

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division

2009/CLE/gen/01367 and
2011/CLE/gen/FP/00276

BETWEEN

INCORPORATED TRUSTEES OF ST JOHN'S PARTICULAR
CHURCH OF NATIVE BAPTISTS IN THE BAHAMAS
Plaintiff/Judgment Debtor

AND

FREEPORT COMMERCIAL AND INDUSTRIAL LIMITED 1st Defendant
AND

GRAND BAHAMA DEVELOPMENT COMPANY LIMITED 2nd Defendant
AND

GODFREY R. WILLIAMS MINISTRIES 3rd Defendant
AND

GODFREY R. WILLIAMS 4th Defendant/Judgment Creditor
AND

BANK OF THE BAHAMAS LIMITED 5th Defendant
AND

RBC ROYAL BANK BAHAMAS LIMITED Third Party

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Harvey Tynes KC with Ntshonda Tynes for the Judgment Creditor
Dr Peter Maynard KC with Tamika Pinder for the Judgment Debtor
Tashana Wilson for the Third Party

Hearing date(s): 26 March 2024

RULING

WINDER, CJ

[1.] This is the hearing of an application by a Judgment Creditor Godfrey Williams (the Creditor), for a Final Third Party Debt Order.

[2.] This substantive action was commenced in 2009. The trial of the action took place before the Honourable Mrs. Senior Justice Gray Evans and a final judgment dismissing the action was delivered on 16 November, 2021, some 12 years later. The Court ordered the Judgment Debtor (the Debtor) to pay the Creditor's costs of the action certified fit for two Counsel. On 17 November, 2022 an Interim Certificate of Taxation was issued to the Creditor in the sum of 589,906.58. The said sum remains unpaid together with interest thereon in the amount of \$86,768.53 as of 22 March, 2024 and continuing at the rate of \$101.01 per diem.

[3.] On 20 February 2024, upon the application of the Creditor, I made an interim Third Party Debt Order against RBC Royal Bank Bahamas (the Third Party) fixing 26 March 2024 for the determination as to whether a Final Third Party Debt Order ought to be made.

[4.] The Third Party says that there is a total of \$197,596 in the Debtor's accounts in addition to \$110,666.49 in a fixed deposit account.

[5.] Rule 45.8 of the Supreme Court (Civil Procedure) Rules 2022 provides:

45.8 Further consideration of the application.

(1) If the judgment debtor or the third party objects to the court making a final third party debt order, he must file and serve written evidence stating the grounds for his objections.

(2) If the judgment debtor or the third party knows or believes that a person other than the judgment debtor has any claim to the money specified in the interim order, he must file and serve written evidence stating his knowledge of that matter.

(3) If —

(a) the third party has given notice under rule 45.6 that he does not owe any money to the judgment debtor, or that the amount which he owes is less than the amount specified in the interim order; and

(b) the judgment creditor wishes to dispute this,

the judgment creditor must file and serve written evidence setting out the grounds on which he disputes the third party's case.

(4) Written evidence under paragraphs (1), (2) or (3) must be filed and served on each other party as soon as possible, and in any event not less than three days before the hearing.

(5) If the court is notified that some person other than the judgment debtor may have a claim to the money specified in the interim order, it will serve on that person notice of the application and the hearing.

(6) At the hearing the court may —

- (a) make a final third party debt order;
- (b) discharge the interim third party debt order and dismiss the application;
- (c) decide any issues in dispute between the parties, or between any of the parties and any other person who has a claim to the money specified in the interim order;
or
- (d) direct a trial of any such issues, and if necessary give directions.

[6.] The Debtor has not paid anything on the judgement debt. The Debtor does not dispute the debt and acknowledges that it is due and owing. They say the court has a discretion to exercise and ought not to exercise it where it would be inequitable to do so. The Debtor says at paragraph 8 of its submissions:

8. It is submitted that it would be inequitable to allow the Third Party Debt Order as the Judgment Debtor cannot satisfy the debt in full from the Garnishee's accounts. It would be inequitable to jeopardize the operations of the Judgement Debtor, the members of the Judgement Debtor's churches, and the public at large.

Relying on the affidavits of Reverend Carrington Pinder (Pinder), General Superintendent and Bishop, the Debtor says that it would be inequitable to do so as it would be impossible to satisfy the debt in full without a payment plan. They say that they made a good faith offer to settle the debt by way of a lump sum payment of \$20,000 and bi-monthly payments of \$7,000, which was rejected. According to Pinder:

6. If the Court makes a Final Third Party Debt Order the Judgment Debtor will be severely jeopardize. In such a scenery, the Judgment Debtor would be unable to fulfill the debt obligations in full, as their ability to function would be totally compromised and unable to operate or meet its financial and other obligations.

7. The Judgment Debtor is funded by way of donations, tithes, and offerings of its members and the general public. A final Third Party Debt Order would be detrimental not only to the Judgment Debtor but also the members of the Judgment Debtor's churches and the public at large.

8. Since the filing of Garnishee Order Nisi, the Judgement Debtor has been severely prejudiced as the operating account and all of the other accounts of the Judgment Debtor with the Third Party has been frozen.

9. It is important to highlight that the available funds in the Judgment Debtor's operating account with the Garnishee herein amount to \$182,918.42 as 21 November 2023.

10. A final Third Party Debt Order would further jeopardize the financial stability of the Judgment Debtor and hinder their capacity to meet the full payment requirement of the judgment debt.

[7.] The Creditor accepts that a third party debt order may be refused if it would be inequitable to grant it. He says that the onus of proof is on the judgment debtor to show why an interim third party debt order should not be made final. The Creditor says however that there is no inequity in ordering the payment but rather, that the equities rests with the Debtor having been forced to carry the litigation for 12 years and to be without the funds which he paid to his lawyers.

[8.] The Creditor also says:

14. The insolvency of the judgment debtor is a sufficient reason for refusing to make an order, because its effect may be to prefer the judgment creditor over the general body of creditors. *Roberts Petroleum Ltd v Bernard Kelly Ltd* [1983]2 AC 192.

15. If a judgment creditor secures a third party debt order in competition with other creditors who had not been so quick off the mark, that should not affect the court's discretion to make the order final.

[9.] The Creditor further says:

16. The Judgment Debtor's Affidavits do not contain clearly identifiable grounds for objecting to the finalising of the Interim Order. Instead they reference a (presumably without prejudice) discussion as well as alleged circumstances that are irrelevant to matters to which the court should have regard in exercising its discretion.

17. First, notwithstanding that the Judgment Debtor has misrepresented the offer made by Mr. Maynard to Mr. Tynes (a lump sum of \$20,000.00 followed by \$7,000.00 every other month and not every month), it is submitted that the reference to the discussions is nothing but a red herring. Without prejudice negotiations are irrelevant to whether or not an interim third party debt order should be made final.

18. Secondly, the Affidavits repeatedly assert that the Judgment Debtor will be "severely jeopardised", "unable to fulfil the debt obligation in full", "totally compromised" and "unable to operate" should the Interim Order be made final.

[10.] The evidence of Pinder given pursuant to an examination before the Deputy Registrar on the 6 December, 2023 was that:

- (a) the Debtor owns 60 mortgage-free properties throughout The Bahamas, some of which have 2 and 3 buildings constructed thereon and 11 of which are situated in New Providence;
- (b) the Debtor holds bank accounts at other commercial banks in the country;
- (c) the Debtor has access to overdraft facilities which it does not need to use because it is “solvent”.

Analysis and disposition

[11.] Whilst the Court will not act in vein, when orders of the court are made they must be complied with. The Debtor pursued the Claim against the Creditor and was ultimately unsuccessful, and as such must bear the consequences of that failure.

[12.] I accept the correctness of the very helpful discussion as to the Court’s discretion in making third party debt orders found in *Blackstone’s Civil Practice 2022*, paragraph 79.24 at page 1555:

A third party debt order may be refused if it would be inequitable to grant it. The onus of proof is on the judgment debtor to show why an interim third party debt order should not be made final. (*Westacre Investments Inc v Yugoimport SDPR [2009] 1 All ER (Comm) 780.*) ... The insolvency of the judgment debtor is a sufficient reason for refusing to make an order because its effect may be to prefer the judgment creditor over the general body of creditors (*Roberts Petroleum Ltd v Bernard Kenny Ltd [1983] AC 192*). Conversely, if a judgment creditor secures a charging order or third party debt order in competition with other creditors who had not been so quick off the mark, that should not affect the court’s discretion to make the order final (*Reed v Oury [2000] WLUK 63*).


[13.] I therefore accept the submissions of the Creditor, that while the court has a discretion and ought not to make a third party debt order where it would be inequitable to do, the Debtor has not properly demonstrated the inequity. He who comes to equity must do equity. The making of an offer, the repayment of which barely covers the interest on the debt does not meet the mark. The Debtor maintains ownership in 60 debt free properties and several overdraft facilities, yet they have not leveraged these assets to prevent the extraordinary steps being taken by the Creditor.

[14.] I accept the Debtor’s position that the account is its operating account, however they do not say what the operational expenses of the Church is and how much of this represents the savings of the Debtor. There is some evidence that other accounts exist although the Debtor says that they have small balances. The records disclosed at Pinder’s examination before the Registrar reflects that in 2023 the Debtor had a surplus (profit may not be the appropriate term for a church business) of \$48,800. The transcript of that examination also revealed that the sum of \$70,000 in the account was raised specifically for the purpose of meeting the judgment debt. There is also the sums in the

separate fixed deposit account of \$110,666.49. Notwithstanding what appears to be a weak cash flow position as a result of the judgment, there is no evidence that the Debtor is insolvent, considering the extent of its landholdings and Pinder's admissions. This should suggest that there is at least \$229,449.49 in that account which do not affect the Debtor operations.

[15.] In all the circumstances, having regard to the existence of the overdraft facility and leaving some moneys to ensure that the church is not crippled and has the opportunity to continue to function, and raise the moneys necessary to retire these debts, I make an order for the Third Party Debt Order be made Final in the amount of \$250,000. In my view such an order ensures that there is no inequity.

Dated the 10th day of April 2024



Sir Ian R. Winder
Chief Justice