

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.CV2017-00502

**Between
RBC ROYAL BANK (TRINIDAD AND TOBAGO) LIMITED**

Claimant

AND

STEPHEN MOHAMMED

Defendant

Claim No.CV2019-00566

**Between
STEPHEN MOHAMMED**

Claimant

AND

**RBC ROYAL BANK (TRINIDAD AND TOBAGO) LIMITED
(formerly RBTT Bank Limited)**

Defendant

Before the Honourable Mr. Justice Seepersad

Date of Delivery: 2 November, 2022.

Appearances:

1. Ms. S. Indarsingh and Mr. A. Ramjohn, Attorneys-at-law for the Claimant.
2. Mr. M. Campbell and Mr. A. Rudder Attorneys-at-law for the Defendant.

DECISION

1. Before the Court for its determination is RBC Royal Bank (Trinidad And Tobago) Limited's ("RBC") claim CV 2017-00502 against Mr Stephen Mohammed ("Mr. Mohammed") for the following reliefs:

- a. The sum of \$1,087,165.12 owing to it by the Defendant as surety of the debts of the Tabaquite Farmers Limited under and by virtue of a Memorandum of Mortgage registered as No. T-20061219001125888 in Volume F2410 Folio 205;
 - b. Interest;
 - c. Costs.
2. Also before the Court is CV2019-00566 by virtue of which Mr Mohammed has sought against RBC the following reliefs:
- a. Damages for sale of the Second Parcel of Land and/or the Farm at an undervalue;
 - b. Alternatively, equitable compensation;
 - c. Interest pursuant to Section 25 of the Supreme Court of Judicature Act Ch. 4:01 and/or equitable interest on the amount found to be due to the Claimant at such rate and for such period as the Court thinks fit;
 - d. Costs;
 - e. Such other relief as the Court deems fit.

Facts in CV2017-00502 RBC v Stephen Mohammed:

RBC's Facts:

3. The Defendant was at all material times a director of a company called Tabaquite Farmers Limited (“TFL”) and the surety and guarantor of TFL’s debts held with RBC.
4. On 30 April 2013 TFL was granted a loan facility by RBC and RBC extended three credit facilities namely:
 - a. An overdraft facility in the sum of \$1,000,000.00 with interest at the Lender’s Commercial Prime Lending Rate plus 2% per annum with fluctuating repayment and subject to call and annual review.
 - b. A commercial mortgage in the sum of \$245,189.00 with interest at the rate of 10.5% per annum variable. This facility was repayable on demand, however until further

notice, by monthly payments of \$3,385.00 inclusive of interest until liquidation by 5 January 2022.

- c. A demand loan in the sum of \$412,420.00 with interest at the Lender's Commercial Prime Lending Rate plus 2% per annum which was repayable on demand, however until further notice, by monthly payments of \$10,274.00 inclusive of interest until liquidation by 23 September 2017.
5. Payment of the credit facilities was secured by:
- a. Demand Second Debenture dated 17 December 2002 registered on 17 February 2003 as DE200300232961D001 between RBC and Mr Mohammed creating a second charge over the fixed and floating assets of the company.
 - b. Deed of Chattel mortgage dated 12 August 2003 and registered on 15 August 2003 as DE200303035551D001.
 - c. Memorandum of Mortgage dated 20 November 2006 registered on 19 December 2006 as registration number T-20061219001125888 in Volume F-2410 Folio 205 whereby the debt was secured and stamped maximum collateral to the Deed of Debenture in relation to:
 - i. A parcel of land comprising 3.9737 hectares located at Watts Trace, Tabaquite in the name of TFL in the name of the principal debtor as well as
 - ii. Mr Mohammed as surety fully guaranteeing the obligations and liabilities of the Principal Debtor.
6. On 3 October 2014 the Principal Debtor defaulted in payment on all its credit facilities namely the Overdraft Account Number 100099110154945, Commercial Mortgage Loan Account Number MG107866320 and Demand Loan Account Number MG1027390590.
7. In or around May 2015 RBC sold the property secured under the Memorandum of Mortgage. The proceeds of this sale were applied to the Overdraft Account and Mr Mohammed was notified of this via email on 15 June 2015.

8. On 24 June 2015 another demand was made by RBC's attorneys on the Principal Debtor for payment of the balance of monies owing under the credit facilities but the Principal Debtor failed to make any payments pursuant to the letter of demand.
9. By letter dated 7 September 2016, RBC's attorneys made a demand on Mr Mohammed, as surety, for payment of the monies due and owing and he has failed to make any payments pursuant to same.
10. As at 31 January 2017 Mr Mohammed was indebted to RBC as surety in the sums of \$1,087,165.12 which is made up as follows:
 - a. Overdraft Account- Principal Balance- \$260,470.00. Inclusive of interest it amounts to \$398,726.46.
 - b. Commercial Mortgage Loan – Principal Balance- \$226,828.85. Inclusive of interest it amounts to \$289,761.84.
 - c. Demand Loan – Principal Balance- \$314,626.63. Inclusive of interest it amounts to \$398,676.82.

Mr Mohammed's Facts:

11. Mr Mohammed in his defence filed on 1 March 2018 stated that his functions as director of TFL ceased consequent upon the appointment of an Interim Receiver in August 2014 under Deed of Debenture and Guarantee registered as No. 14054 of 1998 by the Agricultural Development Bank in CV2014-02793.
12. In addition, Mr Mohammed pleaded that he was not the surety and guarantor of all of TFL's debts and that his responsibility was only in relation to a loan of \$315,000.00.
13. Mr Mohammed outlined that by Memorandum of Mortgage, TFL mortgaged to RBC all its estate and interest in the parcel of land described in the First Schedule thereto and if there were outstanding sums due and owing to RBC, then there was gross mismanagement

by the Interim Receiver as TFL's assets and livestock, as at June 2014 were sufficient to satisfy any obligation of TFL and is unaware whether TFL defaulted in its obligations to RBC.

Facts in CV2019-00566 Stephen Mohammed v RBC:

Mr Mohammed's Facts:

14. Mr Mohammed pleaded that he was the Managing Director of TFL at all times.
15. By Deed of Debenture and Guarantee made on 1 July 1998 and registered as No. 14054 of 1998 between TFL and the Agricultural Development Bank (ADB), TFL was granted banking facilities by the ADB and agreed to secure the payment to the ADB of the monies repayable on such banking facilities in the manner set out in the debenture.
16. By Memorandum of Mortgage dated 20 November 2006 registered in Volume F-2410 Folio 205 as number T-2006121900112588, TFL mortgaged to RBC its interest in the Second Parcel of land as security for a covenant to repay certain monies owing to RBC.
17. Mr Mohammed was a party to the said mortgage and executed same as a surety.
18. In CV2014-02793 ADB sought an order appointing Varune Mungal as Receiver Manager of TFL on the grounds of default having been made by TFL in the repayment of the monies secured by the debenture. By consent order dated 2 March 2014 Mr Mungal was appointed Receiver Manager of TFL.
19. By agreement dated 7 May 2015 between Mr Mungal, RBC and Mr Chandresh Sooknanan, there was an agreement among the parties for the sale of the First Parcel of Land, the Second Parcel of Land and the chattels to the buyer for \$4.8 million dollars.

20. By email dated 15 June 2015 RBC's servant/agent Mr Mongru communicated to Mr Mohammed that RBC sold the Second Parcel for \$750,000.00 and that the sale was conditional on the sale of the entire farm which had been sold by the Receiver.

21. Mr Mohammed pleaded that in exercising its mortgagee power of sale over the Second Parcel of land and/or participating in the farm sale agreement, RBC breached its duty in equity owed to Mr Mohammed in that, *inter alia*, RBC sold the Second Parcel for less than its market value.

RBC's Facts:

22. RBC denied that it is indebted to Mr Mohammed and outlined that it operated under no duty in equity to sell the Second Parcel of land at its true market value. The Bank pleaded that it relied on a 2013 valuation report which Mr Mohammed provided which gave an opinion of the market value of the Second Parcel in the value of \$750,000.00. Furthermore, RBC indicated that it received no bids higher than \$750,000.00.

23. RBC also pleaded that it had no duty in equity to sell the Second Parcel of Land at its true market value. RBC's duty as mortgagee is to secure the proper price having made all reasonable efforts to advertise the Second Parcel of Land for Sale.

The Evidence:

24. At the hearing, the Court heard evidence from the Claimant, Mr Indar Mahase, Ms Vanessa Charles-Roberts, Mr Myles Mitchell and Mr Brent Augustus, who was the Court appointed expert witness.

The Issues:

25. Before the Court for its determination are the following two issues:
a. Whether RBC is entitled to the payment of:

- i. The sum of \$260,470.00 and interest at the rate of 9.5% per annum or \$67.79 per day from 1st July 2016 until payment on overdraft account number 100099110154945;
 - ii. The sum of \$226,828.85 and interest at the rate of 10.5% per annum or \$65.25 per day from 1st July 2016 until payment on commercial loan account MG1017866320; and
 - iii. The sum of \$314,626.63 and interest at the rate of 9.5% per annum or \$81.89 per day from 1st July 2016 until payment on demand loan account number MG1027390590.
- b. Whether the Second Parcel of Land was sold at a gross undervalue and if so, whether Mr Mohammed is entitled to damages.

Resolution of the Issues:

Issue 1:

26. The obligations created under the Mortgage as between Mr. Mohammed and the Bank are the same as that of a debtor under a Contract of Loan. Bereaux J (as he then was) confirmed this position at paragraph 25 of his judgment in **HCA No. 2265/04 Scotiabank Trinidad and Tobago Limited v Seltex Limited and ors** where the court said that :

“It is trite that a promissory note is treated as cash and that judgment should not be withheld in an action on a dishonoured promissory note save for exceptional circumstances.”

27. In *Seltex* (supra), the Court at paragraph 26 outlined that:

- c. The onus of proving repayment lies with the promisor; and
- d. There are limited defences which can be raised, traditionally, illegality, fraud, duress, failure or absence of consideration, satisfaction of the bill or note, material alteration or non est factum.

28. This Court carefully considered the obligations which Mr Mohammed undertook as surety and noted that it was expressly set out at Clauses 15 and 17 of the Memorandum of Mortgage in the Second Part of the Second Schedule that:

“15. The Surety hereby guarantee to the Bank the payment of the principal moneys and interest from time to time to become due hereunder and if and whenever the Borrower makes default in payment of any of such principal monies or interest the Surety will pay the amount aforesaid on demand.... Any notice or demand to be given hereunder may be given by the Bank posting the same to the Borrower or the last known address of the Surety...

17. ... the Surety shall be deemed a principal debtor for the monies and liabilities secured herein”

29. Mr. Mohammed sought by his pleading to limit the extent of his liability to the sum loaned to him for the purchase of the Second Parcel of land, however, consistent with the obligations he undertook pursuant to clauses 15 and 17 referenced above, he conceded during cross examination that he was aware that he was fully liable to the Bank for all debts of TFL under the Deed of Mortgage.

30. The Bank has also claimed that there is a debt owed under a Loan Agreement dated April 30th 2013 and that Mr. Mohammed agreed to pay same on behalf for TFL in the event of any default. RBC adduced documentary evidence to support its claim for the debts owed including the Loan Agreement dated April 30th 2013, the Mortgage, the demand for payment made on Mr. Mohammed as Surety and statements for each account for which it claimed that sums are due and owing. These documents and records established Mr Mohammed's obligation to pay as well as the extent of TFL's indebtedness.

31. Both Myles Mitchell and Vanessa Charles-Roberts provided convincing and uncontradicted testimony which also supported the Bank's claim for monies due and owing.

The Court accepted Mrs. Vanessa Charles-Roberts's evidence that she downloaded and printed the Statements of each of the accounts of TFL and relied upon the said statements.

32. The Court also accepted Mrs. Charles Roberts' evidence on statements of the Bank's overdraft on Current account number 100099110154945 for the period February 2013 to May 2015 which were tendered into evidence. The Court further noted and accepted Mrs. Charles-Roberts's testimony that she downloaded the statements from the Bank's computerised system and her declaration that they are true and correct.
33. Mr. Mohammed was questioned on the information referenced on these overdraft statements and he confirmed that when he was Managing Director of TFL that he received overdraft Statements on a monthly basis. He also indicated that he conducted reconciliation exercises and stated that as far as he was aware the sum due on the overdraft was correct up to June 24th 2014 being the date on which he gave up the keys for the Farm to the ADB.
34. Mr Mohammed also stated that as at 24 June 2015, the Farm was operational and the Workers continued to operate the Farm with the ADB until the Receiver was appointed. The witness further accepted that after his departure, the Workers continued to make deposits and withdrawals from the account as the Farm continued to care for the livestock which he left behind.
35. The witness also agreed that the balance on the overdraft was in the vicinity of \$1,000,000.00 as stated on the Current Account Statement when he handed over the keys for the Farm to the ADB in June 2014.
36. The Court therefore accepted the evidence adduced by the Bank and found that the Statements with respect of the Current Account were accurate and found as a fact that the overdraft balance owed as at July 2014 stood in the sum of \$1,010,470.00.

37. Mrs. Charles–Roberts also provided statements for the two mortgage accounts and confirmed that the information was exported by her from the Bank’s computerised systems.
38. The Court further noted that the Statements of Account with respect to Commercial Mortgage Account Number MG1027390590 contained a schedule showing payments from 29 September 2010 to 23 September 2017 and this demonstrated that the last payment made on the said account was 23 June 2014.
39. The Court considered the Loan Agreement between TFL and the Bank dated 30 April 2013 and noted that the principal balance stated on the Loan Agreement was the sum of \$412,420.93. Mr. Mohammed admitted that this loan existed prior to 2013 and confirmed his understanding that the principal balance on the Loan Agreement was the same as reflected on the adduced Loan Statement. Mr. Mohammed further confirmed and acknowledged that the monthly instalment payment for this loan was \$10,274.00 and he conceded that his last payment was on 23 June 2014.
40. On the evidence adduced this Court finds as a fact that the principal balance outstanding as at June 2014 under the Loan Agreement MG 0127390590 stood in the sum of \$314,626.63.
41. The Second of the two mortgage accounts was a demand mortgage account number MG1017866320 and a comprehensive Statement of the Account from 5 July 2010 to 6 June 2014 was provided to the Court.
42. In the course of cross examination, Mr. Mohammed admitted that this loan also existed prior to 2013 and he outlined that this was the loan taken for the purchase of the Second Parcel of Land in the year 2006. The witness confirmed his understanding that the principal balance on the Loan Agreement for this loan was the same as was reflected on the Loan Statement for the corresponding month of April 2013. Mr. Mohammed further confirmed that the monthly instalment payment for this loan was \$3,385.00. In addition, the witness

accepted that the last payment he made on this loan was on 6th June 2014 just before handing over the keys for the Farm to the ADB.

43. Having considered all of the evidence, this Court formed the view that the Bank established that the principal balance outstanding in relation to this facility as at June 2014 stood in the sum of \$226,828.85.

44. In the circumstances, the Court having considered all the evidence advanced by RBC forms the view that the Bank has discharged the burden placed on it and has proved the debts owed as outlined in its Claim. Consequently, the Court holds that the Bank is entitled to judgment for the sums claimed together with interest at the agreed rates as set out in the Loan Agreement.

Second issue:

45. The duty of care placed on a mortgagee in the exercise of its power of sale was as succinctly set out in **Cuckmere Brick v Mutual Finance [1971] 2All ER 633** at page 643 where the court stated that :

““ It is well settled that a mortgagee is not a trustee of the power of sale for the mortgagor. Once the power has accrued, the mortgagee is entitled to exercise it for his own purposes whenever he chooses to do so. It matters not that the moment may be unpropitious and that by waiting a higher price could be obtained. He has the right to realise his security by turning it into money when he likes. Nor, in my view, is there anything to prevent a mortgagee from accepting the best bid he can get at an auction, even though the auction is badly attended and the bidding exceptionally low. Providing none of those adverse factors is due to any fault of the mortgagee, he can do as he likes. If the mortgagee's interests, as he sees them, conflict with those of the mortgagor, the mortgagee can give preference to his own interests, which of course he could not do were he a trustee of the power of sale for the mortgagor.”

46. The essence and gist of Mr. Mohammed's allegation of undervalue was premised on his assertion that the Bank sold the 10 Acre Parcel at an undervalue. He furthered stated that the bank erroneously relied upon a 2013 Valuation Report and did not update same prior to the sale.

47. The issue of "sales undervalue" was considered at length in **HCA No. 118 of 1993 San Fernando Medical Centre Ltd v Republic Finance and Merchant Bank and Ors.** In this case Blackman J at page 29 stated that in order to determine this issue one must consider the evidence. In particular he said:

““it is not clear whether the plaintiff's use of the expression **gross undervalue** meant it was alleging bad faith on the part of the Bank or whether it was just accusing the Bank of not taking reasonable care to obtain the best price. It seems to me that the Plaintiff intended to use the expression in the former sense or in the sense used by Mason J in Forsyth v Blundell at 508-509 when he said:-

“a serious departure from accepted standards in seeking to obtain the best price then available.”

Did the Bank in agreeing to sell the mortgaged property for \$834,000.00 act fraudulently, or did it recklessly and wilfully sacrifice the interests of the mortgagor (the plaintiff). Was the Bank guilty of a serious departure in accepted standards in seeking to obtain the best price then available.”

48. Before this Court, Mr Mahase convincingly explained the Bank's actions and the decision to sell the Second Parcel of Land. Mr Mahase stated at paragraphs 12 and 13 of his witness statement as follows :

“12. I asked the Receiver to inform all prospective bidders that the Ten Acre parcel which was part of the TFL Farm that the Ten Acre Parcel was for sale and that RBC was willing to sell to the successful bidder.

13. Mr. Chandesh Sooknanan was the successful bidder and initially through the Receiver offered the sum of \$350,000.00 for the Ten Acre Parcel which RBC refused. Mr. Sooknanan then offered the sum of \$750,000.00 which RBC accepted. I made the decision on behalf of RBC to accept the sum of \$750,000.00 for the sale of the Ten Acre Parcel for the following reasons:

13.1. It was not practical to sell the lands under the RBC Mortgage separate and apart from the rest of the farm since the Ten Acre Parcel was part of the TFL Farm. The buildings on the farm had extended from the lands secured by the ADB Debenture to the Ten Acre Parcel and was being used as part of the farm and enclosed as one.

13.2. The Ten Acre Parcel was agricultural land and as advised by Quamina, Scott and Associates in its report of April 17th 2013 there was little prospect of higher use in the foreseeable future.”

49. The evidence of the expert Mr. Augustus, a Chartered Valuation Surveyor, supported the Bank’s actions with respect to the sale of the Second Parcel of Land. This expert stated at Paragraph 9 of his report under the heading Disposal Discussion (Page 615 Trial Bundle Vol. 2) as follows:

“Brent Augustus & Associates Ltd are of the opinion that the prospect of obtaining a sale for the Second Parcel independently, separated from the Main Farm would be remote and that to obtain the best price for the Second Parcel both the Main Farm and the Second Parcel had to be disposed of together...

Brent Augustus & Associates Ltd are of the opinion that the decision to sell the Main Farm and the Second Parcel together was indeed correct.”

50. Further under the Opinion and Conclusion of his expert report (Page 616 Trial Bundle Vol. 2), Mr Augustus stated:

“Second Parcel- On the assumption that the Second Parcel had no encumbrance (encroachment or ponds) evidence available to Brent Augustus and Associates Limited indicates that the value of the Second Parcel (approximately 9.82 acres) on its own will not exceed \$750,000.00. Indeed evidence available to us in the general location shows evidence more in line with a figure of \$50,000.00 per acre for land with slopes such as this i.e \$500,00.00.”

51. The expert’s evidence was clear, comprehensive and compelling and the Court found that there exists no rational basis to reject same.
52. The 2013 Valuation which Mr Mohammed provided to the Bank also valued the Second Parcel in the sum of \$750,000.00 and the evidence established that the Bank relied upon the said report and rejected an initial offer of \$350,000.00.
53. No evidence was adduced to establish that any form of offer and down payment which exceeded \$750,000.00 was made. Consequently, the Court formed the view that Mr. Mohammed failed to discharge the burden placed on him to prove that the sale of the Second Parcel was at an undervalue or at a gross undervalue.
54. The approach adopted by the Bank was methodical, procedurally sound, proportionate and accorded with the evidence as contained in the valuation which was provided by Mr Mohammed. In the circumstances the Court finds as a fact that the said sale was conducted reasonably and in a manner which did not display any wilful neglect for the interests of the mortgagor.
55. For the reasons which have been outlined the Court hereby orders as follows in respect of the two claims:

CV2017-00502: RBC Royal Bank (Trinidad & Tobago) Limited v Stephen Mohammed:

- a. On the claim in CV2017-00502 the Defendant, Mr Mohammed, is ordered to pay to the Claimant, RBC, the following sums:
 - i. The sum of \$381,927.93 and interest on the principal sum of \$260,470.00 at the rate of 11% per annum or \$78.50 per day from 1st July 2016 until payment on overdraft account number 100099110154945;
 - ii. The sum of \$275,132.93 and interest on the principal sum of \$226,828.85 at the rate of 10.5% per annum or \$65.25 per day from 1st July 2016 until payment on commercial loan account MG1017866320 and
 - iii. The sum of \$378,275.22 and interest on the principal sum of \$314,626.63 at the rate of 11% per annum or \$94.82 per day from 1st July 2016 until payment on demand loan account number MG1027390590.
- b. The Defendant shall pay to the Claimant costs calculated on the prescribed costs basis;
- c. Interest shall accrue at the statutory rate of interest from this date of judgment until repayment;
- d. There shall be a stay of execution of 28 days.

CV2019-00566: Stephen Mohammed v RBC Royal Bank (Trinidad & Tobago) Limited:

- a. The Claim is hereby dismissed.
- b. The Claimant, Stephen Mohammed is hereby ordered to pay the Defendant RBC Royal Bank (Trinidad & Tobago) Limited costs assessed in the sum of \$14,000.00.

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FRANK SEEPERSAD
JUDGE

Assisted by Liam Labban JRC