

SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP2011/011

FRANCIS MONROSE
(aka HILERON FRANCIS JN. PIERRE)

Appellant

and

BANK OF SAINT LUCIA LIMITED

Respondent

Before:

The Hon. Mde. Janice M. Pereira
The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mr. Don Mitchell

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

Appearances:

Mrs. Wauneen Louis-Harris and Ms. Raquel Willie-Trotman for
the Appellant
Mr. Thaddeus Antoine and with him Ms. Thea J. Alexander and
Ms. Mary Juliana Charles for the Respondent

2011: December 15;
2012: February 13.

Civil Appeal- Part 55 Civil Procedure Rules 2000 (CPR) - Judgment creditor enforcing money judgment- Whether judgment creditor may opt to proceed under Part 55 CPR as distinct from proceeding under the Code of Civil Procedure- Section 2, Money Lending Act- Whether section 2 can be invoked on an application under Part 55 CPR

The respondent, Bank of Saint Lucia Limited ("the Bank"), issued a claim based on a debt due under a loan. The Bank obtained a judgment in default of defence dated 16th March 2006 and on 14th July 2010 issued an application for each of the judgment debtor's lands and sought among other things, authorization to sell the land by private sale pursuant to Part 55 of the Civil Procedure Rules 2000 ("CPR"). The judgment debtor, the appellant in this appeal, issued an application in opposition to the Bank's application arguing inter alia that the application made pursuant to CPR Part 55 was without legal basis as CPR Part 55 did not apply to Saint Lucia and that the judgment creditor was required to follow the procedure directed by the Civil Code and the Code of Civil Procedure. The judgment debtor also argued that the judgment debt which included a sum for interest was excessive and was therefore subject to Section 2 of the Money Lending Act. The trial judge dismissed the judgment debtor's application in opposition on the basis that it was without merit and awarded costs against the judgment debtor. He directed that the application for an order for sale pursuant to CPR Part 55 should proceed. The judgment debtor appealed.

Held: allowing the appeal, setting aside the order of the trial judge and ordering costs of this appeal to be borne by the respondent to be assessed unless agreed within 21 days:

1. The trial judge rightly rejected the judgment debtor's argument in respect of the Money Lending Act as it was not open to the judgment debtor to raise it at the enforcement stage but rather ought properly to have formed part of his defence.
2. CPR Part 55 contemplates sale of a judgment debtor's land by way of enforcement. CPR having made the preconditions in Part 55.1(1) conjunctive rather than disjunctive intended to circumscribe the power of the court rather than enlarge it so as to encompass any circumstance where the court was so minded irrespective of whether the proceedings related to land. The procedure set out in CPR Part 55 can be engaged only where an enactment so authorizes the court to order a sale and it is necessary and expedient.
3. Once the enactment empowers the court to order a sale, directs that such an application be made to court and does not delimit the manner by which such a sale may be carried out, CPR Part 55 governs the procedure and the court, on making the order, may also direct the manner of the sale to be either by public or private treaty as the circumstances may require.
4. CPR Part 55 does not give the court a power of sale which is 'at large' but relies upon an enabling statute to ground the court's power to order a sale. It is therefore not a free standing power. The empowering enactment in respect of CPR Part 55 in Saint Lucia is the **Civil Code**. Article 1493 of the **Civil Code** empowers the sale of a judgment debtor's land. The **Civil Code** directs execution by way of a Writ in accordance with the formalities set out in the **Code of Civil Procedure**.
5. **The Civil Procedure Rules 2000** being rules of procedure notwithstanding Article 37 of the **Code of Civil Procedure** does not and cannot override or amend the **Civil Code** which is an enactment.
6. In Saint Lucia, CPR Part 55 is subject to the **Civil Code** and any procedure directed to be followed therein save where the **Civil Code** or the **Code of Civil Procedure** permits a referral to the court. Although the CPR Part 55 procedure may well be invoked in dealing with other matters, the procedure is simply not open to a judgment creditor seeking to enforce payment of a judgment debt. The judgment creditor must abide by the provisions of the **Civil Code** and the procedure set out in the **Code of Civil Procedure**. The learned trial judge accordingly erred in holding that the Bank could invoke the CPR Part 55 by seeking an order for sale directing a sale by private treaty in execution of the judgment debt.

Laborie Cooperative Credit Union v Peter Emmanuel, Saint Lucia High Court Civil Appeal No. 4 of 2007 distinguished.

JUDGMENT

- [1] **PEREIRA, JA:** This appeal raises primarily the question whether, in the State of Saint Lucia, a judgment creditor seeking to enforce a money judgment by way of execution on a judgment debtor's land, may opt to proceed under Part 55, **Civil Procedure Rules 2000** ("CPR") which enables the judgment creditor utilizing that procedure to obtain an order for sale as well as a direction that the sale be by private treaty, as distinct from proceeding pursuant to the **Code of Civil Procedure**¹ which in essence directs such sale to be by way of public auction. The other question raised on the appeal, though not pressed at the hearing, is whether on the hearing of the application under CPR Part 55 for an order for sale, the learned judge ought to have invoked section 2 of the **Money Lending Act**² and reopen the transaction on the basis that the interest chargeable to the judgment debtor was excessive in relation to the principal sum borrowed.

Background

- [2] The matter arises in this way:
- (a) The respondent ("the Bank") issued a claim based on the debt due under the loan. Where a creditor sues his debtor on the obligation this is called a *personal action*³.
 - (b) No defence to the claim having been filed, Judgment in Default was obtained by the Bank on 16th March, 2006 in the sum of \$1,217, 076.41
 - (c) On 14th July 2010 the Bank issued an application for sale of the judgment debtor's lands and sought among other things authorization to sell the lands by private sale.
 - (d) The judgment debtor issued an application in opposition arguing, among other things, that the application made pursuant to CPR Part 55 for a private sale was without legal basis and that CPR Part 55 does not apply to Saint Lucia. Reliance was placed on Articles 1493 and 1499 of the **Civil Code**,⁴ Articles 416, 418 and 499 of the **Code of Civil Procedure** ("CCP"), as well as Articles 500-511E of CCP

¹ Chapter 243, Revised Laws of Saint Lucia, 1957 which remains in effect to the extent it has not been amended by CPR.

² Chapter 12.10 Revised Laws of St. Lucia.

³ See: William De Montmollin Marler – The Law of Real Property: Quebec pg. 443.

⁴ Chapter 4.01, Revised Laws of Saint Lucia 2008.

which detailed the requirements for publication of the sale which then would be contra to the concept of a private sale.

- (g) The learned trial judge dismissed the judgment debtor's application in opposition holding that it was without merit and awarded costs against the judgment debtor.
- (h) The judgement debtor launched this appeal.

- [3] The reasons for the learned judge's dismissal of the judgment debtor's opposition so far as are relevant to this appeal, are captured in paragraphs 15, 23 and 24 of his decision in respect of the CPP Article 499 argument. The section 2 **Money Lending Act** point is captured in paragraphs 17 and 18 of the decision.

The Money Lending Act Point

- [4] I propose to deal firstly with the 'section 2 Money Lending Act' point as this in my view is a short one and thereafter, with the CCP Article 499 point on which the bulk of the arguments were focused.

- [5] At paragraph 17 of his decision the learned judge stated as follows:

"Counsel for the applicant [judgment debtor] also objected to the Bank's application for sale pursuant to Part 55 of the CPR 2000 on the basis that the interest charged was contrary to the Money Lending Act... This objection is also misconceived since an application pursuant to that Act would not be available to a judgment debtor in these circumstances pursuant to Part 12 of the CPR 2000. Part 12.13 prevents a judgment debtor in the case of a default judgment from raising any defence in relation to the quantum of the debt. Furthermore, the intent of section 2 of the Money Lending Act is such that a response to the claimant's claim would be raised when the claim is filed."

- [6] The learned judge quite correctly rejected the judgment debtor's argument on this point for the reasons he gave. In essence, the judgment debtor was attempting to raise at the enforcement stage a point which ought to and could only have been properly raised by way of a defence to the claim in so far as it would have affected the quantum to which the Bank was ultimately entitled. The judgment debtor lost this opportunity when he failed to file a defence to the Bank's claim which resulted in a default judgment being entered under CPR 12.5 for all principal and interest claimed. Once a default judgment is in place the matters on which the defaulter may be heard are quite

limited, as the learned judge rightly observed, by CPR 12.13. The judgment debtor at the very least ought to have followed the procedure laid down in CPR 10.2(4) which says, in effect, that a defendant who admits liability and wishes to be heard on the issue of quantum must file and serve a defence dealing with that issue. Accordingly, I would dismiss this ground of appeal.

The CCP Article 499 Point

[7] The learned trial judge in his decision made on 19th April 2011, in reference to Article 499 of the CCP stated at paragraph 15 thus:

“... in the **Laborie Cooperative Credit Union** decision Barrow JA was at pains to point out that a Court order was not required for a Writ of Seizure and Sale pursuant to Article 499 of the Code of Civil Procedure to proceed. **By implication the language of the Article in no way prevents a litigant from taking a decision to effect a sale of land pursuant to Part 55 of the CPR 2000...**” (my emphasis).

Then in paragraphs 23 and 24 he went on to state thus:

“[23] It is one thing to say that one does not require an order of the court to issue a writ of seizure and sale in St. Lucia. It is quite another thing to say that seeking an order for sale of land through the Court is illegal, improper or unjust. Indeed the use of the CPR 2000 appears to be justified by section 37 of the Code of Civil Procedure which states that the Supreme Court or Judge may, from time to time, make any rules of practice that may be necessary for regulating proceedings, in or out of term, in causes and matters, whether in the Supreme Court or in the District Court, and in all matters of procedure.

“[24] It would also be a mistake to assume that the procedure of seeking a court order pursuant to Part 55 of the CPR 2000 is in some way less fair than the administrative procedure laid down pursuant to Article 499 of the Code of Civil Procedure. Any safeguards provided under the latter procedure are clearly available to a party pursuant to the Part 55 procedure by way of a Part 11 application which could procure the dismissal or adjournment of an application for an order for sale, or influence the kind of order given by the court in pursuance of the sale of the property, the provisions of Part 12.13 notwithstanding”

The submissions

- [8] The arguments on behalf of the judgment debtor and those on behalf of the Bank are essentially the same as those advanced before the learned judge. The judgment debtor contends, in essence, that CPR Part 55 does not apply to St. Lucia and that the only basis on which a judgment creditor may sell a judgment debtor's land in Saint Lucia in execution of a judgment debt is in accordance with the procedure laid down in the CCP as dictated by the **Civil Code** which is the enabling statute empowering sale of a debtor's land in execution of a judgment debt.
- [9] The Bank on the other hand, whilst accepting that the enabling statute on which CPR Part 55 hinges in Saint Lucia is the **Civil Code**, (which then directs the observance of the procedure set down under the CCP) contends that CPR provided an alternative approach to the CCP in respect of the sale of land in execution of a judgment debt. In short, counsel says that a judgment creditor may elect as to whether he wishes to invoke the procedure as outlined in the CCP which provides for a sale by public auction only, or invoke the procedure under Part 55 which permits private sales. Counsel Mr. Antoine argues that this is so by virtue of Article 37 of the CCP which allows for the making of rules of practice as may be necessary for regulating proceedings in the Supreme Court by the Supreme Court or a judge thereof. He posits that CPR which provided the procedure on application for sale of land are rules made pursuant to the power given by Article 37 of the CCP.
- [10] I think it useful to state at the onset that the claim brought by the Bank and the subsequent enforcement proceedings taken were not by way of the Bank seeking to enforce its hypothec. Neither was the claim one relating to any land. Rather it was an ordinary claim grounded in debt, and the application for sale merely by way of execution of the judgment debt. Professor Marler⁵ states that the creditor "having obtained judgment, ... executes it by seizing the movable and immovable property of the judgment debtor in the possession of the latter, causing the movable property to be first sold and then, if his judgment remains unsatisfied, his immovables, those, that is, of which the judgment debtor is or is reputed to be in possession 'animo domini'. The question whether a creditor holding a hypothec on land may, by simply suing on the debt, execute the judgment by applying firstly for an order for sale of the same lands subject to the hypothec does

⁵ Law of Real Property; Quebec - *supra*.

not arise for determination on this appeal. Accordingly, I say no more on this save to say that it strikes me as an unusual approach.

The Law

[11] A convenient starting point in considering the law on this matter is with an examination of some key provisions in CPR. CPR Part 45 deals with how money judgments may be enforced. Part 45.2 says, in effect, that a money judgment may be enforced by:

- (a) a charging order under Part 48;
- (b) a garnishee order under Part 50;
- (c) (subject to the restrictions in any relevant Debtor's Act) by a Judgment Summons under Part 52;
- (d) An order for the seizure and sale **of goods** under Part 46, or
- (e) the appointment of a receiver under Part 51.

No mention is here made of enforcement by order for the sale of land.

[12] Turning to Part 46 however, it is noted that this part deals with "Writs of Execution" as a method of enforcement. Rule 46.1 defines what is meant by a "Writ of Execution." This term covers orders ranging from orders for the sale of land or goods, to sequestration of assets, as well as writs of delivery. Orders for the sale of lands or for the seizure and sale of goods, specifically in relation to Saint Lucia, means either:

- (i) a writ for the seizure and sale of immovable property (such as land); or
- (ii) a writ for the seizure and sale of moveable property (such as goods)

It is clear then that although Part 45(2) (d) does not refer to seizure and sale of land by way of enforcement under Part 46, this does not mean that an order for sale of land is not an available method of enforcement of a judgment or may be any less a writ of execution. This omission was, in my view, deliberate as the framers of CPR appreciated that the court may be empowered to order the sale of land in circumstances other than by way of enforcement of a judgment debt. An example which readily springs to mind is the partitioning of land where the shares may be so small as to be practically indivisible, resulting in the court ordering a sale. It is notable that under the previous rules, **Rules of the Supreme Court 1970** (RSC 1970) the order dealing with court's

power to order sale was Order 31 and did not fall under the general enforcement provisions. Order 31 stated the court's power thus:

"Where in any cause or matter **relating to any land** it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof be sold, the court may order that land or part be sold...." (my emphasis).

No mention is made therein of a judgment creditor or judgment debtor.

[13] By way of comparison, the English **Civil Procedure Rules** Part 40 also deals with orders for sale of land. Part 40.16 says in part as follows:

"In any proceedings **relating to land**, the court may order the land, or part of it to be-

- (a) sold;
- (b) ...
- (c) ... or
- (d) partitioned." (my emphasis)

The English provision therefore appears to give the court a broader power than was accorded under Part 31 of RSC 1970. But what is quite clear in respect of both is that the proceedings ('or cause' or 'matter') before the court, must **relate to land**. Does a claim in debt qualify as a proceeding or cause or matter relating to land? I think not.

[14] I now turn to CPR Part 55 which is at the centre of this appeal. It is, in essence, the replacement provision for RSC 1970 Order 31. CPR 55.1(1) states as follows:

"This Part deals with the sale of land-

- (a) under any enactment which authorises the court to order a sale; **and**
- (b) when it appears to the court to be necessary or expedient that the land should be sold." (my emphasis)

It is readily apparent that the language "proceedings relating to land" or a "cause or matter relating to land" has been dropped. What is more is that the conditions under which this power is engaged are conjunctive or cumulative by the use of the word "and" rather than "or". This part seems to suggest that in order for this power of sale to be deployed there must not only be an enactment authorising the court to order a sale, but the court, being so authorised, must then go on to consider whether the circumstances warrant the exercise of that power. Of some novelty is the fact that Part 55.2(2)(c) and 55.2(4) make mention of a judgment debtor. Part 55.2(2)(c) speaks of the need to state in an affidavit supporting the application 'any restriction or condition which should

be imposed on the sale for the benefit of any adjoining land of the judgment debtor' and Part 55.2(4) speaks of serving the judgment debtor with the application and evidence in support. This leads me inexorably to the conclusion that CPR Part 55 contemplates sale of a judgment debtor's land by way of enforcement for I can think of no other reason for the reference to a judgment debtor. Furthermore, it seems to me that CPR having made the preconditions conjunctive rather than disjunctive intended to circumscribe the power of the court rather than enlarge it to encompass any circumstance where the court was so minded irrespective of whether the proceedings related to land or not.

- [15] Counsel for the Bank argued that the two requirements under CPR Part 55.1 should be read disjunctively, because were they to be read conjunctively then having gone to the enactment, and should the enactment restrict one to the rules and formalities as stated by the Civil Code for example, (as submitted by counsel for the judgment debtor), then one would not be able to revert to requirement (b) thus depriving or fettering the court's discretion to order a sale.
- [16] Order 31 of RSC 1970 would seem to be encapsulated in CPR 55.1(1)(b) but the differences in language between RSC 1970 Order 31 and CPR Part 55.1 are compelling. RSC 1970 Order 31 made it plain that the cause or matter must relate to land. It makes no mention of the court being authorised under an enactment. In CPR Part 55.1 however, the court's power is not by reference to any proceedings or cause or matter relating to land. Rather, the Part 55 procedure may be engaged only where (i) an enactment so authorises; **and** (ii) it is necessary or expedient. To my mind, the omission of the language which referred to the court's power by reference to '*a cause or matter relating to land*' (as was the case under RSC 1970 Order 31) coupled with the specific statement that Part 55.1 deals with the sale of land '*under any enactment which authorises the court to order a sale*' is too concise and complete not to be wholly deliberate.
- [17] Was CPR Part 55.1(1) putting the matter right or is CPR Part 55.1(1)(a) and (b) intended to be disjunctive thereby giving to the court two discrete powers of sale? In my view it is the former. To read (a) and (b) disjunctively would mean that CPR, as free standing rules of procedure, give the court a substantive power to order a sale of land whenever it appears to be necessary or expedient irrespective of any enactment and indeed to order the sale of land in circumstances where the

proceedings or cause or matter had nothing to do with land. This would be a power of considerable breadth. Further, were (b) giving a discrete power of sale, it begs the question as to the necessity for (a) at all. CPR Part 55.1 is clear and is not intended to be read disjunctively so as to achieve its meaning and effect. It says exactly what it means in its conjunctive sense. Subparagraphs (a) and (b) work harmoniously – (a) dealing with the authority or jurisdiction of the court and (b) providing a discretion (and the parameters) in the exercise of that authority or jurisdiction. I accordingly respectfully disagree with counsel’s argument and the reasons he gives for urging a disjunctive construction. The discretion in the exercise of the power of sale is quite a different thing from the exercise of determining the manner of sale having exercised the power. I do not accept that the **Civil Code** which may provide for the formalities of the sale fetters in any way the power of sale or the discretion contained in Part 55.1(1)(a) and (b) which justifies (a) and (b) being read disjunctively.

The enactment empowering the court to order a sale – satisfying CPR Part 55.1(a)

- [18] In the bulk of the common law states and territories falling under the court’s jurisdiction the statute empowering the court to order a sale is normally styled as the ‘Judgments Act’. The Judgments Acts of Antigua and Barbuda,⁶ St. Christopher and Nevis⁷ and the Virgin Islands⁸ are substantively identical. These Acts direct an application to the court for an order for sale of lands in satisfaction of a judgment debt. (section 3). Further, they specify the form which the application must take. The form is then set out in the First Schedule (section 4). It is at this stage that CPR Part 55 comes into play in providing for the evidence in support of the application and otherwise setting out the procedure for the hearing and the directions which the court may give on making the order for sale. CPR Part 55.2 refers to an application for an order for sale. Significantly, it does not state the form in which the application is to be made. This must be a tacit recognition of the fact that the empowering enactments specify and set out its own form for making the application. This in turn must mean that the general rule in CPR 11.6(1) regarding the form an application shall take, (being Form 6 under CPR) does not apply in relation to an application for an order for the sale of land by way of execution and enforcement of a judgment debt pursuant to those enactments. The general

⁶ Judgments Act Cap.227 – Laws of Antigua and Barbuda 1992.

⁷ Judgments Act Cap.3.14 Laws of St. Christopher and Nevis 2002.

⁸ Judgments Act Cap.35 Laws of the Virgin Islands 1991.

conclusion to which I have arrived is that once the enactment empowers the court to order a sale, directs that such an application be made to the court, and does not delimit the manner by which such a sale may be carried out, then CPR Part 55 governs the procedure and the court, on making the order may also direct the manner of sale, which may be a sale either by public auction or by private treaty, as the circumstances of the case may require.

- [19] Saint Lucia is different to the other states and the position is not as straightforward. Saint Lucia applies a **Civil Code** (quite analogous to the Quebec Civil Code) but with various common law principles grafted on to it. It is common ground that the empowering enactment in Saint Lucia in respect of CPR Part 55 is the **Civil Code**. The CCP was enacted as a companion set of rules of civil procedure to the **Civil Code**. It is also common ground that various articles in the CCP were repealed when the RSC 1970 came into force. However, the bulk of the substantive provisions of the **Civil Code** are alive and well. Similarly, many of the articles of the CCP remain valid and effective. As Barrow JA (as he then was) opined at paragraph 23 in **Laborie Cooperative Credit Union v Peter Emmanuel**⁹:

“When RSC 1970 [the 1970 Rules] was enacted, the rule making authority varied the provisions of the Code of Civil Procedure by repealing a number of articles. However, the authority did not repeal article 499 which conferred the power to sell land. Neither did it repeal the procedure for the exercise of that power contained in Article 499 and those following. In fact, the whole of Section V of the CCP which contains those provisions, was left intact. This is in contrast with the repeal of a whole column of articles of the CCP, listed in Schedule 2 to the statutory instrument that promulgated RSC 1970. The implication is ineluctable. The former procedure for the sale of a judgment debtor’s land under the Code of Civil Procedure was preserved. CPR 2000 likewise did not repeal those provisions of that code. They are alive and well.”

- [20] The facts in **Laborie Cooperative** are not similar to the facts in this case. In **Laborie Cooperative** the judgment creditor (the credit union) having obtained a judgment from the High Court caused to be issued a writ of seizure and sale in respect of the judgment debtor’s land. The appropriate fees were paid to the sheriff and the judicial sale was advertised as required by law. However, the Deputy Registrar of the High Court caused to be circulated a memorandum to all attorneys¹⁰ which stated among other things that:

⁹ Saint Lucia High Court Civil Appeal No. 4 of 2007- Decision of a single judge delivered 20th July, 2007.

¹⁰ Memorandum dated 30th November 2006.

“1. When a writ of Seizure and Sale is filed an application should be made to the Court pursuant to Part 55.2 and 55.5 (a) of the CPR 2000 for the fixing of a reserve or minimum price for the sale of property.

...
“5. Pursuant to Article 37 of the Code of Civil Procedure, the CPR supersedes the Code of Civil Procedure.

...”

The trial judge made an order on the Writ of Seizure and Sale directing that an application be made to the court for the fixing of a reserve or minimum price. The Credit Union appealed this order contending that there was nothing which obliges a judgment creditor to make application for an order of the court fixing the reserve price. Barrow J.A. agreed with this contention and set aside the judge's order. The challenge here is to the Bank's application for an order for sale directing a private sale rather than going the route of issuing a Writ of Seizure and Sale as required by the **Civil Code** and the CCP.

[21] I agree fully with the statements of Barrow J.A. in paragraph 23 of his judgment in **Laborie Cooperative** quoted above, save for his suggestion that the power of sale is given by Article 499 of the CCP. In my view it is Article 1493 of the **Civil Code**, which empowers the sale of a judgment debtor's land. It states as follows:

“The creditor who has a judgment against his debtor may take in execution and cause to be sold, in satisfaction of such judgment, the property of his debtor, moveable and immovable,... **subject to the rules and formalities provided in the Code of Civil Procedure [CCP]**” (my emphasis).

Article 499 of the CCP merely prescribes the procedure to be followed. It says:

“The seizure of immovables **can only be made** in virtue of a writ, clothed with the same formalities as writs of execution against movables, ordering the Sheriff to seize the immovables of the defendant and sell them in satisfaction of the judgment pronounced against him for principal, interest and costs.” (my emphasis)

Before Article 499 however, there is Article 416 of the CCP which says, in essence, that the judgment of a court can only be put into execution by means of a writ issuing in the name of the Sovereign addressed to the Sheriff. This causes me to return to the definition of a ‘Writ of Execution’ in respect of Saint Lucia, under CPR 46.1 which says that a writ for the seizure and sale of immovable property is a ‘writ of execution’.

[22] Then follow Articles 500 to 511E (all still alive and well) which detail the procedure to be followed in execution of the Writ. These Articles require the publication or advertisement of the sale. These Articles make it clear that the sale is to be carried out by public auction and not by private treaty. There are simply no rules or formalities in CCP contemplating a private sale by way of execution.

[23] Counsel for the Bank says that CPR Part 55 either 'amended' or in essence 'enlarged' the scope of the CCP. He accepts that the procedure laid out under the CCP is still in force but argues that by virtue of Article 37 of the CCP, when CPR was introduced, it so to speak, 'amended' CCP to the extent that CPR 55 provided an alternative approach when seeking execution by way of sale of a judgment debtor's land. It is therefore necessary to examine what is said in Article 37 of the CCP. This Article says in part as follows:

"The Supreme Court or Judge may, from time to time, make any rules of practice that may be necessary for regulating proceedings, in or out of term, in causes and matters, whether in the Supreme or in the District Court and on all matters of procedure. ...

"The power to make rules of court conferred on the Chief Justice by this article shall be deemed to include the power to add to, vary or annul any existing rules of court or articles of the said Code of Civil Procedure."

[24] This argument, though attractive, is not sound in my view for these reasons:

- (a) CPR Part 55 does not give to the court a power of sale which is 'at large'. It is CPR Part 55 which directs one to an enabling statute for grounding the court's power to order a sale. That statute in Saint Lucia is the **Civil Code**. It is this Code which, unlike the Judgments Acts discussed earlier in this judgment, directs execution by way of a Writ in accordance with the formalities set out in the CCP. The relevant Articles dealing with Writs in execution have not been amended or repealed.
- (b) The CPR being rules of procedure, notwithstanding Article 37 of the CCP, does not and indeed cannot override or amend the Civil Code which is an enactment.
- (c) In Saint Lucia, in order to utilise CPR Part 55 by way of execution, the hurdle posed by the **Civil Code** must be surmounted. This would require an amendment to the language in the Civil Code. In short, CPR Part 55 is subject to the **Civil Code** and thus any procedure directed to be followed thereby save where the **Civil Code** or the CCP themselves permit a referral to the court. For example, an

application for fixing the reserve price as was discussed in **Laborie Cooperative**.¹¹

- (d) From the construction of Part 55 which I have addressed above, it is clear that Part 55 does not give a free standing power to the court to order a sale.

Conclusion

- [25] From the foregoing analysis, I conclude that although the CPR Part 55 procedure may well be invoked in dealing with other matters, the procedure is simply not open to a judgment creditor in execution save for the express purposes permitted by the CCP. A judgment creditor seeking to enforce payment of his judgment debt by way of sale of the judgment debtor's land must abide by the provisions of the **Civil Code** and the procedure set out in the CCP as directed by the Code. The learned trial judge accordingly erred in holding that the Bank could invoke the CPR Part 55 by seeking an order for sale directing a sale by private treaty in execution of the judgment debt. This avenue is not available in Saint Lucia by virtue of the **Civil Code** and the CCP. I would allow the appeal on this ground and set aside the orders of the trial judge directing the Bank to proceed with execution of the judgment debt by way of its application to the court for an order for sale pursuant to CPR Part 55 and awarding costs against the judgment debtor

Costs

- [26] The learned trial judge awarded costs to the respondent Bank on the hearing of the appellant's application under CPR Part 65. This part deals with prescribed costs. It is appreciated that this appeal does not arise on the whole action but merely in respect of the application made for sale of

¹¹ See: *Laborie Cooperative Credit Union –v- Peter Emmanuel*, Saint Lucia Civil Appeal No. 4 of 2007 – Judgment of Barrow JA Para. [20]; Article 511A Civil Procedure Code.

land by way of enforcement of a judgment debt. In my view an order for costs to be assessed would be more appropriate to the circumstances. I would order that the costs of this appeal be borne by the respondent such costs to be assessed unless agreed within 21 days.

Janice M. Pereira
Justice of Appeal

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

I concur.

Don Mitchell
Justice of Appeal [Ag.]