IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE
(CIVIL)

GRENADA

CLAIM NO. GDAHCV2019/0507

BETWEEN:

FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LIMITED

Claimant

and

DEBORAH PARKE

Defendant

Before:

The Hon. Mde Agnes Actie

Appearances:

Ms. Deborah St Bernard for the Claimant
Ms. Lawrene Griffith for the Defendant

2020: Sept 9th

JUDGMENT

[1] **ACTIE, J:** The sole issue for determination is whether the payment of interest claimed under a mortgage claim is statute barred.

[2] By way of Fixed Date Claim filed on 11th November 2019, the Claimant, First Caribbean International Bank (Barbados) Limited claims against the Defendant, Deborah Parke, for monies due and owing pursuant to a mortgage agreement. The claimant claims the sum of $26,237.97 being the principal sum outstanding under the mortgage loan account, interest in the sum of $27,857.93 at the rate of 10% per annum until payment together with costs.

[3] The Defendant in her defence filed on 19th February 2020, admits the mortgage agreement and the fact that she defaulted on the monthly repayments. However, the Defendant asserts that her last payment was made on the 2nd February 2010 and accordingly the Claimant is not entitled to the entire sum claimed as the amount claimed for interest is statute barred pursuant to Section 33 of the Limitation of Actions Act.

[4] The parties were directed to file submissions on whether the interest claimed under the mortgage debt was statute barred.

Defendant's submissions

[5] The Defendant, in her written submissions, argues that the principal mortgage debt still subsists pursuant to **Section 30 of the Limitation of Actions Act** as the section provides for recovery of mortgage debt up to twelve (12) years. Therefore, when both Sections 30 and 33 of the Act are read together, it provides that interest accrued on a mortgage debt must be brought within six (6) years and actions for mortgage debts must be brought within twelve (12) years and if not that right of recovery is extinguished. Counsel for the defendant posits that the interest claimed by the Claimant from the last payment on 2nd February 2010 is not recoverable and is therefore statute barred. Counsel relies on the authority in **Bristol West PLC v Bartlett and another** which was cited with approval by Thom J, as she then was, in **First Caribbean International Bank (Barbados) Limited v Timothy St John.**

Claimant's submissions

[6] The claimant, in response states that **Section 30 of the Limitation of Actions Act** in its natural and ordinary meaning provides that a mortgagee has twelve (12) years within which to recover any sum of money secured by a mortgage. Counsel posits that the section makes no distinction between principal and interest. Counsel further submits that The Grenada Limitation of Actions Act is distinguishable from the UK and the Saint Vincent & Grenadines Limitation of Actions Act on which authorities relied on by the defendant were determined.

Issue - whether the sum claimed for interest is statute barred

The Law

[7] **Section 30 of the Limitation of Actions Act** provides for filing of claims for money charged upon land and legacies and reads as follows:

> **Money charged upon land and legacies to be deemed satisfied at the end of twelve years if no interest paid**
>
> 30. No action or other proceeding shall be brought to recover any rent, annuity, or other periodical payment charged upon or payable out of any land, or to recover any sum of money secured by any mortgage, judgement or lien, or otherwise charged upon or payable out of any land or rent, or any legacy whether so charged or not, but within twelve years next after a present right to receive it has accrued to some person capable of giving a discharge for or release of it, unless in the meantime some part of the principal money, or some interest thereon, has been paid or some acknowledgment of the right thereto has been given, in writing, signed by the person by whom it is payable, or his or her agent, to the person entitled thereto, or his or her agent; and in that case no such action or other proceeding shall be brought but within twelve years after the payment or acknowledgment, or the last of the payments or acknowledgments, if more than one, was made or given."

[8] **Section 30** expressly states that all claims or other proceedings for the recovery of any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, shall be brought within twelve (12) years next after a right to receive the debt shall have accrued to a person capable of giving a discharge for or release of the debt. The section goes further to provide that where some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled to the payment or his agent, then in such a case no action or proceeding shall be brought but within 12 years after such payment or acknowledgment or the last of such payments or acknowledgments (if more than one) was made or given.

[9] The claim at bar filed nine (9) years and nine (9) months after the defendant made the last payment is within the terms and therefore comports with the twelve-year limitation period prescribed by Section 30 of the Act. The defendant's main contention is that the claimant's claim for interest is barred pursuant to **Section 33 of the Limitation of Actions Act.**

[10] **Section 33 of the Limitation of Actions Act** provides for the recovery of arrears of rent and interest and reads as follows:

> "**33. No arrears of rent or interest to be recovered for more than six years**
>
> No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, **shall be recovered** (my emphasis) by any distress or action, but within six years next after the same became due, or next after an acknowledgment of the same, in writing, has been given to the person entitled thereto, or his or her agent, signed by the person by whom the same was payable, or his or her agent:
>
> Provided nevertheless that, where any prior mortgagee or other incumbrancer has been in possession of any land or in receipt of the profits thereof, within one year next before an action is brought by any person entitled as a subsequent mortgagee or other incumbrancer on the same land, the person entitled to the subsequent mortgage or incumbrance may recover in the action the arrears of interest which have become due during the whole time that the prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although the time may have exceeded the said term of six years."

[11] **Section 33** deals with the right of recovery of arrears of rent and interest. The section clearly provides that no arrears of rent or interest shall be **recovered** in any action or suit or proceedings but within six years next after the same became due or next after an acknowledgment in writing has been given. The recovery of interest is subject to a proviso in an action brought by a second mortgagee which is inapplicable in the case at bar. The effect of this section is that no more than six years interest from the date due is allowed

[12] In my view, **Section 30 of the Limitation of Actions Act** is subject to **Section 33** of the Act. The two sections relate to money secured upon land and interest entitled on the money secured from the date of default. The limitation of twelve years imposed by Section 30 of the Act for the recovery of money charged on land is subject to Section 33 for the recovery of interest on the said debt. A corollary is that a mortgagee's right of action for a mortgage debt must be commenced within twelve (12) years of the date of the accrual of the cause of action, that is, the date of the last payment or last date of an acknowledgement in writing. Therefore, a mortgage claim for both principal and interest filed outside of six years but within twelve (12) years, entitles the claimant to recover interest on the principal up to six (6) years from the date of the accrual of the cause of action. Section 33 therefore does not relate to the time period within which the action must be brought in respect of recovery of interest. That is captured in Section 30 which provides for a limitation period of twelve (12) years. Once an action is not limited by the twelve (12) year period in section 30, the Claimant can only recover interest for a period of six (6) years from the date of accrual of the right of action even if interest for a greater number of years is due or claimed.

[13] Counsel for the defendant relies on the authority in **First Caribbean International Bank [Barbados] limited] v Timothy St. John**[1] where Thom J, as she then was, citied with approval the decision in **Bristol and West Pic v Bartlett and another**[2] where it was held that "a claim for interest must be made within six years after the interest became due. A party cannot claim interest that has been due for more than six years".

[14] The cases relied on by the defendant are clearly distinguishable from the case at bar. In **First Caribbean International Bank [Barbados] limited] v Timothy St. John,** the subject property of a legal mortgage was sold and the proceeds were applied to the reduction of the mortgage debt, however there was a balance of EC

[1] SVG HCVAP. 423 of 2009.
[2] [2003] 1WLR 284.

$66,908.47 being the interest on the principal sum loaned. Justice Thom in coming to her decision relied on Sections 22(1) & (5) and 29(6) of the Saint Vincent and the Grenadines Limitation Act which read as follows:

> "22.(1) No action shall be brought to recover (a) any principal sum of money secured by a mortgage or other charge on property (whether real or personal); or (b) proceeds of the sale of land, after the expiration of twelve years from the date on which the right to receive the money accrued."
>
> "(5) subject to subsections (6) and (7), no action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of the proceeds of the sale of land, or to recover damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due."

[15] In **First Caribbean International Bank [Barbados] limited v Timothy St. John**, the principal debt had been cleared and the claim was only for interest, unlike the case at bar where the claim is for both the principal and interest. Thom J at Paragraph 17 of the judgment stated “under Section 22(5) the claim must be made within six years of the date on which the interest became due. She agreed with the submission of Learned Counsel that the Claimant was only entitled to interest which became due six years prior to December 22nd, 2009 (the date of filing the claim).

[16] The difference in language between the Saint Vincent and the Grenadines and Grenada legislation must be particularly observed. The Saint Vincent & Grenadines Limitation Act provides that “no action to recover arrears of interest…. “**shall be brought”** after the expiration of six years. **Section 33 of the Grenada Limitation of Actions Act** on the other hand provides that “No arrears of rent, or of interest “**shall be recovered**”. (my emphasis)

[17] An analysis and effect of **Sections 30 and 33 of the Limitation of Actions Act** can be summarized as thus:

1. A claim brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent must be brought within twelve years next after a right to receive the debt shall have accrued to a person capable of giving a discharge for or release of the debt unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some signed acknowledgment of the right have been given in writing, then in such a case no action shall be brought but within twelve (12) years after such payment or acknowledgment or the last of such payments or acknowledgments (if more than one) was made or given.

2. A mortgage claim for principal and interest brought within the twelve years limitation period in accordance with Section 30 but in excess of six years can only recover interest up to six years from the date of the accrual of the cause of action or within six years next after an acknowledgment of the same, in writing, has been given to the person entitled thereto, or his or her agent.

3. No more than six years interest can be recovered from the date of the accrual of the cause of action. in respect of any claim for arrears of rent, interest in respect of any sum of money charged upon or payable out of any land or rent, any legacy or any damages in respect of such arrears of rent.

ORDER

[19] In summary, the defendant having admitted the mortgage debt therefore entitles the claimant to summary judgment on the principal sum claimed together with interest limited to six years from the date of the accrual of the cause of action, together with costs, and I so order.

Agnes Actie
High Court Judge

By the Court

Registrar