SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.7 OF 2006

BETWEEN:

WINMARK LIMITED

Appellant

and

NATIONAL INSURANCE CORPORATION

Respondent

Before:

The Hon. Mr. Brian Alleyne, SC	Chief Justice (Ag.)
The Hon. Mr. Denys Barrow, SC	Justice of Appeal
The Hon. Mr. Hugh A. Rawlins	Justice of Appeal

Appearances:

Mr. Geoffrey Du Boulay, with him Mrs. Gordon-Dorville for the Appellant
Mrs. Cadie St. Rose-Albertini, with her Mrs. Racquelle Willie-Trotman, for the Respondent

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2007: March 1
June 18

JUDGMENT

[1] RAWLINS, J.A.: This is an appeal against a decision of the Master in which, on a preliminary point of interpretation of section 74 of the National Insurance Corporation Act 2000,[1] he held that the National Insurance Corporation[2] was entitled to be paid in priority to the secured creditors of Winmark in the same way in which taxes that are due to the government must first be satisfied in priority to

[1] No. 18 of 2000, now Cap. 16:01 of the 2001 Revised Laws of Saint Lucia. Hereinafter referred to as "the National Insurance Act".
[2] Hereinafter referred to as "the Corporation".

secured creditors. The grounds of appeal against this decision will be better appreciated against the background of the case.

The background

[2] Mr. Richard Peterkin was appointed Receiver and Manager of Winmark Limited on 1st October 2004. The appointment was made by the RBTT Bank Caribbean Limited[3] under the terms of a debenture which gave the Bank a fixed and floating charge over the assets of Winmark. By Hypothecary Obligations registered at the Land Registry as Instruments Nos. 4463/96; 4070/97; 4421/98; 1713/99; 4984/99 and 812/2001,[4] Winmark hypothecated to the Bank immovable property that Winmark owned, to wit, Block 1256B Parcel 5. This was done in order to secure debts that Winmark owed to the Bank. Subsequent to the execution and registration of the Hypothecs, Winmark incurred debts to the Corporation for non-payment of national insurance contributions under the National Insurance Act.

[3] The Corporation filed a claim against Winmark for the sum of $505,564.19 being contributions due for November 2001 to December 2004. The Corporation also claimed surcharges on those outstanding contributions in the sum of $169,929.19 as at 31st December 2004 and continuing at the rate of 1.25% per month until payment.

[4] By way of amended defence and counterclaim, Winmark sought 2 declarations. The first was a declaration that, in relation to the proceeds of the sale of the hypothecated property, the secured debts which Winmark owed to the Bank under the several debentures rank in priority to privileged debts owed to the Corporation. The second was a declaration that articles 1915 and 1974 of the Civil Code[5] prohibit and/or invalidate the registration of any judicial hypothec by the Corporation against the allegedly insolvent Winmark.

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[3] Hereinafter referred to as "RBTT" or "the Bank".
[4] Hereinafter referred to as "the Hypothecs".
[5] Cap. 242 of the 1957 Revised Laws of St. Lucia.

[5] In the reply and defence to counterclaim, the Corporation stated that by the operation of section 74 of the National Insurance Act, unpaid national insurance contributions rank as a privileged debt *pari passu* with state taxes, without it being necessary to register the debt. This, according to the Corporation, entitles such unpaid contributions to rank in priority to all other debts which Winmark owes to the Bank as secured creditor. The Corporation also contended that section 74 of the National Insurance Act creates an exception to articles 1915 and 1974 of the Civil Code, because it does not require registration of an hypothec or any other charge against the property of Winmark in order for the Corporation to become entitled to payment from the sale of property, whether movable or immovable. The Corporation also argued that under section 74 of the National Insurance Act, the outstanding national insurance contributions are accorded statutory protection and preference over all of Winmark's creditors whether secured or unsecured.

[6] The Corporation further contended, in the reply and defence to counterclaim, that under section 74 of the National Insurance Act, a receiver is obliged to deal with national insurance contributions in the same manner as state taxes without the need to register a claim. In the premises, the Corporation asked the court to declare that the Receiver was liable to pay to the Bank the outstanding contributions from the proceeds of the sale of the hypothecated property in priority to the debts which Winmark owes to the Bank.

The grounds of appeal

[7] Winmark appealed against the decision of the Master on 2 grounds. The first is that the learned Master erred in law because he failed to appreciate and apply the distinction between the legal ownership and the beneficial ownership of the hypothecated property. The issue that this ground raises is whether the registered hypothecs vested the beneficial ownership of the hypothecated property or of the proceeds of the sale or realization of that property in the Bank as secured creditor.

[8] The second ground of appeal states that the Master erred in his interpretation of section 74(1)(b) of the National Insurance Act. The basis of this contention is that the learned Master's interpretation results in the untenable proposition that section 74(1)(b) operates to vest in the Corporation the beneficial ownership of the proceeds of the sale of the hypothecated property over the Bank as a secured creditor, although the beneficial ownership of that property was vested in the Bank before Winmark owed monies to the Corporation. This, according to the ground of appeal, violates the fundamental rights of the secured creditor, guaranteed by section 6 of the Constitution of St. Lucia, which protects a person from unlawful deprivation of property. I shall now consider these grounds of appeal beginning with issue raised by the first ground.

Did the hypothecs vest beneficial interest in the Bank?

[9] I shall first set out the relevant statutory provisions, and, second, the submissions by learned counsel for the parties. The reasons and decision on this issue will then follow.

The provisions

[10] The nature of an hypothec is declared in article 1908 of the Civil Code. This article and articles 1909 and 1910, which provide a further elucidation of the nature of the hypothec, are hereby fully reproduced. They state as follows:

> "1908. Hypothec is a real right, and is a charge upon immovables specially pledged by it for the fulfillment of an obligation, in virtue of which charge the creditor may cause the immovables to be sold in the hands of whomsoever they may be, and has a preference upon the proceeds as fixed by this Code."
> "1909. Hypothec is indivisible and binds in entirety all the immovables subject to it and each and every portion of them."
> "1910. Hypothec extends over all subsequent improvements and over alluvial increase of the hypothecated property. It secures besides the principal, whatever interest accrues therefrom, under the restrictions stated in the Book respecting *Registration of Real Rights*, and all costs

> incurred. It is merely an accessory and subsists no longer than the obligation which it secures." (Emphasis provided).

[11] The registration of real rights and the order of priority are provided, insofar as it is necessary for the purpose of the present issue in articles 1967-1969 of the Code. These articles state as follows:

> "1967. Registration gives effect to real rights and establishes their order of priority according to the provisions contained in this Book. 1968. All real rights subject to be registered take effect from the moment of their registration against creditors whose rights have been registered subsequently or not at all. If however a delay be allowed for the registration of a title and it be registered within such delay, such title takes effect against subsequent creditors who have obtained priority of registration. 1969. The following rights are exempt from the formality of registration: 1. … 2. Hypothecs in favour of the Crown."

[12] Insofar as it is necessary for the purpose of the present issue, the legal effect of an hypothec, in relation to the debtor or other holder of hypothecated property, is stated in articles 1938 and 1941 of the Code. They provide as follows:

> "1938. Hypothecs do not divest the debtor or other holder of hypothecated property, either of whom continues to enjoy the property and may alienate it, subject however to the privilege or the hypothec charged upon it. … 1941. Creditors having a registered privilege or hypothec upon an immovable may follow it into whatever hands it passes and cause it to be sold judicially in order to be paid out of the proceeds, according to the order of their claims." (Emphasis provided).

[13] For the purpose of completeness, the concept of ownership of property under the Code is stated in articles 361 and 363 as follows:

> "361. Ownership is the right of enjoying and of disposing of things in the most absolute manner, provided that no use be made of them which is prohibited by law or by regulations made in accordance with law. 362. … 363. Ownership in a thing, whether movable or immovable, gives the right to all it produces, and to all that is joined to it as an accessory whether naturally or artificially. This right is called the right of accession."

[14] An hypothec is therefore a charge upon immovable property because article 1908 says that it is. Articles 1908 and 1941 enable the chargee or secured creditor to cause hypothecated property to be sold in satisfaction of the debt that the

hypothec secures. The Bank therefore has the right to sell the hypothecated property. The Bank also has a right of preference upon the proceeds to the extent of the amounts of the debt and a preference upon the proceeds of the sale of the property as fixed by the Code.[6] In the present case the Bank's secured debt was $12.7 million with interest at 12% per annum on 20th February 2001 when Instrument 812/2001 was registered. The receiver was appointed to administer the subject property in order to recover this debt property. There is, however, article 1938 of the Code, which states that hypothecated property remains vested in the debtor or other holder of the property. It permits the debtor or other holder to freely transfer that property to others, subject only to paying the chargee or secured creditor the amount secured by the hypothecs.

[15] Mr. Du Boulay submitted that a charge upon the property of a debtor is a contractual right or power which a debtor confers upon a creditor. According to learned counsel, this makes the creditor a secured creditor, enabling him to sell the charged property or to cause such property to be sold and have the proceeds applied towards the payment of the debt. He cited in authority the following statement by Lord Hoffman in Smith (Administrator of Cosslett (Contractors) Ltd) v Bridgend County Borough Council:[7]

> "I do not see how a right to sell an asset belonging to a debtor and appropriate the proceeds to payment of the debt can be anything other than a charge."

Mr. Du Boulay also referred to the following statement by Lord Scott of Foscote in Smith:[8]

> "In my opinion, a contractual right enabling a creditor to sell his debtor's goods and apply the proceeds in or towards satisfaction of the debt is a

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[6] Article 1941 of the code gives the Bank the right to follow the property into whosoever hands it may have passed and have it sold to recover the debt. It is noteworthy that article 1943 of the Civil Code defines a privilege as the right of preference in payment which is given to certain claims by the law and without any agreement to that effect. Article 1878 provides that a privilege is a right which a creditor has of being preferred to other creditors according to the origin of his claim. It results from the law and is by its nature indivisible.

[7] [2002] 1 All E.R. 292, at page 302, paragraph 41.

[8] At page 305, paragraph 53.

right of a security character. The conclusion does not depend on the parties' intention to create a security."

[16] It is clear from article 1908 of the Civil Code that a registered hypothec is a real right in the nature of a charge. It is also clear from article 1938 of the Civil Code that the full legal ownership of the hypothecated property, as defined by articles 361 and 363 of the Code, remains vested in the charger or debtor. The critical question, however, is whether a chargee under an hypothec also becomes the beneficial owner of the proceeds of the sale of the hypothecated property.

Is a chargee a beneficial owner?

[17] Mr. Du Boulay submitted that the Bank, as chargee or secured creditor, is the beneficial owner of the proceeds of the sale on realization of the property for the amount of the debt that the hypothecs secured. He contended that this is the implication of articles 1908 and 1941 of the Code, and, in particular, that aspect of article 1908 which gave the Bank "a preference upon the proceeds as fixed by this Code" upon the registration of the hypothecs. According to Mr. Du Boulay, the object of the charge created by an hypothec is to enable or to authorize the Bank to cause the property to be sold, thereby transmuting it into money which is deemed to belong to the bank to the extent of the amount of the secured debt. The beneficial ownership of the proceeds of sale, he said, is analogous to the beneficial ownership of the proceeds of the sale of property held by a trustee, by a trustee in bankruptcy or by an executor in whom partial legal ownership of the property is vested. This, he submitted, is the power to alienate, sell or otherwise dispose of the property without the right to enjoy the property or the produce thereof. He cited in authority Buchler and another v Talbot and others[9] and Ayerst (Inspector of Taxes) v C & K (Construction) Ltd.[10]

[9] [2004] 1 All E.R. 1289 (H.L.).
[10] [1975] 2 All E.R. 537 (H.L.).

[18] In Buchler, a company, which was one in a group of companies, issued debentures. The debentures contained a floating charge over a substantial portion of its assets. The group collapsed about a year later and the charge holder appointed receivers of the company over whose assets it held the charge. The charge crystallized. The receivers realized the assets on which the charge was held. They paid the preferential debts in the receivership and made interim distributions to the chargee toward satisfying the secured debt. The company went into creditor's voluntary liquidation about 4 years after the charge was created. The liquidators insisted that the charged assets should be made available in the liquidation, in priority to the claims of the secured creditor or chargee. They wanted to have the proceeds from those assets to pay a part of the costs of the winding up. The High Court, in a decision which the English Court of Appeal confirmed, granted a declaration to the liquidators that the liquidation expenses were payable out of the assets which were subject to the charge in priority to the claims of the secured creditor notwithstanding that the charge crystallized before the liquidation commenced.

[19] On appeal, the House of Lords overturned the decision of the Court of Appeal. Their Lordships held that the proceeds from the assets comprised in the charge belonged to the secured creditor to the extent of the security thereon. These assets, said their Lordship, which were administered by the receiver, were from a fund and was distinct from the proceeds of the free assets of the company. The free assets fell within the administration of the liquidation in the winding up. Their Lordships held, further, that in the absence of statutory provisions to the contrary, the costs of administering each fund were to be borne by each fund, separately. They also held that since the 2 distinct funds were not pooled and were administered separately under different statutory regimes, there were 2 different sets of priorities. None of the costs of the winding up was payable out of the charged assets of the company.

[20] In Buchler, Lord Hoffman stated as follows:[11]

> "When a floating charge crystallizes, it becomes a fixed charge attaching to all the assets of the company which fall within its terms. Thereafter the assets which are subject to the floating charge form a separate fund in which the debenture holder has a proprietary interest. For the purposes of paying off the secured debt, it is his fund. The company has only an equity of redemption; the right to retransfer of the assets when the debt secured by the floating charge has been paid off. It is this equity of redemption which forms part of the fund held on trust for the company's creditors which arises upon a winding up."

[21] Lord Millet stated in Buchler[12] that while bankruptcy and companies' liquidation are concerned with the realization and distribution of the insolvent's free assets among the unsecured creditors, they are not concerned with assets which have been charged to creditors' security. He said that secured creditors can resort to their security to discharge their debts outside the bankruptcy or winding up, but assets subject to a charge belong to the charge holder to the extent of the amounts secured by them. Lord Millet further stated that only the equity of redemption remains the property of the chargor and falls within the scope of the chargor's bankruptcy or winding up. He supported these statements by reference to the words of James LJ in Re Regent's Canal Ironworks Co, Ex p Grissell[13] and Re David Lloyd & Co; Lloyd v David Lloyd & Co[14] that charge holders are creditors to whom the charged property belongs with a specific right to the property for the purpose of paying their debts. Such creditors, the statement continued, are persons who are to be considered as entirely outside the company, who are merely seeking to enforce a claim, not against the company, but to their own property.

[22] Premised on the foregoing statements, Lord Millet concluded that it would clearly have been inappropriate to allow unsecured but preferential debts to be paid out of assets charged by way of a fixed charge in priority to the claims of the holder of

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[11] At paragraph 29 of the judgment.
[12] At paragraph 51 of the judgment.
[13] [1875] 3 Ch.D 411, at page 427.
[14] [1877] 6 Ch.D. 339, at page 344.

the charge. This, he said, would have been an unwarranted interference with the property rights of the charge-holder. He stated that in addition to making it very difficult for businesses to raise money on the security of their assets it would also be contrary to the interests of both lenders and borrowers.

[23] These statements are elucidating common laws principles, which I think are applicable to the present case. This is because the charges in favour of the Bank are charges which were created by hypothecary obligation mortgage debenture. Rights under a debenture, including rights that attach to receivership or winding up are governed by the Companies Act and the principles which arise thereon. The foregoing statements in Buchler are premised on these considerations. I am further confirmed in the view that the Buchler principles are applicable because article 916A(4) of the Civil Code imports applicable principles of trust and equity. It states that whenever by the law of England a beneficiary of a trust is entitled to a right in equity a beneficiary shall be entitled to a like right under this Code.

[24] In the present case, therefore, after Winmark's property was charged in favour of the Bank, the ownership of the property, within the meaning of articles 361 and 363 of the Code, remained vested in Winmark. However, because the charges are registered by hypothecary mortgage debentures, the subject property, in the words of Lord Hoffman,[15] forms a separate fund in which the Bank as debenture holder has a proprietary interest. For the purposes of paying off the secured debt, the proceeds of sale of the subject property is the Bank's fund to the amount of the debt. On the institution of receivership or winding up proceedings, Winmark has only an equity of redemption; the right to the retransfer of the proceeds from the subject property when the debt secured by the charges has been paid off. It is this equity of redemption which forms part of the fund held on trust for Winmark's other creditors, which arises upon a winding up. The Bank is therefore entitled to the sums which the charges secured, subject to the payment of the monies that are owed to the Inland Revenue Department.

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[15] Reproduced at paragraph 20 of this judgment.

[25] The Corporation's claim against Winmark for outstanding national insurance contributions was made in 2004. This was after the Bank's debentures were registered. However, the Corporation has insisted that section 74 of the National Insurance Act entitles the outstanding contributions to rank in preference over all other debts which are charged on the hypothecs. It is now therefore necessary to determine whether this is the effect of section 74 of the National Insurance Act.

The effect of section 74

[26] Mrs. St. Rose-Albertini referred this Court first to section 32(4) of the National Insurance Act. The subsection states:

> "32(4) Where an employer deducts contributions from the wages of employees under this section, the contributions shall be deemed to be held by the employer in trust for the purposes of this Act and failure of the employer to pay the contributions to the fund is an offence."

[27] Mrs. St. Rose-Albertini submitted that it was undisputed that Winmark, as an employer, made deductions from the wages of its employees for the periods claimed up to September 2004 and submitted the relevant remittance forms in support of this fact to the respondent. As such, she contended, the appellant held the amounts so deducted in trust for the Corporation. Mrs. St. Rose-Albertini referred to the provisions of subsections (1) and (2) of section 74 of the National Insurance Act. They state:

> 74(1) Where—
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> (a) any execution has been levied against the property whether movable or immovable, of an employer, in respect of a judgement against him or her, and any such property has been seized or sold or otherwise realised under such execution; or
>
> (b) on the application of a secured creditor, the property, whether movable or immovable, of an employer has been sold,
>
> any sums due as contributions by such employer shall rank as a privileged debt pari passu with state taxes without the necessity for registration thereof.
>
> (2) For the purpose of this section, employer includes any company in liquidation.

[28] In dealing with the recovery of contributions owed to the Corporation in instances of receivership, I think that it is clear that section 74(1)(b) of the National Insurance Act places these contributions on the same level as state taxes without the need for registration of a judgment or judicial or legal hypothec. It follows that when dealing with the sale of immovable property in these circumstances, the treatment that is accorded to state taxes must also be accorded to contributions owed to the Corporation.[16] Mrs. St. Rose-Albertini submitted that this privilege is captured by section 121 of the Income Tax Act[17] under which unpaid income taxes carry a privilege over all property, moveable or immovable. Section 121 of the Income Tax Act provides that State taxes rank immediately after law costs and in priority to all other privileged claims, charges or debts. I agree with the submission of Mrs. St. Rose-Albertini that the word "charges" in the section is all encompassing and refers to all types of charges, whether fixed or floating. In the premises, her submission continued, the contributions which the Corporation claims from Winmark should be accorded a status that ranks immediately after law costs in the receivership.

[29] However, Mr. Du Boulay submitted that if section 74 of the National Insurance Act is interpreted to mean that Winmark's outstanding contributions to the Corporation are payable out of the proceeds of the sale of the hypothecated property in priority over the Banks' secured debts, then section 74 would be unconstitutional and void to the extent that it amounts to a compulsory acquisition of the Bank's property contrary to section 6 of the Constitution.

Is section 74 unconstitutional?

[30] So far as it may be relevant in this case, section 6 of the Constitution states:

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[16] Article 1884 of the Code states that the Crown has certain rights and privileges resulting from the laws relating to custom and from other provisions conveyed in special ordinances concerning matters of public administration. As a result, she said, government departments such as the Inland Revenue Department have the right to register legal hypothecs at any time by simply issuing a certificate signed by the Comptroller, to the Registrar of Lands or the office of Deeds and Mortgages.

[17] Chapter 15.02 of the Revised Laws of Saint Lucia 2001.

"6(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 except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.
(2) … (5) …
(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section -

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right –

(i) in satisfaction of any tax, rate or due;
(ii) …
(iii) as an incident of a lease, tenancy, mortgage, hypothec, charge, bill of sale, pledge or contract;
(iv) … (vii),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(7) …
(8) In this section –

"property" means any land or other thing capable of being owned or held in possession and includes any right relating thereto, whether under a contract, trust or law or otherwise and whether present or future, absolute or conditional;
"acquisition" in relation to an interest in or right over property, means transferring that interest or right to another person or extinguishing or curtailing that interest or right.

[31] Sir Neville Peterkin, CJ, interpreted the word "property" in Attorney General v Lawrence,[18] in the context of section 6 of the Constitution, as including those well recognized types of interests which have the insignia or characteristics of proprietary rights, including money. He stated that the meaning includes concrete and abstract rights. In the present case, I have found that from the time that the hypothecs were registered, the Bank acquired a right or entitlement to be reimbursed the sums that the hypothecs secured. This includes the right to sell the hypothecated property and to take the charged amount from the proceeds thereof. It is an entitlement to the proceeds or money that the hypothecs secured, which constitutes property within the meaning of section 6(8) of the Constitution.

[18] (1983) 31 WIR 176, at pages 184J-185b.

[32] In my view, section 6(6) of the Constitution does not assist the Corporation because it is an exception to the general rule of deprivation of property that belongs to a defaulting taxpayer. If, as I have found, RBTT has proprietary rights, which is preferred, to the extent of its charges over the proceeds of the sale of the subject property, the deprivation would be of RBTT's property, but RBTT owes no taxes, rates or due to the Corporation. It is Winmark that owes social security contributions. In any event, section 6(6)(a)(i) of the Constitution would not apply because the outstanding social security contributions are not taxes, rates or dues. Moreover, they are not contributions due to the State, but to a statutory corporation. Neither does section 6(6)(a)(iii) of the Constitution does not apply to the present case. This is because it simply means that where persons, including the government, enter into agreements involving lease, tenancy, mortgage, hypothec, charge, bill of sale, pledge or execution, which agreements contain provisions permitting the forfeiture of property, the taking of property would not be a compulsory taking of property under section 6(1) of the Constitution.

[33] The Bank has, through the appointment of the receiver, moved to sell the hypothecated property in order to realize the secured debt. Section 74(1)(b) of the National Insurance Act and section 121 of the Income Tax Act purport to permit the Corporation to claim outstanding contributions from the proceeds of the sale in priority over the Bank, for example, in the present case, notwithstanding that the Bank obtained its entitlement to the proceeds on the registration of its hypothecs. The hypothecs were registered before the contributions which the Corporation claims became due and payable to it. This would, in my view, be an acquisition of the Bank's property within the meaning of section 6(8) of the Constitution since it would extinguish the Bank's entitlement which the hypothecs secured. In the premises, the provisions of section 74(1)(b) of the National Insurance Act are violative of section 6(1) of the Constitution. The question which follows is whether section 74(1)(b) could be saved.

[34] The presumption of constitutionality enjoins a court to refrain from striking down a statutory provision, if the court can bring the provision into conformity with the constitution by making reasonable adaptations, additions or modifications to the provision.[19] The presumption requires the court, to paraphrase the words of Lord Hobhouse in Greene Browne v The Queen,[20] to identify the element of unconstitutionality in the impugned provision, and, having done this, to determine whether the provision can be amended, adapted or modified to bring it into conformity with the Constitution, without affecting the meaning or purport of the provision.

[35] I agree with the submission by Mr. Du Boulay, which states, in effect, that in keeping with the presumption of constitutionality, section 74(1)(b) of the National Insurance Act should be interpreted to confine the privilege which it confers upon the Corporation to a privilege which attaches to the proceeds of the sale of the subject property only after security such as that of the Bank in the present case is met. I would so order to save section 74(1)(b), which on the foregoing analysis appears to be of little utility to the corporation. In saving it I err on the side of caution in the event that circumstances are ever presented in a future case in which a creditor's interest is secured in a manner that section 74(1)(b) becomes applicable so that the Corporation may not have the benefit of this provision.

[36] In conclusion, then, since Winmark is subject to receivership proceedings, the Bank is entitled to the sums which its charges registered against Winmark's property, subject to the payment of the monies that are owed to the Inland Revenue Department. Additionally, section 74(1)(b) of the National Insurance Act is to be interpreted to confine the privilege which it confers upon the Corporation to

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[19] See, for example, Permanent Secretary of the Ministry of Agriculture, Fisheries and Lands and Housing and Others v de Freitas, (1995) 49 WIR 77, per Sir Vincent Floissac CJ, at pages 78e-f and 79g-79j; A. G. v Jobe [1984] A.C. 689, per Lord Diplock at page 566c-g; British American Insurance Company Ltd. v The Attorney General of Antigua and Barbuda, Antigua and Barbuda Civil Appeal No. 20 of 2002, per Sir Dennis Byron, CJ, at paras. 23-27; and Newton Spence and Peter Hughes v The Queen, St. Lucia Civil Appeal No. 14 of 1997 and St. Vincent and the Grenadines Civil Appeal 20 of 1998, per Sir Dennis Byron CJ, at pages 22-24, paras. 56-58.

[20] [2000] AC 45, at page 50.

a privilege which attaches to the proceeds of the sale of charged property only after the Bank's security is met. The result is that the appeal from the judgment of the Master herein, dated 31st March 2006, in which he held that the respondent, the National Insurance Corporation, is entitled to be paid from the proceeds of the sale of the subject hypothecated property in priority to the Bank, is allowed.

[37] There are no circumstances which prevent the application of the general rule that the successful party is to be awarded costs. The respondent Corporation shall therefore pay the appellant's costs in this appeal to be assessed, if not agreed.

Hugh A. Rawlins
Justice of Appeal

I concur.

Brian Alleyne, SC
Chief Justice (Ag.)

I concur.

Denys Barrow, SC
Justice of Appeal