

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

2024/CLE/gen/FP/00048

IN THE MATTER OF property comprised in a Mortgage dated the 6th day of April 2009 and a Further Charge dated the 30th day of June, 2009 between Springfield Investments Limited of the one part and Deskennie Limited of the other part and recorded in the Registry of Records in the City of Nassau in the Island of New Providence in volume 10896 at pages 383 to 389 and volume 10955 at pages 109 to 114 respectively

B E T W E E N

DESKENNIE LIMITED

Claimant

AND

**SPRINGFIELD INVESTMENTS LIMITED ANSON
SPRINGER**

Defendants

Before: The Honourable Madam Justice Constance Delancy

Appearances: Jacy Whittaker for the Claimant

No appearance for the Defendant

Hearing date(s): On the papers

RULING

DELANCY, J

Background

[1.] The Claimant commenced an action against the Defendants by way of a Fixed Date Claim and Statement of Claim filed on 18 March 2024. The Claimant sought the following reliefs:

- (a) An Order that the Defendant pay the principal sum of \$140,000; the interest on the Further Charge at the rate of 8% per annum in the amount of \$67,000;

- (b) Failing which the Defendant should be delivered possession to the Plaintiff the aforementioned property situated Lot #6, Block #2, Unit #1 Bell Channel Bay Subdivision.
- (c) And for an Order that the Defendant does pay the cost of and occasioned by this Application.
- (d) Such further or other relief as in the premises to the Court shall seem just.

[2.] The Fixed Date Claim Form and the Statement of Claim were served on the second named Defendant by affixing copies of the same on the front door of the premises believed to be his last known address on Bluefish and Polaris Drive as per paras. [4.] and [8.] of the Affidavit of Service filed on 24 May, 2024.

[3.] Documents were served on the first named Defendant by affixing copies of the same on the door of premises of Hall Johnson & Brown located at Suite 19-21 Kipling Building, A, Freeport, Grand Bahama, being the registered office of the second named defendant per para. [5.] of the Affidavit of Service filed on 24 May, 2024.

[4.] Judgment in Default by Request was granted 4 July 2024 and filed on 23 July 2024.

[5.] On 10 August, 2024 a copy of the Judgment was served by affixing a copy of the same on the entrance of the premises of the registered office of the first named Defendant, namely Simeon Brown & Co.; and by affixing a copy of the same on the entrance of the premises on Bluefish and Polaris Drive believed to be occupied by the second Defendant. (see Affidavit of Service filed 14 August, 2024).

[6.] A Writ of Fieri Facias was issued on 23rd August 2024 placing a levy on the subject property in the sum of \$216,000 being the amount granted under the judgement of 23 July 2024, marshal's poundage fees, cost of levying and all other legal incidental expenses.

[7.] The Claimant filed a Notice of Application on 16 May 2025 seeking the following orders:

1. That the property known as Lot 6, Block 2, Unit 1, Bell Channel Subdivision, Freeport Grand Bahama (the "Property"), currently owned by the Second Defendant and valued at approximately \$145,100, be conveyed and transferred directly to the Claimant, Deskennie Ltd, in full (or substantial) satisfaction of the Judgment debt of \$216,000 obtained herein on July 23, 2024, pursuant to the Court's equitable jurisdiction and/or the provisions of the Civil Procedure Rules.
2. That a Registrar of the Supreme Court (or other officer designated by the Court) be empowered to execute any deed of conveyance or other instrument necessary to vest title of the Property in the Claimant, in the event that the Defendants fail or refuse to execute such documents as directed.

3. That upon such transfer and vesting of title in the Claimant, the aforesaid Judgment debt (together with any accrued interest and costs, to the extent not exceeding the value of the Property) shall be deemed satisfied to the extent of the appraised value credited, and the Claimant shall file a satisfaction of judgment accordingly.
4. Alternatively, in the event the Court is not inclined to order a direct conveyance, an Order that the Claimant be at liberty to cause the sale of the Property by private sale (including sale to itself at a price crediting the Judgment debt) without the need for a public auction, under such terms as the Court deems just, with the proceeds (or credited value) applied to the Judgment debt and any surplus paid to the Defendants.
5. That the costs of this application be awarded to the Claimant in any event, such costs to be either deducted from any surplus proceeds or otherwise added to the Judgment debt if not satisfied, or otherwise as the Court deems just.

[8.] The Claimant supported its application with an Affidavit sworn by Arthur Parris, Jr. filed on 16 May 2025, in his capacity as director and shareholder the Claimant. The Claimant's evidence in support may be summarized as follows:

- (i) The parties entered into a mortgage agreement which the Defendants breached;
- (ii) That various demand letters were issued to the Defendants and an action commenced against them 18 March 2024;
- (iii) That the Claimant obtained a judgment in the sum of \$216,000 on 23 July, 2024 against the Defendants;
- (iv) That a Writ of Fieri Facias was issued on 24 August, 2024 and the Claimant obtained an appraisal of the property;
- (v) The Claimant is desirous of bringing the matter to a close as it has suffered loss and damage as result of the Defendant's breach.

Law and Analysis

[9.] For avoidance of doubt the Court has read and considered Claimant's submissions and the authorities cited therein.

[10.] Part 5.13 of the CPR provides for Alternative methods of service:

- (1) A party may choose an alternative method of service after taking reasonable steps to personally serve the claim form.
- (2) Where a party —
 - (a) chooses an alternative method of service; and
 - (b) the Court is asked to take any step, including the filing of a default judgment, on the basis that the claim form has been served, the party who served the claim form must file evidence on affidavit proving that it was impracticable to personally serve the defendant and that the method of

service was **sufficient to enable the defendant to ascertain the contents of the claim form.**

- (3) An affidavit under paragraph (2) must — (a) exhibit a copy of the documents served;
- (b) give details of the attempts made to personally serve the defendant;
- (c) give details of the alternative method of service used;
- (d) show that —
- (i) **the person intended to be served was able to ascertain the contents of the documents;** or
- (ii) **it is likely that he would have been able to do so; and**
- (e) **state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents.**
- (4) The **attorney for the claimant must immediately refer any affidavit filed under paragraph (2) to the Listing Office for a hearing on the papers before a judge or registrar who must —**
- (a) **consider the evidence;** and
- (b) **endorse on the affidavit whether it satisfactorily proves service.**
- (5) If the Court is not satisfied that it was impracticable to personally serve the defendant or that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the court office must fix a date, time and place to consider making an order under rule 5.14 and give at least seven days' notice to the claimant or the claimant's attorney.

[11.] The Claimant must clearly show by affidavit evidence, and the Court must be satisfied that, the claim form is likely to reach the Defendant or to come to his knowledge by the method of service adopted by the Claimant (see the Jamaican Court of Appeal case of **Insurance Company of the West Indies Limited v Sheldon Allen et al** 2011 JMCA Civ 33). The Affidavit of service stated the alternative method of service on the second named Defendant was an affixture of the Fixed Date Claim Form and the Statement of Claim to premises occupied by him after receiving information from the second named Defendant's mother.

[12.] Part 12.2(b) of CPR prohibits the granting of judgments in default in proceedings brought by way of a fixed date claim. The proceedings in the instance were commenced by a fixed date claim. The Court notes that Practice Direction No. 2 of 2024 was issued to supplement the rules with reference to contentious and non-contentious fixed date claims; however, this practice direction was not issued until the 29 July, 2024 and grants summary relief, post the granting of this Default judgement. Therefore, the Court finds that the judgment in default which the Claimant seeks to enforce is irregular.

[13.] The Claimant seeks an order from the Court to transfer the title of the property from the first Defendant to the Claimant. The Claimant submits that the Court has the power to grant such an order under Part 52.1 of the CPR which states:

- (1) Where in any cause or matter relating to any land it appears **necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.**
- (2) In this Part, “land” includes **any interest in, or right over, land.**

[14.] The Claimant submits that the Court may broadly interpret the phrase “*necessary or expedient*” under Part 52.1(1) to go beyond sale by private sale or public auction and to include transfers to creditors when the debt exceeds the value of the property. Counsel contends that the Court may follow the example of the vesting orders similar to those issued in Canadian court of British Columbia and Ontario. The CPR does not speak to transfer directly to a judgement creditor.

[15.] The Jamaican case of **Williams v. Omotoso Uswale-Nketia** JSC Suit No. 1996/W239 explored the meaning of ‘*necessary or expedient*’ as per *Campbell, J.* (under Part 55 of the CPR of Jamaica comparable to Part 52 of the CPR) at paras. [9] and [10]:

- (9) **Is there any evidence before the Court from which it can be said that the sale of the land is necessary, that is, it must be done or it is expedient or advantageous to do so. This determination will require a weighing of the reasons given for seeking the sale against the hardship that such a sale will create for the debtor.**
- (10) A good starting point **is an assessment of the effect the sale will have in allowing the judgment creditor to realize the fruits of the judgment....**

[16.] The factors that a Court ought to consider when ordering a sale were posited by *Coulson, J.* (under CPR 73.10 comparable to Part 52 of the CPR) in **Packman Lucas Ltd v. Mentmore Towers Ltd** [2010] BLR 465 at paras. [27]:

27. In my judgment, **the size of the debt, and its value relative to the debt, are matters which should be taken into account in the exercise of the court’s discretion under CPR 73.10. But they are only two factors, along with the parties’ conduct, the absence of any other enforcement options and the like, for the court to weigh in the balance.** Beyond that, I do not consider that there are any rules or presumptions as to the size of the debt, or its comparative value, when dealing with an application for a charging order or an order for sale.

[17.] Counsel submits conventional execution methods have proven ineffective, despite a Writ of Fieri Facias was issued on 23rd August 2024, and the judgment remains wholly unsatisfied some nine months later. No evidence of any efforts to sell the property was adduced to support this submission.

[18.] The Affidavit in support of its application exhibited an appraisal by Churchill & Jones dated 14 May 2025 prepared for the Claimant assessed the property's current market value at

\$145,100.00, with a forced sale value of \$101,570.00. The amount claimed by the Claimant exceeds the appraised value.

[19.] Counsel drew the Court's attention the ruling of *Fraser, Snr. J.* in **Nathalie Parks v BAF Financial & Insurance** 2017/CLE/gen/1424 to persuade the Court that it ought to transfer the title of the subject property to the Claimant and bypass a private sale or sale by auction. The Court did not find this citation helpful as it focused on which party ought to broker the sale of the property and whether to grant a stay of a potential sale by the Claimant in the action.

Disposition

[20.] The Court finds that though the Claimants may have proved service. The order that it seeks for the Court to rely on is irregular and therefore is set aside *ex debito justitiae*. At the time of the granting of the Default Judgment the relief could not be sought for fixed date claims nor could a matter be heard summarily.

[21.] The Court, as a consequence, dismisses this application.

Dated the 26 day of January 2026

[Original signed and sealed]

Constance Delancy
Justice