

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV2020-00026

BETWEEN

WENDY PHILLIP

Applicant/Judgment Creditor

AND

KATHY-ANN MOTTLEY

Respondent/Judgment Debtor

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: 3rd February, 2020

Appearances:

1. Mr. Brent D. Winter Attorney-at-law for the Claimant.
2. No appearance for the Defendant.

DECISION

1. Before the Court for this determination is the Judgment Creditor's application filed pursuant to Part 53 of the Civil Proceedings Rules 1998 as amended ("CPR") by virtue of which the Applicant Judgment Creditor has sought an order for committal as against the Respondent Judgment Debtor Attorney-at-Law, Kathy-Ann Mottley.
2. The factual matrix which led to the unfortunate institution of these proceedings commenced when Ms Mottley represented the Judgment Creditor, Wendy Phillip, in Claim No. CV2013-01239, a matter in which Ms Phillip instituted an action as the administratrix of the estate of her deceased son Karrem Richards. A default judgment was obtained and thereafter an assessment of damages was undertaken by Master Sobian-Awai.
3. The Court on the 17th January 2015 ordered the defendants in the said action to pay to Ms Phillip in her capacity of the administratrix of her son's estate, the sum of \$360,000 inclusive of interests and costs. This sum was paid directly to Ms Phillip's attorney-at-law, Ms Mottley and thereafter an issue arose in relation to the retention by Ms Mottley of a portion of that judgment.
4. Aggrieved by those developments Ms Phillip instituted before the Disciplinary Committee of the Law Association a complaint dated February 13, 2017. On the 4th May 2017 the Disciplinary Committee ruled that Ms Mottley, Attorney-at-law had committed a breach of Part A Rule 31(1) and Part B Rule 10(1) of the Third Schedule of the Legal Profession Act Ch. 90:03 and she was found guilty of professional misconduct. It was ordered that she had to reimburse the sum of \$113,000 on/before the 4th August 2017 and Ms Mottley was also fined in the sum of \$10,000 and was given 30 days to pay the said fine.
5. The proceedings reflect that Ms Mottley testified before the Disciplinary Committee. There is no evidence before this Court however that she was physically present on the

date that the judgment or ruling of the Disciplinary Committee was given on 4th May 2017. However, on the 1st June 2017, Ms Mottley filed a notice of appeal and sought to have the decision of the Disciplinary Committee set aside. She premised her application on the basis that the Committee erred in fact and in law and that its finding that she had committed professional misconduct could not be supported by the evidence.

6. On the 3rd December 2018 the matter came up before Mohammed JA and at that hearing and confirmed by counsel at the bar table, Mr Winter, who appeared on behalf of Ms Phillip, Ms Mottley was present with legal counsel and initialed and entered before the Court of Appeal, a consent order which provided for the withdrawal of her notice of appeal and which outlined an agreement that the sum of \$113,000 would be paid together with interest by two instalments : half on/before the 3rd May 2019 and the balance on/before 4th November 2019. The consent order also provided for the payment of legal costs in the sum of \$4,000.
7. The evidence before this Court reveals that by way of an email sent between Attorney-at-law for the Judgment Creditor to Attorney-at-law for Ms Mottley a copy of the Court of Appeal order was forwarded to Ms Mottley's lawyer.
8. Subsequent to her being notified of the consent order, Ms Mottley issued a cheque for the sum of \$10,000 which was dated the 2nd May 2019 which was received on the 3rd May. The evidence suggests that that cheque cleared leaving an unpaid balance on the sum to be paid as being \$103,000 in addition to the cost order of \$4,000.
9. The Court has before it evidence of subsequent exchange of communication between Mr Winter on behalf of the Judgment Creditor and one response from Ms Mottley as well as another from her legal representative Mr John. The Court is satisfied that the time delimited under the Court of Appeal for the payment of the \$113,000 has expired without the full sum having been paid. By letter dated 20th October 2019 exhibited before this

Court as exhibit "J", Mr Winter on behalf of his client wrote to Ms Mottley advising her that a further complaint has been lodged before the Disciplinary Committee in relation to her non-compliance and that enforcement proceedings would be instituted.

10. The court was informed that Ms Mottley was served and directed that an affidavit of service had to be filed. The Court stood down the matter to enable Mr Winter to contact Ms Mottley who is his colleague at the bar. When the matter was recalled Mr Winter informed the Court that he had spoken to Ms Mottley, indicated to her that the matter was listed before this Court and he gave her the particulars. However, the Court was informed that Ms Mottley responded by saying that the documents which were served upon her were not endorsed with the particulars of hearing. This assertion was denied by Mr Winter.
11. This Court was referred to the Debtors Act Ch. 8:07 and the Court is satisfied that pursuant to Section 3(2)(d) of the legislation it can issue an order for arrest and imprisonment where there has been default by an attorney-at-law in payment of costs when ordered to pay costs for misconduct, or for payment of a sum of money when ordered to pay same in his capacity as an officer of the Court.
12. Having gone through the factual matrix, the Court is resolute in its view that the order of the Disciplinary Committee and the consent order before the Court of Appeal, confirmed that the sums ordered to be paid by Ms Mottley were sums which were ordered to be paid by her in her capacity and character as an officer of the High Court. These were not sums owed by her on a contractual basis or in a personal capacity but sums ordered to be repaid in her professional capacity as an attorney-at-law and the former legal representative of the Judgment Creditor, Ms Wendy Phillip.
13. The Court is therefore satisfied that it has jurisdiction to make an order for imprisonment for default of the payment of the sums referenced both by the order of the Disciplinary Committee and by the consent order before the Court of Appeal.

14. The next issue to which the Court addressed its mind is whether or not the conditions for committal as outlined in Part 53 of the CPR have been met. Counsel candidly pointed out that there was no endorsement of the penal notice in any of the orders which were served upon Ms Mottley. The Court was also directed to Part 53.6 CPR where the High Court has the power to dispense with service of a judgment or order under Part 53.3 CPR or Part 53.4 CPR if it thinks it is just to do so.
15. Notification of the terms of an order are an inherent part of natural justice because someone cannot comply with an order unless the person is aware of the order which has been made. The Court is vested with a discretion and this discretion must be exercised in a way that reflects all of the tenets of justice. It is not lost on this Court that the Judgment Debtor in this case is a professional and an attorney-at-law. The Court is satisfied that at all material times including the date at which she appeared before the Court of Appeal on the 3rd December 2018 and initialled the consent order that she was acutely aware of the terms of the order issued by the Disciplinary Committee which mandated her to repay the sum of \$113,000.
16. It is not lost upon the Court as well that this is not a lay litigant. Ms Mottley is an attorney-at-law and by virtue of her profession it is reasonable and probable for the Court to conclude with a degree of certainty that the consequences for the default of a court order must have been a circumstance to which she addressed her mind. In the exercise of its discretion the Court considered the fact that it has an obligation to uphold the administration of justice and the rule of law in general.
17. In a society where lawyers play a fundamental and integral role in defending citizen's rights and ensuring that justice is done, there is placed upon them a heightened obligation to treat with citizens fairly and justly. The existing system geared towards professional regulation is in this Court's view, deficient. Proper regulations and provisions to ensure the highest level of professional conduct are always observed need to be

implemented. The Court must send a strong and singular message that lawyers who breach their obligations to their clients must face the consequences of their action.

18. Accountability is essential if the rule of law is to be preserved. The Court under its inherent jurisdiction has a substantial interest in ensuring that all its orders are complied with. This interest is heightened when it touches and concerns a member of the profession.
19. If committal orders such as this is to be approached from a purely technical ground then justice may not ultimately be done. Procedural requirements are implemented to ensure that there is procedural fairness and this Court is satisfied that at all material times Ms Mottley had full knowledge of the orders made against her and was fully aware of the consequences which could flow by virtue of her non-compliance with the said orders.
20. The Court is satisfied beyond all reasonable doubt that Ms Mottley knew the terms of the order which the Judgment Creditor now seeks to enforce. She was well aware of the consequences of disobedience and the grounds upon which the application before this Court was made, were grounds which had been communicated to her in the prior chain of communication which predated the institution of this matter.
21. It is unacceptable that a citizen who acquired a judgment in 2015, four years and some months after that fact, is still left without the benefit of the judgment award. Situations such as this , possibly continue because we are operating within a system, where contingency fees are still not part of the legal landscape and unscrupulous lawyers especially in cases which involve running down actions and personal injury actions can take advantage of litigants by doing matters without upfront payments, but then when judgment sums are received they impose upon the litigant, unreasonable percentage charges which they deducted and retain from the sums awarded.

22. While the Disciplinary Committee provides an invaluable service as is evident as is evident in this case, a more regulated system is possibly required so that citizens firstly, can be aware of their rights to challenge attorneys-at-law who engage in courses of conduct which are unscrupulous and secondly, there needs to be quick determinations of complaints, when such complaints arise.
23. The steps taken by Wendy Phillip in this matter are unusual. The majority of people who are adversely affected by actions of lawyers very often suffer in silence and do not avail themselves of any recourse and as a result, lawyers possibly become more emboldened. This is a situation which must be addressed as a matter of urgency. It can no longer be that the profession the size of the one which we have in this Republic can self-regulate and clear and cogent professional and ethical guidelines ought to apply. It is also necessary for lawyers to undergo continuous mandatory training and ethics sensitization and this training should be completed before there is a renewal of practicing certificates. Many jurisdictions such as Jamaica have imposed similar criteria.
24. What a lawyer may have learnt in law school is clearly not sufficient to sustain an ethical approach to practice throughout his/her career and unless there is continuous training sensitization to ethical standards of conduct situations such as this would likely continue.
25. Having considered Part 53.6 CPR, the provisions of the Debtors Act and in particular Section 3(2)(d) thereof as well as all the evidence filed before it, this Court hereby orders that the Respondent Judgment Debtor Kathy-Ann Mottley is to repay to the Applicant Judgment Creditor the sum of \$103,000 representing the balance of the judgment sum awarded by the Disciplinary Committee on the 4th May 2017 and she is to pay the sum of \$4,000 in legal costs as agreed to in the consent order before Mohammed JA on the 3rd December 2018 together with the interest thereon on/before 4:00 PM on 2nd March 2020, in default Kathy-Ann Mottley shall be arrested and imprisoned for a term of 60 days.

26. In relation to the instant application before this Court, the Respondent Judgment Debtor is to pay to the Applicant Judgment Creditor costs assessed by this Court in the sum of \$7,500.

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FRANK SEEPERSAD
JUDGE