

**IN THE COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Common Law and Equity Division**  
**2024/CLE/gen/FP/00139**

**IN THE MATTER** of the Property comprised in and Indenture of Mortgage dated 19<sup>th</sup> December, 2005 made between Sherrol A. Rahming and FirstCaribbean International Bank (Bahamas) Limited.

**AND IN THE MATTER** of the Conveyancing and Law of property Act, Chapter 138 of the Statute Laws of The Bahamas

**B E T W E E N**

**FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED**

Claimant

**AND**

**SHERROL A. RAHMING**

Defendant

**Before:** The Honourable Justice Constance A. Delancy

**Appearances:** Justin Smith with Alexandra Russell for the Claimant

Sherrol Rahming, Defendant pro se

**Hearing date(s):** 13 May 2025

**RULING**

**DELANCY, J.**

[1.] On 16 November, 2020, the Claimant commenced an action against the Defendants seeking, inter alia, Judgment for sums due and owing under a Mortgage between the parties, an Order for vacant possession of the subject property and a declaration that the Claimant was entitled to exercise its power of sale over the subject property.

[2.] The Defendant opposes the Claimant's application on the basis that it failed to comply with the statutory requirements under the Homeowners Protection Act, No.4 of 2017 and supports the same with an affidavit filed on 4 April, 2025. The grounds for the Defendant's challenge is the Claimant's non-compliance with Section 4 of the Homeowners Protection Act 2017 ("the HPA").

[3.] The Defendant avers that there was various correspondence, prior to the HPA and post its enactment, between the parties with reference to the Mortgage as set out in her Affidavit which may be summarized as follows:

- i. Letter dated 15 August, 2007 from the Claimant's Counsel to the Defendant demanding repayment of the loan and vacant possession (*para.4 and Exhibit SAR.1*);
- ii. Letters dated 15 October, 2015 and 2 August, 2016 from Claimant to the Defendant with reference to restructuring the loan (*para.5 and 6 and Exhibits SAR.2 and SAR.3*);
- iii. Customer Authorization Letter-Release of Credit History Information dated 7 December, 2016 executed by the Defendant authorizing the Claimant to release information to the Ministry of Finance for use in the Mortgage Relief Program (*para.7 and Exhibit SAR.4*);
- iv. Letter dated 18 May, 2018 from the Claimant's Counsel to the Defendant demanding repayment of the loan and vacant possession (*para.8 and Exhibit SAR.5*).

[4.] The Claimant's evidence is as set out in the Affidavit of Zoe Hepburn filed 19 April, 2025. The Affidavit does not dispute the sequence of events and correspondence between the parties as outlined by the Defendant. The Claimant averred that they have no record of the Customer Authorization Letter-Release of Credit History Information. The Court notes that the Claimant also exhibited the letter at para.3(iv) herein as proof of notice to the Defendant prior to commencing proceedings in the Affidavit of David Hanna filed on 16 2020 in support of its claim.

## Law and Discussion

[5.] Section 3 of the HPA provides that "[the] Act shall apply to all financial institutions that provide, purchase or otherwise service mortgages." Moreover, Counsel for the Claimant conceded that the HPA applies to the current action.

[6.] Section 4 of the HPA provides that a mortgagee/lender has an obligation to give notice prior to commencing court proceedings:

- (1) Where a mortgagor is in breach of the mortgage agreement, **the mortgagee shall not institute proceedings before the Court in respect of the breach, unless there has been served upon the mortgagor either personally or by registered post at least thirty days prior to instituting such proceedings a notice in writing** stating-
  - (a) the nature of the breach of any covenant in the mortgage;
  - (b) the amount of the arrears the mortgagor owes, if any, as well as all sums due under the mortgage;

- (c) the amount of any administrative or other costs, including any property tax and insurance costs, necessarily incurred by the mortgagee and chargeable by the mortgagor;
  - (d) the actions the mortgagor must take by stated time to cure the breach and avoid foreclosure and sale of the mortgaged property;
  - (e) the rights of the mortgagor under this Act including the right to apply to the Court for relief;
  - (f) the willingness of the mortgagee to discuss the breach with the mortgagor, with a view to entering into an agreement with the mortgagor regarding redress thereof, including modification of the mortgage terms if possible;
  - (g) contact information for the mortgagee, including an address to which a mortgagor may come in person and a telephone number.
- (2) The Court may as it sees fit upon an ex parte application by a mortgagee vary the method of service mentioned in subsection (1).

[5.] The Defendant contends that the correspondence listed at para.3 and in particular 3(iv) herein failed to comply with the requirements of Section 4 of the HPA prior to the issuance of the Originating Summons in this action.

[6.] The Claimant seeks to rely on the series of correspondence to the Defendant as listed at para.3 (i), (ii) and (iv) hereof and denies any knowledge of the document listed at para. 3(iii) hereof. The Claimant contends that the offers made by the Claimant to the Defendant in 2015 and 2016 demonstrated the Claimant's willingness to restructure the loan and that Defendant failed to act on the same.

[7.] In **RBC Royal Bank (Bahamas) Limited v Lawson H. Hall and Rhonda Hall** 2020/CLE/gen/000236 *Winder, J.* (as he then was) at para.8 summarized the purpose the HPA: ... the HPA legislation was to provide meaningful protection to homeowners by ensuring a true and proper discourse between the Mortgagor and the Mortgagee prior to taking the significant and ultimate step of recovering the security through litigation. **Its provisions ought to be strictly complied with otherwise mortgagees would be precluded from instituting proceedings**  
[Emphasis added]

[8.] The Court finds that it is not disputed that there was communication between the parties in 2015 and 2016 prior to the enactment of the HPA. The Court also notes that the Claim was filed 16 November 2020 and that notice prior to commencement of proceeding is the letter dated 14 May, 2018. The letter dated 14 May, 2018 letter referred to previous correspondence offering restructuring, demanded the arrears and interest and vacant possession within 30 days thereof; the institution of proceedings without prior notice.

[9.] The 2018 letter did not advise the Defendant of the amount of any administrative or other costs, including any property tax and insurance costs incurred by the Defendant and chargeable by

the Claimant (*Section 4(c) HPA*). Further it did not advise the Defendant of her the rights under HPA including the right to apply to the Court for relief (*Section 4(e) HPA*).

[10.] In the circumstances the Court is not satisfied that there has been compliance with the HPA. The Claimant was prohibited from commencing proceedings without complying with Section 4 of the HPA. The Claimant's Originating Summons filed herein is struck out. The Claimant may re-file its claim once in compliance with the provisions of Section 4 HPA. The Defendant is hereby granted reasonable costs to be assessed by this Court if not agreed.

Dated: 10 June, 2025

[*Original Signed and Sealed*]

Constance A. Delancy  
Justice