

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. G214 OF 2014

BETWEEN:

MARIVEL EBANKS-YATES

Plaintiff

AND

MIREYA ODALYS EBANKS

Defendant

Appearances: **Mr. Laurence Aiolfi of Priestleys for the Plaintiff**
 Mr. H. Phillip Ebanks of Premier Group Solutions for the
 Defendant

Before: **Hon. Justice Richard Williams**

Heard: **8 August 2016 and 24 May 2018**

Draft Judgment
Circulated: **28 May 2018**

Judgment Delivered: **31 May 2018**



HEADNOTE

Land Law – Joint Proprietorship – Registered Land Law does not prevent order being made for the sale of the entire property under the Partition Law

JUDGMENT

The Applications

1. This is the Plaintiff's ("P") application, brought by an Originating Summons issued on 18 September 2014, for an order for sale of a property registered as Block 38B, parcel 463 Lower Valley ("the property") pursuant to s.4 of the



Partition Law (1997) Revision ("the Law"). The property is a three-bedroom single dwelling house set on .3 of an acre.

2. P is a joint proprietor of the property with the Defendant ("D"), who is her sister. The parties each have a half share in the property.

3. P relies upon the content of her affidavit sworn on 10 September 2014 in support of her application. D relies upon her affidavit sworn on 19 April 2018 and the affidavit of Nelly Ebanks sworn on 8 May 2018 in support of her opposition to the order sought. D's Counsel has made it clear that D no longer relies upon her unsigned and undated affidavit filed on 25 September 2015. D's Counsel confirms that D does not pursue her contentions contained in her September 2015 affidavit that P does not have an interest in the property as she was not born in the Cayman Islands and is not married to a Caymanian and that the Register is "*out of date*" and has no bearing on these proceedings.

4. On the first day of the hearing on 8 August 2016, I was conscious that D appeared in person. At the hearing, after the close of the P's evidence and early into the D's evidence, I became so concerned about D's mental health and her apparent inability to understand the issues, especially in relation to the law, that I adjourned the hearing part-heard to enable her to apply for Legal Aid and obtain representation.

5. At the Case Management hearing on 18 May 2018, issues in relation to further evidence touching on the merits of and factors to be considered in the application were raised. The parties agreed that the full hearing could not proceed, but that this hearing should instead be used to determine whether the Court had the jurisdiction to make the orders sought pursuant to the Law in light of s.100 of the Registered Land Law (2018 Revision) (“the RLL”) and the Court of Appeal’s ruling in *Mums Incorporated and Thiam-Hong Tan v Cayman Capital Trust Company, B.V. Randall and E.G. Randall* [2000] CILR 131 (CA).

Background

6. P and D were joint proprietors of the property with their father. Upon their father’s death on 30 August 2008 his interest vested in the parties. P and D have since held the property in equal proportion, as joint proprietors. This is evidenced by the extract from the Cayman Islands Land Register dated August 2016.

7. The parties lived together in the property along with their elderly mother and D’s 11-year-old daughter. In October 2008 it was agreed that Mr. Hoybia, D’s boyfriend since 1996 and the father of D’s child, could move into the property. P said that she agreed to this as she believed that his residing there would only be a temporary arrangement.



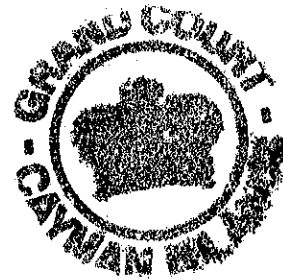
8. There was a breakdown in P's and D's relationship. For the purpose of the preliminary jurisdictional issue before me, I need not herein set out the detail of each party's evidence about the reasons for the breakdown.

9. P left the property in September 2011, six months after D and Mr. Hoybia had married. P currently resides with her other sister and with the parties' mother who eventually moved out of the property to join her there at the end of May 2013 due to health issues. P indicates that she has no benefit at all from the property, which she says is not being well maintained by D.

The Law

(i) The Partition Law

10. Under common law, although a joint tenant or a tenant in common could force a division of property¹, the Courts in England and Wales could not order a sale of co-owned property until the Partition Act 1868 ("the Act") gave them that jurisdiction.² The Law is a replication of the Act and allows a co-tenant in proceedings to petition to obtain an order for the sale of the relevant property which may be a more workable remedy, especially where division of a property is inconvenient or impracticable. Both parties agreed at the hearing that the Law has not been repealed.



¹ An Act Concerning Joint Tenants and Tenants in Common 1539, An Act Concerning Joint Tenants for Term of Life Years 1540 granted the right to compel partition at common law - The equitable jurisdiction to partition merged shortly thereafter see Lord Nottingham L.C. in *Manaton v Squire* (1677) 2 Free 26. The 1954 Act still applies in the Cayman Islands and is a trigger for the use of the Partition Law.

² The Act was repealed in England and Wales by the Law and Property Act 1925 and thereafter a system of statutory trust on co-owned lands was imposed.

11. As there is no agreement about the sale of the property, P has applied for an order pursuant to section 4 of the Law. The Law authorises the Court to order a sale of the property in three separate and distinct situations³. A primary intention of the Law is to:

“enable an unwilling co-owner to rid themselves of the shackles of co-ownership and have either a physical division of the property into aliquot parts among the co-owners or a division of the proceeds of its sale.”⁴

12. Counsel for P made it clear that P’s application is made pursuant to S4 of the Law which provides:

“In a suit for partition, where, if this Law had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates, requests the Court to direct a sale of the property, and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.”

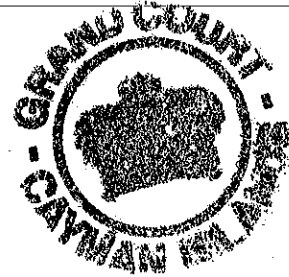


13. As highlighted in P’s written submissions, although the Partition Act was repealed in England and Wales by the Law of Property Act 1925, the English 19th Century authorities are persuasive when considering the interpretation and application of

³ Set out in s.3, 4 and 5 of the Law.

⁴ Trainor J. in *Pun Jong Sau & Ors v Poon Wing Kong & Ors* [1977-1979] HKC 210 - although a Hong Kong case referring to the differently worded Partition Ordinance, the sentiments expressed therein are equally applicable to the Cayman Law.

the Law in the Cayman Islands. However, as I am asked at this time to only determine the preliminary jurisdictional issue, I need not consider those authorities in this ruling.



(ii) Jurisdiction – Effect of the RLL

14. D, relying upon the decision in *Mums*, claims that P's action for sale of the property must fail as the RLL is "*exhaustive on the issue*." P argues that the RLL is not exhaustive, as it contemplates that it may not deal with all matters. P contends that neither the RLL nor the Court of Appeal's decision in *Mums* provide a bar to her action brought under the Law, which the Legislature intended to apply in circumstances such as in this case as the Law, which was in force at the time of the RLL's enactment, has not been repealed.
15. The RLL establishes the registration system in the Cayman Islands and also deals with registrable rights, including those held in co-ownership. As highlighted by Dr. Simon Cooper in "Conveyancing Law and Practice in the Cayman Islands" Third Edition page 14 and in his article "Partition of Land in the Commonwealth Caribbean" 2010 39 Common Law World Law Review 283 at 286, ownership in common and joint ownership are the available forms of co-ownership in the Cayman Islands as they are explicitly recognised in the RLL. The former type of ownership is more flexible as each owner has a separate share in the land and has the right to dispose of his share at will, although he would require the written consent of the other proprietor who could not refuse to give it if there are no

reasonable grounds for doing so. However, we are dealing with the latter type of ownership in this matter, as the parties are registered as joint proprietors of the land and therefore they each have an equal but undivided share in the land, requiring that dealings with the land must be carried out by them both, unless one is transferring his interest to the other.

16. For the purposes of the jurisdiction issue before me the relevant sections of the RLL are:

(i) Section 3 under the heading “Reconciliation with other laws”:

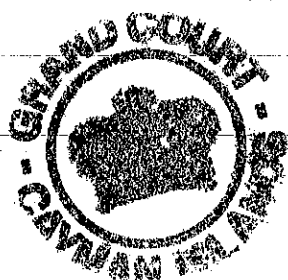
“Except as otherwise provided in this Law, no other law and no practice or procedure relating to land shall apply to land registered under this Law so far as it is inconsistent with this Law.”

(ii) Section 37 (1):

“No land, lease or charge registered under this Law shall be capable of being disposed of except in accordance with this Law, and every attempt to dispose of such land, lease or charge otherwise than in accordance with this Law shall be ineffectual to create, extinguish, transfer, vary or affect any estate, right or interest in the land, lease or charge.”

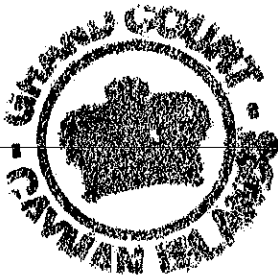
(iii) Section 100 under the heading “Characteristics of joint proprietorship and severance thereof”:

“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 a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly."*

- (iv) Section 164 under the heading "How matters not provided for in Law to be decided":



"Any matter not provided for in this or any other law in relation to land, leases and charges registered under this Law, and interests therein, shall be decided in accordance with the principles of justice, equity and good conscience".

17. Having regard to the meaning of "*disposing*" in s.37(1) RLL, the definition found at s.2 RLL provides that a disposition is:

"any act inter vivos by a proprietor whereby his rights in or over his land, lease or charge are affected..."

In *Mums*, Georges, J.A, when considering the two sections cited, applied the following dictum of Henry J.A in *Paradise Manor Ltd. v Bank of Nova Scotia* [1984-1985] CILR 437 at 468:

"By applying the definition of 'disposition' to s.37, the meaning that emerges is that no right of a proprietor in or over his land, lease or charge registered under the Law shall be capable of being affected except in accordance with the Law and the system of registration established by it."

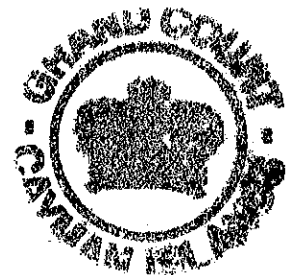
18. Sections 102 and 103 RLL provides the Registrar of Land with the power to order partition of land owned in common and in certain circumstances imposes a

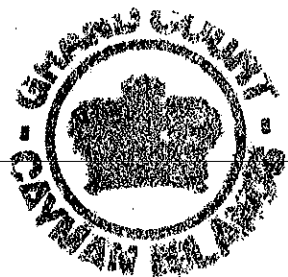
requirement to order sale. There is no reason why a proprietor in common could not seek an order for partition or sale under the Law as well as use the Registrar of Land route provided for in s.102 and 103 RLL. I note, but do not agree with, Counsel for D's submission that an application for sale under the Law could only be made by that proprietor following an unsuccessful application before the Registrar of Lands pursuant to the RLL.

19. The RLL contains no provision dealing with the partition of land held jointly, which is how P and D own this land.

(iii) Jurisdiction – Effect of the RLL in light of the Court of Appeal decision in *Mums*

20. In *Mums* the appellants applied pursuant to s42 of the Judicature Law for an order for the sale of the second respondent's interest in a jointly owned property (the matrimonial home) based on a judgment they had obtained against the second respondent. The wife of the second respondent was registered as a joint proprietor. In the Grand Court, Harre J. held that a joint proprietor did not have a separate share in the property and that there was no power to grant an order for the sale of the second respondent's interest save in compliance with section 100 of the RLL. The Court of Appeal upheld Harre J.'s finding.





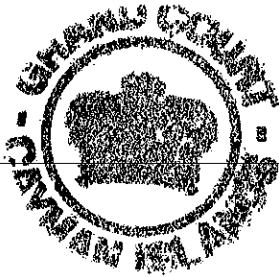
21. In the consolidated cases of *Webb (D.L.) v Webb (O.B.) and Webb (M.)* and in *Cowcatcher Collection Limited v Hawkes (R.) and Hawkes (B.)* 1997 CILR 26⁵

the Chief Justice applied *Mums* when considering the plaintiffs' applications for charging orders nisi, which had been imposed over the defendants' matrimonial homes, to be made final. In one of the cases a judgment in relation to maintenance arrears had been made and, in the other case, a default judgment had been entered on a contract dispute. In both matters the plaintiff wanted to secure the debt against the defendant's beneficial interest in property jointly owned with the wife, who in turn argued that the Court did not have the power to do so. The plaintiff contended, relying on the Judicature Law (1995 Revision), that the beneficial interest of a debtor could be charged and that the making of a charging order was not a disquisition that fell foul of the need for consent required by s.100(1) (a) of the RLL. Smellie C.J., when discharging the charging orders nisi, found that the making of a charging order was a disposition within the meaning of the RLL as it affected the rights of the proprietors and required the consent of all joint proprietors pursuant to s.100(1)(a) RLL.

22. I cannot improve on Smellie C.J.'s learned review of the Court of Appeal's decision of *Mums* when he applied it in his judgment in *Webb*. Therefore, I see great merit in reproducing it herein. I start with the Chief Justice's following comments upon the nature of joint proprietorship, found at page 30 line 13 in *Webb*:

⁵ Although decided in 1990, *Mums* was still an unreported decision at that time of Smellie C.J.'s Judgment.

"The following passage from 39 Halsbury's Laws of England, 4th ed., para. 529, at 349 describes the incidents of joint tenancy as it applied in England prior to January 1926 and—but for an important distinguishing principle affecting the individual right of joint proprietors to sever—as it would apply in the Cayman Islands today:



"Each joint tenant has an identical interest in the whole land and every part of it. The title of each arises by the same act. The interest of each is the same in extent, nature and duration. In the case of freeholds, the seisin, and, in the case of leaseholds, the possession, is vested in all; none holds any part to the exclusion of the others. At common law the interest of each must vest at the same time. These are the four unities of title, interest, possession and time..."

At footnote 5 (loc. cit., at 350) it is stated that each joint tenant holds the whole land and holds nothing; i.e. he holds the whole jointly and nothing separately. This principle is most clearly borne out by what is perhaps the most important incident of joint tenancy or proprietorship: the jus accrescendi or right of survivorship which operates so that the death of one joint tenant creates no vacancy in the seisin or possession of the land. His interest is extinguished and the survivor becomes seised or possessed of the whole and where there is more than one survivor, they continue to hold as joint tenants: see Halsbury's Laws (loc. cit., para 531, at 351)."

23. Smellie C.J. went on, from page 30 line 34 to page 33 line 29 in *Webb*, to provide a most helpful and insightful analysis of *Mum*:

"The similarities between the nature of joint proprietorship under the law of Cayman and joint tenancy under the law of England pre-1926 were recognized by the Court of Appeal in the unreported judgment of Georges, J.A. in Mums Inc. v. Cayman

Capital Trust Co. (2). The important distinction between the right of any joint tenant at common law to demand severance of his interest and the absence of any such right under Cayman law without the consent of all joint proprietors, was a pivotal factor to the outcome in the Mums case. It is a factor of equal importance here.

In the Mums case the appellants/judgment creditors contended that the interest which the judgment debtor held as joint proprietor with his wife in the matrimonial home could be sold pursuant to s.42 (now repealed) of the Judicature Law, to satisfy the judgment debt. That contention was addressed in the following terms which I find applicable to the present case by Georges, J.A.:



"As in the joint proprietorship under the Registered Land Law, joint tenants at common law prior to 1925 had no separate claim in the land. They did, however, have separate rights or interests. The appellants contend this interest can be sold under s.42 of the Judicature Law. Joint proprietorship under the Registered Land Law and joint tenancy at common law prior to 1925 had another characteristic in common—the right of survivorship. As set out in s.99(1)(b) 'on the death of a joint proprietor his interest vested' in the surviving proprietors jointly. There is, however, a clear distinction between the two. At common law prior to 1925 the rule was as stated in Williams on Real Property, 23rd ed., at 147 (1920):

'The incidents of a joint tenancy above referred to, last only as long as the joint tenancy exists. It is in the power of any one of the joint tenants to sever the tenancy; for each joint tenant possesses an absolute power to dispose, in his life time, of his own share of the lands by which means he destroys the joint tenancy(s).'

This right has clearly not been preserved under the Registered Land Law. Dispositions under s.99(1) [now s.100(1)] can be made only by all joint proprietors. The term 'dispositions' in that sub-section cannot, in my view, be interpreted to mean a disposition of the entire estate in the parcel of land jointly held. Such a proposition would



plainly not need to be enacted. It can only mean that one joint proprietor can dispose of his or her interest in the land jointly held only if all the other joint proprietors agree. This is confirmed by the fact that there is one exception. The joint proprietor can transfer his or her interest to the other joint proprietors. Accordingly, any sale under s.42 of the Judicature Law would result in a disposition inconsistent with the Registered Land Law and would be ineffectual. It appears to me that the argument on behalf of the appellants is based on the premise that a joint proprietor under the Registered Land Law has the same rights as has a joint tenant (at common law) to sever the tenancy unilaterally. Section 99(3) makes it clear that joint proprietorship can only be severed by the agreement of all the joint proprietors. A unilateral right of severance would be inconsistent with the Registered Land Law and could not, therefore, be implied." [Emphasis supplied.]

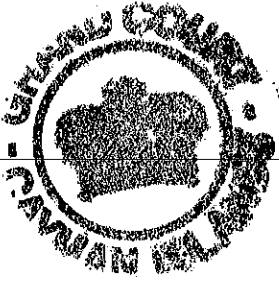
Implicit in those findings is the view of the Court of Appeal that an order for sale by the court would only be valid if allowable as a disposition within the meaning of the Registered Land Law and that the power of the court to so order in respect of a joint proprietorship could be no more extensive than the right of a joint proprietor to dispose.

By the time of the Mums case (2) it was settled law in the Cayman Islands that the Registered Land Law was a comprehensive code of the law governing the registration of and dealings in land, including the dispositions of interests in registered land. As much is stated in the Court of Appeal judgment in that case. And the Registered Land Law itself makes that clear. Section 37(1) of the Registered Land Law (1995 Revision) provides:

"No land, lease or charge registered under this Law shall be capable of being disposed of except in accordance with this Law, and every attempt to dispose of such land, lease or charge otherwise than in accordance with this Law shall be ineffectual to create, extinguish, transfer, vary or affect any estate, right or interest in the land, lease or charge."

In the definitions section—s.2—“disposition” is defined as “any act inter vivos by a proprietor whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer, lease or charge.”

In the Mums case, Georges, J.A. cited and applied the earlier judgment of Henry, J.A. in Paradise Manor Ltd. v. Bank of Nova Scotia (4) in which those sections were considered in the following terms (1984–85 CILR at 480):



“By applying the definition of ‘disposition’ to s.37, the meaning that emerges is that no right of a proprietor in or over his land, lease or charge registered under the Law shall be capable of being affected except in accordance with the Law and the system of registration established by it.”

By applying that dictum to the case before him in Mums (2), Georges, J.A., on behalf of the court, then proceeded to conclude, as we have seen, that because a joint proprietor has no unilateral right to sever or otherwise dispose of his interest under a joint proprietorship, there could be no order made for the sale of any such interest.

Is there a proper basis for contending, as have the judgment creditors before me, that a charging order should be differently regarded for present purposes as a form of disposition and that the orders should be made absolute and registered even if there could never be a power of sale? This contention, as I understand it, centres on the word “beneficially” as it is used in para. 2(1)(a) of the Third Schedule to the Law, to describe any interest held by a judgment debtor in land. This, the attorneys for the judgment creditors submit, is expression of the legislative intent that any interest—legal or beneficial—in land shall be chargeable by order. This would include the “beneficial interests” of the respectively liable joint proprietors.

I find this submission to be without merit for a number of reasons. The first is the fairly obvious one: The joint proprietor has no separate identifiable interest in the land and his "beneficial" interest must be coincidental and co-extensive with his legal interest—as joint proprietor he holds the whole land jointly but nothing separately. Thus there is no separate legal or beneficial interest; only identical interests with that of the other joint proprietor(s). The second is that even if one could conceive of a separate "beneficial interest" to be charged but not sold, such a charge would be none the less a "disposition" within the meaning of the Registered Land Law and, therefore, impermissible as it would purport to affect land held under joint proprietorship while not conforming to s.100. As already summarized in the context of the Mums case, that section governs the disposition of interests in such land in the following absolute terms:

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

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

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

(2) For the avoidance of doubt, it is declared that—

(a) the sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and

(b) a joint proprietor of any land, lease or charge may transfer his interest therein to all the other proprietors."

Paragraph 3(2) of the Third Schedule to the Judicature Law (1995 Revision) settles this point. It refers to the prescribed form and mandates that the charge shall be registered against the title to the land. A charge operates as a disposition, even if the power to sell is never exercised. Those provisions are incompatible with the



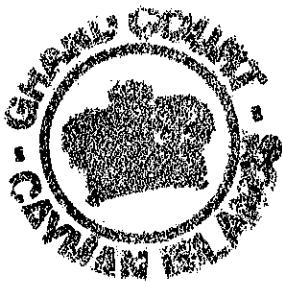


restrictions imposed upon dispositions of land held upon joint tenancy in s.100 (1)(a) of the Registered Land Law (1995 Revision) and therefore would be contrary to the paramount intentions of that Law."

24. The approach in *Mums* was adopted by the Eastern Caribbean Court of Appeal in *Eunice Edwards v Keith Edwards and Njardas AS* Civil Appeal No. 15 of 2005, Gordon J.A commenting that "*the very same issue of involuntary separation of a joint interest arose.*" In *Edwards* the appellant was the husband, the first respondent was the wife and they held a property as joint proprietors. Regrettably the property was not dealt with during their divorce ancillary relief proceedings and this resulted in a post-divorce partition proceedings being issued. The second respondent obtained judgment in default against the respondent and, due to a failure to make payments, committal proceedings followed. The committal proceedings were resolved by means of a consent order between the respondent in which the respondent agreed to give the second respondent a charge over his half share of the property and that the share be sold to satisfy the debt. The appellant was permitted to intervene and argued that the Court did not have the jurisdiction to make the order as the property was joint property and the ownership could not be severed unilaterally by the respondent. The Supreme Court Judge sitting in Antigua and Barbuda did not agree with the appellant and she said that the beneficial joint tenancy was severed. Their Registered Land Act ("the RLA") was

par materia with the RLL and it is clear that the Learned Judge had greatly relied upon s.161, a provision identical to s.164 of the RLL.⁶

25. Gordon J.A., adopting the reasoning of Georges, J.A., rejected the approach taken by the Supreme Court Judge and upheld the Appeal. The Court of Appeal preferred that to the approach taken by the Learned Judge who used s.161 of the RLA as a means to “provide a ‘filler’ for what she saw as a lacuna in the law.” The Learned Judge’s analysis, which did not find favour with the Court of Appeal, included her observations on the absence of any reference to the Partition Act in the RLA and her view that:



“Parliament must be presumed to know that the Partition Act applied to joint tenants as well as tenants in common and if it wished to preclude applications under the Partition Act by a joint tenants where a fellow tenant did not consent to a disposition or severance it had the opportunity to say so expressly. By not doing so and by not making any provision for situations where joint tenants failed to agree to file the prescribed instrument under section 101(3) it seemingly left a serious lacuna in the law.”

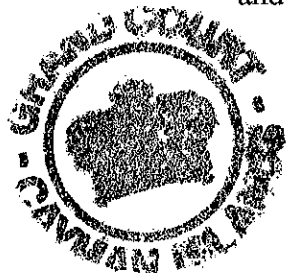
The Learned Judge added that

“...Parliament did not leave the joint tenant without a remedy. By section 161 Parliament recognized implicitly that it might have omitted to deal with all matter touching and concerning registered land and specifically addressed this by providing that such matters be resolved as stated in section 161. What better formula could have been devised for addressing omissions.”

⁶ See paragraph 16 (iv) herein

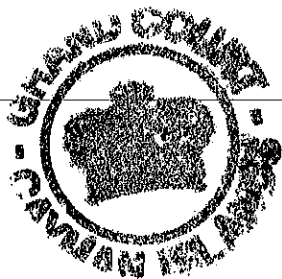
26. Reliance upon S.164 of the RLL forms a brief part in the Plaintiff's written Preliminary Skeleton Argument where it is contended that the RLL recognises that all matters may not have been covered in the RLL. At the hearing no oral submissions had been made on the point, so I drew both Counsels' attention to the Court of Appeal's observations in *Edwards* and invited their comments. I accept that the decision in *Edwards* is not binding on me, but the approach of the Court of Appeal sitting in Antigua and Barbuda is insightful. I fully endorse Gordon J.A's views concerning the Learned Judge's as they applied to the circumstances in the *Mums*, the *Webb* and in the *Edwards* cases, involving an involuntary separation of a joint interest where one of the joint proprietor's interest was not liable to being disposed of, for instance because he did not have someone seeking to enforce a judgment against his interest or because he was not seeking to dispose of his interest by the sale of his undivided share to meet such a liability.

27. The Court of Appeal in *Mums* left the issue about the applicability of the Law open. In the Grand Court in *Mums* Harre J. reviewed the relationship of the RLL and the Law and stated:



"... the principal purpose of the Partition Law is to spell out circumstances in which a sale rather than a division of the property may be directed by the court in suit for partition, where, if the [Partition Law] had not been passed, a decree of partition might have been made."

28. In the Court of Appeal Georges, J.A. stated at 136 that:



"It is not necessary for the purposes of this appeal to decide whether a joint proprietor or a proprietor in common of land could apply to the court under the Partition Law for an order of sale or Partition. There is no such application before the Court. The RLL makes clear that severance of joint proprietorship can only be by consent of all joint proprietors and that severance does not more than create a proprietorship in common. The Partition Law is not, in my view, relevant to these proceedings."

29. The decision in *Mums*, so helpfully analysed by Smellie C.J. in *Webb* is clear and consistent with later decisions made in similar circumstances. The authorities reiterate that severance and disposal of one proprietor's interest is not permitted except with the agreement of all joint proprietors in the circumstances stated in s.100 of the RLL, and they make it clear that there is no power to order the sale of an undivided share to satisfy a judgment debt.

30. In *Mums* Georges, J.A. recognised that there may be instances where the Court has a statutory power to dispose of property where it is held by joint proprietors. He highlighted that the Courts "*routinely*" order the sale and distribution of the proceeds of matrimonial property held by spouses as joint proprietors pursuant to s.21 of the Matrimonial Causes Law. S. 21 provides that:

"at the time of pronouncing a decree under this Law the Court shall, as appropriate, make orders for –

...

(b) the disposition of matrimonial property including the matrimonial home."

31. Then, at page 137 in *Mums*, Georges, J.A. referring to s.21 added:

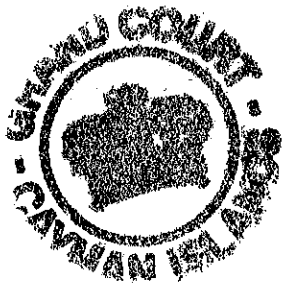
"The power there granted to the court is a power to dispose of the entire matrimonial property. Property held by the spouses as joint tenants can be sold in its entirety. The spouses can be ordered to sign, or a court official authorized to sign on their behalf. In this case there is no power to order a disposition of the whole property, since Mrs. Randall's interest is not liable to being disposed of, there being no judgment against her, and she cannot be compelled to join in any conveyance to dispose of the entire property, as would be possible if the court was exercising its jurisdiction under s.21 of the Matrimonial Causes Law. Section 120 of the RLL provides:



"Where the Crown or any person has become entitled to any land lease or charge under any law or by virtue of any order or certificate, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by such evidence as he may require, register the Crown or the person entitled, as the proprietor."

The RLL does contemplate that estates registered under the RLL may be sold by order made or issued under some Law, presumably by a court. The disposition ordered under any such Law must, however, be such as not to be inconsistent with the RLL. In this case there is no power to order the entire property to be disposed of and the RLL does not provide for the disposition of the interest held by one joint proprietor of land without the agreement of the other unless that disposition be to the remaining joint proprietors." [My emphasis by underlining]

32. P places great reliance on this extract from *Mums*, contending that the Court of Appeal were giving an example of a sale of property pursuant to another law not being “at odds” with the RLL. P rightly contends that the Law was not repealed for a reason and therefore the Legislature had an intention, as it did with the Matrimonial Causes Law, to enable orders to be made for the property of joint proprietors to be sold in its entirety. It is submitted by P that, although it is in no way binding on this Court, that this is a view supported by Dr. Cooper in his abovementioned article⁷ where he states that:



“In the common law world, the courts generally possess powers to order partition or sale: in the smaller Caribbean jurisdictions, this is supplemented by the registrar’s power to partition.

*The Court’s extensive statutory power ensures that applications in the forum possess certain jurisdictional advantages over applications to the land registrar for partition. For instance, the court has wider powers to order a sale of land in lieu of partition and divide the proceeds; ... ; it can partition on the application of the a joint tenant (an important right when a joint proprietors cannot sever without the consent of all other proprietors as is the case under the model; land registration statute” “(footnote – e.g. under the Registered Land Law (2004 Revision, s.100 (Cayman Islands): applied in the decision of the Grand Court in *Mums Incorporated v Cayman Capital Trust Co.* [1988-89] CILR 485).”*

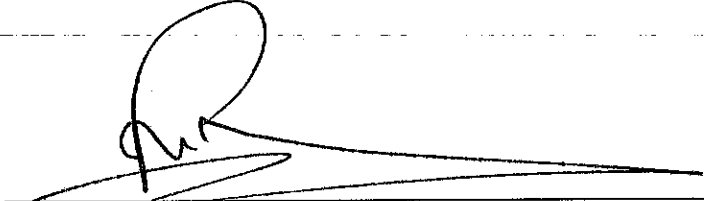
33. The Law is a piece of legislation that deals with the sale of the entirety of the property and not only of the interest or share of one of the joint proprietors and, in that regard, is similar to the Matrimonial Causes Law. In the matter before me,

⁷ See paragraph 15 above.

there are the two parties before the Court who have the interest in the property and there is no external third party seeking a sale of the entire assets in order to release one party's interests. The circumstances are therefore different to the circumstances that the Courts were dealing with in *Mums, Webb* and *Edwards*, where a sale would have resulted in a disposition that was inconsistent with the RLL. I do not accept D's Counsel's submission that, because the Law regime has not, unlike the matrimonial law regime, evolved and produced an extensive body of case law allowing the disposition of property that has gone unopposed, that an analogy cannot be drawn between the two or reliance be placed on Georges, J.A's comments in *Mums* when considering the jurisdictional issue before me.

Conclusion

34. I am satisfied that the Law, which both parties agree was not repealed when the RLL was enacted and which is still in force, provides the Court with a power to direct the sale of the property in the circumstances that exist in this matter.


THE HON. MR. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT

