



[2023] JMCC Comm 13

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2022CD00481

BETWEEN	TRYALL CLUB, INC.	1ST CLAIMANT
BETWEEN	TRYALL GOLF & BEACH CLUB LIMITED	2ND CLAIMANT
AND	JACQUES GRAHAM	1ST DEFENDANT
AND	ADVANCED INTERNATIONAL INVESTMENT INCORPORATED	2ND DEFENDANT

Amanda Montague and Immanuel Williams instructed by Myers, Fletcher & Gordon for the Claimants.

Courtney M. Williams of Counsel for the Defendants.

IN CHAMBERS

Heard: 30th January, 27th March and 28th April 2023

Civil Procedure - Whether debt claim can be dealt with summarily at first hearing of fixed date claim form pursuant to rule 27.2(8) of the CPR - Whether land valuation required in accordance with CPR rule 55.2(2)(c) where contract provides for the sale of land to discharge contractual debt.

C. BARNABY, J

INTRODUCTION AND ORDER

[1] The Claimants are affiliated companies which own and operate the Tryall Club (hereinafter called “the Club”), a private, exclusive members-only club located

in Hanover. The Club contains luxury villas which are usually rented to overseas guest. It is a rule of membership that property in the Club is to be held in the name of a corporation, LLC, Trust or other form of corporate ownership; with one member of the corporate entity designated as Proprietary Member and others joining as Non-Proprietary members. The 2nd Defendant is a company incorporated under the laws of Delaware in the United States of America and is the registered proprietor of property registered at Volume 1303 Folio 127 of the Register Book of Titles (hereinafter called “the Villa”). The 1st Defendant, a restaurateur, was accepted as a Proprietary Member of the Club and acted as the agent for the 2nd Defendant.

[2] By Fixed Date Claim Form filed 2nd November 2022 and supported by the Affidavit of Aram Zerunian sworn and filed on the said date, the Claimants seek to recover a contractual debt alleged to be owed by the Defendants; and to enforce a contractual and proprietary lien against the Villa on the basis that the Defendants have failed and /or refused to pay sums allegedly owed. The Claimants pray for the following relief.

- i. The sum of US\$215,811.16 (converted as at November 2, 2022) to J\$33,252,183.53 using the exchange rate of US\$1 to J\$154.08 and continuing, together with interest which continues to accrue at the rate of 18% per annum, before and after judgment.*
- ii. An order and declaration that the Claimants are entitled to immediately proceed to sell the Property registered at Volume 1303 Folio 127 of the Register Book of Titles at auction and the Claimants shall recover from the proceeds of sale the sums at (i) above, as well as:*
 - a. All fees, assessments, special assessments and expenses due pursuant to the By-laws;*
 - b. The costs and expenses of all legal proceedings and the sale, including reasonable attorney’s fees; and*
 - c. Interest on the sums at a. and b. at the rate of 18% per annum.*
- iii. **J\$68,000.00** representing Court Fees of J\$20,000.00 and Attorneys Fixed Costs of J\$48,000.00;*

iv. *Such further and other relief as this Honourable Court may deem fit.*

- [3] The initiating documents were served on the Defendants on 18th November 2022 and an Acknowledgement of Service filed on 12th December 2022. The Affidavit of Jacques Graham in Response to the Affidavit of Aram Zerunian in Support of Fixed Date Claim Form was sworn, filed and served on the 24th and 26th January 2023 respectively. On the oral application of Mr. Williams, counsel for the Defendants, the affidavit was permitted to stand as duly filed and served. It is the evidence of Mr. Graham at paragraph 3 of his affidavit that it is “*directly in response [to the Affidavit of Aram Zerunian filed in support of the Fixed Date Claim Form] on behalf of the Defendants.*”
- [4] In consequence of the Defendants being permitted to rely on the belated affidavit of Mr. Graham, the Claimants were also permitted, without objection, to rely on the Affidavit of Aram Zerunian in Response to the Affidavit of Jacques Graham, a copy of which had been previously exhibited to affidavit evidence served on the Defendants ahead of the hearing. The Defendants were thereby advised that the Claimants would request that the claim be dealt with summarily at the first hearing, pursuant to rule 27.2(8) of the CPR. The said affidavit in response was sworn on 30th January 2023 and filed on 1st February 2023 as undertaken by counsel for the Claimants.
- [5] The application to determine the claim summarily was duly advanced by Ms. Montague at the first hearing of the fixed date claim form on 30th January 2023. After hearing the submissions of the parties in those regards, a decision on the Claimants’ application was reserved to 27th March 2023. Subsequent to the delivery of the promised decision on 27th March 2023, the judgment of Dunbar-Green J (as she then was) in **Shernett Manning v Twin Acres Development Company Limited and others** [2017] JMSC Civ 54 - which concerned the applicability of Part 55 of the CPR (which deals with the sale of land by order of the court) to the sale of land in mortgage claims to which Part 66 applies - was brought to the attention of the court by the Claimants and considered on 28th April 2023.
- [6] For reasons set out subsequently, I find that the claim is appropriately dealt with summarily and make the following orders.

1. Judgment for the Claimants against the Defendants in the sum of US\$273,748.08 being the amount owed including interest as at 31st December 2022 and continuing.
2. The Claimants are entitled to interest at 18% per annum as prescribed in article VI section 11 of the Bylaws.
3. There being no dispute that the power reserved to the Claimants to sell the Villa for delinquency has crystalized, it is declared that the Claimants have the power under the Bylaws to sell the Villa to recover the sums owed to them by the Defendants, pursuant to the Bylaws.
4. The Claimants are to file and serve a current valuation of the Villa to enable the court to give directions for sale, specifically the fixing of a reserved price ahead of the sale.
5. Upon the filing and service of the valuation aforesaid, the parties are to jointly approach the Registrar for a date to be fixed for the giving of directions for sale.¹
6. Costs to the Claimants in the sum of J\$68,000.00 representing Court Fees of J\$20,000.00, and Attorneys Fixed Costs of J\$48,000.00.
7. The Claimants Attorneys-at-Law are to prepare, file and serve this order.

REASONS

[7] Pursuant to CPR rule 27.2(8), the court at the first hearing of a fixed date claim form is empowered to treat the first hearing as the trial of the claim where it is undefended or where it considers that the claim is one which can be dealt with summarily. Although no authorities were cited by the parties, I find guidance in the dictum of F. Williams JA in **Dale Austin v the Public Service Commission and the Attorney General** [2016] JMCA Civ 46 at paragraph [68], that whether or not a matter is to be treated with summarily is based on the exercise of the discretion of the court; and the following dictum of Laing J in

¹ Orders 3 to 5 were made on 28th April 2023 consequent on the revocation of the earlier order made on 27th March 2023 refusing an order and declaration that the Claimants were "entitled to **immediately** proceed to sell" the Defendants' Villa. [Emphasis added]

Hasheba Development Company Limited v Petroleum Corporation of Jamaica Limited and others [2020] JMCC Comm 17, paragraph [23]:

... dealing with a claim summarily does not mean entering judgment. The claimant still has to prove that he is entitled to the relief sought and the court must conduct a trial albeit in a summary way...

- [8] It is to this assessment that I now turn.
- [9] No issue has been joined on the identity and status of the parties to the claim which appear in the affidavit evidence filed on behalf of the Claimants, which matters were earlier reproduced in the introductory paragraphs to this judgment.
- [10] It is also the undisputed evidence of the Claimants that by signing and submitting his application to the Club, the 1st Defendant agreed to be bound to the provisions of the Bylaws, article VI of which provides, among other things, the following.

*Section 2. **MEMBER ACCEPTANCE OF ALL FEES:** By accepting membership in the Club and by accepting the deed of ownership (whether or not it shall be so expressed in any such deed or other conveyance) with respect to a villa, each Proprietary Member for each villa agrees to pay the Club, for himself and any Non-Propriety Member co-owners of such villa, any and all (a) bi-annual, annual or monthly fees and assessments, (b) special assessments, and (c) expenses, in each case, such fees and assessments, special assessments and expenses to be fixed, established and collected from time to time as hereinafter provided. Such bi-annual, annual or monthly fees and assessments and special assessments, and any expenses paid by the Club on behalf of the owner or owners of a villa, in each case together with such interest thereon, costs of collection thereof, and reasonable attorneys' fees in connection therewith, shall be (1) a charge on the land and a continuing lien upon the property of such Proprietary Member and (2) the personal obligation of the Proprietary member and Non-Proprietary Member co-owners, if any, of such villa at the time when the applicable fee, assessment or expense fell due.*

...

Section 11. **DELINQUENCY:** Any fees or assessments that are not paid when due and payable shall be delinquent. If the same are not paid within ninety (90) days after the due date, they shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, unless a different rate is established by the Board, and the Club may either bring an action at law against the person obligated to pay the same or foreclose on the lien against the villa and sell the same at auction or to another Member or both. Interest, costs, and reasonable attorneys' fees of any such action or foreclosure and sale proceedings shall be added to the amount of such fee or assessment owed to the Club. Additionally, the Club may (a) take the particular villa which is subject to a lien for delinquent fees or assessments out of the Club rental pool and may withhold consent to the rental thereof until all fees, assessments, and other charges on the villa are made current; (b) refuse to pay any expenses of the particular villa or of its owner or co-owners, (c) deny all privileges of the Members owing or co-owning such villa and their guests to Club facilities and common areas, or (d) any combination of the foregoing. No Proprietary Member or other Member may waive or otherwise escape liability for the fees and assessments provided for herein by abandonment of his villa.

[Emphasis in original]

- [11] Whatever the view one may be inclined to take of the terms of the Bylaws, as stated by Lord Diplock in **Photo Production Ltd. v Securicor Transport Ltd.** [1980] A.C. 827, 848 “a basic principle of the common law of contract ... is that parties to a contract are free to determine for themselves what primary obligations they will accept”. Further, as the learned editors of **Chitty on Contracts**, Volume 1, 27th ed. observed at paragraph 1-004, “the parties were to be the best judges of their own interests, and if they freely and voluntarily entered into a contract, the only function of the law is to enforce it.” It is with this in mind that I approach the claim and the Defendants’ response to it.
- [12] Again, no issue is joined on the Claimants’ evidence that the application of the 1st Defendant to become a Proprietary Member of the Club was granted or that all owners of villas in Tryall are propriety members. Similarly, there is no dispute that the 2nd Defendant is the owner of the Villa, that the 1st Defendant at all times acted as the agent of the 2nd Defendant and that by virtue of acceptance

of the Bylaws, the Defendants agreed that the Villa would be charged with all the rights and liens which accrued to the Claimants' benefit. The acceptance of the Bylaws is not disputed.

[13] No issue is taken with the averment of Mr. Zerunian that the 1st Defendant began to default on capital expenditure contributions, water charges and monthly maintenance fees in respect of the Villa, or that the 2nd Claimant who is responsible for the management and local operations of the 1st Claimant lodged a caveat on the title to the Villa to secure an equitable interest created by the Bylaws relative to outstanding fees, assessments and charges.

[14] In respect of Mr. Zerunian's evidence as to the amount of the Defendants' indebtedness; that the Defendants have admitted the debt with proposals to pay; and that they have nevertheless failed, refused and/or neglected to settle the debt in full, Mr. Graham avers as follows in response.

4. In the first place, the alleged debt ("the debt") as prayed by the Claimants in their Statement of Case is not agreed. In fact, while I have engaged with the Claimants regarding the debt, I have been and remain uncertain as to the accuracy of the amount(s) owing to the Claimants.

5. To be clear, at no point during my conversation regarding the debt with the Claimants had I categorically agreed to a figure outstanding. Consequently, an accounting/audit may be required to determine the exact amount owing to the Claimants. In addition, the debt must be viewed and understood against the backdrop of the following points [which in summary are that:

a) the Covid-19 pandemic has affected his affected his ability to meet his liability to the Claimants; and that he had offered on multiple occasions to pay water charges to the Claimants but that the Claimants had refused.

b) The Claimants disconnected the supply of water to the Villa, which he describes as "my property" at the beginning of the pandemic for almost a year and at least on two other occasions, crippling his ability to earn an income from the property and as punishment for outstanding fees.

c) The disconnection of the water supply was illegal and not in accordance with the Bylaws; and that it caused damage to his property to include the infrastructure of the building, furniture, fixture, swimming pool and diminished equipment due to rust and lack of cleaning.

d) The removal of the Villa from the Claimant's booking site, transfer of his confirmed bookings to other villas, reassignment of his staff to other villas due to lack of water prevented him from following through with bookings if he made them. These matters, together with the closure of his restaurant in New York directly affected his ability to bring down the debt. He therefore contends that any sum found to be owing must be less the amount owed to him to restore his property the condition which it was in before the disconnection of water supply to it. There is no indication of the amount which may be owed.]

[15] The foregoing, together with the averment that he has been advised by his attorney-at-law and verily believes that an application for sale of land must exhibit a current valuation of the land by a qualified valuer or surveyor - which the Claimant has not exhibited - are in substance, the response of the Defendants to the claim.

[16] I will address each aspect of the Defendant's response in turn.

Amount of the debt

[17] While the 1st Defendant admits that he has engaged with the Claimants in respect of the debt, he now avers that he remains uncertain about the accuracy of the amounts owed and that an accounting "*may be required*". Issue joined on these averments are appropriately determined summarily in favour of the Claimants.

[18] A number of written correspondence between the Club and the 1st Defendant have been exhibited by Mr. Zerunian in affidavit evidence. Among them are email correspondence from the accountant for the Club to which monthly statements for the Villa are attached, and where it is expressly stated that "*[s]hould you have any questions or concerns, please do not hesitate to contact*

the undersigned [accountant].” The evidence of Mr. Zerunian that the Defendants were sent monthly statements of their debt is not challenged by the Defendants. Additionally, there is no evidence of the Defendants having replied to express any concerns or uncertainty about the amounts reflected as owed in the various statements.

- [19]** In correspondence where the 1st Defendant engages the Claimants in respect of the Defendants’ debts, the amounts are not distinctly admitted but there is also no expression of uncertainty about the amounts which the Club stated as being due. The character of the engagements is the request by the 1st Defendant for forbearance by the 1st Claimant and proposals to discharge the debt. One such proposal was for payments to be made to settle the debt owed commencing July 2021, which proposal was approved by the Board of the Club. The evidence is that the Defendants defaulted on the proposal.
- [20]** The sum of US\$215,811.16 which is reflected in the Fixed Date Claim Form is the total sum stated as due by the Defendants to the Club in the statement dated 30th September 2022.
- [21]** Correspondence passed between the 1st Defendant and the Claimants subsequent to the delivery of that statement in October 2022. The 1st Defendant does not raise any concern about the accuracy of the amount stated as due by the Defendants but requests further forbearance by the Claimants, and indicates the desire to continue to work through the earlier proposal for payment and to scale up to larger payments in the fourth quarter.
- [22]** In the statement from the Club dated 31st December 2022 which is exhibited by the Claimants and which appears to be the last statement issued to the 1st Defendant ahead of the first hearing, the sum of US\$273,748.08 was then owing. There is no evidence of challenge by the Defendants to the accuracy of the sum stated as owed at that date. The claim is for sums owed and continuing.
- [23]** In the face of the unchallenged documentary evidence supplied by the Claimants, the Defendants do not suggest an alternative amount which may be due or the basis for the suggestion that the figures may be inaccurate. They have similarly failed to supply any documentary evidence which would put in

doubt the amounts claimed for the debt, to give credence to the probability that an accounting is required to determine the amounts owed.

- [24]** In the premises, I find that the debt owed as at 31st December 2022 is the sum of US\$273,748.08. Additionally, having agreed the Bylaws, article VI section 11 of which prescribes that fees or assessments which are due, payable and remain unpaid within ninety (90) days after their due date shall bear interest at a rate of 18% per annum, the interest rate is to be applied to the debt from 1st April 2023 until the same is satisfied.

Disconnection of water supply & bookings

- [25]** There is no dispute that the Club was required to provide the Villa with water, the charges for which are included in the monthly statements sent to the 1st Defendant Proprietary Member, who is liable for the same. The Claimants do not deny that water to the Villa was in fact disconnected. It is the Defendants' defence that interruption of the water supply was illegal and that it hampered their ability to earn income from the Villa. The issues enjoined in this regard can also be dealt with summarily in favour of the Claimants, having regard to the provisions of the Byelaws by which the Defendants through the 1st Defendant agreed to be bound.
- [26]** Where a member of the Club is delinquent in the payment of fees, assessments or charges, among the options available to the Club - which options may be combined and exercised - is the refusal to pay any expenses of a particular villa or of the villa's owner pursuant to article VI section 11 of the Bylaws. In addition to this remedy and others which are not immediately relevant to the enquiry, the Board of the Club, to the fullest extent permitted by law and having followed due process is authorized under article 1 section 5 of the Bylaws to suspend a Proprietary Member for non-payment of financial obligations pursuant to article VI sections 11 and 12. It is the evidence, which is unchallenged, that the 1st Defendant was suspended from membership. There is no averment that the process prescribed for such suspension was not observed by the Club.
- [27]** Where a Proprietary Member is suspended, pursuant to article 1 section 5 (b):

... the Club will have the right to discontinue all Club services and to discontinue payment of the staff wages or any other bills associated with the [member's] villa. The Club will also suspend rental privileges for the villa, specifically not accepting reservations for rental of the villa, and reserves the right to move paying guests, if the Proprietary Member is suspended at the time the guests arrive.

- [28] The matters of which the Defendants complain in respect of disconnection of water supply to the Villa are provided for in the Bylaws to which the 1st Defendant Proprietary Member agreed to be bound in subscribing to and being admitted to membership in the Club. The Defendants' complaints in this regard are therefore without merit.

The Applicability of Part 55 of the CPR to mortgage claims

- [29] There is no dispute that the Villa constitutes a security or that the power reserved to the Claimants under article VI section 11 of the Bylaws to sell it to enable recovery of sums owed on account of delinquency has crystallized. Further, while no legal mortgage has been created by agreement between the parties, a caveat has in fact been lodged on the title to the Villa to secure the interest which the Claimants have in respect of it under the Bylaws. In these regards the Claimants seek an order and declaration that they are entitled to **immediately** proceed to sell the Villa at auction, and an order permitting recovery of the contractual debt from the proceeds of sale, pursuant to the Bylaws.

- [30] It is contended on behalf of the Defendants that the court is not empowered to make the orders and declaration for sale of the Villa where the Claimants have failed to exhibit a valuation in respect of it. In so contending the Defendants rely on Part 55 of the CPR, in particular rule 55.2(2)(c).

- [31] Pursuant to rule 55.1 (1) of the CPR, Part 55

deals with the sale of land –

(a) under any enactment which authorises the court to order a sale; or

(b) when it appears to the court to be necessary or expedient that the land should be sold whether to enforce a judgment or for any other reason.

- [32] Rule 55.2(1) prescribes that where an application for the sale of land is being made to the court, it “*must be supported by affidavit evidence*” which “*must*”, among other things, “*exhibit a current valuation of the land by a qualified land valuer or surveyor*”, pursuant to rule 55.2(2)(c). It is my view that the exhibition of a current valuation is particularly important as the court may well consider it appropriate or necessary, having regard to the circumstances of a particular case, to give directions for the fixing of a reserve or minimum price for the sale of land.
- [33] It is my judgment that in the circumstances of this case it is appropriate that a reserved or minimum price be fixed by the court for the sale of the Villa before the Claimants proceed with the sale. This view is taken when I have regard to the nature of the Club as a private, exclusive members-only club; and the fact that the Bylaws permit the Villa to be sold by auction without indication as to whether that auction should be public or private or be sold to a Member of the Club. Accordingly, I determined that the order and declaration sought by the Claimants that they are entitled to “*immediately proceed to sell the [Villa] at auction*” should be refused. *[Emphasis added]*
- [34] It is the contention of the Claimants that a current valuation is not required by Bylaws which is the basis of the power to sell the Villa; and that Part 55 of the CPR does not apply to mortgage claims, for which provision is made under Part 66 of the CPR. The decision in **Shernett Manning** is relied on in this regard.
- [35] The **Shernett Manning** case concerned the aborted sale of an apartment by mutual agreement and an executed settlement agreement, a clause of the latter being that a certain sum together with interest should be paid by the defendant in the claim within a prescribed time; and another being that the debt was to be secured as a mortgage over the apartment. Pursuant to the settlement agreement Ms. Manning registered a caveat against the title to the apartment. The sum was not paid by the defendant and Ms. Manning brought a suit for its recovery. The Claimants here rely on the decision from the interlocutory application of the claimant to strike out the defendant’s defence, for summary

judgment and an order for sale of the apartment to satisfy the debt. While the defence was ordered struck out and summary judgment entered in favour of Ms. Manning, the order for sale of the apartment was denied.

- [36] Among the issues for the court in **Shernett Manning** were whether the claimant had an equitable mortgage over the apartment the subject of the claim and whether it was appropriate to grant an order that the apartment be sold. It suffices to say that the first question was answered in the affirmative. In respect of the second question, it was the contention of the defendant - together with another which is not immediately relevant - that the claimant was not entitled to an order for sale because she had not complied with the requirements of Part 55.2 of the CPR which set out the procedural requirements for applications to the court for such an order. Dunbar-Green J (as she then was) said this of Part 55 of the CPR:

[105] In my view, rule 55 is meant to cover the powers of the Court to make an order for sale of land in the general exercise of its inherent jurisdiction. Part 66 are those rules which pertain specifically to mortgage claims and for specified reliefs, including an order for the sale of a mortgaged property. It is noted that these sections are not cross-referenced and can therefore be applied independently.

- [37] The Claimants rely on the foregoing paragraph to say that Part 55 of the CPR does not apply to mortgage claims. I am not convinced that that is in fact the position which Dunbar-Green J intended to convey by her statement at paragraph [105] of **Shernett Manning**, and if it was, I am unable to agree with it.
- [38] Part 66 of the CPR which is headed "*Mortgage Claims*" has four (4) main components. Rule 66.1 sets out the "*scope*" of the Part; rule 66.2 prescribes how mortgage claims are to be made (by the issue of a fixed date claim form in form 2 and on notice to all other mortgagees of the land); rule 66.3 makes provision for the evidence which is required to be produced by a claimant who seeks final judgment on a mortgage claim at a first hearing; and rule 66.4, the evidence which is required on a claim for "*possession of the mortgaged property*" or "*for payment of the mortgage debt*".
- [39] So far as is relevant rule 66.1 states:

- 66.1 (1) *This Part deals with claims by a mortgagor or mortgagee for any of the following forms of relief -*
(a) *payment of moneys secured by a mortgage;*
(b) *sale of a mortgaged property; ...*
which are referred to in this part as “mortgage claims”.
- (2) *In this part -*
“mortgage” includes a legal or equitable mortgage and a legal or equitable charge;
“mortgagor” means the person who has granted a mortgage of the mortgaged property; and
“mortgagee” means the person to whom the mortgage was granted.
- (3) ...

- [40] There is no dispute that the claim for the sale of the Villa is a mortgage claim within the meaning of Part 66 and therefore amenable to the specific rules and procedure which appear there.
- [41] Apart from designating claims by a mortgagor or mortgagee for the sale of a mortgaged property as a mortgage claim however, Part 66 does not specifically prescribe any procedure which is to be adopted by the court on the application for such a sale. While there is no cross-referencing of Parts 55 and 66 of the CPR as observed by Dunbar-Green J, the absence does not, in my view, prevent the provisions of Part 55 from being applied to mortgage claims as contended by the Claimants. If otherwise, much difficulty is likely to be encountered by the court in effectively applying rules which though not cross-referenced are nevertheless relevant to giving effect to the overriding objective of dealing justly with cases.
- [42] The Claimants do not rely on an enactment which authorises the court to sell land for the order and declaration that it is entitled to **immediately** proceed with the sale of the Villa to recover the sums owed to it. That notwithstanding, Part 55 also clearly applies to land which is to be sold whenever it appears to the court that is necessary or expedient to sell the same to enforce a judgment or for “*any other reason*”, as prescribed by rule 55.1(1)(b).
- [43] I also observe that the declaration and order for the sale of land is not sought by the Claimants to enforce an extant judgment or order of the court. It is sought as a substantive relief in the claim on the basis that the Bylaws empower the Claimants to sell for delinquency. I can see no basis for excluding this reason for seeking an order for the sale of the Villa from the very wide ambit of “*any*”

other reason” which appears at rule 55.1(1)(b). This does not appear to me to be inconsistent with **Shernett Manning** as Dunbar-Green J, ahead of expressing the view at paragraph [105] of her judgment, also correctly stated:

*[102] Part 55 of the CPR governs the sale of land by order of the Court, whether the sale is pursuant to statute **or in exercise of the Court’s discretion when it appears necessary or expedient that such an order be made for any reason.** [Emphasis added]*

- [44] The fact of the matter is that the Claimants have approached the court to declare and order that it is entitled to **immediately** proceed to sell the Villa. The court, being mindful of the character of the Club; that the mortgage is not a legal mortgage; and that the Bylaws which give the power to sell do not provide much by way of direction as to how the sale is to proceed, I do not believe that it is inappropriate, as contended by Counsel for the Claimants, to apply Part 55 of the CPR and refuse the order and declaration in the terms sought by the Claimants at paragraph (ii) of the Fixed Date Claim Form.
- [45] It is my judgment that the circumstances of this case warrant the fixing of a minimum or reserved price before the Claimants are permitted to proceed with the sale of the Villa, to which the production of a current valuation by a qualified land valuer or surveyor will go in aid.
- [46] It is in all the foregoing premises that I make the orders in paragraph 6.

**Carole Barnaby
Puisne Judge**