

**Deciding Priority between Two Competing Judgment Creditors:
Singapore Air Charter Pte Ltd v Peter Low & Choo LLC and another [2020] 2 SLR 1399**

I. Executive summary

Where a judgment in respect of a debt is concerned, a “**judgment creditor**” is the party to whom the debt is owed, and a “**judgment debtor**” is the party who has been ordered by the court to pay a sum of money – the “**judgment debt**” – to the judgment creditor. However, obtaining the court order alone will not necessarily provide the judgment creditor with satisfaction, as the judgment debtor may not want to, or may not be able to, satisfy the judgment debt.

For a judgment creditor faced with a judgment debtor who has not complied with the court order of paying the relevant debt, however, not all hope is lost. Under a Writ of Seizure and Sale (“**WSS**”), registered land belonging to the judgment debtor may be seized and sold to satisfy the judgment debt. But what is the procedure to be taken by the judgment creditor to obtain such land, and how is the priority of payment to be decided where there are competing claims by other creditors?

In *Singapore Air Charter Pte Ltd v Peter Low & Choo LLC and another* (“*Singapore Air Charter*”), the Court of Appeal (“**CA**”) shed light on these questions. Section 132(1) of the Land Titles Act (Cap 157, 2004 Rev Ed) (“**LTA**”) provides that a **writ of execution** will not affect the land in question until the writ or order has been entered in the Singapore land-register.¹ Crucially, the CA held that such “writ of execution” refers to Form 96 of Order 47 Rule 4² (and not Form 83 of Order 47 Rule 1)³ of the Rules of Court (Cap 322, R5, 2014 Rev Ed) (“**Rules**”). Thus, where there are competing claims as to property, priority will be accorded to the party who first registered its Form 96 Order in the Singapore land-register.

II. Material facts

The appellant, Singapore Air Charter Pte Ltd (“**SAC**”), and the first respondent, Peter Low & Choo LLC (“**PLC**”), were both judgment creditors of Danial Patrick Higgins. Higgins co-owned an apartment unit (“**the Property**”) which was mortgaged to the second respondent, Malaysian Banking Berhad (“**the Bank**”). On 13 December 2018, a mortgagee sale⁴ of the apartment unit was effected by the Bank and there were surplus sale proceeds (“**surplus proceeds**”) of \$745,471.64 after Higgin’s debts to the Bank had been satisfied. As this amount was insufficient to satisfy the claims of both SAC and PLC, a core issue before the court was thus whether *SAC* or *PLC* had priority in claims over the surplus proceeds.

Relying on the execution procedures prescribed by the Rules, both creditors took steps to enforce their respective judgments against the Property. For one, both SAC and PLC presented

¹ Singapore operates under the Torrens system of land registration. This provides landowners who register their title to their property in the Singapore land registry a significant degree of protection against adverse claims.

² Where a judgment creditor wishes to seize immovable property, that seizure shall be effected by registering an order of court in Form 96 attaching the interest of the judgment debtor in the immovable property. Upon registration, that interest is deemed to be seized by the Sheriff.

³ After registering the Form 96 order, the judgment creditor must file a writ of seizure and sale in Form 83 (among other things). The Sheriff must then serve (among other things) a copy of the Form 83 writ and the corresponding Form 96 order on the judgment debtor or, if the judgment debtor cannot be found, affix the Form 83 writ to the immovable property.

⁴ This refers to the sale of a property by the bank when the property owner fails to repay the money owed to the bank.

Form 96 Orders for registration to the Registrar of Titles on 19 April 2017 and 11 April 2018, respectively.

SAC later applied for two Extension Orders to extend the validity of its Form 96 Order which would have otherwise expired a year after registration, as well as a WSS Extension Order to extend the validity of its Form 83 Writ. However, its two applications to *register* the Extension Orders were rejected, and its WSS Extension Order was registered only *after* the Property was sold.

As for PLC, though its attempt to register its Form 83 Writ was rejected, the registration of its Form 96 Order was successfully effected on 11 April 2018.

III. Procedural history

In light of these competing claims over the surplus proceeds, the High Court (“**HC**”) had to decide which party was entitled to those proceeds in priority over the other. Ultimately, the HC decided in favour of PLC for two main reasons. *First*, the HC held that Form 96 Orders were considered “writs” (pursuant to section 131 of the LTA) and would thus have to be registered under section 132(1) of the LTA in order to affect the Property. *Second*, the HC found that SAC’s Form 96 Order had lapsed *before* the sale of the Property. This meant that at the date of the sale of the Property, only PLC’s Form 96 Order had been registered. Accordingly, the HC was satisfied that priority was to be given to PLC. SAC appealed against this decision.

IV. Issues

Three main issues arose for the CA’s determination. *First*, for the judgment creditor to successfully bind the judgment debtor’s land, what was the relevant document that had to be registered under section 132(1) of the LTA – the Form 96 Order or the Form 83 Writ? *Second*, what was the duration of the registered instrument being binding on the land, and could the registration be extended upon expiry of such duration? *Third*, how did the answers to the first two questions affect the priority of the parties’ claims?

A. The correct form for registration

As a preliminary observation, the CA noted that the Rules, which are a body of procedural rules meant to assist parties in (among other things) complying with or invoking substantive law provisions, did not govern the statutory interpretation of any provisions of the LTA. The substantive law on the registration and enforcement of writs of execution and orders of court against registered immovable property in Singapore was governed by the LTA. As such, the LTA had to be the first port of call in determining what must be done and how it must be done. This meant that the determination of the definition of “writ” in the LTA could not be supplied by the definition provided for in the Rules.

Sharing the view of both parties in this case, the CA held that the “writ of execution” and the “order of court” as provided for in section 132(1) of the LTA were two separate instruments. Rejecting a narrow reading of section 132(1) – that there is only one instrument provided for in the section – the CA noted that separate definitions are given for the terms “order” and “writ”, indicating that they are to be used distinctly. Further, prior cases had also recognized the wider scope of an “order” as compared to a “writ”.

Having ascertained that the writ of execution and the order referred to in section 132(1) were two separate instruments, the next and more important question that the CA sought to address

was whether it was the *Form 96 Order* or the *Form 83 Writ* that qualified for registration as a writ of execution.

Order 47 rule 4(1)(a) of the Rules, which regulates the seizure of immovable property, stipulates that such “seizure” shall be effected by registering an order of Court in Form 96. Based on this rule, the CA held that it was the Form 96 Order, rather than the Form 83 Writ, that had to be registered in order to seize immovable property.

Further, the language of the Form 83 Writ itself made it plain that a seizure was pursuant *only* to the Form 96 Order. Accordingly, since it was only the registration of the Form 96 Order that effected seizure under Order 47 rule 4(1)(a) of the Rules, the CA held that the “writ of execution” referred to in section 132(1) of the LTA must refer only to the Form 96 Order.

B. Effective duration of a registered writ of execution

Pursuant to section 134(1) of the LTA, 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. In other words, the binding effect of the writ *commences on the date of registration* and *ceases one year after*. During this one year that the seizure remains in force, the judgment debtor is prevented from dealing with his land. According to the CA, this time limit on the effectiveness of writs strikes the appropriate balance between the preservation of the judgment creditor’s right to execution of his judgment, and the judgment debtor’s right to deal with the property, unaffected by the indefinite operation of unexecuted writs of execution.

With that said, even if the judgment creditor fails to effect a Sheriff’s⁵ sale of the land within that one year, a renewal of the writ or a subsequent writ issued on the same judgment may still be registered against the land under section 134(2) of the LTA. However, as the CA noted, this is not a completely straightforward process. As per section 132(6), a subsequent writ cannot be registered unless a first registration has been cancelled. Further, under section 134(3), a judgment creditor cannot use a succession of writs issued on the same judgment to bind land for an interrupted period exceeding one year. This explains the need for a *lapse of at least a day* between the cancellation of the first writ and the registration of the subsequent writ.

Additionally, the CA also held that should the registration of a Form 96 Order be cancelled prior to its lapse, the Sheriff’s power to execute registrable instruments pursuant to that writ would end on the date of cancellation. This is because the power of the Sheriff to execute registrable instruments pursuant to the Form 83 Writ is governed by the LTA and is thus extinguished when the registration of the Form 96 Order lapses.

C. Priorities of the parties’ claims

Generally, where interests in property are of the same rank, the interest which comes first in time prevails. This rule also applies to the LTA, but with an overriding caveat that the *registered* title is paramount. As per section 48(1) of the LTA, it is the *registration* (not the *creation*) of interests that sets the priority. Referring to sections 132(1), 132(2) and 37(5) of the LTA, the CA rejected SAC’s argument that priority should be ascertained based on the dates that the creditors’ Form 83 Writs were delivered to the Sheriff. Instead, the CA held that writs of execution rank in priority according to their respective dates of registration.

⁵ The Sheriff is an officer of the court, whose role is to enforce the court’s orders.

Next, to answer the question of whether this rank in priority would apply where the land is sold by a mortgagee, the CA turned to section 74(1) of the LTA which provides *inter alia*, that “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”. The CA also affirmed the judgment in *United Overseas Bank Ltd v Chia Kin Tuck*⁶ which recognized the judgment creditor as the person entitled to receive the residue of the sale proceeds of such mortgaged property. Lastly, the CA concluded that where a writ of execution has been registered *prior* to the mortgagee sale, the judgment creditor’s name would be present on the land-register and accordingly, only a judgment creditor with a registered writ that is valid at the date of sale can claim entitlement to the residual sale proceeds.

D. Application of principles

The CA then provided a summary of the procedure that a judgment creditor should follow to enforce his judgment against registered land:

- (a) *First*, the judgment creditor should apply under Order 47 rule 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 should extract an order of court in Form 96.
- (c) *Third*, the judgment creditor must present the Form 96 Order for registration to the Registrar of Titles.
- (d) *Fourth*, the judgment creditor must file a writ of seizure and sale in Form 83, as well as an undertaking, declaration and an indemnity in Form 87.
- (e) *Fifth*, the Sheriff will serve 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. If the land is subject to a mortgage, 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 court for an order of sale.
- (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.

In the present case, the CA held that SAC and PLC had rightly registered their respective Form 96 Orders. However, SAC’s Form 96 Order had lapsed on 18 April 2018 and no further order was registered. Accordingly, when the Property was sold on 13 December 2018, PLC’s Form 96 Order, which was registered on 11 April 2018 and valid till 10 April 2019, was the only valid writ registered against the Property. With that, the CA concluded that SAC had no rights against the Property because its Form 96 Order was no longer valid and thus, it had no claim to the surplus proceeds. The appeal by SAC was thereby dismissed.

V. Conclusion

As the CA noted in closing, this was an unfortunate case for SAC which, despite having registered its Form 96 Order a year earlier than PLC, was ultimately the party who failed to recover its judgment debts from the sale of the Property. Significantly, *even if* SAC had cancelled the registration of its Form 96 Order on 18 April 2018 and registered again on 20 April 2018 (in accordance with the requirement of a lapse of at least a day between the cancellation of the first writ and the registration of the subsequent writ), SAC’s second Form

⁶ *United Overseas Bank Ltd v Chia Kin Tuck* [2006] 3 SLR(R) 322.

96 Order would still have ranked behind PLC's Order which was registered on 11 April 2018. Ultimately, the only viable option for a judgment creditor such as SAC was to procure a Sheriff's sale within one year from the registration of its Form 96 Order.

Admittedly, this may be an onerous task especially in situations of economic downturn (such as the present COVID-19 induced economic downturn), where sale of the Property in a year may simply not be possible. In such cases, a judgment creditor faces the risk of its Form 96 Order lapsing and its subsequent order being lower in priority to another creditor's claim. On this note, the CA advised future judgment creditors to take all possible steps to procure the sale of the property in question within one year from the date of registration of its Form 96 Order.

This present case is helpful to both lawyers and future judgment creditors alike in providing a clearer picture as to the procedural requirements and steps to be taken by a judgment creditor in enforcing judgment against registered land.

Written by: Ashley Ho Jia Yi, 3rd-year LLB student, Singapore Management University School of Law.
Edited by: Nicholas Liu (Lecturer), Singapore Management University School of Law.