

THE EASTERN CARIBBEAN SUPREME COURT:

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

SAINT LUCIA

Claim No. SLUHCM2020/0061

BETWEEN:

**REPUBLIC BANK (EC) LIMITED
Qua Successor to THE BANK OF NOVA SCOTIA**

Claimant / Judgment Creditor

-and-

[1] **EMTI LTD**
[2] **EMAD WARD**
[3] **NADIA WARD**

Defendants/ Judgment Debtors

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances:

Mrs. Sardia Cenac – Prospere and Ms. Iyka Dorival for the Claimant/ Judgment Creditor

Mr. Eghan Modeste for the First Defendant/ Judgment Debtor/ Applicant

2026: February 11

**JUDGMENT
Application to Fix Upset Price by the First Defendant**

FACTS:

[1] **PARIAGSINGH J:** Before the Court is the First Defendant's application for an order that an upset price of \$4,254,508.50 be set for the judicial sale of parcel No. 0649B 16 with the building thereon, filed on 23 January 2026.

[2] In support of the application is the affidavit of Mr Zayad Ward, also filed on 23 January 2026. The main thrust of the application is that, since being served with the Writ of Seizure and Sale, it was the deponent's understanding that an upset price for the sale

would be set. Mr Ward exhibits a valuation dated 20 April 2022 by Mr Adrian Dolcy of Adrian Dolcy & Associates, which gives a valuation of \$4,254,508.50 for the subject property.

- [3] The deponent contends that if an upset price is not fixed, the First Defendant would be prejudiced if the property is sold at a judicial sale 'for the lowest possible sum or at a sum far below its value'.
- [4] The deponent accepts that Article 511A of the Code of Civil Procedure enables a judgment creditor to apply to fix an upset price. He, however, advances that there is no express restriction or prohibition upon a judgment debtor making such an application. He contends that it is prudent and in furtherance of the interests of justice that a judgment debtor be heard on an application to fix an upset price in order that his interest be secured.
- [5] No affidavit in opposition was filed by the Claimant; however, a notice of opposition was filed out of time, which I will address below.
- [6] By a second affidavit filed on 2 February 2026 on behalf of the First Defendant, Mr Zayad Ward deposes that he has had sight of Notices in the Gazette of Monday 26 January 2026 and Monday 2 February 2026 listing the property for sale and stating that the required deposit is \$134,280.05, purportedly one tenth of the debt.
- [7] The deponent contends that the deposit sum is incorrect, as that sum represents one tenth of the principal debt and does not include one tenth of the interest and costs as required by Article 530 of the Code of Civil Procedure.

The Notice of Opposition

- [8] By notice of opposition filed on 9 February 2026, the Claimant opposes the application to fix an upset price on three bases. They are: locus standi; that the First Defendant has not complied with Article 513 of the Code of Civil Procedure to seek leave to oppose the sale; and that the application is an abuse of process, as the grounds are not included in

the application but are included in the affidavit in reply, in so far as they relate to the errors in the notice published.

[9] The Claimant also filed an application on 10 February 2026 seeking an extension of time to file the notice of opposition. The main ground of the application, in summary, is that the legal practitioners for the Claimant did not have sight of the application until 8 February 2026 when counsel was reviewing the cause list. It was explained that the previous legal practitioner on record for the Claimant has since left the employment of the firm and, as such, new counsel was not notified of the filing on the e-litigation portal.

[10] At the hearing today, counsel for the First Defendant referred to a screenshot of the Legal Practitioners section of the e-litigation portal dashboard, which shows that four (4) new attorneys were added as legal practitioners for the Claimant, including counsel who filed the Writ of Seizure and Sale, prior to the instant application.

[11] It was, however, brought to counsel's attention that, although this is correct, these new attorneys were only added on 9 February 2026 at 9:42 am, which lends credibility to the Claimant's application.

[12] In any event, there is no sanction for not filing a notice of opposition, and no sanction was imposed for non-compliance in my order of 23 January 2026 abridging time for the filing and hearing of this application.

[13] The reason advanced is plausible and, given that the Claimant filed no evidence in response to the application, there is no prejudice to the First Defendant.

[14] Accordingly, this application is granted with no order as to costs.

[15] The notice of opposition is deemed properly filed.

ANALYSIS:

[16] Article 511A of the Code of Civil Procedure provides that:

“The Judge or the Registrar may, on an application made by the judgment creditor, notice of which shall be served on the judgment debtor, fix an upset price for the sale of immovables seized by the Sheriff by virtue of a writ of execution.”

[17] The wording of Article 511A is clear and unambiguous. The power of the Court or Registrar to fix an upset price is triggered only upon an application made by the judgment creditor. The provision contains no language permitting a judgment debtor to initiate such an application, nor does the Code contain any parallel provision conferring a similar right on the debtor.

[18] This interpretation is supported by the decision of the Court of Appeal in **Laborie Cooperative Credit Union v Peter Emmanuel**¹. In that case, the Court found that it cannot oblige a judgment creditor to apply to the Court to fix a reserve price since (i) a writ of execution may be, and is, issued without an order of the Court and (ii) CPR 55.4 permits a judgment creditor to apply for an order for sale out of court, the essence of which is that the Court does not fix a reserve price (see paragraphs 12, 13 and 17).

[19] To allow a judgment debtor to apply for an upset price would, in practical effect, oblige the judgment creditor to engage the Court in circumstances where the creditor is entitled to proceed without judicial intervention. Such an outcome would indirectly impose an obligation on the judgment creditor which the Court of Appeal has expressly stated does not exist.

[20] This position was reaffirmed in **Royal Bank of Canada v Wells**², where the Court interpreted the judgment in **Laborie** to mean that “the right to apply is that of the judgment creditor, not the respondent. The requirement is not mandatory and simply sets the minimum price for which the property may be sold, to ensure the judgment

¹ Civil Appeal No. 4 of 2007

² SLUHCV2017/0037

creditor is able to recover the full amount of the debt” (see paragraph 54). Significantly, the Court reached this conclusion even after considering the argument that a debtor may suffer prejudice if property is sold below market value and remains liable for any amounts still outstanding.

[21] This Court also took a similar view in **Bank of Saint Lucia Ltd v General Aviation Services Ltd & Ors**³ at paragraph 82, namely that Article 511 of the Code of Civil Procedure does not confer on a judgment debtor a right to apply for the fixing of an upset price. That right is vested exclusively in the judgment creditor.

[22] The jurisprudence confirms that a judgment debtor has no standing to apply to fix an upset price and that the Court is not empowered to impose such a price absent an application by the judgment creditor.

[23] The only statutory recourse available to a judgment debtor in relation to the sale of immovable property is found in Article 513 of the Code, which provides:

“The Sheriff, in the absence of any consent on the part of the seizing creditors, cannot stop the sale of immovables, except upon the Judge’s order permitting the filing of an opposition, accompanied with an affidavit on the part of the opposant, or of his or her attorney in the absence of the opposant, that all the allegations in the opposition are true to the best of the deponent’s knowledge and belief, and that the opposition is not made with intent unjustly to retard the sale, but solely to obtain justice.”

[24] At the hearing today, counsel indicated that, in respect of the error in the notice published, he intends to file an application under Article 513 for leave to make an opposition to the sale. As such, the other limb of the opposition, that the Court ought not to set aside the writ on the basis of the grounds raised in the First Defendant’s affidavit in reply, does not arise at this stage.

³ SLUHCv2023/0512

ORDERS:

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

- 1) The First Defendant/Judgment Debtor's application filed on 23 January 2026 is dismissed; and
- 2) The First Defendant shall pay the Claimant/Judgment Creditor's costs of this application, to be summarily assessed in default of agreement within 14 days.



**Alvin S. Pariagsingh
High Court Judge**

By the Court,

Registrar of the High Court