

IN THE SUPREME COURT OF BELIZE A.D. 2011

CLAIM NO. 2 OF 2011

BETWEEN

JOHN TURLEY

CLAIMANT

AND

**KEVIN MEYER
RHONDA MEYER**

**DEFENDANT
INTERESTED PARTY**

Ms. Estevan Pererra for the claimant/applicant.
Mrs. L. Chung for the defendant/respondent.
Ms. Darlene Vernon for Interested Party.

AWICH Chief Justice (Ag)

3.6.2011

JUDGMENT

1. *Notes: An application for a charging order charging property (company shares) with a judgment debt – R.48; whether the shares had been transferred to the wife, the interested party, by an order of a foreign court; the effect of a judgment and order of a court in the USA; whether interested party had exclusive beneficial interest in the shares intended to be charged, so that the shares did not stand in the name of the debtor 'in his own right' and cannot be charged with the judgment debt.*

2. This is a judgment in an application dated 8.2.2011, by the applicant/claimant, John Turley. He seeks a charging order charging

99 (ninety nine) shares held by Kevin Meyer, the respondent/defendant, in a company known as Bridgeworks Limited.

3. The facts on which the application is based and opposed are common to the parties. On 22.10.2010, Turley obtained a judgment for the sum of US \$78,799.70 from the District Court of El Paso, Colorado, USA, against four persons, including Kevin Meyer. The claim against Meyer was founded on a promissory note which Meyer guaranteed. Instead of enforcing the judgment in USA, Turley filed a claim form in this court, the Supreme Court of Belize, on 4.1.2011 for a judgment of this court based on the judgment debt in the USA. Apparently Turley believed that Meyer owned or had beneficial interest in three properties, namely, land, parcel 1303, lot 6, Block 7, Mangrove Drive, Boca Del Rio; Parcel 1304, lot 5, Block 7, Boca Del Rio and Parcel 1305, lot 4, Block 7, Laguana Drive, Boca Del Rio, all in Belize.
4. Soon after issuing the claim form, Turley obtained an interim injunction order of this court on 11.1.2011, restraining Meyer from disposing of his assets, and requiring him to disclose his assets within this jurisdiction - Belize. Meyer has disclosed his assets, but stated that he no longer held shares in Bridgeworks Ltd. or owned the three parcels of land.
5. Procedurally, Meyer failed to file "acknowledgement of service [of the claim form] containing a notice of intention to defend" the claim of

Turley within 14 days. On 1.2.2011, Turley obtained default judgment for the sums of US \$78,799.70, BZ \$5,260.00 and interest. Meyer has not paid the judgment debt.

6. On 8.2.2011, Turley filed the application, the subject of this decision, for a charging order charging, “the ninety nine shares in Bridgeworks Ltd. held under the name of the above named judgment debtor.” The reason for charging Meyer’s shares was that the company, and not Meyer, owned title to the three parcels of land. Ownership or control of the shares in Bridgeworks Ltd. would secure control of the company and its assets.

7. Meyer’s response to the application was that he did not own the shares at the time the application was made. He exhibited to his affidavit a judgment of El Paso County District Court, Colorado, USA, signed on September 27th, 2010. In the judgment, the court held that Meyer was in contempt of an earlier order of the court, made in a case between himself and his wife, Rhonda. He had failed to pay up credit card debt, and tax due from family businesses, and interfered with one of the businesses, the control of which the court had given to the wife. As a consequence, the court made among others, the following order: “Husband will transfer ownership and control of Bridgeworks Ltd. to wife. Bridgeworks is also known as Bridgeworks Limited. The property is located in San Pedro, Belize, Block #7, Area Boca Del Rio, and

includes Parcel 1303 - 417.79 square yards; Parcel 1304 – 423.42 square yards; and Parcel 1305 – 386.80 square yards.”

8. Learned counsel Mr. Estevan Pererra, for Turley, urged the court to disregard the judgment of El Paso District Court because: (1) it was not enforceable in Belize; (2) given the nature of the judgment order, the judgment creditor could not, in the Common Law, bring a claim in Belize to enforce it, the judgment order was not an order to pay a sum of money; (3) Meyer was the registered shareholder when the application was made, and by s: 34 of Companies Act, entry in Register of shareholders is prima facie evidence of the matter; (4) the court in the USA had no jurisdiction to order transfer of the three properties which belonged to Bridgeworks Ltd., not to Mr. Meyer; and (5) title to the three properties were not held by Meyer on trust for the wife as the result of the order of the court in the USA.

9. ***Determination***

The application for a charging order was not made according to the procedure set out in **R. 48 of the Supreme Court (Civil Procedure) Rules, 2005**. However, the decision in the application does not depend on that irregularity. **Rule 48.2(2)** requires the application to be made in the first place without notice to the judgment debtor, and for an order nisi only. It is on the return date, which must not be more than 7 (seven) days, that the application is renewed on notice. Since the

application is made in the first place without notice, it is not surprising that, the law in **R. 48** requires that the applicant make disclosure similar to the disclosure required from an applicant for an urgent interim injunction order, when he makes an application without notice to the respondent.

10. The material part of **R. 48** are the following:

“48.1(1) This part deals with the enforcement of a judgment debts by charging -

(a) stock (including stock held in court); and

(b) other personal property.

48.2 (1) An application for a charging order must be made on the appropriate practice form.

(2) The application is to be made without notice but must be supported by evidence on affidavit.

...

48.3 (2) The affidavit must –

- (a) state the name and address of the judgment debtor;
- (b) state that to the best of his information and belief the debtor is beneficially entitled to the stock or personal property, as the case may be;
- (c) identify the judgment or order to be enforced;
- (d) state that the applicant is entitled to enforce the judgment;
- (e) certify the amount remaining due under the judgment;
- (f) state the name and address of every person who is believed to be an unsecured creditor of the judgment debtor;
- (g) where the application relates to stock –
 - (i) identify the company and the stock of that company to be charged;

- (ii) identify any person who has responsibility for keeping a register of the stock;
- (iii) state whether any person other than the judgment debtor is believed to have an interest in that stock whether as –
 - (aa) a joint owner;
 - (bb) a trustee; or
 - (cc) a beneficiary; and
- (iv) if so, give the names and addresses of such persons and details of their interest; and
- (h) in the case of other personal property –
 - (i) identify that property; and

- (ii) state whether any other person is believed to have an interest in the property.

48.5 (1) In the first instance, the court must deal with an application for a charging order without a hearing and may make a provisional charging order.”

11. **Rule 48.3** which sets out the nature of the evidence required in an application for a charging order, indicates clearly that the evidence must prove that the judgment debtor owns the property beneficially, alone or jointly with others. The rule is in aid of the substantive law which was established long ago in **Watts v Porter 3 E & 758**. The case of **Gill v The Continental Union Gas Company Limited; [1872] L.R. 7 Exch 332**, confirmed that law. In the case, it was stated by Bramwell B that: *“the only stock that is to be charged is stock standing in the name of the judgment debtor in his own right, and if an order is made otherwise it is not within the competence of the judge to make it.”*
12. The facts of the case are the following. The debtor had sold his shares in the defendant company before the claimant/judgment creditor obtained judgment in his claim against the debtor, and before the judgment creditor applied for and obtained a charging order nisi. The formal transfer of the shares was registered after the judgment on the claim had been obtained and the charging order nisi had been made

and notice of it had been given to the defendant company. The judgment creditor brought a court claim against the company for wrongful registration of transfer of the shares. It was successful before the trial judge, but on appeal, the Court of Appeal allowed the appeal and dismissed the claim.

13. Later, **Cooper v Griffin [1892] 1 Q.B. 740**, was decided by the Court of Appeal (England) to the same effect. The facts were these. Three shareholders transferred their shares to Mr. Griffin so that he would qualify for appointment as a managing director. The transfer of the shares were registered on the register of shareholders. But the three transferors retained beneficial interest in the shares; they obtained and kept an instrument of transfer signed by Griffin for retransfer of the shares. The claimant/respondent had obtained judgment against Griffin five years earlier. The respondent applied for and obtained a charging order nisi which was made absolute. The three shareholders who transferred their shares, but retained beneficial interest appealed successfully. The Court of Appeal held that the expression that the debtor has shares, "*standing in his name in his own right*", meant that the intention was, "*to charge that only which is the debtor's real and true property and not to charge shares which though they stand in the name of the debtor, are not his real and true property.*"
14. Learned counsel Mr. Estevan Pererra, for Mr. Turley, did not contest that statement of the law, although he did not expressly restate it

himself. His contentions, put in my own words, were: (1) that a judgment of the district court in the USA has no effect in Belize unless it has been registered under the Reciprocal Enforcement of Foreign Judgment Act, Cap. 171, or made into a claim in court in Belize and the court has issued its own judgment on the claim; (2) that until transfer of the shares in Bridgeworks Ltd. has been registered on the register of shareholders, the shares remained the property of Meyer absolutely, in other words, Rhonda Meyer could not claim any right to the shares because she was not registered as a shareholder.

15. Whether or not the order made by the district court in the USA is enforceable in Belize, the evidence showed that Meyer acted on it on 28.12.2010, by signing a document described as, "Instrument of Transfer of Shares" thereby he transferred the beneficial interest in the shares to his estranged wife Rhonda, on that date. He signed the transfer even before Turley filed a claim on 4.1.2010, at this court, and indeed before Turley obtained default judgment on 1.2.2010. There has been no suggestion that the separation order regarding the husband and wife was fraudulently obtained from the district court in the USA, or that the instrument of transfer was signed fraudulently, or that the second order of the district court in the USA on an application for contempt order was obtained fraudulently. Rather, there has been evidence that the separation order was obtained properly and Meyer eventually had to comply with the order upon a finding of contempt of court, which rendered him liable to penalty including imprisonment.

16. I do not see how a judgment obtained outside this jurisdiction, Belize, or for that matter, an agreement signed outside this jurisdiction, cannot have effect in this jurisdiction, if the parties decide to voluntarily comply with the foreign judgment or to carry out their obligations and receive benefit under the agreement in regard to a subject matter in Belize, without resorting to enforcement by courts in Belize. I accept the submission by learned counsel Ms. Darlene Vernon that Meyer had complied with the order of the district court in the USA, there was nothing to enforce through court in Belize.
17. The experience of this court is that it is common place that, citizens or residents of the USA enter agreements in the USA and make payments there regarding businesses wholly or partly carried on in Belize; and they prefer to litigate in court in Belize, when dispute arises. I regard it as a demonstration of confidence in courts of Belize.
18. The submission that s:34 of the Companies Act would require that Meyer be regarded as the owner of the shares because he was the registered owner was, with respect, erroneous. The section states:
- “34. The register of members shall be prima facie evidence of any matters by this Act directed or authorised to be inserted therein.”

19. The provision simply means that the entry of whatever information in the register is only prima facie proof of the information, the entry is not conclusive proof, or proof to a standard of a balance of probabilities. Rhonda has rebutted the prima facie proof. She has proved that she alone has beneficial interest in all the 99 (ninety nine) shares, by reason of a court order. Meyer ceased to have the beneficial interest in the shares when the court in the USA made an order on 27.9.2010 that, the shares be transferred to Rhonda; in any case, when Meyer signed the instrument of transfer on 28.12.2010.
20. The cases of **Gill v Continental Gas Co** and **Cooper v Griffin**, especially the latter, provide complete answer to the contentions in the application of Mr. John Turley, dated 8.2.2011. The application is dismissed. The interim injunction order made on 9.2.2011, expired when Mr. Turley obtained default judgment on 11.1.2011.
21. Mr. Turley will pay the costs of the application to Rhonda Meyer. No order for costs of the application is made against Mr. Meyer.
22. **Delivered this Friday the 3rd day of June 2011**
At the Supreme Court
Belize City

SAM LUNGOLE AWICH
Acting Chief Justice
Supreme Court