

IN THE SUPREME COURT OF BELIZE A.D.2002

ACTION NO: 4 OF 2002

BETWEEN: RICHARD LAMBHEY CLAIMANT-RESPONDENT

AND

FRANCIS MEJIA LAMBHEY APPLICANT-DEFENDANT

Mr. Oswald Twist for the applicant-defendant

Mr. K. Musa for the respondent-respondent

AWICH J

18.11.2009

D E C I S I O N

1. On 9.3.2004, the date of the handwritten notes, Dennys Barrow Acting Judge then, made an order on the application of the respondent judgment creditor, Richard Lambey, for sale of land belonging to Francis Mejia Lambey, the applicant-judgment debtor. The land is Lot 1076, situate at 9<sup>th</sup> Street Benguche Area, Dangriga Town. It was held by Minister's Fiat Grant No. 95 of 2001. The application was made under O. XLVI r. 4 of the Supreme Court (Civil Procedure)

Rules, Cap. 82. The order was to effect enforcement of a default judgment entered on 28.4.2003, on failure of the applicant to enter appearance to the writ of summons commencing the action.

2. Subsequent to the order made 9.3.2004, the land was sold by private treaty to Timothy Lambey, the son of the judgment creditor, for \$18,500.00. The date of the sale has not been stated in the application papers. This application by the judgment debtor does not directly challenge the sale on the ground that it was not a proper sale at arms length. That is not therefore an issue for decision.
3. After the sale, the debtor filed this application on 9.2.2006, for an order setting aside the default judgment of 28.4.2003. The grounds for the application were that: (1) the default judgment was irregular because service of the writ of summons was not effected and the applicant was not aware of the claim; (2) the applicant had good reason for failing to enter appearance to the writ of summons, he was not aware of the writ and claim; (3) the claim had been made to court, the Magistrates' Court, and was dismissed; and (4) the applicant had good defence to the claim namely, that the respondent did not spend

the money claimed on the property of the applicant, and in any case, the applicant did not ask the respondent to repair the applicant's house.

4. The ground that service of the writ was not effected is baseless. Service of the notice of the writ instead of the writ, was authorized by a court order made on 28.2.2002, and the notice was served outside Belize at the address of the applicant, specified in the order. Service was effected on 2.4.2003 by delivering the notice to Fedex, a delivery company, with instruction to deliver it at the address which is still the present address of the applicant. Fedex issued a delivery slip dated 9.4.2003, acknowledging delivery. The default judgment was not irregular because of failure to serve the writ of summons.
5. The point was not raised, nevertheless I would have found that the judgment was irregular because the correct default judgment should not have been a final judgment. The proper default judgment was an interlocutory judgment for damages to be assessed. The respondent claimed unspecified sum of money he spent on repairs of the applicant's house, and "damages" for his "investment".

6. I also think that, the applicant might have had a good defence on the merit, in that the case might have already been conclusively decided at Magistrate's Court.
7. The above two points must have occurred to the learned judge at the time of hearing the application by the judgment creditor for court order to sell immovable property of the applicant. I must assume that the learned judge saw it differently. Of importance though was, that was the occasion on which the applicant should have contested the entry of the default judgment on which the order for sale would be based. He did not. Instead, over three years later, he made this application. This piecemeal manner of making applications relating to the same subject matter and before different judges is an abuse of court process.
8. In any case, this application filed on 9.2.2006, for an order to set aside the default judgment entered on 28.4.2003, over three years back, was made far too late. The judgment had long been enforced, and the right of the buyer of the applicant's property would be affected all too late

and without a hearing. He is not a party to this application. I would refuse the application for the reason that it was made far too late.

9. The application by the defendant, Francis Mejia Lambey, filed on 9.2.2006, for an order setting aside the default judgment entered on 28.4.2003, is dismissed.
10. Costs in the sum of \$1,500.00 is to be paid by the applicant to the respondent.
11. Pronounced the 18<sup>th</sup> day of November 2009  
At the Supreme Court  
Belize City

Sam L. Awich  
Judge  
Supreme Court