IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2015/CLE/gen/FP/00290

IN THE MATTER OF in the Matter of the Property comprised in an Indenture of Mortgage dated August 11, 1994 made between Troy Robinson and Canadian Imperial Bank of Commerce

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

B E T W E E N

FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED

Claimant

AND

1) TROY ROBINSON
2) PAULA MAE ROBINSON
3) THREE T'S INVESTMENT LIMITED

Defendant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Justin Smith with Ashley Sands for the Claimant

Gregory Moss for the Defendants

Hearing date(s): 20 October 2025

RULING

DELANCY, J

[1.] This is the Court's ruling on the Defendants' application for summary judgment.

BACKGROUND

[2.] The Claimant brought an action against the Defendants on 14 September, 2015 via an Originating Summons seeking, inter alia, judgment for the sums due and owing on a Mortgage

between the parties dated 11 August, 1994 ("the Mortgage"), vacant possession of the properties held as collateral.

[3.] The Defendants filed a Defence and Counterclaim on 1 April 2016 disputing the Claimant's claim and sought several reliefs including a declaration that the Mortgage has been paid in full or as to the extent to which the same has been paid.

[4.] The Defendants filed a Notice of Application on 24 April, 2024 supported by an Affidavit of Troy Robinson filed on 18 November, 2015 ("the First Robinson Affidavit") and a Second Affidavit of Troy Robinson filed on 24 April, 2024 ("the Second Robinson Affidavit") seeking:

(1) A Declaration that intituled Indenture of Mortgage dated August 11, 1994 between the First Defendant of the one part and the Claimant of the other part and recorded in Volume 6340 at pages 402 to 414 of the Registry of Records as security over the dwelling house situated at Lot 8, Block 17, Churchill Court, Bahama West Replat Subdivision, Freeport, Grand Bahama has been satisfied;

(2) Summary judgment against the Claimant by an Order that the Claimant's claims herein against the First and Second Defendants in relation to the said Indenture of Mortgage dated August 11, 1994 be dismissed;

(3) an Order that the Claimant execute and deliver to the First Defendant a Satisfaction of the said Indenture of Mortgage dated August 11, 1994;

(4) an Order that the Claimant return and deliver to the First Defendant the original Indenture of Conveyance dated the 12th day of November, 1991 between Princess Realty Limited and Troy Robinson and recorded in Volume 5906 at pages 489 to 497 of the Registry of Records which said original Indenture of Conveyance was held by the Claimant as security for the said Indenture of Mortgage dated August 11, 1994; and

(5) an Order pursuant to Part 72, Rule 72.6(1)(b) of the Supreme Court Civil Procedure Rules, 2022 that the Claimant pay to the First and Second Defendants the Assessed costs of the Action inclusive of the costs of this application.

[4.] The Claimant opposes the application and filed Affidavit sworn Berchel Wilson ("the Wilson Affidavit") filed on 9 May, 2024.

[5.] The First Robinson Affidavit states that there are two (2) properties which are the subject matter of these proceedings held by the Claimant as collateral for the advancement of funds, namely:

1. Residential property being Lot 8, Block 17 Bahamia West Replat Subdivision, Grand Bahama utilized as collateral follows:
   (i) Mortgage dated 11 August 1994 between First Defendant and Canadian Imperial Bank of Commerce;
   (ii) Mortgage dated 30 September 1994 between the First Defendant and Canadian Imperial Bank of Commerce;

(iii) Mortgage dated 28 August 1995 between the First and Second Defendants and Canadian Imperial Bank of Commerce;

(iv) Mortgage dated 28 November 1996 between the First Defendant and CIBC Bahamas Ltd.; and

(v) Certificate of Upstamping of the Mortgage dated 11 August 1994 between First Defendant and CIBC Bahamas Ltd. dated 6 November 2000.

2. Multi-family property being Lot 10, Block EN Unit 2 Bahamia North Subdivision, Freeport, Grand Bahama in a Mortgage dated 4 May 2000 between Third Defendant and CIBC Bahamas Limited.

[5.] The Defendants submit that the loan on the residential property was paid off and they are entitled to the satisfaction of mortgage acknowledging the same and the return of the title documents. The Claimants denies that the negotiations were concluded or that it was agreed that the residential loan was satisfied.

[6.] It is not disputed in 2023 the parties instructed their respective to Counsel to engage in negotiations to resolve the ongoing litigation between the parties. Nor is it disputed that the various loans over the properties were consolidated. During the course of those negotiations the parties exchanged a series of without prejudice correspondence. Further that as a part of those negotiations the Claimant at the request of the Defendants produced a ledger splitting or "*de-consolidated*" (the Defendants' terminology) the accounting for the two properties.

Issues

[7.] The Court must determine whether the without prejudice correspondence between the parties is admissible; and whether the said negotiations resulted in a settlement of the issues or part of the issues in question between the parties.

Law and Analysis

[8.] Counsel for the Claimants submits that "*without prejudice*" communications are privileged and inadmissible. Counsel relies on the dictum of *Fitzcharles, J.* in **Win Business Energy Caofeidian Limited v Anadarko Petroleum Corporation and another** [2024] 1 BHS J. No. 134 at paras. [21] to [23] thereof:

> 21. Where parties communicate in a genuine effort to settle a dispute, such communications whether oral or written are generally inadmissible in evidence. In **Rush & Tompkins Ltd v Greater London Council** [1989] 1 AC 1280 at 1299, *Lord Griffiths* opined:
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> > "The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence...[T]he application of the rule is not dependent upon the use of the phrase 'without prejudice' and if it is clear from the surrounding circumstances that the parties were seeking to compromise the action,

> evidence of the content of those negotiations will, as a general rule, not be admissible at the trial and cannot be used to establish an admission or partial admission". (Emphasis added).
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> 22. The general rule rests upon the planks of public policy and agreement amongst the parties. By public policy parties are given a safe space so to speak to settle their differences without fear of their representations being disclosed or used against them in court proceedings, as long as they do not abuse the privilege. In the English Court of Appeal decision of **Cutts v Head** [1984] Ch 290 at 306, the oft quoted passage of the policy behind the rule was addressed by *Oliver LJ* as follows:
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> > "That the rule rests at least in part, upon public policy is clear from many authorities, and the convenient starting point of the inquiry is the nature of the underlying policy. It is that parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiations (and that includes, of course, as much the failure to reply to an offer as an actual reply) may be used to their prejudice in the course of the proceedings. They should, as it was expressed by *Clauson J.* in **Scott Paper Co v Drayton Paper Works Ltd** (1927) 44 RPC 151,156, be encouraged fully and frankly to put their cards on the table...The public policy justification, in truth, essentially rests on the desirability of preventing statements or offers made in the course of negotiations for settlement being brought before the court of trial as admissions on the question of liability.' The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence."
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> 23. This is the general rule which would inform whether or not communications are privileged (prior to any consideration of exceptions).

[9.] Counsel for the Claimants also submits that the purpose of "*without prejudice*" communications is to provide for an environment where parties can freely negotiate. Counsel invites the Court to take note of the dictum of *Fox, LJ* in the English Court of Appeal case of **Cutts v Head** [1984] Ch 290 at 313:

> First, that the purpose of the rule is to facilitate a free discussion of compromise proposals by protecting the proposals and discussion from disclosure in the proceedings. Second, whilst the ordinary meaning of "without prejudice" is without prejudice to the position of the offeror if his offer is refused, it is not competent to one party to impose such terms on the other in respect of a document which, by its nature, is capable of being used to the disadvantage of that other. The expression must be read as creating a situation of mutuality which enables both sides to take advantage of the "without prejudice" protection. The juridical basis of that must, I think, in part derive from an implied agreement between the parties and in part from public policy.

[10.] Counsel for the Claimant argues that whether negotiations resulted in an agreement, partial or otherwise between the parties is clear in the language contained in the correspondence.

Further that it is clear from the language in the communications that the negotiations between the parties were not concluded and the Defendants are "*cherry picking*" contents thereof for their own purposes.

[11.] The Defendants argue that while the ledgers for the two (2) loans were "*de-consolidated*" to facilitate negotiations, it is clear from the language of the communications that the Claimant admitted that the loan on the residential loan was paid off and the balance applied to the multi-family property loan. Further, that where the parties differed was the amount to be applied to the multi-family loan and other charges.

[12.] Counsel for the Defendants argues that, as the issue of the residential loan had been concluded, any privilege attached to the "*without prejudice*" communications fell away. Counsel relies on the dictum of *Danckwerts, L.J.*, in **Tomlin v. Standard Telephone and Cables Ltd** at p. 202F:

> A point that arises is that all the letters written by the agent of the insurance company bore the words "Without Prejudice". The point is taken that, by reason of those words, there could not be any binding agreement between the parties and it was said, indeed, on behalf of the defendants that the letters were not admissible. I feel no doubt, as the learned judge felt no doubt, that the letters were admissible, because the point was whether there had been a concluded agreement of any kind between the parties in accordance with that correspondence, and it would be impossible to decide whether there was a concluded agreement or not unless one looked at the correspondence. The learned judge quoted a statement by *Lindley LJ* which really was in the case no more than a dictum but seems to me to have great force and to be of great importance in regard to the case. That was in **Walker v Wilsher**. When the case is looked at, it appears that in fact the decision was that the letters in question should not have been looked at for the purpose of the case at all and that, consequently, the judge in the court below was at fault in relying on them for the purpose of depriving the party of his costs. But in the course of his judgment, *Lindley LJ* said ((1889), 23 QBD at p 337):
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> > "What is the meaning of the words 'without prejudice'? I think they mean without prejudice to the position of the writer of the letter if the terms he proposes are not accepted. If the terms proposed in the letter are accepted a complete contract is established and the letter, although written without prejudice, operates to alter the old state of things and to establish a new one."
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> That statement of *Lindley LJ* is of great authority and seems to me to apply exactly to the present case if in fact there was a binding agreement, or an agreement intended to be binding, reached between the parties; and, accordingly, it seems to me that not only was the court entitled to look at the letters although they were nearly all described as "Without Prejudice", but it is quite possible (and in fact intention of the parties was) that there was a binding agreement contained in that correspondence. That disposes of the first point.

> …I come to the conclusion that the proper construction is that there was a definite and binding agreement on a 50/50 basis and that, although certain negotiations were entered into for the purpose of trying to agree the amount of the damages, the agreement as to the 50/50 basis stands and the plaintiff is entitled to hold on to that agreement which was reached.

[13.] To determine whether the language in the communications supports the contention that negotiations between the parties were concluded, whether in part or in full, or that negotiations were ongoing necessitated the Court reviewing the same. The Court finds that the ledger for the consolidated loan on the properties was "*de-consolidated*" for the purposes of facilitating negotiations. The Court also finds that as a result of the "*de-consolidation*" of the ledger, the Claimant conceded that the loan on the residential property was "*paid off*" and the parties remained divided on the issue of the amount to be applied to the multi-family loan. The Court is of the view that the "*without prejudice*" communications between the parties in the instant case are admissible as the communications demonstrate the settlement of one of the issues in contention between the parties.

[14.] In all the circumstances of the case the Court hereby grants a declaration that Mortgage dated August 11, 1994 between the First Defendant of the one part and the Claimant of the other part and recorded in Volume 6340 at pages 402 to 414 of the Registry of Records as security over the dwelling house situated at Lot 8, Block 17, Churchill Court, Bahama West Replat Subdivision, Freeport, Grand Bahama has been satisfied.

[15.] And it is hereby ordered that:

1. The Claimant execute and deliver deed of release with respect to Lot 8, Block 17, Churchill Court, Bahama West Replat Subdivision, Freeport, Grand Bahama to the First Defendant;
2. The Claimant return and deliver to the First Defendant the original Indenture of Conveyance dated the 12th day of November, 1991 between Princess Realty Limited and Troy Robinson and recorded in Volume 5906 at pages 489 to 497 of the Registry of Records;
3. Costs awarded to the Defendants to be assessed if not agreed.

Dated the 16 day of April, 2026

[Original Signed and Sealed]

Constance Delancy
Justice