

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

HIGH COURT OF JUSTICE

SUIT NO. GDAHCV 2013/0129

BETWEEN:

GODWIN BIBBY

Applicant

and

**SYDNEY JACOBS
REPUBLIC BANK (GRENADA) LTD.**

Defendants/
Respondents

Appearances:

The Applicant appearing in person
Ms. Sheriba Lewis for the First Named Defendants/Respondents
Ms. Keisha Lander for the Second Named Defendants/Respondents

2013: November 26

REASONS IN ORAL RULING

- [1] **MOHAMMED, J.:** By Notice of Application filed 28th March, 2013 and amended on 7th May, 2013 ("the application") the Applicant applied to the court to stop the Second Defendant from advertising or selling the mortgaged property situated at the corner of Lucas and H.A. Blaize Street St. George's ("the property") of the First Defendant, and to stop the Second Defendant from exercising its power of sale over the property.

- [2] The ground of the March application is if the injunction is not granted the Applicant will suffer financial loss which the First Defendant cannot pay.
- [3] To place the application in its context, a brief history is required. The Applicant entered into an agreement with the First Defendant to lease the property. Subsequently, he discovered that the property was mortgaged to the Second Defendant. By that time payments were made by him. Subsequently, the Second Defendant by letters dated 22nd July, 2010 and 18th October, 2011 agreed to accept the Applicant's offer to purchase the property based on certain terms. In May 2012 the Applicant requested an extension to pay the sum to the Second Defendant.
- [4] In response to the application, the Second Defendant applied on 17th June, 2013 for permission to extend time to file a defence and on 18th June 2013 it applied to strike out the Applicant's claim on 18th June, 2013.
- [5] It is only prudent that the application to strike out the action be dealt with first. The grounds of the application to strike out the action are: the documents filed fail to disclose any reasonable ground for bringing the action since the property was sold on 27th March 2013, one day before the application was filed; the claim form does not comply with CPR 8.6 (1); CPR 3.11; 3.12; and there was a previous suit filed in GDAHCV 2010/0467 where the similar issue was addressed and it is therefore an abuse of process.
- [6] In Citco Global Custody v Y2K Finance [BVI CVA 22/2008] Edwards JA warned that:

"It is also well settled that the jurisdiction to strike out ought to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial and the ability to strengthen its case through the process of disclosure and other court procedures such as request for information; and the examination and cross-examination often change the complexion of the case. Also, before using CPR 26.3 (1) to dispose of 'side issues', one should be taken to ensure "that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in any application must be exercised in accordance with the overriding objective of dealing with cases justly."

- [7] I dismiss the application for the following reasons:
- (a) A Notice of Application is not an originating process. No claim form or Fixed Date Claim has been filed. The Applicant fails to meet the requirement of CPR 17.2(3).
 - (b) The Applicant has not established a cause of action against the First and Second Defendant in any event.
 - (c) The order that the Applicant is seeking cannot be obtained since the property has already been sold. The Second Defendant had exercised its power of sale.
 - (d) While the Second Defendant did agree to sell the property to the Applicant in 2010 and 2011, there was no contract since there was no consideration. The Applicant having failed to complete the arrangements, there was nothing stopping the Bank from exercising its power of sale.
 - (e) Specifically with respect to the First Defendant, the Applicant's dissatisfaction appears to be against the Second Defendant and there is no relief sought against the First Defendant.

Order

- [8] The application is dismissed. The Applicant is to pay the First and Second Defendants cost of the application assessed in the amount of \$ 1500.00 to each Defendant.

Margaret Mohammed
Margaret Y. Mohammed
High Court Judge