

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Side
2010/CLE/GEN/FP/00090**

BETWEEN

GILLIAN PAYNE
Plaintiff

AND

STRAND INVESTMENTS LIMITED
First Defendant

AND

CAFFERATA & CO
Second Defendant

AND

MICHAEL COLEMAN
Third Defendant

AND

JEREMY CAFFERATA
Fourth Defendant



BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mr. Colin Jupp for the Receiver
Mrs. Pearlene Ingraham-Wood for the Judgment Creditor
Mrs. Rebecca Cafferata for the Shoreline Homeowners Association
an Interested Party.

HEARING DATE: June 2, June 16 and July 19, A. D. 2022

RULING

Hanna-Adderley, J

This is a Ruling on an application by the Receiver herein, Mr. Jason Maynard ("**the Receiver**"), for further Receiver's Directions.

Introduction

1. By Order filed on August 10, 2017, Mr. Jason Maynard was appointed as Receiver over the assets of the First Defendant/Judgment Debtor and the Third Defendant/Judgment Debtor. By the said Order the Receiver was empowered among other things to do the following:
 - a. immediately take possession and control of and protect the assets, securities and property real and personal of whatever kind and description, wherever located whether legally and/or beneficially owned by the Third Defendant, Michael Coleman;
 - b. immediately enter and secure any premises, wherever located or situated in order to take possession, custody or control of or to identify the location or existence of assets legally and/or beneficially owned by Michael Coleman;
 - c. sell, convey, lease or assign any assets legally and/or beneficially owned by Michael Coleman up to a value £1,928,537.66 or \$2,500,000 and pay the proceeds of any sale, conveyance, transfer, lease or assignment into Court pending further directions from the Court; and
 - d. take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
2. On March 2, 2022, the Receiver filed a Summons seeking and Order authorising him (i) to execute any sales agreement or conveyance on Mr. Michael Coleman's behalf and to take any steps as may be reasonably incidental to the transfer, release or convey the interest of Emma Colman (Nee Meaden) in Villa #14, Fortune Cay Club, Freeport, Grand Bahama ("**the Premises**") to Michael Coleman and (ii) to transfer to Emma Meaden a painting on the Premises of flowers, which was given to her as a gift by a neighbour and certain books in a bookshelf in the living room of the Premises which belong to Ms. Meaden and (iii) that the First and Third Defendants pay the costs of this application to be taxed if not agreed. This Summons is supported by the Affidavit of the Receiver filed March 2, 2022. The Receiver also

relies on Skeleton Arguments of the Receiver dated May 19, 2022 and Supplemental Skeleton Arguments of the Receiver dated July 18, 2022

Statement of Facts

3. The Receiver states in his Affidavit that since his appointment, he has taken possession and control of Unit 14, Fortune Cay Beach Villas, Freeport, Grand Bahama ("**the Property**"), which is owned by Mr. Coleman and he has it listed for rent and sale with James Sarles Realty, Freeport, Grand Bahama.
4. That he has secured a purchaser for the Property and would like to conclude the sale of the Property in accordance with his duties and powers under the Receivership Order. However, while investigating the title to the property, it was discovered that the Property is jointly owned by both Michael Coleman and his ex-wife Ms. Meaden. That for him to sell the Property to the Purchaser, Ms. Meaden must release and convey her interest in the Property to Michael Coleman.
5. That he has contacted Ms. Meaden and she has agreed to release and convey her interest in the Property, provided some of her personal belongings in the Property, namely a painting and certain books on a bookshelf (both of which are identified with pictures in the Receiver's Affidavit) are returned to her. These items appear to belong to Ms. Meaden, so he has no difficulty with this request.
6. That under the Receivership Order and the Directions Order, filed on January 16, 2020 the Receiver is not authorised to execute the conveyance of Ms. Meaden's interest in the property to Mr. Coleman. Therefore, he is applying under the Summons for an Order authorising him (i) to execute the said conveyance on Mr. Coleman's behalf and to take any steps as may be reasonably incidental thereto and (ii) to return the said painting and the books to Ms. Meaden.
7. That in accordance with paragraph 4.a of the Court's Order, filed on July 13, 2017, the Summons and the Receiver's Affidavit were duly served on Cafferata & Co. on March 24, 2022, as per the Affidavit of Service, filed May 17, 2022. Cafferata & Co. is the registered office for Strand Investments Limited.
8. By an Order of District Judge Segal in the High Court of Justice Principal Registry of the Family Division, United Kingdom, filed on June 10, 2005 the Court ordered by the Consent of the parties ("**the Consent Order**"), that upon payment of 520,000.00 pounds, among other things, Ms. Meaden was to transfer all her legal estate and beneficial interest on the

Premises to Mr. Coleman. That the said transfer has not taken place but Ms. Meaden is not opposed to executing a conveyance of her interest to Mr. Coleman in accordance with the Consent Order.

Submissions

9. Mr. Colin Jupp, Counsel for the Receiver, submitted that according to Halsbury's Laws of England Online Volume 88 (2019) at paragraph 1, where a Receiver is appointed by the Court, he is an officer of the Court deriving his authority from the Court's Order. That when a Receiver is faced with difficulty or uncertainty in respect of the discharge of his duties, he may apply to Court for the Court's protection. He referred the Court to **Burt, Boulton & Hayward vs. Bull and Another. [1895] 1 Q.B. 276** where Lord Esher M.R. on pages 279-280: "What is the position of such [a court appointed] receiver and manager? He is not the agent of the company. They do not appoint him; he is not bound by their directions and they cannot dismiss him, however, much they disapprove of the mode in which he is carrying on the business only the Court can dismiss him or give him directions...but I apprehend that, if he finds himself placed in a difficulty, and is unwilling to give orders, he may apply to Court and the Court would protect him."
10. That in the instant case, the Receiver is seeking authorisation, to (i) to execute the conveyance of Ms. Meaden's interest in the Property to Mr. Coleman and take any step as may be reasonably incidental thereto and (ii) to return the said painting and books to Ms. Meaden. As neither the Receivership Order nor the First Directions Order expressly authorise the Receiver to execute the required conveyance and return Ms. Meaden's belongings, in accordance with Lord Esher's guidance in **Burt Boulton & Hayward**, the Receiver is seeking the Court's authorisation to do so.
11. That insofar as executing the required conveyance is concerned, it should be noted that Mr. Coleman and Ms. Meaden divorced in the United Kingdom on or around 2005 and in the divorce proceedings it was agreed between them by a Consent Order in the Family Division of the High Court of Justice in the United Kingdom, that Ms. Meaden would transfer to Mr. Coleman all of her legal estate and beneficial interest in the Property. That it is a well-established maxim of equity that "Equity looks on that as done which ought to be done." (See Snell's Principles of Equity 27th Edition page 27 and **Walsh vs Lonsdale [1881-1885] All ER Rep Ext 1690**). That based on the foregoing the orders sought ought to be granted.

12. That Mr. Jupp further referred the Court to the case of the Manov Estate v Manov [2003] BHS J. No. 121, a case which dealt with the recognition of a foreign divorce decree from a Court of competent jurisdiction. This case, in which I represented the Manov Estate was appealed to the Court of Appeal and the order of the Learned Judge declaring the Amended Judgment of Divorce of the Superior Court of New Jersey be recognised in The Bahamas was affirmed, but all other orders made by the Learned Judge or conclusions expressed by him in his judgment were set aside, including the order as to costs.

Issues

13. The Court must determine essentially whether it can in these proceedings give effect to the Consent Order in a manner that vests the Premises entirely in Mr. Coleman and puts the Receiver in the position to sell it by authorizing him to execute a Conveyance.

Analysis and Conclusions

14. Section 68 of the Matrimonial Causes Act provides that the validity of any decree or order for divorce or dissolution or nullity of marriage made by a Court of any country outside The Bahamas shall be recognized in all courts in The Bahamas in certain circumstances. Rule 3 of the Matrimonial Causes Rules provide that every "**matrimonial cause**" shall be commenced by filing a Petition addressed to the Supreme Court.
15. The practice has been to file a Petition in the usual form pursuant to Rule 4 (1) of the Matrimonial Causes Rules seeking recognition of the foreign divorce decree and that the particulars of the foreign decree are set out in the body of the Petition together with the prayer for recognition and enforcement also set out therein. This document is served on the Respondent, or the Petitioner as the case may be, together with the supporting documents (Notice of Petition, etc...amended appropriately to suit a recognition application). If the Court is minded to grant the recognition of the divorce decree sought and the parties wish to give affect to any orders made over real property situate in The Bahamas, the Petitioner files a Notice of Intention to Proceed with Ancillary Relief pursuant to Form 1 of the Schedule to the Rules and the Court disposes of the ancillary matters in a subsequent hearing or at that recognition hearing usually by Consent. In most cases this would involve giving affect to any orders made in respect of the real property by the foreign court of competent jurisdiction.
16. Clearly, I agree with Mr. Jupp that the Court has the jurisdiction to recognize and enforce the terms of a foreign Judgment or Order from a Court of competent jurisdiction, however,

in my judgment, for the Court to accede to granting the orders sought by the Receiver, a formal application for recognition of the foreign divorce decree between Mr. Michael Coleman and Ms. Meaden and an application for Ancillary Relief pursuant to the Matrimonial Causes Act and Rules ought to be made by Ms. Meaden, perhaps with the Receiver being joined as an Intervener. Although the Court will in Ancillary Relief proceedings simply be moved to further recognize and enforce the order made by the foreign Court in respect of the real property in The Bahamas, it is my judgment that it cannot do so without notice to Mr. Coleman. I appreciate that Mr. Coleman may contest the proceedings, that a recognition and ancillary relief application will involve additional costs, and that the Receiver's hands remain tied with respect to a sale of the Premises in the interim, but these reasons do not obviate what I believe are the procedural requirements herein.

Disposition

17. For the said reasons I cannot accede to the application and the Summons is dismissed.

Dated this 15th day of August A. D. 2022

Petra M. Hanna-Adderley
Petra M. Hanna-Adderley
Justice

