[2013] JMCA Civ 49

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NOS 33 & 133/2012

BEFORE: THE HON MRS JUSTICE HARRIS JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE BROOKS JA

BETWEEN	**WILFRED NEMBHARD**	**APPELLANT**
AND	**SUPERLUBE LIMITED**	**RESPONDENT**

Ransford Braham QC, Crafton Miller and Miss Khian Lamey instructed by Crafton S Miller and Co for the appellant

Ms Carol Davis for the respondent

Miss Celia Barclay, Trustee in Bankruptcy and Miss Fayola Evans-Roberts, Deputy Trustee in Bankruptcy, for the estate of Wilfred Nembhard

4, 5, 6, 13 June and 19 December 2013

HARRIS JA

[1] I have read, in draft, the reasons for judgment of my brother Brooks JA. I agree with his reasoning and conclusion and have nothing to add.

DUKHARAN JA

[2] I too have read the draft reasons for judgment of Brooks JA and agree with his reasoning and conclusion. I have nothing to add.

BROOKS JA

[3] In these consolidated appeals, Mr Wilfred Nembhard, the Custos Rotolorum for the parish of Saint Elizabeth, seeks to have this court set aside bankruptcy proceedings instituted against him by the respondent Superlube Limited (Superlube). At the conclusion of the various stages of the proceedings, the registrar of the Supreme Court, who was the judge of the bankruptcy court, made orders that Mr Nembhard's affairs be administered in accordance with the law of bankruptcy. Mr Nembhard appealed against each of the learned registrar's three orders, namely, the provisional order in bankruptcy, the "triple order" and the absolute order, respectively.

[4] The appeals were argued before us on 4, 5 and 6 June 2013. After considering the appeals, we handed down a decision on 13 June 2013, in the following terms:

a. The appeal against the orders of the registrar of the Supreme Court made in this matter on 22 September 2011, 1 February 2012 and 15 August 2012, respectively, is dismissed and the said orders are affirmed.

b. Costs to the respondent of both the appeal and in the court below. Such costs are to be taxed if not agreed.

At that time, we promised to provide written reasons for our decision and we now fulfill that promise.

[5] The essence of Mr Nembhard's appeal is contained in his assertion that Superlube improperly initiated the bankruptcy proceedings against him. He asserted that it served him with a bankruptcy notice for improper reasons, including an intention to embarrass him in his office as Custos Rotolorum. Mr Nembhard also complained that the learned registrar erred in failing to recognise the abuse of the bankruptcy process by Superlube. He further asserted that the learned registrar also erred in granting a provisional order and eventually making that order absolute.

[6] Superlube, in answer to those complaints, contended that it has done nothing wrong in seeking to recover the debt of $130,577,746.57, together with interest thereon, owed by Mr Nembhard. That debt, it contends, was for fuel that it sold to Mr Nembhard, who operated a gas station. Superlube complains that his failure has caused it much loss as it has had to borrow money in order to pay for the fuel that it supplied to Mr Nembhard. It asserted that despite the fact that Mr Nembhard had acknowledged the debt, and a consent judgment had been entered in the Supreme Court for that sum, he has paid nothing in respect of it. Superlube asserted that it was entitled, in the circumstances, to proceed as it did. It also supported the decisions of the learned registrar, asserting that in the face of the judgment debt and Mr Nembhard's failure to pay, the learned registrar was obliged to make the orders that she did.

The factual background

[7] Just what did Superlube do? The facts are that the judgment was entered for the sum mentioned above, on 25 July 2011. On 26 July, Mr Nembhard's attorneys-at-

law made a proposal for settlement to Superlube's attorneys-at-law. The proposal included the transfer of certain parcels of land to Superlube as well as the payment of some cash in a lump sum and by way of instalments over an extended period. Superlube rejected the proposal by letter dated 3 August 2011. It then set about using the execution process provided by the court in order to secure payment.

[8] Superlube secured a writ of seizure and sale from the Supreme Court on 4 August 2011. The court's bailiff, in seeking to execute the writ, marked certain goods belonging to Mr Nembhard. On 15 August, Mr Nembhard filed an application in the Supreme Court seeking an order to vary the time and method of payment of the judgment debt or to suspend the writ of seizure and sale. The application came on for hearing before Sykes J, who, upon Superlube's application for an adjournment, set the application for hearing on 5 March 2012 and suspended the execution of the writ of seizure and sale pending the hearing of the application.

[9] Superlube was apparently unhappy with the delay in securing satisfaction of its judgment. It, therefore, sought to utilise another method of securing payment. On 19 August, it served a bankruptcy notice on Mr Nembhard requiring him to pay the judgment sum within seven days of the service of the notice. Mr Nembhard did not make any payment. He, however, on 25 August, filed an application seeking to strike out the bankruptcy notice. In his affidavit seeking that relief, he relied on the following:

a. an assertion that he had sufficient assets to satisfy the debt;

b. the fact that he had made a proposal to settle the debt;

c. the fact that there was a pending application in respect of the writ of seizure and sale; and

d. the assertion that bankruptcy proceedings would unnecessarily destroy his reputation and denigrate the office of Custos Rotolorum for the parish of Saint Elizabeth.

[10] Undaunted, Superlube proceeded. It filed the bankruptcy petition against him on 26 August.

Were the proceedings an abuse of the process of the court?

[11] Mr Braham QC, on behalf of Mr Nembhard, submitted that it is an abuse of the process of the court to use bankruptcy proceedings for a purpose that is "different from that which it was designed" to achieve. He argued that the "object of bankruptcy proceedings is to make the debtor's assets available for rateable distribution to all the debtor's creditors". Learned Queen's Counsel submitted that such misuse is inequitable. He argued that the court would frown on the use of the threat of bankruptcy as a method of oppression or as a tool to "extort" payment from the debtor. In addition, he submitted, the Bankruptcy Act (the Act) stipulates that if any situation renders the making of a provisional order inequitable, the court "shall revoke the provisional order" (section 36).

[12] Mr Braham highlighted the fact that Superlube commenced the execution process by using a writ of seizure and sale. Having made that choice, he argued,

Superlube ought not to have filed a bankruptcy notice while the execution process was not yet completed. In so acting, Mr Braham submitted, Superlube was attempting to circumvent the process of the court and "using the bankruptcy process in a way for which it was not designed".

[13] He concluded that the bankruptcy process was, therefore, inequitable, in the sense that it was unjust and unconscionable. The registrar should therefore, have set aside the provisional order, and this court should act where the registrar had failed to act. Learned counsel cited in support of his submissions, among others, the cases of **In re A Judgment Summons (No 25 of 1952) Ex parte Henleys Ld** [1953] 1 Ch 195; [1953] 1 All ER 424, **Hunter v Chief Constable of the West Midlands Police and Others** [1982] AC 529, **Max Bernard Jules Brunninghausen v Michael Glavanics** [1988] FCA 230 and **Bowen v Robinson and others** [2013] JMSC Civ 13.

[14] The difficulty in applying Mr Braham's submissions to the instant case is that, on those propositions, Superlube would be prevented from taking any step whilst the writ of seizure and sale was pending. Such a stance would have been appropriate had Superlube sought to utilise a separate method of execution provided by the court, such as an application for the sale of real property held by the judgment debtor, or a judgment debtor summons (see **Rendell Cameron v Patrick Drummond** SCCA No 92/1999 (delivered 23 October 2000)). Proceedings by way of the Act are, however, different. Section 39 thereof stipulates that the making of a provisional order automatically stays all court process to recover a judgment debt. Additionally, section 119 stipulates that when the goods of a person have been taken in execution of a

judgment, but have not been sold, those goods must be delivered up to the Trustee in Bankruptcy, in whom property of them is vested by virtue of the provisional order. There is, therefore, no risk of a "double jeopardy" to the judgment debtor.

[15] Apart from those statutory protections for the debtor, there is no statutory provision requiring a judgment creditor to exhaust all court processes before seeking to utilise the provisions of the Act. Nor is there any statutory prohibition against seeking to utilise the provisions of the Act while court process is still under way.

[16] Learned counsel for Superlube, Ms Davis, and learned counsel, Miss Barclay, the Trustee in Bankruptcy, are both correct in their submissions, that the circumstances did permit Superlube to pursue bankruptcy proceedings. The circumstances, they argued, were in conformity with the relevant provisions of the Act. In support of those submissions Ms Davis cited the cases of **Killoran v Duncan** [1999] FCA 1574 and **Watts v Adelaide Bank Ltd** [2009] FCA 420.

[17] In assessing the entitlement to file a bankruptcy notice, it is significant that Superlube had secured a final judgment against Mr Nembhard, which judgment Mr Nembhard had failed to satisfy. Section 19 is the appropriate section of the Act. It states, in part:

> "19. A single creditor or two or more creditors, if the debt owing to such single creditor or the aggregate amount of debts owing to such several creditors from any debtor amounts to a sum of not less than three thousand dollars, may present a bankruptcy petition to the Court against a debtor, alleging as the grounds of the petition any one or more of the following acts or defaults, in this Act deemed to be and included under the expression "acts of bankruptcy"-

...

> (h) that the creditor presenting the petition has obtained final judgment or final order against the debtor in an action in the Supreme Court, or in a Resident Magistrate's Court, for a sum of not less than three thousand dollars, and has served on the debtor in Jamaica a bankruptcy notice in writing, in the prescribed manner and form, requiring him to pay the amount for which such judgment or order has been obtained, and the debtor has not within seven days after the service of such notice paid such amount, or secured or compounded for the same to the satisfaction of the creditor;"

It should also be noted that Superlube was not obliged to accept Mr Nembhard's proposal of settlement.

[18] It is also significant that there is no evidence that Superlube, in instituting bankruptcy proceedings against Mr Nembhard, sought to secure any collateral or other payment from him, in excess of the judgment debt. Although Mr Braham submitted that the term "extortion", as used in the context of bankruptcy, included the use of bankruptcy proceedings, by a creditor, as a means of debt collection, the authorities do not support this submission. What the authorities reveal is that the court eschews the use of bankruptcy proceedings for a collateral or improper purpose, such as an attempt to secure a benefit over and above that to which the creditor is entitled or to secure a payment over and above that to which he would be entitled in bankruptcy.

[19] In **In re A Judgment Summons (No 25 of 1952) Ex parte Henleys Ld**, Lord Jenkins stated the mischief which the court sought to prevent and the jealousy with which it guarded its process. He said, in part, at page 212 of the Chancery report:

> "**The object of proceedings in bankruptcy is to make the debtor's assets available for rateable distribution amongst his creditors. No creditor is entitled to have recourse to such proceedings for the purpose of obtaining some collateral advantage for himself**. Moreover, the threat of bankruptcy, with the deprivation of property and status which it involves, may be a potent instrument of oppression and of 'extortion' in no mere technical sense. These, in effect, are the considerations dwelt on in the authorities to which I have referred, and they amply account for the strictness of the rule against 'extortion' which has been laid down and firmly maintained by the courts in bankruptcy, and for **the penalty for breach of that rule which it has been found necessary to provide in the shape of disqualification from founding any subsequent bankruptcy proceedings upon any debt in relation to which a charge of 'extortionate' conduct has been made good**." (Emphasis supplied)

[20] That excerpt was quoted by Sir (as he then was) Raymond Evershed MR, in delivering the judgment of the court in **Re A Debtor (No 757 of 1954); Ex parte The Debtor v F A Dumont Ltd (Petitioning Creditor) -** [1955] 2 All ER 65. In a comprehensive judgment, the court considered a number of cases involving allegations of the use of extortion in bankruptcy, but in which no moral turpitude or fraud was alleged. The court concluded that not only should each case be considered on its own facts but that it was not every case in which a creditor seeks to obtain more than that to which he would have been entitled in bankruptcy, that the court would find that there was extortion. The court set out, at page 78, a number of principles that were derived from the decided cases.

> "From these citations the following conclusions, which we have already earlier intimated, may in our judgment be drawn. (i) There is no such hard and fast rule as counsel for the debtor suggested, namely, that any arrangement or

agreement made by a petitioning creditor with his debtor, after the institution or under the shadow of bankruptcy proceedings, whereby the creditor is able to get more than that "to which he was legally entitled" (that is, more than he could have recovered at law at the time of the bankruptcy proceedings being started or threatened) amounts to extortion in bankruptcy law, notwithstanding the absence of any mala fides or anything amounting to oppression in fact. In our judgment, the decision in ***Re Bebro*** involves, necessarily, the rejection of such a proposition. (ii) There is equally no rule that extortion has, in bankruptcy law, a special and artificial significance divorced altogether from the ordinary implication of the word. (iii) The so-called "rule" in bankruptcy is, in truth, no more than an application of a more general rule that court proceedings may not be used or threatened for the purpose of obtaining for the person so using or threatening them some collateral advantage to himself, and not for the purpose for which such proceedings are properly designed and exist; and a party so using or threatening proceedings will be liable to be held guilty of abusing the process of the court, and, therefore, disqualified from invoking the powers of the court by proceedings which he has abused. (iv) On the other hand, having regard to what Jenkins LJ [in ***Ex p Henlys Ltd***, [1953] 1 All ER at p 432], called the "potent instrument of oppression" which bankruptcy proceedings (with their potential consequences on property and status) provide, the court will always look strictly at the conduct of a creditor using or threatening such proceedings; and, if it concludes that the creditor has used or threatened the proceedings at all oppressively (for example in order to obtain some payment or promise from the debtor or some other collateral advantage to himself properly attributable to the use of the threat) the court will not hesitate to declare the creditor's conduct extortionate and will not allow him to make use of the process which he has abused. (v) **In every case it is a question of fact in all the circumstances of the case whether there has been, in truth, extortion**.

In the above tabulation we have not specifically referred to those cases—a distinct class in themselves with which the present case is not concerned—where a creditor attempts to perpetrate a fraud on the other creditors, though such attempts are an obvious example of abuse of the process of the courts." (Emphasis supplied)

Those principles have stood the test of time and were cited with approval in **Goldsmith v Sperrings Ltd** [1977] 2 All ER 566 at page 574.

[21] In assessing the facts of the instant case against those principles, it is to be noted that no improper action has been levelled at Superlube, other than that of initiating bankrupcty proceedings whilst the application in respect of the writ of seizure and sale was pending. That action alone, bearing in mind the fact that the bankruptcy proceedings automatically suspended the process involving the writ, cannot be said to be an abuse of the process of the court. Despite Mr Braham's submissions, it cannot properly be said that Superlube initiated the bankruptcy proceedings for a collateral or improper purpose. The following aspects have led to that conclusion:

a. There was a judgment debt in place for what, by any reasonable standard, was a massive sum.
b. The debt involved the supply of fuel for which Superlube had had to pay its own suppliers, Petrojam Ltd.
c. Superlube was entitled to reject Mr Nembhard's proposal for settlement as it did not involve a prompt cash settlement of the debt (firstly, an initial proposal contemplated the transfer of real property to Superlube, the value and ownership of which was a source of dispute and secondly, a letter of 28 July 2011 from his attorneys-at-law proposed a payment of "$50,000,000.00 within 90 days and...$1.5 million monthly commencing at the end of year two").

d. Despite promises to pay, Mr Nemhard, from the entry of the judgment up to the date of the filing of the bankruptcy notice, had paid nothing against the debt.

e. There is no allegation of Superlube or its attorneys-at-law issuing any threat to Mr Nembhard that it would initiate bankruptcy proceedings if he failed to make a payment and certainly no allegation of a threat of bankruptcy proceedings as a consequence of failure to submit to a demand for a payment to which Superlube was not entitled.

Nothing in those, or any of the other circumstances of the instant case, suggests that Superlube has sought to use the bankruptcy process for a purpose other than to secure the payment of the debt due to it. For this reason, it is very different from the facts in the cases of **Bowen v Robinson and others** and **Brunninghausen v Glavanics**, cited by Mr Braham. In the latter case, the court found that "the bankruptcy notice was to endeavour to put pressure on Mr Brunninghausen to make some payment" (page seven of the judgment).

[22] On the above analysis, there is no basis on which the learned registrar should have set aside the bankruptcy notice or the provisional order. This aspect of Mr Nembhard's complaint cannot succeed. The next aspect of the analysis concerns the process before the learned registrar.

The proceedings in the court below

[23] When Superlube's petition first came on before the learned registrar on 22 September 2011, Mr Nembhard was not present, as he had not been served with the

petition. At that time, the learned registrar made a provisional order in bankruptcy (the provisional order), pursuant to section 34 of the Act, that Mr Nembhard's affairs be "wound up and that his property be administered under the law of Bankruptcy unless cause be shown to the contrary".

[24] Superlube served Mr Nembhard's attorneys-at-law with the provisional order on 12 October 2011. On 20 October, he filed an affidavit in which, among other things, he asked for the provisional order to be set aside. He contended in the alternative, that the bankruptcy proceedings be, at least, adjourned until the pending application, to vary the time and method of payment and to strike out the writ of seizure and sale, had been determined.

[25] The next relevant date is 1 February 2012. On that date, the petition again came on for hearing before the learned registrar. She made an order (the triple order), pursuant to section 37 of the Act, that:

a. Mr Nembhard should file a statement of his affairs;

b. a general meeting of creditors should be held on 9 March 2012; and,

c. Mr Nembhard should attend that meeting.

Mr Nembhard asserts that at the hearing, the learned registrar, in considering the issue of the triple order, refused to allow his counsel to address her on his application to strike out the provisional order, or otherwise give him a fair hearing. Mr Nembhard filed his first appeal subsequent to the triple order having been made.

[26] The creditors' meeting was not held until 26 July 2012. Mr Nembhard did not attend that meeting, although he had been given notice of it. Superlube was the only creditor present at the meeting and it voted in favour of a resolution that Mr Nembhard be adjudged an absolute bankrupt. The Trustee in Bankruptcy, who presided at the meeting, filed with the court, a report of the meeting. That report was in conformity with the requirements of section 49 of the Act.

[27] On 15 August 2012, the learned registrar, after considering the triple order, the resolution of the creditor's meeting and the report of the Trustee in Bankruptcy, issued the absolute order, and ordered a public sitting to be held to inquire into his affairs. Mr Nembhard filed his second appeal in the wake of the absolute order having been made. The second appeal repeated, in large measure, the grounds of appeal set out in the first.

The complaint against the registrar's conduct of the process

[28] The complaints against the learned registrar's conduct of the proceedings, apart from her failure to set aside the provisional order, is that she failed to afford Mr Nembhard or his counsel a fair hearing at the sitting at which the triple order was made. At paragraph 21 of his affidavit filed on 5 March 2012, Mr Nembhard stated that the learned registrar, at that sitting, "refused from [sic] allowing my Attorneys-at-Law Mr. Crafton S. Miller from addressing her on the Affidavit that I filed [on 22 October] in support of my Application to strike out the Provisional Order". He went on to say at paragraph 22 that the learned registrar "kept on interrupting Mr. Miller when he attempted to ask me questions in the Witness Stand on the basis that she had...other

cases waiting to be heard". He deposed that Mr Miller, in the circumstances, applied for an adjournment but the learned registrar "refused to hear him".

[29] The affidavit to which Mr Nembhard referred, sought the setting aside of the provisional order on the bases that:

a. the application in repect of the writ of seizure and sale was pending;
b. he had not been given notice of the petition and was not, therefore, present or represented when the petition was considered;
c. that he had assets, the value of which far exceeded his liabilities.

[30] Miss Barclay sought to include in her written submissions a different account of what had occurred at that hearing. It would not be appropriate, in the circumstances of a dispute as to the events, to consider her account, as it was not the subject of an affidavit. It may, however, be noted, based on the above analysis in respect of the issue of the provisional order, that Mr Nembhard's complaint in respect of the bankruptcy notice being tainted would, in any event, have failed.

[31] It may also be noted that his complaint that he had not been given notice of the petition, also had no merit. To his credit, Mr Braham did not seek to advance that proposition in this consolidated appeal. The short answer to this specific complaint is

that there is no requirement in the Act that Mr Nebmhard should have been served with the petition.

[32] It is important to note, in this context, that section 33 of the Act specifically states that "[i]t shall not be necessary to serve a petition or any notice thereof on the debtor". There was, therefore, no requirement for Mr Nembhard's presence at the consideration of the petition and granting of the provisional order. Section 34 is also relevant as it stipulates that the court, "if satisfied by ***ex parte*** evidence or otherwise...of the petitioning creditor's debt and of the act...of bankruptcy alleged, **shall make** on the petition an order, in this Act referred to as a 'provisional order'" (emphasis supplied).

[33] It is patent that, in the instant case, the existence of the debt and Mr Nembhard's failure to pay, secure or compound it to the satisfaction of the creditor, would have fulfilled the requirements of section 34. The learned registrar would, therefore, have been entitled to reject, even robustly so, any submissions which ran contrary to the provisions of sections 33 and 34.

[34] Mr Nembhard's assertion that the value of his assets exceeded his liabilities is the other aspect of his complaint that has to be considered. This assertion is one that he made many times over during the course of the proceedings, both in this court and in the court below. The assertion is, however, one that has to be made in a particular context in order for it to be effective. Section 36 of the Act allows a provisional order to be revoked if the debtor satisfies the court that, among other things, the order was

inequitable having regard to the circumstances. The debtor may do so within the time prescribed by the provisional order. The section states:

> "36. If the debtor, within the time appointed, shows to the satisfaction of the Court that either the proof of the petitioning creditor's debt, or of the act of bankruptcy, is insufficient, and if upon such showing no other sufficient petitioning creditor's debt or act of bankruptcy is proved, or if any ground is shown to exist which would render the making of a provisional order inequitable, the Court shall revoke the provisional order, and unless it sees good cause to the contrary shall order costs to be paid to the debtor."

It is important, also, to note the contents and stipulations of the provisional order.

[35] Rule 18 of the Bankruptcy Rules guides the contents of the provisional order. The relevant portion of the provisional order, which was served on Mr Nembhard, stated as follows:

> "UPON [the] hearing of the above Petition this day and upon proof satisfactory to the Court of Debt of the Petitioner and of the act of Bankruptcy alleged to have been committed by the said WILFRED NEMBHARD having been given IT IS PROVISIONAL [sic] ORDERED that the affairs of the said WILFRED NEMBHARD is [sic] wound up and that his property be administered under the Law of Bankruptcy unless cause be shown the to [sic] contrary on the 2nd day of November 2011 at 2:00 p.m….at the Supreme Court…you will be heard to show cause (if you can) why the said Order should be revoked. **If you intend to show cause against the Order you are required to file a Notice with the Registrar indicating the statement in the Petition which you intend to deny or dispute and to serve on the Petitioning Creditor a copy of such last mentioned Notice three (3) day [sic] before the hearing**." (Emphasis supplied)

[36] As has been stated above, Mr Nembhard filed an affidavit after receiving the provisional order. He did not, however, file a notice stating the provisions of the

petition that he disputed. The absence of a formal notice would not be fatal if the affidavit complied with the substantive requirements of the provisional order. In such a case, the failure would, at worst be considered an irregularity and capable of being cured by the application of section 172 of the Act. That section states that proceedings under the Act shall not be invalidated by any irregularity.

[37] Miss Davis submitted that the affidavit did not obey the direction contained in the provisional order and, therefore, did not satisfy the requirements of rule 18. Learned counsel argued that the affidavit did not show which statements in the petition Mr Nembhard contested. She argued, therefore, that the learned registrar would have been correct to prevent any excursion into areas that were not relevant to that which she had to determine at the stage of considering the triple order. In any event, Miss Davis submitted, any difficulty caused by the learned registrar failing to give Mr Nembhard full audience, should be considered an irregularity that could be cured by section 172 of the Act.

[38] Miss Davis is correct in stating that the statements in the petition were incontestable. They were restricted to citing the entry of the judgment, the service of the bankruptcy notice and Mr Nembhard's failure to pay. None of those facts could be contested. What Mr Nembhard advanced was that he had assets to cover his debts. If proved, that would be a basis for the learned registrar to find that the provisional order was inequitable.

[39] The difficulty with Mr Nembhard's assertions in this context is that there is a serious dispute, not only as to the value of the real estate to which he pointed in support of his claim, but also as to his entitlement to transfer or pledge the property involved. In her affidavit filed on 1 November 2011, Ms Norma Russell, on behalf of Superlube, contended that the assets, to which Mr Nembhard had pointed, were "not viable" for the purpose invoked by him. She deposed to the following difficulties:

a. some of the certificates of title were not in his name or not in his sole name;
b. one of the certificates of title revealed that the property was encumbered by two mortgages; and
c. the value of $281,317,994.60 for the petrol station, relied on by Mr Nembhard, was not accurate because Superlube had a separate valuation that attributed a value of $35,000,000.00 to that property.

[40] In the circumstances, despite Mr Nembhard's assertions, the learned registrar should not be faulted for having refused to revoke the provisional order and for having issued the triple order. This was not a clear case of assets being available as was the case in **Brunninghausen v Glavanics**.

[41] In the circumstances, the learned registrar was entitled to issue the absolute order as Mr Nembhard had not complied with the requirements of the triple order.

[42] Based on the above, Ms Davis is correct that the complaints againt the issue of the triple order and the absolute order have no merit and should be dismissed.

Conclusion

[43] It is for those reasons that the consolidated appeals were dismissed and the orders, set out at paragraph [4] above, made.