



Saisie and vesting orders.

**IN THE ROYAL COURT OF GUERNSEY**  
**ORDINARY DIVISION**

**IN THE MATTER OF SAISIE PROCEEDINGS**

**Between:** (1) **JOHN TONY DENNIS TRIMBEE** (“Judgment  
(2) **CHRISTINE TRIMBEE** Creditors”)

-v-

**ATLANTIQUE HOLDINGS LIMITED** (“the Debtor”)

**AND IN THE MATTER OF AN APPLICATION BY**

**ROY SMITH** (“the Applicant”)

-v-

**JOHN TONY DENNIS TRIMBEE**  
**CHRISTINE TRIMBEE**

**Judgment handed down: 6<sup>th</sup> December 2016**

**Before: Sir Richard Collas, Bailiff**

**Advocate for Mr & Mrs Trimbee: Advocate N J Barnes**

**The Debtor was unrepresented.**

**Mr Smith appeared in person.**

**Cases, legislation and references referred to:**

Saisie Procedure (Simplification) (Bailiwick) Order, 1952

Judicial Committee (Appellate Jurisdiction) Rules 2009

**Introduction**

1. The Judgment Creditors (“Mr and Mrs Trimbee”) who have the benefit of an Interim Vesting Order granted on 1<sup>st</sup> March 2016 in respect of the real property of Atlantique Holdings Ltd

("the Company") are applying for a Final Vesting Order ("FVO") in accordance with S.3(7)(a) of part 3 of the Saisie Procedure (Simplification) (Bailiwick) Order, 1952 ("the Saisie Order 1952"). The Applicant ("Mr Smith") seeks to stay the Saisie proceedings pending the determination of an application for leave to appeal to the Judicial Committee of the Privy Council ("Privy Council") and, if leave is granted, pending the outcome of the appeal to the Privy Council of the Court of Appeal's decision dated 22<sup>nd</sup> July 2016 in proceedings between Mr Smith and the Company.

2. In that decision, the Court of Appeal refused leave to reopen an appeal decided three years earlier in which Mr Smith had sought to reverse an order of 27<sup>th</sup> July 2012 evicting him from the Company's premises known as the Atlantique Hotel, Perelle Bay ("the Hotel") by reason of fire damage to the property. The present Application is the latest in a series of proceedings that have been before the courts for over four years.
3. The factual background has been fully set out in a number of judgments, including the 22<sup>nd</sup> July 2016 decision, and they do not need to be repeated here.
4. Advocate Barnes represented Mr and Mrs Trimbee. Mr Smith appeared as a litigant in person assisted by a McKenzie friend, Mr Howard Young of SQN Global Limited.
5. In a judgment of 26 September, the Court of Appeal refused Mr Smith permission to appeal to the Privy Council its decision of 22<sup>nd</sup> July 2016. That application has not been renewed before the Privy Council although by letter dated 6 December from SQN Global Limited the Court was informed that he will be making an application to the Privy Council for a fee exemption following which it is believed he will be given permission to proceed out of time.
6. The Application for a stay was first heard on 6 September, after which the parties lodged additional written submissions and there was a further hearing on 6 December when Mr Smith appeared unaccompanied by his McKenzie friend. He left the Court room during the hearing. In his absence I delivered my decision on his application for a stay and advised that a written judgment would follow.

### **Submissions**

7. On 6 September, the Court had before it an Affidavit from Mr Smith that was sworn in court. In it he made allegations of misconduct on the part of Advocate Barnes; he alleged that the application for an IVO had been made in breach of a Mareva Injunction he had obtained against the Company; he made allegations of bad faith in relation to the giving of the Bond by the Company in favour of Mr and Mrs Trimbee; and he sought a stay of the Saisie proceedings.
8. The object of the proceedings Mr Smith is pursuing is to reinstate himself in the Hotel, a business in which he invested time and money and from which he has suffered loss as a result of the eviction. Indeed, in arbitration proceedings heard by Advocate John Langlois OBE, the Company has been ordered to pay Mr Smith a sum in excess of £5 million, including costs, by way of compensation. Mr Smith says that the only asset out of which he has any hope of making a recovery is the Hotel. Any hope of doing so could be lost if an FVO is granted. The effect of the FVO would be to enable Mr and Mrs Trimbee to sell the Hotel for whatever price they can obtain or even for as little as £1. In his view, his business has been taken from him wrongfully. He has been unable to obtain redress through the Courts to date because false evidence was led against him which he was then unable to oppose successfully but he claims he now has fresh evidence that would produce a different result if the appeal and the eviction proceedings could be reopened. He has spent £400,000 to date on the legal proceedings. A stay of the Saisie for what might be only a matter of months would be only

fair and just. In September he estimated only another 3 to 6 months and all would be resolved.

9. In further written submissions, Mr Smith explained the prejudice to him if the stay is not granted. In summary, Mr and Mrs Trimbee have first priority over the Hotel under their Bond pursuant to which they are owed in the region of £1.8 million as certified by Jurat Jones, Commissioner, and which Mr Smith is presently in no position to set aside or challenge, although he says he might do so if given time. The tenancy of the Hotel was his livelihood; he has suffered a great loss which he can only begin to recover if his tenancy is reinstated. If the FVO were granted the premises may be sold and he could end up with a pyrrhic victory. He has been the victim of fraud and bad faith and has suffered a clear injustice in respect of which his only effective remedy is reinstatement of the lease. The FVO would be “irreversible” and could wholly frustrate any successful appeal.
10. At the hearing on 6 December, Mr Smith repeated allegations of bad faith and made some serious allegations about the conduct of the proceedings by members of the Bar and about the Guernsey Bar generally, which it is not necessary to describe in any detail.
11. On behalf of Mr and Mrs Trimbee, Advocate Barnes made a number of submissions. First of all, he said it is too late to attempt to stay the Saisie as an IVO has already been granted to Mr and Mrs Trimbee. Mr Smith is not pursuing any proceedings against them. If his appeal to the Privy Council were to be successful, it would re-open proceedings to which the Company is a party, not Advocate Barnes’ clients.
12. If the Court had a discretion to stay the grant of an FVO, factors to be taken into account would include the merits of the appeal. In seeking to reopen an appeal which has already been decided, he is making a novel application which will fail either for want of jurisdiction or because it lacks merit on the facts as the Court of Appeal determined when it refused leave to appeal in its judgment dated 26<sup>th</sup> September 2016. Furthermore, Mr Smith failed to make the application for leave to appeal with prompt dispatch as he should have done when asking the Court to exercise its discretion to stay the Saisie proceedings, and he has given no, or no adequate, explanation for the delay.
13. Mr and Mrs Trimbee, he contends, would be entitled to an FVO whatever the outcome of any appeal to the Privy Council. Thus, a stay will achieve nothing other than to deny Mr and Mrs Trimbee the order to which they are entitled, or delay them obtaining it.
14. As for the possible application to the Privy Council for remission of fees, he drew attention to the Judicial Committee (Appellate Jurisdiction) Rules 2009 – As Amended which indicate that the fees payable are not “notoriously high” as claimed by Mr Smith. Furthermore, Rule 38 provides that application may only be made by an appellant “*who has been granted, or has applied for, assistance from public funds under arrangements in force in the appellant’s jurisdiction*” and there is no evidence that Mr Smith has done so. Furthermore, the time period for appealing has now elapsed.

## Discussion

15. In my judgment, it is too late for Mr Smith to be attempting to stay the Saisie proceedings. His submissions are predicated upon the assumption that if his appeal against the Company were to succeed, the Company could be ordered to reinstate his tenancy of the Hotel. That assumption is false; the Company is no longer the owner of the Hotel. Section 2(3) of the Saisie Order 1952 confirms that the making of an Interim Vesting Order by the Royal Court sitting en Plaids d’Heritage vested “*the whole of the real property of the debtor in the creditor as trustee for claimants against the said real property*”. Mr Smith was advised of that and informed he could apply to the Court for a postponement of the making of the IVO pursuant

to that sub-section. It is not for me to decide whether the grant of an FVO would breach the Mareva Injunction even if it were still in place as the Company no longer owns the asset.

16. Thus the position is that the Company no longer owns the Hotel. It is already in the ownership of a third party, that is to say it belongs to Mr and Mrs Trimbee as trustee for all claimants against the real property of the Company. The effect of granting the FVO will be to bring the trust to an end by vesting the Hotel in Mr and Mrs Trimbee personally.
17. In order to have any chance of reinstatement, Mr Smith faces a number of hurdles. The Privy Council would have to grant Mr Smith leave to pursue his appeal, the appeal would have to be successful in determining that the lease should not have been terminated and that it is still valid, notwithstanding that the original term of the lease has expired. As the Hotel is already in the ownership of a creditor and may or may not be conveyed to one or more other third parties, Mr Smith would also have to show that the IVO and the FVO, if granted, were made subject to his lease.
18. I know of no authority establishing that someone in whose favour an FVO has been granted takes the real property subject to existing leases. However no authority has been produced to me to establish that a creditor may take a property free of any leases. It appears to be a novel issue that is yet to be determined. There may have been relevant decisions of the Court predating the Saisie Order 1952 which are not reported, or, it is more likely that before 1952, when Saisie proceedings often took many years to reach a conclusion, leases expired or the tenants were evicted before the FVO stage.
19. In modern proceedings, for example where a bank is seeking to foreclose on a property that is owner-occupied or tenanted, the creditor applies for an eviction order at an early stage in the Saisie in order to secure vacant possession and thus the creditor is able to obtain vacant possession before the conclusion of the proceedings. The creation of long leases is a relatively recent phenomenon in Guernsey but they are now common. Commercial and residential premises are held on long leases for a variety of reasons. If such leases could not survive the conclusion of a Saisie the tenants would have little security of tenure. The reason for registering long leases on the records of the Greffe, as frequently happens, is to ensure that third parties such as creditors of the landlord have notice of them. I have no doubt at all that the courts would intervene to ensure fairness and justice for the tenant by holding that a long lease survives the grant of an FVO.
20. Whether that would be so is for the Court to determine on a future occasion. In the present matter, it is already the case that the Hotel has vested in persons other than the original landlord that granted the lease. If Mr Smith were to succeed in his appeal proceedings, the procedure for obtaining reinstatement in the Hotel will be no different after the grant of an FVO than is already the case under the IVO.
21. As for the merits of the application for leave to appeal, I must have regard to the decisions of the Court of Appeal on 22<sup>nd</sup> July and 26<sup>th</sup> September. The Court of Appeal was concerned with the allegations made by Mr Smith and was aware that Mr Smith was seeking to adduce fresh evidence that would support his claims of malice, illegality and bad faith in the conduct of the eviction proceedings. The Court of Appeal also had sight of the judgment of the arbitrator on which Mr Smith has placed great reliance. I cannot disagree with the Court of Appeal in determining that any application for permission to appeal to the Privy Council lacks merit. Thus even if I were wrong in concluding as I have done as to the effect of an FVO, there would be no reason for granting a stay.

## **Decision**

22. Mr Smith submits that he will be severely prejudiced if an FVO were to be granted. There is no doubt that he has suffered the loss of his business and livelihood. However, that has already happened. There can be no further prejudice to Mr Smith in granting an FVO in favour of Mr and Mrs Trimbee, in whose names the Hotel has already vested. The Company ceased to have any ownership of the Hotel on the making of the IVO. Whether or not an FVO is granted, if, and it is highly unlikely but if, Mr Smith were to succeed in establishing he still has, or should have, a valid lease the Company is in no position to reinstate him in the Hotel so he would have to assert any rights he may have against a third party whether that be Mr and Mrs Trimbee or a purchaser from them.
23. I therefore dismissed the application to stay the Saisie proceedings and went on to advise the Jurats that there was no reason in law to refuse the grant of an FVO.