REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2009- 04381

Between

GUARDIAN ASSETS MANAGEMENT LIMITED

Claimant/Judgment Creditor

And

DAVID DESLAURIERS

LEONORA DESLAURIERS

Defendants/Judgment Debtors

Before the Honourable Mr. Justice R. Rahim

Appearances;

Mr. C. Sieuchand instructed by Ms. S. Indarsingh (M.G. Daly and Partners) for the Claimant/Judgment Creditor

Mr. I. Benjamin instructed by Ms. L. Assee (Al-Rawi and Co.) for the Defendants/Judgment debtors

REASONS ON ENFORCEMENT PROCEEDINGS APPLICATION

1. This is an application by the Second Defendant/Judgment Debtor Leonora Deslaurier, (JD) for several orders in respect of the sale of property known as the Victoria property. This claim has a very long and winding nine-year history, having gone all the way to the Privy Council. Suffice it to say that the parties are now at the enforcement stage. The Judgment creditor has quite succinctly set out the brief history of the proceedings in its submission and it would be helpful to the reader to repeat it here almost verbatim in order to provide context.

2. By a claim form and statement of case filed on November 20th 2009, the Claimant/ Judgment Creditor (JC) made claims for the recovery of monies due and owing by the Defendants under two promissory notes pursuant to which the JC lent to the Defendants the sum of $18,600,000.00. The Court gave judgment for the JC by that order dated October 25th 2011 ("the Judgment Order").

3. On August 30th 2013, the JC sought an order for the sale pursuant to the Remedies of Creditors Act Chap. 8:09 of Mrs. Deslauriers' alleged beneficial interest in that property which forms the subject of the Application ('the Victoria property'). The Order for Sale made the 27th October 2014 was the subject of appeals which were ultimately decided in favour of the JC by the Judicial Committee of the Privy Council on November 9th 2017.

4. By a series of correspondence exchanged between the parties' Attorneys-at-Law and ending with that letter from the JD's Attorneys-at-Law dated January 30th 2018 and exhibited to the Affidavit of Lesley-Ann Assee dated and filed on March 21st 2018 ("the 1st Assee Affidavit"), it was agreed that the JD would vacate the property by February 2nd 2018.

5. On February 1st 2018, the JD applied to this Court for an extension of time for compliance with the Order for Sale, which application for an extension was refused by this Court by its order dated February 19th 2018. The JC then caused to be filed a request for the issue of a writ of possession in respect of the Victoria property on February 16th 2018.

On March 14th 2018, a Marshall of the Supreme Court affixed to the Victoria property a notice declaring that the property was under Court Order dated November 30th 2017 and any breach would result in Contempt of Court proceeding.

6. On March 20th 2018, the Marshall of the Supreme Court commenced the process of taking possession of the Victoria Square Property by entering same and changing the locks thereto.

The application for relief

7. By the application, the JD sought an interim injunction restraining GAM, its bailiff servants and/or agents and/or the Court Marshall and/or his deputies and/or assistants servants and/or agents from converting, seizing and/or disposing of Mrs. Deslauriers' furniture, fittings and fixtures, appliances and personal belongings, personal property, heirlooms, and private and legal papers and/or those of her family members and/or any private property currently situated at the Victoria Square premises.

8. On March 21st 2018, an interim injunction was granted by this Court in terms of the order sought by the JD and further ordering GAM to permit Mrs. Deslauriers and/or her servants and/or agents to immediately, or as a time mutually agreed by the parties but in any event before 3:00p.m. on March 23rd 2018 enter the said property and remove and take custody of the items sought to be protected.

9. On March 22nd 2018, the JD caused to be filed a supplemental affidavit of Lesley-Ann Assee ("the Supplemental Assee Affidavit") wherein it was deposed that Mrs. Deslauriers' servant and/or agent and son, Daniel Deslauriers, was not being permitted to remove the following items ("the Subject Items"), described therein as being "large personal items" from the Victoria Square Property:
   a. 1 F.G. Wilson Generator;
   b. 4 Automatic Generator Transfer Switches;
   c. 2 turbine-style water pumps with controls;

d. 4 AC computer controllers;

e. 1 UPS Backup Power Supply; and

f. 2 50-gallon water heaters.

10. On March 23rd 2018, the JC caused to be filed three affidavits in response to the Assee Affidavits, that is to say an affidavit of Sashi Indarsingh, an affidavit of Anthony Blackman and an Affidavit of Jeremy Phillip. By these Affidavits, the JC set out the circumstances leading up to and surrounding the issue and execution of the writ of possession and claimed that the Subject Items were fixtures attaching to the Victoria Square Property and not merely "large personal items".

11. The JD caused to be filed two Affidavits in Reply, one of Lesley-Ann Assee ("the Reply Assee Affidavit") and the other of Daniel Deslauriers ("the Reply Deslauriers Affidavit"). By these Affidavits, the deponents restated their version of events in relation of the execution of the writ of possession, clarified that the controllers are "plug-in interfaces, set out grounds for describing the Subject Items as "large personnel items" and sought to include in the Subject Items an unspecified number of exotic pond fish ("the Fish").

12. Oral submissions were heard in relation to the items sought to be removed and submissions in writing were ordered to be filed in relation to the other issues. Submissions were filed on behalf of the JD on April 17th 2018 wherein learned Counsel for the JD submitted upon two issues, namely:

a. Whether or not there was proper service of the Writ of Possession; and

b. Whether or not the Subject Items and/or the Fish are items which are to be the subject of possession under the Order for Sale.

13. Further, it can be gleaned from the JD's submissions at paras. 4 to 8, 12 and 13, that she raised as a third issue whether the JC ought to have applied to the Court for permission to issue the Writ of Possession. Submissions in reply from the JC were also filed.

Permission to issue the writ of possession

14. The JD submits that the claim in this case is not one that falls within one of the exceptions at Part **47.8(2)** therefore a writ of possession ought not to issue unless permission is granted. So that in that circumstance, the writ issued without permission is invalid. In that regard the JD relies on the decision of this court in ***Baby Sookram v Emmanuel Ramsahai*** CV2012-00877. Further, the JD has not specified in its submissions the specific sub part or sub parts of 47.8 (2) upon which she relies in support of her argument so that the court will consider those which appear to be relevant namely 47.8(2)(a) and (c).

15. The starting point must be the immediate proceedings that gave rise to the court's order. Unlike that of possession of the Hevron Heights Towers which themselves formed the subject of the claim for a debt owing on a promissory note, the immediate proceedings which resulted in the order for sale of the Victoria property in favour of the Judgement Debtor (JD) was that of an application for sale of the property under the Remedies of Creditors Act Chap 8:09, so that the proceedings were enforcement proceedings. Further, the application for sale of the property was brought on a judgment given in proceedings brought for a debt owing on a promissory note. Strictly speaking therefore, the original claim was not one brought as a PART 69 CPR mortgage claim. The order made by the court in that regard on the 27th October 2014 was for *both the delivery up of possession and the sale* by way of public auction. Paragraph 3 of the order reads as follows;

"3. The order for possession made herein shall be subject to any entitlement of the tenant Columbus Communications (if any exists) to occupation of that portion of the property which it presently occupies by virtue of and in keeping with the terms of any valid, subsisting tenancy (if any) which was created prior to the date of judgment."

16. **Part 47.8 CPR** reads;

Writ of possession not to issue without leave

47.8 (1) The general rule is that a writ of possession may not issue without the permission of the court.

(2) The general rule does not apply where the order

for possession relates to—

(a) mortgage claims (Part 69);
(b) summary proceedings for possession (Part 68);
(c) proceedings for possession of residential property; or
(d) proceedings where the tenancy is subject to statutory restrictions.

(3) Permission may not be given unless it is shown that every person in actual possession of the land has received such notice of the proceedings as the court considers sufficient to enable him to apply to the court for any relief to which he may be entitled.

17. This court does not agree with the submissions of the JD, and in particular it does not agree that the learning in ***Baby Sookram*** applies to this case for the following reasons.

18. Firstly, Part 47.8 CPR must be taken as a whole and viewed in the context of the purpose of the restriction on the issuance of the writ without first obtaining leave. It is clear from rule that the object is to ensure that the rights of certain third parties who occupy the premises are not compromised by their removal without giving them the opportunity to either be heard or be given sufficient time to relocate. The rule specifically sets out that where the claim is a mortgage claim, under Part 69 CPR, no permission is required. It is clear in this case that the claim was not one pursuant to **Part 69 CPR**. Further, even if the claim could have been considered as a mortgage claim, it is clear that **Part 47.8 (2)(a)** applies to the property which forms the subject of the mortgage and the order for possession. That is not the case here as the Victoria property was ordered to be sold pursuant to a separate application in an effort to satisfy a judgment debt.

19. Secondly it is clear that **Part 47.8 (2)(c)** exempts the JD from having to apply for permission in a case where the proceedings are for possession of residential property and there is good reason for this. In such a case there is no third party whose commercial interest (whether contractual or otherwise) may be affected by the order for possession. In such a case, permission of the court becomes an imperative and the court will only give such permission if it satisfied that every person in actual possession of the land has received such notice of the proceedings as the court considers sufficient to enable him to apply to the court for any relief to which he may be entitled.

20. But in the present case, the order of the court made on the application for the sale of the interest of the JD in the Victoria property considered and treated with the issue of the commercial interest of Columbus Communications who (based on the evidence before the court at that time) occupied three floors pursuant to a lease. It meant therefore that the court was aware at that time that the property was not occupied solely as residential property, and the JD and her family were resident on the fourth floor and maintained possession and control of the basement. This means that the property was a mixed use residential/commercial one in 2014 when the court made the order for sale.

21. The evidence further demonstrates (see paragraphs 7 and 8 of the affidavit of the Leslie - Ann Assee of the 21st March 2018) that the part residential/part commercial character of the property changed when Columbus Communications, the sole commercial tenant vacated the property at the end of September 2017, before the appeals were heard and determined by Their Lordships of the Privy Council. The evidence demonstrates further that JD and her family remained in occupation of the property and used same for their residence. Further, it is the evidence of Assee that the property has been occupied by the JD a residential property for four generations since the year 1902, it having been rebuilt after destruction by fire. It follows therefore that by the date the writ had been applied for and obtained, namely the 16th February 2018, the property had been solely in use as residential property and the JD had been acutely aware of all the orders of the various courts in respect thereof over the years.

22. In making its determination the court is of the view that the essential purpose of Part 47.8 CPR being that of the avoidance of untoward consequences to the commercial interests of third parties without either giving them an opportunity to be heard if they so wish or time to vacate not only their occupation but also to remove items they may have installed to facilitate their commercial enterprise or to apply to the court for relief (there is also in the court's view one other purpose which is dealt with later on). In the circumstances of this case such an occurrence was not a possibility as there is no evidence of any entity having the use of same for a commercial purpose. The order of the court when made in 2014 was made for possession of mixed used premises however the premises became solely that of one for residential use at the time the application for the writ was made. Despite this, it is clear that the vacant portions which comprise three floors, the majority of the building, remain outfitted for commercial use and so the use of most of the building remained commercial in nature.

23. As a matter of the strict interpretation of Part 47.8 therefore, the property being at the least partly commercial, the permission of the court was required for the writ of possession to issue and the court so finds.

24. In her Reply submissions filed on the 7th May 2018, the JD makes the point that section 36 of the Remedies of Creditors Act Chap 8:09 provides a process of recovery of property in respect of which an order for possession has been made but there has been no compliance and the JD refuses to surrender possession. The section reads: *"If any party to the summons for sale, or any one claiming through or under the party by any act or assurance happening or executed after the registration of the judgment, or, in the case of a sale ordered in an action or other proceeding under section 62, after the date of the judgment or order, retains and refuses to deliver possession of the property sold or any part thereof, the purchaser may issue a summons to the party so retaining possession to show cause why an order to deliver up possession should not be made against the party in favour of the purchaser, and the summons shall be made returnable not less than six days from the date of the issuing thereof, and on the hearing the Judge may, upon proof that the purchaser is entitled to immediate possession, order the party served with the summons to deliver up immediate possession of the lands so sold, and may make such order in respect to the costs of the summons as may be just; and any person failing to obey the order forthwith on being served with the same shall be deemed guilty of contempt of Court, and an order of possession may be issued directing the*

Marshal, with such assistance as in such writ shall be directed, to enter upon the lands and deliver possession thereof to the purchaser, and any person obstructing or resisting the Marshal or any assistant of the Marshal in the execution of the order shall be guilty of contempt of Court."

25. The submission appears to be that the remedy of contempt then becomes available, but it is only the purchaser who may make such an application. With respect, the court is of the view that this section does not assist the court in determination of the issue of whether permission was required to issue the writ of possession.

Does the failure to apply for permission to issue the writ of possession vitiate the possession of the JC

26. An application for permission to issue the writ may also provide the landlord of commercial premises (in our case the JD), the opportunity to apply for relief in relation to machinery or items installed by the landlord to facilitate her tenant or tenants. The deprivation of this opportunity may be in given circumstances highly prejudicial to the interests of the JD. In such a case, the failure of the JC to apply to the court for permission will almost as a matter of course vitiate dispossession by the JC and ought to be set aside. But each case turns on its own facts and the particular circumstances must be scrutinized.

27. That being said, in this particular case, the history and circumstances demonstrate that the failure of the JC to apply for permission to issue the writ does not invalidate or render its possession unlawful having regard to the discussion set out above in the context of no prejudice having occurred to any party with a commercial interest at the time of the issue of the writ. Further, in relation to the opportunity to the JD to apply for relief, in this case the JD has not been deprived of that opportunity as she has twice come before this court in relation to matters of her entitlement on enforcement with specific reference to possession of items which belong to her and which are contained within the premises.

28. In such circumstances, the court must be slow to abide a stricture (or step) which contextually holds no significance and causes no prejudice to the JD simply for the sake

that it is a step in the process. The court therefore finds that although in this case the JC was required to apply for leave to issue a writ of possession its failure so to do did not vitiate the writ of possession granted to it and under which it assumed possession.

29. The court is also of the view therefore that having regard to its findings above, the dicta of His Lordship in ***Blackman v Alexander*** HCA 218 of 1985 is not applicable to this case. Further, the discussion by this court in ***Baby Sookram*** centered on the interpretation of an order which declared that a party was entitled to possession and the subsequent order for leave to issue a writ of possession. In that case the issue was whether an application for leave to issue a writ of possession could be founded on such an order in the circumstances where the court's original order did not specify delivery of possession but was merely a declaration. That case therefore is equally of no assistance to the facts of this case.

Service of the writ of possession

30. The JD submits that there was no service of the writ of possession and further that notice of the issuance of the writ was not provided to the occupants of the property prior to execution. That, the JC purposely withheld notice so as to deprive the JD of the opportunity to apply for relief.

31. This submission can be determined in short measure. The requirement to provide notice set out in **Part 47.8 (3)** relates to the case in which permission to issue the writ is being applied for thereby giving the opportunity to the JD to be heard. No statutory authority has been provided to the court to demonstrate that notice of the writ once issued must be served during some period prior to execution. Further, the CPR makes no such provision. By virtue of **Part 47.1**, a Writ of possession is defined as one type of writs of execution, therefore in the absence of rules to the contrary, execution is to occur in the same manner. In any event, the unchallenged evidence appears to be that the Marshall and the Bailiff visited the property on the 14th March some six days prior to execution where they met and began to inform the JD that they were returning on the 20th to take possession but she turned her back on them and walked away.

32. Additionally, the non-service of the writ on a date prior to execution does not deprive the JD from approaching the court for relief and indeed has not done so as this very application is the first of two which the JD has brought seeking relief subsequent to execution.

33. Additionally, no issue has been taken with the process of execution of the writ save and except for the matters dealt with hereinafter and the matters which form the subject of a separate application before this court in respect of which directions have been given for the filing of affidavits and cross examination. That application relates to papers which the JD alleges went missing. That application has since been withdrawn.

The items

The law-fixtures or chattels

34. The law is clear that items not attached to the land other than by their own weight are not considered part of the land unless the circumstances demonstrate that they were intended to be part of the land. (See the dicta of Lord Blackburn in ***Holland v Hodgson*** (1872) L.R. 7 C.P. 328). In this case attachment to the building, as a matter of common sense would be capable of bearing the same meaning attachment to the land in law as the building is itself attached to the land and the order for possession and sale is made and is applicable to both the land and the building. The issue therefore becomes whether the specific items set out above are affixed or attached to the building and run with it. This of course is a question of fact depending on all of the circumstances set out in the evidence before the court.

35. To so decide the nature and character of the items must be considered. This will include considerations as to the mode of annexation to the building, whether it can be easily removed without in injury or damage to the item or the fabric of the building and the object and purpose of annexation. The latter would involve a consideration of whether the item was for permanent and substantial improvement of the dwelling to profit the dwelling or

merely for a temporary purpose or enjoyment as a chattel. (See the dicta of Baron Parke in ***Hellawell v Eastwood*** (1851) 6 Exch 295 at page 312).

36. The nature of this exercise has changed substantially over the decades since the foregoing authorities were decided. In fact there has been a revolution in technology the likes of which may not have been thought possible two centuries ago. The task is therefore not a simple one having regard to the nature of the items of dispute in this case.

37. Further, the court must first resolve the issue as to who bears the burden of proof in the circumstances.

The burden of proof

38. Both parties accept the dicta set out in ***Hollan v Hodgson*** supra at page 328, the full text of which bears repeating;

'There is no doubt that the general maxim of the law is, that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention, viz., the degree of annexation and the object of the annexation. When the article in question is no further attached to the land, then by its own weight it is generally to be considered a mere chattel; see Wiltshire -v- Cottrell (1 EandB 674; 22LJ (QB) 177) and the cases there cited. But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land: see D'Eyncourt -v- Gregory. (Law Rep 3 Eq 382) Thus blocks of stone placed on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels. On the other hand, an article may be very firmly fixed to the land, and yet the circumstances may be such as to shew that it was never intended to be part of the land, and then it does not become part of the land. The anchor of a large ship must be very firmly fixed in the ground in order to bear the strain of the cable, yet no one could suppose that it became

part of the land, even though it should chance that the shipowner was also the owner of the fee of the spot where the anchor was dropped. An anchor similarly fixed in the soil for the purpose of bearing the strain of the chain of a suspension bridge would be part of the land. Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to shew that they were intended to be part of the land, the onus of shewing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel. This last proposition seems to be in effect the basis of the judgment of the Court of Common Pleas delivered by Maule J., in Wilde -v- Waters. (16 CB 637; 24 LJ (CP) 193) This, however, only removes the difficulty one step, for it still remains a question in each case whether the circumstances are sufficient to satisfy the onus. In some cases, such as the anchor of the ship or the ordinary instance given of a carpet nailed to the floor of a room, the nature of the thing sufficiently shews it is only fastened as a chattel temporarily, and not affixed permanently as part of the land.'

39. It is pellucid from the dicta that the issue of with whom the burden lies is dependent on the nature of the attachment to the building as a preliminary matter. In that regard each item will have to be considered separately as the burden may shift to either party depending on the circumstances.

<u>The generator and automatic transfer switches</u>

40. The evidence of David Deslauriers studied for a Bachelor of Science degree in construction engineering with specialist training in Project Management at the University of West Florida. He deposed that he assisted his father, the First Defendant/Judgment Debtor (who has played no part in the proceedings after the trial) in the project management of the Victoria property in 2007. It is his testimony that the building consists of four floors and a basement which is larger in footprint than the rest of the building. He refers to three floors

as the commercial floors and states that the top floor is a penthouse residence which includes covered porches that extend beyond the envelope of the lower floors. The building is powered by T&TEC through lines and then to transformers located within the basement. The transformers are secured by T&TEC and the occupants have no access to same. Each floor is then powered by lines running from the basement. The building is only powered by the generator in the event of a power outage. The generator costs about $750,000.00 and was installed in the year 2007. The generator is not affixed to the floor but simply rests on its own weight. The removal of the generator will result in damage to the concrete lips of the doorway and the hinges of the doors will have to be removed in order so to do. He deposes that the building would not have to be rewired or re-inspected.

41. The witness for the JC Jeremy Phillip of Servus Limited is a facilities manager hired for the purpose of making an assessment of the items. He is a Facilities Management Professional and is accredited by the International Facilities Management Association (IFMA). He has some eight years of practical experience with smart buildings.

42. He visited the building on the 22nd March 2018 and observed the generator with 5 automatic transfer switches. It is his testimony that the main electrical cable that supplies electricity from T&TEC to the entire building is connected to the generator. From that point the main distribution panels provide power to the 5 ATS devices which allow power to be provided to each floor. He deposes that removal of the generator would cause damage to the electrical components of the building and disrupt power distribution as well as damage the floor and walls. Further, electrical panels will have to be replaced and re-wired with the result that the building will have to be rewired and re-inspected before an electricity supply can be restored.

43. In the court's view, the witness Phillip' evidence of whether the generator is bolted to the building is to be preferred as David testified that it was not so bolted but if it is then it can be removed. His evidence is equivocal and does not satisfy the court in relation to that issue as he himself appears unsure by his answer. The court therefore finds that the generator is affixed to the building. It follows that the burden lies with he who wishes to assert that the generator retained its character as a chattel and that this was the intention despite the fact

that it is affixed, namely the JD. In that regard the court notes the evidence of David some of which seems implausible.

44. Firstly, he admits that there will be damage to concrete lips and that doors will have to be removed. This in the court's view indicates the intention that the generator become a fixture of the building so that it is place in such a place and in such a manner that removal is an unlikely event.

45. Secondly, David asserts that there will be no disruption to the power supply but as a matter of common sense this could not be so as any disconnection of the generator it is reasonable to find will more likely than not cause a disruption in the power supply and result in the re-routing of power lines.

46. Thirdly David deposes that the switches are unnecessary. However, the evidence of Phillip shows that the direct T&TEC lines run to the generator which in turn distribute the electricity through the switches. In the court's view therefore the onus that lies on the JD has not been discharged. The generator would have begun its life as a chattel but was installed in such a manner and for such an important purpose that it has become a fixture in the building. Electricity is no longer a luxury, so that the generator is not for the purpose of a luxury or to enable the residents to enjoy the premises. In today's world it is an absolute imperative. The JD will therefore not be permitted to remove the generator and switches.

UPS backup power supply

47. David deposes that the UPS is not a standard feature of any commercial building. The UPS provides backup power to a limited array of outlets and is easily removable. Its removal will not impact the fire system or the CCTV system which are directly powered by the building's electrical system. Phillip testified that the UPS system is standard and provides uninterrupted power to approximately 25-40% of the building systems including to the fire alarm and CCTV system. Its removal would place those critical systems at risk. No photographs have been provided of the UPS system and neither is there any other evidence of its attachment besides the evidence of David that it is easily removable. The photos

provided do not appear to bear the marking of Mitsubishi (which is the brand set out in the Phillips affidavit. The photos which the JC represents to be those of the UPS Backup in fact appear to be the photos of the transfer switches and boxes for electricity distribution and carry the tag GE Zenith Controls.

48. The court therefore accepts the evidence of David and is not satisfied that the UPS backup system is so attached to the building other than by its own weight. The onus therefore lies with the JC to show that the intention was that the UPS Backup system was to become part of the building as a fixture. The court finds that this burden has not been discharged. The UPS appears merely to be a backup for certain systems which the occupiers would prefer not be without power in the event of an outage before the generator comes online. As a consequence it is noted that only 25% to 40% of the systems rely on this for the most. It is also clear that its removal would not place either CCTV or the fire alarm at risk as these items can be powered via regular power from source. The JD will be permitted to remove these systems on the basis that they are not fixtures which attach and form part of the building.

Two turbine water pumps

49. The evidence of Phillips is that the pumps pump water to facilitate the supply throughout the building both for the purpose of potable water and in the event of a fire. It is connected to a top mounted filtration system. The removal would require the re-installation of other water pumps to facilitate a water supply to the building. A photo of at least one of the pumps is attached. David accepts from the tenor of paragraph 21 of his affidavit that the pumps will have to be replaced.

50. It is pellucid to the court that the water pumps are affixed to the property in such a manner that it forms fixtures to the building. The onus therefore lay with the JD to satisfy the court that the intention was that the pumps remain chattels. This they have clearly failed to do.

Without the pumps there can be no water to all the floors of the building. It means that the pumps perform an integral function namely that of supplying water and in its absence there is no water supply certainly to anything higher than the ground floor one can reasonably conclude. It must therefore be the case that the pumps are fixtures. The JD will not be permitted to remove the pumps.

The Air Conditioning controllers

51. David deposes that the items are in fact LCD User interfaces and not A/C controllers. It is his evidence that there are only three left, the fourth having already been removed with no consequence whatsoever to the proper functioning of the A/C units themselves. The latter bit of evidence is unchallenged. Phillips says that the items are in fact controllers that control the on and off function of the A/C and if removed the A/C would be rendered inoperable. The court has seen the photograph of the item. It appears attached to the wall although there is a paucity of evidence in this regard. The onus therefore falls on the JD. In the court's view the JD has failed to discharge its burden of demonstrating that the intention was to keep the character of the interface as that of a chattel. Easily removable does not mean that there will not be damage done to the walls. Further, David has failed to explain the process by which the A/C in the penthouse continues to work despite the removal of the controller. On the face of it, it makes no sense unless he has left out material parts of his evidence as to whether a substitute has been used or the A/C works but must then be plugged in and lugged out to perform the on and off function. It was his duty to demonstrate to the court the precise manner in which the A/C would continue to provide service without the LCD interface but he has not so done. As a consequence the court finds that the LCD units are affixed to the building and are fixtures. The JD shall not be permitted to remove same.

The two 50-gallon water heaters

52. It is clear on the evidence that the water heaters provide the luxury of hot water for the penthouse. It is equally clear that as with every water heater of this size commonly used in

homes in this country, the heater sits on its own weight. It is not an item critical to any of the systems particularly the water system. It is therefore primarily a chattel and the burden lies on the JC to satisfy the court that it was the intention that it become a fixture. The JC has failed to so do. The court does not accept that the water heaters provide hot water throughout the entire building as deposed to by Phillips. In fact as a matter of common sense this is an alarming assertion and in the court's view is an untruth having regard to the size of the building of four floors. It is more likely than not that David is being truthful when he deposed at paragraph 23 that the heaters were installed for personal use in the penthouse. Further, he testified that the doorway is 36", the wider of the standard doors in common use in Trinidad and it is clear to the court that no destruction will occur if they are to be removed. The court therefore finds that they are chattels and the JD will be permitted to remove them.

Other matters

53. Finally, the court must treat with two issues raised obliquely in the application. Firstly, the application seeks an order in relation to fish tanks and fishes. The parties appear to have sorted out this issue. Secondly, David speaks of desks belonging to the previous tenant Columbus Communications to the tune of $350,000.00. However, no interpleader proceedings have been filed by Columbus so that that issue is of no moment to this court at this time.

54. In relation to the costs of the application, having regard to the outcome the JD will be awarded one third of its costs to be assessed in default of agreement.

55. Finally, the court has observed the rapid deterioration in the adversarial relationship between the parties to the point where acrimony appears to be the rule rather than the exception. The role of the advocate is not only to argue his client's case with all the verve he may muster with the ultimate goal being one of persuasion but the role of an advocate in modern times must also be that of attempting to bring a sense of stability, calm and rational thinking to the process despite the attitudes of the clients towards each other. The court trusts that these words will not fall on deaf ears.

Disposition

56. The court makes the following order;

a. The interim injunction granted on the 21st March 2018 is spent and is therefore discharged.
b. The Defendant/ Judgment Debtor shall be permitted to remove and carry away One 30 KVA Mitsubishi UPS Backup Power Supply and two 50-gallon water heaters (hereinafter referred to as "the chattels").
c. The chattels are to be removed using reasonable skill and care in their removal so as not to damage any other system.
d. The removal shall be performed by the Defendant/Judgment Debtor or by someone appointed by her and in the presence of a representative appointed by the Claimant/Judgment Creditor within ten days of the date of this order on a day to be agreed by both parties.
e. Should the Defendant/Judgment Debtor fail to agree a date or fail to remove and carry away the chattels by the date set out above, the Claimant/Judgment Creditor shall be at liberty to remove the chattels using reasonable care and skill and store same safely for collection by the Defendant/Judgment Debtor.

f. The Claimant/Judgment Creditor shall pay to the Defendant/Judgment Debtor one third of the costs of the application to be assessed by a Registrar in default of agreement.

Dated the 10th day of May 2018

Ricky Rahim
Judge