

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW AND EQUITY DIVISION  
2003/APP/mag/FP/00020**

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**BETWEEN**

**CHARLES SEYMOUR**

*Appellant*

**AND**

**BASIL SIMMS**

*Respondent*

**BEFORE** The Honourable Mrs Justice Estelle Gray-Evans

**APPEARANCES:** Ms Casietta McIntosh for the Appellant  
Mr Charles Seymour pro se

**HEARING DATE:** 2012: February 23; 28 June

**DECISION**

**Evans, J**

1. This is an appeal from the decision of the Magistrate.
2. According to the Notice of Appeal filed 3 October 2003, the appellant appeals the decision of the Magistrates to issue a warrant of committal. Indeed the relief sought is an order that the said warrant of committal be set aside.

3. The grounds for the appeal are as follows:
  - (1) The applicant is not willful default of the said judgment issued against him
  - (2) That the said warrant of committal is against the appellant's constitutional rights.
4. On 25 October 2002 the Magistrate gave judgment for the respondent in the sum of \$5,000.00 and ordered that the respondent pay the appellant by November 2002. The appellant did not appeal that decision nor did he pay the sum of \$5,000.00 to the respondent. A judgment summons was issued by the respondent for the said sum of \$5,000.00 on 1 April 2003 summoning the appellant to appear before the Magistrate on 15 August 2003 to be examined as to his means. Neither of the parties appeared.
5. However, on 21 August 2003 the respondent appeared, told the Magistrate that the appellant was self-employed.
6. The Magistrate indicating the court's satisfaction that the appellant was gainfully employed and had the means to pay the judgment debt and that he had willfully failed and refused to do so, ordered the appellant to pay the sum of \$5,000.00 costs in the sum of \$5.34 forthwith, in default of which he was to be committed to H.M. Prison for 6 weeks. That order was subsequently cancelled by the Magistrate on the application of the appellant in September 2003 and the matter set for further hearing in 30 October 2003. On that date the appellant informed the Magistrate that he had not paid the debt because he did not owe the plaintiff the moneys.
7. After informing the appellant that no notice of appeal had been served on the Magistrate's court and that his failure to pay the judgment debt when he had the means to do so, amounted to a contempt of court, the court made another order that the appellant should pay the judgment debt forthwith, in default of which he was to be committed to H.M. Prison for 6 weeks.
8. The appellant's attorney served a notice of appeal on the Magistrate who suspended the Warrant of Commitment pending the outcome of the appeal.
9. That was October 2003.
10. The matter first came on for hearing before Isaacs, J in August 2004 but was adjourned because the transcript from the Magistrate's Court was not available.
11. In November 2005, the parties, each represented by counsel, informed Carroll, J. that they were hoping to settle the matter and asked for an adjournment. Thereafter the matter lay dormant until September 2011 when it was first listed before me. The matter was adjourned to 15 December 2011 for a "final judgment adjournment".
12. On 15 December 2011 the appellant sought leave to appeal, out of time, the Magistrate's judgment awarding \$5,000.00 to the respondent. In support of that application, the appellant filed an affidavit on 14 December 2011 in which he deposed as follows:
  - 1) That I am the Appellant herein.
  - 2) That I make this Affidavit in support of my application to appeal the warrant of committal made on the 3<sup>rd</sup> of October 2003 and for leave to appeal the Judgment of Magistrate Jones in this matter.

- 3) That after the decision was rendered I instructed my then Counsel Ms. Sandra Carmona to appeal the decision of the Magistrate judgment against me.
- 4) That I believed my instructions had been carried out.
- 5) That I was then informed that a warrant of committal was issued for me.
- 6) That I again issued instructions to appeal the judgment.
- 7) That I maintain that the Magistrate was wrong in her decision.
- 8) That I have been advised by Counsel Cassietta Z. McIntosh that a search of the record shows that the initial decision of the Magistrate was not appealed as I instructed.
- 9) That in the circumstances I make this application for leave to appeal the judgment out of time and ask that the warrant of committal be suspended until the hearing of this matter.
- 10) That the contents of this Affidavit are correct and true to the best of my knowledge, information and belief.

13. Apparently the dispute arose over some architectural drawings which the respondent had engaged the services of the appellant to prepare. The respondent, at the Magistrate Court, alleged that he had paid the appellant the agreed contract price but the appellant had failed to complete the drawings.

14. The appellant says not only had he completed the drawings but he had also submitted them to various agencies/departments of the Grand Bahama Port Authority, Limited ("the Port Authority") for approval; that it was during that process that the respondent indicated he no longer wanted the plans. The appellant's position, therefore, is that he had completed the drawings and was entitled to be paid.

15. The appellant admits having received \$6,500.00 from the respondent. However, he says that when he asked the respondent to reimburse him, for the funds he paid to the Port Authority to have the plans approved, the respondent refused to do so and informed him that he no longer wanted the plans.

16. The respondent's position is that he paid the appellant in full before the drawings were complete and although he admits that he had previously indicated to the appellant that he no longer wanted the plans, at the hearing before me in December 2011, he expressed a willingness to accept the plans if the appellant could produce them.

17. The appellant informed the court that he no longer had the plans as they had been tendered in evidence at the Magistrate Court and had not been returned to him. The matter was adjourned to 26 January 2012 so that the parties could retrieve the plans from the Magistrate's Court. By that date attempts to locate the plans were unfruitful and the matter further adjourned to 23 February 2012.

18. Counsel for the appellant informed the Court that despite attempts by Magistrate Jones, as well as other Magistrate Court personnel, they had not by 23 February 2012 been able to locate the said plans. I am satisfied having spoken to Magistrate Jones as

regards her efforts and those of the staff to locate the plans that they have not been able to do so.

19. I have, therefore, decided to make a decision on what is before me.

20. As I indicated, this matter was commenced in the Magistrate's Court in 2002. The first hearing in the Supreme Court was 2004. In November 2005 the parties sought and obtained leave of the Court to adjourn the matter to permit them to engage in settlement discussions. Six years later the matter came on for hearing before me although it is unclear at whose instance.

21. The appeal is against the warrant of committal, although I note here counsel for the appellant's application to appeal the judgment of the Magistrate out of time. That application was made in December 2011, more than nine years after the Magistrate gave the judgment. I note further that the appellant in his affidavit filed on 14 December 2011 that he had instructed his former counsel to appeal the judgment but discovered later that she had not. Well, the record reflects that he has had his current counsel since the appearance before Carroll J in 2005 and no application for leave to appeal the judgment was made during the intervening six years.

22. Therefore, in the exercise of my discretion, I refuse to extend the time for leave to appeal the Magistrate's judgment granted on 25 October 2002.

23. As indicated, the appellant appeals the warrant of committal issued on 3 October 2003 which warrant was suspended by the Magistrate pending the outcome of the appeal.

24. According to the warrant of committal:

"A summons was, at the instance of the plaintiff, duly issued out of this Court, by which the defendant was required to appear personally at this Court on the 3<sup>rd</sup> day of October 2003 to be examined on oath touching the means he had then, or had had since the date of judgment to pay the said sum which summons was proved to this Court to have been personally and duly served on the defendant. [emphasis added]

And whereas, at the hearing of the said summons it had now been proved to the satisfaction of the court that the defendant has, since the date of the judgment, had the means to pay sum in respect of which he made default as aforesaid and has refused up to 3<sup>rd</sup> October 2003 to pay the same.

Now, therefore, it is ordered that the defendant shall be committed to prison for six weeks, unless he shall sooner pay the sum, in payment of which he has so made default, together with prescribed costs hereinafter mentioned."

25. Having reviewed the transcripts of the proceedings before the Magistrate Court, and heard the parties, it does not appear that the Magistrate examined the appellant on oath touching the means he had, if any, to pay the judgment debt and it is unclear from the said transcript how it was "proved to the satisfaction of the court" that the defendant had "since the date of the judgment the means to pay the sum" adjudged to be due and owing to the plaintiff.

26. In the circumstances, I set aside the warrant of committal. I make no order as to costs.

DELIVERED this 28<sup>th</sup> day of June, A.D., 2012

Estelle G. Gray-Evans  
Justice

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