

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

IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0123

BETWEEN

RBTT BANK CARIBBEAN LIMITED

CLAIMANT

and

GLENROY WENDELL DELPECHE

of Richmond Hill

DEFENDANT

Appearances:

Mr. Julian Jack for the claimant.

Defendant in person, unrepresented.

2017: Mar. 22

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** This is a claim by RBTT Bank Caribbean Limited ('RBTT') to recover monies loaned to Mr. Glenroy Wendell Delpeche. RBTT also sought orders for vacant possession, sale of the mortgaged property by private treaty or public auction and costs. Mr. Delpeche did not deny owing the debt. He contended that he did not owe arrears allegedly accrued as at 27th February, 2017. Judgment is entered for RBTT as outlined below.

ISSUES

[2] The issues are:

- (1) Whether Mr. Glenroy Wendell Delpeche is liable to RBTT in respect of the mortgage debt? and
- (2) To what remedies is RBTT entitled?

ANALYSIS

Issue 1 – Is Glenroy Wendell Delpeche liable to repay RBTT the mortgage debt?

[3] RBTT is a commercial bank carrying on the business of lending money. It instituted this matter by Fixed Date Claim Form ('FDCF') on 1st September, 2015, pursuant to the Civil Procedure Rules, 2000 ('CPR').¹ Keishon Browne testified on RBTT's behalf. He was RBTT's only witness and his affidavit² was admitted into evidence. He testified that he is employed as Operations Support Officer by RBTT.

[4] Mr. Delpeche was a customer of RBTT and holder of loan account number MG0927105006. He obtained a loan advance of EC\$244,000.00 from RBTT on 21st August 2009. The agreement to this effect was recorded at the Deeds Registry as Indenture of Mortgage Deed No. 3500 of 2009. The terms were also captured in a Demand Loan Promissory Note³. The loan attracted interest at the rate of 8% per annum, repayable by monthly installments of \$2002.00 commencing on 29th October, 2009, as stipulated in the agreement and Promissory Note.

[5] Mr. Delpeche defaulted on the repayments. He failed to repay the outstanding balance of \$229,703.49 despite RBTT's request for payment sent to him by letter dated 29th October, 2014 by RBTT's lawyer. Mr. Delpeche had repaid EC\$56,475.83 by 27th February, 2017. The balance outstanding then stood at EC\$206,328.68 comprising principal, accrued interest, arrears in excess of four weeks totaling \$18,750.42 and penalty charges of \$54.09. Mr. Browne did not indicate the daily

¹ CPR 8.1 (5) and 66.2.

² Filed on 1st March, 2017.

³ Dated 28th September, 2009.

rate of interest as mandated by the CPR⁴. He deposed that Mr. Delpeche is also liable for solicitor's costs and administration charges of \$5,490.00.

- [6] The Indenture of Mortgage between Mr. Delpeche and RBTT incorporated a power of sale⁵ in the event of non-payment of interest for more than 4 weeks, on default of full repayment for more than three months and after a receipt by Mr. Delpeche of demand for payment; or for other default.
- [7] RBTT did not provide proof of the service of the demand letter on Mr. Delpeche, or proof of the date of such service or evidence of how long Mr. Delpeche's default in repayment continued after he received the letter. RBTT has not indicated what amount of the outstanding balance comprises interest. The foregoing indicia are listed in the mortgage agreement as imperative pre-conditions to RBTT's exercise of the power of sale. Fortunately for RBTT, Mr. Delpeche supplied that information in the statement outlining his payments.
- [8] While RBTT has proved that Mr. Delpeche has not repaid all of the outstanding balance as demanded, it has not established that interest remained outstanding for four weeks after becoming due and it has not established any other breach of the loan agreement. Mr. Browne did not state who occupies the mortgaged property and if one or more occupant is/are unrelated to Mr. Delpeche. These particulars must be supplied to the court and Mr. Delpeche⁶ to satisfy the procedures.
- [9] Mr. Delpeche admitted that he was indebted to RBTT but did not indicate in what amount or what sum was attributable to principal or interest although this was outlined in the printout he produced. He testified that he was required to repay the loan by monthly payments of \$2002.00. He produced a statement from RBTT for the period 28 September 2009 to 21st March 2017 which chronicled his payments. It reflects that Mr. Delpeche made varying payments throughout the history of his loan and

⁴ CPR 66.4 (1) (c) (vii).

⁵ Clause 7 of the contract.

⁶ In accordance with CPR 66.4 (2).

was current for most of the first year. Thereafter, he defaulted fully or partially in repayments intermittently during the second year, with increasing delinquencies afterwards.

- [10] He complained that his payments between 29th March, 2016 and 29th December 2016 were applied exclusively to the principal. Mr. Browne attested that this would be more detrimental to Mr. Delpeche than if the payment was apportioned between principal and interest payments. RBTT submitted that the payments during that period were less than the agreed sum of \$2002.00. The statement shows that they ranged from \$525.00 to \$2,725.00. Those individual payments⁷ fell short of the amount required to completely service the loan monthly.
- [11] Mr. Browne explained that when a loan account has excess arrears, the payments are applied automatically and the facility is managed offsite at the office in Trinidad. I note that all except one of those payments were insufficient to allow for apportionment between principal and interest. This quite possibly adds another dimension to the rationale and approach and I infer that it does.
- [12] Mr. Delpeche queried how RBTT arrived at the payoff sum to which Mr. Browne responded that the statement is system generated and he was unable to say how the figure was arrived at. I cannot help but remark and take judicial notice of the fact that financial institutions apply a rate of interest to their different accounts including loan accounts. This interest amount is applied in a formula along with the term of the loan, the principal amount borrowed, down payment and installments to calculate the payout amount at any given date based on industry and accepted amortization and mathematical calculations. I accept that this was the approach which obtained in the case at bar.
- [13] Mr. Delpeche produced into evidence an email from one Brent Campbell at the RBTT Trinidad office in which Mr. Campbell requested certain information which would enable him to assess Mr. Delpeche's financial status to evaluate whether he qualified for a restructure. It appears that Mr. Delpeche viewed this as an offer to restructure his loan. He insisted that Mr. Campbell informed him 3 weeks before that his arrears then stood at just over \$4,000.00. He produced no documentary evidence of this.

⁷ With the exception of the payment of \$2,725.00.

- [14] He claimed that he deposited \$4,000.00 to the bank but only part of it was applied to the loan. Mr. Browne acknowledged that only part of the deposit was applied to the loan, and said he did not know why. He explained that the deposit was actually made into Mr. Delpeche's savings account.
- [15] In the absence of documentary proof, I reject Mr. Delpeche's assertion that he was notified by Mr. Campbell that his arrears were just in excess of \$4,000.00. This is contrary to the information contained in the statement produced by Mr. Delpeche which on its face disclosed a figure of \$206,465.51 as the settlement amount as at 22nd March, 2017.
- [16] RBTT has established their indebtedness in respect of the principal sum and accumulated interest outstanding as at 27th March, 2017 comprising principal of \$186,756.78, interest of \$19,650.94, penalty of \$57.79 and daily interest of \$40.93 as set out in the statement admitted as 'G. D. 1'. It is on this basis that judgment for payment of the sum of \$206,465.51 is being entered, less any sums paid by Mr. Delpeche which is not accounted for in that summary.

Issue 2 – To what remedies is RBTT entitled?

Power of sale and vacant possession

- [17] RBTT has failed to provide all of the material particulars that the CPR stipulate must be supplied in a claim for vacant possession or sale of mortgaged property. I therefore make no order for sale of the mortgaged property or for vacant possession for the reasons provided. RBTT is entitled to recover the judgment sum of \$206,465.51.

ORDERS

- [18] It is accordingly ordered:

1. Judgment is entered for RBTT Bank Caribbean Limited in the amount of \$206,465.51 being the principal sum of \$186,756.78 and interest of \$19,650.94, due and owing as at 22nd March, 2017, less any sums paid by Mr. Delpeche which is not captured in that data.

2. Mr. Delpeche shall pay to RBTT Bank Caribbean Limited interest on the judgment debt at the agreed rate of 8% from the date of judgment until full satisfaction.
3. Mr. Delpeche shall pay fixed costs of \$2000.00 to RBTT Bank Caribbean Limited, pursuant to CPR 65.4, App. A paragraph 2.

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Esco L. Henry
HIGH COURT JUDGE