THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)

SUIT NO: NEVHCV2014/0005

&

SUIT NO: NEVHCV2014/0007

The Bank of Nevis Limited

Vs.

Lathen Thomas

APPEARANCES: Ms. Aindra Knights for the Claimant.

Mr. Jeffery Nisbett for the Defendant.

DECISION

2014: February 17
2014: February 20

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[1] **WILLIAMS, J. (Ag)**: This matter concerns a Notice of Application by the Applicant Bank of Nevis Ltd. for an Order under section 75 of the Title by Registration Act to Settle Articles of Sale, estimating an upset price fixing the

day of sale and announcement of sale and the mode of Publication in respect of the properties of the Respondent Lathen Thomas.

[2] In relation to Suit No. 0005/2014, the requested upset price by the Applicant is $1,225,000.00 and in relation to Suit No. 0007/2014, the requested upset price by the Applicant is $570,000.00.

[3] The Respondent Lathen Thomas has filed Affidavits dated 14th February 2014 in which he states that in order to assist the Court in fixing an upset price, he had requested an appraisal of the Property which is the subject of this Application from Mr. Edric Stanley in 2010. The Letter from Edric Stanley to the Bank is Exhibited- LT1.

[4] Mr. Stanley has appraised the said properties house and land at $3,668,363.00 and $997,400.00 respectively and Mr. Evan Nisbett has evaluated the property in suit No. 0005/2014 at $5,224,1168.85 as at the 6th February 2014. Mr. Nisbett was contracted by the Respondent.

[5] The Applicant had contracted the services of Mr. Douglas Gillanders of D.L.G Consultants Ltd. Mr. Douglas estimated the foreclosure value of the Respondent's properties at $1,650,000.00; and $570,000.00 respectively.

[6] The Issue of Law raised in this matter is of Practical importance and Counsel for the Respondent has advanced the proposition in law in support of the contention that when and if the mortgagee exercises a power of sale, he comes under a duty in Equity to the mortgagor to take reasonable precautions

to obtain the fair or true market value or the "proper price" for the mortgaged property at the date of sale.

[7] In the case of **Paltz and another vs. Mortgage Services Funding PLC [1993] 2 AIIER 481, C.A Division,** the learned Judges concluded that the mortgagee is not entitled to act in a way which unfairly prejudices the mortgagor by selling the property at a price sufficient to pay off his debt. He must take proper care whether by fairly and properly exposing the property to the market to obtain the best price reasonably obtainable at the date of sale.

[8] Also in the cited case of **Feliz A. McHugh vs. Union Bank of Canada [1913] A.C 299 Privy Council Pg. 299,** their Lordships stated that it is the duty of a mortgagee when realizing the mortgaged property by sale to behave in conducting such realization as a reasonable man would behave in the realization of his own property, so that the mortgagor may receive credit for the fair value of the property sold.

[9] In the present case, the Court has been presented with three appraisals of the same properties, and a progress report by Michael Dore which are all the subject of this application. However there is a wide difference in the appraisals of all the professional appraisers of the said properties and there is no foreclosure value placed on the properties by the Respondents appraisers. Nonetheless the Court must have regard to the interests of all concerned and what, in all the circumstances is just and equitable.

[10] In light of the differences in the valuations of the properties, the Court cannot be guided by any of the valuations in arriving at a just and equitable

upset price which is not prejudicial to either party. However the court reaffirms its fundamental regard for the professional opinion of the three appraisers who have presented reports to the Court. The Court will therefore exercise its jurisdiction under Section 76(1) of the Title By Registration Act Cap 10.19 and appoint an Independent Valuator to provide a Foreclosure value to the properties owned by Lathen Thomas.

[11] The Court hereby orders that:

a) An Independent Valuator be appointed by the Court to prepare an evaluation report on the Respondent's property comprised in a Certificate of Title dated the 14th April 2005 recorded in Register Book as 43 Folio 105.

   The Independent Valuator will be Hastings R. Daniel of Hamaron Services Ltd. The evaluation report will be submitted to the court within two weeks of the making of this order.

b) An evaluation report be prepared of the Respondent's property comprised in a Certificate of Title dated 6th May2005 recorded in Register Book 43 Folio 141.

   The Independent Valuator will be Hastings R. Daniel of Hamaron Services Ltd. The evaluation report will be submitted to the court within two weeks of the making of this order.

c) That the costs of these evaluation reports be borne equally by the Parties to this matter.

Lorraine Williams

High Court Judge (ag)