

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN  
3 CIVIL DIVISION

Cause No: G 0139/2012

6 BETWEEN:

- 7 1. PHILLIP HYRE  
8 2. KEVON HYRE  
9

PLAINTIFFS



12 AND:

13 HSBC BANK (CAYMAN) LIMITED

15 DEFENDANT

18 Appearances:

19 Mr. Dennis Brady for the Plaintiffs

20 Mr. William Jones of Ogier for the  
21 Defendant  
22

23 Before:

The Hon. Mr. Justice Charles Quin

24 Written Submissions Received:

1<sup>st</sup> February 2013

26 SUPPLEMENTARY RULING ON COSTS  
27

28 1. On the 4<sup>th</sup> January 2013 I delivered my Judgment in the above Cause, and I  
29 invited counsel to provide written submissions on the question of costs of these  
30 proceedings. I confirm that I have read and reviewed the submissions of Mr.  
31 Brady, counsel on behalf of the Plaintiffs, and Mr. Jones, counsel on behalf of  
32 the Defendant.

33 2. On the 4<sup>th</sup> January 2013 I dismissed the Plaintiffs' Originating Summons and,  
34 consequently, I can find no reason for not ordering costs to follow the event.

1           3.       Paragraph 14 of the Schedule to the Variation of Charge executed by the parties  
2                   on the 27<sup>th</sup> April 2009 states that:

3                           *“The chargor shall pay on demand all fees and expenses that may be*  
4                           *hereafter payable thereon, and together also with all fees and expenses that*  
5                           *may be hereafter incurred by the chargee of, and incidental to, the*  
6                           *protection and enforcement from time to time of the chargee’s rights.”*

7           4.       I find that in defending the Plaintiffs’ Originating Summons the Defendant  
8                   incurred fees and expenses which are, by definition, of and incidental to the  
9                   protection and enforcement of the Defendant’s rights.

10          5.       Furthermore, under paragraph 10 of the same Schedule to the Variation of  
11                   Charge dated the 27<sup>th</sup> April 2009, the Defendant incurred legal fees and  
12                   expenses in respect of the protection and enforcement of its rights to sell the  
13                   charged properties upon default by the Plaintiffs, as set out in paragraph 10.

14          6.       In addition, GCR O.62 r.43 reads:

15                           *“A person who claims to be entitled pursuant to contract to recover the legal*  
16                           *fees and expenses incurred in enforcing that contract shall be entitled to*  
17                           *judgment for the amount found due under the contract and such amount*  
18                           *shall not be subject to taxation pursuant to this Order.”*

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20          7.       Accordingly I accept the submissions made by counsel for the Defendant in  
21                   respect of its costs and find that the Schedule to the Variation of Charge forms  
22                   part of the contract between the Plaintiffs and the Defendant – as its terms  
23                   expressly state that: *“It is hereby agreed that the [Plaintiffs] and the*



1            *[Defendant] hereby respectfully covenant with each other ....*” (at page 21 of  
2            Exhibit “LMB-1”) and it is executed by the Plaintiffs and the Defendant as a  
3            deed (on page 29 of Exhibit “LMB-I”).

4            8.            Accordingly, and pursuant to GCR O.62 r.4(3), I find that the Plaintiffs are to  
5            pay all the legal fees and expenses incurred by the Defendant in enforcing the  
6            contract between the parties and are thereby entitled to Judgment for the amount  
7            found due under the contract, and that such amount shall not be subject to  
8            taxation.

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12            **Dated this the 21<sup>st</sup> February 2013**

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18            **Honourable Mr. Justice Charles Quin**  
19            **Judge of the Grand Court**  
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