

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0149

BETWEEN

ST. VINCENT CO-OPERATIVE BANK LIMITED

CLAIMANT

and

ALDRICK EDDISON HADAWAY

Also known as

EDDISON HADAWAY

DEFENDANT

Appearances:

Mrs. Zhinga Horne-Edwards of counsel for the claimant.
Defendant in person, unrepresented.

2017: May 16
Jun. 20

JUDGMENT

BACKGROUND

[1] **Henry, J.:** St. Vincent Co-operative Bank Limited ('the bank') filed this claim¹ against Mr. Hadaway to recover the sum of \$22,216.47 interest and an order for sale of property situated at Edinboro, Saint Vincent and the Grenadines. The bank alleged that it lent Mr. Hadaway monies which he has failed to repay.

¹ By Fixed Date Claim Form filed on 6th October, 2016.

[2] Mr. Hadaway admitted the claim. Summary trial was conducted on May 16th 2018. Mr. Hadaway gave no evidence. The bank relied on the testimony of its Assistant Recoveries Officer Ms. Shadia Joseph who provided particulars about the loan and Mr. Hadaway's default in repayment. Her account established that Mr. Hadaway is liable. Accordingly, judgment is entered for the bank.

ISSUES

[3] The issues are:

- (1) Whether Mr. Hadaway is liable to the bank for the debt? and
- (2) To what remedies is the bank entitled?

ANALYSIS

Issue 1 – Is Mr. Hadaway liable to the bank for the debt?

[4] Ms. Joseph's affidavit² was admitted as her evidence in chief. She was cross-examined briefly by Mr. Hadaway. Ms. Joseph gave her account in a frank and forthright manner. Mr. Hadaway did not dispute her recollection or testimony. I therefore accept it as being credible and probative of the issues in this matter.

[5] Ms. Joseph averred that the bank lent Mr. Hadaway \$30,000.00 on May 7th 2012. Mr. Hadaway purported to secure the loan by property at Edinboro in the Parish of Saint George. Ms. Joseph said that it comprised 12,501 square feet and had a dwelling house constructed on it. She gave no details about the root of title or the documentation by which Mr. Hadaway acquired an interest in it. She explained that it is shown on plan number A10/124.

[6] Mr. Hadaway executed a 'mortgage' deed on 7th May 2012 in which he claimed to own a fee simple interest in the subject land. He purported to offer the charge over the land as a security to compel his repayment of the loan. The deed was registered as deed number 1313 of 2012 and a certified copy was tendered into evidence. It made no reference to the title document by which he became so seised. The Schedule to the Deed described the property as follows:

'ALL THAT Lot piece or parcel of land situate at Edinboro in the Parish of St. Andrew

² Filed on 19th October, 2017.

in this State containing (sic) by admeasuring 12,501 square feet or as the same is more particularly shown and delineated on a Plan prepared by Licensed Land Surveyor Clifford Williams and approved and lodged at the Lands and Survey Department on 20th December 2007 under Number A10/124 or howsoever otherwise the same may be abutted bounded known distinguished or described Together with all buildings and erections thereon and all ways waters watercourses rights lights liberties privileges and easements thereto belonging or usually used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto.'

- [7] The referenced plan was not produced. The bank supplied no registration number or particulars regarding how Mr. Hadaway acquired an interest in the referenced property. The deed did not assist in this regard. In the circumstances, there is insufficient evidentiary and no legal basis on which the Court may legitimately find that Mr. Hadaway was the legal or beneficial owner of the subject land at the relevant times, or whether such property exists. I make no finding that he was or is or whether such property exists.
- [8] Ms. Joseph deposed that Mr. Hadaway gave the bank a power of sale over the subject property under the terms of the mortgage deed. She claimed that it was exercisable in the event of Mr. Hadaway's default in repaying the loan. However, I am unable to conclude that Mr. Hadaway legally conferred to the bank such power of sale.
- [9] Only the owner of the referenced property or someone with a sufficient legal or beneficial interest in it, or with the requisite authority could have done so. The bank has not proved that Mr. Hadaway had such interest or authority. I therefore make no finding that he validly executed a mortgage deed which created such obligations and rights.
- [10] I hasten to add that I harbor no doubt that Mr. Hadaway signed the 'mortgage' document. In this regard, the stated commitment by him to repay the loan created a valid contract between the parties. The main undertakings were by the bank to advance the loan amount to Mr. Hadaway; and

on the other hand for him to repay the principal and interest amounts. That part of the contract survived any nullity of the uncertain and potentially unenforceable portions respecting title.³

[11] I wish to make it clear that Mr. Hadaway might very well have an interest in the subject property. However, the bank failed to provide satisfactory evidence of this. In the absence of an adequate evidentiary or legal foundation to buttress such a case, the bank's claim for an order for possession and sale of the property has not been made out.

[12] Ms. Joseph testified that Mr. Hadaway was contractually bound to make monthly payments of \$762.00 including interest, to the bank. She recalled that he failed to do so. She indicated that the bank wrote to him by letter dated 12th April 2015 requesting that he regularize his loan account. He has failed or refused to do so. The bank's lawyer wrote to him by letter dated 12th August 2015 demanding payment of the outstanding balance within 14 days. Certified copies of both letters were produced. Mr. Hadaway did not deny receiving them. I accept that he did.

[13] Mr. Hadaway still did not comply with the bank's demand for repayment of the outstanding balance. Ms. Joseph stated that it stood at \$22,216.47 as at 19th October 2017 but had decreased to \$21,452.95 by the trial date. She indicated that Mr. Hadaway had repaid \$18,311.00 by 19th October 2017, a further \$563.99 on January 2, 2018, and additional amounts of \$431.01, and \$800.00 on 10th and 31st January 2018 respectively.

[14] Of that global figure, \$17,877.86 had been applied towards the principal while the difference comprised interest payments. The add-on charges amounted to \$3,019.00. Ms. Joseph deposed that as at 3rd October 2017 interest was accruing on the loan at the daily rate of \$4.12.

[15] Under cross-examination Ms. Joseph admitted that since January 2018, Mr. Hadaway has continued to make monthly payments towards the balance. She indicated that she could not recall how much has in fact been paid. She was unable to say whether he made payments on Monday 14th May 2018.

[16] Mr. Hadaway made a brief oral speech. He explained that he was trying to get money to pay off the bank but ended up with a lot of stumbling blocks. He did not denying owing the bank part of the

³ The Law of Contract, Common Law Series 6th Ed., Lexis Nexis, para. 8.163; Ailion v Spiekermann [1976] Ch 158.

loan amount with interest. He did not deny that he had a contract to repay the loan in the terms stated by Ms. Joseph, and as evidenced by the loan agreement and promissory note.

- [17] I am satisfied that Mr. Hadaway owes the bank part of the loan amount, but I am not in position to determine the amount. The bank is only entitled to recover the outstanding sum with interest. It seems to me that the justice of this case requires that judgment be entered for the bank on that basis.

Issue 2 – To what remedies is the bank entitled?

- [18] Having failed to prove that Mr. Hadaway owned the referenced property, the bank's claims for possession and sale of the property are not supported by the evidence. They are accordingly dismissed. Damages is not an appropriate remedy in the circumstances of this case, as there is no contractual basis for such an award. I therefore make no order for damages.
- [19] The Court is empowered by the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act⁴ to give effect to every legal claim and to grant all remedies which a party appears to be entitled so that 'as far as possible, all matters in controversy' between them may be 'completely and finally determined and multiplicity of legal proceedings' avoided.
- [20] Applying that provision to the instant case and in view of the earlier finding regarding Mr. Hadaway's contractual liability, judgment is entered for the bank for the sum of \$21,452.95 less any payments made by him between 1st February 2018 and 20th June 2018, with interest at the rate of 10% from the date of judgment to satisfaction.

Costs

- [21] This claim turned out to be one for a sum of money and not a mortgage debt. The bank could have obtained judgment in default of defence. If it had, it would have been entitled to its fixed costs, as it is still. Mr. Hadaway shall pay the bank fixed costs of \$750.00⁵ and additional costs of \$350.00

⁴ Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009, sections 19 and 20.

⁵ In accordance with CPR 12.12 and 65.4.

pursuant to Appendix A of Part 65 of the CPR, paragraphs 1, 2 and sub-paragraph (1) of Table 1, and sub-paragraph (1) of Table 2.

ORDERS

[22] It is accordingly ordered:

1. Mr. Aldrick Hadaway is directed to pay to the bank the judgment sum of \$21,452.95 less any payments made by him to the bank between 1st February 2018 and 20th June 2018, with interest at the rate of 10% from the date of judgment to satisfaction⁶.
2. Mr. Aldrick Hadaway shall pay to the St. Vincent Co-operative Bank Limited fixed costs of \$1100.00.

**Esco L. Henry
HIGH COURT JUDGE**

By the Court

Registrar

⁶ In accordance with clause 3 (d) of the agreement between the parties and section 2 (1) of the Interest Act, Cap. 27 of the Laws of Saint Vincent and the Grenadines, 2009.