



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION**

CLAIM NO. 2008 HCV 00913

BETWEEN	HOLY CHURCH OF THE LIVING GOD	CLAIMANT
AND	JAMAICA CIRCUIT OF REMNANT CHURCHES OF GOD (7TH DAY)	1ST DEFENDANT
AND	QUBERT BEALE	2ND DEFENDANT

Fixed Date Claim –Declaratory Relief –Default Order –Whether entitlement to relief automatic -Whether cause of action proved.

**Mr. Michael Palmer instructed by Palmer Smart & Co for Claimant
Mr. Kipcho West for 1st and 2nd Defendants**

HEARD: 3rd December 2013

CORAM: THE HON. MR. JUSTICE DAVID BATTS

1. On the 3rd December 2013 I dismissed the claim and gave judgment for the 1st and 2nd Defendants with costs to be taxed if not agreed. I promised then to put my reasons in writing at a later date. This written judgment is the fulfilment of that promise.
2. This matter commenced by Fixed Date Claim Form on the 1st February 2007.
The Claimant claimed:

- “1. A Declaration as to entitlement to property and possession of property
2. Attorney at law costs
3. Costs
4. Any further or other relief that this Honourable Court may think just”

The property is described in the claim form as “property which forms part of lands part of Big Bridge in the parish of Westmoreland.”

3. The Claim Form is supported by the affidavit of Bishop Leroy Ricketts dated 18th day of August 2008. He also filed affidavits dated 22nd September 2008. The Claimant also filed the following Affidavits in support of its claim: Calbert Morgan dated 12th May 2010, Densley Reid dated 12th May 2010, Nathan Mullings 12th May 2010. These latter all vouch that the Claimant is a religious denomination registered with the Registrar of Companies as a Company limited by guarantee and that the board of the company has authorised Bishop Leroy Ricketts to pursue an action.
4. By Affidavit dated 9th September 2010 Qubert Beale, the 2nd Defendant, opposed the claim on behalf of the 1st and 2nd Defendants.
5. Perusal of the file reveals that this matter has run the gamut of interlocutory proceedings. On the 7th of October 2008 the Court referred the case to mediation. By report dated the 18th of February 2009, the mediator stated “the parties met but were unable to arrive at an agreement”. The matter was therefore scheduled for case management on the 28th of September 2009. This was adjourned to the 2nd of March 2010. On that date Orders were made for disclosure as well as filing of Affidavits and trial in chambers on the 4th & 5th October 2010. On the 4th of October 2010, the Claimants not being in attendance, the matter was adjourned for a date to be fixed by the registrar. By Notice of Adjourned Hearing filed on the 2nd February 2011, the trial was re-listed for the 23rd June 2011.
6. On the 2nd of June 2011, the Claimant filed an application for judgement in default of defence pursuant to part 12.10(4) and 5 of the Civil Procedure Rules 2002. On the 23rd of June 2011 an Order was made re-listing the matter for the 8th of September 2011 at 9:45am and extending the time to give standard disclosure. On the 8th of September 2011 the time for the Defendant to give standard disclosure, was extended to the 16th of September 2011. Orders were

made for the filing of further Affidavits. A pre-trial review was set for the 19th of July 2012 and trial for the 1st and 2nd of October 2012. All Affiants were ordered present to be cross examined. On the 19th of July 2012, the pre-trial review date was adjourned to the 18th of September 2012 at 2:00pm for half an hour. On the 18th of September 2012, by consent, the trial dates of the 1st and 2nd of October 2012 were vacated and trial dates fixed for the 8th and 9th of April 2013. The pre-trial review was adjourned to the 12th February 2013 and time for standard disclosure extended to the 30th of November 2012. As I write this judgment, it came to my attention that this latter order was made by me sitting in Chambers on the 18th of September 2012. This was not brought to my attention on the trial date.

7. At the adjourned pre-trial review of the 12th of February 2013, the following Order was made,

“Unless the Defendants make standard (disclosure) of documents on or before May 24 2013 then the Defendant’s case is struck out”.

Orders for inspection of documents were made and the trial dates vacated. Pre trial review was adjourned to September 17th 2013 and trial date set for 8th and 9th January 2014. On the 17th of September 2013 the pre trial review was further adjourned to 3rd of October 2013 at 3:30pm. Notice of Adjourned Hearing was ordered to be served on the Defendants. On the 3rd of October 2013, an Order was made that, the Defendants if so advised, may apply for relief from sanctions imposed by Order dated 12th February 2013. The pre-trial review was adjourned to 3rd December 2013. In the course of these several case management and pre-trial review dates, the matter was listed before several different judges of the Supreme Court.

8. On the 3rd of December 2013, the pre-trial review came on for hearing before me. The defendants, through their counsel indicated they would not be applying for relief from sanctions. The 2nd Defendant was present along with other representatives of the 1st Defendant and both clearly understood the

consequence of such a course. They indicated that they were prepared to leave the building and hand over all documents in their possession to the persons now worshipping in the church. I inquired of the Claimant whether that was an accepted avenue for peaceful settlement of the matter. The Claimants representative said no. This he said was because his members were no longer worshipping there and so any decision by the persons worshipping there as to who was to be their pastor would not likely be in his favour. He explained that those now worshipping there had been the subject of a baptismal ritual that differed from that of his church.

9. I explained that as the claim was a Fixed Date Claim seeking a Declaration, the fact that the Defendants case stood as struck out (by virtue of an Unless Order, see paragraph 7 above) did not mean that a judgment for the Claimant was automatic. This was not a case where there were pleadings. Further a Declaration of the Court was a matter to which the Court must give consideration. It is unusual to say the least for a Declaratory Judgment to be the subject of automatic default orders.
10. I therefore enquired of counsel for the Claimant what was the evidence of his client's entitlement to ownership of the land in question. Counsel (and his client who frequently interjected) indicated that ownership was not being pursued. The land they said was "leased land". Their claim was for possession they wished a Declaration that they were entitled to possession.
11. When asked what was the basis of the claim to possession I was told that the Affidavits contained proof of expenditures by the Claimant and its members, on the building which stood on the land. There is or was an account in which the member's contributions were made and the church building constructed. I then asked counsel whether he had evidence that his client was paying the rental for this leased land. He indicated they did not as the rental was being paid it seems, by the Defendants. I therefore enquired of counsel on what legal basis was a possessory Declaration being sought. Was it by virtue of the limitation of actions

or otherwise. Counsel indicated that his clients were not in possession but they base their claim on the basis that they had constructed their building on the land. They had he said no claim in relation to the land, it was only the building. I indicated to counsel that it appears to me that the claim as formulated had no prospect of success and that I would be dismissing the claim.

12. My reasons for adopting this course of action may be shortly stated. It is I believe trite law that a structure which attaches to the land forms part of the land and becomes a part of the realty. Save for the somewhat controversial chattel house of Barbados, there is in the common law no distinction to be drawn between the building and the land on which it has been constructed. In this case the Claimants have built a church on land owned by another and which has been leased or rented to a third party. The rental it was expressly admitted was being paid by a third party. On the face of it therefore, the entitlement to possession would be that of the person paying the rent unless there was evidence of permission or some further agreement.
13. The situation of the Claimant's claim does not materially improve when the Affidavits filed in support of the claim are perused. Mr. Leroy Ricketts in his Affidavit of the 18th of August 2008, states that one pastor Wesley Daley pastored a church at Broughton. He was an executive board member of the church. In 1989 the congregation at Broughton decided to build another church at Big Bridge. Pastor Daley with the congregation's approval approached El Wardio and Eunice Badoo and in or around 1990, secured a 99 year lease on behalf of the church. Rental was paid monthly from contributions and offerings from members of the church. Property tax was paid through Pastor Daley. He said the building was constructed in 1990.

“13. With contributions from community members, the Member of Parliament, a credit facility offered by a Hardware store, donations from the business community and other members of the Church from all across Jamaica, the Church at Big Bridge was built.”

14. He said a few members from the Broughton Church left that church to start services at Big Bridge. Mr. Daley was the pastor for both Broughton and Big Bridge. In 1992 Mr. Ricketts became an ordained pastor and assistant to Mr. Daley. Mr. Ricketts is presently a bishop and has been a member of the executive board since 2002.
15. On the 27th of September 1995 the church at big Bridge established an account at the Savanna La Mar branch of the National Commercial Bank. The account was in the names of the Holy Church of the Living God. Signatories were Pastor Wesley Daley, Leroy Ricketts (Treasurer) George Brown and Richard Russell as Deacons. Tensions developed between Pastor Daley and Mr. Ricketts. Pastor Daley asked the Board to ask Mr. Ricketts to leave the church but the Board did not accede to the request. Pastor Daley told the Board and the congregation that he had contributed \$144,000.00 to the building at Big Bridge and had repaid himself from tithes and offerings. Also he had repaid the Hardware and all that was owed to them from tithes and offerings. On the 13th March 1997, Pastor Daley called for Mr. Ricketts and some other members to leave the Church and said if they were found on the property misbehaving they would be locked up.
16. In consequence Mr. Ricketts states at paragraph 26 of his Affidavit on the 3rd May 1997, himself and 17 other members plus children, left the church at Big Bridge and joined another church branch at Townhead. About 10 members of Big Bridge remained. He states,
 - “27. The Church at Big Bridge remained a member of the body of the Holy Church of the Living God even after these members left.”
17. Pastor Daley continued in that role until October 2006 when he migrated to the United States and the church continued being a member of the Claimant Church. Pastor Daley in or around September 2006 had invited the 2nd Defendant to assume the position of pastor of both Big Bridge and Broughton churches. The 2nd Defendant was a non-member of the Claimant Church. In an undated letter

some members had asked another person to assume leadership of both churches.

18. The Second Defendant assumed leadership of the Big Bridge and Broughton churches which then had still remained a member of the Holy Church of the Living God. In December 2006 the sign at the Big Bridge Church was changed and read Remnants Church of God 7th Day, the First Defendant Church. The doctrines have since been changed to that of the First Defendant's.
19. The Big Bridge Church is now being operated as a member of the Jamaica Circuit of Remnant Churches of God (7th Day) and not as a member of the Claimant's church. The Affidavit details the differences in doctrine and practices. It is also pointed out that tithes and offerings which previously went to the bishop of the Claimant Church have since ceased.
20. In his Affidavit dated 22nd September 2008, Bishop Leroy Ricketts attached a copy of the credentials of Pastor Wesley Daley which were issued by the Holy Church of the Living God on the 24th November 1991. The general headquarters of that church being 548 Georgetown Street Lexington Kentucky U.S.A.
21. It is apparent that there is no evidence pertaining to the payment of rental currently or to the content of the 99 year lease negotiated by Pastor Daley. It must be assumed it was negotiated on behalf of the Claimant. What is clear however is that the Claimant withdrew from the church at Bridgehead when Bishop Ricketts and 10 members left. Pastor Daley and those remaining clearly continued to pay the lease and operated a church. The evidence is unclear at best as to whether Pastor Daley operated under or by virtue of the Claimant. Pastor Daley and the members for the period 1997 to 2006 enjoyed possession undisturbed and must therefore be taken to have had assigned to them any lease agreement. They were paying the rent and hence were entitled to possession.
22. In 2006 the 2nd Defendant accepted the invitation and became pastor of the church. The members clearly acceded to that.

23. On the evidence it is difficult to see on what basis a Court would disturb the possession of a group of worshippers who had been paying rent and acting as tenants entitled to possession since 1997. The change of leadership did not it seems interrupt the possession of the members worshipping there.
24. For these reasons therefore I dismissed the claim as it has no real prospect of success at trial.
25. Let me observe that this is another one of those matters in which persons proceed by Fixed Date Claim Form even if becomes clear that issues of fact will arise. A claim with statements of case and with orders for witness statements tendered in open court may have been a more appropriate process. Primarily because assessment of damages and perhaps decisions as to the existence of resulting trusts are more justly dealt with by trial in open court. The real issues between the parties become crystallised when statements of case have been settled. Affidavits have a way of clouding the issues as they get lost in the evidence. In the circumstances of the case however this Court is not of the view that a Declaration as to entitlement to possession could be made in favour of the Claimant on the evidence tendered.
26. The claim is dismissed with Costs to the 1st and 2nd Defendants to be taxed if not agreed.

David Batts J
3rd February 2014