THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

Claim No: ANUHCV 2019/0256

BETWEEN:

SUN INTERNATIONAL PRODUCE LTD.

Claimant

and

[1] THE BARGAIN CENTRE SUPERMARKET COMPANY LTD.
[2] STEPHEN JOSEPH

Defendants

Appearances:
Mr. Kwame L. Simon for the Claimant
Mr. Lawrence Daniels for the Defendants

2023: December 8th, 20th (written submissions)
2024: March 7th

RULING

[1] **WILLIAMS, J:** This is an application by the Claimant to appoint a receiver over property owned by the Second Defendant/Judgment Debtor. The Claimant having obtained a substantial money judgment against both Defendants submits this application pursuant to Part 51 of the Revised Civil Procedure Rules 2023. The property itself consists of a building with five apartment units located at McKinnon's, St, John's, Antigua.

[2] By notice of application filed on 6th September 2023 the Claimant seeks the following orders:

1. Michelle G. Sterling Legal Inc. without giving security be appointed as Receiver of property of the Second Defendant described as Registration Section: McKinnon's; Block: 45 1695B; Parcel: 235, to receive the rents and profits of the property and to receive the debts now due and owing and to manage the property and take those actions that in her discretion are likely to make the property presentable for a sale pursuant to an order of sale dated 7th December 2021, including to take all legal steps necessary to remove tenants and occupants in possession of units of the property.

2. The Second Defendant whether by himself, his servants or agents be restrained from dealing with the property for the duration of the Receiver's appointment.

[3] The Application is supported by affidavits of Lucy Bocio representative of the Claimant and Trevor Santos Licenced Auctioneer sworn to on 21st and 25th July 2023 respectively.

Background

[4] Before examining the grounds of the application, it is necessary to briefly outline the history of the claim to put this application in its proper context. The Claimant obtained default judgment against the Defendants on 17th July 2019 in the sum of EC1, 554,334.70. Shortly thereafter the Claimant began taking steps to enforce its judgment.

[5] Firstly, by Attachment of Debts Order made on 13th March 2020 the Claimant obtained negligible sums from the Garnishee Antigua Commercial Bank and applied these sums to the judgment debt. The Claimant then applied for and obtained an order for sale of another property on 23rd July 2020. The upset price approved for that sale was EC$435,000.00. It seems that the property was sold for EC$500,000.00 and the sum of EC$366,761.00 applied to the judgment debt after deductions for the necessary costs of the sale. In October 2023 the Second Defendant paid the Judgment Creditor the sum of $3000.00 further reducing the judgment debt. According to the Claimant the balance of the judgment debt stood at EC$1,184,569.70 at the date of the instant application.

[6] The Claimant therefore by further application filed on 14th October 2021 sought an order for sale in respect of the property described as Registration Section: McKinnon's; Block: 45 1695B; Parcel: 235 (the property). An order for sale in respect of the property was granted on 7th December 2021 and Mr. Trevor Santos was appointed to conduct the sale either by public auction or private treaty. The reserve price was set at EC$1,190,000.00.

[7] It seems that the auctioneer had difficulties accessing the property as by order dated 4th July 2022 the Second Defendant was ordered to grant Mr. Santos access to the apartment units upon giving seven (7) days' notice. In addition, tenants at the property were to pay future rent to counsel for the Claimant. The Claimant complains that this order has not been fully complied with

which in turn has necessitated the application for a receiver to be appointed in respect of the property.

Grounds of the Application

[8] The grounds of the application can therefore be briefly summarised as follows:

1. The auctioneer Mr. Santos has not been able to gain access to the apartment units in order to show them to prospective purchasers.
2. The keys provided by the Second Defendant for the apartment either do not work or the locks have been changed.
3. No rent has been paid to counsel for the Claimant as outlined in the court order of 4th July 2022.
4. By letter dated 24th January 2023 counsel for the Claimant wrote to counsel for the Second Defendant demanding an account for rent collected since 4th July 2022, contact details for each occupant and copies of keys. There has been no response to this communication.
5. The property is in a dilapidated and unclean condition and would require some repairs and cleaning before it can be shown to prospective purchasers.

Evidence

[8] As previously indicated the application is supported by the affidavits Lucy Bocio and Trevor Santos. The contents of these affidavits largely repeat the history of the matter outlined above in the case of Ms. Bocio. The affidavit sworn to by Mr. Santos outlines his unsuccessful efforts to auction the property and to gain access to the various apartments. His affidavit reveals both unwillingness on the part of occupiers of these apartments to grant access or his inability to confirm exactly who is in occupation.

Hearing

[9] The application was heard on 8th December 2023 with Mr. Kwame Simon on behalf of the Claimant and Mr. Lawrence Daniels for the Second Defendant making oral submissions. Counsel for the Claimant submitted that the appointment of a receiver was necessary as all efforts to get the property sold have been unsuccessful. Mr. Daniels for the Second Defendant submitted that the existing order for sale was just and proportionate and that the appointment of a receiver was unnecessary in the circumstances.

[10] After the hearing the parties were invited to file submissions with authorities. The Claimant did so on 20th December 2023. The Claimant was also requested to provide information as to the remuneration of the proposed receiver. This was provided by an affidavit of Vanreen Watkins-McKenzie filed on 20th December 2023.

Law

[11] The court is empowered to appoint a receiver pursuant to section 24(1) of the Supreme Court Act.[1] This section provides:

> "A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the High Court or a judge thereof in all cases in which it appears to the Court or Judge to be just or convenient that the order should be made and any such order may be made either unconditionally or upon such terms and conditions as the court of judge thinks just."

[12] A receivership order appoints a responsible person to receive rents, profits and monies receivable in respect of the judgment debtor's interest in certain property and to apply that income in specified ways, including payment of a judgment debt. Rule 51.3 of the Revised Civil Procedure Rules 2023 provides as follows:

> *"In deciding whether to appoint a receiver to recover a judgment debt the court must have regard to the –*
>
> *(a) amount likely to be obtained by the receiver;*
>
> *(b) amount of the judgment debt; and*
>
> *(c) probable cost of appointing and remunerating the receiver."*

[13] Rule 51.4(1) provides that a person may not be appointed receiver until that person has given security. However, Rule 51.4(2) grants the court the discretion to dispense with the requirement of giving security.

Amount Likely to Be Obtained by the Receiver

[14] The appointment of a receiver over property is by its very nature an invasive remedy as it interferes with the judgment debtor's right to enjoy their property. Further, the receiver must

[1] Cap. 143

be remunerated which diverts resources which could have been applied to the judgment debt. The courts therefore only appoint a receiver if it just and convenient to do so. In **Richard Vento** v. **Keithly Lake**[2] Justice Ramdhani stated at paragraph 38 of the decision as follows:

> "A court must be concerned what steps would have been taken by the judgment creditor to enforce the judgment debt by other means but such an order may still be made 'at the instance of a judgment creditor notwithstanding that he has not taken advantage of the legal remedies open to him, provided the circumstances render it just and convenient."

[15] In this I have considered that judgment was obtained over four years ago. As previously outlined, the Claimant has taken steps to enforce said judgment with only limited success. In the case of this property in particular, the Claimant obtained an order from this court to allow for access and to collect rent from any occupiers. However, this order has been ineffective thus far. In the circumstances I am satisfied that it is just and convenient to consider the appointment of a receiver over the property.

Amount likely to be obtained by the Receiver

[16] The factors mandated by CPR Rule 51.3 will now be considered in turn starting with the amount likely to be received by the Receiver. The property consists of apartment units some of which are occupied. The Claimant points out that the Second Defendant's affidavit previously filed on 23rd June 2022 indicates that one of the properties was being rented for EC$1500.00 monthly. The affidavit of Mr. Trevor Santos further outlines that there are five apartment units with two occupied at present. I therefore accept the Claimant's submission that it should be possible to collect rent of EC$7500.00 if steps are taken to let all the units.

[17] Further based on the affidavit evidence and the Claimant's submissions I am satisfied that the ultimate aim is to gain access to the property, carry out minor repairs and cleaning to bring the property to a state where it can be sold. Although receivers are usually appointed primarily to collect monies due and apply these to the judgment debt, section 24 of the Supreme Court Act grants the court a wide discretion as to the circumstances when a receiver may be appointed. In the circumstances of this case, I am satisfied that it is just and

[2] CLAIM NO. AXAHCV 2013/0102 (decided 29th September 2017)

convenient for the receiver to be empowered to take reasonable steps to ensure that the property is rendered fit for sale.

Amount of the Judgement Debt

[18] According to the Claimant the judgment debt now stands at EC$1,184,569.70 with interest accruing at the rate of 5% per annum. This sum has not been disputed by the Second Defendant who has confined his arguments as to whether the appointment of a receiver is necessary. In my view the judgment debt is significant and justifies the appointment of a receiver.

Probable Cost of Appointing and Remunerating the Receiver

[19] The Claimant has proposed Michelle G. Sterling Legal Inc. to be appointed as receiver. By letter dated 30th May 2023 Ms. Michelle Sterling on behalf of the firm has proposed the following fees:

> 3. *We will require an initial retainer of XCD$2,500.00. Our billing rate is XCD$500.00 an hour. Rent collection will be billed at a rate of 10% of funds collected plus 15% Antigua and Barbuda Sales Tax (ABST).*
> 4. *Note that any fees for presale preparation of the property will be assessed upon viewing the premises and receiving instructions to make ready for sale.*
> 5. *All professional fees will be subject to the 15% Antigua and Barbuda Sales Tax.*
> 6. *In addition to our fees, we will expect payment for costs such as long-distance correspondence, photocopies, research, wire transfer fees etc., as well as reasonable costs incurred to retain any investigators, consultants or experts necessary to represent your interests.*

[20] The remuneration of the receiver must be proportionate to the amount likely to be collected, bearing in mind that the primary aim must be to liquidate the judgment debt. The Claimant has submitted and the court has accepted that a monthly sum of EC$7500.00 is likely to be collected. This assumes of course that all apartment units will be rented. This is a relatively modest sum taking into account that there would also have to be disbursements for cleaning services and carrying out repairs.

[21] Thus, the proposed commission of 10% of the rent collected in addition to the proposed EC$500.00 hourly rate is disproportionate in relation to the rent likely to be collected. I have also taken into account that the ABST rate has recently increased to 17%. In effect that would mean 27% of the rent collected would be allocated to the receiver and taxes even before the hourly charges are billed.

[22] Further I am concerned by the stipulation at item 3 of Ms. Sterling's letter quoted above that fees for getting the building ready for sale will be assessed upon viewing the premises and receiving instructions. In my view the hourly rate quoted by the receiver and approved by the court should be applicable to all aspects of the receiver's work.

[23] In the circumstances I am constrained to refuse the appointment of a receiver unless the fee structure is revised to address the concerns identified above.

Dispensing with Security

[24] For the sake of completeness, I will indicate that this is an appropriate case for dispensing with security pursuant to CPR Rule 51.4. In coming to this decision, I have taken into account that the judgment debt is sizeable and that the receiver will actually be taking steps to preserve and possibly improve the property.

Costs

[25] In light of my findings concerning the proposed receiver's remuneration it is appropriate that each party bear their own costs.

Order

[26] The court therefore orders as follows:

1. The Claimant is at liberty to submit a revised fee proposal from Michelle Sterling Legal Inc. the proposed receiver for consideration by the court within fourteen (14) days of this order failing which the application for appointment of a receiver will stand dismissed.
2. No order as to costs.

Rene Williams

High Court Judge

By The Court

Registrar