



The Court of Appeal for Bermuda

CIVIL APPEALS Nos. 17 of 2010 and 2 of 2011

Between:

LEYONI JUNOS

Appellant

-v-

BANK OF BERMUDA (HSBC)

Respondent

Before: Zacca, President
Ward, J.A.
Auld, J.A.

Appearances: The Appellant in Person
Mr. Kevin Taylor for the Respondent

Judgment

Date of Hearing: 13 June 2011
Date of Judgment: 17 June 2011

AULD JA:

Introduction

1. There are two appeals of Ms LeYoni Junos before the Court, both arising out of orders of Greaves J on 10th May 2010 granting the Bank of Bermuda (“the Bank”) on its claim, as mortgagee of her home, for possession and a power of sale for her failure to pay sums due under the mortgage and striking out her counterclaim. The first is against those orders of

Greaves J. The second is against orders of the Chief Justice on 8th October 2010 ruling against her on various forms of interlocutory challenge she had made by way of notice of motion as to the appropriate procedural route of her appeal against the same orders.

2. At the opening of the two appeals the Court summarily dismissed Ms Junos' appeal against the Chief Justice's dismissal of her procedural challenges because of the Registrar's certification on 3rd May 2011, pursuant to Order 2, Rule 17(1) of the Rules of Court of Appeal, of her non-compliance with her, the Registrar's, Order of 17th March 2011 to pay court fees for the settlement and preparation of the Appeal Record. We add that, in any event, the appeal, which turned principally on whether Ms Junos required leave to appeal Greaves J's orders, would have failed as a matter of law for reasons given by the Chief Justice in his judgment in the appeal before him. It would also have failed because, to the extent that it had any mileage at all, it duplicated her appeal against the orders of Greaves J.

3. As to Ms Junos' appeal against Greaves J's orders, she has advanced a number of complaints, alleging wilful and fraudulent evasion by the Bank of legal requirements for enforcement of its mortgage security, bias and misconduct by the Judge and the Registrar, maladministration by the Registrar and/or her staff, of a variety of so-called "errors of law and fact" by the Judge in his findings. Over-all, she maintains that she is a victim of oppression by the Judge, the Registrar and the Bank in violation of her rights under the *Bermuda Constitution Order 1968* to a fair, independent and impartial hearing (Section 6(8)) and not to be dispossessed without compliance with the law (Section 13).

4. Ms Junos asks the Court to quash Greaves J's orders of 10th May 2010 for possession and sale of her home and his strike-out of her counterclaim.

5. The Court has read and listened carefully to all her many complaints, which she has advanced in person. We are satisfied that there is nothing of legal or factual substance in any of them deserving further mention in this judgment, save possibly for three issues - which to do her justice - Ms Junos put at the forefront of her appeal.

6. The first of those issues is a submission that the Bank was not entitled to foreclosure of the mortgage by possession and sale because it failed to comply with Order 88.6, (3)(b),(c) and (d) and (6) of the *Rules of the Supreme Court 1985*. Those Rules require an affidavit in support of such a claim by a mortgagee, stating “the state of the account between” it and the mortgagor “with particulars of ... (3)(b) “the amount of the repayments”, (3)(c) “the amount of any interest or instalments in arrear at the date of the issue of the originating summons and ... of the affidavit”; (3)(d) the amount remaining due under the mortgage”; and (6) where the claim includes payment of moneys secured by the mortgage, proof that the money is due and payable and the particulars mentioned in ... (6)(3).

7. Only the complaints under Order 88.6(3) fall for consideration, for the Bank made no claim in its originating summons for payment of monies that would engage Order 88.6(6). Ms Junos maintains that the affidavit evidence on which the Bank eventually relied before the Judge did not meet the requirements of Order 88.6 (3)(b), (c) and (d) or comply with his order, made some two months before the hearing, for mutual disclosure of evidence pursuant to those requirements. Her complaint was essentially of inadequacy and inaccuracy of the figures that the Bank provided by way of affidavits in response to the Judge’s order. That evidence, complete or incomplete, accurate or inaccurate, met those requirements, particularising as they did what the Bank *claimed* was the state of the account between it and Ms Junos as to, *inter alia*, the amount of the repayments (b), the amount of interest or instalments claimed to be in arrear (c) and the amount remaining due under the mortgage. There is, therefore, no legal basis for Ms Junos’ complaint under this head.

8. We add that, despite Ms Junos’ strident complaints before the Judge and before us about the inadequacy and inaccuracy of the Bank’s evidence in this respect, she failed, either before or at the hearing before the Judge, to comply with his order for her also to file evidence if she disagreed with the Bank’s figures and why. Her attitude throughout has been to demand the highest cooperation from the Bank on this issue but to be wholly uncooperative herself, not even to the extent of putting forward, evidentially or otherwise her own counter figures as to the level and make-up of her indebtedness – a stance that she maintained on the hearing of this appeal.

Section 31 of the Conveyancing Act 1983

9. Ms Junos' second main challenge to the Judge's orders - though not relied on before him – are that they are unlawful because the Bank failed to comply with requirements in Section 31 of the *Conveyancing Act 1983* to give three months' notice to her before claiming to exercise its power of sale. The material provisions of section 31 are sub-sections (1) and (2):

“(1) A mortgagee shall not have a power of sale unless and until -

(i) notice requiring payment of the mortgage money has been served on the mortgagor ..., and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; *or* [the Court's emphasis]

(ii) some interest under the mortgage is in arrears and unpaid for one month after becoming due; or

(iii)..." [not applicable]

(2) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.”

10. Ms Junos maintains that she received no notice pursuant to paragraph (i) and, therefore, that the Judge's order for sale is unlawful. However, Mr Kevin Taylor, for the Bank, submitted that, while such notice is required under paragraph (i) where a mortgagee is in default no notice at all was required under the clearly disjunctive provision in paragraph (ii) in respect of “*some* interest ... in arrears and unpaid for one month after becoming due” (the Court's emphasis). Whatever the issues raised – albeit never evidenced or even identified by Ms Junos - as to the precise amount and make-up of her arrears of payment due to the Bank, there can be no sensible dispute that the Bank was claiming in the proceedings that she owed it “some” arrears of interest.

11. In addition, as Mr Taylor pointed out, there is a clause in the mortgage deed that fits paragraph (ii), entitling the Bank to sell without “any further involvement on the part of the Borrower” in respect of “*any* of the payments under the terms of the deed ...” (the Court's emphasis). And, as he also pointed out, by section 31(2) of the Act, that clause overrides the requirement of notice in paragraph (i) in section 31(1)(i) for “default ... in payment of the mortgage money”. See also per the Chief Justice in *Bank of Bermuda Ltd v Junos and Jones* [2010] BDLR 67, at paras. 7 and 8. Ms Junos cannot, therefore, rely on the *Conveyancing Act* to defeat the Bank's claim for possession and sale.

Greaves J's strike-out of the counterclaim

12. The above heading is not complete, because, although the Judge struck out Ms Junos' counter-claim at the hearing of the Bank's originating summons before him on 10th May 2010, he gave her leave to proceed with it as a separate action. At first sight it is a little unfortunate that Ms Junos may not have felt in some difficulty when appreciating on that day that she was expected to present her defence to the Bank's claim as well as seek leave to proceed with her counterclaim. However, she had had plain notice from the Registrar that the fixture was to determine her claim.

13. Nevertheless, it was a matter for the Judge's discretion whether he should allow her to proceed with the counterclaim or direct her to proceed with it as a separate action if she wished to continue with it.

14. Apart from general principles guiding the exercise of such discretion, we are not surprised that the Judge took the course he did, not least because of the new issues that it raised of fraud, undue influence and the like directed to the validity of the mortgage itself. There is no proper basis on which this Court could interfere with his exercise of discretion against her wish to introduce such matters to the dispute at that stage or earlier if the matter had been put before him earlier.

15. For all those reasons Ms Junos' appeal against Greaves J's orders is dismissed, save for his order giving her liberty to proceed with the counterclaim as a separate action. In consequence, the stay of execution of his orders directed by the Chief Justice on 22nd October 2011 is removed.

16. Accordingly, the appeal is dismissed.

Zacca, P

Ward, JA

Auld, JA