THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2022-01315

BETWEEN

SCOTIABANK TRINIDAD AND TOBAGO LIMITED

Claimant

AND

JOEL STEPHEN

First Defendant

AND

CHRISTINE STEPHEN

Second Defendant

Before the Honourable Madame Justice Margaret Y Mohammed
Date of Delivery 29 January 2025

APPEARANCES
Ms Susan Moolchan instructed by Ms Chitrani Ragoonanan Attorneys at law for the Claimant
Ms Tynneille Tuitt Attorney at law for the Defendants

JUDGMENT

THE APPLICATION

1. The Claimant has applied to strike out the Defendants' respective Defence and Counterclaim[1] pursuant to Part 26.2(1)(c) of the Civil Proceedings Rules, 1998 (as

[1] The First Defendant's Defence and Counterclaim was filed on 7 October 2022 and the Second Defendant's Defence was filed on 14 February 2023.

amended) ("the CPR") on the basis that it discloses no grounds for defending and counterclaiming; and alternatively that the Claimant be granted summary judgment on the whole of its claim against the Defendants pursuant to Part 15 of the CPR.

THE CLAIM

2. According to the claim, at the Defendants' request and by Letter of Offer/Loan Agreement ("the Letter of Offer/Loan Agreement") dated 1 February 2011, the Claimant *inter alia* granted to the Defendants a mortgage loan facility ("the loan facility") in the principal sum of $970,000.00 ("the principal sum"), to be repaid together with variable interest at the rate of 6.750% per annum (before as well as after judgment) over a period of twenty (20) years and to be repaid in accordance with the other terms and conditions within the Letter of Offer/Loan Agreement. By disbursement letter dated 1 February 2011 ("the disbursement letter") and pursuant to the Letter of Offer/Loan Agreement, the principal sum was disbursed for the purpose of purchasing a property ("the property") situate at Southern Main Road, Claxton Bay. The Defendants signed the disbursement letter which acknowledged and confirmed the manner in which disbursement of the principal sum was to be made. Under Clause 4 of the Letter of Offer/Loan Agreement, the Defendants agreed to execute a mortgage over the property as security for the loan facility. However, the Memorandum of Transfer and the Memorandum of Mortgage were never perfected.

3. Subsequently the Defendants defaulted in repayment of the loan facility. As a consequence, the Claimant instituted the instant action against the Defendants for the sum of $728,025.14 for debt and interest as at 14 April 2022, and interest continuing to accrue at the daily rate of $104.97 (equivalent to 6.50% per annum) from 15 April 2022, until liquidation in full ("the Claimant's Claim").

THE DEFENCE AND COUNTERCLAIM

4. In response to the Claimant's Claim, the Defendants contend that the Letter of Offer/Loan Agreement operates conjunctively with the Memorandum of Mortgage and the loan facility between the parties ought to be governed by both the terms and conditions within the Letter of Offer/Loan Agreement and the provisions contained within the Memorandum of Mortgage. The Defendants contend that due to the Memorandum of Mortgage not being perfected, the Loan Agreement was not completed, was breached by the Claimant and cannot be relied on solely. The Defendants also contend that whilst they both signed the disbursement letter, it does not accurately reflect how the sums were disbursed or should have been disbursed, as a payment was made to Chersons despite the Memorandum of Transfer and Memorandum of Mortgage not being perfected. The Defendants further contend that there is a mortgage indemnity fee/charge which cannot be upheld as no mortgage was registered.

5. The Defendants admitted that they have defaulted in their loan repayments but dispute the amount being claimed. The Defendants contend that they never received any pre-action correspondence from the Claimant and only became aware of the Claimant's Claim when it was served on the Second Defendant on 13 May 2022.

6. The Defendants also filed a counterclaim in which they are claiming that the Claimant's loans officer/employees informed them that it had a panel of Attorneys at law who would prepare the requisite documents to transfer ownership of the property to them and prepare the security documents. They assert that the law firm Chersons was appointed from the Claimant's panel of Attorneys to act as the Attorneys-at-Law for the preparation of the Memorandum of Transfer and Memorandum of Mortgage.

7. The Defendants contend that they placed trust and confidence in the loans officers and/or other employees of the Claimant and relied upon the

representations/statements and/or advice provided. As such, the Defendants assert that the Claimant failed to provide full and frank information to the Defendants regarding the security documents and the loan transaction and has breached their trust and/or acted negligently towards them. The Defendants also contend that the Claimant owed a duty of care towards them due to the relationship of Lender and Borrower and that the Claimant owed a fiduciary duty to the Defendants to act in the best interests of the Defendants with respect to the advice given in relation to the mortgage transaction. The Defendants also dispute the amount claimed by the Claimant and are contending that the Claimant failed in its duty to take reasonable care and skill in disbursing funds to itself and Chersons.

THE REPLY AND DEFENCE TO COUNTERCLAIM[2]

8. In Reply, the Claimant asserted that the Mortgage Deed was intended to be prepared by Chersons as a security document for the loan facility, but in its absence the Letter of Offer/Loan Agreement executed by the Defendants in the presence of a witness is a self contained contract which satisfies basic contractual requirements and the Defendants are bound by same. The principal sum being the consideration as set out in the Letter of Offer/Loan Agreement was disbursed to the Defendants to be used exclusively for the purchase of the property. The Mortgage Deed could only be registered after the Defendants registered the Memorandum of Transfer to satisfy having a good and marketable title to the property, which was not done.

9. The Claimant contended that the Defendants chose Chersons as their Attorney at law to take conduct of their transactions and it was their responsibility to conduct the transfer and prepare the mortgage documents. There was no breach of trust, duty of care or fiduciary duty by the Claimant to the Defendants and at all material times the Claimant conducted its due diligence and a reasonable standard of care. The Claimant was not privy to the dealings between the Defendants and Chersons with respect to

[2] Filed on 7 November 2022 and 15 March 2023

the transfer and the mortgage and that all communications between the Claimant's officers and Chersons were only with respect to the mortgage transaction. The Claimant was advised in writing by Chersons by letter dated 11 November 2010 that the Defendants executed the Memorandum of Mortgage and to disburse the funds. The Claimant disbursed the funds as requested as well as a payment of $22,689.00 to Chersons for services rendered and any issues relative to the Memorandum of Mortgage and the Memorandum of Transfer should be raised with Chersons who was wholly responsible for same.

10. The Claimant explained that the charge for the Mortgage Indemnity in the sum of $9,990.50 represented the insurance paid to cover the difference that the Defendants fell short by to qualify for the disbursement of the principal sum. The Defendants have since defaulted in their repayments and the Statement of Account attached as Exhibit D is a proper representation of the total amount owned on the principal sum. The Claimant contended that the Defendants were unjustly enriched by having the benefit of the loan facility to purchase the property and they defaulted in their repayment of the loan amount and failed to ensure that the transfer was registered by its Attorneys. Further, the Defendants were aware of the Claimant's demand for payment of the loan facility, as pre-action correspondence was issued to the Defendants at Ramdhanie Street, St Margaret's Village in Claxton Bay on 18 February 2022 via registered post and has not been returned to date.

THE UNDISPUTED FACTS

11. Based on the pleadings it is not in dispute that: (a) the Claimant granted the loan facility to the Defendants to facilitate the purchase of the property; (b) the funds were disbursed and the Vendor was paid by the Claimant for the purchase of the property; (c)the law firm Chersons, were the Attorneys-at-law who were responsible for preparing and registering the Memorandum of Transfer for the Defendants and the Memorandum of Mortgage for the Claimant; (d) The Defendants have defaulted

in their repayment of the loan facility; and (e) the Defendants currently reside on the property.

LAW AND ANAYSIS

12. The principles of law to be applied with applications to strike out a defence and to grant an order for summary judgment are well settled. Part 26.2 (1) (c) CPR empowers the Court to strike out a statement of case or part thereof where it discloses no grounds for bringing or defending a claim. A statement of case is also defined as a Defence in the CPR. The test in law is a Defence will be struck out under Part 26.2 (1) (c) where a party advances a claim which is unwinnable or bound to fail[3]. However, once there are live issues to be tried the Defence ought not to be struck out.

13. Part 15.2 (a) CPR empowers the Court to give summary judgment on the whole or part of a claim or on a particular issue if it considers that the Defendant has no realistic prospect of success on his Defence to the claim, part of the claim or issue. The test which the Court is to consider in determining a summary judgment application is well settled. The Court must consider whether the Defendant has a realistic as opposed to fanciful prospect of success[4]; a realistic Defence is one that carries some degree of conviction which means a Defence that is more than merely arguable[5]; in arriving at its conclusion the Court must not conduct a mini trial[6]; and this does not mean that the Court must take at face value and without analysis everything the Defendant states in his statements before the Court. In some cases it may be clear there is no real substance in the factual assertion made, particularly if contradicted by contemporaneous documents[7]; in reaching its conclusion the Court must take into account not only the evidence actually placed before it on the

[3] Para 66 in CV 2013-00212 UTT v Professor Kenneth Julien.
[4] Swain v Hillman [2001] 2 ALL ER 91.
[5] ED &F Man Liquid Products and Patel [2003] EWCA Civ 472
[6] Swain v Hillman [2001] 2 All ER 91
[7] ED &F Man Liquid Products and Patel [2003] EWCA Civ 472

application for summary judgment but also the evidence which can reasonably be expected to be available at trial[8]; the Court is required to go further than simply examine the pleadings but to examine in greater detail the facts, the documents and any other proposed evidence which it seeks to support its Defence as the Defendant has a duty to set out its case on an application for summary judgment. It is an assessment of the Defence as it stands to date and on these applications the Court must not be left to speculate as to what may be the evidence to be adduced by the Defendant at a trial[9].

14. Having reviewed the pleadings I formed the view that the Defence and Counterclaim put forward by the Defendants have failed to raise any live issues which should proceed to trial and are bound to fail for the following reasons.

15. First, the Defendants contention that they were not in receipt of the pre-action protocol demand letter dated 17 February 2022 ("the pre-action protocol letter") and that they were unaware of the sums due and owing under the loan as a Defence to the claim is unsustainable in law. Practice Direction 7 (Pre-action Protocols*)*, of the CPR allows a pre-action protocol letter to be delivered either personally or by pre-paid post to the intended recipient. Where the pre-action protocol letter is delivered by post it is deemed to have been received by the intended recipient on the 14th day after posting. Aboud J (as he then was) in the case of **Shade Construction Company Limited v The CEPEP Company Limited[10]** examined the use of the words 'shall be deemed' as used in the CPR and stated at paragraph 84:

> "84. It seems to me that a deemed date is a date that is an accepted date for a thing to have taken place when an actual date cannot be proven. It is a fiction that is treated as a fact in the absence of a provable fact…"

[8] Royal Brompton NHS Trust v Hammond (No 5) [2001] EWCA Cave 550
[9] Civ P 178/2019 Wayne lum Young v Scotiabank Trinidad and Tobago Limited
[10] CV2017-03282

16. In my opinion, the Claimant complied with the Practice Direction of service of the pre-action protocol letter as it was served on the Defendants via registered post to the Defendants last known address of *"91 Ramdhanie Street, St Margaret's Village, Claxton Bay"* which was the same address stated in the Letter of Offer/ Loan Agreement. There was no evidence by the Defendants in the Defence that the pre-action protocol letter was not deemed to be served on them fourteen (14) days after being posted to their last known address. In any event, the Defendants would have been aware of their default in repayment of the loan facility as they were responsible for making the said payments.

17. Second, the Defendants assertion that the Claimant cannot bring a claim solely under the Letter of Offer/ Loan Agreement as it works in conjunction with the Memorandum of Mortgage is flawed as there is a valid contract between the Claimant and the Defendants based on the Letter of Offer/ Loan Agreement in which the Claimant has grounded its claim. **Halsbury's Laws of England Contract (Volume 22 (2019))3. Formation of Contract (1) General Principles of Formation and Capacity to Contract; 31. Requirements for a valid contract** states that:

> "A valid contract requires: (1) an agreement; (2) an intention to create legal relations; and (3) consideration (or, in the alternative, a deed)...."

18. The Letter of Offer/Loan Agreement which was annexed to the statement of case shows that it was signed by both Defendants in the presence of a witness. It set out the terms of repayment, interest rate, sums loaned and all other terms and conditions necessary for the repayment of the loan facility. It is a valid contract as it showed the intention to create legal relations, the loan was granted and the sums were disbursed, which was the consideration. In my opinion, the Memorandum of Mortgage was intended to be a collateral or security for the loan but did not void or discharge the Defendants from their contractual obligations to repay the loan which they agreed to when they signed the Letter of Offer/ Loan Agreement. The

Defendants have breached the terms of the contract as set out in the Letter of Offer/ Loan Agreement as they have admitted in their respective Defences that they have defaulted in their loan repayment and the Claimant is entitled to make the Claimant's Claim.

19. Third, the Claimant did not owe a duty of care to the Defendants. The Defendants contended in the Counterclaim that the Claimant was negligent by:

    (i) Failing to take due care in giving information to the Defendants;
    (ii) Failing to take reasonable care and skill in giving financial and investment advice and in explaining the effect of the security documents to the Defendants;
    (iii) Failing to take reasonable care and skill in appointing Chersons, Attorneys-at-Law, to conduct the transfer and preparation of the mortgage documents;
    (iv) Failing to intervene when the Defendants made enquiries about the status of their documents;
    (v) Failing to take reasonable care and skill in disbursing funds to Chersons for payment of legal fees connected with the transfer and mortgage documents;
    (vi) Failing to keep the Defendants up to date on the status of the transfer and security documents;
    (vii) Failing to mitigate the Defendants' loss/put measures in place to protect the Defendants' interest in the property; and
    (viii) Failing to explain the nature of the transaction and the implications of the Attorneys-at-Law's failure to the Defendants.

20. The duty of care owed by a bank to its customer in a loan transaction was addressed in the Court of Appeal judgment in **Clyde Dindial v RBTT Bank Limited**[11]. In that case,

[11] Civ App 244 of 2009

the Appellant decided to acquire two dump trucks from a Mr Rattan and approached the Respondent (the Bank) for a loan to assist in the purchase of the trucks. His loan application was approved and as security for the loan, the Appellant was required to provide a mortgage over the trucks by way of mortgage bills of sale. The Appellant executed a mortgage bill of sale in respect of each of the trucks and the Bank disbursed the loan proceeds and credited Mr Rattan's account with the funds. Shortly thereafter it was discovered that the trucks did not exist. The Appellant subsequently executed a Deed of Mortgage in favour of the Bank over his property to replace the mortgage bills of sale as security for the loan. Thereafter, the Appellant commenced proceedings against the Bank claiming a declaration that the mortgage bills of sale and the Deed of Mortgage were null and void and should be set aside and sought damages for negligence and breach of contract. The Appellant's claim was dismissed, and the Appellant appealed thereafter, contending that the trial Judge erred in dismissing his claim against the Bank.

21. At paragraphs 15 to 17 of the judgment Mendonca JA, explained the circumstances which give rise to a duty of care as:

> 15. It is now settled that for any situation to give rise to a duty of care three ingredients must exist and these are; 1) the foreseeability of damage; 2) there should exist between the party said to owe the duty and the party to whom it is claimed to be owed a relationship characterized by the law as one of "proximity" or "neighbourhood" and 3) that the situation should be one in which the Court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other (see per Lord Bridge of Harwich in Caparo Industries plc v Dickman and Others [1990] 2 A.C 605, 617-618).
>
> 16. In addition to the foreseeability of damage, the law therefore imposes the need for proximity and reasonableness and fairness. In commenting on the

latter two concepts Lord Bridge in Caparo noted that they were not susceptible of any precise definition but were labels that might be attached to circumstances from which the Court can conclude that a duty of care exists…

17. ... the duty of care in tort depends not solely upon the existence of the essential ingredient of the foreseeability of damage to the plaintiff but upon its coincidence with a further ingredient to which has been attached the label "proximity" and which was described by Lord Atkin in the course of his speech in Donoghue v Stevenson [1932] A.C 5662, 581 as:

> 'such close and direct relations that the act complained of directly affects the person whom the person alleged to be bound to take care would be directly affected by his careless act.' ….
>
> Thus, the postulate of a simple duty to avoid any harm that is, with hindsight, reasonably capable of being foreseen becomes untenable without the imposition of some intelligible limits to keep the law of negligence within the bounds of commonsense and practicality. Those limits have been found by the requirement by what has been called "relationship of proximity" between plaintiff and defendant and by the imposition of a further requirement that the attachment of liability for harm which has occurred be "just and reasonable."…"

22. At paragraph 21 Mendonca JA continued:

21. …While I agree with the Judge that the Appellant could have no objection to the Bank deciding to waive the requirement of security for the loan, unless it did so, it is equally clear <u>that the obligation to provide the security required by the Bank for the loan rested on the Appellant. As part and parcel of the</u>

provision of this security, in addition to providing the documents required of him by the Bank, the Appellant was required to execute the mortgage bills of sale and I would add to these obligations, the obligation to ensure that he acquired a proper title to the vehicles. These could all be treated as terms of the agreement between the Appellant and the Bank with respect to the loan. If the Appellant failed to discharge any of these obligations, or in other words was in breach of any of the terms of the contract, the Bank could rely on the breach either to refuse to proceed with the loan transaction or to demand immediate payment if the breach was discovered after the loan was disbursed**.** It is unreasonable to suggest that although the Appellant owed these obligations to the Bank that somehow the Bank had a corresponding duty of care to ensure that the documents provided by the Appellant in fulfillment of his obligations were genuine and if they were not, then the Bank was liable to pay to the Appellant damages in negligence. Such a contention simply defies logic. The obligations were solely within the responsibility of the Appellant and these were owed to the Bank. It cannot be that the Bank was under a duty to ensure that the Appellant has discharged his obligations to it." (Emphasis mine)

23. In the instant case there were two (2) documents which had to be prepared, namely the Memorandum of Transfer and the Memorandum of Mortgage. The Memorandum of Transfer vested the legal title of the property in the Defendants and the Memorandum of Mortgage could only be perfected after the completion of the Memorandum of Transfer. The Memorandum of Transfer was between the Vendor of the property and the Defendants and the Memorandum of Mortgage was between the Defendants and the Claimant. The only persons who could have instructed Chersons for the preparation of both documents were the Defendants as they were purchasing the property and mortgaging it to the Claimant. Therefore, the Claimant could not have played any role in the retaining of Chersons for those transactions.

24. Based on the documents exhibited by the Claimant in its pleadings the Claimant acted on the written advice by Chersons where by letter dated 11 November 2010, it informed the Claimant that the Mortgage document was executed and that the security documents would be forwarded to the Claimant in due course[12]. In light of Cherson's advice, the Claimant proceeded to disburse the loan in accordance with the disbursement letter, which was duly signed by the Defendants, evidencing their confirmation of same. Therefore, the Claimant acted on the advice from Chersons and was under the belief that the mortgage documents were executed and perfected. In my opinion, there was no breach of any duty of care by the Claimant to the Defendants as it disbursed the principal sum when it was informed by Chersons that the requisite documents were executed and were in the process of being registered. In doing so the Claimant acted with a reasonable standard of care.

25. In my opinion, the Claimant had no duty of care to the Defendants to explain the nature of the transactions, the implications of Chersons' failure to complete the said transactions or to take reasonable care and skill in recommending that the Defendants retain the services of Chersons to conduct the said transactions. The Claimant also did not have a duty to mitigate any loss regarding the transfer as it was not a party to same or put measures in place to protect the Defendants' interest in the property, as it was the Defendants' obligation to secure title to the property to be held as security. In my view, it was Chersons as the Attorneys at law acting on behalf of the Defendants who had the duty to explain the nature of the security documents to the Defendants and to keep them informed of the status of the said documents.

26. In any event, the Defendants and not the Claimant had a duty to ensure that the legal title to the property was registered in order to obtain the legal title as they have been residing on it.

[12] See Exhibit**"H"** in the Claimant's Reply and Defence to Counterclaim of the Second Defendant filed on 15 March 2023

27. Fourth, there was no duty of trust and confidence between the Claimant as Banker and the Defendants. The Defendants pleaded the particulars of breach of trust and confidence by the Claimant towards them in its failure to provide full and frank information regarding the loan and the security documents. It is settled law that a fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.

28. The **Encyclopaedia of Banking Law, Division C: The Relationship of Bank and Customer: The bank's duty to exercise reasonable care and skill; Assuming the role of financial adviser** describes the role of a banker with respect to a customer in a loan transaction as:

> "69. ….a bank does not usually assume the role of financial adviser to a customer who merely approaches it for a loan or for some other form of financial accommodation. As Scott LJ said in Lloyd's Bank plc v Cobb:
>
> > ''… the ordinary relationship of customer and banker does not place on the bank any contractual or tortious duty to advise the customer on the wisdom of commercial projects for the purpose of which the bank is asked to lend money. If the bank is to be placed under such a duty, there must be a request from the customer, accepted by the bank, or some other arrangement between the customer and the bank, under which the advice is to be given.''
>
> Cases where a bank lending money to its customer has also assumed the role of financial adviser will be rare…."

29. The Court of Appeal in this jurisdiction in the case of **Liloutie Deosaran A/C Shirley Badal Deosaran A/C Shirley Liloutie Deosaran-Badal and Others v Narendra Ojar**

Maharaj[13]**,** stated the following in relation to relationships of "trust" and "confidence":

> "9. The law in relation to presumed undue influence is as set out in the following paragraphs of the judgment of Lord Millett in NCB (supra):
>
> > "[29] Undue influence is one of the grounds on which equity intervenes to give redress where there has been some unconscionable conduct on the part of the defendant. …
> >
> > [30] Thus the doctrine involves two elements. First, there must be a relationship capable of giving rise to the necessary influence. And secondly, the influence generated by the relationship must have been abused.
> >
> > [31] The necessary relationship is variously described as a relationship "of trust and confidence" or "of ascendancy and dependency". Such a relationship may be proved or presumed. Some relationships are presumed to generate the necessary influence; examples are solicitor and client and medical adviser and patient. <u>The banker-customer relationship does not fall within this category</u>. But the existence of the necessary relationship may be proved as a fact in any particular case…" (Emphasis mine)

30. There was no pleading in the Defence that the relationship between the Claimant and the Defendants went beyond giving regular advice on the loan. There were no facts pleaded that the Claimant was aware or had knowledge that the Memorandum of Transfer and the Memorandum of Mortgage were not available at the date of the disbursement of the loan. The Claimant disbursed the loan upon receipt of the

[13] Civ Appeal No P46 of 2016

written instructions from Chersons that the Memorandum of Mortgage document was executed. Therefore, the Claimant could not have informed the Defendants of information that was not within its knowledge.

31. In any event, it was not the Claimant's responsibility to update the Defendants on the status of the conveyancing documents, to explain the nature of the transactions and the implications of same. This was the responsibility of Chersons who owed a duty of trust and confidence to the Defendants to whom a relationship of Attorney at law and client existed and not between the Claimant and the Defendants. It was also Cherson's and not the Claimant's duty to acquire the Certificate of Title from the Vendor as Chersons was responsible for perfecting the title for the transfer.

32. Fifth, the Claimant has pleaded sufficient particulars in the Claimant's Claim to prove the sums claimed. While the Defendants have admitted defaulting in the repayment of the loan they have denied that they are owing the sum claimed by the Claimant. In my opinion, the Claimants have complied with Part 8.5 of the CPR as the Claimant set out its entitlement to the sum claimed as it attached a Statement of Accounts in support of the sums being claimed, which was exhibited as "D" in the Claimant's Statement of Case. It also set out its claim for interest pursuant to clause 3 of the Letter of Offer/Loan Agreement at paragraph 3 of the Claimant's Claim. Further, as this is a claim for a specified sum of monies, at paragraph 9 of the Statement of Case the Claimant set out in detail the total amount of interest claimed to the date of the claim; and the daily rate at which interest will accrue after the date of the claim.

33. Having set out these particulars the burden then shifted to the Defendants to set out facts in their respective Defences that they no longer owed the sum claimed. However, the Defendants have denied the sums claimed and they have failed to set out their own version of the outstanding indebtedness or produced any evidence to the contrary. Therefore they have not discharged or satisfied their burden of proof.

Further, the Defendants failed to produce any proof to support the sum pleaded a search fee in the sum of $500.00 in the Counterclaim

34. I have noted that Counsel for the Claimant in her written submissions stated that as a matter of compromise, the Claimant is willing to manually deduct the Mortgage indemnity fee in the sum of $9,990.50 and the fees paid to Chersons in the sum of $22,689.00 from the sums due and owing as at 14 April 2022 as set out in the Claimant's Claim . In this regard I will take this concession into account in making the order hereafter.

35. Having found that the respective Defences filed by the Defendants are to be struck out as they raise matters which are unwinnable in law and as such there are no issues to be tried, I am of the view, that the Claimant is entitled to judgment for the orders sought in the claim.

36. With respect to the alternative relief sought for summary judgment, while it is not necessary for me to address this issue, for the same reasons set out aforesaid I am of the view that the Defendants' Defences and Counterclaims also raise no realistic prospect of success. The Claimant was not negligent in its dealing with the Defendants, as it did not owe any duty of care towards them. The Claimant was entitled to bring the instant claim under the Letter of Offer/Loan Agreement only. The Claimant has established that it is the duty of the Attorneys-at-Law acting for the Defendants to prepare the necessary conveyancing documents and to explain the documents to them. The Claimant is also entitled to its contractual rate of interest after judgment. Section 25 of the Supreme Court of Judicature Act[14] sets out the Court's power to award interest on debts and damages as:

> "In any proceedings tried in any Court of record for recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in

[14] Chapter 4:01

the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment, but nothing in this section—

…

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise;…" [Emphasis added]

37. In the instant case, the Claimant and Defendants have agreed to the contractual rate of interest in the Letter of Offer/Loan Agreement which was pleaded by the Claimant.

ORDER

38. The First and Second Defendants' Defence and Counterclaim filed 7 October 2022 and 14 February 2023 respectively are struck out pursuant to Part 26.2(1)(c) CPR as they disclose no grounds for defending the Claimant's Claim and no grounds for bringing a counterclaim against the Claimant.

39. The Claimant is granted judgment on the whole of its claim against the Defendants in the sum of $728,025.14 for debt and interest as at 14 April 2022 with interest to continue to accrue at the daily rate of $ 104.97 (equivalent to 6.50% per annum) from 15 April 2022 until liquidation in full. The Claimant shall deduct the sum of $9,990.50 and the fees paid to Chersons in the sum of $22,689.00 from the sums due and owing as at 14 April 2022.

40. The First and Second Defendants do pay to the Claimant costs of the claim on the prescribed scale in the sum of $74,498.28 being 55% of prescribed costs.

41. The First and Second Defendants do pay to the Claimant costs of the notice of application filed 10 January 2024 to be assessed by this Court in default of agreement.

/s/ Margaret Y Mohammed
Judge