EASTERN CARIBBEAN SUPREME COURT
ANGUILLA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. AXAHCV 2024/0074

BETWEEN:

CARIBBEAN COMMERCIAL BANK (ANGUILLA) LTD
Claimant/ Respondent

and

TOSH SHARNI CARTY- BIN NASSIR
Defendant/ Applicant

Before: **His Lordship, The Honourable Justice Ermin Moise**

Appearances:
Mrs. Jacinth Jeffers of counsel for the Claimant/Respondent.
Defendant/Applicant self-represented.

2025: April 28;
November 14.

DECISION

[1] **MOISE, J.:** This is a claim regarding the statutory power of sale contained in the **Registered Land Act (RLA).** The claimant, Caribbean Commercial Bank Anguilla Ltd. in receivership (CCB), seeks various orders from this court in order to assist with the auction of the defendant's property. It is claimed, and not denied, that the defendant has defaulted on his loan payments. The defendant has, however, insisted that the claim is statute barred. On 28th March 2025, the court ruled that section 17 of the **Limitation Act** does not apply to the claimant's statutory powers of sale. As such, the 12-year limitation period contained in the section does not fetter the claimant's right to sell the defendant's property, which is subject to a mortgage in favour of the claimant. The matter therefore proceeded to trial in order to determine whether the claimant is entitled to the specific relief sought. These are as follows:

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(a) *A declaration that the Claimant is entitled to sell property described as Registration Section: South Central: Block 38511B: Parcel 90 by public auction.*

(b) *Possession of property located at South Hill, known as Registration Section: South Central: Block 38511B: Parcel 90 or in the alternative access to property for viewings for potential bidders and/or surveyors and/or staff of the Claimant and/or auctioneers.*

(c) *Costs*

(d) *Further or other relief*

[2] Despite the previous ruling, the defendant has continued to submit that the claimant's attempt to sell the land on account of non-payment of the debt is statute barred. I have heard and reviewed the evidence in this case and I am satisfied that the claimant is entitled to the relief sought. The matter is not complicated in any way. Mr. Bin Nassir acknowledges that he is in default of the loan. He also acknowledges that he signed an agreement with the bank authorizing the debiting of his accounts numbers 7093420 and 7515307 in order to make payments to this loan. During the trial Mr. Bin Nassir acknowledged his signature on the document titled "Agreement Re Operation of Account". Although the exact date was not stated on the document, the year was identified as 2005 and Mr. Bin Nassir acknowledged the agreement. The bank was therefore authorized to debit the accounts in order to make payments towards the loan.

[3] The documentation presented at the trial indicated that the last time these accounts were debited was in 2016 and 2017 respectively. Payments, albeit of small amounts, were made towards the loan. As such, in accordance with section 21(1) of the **Limitation Act**, the claimant's attempt to invoke its right under section 72(2)(b) of the **Registered Land Act** was within the 12-year limitation period since the last payment of the loan. Therefore, notwithstanding the court's previous ruling on the limitation issue, there would be no fetter in the claimant's right to put the property up for auction, even if the limitation period were to apply.

[4] The claimants have also contended that Mr. Bin Nassir has acknowledged the debt in various emails to the bank. However, in accordance with section 22(1) of the **Limitation Act, "Every such acknowledgment as aforesaid shall be in writing and signed by the person making the**

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acknowledgment." There was no evidence presented here that Mr. Bin Nassir signed any of the correspondence which he sent via email. If the limitation were to have been applicable, there would not have been a proper acknowledgement in accordance with the relevant section of the Limitation Act.

[5] However, having already found that the **Limitation Act** does not apply and that, in any event, even if it did, there was part payment of the debt in 2016 and 2017, the claimant is entitled to sell the property pursuant to section 72(2) of the Registered Land Act. In those circumstances, the court is satisfied that the claimant is entitled to relief from this court seeking to address any actions on the part of Bin Nassir to interfere with the process. If access to the property is required in order to assist with a public auction of the property, then Mr. Bin Nassir is to provide this access.

[6] In those circumstances, I make the following orders:

(a) It is declared that the claimant is entitled to sell the property described as Registration Section South Central Block 38511B Parcel 90 by public auction.

(b) Mr. Bin Nassir is to provide the claimant with access to the property for viewings for potential bidders and/or surveyors and/or staff of the claimant and/or auctioneers.

(c) Mr. Bin Nassir will pay costs to the claimant in the sum of EC$7,500.00.

Ermin Moise
High Court Judge

EASTERN CARIBBEAN SUPREME COURT
ANGUILLA HIGH COURT
SEAL
FIAT JUSTITIA

BY THE COURT

Chanelle Petty Barrett

REGISTRAR