

11/1/05

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. CL 2002/L 030

BETWEEN	LEXTON LIMITED	CLAIMANT
AND	RBTT BANK JAMAICA LIMITED	1 ST DEFENDANT
AND	FINSAC LIMITED	2 ND DEFENDANT
AND	DENNIS JOSLIN JAMAICA, INC.	3 RD DEFENDANT
AND	JAMAICA REDEVELOPMENT FOUNDATION, INC.	4 TH DEFENDANT

Mr. John Graham instructed by John G. Graham & Company for the Claimant.

Mr. Charles E. Piper for the 1st and 4th Defendants.

Heard 24th May 2007 and 10th November 2009

Campbell, J.

The 1st Defendant's notice to be removed as a party to these proceedings.

(1) On the 4th July 2006, the 1st Defendant filed a notice for Court Orders, seeking to be removed as a party to the proceedings. The proceedings were commenced by a Writ of Summons on the 21st March 2001, endorsed with Particulars of Claim, which stated at paragraph 2 and 3 as follows;

- (2) On or about July 1997 the plaintiff caused to be delivered to the defendant the duplicate Certificate of Title registered at Vol. 1225 Folio 976 and 977. The said Duplicate Certificate of Title was delivered to the defendant, based on the fact that the plaintiff had agreed to act as a guarantor in respect of a loan which he defendant had proposed to make to the Couchere Limited and Soufare Limited.
- (3) In addition to acting as a Guarantor for the loan, the plaintiff has also agreed to provide the titles mentioned in paragraph 2 as further security and that a mortgage would be granted to the defendant in the event that the loan agreement was finalised.

The Plaintiff has since orally and by a letter of demand requested the return of the said Duplicate Certificate of Title. To date there has been no positive response from the Defendant.

(2) The 1st Defendant's defence filed 14th June 2002, stated inter alia;

Save that by letter dated September 9, 1999 to Finsac Limited the Plaintiff requested inter alia, the return of the duplicate Certificates of Titles referred to in paragraph 2 of the Statement of Claim and that by letter dated September 4, 2001 from the Plaintiff's Attorneys-at-Law requested of Finsac Limited that it look into the matter of its failure to return the said Duplicate Certificates of Title which were previously requested by the Plaintiff.

The Defendant says that in or about late 1998 or early 1999, the liabilities which the plaintiff agreed to guarantee was sold to Finsac Limited and that, in pursuance of the sale aforesaid, the Duplicate Certificates of Title were delivered by the Defendant to Finsac Limited.

The plaintiff knew of the matters set out in paragraph 5 hereof and, according, the plaintiff wrote the letter dated September 9, 1999 referred to in paragraph 4 hereof and caused its Attorneys-at-law aforesaid to write the letter dated September 4, 2001, also referred to in paragraph 4 hereof.

(3) On the 21st April 2004, Mr. Justice Pusey (Ag.) ordered at Case Management Conference that Finsac Ltd. and Dennis Joslin Ltd. be joined as Defendants. They became the 2nd and 3rd Defendants respectively.

(4) The Claimant amended its Writ of Summons and Statement of Claim, adding the 2nd and 3rd Defendants and in its amended pleadings at paragraph 5 and 6;

Para (5) That 1st Defendant has advised that the said Duplicate Certificate of Titles have since been delivered to Finsac Limited and Dennis Joslin Jamaica Inc. has since confirmed that the titles are now in its possession.

Para (6) That the Plaintiff has since made formal demands on both Finsac Limited and Dennis Joslin Jamaica Ltd. for the return of the Duplicate Certificate of Title, but they have refused to return same.

(5) The 2nd Defendant in its defence has said that on or about April 1999 it acquired certain debts through its subsidiary Refin Trust, of which the debt of Couchere Limited and Soufare Limited formed a part and as a result Refin Trust came into possession of the credit files and securities, including the subject Duplicate Certificates of Titles, and denies that the Claimant is entitled to any relief against it.

(6) The 3rd Defendant's defence stated that Couchere and Soufare assumed the liabilities of Selections sought loans from the 1st Defendant. On the 22nd June 1997, offered Couchere and Soufare financing by letter dated July 11, 1997 the Claimant had already delivered to the 1st Defendant, the said Titles. In 1999, the liabilities which the Plaintiff agreed to guarantee were sold to the 2nd Defendant together with all of the security. The debts were further assigned to Jamaica Redevelopment by the 2nd Defendant.

(7) By letter dated 9th September 1999 the Claimant requested the return of the security, as a temporary situation as "we remain interested in providing our real estate as a security for apportion of our loan to Couchere and Soufare."

By letter dated 4th September 2001 from the Claimant to the 2nd Defendant, requested Finsac to re-examine its failure to return the Duplicate Certificate. By letter dated 11th July 2003 wrote the 3rd Defendant seeking the return of the Title, as the loan as passed from creditor to creditor.

(8) The 3rd Defendant contends that, having had the benefit of the loan, the Claimant has placed it beyond the means of the 1st, 2nd and 3rd Defendants to complete the terms of the transaction of the Letter of Commitment, by failing to provide the security documentation, failing to provide sums for stamping etc. The 3rd Defendant refers to the Claimant's letter, that the terms and conditions have not been fulfilled; therefore, the guarantee is rendered null and void. The 3rd

Defendant contends that the Claimant is estopped from making allegations as outlined in its claim, as a result of its conduct.

(9) On the 8th December 2005 at Case Management Conference, Jamaica Redevelopment Foundation Limited was added as a Defendant. The 4th Defendant alleged that for valuable consideration, the loan was assigned to them. That the Claimant knew of this assignment.

(10) On the 1st December 2005, the 2nd Defendant filed a notice to be removed as a party to the claim; on the basis that there were no issues for determination between the Claimant and the 2nd Defendant. In the affidavit in support of its application, that “by a Deed of Assignment dated 30th January 2002 that Refin Trust Limited and Financial Institution Services Limited transferred to the Jamaica Redevelopment Foundation Inc., all their interest in the loans acquired from Citizens Bank Limited, including their interests in Certificates of Title registered at Volume 1225 Folio 976 and 977. Accordingly, the 2nd Defendant delivered the said security documentation . . . to the Jamaican Redevelopment Foundation Inc. The issues raised therefore are properly ones between the Claimant and the Jamaican Redevelopment Foundation Inc., who is now the owner of the receivables.

(11) On the 27th March 2006 the parties consented before the Master for the 2nd Defendant to be removed as a party to the claim. On the 26th April 2006, it was ordered that the matter be withdrawn against the 3rd Defendant.

(12) On the 4th July 2006, the 1st Defendant filled an application to be removed as a party to the proceedings. The application was supported by an affidavit from Jeffery Chevannes, who attested that the certificates were delivered to their predecessor in name and title, Citizens Bank Ltd, in pursuance to a Letter of Commitment under which the liabilities of the borrowers were guaranteed by the Claimant. The liabilities were assigned to Refin Trust, a subsidiary of the 2nd

Defendant. The 1st Defendant alleges that the Claimant knew that the Claimant lawfully came into possession of the said titles and lawfully disposed of its interest therein by assignment.

(13) Before me, it was urged on behalf of the applicant that at the time of filing the claim, the Title had already been transferred, and this was known to the Claimant.

(14) I find that in letter of the 4th September 2001, John Graham writes admitting that, Finsac had “inherited” the matter from Citizens Bank. Paragraph 5, of the Amended Statement of Claim indicates that the 1st Defendant had advised the Claimant of the delivery to Finsac of the Titles. The delivery of the Title had been confirmed by the Defendants. As early as 9th September 1999 the Claimant was requesting of Finsac that the Titles be returned, albeit temporarily. This, to my mind, is clear acknowledgment that the 1st Defendant was no longer in possession of the title.

(15) It has not been contradicted that the 1st Defendant came into possession of the Titles lawfully and had lawfully assigned the liabilities. I accept that at the time of the request, the liabilities had already been lawfully transferred. The titles were delivered to secure the indebtedness which included monies already advanced and to be advanced. I have not been shown anything unlawful in the conduct of the 1st Defendant. There are no issues for determination between the parties, pleaded before me. The 1st Defendant’s application to withdraw from the proceedings is granted. Cost to the 1st Defendant to be agreed if not taxed.