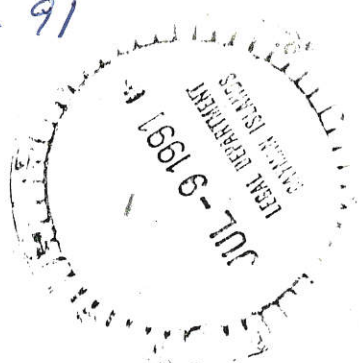


8-7-91



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

C 321/90

BETWEEN:	THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS	PLAINTIFF
AND:	DONALD S. DENBO (AS TRUSTEE)	FIRST DEFENDANT
AND:	ARTHUR R. ANDERSON (AS TRUSTEE)	SECOND DEFENDANT
AND:	RANDAL DAVIDSON (AS TRUSTEE)	THIRD DEFENDANT
AND:	THE BANK OF NOVA SCOTIA	FOURTH DEFENDANT

JUDGMENT.

Mr. Marsden for the Plaintiff  
Mrs. Reid for the First, Second and Third Defendants  
Mr. Shea for the Fourth Defendant

On the 6th April, 1990, the plaintiff, on behalf of the Government of the Cayman Islands, obtained judgment in the Summary Court against Treasure Island Resort Ltd (USA) jointly with the first three defendants in their capacity as trustees of George Town Associates, the general partner of Treasure Island Resort Ltd (USA). Judgment was in the sum of \$586,725.97 and was for arrears in payment of Tourist Accommodation Tax which had been recovered from clients of the Treasure Island Resort and which had not been paid over to the Government. The judgment remains unsatisfied.

The plaintiff has considered the means of execution open to him but, being mindful of the disruption to the Resort which any of the usual methods of execution would have and the effect thereof on the tourist industry in these Islands in general, has sought an order of this Court placing an inhibition on the sale of the land upon which the Resort is situated without the prior written consent of the plaintiff. The application is made pursuant to section 124 (1) of the Registered Land Law (Revised) which reads:

"124 (1) The court may under an order (hereinafter called an inhibition) inhibiting for a particular time or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge."

"The court" means the Grand Court, and I do not think it is in dispute that this Court has the jurisdiction to grant the order applied for. However, the fourth defendant, the Bank of Nova Scotia, was granted leave to be added as a defendant and has contested the grant of the order. The Bank holds first, second and third position registered collateral charges over the land comprising the Resort to secure sums which, with interest, now amount to approximately US\$20 million. Although represented by counsel at the hearing the first three defendants neither supported or contested the application.

Counsel for the Bank put forward various objections to the grant of this inhibition. Firstly, he said, an inhibition is in effect an injunction in rem and this application is in the nature of an injunction in aid of execution. He maintains that the affidavit in support of the application would be woefully inadequate if it were made in support of an injunction. In particular there is no evidence to support a finding that the first three defendants intend to dispose of or dissipate assets so that satisfaction of the decree will be frustrated.

Secondly, counsel argues, the plaintiff is an unsecured creditor and by means of this order seeks to become a secured creditor. He seeks to interfere with and adversely affect the rights of the secured creditors and to leapfrog over any other unsecured creditors. The plaintiff argues that he would not become a secured creditor and would not be in a position to prevent the secured creditors from exercising their rights or taking their proper prior positions. The form of order sought specifically excepts a sale by the Bank in the exercise of its statutory powers of sale. The plaintiff contends that all the

Government is endeavouring to do is to ensure that the Resort is not sold without prior consultation with the plaintiff so that he can determine what other avenues of execution he can explore before the Resort is disposed of by the first three defendants. Be that as it may, the plaintiff does accept that the order sought would adversely affect the Bank and cause it some inconvenience should there be a desire to sell the Resort. Furthermore the fact that an inhibition is recorded on the Land Register may deter potential purchasers of the Resort. Counsel for the Bank emphasized the adverse effects an inhibition would have on the Bank and the other creditors and urged me to regard those effects as a compelling reason not to exercise my discretion in the plaintiff's favour.

Under the Registered Land Law restraints on the disposition of land may be imposed in three ways. By an inhibition placed on the Register by order of the Court. By a caution placed on the Register by a party who has any claim or entitlement set out in section 127 of the Law. By a restriction placed on the Register by the Registrar of Lands in the circumstances set out in section 132 of the Law. Counsel for the Bank argues that as neither a caution nor a restriction can be placed on the Register by a person who merely holds a judgment against the registered proprietor of land, the court ought not easily to exercise its jurisdiction to place an inhibition on disposition of land at the instance of a judgment creditor.

Counsel's analogy with an injunction is an attractive one and in normal circumstances I would be inclined to follow it. However, I do not consider it would be wise or proper to lay down too rigid a set of limits on the exercise of the Court's jurisdiction under section 124. Each application must be dealt with on its merits and circumstances may arise where the considerations for the grant of an injunction need not be slavishly followed.

I accept that a judgment creditor ought not, as a matter of course, to be entitled to inhibit a judgment debtor who owns real

property from disposing of that property. The jurisdiction under section 124 of the Law ought to be jealously and carefully exercised. In this case the judgment debt has been outstanding for some fifteen months and nothing has been done to reduce it. The judgment was obtained in respect of taxes already levied on hotel patrons but not paid over to the Government. That in itself gives rise to a fear (but nothing more) that if it were in their interests the first three defendants would not be above dissipating assets for their own purposes. I am told the only asset in Cayman of the first three defendants is the Resort. Other remedies of execution could have an adverse effect on the tourist industry in these Islands. This consideration of it being in the public interest to take what is the remedy with the least public impact makes this an unusual case. If the plaintiff is being unreasonable in refusing permission to sell the Resort the defendants have a right, pursuant to section 126 (d) of the Law, to return to court to have the inhibition cancelled.

In all the circumstances I consider this to be a proper case to exercise my discretion in favour of the plaintiff. I make an order inhibiting the registration of the sale, except a sale by the Bank of Nova Scotia in exercise of its statutory powers of sale, without the prior written consent of the Attorney General, of the land registered as Block 13B, parcels 124 and 197, West Bay Beach South, until such time as that part of the judgment awarded to the Attorney General against the first, second and third defendants, jointly with Treasure Island Resorts Ltd (USA) in the sum of \$586,725.97 together with interest and costs, has been satisfied.

D. Schofield

Dated this 8<sup>TH</sup> JULY 1991