

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2015/0118

BETWEEN

RBTT BANK CARIBBEAN LIMITED

CLAIMANT

and

LA FLIEUR GRANT

of Calder, St. Vincent and the Grenadines

FIRST DEFENDANT

and

LLOYD AUGUSTUS BROWNE

formerly of Calder, now residing in Tortola, B.V.I.

SECOND DEFENDANT

Appearances:

Mr. Julian Jack for the claimant.

First defendant in person, unrepresented, second defendant absent.

2017: Feb. 8

JUDGMENT

BACKGROUND

- **Henry, :** This is a claim by RBTT Bank Caribbean Limited ('RBTT') to recover monies loaned to Mr. La Fleur Grant and Lloyd Augustus Browne. RBTT sought orders for vacant possession and sale of the mortgaged property and costs. Mr. Browne was not served with the fixed date claim form. Ms. Grant acknowledged her indebtedness to RBTT and explained that she is experiencing difficulties meeting the repayments. Judgment is entered for RBTT against La Fleur Grant.

ISSUES

- The issues are:
 - Whether La Fleur Grant is liable to RBTT in respect of the mortgage debt? and
 - To what remedies is RBTT entitled?

ANALYSIS

Issue 1 - Is La Fleur Grant liable to RBTT in respect of the mortgage debt?

- RBTT is a financial institution, licensed under the Banking Act¹ to carry on banking business including lending. RBTT commenced this suit by Fixed Date Claim Form ('FDCF') on 26th August 2015. It was supported by two affidavits² of Keishon Browne, RBTT's Operations Support Officer. RBTT claimed the principle sum of \$197,545.33 and interest of \$13,727.41 and a daily penalty of \$43.30. Those figures were revised upwards at the hearing. Mr. Browne testified that Ms. Grant and Mr. Lloyd Browne were customers who on 5th January 2006, secured a mortgage from RBTT over property at Calder, in the amount of \$190,000.00. The mortgage was registered in the Deeds Registry by Indenture of Mortgage No. 521 of 2006. Ms. Grant and Mr. Browne obtained an additional loan of \$35,000.00 three years later on 14th December, 2009 as outlined in Deed of Further Charge No. 4585 of 2009. Mr. Browne produced copies of the mortgage and further charge.
- The deeds bound Grant and Mr. Lloyd Browne to repay the loans by equal monthly installments of \$1814.00, at the annual interest rate of 8%. Ms. Grant and Mr. Lloyd Browne executed a promissory

note in RBTT's favour, on 18th December, 2009 and a loan contract on 1st December, 2009 to like effect. Copies were tendered into evidence at trial. The loan contract aggregated the loan amount to \$225,000.00.

1 Cap. 87 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

2 Filed on 18th November 2015 and 11th March, 2016.

[51 RBTT was authorized to sell the mortgaged property³ in the event of breach of the mortgage terms. Before exercising its power of sale, RBTT was required to transmit to Mr. Browne and Ms. Grant, a demand notice for payment of the outstanding balance and grant them a further 3 months to pay. Keishon Browne testified that such demands were sent to Ms. Grant and Lloyd Browne by letters dated 25th March 2014 and 17th March 2015. Mr. Browne produced copies of the letters. Lloyd Browne and La Fleur Grant did not comply. Keishon Browne asserted that as at 18th November, 2015 the amount owed stood at \$215,135.21, comprising a principal sum of \$183,374.85 and interest of \$20,599.48. He testified that the loan was accruing a daily penalty charge of \$44.87.

- Grant did not refute this. She admitted⁴ borrowing the total sum of \$225,000.00 from RBTT as outlined by Keishon Browne and acknowledged that her outstanding arrears as at 18th November, 2015 were \$215,135.21. She indicated that she has been unable to make the payments as agreed because her income was inadequate. She testified that she made payments to RBTT since November 2015 which have reduced the balance, the last having been in November 2016. She was unable to recall how much she paid and what was the outstanding balance at that time. RBTT did not dispute that such payments were made and they provided no evidence of the balance as at 25th January 2017 - the hearing date.
- I am satisfied that RBTT made the advances to Grant as recounted by Keishon Browne and admitted by Ms. Grant. RBTT has proven that Ms. Grant defaulted on repayment for three months after the demand letters were sent to her. They have therefore satisfied an important condition precedent to invoking their power of sale under the mortgage and charge. The details regarding the outstanding balance at the trial date are imprecise and inconclusive. In this regard, RBTT has failed to establish that figure to the court's satisfaction. I accept the parties' testimony that the balance on 18th November, 2015 stood at \$215,135.21. I believe Ms. Grant's account that she has paid towards the loan since then, thereby reducing that figure.

3 Pursuant to paragraph 7 (i) of the Indenture of Mortgage and paragraph 5 of the Deed of Further Charge.

4 By affidavit filed on 8th December, 2015.

- Grant indicated in her affidavit that she intended to sell her motor vehicle valued at \$15,500.00 and use the proceeds from the sale to liquidate arrears on the loan account. She did not say whether this was done. Based on the parties' testimony, RBTT has established that Ms. Grant was at 18th November, 2015, indebted to it in the sum of \$215,135.21. She is liable to RBTT for that balance, less any payments since made.

Issue 2-To what remedies is RBTT entitled?

Loan amount

- RBTT is entitled to recover the Judgment is therefore entered for RBTT in the sum of \$215,135.21, (less any payments made by Ms. Grant between 18th November, 2015 and 25th January 2017), with interest at the contractual rate of 8% per annum, from the date of judgment until full satisfaction.

Sale and vacant possession

- No evidence was presented regarding the occupancy status of the mortgaged In this regard, RBTT did not indicate who occupies the mortgaged property or if they include persons other than Ms. Grant and if so, whether they are related to Ms. Grant.⁵ There is therefore inadequate material on which the court could act to grant an order of vacant possession or sale of the mortgaged property. RBTT's request for an order of possession must be denied. In light of the foregoing, I make no order for sale of the mortgaged property or for vacant possession.

ORDER

- It is accordingly declared and ordered:
1. Judgment is entered for RBTT Bank Caribbean Limited in the amount of \$215,135.21, comprising principal of \$183,374.85 and interest of \$20,599.00, due and owing as at 18th November, 2015, less any sums paid by La Fleur Grant since

5 In accordance with CPR 66.4 (2).

2. La Fleur Grant shall pay to RBTT Bank Caribbean Limited, interest on the judgment debt at the contractual rate of 8% from the date of judgment until full satisfaction.
3. La Fleur Grant shall pay to RBTT Bank Caribbean Limited, fixed costs of \$2000.00 and the applicable court fees, pursuant to CPR 4, App. A, Table 1, paragraph 2.

Esco L. Henry

HIGH COURT JUDGE