

STATEMENT OF FACTS AND ISSUES

JCPC/2025/0091

Case name: Denise Kitson (Appellant) v Roger Phynn (Respondent) (Jamaica)

Statement of Facts

1. References to page numbers in the paragraphs which follow are to pages in the PC Core bundle.
2. The Appellant is an attorney-at-law and the managing partner of the law firm, Grant Stewart Phillips & Co (“**the Firm**”).
3. The Mount Royal Co-operative Society Limited (“**Mount Royal**”) was registered under the Co-Operative Societies Act (“**the Act**”) in 1977, with Registration no.465.
4. In 2006, the Firm started to act for Mount Royal, through Herbert Grant who was a partner of the Firm at that time.
5. On 4 October 2019, Errol Gallimore, the Registrar of Co-operative and Friendly Societies (“**the Registrar**”) ordered that the registration of Mount Royal be cancelled on the ground that the membership of Mount Royal had fallen below the minimum number of 10 members stipulated in section 42 of the Act.
6. On **9 December 2019**, the Registrar appointed the Respondent (“**the Liquidator**”) as Liquidator of Mount Royal under Section 44 of the Act (p18). A certified copy of the Liquidator’s Certificate of Appointment dated 29 January 2021 from the Registrar is at p19.
7. Following upon the appointment of the Liquidator, under cover of letter dated 27th April 2020, in response to the request of the Registrar, the Firm by Mr. Herbert Grant provided copies of 99 Certificates of Title including the parent title that were then in the Firm’s possession.

8. Further by letter dated 8th July 2020 to the Registrar, and copied to the Respondent, the Firm by Herbert Grant enclosed copies of all bills that had been rendered to Mount Royal, and which were never settled and requested settlement of same as early as possible.
9. Following his appointment, the Liquidator commenced the winding up of Mount Royal which primarily involved the sale of its assets, and he continued to be represented by the Firm up to January 2022.
10. A series of events led to a breakdown in the relationship between the Firm and the Liquidator.
11. By letter dated **18 February 2022**, the Liquidator demanded pursuant to section 45(2) of the Act delivery up of all splinter certificates of titles, the Parent Certificate of Title Volume 552 Folio 64 in the Register Book of Title, the Subdivisional Approval, all files and other documents and information in order to facilitate the liquidation of Mount Royal (“**the Documents**”) (p23).
12. By letter dated **4 March 2022**, the Liquidator referred to his letter dated 18 February 2022 to which there had been no response and advised of his intention to utilize his “power as a Resident Magistrate” to “formally [order]” the delivery of the Documents. The Liquidator stated that the Firm had 5 days to deliver up the Documents failing which there would be immediate enforcement of the order pursuant to Sections 45(2) and 47(2) of the Act and that he would seek all the remedies available under any other relevant laws and regulations in order to have the Firm comply with the order (p26).
13. By letter dated **7 March 2022**, the Appellant explained that her delay in responding to the Liquidator was due to the fact that she had been engaged in a protracted litigation and she informed the Liquidator that the Firm was preparing a comprehensive statement of account of all outstanding fees for work done by Herbert Grant since in or around 2016 to 2020 which they would let the Liquidator have in short order. The Firm stated that once the account was paid or a suitable irrevocable undertaking provided by the Liquidator for

the payment of such fees, they were prepared to release as requested, all files and Certificates of Title over which they had a lien. (p32).

14. By letter dated **8 March 2022**, the Liquidator informed the Appellant that he had requested an invoice both from Mr. Grant and Ms. Wong on several occasions over 2 years and it remained outstanding so it was highly unlawful for the Firm to hold the Liquidator hostage by refusing to hand over the Documents and contrary to the Act and that the refusal to hand over the Documents was impeding the liquidation process (p28).
15. On **14 March 2022**, Rita Allen-Brown wrote to the Appellant to inform her that Ms. Allen-Brown was now acting for the Liquidator, a copy of whose order was enclosed, and a further request made for compliance, failing which Ms. Allen-Brown was instructed to proceed to enforcement (pp70 -71).
16. On **21 March 2022**, the Appellant replied to Mrs. Allen-Brown in a letter marked “without prejudice” stating that the outstanding fees were reflected in the invoices for professional services rendered by Herbert Grant and were previously issued to the Registrar and the Liquidator under cover of letter dated 8th July 2020. Further that a comprehensive statement of account had been prepared and the sum owing to the Firm on outstanding bills amounted to JMD \$4,243.050.00. The Appellant, in her capacity as Managing Partner of the Firm, notified the Liquidator that the Firm was prepared to deliver the documents upon payment of the fees of JMD \$4,243.050.00, or the provision by the Liquidator of a suitable irrevocable undertaking for payment of the same, until which time the Firm was exercising a lien over all files and Certificates of Title (p72).
17. On **22 March 2022**, the Liquidator reiterated his demand for the Documents to be delivered over to him and issued a document headed “FORMAL ORDER” (pp7-8) (“the **Formal Order**”).
18. The Formal Order stated that the Appellant’s refusal to produce and deliver up the Documents had resulted in the Liquidator’s inability to perform his statutory duties and to wind up the affairs of the Co-operative. It continued (at pp7-8):

“THEREFORE, ON THE 22ND DAY OF MARCH 2022, BY VIRTUE OF SECTIONS 45(2) AND 47(2) OF THE COOPERATIVE SOCIETIES ACT, IT IS HEREBY ORDERED THAT: –

[The Appellant] and Mr. Herbert Grant of [the Firm] produce and deliver up FORTHWITH all original and copy documents (books, documents, materials, files, plans, subdivision approvals, Duplicate Certificate of Title registered at Volume 552 Folio 64 along with all its splinter titles) belonging to Mount Royal Co-operative Society Limited (in liquidation) in their possession and/or of their agents, employees and/or servants to the Liquidator, Mr. Roger Phynn, his agent or Attorneys-at Law

NOTICE:

Failure to comply with the Order herein will result in enforcement pursuant to Order XX11, Rules 32 and 40 of the Parish Court Rules.

SIGNED BY THE LIQUIDATOR BY VIRTUE OF SECTIONS 45(2) AND 47(2) OF THE COOPERATIVE SOCIETIES ACT.”

19. The Formal Order was left with a receptionist of the Firm on **25 March 2022**. There was no personal service on the Appellant.
20. On **4 April 2022**, the Liquidator applied for a warrant of attachment against the Appellant (and Mr. Herbert Grant) in the Parish Court for the Corporate Area, by a document headed APPLICATION FOR WARRANT OF ATTACHMENT (ORDER XX11 Rule 32) (pp9-11).
21. On **4 April 2022**, the Clerk of the Courts for the Parish Court issued the following notice (“**Rule 32 document**”) to the Appellant (and Mr. Herbert Grant). The notice was headed “**APPLICATION FOR WARRANT OF ATTACHMENT (ORDER XXII, RULE 32)**” (emphasis as in original), and stated:

“TAKE NOTICE, that unless you obey the directions contained in the order made on March 22, 2022 by Roger Phynn, the appointed Liquidator pursuant to section 44 of the Co-operative Societies Act, you will be liable to be committed to prison.”

Dated the 4th day of April 2022

Clerk of Courts”

22. On **8 April 2022**, the Formal Order and the Rule 32 Document were served on the Firm’s receptionist, but were never served personally on either the Appellant or Herbert Grant. The Documents demanded were never delivered to the Liquidator despite service on the receptionist of the Firm.
23. On **17 May 2022**, the Liquidator filed an application, pursuant to Order XXII, Rule 33, for an order for committal of the Appellant for non-compliance with the Formal Order. Consequently, a second notice, headed **“NOTICE OF APPLICATION FOR COMMITTAL (Order XX11, Rule 33)”** (emphasis as in original) was issued by the Clerk of the Court to the Appellant and Mr. Grant. It informed them that the Liquidator would apply on 10 June 2022 to the Court for an Order for the Appellant’s committal to prison for having disobeyed the Liquidator’s order made on 22 March 2022 pursuant to section 44 of the Co-operative Societies Act and that the Appellant was required to attend the Court to show cause why an order for her committal should not be made.
24. The Application for Committal was served on the Firm on **26 May 2022**, but not personally on the Appellant or Mr. Grant.
25. On **9 June 2022**, the Liquidator applied for an Order for substituted service of the Application for Committal, on the basis that the attempts by Joel Tapper, the process server instructed by the Liquidator, to serve the Appellant personally had been unsuccessful.
26. On **9 June 2022**, the Appellant filed an affidavit sworn to by Ms Regina Wong, refuting the factual allegations made by the Liquidator.

27. On **June 10, 2022**, at a hearing attended by Mr Williams for the Appellant and Ms Allen-Brown for the Liquidator, Her Hon. Mrs. Beaumont Daley, a Parish Judge, made an order for substituted service of the Application for Committal on the Appellant by way of service on any staff at the Firm.
28. The Application for Committal was served on the Firm in accordance with the order for substituted service.
29. Her Hon. Miss A. McIntosh, Senior Parish Judge (Acting) heard the Liquidator's application for committal on **4 July 2022** and on **13 July 2022**, issued an order ("the Committal Order") as follows:
- "The documents are to be produced within 14 days or [Mrs. Kitson] is to be committed to prison for 30 days or as soon as the documents are produced."***
30. A note of the reasons for the decision of HH McIntosh is at pages 104-106.
31. The Appellant was present in court on both **4 July 2022** and **13 July 2022** along with her counsel, Kevin Williams and Regina Wong (Affidavit of Regina Wong at p523, para 6).
32. The Committal Order was appealed to the Court of Appeal, and a stay of execution was granted by F Williams JA on 30 August 2022.
33. On **15 January 2024** the Appeal was dismissed by the Court of Appeal of Jamaica, the Committal Order that had been made on **13 July 2022** was affirmed, the stay of execution was discharged and the matter was remitted to the Kingston and Saint Andrew Parish Court (Civil Division) for the Parish Judge to proceed to carry out and enforce the Committal Order in the same manner as if there had been no Appeal against same. The Judgment of the Court of Appeal is at pages 326-368.
34. On **23 January 2024** the Appellant filed in the Parish Court an application for the discharge of the Committal Order and on **8 February 2024**, the Committal Order was discharged by the Parish Judge upon the Appellant delivering over in Court 89 titles remaining in the Firm's possession and 3 boxes of files.

35. The fees claimed by the Firm have not been paid.
36. On **22 July 2024**, the Court of Appeal granted conditional leave to appeal to His Majesty in Council as of right pursuant to section 110(1)(a) of the Constitution and the Court of Appeal also certified the question listed at paragraph 38(i) below as of great general and public importance.

The Issues

37. The issues are:
- i. Whether a solicitor's right to a lien over a client's property for unpaid fees can be defeated by the power of a liquidator under section 45(2) of the Co-operative Societies Act "to compel the attendance and examination of witnesses and the production of documents" (at page 400);
 - ii. Whether the Order for Committal of the Appellant was properly made notwithstanding that she had not been personally served with the application.

DATED THE 5th DAY OF AUGUST 2026

KEVIN A. WILLIAMS – instructed by Grant,
Stewart, Phillips & Co for the Appellant

RITA C. ALLEN-BROWN – instructed by
RC Allen-Brown Attorneys-at-Law for the
Respondent