COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Side

2024/CLE/gen/FP/00065

BETWEEN

BANK OF THE BAHAMAS LIMITED

Claimant

AND

KARON JESCINTA CARVER

1st Defendant

AND

DARWISH ATIBA WHYLLY

2nd Defendant

BEFORE:	Assistant Registrar Rosanne Sweeting
APPEARANCES:	Mr. Jamal Davis for the Claimant
	No appearance by the Second Defendant
HEARING DATES:	April 16th, 2026 and June 17th, 2026

RULING

Mortgage Action-Hearing of Fixed Date Claim

Introduction

1. The Claimant Bank is before the Court on an application for Judgment in Default of Acknowledgement of Service or Defence for the relief sought in the Fixed Date Claim form

filed April 12, 2024 and Amended Fixed Date Claim form filed February 20, 2025. The Claimant is a banking institution and the Defendants were customers of the Claimant bank. The Claimant Bank granted the Defendants a secured loan in the amount of $195,982.00 together with interest at the rate of 6.75% and that the said loan was secured by Lot 3, Block 59, Lincoln Park Subdivision and vacant Lot 60, Block 3, Unit 1, Dover Sound Subdivision, Freeport, Grand Bahama. The parties entered into the mortgage agreement on October 11th, 2005 and further to that mortgage agreement by commitment letter dated April 2, 2014 the Claimant Bank agreed to refinance the current mortgage loan account with the Defendants. Following this agreement, the Defendants have failed and/or refused to repay the monies secured by the mortgage and the Claimant Bank as pleaded in both its Fixed Date Claim form and Amended Fixed Date Claim form seeks the following relief:- (i) payment of the sum of $280,615.17 (being $140,823.83 as the principal sum outstanding, $135,825.96 as to the interest sum outstanding up to the 27th day of March, A.D., 2024, calculated at the rate of 6.75% per annum and continuing theron at the said rate of 6.75% per annum or $18.39 per diem down to the date or dates of payment and $3,965.38 as to late fees) under mortgage loan account number 159M310140930001; (ii) Possession of ALL THAT piece parcel or lot of land being Lot sixty (60), Block Three (3), Unit One (1), Dover Sound Subdivision, of the City of Freeport, Grand Bahama, The Bahamas; (iii) Such further costs or other relief as the Honourable Court deems just; and (iv) Fixed costs in the amount of $7,500.00.

2. The Claimant Bank in support of its claim filed the Affidavits of Paulette Butterfield on April 15th, 2024 and January 7th, 2026 respectively. Both Affidavits set out the terms of the loan and mortgage agreement between the parties; the default of the Defendants (i.e. that the Defendants breached the terms of the mortgage agreement); sets out the

outstanding balance now owed to the Claimant Bank and exhibits the various documents in support of its claim.

3. Counsel for the Claimant Bank, Mr. Jamal Davis appeared before the Court on an application for Judgment in Default pursuant to Part 62.1 of the Civil Procedure Rules, 2022 ("CPR") filed on February 20th, 2026 on the basis that the Defendants have no real prospect of successfully defending the claim.

4. On a review of the Court's file, the Second Defendant was served with these proceedings, i.e. the Fixed Date Claim Form, the Amended Fixed Date Claim Form, the Affidavits in Support and the Notice of Application for Judgment in Default. This is evidenced by way of numerous Affidavits of Service filed on October 15th, 2024; April 15th, 2026 and April 16th, 2026 respectively. However, there is no evidence before the Court that the First Defendant was ever served with notice of these proceedings and notice of the application for Judgment in Default. Moreover, there is no application before the Court by the Claimant Bank for substituted service and the only evidence advising that it was impracticable to find and serve the First Defendant is found in the Second Supplemental Affidavit of Paulette Butterfield which was filed on June 29, 2026 sometime after the first hearing date.

5. During the hearing of the Notice of the Application for Judgment in Default the Court inquired of Mr. Davis, Counsel for the Claimant Bank whether the Court was in a position to grant the items of relief sought against the Second Defendant in the absence of the First Defendant being served with notice of these proceedings.

6. Mr. Davis asked for an opportunity to lay over Skeleton Arguments on the question posed by the Court which were filed on June 3, 2026 and Supplemental Skeleton Arguments filed on June 24, 2026. Mr. Davis also filed the Second Supplemental Affidavit of Paulette

Butterfield on June 29, 2026 in support of his Skeleton and Supplemental Skeleton Arguments.

7. Given that the First Defendant has not been served with notice of these proceedings, can the Court grant the items of relief sought by the Claimant Bank against the Second Defendant solely?

Submissions

8. The Skeleton Arguments provided by Mr. Davis are in summary that the Mortgagee has a right to proceed against one Defendant or co-mortgagor in the absence of service with notice of these proceedings on the other Defendant or co-mortgagor as they are both liable jointly and severally. Mr. Davis refers the Court to Clause 10 of the Mortgage deed held between the Claimant Bank and the Defendants. Clause 10 states "Where this deed is signed by more than one party the liability of each of them hereunder shall be joint and several and every agreement and undertaking on their part shall be construed accordingly. A party hereby being joint or a joint and several debtor shall not nor shall this security be released or discharged by his death or by the death release or discharge of any other joint or joint and several debtor nor by the substitution of any other debtor or security of any change in the constitution of any partnership of which any party hereto may be a member."

9. In addition to the above clause of the Mortgage deed, Mr. Davis refers the Court to the cases of **Ruhkim Balgobin v South West Regional Health Authority [2012] UKPC 11**; **Isaacs & Sons v Salbstein and Another [1916] 2 K.B. 139**; **Alliance Building Society v Shave and Others [1952] All ER 1033**; **Alliance Building Society v Yap [1962] 3 All ER 6**; **Barclays Bank Ltd. V Kiley and Another [1961] 1 W.L.R. 1050** and **Part 62.2 [Notes]** of the **CPR** in support of his submissions.

Analysis/Discussion

10. The Claimant Bank in support of the overall claim and the question posed by the Court sought to clarify the prior Affidavit evidence filed in support. The First Affidavit of Mrs. Butterfield did not specify whether the mortgaged property was a vacant lot or a residential home. However, she did state that to the best of her knowledge the Defendants were in sole possession of the property as mortgagors. In her Supplemental Affidavit Mrs. Butterfield also states that there is a single family home on the property that was utilized as security for the mortgage loan account and she references the mortgaged property. She also states that to the best of her knowledge the Defendants are in possession of the property as mortgagors. It was on this evidence by the Claimant Bank the Court sought further clarification as to whether it can grant the relief sought in the absence of one of the Defendants having notice of these proceedings. Mrs. Butterfield in her Second Supplemental Affidavit states in part that the Claimant has been unable to locate the First Defendant notwithstanding its attempts to locate her and the agents engaged by the Claimant to locate her have been unable to do so. She further states that the mortgaged property described in these proceedings is vacant land and unoccupied and that she inadvertently described the same in her previous Affidavit as comprising as a single family residence.

11. In support of the Claimant Bank's position that the Court can grant the relief sought in the absence of notice of these proceedings Mr. Davis has referred the case **of Alliance Building Society v Shave and Other [supra]; Alliance Building Society v Yap [supra]** and **Barclays Bank Ltd v Kiley and Another [supra]** in support. The defining feature in all of these cases relied on by Mr. Davis is that a person (co-mortgagor in **Alliance Building Society v Shave and Other [supra]**; occupying mortgagor in

Alliance Building Society v Yap [supra]; occupiers in **Barclays Bank Ltd v Kiley and Another [supra]**) was in occupation of the mortgaged property and thus service of the proceedings on that person was possible. What can be gleaned from all three cases however is that the Court will permit proceedings to continue without service on or joining of a mortgagor where the person in possession is before the Court.

12. In the instant case, the evidence before the Court is that the mortgaged property is vacant land. Therefore, the Defendants are not in physical occupation of the same. In most mortgage actions the Bank often seeks an order from the Court for vacant possession of the mortgaged property which is often occupied by the mortgagor(s) so that it can enact the relief sought such as its power of sale without any obstacles such as the mortgagor(s) refusing to leave to prevent such sale. Further, the Affidavits of Service filed in this action shows that the Second Defendant was served with notice of these proceedings and the application for Judgment in Default however he chose not to attend.

13. Therefore, having read the Skeleton Arguments and Supplemental Skeleton Arguments, the Court accepts Mr. Davis' submission that the parties to the mortgage are jointly and severally liable by virtue of Clause 10 of the mortgage deed. Further, that as the mortgaged property is vacant land and no party is in actual physical occupation of the same and the Court accepts that the Second Defendant was served with notice of these proceedings and the application for Judgment in Default the relief sought by the Claimant Bank should not be refused due to the absence of service on the First Defendant.

14. In light of the above the Court will grant the items of relief as sought under the Amended Fixed Date Claim form and grant the Claimant leave to enter Judgment in Default as against the Second Defendant.

Dated this 28th day of July, 2026

Rosanne O. I. Sweeting
Assistant Registrar