

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2022/0007

BETWEEN:

THE SOCIAL SECURITY BOARD

Appellant

and

**[1] FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS)
LIMITED**

[2] EXCLUSIVE RETREATS LIMITED

Respondents

Before:

The Hon. Mde. Margaret Price Findlay
The Hon. Mr. Eddy D. Ventose
The Hon. Mde. Esco L. Henry

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mrs. Angelina Gracy Sookoo-Bobb and Ms. JeNise Carty for the Appellant
Mr. Damian Kelsick KC with him Ms. Hayda Dolphin for the First Respondent

2024: June 17;
July 25.

Civil Appeal – Appeal against the learned master’s decision to dismiss the appellant’s application to be added as a party in an effort to assert their statutory interest in property owned by the second respondent and sold by the first respondent – Statutory interest in property – Sale of property without payment of debt – Social Security Act Revised Laws of Saint Christopher and Nevis 2020 – Income Tax Act Cap 20.22 of the Revised Laws of Saint Christopher and Nevis 2020 – Whether the High Court or the Magistrate’s Court was the court of competent jurisdiction for any enforcement proceedings in respect of the Debt – Whether the word “property” in section 75 of the Income Tax Act includes real property – Whether the provisions of the TAPA applies to section 75 of the Income Tax Act as relevant to the recovery of social security contributions by virtue of section 44 of the Social Security Act

The first respondent sold a property belonging to the second respondent for US\$ 540,000 ("Sale Price") pursuant to the provisions of the Title by Registration Act ("TRA"). The proceeds of the sale of the property were paid into court. On 26th January 2021, the first respondent applied to the court pursuant to section 81 of the TRA to settle the scheme of division of the Sale Price. Since the amount due to the first respondent exceeded the Sale Price, no other creditor stood to benefit from the proceeds of the sale of the property.

The appellant applied on 30th July 2021 for an order for it to be added to the proceedings arguing that (1) the second respondent has statutory financial obligations to the appellant in the sum of EC\$757,697.92 (the "Debt") for the period February 2005 to August 2011 under the Social Security Act ("SSA"), Protection of Employment Act, the Housing and Social Development Levy Act, (2) pursuant to sections 72 and 75 of the Income Tax Act ("ITA"), the appellant is granted a statutory interest in the property (that was sold by the first respondent and (3) notwithstanding that the appellant informed the first respondent of its interest in the property before it was sold, the first respondent filed an application to settle the scheme of division of the Sale Price without paying the appellant the Debt or including the appellant's statutory priority in the interest in the scheme of division of the Sale Price. The appellant also sought, in the alternative, an order that the sale of the property by the first respondent was unlawful and null and void for failing to comply with sections 72 to 75 of the ITA

The learned master in his written judgment held that (1) there was no evidence before him that either of the two processes outline in section 72 of the ITA were followed in relation to the Debt claimed by the appellant, (2) the word "property" as defined in section 75 of the ITA did not include real property, rather it referred to movable property, good and chattels of the debtor, (3) if it did, by virtue of section 30 of the Tax Administration and Procedures Act, the lien for the unpaid contributions due and owing to the appellant, if any, did not rank in priority to any debt owed to the first respondent which is a secured creditor, (4) there was no evidence of any judgment being entered in the High Court against the first respondent pursuant to section 3 of the Judgments Act, which would have created a charge against the land owned by the first respondent and (5) in the absence of such a charge and considering section 30(3)(b) of the TAPA, the appellant's debt did not rank in priority over the first respondent's interest.

Dissatisfied with the decision of the master, the appellant appealed on nine grounds of appeal which gave rise to the following issues for the Court's determination: (1) Whether the High Court or the Magistrate's Court was the court of competent jurisdiction for any enforcement proceedings in respect of the Debt, (2) whether the word "property" in section 75 of the ITA includes real property and (3) whether the provisions of the TAPA applies to

section 75 of the ITA (as relevant to the recovery of social security contributions by virtue of section 44 of the SSA).

Held: allowing the appeal and making the orders set out at paragraphs 24 and 25 of the judgment, that:

1. Where an employer fails to make its contribution to the Social Security Fund, the Social Security Board may pay the person the benefit of that contribution and then seek to recover summarily in a Magistrate's Court from the employer as a civil debt a sum equal to the amount of benefit so lost irrespective of the amount. The court in which the board can seek to recover such sum from the employer is the magistrate's court. This is made clear by section 49(1) of the SSA read in tandem with section 72 of the ITA as required by sections 44(1) and 44(2) of the SSA. The learned master therefore erred in his conclusion at paragraph 14 of his judgment that there was no evidence before him that either of the two processes outlined in section [72] of the ITA were followed in relation to the debt claimed by the appellant. This contradicts the uncontroverted evidence of the appellant that was accepted by the learned master at paragraph 11 of his judgment when he stated that the appellant obtained several judgments in the Magistrate's Court, not in the High Court, against the second respondent for the outstanding Debt.

Social Security Act Cap 22.10 of the Revised Laws of Saint Christopher and Nevis 2020 applied; **Income Tax Act** Cap 20.22 of the Revised Laws of Saint Christopher and Nevis 2020 applied.

2. Section 75(1) of the ITA provides that where a person sells any property, goods or chattels, before any such sale, that person must pay or cause to be paid to the Director all arrears of contributions which are due at the time when the property, goods or chattels are seized. While section 75 originates from the ITA, it is to be read as a stand-alone provision for the purposes of the SSA. The other provisions of the ITA cannot be used to interpret section 75 unless expressly incorporated into the SSA by section 44 of the SSA. The question of how "property" is to be defined needs to be answered since it is not defined in the SSA. Section 2(1) of the Interpretation Act provides the necessary assistance. It states that "property" includes money, goods, things in action, land and every description of property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property as herein defined. The definition of "property" for section 75 must be that as defined in section 2(1) of the Interpretation Act and that definition includes real and personal property. Section 75 must be read purposively to allow

for the sale in respect of all types of property that is defined in section 2(1) of the Interpretation Act.

Social Security Act Cap 22.10 of the Revised Laws Saint Christopher and Nevis 2020 applied; **Income Tax Act** Cap 20.22 of the Revised Laws of Saint Christopher and Nevis 2020 applied; **Interpretation Act Cap** 1.02 of the Revised Laws of Saint Christopher and Nevis 2020.

3. The Tax Administration and Procedure Act (“TAPA”) applies to “taxes” under a tax law, not “contributions under the SSA. Further, the Department of Inland Revenue does not administer “contributions” under the SSA. Section 40 of the SSA expressly states that the contributions to the Social Security fund shall be under the control and management of the Social Security Board. The argument that the TAPA has impliedly repealed section 75 of the ITA is misconceived as it does not differentiate section 75 as applied to the SSA and section 75 as a provision in the ITA. Even if section 30 of the TAPA has that effect, it would still not apply to section 75 when it is used as a part of the enforcement machinery for the recovery of contributions pursuant to section 44 of the SSA. The application of section 30 of the TAPA is unworkable for the following reasons: (1) it would require the court to engage in a complete rewrite of the law, (2) the Board is a body corporate and cannot be equated with the Crown for the purpose of section 30 of the TAPA and (3) if Parliament intended the entire enforcement regime under the TAPA to apply, with any subsequent modifications by future legislation, it could have simply and clearly stated that. The learned master therefore erred in his conclusion that the right of the Director to sell property is subject to the provisions of the TAPA and that section 3 of the TAPA must be read in line with section 44 of the SSA and sections 72 to 77 of the ITA.

Tax Administration and Procedures Act Cap 20.52 of the Revised Laws of Saint Christopher and Nevis 2020 considered.

JUDGMENT

- [1] **VENTOSE JA:** This is an appeal filed by the appellant on 25th May 2022 against the decision of the learned master dated 9th May 2022. The appellant appeals against the master’s decision dismissing their application to be added as a party to proceedings between the first and second respondents so that they could assert their statutory priority interest in property owned by the second respondent and subsequently sold by the first respondent.

Background

- [2] The first respondent sold a property belonging to the second respondent (the “Property”) for US\$540,000.00 (the “Sale Price”) pursuant to the provisions of the **Title by Registration Act**,¹ (the “**TRA**”). The proceeds of the sale of the Property were paid into court. Pursuant to section 81 of the **TRA**, the first respondent applied to the court on 26th January 2021 to settle the scheme of division of the Sale Price. Since the amount due to the first respondent exceeded the Sale Price, no other creditor stood to benefit from the proceeds of the sale of the Property.
- [3] As mentioned, the appellant applied on 30th July 2021 for an order for it to be added to the proceedings arguing that: (1) the second respondent has statutory financial obligations to the appellant in the sum of EC\$757,697.92 (the “Debt”) for the period February 2005 to August 2011, under the **Social Security Act**,² (the “**SSA**”), the **Protection of Employment Act**,³ and the **Housing and Social Development Levy Act**,⁴ (2) pursuant to sections 72 to 75 of the **Income Tax Act**,⁵ (the “**ITA**”), the appellant is granted a statutory interest in the Property (that was sold by the first respondent); and (3) notwithstanding that the appellant informed the first respondent of its interest in the Property before it was sold, the first respondent filed an application to settle the scheme of division of the Sale Price without paying the appellant the Debt or including the appellant’s statutory priority interest in the scheme of division of the Sale Price. The appellant also sought, in the alternative, an order that the sale of the Property by the first respondent was unlawful and null and void for failing to comply with sections 72 to 75 of the **ITA**.

The decision in the court below

- [4] The learned master in his written judgment held that: (1) there was no evidence before him that either of the two processes outlined in section 72 of the **ITA** were followed in relation to the Debt claimed by the appellant; (2) the word “property” as

¹ Cap 10.19 of the Revised Laws of Saint Christopher and Nevis 2020.

² Cap 22.10 of the Revised Laws of Saint Christopher and Nevis 2020.

³ Cap 18.27 of the Revised Laws of Saint Christopher and Nevis 2020.

⁴ Cap 20.21 of the Revised Laws of Saint Christopher and Nevis 2020.

⁵ Cap 20.22 of the Revised Laws of Saint Christopher and Nevis 2020.

defined in section 75 of the **ITA** did not include real property, rather it referred to movable property, good and chattels of the debtor; (3) if it did, by virtue of section 30 of the **Tax Administration and Procedures Act**,⁶ (the “**TAPA**”), the lien for the unpaid contributions due and owing to the appellant, if any, did not rank in priority to any debt owed to the first respondent which is a secured creditor; (4) there was no evidence of any judgment being entered in the High Court against the first respondent pursuant to section 3 of the **Judgments Act**,⁷ which would have created a charge against the land owned by the first respondent; and (5) in the absence of such a charge and considering section 30(3)(b) of the **TAPA**, the appellant’s debt did not rank in priority over the first respondent’s interest.

The appeal

- [5] The appellant filed nine grounds of appeal which gives rise to the following issues in the appeal: (1) whether the High Court or the Magistrate’s Court was the court of competent jurisdiction for any enforcement proceedings in respect of the Debt; (2) whether the word “property” in section 75 of the **ITA** includes real property; and (3) whether the provisions of the **TAPA** applies to section 75 of the **ITA** (as relevant to the recovery of social security contributions by virtue of section 44 of the **SSA**).

The relevant statutory provisions

- [6] Sections 44 and 49 of the **SSA** state that:

Recovery of Social Security contribution by sale of goods, etc.

44. (1) Subject to subsection (2) of this section, the provisions dealing with the recovery of income tax as provided in sections [72] to [77] in the Income Tax Act shall apply mutatis mutandis to the recovery of any contribution under this Act.

(2) Every reference to the word “collector” and the word “tax” in sections [72] to [77] of the Income Tax Act shall be read as a reference to the word “Director” and the word “contribution” respectively for purposes of this Act.

Proceedings for benefits lost by employer’s default.

⁶ Cap 20.52 of the Revised Laws of Saint Christopher and Nevis 2020.

⁷ Cap 3.14 of the Revised Laws of Saint Christopher and Nevis 2020.

49. (1) Where an employer has failed or neglected to pay any contribution which he or she is liable to pay in respect of or on behalf of any insured person, and by reason of such failure or neglect such person or any other person becomes disentitled to any benefit or entitled to a benefit on a lower scale the Board may, on being satisfied that the contribution should have been paid by the employer, pay to the person or the other person benefit at the rate to which he or she would have been entitled if the failure or neglect had not occurred and the Board shall be entitled to recover summarily in a magistrate's court from the employer as a civil debt a sum equal to the amount of benefit so lost irrespective of the amount.

(2) Proceedings may be taken under this section notwithstanding that proceedings have been taken under any other provision of this Act in respect of the same failure or neglect.

(3) Proceedings under this section may, notwithstanding any enactment to the contrary, be brought at any time within one year after the date on which the person concerned would, but for the employer's failure or neglect, have been entitled to receive the benefit lost.

[7] Sections 72 to 77 of the **ITA** provide as follows:

72. Tax in arrear.

Where the whole tax or an instalment is not paid on or before the prescribed date or dates then such tax shall be deemed to be in arrear and it shall be lawful for the Collector, in his or her official name, to sue for and recover the tax or such portion thereof as a civil debt in a court of competent jurisdiction or to issue a warrant under his or her hand directed to the Provost Marshal of the State setting out in the same or in a schedule thereto the several sums due on account of the tax from the persons against whom the warrant is directed.

73. Penalty for non-payment of tax.

When any tax becomes in arrear a fine in the sum of five per centum shall be added thereto and failing payment within one month of the date of notice of such fine, ten per centum per annum from the due date of payment to the actual date of payment shall be added thereto, and the provisions of this Act, relating to the collection and recovery of tax shall apply to the collection and recovery of such sum.

74. Recovery by levy on goods.

Where tax is in arrear the Collector may, and the Provost Marshal, immediately on receipt of a warrant, shall proceed to levy upon the goods, chattels and lands of the persons against whom the warrant is directed and to sell in the manner provided in section 75 of this Act so much of the same as may be required to satisfy the several sums due on account of the tax from the persons against whom the warrant is directed.

75. Priority of claim for tax.

(1) No property, goods or chattels whatever, belonging to any person at the time any tax becomes in arrear, shall be liable to be taken by virtue of any execution or other process, warrant, or authority whatever, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the person at whose suit the execution or seizure is made, or to whom the assignment was made, pays or causes to be paid to the Collector, before the sale or removal of the goods or chattels, all arrears of tax which are due at the time of seizure, or which are payable for the year in which the seizure is made:

Provided that, where tax is claimed for more than one year, the person at whose instance the seizure has been made, may, on paying to the Collector the tax which is due for one whole year, proceed in his or her seizure in like manner as if no tax had been claimed.

(2) In case of neglect or refusal to pay the tax so claimed or the tax for one whole year, as the case may be, the Provost Marshal or the Collector shall distrain the goods and chattels notwithstanding the seizure or assignment, and shall proceed to the sale thereof for the purpose of obtaining payment of the whole of the tax charged and claimed, and the reasonable costs and charges attending such distress and sale, and the Provost Marshal and every Collector so doing shall be indemnified by virtue of this Act.

76. Sale to be by public auction.

(1) Every sale under this Act shall be by public auction held at such time and place as the Collector or Provost Marshal shall direct, and notice of such sale shall be given in the Gazette for two consecutive weeks before the day of sale.

(2) The proceeds of the sale shall be applied to the payment of the tax due and the expenses of levy and sale and the surplus, if any, shall be paid on application to the person entitled thereto.

77. Commission to Provost Marshal.

(1) There shall be paid to the Provost Marshal in respect of the duties performed by him or her under this Act a commission at the rate of two and a half per centum over and above the other expenses of the levy and sale on the net proceeds of any sale under this Act.

(2) All sums of money received or recovered by the Provost Marshal as commission shall be paid into the Treasury.

[8] Section 3(1) and 30 of **TAPA** are as follows:

3. Application of Act.

Except as may otherwise be provided for in this Act, this Act shall apply to

- (a) taxes imposed under a tax law; and
- (b) any other taxes which may, from time to time be introduced, the administration of which the Department is responsible.

30. Crown's lien on taxpayer's property.

(1) Subject to the provisions of this section, where a taxpayer fails to pay a tax by the due date, the amount owing and the interest on the amount, together with the costs of collection that may accrue, shall create a lien in favour of the Crown on all property belonging to the taxpayer, and that lien shall, subject to subsection (3), have priority as against all other interests.

(2) The lien specified in subsection (1) shall accrue on the due date and shall continue until the liability is satisfied.

(3) The lien imposed by this section shall not be valid against the interest of

(a) a person who is a bona fide purchaser of the property for value from the taxpayer;

(b) a holder of a security interest in the property granted by the taxpayer; or

(c) any other lien holder specified in regulations made under this Act; if that interest accrues before the persons mentioned in paragraphs (a), (b) and (c) have actual knowledge of the lien, or before a notice of the lien is duly registered, whichever occurs first.

(4) Regulations made under this Act may prescribe procedures for filing the notice of lien and may prescribe categories of interests against which the lien shall not be valid, notwithstanding the fact that the lien had been filed earlier.

(5) The Comptroller may file a civil action in the High Court to enforce the lien imposed by this section.

(6) An affected person may

(a) apply to the Comptroller for a release of the lien on that person's property; or

(b) appeal against a decision by the Comptroller not to release the lien, to the High Court.

[9] Section 2(1) and section 18(1) of the **Interpretation Act**,⁸ provides as follows:

2. Interpretation of certain terms.

(1) In this Act and in all other laws, and in all public documents, enacted, made or issued before or after the commencement of this Act, the following words and expressions shall have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided:

⁸ Cap 1.02 of the Revised Laws of Saint Christopher and Nevis 2020.

“land” and “premises” includes all tenements or hereditaments, and also all messuages, houses, buildings, or other constructions, whether the property of the Crown, or of any corporation, or of any private individual, except where there are words to exclude houses and other buildings;

“property” includes money, goods, things in action, land and every description of property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property as herein defined;

18. Effect of repeal.

- (1) Where any law repeals and re-enacts, with or without modification, any provision of a former law, references in any other law to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted.

Discussion and Conclusions

- [10] The **SSA** has been in force in Saint Christopher and Nevis since 10th January 1978. The Social Security Board (the “Board”), the appellant, is established by section 3(1) of the **SSA**. The Board is a body corporate with perpetual succession and a common seal, and may acquire, hold and dispose of real and personal property and shall be capable of suing and being sued in its corporate name (section 3(1)). The Board consists of not less than six nor more than twelve members (section 4(1)). The Board manages and controls a fund called the Social Security Fund (section 40(1)). All contributions are to be paid into that fund (section 40(2)). Section 20(1) states that for the purpose of providing the funds required for paying benefit, and for making any other payments which under the **SSA** are to be made out of the fund, contributions shall be payable by insured persons and by employers. Section 23 makes provision for the payment by employed persons and employers of contributions.

Court of competent jurisdiction

- [11] Where any contribution is due and owing to the fund, section 44 of the **SSA** makes provision for the recovery of such contributions. Section 44(1) states that, subject to subsection (2) of this section, the provisions dealing with the recovery of income tax

as provided in sections 72 to 76 of the **ITA** shall apply mutatis mutandis to the recovery of any contribution under this Act. Section 44(2) states that every reference to the word “collector” and the word “tax” in sections 70 of 75 of the **ITA** shall be read as a reference to the word “Director” and the word “contribution” respectively for purposes of the **SSA**. It is to be noted that section 44 is found in the part of the **SSA** under the general heading “Legal proceedings” covering sections 43 to 50.

- [12] Where any contribution is in arrears, section 72 of the **ITA** gives the Director two options. The Director can either: (1) sue for and recover the contribution or such portion thereof as a civil debt in a court of competent jurisdiction; or (2) issue a warrant under his or her hand directed to the Provost Marshal of the State setting out in the same or in a schedule thereto the several sums due on account of the contribution from the persons against whom the warrant is directed.
- [13] In respect of the first option, the Director is given the power to sue for and recover the contribution or such portion thereof as a civil debt in “**a court of competent jurisdiction**” (emphasis mine). Section 49(1) states that where an employer has failed or neglected to pay any contribution which he or she is liable to pay in respect of or on behalf of any insured person, and by reason of such failure or neglect such person or any other person becomes disentitled to any benefit or entitled to a benefit on a lower scale the Board may, on being satisfied that the contribution should have been paid by the employer, pay to the person or the other person benefit at the rate to which he or she would have been entitled if the failure or neglect had not occurred and the Board shall be entitled to recover summarily in a **Magistrate’s Court** from the employer as a civil debt a sum equal to the amount of benefit so lost irrespective of the amount (emphasis mine).
- [14] In other words, where an employer fails to make its contribution to the fund, the Board may pay the person the benefit of that contribution and then seek to “recover summarily in a **Magistrate’s Court** from the employer as a civil debt a sum equal to the amount of benefit so lost irrespective of the amount” (emphasis mine). The court in which the Board can seek to recover such sum from the employer is the

magistrate's court. Section 49(1) puts the matter beyond question. The Magistrate's Court is the court of competent jurisdiction for the purpose of any legal proceedings under the **SSA**. Since this was accepted by the respondent at paragraph 11 of its written submissions, the deployment of section 30 of **TAPA** (which, as accepted below, is not applicable) does not undermine this conclusion.

- [15] The learned master erred in his conclusion at paragraph 14 of his judgment that there was no evidence before him that either of these two processes outlined in section 70 of the **ITA** were followed in relation to the debt claimed by the appellant. This contradicts the uncontroverted evidence of the appellant that was accepted by the learned master at paragraph 11 of his judgment when he stated that the appellant obtained several judgments in the Magistrate's Court, not in the High Court, against the second respondent for outstanding Debt.

The question of "property"

- [16] Section 75 of the **ITA** relates to priority of a claim for contribution. Section 75(1) provides that where a person sells any property, goods or chattels, before any such sale, that person must pay or cause to be paid to the Director all arrears of contributions which are due at the time when the property, goods or chattels are seized. While section 75 originates from the **ITA**, for the purposes of the **SSA** it is to be read as a stand-alone provision. The other provisions of the **ITA** cannot be used to interpret section 75 unless it is one of the provisions which was expressly incorporated into the **SSA** by section 44 of the **SSA**. The question of how the word "property" is to be defined needs to be answered since it is not defined in the **SSA**.
- [17] The **Interpretation Act** provides the necessary assistance, which provides in section 2(1) that all other laws, and in all public documents, enacted, made or issued before or after the commencement of this Act, the following words and expressions shall have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided. Section 2(1) of the **Interpretation Act** states that "property" includes money, goods, things in action, land and every description of

property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property as herein defined. The definition of “property” for the purposes of section 75 must be that as defined in section 2(1) of the **Interpretation Act** and the definition includes real and personal property. Parliament made section 75 of the **ITA** applicable to the enforcement process under the **SSA**. Section 75 must be read purposively to allow for the sale in respect of all types of property that is defined in section 2(1) of the **Interpretation Act**.

[18] Nothing in the subject matter or the context makes the definition of property in the **Interpretation Act** inapplicable to section 75 of the **ITA**. The respondent’s submissions that the learned master was correct in his interpretation that the word “property” in section 75 did not refer to immovable property or real property are not convincing. First, the ejusdem generis principle is not applicable since no general words followed any specific words in section 75. Second, a purposive interpretation suggests that it was the intention of Parliament that property should be given a more general meaning rather than the narrow one proffered by the respondent. Third, section 75 must be read as a whole in the context of the **SSA**, not the **ITA**. Fourth, the definition of land in the **ITA** cannot be imported to the **SSA**; for this purpose, the definition of land in section 2(1) of the **Interpretation Act** must be used. Fifth, the word property in section 2(1) of the **Interpretation Act** includes real property. Sixth, section 75 of the **ITA** did not intend to limit the consequences for not paying taxes demanded to only distraining goods and chattels. Seven, considering the context of the **SSA** and the purposive interpretation, it is unlikely that Parliament intended to limit the meaning of the word “property” in section 75 of the **ITA** in the context of its deployment as an enforcement mechanism in the **SSA**.

[19] There is no indication that the definition of “property” as defined in section 2(1) of the **Interpretation Act** was brought to the attention of the learned master in the court below. Had this been done, the learned master might not have fallen into error in his conclusion at paragraph 26 of his judgment that the word “property” as defined in

section 73 of the **ITA** does not include real property but that it only refers to movable property, goods and chattels.

The application of the TAPA

- [20] The **TAPA** came into force on 1st September 2005, approximately 20 years ago. The **SSA** has been in force since 1978 and the **ITA** since 1st January 1967. The long title of the **TAPA** states that it is an Act to revise and consolidate the law relating to the collection and payment of taxes and fees in the nature of taxes, and to provide for related or incidental matters. Section 3 deals with the application of the **TAPA** stating that except as may otherwise be provided for in this Act, this Act shall apply to: (a) taxes imposed under a tax law; and (b) any other taxes which may, from time to time be introduced, the administration of which the Department of Inland Revenue is responsible. Immediately, two observations are obvious. First, the **TAPA** applies to “taxes” under a tax law, not “contributions” under the **SSA**. Second, the Department of Inland Revenue does not administer “contributions” under the **SSA**. Section 40 of the **SSA** expressly states that contributions in the Social Security fund shall be under the control and management of the Board.
- [21] This is sufficient to answer definitively the question of whether the **TAPA** has any application to the **SSA**. However, counsel for the first respondent, relying on section 18(1) of the **Interpretation Act**, submits that section 30 of the **TAPA** has impliedly repealed section 75 of the **ITA**. This argument is misconceived as it does not differentiate section 75 (as applied to the **SSA**) and section 75 (as a provision in the **ITA**). Even if section 30 of the **TAPA** has that effect, which is not accepted for present purposes, it would still not apply to section 75 when it is used as part of the enforcement machinery for the recovery of contributions pursuant to section 44 of the **SSA**. I agree with the submission of counsel for the appellant that the application of section 30 of the **TAPA** to contributions under the **SSA** is unworkable for the following reasons. First, it would require the court to engage in a complete rewrite of section 30 of the **TAPA** – a legislative function that is vested in the Parliament of Saint Christopher and Nevis, not the court. Second, the Board is a body corporate

and cannot be equated with the Crown for the purpose of section 30 of the **TAPA**. Third, if Parliament intended the entire enforcement regime under the **TAPA** to apply, with any subsequent modifications by future legislation, it could have simply and clearly stated that. The method used by Parliament in section 44 does not lend itself to the analysis submitted by counsel for the respondent.

[22] The learned master therefore erred in his conclusion that: (1) the right of the Director to sell property is subject to the provisions of the **TAPA** (at paragraph 21 of his judgment); and (2) section 3 of the **TAPA** must be read in line with section 44 of the **SSA** and sections 72 to 77 of the **ITA** (at paragraph 23 of his judgment).

[23] The learned master was wrong to dismiss the appellant's application to be added as a party to the proceedings below.

Disposition

[24] Accordingly, I would allow the appeal of the decision of the learned master, set aside the orders made at subparagraphs 1 to 3 of paragraph 30 of his judgment and substitute with the following:

1. The application by the appellant to be added as a party to the proceedings is granted.
2. A declaration is granted that the debt owing by the second respondent to the appellant in the sum of EC\$757,697.92 shall be included in the scheme of division pursuant to section 81 of the **TRA** of the Sale Price as a debt in priority to the debt owed by the second respondent to the first respondent.

[25] The appellant shall have its costs in the appeal to be assessed if not agreed within 21 days of today's date.

[26] I am grateful for the assistance provided by learned counsel.

I concur.
Margaret Price Findlay
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Deputy Chief Registrar