



No. 6

Notice of Originating Motion (0.8, r3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2021

In the Matter of Registered Land Law section 64 and 72.

BETWEEN:

WINSOME A. PRENDERGAST

APPLICANT

AND:

JAMAICA NATIONAL BANK (CAYMAN ISLANDS)

RESPONDENT

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on2021 at a.m./p.m or as soon thereafter as counsel can be heard, by counsel on behalf of Winsome A. Prendergast for an order that the Respondent not be permitted to sell her property [or for the following relief, namely [state relief]].

And for an order that the costs of and incidental to this application may be paid by the Respondent

AND FURTHER TAKE NOTICE that the grounds of this application [appeal] are:

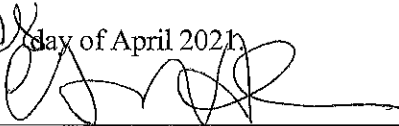
1. That the Respondent has not acted in a professional manner as there are conflicting Balances on Mortgage Account (MLL-000040000752)
2. That there has been unlawful retention and application of monies paid into Account # 20001499 for approximately 7 years (2014 to 2021)
3. That the Respondent has prevented access to the Applicant's Mortgage Account (MLL-000040000752) and the Savings Account (20001499) as the Applicant has been informed that they have been closed. However, the direct deposit of \$1,300 (May 2014) and now \$1,500 (January 2020) from the Cayman Islands Government is still being paid into the Savings account.
4. The Respondent stated that they would consider an application by the Applicant to reduce her monthly payments and to award the Applicant a lump sum on humanitarian grounds so that the Applicant could fix her AC unit was never relayed to the Applicant which caused the Applicant to fall into arrears. At all times, the Applicant relied on the fact that they would award her the lump sum payment to commence the work which cost her about \$6,000.00. The Applicant relied on the verbal representations and commenced the work. The Applicant was never notified in a timely manner that any loan was granted.
5. The Applicant understood that they would take a sum from the total sum of the sale proceeds of \$176,600.00 of \$29,596.71 towards the arrears up to August 2014 leaving a sum of \$147,003.29.

6. Instead, and without the approval of the Applicant the total sum of \$176,600.00 was put towards the loan.
7. If the Respondent was not going to notify the Applicant of the approval, which they did not, then monthly sums could have been deducted from the remaining sum of \$147,003.29 (and after deduction of various fees) the sum of \$146,733.30. If the Applicant were to use that money to pay down the mortgage then it would mean with monthly payments of \$2,664.07 could have been made over 50 payments or at least 4 years of payments. It is for that reason that the Applicant had stopped making payments as she had understood that they were holding the funds - \$146,733.30- out of which she could have made the monthly payments.
8. Alternatively, if they were not going to accept the Applicant's application for a monthly repayment sum less than \$1,300.00 they should have informed her of that fact and she would have gone to an alternative establishment.
9. Further, if the Applicant was informed that the mortgage reduction was not going to be approved, she would have instructed them that the \$146,733.30 be paid out on the terms as stated above of monthly payments from that lump sum. Once again that would have given her time to secure a mortgage from an alternative establishment.
10. The Respondent never provided her with any documents to confirm the new monthly figure after they took the sum \$146,733.30. As a result, and notwithstanding the fact that she had seen a document that suggested the money had been put against the sum outstanding, this was not consistent with her instructions, as she would never have left herself exposed and unable to make any payments at all.
11. The last time that the Applicant made a lump sum payment on 7 March 2011, the Respondent provided a new document with new terms and conditions so that the money - \$20K - could be applied against the account. That did not occur on this occasion, so the Applicant always thought that the money had not formerly been applied against the account. She had a legitimate expectation that new terms and conditions would be provided for signature and that never took place.
12. The Applicant made various applications for restructuring since. The Respondent approached the Applicant and asked her to submit new applications. However, each time she made an application the Respondent simply refused it, as it determined that she was now in arrears.
13. The Applicant is concerned that it is as a result of the dilatory and negligent conduct of the Respondent that she now finds herself in this position and seeks the guidance of this Honourable Court to have the Respondent apply the sum of \$146,733.30, as stated above, especially since no new documents were ever signed approving the application of the funds towards the account in that manner, by way of monthly payments.
14. The Applicant would never have applied the funds in one lump sum and thus in that manner towards the account if she had known that it would have caused her such hardship and would have sat with the bank and discussed the best way forward and thus protect her interest and that of the Respondent.
15. The Applicant has tried to pay cash into her Savings Account Number: RSV - 000020001499 - but she is being told that the account is closed. She has tried to write a deposit slip to pay money into the Savings Account, but She has been told that she cannot do so and to change the account details to the mortgage account - Mortgage Reference number: MLL-00004000075.
16. The Applicant is trying to be responsible and to acknowledge where she has gone wrong. At all times, she had set out for the Respondent, as requested by them, her full financial circumstances. She even completed a hardship letter on 9 November 2013. Her financial circumstances were well known to the bank. She simply does not

know why the Respondent simply refused to keep her informed or properly advise her and why no new documents were ever signed approving the application of the funds towards the account and a new monthly payment figure agreed. She presumed that since she had not heard from them that a new monthly figure had not been agreed. The figure during that period varied between \$1,600 and later \$1,400.00. She did not know if they were still carrying out their assessment. She never knew what figure might be payable and was waiting to hear back from the Respondent.

17. As stated above, the Applicant thought the bank was taking a monthly sum out of the money until such time as the board had approved it and they had reached an agreement with her.
18. She will refer to a letter dated 3 March 2014 wherein they encouraged her to explore all possibilities to clear the arrears without delay. She did clear the arrears but their failure to consider the application resulted in her falling into arrears and is the reason why other institutions refused to consider her applications to transfer the mortgage.
19. The Applicant has provided the Respondent with a spreadsheet showing that she had paid over \$80K in payments.
20. She therefore does not understand what has happened to all of those payments and thus money that she has paid.
21. The Respondent appears to have given to the auditor – KPMG - one figure and are charging the applicant another. The Applicant understood from that letter that her indebtedness to the Respondent was \$202,000.00.
22. However, the outstanding balance as at 8 February 2021 is \$275,165.72 inclusive of interest. The arrears were \$95,407.02. The Applicant is thus shocked as the day that she submitted the documents for the restructuring of her mortgage, her arrears had been reduced to zero. The principle has thus been increased and the interest owing has also increased.
23. The Respondent is acting in a manner that is not in keeping with its duty of care and now wish to sell her property notwithstanding the reason why the Applicant now finds herself purportedly in arrears is as a result of the negligent conduct of the Respondent.

Dated the 28th day of April 2021



[Signature of Plaintiff or his Attorney]

TO: The Clerk of the Court

AND TO: The Respondent c/o HSM

This Notice of Originating Motion was issued by Clyde H. Allen, CHAMBERS whose address for service is P.O. Box 31076 SMB, KY1-1205 at cha@candw.ky.