SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. 432 of 1994

BETWEEN:

FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LIMITED
formerly CIBC (CARIBBEAN) LIMITED

Applicant/ Judgment Creditor

And

(1) JACOB MORILLE

Respondent/ Judgment Debtor

(2) ANTHONY DU BOULAY

Respondent/ Purported Purchaser

(3) ARTHUR ISIDORE

Respondent/ Sheriff of the High Court

Appearances:

Mr. Alberton Richelieu for the Applicant/ Judgment Creditor
Mr. Malcolm Augustin for the Respondent/ Judgment Debtor
Mr. Hilford Deterville, QC with him Ms. Diana Thomas for the Respondent/ Purported Purchaser
Mrs. Georgis Taylor-Alexander for the Respondent/ Sheriff of the High Court

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2004: June 14
June 15, September 17

LAW OF CIVIL PROCEDURE...CIVIL CODE OF SAINT LUCIA...CODE OF CIVIL PROCEDURE (CCP)...WHETHER SHERIFF FAILED TO COMPLY WITH FORMALITIES OF SALE AS REQUIRED BY CCP...ARTICLE 600...WHETHER ATTORNEY-AT-LAW CAN BID AT JUDICIAL SALE PERSONALLY OR FOR THIRD PARTY...MEANING OF LITIGIOUS RIGHTS.

WHETHER SHERIFF HAS DUTY TO PROTECT BANK WHERE NO UPSET PRICE IS SET...BANK AS JUDGMENT CREDITOR

IS IT INEQUITABLE FOR PROPERTY ALLEGEDLY WORTH $1.0 M. TO BE SOLD AT JUDICIAL SALE FOR $25,000.00?

VACATING OR ANNULLING OF SHERIFF'S SALE

JUDGMENT

1. HARIPRASHAD-CHARLES J: On 22nd January 2004, the First Caribbean International Bank (Barbados) Limited [formerly CIBC (Caribbean) Limited] ("the Bank") as Judgment Creditor filed a Petition seeking an order to declare judicial sale held on 14th January 2004 illegal, null and void. I heard arguments on 14th June 2004 and the following day, I dismissed with Costs the Petition. I gave detailed oral reasons for my decision which I have now reduced into writing.

Some Background Facts

2. By a judgment of the High Court dated 10th October 1995, Mr. Morille, the Judgment Debtor was ordered to pay to the Bank, the Judgment Creditor the sum of $367,524.00 together with interest at the rate of 14% per annum from 3rd May 1994. On 23rd October 1995, the said judgment was registered at the Registry of Deeds and Mortgages in Volume 148A, No. 172932 and as such, became a judicial hypothec over Mr. Morille's property.

3. Mr. Morille having made no payments towards satisfaction of the judgment debt, the Bank sought to recover the debt by way of issuing a Writ of Execution against his property. Consequently, a Writ of Execution was issued on 16th June 2003 commanding the Sheriff to put up for sale by public auction certain property of Mr. Morille ("the property").

4. The Writ was made returnable on 23rd January 2004. The Sheriff by due process seized the property and advertised it for sale in three consecutive issues of the Saint Lucia Gazette dated 3rd, 10th and 17th November 2003. A few weeks prior to the publications in the Gazette, Mr. Morille made an application to fix an upset price for the property but he withdrew it on 6th November 2003.

5. The auction took place on Wednesday, 14th January 2004 as directed under the Writ of Seizure and Sale. The sale commenced at about 10.00 a.m. and ended at about 11.05 a.m. There were three persons present and bidding namely: Rudolph Rambally, Clarence Rambally, an attorney-at-law as agent for Elford St. Prix and Mr. Anthony Du Boulay. The last and highest bid was $25,000.00 given by Mr. Du Boulay. The Sheriff accordingly adjudged the property to Mr. Du Boulay.

6. After the judicial sale, the Bank quickly moved to challenge the legality of the bidding. Counsel have all agreed that the following issues arise for determination namely:

   (a) Whether the Sheriff failed to comply with the formalities of sale as required by Article 600 of the Code of Civil Procedure (CCP)? Whether an attorney-at-law is prohibited from bidding on behalf of a third party at a judicial sale?

   (b) Whether the Sheriff has a duty to protect the interest of the Bank by obtaining a purchase price of the immovable property at the judicial sale sufficient to discharge all monies due and owing under the judgment debt?

   (c) Whether the Sheriff failed to pursue his duties diligently?

   (d) Whether it is inequitable to allow a property that is allegedly worth about $1.0 million to be sold for $25,000.00?

   (e) Whether the formalities of the seizure were not adhered to pursuant to Articles 501 and 502 since Mr. Morille was not personally served with the minutes of seizure?

7. Before I proceed to address the main issues raised at the trial, I need to address firstly an ancillary issue which was canvassed by the Bank. Mr. Richelieu appearing as Counsel for the Bank argued that legal authorities have no place in the interpretation of the Civil Code. He submitted that within the confines of the Code is to be found the method of interpreting the Code. In support of his submission, he cited the case of Bank of England v Vagliano Brothers.[1] In that case, the simple issue was whether the claimant's bankers had paid away the claimant's money under such circumstances as enable him to refuse to acknowledge the payments on his behalf. Lord Halsbury LC delivered the judgment of the

[1] [1891] A.C. 107

Court. I have carefully read the judgment and I see nowhere in his judgment anything to support the argument advanced by Learned Counsel. This argument therefore fails.

Formalities of Sale required by Article 600: Quorum

8. Article 600 of the Code of Civil Procedure Chapter 243 of the Laws of Saint Lucia 1957 ("CCP") provides that "no sale can take place unless there be three persons present and bidding exclusive of the Sheriff and his officers."

9. Mr. Richelieu submitted that there was no quorum because one of the persons present and bidding was an attorney-at-law who is a prohibited bidder under the law and as such, there were only two eligible bidders. I understood Counsel to be saying that attorneys-at-law can never bid at judicial sales. In support of his submission, he relied on articles 1395, 1490 and 1491 of the Civil Code Chapter 242 of the Laws of Saint Lucia 1957.

10. Article 1395 reads as follows:

> "Judges, advocates, attorneys, clerks, sheriffs and other officers connected with courts of justice, cannot, either in their own name or through third parties, buy litigious rights which fall under the jurisdiction of the Court in which they exercise their functions."

11. Article 1490 provides as follows:

> "When a litigious right is sold, he against whom it is claimed is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day the buyer has paid it."

12. Article 1491 provides a definition for litigious right as:

> "A right is held to be litigious when it is uncertain, and disputed or disputable by the debtor, whether an action for its recovery is actually pending or is likely to become necessary."

13. Mr. Hilford Deterville QC appearing for the purported purchaser, Anthony Du Boulay submitted that article 1395 prohibits the purchase of litigious rights by attorneys and other officers connected with courts of justice. A "litigious right" is a right which is uncertain or in dispute. He asserted that what was being offered for sale was Mr. Morille's property. He

was registered as the proprietor with absolute title. There was nothing uncertain and disputed or disputable about what was being sold or purchased since the dispute between the parties was long settled by a judgment of the court dated 10th October 1995.

14. The issue of the purchase of litigious rights came up for consideration by the Supreme Court of Canada in the case of Quebec, Montmorency and Charlevoix Railway Co. v Gibsone[2]. The Court applied article 1485 of the Civil Code of Quebec which is similar to article 1395 of our Civil Code. It was held, that since the respondent who was an attorney practising in the courts of the district of Quebec, "knew that the land was in use as part of the line of a railway in actual operation, he must be taken to know that he could not make his purchase effectual without litigation, which he must therefore contemplate."[3] The Court continued on the same page:

> "The character of litigiosity is said to apply to an immovable when a vendor, not having the actual detention of it at the time of the sale, is unable to deliver the possession."

15. In my opinion, the issue in this case is whether the Sheriff is able to deliver up possession of the property to the purchaser. The facts shows that the sale of the immovable property in question took place as a result of a judicial act and the Sheriff had possession of the property because it was properly seized. Therefore, the Sheriff was in a position to deliver up possession of the property to Mr. Du Boulay as a sheriff's sale does not have the character of litigiosity which would fall within the exclusion laid down in article 1395 and I so hold. In fact, a sheriff's sale confers more rights upon a purchaser than an ordinary sale.[4]

16. Learned Queen's Counsel argued that in any event, the attorney-at-law who was present and bidding was not "purchasing in his own name" nor was he purchasing "through a third party." He was purchasing as proxy for another person which action is permissible under the law.

[2] (1899) 29 S.C.R. 340
[3] page 5 of judgment [supra]
[4] Jn Marie v Cenac and another; National Commercial Bank of Saint Lucia v Lowrie et al (Consolidated claims 695/1995 and 789/1995 (Saint Lucia) unreported quoting from Garcia Transport Ltee v Royal Trust Co. (1992) 2 S.S.R. 499.

17. On behalf of the Bank it was urged that not only is an attorney-at-law prohibited from bidding, he cannot even act as proxy for another person.

18. This is an argument I cannot accept, and if it were accepted there would in my view be an unacceptable discrepancy with the law because article 529 provides that "verbal bids may be made by proxy". It is only if the bidder is unable to furnish the Sheriff with the names, quality and residence of his principal, is he held to have purchased in his own name (Article 538). In the instant case, the bidder provided the name of his principal at the outset.

19. In support of his argument that an attorney-at-law can purchase at a judicial sale but is only prevented from purchasing 'litigious rights,' Mr. Deterville cited section 43 (1) of the Legal Profession Act, No. 31 of 2000. The section states as follows:

> "An attorney-at-law shall not –
>
> (a) act as an agent in any action or in any matter in bankruptcy or in relation to any business which can only be transacted by a person with legal qualifications, for any unqualified person;
>
> (b) permit his or her name to be made use of in any such action, or matter upon the account or for the profit of any unqualified person;
>
> (c) send any process to any unqualified person; or
>
> (d) do any other act enabling any unqualified person to appear, act or practise in any respect as an attorney-at-law in any such action or matter."

20. In my view, this section does not speak of attorneys purchasing property at a judicial sale. It refers only to attorneys-at-law acting in that capacity for a person who is prohibited from doing work 'reserved exclusively for an attorney-at-law. As Mr. Deterville so correctly pointed out, if that were the case, then attorneys may well be able to successfully challenge the constitutionality of a law which shuts out an entire class of persons on the basis of their profession.

21. In my judgment, the arguments advanced by the Bank ought to fail for the reasons enunciated above.

Sheriff's Duty under Articles 499 and 597

22. The next issue which falls for determination is whether the Sheriff is duty bound to recover an amount on sale equivalent to the judgment, interest and costs. Mr. Richelieu submitted that in accordance with article 499 of CCP, the Sheriff must recover the principal, interest and costs as well.

23. Mr. Richelieu next submitted that not only is the Sheriff bound to recover the amount equivalent to the judgment debt with interest and costs but under article 597, he stands as an agent for the Bank and he is under a duty to ensure its interests. Article 597 states:

> "In the event of the seizing creditor abandoning the seizure or receiving payment of his claim, the Sheriff is bound to continue the proceedings in the name of the seizing creditor and at a cost of the judgment creditors whose writs have been noted, in order to satisfy the claims specified in the subsequent writs of execution, provided that the seizure was made with all requisite formalities."

24. Mr. Malcolm Augustin acting as Counsel for Mr. Morille supported the Bank in their attempt to declare the judicial sale illegal, null and void. His reasons are obvious. He argued that Article 499 spells out in clear and unambiguous language the measurement by which the Sheriff must determine the selling price of the seized property. He submitted that where, as in the present case, the Sheriff allowed the property to fall for $25,000.00 when it is worth nearly $1.0 million, he has impeached the legality of the sale which said legality is maintained if, but only if, the price obtained is consistent with the principal, interest and costs.

25. Mr. Augustin further argued that article 499 could not and does not mean that the Sheriff is bound to accept whatever bid or bids were made by the bidders because of the failure of the Bank to fix an upset price.

26. Counsel for the Sheriff, Mrs. Taylor-Alexander and Mr. Deterville argued that neither the Civil Code nor the CCP places a duty on the Sheriff that he is bound to sell the property to

recover an amount on sale equivalent to the principal, interest and costs. Instead both the Code and the CCP make provision for the Judgment Creditor [the Bank] to proceed against property of the Judgment Debtor [Mr. Morille] should the debt remain unsatisfied: see articles 1493, 1875, 424, 425 and 446.

27. Mr. Deterville submitted that the conjunct effect of articles 499 and 597 is for the Judgment Creditor to continue to execute against his debtor's property until the debt is satisfied. He contended that it is a contradiction to first permit the creditor to levy against all property of his debtor and then at the same time to place a duty on the Sheriff to satisfy the debt from one judicial sale.

28. It seems to me that it is instructive to look at article 499. It reads as follows:

> "The seizure of immovables can only be made by 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 to sell them in satisfaction of the judgment pronounced against him for principal, interest and costs."

29. In my view, article 499 cannot be read disjunctively. It must be read in conjunction with article 511A which makes provision for a judgment creditor to fix an upset price, and article 537 which mandates that the property be adjudged to the highest and last bidder where no upset price has been fixed. Article 511A contemplates that a property may be sold at any price, and not necessarily to liquidate or extinguish the entire debt, as it makes provision for an upset price to be fixed. Article 537 does not authorize or empower the Sheriff to reject, on an auction, without an upset price, the highest or any other bid for reasons of insufficiency or inadequacy. This issue arose for consideration in the case of Barry v Davies and others[5]. In that case, the auctioneer withdrew items from the sale, believing that he could obtain a higher sum later by other means. The claimant successfully sued the auctioneer for the price of purchasing a similar item less his bid. The Court held that since no reserve price had been set, there was a collateral contract between the auctioneer and the highest bidder, consisting of an offer by the auctioneer to sell to the

[5] [2001] 1 All ER 944

highest bidder and an acceptance of that offer when the bid was made and the auctioneer was in breach of contract.

30. Based on the law, it is my firm view that the Sheriff, in adjudicating the property to Mr. Du Boulay did not contravene or breach his duty as he was bound to adjudge the property, pursuant to article 537 to the highest bona fide bidder, notwithstanding that the highest and last bid was insufficient to liquidate the judgment debt. Had he not done so, applying the principles laid down in Barry v Davies [supra], Mr. Du Boulay could have successfully pursued an action against him for breach of contract.

31. Given that no upset price was fixed, the Sheriff was under no obligation to start the bid at a particular price. The Bank had a duty to set an upset price if it wanted to ensure that it got a price equivalent to the judgment debt, interest and costs. It is both law and equity that where no upset price is fixed, the property shall be sold to the highest bidder, whether the sum bid be equivalent to the real value or not.[6]

32. Further, article 541 provides that "upon payment by the purchaser of the first instalment …the Sheriff is bound to give such purchaser a deed of the sale made to him." If the Sheriff fails to adjudge the property to the purchaser, or fails to give him a deed of the sale, the Sheriff is liable to be sued for breach of his statutory duty.

33. For the reasons stated, I find the submissions advanced by both Mr. Richelieu and Mr. Augustin to be unappealing. Further, it is important to note that the Bank made no attempt to secure their position knowing fully well that the property could be sold at any price if no upset price is fixed.

34. In my considered opinion, article 499 cannot be construed so as to mean to completely satisfy the judgment debt including interest and costs. The phrase, "in satisfaction" could only mean "to put towards the debt." If it were construed in any other manner, it will import

[6] (1846) 15 M & W 367, 153 ER 892

absurdity into many of the provisions regarding bidding and sale and judicial sales may never take place.

Equity and the Judgment Creditor

35. The Bank and Mr. Morille seek to invoke equity. Mr. Augustin submitted that article 569 provides a platform for creditors other than the judgment creditor and that the rationale and justification for this provision is that equity will not operate so as to prevent the Sheriff from selling the property at a price which will force the judgment debtor to repay other creditors out of his pocket. It is clear that Mr. Augustin has misconstrued the concept of equity.

36. First and foremost, in order to invoke equity, the Bank must show that it did not simply sit back on its rights but acted promptly and diligently to secure any interest that it had. The CCP makes adequate provision as to how the Bank could protect its interest. It could do so in two ways: (i) by applying to fix an upset price for the property and (ii) by itself bidding and/or purchasing the property.

Upset price

37. Article 511A makes provision for an upset price to be set on the immovable. The evidence reveals that Mr. Morille made an application dated 15th October 2003 to fix an upset price for the property. The record reflects that the application came up for hearing before the Learned Master on 6th November 2003. The application was withdrawn. No reason for the withdrawal is stated on the court's record.

38. Mr. Deterville argued that the Bank is asking the court to declare that the Sheriff failed to do what the Code says is within the exclusive province of the court to do. The effect of a judgment that the Sheriff should not have accepted a bid lower than the amount of the judgment would mean that the Sheriff had to set some sort of inchoate upset price, a minimum amount for which the property could have been purchased. Learned Queen's Counsel asserted that only the court is permitted to do so, not on its own motion but by application of the Bank (article 511A). Counsel submitted that the Bank cannot now turn around and say:

> "The Sheriff should have done for me, what I failed to do for myself even though I am the only person who is allowed under the law to initiate the process."

39. In Garcia Transport Ltée v Royal Trust Co.[7], the Supreme Court of Canada had to deal with an appeal from the Court of Appeal of Quebec on the similar issue of vacating a Sheriff's sale in circumstances where the applicant had a right to oppose the sale before it began but failed to do so. The Court held that since the applicant could have avoided the sale by opposition but had failed to do so he is taken to have acquiesced in the informality which gave him the right to oppose. In the instant case, the Bank could have avoided the property being sold for a price lower than the debt by simply applying for an order to fix an upset price.

40. Having failed to do so, the Bank cannot now ask the court to hold that it is inequitable for the property to be sold at such a price when it failed to protect its own interest.

Creditor Bidding

41. The Bank could have protected its interest by itself placing bids at the judicial sale. There is nothing in the CCP to prevent a creditor from bidding: see articles 540 and 541. In addition, article 1966 (3) of the Code anticipates and contemplates that the judgment creditor may purchase property of his judgment debtor at a judicial sale.

42. In my view, equity cannot avail a delinquent judgment creditor, who stands idly by while other legal proceedings take place. The Bank failed to do what was so obvious to do in the circumstances and a court of law cannot remedy such inaction.

Vacating or annulling a Sheriff's sale

43. Article 558 of the CCP makes provision for annulling a Sheriff's sale. A Sheriff's sale may be annulled:

> "(1) At the instance of the judgment debtor, or of any creditor or other interested person:

[7] (1992) 2 S.C.R. 499

> If fraud or artifice was employed, with the knowledge of the purchaser, to keep persons from bidding;
>
> If the essential conditions and formalities prescribed for the sale have not been observed; but the seizing party cannot annul the sale for any want of formalities attributable to himself or his solicitor;
>
> (2) At the suit of the purchaser:
>
> If the immovable differs so much from the description given of it in the minutes of seizure, that it is to be presumed that the purchaser would not have bought had he been aware of the difference."

44. Mr. Deterville submitted that article 558 restricts the grounds upon which a vacating or an annulment of a judicial sale can be made. In Garcia's case [supra], the provisions relating to vacating a Sheriff's sale, that is articles 698, 699 and 700 of the Code of Civil Procedure of Quebec were in issue. The provisions of articles 698 and 699 are similar to our article 558.

45. First of all, it is to be noted that the purported purchaser, Mr. Du Boulay does not wish to annul the sale [article 558 (2)]. The other ground on which the sale may be annulled is either by fraud or artifice or the non-observance of the formalities for the sale. In the instant case, the Bank has not alleged fraud or artifice on the part of any participant in the process. What is being alleged is that the formalities for the sale were not followed. Specifically, that the Sheriff failed to comply with articles 501 and 502 of the CCP because the Sheriff did not serve the Minutes of Seizure personally on Mr. Morille.

46. The evidence revealed that the Sheriff did seek out Mr. Morille, but upon failing to find him, he served the document on someone at his home. He deposed that he knows that Mr. Morille received a copy of the duplicate Minutes of Seizure of Immovables because Mr. Morille visited his office with the document on 1st October 2003. Whatever informality existed in the service of the Minutes of Seizure, was in my view, cured by Mr. Morille acknowledging that he received the Duplicate Minutes not only to the Sheriff himself but by taking the next step in making an application on 15th October 2003 to set an upset price for the property.

47. Mr. Deterville submitted that article 501 merely requires that the Sheriff calls upon the Judgment Debtor, which is exactly what the Sheriff did at Mr. Morille's place of residence. In addition, the Code provides for seizure even though the debtor is absent. I agree with Learned Queen's Counsel that the Sheriff complied with all of the formalities and as such, this is not a ground upon which the sale could be annulled or set aside.

48. Further or in the alternative, even if there were a lack of formality in the seizure, the Bank is now precluded from setting up this informality as a ground for annulling the sale. In Garcia's case, the Petitioner complained of an informality that appeared on the face of the Minutes of Seizure. In refusing an application by the Creditor to vacate the sale, the Court held that in failing to oppose the sale, the Petitioner had acquiesced to the defect and could not now seek to vacate the sale on that ground. The Court said at page 25:

> "This requirement that the party who opposes a sale must do so before the sale takes place is very well established in Quebec, as illustrated by these comments in Genier v Kerr.[8]

49. The Court then went on to cite a formidable body of authorities where the application to vacate the sale was refused because the applicants could have applied to oppose the sale but had failed to do so.

50. Given the strict formalities which precedes Sheriffs' sales, and the relative comfort with which interested parties most notably the owners of the property may oppose the seizure and sale before the latter takes place, a petition to vacate the sale will be scrutinized strictly and granted only exceptionally.

51. At page 22 of Garcia's case, it was held that:

> "Titles granted by sheriff's sales in Quebec's civil law are treated with considerable degree of respect and courts do not tamper with them lightly. Strict rules govern them and stringent conditions must be met in order to vacate them."

52. Our Civil Code is patterned after the Civil Code of Quebec and thus, our Sheriff's sale must be treated with the same degree of respect. The sanctity of the Sheriff's sale cannot

[8] (1893) 3 C.S. 409, 411

be undermined. This issue came up for consideration before this very court in the case of Peter Jn Marie et al v Winston Cenac et al and National Commercial Bank of Saint Lucia Ltd v Laurima Lowrie et al.[9] I can do no better than to adopt my own words in that case.

> "The importance of protecting the Sheriff's sale should be emphasized. It attacks one of the most important acts of procedure of any court of record – the enforcement of its own judgment, and puts in issue not only the regularity of that procedure, but jeopardizes the rights of innocent third parties, who purchase property put up for public judicial sale under all the solemnities and formalities of the law. So an attack upon a Sheriff's sale is to my mind, an attack upon a title conferred not just by an individual but by the justice system as a whole."

53. In Forest v Hancor Inc. et al[10], the Federal Court of Appeal of Canada again held, applying Garcia's case that once a Sheriff's sale has taken place, it is only exceptionally and on very limited grounds that it can be set aside. Décary J.A. at page 12 said:

> "I make no secret of the fact that it would be tempting from the point of view of equity to give one more chance to parties each of whom believed in good faith that the sale would not take place because there was no longer any reason for it and who failed, as a result of confusion and blundering, to take the necessary action to stop it. But the law is there, and it seeks to protect a person, the purchaser, who also acted in good faith and, above and beyond the interests of the parties to the case, to preserve what Pigeon J. in Anjou (Town of) v C.A.C. Realty Ltd et al[11] called the 'principle of the inviolability of judicial sales'."

54. In the instant case, Mr. Deterville urged the court to find that the purchaser acted in good faith, the seizure was valid and the Sheriff's conduct was beyond reproach and not even equity could assist in such a situation no matter how tempting it appears.

55. I do agree with Learned Queen's Counsel. The judgment pursuant to which the seizure was made was valid. The immovable sold by the Sheriff belonged to Mr. Morille. Mr. Du Boulay acted in good faith, the Sheriff's conduct was flawless and the alleged informality, if indeed it is an informality existed long before the date fixed for the sale. Furthermore, an

[9] Consolidated Claims No. 695 of 1995 and No. 789 of 1995 (High Court of Saint Lucia) (unreported)
[10] [1996] 1 F.C. 725
[11] [1978] 1 S.C.R. 819, 828

informality will generally not give rise to the vacating of a sale, however, unless, the Bank can show that it is prejudiced by it.[12] This it has failed to do.

56. In my judgment, the Bank was clearly at fault in failing to protect its interest and it is too late in the day to turn around to seek to nullify the sale.

Conclusion

57. In the premises, I will dismiss the Petition. The general rule is that Costs follow the event. I will make the following awards:

    (a) Costs to the Mr. Anthony Du Boulay in the sum of $14,000.00.

    (b) Costs to the Sheriff of the High Court in the sum of $7,000.00.

    (c) I make no award of costs in respect of Mr. Morille. In my opinion, Mr. Morille was erroneously joined as a respondent. He should have been joined as an ancillary claimant.

Indra Hariprashad Charles

High Court Judge

[12] Fort Garry Trust Co. v Robert Sprinkler Ltd [1981] C.S. 905