

## Orders for Sale

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# Introduction



## INTRODUCTION: What is an order for sale?



- Essentially an order allowing a judgment creditor with a charging order to sell the property of a judgment creditor
- Often accompanied by an order for possession to enable sale with vacant possession



## Court's Jurisdiction

- “Statutory engagement of the court’s inherent equitable jurisdiction”
- Section 3(4) Charging Order Act 1979
- CPR 73.10C “Subject to the provisions of any enactment, the court may, on a claim by a person who has obtained a charging order over an interest in property, order the sale of the property to enforce the charging order”
- What if charging order against debtor’s beneficial interest only?
  - Section.14 Trusts of Land and Appointment of Trustees Act 1996 (TLATA): court may make order for sale of legal estate upon application “*from any person who is a trustee of land or as an interest in the property subject to a trust of land*”
  - Includes creditor with a charging order: **Midland Bank v Pike and Pike** [1998] 2 All ER 434
- NOT for Debts arising from regulated consumer credit agreement where debt below £1,000 Charging Orders (Orders for Sale: Financial Thresholds) Regs 2013/491

# Which court?



*Should be made co court which made the charging order unless that court does not have jurisdiction to make an order for sale (CPR 73.10C(3))*



## County Court

- Where judgment debt no more than £350,000
- Otherwise inappropriate for High Court (see Practice Direction 7A, para. 2)



## High Court

- Where judgment debt exceeds £350,000
- Otherwise appropriate for High Court
- Note High Court may transfer proceedings to County Court (CPR 30.3)
- Should generally be brought in Chancery Division, but may be brought elsewhere in appropriate circumstances: ***Packman Lucas v Mentmore Towers*** [2010] EWHC 1037 (TCC)

## Court's discretion

- Orders are discretionary
- CPR73.10C.1
  - *“It is one thing to make a charging order giving security to the judgment debtor and quite another thing to order a sale of the judgment debtor’s property”*
  - *“Extreme sanction and all the circumstances would have to be considered”*
  - *“Draconian step to satisfy a simple debt”*

## Court's discretion – Relevant factors (1)

- Whether the property debtor's and/or his family home
- Welfare of those in the property (***Forrester Ketley v Brent and Palette*** [2009] EWHC 3441)
- Applies even where debtor sole legal and beneficial owner (***Close Invoice Finance v Pile*** [2009] EWHC 1580 (Ch))
- Article 8 ECHR
  - In cases brought under TLATA, consideration of factors in s.15 often sufficient but there may be circumstances where courts must specifically consider proportionality (***Natwest v Rushmer*** [2010] EWHC 554 (Ch))

## Court's discretion – Relevant factors (2)

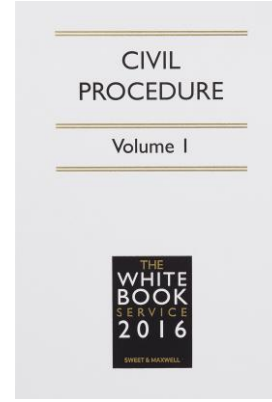
- Ratio of debt to value of charged asset
  - “no rules or presumptions”
  - Low debt:value ratio can cut both ways (***Packman Local v Mentmore*** [2010] EWHC 1037 (TCC))
  - Might be relevant that even after sale of a family home, a husband and wife will be able to afford another (all be it smaller) one (***C Putnam & Sons v Taylor*** [2009] EWHC 317 (Ch))
- Attitude of other secured creditors
- Attitude of judgment debtor towards paying the debt



## Court's discretion – Co-Beneficial interest

- Application made under s.14 TLATA. Court must list factors in s.15:
  - (a) the intentions of the person or persons (if any) who created the trust,
  - (b) the purposes for which the property subject to the trust is held,
  - (c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home, and
  - (d) the interests of any secured creditor of any beneficiary.
- Rights of creditor remain a powerful consideration (***Mortgage Corp v Shaire*** [2001] Ch 743)
- Interests of families will not necessarily outweigh those of creditors (***Bank of Ireland v Bell*** [2001] All ER (Comm) 920)

## Procedure (1) (CPR 73.10C)



- Judgment creditor required to issue separate proceedings
- Must use Part 8 procedure
- If charging order obtained at County Court Money Claims Centre, the claim must be made to the judgment debtor's home court
- A copy of the charging order must be filed with the claim form

## Procedure (2) Who should be listed as parties?

- In all cases the claim form must list as defendants:
  - The debtor; and
  - All other adult occupiers of the property (whether tenants or otherwise) against whom possession will be sought as a precursor to order for sale
- When debtor is co-beneficial owner:
  - The trustee legal owners
  - Other beneficial owners (unless their interests are small or they don't occupy property in which case they may not need to be added)
- Other interested persons such as secure creditors should be notified of the proceedings but do not necessarily need to be listed as parties

# Evidence (1) (Practice Direction 73, para. 4.3)



4.3 The written evidence in support of a claim under rule 73.10C must –

- (1) identify the charging order and the property sought to be sold;
- (2) state the amount in respect of which the charge was imposed and the amount due at the date of issue of the claim;
- (3) verify, so far as known, the debtor's title to the property charged;
- (4) state, so far as the claimant is able to identify –
  - (a) the names and addresses of any other creditors who have a prior charge or other security over the property; and
  - (b) the amount owed to each such creditor; and
- (5) give an estimate of the price which would be obtained on sale of the property;
- (6) if the claim relates to land, give details of every person who to the best of the claimant's knowledge is in possession of the property; and
- (7) if the claim relates to residential property –
  - (a) state whether –
    - (i) a land charge of Class F; or
    - (ii) a notice under section 31(10) of the Family Law Act 1996, or under any provision of an Act which preceded that section,  
has been registered; and
  - (b) if so, state –
    - (i) on whose behalf the land charge or notice has been registered; and
    - (ii) that the claimant will serve notice of the claim on that person.

## Evidence (2)



### (1) Identify the charging order and property sought to be sold

- Final Charging order required. **Must** be filed with the claim form (CPR 73.10C(5))
- Property in respect of which the order is sought also needs to be identified
  - Covered in witness statement and copy of title (if available)



## Evidence (3)



### (2) State the amount in respect of which the charge was imposed and the amount due at the start of the claim

- “Claim” means claim for order for sale
- Can be set out in witness statement. Also good practice to attach any judgments or orders



## Evidence (4)



### **(3) Verify, so far as known the debtor's title to the property charged**

- May need to be more detailed than evidence adduced at charging order stage, because court needs more certainty.
- In most cases land will be registered and an official copy of title will suffice
- Where land is unregistered title probably deeds required
- Where beneficial interest which is not listed other evidence will need to be adduced (e.g. trust deed, witness statement, etc)
- Where information is required, creditor may make application under CPR 71.2 to attend court and provide information under oath

## Evidence (5)



### **(4) State names of other creditors with a prior charge or other security**

- Judgment creditor required to make “take reasonable steps” to obtain this information (PD73, para 4.4)
- Consulting title document is often sufficient. Creditors would be advised to contact those with charges over the property to confirm whether the charge is still valid and the amount owed.
- If a prior incumbrancer is found and is about to make an application for an order for sale the judgment creditor would be advised to abandon his own claim and await satisfaction from the sums secured by the other creditor

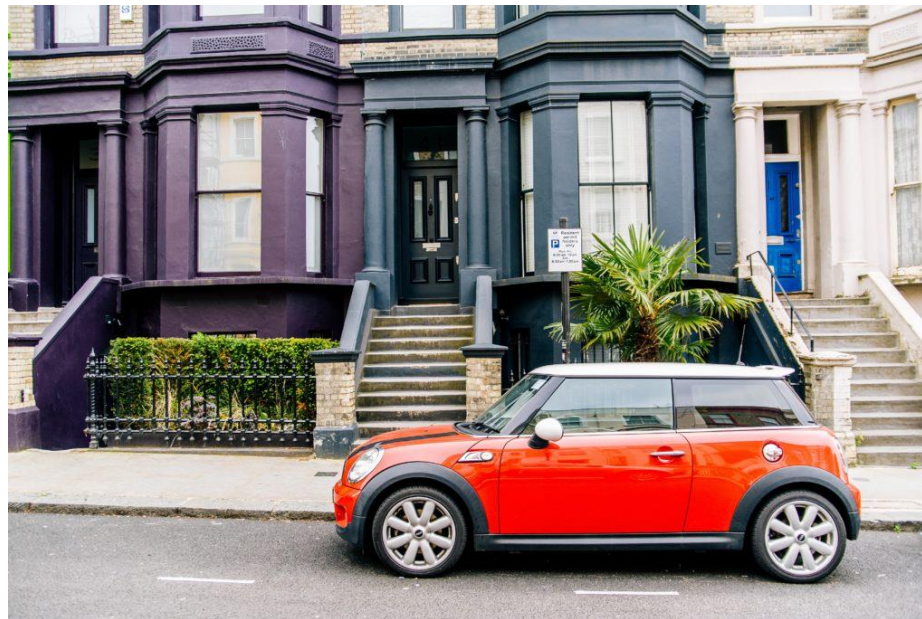


## Evidence (6)



### (5) Give estimate of the price which would be obtained on sale of the property

- Creditors should obtain external/ “drive-by” valuation from estate agent/surveyor



## Evidence (7)



### (6) If the claim relates to land, details of every person who to the best of the claimant's knowledge is in possession of the property

- This may or may not be obvious from the title
- Where it is not, and the Claimant has knowledge of the Defendant's living arrangements, it can set this detail out in a witness statement
- Court likely to be particularly concerned to know if it is a family home and/or occupied by children or vulnerable adults
- In some cases it may not be possible for the Claimant to obtain this information

## Evidence (8)



### **(7) Class F land charge or notice under s.31(10) Family Law Act 1996 (or under any provision of an Act which preceded that section)**

- Essentially to identify whether debtor's spouse or partner has home rights
- For registered land: Land Registry search using form HR3
- For unregistered land: Official search at the Land Charges Department
- If found, creditor must state on whose behalf the charge/notice has been registered and that it will serve notice of the claim on that person

# The Order (1)



- Helpful precedent in Practice Direction 73, Appendix A

**Order for sale following a charging order**  
(property solely owned by judgment debtor)

in the \_\_\_\_\_ Claim No. \_\_\_\_\_  
Appn. No. \_\_\_\_\_  
Claimant \_\_\_\_\_  
Defendant \_\_\_\_\_

On the \_\_\_\_\_ 20 \_\_\_\_\_ sitting at \_\_\_\_\_  
heard \_\_\_\_\_

The claimant is entitled to an equitable charge upon the defendant's interest in the property \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[registered at H.M. Land Registry under Title No. \_\_\_\_\_]  
("the property") \_\_\_\_\_  
under a charging order made on the \_\_\_\_\_  
in the \_\_\_\_\_ in Claim No. \_\_\_\_\_

**and the court orders that**

1. The remainder of this order will not take effect if the defendant by 4.00 p.m. on the \_\_\_\_\_ 20 \_\_\_\_\_ pays to the claimant the judgment debt of £ \_\_\_\_\_ secured by the charge and his costs to date of this application assessed at £ \_\_\_\_\_ making together £ \_\_\_\_\_ [together \_\_\_\_\_ with interest at the rate of £ \_\_\_\_\_ per day from the date of this order until payment is received by the claimant].
2. The property shall be sold without further reference to the court at a price not less than £ \_\_\_\_\_, unless that figure is changed by a further order of the court.
3. The [claimant] [claimant's solicitor] will have conduct of the sale.
4. To enable the claimant to carry out the sale, there be created and vested in the claimant pursuant to section 90 of the Law of Property Act 1925 a legal term in the property of [3000 years] [one day less than the remaining period of the term created by the lease under which the defendant holds the property].
5. The defendant must deliver possession of the property to the claimant [on or before the \_\_\_\_\_ 20 \_\_\_\_\_] [within [\_\_\_\_\_] days of this order being served on him].

## The Order (2)



- Most orders are conditional
- Court may postpone or suspend an order
- Creditors usually entitled to costs



# Questions?

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