[2021] JMSC Civ. 85

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2021CV02217

BETWEEN	**WINSTON ROY MARTIN**	**CLAIMANT**
AND	**JAMAICA REDEVELOPMENT FOUNDATION INC.**	**1ST DEFENDANT**
AND	**DAVE GIARDELLO VAZ**	**2ND DEFENDANT**

IN CHAMBERS

Carol Davis, Attorney-at-Law for the Claimant.

Maurice Manning QC and Francois McKnight instructed by Nunes, Scholefield, DeLeon & Co for the 1st Defendant.

Garfield Haisley instructed by Paige & Haisley for the 2nd Defendant.

Heard: 10th and 11th May 2021

Injunctions - interlocutory - restraint on mortgagee's power of sale - whether there are serious questions to be tried - mortgagor denies executing restructured debt agreement - dispute as to applicable interest - concluded agreement for sale between mortgagee and third party - whether evidence capable of finding at trial of bad faith on part of mortgagee in entering into agreement - balance of convenience - Marbela principle exceptions.

C. BARNABY J

INTRODUCTION

[1] Mr. Winston Martin is the proprietor of land in York, St. Thomas, registered at Volume 1120 Folio 839 of the Register Book of Titles (the York Property). He

obtained mortgages numbered 780789 and 850304 which were registered to Mutual Security Bank Limited (MSB) on 18th November 1994 and 6th February 1995 respectively. Between 24th June 1993 and 3rd November 1995 he also received five (5) mortgages registered to the said MSB on property in Paddington, St. Andrew previously registered at Volume 1365 Folio 70 of the Register Book of Titles (the Paddington property). The debts of MSB were taken over by the National Commercial Bank (NCB), who assigned them to Recon Trust Limited, who assigned it to Refin Trust Limited, who then made an assignment to the Jamaica Redevelopment Foundation Inc. (JRF) by deed dated 30th January 2002.

[2] JRF in exercise of the power of sale under the various mortgages registered to it on the Paddington property sold that property in February 2014. Save that Mr. Martin says that he has never received an account of how monies from the sale were utilised in respect of the York and Paddington property mortgages, he does not now challenge this sale on account of his being advised that it is too late to do so.

[3] JRF has proceeded to exercise its power of sale under the mortgages registered to it on the York property, and in that regard, executed an Agreement for Sale with Mr. Vaz on 21st April 2021, which has been submitted to the Stamp Office for assessment. Mr. Vaz has paid the balance purchase price and outstanding costs in accordance with a Statement of Account to Close which was issued to him through his Attorney-at-Law. Consequently, JRF issued a receipt in these regards to Mr. Vaz on the 4th May 2021. While the Instrument of Transfer has been executed, it has not yet been lodged for transfer.

[4] By way of an Amended Notice of Application for Court Orders (The Application) filed 10th May 2021, in which JRF and Mr. Vaz are joined as respondents, Mr. Martin seeks interlocutory injunctive relief against JRF to restrain it: (i) from exercising the power of sale in respect of the York property; and (ii) from disposing, transferring or dealing with the said property, whether by itself, its servants and/or agents or otherwise. The relief are requested until trial or other period the court

thinks fit. The Application is supported by Mr. Martin's Affidavit filed on the said date. JRF, in an affidavit sworn to by its Legal Officer Naudia Sinclair and filed on 7th May 2021, responds to the Application.

[5] An Amended Claim Form was also filed by Mr. Martin on the day of the hearing of the Application. Mr. Vaz was added as a second defendant and a number of relief, which were not pursued previously, were also added to the claim. Counsel Ms. Davis confirmed with the court that the Particulars of Claim were not amended on account that there simply was not enough time to do so. No further affidavit evidence was filed by or on behalf of Mr. Martin in response to Ms. Sinclair's affidavit. This notwithstanding, there was no request for a further adjournment by Counsel who indicated that she brought what was necessary for the hearing of the Application. On that indication, Mr. Manning Q.C and Counsel Mr. Haisley indicated that they were prepared to proceed.

[6] After hearing the competing submissions, a decision on the Application was reserved to 11th May 2020. I determined and advised that there were serious questions to be tried but that the balance of convenience lay in refusing the injunctive reliefs sought by Mr. Martin. The reasons for that were delivered orally and I promised to make the written reasons, which were then in draft, available to the parties. I now do so.

ISSUES

[7] Consistent with the guidance provided in **American Cyanamid Co v Ethicon Ltd** [1975] 1 All ER 504 and having regard to the evidence, I find that the Application is resolved on two issues.

(1) Are there serious questions to be tried?

(2) Does the balance of convenience lay in refusing or granting the interim injunction?

SERIOUS QUESTIONS TO BE TRIED

[8] In addition to the declarations sought on the Claim Form, that the proposed exercise of the power of sale by JRF in respect of the York property is fraudulent or in the alternative, negligent; that the Agreement to Restructure Existing Debt was not signed by Mr. Martin and is fraudulent; that JRF's claim as reflected in "Restructure in Default" is excessive; Mr. Martin by his Amended Claim Form seeks orders that he is entitled to exercise his right of redemption in respect of the mortgages on the York property; that JRF produces and delivers up to him the original duplicate certificate of title, together with stamped registrable interest of discharge of the mortgages on that property; that if monies are due to him by JRF that he be paid; declarations that he is entitled to the legal and beneficial interest in the York property; and that the agreement for sale between JRF and Mr. Vaz is void and/or should be set aside as a result of JRF's breach of contract and/or bad faith with respect to him.

[9] The Particulars of Claim not having been amended to account for the additional relief, and the claim for breach of contract not being particularised in the Amended Claim Form, I have not been placed in a position to assess whether there is a serious question to be tried in respect of that particular claim. That therefore leaves the allegations of fraud and negligence, and the entreaty from Mr. Martin that an order be made in the claim declaring the Agreement for Sale between JRF and Mr. Vaz void and/or that the said agreement be set aside on the basis of bad faith by JRF, on which many of the relief on the amended claim rely for their viability and need not be separately discussed,

Fraud

[10] In respect of his allegation of fraud, Mr. Martin's main contention appears to be that the "Agreement to Restructure Existing Loan" on which he says JRF relies was not executed by him. He denies recognizing the writing on that document as his and states that the signature which JRF attributes to him does not in fact belong

to him. In that regard he indicates an intention to engage a handwriting expert in proof of his contention.

[11] The evidence of JRF is to the contrary. Ms. Sinclair avers that in 2005 she witnessed Mr. Martin sign the "Agreement to Restructure Existing Loan". Exhibited to her affidavit are receipts issued by JRF with Mr. Martin as the payee, showing monthly payments from the "8/3/2005" to the "27/09/2005". Most of these receipts were in the sum of US$1,609.00 which I note is just a few cents more than the US$1,608.37 that was due to be paid under the "Agreement to Restructure Existing Loan", which Mr. Martin denies signing.

[12] Although it was maintained that Mr. Martin did not sign the "Agreement to Restructure Existing Loan", the documentary evidence form JRF appears to have prompted an admission from Ms. Davis in her written submissions that it is evident that there was some form of restructuring pursuant to which Mr. Martin paid US$1,609.00 per month for several months. The admission is particularly curious in light of the contents Mr. Martin's affidavit filed in support of the application.

[13] In particular, Mr. Martin avers that he was dealing with NCB in respect of the mortgages from on or about 2002 where he made payments and was advised by an agent from NCB, who is unnamed, that he had completed payment on loans secured by the properties. There is no endorsement on title that any of the mortgages held by NCB were discharged. He also avers that consideration for the transfer to NCB appeared excessive based on the amounts he borrowed. NCB has not been made a party to the suit. Mr. Martin then goes on to say that unknown to him, the mortgages were transferred to Refin Limited and that he notes from the title, that it was transferred to JRF, which transfer was registered on 6th June 2003. These averments notwithstanding, as is apparent on the face of the registered titles to both properties, Mr. Martin's mortgages to MSB were transferred to JRF.

[14] There still remains a dispute however, as to the circumstances under which the debts so transferred came to be restructured. Consequently, I find that there is a serious question to be tried in respect of the claim for fraud.

Negligence

[15] Mr. Martin's claim in negligence appears to be twofold. In the first instance, he says he never received a notice from JRF advising him of its intention to exercise the power of sale under the mortgage in respect of the York property or the Paddington property for that matter.

(i) Service of Statutory Notice

[16] It is Ms. Sinclair's evidence that the notices required to be served by statute were in fact served on Mr. Martin in respect of the properties by way of registered post. She exhibits two Registered Notices, both dated 8th December 2009 in respect of each property. Both are addressed to Mr. Martin at 63 Paddington Terrace, Kingston 6 which is the Paddington property which was only sold on the 24th February 2014. A Duplicate List of Registered Letters is also exhibited showing that three (3) letters were sent by JRF to that address in December 2009.

[17] Counsel Ms. Davis did not address the issue raised on the pleadings relative to the service of notices in submissions before me. However, under section 105 of the **Registration of Titles Act** a mortgagor is permitted to send the statutory notice through the post office by registered letter, directed to the proprietor of the land at his address which appears in the Register Book. By Transfer number 443915 registered on the title to the York property on the 3rd January 1986, I am advised that a transfer of interest to *"WINSTON ROY MARTIN of 63 Paddington Terrace, Kingston 6, Saint Andrew, Businessman…"* There being no suggestion or evidence before me of any deviation from the statutory position, I do not find that there is any serious question to be tried in respect of this aspect of Mr. Martin's claim in negligence that he did not receive the notice which is the statutory precursor to a mortgagee's exercise of the power of sale.

(ii) Computation of debt – Applicable interest rate

[18] In the second instance, Mr. Martin complains of JRF's computation of the debt he is said to owe. He says it is excessive. Mr. Martin also asserts that there is a disparity in the interest rate said to be chargeable under the "Agreement to Restructure Existing Loan" and the account provided to him by JRF in 2014 as to his indebtedness, via the document he labels, "Restructured in Default". In the first named document he states that the interest rate was 10% on a reducing balance but that in the last named document, interest was calculated at 30% and appears to have been compounded.

[19] While both of those documents were available to the court, the mortgage instruments were not. It is a clause of the "Agreement to Restructure Existing Loan" that the restructured debt was to be paid in a certain manner and when so paid, interest would be calculated at 10% on the reducing balance. Ms. Davis' contention was that except by proceedings in court, there is no provision in the "Agreement to Restructure Existing Loan" which provides for interest at a rate of 30%. Counsel appears to ignore however, that there are several remedies available to JRF under the said agreement in the event of default by the mortgagor, including the right to enforce the original debt and exercise any powers given to it under the mortgages.

[20] It is JRF's evidence that under the restructuring agreement with Mr. Martin, in which there was a compromise of the original debt, Mr. Martin made payments up to 5th May 2008. Final payment was due on 15th November 2009. The sums paid did not liquidate the compromised amount and per the terms of the agreement the debt reverted to the original amounts and interest rates. The payments made by Mr. Martin made under the restructuring agreement were applied to those amounts.

[21] As I have previously concluded that there is a serious question to be tried in respect of the circumstances under which the debt came to be restructured, there is a

correspondingly serious question to be tried in respect of its terms and the applicable interest rate.

Bad faith

[22] It was a part of Ms. Davis' written submissions that there was sufficient material before the court as to whether JRF's conduct amounted to bad faith. On my enquiry to direct me to the material on which she relied for her submission, she went on to list the following:

1. The interest rate is excessive;

2. There is a dispute as to whether Mr. Martin signed the "Agreement to Restructure Existing Loan"; and

3. That Ms. Sinclair having said she witnessed Mr. Martin sign the document, in the absence of evidence that Mr. Martin received separate legal advice, it is implied that she had some level of communication with him in respect of his awareness of the contents of the "Agreement to Restructure Existing Loan" which itself raises the issue of bad faith.

[23] I find myself unable to agree with Ms. Davis' submission and will return to the particular contentions following an address on **Devon Morris et al v JN Bank Ltd et al** [2019] JMCC COMM. 25 on which Mr. Martin relies.

[24] In that case, Laing, J concluded that there was evidence that could amount to bad faith on the part of the mortgagee in entering into the agreement for sale with the third party purchaser, the 3rd defendant. While I am in agreement with that conclusion and will in fact be guided by some of the authorities which informed it, I find the cases to factually dissimilar, and that there is no evidence in this case which permits a like finding.

[25] In that case, the 1st defendant and its wholly owned debt recovery service, the 2nd defendant, sold property in exercise of a power of sale under a mortgage. The

court referred to both defendants collectively as "JN". The 1st and 2nd claimant had acquired property through a joint mortgage with JN and the National Housing Trust (NHT). The claimants defaulted. When they learnt that the mortgagee intended to exercise the power of sale, they purported to execute a transfer to the 3rd claimant, the 2nd claimant's mother. The claimants applied for an interim injunction to prevent dealing by JN and to restrain it from interfering with their enjoyment of the property; and an order that the caveat lodged on title should to remain in effect until the court made an order for its renewal.

[26] Counsel for the claimants, Mr. Patrick Foster QC submitted that there was evidence of bad faith on the part of JN which would ground the relief sought by the claimants on the claim, including that the sale agreement executed between JN and the 3rd defendant be set aside and to enable the grant of other relief, identical those which Mr. Martin now wishes to pursue on his amended claim form.

[27] Learned QC referred to a number of decisions in grounding his submission including that of Brooks, JA (as he then was), in **Cowell Anthony Forbes and anor v Miller's Liquor Store (Dist) Ltd** [2016] JMCA Civ 1, who stated thus.

> *[45] … once a mortgagee enters into an agreement to sell the mortgaged property, the mortgagor's equity of redemption is extinguished, unless the mortgagee has acted in bad faith. Once extinguished, the equity of redemption cannot be revived. Those principles have been extracted from the decision in* ***Waring v London and Manchester Assurance Company Limited and Others*** *[1935] 1 Ch 310. They apply under the old system as well as under the Torrens system. That case has been accepted in this jurisdiction as accurately setting out the relevant law.*

[28] As to what constitutes bad faith in the context of the exercise of a power of sale by a mortgagee, Laing, J cited the Lord Chancellor in **John Kennedy v Mary Annette de Trafford** [1895-9] AII ER. Rep 408 who said,

> *"… if a mortgagee in exercising his power of sale exercises it in good faith, without any intention of dealing unfairly by his mortgagor, it would be very difficult indeed, if not impossible, to establish that he had been guilty of any breach of duty towards the mortgagor… Of course, if he wilfully and recklessly deals with the property in such a manner that the interests of the mortgagor are sacrificed, I should say that he had not been exercising his power of sale in good faith".*

[29] He also cited dicta from the decision of the Supreme Court of Canada in **Enterprises Sibeca Inc. v. of Frelighsburg (Municipality)** 2004 SCC 61, [2004] 3 S.C.R. 304, where the concept of bad faith was summarized as follows at para. 26 of that decision thus,

> *"… the concept of bad faith can encompass not only acts committed deliberately with intent to harm, which corresponds to the classical concept of bad faith, but also acts that are so markedly inconsistent with the relevant legislative context that a court cannot reasonably conclude that they were performed in good faith. What appears to be an extension of bad faith is, in a way, no more than the admission in evidence of facts that amount to circumstantial evidence of bad faith where a victim is unable to present direct evidence of it."*

[30] Laing J on a preliminary assessment concluded that JN had exercised its power of sale under the mortgage in bad faith, notwithstanding that the evidence was contested. There was evidence that an officer at JN with whom the claimants were dealing had advised them to focus on the NHT portion of the mortgage and she would protect them from JN; that an attorney at law for the claimants had communicated with JN on their interest to redeem the property and requested a statement of account to close on 21st August 2018; that on 24th August 2021 the officer at JN told the attorney for the claimants that she was awaiting the file in order to process the request for statement to close and to verify the signature of authorization officer; and that the attorney for the claimants also sent letters requesting the statement to close on 27th and 31st August 2018. Even though there were these communications, it was only by letter dated 5th September 2018 to the

claimants' attorney that JN advised that there was an executed agreement for sale with the 1st defendant. JN had signed the agreement on 18th August 2018 but the 1st defendant had not done so until 31st August, days after consistent effort by the claimants to benefit from the equity of redemption were initiated.

[31] On that evidence, albeit disputed, Laing J rightly arrived at the conclusion that there was evidence on which bad faith on the part of the mortgagee could be found at trial so that there was a serious question to be tried.

[32] I now turn what Counsel for Mr. Martin contends is capable of amounting to bad faith on the part of JRF when it entered into the Agreement for Sale with Mr. Vaz.

[33] In respect of the contention that the interest rate is excessive, that appears to me to be premature and conclusory when there is in fact a dispute about the vehicle for the restructuring agreement and its terms. While on a pure mathematical exercise, compound interest of 30% is far greater than 10% on the reducing balance, there is no evidence before the court as to the source of the former rate of interest. It is Ms. Sinclair's evidence that under the restructuring agreement with Mr. Martin, in which there was a compromise of the original debt, he made payments up to 5th May 2008. The sums paid did not liquidate the compromised amount and per the terms of the agreement, the debt reverted to the original amounts and interest rates. Payments made by Mr. Martin were applied to that sum. In these circumstances, I do not believe it could be fairly said that there is evidence of an excessive interest rate when the agreement pursuant to which it is charged is not before the court. On the evidence, it could be on the basis of the restructured agreement, whatever that is determined to be at trial and/or the mortgages under which the original debt and interest rates were fixed. There is a significant dispute in respect of the first and there is no evidence before the court of the last.

[34] As to Ms. Davis' contention that there is an implication that Ms. Sinclair inappropriately communicated with Mr. Martin at the time of witnessing his

signature, that was never particularised. In any event, it is Ms. Sinclair's evidence that Mr. Martin signed in her presence and she witnessed his signature indicating his consent. She goes further to state that whenever she witnesses a person's signature, she usually asks that the witness spell his or her name in full and initial the other pages. There is nothing on that or any other evidence before the court on which an inference could be drawn, which would certainly be very dangerous at this stage, or on which the implication suggested by Counsel arises.

[35] In my view, the matters raised are not capable could not be accepted as evidence of bad faith on the part of JRF in entering into the agreement for sale with Mr. Vaz in respect of the York Property. As a result, I find that there is no serious question to be tried in respect of setting aside or otherwise invalidating the Agreement for Sale.

BALANCE OF CONVENIENCE

[36] Having previously concluded that there are serious questions to be tried in respect of the circumstances under which Mr. Martin's debt came to be restructured, the terms of the restructuring and applicable rate of interest, it now falls to be considered, whether the balance of convenience lays in refusing or granting the interlocutory injunctive relief sought by Mr. Martin.

[37] It is contended on his behalf that damages would not be an adequate remedy if the court should refuse the interlocutory injunctions and he is successful in his claim at trial. It is argued that the common law presumption that damages is not an adequate remedy when the subject matter is land is capable of disposing of this consideration. I do not agree.

[38] While I accept that an award of damages is not generally regarded as an adequate remedy at common law where land is the concern, it is my view that like other legal presumptions, it is capable of being rebutted.

[39] This application for interlocutory injunctive relief is to restrain a mortgagees exercise of a power of sale in circumstances where an agreement for sale has been executed between the mortgagee and a third party purchaser for value. As stated previously, it is the law in this jurisdiction that unless a mortgagee has acted in bad faith, once he enters into an agreement to sell the mortgaged property, the mortgagor's equity of redemption is extinguished and cannot be revived.

[40] Notwithstanding Mr. Martin's evidence that he farms the land as a hobby and has a certain attachment to it, having found that there is no triable issue in respect of the allegation of bad faith, which could permit the court to exercise its equitable jurisdiction to set aside the agreement for sale between JRF and Mr. Vaz, damages is an adequate remedy.

[41] The foregoing conclusion is sufficient basis to ground a refusal of the interlocutory injunctive relief. In the event that the opposite conclusion could be reached however, I will proceed to the next stage of the enquiry. Whether damages would be an adequate remedy for JRF.

[42] JRF's interest in the property as mortgagee is pecuniary and damages would therefore be considered an adequate remedy to compensate for any loss it would likely suffer if it succeeded in defending the claim at trial. The question would then arise as to whether Mr. Martin would be in a financial position to pay those damages. I am not satisfied that he would be.

[43] It is Mr. Martin's evidence that he has assets which are sufficient to enable him to give an undertaking to abide by any order as to damages in the event the injunctions were wrongly granted. In this regard he makes reference to the land owned by him which is adjacent to the York property, which land is registered at Volume 1325 Folio 314 of the Register Book of Titles. There is no evidence of the value of the land and on my review of the copy of the relevant title, marked "WM6" and exhibited in Mr. Martin's affidavit, I note that it is currently twice encumbered by mortgages to RBTT Bank Jamaica Ltd. In these circumstances, while I am

prepared to conclude that where interest in the property is purely financial, damages would be an adequate remedy to compensate the JRF if it succeeds in defending the claim at trial, Mr. Martin has not satisfied me on his evidence that he would be in a position to pay those damages.

[44] In weighing the balance of convenience I consider that grant of the interlocutory injunctions would interrupt JRF in an established enterprise which would no doubt result in great inconvenience. In the first instance, should it fail to deliver the York property to Mr. Vaz pursuant to the terms of the concluded agreement for sale, it exposes itself to legal liability and the costs which may attend on that.

[45] I also have regard to the evidence that the statutory notices were sent by registered post in December 2009, which was almost twelve (12) years ago. Additionally, JRF has indicated that it has had difficulty in selling the York property which it first sought to dispose of by way of public auction in 2012, some nine (9) years ago. This difficulty required JRF to advertise the property for sale by private treaty.

[46] I also consider that Mr. Martin, by his own account, had requested a detailed accounting from JRF as to the debt alleged to be owed by him after he discovering that the Paddington property had been sold, and that a document in that regard was sent to him in 2014. There is no evidence of any effort by him satisfy the outstanding debt and thereby avail himself of the equity of redemption.

[47] Similarly, although Mr. Martin submits documentary proof via the document titled "Restructure in Default: Original Debt per Agree (sic)" which shows that as at 23rd March 2021, JM$43,941,736.16 was required to pay off the debt to JRF, there is no evidence of him having taken any step, whether by himself or others, to satisfy the outstanding debt and thereby redeem the property. This is in circumstances where he says the Paddington property was sold without his knowledge and having been advised by his daughter in March of this year, that she saw the York property being advertised for sale with an indication that "sale was in progress". It was not until the latter part of the following month that the Agreement for Sale was executed

between JRF and Mr. Vaz on 21st April 2021. Even though Mr. Vaz had previously made a deposit and futher payment towards the purchase, they were subject to contract.

[48] In all the foregoing circumstances, I find that the balance of convenience lays in favour of refusing the interim injunctions sought by Mr. Martin.

THE MARBELA PRINCIPLE

[49] In exercising the discretion reserved to me in the way I have, there is no need for me to consider the grant of a **Marbela** order. That notwithstanding, it was submitted by Counsel Ms. Davis that this case fell within the recognized exceptions under the **Marbela** principle. I do not agree with the submission and will very briefly indicate my reasons.

[50] Ms. Davis relied on the decision of McDonald-Bishop JA in **Alexander House Ltd. v Reliance Group of Companies Limited** [2018] JMCA Civ 18, in particular paragraph 40, which reads as follows.

> *[40] There are … special rules that have evolved to protect the mortgagee from a recalcitrant mortgagor and so, the Marbella principle, as Morrison JA said in **Mosquito Cove**, is "alive and well", albeit that that there may be a departure from it, if justice demands it in special circumstances. Morrison JA, himself, pointed to some of those exceptional circumstances in which the Marbella principle may be departed from as follows (paragraphs [57] - [63]):*
>
> *i. where the terms of the mortgage deed are peculiar or unusual (see **Gill v Newton** (1866) 14 WR 490);*
>
> *ii. where the issue of fiduciary relationship between the mortgagor and the mortgagee arises; or in the case of forgery (see **MacLeod v Jones**);*
>
> *iii. where questions arise as to the validity of the mortgage document. For example, where a person asserts that they did not sign or give*

*authority for the mortgage document to be signed (see **Rupert Brady v JRF**); and*

iv. *where on the face of the mortgage, the mortgagee's claim is excessive (see **Fisher & Lightwood's, Law of Mortgage**).*

[51] The **Marbela** principle requires the court, in exercise of the power it has to restrain a mortgagee from exercising its power of sale, to require the amount claimed by the mortgagee to be paid into court. As indicated in the foregoing extract, departure is only permitted in exceptional cases. While the category of cases above is not exhaustive, when the authorities for the exceptions are considered, the exceptional circumstances arose in respect of the security itself.

[52] There is no allegation here that the terms of the mortgage deed are peculiar or unusual, in fact that document is not before; and there is no allegation of their being a fiduciary relationship between Mr. Martin and JRF. In the absence of the mortgage instruments, there is no basis upon which to conclude that on the face of the mortgages, JRF's claim is excessive. Additionally, the document which Mr. Martin says he did not sign is not a mortgage instrument under which the power of sale arises and no question has been raised about the validity of the mortgages. At the root of the serious questions to be tried on the claim is a dispute as to the calculation and extent of Mr. Martin's indebtedness to JRF. That is hardly an exceptional circumstance as far as claims by mortgagors against their mortgagees go.

ORDER

1. The interlocutory injunctions sought on the Amended Notice of Application for Court Orders filed 10th May 2021 are refused.

2. The Claimant is to formally serve the Defendants with the Amended Claim Form and Particulars of Claim by 12th May 2021 via electronic mail.

3. Application for leave to appeal is refused.

4. Costs of the application to the Defendants.

5. The Claimant’s Attorney-at-Law is to prepare, file and serve this order.