



[2015]JMSC Civ. 7

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2012 HCV 02998**

BETWEEN	JOHN LEDGISTER	1ST CLAIMANT
AND	SUNNYCREST ENTERPRISES LTD	2ND CLAIMANT
AND	JAMAICA REDEVELOPMENT FOUNDATION INC.	DEFENDANT

Mr. John Ledgister in Person for the 2nd Claimant

Mrs. Sandra Minott-Phillips, QC instructed by Myers Fletcher and Gordon for the Defendant

Heard: January 15, 2015

CIVIL PROCEDURE – APPLICATION FOR COURT ORDERS – REQUEST FOR SPECIFIC DISCLOSURE – APPLICATION PREVIOUSLY MADE AND ORDERS GRANTED BY THE COURT – WHETHER THE SAME APPLICATION MAY BE HEARD AGAIN BY A DIFFERENT COURT FOR THE SAME ORDERS – PART 28 OF THE CIVIL PROCEDURE RULES (CPR) 2002 PART 28 AND 34.

IN CHAMBERS

SHELLY-WILLIAMS, J (AG)

THE CLAIM

[1] On January 15th 2015 I heard the application and rendered my decision and promised to give my reasons in writing. I do so now.

[2] The 1st Claimant is the Managing Director of the 2nd Claimant Company. Both Claimants are unrepresented. The 1st Claimant represented both himself and the 2nd

Claimant at the hearing in chambers. The Claimants filed a Fixed Date Claim Form on the 31st of May 2012 against the Defendant for the following orders namely:

- a. 'An order for Discharge of Lien registered as Volume 1175 Folio 850 of the Registered Book of Titles'.
- b. 'An order for Discharge of Mortgage #729730 and #832252 for parcel Volume 1175, Folio 850 of the Registered Book of Titles'.
- c. 'An order for the return of Claimant's Duplicate Certificate of Title registered at Volume 1175 Folio 850'.
- d. 'An order to make null and void the document 'Agreement to Restructure Existing Debt', effective July 8, 2005'.
- e. 'An injunction to prevent the Defendant, its servants and/or agents from selling or offering for sale, by way of Auction or otherwise, premises comprised in Certificate of Titles registered at Volume 1175, Folio 850 of the Registered Book of Titles.'

[3] An affidavit in support of the Fixed Date Claim Form was signed and filed by the 1st Claimant Mr. John Ledgister. Subsequent to the filling of the Fixed date Claim Form on the 1st of June 2012 the matter came up for hearing before Anderson J who made an order for the Fixed date Claim filed on the 31st of May 2012 to stand as a Claim Form and for the Claimant to file Particulars of Claim. A Defence to that claim was filed by the Defendant.

FIRST APPLICATION

[4] On the 10th of April 2014 the Claimant Mr. John Ledgister filed a "Notice of Application for Consolidated Court Orders". Attached to that application was an affidavit in support. This application was for;

- a. 'Immediate emergency interim payments',
- b. 'Specific disclosure'.
- c. 'Inspection of documents'.
- d. 'Unless to comply with request for information',
- e. 'Accounts, Inquiries',
- f. 'Judgment on admission',

- g. 'Judgment on Preliminary issues',
- h. 'Judgment on striking out of statement of case'.
- i. 'And other related orders'.

[5] The Application was broken into different categories namely;-

- a. 'The defendant to give/facilitate specific disclosure, inspection of documents, request for information, accounts and inquiries to satisfy the validation, verification and authentication process'.
- b. 'Forensic inspection and the description of the step by step process and chain of custody, possession and application/Claimant's transactional documentation'.
- c. 'Forensic investigation, examination and specific disclosure of documents including key word searches of respond/defendant computers/database'.
- d. 'Immediate judgment on a preliminary issue unless Respondent/defendant gives specific disclosure pursuant to all CPRs. Rules and enactments relied on above'.
- e. 'Judgment if Defendants refuse to file a Defence to Amended Fixed Date Claim or Answer to Claimant's affidavit filed on February 7, 2013'.
- f. 'Court to remedy breaches of Failures by Justice Donald McIntosh and Justice Davis Batts'.
- g. 'Judgment on admission pursuant to CPR 14.1(1) and (2), 14.4(1)'.
- h. 'Respondent to immediately repay with interest money extorted from Appellant/Claimant since 2005 to 2009'.
- i. 'Sanctions, cost and damages...'
- j. 'Criminal Investigation in to conduct of the Respondent/Defendant, its employees...'
- k. Release from the mortgage pursuant to CPR 66.1 (1f)...'
- l. 'Damages, Expectation, exemplary and aggravated damages'.
- m. 'Accounting of every dollar profit made by criminal conspirators'.
- n. 'Costs of this application...'
- o. 'Orders for interest'.

p. 'Any other relief the court deems just and fitting'.

[6] This was the second such application that was being filed by the Claimants. The same application was filed on the 14th of June 2013 and was previously heard by Batts J. at which time the learned judge made a Formal Order dated the 23rd of July 2013.

[7] At the hearing of this present application on the 15th of January 2015, the Claimant was asked to point out if there were any orders that he was requesting that were different from the orders sought in the first application before Batts J. The Claimant indicated that he had requested additional orders in the application before Batts J. The Claimant was given an opportunity to review the two applications. The Claimant indicated that he had applied for additional orders in the Notice of Application filed on the 14th of June 2013 and heard by Batts J. He went on to point out what he considered to be the additional orders sought then.

[8] The Claimant was then asked to point out, in relation to the present application, apart from the additional orders that had been sought in the application before Batts J., the areas which he considered to be different from the application of the 13th of June 2013. The Claimant indicated that this application, did not differ at all from the application previously made before Batts J.

[9] The Claimant however indicated that he was permitted to make this application pursuant to the Civil Procedure Rule 2002 as amended (CPR) after standard disclosure had been made. The Claimant failed to indicate the particular rule on which he was relying.

[10] The Claimant indicated that he was relying on the grounds set out in his application before the court. The grounds set out in this application may be summarized as follows:

- a. 'The Law of Property (miscellaneous Provisions) Act 1989 (c 34) in the United Act of Parliamentary which lays down a number of important provisions for English Property law'.

- b. 'Section 1 that a deed is to be signed and witnessed by two people'.
- c. 'Section 2 requirement that ' a sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressed agreed in one document or, where contracts are exchanged , in each'.
- d. 'That the Respondent/defendant indicated that they had all records related to loans in their possession in their letter dated February 26, 2002...'

[11] Filed along with the application was a list of documents headed 'REQUEST FOR SPECIFIC DISCLOSURE OF MISSING DOCUMENTS'. The list was four pages long and had a number of documents listed in it.

[12] The list included, amongst other items, the request for the entire file regarding reassignment and transfer arrangements of the 'debt' claim from NCB to FINSAC to JRFI and all related agents. The court made enquires if the Claimant was requesting the documents for himself or for all the persons with debt claims that were assigned from NCB to FINSAC and to JRFI. The Claimant indicated that he wanted the information for all persons not just for himself.

[13] At the time Batts J. heard the first application he made case management orders. The Case Management order from Batts J. stated that:

"UPON THE CLAIMANT'S APPLICATION FOR CONSOLIDATED COURT ORDERS dated and filed June 14, 2013, coming on for hearing at the CASE MANAGEMENT CONFERENCE held before me on this day and after hearing Mr. John Legdister, appearing in person for the Claimants, and Sandra Minott-Phillips, QC and Mr. Gavin Goffe, instructed by Myers, Fletcher & Gordon, attorneys-at-law for the Defendant, IT IS HEREBY ORDERD THAT;

1. *There be standard disclosure on or before September 20, 2013.*
2. *Inspection is to occur by October 4, 2013.*
3. *Mediation is dispensed with.*

4. *There be an exchange of witness statements on or before November 22, 2013.*
5. *Witnesses are limited to 4 for each party.*
6. *Trial will be by Judge alone in open court.*
7. *Listing Questionnaires are to be filed and served on or before March 7, 2014.*
8. *The Pre-trial Review is set for March 17, 2014 at 10:30 am for 2 hours.*
9. *The trial is fixed for 3 days from July 23-25, 2014.*
10. *Costs of the Case Management Conference are in the claim.*
11. *The Defendant's attorney-at-law are to prepare, file and serve this Formal Order."*

[14] Counsel for the Defendant in response to this application indicated that the Claimant had already made the application before Batts J and that after the matters were considered a Case Management Order was made that did not include the orders that had been requested.

[15] Counsel for the Defendant went on to indicate that:

- a. The case is essentially one where an agreement was signed between the Claimants and the Defendant.
- b. Prior to the agreement being signed by the Claimants they had obtained legal advice.
- c. The claim that was filed by the Claimants was seeking a declaration from the court that the agreement signed between the parties was null and void and if the Claimant is successful in his application then the Claimant would be entitled to all the orders requested in his Claim Form.

[16] Counsel for the Defendant went on to indicate that the Claimant was seeking orders in the court that the Defendant would be unable to fulfil as the application entailed requesting documents from an institution, namely NCB, who is not a party to the Claim.

[17] Counsel for the Defendant also indicated that:

- a. Standard disclosure was sufficient for each party to provide documents relevant in the case.
- b. The documents that are exhibited to the court are to be taken as authentic unless it was a case that the Claimant was saying that the documents were not authentic.
- c. The Claimant had the documents which go to whether the restructured agreement was signed under duress.

[18] The Defendant's attorney pointed to Rule 28.6 of the CPR that deals with specific disclosure and indicated that an application can be made on any occasion including case management and had already been made by the Claimant

RULING

[19] An application for specific disclosure can be renewed but the applicant would have to satisfy the court in relation to Section 28.6 (5) of the CPR, which states that:

'An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.'

The issue in the proceeding was whether the agreement between the parties should be made null and void. The specific disclosure requested concerned was for:-

- a. All original Promissory Notes with original wet signatures for authentication.
- b. Loan, mortgage deeds and security documents for lien on property, related applications, contracts etc.
- c. Various relevant assignment mortgage transfer documentation.
- d. Insurance documents.
- e. Forensic investigation, examination, and specific disclosure of documents including key word searches of the Respondent/Defendant computers/database.

[20] Rule 28.7(1) of the CPR states that:

“When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save cost”.

[21] In considering the application filed on the 10th of April 2014 and the affidavit in support the court’s ruling is that the documents being requested concerned an entity that is not before the court i.e. the National Commercial Bank. The agreement between the Claimant and the Defendant, which is the subject matter of the Claim before the court, is dated the 4th of September 2005. The list of documents, except for four documents, concerned documents from National Commercial Bank or documents that existed prior to 2005. Based on the above the Claimant has not presented any cogent reason to depart from the decision of Batts J. refusing specific disclosure in the application of 14th of June 2013. The application before me being in the same vein specific disclosure is refused.

SECOND APPLICATION

[22] The second application before the court was headed ‘REQUEST FOR FURTHER INFORMATION AND INTERROGATORY QUESTIONS’.

[23] This application listed a number of questions that the Claimants sought answers. The first set of questions numbered one to forty-six arose out of the witness statement of Mr. Raymond McBride who is the witness for the Defendant. The questions were directed to each paragraph of the witness statement. The questions included:-

- a. questions about the qualifications of the witness and whether he is an attorney-at-law as well as his work experience,
- b. how the defendants acquired the ‘debt’ claimed from Sunnycrest Enterprises Limited,
- c. questions about interest rates, penalty charges,

- d. a statement in the Gleaner quoting the late accountant for Defendant Mr. Dennis,
- e. correspondence between the first named Claimant and the NCB dating from 1997-2002,
- f. and even various correspondence between the Claimants and Joslin/Robinson including a letter in 2003 regarding undue influence.

[24] The second set of questions were headed "AGREEMENT TO RESTRUCTURE EXISTING DEBT". The questions were again targeting the witness statement of Mr. Mc Bride seeking to ask him:-

- a. questions such as whether it could be considered valid if the contract was signed under undue influence and economic duress,
- b. about a letter dated June 7, 2005 from the Claimant to Joslin/Whitman about the Claimant feeling intimidated,
- c. if Claimants were given an opportunity to negotiate the contract,
- d. what was the value of legal advise,
- e. what was the basis on the calculation of the debt,
- f. what was the benefit of legal advise,
- g. what was the basis of offering an unsolicited reduction,
- h. since the debt demand cannot be validated verified and authenticated then there was no lawful debt owing.

[25] The third section of the application concerned questions for "VALUATIONS BY DAVID THWAITES". In this section 101 questions were asked of the valuator. The questions included:-

- a. how the valuator came by his valuation,
- b. did he follow the proper procedure,
- c. whether he incorrectly valued the land as agricultural land,
- d. the instructions he received for the valuation,
- e. date of inspection,
- f. whether he trespassed on the property to conduct his valuation,
- g. if he used Heritage reports,

- h. why the owner was not contacted for accurate details.

[26] The last set of questions concerned "ADVERTISEMENT OF PROPERTY FOR SALE". These questions concerned the dates the property was advertised for sale, who authorized it, who authorized the advertisement for sale in the sum of US \$900,000, and how many inquiries and negotiations took place and by whom since the advertising of the property.

[27] The Claimant argued that he required that these questions be answered before he could proceed with the case.

[28] The Defendant's counsel indicated that the valuator is not being called as a witness. In addition there was no order for expert witness. The Defendant's counsel also indicated that:

- a. There was no need for questions to the valuator as the property had not been sold and that there is an Injunction in place that bars the sale of the property.
- b. The questions for the valuator are not valid nor are the questions for about the advertisements.
- c. The defendant was not in a position to answer questions in relation to Mr. Thwaites.

RULING

[29] The request for information and interrogatory questions will be dealt with based on the different sections of the application. In relation to the questions directed to Mr. McBride, the witness for the defendant, the majority of the questions seem to be ones to be asked in cross examination which the Claimant will be allowed to do at the day of trial. A number of the questions concern information that is not part of the claim. The Claimant has not satisfied the court pursuant to Rule 34 of the CPR and therefore the application is refused.

[30] The section of the application concerning Agreement to restructure existing debt, concerns questions that are either for cross examination or for submission.

[31] The Section labelled 'Valuations by David Thwaites' are questions concerning a valuation that was disclosed by the Defendant to the Claimants. Mr. Thwaites is not being called by the Defendant as a witness. The questions being directed at Mr. Thwaites concerns a property that has an Injunction presently on it and cannot be sold until the court decides on the issue of the contract itself i.e. whether it was signed under undue influence and economic duress. This also applies for the questions relating to the advertising of the property.

[32] The Claimant has not satisfied the court pursuant to Rule 34 of the CPR that the request should be made for further information and interrogatory questions. Rule 34 of the CPR allows a party to make a request for information and it lays out the procedure by which this request is to be made. Rule 34.2 (2) of the CPR states that, '*an order may not be made under this rule unless it is necessary in order to dispose fairly of the claim or to save cost.*'

[33] Rule 34.2(3) of the CPR states that when considering whether to make an order the court must have regard to the likely benefit which will result if the information is given.

[34] Orders;-

1. The Claimant's application for consolidated Court Orders (including specific disclosure) filed on 10th April 2014 is the same application dated 14th June 2013 heard by Batts J who made a Formal Order on 23rd July 2013. The Order of Batts J made on 23rd July 2013 stands.
2. The Claimant's Request for Information & Interrogatory Questions filed 10th April 2014 is refused.
3. Leave to appeal granted.
4. Skeleton submissions to be filed and served by the Claimant by 4th March 2015.
5. Skeleton Submissions to be filed and served by the Defendant by 18th March

2015.

6. Volumes 1 and 2 of the Judge's Bundle prepared by Defendant's Attorney-at-Law will be used as the Judge's trial bundle.
7. Supplemental Judge's bundle consisting of:
 - a. Case Management Conference Orders of Batts J dated 23rd July 2013;
 - b. Case Management Conference Orders of Sykes J dated February 21, 2014;
 - c. Claimants List of Documents;
 - d. Defendant's List of Documents;
 - e. Claimant's Listing Questionnaire and Pre-trial Memorandum;
 - f. Defendant's Listing Questionnaire and Pre-trial Memorandum;
 - g. Witness Statement of John Ledgister;
 - h. Witness Statement of Raymond McBride;
 - i. Claimant's abovementioned Skeleton Submissions;
 - j. Defendant's abovementioned Skeleton Submissions in response: and
 - k. The Formal Order dated 15th January 2015 is to be prepared by the Defendant's Attorney-at-Law and filed by 8th April 2015
6. Costs of Pre-trial Review are to be in the claim.
7. Defendant's Attorney to prepare, file and serve Orders herein.