

ORDER 45
(R.S.C. 1978)

ENFORCEMENT OF JUDGMENTS AND
ORDERS: GENERAL

*Enforcement of judgment, etc., for payment of money
(O.45, r.1).*

1.—(1) Subject to the provisions of these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means, that is to say—

- (a) writ of fieri facias;
- (b) garnishee proceedings;
- (c) a charging order;
- (d) the appointment of a receiver;
- (e) in a case in which rule 5 applies, an order for committal;
- (f) in such a case, writ of sequestration.

(2) Subject to the provisions of these Rules, a judgment or order for the payment of money into court may be enforced by one or more of the following means, that is to say—

- (a) the appointment of a receiver;
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(3) Paragraph (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a court under the Debtors Act to commit to prison a person who makes a default in paying money adjudged or ordered to be paid by him, or to the enactments relating to bankruptcy or the winding up of companies.

(4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

(5) In any writ or order issued or made to enforce a judgment or order for the payment of money, the amount to be recovered must be stated in Bahamian currency.

Judgment, etc. for payment of money to person resident outside the scheduled territories (O.45, r.2).

2.—(1) Where any person is directed by any judgment, order or award to pay any money to or for the credit of a person who is resident outside the scheduled territories, he must, unless the Central Bank of the Bahamas has given permission for the payment under the Exchange Control Regulations, unconditionally or upon conditions which have been complied with, pay the money into court.

(2) Payment into court under paragraph (1) shall, to the extent of the amount paid in, be a good discharge of the person making the payment, and no steps may be taken to enforce the judgment, order or award to the extent of that amount.

(3) Notice of a payment into court under this rule must be given to the plaintiff, his attorney or agent and to any other person required by the judgment, order or award to be given notice of such payment.

Enforcement of judgment for possession of land (O.45, r.3).

3.—(1) Subject to the provisions of these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say—

- (a) writ of possession;
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 77 applies.

(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

Enforcement of judgment for delivery of goods
(O.45, r.4).

4.—(1) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say—

(a) writ of delivery to recover the goods without alternative provisions for recovery of the assessed value thereof (hereafter in this rule referred to as a “writ of specific delivery”);

(b) in a case in which rule 5 applies, an order of committal;

(c) in such a case, writ of sequestration.

(2) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say—

(a) writ of delivery to recover the goods or their assessed value;

(b) with the leave of the Court, writ of specific delivery;

(c) in a case in which rule 5 applies, writ of sequestration.

(3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

Enforcement of judgment to do or abstain from doing any act (O.45, r.5).

5.—(1) Where—

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time, or, as the case may be, within that time as extended or abridged under Order 3, rule 4, or

(b) a person disobeys a judgment or order requiring him to abstain from doing an act.

then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means, that is to say—

- (i) with the leave of the Court, a writ of sequestration against the property of that person;
- (ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;
- (iii) subject to the provisions of the Debtors Act an order of committal against that person or, where that person is a body corporate, against any such officer.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to that order made under rule 6.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in that order, and that order may be so enforced.

Judgment, etc. requiring act to be done: order fixing time for doing it (O.45, r.6).

6.—(1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court, shall, without prejudice to Order 3, rule 4, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, notwithstanding Order 42, rule 2(1), or by reason of Order 42, rule 2(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this rule must be made by summons and the summons must, notwithstanding anything in Order 61, rule 9, be served on the person required to do the act in question.

Service of copy of judgment, etc., prerequisite to enforcement under r.5 (O.45, r.7).

7.—(1) In this rule references to an order shall be construed as including references to a judgment.

(2) Subject to Order 24, rule 16(3), Order 26, rule 6(3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless—

(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and

(b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

(3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1)(ii) or (iii) unless—

(a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought, and

(b) in the case of an order requiring the body corporate to do an act, a copy has been so served before the expiration of the time within which the body was required to do the act.

(4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served—

(a) in the case of service under paragraph (2), that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the Order, he is liable to process of execution to compel him to obey it, and

(b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.

(5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, rule 4, extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this Order, a copy of the previous order requiring the act to be done.

(6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either—

(a) by being present when the order was made, or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) Without prejudice to its powers under Order 61, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

Court may order act to be done at expense of disobedient party (O.45, r.8).

8. If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to any other power it may have including its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

Execution by or against person not being a party (O.45, r.9).

9.—(1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

Conditional judgment: waiver (O.45, r.10).

10. A party entitled under any judgment or order to any relief subject to the fulfillment of any condition who fails to fulfill that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

Matters occurring after judgment: stay of execution, etc. (O.45, r.11).

11. Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order

made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

Forms of writs (O.45, r.12).

12.—(1) A writ of fieri facias must be in such of the Forms Nos. 53 to 63 in Appendix A as is appropriate in the particular case.

(2) A writ of delivery must be in Form No. 64 or 65 in Appendix A, whichever is appropriate.

(3) A writ of possession must be in Form No. 66 or 66A in Appendix A, whichever is appropriate.

(4) A writ of sequestration must be in Form No. 67 in Appendix A.

Enforcement of judgments and orders for recovery of money, etc. (O.45, r.13).

13.—(1) Rule 1(1) of this Order, with the omission of subparagraphs (e) and (f) thereof, and Order 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.

(2) Rule 3 of this Order, with the omission of paragraph (1)(b) and (c) thereof, and Order 47, rule 2(2), shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.

(3) Rule 4 of this Order, with the omission of paragraphs 1(b) and (c) and 2(2)(c) thereof, and Order 47, rule 2(2), shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.
