EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2016/0727

BETWEEN:

British American Insurance Company Limited
In Judicial Management

Claimant

and

1. **Dean Nicholas**
2. **Mount St. Nicholas Resorts Limited**

Defendants

Appearances:

Mr. Vern Gill for the claimant

Ms. Carol Gedeon-Clovis for the defendants

2017: December 6

JUDGMENT

[1] **ACTIE A.**: This matter comes on to determine a preliminary issue as to whether the Claimant's claim is prescribed.

Background Facts

[2] British American Insurance Company Ltd granted a loan of $5,000,000.00 to Nicholas Resort Ltd with Dean Nicholas as surety. The loan was secured by a Deed of Hypothecary Obligation Mortgage Debenture and Floating Charge executed on 20th August 2008 for the sum borrowed. It was an express term of the loan agreement that the principal together with accrued interest were to be paid twenty four (24) months after the first disbursement. The first disbursement in the sum of $673,630.95 made to the defendants on the 20th August 2008 remains unpaid.

[3] On November 18, 2016, British American Insurance Company Limited, in Judicial Management, filed a claim form with a statement of claim for the sum disbursed together with interest.

[4] The defendants filed a defence and counterclaim acknowledging the disbursement but contend that the claim is prescribed. The defendants aver that the loan being of a commercial nature, is governed by **Article 2121(4) of the Civil Code** and is accordingly prescribed after six years from the date of maturity. The defendants contend further that the claim for interest is also prescribed by Five (5) years in accordance with **Article 2111 of the Civil Code**.

[5] The claimant concedes that the accrued interest was prescribed but maintains that a demand letter dated 10th October 2013 placing the defendants in default would be the starting point of the default for the purposes of prescription.

Issue: When did the prescription period commenced and whether the claim is prescribed.

Law and Analysis

[6] **Article 999 of the Civil Code** gives four ways in which a debtor can be placed in default. The debtor is placed in default either by the terms of the contract, through the lapse of time specified for its performance; by mere operation of law; by the commencement of a suit, or by a demand which must be in writing except in the case of a verbal contract.

[7] It was an express tern of the loan facility that the loan payment in full became due and payable after twenty four (24) months from the first disbursement. The first disbursement was made on the 20th August 2008 thus making the maturity date for payment to have commenced from 20th August 2010. The defendants being in default, it was incumbent on the claimant to enforce its rights under the loan agreement.

[8] **Article 1942 of the Civil Code** provides that in order to secure his rights under a hypothec, the creditor has two remedies, namely, the hypothecary action and the action to interrupt prescription.

[9] **Article 2121 (4) of the Civil Code** provides a prescription period of six years:-

"upon inland and foreign bills of exchange, promissory notes, or notes for the delivery of merchandise, whether negotiable or not, upon any claim of a commercial nature reckoning from maturity;…."

[10] It is indisputable that the purpose of the loan granted to the defendants, in the form of a Hypothec Mortgage Debenture and Floating Charge, falls within the definition of a claim of a commercial nature. British American Insurance Ltd had to take the necessary action to enforce its rights either, by the commencement of a suit or by a demand within six (6) years reckoning from maturity.

[11] Interruption of prescription resulting from a demand must be in a proper written form and served upon the person whose prescription it is sought to hinder. The claimant relies exclusively on the Privy Council decision in **Nelson and others v First Caribbean international Bank (Barbados) Limited**[1] where the defendants had defaulted on loan repayments about two years into the loan repayment period (which was about ten or fifteen years). The bank filed a claim based on default and the Privy Council said if the Nelsons wanted to argue the prescription point they would have had to show when the written demand for the loan was made, which would serve as the commencement date for prescription. Since they never presented such letter and had not taken the prescription point in the court below, they were precluded from taking it before the Privy Council. The Privy Council was not saying that there must always be a demand letter but that if the prescription issue is to be argued the party seeking to rely on it must show the act or event from which prescription starts to run.

[12] It is acknowledged by counsel for British American Insurance Company Ltd, that a formal demand letter dated 10th October 2013 was never served on the defendants. This revelation has denuded the claimant's reliance on the commencement of the prescription period from the date of issue of the demand letter.

[13] In the alternative of a written demand, **Article 999 of the Civil Code** requires the commencement of a claim to interrupt prescription. Prescription is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction and the proper service of such suit on the party whose

[1] [2014] UKPC30 delivered on 3rd September 2014

prescription it is sought to interrupt[2]. As indicated previously, the maturity date of the loan was the 20th August 2010. British American Insurance Ltd filed its statement of claim on 18th November 2016, 2 days short of 3 months after the expiration of the six (6) years limitation period.

[14] The **Civil Code** provides the means for the creditor to preserve his rights, if he neglects to protect his rights, he can only blame his own negligence for his loss. If the demand letter had been issued and the defendant had responded acknowledging the debt, that would have interrupted prescription and time would have recommenced from the date of demand or the acknowledgment.

[15] In summary, British American Insurance Ltd has not shown that the prescription period was interrupted either by a demand or the commencement of the claim in keeping with the requirements of the Civil Code. It follows that the defendants are correct in asserting that prescription ran from the lapse of time specified for performance which was upon the expiration of twenty four (24) months from the date of first disbursement. In accordance with **Article 999 of the Civil Code**, a claim of a commercial nature is prescribed after six (6) years from maturity. The claimant having failed to serve the formal demand on the defendant or file and serve the claim within the time prescribed is barred from bringing an action under the terms of the loan agreement.

ORDER

[16] For the foregoing reasons, the claim form with statement of claim filed by British American Insurance Limited (in Judicial Management), being a claim of a commercial nature is prescribed in accordance with **Article 2121(4) of the Civil Code**.

[17] The claim stands dismissed with costs to the defendants in the sum of $2000.00.

AGNES ACTIE

MASTER, HIGH COURT

BY THE COURT

REGISTRAR

[2] per Gordon JA in David Sweetnam etal v The Government of Saint Lucia etal -SLUHCVAP 2005/0042