

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division**

2014/CLE/gen/FP/00320

IN THE MATTER OF property comprised in an Indenture of Mortgage dated 16th day of November A.D., 2005 between Michael Neymour and Judymae Neymour and Bank of The Bahamas Limited of the other part and of record in the Registry of Records in the City of Freeport in the Island of Grand Bahama in Volume 8274 at pages 261 to 270.

B E T W E E N

BANK OF THE BAHAMAS LIMITED

Appellant/Claimant

AND

MICHAEL NEYMOUR

1st Respondent/1st Defendant

AND

JUDYMAE NEYMOUR

2nd Respondent/2nd Defendant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Jamal Davis for the Claimant

No appearance

Hearing date(s): 11 July 2025

RULING

DELANCY, J

Background

[1.] This is the Claimant's Application to appeal the decision on 18 March 2025 of the Assistant Registrar to refuse to issue a writ of possession for enforcement of a vacant possession Order granted in this action.

[2.] On 3 September 2014, the Claimant commenced an action against the Defendants by Originating Summons seeking vacant possession of the property mortgaged by the Defendants by Mortgage dated 16 October 2001.

[3.] On 1 September 2015 an Order (“the Order”) for vacant possession and judgment was granted as follows:

- i. **The Defendants do, by no later than sixty (60) days following the service of this Order, deliver up to the Plaintiff vacant possession** of all that piece parcel or lot of land situate in the Caravel Beach Subdivision being Lot No.206, Section I situate within the “Port Area” on the Island of Grand Bahama AND Lot No.8, Block No.3 Unit 1 situate in Grasmere Subdivision lying East of the City of Freeport in the Island of Grand Bahama one of the Islands of the Commonwealth of The Bahamas as mortgaged by the Defendants to the Plaintiff to secure advances therein mentioned.
- ii. That the execution of **this Order be stayed for Sixty (60) days from the date whereof.**
- iii. That the Plaintiff be at liberty to enter Judgment in this action against the Defendants, Michael Neymour and Judymae Neymour under loan No.159m309122070001 for the principal of \$97,929.05 accrued interest on the said principal in the sum of \$588.15 calculated to the 10th April, 2014 and interest continuing to accrue at the contractual rate 7.5% per annum to the date of Judgment and thereafter at the statutory rate of 7.5% per annum pursuant to the Civil Procedure (Award of Interest) Act 1992 until payment in full

[4.] The Order was served on the Defendants on 7 April, 2016 as evidence by the Affidavit of Service sworn on 28 April 2016 and filed herein.

[5.] The Affidavit Paulette Butterfield filed on 7 July 2025, on behalf of the Claimant, states the following:

“5. Lot 206 was sold by the Claimant on or about the 9th day of January, A.D., 2007.

6. **Lot 8 was advertised for sale from in or about the 30th day of March, A.D., 2016 to present** and the Claimant did not receive a reasonable offer for the purchase of the same (which it accepted) until 15th day of May A.D., 2024. To the best of my knowledge, I verily believe that Lot 8 is occupied by the Defendants as their residence.

7. The Claimant and its officers repeatedly contacted or sought to contact the Defendants to demand and obtain satisfaction of the said Judgment **but received no payments from the Defendants until on or about the 24th day of February, A.D., 2021.**”

[6.] A Writ of Possession was submitted to the registry of the Supreme Court in or about June 2024, September 2024 and December, 2024. The Writ of Possession was not issued and on 18 March 2025 advised the Claimant’s Counsel was advised that it was not issued by the Assistant Registrar “*as too much time has lapsed from the date of the Judgment to the date of intended execution*”

Law & Discussion

[7.] Section 5(3) of the Limitation Act provides as follows:

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 debt shall be recovered after the expiry of six years from the date on which the interest became due.

[8.] The Claimant's Counsel submitted that the Section 5(3) of the LA cannot be read in a vacuum and that the Court must also consider the effect of Section 23(3) of the Home Owners Protection Act, 2017 ("HOPA"):

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.**

[9.] The Claimant's Counsel also drew the Court attention to the dicta of *Cooper-Burnside, J (Acting)* with reference to the effect of Section 23(3) HOPA in **Bank of The Bahamas Limited v Herman Cleophas Maycock and Sabrina Elizabeth Maycock 2012/CLE/gen/45** at para.30 thereof:

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*.

[10.] The Court accepts Counsel's submission that the Claimant may bring proceedings for enforcement of the Judgment entered in this action from the date of the last payment in 2021.

[11.] The Court notes there is no evidence that the Claimant's Counsel disclosed the payment made in 2021 to the Registry at the time of the refusal to sign off the Writ of Possession.

Disposition

[12.] In all the circumstances, I conclude that the Claimant's right to enforce the Judgment is not statute-barred. The decision of the Assistant Registrar is set aside and leave is granted to the Claimant to issue a Writ of Possession.

Dated the 8 day of October, 2025

[Original Signed and Sealed]

Constance A. Delancy
Justice