

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2021/0029

BETWEEN:

CAROL BOGUE-LLOYD

Claimant/Judgment Creditor

and

GIRISH HIRANANDANI

SHRI KRISHNA LTD

Defendants/Judgment Debtors

and

VIKAS PARIANI

HIREN FATNANI

Interested Parties

Appearances:

Mr. D. Victor C. Elliott-Hamilton for the Judgment Creditor

Ms. Zenitaa Singh for the Judgment Debtors

Ms. Edisha Greene for the Interested Parties

2025: October 30;
2026: January 28.

JUDGMENT

- [1] **GILL, J:** A judgment creditor seeks to enforce a money judgment through the sale of land.
- [2] On 13th March, 2024, the claimant Carol Bogue-Lloyd (“the judgment creditor”), a national of Wales in the United Kingdom, obtained a consent judgment against the defendants/judgment debtors Girish Hiranandani and Shri Krishna Ltd, operators of

a jewellery store, in the sum of US\$35,000.00 plus costs in the sum of US\$6,175.93. The claimant's claim arose out of a business transaction between the parties when the claimant was on a cruise making a stop at Port Zante, Basseterre, St. Kitts. Since the date of the judgment, the judgment debtors have failed to make any payment whatsoever towards the judgment debt.

- [3] Therefore, in order to secure payment, on 30th September 2024, the judgment creditor filed an application for the sale of land pursuant to section 4 the Judgments Act.¹ The subject of the application was a lot and piece of land otherwise known as Lot No. 11 Golf View Estates Development situate at Frigate Bay in the island of Saint Christopher noted in Certificate of Title dated 6th January 2009 and registered in Book I3, Folio 6 of the Register of Titles. The first judgment debtor Girish Hiranandani (hereinafter "the judgment debtor") is the registered proprietor of the said land or property.
- [4] The application for sale was presented on 1st October 2024 and noted on the Certificate of Title of the judgment debtor on 18th October 2024. At the time of the registration of the application, there was a mortgage noted in favour of RBTT Bank Caribbean Limited. The judgment creditor served a copy of the application on the Bank of Nevis Limited, the successor to the RBTT Bank Caribbean Limited.
- [5] Since the filing and service of the application, a discharge of mortgage was noted on the Certificate of Title.
- [6] On 6th December 2024, the judgment debtor filed a notice of opposition to the application on the ground that the land was sold on or about 8th May 2024. In his affidavit in support of the notice of opposition, the judgment debtor stated that he signed a memorandum of transfer to Vikas Pariani and Hiren Fatnani, pursuant to the terms of an agreement for sale. Annexed to his affidavit is a copy of an unregistered memorandum of transfer dated 19th April 2024. The judgment debtor

¹ Cap. 3.14 of the Laws of Saint Christopher and Nevis

avers that he has no beneficial interest in the property by virtue of the fact that it was sold.

- [7] On 10th February, 2025, Vikas Pariani and Hiren Fatnani, applied to the court to be joined to the application as interested parties, and for the application for sale to be dismissed. This application was supported by the affidavit of Vikas Pariani. On 18th July 2025, the court granted the application for Vikas Pariani and Hiren Fatnani to be joined as interested parties in the application for sale.
- [8] Mr. Pariani confirmed that at the time of the sale agreement, a mortgage in favour of RBTT Bank Caribbean Ltd (now The Bank of Nevis Limited) in the sum of EC\$795,000.00 was noted on the Certificate of Title for the property. As at 19th April 2024, the balance of the mortgage was EC\$280,128.74. As a result, the original Certificate of Title was held with the Bank.
- [9] In order to purchase the property, the interested parties satisfied the sum outstanding on the judgment debtor's loan with the Bank and paid the surplus funds to which the judgment debtor was entitled for the purchase of the property on 22nd April 2024.
- [10] Mr. Pariani avers that inadvertently, the Bank released the original Certificate of Title to the property to the judgment debtor. In or around August 2024, the Bank advised that the discharge of mortgage would be provided to Messrs. Joseph Rowe, (the attorneys-at-law for the interested parties) for registration once the Certificate of Title to the property was located and returned to the Bank.
- [11] The judgment debtor's original duplicate Certificate of Title for the property, the executed memorandum of transfer and the Bank's discharge of mortgage were deposited with the attorneys for the interested parties.
- [12] On 29th November 2024, when the attorneys-at-law for the interested parties presented the discharge of mortgage for registration, it was discovered that there was a notation made by the Assistant Registrar on the judgment debtor's Certificate

of Title dated 18th October 2024, which stated that there was an application for an order for sale of the property.

- [13] The original duplicate Certificate of Title for the property remains deposited with the interested parties, and the employees of the interested parties have been residing at the property since April 2024.
- [14] On 18th July 2025 when the matter came on for hearing, learned counsel for the judgment debtor and the interested parties requested time to file submissions in response to those filed by the judgment creditor on 17th July 2025. The judgment debtor and the interested parties were ordered to file submissions in response to the application for sale by 15th September 2025, and the judgment creditor was at liberty to file submissions in reply by 30th September 2025. The matter was adjourned to 30th October 2025 for hearing of the application for sale.
- [15] The interested parties, without an explanation, filed their submissions in response on 30th October 2025, the said date fixed for the hearing, a month and a half after the court's deadline, thereby denying the judgment creditor the opportunity to reply before the hearing.

Application for stay of proceedings

- [16] The judgment debtor, in flagrant breach of the court's order, failed to file submissions at all. Instead, on 29th October 2025 at 2:12 p.m., on the eve of the hearing, the judgment debtor filed an application for a stay of the proceedings. This application was grounded on the fact that the judgment debtor's ex-wife Seema Ramesh Shahani, on 21st February 2025, filed an application for ancillary relief subsequent to their divorce. In her application, Ms. Shahani seeks, *inter alia*, an order that the property in issue be deemed matrimonial property, and an order that she is a joint owner of the property and is entitled to an equal share in the division of the property. It is of note that Ms. Shahani is not a party to the application for the stay, and she has not provided any evidence in support of that application. The judgment debtor avers that if counsel for the judgment creditor is right in his submissions to the court (on the application for sale) regarding section 5 of the Title

by Registration Act, then the legal and beneficial interest of the property is still with him, and potentially Ms. Shahani, if so determined. Therefore, the judgment debtor avers that the stay was sought in the interest of justice and to avoid prejudice to Ms. Shahani's claim.

- [17] The judgment creditor strenuously opposed the late application for a stay and managed to file a notice of opposition at 10:08 a.m. before the matter was called up for hearing on the 30th. After hearing arguments on the stay, the court proceeded to hear the application for sale, and undertook to deal with both applications in its judgment.

Ruling on the application for a stay

- [18] The court finds favour with the objections raised by the judgment creditor, *inter alia*, that the stay application is an abuse of the process of the court. The ex-wife's application for ancillary relief was filed since 21st February 2025. There was no mention of it when the court gave directions on the application for sale on 18th July 2025. The judgment debtor waited until the day before the hearing to make the stay application. Further, the judgment debtor has no standing to bring the stay application seeking to protect the interests of his ex-wife in her application for ancillary relief. It is a matter of record that the judgment debtor, by his affidavit in response filed on 13th June 2025, opposes that part of her application on the basis that he was the sole registered proprietor of the property and there was an agreement between them that she would leave him with the property. The judgment debtor cannot use a third party's potential interest to shield his own assets from execution. The court sees the stay application as a delay tactic, and will not oblige the judgment debtor in this regard.
- [19] Accordingly, the judgment debtor's application for a stay of proceedings is dismissed, and the court will proceed to determine the application for sale.

The Law

[20] The Title by Registration Act²² (“TRA”) governs these proceedings. Section 5 reads:

- (1) *From and after the time when any land is brought under the operation of this Act, all dealings with such land shall be in the forms and governed by the principles set forth in this Act, and all such dealings shall take effect from the date and act of registration, and not from the date of the execution or delivery of any instrument or document, or otherwise, save as in this Act provided.*
- (2) *It shall not be necessary to register under the provisions of the Registration and Records Act, Cap. 23:25, dealings with lands brought under the operation of this Act, which are in accordance with the provisions of this Act.*
- (3) *Dealings with lands brought under the operation of this Act, which are not in accordance with the provisions of this Act, shall operate as contracts only, and shall not confer any right in respect to the land, except the right of enforcing the contract as against the parties, and persons claiming, otherwise than as purchasers or mortgagees for value, under such parties.*

[21] “Dealing” is defined in the First Schedule of the TRA as follows:

*Dealing. A dealing with land is any act in regard thereto which requires an application to the Registrar of Titles to have the act completed and made available for registration. **A sale of land, for example, is evidence of the registered proprietor signing in proper manner a memorandum of transfer, and the memorandum of transfer must be presented to the Registrar of Titles to be dealt with by him or her, without which there is no registration of the title, and the sale is not completed.** In the same way all mortgages and encumbrances and transmissions of land are dealings in the sense of the Act. Every act therefore by which the proprietorship of the land is changed or affected, or the mortgages and encumbrances are increased or diminished, is a dealing. (Emphasis added)*

[22] Section 106 provides:

- (1) *Where any registered proprietor, mortgagee or encumbrancee, or the estate or right of any registered proprietor, mortgagee or encumbrancee in or over any land brought under this Act, is liable to the payment of a judgment debt, the Court may, at any time after the date of the judgment, on the application of the judgment creditor, make an order for sale of the estate or right of such registered proprietor, mortgagee or encumbrancee in or over the land:*

...

²² Cap. 10:19 of the Laws of Saint Christopher and Nevis

(2) *In this section,
“judgment” means judgment entered in the High Court.*

[23] Section 109 of the Act reads:

A judgment for the payment of any money or costs shall constitute such money or costs a charge, subject to charges having a priority, upon the estate or right of any registered proprietor, mortgagee or encumbrancee in or over any land brought under the operation of this Act as soon as

(a) the person entitled to the benefit of such judgment has filed an application to the Court under the Judgments Act, Cap. 3:14 for an order for the levying of such money or costs or part thereof by sale of such estate right or otherwise, and all further proceedings in connection with such judgment shall be governed by the provisions of that Act; and

(b) the Registrar of Titles shall have noted such application upon any relevant certificate of title in his or her custody.

[24] In **Rosalind Nicholls and others v Richard Rowe and others**,³ the Court of Appeal gave valuable guidance on section 5 of the TRA. At paragraphs 28, 30 and 32 of the judgment, Kentish-Egan JA (Ag.) stated:

“[28] The legislative intention in section 5(3) is crystal clear. It enacts:

- (i) that an unregistered memorandum of transfer cannot create a right or interest in land;
- (ii) that the only legal effect such an instrument has is that it operates as a contract only; and
- (iii) that the only right it creates is the right to enforce the contract against the other party to the contract or against persons claiming under that party.

...

[30] It is clear from the definition of ‘dealing’ in the First Schedule to the TRA that the appellants’ Unregistered Memorandum of Transfer is a ‘dealing’ in land. It was required to be presented for registration and to be registered in order to have legal effect as a completed sale of the Units to the appellants. Unless presented for registration, the sale of the Units remained incomplete with the consequence that the proprietorship of the land was never affected by the alleged beneficial interest.

...

³ SKBHCVP2011/0015, delivered January 11, 2016

[32] I am constrained by the provisions in section 5(3) as well as the enactments in the sections of the TRA dealt with in the preceding paragraphs 29 to 31, to hold that the right the appellants possess by virtue of their Unregistered Memorandum of Transfer is no higher than a contractual right. It is a right to bring an action in personam in law or in equity for damages or for specific performance of the contract. **Whether this may seem “inequitable” is not a material consideration when the TRA makes it inevitable.** (*Emphasis added*)

Judgment creditor’s submissions

[25] The judgment creditor submits as follows:

- 1) The contention of the judgment debtor and the interested parties that the judgment debtor has no beneficial interest in the property is untenable and bound to fail, having regard to the clear provisions set out in section 5 of the TRA, as interpreted by the Court of Appeal in **Nicholls v Rowe**.
- 2) The judgment creditor’s judgment was registered prior to any attempt by the interested parties to present the memorandum of transfer for registration. Under the title by registration system, priority is determined by registration, not by execution or delivery. Therefore, the registered judgment must prevail over the unregistered memorandum of transfer and is conclusive. Accordingly, the judgment debtor remains the registered proprietor having a legal and beneficial interest in the land until such time as the memorandum of transfer is registered. The principle of “first in time, first in right” applies only within the confines of registered interests; the registration is what gives the interest legal effect.
- 3) The TRA makes it clear that a sale is concluded upon registration, not the execution of the memorandum of transfer. The effect of registration is to confer indefeasible title, ensure finality, and secure priority over unregistered dealings. The failure of the interested parties to register the memorandum of transfer renders it ineffective against the judgment creditor’s registered judgment. The registered judgment constitutes a

prior registered incumbrance. Consequently, the interested parties have no legal or beneficial interest in the property. Even if the interested parties assert a beneficial or equitable interest, such interests do not override the statutory priority of registration or the registered judgment, unless fraudulent conduct is alleged and proven. For the instant proceedings, there is also no allegation by the interested parties of fraud or other unconscionable conduct on the part of the judgment debtor so as to render the registered judgment ineffective, thereby rendering the unregistered transfer or sale ineffective.

- 4) Rather, the interested parties may potentially have a cause of action against the judgment debtor for breach of contract for the failure to give clear title or deliver good title free from encumbrances. However, the interested parties' potential claim does not affect the judgment creditor's statutory and registered rights to enforce her judgment through a sale of the property.

The judgment debtors' opposition

- [26] Whereas the judgment debtors failed to file submissions on the application for the sale of land, they filed a notice of opposition on 6th December 2024 and an affidavit in support of the notice followed on 11th December 2024.
- [27] The notice is grounded on the basis that the judgment debtor is no longer the legal owner of the land by virtue of the fact that it was sold on or about 8th May 2024, and that the judgment debtor proposes to make other arrangements to settle the judgment.
- [28] In the supporting affidavit, the judgment debtor avers that he signed the memorandum of transfer of the property to the interested parties. He acknowledges that the memorandum of transfer was not registered after execution and therefore the property is still registered in his name. He affirms that his attorneys informed him and he verily believes that the purchasers (the interested parties) have an equitable interest in the property.

The interested parties' submissions

[29] The interested parties do not dispute that the statutory scheme of the TRA and particularly, that section 5(3) requires the registration of all dealings in land that are intended to change or affect the legal ownership of land. The interested parties submit that this notwithstanding, the TRA also recognises and protects equitable interests in land including such interests which do not require registration, such as equitable mortgages created through the deposit of the Certificate of Title to the property. They cite **Nicholls v Rowe** and set out paragraphs 60 and 61 of the judgment regarding the recognition of interests arising in equity under the TRA as follows:

“[60] With the exception of equitable mortgages, each of these provisions establishes definitively that subject to the provisions of the TRA, an interest in land exists under that Act when it bears the stamp of indefeasibility by notation in the register as well as on the duplicate certificate of title. Registration and noting on the certificate of title are the sine qua non of the existing interests in land under the TRA and this is so whether the interest has its origins in law or in equity. We have seen from the first of the four types of encumbrance identified by the TRA, that recognition and protection is given to burdens, securities and liens upon land arising in equity.

[61] This availability of an encumbrance as the vehicle to note on the certificate of title, an interest arising in equity, sets to naught the argument of the MKS respondents that the TRA recognises legal interest only and does not recognise equitable interests. No such distinction can be found in the provisions of the TRA. It sets to naught too, the misplaced and expansive submission of the appellants that the TRA cannot be used to defeat equitable interests in land. This is an engineered assertion that begs the answer to the question whether the TRA embraces equitable interests. The short response is that, one must look to the provisions of the TRA in order to determine the degree of recognition or the degree of protection that is given to claims to equitable interests in land.”

[30] The interested parties explain that they do not seek to assert that their interest in the property trumps that of the judgment debtor. Rather, they request that their equitable right to the property be recognised considering the events that

transpired subsequent to the execution of the memorandum of transfer, and further that their beneficial right be given priority to that of the judgment creditor.

[31] At the hearing, learned counsel for the interested parties alleged as misleading the judgment creditor's submissions that "the judgment creditor's judgment was registered prior to any attempt by the interested parties to present a memorandum of transfer for registration" and that to date, "the interested parties have not registered the memorandum of transfer." The Court of Appeal in **Nicholls and Rowe** noted that there was no evidence adduced to show that the appellants attempted to or presented their memorandum of transfer for registration.

[32] The interested parties submit that the facts of this case are distinguishable from those of **Nicholls v Rowe** because of the following matters:

- a. The interested parties were unable to proceed with registering their memorandum of transfer until the mortgage in favour of the Bank of Nevis was discharged.
- b. Whilst the memorandum of transfer was fully executed since 19th April 2024 and the funds necessary to discharge the judgment debtor's loan were satisfied on said date, nothing could be done until the Bank's discharge of mortgage was presented to the land registry for registration.
- c. The Bank's discharge of mortgage was only executed on 17th October 2024, registered with the Inland Revenue Department for the payment of stamp duties on 24th October 2024, and subsequently registered at the land registry on 29th November 2024. By the time the discharge of mortgage was presented to the land registry, the judgment creditor had already presented her application for sale which was noted on 18th October 2024.
- d. The delay in the Bank's execution of the discharge of mortgage was not caused by the interested parties.

- e. Following the execution of the memorandum of transfer in April 2024, the interested parties would not have thought it necessary to register a caveat against the property as they were aware that the Bank was processing the discharge of mortgage, and had possession of the Certificate of Title. Further, the interested parties had utilised the said Bank to assist with its purchase of the property which was arranged concurrently with the discharge of the judgment debtor's mortgage loan.
- f. To date the interested parties have not registered their memorandum of transfer as they are barred from doing so due to the judgment creditor's existing application for sale.
- g. Employees of the interested parties have resided at the property since April 2024 and continue to reside there to date.
- h. Since the conclusion of the sale in April 2024, the interested parties and their legal counsel have taken all steps to facilitate the transfer of the property to them. The interested parties have not taken an "armchair" approach to their rights.
- i. The interested parties have done everything within their power in the ordinary way of the transfer of registered property to become the registered owners of the property. Similarly, the judgment debtor, by delivering his original duplicate certificate of title and the executed memorandum of transfer to the interested parties, has done everything required as to effect the transfer of the property.

[33] Considering the aforementioned matters, the interested parties assert that should the court take the view that the TRA does not recognise the beneficial rights of the interested parties in equity, and that the only way to have one's interest recognised is by registration, it follows that a bona fide purchaser for valuable consideration has no remedy or recognition under the TRA as the lodging of a caveat on its own does not vest one with interest. It will also follow, they submit, that even where a transferor has done all that is necessary to effect the transfer of a property, where such a transfer is delayed through

administrative error by a Bank, or even the Registry, such a transfer will not be effective.

- [34] Having regard to the circumstances of this matter and to the actions of the judgment debtor and the interested parties to effect the transfer of the property, the interested parties request that the order sought by the judgment creditor be refused.

Analysis

- [35] Notwithstanding the clear provisions of section 5(3) of the TRA, the interested parties are asking the court to dismiss the judgment creditor's application for sale based on the circumstances grounding their equitable interest in the property. The judgment creditor does not deny the equitable interest of the interested parties, but asserts that this court is bound by the Court of Appeal in **Nicholls v Rowe**. That case concerned the appellants' claim for compensation for property compulsorily acquired by the government of St. Christopher and Nevis under the Land Acquisition Act.⁴ Although the appellants produced a duly executed but unregistered memorandum of transfer evidencing purchase and full payment of the purchase price, the Board of Assessment rejected the appellants' claim on a finding that they had no interest in the land.

- [36] In upholding the award of the Board of Assessment (while allowing the appeal against the ruling of the judge in the court below on the effect of a provision of the Land Acquisition Act), the Court set out the Board's position at paragraphs 21 – 23 of the judgment as follows:

“[21] Cast in language of regret yet firmly stated, the Board at paragraph 66 of the unanimous award, rejected the appellants' claim in these words:

‘[66] Inequitable as it seems to us, we are constrained by the law to find that [the appellants] have no interest in land that is required to be compensated by the [Land Acquisition] Act. If they have any entitlement it is against the previous proprietors of the subject lands, or those who hold title from them.’

⁴ Cap. 10.08 of the Laws of Saint Christopher and Nevis

[22] The Board regarded the submissions of the MKS Respondents as having greater cogency and stemming from its acceptance of those submissions, made the following findings of law:

(a) That the English case of **Lloyds Bank Plc v Carrick and Another**, [[1996] 4 All ER 630] applied to the appellants' case on the basis that both cases involved the purchase price having been fully paid in relation to the purchase of land under the system of title registration, with the result that an unregistered equitable interest could not be binding against third parties because they failed to do that which Parliament has ordained must be done if their interest is to prevail over that of a third party, namely to register the estate contract.

(b) That section 5(3) of the TRA expresses the principles repeated in the **Lloyds Bank** case that dealings with registered land in Saint Christopher which are not in accordance with the provisions of the Act, operate, as contracts only conferring no right in respect of the land, except the right of enforcing the contract as against the parties, and as persons claiming, otherwise than as purchasers or mortgagees for value, under such parties, which exception would apply, for example, to volunteers, which was not the case here.

(c)...

[23] Based on these findings of law, the Board reasoned to the conclusion in paragraph [63] of the award that:

'[63] The language in section 5(3) of the Title by Registration Act is quite clear. One of the declared purposes of the Torrens system of land registration was the replacement of all estates and interests in land previously recognised at common law by those interests only that were recognised by the Title by Registration Act. Dealings with land subject to the Act which are not in accordance with the provisions of the Act operate as contracts only. They do not confer any right in respect of the subject lands, except the right of enforcing the contract as against the parties to the contract.'

[37] Likewise, the Court of Appeal was constrained to adhere to the stringent provisions in section 5(3) of the TRA, and agreed with the finding of the Board that the effect of section 5(3) was that the appellants' unregistered memorandum of transfer was an unregistered dealing in land, which is incapable of conferring any right or interest in respect of land.

[38] In my respectful view, the interested parties' attempt to distinguish their situation from that of the appellants in **Nicholls v Rowe** fails. The submission that they have done everything within their power to become the registered owners of the property, by way of the matters set out in paragraph 32 above, does not take away from the fact that the memorandum of transfer is unregistered, and therefore in non-compliance with the provisions of the TRA. For the purposes of section 5, these matters are irrelevant. Not being registered, the memorandum of transfer is ineffective in creating a right or interest in the property in respect of the interested parties.

[39] I note the submission that the TRA recognises equitable interests, and the reliance of the interested parties on equitable principles in light of their 'far from armchair approach' to having the memorandum of transfer registered.⁵ However, in the circumstances of this case, in my respectful view, the court has no jurisdiction to deviate from the strict statutory regime of the TRA. Under the Torrens system, registration is the *sine qua non* (essential condition) of title. The equitable maxim "equity regards as done that which ought to be done" is displaced by the statutory requirement of registration. The TRA requires not only that the memorandum of transfer be presented for registration, but that it is, in fact, registered. Therefore, notwithstanding the efforts to effect registration, section 5(3) defeats the asserted equitable interest of the interested parties.

[40] The interested parties did not lodge a caveat to protect their unregistered interest in the property. 'Caveat' is defined in the First Schedule to the TRA as follows:

Caveat. An instrument presented to the Registrar of Titles... for the purpose of forbidding the registration of any dealing with the land set forth therein, until the caveat be withdrawn or removed.

⁵ See *Re Rose, Rose v Inland Revenue Commissioners* [1952] Ch 499; see also *Mascall v Mascall* (1985) 50 P & CR 119

[41] The interested parties acknowledged their right to lodge a caveat, quoting from the text Commonwealth Caribbean Land Law⁶ by Sampson Owusu where it is stated:

“Land title registration systems do not provide for the registration of equitable interests such as beneficiary’s interest under a trust, interests arising under an estate contract, or part performance, or interests under equitable mortgage by deposit of the duplicate certificate of title. Such unregistrable interest can, however, be protected under the land title registration system by means of a caveat which can be lodged so as to be endorsed on the certificate of title to the land in question. A caveat which is duly lodged serves as a warning to persons intending to deal with the person registered as a proprietor of the land. In fact, the land registrar is expressly enjoined by statute not to register any title affecting the land for which the caveat is lodged until the caveator is notified of the intended title registration.

But the question arises as to whether there is a duty to lodge a caveat and whether where one fails to do so to protect his prior equitable interest his otherwise prior equitable interest should be postponed to a subsequent encumbrance which was first to be protected by a caveat.”

[42] The interested parties failed to lodge a caveat because they did not think it necessary to do so as they were aware the Bank was processing the discharge of mortgage and had possession of the certificate of title. They were at liberty to lodge a caveat at any time after the execution of the memorandum of transfer in April 2024. Unfortunately, this failure denied them the protection from the judgment creditor’s application for sale noted on 18th October 2024.

[43] The judgment creditor’s registered judgment takes priority over the unregistered memorandum of transfer. As submitted by the judgment creditor, priority is determined by registration, not by execution or delivery. According to the chronological evidence, the judgment creditor’s judgment was registered before the memorandum of transfer was presented for registration.

[44] The unregistered memorandum of transfer is a dealing in land and, by virtue of section 5(1) of the TRA, does not take effect until the date and act of registration. Registration of the memorandum of transfer has not taken place and the

⁶ Chapter 7 at page 249

judgment debtor remains the registered owner of the property with indefeasible title. The interested parties have no legal or beneficial interest in the property. In the face of an apparent inequitable state of affairs, the court is constrained to adhere to the stringent provisions of the TRA.

- [45] The legal effect of section 5(3) of the TRA is that the unregistered memorandum of transfer operates as a contract only. It does not create a right or interest in the property in the interested parties. As submitted by the judgment creditor, the interested parties may potentially have a cause of action against the judgment debtor for the failure to give clear title or deliver good title free from encumbrances. Interestingly, whereas the interested parties accredit the judgment debtor for doing “everything required of him to effect the transfer”, they appear to attach blame to the Bank for the delay in the execution of the discharge of mortgage.

Conclusion

- [46] The judgment creditor is entitled to the fruits of her judgment which remains wholly unsatisfied to date. The unregistered memorandum of transfer in favour of the interested parties is a dealing in property not in conformity with the provisions of the TRA, and does not confer any right in respect of the property in the interested parties. The judgment debtor remains the sole registered proprietor of the property. Therefore, the judgment creditor has properly moved the court for the sale of the property in order to enforce the judgment. Accordingly, the court will grant the application for an order for sale.

Order

- [47] Based on the foregoing, it is hereby ordered as follows:
- 1) The judgment debtor's application for a stay of proceedings is dismissed.
 - 2) The judgment creditor's application for an order for the sale of the property described as Lot No. 11 of Golf Estates Development situate at Frigate Bay in the island of St. Christopher, more particularly

described in the Certificate of Title dated 6th January 2009 and recorded in Book I3, Folio 6 of the Register of Titles, St. Christopher Circuit is granted.

- 3) The interested parties' application to dismiss the application for sale is dismissed.
- 4) The judgment debtor shall pay costs of the application for sale to the judgment creditor in the sum of EC\$1500.00.
- 5) The interested parties shall pay costs of the application for sale to the judgment creditor in the sum of EC\$1500.00.

Tamara Gill
High Court Judge

By the Court

Registrar