

**REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2012 - 00877

Between

**BABY SOOKRAM**

(as Representative of the estate of Sonnyboy Sookram,  
pursuant to the order of Mr. Justice Mon Desir made on  
the 12<sup>th</sup> day of March 2010)

Claimant

And

**EMMANUEL RAMSAHAI**

Defendant

Before the Honourable Justice R. Rahim

Appearances:

R. Ramoutar for the Claimant

S. Salandy for the Defendant.

## **Reasons for Ruling on application for Interim Injunction**

1. The facts in the instant application were not in dispute. There is evidence on behalf of the Claimant by way of a six paragraph affidavit in support but none on behalf of the Defendant, the Defendant having elected not to elicit any. This was an inter partes application for the following interim orders:
  - i. *An injunction restraining the Defendant whether by himself, his servants or agents or whosoever otherwise from enforcing the order of the Honourable Madam Justice Barnes made on the 4<sup>th</sup> day of February 2000 in High Court Action No. 2962 of 1985 or taking any steps pursuant to the said Order.*
  - ii. *Such further and/or other relief as the Court may think fit.*
  - iii. *Costs.*
  
2. The Order of the Honourable Madam Justice Barnes in High Court Action No. 2962 of 1985 between the present parties was made on the 4<sup>th</sup> February 2000 in the following terms:
  - i. *The Defendant is entitled in possession to all that parcel of land now occupied by the Plaintiff being part of Lot No. 7 Mehelall Street, Boundary Road as shown on Cadastral Sheet B17N.*
  - ii. *The Plaintiff is hereby ordered to break down and remove on or before 4<sup>th</sup> May 2000 the structure built by him on the said Lot No. 7.*
  - iii. *The ex parte injunction granted against the Defendant on the 7<sup>th</sup> June 1985 is discharged.*
  - iv. *Costs to be taxed to be paid by the Plaintiff to the Defendant.*
  
3. The Plaintiff in the matter before Barnes J is now deceased. The Claimant in this application is his lawful representative for the purpose of this claim. The Defendant remains the same.

4. By Paragraph 2 of the Claimant's affidavit, the Claimant states that on the 4<sup>th</sup> November 2011 the Defendant obtained the following orders to enforce the above mentioned Order of Barnes J :
- i. *That pursuant to Rule 45 (3) and of the Supreme Court Rules 1975 the Defendant be granted leave to issue a writ of possession against the Plaintiff pursuant to an order of Madam Justice Barnes made on the 4<sup>th</sup> day of February 2000*
  - ii. *That pursuant to Order 45 (6) (2) of the Supreme Court Rules 1975 that the Plaintiff do comply with the order of Madam Justice Barnes and demolish that structure of her house which encroaches upon Lot 7 as shown on the cadastral sheet on or before the 28<sup>th</sup> day of February 2012.*
  - iii. *That pursuant to section 45 (8) of the Supreme Court Rules 1975 if the Plaintiff fails and or refuses to demolish the structure as ordered by the court the defendant and or the Marshall of the Courts shall demolish the said structure.*
  - iv. *That all costs incurred and or incidental to the demolition of the structure be paid for by the plaintiff*
  - v. *That the plaintiff pays the cost of this application.*
5. This order had not been put before this court so that the court cannot confirm the precise terms thereof. The contents of the order are taken as set out in the Claimant's affidavit. In this regard the court noted that the order purports to be issued pursuant to the Rules of the Supreme Court 1975 and not the CPR. Further, and quite improperly, paragraph (i) of the order is purportedly made under **Rule** 45, paragraph (ii) under **Order** 45 and paragraph (iii) under **section** 45 of the RSC.

6. The Claimant contended that the Order of Barnes J is a declaratory Order and therefore cannot be enforced by a Writ of Possession or otherwise.
7. Additionally, the Claimant argued that there was no order made for the Plaintiff to deliver possession to the Defendant or for the Defendant to recover possession of the said premises and as a result submitted that a writ of possession is not the proper method of enforcement.
8. The Claimant further argued that in any event the enforcement of the Order to demolish the said structure is barred pursuant to the provisions of the **Limitation of Certain Actions Act Chap 7:09**.
9. The issues to be determined can therefore be stated as follows:
  - i. *Was the order of Barnes J a declaratory one.*
  - ii. *What is the effect of a declaratory order.*
  - iii. *Whether the command to “break down and remove” is akin to “deliver up possession” and can be enforced by writ of possession.*
  - iv. *What is the limitation on the enforcement of orders for possession.*

### Declaratory Order

10. A declaratory judgment is a formal statement by a court pronouncing upon the existence or non existence of a legal state of affairs: *Zamir & Woolf, The Declaratory Judgment. 3<sup>rd</sup> Edition, para. 1.02.*

11. The word “declaratory” is used in apposition to the words “executory”, executory orders being court orders which are enforceable by execution. See *Declaratory Orders. 2<sup>nd</sup> Edition. P.W. Young, para. 101.*
12. A declaratory judgment does not require enforcement: it is complete in itself, since the relief is the declaration. See **Halsbury's Laws of England 1 (FIFTH EDITION 2008) (1 MARCH 2008), para 234.**
13. In the case of an executory judgment, the court determines the respective rights of the parties and then orders the defendant to act in a certain way. If the order is disregarded, it can be enforced by official action. A declaratory judgment, on the other hand, pronounces upon a legal relationship but does not contain any order which can be enforced against the defendant. See *Zamir & Woolf, The Declaratory Judgment. 3<sup>rd</sup> Edition, para. 1.02.*
14. In this regard although part of the order of Barnes J declared the legal rights of the Defendant, the effect of the entire order must be considered. It would be improper for the court to read the first part of the order as being severable from the second part, as the second part is in essence an extension of the first. The second part equips the order with words of coercion making the order an executory one and not merely a declaratory one. The Learned Judge appeared to have first declared the entitlement of the defendant and then ordered the Claimant to act in a certain way consistent with that entitlement. Put another way, the command to “*break down and remove*” following from the establishment of the Claimant’s right to possession is one that can be enforced by official action.

Command to “break down and remove”

15. The Claimant submitted that even if the judgment was an executory one, the command to “break down and remove” was not the same as “to deliver up possession” and so could not be enforced by way of writ of possession.
16. According to **Rule 46.4** of the CPR 1998, a judgment for possession of land may be enforced by (1) a writ of possession; (2) a confiscation of assets order under Part 53; or (3) an order for committal to prison under Part 53.
17. This court did not agree that a differentiation in the phrasing of the order ought to have been made. The order made by Barnes J declared that the Defendant was entitled to possession and proceeded to give a directive of how the Defendant was to be furnished with possession. It is immaterial that the order of Barnes J did not specify that possession was to be delivered to the Defendant. The duty on the part of the Claimant as arose out of the order was to vacate. Coupled with the declaration, it simply meant that the Defendant would enter into possession after such vacation, he being the person who by legal declaration is entitled so to do. Consequently, this was in fact an order for possession of land which could be enforced in the ways provided in **Rule 46.4**. and in **Order 45** RSC 1975.
18. The order for leave to issue the writ therefore mandates the means by which the Defendant is to recover possession of the parcel of land, that is by the removal of the Claimant from the land. The writ of possession was therefore a proper mode of enforcement.

Time limitation on the enforcement of orders for possession

19. The Claimant also argued that in any event the Defendant is time barred from enforcing the Order of Justice Barnes since more than 12 years has elapsed since the making of the said Order.

20. The Claimant relied on section 3(2) of the **Limitation of Certain Actions Act Chap 7:09** in support of this proposition. This section provides:

*(2) An action shall not be brought upon any judgment after the expiry of twelve years from the final judgment and no arrears of interest in respect of any judgment debt, shall be recovered after the expiry of twelve years from the date of the final judgment.*

21. However the Act attributes the following definition to “action”:

*“action” means any civil proceedings in a Court of law other than those relating to real property;*

22. It is clear from definition of “action” in the **Limitation of Certain Actions Act Chap 7:09** that this legislation does not cover actions relating to real property and therefore the Claimant cannot rely on this legislation in support of his proposition in the present matter.

23. The Claimant also relied on the case of **Dalton Chadee & others v Kaaramchand Rampersad** CIVIL APPEAL NO. 145 of 2005 (Court of Appeal Trinidad and Tobago). However in this case the issue for determination was whether proceedings to enforce the recovery of a money judgment in favour of the Appellants were barred by section 3 of the **Limitation of Personal Actions Ordinance Ch. 5 No. 6** (the Ordinance) (now the Limitation of Certain Actions Act). The court did not see the relevance of this case to the present proceedings

since it related specifically to the enforcement of a money judgment and not to enforcement of an order for possession as is the subject of the present proceedings. Neither does it appear from this authority that it was decided that the limitation period applicable to money judgments were equally applicable to judgments for the possession of land.

24. The Defendant, on the other hand, argued that the relevant legislation for the limitation of the enforcement of judgments relating to property was the **Real Property Limitation Act Chap 56:03**. Consequently, Counsel for the Defendant stated that the time limit for the enforcement of the judgment of Barnes J was 16 years and that the right to enforce the judgment of Barnes J had not yet been extinguished.

25. It has become settled law that to enforce a judgment a party must take further court proceedings to do so. Therefore, a right to take execution on a judgment is to be treated as a proceeding in a judgment: **National Insurance Board of Trinidad and Tobago v Barl Naraynsingh and another** HCA 563 of 1992, **Chadee and Ors v Rampersad** (supra).

26. It is apparent that the enforcement of a judgment is not a separate action but one which emanates from the previous proceedings for the recovery of land. The **Real Property Limitation Act** relates specifically to the limitations on actions for recovery of land. That is, the substantive proceedings for the recovery of land. Therefore, the **Real Property Limitation Act** may not apply to the present proceedings at the present time as the present proceedings are proceedings in a judgment. The distinction between the wording of the relevant sections of both the **Real Property Limitation Act** and the **Limitation of Certain Actions Act** appears to support this interpretation.



27. No authority was therefore provided by the Claimant on the issue of any limitation period for the enforcement of orders for possession of land granted by the court after determination of actions which do not relate to mortgages.

28. By **Rule 47.8** of the **CPR** the general rule is that a writ of possession may not be issued without the permission of the court. In the absence of legislation specifically dealing with time limitation on the enforcement of possession judgments, this Court was of the view that where an order for possession of land is to be enforced the party seeking enforcement must simply obtain the permission of the court. This seems to be the only restriction to the enforcement of such an order and the Court could see no time limitation on the enforcement of the Order of Barnes J in the instant case.

### Interim Injunction

29. In considering whether to grant the interim remedy sought the court is guided by the following considerations:

*(1) Is there a serious issue to be tried.*

*If the answer to this question is “yes”, then the court considers the next question.*

*(2) Where does the greater risk on injustice lie, in granting or refusing the injunction. In some cases the Claimant may not have a strong case but nonetheless the consequences of the refusal to grant the injunction may have consequences which far outweigh the consequences to the defendant of wrongfully granting it.*

**East Coast Drilling and Worker Services Ltd v Petroleum Co of Trinidad and Tobago Ltd (2000) 58 WIR 351, Jet Pak Services v BWIA International Airways (1998) 55 WIR 362.**

30. In considering the first threshold, the court must be satisfied that the claim is not frivolous or vexatious without an indebt consideration of the merits of the case.

31. Having regard to the foregoing, this court was of the view that there was no serious issue to be tried as relates to the enforcement of the order of Barnes J. The court was of the view that this case was not one in which the Claimant had even passed muster. It could not even be said that at the least the Claimant had an arguable case. It was clear to the court, without an indebt consideration of the merits, that the case for the Claimant may have been frivolous in that it lacked legal merit and may was an attempt to delay the enforcement of the judgment.

32. Nevertheless the court proceeded to consider the balance of justice, that is, how much greater the injustice suffered would be to either party if the injunction were wrongly refused than if it were wrongly granted.

33. In this regard, the evidence upon which the court was being asked is contained at paragraphs 3, 4 and 5 of the affidavit of the Claimant. These paragraphs contain only the facts in relation to the pre action protocol letter and the response thereto by Attorney for the Defendant.

34. There is simply no other evidence. The evidence did not disclose the facts material to an application of this type. There is no evidence that the structure is occupied and by whom. There is no evidence that anyone would suffer hardship should the injunction not be granted and in what manner if so. There is no evidence of the extent of the encroachment save and except the inference to be drawn from the

letter in response by the Defendant's attorney-at-law that **part** of the Claimant's structure is that which stands on the Defendant's land. The paucity of the evidence in support in this case was to say the least remarkable.

35. When considered in the round therefore, the court was of the opinion that on the evidence the balance of justice did not favour the Claimant. The court could not and did not speculate as to the consequences to the Claimant, (if any), should the injunction be wrongly refused. While it is reasonable for a court to consider that in an application of this nature there would be some inconvenience to the occupant of the premises, there is no evidence that the Claimant even occupied the subject premises in this case.

36. The paucity of the evidence of any consequences to the Claimant whatsoever, coupled with the lack of merit of the case for the Claimant, in the court's view militated against the grant of the injunction.

37. Before disposing of the application, the court noted that during the course of argument it was disclosed by attorney-at-law for the Defendant that there had been a previous claim in relation to the said property in which the same parties were involved which was compromised by way of a consent order dated the 4<sup>th</sup> November 2011 before my brother Harris J in which the Claimants consented to delivering up possession to the Defendants. The fact of this recent consent order is nowhere disclosed in either the Claim Form, Statement of Case, Notice of Application or Affidavit in support all filed on behalf of the Claimant. It was subsequently conceded by attorney-at-law for the Claimant that said consent order did in fact exist but was not brought to the attention of the court by the Claimant. Further, the court was not informed of the name of the Honourable Judge before

whom the order was entered. No reason for such a relevant non disclosure was provided.

38. In this regard attorney for the Defendant argued that the proper forum to challenge the consent order was before the Judge before whom it was entered. However, the consent order was never placed before this court by either party and the court was therefore unaware as to its terms if in fact it does exist.

39. The application for an interim injunction was therefore refused and the Claimant was ordered to pay the Defendant's costs of the application to be assessed at the end of trial.

Ricky Rahim

Judge

7<sup>th</sup> May, 2012.