

~~The application for leave to appeal against the order of Justice Ward dated 21st May 2021 as varied by his order of 3rd June 2021, is withdrawn with no order as to costs.~~

Reason:

~~The applicant made an application to appeal to orders of Justice Ward made on the 21st of May 2021 and varied on an oral application on 3rd June 2021.~~

~~The applicant explained that at the time the application was made for leave to appeal, the orders were alive, however the orders have now expired by effluxion of time. The applicant sought the Court's guidance on whether there was a need to proceed with the application having regard to the fact that the orders no longer exist.~~

~~The applicant then withdrew his application for leave to appeal given the circumstances and the Court ordered the application withdrawn.~~

Case Name:

**Caribbean Building Systems (St. Kitts) Limited
v
First Caribbean International Bank (Barbados)
Limited
[SKBHCVAP2021/0001]
(SAINT KITTS AND NEVIS)**

Date:

Tuesday, 13th July 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard Farara QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Victor Elliot- Hamilton

Respondents: Mr. Garth Wilkin

Issues:

Interlocutory Appeal – Appeal against the order a master – Title by Registration Act – Reduction of upset price with respect to property held by respondent – Whether the master erred in law by the weight which he attached to factors in his evaluation

**Type of
Order:**

Oral Decision

**Result /
Order:**

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed with costs to the respondent of \$2,000.00;**
- 2. The respondents counter appeal is allowed with no order as to costs;**
- 3. Order 3 of the master's order is quashed and order 2 is replaced by the following:**

The day and time of the sale of the property shall be fixed by the Registrar of the High Court no earlier than 30th November 2021.

Reason:

The Court considered an appeal against the order of the Master which reduced the upset price of property under the Title by Registration Act of Saint Kitts and Nevis.

The appellants argued that the following grounds on appeal:

- 1. The Master erred in law by failing to attach sufficient weight to the fact that the respondent had not provided any evidence that the property had been adequately advertised, in light of the matters that it was at liberty to carry out in the order dated 19th October 2016.**
- 2. The Master erred in law by failing to make mandatory conditions of the announcement suitable and reasonable given the Property's value and best use.**
- 3. The Master erred in law by attached too much weight upon previous order of Master Actie.**

Counsel for the appellant asserted that there was no evidence that the bank took any of the methods of advertisement that it was at liberty to take and no evidence as to why it failed to do so. He argued that the bank appeared to have done the bare minimum in publishing the sale of the property on the newspaper. Counsel submitted that the respondent's application was premised on the fact that the sale was adjourned, and the bank obtained a valuation with the reduced upset price.

He further argued that there is no indication in the affidavits submitted by the bank that it took any steps to advertise the property beyond the bare minimum set out in the Order of the Master. Counsel also argued that the Master's failure to attach significant weight to this factor was a serious error of law. Relying on the case of Cuckmere Brick Co v Mutual Finance [1971] EWCA Civ 9 he stated that it is implicit that the manner in which a mortgagee is to advertise property has a direct relationship with the price obtained at sale.

The respondent submitted that the appellant conflated the common law duties of a mortgagee when exercising the power of sale and that ground 1 was misconceived. He also contended that whether or not the property was adequately advertised, the respondent's application only sought an assignment of a reduced upset price for the property based on the new appraisal which the Master was guided to consider and did.

The respondent's application sought to reduce the upset price of the sale value estimated in the valuation of October 28th 2019, which he argued was reasonable as it was the only appraisal in evidence seeing that the appellant did not present one or seek to challenge the court's sale value from that appraisal.

The Court considered the relevant statute and noted that the Title by Registration Act allows for sale of mortgaged property by way of auction through the Registrar of the High Court.

When assessing the appellants' arguments, the Court found that ground 1 and 3 of the appeal both concerned the weight attached by the Master and therefore considered them together. In light of this, the Court noted that it is inappropriate for the Court to interfere with the master's evaluation unless it is perverse – Manzi v King's College Hospital NHS foundation Trust [2018] EWCA Civ 1882.

The Court was of the opinion that the Master was correct in reducing the upset price based on his review of the new appraisal of the mortgaged property. The Master would have been cognizant of the fact that previous sales of the property did not take place as no prospective buyers attended. With respect to the statutory adjustment the Master agreed with

the pronouncements made by the previous Master's and added one further mandatory mode of advertisement.

The Master in the Courts view acted based on his discretion after properly considering the provisions of statute, previous announcements of sale and the evidence before him. The Master was entitled to take the view he did in reducing the upset price, it cannot be said that he erred in the exercise of his discretion or reached a decision that was plainly wrong. The Court was of the opinion that there was no basis for appellate review and grounds 1 and 3 were accordingly dismissed.

The Court, in assessing ground 2 of the appellants arguments found that the Master's order was reasonable given the circumstances.

~~Case Name:~~

~~Sandy Nisbett~~

~~v~~

~~The Director of Public Prosecutions
[SKBHCRAP2012/0014]
(SAINT KITTS AND NEVIS)~~

~~Date:~~

~~Wednesday 14th July 2021~~

~~Goram:~~

~~The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard Farara QC, Justice of Appeal [Ag.]~~

~~Appearances:~~

~~Appellant: Ms. Natasha Grey~~

~~Respondent: Mr. Tashaun Vasquez~~

~~Issues:~~

~~Criminal appeal – Appeal against sentence – Whether the sentence imposed by the judge was manifestly excessive – Assessment of psychiatric report on the appellants' condition~~

~~Type of Order:~~

~~Oral Decision~~

EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT



IN THE HIGH COURT OF JUSTICE

APPLICATION NO. SKBHCV 2013/0021

IN THE MATTER OF SECTION 92 OF THE TITLE BY REGISTRATION ACT

- AND -

IN THE MATTER OF THE SALE OF THE PROPERTY COMPRISED IN
CERTIFICATE OF TITLE DATED FEBRUARY 10, 2006 AND REGISTERED
IN BOOK F3 Folio 69

BETWEEN:

[1] FIRSTCARIBBEAN INTERNATIONAL
(BARBADOS) LIMITED

Applicant

and

[1] CARIBBEAN BUILDING SYSTEMS
(ST. KITTS) LIMITED

Respondent

BEFORE: Master Carlos Cameron Michel (Ag.)

APPEARANCES:

Mr. Garth Wilkin of Counsel for the Applicant

Mr. Victor Elliott-Hamilton of Counsel for the Respondent

PRESENT:

Mr. Peter Irish representative of the Applicant

Mr. Paul Bilzerian representative of the Respondent

Ms. D. Camilla Cato

DATED: The 20th day of January, 2021

ENTERED: The 23 day of Feb, 2021

ORDER

UPON the matter coming on for the hearing of an application to reduce the upset price

UPON READING the notice of application filed by the applicant Bank on 23rd March 2020 (together with an affidavit of Peter Irish in support, the 1st affidavit of Eavin L. Parry with exhibit ELP-1, and a draft order) for a new date of sale of the property of the respondent Company described in a Certificate of Title dated 10th February 2006 and registered in Register Book F3 Folio 69 of the Register of Titles of the Island of St. Kitts ("the Property") at a reduced upset price of EC\$1,205,000.00 and to adjust the announcements of sale and the mode of publication thereof

UPON READING the affidavit of Paul Bilzerian filed on 10th November 2020 in response to the application of the applicant

UPON HEARING counsel for the parties

UPON READING the written submissions and authorities of the respondent filed on 25th November 2020 in response to the applicant Bank's application filed on 23rd March 2020

UPON READING the written submissions and authorities of the applicant Bank filed on 10th December 2020 in support of the applicant Bank's application filed on 23rd March 2020

UPON READING the appraisal report prepared by Mr. Eavin L. Parry dated 28th October 2020 and exhibited to his affidavit filed on 23rd March 2020

UPON NOTING the disposition value of the Property of EC\$1,205,000.00 in the report of Mr. Eavin L. Parry dated 28th October 2019

UPON NOTING that the disposition value of the Property provided by Mr. Eavin L. Parry is based on a marketing time of 9 months

UPON NOTING that the Property's zoning is tourism and resort development

UPON NOTING section 92 of the Titles by Registration Act Cap. 10.19 of the Laws of Saint Christopher and Nevis:

"Announcement of adjourned sale.

92. When the sale has been so postponed, another day shall be fixed by the Court, either at the request of the Registrar of the High Court, or on the motion of the mortgagee or encumbrancee prosecuting the sale, or of the registered proprietor, and with or without any alteration of the upset price, or of the announcements of sale, as may be considered best adapted to ensure a sale of the land and estate, and on such publication of the announcement of the adjourned sale as the Court may order."

UPON NOTING that the respondent objects to the reduced upset price being sought by the applicant but has not provided the court with evidence of a different disposition value of the Property

UPON NOTING the order of Lanns M dated 6th November 2013

UPON NOTING the order of Actie M dated 19th October 2016 which provided for the announcements of sale of the Property by advertisement locally and granted leave to the respondent to advertise the sale of the Property internationally

UPON TAKING THE VIEW that it is unnecessary to alter the announcements of sale made in the previous order of the court save and except to require the applicant to place on the Property of "For Sale by Public Auction" signs and to grant liberty to the applicant to advertise internationally

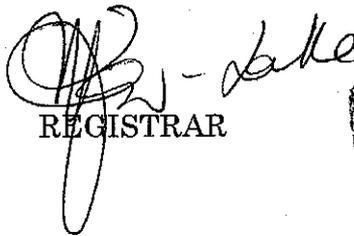
AND UPON TAKING THE VIEW that a 9-month period should be allowed for the Property to be advertised to ensure a sale of the Property

IT IS HEREBY ORDERED that:

1. The reduced upset price of the Property shall be EC\$1,205,000.00.
2. The day and time of sale of the Property shall be fixed by the Registrar of the High Court.
3. The date of sale of the Property shall be fixed for a date being not less than 9 months from the issue of the Notice of the sale by the Registrar of the High Court.
4. Notice of the sale of the Property issued by the Registrar of the High Court shall be advertised twice in two different local newspapers, at least 4 weeks prior to the sale and by placing on the Property of "For Sale by Public Auction" signs.
5. The Applicant shall also be at liberty to, but shall not be required to, advertise the Notice of the sale of the Property issued by the Registrar of the High Court and photographs of the Property in the following manner:-
 - a) On at least one occasion each on a radio station based in Nevis and a radio station based in St Kitts.
 - b) On at least one local based website of an internet-based news entity.
 - c) On ZIZ television and/or on a Cable television channel offering local advertisements.
 - d) By advertisement internationally.

6. The Respondent is granted permission to advertise the aforesaid Notice of the sale of the Property signed by the Registrar of the High Court internationally at the expense of the Respondent, but failure so to do shall not delay the sale of the Property on the sale date.
7. The Respondent shall make the Property available for showing to prospective purchasers at reasonable times during the week and on weekends, that is, between the hours of 9 a.m. to 5 p.m.
8. All other terms of the Articles of Sale settled on November 6, 2013 shall remain the same, except that the reduced upset price reflected therein shall be EC\$1,205,000.00.

BY THE COURT


REGISTRAR

