

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. CV2011-01628

**IN THE MATTER OF THE PROPERTY  
COMPRISED IN A MEMORANDUM OF MORTGAGE  
DATED 2<sup>ND</sup> AUGUST 1994 REGISTERED  
IN VOLUME 3690 FOLIO 95 AND MADE  
BETWEEN MANTA RESORTS COMPANY  
LIMITED OF THE ONE PART AND DEVELOPMENT  
FINANCE LIMITED OF THE OTHER PART**

BETWEEN

**DEVELOPMENT FINANCE LIMITED**

Claimant

AND

**MANTA RESORTS COMPANY LIMITED**

Defendant

**BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES**

**Appearances:**

Mr. S. Singh instructed by Ms. S. Rampersad for the Claimant.

Mr. A. Manwah instructed by Mr. R. Dowlath for the Defendant.

**REASONS**

By a fixed date claim dated 29<sup>th</sup> April 2011 the Claimant seeks payment by the Defendant of the sum of \$10,970, 638.59 being the balance outstanding in respect of following monies loaned to the Defendant by the Claimant and secured by a memorandum of mortgage, single debenture, bond and a further single debenture:

(i) Principal	\$6,180,000
interest at the rate of 11% per annum from 1 <sup>st</sup> December 2008 to 31 <sup>st</sup> March 2011	\$1,689,816.49
(ii) Principal	\$2,400,000
interest at the rate of 11% per annum from 1 <sup>st</sup> December 2008 to the 31 <sup>st</sup> March 2011	\$660,862.10
(iii) cost of insurance with Gulf Insurance Limited (less than \$30,000 paid by the Defendant to the Claimant in 2010, which was applied towards this cost)	\$39,960.00

The Claimant further pleads that:

- (i) by a memorandum of mortgage dated 2<sup>nd</sup> August 1994 the Defendant mortgaged to it a parcel of land situate in the parish of St John in the island of Tobago. The consideration for this mortgage was the single debenture No. 12296 of 1994 dated 2<sup>nd</sup> August 1994 (“the first debenture”) which debenture was varied by a deed dated 28 July 1995 and registered as number 14708 of 1995;
- (ii) by a bond sealed on the 26<sup>th</sup> July 1995, with registration number 010752 the Defendant further bound itself pay to the Claimant the sum of \$464,286, together with capitalised interest;
- (iii) by a single debenture number 13154 of 1995 dated 28<sup>th</sup> of July 1995 (“ the second debenture”) the bond was secured by a fixed charge on all the leasehold and freehold property of the Defendant situated in Trinidad and Tobago and a floating charge over all the other undertakings, property and

assets and rights of the Defendant whatsoever and wheresoever both present and future;.

- (iv) On 29<sup>th</sup> December 2008 the loan was restructured to provide for(a) short-term loan of \$2,400,000 to be repaid to the Claimant in full within three months in two instalments of \$400,000 and \$2,000,000 and (b) a long term loan of \$6,180,000 over 12 years effective from 31<sup>st</sup> December 2008 inclusive of a two month moratorium on principal payments.
- (v) Except for the payment of \$240,000 comprising \$30,000 towards principal and \$210,000.00 toward interest the Defendant has defaulted in the repayment of the said loan.

The Claimant further alleges that by letter dated 7<sup>th</sup> June 2010 the Defendant through its attorney at law, admitted the debt.

The Claimant therefore seeks an order for:

- (a) the payment of the sum of \$10,970,638.59;
- (b) delivery of possession of the mortgaged property and
- (c) delivery by the Defendant to the Claimant of all chattels secured by the first and second debentures.

By its defence dated 1<sup>st</sup> July 2011 the Defendant denies that (a) the letter of 7<sup>th</sup> June 2010 contained an acknowledgement or admission of the said debt and (b) the sums claimed on the grounds set out in paragraph 5 of its defence. Paragraph 5 of the Defendant's defence reads as follows:

“save that the said payments are admitted, but their application is not admitted on the ground that the Defendant does not know if it is true and wishes the Claimant to prove same paragraph 7 is denied on the grounds that:

- (a) no monies were advanced upon the execution of the first debenture and the memorandum of mortgage as these documents were to secure monies to be advanced repayable to the Claimant up to a maximum of \$2,820,000;
- (b) at the time of the execution of the bond the total indebtedness to the Claimant was \$464,286;
- (c) the second debenture secured only the payment of monies due under the bond; and
- (d) no money was advanced to the Defendant pursuant to the said restructuring.”

Paragraph 7 of the statement of case refers to the repayment by the Defendant of the sum of \$240,000 only and the application of that sum to principal and interest, and the fact that the Defendant has defaulted on the repayment.

By way of reply the Claimant contends that the procedure followed by the parties was that the Defendant was required to submit to it requests for disbursements to creditors supported by invoices from the creditors, which would be approved by the Claimant and payments issued directly to the creditors. In support of that the Claimant annexes copies of all requests for disbursements. In addition the Claimant contends that it kept investment ledgers for the monies advanced under the single debenture and the bond and annexes copies of these ledgers.

Giving the defence the most beneficial interpretation is clear that the defence advanced by the Defendant was that only the sum of \$464,286. was advanced by the Claimant. Using that interpretation, on the pleadings therefore, the only issues for my determination were (i) whether the sums of \$6,180,000; \$2,400,000 and \$69,960. minus the sum of \$464,286. admitted by the Defendant were lent to the Defendant by the Claimant and (ii) whether the letter of 7<sup>th</sup> June constituted an acknowledgement and admission of the debt.

No evidence was led by the Defendant. The only evidence before me was the evidence of Siew Paltoo the Claimant's general manager at the time. His evidence was not shaken in cross-examination and I accept it. According to the witness during the period 1994 to 1996 the sum of \$3,807,598 was disbursed to the Defendant. By January 2008 the total amount owed by the Defendant was \$8,580,008. This sum included the sum advanced together with interest at the contracted rate. On 29<sup>th</sup> December 2008 the parties agreed to restructure the Defendant's loan facility. As a result the Defendant's outstanding debt was converted into a short-term loan of \$2.4 million to be repaid in full in three months and a long term loan of \$6,180,000 to be repaid over 12 years effective 31<sup>st</sup> December 2008 inclusive of a two month moratorium on the payment of the principal.

According to the witness to date the Defendant has paid some \$240,000 on the said loan under the restructuring agreement to which the sum of \$30,000 was applied to the principal and the sum of \$210,000 towards interest. There remains outstanding therefore on the two restructured loans the sum of \$10,930,678.59 as of the 31<sup>st</sup> March 2011 with daily interest accruing in the sum of \$2675.40. With respect to the claim for the sum of \$39,960.00 paid to Gulf Insurance

Limited while there is contained in the exhibits an invoice for the payment of a sum of \$69,960 to Gulf Insurance, Paltoo gives no evidence of the payment of this sum.

The Defendant submits that the Claimant's claim fails because the statement of case fails to state two essential facts: that the monies were in fact advanced pursuant to the agreement and that the sums claimed are in fact secured by the mortgage.

According to the Defendant the Claimant has failed to plead that it advanced any monies to the Defendant pursuant to the loan arrangement set out in paragraph 2 of the statement of case. While I accept that the Claimant's case is badly pleaded I do not accept this submission. While the Claimant fails to particularise when this money was advanced to the Defendant in my opinion, paragraph 1 of the statement of case clearly states that monies were loaned to the Defendant and specifies the monies so loaned and the interest charged on these sums.

Further the Defendant does not deny this fact. Indeed, what the Defendant says is that it denies the sums claimed because (a) no monies were advanced upon the execution of the first debenture and the memorandum of mortgage as these documents were to secure monies to be advanced and repayable to the Claimant up to a maximum of \$2,000,820; (b) at the time of the execution of the bond the total indebtedness to the Claimant was \$464,286; (c) the second debenture only secured the payment of monies due under the bond and (d) no money was advanced to the Defendant pursuant to the said restructuring. In my opinion this does not amount to a denial that the sums were loaned to the Defendant. At best the defence merely avers that the sums claimed are not recoverable for the reasons advanced.

Further the fact that the debenture and the memorandum of mortgage were for the purpose of securing monies to be advanced does not in my opinion suggests that monies were not advanced. Neither in my view does it make any difference that these two instruments were to secure monies to be advanced and repayable only to a maximum of \$2,820,000. There is no requirement that a Claimant may only sue for monies secured by way of mortgage or debenture. Neither in my opinion do the items referred to in (b) (c) or (d) makes a difference. It is clear from the evidence of Paltoo that the restructuring was with respect to the monies advanced and the outstanding interest. While these facts may have made a difference if the Defendant had joined issue on fact that the monies were loaned to it given both the defence and the evidence before me in my opinion these facts are irrelevant. The Defendant stands or falls by its failure to specifically deny that the monies were loaned to it.

According to the Defendant the Claimant has not complied with Part 64.4 (c) which requires a mortgagor to file with the claim form particulars of the amount of the advance. It seems to me that paragraph 1 of the fixed date claim/statement of case does in fact state the amount of the advance, albeit by the use of the word “principal”.

The Defendant further submits that this action is intituled and based only on the mortgage. While I accept that the action is intituled in the matter of the property comprised in the memorandum of mortgage. I do not accept the submission that the action is based only on the mortgage. Indeed the fixed date claim/statement of case clearly indicates otherwise. The fact that the Claimant referred to the mortgage in the title of the proceedings, to my mind, is merely an attempt by it to comply with Part 69 of the rules which requires a party claiming any relief identified in Part 69.1 to comply with the rule.

Finally the Defendant submits that since the stamp duty paid on the mortgage is only sufficient to secure advances up to \$2,820,000 the mortgage deed cannot be given in evidence or be available for any purpose whatsoever in accordance with section 22 (5) of the Stamp Duty Act. I have to admit that I am baffled by the submission for the simple reason that on the totality of the evidence before me is the loan covered by a number of securities the mortgage deed being but one. On the evidence it is not in dispute that the Defendant owes to the Claimant at least \$2,820,000. That being the case, the Claimant would have been entitled to bring proceedings pursuant to the deed of mortgage to enforce its security and the mortgage deed could have validly put into evidence before me. As it is given the fact of multiple securities I have no evidence which would suggest that the Claimant is seeking to enforce the mortgage deed with respect to a sum in excess of \$2,820,000. In the circumstances I am not satisfied that there is any omission or insufficiency with respect to the stamp duty payable on the mortgage deed.

In the circumstances there is no need to deal with the letter of the 7<sup>th</sup> June 2010.

At the end of the day therefore I am satisfied that the Claimant is entitled to an order that the Defendant:

- (i) pay to it the sum of \$10,970,638.59 together with interest at a daily rate of \$2,675.40 from 31<sup>st</sup> March 2011 to today's date, but must give the Defendant credit for the sum of \$30,000.00 it admits it received and applied to the Insurance payment;
- (ii) Deliver up to the Claimant possession of premises situate in the Parish of St John in the island of Tobago comprising one acre and 2.5 perches or 0.4111 ha more particularly described and coloured pink in the plan registered in



volume 3366 folio 355 being a portion of the land is described in Crown grant in volume 3514 folio 13 and also describing certificate of title, volume 1258 folio 181 and now described in certificate of title. In volume 3366 folio 357 and bounded on the north and the West by other portions of the said land the South by other portion of the said lands and by Windward Road, and on the East by Windward Road.

- (iii) Deliver up to the Claimant the chattels secured by (a) a debenture dated 2<sup>nd</sup> August 1994 and registered as No. 12296 of 1994 and varied by deed dated 28<sup>th</sup> July 1995 and registered as number 1478 1995 and (b) a debenture dated 28<sup>th</sup> July 1995 registered as number 13154 of 1995.
- (iv) Costs on prescribed costs basis in the sum of \$318,578.57.

Dated this 5<sup>th</sup> day of April 2012.

**Judith Jones**  
**Judge**