

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT COMMON LAW AND EQUITY DIVISION
2015/CLE/gen/00864**

BETWEEN

TRIPLE S. COMPANY LIMITED

Plaintiff

AND

JULIET NEYMOUR

Defendant

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Mr. E. Raphael Moxey for the Plaintiff
Mrs. Sharon Wilson for the Defendant

Ruling Date: 15 March 2022

RULING

1. I gave my ruling orally in court and am putting the same in writing at the request of the Plaintiff.
2. By a summons filed on 18th May, 2021, the Defendant sought an order that the Writ of Summons and Statement of Claim filed on the 22nd of June, 2015, be struck out for want of prosecution and as an abuse of the process of the Court along with costs. I have read the affidavits filed by the Applicant on the 18th May and 20th September 2021 and the affidavit of the Respondent filed on the 7th October 2021.
3. I have heard the oral submissions of both parties and read their written submissions.
4. This action, commenced by a Writ of Summons filed in 2015 seek is possession of the property described as Lot No. 7 Block 15, Section 3 of the Sea Breeze Subdivision "The Property" and seeks payment of rent and arrears of rent in the sum of \$49,334.91.
5. It is my decision that the ruling of Justice Turner in the divorce action between Mr. Phenton Neymour and the Defendant herein, made in June 2011, determined that the Property was a matrimonial asset, even though the Property was held in

the name of Triple S. Company, the Plaintiff herein. He found that it was beneficially owned by Mr. Phenton Neymour and as such was included in the matrimonial assets and proceeded to adjust all the matrimonial property including this property between the Neymours.

6. In November of 2017, Justice Turner varied his initial Order on application made by Mr. Phenton Neymour but did not change or vary his finding that the Property was matrimonial property, or that he had given the Defendant in this action a 50% interest in the Property subject to certain obligations, which included paying a portion of the mortgage outstanding.
7. The Defendant, Mrs. Juliet Neymour therefore has a 50% interest in the Property subject to her obligation to pay half the mortgage owing on the property.
8. Mrs. Lilith Smith-Mackey Counsel and Attorney, by an invitation to appear confirmed to the court that she had had carriage of the divorce action on behalf of Mr. Phenton Neymour and never had any instructions to appeal Justice Turner's ruling up to the time of Mr. Neymour's death. Her only instructions were to apply to vary the order which she did.
9. This action commenced by Triple S Company Limited as the legal owner of the property, is misconceived as the company had a right to appeal the decision made by Justice Turner which they did not avail themselves of.
10. Justice Turner found that although Triple S. Company Limited was the legal owner of the property, the shares were all beneficially owned by Mr. Neymour and that the Seabreeze home was a family asset.
11. I accept that the ruling of Justice Turner was a final judgment subject to any appeal which could have reversed that finding. As there was no appeal either by Mr. Neymour or Triple S. Company Limited his ruling stands. Any attempt to relitigate his finding by a court of commensurate jurisdiction would be met with the defence of res judicata and or an abuse of process.
12. The Plaintiff in this action is seeking to relitigate the issue of the ownership of the Seabreeze property and to seek consequential relief arising from a finding that they are the owner of the property.
13. Were the court to allow this action to proceed, it runs the risk of a decision which contravenes the judgment of Justice Turner as to the ownership of the same Property.
14. The Plaintiff in this action had the right to appeal the decision of Justice Turner. They knew of the ruling and chose not to appeal it, even though it bound them to their detriment.
15. Section 119 of the Evidence Act states;-

“A final judgment, order or decree of a competent court in the exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction which confers upon or takes away from any person any legal character or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any special person but absolutely is in a civil proceeding conclusive proof and in a criminal proceeding prima facie proof

(a) that any legal character which it confers accrued at the time when the judgment, order or decree, declares it to have accrued to that person;

(b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when the judgment; order or decree, declares it to have accrued to that person;

(c) that any legal character which it takes away from any such person ceased at the time from which the judgment, order or decree; declared that it had ceased or should cease;

(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which the judgment, order or decree, declares that it had been or should be his property.

This categorically states that the Property beneficially belonged to Mr. Phenton Neymour. Mr. Neymour also devised this property in his will which further supported the finding of Justice Turner.

16. Triple S did not have a right subsequent to Justice Turners ruling to charge rent. Mrs. Neymour was a 50% owner of the property, subject to her obligation to pay half of the mortgage and an order for sale if certain events did not transpire. There was no obligation to pay any rent to Triple S.

17. Accordingly, I am satisfied that this action is an abuse of process and ordered struck out.

18. The Defendant is entitled to her costs to be taxed if not agreed.

Dated this 11 day of May 2022


Hon. G. Diane Stewart