

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

GRENADA

**CLAIM NO. GDAHCV2021/0450
(FORMERLY CLAIM NO. GDAHCV2017/0403)**

BETWEEN:

TERRENCE R. JOSEPH

Claimant

and

**ACB GRENADA BANK LTD.
(FORMERLY RBTT BANK GRENADA LIMITED)**

Defendant

Appearances:

Gennilyn Ettienne for the Claimant

Carah St. Paul and Chennelle Hyacinth for the Defendant

2024: October 28, 30;
December 19.

DECISION

- [1] **MICHEL M:** This an assessment of damages following the entry of judgment in default of defence in favour of the Claimant, Mr. Terrence Joseph (“Mr. Joseph”) against the Defendant, RBTT Bank Grenada Limited, now called ACB Grenada Bank Ltd (“the Bank”). Despite the Claimant obtaining a default judgment, these proceedings have had a long history before reaching to this assessment.

Background

- [2] In or about 2008, the Bank advanced sums by way of a loan together with interest to Mr. Joseph and his former wife, Sherlie Joseph. The sums advanced were secured by way of a mortgage over certain property situate at Calivigny in the

Parish of St. George (“the Mortgaged Property”) then possessed by Mr. Joseph. Mr. Joseph conveyed legal title to the Bank subject to redemption and retained a beneficial interest in the Mortgaged Property. The mortgage by which the loan to Mr. Joseph and Shirlie Joseph was secured conferred on the Bank the statutory power of sale where demand for repayment of the loan had been made by the Bank in the prescribed manner and Mr. Joseph and Shirlie Joseph as borrowers defaulted in paying.

- [3] Some years later, Mr. Joseph and Shirlie Joseph defaulted on the repayment of the loan and the Bank subsequently sought to exercise its power of sale. The Bank placed the Mortgaged Property on the market for sale in or about 2015 and in or about 2017, a prospective buyer expressed interest in the Mortgaged Property and completed the purchase of the Mortgaged Property in 2018.

The Claimant’s Claim

- [4] By a fixed date claim form and accompanying statement of claim filed on 3rd November 2017, Mr. Joseph commenced the present proceedings against the Bank in respect of the Bank’s exercise of its statutory power of sale. The mortgage instrument executed by the parties specifically incorporated the statutory power of sale conferred on mortgagees by the **Conveyancing and Law of Property Act**¹ but without the restrictions contained therein as to giving notice or otherwise as stated in clause 5(v) of the mortgage instrument.
- [5] Mr. Joseph averred in his claim that in exercising its power of sale, the Bank owed him a duty to act in good faith by obtaining a price which reflected the true market value of the Mortgaged Property. He alleged that in breach of the duty to act in good faith, the Bank sought to exercise its statutory power of sale. He further pleaded several particulars of claim, the essence of which was that the Bank failed to ensure that the Mortgaged Property was advertised by its agent in an accurate manner which reflected its true size and extent. Mr. Joseph alleged that the Bank recklessly caused the Mortgaged Property to be advertised as containing 1903 square feet instead of its true size of 3,300 square feet. He further alleged that the

¹ Cap. 64, Laws of Grenada.

Bank generally failed to act in such a manner or to take reasonable precautions to obtain a price which reflected the true market value of the Mortgaged Property.

[6] Mr. Joseph further pleaded in his statement of claim that he was interested in the proceeds of sale in excess of the sum owed by him to the Bank and that by virtue of the matters pleaded in his claim, he suffered loss and damage and was put to expense. He further pleaded that the Banks owed him a duty to take reasonable care not to squander or to occasion loss of the proceeds of sale to which he was entitled after payment of the sums he owed to the Bank.

[7] Mr. Joseph therefore sought the following reliefs on his claim:

- (i) a prohibitory injunction that the Bank be prohibited from advertising and selling or otherwise disposing of the mortgaged property of Mr. Joseph underneath a price which represents its fair market value whether by itself its servants and/or agents;
- (ii) Damages for breach of duty to act in good faith: general and special damages;
- (iii) Damages for misrepresentation: general and special damages.

[8] Following the filing of Mr. Joseph's claim, there were several procedural wranglings between the parties; however, for the purposes of this assessment, it is sufficient to say that the fixed date claim was deemed an ordinary claim by the Court and the Bank failed to file its defence to Mr. Joseph's claim within the time limited by the **Civil Procedure Rules 2000** ("CPR 2000"). On 8th March 2022, the Court granted judgment for Mr. Joseph against the Bank in default of defence to his claim for damages, interest and costs to be quantified by the Court. A subsequent application to set aside the default judgment was refused by this Court.

The Assessment of Damages

[9] The issue of liability having been concluded by the default judgment, the only issue for the Court to determine on this assessment is how much in compensatory damages is due to Mr. Joseph on his claim. The Court, however, must also

scrutinize the statement of claim to determine what was actually decided by the default judgment. Further, on the assessment of damages, all questions going to quantification, including the question of causation in relation to particular heads of loss claimed by a claimant remain open and can be raised by a defendant, provided that it is not inconsistent with the liability alleged by the claimant in the statement of claim.²

[10] On a previous application by the Bank to set aside the default judgment, it had been recognized by counsel for Mr. Joseph that the matters that are pleaded on Mr. Joseph's statement of claim did not give rise to a viable claim for damages for misrepresentation. Having critically examined Mr. Joseph's statement of claim, I agree. The Court, however, is satisfied that a proper basis for breach of duty to act in good faith arises on Mr. Joseph's claim and that the default judgment has concluded the Bank's liability on this issue. The assessment of damages therefore proceeds on the basis of Mr. Joseph's claim for damages for breach of duty to act in good faith in exercising its statutory power of sale.

[11] Both parties filed witness statements and written submissions for the assessment of damages. Mr. Joseph also sought the permission of the Court to deem Mr. Leslie Sydney Barry and Mr. Boris Michael Horsford, both valuers, to be deemed expert witnesses for the assessment of damages. The expert reports of both valuers were filed by Mr. Joseph for the assessment. No expert evidence was led by the Bank.

Measure of Damage

[12] The Court on this assessment must carry out an inquiry into the damage suffered by Mr. Joseph as a result of the breach of the Bank's duty to act in good faith in exercising its power of sale, that breach being its failure to properly advertise the mortgaged property. Therefore, the Court has to determine what damage Mr. Joseph sustained consequent on the failure of the Bank to properly advertise the property.

² Keith Claudius Mitchell et al v Capital Bank International Limited GDAHCV2015/0034 (delivered 22nd September 2017, unreported).

- [13] For the Bank to have properly complied with its duty in exercising its power of sale, it was required to properly describe the Mortgaged Property in the advertisement of the Mortgaged Property for sale. The evidence before the Court which is accepted by the Court is that the property was not properly described in the advertisements by the Bank's agent in that the size of the property was grossly understated. In my view, therefore, the Court must determine on this assessment whether a better sale price of the Mortgaged Property could have been obtained but for the Bank's breach.
- [14] In **Caribbean Banking Corporation v Alpheus Jacobs**,³ Carrington JA [Ag.] in discussing the statutory power of sale under the Antigua and Barbuda **Registered Land Act**,⁴ stated that the section 'recognises the relationship of proximity between the chargee and the chargor in the circumstances and imposes on the chargee a duty to take reasonable care to obtain the true market value of the property at the time of the sale.' Carrington JA [Ag.] also referred to the judgment of the English Court of Appeal in **Cuckmere Brick Co v Mutual Finance Ltd.**⁵ where it was noted that the obligation to have regard to the interests of the chargor was part of the duty to act in good faith.
- [15] Mr. Joseph in his claim essentially alleged that the Bank inaccurately described the Mortgaged Property when it was advertised for sale. He alleged that the Mortgaged Property was advertised as being 1,903 square feet instead of its alleged true size of 3,300.00. He alleged that because the true size of the Mortgaged property was not ascertained by the Bank, the Mortgaged Property was advertised at a lower reserved price than its true market value.
- [16] Importantly, Mr. Joseph pleaded in his claim that he is interested in the proceeds of sale in excess of the sum owed by him to the Bank and by virtue of the Bank's actions he has suffered loss and damage and put to expense.

³ ANUHCVP2004/0010 (delivered 6th October 2008, unreported).

⁴ Cap. 374, laws of Antigua and Barbuda.

⁵ [1971] Ch D 949.

[17] In my view, in light of Mr. Joseph's pleaded case, the measure of damage based on Mr. Joseph's claim would be the difference between the price the Bank would have obtained for the property had it taken reasonable care to obtain the true market value of the Mortgaged Property at the time of the sale and the price it actually obtained from the purchaser for the misdescribed Mortgaged Property, less the sum Mr. Joseph owed to the Bank at the time of the sale of the Mortgaged Property.

[18] Support for this position can be found in the judgment of the Judicial Committee of the Privy Council **Tse Kwong Lam v Wong Shit Sen and others**.⁶ Which was followed by Glasgow J in **RBTT Bank Grenada Ltd v Erron Williams**. In opining on the mortgagee's actions in exercising its power of sale, the Board stated:

"that although there was no fixed rule that a mortgagee exercising his power of sale might not sell the mortgaged property to a company in which he was interested, in order to resist a borrower's application to set aside such a sale he had to show that he had made the sale in good faith and had taken reasonable precautions to obtain the best price reasonably obtainable at the time; that on the facts the mortgagee was in such a close relationship with the purchasing company and had been subject to such a conflict of duty and interest as to make it necessary to show that he had taken reasonable precautions to obtain the best price; but that, although the mortgagee had failed to satisfy the court that he had taken such precautions, the borrower was, by reason of his own inexcusable delay in prosecuting the counterclaim, not entitled to have the sale set aside **but was entitled to damages, the measure of which was the difference between the best price reasonably obtainable at the date of sale and the price paid by the company.**" (Emphasis added).

[19] The best evidence that the Court has before it to ascertain the best price that was reasonably obtainable at the date of the sale of the Mortgaged Property, that is the best price the Bank could have obtained for the mortgaged property had the Bank not breached its duty by misdescribing the property when exercising its power of sale, would, in my view, be the valuation reports that were placed before the Court.

⁶ [1983] 3 All ER 54.

- [20] As previously stated, the Bank did not seek to place any expert evidence before the Court to assist on this assessment of damages nor has it ever produced the valuation report it relied on in exercising its power of sale. The Court therefore only has before it the valuation reports of Mr. Mr. Boris Michael Horsford and Mr. Leslie Sydney Barry to consider.

The Boris Michael Horsford Valuation

- [21] Mr. Boris Hosford carried out an inspection of the Mortgaged Property on 3rd October 2015. Using the direct sales comparison method, he estimated the fair market value of the Mortgaged Property at that time to be \$1,500,000.00.
- [22] In his report, Mr. Horsford indicated that the total building area of the Mortgaged Property was 4,140 square feet. This figure is significantly higher than the square footage stated in the advertisement of the Mortgaged Property when it was put up for sale by the Bank and higher than the size pleaded by Mr. Joseph in his statement of claim.
- [23] Mr. Horsford further stated in his report that in the event of a force sale situation, he would recommend the sum of \$1,050,000.00.

The Leslie Sydney Barry Valuation Report

- [24] Mr. Leslie Barry carried out the valuation of the Mortgaged Property on 26th September 2017. Mr. Barry estimated the fair market value of the Mortgaged Property as \$1,455,210.00.
- [25] Mr. Barry estimated the total floor area of the building to be 5,196 square feet. This figure is higher than the figure quoted in the report of Mr. Horsford and significantly higher than the 1,906 square feet stated in the advertisement of the sale of the Mortgaged Property.
- [26] Mr. Barry also helpfully set out in his report a description of “market value”. He explained it thus:

“The Market Value of a property is the price that property would be expected to be sold in an open and competitive market, assuming that there is no undue coercion or other stimulus that may affect the price and subject to the following assumptions:

- (A) Both the buyer and seller are similarly motivated to effect the sale.
- (B) The property is advertised in the open market for a seasonable time to allow enough exposure to attract fair price.
- (C) Both buyer and seller are well informed and advised, and are acting in their best interest.
- (D) Both buyer and seller are acting knowledgeably and prudently.
- (E) The terms of sale is cash or cash equivalent at a price that would represent the normal consideration for the subject property absent of any normal or creative financing arrangements or confessions on the part of anyone associated with the sale.”

[27] In his report, Mr. Barry gave an analysis of the real estate market in Grenada at the time the valuation was carried out. He stated the following:

“At present the local real estate market is sluggish but resurging. The prices paid are reflective of a “buyers market” in which demand is less than supply. Prices are therefore conservative and in which quick sales are transacted at prices as low as 50% to 70% of market values. In order to realise close to market values longer exposure times are needed.

There have been some sales of properties that may be considered similar to or comparable to the subject property within the area or in similar neighborhoods. Although there have been recorded sales, the market activity has been slow.”

[28] Mr. Barry did not give a forced sale value of the Mortgaged Property in his report. What is critical based on Mr. Barry’s comments on the real estate market is that despite market being described as sluggish at the time, with sufficient exposure, a seller could obtain close to the market value in a sale.

[29] In the witness statement of Kerry Modoo, filed on behalf of the Bank, she stated that in reliance on a valuation dated 22nd October 2015, commissioned by Terra Caribbean, the Bank commenced advertising of the Mortgaged Property on 17th November 2015 at the value of \$1,090,000.00. The advertisement by Terra Caribbean of the Mortgaged property quoted its size as 1903 square feet.

- [30] Ms. Moodoo further stated that on 7th June 2017 the Bank received an offer for the purchase of the Mortgaged Property in the sum of \$635,000.00 and the offer was accepted by the Bank. The Mortgaged Property was subsequently sold to a buyer evidenced by a deed of conveyance dated 9th March 2018.
- [31] Based on both expert reports that have been put into evidence before the Court, the true market value of Mr. Joseph's property was significantly higher than the price the property was advertised for by the Bank and the price for which it was ultimately sold. There is a slight difference in the market values of the two reports. For the purposes of this assessment, the Court prefers to use the report of Mr. Barry because it is based on a valuation conducted closer in time to the actual sale of the property. Accordingly, I am of the view that the true market value of the property when the Bank sold it would be better reflected in the report of Mr. Barry who inspected the mortgage property to prepare the valuation report in September 2017.
- [32] Having considered valuations, and the evidence before the Court, I find on the balance of probabilities that had the Mortgaged Property been properly advertised, with sufficient exposure time in 2017, it would have fetched a price closer to the stated market value in the valuation report of Mr. Barry of \$1,455,210.00 and I therefore find that this would have been the true market value of the Mortgage Property and the best price for which the Bank could have fetched for the property had it caused the Mortgaged Property to be properly advertised.
- [33] The Mortgaged Property was sold in March 2018 for \$635,000.00, \$820,210.00 below its true market value of \$1,455,210.00. Mr. Joseph however, is not entitled to this difference. What he is entitled to as pleaded in his statement of claim are the proceeds of sale in excess of the sum owed by him to the Bank at the time. To determine this sum, the Court therefore has to consider the evidence before it.
- [34] Firstly, it is important to note certain provisions in the mortgaged instrument and the **Conveyancing and Law of Property Act** concerning expenses on account of the power of sale.

[35] Clause 5(iv) of the conveyance agreed to by Mr. Joseph provided:

“All costs charges and expenses properly incurred hereunder by the Bank and all other monies properly paid by the Bank including charges and expenses which the bank may pay or incur in investigating the title to the Property and drawing stamping registering perfecting or enforcing this security or in obtaining payment or discharge of such monies and liabilities or any part thereof together with interest thereon as aforesaid shall be charged on the Property PROVIDED that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the Bank may or but for the said charge would have for the monies hereby secured or any part thereof”

[36] Further, section 11(3) of the **Conveyancing and Law of Property Act** provides:

(3) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him or her in trust to be applied by him or her, first, in payment of all costs, charges and expenses properly incurred by him or her as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest and costs and other money, if any, due under the mortgage; and the residue of the money shall be paid to the person entitled to the mortgaged property or authorised to give receipts for the proceeds of the sale thereof.”

[37] It is therefore clear that the Bank was entitled to make deductions of costs, charges and expenses incurred in the sale of the Mortgaged Property and secondly, discharge of the mortgage money, interest and costs and other money, if any, due under the mortgage; before any surplus could be received by Mr. Joseph.

[38] In her witness statement, Ms. Modoo gave evidence in relation to the balance owed by Mr. Joseph to the Bank and how the sums received from the sale were applied as follows:

“10. As of 12th June 2018, a balance to One Million and Nineteen Thousand One Hundred and Fifty-seven dollars and Ninety-six cents (\$1,019,157.96) Eastern Caribbean Currency due and owing on the loan facility extended to the Claimant which included:

- i. Principal balance in the sum of Six Hundred and Forty-three Thousand Six Hundred and Twenty-nine dollars and Seventy-eight Cents (\$643,629.78) Eastern Caribbean Currency;
 - ii. Accrued interest in the sum of Three Hundred and Sixty-eight Thousand Nine Hundred and Thirteen Dollars and Forty-three Cents (\$368,913.43) Eastern Caribbean Currency; and
 - iii. Late Charges in the sum of Six Thousand Six Hundred and Fourteen dollars and Seventy-five Cents (\$6,614.75) Eastern Caribbean Currency.
11. The Defendant received the Purchase monies and deducted the sum of Seventy-six Thousand Eight Hundred and Ninety-three Dollars and Seventy Cents (EC\$76,893.70) Eastern Caribbean Currency broken down as follows:
 - i. 5% Property Transfer Tax in the sum of Fourteen Thousand Two Hundred and Fifty Dollars (EC\$30,750.00) Eastern Caribbean Currency;
 - ii. Outstanding Annual Property Tax in the sum of One Thousand One Hundred and Fifty Dollars and Eighty-two Cents (EC\$1,150.82) Eastern Caribbean Currency;
 - iii. Payment of Outstanding Utilities (GRENLEC & NAWASA)- in the sum of Twenty-eight Dollars and Twenty-eight Cents (EC\$28.28) and Twenty-one Dollars and Sixty Cents (EC\$21.60) Eastern Caribbean Currency respectively;
 - iv. Realtor Fees (Commission due) in the sum of Thirty-six Thousand Five Hundred and Twelve Dollars and Fifty Cents (EC\$36,512.50) Eastern Caribbean Currency; and
 - v. Legal Fees Invoice (Sale Agreement) in the sum of Eight Thousand, Four Hundred and Thirty Dollars and Fifty Cents (EC\$8,430.50) Eastern Caribbean Currency. A true copy of the Statement of Account with respect to the sale is attached hereto and marked "ACB 12".
12. The Defendant after making the above-mentioned deductions was left with a balance on the proceeds of sale in the sum of Five Hundred and Fifty-eight Thousand, One Hundred and Six Dollars and Thirty-one Cents (EC\$558,106.31) Eastern Caribbean Currency being the net sale proceeds (hereinafter referred to as "the Net Sale Proceeds").
13. The Defendant then applied the Net Sale Proceeds to the Claimant's Mortgage Account reducing the Principal from Six Hundred and Forty-three Thousand Six Hundred and Twenty-nine Dollars and Seventy-eight Cents (EC\$643,629.78) Eastern Caribbean Currency to Eighty-five Thousand Five Hundred and

Twenty-three Dollars and Forty-seven Cents (EC\$85,523.47)
Eastern Caribbean Currency.

14. The Net Sale Proceeds of sale of the Property as sold by the Defendant was insufficient to clear off the mortgage debt due and owing to the Defendant, the Claimant having failed to make a payment towards the Mortgage since on or about 5th September 2014. It therefore meant that interest continued to accrue on the remaining principal sum daily.

[39] The Bank provided the following breakdown of Mr. Joseph's loan balance after the sale of the Mortgaged Property in June 2018.

Loan balance as at time of the sale as at June 12 2018

Principal sum	\$643,629.78
Accrued Interest	\$368,913.43
Late charges	\$6,614.75
Total amount owing	\$1,019,157.96
Principal balance net proceeds from sale	\$ 85,523.48
Accrued Interest	\$368,913.43
Late charges	\$6,614.75
Legal fees	\$27,401.98
Total owing after the sale	\$488,453.64

[40] Based on Mr. Joseph's pleaded case, Mr. Joseph would be entitled to recover the surplus above the total debt that was owed to the Bank after it sold the Mortgaged Property.

[41] The best that the Court can do is use the sum of \$488,453.64 which represents the outstanding sums to the Bank after the sale of the Mortgaged Property. Whilst the figure may not represent the exact balance taking into account that realtor and legal fees may have been on a sliding scale, it is the best evidence the Court has available to calculate what would have been the surplus Mr. Joseph would have been entitled to on the sale of the Mortgaged Property but for the Bank's breach.

[42] The Court has found that the Mortgaged Property was sold at \$820,210.00 below its market value. Therefore, deducting the amount Mr. Joseph owed to the Bank after it sold the Mortgaged Property from the difference in price of the sale, gives a figure of \$331,756.36. This would represent the surplus that Mr. Joseph would have been entitled to. I would therefore assess Mr. Joseph's damages on the Bank's breach of duty in the sum of \$331,756.36.

Other Special Damages

[43] Included in the relief claimed by Mr. Joseph in his statement of claim was a reference to special damages for breach of duty to act in good faith. Other than in relation to the sums he would have recovered if a proper sale had been conducted, Mr. Joseph did not plead nor particularise any further items of special damage in his claim.

[44] It is well settled so as to be considered trite that special damages must be strictly pleaded, particularised and proved.⁷ The requirement is not satisfied by the production of documentary evidence in a list of documents or evidence set out in a witness statement. This requirement was recently explained by Bennett JA [Ag.] in **Carl Webster v Historic Beacon Point Anguilla Ltd et al.**⁸

[45] Mr. Joseph having failed to plead any further items of special damage is not entitled to recover any further sums in this regard.

Legal Costs

[46] In the written submissions filed on behalf of Mr. Joseph and in his witness statements, Mr. Joseph asked the Court to assess his costs by virtue of the order of the master dated 8th March 2022. The order being referred to is the order of the master consequent upon Mr. Joseph's application for default judgment and the Bank's application for an extension of time to file a defence which were heard

⁷ See: *Ilkiw v Samuels and others* [1963] 1 WLR 991.

⁸ AXAHCVP2020/0020 (delivered 21st June 2023, re-issued 19th September 2023, unreported) at para. 18 to 22.

together and determined by a master on 8th March 2022. The Court ordered, among other things, that:

“Judgment is granted for the Claimant against the Defendant in default of a defence to this claim for damages, interest and costs to be quantified by the Court.”

[47] It is pellucid that no order was made for Mr. Joseph’s costs of the proceedings to be assessed. The appropriate costs regime in this case is the prescribed cost regime. CPR 65.3 provides:

“Ways in which costs are to be quantified

65.3 Costs of proceedings under these rules are to be quantified as follows –

(a) where rule 65.4 applies – in accordance with the provisions of that rule; and

(b) in all other cases if, having regard to rule 64.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways –

(i) costs determined in accordance with rule 65.5 (“prescribed costs”);

(ii) costs in accordance with a budget approved by the court under rule 65.8 (“budgeted costs”); or

(iii) (if neither prescribed nor budgeted costs are applicable), by assessment in accordance with rules 65.11 and 65.12.”

[48] In **Terrance Wade v James Weekes**⁹ Michel JA explained the operation of the rule as thus:

“In accordance with rule 65.3(b), the general rule is that costs ought to be **quantified** on the basis of either prescribed costs or where applicable, budgeted costs. But, if there is a basis to disapply the general rule, only then can the court make an assessed costs order. In the present case, the trial judge, not having given any reasons for disapplying rule 65.3(b), should have made a prescribed costs order on the substantive trial and it ought not to have fallen to the master to make a specific order as required to be made by the Rules.” (Emphasis added).

[49] I can discern no basis upon which the general rule of quantifying the costs on the basis of prescribed costs pursuant to CPR 65.3(b)(i) should be disappplied and Mr. Joseph’s costs be awarded by assessment instead. I note by way of observation

⁹ MNIHC VAP2019/0002 (delivered 25th June 2000, unreported).

that the Court had ordered that each party bear their own costs on Mr. Joseph's application for default judgment and the Bank's application for an extension of time to file a defence. Costs were awarded to Mr. Joseph on the Bank's unsuccessful application to set aside the default judgment and costs were awarded to Mr. Joseph on the Bank's unsuccessful application for a stay of proceedings.

[50] There being no basis to depart from the general rule, the costs of these proceedings therefore ought to be quantified on the prescribed costs basis in accordance with CPR 65.5.

[51] Mr. Joseph having obtained a default judgment is entitled to 60% of prescribed costs on the award of \$331,756.36 in accordance CPR 65.5 and CPR Part 65, Appendices B and C in the sum of \$26,655.38.

Interest

[52] The Claimant is awarded interest in accordance with the principles set out in **Alphonso and Others v Deodat Ramnath**.¹⁰ Pre-judgment interest will therefore be awarded on the sum of \$331,756.36 at the rate of 3% per annum from the date of the sale of the Mortgaged Property to the date of this order. Mr. Joseph is additionally awarded post judgment interest at the statutory rate of 6% per annum.

[53] In light of the foregoing, the Bank shall pay Mr. Joseph the following:

- (1) Damages for breach of statutory duty in the sum of \$331,756.36 together with interest at the rate of 3% per annum from the date of the sale of the Mortgaged Property to the date of this order.
- (2) 60% of prescribed costs in accordance with CPR 65.5 and CPR Part 65, Appendices B and C in the sum of \$26,655.38.
- (3) Post judgment interest at the statutory rate of 6% per annum.

[54] I wish to place on record my thanks to learned counsel on both sides for their assistance in this matter.

¹⁰ (1997) 56 WIR 183 at p. 18.

Carlos Cameron Michel
High Court Master

By the Court

Registrar