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STATUTORY INSTRUMENTS

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**1981 No. 1687**

**The County Court Rules 1981**

**ORDER 31**

**CHARGING ORDERS**

**Application for charging order**

**1.—(1)** An application to a county court for a charging order under section 1 of the Charging Orders Act 1979 may be made—

- (a) if the order is sought in respect of a fund in court, to the court where the money is lodged;
  - (b) subject to (a), if the judgment or order sought to be enforced is that of a county court, to the court in which the judgment or order was obtained or, if the action or matter has been transferred to another court under Order 16, rule 1(d) or (e), or Order 25, rule 2, the court to which it has been transferred;
  - (c) subject to (a) and (b), to the court for the district in which the debtor resides or carries on business or, if there is no such district, to the court for the district in which the judgment creditor resides or carries on business.
- (2) The application may be made *ex parte* by filing an affidavit—
- (a) stating the name and address of the debtor and, if known, of every creditor of his whom the applicant can identify;
  - (b) identifying the subject matter of the intended charge;
  - (c) either verifying the debtor's beneficial ownership of the asset to be charged or, where the asset is held by a trustee, stating on which of the three grounds appearing in section 2(1) (b) of the said Act the application is based and verifying the material facts;
  - (d) stating, in the case of securities other than securities in court, the name and address of the person or body to be served for the purpose of protecting the intended charge;
  - (e) stating, where the subject matter is an interest under a trust, or held by a trustee, the names and addresses of such trustees and beneficiaries as are known to the applicant.

Where the judgment or order to be enforced is a judgment or order of the High Court or a judgment, order, decree or award of a court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, the applicant shall file with his affidavit the documents mentioned in Order 25, rule 11(a) and (c), and the affidavit shall verify the amount unpaid at the date of the application.

(3) Subject to paragraph (1), an application may be made for a single charging order in respect of more than one judgment or order against a debtor.

(4) Upon the filing of the affidavit mentioned in paragraph (2), the application shall be entered in the records of the court, and if, in the opinion of the registrar, a sufficient case for such an order is made in the affidavit, the registrar shall make a charging order nisi fixing a day for the further consideration of the matter by the court.

(5) A copy of the order shall be sent by the proper officer to the judgment creditor and, where funds in court are to be charged, shall be served by the proper officer on the Accountant-General at the Court Funds Office.

(6) Copies of the order and of the affidavit shall be served by the proper officer on the debtor and on such of the debtor's other creditors, and, where a trust is involved, on such trustees and beneficiaries as the registrar may direct.

(7) Where an interest in securities not in court is to be charged, copies of the order nisi shall be served by the proper officer on the person or body required to be served in like circumstances by R.S.C. Order 50, rule 2(1)(b).

(8) The documents required by the foregoing paragraphs to be served shall be served in accordance with Order 7, rule 1, not less than 7 days before the day fixed for the further consideration of the matter.

### **Order on further consideration of application for charging order**

2.—(1) On the day fixed under rule 1(4) for the further consideration of the matter, the court shall either make the order absolute, with or without modifications, or discharge it.

(2) If an order absolute is made, a copy shall be served by the proper officer, in accordance with Order 7, rule 1, on each of the following persons, namely—

- (a) the debtor,
- (b) the applicant for the order,
- (c) where funds in court are charged, the Accountant General at the Court Funds Office, and
- (d) unless otherwise directed, any person or body on whom a copy of the order nisi was served pursuant to rule 1(7).

(3) Every copy of an order served on a person or body under paragraph (2)(d) shall contain a stop notice.

### **Effect of charging order, etc**

3.—(1) Where a charging order nisi or a charging order absolute has been made and served in accordance with rule 1 or 2, it shall have the same effect as an order made and served in like circumstances under R.S.C. Order 50.

(2) The court may vary or discharge a charging order in the like circumstances and in accordance with the same procedure, with the necessary modifications, as a like order made by the High Court.

(3) The powers of the court under rule 2 or the last preceding paragraph, except the power to vary an order made by the judge, may be exercised by the registrar.

### **Enforcement of charging order by sale**

4.—(1) Proceedings in a county court for the enforcement of a charging order by sale of the property charged shall be commenced by originating application, which shall be filed in the appropriate court, together with an affidavit and a copy thereof—

- (a) identifying the charging order sought to be enforced and the subject matter of the charge;
- (b) specifying the amount in respect of which the charge was imposed and the balance outstanding at the date of the application;
- (c) verifying, so far as known, the debtor's title to the property charged;
- (d) identifying any prior incumbrances on the property charged, with, so far as known, the names and addresses of the incumbrancers and the amounts owing to them; and

- (e) giving an estimate of the price which would be obtained on sale of the property.
- (2) The appropriate court shall be—
  - (a) if the charging order was made by a county court, that court;
  - (b) in any other case, the court for the district in which the debtor resides or carries on business or, if there is no such district, the court for the district in which the judgment creditor resides or carries on business.
- (3) A copy of the affidavit filed under paragraph (1) shall be served on the respondent with the documents mentioned in Order 3, rule 4(4)(b).
- (4) The proceedings may be heard and determined by the registrar.