COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCivApp. No. 160 of 2023

B E T W E E N

AML FOODS LIMITED

Appellant

AND

CRAIG BUTLER
(Trading as C.F. Butler & Associates)

Respondent

BEFORE:	**The Honourable Sir Michael Barnett, P** **The Honourable Madame Justice Charles, JA** **The Honourable Mr. Justice Smith, JA**
APPEARANCES:	**Mr. Marco Turnquest, with Ms. Chizelle Cargill, Counsel for the Appellant** **Respondent appeared Pro se**
DATES:	**20 March 2024, 11 April 2024**

****

Civil Appeal - The Appointment of an Equitable Receiver - Exercise of Discretion

In 2021, the appellant ("AML") obtained a default judgment against the respondent ("Butler"). Butler has not sought to have the default judgment set aside and has not satisfied the same. At an examination, Butler advised that he was the beneficial owner of shares in a company; the company owned property valued at $1.29 million.

In 2022, AML applied to the Supreme Court for an order appointing a receiver over money Butler inherited under a will; the judge refused the application. AML appealed that refusal.

Held: Appeal allowed. An order is granted appointing Edmund Rahming as receiver. Unless submissions on costs are received in two weeks, Butler is ordered to pay the costs of this appeal, and in the court below, to be taxed if not agreed.

The appointment of an equitable receiver is discretionary. A judgment creditor has no legal right to the appointment of an equitable receiver. The discretion is wide but it cannot be exercised capriciously.

As it is the exercise of a discretion, an appellate court will only reverse the exercise of a discretion by a judge of the court below where it can be shown that the judge misunderstood the law or the evidence, took into account irrelevant matters, failed to take into account relevant matters or is plainly wrong.

The judge appears to have exercised his discretion to refuse to order the appointment of an equitable receiver on the basis that AML had obtained a Charging Order against the property. However, the charging order is not *against the property* but *against the shares* of the company that owns the property.

AML could not sell the property because the judgment did not operate as a charge over the property. The property was not owned by Butler as judgment debtor. AML has not agreed to accept the property "in satisfaction" of the debt and it is not obliged to accept it. The interest of justice requires that AML be empowered to use all means to have its debt satisfied.

Levermore v Levermore [1979] 1 W.L.R. 1277; mentioned
Maria Iglesias Rouco and ors AND Juan Sanchez Busnadiego and ors SCCivApp. Nos. 147 & 148 2021; applied

---

JUDGMENT

Judgment delivered by the Honourable Sir Michael Barnett, President:

1. This is an appeal by a judgment creditor, AML Foods Ltd ("AML"), against a judgment by Braithwaite J ("the judge"). The judge refused an application by AML for an order to appoint Edmund Rahming ("Rahming") as a receiver over the interest of a judgment debtor, Craig Butler ("Butler"), under the will of his father. The will is dated 28 July 2010.

2. On 21 June 2021, AML obtained a default judgment against Butler in the sum of $862,287.28, plus interest. The judgment also called for damages to be assessed but, to date, those damages have not yet been assessed. Butler has not sought to have the default judgment set aside and has not satisfied the same. At this appeal, he has acknowledged the obligation under the judgment.

3. On 10 May 2022, AML applied to the Supreme Court under Order 51 for an order appointing Rahming as a receiver.

4. Butler's father was clearly a man of substantial means. When the father died, his estate was said to be in excess of $12 million. In his will, he left his property to trustees. The following were material terms of his will:

> **"Clause 8**
>
> **My Trustees shall hold my residuary estate specified in Clause 7 hereof as to both capital and income (hereinafter referred to as "the Trust Property") for a period of Twenty (20) years (hereinafter referred to as "Trust Period") upon the following trusts:**
>
> **Upon trust**
>
> **(i) First to apply so much of the income of the Trust Property to and for the maintenance support and general welfare of my wife, Rose Butler, during her life so long as she remains my widow as my Trustees in their discretion shall deem sufficient as a reasonable financial provision for her maintenance; and thereafter**
>
> **(ii) To apply so much of the remaining income of the Trust Property as my Trustees in their discretion shall deem sufficient for the benefit of my children and for the respective durations specified in equal shares:**
>
> **a. For my children Clarice Butler; Denise Butler Docemo; Valarie Butler Walkine; Claudette Butler; Loretta Butler-Turner; Raleigh Butler Junior; and Craig F. Butler during the entire Trust Period.**
>
> **Clause 9**
>
> **Upon expiration of the Trust period but subject to my directions in Clause 11 hereof, I Direct my Trustees to release assign convey and distribute my residuary estate comprising the Trust property as to both capital and income as follows:**
>
> **…**
>
> **(viii) As to the remaining 25% thereof, to my son, Craig F. M. Butler absolutely."**

5. At an examination, Butler advised that he was the beneficial owner of shares in a company called CF Corporate Services Ltd. CF Corporate Services Ltd owns property in Alice Town Subdivision in New Providence; Butler asserts that the real property is valued at $1.29 million.

6. As I said, Braithwaite refused the application for a receiver. In his judgment, dated 2 May 2023, he explained why he refused the application. He said:

> **"1 In this matter the Judgment Creditor obtained a Default Judgment against the Judgment Debtor on 29th June 2021 in the amount of $862,287.43, and for damages to be assessed with interest and costs. The Judgment Debtor was**

examined in 2022 on his means, and advised that he owned a property on Alice Street through CFB Corporate Services. He further advised that he had substantial interests under a Will Trust. The judgment debt has yet to be satisfied. The Judgment Creditor has obtained a Charging Order Absolute against the property at Alice Street, and now seeks to have a receiver appointed over the Judgment Debtor's interests under that Will Trust.

...

JUDGMENT CREDITOR'S CASE

4 The Judgment Creditor submits that the court has jurisdiction to appoint a receiver, and that the Judgment Debtor has a fixed interest under the Will Trust, and will receive at least a 25% share of the residue of the trust, which may, on the admission of the Judgment Debtor, amount to at least $1,650,000.00. They note also that the Judgment Debtor is entitled under the Will Trust to receive a payment of $50,000.00, as well as reasonable legal fees for dealing with the assets of the Will Trust. They submit that the appointment of a receiver would therefore not be fruitless.

5 The Judgment Creditor submits that the debt has been outstanding since June 2021, with no satisfaction in sight. They suggest that the Judgment Debtor has been stalling, having made no genuine effort to convey the Alice Street property to the Judgment Creditor, and having produced no material evidence to confirm whether owing on the property. Bearing in mind that the amount owed is now $862,287.43, with damages to be assessed, and with interest and costs also in the offing, they suggest that it cannot be said with any certainty that a sale or transfer of the Alice Street property would satisfy the debt.

6 The authority of Cruz City 1 Mauritius Holdings v Unites & Ors (2014) EWHC 3131 is cited as encapsulating the principles relevant to the appointment of a receiver. In that case, the court said the following:

"[47] In the light of these and other statements cited, I would summarise the position so far as relevant to the present application as follows:

> **a) The overriding consideration in determining the scope of the court's jurisdiction is the demands of justice. Those demands include the promotion of the policy of English law that judgments of the English court and English arbitration awards should be complied with and, if necessary, enforced.**
>
> **b) Nevertheless the jurisdiction is not unfettered. It must be exercised in accordance with established principles, though it is capable of being developed incrementally. It is not limited to situations where equity would have appointed a receiver before the fusion of law and equity pursuant to the 1873 Judicature Acts. Specifically, in modern conditions where business is increasingly global in nature, the**

jurisdiction is "unconstrained by rigid expressions of principle and responsive to the demands of justice in the contemporary context".

c) The jurisdiction will not be exercised unless there is some hindrance or difficulty in using the normal processes of execution, but there are no rigid rules as to the nature of the hindrance or difficulty required, which may be practical or legal, and it is necessary to take account of all the circumstances of the case. That is all that is meant by dicta which speak of the need for "special circumstances": see in particular the decision of Tomlinson J in Masri cited above and also the decision of Arnold J in UCB Home Loans Corporation Ltd v Grace [2011] EWHC 851 (Ch), holding that there were sufficient "special circumstances" rendering it just and convenient to appoint a receiver by way of equitable execution when it would be "difficult for the Claimant to enforce its judgment by other means" and that the appointment of a receiver was the only realistic prospect available to the judgment creditor to enforce its judgment in the short term.

d) As the statutory source of the court's power to appoint a receiver speaks of what is "just and convenient", it is impossible to say that convenience is not at least a relevant consideration (albeit not the only one).

e) A receiver will not be appointed if the court is satisfied that the appointment would be fruitless, for example because there is no property which can be reached either in law or equity. That is an aspect of the maxim that equity does not act in vain. However, a receiver may be appointed if there is a reasonable prospect that the appointment will assist in the enforcement of a judgment or award. It is unnecessary, and will generally be pointless, for the court to attempt to decide hypothetical questions as to the likely effectiveness of any order. That applies with even greater force where such questions involve disputed issues of foreign law. It is sufficient that there is a real prospect that the appointment of receivers will serve a useful purpose."

7 The Judgment Creditor also cites the case of Masri v Consolidated Contractors Int (UK) Ltd (NO 2) (2009) EWCA Civ 303 as authority for the proposition that a receiver can be appointed by way of equitable execution over future assets. In that case the court said the following:

"184. In my judgment there is no reason why in 2008 the court should not exercise a power to appoint a receiver by way of equitable execution over future receipts from a defined asset. There is no longer a rule, if there ever was one that an order can only be made in relation to property which is presently amenable to legal execution. There is no firm foundation in authority for a rule that the remedy is not available in relation to future debts. There is no principle which prevents the development of existing authority to extend the remedy to the property which was the subject of the receivership order in this case."

8 The Judgment Creditor therefore submits that the appointment of a receiver would serve a useful purpose, as the appointment would not be fruitless, and that the appointment is necessary as there is a strong likelihood that the Judgment Debtor would not inform the Judgment Creditor of his receipt of any proceeds from the Will Trust, and would dissipate those receipts rather than apply those assets to setting the debt. They further submit that they are not limited to pursuing only one remedy, but are entitled to go after all available assets to satisfy the debt. They therefore propose the appointment of Edmund Rahming, a chartered accountant, as receiver.

JUDGMENT DEBTOR'S CASE

9 In his defence, the Judgment Debtor swore an affidavit in which he accepted that he is the owner of the Alice Street property, provided an appraisal indicating a market value of $1,013,000.00 as at 23rd June 2022, and indicated that the building has been listed for sale. He further stated that he was contacted by Gavin Watchhorn, President and CEO of the Judgment Creditor, who proposed that he sign a sales agreement giving the Judgment Creditor the right to sell the property if the sale is not completed by the real estate agent within six months. Mr. Butler indicates that he is prepared to convey that property to the Judgment Creditor as full and final settlement of the debt. Mr. Butler notes that the Judgment Creditor has already obtained a Charging Order over the shares in CFB Corporate Services, and is now seeking to appoint a receiver over to receive any distributions from the Will Trust. He objects to the appointment on the basis that it would be disproportionate, as the Judgment Creditor in his submission is seeking to attach assets far above the value of the judgment debt.

LAW & ANALYSIS

10 The jurisdiction to appoint a receiver is found at section 21(1) of the Supreme Court Act Chapter 53 which provides as follows:

> **"21. (1) The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so."**

(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit."

11 In considering the exercise of the discretion to appoint a receiver, Order 51 Rule 1(1) provides that:

> **"1. (1) Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment."**

12 There does not appear to be any question of the jurisdiction of the court in this matter. The real bone of contention appears to be whether it is just and convenient in the circumstances to order the appointment. In considering this issue, it is my view that account must be taken of the amount of the judgment debt and the charging order already in place.

13 The Judgment Creditor is correct that they are entitled to pursue all assets to satisfy the debt. But that is not the end of the matter. In this case a charging order has been obtained over a building valued at in excess of $1,000,000.00, against a debt which is presently quantified at $862, 000.00. The Judgment Creditor emphasizes that there are damages to be assessed, which is an important consideration, but one which assumes less importance when it is realized that there is no indication of a likely amount. Damages might be assessed at $1,000,000.00, or at $1,000. There is nothing before the court at this point to indicate the scale of any such damages. The court is therefore left with the fact that the building is appraised at more than the quantifiable current amount of the debt.

14 In the case of Cruz City 1 Mauritius Holdings v Unitech & Ors relied upon by the Judgment Creditor, the court states at paragraph 47(b), cited above, that "The jurisdiction will not be exercised unless there is some hindrance or difficulty in using the normal processes of execution." No such difficulty has been identified in this case. While I do not doubt that the Judgment Creditor is entitled to pursue all available assets, the issue in this case is whether it is just and convenient to do so.

15 In my view the usage of the word "just" connotes the interests of justice. While it is in the interests of justice that orders of the court be obeyed, it is also right that steps taken to ensure compliance are not excessively oppressive. I also bear in mind that the appointment of a receiver would involve an increase in costs, which would undoubtedly also be borne by the Judgment Debtor, and which costs the court is statutorily empowered to consider. I also bear in mind the evidence that, while there is mention made of a disposition of $50,000.00 in the Will Trust, that disposition would have occurred some time ago, and is therefore not relevant at this time. While other dispositions might be made, those are discretionary. The major and final disposition of assets from that Will Trust is to occur at the end of the trust period, which falls in 2033, some distance in the future.

16 In the circumstances of this case, I do not consider it just and convenient to order the appointment of a receiver at this time. The situation might be different if there was evidence that the damages had been assessed and far exceeded the value of the building, but that is not the case. I therefore decline to grant the order appointing a receiver."

7. The appointment of an equitable receiver is discretionary. A judgment creditor has no legal right to the appointment of an equitable receiver. The discretion is wide but, like all judicial discretions, it cannot be exercised capriciously and should be exercised consistent with the

manner in which it has been exercised by courts in previous decisions (For example, see **Levermore v Levermore** [1979] 1 W.L.R. 1277).

8. As it is the exercise of a discretion, an appellate court will only reverse the exercise of a discretion by a judge of the court below where it can be shown that the judge misunderstood the law or the evidence, took into account irrelevant matters, failed to take into account relevant matters or is plainly wrong. This principle has been cited and applied in numerous cases in this Court, including in **Maria Iglesias Rouco and ors AND Juan Sanchez Busnadiego and ors** SCCivApp. Nos. 147 & 148 2021.

9. In this case, the judge appears to exercise his discretion to refuse to order the appointment of an equitable receiver on the basis that "*The Judgment Creditor has obtained a Charging Order Absolute against the property at Alice Street, and now seeks to have a receiver appointed over the Judgment Debtor's interests under that Will Trust*."

10. This is not factually correct. The charging order is not *against the property* but, rather, *against the shares* of the company that owns the property. The trial judge noted that "*The jurisdiction will not be exercised unless there is some hindrance or difficulty in using the normal processes of execution*." This appears to be a suggestion that AML could have sold the property.

11. However, AML could not sell the property. The judgment did not operate as a charge of the Alice Street property under section 63 of the Supreme Court Act. The property was not owned by Butler as judgment debtor. Although listed for sale, Butler had not - at the date of the application for the appointment of a receiver - sold the property to raise funds to satisfy the debt. Indeed, the property has still not been sold. At the hearing of this appeal, Butler said that he has instructed attorneys to prepare a conveyance whereby the company will convey the property on Alice Street to AML "in satisfaction of the judgment debt". AML has not agreed to accept the property "in satisfaction" of the debt; it is not obliged to do so. Although it is said to have a value in excess of the present amount of the judgment, unless and until it is sold, AML could not know its true value and whether it is burdened by substantial real property taxes.

12. The debt has been outstanding for some time. It was created with respect to a transaction that occurred in 2018. Butler has not disputed the obligation, but has not settled the same. The Court is aware that Butler is suffering from a debilitating illness and is bedridden, but that is not a basis for not satisfying the judgment obligation.

13. In my judgment, the interest of justice requires that AML be empowered to use all means to have its debt satisfied. The appointment of a receiver will permit it to collect any monies that Butler may receive under his father's will. This does not prevent Butler from taking all steps to sell the property on Alice Street. Indeed, the appointment of a receiver may provide

an incentive for Butler to proactively sell the property, satisfy the judgment debt and discharge the receiver.

14. We are satisfied that we are entitled to set aside the judgment of Braithwaite J refusing to appoint a receiver. Accordingly, we make an order appointing Rahming as receiver, as sought in the summons of 10 May 2022.

15. Unless submissions on costs are received in two weeks, Butler is ordered to pay the costs of this appeal, and in the court below, to be taxed if not agreed.

The Honourable Sir Michael Barnett, President

16. I have read the judgment of my learned Brother and I agree with his reasons for the disposition of this appeal.

The Honourable Madame Justice Charles, JA

17. I have also read the judgment of my learned Brother and I agree with his reasons for the disposition of this appeal.

The Honourable Mr. Justice Smith, JA