TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2011-00909

FIRST CITIZENS BANK LIMITED

Claimant

AND

ENRICO DE FRIETAS

AND

INGRID DE FRIETAS

Defendants

Before the Honourable Mr. Justice Boodoosingh

Appearances:

Mr. B. Reid instructed by Ms. G. Maharaj for the Claimant
Mr. S. Sharma instructed by Mrs. J. Byrne for the first Defendant

Dated: 12 June 2012

REASONS

1. By Notice of Application for summary judgment of 15 August 2011, the Claimant says the first Defendant is indebted to it in the sum of $355,751.62 plus $66,416.33 together with interest at 9.5% from 19 November 2011 to date of judgment. They have already obtained judgment against the second Defendant.

2. The Defendant raised a limitation defence. Written submissions were filed by the parties.

3. The Claimant says the first Defendant acknowledged the debt by a letter he sent to them dated 2 October 2000. It was common ground between the parties that the limitation period is 12 years from any acknowledgement of the debt.

4. The letter addressed to Ms. Cintra Singh, Recoveries Officer, states:

"Subject: Mortgage Loan Account Nos. 2961, 2963 & 2964

Property situated at 92, Second Avenue, Mt Lambert in the name of Enrico and Ingrid de Freitas

This refers to your letter of September 14, 2000.

I thank you for your response.

While you have failed to answer some of my specific questions or address particular concerns and have not really provided a satisfactory explanation as to why you waited three years before trying to contact me, I would like to settle this matter.

To this end, I have engaged the services of the Dispute Resolution Centre of Trinidad and Tobago Chamber of Industry & Commerce to negotiate on my behalf.

Enclosed is a copy of an agreement that I have signed with them giving them full powers of attorney to act on my behalf."

They will be contacting you soon."

5. The first Defendant says this is not a sufficient acknowledgement. The Claimant says all that is needed is an acknowledgement such that the amount of the debt is ascertainable. The Claimant cites **Halsbury's Laws of England, Fourth Edition, paras 881 and 882**. The acknowledgement must be in writing. No promise to pay is required. All that is necessary is that the debtor should recognise the existence of the debt. Whether a document is an acknowledgement depends on what it states.

6. The Defendant's letter refers to the Claimant's previous letter dated 14 September 2000. It refers to Mortgage Loan Account Nos. 2961, 2963 and 2964. It refers to his engaging the Dispute Resolution Centre to negotiate on his behalf.

7. There could be no point of referring to the Mortgage Loan Accounts or the property or to engage someone to negotiate on the first Defendant's part unless he was acknowledging the debt. I do not accept the first Defendant's argument that this could simply be that his costs could be paid. The letter was a reference to the previous correspondence, the loan accounts, and proposes a mechanism for resolution of the dispute. The dispute was over the payments to a mortgage debt. The reference to the

loan accounts was a reference to the status of the loan accounts, from which the amount of the debt could be ascertained.

8. In my view this was sufficient to constitute an acknowledgement of the debt for the purposes of the **Limitation of Certain Actions Act, Chap. 7:09.**

9. The second issue is whether the Claimant was required to plead this acknowledgement by way of setting it out in the Statement of Case or Reply.

10. I agree with the decision of Gobin J. in **Wendell Beckles –v- Attorney General, CV 2009 – 03303**, *unreported*, that limitation can be raised without a pleading to that effect. What follows from this is that the issue can be joined in a claim. If there is no need to plead it, then it follows there is no need to plead an acknowledgement in reply. Put another way, it cannot be that if it is pleaded that it is necessary to plead an acknowledgment, but if limitation is not pleaded, it can still be taken as a point of law. In the latter case, there would have been no pleading setting out the acknowledgment of the debt.

11. Under CPR, the parties can give notice to the other side of their intention to rely on an acknowledgement in different ways. It is primarily a matter of evidence – and

what follows from the evidence. In this case, the acknowledgement has been raised at an early stage in their application for summary judgement.

12. I do not think this pleading point can therefore stand in the way of the claim. In any event, the Court at case management could direct a party to give particulars of any matter that can fairly determine the issues. This argument of the Defendant therefore fails.

13. Having regard to my decision on the limitation point, it is unnecessary to decide whether I should strike out the without prejudice communication of the first Defendant.

14. Given that the only matter raised in the Defence has been determined, and the parties had accepted that the determination of that issue would determine the claim, the appropriate course would be to grant judgment for the Claimant against the first Defendant.

15. Costs are awarded on the prescribed scale.

Ronnie Boodoosingh