

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 423 of 2009



BETWEEN:

FIRST CARIBBEAN INTERNATIONAL BANK (Barbados Limited)

Claimant

and

TIMOTHY ST. JOHN

Defendant

Appearances: Ms. Anique Cummings for the Claimant.
Mr. Richard Williams and Mr. Sten Sergeant for the Defendant.

2011: October 25
2012: April 3

JUDGMENT

- [1] **THOM J:** The Claimant claims against the Defendant the sum of \$68,023.47 which it alleges is the interest outstanding on a loan which was made to the Defendant along with Court fees and legal Practitioner's fixed costs. The sum of interest claimed is \$66, 908.47.
- [2] The Defendant in his defence alleges that the claim is statute barred pursuant to the Limitations Act of Cap. 90 of the Laws of Saint Vincent and the Grenadines.

ISSUE

- [3] The sole issue to be determined is whether the Claimant's claim is statute barred.

FACTS

[4] At the commencement of the hearing the parties agreed to file a Statement of Agreed Facts on which the court would determine whether the claim was statute barred. The parties agreed the following facts:

- (1) The Claimant is a Public Liability Company carrying on banking business and having its registered, office at Halifax Street in the town of Kingstown in Saint Vincent and the Grenadines. The claimant operated under the name CIBC Caribbean Limited until the 13th day of October 2002 but was merged with Barclays Bank plc under its present name on the 14th day of October, 2002.
- (2) The Defendant is a customer of the Bank.
- (3) On the 22nd day of November 1966, the Claimant granted to the Defendant, a loan facility in the sum of ECC \$292,800.00 to assist with the construction of property at Amos Vale, St. Vincent.
- (4) The Defendant agreed to repay the said loan over a period of 20 years at 10.5% per annum by paying monthly instalments of ECC \$2,920.00 to the Claimant.
- (5) It was an express term of the agreement that the Defendant would pay all late charges arising in the event of the Defendant's failure to make the agreed payments at the agreed times and would reimburse the Claimant for all expenses, including legal expenses, incurred by the Claimant in suing for or recovering the sums due under the loan and the said agreement.
- (6) The said loan was secured by a legal mortgage in favour of the Claimant and registered as No: 2877/1997 in the state of Saint Vincent and the Grenadines.
- (7) By letter dated 3rd October, 2001 to the Defendant, the Claimant made demand for the payment of all outstanding balances.
- (8) The subject property of the said legal mortgage was sold and the proceeds therefrom applied to the reduction of the mortgage debt on 28th

January, 2004. However there is a balance of ECC \$66,908.47 being the interest on the principal sum loaned.

- (9) The last date of payment on the mortgage debt as 28th January, 2004.
- (10) By letter dated 26th march, 2009, the Claimant made demand on the Defendant for the payment of all outstanding balances.
- (11) The Defendant failed to comply with the Claimant's said demand. The Claimant filed claim against the Defendant for the balance of the debt due and owing on 22nd December, 2009.
- (12) The balance due and owing on the debt at the time of filing the claim was ECC \$66,908.47 being the interest owed on the Principal sum, together with Court and Legal Costs of ECC \$115.00 and ECC \$1,000.00 respectively. The total sum claimed is ECC \$98,023.47.

SUBMISSIONS

- [5] Learned Counsel Ms. Cummings submitted that since the last date of payment by the Defendant was on 28th January 2004 and the claim was filed on 22nd December 2009, the claim was filed less than six years after the date of the last payment by the Defendant and was therefore not statute barred pursuant to the Limitation Act.
- [6] Learned Counsel also submitted that Section 29(6) of the Limitation Act was also not applicable to this case, since once payment is made on interest it is an acknowledgement of the debt.
- [7] Learned Counsel Mr. Richard Williams submitted in response that the claim is based on simple contract and the relevant provision is Section 7 of the Limitation Act which sets a limitation period of six years from the date on which the cause of action arose. Learned Counsel further submitted that Section 8 does not apply since the terms of the loan are not within the provision of Section 8. Learned Counsel however acknowledged that the claim was made less than six years from the date of the last payment but referred the Court to Sections 22(3) and 29(6) and submitted that the Claimant can only claim interest from the date on which the interest became due. Thus at best the Claimant can only recover

interest due from six years to the date of the claim which was an amount of approximately \$2,956.57.

[8] Learned Counsel further submitted that since at the time of the sale of the property on 28th January 2004 the Defendant's property was sold for the sum of \$284,956.00 and the principal sum outstanding was \$275,488.25 there was a balance of \$9,467.75 which was more than the interest that is recoverable.

[9] Learned Counsel also submitted that since the sum recoverable is \$2,956.53 the claim should have been made in the Magistrate's Court. The Claimant should therefore not be awarded costs pursuant to CPR 2000 but in accordance with the Magistrates Act.

FINDINGS

[10] The relevant sections of the Limitations Act in determining whether the claim for outstanding interest is statute barred are Sections 22 and 29. I do not agree with the submission of Learned Counsel Mr. Richard Williams that the claim is a simple contract for a loan. The parties agreed in the Statement of Agreed Facts at paragraph 6 as follows:

"The said loan was secured by a legal mortgage in favour of the Claimant and registered as No. 2877/1997 in the State of Saint Vincent and the Grenadines."

[11] Sections 22(1) & (5) and 29(6) read as follows:

"22.(1) No action shall be brought to recover -
(a) any principal sum of money secured by a mortgage or other charge on property (whether real or personal); or
(b) proceeds of the sale of land,
after the expiration of twelve years from the date on which the right to receive the money accrued."

"(5) subject to subsections (6) and (7), no action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of the proceeds of the sale of land, or to recover damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due."

[12] Subsections 6 and 7 are not applicable since subsection 6 deals with the situation where there is a prior mortgagee or other incumbrancer who has been in possession of the mortgaged property, while subsection 7 deals with the situation where the mortgaged property comprised any future interest or life insurance policy.

[13] Section 29.6 reads as follows:

“29.(6) A payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.”

[14] The effect of the above provisions is that the period for recovering the principal sum is twelve years. However a claim for interest must be made within six years after the interest became due. A party cannot claim interest that has been due for more than six years - see **Bristol and West Plc v Bartlett and another** [2003] 1 WLR 284.

[15] In determining whether the Claimant's claim for interest is statute barred the question that arises is when did the interest that is being claimed became due.

[16] The parties in their agreed statement of facts at paragraphs 8 and 12 agree that on January 28th, 2004 after the mortgaged property was sold and the proceeds applied to reduce the mortgage debt there was still remaining a balance of \$66,908.47 which was interest on the principal sum.

[17] The Claimant's argument essentially is that the interest of \$66,908.47 was outstanding on January 28th, 2004 and thus six years had not expired on December 22nd, 2009 when the claim was filed. This raises the question whether the entire sum of \$66,908.47 became due on January 28th, 2004. As stated earlier under Section 22(5) the claim must be made within six years of the date on which the interest became due. I agree with the submission of Learned Counsel Mr. Richard Williams that the Claimant is only entitled to interest which became due six years prior to December 22nd, 2009 which is from December 22nd, 2003. The parties have agreed in paragraph 8 of the Statement of Agreed Facts that the

principal sum was fully repaid on January 28th, 2004 therefore no further interest could accrue after January 28th, 2004.

[18] I find that the Bank is entitled to recover all interest which became due from December 22, 2003 to January 28, 2004. Learned Counsel Mr. Richard Williams submitted that this sum is no more than \$2, 956.57. The parties in their agreed facts did not address the issue of the computation of interest. The Court therefore cannot make a finding on the exact amount of interest that became due during the aforementioned period. Accordingly the Court will determine the sum on an application of the Claimant if the parties cannot agree the sum.

[19] It is ordered:

1. Judgment is entered for the Claimant.
2. The Defendant shall pay the Claimant the interest due from December 22, 2003 to January 28, 2004. The sum to be determined on application of the Claimant, such application to be made within three months if the parties do not agree the sum.
3. Costs to be the claimant to be determined at the time of the hearing of the application if not agreed by the parties.



Gertel Thom

HIGH COURT JUDGE