

THE EASTERN CARIBBEAN SUPREME COURT:

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

SAINT LUCIA

Claim Number: SLUHCV2023/0512 formerly
SLUHCV2013/0052

BETWEEN:

BANK OF SAINT LUCIA LIMITED

Claimant

-and-

[1] **GENERAL AVIATION SERVICES LIMITED**
[2] **SYLVANUS ERNEST**
[3] **SOHRIA ERNEST**

Defendants

-and-

THE SHERIFF OF THE HIGH COURT

Interested Party

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mr. Leslie Prospere for the Claimant, the Respondent to the application.
Mr. Arthur Compass for the Sherriff, the Interested Party.
Third Defendant/ Applicant, a litigant in person.

2025: June 25 - Hearing of application
July 14 - Decision

JUDGMENT

Application to set aside judicial sale by the Sheriff, Articles 428, 429, 501, 511, 511A, 2122 and 2129 of the Civil Code of Saint Lucia, Part 46 of the Civil Procedure (Revised Edition) Rules 2023, litigant in person, allegations of breach of constitutional rights, application to set aside default judgment.

[1] **PARIAGSINGH, J:** - Before the Court is the Third Defendant's application filed on 23rd April 2025 seeking an order staying and setting aside a judicial sale. At the conclusion of the hearing, the Court was initially minded to deliver an oral decision. However,

bearing in mind that the Third Defendant is a litigant in person, the Court considered it more appropriate to deliver its judgment in writing. To properly appreciate this decision, it is necessary to set out some procedural history and summarise the evidence before the Court.

PROCEDURAL HISTORY:

[2] By Claim Form filed on 24th January 2013, the Claimant, commenced a claim against the Defendants claiming joint and several liability for debts against the three defendants. The Claimant sought to recover money due and owing under two demand loans and two overdraft facilities granted by the Claimant at the request of the Defendants.

[3] The Third Defendant was served with the claim on 7th February 2013¹ and an Acknowledgement of Service was filed on 15th February 2013. It is important to note that she admitted part of the claim, however, no further details were given as to how much of the debts was admitted².

[4] A Defence was filed on 8th March 2013 on behalf of the Third Defendant and a Request for Judgment in default was filed on 15th April 2013 against the First and Second Defendants; they having filed no defence to the claim.

[5] Default Judgment against the First and Second Defendants was granted on 17th September 2013³. The terms of the order are as follows:

- 1) Judgment in Default of Defence is entered against the First and Second Named Defendants in the following amounts:
 - i. The sum of \$33,296.82 together with interest at the rate of 18% per annum or at a daily rate of \$16.42 from 31st December, 2012 and continuing to date of payment in full.
 - ii. The sum of \$3,949.27 together with interest at the rate of 18% per annum or at the daily rate of \$1.95 from 31st December 2012 and continuing to date of payment in full.

¹ Affidavit of Service of PC 458 Lafeuille filed on 13th February 2013.

² '8. Do you admit part of the claim YES' – Acknowledgement of Service filed by Third Defendant on 15th February 2013.

³ Order of Master V. G. Taylor – Alexander (as she then was) dated 17th September 2013.

iii. The sum of \$35,658.78 together with interest at the rate of 12% per annum or at a daily rate of \$12.70 from 31st December 2012 and continuing thereafter until fully paid.

iv. The sum of \$557,450.80 together with interest at the rate of 10.5% per annum, or at a daily rate of \$160.36 from 31st December 2012 and continuing to date of payment in full, together with fixed costs of \$2,500.00, service fees of \$300.00 and court fees of \$27.50.

2) **The Claimant and the Third Named Defendant and their Counsel are in agreement that they meet to determine the terms of settlement of the action brought against the Third Named Defendant, and the parties are to report on 14th January, 2014, when the claim will be listed for further Case Management.**

3) The First and Second Named Defendants do pay the sum of \$7,000.00 monthly towards the total satisfaction of the Judgment debts, commencing on 29th November 2013 and continuing monthly on the last working day of every month until the debt is settled in full. The consistency of the payments will be reviewed on 14th January 2014.

[6] On 14th January 2014⁴, the following order was made by a Master:

“UPON this matter coming on for Case Management Conference;

AND UPON the Claimant requesting Judgment against the Third Defendant, on the basis that the Defence discloses no reasonable ground for defending the claim;

The Court being of a similar view, the Defendant being a Guarantor, has difficulty avoiding the liability of the debt.

IT IS HERBEY ORDERED:

1) The Defence of the Third Named Defendant be and is hereby struck out.

2) Judgment in Default of Defence is entered against the **First and Second Named Defendants** in the following amounts:

i. The sum of \$33,296.82 together with interest at the rate of 18% per annum or at a daily rate of \$16.42 from 31st December, 2012 and continuing to date of payment in full.

⁴ Order of Master V.G. Taylor -Alexander (as she then was) dated 14th January 2014.

- ii. The sum of \$3,949.27 together with interest at the rate of 18% per annum or at the daily rate of \$1.95 from 31st December 2012 and continuing to date of payment in full.
- iii. The sum of \$35,658.78 together with interest at the rate of 12% per annum or at a daily rate of \$12.70 from 31st December, 2012 and continuing thereafter until fully paid.
- iv. The sum of \$557,450.80 together with interest at the rate of 10.5% per annum, or at a daily rate of \$160.36 from 31st December, 2012 and continuing to date of payment in full, together with fixed costs of \$2,500.00, service fees of \$300.00 and court fees of \$27.50.
- v. The Court to provide reasons upon request.

[7] It appears and can only be logically explained that the order of 14th January 2014, the parts highlighted and underlined above, in error, referred to the First and Second Defendants when it ought to have referred to the Third Defendant. I say this as by the time this order was made, judgment had already been entered against the First and Second Defendants.

[8] Further at the hearing on 14th January 2014, the Third Defendant was present and represented by Counsel. No application was made by the Claimants to correct this order.

[9] The matter stood in abeyance for almost 10 years until 28th November 2023, when the Claimant filed a request for entry of judgment in default of defence against the Third Defendant.

[10] This request was heard by this Court on 14th February 2024, having been referred by the Registrar and the following order inter alia was made:

- 1) Judgment in default of a defence is entered for the Claimant against the Third Defendant for the following sums:
 - i. Amount claimed under the first debt \$33,296.82 together with interest on the principal sum under the first debt at the rate of 18% per annum from 31st December 2012 and continuing to date of payment in full (Daily rate thereafter= \$16.42 per day)

- ii. Amount claimed under the second debt \$3,949.27 together with interest on the principal sum under the second debt at the rate of 18% per annum from 31st December 2012 and continuing to date of payment in full (Daily rate thereafter= \$1.95 per day)
- iii. Amount claimed under the third debt \$35,658.78 together with interest on the principal sum under the third debt at the rate of 12% per annum from 31st December 2012 and continuing thereafter until fully paid (Daily rate thereafter= \$12.70 per day)
- iv. Amount claimed under the fourth debt \$557,450.80 together with interest on the principal sum under the fourth debt at the rate of 10.5% per annum from 31st December 2012 and continuing to date of payment in full (Daily rate thereafter= \$160.36 per day)
- v. Court fees on claim, paid service of claim form, Legal practitioner's fixed costs on issue, Paid filing request for judgment, Paid registering judgment, Legal practitioner's fixed costs on entering judgment in the sum of \$3,2150.

[11] By Notice of Application, made without notice, filed on 22nd November 2024, almost 9 months after securing default judgment against the Third Defendant, the Claimant applied to the Court for an order that leave be granted to issue a Writ of Seizure and Sale against the Judgment Debtors for the seizure and sale of immovable properties belonging to the Judgment Debtors and registered in the Land Registry as Block 0846B Parcel Numbers 281 and 377. The application was supported by the affidavit of Valdez James, a Legal Liaison Officer and Property Sales Administrator employed with the Claimant.

[12] In his affidavit, he deposes that since the default judgment against the First and Second Defendants, the Judgment Debtors have not made any payments towards the said mortgage loans since 3rd December 2013 and 28th March 2014, in breach of the interim order made on 17th September 2013. He further states that sometime in 2013, there was a meeting between the Third Defendant and the Claimant, to determine the settlement of the debt, but that this meeting was unsuccessful.

[13] On 4th November 2021, the Claimant, through its counsel, wrote to the Attorneys on record for the Third Defendant, requesting feedback on the outstanding issues arising from the judgments. No response was received to date.

[14] He also deposes that on 2nd November 2023 at 11:36 am, the Claimant attempted to reach out to the Third Defendant via email confirming an earlier telephone conversation and proposing terms of a consent order to obviate the need for applying to the Court for a default judgment against her.

[15] At 12:45 pm the same day the Third Defendant responded to counsel in the following terms:

“Good day Leslie,

Thanks for your email.

My stance on this as the third defendant is to put the property up for auction.

Best Regards.”

[16] Counsel for the Claimant responded to the Third Defendant’s email at 2:20pm indicating that it was the intention of the Claimant to have the properties sold via a public auction, but her consent must first be secured in the form of the proposed consent order. It was indicated in this email that:

“All that we require you to do is to agree to sign our client’s proposed draft consent order which mirrors the terms of the default judgments against the First and Second named Defendants.”

[17] The Third Defendant responded to this email at 3:41 pm in the following terms:

“Good Day All!!

The judge has struck me out from this debt. Please contact defendant 1&2.

Regards

Sohria.”

[18] On 15th November 2023 the Claimant again tried to reach the Third Defendant via telephone calls, to settle the terms of the settlement of the consent order, but this was unsuccessful as she refused to co-operate.

[19] On 29th November 2024, the application for permission to issue the writ was considered and dealt with on paper by a judge⁵ and the following orders were made:

- 1) **The Claimant is granted permission to issue the writ of seizure and sale of the immovable properties of the Defendants registered in the Land Registry as Parcel No. 0846B 281 and 377 notwithstanding that six years have elapsed since the entry of judgment.**
- 2) **The Defendants may apply to the Court within 14 days of service of this order, to vary or set it aside, and to have the application dealt with again.**
- 3) **The Claimant will file and serve this order.**

[20] The Third Defendant was served with the orders dated 17th September 2013, 14th February 2024 and 29th November 2024, on 20th December 2024⁶.

[21] The Praecipe for Writ of Seizure, Writ of Seizure, List of Exhibits and Instructions to Levy were filed on 22nd January 2025, clearly identifying the sums owed pursuant to the judgments entered, and the two properties in question.

[22] By Duplicate Minutes of Seizure of Immovables dated 11th February 2025, the Sheriff's Officer stated that the Judgment Debtors were called upon to declare and specify their immovable property. The Return of Service attached states that the minutes were left with the Second Defendant, Sylvanus Ernest, in respect of the two properties.

[23] The sale was scheduled for 10th April 2025 at Derek Walcott Square on Laborie Street in the City of Castries. No upset price having been set, the sale was to the highest bidder.

⁵ Order of St Rose-Albertini J made on 29th November 2024

⁶ Affidavit of Service of Police Officer PC 775 Vicky Alphonse filed 7th January 2025

[24] By letter to the Registrar dated 20th March 2025, the Claimant requested that the writ of execution ought to have been executed only in respect of Block 0846B Parcel 377. A request was therefore made for the sale of Block 0846B Parcel 281 to be cancelled.

[25] By letter dated 15th April 2025, the Registrar informed counsel for the Claimant that the judicial sale was successful and the property Parcel 0846B 377 was sold to Mr. Adaiah Bernard and Mrs. Davadille Bernard. The purchasers paid the required 1/10 deposit, and the property was sold for XCD \$201,000.00.

THE APPLICATION:

[26] On 23rd April 2025, the Third Defendant, as litigant in person, filed a Notice of Application for an interim order staying the execution of the sale in respect of both Parcels 0846B 281 and 0846B 377, and an order setting aside the judicial sale. She also sought damages for the unlawful and unauthorised seizure of her property. The grounds of the application are as follows:

- 1) The Claimant failed to serve the Applicant with notice of the auction and failed to inform her of the sale;
- 2) Lack of information regarding the value and final debt owed at the time of sale;
- 3) Breach of due process rights under Article 428 and 429 of the Civil Code of Saint Lucia;
- 4) The judgment was made against the First and Second Defendants only;
- 5) First Caribbean International Bank holds a first legal lien over Parcel 0846B 281 which was not addressed prior to any purported auction;
- 6) The enforcement measures pursued by the Claimant are an abuse of the Court's process and constitute an infringement of the Applicant's rights to natural justice and due process;
- 7) The limitation period for enforcing the underlying debt has expired, and the Claimant's attempt to restart the debt without the Applicant's consent is unlawful;
- 8) The auction and registration steps are therefore unlawful and should be stayed and set aside accordingly;

- 9) On or about 14 February 2024, a hearing was conducted before this Court. The Applicant was never served or notified of this hearing and was not afforded an opportunity to be present or represented. This constitutes a breach of natural justice and due process and renders any resulting decision void or liable to be set aside.

[27] In support of the application, an affidavit was filed on 23rd April 2025. However, this affidavit was not signed by the Third Defendant, despite being commissioned by the Justice of the Peace.

[28] The Third Defendant refiled an affidavit in support on 29th April 2025. In this affidavit, she confirms that she was served on 20th December 2024 with a document which allowed the seizure and sale of her immovable properties. She annexed Court orders dated 14th February 2024 and 29th November 2024 as the documents she was served with. The Third Defendant goes on to state that at no point was she served with a notice of auction, nor of any scheduled sale of the said properties. The Third Defendant first became aware of the sale on 18th April 2025, when her son forwarded a text message to her from the purchaser informing him of the purchase.

[29] She further states that she did not know what value was placed on the properties by the bank, and she was not provided with any information regarding the final figure owed at the date of auction, including interest and penalties.

[30] The Third Defendant also stated that no money judgment was made against her, but the First and Second Defendants only. She annexed the order of 17th September 2013, to support this assertion. Further, she alleges that the “renewed” enforcement comes a decade after the original judgment, in which the statute of limitations has clearly run its course.

Affidavit in Response of Valdez James filed 20th May 2025:

[31] In this affidavit, Mr. James reiterates that an email was sent on 2nd November 2023 to the Third Defendant following an earlier conversation wherein the Claimant specifically proposed a “consent default judgment” in the claim for the Third Defendant’s review and

approval. The purpose of this was to save further legal costs in the claim. During that same day, the Applicant responded to counsel stating, "My stance on this as Third Defendant is to put the property up for auction."; "The Judge has struck me out from this debt. Please contact Defendant 1 & 2."

[32] Given the Third Defendant's responses, the Claimant proceeded to file a request for default judgment. The Claimant was therefore surprised by the Third Defendant's Notice of Application having regard to her email responses along with her failure to react to the orders served on her on 20th December 2024.

Affidavit in Response of Daniel Francis, Registrar filed 22nd May 2025:

[33] In his affidavit, the Registrar, acting in his capacity as ex officio Sheriff, states that he has superintendence over the judicial sale process as is set out in the Code of Civil Procedure Saint Lucia.

[34] He states that with respect to Block and Parcel 0846B 281 ("the unsold property"), the Land Register lists the registered proprietor as the Second Defendant, Sylvanus Ernest. With respect to Block and Parcel 0846B 377 ("the property sold"), the registered proprietors are listed as Sylvanus and Sohria Ernest in community.

[35] He also details the procedure taken by the Claimant in executing the writ. A single Writ of Seizure and Sale of Immovables was filed by the Claimant on 23rd January 2025. On 5th February 2025, he prepared instructions to the seizing officer to execute the writ in accordance with the Code of Civil Procedure. The seizing officer did call upon the Second Defendant on 11th February 2025 to declare the immovables, which he did.

[36] Both properties were thereafter scheduled for sale on 10th April 2025. He denies that there is a requirement in the Code of Civil Procedure for the personal service of any advertisement for a judicial sale on a debtor. However, he confirms that three separate publications in the Gazette were made within two months of the date of the first publication in respect of the property sold, on 17th March 2025, 24th March 2025 and 31st March 2025.

[37] The Sheriff's sale was done in conformity with the Civil Code of Procedure and the Applicant suffered no prejudice.

Affidavit of Jn. Baptiste Deleon, Bailiff, Sheriff's Officer and/or Seizing Officer filed 23rd May 2025:

[38] The affidavit of Mr. Deleon confirms that he received instructions to execute the writ, directing him to seize the properties. His evidence is that he had on previous occasions served the Second and Third Defendants with previous writs filed as far back as 2016 from his recollection. His evidence is that the Second and Third Defendants are personally known to him. He also has a contact number for the Second Defendant which was given to him by the Third Defendant on a previous occasion when he was serving a writ.

[39] He states that on 8th February 2025, he had a conversation with the Second Defendant on the number provided to him previously by the Third Defendant, and they agreed to meet on 11th February 2025 at Vigie in order to present to him the seizing bundle for the properties. Upon meeting the Second Defendant, he read out the contents of the schedules of the properties, including the Block and Parcel Number, measurements, how the parcel is bounded and how title was obtained by the proprietor. The Second Defendant confirmed the accuracy of the details read out to him and indicated his agreement to the judicial sale and even signed the Duplicate Minutes of Seizure for the properties.

[40] Having received the declaration from the Second Defendant, he did not think it necessary to ascertain same from the Third Defendant as the property is co-owned.

Affidavit in reply of Sohria Ernest

[41] In her affidavit, the Third Defendant explains that parcel 0846B 281 is registered solely in the name of her ex-husband, the Second Defendant, and is encumbered by several mortgages and judicial hypothecs, including those in favour of First Caribbean International Bank, the Bank of Saint Lucia, and the Inland Revenue Department. Parcel 0846B 377 is registered in both her name and that of the Second Defendant. That

property too is encumbered by a mortgage in favour of the Bank of Saint Lucia and judicial hypothecs, including those registered against parcel 0846B 281.

[42] Her primary complaint relates to the absence of any valid judgment against her and the procedural irregularities leading up to the judicial sale. She states that as early as 2nd November 2023, she recognised that there was no judgment against her. She points out that she was not served with any hearing notice, claim, or application regarding the Claimant's request for default judgment filed on 28th November 2023. She highlights that the order dated 14th February 2024 explicitly records that she was "absent and unrepresented" at the hearing, underscoring that she had no opportunity to appear or be heard.

[43] She asserts that the entry of judgment against her in these circumstances violated her constitutional right to a fair hearing under section 8(1) of the Constitution of Saint Lucia. She further contends that this was contrary to Rule 12.11(2) of the Civil Procedure Rules, which mandates proper service. She submits that the Claimant's decision to proceed without lawful service amounts to an abuse of the court's process and a breach of the provisions of the Code of Civil Procedure, particularly Article 501, which governs the requirements for notice.

[44] She also points out that the original judgment obtained in 2014 imposed liability solely on the First and Second Defendants. No monetary judgment or enforcement directive was entered against her, and this position remained unchanged for almost a decade. She argues that the Claimant's attempt in 2024 to add her name to the judgment through reliance on the slip rule (CPR 42.10) was both procedurally invalid and substantively improper. She emphasises that CPR 42.10 permits only the correction of accidental slips or omissions and does not allow for the addition of a new party or new liability.

[45] She submits that if the Claimant wished to pursue a claim against her, the proper course would have been to commence fresh proceedings and serve her in compliance with the prescribed five-year limitation period under Article 2111 of the Civil Code. In her view, the Claimant's failure to do so renders any claim prescribed.

[46] With respect to the judicial sale, Mrs. Ernest states that both properties were declared to be community property during her marriage. Following her divorce (pursuant to case no. SLUHMT2013/0139), she says that the Second Defendant could not represent her or the community's interest in any capacity. She contends that she was entitled to be served in accordance with Article 501 of the Code of Civil Procedure, and that this was an essential formality. The failure to serve her, she argues, rendered the sale process defective.

[47] She takes issue with the sale price of parcel 0846B 377, stating that no upset price was fixed, and that the property was sold for less than its value. She argues that the proceeds of sale are insufficient to liquidate the judgment debt or satisfy the existing hypothecs, including those in favour of First Caribbean International Bank, the Inland Revenue Department, and the judgment creditor. As a result, she remains exposed to liability while having lost her property at an undervalue.

[48] She further argues that the Claimant's continued charging of interest from 2013 through to 2024 is unlawful, as Article 2111 and Article 2129 of the Civil Code prescribe that claims for money lent and interest are extinguished after five years if not acted upon. She says that the continued charging of interest has unjustly inflated the debt and misled the court.

[49] She distinguishes her case from the decision in **Paul Eloise v 1st National Bank Ltd**⁷ noting that in **Eloise**, there was a valid monetary judgment before enforcement commenced, whereas no such judgment existed against her prior to the Claimant's enforcement efforts in this case.

[50] In conclusion, Mrs. Ernest asks the court to annul the judicial sale, set aside the default judgment, and grant such further relief as the court deems just, given the significant prejudice she has suffered as a result of the alleged procedural irregularities and breaches of her constitutional rights. She also asks for the default judgment against her to be set aside.

⁷ [2021] ECSCJ No. 625

ISSUES:

[51] The central issue is whether the judicial sale ought to be annulled by reason of the several complaints the Third Defendant now makes. I propose to deal with the complaints individually.

ANALYSIS:

[52] The Third Defendant contends that non-compliance with Article 501 of the Code of Civil Procedure is sufficient to annul the sale.

[53] **Article 501 of the Code of Civil Procedure** provides that:

“501. Before proceeding to seize **immovables**, the seizing officer calls upon the defendant to declare and specify his immovable property, and upon his failure so to declare and specify, or if he be absent, the executing officer may seize the property in possession of the defendant, at the risk and peril of the latter.

502. The seizure of immovables is recorded by minutes, which must contain:

1. Mention of the title under which the seizure is made ;
2. Mention of the defendant having been called upon, as required by the preceding article;
3. A description of the immovables seized, indicating the town, village, or parish, as well as the street (when in a town or village) in which they are situated, and the coterminous lands ;
4. The number and description of the cattle used in the cultivation of the estate must also be given ;

If the property to be seized consists of incorporeal rights, such as rents, leases, or other real charges, mention must be made of the title under which they are due, with a description, as above mentioned, of the real property charged with the same ;

5. Mention that the minutes are made in duplicate, and that one duplicate thereof has been delivered to the judgment debtor, either personally or at his actual or legal domicile.”

[54] Pereira CJ in **Eloise** provides guidance on the application of these articles by the court when asked to annul a sale at paragraph 1, where it is stated as follows:

“[1] ... Article 558(1) of the Code of Civil Procedure vests the court with a discretion to annul a sheriff’s sale, on the application of an interested person, ‘if the essential conditions and formalities prescribed for the sale have not been observed’. The circumstances which would impel a judge to exercise that discretion in favour of an annulment are, however, not expressed in the Code of Civil Procedure.”

[55] In **Eloise**, the Appellant claimed that Articles 530, 534 and 536 of the Code of Civil Procedure were breached. Article 530 deals with the 1/10 deposit requirement, whilst Article 534 states that if 530 is disregarded, the bid is disregarded, and the proceedings are resumed upon the previous bid. Article 536 requires that the adjudication of an immovable cannot be made before the expiration of an hour from the time at which it was put up for sale.

[56] At paragraph 12 of the judgment, the Court stated:

“The judge found that there could be no prejudice to Mr. Eloise arising from the failure of the purchaser to pay the deposit in the amount required by law as the deposit price has no bearing on the final sale price.”

[57] The test for annulling a judicial sale was set out at paragraphs 35 and 36 as follows:

“ [35] ... A party who seeks therefore to vacate a sheriff’s sale must go further to show that the condition or formality which has been breached **goes to the root of the sale or has caused sufficient prejudice to warrant vacation.**

[36] In summary, having considered **Anjou, Garcia Transport Ltée** and **Bank South Pacific**, it appears to me that the legal position in relation to applications to vacate a sheriff’s sale under Québec law is as follows:

- i. An application to vacate a sheriff’s sale has far reaching consequences. It not only represents an attack on an important act of procedure – the enforcement of a court judgment – but also involves the possibility of

jeopardising the rights of innocent third-party purchasers. Such an application must therefore be closely scrutinised by the court.

- ii. On an application to vacate a sheriff's sale, the court is required to exercise a discretion. As with every discretion, the discretion exercised on an application to vacate a sheriff's sale must be exercised judicially, having regard to all the relevant circumstances of the case.
- iii. **A failure to comply with the essential conditions and formalities of a sheriff's sale does not, ipso facto, entitle a party to annulment of a sheriff's sale.**
- iv. In order to annul a sheriff's sale on the basis that a condition or formality has not been complied with, **the applicant must satisfy the court that the breach of the condition or formality went to the root of the validity of the sale or that there was such prejudice to the applicant which ought to compel the court to set aside the sale. This is a high threshold.**
- v. In determining whether a breach of a condition or formality goes to the root of the validity of a sale, **the court must examine the nature and purpose of the condition or formality, and also the extent of the breach which has occurred.**
- vi. An application to vacate a sheriff's sale is fundamentally undermined (though not definitively defeated) **where an applicant has failed to avail himself of earlier opportunities to challenge the sale (for example, challenging writs of seizure or execution, or the advertisements issued before the sale is conducted)."**

[58] To reiterate, only one of the properties was auctioned, Block and Parcel 0846 377, and one remains unsold, Block and Parcel 0846 281. The property sold was registered in the names of the Second and Third Defendants in community. For both mortgages, the First Defendant is stated as principal debtor and the First and Second Defendants as surety. The First and Second Defendants are also directors of the First Defendant.

[59] In my view, the purpose of Article 501 of the Code of Civil Procedure is to identify the immovable property of the debtor. This however must be contextualized against the facts of this claim. These proceedings were in relation to specific properties identified in the pleadings, to which the Defendants, including the Third Defendant, were aware of since 2013.

[60] In the present circumstances, the writ specifically identifies the property located at Capital Hill, Morne Fortune, bearing parcel number 0846B 377. The Third Defendant therefore had ample notice of the properties to be seized by the seizing officer. Even so, if the Defendant fails to declare, or is absent, the officer is not prevented with carrying on the seizure of the movable by application of Article 501.

[61] It is clear from the evidence, including the Third Defendant's own evidence, that she laboured under the false impression that enforcement was to be against the First and Second Defendants only. However, she is a party to the claim and judgment had been obtained against her in the absence of a consent order or proceedings having not being discontinued against her.

[62] She had notice of the Claimant's intention, and was not concerned until she came to the realisation that it affected her rights as well. Having been served with the orders on 20th December 2024, the Third Defendant failed to avail herself of earlier opportunities to challenge the sale.

[63] Further, in the order of the court dated 29th November 2024, the properties Parcels No. 0846B 281 and 377 were identified. The order also contained that, "the Defendants may apply to the court within 14 days of service of this order, to vary or set it aside, and to have the application dealt with again". The Third Defendant had notice of the default judgment and the order granting permission to enforce since 20th December 2024. Yet, no application was filed until 24th April 2025, 4 months after the date of service.

[64] The Court also places heavy weight on the evidence of Mr. Deleon, when he deposed that from past experiences, he was always directed by the Third Defendant to liaise with the Second Defendant. This evidence is consistent with the evidence of Mr. Valdez James, who exhibited the response of the Claimant, wherein she states via email to proceed with enforcement against the First and Second Defendants.

[65] I am not persuaded that given the divorce of the Second and Third Defendant that he could not identify the property to the seizing officer on her behalf. Firstly, there is no

evidence that the Bank was made aware of the divorce proceedings. Secondly, it is a joint and several debt between the Defendants. Thirdly, the Second Defendant was well placed and able to identify the immovable property to be seized. Fourthly, there was no prejudice in the Third Defendant not being asked to declare her immovable property, as the property is jointly owned with the Second Defendant and not partitioned. Any identification by the Second Defendant would necessarily be of the entire property.

[66] Applying the principles in **Eloise**, I do not find that the breach of this provision or formality went to the root of the validity of the sale or that there was such prejudice to the applicant which ought to compel the court to set aside the sale. The Third Defendant has failed to meet the high threshold.

[67] The Court sees no reason why it should exercise its discretion under article 558(1) to annul the sale.

[68] The above is sufficient to dispose of this application entirely. I will nevertheless deal with the other points raised for completeness.

Constitutional Issues:

[69] The evidence provided shows that the Third Defendant was given every opportunity to settle the matter before the Claimants resumed litigation. From the emails provided, it is apparent that the Third Defendant was in agreement with the enforcement through writ, once it affected the rights of the first and Second Defendants only.

[70] Additionally, the Third Defendant makes several complaints about breaches of her constitutional rights. She complains that she was not given a right of hearing.

[71] This argument can be summarily dispensed with. The Third Defendant cannot invoke or assert the breach of a constitutional right in an interlocutory application. Such an issue cannot be traversed in this interlocutory application in a private law claim.

Was the Third Defendant entitled to be served with the application for permission to enforce the judgment:

[72] **Part 46 of the Civil Rules of Procedure (Revised Edition) 2023** deals with writs of execution. In particular, **Rule 46.2** provides certain cases where a writ may not be issued without the permission of the court. There is some disparity between the process for the issue and execution of a writ for immovables between the CPR and the Code of Civil Procedure. To the extent that there is any inconsistency, the provisions of the Code of Civil Procedure will take precedence over the CPR.

[73] Rule 46.2(6), which states that the court's permission is required if 6 years have elapsed since the judgment was entered. In this case, the judgment against the First and Second Defendants was granted on 17th September 2013, almost 12 years ago. The default judgment against the Third Defendant was granted on 14th February **2024**. By application dated 22nd November 2024, and by order dated 29th November 2024, the Claimant was granted permission to issue the writ against the "defendants".

[74] The Third Defendant complains that there was no service of the application for permission to extend the time to enforce the judgment. At the time the application was made, the only Defendants to whom it could relate were the First and Second Defendants. It could not relate to the Third Defendant. Although the order speaks to permission being granted to enforce against the "defendants" in my view this is clearly an obvious error. The application and order could only have related to the First and Second Defendants.

[75] In any event, an application for permission to enforce can be made without notice unless the court otherwise directs; see CPR 46.3 (1). In this case, there was no obligation on the Claimant to make the application on notice to the Third Defendant. Moreover, the judge dealing with the application did not order it to be served on the Defendants.

[76] As stated in the order, it was open to the Defendants, including the Third Defendant to apply to set aside or vary this order made in her absence. She did not.

[77] Accordingly, I find no merit in the suggestion that the application for permission to enforce had to be served on the Third Defendant.

The Claimant failed to serve the applicant with notice of the auction and failed to inform her of the sale:

[78] This statement is directly contradicted by the evidence. The email thread provided by Mr. Valdez of 2nd November 2023, shows that the Third Defendant was made aware of the Claimant's intention to proceed to auction, and even indicated that the Claimant should go ahead with same.

[79] The Court accepts the documents as submitted by Mr. Valdez, and finds that the Third Defendant attempted to hide that she was aware by not annexing her responses to the emails to her affidavit, as it shows that she was in agreement with the auction as long as it affected the rights of the First and Second Defendants.

[80] Moreso, the Third Defendant was served with the order of the court dated 14th February 2023 and 29th November 2024, at which time she was made directly aware of the judgment against her and the ability of the Claimant to auction and sell the properties.

[81] This complaint has no merit. The Third Defendant was well aware of the intention of the Claimant to seize and auction and in her email consented to this. To come now to suggest that she had no notice or to seek to create the impression she was in the dark is wholly unmeritorious.

Not fixing of an upset price:

[82] The Code of Civil Procedure does not give the debtor a right to apply for an upset price to be fixed. That right is given to the creditor only⁸. The Third Defendant's complaint about an upset price not being fixed therefore has no merit.

⁸ 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.

Lack of information regarding the value and final debt owed at the time of sale:

[83] The court refers to the affidavit evidence of Mr. Valdez, who stated that no payments were made to the overdrafts or loans since 2013 and 2014. The Third Defendant and Claimant did have settlement discussions which bore no fruit, and which undoubtedly would have surrounded the value and final debt owed.

[84] Almost 10 years passed until default judgment was entered against the Third Defendant. The Third Defendant was informed via email on 2nd November 2023 and by letter sent to her Attorneys in 2021, before the judgment was entered against her, of the value of the debt.

[85] The order made on 14th February 2024 does not contain different figures from the order made on 17th September 2013. The Court therefore finds that at all material times, the Third Defendant was aware of this information.

Breach of due process rights under Article 428 and 429 of the Civil Code of Saint Lucia:

[86] These articles are not relevant as they speak to the seizure of movables.

The judgment was made against the First and Second Defendants only:

[87] Judgment was entered against the Third Defendant on 14th February 2024. She was served with a copy on 20th December 2024. It is incorrect that there is no judgment against the Third Defendant in respect of which a writ can issue.

First Caribbean International Bank holds a first legal lien over Parcel 0846B 281 ("the unsold property") which was not addressed prior to any purported auction.

[88] The ranking of priority of creditors to the proceeds of sale does not preclude a sale. The fact of a prior charge by First Caribbean International Bank does not preclude the Claimant from enforcement.

[89] As submitted by Counsel for the Claimant, the Third Defendant holds no brief on behalf of First Caribbean International Bank and any interest to be protected by that financial institution cannot be done by her.

[90] In any event, although the Claimant has the ability to auction this property, that is, **Parcel 0846B 281**, which is not the subject of this application, it remains unsold due to the Claimant's request to cancel the sale.

[91] This point too has no merit.

The enforcement measures pursued by the Claimant are an abuse of the court's process and constitute an infringement of the Applicant's rights to natural justice:

[92] The Third Defendant makes several complaints about breaches of her natural justice rights. She complains that the proper process was not followed and more so that she was not given a right of hearing.

[93] This argument can be summarily dispensed with. Firstly, this is not an administrative claim but the enforcement of a debt. Secondly, the Third Defendant cannot invoke or assert the breach of a natural justice right in an interlocutory application. Such an issue cannot be traversed in this interlocutory application in this claim.

[94] The Third Defendant forfeited her right to participate further in this claim when she failed to take any steps after being served with the default judgment entered against her. The rights of a litigant following the entry of default judgment are necessarily curtailed. There is nothing unconstitutional, oppressive, or unfair about this. The Third Defendant's right to due process entitled her to be heard in accordance with the rules of court, not on her own terms. Having disregarded the rules and processes designed to afford her a hearing, her complaint is without merit.

[95] Similarly, the fact that the Third Defendant appears as a litigant in person does not entitle her to any special privileges, courtesies, or indulgences beyond those afforded to litigants represented by counsel. While she is entitled to represent herself, that right is not absolute. It carries with it the responsibility to familiarise herself with the applicable

rules and procedures of the court. It is not the court's role to advise her as to the process or procedure she ought to follow. To do so would be to invite the court to descend into the arena and assist her, which I decline to do. The court's proper role, as was done in this case, is to explain the relevant processes and to ensure that the litigant understands them. That was done.

[96] I wish to note, as a matter of concern, a trend that appears to be emerging in this jurisdiction. Increasingly, documents are being prepared by lawyers, legal assistants, or Justices of the Peace, while litigants choose to present themselves as litigants in person. In the present case, although the Third Defendant, when questioned, asserted that she had researched and drafted her documents herself, I do not believe that this was so, particularly as she read from a prepared script during the hearing. I offer this word of caution: where such conduct is detected, this Court will have no hesitation in making the necessary referrals.

The limitation period for enforcing the underlying debt has expired, and the Claimant's attempt to restart the debt without the applicant's consent is unlawful.

[97] At the initial directions hearing, the Court pointed out to the Third Defendant that her discourse and exposition in her application about limitation was totally inapplicable in this jurisdiction. At the hearing, though the Third Defendant indicated that she had done research, and she understood that was the nature and effect of prescription, she still made her submissions, clearly reading from a prescribed script, without any true appreciation for the difference between the two concepts.

[98] Limitation does not extinguish the jurisdiction of the Court, prescription does; See **Norman Walcott v Moses Serieux**⁹. Prescription is interrupted either naturally or civilly; See Article 2083 of the Civil Code. Natural interruption does not arise in this case. Civil prescription takes place when the conditions in **Article 2085 of the Civil Code** is satisfied. This section states that:

⁹ [1975] ECSCJ No. 26

“A judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filed and severed conformably to the Code of Civil Procedure when a personal service is not required, creates a civil interruption.”

[99] As it relates to demands brought against a principal debtor as regards a surety, **Article 2089 of the Civil Code** provides that:

“A judicial demand brought against the principal debtor, or his acknowledgment, interrupts prescription as regards the surety. The same acts against or by a surety interrupt prescription as regards the principal debtor.”

[100] The claim in this matter was filed on 24th January 2013 and served personally on the Third Defendant. The Third Defendant filed an acknowledgment of service on 15th February 2013, admitting a portion of the debt but not stating the quantum, and filed a defence on 8th March 2013.

[101] The above facts, clearly interrupted prescription. The Third Defendant appears to have not appreciated this and contends that the default judgment against her was applied for and obtained almost a decade after her defence was struck out.

[102] Unfortunately, time does not run afresh for the purpose of prescription after the claim has been served. Her submission on this issue has no merit. The applying for the default judgment and obtaining of same, was not barred by prescription.

On or about 14 February 2024, a hearing was conducted before Justice Pariagsingh titled ‘Request for Entry of Default of Judgment against the third defendant’. The Applicant was never served or notified of this hearing and was not afforded an opportunity to be present or represented. This constitutes a breach of natural justice and due process and renders any resulting decision void or liable to be set aside.

[103] There is no rule, practice direction or procedure which mandates a request for default judgment to be served. To do so would be totally contrary to the nature of a default judgment. By the default judgment process, the Third Defendant forfeited her right to be heard on the claim.

[104] Her rights following service of the default judgment are set out in the rules. Although in her affidavit in response and in oral submissions, she asserts that in her original

affidavit she indicated that the default judgment should be set aside and in her affidavit in reply, she asked for the default judgment to be set aside, there is no application before me to set aside the default judgment.

[105] An application to set aside a default judgment is governed by a specific rule. There is also a procedure. This procedure includes the filing of an application supported by affidavit and the exhibiting of a draft defence. To merely raise the setting aside of a default judgment within an application to stay a judicial sale is not sufficient. Furthermore, the defence of the Third Defendant has already been struck out by the court. In the absence of a consent position, the steps to be taken by the claimant were limited to obtaining default judgment against her.

[106] Accordingly, I find no merit in this submission.

ORDERS:

[107] For the reasons above, I make the following orders:

- 1) The Third Defendant's application filed on 23rd April 2025 is dismissed.
- 2) The stay of the judicial sale granted by this Court on 5th May 2025 is discharged.
- 3) Time is extended to Monday 15th December 2025 for the purchasers to complete the sale, being an extension of 66 days, the number of days the sale was stayed for the hearing and determination of this application.
- 4) The Third Defendant shall pay the Claimant's costs of this application to be summarily assessed by this Court in default of agreement within fourteen (14) days of the date of this judgment.

- 5) The Third Defendant shall pay the Sheriff's costs of this application to be summarily assessed by this Court in default of agreement within fourteen (14) days of the date of this judgment.

Alvin S. Pariagsingh
Judge

By the Court,

Registrar