

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

CLAIM NO. 58 OF 2005

BETWEEN:

FIRST CARIBBEAN INTERNATIONAL
BANK (BARBADOS) LTD.

Claimant

and

1. DEAN CLOUDEN
2. VERA TROTMAN

Defendants

Appearances:

Mr. Douglas Williams for the Claimant.

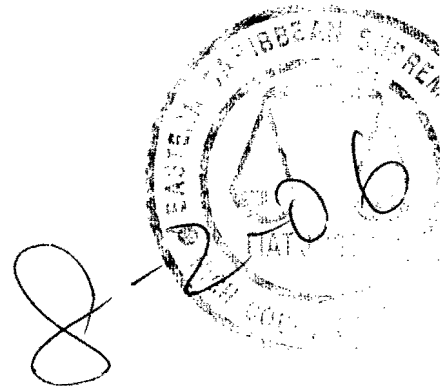
Mr. Arthur Williams for the Second Defendant

No Appearance of the First Defendant nor his Counsel

2006: January 17th
2006: February 8th

JUDGMENT

[1] **Bruce-Lyle, J:** The Claimant First Caribbean International Bank (Barbados) Ltd. of Halifax Street, Kingstown, St. Vincent and the Grenadines claimed against the two defendants Dean Clouden and Verna Trotman of Villa in the State of Saint Vincent and the Grenadines for an order for possession of the property situate at Villa which was the subject matter of a Deed of Mortgage made between the defendants and the claimant recorded in the Registry of St. Vincent and the Grenadines and bearing registration number 2150 of 2000. The claimant also requests costs.



- [2] The Claimant is a Public Company carrying on banking and having its registered office at Halifax Street, Kingstown. It commenced its operations under its present name on the 14th of October 2002 after the merger of Barclays Bank PLC and CIBC Caribbean Ltd. The defendants are customers of the claimant.
- [3] On the 22nd day of May 2000, under and by virtue of an indenture made between Dwight Clouden, a son of both defendants, and the defendants, and recorded in the Registry of this State as Deed number 2149 of 2000, the defendants became seized of part of Lot No. 103 of the Villa Estate measuring 6,824 square feet comprising two parcels measuring 5815 square feet and 1009 square feet with a dwelling house thereon.
- [4] On the 30th day of May 2000, under and by virtue of an indenture made between the defendants and the claimant and recorded in the Registry of this State as Deed number 2150 of 2000, the defendants mortgaged the said property to the claimant to secure a loan in the sum of \$185,000. The defendants under the said Mortgage covenanted with the claimant that they would on demand in writing made to the defendants, pay to the claimant the balance or balances on the account or accounts of the defendants.
- [5] According to the claimant, the defendants subsequently defaulted on the loan repayments and by letter dated the 6th of June 2003 to the defendants, the claimants Solicitors demanded the immediate repayment of the balance owing on

the defendants account. To date the defendants have failed or refused to repay the loan.

[6] The claimant further contends that as a result of a Notice of Sale dated the 29th of October 2004 in one of the newspapers published in the State, the claimant received an offer for the purchase of the said property by Mrs. Kay Bacchus-Browne on behalf of her claimants Lyndell and Nicole Sharpe for \$300,000 which said offer was accepted by the Claimant.

[7] Subsequently a deposit of \$30,000 was paid by the said prospective purchasers and the claimant was given until the 1st day of March 2005 for the completion of the sale. But the claimant contends that since their acceptance of the offer by the prospective purchasers, the defendants have refused to allow any one onto the property to inspect same for the purpose of having a valuation done in order for the prospective purchasers to obtain a loan to complete the sale.

[8] The claimant being desirous of obtaining vacant possession of the said property which he feels he is entitled to before the scheduled closing date of the 1st day of March 2005 has now filed this claim for possession of the said property and costs. Both defendants were served with copies of the claim and all supporting documents.

[9] It is interesting to note that the First defendant Dean Clouden never responded or acknowledged service of the claim nor engaged Counsel to represent his interests

in the matter. Subsequently on the 13th July 2005 the claimant obtained an order from Master of the Supreme Court Mr. Brian Cottle. This was a judgment in default of acknowledgement of service against the 1st named defendant Dean Clouden and for possession of the property situate at Villa in this State and also that judgment in default of defence be entered for the ancillary claimant/Second defendant against the ancillary defendant/First defendant and also the granting of a declaration that the Second defendant/Ancillary claimant is entitled to be indemnified in full by the First defendant/Ancillary defendant against all claims arising out of the mortgage registered as No. 2150 of 2000, with liberty to the ancillary claimant to apply to have the terms of the indemnity determined.

[10] The matter was then ordered to proceed to trial in respect of the claim against the second defendant. The second defendant's defence is clearly spelt out in her ancillary claim form and statement of claim. This she also relied on in her evidence at trial. In a nutshell her defence was that the first defendant Dean Clouden negotiated the mortgage with the claimant bank and then got her the second defendant to sign the said mortgage by fraud; and that the first defendant was the one who got the benefit from the loan and that it is his loan. She also contended that the mortgage document was not explained to her nor was she given an opportunity to read the said document and therefore should not be held responsible for the repayment of any part of the said loan.

[11] She therefore prayed for an order that the first defendant repay the said loan plus interest or alternatively an order that the first defendant is indebted to the claimant

for the entire mortgage debt plus interest at a rate of 9% per annum until the entire mortgage debt is repaid by the first defendant; a declaration that the second defendant is entitled to be indemnified to the claimant by the first defendant, an order she was successful in obtaining at Case Management level; and that the said mortgage be transferred back to the name of the second defendant only.

[12] Evidence was taken at the trial from Frances Llewelyn an employee of 25 years with the claimant bank and Mr. Errol Layne a Barrister and Solicitor and also Solicitor for the claimant bank who advised and prepared the legal documents for the mortgage in issue. To my mind his evidence was most crucial in resolving this case. The second defendant was the only witness for the defence.

[13] Witness Francis Llewelyn did not have much to say pertaining to the case save that his only involvement in the matter was when he wrote to the defendants on behalf of the claimant when their payments fell into arrears. He was not the Loans Officer at the time the defendants negotiated for the loan. But having served as Loans Officer when the Bank was Barclays Bank he gave the Court an overview of what is entitled by way of procedure when one makes application to the bank for a loan. He posited that the legal side or aspect of a loan is handled by one of the two banks Solicitors – the law firm of Hughes and Cummings or Mr. Errol Layne. He said when the loan was defaulted; he spoke to the second defendant, but he cannot say if the second defendant negotiated the loan with the claimant even though whoever negotiated would be in the banks records. As far as he was aware the loan remained unpaid.

[14] Witness Mr. Errol Layne, whose evidence to me was crucial to this case gave evidence next. His evidence is crucial because it seems to resolve the issue as to whether the second defendant was made to sign the loan agreement through fraud or undue influence by the first defendant as she has maintained in her defence and counterclaim and evidence to the court.

[15] Mr. Layne's evidence was to the effect that he has been one of the claimants banks Solicitors even from when the claimant bank was known as Barclays. He told the Court that he knew the two defendants as he had in the past done legal work for the bank in respect of the two defendants. His witness statement was tendered in evidence as his examination in chief. What is of utmost importance in Mr. Layne's evidence was his explanations as to how the mortgage came to be in the name of both defendants, as he had received instructions from the bank to prepare the mortgage documents. He could not say which of the two defendants negotiated for the loan with the bank, but he received instructions from the bank to prepare the mortgage deed in the name of both defendants as security. This was because the bank was only willing to grant the mortgage if it was in the name of someone else in conjunction with the second defendant Verna Trotman. Initially the only security offered was that from the 2nd defendant Verna Trotman.

[16] To get around this hurdle, it was agreed that the son of the two defendants, Dwight would be transferred the security in the form of the property bequeathed to the second defendant by her Grandmother, and then Dwight would in turn transfer the

said property to his father Dean Clouden and his mother Verna Trotman as Tenants in common in equal shares. Mr. Layne explained that this was done as it may have been that Verna Trotman could not have secured the loan on her own. Mr. Layne further explained that Dean Clouden was unwilling to become a party to the Mortgage unless he received an interest in the real estate because he was becoming liable to repay the loan along with Verna Trotman.

[17] Mr. Layne said he had to check the title on the property on behalf of the bank. His searches revealed no encumbrances attached to the property. He said if there had been any, he would have so advised the bank. But as it turned out the property in issue was mortgaged to the St. Vincent Building and Loan Association. But he insisted that the first time Dean Clouden was given an interest in the property was when he Mr. Layne prepared the Mortgage in his name. He maintained this was an arrangement between the two defendants.

[18] Of most importance was when Mr. Layne said that the Second Defendant Verna Trotman came to his office on two occasions. She signed separately from Dean Clouden. He had discussions with the second defendant pertaining to the mortgage and she seemed fully aware of the transaction as it was explained to her. He said he gave both defendants the documents to read and asked them to point out anything they might not understand for him to explain. He said the second defendant read the document and then signed; this the second defendant vehemently denies.

[19] Mr. Layne further contended that the second defendant told him what an awful person the first Defendant was but other than that, in his view, the second defendant was fully aware of what she was doing otherwise they would not have gotten the loan. As far as he Mr. Layne was concerned he only had to be satisfied that the mortgage was properly signed. He said the second defendant signed the property over to her son Dwight who in turn signed over the said property to both defendants and that at all material time she knew what she was doing. He said he was confident that the second defendant signed the documents without any undue influence even though she had intimated to him also that the first defendant treated her badly. He said all the documents she had to sign she was given to read; and that she agreed to the whole transaction unreservedly.

[20] The second defendant in her evidence told the Court that the house in issue was given to her by her Grandmother, and it is the same house she presently resides in. She maintained it was the first defendant Dean Clouden who negotiated the loan, but that he did not tell her anything pertaining to the details of the loan though at the time, he had no legal interest in the property in issue.

[21] She further said that at that time of negotiating the loan with the claimant bank, the property in issue was already mortgaged to the St. Vincent Building and Loan Association. All this presupposes that the defendant knew that a mortgage was being sought from the bank and that it would involve the property in issue. She further asserted in her evidence that she was told, ostensibly by the first defendant that Mr. Errol Layne was preparing the mortgage document and she even received

a call from Mr. Errol Layne to visit his Office on Murray's Road to sign some documents. Again I am at a loss as to why Verna Trotman would now claim that she knew nothing about anything pertaining to the mortgage. Would she have been also unduly influenced or enticed by fraud from Mr. Errol Layne to sign those documents? I would answer clearly in the negative having regard to Mr. Errol Layne's evidence.

[22] Defendant Verna Trotman goes further. She said she was asked by Mr. Layne to come with her son Dwight to his office. My understanding of this piece of evidence is that Ms. Trotman was aware of her having to sign over the property to Dwight who would in turn sign over or transfer the same property to both Dean Clouden and herself. This was borne out by Mr. Errol Layne's evidence and confirms to me that Verna Trotman was in the know at all material times as to what was entailed in these transactions, and that she signed the documents fully aware of the ramifications flowing there from.

[23] Then comes the interesting part. Ms. Verna Trotman in her evidence in Court under Cross-Examination said at Mr. Layne's Office, she spoke to Mr. Layne but she cannot remember what he said nor was she fully aware of what was going on except to sign a mortgage Deed. She did sign but does not know for what amount she signed. She admitted she was given the document to read, but did not read it. She said in hindsight, if she had read the document, she would never have signed for that amount in excess of \$180,000. She does not remember Mr. Layne telling her anything about reading the document. It seemed to me that Ms. Verna

Trotman may have been suffering from some form of selective amnesia when she gave evidence. I observed her demeanour in the witness stand and concluded that this was a desperate calculated story to extricate herself from the pitiful position she found herself in – losing her property. To my mind she was a willing participant in the transaction and to quote Mr. Errol Layne “she agreed to the whole transaction unreservedly”.

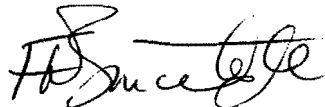
[24] I myself put certain questions to Verna Trotman to ascertain her level of education and intelligence. I cannot imagine that someone in a responsible position in the Accounts and Administration Department of the St. Vincent Marketing Corporation and the holder of a Diploma in Business Administration at the time would append her signature to a document she knew to be a mortgage document without reading it. In fact she stated further in her evidence that “I agree that at the time I should have done better in reading the document”. She even went further to say that Mr. Clouden said he would take care of the payments but does not know if he did, but is aware that there is an outstanding balance on the mortgage for which the claimant is now suing for the property.

[25] I am satisfied that the second defendant signed the Mortgage documents being fully aware of what she was doing. I am also satisfied that before she appended her signature to the documents she had had the documents explained to her by Mr. Errol Layne and the opportunity to read the said documents. If she did not, she only has herself to blame. I am also more than satisfied that the second defendants defence of having signed the documents by fraud from the first

defendant and also undue influence from the same first defendant as a story calculated to hoodwink the Court and also an afterthought, having realized that she now stood to loose her property.

[26] I do not think it necessary to expound on any legal authorities in this case. I find the defence offered by the defendant Verna Trotman as spurious to say the least and reject it outright. If one guarantees a loan by way of a Mortgage document and the principal defaults, one is liable to make good the mortgage sum plus interest to the bank. The second defendant has obtained judgment against the first defendant to indemnify her for any monies she would have to pay to the claimant. That is her only recourse in this matter.

[27] I therefore find for the claimant as against the second defendant and order that the Claimant forthwith have possession of the said property in issue with costs. It was agreed by both Counsel for the claimant and Counsel for the second defendant that all documents filed in this case and which formed part of standard disclosures be put in as exhibits for the trial. I wish to state here that even though the Court at the end of the trial ordered for written submissions to be filed and exchanged on or before the 31st January, 2006, none was received by this Court. The defendants are to pay the Claimants costs in the sum of \$10,000, and the second Defendants counterclaim is hereby dismissed.


Frederick V. Bruce-Lyle
High Court Judge