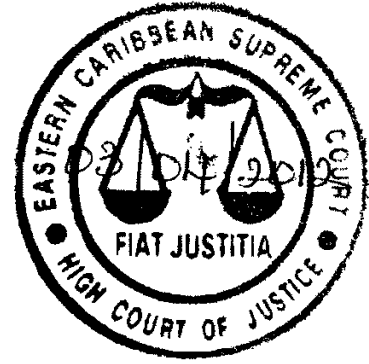


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 422 of 2009



BETWEEN:

FIRST CARIBBEAN INTERNATIONAL BANK LIMITED

Claimant

and

**T.C. ENTERPRISES LIMITED
TIMOTHY ST. JOHN
CLEMENTINE ST. JOHN**

Defendants

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

2011: October 25
2012: April 3

JUDGMENT

[1] **THOM J:** The Claimant seeks to recover the sum of \$982, 177.60 from the Defendants. The claimant alleges that of the total sum \$429,390.74 represent the principal sum outstanding on a loan and \$550,171.86 being interest outstanding up to the 18th December, 2009, the interest continuing thereafter at a daily rate of \$176.46. The Claimant also claims costs.

[2] The Defendants' defence consist of one paragraph which reads as follows:

"1. The Claimant's cause of action did not accrue within six (6) years before the commencement of this action and the Defendants will rely on the provisions of the Limitation Act cap.90 of the Laws of Saint Vincent and the Grenadines."

ISSUE

- [3] The sole issue is whether the claim is statute barred.
- [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 agreed facts are:
- (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 Defendants are all customers of the Claimant.
 - (3) On the 22nd day of July 1999, the Claimant granted to the Defendants the sum of ECC \$100,000.00 by way of a capital loan. The Defendants agreed to repay the said loan over an 84 month period at 15% per annum by paying monthly instalments of ECC\$4, 550.00 to the Claimant.
 - (4) It was an express term of the agreement that the Defendants 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 in suing for or recovering the sums due under the loan and the said agreement.
 - (5) The said loan was secured by a registered debenture of \$335,000.00 over the first Defendant's fixed and floating assets. Further, the said loan was fully guaranteed by the second and third Defendants and by Ronald Lewis, deceased.
 - (6) The said loan was also secured by a legal mortgage in favour of the Claimant.
 - (7) The subject property of the legal mortgage in the name of Ronald Lewis, deceased has since been sold and the proceeds there from applied to the reduction of the Defendant's mortgage debt. The said proceeds

amounting to EC\$21,839.16 were applied to the Defendant's mortgage debt on 24th March, 2003. However, there remains an outstanding balance as the said proceeds were insufficient to cover the mortgage debt. It is for this said outstanding balance that the Claimant herein claims.

- (8) By letter dated 3rd October 2001 to the Defendants, the claimant made demand for the payment of all outstanding balances which the Defendants have failed to repay.
- (9) The last date of payment on the Defendant's mortgage debt was 24th March, 2003.
- (10) By letter dated 26th March 2009, the Claimant made demand on the Defendants for the payment of all outstanding balances.
- (11) The Defendants failed to comply with the Claimant's said demand. The Claimant filed claim against the Defendants for the balance of the debt on 22nd December, 2009.
- (12) The balance of the debt due and owing by the Defendants up to the 18th day of December 2009 was EC\$982,177.60. The said sum is comprised of a principal amount of EC\$429,390.74 and EC\$550,171.86 as the interest together with court fees of EC\$115.00 and Legal Practitioner's fixed costs of \$2,500.00. Interest continues to accrue at the daily rate of EC \$176.46."

SUBMISSIONS

- [5] Learned Counsel for the Claimant submitted that the claim is not statute barred. The applicable sections of the Limitations Act are Sections 22 and 29 which provide that in the case of money secured by mortgage, the right to recover does not expire until the expiration of twelve years from the date when the right to receive the money accrued. Since the demand by the Claimant for repayment was made on 3rd October 2001, the last payment was made on 24th March 2003, and the claim instituted on 22nd December 2009, the claim being a claim for the remainder of the mortgage debt the twelve year limitation period stipulated in Section 22 did not expire when the claim was filed.

- [6] Learned Counsel referred the Court to the case of Bristol and West plc v Bartlett and another [2003] 1 WRL p.284 and submitted that even after the property which forms the security of the mortgage has been sold, if there remains a shortfall that shortfall is considered a mortgage debt.
- [7] Learned Counsel conceded that in view of the provisions of Section 22(5), the Claimant could not proceed with the claim for interest.
- [8] Learned Counsel Mr. Richard Williams submitted in response that the mortgage was drawn as a demand mortgage. The Claimant made a formal demand in October 2001 and the property was sold on 2nd May 2003, the proceeds were applied to the mortgage debt and the claim was only filed on the 22nd day of December 2009. Learned Counsel referred the Court to Section 7 of the Limitation Act and submitted that six years had already expired since the cause of action arose. Further, Section 29(6) provides that payment of part of the interest does not extend the period for claiming the remainder. An action to recover interest cannot be made after the expiration of six years from the date on which the interest became due.
- [9] Learned Counsel also submitted that in the case of Bristol and West plc the action was brought pursuant to the mortgage, but in the present case the Claimant made its claim pursuant to a loan not a mortgage. Further the Claimant has not shown that the 2nd and 3rd Defendants have executed a mortgage. Indeed the Claimant's exhibits show that the 2nd and 3rd Defendants did not execute a mortgage. Since the Claimant did not plead the mortgage nor made any reference to the terms of the mortgage, the Claimant cannot rely on Section 22 of the Limitation Act.

FINDINGS

- [10] The relevant provisions of the Limitation Act are Sections 7, and 22(1). They read as follows:

"7. An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

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 land, after the expiration of twelve years from the date on which the right to receive the money accrued."

[11] Section 7 deals with the time limit for instituting proceedings where there is a simple contract for a loan, while Section 22 deals with the situation where the loan is secured by a mortgage.

[12] In paragraph 6 of the Statement of Agreed Facts, the parties agreed that the loan was secured by a mortgage. The mortgage was listed in the Claimant's list of documents, also the deed of sale of the mortgaged property. The parties also agreed in paragraph 7 of the Statement of Agreed Facts that the mortgaged property was sold and the proceeds applied to the mortgage debt on the 24th March, 2003. This date is acknowledged by the parties in paragraph 9 of the Statement of Agreed Facts as being the date of the last payment.

[13] The loan being a loan that was secured by a mortgage, Section 22 of the Limitations Act is the applicable section and not Section 7 as submitted by the Defendants. Provisions similar to Sections 7 and 22 were considered in the case of **Bristol and West plc** referred to by the Claimant. In **Bristol and West plc** the UK Court of Appeal considered the issue whether a claim for the remainder of a loan secured by a mortgage after the sale of the mortgaged property is subject to a limitation period of 12 years as provided in Section 20 of the UK Limitation Act or the limitation period of six years applicable to simple contract debts pursuant to Section 5 of the UK Act. The Court of appeal in finding that Section 20 applied even after sale of the mortgaged property concluded that what is critical is that the mortgage must exist on the date on which the right to recover accrued.

[14] In this case it is agreed that Timothy St. John and Clementina St. John were guarantors of the loan, they did not sign the mortgage deed. The parties agreed that the mortgage deed

was signed by one Ronald Lewis. In my opinion the fact that Timothy St. John and Clementina St. John did not sign the mortgage deed is of no moment having regard to the sole issue which the court has to determine which is whether the claim is statute barred. What is relevant is that the loan was a loan that was secured by a mortgage. The fact that the loan was secured by a mortgage brings it within the provisions of Section 22 of the Limitations Act. I therefore find that the Claimant having brought the claim to recover the remainder of the principal debt within the twelve year period, the claim is not statute barred.

[15] It is ordered that:

- (1) Judgment is entered for the Claimant.
- (2) The Defendants shall pay the Claimant the sum of EC \$429,390.74.
- (3) The Defendants shall pay the Claimant costs in the sum of \$2,500.00.



Gertel Thom

HIGH COURT JUDGE