

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. CL 1996/M 105

BETWEEN	GIFFORD MORRELL	1 ST JUDGMENT DEBTOR
AND	FIONA MORRELL	2 ND JUDGMENT DEBTOR
AND	WORKERS SAVINGS AND LOAN BANK	JUDGMENT CREDITOR

Ms. Sandra Minott-Phillips instructed by Myers, Fletcher and Gordon for judgment creditor.

Ms. Hilliary Phillips, Q.C. and Ms. Lauren Saddler instructed by Grant, Stewart, Phillips & Company for 1st judgment debtor.

Mr. John Thompson for 2nd judgment debtor.

Ms. Olive Gardner for intervener.

Heard: 5th June 2009

Campbell, J.

Final Charging Order

(1) On the 2nd October 1998, the Honourable Justice Cooke gave judgment in favour of Workers Savings and Loan Bank (WSLB) on both the Claim brought by Gifford and Fiona Morrell and the counterclaim by WSLB. The judgment sum was \$243,201,588.87. On the 14th October 1998, the judgment debtors swore out affidavits of assets. The judgment was stayed whilst the Morrells pursued an appeal, which culminated in the Privy Council's dismissal on the 18th January 2007, and affirmation of the order of Mr. Justice Cooke. On 30th January 2002 the receivables owned by the judgment debtors were acquired by Jamaica Redevelopment Foundation (JRF). JRF also acquired a debt owed by 1st judgment debtor to National Commercial Bank.

(2) WSLB executed a Power of Attorney which allows JRF inter alia: "To demand and receive from any debtor whose debts have been sold or will be sold ... under the said Agreement for Sale and Purchase of Assets every sum owing. . . . to exercise, commence prosecute all necessary and lawful power, remedies, actions, proceedings and means to enforce rights and

remedies under or in respect of any purchased debts. "Mr. Morrell was informed by way of a letter dated 25th October 2005 that his debts and other obligations previously owing to WSLB were acquired by JRF.

(3) On the 27th March 2007, WSLB filed a notice applying for provisional orders charging the shares in Time Trend Financial Company Limited, owned by Fiona and Gifford Morrell, the land at Haughton, Lacovia in the name of Gifford Morrell, land at 8950 NW 21 Street, Pembroke Pines, in the names of Dothlyn and Gifford Morrell, the lands at 679 NW 170 Ter., Pembroke Pines, registered in the name of Fiona Morrell, personal property in form of bank accounts, motorcars and life insurance policies, with the payment of the judgment sum as awarded on the 2nd October 1998. The provisional charging-order was made by McDonald Bishop, J. on the 28th June 2007.

(4) In respect of both properties in Florida, an amended Provisional Charging Order filed on the 13th November 2007 made the charge on the property subject to the laws of Florida, and that the judgment creditor be allowed to enforce the final charging order by sale of the properties mentioned therein. It provided for the registration of the charge on the Certificate of Title of any shares, land or property made under the order.

(5) On this application for Final Charging Order, the issues raised were, (1) JRF has not establish its right to execute the judgment on behalf of the judgment creditor having not produced a copy of the Agreement for Sale and Purchase of Assets (2) that the properties owned jointly by Dothlyn and Gifford have not been severed.

Judgment Debtors' Case

(6) The operation of Power of Attorney is pinned on the Agreement for Sale and Purchase of Assets dated January 2002. There is no evidence of assignment of the judgment debtor. JRF has not shown they are clothed with the authority to enforce mortgage in the name of WSLB. In addition, because of the joint ownership of the property in Florida, it would not be proper to make such a final charging order in the absence of severance of Gifford Morell's interest from that of his wife. English Law is the relevant law to deal with the disposition of the Florida property. Court should await decision in Florida.

(7) Mr. Thompson argued that, N. Brown's affidavit is to be disregarded, as it was based on the proceedings in Florida. He argued that it is more prejudicial than probative, and consists of and consists of hearsay reports. He concurred with Ms. Phillips in respect of lack of authority evidenced by JRF to enforce judgment in the name of WSLB.

(8) It was further submitted on behalf of Dothlyn Morrell that the final charging order which is sought for property situated in Florida, and which is registered in the joint names of Dothlyn Morrell and Gifford Morrell, is expressed as being subject to an order to the contrary being made

in Florida. The lex situs is the governing principle in such matters. There should be no final charging order in respect of such property. The action of this Court is regarded as ultra vires. The joint-tenancy between the 1st claimant and the intervening party is existing and has not been severed.

Judgment Creditor's Case

(9) Mrs. Minott-Phillips submitted that disclosure was provided for in the 4th Schedule to the Banking Act. The customer is not a party to the Agreement for Sale between Workers Bank and JRF. There is no Court Order for the sale and purchase of assets. Judgment was entered in the defendant's favour. The case is not ongoing. Liability has long been established. Assignment of judgment debt from WSLB to JRF, post-date the issue of judgment in 1998. Only evidence of transfer of judgment debt before this Court is in para 7 of affidavit of Janet Farrow. Cooke J. found that the mortgage was given to WSLB to secure overdraft facilities. The only person capable of challenging sale to JRF is WSLB. The judgment debtors are not parties to that agreement.

(10) The assignment remains an equitable assignment, so long as the debtor is not notified. If notified, it is a legal assignment. Court has found that judgment debtors were secured by title of Lacovia. The judgment debt is to large measure, the overdraft plus interest. If JRF is saying I bought the debt, only the seller can challenge it. The whole debt is assigned; there is no partial assignment. Transfer of property after 22nd February 2007. Agreement of no moment – This Court attached the judgment to assets both inside and outside of Jamaica. In respect of joint/tenancy, this Court attached the judgment to assets of judgment debtors both inside and outside of Jamaica. Property outside of Jamaica must be subject to Florida law. See affidavit of Nadine Brown.

Analysis

(11) The application for a charging Order is made under the Judgement Lien Act and Part 48 of CPR, and constitutes one of two ways of enforcing a judgment. The Judgment Lien Act relates to stock or shares in a public company. In relation to stocks in public company, Part 48 makes it clear that the judgment of the Supreme Court can be enforced by charging order over land, stock, and other personal property.

A preliminary issue was whether there had been an objection raised as required by CPR 48.8 (3). The rules required service of objections within fourteen days. The affidavits of the judgment debtors were treated as objections. It was noted that the amended order sought stipulated that any order that the Court makes in respect of 2 Pembroke Pines will be subject to the law of Florida. Cooke, J. had issued a mareva injunction in respect of the assets of the judgment debtors, restraining them from dealing with their assets. Judgment debtors, Gifford

and Fiona Morrell have particularized the circumstances in which the restraining orders were breached. They had sold motor vehicles and used the equity in life insurance policy to defray medical bills. The creditor argued that no permission was sought before breaching the Order of the Court, and that they were contemptuous of the Court. Gifford Morrell appears less than frank with his assertion to have been separated from his wife since 1978, when in documents filed in Florida proceedings, he attested to their continuing marriage up to 1998.

(12) John Thompson, counsel for the 2nd defendant, submits that there is an absence of evidence from WSLB to support the application before the Court. JRF, relying on The Power of Attorney dated 30th January 2002, purports to act in respect of the debts, the subject of an Agreement for Sale and Purchase of Assets. The Agreement for Sale has not been exhibited before the Court. Therefore runs the argument, JRF has not shown that they are authorised to enforce mortgage 79583 in the name of WSLB, pursuant to the Power of Attorney. Counsel relied on RSC Order 46 – Writs of Execution and **Chung Kwok Hotel Co. v Field (1990) 3 ALL ER 143**. Paragraph I of the Power of Attorney recites, “To demand and receive from any debtor whose debt has been sold or will be sold under the said Agreement” that says counsel can only be properly done by exhibiting the Agreement for Sale and Purchase of Assets, to determine whether the sale is in compliance with it. The 1st defendant’s counsel submits that, if such an agreement does not exist, or if the debt owed by the Morrells is not included in such an agreement, it is incumbent on JRF to show the mode of acquisition of the debt and bring proceedings in their own names.

(13) The Power of Attorney given to JRF by WSLB allows JRF to demand and receive the judgment debt in the name of WSLB. The mortgage of the land at St. Elizabeth was transferred from WSLB to JRF and that transfer is registered on the title on 22nd February 2007. The registered mortgagee is now Jamaica Redevelopment Foundation, Inc. The deed of assignment, which incorporates the Agreement for Sale and Purchase of Assets, was served on the judgment creditor pursuant to their notice to produce. Counsel for the creditors had argued that the document is highly confidential, and contains other names other than the parties here involved, and other debts, other than those of the Morrells. The Court has had sight of the document. JRF is an equitable assignee of the debt until it notifies the judgment debtors of the assignment. As an equitable assignee, it can do all things to enforce the judgment debt in the name of WSLB. As a legal assignee of the judgment debt, JRF needs only leave to issue execution of the judgment debt (see UK Supreme Court practice at para 46.2. 7). In respect of Fiona Morrell, whose evidence is unchallenged, that she has not been notified of the assignment of the debt from WSLB to JRF, it is therefore permissible that JRF’s actions for recovery be done in WSLB’s name.

(14) It was urged that in respect to the debt of Gifford Morrell, Janet Morrow’s affidavit of the 27th March 2007 be treated as an application for leave. That affidavit was served on the 1st judgment debtor on the 11th May 2007, it states at paragraph 7;

“On 30th January 2002 the receivable owed by the judgment debtors, Gifford and Fiona, was acquired by JRF....”

This clearly notifies the debtor that the debt is in the hands of JRF, he cannot claim to be ambushed, he has the necessary information to raise any objection to JRF. What he cannot raise are what he imagines are the terms of the agreement between JRF and WSLB. We were urged that the discovery process is to provide the parties with the relevant documentary material before trial so as to assist them in appraising the strength or weakness of their respective cases. Trial is long gone; the strength of the respective cases has been finally determined. The question at this time is whether JRF is entitled to enforce the judgment herein against the judgment debtors. The unchallenged assertion by the Chief Executive Officer of Jamaica Redevelopment Foundation is evidence that JRF has bought the debt on the 30th January 2002 and by paragraph 8, that the judgment debtor should make payments to JRF. Paragraph 9 exhibits the Power of Attorney. Certainly, if the judgment debtors had doubts as to the accuracy of the statements, they could have taken issue with it, this they failed to do. JRF is a legal assignee of the judgment debt as regards Gifford Morrell. The Court will treat the affidavit of Janet Farrow, of 27th March 2007, as an application by JRF for leave to issue execution and grant the leave sought. It is not necessary for JRF to be added as a party to the proceedings. JRF is permitted to execute the judgment debt in respect of any asset which requires execution to be carried out in its name.

(15) In respect of Fiona Morrell, JRF is regarded as an equitable assignee of the judgment debt. As she has not been notified of the assignment of the debt from WSLB to JRF, it is proper for the judgment debt owed to be done in the name of WSLB.

(16) Mr. Gifford Morrell has contended that he has been separated from his wife in 1978, and has relinquished his claim in the Pembroke Pines property since that date; that hitherto, the property was in the joint-names of his wife and himself; and he has no involvement in the bank account at First National Bank. The assertion of separation was challenged by the judgment creditor who pointed to affidavits filed in Florida in 1998, attesting to the uninterrupted marriage to each other from July 14th 1967. Furthermore, the 1st judgment creditor has attested in this action that he owes monthly payments in respect of the Pembroke Pines property. Ms. Minott-Phillips argues that the recent decision of this Court in **Bertram Cooper (As Executor in the estate Lucille Adela Coleman v Linford Coleman, Claim No. 2004 HCV 01803 (June 15, 2007)**, on which the judgment debtors relied is not relevant. That case was used to demonstrate that because of “a thorough and intimate union between joint tenants . . . they form one person” and that Mr. Morrell had no interest in any “individual part of the whole” which could be the subject of a charging order. The judgment debtor would have to demonstrate some act of severance on the part of Mr. Morrell.

(17) I find that the relevant law is the law of the State of Florida. The final charging order recognizes that the Court in the United States may release that property from that charging order.

It is hereby ordered that:

1. The 600 ordinary shares of \$1 each standing in the books of Time Trend Financial Company Limited in the names of Gifford Morrell and Fiona Morrell, being 300 shares allotted to Gifford Morrell and 300 shares to Fiona Morrell, do stand charged with payment by the 1st and 2nd claimants to the defendant in the sum of J\$243,201,568.87 and all interest due on the said sum, which sum by a judgment made in this action and dated October 2, 1998 the claimants were ordered to pay to the defendant as therein mentioned, pending an application by the defendant to have the order made on this application absolute or until the claimants shall show cause why the order should be discharged or should not be made absolute.
2. The judgment debtors, directors, secretary or other officer or employee of Time Trend Financial Company Limited and each of them be and is hereby restrained from permitting a transfer of the said shares or a payment of any dividend thereon in the meantime and until the order to be made on this application shall be made absolute and discharged.
3. The land at Haughton, Lacovia in the parish of Saint Elizabeth, registered at Volume 1034 Folio 102 of the Register Book of Titles in the name of Gifford Morrell does stand charged with the judgment debt, interest and costs, pursuant to the said judgment of this Honourable Court dated October 2, 1998.
4. The land at 8950 NW 21 Street, Pembroke Pines registered in the joint names of Dothlyn and Gifford Morrell does stand charged, with the judgment debt, interest and costs, pursuant to the said judgment of this Honourable Court dated October 2, 1998.
5. The land at 679 NW 170 TER, Pembroke Pines registered in the name of Fiona Morrell (with legal description being Pembroke Isles, V 166-46 B Lot 52) does stand charged with the judgment debt, interest and costs, pursuant to the judgment of this Honourable Court dated October 2, 1998.
6. Personal property owned by the 1st and 2nd claimants in the form of the following bank accounts:
 - a. Account number 892190046 held at the National Commercial Bank, Santa Cruz Branch in the names of Fiona and Gifford Morrell;
 - b. Account number 1168526161733 held at First Union National Bank, 199 N. University Drive, Pembroke Pines, Florida in the names of Dothlyn and Gifford Morrell;

do stand charged with the judgment debt, interest and costs, pursuant to the said judgment of this Honourable Court, dated October 2, 1998, and all funds in the said accounts are to be paid forthwith to the judgment creditor's attorneys-at-law, Myers, Fletcher & Gordon upon the making absolute of this Order.

Costs.