

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**2021/CLE/gen/1365**

**IN THE MATTER OF** the Mortgages Act, Chapter 156 of the Statute Laws of The Bahamas  
**AND IN THE MATTER OF** the Conveyancing and Law of Real Property Act, Chapter 138 of  
the Statute Laws of The Bahamas

**AND IN THE MATTER OF** an Indenture of Mortgage made the 15<sup>th</sup> April, 2011 between  
Vincent Peet & T.R. Management Ltd. and BAF Financial & Insurance (Bahamas) Ltd.

**B E T W E E N**

**BAF FINANCIAL & INSURANCE (BAHAMAS) LTD.**

Claimant/Judgment Creditor

**AND**

**VINCENT ARTHUR PEET**

First Defendant/First Judgment Debtor

**AND**

**T.R. MANAGEMENT LTD.**

**(Guarantor)**

Second Defendant/Second Judgment Debtor

**Before:** Assistant Registrar Jonathan Z.N. Deal

**Appearances:** Glenda Roker of Counsel for the Claimant (on record)

**Hearing date(s):** Without a hearing

**RULING**

## ASSISTANT REGISTRAR DEAL

[1.] This is my decision on a without notice application filed on 20 August 2024 for a third party debt order (the "Application"). The Application is made further to an Order made by Charles SJ (as she then was) on 11 November 2022 *inter alia* entering judgment against the Defendants for the sum of \$113,159.72 as at 27<sup>th</sup> July 2021 with interest continuing and awarding costs to the Plaintiff in the amount of \$4,000.

[2.] By the Application, the Claimant/Judgment Creditor seeks an order that Scotiabank (Bahamas) Ltd, RBC Royal Bank (Bahamas) Ltd, Commonwealth Bank Limited, FCIB First Caribbean, Fidelity Bank (Bahamas) Ltd, Bank of The Bahamas Ltd, National Workers Co-operative Credit Union and Teachers and Salaried Workers Credit Union pay them \$131,953.77 as at 2<sup>nd</sup> May 2024 and continuing with a per diem interest of \$21.87 until full repayment and the sum of \$4,000.

[3.] The grounds for the Application, as stated in the application notice, are:

"1) The Judgment Creditors instituted the cause for the recovery of all sums due under an Indenture of Mortgage dated 15<sup>th</sup> April 2011.

2) On 8<sup>th</sup> November, 2022, Judgment was entered against the Defendants jointly and severally for the sum of One Hundred and Thirteen One Hundred Fifty Nine Dollars and Seventy Two Cents (\$113,159.72) as at 27<sup>th</sup> July, 2021 and continuing thereafter at the contractual rate of interest of Nine (9%) percent until date of Judgment and thereafter at the statutory rate of 6.25% until full repayment.

3) The Court further ordered that the First Defendant shall pay to the Plaintiff fixed costs of Four Thousand Dollars (\$4,000.00).

4) To date, the Judgment Debtor has failed and/or refused to liquidate the balance due and owing to the Judgment Creditors."

[4.] The Application is supported by the Affidavit of Sidwell Alleyne filed on 20 August 2024 (the "Alleyne Affidavit"). That states:

"1. I am a Mortgage Administrator at BAF Financial & Insurance (Bahamas) Limited formerly British American Insurance Company of The Bahamas Limited and I am duly authorised to make this Affidavit on behalf of the Judgment Creditor.

2. Except where otherwise stated, I am familiar with the facts of this matter through my aforementioned employment capacity and I depose to the facts and matters contained herein from my own knowledge, information and belief.

3. By Originating Summons filed in this cause on 17<sup>th</sup> November, 2021, the Judgment Creditors instituted the cause for the recovery of all sums due under an Indenture of Mortgage dated 15<sup>th</sup> April, 2011 as against the Judgment Debtors jointly and severally.

4. On 8<sup>th</sup> November, 2022, Judgment was entered against the Judgment Debtors jointly and severally for the sum of One Hundred Thirteen One Hundred Fifty Nine Dollars and Seventy Two Cents (\$113,159.72) as at 27<sup>th</sup> July, 2021 and continuing thereafter at the contractual rate of interest of Nine (9%) percent until date of Judgment and thereafter at the statutory rate of 6.25% until full repayment.

5. The Court further ordered that the First Judgment Debtor shall pay to the Judgment Creditor's fixed costs of Four Thousand Dollars (\$4,000.00).

6. The Order was stayed until 8<sup>th</sup> March, 2023. There is now shown and produced by me as exhibit SA-1 a copy of the Order.

7. On 6<sup>th</sup> March 2023, the First Judgment Debtor paid to Counsel for the Judgment Creditor the sum of Ten Thousand Dollars (\$10,000.00). The sum of Four Thousand Dollars (\$4,000) was retained by Counsel to satisfy the court award and the remaining Six Thousand Dollars was applied to the judgment sum. There is now shown and produced to me as exhibit SA-2 a copy of the Letter enclosing the said sum.

8. To date, the Judgment Debtors have failed and/or refused to liquidate the balance due and owing to the Judgment Creditors.

9. As at 2<sup>nd</sup> May, 2024 the Judgment Debtors are jointly and severally indebted to the Judgment Creditor in the sum of One Hundred and Thirty One Thousand Nine Hundred and Fifty Three Dollars and Seventy Seven Cents \$131,953.77 along with a per diem interest of Twenty-one Dollars and Eighty-one Cents (\$21.81) until full repayment. There is now shown and produced to me as exhibit SA-3 an amortization schedule outlining all sums due and owing as at 2<sup>nd</sup> May, 2024.

10. The Judgment Creditor is desirous of utilizing all methods to enforce the Judgment of 8<sup>th</sup> November, 2022.

11. I make this Affidavit in support of the Judgment Creditor's application to enforce the Judgment of 8<sup>th</sup> November, 2022.

12. The contents of this Affidavit are true and correct to the best of my knowledge information and belief."

[5.] Third party debt orders are provided for in **Part 45** of the **Supreme Court Civil Procedure Rules, 2022** ("CPR"). **CPR 45.2** provides:

"45.2 Third party debt order. (1) Upon the application of a judgment creditor, the court may make an order (a 'final third party debt order') in Form EX13 requiring a third party to pay to the judgment creditor — (a) the amount of any debt due or accruing due to the judgment debtor from the third party; or (b) so much of that debt as is sufficient to satisfy the judgment debt and the judgment creditor's costs of the application. (2) The court will not make an order under paragraph (1) without first making an "interim third party debt order" pursuant to rule 45.4(2)."

[6.] **CPR 45.2** makes clear that the process is a two-staged one. The Court will not make a final third party debt order without first making an interim third party debt order. The Court has a discretion whether to make a third party debt order or not. The **Supreme Court Practice Guide 2024** explains at page 353:

“Procedure -two stage process to obtain final third party debt order[.] The process of attaching debts due or accruing due to the judgment debtor operates in two stages which are quite separate and distinct. The first stage is the obtaining by the judgment creditor of an interim third party debt order [(]Part 45.4), that is, in the first instance, an order directed to the third party to show cause why the debt claimed to be due or accruing from him to the judgment debtor should not be attached to answer the judgment debt and costs of the proceedings. The interim third party debt order is made in terms of Form EX12 and specifies the time and place for further consideration of the matter, and in the meantime attaches the debt claimed to be due or accruing due from the third party to the judgment debtor, or so much of it as may be specified in the order. The second stage in the proceedings is the further consideration of the matter when, in an appropriate case, a final third party debt order will be made against the third party ordering him to pay the attached debt to answer the judgment debt and costs of the proceedings.”

[7.] Interim third party debt orders are addressed in **CPR 45.4**. **CPR 45.4** provides:

“(1) An application for a third party debt order will initially be dealt with by a judge without a hearing. (2) The judge may make an interim third party debt order in Form EX12 — (a) fixing a hearing date to consider whether to make a final third party debt order; and (b) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order. (3) An interim third party debt order will specify the amount of money which the third party must retain, which will be the total of — (a) the amount of money remaining due to the judgment creditor under the judgment or order; and (b) an amount for the judgment creditor’s fixed costs of the application, as specified in the relevant practice direction. (4) An interim third party debt order becomes binding on a third party when it is served on him. (5) The date of the hearing to consider the application shall be not less than twenty-eight days after the interim third party debt order is made.”

[8.] **CPR 45.4(1)** provides that an application for a third party debt order “will” initially be dealt with by a judge without a hearing, and the judge may make an interim third party debt order in Form EX12 fixing a hearing date to consider whether to make a final third party debt order and directing that, until that hearing, the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order. Paragraph 2.1 of **Practice Direction No. 3 of 2024 – Allocation of work of the Court between judges and registrars (Part 2)** provides that registrars may hear applications for third party debt orders.

[9.] Under **Order 49, rule 2** of the **Rules of the Supreme Court**, a judgment creditor applying for a garnishee order was required to apply *ex parte* supported by an affidavit identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application and stating that to the best of the information or belief of the

deponent, the garnishee was within the jurisdiction and was indebted to the judgment debtor. The affidavit was also required to state the sources of the deponent's information or the grounds for his belief. Under the **CPR, CPR 45.3** simply states that an application for a third party debt order must be in Form EX11 and may be made without notice. No detail is given as to what should be contained in the affidavit. However, the **Supreme Court Practice Guide 2024**, which parties are bound to have regard to by **CPR 4.5(2)**, provides as follows at page 353:

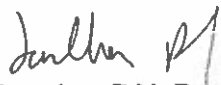
"Application is made to the court without notice in the Form of EX11 and should be supported by evidence. In Bahamas rules do not set out what should be contained in the affidavit. The evidence would be expected to do the following: (a) identify the judgment or order to be enforced stating the amount remaining unpaid under it at the time of the application, (b) state that, to the best of the deponent's information or belief, the third party (who must be named) is within the jurisdiction and is indebted to the judgment debtor, (c) state the sources of the deponent's belief. (d) it is suggested that the practitioner also include (i.) where the third party is a bank having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held (see Part 50.8(4)) or, (ii) if it be the case, that this information is not known to the deponent, and (iii) the name and last known address of the judgment debtor."

[10.] The Alleyne Affidavit contains no statement that, to the best of the deponent's information or belief, the various banks (or any of the various banks) against whom the Claimant/Judgment Creditor has sought a third party debt order are indebted to the First Defendant/First Judgment Debtor or the Second Defendant/Second Judgment Debtor, let alone any statement of the sources of the information or the grounds for any such belief. Nothing is said about where the First Defendant/First Judgment Debtor or the Second Defendant/Second Judgment Debtor are reputed or believed to bank.

[11.] The Court will not grant speculative applications for third party debt orders. Third party debt orders cannot simply be there for the asking, without any requirement for the judgment creditor to provide some basis for proceeding against the third party against whom it is sought for a third party debt order to be made. Such an approach would be open to abuse and would only serve to encourage judgment creditors to place the burden of locating a judgment debtor's assets on third parties, and in particular, banks and credit unions.

[12.] On the evidence filed in support of the Application, the Application is irregular and speculative and it is, therefore, dismissed.

Dated the 23<sup>rd</sup> day of September, 2024

  
Jonathan Z.N. Deal  
Assistant Registrar