

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

No. 2017/CLE/gen/00269

BETWEEN

COMMONWEALTH BANK LIMITED

PLAINTIFF

AND

QUTELL ADDERLEY

DEFENDANT

Before: Deputy Registrar (Acting) Carol D Misiewicz

Appearances: Mrs. Sharon Rahming- Rolle for the Plaintiff

Defendant appears pro se

Hearing Dates: 23 August 2017 & 17 October 2017

RULING

1. This action is a money lending claim by Commonwealth Bank for funds loaned to the defendant Qutell Adderley to allow her to purchase a car. According to the Writ which was filed on 7 March 2017 and served on 5 April 2017, the Defendant borrowed the sum of \$14,470.05 via a chattel mortgage executed on 15 April 2013. She subsequently defaulted on that loan, hence the bank brought this action to recover sums due under the loan.
2. The affidavit evidence shows that the Defendant duly purchased a vehicle, a 2003 Diahatsu Terios. Due to the Defendant's default the car was repossessed by the Bank and sold for the sum of \$2,160 on 21 March 2016. After deducting expenses of sale, the net sum of \$1,927.80 was realized and this was then credited to the Defendant's account. Notwithstanding that sale, the amount due under the chattel mortgage had increased, mainly because of interest, to \$17,382.24 by May of 2017.
3. The Defendant did not enter an appearance or file a defence in the action. She did appear on the hearing of the Plaintiff's Summons for leave to enter Judgment, at which time she spoke of having fallen on hard times due to illness. However, the issue of concern for the Court was her indication that the Terios was worth considerably more than the amount it had been sold for by the Bank. Because of this concern I adjourned the matter to allow her to produce evidence of its value, for example by way of insurance certificate.
4. At the adjourned hearing in October 2017 the Defendant produced an affidavit sworn and filed by her on 22 September 2017. It spoke to her illness and her being at that time unemployed, and other financial hardships brought on because of hers and her daughter's health challenges. However, there was nothing said in her affidavit about what she had claimed or supposed to be the value of the Terios vehicle.
5. Meanwhile, the Plaintiff took the opportunity of the adjourned hearing to file evidence of the sale of the vehicle – and thereby show what the Bank alleged

was its market value, in the Supplemental Affidavit sworn by Tiaja Rolle and filed 29 September 2017. No such evidence had been provided in the Affidavit of Lernix Williams filed 19 June 2017.

6. As indicated earlier, the Defendant did not file a defence in the action, nor did she claim to have a basis for defending the claim. The only issue that appeared to be relevant was as to the quantum of judgment that the Plaintiff was entitled to which would have been impacted by the value of the vehicle which the Bank sold, that is to say, if the Defendant was able to successfully allege that it had been sold at an undervalue.
7. Given that the Defendant has not provided any evidence that the true value of the vehicle was (significantly) greater than the price the Bank obtained for it, and given that Ms. Adderley has no defence to the Bank's claim for repayment of sums lent under the mortgage, I will grant the application made in the Summons filed on 19 June 2017 as prayed therein.

Dated the 25th day of July AD, 2018



CAROL D. MISIEWICZ
Acting Deputy Registrar