

**IN THE SUPREME COURT OF GRENADA  
AND THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE  
(CIVIL)**

**CLAIM NO. GDAHCV2007/0345**

**BETWEEN:**

**REPUBLIC BANK (GRENADA) LIMITED**  
(Formerly known as the National Commercial Bank of Grenada Limited)  
Claimant

and

**ALANA BRATHWAITE  
AISHA CAMPBELL**  
Defendants

**AND**

**CLAIM NO. GDAHCV2007/0417**

**BETWEEN:**

**ALANA BRATHWAITE  
AISHA CAMPBELL**  
(Executrices of the Estate of Shirley Brathwaite, deceased)

**ALANA BRATHWAITE  
AISHA CAMPBELL**  
Claimants

and

**REPUBLIC BANK (GRENADA) LIMITED**  
Defendants

**Appearances:**

Mr. Gregory Delzin, S.C. with Ms. Michelle Emmanuel Steele for the Bank  
Dr. Francis Alexis, Q.C. for the Executrices

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2010: May 27  
October 7  
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**JUDGMENT**

- [1] **PRICE FINDLAY, J.:** Two claims have been consolidated into this one matter before this Court.
- [2] The first claim is GDAHCV2007/0345 initiated by Republic Bank (Grenada) Limited as a mortgage claim. The Bank sought monies due and owing under a mortgage dated 8<sup>th</sup> July 2002, made between the Bank (at the time the National Commercial Bank Grenada Limited and Shirley Brathwaite, now deceased). This claim also seeks a declaration that the Bank is entitled to sell the property held under the Mortgage and Deed of Charge, court fees and costs.
- [3] The second claim is GDAHCV2007/0417 initiated by the Executrices of the late Shirley Brathwaite against the Bank for negligence, breach of contract and damages and an injunction restraining the Bank from exercising its powers of sale, and for costs.
- [4] The contract alleged is an oral contract evidenced in writing, the writing being a Banker's Order dated 4<sup>th</sup> September 2003, in which the late Shirley Brathwaite gave the Bank instructions to debit the account monthly in order to pay her life insurance premiums to CLICO.
- [5] The Bank claims the following relief:
- (a) Payment of the sum of \$470,719.55 being principal and interest as at 3<sup>rd</sup> August 2007 with interest accruing on the sum of 402,564.65 at the rate of 9% per annum from 3<sup>rd</sup> August 2007 until payment being monies due and owing under the said covenant to pay contained in the Mortgage and the Deed of Further Charge.
  - (b) A Declaration that the Claimant is entitled to sell under its power of sale the said lot of land with the building thereon mortgaged to it under the Mortgage and Deed of Further Charge being ALL THAT lot piece or parcel of land with the building thereon being part of a large lot known as Hygeia situate in the Parish of Saint Andrew in the State of Grenada containing by admeasurement Twenty Thousand (20,000) square feet English Statute

Measure and abutted and bounded as the same is delineated and described in the plan or diagram thereof marked with the letter "K" and annexed to an Indenture of Conveyance made the 31<sup>st</sup> January, 1975 between Lloyd St. Louis of the first part The Grenada Building and Loan Association of the second part and the said Lloyd St. Louis of the third part and recorded in the Deeds and Land Registry of Grenada in Liber A12 at page 542

- (c) Court fees in the sum of \$133.00, and
- (d) Legal practitioners fixed cost on issue in the sum of \$2,000.00

[6] The Executrices claim the following relief:

- (1) A declaration that Republic Bank (Grenada) Limited, ("the Bank"), shall within 45 days the making of this declaration account to Alana Brathwaite and Aisha Brathwaite Campbell as Executrices of the estate ("the estate") of Shirley Brathwaite, deceased, ("the deceased"), and Personal Representatives of the deceased, for the sum of \$400,000.00 which would have been payable to Colonial Life Insurance Company (Trinidad) Limited, ("CLICO"), to the estate on the death of the deceased, under Life Insurance Policy No. GNH0061353, ("the Policy"), issued by CLICO to the deceased by which Policy CLICO contracted that in consideration of the premiums on the policy being paid up to date CLICO would pay the sum assured under the Policy \$400,000.00, ("the sum assured"), on the death of the insured or on expiry of the Policy on 08.01.2002, had the Bank, compliantly with its obligations to the deceased, paid CLICO the premiums thereon for September and October 2005 for the deceased out of her Savings Account #61004045 with the Bank; but which the Bank did not pay, in breach of contract and negligently.
- (2) A declaration that the Bank, as assignee of the Policy, shall be deemed to have received the sum assured, following the death of the deceased.

- (3) A declaration that the estate is entitled to a set-off against the Bank regarding the sum assured, in respect of money, if any, due and owing to the Bank at the death of the deceased by the deceased under an Indenture of Mortgage dated 8 July 2002 and made between the Bank on the One part and the deceased of the Other part and recorded in the Deeds and Land Registry of Grenada in Liber 3-2005 at page 969.
- (4) An injunction restraining the Bank from exercising as against the estate, any of the powers and rights in the said Indenture of Mortgage, including particularly the power to sell the property comprised in the said Mortgage conferred thereby or otherwise on the Bank, on any basis other than that the Bank be deemed to have received the sum assured.
- (5) Damages for damage and loss suffered by the estate, caused by breach by the Bank of the said contract, including:-
  - (1) Special Damages \$400,000.00
  - (2) General Damages.
- (6) Further or alternatively, damages for damage and loss suffered by the estate, caused by breach by the Bank of the neighbourly duty of care owed by the Bank to the deceased regarding payment of the said premiums, which premiums the Bank negligently failed to pay, the damage and loss resulting from such breach of duty of care sounding in damages including
  - (1) Special Damages \$400,000.00
  - (2) General Damages.
- (7) Interest pursuant to section 27 of the Supreme Court Act, Cap. 336, 1990 Revised Laws, Grenada, on the amount found to be due to the Claimants at such rate and for such period as the Court thinks fit.
- (8) Further or other relief.

- [7] The Bank did not call Wendy Ann Richardson to be cross-examined as she was ill and unable to attend.
- [8] The Executrices did not call Aisha Campbell as she resides in Jamaica and was unable to attend the hearing.
- [9] Neither of their witness statements was taken into account as a result of their absence.
- [10] O'Neale Dominique, the Supervisor of the Credit Unit of the Bank, gave evidence that the deceased entered into a mortgage on 8<sup>th</sup> July 2002 over the subject property at St. Andrew in Grenada. The mortgage was stamped to cover the sum of \$400,000.00.
- [11] By way of a Deed of Further Charge the deceased entered into a further mortgage arrangement with the Bank. This charge was stamped to secure the sum of \$12,000.00.
- [12] Both the original mortgage and the Deed of Further Charge contained covenants to repay the sums loaned and to pay interest at the end of every month.
- [13] He testified that the deceased defaulted on the payments of principal and interest due under these mortgages. He further testified that as of August 3, 2007, the deceased owed the following sums:

Amount of advance	\$450,000.00
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The interest payable under the Mortgage  
at the rate of 9.00 % per annum

Amount of periodic payments required to be made \$4,179.00 per month

Amount or repayments that have been made	\$170,414.19
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Amount or repayment due but unpaid as of

August 3, 2007	\$470,719.55
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The amount remaining due under the Mortgage  
(Principal balance \$402,564.65 Interest due \$68,154.90)  
As of August 3, 2007

The daily rate at which interest accrues                      \$99.26

- [14] The Bank, by way of formal demand letter dated 20<sup>th</sup> September 2006, wrote to the Defendants in their capacity as Executrices of the deceased's estate requesting payment on the outstanding sum due to the mortgage.
- [15] He also produced a loan activity statement, a document which detailed all the activities with respect to the loan taken out by the deceased.
- [16] In cross-examination he stated that payments were made on the loan to the sum of \$170,414.19; he could not, however, say how many payments were made. The last payment on the loan was made on the 26<sup>th</sup> August 2005; that sum was \$250.93.
- [17] Joycelyn Mc Sween, the Manager of Retail Services at the Bank, also gave evidence, having held that position since 2002. She headed the department which administered the loan facility the deceased had with the Bank.
- [18] She testified that Dr. Bert Brathwaite and the Defendants came to the Bank on 13<sup>th</sup> June 2006, this was just the first meeting she had with them as she had been on leave and away from the office during the deceased's illness and eventual death.
- [19] At that meeting the Brathwaites were upset that the Bank had not paid the insurance premiums.
- [20] This insurance policy was a life insurance policy which the deceased had taken out with CLICO and which she had assigned to the bank as a further security for the mortgage loan. The policy was in the sum of \$400,000.00.

- [21] The premiums were not paid to CLICO for a period of two months. As a result the policy lapsed, and at the death of the deceased the company refused to pay the sum of the policy, that is, \$400,000.00.
- [22] She stated that Dr. Brathwaite said that he had gone to the Insurance Company and made a payment and that he thought the payment would cover the year. He could not find the receipt nor could he remember how the payment had been made, or to whom he had spoken [dealt with].
- [23] She said that the Brathwaites continued to blame the bank. She told them that Mrs. Brathwaite became ill and her salary stopped coming to the Bank.
- [24] She asked what responsibility were the Brathwaites willing to take. She got no response. Dr. Brathwaite claimed that he Bank refused to give him information.
- [25] The Brathwaites requested that the Bank waive the mortgage payments until the CLICO situation was sorted out. She indicated that the Bank would grant them some time to obtain a grant of Probate and come up with a proposal for paying the loan.
- [26] She received no proposal so she signed a demand letter.
- [27] She stated that, with respect to the Standing Order, that if there are no funds in the account, the system would not debit the account.
- [28] The Standing Order was the agreement made between the deceased and the Bank for the Bank to pay the monthly insurance premiums to CLICO.
- [29] The Bank Order was in the following terms:-

"FROM:           Name Shirley Agnes Brathwaite  
                    Address Herbert Blaize Street St. George  
                    Date 4-9-003

TO:               THE NATIONAL COMMERCIAL BANK OF GRENADA LTD.

Branch St. George's

On 28<sup>th</sup> September and on the 28<sup>th</sup> day of each month pay to National Commercial Bank for account of CLICO International Life Ins. Ltd. the sum of \$289.79 (words) Two hundred eighty nine & seventy-nine cents debiting my/our account No. 61004045 with the equivalent plus all charges.

I/We are fully aware that the bank does not undertake to effect after the due date any payment which has not been effected on the due date owing to lack of funds, nor does it undertake to advise me/us of non payment on due date owing to lack of funds .

SIGNATURE/S S. A Brathwaite"

- [30] The witness continued that it was not the Bank's obligation to advance money for the payment of the premiums and that the Standing Order contains a clause to that effect. The deceased signed the Standing Order agreeing to its terms and conditions.
- [31] It is the customer's obligation to keep the account funded. She maintained that there was no oral agreement between the Bank and the deceased with respect to paying the insurance premiums.
- [32] She testified that on the 15<sup>th</sup> November 2005 the Bank wrote to CLICO enclosing a cheque to cover premiums for September, October and November 2005. At the time this letter was written the policy had lapsed and, according to her, the Bank was only trying to assist the deceased by keeping the policy alive.
- [33] The cheque sent to CLICO was in an amount which was debited against the loan account. She explained that the Bank made funds available because the deceased's account did not have sufficient funds. This was a discretionary payment/advance made by the Bank, the Bank did not have to debit the loan account in that way.
- [34] At the time of the writing of this letter the deceased had passed. In fact, she passed on the very day of the writing of the letter.

- [35] The cheque was returned by CLICO, accompanied by a letter stating that the policy had lapsed and indicating what would need to be done in order to reinstate the policy.
- [36] She testified that to date the mortgage debt remains unsatisfied.
- [37] In cross-examination she repeated much of what she stated in her evidence-in-chief.
- [38] The conversations she had with the Brathwaites took place after the death of the deceased.
- [39] She explained how a standing order worked, that the funds would be automatically withdrawn from a specified account on a stated day. This debiting was done by the Bank's computers.
- [40] She also explained the Loan Activity Statement with respect to the automatic withdrawals.
- [41] Rina John, the private banking officer for the Bank, was the Bank's final witness.
- [42] She testified that Dr. Brathwaite came to the Bank in August 2005 and informed them of the deceased's illness, and asked for information concerning the deceased's account. He was informed that he could not get the information as his name was not on the account. She referred him to her supervisor, Wendy Ann Richardson.
- [43] Dr. Brathwaite returned in September 2005. He produced a doctor's letter and told her that the deceased had had surgery. He proposed that the NIS payment and part of the deceased's salary would pay down the interest on the loan, and the \$700.00 from the rental of an apartment would be applied to the loan as well. He also indicated to her that the deceased would not be able to make payments on the loan. She did not get the impression from her conversation with Dr. Brathwaite that he would be servicing the loan from his own funds. She again referred Dr. Brathwaite to her supervisor. At the time the loan arrears was \$3,928.07.

- [44] She spoke of the standing order set up to debit the deceased's account to pay the insurance premiums. She also testified that the last payment from the Bank to the insurance company was in the sum of \$289.79 on the 26<sup>th</sup> August 2005. She said that the Bank would not have debited the account if there were no funds in the account.
- [45] She explained the contents of the Loan Activity Statement. She explained that if the due date for the automatic deduction fell on the weekend, the deduction may appear on either the Friday or the following Monday.
- [46] She explained that there were automatic withdrawals of less than the agreed loan payment of \$4,179.00, when the account did not have sufficient funds. The computer would take what it could towards the loan payment.
- [47] There was a deposit of \$5,439.00 on the account on 7<sup>th</sup> November 2005. The account took out the funds due on the mortgage at that time. This left a balance of \$10.00 on the account.
- [48] She also confirmed that the \$869.37 payment to the insurance company was an advance by the Bank to the account of the deceased.
- [49] In cross-examination, she confirmed the deposit of the NIS cheque to the deceased's account.
- [50] She re-confirmed her evidence-in-chief relating to the conversation she had with Dr. Brathwaite. She also confirmed the increase in the amount loaned to cover the insurance premiums. She reiterated that this was a discretion that the Bank exercised.
- [51] The Defendants' case comprised of the evidence of Alana Brathwaite, one of the daughters of the deceased, and her father Dr. Bert Brathwaite, the husband of the deceased.

- [52] Alana Brathwaite testified that she and her sister obtained probate to the estate of their mother Shirley Brathwaite on 27<sup>th</sup> April 2006, their mother having passed on 15<sup>th</sup> November 2005.
- [53] She testified that her mother made provision to ensure that on her death there would be sufficient funds to cover her debt to the Bank. That was in the form of the life insurance policy which her mother assigned to the Bank.
- [54] That policy was taken out with CLICO and was in the sum of \$400,000.00. The premium was \$289.79 per month.
- [55] She asserts that the deceased and the Defendant (then NCB) made a contract by which NCB agreed to provide the deceased with the service of paying for and on her behalf to CLICO the monthly premiums, and that NCB agreed to do so. This is not in dispute.
- [56] The agreement she asserted was evidenced by the standing order which the deceased executed on 4<sup>th</sup> September 2003.
- [57] She further asserts that it was an implied term of the contract that if the account lacked sufficient funds to finance payment of the premiums and the commission, NCB would timeously inform the deceased.
- [58] However, in cross-examination, she admitted that she did not accompany the deceased to the Bank when the arrangements were made.
- [59] It is also instructive that the standing order itself makes no reference to the Bank having any obligation to inform the deceased that the account lacked sufficient funds.
- [60] In fact, the document states: "... nor does it (the Bank) undertake to advise me of non payment on due date owing to lack of funds."
- [61] She says that the Bank failed in its neighbourly duty of care to the deceased.

- [62] She testified that she was not privy to conversations that her deceased mother had with the Bank.
- [63] Her mother spoke to her while she was in Canada. She told her of an insurance policy with Netherlands Insurance Company but told her of nothing else. She became aware of the CLICO policy on the day her mother passed.
- [64] She also testified that she understood the confidentiality which exists between the Banks and their customers. She also understood that the Bank could not alter the terms of a document without the customer's approval and consent. She agreed that the Bank was within the bounds of confidentiality when they refused to give her information about her mother's accounts.
- [65] She confirmed that her father had deposited money to her mother's account at the Defendant and that one can deposit money into an account without permission.
- [66] The last witness was Dr. Bert Brathwaite, the husband of the deceased. He recited his wife's trip to Canada and her untimely death without ever returning to Grenada.
- [67] He went to the Bank, informed them of her illness, but states the Bank did not tell him of the insurance policy with CLICO, or the arrangement for the Bank to pay the premiums by way of standing order.
- [68] He explained to the Bank that he wanted to ensure that the deceased's obligations were met. The Bank did not give him any information, especially they did not tell him of the CLICO insurance policy.
- [69] He deposited into Account No. 61004045, the deceased's account, the sum of \$5,439.00, the proceeds of the sickness benefit cheque the deceased received from the National Insurance Scheme.
- [70] He agreed that he spoke with Joycelyn Mc Sween but he denied the conversation Joycelyn Mc Sween said he had with her. He also spoke with Ms. John and Ms.

Baisden at the Bank. He told the Bank he did not want details of his wife's account, he merely wished to cover his wife's liabilities.

- [71] The Bank at no time gave him any information about the existence of the CLICO policy. He admitted that he did pay to CLICO the sum of \$289.79 on 19<sup>th</sup> September 2005 but he did not get a receipt. He thought the payment had to do with his late wife's school, he did not know it was for his wife's life insurance policy.
- [72] He paid monies into an account at RBTT in his wife's name to cover her liabilities.
- [73] RBTT made arrangements for a parallel account to be set up in order for his deceased wife's liabilities at that Bank to be covered. He provided some \$20,000.00 for the funding of the RBTT account, because the school would not have been sustained. Why no such arrangement was made at Republic Bank was not explained, nor was why no further monies were deposited to the account at the defendant Bank, even though the Claimants and their father were aware that mortgage payments were to be made.
- [74] It is not in dispute that the deceased Shirley Brathwaite took out a mortgage with the Defendant in the principal sum of \$400,000.00 and a further loan of \$12,000.00 also from the Defendant.
- [75] She serviced the loan successfully until she went to Canada in 2005 and fell ill and eventually passed away. Her passing was no doubt unexpected and painful for her family, that is, her two daughters and her husband.
- [76] The terms of the mortgage provided for the deceased to pay the principal sum due to the Bank along with the stated interest rate on a monthly basis. As a result of entering into this agreement the Bank loaned and the deceased received a total of \$412,000.00 from the Bank.
- [77] The Bank requested and the deceased agreed to assign a life insurance policy with a face value of \$400,000.00 to the Bank. Further, the Bank, at the request of

the deceased, agreed to pay the monthly premiums due on the policy by way of standing order, along with the relevant Bank charges for that purpose.

[78] The terms of the mortgage expressly confers the statutory power of sale on the Bank. This is also true with respect to the Deed of Further Charge.

[79] The Bank, once the deceased failed to pay the mortgage installments as agreed, was entitled to sell the property, subject to the mortgage. There has been no challenge to either the Mortgage deed or the Deed of Further Charge in their conferring this right on the bank.

[80] The Executors contend that there was an oral contract by which the Bank agreed to pay the monthly premiums for the insurance policy. The consideration they claim was the charge of \$7.50, which represented the commission charged by the Bank each time the account of the deceased was debited. But the one person who could testify to the terms of the oral agreement, if it existed, was the deceased, and she could not give evidence at the trial.

[81] The Bank denies such an oral contract and the Executors have failed to lean any evidence that such a contract existed. In fact, the Executor who gave evidence testified that she never attended the Bank with the deceased and therefore was not present when the deceased entered into the mortgage contract, the Further Deed of Mortgage or the Standing Order.

[82] In fact the Standing Order speaks for itself. The Bankers Order signed by the deceased instructed the Bank to pay the monthly insurance premium of \$289.79 on the 28<sup>th</sup> day of each month to CLICO International Life Insurance Limited. They were to debit her account.

[83] The Bankers Order in part stated as follows:

"I/We are fully aware that the Bank does not undertake to effect after the due date any payment which has not been effected on the due date owing

to lack of funds nor does it undertake to advise me/us of non payment on the due date owing to lack of funds.”

- [84] These were the terms agreed to between the Bank and the deceased. The Court finds that the Bankers Order as exhibited showed the entire agreement between the parties. The Court finds that there was no oral contract.
- [85] I agree with Counsel for the Bank that, as a matter of law, an oral contract cannot vary a written contract in the absence of a written acknowledgment of the variation. Indeed, the Executors have not led any evidence supporting a variation of the written contract. They have also not pleaded a variation.
- [86] I borrow the words of Counsel, “the relationship between client and banker is based on the express and implied terms of contract evidenced by the documents which bring that relationship into being. Any duty of care owed to the client is established by reference to those documents.”
- [87] I find that the Bank carried out its obligations as stated in the Bankers Order and can find no fault with their actions.
- [88] The Bank was under no obligation to keep the deceased's account under review or to inform her or her family that the account had insufficient funds in order to pay the monies due under the standing order.
- [89] I disagree with Counsel for the Executors in his submission that when the deceased's husband caused the deposit of \$5,439.00 to be made, that the Bank had an obligation to pay under the terms of the Bankers Order rather than the mortgage loan.
- [90] The Bank had two mortgage contracts with the deceased and the Bank's first obligation, once there were funds in the account, was to satisfy the obligation the deceased had to it, that is, the Bank. Therefore the Bank took monies from the account to satisfy the deceased's indebtedness to it, that is, the payment of the mortgage.

[91] In **Whitehead v National Westminster Bank** [1982] TLR 300 it was held as follows:

“Where a Bank was required by a client’s standing order to pay a sum on a particular day of each month to a payee until further order, and there are insufficient sums in the client’s account on the material date to satisfy the standing order, the Bank was under no duty to review the account to meet the order as and when sufficient funds became available.”

[92] The Bank having taken the funds necessary to service the mortgage the deceased had with them found that there were not sufficient funds left in the account to fulfill the terms of the Bankers Order to pay the insurance premium.

[93] I find that there was no conflict of interest here. What the Bank did in this matter was not unusual. It is common banking practice for Banks lending large sums of money to require the borrower to take out a life insurance policy to the amount of the loan, and then to have the policy assigned to the Bank.

[94] There was no breach of the duty of care. There was no negligence on the part of the Bank. The Bank carried out their obligation under the contract contained in the Bankers Order.

[95] Even if the Court is minded to accept the Executor’s assertion that the Bank must have known that the amount to be paid under the Bankers Order was for the insurance premium, it does not change the nature of the Bank’s contractual obligations under the Bankers Order.

[96] It was not the responsibility of the Bank to pay the premiums under the insurance policy; it was for the assured to do so. It was for the assured to do “all acts which may be necessary to keep such policy in full force”.

[97] The Life Insurance assignment, executed by the deceased, stated in part:

“If within 3 days prior to any such premium becoming due the assured shall not have provided the Bank with evidence of payment of such premium, the Bank though not bound to do so, may pay such premium, but shall not be responsible for any loss occasioned by the non payment therefore notwithstanding that the Bank may have paid prior premiums ...”

- [98] Even under the assignment of policy, it remained the responsibility of the insured to make the payments and to fund the account to enable the Bank to make the payments.
- [99] The Executors asserted that under the duty of care the Bank had an obligation to inform the deceased's husband and daughters of the policy of insurance, the assignment of the policy and the premiums and standing order and charges.
- [100] One has to recognize that the relationship which exists between a banker and his customer, the issue of confidentiality, the Bank was not in a position to disclose the information sought by the Executors and their representatives.
- [101] According to Halsbury's Laws Vol. 3(1) 4<sup>th</sup> Edition at para 149, "The banker owes his customer a contractual duty of secrecy ..."
- [102] Under the Banking Act of Grenada 2005, section 3 prohibits the disclosure of "information concerning the identity, assets, liabilities, transactions or other information in respect of any depositor or customer of a financial institution except in certain cases."
- [103] The circumstances surrounding this matter do not fall within the exceptions set out in the Act, and as such the Bank was under no duty to make any disclosures to the Executors or to Dr. Brathwaite.
- [104] The application for an injunction to prevent the Bank from exercising its power of sale under the mortgage also does not find favour with the Court.
- [105] The Court will not easily interfere with the right of the mortgagee to sell but may adjourn proceedings for a short period to allow the mortgagor an opportunity to pay the monies due under the mortgage.
- [106] Given the facts of this matter, I find that there is no reason for the Court to restrain the Bank from exercising its right under the mortgage deed.

[107] In the circumstances, the Court finds for the Bank and orders as follows:

- (a) Payment of the sum of \$470,719.55 being principal and interest as at 3<sup>rd</sup> August, 2007 with interest accruing on the sum \$402,564.65 at the rate of 9% per annum from 3<sup>rd</sup> August, 2007 until payment being monies due and owing under the said covenant to pay contained in the Mortgage and the Deed of Further Charge;
- (b) A Declaration that the Claimant is entitled to sell under its power of sale the said lot of land with the building thereon mortgaged to it under the Mortgage and Deed of Further Charge being **ALL THAT** lot piece or parcel of land with the building thereon being part of a larger lot known as Hygeia situate in the Parish of Saint Andrew in the State of Grenada containing by admeasurement Twenty Thousand (20,000) square feet English Statute Measure and abutted and bounded as the same is delineated and described in the plan or diagram thereof marked with the letter "K" and annexed to an Indenture of Conveyance made the 31<sup>st</sup> January, 1975 between Lloyd St. Louis of the first part the Grenada Building and Loan Association of the second part and the said Lloyd St. Louis of the third part and recorded in the Deeds and Land Registry of Grenada in Liber A12 at page 542;
- (c) Court fees in the sum of \$133.00; and
- (d) Legal practitioners fixed costs on issue in the sum of \$2,000.00.

[108] I would dismiss the Defendants' counterclaim.

[109] I was referred to the following cases:-

**Whitehead v National Westminster Bank** [1982] TLR 300

**Morne Rouge Holiday Apartments Limited v The National Commercial Bank of Grenada** – GDAHCV1999/0561

**Birmingham Citizens Permanent Building Society v Caunt and Another** [1962] 2 WLR 323

**Penny v Neckles** [1971] 1 OECS LR 682

**New India Assurance Co. (T'dad) Ltd. v Liberty Club** [1999] ECLR 15

**Fortis Bank v Indian Overseas Bank** [2010] EWHC 84

**Financial Institutions Services v Negril Negril Holding** [2004] 65 WIR 227

**Mair v Bank of Nova Scotia** [1986] 31 WIR 186

**Shah v HSBC** [2009] EWHC 79

**Gumbs v Caines** [1969] 13 WIR 88

[110] I wish to thank Counsel for their assistance in this matter.



**Margaret Price Findlay**  
High Court Judge