EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2024/0483 (formerly CLAIM NO. GDAHCV2013/0313)

BETWEEN:

GRENADA CO-OPERATIVE BANK LIMITED

Claimant

and

VALMA JESSAMY

Defendant

CONSOLIDATED WITH

CLAIM NO. GDAHCV 2022/0453 (formerly CLAIM NO. GDAHCV2014/0484)

BETWEEN:

VALMA JESSAMY

Claimant

and

[1] GRENADA CO-OPERATIVE BANK LIMITED
[2] LEWIS & RENWICK (A FIRM)

Defendants

Before:

The Hon. Mde. Justice Agnes Actie — High Court Judge

Appearances:

Mr. John Carrington KC and Ms. Deborah St. Bernard for Grenada Co-Operative Bank
Mr. Jerry Edwin for Dr. Valma Jessamy
Mr. Ian Sandy for Lewis & Renwick

2025: October 6th, 7th;
October 31st (Submissions);
November 17th (Submissions);
2026: June 30th.

JUDGMENT

[1] **ACTIE, J.:** These proceedings concern whether the Grenada Co-Operative Bank Ltd. ("the Bank") may exercise its power of sale to recover the outstanding mortgage debt, or whether the mortgage should be set aside on grounds of impropriety, breach of contract, misrepresentation, duress, or undue influence.

[2] This protracted dispute involves Dr. Valma Jessamy the borrower, the Bank, and the law firm Lewis & Renwick ("the Firm"). The consolidated claims have a lengthy procedural history, including several satellite applications and appeals to the Court of Appeal. The material facts are largely undisputed. The following summary sets out the factual background necessary to place the issues in context.

Brief Facts

[3] By Indenture dated 31st October 2007, Dr. Jessamy secured a mortgage from Grenville Vale Estates Limited in the sum of $469,684.75 over property situate at Grenville Vale, St. George (hereafter referred to as "the property").

[4] In or about June 2008, Dr. Jessamy developed a proposal for an agro-tourism project (hereafter referred to as "the project") to be located on the property.

[5] On 4th November 2008, the Bank offered Dr. Jessamy a facility secured by a first legal mortgage in the sum of $1,050,000.00. The stated purposes included consolidation of the property mortgage in the sum of $430,000.00, infrastructural development of Grenville Vale Botanical Gardens in the sum of $450,000.00, working capital of $150,000.00 and legal fees of $20,000.00. Dr. Jessamy signed the letter of offer on the same date.

[6] On 5th November 2008, the Bank instructed the Firm to prepare a reconveyance of the property from Grenville Vale Estates Limited to Dr. Jessamy and a first legal mortgage in favour of the Bank.

[7] By indenture dated 29th January 2009, the property was mortgaged to the Bank for $1,050,000.00 ("the mortgage"), comprising a loan of $900,000.00 and an overdraft facility of $150,000.00.

[8] On 30th January 2009, the Bank issued an amended offer letter to Dr. Jessamy (hereafter referred to as "the amended loan agreement") signed by Dr. Jessamy. Differently in the amended loan agreement is a moratorium for the first year on principal payments, however interest was to be paid monthly.

[9] By letter dated 13th February 2009, the Bank advised Dr. Jessamy that the loan had been fully drawn down and booked on 22nd December 2008, and that monthly interest payments became due from 22nd January 2009.

[10] By letter dated 25th February 2009, Dr. Jessamy disputed that the disbursed funds included an overdraft facility and maintained that the overdraft could not properly form part of the loan amount.

[11] On 5th May 2009, the Bank demanded payment of the outstanding debt and, by notice dated 11th September 2009, advertised the property for sale in a local newspaper.

[12] By letter dated 22nd October 2009, Mr. Denby De Freitas of the Bank acknowledged that the outstanding loan interest had been cleared. He stated, however, that the matter had not progressed in accordance with the amended loan agreement dated 30th January 2009 and that the $150,000.00 overdraft facility had been fully utilised.

The Bank's claim

[13] On 7th June 2013, the Bank filed a claim in respect of the loan facility in the sum of $986,502.50 with interest in the sum of $340,804.89 at the rate of 9.5% per annum from 6th June 2013 until payment, and costs.

[14] On 26th July 2013 and amended on 31st July 2013, Dr. Jessamy in response to the Bank's claim filed an application to pay by instalments. On 9th August 2013, Dr. Jessamy filed a document entitled "Answer, Statement of Defence".

[15] The property was advertised for sale on 27th September 2013.

[16] On 1st October 2013, Dr. Jessamy filed a further document entitled "Amended Reply and Defence to Fixed Date Claim".

[17] The property was again advertised for sale on 9th November 2013.

[18] On 28th November 2013, Dr. Jessamy applied for an injunction that the advertised public auction for the sale of her home and business ("Jessamine Eden") be cancelled. Mohammed J in a judgment delivered on 6th March 2014, restrained the Bank from selling Jessamine Eden until the determination of the sum due and owing on the judgment on admission obtained by the Bank on 4th December 2013.

[19] The application for payment by instalments filed by Dr. Jessamy and judgment on admission obtained by the Bank were both set aside by the Court of Appeal.

[20] On 6th December 2016, the Court of Appeal directed the parties to agree the documents comprising the pleaded cases for the purposes of case management.

The defence to the Bank's claim

[21] Mr Jerry Edwin, counsel for Dr. Jessamy made much about the document which is purportedly the filed defence which he said was included in the record of appeal. Upon enquiry for further clarification on the defence referenced in the appeal, the Court of Appeal stated the unlikelihood of the court allowing filings in contravention of the CPR 2000.

[22] This court is of the view that the only purported defence to the Bank's claim is the "amended reply and defence to Fixed Date Claim" filed on 1st October 2013 in keeping

with Part 20 which clearly provides that a statement of case can only be amended once without the leave of the court. As such, the amended defence filed on 1st October 2013 amended the defence filed on the 9th August 2013 and defines the issues pleaded in response to the bank's claim.

[23] In her "amended reply and defence", Dr. Jessamy admits that she mortgaged the property but denies owing the sum of $986,502.50 together with the interest claimed. She pleads that she was wrongfully induced to execute the mortgage and is liable only for the property mortgage. She further avers that the Bank misapplied payments made towards the loan, knew that she was in a vulnerable position when the mortgage was executed, and made false promises to secure the loan.

[24] The issues pleaded in the defence to the Bank's claim were similar to those raised by Dr. Jessamy in her claim against the Bank. Accordingly, the court, exercising its case management powers under Part 26.1(2)(b), consolidated the two claims.

Dr. Jessamy's claim against the Bank

[25] In amended Claim No. GDAHCV2022/0453, filed on 15th May 2015, Dr. Jessamy brought claims against the Bank and the Firm. The pleading is lengthy and does not comply with Part 8 requirement for concise pleadings. However, the matter proceeded through numerous case management conferences and appeals without objection.

[26] In summary, Dr. Jessamy seeks special damages of $1,253,766.81 and a declaration that the mortgage is void or, alternatively, voidable. Against the Bank, she claims damages for breach of contract, misrepresentation, undue influence, duress and coercion. Against the Firm, she claims damages for negligent misrepresentation, breach of trust by an attorney, and breach of ethical duties.

Breach of oral contract

[27] Dr. Jessamy alleges that, in or about July 2008, she discussed with Mr. Richard Duncan, then Managing Director of the Bank, a financing proposal for a three-phase

agro-tourism project estimated at $10,000,000.00. She states that she sought funding for Phase 1, estimated at $3,000,000.00, and was led to believe that the Bank had agreed to finance that phase in full. She further alleges that, at a meeting on 4th July 2008, Mr. Duncan orally agreed to fund the entire project.

[28] She avers that the oral agreement is demonstrated by the bank statements, expenditures, emails and letters between the parties which prove that the bank had in fact provided an unsecured facility which she was using for the Phase 1 of the project. She states that she accepted the contract by becoming a customer and opened a checking account with $150.00 to access the funding.

[29] Dr. Jessamy asserts that the Bank breached both the oral agreement made in July 2008 to fund her $10,000,000.00 project in full and the written agreement dated 30th January 2009 to finance her new agro-tourism project.

[30] Dr. Jessamy avers that both parties performed their respective obligations under the oral contract, in her case by using the unsecured funds solely for phase 1 of the project's infrastructure expenses, and by the Bank making the unsecured facility available to her.

[31] Dr. Jessamy pleaded that the Bank in the amended mortgage agreement dated 30th January 2009, agreed to complete the unfinished buildings of Greenville Vale Tropical Botanic Garden and to provide an overdraft facility of $150,000.00 in return for which she would turn over her deed to the Bank.

[32] Dr. Jessamy states that the Bank refused to honour the agreement one business day after the she executed the 30th January 2009 amended loan agreement and thereafter demanded payment of the entire loan amount.

[33] Dr. Jessamy avers that she informed the Bank she could not repay the loan because the infrastructure remained incomplete and, without working capital, the project could not generate the revenue anticipated in July 2008. She contends that the Bank

ignored her requests for continued project funding and instead listed the business for sale, causing loss and damage exceeding $61,000,034.00.

Breach of Bank- customer contract

[34] Dr. Jessamy alleges that the Bank breached its banker-customer contract by combining her current and loan accounts. She avers that in October 2008, after she borrowed sufficient funds to pay the accrued interest, the Bank arbitrarily combined the accounts by refusing to credit the full payment of $60,000.00 and diverting $20,000.00 to clear arrears without her knowledge.

Misrepresentation, Undue Influence, duress and coercion

[35] Dr. Jessamy contends that misrepresentation, undue influence and duress induced her to sign the final loan agreements.

[36] As to misrepresentation, Dr. Jessamy alleges that Mr. Richard Duncan represented that the Bank intended to fund the project but later changed that position without informing her while continuing to require her to satisfy specified conditions. She says she had complied with those conditions by mid-October 2008 and signed the amended loan agreement believing that the Bank would provide full funding.

[37] Dr. Jessamy further contends that the loan agreement's description of the $1,050,000.00 facility as comprising a $900,000.00 loan and $150,000.00 in working capital misled her into believing that additional funds would be advanced under the amended loan agreement.

[38] Dr. Jessamy contends that the Bank's allowance of expenditure exceeding $200,000.00 without a formal agreement led her to reasonably believe that the project was approved for funding by the Board of Directors of the Bank.

[39] Dr. Jessamy relies principally on Mr. Duncan's email of 22nd July 2008, in which he stated that he awaited Board's approval and anticipated "a definite positive answer". She also relies on the Bank's letter of 18th September 2008 confirming that it would "...proceed with Phase 1A of the project...". Dr. Jessamy alleges that she signed the amended agreement in reliance on those representations.

[40] She contends that the Bank's oral representations were false, or that the Bank expressed beliefs it did not genuinely hold. She further avers that, despite the letter dated 18th September 2008, the Bank, through its Managing Director and Retail Credit Manager, knew the statements were false.

Undue Influence

[41] Dr. Jessamy pleaded that she was improperly induced by the Bank to sign the amended mortgage agreement on 30th January 2009. She states that she placed trust and confidence in the Bank's Managing Director, Mr. Richard Duncan, and avers that the Bank's officers knowingly and deliberately exploited her lack of experience in project financing.

[42] Dr. Jessamy states that she was pressured into signing the loan agreement after the Bank returned her cheques and thereafter ceased all project funding. She states that she was desperate to protect her business from failure and embarrassment. She said that she signed the loan agreement on the belief that the agreement contained a promise of an overdraft facility of $150,000.00, a moratorium on the mortgage for the first year and a promise to complete the infrastructure phase 1 of the project.

[43] Dr. Jessamy also contends that the Bank's attempts to sell the mortgaged property by public auction were in breach of contract, as the Bank failed to comply with statutory and contractual notice requirements. Dr. Jessamy avers that the Bank's failure to honour both the July 2008 oral agreement and the amended loan agreement resulted in financial loss and reputational damage. She accordingly seeks to rescind the mortgage on those grounds.

Bank's defence to Dr. Jessamy's claim

[44] The Bank denies responsibility for any financial loss or reputational damage suffered by Dr Jessamy. The Bank admits that Dr. Jessamy was informed by its managing director that it would proceed with Phase 1A of the project, development of the infrastructure and facilities as indicated in a letter dated 18th September 2008, setting out the following conditions:

(1) "You will transfer to your account with us proceeds of US $17,000.00 from the current consulting contract with Belgium firm on or 30th September 2008.

(2) You will provide a schedule of consulting projects for which there are signed contracts and those that are in the advanced stages of negotiation by 25th September 2008.

(3) You will provide by 25th September 2008, an accounting for funds expended on the project to date.

(4) We will, on your request make or authorize **all large** disbursements (over $5,000.00) to the suppliers and contractors eg ordering of solar systems;

(5) You will immediately begin to use the existing Account #100004091 to make **all** expenditure and deposit **all** revenue in respect of Grenville Vale Tropical Gardens.

(6) Though the account is now in your name you will transfer same to the company name once incorporating is completed. We suggest that this can be achieved **within the next three (3) weeks**.

(7) We will allow a further $145,000.00 in addition to the $200,000.00 already approved in order to bring Phase 1A to completion. The requirement in 4 above shall obtain i.e. we, at your request, make or make or authorize **all large** disbursements (over $5,000.00) to the suppliers and contractors e.g. ordering of solar systems.

(8) Moving forward we shall aim for full approval in October, to include Phase 1B – the pay off of Grenville Vale Estate. Kindly confirm the balance due by 25th September 2008."

[45] The Bank admits email correspondence dated 22nd July 2008 to Dr. Jessamy informing that the Bank was awaiting the final analysis of the project before it was presented to its Board of Directors. The Bank avers that the full content of the email states "we are awaiting the final analysis of your information and then go to the BOD. A positive definite answer will be given by the end of August".

[46] The Bank states that Dr Jessamy failed to perform the condition numbers 2, 3, 5 and 6 of the 18th September 2008 letter, which resulted in the non-release of further funds.

[47] The Bank avers that the mortgage agreement of 4th November 2008 amending the 18th September 2008 agreement was executed at the request of Dr. Jessamy to include a moratorium on the full payment of the principal for the first year and to pay only monthly interest.

[48] The Bank contends that Dr. Jessamy failed to perform her obligations with respect to the overdraft facility and the payment of interest on the loan. The Bank in a letter dated 13th February 2009, reminded Dr. Jessamy that her overdraft account was overdrawn in the amount of $17,476.42 together with the payment of the outstanding interest with effect from 22nd January 2009.

[49] The Bank denies the allegations of misrepresentation, undue influence, duress and coercion as pleaded. The Bank further denies that it agreed to provide Dr. Jessamy the sum of $3,000,000.00 for funding phase 1 of the project.

[50] The Bank avers that Dr. Jessamy was requested to secure by way of mortgage monies already advanced to her in the sum $1,050,000.00 comprising of $150,000.00 overdraft facility and $900,000.00 for a loan. The Bank contends that it performed its transactions pursuant to the mortgage loan agreement.

[51] The Bank avers that it exercised its power of sale and demanded payment notwithstanding the moratorium on the principal for one year in keeping with its expressed right to review at any time that the facility became payable on the event of any breach of the terms of the loan.

Evidence at Trial

[52] At trial, the Bank relied on the evidence of Mr. Richard Duncan, Ms. Nicola Phillip and Ms. Jennifer Robertson, while the Firm relied on the evidence of Mr. Trevor St. Bernard. Dr. Jessamy was the sole witness in support of her case.

Mr. Richard Duncan

[53] Mr. Richard Duncan in his witness statement and at trial states he met Dr. Jessamy when she sought financing from the bank for her agro-tourism plans at Grenville. He states that he never advised Dr. Jessamy on the viability of her project. He states that Dr. Jessamy's project was already designed and on its way for implementation when she approached the bank for financing.

[54] Mr. Duncan states that the Bank did not provide advice on business ventures, neither did he advise Dr. Jessamy on her project which was already designed. He states that Dr. Jessamy was requested to provide information on her actual earnings and projected earnings of the agro tourism project to complete the preparation of the submission of her request to the Board of Directors for consideration of phase 1.

[55] Mr. Duncan states that during the period of consideration an overdraft facility was granted to Dr. Jessamy to assist her in meeting her expenses with the work that she had already commenced on the project. He states that the Bank in an email dated 24th October 2008, in response to the Dr. Jessamy's email of 22nd October 2008, informed that no further disbursements would be forthcoming due to her non-compliance with the stipulated preconditions. Mr. Duncan states by 31st October 2008, in excess of $300,000.00 was already advanced to Dr. Jessamy for meeting expenses for development of infrastructure and facilities.

Ms. Jennifer Robertson

[56] Ms. Jennifer Robertson in her witness statement states that Mr. Clifford Bhola, the then retail manager, in a letter dated 4th November 2008 addressed to Dr. Jessamy informed her of the approval of financing with a first legal mortgage to secure the sum of $1,050,000.00. Dr. Jessamy was required to execute the copy of the letter which she did on the instant date. Following which the Bank instructed the Firm to prepare the reconveyance from Grenville Vale Estates Ltd to Dr. Jessamy and a mortgage to the Bank in the agreed sum.

[57] She states that Dr. Jessamy sought and obtained a moratorium on the repayment of principal but interest to be paid monthly. The concession was reflected in the amended loan agreement dated 30th January 2009 and signed by Dr. Jessamy on the same date. The loan funds were fully drawn down by 22nd December 2008 and therefore the monthly interest became due by 22nd January 2009. A letter dated 13th February 2009 was sent to Dr. Jessamy requesting her to meet her commitment to pay up all the arrears. Dr. Jessamy's non-payment of interest persisted and accordingly the Bank excised its power of sale and advertised the property for sale.

Dr. Jessamy

[58] Dr. Jessamy in her witness statement states that she's an Environmental Engineering scientist with 30 years professional work experience. She states that with her professional training she carefully and meticulously prepares herself and research before she undertakes anything that would implicate her professional reputation. She states that when she conceived the development of the $10,000,000.00 agro tourism project she was well prepared in terms of her ability to purchase and develop the land and design a unique and successful agro- tourism project with proper and adequate financing.

[59] She states that she met with Mr. Richard Duncan and Mr. Clifford Bhola on 4th July 2008. Mr. Duncan advised that the Bank would finance the project by providing the requested loan for capital expenditure, working capital and an overdraft facility, provided that she submitted a coherent marketing strategy and information sufficient for him to present the proposal to the Board of Directors. She avers that Mr. Duncan required her to show how Phase 1 of the project would generate the projected cash flows set out in her proposal and asked for a certified auditor's statement of her annual income. She further states that he told that the requested documents were essential prerequisites before the Board would consider the proposal. Acting on the Bank's advice, she opened an account on 16th July 2008 with a deposit of $150.00.

[60] Dr Jessamy states that she left the meeting believing that there was, at minimum, a conditional oral agreement for the Bank to finance Phase 1 of the project, subject to her providing a coherent marketing strategy, a statement of her personal finances from her accountant, and Board approval of the funding. She further states that, on 8th July 2008, she provided Mr. Duncan with the marketing strategy and an audited statement showing annual personal income of $60,000.00.

[61] Following further inquiry, she received a response from Mr. Duncan on 22nd July 2008 confirming that the Bank was reviewing her proposal and awaiting final analysis of the information before presenting it to the Board of Directors. The email indicated that a definite positive answer would be provided by the end of August. She states that, in a subsequent telephone call, Mr. Duncan advised her to access $10,000.00 by overdraft to begin implementing the project's marketing strategy. She further states that she continued using the unsecured facility, although the Bank had not provided any written terms or conditions governing access to that credit facility.

[62] She states that Mr. Duncan, on 5th August 2008, approved expenditures from the chequing account. She met with Mr. Duncan and Mr. Bhola met on 18th September 2008 to discuss the project. Mr. Duncan followed with a letter confirming the Bank would proceed to fund Phase 1 if certain conditions were met.

[63] On 24th October 2008, she received a further letter from Mr. Duncan stating that funding for the project had not been finalized and the Bank was unable to make any disbursements towards operating expenses. Cheques were returned on 28th October 2008 on the ground that the Bank had not yet approved the funding.

[64] Dr Jessamy states that up until November 2008, the Bank had disbursed the sum of $555,286.35 in her account without an agreement setting out the details or terms and conditions, interest rates and limits for the credit facility. She states that the representations made on 4th July 2008 which were crystalized in the 18th September 2008 letter coupled with the Bank allowing her to withdraw the significant sum caused her to reasonably understood that the Bank had approved funding for Phase 1 of the project up to the sum of $3,000,000.00.

[65] She further states that the letter of 4th November 2008 was an attempt by the Bank to resile from its contractual obligation. She avers that the Bank was fully aware that the project was incomplete, that she was in a vulnerable position and would be struck a further devasting blow if it pulled the plug on the finances for the project.

[66] She states that Mr. Duncan throughout December 2008, urged her to sign the funding agreement stating that her project would fail if she didn't sign. She states she met with Mr. Bhola on 22nd December 2008 to discuss the dishonoured cheques and funding by the Bank. It was then she was presented with cheques paid to clear the mortgage with Grenville Vale Estates and for the Firm to prepare the legal documents for the transfer and new mortgage agreement with the Bank. She states that Mr. Bhola promised that further funding would be provided to complete Phase 1 of the project only if she signs the loan and mortgage agreement to secure the funds already spent. At that time, she negotiated that the terms under which she would sign, i.e a moratorium on the repayment of the loan and the promised overdraft facility and working capital.

[67] On 30th January 2009, out of desperation, Dr. Jessamy states that she had no choice but to sign the amended loan agreement which included funds already used for the

project from July 2008 to December 2008, financing the mortgage for the lands, legal fees and overdraft facility which also provided that she would receive among other things a moratorium on payment of the principal for the first year.

[68] On 2nd February 2009, she went to office with intent to sign the overdraft facility agreement for the promised $150,000.00 of working capital and was informed that no new funds would be provided. By letter dated 13th February 2009, she was further informed that the loan agreement signed on 30th January 2009 was booked since 22nd December 2008, with the effect that she was already in default of payment of interest which was due on 22nd January 2009.

[69] Dr Jessamy states that she was tricked by the Bank into signing the 30th January 2009 amended loan agreement by having her to believe that she would be provided working capital of $150,000.00 and payments would run from the date of signing. She avers that later learned and fully understood that at the time of signing the mortgage and loan agreement, that the Bank had no intention of providing her with the $150,000.00. She states that she would not have signed the loan agreement if she was not misled into believing that the Bank would disburse the additional sum since her meagre personal income would be the source of repayment of financing of the project.

LEGAL ANALYSIS

Duty to Repay

[70] It is well settled that the relationship between a bank and its customers is primarily based on contract[1].

[71] Dr. Jessamy concedes that the Bank in December 2008, disbursed $588,000.00 transferred to an unsecured account; $430,000.00 paid to Grenville Vale Estates Ltd to clear her previous mortgage; a negotiation fee of $5,250.00; and $26,000.00 paid

[1] Foley v Hill (1848) 2 HL Cas 28

to the Firm for legal fees. The sums totalled $1,050,000.00 which misled her into believing it was providing an overdraft of $150,000.00.

[72] Dr. Jessamy both in her defence and at trial conceded her indebtedness for the land mortgage with Grenville Vale Estate Ltd in the sum of $430,000.00 but challenges the interest and the remaining sum claimed by the Bank.

[73] It is the evidence of the Bank that as at 15th August 2025, the loan account of Dr. Jessamy reflected the following:

Original Loan Amount	$1,050,000.00
Current Principal Balance	$974,817.20
Interest Adjustment	$1,451,284.25
Today's Payoff	$2,426,101.45
Scheduled Interest Rate	9.500
Daily Interest Rate	253.7195
Date Last Payment	12/31/2013
Amount Last Paid	$10,000.00

[74] The evidence of the Bank's record dated 20th November 2021 indicates that the last payment on the account was made on 31st December 2013 in the sum of $10,000.00. A formal demand for repayment was made on 5th May 2009. Since the original filing of the claim in 2013, over 12 years ago, it is the Bank's evidence that Dr. Jessamy made payments totalling $31,000.00 although she conceded her indebtedness to the Bank for clearance of the land loan in the sum of $430,000.00.

[75] In **Terrence R. Joseph v RBTT (Grenada) Ltd**[2] the High Court of Grenada affirmed that a mortgagor remains liable to repay a debt unless and until the debt is lawfully discharged. Similarly, in **Sagicor Finance Inc. v Glenis Remi**[3]**,** the court confirmed

[2] GDAHCV2017/0403
[3] SLUHCV2015/0906

that a borrower's obligation to repay persists despite the seizure of the secured asset, emphasizing that the loan agreement's terms govern repayment obligations.

[76] The evidence is pellucid that Dr. Jessamy, although admittedly receiving the funds, has failed to repay the debts but seeks to vitiate the mortgage agreement on the following grounds outlined below.

Breach of Contract: Funding

[77] Dr. Jessamy contends that the Bank breached an oral agreement by failing to fully fund the project. The proposal submitted by Dr. Jessamy, at paragraph 2.2 entitled "Project Costs", identifies a total project cost of approximately $10,000,000.00. Dr. Jessamy's evidence is that the project was to be completed in three phases.

[78] Paragraph 7.2 of the proposal, entitled "Refinance existing loans", requests $500,000.00 to consolidate loans with Grenville Vale Estate Ltd and Microfin, while paragraph 7.3 entitled "Business Development - Capital investments", identifies a funding requirement of $633,000.00.

[79] Dr. Jessamy asserts that Mr. Richard Duncan orally agreed that the Bank would fund the project, including a loan to cover the project's capital expenditure, working capital for business operations, and an overdraft facility as a standby credit line. Dr. Jessamy contends that there was an understanding that the Bank would finance at least Phase 1 of the project, subject to her provision of the marketing strategy and her personal financial statements.

[80] To establish a breach of contract, the claimant must demonstrate the existence of a contract, the claimant's performance under the contract, and the non-performance on the part of the defendant.

[81] By letter dated 18th September 2008, the Bank confirmed that it would finance what is termed "Phase 1A" of the project, subject to specified conditions. The letter required the following of Dr. Jessamy, among other actions:

> "...
> 2. You will provide us with a schedule of consulting projects for which there are signed contracts and those that are in the advanced stages of negotiation by 25th September 2008.
>
> 3. You will provide, by September 25th 2008, an accounting for the funds expended on the project to date.
>
> 4. We will, on your request make or authorise all large disbursements (over $5,000.00), to the suppliers and contractors e.g. ordering of solar systems.
>
> 5. You will immediately begin to use the existing account #100004091 to make all expenditure and deposit all receipts of revenue in respect of Grenville Vale Tropical Gardens.
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> 6. Though the account is now in your name you will transfer same to the company name once incorporating is completed. We suggest that this can be achieved within the next three (3) weeks.
>
> 7. We will allow a further $145,000.00 in addition to the $200,000.00 already approved, in order to bring Phase 1A to completion. The requirement in 4 above shall obtain i.e. We Will, at your request, make or authorise all large disbursements (over $5,000.00), to the suppliers and contractors e.g. ordering of solar systems.
>
> 8. Moving forward we shall aim for full approval in October, to include Phase 1B- the pay off of Grenville Vale Estate. Kindly confirm the balance due by September 25th 2008."

[82] It is the evidence and the case of the Bank that its financing was contingent on Dr. Jessamy meeting these requirements. By letter dated 7th October 2008, the Bank contends that Dr. Jessamy failed to comply with the preconditions set out by it, all of which were to be completed by 25th September 2008.

[83] The Bank further contends that its commitment was explicitly limited to Phase "1A" and Phase "1B", and that it stated the amount that it would so finance. By paragraph 7 of the 18th September letter, the Bank indicated that a total of $345,000.00 would

be allowed on account, with funding for the pay-off of Grenville Vale Estates Limited being "Phase 1B" financing.

[84] Following the execution of the loan agreement dated 4th November 2008 and amended on 30th January 2009 by the Bank and Dr. Jessamy, the facility of $1,050,000.00 was agreed between the parties consisting of the following:

(1) The consolidation of mortgage with Grenville Vale Estate Ltd: $430,000.00;
(2) Infrastructural development at Grenville Vale Botanical Gardens: $450,000.00;
(3) Working capital $150,000.00; and
(4) Legal fees: $20,000.00.

[85] The evidence reveals that it was only after of the approval of the loan on 4th November 2008 that the overdraft facility was allowed to exceed $345,000.00 that had been limited by the 18th September 2008 letter.

[86] Mr. Jerry Edwin, counsel for Dr. Jessamy argues that the Bank's claim for non-compliance was false. Nevertheless, the 18th September 2008 letter and the November 2008/January 2009 loan agreements established that the Bank's financing obligation was to the extent of $1,050,000.00, in the first instance. Any discussions regarding the likelihood of fully funding the $10,000,000.00 project were superseded by these written agreements.

[87] Where a statement invites persons to respond in a certain or prescribed way, there is not to be a binding agreement until those requirements have been complied with and the parties entered into a formal contract, that is an invitation to treat, and no binding contract comes into existence until the formal agreement is signed by the parties[4].

[4] Donald Bridgeman (also called "Earl Gerald Bridgeman") v HKZ INC GDAHCVAP2021/0011

[88] The evidence establishes that any oral agreement between the parties which was reduced in writing in the September 2008 letter was conditional upon Dr. Jessamy satisfying specified requirements before further funding would be advanced for the project. Dr Jessamy was bound by the conditions. Her non-compliance with those conditions brought further disbursements to an end and relieved the Bank of any assumed contractual obligation to fund the project in full.

Breach of contract: Overdraft facility

[89] Dr. Jessamy alleges that the amended loan agreement established an overdraft facility of $150,000.00, secured by a first mortgage over the property.

[90] Dr. Jessamy contends that between July and December 2008, the Bank permitted her to utilise an informal and unsecured facility, representing that the amended loan agreement would secure prior advances and extend the facility by an additional $150,000.00 for working capital.

[91] Dr Jessamy contends that the overdraft facility of the amended loan agreement was a new overdraft facility, separate and distinct from monies already advanced by the Bank. Dr. Jessamy contends that she was misled into believing that the Bank was providing the additional $150,000.00 to continue her project.

[92] Mr. Jerry Edwin, counsel for Dr. Jessamy relies on the decision of Clarke LJ in **Rainy Sky SA v Kookmin Bank**[5], where he stated at paragraph 14:

> "[14] ... that the ultimate aim of interpreting a provision in a contract, especially a commercial contract, is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant. As Lord Hoffmann made clear in the first of the principles he summarised in the Investors Compensation Scheme case at p 912H, the relevant reasonable person is one who has all the background

[5] [2011] UKSC 50

> knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract."

[93] The Bank contends that the overdraft facility and the loan were components of a single facility, with the overdraft portion already utilised by Dr. Jessamy. On that interpretation, the Bank asserts that there was to be no additional funds advanced to Dr. Jessamy.

[94] A comparison of the loan agreement of 4th November 2008 and 30th January 2009 shows that the approved facility remained at the sum of $1,050,000.00. Although the descriptors of the funding were changed from "consolidation of mortgage with Grenville Vale Estate Ltd, infrastructural development at Grenville Vale Botanical Gardens, working capital $150,000.00; and legal fees: $20,000.00", to "loan: $900,000.00 and overdraft facility: $150,000.00". No additional funding was offered by the Bank to increase the overall amount offered of $1,050,000.00.

[95] Although counsel Mr. Jerry Edwin argues that the Bank failed to provide the promised overdraft facility, Dr. Jessamy's own evidence indicates the sum of $555,286.35 was disbursed by the Bank through the overdraft facility.

[96] The law of contract seeks to give effect to the common intention of the parties to a contract, and it is for the court to give the meaning of the terms of a contractual document.

[97] Dr. Jessamy bears the burden of proving that the overdraft facility referred to in the 30th January 2009 loan agreement constituted an additional loan which she has failed to do. By her own conduct in seeking a moratorium on the repayment of the sums already disbursed suggests performance under the agreement which was amended to facilitate her request.

[98] The court is of the view that Dr. Jessamy has failed to satisfy that there was any breach of contract in relation to the alleged further overdraft facility and accordingly claim in relation to breach of contract of the overdraft facility is therefore dismissed.

Breach of Bank/Customer Obligations

[99] Further, Dr. Jessamy alleges that the Bank breached its banker-customer obligations by diverting $20,000.00 to settle arrears without her knowledge, although she seeks no specific relief on that basis. Beyond that assertion, no submissions were advanced identifying the contractual term or duty allegedly breached. Nor has the court been referred to any authority establishing the relevant duty owed by the Bank in these circumstances. The court is therefore unable to determine this alleged breach.

Misrepresentation

Whether there was misrepresentation by the Bank

[100] Dr. Jessamy's claim is framed in terms of negligent or careless misrepresentation and relies on **Hedley Byrne v Heller**[6] that defines negligent misrepresentation as a false statement made by a party who has no reasonable grounds for believing it to be true.

[101] Mr. Jerry Edwin, counsel for Dr. Jessamy, argues that a duty of care arises in a purely commercial relationships where the representor has or purports to have some special skill or knowledge or it is reasonable to assume that the representee will rely on his representations.

[102] Mr. Carrington K.C for the Bank in response submits that in order to establish negligent misrepresentation, Dr. Jessamy must prove: that the Bank made a false statement of fact; that she relied on the statement; and that she suffered loss as a result[7].

[103] Mr Carrington K.C. argues that Dr. Jessamy has failed to provide any cogent particulars to substantiate the allegation that the Bank made false or misleading statements, and that the available evidence demonstrates that the Bank explicitly

[6] [1964] AC 465

[7] Hedley Byrne & Co. Ltd v Heller & Partners [1964] AC 465

communicated the scope of financing it was offering, and that no unconditional promise was made. The Bank emphasises that the approved funding, as documented in the 4th November 2008/30th January 2009 loan agreements to be the sum of $1,050,000.00.

[104] King's Counsel further submits that misrepresentation is actionable only if it involves a false statement of fact, past or present, and that a mere statement of intention is not actionable[8]. Counsel further argues that misrepresentation would only be actionable if it induced Dr. Jessamy to enter into an agreement[9], and states that by 22nd December 2008, Dr. Jessamy had already entered an agreement for an overdraft and a secured loan facility by agreement of 4th November 2008.

[105] Lastly, King's Counsel notes that Dr. Jessamy did not plead the existence of a special relationship imposing a duty of care to sustain a claim of negligent misrepresentation.

[106] Misrepresentation is defined as a positive statement of fact or law, which is made or adopted by a party to a contract and is untrue. It may be made fraudulently, carelessly or innocently. "Where one person ('the representor') makes a misrepresentation to another ('the representee') which has the object and result of inducing the representee to enter into a contract or other binding transaction with him, the representee may generally elect to regard the contract as rescinded."[10]

[107] In **Bisset v Wilkinson & Anr**[11], Lord Merrivale relied on dicta of Bowen LJ in **Smith v Land and House Property Corpn**[12] where it was stated:

> "It is often fallaciously assumed that a statement of opinion cannot involve the statement of fact. In a case where the facts are equally well known to both parties, what one of them says to the other is frequently nothing but an expression of opinion. The statement of such opinion is, in a sense, a statement of fact about the condition of the man's own mind, but only of an irrelevant fact, for it is of no consequence what the opinion is. But if the facts are not equally

[8] Chitty on Contracts 34th edn para 9-008
[9] Chitty on Contracts 34th edn para 9-001
[10] Halsbury's Laws of England (5th edn., 2021) vol. 76, para 701
[11] [1926] All ER Rep 343
[12] (1884) 28 Ch D 7

> well known to both sides, then a statement of opinion by one who knows the facts best involves very often a statement of a material fact, for he impliedly states that he knows facts which justify his opinion."

[108] This statement of law developed in **Esso Petroleum Co. Ltd v Mardon**[13]**,** where the case of **Hedley Byrne & Co. Ltd v Heller & Partners Ltd**[14] was referenced in the following terms:

> "...It seems to me that Hedley Byrne & Co. Ltd. v Heller & Partners Ltd., properly understood, covers this particular proposition: if a man, who has or professes to have special knowledge or skill, makes a representation by virtue thereof to another - be it advice, information or opinion - with the intention of inducing him to enter into a contract with him, he is under a duty to use reasonable care to see that the representation is correct, and that the advice, information or opinion is reliable. If he negligently gives unsound advice or misleading information or expresses an erroneous opinion, and thereby induces the other side to enter into a contract with him, he is liable in damages..."

[109] The email of 22nd July 2008 makes clear that financing was subject to the Board's approval. The letter of 18th September 2008 confirms that the Bank's commitment was limited to "Phase 1A and 1B" of the project. By 4th November 2009, the Bank approved a loan facility totalling $1,050,000.00, and Dr. Jessamy acknowledges that she was made aware that the full loan had been disbursed by 22nd December 2008. Further, using the argument of counsel for Dr. Jessamy, any representation made by the Bank was clarified when it was reduced to writing on 18th September 2008 and 4th November 2008/30th January 2009.

[110] On the evidence presently before the court, the representations relied on by Dr. Jessamy were, at all material times, expressly qualified by the requirement of the Board's approval. The written instruments of 18th September 2008, 4th November 2008 and 30th January 2009 clearly defined the scope and quantum of the financing approved.

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[13] [1976] QB 801

[14] [1964] AC 465

[111] The Bank admits that it communicated its willingness to finance "Phase 1A" of the project and references the full statement issued by the Bank's Managing Director in the following terms:

> "We are awaiting the final analysis of your information and then go ti [sic] the BOD [sic]. A positive definative [sic] answer will be given by the end of Aigust [sic]".

[112] The Bank further contends that Dr. Jessamy failed to meet the conditions outlined in the letter of 18th September 2008, justifying the non-release of further financing. It was only after the approval of the loan on 4th November 2008 that the overdraft facility was allowed to exceed the limit of $345,000.00, which was established in the 18th September 2008 letter.

[113] Dr. Jessamy relies on the email dated 22nd July 2008, where Mr. Duncan informed that the Bank was awaiting the final analysis of the project before it was presented to its Board of Directors, and that "a positive definite answer" was expected by the end of August 2008. Dr. Jessamy extrapolated only the part of the letter that stated "a positive definite answer" was expected by the end of August 2008 to assert that there would have been full approval of her entire project.

[114] The court doesn't accept the meaning ascribed by Dr. Jessamy. The words "a positive definite answer" quoted by Dr. Jessamy cannot be reliably understood in isolation from the general context in which the words were used in the letter. The entirety of the letter must be viewed, together with the context. "A positive definite answer" was only to read in the context that the Board of Directors may agree if all the conditions are met. It was merely presumptive conjecture, but not definitive as to the approval. The entire context should be considered which ineluctably leads to one conclusion: that the agreement had to meet the requirements.

[115] The court notes that, although Dr. Jessamy admits her indebtedness to the Bank in respect of the land loan, she disputes the full amount claimed. She has not, however, repaid the principal sum or the unsecured sums advanced to her before the

agreement was signed. Having accepted and used those funds, she cannot approbate by retaining their benefits while reprobating by refusing to repay the amounts disbursed, including those advanced before the mortgage was executed.

[116] Dr. Jessamy, from all accounts, is an astute, highly qualified individual and is reasonably assumed that she fully understood the terms, purpose and object of the contract that she signed, especially in light of her own admissions.

[117] Dr. Jessamy has failed to establish that there was any other agreement except the terms of the September 18th agreement, which were only amended in January to reflect a moratorium of payment on the principal for one year.

[118] In the absence of clear evidence of false or misleading statements inducing Dr. Jessamy to enter into the loan agreement and given that any earlier statements were overtaken by subsequent written clarification, the foundation of a claim in misrepresentation fails.

Duress

[119] Dr. Jessamy seeks damages on the basis that the amended loan agreement was procured by duress. She alleges that the Bank exerted pressure on her by dishonouring her cheques, thereby compelling her to execute the agreement.

[120] Duress at common law is described in **Halsbury's Laws of England**[15] in the following terms:

> "By duress of persons at common law is usually meant the compulsion under which a person acts through fear of personal suffering as from injury to the body or from confinement, actual or threatened. ... There is no duress simply because a party has to enter into a contract by reason of statutory compulsion, or the fact that the other party is a monopoly supplier. ...

[15] (5th edn, 2019) vol 22 para 92

A contract obtained by one party (A) by means of duress exercised by A over the other party (B) is probably voidable by B, even though he might have entered into the transaction even if the threat had not been uttered: it is for A to prove that his threat has contributed nothing to B's decision to enter the contract. However, if the contract is voluntarily acted upon by B, it will become binding on him. The duress must be existing at the time of the making of the contract; and the personal suffering may be that of B, or his or her spouse or near relative; or employees for whom he is responsible, but duress of a stranger is more doubtful."

[121] The doctrine of duress has developed to include economic duress. Counsel for Dr. Jessamy relies on the formulation of duress approved by Dyson J in **Carillion Construction Ltd v Felix (UK) Ltd**[16], adopting the summary of law in DSND Subsea Ltd v PGS Offshore Technology AS, namely that actionable duress requires:

> "... pressure, (a) whose practical effect is that there is compulsion on, or a lack of practical choice for, the victim, (b) which is illegitimate, and (c) which is a significant cause inducing the claimant to enter into the contract: see Universal Tankships of Monrovia v ITWF [1983] AC 336,400B-E, and The Evia Luck [1992] 2 AC 152, 165G. In determining whether there has been illegitimate pressure, the court takes into account a range of factors. These include whether there has been an actual or threatened breach of contract; whether the person allegedly exerting the pressure has acted in good or bad faith; whether the victim had any realistic practical alternative but to submit to the pressure; whether the victim protested at the time; and whether he affirmed and sought to rely on the contract. These are all relevant factors. Illegitimate pressure must be distinguished from the rough and tumble of the pressures of normal commercial bargaining."

[122] Counsel further relies on **North Ocean Shipping Co Ltd v Hyundai Construction Ltd (The Atlantic Baron)**[17] as authority for the proposition that economic duress may arise where parties are already in a contractual relationship and one party exploits the financial vulnerability of the other to secure contractual advantage.

[123] Dr. Jessamy submits that the Bank granted her an unsecured overdraft facility and permitted her to issue cheques in reliance upon it. She contends that the Bank, without prior notice, began dishonouring those cheques thereby placing her under financial pressure.

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16 [2000] All ER (D) 1696
17 [1979] QB 705

[124] Carrington K.C. submits that for a claim of economic duress to succeed, Dr. Jessamy must establish that she was subjected to illegitimate pressure; that the pressure was of a significant cause of her entering into the agreement; and that she had no reasonable alternative but to submit.

[125] K.C in submissions relies on the Privy Council's ruling in **Pao On v Lau Yiu Long**[18] where it was stated that:

> "...In their Lordships' view, there is nothing contrary to principle in recognising economic duress as a factor which may render a contract voidable, provided always that the basis of such recognition is that it must amount to a coercion of will, which vitiates consent. It must be shown that the payment made or the contract entered into was not a voluntary act."

[126] The Bank accepts that actionable duress required the use of illegitimate or wrongful pressure[19], but denies that any such pressure was applied in this case. It is the Bank's position that Dr. Jessamy was under no legal obligation to execute neither the loan agreement nor the mortgage, and that she did so willingly. It is further submitted that the loan agreement and mortgage merely provided security for an existing financial arrangement and did not result from improper compulsion.

[127] The burden rests on Dr. Jessamy to establish that her consent was vitiated by duress. It is not sufficient that she was under commercial pressure or that the decision was difficult or disadvantageous. She must demonstrate that the pressure exerted by the Bank was illegitimate, that it left her with no reasonable alternative, and that it operated upon her will at the time the agreement was executed.

[128] Dr. Jessamy's evidence is that by 30th January 2009, she was in a state of financial desperation and believed she had no option but to sign the amended loan agreement in order to restore funding and prevent further financial harm. I accept that the

[18] [1980] AC 614 at page 636
[19] Chitty on Contracts (34th Edn.) para 10-003

circumstances in which she signed the amended loan agreement were commercially adverse and stressful. However, economic pressure, even if severe, does not of itself constitute duress.

[129] The central issue is whether the Bank's conduct in dishonouring cheques amounted to illegitimate pressure. Dr. Jessamy has failed to establish that the Bank acted unlawfully or in bad faith. While the dishonouring of cheques undoubtedly placed her under financial strain, the evidence does not establish that this conduct was unlawful or that it was employed as a wrongful threat calculated to coerce Dr. Jessamy into executing the agreement. There is no finding that the Bank was contractually bound to honour the cheques which had been overdrawn neither was a breach of contract on this basis specifically pleaded.

[130] Having considered the evidence, the court is of the view that Dr. Jessamy has failed to discharge that burden that her consent was vitiated by duress. Accordingly, the court finds that the amended loan agreement was not procured by duress and the claim under this head fails.

Undue Influence

[131] Counsel for Dr. Jessamy advanced submissions on undue influence. However, it is not apparent from the pleadings with any clarity whether undue influence is relied upon as a distinct cause of action, nor upon what factual foundation it is said to arise. The relevant pleadings group allegations of misrepresentation, duress, coercion, and undue influence under a single heading, without identifying the constituent facts said to give rise to undue influence in particular.

[132] To establish undue influence, it is for Dr. Jessamy to prove that first by reason of the relationship between the parties, the Bank had such influence against her that she was unable to exercise a free judgment independent of the Bank in making the loan transaction between herself and the Bank. There are two requirements for

establishing the (rebuttable) presumption of undue influence[20]. First, there must be a relationship of influence. This may be established on the facts, but in respect of some relationships there is what is commonly referred to as an irrebuttable legal presumption (but is more appropriately referred to as a legal rule) that the relationship is one of influence (but note not undue influence). The second requirement is that the transaction must not be readily explicable on ordinary motives.

[133] The doctrine of undue influence is concerned with the abuse of a relationship of influence so as to procure a transaction which cannot be explained by ordinary motives or by the normal commercial relationship between the parties. It is not concerned merely with inequality of bargaining power or pressure to agree to contractual terms.

[134] The burden lies upon the claimant to establish either actual undue influence, or facts giving rise to a presumption of undue influence, based on a relationship of trust and confidence. In the present case, no evidence of actual undue influence has been made out. Dr. Jessamy's assertions that she was pressured to sign the amended loan agreement do not, without more, establish undue influence.

[135] It is unimaginable that a bank would disburse such a significant sum without any agreement for the repayment of the principal sum plus interest. It is the standing operation of lending institutions to provide terms for repayment of loans within a certain timeframe. Dr. Jessamy's profile does not accord with that. The evidence clearly shows that by her own conduct in seeking a moratorium, terms for repayment had been communicated prior to the signing of the agreement.

[136] Nor does a presumption of undue influence arise on the pleadings. The relationship between Dr. Jessamy and the Bank was that of a commercial borrower and lender. While **Bundy**[21] illustrates that a banker/customer relationship may, in exceptional circumstances, attract the principles of undue influence, **National Westminster Bank**

[20] Della Vallery Nolan nee Jude and another v Vandyke Jude [2024] UKPC 22
[21] [1975] QB 326

v Morgan[22] makes clear that such cases are rare and highly fact-specific. A presumption arises only where the bank assumes a role beyond that of lender, into that of adviser, and the customer relies on the bank in making a decision which affects the customer's own interests.

[137] The court accepts Mr. Duncan's evidence that neither he nor any bank officials provided advice to Dr. Jessamy on her project. It is his evidence that Dr. Jessamy's project was well advanced when she approached the bank for financing.

[138] There is no evidence that the Bank undertook to advise Dr. Jessamy on matters outside its commercial interest or assumed responsibility for protecting her interests. The court's assessment of Dr. Jessamy suggests that she is a fully educated and astute businessperson. The court had the opportunity to assess her demeanour at the trial and she appears to be resilient, insistent and well articulate individual and in the court's, view would not be easily intimidated or unduly influenced. It is Dr Jessamy's own evidence at trial that she accepts that she is fully indebted to the Bank for the payment for clearing off the previous bank loan but however has only paid a minimal sum towards the very same amount that she admits and is raising challenges to the remainder of the loan and overdraft facility.

[139] The allegations advanced by Dr. Jessamy in support of undue influence are not borne out by the pleadings or the evidence before the court. A contract will be set aside on that ground only where the party seeking such relief proves that undue influence was in fact exercised.

[140] It is further submitted that the loan and security arrangements are entirely explicable by the nature of the financing sought and the relationship of banker and customer, and the Bank's requirement for security as lending exposure increased.

[22] [1985] AC 686

[141] The Bank argues that Dr. Jessamy cannot establish the necessary relationship of trust and confidence, particularly given her own evidence that she only became a customer of the Bank in 2008 for the purpose of obtaining project financing.

[142] The underlying idea behind the test is that the nature and/or contents of the transaction must make one conclude, in the context of the relationship of influence, that, absent evidence to the contrary, undue influence has been exercised.

[143] It is settled law that proper pleadings are required to mark out the parameters of the case that is being advanced by each party and the factual and legal issues on which the pleader relies[23].

[144] The court notes that Counsel for Dr. Jessamy in submissions filed on 3rd March 2025 also referred to communications allegedly made by Mr. De Freitas of the Bank indicating the provision of additional funding, and to a statement by Richard Duncan of the Bank in June 2011, years after the loan agreement was executed, of conditions under which the Bank would refinance the loan. These matters, however, are uncorroborated versions of facts of Dr. Jessamy and cannot form a basis for a finding of undue influence.

[145] In light of the above, this court is not satisfied that Dr. Jessamy has established a claim of undue influence. There is no evidential basis to support the proposition that the Bank exercised influence over her in a manner that vitiated her consent to the amended loan agreement. The claim under this head therefore fails.

Claim against the Firm - *Breach of Ethics by the Firm*

[146] As against the Firm, Dr. Jessamy claims breach of ethical duties. She contends that the Firm acted as her attorneys in December 2008 and January 2009 without disclosing that it represented the Bank. She further contends that although

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[23] Harbor Club Limited et al v Mc Milliam Monrose dba Tropical Decoration[23]

representing her, the Firm failed to obtain instructions from her and did not properly advise her in circumstances where her proprietary rights were directly affected. She alleges that it was implied that the Firm would protect her interests as borrower and advise her fully on matters affecting her decision to enter into the amended loan agreement. She claims that the Firm owed her a duty to exercise reasonable care, skill and diligence, and that it failed to ensure that she obtained independent legal advice. Her evidence is also that she never consented to the Firm acting on her behalf and that throughout the transaction the Firm acted as the attorneys for the Bank. Dr. Jessamy claims damages for negligent representation, breach of trust and of ethical duties.

The Firm's case

[147] The Firm denies Dr. Jessamy's allegations in their entirety and maintains that it was retained by the Bank alone to prepare and record the reconveyance and mortgage.

[148] The firm specifically denies that it acted for Dr. Jessamy, owed her any fiduciary or professional duty, or breached any duty of trust or ethics. It further denies that responsibility for payment of legal fees created a retainer or any solicitor-client relationship between itself and Dr. Jessamy.

Dr. Jessamy's Submissions

[149] In support of this claim, counsel Mr. Edwin relied on **The Roserie Company Limited et al v First Caribbean International Bank (Barbados) Limited**[24] where the following was stated by The Hon. Margaret Price Findlay, then Justice of Appeal, now Chief Justice:

> "Whilst the law gives relief to one who, without independent advice, enters into a contract upon terms that are very unfair, the relationship must be one where there is a degree of trust and confidence..."

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[24] SLUHCVAP2021/0012

The Firm's Submissions

[150] The Firm maintains that it acted exclusively on the Bank's instructions as its retained attorneys, and that it was never retained by Dr. Jessamy. The evidence of Mr. Trevor St. Bernard is that neither the Firm nor any of its members were retained or consulted by Dr. Jessamy in relation to the preparation of the mortgage documents.

[151] Counsel for the Firm relies on the definition of "retainer" in **Black's Law Dictionary** as a client's authorisation for an attorney-at-law to act in a case. Counsel also refers to Lightman J's ruling in the case of **Dean v Allin & Watts (a Firm)**[25] referred to in the High Court decision of **Sunsystems Limited et al v Grenada Co-Operative Bank Limited et al**[26] where it was observed that:

> "…As a matter of law, it is necessary to establish that A&W by implication agreed to act for Mr Dean: an implied retainer could arise where on an objective consideration of all the circumstances an intention to enter into such a contractual relationship ought fairly to be imputed to the parties…**No such retainer should be implied for convenience, but only where an objective consideration of all the circumstances make it so clear an implication that the solicitor himself ought to have appreciated it**." [Emphasis not mine]

Analysis

[152] The starting point is **Section 26** of the **Third Schedule (Legal Profession Code of Ethics)** to the **Legal Profession Act**[27] which strictly regulates multiple representation. **Section 26** reads:

> "(1) An attorney-at-law may represent multiple clients only if he can adequately represent the interests of each, and if each consents to such representation, after full disclosure of the possible effects of multiple representation.
>
> (2) In all situations where a possible conflict of interest arises, an attorney-at-law shall resolve all conflicts by leaning against multiple representation.

[25] [2001] EWCA Civ 758
[26] GDAHCV2023/0015
[27] CAP 167A

(3) Notwithstanding any paragraph of this Part, **no attorney-at-law shall represent both the–**

> **(a) mortgagor and mortgagee**; or
>
> (b) vendor and vendee, except where both parties seek independent legal advice and present evidence of the written consent of both parties to such joint representation.” [Emphasis mine]

[153] A conflict of interest within the meaning of **Section 26** can only arise where an attorney represents, or purports to represent, more than one party to a transaction. Where an attorney acts exclusively for one party no issue of multiple representation arises. The central question therefore is whether, on the evidence, the Firm acted solely for the Bank, as it contends, or whether it also impliedly acted for Dr. Jessamy.

[154] The Firm has consistently maintained that it acted solely on the Bank’s instructions and was never retained by Dr. Jessamy. That assertion must be assessed against the objective evidence. The evidence shows that the Firm prepared both the reconveyance of the property from Grenville Vale Estate Limited to Dr. Jessamy and the subsequent mortgage from Dr. Jessamy to the Bank.

[155] The reconveyance was a distinct transaction which did not directly involve the Bank and which had the legal effect of vesting title in Dr. Jessamy. The two parties involved in the reconveyance were Grenville Vale Estates Limited and Dr. Jessamy. The reconveyance states that it was prepared by the Firm and perused on behalf of Grenville Vale Estates Limited by the firm Renwick and Payne. The preparation and registration of such an instrument, therefore, necessarily engaged Dr. Jessamy’s proprietary interests. In the absence of evidence that the reconveyance was prepared at her instruction, or with her informed participation, the Firm’s role in that transaction is inconsistent with its position that it acted exclusively for the Bank.

[156] There was no relationship of attorney and client between Dr. Jessamy and the Firm in relation to the deed of mortgage. The deed of mortgage was executed on behalf of the Bank to secure its interest in the land used as collateral for the loan.

[157] The Privy Council per Lord Briggs and Lord Burrows in **Nature Resorts Ltd v First Citizens Bank Ltd**[28] states, in the Board's view, where the other party to the transaction is not the solicitor obtaining some benefit from the client but is rather a third party, an ordinary commercial transaction such as a mortgage, entered into by a person engaged in business, should rarely be regarded as one that is not readily explicable on ordinary motives, merely because it is, or turns out to be, disadvantageous. It is readily explicable that the client will enter into such a transaction without being under the undue influence of the solicitor as the deed of mortgage was readily explicable, there was no presumed undue influence in respect of the deed of mortgage.

[158] The authorities have recognised that there are many instances where, for example, the solicitor is acting for both a purchaser of land and a lender of the money for the purchase where that relationship should not operate to give rise to a presumption of undue influence for either client to be used against the other. This is so where the solicitor does not obtain any personal benefit (beyond his normal fees) from the transaction.

[159] Whereas the law recognises that there exists a relationship of trust and confidence between solicitor and clients, there is no evidence to support a finding of fact that Dr. Jessamy reposed trust and confidence in the Firm with regard to any of the transactions between herself and the bank. The Firm was acting on the instructions of the Bank to prepare the reconveyance of title to Dr. Jessamy to facilitate the preparation of the mortgage to secure the Bank's interest.

[160] The reconveyance formed part of the completion of the Bank's facility and vested title in Dr. Jessamy, thereby conferring a direct legal benefit on her. In the absence of evidence that she suffered detriment, or that the Firm misused its position, I am satisfied that the Firm was not acting on her behalf.

[28] [2022] UKPC 10

[161] The court is of the view that Dr. Jessamy, having taken a previous mortgage in which the said property was used as collateral to secure the mortgage, is deemed to have reasonably understood the consequences in providing her title as security for the loan. It has been said that those engaged in business can be regarded as being capable of looking after themselves and understanding the risks involved in the giving of security[29].

Conclusion

[162] In absence of fraud, misrepresentation, mistake or a plea of 'non est factum', a party is bound by the terms of a document they sign whether or not they have read it. As stated in **Halsbury's Law of England[30]**:

> "Before a party executes a deed, it should be read by him, or correctly read over or fully and accurately explained to him, and he cannot be required to execute it until this has been done. **If he is content to execute it without so informing himself of its contents, it will in general be binding on him**, even though its contents are materially different from what he supposed, and even though he is himself illiterate or blind..." [Emphasis mine]

[163] Dr. Jessamy voluntarily executed the amended loan agreement and mortgage, and received the benefit of the funds advanced. The contractual obligation to repay therefore arose and remains unenforceable, unless vitiated by legal doctrine.

<u>The Bank's Power of Sale</u>

[164] Where a borrower defaults and the mortgage contains an express or statutory power of sale, the mortgagee is entitled to enforce that power upon proper notice.

[165] In **Gibbs v Bank of Nova Scotia[31]**, as referred to by counsel for the Bank, it was stated at paragraphs 13 and 20 that:

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[29] Per Lord Nicholls in Royal Bank of Scotland v. Etridge [2001] UKHL 44
[30] 5th edn. (2023) vol 32, para 234
[31] GDAHCV2008/0004

> "It is well settled law that it is the duty of a mortgagee when realizing the mortgaged property by sale to behave in conducting such realization as a reasonable man would behave in the realization of his own property…
>
> ...
>
> "It must be shown that the course adopted by [the bank] shows that it was not acting in good faith or it failed to take reasonable steps to obtain the best price... There is no evidence... that the price obtained at the auction was not the true market value."

[166] The Bank's evidence demonstrates that demand was made, default persisted, and the property was advertised for sale in accordance with the mortgage terms.

[167] No cogent evidence has been adduced to establish bad faith, failure to advertise properly, or breach of any statutory requirement. In **Terrence R. Joseph v RBTT (Grenada) Ltd**[32] the court further observed at paragraph 43 that:

> "The benefit of having a security for a debt would be greatly diminished if the fact that a debtor has raised claims for damages against the mortgagee were allowed to prevent any enforcement of the security until after the litigation of those claims had been completed."

[168] Dr. Jessamy's default and the Bank's demand notice of 5th May 2009 entitled the Bank to call in the debt and enforce the mortgage security[33]. In the circumstances, the Bank was entitled in law to call in the loan and to exercise its power of sale.

[169] For the reasons set out above, the court finds that Dr. Jessamy has failed to establish her claims against the Bank in breach of contract, misrepresentation, duress or undue influence. The evidence does not support any finding that the amended loan agreement or the mortgage was vitiated by improper conduct on the part of the Bank, nor that the Bank acted in breach of any contractual or legal duty owed to her.

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[32] GDAHCV2017/0403

[33] Bank of Nova Scotia v Tethmore Joseph SVGHCV2017/0024

[170] The court further finds that Dr. Jessamy is contractually bound by the amended loan agreement and mortgage which she voluntarily executed and pursuant to which she received the benefit of the funds advanced. Her obligation to repay the loan therefore subsists, and the Bank was entitled in law to call in the debt and to enforce its security. Accordingly, the interim injunction granted by Mohammed J on 6th March 2014 restraining the Bank from exercising its power of sale is therefore discharged.

[171] In conclusion, the Bank's claim against Dr. Jessamy succeeds, and Dr. Jessamy's claim against the Bank and the Firm is dismissed with costs. The parties agreed that costs should be prescribed. In determining costs, the court takes into account that the two claims were consolidated because Dr. Jessamy's defence to the Bank's claim and her claim against the Bank were advanced on similar grounds. Accordingly, prescribed costs are awarded against Dr. Jessamy on the sum pleaded by the Bank, and prescribed costs are awarded to the Firm on the amount pleaded by Dr. Jessamy against the Firm.

ORDER

[172] In summary, it is ordered and declared as follows:

(1) The Bank's claim is allowed;

(2) Dr. Jessamy's claim stands dismissed;

(3) Judgment is entered for the Bank in the sum of $2,426,101.45;

(4) The interim injunction granted by Mohammed J. on 6th March 2014 restraining the Bank from exercising its power of sale under the mortgage pending the trial is hereby discharged;

(5) Dr. Jessamy shall pay prescribed costs to the Bank in the sum of $148,380.51 and the sum of $165,519.00 to the Firm pursuant to Part 65.5.

Agnes Actie
High Court Judge

By the Court-

Registrar