COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Side
2020/CLE/gen/00079

IN THE MATTER of an Indenture of Mortgage dated the 28th day of February, A. D. 2000 and made between Derrick Jones and Charlene M. Jones and Finance Corporation of Bahamas Limited and recorded in the Registry of Records of the Commonwealth of The Bahamas in Volume 8103 at pages 232 to 240

AND IN THE MATTER of the Conveyancing and Law of Property Act, Chapter 138 of the Revised Laws

BETWEEN

FINANCE CORPORATION OF BAHAMAS LIMITED
Plaintiff

AND

CHARLENE M. JONES
Defendant

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mrs. Karen Brown for the Plaintiff
Mrs. Charlene M. Jones Pro Se Defendant

HEARING DATE: February, 1, 2022

RULING

Hanna-Adderley, J

Introduction

1. This application for my Recusal was made by the Defendant "on her feet" on February 1, 2022, sans the filing of a Summons and Affidavit in support of

the application. The application was made after the Plaintiff had closed its case save for its final Submissions.

2. The Defendant relies on her Submissions dated January 31 and February 14, 2022. The Plaintiff relies on its Skeleton Arguments dated February 1, 2022.
3. The Court must be determine firstly, whether the Defendant's application is properly before the Court and secondly, whether a reasonable, objective and informed person would on the facts reasonably apprehend that the Court has not or will not bring an impartial mind to bear on the adjudication of the case.
4. The Defendant's application is dismissed for the reasons set out below.

Pleadings

5. The Plaintiff's claim in the Originating Summons is as follows:

   (1) A Declaration that upon the true construction of Clause 4 (a) (i), 4 (a)(iii) and 4(a) (v) of the Mortgage that the Plaintiff is entitled to possession of the Mortgaged Property.

   (2) A Declaration that the Plaintiff is entitled to exercise its power of sale over the Mortgaged Property.

   (3) An Order directing the Defendant, Charlene Jones, Mortgagor under the Mortgage to deliver up vacant possession of the Mortgaged Property within 28 days of the Order.

   (4) Judgment for the sums outstanding under the Mortgage.

   (5) That the Court order further or other relief as deemed expedient.

   (6) That provisions be made for the costs of this application.

6. The Defendant filed no evidence in support of her Submissions.

Submissions

The Defendant

7. The Defendant is requesting that this action be transferred to the Supreme Court in New Providence and that respectfully, I Recuse myself from making the final decision in the matter on the grounds that my so doing poses a conflict of interest or a future conflict of interest in this matter. That by a Judgment dated September 18, 2015 in Action 2014/CLE/gen/346, an action

involving Attorney Karen Brown of Higgs & Johnson and the Defendant, I signed off on an Order for the Plaintiff to obtain possession of the Defendant's property and that the Defendant pay the Costs to the Plaintiff.

8. The Defendant submits that the Defendant paid more than Two Hundred and Fifty Thousand Dollars ($250,000.00) by way of her husband's life insurance policy on the loan and that this can be seen in the Defendant's affidavit and in the Plaintiff affidavit before the Court. That so that she can have a fair and impartial hearing before the Supreme Court and in the interest of Justice, the Defendant has some concerns that the Plaintiff did not raise.
9. That the Plaintiff pointed out to the Courts that the Defendant's husband who is deceased held a mortgage with the Plaintiff but did not disclose to the Court that the husband was an employee of the Plaintiff for 12 years before his death. That the Defendant's deceased husband's credit cards bills were added to the Defendant's loan account as stated in the Plaintiff's supplemental affidavit. The Deceased was an employee with the Plaintiff who would have had benefits and that the credit cards of the deceased held an insurance coverage with the bank which upon the death of the Deceased would have paid off his credit card loan.
10. That it is the Defendant's "constitutional reason" why the matter before the Freeport Supreme Courts should be transferred to a Nassau Court, and that the Justice of the Freeport Supreme Court should respectfully recuse herself from this matter.
11. That there is a strong possibility of **apprehended bias** in the matter. That the application is not based on actual bias but on apprehended bias by the Defendant.
12. The Defendant referred the Court to the Judgment of the Caribbean Court of Justice in **Walsh et al v Ward et al [2015] CCJ 14 (AJ)** where Saunders, JCCJ succinctly summarized the current position on judicial recusal at paragraph 95 of the Judgment thus:

"The Law on apparent bias is well settled. In determining whether, in instances such as these, a judge is disqualified from hearing a case, the reviewing court must place itself in the position of an objective and fair-minded lay observer who would not conclude that there was a real possibility of bias. What matters is not so much the reality of bias or prejudice on the part of the judge but its appearance. This test is aimed at preserving confidence in the administration of justice and not a censure of the judge. If an objective bystander thought there was a real (as opposed to a fanciful) possibility a judge might be biased, justice delivery is compromised. This remains the case even when the judge himself, and his peers, might confidently consider that the judge was a competent and impartial judge. What is at stake is not the integrity of the judicial officer but that of the administration of justice. It is important to stress that for a judge to recuse himself, or be asked to do so, does not reflect negatively on the probity or competence of the judge".

13. Mrs. Jones submitted that after reviewing the skeleton arguments of the Plaintiff it is clear that the Plaintiff is of the opinion that the Defendant has made an accusation that the Justice of the Freeport, Supreme Court is biased. That there is a claim of Actual bias or Perceived bias by the Defendant against the Court. The Court has been placed by the Defendant in the category of Actual bias or Perceived biased, which is one and the same, as stated in the Plaintiff Skeleton Arguments. Therefore, the Defendant's position is that the words Actual and Perceived biased should not be considered before this court in the matter because that is not the intent of the Defendant as was stated by the Plaintiff.

14. That the Defendant in the Courts records did say to the Court that there could be a **potential conflict of interest** pertaining to a previous ruling by Justice Petra Adderley involving the Plaintiff and the Defendant in 2014. On the

record the Court had asked the Plaintiff if the matter in 2014 is connected with this matter before the Court and the Plaintiff replied Yes. (Emphasis mine).

15. That as this Court makes it's ruling the Defendant asks this honorable Court to Consider the Judgment of the Caribbean Court of Justice and the Defendant's claim of **apprehended biased in this matter** and that the Justice of the Freeport Supreme Court grant the Defendant leave to file a Motion for recusal and to transfer the proceedings to New Providence Supreme Court.

The Plaintiff

Jurisdiction

16. Ms. Karen Brown, Counsel for the Plaintiff submits that an application for recusal may be brought pursuant to Order 31A rule 18(1)(2)(s) of the Rules of the Supreme Court or under the inherent jurisdiction of the Supreme Court. The application should be made by Summons and supported by Affidavit evidence. In the instant case, the Defendant has filed neither the requisite Summons nor Affidavit. As such, no application for recusal is properly before the Court.

Law

Recusal

17. Ms. Brown submits that in deciding whether to exercise a discretion in favour of recusal, the onus of establishing the justice of so doing rests on the applicant. The question is whether a reasonable, objective and informed person would on the facts, reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is, a mind open to persuasion by the evidence and the submissions of counsel.

18. That in **Coral Beach Management Company Limited v. Anderson et al** [2014] 1 B.H.S. J 147, at para 55, Evans J. noted with approval, the following statement of the Court of Appeal in **Conticorp S.A. and other v. Central Bank of Ecuador and others** [2009] 3 BHS J No. 126:

"the word bias when used in connection with judicial proceedings means that he tribunal hearing the matter had either actual bias – in the sense that the tribunal had a personal interest in the outcome of the matter – or perceived bias – in the sense that bearing in mind all the circumstances which have a bearing on the suggestion that the tribunal was biased, an objective and fair-minded and informed observer would conclude that there was a real possibility or a real danger (which means the same thing) that the tribunal was biased."

19. That Evans J. also went on to list a number of characteristics which have been attributed to the fair-minded and informed observer:

"He /she is -

(1) *is objective and is not to be confused with the complainant, so that "any assumptions that the complainer makes are not to be attributed to the observer unless they can be justified objectively.*

(2) *is not a member of the judiciary, nor a member of the legal profession.*

(3) *is "neither complacent nor unduly sensitive or suspicious when he examines the facts that he can look at".*

(4) *is "the sort of person who always reserves judgment on every point until he/she has fully seen and understood both sides of the argument".*

(5) *knows that fairness requires that a judge must be, and must be seen to be, unbiased; knows that judges, like anybody else, have their weaknesses; will not shrink from the conclusion, if it can be justified objectively, that things they have said or done or associations that they have formed may make it difficult for judges to judge the case before them impartially."*

(6) *is also aware of the "legal traditions and culture of this jurisdiction".*

(7) *must be taken to know that judges are trained to have an open mind; and must not only be aware of the traditions of judicial integrity and of the judicial oath, but must "give it great weight".*

20. That accordingly, Evans J. noted inter alia, she had not been employed with Callenders & Co. since 1994 and that she had no personal, financial or familial interest in the outcome of the case and declined to recuse herself from presiding therein on the basis of her previous association with a company which was the former owner of the property which was the subject matter of the action and of her former employment with Callender's & Co. (Counsel for the Plaintiff).

21. Ms. Brown submitted that likewise, Sir Andrew Smith, J noted in **Ovsyankin v Angophora Holdings Ltd and others; Ovsyankin and another v Angophora Holdings Ltd and others** [2021] EWHC 3376 (Comm) as follows: *"It is well established that the English Courts do not consider that a judge should recuse himself from a case on the grounds that he has made adverse findings against a party, in other proceedings or at a different stage of the same proceedings. In Okritie International Investment Management Ltd v Urumov, (loc cit), Longmore LJ said (at para 13): "The general rule is that [the judge] should not recuse himself, unless he either considers that he genuinely cannot give one or other party a fair hearing or that a fair minded and informed observer would conclude that there was a real possibility that he would not do so". I consider that, as far as is relevant for present purposes, the same general rule applies to arbitrators."*

22. Ms. Brown further submitted that based on the foregoing, and considering all the circumstances of this case, that there is no basis for recusal and that the application for recusal should be refused.

Analysis and Conclusions

23. On an application where there has been an allegation of bias or apparent bias, the question of said bias is one of law; however it should be answered in light of the relevant facts. The Plaintiff in this matter has not filed the requisite Summons and Affidavit in support of her application. Therefore, there are no facts before the Court to which such an answer as to the existence of any bias or apparent bias can be given. In light of this, the Court

accepts the submissions of Ms. Brown and finds that there is no formal application for recusal before the Court. However, in the event that I am incorrect in this finding, the Court has considered whether it should accede to the Defendant's request and recuse itself.

24. Admittedly the Defendant's submissions have been difficult to follow and to understand. Submissions are not "evidence" yet Mrs. Jones has repeated in her Submissions portions of her evidence contained in her Affidavit filed herein November 5, 2021 (not yet formally put in evidence) in opposition to the Plaintiff's Originating Summons, in addition to new assertions in opposition to the case laid by the Plaintiff herein. This "evidence" should be advanced in her case against the Plaintiff and fails to support her application for my recusal. What I believe to be essentially her objection to this Court continuing to hear this matter is my having heard and entered Judgment on September 18, 2015 against her and her late husband's estate in Action No. 2014/CLE/gen/346, **Finance Corporation of Bahamas Limited v The Estate of Derrick Jones and Charlene M. Jones.** She also suggests that she has Constitutional reasons why I should recuse myself but she does not elaborate.

25. In her Submissions Mrs. Jones has asked me to recuse myself because of a potential **conflict of interest** because I heard the 2014 action but she also went to great pains to clarify that she was not accusing the Court of actual bias but of apprehended or perceived bias. Mrs. Jones has referred the Court to a relevant case on the issue of apparent bias and recusal. Saunders, JCCJ sets out the relevant test to be applied. However, on the other hand, she goes on to say, "Therefore, the Defendant's position is that the words Actual and Perceived biased should not be considered before this court in the matter because that is not the intent of the Defendant as was stated by the Plaintiff." At the close of her Submissions, she asks this Court to Consider the Judgment of the CCJ and the Defendant's claim of apprehended bias in this matter. The positions taken in her Submissions are opposite in several respects. For

completeness, however, I will address recusal, conflict of interest and redress under the Constitution of the Commonwealth of The Bahamas ("**The Constitution**").

26. Mrs. Jones forwarded with her Submissions the Judgment entered by me on September 15, 2015 in the 2014 action. The Plaintiff was represented by Mrs. Karen Brown of Higgs & Johnson and the Defendant was represented by Miss Tenisha Tynes of the law firm Tynes & Tynes. It would appear from the face of the Judgment that the Defendants filed no evidence. It would appear that the action and the entering of Judgment was unopposed by the Defendants. There is no evidence before me that Judgment was appealed. As hereinbefore-mentioned the Plaintiff has closed its case save for its final Submissions. From the Affidavit evidence of Mrs. Jennifer Styles filed on June 7, 2021, on October 17, 2017 the parties entered into a restructuring arrangement in respect of the Mortgage herein which was memorialized by a Commitment Letter dated October 17, 2017. The current action is predicated on the manner in which Mrs. Jones serviced the Mortgage under the terms of the restructuring arrangement.

27. Every citizen in the Commonwealth of The Bahamas has a right to a fair hearing by an independent and impartial tribunal. I believe that this right may be the right eluded to by the Defendant in her Submissions. This right is enshrined in Article 20(8) of The Constitution which provides as follows: "**Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.**"

28. Ms. Brown referred the Court to the Judgment of Sir Andrew Smith, J in the **Ovsyankin** case which bears repeating: "***It is well established that the***

English Courts do not consider that a judge should recuse himself from a case on the grounds that he has made adverse findings against a party, in other proceedings or at a different stage of the same proceedings. In Okritie International Investment Management Ltd v Urumov, (loc cit), Longmore LJ said (at para 13): "The general rule is that [the judge] should not recuse himself, unless he either considers that he genuinely cannot give one or other party a fair hearing or that a fair minded and informed observer would conclude that there was a real possibility that he would not do so".

The Defendant's main objection is that I heard the 2014 action in which Judgment was entered against her and her and the estate of Mr. Jones. I do not accept that this is a valid reason to recuse myself from hearing this action bearing in mind the principles above stated.

29. In the case **Alan R. Crawford and Sharon M. Crawford v Christopher Stubbs, Shanna's Cove Estate Company Limited and Donna Dorsett Major** 2015/CLE/gen/00765 Justice Indra Charles at paragraphs 8 and 9 of her Judgment states:

"[8]...To determine whether apparent bias exists, the Court ought to examine all of the circumstances of the case and ought to recuse itself where the Court determines there was a real danger or possibility of bias. Further, either there is a real possibility of bias or not. If there is, the judge should recuse himself/herself.

[9] When considering all of the circumstances, it must be noted that the fair minded and informed observer is neither complacent nor unduly sensitive or suspicious. In his dissenting judgment in Almazeedi v Penner and Another (Cayman Islands) [2018] UKPC 3, Lord Sumption beautifully puts it this way (at paragraph 36): "... The notional fair-minded and informed observer whose presumed reaction is the benchmark for apparent bias, has only to be satisfied that there is a real risk of bias. But where he reaches this conclusion,

he does so with care, after ensuring that he has informed himself of all the relevant facts. He is not satisfied with a look-sniff impression. He is not credulous or naïve. But neither is he hyper-suspicious or apt to envisage the worst possible outcome. The many decisions in this field are generally characterised by robust common sense."

The Defendant has failed to adduce any facts or evidence which would suggest that there is a real risk of bias.

30. The issue of conflict of interest does not arise as the Defendant has failed to state the manner in which the Curt is conflicted. In this matter the Court has no connection or association with the Plaintiff or with the Defendant. Therefore, the duty to make disclosure of any connection or association also does not arise as there is no conflict of interest. I therefore find that this allegation has no merit.

31. Having examined all of the circumstances of this case, having considered the Submissions of the parties and having accepted the submissions of Ms Brown, I have determined that there is nothing to lead an informed observer to conclude that there is any real risk, or real danger or possibility of bias. There are no circumstances that establish or suggest that there exists any conflict of interest between the parties and I. There are no circumstances to suggest that the Defendant's Constitutional right to a fair and impartial hearing is being or is likely to violated, and thus no real danger of a lack of impartiality or violation of her right under Article 20 (8) of The Constitution arises. The Recusal Application is therefore dismissed.

32. The Defendant is granted leave to appeal this ruling to the Court of Appeal. The part heard application is adjourned to May 10, 2022 at 12:30 p.m. for completion.

Dated this 23rd day of February, A. D. 2022

Petra M. Hanna-Adderley
Justice