

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. C.L. S. 195 of 2001

BETWEEN SUNROSE LIMITED CLAIMANT

AND OTHNEIL MARTIN 1ST DEFENDANT

AND FELIX MITCHELL 2ND DEFENDANT

Miss Suzette Wolfe and Miss Celia Barclay instructed by Crafton S. Miller and Co. for Claimant

Mr. Ian Wilkinson and Miss Shashawa Grant instructed by Ian G. Wilkinson and Co. for the 1st Defendant

Mr. Debayo Adedipe for the 2nd Defendant

Execution – Writ of Possession – Whether Bailiff liable for any loss occurring during execution – Whether Bailiff the agent of the owner of the land

April 2, 3, 4 and 25, 2008

BROOKS, J.

In March 1997, at Mr. Othniel Martin’s request, this court issued a writ of possession for his tenant, Sunrose Limited, to be evicted and for possession of the leased land to be delivered to him. The writ was entrusted to the Bailiff for the parish of Manchester, who was then Mr. Felix Mitchell. The execution commenced on 8th March. It was a large undertaking. According to Sunrose, by the time the execution was eventually completed on the 11th March, its products, materials, tools and equipment had been damaged, destroyed or stolen. It seeks to recover in trespass, from Mr. Martin and the bailiff, compensation for its loss.

Both Mr. Martin and the bailiff assert that they can bear no liability for the alleged damage or loss, because all that was done was done in obedience to and in conformity with, the process of this court. The main question to be decided is whether or not Sunrose has proved that the bailiff acted outside the scope of the writ of possession. If the answer to that question is in the affirmative then two further questions must be answered:

- a. was the bailiff at any time acting as the agent of Mr. Martin;
- b. what loss has Sunrose suffered as a result of the breach.

The Law

The principle concerning the execution of the process of this court is of long standing. It is that officers of this court, who are carrying out its orders, are immune from liability for the actions taken in obedience to those orders. Greer, L.J. in *Williams v Williams and Nathan* [1937] 2 All E.R. 559 at page 563 put it succinctly:

“...It appears to me that the law is as stated by Parke, B., in *Howard v. Gosset* [(1847) 10 Q.B. 359] at p. 453, that the sheriff and his officers executing a judgment, however wrong the judgment may be, or however mistaken they may be as to the effect of the judgment, are not liable to have an action brought against them for damages for what they have done.”

In our jurisdiction, it is a bailiff rather than a sheriff who is the relevant officer for executing writs issued by this court. A bailiff of the Resident Magistrate's Court is, by section 17 (1) of The Judicature (Supreme Court) Act, a bailiff of the Supreme Court. That section also authorizes the

bailiff to execute the process of this court. In 1997 the specific authority for the issue and execution of writs of possession was outlined in section 648 of the Judicature (Civil Procedure Code) Act (CPC). Rule 45.4 of the Civil Procedure Rules 2002 (CPR) now applies in respect of such process.

A bailiff is liable, however, if any act is done in excess of the authority given by the writ. (See *De Coppett v Barnett* (1901) 17 T.L.R. 273 C.A.) The bailiff is also liable for the negligence of his officers. Although I have not found any decided case on the point, it is my view that a bailiff who conducts the eviction in a wanton manner, with absolutely no regard for the property being removed from the premises, would be liable to an action for trespass. He would be in a similar position to a bailiff who takes possession of more land than the writ describes. It would be an exercise in excess of his authority.

Despite the statement made above, I accept as an accurate statement of the law, the submission of Mr. Adedipe, for the bailiff, that the bailiff is not required to “tiptoe” while carrying out his function of ejection. I also accept that once the items have been placed outside of the premises, the bailiff has no further responsibility in respect of them. He is not obliged to secure them from either human or natural elements.

The bailiff is not the agent of the landlord who seeks to recover possession, unless the bailiff, at the landlord’s request takes some action

outside the scope of the writ of possession. In *Barclays Bank Ltd. v Roberts* [1954] 2 All E.R. 107, the sheriff acted on the advice of the landlord's solicitors in evicting a sub-tenant who was subsequently proved to be in lawful occupation of the premises. It was held that the sheriff's officers had acted in accordance with the writ of possession and did nothing beyond what they were authorised to do by the court. It was further held that the advice by the solicitors did not make the sheriff's officers the agent of the landlord and therefore the landlord was not liable for the wrongful eviction.

Mere presence of the landlord at the time of the eviction does not expose him to any liability (See *Williams v Willams and Nathan* (cited above)). Indeed, there is a view that the landlord or his representative, "must go upon the premises, together with the sheriff or bailiff to point out the property of which possession is to be given". That view was expressed by the learned editors of *Halsbury's Laws of England* Vol. 17 (1) 4th Ed. (Reissue), at paragraph 146. It coincides with that of the learned author of *Edwards on Execution* (1888) who, at page 101 opined:

"It is, therefore, essential to the due execution of the writ that the plaintiff, A.B., or some person authorized by him, should be or come upon the land with the sheriff's officer to be let into possession. If no such person appears, the sheriff cannot, in the nature of things, obey the mandate, and a return to that effect is a good return."

There is judicial support for the view. In *Cottingham v King* 1758) 1 Burr. 622 at page 629 Lord Mansfield said "...the plaintiff is to shew the

sheriff; and is to take possession at his peril, of only what he has title to: if he takes more than he has recovered and shewn title to, the Court will, in a summary way, set it right". Bearing in mind the wording of writ of possession which was in use in 1997 and that which is currently applicable, I find that those statements by the learned authors, correctly state the law.

Did the bailiff act negligently or otherwise outside the scope of the Writ of Possession?

Negligence

The managing director of Sunrose, Mr. Alfons Klem, testified that Sunrose cultivated vegetables, mainly lettuce, hydroponically. The agricultural operation was conducted in three green houses totalling 10,000 square metres. The main components of the operation were the tables on which the plants were cultivated (growing tables), "growing equipment, including cold room, water tanks, water pumps, and irrigation systems to facilitate the process" (paragraph 3 of Mr. Klem's witness statement).

He said that in the execution of the writ the bailiff and the bailiff's "workmen damaged and destroyed [Sunrose's] crops and equipment". He went on:

"The Bailiff and his men threw [the lettuce] on the roadside without giving us a chance to reap same. They did not care at all, they just busted fertilizer bags, stole the company's tools, equipment and plants. The truck hired by [Mr. Martin] drove over the flower pots and the lettuce dried out." (paragraph 8)

Mr. Keith Bennett, who assisted Mr. Klem during the eviction, gave evidence of a similar nature to Mr. Klem. Mr. Bennett at paragraph 7 of his witness statement said:

“The workmen that were there to assist in the eviction process did not care at all. They threw the vegetables and produce which were being cultivated down on the streets (sic) side, busted up the fertilizer bags and smashed up the equipment.”

Mr. Klem tendered into evidence a number of photographs. One of these depicted men throwing a bag, from inside the rear of a motor truck, in which they were standing, unto the road-side. The bag was, based on Mr. Klem's evidence, apparently filled with fertilizer. The picture shows the bag in mid air, heading toward the road-side some feet below. There was no evidence as to what was the result of the tossing from the truck of that bag, or any of the others on the truck at that time. There were pictures of torn fertilizer bags, but no connection was made to the bag being tossed.

Other pictures show piles of what can only be described as refuse; an old car seat, an old tyre, pieces of lumber, torn bags and items of that ilk. The impression was not one of damage to previously sound items. Still other pictures show many trays of crops, presumably lettuce, laid out in rows on the road-side along with other items. They seem to have extended for a number of chains along the road-side.

In cross-examination, it proved that Mr. Klem did not actually see any of the bailiff's men take away any items. He testified that he saw one with a

plastic "scandal" bag with lettuce, but that he (Mr. Klem) took the bag away from the man and made a complaint to the bailiff. What Mr. Klem could and did say, is that the property was put out on the road-side and at the end of the day the vegetables were spoiled by lack of nutrient, or destroyed by the handling. He also said that his tools and equipment were then, discovered missing.

He said that he had an employee from his farm on the roadway, looking after his property and securing them, while he walked around observing what was being done. He agreed however that the items were on the public roadway and many houses were in that vicinity.

One of Mr. Klem's complaints about the operation was that it should have taken longer. Implicit in that statement is that he expected the bailiff's men to treat the crops with the kind of care that Mr. Klem knew that they required. I do not think that the standard is that high. It is my view that what was required was the taking of reasonable steps to remove Sunrose's property from Mr. Martin's property. This would require the dismantling of the equipment, if that could be done without damage, and transporting it to the road-side. Some items may have been damaged in the process but Mr. Klem's evidence does not, in my view, amount to proof of negligence. I was somewhat concerned that the bailiff, on realizing that he needed more manpower, had recruited persons from the area surrounding the farm without

any previous knowledge of them or their antecedents. I am satisfied however, that Sunrose has not proved that that manner of recruitment resulted in any of the losses which it claims it suffered.

I am satisfied that the bailiff took all reasonable steps in the circumstances. Although Mr. Klem testified that he did not remember if it had occurred, I find that the bailiff visited him on the 5th March, that is, three days before the eviction, and gave Sunrose warning to leave the property. When asked why he didn't vacate the premises before the bailiff came, Mr. Klem testified: "I don't know - maybe the time was too short". Later in the cross-examination, he said that he didn't remove the property because he was not sure that the bailiff was coming. Yet he testified that by the time the bailiff came to the premises on the 8th, Mr. Klem had already secured the services of Mr. Bennett to help him and his staff remove Sunrose's property from the premises and to transport them to Mr. Bennett's home.

I was impressed by the fact that the bailiff did give that warning and that he did inform Mr. Martin, on the day, that the eviction required more men than he, the bailiff, had available to him. It is also of significance that the bailiff did not carry out any work on Sunday the 9th March, which fell immediately after the first day of the eviction, and that Mr. Klem had a further opportunity then, to remove Sunrose's property. I find that Sunrose

has not proved that the bailiff was negligent in any manner, either directly or vicariously through his agents.

Exceeding Authority

The writ of possession executed was not put in evidence. I shall however, adopt the method used by the Court of Appeal in the *Barclays Bank* case, mentioned above. I shall assume, therefore, that the writ took the form set out in Schedule VII to the CPC, that is, it was addressed to the bailiff, and after reciting the judgment for possession, commanded the bailiff to enter the premises, cause Mr. Martin to have possession thereof and make a report of the execution to the court.

Based on the evidence led before me, there is nothing to indicate that the bailiff went outside the terms of his remit. Mr. Klem complained that the bailiff did stray from the terms of the writ, by failing to dismantle the greenhouses and remove them from the property. I do not accept that as being a valid criticism. I accept the evidence that at the end of the third day, when only the greenhouses and a reservoir pump were left on the property, the bailiff completed his task when Mr. Martin assured Mr. Klem in the presence of the bailiff, that Mr. Klem could return at any time to recover those items. Mr. Martin indicated that his caretaker, whom Mr. Klem knew, would have the keys, and would afford him access.

Miss Wolfe, on behalf of Sunrose, relied on the case of *Jelks v Hayward* [1905] 2 K.B. 460, in support of her submission that the bailiff had exceeded his authority. *Jelks* concerned the sale of furniture lawfully seized by a bailiff. The furniture had been seized from a person who had taken them on hire-purchase. The act of seizure caused the reversion of the right to possession of the furniture, from the person from whom the bailiff seized the goods to the legal owner thereof. The subsequent sale of the furniture exposed the bailiff to liability in trover. Miss Wolfe submitted that just as that sale caused that bailiff to be liable, so should the damage of Sunrose's property lead to liability.

I do not think that that case is of assistance here. The circumstances are wholly different from the instant case. The nature of the execution in each case is completely dissimilar.

It would have been unreasonable for Mr. Klem to require the bailiff to undertake the task of dismantling the greenhouses. Firstly the bailiff testified that he had neither the tools nor the expertise and secondly it would have taken an enormous amount of time which would not have been justified in the face of Mr. Martin's assurances just mentioned. Mr. Klem testified that it took him four weeks, using eight persons working every day, to dismantle the green-houses.

Based on the above, I find that the bailiff is not liable in any way to Sunrose. Neither did the bailiff, at any time act as Mr. Martin's agent. Although Mr. Martin did provide the truck to assist in the removal of Sunrose's property from the premises to the sidewalk and did round-up a group of men from which the bailiff chose persons to assist him, those acts were not such as to require the bailiff to go outside of his bailiwick.

Based on that finding, I need not therefore consider any of the loss claimed by Sunrose. Even if I did have to give the matter of loss consideration, I would have found that Sunrose had failed to prove the value of any loss, to the standard required in civil claims, relating to special damages. (See *Robinson and Co. Ltd. and Jackson v Lawrence* (1969) 11 J.L.R. 451 at page 453.)

The Greenhouses

Before parting with this claim, I should mention that I was concerned about Mr. Martin's act of locking the premises at the end of the third day of the eviction and saying that he had to leave. That may well have exposed him to liability in detinue. I accept, however, his evidence and that of the bailiff that he did tell Mr. Klem that Mr. Klem could collect the items at any time. I find that no liability attaches to that act of locking the premises, despite the fact that approximately three and a half years would pass before Mr. Klem did recover the greenhouses.

This aspect would not affect the bailiff whose official involvement terminated when he delivered the premises to Mr. Martin and went away.

(Molineux v Fulgam (1622) Palm. 289)

Conclusion

The bailiff acted in accordance with the writ of possession issued by this court. He did not go beyond the terms of the writ and therefore no liability in trespass attaches to his actions or those of his agents. In carrying out his actions, the bailiff was in no way acting as Mr. Martin's agent, but rather, was acting as an officer of this court.

Although it appears that some damage did take place during the eviction, this was not due to negligence or a wanton exercise of the bailiff's authority. Sunrose's crops were damaged because of the termination of their water source. The tools and equipment were not proved to have been taken by the bailiff or his agents.

The order therefore is:

1. Judgment for the Defendants
2. Costs to the Defendants to be taxed if not agreed.