COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2012/CLE/gen/00458

IN THE MATTER of an Indenture of First Demand Legal Mortgage dated 17th day of December, A.D., 2010 and made between Herman Cleophas Maycock and Sabrina Elizabeth Maycock (as Borrowers) of the one part and Bank of The Bahamas Limited (as Lender) of the other part to secure advances to the said Herman Cleophas Maycock and Sabrina Elizabeth Maycock by the said Bank of The Bahamas Limited

AND

IN THE MATTER of All That piece parcel or lot of land being Lot number 314 in the subdivision called and known as "Eastwood" situated in the Eastern District of the Island of New Providence

AND

IN THE MATTER of the Rules of the Supreme Court Order 77

BETWEEN

BANK OF THE BAHAMAS LIMITED

Plaintiff

AND

HERMAN CLEOPHAS MAYCOCK

1st Defendant

AND

SABRINA ELIZABETH MAYCOCK

2nd Defendant

Before: The Honourable Madam Justice Tara Cooper Burnside (Ag)

Appearances: Jamal G. Davis for the Plaintiff

Akire C. Nicolls and Calpurnia Campbell for the Defendants

Hearing Date: 11 February 2021, 5 March 2021

Civil – Enforcement of Judgment – Writ of Possession – Application to invalidate Writ of Possession – Section 5(3) and 38(5) Limitation Act, Chapter 83 – Order 46 Rule 2 (1) (a) RSC – Section 23 (3) Homeowners Protection Act, 2017

RULING

INTRODUCTION

[1] In the application before me the Defendants seek by a Summons filed 18 December 2020:

> "...Order that the Writ of Possession filed herein on the 28th day of September, A.D., 2020 against the First and Second Defendants be declared invalid pursuant to section 5(3) of the Limitation Act [CH.83] and Order 46 Rule 2 (1)(a) of the Rules of The Supreme Court [CH.53]."

BACKGROUND

[2] On 17 December 2010, the Plaintiff and the Defendants entered into an Indenture of Mortgage (the "**Mortgage**") whereby the Defendants granted a mortgage to the Plaintiff in respect of Lot 314, Eastwood Subdivision (the "**Mortgaged Premises**") as security for a loan.

[3] The loan eventually went into default and by an Originating Summons filed on 3 April 2012, this action was commenced by the Plaintiff against the Defendants for the following relief:

(i) Payment of the sum of $268,184.31, being $264,016.57 as to the principal sum outstanding, $4,132.74 as to the interest sum outstanding up to 29 February 2012 calculated at the rate of 8% per annum and continuing at the rate of 8% per annum or $58.67 per diem to the date of payment and $35.00 as to late fees; and

(ii) Delivery by the Defendants to the Plaintiff possession of the Mortgaged Premises.

[4] On 8 August 2012, judgment (the "**Judgment**") was granted by this Court in favour of the Plaintiff against the First Defendant in the terms set forth below.

> "**IT IS THIS DAY ADJUDGED** as follows:
>
> (1) That the said Herman Cleophas Maycock, the 1st Defendant herein, do pay the Plaintiff the sum of $268,184.31 being $264,016.57 as to the principal sum outstanding, $4,132.74 as to the interest sum outstanding up

to the 29th day of February, A.D., 2012, interest continuing thereafter at the rate of 8% per annum on the said principal sum up to the 8th day of August, A.D., 2012, interest further continuing thereafter at the rate of 6.75% per annum on the said principal sum until payment of the same and $350.00 as to late fees;

(2) Delivery by the said Herman Cleophas Maycock, the 1st Defendant herein to the Plaintiff of possession of ALL THAT piece parcel or lot of land situate in the Eastern District of the Island of New Providence being Lot Number Three Hundred and Fourteen (314) of the Subdivision called and known as "Eastwood" bounded Northeastwardly by a road reservation of the said Subdivision and running thereon in an arc Fifty-five and Ninety-seven hundredths (55.97) feet Southeastwardly by Lot Number Three Hundred and Fifteen (315) of the said Subdivision and running thereon One Hundred (100) feet Southwestwardly by Lots Numbers Three Hundred and Seventeen(317) and Three Hundred and Eighteen (318) of the said Subdivision and running thereon jointly Eighty-five and Twenty-three hundredths (85.23) feet and Northwestwardly by Lot Number Three Hundred and Thirteen (313) of the said Subdivision and running thereon Ninety-nine and Nine Hundredths (99.09) feet ; and

(3) That costs be for the Plaintiff to be taxed if not agreed."

[5] Neither of the Defendants attended the hearing of the Originating Summons and as such, they were not present when judgment had been granted. However, by virtue of an affidavit of service sworn by Constable 3390 Fritznell Pierre ("**Constable Pierre**"), there was evidence before the Court that the First Defendant, i.e. the person against whom judgment was granted, was personally served with a Notice of Appointment to Hear the Originating Summons on 19 July 2012 at 7:45 p.m. at his residence.

[6] On various dates during the period 2016 to 2020, a writ of possession to enforce the Judgment was issued by the Plaintiff against the First Defendant. The most recent writ (the "**2020 Writ**"), which was issued on 28 September 2020, is the subject of the Defendants' application.

EVIDENCE

[7] The Defendants' application is supported by affidavits sworn by each of the Defendants on 18 December 2020, which are substantively almost identical.

[8] In summary, the Defendants aver that they entered into the Mortgage to secure a loan in the amount of $273,000.00 for the purchase of a commercial fishing vessel. The mortgage was for a term of 15 years and the monthly sum required to be repaid was $2,770.00, of which $1,400.00 was paid by the First Defendant directly, and $1,370.00 was paid by the Second Defendant by way of automatic deductions from her salary.

[9] The Mortgage went into default due to changes in the First Defendant's financial circumstances, although the monthly deductions from the Second Defendant's salary remained in place and are continuing. In this regard, the Second Defendant states at paragraph 5 of her affidavit:

> "That since the beginning of the mortgage, the sum of One Thousand, Three Hundred and Seventy ($1,370.00) has been deducted from my salary each month and said deduction is ongoing. (Now produced and attached hereto is a true and correct copy of my pay slip for April, 2017 marked as exhibit "**SEM-1**")."

[10] During the period 2012 to 2016, there were various discussions and proposals between the parties for the restructure of the debt, but a restructure did not materialise.

[11] Although this action was commenced in 2012, it was not until July 2016, that the Defendants became aware it and that judgment had been granted in favour of the Plaintiff for the sum of $268,184.31, along with vacant possession. When the Defendants became aware of the Judgment, they "continually informed the Plaintiff" that service of the proceedings had not taken place as stated by Constable Pierre in his affidavits of service.

[12] Discussions regarding the restructure of the debt continued in 2017. According to the First Defendant at paragraph 47 of his affidavit:

> "That every time we made some progress in respect of the restructuring, the Plaintiff changed officers and the process started all over again..."

[13] In early 2019, the Defendants became aware that their home, i.e. the Mortgaged Premises, had been advertised for sale in the newspaper and they immediately contacted the Plaintiff. Arrangements were made for a meeting to take place at which the Defendants were encouraged to make an offer to settle the debt.

[14] Subsequently, in April 2019, the Defendants offered to settle the debt by paying $250,000.00, which was accepted by the Plaintiff. However, the Defendants were unable to qualify for a loan with another financial institution as anticipated and were therefore unable to raise that sum.

[15] In 2020, the Defendants' home was again advertised for sale in the newspaper. Further, on 1 October 2020, the Defendants were served with the 2020 Writ, after which they engaged legal counsel and filed the present application.

[16] No affidavit was filed by or on behalf of the Plaintiff.

ARGUMENTS MADE BY COUNSEL AND DISPOSITION

Does section 5(3) of the Limitation Act apply to this case whereby the Plaintiff's right to issue the 2020 Writ was statute-barred?

[17] On behalf of the Defendants, Mr Nicolls contends that the Judgment cannot be enforced because, pursuant to Section 5(3) of the *Limitation Act, 1995*, the limitation period for enforcing the Judgment has expired. Section 5(3) of the *Limitation Act, 1995* states:

> "(3) An action shall not be brought upon any judgment after the expiry of six years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiry of six years from the date on which the interest became due."

[18] The term "action" is defined by section 2 of the *Limitation Act, 1995* as "any proceedings in a court of law" and Mr Nicolls contends that this Court, in ***Perfect Luck Investments Limited and another v CTF BM Holdings Ltd and another*** [2017] BHS J. No. 122, determined that "an action" under section 5(3) is not limited to fresh actions on a judgment but also includes proceedings to enforce a judgment. Mr Nicolls invites this Court to follow the decision in Perfect Luck accordingly.

[19] On behalf of the Plaintiff, Mr Davis submits that the Defendants' application is misconceived. He contends that enforcement proceedings are not barred by section 5(3) of the *Limitation Act, 1995* and relies on the decisions of this Court in ***Bahamas Commonwealth Bank Ltd. v Lewis*** [1996] BHS J No. 96 and ***Imperial Life Assurance Co. of Canada v Wells*** [2001] BHS J. No. 107, both of which pre-date ***Perfect Luck***. Mr Davis argues that the decision in Perfect Luck was made on a vendor-purchaser summons and invites the Court to follow the decisions in ***Bahamas Commonwealth Bank Ltd.*** and ***Imperial Life Assurance Co. of Canada*** accordingly.

[20] In the alternative, Mr Davis contends that, even if section 5(3) of the *Limitation Act, 1995* applies to this case, the limitation period for enforcing the judgment has been extended by section 38(5) of the *Limitation Act, 1995* and section 23 of the *Homeowners Protection Act, 2017* because the Defendants have continued to make payments on the judgment debt.

[21] Section 38(5) of the *Limitation Act, 1995* states:

> "(5) Subject to the proviso to subsection (4), **a current period of limitation may be repeatedly extended under this section by further acknowledgements or payments, but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgement or payment.**"
>
> (my emphasis)

Additionally, section 23(3) of the *Homeowners Protection Act, 2017* states:

> "No mortgagee shall recover from any mortgagor any sum owing under any judgment by the Court for the repayment of any sum borrowed by the mortgagor from the mortgagee after the expiry of six years from the date on which the judgment was first obtained or the date of the last payment pursuant to that judgment."

[22] Having read the decision in ***Perfect Luck***, I am of the view that it has no application to the present case.

[23] The decision of this Court in ***Perfect Luck*** was made on a vendor-purchaser summons where Winder J considered an application by the plaintiffs (the vendors) for declarations in the following terms (i) that the right of a judgment creditor, under a judgment which operates as an equitable charge, to bring an action or proceedings for enforcement of that judgment is barred after the lapse of six years by virtue of section 5(3) of the *Limitation Act, 1995* and (ii) that the requisitions raised by the defendants (the purchasers) had been reasonably answered by the plaintiffs.

[24] A brief summary of the facts were as follows: The second plaintiff had entered into an agreement for sale with the defendants which contemplated the sale of certain property which had been owned by the Baha Mar companies. In their title searches, the defendants discovered of the property that various judgments had been entered against the Hotel Corporation of The Bahamas and other predecessors in title to the property subject to the sale. More than ten years had elapsed since the date of each of those judgments and the defendants made a requisition as to the time period within which the equitable charges created by the judgments were enforceable. Both parties agreed that section 5(3) of the *Limitation Act, 1995* and an examination of the authorities would lead to a view that judgments granted more than six years ago would be statute barred against enforcement, and the defendants' requisition would have been answered affirmatively, but for the decision of the Court in ***Bahamas Commonwealth Bank***. In that case, Barnett CJ had adopted with approval the decision of the English Court of Appeal in ***WT Lamb & Sons v Rider*** [1948] 2 All ER 402 and determined that an action in the context of section 5(3) of the *Limitation Act, 1995* is limited to fresh actions.

[25] Winder J, in delivering the judgment of the Court in Perfect Luck, considered ***Bahamas Commonwealth Bank*** and the jurisprudence post ***WT Lamb***. He noted that the House of Lords in ***Lowsley v Forbes (t/a LE Design Services)*** [1998] 3 All ER 897 subsequently determined that ***WT Lamb*** was wrongly decided. Albeit, the House of Lords did not overrule ***WT Lamb*** because it had been followed and treated as correct in subsequent cases and also by the British Parliament, as evidenced by the Report of the Law Commission which preceded the enactment of section 24 of the *Limitation Act, 1980* (i.e., the English equivalent to section 5(3) of the *Limitation Act, 1995*).

[26] Winder J determined that there were no parallel considerations in The Bahamas Court and in particular, no such law commission report or legislative intent which preceded the enactment of section 5(3) of the *Limitation Act, 1995*. He therefore interpreted section 5(3) in the manner which the House of Lords in ***Lowsley*** said was correct, i.e. that an action on a judgment, including proceedings for the enforcement of a judgment are required to be brought within six years. He granted the declarations sought by the plaintiffs accordingly.

[27] Perfect Luck was decided shortly after the coming into force of the *Homeowners Protection Act, 2017,* which was enacted to provide protection and relief to homeowners and ancillary matters related thereto. The *Homeowners Protection Act, 2017* applies to all financial institutions which provide, purchase or service mortgages, which are defined under that Act to include a charge on property primarily used as the residence of a mortgagor (or members of his immediate family) for securing money for the construction of a dwelling house, educational or medical expenses of the mortgagor (or members of his immediately family) or commercial ventures. The mortgage in the present case, between the Plaintiff and the Defendants, falls squarely within that definition and the Judgment, is clearly subject to the provisions of section 23(3) of the *Homeowners Protection Act, 2017.*

[28] In contrast, the judgments under consideration in ***Perfect Luck*** were clearly not judgments within the scope of section 23(3) of the *Homeowners Protection Act, 2017* and as such, the provisions of that Act were not considered by Winder J in his determination. The circumstances giving rise to the decision in ***Perfect Luck*** are distinguishable from the present case on that basis.

[29] In my view, section 23(3) of the *Homeowners Protection Act, 2017*, which specifically deals with enforcement by a mortgagee of a judgment for the repayment of sums borrowed from it by a mortgagor, is directly applicable to the facts in this case. Pursuant to section 23(3), which is a savings provision, certain rights of a mortgagor and mortgagee are expressly preserved. Section 23(3) states:

> "**23. Savings.**
>
> ...
>
> (3) No mortgagee shall recover from any mortgagor any sum owing under any judgment by the Court for the repayment of any sums borrowed by the mortgagor from the mortgagee after the expiry of six years from the date on which the judgment was obtained or the date of the last payment pursuant to that judgment."

[30] The language of this provision is clear and unambiguous. It provides that the limitation period for recovery by a mortgagee of a judgment debt in respect of sums borrowed by the mortgagor shall be six years from the date the judgment was obtained or the date of the last payment on the judgment. This means that a mortgagor may bring proceedings for the enforcement of any such judgment at any time before the expiry of six years

from the date the judgment was obtained or the date the last payment was made pursuant to the judgment. It also means, as argued by Mr Davis, that the limitation period may be repeatedly extended, albeit for present purposes, the relevant provision is section 23(3) of the *Homeowners Protection Act, 2017* and not section 38(5) of the *Limitation Act, 1995*.

[31] On the Defendants' own evidence, they made monthly payments to the Plaintiff in respect of the Mortgage right up to the time when their affidavits were sworn in December 2020. In law, such payments are deemed to be made pursuant to the Judgment; for under the doctrine of merger, the Plaintiff's cause of action under the mortgage was extinguished by the Judgment and has merged into the Judgment Debt. In the circumstances, it matters not that the Defendants claim they were unaware of the Judgment or that the payments were made by salary deduction automatically.

[32] Merger explains what happens to a cause of action when a court or tribunal gives judgment. If a court or tribunal gives judgment on a cause of action, it is extinguished. The plaintiff, if successful, is then able to enforce the judgment, but only the judgment. The effect of merger is that a plaintiff cannot bring a second set of proceedings to enforce his cause of action even if the court or tribunal awarded him less than that to which he was entitled.

[33] In all the circumstances, I find that the payments made by the Defendants to the Plaintiff were payments pursuant to the Judgment. As such, in accordance with section 23(3), the period for recovery by the Plaintiff of the Judgment debt was repeatedly extended and it was not expired on the date the 2020 Writ was issued. It is well established that the Plaintiff, as mortgagee, may enforce the Judgment by taking possession of the mortgaged property and exercising its power of sale.

[34] For the reasons stated above, I am of the view that section 5(3) of the *Limitation Act, 1995* does not apply to this case and I decline to make a declaration that the 2020 Writ is invalid pursuant to that provision in the circumstances.

Should the 2020 Writ be declared invalid because of the Plaintiff's failure to obtain leave under Order 46, rule (2)(1)(a)?

[35] Mr Nicolls also argues that the 2020 Writ is invalid because there is no evidence that the Plaintiff obtained leave to issue the writ in accordance with Order 46, rule 2(1)(a) which states:

> "**2.** (1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases, that is to say —
>
> (a) where six years or more have elapsed since the date of the judgment or order..."

[36] Mr Davis submits that Order 46, rule 2(1)(a) does not apply to a mortgagee because Order 45, rule 3(2) provides that no leave is required for the issuance of a writ of possession to enforce a judgment made in a mortgage action such as this. Alternatively, Mr Davis submits that if leave was required, the Plaintiff's failure to obtain leave before issuing the Plaintiff's 2020 Writ is a mere irregularity by virtue of Order 2, rule 1 and the Court should permit it to stand.

[37] First, it is clear from the editorial at paragraph *46/2/1* of the *Supreme Court Practice, 1999* that the requirement under Order 46, rule 2(1)(a) to obtain leave to issue execution to enforce a judgment after the expiry of six years from the date the judgment was obtained is *additional* to the requirement of leave to issue a writ of possession under Order 45(3). I am therefore of the view that, although leave to issue a writ of possession is ordinarily not required in a mortgage action, it is required to be obtained if six years have elapsed since the date of the judgment. The Plaintiff should have applied for leave accordingly.

[38] Insofar as it is relevant for present purposes, Order 2, rule 1 states:

> "1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.
>
> (2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1) and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit .
>
> (3) ..."

[39] The purpose of the rule is to do away with the distinction between nullities and irregularities insofar as they relate to any failure to comply with a requirement under the Rules of the Supreme Court and is to avoid the problem identified by the Court of Appeal of England and Wales in ***Re Pritchard.*** Indeed, the editorial at paragraphs 2/1/1 - 2/1/2 of *Supreme Court Practice 1999*, explains that the rule was introduced in this form into the English Rules of the Supreme Court in 1964 in light of the decision in that case.

[40] The question in ***Re Pritchard*** was whether proceedings brought under the *Inheritance (Family Provision) Act 1938* in the local district registry (rather than in the central office

of the High Court, as the rules required) were a nullity or whether the failure to bring the proceedings in the central office could be treated as an irregularity and so capable of cure under what was then Order 70, rule 1. The rule was in these terms:

> "Non-compliance with any of these Rules, or with any Rule of practice for the time being in force, shall not render any proceedings void unless the Court or any Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit."

[41] The court accepted that, notwithstanding the wide scope of the rule, if the proceedings were a nullity, the rule could have no application to them. The importance of the point in that case was that, if the proceedings were a nullity, as the court held (Lord Denning, MR dissenting), it was too late for the claimant to bring fresh proceedings under the *Inheritance (Family Provision) Act 1938*, as the strict time limit of six months within which such proceedings could be brought had expired.

[42] The position under Order 2, rule 1 in light of that history is helpfully explained by Lord Denning in ***Harkness v Bell's Asbestos and Engineering Ltd*** [1966] 3 All ER 843 where he stated (at pages 845-846):

> "This new rule does away with the old distinction between nullities and irregularities. Every omission or mistake in practice or procedure is henceforward to be regarded as an irregularity which the court can and should rectify so long as it can do so without injustice. It can at last be asserted that "it is not possible ... for an honest litigant in Her Majesty's Supreme Court to be defeated by any mere technicality, any slip, any mistaken step in his litigation."

[43] In the present case, the issuance of the 2020 Writ without the requisite leave is a "proceeding" within the scope of Order 2, rule 1 and shall be treated by this Court as a mere irregularity. I therefore decline to declare that the 2020 Writ is invalid, i.e. that it has no legal force.

[44] The question which arises is whether the Court should exercise its discretion to permit the 2020 Writ to stand or otherwise set it aside for the Plaintiff's failure to obtain leave as required.

[45] On behalf of the Plaintiff Mr Davis argues that the Defendants waived the irregularity when they entered an unconditional appearance to the action on 21 December 2020. It is obvious, however, that the Defendants filed the present application on 18 December 2020, i.e. before they entered an appearance, and in any event the jurisdiction of this Court is not disputed. I therefore do not accept that the Defendants' filing of an unconditional appearance constitutes a waiver by them of the irregularity of the 2020 Writ.

[46] In deciding whether or not the 2020 Writ should stand, I am mindful that, pursuant to Order 42, rule 4, a judgment creditor who seeks leave to issue execution to enforce his judgment after a period of six years has elapsed may apply for such leave, *ex parte*. Further, such judgment creditor must file an affidavit stating the reasons for the delay, which must be considered by the Court deciding the application.

[47] Based on the evidence before the Court, the Judgment was granted on 8 August 2012 and there have been discussions between the parties for the restructure of the debt since 2012. Further, in 2019, the Plaintiff had even agreed to compromise the debt by accepting a lump sum payment of $250,000.00 but the Defendants were unable to raise that amount. In light of that evidence, I am of the view that the Plaintiff's willingness to accommodate and work with the Defendants has significantly contributed to the delay. It would be unjust if the Plaintiff was prevented from issuing execution because of delay in the circumstances.

In the circumstances, I order that the 2020 Writ do stand.

Should the Plaintiff be estopped from enforcing the Judgment?

[48] Finally, Mr Nicolls contends that that Plaintiff is estopped from seeking to enforce the Judgment because (i) the Plaintiff entered into an agreement for the settlement of the mortgage debt subsequent to the Judgment and thereby waived its right to enforce the Judgment and (ii) the Defendants were not served with the notice of the hearing of the Originating Summons in any event.

[49] Mr Davis submits that the Plaintiff's agreement to accept the sum of $250,000.00 in settlement of the debt outstanding does not create an estoppel against the Plaintiff from enforcing its Judgment since in the first place, no consideration passed from the Defendants to the Plaintiff to support that agreement and in any event, the sum was never paid.

[50] It is well established that estoppel takes place when one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly. Once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced.

[51] In this case, in 2019 the Plaintiff accepted the offer of the Defendants to pay $250,000.00 in full satisfaction of the judgment debt and then the Defendants did not make good on their offer. Estoppel to prevent the enforcement of the Judgment does not arise. Further, I agree with the submissions made by Mr Davis on behalf of the Plaintiff that the agreement for the Defendants to pay the lesser sum of $250,000.00 is not supported by consideration.

[52] With respect to the Defendants' complaint that they were not served with notice of the hearing, it is clear that when the Judgment was granted, the evidence before the Court showed that the First Defendant had been duly served. It is also clear on the Defendants' own evidence, if it was to be accepted, they became aware of the Judgment in the year 2016. Yet up to the time of their application, neither of them took any steps to appeal or otherwise impeach the Judgment. Estoppel does not arise and in any event, the present application is not the proper forum for the Defendants to Complain about the circumstances in which the Judgment was made.

Conclusion

[53] In all the circumstances, I conclude that the Plaintiff's right to enforce the Judgment was not statute-barred at the time of the issuance of the 2020 Writ and the 2020 Writ is not invalid. I also order that the validity of the 2020 Writ be extended to 28 April 2022 to make up for the time which has elapsed between the filing of the Defendants' application and the date of this Ruling.

[54] The Plaintiff shall have its costs, taxed if not agreed.

DATED the 20th day of September, 2021

TARA COOPER BURNSIDE
JUSTICE (AG)