

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 39 of 2020

IN THE MATTER OF AN APPLICATION MADE PURSUANT TO THE THIRD SCHEDULE OF THE JUDICATURE LAW (2017 REVISION) AND GCR ORDER 50 TO OBTAIN A CHARGE OVER REAL PROPERTY

BETWEEN

MCGLYNN ENTERPRISE LTD

Plaintiff

-AND-

MAGDA-ZOE EMBURY

Defendant

ON THE PAPERS

SUBMISSIONS FROM: Appleby (Cayman) Ltd on behalf of the Plaintiff
Defendant in person

Judgment Delivered: 22 June 2020

HEADNOTE

Application for Charging Order absolute – exercise of discretion of Court to make order under the Schedule 3 para 1(2) of the Judicature Law 2017



JUDGMENT

1. The Plaintiff, McGlynn Enterprises Ltd (“McGlynn”), is a judgment creditor in the sum of US\$122,620.69 with pre-judgment interest thereon of US\$9,687.88 and post-judgment interest accruing at a daily rate of \$7.98 as of 22 January 2019 due under a summary judgment of Gunn J (Acting) on claims alleging professional negligence and breach of trust against the Defendant, Ms. Magda-Zoe Embury, in connection with a conveyancing transaction.
2. Ms. Embury failed to pay the judgment debt and McGlynn subsequently applied for a charging order to secure the payment of the judgment sum by *ex parte* Originating Motion dated 21 February 2020.

3. A Charging Order *nisi* over all Ms. Embury's interest in property known as Prospect, Block 22D, Parcel 118 and Savannah, Block 27C, Parcel 203 was granted by McMillan J and a Notice to Show Cause why the order should not be made absolute was issued on the 7 May 2020 and duly served on Ms. Embury, together with copies of the Charges to be registered pursuant thereto, with a return date of 7 June 2020.
4. Ms. Embury did not file any evidence in opposition to the application to charge her properties but instead made written submissions which the Court has considered *de bene esse*. In those submissions, Ms. Embury asserts, *inter alia*, that the application was unnecessary as she had already given McGlynn an undertaking to pay any sums accruing to her from the sale or refinancing of her properties into Court, pending the resolution of her appeal against the decision of Gunn J (Acting) and further, the application was not made *bona fide* for securing the judgment debt, but improperly to secure the costs of litigating its claim, even though those costs have not yet been taxed or agreed. This latter argument appears to be constructed from the decision by McMillan J, in rejecting McGlynn's application, that it was inappropriate to charge property in respect of unassessed costs.
5. Neither assertion shows any cause why the order *nisi* should not be made absolute. Relevant evidence to the exercise of the Court's discretion is evidence of personal circumstances tending to show that it would be inequitable to make the order or details of other creditors who would be unduly prejudiced if a charging order were made: see Section 29 and Schedule 3 of the *Judicature Law (2017)* Revision at para 1(2).
6. The Charging Order made by McMillan J on 7 May 2020 is hereby made absolute. The Plaintiff's costs of this application are also charged against the properties.

Alex

RAMSAY-HALE J
Judge of the Grand Court

