



[2022] JMCC Comm 25

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**COMMERCIAL DIVISION**

**CLAIM NO: 2018CD00316**

|                |   |                                 |
|----------------|---|---------------------------------|
| <b>BETWEEN</b> | <b>COK SODALITY CO-OPERATIVE CREDIT UNION</b> | <b>CLAIMANT</b>                 |
| <b>AND</b>     | <b>GREGORY DUNCAN</b>                         | <b>1<sup>ST</sup> DEFENDANT</b> |
| <b>AND</b>     | <b>GLOBAL DESIGNS &amp; BUILDERS LIMITED</b>  | <b>2<sup>ND</sup> DEFENDANT</b> |

**IN CHAMBERS BY VIDEO-CONFERENCE**

**Appearances: Stephanie Williams and Ariana Mills instructed by Henlin Gibson  
Henlin for the Claimant/Judgment Creditor**

**Mr Gregory Duncan 1<sup>st</sup> Defendant/Judgment Debtor and as representative of the  
2<sup>nd</sup> Defendant self-represented**

**HEARD: March 3<sup>rd</sup>, April 4<sup>th</sup> and June 15<sup>th</sup> 2022**

***Debt - Order for Sale of Land – Objection to Sale***

**BROWN BECKFORD J**

**BACKGROUND**

**[1]** This is an application made by COK Sodality Co-Operative Credit Union (“**COK**”) for the sale of land comprised in Certificate of Title registered at Volume 1524 Folio

21 to enforce the judgment debt in their favour in the amount of Five Million Three Hundred and Ninety-Three Thousand Eight Hundred and Twenty-Eight Dollars and Eighty-Nine Cents (**\$5,393,828.89**) plus interest and costs pursuant to **Rule 48.11 and Rule 55.1(b) of the Civil Procedure Rules (“CPR”) 2002 (as amended on the 3rd of August 2020)**. Judgment was entered against Mr. Gregory Duncan and Global Designs & Builders Limited on the 9<sup>th</sup> July 2020. Mr. Duncan is the registered proprietor of the land. A final charging order was made on the 2<sup>nd</sup> February 2021 over the said land.

Mr. Duncan filed several Affidavits objecting to the application for sale. His objections may be summarized as being on the following grounds:

1. The judgment has already been satisfied as evidenced by two discharges of mortgage (Mr. Duncan was allowed to make submissions on this ground during the hearing as he indicated he had filed an affidavit on March 3, 2022 [day of hearing] which had not been served).
2. The judgment of Laing J states that the judgment is satisfied.
3. The judgment creditor has acknowledged payment of Thirty Million Three Hundred and Ninety-Seven Thousand and Five Hundred and Eighty-Two Dollars and Forty-Nine Cents (**\$30,397,582.49**). (**See paragraph 5 of Affidavit sworn July 12, 2021.**) He therefore owes nothing.
4. The interested parties have not been served.
5. The judgment is being appealed.

#### **A. DISCHARGE OF MORTGAGE**

[2] Mr. Duncan contends that discharge of mortgage 1577057 endorsed on certificate of title registered at volume 1184 folio 751 and discharge of mortgage 2322672 endorsed on certificate of title registered at volume 1466 folio 530 show that the debt has been settled. He was invited to provide the date of the payment or receipt

for payment. He produced neither insisting the discharge could only be entered if the debt was paid.

- [3] Paragraph 8 of Judgment of Laing J reveals that mortgages were endorsed on each of four Certificates of Title to secure the loan. Two Certificates of Title were subsequently released. Certificate of Title registered at Volume 1184 Folio 751 was the original security and was returned with discharge of mortgage to Mr. Duncan in exchange for mortgage security endorsed on two other titles (**described by Laing J as the “Rose Garden properties”**). The Duplicate Certificate of Title registered at Volume 1466 Folio 530 was released to Mr. Duncan in exchange for a payment of Nine Million Dollars (**\$9,000,000.00**) which was applied to Mr. Duncan’s account. (**See paragraphs 8,10 and 11 of judgment Laing J.**)
- [4] The fourth referenced property over which security was held was sold by COK, which partially settled the Defendants’ indebtedness to them. The claim giving rise to the judgment was in respect of the balance owing on the debt. COK maintained that the debt remains owing.
- [5] In the first place a discharge of mortgage is not proof of payment. Same may be done for various reasons. The discharge of mortgage referenced by Mr. Duncan were clearly in connection with the above mentioned matters and which must have surely been to his knowledge. Mr. Duncan is in the Court’s view being disingenuous in this argument.

## **B. JUDGMENT OF LAING J.**

- [6] Mr. Duncan contends that the highlighted words in paragraph 43 of the judgment of Laing J as follows, shows that the judgment debt was satisfied. Paragraph 43 reads thus:

### **“Disposition**

[43] *Based on the findings herein, the Court makes the following orders;*

*Judgment in favour of the Claimant against the Defendants in the sum of \$5,393,828.89 which represents the principal sum claimed of \$1,091,506.99 plus a penalty of \$790,204.19, court fees of \$10,000.00, Attorneys fixed costs of \$14,000.00 and contractual interest at the rate of 12 per cent per annum from 27<sup>th</sup> October 2015 to today's date 9<sup>th</sup> July 2020 in the sum of \$3,488,117.71 (\$4,329,973.60 minus \$841,855.89). **This judgment in the sum of \$5,393,828.89 will attract statutory interest at the rate of 6 per cent per annum from today's date until the judgment is satisfied.**" (Emphasis mine)*

- [7] Mr. Duncan is very obviously labouring under a misunderstanding of the order of Laing J. The words clearly, and can only relate to the duration or period for which interest will accrue as shown by the entire sentence which is underlined for emphasis.

**C. PAYMENT OF THIRTY MILLION THREE HUNDRED AND NINETY-SEVEN THOUSAND AND FIVE HUNDRED AND EIGHTY-TWO DOLLARS AND FORTY-NINE CENTS (\$30,397,582.49)**

- [8] Mr. Duncan asserted in his Affidavit filed July 12, 2021 that COK acknowledged payment of this sum. Mr. Duncan was invited to provide details of this payment and/or receipt(s) evidencing same. He provided neither. COK denied that any such payment on account of the judgment debt was made and that the only amounts received on account of the judgment debt were Eighty-Eight Thousand Seven Hundred and Forty-Five Dollars and Fourteen Cents (**J\$ 88,745.14**) and Six Dollars and Eighty-Six Cents (**US\$ 6.86**) by virtue of an attachment of debt order.
- [9] In the absence of proof of payment of the sum, the debt has not been so reduced.

**D. SERVICE ON INTERESTED PARTIES**

- [10] The Affidavit of Service filed March 1, 2022 indicates that the two caveators on title were duly served with the Notice of Application and with Notices of Adjourned Hearing including for the hearing on March 3, 2022, in compliance with the order of Barnaby J made on September 29, 2021.

[11] Mr. Duncan pointed out that a Provisional Charging Order was endorsed on the title and that the judgment creditor should have been served as an interested party under **CPR Rule 48**.

[12] **Rule 48.8 of the CPR** defines an interested person as inter alia ‘any person who owns the land...jointly with the judgment debtor’ and ‘any other person who has an interest in the personal property to be charged’. This would not include a judgment creditor. The privy Council made this clear in **Beverley Levy v Ken Sales and Marketing Ltd** Privy Council Appeal no 87 of 2005. It was said of charging orders:

*Section 134 and charging orders*

*17. It is common ground that a mere order for sale of land under section 134 does not vest in the judgment creditor who has applied for the order any interest in the land. An interest in land is acquired when the Registrar, having been served with a copy of the order of sale, enters the order in the Register Book. The interest acquired by the judgment creditor at that point is an equitable interest subject to other interests already on the Register.*

This objection is therefore without merit.

## **E. APPEAL**

[13] It is trite law that an appeal does not operate as a stay. Furthermore, an application for a stay was refused by the Court of Appeal. This suggests the merits of the appeal merit of the appeal appear to be lacking.

## **CONCLUSION**

[14] The objections of Mr. Duncan are not sustainable for the reasons given above. Accordingly, the application is granted in the terms of orders 1, 3,4, 5, 6, 7, 8, 9 and 10 outlined in the Notice of Application for Sale of Land filed May 13, 2021.

## ORDERS

1. An order for the Sale of Land to enforce the judgment debt in favour of the Applicant Judgment Creditor in the sum of **\$5,393,828.89** forthwith plus interest at the rate of 6% per annum or **\$886.66** per diem from the 9th day of July 2020 and the costs incurred in enforcing the said judgment be made over land comprised in Certificate of Title registered at Volume 1524 Folio 21 of the Register Book of Titles and being-

**ALL THAT** parcel of land part of **NUMBER ONE HUNDRED AND TWENTY-ONE AND ONE HUNDRED AND TWENTY-THREE BARBICAN ROAD** in the parish of **SAINT ANDREW** being land comprised in Certificate of Title registered at **Volume 1524 Folio 21**

2. Henlin Gibson Henlin, Attorneys-at-Law is to have carriage of the sale and is to carry out the sale and administer the proceeds thereof in accordance with law and with the directions of the Court as stated herein.
3. The said land is to be sold by public auction or thereafter by private treaty, if necessary.
4. The said judgment debt in favour of the Applicant/ Judgment is to be satisfied from the net proceeds of sale of the said land.
5. The minimum price for the sale of the said land is to be subject to the Valuation report prepared by C.D. Alexander Company Realty Limited dated the 30th April 2021 which valued the land at Thirty Million Dollars **(\$30,000,000)** with a forced sale value of Twenty-Two Million Five Hundred Thousand Dollars **(\$22,500,000.00)**.

6. Any person in possession or in receipt of the rents or profits, of the land or any part of the land is to deliver up possession of the land or receipt of the rents and profits to such person and on such date as the Court may direct.
7. Upon completion of the sale of the said land, the Applicant is to prepare a Certificate of Sale of Land to be endorsed by the Registrar of the Supreme Court for registration at the Office of Titles in order to complete and give effect to the sale.
8. An extension of time, until completion of sale, for delivering the Certificate of Sale for entry upon the register.
9. Costs of this application to the Applicant to be agreed or taxed.
10. Applicant's Attorneys-at-Law to prepare the formal order.