PART 51 Interpleader

PART 51

Interpretation 51.1

51.1

In this Part:

(1) ‘enforcement officer’ means the Court Bailiff or an individual who is authorised to act as such by the Chief Justice or a person acting on his behalf;

(2) ‘order of execution’ includes an order of execution against assets, an order of possession, an order of delivery, or an order of sequestration and any further order in aid of any of the aforementioned orders.

Entitlement to relief by way of interpleader 51.2

51.2

Where:

(1) a person is under a liability in respect of a debt or in respect of any assets and he is, or expects to be, sued for or in respect of that debt or assets by two or more persons making adverse claims thereto; or

(2) claim is made to any assets taken or intended to be taken by an enforcement officer in execution under any process, or to the proceeds or value of any such assets, by a person other than the person against whom the process is issued;

the person under liability as mentioned in sub-paragraph (1) or (subject to Rules 51.3 to 51.6) an enforcement officer may apply to the Court for relief by way of interpleader.

Claim to assets taken in execution 51.3 - 51.6

51.3

Any person making a claim to or in respect of any assets taken or intended to be taken in execution under process of the Court , or to the proceeds or value of any such assets, must give notice of his

claim to the enforcement officer charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service .

51.4

On receipt of a claim made under Rule 51.3 the enforcement officer must forthwith give notice thereof to the execution creditor and the execution creditor must, within 7 days after receiving the notice, give notice to the enforcement officer informing him whether he admits or disputes the claim. An execution creditor who gives notice in accordance with this Rule admitting a claim shall only be liable to the enforcement officer for any fees and expenses incurred by the enforcement officer before receipt of that notice.

51.5

Where:

(1) the enforcement officer receives a notice from an execution creditor under Rule 51.4 disputing a claim, or the execution creditor fails, within the period mentioned in that Rule, to give the required notice; and

(2) the claim made under Rule 51.3 is not withdrawn;

the enforcement officer may apply to the Court for relief under this Part.

51.6

An enforcement officer who receives a notice from an execution creditor under Rule 51.4 admitting a claim made under Rule 51.3 shall withdraw from possession of the assets claimed and may apply to the Court for an order restraining the bringing of a claim against him for or in respect of his having taken possession of the assets.

Claim in respect of assets protected from seizure 51.7 - 51.12

51.7

Where a judgment debtor whose assets have been seized, or are intended to be seized, by an enforcement officer under an order of execution claims that such assets are not liable to execution by virtue of Article 45(2) of the Lawof Damages and Remedies 2005, he must within 5 days of the seizure give notice in writing to the enforcement officer identifying all those assets in respect of which he makes such a claim and the grounds of such claim in respect of each item.

51.8

Upon receipt of a notice of claim under Rule 51.7, the enforcement officer must forthwith give notice thereof to the execution creditor and to any person who has made a claim to, or in respect of, the goods under Rule 51.3 and the execution creditor and any person who has made claim must, within 7 days of receipt of such notice, inform the enforcement officer in writing whether he admits or disputes the judgment debtor's claim in respect of each item.

51.9

The enforcement officer shall withdraw from possession of any goods in respect of which the judgment debtor's claim is admitted or if the execution creditor or any person claiming under Rule 51.3 fails to notify him in accordance with Rule 51.8 and the enforcement officer shall so inform the parties in writing.

51.10

Where the enforcement officer receives notice from:

(1) the execution creditor; or

(2) any such person to whom notice was given under Rule 51.8;

that the claim or any part thereof is disputed, he must forthwith seek the directions of the Court and may include therein an application for an order restraining the bringing of any claim against him for, or in respect of, his having seized any of those assets or his having failed so to do.

51.11

The enforcement officer's application for directions under Rule 51.10 shall be made by an application in accordance with Part 23 and, on the hearing of the application, the Court may:

(1) determine the judgment debtor's claim immediately; or

(2) give such directions for the determination of any issue raised by such claim as may be just.

51.12

The Registrar shall have power to make an order of the kind referred to in Rule 51.11.

Mode of application 51.13 - 51.18

51.13

An application for relief under this Part must be made by claim form in accordance with Part 8 unless made in an existing claim, in which case it must be made in accordance with Part 23.

51.14

Where the applicant is an enforcement officer who has withdrawn from possession of assets taken in execution and who is applying for relief under Rule 51.6 the claim form must be served on any person who made a claim under Rule 51.3 to or in respect of those assets, and that person may attend the hearing of the application.

51.15

Subject to Rule 51.16 a claim form or application notice under Rule 51.13 must be supported by evidence that the applicant:

(1) claims no interest in the subject matter in dispute other than for charges or costs;

(2) does not collude with any of the claimants to that subject matter; and

(3) is willing to pay or transfer that subject matter into Court or to dispose of it as the Court may direct.

51.16

Where the applicant is an enforcement officer , he shall not provide such evidence as is referred to in Rule 51.15 unless directed by the Court to do so.

51.17

Any person who makes a claim under Rule 51.3 and who is served with a claim form under Rule 51.14 shall within 14 days serve on the execution creditor and the sheriff an affidavit specifying and/or describing any assets claimed and setting out the grounds upon which such claim is based.

51.18

Where the applicant is an enforcement officer a claim form under Rule 51.13 must give notice of the requirement in Rule 51.17.

Powers of Court hearing the claim 51.19 - 51.21

51.19

Where on the hearing of a claim under this Part all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Part referred to as 'the interpleader claimants') appear, the Court may order:

(1) that any interpleader claimant be made a defendant in any claim pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Part; or

(2) that an issue between the interpleader claimants be stated and tried and may direct which of the interpleader claimants is to be claimants and which defendant .

51.20

Where:

(1) the applicant under this Part is an enforcement officer ;

(2) all the interpleader claimants consent or any of them so requests; or

(3) the question at issue between the interpleader claimants is a question of law and the facts are not in dispute;

the Court may immediately determine the question at issue between the interpleader claimants and make an order accordingly on such terms as may be just.

51.21

Where an interpleader claimant, having been duly served with a claim form under this Part, does not appear at the hearing or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the interpleader claimant, and all persons claiming under him, barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the interpleader claimants as between themselves.

Power to order sale of assets taken in execution 51.22

51.22

Where an application for relief under this Part is made by an enforcement officer who has taken possession of any assets in execution under any process, and an interpleader claimant alleges that he is entitled to the assets by way of security for debt, the Court may order those assets or any part

thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

Power to stay proceedings 51.23

51.23

Where a defendant to a claim applies for relief under this Part in the claim, the Court may by order stay all further proceedings in the claim.

Other powers 51.24 - 51.25

51.24

The Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

51.25

Where the interpleader claimant fails to appear at the hearing, the Court may direct that the enforcement officer's and execution creditor's costs shall be assessed by the Registrar .

One order in several proceedings 51.26

51.26

Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several proceedings, the Court may make such an order; and the order shall bear the titles of all those proceedings and shall be binding on all the parties to them.

Production of documents 51.27

51.27

Parts 19 and 28 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other proceedings.

Trial of interpleader issue 51.28 - 51.29

51.28

Part 35 shall, with the necessary modifications, apply to the trial of an interpleader issue as it

applies to the trial of a claim.

51.29

The Court may give such judgment or make such order as is necessary finally to dispose of all questions arising in the interpleader proceedings.