IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

SAINT LUCIA

CLAIM NO. SLUHCV2026/0022 (formerly SLUHCV2013/1039)

BETWEEN:

BANK OF SAINT LUCIA LIMITED

Claimant/ Respondent

-and-

[1] **IMRAN DUPLESSIS**
[2] **AGATHA DUPLESSIS**
[3] **THE HEIRS OF ANTONIUS DUPLESSIS**

Defendants

-and-

ST. LUCIA MORTGAGE FINANCE COMPANY LIMITED

Petitioner

-and-

[1] **THE REGISTRAR OF THE SUPREME COURT**
[2] **THE HONOURABLE ATTORNEY GENERAL**

Respondents

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances:

Mr. Leslie Prospere and Ms. Joelle Greene for the Claimant/Respondent
Mrs. Zinaida McNamara – Phillip for the Petitioner
Mr. Arthur D. Compass and Ms. Kimberley K. Williams for the Respondents.

2026: April 23 – Hearing
April 27 – Decision

JUDGMENT
Petition in Revocation

Civil procedure – judicial sale – scheme of ranking – petition in revocation – error in excluding prior creditor – redistribution of proceeds – hypothec – priority of registered real rights (Civil Code, Arts. 1877, 1908, 1967, 1968) – Registrar's duty to rank creditors correctly (Code of

Civil Procedure, Art. 568) – challenge to scheme by revocation (Arts. 594, 595) – failure to file opposition not defeating substantive rights – restitution of money paid in error (Civil Code, Art. 979) – return of proceeds.

INTRODUCTION:

[1] **PARIAGSINGH, J**: - This matter concerns a Petition in Revocation brought by St. Lucia Mortgage Finance Company Limited ("Mortgage Finance") arising out of the distribution of the proceeds of a judicial sale conducted on 28 February 2022 in respect of immovable property registered as Block 1252B Parcel 713 in the Registration Quarter of Gros Islet.

[2] The petition is directed to the Scheme of Ranking filed on 30 September 2022 which governed the distribution of the monies realised from that judicial sale.

[3] Mortgage Finance contends that the scheme of ranking was prepared in error in that it failed to include its hypothecary charge over the property despite that charge being duly registered and ranking in priority to the security held by the Claimant, Bank of Saint Lucia Limited ("BOSL").

[4] As a consequence of that omission, the proceeds of the judicial sale were distributed almost entirely to BOSL. Mortgage Finance now seeks an order requiring BOSL to return the proceeds to the Sheriff so that they may be redistributed in accordance with the proper ranking of creditors.

[5] BOSL opposes the petition and contends that Mortgage Finance failed to avail itself of the procedural mechanisms provided under the **Code of Civil Procedure** to secure its claim, including the filing of oppositions for payment within the prescribed delay.

[6] The Court is therefore required to determine whether the omission of Mortgage Finance from the scheme of ranking may properly be corrected through a petition in revocation and whether the Court possesses jurisdiction to order the return of proceeds which have already been distributed pursuant to that scheme.

BACKGROUND:

[7] The material facts are largely undisputed and may be stated briefly. The property which forms the subject of these proceedings was encumbered by several charges, including a hypothecary obligation executed on 10 September 1996 by Antonius Duplessis and Agatha Duplessis in favour of Mortgage Finance to secure a loan in the principal sum of $87,500.00 together with interest. That hypothec was registered in the Land Registry of Saint Lucia on 18 September 1996.

[8] Subsequently, the property was charged in favour of BOSL pursuant to a hypothecary obligation executed in 2002. BOSL also later obtained a judicial hypothec arising from a judgment entered in its favour against the defendants.

[9] In execution of that judgment the property was seized and sold by judicial sale on 28 February 2022. Following the sale, the Registrar issued the customary notice to creditors and thereafter prepared a Scheme of Ranking which was filed on 30 September 2022.

[10] That scheme identified BOSL as the creditor entitled to receive the proceeds of the sale but omitted the prior hypothec held by Mortgage Finance. The scheme was thereafter homologated and the proceeds of the judicial sale were paid to BOSL.

[11] It later came to light that the omission of Mortgage Finance's hypothec from the scheme was an error. An amended scheme of ranking was subsequently prepared which reflected the correct ranking of the charges affecting the property and demonstrated that BOSL would not have been entitled to any portion of the proceeds had the scheme properly reflected the registered real rights.

[12] Mortgage Finance requested that BOSL return the proceeds so that the monies could be redistributed in accordance with the amended scheme. BOSL declined to do so and maintained that Mortgage Finance had failed to take the procedural steps required under the **Code of Civil Procedure** to protect its claim. Mortgage Finance therefore filed the present Petition in Revocation.

ISSUES:

[13] Two principal issues arise for determination. They are:

1) whether BOSL, as a creditor holding a hypothec registered subsequent in time to that of Mortgage Finance, was nevertheless entitled to receive the proceeds of the judicial sale by reason of the omission of Mortgage Finance from the Scheme of Ranking; and

2) whether the Court possesses jurisdiction under the **Code of Civil Procedure** to order the return of monies which have already been distributed pursuant to a scheme of ranking.

THE LEGAL FRAMEWORK:

[14] The legal framework governing this matter is found principally in **the Civil Code of Saint Lucia** ("the Civil Code") and the **Code of Civil Procedure**. The **Civil Code** establishes the substantive law governing privileges, hypothecs and the registration of real rights affecting immovable property.

[15] Article 1877 of the Civil Code provides that the legal causes of preference among creditors consist of privileges and hypothecs. A hypothec constitutes a real right over immovable property securing the fulfilment of an obligation and confers upon the creditor a right of preference over the proceeds of the property in the event of enforcement.[1]

[16] A real right is secured upon registration[2] and a cardinal principle of the **Civil Code** is that real rights affecting immovable property rank according to the date of their registration.[3]

[17] The centrality of the principle of registration within the Saint Lucian system of real rights has been recognised by the Judicial Committee of the Privy Council in **National Insurance Corporation v Winmark Ltd**[4], wherein the Board observed that the Saint

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[1] Article 1908 of the Civil Code.
[2] Article1967 of the Civil Code.
[3] Article 1968 of the Civil Code.
[4] [2009] UKPC 9 at paras [10] and [11].

Lucian system governing the priority of real security rights over immovable property is founded upon registration and that the ranking of claims is ordinarily determined by the date upon which the relevant real right is registered. That principle forms the cornerstone of the system of secured lending over immovable property.

[18] Therefore, the system of registration serves a fundamental purpose in the law of property by providing certainty and publicity with respect to the ordering of rights affecting land. Persons dealing with immovable property are thereby enabled to ascertain the priority of competing claims by reference to the public registers.

[19] The **Code of Civil Procedure** governs the procedure by which monies realised through execution proceedings are distributed among creditors. After the sale of property under execution and the expiry of the delay for filing oppositions, the Registrar prepares a scheme of ranking which determines the order in which creditors are to be paid.

[20] Article 568 provides that in preparing the scheme of ranking the Registrar must collocate creditors according to the apparent rights of the parties and in conformity with the rules contained in the **Civil Code** respecting privileges, hypothecs and the registration of real rights. It provides that:

> 'In preparing the scheme of ranking the Registrar must set according to the apparent rights of the parties, as shown by the oppositions, claims and the other documents forming part of the record, and in conformity with the rules contained in the Civil Code, in the Book respecting Privileges and Hypothecs, and Registration of Real Rights, and with those hereinafter declared.
> …'

[21] The scheme of ranking must therefore reflect the substantive rights arising under the **Civil Code** rather than merely the procedural steps taken by individual creditors. The process of collocation is intended to ensure that the proceeds of execution are distributed in accordance with the legally established order of preference among creditors.

[22] The **Code of Civil Procedure** also provides a mechanism by which an aggrieved party may challenge or correct a scheme of ranking.

[23] Article 594 of the **Code of Civil Procedure** states that any party aggrieved by a scheme of ranking may seek redress by means of an appeal or by a petition in revocation, if there are grounds for it.

[24] Article 595 of the **Code of Civil Procedure** further provides that where a scheme of ranking is reformed or otherwise set aside, any sums which have been unduly paid must be returned to the Sheriff and the parties collocated are bound to refund such monies upon an order of the Court.

[25] These provisions reflect the broader civil law principle, recognised in Article 979 of the **Civil Code**, that a person who receives something which is not due to him through error is bound to restore it. It states:

> '979. He or she who receives what is not due to him or her, through error of law or of fact, is bound to restore it; or if it cannot be restored in kind, to give the value of it.
>
> If the receiver be in good faith, he or she is not obliged to restore the profits of the thing received.'

ANALYSIS:

[26] There can be no real dispute that Mortgage Finance held a prior registered hypothec over the property which is the subject of these proceedings. The evidence demonstrates that the hypothec in favour of Mortgage Finance was registered in 1996, well before the hypothecary obligations and judicial hypothec in favour of BOSL.

[27] Under the **Civil Code** the priority of real rights affecting immovable property is determined by the date of registration. The effect of that rule is that Mortgage Finance enjoyed a superior real right over the property and was therefore entitled to be collocated ahead of BOSL in any distribution of the proceeds arising from its sale.

[28] The omission of Mortgage Finance from the Scheme of Ranking was therefore plainly inconsistent with the governing legal framework. Article 568 of the **Code of Civil Procedure** expressly requires the Registrar to prepare the scheme in conformity with

the rules contained in the Civil Code respecting privileges, hypothecs and the registration of real rights.

[29] The Registrar was therefore required to recognise the priority of the hypothec registered in favour of Mortgage Finance notwithstanding the absence of any opposition filed by that creditor. The scheme prepared in September 2022 did not reflect that priority and was accordingly erroneous.

[30] BOSL argues that Mortgage Finance forfeited its entitlement to the proceeds because it failed to file an opposition for payment within the time prescribed by the **Code of Civil Procedure**. I do not accept this submission for the reasons which immediately follow.

[31] While the Code undoubtedly provides procedural mechanisms through which creditors may assert and protect their claims in execution proceedings, the failure to utilise those mechanisms cannot operate to extinguish a real right which has been validly created and registered under the Civil Code.

[32] The system governing immovable property rights in Saint Lucia rests fundamentally upon the principle of registration. To allow a procedural omission to defeat the priority conferred by a duly registered hypothec would undermine the certainty which that system is designed to provide.

[33] Moreover, Article 568 of the **Code of Civil Procedure** speaks not only to those rights shown by the oppositions, but other documents which form part of the record, and in addition to preparing the scheme according to the apparent rights, it imposes a positive obligation upon the Registrar to prepare the scheme in conformity with the **Civil Code**, the Book respecting Privileges and Hypothecs, and the Registration of Real Rights. The preparation of the scheme is therefore not a purely mechanical exercise dependent solely upon the filing of oppositions by creditors. It requires the Registrar to examine the record and to collocate creditors in accordance with the real rights which appear upon the public register.

[34] BOSL also urged the Court that it is duty bound to jealously safeguard the integrity and finality of the judicial sale process particularly in circumstances where the Sheriff's conduct cannot be impeached. It is therefore important to make clear that the present petition does not challenge the validity of the seizure or the judicial sale itself. The issue before the Court concerns only the distribution of the proceeds of sale and whether the Court can make an order for the return of monies which have already been distributed pursuant to an erroneous scheme of ranking.

[35] Once it is accepted that the original scheme of ranking was prepared in error, the remaining question concerns the appropriate remedy. The **Code of Civil Procedure** expressly contemplates that errors in a scheme of ranking may be corrected through a petition in revocation.

[36] As set out above, Article 594 of the **Code of Civil Procedure** provides a right of redress to any party aggrieved by the scheme, and article 595 provides that where a scheme is reformed any sums unduly paid must be returned to the Sheriff upon order of the Court. These provisions reflect the broader civil law principle that a person who receives something which is not due to him through error is bound to restore it.

[37] In the present case BOSL received the proceeds of the judicial sale solely because the scheme failed to recognise the prior registered hypothec of Mortgage Finance. Had the scheme been prepared in conformity with the **Civil Code**, Mortgage Finance would have been collocated ahead of BOSL and would have been entitled to receive the proceeds.

[38] The payment to BOSL must therefore be regarded as a payment made in error and as money which was not legally due to it.

[39] The Court must also consider whether any prejudice would arise from granting the relief sought. BOSL will suffer no injustice by being required to return monies which it was never legally entitled to receive. Its rights as a creditor remain intact and it remains entitled to pursue any balance of its debt through the enforcement mechanisms available under the law.

[40] Furthermore, BOSL was aware at all material times of Mortgage Finance's superior right by virtue of fact that BOSL caused Mortgage Finance to intervene in BOSL's real right registered on 02 August 2002, and the fact that Mortgage Finance's superior charge was correctly reflected in the Registrar's Notice to Creditors in relation to the judicial sale. Therefore, BOSL was also aware that the proceeds of the judicial sale were unlikely to be sufficient to satisfy both Mortgage Finance's prior charge and BOSL's own judgment debt.

[41] By contrast, to refuse the petition would result in a junior creditor retaining funds which ought properly to have been paid to a creditor holding a superior registered security.

[42] Such a result would be inconsistent with the established principles governing the priority of real rights and would undermine the integrity of the system of secured transactions over immovable property.

CONCLUSION:

[43] For these reasons I am satisfied that the Petitioner has established grounds for the grant of the Petition in Revocation.

[44] The Scheme of Ranking filed on 30 September 2022 failed to reflect the priority of the hypothec registered in favour of Mortgage Finance and was therefore inconsistent with the rules governing the ranking of real rights under the Civil Code.

[45] The payment of the proceeds of the judicial sale to BOSL was the direct consequence of that error and resulted in BOSL receiving monies to which it was not legally entitled.

[46] The **Code of Civil Procedure** expressly empowers the Court to correct such errors and to order the return of monies unduly paid pursuant to an erroneous scheme of ranking.

[47] In the circumstances it is both appropriate and necessary to grant the relief sought so that the proceeds of the judicial sale may be redistributed in accordance with the correct ranking of creditors.

COSTS:

[48] Although the Petitioner has succeeded in establishing that the Scheme of Ranking was prepared in error and that the proceeds of the judicial sale must therefore be returned and redistributed, I do not consider that this is an appropriate case in which to award costs.

[49] The difficulty which arose appears to have been the result of an administrative error in the preparation of the scheme rather than any improper conduct on the part of the Claimant.

[50] The Claimant received the proceeds pursuant to a scheme that had been duly prepared and homologated under the court's process and was therefore entitled to rely upon it.

[51] In those circumstances and bearing in mind that the present proceedings were necessary primarily to correct that error, I consider that the appropriate order is that each party bear its own costs.

ORDER:

[52] For these reasons, I make the following orders:

1) The Petition in Revocation is granted.

2) The Scheme of Ranking filed on 30 September 2022 is set aside.

3) The Bank of Saint Lucia Limited shall forthwith and in any event within forty-eight hours of this order return the proceeds of the judicial sale received pursuant to that scheme to the Sheriff.

4) The proceeds shall thereafter be redistributed in accordance with a revised Scheme of Ranking reflecting the priority of the hypothec held by St. Lucia Mortgage Finance Company Limited.

5) Each party shall bear its own costs.

Alvin Shiva Pariagsingh
High Court Judge

By the Court,

Deputy Registrar of the High Court