
- (a) that on a proper construction of S. 42(2) of the Co-operative Societies Act Ch 81:03 – the estate of Mr. Joshua Henry remains liable to the Claimant for the debt owed to it at the date of his death.
 - (b) the order of the Minister dated 9th November 2016 is hereby set aside.

12. On the issue of costs I have considered that these proceedings arose as a result of the decision of the Hon. Minister of Labour. The issue of the applicability of S.42 (2) was raised by the Minister and not by a party. The Minister had the benefit of legal submissions of Counsel for the Commissioner but she proceeded to reject them. It is not for me to speculate as to whether CEMCU's participation may have made a difference to her ruling. While I eventually invited the Minister and the Commissioner to assist with submissions on the core issue as interested parties, I am mindful that the Minister was wrongly joined as an original defendant to the original proceedings.
13. On 25th October 2018, I dismissed the original proceedings and reserved on the issue of costs. In the circumstances, I consider it fair to in all the circumstances that there should be no order as to costs.

Carol Gobin
Judge