

IN THE SUPREME COURT OF SEYCHELLES

**CIVIL SIDE: CN 20/2014
and
MA 150/2015 arising in
CN 20/2014**

[2015]SCSC 211

In the matter of:

A Petition under section 168 and 186 of the Immovable Property (Judicial Sales) Act

SEYCHELLES CREDIT UNION
Execution Creditor and Inscribed Creditor

Versus

SUBRAMANIAN PALANIVELAYUT PILLAY
Execution Debtor

And in the matter of:

A Petition under section 168 and 186 of the Immovable Property (Judicial Sales) Act

SEYCHELLES CREDIT UNION
Execution Creditor and Inscribed Creditor

Versus

SUBRAMANIAN PALANIVELAYUT PILLAY
Execution Debtor

And

DEVELOPMENT BANK OF SEYCHELLES
Inscribed Creditor

Heard: 12th June 2015

Counsel: Mr. Serge Rouillon for the Seychelles Credit Union

Mr. France Bonte for the Execution Debtor

Mr. Frank Ally for Development Bank of Seychelles

Delivered: 16th June 2015

IMMOVABLE PROPERTY (JUDICIAL SALES) ACT
JUDGMENT FOR DISTRIBUTION OF PRICE

Robinson J

[1] **Background**

[2] On the 12th May, 2015, this court ordered that the land comprised in title number V 5363 (hereinafter referred to as the "Property") is to be registered in the name of Bastion Limited of Room 4, 2nd Floor, La Ciotat, Mont Fleuri, Mahe, Seychelles. The consideration for the Property is Seychelles Rupees (SCR) Nineteen Million Two Hundred and Fifty Thousand only (SCR19250000/-).

[3] This court has caused the Judgment of Adjudication to be registered by the Registrar of Deeds. The Judgment of Adjudication was returned to this court by the Registrar of Deeds. The Judgment of Adjudication is filed on record as Exhibit "JA1" and incorporated in this Judgment for the distribution of the price.

[4] Bastion Limited made application to the Registrar of Deeds for a Certificate of Inscriptions burdening the Property. The Registrar of Deeds *ex officio* transmitted the certificate of Inscriptions burdening the Property to this court. The Certificate of Inscriptions burdening the Property dated the 2nd June, 2015, is filed on record as Exhibit "CI1" and incorporated in this Judgment for the distribution of the price.

[5] **Proceeding for the distribution of the price**

[6] The proceedings for the distribution of the price proceeded under section 186 of the Immovable Property (Judicial Sales) Act (hereinafter referred to as the "Act").

[7] Section 186 of the Act provides —

"186 — When a property has been sold, otherwise than by forcible ejectment, the ordre may be opened at the request either of the most diligent creditor or of the purchaser.

Whatever may be the mode of sale, no distribution by way of ordre shall be necessary whenever there are fewer than four inscribed creditors upon the property.

In any such case, the distribution of the price shall take place, under and in virtue of a judgment of the Judge."

[8] The only inscribed creditors, as per Exhibit "CI1", are the Seychelles Credit Union and the Development Bank of Seychelles. The Charge of the Seychelles Credit Union is a first rank Charge ranking first before the Charge registered against the Property in favour of the Development Bank of Seychelles. The Seychelles Credit Union and the Development Bank of Seychelles have each filed its claim with its application for collocation supported by miscellaneous documents under section 195 of the Act.

[9] This court heard the claims of the Seychelles Credit Union and the Development Bank of Seychelles on the 12th June, 2015.

[10] *Claim of the Seychelles Credit Union*

[11] Mr. Bernard Elizabeth, the Chief Executive Officer of the Seychelles Credit Union, swore to an affidavit on the 2nd June, 2015, in support of the petition filed by the Seychelles Credit Union. Paragraphs 6, 7, 8, 9, 10, 11 and 12 of the affidavit, of Mr. Bernard Elizabeth, read —

"6. That at a public auction held on the 10th April 2015 the property was sold by public auction in open court for a total consideration of Rupees Nineteen Million Two

Hundred and Fifty Thousand by a company Bastion Limited represented by its director Mr. Jerry Morin.

7. *That according to the certificate of Title from the land registry there are only two registered creditors to the said Title V5363 the present PETITIONER/EXECUTION CREDITOR and the Development Bank of Seychelles.*

(Copy of certificate of Title attached)

8. *That the sale was recorded and adjudicated upon in a judgment of the honourable Judge Fiona Robinson dated 12th May 2015 which judgment was registered in the registry of lands on the 18th May 2015.*

(Copy of registered judgment attached)

9. *That on the 25th May 2015 the PETITIONER/EXECUTION CREDITOR served the Development Bank of Seychelles with a summons under section 165 of the Immovable Property (Judicial Sales) Act CAP 94 and filed in the Supreme Court on the 27th May 2015.*

(Copy of summons to creditors attached)

10. *That on the 25th May 2015 the Development Bank of Seychelles responded through their Attorney to the said summons with their claim in the sum of Rupees Thirteen Million, Five Hundred and Five Thousand Seven Hundred and Twenty and Cents Forty Two (R13,505,720.42/-) being the amount of the bank's claim with effect from the 26th May 2015 inclusive of costs.*

(Copy of Development Bank Claim attached)

11. *That the Petitioner/Execution Creditor has also compiled its claim up to 26th May 2015 for a net total sum of Rupees Three Million Nine Hundred and Thirty Eight Thousand and Two cents Seventy Three plus taxed costs in the sum of Rupees Six Thousand and Sixty One.*

(Copy of claim of Petitioner/Execution Creditor attached)

12. *That the statements made in this Affidavit and the attached Petition are true and correct to the best of my knowledge information and belief and we pray this honourable court*

accordingly under section 168 of the Immovable Property (Judicial Sales) Act CAP 94."

[12] The total debt owed to the Seychelles Credit Union as of the 26th May, 2015, was Seychelles Rupees Three Million Nine Hundred and Thirty Eight Thousand and Two and Cents Seventy Three only (SCR 3, 938, 02.70/-) plus taxed costs in the sum of Seychelles Rupees Six Thousand and Sixty One.

[13] On the day of hearing of the Petition, learned counsel for the Seychelles Credit Union proved the total debt of the Seychelles Credit Union to the sum of Seychelles Rupees Two Million Nine Hundred and Twenty Five Thousand Seven Hundred and Four only (SCR2925704.00/-) having adjusted for interest.

[14] Having considered the claim of the Seychelles Credit Union supported by the various miscellaneous documents, this court is satisfied that the Seychelles Credit Union has proven its claim to the sum of Seychelles Rupees Two Million Nine Hundred and Twenty Five Thousand Seven Hundred and Four only (SCR2925704.00/-).

[15] *Claim of the Development Bank of Seychelles*

[16] Mrs. Annie Vidot, the Chief Executive Officer of the Development Bank of Seychelles, swore to an affidavit on the 11th June, 2015, in support of the petition filed by the Development Bank of Seychelles. Paragraphs 3, 4, 5, 6, 7, 8 and 9 of the affidavit of Mrs. Annie Vidot read —

"3. *By an instrument of Charge dated the 17th February, 2011, and registered on the 18th February, 2011, the Execution Debtor charged his land comprised in title no. V 5363 (hereinafter the "immovable property") in favour of the Inscribed Creditor to secure a loan of SR 12M plus interest and cost as per the loan agreement to Sakthi Aqua and Bottling (PTY) Limited. The said Charge is a second rank Charge ranking next after the Charge registered against the immovable property in favour of the Execution Creditor*

for a sum of SR 3,787,335/-. A copy of the Charge is shown to me produced and exhibited herewith.

4. *On the 10th April, 2015, the Honourable Court adjudicated the immovable property to Bastion Limited.*
5. *On the 25th May, 2015, the Inscribed Creditor received a summons under section 165 of the Immovable Property (Judicial Sales) Act (hereinafter 'the Act') served upon it by the Execution Creditor, summoning it to produce its claim to the proceeds of the said sale.*
6. *That as per section 168 of the Act, the Inscribed Creditor produces its claims and titles against the Execution Debtor along with proof of such claims, in order for the Court to proceed with the distribution of the proceeds of the sale.*
7. *I aver that the total debt owed to this Inscribed Creditor as of the 2nd June 2015 is in the sum of Seychelles Rupees Thirteen Million Five Hundred and Forty Five Thousand Two Hundred and Forty and Fourteen cents (SR 13,545,240.14). A statement of the debt as of the 2nd June 2015 along with invoices and receipts for other expenses and a letter confirming the legal fee owed to the Attorney preceding over the sale are shown to me produced and exhibited herewith.*
8. *The above statements are true and correct.*
9. *I, therefore, pray accordingly".*

[17] The total debt owed to the Development Bank of Seychelles as of the 2nd June, 2015, was in the sum of Seychelles Rupees Thirteen Million Five Hundred and Forty Five Thousand Two Hundred and Forty and Fourteen cents only (SCR13545240.14/-). On the day of hearing of the Petition, learned counsel for the Development Bank of Seychelles proved the total debt owed to the Development Bank of Seychelles to the sum of Seychelles Rupees Thirteen Million Five Hundred and Six Thousand Nine Hundred and Seventy and Fifty Cents only (SCR13506970.50/-).

[18] Having examined the petition and the affidavit in support of it, this court is satisfied that the Development Bank of Seychelles has proven its claim to the sum of Seychelles Rupees Thirteen Million Five Hundred and Six

Thousand Nine Hundred and Seventy and Fifty Cents only (SCR13506 970.50/-).

[19] **Decision**

[20] In light of the above, this court directs the Registrar of the Supreme Court to distribute the sum of Seychelles Rupees (SCR) Nineteen Million Two Hundred and Fifty Thousand only (SCR 19250000/-) as follows —

(a) To the Seychelles Credit Union —

(i) the sum of Seychelles Rupees (Two Million Nine Hundred and Nineteen Thousand Six Hundred and Forty Three only (SCR2919643.00/-); and

(ii) the amount of taxed costs calculated at Seychelles Rupees Six Thousand and Sixty One only (SCR6061/-).

The total amount to be distributed to the Seychelles Credit Union is Seychelles Rupees Two Million Nine Hundred and Twenty Five Thousand Seven Hundred and Four only (SCR2925704.00/-)

(b) To the Development Bank of Seychelles —

(i) the sum of Seychelles Rupees Thirteen Million Five Hundred and Six Thousand Nine Hundred and Seventy and Fifty Cents only (SCR13506970.50/-).

(c) Fees to be taken in the office of the Registrar of the Supreme Court on moneys distributed by court under the Courts Act Chapter 52 —

(i) the sum of Seychelles Rupees Nine Hundred and Sixty Two Thousand Five Hundred and Twenty Five only (SCR962525.00/-).

- [21] The total amount for distribution, in accordance with paragraph [20], of this Judgment for the distribution of the price, is Seychelles Rupees Seventeen Million Three Hundred and Ninety Five Thousand One Hundred and Ninety Nine and Cents Fifty only (SCR17395199.50). The amount of money remaining after the said distribution is Seychelles Rupees One Million Eight Hundred and Fifty Four Thousand Eight Hundred and Cents Fifty only (SCR1854800.50/-).
- [22] This court directs that the sum of Seychelles Rupees One Million Eight Hundred and Fifty Four Thousand Eight Hundred and Cents Fifty only (SCR1854800.50/-) shall be paid to the Execution Debtor, Mr. Subramanian Palanivelayut Pillay. The said sum of Seychelles Rupees One Million Eight Hundred and Fifty Four Thousand Eight Hundred and Cents Fifty only (SCR1854800.50/-) shall be paid in the client's account of Mr. France Bonte, learned counsel for the Execution Debtor. Mr. France Bonte shall provide details of his client's account to the Registrar of the Supreme Court, forthwith.
- [23] I certify as to counsel.

Signed dated and delivered at Ile du Port this 16th June, 2015.

F. Robinson
Judge of Supreme Court