In The Supreme Court of Bermuda

CIVIL JURISDICTION
2024 No: 155

BETWEEN:

CLARIEN BANK LIMITED

Plaintiff

And

VERONICA MANDERSON
DONNANIACA BURCHALL
DONYELLE BURCHALL

Defendants

JUDGMENT

Trial Dates:	Thursday 9 April 2026 and Wednesday 17 June 2026
Date of Ruling:	Wednesday 4 November 2026
Plaintiff:	Jennifer Haworth and Brian Catalano, Carey Olsen Bermuda Limited
Defendant:	Ben Adamson, Conyers Dill & Pearman Limited

Trial-Mortgage Action (RSC O.88)- Dispute on Quantum – dispute as to outstanding interest, fees and charges – construction of a renegotiation clause -claim for pre-judgment contractual interest and post-judgment statutory interest under section 10 of the Interest and Credit Charges (Regulation Act) Act 1975

JUDGMENT of Shade Subair Williams J

INTRODUCTION

1. This is the final judgment of this Court in respect of a mortgage claim brought by Originating Summons dated 21 June 2024 (the "Originating Summons") for relief under Order 88 of the Rules of the Supreme Court ("RSC").

2. In support of the Plaintiff mortgagee's case, this Court received written and oral evidence sworn by Ms. Nina Ebbin, a Credit Recovery Manager in the Asset Remediation Department of Clarien Bank Limited. In support of the Defendants' case, each of whom is a mortgagor, written and oral evidence was provided by the First Defendant, Ms. Veronica Manderson.

3. Following closing arguments from Counsel for both sides, I reserved judgment which I now deliver.

BACKGROUND:

4. The Plaintiff agreed to extend a loan facility to the Defendants to assist with their purchase of property situate at 48 Spanish Point Road, Pembroke HM02 (the "Property"). The offer to extend the loan facility was made by the Plaintiff in the form of a Credit Facility Letter dated 21 May 2008 (the "Facility Letter"). The acceptance of the Plaintiff's offer is evidenced by the Defendants' signatures marked on the Facility Letter and dated 29 May 2008. On 17 June 2008 the parties entered into a Deed of Mortgage (the "Mortgage"). The Mortgage was secured against the Property until full payment of the outstanding principal and interest was completed.

Terms of the Mortgage

The Principal Sum loaned

5. The Facility Letter stated the terms and conditions for the loan. The loan sum was stated to be $1,058,300.00 (principal) for the purpose of completing home renovations, repaying the then outstanding mortgage and loan sum at Bank of Bermuda (as it then was) and to repay a small loan at Capital G. Bank Limited (now Clarien Bank). The principal sum stated in the Facility Letter is the same figure as the principal sum listed under the First Schedule of the Mortgage.

The Term of the Loan

6. The term of the loan was for 30 years under the Fifth Schedule of the Mortgage and in accordance with the Facility Letter.

Monthly Payments

7. Pursuant to the Facility Letter, monthly payments were agreed on the following basis:

"*Commencing 1 month following the date of initial draw down and monthly thereafter at $4,606.00 covering both principal and interest which should retire the loan within the agreed term. However, in the event of a change in the rate of interest, a balloon payment may be required to ensure the loan is repaid within the agreed term*."

8. The amount of each monthly installment was stated under the Seventh Schedule of the Mortgage to be $4,606.00. The monthly days for payment of the monthly sums was stated under the Fourth Schedule as "*The 17th day of each calendar month*". Pursuant to the Eighth and Ninth Schedules, the first installment date was fixed for 17 July 2008 and the final installment date was set for 17 June 2008.

9. At paragraph [13] of Ms. Manderson's affirmation and at paragraph [11] of the Defence, the Defendants say that the Bank "*separately contended to the Defendants that Payments were due on the 1st of each month*". On that basis, the Defendants say: "*To the extent that any interest and/or penalties and/or fees and/or other charges have been applied by the Bank by reason of Payments made by the Defendants after the 1st of the month, but prior to the seventeenth day of each month as provided for by the Mortgage, then any such amount should not have been charged by the Bank and is denied*."

10. In response, Ms. Ebbin stated in her Fourth Affidavit at paragraph [7]:

"*Ms Manderson also says that the Defendants were allegedly told by the Bank that they had to make their mortgage payments on the first of each month. I have not located any notes or documents which support this allegation. I believe this is not correct because: (i) it is not the Bank's practice to unilaterally adjust payment dates – though the Bank will often do so as a courtesy to its customers when requested by them; and(ii) in reviewing the Bank's records, I note that the Defendants' payments are actually due on the 30th of each month. Given the change to the payment date, I believe that the Defendants requested this adjustment from the 17th to the 30th at some point during the term of the Mortgage. The fact that payments were due on the 30th of each month is evidenced in correspondence with the Defendants many times,*

including, for example, in my email exchange with the Third Defendant at pages 5-6 of Exhibit NE-4."

11. The exhibit reference made by Ms. Ebbin points to a 1 May 2019 email in which Ms. Ebbin wrote to the Defendants stating, in the part relevant to the Plaintiff's case on the monthly payment date:
"*Your immediate attention is required.*

Please be advised that the Bank has notes on file that advise your mortgage should have been up to date April 30th 2019 and to date your mortgage remains delinquent.

The amount that remains outstanding is $10,724.97 that is for the following months:
- *March 30th 2019 the delinquent amount is $3,860.25*
- *April 30th 2019 the delinquent amount is $6,864.72*

…"

12. During re-examination, Ms. Ebbin was also directed to her email to Ms. Manderson sent on 31 May 2019 in which she stated:

"*Please be advised that your mortgage account remains delinquent in the amount of $10,788.69 now for 31 days. This is for the following months:*

- *April 30th 2019 the delinquent amount is $3,923.97*
- *May 30th 2019 the delinquent amount is $6,864.72*

…"

13. The Plaintiff's case is that this correspondence corroborates Ms. Ebbin's evidence that the monthly payment due date moved from the 17th of each month to the 30th of each month.

Rate of Interest and Late Fees

14. The agreement between the parties on the rate of interest was stated in the Facility Letter in the following terms:

"*At the staff rate of BD$ Base -1% - All in rate at the time of offer at 3.25% (variable). This rate of interest will apply to any outstanding unpaid balance of the principal, and will be subject to daily review and adjusted accordingly. In the event that the Borrower (Donyelle D. K. Burchall) is no longer an employee of the Gibbons Group of Companies, the loan must be renegotiated acceptable to both parties and adjusted to the then current standard lending rates. See also under RENEGOTIATION FEE.*

Please note that in the event the loan becomes delinquent for a period of 90 days, the Bank will have the right to automatically adjust the rate to a new higher rate of 2% above the current rate, in order to compensate the Bank for the additional managerial and administrative costs created by the loan's delinquency."

("*RENEGOTIATION FEE: In the event that the Gibbons Group of Companies Employee is no longer employed by the Group, a ½% renegotiation fee will be applicable on the then remaining principal loan balance, which fee may be capitalized to the loan should the employee not be in a position to pay separately.*")

15. The parties also agreed to the imposing of a late fee as a penalty for non-payment of the full sum of any monthly payment due. In the Facility Letter the late fee term was written as follows:

"*In the event of insufficient funds to meet the monthly loan payments, the Bank is entitled to charge a late fee (that may vary from time to time) and automatically capitalize the fee to the loan account*."

16. Under the Second Schedule of the Mortgage the terms on the rate of interest provide:

"*1.00% less than the Company's base ending rate (currently 4.25%) subject to variation whilst Donyelle D K Burchall ("Donyelle") continues to be employed by the Gibbons Group of Companies. If Donyelle's employment with the Gibbons Group of Companies ceases, then the loan is subject to renegotiation as set out in the credit facility letter dated 21 May 2008 addressed to the Mortgagor a copy of which is attached hereto*"

17. These provisions are center-stage to the dispute between the parties on the issue of quantum and are addressed further below.

Power of Sale

18. Clause 4(a) of the Mortgage confers a power of sale on the mortgagee. It provides:

"*It shall be lawful for the Company at any time…without any consent on the part of the Mortgagor or of any other person or persons TO SELL the Property or any part or parts thereof in the event that the Mortgagor fails to comply with all or any of the terms and conditions contained in this Deed*."

19. At paragraph [12] of the Defence, it is accepted that under Clause 4 the Plaintiff has a power of sale over the Property in the event of any breach by the Defendants of the Mortgage terms.

However, the Defendants also say that in order to obtain a possession order, the Bank requires as a condition precedent the Court's determination on liability and quantum.

ISSUES IN DISPUTE:

Default on the Mortgage

20. The Plaintiffs' case is that the Defendants breaches of their mortgage obligations occurred as long ago as in 2012, while the Third Defendant was employed by the Gibbons Group of Companies (the "Gibbons Companies"). Ms. Ebbin's evidence was that the Defendants failed to make the requisite payments, including payment on the home insurance policy, in accordance with the terms of the Mortgage.

21. The Defendants do not deny that they fell into arrears on the Mortgage but a dispute arose as to when their delinquency began. Ms. Manderson explained that the Defendants were mostly, if not entirely, compliant with their mortgage obligations from the commencement of the Mortgage on 17 June 2008 up until the start of the Covid 19 Pandemic in 2020. She also explained that each of the Defendants endured a loss of gainful employment as a result of the Pandemic and that they each suffered personal tragedies which contributed to their falling behind on the mortgage payments.

The Renegotiation Clause

22. Pursuant to the Facility Letter the parties agreed to a mutual obligation to renegotiate the loan (the "renegotiation clause") once Ms. Donyelle Burchall ceased her employment by the Gibbons Companies. It is implicit on the Facility Letter that the renegotiation clause is a requirement to renegotiate the loan on terms acceptable to both parties, provided that the loan is adjusted to whatever the current standard lending rates are at the time when Ms. Donyelle Burchall is no longer employed by the Gibbons Companies.

23. The renegotiation clause in the Facility Letter provides as follows:

"*…In the event that the Borrower (Donyelle D. K. Burchall) is no longer an employee of the Gibbons Group of Companies, the loan must be renegotiated acceptable to both parties and adjusted to the then current standard lending rates. See also under RENEGOTIATION FEE.*"

24. The Defendants say that they were deprived of their contractual entitlement to renegotiate the loan before their rates of interest increased following Ms. Burchall's departure from the Gibbons Companies in September 2013. What is clear on the Defendants' case is that the

Defendants understood their agreement to renegotiate the loan to be a legally binding assurance from the Bank that their interest rates would not be adjusted without their prior consent.

25. At paragraph [20] of her evidence, Ms. Manderson stated:

"*However, there was no "renegotiation" with the Bank after Donyelle left the Gibbons Group. Still less was there any renegotiation "acceptable to both parties". We did meet with a representative of the Bank around that time. So far as we can recall, the Bank did not propose any new interest rate or invite us to accept new interest rate. The Bank simply presented us with a new monthly payment amount*."

26. The Plaintiff disputed any breach on their part of the renegotiation clause. Ms. Ebbin, in her Fourth Affidavit, stated at paragraphs [5]-[6]:

"*I have also now had an opportunity to review the Affirmation of Ms Veronica Manderson. Based upon my review of Ms Manderson's Affirmation, I now understand that the Defendants take the surprising position that they did not know their interest rate increased from 2.5% to 6.5% after the Third Defendant's employment at Capital G terminated. This new position is contradicted by the Bank's Credit Approval Risk Management records system (CARM), in which loan officers record contemporaneous notes relating to a facility. CARM indicates that the rate adjustment from 2.5% to 6.5% was discussed with Ms Manderson on 25 September 2013 and the request to continue at a rate of 2.5% was not accepted by the Bank. The contemporaneous CARM extract noting this conversation with Ms Manderson can be found at page 3 of Exhibit NE-4.*

Consistent with the Loan Statements, the Defendants' interest rate was thereafter adjusted to 6.5% on 10 October 2013, being 3% above the base lending rate at the time. A copy of the restructure form for this adjustment can be found at page 4 of Exhibit NE-4."

27. Ms. Ebbin explained that "CARM" is what the Plaintiff internally refers to as "the Bible". She said any verbal or written communications with the client are placed in the system contemporaneously. The CARM-Pro account history records that at 4:17pm on 25 September 2013 there was a meeting between Ms. Manderson and one Ms. J. Eve. The corresponding annotation reads as follows:

"*Veronica (*[cell number]*) was placed on notice that the monthly payments for both the mortgage and the loan would be impacted now that Donyelle is no longer employed with Capital G. Based on today's current figures the monthly payments would be approximately $6,431.52 (Interest $5,206.72) and $568.15/mth respectively – total of $6,999.67 WEF Oct*

EOM. The Interest rate would be increased from 2.5% to 6.5% - most likely to take effect Oct EOM (currently not adjusted in Signature). Request to further extend the employee rate of 2.5% was denied. VM confirmed that her son was withdrawn from private school and now in a home school – savings of $600/mth. (UTD)"

28. Under cross examination, Ms. Ebbin stated that she was not present at the 25 September 2013 meeting between Ms. Eve and Ms. Manderson. She also stated in her evidence that she was unaware of the existence of any document signed by the Defendants establishing their agreement to the newly imposed 6.5% interest rate.

29. Further, during cross-examination by Mr. Pearman, Ms. Ebbin agreed that the renegotiation clause effectively meant that:

    (i) There has to be a renegotiation;
    (ii) Any renegotiation has to be acceptable to both parties and
    (iii) The loan must be adjusted to the then current standard lending rates

30. Mr. Pearman put it to Ms. Ebbin that the renegotiation clause, in reality, made no real sense having regard to what would actually follow once Ms. Burchall's employment came to an end. He went on to suggest that the above three requirements were inherently inconsistent, a proposition which was initially rejected by Ms. Ebbin. However, Mr. Pearman successfully pressed her to agree that the renegotiation clause was unworkable. That was on the premise that it sought to compel the Defendants to renegotiate terms in circumstances where the interest rates had already been fixed. He pointed out that the interest rates had been fixed pursuant to the term stating that the loan had to be adjusted to accord with the current standard lending rates of the period in question. Ms. Ebbin's response to this line of questioning was: "*If they disagree, then there's no renegotiation, no…*". In the end she conceded to Mr. Pearman's suggestions that the renegotiation clause was thus inoperable. Mr. Pearman also put it to Ms. Ebbin that a renegotiation could not plausibly be acceptable to both parties in circumstances where one party disagrees with the outcome of the renegotiation. In response, Ms. Ebbin agreed that the renegotiation clause was also inoperable in this sense.

31. When Ms. Ebbin, was asked about the meaning of "the then current standard lending rates", based on her 27 years of experience in the banking industry, she explained that this referred to the market's current standard rates, which varies. She stated that the market's current standard rates are indistinguishable from the bank's standard rates. She said: "*the market is the bank…. …meaning the bank's market rate*". She explained that her refence to a market rate does not signify a common rate governing or agreed between different lending institutions. Her evidence was that interest rates in Bermuda are set by individual banks, not by a regulatory or other governing body.

32. Challenging Ms. Ebbin on the meaning of "*the then current standard lending rates*" Mr. Pearman pointed out during cross-examination that the Defendants could not have known what they were agreeing to because the precise calculations of these rates had yet to be fixed by the Plaintiff. As Mr. Pearman put the Defendants' case: "… *the Bank's clause is pretty vague and hard to understand….how do we know what "the then current standard lending rates" would be? … we cannot know… it's a nonsense, its vague, its meaningless…*"

Dispute as to Quantum

33. The Defendants, while accepting that they did indeed fall into arrears on the mortgage payments, put the Plaintiff to strict proof as to the quantum of the Plaintiff's claims. At paragraph [9] of Ms. Manderson's affirmation she stated:

"*We do not deny that we fell into arrears on our Mortgage. What we contest is the shifting sums that have been claimed by the Bank throughout these proceedings, including discrepancies in the three tranches of sworn evidence the Bank has filed with the Court*."

The Terms Base Lending Rate and the "Market" Rate

34. On Ms. Ebbin's evidence the Plaintiff set its own interest rates. Although she synonymously referred to the Plaintiff's interest rates as the "market rate", a term seemingly adopted by other employees of the Plaintiff on an internal banking document produced for the Court, she explained that the both terms signify rates set by the Plaintiff and not any other institution.

35. Ms. Ebbin was asked in cross-examination about how the market rate was set to which she said; "*The Bank always goes 3% above* [the base rate] – *not always, but they sometimes go 3% above*". Ms. Ebbin, referring to the Plaintiff's "*Base Lending Rate, As of 1st September 2023*" notice as an example, explained that the Plaintiff makes its base lending rate publicly known online. She said the base lending rate adjusts from time to time and can be lowered in circumstances where a sum of cash has been secured or where the loan involves a "select banking customer" or an employee of the Plaintiff.

36. As to the various terms used to refer to the base lending rate, Ms. Ebbin accepted under cross examination that the term "personal base lending rate" was another variant term for "current standard lending rates*"* as it appears in the Facility Letter and "market rate" as it appears on the Restructure Form. Notwithstanding, it was never suggested on the evidence that these various terms had different meanings.

The Late Fees

37. In the loan account statements (the "loan statements" / the "statements") put before this Court there are various charges for the sum of $50.00 for the entry labelled "*LN Admin Fee Assess*". Ms. Ebbin's evidence was that these were fees charged as a penalty for the Plaintiff's late receipt of the Defendants' monthly payments (the "late fees"). The loan statements show that on 7 May 2014 the late fees increased from $50.00 to $75.00 and thereafter on 1 January 2018 they further increased to $150.00. In respect of the loan statements covering the period from 1 January 2018 and 31 December 2018, the cover page contains a caption which reads:

"*Loan Admin Fee*
Please note: if your loan payment is not received in full on or before the contractual due date, a late fee of $150.00 will be applied to your loan account. The $150 late fee is subject to change at any time at the Bank's sole discretion."

38. Ms. Ebbin stated under cross-examination that if any monthly payment was not made within four days of the due date, the late fee would be applied. However, Ms. Ebbin told the Court that in respect of the late fee charged on 7 May 2014, she was unable to say to which monthly obligation that related as the loan statement did not disclose that information. When asked by the Court to clarify the meaning of the entry on the loan statement, Ms. Ebbin explained that the "*Activity Description*" coloumn "*LN Admin Fee Assess*" only denotes the Bank's assessment that a late fee is owed. She said that the entry does not signify the Defendants' payment of the late fee. The application of late fee payments is flagged by the "*Activity Description*" coloumn where it reads "*Loan Payment*". Such payments are applied against the late fees assessed by the Bank.

Interest rate charged during the Third Defendant's tenure of employment by the Gibbons Companies

39. Ms. Manderson stated in her evidence that the rate of interest paid by the Defendants from the start of the Mortgage up to the end of the Third Defendant's employment by the Gibbons Companies commenced at 3.25% (when the base lending rate was 4.25%) and decreased to 2.5% (when the base lending rate lowered to 3.5%). At paragraphs [16] and [17] of Ms. Manderson's affirmation she said:

"*Under the Second Schedule of the Mortgage Deed…the Bank agreed to an interest rate on our loan at 1% below the Bermuda base lending rate. At the time of the Mortgage, the Bermuda base lending rate was stated in the Second Schedule of the Mortgage Deed to be 4.25%. Therefore, for such period as my daughter Donyelle remained an employee of the*

Gibbons Group of Companies, the interest rate charged by the Bank remained at 3.25% (subject to any downward or upward variations in the Bermuda base lending rate).

Donyelle remained employed at the Gibbons Group until around September 2013. On that basis, the interest charges on the loan should have been 3.25% (being 1% less than 4.25%) from the inception of the Mortgage in May 2008 until around September 2013. Again, this would have been subject to any variations in the Bermuda base rate during that period. In fact, interest rates decreased over that period. The first Loan Account Statement disclosed by the Bank for the period 6 August 2012 to 31 December 2017…shows that immediately prior to Donyelle's departure from the Gibbons Group, the interest rate was 2.5% (as at 10 October 2013) suggesting the Bermuda base lending rate of 3.5% (less 1% for Gibbons employees)."

Interest Charged after the end of the Third Defendant's employment by the Gibbons Companies

40. Ms. Manderson, having pointed out that the base lending rate appeared to by 3.25% immediately prior to the Third Defendant's departure from the Gibbons Companies, complained that the Defendants' interest rate exceeded the 3.5% rate by 3%, putting their interest rate up to 6.5%. At paragraphs [21] and [26] of Ms. Manderson's affirmation she said:

"*From the Loan Account Statement now disclosed by the Bank, it appears the Bank did not increase our interest rate by 1% back to the Bermuda base rate (which would have been an increase from 2.5% to 3.5%). Instead, on 10 October 2013, the Bank increased our interest rate to 6.5%, being 3% above the current standard lending rate (the "Penalty Rate").*

Although we appreciated the lending rate would no longer be 1% below the base rate after Donyell changed jobs, we do not recall ever discussing or agreeing to any new interest rate, and certainly not one at the Penalty Rate of 3% above the Bermuda base rate."

41. During cross-examination, Mr. Pearman directed Ms. Ebbin to an internal document of the Bank, signed only by employees of the Bank, entitled "*Restructure Form Financial Details*" dated 10 October 2013 (the "2013 Restructure Form"). There it is stated as a reason for restructuring the loan: "*Change interest rate, no longer staff (Donyelle Burchall)*." It is also noted on the 2013 Restructure Form: "*Donyelle Burchall no longer staff, loan reamortized over remaining term at market rate*". The 2013 Restructure Form shows that a change of interest rate was applied such that the Defendants' interest rate moved from 3.5% (being the employee rate of 1% less than the base lending rate of 2.5% for that period) to 6.5% (the new rate charged to the Defendants). This increase is also shown on the loan statements produced for the Court as having commenced on 10 October 2013.

42. The Defendants' case is that if the Bank was overcharging them on interest, their monthly payments were being wrongly weighted on their interest obligations rather than the principal.

43. The evidence before this Court is that between September 2018 and December 2025 the Bank sent approximately six separate notice letters of increases and decreases to the base lending rate. In those letters, the Defendants were invited to make contact with their lending officer to resolve any related queries they might have had.
44. At paragraphs [23]-[25] of Ms. Manderson's affirmation she stated:

The Bank has disclosed some letters that are said to have been sent to us. The earliest of the disclosed letters is dated 9 January 2018. None of these letters appear to state a new interest rate, or to record our agreement to the Penalty rate being imposed on our loan. The letters disclosed by the Bank merely state that the interest rate is increasing or decreasing (as the case may be) without stating any specific interest rate to be applied.

Further, the "Final Notice" dated 8 September 2023 sent by the Bank in these proceedings…states that the interest payments charged on the Principal (being $888,093.38 in the Final Notice) is said to be "$225.06 per day". This amounts to interest of $82,149.90 per year on the Principal, or interest at a rate of 9.25%.

However, Clarien's publicly stated current lending rates for personal mortgages as at 1 September 2023 (i.e. one week before the Final Notice sent to us by the Bank) was 6.25%, not the 9.25% rate of interest that has been applied to us. This can be seen from the Bank's document (which is publicly available on the internet) exhibited at p.1 of "VGRM-1"

45. Ms. Ebbin produced a letter from the Plaintiff to the Defendants, dated 9 January 2018, in which the Bank wrote:

"*…As a result of the US Federal Reserve rate increase in December 2017, Clarien Bank Limited will be increasing its BMD$ base lending rate by 25 basis points (0.25%).*

This increase is effective January 15, 2018 and applicable to your loan…in accordance with the notice period as outlined in your Clarien Lending Agreement.

Please be advised that your monthly payment will adjust as follows:

- *Current monthly payment: $6, 561.48*
- *New monthly payment: $6, 713.67 (to be paid on the first scheduled payment to occur on or after the Effective Date*

Lump Sum Repayment / Balloon Payment: … … there will continue to be a lump sum repayment (balloon payment) remaining payable at the scheduled maturity date of your Loan. …Please contact your Lender to discuss this matter. … …

As the current increase requires an adjustment to your monthly payment, we encourage you to make timely arrangements to adjust any standing orders that may be required to ensure your monthly payment is sufficiently funded and avoid potential late fees. Please contact your Lender (listed below) at your earliest opportunity if you have any questions. Our team is here to answer your questions, provide additional information or to discuss the terms of your loan."

46. Approximately two years later, on 23 March 2020 the Bank wrote to the Defendants as follows:

"*Clarien appreciates the gravity of the Coronavirus pandemic… … As a result, we will be making adjustments to our personal and commercial base lending rates. The Clarien Bank Bermuda Dollar personal base lending rate will be reduced by 50 basis points (0.50%) to 4.25%...*

This decrease is effective March 23, 2020 and applicable to your loan in accordance with the notice period as outlined in your Clarien Lending Agreement. You should expect your monthly payments to stay the same.
In addition to interest rate reductions, we will also be supporting your clients through these challenging circumstances and therefore, we encourage you to proactively contact the Bank through your lending officer or the client service centre at 296-6969 as your needs require. We will be developing other means of communicating with the Bank in the near future for this purpose. … …"

47. Further notice letters of increases and decreases to the base lending rate were sent to the Defendants in January 2022, October 2025 and December 2025, each of which specified that mortgage payment amounts would remain unchanged. In the October 2025 and December 2025 letters, the Defendants were informed, "…*you are welcome to contact us if you wish to request a recalculation of your scheduled payment amount to reflect the lower interest rate*".

48. Ms. Manderson referred to the 23 March 2020 letter from the Bank to establish that the base lending rate, effective 23 March 2020, had been reduced to 4%, which, she said, ought to have been reflected in the Defendants' loan statements for that period. At paragraph [30] of her affirmation she said, "*Yet, for that same period, copies of the Loan Account Statements from the Bank…show us being charged an interest rate of 7.5% (only reducing to 7% on 23 March 2020)*." Indeed, the loan statement covering the period from 1 January 2020 to 30 September

2021 reports a 7% variable rate and displays an entry for 23 March 2020 providing for an interest rate decrease from 7.5% to 7%.

49. In the loan statement covering the period from 1 July 2022 to 20 September 2022 the variable rate is stated to be 8%. Notwithstanding, the opening paragraph on this statement provides:

"*Clarien Increases Base Lending Rates*
Effective June 1, 2022, Clarien adjusted its Bermuda dollar base lending rate by 50 basis points (0.50%) following the US Federal Reserve rate increase. The Bermuda Dollar Base rate increased from 4.00% to 4.50% for personal mortgages…". Entries on that statement show an interest rate change was applied such that the interest rate increased on 1 September 2022 from 7.5% to 8.5% and decreased on 6 September 2022 from 8.5% to 8.0%."

50. Ms. Manderson also produced a copy of a document entitled "*Clarien Bank Limited Base Lending Rate As of 1st September 2023*" in which it is stated, "*Personal Loan, Mortgage and Overdraft Base Lending Rate BMD 6.25%*". Two other similar documents were also exhibited to Ms. Manderson's evidence disclosing that the base lending rate as of 30 November 2025 was 6% and, as of 12 January 2026, was 5.75%.

The Defendants' plea for the application of the Statutory Interest Rate

51. At paragraph [13.e.i.] of the Defence, the Defendants aver that only the statutory rate of interest should be applied to the Principal for the timeframe to be determined in accordance with this Court's exercise of discretionary powers under section 10 of the Interest and Credit Charges (Regulation Act) Act 1975 and or pursuant to its inherent jurisdiction. The Defendants say that the exercise of such discretionary powers requires the Court to consider (i) whether the pleaded interest rate or the contractual interest rate would be contrary to public policy; (ii) inequality of bargaining power; (iii) unjust enrichment and (iv) equity (including by reason of section 18 of the Supreme Court Act 1905). Applying those factors to the present case, the Defendants say that the date from which the statutory interest rate would run ought to be fixed by the date on which, in the opinion of the Court, it would have been reasonable on an objective basis for the Plaintiff to have commenced possession proceedings.

52. In the alternative, the Defendant's invite this Court to combine the application of the contractual interest rate and the statutory interest rate.

The Bank's Final Demand for Payment

53. Ms. Ebbin's evidence was that on 8 September 2023 the Plaintiff wrote to the Defendants advising that the loan was 892 days past due and made a final demand (the "final demand") for payment of the arrears.

54. Ms. Ebbin said that the Plaintiff provided the Defendants with an opportunity to remedy the breach by making payment of the arrears in full and or agreeing an approved repayment proposal within 10 business days of the date of the final demand. She said that the Defendants were also reminded of the terms in the Facility Letter by which the parties agreed that a 90-day loan delinquency period would give rise to the Plaintiff's right to automatically adjust the rate of interest to a new higher rate of 2% above the current rate, in order to compensate the Plaintiff for the additional managerial and administrative costs created by the loan's delinquency.

55. On 15 September 2023 the Plaintiff's Counsel of Carey Olsen Bermuda Limited ("Carey Olsen") sent a Letter Before Action to the Defendants informing them that the loan was 892 days past due and that the amount in arrears was $201,994.81 of which $165,980.26 was outstanding interest. In the concluding paragraphs of that letter, Carey Olsen wrote:

"*To mitigate the risk of legal action the Bank has agreed to meet with you on Tuesday, 19 September 2023 between 11am-1pm. By return, please make contact with Mahogany Bean on or before 4 pm on Monday, 18 September 2023, to facilitate this meeting. Ms. Bean's email address is … and her direct line is … Please note that, as a minimum requirement, you will be expected to agree to pay the Arrears in full within 10 business days of the date of this letter. The Bank will communicate its other conditions for continuing the Loan during the meeting.*

The Bank has notes on file detailing the numerous attempts it has made to work with you to resolve this matter, but to date the file remains delinquent. Therefore, in the event that you continue to ignore correspondence or simply refuse to make any meaningful attempt to meet your obligations, the Bank will proceed to protect its position."

<u>The Originating Summons</u>

56. On Ms. Ebbin's evidence, as at 4 June 2024, the Defendants owed a total outstanding sum of $1,064,366.87, of which comprised:
    (a) Principal: $871, 477.15
    (b) Interest: $180,180.22
    (c) Late Fees: $150.00
    (d) Other fees: $12,559.50

57. As a result of these sums said to be owed by the Defendants, the Plaintiff filed an Originating Summons on 21 June 2024 claiming the following relief against the Defendants:

> "…
>
> *(a) The Defendants do pay to the Plaintiff the sum of $1,064,366.87 which as at 4 June 2024 is due and owing to the Plaintiff pursuant to the Mortgage.*
>
> *(b) The Defendants do pay to the Plaintiff Interest on the Principal from date of this Originating Summons to the date of Judgment at the rate of 9.25% per annum, accruing at the daily rate of $220.85.*
>
> *(c) The Defendants do pay to the Plaintiff interest on the judgment sum at the statutory rate from the date of judgment until the date of payment in full.*
>
> *(d) The Defendants do deliver possession of the Property to the Plaintiff.*
>
> *(e) A Declaration that the Plaintiff is at liberty to exercise its power of sale under the Mortgage.*
>
> *(f) Further or other relief as this Honourable Court deems fit.*
>
> *(g) Costs on an indemnity basis pursuant to the terms of the Agreement.*"

58. In an Order made by Mussenden CJ on 20 February 2025, the Defendants were directed to file a Defence in answer to the Originating Summons. Neither of the appearing Counsel was able to assist me in understanding the basis for which a Defence was ordered by the Court rather than responsive affidavit evidence. Notwithstanding, no application was made by the Plaintiff for the Defence, which was filed on 3 March 2025, to be struck out. Equally, no application was made for these proceedings to be converted as if the matter had commenced by the filing of a Writ.

59. Notwithstanding, on 7 July 2025 I made a Consent Order directing, *inter alia*, the Defendants to file reply affidavit evidence which led to the filing of an affirmation from the First Defendant, Ms. Veronica Manderson on her own behalf and on behalf of the other two Defendants who are her daughters.

60. On 25 February 2026 I directed the Plaintiff to produce a further affidavit exhibiting the loan statements from 2017 to the current period. Accordingly, Ms. Ebbin's Third Affidavit was filed. Loan statements spanning a broader period commencing on 6 August 2012 and ending

on 1 October 2025 were exhibited to Ms. Ebbin's Third Affidavit on which she was extensively cross-examined by Mr. Scott Pearman, on behalf of the Defendants.

The status of the loan post-filing of the Originating Summons

61. On Ms. Ebbin's evidence, the Plaintiff was unsuccessful in its several attempts made after the filing of the Originating Summons to "*amicably resolve the loan arrears*" with the Defendants. Her evidence was that the Defendants had failed to make even a single loan payment since September 2024.

62. In Ms. Ebbin's Second Affidavit, she reported the following outstanding amounts totaling $1,137,166.54 as at 17 January 2025:
    (a) Principal: $869, 886.72
    (b) Interest: $223,591.55
    (c) Other fees: (including legal, home insurance and contractual late fees) $43,688.27

63. The Defendants say that the calculation errors made by the Bank are evident when one looks at both the outstanding sums said to be owed in June 2024 and the reported outstanding balance for January 2025. The Defendants sought to cast a wide net of doubt over the Plaintiff's contention that the total outstanding sum increased by $72,799.67 in a six-month period between 4 June 2024 and 17 January 2025.

64. The Defendants say that the $72,799.67 increase over the six-month period from 4 June 2024 to 17 January 2025 is mathematically inconsistent with the Plaintiff's pleaded case for relief in which they claim: "*Interest on the Principal from date of this Originating Summons to the date of Judgment at the rate of 9.25% per annum, accruing at the daily rate of $220.85*".

65. Further, the Defendants take issue with the 9.25% rate of interest claimed by the Plaintiffs. They query how the pleaded claim for interest at 9.25% per annum can stand against what "is stated in the Mortgage to be 1.00% less than the base lending rate, which at the time of the Mortgage was 4.25%". The Defendants refer to the latter as the "contractual interest rate".

ANALYSIS

Findings of late payments

66. The Defendants' claim that they were wrongly charged late fees is premised on the basis that their payments were due on the first day of each month and their full monthly payments were satisfied by the first day of each month until May 2017 when Ms. Manderson's mother's

husband took ill. However, Ms. Manderson, also told this Court that the Defendants' delinquency on their mortgage obligations coincided with the start of the Covid 19 Pandemic, in early 2020.

67. That said, the loan statements show that from as early as 6 August 2012, the Defendants were being charged late fees in the sum of $50.00. Ms. Manderson told this Court that she was previously unaware of these late fee charges and that, insofar as she was concerned, the monthly payments were being made on a timely basis. She said that payments were made incrementally throughout the month but that by the first day of the following month, the full monthly sum had been paid. This Court is, therefore, asked to determine the monthly day on which payment was due, ultimately to establish if the Defendants were wrongly being charged with late fees and the increased penalty interest rate.

68. It is plainly stated in the Mortgage documents that the monthly date was fixed for the seventeenth day of each month. Both parties, however, contend that the payment date was altered by agreement. Ms. Manderson states that the altered day was to the first day of each month while the Plaintiff's case is that the new monthly day for payment was the thirtieth. That is was the thirtieth is supported by the Plaintiff's email correspondence to the Defendants on 1 and 31 May 2019. No evidence of a written statement to the contrary was put before the Court.

69. On 6 August 2012, a late fee was charged to the Defendants. Ms. Ebbin's evidence was that late fees were charged under the entry "LN ADMIN FEE ASSESS" once a four-day period lapsed after the payment due date. The loan statements disclose that in August 2012 the Defendants' first incremental loan payment was made on the seventeenth day of that month in the sum of $2,099.37. On 30 August 2012, another payment was made in the sum of $2,595.00 and on 31 August 2012 a final sum of $2000 was paid. Those August 2012 payments totaled $6,694.37. Yet, the monthly sum owed under the Mortgage, covering both principal and interest, was $4,606.00 not $6,694.37. In my judgment, it is plain and obvious that at least a portion of the three payments made incrementally in August 2012 were purposed to be applied against a sum owed in arrears which was due prior to August 2012. This sufficiently explains why a late fee was charged on 6 August 2008.

70. If this Court was to accept Ms. Manderson's evidence under cross-examination that the incremental payments made in August 2012 were all purposed to meet a 1 September deadline and that no late payments had been previously made, the Court would be bound to also find that the Defendants paid an excess or advanced sum of $2,088.37 by 30 August 2012 for 1 September. I reject any such proposition, particularly because Ms. Manderson never suggested in her evidence that she, at any point in time, made advanced payments. Her evidence was that she made incremental payments, in so far as she was able, with the intention that those

payments would total the sum owed by the monthly due date. In my judgment the evidence establishes that the Defendants, whether the due date was 30 July or 1 August 2012, fell or had fallen into arrears by 2 August 2012 and the sum which initially appears to be a surplus for August was in fact a late payment owed by 30 July or 1 August 2012.

71. In September 2012 a loan payment in the sum of $11.00 was applied on 5 September 2012. Two entries marked "pending disbursements" are shown on the loan statement, both of which are negative sums. The first sum is -$1,271.52 (for 7 September 2012) and the second sum is stated as -$317.88 (for 28 September 2012) totaling -$1,589.40. This was not explained by Ms. Ebbin's evidence nor was it explained by Ms. Manderson. However, it is clear on the loan statement that the negative sum of -$1,589.40 signifies non-payment of the principal sums owed which are stated on those same days to be $1,271.52 and $317.88. That conclusion is supported by the principal balance having increased twice on 7 and 28 September. The first increase was by $1,271.52 when the principal sum moved from $982,558.23 on 5 September to $983,829.75 on 7 September. The second increase was by $317.88 as the stated principal balance ascended from $983,829.75 on 7 September to $984,147.63 on 28 September. This explains the late fee charge applied to the statement in October 2012.

72. In October 2012, a total sum of $6,810.46 was made by the Defendant over four installments. That payment clearly consisted, in part, of payment in arrears for the monthly sum previously due, whether it be 30 September or 1 October. Whichever the case, the loan statements establish the payment was not made promptly as owed, again whether owed on the 30th day of the month preceding or the 1st day of the month.

73. For these reasons, having found a similar pattern of late monthly payments throughout the entire period of the loan statements put before the Court, I am bound to find that the late fees applied are defensible. By 10 October 2013, the Defendants had been delinquent on their mortgage obligations by having failed to make full and prompt monthly payments in the sum of $4,606.00 for a period exceeding 90 days. Instead, partial and late payments were consistently made from at least July 2012 through to 2013. That was a basis for the Plaintiff's entitlement to increase the loan rate by adding 2% to the current lending rates commencing 10 October 2013. Of note, it was open to the Plaintiff to make this increase sooner than it did. It is also notable that on 8 September 2023 the Plaintiff made the final demand for payment on the basis that the loan was 892 days past due and advised the Defendants in its Letter Before Action of 15 September 2023 that the amount in arrears was $201,994.81, of which $165,980.26 was outstanding interest. The evidence before me is that since September 2024, the Defendants have failed to make any payments.

74. In my judgment, those late fees would have been payable, whether or not I was persuaded on the evidence that the adjusted payment due date was agreed for the first of each month or the

thirtieth day of each month. Notwithstanding, I find against the Defendants on that issue as I am persuaded by the Plaintiff's evidence that the new payment date was the thirtieth day of each month from at least 30 March 2019, as evidence by the email correspondence sent to the Defendants.

Findings on the interest payable

75. I accept that the renegotiation clause meant that the parties agreed to renegotiate the terms of the mortgage, once the Third Defendant ceased to be employed by the Gibbons Companies and that any renegotiated terms had to be acceptable to both parties. However, under that same clause, the parties agreed that the interest rate for the loan would be adjusted to the then current standard lending rates. In my judgment, this term of the agreement between the parties was not rendered unworkable on the basis that the standard lending rates had not yet been determined by the Plaintiff. On that issue, this Court is not bound by the opinion procured by Ms. Ebbin under cross-examination that the clause was unworkable. Clearly, what was agreed between the parties was that the parties would renegotiate the terms of the loan, save the agreed term that Defendants would pay the standard lending rate, notwithstanding that the precise figure would later be determined and fixed by the Plaintiff. That is what the parties agreed. So, by necessary implication, the terms which were left open to renegotiate would have been the payment due dates and even the banking fees chargeable for late payments.

76. Counsel for both sides referred this Court to various extracts from Chitty on Contracts (Thirty-Sixth Edition). In answer to Mr. Pearman's scathing criticisms made against the renegotiation clause, Ms. Haworth drew this Court's attention to paragraph [4-189] which provides:

"*The courts do not accept commercial documents to be drafted with strict legal precision. The cases provide many examples of judicial awareness of the danger that too strict an application of the requirement of certainty could result in the striking down of agreements intended by the parties to have binding force. The courts are reluctant to reach such a conclusion, particularly where the parties have acted on the agreement. As Lord Wright said in Hillas & Co Ltd v Arcos Ltd (1932) 147 L.T. 503, 514:*

> *"Businessmen often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise. It is accordingly the duty of the court to construe such documents fairly and broadly, without being too astute or subtle in finding defects; but, on the contrary, the court should seek to apply the old maxim of English law, verba ita sunt intelligenda ut res magis valeat quam pereat. That maxim, however, does not mean that the court is to make a contract*

for the parties, or to go outside the words they have used, except in so far as they are appropriate implications of law."

In addition, so long as there is no "conceptual uncertainty", it is no bar to finding a binding agreement that the matter may be difficult "to resolve in practice"; the latter is "a matter for interpretation". [Footnote reference to *Re Lehman Brothers International (Europe) (In Administration)* [2012] EWHC 2997 (Ch at [197]-[198]…] *Rix LJ* said [Footnote reference to *Scammell v Dicker* [2005] EWCA Civ 405 at [30] and [39]]:

"*…it is simply a non sequitur to argue from a disagreement about the meaning and effect of a contract to its legal uncertainty…For that to occur – and it very rarely occurs – it has to be legally or practically impossible to give to the parties' agreement any sensible content…that is certain which can be rendered certain…*"

77. Although I am guided by that general principle, I am also duty bound to remind myself of the *contra proferentem* principle which applies where a contract clause is ambiguous or can be reasonable construed in more than one way. Applying that legal maxim, the Court will settle on the interpretation against the interests of the offeror who drafted the ambiguous clause. In this case, I am not concerned two commercial parties but a bank and its civilian banking customers. That being the case, I have addressed my mind as to whether there is any competing meaning behind the renegotiation clause. While it may be fairly described as awkwardly drafted, I find that its meaning is unambiguous all the same. The clause simply required the parties to renegotiate its terms if the mortgage relationship was to continue beyond Ms. Burchall's employment with the Gibbons Companies. The clause also clearly imposes a restriction on the parameters of what was renegotiable by stipulating that the interest rate would return to the base lending rate, or market rate as Ms. Ebbin loosely referred to it, upon the Third Defendant's employment with the Gibbons Companies coming to an end.

78. As to the question as to whether a renegotiation took place, I find that the 25 September 2013 meeting between Ms. Manderson and Ms. Eve constituted the requisite renegotiation. While the terms of the Mortgage were not the preferred or favoured terms pursued by Ms. Manderson, the Defendants' continued contractual relationship, with the Plaintiff as mortgagee and them as mortgagors, denoted an agreement acceptable to both parties. It was otherwise open to the Defendants to terminate their mortgage relationship with the Plaintiffs and seek financing elsewhere. They did not do that. Instead, they remained bound by the part of the clause which stated that the new terms of interest would be adjusted to the then current standard rates. That clearly meant an interest adjustment which would accord with each current standard rate of the subsequent period, not one fixed current standard rate.

79. Mr. Pearman, quoting from paragraph [4-088], submitted: "*As a general rule, an offeree who does nothing in response to an offer is not bound by its terms*." However, in this case, it cannot be said on the facts that the Defendants did nothing in answer to the Bank's offer to continue the Mortgage on interest terms increased to 6.5%. To the contrary, the Defendants continued as parties to the mortgage agreement, as evidenced by Ms. Manderson's telephone call to Ms. J. Eve approximately two months after the 25 September 2013 renegotiation meeting. The evidence before this Court was that on 2 December 2013 Ms. Manderson called Ms. Eve, an employee representative of the Plaintiff, requesting to be forgiven for two monthly payments to facilitate her purchase of new appliances. The evidence before this Court clearly establishes that the Defendants actively (not silently) continued their mortgage relationship with the Plaintiffs, albeit in breach, for a period exceeding 10 years after the 25 September 2013 meeting.

80. The Defendants were thus bound by the terms of the Mortgage stating that in the event of a 90-day delinquency the Bank would be entitled *"to automatically adjust the rate to a new higher rate of 2% above the current rate...*". Equally, the Defendants remained bound by the penalty late fees which were contemplated by the parties to *"vary from time to time"* and the Plaintiff was contractually entitled to *"automatically capitalize the fee to the loan account*." Those were the renegotiated terms of the loan.

81. Notwithstanding, I must point out that the Plaintiff's 23 March 2020 letter stated that the base lending rate, effective 23 March 2020, had been reduced to 4%. In my judgment, the Plaintiff was not entitled to charge the Defendants interest at a rate exceeding 6%, for as long as the base lending rate was 4%. That is so for any other period after September 2013. The Plaintiff was not entitled to charge interest exceeding 2% above the base lending rate applicable to personal mortgages. I leave it to Counsel to properly identify any errors where the Plaintiff's interest charges exceeded the base lending rate by more than 2%. Further, I am bound to flag clause 3(c) of the Mortgage which obliges the Plaintiff to provide the Defendants with three months' notice of an interest rate change before the increased rate becomes effective and payable by the Defendants. Clause 3(c) provides:

    "*The increase in the rate of interest shall be effected by notice served by the Company on the Mortgagor which shall state the increased rate of interest to be payable hereunder and such increased rate shall be payable as from the end of three months after the date of the notice*".

82. On the reasoning underpinning my findings that the Plaintiff was entitled to charge interest at the base lending rate plus 2% once the Third Defendant's employment ended with the Gibbons Companies, it follows that I reject the Defendants' invitation to this Court to make an Order for interest to be fixed at the statutory rate in lieu of the contractually agreed rate.

Pre-Judgment Interest

83. In the Plaintiff's Originating Summons, dated 21 June 2024, interest is claimed at paragraph [7(b)] at the rate of 9.25% per annum from the date of the Originating Summons until the date of the judgment. In the loan statement covering the period of 1 April 2024 to 30 June 2024 the interest rate is stated as 9.25% (variable). In the final and most recent statement before this Court covering the period between 1 October 2025 and 31 December 2025, the interest rate is stated to be 9% (variable) having decreased on 1 October 2025 from 9.25% to 9%. Because the prejudgment interest is pleaded on a contractual basis, I find that the rate of interest claimed should adjust to consistently reflect a 2% increase on whatever the current base lending rate may be between 21 June 2024 and the date of this Judgment.

84. For the avoidance of doubt, I accept that it was appropriate for the Plaintiff to claim pre-judgment interest on a contractual footing. In *Tensor Endpwment Ltd and USB Fund Services (Cayman) Ltd v New Stream Capital Fund Ltd* BM 2010 SC 30 Kawaley J said at paragraph [17]:

"*Although the Court has an apparently broad discretion as to the grant of pre-judgment* ***interest*** *under section 10 of the* ***Interest and Credit Charges*** *(Regulation) Act 1975, decided cases have laid down certain guiding principles which ought not to be lightly departed from in the interests of certainty. Pre judgment* ***interest*** *is the normal rule in personal injuries cases, but in contractual cases the Court is normally guided by the parties' agreement."*

Post-Judgment Interest

85. At paragraph [7(c)] of the Originating Summons, the Plaintiff makes a claim for statutory interest from the date of the judgment until the date of payment in full. Section 10 of the Interest and Credit Charges (Regulation) Act 1975 (the "1975 Act") provides as follows:

"***Courts may award interest on debts and damages***

10 In any proceedings tried in any court for the recovery of any debt or damages, including proceedings in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at the statutory rate on the whole or any part of the debtor damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment:

Provided that nothing in this section-

(a) Shall authorize the giving of interest on interest; or

(b) Shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any enactment or otherwise; or

(c) *Shall affect the damages recoverable for the dishonour of a bill of exchange*."

86. In my judgment, the Plaintiffs are entitled to post-judgment interest at the statutory rate of 3.5%, so long as no additional claim is made for post-judgment contractual interest which is prohibited by the operation of section 10(a) of the 1975 Act.

CONCLUSION

87. The Plaintiff is entitled to judgment on the balance of the principal sum owed by the Defendants.

88. Any outstanding interest owed on a contractual interest from 17 June 2008 to September 2013 (when the Third Defendant's employment came to an end) is to be calculated at the then current base lending rate minus 1%.

89. Any outstanding interest owed on a contractual interest from October 2013 (after the Third Defendant's employment came to an end) up until the date of this Judgment is to be calculated at the then base lending rate plus 2%, and on the basis of 3 months' notice of any increase of the base lending rate pursuant to clause 3(c) of the Mortgage.

90. Post-judgment interest shall be at the statutory rate of 3.5% only or at the contractual rate to be calculated at the current base lending rate plus 2%, and on the basis of 3 months' notice of any increase of the base lending rate pursuant to clause 3(c) of the Mortgage.

91. The Defendants shall deliver possession of the Property to the Plaintiff.

92. The Plaintiff is at liberty to exercise its power of sale under the Mortgage pursuant to clause 4(a) of the Mortgage.

93. The Plaintiff is at liberty to exercise its contractual entitlement to costs on an indemnity basis pursuant to the provision in the Facility Letter which provides:

"*COVENANTS*

You agree to pay and/or reimburse the Bank for all costs and expenses arising in respect of the Agreement, the preparation of any necessary documentation for the borrowing, and the enforcement by the Bank (or on its behalf) of the Bank's rights and remedies in respect thereto, to include legal costs and any independent debt-collection agency and the costs of the Bank's attorney on a full indemnity basis. Such costs and expenses, to become part of your repayment obligations under this Agreement."

Dated this 4th day of November 2026



THE HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT