THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2020/0113

BETWEEN

FIRST CARIBBEANINTERNATIONAL BANK (BARBADOS) LTD.

CLAIMANT

and

DESRON PAUL

DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:
Mr.Jadric Cummings for the claimant.
Defendant unrepresented, absent.

2022:Apr.13
Apr. 27
Re-issued 2022: May 13[i]

JUDGMENT

BACKGROUND

[1]**Henry, J.:** First Caribbean International Bank (Barbados)Ltd.('the bank') carries on banking business as a licensed financial institution in Saint Vincent and the Grenadines. It alleged that Mr. Desron Paul borrowed over $200,000.00 from it in 2008 secured by a mortgage of property he owns at Yambou. The bank claims that Mr. Paul has defaulted on repayment of the loan. It seeks an order from the court for possession of, and immediate access to the mortgaged property and the costs of bringing

this claim. Mr. Paul presented no defence. He filed no documents and did not attend court. Judgement is entered for the bank.

ISSUES

[2]The issuesare:

(1) Whether Mr. Desron Paul is liable to the bank in respect of the referenced mortgage loan? and

(2) To what remedies is the bank entitled?

ANALYSIS

Issue 1 – Is Desron Paulliable to the bank[i]in respect of the referenced mortgage loan?

[3] Mr. Desron Paul took no part in these proceedings. The bank secured an order from the court to serve pleadings and other documentation on him by depositing originals at the court office for retrieval by him. The bank provided evidence[1] that the Fixed Date Claim Form, the statement of claim, affidavits containing its testimony and notice of the date set for the hearing were served on Mr. Paul. The court also directed[2] that notice of the hearing date be given to Mr. Paul by advance publication in a local newspaper. This was done.

[4] I am satisfied that the several publications in the local newspapers of notice of the commencement of proceedings and the date set for the summary trial would have provided ample opportunity for Mr. Paul to retrieve all necessary pleadings and other documentation from the court office. He was also afforded adequate notice of the hearing date.

[5] The bank's evidence was adduced through its Analyst Ms. Celine Coward. Ms. Coward's testimony is largely outlined in her affidavit filed on 28th March 2022. The contents were admitted into evidence along with the documents relied on which were produced collectively as 'ex. CC1'. Her account was credible and corroborated by the documentary evidence. In the premises, the court accepts itin its entirety as being factual and probative of the matters under consideration, no

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[1]By affidavits filed respectively on 13th September 2021, 28th January 2022 and 2nd March 2022, 3rd March 2022 and 29th March 2022.

[2] By order dated 9th March 2022.

contrary position having been advanced or being discernible from the factual matrix supplied.

[6] It emerged that Mr. Paul successfully applied to the bank for a mortgage loan of $225,000.00. He surrendered title to his property (registered by Deed of Conveyance 5105 of 2006[3]) at Yambou as security for the loan.An interest rate of 8% per annum was agreed by the parties and applied to the loan. The bank executed a mortgage over that property by Deed of Mortgage No. 4056 of 2008[4]. Ms. Coward exhibited copies of both deeds. They were produced into evidence along with the corresponding facility letter outlining the terms of the mortgage.

[7] The mortgaged property is described in the Schedule to the Deeds as: -

> 'ALL THAT lot piece or parcel of land situate at Yambou in the Parish of Charlotte in the State of Saint Vincent and the Grenadines formerly admeasuring Seven Thousand Five Hundred (7,500) Square Feet but by recent survey admeasuring Seven Thousand Five Hundred and Nine (7,509) Square Feet as delineated and described in a registered Survey Drawing prepared by Colin Alexander Licensed Land Surveyor and approved and lodged in the Lands and Surveys Office on the 20th day of October 2006 bearing No. C16/52 and is butted and bounded on the NORTH by a proposed Road on or towards the SOUTHby lands of one Isaac on or towards the EAST by remaining lands of Ruth Frank and on or towards the WEST by a 20' road or howsoever otherwise the same may be butted bounded known distinguished or described ...'

[8] By paragraph 8 of the mortgage deed, the parties agreed that the bank would be granted a power of sale over the mortgaged property and would be able to invoke it in on the occurrence of any of three specified events. The first such circumstance would involve the service on Mr. Paul of a demand notice by the bank to pay off the mortgage loan or any outstanding balance,coupled with non-payment by himfor the succeeding 3-month period,of the full amount. The second would arise if Mr. Paul defaulted in the payment of interest, as a consequence of which arrears accumulated and remain unpaid for four weeks thereafter. The third scenario would arise by any breach by Mr. Paul of any other term of the mortgage agreement.The agreement stipulated that the purchase

[3]Dated 18thDecember 2006 and registered on 29thDecember 2006.

[4] Dated 9thOctober 2008.

price realized on the exercise of such power of sale is to be applied first towards the expenses associated with effecting the sale, and the rest towards discharging the mortgage debt with any remainder to be paid to Mr. Paul.

[9] Mr. Paul agreed to repay the mortgage loan by monthly payments.He failed to do so consistently. As a result, he was sent a demand letter from the bank (authored by its lawyers[5]) dated March 8th 2018 for payment of the full balance which at that time was $208,128.94[6], comprising the principal of $152,901.57, arrears of $54,351.20, and interest of $55,227.37.He has not satisfied the debt.

[10] As at1st February 2022, the outstanding balance on the mortgage had increased to$282,131.13 and attracted a daily interest rate of $38.38. Of that sum, the principal balance amounted to $175,143.55 and the interest due and owingwas $106,987.58. Mr. Paul had by then made 101 payments totaling $155,884.67. He made his last payment of $800.00 towards the debt on February 1st 2018.

[11] Ms. Coward averred that this case does not require that notice be given to any person because of a registered interest under the Matrimonial Causes Act. It is also a matter of record that no third party has made any such representation to the court.

[12] Ms. Coward's testimony was clear and unequivocal. I believe her. I am satisfied that Mr. Paul remains indebted to the bank in the sum of $282,131.13 and that a daily interest of $38.38 is accruing. I also accept Ms. Coward's account that the principal and interest components of the debt are $175,143.55 and $106,987.58respectively. I find on a balance of probabilities that Mr. Paul is liable to the bank for those sums together with interest on the principal sum at the rate of 8% per annum.

Issue 2 – To what remedies is the entitled?

[13] The bank submitted that a legal mortgage entitles the mortgagee as against the mortgagor to immediate possession or receipt of the rents and profits at any time after execution of a mortgage.

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[5]Cardinal Law Firm

[6]As at28th February 2018.

Citing **Four-Maids Ltd. v Dudley Marshall (Properties) Ltd.**[7] and **Halsbury's Laws of England**[8], the bank submitted that it is entitled to go into possession of the mortgaged property even if there is no default. It reasoned that by virtue of Mr. Paul's default of his repayment obligations, it is entitled to exercise its power of sale.

[14] The bank submitted further that it was necessary for it to obtain a court order to secure possession of the mortgaged property. It relied on the decisions in **Ropaigealach v Barclays Bank Plc**[9]and **Birmingham Citizens Permanent Building Society v Caunt**[10]and pronouncements by the learned authors of **Halsbury's Laws of England**[11]as authorities for the proposition that a mortgagee may by reasonable force take possession of mortgaged property and treat the mortgagor as a trespasser. That approach is not being pursued in this case.

[15] It has not escaped the court's attention that the Mortgage Deed provides[12] that the mortgagee may sell the subject property by public auction or private treaty in satisfaction of the debt secured thereby. It is now established that the common law imposes an obligation on a mortgagee to act honestly and without reckless disregard for the mortgagor's interest, when exercising the power of sale.[13] Among other things, the mortgagee is required to take reasonable precautions to obtain a price which reflects thetrue market valueof the mortgaged property.[13] However, themortgagee is not expected to subsume its interests under those of the mortgagor where a conflict of interests exists. It may in such casegive preference to its own interests.[13]

[16] The bank has limited its prayer in this matter to an order of possession, access to the mortgaged property and costs. The law and facts are on the bank's side in respect of those reliefs. The court infers that it intends to seek to exercise its power of sale. Accordingly, even though no application

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7 [1957] 1 Ch. 317

8(4thEdn. 2005 Reissue) Vol.32, pg. 308 at para. 602

9[2000] QB 263

10[1962] 2 WLR 323

11(4thEdn. 2005 Reissue) Vol.32, pg. 312 at para. 611

12At para. 7

13 Cuckmere Brick Co Ltd and another v Mutual Finance Ltd. [1971] 2 All ER 633.

has been made expressly for related orders to facilitate any intention by the bank to proceed to effect a sale of the property, the court remains mindful of its duty to seek to dispose of all issues with finality and comprehensively[14]. In this regard, the court takes cognizance of the principles enunciated in the **Cuckmere case** as re-affirmed and applied by the Court of Appeal in **Caribbean Banking Corporation v Alpheus Jacobs**[15]and in the court in several cases in this jurisdiction. In this regard, the court notes the need to ensure that the interest of the mortgagor is protected by among other things stipulating that any proposed sale be advertised widely and that the sale price is reasonable and commensurate with market trends.

[17] Accordingly, in all of the circumstances the court is minded to address the issue of the bank's remedies in a holistic fashion in the interest of justice and for completeness. I am satisfied that the facts and the applicable law gives the bank the right of possession of the mortgaged property consequent on Mr. Paul's default in repayment. Similarly, the bank is entitled to exercise its power of sale to recover the debtof $282,131.13. Such sale must be conducted in accordance with the referenced procedures discussed in the **Cuckmere** and **Alpheus Jacobs cases** to ensure fairness to Mr. Jacobs.

[18] In the premises, I propose to make an order for vacant possession of the property to be delivered to the bankon or before June 15th 2022; for access to be granted to the bankto allow for a valuation; for advertisement of any intended sale; and with liberty to apply if necessary for any consequential orders. Desron Paul shall on receiving at least 7 days' advance noticefrom the bank grant access to the bank, its servants and agents, to conduct a valuation of the mortgaged property; and must arrange for his servants, agents, licensees and tenants (if any) to grant similar access to the bank, its servants and agents.

[19] The bankshallarrange for the mortgaged property to be valued bya licensed property valuator within 30 days of today's date; and is at liberty to exercise its power of sale over the mortgaged property to recover the referenced outstanding principal sum and interest. The bank shall advertisethe

[14]In accordance with sections 19 and 20 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines Act, Cap. 24 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

[15] ANUHCVAP2004/0010 (decision delivered on October 6th 2008)

mortgaged property for sale by public auction or private treatyin at least six consecutive issues of two weekly newspapers circulating in Saint Vincent and the Grenadines; and with at least one licensed local realtor who maintains or has access to a website for advertising purposes. The bank may sell the mortgaged property by public auction or private contract to the bidder or offeror who makes the highest reasonable offer; provided that it amounts to at least 80% of the value ascribed in the valuation report. It must apply to the court for further directions and/or order if the highest bid or offer received is less than 80% of the value of the mortgaged property.

COSTS

[20] The bank made no submissions on costs.The CPR[16] provides that the fixed costs regime is applicable in cases involving undefended claims for a specified sum, as in the case at bar. In such a case, costs are based on the scale outlined in Table 1. In respect of claims for sums between $100,000.00 and $500,000.00 the applicable fixed costs is $2,000.00. In the premises, fixed costs of $2000.00 are awarded to the bank. It is payable together witha further $100.00 associated with personal service on the defendant and the appropriatecourt fee.The bank waivedpayment of the court fee. It would not be able to recover the fee for service since there was no personal service on Mr. Paul.Therefore, no award is made in respect of either of those items.

ORDERS

[21] It is accordingly ordered and declared:

1. Judgment is entered for First Caribbean International Bank (Barbados) Ltd.

2. First Caribbean International Bank (Barbados) Ltd. is entitled to recover from Desron Paul the outstanding balance of the mortgage loan sum of $282,131.13 inclusive of the principal sum of $175,143.55 and interest of $106,987.58

3. First Caribbean International Bank (Barbados) Ltd. is entitled to recover from Desron Paulinterest on the principal sum at the rate of 8% per annumfrom the date of judgment until full satisfaction.

[16]Rule 65.4 and Appendix A, Part 1.

4. Desron Paul shall on receiving at least 7 days' advance noticefrom First Caribbean International Bank (Barbados) Ltd.:

   (a) grant access to the bank, its servants and agents, to conduct a valuation of the mortgaged property; and

   (b) arrange for his servants, agents, licensees and tenants (if any) to grant similar access to the bank,its servants and agents.

5. First Caribbean International Bank (Barbados) Ltd.shall:

   (a) arrange for a licensed property valuator to conduct within 30 days of today's date, a valuation of the property described in the Schedule to Deed of Mortgage 4056 of 2008; and

   (b) be at liberty to exercise its power of sale over the mortgaged property to recover the referenced outstanding principal sum and interest.

6. First Caribbean International Bank (Barbados) Ltd.must advertise the mortgaged property for sale by public auction or private treaty:

   (a) in at least six consecutive issues of at least two weekly newspapers circulating in Saint Vincent and the Grenadines; and

   (b) for a similar period, with at least one licensed local realtor who maintains or has access to a website for advertising purposes.

7. (a) First Caribbean International Bank (Barbados) Ltd.shall be at liberty to sell the said mortgaged property by public auction or private contract to the bidder or offeror who makes the highest reasonable offer; provided that it amounts to at least 80% of the value ascribed in the valuation report prepared under subparagraph 5 (a).

   (b) First Caribbean International Bank (Barbados) Ltd.must apply to the court for further directions and/or order if the highest bid or offer received is less than 80% of the value of the mortgaged property.

8. Desron Paul is directed to deliver vacant possession of the mortgaged property to First Caribbean International Bank (Barbados) Ltd. on or before June 15th 2022.

9. Desron Paulshall on or before June 30th 2022, pay toFirst Caribbean International Bank (Barbados) Ltd.fixed costsof $2000.00pursuant to CPR 12.12 and 65.4(1), Appendix A of Part 65 of the CPR at paragraphs (1) and (2) of Table 1, and paragraph (1) of Table 2.

10. A penal notice is to be affixed to this order in terms of CPR 53.3.

[22] I am grateful to counsel for his skeleton arguments and list of authorities.

CLP 13.5.2022

Esco L. Henry
HIGH COURT JUDGE

By the Court

REGISTRAR'S OFFICE
ST. VINCENT AND THE GRENADINES

Deputy Registrar

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[i]Re-issued with correction made (pursuant to CPR 42.10) by changing the name of the bankfrom 'Bank of Nova Scotia' to 'the bank' on page 2,in the statement of issue 1.