

**REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2011-03925

**IN THE MATTER OF THE  
COMPANIES ACT, CHAPTER 81:01**

AND

**IN THE MATTER OF A PETITION FOR THE WINDING  
UP OF GREEN VALLEY HOUSING DEVELOPMENT  
COMPANY LIMITED**

**JAN VAN LOO**  
(via his duly appointed Power of Attorney Khadijah Khan)

Petitioner

AND

**GREEN VALLEY HOUSING DEVELOPMENT  
COMPANY LIMITED**

Respondent

**BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES**

**APPEARANCES:**

**Mr. K. Walesby for the Petitioner.**

**Mr. A. Khan for the Respondent.**

**Mr. P. Deonarine instructed by Mr. R. Jagai for the Applicant.**

**Ms. Z. Haynes, Ms. N. A. Jones and Ms. A. Ramsook for the Official Receiver.**

**Reasons**

By an application dated the 19<sup>th</sup> December 2012 Intercommercial Bank Ltd., (“the Bank”) sought

the leave of the Court to dispose of property and/or to continue high court action CV 2012 - 01482 (“the existing action”) against Green Valley Housing Development Company Ltd (“the Company”). On the 22<sup>nd</sup> January 2013 I made an order granting the Bank permission to pursue its statutory power of sale pursuant to section 42 of the Conveyancing and Law of Property Act Chap. 56:01 and/or to continue the existing action against the Company.

It is not in dispute that:

- (i) The Appellant obtained a judgment against the Company on the 29<sup>th</sup> October 2008;
- (ii) On the 27<sup>th</sup> September 2012 an order of Winding up was made by me with respect to the Company on the petition of the Appellant;
- (iii) At all material times prior to the abovementioned judgment there were in existence two mortgages on lands owned by the Company. The first dated 8<sup>th</sup> July 2004 in favour of Colonial Life Insurance Company Ltd and the second dated 16<sup>th</sup> day of May 2007 in favour of the Bank.
- (iv) By a high court action, CV 2008-01011, Colonial Life Company Ltd on the 11<sup>th</sup> November 2008 obtained a judgment against the Company for the possession of the land the subject matter of both mortgages and costs;
- (v) By a high court action, CV2010-01928, on the 15<sup>th</sup> day of November 2010 the Bank obtained judgment against the Company for the sum of \$9,823,484.30 and interest at a daily rate of \$5,269.00.
- (vi) By a deed of Assignment dated the 27<sup>th</sup> May 2011 the benefit of the first mortgage was assigned to the Bank.

(vii) The Company has to date failed to satisfy the amounts outstanding on the said judgments and/or mortgages.

(viii) By the existing action the Bank sought, and on the 18<sup>th</sup> June 2012 obtained, an order requiring the Company to pay to the Bank sums in excess of \$16,000,000.00 with the Bank being at liberty to apply for an order of foreclosure in the event of a default in payment by the Company.

On the undisputed facts therefore both mortgages preceded the judgment obtained by the Appellant against the Company.

At the first hearing of this application on the 16<sup>th</sup> January 2013 the Appellant was represented by Attorney at law. In response to the Court's enquiry as to his position on the application Attorney at Law indicated that he was not objecting to the application but merely wished to raise the issue of whether there should be in order to obtain the order evidence before the court with respect to any searches done on the property and whether there are any creditors or any persons who may rank in priority. On the second hearing, the 22<sup>nd</sup> January 2013, Attorney at Law for the Appellant indicated that his position was the same as before and that he could not object to the application.

After hearing the submissions of the Bank and those parties who objected or had concerns with respect to the application I came to the conclusion that the authorities raised by the Company had no relevance to the particular circumstances before me. At the end of the day I was satisfied that the principle of law espoused in the case of **In re David Lloyd & Co v David Lloyd & Co (1877) 6 Ch. D 339** was applicable. I was satisfied that no special circumstances had been shown

which would persuade me to restrain the Bank from pursuing its remedies under the mortgages nor could it be shown that in the winding up the Bank would have all the remedies available to it under the mortgages. In the circumstances I granted the Bank the order sought.

Dated this 22<sup>nd</sup> day of January, 2013.

**Judith Jones**  
**Judge**