IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 99

Civil Appeal No 163 of 2019

Between

Singapore Air Charter Pte Ltd

… *Appellant*

And

(1) Peter Low & Choo LLC
(2) Malayan Banking Berhad

… *Respondents*

In the matter of HC/OS 113 of 2019

In the matter of
Order 15, Rule 16 of the Rules of Court
(Cap 322, 2014 Rev Ed)

and

In the matter of
Order 17, Rule 1 of the
Rules of Court (Cap 322, 2014 Rev Ed)

and

In the matter of
Sections 37, 132 and 134
of the Land Titles Act (Cap 157, 2004 Rev Ed)

Between

Peter Low & Choo LLC

… *Applicant*

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And

(1) Singapore Air Charter Pte Ltd
(2) Malayan Banking Berhad

… *Respondents*

JUDGMENT

[Civil Procedure] – [Judgments and orders] – [Enforcement] – [Priority of creditors]

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Singapore Air Charter Pte Ltd
v
Peter Low & Choo LLC and another

[2020] SGCA 99

Court of Appeal — Civil Appeal No 163 of 2019
Sundaresh Menon CJ, Judith Prakash JA and Steven Chong JA
18 June 2020

14 October 2020 Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 The issue in this appeal may appear to be a rather dry procedural one: which of two competing judgment creditors has priority of claim in respect of the balance proceeds of sale of the judgment debtor's property. Indeed, this impression may not be dispelled upon reading the judgment revolving as it does around statutory interpretation and reconciling court enforcement procedures with the statutory regime. Having said that, clarifying the legal position in this regard will, we hope, be of assistance not only to the litigants before us but also to future judgment creditors pondering how to enforce their judgments.

Background

The facts (Part 1)

2 The facts are straightforward. The judgment debtor in question is one Mr Danial Patrick Higgins ("the Debtor"). He co-owned an apartment unit in Pasir Ris ("the Property") which was mortgaged to the second respondent, Malayan Banking Berhad ("the Bank"). On 26 September 2016, judgment was entered against the Debtor in the sum of US$340,500 in favour of the appellant herein, Singapore Air Charter Pte Ltd ("SAC"). Two years later in March 2018, judgment for $394,254.13 against the Debtor was obtained by the first respondent herein, Peter Low & Choo LLC ("PLC") on account of its legal fees when it represented the Debtor in the action taken by SAC against him. Because the Debtor did not settle the judgment debts, both his creditors took steps to enforce their respective judgments against the Property, using the execution procedures provided for by the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("the Rules"). These procedures are time-sensitive in that they are valid for only limited periods as prescribed by the relevant provisions in the Rules and the legislation regulating the ownership of registered land, the Land Titles Act (Cap 157, 2004 Rev Ed) ("the LTA"). The Property is registered land falling under the LTA.

3 We now digress from the facts to describe the provisions which set out the possible enforcement actions available to a judgment creditor in respect of real property owned by the judgment debtor. Thereafter, we will come back to the various steps taken by SAC and PLC to attach the Debtor's interest in the Property.

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The legislative and procedural scheme

4 As is well known, the LTA provides a comprehensive scheme for the ownership of immovable property in Singapore. Most land in Singapore, which term includes apartment units like the Property, is registered on the land-register maintained by the Registrar of Titles. All dealings with a piece of registered land must be entered in the land-register. Generally, interests in registered land must also be notified on the land-register to be effective. The foregoing is stated by way of general introduction only.

5 Part XIII of the LTA is entitled "Writs and Orders of Court" ("Part XIII"). It is the chapter of the LTA that deals specifically with enforcement action taken by a judgment creditor against registered land belonging to a judgment debtor. There are sections in other parts of the LTA that might have some bearing on issues raised by an enforcement action, but any consideration must start with Part XIII.

6 The primary sections of Part XIII that we need to have regard to are ss 132 and 134. We reproduce the sections later in this judgment (at [21]). At this point it is sufficient to give a general explanation of the same. Under s 132(1), in order for a parcel of land to be affected by a writ of execution or an order of court which empowers a third party to sell the same, that writ or order of court must be entered in the land-register. The registration of the writ or order will enable the Sheriff or the person named in the order to sell the land and execute a transfer of the land which can be registered against it in the land-register. Once registered, the writ remains valid for a year but, at the expiration of that year, the registration lapses: s 134(1). After the first writ has lapsed, the judgment creditor can still procure the issue of a renewed writ or a subsequent writ on the same judgment and tender the same for registration: s 134(2).

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7 To invoke the seizure provisions of the LTA, the judgment creditor has first to obtain a registrable instrument from the court. The procedure to do so is set out in O 47 of the Rules, the Order being entitled "Writs of Seizure and Sale". Order 47 Rule 4(1)(*a*) provides that where a judgment creditor wishes to seize immovable property, that seizure shall be effected by registering an order of court in Form 96 ("the Form 96 Order") attaching the interest of the judgment debtor in the immovable property. Upon registration, that interest is deemed to be seized by the Sheriff. Under the Rules, the Form 96 Order remains in force for six months unless it is registered on the land-register within that period: O 47 r 4(1)(*f*).

8 After registering the Form 96 Order, by O 47 r 4(1)(*e*), the judgment creditor must file a writ of seizure and sale in Form 83 ("Form 83 Writ") and an undertaking, declaration and indemnity in Form 87. The Sheriff must then serve a copy of the Form 83 Writ, the corresponding Form 96 Order and the notice of seizure in Form 97 on the judgment debtor or, if the judgment debtor cannot be found, affix the Form 83 Writ to the immovable property: O 47 r 4(1)(*e*)(iii). Thereafter, the Sheriff can sell the interest of the judgment debtor in the property. The Form 83 Writ remains valid for 12 months from its date of issue but may be renewed: O 46 r 6(1).

9 The essential question that has arisen in this case is whether it is the Form 96 Order or the Form 83 Writ which qualifies as the "writ of execution" that must be registered under s 132(1) of the LTA.

The facts (Part 2)

10 We now go back to the steps taken by the parties herein to attach the Property in satisfaction of their respective judgment debts.

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11 We list first the steps taken by SAC:

(i) On 23 March 2017, SAC applied for the interest of the Debtor in the Property to be attached to satisfy its judgment debt. On 29 March 2017, the High Court granted this order and it was subsequently extracted in Form 96.

(ii) On 19 April 2017, SAC lodged its Form 96 Order with the Registrar of Titles for registration in the land-register. It was subsequently registered under instrument number AOC IE/793086A. The effective date of registration was 19 April 2017.

(iii) On 19 April 2017 as well, SAC applied for the issue of a Form 83 Writ in respect of the Property. Pursuant to this form, the Sheriff attended at the Property on 4 May 2017 and affixed documents to it.

(iv) Thereafter, SAC wrote to the Bank asking it to consent to the sale of the Property. By mid-August 2017, the Bank had indicated in writing that it would not consent to a sale by SAC as it was not the Bank's practice to do so. In view of the Bank's opposition, SAC could not proceed with a sale. Paragraph 80(2) of Part X of the Supreme Court Practice Directions states that the Sheriff shall not be required to proceed with a sale of the immovable property if the execution creditor cannot produce the mortgagee's written consent to the sale.

(v) On 19 September 2017, on its application, SAC was granted an order ("First Extension Order") that extended by six months the validity of the Form 96 Order it had obtained in March 2017 until

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28 March 2018. SAC applied to the Registrar of Titles for registration of the First Extension Order. This application was rejected on 9 December 2017.

(vi) On 21 March 2018, SAC obtained a further order ("Second Extension Order") extending the validity of its Form 96 Order for a further six months until 28 September 2018. It applied for registration of the Second Extension Order but the same was rejected by the Registrar of Titles on 30 July 2018. The Registrar of Titles noted that the registration of the Form 96 Order had first to be cancelled before SAC could have the Second Extension Order registered.

(vii) Apart from attempting to procure the extension of its Form 96 Order, on 5 April 2018, SAC applied for an extension of the Form 83 Writ it had obtained in April 2017. It was granted an order ("WSS Extension Order") extending the Form 83 Writ for a further twelve months from 18 April 2018 to 17 April 2019. Shortly thereafter, SAC applied to register the WSS Extension Order, but the application was rejected by the Registrar of Titles on 30 July 2018. The next day, SAC applied again for the registration of the WSS Extension Order and it was registered on 19 December 2018, which was six days after the Property had been sold.

12 As far as PLC was concerned, the steps it took were as follows:

(i) On 16 March 2018, PLC was granted an order attaching the Debtor's interest in the Property. This order was subsequently extracted in Form 96.

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(ii) On 28 March 2018, PLC lodged its Form 96 Order for registration against the Property in the land-register and this registration was effected on 11 April 2018 under instrument No IF/231537E.

(iii) On 18 April 2018, PLC obtained a Form 83 Writ in respect of the Property.

(iv) PLC made attempts to register its Form 83 Writ on the land-register but the instrument was rejected.

13 In the meantime, the Bank had been making efforts to sell the Property. These efforts resulted in an option to purchase being issued in November 2018 and in a mortgagee sale being effected on 13 December 2018. The proceeds of sale were more than sufficient to satisfy the indebtedness due to the Bank and the question then arose as the whether the Debtor's share of the surplus sales proceeds ("the surplus proceeds") ought to be paid to SAC or PLC.

Proceedings below

14 In January 2019, PLC took out an originating summons in the High Court seeking a declaration that it was entitled to the surplus proceeds on the basis that SAC's Form 96 Order no longer bound the Property because its registration had lapsed in April 2018 pursuant to s 134 of the LTA.

15 The High Court judge ("the Judge") heard submissions from PLC and SAC. The Judge decided in *Peter Low & Choo LLC v Singapore Air Charter Pte Ltd* [2019] SGHC 89 ("the Judgment") that PLC was entitled to the surplus proceeds in priority over SAC. His reasons were as follows:

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(a) Priority of third parties' interests in relation to the surplus sales proceeds should be determined with reference to the date at which the Property was sold (Judgment at [12]).

(b) Form 96 Orders are "writs" pursuant to s 131 of the LTA and they would need to be registered under s 132(1) of the LTA to bind or affect the Property. Registration of SAC's Form 96 Order on 19 April 2017 effected a seizure of the Debtor's interest in the Property. Registration of PLC's Form 96 Order on 11 April 2018 also effected a seizure of the Debtor's interest in the Property. This was reflected in the land-register (Judgment at [10]).

(c) Pursuant to s 134 of the LTA, a Form 96 Order will expire one year from its date of registration, and a Form 83 Writ issued pursuant to the registration of the Form 96 Order will expire on the same date (Judgment at [11]).

(d) At the date of the sale of the Property on 13 December 2018, only PLC's Form 96 Order was registered. SAC's Form 96 Order had lapsed on 18 April 2018 and its extension order was only registered on 19 December 2018 *after* the Property was sold. As such, PLC was entitled to the Debtor's interest in the surplus proceeds in priority over SAC (Judgment at [12]).

16 It can be seen from the actions of the parties as described in [11] and [12] above that there was some degree of uncertainty on their part as to which instrument should be registered or whether both instruments should be. There was also a lack of clarity as to the period of validity of a registered Form 96 Order.

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The appeal

17 SAC was dissatisfied with the decision of the Judge and applied for leave to appeal the same. Leave was granted by this court on 19 July 2019. Parties were directed to address various questions in their respective cases. It was subsequently decided that the court would be assisted in dealing with these questions by an *amicus curiae*.

18 Accordingly, on 7 November 2019, Associate Professor Alvin See Wei Liang ("Prof See") of the School of Law, Singapore Management University, was appointed as *amicus curiae*. Prof See was asked to address a number of questions which were, in large part, the same as those that the parties had been asked to address. The questions were:

(a) What is the "writ of execution" referred to in s 132(1) and the "writ" referred to in s 134(1) of the LTA? Is it the order of court in Form 96 referred to in O 47 r 4(1)(*a*) of the Rules or the writ of seizure and sale in Form 83 referred to in O 47 r 1(*e*) of the Rules or both?

(b) Which of the instruments referred to in question (a) above needs to be registered in order to bind or affect the land under s 132(1) of the LTA?

(c) Would either or both such instruments referred to in (a) above need to be registered for the purposes of priority under s 37(5) or s 48(1) of the LTA?

(d) If the instrument identified in (b) above is registered under the LTA, can it be renewed or extended and, if so, please identify the legal basis. Specifically, does such an instrument, once registered under the

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LTA, have an expiry date after registration? In answering this question, please address s 134(1) of the LTA, which suggests that the registration of the writ of execution shall lapse and the power of the Sheriff to execute (presumably pursuant to a writ of seizure and sale in Form 83 of Appendix A of the Rules) shall be extinguished at the expiration of one year from the date of registration.

(e) If the instrument identified in (b) above which has already been registered under the LTA cannot be extended beyond the one-year period commencing on the date of the registration under the LTA, can it nonetheless have priority over similar instruments registered at a later date which had not expired?

19 At the hearing of the appeal, therefore, apart from the parties' submissions, we also had the benefit of a written opinion and oral submissions from Prof See. We take this opportunity to express our gratitude for the learned and thorough contributions of Prof See which have been very helpful in our analysis.

Applicable provisions of the LTA and the Rules

20 Before we set out the submissions of the parties and our analysis, the relevant legislative provisions and rules of court are cited in more detail for ease of reference.

Part XIII of the LTA

21 First, we set out the relevant provisions of Part XIII of the LTA. These are as follows:

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Interpretation of this Part

131. In this Part, unless the context otherwise requires –

"order" includes any rule or decree of any court;

"Sheriff" includes any officer directed by a court to levy execution on land;

"writ" means a writ of execution issued out of any court having jurisdiction to levy execution against land, and, where the context admits, includes renewal of a writ and a second or subsequent writ on the same judgment.

Writs and orders not binding unless registered

132.—(1) A writ of execution, or an order of court directing, appointing or empowering some person other than the proprietor to sell or otherwise to deal with or dispose of registered land, shall not bind or affect such land until particulars of the writ or order have been entered in the land-register.

(2) An entry referred to in subsection (1) shall constitute a memorial of registration within the meaning of section 37.

…

(4) The registration of a writ or an order shall enable the Sheriff or other person named therein to execute instruments registrable in accordance with [this Act].

(5) A writ shall not be registered unless it has been lodged for registration within 6 months of the date of its issue.

(6) Where a writ has been registered then, until its registration has been cancelled in accordance with [this Act], a renewal of that writ, or a second or subsequent writ on the same judgment, shall not be registered.

Dealings by judgment debtors

133.—(1) The registration of a writ shall not prevent the lodgment of instruments executed by the judgment debtor, but any such instrument shall not be registered until registration of the writ has been cancelled as [this Act] provided.

(2) A renewal of a writ, or any second or subsequent writ on the same judgment, shall not be registered while any instrument executed by the judgment debtor is awaiting and is otherwise in order for registration.

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> **Lapsing of writs**
>
> **134.**—(1) Registration of a writ shall lapse, and the power of the Sheriff to execute registrable instruments pursuant thereto shall be extinguished, at the expiration of one year from the date of the registration of the writ, and the land thereupon shall cease to be bound thereby.
>
> (2) Subsection (1) shall not prevent the registration of a renewal of a writ, or of a second or subsequent writ issued on the same judgment.
>
> (3) Nothing in [this Act] shall enable a judgment creditor by a succession of writs on the same judgment to bind land for an uninterrupted period exceeding one year.
>
> (4) Upon the lapsing of the registration of a writ, the Registrar shall, on an application made by the proprietor or of anyone claiming through him in an approved form, cancel the registration of the writ.
>
> …
>
> **Land sold in pursuance of writs**
>
> **135.**—(1) The interest in registered land which may be sold in execution under a writ shall be the interest which belongs to the judgment debtor at the date of the registration of the writ.
>
> …
>
> (3) Land shall not be sold in an execution under a writ until the expiration of 30 days from the date of the registration of the writ.

Order 47 Rule 4(1) of the Rules

22 We move on to the court execution procedure set out in O 47 r 4(1) of the Rules. This Rule provides as follows:

> **Immovable Property (O 47, r. 4)**
>
> 4. – (1) Where the property to be seized consists of immovable property or any interest therein, the following provisions shall apply:
>
> > (*a*) *seizure shall be effected by registering under any written law relating to the immovable property an order of Court in Form 96* (which for the purpose of this Rule

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and Rule 5 shall be called the order) attaching the interest of the judgment debtor in the immovable property described therein and, upon registration, such interest shall be deemed to be seized by the Sheriff;

(*b*) an application for an order under this Rule may be made *ex parte* by summons;

…

(*d*) as many *copies of the order* as the case may require shall be issued to the judgment creditor in order that he may present the order, in compliance with the provisions of any written law relating to such immovable property, for registration at the Registry of Deeds or the Land Titles Registry, as the case may be, of the Singapore Land Authority;

(*e*) after registering the order, the judgment creditor must –

(i) file a writ of seizure and sale in Form 83;

(ii) file an undertaking, declaration and indemnity in Form 87; and

(iii) upon compliance with sub-paragraphs (i) and (ii), the Sheriff must serve a copy of the writ of seizure and sale together with the order and the notice of seizure in Form 97 on the judgment debtor forthwith and, if the judgment debtor cannot be found, must affix a copy thereof to some conspicuous part of the immovable property seized;

(*f*) subject to sub-paragraph (*g*), any order made under this Rule shall, unless registered under any written law relating to such immovable property, remain in force for 6 months from the date thereof;

(*g*) upon the application of any judgment creditor on whose application an order has been made, the Court, if it thinks just, may from time to time by order extend the period of 6 months referred to in sub-paragraph (*f*) for any period not exceeding 6 months, and the provisions of sub-paragraphs (*d*) and (*e*) shall apply to such order; and

(*h*) the Court may at any time, on sufficient cause being shown, order that property seized under this Rule shall be released.

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[emphasis added in italics]

23 Next, we set out **Form 83**:

83.

WRIT OF SEIZURE
AND SALE IN RESPECT OF
IMMOVABLE PROPERTY

(Title as in action)

To the Sheriff/bailiff,

Having seized the interest of (name of execution debtor) in the immovable property specified in the Schedule hereto pursuant to the Order of Court dated , you are directed to serve the Writ of Seizure and Sale together with the said Order of Court on (name of execution debtor), of and, if the execution debtor cannot be found, affix a copy of the same on some conspicuous part of the immovable property known as , and thereafter, if necessary, to sell the said interest to satisfy the sum $ which is the sum outstanding payable to the said (name of execution creditor) pursuant to a judgment (or order as they may be) dated against the said (name of execution debtor).

SCHEDULE

*CT/SSCT/SCT/ Lease		MK	TS	Whole or part lot (if part lot, to state approved new lot number or strata lot number)	Property Address
Vol**	Fol **				

(* Delete as appropriate)

(** If title document is a lease, to cancel the Vol No. and Fol No. and simply state the Lease No.)

This writ is issued by:

This form requires sealing by the Court and the signature of the Registrar.

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24 **Form 96** is as follows:

96.

ORDER OF COURT FOR THE SEIZURE AND SALE IN RESPECT OF IMMOVABLE PROPERTY

(Title as in action)

Before (Name and designation of Judicial Officer):

(In open court/chambers)

Date of order:

Upon the application of and upon reading the affidavit of filed on , and upon hearing , the following orders are made:

1. The interest of in the immovable property specified in the Schedule herein be attached and taken in execution to satisfy the judgment of the abovenamed dated .
2. (State costs orders given by Court.)

SCHEDULE

*CT/SSCT/SCT/ Lease		MK	TS	Whole or part lot (if part lot, to state approved new lot number or strata lot number)	Property Address
Vol**	Fol **				

(* Delete as appropriate)

(** If title document is a lease, to cancel the Vol No. and Fol No. and simply state the Lease No.)

Note: This order shall, unless registered under any written law relating to such immovable property, remain in force for 6 months from the date hereof.

This form requires sealing by the Court and the signature of the Registrar.

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The issues and SAC's submissions

25 There are three broad issues to be dealt with in this appeal. They are as follows:

(a) Is it the Form 96 Order or the Form 83 Writ that needs to be registered by the judgment creditor in order to bind the judgment debtor's land under s 132(1) of the LTA?

(b) What is the period during which the instrument so registered would be binding on the land and can the registration be extended upon the expiry of that period?

(c) How do the answers to the first two issues impact on the priority of the claims of the parties and are there any other provisions of the LTA that are of assistance in answering this question?

26 We turn now to SAC's submissions. SAC submits that the Form 96 Order fits the definition in s 132(1) of the LTA, as an "order of court directing, appointing or empowering some person other than the proprietor to sell or otherwise deal with or dispose of registered land". However, it argues that the Form 96 Order is not a "writ" under Part XIII of the LTA. Hence, its registration does not lapse after one year pursuant to s 134(1) of the LTA and it has no expiry date. SAC also argues that the Form 96 Order was enabled pursuant to s 18 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") read with the First Schedule, s 80(2)(*l*) of the SCJA and O 47 r 4(1)(*f*) of the Rules. It was on this basis that SAC's Form 96 Order was issued.

27 In relation to the matter of priority between SAC's Form 96 Order and PLC's Form 96 Order, SAC submits that the Form 96 Order does not need to

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be extended once it is registered as its registration has no expiry date. Thus, SAC's Form 96 Order ranked first and remained on land-register as at the date of the sale of the Property, *ie*, 13 December 2018.

28 If this court were to decide that a Form 96 Order cannot be extended beyond the one-year period specified in s 134(1) of the LTA, then SAC's submission is that this fact would be immaterial to the priority between judgment creditors. Instead, priority between judgment creditors should be in accordance with the dates on which when their respective Form 83 Writs were delivered to the Sheriff, pursuant to O 46 r 6(4) of the Rules. As such, priority should have been given to SAC's Form 83 Writ which was first in time; PLC's Form 83 Writ came a year later.

29 Finally, SAC argues that the justice of the case was with SAC as:

(a) SAC's Form 96 Order was first in time in registration;

(b) SAC took all steps necessary to enforce its judgment and complied with all obligations and timelines;

(c) SAC was confronted with unclear law on whether the unity of title of joint tenants was exigible in an execution;

(d) SLA's repeated delays contributed to the conundrum and confusion which resulted in three to four months' delay instead of the published seven to 14 days;

(e) The presence of confusion between the Form 96 Order and the Form 83 Writ; and

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(f) The Sheriff was stymied as he could not sell the Property without the consent of the Bank, it being the mortgagee.

Our decision

The correct form for registration

30 We start with an observation which may seem obvious. This is that the substantive law on the registration and enforcement of writs of execution and orders of court against registered immovable property in Singapore is governed by the LTA. The provisions of Part XIII of the LTA must therefore be the first port of call in determining what must be done and how it must be done. As for the Rules, these are a body of procedural rules meant to assist parties in, among other matters, complying with or invoking substantive law provisions. The Rules cannot affect the provisions of the LTA in the sense that the meaning of terms in the LTA is not controlled by the usage of similar terms in the Rules. Rather, the terms in the LTA find their meaning from the statute itself either expressly or by way of general principles governing statutory interpretation. It cannot be said therefore that because the Rules prescribe a particular form for implementation of a court procedure and term that form a "writ", that form is also, *ipso facto*, the "writ" referred to in any particular provision of the LTA.

31 The anterior question that arises is whether Part XIII is intended to provide the framework for the registration and implementation of two types of instruments in respect of registered land or only one. If two are specified, the first would be a "writ of execution" which going by the definition of "writ" in s 131 is "[an instrument (to use a neutral term)] issued out of any court having jurisdiction to levy execution against land". The second type would be the "order of court" which has the effect of "directing, appointing or empowering

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some person" who is not the owner of the land to sell or otherwise deal with or dispose of it: s 132(1).

32 In this regard, PLC's position is that the "writ of execution" is the Form 96 Order while SAC's position is that the Form 96 Order is the "order of court directing …". Both parties therefore take the view that s 132(1) refers to *two separate instruments* though they differ as to which form of the Rules these instruments are equivalent to. On the other hand, as Prof See pointed out, a view can be taken that there is only *one instrument* described in s 132(1). The opening lines of the section could be interpreted as stating that "writ of execution" *means* "an order of court directing, appointing or empowering some person other than the proprietor to sell or otherwise deal with or disposed of registered land" ("the narrow definition"). In other words, the scope of the term "writ of execution" is *qualified* and *defined* by the subsequent description. There is some support for such an interpretation in s 132(4) which indicates that "the registration of a writ or order shall enable the Sheriff or other person named therein" to execute registrable instruments. Further, a writ of seizure and sale would clearly fall within the descriptive words following the word "order" as its intended effect is to empower the Sheriff to execute an instrument which could be registered on the land-register.

33 We are not persuaded, however, that the narrow definition is the correct reading of s 132(1). In the first place, while a writ is essentially an order and there is an overlap between a writ of execution and an order empowering someone to deal with the land, s 131 gives separate definitions for "order" and "writ" indicating that the two terms are used in a distinct fashion in Part XIII. The definition of "writ" ties that instrument to the process of levying execution over land while the definition of "order" does not limit the function of an order

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to any particular process. Case authority has recognised the wider scope of the "order". In *Suttons International Ltd v The Management Corporation - Strata Title No. 992* [1987] SGHC 65, Chan Sek Keong JC (as he then was) ruled that the reference to an "order of court" in s 132(1) was "not intended to apply to execution proceedings" (at [9]). This ruling was consistent with the example of an "order" given in John Baalman, *The Singapore Torrens System: Being a commentary on the Land Titles Ordinance 1956 of the State of Singapore* (Government Printer, 1961) ("*Baalman*") at p 212, that where registered land had been acquired by fraud and the wrongdoer had absconded, a court official could be empowered to execute a transfer to the rightful owner. Thus, *Baalman* envisages that the "order" referred to situations where the registrable instrument to be executed has nothing to do with levying execution on land.

34 This must be correct. Various situations which may require a court order for the transfer of land come to mind. One example of such an order is given in s 137 of the LTA which deals with "Vesting orders". That section provides that where a vesting order made under the Trustees Act (Cap 337, 2005 Rev Ed) would affect registered land, the court may make an order appointing a person to execute such transfers or other instruments as may be necessary to give effect to the vesting. It further provides that after registration of the order under s 132 of the LTA, an instrument executed pursuant to the order will have the same effect as if it had been executed by the proprietors of the land. Another example would be an order of court made under s 14(1) of the SCJA which empowers the Registrar of the Supreme Court to sign a transfer of property in place of the registered proprietor where that proprietor has not obeyed a court order to sell or transfer matrimonial property following an ancillary matters hearing.

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35 Further, while an "order of court directing … some person" applies to the person named in the order who can be any person, the writ of execution empowers only a court officer. This can be seen from s 131 where the Sheriff is defined to include any officer directed by a court to levy execution on land and from s 134(1) where the powers of the Sheriff are stated to be extinguished when the writ lapses.

36 Having determined that the writ of execution and the order referred to in s 132(1) are two separate instruments, we now move on to analyse whether it is the Form 96 Order or the Form 83 Writ that qualifies for registration as a writ of execution. The Rules have undergone several amendments over the decades that they have been in force and the nomenclature used to describe the various forms drawn up for the purpose of seizing immovable property has changed from time to time with the amendments. This has caused some confusion.

37 Order 47 of the Rules is entitled "Writs of Seizure and Sale" and sets out the procedure by which judgment creditors can have access to various types of property belonging to judgment debtors. Order 47 r 4 relates to immovable property. It sets out a *process* of execution, not a single act of execution. It provides that in this process four forms are to be issued: Forms 83, 87, 96 and 97. Form 83 is entitled a "Writ of Seizure and Sale in respect of Immovable Property"; Form 87 is entitled "Undertaking, Declaration and Indemnity"; Form 96 is called "Order of Court for the Seizure and Sale in respect of Immovable Property" and Form 97 is entitled "Notice of Seizure". Of these forms, only Form 83 and Form 96 could possibly be the writ of execution referred to in s 132(1). Looking at the titles of the forms alone, it would appear that Form 83 would be the writ of execution. However, as Prof See indicated, the issue cannot

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simply be decided on the basis of *labelling* and the *substance* of both Form 83 and Form 96 must be scrutinised in order to determine this issue. Before we do this however, we detail the steps that O 47 r 4 specifies must be followed to obtain a writ of seizure and sale against immovable property.

38 Order 47 r 4(1)(*a*) gets straight to the point. It says that "seizure" shall be effected by "registering" under the written law which governs the relevant immovable property an "[O]rder of Court in Form 96" attaching the interest of the judgment debtor in the immovable property. Importantly, it goes on that "upon *registration*" [emphasis added], the interest is deemed seized by the Sheriff. This is consistent with s 132(4) of the LTA which states that it is the registration of the writ which enables a Sheriff to execute instruments registrable in accordance with the LTA.

39 The next important step in the seizure process is set out in O 47 r 4(1)(*e*). Once the Form 96 Order has been obtained, the judgment creditor "must" do certain things and thereafter the Sheriff "must" take certain steps. These are as follows:

> (a) The judgment creditor has to file a Form 83 Writ and an undertaking, declaration and indemnity in Form 87; and
>
> (b) the Sheriff must then serve a copy of the Form 83 Writ together with the Form 96 Order and the notice of seizure in Form 97 on the judgment debtor and if he cannot be found, the Sheriff must affix a copy of the same to some conspicuous part of the property seized.

40 It should also be noted that under O 47 r 4(1)(*f*), subject to any extension that may be given by the court, any Form 96 Order that is made by the court

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remains in force for six months from its date unless it is registered under the relevant written law relating to the immovable property which it affects.

41 We now examine the Form 96 Order as it is plain from O 47 r 4(1) that that is the first form that is issued when the procedure in the rule is followed. Without a Form 96 Order which has been duly registered, the provisions of O 47 r 4(1)(*e*) cannot be implemented and no Form 83 Writ can be filed. The Form 96 Order is straightforward and in the usual format for an order of court (see above at [24]). It indicates the title of the action, the name of the judicial officer who has heard the application and the date on which the order is made. Then comes the material portion of the form. It states that upon application and hearing, the court officer makes, *inter alia*, an order that the interest of the execution debtor in the immovable property specified in the Schedule therein "*be attached and taken in execution*" [emphasis added] to satisfy the judgment of the execution creditor. Thereafter, the Schedule with the details of the property attached appears and this is followed by an important note relating to the period for which the order is to remain in force:

> This order shall, unless registered under any written law relating to such immovable property, remain in force for 6 months from the date hereof.

42 The Form 83 Writ is quite different in its format (see above at [23]): after the title of the action it indicates an addressee and this is followed by an instruction to the addressee. The substantial portion of the form begins: "To the Sheriff/bailiff". Thus, significantly, the addressee is a court officer, not the Registrar of Titles. He is told that "having seized the interest" of the execution debtor "pursuant to the Order of Court dated …" (this refers to the corresponding Form 96 Order), he is to carry out a series of directions. Specifically, the Sheriff is directed:

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(a) To serve the Form 83 Writ and related order of court on the judgment debtor (described in the form as "execution debtor");

(b) If the judgment debtor cannot be found, to affix a copy of the Form 83 Writ on the judgment debtor's immovable property; and

(c) Thereafter, if necessary, to sell the judgment debtor's interest in the property to satisfy the judgment creditor's judgment debt.

43 From the above exegesis, it is clear that in order to seize immovable property under O 47 r 4, it is the Form 96 Order that has to be registered under the relevant "written law relating to the immovable property". In the case of registered land, this written law is the LTA. There is no provision or instruction in O 47 r 4 for the registration of the Form 83 Writ. As far as the Form 83 Writ is concerned, it must be *served on the judgment debtor* and if he cannot be found it must be affixed on a conspicuous part of the immovable property. The language of the Form 83 Writ itself makes plain that the seizure was pursuant *only to the Form 96 Order*. The Form 96 Order must therefore always precede the issue of the Form 83 Writ.

44 Since it is only the registration of the Form 96 Order that effects seizure under O 47 r 4(1)(*a*), it must be the Form 96 Order that has been designed to be the "writ of execution" referred to in s 132(1) of the LTA. The Form 83 Writ may be called a writ of seizure and sale, but its function is to direct the Sheriff to do certain things to bring the seizure of the immovable property to the notice of the judgment debtor and thereafter, to sell the property pursuant to the seizure. The design of O 47 r 4 therefore is that the Form 96 Order is to effect the attachment of the immovable property by registration pursuant to the

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relevant written law and thereafter the Sheriff is empowered by the Form 83 Writ to sell the property.

45 We end this section of the judgment with a brief historical note. The Rules with which we are dealing in this judgment came into effect in 2014. However, the provisions of O 47 r 4 have been in their present terms since the iteration of the Rules of Court published in 2012. In 2012, Form 96 and Form 83 took their present configurations. Prior to that these forms had different numbers and different labels. However, as Prof See explained, since 1970, the Rules have all along been consistent as to the *content* of the form that must be registered under the LTA for execution purposes. The contents of Form 96 have not changed since 1970 when it was Form 88-A and was labelled "Writ of Seizure and Sale in respect of Immovable Property". Form 88-A became Form 83 some years later but the label remained the same. The present Form 83 was previously Form 96 and was entitled "Direction to Sheriff/Bailiff in respect of Writ of Seizure and Sale for Immovable Property". If the prior labelling conventions had been retained in the 2012 amendments to the Rules of Court, some confusion could have been avoided. The previous labels more clearly reflected the true functions of the respective forms than the present ones do.

Effective duration of a registered writ of execution

46 The effective duration of a writ of execution would appear to be completely determined by the provisions of ss 132(1) and 134(1) of the LTA. Under s 132(1), the writ only binds or affects registered land when particulars of the writ have been entered in the land-register. Under s 134(1), registration of a writ lapses at the expiration of one year from the date of registration, and the land thereupon ceases to be bound by the writ. Thus, the binding effect of

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the writ commences on the date of registration and ceases one year from that date.

47 Some confusion regarding this clear position was evident in the present case. As stated at [11(ii)] and [11(v)] above, although SAC's Form 96 Order was registered on 19 April 2017, and therefore according to s 134(1) of the LTA such registration would remain in force until 18 April 2018, during that one-year period SAC applied for the renewal of its Form 96 Order. The extension application was made on 19 September 2017, some six months after the grant of the order in March 2017 and SAC was granted an extension of six months up to 28 March 2018. SAC's actions were obviously guided by the belief that its Form 96 Order granted on 29 March 2017 would have expired six months later, *ie*, on 28 September 2017. This belief was based on a misinterpretation of O 47 r 4(1)(*f*) which provides that the Form 96 Order shall "*unless registered*" [emphasis added] under any written law remain in force for six months from the date thereof. SAC did not appreciate that the six months' lifespan of a Form 96 Order only applies if the order is *not registered* on the land-register within that period. Once registration of the order is effected, the Rules say nothing about the expiry of the order thereafter. The six-month period is intended to provide the timeframe within which registration has to be effected so that the judgment creditor is not dilatory about enforcement action. After the particulars of the Form 96 Order are entered on the land-register, it is s 134(1) of the LTA which determines how long the seizure remains effective (*ie*, one year from the date of registration).

48 During the one-year period that the seizure remains in effect, the judgment debtor is prevented from dealing with his land. This enables the sale of the land by the Sheriff free from any adverse interest created by the judgment

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debtor. As Prof See highlighted, the purpose of imposing a time limit on effectiveness of the writ is to strike a balance between the treatment of the judgment creditor and that of the judgment debtor. While it is important to preserve the judgment creditor's right to execution of his judgment, it is unfair for the judgment debtor's right to deal with the property to be affected by the indefinite operation of unexecuted writs of execution. If a writ were to be allowed to have a lasting effect, this would go some way towards undermining the judgment debtor's interest. As *Baalman* explains (at p 216):

> The provisions relating to lapsing proceed on the supposition that there may be a competition between a sale by the Sheriff, and a dealing by the judgment debtor. The priorities in such case could be affected by the process of lapsing. The object of that process, as the Privy Council has said, is "to prevent titles from being affected by the operation beyond a limited time, of unexecuted writs of execution"; *Registrar of Titles v. Paterson* (1876) 2 App. Cas. 110, 188. The time is limited to enable dealings by the judgment debtor to be registered if the Sheriff does not act promptly.

49 If the judgment creditor is not successful in effecting a Sheriff's sale of the land within the one-year period, all is not lost. Section 134(2) of the LTA indicates that a renewal of the writ or a subsequent writ issued on the same judgment may be registered against the land. However, this is not a completely straightforward process. This is because under s 132(6), once a writ has been registered, a subsequent writ shall not be registered until the first registration has been cancelled in accordance with the LTA. This is a reference to s 134(4), which provides that when the registration of a writ lapses, the Registrar of Titles shall cancel that registration on the application of the proprietor or anyone claiming through him. Further, under s 134(3), a judgment creditor is not permitted to use a succession of writs issued on the same judgment to bind land for an interrupted period exceeding one year. Therefore, there must be a lapse

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of at least one day between the cancellation of the first writ and the registration of the subsequent writ.

50 The operation of ss 134(4) and 132(6) were illustrated in this case. It would be recalled that SAC applied on 22 March 2018 to register its second extension of the Form 96 Order (to avoid confusion we refer to this as the "renewed writ"). However, this application was rejected by the Registrar of Titles on the basis that the existing registration of the Form 96 Order had to be cancelled before SAC could have the renewed writ registered. Thus, the Registrar of Titles was applying the provisions of s 132(6) in refusing to register the renewed writ until SAC applied for and was granted cancellation of the original registration of the Form 96 Order. To obtain the registration of the renewed writ after 22 March 2018, SAC would have had to cancel the existing registration of its Form 96 Order, and then waited at least one day before applying for the registration of the renewed writ. Pursuant to s 134(3), a judgment creditor cannot use a succession of writs on the same judgment to bind land for an uninterrupted period of more than one year and that explains the need to wait for a day between cancellation of the first writ and registration of the renewed writ.

51 We need to make one more observation about the duration and effectiveness of the Form 96 Order and the Form 83 Writ. The Form 83 Writ authorises the Sheriff to sell the judgement debtor's interest in the land. Under O 46 r 6(1), it is valid for one year from its date of issue. The power of the Sheriff to execute registrable instruments pursuant to the Form 83 Writ is governed by the LTA, however, and, accordingly, in accordance with s 134(1), it is extinguished when the registration of the Form 96 Order lapses, notwithstanding it may still be valid under the Rules. While it is not expressly

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stated in any section of Part XIII of the LTA, it would follow that if the registration of a Form 96 Order is cancelled prior to its lapsing, the Sheriff's power to execute registrable instruments pursuant to that writ would end on the date of cancellation.

Priorities of the parties' claims

52 We now turn to the question of priorities of the parties' claims. Under the general law, interests in property standing in the same rank have priority *inter se* in order of their respective dates of creation. This rule is generally expressed as "where the equities are equal, the first in time prevails". Under the LTA, the first in time rule also applies but with a slight twist in line with the fundamental principles that the land-register is all and the registered title is paramount. Section 37(5) of the LTA provides that when instruments affecting the same estate or interest in any land have been registered, they are entitled to priority according to the order of registration not according to the dates of creation of the respective instruments. Similarly, under s 48(1), interests appearing in the land-register have priority according to the order of their date of registration irrespective of the dates of the instruments creating them. It is *registration* rather than *creation* that sets the priority. Thus, SAC's position is that since its Form 96 Order was registered before PLC's Form 96 Order, it has a prior claim to the surplus proceeds. PLC says that that would only be so if SAC's Form 96 Order was still valid when the Property was sold. In fact, SAC's Form 96 Order had lapsed on 18 April 2018. As at 13 December 2018, PLC's Form 96 Order was the only effective writ (*ie*, it had not lapsed) on the land-register.

53 The effect of registration of the writ is to bind the land and empower the Sheriff to execute a registrable transfer of the land. The Form 83 Writ directs

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the Sheriff to sell the interest of the judgment debtor in the land "to satisfy" the judgment debt. Accordingly, any sale effected by the Sheriff under a Form 83 Writ would result in the sale proceeds being paid to the judgment creditor to the extent required to satisfy the judgment debt which he holds. If at the time of the Sheriff's sale there is more than one Form 96 Order on the land-register, then it would seem to be in line with ss 37(5) and 48(1) of the LTA that the holders of those writs of execution would be paid from the sales proceeds in the order of registration of their respective writs. While at p 215, *Baalman* observes that the distribution of sale proceeds between competing registered judgment creditors is not a question addressed by the Land Titles Ordinance, however, with reference to s 30 of the Land Titles Ordinance (*in pari materia* to s 48(1) of the LTA) he says at p 219:

> As between two or more creditors having writs on the same land, if the Sheriff sells the land he sells under all of the writs and should hold the proceeds of sale for the benefits of the respective execution creditors in their order of priority … In Singapore the question is probably placed beyond doubt by s 30 *ante*.

54 SAC contests the position that ss 37(5) and 48(1) have anything to do with priority of payment as between writs of execution. It pointed out that in Singapore, the registration of a writ of execution under s 132(1) of the LTA does not confer an interest in the proceeds of sale of the land seized. Under the current law, seizure takes the form of a statutory injunction, preventing the judgment debtor from dealing with the land (see s 133(1) of the LTA). It does not create a security interest over the land. As V K Rajah J (as he then was) explained in *United Overseas Bank Ltd v Chia Kin Tuck* [2006] 3 SLR(R) 322 ("*UOB*") at [10]:

> Even when a [writ of seizure and sale] against specific property is issued, this does not have the effect of creating a security

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> interest. The interest or property in the subject goods or land continues to reside in the judgment debtor pending sale …

Thus, seizure gives the judgment creditor the right to have the land sold but not an interest in the land itself. If the judgment creditor has no interest in the land, s 48(1) would not apply.

55 SAC takes the position that priority between judgment creditors should be ranked instead in accordance with the respective dates on which their Form 83 Writs were delivered to the Sheriff. In this regard, they cite O 46 r 6(4) of the Rules which states that the priority of a writ of execution, the validity of which has been extended under O 46 r 6, shall be determined by reference to the date on which it was originally issued. The difficulty for SAC is that in relation to land O 46 r 6 is referring to a Form 83 Writ rather than the Form 96 Order and it is the Form 96 Order which is the registrable instrument that must determine priorities in relation to land.

56 In our view, the answer to this question lies in the purpose of Part XIII. The reason for this Part which enables the registration of an execution proceeding by a judgment creditor was precisely to give judgment creditors the ability to satisfy the judgment debt from the judgment debtor's interest in the land. In this regard, priority between registered writs of execution has not been forgotten. Section 132(2) is the route provided for the ascertainment of priority between registered writs of execution. It states that an entry in the land-register made pursuant to s 132(1) "shall constitute a memorial of registration within the meaning of section 37". This takes us back to s 37(5) which states that:

> (5) When instruments affecting the same estate or interest in any land have been registered, they shall, notwithstanding any express, implied or constructive notice, be entitled to priority according to the order in which they are registered and not according to the date of the respective instruments.

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57 The writ of execution registered under s 132(1) is clearly an instrument which affects the estate of the judgment debtor since it prevents him from registering any instrument against his land until the writ of execution has lapsed. Further, any sale by the Sheriff within the validity period of the writ would divest the judgment debtor of his interest so that thereafter instruments executed by him would not be registrable. Thus, the effect of ss 132(1), 132(2) and 37(5) is to make writs of execution registered against the judgment debtor's land rank in priority according to their respective dates of registration. This is clearly the case when the land is sold by the Sheriff pursuant to the Form 83 Writs but is the situation the same when the land is sold by a mortgagee?

58 The answer may lie in s 74 of the LTA. Section 74(1) provides:

> **Application of proceeds of Sale**
>
> **74**.—(1) The money received by a mortgagee who has exercised his power of sale … shall be held by him on trust to be applied —
>
> (a) firstly, in payment of all costs and expenses …;
>
> (b) secondly, in discharge of the mortgage money, interest and costs, other money and liability (if any) secured by the mortgage; and
>
> (c) thirdly, in payment of subsequent mortgages and charges …,
>
> and the residue of the money so received shall be paid to the person who appears from the land-register to be entitled to the mortgaged property or to be authorised to give receipts for the proceeds of sale thereof.

59 For the purpose of the present appeal, the words in s 74(1) that need to be considered and interpreted are: "the *residue of the money* so received shall be paid to *the person who appears from the land-register to be entitled* to the mortgaged property" [emphasis added]. In the *UOB* case, it was observed that

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under this section, a judgment creditor whose writ of execution has been registered can only legitimately claim to have any interest in the surplus sale proceeds after the mortgagee's claim has been satisfied (at [17]). There the judgment creditor was challenging the mortgagee's right to conduct a sale of the judgment debtor's land and this challenge was firmly rejected by the court. For present purposes, the importance of this authority is that it identifies the judgment creditor as a "person who appears from the [land-register] to be entitled to the mortgaged property" even though his right in relation to the same is only to procure its sale by the Sheriff.

60 It appears to us that the recognition in *UOB* of the judgment creditor as the person entitled to receive the residue of the sale proceeds is correct. Once the three sets of payment have been made in the order of priority of application of the proceeds of a sale by the mortgagee as set out in s 74(1) (see above at [58]), the remaining person shown by the land-register to be entitled to the mortgaged property would have to be the registered proprietor of the same. However, where a writ of execution has been registered *prior* to the mortgagee sale, the judgment creditor's name would also appear on the land-register. Under s 135(1), the Sheriff would be entitled to sell the interest in the land which the judgment debtor had at the date of the registration of the writ and apply the proceeds in satisfaction of the judgment debt by paying the judgment creditor the same. As such, the judgment debtor would only receive whatever is left after settlement of the judgment debt. This postponement of the judgment debtor's claim to the sale proceeds should also, logically, apply when the sale is made by the mortgagee rather than the Sheriff. Thus, we conclude that the judgment creditor has a claim to payment of the residue under s 74(1).

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61 The question that arises next is whether, for priority purposes, it is sufficient for a writ of execution to be registered at some point of time before the mortgagee sale or whether at the time of sale it must still be extant, *ie*, not have lapsed under s 134(1). In this regard, since the right of the judgment creditor (or the effect on the estate of the judgment debtor of his writ) depends on the ability of the Sheriff to sell the land and pay over the proceeds, it logically follows that this right must lapse when the writ lapses and the Sheriff's right to deal with the land is extinguished. We therefore conclude that only a judgment creditor whose writ is not only on the land-register but is also still valid at the point of sale by the mortgagee can claim entitlement to be the recipient of the residue of the sale proceeds.

Application of principles discussed

62 The results of the conclusions that we have come to above, indicate that the procedure that a judgment creditor should follow to enforce his judgment against registered land, are as follows:

(a) First, he should apply under O 47 r 4 of the Rules for an order attaching the interest of the judgment debtor in the registered land.

(b) Second, when the court grants the judgment creditor's application, the judgment creditor must extract an order of court in Form 96.

(c) Third, the judgment creditor presents the Form 96 Order for registration to the Registrar of Titles pursuant to s 132(1) of the LTA.

(d) Fourth, the judgment creditor files a writ of seizure and sale in Form 83 and an undertaking, declaration and an indemnity in Form 87.

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(e) Fifth, the Sheriff serves copies of the Form 83 Writ, Form 96 Order, and the Notice of Seizure in Form 97 on the judgment debtor or the registered property.

(f) Sixth, once 30 days have passed from the registration of the Form 96 Order, the Sheriff can sell the land in execution (s 135(3) of the LTA). If the land is subject to a mortgage, then the Sheriff will not sell the land without the mortgagee's consent unless empowered to do so by an order of court. If the mortgagee refuses to consent, then the judgment creditor can apply to the court for an order of sale (see *BYX v BYY* [2020] 3 SLR 1074 ("*BYX*") at [16]).

(g) Seventh, if the sale is effected by the mortgagee, the surplus proceeds will be paid to judgment creditors who have valid writs of execution on the land-register in the priority in which those writs were registered.

63 Thus, in the present case, it was correct for SAC and PLC to present Form 96 Orders for registration to the Registrar of Titles. SAC's Form 96 Order lapsed on 18 April 2018. No further Form 96 Order was registered by SAC between 20 April 2018 (*ie*, one day after the lapse) and 13 December 2018 (*ie*, the date of the sale of the Property), or even thereafter. PLC's Form 96 Order was registered on 11 April 2018. Accordingly, the period of its validity was up to 10 April 2019. The Property was sold on 13 December 2018 when PLC's Form 96 Order was the only valid writ registered against the Property. Thus, only PLC appeared from the land-register (in accordance with s 74(1) of the LTA) to be a person entitled to give a receipt for the proceeds of sale. On 13 December 2018, SAC had no rights against the Property because its Form 96 Order was no longer valid. It therefore had no claim to the surplus proceeds.

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64 We realise that SAC might feel dismayed at this outcome since it obtained its Form 96 Order considerably earlier than PLC did. Unfortunately for SAC, due to non-cooperation from the Bank, it was unable to sell the Property within the one-year validity period of the registration of its Form 96 Order. SAC did not apply for a court order to overcome this resistance; it explained this was due to some uncertainty about the legal position. That uncertainty has, fortunately, since been resolved by the High Court decision of *BYX*, which we affirm.

65 In *BYX*, the High Court ordered that the Sheriff proceed with the sale of immovable property (which was subject to a mortgage) without the mortgagee bank's consent. The case clarified the High Court's power to order a sale pursuant to s 18(2) of the SCJA. The High Court found that paragraphs 80(1) and 80(2) of the Supreme Court Practice Directions did not "subdue the court's judicial powers" (at [14]) and held that where a mortgagee's consent for sale is not obtained, it remains open to the execution creditor to apply for a court order for the Sheriff to proceed with the sale regardless, on the basis that such sale is necessary or expedient (at [15]). The High Court in *BYX* correctly departed from its previous observations in *Peter Low LLC v Higgins, Danial Patrick* [2018] 4 SLR 1003 at [114(b)] that such a sale "is not possible without the mortgagees' consent", as these comments were deemed as *obiter dicta* in proceedings relating to immovable property held under a joint tenancy (*BYX* at [17]).

66 In future, judgment creditors who find themselves in SAC's position will be aware that in appropriate circumstances the court will sanction a sale notwithstanding the mortgagee's objections. As we have pointed out, the scheme of Part XIII is to balance the rights of the judgment creditor with those of the proprietor of the land and therefore the validity of a registered Form 96

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Order has a definite time limit. Judgment creditors must work within the restrictions of the LTA. Unfortunately for SAC, the circumstances here were such that, even if it had cancelled the registration of its Form 96 Order on 18 April 2018 and presented a new Form 96 Order for registration on 20 April 2018 (thus complying with the requirement that the land could not be bound by one creditor's writs for a continuous period of more than a year), its second Form 96 Order would have been ranked behind PLC's Form 96 Order which was registered on 11 April 2018. Upon registration of the Form 96 Order, the judgment creditor assumes the inherent risk that the Sheriff might fail to sell the land before the registration of the Form 96 Order lapses within the year (*eg*, during an economic downturn). Thus the lesson to be drawn from this case is that once a judgment creditor has registered a Form 96 Order and procured the issue of a Form 83 Writ, the creditor must take all possible steps to procure a Sheriff's sale within the year during which the registration remains valid.

Conclusion

67 For the reasons given above, we dismiss the appeal. We fix costs to be paid by SAC to PLC at $50,000 inclusive of disbursements.

68 Once again, we express our thanks to Prof See for his learned and helpful submissions.

Sundaresh Menon Chief Justice	Judith Prakash Judge of Appeal	Steven Chong Judge of Appeal

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