

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

SUIT NO GDAHCV 2006/0334

BETWEEN:

GRENADA PUBLIC SERVICE
CO-OPERATIVE CREDIT UNION LTD

Claimant

and

JEANETTE BENOIT-WILLIAMS

Defendant

Appearances:

Ms. Shireen Wilkinson and Ms. Tanya Lambert for the Claimant
Mrs. Celia Edwards QC, Ms. Karina Johnson and Mr. Deloni Edwards for the
Defendant

2014: January 13; February 5

DECISION

- [1] **MOHAMMED, J.:** The Claimant instituted the instant proceedings against the Defendant for certain sums of money due and owing to it by the Defendant pursuant to two written loan agreements dated 21st June 2000 ("the first loan agreement") and 31st August 2000 ("the second loan agreement"), interest at 12% per annum from July 2006 until payment and for such other relief as the Court sees fit. The initial sum claimed in the Statement of Claim was for \$60,252.40 but subsequently in the Reply it was reduced to \$24,868.66. This action therefore

surrounds the recovering of the sum of \$24,868.66 together with interest at 12% per annum.

[2] The Defendant admits the first loan agreement and the second loan agreement but denies that she is still indebted to the Claimant. She contends that subsequent to the first loan agreement and the second loan agreement she entered into a verbal agreement with the Claimant where it allowed her to sell the property ("the property") used partly to secure the loans and to pay the proceeds from the sale in full satisfaction the entire debt. The Claimant acknowledges that the Defendant sold the property and paid the sum of \$54,722.50 to it. It denies that the payment was in full satisfaction of the entire entering sum due and owing to it. The Defendant also contends that the Claimant is not entitled to recover interest at a rate outside of the statutory rate or any agreed rate.

[3] The issues which arise for determination are:

- (a) Was there an agreement between the Claimant and Defendant that the proceeds from the sale of the property would fully satisfy the debt due and owing?
- (b) Has the Claimant proven that the Defendant is still owing the sum of \$24,868.66?
- (c) What rate of interest is the Claimant entitled to on any outstanding sums?

Was there an agreement between the Claimant and Defendant that the proceeds from the sale of the property would fully satisfy the debt due and owing?

[4] There was no dispute that under the first loan agreement the Claimant advanced to the Defendant the sum of \$55,720.00 which was due to be repaid by 96 monthly installments together with interest at 1% per month on the unpaid balance. Under the second loan agreement the Claimant advanced to the Defendant the sum of \$9,470.00 with interest on the unpaid balance at .875% per month. The Claimant admitted that she was unable to meet her monthly commitment and the loan was refinanced in on 23rd August 2002.

- [5] According to the loan rescheduling form dated 23rd August 2002 ("the loan rescheduling form"), "Shares and regular savings totaling \$6,656.59, mortgage on 6254 sq ft of land located at Springs, St. George's value at \$37,524.00 and her character presently secure the loan". The sole witness for the Claimant, Rachael Brown acknowledges at paragraph 9 of her witness statement that the Claimant received the sum of \$54,722.50 "as payment towards the sum due and owing to the Claimant by the Defendant subsequent to the sale of the mortgaged property". In paragraph 10 of her witness statement she was clear that "There was no agreement between the Claimant and Defendant prior to the sale of the said property that the proceeds of the said sale would fully satisfy the said debt due and owing to the Claimant by the Defendant". Under cross-examination she admitted that the Claimant had the legal title deed to the property; that the purchaser of the property could not get good title without the participation of the Claimant and that the Claimant had agreed to the sale of the property. While both parties acknowledged that the property was mortgaged to the Claimant this was not part of the Claimant's pleaded case.
- [6] At paragraph 4 of the Defendant's witness statement she acknowledges that she fell into arrears after the 2002 loan refinancing form and "Concluded an agreement with the Claimant that I was going to sell the land all the proceeds of sale for the land would be applied to the loan." Under cross-examination she stated that by the Claimant agreeing to sell the land it had varied the loan repayment she had with it. Under cross-examination she admitted that the loans were secured in part by the property and that she understood the agreement she had with the Claimant was that the proceeds from the sale of the land would be applied to settle all of the arrears on her loan. She confirmed that she did not have this agreement in writing and as such she did not disclose such document to the Court. More importantly she admitted that if the proceeds from the sale of the land were not enough to settle the arrears the Claimant could not settle the account since there would be a balance owing.

- [7] I find that the Claimant agreed with the Defendant for her to sell the property since the Defendant could not have sold the land without the permission or knowledge of the Claimant since it had the title deed to the property. I also find that one of the terms of that agreement was for the Defendant to pay the proceeds received from the sale of the property to the Claimant to liquidate her debt.
- [8] However, I was not convinced by the Defendant that the agreement with the Claimant was that the proceeds received from the sale of property would satisfy the entire debt. The Defendant failed to state which representative from the Claimant verbally agreed to this condition and if such officer was authorized to make such variation. I accept the evidence from the Claimant's witness, Rachael Brown whose evidence on this issue, in view was unchallenged. If the Defendant was under the impression that the proceeds from the sale of the property would fully satisfy her entire debt then it was in her interest to ensure that she had secured this position in writing. The Defendant was well aware that to obtain a loan rescheduling in August 2002 it had to be in writing and approved. It therefore follows that if the agreement was to fully satisfy her entire debt then such approvals were required.
- [9] I therefore find that there was no agreement that the proceeds from the sale of the property would fully satisfy the debt due and owing.

Has the Claimant proven that the Defendant is still owing the sum of \$24,868.66?

- [10] According to the Claimant's Statement of Claim it instituted the proceedings in July 2006 for the balance of a loan in the sum of \$60,252.40 and interest. In its Reply it stated that after receipt of the sum of \$54,722.50 (the proceeds from the sale of the land) there was a remaining balance \$24,868.66 and it was legally entitled under the loan agreements to institute the instant action to recover the outstanding balance plus interest.

- [11] The Claimant's witness Rachael Brown confirms this position at paragraphs 9 and 10 of her witness statement. Under cross-examination she accepted that the Claimant disbursed the first loan in the sum of \$55,720.00 and only the sum of \$9,470.00 from the second loan which was approved for \$31,000.00. She however refused to accept that the total principal disbursed was \$65,190.00. She accepted that the two loans fell into arrears and that in August 2002 after the rescheduling the new sum was \$62,134.08 which included the arrears of interest which was capitalized. She stated that loan was called in by letter dated 11th July 2005 to the Defendant and that later when the rescheduled loan was delinquent the Claimant took the Defendant's shares of \$6,656.59 and applied it to the delinquent loan. She stated that this was sometime in 2006 after the property was sold but before the institution of the instant proceedings. She admitted that while this information was communicated in a letter to the Defendant after the sale of the property the said letter has not been disclosed to the Court in the instant proceedings.
- [12] The Defendant has admitted that in the loan rescheduling form the arrears of interest was capitalized and added on to the outstanding principal whereby a new loan balance of \$62,134.08 to be repaid over a period of 97 months at payments of \$1,000.00 per month. She has also admitted that she repaid the Claimant the total sum of \$1,588.95 on account of principal and \$11,369.30 on account of interest. She however disputes the Claimant's calculation of the sum she is owing. At paragraph 7 of her witness statement she states "On the accounting of the Claimant therefore at that point the amount due and owing to them was \$65,801.43". I understand the "that point" to mean in 2006 when the property was sold. In paragraph 9 of the Defendant's witness statement she states that after receipt of the proceeds from the sale of the property, in her view, based on the Claimant's figures she is indebted to the Claimant in the sum of \$11,078.93.
- [13] Under cross-examination the Defendant accepted that between May 2000-October 2000 she received loans in the sum of \$65,190.00; those loans accumulated interest; the sum of \$54,722.50 was paid towards the loan and that there would still be a balance due and owing.

[14] In light of the Claimant's pleaded case and the evidence I find that the Claimant has failed to prove that the remaining balance on the loan is the sum of \$24,868.66 for the following reasons:

- (a) Rate of interest on new loan balance - Based on the loan rescheduling form the new loan balance as at that date was \$62,134.08. This consolidated balance was based on the recommendation "that both loans be merged and the capitalization of interesting outstanding be added to the new loan balance making a consolidated balance of \$62,134.08". In the Court's view the new rate of interest on the consolidated balance of \$62,134.08 could not be by implication the rate of interest of 1% per month in the first loan agreement or the .875% per month in the second loan agreement since both loans were merged and the interest arrears were capitalized and added to the new balance. In my view, unless the rate of interest was expressly stated in the loan rescheduling form, either rate of 1% per month or .875% per month can be implied. The new principal, monthly payment and period of repayment were expressly stated in the loan rescheduling form but notably absent is the rate of interest which would accrue on the new loan balance.
- (b) Letter dated 11th July 2005 - both parties agreed that the loan was called in by letter dated 11th July 2005. However this letter only calls in the principal and interest owing under the mortgage dated 20th October 2000 which was not part of the Claimant's pleaded case. This letter does not even state the sum that the Claimant was called upon to pay immediately.
- (c) Application of the Claimants shares to the loan- it was not in dispute that the Claimant's shares and regular savings of the Claimant in the sum of \$6,656.59 were part of the security used for the loans. Although the Claimant's witness admitted that the shares were applied to the loan sometime in 2006 the Claim failed to set out this material fact.
- (d) Unsatisfactory accounting of the arrears by the Claimant – it was not in dispute that sometime in 2006 the Claimant received the sum of \$54,722.50

from the sale of the land to pay off the loan. However in the Claimant's claim it fails to set out the sum due and owing under the loan at the time of the receipt of this sum, when the sum was received and if it went to the payment of principal or arrears of interest.

- [15] It is a fundamental principle that he who alleges must prove and in light of the evidence the Claimant has failed to prove that the Defendant owes it \$24,868.66 to the satisfaction of this Court. At best it has proven that if the sums which represents the shares and the proceeds from the sale of the property are deducted from the new balance of \$62,134.08 are deducted the remaining balance is \$755.08.

What rate of interest is payable on any outstanding balance?

- [16] In the Statement of Claim the Claimant pleaded interest at the rate of 12% per annum from the 7th July 2006 until judgment or at such rate as the Court shall deem fit. It has calculated the interest due for the period 8th January 2003 to 6th July 2006 in the sum of \$16,495.53, with a daily rate thereafter of \$19.81 per day. In the closing submissions the Claimant conceded that the sum claimed as interest is a lesser sum since the sum claimed in its Reply is a lesser sum than that claimed in the Statement of Claim. However it still insists that the prayer for interest at the rate of 12% annum is still a good prayer and that interest at this rate is to be awarded on the lesser sum.
- [17] The Defendant has objected to the rate of interest of 12% per annum claimed on the basis that the outstanding interest was capitalized in the \$62,134.08 but there was no agreement between the two parties on the rate of interest on this sum.
- [18] Rachael Brown admitted under cross-examination that the August 2002 Loan Rescheduling Form was not the only document concerning the capitalization of interest but she conceded that the Claimant did not place before this Court the Defendant's application to change the loan arrangements neither any letter sent to

the Defendant after the sale of the land but before the institution of the instant action.

[19] The rationale for the award of interest was enunciated by Lord Denning MR in **Jefford v Gee**¹ where he stated:

“Interest should not be awarded as compensation for the damage done. It should be awarded to a Plaintiff for being kept out of money which ought to be paid to him.”

[20] In section 27A of the **West Indies Associated States Supreme Court (Grenada) Act**² unless the Court orders otherwise the statutory rate of interest for every judgment debt is 6% per annum.

[21] The Court finds that the Claimant's prayer for interest at the rate of 12% per annum has not be substantiated from the documentary evidence. In the Court's view the Claimant cannot rely on the first loan agreement and the second loan agreement to support this claim for interest since it conceded that the outstanding interest under these loans were capitalized and added to the outstanding principal. The Claimant also cannot rely on the August 2002 Loan Reschedule document since it does not state the rate of interest for the said sum of \$62,134.08. In the circumstances, since it is unclear to the Court the rate of interest which accrued on the remaining balance the Court awards the statutory rate of interest on the remaining balance of \$755.08.

¹ [1970] 1 All ER 1202 at 1208

² Chapter 336 of the 2010 Revised Laws of Grenada

Order

[22] The Defendant is to pay the Claimant the sum of \$755.08 with statutory interest at the rate of 6% per annum from the date of judgment until payment.

[23] The Defendant to pay the Claimant prescribed costs.

Margaret Y. Mohammed
High Court Judge