CV 06365

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

THE COMMISSIONER OF THE NORTHWEST TERRITORIES and THE NORTHWEST TERRITORIES BUSINESS CREDIT CORPORATION

Plaintiffs

- and -

CHANDRA P. MUDALIAR and LUMEN C. MARIANAYAGAM, carrying on business under the firm name and style of ARCTIC FOTO LAB

Defendants

MEMORANDUM OF JUDGMENT

On April 26, 1996, I issued a declaration that there was an act of default on the part of the defendants within the terms of the chattel mortgage dated January 3, 1996. That act of default occurred as of January 19, 1996. I have now considered the further submissions of the parties with respect to the effect of one partner's consent to early seizure of the chattels.

The basic facts are:

1. On January 19, 1996, the plaintiff B.C.C. made demand for payment and gave notice of its intention to enforce its security at the expiry of 10 days.

2. On January 19, 1996, the defendant Mudaliar executed a consent to early enforcement of the B.C.C. security.

3. Prior to that, on January 18, 1996, the defendant Mudaliar signed and filed a Notice of Dissolution of Partnership.

4. Seizure was effected on January 24, 1996.

5. On April 17, 1996, Mudaliar assigned into bankruptcy.

The general principles that govern are well established. Each partner is an agent of the firm and the other partner (s.5(1) of Partnership Act) and each partner is liable jointly with the other partner for all debts and obligations of the firm (s.9 of the Act). Each partner has implied authority to bind the firm and to compromise the firm's affairs: Canadian Imperial Bank of Commerce v. Donoghue (1909), 12 W.L.R. 30 (Y.T.). The power of each partner to bind the firm continues after dissolution of the partnership for the purpose of winding-up of partnership affairs: s.38 of Act and see Sealy v. Stephenson (1923), 32 B.C.R. 187 (C.A.).

These governing principles are not affected by the document executed by the defendants entitled "General Partnership Agreement". That document, being a pre-printed form, does not restrict the ability of either partner to bind the firm. It makes reference to a "managing partner" and to decisions requiring approval by 80% of the partners. But there are only two partners. In the absence of evidence as to any other

agreement, and a more specific one, these generalized clauses are ineffective to displace the statutory and common-law principles noted above. In part, this is a built-in problem with using pre-printed forms. In addition, these clauses may give rise to internal management disputes but they cannot affect dealings with a third party.

Assuming that the partnership was not dissolved as of January 19, 1996, the general principles noted above apply. Therefore, the consent by one partner to effect early seizure is valid.

Assuming that the partnership was dissolved, and even assuming that the B.C.C. knew that, the consent is equally as valid. The primary obligation on partners in that situation is to realize the assets of the partnership so as to satisfy the firm's obligations. An early seizure would seem to me to be a reasonable step so as to reduce the firm's indebtedness on the chattel mortgage. The sooner that debt can be cleared off the better for both partners. The primary duty of partners to satisfy the firm's obligations is reflected in s.44(b) of the Act, clause 18 of the "General Partnership Agreement", and authorities of venerable vintage:

> On dissolution, each one of the partners has a perfect right to require, and through equity to compel, a final settlement and adjustment of all questions and all property. On dissolution the power and authority of the surviving partners is for the purpose of winding up and no further; it is an incident to the contract of partnership that the surviving partners should collect the assets and wind up the business of the firm, and after the dissolution of the firm the authority of each partner to bind the firm continues only so far as is necessary to settle and liquidate existing demands, and to complete transactions begun but unfinished at the time of the dissolution, and not otherwise.

Starrs v. Cosgrave Brewing Co. (1886), 12 S.C.R. 571 (per Ritchie C.J.C.).

Mr. Marianayagam's counsel submitted that there was a burden on the B.C.C. to prove that they knew and relied on the fact that Mr. Mudaliar was acting as agent for the partnership at the time he consented to the early seizure. I do not agree. The case references cited by counsel are inapplicable since they deal with defendants seeking to avoid contract debts on the basis that they were acting merely as agents for another person or for a company. In the present case, the B.C.C. is entitled to rely on the statute and the common law authorizing one partner, before or after dissolution, to bind the firm with respect to satisfaction of its obligations.

I have therefore concluded that the consent to seizure executed by the defendant Mudaliar was effective to bind the partnership. There may be claims and liabilities as between the partners. Their joint obligation to B.C.C., however, remains. This applies whether one considers the partnership to have been continuing or dissolved as of January 19, 1996.

If nevertheless I had to decide, I would conclude that the partnership was not dissolved as of January 19th since the technical requirements for dissolution, whether by the agreement, by statute, or by notice, had not been fully satisfied. Having regard to my earlier comments, however, the essential decision, that the consent of Mudaliar alone was sufficient to effect seizure, is the same whether one considers the partnership dissolved or not.

An order will therefore issue:

1. Vacating the objection to seizure filed by the defendant Marianayagam and dismissing his motion for declaratory relief.

2. Directing the removal and sale of the seized goods, as described in Schedule "A" to the plaintiffs' Originating Notice, by the Sheriff by public tender.

3. The plaintiffs shall have their costs on the basis of Column 2 of the Tariff of Costs (as it was before and after April 1st), such costs to be added to the indebtedness of the defendants under the plaintiffs' security.

If further directions are required, counsel may see me in chambers.

Dated this 15th day of May, 1996.

J. Z. Vertes

J.S.C.

To: Garth L. Wallbridge
Counsel for the Plaintiffs

Glennis M. Munro Brydon
Counsel for the Defendant Marianayagam

Chandra P. Mudalier
c/o Paul Fleury
4912 - 49th Street
Yellowknife, NT
X1A 2R2

CV 06365

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

THE COMMISSIONER OF THE NORTHWEST TERRITORIES and THE NORTHWEST TERRITORIES BUSINESS CREDIT CORPORATION

Plaintiffs

- and -

CHANDRA P. MUDALIAR and LUMEN C. MARIANAYAGAM, carrying on business under the firm name and style of ARCTIC FOTO LAB

Defendants

Memorandum of Judgment of the Honourable Mr. Justice J. Z. Vertes