

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV NO. 2010 -02290

**IN THE MATTER OF THE SECURITIES INDUSTRY
ACT, CHAP. 83:02 OF THE
LAWS OF TRINIDAD AND TOBAGO**

AND

**IN THE MATTER OF SECTIONS 53(1), 64(2), (65) 1, 69, 82(b),
140 (2) 144 AND 145 OF THE SECURITIES ACT, CHAP. 83:02**

BETWEEN

TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION

Claimant/Applicant

AND

LAWRENCE COLE

First Defendant

ALPHA SAVINGS AND TRUST LIMITED

Second Defendant

FLAGSHIP FINANCIAL INVESTMENTS CO-OPERATIVE SOCIETY

Third Defendant

SAFE HOLDINGS AND TRUST LIMITED

Fourth Defendant

CHRISTIAN CREDIT UNION CO-OPERATIVE SOCIETY LIMITED

Fifth Defendant

AND

**IN THE MATTER OF THE APPLICATION OF LYNETTE MAHARAJ
CLAIMANT/EXECUTION CREDITOR IN CLAIM NO. CV2010-00477**

**BETWEEN LYNETTE MAHARAJ AND SAFE HOLDINGS AND TRUST
LIMITED, LAWRENCE COLE, NADRAKA COLE, MICHAEL INDAR
PERSAD AND ALPHA SAVINGS AND TRUST LIMITED**
Applicant

AND

**ANGUS P. YOUNG AND ALLAN M. CLAYTON, RECEIVERS
APPOINTED OVER THE PROPERTY OF THE DEFENDANTS
PURSUANT TO THE ORDER OF THE HONOURABLE MADAM
JUSTICE JUDITH JONES MADE ON THE 9TH DAY OF
DECEMBER, 2011.**

Receivers

BEFORE THE HONOURABLE MADAM JUSTICE JONES

Appearances:

**Mr. R. L. Maharaj S.C., and Mr. K. Walesby instructed by Ms. K. Khan for the
Applicant.**

Mr. C. Kangaloo instructed by Ms. M. Regrello for the Claimant.

Mr. S. Singh instructed by Ms. T. Rojas for the Receivers.

RULING

1. The Applicant is the beneficiary of a judgement against the Defendants for a sum amounting to approximately \$3 million TT obtained on the 28th April 2010. This judgement was duly registered on the 29th April 2010. On the 11th May 2010 an application was filed by the Defendants to set aside the judgement. This application was determined in the Applicant's favour on the 30th June 2010. Thereafter on 16th September 2010 the Applicant commenced enforcement proceedings against the First Defendant pursuant to the Remedies of Creditors Act Chapter 8:09 seeking an order for the sale of the First Defendant's interests in several parcels of land.

2. On the 8th June 2010 the Claimant commenced this action pursuant to the Securities Industry Act Chap. 83:02 (“the Act”). On 20th April 2012 an order was made in these proceedings appointing a receiver over the property of the Defendants. The Applicant, as she is required to do, now seeks permission of the court to proceed with her application to enforce the judgement obtained by her. These proceedings are now stayed pending the determination of this application.

3. The Receivers¹ have taken no active part in the instant application. Submissions have however been made by both the Applicant in support of and the Claimant in opposition to the application. The Applicant submits that the Claimant has no locus standi in this application and in the circumstances the objections made by it ought not to be considered.

4. In this regard the Claimant's involvement in these proceedings is worth noting. The Claimant is a body corporate established by the Act whose functions include the regulation of security companies and investment advisors and controlling and supervising their activities with a view to maintaining proper standards of conduct and professionalism in the securities business. Included in its powers is the ability to monitor the solvency of registrants under the Act and to take measures to protect the interests of customers where such solvency is in doubt.² Pursuant to its role and duty under the Act the Claimant commenced these proceedings and in accordance with section 145 obtained the order for the appointment of a receiver.

¹ Jointly appointed on the 9th December 2011.

² Section 6 of the Securities Industry Act Chap 83:02.

5. In my opinion therefore the Claimant cannot be said to be a busybody but rather has a statutory function to ensure that all the Defendant's creditors are protected as far as the law will allow. In the circumstances I am satisfied that in the application before me the Claimant has a sufficient interest to assist me in its determination. In these circumstances I am of the view that with respect to this application the Claimant operates as a friend to the court and I am grateful for the assistance rendered. In the circumstances I intend to consider their submissions.

6. The questions for my determination are: (i) whether the registration of the judgement in her favour and the commencement of enforcement proceedings prior to the appointment of a receiver over the property of the First Defendant gives the Applicant any priority over the Receivers with respect to those assets; and (ii) ought the court to exercise its discretion to allow the Applicant to continue the enforcement proceedings over property of the First Defendant now in the hands of the Receivers. In this regard it is clear that the assets of the Defendants will not meet all their liabilities. The effect of an order in favour of the Applicant is that property which would otherwise have been available for distribution to the Defendant's creditors will no longer be available for such distribution. The Applicant will therefore have obtained a priority over the Defendant's other creditors the majority of whom, like the Applicant, were investors in the Defendant companies.

7. The Claimant submits that the existence of the judgement does not afford the Applicant any priority over the interests of the Receivers because the Applicant is not a secured creditor. Section 145(4) of the Securities Industry Act provides that sections 289 to 302 of the Companies Act Chap 81:01 shall apply to receivers appointed pursuant to the Act. According to the

submission section 290 of the Companies Act provides that priority only be given to secured creditors. A consideration of these sections, including section 290³, reveals that the sections specifically refer to receivers of companies only. It has not been suggested that I ought to put any other meaning other than the literal meaning of the words to the relevant sections. In any event it would seem to me that had the framers of the Act meant to include receivers appointed with respect to the property of individuals they could easily have said so.

8. I am satisfied that the Applicant's interest as a creditor with a registered judgement takes priority over the interests of the Receivers over the assets of the First Defendant for the following reasons:

1. it is first in time;
2. While section 245 of the Act specifically applies sections 289 to 302 of the Companies Act applies to receivers appointed under the section, section 290 of the Companies Act expressly states that it applies to the receivers of any property of a company. It does not purport to apply to persons appointed receivers with respect to the property of individuals. The application before me is with respect to the property of the First Defendant and not the Defendant companies. The issue of whether the Applicant is a secured creditor therefore does not arise;
3. In any event, I am satisfied that, unlike the English position, in this

³ Section 290 provides: "A receiver of any property of a company may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property, and realize the security interest of those on behalf of whom he is appointed; but, except to the extent permitted by the Court, he may not carry on the business of the company."

jurisdiction the mere entry of the judgement and its registration in accordance with the provisions of the Remedies of Creditors Act creates a valid charge on the lands of the judgement debtor. To adopt the words of Lord Hoffmann in **Trinidad Home Developers Limited (in voluntary liquidation) v IMH Investments Ltd**⁴ “in the particular context of the Remedies of Creditors Act the entry and registration of judgement, not only creates a security over the land but also counts as part of the process of execution.”

9. In the circumstances I am satisfied that the registration of the judgement and the commencement of the enforcement proceedings gives the Applicant priority over the interests of the Receivers in the lands of the First Defendant.

10. In the circumstances the only question for my determination now is whether I ought to exercise my discretion in favour of the Applicant continuing the enforcement proceedings. In this regard it is clear that the exercise of my discretion is independent of my determination of whether the Applicant is a secured creditor or not⁵.

11. The Claimant submits that of relevance is the fact that (i) the Receivers were appointed upon the application of the Claimant whose responsibility it was to protect the investing public; (ii) the judgement obtained by the Applicant is based on an investment which has been cancelled or rescinded and declared to be illegal, null and void by virtue of the order of this court; and (iii)

⁴ [2003] UKPC85, paragraph 39

⁵ Re Aro Ltd [1980] 1 All ER 1067

in granting the reliefs sought under the application the court would be in effect allowing the Applicant to jump the line in terms of obtaining a benefit over other similar investors.

12. In so far as (ii) above is concerned while it is true that in the course of these proceedings this court made a declaration as to the illegality of the investments such a declaration was made in the circumstances of (a) it being necessary for the protection of the public; and (b) based on the failure of the Defendants to comply with certain statutory provisions designed to protect the investing public and not as a result of any missteps on the part of investors. Further and perhaps more importantly such a declaration was made after judgement had already been obtained by the Applicant for the return of the money invested by her. This judgement is a valid judgement and still stands.

13. With respect to (iii) above while this is clearly the effect of allowing the Applicant to continue with the enforcement proceedings the reality of the situation is that the Applicant is not exactly like the other investors in that, unlike the other investors, she accessed the remedies available to her in law, obtained a judgement in her favour and sought to enforce such judgement prior to the appointment of the Receivers herein.

14. In this regard allow me to digress a little. There is evidence before me of other judgements obtained against the Defendants what, in my opinion, distinguishes the Applicant from these other judgement creditors however is not only the fact that she has made this application but the fact that as far as I am aware the Applicant is the only judgement creditor who commenced enforcement proceedings prior to the appointment of a receiver.

15. So what is a court to do in the circumstances? The cases suggest that the requirement to obtain leave in circumstances such as these gives the court the ‘freedom to do what is right and fair in all the circumstances’.⁶ The Claimant submits that the court’s discretion is subject to the limitation that the court is bound to support its authority and to support its officers acting under that authority. While I have no doubt the validity of this statement extracted by the Claimant from the case of *Russell v East Anglia Railway Company and others*⁷ I am satisfied that with respect to the facts before me this statement has been taken out of context.

16. It cannot be disputed that the assets of the Defendants while sufficient to satisfy the Applicant’s judgement will not be sufficient to meet all their other liabilities. It is equally clear that this will be the position even if the Applicant’s enforcement proceedings are not allowed to be pursued. These liabilities include the cost of the receivership which given the state of the Defendant companies could be substantial. The effect of an order for sale in favour of the Applicant therefore means that there will be even less money in the pot to satisfy the other duped investors.

17. The real question therefore is whether the Applicant is to be allowed to steal a march on the other investors. It seems to me that at the end of the day the fact that the Applicant not only obtained and registered a judgement against the Defendants long before the commencement of these proceedings by the Claimant but also commenced enforcement proceedings some seven months prior to the appointment of a receiver tips the scales in favour of allowing the Applicant to proceed with the enforcement proceedings against the First Defendant.

⁶ *Ibid* at page 1076 a-b

⁷ (1850) 3 Macnaghten & Gordon 104, 42 ER 201.

18. It seems to me that by instituting and successfully prosecuting an action against the Defendants and pursuing the remedies available to her for the enforcement of her rights the Applicant has taken herself out of the pool of other investors hoodwinked by the Defendants and ought to be entitled to the benefit of her timely attempts to recoup her money. To do otherwise would be to close my eyes to the steps taken by the Applicant to pursue her rights and subject the Applicant to the cost of the receivership in circumstances where she has taken all reasonable steps to recoup her money prior to the appointment of a receiver.

19. Accordingly the Applicant is granted leave to continue the enforcement proceedings started by her.

Dated this 21st day of February, 2013.

Judith Jones
Judge