

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE COURT OF APPEAL

ANGUILLA

AXAHCVAP2016/0012

BETWEEN:

- [1] KEITHLEY LAKE
- [2] FIDELITY INSURANCE CO. LTD
- [3] ALLIANCE ROYALTIES INC
- [4] WESTMINISTER HOPE & TURNBERRY, LTD

Appellants

and

- [1] RICHARD VENTO
- [2] LANA VENTO
- [3] GAIL VENTO
- [4] RENEE VENTO
- [5] NICOLE MOLLISON
- [6] FIRST NEVIS TRUST COMPANY LIMITED,(as trustee of  
Much Love International Dynasty Trust, Vita International  
Dynasty Trust, Loki International Dynasty Trust, Founders  
International Dynasty Trust)

Respondents

Before:

The Hon. Mde. Louise Esther Blenman  
The Hon. Mr. Mario Michel  
The Hon. Mr. Paul Webster

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

Appearances:

Mr. Brian Barnes instructed by Daniel Brantley for the appellants  
Mr. Gerhard Wallbank, with him Ms. Rayana Dowden, instructed by Webster for the respondents  
Ms. Dia Forrester holding a watching brief for Dr. Rona Hodge, Mrs. Marilyn Harewood and Ms.  
Jean Lake

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2018: May 4;  
2019: June 20.

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*Civil Appeal – Judgments Act – Registered Land Act – Part 55 of the Civil Procedure Rules 2000 – Order for sale of property by a judgment creditor – Whether the Master erred by failing to make inquiries into an alleged unregistered interest in land – Joint proprietorship – Proprietors in common – Whether the Master erred in ordering the sale of property which a judgment debtor owned in common with non-debtors – Whether the Master erred in ordering the sale of jointly owned properties without the consent of all joint proprietors or severance of the joint tenancy – Severance of a joint proprietorship – Operation of a judgment as a charge on property – Whether the operation of a judgment as a charge on property severs a joint tenancy – **Whether an order for sale of property in satisfaction of one joint proprietor’s debt severs a joint proprietorship***

On 23<sup>rd</sup> September 2013 the respondents obtained a final arbitration award against the appellants for US\$7,419,000.00 which was duly registered as a judgment of the High Court of Anguilla. As a means of enforcing the arbitration award, the respondents applied for the sale of four properties in Anguilla in which the first appellant, Mr. Keithley Lake, has an interest. The properties that were the subject of the application were: parcel 52 which is owned by Mr. Lake absolutely; parcel 127 which is owned by Mr. Lake, and in which his sister, Marilyn Harewood, claims to have an unregistered interest; parcel 129 which is owned by Mr. Lake and his sisters, Marilyn Harewood and Jean Hooks, as proprietors in common in one-third shares; and parcel 209 which is owned by Mr Lake and his wife as joint proprietors.

On 5<sup>th</sup> December 2016 the learned Master heard the application for the sale and ordered that the four properties be sold by public auction and directed that the proceeds of sale be divided in accordance with an order of priority set out in the order.

**Mr. Lake, being dissatisfied with the Master’s orders**, appealed. The issues arising for determination before the Court of Appeal were:

- (i) Whether the Master was required to and/or did make an order in respect of Marilyn **Harewood’s unregistered interest in parcel 127;**
- (ii) Whether the Master erred by ordering the sale of the entirety of parcel 189 in which Mr. Lake owns only a one-third interest as a proprietor in common;
- (iii) Whether the Master erred by ordering the sale of the entirety of parcel 209 in which Mr. Lake owns an interest as a joint proprietor with his wife; and
- (iv) Whether the Master erred in his identification and application of the legal principles relating to lands owned by joint proprietors and proprietors in common.

Held: allowing the appeal, setting aside the order of the learned Master, and making the orders set out in paragraph 39, that:

1. Rule 55.5 of the Civil Procedure Rules empowers the court to give directions to facilitate the sale of property, including directions that an inquiry be made into the interests of any interested persons in **the land, and the extent of such interests in the net proceeds of sale.** While the Master’s order recognises both Ms. Harewood and her alleged interest in parcel 127, there was no specific finding in relation to the nature and extent of her interest in the property. In the face of unresolved claims that Ms. Harewood held an interest in the land, which would necessarily have to be accounted for in the substantive order, the Master was required to make a specific finding regarding the interest, **and if necessary, give directions for an enquiry into the existence or otherwise of Ms. Harewood’s interest.**

Rule 55.5 of the Civil Procedure Rules 2000 considered.

2. **The court's power to sell the lands of a judgment debtor is limited to selling only the debtor's interest in the land.** Such a sale cannot include the interest of any other person in the land being sold, such as a proprietor in common. The order for the sale of the entirety of parcel 189, which **necessarily included the interests of the other proprietors in common, was in excess of the court's jurisdiction under the Judgments Act.** Accordingly, the order for the sale of parcel 189 must be set aside.

Sections 2, 3, 4 and 8 of the Judgments Act R.S.A. c. J10 considered.

3. Where a joint proprietorship subsists, the court will only have the power to make an order for the **sale of one proprietor's interest to the exclusion of the other proprietors' interests, where the joint tenancy has first been severed.** There is no evidence that the joint proprietorship in parcel 208 was severed by voluntary acts of the joint proprietors. Neither did the fact that the judgment debt operated as a charge on the land under the Judgments Act operate to sever the joint proprietorship, as the four unities of time, title, interest and possession that are essential for a joint tenancy remained unaffected by the charge. It follows that the Master did not have the power to order the sale of the joint property. The order for the sale of parcel 209 was therefore irregular and must be set aside.

Sections 2, 3, 4 and 8 of the Judgments Act R.S.A. c. J10 considered; section 107 of the Registered Land Act R.S.A. Cap. R30 considered; Williams v Hensman (1861) 70 ER 862 considered; Mums Incorporated and another v Cayman Capital Trust Company and others 2000 CILR 132 considered; Eunice Edwards v Keith Edwards and another Antigua and Barbuda Civil Appeal No. 15 of 2005 considered; Sheila Miller-Weston v Paul Miller and Leithia Miller Supreme Court of Jamaica, Claim No. CL 2002 MO94 (delivered 22<sup>nd</sup> June 2007, unreported) considered; First Global Bank Limited v Rohan Rose Supreme Court of Jamaica, Claim No. 2012CD00029 (delivered 29<sup>th</sup> July 2016, unreported) distinguished; James F. Walker v Susan Lundborg [2008] UKPC 17 distinguished.

#### JUDGMENT

- [1] WEBSTER JA [AG]: This is an appeal against the order of the learned Master dated 5<sup>th</sup> December 2016 by which he ordered the sale by public auction of four parcels of land in Anguilla in which the first appellant, Mr. Keithley Lake (**"Mr. Lake"**), has an interest. The intended sale of the properties is towards satisfaction of a judgment debt of US\$7,419,000 plus interest owed by the appellants to the respondents.

## Background

- [2] Mr. Lake resides in Anguilla. The second to fourth appellants are companies incorporated in Anguilla. The respondents reside or are located outside of Anguilla.
- [3] On 23<sup>rd</sup> September 2013 the respondents obtained a final arbitration award against the appellants for US\$7,419,000.00 (**“the Award”**). On 15<sup>th</sup> October 2015 this Court, in an earlier appeal, ordered that the award be registered as a judgment of the High Court.
- [4] On 17<sup>th</sup> October 2015 the respondents applied for the sale of the four properties in Anguilla in which Mr. Lake has an interest. The properties are:
- (i) Parcel 52 owned by Mr. Lake absolutely.
  - (ii) Parcel 127 owned by Mr. Lake absolutely.
  - (iii) Parcel 189 owned by Mr. Lake in common his sisters Marilyn Harewood and Jean Hooks as proprietors in common with one-third share each.
  - (iv) Parcel 209 owned by Mr. Lake jointly with his wife, Dr. Rona Hodge.
- [5] On 5<sup>th</sup> December 2016 the learned Master heard the application for the sale of the four properties and ordered that they be sold by public auction. The Master did not deliver a written judgment. Instead, he made a detailed order running five pages with full recitals giving the background to the application followed by the actual orders. The entire document is referred to in this judgment as **“the Order”**. The parts of the Order that apply to all the properties are:
- (i) paragraph 2 which orders that “the right, title and interest” of the four properties in which Mr. Lake has an interest be sold by public auction;
  - (ii) paragraph 3 which states that: the reserve price for the sale of parcel 127 and parcel 209 shall be set by the auctioneer following consultation with the legal representatives for the parties and for the National Commercial Bank of Anguilla Ltd; the reserve price for parcel 52 is US\$42,000.00; and, the reserve price for parcel 189 is US\$216,000.00;

- (iii) paragraph 4 which provides that the sale shall be advertised in three consecutive issues of a local newspaper prior to the sale; and
- (iv) paragraph 5 which lists the order of priority for the distribution of the proceeds of sale.

I will refer to these and other terms of the Order as necessary when dealing with the issues in relation to the individual parcels of land.

#### The Appeal

[6] Mr. Lake was dissatisfied with the orders for the sale of the properties and appealed to this Court. The appeal in respect of parcel 52 for which Mr. Lake is the sole owner absolutely was not pursued.

[7] The notice of appeal lists seven grounds of appeal. The issues raised by the grounds of appeal that require determination by this Court are:

- (v) Whether the Master was required to and/or did make an order in respect of Marilyn **Harewood's unregistered interest** in parcel 127.
- (vi) Whether the Master erred by ordering the sale of the entirety of parcel 189 in which Mr. Lake owns only a one-third interest as a proprietor in common.
- (vii) Whether the Master erred by ordering the sale of the entirety of parcel 209 in which Mr. Lake owns an interest as a joint proprietor; and
- (viii) Whether the Master erred in his identification and application of the legal principles relating to lands owned by joint proprietors and proprietors in common.

#### Parcel 127

[8] Mr. Lake is the sole owner of Parcel 127. The property is leased to **Mr. Lake's** law firm known as Keighley Lake & Associates for five years, commencing 1<sup>st</sup> January 2014, with an option to renew for another five years. Mr. Lake claims that this property is subject to an unregistered interest in

favour of his sister, Marilyn Harewood. Ground 4 of the notice of appeal alleges that the Master erred in law when he failed to take Marilyn **Harewood's** interest into consideration and made no order respecting the said interest.

[9] The evidence supporting the claim for the unregistered interest is in the affidavits of Mr. Lake and Ms. Harewood filed in opposition to the application for sale. Mr. Lake deposed in his first affidavit filed on 1<sup>st</sup> July 2016 that parcel 127 was owned by his late father, Thomas Raphael Lake, who allowed his brother, Joseph Benjamin Tinsley, to build a house on the property. His father bequeathed the property to him (Mr. Lake) and his uncle left the house on the property to Marilyn Harewood. Mr. Lake said that he has always acknowledged **his sister's** interest in the house on the property. He expanded the house to accommodate his law practice and paid his sister an annual rent of \$2,100.00. He has paid the annual rent since 1993 and continues to do so. He said that he has attempted to purchase **his sister's** interest in the house, but she has always refused to sell.

[10] Ms. Harewood filed an affidavit to the same effect on 6<sup>th</sup> July 2016.

[11] Despite the vintage of Ms. **Harewood's** alleged interest in parcel 127 she has never taken any steps to register her interest in the land register, or to quantify or prove her claim in any other way. The first intimation of her interest in the property surfaced when the respondents applied to the court for the sale of the four properties.

[12] The appellants' challenge to the Master's order to sell parcel 127 is on two fronts, namely that: (i) the Master did not take Ms. **Harewood's interest into consideration**; and (ii) the Master did not make any order in respect of her interest.

[13] The first limb of the attack is without merit. The Order contains 12 recitals. Recital 5 refers to Ms. **Harewood's** interest in parcel 127 and recital 7 to her evidence, and that of Mr. Lake, in relation to the said interest. Further, paragraph 9 of the orders made provides that a copy of the Order shall be served on Ms. Harewood and others, and paragraph 10 provides that the respondents are to file and serve the result of the sale of the lands on Ms. Harewood and others. Having regard to these

references in the Order to Ms. Harewood and her interest in parcel 127, I would dismiss Mr. Lake's contention that the Master failed to take into consideration Ms. **Harewood's interest in parcel 127.**

[14] Different considerations apply to whether the Master made an order in respect of Ms. **Harewood's** interest. Part 55 of the Civil Procedure Rules 2000 ("**CPR**") deals with sales of land by the court. Rule 55.5 empowers the court to give directions for the purpose of a sale including directing an inquiry into what interests any interested persons may have in the land, and the extent of such interests in the net proceeds of sale. I have reviewed the Order and heard submissions from counsel on both sides on the proper interpretation it. I am satisfied that the Master did not make an order in respect of the interest, if any, that Ms. Harewood has in the property. It may be that the Master thought that Ms. Harewood does not have an interest in the property having regard to the bald statements in the evidence supporting the alleged interest and the absence of supporting documents, combined with her long delay in taking any step to protect that interest. I find however that in the face of the unresolved assertions that Ms. Harewood held an interest in the land, which would necessarily have to be accounted for in the substantive order, the Master was required to make a specific finding regarding that interest. Either that Ms. Harewood does not have an interest in the property, or if he was satisfied that the interest may exist, to give specific directions pursuant to rule 55.5 to take steps to ascertain her interest. In my view, and in these circumstances, this was not a matter of discretion by the Master as suggested by learned counsel Mr. Gerhard Wallbank who appeared for the respondents. Having failed to make such a finding, ground 4 of the notice of appeal succeeds but there still remains the issue of how should this Court deal with the **Master's failure to make an order.**

[15] The proceedings in the High Court involved an oral examination of Mr. Lake by the Master followed by oral submissions by counsel for the parties. There was no cross-examination of the various deponents on their affidavits. The order for the sale of the properties was therefore made on the basis of untested affidavit evidence and the supporting documents, all of which are before this Court. This Court is therefore in as good a position as the Master to assess the evidence and make findings.

[16] Section 30(1) of the Eastern Caribbean Supreme Court (Anguilla) Act<sup>1</sup> empowers the Court of Appeal, on hearing an appeal from the High Court in a single cause or matter, to:

“(a) confirm, vary, amend or set aside the order or make such order as the High Court might have made, or to make any order which ought to have been made, and to make such further or other order as the nature of the case may require;  
(b) draw inferences of fact”.

Subsection (2) of section 30 is drafted in wide terms and gives the Court of Appeal a wide discretion in exercising its powers under sub-section (1) “... to ensure determination on the merits of the real question in controversy between the parties.”

[17] In this matter the Master should have made a finding regarding Ms. **Harewood’s** unregistered interest. On the state of the evidence, which remains untested and unsupported by documentary evidence, I would make an order giving directions pursuant to CPR 55.5 for an inquiry into Ms. **Harewood’s alleged unregistered interest** in parcel 127 and/or the net proceeds of sale.

Parcel 189

[18] Parcel 189 comprises 1.17 acres of undeveloped land owned by Mr. Lake in common with his sisters Marilyn Harewood and Jean Hooks, each owning an undivided one-third share. In addition to the sale of this parcel, the Master **ordered that “the one** third interest of Ms. Marilyn Harewood shall be paid to Ms. Marilyn Harewood and one third interest of Ms. Jean Hooks shall be paid to Ms. Jean Hooks.” The result of this order, if carried to completion, is that Marilyn Harewood and Jean Hooks will have their interests in real estate converted into money in circumstances where they were not in any way responsible for the debts owed to the judgment creditors. This brings into focus the law and procedure relating to the ownership of land by proprietors in common and the sale of the share of one proprietor in common by a judgment creditor to facilitate the payment of a judgment debt for which the other proprietors in common are not responsible.

[19] There are two enactments that are relevant to the resolution of this issue: the Registered Land Act,<sup>2</sup> (“**the RLA**”) and the Judgments Act.<sup>3</sup> The RLA is the controlling legislation for all lands in

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<sup>1</sup> CAP E15, Revised Statutes of Anguilla 2014 (R.S.A. c. E15).

<sup>2</sup> CAP R30, Revised Statutes of Anguilla 2014 (R.S.A. c. R30).



Anguilla and it provides in section 2 that: “except as otherwise provided in this Act, no written law and no practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act...”.

[20] The RLA does not have a procedure for the sale of a judgment debtor’s land by a judgment creditor. This procedure is contained in the Judgments Act. The relevant provisions are sections 2, 3, 4 and 8 which state:

“2. A judgment already entered up or hereafter to be entered up against any person in the High Court shall operate as a charge upon all lands of such person within Anguilla to the extent of his beneficial interest therein...

3. Every such application for an order of sale shall be according to the form in schedule 1 and shall be filed in the Office of the Registrar of the High Court in Anguilla, and the notice of the filing thereof shall be served upon the judgment debtor. Every such application or copy of application shall be registered in a book to be kept for that purpose, and an index to such a book in alphabetical order under the name of any person whose estate is to be affected by such application shall also be kept, and any person shall be at liberty to search the same on payment of the prescribed fee.

4. The court may at any time within 6 months or such further time as it may allow, from the filing of the application for an order of sale, make an order for the sale of the right, title, and interest of the judgment debtor in the lands mentioned in the application, and may in connection with such order give such directions and impose such conditions as it may deem just. The cost of every such order shall be in the discretion of the Court. Every order of sale shall be registered in the manner hereinbefore provided for the registration of the application therefor.

...

8. After the sale of the interest of any judgment debtor the in any lands under this Act, the judgment creditor shall furnish to the purchaser of the interest a transfer by charge in exercise of the power of sale in a form registerable under the Registered Land Act to the effect that the purchaser has purchased the interest of the judgment debtor.” (underlining added)

[21] From a plain reading of the Judgments Act, and in particular the sections set out in the preceding paragraph, I make the following findings:

- (i) The Judgments Act gives the court the power to sell the lands of a judgment debtor, but the power is limited to selling the judgment **debtor’s** interest in the land. By

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<sup>3</sup> CAP J10, Revised Statutes of Anguilla 2014 (R.S.A. c. J10).

inference, such a sale cannot include the interest of any other person in the land being sold, such as a proprietor in common.

- (ii) The Judgments Act is not inconsistent with the RLA. It provides a procedure for the sale by a judgment creditor of the interest in the lands in Anguilla owned by a judgment debtor to satisfy a judgment debt. There is no procedure to do this in the RLA. In fact, the Judgments Act complements the RLA by providing this procedure. The symbiotic nature of the relationship between the two Acts is shown by the reference in section 8 of the Judgments Act to the use of a form for transferring title to **the purchaser of the judgment debtor's interest** that is "...registerable under the Registered **Land Act**". Considering that the RLA was enacted long after the Judgments Act it is easy to infer that section 8 of the Judgments Act was amended to bring it in line with the RLA.

Mr. Wallbank submitted that the appropriate form to be used is Form 4 in the Registered Land Rules,<sup>4</sup> **which is headed** "Transfer by Chargee in Exercise of Power of Sale". I agree with this submission. The appropriate form to be used when the court orders a sale under the Judgments Act is Form 4 in the Registered Land Rules with such modifications as are necessary.

- [22] This still leaves open the question of how to transfer the judgment debtor's share in land owned in common with other proprietors. Mr. Wallbank's **primary position** was that parcel 189 should be sold in its entirety and the other proprietors in common (Ms. Harewood and Ms. Hooks) be paid for their interests out of the proceeds of sale. This submission was obviously accepted by the Master and he so ordered in paragraph 5(b) of the order. In my opinion the Master erred in so ordering. A sale of the entire interest in parcel 189 would be in excess of the **court's** jurisdiction under the Judgments Act which is limited to selling the interest of the judgment debtor only. The court does not have the power to order the sale of the interests of the other proprietors in common, leaving them to share in the proceeds of sale to recover their interest in the property. This part of the Master's order must therefore be set aside.

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<sup>4</sup> CAP R30-1, Revised Regulations of Anguilla 2014 (R.R.A. R30-1).

[23] Mr. Wallbank's **alternative** position, which is shared with learned counsel Mr. Brian Barnes who appeared for Mr. Lake, is that parcel 189 should be subdivided and **Mr. Lake's** resulting one-third divided share be sold by the court. The relevant provision in section 109 of the RLA dealing with the partition of land owned in common. The section reads:

“(1) An application for the partition of land owned in common may be made in the prescribed form to the Registrar by –

- (a) any one or more of the proprietors; or
- (b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree;

and, subject to the provisions of this Act and of any written law by under which minimum areas or frontages are prescribed or the consent of any authority to a partition is required, the Registrar shall effect partition of land in accordance with any agreement of the proprietors in common or in the absence of agreement in such manner as the registrar may order.”

The respondents are persons who fall under paragraph (b) of section 109 and they can make an application under the section to partition parcel 189 and then apply to sell the divided one-third share pursuant to the provisions of the Judgments Act.

Parcel 209

[24] Parcel 209 comprises 1.3 acres and is registered in the name of Mr. Lake and his wife, Dr. Rona Hodge, as joint proprietors. The matrimonial home is located on this property. The property is subject to a charge in favour of the National Bank of Anguilla Ltd.

[25] The Master noted that the amount outstanding on the charge to the bank was approximately US\$750,000.00, and that Dr. Hodge claimed an amount in excess of US\$1.1 million that she invested in the development of the house on the property. In paragraph 5(d) of the Order the Master ordered that the interest of Dr. Hodge in parcel 209 be ascertained and be paid to her (in priority to any final distribution to the respondents).

[26] Mr. Lake complained in ground 1 of the notice of appeal that:

“The Learned Master erred in law by failing to identify and apply the relevant legal principle applicable to property owned as a joint tenant as opposed to property owned by tenants in common.”

In elaborating on this ground of appeal, learned counsel Mr. Barnes took the Court to various provisions in the RLA and the Judgments Act, and the relevant cases that support his position. The essence of his submission is that in a joint proprietorship, all the proprietors have to consent to any disposition of the jointly held property; that a sale by a judgment creditor is a disposition within the meaning of the RLA; the Master did not have the power to order the sale of parcel 209, including Dr. **Hodge's undivided** joint interest; and, the effect of the order was to leave Dr. Hodge to recover her interest in real property by a monetary payment following the sale and the payment of prior claims.

[27] Mr. Wallbank submitted that this case is different. The registration of the judgment created a statutory charge over the property and a sale by a judgment creditor is a sale by operation of law by a statutory chargee. As such the consent of the joint proprietors is not necessary. In Mr. **Wallbank's submission therefore**, the Master had power to sell the jointly owned property, reserving the right to Dr. Hodge to satisfy her interest out of the proceeds of sale.

[28] The difference in the views between counsel raises important issues relating to the severance of a joint proprietorship in land and the court's power to order the sale of jointly owned land and/or the interest of one of the joint proprietors.

#### Severance of joint proprietorship

[29] The starting point in the analysis of the law and practice relating to jointly owned property in Anguilla is the RLA. Section 107 sets out the basic characteristics of a joint ownership. The section reads:

“(1) Where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently –

(a) dispositions may be made only by all the joint proprietors; and

(b) on the death of joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.

...

(3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance shall be completed by registration of the joint proprietors as proprietors in common in equal **shares and by filing the instrument.**"

This section embodies the essence of joint ownership – each proprietor owns everything and yet owns nothing individually, and no proprietor can claim or be entitled to a separate interest in the property. All must act together or not act at all, and any disposition of the land must be with the consent of all the proprietors. The court will only have the power to make an order for the sale of one joint **proprietor's interest to the exclusion of the other proprietors' interests**, where the joint tenancy is first severed and a tenancy in common is created.<sup>5</sup>

[30] Subsection (3) of section 107 provides that joint proprietors can sever the joint proprietorship by an executed instrument in the prescribed form. This provision is not exhaustive as to the ways that a joint proprietorship can be severed. The common law has long recognised that there are other ways of severing a joint proprietorship. In *Williams v Hensman*<sup>6</sup> the Vice Chancellor Sir W. Page Wood set out three other ways that a joint tenancy<sup>7</sup> can be severed:

"A joint-tenancy may be severed in three ways: in the first place, an act of one of the persons interested operating on his own share may create a severance as to that share. The right of each joint-tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the *jus accrescendi*. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund - losing, of course, at the same time, his own right of survivorship. Secondly, a joint-tenancy may be severed by mutual agreement.<sup>8</sup> And, in the third place, there may be a severance by any course of dealing sufficient to intimate that the interests of all parties were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested. You must find in this class of cases a course of dealing by which the shares of all the parties to the contest have been effected, as happened in the cases of *Wilson v. Bell* and *Jackson v. Jackson*."

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<sup>5</sup> The procedure for a court ordered sale of the interest of a tenant in common is set out in paragraph 23 above.

<sup>6</sup> (1861) 70 ER 862.

<sup>7</sup> The expressions "joint proprietorship" and "joint tenancy" are used interchangeably in this judgment with no intention to create a difference in meaning.

<sup>8</sup> This second method approximates to section 107(3) of the RLA.

[31] It is noteworthy that the various ways of severing a joint tenancy in both section 107(3) of the RLA and the common law methods in *Williams v Hensman* all involve the voluntary act or acts of one or more or all of the joint tenants. None of these methods apply in this case. There being no issue of severance by agreement or conduct, the sole issue is whether the operation of the judgment as a charge or the learned Master's order for the sale of parcel 209 had the effect of severing the joint tenancy.

[32] The operation of the respondents' judgment as a charge was possible under the provisions of the Judgments Act. The relevant provisions of the Act are set out on paragraph 20 above. The charge that was created did not affect the ownership of parcel 209. It gave the respondents a security interest in the property. The four unities of time, title, interest and possession of the joint tenants that are essential for a joint tenancy remain unaffected. In my opinion, the operation of the judgment charge did not have the effect of an involuntary severance of the joint tenancy in the property.

[33] There being no severance of the joint tenancy it follows that the Master did not have the power to order the sale of the joint property. H The order for sale was irregular and did not have the effect of severing the joint tenancy in the property. This is the effect of the provisions of the Judgments Act when read in conjunction with the RLA of the laws of Anguilla. I will now review the cases to see if they have any impact on this conclusion.

The cases

[34] The common thread that runs through the following cases is that they involve applications by judgment creditors to sell real property in which the judgment debtor holds a joint interest with another person, usually a spouse, who is not a judgment debtor. Mr. Barnes relied on two appellate decisions and one decision from the Supreme Court of Jamaica.

[35] *Mums Incorporated and another v Cayman Capital Trust Company and others*<sup>9</sup> is a decision of the Court of Appeal of the Cayman Islands. A judgment creditor applied for the sale of property

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<sup>9</sup> [2000] CILR 131.

in which the judgment debtor had a joint interest with his wife. The judgment creditor relied on section 42 of the Judicature Law of the Cayman Islands which gives a judgment creditor the power to apply for an order for the sale of property in which the judgment debtor has an interest. The **Court of Appeal had to interpret section 100 of the Cayman Islands Registered Land Act (“the CI RLA”)** which is in the same terms as section 107 of the Anguillan RLA. The Court noted that section 100 of the CI RLA required the consent of all the joint proprietors to any disposition of the joint property and that there was no provision in the Cayman Islands for unilateral severance of a joint proprietorship. Severance of the joint property was possible only with the consent of all the proprietors. The purported sale by the judgment creditor was a disposition of land within the meaning of section 2 of the CI RLA (equivalent to section 2 to of the RLA Anguilla) and the consent of all the proprietors was required for the sale. The Court of Appeal set the sale aside.

[36] Edwards v Edwards<sup>10</sup> is a decision of this Court from Antigua and Barbuda. The judgment debtor agreed to a negotiated settlement with the judgment creditor resulting in a consent order that gave **the judgment creditor a charge over the judgment debtor’s “half share” of the joint property.** The other joint proprietor was **the judgment debtor’s wife.** She applied for and was granted leave to intervene in the intended sale. Her position was that the Court had no jurisdiction to enter the consent order or to order the sale of the jointly owned property which could not be severed by the judgment debtor acting on his own. The learned trial judge made the order for sale and the wife appealed. The Court of Appeal allowed her appeal and set aside the sale, adopting the reasoning and conclusions of the Court of Appeal in the Cayman Islands in the Mums case. In effect, this Court decided in the Edwards case that an attempted sale by the judgment creditor as a chargee did not sever the joint proprietorship – this could not be achieved without the consent of all the proprietors.

[37] Mr. Barnes also relied on the case of Sheila Miller-Weston v Paul Miller and Leithia Miller,<sup>11</sup> a decision of the Supreme Court of Jamaica. The property in question was owned jointly by the respondents who were husband and wife. In 2002 the claimant obtained a money judgment

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<sup>10</sup> Antigua and Barbuda Civil Appeal No 15 of 2005 (delivered 14<sup>th</sup> March 2007, unreported).

<sup>11</sup> Supreme Court of Jamaica, Claim No. CL 2002 MO94 (delivered 22<sup>nd</sup> June 2007, unreported).

against the husband. In 2006 the husband agreed with the judgment creditor that the judgment debt was a charge on the property and he (the husband) executed a document purporting to change the joint tenancy to a tenancy in common. The judgment creditor applied for a declaration that the joint tenancy in the property was severed and for orders that the property be sold and that **the judgment debt be paid out of the husband's share of the proceeds of sale.** The learned judge found that there was no severance of the joint tenancy and accordingly dismissed the application for an order to sell the property.

[38] Mr. Wallbank attempted to distinguish the cases cited by Mr. Barnes. He submitted that the Mums case is distinguishable because the power of sale under section 42 of the Judicature Law in the Cayman Islands does not give the judgment creditor a charge over the joint property. On the other hand, section 2 of the Anguillan Judgments Act gives the judgment creditor a charge over the property, that the power of sale in the case of an Anguillan judgment debt would be exercised by a chargee, and that as a result the consent of the joint proprietors is not necessary. In other words, Mr. Wallbank submits that a judgment chargee exercising a power of sale over joint property does not need the consent of the owners of the property. This submission is superficially attractive but it does not assist the respondents for the following reasons:

- (a) The provisions of the Anguillan legislation are clear in that the court cannot order the sale of more than the judgment debtor's **interest in the property**;
- (b) A sale of the property is a disposition within the meaning of section 2 of the RLA and requires the consent of all the joint owners; and
- (c) The imposition of a charge on property does not amount to an involuntary severance of the joint proprietorship (see paragraphs 32 and 33 above).

[39] **Mr. Wallbank's** attempt to distinguish the Edwards case suffers from a similar fate. The fact that the charge was entered with the consent of the judgment debtor does not put the judgment creditor in a better position for the purposes of a sale. The court is still limited to selling only the interest of the judgment debtor which, in the case of joint property, is indivisible and cannot be sold by the unilateral acts of a judgment creditor.



[40] Mr. Wallbank also relied on the decision of the Commercial Court in Jamaica in *First Global Bank Limited v Rohan Rose*<sup>12</sup> to support his submission that a registered chargee can get an order for the sale of the joint property. But this case does assist the respondents for the following reasons:

- (a) First Global involved an application to make a provisional charging order over land final. This procedure is available in Jamaica under their CPR part 48. Charging orders over land are not available in the Eastern Caribbean. EC CPR part 48 **dealing with charging orders is limited to “stock and other personal property”**.
- (b) The case did not involve an application for sale and no such order was made.
- (c) In any case Mr. Wallbank commented on the case in his Additional Submissions filed on 29<sup>th</sup> December 2017 and stated **that “Such a charge itself does not sever the joint tenancy”**. He went on to say that such a charge can give rise to a sale of land but it is difficult to see how this could happen when, as is clear, there is no severance of the joint tenancy.

[41] We were not referred to any case by counsel where the court actually ordered the sale of joint property to satisfy a judgment debt. The only case of which this Court is aware where such an order was made is *James F. Walker v Susan Lundborg*,<sup>13</sup> an appeal to the Privy Council from the Court of Appeal of the Commonwealth of the Bahamas. The Board in *Walker* noted that the order for sale was initially made by the Supreme Court judge based in part on a concession from counsel for the objecting joint owner that Order 31 of the Supreme Court Rules (Bahamas) enabled the court to authorise a sale of the property as a whole<sup>14</sup>. The Board also noted **the Court of Appeal’s finding that “order 31 (which) gives the court an unqualified power to order a sale of land”**<sup>15</sup>. The Bahamian Supreme Court’s power to make such an order was taken as a given by the Privy Council - there was no argument on the point and the terms of the Order 31 were not even set out

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<sup>12</sup> Supreme Court of Jamaica, Claim No. 2012CD00029 (delivered 29<sup>th</sup> July 2016, unreported).

<sup>13</sup> [2008] UKPC 17.

<sup>14</sup> See paragraph 49.

<sup>15</sup> See paragraph 53.

**in the Board's judgment.** The case should not be applied in Anguilla where legislation does not **allow sales of more than the judgment debtor's interest in the property** and where there is no equivalent to Order 31 in the Bahamas.

#### Summary

[42] I am satisfied that on a proper construction of the Judgments Act and the RLA the Court does not have the power to order the sale of the jointly owned property towards satisfaction of a judgment debt. The decided cases support this interpretation of the legislation. It follows that the Master did not have power to order the sale of parcel 208 and that part of the Order must be set aside. The effect of this finding is that property in Anguilla that is owned by joint tenants cannot be sold by a judgment creditor towards the satisfaction of a judgment debt owed by one of the joint owners without the consent of all the joint owners, or without severance of the joint tenancy to create a tenancy in common.

#### Conclusion

[43] I would allow the appeal and set aside the Order of the learned Master made on 5<sup>th</sup> December 2016 and make the following orders:

- (i) The right title and interest owned by the 1<sup>st</sup> appellant/judgment debtor, Mr. Keithley Lake, in parcel 52 block 78914B of the south-east registration section shall be sold by public auction to be conducted by Mr. David M Kauffman of DK Realty Partners or should he be or become unavailable by a suitably qualified auctioneer.
- (ii) The reserve price for the sale of parcel 52 shall be US\$42,000.00.
- (iii) The sale shall be advertised in three consecutive issues of a local newspaper prior to the sale.
- (iv) The proceeds of sale shall be applied firstly to the satisfaction of the expenses of sale, including the costs of obtaining valuations, advertisements of the sale, auctioneers fees, and payment of applicable taxes and expenses, and then towards the satisfaction of the judgment debt, including all costs due to the

respondents/judgment creditors, and interest thereon. The balance of the purchase money, after payment of the amounts referred to in paragraph (iv), shall be paid to the appellant/judgment debtor.

- (v) The appellant/judgment debtor and Ms. Marilyn Harewood shall file and serve witness statements, submissions and authorities in relation to the unregistered interest of Ms. Harewood in parcel 127 within 28 days of the date of this order.
- (vi) The respondents/judgment creditors may file and serve witness statements, submissions and authorities in response within 28 days of the service of documents by Mr. Lake and Ms. Harewood.
- (vii) The respondents/judgment creditors are at liberty to file an application with the Registrar of Lands pursuant to section 109 of the Registered Land Act for the partition of parcel 189.
- (viii) The application for the sale of parcel 127 and 189 are remitted to the High Court to determine the appropriate order to be made upon substantial compliance with paragraphs (v) to (vii) hereof.
- (ix) The order for the sale of parcel 209 is set aside.
- (x) The 1<sup>st</sup> appellant/judgment debtor shall have carriage of this order and shall serve copies of the order on the legal practitioners for the parties and on Ms. Marilyn Harewood and Ms. Jean Hooks.
- (xi) The appellant/judgment debtor shall have the costs of this appeal to be assessed if not agreed within 28 days and to be set off against any amounts owing by him to the respondents/judgment creditors under the arbitration award.

[44] The assistance of learned counsel and those assisting them is gratefully acknowledged and the delay in delivering this judgment, which is entirely mine, is regretted.

I concur.  
Louise Esther Blenman  
Justice of Appeal

I concur.  
Mario Michel  
Justice of Appeal

By the Court

Chief Registrar