



## **Judgment**

**IN THE SUPREME COURT OF JUDICATUE OF JAMAICA**

**IN CIVIL DIVISION**

**CLAIM NO. 2004 HCV 02194**

<b>BETWEEN</b>	<b>THE BANK OF NOVA SCOTIA JA. LTD.</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>ABDULLA C. MARZOUCA</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>ABDULLA A. MARZOUCA</b>	<b>2<sup>ND</sup> DEFENDANT</b>

Ms. D. Gentles instructed by Livingston Alexander and Levy for Claimant  
Mr. A. Levy for the Defendants.

**Heard: May 29, 2008 and July 2, 2008**

**Thompson-James J, (Ag.)**

### **BACKGROUND**

On the 15th of September 2004 the Judgment Creditor Bank of Nova Scotia Jamaica Limited (hereinafter referred to as the bank) filed a Claim form and Particulars of claim against the Judgment debtors, the 1<sup>st</sup> and 2<sup>nd</sup> defendants Abdulla C Marzouca Limited and Abdulla A. Marzouca (herein-after referred to as the company and Mr. Marzouca) respectively, in relation to monies loaned to the company by the bank, repayment of which was guaranteed by Mr. Marzouca together with interest and other fees. The company and Mr. Marzouca, having defaulted in their repayments.

On the 16<sup>th</sup> of February 2005 judgment on admission was entered in the amount of \$9,271,061.64 and on the 14<sup>th</sup> February 2008, on the application of the bank an order for oral examination was granted.

### **The Oral Examination**

It is against this background that on the 29<sup>th</sup> of May 2008 Mr. Marzouca was examined under oath as to his property or means.

The examination revealed that Mr. Marzouca a 77 years old retiree and divorcee owns no property. The apartment in which he resides at 3H Manor Court is rented for him by his ex-wife. He has no children dependent on him nor residing with him. He retired from the Company for the past 67 years. The building from which the company operated was sold and an amount less than expected was realized. Instead of the \$60m anticipated, \$35-40m was received.

Presently he receives no pension apart from a Government Pension of \$3,000.00 every fortnight. He does not know the sum of money paid for his rental. His children assist him, one of his sons in particular supports him with \$8,000.00 per month.

His chequeing account at first Global Merchant Bank holds \$4,000.00 to \$5,000.00. He has no other bank account. He owns no stock neither does he own a motor car. The motor car that he uses is due to the benevolence of his ex-wife. His monthly bill he said at first amounts to \$3,000.00. He does not pay for water and his telephone bills amount to \$1,500.00 per month.

In declaring the monthly payments for utilities as well as to his household helper he seems to be a bit confused. At first he indicated that his monthly bills

amount to about \$3000.00 but he then went onto say that his telephone bills amount to \$1,500.00, and for cable television with Sports Max he pays about \$3,000.00. To his household helper he pays about \$8000.00 from his salary. I am not sure what he means by salary as he had earlier deponed that he only receives a pension. I take it therefore that salary is synonymous with pension. Initially he stated that he pays her \$3,000.00 for 3 days per week. He then went onto say that he pays her \$2,200.00 per week which is his entire salary.

As far as he knows he has no Court Orders against him nor payment in any court case. He does not know of any bankruptcy proceedings filed against him but a Mr. Charles Clark has filed writ against him. The proceeds from the sale of the company were used to pay some of his creditors including the bank. Mr. Marzouca said he lost the company which was engaged in the sale of electrical supplies, lightings and appliances as a result of competition. His competitors, it seems were able to source cheaper goods and material from outside of Jamaica. The company owes him \$38m.

### **The applicable law**

The applicable provisions of the Civil Procedure Rule 2002 is part 44.

By part 44.1

**This part deals with the examination of a Judgment debtor on the application of a judgment creditor to obtain information as to -**

- (a) what property or means the Judgment debtor has; and**
- (b) what debts are owing to the judgment debtor,**

**to assist in enforcing a judgment. Such examination is called an “oral examination.”**

The purpose of the oral examination is to assist in enforcing the judgment by way of obtaining information as to what property or means the judgment debtor has or what debts are owing to him.

As outlined earlier Mr. Marzouca owns no property. The Company was sold for \$35-40m which was used to reduce his debts. The company owes him \$38m. He has other creditors apart from the bank. He receives government pension in the amount of \$6,000.00 per month along with assistance of \$8,000.00 from his son. His ex-wife assists him with transportation and living accommodation. He pays his household helper in the region of \$2,200.00 to \$3,000.00 per week. His telephone bill is \$1,500.00 per month. His entertainment seems to be about \$3,000.00 per month. Payment to his helper, seems to consume his pension whilst the \$8,000.00 that he receives from his son is absorbed by utility bills.

### **Conclusion**

Whilst appreciating Mr. Marzouca's apparently impecunious position, it cannot be ignored that he has admitted owing the bank in excess of \$9m. Repayments of this sum has to be made to the bank. I have considered the issues involved long and hard and it seems to me that the only steady source from which repayments can be made, taking into account that he owns no property, he has a fortnightly pension of \$3,000.00 and is assisted by his children and ex wife

financially, is from the pension. A repayment of the paltry sum of \$5,000.00 per month may well be reasonable in all the circumstances.

**Order**

- (1) It is hereby ordered that the 2<sup>nd</sup> defendant pays the sum of \$5,000.00 per month as monthly repayment on the debt commencing on 1<sup>st</sup> August 2008 and thereafter on the 1<sup>st</sup> of each month while the debt is discharged
- (2) Interest at 12 percent per annum.
- (3) Costs to the Claimant to be agreed or taxed