IN THE COURT OF APPEAL OF BELIZE, A.D. 2023

CIVIL APPEAL NO 23 OF 2016

ATLANTIC BANK LIMITED	**APPELLANT**
v	
W&S ENGINEERING COMPANY LTD	**FIRST RESPONDENT**
MINISTER OF FINANCE	**SECOND RESPONDENT**
ATTORNEY GENERAL OF BELIZE	**THIRD RESPONDENT**
COURTENAY COYE LLP	**FOURTH RESPONDENT**
DEAN LINDO	**FIFTH RESPONDENT**
MUSA & BALDERAMOS	**SIXTH RESPONDENT**

BEFORE:

The Hon Madam Justice Woodstock-Riley	-	Justice of Appeal
The Hon Madam Justice Minott-Phillips	-	Justice of Appeal
The Hon Mr. Justice Foster	-	Justice of Appeal

E A Marshalleck, SC & J Ysaguirre for the appellant.
I Swift for the 1st and 4th respondents.
S M Tucker for the 2nd & 3rd respondents.
A Sylvestre for the 6th respondent.

[The Appellant, at the hearing of the appeal, announced its withdrawal of its appeal as against the 5th Respondent consequent upon the death of the 5th Respondent]

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19 October 2021

Promulgation Date: 9 February 2023

JUDGMENT

WOODSTOCK-RILEY, JA

[1] I have read the draft judgment of Foster,JA and agree with the proposed order.

WOODSTOCK-RILEY, JA

MINOTT-PHILLIPS, JA

[2] I agree with the judgment of my brother, Foster, JA, and have nothing to add.

MINOTT-PHILLIPS, JA

FOSTER, JA

[3] The Appellant, Atlantic Bank Limited [ABL] loaned a sum of money to the 1st Respondent, W&S Engineering Co Ltd [W&S] on the 14th February 2003. The loan was secured by a registered mortgage in favour of ABL over 4.98 acres of land owned by W&S. The value of the initial mortgage was said to be $10,000.00 and later up stamped to $600,000.00. ABL claims that the monies loaned to W&S far exceeded the sum of $600,000.00.

[4] On the 2nd day of August 2008, the Government of Belize (GOB) compulsorily acquired the lands owned and mortgaged to W&S. On the 22nd day of March 2010 and after the compulsory acquisition, the mortgage was up stamped to secure a total sum of $600,000.00.

[5] On the 15th April 2013 ABL filed a claim in this matter against the 1st, 2nd, and 3rd Respondents and amended the claim in December 2013. The affidavit of Sandra Bedran, the General Manager of ABL claims that W&S is indebted to ABL in the sum of $8,378,033.65 "but the Defendant has disputed the account of the Claimant and has asserted that the amount owing as of the 4th day of July, 2007 was properly $2,864,522.02 instead of $4,380,000.00 by way of written submissions to the court in Claim No. 26 of 2011 dated 22nd October 2012".

[6] On the 27th day of September 2008 the Board of Assessment awarded W&S the sum of $575,000.00 together with interest at the rate of 8.5% per annum for the compulsory acquisition of the lands.

[7] The Attorneys who 'assisted' W&S in recovering the sums awarded from the GOB have claimed a lien against the compensation money for the payment of their fees. The lawyers brought a claim against W&S for their fees and armed with that judgment obtained orders from the court restraining the GOB from paying W&S its compensation money and to pay the sums to them as they had liens on the sum awarded as compensation for legal services provided to W&W.

[8] On the 15th April 2013, ABL filed the claim in the court below for payment of the money secured by way of the mortgage and so did the Fourth and Fifth Respondents for recovery of their fees. The GOB paid the fees owed to the Fourth, Fifth and Sixth Respondents out of the compensation monies due to W&S.

[9] At paragraph 1 of the judgment, the Learned Judge of the Supreme Court, stated that the lawyers (the Fourth, Fifth and Sixth Respondents) *"sued W&S and obtained judgment on admissions for their legal fees. With judgments in hand, the lawyers then obtained from the Court orders that the Government be restrained from paying W&S its compensation monies but instead pay the sums to them, as they had liens on the sum awarded as compensation for legal services provided to W&S. Upon learning that the lawyers had been paid the compensation monies owed to W&S by the Government, Atlantic Bank Ltd. brought this action to enforce its rights under the mortgage which the bank claims has priority over all other debts of W&S (including the company's debts owed to the attorneys for their legal fees").*

[10] The matter was heard on submissions filed by the parties and the judge considered the issues to be:

1) Whether or not the acquisition of the Property by the Crown operated to acquire or extinguish the security interest of the Claimant over the property,

2) Whether or not the compensation monies paid and payable for the Property are charged with the payment of the debt due to the Claimant by virtue of the mortgage and so were and are held on constructive trust for the benefit of the Claimant,

3) Whether the portion of compensation monies paid over to any of the Defendants are traceable into the hands of such Defendants and are recoverable by the Claimant,

4) In the alternative, whether or not the Second or Third Defendants are liable in damages for breach of trust in the amount of compensation payable to the Claimant paid to the third parties,

5) Whether Courtney Coye LLP (CCLP) (and the other attorneys/law firms named as Defendants who are owed legal fees by W&S) is entitled to a lien on the compensation awarded by the Board of assessment to W&S in respect of its legal fees for services rendered,

6) Whether CCLP's lien (as well as the liens of the other Defendant attorneys/law firms) ranks in priority to any claim which the Bank may have in respect of the compensation monies? And

7) Whether the bank's mortgage was legally up stamped from $10,000 to $600,000 in favour of the Bank.

Issue 1.

[11] The judge found for the Defendants/Respondents stating '*A mortgagee cannot just sit back and relax on those rights when property is taken by the Crown for public purposes under the land Acquisition (Public Purposes) Act (LAPPA). Such a mortgagee is obligated under the terms of the LAPPA to take statutorily prescribed steps to protect its interest under the mortgage'.* The learned

judge also stated *'....the Act requires that all persons including mortgagees such as Atlantic bank Ltd. who have interest in the acquired property must make its interest known to those persons who are authorized to carry out the acquisition. That is the nature and import of sections 7(1) and (2) of the LAPPA. Section 7 (1) As soon as may be after any land has been acquired compulsorily, the authorised officer shall, if the boundaries of the land have not been set out or if they cannot be identified by reference to any plan, cause them to be set out, and he shall also issue a notice of acquisition in accordance with this section. (2) Every notice of acquisition under this section shall - .... (c) require all persons interested, as soon as is reasonably practicable, either – (i) to appear personally or by an attorney or agent before the authorised officer to state the nature of their respective interests in the land and the amounts and full particulars of their claims to compensation in respect of their interests, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated; or (ii) to render to the authorised officer a statement in writing, signed by them or by their attorneys or agents, setting forth like matters.*

[12] The judge found that despite the letter written by the ABL dated the 21st March 2013 to alert the GOB of its *interest in the property,* it was not enough. The judge in paragraph 15 of her judgment set out letters written by Dean R Lindo on behalf of W&S to ABL acknowledging ABL's mortgage interest in the lands acquired by the GOB and inquiring whether ABL would participate in the proceedings and suggested that '*your bank would be entitled to nominate a person to the Board of Assessment. Will (With all the advantages appertaining thereto'*. In a letter dated 4th August 2009, addressed to ABL, Attorney Dean R. Lindo wrote on behalf of W&S as follows:

> *"I write you on behalf of the above-company in connection with the alleged loan owing by them to your bank... Part of your claim derives from your refusal to act in the compulsory acquisition of property at the Belizean Beach, Belize City, belonging to my clients but mortgaged to you.*
>
> *He reported to you because your bank held a mortgage on this property. He requested your intervention in order to prevent GOB from acquiring the said property. Had your bank*

acted with due diligence, it would have mitigated your claim by some 2.5 million dollars, a fair market value of this valuable seafront property. GOB could hardly have acquired this property had you taken action to prevent them by asserting your rights which you held under mortgage. Indeed your bank, in my view, is still capable of action to forestall the deleterious effects of the acquisition.

I trust you appreciate the difficulties which have arisen in this matter and that you will take the necessary steps to bring this matter to a just and amicable solution. I am still convinced, that action on your part as an interested party could bring some sanity to this situation.

Yours faithfully,

Dean R. Lindo SC

Attorney-at-law".

[13] The judge found that *"the Claimant did nothing and refused to take any action to defend its rights under the mortgage".* The judge further stated "*In my respectful view, this clearly amounted to laches by the Claimant bank in that they slept on its rights and refused to avail itself of the procedure set out in the LAPPA. The bank therefore does not have the right to claim monies paid to the First Defendant of the Board of Assessment in 2013. The Act set out clearly in section 33 that claims must be made within a specific time frame of 12 months, which has long passed. Section 33 "Except with the approval of the Minister, in any case in which he considers that injustice may otherwise be done, no claim for compensation which may be made under the Act shall be admitted or entertained unless that claim is made within twelve month after the date on which entry has been made on the land under section 4 or, if a declaration has been made under section 3, within a similar period after the date of the second publication of such declaration". "… any claim to the monies paid by the government to W&S as compensation for land acquisition has long since been extinguished by virtue of the bank's deliberate inactivity".*

Issue 2.

[14] This issue centers on whether by virtue of the registered mortgage of ABL, ABL has a charge on the proceeds of the sale. If so, whether the 'inaction by ABL" defeated the right to the proceeds. The judge found that ABL was *"obligated to make its interest known to the Board of Assessment under the LAPPA"*. The judge further reasoned that *"there is a time frame set out in the LAPPA which obligates a citizen whose rights might be affected to make its claim known to the authorized body within a certain time, I believe for this very reason to prevent citizens coming so many years later and making endless claims in relation to the acquired property. Hence the gazetting of the process as notice to the world that the property has been acquired for a public purpose and the steps to be taken by affected parties as set out in the LAPPA."*

Issues 3 and 4.

[15] These issues are in essence whether the compensation monies paid to the Defendants can be traced to them and be disgorged by them to the GOB or ABL as trust property held by those defendants on behalf of ABL. The judge found that having found in favour for the Respondents on the first two issues, that *"it follows that I also find the answer to issues three and four is a resounding no."* The judge further reasoned that *"It is very clear that in the case at bar the Claimant deliberately decided not take part in the acquisition proceedings in 2009 or in the Board of assessment hearings in 2012 and therefore failed to protect its own interest which arose under the mortgage." "... What the Bank should have done was to take part in the Board of Assessment proceedings to comply with the LAPPA requirements and thereby ensure that its interest would have been addressed and protected. It refused to do so and must therefore bear the costs of such failure".* The judge also found that *"the compensation monies were finally awarded to the First Defendant W & S Engineering solely through the efforts of the Defendant law firms Courtney Coye & Co., Dean Lindo S.C., and Musa & Balderamos. After the funds were secured as compensation through the diligent efforts of these attorneys in advocating for the convening of the Board of Assessment hearings, the Claimant bank then sought to assert its claim under the mortgage in priority to the various liens held by the attorneys for their fees, claiming that the attorneys as well as the government are fixed with notice of its mortgage by virtue of its letter dated 2013 and that*

the compensation monies should be paid to it. Such a position is clearly untenable both in law and in equity".

Issues 5 and 6.

[16] In essence these issues concern the question whether lawyers have a lien for legal fees against the compensation monies and if so, whether the lien ranks in priority to the banks mortgage security interest? Again, the judge found in favour of the Respondents. Having relied on the dicta in ***Re Born [1900] 2 Ch 433 and Newport and Pougher [1963] 3 All ER***, the judge reasoned, *"to my mind it is incomprehensible how the Claimant bank slept on its rights, being fully aware of what was at stake, and being fully aware of what the LAPPA mandated should be done to protect its interest, vigilantibus et non dormietibus jura subveniunt. I find that not only do the defendant law firms hold individual liens on the funds which were the proceeds paid to the First Defendant as compensation for the acquisition, but I also find that these liens take priority over all the other creditors of the First Defendant because the attorneys did all the necessary work to secure the compensation and there would not have been any funds paid had it not been for the efforts as attorneys for and on behalf of the First Defendant."*

[17] With regards to issue 7, the up stamping of the mortgage from $10,000.00 to $600,000.00 was not dealt with by the judge. The judge reasoned, *"I have already held that the Bank is not entitled to claim compensation monies because it did not act in accordance with the LAPPA. I will not pronounce on the validity of the upstamp at this time, and I reserve my views on that point as it is not essential to the fair disposition of this case."*

[18] ABL filed a Notice of Appeal on the 28 June 2016 with seven grounds, they are:

1. The learned trial judge erred in law and misdirected herself in holding that it was not enough for the Bank to notify the Government of its mortgage interest in the compulsorily acquired property and claim payment of the compensation and that the failure of the Bank to notify the authorized officer of its mortgage at the time of the acquisition and to take part in the

Acquisition of proceedings amounted to laches causing the Bank to lose its right to claim compensation monies paid to the mortgagor/First Defendant.

2. The learned trial judge erred in law and misdirected herself in holding that the Bank's deliberate inactivity in failing to make a claim for compensation within 12 months of the date of the acquisition operated to extinguish any claims by the Appellant to the proceeds of compensation paid by the government as compensation.

3. The learned trial judge erred in law and misdirected herself in finding that there is no constructive trust arising in favour of the Bank over the compensation monies paid on acquisition of the property.

4. The learned trial judge erred in law and misdirected herself in finding that compensation monies paid over to the Defendants are not traceable into the hands of the Defendants and recoverable by the appellant Bank.

5. The learned trial judge erred in law and misdirected herself in finding that the Second or Third Defendants did not act in breach of trust and are not liable in damages for breach of trust in paying compensation monies to the Defendants with knowledge of the existence of the security interest of the Appellant.

6. The learned trial judge erred in law and misdirected herself in holding that the Appellant not having proved its exact debt in an existing, separate mortgage claim could not rely on the admissions made by the First Defendant in that said claim and produced to the court in this instant claim to establish the admitted amount of indebtedness.

7. The learned trial judge erred in law and misdirected herself in finding that the lien for legal fees of the Defendant law firms [being equitable interests] over compensation monies takes priority over the Appellant's claim [legal

interest] to the compensation monies [N.B. the words in square brackets are my insertions].

[19] The issues that arise on this appeal on a compulsory acquisition of land that is/was secured by a mortgage on that security interest, whether:

a. ABL is obligated to give notice of its mortgage interest to the Board/GOB
b. ABL was obligated to participate in the assessment hearings
c. The timing of the up stamping and its effect on ABL's security interests.
d. Solicitors' fees are properly classified as a Solicitors lien and if so, whether it ranks in priority to the bank's security interest.
e. The GOB had actual or constructive notice of ABL's security, and if so,
f. The GOB was obligated to pay ABL in priority to W&S, and the Solicitors, and, if so
g. Whether the GOB is still obligated to pay the compensation monies to ABL or whether the Solicitors are to return the funds to GOB.

[20] It is not in dispute that ABL had legal charge over unregistered land owned by W&S in accordance with ***section 64 (1) (b) of the Law of Property Act***. The section provides:

> "*A legal charge on an estate in fee simple or a term of years or an easement right or privilege or any other interest in or over land shall only be created … (b) in the case of unregistered land by a deed expressed to be by way of legal mortgage or a rent charge or a lien on crops executed and recorded under and in accordance with Part VI of the General Registry Act*."

Section 64 (3) provides, *"Subject to Part III of the General Registry Act, a legal charge shall remain attached to and shall accompany the property, income or crops on which it is imposed or charged notwithstanding any transfer of the land, and shall bring the property, income or crops*

with the payment of the sum secured by the mortgage in priority to all unsecured debts and other legal charges subsequent in date of registration or recording." Section 67 (1) provides that *"The legal estate, right or interest of the mortgagor in any property shall, notwithstanding a mortgage thereon, continue to be vested in him, and the mortgagee shall take no estate in the property mortgaged, but shall have as his security on the property and a right to an order for sale of the property in order to recover the mortgage money together with costs, charges and expenses of the application for that order."* The underline emphasis is mine.

[21] ABL have submitted that by virtue of these sections, its security interest did not create an estate in the property but rather a right to an order for sale to recover the monies thereafter to be applied to the payment of the loan amount, charges, costs and expenses.

[22] ABL have therefore argued that it had no proprietorial interest in the legal estate of the land acquired by the GOB and therefore was not obligated to give notice of its security interest to Board of Assessment or to the GOB. They claim that they do not have a property interest, a legal estate in the land. The LAPPA at section 7 (2) (c) provides "*As soon as may be **after** any land has been acquired compulsorily, the authorized officer shall, if the boundaries of the land have not been set out or if they cannot be identified by reference to any plan, cause them to set out, and he shall also issue a notice of acquisition in accordance with this section. (2) (c) Every notice of acquisition (to be issued by the authorised officer) under this section shall – (c) require all persons interested, as soon as is reasonably practicable, either (i) to appear personally or by attorney or agent before the authorized officer to state the nature of their respective interests in the land and the amounts and full particulars of their claims to compensation in respect of those interest, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated: (ii) to render to the authorized officer a statement in writing, signed by them or by their attorneys or agents, setting forth the like matters."* The emphasis is mine and the words in brackets is my insertions.

[23] What is important to note is that the section imposes on the authorized officer to do certain things with regard to publishing a notice of acquisition as it concerns the acquisition and what information is to be contained in the notice. If a person has an interest in the land, the notice would

provide what is required of the interested party. This section does not concern us as we have not been shown any evidence of a notice being given by the authorised officer in this matter. However, interestingly section 8 (1) clothes the authorized officer with a discretion to target persons, owners, occupiers, or persons with an interest in the land to furnish him under pain of criminal proceedings, to provide information to the authorized officer of any one who may have an interest in the land *"a statement in writing containing, so far as may be within his own knowledge, the name of every person possessing any interest in the land, or any part thereof, whether as partner, mortgagee, lessee, tenant or otherwise, the nature of such interest".* These sections do not impose on a mortgagee, and specifically one who has not acquired an interest in the land to notify the authorized officer of that interest. On the contrary, it imposes on the authorised officer a discretion in both instances under sections 7 (2) (c) to issue a notice inviting persons to send in the nature of their interest and in section 8, a discretion to carry out his own inquiries to ascertain the possible interest of persons in the land. I have also noted that even if an 'interested person' does not participate in the process that by not doing so he would not lose that interest.

[24] I agree with Counsel for ABL that by virtue of section 67 (1) of the Law of Property Act, ABL did not acquire by virtue of its legal mortgage a proprietorial interest in the lands and that because of the nature of the mortgage, the GOB would have acquired the lands and the legal interest in the lands but that the security interest of ABL in the fruits of the mortgage subsist and survive the acquisition. The interest of ABL would attach to the compensation monies subject only to prior registered liens or charges. ABL would not have to participate in the acquisition process because no interest of the bank was acquired or being acquired. ABL's security remains in the fruits of the sale/acquisition of its security interest, that is in the compensation monies. ABL would have an interest in the awarded compensation monies, not because it had an interest in the land, but because it had an interest in the "fruits" of the legal and subsisting mortgage.

[25] The Respondents have argued that section 64 (3) does not apply to the case at Bar because this was not a transfer – sale of the property but rather an acquisition by the Government of the property. However, Counsel for the W&S and CCLLP have submitted that they "do not dispute that, as the mortgagee, the Bank is entitled to the fruits of the mortgaged property, to the stamped value of the mortgage. They therefor argue that ABL would only be entitled to $10,000, the

stamped value of the mortgage at the time of the acquisition. ABL have argued that the mortgage subsists and that its interest would be in acquisition/compensation monies paid for the land (being the fruits of the mortgage that is the compensation monies). W&S would ordinarily be entitled to the compensation monies on the acquisition. But because of the mortgage, the security holder would have a prior claim to these monies to that of W&S. ABL have argued that not participating in the acquisition process did not result in a waiver of its rights to its security interest in the compensation monies. I agree. I also agree that the GOB were not acquiring property belonging to ABL. The GOB were not acquiring ABL's security interest as that interest survived the acquisition. The interest of ABL is the fruits, that is, the compensation monies form the security ABL has over the property formerly owned by W&S. ABL has a security interest over those monies. In ***Buhr & Ors v Barclays Bank PLC [2001] EWCA at page 1223***, Arden LJ stated at paragraphs 40-41:

> *"[40] So far as principle is concerned, equity has for a long time taken the view that the mortgagee is entitled to a security interest in the fruits of the mortgaged property. Thus if (for example) a mortgagor grants security over a lease and he then surrenders the lease and takes a new lease, the mortgagee has a security interest in the new lease (*Hughes v Howard *(1858) 25 Beav 575). Where a mortgagor renews a lease the mortgagee obtains a security interest in the new lease without express mention in the mortgage deed (*Leigh v Burnett *(1885) 29 Ch D 231). Mr Norris submits that these cases are distinguishable because this case is concerned with proceeds of sale, rather than the renewal or grant of a lease. In my judgment this is not a valid distinction. In all these cases, the mortgagee is entitled to the fruits of the mortgaged property: see generally Fisher & Lightwood's Law of Mortgage, (10th edn) (1988) at pp 55 to 57.*
>
> *[41] Likewise a mortgagee has been held entitled to a security interest in compensation monies received on a compulsory acquisition of part of the mortgaged property without express mention in the deed (*Law Guarantee and Trust Co Ltd v Mitcham and Cheam Brewery Co Ltd *[1906] 2 Ch 98). That particular set of facts is in my judgment only distinguishable from the present case by virtue of the fact that the sale*

was compulsory. Mr Norris submits that the cases which illustrate the principle described above were cases where the mortgage was by way of assignment. If he is right, the authorities are not founded on any common or consistent principle. In my judgment that is not correct. They are founded on the simple and eminently fair proposition that the mortgagee should be entitled to accretions to the mortgaged property or property received in substitution for it, as on a renewal or further grant of a lease. That principle is reflected in legislation dealing with leasehold enfranchisement (see the Leasehold Reform Act ss 8 to 13); on compulsory acquisition and compensation for blight (see for example Town and Country Planning Act 1990 ss 117(3), 162, 250); and on disclaimer in the insolvency of the mortgagor (Insolvency Act 1986, ss 181 and 320)."

[26] I therefore find that a compulsory acquisition does not extinguish a mortgage over the property acquired and the interest of the mortgagee remains in having a security interest in the fruits of that mortgage, that is, the compensation monies. The property acquired, would be free from encumbrances. Whilst the property is now free from encumbrances (in the sense that a mortgagee or other creditor may have had over the property) the creditor's security interest is now transferred to the proceeds of the acquisition, that is, the compensation monies in this case.

[27] There is another issue as it regards the up stamping of the mortgage. In Belize as submitted to the court by counsel for ABL, it is a normal practice to up stamp a mortgage without the consent of the mortgagor. From the exchanges between counsel for the all the parties and the court I came away with the conclusion that the timing of the up stamping was not an issue in the court below as it related to priority of the mortgage. We also came away with the view that it is a normal practice to up stamp and that the up stamping took place as regards ABL's security interest evidenced by the mortgage deed. On compulsory acquisition the bank's interest still existed in the land to the extent of the stamped amount of its security when realized. Indeed, Counsel for W&S and CCLLP stated that it was their position that "*the bank could not unilaterally up stamp the mortgage by $590,000 after title had been vested in the Government. The bank's security interest at the time of acquisition, and for 18 months thereafter, was $10,000.00 and so the Bank is entitled to the 'fruits of the mortgage property' to the tune of $10,000.00".* Unfortunately, this issue was not dealt with

by the judge below. In any event it has already been established that permission of the owner/mortgagor (into whose shoes the GOB stepped upon compulsory acquisition) to the upstamping had already been given in the terms of the mortgage and so an upstamping of the mortgage would not be a unilateral act of the bank. The bank's right to apply the proceeds of sale (compensation for acquisition) of the property against the debt owed was not extinguished by the acquisition and registration of the property to the GOB. Because the arguments of counsel went unchallenged in the matter before us regarding the practice when upstamping, I see no good reason not to accept Counsel for ABL's submission that the mortgage deed created a security interest in the amount of $600,000.00 before the Assessment Board made an assessment and before the GOB had paid out the acquisition monies (which it did with notice of ABL's security interest and claim and without a challenge to the validity of the mortgage deed).

[28] There is no doubt that a Solicitor has a lien as regards his fees. The lien would have to be a registered lien for it to take effect in priority to other registered liens. In the matter before us, the mortgage was registered in 2003. The mortgage was up stamped in 2010 to $600,000.00 before the lands were assessed in 2013. We have not been shown where there was a legal challenge to the up stamping of the mortgage to declare the mortgage deed null and void. It therefore remains a registered lien. I have not heard any arguments which refute the validity of the mortgage deed. Indeed the arguments seem to be (and accepted by the judge below) that because ABL did not participate in the acquisition process that the Solicitors lien would take precedence over ABL's lien. I disagree. The Solicitors may indeed have an equitable lien over the compensation monies, if the lien was properly established in accordance with the law, but the question remains, who has the priority, who ranks ahead. In the ordinary course of things the doctrine of priority ranks legal rights ahead of equitable rights. ABL had a legal right emanating from its mortgage. The solicitors did not have legal rights emanating from their respective liens. Even if the solicitors' liens could have been categorized as legal rights, they did not pre-date ABL's legal right and, therefore, could not outrank ABL's prior right absent a postponement. I have not seen anything in the facts of this case that warrant a postponement of ABL's legal right so as to make it rank behind the equitable rights of the solicitors. The mortgage deed having been registered prior to the judgments obtained by the Solicitors would mean that ABL has a priority interest in the fruits of the mortgage deed. With regards to the issue of the Solicitors fees, the written submissions of the Attorney General at

paragraph 5 stated that *"The Board awarded the First Respondent the sum of $575,000.00 in compensation together with 8.5% interest per annum until compensation was paid in full. The Board ordered the Government of Belize to pay the attorneys costs."* Having considered this, no explanation was proffered by the other defendants as to why their cost in their participation at the Board of Assessment was not claimed by them from the GOB. The Board's order had to be complied with but only in keeping with the doctrine of priorities. ABL's claim to the acquisition monies would outrank that of all other parties with inferior ranking of their debts (including the attorneys-at-law claiming a solicitor's lien over the money owed them by W&S for their fees).

[29] Counsel for the Minister of Finance the Second Respondent (MOF) and the Attorney General of Belize (AG) did not take issue with the upstamping of the ABL mortgage Deed. Counsel stated at paragraph 11 of their submissions that *"It is noteworthy that when the mortgage was purportedly 'up stamped' the property was already acquired by GOB in 2008. And by operation of law absolute title was vested in GOB."* At paragraph 11 Counsel submitted *"...that if a deed of mortgage was executed when the property was acquired by GOB the charge would remain but it is the obligation of the First named Respondent, not the Second and Third Respondents, to meet the obligations of that security charge"* At paragraph 14 counsel further submitted *"...when the land was acquired by GOB, by operation of law GOB acquired the legal estate, right and interest in the property but not any charge in relation to the property created by mortgage deed. The charge created by the mortgage deed will continue to be a charge for which the First Respondent is liable".* At paragraph 16, Counsel for the MOF and AG argued that "*What can be gleaned from the above mentioned section is that where the there is a mortgage deed, the legal estate remains with the mortgagor and not the mortgagee but the mortgagee retains as security a charge on the property and a right to an order of the sale of the property in order to recover the mortgage money and any other costs."* At paragraph 17, counsel argued *"It is therefore our respectful submission that the legal estate was no longer in the hands of the First named Respondent, but in the hands of GOB who acquired the legal estate, right and interest in the property, the Appellant's security of charge on the property and the right to an order for sale extinguished."* I must respectfully disagree with learned counsel's submissions which in effect argues that by virtue of a compulsory acquisition, ABL's security interest was also extinguished. The security interest of ABL, on the acquisition of the property was the compensation to be paid

to the landowner, the fruits of the mortgage, and as such the GOB would hold those compensation monies on trust for the holders of registered liens in order of their ranking. ABL's right to the proceeds of sale/acquisition monies re the mortgaged property is a right *in rem*. The right is not extinguished by the transfer of the property from one proprietor to another because rights *in rem* are characterized by privity of estate in addition to privity of contract. Section 8 (1) of the LAPPA indeed imposes a discretion on the authorized officer to serve a notice to the persons who may be the owners of occupiers of the land, or whom may have an interest in the land to *'deliver to him within a time frame to be specified in the notice, a statement in writing containing, so far as may be within his own knowledge, the name of every person possessing any interest in the land, or any part thereof, whether as partner, mortgagee, lessee, tenant or otherwise, and the nature of such interest."* This exercise and these provisions are there to ensure that the process concerning the acquisition of property by compulsory means would result in the fair and proper allocation of the compensation monies and those interested in the property, for example, a mortgagee, being able to claim from the proceeds of the acquisition (not an obligation to participate in the process failing which your rights are lost).

[30] Section 33 of the Act is not applicable on the facts of this case. It does not operate against ABL as ABL did not have a right or obligation to make a claim to the authorised officer for 'compensation for *its* *interest in land* on the compulsory acquisition of the land. As I have stated above, ABL by virtue of its continuing mortgage did not have an 'interest in the land' but rather had a security interest *in rem* over the property for the payment of the loan with a right to obtain an order for the sale of the land and a right to the proceeds of that sale to the extent of the amount its security was stamped to cover (in this case being the amount of $600,000.00). That right extended to the fruits of the mortgage that is, the compensation monies in this case. On the acquisition of the lands by the GOB, the interest of ABL was then in the compensation monies and the GOB had an obligation to ensure that all persons who had a charge against the monies realized from the alienation of the property were paid in accordance with their ranking.

[31] It is not in dispute that the MOF and AG, acting for GOB were aware or ought to have been aware of the security interest held by ABL by virtue of its registered mortgage deed. Indeed, pre the acquisition and long before compensation monies were paid out, the GOB had, if not actual, then constructive notice of ABL's registered security with its attendant rights of entitlement to the

compensation monies. ABL had written to the GOB before any monies were paid out, claiming the compensation monies as its registered interest exceeded the compensation amount. It was incumbent on the GOB to have acted with all due diligence in ascertaining the various claims that may be made as regards the compensation monies. Indeed, that is one of the purposes of section 8 of the LAPPA. The GOB acted in breach of that obligation, having had actual and constructive notice of ABL's claim in the compensation monies. Instead of paying the compensation monies due to the ABL, it paid the money to the solicitors/attorneys for the other Respondents, all of whom ranked after ABL in priority.

[32] The GOB was nevertheless obligated to pay the legal cost as ordered by the Board, but not in priority to ABL and only to the extent that a surplus remained after discharging W&S's obligation to ABL such as would allow it to do so. Unfortunately, in this case there was no surplus.

[33] The GOB, having had notice of the claims made by ABL in accordance with its security interest in the proceeds of the compulsory acquisition were obligated to pay ABL in priority to the attorneys claiming a lien. Having failed to do so I find that the MOF and AG are liable to ABL for the payment of the amount declared by the Board Assessment. For the reasons given:

a. the appeal is allowed,

b. the order of the court below is set aside;

c. the MOF and the AG acting on behalf of the GOB are ordered to pay to ABL the entire compensation monies of $575,000 together with interest thereon at the rate of 8.5% per annum until payment;

d. [Pending a change in this order upon receipt of written submissions on costs within 7 days hereof] Costs in the High Court and of the appeal are awarded to ABL against Respondents 1, 2, 3, 4 & 6 and are to be assessed if not agreed.

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FOSTER, JA