

**COMMONWEALTH OF THE BAHAMAS**

**2022/CLE/gen/1000**

**IN THE SUPREME COURT**

**BETWEEN**

**RBC ROYAL BANK (BAHAMAS) LIMITED**

**Claimant**

**AND**

**DEALS BUS SERVICE LIMITED**

**1st Defendant**

**AND**

**ARTHUR W. DEAL**

**2nd Defendant**

**Before:** The Honourable Madam Carla Card-Stubbs

**Appearances:** Audley Hanna for the Claimant  
C.A. Martin for the Defendants

**Hearing Date:** June 28, 2024

*Mortgagee awarded judgment for sums due under the Mortgage in previous action against Defendants — Whether mortgagee is estopped from seeking further relief – Whether mortgage is extinguished by previous judgment*

*Applicable rules for matters in transition – Provisions on Preliminary Matters, CPR Whether mortgagee must file initiating documents under Part 8 The Supreme Court Civil Procedure Rules, 2022, as amended (‘CPR’)*

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## **RULING**

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### **CARD-STUBBS J**

#### **INTRODUCTION**

[1.] This is the Claimant's suit and application for an order for possession, appointment of a receiver, and sale of mortgaged property.

[2.] The application was opposed by the Defendants.

[3.] For the reasons that follow, the Claimant's application is allowed.

#### **BACKGROUND**

[4.] On June 29, 2022 the Claimant brought an action against the Defendants by virtue of an Originating Summons seeking certain relief, including an order for possession, appointment of a receiver, sale of the mortgaged property and judgment for the sums outstanding under the said Mortgage.

[5.] On January 18, 2022 the Defendants filed an Amended Summons to strike out the Claimant's cause of action.

[6.] By ruling dated November 16, 2023, this Court did not accede to the Defendants' application to strike out the action. However, this Court determined that as a result of a previous action pursued by the Claimant against the Defendants, the Claimant was estopped from pursuing any further action for damages. This Court also determined that the Claimant was not debarred from pursuing other remedies sought by the Originating Summons. The conclusion of this Court relevant to that determination is found in the following paragraphs of that judgment:

86. I find that the Claimant is estopped, as a result of the doctrine of merger, from proceeding with its claim on outstanding sums due under the mortgage. The Claimant has a judgment in relation to same and its recourse must be to that judgment.

....

89. I find that the Claimant is not barred from proceeding in this action (the 2022 action) to secure relief not previously sought or granted in the 2011 action. The

Court will exercise its power to strike out that part of the pleading that is an abuse of the process of this court.

[7.]This Court therefore made the following order:

92. The order and directions of this Court are as follows.

1. The Claimant is estopped, as a result of the doctrine of merger, from pursuing any further action for monetary damages.
2. Paragraph 3 of the Claimant's Originating Summons, viz, "Judgment for the sums outstanding under the said Mortgage" is struck out.
3. For avoidance of doubt, this action is now governed by The Supreme Court, Civil Procedure Rules 2022, as amended.

[8.]On February 23, 2024, the Claimant filed a Notice of Application seeking relief in its action. The Notice of Application seeks the court's determination on its suit for the remedies sought in the Originating Summons, save for an order for "Judgment for the sums outstanding under the Mortgage."

## **THE NOTICE OF APPLICATION**

[9.]The Claimant's application filed on the February 23, 2024 states in part:

1. The Claimant makes application for the following relief:
  - i. That it may be determined whether in the circumstance and upon the true construction of Paragraphs 4 and 6 of the Indenture of Mortgage made the 5th day of January, A.D 1996 made between the Claimant and the First Defendant of ALL THAT piece parcel or lot of land numbered 8 in a plan of allotments laid out on a tract of land situate on the Northwest corner of Wulff Road and Mackey Street in the Eastern District of the Island of New Providence and bounded on the North by land now or formerly the property of William Alfred Carey and running thereon One hundred (100) feet on the East by Mackey Street and running thereon Fifty (50) feet on the South by a road reservation called and known as Rosedale Street and running thereon One hundred (100) feet and on the West by land formerly the property of the Estate of the late Helen Lord and running thereon Fifty (50) feet which said piece or parcel or lot of land has such position boundaries shape marks and dimensions as are set out and delineated on a plan of the said land attached to the said Indenture of Mortgage and thereon shown coloured Pink (hereinafter called the "Mortgage") and in the events which have transpired, whether the Claimant is entitled to the following relief:-
    - a) A Declaration that the Plaintiff is entitled to possession of the Mortgaged Property; and
    - b) A Declaration that the Claimant is entitled to exercise the power of sale with respect to the Mortgaged Property.

- ii. An Order directing the First Defendant to deliver possession of the Mortgaged Property to the Plaintiff within Twenty-eight (28) days of the Order.
- iii. An Order that a Receiver or a Receiver-Manager be appointed in accordance with the Mortgage and/or for the purpose of receiving the revenue, whether rents, profits or otherwise, of the Mortgaged Property.
- iv. An Order directing that upon the appointment of a Receiver or a Receiver-Manager, that the aforesaid Receiver or Receiver-Manager:-
  - a) Be added as a signatory to each of the bank accounts maintained by the First Defendant, until such time as he is able to open and maintain bank accounts in his name as Receiver or Receiver Manager of the First Defendant;
  - b) May be at liberty to receive revenue, whether rents, profits and/or otherwise, of the Mortgaged Property;
  - c) May be at liberty to and/or be directed to sell lots of land or any part thereof comprising the Mortgage Property and/or which form assets of the First Defendant;
  - d) May be at liberty to now and in the future compromise all claims, demands and liabilities whatsoever and to settle each and every right and claim, matter or action and actions, cause and causes of action, suit debts, dues, sums of money, accounts, reckoning costs, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, demands non and that may arise any time hereafter in law or equity in respect of the property comprising the Mortgage Property and/or which form assets of the First Defendant; and to give effectual receipts and discharges pursuant to Section 26 (3) of the Conveyancing and Law of Property Act; and
  - e) May be at liberty to execute sales agreements, conveyances or other instructions relating to the sale of the lots of land or any part thereof comprising the Mortgaged Property and/or which form assets of the First Defendant.
- v. An Order for delivery up by the Second Defendant to the Receiver or Receiver Manager of possession of the Mortgaged Property and/or assets of the First Defendant.
- vi. An Order directing that upon the appointment of the Receiver or Receiver-Manager, the Receivership in relation to the Mortgaged Property be continued thereafter under the direction and/or supervision of the Court with liberty to apply thereafter.
- vii. That the Court order further or other relief as deemed expedient.
- viii. An Order that costs of and occasioned by this application be paid by the Defendants to the Claimant.

## **CASES OF THE PARTIES**

[10.] The Defendants resist the application. The Defendants' objections and submissions may be summarized as falling under categories: (1) a procedural point and (2) a substantive point. (1) The Defendants argue that the Claimant is procedurally barred from seeking relief due to non-compliance with the CPR 2022. (2) The Defendants also argue that the

Claimant is substantively estopped from seeking relief under the mortgage as a result of the doctrine of merger.

- [11.] In response, the Claimant submits that (1) procedural steps taken before the CPR remain valid and that the application for relief is validly before the Court. The Claimant also contends that (2) the doctrine of merger does not preclude seeking possession or sale of the property or the appointment of a receiver and advance that this issue was already determined by this Court in its earlier ruling.

## **ISSUES**

- [12.] The central issues to be determined in this instance are:
- (i) Whether the Claimant's application complies with the Supreme Court Civil Procedure Rules 2022 (CPR).
  - (ii) Whether the Claimant can pursue the remedies sought after obtaining a judgment on the mortgage in another action, or whether all rights have merged into the judgment, extinguishing the mortgage as a basis for further relief.
  - (iii) Whether the Claimant is entitled to the remedies sought.

### **Issue 1 - Procedural Compliance**

Whether the Claimant's application complies with the CPR.

#### ***Submissions***

- [13.] It is the Defendants' submission that the "Claimant in the light of the ... new rules cannot continue or make the remainder of the claims under its said Originating Summons, but must now proceed by way of the mandatory originating process of Fixed Date Claim....It appears that the claims in the Originating Summons is caught in the transition from the old rules to the new rules, in that there must be compliance with the mandatory requirements of the new rules. Paragraph 3 of the above Order and Directions was no doubt inserted as a constant reminder of this fact."

- [14.] The Defendants submit that the Fixed Date Claim form is a "procedural scheme" that did not exist and which must be complied with in this action. The Defendants' argument is that this Court's order provides "this action is now governed by the Supreme Court Civil Procedure Rules 2022, as amended", and therefore the Claimant ought to adopt the originating process applicable under Part 62 CPR for Mortgage Claims, which is an action brought by Fixed Date Claim pursuant to Part 8 CPR.

- [15.] The Claimant submits that the action was commenced on June 29, 2022, and set down for hearing prior to the coming into effect of the CPR. The Claimant submits that

“The substantive hearing was, however, superseded by the determination of the Amended Summons. However, this does not change the fact that, prior to the operation of the CPR all of the steps which previously governed applications for vacant possession had been complied with.”

- [16.] The Claimant argues that “nothing in the Preliminary Part of the CPR invalidates any steps taken prior to its operation it only sets out that the parties are to proceed, essentially, from this point on under the CPR.”

### ***Law and Analysis***

- [17.] For the record, a direction of the Court in its November 16, 2023 order was:

For avoidance of doubt, this action is now governed by The Supreme Court, Civil Procedure Rules 2022, as amended.

- [18.] The Supreme Court, Civil Procedure Rules 2022, as amended (‘CPR’) came into effect on March 1, 2023 (SI No. 13 of 2023). The section on Preliminary matters in the CPR provides:

#### **PRELIMINARY**

##### **1. Citation and commencement.**

- (1) These Rules may be cited as the Supreme Court Civil Procedure Rules, 2022.

- (2) These Rules shall come into operation on such date to be appointed by the Rules Committee by notice published in the Gazette.

##### **2. Application of Rules.**

- (1) Subject to paragraph (4), these Rules shall —

(a) apply to all civil proceedings commenced in the Court on or after the date of commencement of these Rules;

(b) not apply to civil proceedings commenced in the Court prior to the date of commencement of these Rules **except where**

— (i) a trial date has not been fixed for those proceedings;

or

(ii) a trial date has been fixed for those proceedings and that trial date has been adjourned.

- (2) In the case of civil proceedings -

(a) referred to in paragraph (1)(b)(i), the claimant must fix a date, time and place for a case management conference under Part 27 after a defence has been filed and give all parties at least twenty-eight days' notice of the conference; and

(b) referred to in paragraph (1)(b)(ii), an application to adjourn a trial date is to be treated as a pre-trial review and these Rules apply from the date that such application is heard;

(3) Where in proceedings commenced before the date of commencement of the Rules, the Court has to exercise its discretion, it may take into account the principles set out in these Rules and, in particular Part 1 and Part 25.

(4) These Rules shall not apply to —

(a) bankruptcy and insolvency proceedings, including winding up of companies;

(b) family proceedings except proceedings under the Child Protection Act (Ch. 132);

(c) probate proceedings except contentious probate proceedings as provided for in Part 63;

(d) proceedings in which the Court is acting as a Prize Court;

(e) any other proceedings in the Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.

3. Revocation.

The Rules of the Supreme Court (S.I. No. 48 of 1978) are hereby revoked.

4. Savings and transitional.

Notwithstanding rule 3, proceedings commenced in the Court prior to the commencement of these Rules, to which these Rules in accordance with rule 2(1)(b) do not apply, shall continue under the Rules of the Supreme Court (S.I. 48 of 1978).

[EMPHASIS SUPPLIED]

[19.] Prior to the commencement of the CPR, the governing rules were the Rules of the Supreme Court (R.S.C. 1978, as amended) ('RSC'). The RSC was revoked by the CPR: Preliminary Section 3, CPR. Therefore all civil proceedings commenced on or after the commencement date, viz, March 1, 2023 are to be commenced in accordance with the CPR.

[20.] An issue raised on the coming into effect of the CPR is the status of those matters commenced prior to March 1, 2023. The rules provide for a savings and transitional clause for those matters which had commenced prior to March 1, 2023 if those matters had already had a fixed trial date and proceeded to trial on the date fixed (Preliminary Section 4, CPR). Those matters were to "continue under the Rules of the Supreme Court (S.I. 48 of 1978)". However, if the trial date was adjourned then the new rules, the CPR, applied.

[21.] For matters in transition, for those commenced prior to March 1, 2023 but which had no fixed trial date or where the fixed trial date was adjourned, those matters were to *continue* under the CPR.

[22.] Practice Direction 9 of 2023 provides clarification as to the application of CPR 2022. Practice Direction 9 of 2023 was made pursuant to Rule 4.2 CPR 2022. It directs that if an application or new document is filed on or after March 1, 2023, that application or new document must comply with the CPR even if the civil proceedings commenced prior to March 1, 2023. These principles were reviewed and reiterated by this court in *Stefanie Ann Schaffer et al v Clayton Patterson Smith et al* CLE/GEN/00708.

[23.] Practice Direction 9 of 2023 provides

1. Introduction

1.1 This practice direction clarifies the application of the Rules to proceedings which were commenced prior to the commencement date.

2. Civil proceedings commenced prior to the commencement date and a trial date has not been fixed for those proceedings

2.1 The Rules apply to proceedings commenced prior to the commencement date where a trial date has not been fixed for those proceedings.

2.2 Any **new interlocutory application** which has to be made or any **new document** which has to be filed, including the Defence, must comply with the Rules.

2.3 A party may apply to a Judge by Notice, prior to the convening of the CMC required under 2(2)(a) of the Rules, for directions in respect of any proceedings commenced prior to the commencement date where a trial date has not been fixed for those proceedings.

3. Interlocutory applications filed prior to the commencement date but which have not been heard by the Court

3.1 Where the Rules apply to an application which had been filed with the Court prior to the commencement date but not heard by the Court, **the parties will not be required to file new applications** and the Court may proceed to determine the applications on the documents already filed with the Court.

3.2 The Court in managing the hearing of the interlocutory application may permit the parties to file any additional material which may be required for the application to be properly considered where the Rules now apply.

[EMPHASIS SUPPLIED]

[24.] Practice Direction 9 of 2023 serves to facilitate the transition of matters started under one regime and which are to continue under a new regime. Notably, under Practice Direction 9, only *new documents* (documents filed on or after March 1, 2023) are to be filed in compliance with the CPR. Specifically, in interlocutory proceedings, parties are not required to file new applications although a court may give directions to file additional material so that extant applications could be determined under the CPR.



[25.] The essence of the preliminary provisions of the CPR and of Practice Direction 9 of 2023 is to facilitate transition without upheaval or undue procedural burdens that could delay and defeat extant matters. It seems to me that the transitional provisions in the rules serves to recognize documents filed under the old rules pursuant to the then governing provisions. That such documents would remain valid and effective after the new procedural rules is expressly contemplated in provisions that provide for the court to hear interlocutory matters without requiring the refiling of documents and for the court to have case management conferences or directions hearings in matters proceeding to trial. The transitional provisions facilitate continuity and mitigate costs and delay as a result of procedural changes.

[26.] Part 8 CPR deals with “How to start proceedings”. To accept the Defendants’ arguments could lead to the conclusion that for every matter that did not make it to a trial date, the parties would be required to restart the proceedings under one of the new initiating forms under Part 8 CPR. It is difficult to see how such a consequence could have been intended or would be desirable under the new rules. It seems to me that the CPR has explicit provisions to the contrary. The new rules make specific provision for the transition of RSC matters to the CPR. The CPR also specifically provides that matters that do not proceed to trial on a date fixed prior to March 1, 2023, will proceed according to the procedure set out under the CPR.

[27.] The Defendants seem to suggest, by written submission, that the Claimants ought to proceed by a Fixed Date Claim Form and to serve the Defendants with “the mandatory acknowledgement of service form.” If that were to be so, it would be that the Defendants would be required to enter an acknowledgement of service to the action. In that case, that would be a new action without a resolution of the current action. Currently, it is open to a Claimant to discontinue one action and to pursue another - with all the consequences that that may entail. Consequences include incurred costs, delay, statute of limitations considerations and the possible substitution of parties. Those are consequences that a party may voluntarily decide to bear with the adoption of such a process. The CPR does *not* mandate the start of new actions for extant proceedings that did not make it to trial on a date previously fixed for trial. To impose such an interpretation on the provisions of the CPR would cause a buckling of the judicial system of seismic proportion. The provisions of the CPR provide for continuity, not a revision or abandonment, of claims.

[28.] The order of this court is in keeping with the explicit provisions and intent of the CPR. This is an action filed under the RSC and which proceeded with the requisite pleadings and responses by the Defendants as provided for under the RSC. This Court has already heard and disposed of an application by the Defendants to have the action struck

out. It would be a misconstruction of the rules, and of this Court's order, to require the Claimant to reconstitute and initiate his cause anew under the CPR.

[29.] The objection on the procedural point is misconceived and is dismissed.

## **Issue 2 – Merger of rights**

Whether the Claimant can pursue the remedies sought after obtaining a judgment on the mortgage in another action, or whether all rights have merged into the judgment, extinguishing the mortgage as a basis for further relief.

### ***Submissions***

[30.] The Defendants argue that once the Claimant obtained a judgment for the mortgage debt, all rights under the mortgage merged into the judgment. The Defendants submit that the Claimant cannot seek possession, appointment of a receiver, or sale of the property under the mortgage because the mortgage has been extinguished and that any further relief must be sought under the judgment, not the mortgage.

[31.] The Defendants also consider this Court's earlier ruling and posit the following:

The Court (paragraph 89 above) found that the Claimant is not barred from proceeding in this action (the 2022 action) to secure relief not previously sought or granted in the 2011 action. But such relief must be claimed under processes connected with the Judgment and not the Mortgage, as the Mortgage is extinguished. Any and all claim for relief by the Claimant must now be under or by way of the Judgment and not the Mortgage. This point of no right under the Mortgage after the judgment is obtained for the mortgaged money and merger takes place is clearly driven home on a clear understanding of the meaning and significance of Section 21 (1), which says a mortgagee, where the mortgage is made by deed, shall, by virtue of the Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely): 1) a power, when the mortgage money has become due, to sell the mortgaged property and 2) to appoint a receiver of the mortgage property of any part of it. The fact is there is no mortgaged money any longer, it having been merged into the Judgment, let alone any mortgage money to become due. Clearly, the power referred to under Section 21 has to do with a mortgage or mortgagee under a mortgage where there has not been a merger of the mortgage or of the mortgaged money in a judgment. This position is in line with the finding of the Court that the Claimant must look to its judgment, and not the Mortgage, which has merged into the Judgment. This line of reasoning is also clear from the fact that the Court has found that there is no claim whatsoever based upon the Judgment of the Claimant.

[32.] The Claimant submits that the doctrine of merger does not prevent a mortgagee from seeking possession or sale of the property or the appointment of a receiver after obtaining a judgment for the debt. The Claimant submits that different remedies can be pursued in separate actions and that the Defendants' arguments on merger have already been considered and rejected by the court.

### ***Law and Analysis***

[33.] It seems to me that much of the Defendants' submissions are a reiteration of submissions made in the earlier hearing. To that extent this court has already considered and pronounced upon those submissions. At paragraphs 30 to 34 of the November 16, 2023 ruling, this court opined:

30. I accept that the principle of law is as extracted from *Virgin Atlantic Airways Ltd. v. Zodiac Seats UK Ltd.* (2013) UK SC 46, at paragraph 17 above and in Halsbury's Laws of England, 3<sup>rd</sup> Edition, Volume 22 at paragraph 1661. The doctrine of merger "treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right [is] a right upon the judgment."
31. The doctrine provides that where judgment has been given in an action, the cause of action merges in that judgment so that the judgment stands in its place. Having moved on the cause of action for relief and having received a judgment in relation to that relief, the cause of action is said to be merged in the judgment. I believe that the effect of the principle is that the party with the judgment must now have recourse to the judgment. The cause of action has been adjudicated upon and the party's rights then flow from the judgment.
32. A consequence of the doctrine of merger is that a party having received judgment on a cause of action in one suit, cannot revisit the same cause of action in a subsequent suit to get another judgment for the same loss. This is sometimes referred to as cause of action estoppel.
33. I also accept the principles as set out in **Commonwealth Caribbean Property Law 2<sup>nd</sup> edition**. A mortgage is, to my mind, a specialty contract. A mortgagee may claim one of several reliefs under the contract on breach of the contract. A mortgagee may sue for any or all of the reliefs in one suit or in subsequent suits. It is to be noted that, of course, if the mortgagee forecloses, then that extinguishes the other remedies. That principle is not at odds with the doctrine of merger. It seems to me that a mortgagee can go after his contractual reliefs in separate suits. However, once the mortgagee has obtained judgment for a certain relief, then the mortgagor is not entitled to go after that same relief in a subsequent suit.

34. In this case, the Claimant has been at pains to indicate that the reliefs sought in the 2022 action include vacant possession and a declaration of the right to exercise the power of sale. I find that the Claimant is not estopped from pursuing these reliefs. These reliefs were not sought in the 2011 action nor pronounced upon. The Claimant is entitled to pursue these reliefs in the 2022 action.

[34.] It is in this context that this Court concluded at paragraph 89:

89. I find that the Claimant is not barred from proceeding in this action (the 2022 action) to secure relief not previously sought or granted in the 2011 action. The Court will exercise its power to strike out that part of the pleading that is an abuse of the process of this court.

[35.] The law is that the mortgagee has a right to pursue its contractual and statutory remedies separately. The remedies are “both concurrent and cumulative.” In summary, a mortgagee who has obtained a judgment on the mortgage debt, unless constrained by contract or statute, is entitled to pursue further remedies under the mortgage. The rights under the mortgage do not merge into the judgment. This would be contradictory to the remedies provided for under Section 21 of the Conveyancing and Law of Property Act, Cap. 138, which is a section relied upon by the Defendants.

[36.] Obtaining a judgment does not extinguish the mortgage. A mortgagee retains the right to enforce the security and this includes taking possession or exercising the power of sale. The exception to the principle of pursuing the remedies separately relates to the remedy of a foreclosure [**Commonwealth Caribbean Property Law 2<sup>nd</sup> edition by Gilbert Kodilinye**]. By that option, the mortgage term merges into the fee simple for the title to pass. Therefore, it is at that point that the mortgage is extinguished. Until then, that is, until a foreclosure, the mortgagee’s separate remedies under the mortgage remain available.

[37.] The Defendants’ objection on this substantive point is dismissed.

### **ISSUE 3 – Mortgage relief sought by the action**

Whether the Claimant is entitled to the remedies sought.

#### **THE ACTION**

[38.] I have found that the Claimant is not procedurally-barred and that the action is properly continued before me. In its earlier ruling, this Court found that the mortgagee

having pursued a claim in damages, could no longer pursue same by way of new action. However, the mortgagee is not estopped from pursuing its other remedies. This is made explicit in this court's earlier ruling. The mortgagee is now before the court in pursuit of those other remedies. The objections by the Defendants are the discreet points of law which I have addressed above. Those objections are rejected for the reasons given.

[39.] The application is for relief filed by way of Originating Summons filed on June 29, 2022 and is supported by the evidence of Roneika Rolle by affidavit filed on September 6, 2022. The affiant avers, in part:

1. ...

2. ...

3. I make this Affidavit in support of the relief prayed for in the Plaintiff's Originating Summons filed herein on the 29th day of June, A.D., 2022 (the "Originating Summons").

4. The First Defendant is and was at all material times a customer of the Plaintiff and is indebted to the Plaintiff pursuant to a Demand Loan (the "Facility") granted by the Plaintiff to the First Defendant.

5. The Second Defendant is and was at all material times a Guarantor to the Plaintiff of the First Defendant's obligations to the Plaintiff pursuant to a written Guarantee made the 7th day of August, A.D. 2009 between the Plaintiff and the Second Defendant (the "Guarantee").

6. The Facility was secured by an Indenture of Mortgage from the First Defendant to the Plaintiff made on the 5th day of January, A.D. 1996 (hereinafter referred to as "the Mortgage") over real property more particularly described in the Schedule of the said Originating Summons as the Mortgaged Property. There is now produced and shown to me true copies of the Mortgage which is annexed hereto at Tab 1 of Exhibit "R.R. 1".

7. The Facility was also secured by a Debenture from the First Defendant to the Plaintiff made on 16th day of March, A.D., 2004. There is now produced and shown to me true copies of the Debenture which is annexed hereto at Tab 2 of Exhibit "R.R. 1".

8. Under the Guarantee the Second Defendant guaranteed the satisfaction and repayment of the First Defendant's obligations to the Plaintiff under the terms of the Guarantee up to the sum of \$546,000.40. There is now produced and shown to me a true copy of the Guarantee which is annexed hereto at Tab 3 of Exhibit "R.R. 1".

9. The First Defendant and its tenants and the employees/agents of the said tenants are the only people in possession of the Mortgaged Property.

10. In breach of the conditions of the Mortgage and the Guarantee, the First and Second Defendants have failed to repay the indebtedness under the Facility to the Plaintiff in the agreed terms and have fallen into arrears there under.

11. The Defendants were subsequently notified of their said breaches by letters from Counsel for the Plaintiff to the Defendants dated the 13th day of March A.D., 2019 and 10<sup>th</sup> day of March, A.D. 2022 (the "Demand Letters"), and were advised that should payment of the debt not be satisfied within Thirty (30) days, legal proceedings might be taken against them to recover the debt without further notice. There is now produced and shown to me a true copy of the Demand Letters which are annexed hereto at Tab 4 of Exhibit "R.R. 1".
12. The Plaintiff obtained an Appraisal Report dated the 17th day of June, A.D., 2022 (the "Appraisal") of the Mortgaged Property from Bahamas Realty ...
13. The First and Second Defendants have failed and/or refused to make current the Facility despite requests made by the Plaintiff to the First and Second Defendants. The First and Second Defendants have refused and continue to refuse to voluntarily vacate the Mortgage Property so as to permit the Plaintiff to exercise its power of sale over the Mortgaged Properties pursuant to the terms of the Mortgage.
14. The First Defendant is indebted to the Plaintiff in the amounts hereinafter appearing and the Second Defendant is liable for the equivalent sum owed by the First Defendant in accordance with the terms of the Guarantee.

#### PARTICULARS

...

15. The amounts stated herein remain wholly unsatisfied together with accrued interest and late fees, as set out in the above particulars, and together also with interest and late fees which continue to accrue as aforesaid.
16. The Plaintiff has not received nor to my knowledge, information and belief has any other person by the Plaintiff's order or to the Plaintiff's use received the sums in or any part thereof stated in Paragraph 14 above to be due to the Plaintiff or any security other than the Mortgages or anything of value in or towards satisfaction of the sums.
17. In addition, the First Defendant may also be in arrears with respect to real property taxes on the Mortgaged Property which would represent a contingent liability of the Plaintiff. The Plaintiff has not; however, been able to ascertain whether there are in fact real property taxes outstanding.

#### Receivership

18. The First Defendant is the equitable owner in fee simple of the Mortgaged Property, with the legal title being conveyed to the Plaintiff by the Mortgage.
19. The Mortgage contain provisions for the appointment of a Receiver.
20. The Plaintiff seeks to appoint a Receiver as provided by the Mortgage and the statute laws of The Bahamas in accordance with the provisions of Section 139 of the Companies Act.

21. Any Receiver appointed, will have expertise in acting as a Receiver-Manager.
22. ...

[40.] The evidence of Roneika Rolle is uncontradicted. That affidavit purports to lay the foundation as to the existence of the mortgage, the contractual obligation of the parties, the default of the Defendant and the contractual entitlement of the Claimant. The sole affidavit filed by the Defendants is that of Arthur Deal filed on February 2, 2023. The factual averments set out and relied on by the Claimants in the Roneika Rolle affidavit were not directly refuted by the Defendants in the Arthur Deal affidavit. There is no dispute on the material facts relevant for this application.

[41.] In the premises, this court makes the declarations and orders sought in the terms below.

## **COSTS**

[42.] The Claimant has been successful in its action. The general rule is that the unsuccessful party should pay the costs of the successful party. Taking into account the provisions of Part 71, CPR and in particular the provisions of Rule 71.6, I find no reason to depart from the general rule. Therefore, in this matter, the Defendants shall pay the Claimant's costs, to be assessed if not agreed.

## **ORDER**

[43.] The order and directions of this Court are as follows.

### **IT IS HEREBY ORDERED THAT:**

1. The First Defendant shall, no later than November 28, 2025, yield vacant possession over ALL THAT piece parcel or lot of land numbered 8 in a plan of allotments laid out on a tract of land situate on the Northwest corner of Wulff Road and Mackey Street in the Eastern District of the Island of New Providence and bounded on the North by land now or formerly the property of William Alfred Carey and running thereon One hundred (100) feet on the East by Mackey Street and running thereon Fifty (50) feet on the South by a road reservation called and known as Rosedale Street and running

thereon One hundred (100) feet and on the West by land formerly the property of the Estate of the late Helen Lord and running thereon Fifty (50) feet which said piece or parcel or lot of land has such position boundaries shape marks and dimensions as are set out and delineated on a plan of the said land attached to a Indenture of Mortgage made the 5<sup>th</sup> day of January, A.D 1996 made between the Claimant and the First Defendant and recorded in the Registry of Records in the City of Nassau in the Island of New Providence in the Commonwealth of the Bahamas in Book 7253 at pages 206 to 214 being (the “Mortgaged Property”).

2. The Claimant is entitled to exercise the power of sale with respect to the Mortgaged Property.
3. A Receiver or Receiver-Manager be appointed in accordance with the Mortgage and/or for the purpose of receiving the revenue, whether rent, profits or otherwise, of the Mortgaged Property and all other duties as it relates to the management and/or sale of the Mortgage Property.
4. Upon the appointment of a Receiver or a Receiver-Manager, the aforesaid Receiver or Receiver-Manager:-
  - a) Be added as a signatory to each of the bank accounts maintained by the First Defendant, until such time as he is able to open and maintain bank accounts in his name as Receiver or Receiver Manager of the First Defendant;
  - b) May be at liberty to receive revenue, whether rents, profits and/or otherwise, of the Mortgaged Property;
  - c) May be at liberty to and/or be directed to sell lots of land or any part thereof comprising the Mortgage Property and/or which form assets of the First Defendant;
  - d) May be at liberty to now and in the future compromise all claims, demands and liabilities whatsoever and to settle each and every right and claim, matter or action and actions, cause and causes of action, suit debts, dues, sums of money, accounts, reckoning costs, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, demands non and that may arise any time hereafter in law or equity in respect of the property comprising the Mortgage Property and/or which form assets of the First Defendant; and to give effectual receipts and discharges pursuant to Section 26 (3) of the Conveyancing and Law of Property Act; and
  - e) May be at liberty to execute sales agreements, conveyances or other instructions relating to the sale of



the lots of land or any part thereof comprising the Mortgaged Property and/or which form assets of the First Defendant.

5. The Second Defendant shall deliver up possession of the Mortgaged Property and/or assets of the First Defendant to the Receiver or Receiver-Manager.
6. Upon the appointment of the Receiver or Receiver-Manager, the Receivership in relation to the Mortgaged Property shall continue thereafter under the direction and/or supervision of the Court with liberty to apply thereafter.
8. The Defendants shall pay the Claimant's costs of and occasioned by this action, such costs to be assessed if not agreed.

Dated this 27<sup>th</sup> day of October 2025.

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs, J.', with a stylized flourish at the end.

**Carla D. Card-Stubbs, J**  
Justice