

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**2017/CLE/gen/01191**

**BETWEEN**

**THE TREASURER OF THE COMMONWEALTH OF THE BAHAMAS**

**Plaintiff**

**AND**

**ALCO HOLDINGS LIMITED**

**First Defendant**

**AND**

**SCOTIABANK (BAHAMAS) LIMITED**

**(formerly called BANK OF NOVA SCOTIA)**

**Second Defendant**

**Before Hon. Mr. Justice Ian R. Winder**

**Appearances: Kevin Moree with Andrew Smith for the Plaintiff**  
**Krystal Rolle QC with Kendrea Demeritte for the First Defendant**  
**Samuel Brown for the Second Defendant**

**6 July 2021**

**JUDGMENT**

## WINDER, J

This is the application of the Plaintiff (the Treasurer) for an Order for the sale of property following upon its judgment for the recovery of outstanding real property taxes dated 9 April 2019. The First Defendant (Alco) has sought to stay and/or suspend the judgment.

[1.] On 9 April 2019 the Treasurer obtained judgment against Alco in the sum of \$1,356,844.55 arising from unpaid real property taxes and surcharges associated with Alco's properties on Elizabeth Avenue and West Bay Street. Execution upon the judgment was suspended for 90 days to permit Alco to submit an application in accordance with section 22A of the Real Property Tax Act.

[2.] Prior to the entry of the judgment, in February 2019, Alco had offered to convey lots numbered 18-23 in Sea Beach Subdivision in satisfaction of the debt. The lots are owned by Alco's principal, Alfred Collie ('Collie'). The letter of offer was written to Ms Shunda Strachan, Acting Chief Valuation Officer. Collie says that the lots were offered to the Government as it had previously expressed an interest in compulsorily acquiring them. There is some evidence of this interest in acquiring the property, as a notice of intended acquisition had been drafted by the Ministry of Public Works. This was confirmed by David Davis, Permanent Secretary in the Office of the Prime Minister. Additionally, the Government had commenced construction of seawalls on the Sea Beach property, with Mr Collie's consent. The offer was ultimately rejected notwithstanding a somewhat favourable meeting with the Prime Minister.

[3.] Alco made two payments of \$772,601 and \$35,049 on its West Bay Street property account with the Inland Revenue Department on 18 May 2021. The payment, Alco says, was as a result of its acceptance of one of two settlement options offered to it by staff at the Inland Revenue Department, in full and final settlement of all amounts outstanding, if paid by 31 May 2021. What Alco says was the Treasurer's offer, is reproduced below:

<b>DEPARTMENT OF INLAND REVENUE DEBT MANAGEMENT &amp; COMPLIANCE UNIT CALCULATION WORKSHEET FOR</b>		
<b>TAXPAYER NAME: Alco limited nite club</b> <b>ASSESSMENT NO: 0021382</b> <b>LOCATION OF PROPERTY: West Bay Street</b>		
<b>OPTION #1 - PAYMENT TO BE MADE UPFRONT</b>		
TOTAL UNPAID TAXES & SURCHARGES	1,543,868.16	
LESS 2021	71,434.00	
ARREARS TOTAL	1,472,434.16	
DISCOUNT (50%)	736,217.08	
(DISCOUNT (50%))	71,434.00	
ADD 2021	807,651.08	
TAX & SURCHARGE WRITE OFF AMOUNT	(736,217.08)	
<b>OPTION #2 - PAYMENT PLAN (25% DOWNPAYMENT &amp; BALANCE TO BE PAID OVER PERIOD OF TIME)</b>		
TOTAL UNPAID TAXES (ONLY)	910,956.83	Monthly Payment Terms
25%	227,739.21	12      24      36
BALANCE FOR PP	683,217.62	56934.80   28467.40   18978.27
SURCHARGE WRITE OFF AMOUNT	632,911.33	
Completed by: MS ALECIA BODIE Date 19 May 2021		

[4.] The Treasurer says that what Alco calls an offer to settle was nothing more than a calculation worksheet which is provided to every customer making inquiries in connection with making payments pursuant to the Real Property Tax Amnesty Order 2021 (the Amnesty Order). The Treasurer suggests that Alco surreptitiously sought to take advantage of the Amnesty Order notwithstanding the benefits of the Order could not apply to its case. Under the Amnesty Order property owners were forgiven ½ of their outstanding real property taxes, if paid prior to 31 May 2021. They point out that Collie went directly to Inland Revenue staff rather than to Ms Shunda Strachan, the Chief Valuations Officer, as he had done in 2019. Additionally, Collie did not correspond through his lawyers Rolle & Rolle or the Treasurer's lawyers. They also say that when Collie was asked to contact Inland Revenue concerning his attempt to benefit from the Amnesty Order he did not make contact with them.

[5.] The Treasurer's case is that since 9 April 2019 there has been an outstanding judgment debt owed to it by Alco. They say that Alco has not appealed the entry of the

judgment or applied to have the judgment set aside, instead, after making the recent payments it has confirmed that it will not pay the full amount of the outstanding judgment debt. The Treasurer says that it is entitled to sell Alco's property to ensure that it is not deprived of the fruits of the judgment.

[6.] Alco's case that there are no sums due to the Treasurer and that all sums due relative to the West Bay Street property were paid in full pursuant to a settlement offer extended to it. Alco contends that:

- a) Having regard to the facts and circumstances of the case the Court ought to make an order for the sale of the property as a means of enforcing the judgment.
- b) The Treasurer's Summons should be dismissed as the judgment is settled in full.
- c) The Treasurer is estopped having regard to the offer/proposal.
- d) The Treasurer is bound by the actions of its staff which presented the offer/proposal.
- e) Alco had a legitimate expectation that the offer/proposal would be honoured.

[7.] I am not satisfied that any settlement offer was made to Alco by the Treasurer.

[8.] Firstly, it is unbelievable that Alco, being engaged in contentious litigation with an approaching court date for enforcement against it, would be engaging a staffer at the Inland Revenue office negotiating a compromise for the settlement of the judgment. This, at a time when it, as well as their opponent, are represented by seasoned and experienced counsel.

[9.] Secondly, putting aside the real issues of ostensible authority which arise, what was presented was clearly an inquiry relative to the Amnesty Order and not any options to settle the judgment as Alco and Collie contends. This is reflected by the fact that the terms of the "offer" clearly relate to the rebate under the Amnesty Order for the West Bay Street property. The documents speaks to paying outstanding taxes up to 2021 when the judgement, entered in 2019 does not include taxes up to 2021. This was clearly an inquiry initialed by Alco.

[10.] Thirdly, Collie knew (as he is deemed to know the state of the law) that the Amnesty Order did not relate to him. Section 3(c) of the Amnesty Order clearly provides:

**3. Order not applicable to 2021 tax etc.**

For the purposes of clarity, nothing in this Order shall be construed to —

- (a) grant any waiver of the tax assessed on any property in respect of the year 2021;
- (b) .... ; or
- (c) reduce the amount payable under any judgment awarded by the Court in proceedings under section 23 of the Real Property Tax Act (Ch.375)

[Emphasis supplied]

[11.] Fourthly, nowhere in the purported "*settlement proposal/offer*" is there any reference to it being in full and final settlement of the 9 April 2019 judgment. In fact, the document is called a Calculation Worksheet making it an untenable proposition that this was an offer to settle as asserted by Alco.

[12.] Fifthly, besides the purported offer not stating that it was in full and final settlement of the judgment, nothing in the purported proposal or offer relates to the Elizabeth Avenue property. This reflects Alco's complete awareness that this was no proposal or offer for full and final settlement of the April 2019 judgment. In its submissions Alco accepts that the Elizabeth Avenue taxes have not been paid as it alleges that there are discrepancies, concerning this property, which remain to be resolved. This is important because it has to be borne in mind that the judgment was made up of a composite of the outstanding taxes for the West Bay Street property as well as the Elizabeth Avenue property.

[13.] In the absence of an agreement or representations by the Treasurer, which I am satisfied did not exist, the issues of estoppel and legitimate expectation do not arise.

[14.] In respect of Alco's application for a stay or suspending the effect of the judgment, I am not satisfied that Alco has demonstrated any basis for the exercise of the Courts jurisdiction. I accept there was some uncertainty as to what transpired concerning the Government's interest in acquiring the Sea Beach Subdivision properties. Regrettably

however, on the current state of the evidence it seems clear that there is no agreement to acquire the property by the Treasurer, and no present intention to do so.

[15.] I am satisfied that the Treasurer is entitled to an order for the sale of Alco's property. Section 63 of the Supreme Court provides:

63. (1) A judgment entered up in the Supreme Court (whether before or after the commencement of this Act) against any person (in this section called a "judgment debtor") shall operate as an equitable charge upon every estate or interest (whether legal or equitable) in all land to or over which the judgment debtor at the date of entry or at any time thereafter is or becomes —

(a) beneficially entitled; or

(b) entitled to exercise a power of disposition for his own benefit without the assent of any other person;

and the judgment shall bind:

(i) the judgment debtor,

(ii) all persons deriving title under him subsequent to the entry of the judgment, and

(iii) all persons capable of being bound by a disposition by the judgment debtor made after the entry of the judgment, including the issue of his body and all other persons (if any) whom he might, without the assent of another person, have barred from any remainder, reversion or other interest, in the land.

(2) A charge imposed under subsection (1) shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the debtor by writing under his hand.

(3) The preceding provisions of this section shall apply in relation to a judgment, order, decree or award (however called) of any court or arbitrator (including any foreign court or arbitrator) which is or has become enforceable, as if it were a judgment or order of the Supreme Court as they apply in relation to a judgment or order of the Supreme Court.

(4) A charge imposed by this section shall take priority over all other mortgages or charges affecting the land other than —

(a) any mortgage or charge registered prior to the date of the entering up of the judgment; or

(b) any further advance made under the security of a mortgage or charge registered prior to such date which provides for the mortgagee or chargee to make further advances.

(5) For the purposes of subsection (4), "registered" means lodged and accepted for record in the Registry in accordance with the Registration of Records Act.

Order 31 of the Rules of the Supreme Court provides:

1. Where in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party

bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct. In this Order "land" includes any interest in, or right over, land.

2. (1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or under paragraph (4) direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The party entitled to prosecute the order must —

(a) leave a copy of the order at the judge's chambers with a certificate that it is a true copy of the order; and

(b) subject to paragraph (3), take out a summons to proceed with the order.

(3) Where an order for sale contains directions with regard to effecting the sale, the party entitled to prosecute the order shall not take out a summons under paragraph (2) unless and until he requires the further directions of the Court.

(4) On the hearing of the summons the Court may give such directions, as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions —

(a) appointing the party or person who is to have the conduct of the sale;

(b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;

(c) fixing a reserve or minimum price;

(d) requiring payment of the purchase money into court or to trustees or other persons;

(e) for settling the particulars and conditions of sale;

(f) for obtaining evidence of the value of the property;

(g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him;

(h) requiring an abstract of the title to be referred to conveyancing counsel of the Court or some other conveyancing counsel for his opinion thereon and to settle the particulars and conditions of sale.

[16.] The Treasurer properly relied upon the decision of Hepburn J in *Travster v Bain and another* [2010] 4 BHS J 10. According to Hepburn J at paragraphs 8-10, she stated:

8 Section 63(1) creates an equitable charge on land owned by the judgment debtor in favour of the judgment creditor. The incidents of the equitable charge so created were considered by Lyons J in *Imperial Life Assurance Co. of Canada v Wells* [2001] BHS J No 107 and he cited with approval what Peter Gibson J had to say on the matter in *Carreras Rothman Ltd. v Freeman Matthews* (1952) 2 Ch 207 at 227:

The type of charge which it is said was created is an equitable charge. Such a charge is created by an appropriation of specific property to the discharge of some debt or other obligation without there being any change in ownership either at law or in equity and it confers on the charge the rights to apply to the court for an order for sale or for the appointment of a receiver, but no right to foreclosure (so as to make the property his own) or to take possession.

9 ...

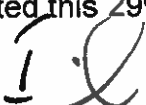
10 The question is whether the Albury order is a 'judgment' within the meaning of section 63 of the Supreme Court Act. This question was considered by the Barnett CJ in the unreported Bahamian case of **Rosina S. Smith v Chenika C. Gibson** 2009/CLE/gen/01321, where he held at paragraph 15 that the word 'judgment' in subsection 63(1) does not apply to every judgment, order or decree made by the Supreme Court and that it is limited to those judgments that establish a debt. The Honourable Chief Justice then cited with approval the judgment of Lord Denman in **Jones v Jones** 113 ER 381 which considered the effect of a judgment under the English Judgments Act 1838. Lord Denman said of the judgment:

These rules are to have the effect of judgments which are to charge the land; and therefore the sum to be so charged ought to be distinctly stated in the document which thus charges the land, so that purchases or creditors may know what it is. Judgments are to bind the land from the time they are entered; but at that time, there is nothing to inform any body of the charge; the amount may not be ascertained for a year afterwards. (Emphasis supplied.)

[17.] In the circumstances therefore, I order that should Alco fail to pay the judgment sum of \$734,222.58 with interest thereon at 6.25% per annum, within 60 days, the West Bay Street property shall be sold and the proceeds of the sale would be used to settle the outstanding judgment debt and interest. Should the property have to be sold, it should be appraised by a reputable appraiser approved by the Court and listed with a reputable realtor approved by the Court. I am satisfied that the Order should relate only to the West Bay Street property. Subject to these parameters the Treasurer shall have conduct of the sale.

[18.] The Treasurer shall have its reasonable costs to be taxed if not agreed.

Dated this 29<sup>th</sup> day of July 2021

  
Ian R Winder  
Justice