

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

**FEDERATION OF SAINT CHRISTOPHER & NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCVAP2011/0015

**IN THE MATTER of a Declaration dated 18th January
2007 for the compulsory vesting in the Government of
St. Christopher and Nevis of lands comprising the
Angelus project**

and

**IN THE MATTER of the Land Acquisition Act Cap 10:08
Revised Statutes of the laws of the Laws of St.
Christopher and Nevis, Sections 3, 7, 8, 9, 11, 12, 13,
14, 15, 17, 19, 21, 22, 26, 28, and 29**

and

**IN THE MATTER of the Board of Assessment of Lands
commonly referred to as “The Angelus”**

and

IN THE MATTER of the Crown Proceedings Act

and

**IN THE MATTER of the Constitution of St. Christopher
and Nevis Sections 2, 3 and 8**

BETWEEN:

**[1] ROSALIND NICHOLLS
[2] CONSTANCE V. MITCHAM
[3] PEARLINE O. SYLVESTER**

Appellants

and

**[1] RICHARD ROWE and MARK SECRIST
(and those whom they represent)
[2] ROY and GEN BENTON
[3] PAUL and CHAE DUNN**

1st, 2nd and 3rd Respondents

and

**[1] THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND
NEVIS**

[2] THE AUTHORIZED OFFICER FOR THE ANGELUS REPORT

4th and 5th Respondents

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Gertel Thom
The Hon. Mde. Joyce Kentish-Egan, QC

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Patrick Patterson for the Appellant
Mr. John Carrington, QC with him Ms. Elizabeth Harper for
1st and 2nd Respondents
The 3rd Respondent is unrepresented personally or by counsel
in the appeal.
Ms. Simone Bullen-Thompson with her Ms. Violet Williams for the
4th and 5th Respondents

2014: October 2;
2016: January 11.

Civil appeal – Compulsory acquisition of lands by Government – Interpretation of provisions of Land Acquisition Act – Entitlement to compensation for land acquired – Section 8 of The Saint Christopher and Nevis Constitution – Effect of non-registration of memorandum of transfer – Whether a person holding an unregistered memorandum of transfer has an interest in land and is entitled to compensation on a compulsory acquisition of land – Equitable interest – Effect of provisions of Title by Registration Act – Indefeasibility of title.

On 28th December 2006, the Government of the Federation of Saint Christopher and Nevis (“the Government”), acting under section 3 of the Land Acquisition Act¹ (“the LAA”) published two declarations in the official Gazette for the compulsory acquisition of three parcels of land (“the Angelus Lands”). Those parcels are registered under the Title by Registration Act² (“the TRA”) at Book Y2 folio 69 (“Y2-69”), Y2 folio 382 (“Y2-382”) and Y2 folio 383 (“Y2-383”). In 2004, a condominium resort development (“the Angelus”) was constructed on parcel Y2-69 consisting of approximately 108 units of which B.M.T. Limited

¹ Cap 10.08, Revised Laws of Saint Christopher and Nevis 2009.

² Cap 10.19, Revised Laws of Saint Christopher and Nevis 2009.

("B.M.T.") was the registered proprietor. On 18th January 2007, by virtue of section 3(3) of the LAA, the Government became vested with the ownership of the Angelus and on that date also appointed an authorized officer in the person of Beverly Williams. In compliance with section 13 of the LAA, the authorised officer prepared a report in which she recognised the appellants as persons possessing an interest in the Angelus Lands and entitled to compensation. The authorised officer accepted the appellants' claim for compensation on the production of a duly executed but unregistered memorandum of transfer evidencing purchase, payment in full of the purchase price and transfer of ownership to each of the units in the Angelus ("the Units"), together with an undivided interest in the common elements and property. She also accepted the claims of the 1st, 2nd and 3rd respondents, collectively referred to as "the MKS Respondents", that they too were entitled to compensation payable by the Government to owners of the Angelus. Their entitlement arose by virtue of an order of Belle J dated 21st September 2007 (the Order") which directed the Registrar of Land Titles in Saint Christopher to rectify and amend the register and relevant certificates of title to show that the MKS Respondents were the true owners of the resort lands. As a consequence of the Order, the MKS Respondents were registered as proprietors of the Angelus Lands (with the exception of some units listed in Schedule 3 to the order). The 4th and 5th respondents were non-aligned to the issue in relation to whether the appellants had made out a case that they held an interest in land for which they should be compensated. As the gate-keeper for the Government's treasury, they were only interested in knowing whom they should pay compensation provided they did not have to pay twice.

Having accepted the claims of the appellants and the MKS Respondents, the authorised officer entered into negotiations with them in relation to issues of entitlement to and amounts of compensation but there was no productive outcome. Consequently, the Governor General established a Board of Assessment ("the Board") which proceeded to hear their claims for compensation. The Board rejected the appellants' claim to compensation on a finding that they had no interest in land that required payment of compensation by the LAA. The Board found inter alia, that the effect of section 5 (3) is that the appellants' unregistered memoranda of transfer is an unregistered dealing in land, which is incapable of conferring any right or interest in respect of land. Further, dealings with registered land in Saint Christopher and Nevis which are not in accordance with the provisions of the TRA operate, as contracts conferring no right in respect of land, except the right of enforcing the contract against the parties. Thus, the Board found that the legal effect of the appellants' unregistered memoranda of transfer was that it operated as a contract only. The Board also noted that, under the LAA persons are entitled to have their titles registered and alternatively bring suit against the registered proprietor either for specific performance of their contracts, or damages for breach of contract, but they could not successfully make a claim under this legislation.

The appellants appealed the decision of the Board to the High Court. The learned trial judge refused to entertain the appellants' appeal on the basis that section 17 of the LAA permits appeals only against an award of compensation; that as the appellants were not the recipients of an award of compensation, they had no right of appeal against the award of the Board. The learned trial judge went on to rule that this was a matter for judicial review of the Board's decision and that the incorrect procedure for seeking constitutional relief was used.

The appellants, dissatisfied with the decision of the learned trial judge and the Board, appealed to the Court of Appeal. The appellants relied on their unregistered memorandum of transfer as the source document evidencing their alleged ownership and contended that by virtue of that document they were the holders of at least an unregistered equitable interest in the units purchased, which was protected by sections 2 and 8 the Saint Christopher and Nevis Constitution. They further claimed that by virtue of their unregistered memorandum of transfer, their status was that of beneficial owners in ostensible possession of the units purchased and that as owners in ostensible possession, the Board should have recognised that persons having ostensible possession or enjoyment of rents and profits of such land are deemed to be the owners of the land until the contrary is proved. They claimed that following the due execution of the memoranda of transfer, they were kept out of title by the respondents who every 21 days filed a series of caveats which led to their memoranda of transfer not being registered. On the other hand, the respondents contend that the appellant's failure to register each memorandum of transfer gives them at most an equitable interest that takes effect as a contractual right. The respondents conceded that the appellants did have a right of appeal against the decision of the Board pursuant to section 17 of the LAA. The substantive issue in the appeal was whether the appellants who each hold a fully executed, fully paid up but unregistered memorandum of transfer evidencing their purchase of the condominium units in the Angelus, are persons holding an interest in land for which they should be compensated by the Government on its compulsory acquisition of the Angelus pursuant to the provisions of the LAA.

Held: allowing the appeal against the ruling of Thomas J on the effect of section 17 of the LAA and upholding the award of the Board of Assessment, that:

1. The Court must adhere to the stringent provisions of the TRA. The legislative intention in section 5(3) of the TRA is clear. Section 5(3), expressly prescribes: (i) that an unregistered memorandum of transfer cannot create a right or interest in land; (ii) that the only legal effect such an instrument has is that it operates as a contract only; and (iii) that the only right it creates is the right to enforce the contract against the other party to the contract or against persons claiming under that party. By virtue of section 5 (3), as well as the enactments in the sections of the TRA, the right the appellants possess by way of their unregistered memoranda of transfer is no higher than a contractual right. It is a right to bring an action in personam in law or in equity for damages or specific performance of the contract. Whether this may seem "inequitable" is not a material consideration when the TRA makes it inevitable. Further, it is clear from the definition of 'dealing' in the First Schedule to the TRA that the appellants' unregistered memoranda of transfer is a 'dealing' in land, which is incapable of conferring any right or interest in respect of land. It was required to be presented for registration and to be registered in order to have legal effect as a completed sale to the appellants. Unless presented for registration, the sale of the Units remained incomplete with the consequence that the proprietorship of the land was never affected by the alleged beneficial interest. There was no evidence adduced to show that the appellants attempted to or presented their memoranda of transfer for registration as required by section 20 of the TRA. Therefore by parity of reasoning, the appellant's unregistered memoranda of

transfer cannot confer on them an interest in the Angelus Lands.

Section 5 (3) **Land Acquisition Act** applied; *Frazer v Walker* [1967] 1 All ER 649 applied.

2. On a compulsory acquisition of lands brought under the operation of the TRA, one must look to the scheme of TRA in order to determine what constitutes interests in land. It is only interests in land as so ascertained, which are protected on a compulsory acquisition by the right to compensation under section 8(1) of the Constitution of Saint Christopher and Nevis and pursuant to the provisions of the LAA. These consist of the absolute interest of the holder of the certificate of title, ranging down to the interest of a legal or equitable mortgagee, and encompassing all lesser interests in land that have been presented for registration and noted on the certificate of title as encumbrances. Registration and noting on the certificate of title are the sine qua non of the existence of interests in land under the TRA and this is so whether the interest has its origins in law or in equity. To grant recognition to an unregistered dealing as constituting an interest in land would undermine the indefeasible nature of registered interests and throw into a state of flux if not chaos, the scheme and principles of the TRA. In light of this, the Board was right in ruling that the appellants were not entitled to compensation based on the appellants' unregistered memorandum of transfer.

Sections 8 -10 of the **Title by Registration Act**.

3. Section 26 of the LAA seemingly provides a legitimate pathway for a claimant to prove an entitlement to compensation by being deemed the owner of the land providing the criteria there specified is met. The appellants failed to assert a claim in reliance on the provisions of section 26, and also failed to adduce any evidence that could form the factual matrix for a finding in their favour pursuant to section 26.

Section 26 **Land Acquisition Act** considered.

JUDGMENT

- [1] **KENTISH-EGAN JA [AG.]:** This is an appeal against the decision of Thomas J. delivered on 29th July 2011. Thomas J. dismissed the appellants' appeal from an award dated 25th March 2010 in which the Board of Assessment ("the Board") rejected the appellants' claim for compensation in respect of the compulsory acquisition of the Angelus Condominium Lands ("the Angelus Lands").

- [2] The grounds of appeal are dealt with later in this judgment.

Background to the Appeal

- [3] On 28th December 2006 and 18th January 2007 respectively, the Government of the Federation of Saint Christopher and Nevis (“the Government”), acting under section 3 of the **Land Acquisition Act**³ (“the LAA”) published two declarations in the official Gazette for the compulsory acquisition of three parcels of land totalling 21.535 acres. The parcels acquired are registered under the **Title by Registration Act**⁴ (“the TRA”) at Book Y2 folio 69 (“Y2-69”), Y2 folio 382 (“Y2-382”) and Y2 folio 383 (“Y2-383”). The latter two parcels were subdivisions from Y2-69. In 2004, a condominium resort development was constructed on Y2-69 consisting of approximately 108 units of which B.M.T. Limited (“B.M.T”) was the registered proprietor. The subject matter of this appeal relates only to the units within this condominium development, which is known as “the Angelus”. The titles of individual condominiums were registered and are held under the provisions of the TRA and the **Condominium Act**⁵.
- [4] On 18th January 2007, by virtue of section 3(3) of the LAA, the Government became vested with the ownership of the Angelus and on that date also appointed an authorized officer in the person of Beverly Williams.
- [5] In compliance with section 13 of the LAA, the authorized officer prepared her report in September 2009. In it she recognised the appellants as persons possessing an interest in the Angelus Lands and entitled to compensation pursuant to the provisions of the LAA.
- [6] She accepted their claims to compensation on their production of a duly executed but unregistered memorandum of transfer evidencing purchase (“the Unregistered

³ Cap 10.08, Revised Laws of Saint Christopher and Nevis 2009.

⁴ Cap 10.19, Revised Laws of Saint Christopher and Nevis 2009.

⁵ Cap 10.03, Revised Laws of Saint Christopher and Nevis 2009.

Memorandum of Transfer”), payment in full of the purchase price and transfer of ownership to each of the units in the Angelus (“the Units”), together with an undivided interest in the common elements and property. In the case of the 1st appellant this was a purchase of three units numbered C210, C211 and C212 for the sum of US\$125,000.00 each. In the case of the 2nd and 3rd appellants, theirs were a joint purchase of three units numbered C207, C208 and C209 for the sum of US\$125,000.00 each.

- [7] The authorized officer also accepted the claims of the 1st, 2nd and 3rd respondents, collectively referred to in this judgment as “the MKS Respondents”. A brief portrayal of the MKS Respondents and their entrenched opposition to the claim of the appellants in the hearings before the Board is essential.
- [8] In December 2003, the MKS Respondents as representative claimants of some 118 persons, filed and served a claim form and statement of claim in claim **SKB BHCV2003/0222 Rowe & Secrist v Administrative Services et al**, against six defendants including B.M.T., alleging breach of fiduciary duty, fraud and unjust enrichment and seeking, among other remedies, an award of US\$19,161,302.16 in damages. They claimed that they had been defrauded through a ponzi scheme operated by the owners or controllers of B.M.T. and that their funds had been used to acquire the Angelus Lands and build the condominium resort development. After several years of litigation, these proceedings were compromised in part by an Agreement of Final Settlement and Compromise dated 22nd June 2007, entered into between the MKS Respondents and three of the defendants including B.M.T. (the “Settlement Agreement”), and by an order of Belle J. dated 21st September 2007, which among other declarations and orders made, approved and declared the Settlement Agreement as binding on all the parties to it.
- [9] By virtue of this order, the MKS Respondents were registered as proprietors of the Angelus Lands with the exception of those units listed at Schedule 3 to the order and by virtue thereof became entitled to compensation payable by the

Government to owners of the Angelus. On this aspect, the operative paragraph 10 of Belle J's order of 21st September 2007 is reproduced:

"With the exception of the titles to the Condo Units listed on Schedule "3" to this Order, and subject to the National Bank's Mortgage (such exceptions being without prejudice to the Claimants' right to challenge or to seek to set aside such third party interests or rights), the Registrar of Land Titles in St. Christopher is hereby directed to rectify and amend the Register and the relevant Certificates of Title retrospectively to 24th February, 1999 to show that the Representative Claimants were the true owners of the title to the Resort Lands since such date and up to 18th January, 2007 when the Taking of such title was completed by the Government of St. Christopher and Nevis."

- [10] Negotiations ensued between the authorized officer and persons claiming an interest in the Angelus. There was no productive outcome to these negotiations on issues of entitlement to and amounts of compensation. Consequently, the Board that had been established by the Governor General on 11th July 2008, proceeded to hear the several claims for compensation including those of the appellant and the MKS Respondents⁶. The Board gave its award on 25th March 2010. At the hearing before the Board, there was no change in the position of the authorized officer that the appellants were entitled to an award of compensation for their units, as persons having an interest in the land by virtue of their Unregistered Memorandum of Transfer.

The Ruling/Award of the Board of Assessment

- [11] The Board rejected the appellants' claim to compensation on a finding that they had no interest in land that required payment of compensation by the LAA.
- [12] The learned trial judge refused to entertain the appellants' appeal from the decision of the Board. He did so on the basis that section 17 of the LAA permits appeals only against an award of compensation; that as the appellants were not the recipients of an award of compensation, they had no right of appeal against the

⁶ There were some 71 claims if one uses Tables 4 and 5 found at paragraphs [71] and [72] of the award as a guide. Table 4 gives the names of the twenty-four claimants rejected by the Board of Assessment. Table 5 gives the names of the forty-seven successful claimants in their representative capacities.

award of the Board pursuant to section 17 of the LAA. There was therefore no appealable issue before him. He went on to rule that this was a matter for judicial review of the Board's decision and that the incorrect procedure for seeking constitutional relief was used.⁷

[13] The appellants now seek to overturn the decision of Thomas J and the Board relying on thirteen grounds of appeal in which they challenge the findings of the learned trial judge that: 1) the appellants had not employed the proper procedure to mount constitutional challenges to the award nor to raise issues of vires relating to errors of law made by the Board; and 2) the appellants had no right of appeal from the decision of the Board as no award was made in their favour.

[14] In a most salutary manner, counsel for all respondents represented in the appeal,⁸ conceded that the appellants did have a right of appeal against the decision of the Board pursuant to section 17 of the LAA. Counsel for the appellants and counsel for the MKS Respondents agreed that the substantive issue to be tested by argument in the appeal was whether the appellants had made out a case that they held an interest in land for which they should be compensated pursuant to the provisions of the LAA. Counsel representing the 4th and 5th respondents, took the role of gate-keeper for the Government's treasury. They were non-aligned on this issue although the authorized officer had accepted before the Board that the appellants were persons with an interest in land and entitled to compensation. They simply wanted to know whom to pay the compensation provided that they did not have to pay twice.

[15] These concessions in my view processed the thirteen grounds of appeal into one ground. This is ground of appeal (h) and is reproduced in full:

“(h) The learned Judge ought to have found that the Appellant's appeal to the High Court was not a matter of 'vires' but simply one of interpretation of the Land Acquisition Act, and specifically the word “land” and “interest in or over land”, within such Act, which the Board of Assessment interpreted too narrowly, when looked at within the four corners of the said Land

⁷ Judgment of Thomas J at paras 78-84).

⁸ The court did not have written submissions or oral arguments from the 3rd respondent who also did not appear at the hearing.

Acquisition Act and/or also when read alongside the Constitutional guarantee for compensation for property acquired by the state compulsorily, and in all the circumstances of the case.”

[16] As a result, arguments on appeal were restricted to one primary and two subsidiary issues. The primary issue:

(i) Whether the appellants who each hold a fully executed, fully paid up but Unregistered Memorandum of Transfer evidencing their purchase of condominium units in the Angelus, are persons holding an interest in land and entitled to be paid compensation by the Government on its compulsory acquisition of the Angelus Lands.

[17] If the primary issue is resolved against the appellants, the subsidiary issues are; (i) whether there is sufficient evidence from which this Court can conclude that they were prevented by the MKS Respondents from registering their title; and (ii) even if such a conclusion can be drawn, does that place the appellants in a better position to seek compensation under the LAA.

[18] The issues thus narrowed, it is the ruling and reasoning of the Board and the principles it applied to deny the appellants’ claim to compensation, that are at the heart of review in this appeal and not the judgment of Thomas J.

Consideration of The Primary Issue

[19] The appellants rely on the Unregistered Memorandum of Transfer as their source document evidencing their alleged ownership of an equitable interest in the Units for which, pursuant to the provisions of the LAA, they should receive compensation from the Government on its compulsory acquisition of the Angelus Lands.

[20] The MKS Respondents contend that the appellants’ failure to register each memorandum of transfer gives them at most an equitable interest that takes effect as a contractual right. This is by virtue of section 5(3) of the TRA, which expressly prescribes that an unregistered dealing in land (as is the acknowledged position of

the appellants under the Unregistered Memoranda of Transfer), does not confer any rights in respect of the land, except the right to enforce the contract as against the parties.

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

“[66] Inequitable as it seems to us, we are constrained by the law to find that Ms Mitcham, Ms Sylvester and Ms Nicholls have no interest in land that is required to be compensated by the Act. If they have any entitlement it is against the previous proprietors of the subject lands, or those who hold title from them.”

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

- (a) That the English case of **Lloyds Bank Plc v Carrick and Another**⁹, applied to the appellants’ case on the basis that both cases involved the purchase price having been fully paid in relation to the purchase of land under the system of title registration, with the result that an unregistered equitable interest could not be binding against third parties because they failed to do that which Parliament has ordained must be done if their interest is to prevail over that of a third party, namely to register the estate contract.
- (b) That section 5(3) of the TRA expresses the principles repeated in the **Lloyds Bank** case that dealings with registered land in Saint Christopher which are not in accordance with the provisions of the Act, operate, as contracts only conferring no right in respect of the land, except the right of enforcing the contract as against the parties, and as persons claiming, otherwise than as purchasers or mortgagees for value, under such parties, which exception would apply, for example, to

⁹ [1996] 4 All ER 630.

volunteers, which was not the case here.

- (c) That under the LAA there is always room for persons claiming to be entitled to have their titles registered to apply to the Registrar of Titles to have their interests placed on the Register and alternatively, they may bring suit against the registered proprietor, either for specific performance of their contracts, or for damages for breach of contract, but that they could not successfully make a claim under the LAA.

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

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

The Appellants' Submissions

[24] The appellants contend:

- (i) That by virtue of the Unregistered Memorandum of Transfer, they were the holders of an unregistered equitable interest in the Units purchased; that their unregistered equitable interest was protected by sections 2 and 8 of **The Saint Christopher and Nevis Constitution Order 1983**¹⁰ (“the Constitution”) which did not impose any requirement for the interest protected to be purely legal. Resultantly, they were persons interested in the land within the meaning of the LAA for the purposes of the award of compensation in respect of compulsory acquisition.
- (ii) That the Board failed to take account of the impact of Section 6(3) of the

¹⁰ The Saint Christopher and Nevis Constitution Order 1983, SI 1983 No. 881.

TRA₂ which removed land compulsorily acquired from the operations of the Act. Pursuant to section 6(3) therefore, the impact of section 5(3) of the TRA should have been of little relevance to the Board.

- (iii) That in deciding that the appellants had no interest in the Angelus Lands such that they were not entitled to compensation, the Board was wrong to place reliance on the decision of **Lloyds Bank PLC v Carrick and another**¹¹, it being distinguishable as a case not involving the interpretation of the LAA within the context of a written Constitution.
- (iv) That by virtue of their memorandum of transfer, their status was that of beneficial owners in ostensible possession of the Units purchased. As owners in ostensible possession, the Board should have recognised that persons having ostensible possession or enjoyment of the rents and profits of such land shall be deemed to be the owners of the land until the contrary is proved.¹²
- (v) That following the due execution of the memoranda of transfer, they were kept out of title by the respondents who every 21 days filed a whole series of caveats, which led to the memoranda of transfer not being registered. As a result there was nothing else they could do to have their memoranda of transfer registered. In such circumstances equity would treat as done that what ought to have been done.

[25] It should be noted that the appellants' claim to be the holders of an unregistered equitable interest in the Units purchased, represented a crystallizing of the dichotomous description of their interest before the learned trial judge, 'as an unregistered legal interest at best in the units and at worst an unregistered beneficial or equitable interest'.

¹¹ [1961] 4 All ER 630.

¹² Section 26, Land Acquisition Act.

Effect of section 5(3)

[26] The Board construed section 5(3) of the TRA as determining quite clearly that the appellants' Unregistered Memoranda of Transfer did not confer on them any right or interest in the Angelus lands, and its legal effect was that it operated as a contract only.

[27] Section 5 so far as material prescribes:

“5. **Dealings with lands brought under this Act.**

(1) From and after the time when any land is brought under the operation of this Act, all dealings with such land shall be in the forms and governed by the principles set forth in this Act, and all such dealings shall take effect from the date and act of registration, and not from the date of the execution or delivery of any instrument or document, or otherwise, save as in this Act provided.

(2) (...)

(3) Dealings with lands brought under the operation of this Act, which are not in accordance with the provisions of this Act, shall operate as contracts only, and shall not confer any right in respect to the land, except the right of enforcing the contract as against the parties.’ [Emphasis added].”

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

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

[29] One does not have to rely on the somewhat analogous situation in **Lloyds Bank Plc v Carrick and another**¹³ as did the Board, to construe what section 5(3) made very

¹³ [1996] 4 ALL ER 630. In this case, Mrs. Carrick had purchased a property from her brother-in-law, Mr. Carrick. She had paid the full purchase price and had assumed possession, but had failed to register her

clear almost 100 years earlier. The Board found that the effect of section 5(3) is that the appellants' unregistered memorandum of transfer is an unregistered dealing in land, which is incapable of conferring any right or interest in respect of land. I agree with this finding. Section 5(3) does not stand alone in dictating the correctness of the Board's conclusion. It is a conclusion that is underscored by other provisions of the TRA. It is specifically aided by the definition of "dealing" in the First Schedule to the TRA and reinforced by the illustration given in the definition.

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

[30] It is clear from the definition of 'dealing' in the First Schedule to the TRA that the appellants' Unregistered Memorandum of Transfer is a 'dealing' in land. It was required to be presented for registration and to be registered in order to have

interest in the land. Mr. Carrick, as legal owner, had mortgaged the property with Lloyds Bank, but had defaulted in his obligations to the bank, and it had foreclosed on the property. Mrs. Carrick argued that a trust arose which protected her from the bank, on the basis that Mr. Carrick was a bare trustee and as such held no beneficial interest in the property. The Court of Appeal rejected this contention. It was admitted by all parties that Mr. Carrick was a bare trustee as Mrs. Carrick had paid the purchase price in full. Mr. Carrick no longer maintained any beneficial interest in the property. However, due to the land registration system, Mrs. Carrick's equitable interest could not bind third parties with subsequent registered interests. Her interest was binding only as between herself and Mr. Carrick. Lord Morritt said at page 637:

"The payment of £19,000 by Mrs. Carrick to Mr. Carrick did not as such and without more give her any interest in the maisonette. Nor, prior to the conclusion of the contract, were the circumstances such that Mrs. Carrick could assert that her brother-in-law held the maisonette on any trust for her benefit. The source and origin of the trust was the contract; [...] Mrs. Carrick is unable to establish a bare trust as against the bank for it has no existence except as the equitable consequences of the contract. Accordingly, I reject the contention founded on the bare trust."

[...]

It is true that on this footing the ultimate position of Mrs. Carrick with the benefit of a specifically enforceable contract may be worse than it would have been if there had been no contract. But that is because she failed to do that which Parliament has ordained must be done if her interests is to prevail over the Bank, namely to register the estate contract."

legal effect as a completed sale of the Units to the appellants. Unless presented for registration, the sale of the Units remained incomplete with the consequence that the proprietorship of the land was never affected by the alleged beneficial interest.

[31] It is a conclusion reinforced by other sections of the TRA as well. For example:

(i) By section 3(4) which mandates that:

‘Before the issue of a certificate of title, the Registrar of Titles shall note thereon ... all mortgages and encumbrances affecting the lands, in the order of their dates.’

(ii) By section 5(1) above, which stipulates that dealings with land shall take effect from the date and act of registration and not from the date of execution or delivery of the instrument or document;

(iii) By section 8 which lays down in express terms that ‘All certificates of title granted under this Act, and all notings of mortgages and encumbrances on the same, shall be indefeasible.’

(iv) By the definitions of ‘Indefeasible’ and ‘Note’ in the First Schedule to the TRA which are reproduced in full:

“Indefeasible. The word used to express that the certificate of title issued by the Registrar of Titles, and the notings by him or her thereon, cannot be challenged in any Court of law on the ground that some person, other than the person named therein as the registered proprietor, is the true owner of the land therein set forth, or on the ground that the mortgages or encumbrances in the notings thereon are not mortgages and encumbrances on the said land; except on the ground of fraud connected with the issue of such certificate of title, or the noting of such mortgages or encumbrances, or that the title of the registered proprietor had been superseded by a title acquired under the Limitation Act, Cap 5.09 by the person making the challenge. The word also means that, the certificate of title being issued by the Government of the State, the Government of State is, with the exceptions above mentioned, prepared to maintain the title in favour of the registered proprietor,

leaving any one justly aggrieved by its issue to bring an action for money damages against the Government of the State.”

“Note. The word used to denote the writing and markings with figures which the Registrar of Titles makes upon the certificate of title in the register, and on the duplicate issued to the registered proprietor, to show the mortgages and encumbrances which are upon the land, and also the transfers and discharges of such mortgages and encumbrances, and the caveats, or the withdrawal or removal of caveats. The notings made by the Registrar of Titles upon a certificate of title are as indefeasible as the title upon which they are marked, that is, that any one, in dealing with the land, may take it as guaranteed by the Government of the State that no other mortgages or encumbrances affect the land than those noted on the certificate of title, and that the existing mortgages and encumbrances are correctly set forth. {Emphasis added}.”

- (v) By section 9, which gives the registered proprietor the absolute power to deal with the land in any manner and mandates that lesser interests in land must be recorded on the certificate of title. Section 9 provides:

“9. Powers of the registered proprietor.

In every certificate of title a registered proprietor or proprietors shall be set forth of the land to which it relates, who shall have the absolute power to deal with the land in any manner in which land may be dealt with under this Act, any rights for life, or rights in the land for terms of years, or any other limited or conditional rights, being hereby declared to be encumbrances on the lands, and requiring to be constituted as such in the manner in which encumbrances are constituted under the provisions of this Act. [Emphasis added]

- (vi) By section 10¹⁴ which confers on the registered proprietor named in

¹⁴ Section 10: “The right of the registered proprietor named in a certificate of title to the land comprised in a certificate of title granted under this Act shall be the fullest and most unqualified right which can be held in land by any subject of the Crown under the law of England, and such right cannot be qualified or limited by any limitations or qualifications in the certificate of title itself, unless such limitations and qualifications were inserted in any Crown grant in place

the certificate of title, the fullest and most unqualified right which can be held in land. Under and by virtue of this section, qualifications and limitations on the land and mortgages and encumbrances exist and have effect only when inserted on the certificate of title. By section 50, which provides for the creation of encumbrances. The definition of encumbrance in the First Schedule to the TRA, is instructive of the following requirements: that all lesser interests in land; all rights against the registered proprietor created in the form of dealings; all judgments; orders; or caveats to prevent dealings, must be noted on the certificate of title as an encumbrance. The definition is set out in full.

“Encumbrance. All burdens, securities, or liens upon land, arising whether in law or in equity, other than mortgages, by which the land is subjected to particular interests in favour of individuals, or the revenues thereof are affected for the payment of annuities or temporary charges; and also any dealings with land which, in the event of sale, would limit the free use and disposal thereof by the purchaser, such as leases for three years and upwards; and all temporary attachments by judgment; and all caveats forbidding registration of dealings. An encumbrance is made, constituted, or created by a memorandum of encumbrance or memorandum of lease, the noting of a judgment or order, or the presentation of a caveat. The instruments must be presented to the Registrar of Titles, and must be noted by him or her on the certificate of title in the same manner as mortgages. Encumbrances (except caveats and judgments) may be transferred and discharged in the same manner as mortgages, and the transfers and discharges must be noted by the Registrar of Titles.”

- (vii) By section 56, which is of primary importance for underscoring that rights or interests granted in or over land, exist and affect the land, only when they are registered and made visible on the certificate of title. Section 56 requires no elucidation except to

of which the certificate of title has been issued or as in the case of mortgages and encumbrances, when these are noted on the certificate of title.”

accent the portion underlined. It prescribes that:

“56. **Leases for three years to be encumbrances.**

For the purposes of this Act, and in order that all the rights granted, which to any important extent affect the land, may appear upon the certificate of title, a lease for three years and upwards shall be deemed an encumbrance, and shall be constituted by a noting on the certificate of title in the same manner as an encumbrance.”

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

[33] There is no prescient reasoning involved in this determination. Firstly, it is giving effect to the clearly and unequivocally expressed provisions of section 5(3). Secondly, it is giving effect to the tenets of indefeasibility of title and the role which equity still plays in the determination of issues arising under the TRA, as long since articulated by Lord Wilberforce in **Frazer v Walker and others**¹⁵. In his words:

“Their lordships have accepted the general principle, that registration under the Land Transfer Act, 1952, confers on a registered proprietor a title to the interest in respect of which he is registered which is (under s 62 and s 63) immune from adverse claims, other than those specifically excepted. In doing so they wish to make clear that this principle in no way denies the right of a plaintiff to bring against a registered proprietor a claim in personam [...] for such relief as a court acting in personam may grant. That this is so has frequently, and rightly, been recognised in the courts of New Zealand and of Australia...”

¹⁵ [1967] 1 ALL ER 649 at 655.

[34] Notwithstanding the conclusions I have come to on the non-proprietary effect of the Unregistered Memorandum of Transfer, I must still consider whether as the appellants' posit:

- (1) That section 5(3) of the TRA is irrelevant to their claim as the Unregistered Memorandum of Transfer is an interest in land which is protected under the Constitution and is cognisable under section 8(1) of the LAA as granting them an entitlement to compensation as persons interested in the land;
- (2) That they are unaffected by section 5(3) which focuses on dealings in land and the compulsory acquisition was not a dealing in land. Section 6(3) of the TRA is applicable to their claim since by virtue of that section, the Angelus Lands were removed from the operation of the TRA when the compulsory acquisition took place.
- (3) That there was a failure by the Board to recognise that by virtue of section 26 of the LAA, they were in ostensible possession of their units; that as persons having ostensible possession or enjoyment of the rents and profits of their units, they should be deemed to be the owners thereof and awarded compensation on this basis.

[35] I will deal first with the relevance of section 6(3) of the TRA followed by the claim said to arise under section 26 of the LAA as both can shortly be disposed of. The pertinent provisions of section 6 of the TRA provide as follows:

"6. Procedure where land acquired by the Crown

- (1) In any case where the land of the registered proprietor under this Act is partly or wholly acquired by the Crown by gift, purchase or devise, or under the provisions of any Act for the time being in force relating to the acquisition of land, the Governor-General shall forward to the Registrar of Titles the particulars of such acquisition (the correctness of which shall, in the case of acquisition by purchase, be certified by the registered proprietor) together with a plan or, where part only of the land has been acquired, with a plan in duplicate showing the extent of such acquisition.

- (3) On receipt of such particulars and plan or plans, the Registrar of Titles shall
- (a) note on the original, and also on the duplicate certificate of title, the fact, date and extent of acquisition of the land by the Crown and also a reference to the volume and folio in the book (hereinafter in this section referred to) in which a copy of the plan relating to the land may be found and, where the whole of the land has been acquired, cancel the certificate of title;
 - (b) [Omitted as not relevant]
 - (c) [Omitted as not relevant]
- (4) The effect of noting or cancellation under subsection (2) shall be that the land or portion of the land the subject of the certificate of title shall thereby be removed from the operation of this Act.”

[36] The appellants have failed to demonstrate how the removal of the Angelus Lands from the operation of the TRA by virtue of section 6(3), would accord to their Unregistered Memorandum of Transfer a status greater than they had before the compulsory acquisition took place. Such an attempt would have been futile in my view. Section 6(3) must be construed in the context of section 6(1). On a partial or total acquisition of lands by the Crown (whether by gift, purchase, devise or compulsory acquisition), the Governor General is required by section 6(1), to forward to the Registrar of Titles, particulars of the acquisition duly certified by the registered proprietor. On receipt of these particulars, the Registrar of Titles must in the case of a partial acquisition, note on the certificate of title the date and extent of the lands acquired. If the Crown acquired the whole of the lands, the Registrar of Titles must cancel the certificate of title.

[37] By removing the acquired land from the operation of the TRA, the intention behind section 6(3) is that the principles of the Act should no longer apply to the land acquired by the Crown. The resulting effects are:

- (i) The noting of the acquisition of part of the land on the certificate of title of the registered proprietor means that his certificate of title is no

longer indefeasible. The same applies to any notings of mortgages and encumbrances on the certificate of title.

- (ii) The cancellation of the certificate of title on an acquisition of the whole of the land would have the same outcome. The certificate of title and interests in land noted thereon no longer enjoy the indefeasible guarantee enshrined in section 8 of the TRA.
- (iii) The noting of the partial acquisition on the certificate of title or the cancellation of the certificate of title, serves to nullify the registered proprietor's absolute powers of dealing with the land under section 9 of the TRA.
- (iv) The land acquired is no longer subject to the registration of dealings between the registered proprietor and third parties, or to the creation and noting of encumbrances by third parties on the certificate of title.
- (v) Most important, by removing the land from the operation of the TRA, the acquired land can once again be made the subject of a Crown grant under section 7.

[38] The intention of 6(3) could not sensibly be to transform that which was not a right or interest in land prior to the Crown's acquisition of the land, into an interest in land after such an acquisition. To say that the compulsory acquisition is not a dealing in land, adds nothing to the argument. Section 6(3) does not assist the appellants in establishing that they have an interest in land for which they can be compensated.

Entitlement under Section 26

- [39] The appellants modelled a right to compensation by placing reliance on Section 26 of the LAA, which states:

“26. Persons in possession to be deemed owners.

Where any question arises touching the title of any person to any land which may be entered upon or acquired for the purposes of this Act, or touching any estate or interest therein, the person having the ostensible possession or enjoyment of the rents and profits of such land shall, for the purposes of this Act, be deemed to be the owner of the same until the contrary is proved.”

- [40] Section 26 seemingly is a legitimate pathway for a claimant to prove an entitlement to compensation by being deemed owners of their units, providing they meet the criteria there specified. It appears that the appellants did not make a claim on this basis to the authorized officer or before the Board. Certainly, the award of the Board is silent on the issue.

- [41] Further, an allegation of failure to recognise an entitlement under section 26 was not relied on as a ground of appeal against the decision of the Board. It was levelled as a criticism of the Board’s award at paragraph 40 of the appellants’ skeleton arguments on appeal dated 31st May 2014. There, the complaint is that:

“[40] The Board should have found it to be clear that the Appellants were in ostensible possession of the Units and recognized that persons having ostensible possession or enjoyment of the rents and profits of such land shall be deemed to be the owners of the land until the contrary is proved (Section 26 Land Acquisition Act)”

- [42] In a summary response, the MKS Respondents’ say that the appellants failed to adduce any evidence before the Board to show that they were in actual or ostensible possession of their units or that they were in receipt of the rents and profits from their units. I am satisfied from a review of the transcript of the hearing before the Board, that the appellants failed then to assert a claim in reliance on the provisions of section 26, and also failed to adduce any evidence that could

form the factual matrix for a finding in their favour pursuant to section 26. For these reasons the appellants contention is rejected.

The right under Section 8(1) of the Land Acquisition

[43] As earlier noted, the appellants contend that their unregistered Memorandum of Transfer constitutes an interest in land which is protected under the Constitution and is cognisable under section 8(1) of the LAA as granting them an entitlement to compensation as persons interested in the land. They assert that this interest in land arises outside of the TRA.

[44] The MKS Respondents had contended before the Board and in their written skeleton arguments on appeal, that the TRA recognises legal interests only and that accordingly only legal interests were protected by payment of compensation under the LAA. In oral submissions on appeal, Mr. Carrington QC appearing for the MKS Respondents did not pursue this line of argument. In his view it was distracting to center the arguments on making a distinction between legal interest and beneficial interest. He asserted that the crux of the matter was to ascertain what interests in land were created by the TRA and honed the argument for the MKS Respondents with the following submissions:

- (i) The LAA was enacted in 1958 against the background of the TRA, which was enacted in 1886. The TRA forms a complete system of land holding and conveyancing for property in Saint Christopher brought within its scope.
- (ii) That interests in land contemplated by the Constitution and by section 8 of the LAA, can only be recognised through the scheme of the TRA. In making this point, he focused his analysis on sections 8, 9, 10 and section 50 of the TRA taking into account the meaning of 'encumbrance' and of 'dealing'.
- (iii) That the effect of these sections is that, the person named in the

certificate of title as the registered proprietor holds the absolute interest in the land. However all lesser interests must be noted on the certificate of title by means of an encumbrance. He used the more neutral term “statutory interests” as his labeling for interests arising under the TRA and summed up the position by stating that as section 9 of the TRA shows there are no unregistrable interests in land under the TRA.

[45] In the Federation of Saint Christopher and Nevis, the right to compensation on a compulsory acquisition of property is protected by section 8 of the Constitution. Section 2 of the Constitution declares the Constitution to be the supreme law of the Federation. By section 8 (1) property acquired by the State must be for a public purpose and compensation must be paid to persons having an interest in the acquired property.

[46] Section 8 of the Constitution provides:

“8.(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and by or under the provisions of a law that prescribes the principles on which and the manner in which compensation therefor is to be determined and given.”

[47] It is not in issue that the word “property” as used in section 8 (1) of the Constitution must be given the broadest meaning as it has been held to protect not only interests in land but every form of private property.¹⁶ It embraces protection for the broadest spectrum of rights to property. On the basis of this broad application to be given to the word “property”, the appellants contend that references to “land” and “interests in land” in the LAA must be given the widest meaning and must therefore be construed to include equitable interests in land. In paying due regard to section 8 (1) of the Constitution, the Board was correctly mindful of the fact that its role was to

¹⁶ Attorney -General of St. Christopher and Nevis v Lawrence, (1983) 31 WIR 176.

assess compensation for the compulsory acquisition of interests in land, by applying the principles of assessment laid down by the LAA.

[48] The LAA applies to any land acquired for a public purpose. There is no definition given of “land” in that Act. Section 8(1), is the only provision in which the wording “interest in land” appears. No definition is given of this term. There are references in section 5, section 8 (1), section 9, section 13(1)(e) and section 13(2)(e) to persons interested in land. “Persons interested” is defined in section 2 as “every person claiming, or entitled to claim, compensation under this Act: Provided that a tenant by the month or at will shall be deemed not to be a person interested for the purposes of this Act”.

[49] I construe the definition of “persons interested” as embracing two categories of persons. On the one hand, there are those persons who assert a claim to compensation but are debarred therefrom in consequence of failure to prove an extant interest in the land. For example, this would be the position where a subsequent mortgagee gained priority over an equitable mortgagee where the latter failed to secure his preference by registering a caveat.

[50] In the other category, are those persons who assert a claim to compensation and can straightway prove an indefeasible interest in land. This would be the position not only of the holder of the certificate of title, but of all registered interest holders such as mortgagees or encumbrances¹⁷. An instance of an encumbrance, would be a lessee for a term exceeding 3 years¹⁸ or an equitable mortgagee who has secured his preference on the Certificate title by noting of a caveat¹⁹. The phrase “persons interested in land” as defined, does not inevitably imply that such persons must be regarded without more as possessing an interest in land. Likewise, a claim to compensation by persons interested in land does not automatically connote a right to compensation by the persons claiming.

¹⁷ Section 8 of the TRA.

¹⁸ Section 56 of the TRA.

¹⁹ Section 62 of the TRA.

[51] This interpretation of the scope of the definition of “persons interested in land”, is fully supported by the statutory prerequisites to establishing a right to compensation enacted in section 8(1), section 13(1) (e) and section 13(2)(e) of the LAA. While section 8(1) is the only provision in which the wording “interest in land” appears, to be noted however, is the elliptical reference to interest in land in section 13(2)(e). Section 13(2)(e) provides that the authorised officer must include in his report to the Board, ‘the apportionment of the provisional compensation among the persons interested in the land, in respect of their interest.’ [Emphasis added].

[52] Section 8(1) states:

“8. Authorised officer may require information as to interests in land

(1) The authorized officer may, by notice served personally, or by post addressed to the last known place of abode or business of the person concerned, require the owner or occupier of, or any person interested in, any land, or in any part thereof, in respect of which a declaration or a notification has been published in the Gazette under section 3 or section 4 respectively, to deliver to him or her within a time specified in the notice, being not less than twenty-one days after service of the notice, a statement in writing containing so far as may be within his or her knowledge, the name of every person possessing any interest in the land, or any part thereof, whether as partner, mortgagee, lessee, tenant or otherwise, and the nature of such interest.” [Emphasis added].

[53] A careful pausing and analysis of section 8(1) shows that it is not the portal for the ascertainment of interests in land that are protected in compensation by the LAA. The aim of section 8(1) is to assist the authorized officer to identify as exhaustively as possible all persons having an interest in land and the nature of the interest. It does so by placing the onus on every owner, occupier of, or any person interested in land upon written notification from the authorized officer, to furnish him with a statement in writing, to the extent of their knowledge, of the name of every person possessing any interest in land, or any part thereof.

[54] The requirement for the identification of all interests in land imposed by section 8(1) is but a step preparatory to performance of certain of the duties imposed on the

authorized officer under section 13 of the Act. In particular these are the duties to ensure: (1) that he forwards to the Board 'the names and addresses of the persons whom he has reason to believe are interested in the land'²⁰; and (2) that in his report to the Board, he provides "the apportionment of the provisional compensation among the persons interested in the land, in respect of their interests."²¹

[55] Far from being one of the legal bases that confers an interest in the Angelus Lands on the appellants, the ambit of section 8(1) is to place on them the obligation to assist the authorized officer (if called upon), with identifying all persons (including themselves), whom they believe possess an interest in the Angelus Lands. To assist in the discharge of this obligation, section 8 (1) gives some illustrations of the nature of interests in land. As it indicates, the interest in land may arise as 'partner, mortgagee, lessee, tenant or otherwise'.

[56] Section 8(1) cannot be said to be exhaustive by any means, of the full range of interests in land. It must be remembered that title to land in Saint Christopher and Nevis is held under a dual titling system. The title to some lands is held under and governed by the provisions of the TRA, while title to other lands is held under and governed by the **Conveyancing and Law of Property Act**.²² Section 8(1) of the **Constitution** and section 8(1) of the LAA protect interests in land arising under both systems of land tenure.

[57] For this reason, there is inherent logic to the proposition advanced by MKS Respondents, that any interests in land contemplated by the Constitution and by section 8 (1) of the LAA, can only be recognised through the scheme of laws of the Federation of Saint Christopher and Nevis that govern title to and interests in land. In the case of the Angelus Lands, that scheme of law is undoubtedly the TRA. This court must therefore look to the provisions of the TRA in order to determine the

²⁰ Section 13(1)(e) of the LAA.

²¹ Section 13(2)(e) of the LAA.

²² Cap 10.04 , Revised Laws of Saint Christopher and Nevis 2009.

interests in or over the Angelus Lands that are protected by the right to compensation pursuant to section 8(1) of the Constitution and the LAA.

Interests in land registered under the TRA

- [58] The TRA gives a guarantee of indefeasibility of title to and of interests in land. As the Board underscored, it is the adaptation in Saint Christopher and Nevis of the Torrens system of land tenure. In order to back the guarantee of indefeasibility, the TRA sets up an intricate statutory scheme for: (i) registration of title to and transfer of land; (ii) for registration of all dealings in land that are intended to change or affect the ownership of land and; (iii) for registration of all dealings that are intended to increase or diminish mortgages and encumbrances over the land. In its carefully crafted provisions, it lays down the cardinal principles that underpin the indefeasibility of title.
- [59] Sections 8, 9 and 10 together with the comprehensive definitions of the terms 'indefeasible' 'encumbrance' and 'note', (set out and discussed in paragraphs 29 to 31 above), are the provisions paramount to indefeasibility of title to land. To this list must be added sections 43 and 52, which provides for priority as between encumbrances and mortgages according to their respective date of registration.
- [60] With the unique exception of equitable mortgages,²³ each of these provisions establishes definitively that subject to the provisions of the TRA, an interest in land exists under that Act when it bears the stamp of indefeasibility by notation in the register as well as on the duplicate certificate of title. Registration and noting on the certificate of title are the sine qua non of the existence of interests in land under the TRA and this is so whether the interest has its origins in law or in equity. We have seen from the first of the four types of encumbrance identified by the TRA, that recognition and protection is given to burdens, securities and liens upon land arising in equity.

²³ Pursuant to section 59, an equitable mortgage is created by deposit of the certificate of title with the mortgagee and can subsist off the register without being noted on the certificate of title. Pursuant to section 62, an equitable mortgagee can be protected by a caveat, which is a form of encumbrance noted on the certificate of title. It may be converted into a mortgage in accordance with section 63.

- [61] This availability of an encumbrance as the vehicle to note on the certificate of title, an interest arising in equity, sets to naught the argument of the MKS Respondents that the TRA recognises legal interest only²⁴ and does not recognise equitable interests. No such distinction can be found in the provisions of the TRA. It sets to naught too, the misplaced and expansive submission of the appellants that the TRA cannot be used to defeat equitable interests in land. This is an engineered assertion that begs the answer to the question whether the TRA embraces equitable interests. The short response is that, one must look to the provisions of the TRA in order to determine the degree of recognition or the degree of protection that is given to claims to equitable interests in land.
- [62] For completeness, one must consider here the ramifications of the finding of the Board at paragraph 67 of the award that it is '[..] constrained by the law to hold that none of the Claimants who did not hold a certificate of title under the Title by Registration Act is entitled to compensation from the Government.'
- [63] With respect, this finding is unsustainable in law. It promotes a breach of section 8(1) of the Constitution by recognising only the interest of the registered proprietor of land as having the right to compensation on a compulsory taking. It compounds the breach by excluding from the right to compensation, the full complement of lesser interests in land which exists under the TRA, and which, on the broad definition given to 'property', must enjoy the protection of the Constitution. This finding places the Board at odds with the test of entitlement that it formulated at paragraph 67 of the award.
- [67] **The test for entitlement:** The powers of the Board to award compensation are limited by the provisions both of the Title by Registration Act and the Land Acquisition Act. While "property" protected by The Constitution is capable of wide interpretation, the Board is not permitted to award compensation to every person whose property rights may have been infringed by a compulsory acquisition. In a case involving compulsory acquisition of registered land, the Board is limited by the Land Acquisition Act to awarding compensation only to those persons who hold land as defined by

²⁴ This was advanced in their written skeleton submissions.

the Title by Registration Act and following the limitations contained in that Act.” [Emphasis added].

[64] I end the detailed consideration of the primary issue in this appeal with the following summary conclusions:

- (1) The court must adhere to the stringent provisions in section 5(3), and hold as did the Board, that the appellants’ Unregistered Memorandum of Transfer is an unregistered dealing in land which is incapable of conferring any right or interest in respect of land governed by the TRA. By parity of reasoning, it cannot confer on them an interest in the Angelus Lands.
- (2) Section 6(3) of the TRA does not improve the appellants’ position. By removing lands acquired by the Crown from the operation of the TRA, the intention was two-fold. It ensured that the principle of indefeasibility title to land and of interest noted on the certificate of title, should no longer apply to the acquired lands. Secondly, by removing land acquired by the Crown from the operation of the TRA, section 6(3) secured that the acquired land could once again be made the subject of a Crown grant by virtue of section 7.
- (3) On a compulsory acquisition of lands brought under the operation of the TRA, one must look to the scheme of TRA in order to determine what constitutes interests in land. It is only interests in land as so ascertained, which are protected on a compulsory acquisition by the right to compensation under section 8(1) of the Constitution of Saint Christopher and Nevis and pursuant to the provisions of the LAA. These consist of the absolute interest of the holder of the certificate of title, ranging down to the interest of a legal or equitable mortgagee, and encompassing all lesser interests in land that have been presented for registration and noted on the certificate of title as encumbrances.
- (4) The Board was right in ruling that the appellants were not entitled to compensation. To grant recognition to an unregistered dealing as constituting an interest in land would undermine the indefeasible nature of

registered interests and throw into a state of flux if not chaos, the scheme and principles of the TRA.

- (5) Section 26 seemingly is a legitimate pathway for a claimant to prove an entitlement to compensation by being deemed the owner of the land providing the criteria there specified is met. The appellants did not make a claim on the basis of section 26 to the authorized officer or before the Board. I am satisfied from a review of the transcript of the hearing before the Board, that the appellants failed then to assert a claim in reliance on the provisions of section 26, and also failed to adduce any evidence that could form the factual matrix for a finding in their favour pursuant to section 26.

The subsidiary issues

- [65] (i) Whether there is sufficient evidence from which this Court can conclude that the appellants were prevented by the MKS Respondents from registering their memoranda of transfer by the filing of caveats; and
- (ii) Even if such a conclusion can be drawn, does that place the appellants in a better position to seek compensation under the Land Acquisition Act. Both of these issues must be decided against the appellants by reason of their own inertia.
- [66] In November 2005, B.M.T., the registered proprietor of the Angelus Land, executed a memorandum of transfer for each of the Units purchased by the appellants. By that date the appellants had paid the full purchase price for each unit. They assert that following the due execution of the memorandum of transfer, the MKS Respondents filed a whole series of caveats almost every 21 days, which led to the memorandum of transfer not being registered.
- [67] This statement must be viewed with caution for two reasons. First, no evidence was adduced to show that the appellants attempted to or did present the memorandum of transfer for registration as was required by section 20 of the **TRA**. It was telling that the appellants did not give an explanation for the failure

to physically present the memorandum of transfer to the Registrar of Titles. Second, it suggests that the MKS Respondents' caveats were the response to the appellants' memorandum of transfer. This is not correct as the caveats were being filed since September 2005.

[68] As provided by section 112, the caveats were registered to prevent any dealings with Angelus Lands until the court had determined the extent if any, of the rights of the MKS Respondents to the Angelus Lands in the claim **Rowe & Secrist v Administrative Services et al**²⁵ ("the proceedings"). The order of Belle J. dated 21st September 2007, brought the proceedings to an end with a determination in favour of the MKS Respondents.

[69] The appellants took no steps to have the caveats removed. There is no evidence that they attempted to negotiate with the MKS Respondents for the release of the caveats. As persons claiming to be the proprietors of the Units purchased, they could have invoked the protection of section 16 of the TRA²⁶ and entered a caveat to forbid the issue of a certificate of title to the MKS Respondents or to claim that a note is made on the certificate of title stating the interest they claimed in the land. They could have requested B.M.T., the caveatee, to present an order to the Registrar of Titles for the removal of the caveats pursuant to section 112. It was also open to them to apply to the court to have the caveat removed by order of the court pursuant to section 119.

[70] In the alternative, they could have obtained an order of the court approving the registration of the memorandum of transfer pursuant to the liberty to apply provision of the restraining order dated 27th January 2007. In this regard, the MKS Respondents correctly underscore the fact that registrations of title were

²⁵ SKBHCV2003/0222 (delivered 23rd July 2004, unreported).

²⁶ "Section 16. Parties interested may enter caveat.

'Any person who claims to be the proprietor of any land, or to be interested in any mortgage or encumbrance, may enter a caveat in the office of the Registrar of Titles, either forbidding the issue of any certificate of title for any land to any specified person, or claiming that a note may be made upon any certificate of title in regard to any mortgage or encumbrance, or in any other manner stating an interest in any land.'

achieved on behalf of two purchasers in August 2006. The acquisition process was not started until September 2006 and no explanation is given why the appellants did not seek registration during the intervening period.

- [71] It was foolhardy for the appellants to take an armchair approach to their rights. They must bear the consequences of their inertia without intervention by the court of equity to grant the relief they seek relying on **Re Rose. Rose v Inland Revenue Commissioners**,²⁷ and to deem as done what ought to be done to complete the Memorandum of Transfer. Curiously, the appellants also rely on a dictum of Lawton LJ in **Mascall v Mascall**,²⁸ where he opined that the plaintiff had done everything within his power in the ordinary way of the transfer of registered property, to transfer the house to the defendant and, that it was for the defendant to get the Land Registry to register him as the proprietor of the property. This dictum is against the appellants as I have found that they took no steps to be registered as proprietors of the Units.

Disposition

- [72] The appellants must therefore also fail on the secondary issues. Their appeal against the ruling of Thomas J on the effect of section 17 of the **Land Acquisition Act** is allowed. The award of the Board of Assessment denying their claim to compensation for the Units purchased is upheld.

²⁷ [1952] Ch. 499 at pp 518 to 519.

²⁸ (1985) 50 P. & C.R. 119 at pp 125 to 126.

[73] The parties shall file submissions on the incidence of costs within 21 days from the date of this judgment.

Joyce Kentish-Egan, QC
Justice of Appeal [Ag.]

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

I concur.

Gertel Thom
Justice of Appeal