

Commonwealth of The Bahamas

In the Supreme Court

CLE/gen/00606 of 2011

LUCAYAN HOLDINGS LTD.

Plaintiff

And

YURI STAROSTENKO

1st Defendant

And

IRINA STAROSTENKO

2nd Defendant

Before: Mrs. Camille Darville-Gomez, Deputy Registrar

Appearances: Mrs. Cheryl T. Whyms for the Plaintiff
The Defendants appear pro se

Date of Hearing: November 21, 2017

RULING

1. This is an application by the Plaintiff to make absolute the Charging Order nisi granted on October 6, 2017 against the following referred to in the schedule to the said Order:
 - (i) The Judgment Debtor' shares in Junkanoo Beach Estates Limited (each of the Judgment Debtors own 50% of the total shares);
 - (ii) The dividends payable to the Judgment Debtors in respect of their respective 50% share in Junkanoo Beach Estates Limited;
 - (iii) The Judgement Debtors respective beneficial interest in Jazz House Lyford Cay which is held by Junkanoo Beach Estates Limited.
2. The application was opposed by the Defendants who filed a Summons on November 14, 2017 which was supported by an Affidavit also filed on the same date. Additionally, the Defendants filed a Supplemental Affidavit on November 20, 2017.

3. It was evident from the Certificate of Incumbency dated March 4, 2009 exhibited to the First Defendant's affidavit filed on November 14, 2017 that the shares of Junkanoo Estates Ltd. are owned by Five Stars Foundation and not the Defendants directly.
4. This was challenged by the Plaintiff who submitted that the charging order be made absolute notwithstanding and further, that the court ought to reject the evidence tendered by the Defendants that Junkanoo Estates is owned by Five Stars Foundation and not them.
5. The Plaintiff was permitted to cross examine the First Defendant in relation to his Affidavit filed on November 14, 2017 where he confirmed that the shares in Junkanoo Estates are not in fact owned by him or his wife. The Plaintiff found those paragraphs inconsistent with the Defendants evidence previously given under oath during the course of the Order for Examination before then, Deputy Registrar, Mrs. Marilyn Meeres. The Plaintiff submitted that the evidence in the said Affidavit was inconsistent and in the opinion of the Plaintiff, self-serving.
6. During the cross examination of the First Defendant he said that he stood by the statement made in paragraph 2.2 of his affidavit. He said that he and his wife both have control of Junkanoo Estates, meaning management and operational control as directors and that these powers are shared 50% and 50% which means that they each have equal power in relation to Junkanoo Estates. Further, Junkanoo Estates owned Jazz House directly and not through a company. However, he said that the shares of Junkanoo Estates are owned by Five Stars Foundation, a charitable foundation whose beneficiaries are his children.
7. The Plaintiff drew to the court's attention, the notes of then Deputy Registrar, Mrs. Marilyn Meeres of March 2, 2016 of the Order for Examination where the First Defendant confirmed ownership of 50% of Junkanoo Estates and the other 50% owned by his wife. Further, he confirmed that he signed the notes and that it was his signature affixed to the notes of Mrs. Meeres. Similarly, the Plaintiff drew to the First Defendant's attention the notes of Mrs. Meeres made of the testimony by the Second Defendant which were similarly signed by her.
8. However, the First Defendant submitted that the Plaintiff should not move the court on the basis of their evidence because the corporate structure was not examined before making a charging order. He accused the Plaintiff's attorney of negligence for not having done so.
9. The court has accepted that the Plaintiff ought to have performed its own searches of the corporate records maintained at the Registrar General of Junkanoo Estates Ltd. However, the Defendants were examined under oath regarding the ownership of Junkanoo Estates Ltd. and clearly neglected to give full and frank disclosure of its ownership by the

Foundation at that time. They were either dishonest as asserted by the Plaintiff, or, chose to be less than full in their disclosure of the true ownership of Junkanoo Estates Ltd. I believe that it is the latter, as is borne out by the evidence, namely, the Certificate of Incumbency.

10. Accordingly, the court is clearly unable and not in a position to make final and absolute, the charging order nisi granted on October 6, 2017. Therefore, for the aforementioned reasons, the court refuses the application to make the charging order absolute and makes no order for costs.

Dated the 17th day of July, 2018



Camille Darville-Gomez
Deputy Registrar
Supreme Court

