



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO 2010 HCV 05157

BETWEEN	FIRST GLOBAL BANK LTD.	CLAIMANT
AND	D'OYEN WILLIAMS	FIRST DEFENDANT
AND	TRACY ANN WILLIAMS	SECOND DEFENDANT

Peta Gaye Manderson instructed by John Graham & Co. for Claimant

Stuart Stimpson, Hesani Haughton instructed by Hart Muirhead and Fatta for First Defendant.

In Chambers

Batts, J

Heard : 23rd January, 2015 and 6th February, 2015

- [1] In this application the Claimant, a judgment creditor, seeks to have a provisional charging order against the First Defendant, a judgment debtor, made Final. The Second Defendant I was told was never served with proceedings in the claim and is not a party to the action.
- [2] The application raises interesting issues of law. This is because the property in respect of which the Charging Order is sought is jointly owned by the First Defendant and a third party. That third party is the First Defendant's mother and she lives at the property.
- [3] The First Defendant's Counsel urged this court to refuse to make the provisional Charging Order Final. In essence the submission is as follows:
- a. Jointly held property means there is a unity of interests. In the absence of severance there is no existing separate interest to be charged.
 - b. It would be unjust and inequitable having regard to the overriding objective, to make an order that

would give notice to the world of a distinct and divisible interest where same did not exist.

- c. There is a practical prejudice to the other joint owner as the Charging Order will diminish the value of the property and effectively prevent use of the title for mortgage and other purposes.
- d. The bank's interest in securing its unsecured judgment ought not to outweigh the interest of the innocent third party.

[4] I should note that in response to my query as to whether the third party should be served with these proceedings, both Counsel appearing before me felt it was unnecessary. Counsel stated, and I accept, that the third party's interest was the one being advocated for by the First Defendant. Furthermore the First Defendant was the third party's son and the third party was aware of the proceedings.

[5] The Civil Procedure Rules in Rule 48 sets out the practice and procedure with respect to Charging Orders for the enforcement of a Judgment "land" be it noted is defined to include "any interest in land" see Rule 48.1 (2).

[6] The evidence required in support of such an application is detailed in Rule 48.3. This includes,

"(h) state that to the best of the deponent's information and belief the debtor is beneficially entitled to all or some part of the land, stock or personal property as the case may be."

[7] Rule 48.6 defines "interested persons." These persons are defined to include,

"any person who owns the land, stock or assets to be charged jointly with the judgment creditor."

Rule 0.48.7 stipulates that interested parties must be served with the provisional charging order. As indicated earlier, I decided to proceed with the hearing as it was common ground that the interested party in this case was aware of these proceedings and that her interest was the one being articulated by way of the objection to the Charging Order being made Final.

[8] Rule 48.8 deals with the making of a provisional order Final. It allows interested parties and the judgment debtor to file a Notice of Objection. In this matter the Judgment Debtor filed an amended Notice of Objection. His Counsel however stipulated that only ground number 9 of the objection would be argued, i.e.,

“That it would not be just and equitable for the Provisional Charging Order to be made Final”

- [9] Rule 48.9 (1) states the effect of a Charging Order, that is,
“ No disposition by a judgment debtor of an interest in property subject to a Provisional or Final Charging Order is valid against the judgment creditor.”
- [10] Rule 48.11 deals with Enforcement of Charging Orders by Sale and provides:
- “(1) This rule applies where a judgment creditor wishes to enforce a Charging Order for Sale
 - (2) The judgment creditor may apply to the court for an Order for Sale.
 - (3) The application must be supported by evidence on affidavit
 - (4) Notice must be served on the judgment debtor
 - (5) The court may give such directions as seem appropriate to secure the expeditious sale of the land, stock or property charged at a price that is fair to both judgment creditor and debtor.”
- [11]. Part 55 deals with the Sale of land by Order of the Court. “land” is defined
“including any interest in or right over land”
Rule 55.1(2).

The evidence in support of the application must state the full name and address of any person who the applicant knows or believes has an interest in the land. The application must also be served on such persons (Rule 55.2).

- [12] Mr. Stimpson for the objector relied on the judgment of the Honourable Mr. Justice Brooks as he then was in ***Royes v Campbell et al Claim No. E 1995/E349*** unreported judgment delivered on the 16th March 2004. The second issue for determination before that court was stated thus:

“Should the spouse of such a judgment debtor who owns premises jointly with the debtor be obliged to have the premises sold against his or her will in order to satisfy the judgment debt?”

- [13] In answering that question the learned judge stated,

“Though it may seem unjust that a judgment creditor languishes in the “cold” while his judgment debtor is able to enjoy the comfort of real property jointly owned with one or more persons, our law does not allow a sale which affects the interests of the innocent joint holder.

While the nature of the property is amenable to such an Order the court may order a sale of the interest of the judgment debtor in the property. The result would be a severance of the joint tenancy in so far as the interest of the judgment debtor is concerned. The subsequent sale, if there be one, would see the purchaser holding as a tenant in common with the remaining co-owners.

In the case of a private dwelling house not capable of a convenient physical division reflecting the interest of the judgment debtor, orders for sale are not appropriate. They are not practicable. This is the position in this case and the application is refused.”

- [14] Justice Brooks was of course dealing with an application for an Order for Sale. In the course of his judgment however he makes it clear that there was no bar in law. He stated:

“I find that, as in the case of a provisional order in bankruptcy an order for sale pursuant to Part 55 will operate as a severance of the joint tenancy and therefore may be properly made by the court in these circumstances.

I draw support for this view from the fact that Part 48 of the rules which deal with charging orders made by the court against, among other things, land, specifically speaks to land held on a joint tenancy.....

I find that the absence of a specific reference to joint tenancies in Part 55 does not restrict the authority given to the court by that Part to order the sale of an interest in land.”

- [15] Counsel also sought solace from the decision of Justice McDonald-Bishop (AG)(as she then was) in ***Sheila Millier-Weston v Millier Claim No. CL2002 M094*** unreported judgment dated 22nd June 2007. The issue before that court is stated in Para 7 and was, whether or not the joint tenancy had been severed so

that an Order of Sale could be made. The learned judge's statement at Para 9 that:

“It follows then that there has to be a severance of the joint tenancy in this case, before there can be a distinct share of the First Defendant to be made subject to enforcement of the judgment against him,”

must be read in light of the issue being considered. In other words the learned judge was considering not enforcement generally but an order for sale.

[16] I am fortified in this view by the decision of Mangatal J in ***Air Jamaica Ltd. V Stewarts Travel Service Ltd et al Claim No. 1998/A-018*** unreported judgment dated 24th February 2011. In that case an application to make a provisional charging order final was being considered. The objecting judgment debtor relied, among other things, on the fact: that the property, jointly owned with his wife would be adversely affected, the delay in making the application exceeded 6 years, and the severe prejudice which would result if an Order for Sale were to be subsequently made. In deciding to make the Provisional Charging Order final the learned judge stated,

“28. I also agree with Mr. Graham that a charging order in relation to land does not necessarily or inexorably lead to an application for an order for sale of land, which order is included in the definition of a writ of execution. A charging order is a separate proceeding and/or alternatively, it has its own utility, as a form of execution not covered under the definition of writ of execution

31. I agree with Mr. Graham that a charging order does not necessarily lead to the issue of an order for the sale of land, and a charging order has a utility of its own. It has the effect of being notice to the other parties, with whom the owner of the land may want to have dealings, that the recipient of the charging order has an interest which needs to be recognized or cleared off.”

- [17]. I do not agree that a charging order on jointly owned land where one joint owner is not a judgment debtor is barred by law. To so hold would be to say that one joint owner has no interest in jointly owned land. On the contrary there is a unity of interest. It is that united interest which is charged and Part 48.6 of the CPR expressly authorizes this. The purpose of the Charging Order is to give notice to all the world that if the joint owners decide to treat with the premises there is a third party who has a judgment awaiting satisfaction with respect to one or other or both of the joint owners.
- [18]. In the result therefore I will make the Provisional Order Final. I direct that if an application for an Order for Sale is to be made then the other joint owner is an interested party and must be served. Costs will go to the applicant to be taxed if not agreed.

David Batts
Puisne Judge