

Jan 18, 2005  
Civil

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**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**



**CAUSE NO. 72 OF 2002  
C.I.C.A. 13 OF 2004**

**BETWEEN:**

**SCOTIABANK (CAYMAN ISLANDS) LTD.**

**PLAINTIFF**

**AND:**

**WILLIAM HORTER RANKINE**

**DEFENDANT**

**Appearances:**

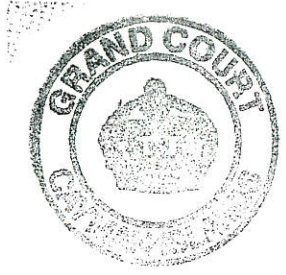
**Mr. Ward Sykes of Appleby Spurling Hunter for the Plaintiff  
Mrs. Margeta Facey-Clarke of Facey-Clarke & Associates  
for the Defendant**

**Before:**

**The Hon. Justice Henderson**

**Heard:**

**July 7, 2004**



**JUDGMENT**

31 By Originating Summons issued January 25, 2002, the plaintiff bank asked for an order  
32 that its charge on the defendant's property be enforced by sale by private treaty. It also  
33 asked for certain collateral relief, including vacant possession and a declaration that the  
34 defendant was in default of payment. The charge was in the amount of \$150,000.

35  
36 In an appraisal dated February 28, 2002, the bank's appraiser estimated the open market  
37 value of the property at \$235,000 and the restricted realization price at an amount in the  
38 range of \$150,000 - \$190,000. Kellock, J. made the requested declaration and granted

1 access to the property to the bank for the purpose of viewing and evaluating it. He also  
2 granted leave to sell the property by private treaty, the sale to be subject to approval by  
3 the Court. This order was made April 8, 2002.

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5 The property was first listed on the Multiple Listing Service on May 4, 2002 at a price of  
6 \$200,000. By July 24, 2003, five offers had been received, the highest of which was  
7 \$170,000. The bank applied for an order approving the sale of the property at this price.

8

9 When the application was heard by me (on September 5, 2003) I refused to approve the  
10 sale. There was evidence which demonstrated that the particulars of the property entered  
11 into the Multiple Listing Service and advertised on Grand Cayman Island were incorrect  
12 - the property was described as being smaller and less desirable than it was. I directed  
13 that the property be listed correctly on the MLS system for a further 90 days at a price of  
14 \$240,000. I also dismissed the plaintiff's application for vacant possession.

15

16 Additional appraisals were produced at this time. One appraisal expressed the opinion  
17 that the open market value of the property was \$370,000 as of April, 2002. Another  
18 agreed with this estimate, and added that the restricted realization price was in the range  
19 of \$240,000 - \$296,000. An appraisal in August, 2003 estimated the open market value  
20 at \$340,000.

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22 The property was re-advertised with a correct description, commencing around  
23 September 5, 2003. It was also entered correctly into the Multiple Listing Service.

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On February 20, 2004 the bank applied for vacant possession. The evidence satisfied me that Mr. Rankine had conducted himself in such a way as to delay and obstruct the bank's reasonable efforts to sell the property. Consequently, I granted vacant possession to the bank and gave Mr. Rankine thirty days within which to vacate the house.

The property continued to be marketed through the Multiple Listing Service but, by May 12, 2004, the highest offer received was \$180,000. On that date, I approved a sale at that price. Subsequently, the offer was increased slightly to \$186,000 and the property was sold.

In my view, the best evidence of the value of real estate is the reaction of the marketplace, always assuming that the property has been listed on the Multiple Listing Service (with accurate particulars) and advertised in a reasonable and competent fashion.

I find as a fact that this property has been marketed and advertised appropriately from about September 5, 2003 until May 12, 2004. That is a sufficient period of time to judge its true value from the reaction of potential purchasers and offers made by them. In light of the extended exposure of the property to the marketplace and the size of the highest offer received for it, the more optimistic estimates contained in the appraisals must be viewed as erroneous.

1 On the balance of probabilities, I am satisfied that the bank had, by May 12, 2004, taken  
2 all reasonable steps to comply with its obligations and is therefore entitled to an order  
3 approving the sale at \$180,000.

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5 Dated this 18<sup>th</sup> day of January, 2005

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8 Henderson, J.

9 Judge of the Grand Court

