

Rules of the District Court (Amendment) Rules 2008

The Rules of the District Court (Cap. 336H)

Order 50 – CHARGING ORDERS, STOP ORDERS, ETC.

Remarks

1. Order imposing a charge on a beneficial interest (O. 50, r. 1)

(2) An application by a judgment creditor for a charging order in respect of a judgment debtor's beneficial interest may be made ex parte, and any order made on such an application shall in the first instance be an order, made in Form No. 75 in Appendix A, to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time.

- (3) The application shall be supported by an affidavit –
- (a) identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;
 - (b) stating the name of the judgment debtor and of any creditor of his whom the applicant can identify;
 - (ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating –
 - (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and
 - (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; (18 of 2003 s. 24)
 - (c) giving full particulars of the subject-matter of the intended charge, including, in the case of securities other than securities in court, the full title of the securities, their amount and the name in which they stand and, in the case of funds in court, the number of the account; and
 - (d) verifying that the interest to be charged is owned beneficially by the judgment debtor.
- (4) Unless the Court otherwise directs, an affidavit for the purposes of this

rule may contain statements of information or belief with the sources and grounds thereof.

(5) An application may be made for a single charging order in respect of more than one judgment or order against the judgment debtor.

2. Service of notice of order to show cause (O. 50, r. 2)

(1) On the making of an order to show cause, notice of the order shall, unless the Court otherwise directs, be served as follows –

- (a) a copy of the order, together with a copy of the affidavit in support, shall be served on the judgment debtor;
- (b) where the order relates to securities other than securities in court, copies of the order shall also be served –
 - (iii) in the case of stock of any body incorporated within Hong Kong, on that body;
 - (iv) in the case of stock of any body incorporated outside Hong Kong, being stock registered in a register kept in Hong Kong, on the keeper of the register;
 - (v) in the case of units of any unit trust in respect of which a register of unit holders is kept in Hong Kong, on the keeper of the register;
- (c) where the order relates to a fund in court, a copy of the order shall be served on the Registrar at the Registry; and
- (d) where the order relates to an interest under a trust, copies of the order shall be served on such of the trustees as the Court may direct.

(2) Without prejudice to the provisions of paragraph (1) the Court may, on making the order to show cause, direct the service of copies of the order, and of the affidavit in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances.

(3) Documents to be served under this rule must be served at least 7 days before the time specified for the further consideration of the matter.

3. Order made on further consideration (O. 50, r. 3)

(1) On the further consideration of the matter the Court shall either make the order absolute, with or without modifications, or discharge it.

(2) Where the order is made absolute, it shall be in Form No. 76 in Appendix A, and where it is discharged, the provisions of rule 7, regarding the service of copies of the order of discharge, shall apply.

4. Order imposing charge on interest held by trustee (O. 50, r. 4)

- (1) Save as provided by this rule, the provisions of rules 1 to 3 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest.
- (2) Instead of verifying the judgment debtor's beneficial ownership of the interest to be charged, the affidavit required by rule 1(3) shall state the ground on which the application is based and shall verify the material facts.
- (3) On making the order to show cause, the Court shall give directions for copies of the order, and of the affidavit in support, to be served on such of the trustees and beneficiaries, if any, as may be appropriate.
- (4) Rules 5 to 7 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest, except that, where the order is made under section 52AA(1)(b)(ii) or (iii) of the Ordinance references in those rules to "the judgment debtor" shall be references to the trustee.
- (5) Forms No. 75 and 76 in Appendix A shall be modified so as to indicate that the interest to be charged is held by the judgment debtor as trustee or, as the case may be, that it is held by a trustee (to be named in the order) on trust for the judgment debtor beneficially.

5. Effect of order in relation to securities out of Court (O. 50, r. 5)

- (1) No disposition by the judgment debtor of his interest in any securities to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.
- (2) Until such order is discharged or made absolute, the person or body served in accordance with rule 2(1)(b) shall not permit any transfer of any of the securities specified in the order, or pay any dividend, interest or redemption payment in relation thereto, except with the authority of the Court, and, if it does so, shall be liable to pay the judgment creditor the value of the securities transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.
- (3) If the Court makes the order absolute, a copy of the order, including a stop notice as provided in Form No. 76 in Appendix A, shall be served on the person or body specified in rule 2(1)(b) as may be appropriate and, save as provided in rule 7(5), rules 11 to 14 shall apply to such a notice as they apply to a stop notice made and served under rule 11.

(4) This rule does not apply to orders in respect of securities in court.

6. Effect of order in relation to funds in Court (O. 50, r. 6)

(1) Where an order to show cause has been made in relation to funds in court (including securities in court) and a copy thereof has been served on the Registrar in accordance with rule 2, no disposition by the judgment debtor of any interest to which the order relates, made after the making of that order, shall, so long as the order remains in force, be valid as against the judgment creditor.

(2) If the Court makes the order absolute, a copy of the order shall be served on the Registrar at the Registry.

7. Discharge, etc., of charging order (O. 50, r. 7)

(1) Subject to paragraph (2) on the application of the judgment debtor or any other person interested in the subject-matter of the charge, the Court may, at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks just.

(2) Where an application is made for the discharge of a charging order in respect of the judgment debtor's land on the ground that the judgment debt has been satisfied, the applicant shall state in his application, and the Court shall specify in its order the lot number of the land and the memorial number of any relevant charge registered against the land.

(3) Notice of an application for the discharge or variation of a charging order shall be served on such interested parties as the Court may direct.

(4) Where an order is made for the discharge or variation of a charging order in respect of funds in court, a copy thereof shall be served on the Registrar at the Registry.

(5) Where an order is made for the discharge or variation of a charging order in respect of securities other than securities in court, a copy thereof shall be served on the person or body specified in rule 2(1)(b) as may be appropriate, and the service thereof shall discharge, or, as the case may be, vary, any stop notice in respect of such securities which may be in force pursuant to the original order.

9. Jurisdiction of master to grant injunction (O. 50, r. 9)

A master shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 1, 3 or 4 and an application for

an injunction under this rule may be joined with the application for the order under rule 1, 3 or 4 to which it relates.

9A. Enforcement of charging order by sale (O. 50, r. 9A)

- (1) Proceedings for the enforcement of a charging order by sale of the property charged must be begun by originating summons.
- (2) The provisions of Order 88 shall apply to all such proceedings.

10. Funds in Court: stop order (O. 50, r. 10)

- (1) The Court, on the application of any person –
 - (a) who has a mortgage or charge on the interest of any person in funds in court; or
 - (b) to whom that interest has been assigned; or
 - (c) who is a judgment creditor of the person entitled to that interest,may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant. (See Appendix A, Form 79)
- (2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court, or, if there is no such cause or matter, by originating summons.
- (3) The summons must be served on every person whose interest may be affected by the order applied for but shall not be served on any other person.
- (4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds occasioned by the application.

11. Securities not in Court: stop notice (O. 50, r. 11)

- (1) Any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 52AA(2)(b) of the Ordinance, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.
- (2) A person claiming to be so entitled must file in the Registry –
 - (a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and
 - (b) a notice in Form No. 80 in Appendix A (a stop notice), signed by

the deponent to the affidavit, and annexed to it, addressed to the body or unit trust concerned, and must serve an office copy of the affidavit, and a copy of the notice sealed with the Seal of the Court on that person or body specified in rule 2(1)(b).

(3) There must be endorsed on the affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 12 is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 12 by serving on the person or body concerned, a notice to that effect, and as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

12. Effect of stop notice (O. 50, r. 12)

Where a stop notice has been served in accordance with rule 11 then, so long as the stop notice is in force, the person or body on which it is served shall not register a transfer of the securities or take any other steps restrained by the stop notice until 14 days after sending notice thereof, by ordinary pre-paid post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other steps, after the expiry of that period.

13. Amendment of stop notice (O. 50, r. 13)

If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

14. Withdrawal, etc., of stop notice (O. 50, r. 14)

(1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the person or body on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 11 relates,

may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by originating summons, and the summons must be served on the person on whose behalf a stop notice was filed.

The summons shall be in Form No. 10 in Appendix A.

15. Order prohibiting transfer, etc., of securities (O. 50, r. 15)

(1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 52AA(2)(b) of the Ordinance, may by order prohibit the person or body concerned from registering any transfer of the securities or taking any other steps to which section 72C(4) of the Ordinance applies.

The order shall specify the securities to which the prohibition relates, the name in which they stand and the steps which may not be taken, and shall state whether the prohibition applies to the securities only or to the dividends or interest as well.

(2) An application for an order under this rule must be made ~~by originating summons in Form No. 10 in Appendix A~~ by summons.

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(2A) An originating summons under this rule must be in Form No. 10 in Appendix A.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in any securities to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs or otherwise as it thinks fit.

16. Partner's interest in partnership property (O. 50, r. 16)

Nothing in this Order shall affect the provisions of Order 81, rule 10.