

EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

DOMHCV0162 OF 2013

BETWEEN:

[1] MARIGOT CO-OPERATIVE CREDIT UNION LTD

Claimant

AND

[1] MACS LTD

[2] SHADRACH DUPUIS

[3] ABEDNIGO DUPUIS

Defendants

Appearances: Mr. Glen Ducreay, Counsel for the Claimant
Mr. Kevin Williams, Counsel for the Defendants

2013: September 17th
2014: January 23rd

Judgment

[1] **THOMAS J: (Ag)** Before the Court is a Fixed Date Claim Form filed by the Marigot Co-operative Credit Union Ltd, the Claimant, on the 16th day of January 2012, seeking redress against the defendants, being: Macs Ltd, Shadrach Dupuis and Abednigo Dupuis. The Claimant claims: the balance of principal and \$127, 378.82

owed by the defendants, further or in the alternative that the mortgaged property be sold in accordance with the Title by Registration Acts, costs and such further or other relief as the court deems fit.

- [2] On the day of the trial learned Counsel for the defendants made application to adduce evidence. This was disallowed on account of the failure of the defendants to file a defence. In the affidavit in support of statement of the mortgage claim, the deponent, Lester Gordon deposes as to the loan agreement with the defendants for the sum of \$136 984.11 at the rate of 1% per month repayable in 57 monthly installments of \$3, 164.55 commencing on the 30th day of November 1999.
- [3] The deponent deposes further that the defendants have failed or refused to make the agreed monthly installments with the costs/payments being on the 23rd day of May 2011 in the sum of \$300.00. In the circumstances the contention is that as of the 16th day of December 2011 the total amount owed was \$127, 378.82 consisting of \$55, 347.21 s principal and \$32 031.61 as interest.
- [4] On the day of the trial the amount claimed was \$147 033.62 with costs of \$2000.00.
- [5] At the trial Lester Gordon gave further evidence regarding the loan agreement and said inter alia that the claimant is seeking \$147, 033.62, costs of \$2000.00, statutory interest of 5% after judgment, and in the alternative the mortgaged property to be sold.
- [6] In cross-examination Lester Gordon testified that the money was disbursed to the defendants based on an application made by Shadrach Dupuis. He said further that the said Shadrach Dupuis was the Guarantor but he was made a party to the suit which seems to be an error in filing. The witness explained further that the loan was applied for on behalf of the company, Macs Ltd with a parcel of land 10, 482 square feet given as security.
- [7] It is also the witness evidence that the defendants are still indebted and he gave details of the monthly payments of \$3164.55 and two small payments of \$300.00 made on the 27th day of October 2010 and 23rd day of June 2010 respectively.

- [8] The sole witness for the claimant testified that it was an error in making the guarantor a party in the proceedings and that it is entirely a matter for the claimant, and suffice it to say that three persons are defendants in the matter.
- [9] There was no defence filed and in the circumstances, the Court agrees partially with the submission by Learned Counsel on behalf of the claimant that the defendants should be jointly and severally liable for \$147, 033.62 and costs of \$2000.00 and interest.
- [10] The determination of the Court is that the defendants are jointly and severally liable to the claimant for the amount owed, plus interest at the rate of 5% from the date of this order and prescribed costs of \$200.00. Order accordingly.

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Justice Errol Thomas
High Court Judge (Ag)