

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(VIRTUAL HEARING)

CLAIM NO. CV2015-00623

BETWEEN

DIAGEM IMPORTS INC

CLAIMANT/JUDGMENT CREDITOR

AND

JEWELLERY PARADISE LIMITED

DEFENDANT/JUDGMENT DEBTOR

AND

OPNET INTERNATIONAL LIMITED

INTERPLEADER CLAIMANT

Before the Honourable Mr. Justice Kevin Ramcharan

Date of Delivery: 3rd September, 2020

Appearances: Mr. Anthony Cherry for the Claimant/Judgment Creditor

Mr. Anthony Manwah *instructed* by Mr. Kishore Maharaj for the Defendant/Judgment Debtor and the Interpleader Claimant

DECISION ON INTERPLEADER NOTICE

1. On 2nd November, 2018, Judgment was awarded in favour of the Judgment Creditor against the Judgment Debtor in the sum of (\$41,921.37) United States Dollars. There was no payment on that sum and a request for the issue of a Writ of *Fieri Facias (fi fa)* was issued on 19th March, 2019. In obedience to the Writ, Marshal's Assistants executed the Writ at the premises of the Judgment Debtor on behalf of the Marshal,

and seized several goods. On 3rd June, 2019, the Interpleader Claimant claimed the goods seized and the Marshal sent Notice of the claim to the Judgment Creditor who has disputed the Claim. The Marshal has now applied to the Court to determine the Claim of the Interpleader Claimant.

2. There was one affidavit filed on behalf of both the Interpleader Claimant and the Judgment Debtor by Hansrajie Khaludin who states that she is both a director of the Interpleader Claimant and the Judgment debtor. She states that there exists an agreement between the Interpleader Claimant and the Judgment Debtor, and the Judgment Debtor's predecessor that the Interpleader Claimant would provide the Judgment Debtor with Jewellery on consignment and that until the jewellery was sold, title remained with the Interpleader Claimant. In the circumstances, the jewellery seized by the Marshal was in fact the property of the Interpleader Claimant as the title had not been transferred to the Judgment debtor. Exhibited to the affidavit were copies of invoices which stated that "Seller retains title to all goods until payments are received".
3. In its submissions, the Judgment Creditor submitted that the title in the goods passed on delivery relying on sections 19 of the Sale of Goods Act Chapter 82:30, or alternatively, that the Judgment Debtor had a saleable interest in the goods, subject to the Interpleader Claimant's rights. It was noted that there was no evidence of any conditions upon which the Judgment Debtor held the goods, whether there be any right of recovery.

4. Reliance was placed on the cases of *Haythorn v Bush; Richards v Johnston, Bradley v Copley*; and *Manders v Williams*. In reply, the Judgment Debtor submitted that as there was evidence of the intention of the parties that the title to the goods remained in the Interpleader Claimant, sections 19 and 20 of the Sale of Goods Act did not apply. It further sought to distinguish the cases relied on by the Judgment Creditor on the basis that the title had not passed, or that the cases in actuality supported the case of the Interpleader Claimant and Judgment Debtor.
5. Section 19 of the Sale of Goods Act states that **“(1) Where there is a contract for the sale of specific or ascertained good, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. (2) For the purposes of ascertaining the intention of the parties, regard should be had to the terms of the contract, the conduct of the parties, and the circumstances of the case.”**
6. Attorney at Law for the Defendant submits that given the evidence of Ms. Khaludin, there is no need for recourse to the section. I disagree. The evidence of Ms. Khaludin mere expresses the terms of the contract to some degree. There is a measure of uncertainty as to the exact terms of the contract and what was the intention of the title remaining in the Interpleader Creditor until payment?
7. It seems to me that the intention of the parties in having that term was to remove any doubt that the Judgment Debtor was obliged to pay the Interpleader Claimant for the goods and even though they had a right to possession of the goods, they had no ownership until payment was made. That was the only rationale for the provision.

From the evidence before the Court, the Interpleader Claimant had no right to demand the return of the goods from the Judgment Debtor under any circumstances. Any claim would be for their share of the proceeds of the sale of the jewellery.

8. In that regard, the present case is similar to the case of ***Bradley v Copley***. Although the Judgment Debtor sought to distinguish it on the basis that it was a case of a distress for rent, upon a reading of the case, it is clear that this was a matter that dealt with the execution of a Writ of *fi fa*. In that case, a former baker, Boulton, was let an inn and lands by the Plaintiffs, in addition to being sold the household furniture and other effects and things. Boulton was unable to pay for the furniture and other effects, so he executed a bill of sale whereby he assigned and transferred them to the Plaintiffs on condition that the bill of sale would become void on the payment of the purchase price. The Bill of Sale also made specific provision for the Plaintiffs to be entitled to demand full payment and in default of payment, they would be entitled to retake possession of the goods.

9. Prior to the execution of the bill of sale, Boulton had been indebted to one Taylor, a miller, who had provided him with flour in the course of his previous trade as a baker. He had entered into an agreement with the Taylor for the payment of the debt by way of instalments. However, he defaulted on the instalments, and Taylor issued a Writ of *fi fa*, which was executed by the Sheriff, and in the execution of which the furniture and other effects which were the subject to the bill of sale were seized by the Defendant, the sheriff, through his officer. At the time of the execution, the bill of sale was still in force, as Boulton had not paid the Plaintiffs for the goods.

10. The Plaintiffs sued for the return of the goods, on the basis that the goods belonged to them. However, the court held that they were not entitled to the goods. As Cresswell, J stated, **“Upon the plea of not being possessed, the plaintiffs must succeed on the first point, the case expressly finding that the bill of sale was bona fide executed. But, construing the deed according to its terms, it clearly did not give the plaintiffs a present right of possession; nor did the sale by the sheriff. Before the plaintiffs could be entitled to possession of the goods, it was necessary that there should have been a demand of the money, and a failure, on the part of Boulton, to comply with that demand. Neither of these things has happened; and therefore the plaintiffs had not such a present right of possession as would entitle them to trover.”** (Emphasis supplied).
11. This is indeed the position in the instant case, where even though the Interpleader Claimant has title to the jewellery (as the plaintiffs had title to the goods in ***Bradley v Copley***), they have no right to possession. On the evidence of Ms. Khaludin, the Interpleader Claimant had no right to demand the return of the jewellery, and the Judgment Debtor had a right to possession until sale, upon which time the Judgment Debtor was obliged to pay the Interpleader Claimant its share of the proceeds of sale.
12. In the circumstances, I am of the view that the Marshal was entitled to seize the jewellery in the possession of the Judgment Debtor during the execution of the Writ of *fi fa*, and as a consequence are entitled to sell them to satisfy the judgment debt owed by the Judgment Debtor to the Judgment Creditor.

13. The Judgment Debtor and Interpleader Claimant are to pay the Judgment Creditor's costs of the Application assessed in the sum of Five Thousand and Seven Hundred Dollars (\$5,700.00).

KEVIN RAMCHARAN
JUDGE