

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2014/CLE/GEN/001615

BETWEEN

**FINANCE CORPORATION OF BAHAMAS LIMITED
Plaintiff**

AND

DONZEL HENRY PRATT

Defendant

Appearances: Mr Audley Hanna for the Plaintiff
Mr Wilver Deleveaux for the Defendant and the Defendant was present

Hearing Date: 30th November, 2021

DARVILLE GOMEZ, J

1. This action arose out of property mortgaged by the Defendant to the Plaintiff to secure a loan. It was commenced by the Plaintiff by an Originating Summons filed in 2014 and heard and determined in 2016.
2. I gave my decision orally however, I promised to put it in writing and do so now.
3. The attorney for the Defendant referred the Court to the following Summonses as being extant and required the adjudication of the Court:
 - (a) Summons filed on April 19, 2017 pursuant to Order 45 rule 11 of the Rules of the Supreme Court 1978 that the court do stay the execution of the Order of Her Ladyship the Honourable Mrs Cheryl Grant-Thompson made on the 3rd day of November, 2016 pending the determination of the appeal there from of which the Defendant has given notice by Notice of Appeal filed on the 15th day of December, 2016;
 - (b) Summons filed on September 10, 2019 pursuant to Order 2 rule 2, Order 13, rule 8, Order 32, rule 6, Order 45 Rule 11 and Order 75 rule 5 of the Rules of the Supreme Court 1978 on the grounds that an Order entered herein on the 3rd day of November, 2016 and a Judgment in Default entered herein on the 13th day of December, 2016 is irregular in that (i) the Originating Summons is

nebulous and ill-define (ii) that the Originating Summons is contrary to the Money Lending Act, namely Order 77 rule 4

- (c) Summons filed on December 17, 2020 for the following:
 - (i) That the Plaintiff's Originating Summons filed herein be struck out as an abuse of processes delay and prejudice.
 - (ii) That the Plaintiff failing to file and serve a notice of appointment to hear originating summons on the Defendant or his attorneys within a year of service the Originating Summons without leave of the Court be held as an irregularity, null and void and of no effect.
 - (iii) That the Plaintiff be estopped from interfering with the Defendant that there being no clarification on any previous Order of the Court.
- (d) Summons filed on August 24, 2021 for the discharge of the injunction made on October 22, 2020.

- 4. For the reasons hereinafter set out, I have dismissed the Summonses (a) through (c) and adjourned (d) sine die. I have awarded costs to the Plaintiff to be paid by the Defendant. I have fixed the costs in the sum of \$1,500.

BACKGROUND

- 5. This action was commenced by the Plaintiff by Originating Summons filed on October 3, 2014 for inter alia, the following relief:
 - (a) A declaration that the Plaintiff is entitled to possession of the Mortgaged properties;
 - (b) A declaration that the Plaintiff is entitled to exercise its power of sale with respect to the Mortgaged properties;
 - (c) An Order directing the Defendant to deliver up possession of the mortgaged properties to the Plaintiff within twenty-eight (28) days of the Order;
 - (d) Judgment for the sums outstanding under the said Mortgage.
- 6. On November 3, 2016 by an Order of the Honourable Madam Justice Mrs Cheryl Grant-Thompson the Plaintiff was granted inter alia:
 - (i) Vacant possession within sixty (60) days from the date of the Order of the Mortgaged properties;
 - (ii) Power to exercise its power of sale with respect to the Mortgaged properties;
 - (iii) Judgement for the sums owing; and
 - (iv) Costs.
- 7. This decision was appealed to the Court of Appeal by the Defendant in December, 2016. It would appear from the Affidavit of the Plaintiff filed on November 6, 2019 that the appeal was dismissed however, it is open to the Defendant to have the appealed restored.

8. The Defendant failed to deliver up possession of the properties and a Writ of Possession was issued on February 22, 2017.
9. The Defendant then issued the Summons filed on April 19, 2017 (referred to in (a) above).
10. On October 7, 2020 the Court granted an injunction against the Defendant and provided him liberty to be heard with respect to the Order on certain terms as to time.

DECISION

11. The Originating Summons having been heard and determined by the Honourable Justice Mrs Cheryl Grant-Thompson on November 3, 2016; the court is functus officio and therefore, on that basis, I hereby dismiss the following:
 - (a) Summons filed on April 19, 2017;
 - (b) Summons filed on September 10, 2019; and
 - (c) Summons filed on December 17, 2020.
12. Accordingly, I order that the Defendant must pay the Plaintiff's costs of these dismissed Summonses and I have fixed costs at \$1,500.
13. I do not dismiss the Summons filed on August 24, 2021 for the discharge of the injunction, however, I have adjourned the hearing of this Summons sine die.

Dated the 8th day of December, 2021

Camille Darville Gomez
Justice