

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVP2018/0007

BETWEEN:

PAUL ELOISE

Appellant

and

1ST NATIONAL BANK ST. LUCIA LIMITED

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE

Chief Justice

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mr. John Carrington, QC

Justice of Appeal [Ag.]

Appearances:

Mr. Paul Eloise, in person

Mrs. Sardia Cenac-Prospere and Mr. André McKenzie for the Respondent

Mr. Rene Williams and Mrs. Antonia Charlemagne, on behalf of the Attorney

General who appears *amicus curiae*

2019: April 9;

2021: July 12.

Civil appeal – Vacation of sheriff's sale – Code of Civil Procedure Chapter 4:01A – Interpretation of articles 530, 534 and 558 of the Code of Civil Procedure – Appellate court's approach to interference with lower court's exercise of discretion – Did the judge err in principle by considering whether appellant had suffered prejudice in the execution of the sheriff's sale – Québec Code of Civil Procedure – Provisions under Québec Code of Civil Procedure are in pari materia to those under Saint Lucian Code of Civil Procedure – High threshold to be met to vacate sheriff's sale – Condition or formality which has been breached must go to the root of the sale or has caused sufficient prejudice to warrant vacation – Prejudice in the execution of the sheriff's sale – Did the judge wrongly conclude that appellant failed to demonstrate prejudice sufficient to warrant the annulment of the sheriff's sale

In 2006, judgment was entered in the High Court against the appellant, Mr. Paul Eloise in the sum of \$557,091.70 with interest at a rate of 10% per annum, and costs, in favour of the respondent, 1st National Bank St. Lucia Limited ("the Bank"). Later the Bank obtained permission to have Mr. Eloise's judgment debt discharged by way of a sheriff's

sale of land owned by Mr. Eloise, in the Quarter of Anse La Raye ("the Anse La Raye Property") and the Quarter of Castries ("the Castries Property"). The sales were advertised in the Official Gazette stating, among other things, the times at which the sales would be conducted, and requested potential bidders to make a deposit of \$26,183.31 in relation to the Anse La Raye Property and \$29,525.86 in relation to the Castries Property. These deposit amounts were intended to represent one-tenth of the total amount owed by Mr. Eloise to the Bank under the 2006 judgment, in keeping with the requirements of article 530 of the **Code of Civil Procedure**. However, the deposit amounts stated in the advertisements were incorrect and did not represent one-tenth of the total amount. Notwithstanding this, the sheriff's sales were conducted in relation to both parcels of land and both properties were adjudicated as sold in October 2017.

In November 2017, Mr. Eloise applied to the High Court pursuant to article 558 of the **Code of Civil Procedure**, seeking orders that the sheriff's sales conducted in relation to both properties be annulled on the basis that the essential statutory conditions and formalities as contained in articles 530, 534 and 536 of the **Code of Civil Procedure** for the conduct of the sales had not been complied with. Mr. Eloise's position was that these conditions were breached when the sheriff accepted a deposit in the sum on both sales which was lower than one-tenth of the debt including the principal, interest and costs, and permitted the sales to proceed on the basis of bids which ought to have been disregarded in accordance with article 534; in relation to the Anse La Raye Property, article 536 was breached, as the length of time for which the auction took place for the sale was only 15 minutes – 45 minutes shorter than the time required under this article; and that he would suffer prejudice were the sales not annulled as prayed.

By a written judgment dated 8th February 2018, Cenac-Phulgence J ("the judge") granted the annulment application so far as it pertained to the Anse La Raye Property and dismissed the application in relation to the Castries Property. The judge reasoned that (i) article 558 is discretionary and requires the court to determine whether to annul a sheriff's sale or not; (ii) the court must be satisfied, that the applicant has suffered prejudice from the non-observance of essential conditions and formalities of the sheriff's sale; and (iii) the court must consider whether the breach of the particular condition or formality which the applicant alleges was not complied with, goes 'to the root of the sale' or whether 'to allow the sale to stand in the face of the particular non-observance would be unfair'. Upon considering the circumstances of the case, the judge held that the breach of the deposit requirement under article 530 did not occasion any prejudice sufficient to warrant annulling the sale; and the breach of article 530 did not go to the root of the validity of the sale. There was accordingly no basis upon which to annul the sale of the Castries Property.

Mr. Eloise being dissatisfied with the judge's decision to refuse his application to annul the sheriff's sale in relation to the Castries Property, has appealed to this Court relying on six grounds of appeal. The main issues arising for this Court's determination are: (i) did the judge err in principle by considering whether Mr. Eloise had suffered prejudice in the execution of the sheriff's sale; and (ii) did the judge wrongly conclude that Mr. Eloise had failed to demonstrate prejudice sufficient to warrant the annulment of the sheriff's sale and that the breaches of articles 530 and 534 of the **Code of Civil Procedure** did not go to the 'root' of the validity of the sheriff's sale.

The orders pertaining to the Castries Property have also been stayed by order of a single judge on 27th March 2018.

Held: dismissing the appeal; discharging the stay granted by this Court on 27th March 2018 in relation to the Castries Property; and making no order as to costs, that:

1. An appellate court ought not to set aside a lower court's exercise of discretion on the basis, that it would have exercised the discretion in a different way were it vested with the discretion in the first place. Rather, an appellate court should only interfere with a lower court's exercise of discretion if satisfied: (i) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (ii) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.

Showa Holdings Co., Ltd. v Nicholas James Gronow and John David Ayres [2021] ECSCJ No. 571, (delivered 31st May 2021) followed; **Edy Gay Addari v Enzo Addari** [2005] ECSCJ No. 125, (delivered 27th June 2005) followed; **Michel Dufour and Others v Helenair Corporation Limited and Others** (1996) 52 WIR 188 followed.

2. The **Code of Civil Procedure** does not speak to the circumstances which should cause a judge to exercise his discretion under article 558 in favour of annulling a sheriff's sale. However, as the provisions of the Québec Code of Civil Procedure are in *pari materia* to those under the Saint Lucian **Code of Civil Procedure**, this Court can look to the case law concerning article 698 of the Québec Code of Civil Procedure, for the approach to the exercise of judicial discretion under article 558.

Article 558 of the **Code of Civil Procedure** Cap. 4:01A of the Revised Laws of Saint Lucia 2017 applied; Article 698 of the **Code of Civil Procedure**, CQLR c C-25.01 applied; **Civil Code of Saint Lucia** Cap. 4.01, of the Revised Laws of Saint Lucia applied; **Voice Buildings Ltd v Canadian Imperial Bank of Commerce and Others** (1992) 43 WIR 132 at 138 followed; **Polinere and Others v Felicien** (2000) 56 WIR 264 applied; **Prospere v Prospere and Another** [2007] 69 WIR 278 applied and **National Insurance Corporation v Winmark Ltd** [2009] UKPC 9 applied.

3. Article 698 of the Québec Code of Civil Procedure provides that an interested person who seeks to vacate a sheriff's sale must meet a high threshold, as the discretion vested in the courts, does not, without more, operate in favour of vacating a sheriff's sale upon the happening of some breach of procedure. 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. As such, a party who seeks 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. In determining this, the court must examine the nature and purpose of the condition or formality, and also the extent of the breach which has occurred. The applicant must also be sure to avail himself of earlier opportunities to challenge the sale as this will fundamentally undermine an application to vacate a sheriff's sale. In this case, the judge clearly recognised that she had a discretion to exercise on the annulment application and the caution which traditionally attaches to the vacation of sheriff's sales under Québec law, and by extension to the annulment of sheriff's sales under Saint Lucian law. The judge correctly considered that a breach of a condition or formality, alone, did not provide a sufficient basis to annul the sale of the Castries Property, and that she was required to consider whether the breaches of articles 530 and 534 went to the 'heart' or the 'root' of the validity of the sale or whether there was some prejudice to Mr. Eloise. It follows that the judge did not err in her approach to Mr. Eloise's annulment application.

Articles 530, 534 and 558 of the **Code of Civil Procedure** Cap. 4.01A, of the Revised Laws of Saint Lucia 2017 applied; Article 698 of the **Code of Civil Procedure**, CQLR c C-25.01 applied; **Anjou (Town of) v C.A.C. Realty Ltd. and et al** [1978] 1 SCR 819 applied; **Garcia Transport Ltée v Royal Trust Co.** [1992] 2. SCR 499 applied; **First Caribbean International Bank (Barbados) Limited formerly CIBC (Caribbean) Limited v Jacob Morille et al** [2004] ECSCJ No. 330, (delivered 17th September 2004) followed; **Bank South Pacific v Ifira Port Development and Services Company Limited** Case No. 212 of 2017 applied.

4. In the absence of judicial pronouncement, it is clear that the **Code of Civil Procedure** contemplates that sheriff's sales are to be executed in a manner that is fair to the judgment debtor and in manner that ensures that a judgment creditor obtains as good a chance as possible at full satisfaction of the debtor's debt. It would not further those objectives were a sheriff's sale permitted to be annulled simply on the basis that a bidder, who had every intention of participating in the bidding process as lawful bidder and was successful in his or her bid, was deprived of the ownership of the property because he or she paid less than a 1/10 deposit. This is even more so in this case, as the judge observed, that the purchaser's failure to pay the 1/10 deposit was directly attributable to an error in the advertisement for the sale and was not intentional.

Articles 530 and 534 of the **Code of Civil Procedure** Cap. 4.01A, of the Revised Laws of Saint Lucia 2017 applied.

5. The prejudice to be shown on an application to vacate or annul a sheriff's sale, cannot be that which naturally arises from the fact that a sheriff's sale has taken place or that there has simply been non-compliance with a formality or condition under law. The prejudice suffered must be of the nature which undermines the entire process and fundamentally undermines the purposes of the enforcement jurisdiction of the court. As

such where Mr. Eloise's averments fell short of demonstrating any such degree of prejudice, the judge was entitled to reason that there was no prejudice sufficient to warrant the annulment of the sale of the Castries Property. The judge was entirely correct in light of the applicable principles in her conclusion.

Articles 530 and 534 of the **Code of Civil Procedure** Cap. 4.01A, of the Revised Laws of Saint Lucia 2017 applied; **Anjou (Town of) v C.A.C. Realty Ltd. and et al** [1978] 1 SCR 819 applied; **Garcia Transport Ltée v Royal Trust Co.** [1992] 2. SCR 499 applied; **Bank South Pacific v Ifira Port Development and Services Company Limited** Case No. 212 of 2017 applied.

JUDGMENT

- [1] **PEREIRA CJ:** A sheriff's sale (commonly referred to as a "judicial sale") is a remedy under the **Code of Civil Procedure**¹ available to a judgment creditor who seeks to enforce a debt arising from a court judgment ("a judgment debt") against the property of the judgment debtor. 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**.
- [2] This appeal challenges the decision of Cenac-Phulgence J ("the learned judge" or "the judge") dismissing an application to annul a sheriff's sale conducted in relation to land owned by the appellant, situated at Block and Parcel 1248B 578 registered in the Quarter of Castries ("the Castries Property"), on the basis that breaches of certain conditions and formalities under the **Code of Civil Procedure** for the conduct of sheriff's sales did not 'go to the root of the sale', and that the appellant had not demonstrated the degree of prejudice required to justify an annulment.
- [3] Before turning to the issues raised on the appeal, I will set out, in brief, the factual and procedural background, which is undisputed.

¹ Cap. 4.01A, of the Revised Laws of Saint Lucia 2017.

Background

- [4] In 2006, judgment was entered in the High Court in favour of the respondent, 1st National Bank St. Lucia Limited (“the Bank”), against the appellant, Mr. Paul Eloise in the sum of \$557,091.70 with interest at a rate of 10% per annum, and costs. Proceedings were brought by the Bank for the commencement of a sheriff’s sales to satisfy Mr. Eloise’s judgment debt. On 8th June 2017, the Bank obtained permission to issue writs of execution against land owned by Mr. Eloise. Instructions to levy were issued to the sheriff in relation to two parcels of land – Block and Parcel 0442B 62 registered in the Quarter of Anse La Raye (“the Anse La Raye Property”) and the Castries Property. The sales were advertised in the Official Gazette in accordance with article 511 of the **Code of Civil Procedure**. The advertisements stated, among other things, the times at which the sales would be conducted, and requested potential bidders to make a deposit of \$26,183.31 in relation to the Anse La Raye Property and \$29,525.86 in relation to the Castries Property. These deposit amounts were intended to represent 1/10 of the total amount owed by Mr. Eloise to the Bank under the 2006 judgment, in keeping with the requirements of article 530 of the **Code of Civil Procedure** that a bidder in a sheriff’s sale must provide a deposit to the tune of 1/10 of the total sum owed by the debtor. It was accepted by the learned judge, and is not disputed before us, that the deposit amounts stated in the advertisements were incorrect and did not represent 1/10 of the total amount owed by Mr. Eloise to the Bank.

- [5] On 24th October 2017, sheriff’s sales were conducted in relation to both parcels of land and both properties were adjudicated as sold to Jacqueline Emmanuel.²

The annulment application

- [6] In November 2017, Mr. Eloise applied to the High Court pursuant to article 558 of the **Code of Civil Procedure**, seeking orders that the sheriff’s sales conducted in relation to both properties be annulled on the basis that the

² As per the affidavits of judicial sale deposited by Jn Baptiste De Leon, filed on 8th November 2017.

essential statutory conditions and formalities for the conduct of the sales had not been complied with. The formalities which Mr. Eloise claimed had been breached were contained in articles 530, 534 and 536 of the **Code of Civil Procedure**.

[7] Article 530 of the **Code of Civil Procedure** provides that:

“Before receiving the first bid of every bidder, the officer conducting the sale shall require from the bidder a deposit or a certified bankers’ cheque of an amount of money equal to 1/10 of the debt (in principal, interest and costs) due to the seizing party.”

Article 534 of the **Code of Civil Procedure** provides that– ‘If a bidder fails to deposit forthwith the amount required by article 530, his or her bid shall be disregarded, and the proceedings shall be resumed upon the previous bid.’ Mr. Eloise’s position was that these conditions were breached when the sheriff accepted a deposit in the sum, on both sales, which was lower than 1/10 of the debt including the principal, interest and costs, and permitted the sales to proceed on the basis of bids which ought to have been disregarded in accordance with article 534.

[8] Article 536 of the **Code of Civil Procedure** 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. This article, in essence, requires the auction conducted in relation to a sheriff’s sale to last for at least 60 minutes. This article was breached in relation to the Anse La Raye Property, only, as the length of time for which the auction took place for the sale was only 15 minutes – 45 minutes shorter than the time required under article 536.

[9] Mr. Eloise therefore argued that the sale was not conducted in keeping with the essential conditions and formalities prescribed under the **Code of Civil Procedure**, and therefore that the sales ‘must be annulled pursuant to Article 558 for failure to observe the essential conditions and formalities prescribed for the sale’.³

³ Paragraph 13 of the Amended Annulment application filed on 26th January 2017 – See Record of Appeal pages 251-253.

[10] In his application and further affidavit in support, Mr. Eloise also addressed the prejudice he would suffer were the sales not annulled as prayed. At paragraph 12 of the grounds of Mr. Eloise's amended annulment application, it is said that:

"[Mr. Eloise] has suffered prejudice due to the irregular judicial sales because as a result of the sales he would cease to be the owner of the properties and would thereby be illegally deprived of his right to property and or deprived of the opportunity to allow other bidders to participate[d] in the sale at a higher bid(s)." ⁴

The Judge's Judgment

[11] By a written judgment dated 8th February 2018, the learned judge granted the annulment application so far as it pertained to the Anse La Raye Property and dismissed the application in relation to the Castries Property. The judge's reasons for refusing the annulment application in relation to the Castries Property may be shortly stated. The judge reasoned that article 558 is not couched in mandatory terms, contemplates an exercise of discretion and requires the court to determine whether to annul a sheriff's sale or not. The judge followed and applied the decision of the Supreme Court of Quebec in **Garcia Transport Ltée v Royal Trust Co.**⁵ and the Saint Lucian High Court decisions by Hariprashad-Charles J in **First Caribbean International Bank (Barbados) Limited formerly CIBC (Caribbean) Limited v Jacob Morille et al**⁶ and **Peter Jn Marie et al v Winston F. Cenac et al; National Commercial Bank of Saint Lucia Limited v Laurima Lowrie et al**,⁷ (both of which relied on and adopted the position taken by the Supreme Court of Quebec in **Garcia Transport Ltée**) and determined that the court must be satisfied, on an annulment application, that the applicant has suffered prejudice from the non-observance of essential conditions and formalities of the sheriff's sale. Further, the court must consider whether the breach of the particular condition or formality which the applicant alleges was not complied with, goes 'to the root of the sale' or whether 'to allow the sale to stand in the face of the particular non-observance would be unfair'. To this end, the judge reasoned,

⁴ See also paragraphs 8 and 11 of Mr. Eloise's further affidavit in support filed on 29th January 2018 – See pages 255-257 of the Record of Appeal.

⁵ [1992] 2 SCR 499.

⁶ [2004] ECSCJ No. 330, (delivered 17th September 2004).

⁷ [2004] ECSCJ No. 241, (delivered 1st March 2004).

the purpose or reason for the identified essential condition or formality in the sale process and any potential prejudice must also be considered.

- [12] 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. Furthermore, the error in the deposit paid was directly caused by an error in the advertisement. Mr. Eloise could have opposed the sale on that basis prior to the conduct of the sale, and did not do so. The breach of the deposit requirement under article 530 therefore did not occasion any prejudice sufficient to warrant annulling the sale. The breach of article 530 also therefore did not go to the root of the validity of the sale. There was accordingly no basis upon which to annul the sale of the Castries Property.

The Appeal

- [13] As foreshadowed, Mr. Eloise has appealed to this Court challenging the judge's decision to refuse his application to annul the sheriff's sale in relation to the Castries Property. There is, for obvious reasons, no appeal in relation to the judge's accession to Mr. Eloise's application in relation to the Anse La Raye Property.

- [14] The proceedings before this Court have proved to be particularly protracted, due to breakdowns in the relationship between Mr. Eloise and his former legal practitioners and failed settlement negotiations between Mr. Eloise and the Bank. In summary, these appellate proceedings have taken the following trajectory:

- (i) Mr. Eloise was granted leave to appeal by order of a single judge on 27th March 2018. By that order, Mr. Eloise was also granted a stay of execution in relation to the order of the learned judge.
- (ii) The notice of appeal was filed on 16th April 2018

- (iii) Subsequently a round of settlement discussions took place between the appellant's and the Banks' legal practitioners which in the event came to naught.
- (iv) Mr. Eloise later applied to have his legal practitioners removed from the record. This order was granted on 23rd November 2018.
- (v) The appeal came on for hearing on 9th April 2019. Mr. Eloise represented to the Court that he did not intend to seek new counsel to prosecute the appeal on his behalf. Following oral arguments by the parties, we reserved judgment in this matter and the parties were ordered to file, on or before 28th June 2019, further written submissions on the treatment of articles 530, 534 and 558 of the **Code of Civil Procedure** and how those articles relate to each other, supported by any authorities dealing with articles in *pari materia* to those articles, in relation to the annulment of a sheriff's sale, following which the Court would render its decision.
- (vi) Finally, the parties pursued further settlement negotiations with a view to bringing the matter to an end, independent a determination of the appeal on the basis of the arguments advanced. These discussions culminated in the preparation and signature of a consent order and settlement agreement. For reasons (which are not strictly relevant here), many months later that settlement was aborted and the matter was once again referred to this Court for determination by the end of 2020.

[15] The net effect of this series of events is that this Court's judgment on the appeal is now being rendered over 2 years after the appeal was heard, and the orders pertaining to the Castries Property have been stayed since March 2018 – over 3 years since the notice of appeal was filed.

The Issues on Appeal

[16] The appeal is brought on 6 grounds which admit of the following two determinative issues:

- (i) Did the judge err in principle by considering whether Mr. Eloise had suffered prejudice in the execution of the sheriff's sale; and
- (ii) Did the judge wrongly conclude that Mr. Eloise had failed to demonstrate prejudice sufficient to warrant the annulment of the sheriff's sale and that the breaches of articles 530 and 534 of the **Code of Civil Procedure** did not go to the 'root' of the validity of the sheriff's sale.

[17] It readily appears, and is not disputed, that this appeal challenges the exercise of the learned judge's discretion to dismiss the annulment application. The grounds upon which an appellate court can interfere with a judge's exercise of discretion are well known. As Blenman JA recently reiterated in **Showa Holdings Co., Ltd. v Nicholas James Gronow and John David Ayres**,⁸ citing the decision of Gordon JA in **Edy Gay Addari v Enzo Addari**,⁹ an appellate court ought not to set aside a lower court's exercise of discretion on the basis, alone, that it would have exercised the discretion in a different way were it vested with the discretion in the first place. Rather, an appellate court should only interfere with a lower court's exercise of discretion if satisfied that the lower court's decision is plainly wrong, in the sense discussed by Floissac CJ in the often-cited decision of this Court in **Michel Dufour and Others v Helenair Corporation Limited and Others**.¹⁰ In **Dufour and Others**, the learned judge Chief Justice explained the applicable principles thusly:

"(1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."¹¹

⁸ [2021] ECSCJ No. 571 (delivered 31st May 2021).

⁹ [2005] ECSCJ No. 125, (delivered 27th June 2005).

¹⁰ (1996) 52 WIR 188.

¹¹ *Ibid* at 190 and 191.

[18] On this appeal therefore, Mr. Eloise must show that the learned judge erred in the exercise of her discretion in the above-described sense, so as to overcome the characteristic restraint required of this Court in an appeal of this nature.

[19] I turn now to the first issue.

Issue 1 – The Requirement for Prejudice
The parties' submissions

[20] Mr. Eloise's submissions on the appeal are comprised both of written submissions filed on his behalf by his former legal practitioners and submissions he made, of his own, as an unrepresented litigant. Mr. Eloise accepts that the judge was required to exercise her discretion when asked to annul the sheriff's sale. He however argues that the learned judge, in exercising her discretion, was required to take into account the particular breach that was committed on the basis of which the annulment was sought. This, it is argued, the judge failed to do. Mr. Eloise contends that the judge failed to pay sufficient regard to the wording of articles 530 and 534 which, together, require a bidder to make a deposit or a certified bankers' cheque of an amount equal to 1/10 of the debt due to the seizing party, and provide that where such a deposit has not been provided, the relevant bid shall be discarded. He contends that these provisions are mandatory. Therefore, any non-observance of the requirements of the articles ought to have compelled the judge to annul the sheriff's sale.

[21] Mr. Eloise further criticises the judge's reliance on **Garcia Transport Ltée**, a decision from the Supreme Court of Quebec, and the decisions of Hariprashad-Charles J in **First Caribbean International Bank (Barbados) Limited formerly CIBC (Caribbean) Limited v Jacob Morille et al** and **Peter Jn Marie et al v Winston F. Cenac et al**; **National Commercial Bank of Saint Lucia Limited v Laurima Lowrie et al** which relied on and adopted the principles in **Garcia Transport Ltée**. He contends that these decisions are distinguishable on their facts as they concerned breaches of non-mandatory formalities. The judge therefore erroneously adopted the approach deployed in those cases by requiring some proof of prejudice as a precondition to

annulling the sheriff's sale, as opposed to considering the mandatory nature of articles 530 and 534 and determining that a breach of those articles provided a sufficient basis upon which to annul the sale of the Castries Property.

- [22] The Bank and the Attorney General, who appeared *amicus curiae*, argue along similar lines. In sum, they contend that the judge did not err in principle in refusing to annul the sheriff's sale of the Castries Property. They contend that the judge was correct to rely on **Garcia Transport Ltée** and **Jacob Morille et al** and correctly considered, as she was required to, whether there was prejudice occasioned by the sheriff's sale, sufficient to warrant an annulment.

Discussion

- [23] This issue involves the interpretation and application of article 558(1) of the **Code of Civil Procedure**. The full text of that article is as follows:

“558. Sheriff's sales may be annulled:

1. at the instance of the judgment debtor, or of any creditor or other interested person:

If fraud or artifice was employed, with the knowledge of the purchaser, to keep persons from bidding;

If the essential conditions and formalities prescribed for the sale have not been observed; but the seizing party cannot annul the sale for any want of formalities attributable to himself or herself or his or her attorney-at-law;

2. at the suit of the purchaser; If the immovable differs so much from the description given of it in the minutes of seizure, that it is to be presumed that the purchaser would not have bought had he or she been aware of the difference.” (Underlining supplied)

- [24] The general principles attendant on the interpretation of the **Civil Code of Saint Lucia**¹² have been discussed in a number of cases. In my view, those principles apply with equal force to the interpretation of the **Code of Civil Procedure** on account of the fact that **Code of Civil Procedure**, like the **Civil Code of Saint Lucia**, was clearly intended, at the time of its passage into law,

Cap. 4.01, of the Revised Laws of Saint Lucia 2017.

to be a comprehensive source of the rules of civil procedure relative to civil law and obligations in Saint Lucia; and borrows substantially from old Quebec law in the same way that the **Civil Code of Saint Lucia** does. Vincent Floissac, QC (later, Floissac CJ) in his essay '**The Interpretation of the Civil Code of St Lucia**'¹³ described the court's required approach to interpreting the **Civil Code of Saint Lucia**, as follows:

"Another rule which is not strictly a rule of interpretation, but which may be so regarded, is the judicial precedent rule. According to that rule, where an article of our Code is identical in terms with, equivalent to, evidently derived from or even similar to an English statutory provision or a Quebec codal provision and that provision has received a hitherto unchallenged English or Quebec judicial interpretation as the case may be, that judicial interpretation should normally be applied to our article."¹⁴

[25] This approach was in effect followed and adopted by the Privy Council in **Polinere and Others v Felicien**,¹⁵ where Lord Hoffmann stated as follows:

"...anyone attempting to interpret the Civil Code must bear in mind that it is derived, in most cases word for word, from the Quebec Civil Code of 1865, which in turn was derived from the Code Civil of France. In adopting the St Lucia Civil Code, the legislature must in their lordships' view have intended that its terms should be construed with due regard to what they had been understood to mean in Quebec and France. The jurisprudence which has been attached to the provisions of the Code by the courts and legal writers of those countries must at the very least have considerable persuasive authority. Their lordships therefore consider that it was unwise for the judge and the Court of Appeal to have attempted to construe them without any reference to their civilian background."¹⁶

[26] These statements of Lord Hoffmann have been approved and applied in the later Privy Council decisions in **Prospere v Prospere and Another**¹⁷ and **National Insurance Corporation v Winmark Ltd**,¹⁸ and, in my view, apply to this case with the same force as they would had this been a case concerning the interpretation of the **Civil Code of Saint Lucia**.

¹³ Floissac, V. F. (1983). The Interpretation of The Civil Code of Saint Lucia. *Revue générale de droit*, 14(2), 409–429.

¹⁴ See the judgment of Byron JA in *Voice Buildings Ltd v Canadian Imperial Bank of Commerce and Others* (1992) 43 WIR 132 at 138.

¹⁵ (2000) 56 WIR 264.

¹⁶ *Ibid* at 267.

¹⁷ [2007] 69 WIR 278.

¹⁸ [2009] UKPC 9.

As earlier stated, it is clear that the **Code of Civil Procedure** does not speak to the circumstances which should cause a judge to exercise his discretion in favour of annulling a sheriff's sale. Adopting the approach of the Privy Council in **Polinere**, a useful starting point to understanding the nature of judge's discretion under article 558 is the case law concerning article 698 of the Quebec Code of Civil Procedure¹⁹ which is framed in materially identical terms as article 558 of the Saint Lucian **Code of Civil Procedure** and which I have found to be particularly helpful in resolving this question.²⁰

[27] I commence firstly with the case of **Anjou (Town of) v C.A.C. Realty Ltd. and et. al.**²¹ In discussing the meaning and effect of article 698, the Supreme Court of Canada, made the following observations at paragraph 78:

"In art. 698(1) the legislator states his principle as it applies to a particular case. This principle is the protection of bidding. Even if this principle is violated by fraud, the legislator nevertheless wishes to protect a bona fide purchaser who was not aware of the fraud, and he provides that a sheriff's sale cannot be vacated to the prejudice of the purchaser, provided, however, that the conditions and formalities prescribed for the sale, referred to in art. 698(2), are observed.

However, if the sale is openly conducted subject to illegal conditions which, on their face, appear to be likely to keep people from bidding and which in fact did so, the principle again becomes applicable and the sale can be vacated regardless of any fraud. It is thus art. 698(2) which must be applied. The essential conditions prescribed for the sale are of two types: they include those which can be validly mentioned in the notices of sale, for example those referred to in arts. 684 and 696 C.C.P.; they also include those that are prescribed by law or by the very nature of a sheriff's sale.

Where the conditions mentioned in the notices of sale and the conditions of sale are contrary to the aim pursued by the law and to the nature of a sheriff's sale, they make the latter a nullity. The same would be true if the sale were made subject to conditions mentioned in the notices of sale that were contrary to public order or good morals. In my opinion, if the sale is made subject to conditions prohibited by law because they affect the very integrity of the seizure in execution, it

¹⁹ CQLR c C-25.01.

²⁰ "698. A sheriff's sale may, at the instance of any interested person, be vacated:

1. If, with the knowledge of the purchaser, fraud was employed to keep persons from bidding;
2. If the essential conditions and formalities prescribed for the sale have not been observed; but the seizing creditor cannot vacate the sale for any irregularity attributable to himself or his attorney."

²¹ [1978] 1 SCR 819.

can be said that ‘the essential conditions ... prescribed for the sale have not been observed’.”

[28] Here, the Supreme Court makes clear that at the heart of article 698(1) (the equivalent of article 558(1) in the Saint Lucian **Code of Civil Procedure**) is the principle of protective bidding; whereas article 698(2) (the equivalent of our article 558(2)) is engaged where there is some serious irregularity in the conduct of a sheriff’s sale which runs contrary to the purpose of the legal regime for those sales, or some other recognised head of illegality or condition which is prohibited by law. A close review of the above-quoted passage reveals that an interested person who seeks to vacate a sheriff’s sale under Quebec law, must meet a high threshold. The reason for this is explained at paragraph 81, where the Supreme Court emphasised the importance of protecting the integrity of a sheriff’s sale. There, the court stated:

“The importance of protecting the sheriff’s sale has often been emphasized:

‘... a petition en nullité de décret must be scrutinized with care. It attacks one of the most important acts of procedure of any court of record — the enforcement of its own judgment, and puts in issue not only the regularity of that procedure, but jeopardizes the rights, as in this case, of innocent third parties, who purchase property put up for public, judicial sale under all the solemnities and formalities of the law.’ (Hall J., *Perrault v. Mousseau*[16], at p. 480.)

It is precisely to protect the rule of the integrity of the sheriff’s sale that we must not let stand a sheriffs sale that has been stripped of its chief virtue, and that thereby prejudices the rights of a third party.”

[29] Article 698 of the Quebec Code of Civil Procedure was again considered by the Supreme Court of Quebec in **Garcia Transport Ltée**. In that case, the Supreme Court underscored that titles granted by sheriff’s sales in Quebec’s civil law are treated with a considerable degree of respect and courts do not tamper with them lightly. In this respect, the court noted, ‘it has been remarked that Quebec law is much stricter than French law: *Bérard v. Barrette* (1874), 5 R.L. 703 (Sup. Ct.), and *Lymburner v. Courtois* (1922), 34 Que. K.B. 341’.

[30] The court reiterated the high-importance attached to sheriff's sales by the Quebec law and stated at paragraph 82 that- 'Quebec courts have long and consistently held that an attack upon a sheriff's sale is an attack upon a title conferred not just by an individual, but by the justice system as a whole'. Accordingly, in the court's view, a sheriff's sale will not readily be set aside. This is even more so in circumstances where the applicant or petitioner has not attempted to availed him or herself of the opportunities to have a sale annulled prior to the execution of the sale. At paragraph 91, the court stated:

"Finally, given the strict formalities which must be followed prior to a sale at law, and the relative ease with which interested parties, most notably the owner of the property, may oppose the seizure and sale before the latter takes place, a petition to vacate the sale will be scrutinized strictly and granted only exceptionally. Petitioners who could have opposed the seizure and sale, but who failed to do so, generally do not succeed in having a sheriff's sale set aside because their failure to act earlier implies that they consented to whatever irregularity they might later invoke..."

[31] The Court went on to make very critical statements on the nature of formalities which would engage the court's discretion to vacate a sheriff's sale. The court said:

"Article 698 allows 'any interested person', including the debtor whose property is seized, to seek the vacating a sheriff's sale on the grounds of fraud, or the non-observance of essential conditions and formalities prescribed for the sale. An informality will generally not give rise to the vacating of a sale, however, unless the petitioner can show that he or she was prejudiced by it: *Fort Garry Trust Co. v. Roberts Sprinkler Ltd.*, [1981] C.S. 905."

[32] Consistent with the approach taken in **Anjou**, the Supreme Court in **Garcia Transport Ltée** took the clear view that Quebec law does not favourably countenance an attack on sheriff's sales made on grounds which do not engage some illegality which undermines the sheriff's sale as a mode of enforcement of the court's judgments, or which does not occasion some prejudice on the part of the party who applies to have the sale vacated.

[33] Lastly, importantly and more recently, is the decision of Master Cenac in **Bank South Pacific v Ifira Port Development and Services Company Limited**,²² a decision from the Supreme Court of Vanuatu. The master there considered article 698 of the Quebec Code of Civil Procedure (which appears to be part of the laws of Vanuatu). The master considered the learning in **Garcia Transport Ltée** and examined, with it, the decision of Hariprashad-Charles J in **Jacob Morille et al.** First, Master Cenac took the view that both Quebec and Saint Lucia alike are firm in the position that ‘an attack on a Sheriff’s sale is an attack on the entire justice system, and as such, any challenge to vacate such a sale must demonstrate some serious breach’. Second, on the nature of the discretion vested in the court to vacate a sheriff’s sale, Master Cenac frontally addressed the matters to be taken into account on an application to vacate a sheriff’s sale under Quebec law, and made a number of critical statements which mirror the approach of Cenac-Phulgence J in the court below in this case, and to a large extent the approach of Hariprashad-Charles J in **Jacob Morille et al.** The master stated:

“The Code of Civil Procedure out of Quebec provides that a sale may be vacated in certain circumstances. The use of the word ‘may’ suggest a discretion to be exercised by the court in its assessment of any annulment. It is consonance with common sense and the law then, that the absence of conditions and formalities does not necessarily void a sale; for e.g. if the warrant of execution specified that a sale was to be conducted by public tender and the Sheriff conducted it by public auction.”²³

[34] Most critically, the master continued:

“The exercise of a discretion would suggest some extrinsic consideration that was not written into the law which the court would have to bring to mind in its examination of the absence of one or more of the essential conditions. I am of the opinion therefore that part of the exercise of this discretion must be a consideration of that condition which the applicant alleges was breached. In so doing, the court would have to assess whether that condition went to the root of the sale. Garcia espouses that it is not enough to establish a breach, but that that breach must be considered in light of a real prejudice that has been suffered by the applicant.”²⁴

²² Case No. 212 of 2017.

²³ Ibid at p.7.

²⁴ Case No. 212 of 2017 at p.7.

[35] It is clear from the decision of Master Cenac, which is entirely consistent with the approach sanctioned by the Supreme Court in **Anjou** and **Garcia Transport Ltée**, that the discretion vested in the courts under article 698 of the Québec Code of Civil Procedure does not, without more, operate in favour of vacating a sheriff's sale upon the happening of some breach or procedure. 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).

[37] To Mr. Eloise's point that the learned judge erred in her application of the principles expressed in **Garcia Transport Ltée** and **Jacob Morille et al** to his case on the basis that **Garcia Transport Ltée** is distinguishable on its facts, I am satisfied that the principles expressed in **Garcia Transport Ltée**, which were applied by Hariprashad-Charles J in **Jacob Morille et al**, apply across the board to applications made under article 698 of the Québec Code of Civil Procedure. It is clear, contrary to Mr. Eloise's submission, that the principles set out in **Garcia Transport Ltée** were not limited to any particular breach of formality under the Québec Code of Civil Procedure and are of general guidance on the nature of the sheriff's sale and the matters to be established on an application to vacate such a sale under Quebec law. There is therefore no basis to distinguish the authoritative statements made by the Supreme Court in **Garcia Transport Ltée** (which mirror the approach previously taken by the Supreme Court in **Anjou** and later by Master Cenac in **Bank South Pacific** and Hariprashad-Charles J in **Jacob Morille et al**) on the basis that they applied to particular circumstances which do not attend Mr. Eloise's case.

[38] Furthermore, I am satisfied that there is no reason to disapply those principles in this case or to find that they do not apply with equal force to the provisions of the Saint Lucian **Code of Civil Procedure**. The Québec codal provisions

are, in my view, clearly in *pari materia* to those under the Saint Lucian **Code of Civil Procedure**. Following the approach advocated by the Privy Council in **Polinere** which I have adopted, I do not doubt that the principles stated in **Anjou**, **Garcia Transport Ltée** and **Bank South Pacific** which I have summarised at paragraph 37 above, apply in relation to applications to annul sheriff's sales under the Saint Lucian **Code of Civil Procedure**.

[39] In relation to the argument that the judge erred in considering whether there was prejudice to Mr. Eloise, sufficient to warrant the annulment of the sale, as distinct from focussing on the mandatory requirements of articles 530 and 534 of the **Code of Civil Procedure**, I note in passing that this contention by Mr. Eloise seems to be the opposite of what was advanced on his behalf in the court below. From the record of appeal, it appears that Mr. Eloise's notice of application for annulment was amended to, among other things, specifically address the issue of prejudice arising from the conduct of the sales by the sheriff. Mr. Eloise's further affidavit in support of the annulment application also makes specific averments as to the prejudice he suffered as a result of the sheriff's sale; and, one of the issues stated and addressed in his skeleton arguments in support of the annulment application is 'whether [Mr. Eloise] has suffered prejudice as a result of the irregular judicial sale'.²⁵ It is therefore strange, to say the least, that before us, Mr. Eloise (and his former legal practitioners) took the position that the judge ought not to have addressed the issue of prejudice arising from the breaches of the **Code of Civil Procedure**.

[40] Leaving that aside however, given all the principles I have distilled from **Garcia Transport Ltée**, **Anjou** and **Bank South Pacific**, and paying particular regard to the learned judge's judgment which I have summarised above, the conclusion naturally follows that the judge did not err in her approach to Mr. Eloise's annulment application. The learned judge clearly recognised that she had a discretion to exercise on the annulment application. She was rightly cognisant of the caution which traditionally attaches to the vacation of sheriff's sales under Quebec law, and by extension to the annulment of sheriff's sales

²⁵ See paragraph 3.2 of Mr. Eloise's skeleton arguments filed on 26th January 2017 in support of the annulment application.

under Saint Lucian law. The judge correctly considered that a breach of a condition or formality, alone, did not provide sufficient basis to annul the sale of the Castries Property, and that she was required to consider whether the breaches of articles 530 and 534 went to the 'heart' or the 'root' of the validity of the sale or whether there was some prejudice to Mr. Eloise.

[41] The grounds of appeal in relation to issue 1 must therefore be dismissed.

Issue 2 – The Exercise of Discretion

The parties' submissions

[42] Mr. Eloise has also sought to impugn the judge's findings on prejudice, which formed the basis of her refusal to annul the sheriff's sale of the Castries Property. He argues that she came to the wrong conclusion on the issue of prejudice. He contends that, by virtue of article 534, there were no valid bids as no bidder had paid the requisite 1/10 deposit. The bids, having been made in the absence of the appropriate deposits, were invalid and could not result in a valid sale. The sale was therefore conducted in breach of the provisions of the **Code of Civil Procedure** with the effect that Mr. Eloise had been deprived of his property unlawfully, with great prejudice to him.

[43] The Bank and the Attorney General, on the other hand, contend that the judge's assessment of prejudice was correct for the reasons articulated in her judgment.

Discussion

[44] In assessing the rival contentions on this issue, I bear in mind, once again, that the matters raised by Mr. Eloise go to the heart of the judge's exercise of discretion. This Court should therefore only intervene if satisfied that the judge, in exercising her discretion, was plainly wrong in the sense described by Floissac CJ in **Dufour and Others**.²⁶ With that in mind, I am not of the view that Mr. Eloise has satisfied the high threshold for appellate interference with the judge's decision as it has been described in **Dufour and Others**.

²⁶ See paragraph 17 above.

[45] The breach of condition or formality relied on by Mr. Eloise in relation to Castries Property was the insufficiency of the deposits made by the purchaser and other bidders which, according to articles 530 and 534 of the **Code of Civil Procedure**, was a precondition to the receipt of bids for the sheriff's sale. The judge took the view that the requirement for a 1/10 deposit, though expressed in mandatory terms under the **Code of Civil Procedure**, did not affect the sale price of the land, and was, in essence a technical formality which did not go to the root of the validity of the sale. The judge considered that the errors in the amounts deposited were directly attributable to errors in the advertisements made by the sheriff in relation to the sale. Mr. Eloise did not take any steps to object to the advertisements or to the sale before filing his annulment application – this fact undermined his ability to successfully pursue his annulment application. The judge accordingly concluded that there was no prejudice on the part of Mr. Eloise which could justify granting the annulment application in respect of the Castries Property.

[46] Learned counsel for the Bank, Mrs. Cenac-Prospere, was not able to point us to any provision in the Québec Code of Civil Procedure or any decided cases to demonstrate how Québec law would treat with a breach of articles in *pari materia* to our articles 530 and 534. Like counsel, I have not been able to find any such cases as it does not appear that the Québec Code of Civil Procedure contains provisions which are in *pari materia* to articles 530 and 534. We are then left to consider (in keeping with the principles I have summarised above) whether the judge erred in the exercise of her discretion having regard to the nature and purpose of those provisions in the wider of context of the **Code of Civil Procedure**.

[47] I have examined articles 530 and 534 in the context of the procedural provisions which regulate the conduct of judicial sales under Book Fourth, Chapter Second of the **Code of Civil Procedure**, I can see no reason to find that the judge erred in concluding as she did.

[48] The obvious intendment of the sheriff's sale provisions under the **Code of Civil Procedure** is to secure transparency and openness in the execution of

this peculiar enforcement process. The **Code of Civil Procedure** very clearly contemplates that sheriff's sales are to be executed in a manner that is fair to the judgment debtor and in manner that ensures that a judgment creditor obtains as good a chance as possible at full satisfaction of the debtor's debt. It would not further those objectives were a sheriff's sale permitted to be annulled simply on the basis that a bidder, who had every intention of participating in the bidding process as a lawful bidder and was successful in his or her bid, was deprived of the ownership of the property because he or she paid less than a 1/10 deposit. This is even more so in a case such as this one where, as the judge observed, that the purchaser's failure to pay the 1/10 deposit was directly attributable to an error in the advertisement for the sale and was not intentional.

[49] In my view, it cannot be said that the breaches of articles 530 and 534 complained of in this case went to the root of the validity of the sale. Indeed, it would be wholly undesirable in the result were the court's enforcement process (i.e. the sheriff's sale) to be entirely upended by a mere technical error such as the failure to make a deposit in the correct sum, in circumstances where there is no relationship between the deposit which is made and the end result of the sheriff's sale, which is the satisfaction of a debt owed by one party to another party, on the basis of bids, the values of which, are unconnected to the said deposits.

[50] What is more is that Mr. Eloise's sole assertion of prejudice in his further affidavit in support of the annulment application, was that he was being put out of ownership of his land in breach of the procedure under the **Code of Civil Procedure**. At paragraph 9 of his further affidavit, Mr. Eloise deposed:

"I have suffered prejudice and will continue to suffer prejudice due to the irregular and unlawful judicial sales of my properties because as a result of the sales I would cease to be the owner of my properties and would thereby be illegally deprived of my right to property. Further with respect to [the Anse La Raye Property] I would be deprived of the opportunity of allowing other bidders to bid a higher sum for the property."

[51] At paragraph 11, he continued, in relation to the issue of prejudice, that:

“I am informed by my legal practitioners and verily believe that I have suffered prejudice due to the illegality of these sales as my properties were able to be sold for said sums in breach of the essential conditions and formalities required by law for the conduct of judicial sales and I have been unlawfully deprived of my right to property as a result.”

[52] In view of the posture adopted by the Supreme Court in **Garcia Transport Ltée** and **Anjou**, so far as it pertains to the high threshold for vacating a sheriff's sale under Quebec law and the corresponding finality desired by Quebec law in relation to sheriff sales, as well the statements of Master Cenac in **Bank South Pacific**, the prejudice to be shown on an application to vacate or annul a sheriff's sale, cannot be that which naturally arises from the fact that a sheriff's sale has taken place or that there has simply been non-compliance with a formality or condition under law. The prejudice suffered must be of the nature which undermines the entire process and fundamentally undermines the purposes of the enforcement jurisdiction of the court. In my view, Mr. Eloise's averments fall short of demonstrating any such degree of prejudice.

[53] The sale of the Castries Property was duly advertised, took place for the period of time required under the **Code of Civil Procedure** and there is no evidence that the sale was conducted unfairly or in a manner which would embarrass the court in the exercise of its enforcement jurisdiction or in the administration of justice. Mr. Eloise did not seek to challenge the writs of execution or object to the contents of the advertisements pertaining to the Castries Property. Accordingly any arguments as to prejudice, and his overall chances of successfully annulling the sale of the Castries Property, were fundamentally undermined.

[54] In the circumstances, the judge's conclusion that there was no prejudice sufficient to warrant the annulment of the sale of the Castries Property was reasoned, it was not perverse or plainly wrong, and in my view, it was entirely correct in light of the applicable principles. I do not doubt that the judge was correct to conclude that there was no prejudice in this case which would warrant an annulment of the sheriff's sale in relation to the Castries Property. The grounds of appeal on this issue must also be dismissed.

Costs

- [55] The judge made no order as to costs in the court below. Taking into account of all the circumstances of this case, such an order is appropriate on this appeal, and I would so order.

Order

- [56] For all the foregoing reasons, I would make the following orders:
1. The appeal is dismissed.
 2. The stay of execution granted by this Court on 27th March 2018 in relation to the Castries Property, is discharged.
 3. There is no order as to costs.

I concur.
Mario Michel
Justice of Appeal

I concur.
John Carrington, QC
Justice of Appeal [Ag.]

By the Court

Chief Registrar [Ag.]