

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2011/0336

BETWEEN:

ARVO'S LIMITED

Claimant

and

MARK ANTHONY

Defendant

Appearances:

Ms. Stacey-Ann Saunders-Osbourne for the Claimant
Ms. Leslie Ann Brissett for the Defendant

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2011: May 31
June 2, 16, 20
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RULING

[1] **MICHEL, J.:** By Application without Notice filed on 24th May 2011 the Applicant, Arvo's Limited, applied to the Court for an order pursuant to section 4 of the Absconding Debtor's Act, Cap. 3 of the Revised Laws of Antigua and Barbuda (the Act) for a warrant to be issued for the arrest of the Respondent, Mark Anthony, to be brought before the Court to show cause why he should not give security for the payment of the sum of \$46,597.06 owing to the Applicant or be committed to Her Majesty's Prison and for costs of the application in the sum of \$1,500.00.

[2] The grounds of the application were that the Respondent was indebted to the Applicant in the sum of \$46,597.06 and was about to quit Antigua without paying the Applicant the sum owed.

[3] The application was supported by an affidavit sworn to by a director and shareholder of the applicant company and was accompanied by several exhibits.

[4] On 25th May 2011 Remy, J. ordered as follows:

1. A Warrant of Arrest be issued to arrest the Respondent, Mark Anthony, to bring him before the Court to show cause why he should not give security for the payment of the sum of \$46,597.06, being the amount due and owing to the Applicant or be committed to Her Majesty's Prison.
2. The Applicant do file and serve a Claim Form and Statement of Claim on the Respondent within seven (7) days of the date of this order.
3. The Respondent do pay the Applicant's costs of the application in the sum of \$500.00.

[5] The Warrant of Arrest of the Respondent was executed by Remy, J. on the said 25th May, was filed on 26th May and was served on the Respondent on 31st May 2011.

[6] The Respondent was brought before me on the warrant on the said 31st May, whereupon I made the following order:

1. The matter was adjourned to Thursday 2nd June 2011 at 4.30 p.m. at which time the Respondent will inform the Court of the security arrangements to be put in place.
2. The Respondent will be discharged from the custody of the Court upon surrender by him to the Registrar of the Court of his passport and any other travel documents in his possession.

- [7] On 1st June 2011 the Applicant filed a Claim Form and Statement of Claim and served them on the Respondent on 2nd June.
- [8] When the matter resumed before me on Thursday 2nd June, the Respondent was ordered to file and serve by 14th June 2011 an affidavit in response to the application made by the Applicant setting out, inter alia, security arrangements to be put in place relative to the claim by the Applicant and the matter was further adjourned to Thursday 16th June 2011 at 9 a.m.
- [9] The Respondent's Affidavit in Reply was filed at 8.40 a.m. on 16th June, just minutes before the adjourned hearing of the matter. In his affidavit, the Respondent joined issue with the Applicant on some of the issues canvassed by the Applicant and offered cash security of US\$4,100.00, together with a motorcycle assessed to be worth US\$7,500.00.
- [10] On the resumption of the hearing of the application on 16th June 2011, Counsel for the Applicant informed the Court that she had only seen the Respondent's Affidavit in Reply shortly before Court and so there was no opportunity for the Applicant to put in an affidavit in response to it. Counsel however stated that the Applicant was contesting the value of US\$7,500.00 placed on a 2005 Yamaha Quad and that the Applicant was only prepared to accept the Quad as security to the value of US\$3,000.00, together with cash security of US\$9,100.00. Counsel submitted that the claim is a substantial one and the security requested is half of what the claim is and that the Respondent is a student whose studies will be completed within a week and he has no reason to come back to the jurisdiction unless the security which he puts up is sufficient to force him to maintain an interest in the adjudication or settlement of the matter.
- [11] Counsel for the Respondent submitted that the Applicant's claim against the Respondent is disputed and the Respondent is a student of limited means who has offered as much security as he could afford, and that if asked to come up with additional security he will just have to stay in Antigua and Barbuda to defend the claim. Counsel also submitted that the

Respondent is booked to travel to Trinidad on 23rd June and to return to Antigua on 30th June 2011, so that he will be in the jurisdiction for the adjudication of the matter.

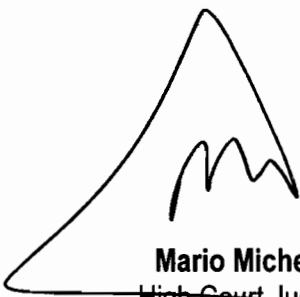
[12] At the conclusion of the submissions of Counsel, the Court reserved to review the documents on the Court's file and consider the oral submissions of Counsel and to deliver its ruling on Monday 20th June prior to the Respondent's scheduled departure from Antigua and Barbuda on 23rd June.

[13] Having considered the provisions of the Act, the documents filed in this matter on behalf of the Applicant and the Respondent, and having reviewed the submissions of Counsel on behalf of the Applicant and the Respondent, the Court is of the view that - once his passport and other documents (if any) in the custody of the Registrar of the High Court are released to the Respondent - there is nothing obliging the Respondent to return to Antigua and Barbuda once he leaves on 23rd June 2011. It appears that his final exam in Antigua and Barbuda would have taken place on 18th June and that he may, if he wishes when the time comes, return to Antigua and Barbuda on 30th June to use the facilities at the American University of Antigua to study for an exam in Venezuela in August 2011, but he could also decide to prepare for his Venezuela exam elsewhere. If the Respondent leaves Antigua and Barbuda on Thursday (23rd June 2011) and decides not to return, the Applicant will be left unsecured in relation to its claim duly filed and served on the Respondent and to which no defence has been offered, apart from a dispute as to quantum. The Court will not therefore order the release of the Respondent's passport and other documents (if any) in the custody of the Registrar without the Respondent giving security for the payment of the alleged debt.

[14] Section 8 of the Act provides that: "Security may be given by the deposit of money or by bond, or otherwise to the satisfaction of the Judge or Registrar as the case be."

[15] The Court considers that security ought to be given in the amount of \$34,833.74, being the estimated repair cost of the Applicant's motor car of \$33,333.74, plus legal costs to date of \$1,500.00 (which includes the \$500.00 awarded by Remy, J.). The security must be

provided by way of deposit of that sum of money or by a bond in that amount no later than 1st July 2011. The Respondent's passport and other travel documents (if any) in the custody of the Registrar of the High Court shall however be released to him immediately upon the making by him of a cash deposit of 50% of the sum of \$34,833.74 and the surrender by him to the Registrar of his 2005 Yamaha Quad Motorcycle Registration Number A24295.



Mario Michel
High Court Judge