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**NOTICE TO PARTIES OF THE COURT'S
MEMORANDUM OF REASONS FOR DECISION**

APPLICATION NO COA2024APP00056

PARISH COURT CIVIL APPEAL NO COA2024PCCV00001

BETWEEN	NATIONAL COMMERCIAL BANK JAMAICA LIMITED	APPLICANT
AND	DERRICK VAN MCLENNON	RESPONDENT

TAKE NOTICE that this matter was heard by the Hon Mr Justice Brooks P on 2 April 2024, with Mr Hadrian Christie instructed by HRC Law for the applicant and Mr Derrick Van McLennon appearing in person and unrepresented.

TAKE FURTHER NOTICE that the court's memorandum of reasons, as delivered orally in open court by Brooks P on 5 April 2024, is as follows:

[1] This is National Commercial Bank's ('NCB' or 'the bank') application to stay the order of Her Honour Mrs Dennis McPherson ('the learned judge') made on 6 December 2023 in the Corporate Area Parish Court held at Sutton Street for NCB to release the certificate of title ('the title') for a 2001 motor vehicle with registration plates 7646 ES ('the motor vehicle'), pending the hearing of the appeal.

[2] Mr McLennon obtained a loan from NCB to purchase the motor vehicle and used it as security for the loan. He executed a bill of sale over the motor vehicle on 5 January 2009 and delivered the title for the motor vehicle to NCB. Mr McLennon repaid the motor vehicle loan. Although NCB initially indicated that it would have given him a discharge of the bill of sale and release the title to him,

the bank changed its position and withheld both. The reason it gave was that Mr McLennon had outstanding balances on his credit cards with NCB. Displeased by that decision, Mr McLennon filed a claim against NCB in the Parish Court for the release of the title.

[3] NCB asserted that the bill of sale that Mr McLennon signed authorised it to use the security for any and all monies that Mr McLennon owed to it, whether or not it was connected to the motor vehicle.

[4] The learned judge, having considered the contending positions, decided that NCB was not entitled to its stance. NCB has appealed from that decision.

[5] Counsel for NCB, Mr Hadrian Christie, contended that NCB's appeal has a realistic prospect of success. He argued that the bill of sale included an "all monies" clause, which provided that all monies owing to NCB should be covered by the bill of sale. He advanced that the bill of sales' net was wide enough to include the outstanding balances on the credit cards. He postulated that the learned judge accepted that Mr McLennon owed the credit card debt but she erred in her interpretation of the bill of sale.

[6] Learned counsel argued that, in considering the grant of a stay of execution of the learned judge's order, the balance of convenience favours NCB, since, if the stay is not granted, the possibility exists that NCB may lose its security. Additionally, NCB cannot later bring a claim for breach of contract since the limitation period has expired. Consequently, he noted that if the stay is not granted, this aspect of the appeal may be nugatory.

[7] Mr McLennon argued that NCB does not have a realistic prospect of success. He insisted that he is the owner of the motor vehicle, and having repaid the motor vehicle loan on 18 December 2013, NCB is wrong in refusing to return the title to him. Although said in different words, he contended that the balance of convenience is in his favour because although he is the owner of the motor vehicle,

he has been unable to use it since April 2017, since it can neither be insured nor licenced. He submitted that the learned judge's order should not be stayed and the certificate of title should be handed over to him.

[8] In determining whether to grant the stay of execution, the proper approach is to make an order that best aligns with the interests of justice (see **Combi (Singapore) Pte Limited v Ramnath Sriram and Another** [1997] EWCA 2164). The first question to be considered, in that context, is whether there is some merit in NCB's appeal. The second question is whether granting the stay would result in less injustice between the parties (see para. [48] of **Kenneth Boswell v Selnor Developments Limited** [2017] JMCA App 30). This determination necessarily requires a consideration of the bill of sale. Section 2(a) of the bill of sale reads:

"For the same consideration aforesaid [Mr McLennon] HEREBY COVENANTS and agrees with [NCB] so long as any moneys due and owing by [Mr McLennon] to [NCB] shall remain unpaid, as follows:-

- (a) **To repay to [NCB] all moneys as are now or shall hereafter from time to time become owing to [NCB] from [Mr McLennon] whether in respect of advances on current account, moneys advanced or paid to or for the use of [Mr McLennon] or charges incurred on his account or in respect of negotiable instruments drawn, accepted or endorsed by or on behalf of [Mr McLennon] and discounted or paid or held by [NCB] either at [Mr McLennon's] request or in the course of business or otherwise and all moneys which [Mr McLennon] shall become liable to pay to [NCB] in any manner or on any account whatsoever and whether any such moneys shall be paid to or incurred on behalf of [Mr McLennon] alone or jointly with any other person, firm or company and whether as principal or surety together with interest on principal and interest on interest thereon, calculated on daily balances using monthly rests, at the initial rate set out in Item 2 of the First Schedule or at such other rate or rates**

of interest as [NCB] shall from time to time charge and payable at such time or times as [NCB] shall from time to time specify together with commission and all usual and accustomed bank charges, legal and other costs, charges and expenses..." (All caps as in original, emphasis supplied)

[9] An important part of the learned judge's reasoning is that the bill of sale does not expressly state that Mr McLennon must pay NCB sums owing on his credit cards. It is accepted that the bill of sale does not expressly so state, but it is arguable that a credit card is a means by which the holder of the credit card may borrow funds from, and become indebted to, the bank. Those funds would represent money "advanced" to Mr McLennon for his use. This situation is contemplated in section 2 of the bill of sale. This suggests that there is merit in NCB's appeal.

[10] Both parties have indicated that they would suffer hardship. Mr McLennon has repaid his motor vehicle loan but is unable to use the motor vehicle. He asserts that the longer NCB withholds the title, the less the vehicle is worth. NCB contends that it would risk losing its security if it handed the certificate of title over to Mr McLennon. This situation, it says, is more perilous in the face of the expiration of the limitation period, which means that if NCB handed over the title to Mr McLennon and he disposed of or alienated the motor vehicle in any way, NCB would not be able to recover the funds owed to it.

[11] The decision that best accords with justice, therefore, is to grant the stay of execution and order an expeditious hearing of the appeal, to prevent further hardship to the parties.

[12] The orders are therefore:

1. The application for a stay of the order of the learned Judge of the Parish Court, made on 6 December 2023, is granted.

2. The order of the learned Judge of the Parish Court made on 6 December 2023, ordering National Commercial Bank to release the certificate of title for a 2001 Honda Odyssey motor vehicle with registration no 7646 ES, engine no F23Z42001592 and chassis no JHMRA68401C201611, is stayed pending the hearing of the appeal.
3. The hearing of the appeal is set for the week commencing on 8 April 2024.
4. Costs to be costs in the appeal.