

M. S. BHATTI, Chairman of the Board of Directors and Shareholder, FIRST UNITED AMERICAN BANK, Informant v. HIS HONOUR WYNSTON O. HENRIES, Resident Circuit Judge, JOSEPH M. ANDREWS, Assigned Circuit Judge, Sixth Judicial Circuit, and ALI SAKSOUK TEXTILE CENTER, by and thru its Proprietor, ALI SAKSOUK, Respondents.

M. S. Bhatti v Henries et al. [2000] LRSC 1; 40 LLR 3 (2000) (12 May 2000)

Heard: March 27, 2000. Decided: May 12, 2000.

INFORMATION PROCEEDINGS.

1. Execution upon a money judgment is the legal process of enforcing the judgment, usually by seizing and selling the property of the judgment debtor.
2. The procedure for the enforcement of a money judgment is that the clerk of the court in the county in which the judgment was first entered issues a writ of execution which is placed in the hands of the sheriff commanding him to levy upon the personal and real property of the judgment debtor, and to make returns thereto as to whether the judgment is unsatisfied, or wholly or partially satisfied.
3. It is erroneous for a court, in a writ of execution issued upon a judgment for enforcement thereof against a corporation to command the sheriff to arrest the living body of an officer for the debts and obligations of the corporation.
4. The sole purpose of the writ of execution is to command the ministerial officer to seize and sell property of a judgment debtor in order to satisfy a debt or obligation. It is not designed to arrest the judgment debtor at the time of service of the writ.
5. A person shall not be arrested or imprisoned for disobedience of any money judgment or order requiring the payment of money except those money judgments enforceable by punishment for contempt under section 44.71(3) or by imprisonment under section 44.71(2) if execution is not satisfied. Civil Procedure Law, Rev. Code 1: 44.71(3) and 44.71(2).
6. Under section 44.71(3) of the Civil Procedure Law, money judgments are enforceable by contempt proceedings against a trustee or a person acting in a fiduciary relationship for the payment of a sum of money for a default or dereliction of his duty or for the support of a wife, child, or other defendant.
7. Under section 44.71(2) of the Civil Procedure Law, judgments are enforceable by imprisonment if execution is not satisfied in cases involving adultery, seduction of a wife or child, illegally taking away or harboring a wife or child or ward under 21 years of age, enticing an incompetent away from his or her lawfully appointed trustee or guardian, or injury to the reputation when the words spoken or written are actionable per se.

8. In contempt proceedings for the enforcement of a money judgment, the procedure is that service of summons is effected against the debtor in the same manner as service of summons to show cause why the contemnor should not be held for the alleged offense which defeats, impairs or impedes, or prejudices the rights or remedies of the judgment creditor.

9. Where a writ of execution has been issued against a corporation, for which an officer has been cited to a conference, it is incumbent upon the trial judge to order the officer to identify assets of the corporation to be levied upon to satisfy the judgment, and upon the failure of the corporate officer to show the assets of the corporation the judge is duty bound to have such officer held in contempt of court.

10. A conference citing corporate officer to ascertain the reason which prevented a judgment debtor corporation from satisfying a mandate of the Supreme Court, sought to be enforced by an execution writ against a corporation is not contempt proceeding against the corporation, and any order of the judge committing corporate officers to jail growing out of such conference is erroneous and contrary to the statutory law governing enforcement of a judgment through contempt proceedings.

11. A writ of execution against a corporate body does not run against its chairman or other officer.

12. Corporate officers are not personally liable for the debts and obligations of a corporation except as otherwise provided by law.

13. A corporation is a separate and distinct legal entity from its members, officers, and shareholders, and, as such, its officers, members, and shareholders are not liable for its liabilities and/or obligations.

14. Information will lie where a trial judge improperly executes the mandate of the Supreme Court.

The informant, M. S. Bhatti, a shareholder and chairman of the board of directors of the First United American Bank, sought the intervention of the Supreme Court by the filing of a bill of information to prevent the enforcement of a money judgment in an action of damages brought by Co-Respondent Ali Saksouk Textile Center in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against the First United American Bank. The appeal of the defendant bank from the judgment in the damages action was dismissed by the Supreme Court and the judgment ordered enforced. The trial judge thereupon ordered the issuance of a writ of execution. The writ contained a clause commanding the sheriff to arrest the body of the informant if the defendant bank failed to show any land, goods, or chattels which could be seized and sold to satisfy the court's judgment.

Following service of the writ of execution, the informant, as chairman of the board of directors of the defendant bank, along with counsel for the bank, was cited to a conference by the judge. When counsel for the defendant bank asserted that the judgment has not been satisfied by the bank because it had been looted and vandalized during the April 6, 1996 civil crisis, which had resulted into its closure, the trial judge ordered the a writ of arrest issued against the informant. Whereupon the informant executed an agreement to make payment of the amount in satisfaction of the judgment and the corporate obligations thereunder.

The informant contended (a) that although he was not a party to the damages suit brought against the First United American Bank, the trial judge had demanded that he should satisfy the judgment against the bank because of the fact that he was a shareholder and chairman of the board of directors of the bank; that in pursuing this course the trial judge was im-properly executing the mandate of the Supreme Court; that he was made to sign under duress a stipulation to make payment of the judgment debt of the bank; and that the action taken against him was improper as a corporate officer cannot be held liable for the debts and obligations of a corporation.

The respondents denied that the informant was held liable for the debts and obligations of the defendant bank or that he executed the payment stipulation under duress. Rather, they said, the informant was held in contempt for failing to show assets of the corporation to be seized and sold to satisfy the judgment of the court.

The Supreme Court disagreed with the respondents, noting that the writ of execution clearly stated that the sheriff should arrest the body of the informant if the sheriff did not find property of the corporation to be sold. The inclusion in the writ of execution of a clause for the arrest of the informant was erroneous, the Court said, observing that the sole purpose of the writ is to have the ministerial officer seize and sell the property of the judgment debtor in satisfaction of the debt.

The Court also agreed with the informant that he was made to executed the payment agreement under duress, noting that the informant had executed the agreement only after the trial judge had ordered him imprisoned and that was the only means by which he could have avoided being imprisoned. The Court rejected the respondents contention that the informant was ordered imprisoned in contempt of court for failing to show property of the corporation which could be seized. The Court opined that, firstly, the conference to which the informant, in his capacity as chairman of the board of directors of the defendant bank, had been cited, along with the bank's counsel, was designed to ascertain from the bank's counsel the reason for the failure of the bank to comply with the mandate of the Supreme Court, and did not therefore constitute contempt proceedings either against the defendant bank or the informant. Secondly, the Court said, an officer of a corporation cannot be held for the debts and obligations of the corporation, and that the enforcement of the Court's mandate against the informant in his private capacity was contrary to the Court's mandate, for which information was the appropriate remedy.

The Court therefore granted the information, reversed the order of arrest of the informant, and ordered the trial court to resume jurisdiction over the case and enforce the judgment to the extent that the corporate officer identifies property of the corporation to be seized and sold to satisfy the judgment.

Snonsio E. Nigba of Legal Services, Inc. appeared for the informants. Salia A. Sirleaf of the Henries Law Firm appeared for the respondents.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case is before us upon a bill of information growing out of the judgment and mandate of this Court, given during its March Term, A. D. 1998.

The facts as culled from the certified records transmitted to this Court reveal that the co-respondent herein, Ali Saksouk Textile Center, by and thru its proprietor, Ali Saksouk, instituted an action of damages against the First United American Bank, by and thru its chairman of the board and president, M. S. Bhatti, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, during its December Term, A. D. 1995. Following the trial of the facts, the plaintiff was awarded US\$4,000.00 and US\$100,000.00 as special damages and general damages, respectively. From this judgment the defendant bank appealed to this Court.

On the 22nd day of July, A. D. 1997, during its March Term, A. D. 1997, this Court granted the appellee's motion to dismiss the defendant bank's appeal on the ground that the appeal was defective. The trial court was accordingly ordered by this Court to resume jurisdiction over the case and enforce its judgment.

On the 5th day of August, A. D. 1998, this Court, in a further judgment and mandate, granted a bill of information filed by the plaintiff in the damages suit and mandated the trial court to again resume jurisdiction over the case and enforce its judgment against the banking institution, consistent with the bill of costs as prepared by the acting clerk of court.

The trial court, acting pursuant to the mandate of this Court, prepared a writ of execution on the 10th day of September, A. D. 1998, commanding the sheriff of the trial court to seize and sell the lands, goods and chattels of the First United American Bank and the proceeds used to satisfy its judgment in the total amount of US\$107,044.80 and L\$1,910.00, inclusive of interest calculated at the rate of 6% per annum. The sheriff was also commanded by the trial court to arrest the body of the president and chairman of the board of directors in the absence of any land, goods, and chattels of the defendant bank which could be seized. It is from the enforcement of the writ of execution that the informant fled to this Court upon a bill of information alleging, among other things, that the defendant bank was a domestic corporation authorized by law to do banking business in Liberia, and that the informant is merely a shareholder and chairman of the board of directors of said bank.

The informant contended principally that the trial judge had held him personally liable for the corporate debts and obligations of the defendant bank contrary to the decision and mandate of this Court. The informant also contended and argued that a named officer of a corporation is not a party to a suit brought against the corporation, and that corporate officers and shareholders are not liable for the debts and obligations of a corporation. The informant alleged that his counsel was cited on December 11, 1998 by His Honour Joseph Andrews, Assigned Circuit Judge for the Sixth Judicial Circuit Court, Montserrado County, to ascertain from said counsel for the defendant bank why the Supreme Court's mandate which the trial court had been ordered to enforce, had not been complied with by the defendant bank. The informant asserted that notwithstanding the explanation made by counsel for the defendant bank, the trial judge had ruled that the clerk of court should prepare a commitment and serve same on the informant to have him imprisoned. In count 9 of the amended bill of information, the informant additionally contended that he was under duress when he signed an agreement of payment to satisfy the Supreme Court's mandate, and that he had done so only to avoid imprisonment. The informant therefore prayed this Honourable Court to prohibit the respondent judge from holding him personally liable for the debts and obligations of the defendant bank.

The respondents, on the other hand, in their returns filed to the information, contended succinctly that the informant was not held to be personally liable for the corporate debts or obligations of the defendant bank, but rather that he was held in contempt for his failure to identify and show assets of the corporation, he being a director and officer of the corporation and one of the custodians of the corporation's assets. The respondents also contended that the informant had signed the agreement of payment without duress and that he had agreed to make a stipulation for the balance payment of the judgment without any reservation. The respondents argued further that the defendant bank had assets to satisfy this Court's mandate at the time the informant signed the payment agreement to make payment in two installments, with the proviso that he would prepare and sign a stipulation to pay the balance of the judgment. The respondents argued additionally that contrary to the claim made by the informant, he, the informant, was held in contempt of court by the trial judge for disobeying his order to identify the assets of the defendant bank. The respondents therefore prayed this Court to dismiss informant's information and to order the enforcement of this Court's mandate.

The issue which is decisive of the final determination of this case is whether or not a corporate officer can be held personally liable for the debts and obligations of a corporation?

A recourse to the records in this case shows that the clerk of the trial court issued a writ of execution on the 10th day of September, A. D. 1998 upon orders of His Honour Wynston O. Henries, resident judge of the Sixth Judicial Circuit Court, Montserrado County, commanding the sheriff, inter alia, to arrest M. S. Bhatti, chairman of the board of directors and president of the defendant bank should the sheriff fail to find any lands, goods and chattels of the said defendant, unless Mr. Bhatti could pay the sheriff the amount of the judgment or show property of the defendant bank to be seized and sold to satisfy the judgment amount. This Court observes

from the face of the writ of execution that the trial judge did order the arrest of the aforementioned corporate officer of the defendant bank should the sheriff fail to find any assets to satisfy the judgment unless the said corporate officer identified property for seizure and sale.

This Court recognizes the universally held principle that "execution upon a money judgment is the legal process of enforcing the judgment usually by seizing and selling property of the debtor." BLACK'S LAW DICTIONARY 568 (6th ed. 1990). Moreover, our Civil Procedure Law, Rev. Code 1, provides that the clerk of the court in the county in which the judgment was first entered against the defendant party shall issue a writ of execution and place same in the hands of the sheriff of the county where such judgment is rendered directing the said sheriff to levy upon the personal and real property of the judgment debtor. Civil Procedure Law, Rev. Code 1: 44.39(2). The same law states further that the sheriff shall within 60 days after issuance of the judgment execution make returns to the clerk of the court from which the writ of execution is issued. The statute also requires the sheriff to attach to the execution upon its return to the court, a schedule of the property on which he has levied together with an itemized appraisal of its value. The sheriff is required additionally to endorse on the execution whether it is returned unsatisfied or wholly or partially satisfied. Civil Procedure Law, Rev. Code 1:44.39(2)(3)(4). It was therefore erroneous for the trial court, in the writ of execution, to command the sheriff to arrest the living body of the chairman of the board of directors and president of the defendant bank since the sole purpose of the writ of execution is to command the ministerial officer or sheriff to seize and sell the property of the judgment debtor in satisfaction of the debt and not to arrest, at the time of serving a writ of execution, a judgment debtor.

The records in this case also show that His Honour Joseph W. Andrews, the Assigned Circuit Judge for the Sixth Judicial Circuit Court, Montserrado County, December Term, A. D. 1998, directed the clerk of court on the 8th day of December, A. D. 1998, to cite counsel for the defendant bank, along with Mr. M. S. Bhatti, to a conference in his chambers scheduled to be held on the 11th day of December, A. D. 1998, at the hour of 2:00 p. m. in connection with the case. We observe from the minutes and ruling of the 8th day chambers' session, same being Friday, December 11, 1998, that the trial judge wanted to ascertain from counsel for the defendant bank why the mandate of this Court had not been implemented by the defendant bank. At the conference, counsel for the defendant bank made a submission alleging substantially that the April 6, 1996 crisis had affected the banking institution in that the bank had been subjected to looting and vandalism, and that these had resulted in the closure of the bank. It was further alleged by the bank's counsel that as a consequence of the aforementioned events the bank had no assets to satisfy the mandate of this Court.

Counsel for plaintiff resisted the submission and the judge sustained the resistance. The judge further ordered the clerk of court to prepare a commitment to be placed in the hands of the sheriff to be served on Mr. M. S. Bhatti to have him imprisoned for his deliberate refusal to show the trial court any property to be executed upon in satisfaction of this Court's judgment. Counsel for informant excepted to this ruling and gave notice that the informant would take advantage of the

statute. A commitment was accordingly prepared on the 11th day of December, A. D. 1998 to commit to jail Mr. M. S. Bhatti as a defendant, charging him with contempt of court for his failure to satisfy this Court's mandate. On the same day, December 11, 1998, an agreement of payment was prepared and signed by the parties and their counsels and approved by the trial judge. We therefore agree with the informant's assertion that under the facts and circumstances enumerated in this case, he had signed the agreement of payment under duress to avoid imprisonment. Section 44.1 of the Civil Procedure Law provides that "a person shall not be arrested or imprisoned for disobedience of any money judgment or order requiring the payment of money except for those money judgments enforceable by punishment for contempt under section 44.71(3) or by imprisonment under section 44.71(2) if execution is not satisfied. Section 44.71(3) provides that money judgments are enforceable by contempt proceedings against a trustee or a person acting in a fiduciary relationship for the payment of a sum of money or a default or dereliction of his duty or for the support of a wife, child or other defendant. Section 44.71(2) provides that judgments are enforceable by imprisonment if execution is not satisfied in cases involving adultery, seduction of a wife or child; or illegally taken away or harboring a wife or child or ward under 21 years of age; enticing an incompetent away from his legally appointed trustee or guardian; or injury to the reputation when the words spoken or written are action-able per se. Section 44.73 provides for the enforcement of a money judgment through contempt proceedings. The procedure therein is that a writ of summons is issued and served upon the judgment debtor in the same manner as service of summons to show cause why he should not be punished for contempt for the alleged offense which defeats, impairs or impedes, or prejudices the right or remedies of the judgment creditor to the action. The court is by law required to make a final order directing that the judgment debtor be punished by a fine, imprisonment or both. This order may be enforced, if necessary, by arrest of the judgment debtor under a warrant of arrest.

The trial judge correctly ruled when he sustained plaintiff's resistance to the defendant's submission, but erred when he ordered the issuance of a commitment to imprison Mr. M. S. Bhatti in his private capacity. The essence of the conference of December 11, 1998 in the chambers of the trial judge was purposely intended to ascertain from the judgment debtor the reason which prevented the defendant bank from satisfying the mandate of this Court. It was incumbent upon the trial judge to order Mr. M. S. Bhatti, as president and chairman of the board of directors of the defendant bank, to identify assets of the corporation in satisfaction of the money judgment, failing which, the judge was duty bound under the law to hold him in contempt for his failure to identify or show assets of the corporation. The conference, as shown by the records in this case, was not a contempt proceeding brought against the banking institution, by and thru its president and chairman of the board of directors, Mr. M. S. Bhatti. Thus, the ruling of the judge ordering the commitment of M. S. Bhatti at the conference was erroneous and contrary to the statutory provisions governing the enforcement of judgment through contempt proceedings. As far back as in 1913, this Court held that "a writ of execution against a corporate body such as a township does not run against the body of its chairman." *Wilks v. Page*, 2 LLR 126, Syl. 2, text at 129 (1913). This principle propounded in the *Wilks* case has been consistently

upheld in a long line of cases by this Court. *Karpeh v. Manning*, 5 LLR 162, Syl. 8 (1936); *Liberia Oil Refining Company v. Mahmoud*, 21 LLR 201, Syl. 1 (1972); *Eitner v. Sawyer*, 26 LLR 247, Syl. 3 (1977). Also, section 2.6 of the Association Law of Liberia, Rev. Code 5, clearly provides, inter alia, that corporate officers are not personally liable for the debts and obligations of a corporation, except as otherwise provided by law.

A corporation, under our law, is a separate and distinct legal entity from its members, officers and shareholders; and as such, its officers, members and shareholders are not personally liable for the liabilities and/or obligations of the corporation. The mandate of this Court out of which these information proceedings grew, specifically mandated the trial court to resume jurisdiction over the case and enforce its judgment against the defendant bank for the satisfaction of the money judgment in the action of damages for breach of contract. The enforcement of this mandate against Mr. M. S. Bhatti in his private capacity was therefore contrary to our previous decision and mandate. The trial judge indeed improperly executed the mandate of this Court, for which information will lie.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the bill of information should be and the same is hereby granted. The Clerk of this Court is hereby ordered to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction over the case and enforce its judgment against the corporation to the extent that the management or corporate officers should identify assets of the corporation to be sold and the proceeds therefrom applied in satisfaction of this Court's judgment, as provided by law. Costs of these proceedings are disallowed. And it is hereby so ordered.

Information granted.