

Lawtel document(s) - 06/04/2011 09:52

[UCB HOME LOANS CORPORATION LTD v GRACE \(2011\)](#)

Ch D (Arnold J) 21/3/2011

CIVIL PROCEDURE - BANKING AND FINANCE

BREACH OF TRUST : DISHONESTY : DISSIPATION OF ASSETS : EQUITABLE EXECUTION : FREEZING INJUNCTIONS : MORTGAGES : RECEIVERS : SUBROGATION : CONTINUATION OF FREEZING INJUNCTION FOLLOWING NON-PAYMENT OF JUDGMENT : ESTABLISHING REAL RISK OF DISSIPATION

Dishonesty that was sufficiently proximate to a claim of a real risk of dissipation of assets in order to avoid satisfaction of a judgment debt justified the continuation of a worldwide freezing injunction.

The claimant lender (U) applied for the continuation of a worldwide freezing injunction against the defendants (G, Y and Z) and the appointment of receivers by way of equitable execution over a portfolio of properties owned by G and Y. G, a principal solicitor in the third defendant legal firm (Z), had entered into a partnership to develop properties with Y, who was also an employee of Z. G and Y, as joint owners of the property development business, had applied to U to remortgage some of the properties in their portfolio. Z was retained to act in relation to those transactions. Although U had advanced mortgage funds on condition that they not be dissipated until completion, the funds were in fact paid out to G and Y. The transactions did not complete, and the first legal charge in U's favour did not eventuate. U secured summary judgment ([UCB Homes v Grace Unreported December 15, 2010 Ch D](#)) for damages for breach of trust, and also secured a worldwide freezing injunction against the defendants. The judgment monies remained unpaid. U submitted that, in relation to the continuation of the injunction, as G and Y had acted dishonestly, there was a real risk of dissipation of assets. In relation to the equitable appointment of receivers, U contended that there was no other realistic prospect of enforcing judgment and no other means of securing rents payable. G and Y submitted that it was not right to appoint receivers by way of equitable execution as there were 13 portfolio properties in which U did not have a proprietary interest, and in which other lenders had better rights.

HELD: (1) Firstly, although it was a necessary condition of a post-judgment freezing order that the judgment had not been paid, it did not follow that non-payment indicated a risk of dissipation. Rather, it was necessary to show that there was a real risk of dissipation of assets in order to avoid execution of a judgment, [Masri v Consolidated Contractors International Co SAL \(2008\) EWCA Civ 303](#), (2009) QB 450 considered and [Laemthong International Lines Co Ltd v Artis \(The Laemthong Glory\) \(No1\) \(2004\) EWHC 2226 \(Comm\)](#), (2004) 2 All ER (Comm) 797 applied. In order to establish a real risk of dissipation, something more than general dishonesty was required: dishonesty that was sufficiently proximate to the claim was necessary so as to lead to the relevant risk. G and Y had applied to U as single borrowers remortgaging, when they had in fact been joint borrowers; Y had also falsely held herself out to be a solicitor on a mortgage form and, on any view, G and Y had been hiding the truth from U in response to disclosure applications. It was also telling that there was no evidence from either G or Y that the mortgage funds had been paid out without their knowledge or authority. G's explanations for the denial of insurance cover also gave rise to considerable concern. Further, there was deep concern over the veracity of G's affidavits. The available evidence accordingly showed that there was, at a minimum, a good arguable case that G and Y had had the requisite knowledge and intent to engage in deliberate breaches of trust, and to that extent had acted dishonestly. That dishonesty was sufficiently proximate to the risk of dissipation of assets to justify continuing the worldwide freezing injunction. Secondly, it was not possible to be sure that dissipation had not taken place given U's lack of knowledge of the defendants' foreign assets, and the fact that there had not been any past dissipation did not mean that there was no risk of future dissipation. G and Y's behaviour showed that they were willing to put their own interests before the interests of creditors and U who was a judgment creditor. (2) U was unable to appoint receivers, as completion of the sale of the portfolio properties had not taken place. However, in the circumstances, there was no other realistic prospect of enforcing judgment. Charging orders, as a prelude to sale, were likely to result in insufficient equity to satisfy the judgment orders, and subrogation rights had not been conceded by one of the insurers. Further, third party debt orders to secure rental income were impractical where a large number of properties were involved, and where there would be a need for monthly orders. Accordingly, it was just and convenient to appoint receivers by way of equitable execution in respect of all the properties in G and Y's portfolio, with the defendant's objection met by making the appointment without prejudice to the interests of other lenders and to those lenders' entitlements to appoint receivers, Masri applied. (3) Orders for the oral examination of G and Y were made consequent on the continuation of the worldwide freezing injunction.

Applications granted

Counsel:

For the claimant: TJ Polli

For the defendants: O White

Solicitors:

For the claimant: Glovers LLP

For the defendants: Direct Public Access Scheme

LTL 22/3/2011 EXTEMPORE

AC9800429
