



**IN THE SUPREME COURT  
TURKS AND CAICOS ISLANDS  
BETWEEN:**

**CL-101/2018**

**Anthony Kikivarakis  
Official Liquidator of TCI Bank Limited (In Liquidation)**

**Plaintiff**

**v.**

**(1) Laverne Forbes  
(2) Howard Gardiner  
(3) The Registrar of Lands  
(4) Rainbow Gardens Limited**

**Defendants**

**AND BETWEEN:**

**Laverne Forbes**

**Plaintiff**

**v.**

**(1) Anthony Kikivarakis Official Liquidator of TCI Bank Limited (In Liquidation)  
(2) Rainbow Gardens Limited  
(3) Clayton Stanfield Greene**

**Defendants**

**(By Counterclaim)**

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## JUDGMENT

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**Before:** **The Hon. Mr. Justice Carlos W. Simons OBE QC**

**Appearances:** **Mr Peter McKnight of McKnights for the Plaintiff and the 1<sup>st</sup> Defendant by Counterclaim**  
**The Hon. Mr Alvin Garland of Garland & Co for the 1<sup>st</sup> Defendant and the Plaintiff by Counterclaim**

**Hearing Dates:** **31 January, 1, 4 and 16 February 2022**

**Venue:** **Court No. 5, Graceway Plaza, Providenciales**

**Date delivered:** **Tuesday, 3 May 2022 at 4:00pm**



### **Background Facts**

1. The essential facts in this matter are not in dispute and only the briefest review of them is necessary for the purposes of this Judgment. The Plaintiff is the Official Liquidator of TCI Bank Ltd., and the First Defendant (Plaintiff by Counterclaim) (Mrs. Forbes) is a former customer of the Bank.
2. In 2007 the Bank loaned Forbes \$198,000.00 for the purchase of a dwelling house on the land comprised in Parcel 60503/32. The land was owned by the Second Defendant, Howard Gardiner (Mr. Gardiner) but was being developed, along with other adjoining Parcels into a housing scheme by the First Defendant, Rainbow Gardens Limited (Rainbow), a company wholly owned and controlled by Mr. Gardiner.
3. Due to a dispute between the Bank and its then lawyers, Saunders & Co., the transfer of the land and the charge given by Mrs. Forbes to secure the loan were never registered although these documents were prepared, fully executed and available in registrable form. The land therefore remains registered to Mr. Gardiner, to whom the purchase funds for the dwelling house were paid by the Bank.
4. What brings the parties before the Court is that from around the time the Bank was put into liquidation, Mrs. Forbes has discontinued mortgage payments because she said she had no proof of her title to the property, though she remains in occupation.

## **The Claim and Counterclaim**

5. Based largely on these facts the Plaintiff seeks payment of arrears and interest, a declaration that the property is beneficially owned by the Bank under a resulting trust, an order for possession, and costs.
6. Mrs. Forbes defends and counterclaims against the Plaintiff in negligence and asks for damages and costs.
7. It should be noted at this point that Mr. Gardiner asked and was excused attendance at the trial – he has always been ready and willing to execute fresh transfers of the property as necessary and in fact did so just before the trial commenced. There was also no relief prayed against him. Rainbow Gardens Limited has been struck from the register and I ordered that Mr. Clayton Greene be struck out as a Defendant to the counterclaim. The contest was therefore between the Plaintiff and Mrs. Forbes.

## **Discussion**

8. The legal principles to be applied in the circumstances are straight forward and required no elaboration. As to the facts, which as I say are essentially not in dispute, this is an unfortunate case that ought to have been settled. Both parties are clearly at fault – the Plaintiff for failing to ensure that the transfer to Mrs. Forbes and its charge was registered and Mrs. Forbes for discontinuing mortgage payments and essentially living rent free since the Bank was placed into liquidation.

## **Decision**

9. Against this background I make the following orders on the parties respective prayers for relief:
  - i. I grant the declaration sought that the property is beneficially owned by the Bank under a resulting trust, the trustee of which is Mr. Gardiner. The trust arose upon payment of the purchase price by the Bank to Mr. Gardiner.
  - ii. As the sole beneficiary of a bare trust, the Bank shall be at liberty at any time of it's choosing to call for the transfer of the property by Mr. Gardiner to the Bank or to its agent or nominee, the Bank to bear all costs associated therewith.
  - iii. The Bank shall be entitled to recover from Mrs. Forbes the principal only of the monthly mortgage payments since the discontinuance of such payments by Mrs. Forbes to the date hereof, and afterwards upon such terms as may be agreed between them. Such recovery shall be reduced by the sum of \$50,000.00 as ordered at sub-paragraph viii below.
  - iv. Given sub-paragraph iii. above I refuse items 1 and 2 of the Plaintiff's prayer for relief is so far as there is a reference to interest or difference in principal calculation.
  - v. I refuse item 5 of the Plaintiff's prayer for relief regarding costs.
  - vi. Given sub-paragraph i. above, I grant the Bank possession of the property as prayed at paragraph 7 of the Amended Statement of Claim.
  - vii. As regards Mrs. Forbes' claims and prayer for relief on her counterclaim, I find the Bank to have been negligent in not ensuring that the transfer and charge were registered, and for not properly managing the opportunity to have Mrs. Forbes

mortgage transferred to First Caribbean Bank, thereby depriving her of the opportunity to have these matters settled. For these reasons I have not allowed interest on sums being claimed by the Bank.

- viii. Furthermore, against the sum due to the Plaintiff pursuant to sub-paragraph iii. above, I allow Mrs. Forbes a deduction of the global sum of \$50,000.00 (as mentioned at sub-paragraph iii. above) in respect of her claims for repairs of hurricane damage to the property and for loss of opportunity to transfer her mortgage to the First Caribbean Bank. I refuse her claim for interest.

**Costs**

10. I make no order as to costs.

**Hon. Carlos W. Simons OBE QC**  
**Judge of the Supreme Court**  
**3 May 2022**

