**In the Commonwealth of The Bahamas**

**In the Supreme Court**

**Common Law & Equity Division**

**Claim No. 2023/CLE/gen/01181**

**IN THE MATTER** of the Moneylending Act, Ch. 340 of the Statute Laws of The Commonwealth of The Bahamas

**AND IN THE MATTER** of Part 62, Section II of the Civil Procedure Rules

**AND IN THE MATTER** of The Conveyancing and Law of Property Act Chapter 138 of the Revised Statue Law of the Commonwealth of The Bahamas

**AND IN THE MATTER** of the Property comprised in an Indenture of Mortgage by way of a Mortgage dated 11th day of April, A.D., 2006 and made between A-plus Enterprises Limited and The Bank of The Bahamas Limited

**AND IN THE MATTER** of the Property comprised in an Indenture of Further Charge dated 9th day of November, A.D., 2009 and made between A-Plus Enterprises Limited and Bank of The Bahamas Limited

**AND IN THE MATTER** of the Property comprised in an Indenture of Guarantee dated 11th day of April A.D., 2006 and made between Freddie Russell Smith, the Guarantor and Bank of The Bahamas Limited

**AND IN THE MATTER** of the Property comprised in an Indenture of Guarantee dated the 9th November, A.D., 2009 and made between Freddie Russell Smith, the Guarantor and The Bank of The Bahamas Limited

**Between:**

**BAHAMAS RESOLVE LIMITED**

Claimant

AND

**A-PLUS ENTERPRISES LIMITED**

1st Defendant

AND

**FREDDIE RUSSELL SMITH**
(The Guarantor)

2nd Defendant

Before: The Honourable Justice Darron D. Ellis

Appearances: Nadia Wright with Caramel Cooper for the Claimant
Ryan Brown for the Defendants

Dates October 1, 2025

DECISION

**Mortgages — Fixed Date Claim — Limitation — Written acknowledgement — Email Acknowledgement Restarting Limitation Period — Limitation Act 1995 Sections 32 and 38 — Uncontroverted Affidavit Evidence — Summary determination at Fixed Date Claim hearing — Judgment for Claimant with damages to be assessed.**

Proceedings were commenced by Fixed Date Claim seeking judgment for monies owed under a 2006 mortgage and further charge. The Defendants' attorney admitted liability but argued that the action was statute-barred. The Claimant relied on an email acknowledgement dated September 6, 2020, in which the 2nd Defendant admitted to having stopped payments since January 2012. The Claimant filed extensive affidavit evidence, which remained uncontroverted, as the Defendants filed no affidavit in reply before the hearing and the Court's decision.

1. Upon hearing a Fixed Date Claim in accordance with the Supreme Court Civil Procedure Rules 2022 (CPR), a court has jurisdiction to determine a claim on affidavit evidence where the material facts are not substantially in dispute and no oral evidence is required and where liability is admitted or established on the affidavit evidence: **Hasheba Development Co Ltd v Petroleum Corporation of Jamaica Ltd** [2020] JMCC Comm 17; **Agnes Danzie et al v Cecile Anthony (Saint Lucia)** SLUHCVAP2015/0009; Part **27.2 Civil Procedure Rules** relied upon.

2. For the purposes of section 38 of the Limitation Act, a signed written acknowledgement of a subsisting debt made by the debtor has the effect of causing the limitation period to run afresh from the date of acknowledgement. An acknowledgement need not admit the precise sum due and may coexist with a dispute as to quantum: **Bradford & Bingley plc v Rashid** [2006] UKHL 37; **Dungate v Dungate** [1965] 1 WLR 1477 applied.

3. In modern commercial practice, an email bearing the sender's name or other indicia of authentication may constitute a signed written acknowledgement for the purposes of the Limitation Act, provided it objectively recognises the existence of a subsisting debt: **I.D.H. Diamonds NV v. Embee Diamond Technologies Inc., 2017 SKQB 79; Johal v Nordio** 2017 BCSC 1129; **Electronic Communications and Transactions Act (ECTA)** Ch. 337A relied upon.

**Held**: The Claimant's Affidavit evidence proved that the Defendants were in breach of the mortgage agreement, and the Defendants' failure to file an affidavit in reply meant that the Claimant's evidence stood unchallenged. The email dated September 6, 2020, constituted a written acknowledgement of a subsisting debt within sections 38 and 39 of the Limitation Act, thereby causing the limitation period to run afresh from that date. The Claim, having been filed within the revived limitation period, was not statute-barred. Upon the Defence of the Defendants acknowledging the debt, counsel for the Defendants' admission and upon the evidence in the Claimant's affidavit, including the email admission of the 2nd Defendant, Judgment is therefore entered for the Claimant on liability, with damages to be assessed.

**Ellis J**

[1.] These proceedings concern a mortgage enforcement claim brought by a Fixed Date Claim filed on December 6, 2023, seeking judgment for monies due and owing under a mortgage dated April 11, 2006 and a further charge dated November 9, 2009. The Claimant, Bahamas Resolve Limited, is the assignee of the original lender.

[2.] A Defence was filed on February 23, 2024. The Defence acknowledges default on the loans but posits that the defaults are outside the limitation period.

[3.] A Reply to the Defence was filed on March 20, 2024, where the Claimant contends that paragraphs 1b and 1c of the Defence are an admission to the claim and that the defaults are not outside the scope of the limitation period.

[4.] Most of the facts which I now state are uncontroverted and agreed. To the extent that there is any departure from the agreed facts, then what is expressed must be taken as positive findings of fact.

**Introduction and Background**

[5.] By a Mortgage dated April 11, 2006, the 1st Defendant borrowed the sum of $360,000.00 from Bank of The Bahamas Limited. The Mortgage was secured over Lot 40 in the Coral Lake Subdivision and was guaranteed by the 2nd Defendant. The Defendants covenanted to repay the sum advanced, together with interest and charges, by monthly instalments.

[6.] On November 9, 2009, the 1st Defendant obtained a further charge for the advance of $90,000.00, again guaranteed by the 2nd Defendant. As is common in such instruments, the further charge incorporated the terms of the principal mortgage and treated advances under both instruments as part of a single secured indebtedness.

[7.] By Deed of Transfer of Mortgages dated September 18, 2017, and recorded in Book 13012 at pages 404–426 at the Registry of Records, the original lender transferred its

mortgage portfolio, including the 1st Defendant's facilities, to the Claimant. From that date, the Claimant became the mortgagee and the beneficiary of the guarantees.

[8.] The facts show that the Defendants fell into arrears and that the indebtedness remained unpaid despite the Claimant's efforts to negotiate and restructure the borrowing. A statement of account exhibited in the Claimant's evidence reflects a total principal and interest balance of $849,819.88.

[9.] By the Fixed Date Claim, the date of default is listed as October 3, 2019. Of particular significance is an email dated September 6, 2020, in which the 2nd Defendant expressly acknowledged that he had "stopped making payments since January 2012" and recognised the existence of the arrears. It is this communication which lies at the heart of the limitation analysis.

[10.] Counsel for the Defendants admits receipt of the funds but says that the claim is statute-barred and therefore Judgment should not be entered. When the matter came on for hearing, counsel for the Defendants did not dispute liability for the sums advanced or the validity of the security instruments. The Defendants relied on a limitation defence, contending that the action was commenced outside the statutory period prescribed by the Limitation Act 1995.

[11.] The Claimant's answer to that contention is that the applicable limitation period is 12 years and that the Defendants made a written acknowledgement of indebtedness on September 6, 2020, in which they admitted that no payments had been made since January 2012. The Claimant argues that the 12-year limitation period had not expired. In any event, this acknowledgement, made in writing by the Defendants, restarted the limitation period for the purposes of the Act.

[12.] The Claimant is seeking judgment in the principal sum of $849,819.88 plus interest, and possession of lot 40, and that the said mortgage be enforced by sale.

[13.] Having heard the submissions of counsel, on October 1, 2025, the Court delivered an oral ruling at the conclusion of the hearing in which it rejected the limitation defence and entered judgment for the Claimant, with damages to be assessed. This written judgment now sets out the Court's reasons.

## ISSUES

- Whether the Claimant's cause of action is statute-barred, having regard to the email sent by the 2nd Defendant on September 6, 2020 and whether that email constitutes

a written acknowledgement of the debt within sections 38 and 39 of the Limitation Act so as to restart the limitation period?

- If the claim is not statute-barred, is the evidence in the affidavit of the Claimant sufficient to enter judgment in light of the Defendants failing to file an affidavit in reply?

**Evidence**

[14.] The Claimant relied on two affidavits in support of the Fixed Date Claim:

- The Affidavit of Llewellyn Owen, sworn January 28, 2025; and
- The Affidavit of Denise Newbold, sworn January 15, 2025.

[15.] No affidavit in reply was filed by the Defendants at the time of the hearing. The Claimant's evidence was therefore uncontroverted.

**Affidavit of Llewellyn Owen**

[16.] Mr Owen is the Claimant's Recovery Manager. In his affidavit, he explains the history of the borrowing and the Claimant's status as assignee of the mortgage. He confirms that by the Deed of Transfer dated September 18, 2017, the Claimant acquired the Defendants' delinquent mortgage loans from Bank of The Bahamas Limited, and that the transfer was duly recorded at the Registry. He notes that the Defendants have not made a payment since this transfer.

[17.] Mr Owen confirms the mortgage in the sum of $360,000.00 and the further charge in the sum of $90,000.00, each guaranteed by the 2nd Defendant, and exhibits copies of those instruments together with the guarantees. He highlights relevant provisions of the mortgage and further charge, including the clauses which (i) disapply certain statutory restrictions on the exercise of the power of sale, and (ii) treat arrears of interest as part of the principal sum secured.

[18.] Mr Owen deposes that the Defendants have not made the agreed monthly payments at least since the date of the transfer of the mortgages to the Claimant, and that they have refused to enter into reasonable repayment arrangements despite the Claimant's efforts to negotiate. He states that the Defendants acknowledged their indebtedness to the Claimant in email correspondence, and he exhibits that correspondence as "LO-4". Specifically, he exhibits the email dated September 6, 2020, in which the 2nd Defendant admits that he ceased making payments on the mortgage in January 2012.

[19.] Mr Owen also exhibits the demand letters issued to each Defendant and a detailed statement of account for the loan facilities, showing that a total of $849,819.88 is

outstanding. He concludes by asserting that the Claimant is entitled to recover that sum and to seek vacant possession and a sale of the mortgaged property.

**Affidavit of Denise Newbold**

[20.] Ms Newbold is a legal assistant at Providence Law, the Claimant's attorneys. In her affidavit, she describes the course of correspondence between the Claimant's attorneys and the Defendants' attorney. She explains that the Defendants' attorney raised queries regarding the loan accounts and sought additional documents, and that the Claimant's attorneys provided those documents and responses.

[21.] Ms Newbold notes that although there were references by the attorney to difficulties accessing the e-filing portal, the Court had not dispensed with personal service, and the Claimant's attorneys took steps to ensure that all necessary documents were available to the Defendants' attorney. Her affidavit is directed principally to matters of service and communication and confirms that the Claimant has acted transparently and cooperatively in the conduct of the proceedings.

**Uncontroverted Evidence**

[22.] Crucially, at the time the limitation issue was argued and determined, no affidavit in reply had been filed by or on behalf of the Defendants. As a result, the Claimant's affidavit evidence stood wholly unchallenged. In particular, the Defendants did not dispute the authenticity or validity of the mortgage documents, the Deed of Transfer, the demand letters, the statement of account, or the email acknowledgement dated September 6, 2020. It must be noted that on December 18, 2024, this matter came before this Court, and the Court adjourned because no affidavits had been filed in support or opposition to the fixed-date claims. Both parties were directed to file and serve affidavits and written submissions in support of their positions. At the hearing on October 1, 2025, the Claimant was the only party to file affidavits in this matter.

[23.] In the circumstances, the Court is entitled to accept the Claimant's affidavit evidence as true unless it is shown to be inherently improbable and untrue. The Court finds nothing in the Claimant's evidence that is improbable, untrue, or contradicted by any contemporaneous documentation.

**Submissions of the Claimant**

[24.] On behalf of the Claimant, counsel submitted that the Defendants obtained multiple loans from the Claimant, which remain wholly unpaid. It was emphasised that, in their Defence, the Defendants expressly acknowledge receipt of the loan monies and do not plead full repayment and satisfaction of the mortgage. Accordingly, there is no live factual dispute as to the existence of the debt or the failure to discharge it.

[25.] Counsel further submitted that the Defendants' reliance on the Limitation Act is misconceived. The Defence proceeds on the erroneous footing that the applicable limitation period is six years and that, as a result, both the principal sums and accrued interest are statute-barred. Counsel argued that this position is unsustainable in law. The loans in question were secured by a mortgage, and the applicable limitation period is therefore twelve years pursuant to section 32 of the Limitation Act, which governs actions to recover money secured by a mortgage.

[26.] It was submitted that the relevant advances were made on April 11, 2006, and November 9, 2009. Even if the Court were to accept, for the sake of argument, that the cause of action accrued at the earliest possible date in November 2009, the twelve-year limitation period would not have expired until November 2021. The claim would therefore not have been statute-barred prior to that date.

[27.] In any event, counsel relied on the 2nd Defendant's email dated September 6, 2020 (before the 12-year expiry date), which was said to constitute an unequivocal written acknowledgement of the debt within the meaning of sections 38 and 39 of the Limitation Act. That acknowledgement reset the limitation period as of that date. On this basis, when the Claim was filed on December 1, 2023, no more than approximately three years had elapsed within a renewed twelve-year limitation period.

[28.] Counsel also drew the Court's attention to the express terms of the mortgage, in particular the clause providing that arrears of interest are to be treated as part of the principal sum secured. It was submitted that, by operation of section 32(5)(b) of the Limitation Act, interest secured in this manner is recoverable within the same limitation period as the principal debt.

[29.] Finally, counsel submitted that, on the evidence before the Court—which stands uncontroverted—there is no factual or legal basis upon which the Court could properly conclude that the Claimant's cause of action is statute-barred. The limitation defence, it was argued, should therefore be rejected in its entirety.

[30.] In light of the foregoing, counsel submitted that the Claimant has established its entitlement to judgment on the Fixed Date Claim. The Defendants' Defence raises no triable issue as to liability, acknowledges receipt of the loan monies, does not plead repayment, and advances a limitation defence which is unsustainable both in law and on the evidence. There is accordingly no basis upon which the Claimant should be put to proof at trial on the issue of liability.

[31.] Counsel therefore invited the Court to enter judgment in favour of the Claimant on the Fixed Date Claim, with damages to be assessed, together with interest and costs, such costs to be assessed if not agreed.

**Submissions on Behalf of the Defendants**

[32.] On behalf of the Defendants, counsel accepted that the Claimant advanced monies to the Defendants pursuant to the mortgage and further charge and further accepted that the principal sums have not been repaid. However, it was submitted that the Limitation Act nevertheless defeats liability.

[33.] Counsel argued that the Claimant's cause of action accrued more than six years prior to the commencement of these proceedings and is therefore statute-barred. It was submitted that the relevant breach occurred when the Defendants first failed to make payment in accordance with the contractual repayment terms, which, on the Claimant's own case, arose well before the institution of the claim on December 1, 2023. On this analysis, the limitation clock began to run at the date of default, and the Claimant's right of action expired long before these proceedings were brought.

[34.] While acknowledging that the loans were secured by a mortgage, counsel submitted that the Claimant's characterisation of the claim as one attracting a twelve-year limitation period was overstated. In the alternative, counsel contended that even if a twelve-year limitation period were applicable, the claim would nevertheless be out of time in the absence of a valid statutory acknowledgement.

[35.] Counsel questioned whether the email dated September 6, 2020, could properly be construed as an acknowledgement of the debt within the meaning of Sections 38 and 39 of the Limitation Act. It was submitted that the email does not amount to a clear and unequivocal admission of present liability.

[36.] Accordingly, counsel for the Defendants invited the Court to find that the Claimant's claim is statute-barred.

**The Law and Authorities**

[37.] A Fixed Date Claim commenced the proceedings. Under the CPR, specific categories of claims, including mortgage and possession matters, are commenced in this fashion. The Fixed Date Claim procedure is akin to Part 8 proceedings under the English CPR. It is intended for cases where the issues can be determined on affidavit evidence and legal submissions without the need for extensive pleadings or oral evidence.

[38.] In the context of Fixed Date Claims, the first hearing is designed to allow the Court to identify the issues, consider the evidence, and, where appropriate, resolve the matter in whole or in part without further procedural steps as per **Hasheba Development Co. Ltd. v Petroleum Corporation of Jamaica Ltd.** [2020] JMCC Comm 17 and **Agnes Danzie et al v Cecile Anthony (Saint Lucia)** SLUHCVAP2015/0009.

[39.] CPR Part 27.2 provides that when a Fixed Date Claim is issued, the Court has all the powers of a case management conference and that the Court may treat the first hearing as the trial of the claim if it considers that the Claim could be dealt with summarily.

[40.] In the present case, the Defendants, through the evidence and counsel, admitted liability for the mortgage debt. At paragraphs 1b and 1c, the Defendants, in their Defence, admit to receiving a total of $450,000 from the Claimant and do not plead that these funds were fully repaid. Furthermore, a review of the hearing transcripts shows that Counsel for the Defendants admits liability on behalf of the Defendants. See the transcript of the Hearing dated October 1, 2025, starting at page 4, lines 14 – 31, which reads as follows:

> **Mr Brown (attorney for Defendants):** *So, how it is, is The Limitation Act, how it works is once the amount is owed, and it wasn't paid, meaning that the interest wasn't paid pursuant to the monthly payment schedule, then the action started there, the right to bring actions started from that date.*
>
> *In this matter, there is evidence from the defendant that the interest wasn't paid on this and the – probably even the principle wasn't paid from this matter was – from the claimant Bahamas Resolve Limited took over this book of business from the Bank of The Bahamas in 2014 ……*

**Pg 5. LINES 23 – 32**

> **Mr Brown:** ***That may be a point to consider in arguments, but the point still remains, which portion of this claim in determining the day of breach, what is the amount owed?*** *That is one of the questions this Court has to determine.*
>
> **The Court:** *Let me pause you right there. You may have an argument on that, so to me the issues between the parties falls to the amount.*
>
> **Mr Brown:** ***Correct, we're not disputing*****.....**

**Pg 6. LINES 1 -8**

> **The Court:** *So I understand that, and I appreciate that Mr Ryan, so the issue isn't about liability, and I'm glad you said that makes all this easier, right? The issue isn't about liability the issue is about the extent of the liability.*
>
> **Mr Brown:** ***The issue is the extent of the liability and of course if The Limitation Period Act is –***

**Pg. 12 LINES 1 -7**

> **The Court:** *Because you are not taking the position that we (the Defendants) have repaid everything that we should have repaid. There is no affidavit evidence saying I did not receive these loans. There is no affidavit evidence saying I repaid and satisfied these loans. That's the only way the Court can be restricted from giving judgment on liability.*

**Pg 13. LINES 1 – 4**

> **The Court:** *Mr Brown, are you saying to this Court that everything has been repaid to the Claimant?*
>
> **Mr Brown:** ***I'm not saying that everything has been paid to the Claimant.***

[41.] The main point raised, not in evidence but by oral arguments in opposition to the entry of judgment, was the question of the limitation period. No factual dispute was raised that would necessitate a trial or cross-examination.

[42.] The starting point is the statutory framework. Section 32(1) of the Limitation Act provides, in substance, that an action to recover money secured by a mortgage shall not be brought after the expiration of twelve years from the date on which the right to receive the money accrued:

> **Action to Recover Money Secured by a Mortgage or Charge or to Recover Proceeds of the Sale of Land**
>
> 32. (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover the proceeds of the sale of land, after the expiry of twelve years from the date when the right to receive the money accrued.

[43.] Section 32(5)(b) provides that where, under the mortgage, arrears of interest are treated as part of the principal, the same limitation period applies:

> (5) No action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of the proceeds of the sale of land, or to recover damages in respect of such arrears shall be brought after the expiry of six years from the date on which the interest became due: Provided that —
>
> (a) where a prior mortgagee or other encumbrancer has been in possession of the property charged, and an action is brought within one year of the discontinuance of such possession by the sub sequent encumbrancer, that encumbrancer may recover by that action all the arrears of interest which fell due during the period of

possession by the prior encumbrances or damages in respect thereof, notwithstanding that the period exceeded six years;

(b) where the property subject to the mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

[44.] Sections 38 and 39 of the Act deal with acknowledgement and part payment. It provides that if a person liable for a debt makes a part payment or acknowledges the claim in writing, and the acknowledgement is signed or otherwise authenticated so as to identify that person, the right of action is to be treated as having accrued on the date of the acknowledgement. This has the effect of restarting the limitation period. **Section 38** states:

**Acknowledgement and Part Payment**

38. (1) Where there has accrued any right of action (including a foreclosure action) to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and —

(a) the person in possession of the land or personal property, acknowledges the title of the person to whom the right of action has accrued; or

(b) in the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or any person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest, the right shall be deemed to have accrued on and not before the date of the acknowledgement or payment.

**Legal Analysis and Findings**

[45.] The Affidavit of the Claimant presents evidence of the Defendants acknowledging their debt and non-payment of the Claimant's claim. Paragraph 6 of the Affidavit of Llewwellyn Owen states:

"That the Defendants have not made the agreed monthly payments under the Mortgage at least since the date of transfer of the mortgage to Bahamas Resolve Limited. The Defendants have refused to make alternative satisfactory payment arrangements despite efforts by the Claimant to negotiate repayments with the Defendants and their representatives. The Defendants acknowledged their indebtedness to the Claimant in an email correspondence. However, further to the Defendant's inaction, the Claimant issued a written demand to each of the Defendants for payments of all sums due and owing under the loans granted under the mortgage and further charge."

[46.] Further, the email of the 2nd Defendant that was exhibited to the affidavit stated:

"Good Morning,

I hereby acknowledge that the scheduled meeting was held at Bahamas Resolve on Friday September 4th 2020 with Mr. Owen and Mr. Fountain.

The following is noted from the meeting:

1. The reiterated position is that Bahamas Resolve Limited is not mandated to mediate the resolution of any challenges raised with respect to the cleanup portfolio that comprise the debt purchased by the Government of The Bahamas,
2. That Bahamas Resolve Limited is mandated to liquidate debt obligations as part of an offline debt recovery strategy,
3. **That my formal challenge to the number of facilities that ought to be outstanding and the amount of the outstanding indebtedness is a matter that I/we have to resolve with Bank of The Bahamas who in circular fashion refers all enquiries to Bahamas Resolve. Like I said it has only been since 2009 since we have been trying to resolve the related issues.**

   **In Response to the question asked regarding what we/I think outstanding Principal amount should be, I can qualify that based on the original commitment to repay the Bank the principal sum of $355,000.00 in 240 equal installments (mortgage) payments under an amortization scheduled approved by The Bank when the credit was approved in 2005, the principle balance as of January 2012 when the payments stopped under advisement, ought to have been near $258,000.00. this is exclusive of the Further Charge of $90,000.00 taken to liquidate the Bank's duplicate deposit error that was not corrected for almost a year due to the related operational problems created when the Bank migrated to its new operating software Iflex in 2007/8.**

   A meeting is scheduled this coming week and I undertake to formally advise you further on behalf of the company, by September 11, 2020.

   Kind Regards:

   F. Russell Smith"

[47.] According to the authorities, an acknowledgement capable of restarting a limitation period must:

1. be in writing;
2. be made by the debtor or its authorised agent;
3. be signed; and
4. amount to an acknowledgement of a present subsisting liability, even if the debtor disputes the amount or seeks indulgence as to payment.

[48.] These principles are well established. An acknowledgement need not admit the precise sum due and may coexist with a dispute as to quantum as per **Dungate v Dungate**

[1965] 1 WLR 1477 at 1483 (CA). What matters is whether the debtor recognises the existence of the debt relationship. The court must construe the document objectively and as a whole as per **Bradford & Bingley plc v Rashid** [2006] UKHL 37.

[49.] In **Bradford & Bingley,** the Court gives excellent guidance at paragraph 46:

> **"46** The next three letters are the most important ones. On 26 September 2001 an advice centre wrote to Bradford & Bingley's solicitors on Mr Rashid's behalf:
>
> > "Please find attached Mr Rashid's financial statement, which clearly indicates that at present he is not in a position to repay the outstanding balance, owed to you. However, my client requests that once his financial situation is stable he will start to repay. This could be in year 2003/04. Please could you take the above into consideration and reassess this matter and of course his financial situation."
>
> **47** On 2 October 2001 Bradford & Bingley's solicitors replied:
>
> > "Our client is not willing to hold this matter without payment. Our client requires Mr Rashid's proposals for repayment. Should your client be in a position to raise a lump sum payment in full and final settlement, our client is willing to consider writing off a substantial amount of this debt."
>
> **48** On 4 October 2001 the advice centre replied:
>
> > "I have informed my client Mr M Rashid of the contents of your letter. He is willing to pay approximately £500 towards the outstanding amount as a final settlement. He is only able to afford this amount by borrowing from friends and family."
>
> The correspondence before your Lordships ends at this point. None of it was marked without prejudice. Nothing in the event was paid. It is the letters of 26 September 2001 and 4 October 2001 that Bradford & Bingley seek to rely on as acknowledgments for the purposes of the 1980 Act.
>
> **49** Eventually, on 17 June 2003, Bradford & Bingley issued proceedings claiming £15,583 plus statutory interest. The sole defence advanced was that of limitation.....
>
> 54 Although, as stated, Judge Hawkesworth and the Court of Appeal reached no decision as to whether the letters constituted an acknowledgment of Bradford & Bingley's claimed debt, it is noteworthy that Sir Martin Nourse, giving the only reasoned judgment in the Court of Appeal, held that the letter of 26 September, no less than that of 4 October, contained "an admission against interest" and was to be regarded as written without prejudice:
>
> > "In my view, the words 'the outstanding balance, owed to you' do constitute an admission that the amount of the shortfall originally specified in the letter of 14 June 1994 is owed by the defendant to Bradford & Bingley."

That notwithstanding, Mr Nugee submits that in neither letter did Mr Rashid admit that the debt claimed by Bradford & Bingley was a good one, merely that he could not at present pay, or was willing to settle for £500, whatever sum was in fact due. The letter referred only to "the outstanding balance, owed to you" (letter of 26 September) and "the outstanding amount" (letter of 4 October), in neither case acknowledging what sum was outstanding. In particular Mr Nugee submits that unless there is an admission of a definite amount due or an amount ascertainable by mere calculation, there is no acknowledgment within the statute.

55 In advancing this argument Mr Nugee seeks to reopen the issue as to what precisely was decided by the Court of Appeal in Good v Parry [1963] 2 QB 418, an issue raised and apparently resolved by the Court of Appeal's subsequent decision in Dungate v Dungate [1965] 1 WLR 1477. The relevant letter in Good v Parry discussed first the writer's proposed purchase of the house (offering £1,350 subject to contract), and continued: "The question of outstanding rent can be settled as a separate agreement as soon as you present your account." It was held not to constitute an acknowledgment of the landlord's claim for rent. Lord Denning MR said, at p 424, that the sentence meant "there may be some rent outstanding and it can be made the subject of an agreement as soon as you present your account" and concluded:

> "Such being the meaning of it, I am quite satisfied there is no acknowledgment, because there is no admission of any rent of a defined amount due, or of any amount that can be ascertained by calculation. The amount is uncertain altogether. Nor can I regard it as a promise to pay whatever amount may be found due on taking an account. The tenant clearly reserves the right to examine it and not to be bound except by separate agreement."

Danckwerts LJ, at p 425, regarded the letter as "merely … an admission that there may be some possible justified claim but no admission that there is such a debt in fact". Davies LJ thought that "the letter did not acknowledge the claim; it only acknowledged that there might be a claim".

56 The debtor's letter in Dungate v Dungate (a claim against the widow and administratrix of the claimant's deceased brother) read: "Keep a check on totals and amounts I owe you and we will have account now and then … Sorry I cannot do you a cheque yet-terribly short at the moment." Holding this to be an acknowledgment of the claim, **Diplock LJ, at p 1487, said that "an acknowledgment under this Act need not identify the amount of the debt and may acknowledge a general indebtedness, provided that the amount of the debt can be ascertained by extraneous evidence" (as had been possible there).** As for the letter in Good v Parry [1963] 2 QB 418 Diplock LJ agreed, at p 1488, that it "'did not acknowledge the claim; it only acknowledged that there might be a claim .' … [It] did not state that any rent was in fact outstanding." Russell and Sellers LJJ agreed, Russell LJ stating that the Dungate letter acknowledged "I owe you money", adding "the quantum can be established, as it has been, by extrinsic evidence".

57 Edmund Davies J, the first instance judge in Dungate v Dungate, had said, at p 1485, that the letter was:

> "a totally unqualified admission of indebtedness-the 'totals and amounts I owe you'-and it is open thereafter for the plaintiff to supplement that letter by oral evidence (as he has done) to show the amounts which his brother then owed him and the present position."

58 It seems to me that Mr Nugee may well be right in suggesting a distinction between on the one hand Lord Denning MR's (although not, I think, his colleagues') apparent view in Good v Parry [1963] 2 QB 418 that, even had the letter there admitted that some rent was due, it would not have constituted an acknowledgment because the amount was "uncertain altogether" and not able to "be ascertained by calculation" (or, as Lord Denning had said earlier, at p 424, "a mere matter of calculation from vouchers"); and on the other hand the approach taken in Dungate v Dungate, that any uncertainties as to the quantum of the admitted liability can be determined by "extraneous evidence", including if necessary oral evidence to resolve any dispute. Assume, for example, that a creditor seeks to recover an outstanding debt of £1,000 and the debtor, asserting that he has made a number of unreceipted cash payments in partial repayment, admits that he owes something but not as much as £1,000. It may be doubted whether Lord Denning would have regarded that as an acknowledgment, the precise sum owed being capable of ascertainment "by calculation", and without "separate agreement" of the parties. **Dungate v Dungate, however, appears to me clear authority for holding that it would be an acknowledgment although, had the debtor in fact admitted liability only for £500 rather than some unspecified sum short of £1,000, that, in my opinion, would constitute an acknowledgment of the claim only to the extent of £500-see Kerr J's judgment in Surrendra Overseas Ltd v Government of Sri Lanka [1977] 1 WLR 565).**

59 How, then, should one approach the letters of 26 September and 4 October in the present case? Neither letter, as Mr Nugee is bound to accept, in fact suggested any basis whatever for disputing Mr Rashid's liability for the whole of the shortfall specified in Bradford & Bingley's original letter of 14 June 1994. Indeed, as the statement of facts and issues before the House records: "There is not and never has been any dispute as to the quantum of the debt or the claimant's entitlement to obtain a judgment in respect thereof, subject to the question of limitation." Mr Nugee nevertheless submits that the letters cannot realistically be read as admitting the entirety of the claim: it would, for example, have been open to Mr Rashid thereafter to have sought to challenge the sufficiency of the sum realised by Bradford & Bingley on the sale of the property in 1991. No doubt it would. **But in my opinion each of the letters of 26 September and 4 October constituted a clear acknowledgment for the purposes of the 1980 Act.**

**60 Dungate v Dungate [1965] 1 WLR 1477was to my mind rightly decided. Acknowledgements are not confined to admissions of debts which are indisputable as to quantum as well as liability. That to my mind would be a retrograde step in the law, not least given the Law Commission's conclusion in their 2001 Report on Limitation of Actions (Law Com No 270), following an extensive consultation process, that the present distinction made by section**

**29(5) between claims for specific amounts and claims for unspecific amounts is "anomalous" (para 3.149), and their recommendation that a written acknowledgment or a part payment "irrespective of the nature of the claim, should restart the running of time" (para 3.155(1)).**"

[50.] The main question is whether the 2nd Defendant's email dated September 6, 2020 satisfies the statutory requirements for a valid acknowledgement under sections 38 and 39(a) of the Limitation Act. Section 38 provides for a fresh accrual of the right of action upon acknowledgement, while section 39(a) requires that such acknowledgement be in writing and signed by the person making it.

[51.] The email in question is plainly in writing. It was sent from an email address attributable to the 2nd Defendant, identifies him as the author, and concludes with his name. In modern commercial and legal practice, an email which is attributable to its sender and concludes with the sender's name may constitute a signed written communication for statutory purposes.

[52.] It is also significant that the Defendants did not dispute the authenticity or attribution of the email. In particular, they did not contend that the 2nd Defendant did not send the email, nor did they assert that it was unsigned or otherwise failed to meet the statutory requirements. In the circumstances, the Court is entitled to proceed on the basis that the email is genuine and attributable to the Defendants. Nevertheless, for completeness, I have considered the legal position regarding emails and electronic signatures.

[53.] Guidance may be found in **Johal v Nordio** 2017 BCSC 1129 (CanLII), where the court recognised that an email bearing the sender's name and sent from an address associated with that person may satisfy acknowledgement and statutory signature requirements. The Court in this case stated:

**"The Electronic Transactions Act (the "ETA")**

[31] The *ETA* defines "electronic signature" as:

information in electronic form that a person has created or adopted in order to sign a record and that is in, attached to or associated with the record.

[32] Counsel for Nordio argued that attaching a name to the bottom of an email is insufficient to meet the requirements of the *ETA* and that, to authenticate the email, something more akin to a digital signature is required.

[33] The legislation does not require a digital signature, and a plain language interpretation of the *ETA*'s definition of "electronic signature" weighs against such an interpretation. Instead, the statute's language seems to focus on whether the

email's sender intended to create a signature to identify him/herself as its composer and sender.

[34] A great deal of electronic commerce relies on electronic signatures in order to identify an email's sender.

[35] **As well, it is important to note that Nordio does not deny sending the emails. He also does not offer any evidence that his name, position, and contact information on the emails are inaccurate, or that he did not attach that information.**

[36] The Saskatchewan ***Electronic Information and Documents Act***, 2000, SS 2000, c. E-7.22 (*"EIDA")* is the Saskatchewan equivalent of the *ETA*. Its definition of "electronic signature" is very close to that contained in the *ETA*. The *EIDA* definition is contained in s. 3(b) and reads as follows:

> "**electronic signature**" means information in electronic form that a person has created or adopted in order to sign a document and this is in, attached to or associated with the document.

[37] In *I.D.H. Diamonds NV v. Embee Diamond Technologies Inc.*, 2017 SKQB 79, Layh J. addressed the issue of whether an email with a form of signature can, so as to extend its limitation period, constitute an acknowledgment of a debt.

[38] Layh J. begins his analysis by pointing out that, even before the existence of such statutes as the *ETA* and *EIDA,* "courts have considered an electronic signature as a valid signature simply under longstanding principles of common law." He notes that this common law development was based on analogous non-electronic deviations from ordinary handwritten signatures, such as crosses, initials, pseudonyms, and rubber stamps, which have all been accepted as valid signatures in the past (at para. 43).

[39] He goes on to state that the intent of statutes such as EIDA is to ensure that electronic signatures sufficiently meet the requirements usually imposed on a written and signed document.

[40] Ultimately, after considering the application of EIDA he concludes that the series of emails sent by an agent of the defendant, with the agent's name indicated on them, met the requirements of an "electronic signature" as defined under *EIDA*.

[41] At para. 57, he lists four requirements that were satisfied by the emails:

- the presence of some type of information on the emails;
- such information may be in electronic form;
- the information must have been "created or adopted [by the person] in order to sign a document"; and
- the information must be "attached to or associated with the document".

> [42] The very similar BC legislation, as applied to the Nordio email of August 31, 2014, shows that the signature at the bottom of it constituted the following: information, in electronic form, created or adopted by Nordio to sign the record, which was attached to that record.
>
> [43] Nordio could have refrained from attaching his name, position and contact information to the emails. However, if he had failed to do so, Mr Johal may have doubted that the emails originated with Nordio. From the beginning of their transactions, Nordio attached his name and accompanying information to his emails.
>
> [44] I find that the Nordio emails are in writing, identify Nordio as their composer, and meet the requirement of bearing Nordio's "electronic signature" for the purposes of satisfying s. 24(6)(a), (b), and (c) of the *Act*."

[54.] Similarly, the **Electronic Communications and Transactions Act (ECTA)** Ch. 337A of this jurisdiction defines a signature as:

> "electronic signature" means any letters, characters, numbers, sound, process or symbols in electronic form attached to, or logically associated with information that is used by a signatory to indicate his intention to be bound by the content of that information"

[55.] Further, sections 7, 8 and 9 of the **ECTA** provide:

> Legal recognition of electronic communication.
>
> 7. An electronic communication shall not be denied legal effect, validity, admissibility or enforceability solely on the ground that it is — (a) in electronic form; or (b) not contained in the electronic communication purporting to give rise to such legal effect, but is referred to in that electronic communication.
>
> 8. (1) Where information is required by law either to be in writing or is described as being written, such requirement or description is met by an electronic communication if the information contained in the electronic communication is accessible to, and is capable of retention by, the intended recipient. (2) Subsection (1) shall apply whether the requirement for the information to be in writing is in the form of an obligation or the law provides consequences if it is not in writing.
>
> 9. (1) Where the law requires the signature of a person, that requirement is met in relation to an electronic communication if a method is used to identify that person and to indicate that the person intended to sign or otherwise adopt the information in the electronic communication. (2) Subsection (1) shall apply whether the requirement for a signature is in the form of an obligation or the law provides consequences for the absence of

> a signature. (3) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a party, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic communication is that of such party.

[56.] It bears repeating that, as in **Johal v Nordio**, the Defendants in the present case did not dispute the authenticity or attribution of the email. In particular, they did not contend that the 2nd Defendant did not send the email, nor did they assert that it was not signed or otherwise failed to comply with the statutory requirements.

[57.] I am therefore satisfied that the email meets the formal requirements of section 39(a) of the Limitation Act. Substantively, the email acknowledges and admits the existence of a subsisting mortgage obligation by expressly stating that mortgage payments ceased in January 2012, while admitting a sum is due, thereby recognising that payments were due and outstanding.

[58.] The fact that the Defendants may dispute the amount claimed does not negate the acknowledgement. A dispute as to quantum is legally consistent with an acknowledgement that a debt remains owing.

[59.] The Claimant's affidavit evidence identifies September 18, 2017, as the date of default. The Fixed Date Claim pleads October 3, 2019, as the date of default, being the date on which demands for payment were made and not complied with. The 2nd Defendant's email of September 6, 2020, asserts that mortgage payments ceased in January 2012. Even if the Court were to proceed on the earliest possible date of breach, namely January 2012, the claim—issued on December 1 2023—would not be out of time on the basis of the applicable twelve-year limitation period governing mortgage debts, which would expire no earlier than January 2024.

[60.] In any event, the Claimant relies on section 38 of the Limitation Act as a complete answer to the limitation defence. Section 38 provides for a fresh accrual of the right of action where a person liable for the mortgage debt acknowledges the claim or makes a payment in respect of it. By virtue of section 38(1), the right of action is deemed to have accrued on the date of the acknowledgement or payment and not before.

[61.] The formal requirement for acknowledgement is that it be in writing and signed: section 39(a). The Court believes that if the last further charge was dated November 9, 2009. Applying the limitation period would have rendered the claim statute-barred by November 2021 (if the breach occurred immediately in November 2009), the Defendant, in its email, admits that the payments ceased in January 2012. The Claimant therefore relies on the September 6, 2020, email as a qualifying written acknowledgement, with the effect that time ran afresh from that date. The Defendants submit that the email merely records a dispute over quantum and does not constitute an acknowledgement of liability. I reject that submission. A communication which denies liability altogether will not constitute an acknowledgement; however, a statement which recognises that money remains owing,

even while disputing the creditor's figures, is sufficient to restart time as per **Bradford & Bingley plc v Rashid** [2006] UKHL 37.

[62.] The email in question, sent by the 2nd Defendant, records a meeting with the Claimant and states, in substance, that there remains an "outstanding indebtedness"; that the Defendants dispute the amount claimed; that the mortgage approved in 2005 was for $355,000.00, repayable over 240 instalments; that payments ceased in January 2012; and that, on that footing, the principal balance "ought to have been near $258,000.00," exclusive of a further charge. The email concludes with an undertaking to revert further "on behalf of the company," which I accept to be the 1st Defendant.

[63.] There is no dispute that the email is in writing, attributable to the Defendants, and authenticated by the sender's name. The decisive question is whether it acknowledges a subsisting debt. In my judgment, it plainly does. The email proceeds on the express premise that monies remain outstanding under a mortgage facility. The 2nd Defendant does not deny liability; instead, he accepts the existence of the debt relationship and advances a calculation of the outstanding principal balance he believes it should be.

[64.] The Defendants' challenge to the quantum of the claim and to the administration of the account does not negate the acknowledgement. The identification of an outstanding principal balance of approximately $258,000.00 is wholly inconsistent with a denial of indebtedness and amounts, objectively, to a recognition that the mortgage debt had not been extinguished.

[65.] The email is not marked "without prejudice" and does not form part of settlement negotiations. There is therefore no evidential bar to the Court's reliance upon it. Further, the affidavit evidence exhibiting the email was not met by any affidavit in reply and accordingly stands uncontroverted.

[66.] I am satisfied that the email constitutes a written and signed acknowledgement for the purposes of sections 38 and 39 of the Limitation Act, and that it caused the limitation period to run afresh from September 6, 2020. The Claim, having been commenced within that revived limitation period, is not statute-barred.

[67.] Additionally, I accept the Claimant's submission that the express terms of the mortgage provide for arrears of interest to be capitalised and treated as part of the principal sum secured. As a result, such capitalised interest is recoverable together with the principal within the applicable limitation period.

[68.] As per **West Bromwich Building Society v Wilkinson** [2005] UKHL 44 and Section 32 (5) (b), where interest is contractually capitalised and becomes part of the secured principal, it is recoverable within the same limitation period as the principal debt. Section 32(5)(b) of the Limitation Act (Bahamas) expressly preserves the recoverability of interest which forms part of the principal sum secured by a mortgage. The mortgage in question also includes this as an agreed term.

[69.] Accordingly, by operation of section 32(5)(b) and the express terms of the mortgage, both the principal sums advanced and any arrears of interest capitalised pursuant to the mortgage terms are subject to the same limitation period. The Defendants' attempt to treat interest as separately statute-barred is therefore legally unsustainable.

[70.] In any event, and independently of that conclusion, the limitation defence fails by reason of the Defendants' written acknowledgement of the debt in the email dated September 6, 2020, which had the effect of restarting the limitation period.

[71.] The Fixed Date Claim in this matter was issued on December 1, 2023, approximately three years and three months after the date of acknowledgement. That is well within the twelve-year period expiring on or about September 6, 2032. The claim is therefore clearly within time.

**Conclusion**

[72.] Having considered the pleadings, the evidence, and the submissions of counsel, the Court is satisfied that the Claimant has established its entitlement to judgment on the Fixed Date Claim. The Defendants' defence raises no triable issue as to liability. It expressly acknowledges receipt of the loan monies, does not allege repayment, and relies solely on a limitation defence which, for the reasons set out above, is without merit in law and unsupported on the facts. Furthermore, Counsel for the Defendants and the 2nd Defendant himself, via email, admitted liability.

[73.] In accordance with CPR principles governing Fixed Date Claims, where no substantial dispute of fact arises, and the Defendants having failed to disclose a viable defence, the Court is entitled to determine the claim. In such circumstances, the Court may enter judgment on liability and direct that damages be assessed at a later stage.

[74.] Accordingly, the Court enters judgment in favour of the Claimant on the Fixed Date Claim. The quantum of damages, including the precise amount due and owing under the mortgage and associated interest, shall be assessed. The Claimant is also entitled to its costs of the proceedings, such costs to be awarded in accordance with the CPR for Fixed Date Claims.

**IT IS ORDERED THAT**:

1. Judgment is entered for the Claimant on the Fixed Date Claim.
2. The Defendants are liable to the Claimant for damages arising from the unpaid loan monies secured by the mortgage.
3. The quantum of damages shall be assessed.

4. Costs to the Claimant in accordance with the CPR.

Dated this 19th day of January 2026

Darron D. Ellis
Justice