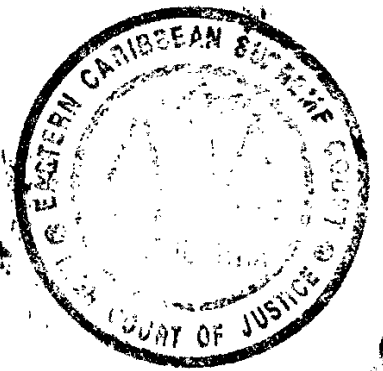


IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
SUIT NO: 497 OF 1993



BETWEEN:

THE GUYANA AND TRINIDAD MUTUAL LIFE
INSURANCE COMPANY LIMITED - PLAINTIFF

AND

KENNETH BROWNE
AND - DEFENDANTS
PAMELA BROWNE

Mr Andrew Cummings and Mrs Margaret Hughes-Ferrari for the Plaintiff
Mr R. Theodore L. V. Browne for the Defendants

[17th July, 1998]

[October 1 1998]

DECISION

BAPTISTE J.

By summons filed 25th May, 1998 the plaintiff applied for an order of foreclosure with respect to a mortgaged property. The application was supported by the affidavit of Kendall Durrant, local agent of the plaintiff, sworn to and filed on the said 25th day of May, 1998.

The present application has its genesis in an order made by Mr Justice Dunbar Cenac on the 13th day of May, 1994, for sale or foreclosure of the defendants premises.

On 24th June, 1994, the plaintiff filed a summons for an order for directions pursuant to the order for sale. The application was heard on July 1, 1994 and the order was granted.

In his affidavit of 25th May, 1998 Kendall Durrant deposed that the plaintiff received no offers or inquiries regarding the sale of the mortgaged property. Further, the defendants have made no payment of principal or interest due on the mortgage debt or the premiums due on the life insurance policy since

February, 1993. In further pursuance of the order obtained on the 13th May, 1994, the plaintiff is desirous of obtaining foreclosure of the mortgaged property and an order for foreclosure is being sought.


The order is being resisted by learned counsel for the defendants. Counsel submitted that the plaintiff has not adopted the correct procedure in obtaining the order sought. All foreclosure actions, counsel contended, must be begun by either writ or originating summons. Counsel referred to order 58 of the Rules of the Supreme Court and further asked whether the plaintiff was applying for foreclosure nisi or foreclosure absolute. It was the contention of counsel that it would be manifestly wrong to make the order without having information as to the current value of the property.

Mr Cummings in reply referred to the order dated 13th May, 1994 and stated that it is a valid order and remains in full force and effect. Counsel correctly submitted that the settled procedure is to make nisi order for six months within which the mortgagors can redeem.

It seems to me that counsel for the defendants is really contending that there is a procedural irregularity on the part of the plaintiff in bringing this application. If that be the case I am of the view that the provisions of Order 2 of the Rules of the Supreme Court would come into play. Assuming that counsel for the defendant is correct when he submitted that the plaintiff has not adopted the correct procedure to obtain the order sought, I would treat the failure as no more than a procedural irregularity, which does not nullify the proceedings or any steps taken in the proceedings. However, I have considered the order made on the 13th of May, 1994 and I am of the view that the plaintiff's application is in consonance with the order.

The order of May 13, 1994 provided that the said mortgage may be enforced by sale or foreclosure. The plaintiff applied for and received directions for sale. No offers were received regarding the sale of the property. The plaintiff is now applying for foreclosure, based upon the order of May 13, 1994.

It is ordered that a foreclosure order nisi is granted with the mortgagors having six months to redeem.


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DAVIDSON KELVIN BAPTISTE
High Court Judge