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COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

SCCivApp & CAIS No. 95 of 2021

IN THE MATTER of an Indenture of Mortgage made the 20th day of April, A.D. 2005 between Craig Anthony Bowe and Royal Bank of Canada

AND IN THE MATTER of the Mortgages Act, Chapter 156 of the Revised Statute Law of the Commonwealth of The Bahamas

BETWEEN

RBC Royal Bank (Bahamas) Limited  
(formerly "Royal Bank of Canada")

Appellant

And

Craig Bowe

Respondent

(Substantive Hearing)

Before: The Hon Mr Justice Isaacs, JA  
The Hon Madam Justice Crane-Scott, JA  
The Hon Mr Justice Jones, JA

Mr Audley Hanna, Jr, with Ms Sharmon Ingraham,  
Counsel for Appellant  
Mr Milton Cox, Counsel for Respondent

16 November 2021

1 The oral judgment of the court was delivered by  
2 Isaacs, JA:

3 The Appellant challenges the decision of Madam  
4 Justice Indra Charles (the judge) made on 9th June, 2021 where  
5 the judge ordered that the sum of \$150,000.00 be paid to the  
6 Appellant by the Respondent in full and final settlement of  
7 the debt due to the Appellant under an indenture of mortgage  
8 made on 20th April, 2005 between the Respondent and the  
9 Appellant.

10 The appellant seeks the following orders:

- 11 1. The Order of the Honourable Madam Justice  
12 Charles made on the 9th day of June, A.D. 2021  
13 for the sum of \$150,000.00 in favour of the  
14 Appellant be set aside and judgment entered for  
the Appellant for the sums outstanding to date  
under the said Indenture of Mortgage, late  
fees, interest and costs.
- 15 2. The Appellant is entitled to possession of the  
16 Mortgaged Property.
- 17 3. The Appellant is entitled to exercise its power  
18 of sale with respect to the Mortgaged Property.
- 19 4. The Respondent do deliver up vacant possession  
20 of the Mortgaged Property to the Appellant  
within Twenty-eight (28) days of the Order of  
the Court.

21 The pith and substance of the Appellant's complaint  
22 is that the judge cannot order a lesser sum to be accepted by  
23 a party without their consent. The contention of the  
24 Appellant is that they should be paid the debt sum under the  
25 mortgage deed.

1           The Appellant has provided certain figures to the  
2 court that the Respondent is indebted to the Appellant under  
3 the mortgage loan as at 6th July, 2020 in the sum of  
4 \$165,418.54. They also say that the interest they should be  
5 paid on \$139,112.05 is at the contractual rate of 7.25 per  
6 cent from the 6th day of July, 2020 until the date of judgment  
7 and thereafter at the statutory rate.

8           The court is of the view that the appeal must be  
9 allowed. It was not competent for the judge to strong-arm the  
10 Appellant into accepting a figure less than what they were  
11 seeking under their originating summons.

12           In the circumstances, the order of the judge made on  
13 9th June, 2021 in the sum of \$150,000.00 in favour of the  
14 Appellant is set aside. Judgment is entered for the Appellant  
15 in the sum of \$165,418.54 as at 6th July, 2020. Further, the  
16 interest on \$139,112.05 at 7.25 per cent from 6th July, 2020  
17 until the date of judgment is ordered to be paid by the  
18 Respondent, and thereafter at the statutory rate.

19           We grant the order for vacant possession. The order  
20 is suspended for the period of sixty (60) days as from the  
21 date of judgment.

22           Costs of the Appeal are the Appellant's, to be taxed  
23 if not otherwise agreed.

24           Dated this 16th day of November, 2021

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ISAACS, JA