

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
Civil Division**

SAINT LUCIA

CLAIM No. SLUHCV2026/ 0129

BETWEEN:

HEMISH LESMOND
The Government Trustee

Applicant

-and-

REPUBLIC BANK (EC) LIMITED

Respondent

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances:

Mrs. Brender Portland – Reynolds for the Applicant
Mr. Geoffrey Duboulay and Mrs. Sardia Cenac – Prospere for the Respondent
Mr. Arthur Compass for the Sheriff of the High Court

2026: March 30

REASONS

Application for Stay of Judicial Sale

[1] **PARIAGSINGH, J:** -This is an application by the Government Trustee for a stay of execution of a writ of seizure and sale in respect of immovable property registered as Block 1217C Parcel 603. The application is made pursuant to section 172(3) of the **Insolvency Act, No. 17 of 2024**, following the filing of a consumer proposal.

[2] The Applicant seeks to restrain the Respondent, a secured creditor, from proceeding with the judicial sale of the property. The application is opposed.

BACKGROUND:

[3] The Respondent obtained judgment against the judgment debtors in 2019 in the sum of approximately EC\$247,458.51, together with interest and costs. The Court subsequently granted permission to issue a writ of seizure and sale against the immovable property, which is registered in the name of Ambrose Elius, who is now deceased. On 27 March 2026, a consumer proposal was filed with the Supervisor of Bankruptcy and Insolvency, and the Applicant now seeks to stay execution of the writ.

THE ISSUE:

[4] The central issue is whether the Court should exercise its discretion under section 172(3) of the Insolvency Act to stay execution proceedings by a secured creditor.

THE LAW:

[5] The Insolvency Act establishes a regime for consumer proposals under Part IV. Upon filing, section 172(1) generally operates to stay proceedings against the debtor.

[6] However, the Act preserves the rights of secured creditors to realise their security unless the Court orders otherwise. A stay is therefore not automatic and depends on the Court's discretion, which must be exercised on a proper evidential basis and only where it is just to interfere with those rights.

ANALYSIS:

Locus Standi:

[7] A central difficulty in this application concerns locus standi. The property subject to the execution proceedings is registered in the name of Ambrose Elius, now deceased. While this is not disputed, the evidence does not establish who is legally entitled to represent or administer the estate.

[8] It is well established that upon death, a person's property vests in their estate, which may only be administered by a duly appointed personal representative, either through a

grant of probate or letters of administration. Until such a grant is obtained, no person has authority to act on behalf of the estate in matters affecting proprietary rights.

[9] In this case, the application proceeds on the basis that a consumer proposal has been filed in relation to the estate through Ms. Yasmine Elius, who is said to act as a representative. However, there is no evidence that she has obtained a grant of probate or letters of administration. No such grant or application is exhibited, nor is there any material from which the Court can infer legal authority to represent the estate.

[10] While the applicant invites the Court to take judicial notice of the basis of an application to appoint a representative party in connected proceedings, the court must however decline such an initiation. The issue of locus is a mixed question of fact and law. The onus was on the applicant to put evidence before the court in this application establishing, as she alleges, the existence of a will pointing her as executor.

[11] This is not a mere technical deficiency. Without such authority, the Court cannot recognise actions taken on behalf of the estate or permit interference with its assets.

[12] Additionally, there is no sufficient evidence that Ms. Elius has any independent legal or equitable interest in the property. While it is asserted that the property is her principal residence, this claim is unsupported by documentary evidence. In any event, occupation alone does not confer a proprietary interest.

[13] The Court accepts the submission of counsel for the Respondent that there is vacillation as to who is the applicant. Whilst counsel for the applicant made submissions about the deceased daughter being a consumer debtor, those submissions are inconsistent with ground 1 of the application itself and exhibit HL3 and Annex 1 thereto.

[14] Further, the deceased cannot be a 'consumer debtor' within the meaning of the Insolvency Act as the estate is not an individual nor can the estate have a place of residence which are essentially the two criterium to be consumer debtor.

[15] Moreover, the relief sought would directly interfere with the rights of a secured creditor in respect of property registered to a deceased person. In such circumstances, the Court must be satisfied that the applicant has clear legal standing.

[16] That threshold has not been met. There is no adequate evidential basis to conclude that the consumer proposal was validly initiated by an authorised person or that any recognised legal interest exists.

[17] Accordingly, I am not satisfied that locus standi has been established. This finding alone is sufficient to dispose of the application.

Evidential Deficiencies and the Exercise of Discretion:

[18] Even if I am wrong on locus standi, the application would fail due to insufficient evidence. The relief sought would restrain a secured creditor from enforcing its rights over immovable property, an interference with established proprietary and contractual rights. Such relief requires a strong evidential foundation.

[19] While section 172 provides a framework for stays upon the filing of a consumer proposal, the position differs for secured creditors, whose rights remain intact unless the Court orders otherwise. The Court must therefore balance competing interests based on adequate evidence.

[20] Here, the evidence is sparse. Although a consumer proposal has been filed, no meaningful details are provided regarding its terms, viability, or likelihood of acceptance. There is no information on the estate's assets and liabilities, the level of indebtedness, or how the proposal would be funded.

[21] This is critical, as a stay is intended to preserve the status quo only where a viable insolvency process exists. Absent such evidence, the justification for restraining enforcement is weak. Further, there is no evidence addressing the Respondent's position as a secured creditor, including the value of the security, the extent of the debt, or the prejudice that delay would cause. Nor is there evidence that a stay would produce a better outcome for creditors generally.

[22] The assertion that the property is a principal residence, while serious, is unsupported and must be weighed against the Respondent's accrued rights and the absence of any demonstrated legal entitlement. In short, the Court is asked to exercise a significant discretion on limited and unparticularised evidence. That is insufficient.

Discretion under Section 172(3):

[23] Section 172(3) does not impose an automatic stay in cases involving secured creditors. The Court must exercise its discretion carefully, given the importance of a secured creditor's right to realise its security. Such rights are fundamental to commercial certainty and should only be curtailed for compelling reasons.

[24] In deciding whether to grant a stay, the Court considers:

- 1) whether there is a bona fide insolvency process;
- 2) whether the proposal is viable;
- 3) whether a stay would advance the objectives of the Act;
- 4) the prejudice to the secured creditor; and
- 5) the overall balance of justice.

[25] In this case, the Court lacks sufficient evidence to properly assess these factors. There is uncertainty regarding legal standing, no meaningful detail about the proposal, and no basis to evaluate competing interests.

[26] Counsel for the Applicant correctly accepted that it was open to the Deceased to make an application to satisfy the debt by installments at last seven (7) years ago when the judgment was obtained. To permit a stay of the sale on the basis of an intended investigation, the effect of which would lead to a parallel process under the Insolvency Act from that set out in the CPR to pay by installments, is not in my view a judicial exercise of my discretion.

[27] Intervening in these circumstances would be speculative and unjustified. The Respondent has already obtained judgment and commenced enforcement with the Court's approval. To interrupt that process without a proper foundation would be inappropriate.

[28] This is not a case in which the discretion under section 172(3) should be exercised.

CONCLUSION:

[29] I find that:

- 1) The Applicant has failed to establish locus standi in relation to the property and the estate;
- 2) The evidence is insufficient to justify the grant of discretionary relief; and
- 3) There is no basis for the Court to exercise its discretion under section 172(3) of the Insolvency Act.

ORDER:

[30] Accordingly, I make the following orders:

- 1) The application for a stay of judicial sale scheduled for 30 March 2026 is dismissed.
- 2) The Respondent is at liberty to proceed with enforcement of its security.
- 3) The Sheriff of the High Court is directed to proceed with the judicial sale at 2:00pm today.

- 4) The Applicant shall pay the Respondent's costs of this application to be summarily assessed is not agreed.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar