



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CIVIL DIVISION**  
3 **CAUSE NO: G154 OF 2014**

4  
5 **BETWEEN**

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7 **SCOTIABANK & TRUST (CAYMAN) LTD** **PLAINTIFF**

8  
9 **AND**

10  
11 **(1) MARSHA EBANKS** **FIRST DEFENDANT**

12  
13 **(2) CARLYLE EBANKS** **SECOND DEFENDANT**

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15  
16 **IN CHAMBERS**  
17 **TUESDAY, 30<sup>TH</sup> JUNE 2015**  
18 **BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE**

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20  
21 **Appearances: Mr. James Austin-Smith of Campbells for Plaintiffs**  
22 **Mr. Carlyle Ebanks the Second Defendant, In Person**  
23 **The First Defendant not appearing**  
24

25 **RULING**

26 *Application to restrain chargee bank from exercising its power of sale*  
27 *- circumstances under which such an order would be appropriate.*

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29  
30 The second defendant seeks an order to restrain the plaintiff bank from  
31 exercising its power of sale over the charged property which the bank proposes  
32 to do by listing the property at a price of CI\$350,000.00. He alleges that the  
33 bank is operating in bad faith by listing the property at that price when,  
34 according to him, it is worth much more.  
35

- 36 1. Having considered his allegations and the history of this matter, including  
37 the various valuations, it is impossible in my view to conclude that the bank

1 is acting in bad faith in seeking to sell this property for the price of  
2 CI\$350,000.00.

3  
4 2. Mr. Ebanks bases his application primarily on the fact that there have been  
5 valuations for this property at significantly higher than the advertised price;  
6 viz: \$465,000.00 and \$550,000.00.

7  
8 3. But it is well understood that the real value of a property is what the market  
9 will yield and there have been no offers even at the listed price of  
10 \$350,000.00, let alone at the much higher putative values.

11  
12 4. As a gauge to whether the listed price is fair, nor may I overlook the fact that  
13 the property was purchased by Mr. Ebanks and his daughter for \$342,000.00  
14 as recently as 2009.

15  
16 5. By analogy with the principle as it relates to the redemption of mortgages,  
17 the applicable law is reasonably clear. A chargor may not ask the Court to  
18 restrain the exercise by a chargee of its power of sale unless the chargor  
19 tenders to the chargee or pays into court the amount due under the charge or  
20 unless it can be shown that the chargee acts in bad faith, by for instance,  
21 deliberately offering the property for sale at a gross undervalue. See Fisher  
22 and Lightwood's Law of Mortgage 13<sup>th</sup> Ed. (LexisNexis) Chp. 30.34 –  
23 30.35, citing *inter alia* Duke v Robson [1973] 1 ALL ER 481, Shercliff v  
24 Engadine Acceptance Corpn Pty Ltd [1978] 1 NSWLR 729 and Rhodes v  
25 Buckland [1852] 16 Beav 212.



1 6. And this situation is ultimately governed by Section 75(1) of the Registered  
2 Land Law (the “RLL”) which, while requiring the chargee to act in good  
3 faith, also recognizes its right to set the market price for sale by public  
4 auction in the following terms:

5  
6 *“A chargee exercising his power of sale shall act in good faith and*  
7 *have regard to the interest of the chargor, and may sell or concur with*  
8 *any person in selling the charged land, lease or charge or any part*  
9 *thereof, together or in lots, by public auction for a sum payable in one*  
10 *amount or by instalments, subject to such reserve price and conditions*  
11 *of sale as the chargee thinks fits, with power to buy in at the auction*  
12 *and to resell by public auction being answerable for any loss*  
13 *occasioned thereby.”*

14  
15 7. That is a very wide power of sale vested in the chargee to be exercised in  
16 good faith and always with the interest of the chargor in mind. This implies  
17 the clear obligation to get the best price that the market with reasonable  
18 attempts at marketing, will yield.

19  
20 8. If the chargee fails to act in that manner required by the RLL, the chargor  
21 will of course have recourse to the courts for damages for breach of faith and  
22 statutory duty but, barring the showing of clear and compelling evidence of  
23 bad faith, the chargor may not pre-empt the chargee’s statutory right to sell  
24 by asking the Court to restrain him.

25  
26 9. As explained above, no such evidence of bad faith has been presented by  
27 Mr. Ebanks here. His own further assertion that the bank’s valuer had

1           confided in him that the property had been deliberately undervalued by the  
2           bank by the use of an erroneously low square foot valuation, is nothing more  
3           that self-serving hearsay as no such admission is forthcoming from the  
4           valuer himself and there is no independent verification of it.

5  
6           10. When this matter last came before me more than 6 months ago on 19<sup>th</sup>  
7           January 2015, Mr. Ebanks asserted that if allowed more time, he would have  
8           been able to obtain re-financing to redeem the charged debt owed to the  
9           bank.

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11           11. In effect, that time has been afforded him by the postponement of this ruling  
12           since then. This it seems however, has been to no avail. Instead, his  
13           inability in the meantime to secure refinancing tends to confirm that the high  
14           equity value he perceives the property as affording him does not, in reality,  
15           exist.

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17           12. For all these reasons his application for an injunction to restrain the bank's  
18           sale of the property is refused.

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21           Dated this 3<sup>rd</sup> day of June 2015

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25           The Hon. Anthony Smellie  
26           Chief Justice

