



[2025] JMSC Civ.34

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU1994E00053 and SU2022CV03339

**IN THE MATTER of ALL THAT parcel of land
known as BALLARDS VALLEY in the parish
of SAINT MARY also known as
HAMPSTEAD in the parish of SAINT MARY
registered at Volume 1090 Folio 214 of the
Register Book of Titles**

AND

**IN THE ESTATE of ARLENE HADDAD,
Businesswoman, Deceased, Testate**

BETWEEN

**KIMBERLY HOSUE
(Executrix of the Estate of
Arlene Beverly Haddad)**

APPLICANT

AND

PETER HADDAD

RESPONDENT

BETWEEN

PETER HADDAD

CLAIMANT

AND

**KIMBERLY HOSUE
(Executrix of the Estate of
Arlene Beverly Haddad)**

DEFENDANT

TRIAL IN CHAMBERS

Mr. Michael Hylton, K.C. instructed by Hylton Powell, Attorneys-at-Law, for the Applicant/ Defendant.

Mrs. Denise E. Kitson, K.C. instructed by Messrs. Grant, Stewart Phillips & Co., Attorneys-at-Law, for the Respondent /Claimant.

Heard: July 16, 2024, January 29, and March 7, 2025

Judgment - Enforcement of Judgment – delay - Limitation of Actions Act ss 3 and 30 – whether applicable to delay in enforcing judgment declaring beneficial interest – Permission to enforce Judgment – Writ of Execution – Parts 46 and 55 of the Civil Procedure Rules.

Wong-Small, J

[1] There are two matters before me for determination. The first is the application of Ms. Kimberly Hosue in her capacity as executrix of Mrs. Arleen Haddad's estate seeking orders in relation to the enforcement of a judgment on behalf of the estate. Mr. Peter Haddad on the other hand has filed a fixed date claim form seeking a declaration in relation to property which is the subject matter of the judgment. For ease of reference the parties will be referred to by their names rather than the capacity in which they are parties to the respective matters

BACKGROUND

[2] Peter Edward Haddad (hereinafter referred to as 'Mr. Haddad) and Arleen Beverly Haddad were previously married during which time Mr. Haddad owned property at Hampstead in the parish of St. Mary (hereinafter referred to as "the property") in his sole name. The marriage later broke down, and Mrs. Haddad sought an order of the court to declare her beneficial interest in the property. On April 7, 2003 the Honourable Justice K Harrison made an order declaring that Mrs. Haddad owned a 50% beneficial interest in the property. Justice Harrison also made further orders to include that the property was to be valued, sold, and the proceeds of sale to be shared equally between the parties.

- [3] Mr. Haddad appealed to the Court of Appeal which dismissed his appeal on May 17, 2007 but varied the lower Court's judgment to allow Mr. Haddad to deduct, prior to the distribution of the proceeds of sale, the sum of \$2,000,000.00 as repayment for a loan obtained by him for improvements to the property. Mrs. Haddad later died in May 2022, but up to that time, the property has not been sold. During the intervening period to present, Mr. Haddad remained in sole custody and possession of the property.
- [4] Subsequently, the Executrix of Mrs. Haddad, Ms. Kimberly Hosue (hereinafter referred to as Ms. Hosue) filed a Notice of Application for Court Orders on August 30, 2022, later replaced by an Amended Notice of Application for Permission to Enforce Writ of Execution and Other Orders on to substitute Mrs. Haddad in these proceedings, along with orders to enforce the judgement of Harrison, J. On January 10, 2023 an order was made by this Court for Ms. Hosue to substitute Mrs. Haddad in these proceedings, while the other orders are now to be decided. Almost simultaneously, Mr. Haddad filed a Fixed Date Claim Form on November 7, 2022 seeking inter alia, a declaration that the beneficial interest of Mrs. Haddad in the property had been extinguished.

THE APPLICATION

- [5] In her Amended Notice of Application Ms. Hosue sought orders as follows;

1.
2. *The order for sale of land known as Hampstead in the parish of Saint Mary registered at Volume 1090 Folio 214 of the Register Book of Titles (the Property) made on April 7, 2003 by the Honourable Justice K Harrison be renewed.*
3. *In the alternative, permission be granted for an order for the sale of the Property.*

4. *Within 14 days of the date of this order the parties agree on a firm of valuers to conduct a valuation of the Property, failing which the Claimant shall be permitted to retain a firm of valuers to conduct the said valuation.*
5. *The cost of the valuation is to be shared equally between the parties and be recoverable from the proceeds of sale of the Property.*
6. *On completion of the valuation of the Property, the sale of the Property shall proceed as follows:*
 - a. *The Claimant's Attorneys-at-law shall conduct the sale of the Property*
 - b. *The sale of the Property shall proceed firstly by public auction and if the Property is not sold at the public auction, the sale may thereafter proceed by private treaty or by further public auction.*
 - c. *The Claimant's Attorneys-at-law shall set a reserve price at the first public auction of the Property which shall not be lower than the forced sale value identified in the valuation obtained in accordance with paragraph 2.*
7. *The Claimant's Attorneys- at- law are authorized, if necessary, to:*
 - a. *retain the services of auctioneers, real estate agents and other professionals;*
 - b. *fix the reserve price for any subsequent public auction and the sale price in any sale by private treaty; and*
 - c. *pay the costs incurred, including their own fees, from the proceeds of sale.*
8. *The proceeds of sale shall be applied as follows:*
 - a.

- b. ...Firstly, a sum of \$2,000,000.00, being the amount owing to the Defendant for the repayment of a loan, is to be deducted and paid to the Defendant;*
 - c. Finally, the remainder shall be divided and paid equally to the Claimant and the Defendant.*
9. *Within 30 days of the date of this order the Defendant shall deliver to the Claimant's Attorneys-at-law possession of the Property and all deeds and documents relating to the Property.*
10. *The Registrar of the Supreme Court is empowered to execute all documents necessary to give effect to and complete the sale and transfer of the Property, if either party fails to do so.*
11. *Costs.*
12. *Liberty to Apply.*
13. *Such further or other directions or orders as the court thinks appropriate.*

[6] Ms. Hosue's position is that in order for Mrs. Haddad's estate to be wound up, it is necessary for the judgment to be enforced by having the property sold. She relied on two affidavits filed in support of the application on August 30, 2022 and May 8, 2023. In them she gave the reasons for Mrs. Haddad's delay in enforcing the judgment.

[7] She relied heavily on information obtained from her parents who advised that Mrs. Haddad failed to act in 2003 after the initial judgment because she was awaiting the outcome of the appeal that was filed by Mr. Haddad which was decided four years later. Mrs. Haddad and her parents further advised her that arrangements were made for a valuation report to be completed. However, when this was done, Mrs. Haddad advised her that she was not comfortable with the value that was

given to the property at the time. She thereafter asked Mr. Haddad to have another valuation completed in order to facilitate the sale of the property.

[8] She was also advised that Mrs. Haddad made multiple attempts to get the cooperation of Mr. Haddad to facilitate the preparation of another valuation report and he refused to cooperate. It was noted that he indicated that he was not interested in taking the necessary steps to obtain another valuation, neither was he interested in contributing to the cost of obtaining or giving access to the property to facilitate such a valuation.

[9] It was also stated that Mrs. Haddad always intended to enforce the judgment and that she refused two requests by Mr. Haddad to transfer her interest to his daughter. However, she did not proceed with enforcement because Mr. Haddad had constant complaints of financial difficulties in addition to which he became ill and was hospitalized. Furthermore, Mrs. Haddad health also began to decline and she became terminally ill and had to have treatment over time.

THE CLAIM

[10] Mr. Haddad by way of his Fixed Date Claim Form ('FDCF') sought the following orders:

"1. An Order declaring that the beneficial interest of Mrs. Arlene Beverly Haddad in the property known as Hampstead, Ballards Valley, St. Mary registered at Volume 1090 Folio 214 of the Register Book of Titles has been extinguished pursuant to the Limitations of Actions Act, by virtue of the sole open, and uninterrupted occupation by the Claimant to the exclusion of Mrs. Arleen Beverly Haddad for a period in excess of 15 years since the determination of her beneficial interest.

2. An Order declaring that PETER EDWARD HADDAD is the sole beneficial owner of the property known as Hampstead, Ballards Valley, St. Mary registered at Volume 1090 Folio 214 of the Register Book of Titles.

3. *Liberty to apply.*

4. *Cost to the Claimant to be agreed or taxed.*

3. *Such further or other relief as this Honourable Court deems just.”*

[11] Mr. Haddad relied on four affidavits filed in support of his claim and in response to the Application on November 7, 2022, May 9, 2023 and July 16, 2024. He stated that subsequent to the Court of Appeal decision in April 2007, the property was valued by D.C. Tavares Finson Realty Limited as agreed by the parties. Mr. Haddad noted that he arranged and solely financed the completion of the valuation, and that the report was shared with Mrs. Haddad through her attorneys, proof of which was exhibited in his Affidavit in Support of the FDCF. He pointed out that Mrs. Haddad and her attorneys did not respond or make any comments about the valuation, and that she neglected and or refused to have a valuation done for herself. He further noted that she took no steps towards enforcing the Court's judgment.

[12] He also stated that since the judgment of the Court of Appeal, neither Mrs. Haddad nor anyone acting on her behalf visited or occupied the property. As such, he has exercised sole, open undisturbed and continuous possession since then to the present. It is only after the death of Mrs. Haddad that her Executrix is seeking to enforce the order and during the intervening period, he has expended significant funds on the property to his prejudice while she declined to act.

[13] Finally, he averred that his sole, open, undisturbed and continuous occupation of the premises for over 15 years after the judgment of the Court of Appeal, exceeds the limitation period of 12 years prescribed by the LAA. As such, any legal or beneficial interest of Mrs. Haddad in the property has been extinguished. Therefore, he does not agree that the orders sought in the application are necessary to wind up the estate and that a writ of execution for the enforcement of the judgment under **Part 46 of the Civil Procedure Rules** ('CPR') should be issued by the court.

SUBMISSIONS

- [14] Mr. Hylton, K.C. on behalf of Ms. Hosue, noted that she is seeking the directions of the court pursuant to the liberty to apply order to enforce the judgment and complete the winding up of the estate. He stated but it is incorrect that Mrs. Haddad's right to the property has been extinguished by Mr. Haddad's sole and undisturbed occupation for more than 12 years for two reasons.
- [15] Firstly, he submitted that the provisions of sections 3 and 30 of the LAA are not applicable on these facts. While it is accepted that there is a limitation on the time in which claims for recovery of possession can be brought, the effect of these provisions is to bar a person from bringing a court action, not from enforcing a judgment. It therefore does not affect a person's right to enforce an order. Judgment in the claim was already entered in favour of Mrs. Haddad and Ms. Hosue now seeks to enforce it.
- [16] Secondly, the effect of the court order is that Mr. Haddad as the sole legal owner/registered proprietor of the property holds a 50% beneficial interest on trust for Mrs. Haddad, thereby making him a trustee. Counsel submitted that by virtue of **section 26 of the LAA**, a trustee cannot rely on the statute of limitation as the section prevents the running of time against a beneficiary to bring a claim against a trustee in respect of any land vested in the trustee.
- [17] He also relied on **section 86 (1) of the Trust Act** which came into effect September 2019 and replaced **section 46** of the repealed Trustee Act which precluded a trustee from relying on a period of limitation in any action brought against him to recover trust property/proceeds held by him, vested in him or in his possession/control. He further submitted that as a trustee has a fiduciary duty to protect and advance the interests of the beneficiary, the law would not permit him to breach that duty by claiming the trust property for himself. Therefore, in these circumstances the issue of adverse possession does not arise.

- [18] Counsel also refuted the argument that the beneficial interest ceased because 15 years have elapsed on the ground that the orders of Justice Harrison were declaratory, and relying on the case of **Bowen v Robinson SCCA 114/2010, delivered November 24, 2010 (unreported)**, this became the legal position as of 2007 when it was varied and it cannot be changed or extinguished.
- [19] Counsel also submitted that the order of Justice Harrison, ordering the sale of the land, is arguably a writ of execution whose period of validity has expired. He noted that **rule 46.1 of the CPR** identifies an order for the sale of land as a writ of execution and further relied on **rule 46.10(1) of the CPR** which allows the Court to use its discretion to renew the writ once the judgment creditor has met certain requirements, namely that all reasonable steps have been taken to execute it and he has been unable to do so.
- [20] In this respect, he noted that the evidence of Ms. Hosue was more credible than that of Mr. Haddad sufficient for the Court to exercise its discretion in renewing the writ of execution. He also discredited the evidence of Mr. Haddad, highlighting that he has always been a witness who lacked credibility in this and all the hearings of the matter since its inception.
- [21] Nevertheless, Counsel submitted that even if the Court were to accept Mr. Haddad's evidence, the case is not one in which a judgment creditor is seeking to enforce a money judgment. This Court has already decided and declared a 50% beneficial interest to Mrs. Haddad in the property, so an order for the sale of the property would be in the interest of the overriding objective.
- [22] If, however, this Court disagrees with his arguments in relation to the order of Justice Harrison for the sale of the property being a writ of execution, permission is sought to enforce the judgment and to issue a writ of execution pursuant to **rule 46.2(1)(a) of the CPR** on the same evidence. Counsel pointed out that **rule 46.3 of the CPR** required affidavit evidence to be provided with reasons for the delay.

[23] He further submitted that the evidence of Ms. Hosue sufficiently outlines the reasons for the delay by Mrs. Haddad to enforce the judgment. He referred to **Dipika Patel v Sarbjit Singh** [2002] EWCA Civ 1938 and submitted that the circumstances of the case take it outside the ordinary and justify a grant of permission to enforce the judgment. On these bases, he further relied on **rule 55 of the CPR** and asked that the Court grant an order for the sale of the property as it is necessary and expedient in order to enforce the judgment.

[24] Mrs. Kitson, K.C on behalf of Mr. Haddad, identified two issues of law for the determination of the court namely;

- a. *Whether the half interest declared by the court in favour of Arlene Haddad in the Hampstead property was extinguished by virtue of subsequent adverse possessory ownership by the Defendant, and by operation of of the Limitation of Actions Act?*
- b. *Whether the executrix in making an application for a writ of execution has satisfied this court that it is “demonstrably just” for the court to so order, having regard to the lack of cogent reasons given for the delay enforcing the order made 17 years ago.*

While Counsel agreed that **rule 46.2(1)(a) of the CPR** is the relevant consideration, she submitted that the emphasis should be placed on **rule 46.2(1)(c)** and **rule 46.3** of the **CPR** in determining the issues before the Court particularly whether it is demonstrably just to grant the application being made by the Defendant.

[25] Where **Rule 46.2(1)(c)** is concerned, she submitted that “*enforceability*” as mentioned is relevant to the Application for a writ of execution as Mr. Haddad’s liability to have the judgment enforced against him is affected by his claim to adverse possessory ownership of the property. The matter raised an important consideration as to whether it has been shown that Mrs. Haddad’s right to enforce an order declaring her a one-half beneficial interest in the property has been made

extinct as a result of the factual and exclusive possession by the Claimant in accordance with **sections 3 and 30 of the LAA**.

- [26] Mr. Haddad contends that the Mrs. Haddad's interest in the property is statute barred by virtue of these sections. In support of this point, Counsel relied on **Thomas Lazarus Anderson v Gaian Ludoff Thompson** [2015] JMCA Civ 51 and **Recreational Holdings (Jamaica) Limited v Carl Lazarus** [2014] JMCA Civ 34 which state the effect of these two sections. Counsel also adopted dicta from **Wills v Wills** [2003] UKPC 84 and pointed out that for more than 15 years after the declaration of her beneficial interest by the courts, Mrs. Haddad "**never seems to have taken action either to have the properties sold or to rearrange their ownership by an exchange of beneficial interests**" and instead, allowed the limitation period to run against her. It was further stated that even though **Recreational Holdings** (supra) establishes that the claimant to a possessory title does not have to do anything to perfect his possessory title, Mr. Haddad has filed his Fixed Date Claim Form seeking the declaration of his beneficial interest out of an abundance of caution.
- [27] As it relates to this second issue, Counsel submitted that if the Court finds that the LAA has not acted against Mrs. Haddad, then she should have enforced the judgment within the 6-year limitation period contemplated by **rule 46.2(1)(a) of the CPR** and section **28B of the Judicature (Supreme Court) Act**. The main thrust of Counsel's submissions on this issue was that the evidence has not satisfied the prerequisites for the Court to exercise its discretion to issue a writ of execution as outlined in **rule 46.3(1)(2) of the CPR**.
- [28] She noted that the Rule requires that Affidavit evidence must be provided to the Court explaining the reason for the delay in enforcing the judgment for in excess of six years. This evidence must be such that the Court will be convinced that it is '*demonstrably just*' to exercise its discretion and grant permission to issue a writ of execution. Counsel also relied on **Patel v Singh** (supra) in support and noted that

Ms. Hosue's affidavits do not provide a cogent reason for the Court to exercise its discretion after the excessive 15-year delay.

- [29] The reasons advanced were assessed and dismissed by Counsel as incredible and it was indicated that they were successfully challenged and discredited by the evidence of Mr. Haddad. Counsel pointed out that Mr. Haddad in his evidence denied that he refused to cooperate to facilitate a second valuation and or sale of the property. It was also pointed out that Ms. Hosue conceded that Mrs. Haddad could have taken steps on her own initiative but did not do so.
- [30] She also noted out that the evidence revealed that while Mr. Haddad had a valuation done and even spoke with Mrs. Haddad about reaching a settlement in relation to the property when she was not being responsive, she did nothing of her own volition or through her Attorneys. Counsel further pointed out that Mr. Haddad denied that he had any financial difficulties and it was established that his illness and admission to the hospital was for a very brief period in 2011 and thereafter he was fully functional and returned to work.
- [31] In response to the submission that a Trust had been created as a result of the Order of the Court, Counsel submitted that the provisions of the Trust Act, section 26 of LAA, and authorities relied on by the Defendant/Applicant are wholly inapplicable to these proceedings. Mrs. Kitson's, position was that a trust was never established in the usual sense of the word; it was a declaratory order conferring a beneficial interest which required steps to be taken by Mrs. Haddad for it to be enforced. As she had not enforced her beneficial interest within 6 years, she no longer had an entitlement to do so without a further order of the Court. Having not sought that order within 12 years, the LAA has acted against her and her executrix should not be allowed to act upon that beneficial interest.

THE ISSUES

- [32] The issues which arise for the Court's determination are as follows:

- i. Whether the beneficial interest of Mrs. Haddad was extinguished by virtue of the operations of the LAA.
- ii. Whether the Executrix's application for a writ of execution has satisfied this Court for the court to so order.

LAW AND ANALYSIS

Whether the beneficial interest of Mrs. Haddad was extinguished by virtue of the operations of the LAA.

[33] Except for the sequence of events following the Court of Appeal's variation of the judgment, the facts of this case are agreed by both parties. I will therefore immediately deal with the issues identified. In relation to the first issue, I have read the authorities provided by learned Kings Counsel in support of her position but did not find them helpful as they were not similar to the instant matter either on their facts or on the issues with which they dealt. Counsel argued that the judgment cannot be enforced against Mr. Haddad because Rule 46.2(1)(c) is applicable. Rule 46.2 (1)(c) states;

46.2 (1) A writ of execution may not be issued without permission where –

(c) any party against whom a judgment or order was liable to be enforced is no longer liable to have it enforced against it;

He was no longer liable to have the judgment enforced against him since the statute of limitation, specifically **sections 3 and 30 of the LAA** have run against Mrs. Haddad.

[34] Upon an examination of Section 3, it is noted that it bars the right to recover land by making an entry or by **bringing an action or suit after 12 years**. Section 30 of the LAA outlines the consequence which is to extinguish the right and title of the person entitled to recover possession. In my estimation, in order for the current proceedings to fall within the ambit of section 3, I would have to accept that it is an

action to recover possession within the meaning of the LAA. Since Counsel has agreed that Rule 46.2 (1) is the relevant consideration, i.e., enforce proceedings, I do not accept that it is an action of the type to which sections 3 and 30 apply. It could only be considered as an action to enforce the judgment.

- [35] I note that the LAA does not include a limitation for the enforcement of judgements. In fact, it contains very few detailed provisions as to the type of actions to which it applies and the limitation periods prescribed for them. In **Lance Melbourne v Christina Wan** Supreme Court Civil Appeal No. 55 of 1983 Rowe P at page 4, summarized the provisions of the Act in the following manner;

“The present version of the Limitation of Actions Act is divided into four parts. Part I deals with limitation of actions in relation to land, Part II Crown Suits limitation, Part III with Boundaries and the fourth part with limitations in relation to debt and contract.

He also went on to point out that the LAA does not contain the detailed statutory provisions limiting the time within which actions in tort may be brought and that reference had to be made to the **Limitation of Actions Act 1623** in order to ascertain much of these necessary details. Although this comment was in reference to actions in tort, I find it to be of general applicability and was guided accordingly. However, recourse to the 1623 Statute does not assist as it also does not contain a limitation for bringing an action for the enforcement of a judgment.

- [36] In dealing with this issue, I found some limited guidance from jurisdictions where the Limitation of Actions Act provides a limitation for bringing an action to enforce a judgment and noted that a clear distinction is made between proceedings for the issue of a writ of execution and the bringing of a fresh action to enforce a judgment. In **Morrison Knudsen International Inc. v Consultant Ltd and Another** (2003) 66 WIR 179, a decision of the Eastern Caribbean Court of Appeal on appeal from the Grenada High Court, Sir Dennis Byron CJ dealt with this issue.
- [37] In that case, the Appellant obtained a money judgment against one Denis Ross in 1990 which was not satisfied. In 2000, Mr. Ross sold land to the first Respondent

but did not satisfy the judgment debt. It was not disputed that the judgment debt created a statutory charge on land owned by Mr. Ross and his successors in title which could be enforced against the Respondents. In the same year, the Appellant commenced proceedings to obtain an order for sale of the land which was dismissed on the ground that it was prohibited by the Civil Procedure Rules 2000, Rule 46.2 which is to the same effect as our CPR Rule 46.2. The appellant appealed on the ground that the proceedings was not for the issue of a writ of execution but was a fresh action brought within the limitation period set out in Section 30 of the Limitation of Actions Act. This section stated that;

“No action or other proceedings shall be brought to recover any rent...judgment or lien...but within 12 years next after a present right to receive it had accrued.”

[38] The learned Chief Justice in delivering the judgment of the Court made the following statement;

[5] The effect of delay in the enforcement of legal rights is a highly regulated feature of the law. In this case, there are two relevant regimes. The first is under the Limitations of Actions Act and the other is under the Rules of Court (the Civil Procedure Rules 2000)

In addressing the issue before the court, he went on to state;

“[10] The solution to this case therefore depends on establishing the difference between the issue of a writ of execution, and the bringing of a fresh action to enforce the collection of a judgment debt.

[39] In establishing the distinction between the two he relied on **28 (reissue) Halsbury's Laws of England (4th Edn) para 815** which defined “Actions” under the Limitation of Actions Act 1980 and stated that while “Actions” has a very wide definition in the Act, it did not however cover the issue of an execution on a judgment, as distinct from an action to enforce a judgment. He also relied on **note**

1 to para 916 of 28 (reissue) Halsbury's Laws of England (4th Edn) which he said emphasized and further clarified the foregoing principle.

*'Despite the wide definition of "action" contained in the Limitation Act 1980, s 38(1), an action upon a judgment applies only to the enforcement of judgments by suing on them and does not apply to the issue of executions upon judgments for which the leave of the court is required, after six years have elapsed, by RSC Ord 46, r 2(1)(a); in matters of limitation the right to sue on a judgment has always been regarded as quite distinct from the right to issue execution under it, but the court will not give leave to issue execution when the right of action is barred; see **National Westminster plc v Powney** [1990] 2 All ER 416 and **WT Lamb & Sons v Rider** [1948] 2 KB 331, [1948] 2 All ER 402, CA.'*

[40] He also highlighted the leading case, **WT Lamb & Sons Ltd v Rider** [1948] 2 All ER 402, in which the court considered whether there was a distinction between the issue of execution and bringing an action on a judgment. He pointed out that after a historical review and explanation of the law, Scott LJ stated (at p 407) of the judgment:

'It follows from the above brief survey that the right to sue on a judgment has always been regarded as a matter quite distinct from the right to issue execution under it and that the two concepts have been the subject of different treatment. Execution is essentially a matter of procedure-machinery which the court can, subject to the rules from time to time in force, operate for the purpose of enforcing its judgments or orders. ...'

[41] Having examined the authorities, the learned Chief Justice concluded as follows;

"[15] It would seem to me that there is a clear distinction between the two situations. A writ of execution is issued at the point where there is a judgment to be enforced and a proceeding is initiated to enforce it, for example by obtaining an order for the sale of land charged with the judgment debt. On the other hand, fresh proceedings are issued where the judgment is not being directly enforced, but the proceedings based on the judgment creates a new basis for enforcement."

[42] While I am mindful that the facts of this case are not similar to the instant matter, I find the guidance it provides very helpful in assessing the matters before me. It appears that since the LAA does not contain any similar provision to section 30, there is one regime for dealing with the enforcement of judgments where there is a delay, which is Rule 46.2 of the CPR.

[43] I also find that these are proceedings initiated to enforce a judgment. I note that the proceedings were commenced by notice of application in claim No. 1994 E 00053, the matter in which the judgment was granted and seek orders for the sale of the property as previously ordered by Harrison J. Accordingly, I do not accept that sections 3 and 30 of the LAA applies in the circumstances of this matter. I find that the CPR is applicable and that it stipulates what must be done in these instances and what is required for the Court to exercise its discretion.

For these reasons, I am also not persuaded that a trust arises in this situation. I note that Counsel did not refer the Court to any actual authority to support his contention that the effect of the court order is that Mr. Haddad as the sole legal owner/registered proprietor of the property holds a 50% beneficial interest on trust for Mrs. Haddad, thereby making him a trustee. I accept instead that these are proceedings to enforce the declaratory order conferring a beneficial interest in the property on Mrs. Haddad.

Whether the Executrix's application for a writ of execution has satisfied this Court for the court to so order.

[44] On this issue, Mr. Hylton has asked to the Court to consider their application to be a renewal of the writ of execution pursuant to **rule 46.10 of the CPR** or in the alternative, that the Court grants permission to issue a writ of execution for the sale of the property.

[45] I agree that under **rule 46.1 of the CPR**, an order for the sale of land falls into the category of a writ of execution, as it states:

“In these Rules a “writ of execution” means any of the following:

.....

(c) an order for the sale of land”

The CPR is silent as to the form that a writ of execution or an order for sale of land should take. However, Sir Dennis Byron CJ at para 17 in **Morrison Knudsen International Inc v Consultant Ltd** (supra) noted that: -

“The form in which the order for sale of land is obtained is not limited by the rules. It is significant that the rules did not prescribe the method of obtaining an order for sale. This indicates to me that, however the order is obtained, it constitutes a writ of execution...”

[46] While the order for the sale of the property may arguably be deemed to be a writ of execution, the provisions of the Rules do require that such a writ be issued in the first place. According to the **Halsbury’s Laws of England, Civil Procedure, Volume 11 (2020)**, a writ of execution must be issued. Rule 46.9 in particular states that the writ of execution is valid for a period of twelve months beginning with **the date of its issue**. (emphasis supplied) Likewise rule **46.10 of the CPR** requires the judgment creditor to make an application for renewal within the period for which the writ is valid. There is no evidence of the issue of a writ of execution in this matter for the court to consider a renewal. Therefore, the instant application cannot be considered to be one for the renewal of a writ of execution.

[47] In these circumstances, I find that the Defendant’s application is best addressed as an application for permission to issue a writ of execution pursuant to **rule 46.2 (1)** which states that:

“ A writ of execution may not be issued without permission where-

(a) Six years have elapsed since the judgment was entered...”

[48] Then **rule 46.3 of the CPR** provides that:

(1) *An application for permission to issue a writ of execution may be made without notice unless the court otherwise directs but must be supported by evidence on Affidavit;*

(2) *On an application for permission the applicant must satisfy the court that it is entitled to proceed to enforce the judgment or order and in particular-*

a. *Where the judgment is a money judgment, as to-*

i. *The amount originally due; and*

ii. *The amount due and the amount of interest due at the date of the application.*

d. *Where rule 46.2(a) applies, the reason for the delay....”*

[49] I therefore agree that in order for the Court to exercise its discretion to grant permission to issue a writ of execution, after 6 years have elapsed, affidavit evidence must be provided to explain the delay, and having considered the reasons put forward, the Court must be satisfied that it is ‘*demonstrably just*’ to exercise its discretion. This was stated in the dicta of Lord Gibson in **Patel v Singh** on which both parties relied at para 18:

“In all the cases on the exercise of discretion after the expiry of six years including the present case at both levels below, it has been recognised that something more is needed to justify the exercise of discretion in favour of the judgment creditor who has allowed six years to elapse since judgment. Even Jack J was not content that it should merely be shown that it was just to give permission. He required Mr Evans-Lombe J’s adverb, “demonstrably”, to be added to the adjective “just” and gave the adverb the synonym, “plainly”. That view taken by the judge runs counter to the submission of Mr Crosfill that what the court has to do is conduct a mere balancing exercise which is to be performed without any weighting against the judgment creditor because of the lapse of time.”

[50] The question then is whether the reasons provided are such that I am persuaded that it is demonstrably just to grant permission to enforce the judgment. Ms. Hosue has put forward 4 reasons for the delay, all of which Mr. Haddad denied. He claims

that subsequent to obtaining the court ordered valuation in 2007, Mrs. Haddad did nothing to enforce it.

[51] In assessing the evidence, I found Ms. Hosue to be the more credible of the two witnesses in some respects. In particular, I don't believe Mr. Haddad that he and Mrs. Haddad never discussed the valuation and he was not aware that she objected to it. On this latter fact in issue, he gave conflicting evidence. In the early stages of cross examination, he denied that they ever discussed the valuation report so he did not know whether Mrs. Haddad objected to it. Later, learned Kings Counsel drew his attention to his second affidavit filed on May 29, 2023 at paragraph 10 where he stated:

"I deny paragraph 13 of the claimant second affidavit and say that I am not aware that Mrs. Haddad ever requested that another valuation report be done. In fact, after the valuation report was prepared and shared with Mrs. Haddad. I reached out to her on at least three different occasions requesting an explanation as to why she had not responded to the valuation and each time I was told by Mrs. Haddad not to worry about it, and to leave it alone. I further say that if Mrs. Haddad was in disagreement with the valuation report as is asserted in the claimant's second affidavit, she had every right to have a separate valuation done on the property, however she neither disagreed with the valuation nor did she take any steps to move the matter forward."

[52] When asked subsequently, which of these statements was true, he refused to answer nor did he clear up the inconsistency. In successive answers he reiterated that the valuation was never discussed without addressing the contents of the paragraph. He further went on to state that in this paragraph the word "valuation" should be removed and replaced by "settlement".

[53] In response to Counsel's question as to where this should take place since there were several places where the word valuation appeared, he stated that any reference to "valuation" in paragraph 10 should have been "settlement". Having

done as stated by Mr. Haddad, I find that the effect on the paragraph outlined above makes it patently clear that he was not speaking the truth and that it was a ridiculous attempt to maintain his claim that he and Mrs. Haddad had never discussed the valuation report. I therefore did not find him to be a credible witness in this respect and preferred the evidence of Ms. Hosue.

- [54]** I found however, that her evidence suffers from certain fundamental weaknesses. The first is that the evidence of the reasons given for the delay is largely hearsay, based on information obtained from her parents who were unfortunately unable to participate in the matter. The Court would have appreciated the personal evidence of her parents being presented and for them to be subject to cross-examination for a proper assessment to be made.
- [55]** Secondly, I found the evidence to be lacking in specific details as to what part of the 15 year period they operated to account for the delay. Even taking the evidence of both parties together, I was unable to ascertain when and for how long, the enforcement was delayed by Mr. Haddad's alleged lack of co-operation, his illness and that of Mrs. Haddad.
- [56]** The evidence of Ms. Hosue is that among the reasons for the delay is that Mr. Haddad was having financial issues and that he also became ill and was hospitalized. Subsequently, Mrs. Haddad became ill herself. She did not give any evidence of when this took place and for how long they operated to cause the delay. Mr. Haddad however stated that he was ill for a short period in 2011 and that Mrs. Haddad's illness began in 2019. These time periods were not contested. He also denied that he had financial issues. There was no evidence to refute this claim. It therefore appears that between 2011 and 2019, nothing was done to enforce the judgment nor could it be established on a balance of probability that Mr. Haddad had financial problems that prevented the enforcement of the judgment during this period.

[57] In addition, it does not appear that Mrs. Haddad took all available steps to enforce the judgment and was prevented from so doing. It was admitted by Ms. Hosue that she had the assistance of very capable Attorneys in this matter and that she could have, but did not take any steps to obtain the assistance of her Attorneys or the court to get another valuation done. No explanation was given for this.

[58] In **Patel v Singh** (supra) at paragraph 21, Lord Gibson made the following statement;

“21. The policy of the rule seems to me to be that ordinarily after six years permission will not be given and that is underlined by the provisions of Order 46 rule 4(2), requiring the judgment creditor to explain his delay.... In my judgment, therefore, consistently with what this court said in Powney, the court must start from the position that the lapse of six years may and will ordinarily, in itself justify refusing the judgment creditor permission to issue the writ of execution, unless the judgment creditor can justify the granting of permission by showing that the circumstances of his or her case takes it out of the ordinary. That may be done by showing the presence of something in relation to the judgment creditor’s own position, or, as Sir Anthony Evans suggested in the course of the argument, in relation to the judgment debtor’s position. Thus the judgment creditor might be able to point, for example, to the fact that for many years the judgment debtor was thought to have no money and so was not worth powder and shot but that, on the judgment creditor winning the lottery or having some other change of financial fortune, it has become worthwhile for the judgment creditor to seek to pursue the judgment debtor” (emphasis added)

[59] I do not find that Ms. Hosue presented sufficiently cogent evidence of the reasons for the 15-year delay. There is nothing in the evidence of the circumstances of this case which takes it out of the ordinary to justify the granting of permission. I do not find in the circumstances that it is demonstrably just to grant the application for permission to enforce and for an order for sale of land.

CONCLUSION

For the reasons contained herein, I make the following orders: -

- (1) The Amended Notice of Application for Court Orders filed on May 8, 2023 is dismissed.

(2) Costs to the Respondent to be taxed if not agreed.

(3) The Fixed Date Claim Form filed on November 7, 2022 is dismissed.

(4) Costs to the Defendant to be taxed if not agreed.