



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

Cause Number G 86 of 2021

BETWEEN

**(1) GREGG ARNOLD
(2) CATHERINE HOUTS**

Plaintiffs

AND

SUSHELLA ANNON T/A FIRST CLASS CONSTRUCTION

Defendant

IN CHAMBERS

Appearances: Ms Alice Carver of Nelsons for the Plaintiffs
Ms Amelia Fosuhene of Bradys for the Defendant

Before: Hon Mr Justice Alistair Walters, Actg.

Date of Hearing: 5 July 2022

Draft circulated: 16 September 2022

Judgment Delivered 7 October 2022

HEADNOTE

Charging order absolute, whether Defendant has beneficial interest in property to be charged

JUDGMENT

1. This is the hearing of a charging order, Notice to Show cause. The Plaintiffs had entered into a contract with the Defendant under which the Defendant (and her former husband, Exroy Annon) agreed to construct a home for the Plaintiffs. The construction ceased before the home was completed. The Plaintiffs had to pay for the building works to be completed despite in some cases, having already paid the Defendant for the work. The Plaintiffs issued proceedings against the Defendant on 27 May 2021. By way of an order dated 1 November 2021, the Defendant's defence was struck out for failing to comply with an order that she file and serve a response to the Plaintiffs' request for further and better particulars of her defence. Judgment was entered against her for



damages amounting to CI\$135,805.06 for sums paid by the Plaintiffs to contractors and CI\$14,400 in respect of additional rental costs incurred by the Plaintiffs.

2. As part of their efforts to enforce the judgment in their favour, after some research (as explained in the affidavit of Mr Arnold dated 14 January 2022), the Plaintiffs identified a piece of land (Block 25B, Parcel 327 (the "Land")) registered in the name of "Su Hayla Brown" which they believed was owned by the Defendant. Their research indicated that the name of the registered owner had been changed from Sushella Annon to Su Hayla Brown but that, in fact, they are one and the same person. The Plaintiffs believed that the Defendant had taken this step to avoid the risk of the judgment being enforced against the Land.
3. This issue has been resolved in the sense that the Defendant has acknowledged that she was and is the registered owner of the Land. Apparently she changed her name legally hence the change of the name of registered owner.
4. Pursuant to GCR O.50, r.1, the Plaintiffs issued an ex parte Notice of Motion dated 14 January 2022 applying for a charging order over the Land. The application was supported by the affidavit of Mr Arnold referred to above. GCR O.50, r.1 states:

"Order imposing a charge on a beneficial interest (O.50, r.1)

1. (1) *The power to make a charging order under paragraph 1 of the Law shall be exercisable by the Court.*
- (2) *An application by a judgment creditor for a charging order in respect of a judgment debtor's beneficial interest in any property may be made by an ex parte originating motion, and any order made on such an application shall in the first instance be an order, made in Form No. 33 in Appendix 1, to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time.*
- (3) *the application shall be supported by an affidavit -*
 - (a) *identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;*
 - (b) *stating the name of the judgment debtor and of any creditor of whom the applicant can identify;*
 - (c) *giving full particulars of the subject matter of the intended charge, including -*
 - (i) *in the case of securities other than securities in Court, the full title of the securities, their amount and the name in which they stand;*
 - (ii) *and, in the case of funds in Court, the number of the account; and*
 - (iii) *in the case of land, the registration details.*



(d) verifying that the interest to be charged is owned beneficially by the judgment debtor.”

5. A charging order nisi was made by me on 23 February 2022.
6. After repeated delays on the part of the Defendant, the Notice to Show Cause was finally set down for hearing. The position of the Defendant is set out in her affidavit of 29 June 2022. In summary she says:
 - 6.1 That her former husband had mismanaged the finances for the construction of the Plaintiffs’ home causing her to have to “fire” him.
 - 6.2 A dispute arose between her and the Plaintiffs about the completion of the work and she says that she told the Plaintiffs in December 2020 that the only way that she would be able to afford to do so is by selling the Land.
 - 6.3 In December 2020 she says that she was approached by Mr Shaun King who she describes as a property developer. She says that at the time Mr King was not looking for land to develop but that she offered him the Land at a favourable rate and he agreed to purchase it. The agreement for the sale and purchase of the Land (the “Agreement”) was drafted by them and is exhibited to the Defendant’s affidavit. The Agreement says that it was “made” on 18 January 2021 and was open for acceptance until 22 January 2021. It is dated 22 January 2021. The Agreement refers to the Land by reference only to the Block number (32C). It states that the purchase price is CI\$100,000 with CI\$50,000 to be paid by way of a deposit and the remaining CI\$50,000 to be paid when the Land is sub-divided. Upon completion of payments the property is to be transferred to Mr King.
 - 6.4 The initial deposit of CI\$50,000 was paid by bank draft and thereafter the evidence for the Defendant is that Mr King paid the Defendant the balance in cash in 7 instalments during 2021.
 - 6.5 The Agreement stated that the Defendant would pay for the stamp duty on the transaction and registration fees.
 - 6.6 The Defendant had also agreed to pay for the sub-division of the Land and says that in January 2021 she approached Mr Orsino Pink, a licenced land surveyor, to do that work. She says that she told Mr Pink that he did not need to rush matters as Mr King was not in a hurry to develop the land. In September 2021 Mr Pink had prepared a suggested plan for the sub-division and sent it to the Defendant by email. Apparently, the reason that the



transfer of title had not taken place was because of the delay by Mr Pink and the fact that the Defendant had not paid the stamp duty.

- 6.7 The Defendant maintains that Mr King is the beneficial owner of the Land and, on that basis, the charging order should not be made absolute.
- 6.8 The Defendant did suggest that she could give the Plaintiffs security over some other land that she owns jointly with her former husband, but nothing seems to have come of that.
7. Mr King swore an affidavit dated 27 June 2022, a copy of which was exhibited to the Defendant's affidavit, explaining that he had agreed to purchase from the Defendant the Land in its entirety. He states that he made the payments claimed by the Defendant. He states that the Land has not been transferred into his name because neither the stamp duty nor the costs of the sub-division have been paid by the Defendant. He states that he purchased another piece of land and took 5 years to get title transferred. He is in no rush to develop the Land and expects title to be transferred when he is in a position to afford to develop it. The affidavit appears to have been sworn before a notary on 27 June 2022, but does not appear to have been filed at court.
8. Also exhibited to the Defendant's affidavit was a copy of an affidavit sworn by Mr Pink and dated 27 June 2022. He states that in January 2021 he was approached by the Defendant to carry out a sub-division of the Land. He says that due to his hectic work schedule he was not able to produce a plan for the sub-division until September 2021. He says that he was informed by the Defendant and Mr King that they were in no rush to complete the sub-division. This affidavit again appears to have been sworn before the same notary. However the notary records that Mr Pink appeared before him on 27 February 2022, not June 2022. Again this affidavit does not appear to have been filed with at court.
9. In response, Mr Arnold swore a further affidavit dated 1 July 2022. In summary he states:
 - 9.1 The Plaintiffs do not agree that the Defendant told them that she had to sell the Land to fund the completion of their home.
 - 9.2 He says that the Land is 0.84 acres in size and was purchased by the Defendant in June 2020 for CI\$94,000. He says that it is surprising that it would be re-sold by the Defendant in January 2021 for only CI\$100,000 when he says land values have been increasing. He also says that he is aware that in May 2021, around the time that these proceedings were started, the Defendant had started construction on the Land and estimates that approximately CI\$50,000 has been spent on that work.



- 9.3 Mr Arnold says that he is a real estate agent and finds the form of the Agreement very surprising. He says that there are many standard clauses missing from what one would expect to see in a contract for the sale and purchase of land. He also questions why there is no reference to the parcel number of the Land or any description of exactly what was being purchased by Mr King. He continues to point out that there is no date specified by which the sub-division should take place and confirmed that his attorneys had been advised by the Land Registry by email on 23 June 2022 that no application has been made to sub-divide the Land.
- 9.4 Mr Arnold questions why Mr King has not registered a caution over the Land to protect his interest, assuming that he has one and also questions why the Defendant would agree to pay the stamp duty (7.5% of the purchase price) when that is usually paid by a purchaser.
- 9.5 Overall, Mr Arnold says that the Plaintiffs do not believe that the Defendant's evidence is truthful.
10. At the hearing the Defendant was cross examined on her affidavit evidence which it was agreed would stand as her evidence in chief.

The Defendant's oral evidence

11. The Defendant confirmed that she had legally changed her name which is why she changed it on the title to the Land. She also explained that it had taken her 4 years to purchase the Land using an owner financing arrangement.
12. The Defendant was asked about the construction on the Land. She said that it has been underway for 3 years and that she had recently applied for a new building permit. She was asked whether there was a separate agreement with Mr King in relation to the construction. She said that there was not but that it was known by both parties that it was taking place. She was asked who is to complete the construction and she initially answered that she didn't know but when asked if it would be Mr King she said yes. Apparently she applied for an inspection of structural beams in October 2021. When asked why she would have done that when Mr King was to complete the construction she answered that it was to keep the building permit current. The Defendant confirmed that the building permit is still current and that she pays the associated planning fees. When asked why it is that she is spending money on the planning process, the Defendant answered that it was because she had sold Mr King the property as something that he could develop and that the price included the value



of the construction work already carried out which the Defendant valued at approximately CI\$13,000.

13. It was put to the Defendant that, on her evidence, she had sold the Land for CI\$100,000 but had to pay stamp duty of CI\$7,500. She had also included the CI\$13,000 value of the construction in the price. She also had agreed to pay the costs of the sub-division. On that basis she had sold it for substantially less than the CI\$94,000 that she had paid for it. She agreed but said that she needed the money immediately.
14. In relation to her dealings with Mr King, the Defendant explained that she had not approached anyone else in relation to buying the Land and had not advertised it for sale. The Defendant agreed that she had registered a caution against the Land when she agreed to buy it. She stated that she had known Mr King for several years before entering into the agreement in relation to the Land. She said that she knew of him but that they were not friends. She described him as a business acquaintance also working in the construction industry. When asked why Mr King would have paid the whole of the consideration for the Land prior to the sub-division taking place she stated that she needed the money and that Mr King was a very good friend of one of her friends, a Mr Lenworth Green. It was Mr Green who had suggested the amount of the purchase price for the Land.
15. When asked about the likely costs of the sub-division, the Defendant initially said that she had no idea what it might cost. She speculated that it might be approximately CI\$3,000 between Mr Pink's fees and the Land Registry but did not seem to have any clear idea of the real likely cost. When asked when the sub-division might be completed, she said that she would have to ask Mr Pink but thought maybe by the end of the year. When asked whether she had funds to cover the costs she said that at the moment she only had CI\$1,500.
16. When asked about the Agreement, the Defendant said that Mr King was purchasing the entire parcel. When pressed about evidence in relation to the source of the initial payment of CI\$50,000 and the payment of the balance of the purchase price and why that had not been produced the Defendant said that she had her own record of the payments but that the only payment that went through her bank account was the first payment.
17. The Defendant confirmed that she had not yet paid Mr Pink. She confirmed that by way of an email addressed to her dated 7 September 2021 Mr Pink had provided a plan with a suggestion for the



sub-division. The Defendant confirmed that there had been several discussions with Mr King about the proposed sub-division around the time of Mr Pink's email. The Defendant confirmed that she had never been involved in a sub-division before and was not aware what the process involved. She also repeated that the reason that it had not progressed was because she couldn't afford to pay for it although accepted that she did not know how much it was going to cost.

18. The Defendant confirmed that if she had to get the sub-division completed she could borrow the money from acquaintances who would not ask for security but was not going to do so because Mr King was not in a hurry.
19. In re-examination, the Defendant maintained that the Agreement was genuine and that Mr King had bought the Land.

Mr King's oral evidence

20. Mr King was called and Ms Fosuhene examined him in chief because of disagreement about the status of this affidavit and he was then cross-examined by Ms Carver. Mr King maintained that he first found out about these proceedings in June 2022. His view appeared to be that the proceedings didn't involve him because the Land is his as he had paid for it. Mr King (who is an air conditioning technician) had been due to appear to give evidence at a previous hearing of the Plaintiffs' Notice of Motion to show cause but explained that he had been unable to attend because he was servicing a customer's air conditioning system. When asked if he understood that the purpose of the previous hearing was to determine whether the Plaintiffs should have a right to a charge over the Land, he said that he did not realize how serious matters were and had 3 service appointments that day so was unable to attend.
21. Mr King explained that he was acquainted with the Defendant from living in the Cayman Islands, through previous employment and via Mr Green. Mr King agreed that he and the Defendant had a close friendship and would spend time and socialize together. At times he referred to the Defendant as "Su Su". Mr King confirmed that he was first told about the Land being for sale by Mr Green. When he heard that the price was CI\$100,000 he was of the view that it was cheap as it was prime land. He said that he agreed to buy it because at that price he couldn't lose but did not feel guilty about the price despite his relationship with the Defendant.



22. Mr King explained that the first payment for the Land came via a friend, Mr Rasheed Facey who he said that he has paid back. When asked about why he did not register a caution over the land he ultimately said that he was not aware of that process.
23. When asked why he had paid the Defendant the balance of the purchase price of the Land prior to the sub-division being completed he said that he trusted the Defendant.
24. In relation to the transfer of title to the Land into his name, Mr King said that he has plans for the Land. Apparently the sub-division of the Land is taking place. The application has already been submitted to Lands and Survey and a response had been received from Lands and Survey. Mr King said that he had been told that by Mr Pink this year. In relation to the construction that had taken place on the Land, Mr King said that he would demolish what had been built. He said that he was working on plans for the Land and that those plans had nothing to do with the Defendant, everything was going through him. He said that the rough cost of the sub-division work is CI\$5,000.
25. Mr King maintained that the Agreement is a valid agreement and that he was investing in order to help his daughter's education.
26. In re-examination Mr King said that he had used Mr Pink for survey work on other land in the past and that he had recommended Mr Pink in relation to the sub-division of the Land. He also confirmed that he had purchased another piece of land that took 5 years to be transferred into his name.

Review of the evidence and conclusion

27. Although Mr King was called as a witness to support the Defendant I have been left surprised by the differences and contradictions in their respective evidence.
 - 27.1 The Defendant says in her affidavit that she was approached by Mr King about the Land whereas Mr King said that he was contacted by Mr Green.
 - 27.2 When asked by Ms Carver about her relationship with Mr King, I was left with the impression that she did not know him well and primarily through Mr Green. On the other hand Mr King gave the impression that he knew the Defendant well. He called her "Su Su", and said that he trusted her enough to advance the whole of what was said to be the purchase price of the Land before the sub-division was completed.
 - 27.3 In her affidavit the Defendant says that she approached Mr Pink and says that he agreed that he would do the work on the sub-division for her. When giving his evidence Mr King

seemed to suggest that he was the one with the connection to Mr Pink and that Mr Pink was doing the work for him. This is particularly relevant as the Defendant said that she had not carried out a sub-division before, did not know what the cost would be and couldn't afford to pay for it. Mr King's evidence was that it was he who was liaising with Mr Pink and that plans had already been submitted to Lands and Survey.

27.4 The Defendant suggested that the continued construction on the Land was being carried out with the knowledge of Mr King and that she expected that he would continue the work. Mr King said that he will demolish it. The Defendant's evidence left me with the impression that she was continuing to do the construction work and pay the associated fees for her own benefit.

27.5 As of 23 June 2022 Lands and Survey indicated that no application for a sub-division had been made in relation to the Land whereas Mr King said that one had but produced no evidence to that effect.

27.6 Finally, as mentioned by Ms Carver, Mr King did not come across as someone who was really aggrieved or concerned about the risk of the charging order absolute being granted over the Land. If he was the beneficial owner of the Land facing the risks associated with the present application I would have thought that his reaction would be markedly different from what was on display.

28. Legal title to the Land is registered in the Defendant's name. It is the Defendant who has raised the issue about the beneficial ownership of the Land. On that basis, in my view, the burden is on her (and Mr King) to demonstrate that she is not the beneficial owner, and that it is, in fact, Mr King.

29. The evidence given by the Defendant and Mr King is, in my view so much at odds, it is as if they are on opposing side of this case. On that basis, I find the Defendant's evidence and that of Mr King unreliable and on that basis I find that that the Defendant has failed on the balance of probabilities to demonstrate that she is not the beneficial owner of the Land.

30. That being the case, the order sought by the Plaintiffs is granted and the Defendant is to pay the Plaintiffs' costs to be taxed if not agreed.



**Honourable Mr. Justice Alistair Walters, (Actg.)
Judge of the Grand Court**