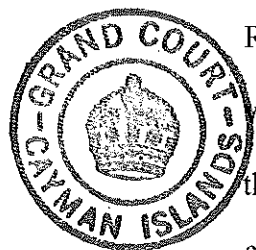




Road property and there are such serious concerns arising from the nature of the relief which the Bank now seeks.

2. The first is that upon taking over the process of marketing the property from the Defendants, the Bank adopted the valuation of CI\$445,000 which the Defendants had obtained in 14<sup>th</sup> January 2013 and their listing at CI\$435,000 with Mr. Ashmore of Capital Realty. A special assumptions sale price of CI\$355,000 was also then noted, but this was on the basis that the property had to be sold within six months.

3. There was, of course, no such assumption applicable to the sale of the Moxam Road property at that time, among other things, because it was worth, on primary valuation, a good deal more than twice the amount said to have been then owed to the Bank. In other words, there was no urgency to sell, the Bank was more than fully secured.



4. By August 2013, the Bank had reduced the listing price to CI\$360,000 because of absence of offers at higher prices and it was then, according to Mr Moses, that the market started to show some interest. However, then it was, according to Mr. Moses, that the Bank started getting obstruction from the Defendants who refused to allow viewings of the property.

5. Eventually, I am told, there was an offer of CI\$335,000 which the Bank wished to accept and Mr. Moses brought an application for vacant possession on 17 February 2014; but no order for sale by private treaty was sought. The matter was then adjourned by me for discussions between the parties towards a consensual settlement of the matter, with the undertaking of the Defendants to allow the Bank

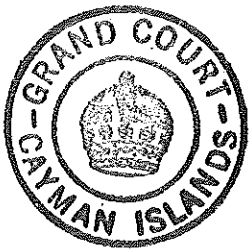
to show the property to prospective purchasers (of whom the Court was told there were four (4)). In the meantime, payments of \$2,600 per month were to be paid to the Bank, with the balance to be cleared once an apartment was sold; and the Bank enjoined from exercising its power of sale within one month.

6. Today, I am told that the Defendants have failed to comply with that order in any respect and I am bound to conclude that they are in breach of the Order. This is another reason for my refusal of the stay which Mr. Allen seeks on their behalf because I do not believe that parties who are in flagrant breach of an order of the court can expect to invoke the process of the Court in aid of their own action.

7. What I am left with then is Mr. Moses' application on behalf of the Bank, not only for an order for vacant possession of the Moxam Road property, but also for leave to sell by private treaty at a reserve price of \$300,000 – a price which would match the offer the Bank now has from a prospective purchaser who had earlier offered \$325,000. His offer was reduced to \$300,000 simply upon the Bank's request for an extension of time to closing for a few days.

8. I am far from assured about the fairness of approving a sale by private treaty in these circumstances. There is no up-to-date valuation upon which I could rely to do so. I am perturbed by the valuation of 19 March 2014 now put before me which, while opining an open market value of CI\$435,000, recommends a special assumption price of only \$300,000 – a value which happens to match exactly the last reduced offer given to the Bank.

9. The special assumption used – which is that the property must be sold within 90 days of the valuation date of 19 March 2014 – is odd, to say the least; when the



valuation otherwise assumes that the property would be listed for sale on the open market and there is no basis for thinking that on the open market it might not be sold within 90 days. This is a property in respect of which I am told, as already noted, there were already at least four offers between \$360,000 and \$325,000.

10. In short, I do not accept the valuation report as a proper basis upon which to sanction sale by private treaty at the price of CI\$300,000.

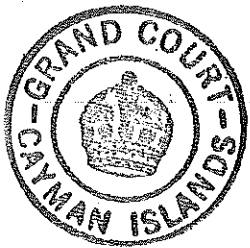
11. As to the other aspect of the Bank's application for an order for vacant possession, nor am I satisfied that it would be appropriate to make such an order. This application explains nothing about the case this applicant would wish to bring before the Court; other than that it would be an "appeal" from a tribunals decision.

12. Section 78 of the RLL is clear that the default of the chargor is not in and of itself, sufficient to give the chargee a right to vacant possession.

13. Section 75(2) provides that the chargee shall become entitled to vacant possession upon a bid being accepted upon an auction sale.

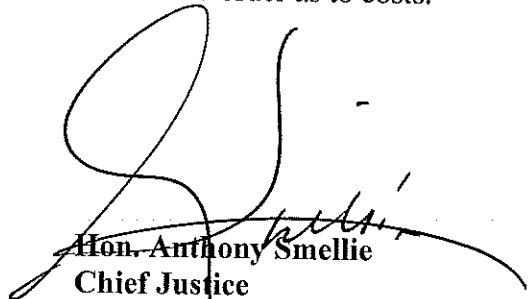
14. That, on the evidence before me, has not yet occurred, as I do not sanction the bid of CI\$300,000.

15. The only order I consider I can properly make in the present circumstances, is that the Defendants shall provide access to the Moxam Road property so that it can be viewed by prospective purchasers. In this regard, I direct that the Defendants shall allow inspection upon 24 hours' notice and that failure to do so will be treated as a contempt of court and result in the Plaintiff Bank being immediately entitled to an order for vacant possession. To enable viewings, the Defendants



will provide a key to the property to their realtors at Century 21 who, in turn, will ensure access

16. No order as to costs.

  
Hon. Anthony Smellie  
Chief Justice  
24<sup>th</sup> March 2014

