

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2005-00548

BETWEEN

**JONTAE TINTO
ALDON JAMES**

CLAIMANTS

AND

**ROOSEVELT THOMPSON
RBTT BANK LTD**
(formerly The Royal Bank of Trinidad and Tobago Ltd.)

DEFENDANTS

Before The Honourable Mr. Justice Stollmeyer

Appearances:

Mr. K. Scott for the Claimants

Mr. S. Indarsingh for the Second Defendant

RULING

It has been agreed that I should determine a preliminary point of law in this matter because doing so might decide the outcome of the proceedings. The point of law is whether the issue of notice is relevant where competing equitable interests or claims exist, or whether the first equitable interest or claim is to prevail. It is a matter of priority of interests, and it is an issue between the Claimants and the Second Defendant, ("RBTT").

The issue arises in the following circumstances.

By two written agreement dated 4th March 1999 and 1st October 1999 respectively the Claimants agreed to buy from the First Defendant No. 38 Longden Street, Arima for \$180,000.00. They paid \$18,000.00 on account of the purchase price and, as agreed, took possession of the property. The First Claimant, Ms. Tinto, moved in (Mr. James having left Trinidad and Tobago to work in the United States) during July 1999 and carried out repairs and renovations to the property. A further \$90,000.00 was paid on account of the purchase price by October 1999, and yet further payments were made after that.

In 2001 Ms. Tinto also left Trinidad and Tobago and put her mother, Monica Joshua, in charge of the property. Ms. Joshua also continued making the payments on account of the purchase price to the First Defendant on behalf of the Claimants. By July 2005 the Claimants had paid a total of \$179,315.00 and when ready to make the final payment called on the First Defendant to convey the property to them. He refused to do so saying he was owed certain monies. In August 2005, while the Claimants and the First Defendant were attempting to resolve this question, someone went onto the property in Ms. Joshua's absence and installed locks and bolts. Ms. Joshua removed them and installed her own locks. On 28th August 2005 Mr. Burkette went onto the premises, evicted Ms. Joshua's licensee, a Mr. Edwin Gibson, and installed new locks. Mr. Burkette subsequently changed the locks once again.

Mr. Burkette's arrival was apparently on the instructions of RBTT which had obtained a judgment against the First Defendant on 20th January 2003 and then an order for the sale of the property under the provisions of the Remedies of Creditors Act Chap. 8:09 on 28th July 2005.

The Claimants seek specific performance against the First Defendant. As against the Second Defendant they seek a declaration that its judgment ranks after their

rights under the purchase agreement(s) and that the order for sale be set aside. No defence has been filed or served by the First Defendant. The Second Defendant raises the issue that its registered judgment is a legal charge that takes priority over the Claimants' rights, if any. Notwithstanding this, it was agreed that the preliminary point be formulated as I have set out above.

The issue for me to decide is whether the purchase agreements in 1999 or the judgment registered in 2003 takes priority.

Mr. Scott's submissions on behalf of the Claimants can be summarised as follows:

1. The two agreements in 1999 give the Claimants priority and whether RBTT had notice of this is irrelevant;
2. where the equities are equal, the first in time prevails;
3. registration of RBTT's money judgment may give notice to the world of its equitable charge or interest that arises under the provisions of the Remedies of Creditors Act, but this only affects equities or interests arising after registration;
4. notice is not relevant because RBTT is not a bona fide purchaser for value of the legal estate.

Ms. Indarsingh on behalf of RBTT submits as follows:

1. if an equitable interest is registrable, then registration constitutes notice to all the world including a subsequent holder of the land;
2. contracts for the sale/purchase of land in Trinidad and Tobago are not registrable. If they were, and were in fact registered, then in the present case the Claimant's interest would be superior to that of RBTT. It is not, however, registrable and its status is therefore inferior to RBTT's registered judgment.

A great deal turns on the effect on Sections 5, 7, and 8 of the Remedies of the Creditors Act Chap. 8:09, to which I will come.

The general rule in equity as to the priority of equitable charges (see *Snell's Equity* 31st Ed. Para. 4-03) is that he who is first in time is stronger in law. The principle has more to do with the times at which the competing charges were created than with the capacity of a person to dispose of an interest, as is the position in law. The person "...whose equity attached to the property first will be entitled to priority over the other. Where the equities are equal and neither claimant has the legal estate, the first in time prevails".

This general rule can be modified by provisions relating to registration and overreaching (most of which largely retain the principles of the basic rule), or where there is a purchase of property for value without notice of a legal interest in it; or by conduct of the parties; or finally by the rule in *Dearle v. Hall* (1828) 3Russ1 (see *Snell* at para. 4-02). It is enough to say that registration is the only one of these modifications suggested to me as having some effect in the present case.

It is not disputed that the agreement(s) for sale created an equitable interest in favour of the Claimants, and there is no doubt that the agreements came into existence more than two years before either the obtaining of the judgment or the order for sale by RBTT. It is not suggested that these agreements are in the form of a deed or that they are registrable. On that basis, the general rule would apply and the Claimants would have priority, thus bringing the matter to an end.

The thrust of the submissions on behalf of RBTT, however, is that the unregistered contract for sale has "...status inferior to that of...[RBTT's]...registered judgment...[and]... the Claimant's rights cannot prevail over that of [RBTT]...", because the registered judgment is a legal charge, and not equitable. Great reliance is placed on the Privy Council decision in the

Singapore case of *Chung Khiaw Bank Ltd. v. United Overseas Bank Ltd.* [1970] AC767.

In *Chung Khiaw* two banks, one an equitable mortgagee the other an unsecured judgment creditor, had competing claims to the proceeds of sale of lands owned by a Mr. Tay Soo Tong and which were subject to the equitable mortgages. Chung Khiaw obtained the equitable mortgage in 1958 by virtue of the deposit of title deeds. United Overseas obtained its judgment on 16th June 1966, and then on 27th October 1966 an order attaching Mr. Tay Soo Tong's interest in the properties by writ of seizure and sale. This order was registered in the Registry of Deeds on 28th October 1966.

Chung Khiaw then obtained, on 14th November 1966, an order against Mr. Tay Soo Tong declaring that it was the legal mortgagee of the properties and liberty to sell them out of Court. This order was registered in the register of deeds on 23rd January 1967. The issue was whether United Overseas as judgment creditor had priority in relation to the proceeds of sale of the properties. The Privy Council held (dismissing Chung Khiaw's appeal) that United Overseas had priority.

Chung Khiaw, however, is based upon a statutory regime different to that in Trinidad and Tobago. The relevant provisions in Singapore are:

Registrations of Deeds Ordinance 1886 C.255.

"2. 'assurance' includes any conveyance, memorandum of charge or discharge...[or] order of court....'order of court' means any judgment, decree, writ of execution or sequestration, adjudication in bankruptcy or other order or process of or issuing from the said court or other court of competent jurisdiction whereby any interest in any land is or may be affected."

"7. (1) Where any lien or charge on any lands is claimed in respect of any unpaid purchase-money or by reason of any deposit of title deeds or

otherwise, a memorandum of such lien or charge, signed by the person against whom such lien or charge is claimed, may be provisionally registered on presentation by any person claiming to be interested therein...(3) No such lien or charge shall have any effect or priority as against any assurance for valuable consideration unless and until a memorandum thereof has been registered in accordance with this Ordinance."

"15. (1) Subject to this Ordinance, all instruments...entitled to be registered under this Ordinance shall have priority according to the date of registration thereof and not according to the date of such instruments or of the execution thereof...(4) All priorities given by this Ordinance shall have full effect in all courts except in cases of actual fraud to which the person by or on whose behalf the registration is made is a party, and all persons claiming thereunder any legal or equitable interests shall be entitled to corresponding priorities, and no such person shall lose any such priority merely in consequence of his having been affected with actual or constructive notice except in cases of actual fraud to which he is a party."

Order XLI Rules of the High Court of Singapore.

"1. (1) Where the property to be seized consists of immovable property or any interest therein, seizure shall be effected by registering, under the Registration of Deeds Ordinance (cap.255), an order of court attaching the interest of the judgment debtor in the land described therein."

Civil Procedure Code 1907

"619-(1) Where the property to be seized consists of immovable property or any interest therein, either at law or in equity, the seizure shall be made by registering, under 'The Registration of Deeds Ordinance 1886,' an order of court, signed by the registrar and sealed with the seal of the court, attaching the interest of the judgment debtor in the property

described in the order. (2) The order shall be made ex parte by the registrar on a written requisition by the sheriff, and shall be deemed to be an order of court by which the property in it is affected, and an assurance for valuable consideration within the meaning of 'The Registration of Deeds Ordinance 1886.' "

Sections 5, 7 and 8 of the *Remedies of Creditors Act* are substantially different.

5. "Every judgment or decree to be entered up against any person in the Court shall operate as a charge upon all lands and rents of or to which that person shall at the time of entering up the judgment or decree, or at any time afterwards, be seised, possessed or entitled for any estate or interest whatever, whether in possession, reversion, remainder or expectancy, or over which that person shall at the time of entering up the judgment or decree, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit, and shall be binding as against the person against whom the judgment or decree shall be entered up, and against all persons claiming under him after the judgment or decree, and shall be also binding as against his next of kin, and all other persons whom he might without the assent of any other person cut off and debar from any remainder, reversion or other interest in or out of any of the said lands and rents."

7. No judgment or decree of the Court shall affect any lands as to purchasers, mortgagees or creditors, or have any preference against heirs, executors or administrators, in the administration of their ancestors', testators' or intestates' estates, any notice to any such purchaser, mortgagee or creditor, or to any such heir, executor or administrator notwithstanding, unless and until a memorandum or minute containing the name and the usual or last known place of abode and the trade or profession of the person whose estate is intended to be affected thereby, and the title of the cause or matter in which the judgment, decree,

order or rule has been obtained or made, and the date of the judgment, decree, order or rule, and the amount of the debt, damages, costs or moneys thereby recovered or ordered to be paid, shall be left with the Registrar General, who shall forthwith enter the same particulars, together with the year and the day of the month when the memorandum or minute is so left with him, in a book in alphabetical order by the name of the person whose estate is intended to be affected by the judgment, decree, order or rule, and the Registrar General shall be entitled for any such entry to the sum of two dollars and fifty cents, and all persons shall be at liberty to search the same book on payment of the sum of one dollar.

8. Every judgment to be registered in the manner directed by this Act shall entitle the creditor, by virtue of the judgment, decree, order or rule, to the same remedies in equity against the lands charged by virtue of this Act, or any part thereof, as he would be entitled to in case the person against whom the judgment, decree, order or rule has been so entered up had power to charge the same lands, and had by writing under his hand agreed to charge the same with the amount of the judgment debt, or the amount made payable by the decree, order or rule, and interest thereon."

The Registration of Deeds Act Chap. 19:06 provides (at Section 16) for the registration only of deeds relating to interests in land and for the order of priority as between deeds so registered. More specifically, this Act does not define what is meant by a deed, much less include an "order of court" within that definition, nor does it provide for the registration of orders of court.

There is no equivalent in this jurisdiction to either Order XLI of the Singapore Rules or Section 619 of the Civil Procedure Code, 1917.

The primary issue in *Chung Khiaw* was whether Singapore's Registration of Deeds Ordinance changed the pre-existing law as set out in decisions such as *Whitworth v. Gaugain* [1844] 3 Hare; *Eyre v. McDowell* 9 H.L. Cas. 619; and

Jones v. Barker [1909] 1 Ch. 321. In summary, (see *Chung Khiaw* at page 775 B-C) those decisions "... [substantially] support... the contention that under the general law, apart from special provisions of legislation as to registration, and in certain circumstances even where such special provisions exist, the judgment creditor can only take whatever interest the debtor has and that, in such a case, questions of priority and correspondingly a postponement through failure to register, do not arise".

In *Fung Sin Wa v. Moi Chan Hen* (1897) 4 S.S.L.R.175; (1898) 5 S.S.L.R., the Singapore courts held that the judgment creditor's writ of execution had priority over a previously created equitable charge. At first instance Leach J. held that Singapore's Registration of Deeds Ordinance differed in its wording to the statutes under which *Eyre* was decided, and that the writ of execution was an assurance for valuable consideration. On appeal (where his judgment was upheld) Collyer A.C.J. agreed that the law under which *Eyre* was decided was different and that the object of the Ordinance was "...to prevent as far as possible the making of unregistered and secret assurances of every kind, by giving priority to every kind of registered assurance" and also held that a writ of execution was an assurance for valuable consideration (see *Chung Khiaw* page 775D).

Section 619 of the Civil Procedure Code was seen by the Privy Council in *Chung Khiaw* (see pp.775H-776A) as "... a legislative endorsement of the decision in *Fung's* case", and specifically "... that part of it by which an order of attachment of immovable property was held to be an assurance for valuable consideration...".

The Privy Council in *Chung Khiaw* was asked to disagree with *Fung Sin Wa* but expressed (at page 775E-F) reluctance to do so for two reasons. First, that the "...construction placed upon the Ordinance, in particular upon section 2 (definition of assurance) and section 7(3), appears in itself at least a reasonable

construction, and if the matter were doubtful, then their lordships would be inclined to favour that construction which gave strength to a system of priority by registration furthering the policy to which Collyer A.C.J. referred". The Privy Council then went on to say that Section 619 of the Civil Procedure Code appeared to be a legislative endorsement of *Fung Sin Wa*, particularly that part of the decision which held that "...an order of attachment of immovable property was ...an assurance for valuable consideration, and by implication of the decision as a whole".

In short, the effect of registration is to create by statute an assurance for valuable consideration *i.e.* a legal interest (as opposed to an equitable interest) which will have priority over a previous unregistered equitable charge or interest. This reflects the doctrine of the purchaser for valuable consideration without notice, by which the purchaser of a legal estate without notice of a prior equitable right is entitled to priority in equity as well as in law (see *e.g. Snell: Principles of Equity* 26th Edition at page 52).

It is perhaps worthy of mention that in a later decision of the Singapore courts, *Ng Boo Bee v. Khaw Joo Choe* 14 S.S.L.R. 90, it was held that at the date of the seizure by a judgment creditor there was no interest of the judgment debtor to be seized. The latter had previously conveyed the property to someone who had paid the full purchase price and gone into possession, but had not registered the deed of conveyance prior to the date on which the judgment creditor's order was registered. It was held that the Registration of Deeds Ordinance did not postpone the conveyance to the seizure. To express it differently, the seizure did not gain priority over the conveyance because the judgment debtor had no interest in the land, legal or equitable, when the order was registered.

In Trinidad and Tobago the effect of registration of a judgment is dealt with solely by the provisions of the *Remedies of Creditors Act*. In summary, Section 5 creates a blanket equitable charge upon every estate or interest, legal or

equitable, in land to which the judgment debtor is beneficially entitled when judgment is entered, and this charge is binding on him and on any person claiming under him after that judgment is registered. By Section 7, however, that judgment does not affect "...any lands as to purchasers, mortgagees or creditors or have any preference against heirs, executors or administrators, in the administration of their ancestors', testators' or intestates' estate ..." unless and until the judgment is registered. Section 8 gives to the judgment creditor the same remedies in equity against the lands in question as the judgment debtor had power to charge those lands and had done so in writing.

It should be noted that by Section 9 any such registration is effective for only three years and lapses unless renewed, so that the charge created can fall by the wayside. Also, by Section 11 where any legal or equitable estate becomes vested in any person by virtue of a conveyance or other instrument as a purchaser or mortgagee for valuable consideration, the lands may not be taken in execution under any writ of execution if the mortgagee has been paid off prior to or at the time of the execution of the conveyance or mortgage, and no such judgment shall be a charge on the lands so vested in purchasers or mortgagees. In the present case, the Claimants say that they have paid the purchaser price and were in possession prior to RBTT obtaining its judgment

The result of all this is that a judgment creditor has an equitable charge with only the same equitable remedies against the land as would a judgment debtor if the latter had charged the land to the judgment creditor to the extent of the judgment debt and interest thereon.

Sections 28, 35, 37 and 45 of the *Remedies and Creditors Act* provide for a judgment creditor obtaining an order for the sale of any legal or equitable interest of the judgment debtor in any lands. In the instant case it appears that the order was obtained following an application under Section 35, execution having been levied previously (to which I will come). I have ascertained this

from a perusal of the proceedings in HCA No.63 of 2003, in which RBTT obtained judgment and thereafter a writ of execution in an effort to obtain satisfaction of the judgment debt against Roosevelt Thompson.

I have had regard to these proceedings although I was not made aware, either in the submissions or RBTT's defence, of what steps, if any, it took after obtaining the judgment. I did so for the sake of completeness because while it may not affect my decision on the preliminary point, the existence of the writ of execution brings into focus certain further provisions of the Remedies of Creditors Act. I therefore take notice of RBTT having obtained the issue of a writ of execution *feri facias* and that it was executed on 14th June 2006 by the seizing of certain goods and chattels of Roosevelt Thompson the sale of which realised the amount of \$7,769.61.

The relevant provisions of the Remedies of Creditors Act are Section 11, to which I have already referred, and Sections 22 and 28 and those following.

Section 22 directs the Marshal of the Court to seize and sell the personal goods and chattels and effects of the judgment debtor. This does not include chattel interests in land, much less any legal or equitable interest in land.

Section 28 provides that a judgment creditor is entitled to an order for sale of any beneficial interest in land, whether that interest is legal or equitable, or of a freehold or chattel nature, having given credit for any monies realised by the sale of chattels under Section 22.

Section 34 provides that the Marshal shall make execution for the judgment debt by seizure of any lands actually in the possession of the judgment debtor on the written request of the judgment creditor.

Section 35 provides for the issue of the summons for sale after the execution provided for in Section 34, or for it to issue without that execution either because the judgment debtor is not in possession of the lands; or the lands cannot be entered on immediately or seized without prejudicially affecting or the rights of some other person not a party to the proceedings. A seizure under section 35 is to prevent the judgment creditor from disposing of the lands until the application for the order for sale is decided. It does not divest the lands from the judgment creditor.

No such request was made under Section 34 in the present case. The summons seeking the order for sale does not indicate that it was issued pursuant to Section 35. Indeed, it does not indicate the section pursuant to which it was issued. It does not ask for seizure; the relief sought is limited to an order for sale.

Section 48 provides for the ordering of a trial to decide any issue relating to the lands arising between a judgment creditor and a judgment debtor or any other person claiming to be entitled to the lands.

All this places a judgment creditor in this jurisdiction in a different, and lesser, position than his counterpart in Singapore.

Registration of a judgment under the *Remedies of Creditors Act* does not have the same effect as the registration of a judgment or writ of seizure in Singapore under the conjoint effect of its Registration of Deeds Ordinance, Rules of the High Court and Civil Procedure Code. Nothing more than an equitable charge is created in favour of a judgment creditor, and having registered the judgment he must then take further steps to enforce that judgment. If he chooses to do so by way of an order for the sale of land, any person claiming an interest in the land can be heard and any sale of the land will be subject to the interest, if any, of that person.

A judgment creditor in this country is in no better position than under *Eyre*: "A judgment mortgage [i.e. a registered judgment] is a process of execution and the judgment mortgagee [i.e. the judgment creditor] is not a purchaser for valuable consideration". This statement has been approved in Irish decisions such as *ACC Bank plc v. Markham & Anor* [2005] 1EHC 437 at para 4.1.

Further, it is well accepted that a person claiming an interest can apply to the Court to have an order for sale made in their absence varied or set aside, depending upon the circumstances. This was done, for example, by Nur Mohammed Gokool in HCA 2041 of 1973 *John Richardson v. Record Investment Ltd*

The memorandum or minute of judgment is not a deed for the purposes of the *Registration of Deeds Act*. There is no "seizure" or "attachment" of the land as a consequence of registration of the memorandum of judgment. There is no provision for registering a writ of execution or seizure under this Act or under the *Remedies of Creditors Act*. Seizure takes place only as a result of the judgment creditor so requesting under Section 35, but no such request was made in this case. In any event, as I have said, there is no provision for registering the "seizure" in any registry, nor is there any provision for registering the order for sale. The memorandum of judgment is not an assurance for valuable consideration, nor is the seizure, nor is the order for sale. The Singapore position is materially different to that in this jurisdiction. *The Remedies of Creditors Act* does not operate for the purpose of notice or priority in the same manner of the *Registration of the Deeds Act* or the Singapore Ordinance. A judgment creditor gets no greater interest in the land than that held by the judgment debtor.

RBTT also relies on the decision in *Richardson*. This was decided on the particular provisions of Section 79 of the then Companies Ordinance Ch. 31 No. 1 which required registration in the Companies Registry of particulars of a charge as well as the document creating or evidencing a charge. The latter part of that requirement was in direct conflict with the provisions of Section 16 of the Registration of Deeds Act which made a charge void against e.g. a subsequent purchaser for value if not registered in the Deeds Registry. It is, of course impossible to register the original document in both registries. The mortgagee in *Richardson* (whose charge pre-dated the registration of the judgment and the obtaining of an order for sale) obtained an order extending the time for registration of the particulars of sale. It was registration of those particulars under that order (for the first time) that preserved the priority of the mortgage.

In the circumstances, I do not regard this decision as assisting RBTT in this case.

In *Trinidad Home Developers Ltd. v. IMH Investments Ltd. (No 3)* 63 WIR 413 registration of a judgment was held by the Privy Council to be part of the process of execution. That case was concerned with the construction of Section 254 of the then Companies Ordinance Ch. 31 No. 1 (now effectively reproduced in Section 441 of the Companies Act Chap 81:01) which was to ensure that unless execution had been completed before a winding-up began, a judgment creditor would lose the priority over other creditors that he would otherwise have had (see para. 33). Having also considered the provisions of Sections 5, 7, 8 of the *Remedies of Creditors Act*, as well as the historical development of the law, the Privy Council concluded (at para. 37) that there was "...no reason why the entire procedure for entry of the judgment, followed by its registration and the resort by the judgment creditor to the remedies provided by the [Remedies of Creditors Act] culminating in an order for sale, should not be regarded for the purposes of Section 254 as a process of execution. Although the judgment charge [*i.e.* the registration of the judgment] confers the same priority as an

ordinary consensual equitable charge, it is a charge created in aid of the enforcement of the judgment. It can therefore be regarded as being not only a judgment but, in so far as it creates an automatic charge, part of the process of its own execution".

The observations made at paragraphs 38 and 39 of this judgment appear to take the matter one step further than just the provisions of Section 254. Referring to the words of Sir Nicholas Browne-Wilkinson at pages 763-764 of *Bristol Airport plc v. Powdrill* [1990] 1CH 744 where he said, "There is no legal reason why the same act should not have a dual effect as being both the perfection of the security and a step taken to enforce it", the Privy Council went on to say, "Their Lordships think that likewise, in the particular context of [the Remedies of Creditors Act] the entry and registration of judgment not only creates the security over land but also counts as part of the process of execution".

I do not think, however, that *Trinidad Home Developers* assists RBTT in the case before me. It does not, for example, take matters to the stage of execution having been completed. There was no seizure in the instant case, and the order for sale can be set aside. Section 254 provides in effect that a judgment creditor cannot retain the benefit of an execution against a company unless the execution is completed before the beginning of the winding-up of a company, and that execution against land is completed by an order for sale being made or by seizure. I can find no analogous provision where the judgment debtor is an individual, except perhaps in the event of bankruptcy, but that is not the case here and I do not comment upon it.

More important, however, is that neither a judgment nor a seizure, nor an order for sale, is an assurance for value. No legal estate or interest therefore vests in a judgment creditor as a consequence of registering the judgment, obtaining

seizure, or an order for sale, and there will be no obtaining of priority over an equitable interest created previously. The statutory provisions and the case law in this jurisdiction fall short of the position in Singapore.

What arises here is a case of the creation of an unregistrable, equitable interest being followed by the creation of a registrable equitable interest. The latter is created by its registration but the Remedies of Creditors Ordinance does not establish any regime for priorities, unlike registration of a deed under the Registration of Deeds Act.

Similarly, it does not provide that registration constitutes notice to all persons for all purposes, as is the case in England where a registrable interest registered under the Land Charges Act 1925 constitutes notice to all persons and for all purposes as a result of Section 198(1) of the Law of Property Act 1925.

The consequence of registration under Section 7 of the Remedies of Creditors Ordinance is effectively to give notice to the world, since the Register is available for public inspection, although no statute so provides. By Section 5, however, the charge created is as against any interest or estate held by the judgment debtor at the time of entering up the judgment, or at any time after that, or over which he might exercise any power of disposal for his own benefit without the agreement of any other person. The charge is binding against all persons claiming under the judgment debtor after the judgment.

It does not, therefore, affect or bind any person who at the date of entry of the judgment had already acquired an interest in the land, to the extent of that interest. The nature of such an interest is expressed succinctly in *Jagdeo Sookraj v. Buddhu Samaroo* (2004) 63 WIR 401 at para [16]. The consequence of this in the present case is two-fold: first, the equitable charge created by the registration of the judgment can only be against the legal estate in the lands

which Roosevelt Thompson still held at the time judgment against him was entered by RBTT; second, and more important for the purpose of deciding the preliminary point, the charge created when RBTT's judgment was registered does not affect the equitable interest previously acquired by the Claimants. In this instance, registration does not give priority, and notice is not relevant.

The registration system in this country cannot govern priority as between a registered deed and another document or disposition which is not registrable such as a mere contract for sale (see *Wylie: The Land Laws of Trinidad & Tobago* paras. 23:04; 23.16 referring to *Charles v. Leacock* 1926 6 TrinLR 57). In such a case the ordinary doctrine of notice and the distinction between legal and equitable interests will be applicable. Although this was said in the context of the 1981 legislation (enacted but never brought into force) it is equally applicable to the provisions of the existing Registration of Deeds Act.

In the circumstances of this case notice is not relevant. The Claimant's interest was created first. If RBTT knew of it, or knew that the premises were occupied by someone other than Roosevelt Thompson, then it was on notice to enquire as to what other interest there might be. RBTT will rank for priority after any such charge.

If RBTT did not know of any prior interest, then the general of order priority is not affected. Both interests are equitable and rank for priority in order of creation.

I have therefore come to the conclusion that the general rule is not displaced: the priority of the competing equitable interests is that they rank for priority in order of creation.

The preliminary point was to decide whether notice is relevant to the question of deciding priority of the respective interests. In short, my answer is in the negative given the circumstances of this case. The beneficial or equitable interest of the purchasers and the judgment debt rank for priority in the order of creation.

The preliminary point having been decided, I will hear Attorneys-at-Law for the parties on how the claim might progress further.

19th February 2009

C.V.H. Stollmeyer
Judge