

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2014/0577

BETWEEN:

LUX LOCATIONS LIMITED

Claimant/Applicant

-and-

YIDA ZHANG

Defendant/Respondent

APPEARANCES:

Mr. Andrew Okola led by Mr. Thomas Roe K.C. for the Applicant.

Dr. David Dorsett for the Respondent

2023: July 26th

September 7th

Reissue: September 8th

RULING ON APPLICATION FOR THE SALE OF SHARES

[1] **WILLIAMS, J.:** This is an application for the sale of shares in Yida International Investment Limited a company incorporated in Antigua and Barbuda “The Company” pursuant to CPR Rule 48.11. The Judgment Debtor who is the Respondent to this application owns shares in the said company.

[2] Before addressing the application itself it is necessary to give some background for context. This matter has been before the Judicial Committee of the Privy Council.¹ Thus, most of the factual information recited below is taken directly from their Lordships’ judgment.

¹ [2023] UKPC 3

Background

[3] The relevant facts are as follows:

1. A Consent Order was entered into between the parties dated 7th March 2017. The Consent Order provided for judgment to be entered for the Applicant against the Respondent in the sum of US Three Million Dollars plus interest at the rate of 8% per annum and legal costs (including sales tax) of US \$345,000. The Respondent was to pay these sums within 21 days of the order.
2. The Respondent failed to pay these sums within 21 days as specified and the Claimant/Applicant began enforcement proceedings.
3. A Provisional Charging Order was obtained against the Respondent's shares in the company on 4th April 2017.
4. On 12 May 2017 the Respondent paid US \$705,486.39 in partial satisfaction of the judgment debt.
5. A Final Charging Order was made on 23rd May 2017 and took effect 14 days later.
6. The Respondent commenced a fresh claim against the Applicant on 23rd November 2018. This claim sought the setting aside of the Consent Order.
7. The Respondent obtained default judgment against the Applicant the terms of which were determined by order of Robertson J. made on 20th March 2020. The Applicant's appeal against this decision was dismissed by the Court of Appeal on 11th January 2021.
8. The Applicant appealed to the Privy Council. The Privy Council by judgment dated 23rd June 2023 set aside the orders in the courts below and thereby struck out the claim brought by the Respondent.

[4] Although this story has many more twists and turns than reproduced above, these are not necessary for the purposes of this application. In short, the effect of the Privy Council's decision is that the Consent Order of 7th March 2017 is now in effect. Thus, the Applicant has an order of this Court which is capable of enforcement.

Analysis

[5] CPR Rule 48.11 provides as follows:

“48.11 (1) If a judgment creditor wishes to enforce a charging order of stock or personal property by sale, the judgment creditor may apply to the court for an order for sale of the stock or personal property.

(2) The application must be supported by evidence on affidavit.

(3) Notice must be served on the judgment debtor.

(4) The court may give such directions as seemed appropriate to secure the expeditious sale of the stock or property charged at a price that is fair to both creditor and judgment debtor.”

[6] The present application was filed on 12th April 2023 and was supported by an Affidavit of Nadia Dyson filed on the same date. The Application was also served on the Respondent. Thus, there has been procedural compliance with CPR Rule 48.11.

[7] On the face of it the Applicant is entitled to an order for the sale of shares. Firstly, as a result of the Privy Council decision the order of 7th March 2017 is enforceable. Secondly, a Final Charging Order made on 23rd May 2017 is in effect. Finally, there is no evidence of any factors such as third-party rights or undue hardship which would render it unjust to grant an order for the sale of shares.

[8] In relation to the last factor, I note that the Respondent has not submitted any affidavit evidence in opposition to the Application. Earlier this year I dismissed an application by the Respondent to extend the date for compliance with the Consent Order. I further note

that the proposed extension date of 31st July 2023 has now passed with no indication that anything further has been paid towards the judgment debt since May 2017.

[9] I agree with learned King's Counsel for the Applicant that it is for the Respondent to show reasons why the order should not be made. In **Deslauriers and another v. Guardian Asset Management Limited**² the Privy Council stated that "*unless the judgment debtor can show that it is, by other means, in a position to redeem by making reasonably prompt payment*"³ a judgment creditor is prima facie entitled to a sale of the charged property. Apart from counsel for the Respondent stating from the bar table that arrangements were at an advanced stage to pay the judgment debt, there is no evidence that the Respondent intends to liquidate the judgment debt in a reasonable time.

[10] Counsel for the Respondent also made the following submissions:

1. No final Charging Order has been made; and
2. Interest on the judgment debt should be limited up 7th March 2023 in accordance with section 26 of the Limitation Act;
3. The Charging Orders were no longer in effect

No Final Charging Order

[11] The Court has also examined the case file and confirms that both a provisional and a final order are on file. There is therefore no merit in this objection.

Limitation Act

[12] Section 26 of the Limitation Act⁴ provides as follows:

26. (1) an action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable.

(2) No arrears of interest in respect of any judgment shall be recovered after the

² [2017] UKPC 34

³ [2017] UKPC 34 at paragraph 74

⁴ Act No. 8 of 1997

expiration of six years from the date on which the interest became due.

[13] Counsel for the Respondent also relied upon the of **Lowsley v Forbes** [1999] 1 AC 329 where the House of Lords examined the equivalent provision in the United Kingdom. In that case the House of Lords ruled that the equivalent of section 26(2) barred execution after six years in respect of all judgments, since the term 'recovered' in the statute had a broad meaning and was not confined to recovery by fresh action. Thus, interest in this case started to accrue on 28th March 2017 (twenty-one days after the judgment of 7th March 2017). Accordingly, no interest which accrues after 28th March 2023 can be recovered.

[14] Counsel for the Applicant referred the court to section 29(5) of the Limitation Act which provides:

“(5) Subject to subsection (6), where any right of action has accrued to recover –

(a) Any debt or other liquidated or pecuniary claim; or

(b) Any claim to the personal estate of a deceased person or to any share or interest in any such estate;

and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it, the right shall be deemed to have accrued on and not before the date of the acknowledgement or payment.”

[15] Counsel for the Applicant refers to an email from counsel for the Respondent which states *“Mr Yida accepts that the Privy Council has issued final judgment in the matter and that he is under an obligation to pay on the judgment debt.”* Counsel for the Applicant states that pursuant to section 29(5) of the Limitation Act this means that the effective date for accrual of interest is 7th February 2023.

[16] The Court also observed that a part payment was made on 12th May 2017. This means that interest could also be interpreted as accruing up to 12th May 2023 in accordance

with section 29(5) of the Limitation Act. In any event it is not necessary to decide this at this point. This application is concerned with whether it is just in the circumstances to order a sale of shares. The issue of interest will therefore be considered as part of the process of approving any sale of the shares.

No Charging Order in Effect

[17] Counsel relies on CPR Rule 43.5 which states as follows:

“Effect of order setting aside judgment or order

43.5 (1) The general rule is that if the court sets aside a judgment or order, any order made for the purpose of enforcing it ceases to have effect.

(2) The court may however direct that an order remains in force.”

[18] Counsel argues that the orders of the High Court and the Court of Appeal in setting aside the Consent Order of 7th March 2017 also set aside the Charging Order which was previously granted. That is the effect of CPR Rule 43.5(1).

[19] Counsel has failed to take into account that the orders of the High Court and Court of Appeal were themselves set aside by the Privy Council. Whilst these orders were in force, Rule 43.5 applied making it impossible to enforce the Consent Order of 7th March 2017. Now that the Privy Council has in effect reinstated the Consent Order there is no need for a separate order to revive any ancillary orders previously made to enforce it. This is as an order remains in effect until it is set aside. (See **Strachan v. Jamaica Gleaner** [2005] UKPC 33 at paragraph 28). Accordingly, this ground of objection has no merit.

Appointment of a Receiver

[20] The Court on its own initiative considered whether a Receiver should be appointed to conduct the sale of the shares rather than counsel for the Applicant as proposed. The practice in some jurisdictions appears to be that a Receiver is appointed to conduct the sale.

[21] The concern is that counsel for the Applicant could act solely in the Applicant's interest in the conduct of the sale of shares. This must be contrasted with a Receiver's primary

duty which is to the Court. However, the appointment of a Receiver would incur more costs and the appointment process itself would lead to further delay of these already protracted proceedings. In the circumstances I believe that any concerns can be mitigated by the Court retaining control of the sale process.

[22] Thus, the application is hereby granted subject to the provision that any proposed sale of the Shares of the Company must be approved by the Court.

IT IS ORDERED THAT:

1. The Applicant is authorized to sell any shares "the Shares" owned by the Defendant in the company Yida International Investment Antigua Limited (Company C152/13) in accordance with the terms of this order.
2. The Applicant's attorneys-at-law shall have the conduct of the sale of the Shares.
3. The Respondent must not (whether by himself in whatever capacity or by instructing or encouraging any other person) in any way dispose of, deal with or diminish the value of the Shares.
4. The Respondent shall provide all information reasonably requested by the Applicant in writing to assist with the valuation of the Shares within seven (7) days of such request. In default of which the Applicant may apply to the Court to compel disclosure of the relevant information from either the Respondent or from Third Parties as the case may be.
5. Every proposed sale of the Shares shall be approved by the Court.
6. The Respondent must forthwith deliver up possession of the Shares including any Share Certificates to the Applicant.
7. The Respondent must sign the requisite documents to effect the sale of the Shares, and in default thereof the Applicant may apply to the court for the Registrar of the High Court to execute the same on the Respondent's behalf.

8. The Applicant shall apply the proceeds of sale:
 - (1) To pay the costs and expenses of effecting the sale.
 - (2) To retain the amount due to the Applicant.
 - (3) To pay the balance to the Respondent or into court as the court shall direct.
9. This Order shall be served on the Registrar of Companies and Intellectual Property and shall be filed in the relevant company file for Yida International Investment Antigua Limited (Company C152/13).
10. Liberty to apply for further directions or orders.
11. The Applicant shall have carriage of this order.
12. A Penal Notice is to be included in the order advising the Respondent that he may be liable to be imprisoned for Contempt of Court in the event of non-compliance with this order.
13. Costs of \$2,000.00 payable to the Applicant within 14 days of this Order.

Rene Williams
High Court Judge

By The Court

Deputy Registrar