

RENWICK & PAYNE

ATTORNEYS-AT-LAW

&

INTELLECTUAL PROPERTY AGENTS
in Grenada and the Caribbean

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6th October, 2023

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:

**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.
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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 2nd 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 previous reports.

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 1st 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.

At present, the trial is still scheduled for the 23rd November 2023 as no earlier date was provided by the Court.

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. 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

Trial of this matter was held on 10th February, 2023. At the trial, due to numerous faults of the Claimants, the Trial Judge struck out the entire claim with costs awarded in favour of the Bank to be assessed, if not agreed.

The Trial Judge's decision was appealed by the Claimants. We filed an affidavit in opposition on behalf of the Bank. The hearing of the appeal was held on 27th June, 2023 on which occasion the Appeal Court dismissed the Claimants' appeal with costs to the Bank.

We have begun assessing costs in favour of the Bank which will be collected in due course. Once costs have been agreed and settled, this matter will be at a close.

3. 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 previous reports.

Judgment was delivered in this matter on 26th 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.

It is noteworthy that without an application for a stay of the judgment, the injunction which was granted against the Bank, preventing its power of sale of the mortgaged property is no longer in effect. However, it is probable that should the Bank choose to effect its power of sale, the Claimants may well make a further application to injunct the Bank.

We hope the above is of assistance to you.

Yours sincerely,


Renwick & Payne
ABJ/rhd