



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

**2024: No. 164**

**IN THE MATTER OF** a Mortgage dated 29 OCTOBER 2009 made between **HSBC BANK BERMUDA (formerly THE BANK OF BERMUDA LIMITED)** a body corporate of the Islands of Bermuda of the one part, the late **JASMINE EUGENE SALTUS (deceased)**, **JERMAINE OMAR SALTUS AND JENEA ROSELITA SMITH NEE' SALTUS** of the other part

**BETWEEN:**

**HSBC BANK BERMUDA  
(formerly THE BANK OF BERMUDA LIMITED)**

**Plaintiff**

**and**

**JERMAINE OMAR SALTUS  
JENEA ROSELITA SMITH  
ROSELITA INELDA SALTUS**

**Defendants**

## RULING

**Date of Hearing:** **9 December 2025**  
**Date of Ruling:** **9 December 2025**

**Appearances:** **Devon Luca, Walkers (Bermuda) Limited, for Plaintiff**  
**Bruce Swan, Bruce Swan & Associates, for Defendants**

## **RULING of Mussenden CJ**

### **Introduction**

1. This is a hearing on two applications by the Defendants:
  - a. The order for possession of the property be stayed (the “**Stay Application**”); and
  - b. For leave to appeal the possession order (the “**Leave Application**”).
2. The background to the matter has been set out in various affidavits by the parties. In summary, the Defendants are in default of their mortgage with the Bank. There have been attempts to restructure the mortgage and the Courts had granted various adjournments in order to give the Defendants time to address matters. Part of the history is efforts by the Bank to discuss with the Defendants their plans to restructure.
3. On the 5th of June 2025, before me, I made an Unless Order as follows:

*“1. Unless the Defendants file and serve within 14 days of this Order:*

*(a) evidence responsive to the Originating Summons; and*

*(b) written submissions outlining the basis upon which they contest the Originating Summons,*

*then, without further steps being taken by the Plaintiff, the Court shall grant the relief sought in the Originating Summons, subject to the Plaintiff having the ability to file an order with updated sums owing under the Mortgage Deed dated 29 October 2009 (the “**Mortgage**”).*
4. The Defendants followed the evidence in paragraph 1(a) out of time. To this day, they never filed the submissions contemplated in paragraph 1(b). As a result, the possession order was made and the Defendants were evicted. Mr. Swan submits that there was an issue of the calculation of “14 days” as against “14 clear days”. I do not accept such arguments as paragraph 1(b) of the Unless Order remains not complied with. So “14 days” or “14 clear days” is not a relevant issue.

5. Mr. Swan also says the Defendants are still working on getting funds to address the mortgage arrears. Thus, there is acknowledgement and no dispute that the Defendants are in arrears on the mortgage and thus in breach. I find thus, that the Bank has the right to enforce the mortgage and take possession and sell the property.

### The Leave Application

6. I accept that the test for leave to appeal is as set out in *Credit Suisse Life (Bermuda) Ltd v Mr. Bidzina Ivanishvili* [2020] CA (Bda) 13 Civ at paragraph 22:

*“It was common ground that the applicable test for leave to appeal in this jurisdiction is whether the appeal is arguable and/or raises a novel question of importance upon which further argument and a decision of the Court of Appeal would be to public advantage. It was also common ground that the standard to apply when deciding whether an appeal was arguable was whether the appeal was ‘doomed to fail’; see the decision of this court in *American Patriot Insurance Agency Inc v Mutual Holdings (Bermuda) Ltd* [2004] Bda LR 55).”*

7. In my view the appeal is doomed to fail for several reasons. First, the Defendants did not, and still have not, complied with the Unless Order paragraph 1(b), that is, no written submissions have been ever filed. Thus, the Defendants remain in breach. I am satisfied that I should deny leave on this basis.
8. Further, Order 2 rule 2 required the ‘appellant’ to set out the particulars of any alleged misdirection or error of law and set out distinct heads of the grounds. I find that the Defendants/Appellants grounds are vague and in general terms. They are bald assertions that I failed to consider a number of things.
  - a. Ground 1 - There is no merit in this ground as to the interpretation of “14 days” or “14 clear days”. The Defendants/Appellants have still not complied with the Unless Order.
  - b. Ground 2 - It is unclear what is meant by the “strength of the defense”. The Defendants/Appellants are in breach of the terms of the mortgage. Further, the Defendants/Appellants have filed no evidence as to why they failed to comply with

the Unless Order. I reject Mr. Swan's late attempt to say that the legal submissions are to be found in the evidence. This ground fails to meet the test.

- c. Ground 3 - This ground fails to meet the test. The Court has limited powers to delay the Bank's exercise of its right to the power of sale.

9. Further there was never an application for an extension of time.

10. Also, on 5 June 2025, I had made clear to counsel for the Defendants, the consequences of failure to comply with the Unless Order.

#### The Stay Application

11. In respect of the Stay Application, I bear in mind Rules of the Supreme Court Order 45 rule 11.

##### ***45/11 Matters occurring after judgment: stay of execution, etc.***

*Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.*

12. In my view, the Court's jurisdiction to delay or adjourn proceedings relating to a Bank's power of sale is limited to circumstances where there is evidence that the entirety of the debt can be repaid. There is no such evidence, other than attempts continue to secure such funding. I am guided by the decisions in the following cases:

- a. *The Hong Kong and Shanghai Banking Corporation Ltd v Newocean Energy Holdings Ltd* [2022] CA (Bda) 21 Civ at paragraph 26.
- b. *White and White v Trew* [2021] SC (Bda) 67 Com at paragraph 42; and
- c. *Clarien Bank Ltd v Robinson et al* [2017] SC (Bda) 83 Civ at paragraph 84 – 86.

13. I am satisfied that the test has not been met to grant a stay in this matter on Order 45 rule 11 or on any equitable grounds and as any appeal is doomed to fail. The applications are denied.

Dated 9 December 2025



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**HON. MR. LARRY MUSSENDEN**  
**CHIEF JUSTICE OF THE SUPREME COURT**