

# RENWICK & PAYNE

ATTORNEYS-AT-LAW  
&  
INTELLECTUAL PROPERTY AGENTS  
in Grenada and the Caribbean

**CHAMBERS:**

EBA House

Corner Lucas Street & Church Street  
St. George's Grenada, West Indies

Email: [renwickpaynelaw@gmail.com](mailto:renwickpaynelaw@gmail.com)

Website: [www.renwickandpayne.com](http://www.renwickandpayne.com)

Telephone (473) 440-2479/3895

Fax (473) 440-4189

Partner: Margaret Blackburn-Steele LL.B (Hons.) Notary Public

Associate: Rena L. Banfield LL.B (Hons.) LEC

**Consultants:**

D. H. Lalsee. Barrister-at-Law

Amy M. Y. Bullock-Jawahir BA (Hons) Law,  
Post Graduate Dip. PLS

---

3<sup>rd</sup> October, 2022

The General Manager  
Republic Bank (Grenada) Ltd  
Centralised Credit Unit  
Melville Street  
St. George's

**Attn: Mr. O'Neal Dominique**

Dear Mr. Dominique,

**Re: Republic Bank (Grenada) Limited- Litigation Matters**

We refer to your request for information of any litigation matters involving the Bank and report as follows:

We remind the Bank that since our last report, the Court paused for the long holiday (July 31<sup>st</sup> – September 15<sup>th</sup>) during which time no Court matters were held.

**1. Claim No: GDAHCV 2005/0209- Republic Bank (Grenada) Limited v Ian Francis and Juliana Francis.**

The Bank financed the purchase of a sub-divided lot of land from Simeon Francis and subsequently the construction of a house on the said sub-division for customers Ian and Juliana Francis. During the construction, customers received a court order to cease construction as there was covenant in a prior deed which prevented the sub-division of the lot. Customers have claimed \$257,900 from the Bank as the value of their equity in the property plus legal fees and rents paid.

The above-captioned action was instituted by Renwick & Payne on the Bank's behalf to obtain clarification of the Orders in the two previous actions and to obtain declarations to the effect mainly that:

---

- a) Mr. Ian Francis and his wife would not be in contempt of court if they were to move into the house they built; and
- b) Mr. Ian Francis remains liable to pay under the mortgage.

The Bank's customers responded by way of a Defence and Counterclaim against the Bank and joined Renwick & Payne as a party for negligence as the customer alleges we did not advise him as to the covenant restricting more than one building. We responded by way of Reply and Defence to Counterclaim. On 2<sup>nd</sup> May, 2008 Judgment was entered in favour of our application to strike the Counterclaim filed in this matter. Subsequently, the Lawyers for Francis appealed the Judgment. The Court of Appeal ruled against Renwick & Payne but we did not think it in the firm's interest to resort to the Privy Council as the issue will nevertheless be thrashed out at the main trial of the action, together with the Bank's action.

### **Present Position**

This matter remains as per our last report dated 5<sup>th</sup> July, 2022.

We attended the hearing date which was set for trial of the matter. However instead of conducting a full trial of the matter, the judge engaged Counsel in a discourse of what are the relevant issues of this matter. The Judge is of the opinion that a trial may not be necessary at all depending on his determination of one preliminary issue, that is, whether the effect of Master Cottle's judgment truly prevented Ian Francis and his wife from completing the construction of their home and moving into same. If not then the Bank will be successful on its Claim, if it did, then the Judge will hold a trial on the issue of negligence on the part of the Bank and Renwick & Payne, if any.

The Judge directed all parties to file submissions on the issue for determination. We are in the process of preparing same on behalf of the Bank.

The Judge's determination on this point was delivered on Friday 1<sup>st</sup> June, 2022. He has held that the statements made in Master Cottle were in fact Obiter Dicta and did not preclude Ian Francis from completing the construction of his house. The Judge, however, felt that whilst he has narrowed the issues by way of this determination, there still need to be a trial to establish whether the Bank or Renwick & Payne owed Ian Francis a duty of care, whether this duty was breached and the extent of any loss suffered by Ian Francis as a result.

Trial is set for 23<sup>rd</sup> November, 2023, unless an earlier date becomes available.

## **Prospect of Success**

We believe that the Judge is siding with the Bank's point of view that there was nothing preventing Ian Francis from moving into his home and fulfilling his obligations under the mortgage. We believe that the Bank has good chance of succeeding in obtaining the declarations sought. These declarations are important to establish the legal position of the parties and the mortgaged property vis-à-vis a sale by the Bank under its Power of Sale. It is difficult to ascertain the final amount of the Claim because the Francis' are claiming all costs expended subsequent to their purchase of the land. However, the Bank must be mindful that there is no guarantee as to what the Judge will ultimately determine.

As a reminder, the building on the mortgaged property remains standing and we advise that insurance be maintained.

### **2. Claim No. GDAHCV 2011/0096 – Time Bourke (Holdings) Grenada Limited v Issa Nicholas (Grenada) Limited and Republic Bank (Grenada) Limited**

This matter is essentially a Landlord and Tenant matter. Time Bourke (Holdings) Grenada Limited as Landlord instituted proceedings against Issa Nicholas (Grenada) Limited as Tenant for breach of covenants under an Indenture of Lease so that the lease had become liable to forfeiture and also for possession of the leasehold property.

Issa Nicholas (Grenada) Limited, filed a Defence denying that it was in breach of the lease; that the Claimant was not entitled to forfeit the lease; and, contending that the Claim against it should be struck out. Issa Nicholas (Grenada) Limited also counterclaimed for damages, relief from forfeiture, and costs.

The Bank is affected by this matter as Issa Nicholas (Grenada) Limited has a mortgage with the Bank under which the leasehold property is being held as security. Forfeiture of the lease would result in the Bank losing its security under the said Mortgage.

On 11th September, 2015 the Bank filed an application to be joined as an Interested Party or as a Defendant to these proceedings in order to make the Court aware of the existence of the mortgage and to protect its interests.

The Court ordered that the Bank be joined as a Defendant to these proceedings and we have since been served with all the relevant documents.

### **Present Position**

We have spoken with Counsel for Time Bourke Holdings (Grenada) Limited. They have withdrawn (discontinued) this matter as against Issa Nicholas (Grenada) Limited. This means that it is no longer seeking forfeiture of the lease.

This is good news. The Bank's security under its mortgage is therefore intact. The Bank may proceed to treat with the mortgage and its Client in the usual manner.

Please confirm that we may close out file on this matter. Once we receive a copy of the Notice of Withdrawal from Counsel for Time Bourke.

### **3. Claim No. GDAHCV2014/0274 – Jessamy Environmental Consulting & Research Caribbean Incorporated, a firm and Valma Jessamy v Republic Bank (Grenada) Limited**

These proceedings commenced with the filing of a Claim Form and Statement of Claim by Valma Jessamy and her registered Company claiming relief for breach of contract, negligence on the Bank's part, breach of confidentiality and general damages. We filed a Defence in these proceedings on the Bank's behalf. Pleadings are now at a close, and the Claimants opted not to file a Reply to our Defence.

### **Present Position**

A trial date of 8<sup>th</sup> November, 2022 has been set for this matter. We have begun preparations for Trial. We will inform the Bank when we require a meeting with the Bank's witnesses in this matter in order to properly prepare them. We will be filing Skeleton Arguments with Authorities in a few weeks.

### **Prospect of Success**

As indicated above, we filed a Defence on behalf of the Bank, which in summary emphasizes that the Bank acted in accordance with the provisions of the Bill of Sale Act as well as the Banking Act. We feel the Bank has a strong position to defend this matter at trial. However, the Bank must be mindful that there is no guarantee as to what the Judge will ultimately determine.

### **4. Re: Claim No. GDAHCV 2015/0036- Rickie Morain and Robbie Morain v Beverly Whint**

Robbie Morain and Rickie Morain ("the Morains") brought an action against their sister Beverly Whint for specific performance of an agreement between the

Morains and Ms. Whint made on or about 27th January 2011 for the sale by Ms. Whint to the Morains of all that lot of land situate at Woburn, St. George comprising 8791 square feet with residential building thereon.

Prior to the agreement, Ms. Whint mortgaged the said property to the Bank. The Morains claim that there was an agreement partly in writing and partly oral whereby Ms. Whint agreed to sell and the Morains agreed to purchase the said lot of land for the purchase price of \$170,000.00. It was also agreed that the said purchase price was to be applied to Ms. Whint's mortgage account with the Bank.

### **Present Position**

This matter remains as per our last reports of 1<sup>st</sup> April and 5<sup>th</sup> July, 2022.

Judgment was delivered in this matter on 26<sup>th</sup> November, 2021. Judgment was entered in favour of Beverly Whint with the Judge dismissing the Morain brothers' claim for specific performance and also discharging the injunction against the Bank. Costs were awarded to be assessed.

Mrs. Edwards, Counsel for the Morain brothers has since filed an appeal seeking to overturn the High Court judgment in its entirety and enter judgment in their favour. This matter is currently awaiting to be set before the Court of Appeal.

We are opposing this appeal on behalf of the Bank. We are awaiting the Court of Appeal to set a date for Case Management and the hearing of the Appeal.

### **5. Re: Claim No. GDAHCV2018/0110 - Lauralee Cross v Republic Bank (Grenada) Limited v Garvin McQuilkin**

This Claim is brought by Lauralee Cross against the Bank for monies held in what was a joint account held with Lionel Akins. The subject account belonged to Lionel Akins and he later purported to join his daughter Lauralee Cross as a holder to the account.

In or about 2017, one Garvin McQuilkin, the nephew of Lionel Akins, presented a letter to the Bank requesting a transfer from the joint account to Garvin McQuilkin's own account of a sum which was almost all of all the monies held in the account at the time (almost two million dollars). The letter stated that the monies were needed in order to, inter alia, pay for the maintenance and health care of Lionel Akins.

The Bank was concerned that the letter was not legitimate and made a home visit to Mr. Akins where they were satisfied that he was mentally competent and he confirmed the instructions in the said letter. The Bank was also given a doctor's

report of good mental health. However, following the home visit, the Bank was presented with another letter adjusting the transfer amount to half of the previous request. Unfortunately, before the instructions could be carried out Mr. Akins died, triggering the survivorship principle.

Lauralee Cross attempted to remove all of the monies in the account and the Bank subsequently placed a hold on the monies in the account in consideration of the two conflicting claims to the monies in the account. The Bank suggested that Lauralee Cross and Garvin McQuilkin reach a settlement or agreement as to whom the monies in the account belonged, but they did not.

Lauralee Cross filed a claim against the Bank for the monies in the account and also damages for unlawful retention. The Bank filed a Defence stating that it was within its rights to place a hold on the account as it had sufficient evidence to show that the survivorship principle may not apply in this situation. The Bank also filed a Counterclaim asking the Court for declarations as to the true entitlement of the monies in the account and for the monies to be held by the Court pending the resolution of this matter.

Garvin McQuilkin was joined as an Ancillary Claimant to the proceedings. He has brought his own claim against the Bank for what he claims to be his share of the money. We filed Defence for the Bank in similar terms to that of the Defence against Lauralee Cross, so that pleadings are now closed.

### **Present Position**

This matter remains as per our last reports of 1<sup>st</sup> April and 5<sup>th</sup> July, 2022.

At the most recent hearings the Judge opined that the determination of this matter turned on the efficacy of Lionel Akins' written instructions after his death, that is, did the instructions survive his death or did they expire? If they survived him then the monies instructed to be paid to Garvin McQuilkin must be paid and if not then all of the monies in the account belong to Lauralee Cross as the surviving holder of the joint account.

The Judge ordered all parties to file submissions on this single preliminary point for determination. At the last hearing, the Judge engaged parties in a discussion of their submissions. The Judge came to a further query as to whether or not the Letter of instruction to pay half the monies in the account created a legal or equitable lien which is enforceable by Garvin McQuilkin, and if so, whether it is enforceable against the Bank, or whether he should be rightfully suing the estate of Lionel Akins.

The Parties were ordered to file further submissions examining this point, and all parties have filed and exchanged same. We await the Court Office to fix a date for further hearing of this matter.

### **Prospect of Success**

We have previously written to the Bank indicating our opinion that the Bank was correct to place a hold on the account following the death of Lionel Akins. We believe there is sufficient evidence to show contrary intention to rebut the presumption of the survivorship rule, that is to say, there is sufficient evidence to show that Lionel Akins did not intend for all of the monies in the account to go to Lauralee Cross upon his death.

We believe that the Bank has a strong Defence, and in any event the Bank is asking the Court to make declarations as to the true entitlement of the monies held in the account. The monies in the account continue to accrue interest so that the Bank is mitigating any potential losses for the customers.

Nonetheless, the Bank must be mindful that there is no guarantee as to what the Judge will ultimately determine.

We hope the above is of assistance to you.

Yours sincerely,

  
Renwick & Payne  
(Amy Bullock-Jawahir)

*AB*