

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Side
2024/CLE/GEN/00466

BETWEEN

CARLTON A. MARTIN

Claimant / Judgment Creditor

AND

PETER JOHN NYGARD

Defendant / Judgment Debtor

AND

GALAXY GROUP LIMITED

Second Defendant

Before: The Honourable Madam Justice Simone I Fitzcharles
Appearances: Rouschard Martin for the Claimant / Judgment Debtor
Gail Lockhart-Charles KC with Syann Thompson Wells for the 2nd Defendant
Hearing: 04, 07 and 08 October 2024

RULING

(heard as Duty Judge)

FITZCHARLES, J.

On 8th October 2024 I gave the following oral decision on an emergency application brought by the claimant:

- 1. "This is a brief oral ruling. I reserve the right to produce fuller written reasons for my decision.*

2. *This is an application by the claimant for an interim injunction to prevent the second defendant from selling or in any manner dealing with the land the subject-matter of these proceedings called and known as Union Wharf, which was conveyed by First Caribbean Bank to the second defendant, Galaxy Group Limited, in the year 2015. The claimant also applies for an order protecting the claimant with respect to the payment of his judgment debt on the sale of the said Union Wharf property (the "Property") so that the net proceeds after payment of real property tax shall be vested in the names of the claimant and the second defendant in a joint account pending resolution of the issues before the Court.*
3. *The claimant sought other reliefs in his application, but the most pressing is the injunction which was argued before me, as the duty judge, on 04 and 07 October 2024. The Court saw the necessity of joining Galaxy Group Limited as 2nd defendant because the relief sought by the claimant integrally involves Galaxy Group Limited, which has appeared to argue against the stoppage of the sale of the Property.*
4. *It is the Court's understanding that Galaxy Group Limited is imminently going to sell the Property, as its owner, to Buena Vista Properties Limited. Galaxy states that it is the owner of the Property and the Nygard Foundation is the 100% owner of the shares of Galaxy Group Limited. If Galaxy Group Limited does not sell the Property, the Inland Revenue Department will do so by public auction in short course. Galaxy Group Limited has obtained the Court's approval by the Order of Grant-Thompson J to sell the Property in Supreme Court Action No. 995 of 2022, when the Court discharged an injunction which prevented such sale. In that action, the Judgment Debtor, Peter Nygard, attempted to assert his ownership of the Property, (according to the evidence of Galaxy) but did not follow through with his claim after failing to abide by an Order of the Court that he give security for costs and a fortified security for a cross-undertaking in damages in certain specified amounts in order to proceed with the claim. Also in that action Galaxy Group Limited obtained a judgment debt against Peter Nygard for some \$567,018.20.*
5. *Galaxy Group Limited has in another legal proceeding obtained an Order for vacant possession of the Property (which is believed to be under appeal) and wishes to sell the same post-haste as the sale will be for substantially more than can be fetched in a public auction by the Department of Inland Revenue. The projected purchase price for the sale of the Property to Buena Vista Properties Limited is \$11,900,000.*
6. *Mr Carlton Martin, the claimant, has a judgment against Peter Nygard in the amount of \$2,856,000 plus interest. As at 27 May 2024, the amount due to Mr Martin with interest was \$3,185,261. Mr Martin claims that Mr Nygard is the beneficial owner of the Property. Mr Martin argues that he has, pursuant to s. 63 of the Supreme Court Act, an equitable charge on the Property. He states that Galaxy Group Limited has denied Mr*

Nygaard's beneficial ownership of the Property and has therefore refused to recognize his charge on the Property.

7. *Mr Martin's position is that the sale ought to be stopped until he is able to prove that Mr Nygaard owns the Property so that he (Mr Martin) may then appoint a receiver and take control of any sale of the Property in order to realize assets to satisfy the debt due to him. He states that if the sale is permitted to continue Galaxy Group Limited, a Barbadian entity will likely export the proceeds of sale outside of the Bahamas causing Mr Martin not to be able to obtain the money for his judgment. At least, this was the main ground upon which Mr Martin launched his application. However, when the Court pointed out that he could be protected by placing a hold on a portion of the proceeds of sale in the amount of his judgment debt pending the full airing of his issue, he changed his argument.*
8. *Mr Martin now asserts that to allow Galaxy to sell the land would be to concur that it is the beneficial owner. If the Court agrees Galaxy is the beneficial owner, that defeats the claimant's charge or lien on the Property which is based upon Peter Nygaard (the judgment debtor) being the beneficial owner. The claimant states that the basis for the application for the injunction is that the person he seeks to enjoin holds or controls assets against which his judgment against the primary defendant (Mr Nygaard) could potentially be enforced: see **TSB Private Bank International SA v Chabra** [1992] 1 WLR 231 and **Broad Idea International Ltd v Convoy Collateral Ltd, Convoy Collateral Ltd v Cho Kwai Chee** [2021] UKPC 24.*
9. *Today, the Court is called upon to give a quick decision and one that accords with the justice and convenience of the case. It is mindful that if the sale is obstructed it may be lost and with it a substantial purchase price from a willing and able buyer. Further, the Property could be sold by the Department of Inland Revenue for much less than Buena Vista Properties Limited is now willing to pay to Galaxy Group Limited. Additionally, the Inland Revenue must have its taxes. Moreover, to halt the sale and allow Mr Martin to conduct a future sale involving appointment of a receiver could be a more expensive exercise, which would be drawn against the proceeds of sale. Counsel for Mr Martin has stated that it would require the payment of fees and expenses to complete that undertaking. Undoubtedly so. He also claims that the \$11.9 million purchase price is at an undervalue, but I have seen no evidence of that assertion.*
10. *The Court is of the view that if Mr Martin has a good equitable charge over the Property, to the extent that he does, it is for so much of the value of the Property as would be sufficient to satisfy his judgment debt of \$3,185,261. In order to receive that amount either from Galaxy's sale of the Property or a sale controlled by Mr Martin, he would in either case have to demonstrate that the person who is indebted to him (that is, Mr Nygaard) is the owner of the Property. The Court cannot arrive at that conclusion without first conducting a trial of the issue.*

11. *Arriving at the best solution in the brief time I have, and attempting to balance the rights of the parties and minimize prejudice to any of them, the Court is of the view that it can preserve or protect the claimant's position pending the outcome of his claim without obstructing the immediate sale of the Property, the latter of which would deny the Inland Revenue of being paid its taxes and the true owner of the Property, whether it be Galaxy or Nygard, from the immediate opportunity to discharge a tax burden such owner currently bears.*
12. *The Court is of the view that the sale should proceed and Galaxy should be compelled to retain the sum of \$3,185,261 until the final determination of Mr Martin's claim that Mr Nygard owns the Property. If he proves that Mr Nygard owns the Property, Galaxy will be ordered to release the sum retained to Mr Martin in satisfaction of his judgment debt. Galaxy and Mr Nygard may then have further issues amongst themselves to resolve, perhaps based on constructive trusteeship of the proceeds in Galaxy's hands, but that is not now before me. If Mr Martin fails to prove that Mr Nygard owns the Property, Galaxy will be able to keep the funds retained from the sale thereof, and Mr Martin will have to seek his fortunes elsewhere.*
13. *Having regard to the parties' positions and the Order of Grant-Thompson J that Galaxy Group Limited is at liberty to sell the Property, this Court will not impede the sale. I consider that that judge was satisfied, on the basis of all the Court was then aware of, that such pronouncement ought to be made.*
14. *In the circumstances, the Order I make is in the following terms:*
 - (1) *That Galaxy Group Limited shall by itself its servants or agents or otherwise shall retain in the trust account of Gail Lockhart-Charles & Co. the sum of \$3,185,261 out of the proceeds of sale of the Union Wharf Property located north of Bay Street on the Island of New Providence, the Bahamas, which was conveyed to it by First Caribbean International Bank in 2015 and shall be restrained from transferring, dissipating or disposing of the said amount of \$3,185,261 pending the final determination of the Fixed Date Claim and the issue of beneficial ownership of the Property or until further Order of the Court.*
 - (2) *That in light of the injunction herein granted, Mr Carlton Martin is required and ordered to give an undertaking in damages to compensate Galaxy Group Limited for any loss and damage it may suffer as a result of this Order, should it be found the sum of \$3,185,261 ought not to have been retained for protection of the claimant's claim.*
 - (3) *That Galaxy Group Limited is directed to inform the Ministry of Finance of the status of the sale of the Property to facilitate the satisfaction of the tax debt.*

(4) As the Minister of Finance is interested in the sale of the Property, has a real property tax claim which must be satisfied in relation to the Property, and in fact, has organized a sale by public auction which competes with the sale staged by Galaxy, the Minister of Finance is hereby joined to this action as a party, and the Court restrains, until further Order, the sale of the Property by public auction to allow the sale by Galaxy Group Limited to proceed.

(5) The Court directs that the parties return for further directions to see to the disposal of this matter on 21 October 2024 at 9:00 am.

(6) Costs of this application are in the cause.”

15. The Court then asked Mr Martin to draft the Order as representative for the claimant. Counsel refused to do so stating that he preferred Mrs Lockhart-Charles KC to draft the Order. The Court indicated it would send its Note of the oral ruling to assist with the drafting of the Order.

16. Mr Martin stated he had instructions to appeal and did not require leave as it was an application for an injunction. Mrs Lockhart-Charles KC stated that it is an interlocutory application which required leave. Mr Martin applied for a stay of the order of the Court, which was refused after brief argument by both Counsel.

Dated this 8th day of October 2024.


Simone I Fitzcharles

Justice
