



Neutral Citation Number: [2025] CIGC (Civ) 29

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO: G0264 OF 2024

BETWEEN: CHARLES JESSUP SMITH

PLAINTIFF

**AND: (1) SADIE J. JURGENS
(2) CHARLIE B JURGENS**

DEFENDANTS

Before: The Honourable Justice Marlene Carter

**Appearances: Ms. Clare Price of KSG Attorneys at Law for the Plaintiff
1st Defendant, litigant in person**

Heard: 24 July 2025 and 20 August 2025

Reasons delivered: 29 August 2025

Released for Publication: 10 October 2025

REASONS FOR DECISION

Hearing on 24 July 2025

1. The Plaintiff was represented by Ms. Price of KSG. The Defendant appeared unrepresented. The Defendant's Counsel had applied for and granted leave to come off record which application was granted on 10 July 2025.

[2025] CIGC (Civ) 29 - Smith v Jurgens et al – Reasons for Decision

2. The Plaintiff sought the following orders:
 - (i) The Plaintiff do recover possession of the Property on the ground that the Property has been sold by public auction pursuant to section 75(1) of the Registered Land Act (2018 Revision) and the Plaintiff is entitled to possession of the Property.
 - (ii) The Plaintiff do have leave to issue a Writ of Possession against the 1st Defendant.
 - (iii) A partner of KSG Attorneys-at-Law shall sign the Form 36 Deletion on Death of a Joint Proprietor for the Property.
 - (iv) The Plaintiff shall recover the costs of this application, to be added to the sums charged against the Property.

3. The background and relevant facts surrounding the application are taken from the Plaintiff's submissions.
 - (i) The Defendants are registered as the joint proprietors of the Property, 5 Radiant Lane, West Bay, Grand Cayman, Registration Section West Bay North East, Block 9A, parcel 355, ("the Property").
 - (ii) The First Defendant lives in the Property. The Second Defendant died on 12 August 2024.
 - (iii) By an Amended Default Judgment dated 30 August 2024, it was adjudged that the Defendants should pay to the Plaintiff the sum of CI \$528,938.74 plus interest thereon, filing fees, ad valorem fees, bailiffs' fees and costs.
 - (iv) On 24 October 2024, the Honourable Justice Jalil Asif KC made a Charging Order Nisi and directed the Registrar of Lands to register a Charge relating to the Property to secure payment to the Plaintiff of the principal sum plus interest thereon, filing fees, ad valorem fees, bailiffs' fees and costs.
 - (v) On 22 January 2025, the Honourable Justice Jalil Asif KC made the Charging Order Absolute directing that the Defendants' interests in the Property do stand charged with payment of all sums due pursuant to the Amended Default Judgment together with the costs of that application.
 - (vi) On 1 April 2025, the Charging Order made by the Court was registered against the Property.
 - (vii) As at the date of hearing, 24 July 2025, all of the sums remained due and unpaid.

4. The Court had sight of the Affidavits of Keith Doyle on behalf of the Plaintiff filed in the proceedings and in support of the application which exhibited copies of the amended Default Judgment of 30 August 2024, the Charging Order Nisi and the Charging Order Absolute.
5. GCR O.50, r.8 governs the procedure for the enforcement of an order charging an interest in land. It is pursuant to this order that the Plaintiff embarked upon enforcement by way of sale of the Property. The Judgment Creditor is entitled to exercise its power of sale in respect of a charge by public auction. The provisions of ss.72 and 75 of the Registered Land Act set out perimeters for enforcement in this regard.
6. The Court was satisfied the Judgment Creditor was entitled to exercise its power of sale. The Property was put up for sale by public auction. It appeared to the Court that the judgment creditor had acted in good faith. There were a number of offers to buy the Property. The first defendant was kept informed of the offers made. The highest bid ultimately accepted by the judgment creditor was in the amount of \$926,000. A completion date for the sale of the Property was originally set for 27 June 2025. Because the first defendant remained in occupation of the Property, she was asked to confirm that she would give vacant possession of same. She refused to do so. The Plaintiff sought an extension of the completion date to 26 August 2025 and filed the application seeking an order for possession and consequent orders.
7. The 1st Defendant at the hearing confirmed that up to date of hearing she had made no payments towards the outstanding debt.
8. At the hearing the 1st Defendant raised the issue of seeking other Counsel to assist her. The 1st Defendant's Counsel was granted leave to come off record on 10th July 2024. The Court was satisfied then that although the 1st Defendant was not present at that hearing, she was aware of the date as she had been served with the Summons and affidavit of Counsel seeking to come off record.
9. The 1st Defendant was informed from as early as 15 May 2024 of the fact that an offer had been accept for the sale of the house and that if she did not vacate the property, voluntarily consequences that could flow therefrom including that the Plaintiff would have to return to Court seeking an order

[2025] CIGC (Civ) 29 - Smith v Jurgens et al – Reasons for Decision

of possession.¹ The 1st Defendant was also aware of the instant Summons seeking an order for possession having been advised of same by her attorney before the application to come off record was filed. The Court had these matters in mind when the 1st Defendant appeared on 24th July 2025 without representation. If the 1st Defendant wished to secure representation she had had sufficient time to do so after being served with her attorney's application to come off record.

10. However, in the circumstances as outlined above, the Plaintiff having a proper basis in law for seeking an order of possession, having complied with the requirements of the statute regarding the process by which a sale was to be managed, having also acted in good faith throughout, the fact that the defendant was represented up to two weeks before the instant hearing and had been kept fully informed by the Plaintiff as the matter proceeded and there being no apparent basis for not granting the order, the Court granted the Plaintiff's application and made the orders as per the Summons.
11. The 1st Defendant was ordered to vacate the premises by 15 August 2025 - the completion of the sale being set for the 26 August 2025.

Hearing on 20 August 2025

12. The 1st Defendant did not vacate the Property.
13. The 1st Defendant did not file a Notice of appeal against the order of 24 July 2025. Instead, the 1st defendant filed a summons on 15 August 2025 seeking a stay of the Court's Order for possession of the Property. The 1st Defendant remained unrepresented. At the hearing the Court inquired of the defendant whether she intended to file an appeal. She indicated that she did so intend. The Court then considered whether if Notice to appeal had been filed, the 1st Defendant would have grounds for a stay of the Court's Order pending the appeal.
14. The Court considered the grounds of the application as stated in the summons as well as the Affidavit of the 1st Defendant.

¹ Email from James Kennedy to the 1st Defendant of 15 May 2025 from bundle of emails exhibited by Keith Doyle.
[2025] CIGC (Civ) 29 - Smith v Jurgens et al – Reasons for Decision

15. Both before the Court on 24 July 2025 and in her Affidavit sworn on 15 August 2025 in support of the application for the stay, the 1st Defendant accepted that she owes the judgment debt to the Plaintiff.
16. At the hearing the 1st Defendant offered to pay CI\$1,500 to 2,000 per month towards the judgment debt which then stood at CI\$528,938.74, with interest of CI\$257,783.33 as well as filing fees, ad valorem fees, bailiff's fees and the Plaintiff's costs. This appeared to be the first instance in which she had sought to make a substantive offer of repayment of the debt. She also indicated that she now had an investor who was willing to develop the Property, and she could be in a position to repay up to 100,000 of the debt within 12 months.
17. At the hearing the Plaintiff was represented by Counsel Ms. Price of KSG. Counsel for the Plaintiff submitted that the 1st Defendant had not issued a Notice of Appeal and it was clear that she does not have any valid grounds to appeal the Order of 24 July nor does she have a valid Defence.
18. Counsel for the Plaintiff submitted that this offered appeared "wholly unrealistic and indeed not credible" for the reason that the 1st Defendant had "*not made any payment at any time, whether over the past two years or before the claim was filed, to the Plaintiff despite accepting that she owes the judgment debt to him and despite being involved, and for much of the time legally represented, at all stages of the legal process*".
19. Counsel further submitted that the sums proposed would not cover even the monthly interest payments on the loan let alone clearing the principal sum and the consequential costs. With regard to the assertion of an investor in the Property Counsel submitted:

"There is no evidence at all to support the First Defendant's assertion that she has an investor to develop units on the Property as she claims nor that there is any bona fide development plan which would satisfy all of the outstanding sums and those which would continue to accrue. If there were such an investor, they could have bid for the Property at public auction earlier this year (assuming that they (a) genuinely exist as to which there is no evidence and (b) were not one of the unsuccessful bidders). It is noticeable that the First Defendant has never before said that she was in discussions with a potential investor."
20. Having considered the application for the stay this Court noted that the grounds set out in the Summons presented no legal basis for the Court to grant an order to stay the Writ of Possession.

[2025] CIGC (Civ) 29 - Smith v Jurgens et al – Reasons for Decision

Instead, the 1st Defendant sought to raise matters that would have been better set out in a Defence at the start of the proceedings. However, no Defence was ever filed. The Plaintiff obtained Default Judgment.

21. The 1st Defendant was represented by Counsel when she sought to set aside the Default Judgment. The Court had sight of the Judgment of Asif J., the Learned Judge having heard that application. The Court was satisfied that the main issues raised in the Summons [at paragraphs 1-3] as the basis for a stay were matters that were ventilated before Asif J. at the hearing of the application to set aside the Default Judgment. These were matters that had therefore been considered and adjudicated upon by the Court. In that judgment Asif J. found:

- (i) There had been no procedural irregularity identified by the 1st Defendant and her Counsel surrounding the obtaining of the Default Judgment.
- (ii) The Plaintiff was fully entitled to apply for and to obtain judgment in default
- (iii) Complaints about the Plaintiff's actions in the divorce proceedings were completely irrelevant to the current claim by the Plaintiff.
- (iv) The Court considered both the 1st Defendant's explanations for not taking timely action to set aside the Default Judgment as well as the merits of her intended defence and potential counterclaim and concluded:

"I have not been able to identify any basis for Ms. Jurgens' assertion that the Plaintiff's actions caused her detriment or put her in a worse position such as to found a possible counterclaim against the plaintiff. Other than this it is very difficult for me to see what effective substantive defence she has identified to the claim for repayment of the debt."

- (v) Regarding the fact of no formal agreement with the Plaintiff or any agreement that was reached not intended to be legally enforceable, the Judge concluded:

"...even if she were right on that, it seem to me that Ms. Jurgens and her ex-husband receive the benefit of the repayment of their loan...and the well - established doctrine of subrogation then puts the Plaintiff in the shoes of Fidelity Bank to enforce repayment of the debt...whether or not there was a formal agreement between the Plaintiff and the Defendants."

22. There was no appeal against the decision not to set aside the Default Judgment.

[2025] CIGC (Civ) 29 - Smith v Jurgens et al – Reasons for Decision

23. In all the circumstances, this Court found that there was no basis to grant the stay sought by the 1st Defendant. The matters raised in the summons provided no legal basis to do so. The matters raised did not demonstrate that there was any irregularity regarding the enforcement process that could justify a stay of the Court's order. The Plaintiff had done all that he was legally entitled to do to enforce the debt owed to him by the 1st Defendant. The 1st Defendant had never sought to repay the debt and provided no evidence to support the fact that she would be able to do as she had now proposed.
24. The application for a stay was dismissed with costs to the Plaintiff to be added to the sums charged to the Property.



Hon. Mrs. Justice Marlene Carter
Judge of the Grand Court