



Neutral Citation Number: [2019] EWHC 1920 (QB)

Case No: E68Y J207

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/07/2019

Before :

THE HON. MR JUSTICE TURNER

Between :

365 BUSINESS FINANCE LTD **Claimant**
- and -
(1) BELLAGIO HOSPITALITY WB LTD
(2) MR TANVEER SINGH HANDA **Defendant**

IN RESPECT OF AN APPLICATION BETWEEN

COURT ENFORCEMENT SERVICES LTD **Applicant**
- and -
BURLINGTON CREDIT LTD **Respondent**

Christopher Royle (instructed by **Wilkin Chapman LLP**) for the **Applicant**
Stephen Ryan (instructed by **Burlington Credit Ltd**) for the **Respondent**

Hearing date: 21 March 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE TURNER

The Hon Mr Justice Turner :

INTRODUCTION

1. Mr Tanveer Handa is a businessman who fell into debt. Two of his creditors are arguing over which of them is entitled to the benefit of a payment of £12,050 which Mr Handa made to an enforcement agent on 21 August 2018. The purpose of this judgment is to resolve that dispute.

THE CENTRAL ISSUE

2. The most popular way in which a creditor may seek to enforce a debt is through execution on the debtor's goods.
3. Where a money order of the court remains unpaid, the creditor in the High Court may apply to the court to issue a writ of control. Thereafter, the writ will be directed either to a High Court Enforcement Officer ("HCEO") or delivered to the Registry Trust for onward allocation to local HCEOs on a cab rank basis. The HCEO to whom a writ has been directed then passes it to a certified enforcement agent ("EA") for the purposes of effecting enforcement against the debtor.
4. The central, but by no means only, question arising is as to whether priority is to be afforded to the creditor whose writ is first received by an HCEO or the one whose HCEO is first to receive the fruits of the writ from the debtor.
5. I now turn to describe in greater detail the factual background to the instant case.

THE BACKGROUND

The competing writs

6. There are two relevant creditors: 365 Business finance Limited ("365") and Alivini (North) Limited ("Alvini").
7. 365 obtained judgment in the County Court in the sum of about £23,000 including costs. Enforcement was handled by Burlington Credit Limited ("Burlington") a company which employs EAs whose job it is to enforce writs of control which are given to them for that purpose by one of its HCEOs. In this instance, a writ of control was issued on 11 June 2018. Mr Badger of Burlington received the writ on 12 June 2018. This Writ will be referred to as "the B Writ".
8. Alvini obtained judgment in the County Court in the sum of about £8,500 including costs. It was Court Enforcement Services ("CES"), another company of HCEOs and EAs, which applied for the writ of control which was duly sent to an EA, Mr Davies, to enforce. This writ was not issued until 16 July 2018. The precise date of receipt is not known but it must

have been after the B Writ was received by Mr Badger. This second writ will be referred to as “the CES Writ”.

9. If, therefore, the respective priorities of the writs are to be determined having regard only to the date of receipt then there can be no doubt that the B writ would prevail. CES, however, contend that this is not the determinative factor and, in the race to enforcement, secured a tactical advantage in circumstances which I now outline.

The enforcement race

10. Having received no response to a Notice of Enforcement giving seven days in which to pay the debt, an EA attended Mr Handa’s premises in West Bromwich (“the premises”). He took control of the contents pursuant to the B Writ but agreed to defer further action under a Controlled Goods Agreement (“the CGA”) under the terms of which Mr Handa agreed to make a payment of £10,000 within 30 days followed by monthly payments of £1,000 until the debt was satisfied.
11. The B writ’s early lead in the enforcement race was not to last very long. The first instalment was due to be paid on 22 August 2018 but, on the day before, an enforcement officer, one Mr Wild, arrived at the premises to execute the CES writ. Mr Wild proved to be less accommodating than Mr Badger had been and wanted immediate payment in full of Alvini’s debt. Mr Handa telephoned Mr Badger to let him know what was happening and put him on the telephone to Mr Wild. Mr Badger said that the B Writ had priority over the CES Writ and had to be discharged first. Mr Wild, unmoved, secured full and immediate payment from Mr Handa.
12. From Mr Badger’s point of view, CES had unfairly snatched the spoils of his victory and, rather than sulking like Achilles in his tent, applied successfully but without notice to Master Eastman for Mr Wild to pay over the money to Burlington. CES applied to set aside the order within a timescale originally granted and then extended by the Court.
13. The present position is that the sum paid by Mr Handa to Mr Wild is held in a CES bank account pending the outcome of CES’s application.
14. Master Eastman’s order in so far as it is relevant provides:

“1. The Court is satisfied that:

1.1. The Writ issued to Christopher Michael Badger on 11th June 2018 holds priority pursuant to CPR 83.4.

1.2. All funds paid under a Writ of Control must be paid and allocated in strict order of Writ Priority.

1.3. It is reasonable in all the circumstances to issue this Order.

2. The sums paid to Mr Wild of Court Enforcement Services Ltd in respect of their subsequent Writ of Control issued against Mr Tanveer Handa be paid to Burlington Credit Limited by Court Enforcement Services and/or their respective Creditor; Alvini (North) Limited, within 7 days of service of this order.”

15. The central issue is whether the Master was right to conclude that all funds paid under a writ of control must be paid and allocated in strict order of writ priority.

THE HEARING

16. The matter came before me on 21 March 2019 and things got off to an unpromising start. Counsel for the applicant referred to what he described as a “road-map” through which he intended to guide me in the course of his oral submissions. Unhappily the road-map followed a markedly different path than that which had been laid out in the written skeleton argument which had preceded it and, although the intended destination was the same, the new route now included a number of unheralded scenic diversions through an unfamiliar landscape.
17. Of course, oral submissions are important but they should be seen primarily as the means by which arguments already articulated in outline in the skeleton arguments are to be fleshed out, refined and tested. Perhaps my experience is unrepresentative but there appears to me to be a growing trend for advocates to present cases orally in a way which bears only a passing resemblance to the structure earlier laid out in their written submissions. In cases such as this, in which the point in issue is one of pure law and not without complexity, it is unhelpful for oral arguments to depart significantly from their written predecessors. Naturally, occasions will arise when the immediate anticipation of a hearing concentrates an advocate’s mind wonderfully and thus generates freshly minted submissions. Of course, the court will indulge such late inspirations as far as it is practicable so to do. But sometimes, as in the instant case, this is not possible.
18. I cannot altogether exclude the possibility that my struggles to follow counsel’s oral submissions were attributable to a disappointing and unforeseen lack of mental agility on my part and, if so, it is an explanation which I would readily forgive him for not articulating in open court. However, whatever the reason, the result was that I declined to set about the business of writing this judgment until I had the benefit of further written submissions more closely reflecting counsel’s oral “road-map”. The fact that my invitation for such further input has now prompted the parties to consolidate their representations in over fifty further pages of

written submissions in small font leads me, albeit conveniently, to believe that my request was entirely justified.

THE LEGISLATIVE FRAMEWORK

The historical perspective

19. Historically, the task of enforcing High Court judgment debts fell to the local sheriffs each of whom had their bailiwick as the geographical boundary within which they worked. As a result, there was no competition and no one providing a nationwide service. The role of sheriff was replaced by that of the HCEO under the Courts Act 2003, the bailiwick boundaries were removed and each newly authorised HCEO was permitted to work throughout England and Wales.

The Tribunals, Courts and Enforcement Act 2007

20. The Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”), the relevant provisions of which came into force on 6th April 2014, sets out the procedure for the taking control of goods under a writ of control or (in the County Court) a warrant of control. The writ of control was a new label which covered what had previously been known as writs of fieri facias (except for writs of fieri facias de bonis ecclesiasticis the consideration of which, mercifully, does not fall to be considered in the instant case).

21. Section 62 of the 2007 Act provides:

“Enforcement by taking control of goods

- (1) Schedule 12 applies where an enactment, writ or warrant confers power to use the procedure in that Schedule (taking control of goods and selling them to recover a sum of money).
- (2) The power conferred by a writ or warrant of control to recover a sum of money, and any power conferred by a writ or warrant of possession or delivery to take control of goods and sell them to recover a sum of money, is exercisable only by using that procedure...

Paragraph 4 of Schedule 12 to the 2007 Act provides:

- “(1) For the purposes of any enforcement power, the property in all goods of the debtor, except goods that are exempt goods for the purposes of this Schedule or are protected under any other enactment, becomes bound in accordance with this paragraph.
- (2) Where the power is conferred by a writ issued from the High Court the writ binds the property in the goods from the time when it is received by the person who is under a duty to endorse it.”

22. For the purposes of Schedule 12, an “enforcement power” is defined as: “a power to use the procedure [in Schedule 12] to recover a particular sum.”

And “Goods” are defined as: “property of any description, other than land”.

23. Paragraph 5 of Schedule 12 provides:

“An assignment or transfer of any interest of the debtor’s in goods while the property in them is bound for the purposes of an enforcement power-

(a) is subject to that power, and

(b) does not affect the operation of this Schedule in relation to the goods, except as provided by paragraph 61 (application to assignee or transferee).”

24. The effect of these provisions is that from the moment a writ is received by the person who is under a duty to endorse it, all of the debtor’s goods (being property of any description, other than land) are bound by the writ for the purposes of an EA’s power to use the Schedule 12 procedure to recover a particular sum and that any assignment or transfer is subject to that power.

The Civil Procedure Rules

25. CPR 83.4 provides:

“Writs and warrants conferring a power to use the TCG procedure—duration and priority

(1) This rule applies to—

(a) a writ of control;...

(2) A writ or warrant to which this rule applies is referred to in this rule as a “relevant writ or warrant”, “relevant writ” or “relevant warrant” as appropriate.

(5) ...

(a) the priority of a relevant writ will be determined by reference to the time it is originally received by the person who is under a duty to endorse it...”

The respondent’s analysis

26. The respondent seeks to derive the following propositions from the provisions of Schedule 12 and CPR r83.4:

- a. From the time that a writ of control is received by the person under a duty to endorse it, the property in the goods of the debtor becomes ‘bound’ i.e. subject to a security interest.
- b. That which is bound comprises the property in all the debtor’s goods (being property of any description, other than land).
- c. It is the writ which binds the goods.
- d. All of the debtor’s property is bound from the moment that a writ is received by the person who is under a duty to endorse it.
- e. The goods are bound for all the purposes of an enforcement agent’s power to use the Schedule 12 procedure to recover a particular sum.
- f. When an interest in the debtor’s goods is assigned or transferred while the property in the goods is bound, the assignment or transfer is made subject to an enforcement agent’s power to use the Schedule 12 procedure to recover a particular sum, and any such assignment or transfer does not affect the operation of Schedule 12 in relation to the goods.
- g. Where there is a conflict between two or more writs issued pursuant to separate judgments in respect of the same debtor the writ that was first received by the person under a duty to endorse it will have priority over writs received subsequently in time, so that all of the debtor’s goods are bound by that writ for all of the purposes of an enforcement agent’s power conferred by that writ to use the Schedule 12 procedure to recover a particular sum, in priority to subsequent writs. Accordingly, writs must be executed in accordance with their priority, and any proceeds from the exercise of an enforcement power (including both the proceeds from the sale of controlled goods and money obtained from the debtor in the exercise of an enforcement power) must be allocated in accordance with writ priority i.e. proceeds must be used to pay the amount outstanding under the writ with the highest priority with any surplus to be used to pay the amount outstanding under the next writ, and so on, failing which the surplus is to be paid to the debtor.

The applicant’s riposte

27. The applicant seeks to challenge this analysis on a number of different grounds with which I propose to deal in turn.

HCEOs and Writs of Control

28. Section 63 of the 2007 Act provides in so far as is relevant:

“Enforcement agents

(1) This section and section 64 apply for the purposes of Schedule 12.

- (2) An individual may act as an enforcement agent only if one of these applies—
 - (a) he acts under a certificate under section 64;
 - (b) he is exempt;
 - (c) he acts in the presence and under the direction of a person to whom paragraph (a) or (b) applies.”

- 29. It follows that an HCEO is not entitled, solely by reason of being such, to act as an EA. From this, the applicant contends that Schedule 12 has no application to an HCEO and cannot therefore be deployed so as to impose a duty upon HCEOs to observe the priorities which would otherwise follow.
- 30. I do not accept this argument. It is by the operation of Schedule 12 4(2) that the Writ of Control binds the property in the goods from the time when it is received by the person who is under a duty to endorse it. The debtor’s property is thus bound by the operation of Schedule 12 regardless of the statutory limitations on the HCEO to act as an EA.

Binding and priority not linked in law

- 31. The applicant contends that the binding effect of paragraph 4 of Schedule 12 operates only to protect the creditor against the actions of the unscrupulous debtor who seeks to frustrate enforcement by selling or transferring his goods. It does not create a hierarchy of priority as between creditors and if it had been intended that paragraph 4 should have this effect then it is to be expected that express provision would have been made for this.
- 32. My attention has been drawn to the old Rules of the Supreme Court and County Court Rules and the commentaries thereto but I have not found them to be helpful.
- 33. Of greater assistance, however, are the decided cases which establish the law and practice as it applied to writs of fieri facias as the progenitors of writs of control.
- 34. In ***Hutchinson v Johnston*** (1787) 1 Term Reports 729 the plaintiff obtained a judgment in the sum of £600 against the defendant on 25 November 1786. Without delay, a warrant was issued and delivered to the sheriff whose officer took possession of the defendant’s goods that very evening. However, two days later another sheriff’s officer entered into the defendant’s premises pursuant to an earlier writ at the suit of one Mr Gover. The plaintiff applied to the sheriff for a bill of sale but the sheriff insisted that the plaintiff should first pay to him the amount of Gover’s

execution in the sum of a little over £70. This the plaintiff did but later claimed this sum back from the sheriff on the grounds that the sheriff was not entitled to give priority to Gover and should return the money which the plaintiff had given him. Ashhurst J held:

“The general principle of law, and which has not been contradicted by any of the cases cited, is, that the person whose writ is first delivered to the sheriff is entitled to a priority; and that the goods of the party are bound by the delivery of the writ. But the Legislature saw the inconvenience and hardship which would fall upon innocent purchasers, if the vendee under the second writ were liable to be dispossessed of the goods which he had bona fide bought; and therefore they guarded against it by the Statute of Frauds. This I understand was the sole object of that part of the Act. It was only intended to secure the possession of purchasers under an execution. Here Gover's execution was delivered on the 23rd of November, and the plaintiff's not till the 25th. It is true indeed that the entry under the first execution was not made till the 27th, which was after the second; but though the sheriff suffered the seizure to be made under the second writ first, yet he knew at that time of Gover's execution, and therefore made the bill of sale to the plaintiff expressly under the condition of securing him against Gover. This then is not a bill of sale under an execution to an innocent purchaser, but to a person who purchased with notice of a prior claim. This agreement takes it out of all the cases cited with respect to innocent vendees. The cases cited shew clearly that though the possession of an innocent vendee shall not be disturbed, yet as to all the rest of the world the goods are bound from the delivery of the writ. In Rybot and Peckham the second execution was completed; and it was for that reason that the claimant under the first execution could not recover the money out of the hands of the creditor under the second execution; and his only remedy was by an action against the sheriff. But that is not like the present case; for here the execution was not so completely executed as that the money was paid into the hands of the plaintiff claiming under the second execution. He is not a vendee without notice, and so is not protected by the statute. It is clear, therefore, that he is not entitled to recover this money out of the hands of the sheriff.”

35. The writ of fieri facias is, as I have already observed, the predecessor of the modern writ of control and, although the latter forms part of a new regime, the respondents argue that the approach of the Court of King's Bench in Hutchinson provides strong conceptual support for the proposition that the binding nature of a writ once delivered establishes priority over the creditor whose writ is received later regardless of the order in which the writs are first sought to be enforced.

36. In ***Jones v Atherton*** (1816) 7 Taunton 56 the approach of the Court of Common Pleas is summarised in the headnote thus:

“Though a sheriff make a warrant and seizure of goods under a fieri facias last delivered to him, yet the Plaintiff in a fieri facias first delivered to the sheriff is entitled to be first satisfied out of the fruits of that seizure.”

Gibb C.J. held:

“I cannot distinguish this case in principle from that of ***Hutchinson v. Johnstone*** (7 Term Rep. 729). There, indeed, the warrant upon the first writ issued subsequently to the warrant upon the second writ. The sheriff informed the Plaintiff in the second execution, that the Plaintiff in the first execution must be first satisfied; the second Plaintiff paid the sheriff the sum to be levied under that first execution, and applied to the Court to have that money restored to him, upon the ground that the first Plaintiff's warrant was not made till after his own. The sheriff says, “True, I did not make my warrant on the first execution, till after my warrant on the second writ; but as I had the first writ first delivered to me, it must take precedence;” and the Court held that he was right. This shews, that if the sheriff has the writ in his office, though no warrant be made on it, if he afterwards gets possession of the goods, though apparently under another writ, yet his possession shall enure to the use of the first writ, and that the goods are bound by the writ in the sheriff's hands, from the time of its delivery to him.”

37. In ***Dennis v Whetham*** (1874) L.J. QB 129 Blackburn J put the matter succinctly thus:

“Where more writs than one are placed in the hands of the sheriff, the second creditor's right is subject to the right of the creditor whose writ was lodged first.”

38. More recently, the Court of Appeal in ***Bankers Trust Co v Galadari (No.2)*** [1987] Q.B. 2 held that the priority of the first writ is sustained even in circumstances where the original judgment upon which it is founded has been overturned but thereafter restored following the date of receipt of a second writ.

39. The statutory basis upon which the ***Bankers Trust*** case was decided is to be found in section 138 (1) of the Supreme Court Act 1981 which provided:

“Effect of writs of execution against goods.

(1) Subject to subsection (2), a writ of fieri facias or other writ of execution against goods issued from the High Court shall bind the property in the goods of the execution debtor as from

the time when the writ is delivered to the sheriff to be executed.”

The text of Schedule 12 paragraph 4 (2) of TCEA 2007 inevitably reflects the fact that writs of control have since replaced writs of fieri facias and that sheriffs no longer have responsibility for the execution of writs but otherwise closely follows the wording of section 138 (1) of the 1981 Act:

“Where the power is conferred by a writ issued from the High Court the writ binds the property in the goods from the time when it is received by the person who is under a duty to endorse it.”

40. I am satisfied that the wording of Schedule 12 preserves the long established principle that a debtor’s goods become bound by the writ from a particular point in time, and that although the same goods can be bound by multiple writs, it is only once the first writ is satisfied out of proceeds that the surplus (if any) can be applied to the second writ, and so on, in accordance with writ priority. I reject the applicant’s contention that the earlier authorities do no more than refer to “goods being bound” in the same sentence as “priority”. The only proper interpretation of them is that the timing of the binding of the goods establishes the order of priority.
41. In the alternative, the applicants argue by the operation of section 65 of the 2007 Act, that the new statutory framework replaces the common law rules about the exercise of the powers which, by its operation, become powers to use the procedure in Schedule 12. This is undoubtedly so but it does not automatically follow that earlier law and practice must be jettisoned even where it is consistent with the modern framework as I here find it to be.
42. A related argument promoted by the applicant is to the effect that prior to the Courts Act 2003, there was only ever one sheriff to each bailiwick and so the earlier authorities cannot be regarded as laying down any principle of priorities as between HCEOs whose jurisdictions overlap.
43. I reject this contention and accept the respondent’s riposte that the goods are bound and priorities established by the writs and their date of receipt irrespective of the identities of the HCEOs in any given set of circumstances. It does not follow that because, *as a matter of fact*, multiple enforcement agencies may now be involved that firmly established principles both consistent and compliant with the Schedule 12 regime should now be abandoned.
44. I take further comfort in the safety of my conclusion on this issue from a textbook with which I invited the parties to equip me in their consolidated written submissions. This has now been done and I have found the exercise to have been fruitful.

45. Claire Sandbrook's: "Debt Recovery through the Courts" 1 Ed. (2008) is a text post-dating the statutory transfer of the responsibility of the sheriff to the HCEO on 1 April 2004 pursuant to the provisions of the Courts Act 2003. The author, herself an HCEO, addresses the issue thus:

"Why is the timing of the writ so important?"

14-26 On delivery of the Writ to the HCEO, the HCEO must endorse the Writ with the date and time of its receipt. The time which is endorsed is then used to establish the priority of the writ with competing judgment creditors, either in the High Court or county court, and so far as other proceedings are concerned, particularly where moves are afoot to make the judgment debtor insolvent."

46. I also expressed an interest during the course of oral argument in the qualifications which are required of any person wishing to become an HCEO in the expectation that the training material for such courses would be very likely to deal with the priorities to be afforded to writs received sequentially. I have now been provided with this material.
47. Those aspiring to become HCEOs are required achieve a Level 4 Diploma in High Court Enforcement. The Chartered Institute of Credit Management's Level 4 training material at Ch. 2, p.9 provides:

"Receipt of writ

The HCEO must record clearly the date and time of receipt, normally on the back of the writ in order to establish its priority and acknowledge receipt of the Writ...

Writs are enforced in order of priority, based on date and time of lodgement. This applies for all HCEOs nationally to ensure that claimant priorities are maintained as ordered by the court."

And at Ch. 4, p. 19:

"Priority of writs

Writs have an order of priority which is established by the date and time that the writ is lodged with the HCEO. Once lodged a writ has priority over any other writs that are lodged later, regardless of whether an earlier taking control of goods has been made.

There are many cases where an officer will find another officer enforcing at the same address. In these circumstances it is the priority date that determines which officer is entitled to the goods.

Where an officer finds another enforcement agent has taken control of goods under a writ at an address, it is the date of the lodgment of the writ that becomes the effective date.”

And at Ch. 4, p. 26:

“Summary

In this chapter you have learned that Writs of Control hold a chronological order of priority”

48. Of course, textbooks and training materials carry no weight of precedent but I am reassured that the analysis which is applied by the authors of these works represents an accurate description of the law as I have found it to be.

Project Fear

49. The time now comes when, as Lord Reed put it in *Cox v Ministry of Justice* [2016] A.C. 660 at para. 46, “...like the Fat Boy in *The Pickwick Papers*, counsel sought to make our flesh creep.” Thus the applicant seeks to persuade me that the consequences of finding against him would be to introduce dire and immediate complexity and unfairness into the process of enforcing writs of control.
50. The first and obvious point to be made is that where the legal position is otherwise clear, as I here find it be, then the practical consequences must lie as they fall. But in any event, I am not satisfied that the dysphoric predictions of the applicant are, in any event, compelling.
51. The applicant asserts that there is no system for finding out as between two HCEOs or EAs which has the higher priority writ. However, section 104 of the County Courts Act 1984 provides:

“Information as to writs and warrants of execution.

- (1) Where a writ against the goods of any person issued from the High Court is delivered to an enforcement officer who is under a duty to execute the writ or to a sheriff, then on demand from a judge of the county court that person shall—
- (a) in the case of an enforcement officer, by writing signed by that officer or a person acting under his authority, and
- (b) in the case of a sheriff, by writing signed by any clerk in the office of the under-sheriff,

inform the judge of the precise time the writ was delivered to him.

- (2) The person to whom a warrant issued by the county court is directed shall on demand show his warrant to any enforcement officer, any person acting under the authority of an enforcement officer and any sheriff's officer.
- (3) Any writing purporting to be signed as mentioned in subsection (1) and the endorsement on any warrant issued from the county court shall respectively be sufficient justification to any judge, or enforcement officer or sheriff, acting on it.
- (4) In this section "enforcement officer" means an individual who is authorised to act as an enforcement officer under the Courts Act 2003."

52. The applicant further contends that there is likely to be complexity and unfairness because there is no provision in The Taking Control of Goods (Fees) Regulations 2014 ("the 2014 Regulations") dealing with circumstances in which an EA may recover fees in respect of enforcement-related services from the debtor where the relevant writ of control is subsequently found to be of lower priority than one deployed subsequently. I consider that these potential difficulties are much exaggerated. If they had generated any significant problems since the introduction of the new regime then it is remarkable that no such issues have come to light hitherto.

53. Furthermore, as the training materials state, in the context of the priority of writs, that:

"...it is good practice to inform the claimant of liability for any fees, for example for administrative fees, and any obligations which the HCEO may place on the claimant".

54. And according to Sandbrook at 14-70:

"As a cautionary note, it should be remembered that it is set out at common law that ultimate liability for the High Court Enforcement Officer's charges does rest with the Judgment Creditor, a fact set out in the High Court Enforcement Officer's Regulations and as such it is very important that practitioners do bear in mind the High Court Enforcement Officer's charges before and during any negotiations with the Judgment Debtor to settle the matter."

55. Against this background I consider the applicant's arguments that an officer's agreement for the payment of fees may be void for lack of consideration or as being contrary to public policy are without merit as is the suggestion that an officer would be bound to execute a writ even in circumstances in which the creditor declines to make provision for the

payment of such fees. Furthermore, I am not assisted by the difficulties alleged to arise from the provisions in the Regulations that refer to the EA rather than the HCEO as being the person who may recover his fees from the debtor. The complete absence of evidence that this has given rise to any difficulties in practice supports the conclusion that the applicant's expressed fear are more imaginary than real.

Other arguments

56. The applicant further argues on the facts of this particular case that where payment is made instead of the enforcement agent taking control of goods and selling them (or taking cash into control and crediting it to the debt) there are no proceeds of the Schedule 12 process and there is nothing to pay over in priority.

57. However, paragraph 50 of Schedule 12 deals with the 'application of proceeds' and provides that proceeds from the exercise of an enforcement power (i.e. a power to use the Schedule 12 procedure to recover a particular sum) must be used to pay the amount outstanding.

58. Paragraph 50(2) sets out two kinds of proceeds from the exercise of an enforcement power:

“(2)Proceeds are any of these -

(a) proceeds of sale or disposal of controlled goods;

(b) money taken in exercise of the power, if paragraph 37(1) does not apply to it.”

59. Thus paragraph 50(2) expressly contemplates that proceeds are not only the proceeds of sale or disposal of controlled goods but are also money taken in exercise of the power to use the procedure to recover a particular sum. Where an enforcement agent attends at a debtor's premises under the power conferred by a writ and obtains money from the debtor which the debtor pays to him in order to avoid the enforcement agent taking control of his goods, that money constitutes proceeds from the exercise of an enforcement power. On the facts of this case, paragraph 37(1) does not apply.

60. In this case, there can be no doubt that Mr Wild was indeed taking money in the exercise of an enforcement power. Mr Badger's evidence is that he spoke to Mr Wild on the telephone while Mr Wild was attending at Mr Handa's property and Mr Wild confirmed that he was there to execute the CES Writ in the absence of payment. Mr Badger also exhibits in evidence an email from Mr Handa, which states: “when they attended the property on 21st August 2018, they clearly told myself and my father that they would be removing all the assets on the property, despite your

paperwork that had been presented to them”. None of this evidence is contradicted by the applicant. The argument that Mr Handa was making a voluntary payment is simply unsustainable on the facts of this case

61. I am equally unpersuaded by the applicant’s argument that Mr Handa was exercising his right to appropriate his payment to a particular debt. In reality, Mr Handa was doing no such thing. He was parting with his money with the intention solely to avoid the consequences of further enforcement.
62. It is further suggested by the applicant that the money obtained by Mr Wild consisted in part of a bank payment and, as such, did not constitute “money taken” within the provisions of Schedule 12. I reject this argument. There would be no justification in artificially limiting the definition of money so as, for example, to include only cash and one would be entitled to question the purpose, fairness and utility of any such distinction.
63. The sedulous ingenuity of the applicant remains unexhausted. It goes on to argue that once money is paid against the amount outstanding, the effect of paragraph 6(2)(b) of Schedule 12 is that the goods cease to be bound such that “any security interest and priority must end”.
64. On this issue I accept the contention of the respondent that the provisions of Schedule 12 apply in respect of each writ, so that under paragraph 6 of Schedule 12 the property in any goods ceases to be bound by a particular writ when the amount outstanding in respect of that writ is paid. Otherwise, the priority principle and the effect of the goods being bound by a writ from a particular moment in time would be rendered completely ineffective, since payment in respect of a subsequent writ would release the goods from all other writs in priority to that writ.
65. In this case the B Writ bound the property in all of Mr Handa’s goods from the time of its receipt by Mr Badger on 12th June 2018. The B Writ would only stop binding the goods upon payment of the amount outstanding under that writ. The amount outstanding under the B Writ was not paid by Mr Handa making payment to CES upon CES attending at the Property pursuant to a subsequent writ (the CES Writ) and threatening to take control of Mr Handa’s goods pursuant to the CES Writ.
66. I have not dealt with every strand of the very many and various arguments raised by the applicant in support of the points upon which I have adjudicated above. It would be disproportionate to have done so. Suffice it to say that none of these contentions have strength or merit enough to drive me to any different conclusions than those which I have set out above.

CONCLUSION

67. I have found that none of the arguments raised by the applicant have merit and it must follow that this application fails.