

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2023/0122 (formerly GDAHCV2020/0466)

BETWEEN:

CHRISTINE BRATHWAITE

Claimant

and

[1] **ANTHON ANTOINE**
[2] **SHARON ANTOINE**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. James Bristol K.C. and Ms. Shireen Wilkinson for the Claimant
Mr. Deloni Edwards for the Defendants

2023: May 3;
2024: February 14.

JUDGMENT

[1] **ACTIE, J.:** The claimant claims for declarations, injunctions or in the alternative damages against the defendants in respect of an alleged breach of a restrictive covenant over land situate at L’Ance Aux Epines, St. George.

Brief Facts

[2] The lots in dispute were originally owned by Gordon Brathwaite who died in 2004 (hereafter referred to as “the deceased”). The claimant as beneficiary of the deceased and is the registered owner in fee simple of all remaining lots and parcels of the L’Ance

Aux Epines Estate, together with all rights of way, privileges and appurtenances thereto by virtue of a deed of assent dated 27th January 2017. By correcting deed made 22nd October 2020, the deed of assent was corrected to include an assignment of the benefits of all covenants from the deceased to the claimant together with the right to sue upon and enforce the same.

- [3] The claimant, through a claim filed on 11th November 2020, seeks declarations that the defendants are in breach of an existing restrictive covenant contained in their title, which refrains from using a dwelling house for any other purpose than that of a dwelling house, and prohibits the use of the buildings otherwise except as a private dwelling house and the erection of any apartment building hotel or commercial building.
- [4] The claimant seeks an injunction to restrain the defendants from using the buildings or any part for any other purpose except as a dwelling house and from carrying construction of an apartment building upon the said lots, demolition, and removal of the apartment buildings or in the alternative damages or other relief as the court deems just.
- [5] There are two lots of land in issue. By conveyance dated 14th February 1969, the deceased conveyed a lot of land measuring Two Roods (2 Rds.) situate at L'Ance Aux Epines, St. George to Gerald Harvey Lupu. The lot was conveyed to the first defendant through a deed of conveyance dated 30th October 1997 made between Yvonne Edmond and the first defendant.
- [6] By conveyance dated 4th July 1978 between Barclays Bank, the deceased as Vendor and Fleming Estates Limited as Purchaser became the legal owner of a lot of land measuring Twenty-six Thousand Eight Hundred and Forty-eight Square Feet (26,848 Sq. Ft.) situate at L'Ance Aux Epines, St. George The lot was conveyed to the defendants through a deed of conveyance dated 28th July 2006.

- [7] Both deeds of conveyance contain a covenant to the effect that the purchaser, and those deriving title under the purchaser, covenants to use the said lot of land for the erection of a private dwelling house and not to use the same for the erection of any commercial building.
- [8] The claimant contends that the defendants, as purchasers under derivative title, are in breach of the covenants by virtue of their use of the dwelling house constructed on the lots for rental accommodation and not as private dwelling houses. The claimant asserts therefore that the defendants purchased the lots of land with the said restrictive covenant validly annexed and conveyed, and that she is entitled to enforce the covenants against the defendants. The claimant further contends that she has suffered loss and damage and that unless restrained, the defendants will continue to breach the covenant.
- [9] The defendants in their pleaded defence did not deny the breach of the restrictive covenant but assert that the claimant is not entitled to enforce the covenant against them since there can be no breach of an obsolete covenant.
- [10] The defendants aver that since they purchased the first lot in 1997, the character of L'Ance Aux Epines was already a commercialised residential area. The defendants aver further that there are several commercialized buildings and residential homes in the vicinity of L'Ance Aux Epines, St. George used as rental premises to accommodate short and/or long-term rentals on properties that still contained the obsolete restrictive covenant for twenty years or more.
- [11] The defendants assert that L'Ance Aux Epines has become the most centrally used residential area that houses students of the St. George's University (hereafter referred to as "SGU") and foreigners. They state that this has become a substantial change in the character of the neighbourhood.

- [12] The defendants state that the claimant during that time took no action and therefore impliedly acquiesced the change of the neighbourhood and waived the covenant. The defendants aver as such there is no necessity to be restrained by the court.

Law and Analysis

Whether the restrictive covenant is enforceable

Acquiescence

- [13] The defendants have built more than one private dwelling place on the lots of land with villas, condominiums and private rooms located on the lots of land are offered by the defendants to the public for rent. The defendants have not disputed the applicability of the restrictive covenant to the respective parcels of land, nor their breach thereof. The defendants' sole contention is that the restrictive covenants as contained in their title deeds are not enforceable on the ground of obsolescence or that the claimant by non-action acquiesced the breach.
- [14] Grenada does not have statutory provisions for the enforcement or modifying of restrictive covenants and accordingly the common law applies. The court overtime has assumed jurisdiction to modify or to discharge a restrictive covenant or to refuse injunctive relief where (a) there is a change in character in the neighbourhood in which the burdened land is located; and (b) by the acts or omissions of known violations have continued over a period of time¹.
- [15] Gilbert Kodilinye states the following with respect to the discharge or modification of a restrictive covenant in **Commonwealth Caribbean Property Law**²:

“The court has an inherent power to discharge or modify a restrictive covenant if there is sufficient evidence: (a) that a covenantee (or any of his assignees) has acquiesced in a course of conduct that is inconsistent with its continuance, as where he has discharged past breaches of the covenant; or (b) that the

¹ Sampson Owusu, *Commonwealth Caribbean Land Law* (1st edn., Routledge-Cavendish) at page 510

² (3rd edn, Routledge 2011) page 172

character of the neighbourhood has changed to such an extent that it would be inequitable or senseless to continue to insist on the observance of the covenant that, in effect, has become redundant.”

- [16] The claimant argues further that none of the defendants’ predecessors in title breached the restrictive covenants applicable to the extant case, up to the date of purchase by the defendants. The claimant states that it was in or about the year 2019 that she became aware that the defendants were using the property as a commercial building, and that on 6th October 2020 an Attorney’s letter was sent to the defendants demanding a cease and desist of commission of the breach of the restrictive covenant. The defendants deny receipt of such a letter.
- [17] The defendants contend that during the conversion of the houses on the lots to villa style buildings, no objection was taken by the claimant. The defendants therefore assert that the claimant during that time took no action and therefore the claimant impliedly acquiesced the change of neighbourhood and waiver of the covenant.
- [18] Mr James Bristol, K.C. for the claimants challenged the defendants pleaded defence on the ground that the pleadings failed to particularize the grounds for the purported acquiescence and waiver as alleged by the defendants.
- [19] **Part 10.5(1)(2)** requires a defence to set out all the facts on which the defendant relies in short as practicable statements. **Part 10.5(3)(4)** further requires the defendant to say which (if any) allegations in the claim form that are admitted, denied and if denied state the grounds for doing so by providing his own version of facts to disprove the version of facts given by the claimant.
- [20] The defendants failed to plead the particulars of the acquiesced conduct of the claimant in their filed defence. It is in their witness statements that the defendants mentioned meetings held with Tim Braithwaite and another son of the claimant between 2007-2009, concerning the building on the first lot and that neither of them objected. Further, the witness statements mention several conversations about the defendants’ plans to construct the building with the claimant’s son who represented

the claimant at the time, and he never voiced an objection. The defendants also state that the claimant's son operates rental properties called L'Anse Aux Epines Cottages and that between 2017 and 2019 referred clients to stay at their property when his properties were full. None of these averments were pleaded in the defence to put the claimant on notice so that a proper reply could have been filed either accepting or refuting the allegations. The defendants also failed to detail whether the properties with the commercial residential areas form part of the claimant's estate.

[21] The Court of Appeal in **The National Lotteries Authority v Jerome De Roche**³ per Ward JA said:

"It is an established rule that the statement of case must plead the essential facts that constitute its case, and those facts must be sufficient to establish a cause of action and to enable the other side to know the case it has to meet in sufficient detail. A concise statement of the facts relied on must still be included in the statement of case. Where pleadings are deficient for the failure to plead an important factual detail, which was an essential element of the cause of action, the defect could not be cured by simply inserting the evidence into a witness statement⁴".

[22] Ward JA further stated:

"A witness statement constitutes the evidence to prove an allegation of fact made in the statement of claim. It provides the details or particulars of the issues that arise from the pleader's case. Its contents must, on analysis, be capable of being properly regarded as particulars or details of allegations already made in the pleadings. Once the case is sufficiently pleaded, then a witness statement may furnish the particulars and details of the allegations or facts contained in the pleadings. Additional particulars do not constitute a change of case, provided that the allegation was sufficiently pleaded".

[23] The court agrees with learned King's Counsel that the joint defence fails to particularize the facts relied on to prove that the claimant had knowledge or acquiesced to the construction of the hacienda Villa Style building where they entertain guests continuously.

³ GDAHCVAP2021/0025

⁴ GDAHCVAP2021/0025

[24] The defendants also pleaded there are several commercialized buildings and residential homes in the vicinity of L'Ance Aux Epines used as retail premises, to accommodate short term and or long-term rentals, on properties that still contain the restrictive covenant. Further, the defendants pleaded that since their purchase of the property in 1997 the character of L'Ance Aux Epines was already a commercialized residential area, in particular for the university students on properties subject to the aforesaid purportedly obsolete restrictive covenants. They plead that the claimant during that time took no action and therefore impliedly acquiesced the change of neighbourhood and waiver of the covenant.

[25] The defendants in an attempt to provide evidence to support their assertion filed a bundle of documents on the eve of the trial containing photographs and purported plans to prove the existence of the commercialized buildings and rental apartments in the vicinity of the lots. Mr. Bristol K.C took strong objection to the purported evidence which he avers does not comply with the rules of evidence.

[26] **Rule 31.1** provides for the use of plans, photographs etc as evidence and read as follows:

“31.1 (1) A party who intends to rely at a trial on evidence which is not –
(a) to be given orally; and
(b) contained in a witness statement, affidavit or expert report, must disclose that intention to the other parties in accordance with this rule.
(2) If a party fails to disclose the intention to rely on the evidence as required by this rule, the evidence may not be given.
(3) Subject to paragraphs (4) and (5) a party who intends to use the evidence referred to in paragraph (1) to prove any fact must disclose such intention not later than the latest date for serving witness statements.
(4) If – (a) there is no order for service of witness statements; or (b) a party intends to put in the evidence referred to in paragraph (1) solely in order to disprove an allegation made in a witness statement, that party must disclose the evidence at least 21 days before the hearing at which it is proposed to be put in the evidence.”

[27] The requirements of **Part 31** are mandatory. The defendants, from the filing of the defence, emphasized that the neighbourhood was a commercialized area with apartments buildings and accordingly was under an obligation to provide the evidence in support of their averments within the timelines provided under Part 31. The

defendants intending to rely on the bundle of plans and photographs were under an obligation to place the claimant on notice. The late filing without the appropriate notice fails to give the claimant an opportunity to do any research or prepare a proper response to the evidence, is tantamount to trial by ambush. Trial by ambush is unfair and prejudicial and not in keeping with the overriding objective, as it places the opponent at a disadvantage. **Rule 31.1** requires the evidence to be filed with enough time for the parties to prepare their cases for trial. Accordingly, the court cannot place any reliance of the documents filed by the defendants in breach of the rule.

[28] However, the court accepts the defendants' evidence that they completed a hacienda villa style building in the year 2006 and entertained guests continuously there, whilst they occupied the pool house. The defendants further state that in 2007 they began construction of a three-storey building which was completed in 2015. The defendants aver that the construction of the villa style building which joins the second lot took approximately 3 years to construct and they entertained guests continuously.

[29] The evidence suggests that the construction of the hacienda villa style building was done in excess of fourteen years and the construction of three storey building in excess of five years respectively before the filing of the extant claim.

[30] In **Sobey v Sainsbury**⁵ it was held by Sargant J that the acts and omissions of the claimant and his predecessors in title, and the non-enforcement of the covenant as to certain other plots, were amply sufficient to prevent the court granting the relief claimed.

[31] In **Victory & Anor v Galhoy Inns Ltd**⁶ however, McMahon J stated the following:

“before the law will deprive a person of his prima facie entitlements in such a case, however, the inaction or passivity of the complainant must amount to something approaching dishonesty or unconscionableness on his part. In *Shaw & Anor v. Applegate* [1977] 1 W.L.R. 970, the Court of Appeal held, reversing the lower court, that a delay of more than two years, during which a

⁵ [1911-13] All ET Rep 1441

⁶ [2010] IEHC 459

convenantee was in breach of a covenant not to use the property as an amusement arcade, did not prevent the beneficiaries of the covenant, who knew of the development, from enforcing the covenant, as on the facts, the plaintiff's failure in that respect was not dishonest or unconscionable. It appears that the plaintiffs were confused as to whether, during the two year period, the defendant was in breach of the covenant or not, and this subjective doubt was a relevant factor in avoiding a conclusion of dishonesty. The fact that the early infringements did not particularly compete very strongly with the plaintiff's own interests, was also seen as justification for not commencing enforcement proceedings."

[32] McMahon J goes on to state⁷:

"Without being definitive on the matter it is sufficient to say, that the level of inactivity required to deprive the person who wishes to assert his right is high and must be so reprehensible that it approaches dishonesty. A lower standard might be seen as a policy by the courts of encouraging and promoting litigation before the claimant is sure of his entitlement or of his likelihood of success."

[33] The trial bundle filed by the claimant contains printouts of the defendants' vacation home Facebook page provided by the claimant; however, the specific dates of the printed posts are not clear. Nevertheless, a visit of this public webpage reveals that it was created in the year 2012 for the purpose of advertising the property for rent. The court will therefore use the year 2012 as the operative year of the defendants' breach of the restrictive covenant, as opposed to 2006 as proposed by the defendants, and 2019 as proposed by the claimant for the prohibited rental.

[34] This claim was filed in 2020, some eight years after the defendants publicly advertised their property for rent. However, applying the standard as set out by McMahon J, the claimant's evident passivity of eight years in the extant case cannot be described as approaching dishonesty or unconscionability, so as to disentitle her from enforcing the covenants contained in the title deeds of the defendants. The court also bears in mind that there were no previous breaches of the respective covenants on the lots and that the defendants have failed to provide the court with impartial evidence as it

⁷ Victory & Anor v Galhoy Inns Ltd [2010] IEHC 459

relates to the personal awareness of the claimant of their breach of the restrictive covenants.

- [35] However, the court finds that the claimant as trustee of the estate and sole beneficiary was under a legal duty to be vigilant and prudent during the administration of deceased estate to protect her beneficial interest. The court cannot accept that the claimant would not have had either actual or constructive notice of the extensive construction of two buildings and rental activity on the lots in breach of the covenant for such an extended period. This in the court's view would be out of the norm in our Caribbean culture especially in a small jurisdiction like Grenada. Also, the court notes the fact that the claimant owns the remaining lands forming part of the deceased estate. It is unconscionable for the claimant to have passively allowed the defendants to openly breach the covenants without taken any action to curtail the breach.

Change in Character of Neighbourhood

- [36] The second respect in which a restrictive covenant can be discharged or modified, as described by Gilbert Kodilinye⁸, is by the change of the character of the neighbourhood to such an extent that it would be inequitable or senseless to continue to insist on the observance of the covenant that, in effect, has become redundant.
- [37] Such a character change in a neighbourhood was described in **Truman, Hanbury, Buxton and Co. Ltd's Application**⁹ where it was held that if the character of an estate as a whole or of a particular part of it gradually changed, a time would come when the purpose for which such a covenant was imposed could no longer be achieved, as what was intended to be a residential area would have become substantially a commercial area. When that time came, it might be said that the covenant had become "obsolete".

⁸ (3rd edn, Routledge 2011) page 172

⁹ (1955) 3 WLR 704

[38] In addition, Farwell J in the case of **Chatsworth Estates Company v Fewell**¹⁰ also considered restrictive covenants and the change in the character of a neighbourhood when he stated:

“The defendant’s first ground of defence is that there has been such a complete change in the character of the neighbourhood... that the covenants are now unenforceable. But to succeed on that ground the defendant must show that there has been so complete a change in the character of the neighbourhood that there is no longer any value left in the covenants at all.”

[39] The defendants state that with the coming of SGU, extensive development has substantially changed the character of the neighbourhood of L’Ance Aux Epines with commercialised buildings, apartment buildings and residential homes, since they made their first purchase of land in 1997.

[40] These premises, they contend, contain the obsolete restrictive covenants applicable in the extant case. The defendants state that there was also once a furniture shop called Herrerier Furniture shop, and that there is a Mount Hartman Bay Estate and Villas, Kingfisher Villa, Evans Apartment Buildings and homes with apartments, all rental properties.

[41] The defendants contend that the locality of the lots in dispute includes the Calabash Luxury Boutique Hotel, Red Crab Restaurant now named Aziz, Spice Affair restaurant, Prickly Bay Marina. The defendants also aver that the neighbourhood is known as one of the social hubs for nightlife in St. George, as the West Indies Beer Company known as “Breweries” is a main attraction spot, and adjacent to it, Junction Bar & Grill is a hot spot for locals and students.

[42] In support of the change of the character of the neighbourhood, evidence was led by witnesses Leon Daniel and Richardson Donald in support of the defendants.

¹⁰ [1931] 1 Ch. 224

- [43] Witness Leon Daniel, who has lived in L'Ance Aux Epines for eight years, states that he purchased property in L'Ance Aux Epines that was subject to the restrictive covenants and contained a building and a beach house thereon. Leon Daniel asserts that he rented the property to students for years, and states that in his opinion 90% of the L'Ance Aux Epines properties are rented out to students and/or used for commercial purposes. The court is aware that Leon Daniel is a defendant in similar proceedings pending before this court, and that evidence given to support a change in character of the neighbourhood may be self-serving.
- [44] Witness Richardson Donald states that he has both residential and commercial properties in L'Ance Aux Epines and that apartments built on his properties have been rented out to students for about nine years.
- [45] It is the claimant's evidence however that the character that has originally existed of the estate has not changed. The claimant avers that the estate is a mixed development, and that from the outset there were commercial and residential areas. Thus, some lots had covenants, some did not, and some had different covenants. The evidence on behalf of the claimant is that there are approximately two hundred and eighty residential homes in the estate.
- [46] The court accepts the claimant's evidence that the estate is a mixed development which is also acknowledged by the defendants. A situation that existed since the defendants purchased their lots. This is also evidenced by one of the deeds of Richardson Donald which is before the court, which released Richardson Donald from the restrictive covenant of his use of the premises for the purpose of a supermarket.
- [47] The case of **Robert Bathik v Christine Brathwaite**¹¹ is highly relevant to this case as it dealt with similarly located property in this jurisdiction, the defendant in that case being the claimant in the extant proceedings. It was held therein by Fay J in 2012 at paragraph 37 that:

¹¹ Claim No. GDAHCV2008/0349

“The fact that there has been development of parcels of land, and in particular the fact that it is likely that there has been the construction of a number of apartment buildings, since the imposition of the covenant in 1969 does not necessarily mean that there has been a change in the character of the neighbourhood during that time. In considering whether there has been a relevant change, I must give significant weight to what (or rather what the evidence reveals) was intended for L’Anse Aux Epines when the covenant was imposed in 1969. The fact that the parties agree that the sale of the parcels of land at L’Anse Aux Epines was done on an ad hoc basis is highly relevant. The claimant pleads that restrictive covenants were imposed on an inconsistent basis, that numerous lots were sold without restrictive covenants, and that some lots were sold with different restrictive covenants. The consequence of the methodology used by the deceased in imposing restrictive covenants on some but not all of the parcels at L’Anse Aux Epines was that there was a possibility, albeit not a certainty, that there would be development of apartment buildings on some parts of the development but a certainty (assuming that restrictive covenants were obeyed) that there would be a limited number of apartment buildings. It appears to have been the intention of the deceased, and of those that acquired parcels that were subject to the restrictive covenant, that at the very least those parcels would not be developed as apartment buildings. The determination as to which lots were subject to restrictions may have been haphazard but its intention seems to be clear. It does seem likely that there has been some development in breach of the restrictive covenants, but I am not satisfied that such breaches are so extensive as to amount to a change in the neighbourhood that was contemplated at the time the covenant was imposed of the disputed parcel. It seems to be that the neighbourhood has developed, at least substantially, as was contemplated in 1968 when restrictive covenants were imposed on some but not all the parcels.”

[48] The court adopts the above sentiments of Fay J and finds that the defendants have not sufficiently proven that there have been breaches of similar covenants as contained in the first conveyance and the second conveyance, so as to demonstrate a change in the character of the neighbourhood of the premises, with respect to properties forming part of the estate.

[49] The defendants’ main contention is that the covenant is obsolete having regard to the change in character of the neighbourhood. However, although the defendants have identified commercial properties within close proximity to the lot, they have not provided evidence so as to convince this court that a restrictive covenant with respect to those commercial properties applies, as in the covenants to their lots.

Conclusion

[50] The defendants admittedly being in breach of the restrictive covenant and accordingly the issue turns on what is the most equitable relief available to the claimant in light of the breach. The claimant seeks an injunction restricting the use of the buildings for any purpose except as a private house and from carrying on or authorizing or permitting the construction of an apartment building on the said lots or for the demolition and removal of the said apartment building from the lots or in the alternative, damages.

[51] Where there is a breach of covenant the court may grant a mandatory injunction for the demolition of the building, restricting the rental of the premises. However, a mandatory injunction may be refused if the claimant stood by while work progressed¹², as in this case. The construction was in the open with no immediate action taken by the claimant as trustee of the estate at the time to obtain an injunction to prevent the commencement of the buildings and the continuous rental of the buildings over an extended period of time.

[52] In the Privy Council decision in **Singh v Rainbow Court Townhouses Ltd**¹³ Lord Carnwath referred to the decision of Buckley J in *Charrington v Simons & Co Ltd*¹⁴:

“29...“Different considerations may, I think, arise in a case where the court has to consider whether a defendant should be compelled by a mandatory order to remedy a breach of contract which he has committed from those which would arise if the question were whether the court should restrain a threatened breach of contract. To the latter case the principle enunciated by Lord Cairns LC in *Doherty v Allman*, 3 App Cas 709, 710, 720, may apply in its full rigour. Where a mandatory order is sought the court must consider whether in the circumstances as they exist after the breach a mandatory order, and, if so, what kind of mandatory order, will produce a fair result. In this connection the court must, in my judgment, take into consideration amongst other relevant circumstances the benefit which the order will confer on the plaintiff and the detriment which it will cause the defendant. A plaintiff should not, of course, be

¹² *Clothier v Snell* (1966) 198 Estate Gazette 27

¹³ [2018] UKPC 19

¹⁴ [1970] 1 WLR 725, 730

deprived of relief to which he is justly entitled merely because it would be disadvantageous to the defendant. On the other hand, he should not be permitted to insist on a form of relief which will confer no appreciable benefit on himself and will be materially detrimental to the defendant.

30. That passage was cited with approval by Megarry J in *Shepherd Homes Ltd v Sandham* [1971] Ch 340, 351, where he said: "... although it may not be possible to state in any comprehensive way the grounds upon which the court will refuse to grant a mandatory injunction in such cases at the trial, they at least include the triviality of the damage to the plaintiff and the existence of a disproportion between the detriment that the injunction would inflict on the defendant and the benefit that it would confer on the plaintiff. The basic concept is that of producing a 'fair result', and this involves the exercise of a judicial discretion".

[53] The evidence is that the buildings were erected within a small locale where the claimant retains ownership of nearby properties. It is also the evidence that the rental of the premises commenced from about 2006 but the court accepts 2012 based on the evidence. The claimant at the time was the executrix of the estate of the deceased who died in 2004 and also the sole beneficial owner of the estate which was vested by assent in 2017. The claimant as a trustee and beneficial owner was under an obligation to be vigilant to observe and enforce her rights. The court does not accept that the claimant was unaware of the breaches having regard the structures of the Hacienda type/apartment buildings, and the rental of the units.

[54] The court is of the view that taking all into consideration, it would be inequitable to grant a mandatory injunction restraining the defendants from continuing the rental of their units and or the demolition of the buildings. The construction from all accounts was done in the open in a relatively small neighbourhood taking into consideration that the claimant owns adjoining properties. It would be unconscionable to allow the claimant as trustee and beneficiary to have sat sit idly and insist on the enforcement of the restrictive covenant without taking an action to mitigate her loss.

[55] The court is of the view that an award of damages would be the most equitable relief in lieu of the breach to compensate for any loss sustained by the claimant as a result of the breach.

ORDER

[56] For the foregoing reasons, it is therefore ordered and declared as follows:

- (1) The defendants are in breach of the restrictive covenants contained in deeds of conveyance dated 14th February 1969 between Gordon Brathwaite, Gerald Harvey Lupu, and dated 28th June 1978 between Gordon Brathwaite and Fleming Estates Limited.
- (2) Judgment is entered in favour of the claimant against the defendants for breach of covenants contained in deeds of conveyance with damages to be assessed if not agreed.
- (3) Failing agreement, directions for the assessment of damages shall be issued pursuant to Part 16.4, upon the application of the claimant.
- (4) Prescribed costs agreed in the sum of \$7,500.00 to paid to the claimant by the defendants within thirty (30) days of today's date unless otherwise agreed by the parties.

**Agnes Actie
High Court Judge**

By the Court

Registrar