

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL
27th april 2005

Before:

THE HONOURABLE MR. JUSTICE PETER SMITH

**PRITCHARD ENGLEFIELD
MICHAEL LESLIE COHN**

Claimants

- and -

JONATHAN ROGER STEINBERG

Defendant

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**Mr. Michael Cohn of Pritchard Englefield for the Claimants
Mr. Ian Torrance of Bernard Oberman & Co. for the Defendant**

HTML VERSION OF APPROVED JUDGMENT

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Mr. Justice Peter Smith:

1. I have before me an application by the claimants to enforce a charging order in respect of the reversionary interest held by the defendant in the property known as 11 Avenue Close, Avenue Road, London NW8. The charging order and the application arises out of my judgment dated 30th July 2004 when I determined that the defendant's mother (Mrs. Steinberg) in effect had an interest in the property after a charge in favour of HSBC approximating to about 20% of its value. I, nevertheless, decided on the balance as between the claimants and the defendant and Mrs. Steinberg that it would be appropriate to order a sale of the property.

2. Mrs. Steinberg, despite the contents of a letter from her son (the defendant) dated 26th April 2005 to Sedley LJ, has agreed, I accept probably reluctantly, that the flat has to be sold. There has been a marketing exercise since September last year, but that has achieved no sensible offer and the price has been reduced successively so that on 12th April of this year, for example, Mrs. Steinberg consented to an order reducing the sale price to £800,000 from a previously canvassed sale price of £950,000.

3. One of the difficulties is the interest that is being sold. The interest currently being sold is a leasehold interest which has some 59 years to run. That is a difficult interest to market. Mr. Steinberg holds the reversionary lease on that interest, and it is that estate which the claimants seek to

realise. In addition to the HSBC charge over the sub-leasehold interest, the landlord has charging orders securing arrears of service charges and the claimants have charging orders over both interests.

4. The regime arising out of my judgment of 30th July 2004 postpones any realisation in favour of the claimants to the sums due to HSBC and the percentage due to Mrs. Steinberg. That means that any reduction in the price, whilst it impacts on Mrs. Steinberg, proportionally impacts greater on the claimants. In addition, of course, all the various charges are attracting interest. The present market appears to be a falling market so that the equity available is being reduced on a daily basis. The claimants believe that the property will be better marketed if the reversionary leasehold interest can be gathered in. I agree with that analysis, and that is why the present application is made.

5. Mr. Torrance appears for Mr. Steinberg. He does not adduce any substantive evidence in opposition to the application. The reason for that, he says, is that his client is suffering from a depressive illness. I was shown today a medical report dated 4th January 2005 from a Mr. Kim, Mr. Steinberg's psychiatrist. That report recounts illnesses which Mr. Steinberg has suffered periodically since October 2002.

6. In March of this year, the Court of Appeal (whilst not considering that report) did consider earlier medical evidence and, notwithstanding that, dismissed Mr. Steinberg's appeal against the judgment of Eady J which gave rise to a substantial part of the claimants' costs orders against Mr. Steinberg. That judgment is currently under review because there is a dispute as to whether or not this medical report was suppressed from the Court of Appeal, it being common ground that the Court of Appeal was not aware of it. That issue may well be determined in the foreseeable future.

7. I asked Mr. Torrance what it was that his client would wish to bring forward but which he was unable to bring forward because of his illness. Mr. Torrance was unable to identify any clear evidence. It seems to me that the question to be considered is the execution of my order of 30th July 2004. My order has never been appealed by Mr. Steinberg, although he was aware of it and, indeed, indirectly participated in the hearing by sending various written submissions to me, both during and after the judgment. His major concern appears to be to protect his mother's right to the house. However, following that hearing, so far as I am aware, Mrs. Steinberg has, as I have said, agreed, albeit reluctantly, because of her emotional attachment to the property which has been her home for something like forty years, that a sale must take place. That is why, contrary to Mr. Steinberg's letter, she consented to the variation of the order in respect of the sub-leasehold interest.

8. In addition to her interests, there are the interests of the claimants and the other secured creditors and there are the interests of Mr. Steinberg. Mr. Steinberg wishes to hold on to the reversionary interest, but no cogent reason is put forward by Mr. Torrance as to why this should be so. He could use it as a tool to block the sale of the sub-leasehold interest, but that, at the moment, in my view, is against his mother's interests. Mr. Torrance suggested that it might be an investment, but all the evidence is that the market is declining and the amount secured on the properties by charges, none of which have been serviced, means that the equity in the property is reducing on a daily basis.

9. I was referred to the case of *Teinaz v. Wandsworth London Borough Council* [2002] ICR 1471. In that case the Court of Appeal said that if there is some evidence that a litigant is unfit to attend, in particular if there is evidence on medical grounds, the litigant has been advised by a qualified person not to attend, but the tribunal or court has doubts as to whether or not the evidence is genuine or sufficient, the tribunal or court has a discretion whether or not to give a direction that would enable the doubt to be resolved. Thus one possibility is to direct that further evidence be provided promptly. Another is to state that the parties seeking the adjournment should be invited to authorise the legal representatives for the other party to have access to the doctor giving the advice in question. The latter is not a feasible proposition, given that the doctor in question practises from Park Avenue, New York. It would be disproportionate to expect the claimant's to attend on that psychiatrist.

10. This evidence has been a repetition of a series of reports to a similar effect. There is nothing to suggest that Mr. Steinberg will ever recover. His problems appear to stem from him involving himself in litigation despite his psychiatrist's suggestion that he should keep away from it. Thus, for example, he wrote to Sedley LJ on 26th April, once again involving him in litigation.

11. I am mindful of the *Teinaz* decision, contrary to what Mr. Steinberg said in his letter to Sedley LJ, but I am unpersuaded that his illness has any impact on this case to any great degree. I do not see why his illness can prevent him from giving instructions which relate merely to an execution of my order which arises from my judgment of 30th July 2004. If he is unable to give such instructions,

the logical conclusion would be that he ought to be the subject matter of an order appointing a litigation friend; but that is not suggested. Mr. Steinberg quite clearly is able to write letters of a coherent nature, although, as Mr. Cohn says, apparently the letter refers to orders that the Court of Appeal never actually made.

12. I am, therefore, unpersuaded that there are any realistic grounds as to why the matters should not be proceeded with. Mr. Torrance only sought a short adjournment for 21 days and Mr. Cohn, quite properly, did not oppose such a short adjournment, provided the sale process could continue in the intervening period and that the only prohibition was on the exchange of contracts pursuant to this order. Given that concession by Mr. Cohn, I am minded to stay the present order for that 21 day period and the stay will be lifted unless Mr. Steinberg, within the time period, issues an application supported by evidence and serves it on the claimants justifying why this present order should be set aside. I will make an order staying the exchange of a contract for sale pursuant to the order for that 21 period subject to that term. If Mr. Steinberg does issue an application within the time limits, I will give the claimants liberty to apply to me to fix an early determination of that application. It is essential, given the falling market and the interests of the claimants and Mrs. Steinberg, that further losses are not sustained by an application that is in issue and is not determined expeditiously.

13. For all of those reasons, I will make the order subject to the modification referred to in this judgment.