

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2020/CLE/gen/000236

IN THE MATTER of an Indenture of Mortgage made the 26th day of August AD 2013 between Lawson H. Hall and Rhonda Hall (his wife) and RBC Royal Bank (Bahamas) Limited

AND IN THE MATTER of the Mortgage Act Chapter 156 of the Revised Laws of the Commonwealth of the Bahamas

BETWEEN

RBC ROYAL BANK (BAHAMAS) LIMITED

Plaintiff

AND

LAWSON H HALL

First Defendant

AND

RHONDA HALL

Second Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Sharmon Ingraham for the Plaintiff
Myra Russell for the First Defendant
Rhonda Hall pro se

24 November 2020

DECISION

WINDER, J

This is my brief decision on the application of the first defendant pursuant to Order 18 rule 19 of the Rules of the Supreme Court to strike out or stay the proceedings in this action. The second defendant supports the application and adopts his submissions.

1. The defendants' challenge to the action is centered on what they say is a breach of section 4(1) of the Homeowners Protection Act 2017 (HPA). Section 4(3) of the HPA provides:

Obligation of Mortgagee to give notice prior to institution Court proceedings

4. (1) Where a mortgagor is in breach of the mortgage agreement, the mortgagee shall not institute proceedings before the Court in respect of the breach, unless there has been served upon the mortgagor either personally or by registered post at least thirty days prior to instituting such proceedings a notice in writing stating –

(a) the nature of the breach of any covenant in the mortgage;

(b)...

(2) The Court may as it sees fit upon an ex parte application by a mortgagee vary the method of service mentioned in subsection (1).

2. The evidence of the defendants was that they were never served with or received the notice required by Section 4(3) of the HPA prior to the issuance of the Originating Summons in this action.

3. The plaintiff's evidence, as contained in the Affidavit of Nia Rolle filed on 20 November 2020, was that:

(1) By letters dated 29 July 2019 the plaintiff wrote to each of the defendants notifying them:

- i. of their breach under the mortgage;
- ii. that should they not satisfy the breach proceedings would be instituted against them without further notice; and
- iii. of their right to apply for relief and means of contact of the Plaintiff to discuss matters in compliance with the HPA.

(2) The letters were served by registered post to a general delivery address. Receipt that the registered mail was posted on 14 August 2019 was exhibited to the affidavit.

4. The plaintiff relies on the provisions of the Interpretation and General Clauses Act (IGCA) to support their position that they served the notice, required by virtue of the HPA. Section 7 of the IGCA provides:

7. Where any written law authorizes or requires any documents to be served or any notice to be given by post or by registered post, whether the expression “serve” or “give” or “send” or any other expression is used, the service or notice shall be deemed to be effected by properly addressing, pre-paying the postage thereon and dispatching by post or by registered post, as the case may be, to the last known postal address or to the post office box number of the person to be served or given notice or in care of the Post Office for general delivery, an envelope containing the document or notice, and, unless the contrary is proved, such service or notice shall be deemed to have been effected ninety-six hours after the time of posting of the envelope.

5. The evidence of the second defendant, at paragraphs 5-10 of her affidavit filed on 23 November 2020, is very instructive and speaks to the vagueness of the purported service by post. She says:

5. That I have not been served with a Demand Letter from the Plaintiff in accordance with section 4 of the Home Owners Protection Act 2017 and I have never seen the Higgs and Johnson letter dated 29th July, 2019, or any Demand Letter at all from the Plaintiff, by post or otherwise, in relation to the Mortgage Loan No. 05745-3317663 as described in the Affidavit of Nia G. Rolle filed 13th November, 2020 prior to the same being included in the Plaintiff’s affidavit.
6. That the Affidavit of Nia G. Rolle states that I was served at my last known address however, the Affidavit, the demand letter produced and the registered post receipt all fail to condescend to my ‘last known address’ but rather states to be addressed to ‘general delivery’ without even specifying which post office branch’s general delivery the letter is intended to be delivered to.
7. Moreover, the Plaintiff was very well aware of my last known address, Swordfish Drive, Stapledon Gardens, P. O. Box N-8249, Nassau, The Bahamas, as evidenced on the face of the Originating Summons commencing the substantive matter before the Supreme Court of the Bahamas filed herein. There is now produced and shown to me a true

copy of the said Originating Summons filed in the Supreme Court of The Bahamas on 17th February, 2020.

8. That I could not be said to have received the said Demand Letter when there was absolutely no address or P. O. Box listed on the Demand letter or on the registered post receipt, but simply addressed to Rhonda Hall with the address provided as "General Delivery, Nassau, N.P. Bahamas".
 9. That the Demand Letter dated July 2019 was written by the same law firm representing the Plaintiff in this matter, and I am therefore of the belief that the Plaintiff intentionally addressed the Demand Letter in that manner (rather than my address on file as contained in the Originating Summons) to ensure that I was not in receipt.
 10. That the Plaintiff has never reached out to me by way of notice in writing and served upon me either personally or by registered post prior to the institution of these proceedings, with a view of entering into an agreement regarding redress of any alleged arrears inclusive of modification of the mortgage terms.
6. Whilst it is true that the HPA permits service either personally or by registered post, there must be a proper registered posting of the notice. There is no evidence as to how and why RBC would determine to send a letter to the defendants at a general delivery post box when they were well aware that the defendants resided in premises, which are the subject of the mortgage, at Swordfish Drive, Stapledon Gardens. There is no evidence as to the basis it determined that this was the defendants' last known postal address and more importantly which post office location this was. In any event, on the second defendant's evidence, the plaintiff was aware of her postal address at P. O. Box N-8249, Nassau Bahamas. Reliance upon the HPA and the IGCA is premised upon the use of a proper postal address.
7. I find that the service purported to have been made pursuant to the HPA on defendants was inadequate in the result that the plaintiff did not fulfil its obligation under the HPA. I did not accept that there was service by post on these defendants. As the defendants note, when it was time to pursue these proceeding in the Supreme Court there was no difficulty in seeking to effect personal service on them. Their address is prominently stated on the Originating Summons as Swordfish Dr., Stapledon Gardens.

8. The purpose of the HPA legislation was to provide meaningful protection to homeowners by ensuring a true and proper discourse between the Mortgagor and the Mortgagee prior to taking the significant and ultimate step of recovering the security through litigation. Its provisions ought to be strictly complied with otherwise mortgagees would be precluded from instituting proceedings.

9. In the circumstances I am not satisfied that there has been compliance with the HPA in the result that the plaintiff is prohibited from instituting proceedings without complying with section 4(3) of the HPA. The action is therefore struck out. The plaintiff is free to commence fresh proceedings which comply with Section 4(3) of the HPA.

10. The defendants shall have their reasonable costs in default of agreement.

Dated the 7th day of December 2020

A handwritten signature in black ink, appearing to read 'I. Winder', written in a cursive style.

Ian R. Winder

Justice