

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

**HIGH COURT OF JUSTICE
CIVIL**

**GRENADA
Claim No: GDAHCV2020/0466
BETWEEN**

CHRISTINE BRAITHWAITE

Claimant

And

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

Defendants

Appearances:

James Bristol QC leading Shireen J. Wilkinson instructed by the firm of Wilkinson, Wilkinson & Wilkinson for the Claimant

Celia Edwards QC leading Deloni Edwards instructed by the Law Office of George E.D. Clyne for the Defendants

2021: May, 10
June 08

DECISION

(On Claimant's application for further information)

[1] Before the Court is the Claimant's application for further information filed on March 11, 2021. In support of the application is the affidavit of Rosana John sworn and filed on the same day. In opposition to the application is the affidavit of the First Defendant, Anthon Antoine filed on April 20, 2021.

Relevant facts:

[2] The facts relevant to the application are by request dated February 26, 2021 pursuant to Part 34 of the Civil Proceedings Rules 2000 as amended (CPR) the Claimant requested the following information:

a) Request (1): (Under Paragraph 4 of the Defence)

Of: "on properties that still contained the said obsolete restrictive covenants".

Request :

Stating the exact properties referred to and their road locations within Lance Aux Epines Estate and produce the title deeds containing the said covenants.

b) Request (2) (Under Paragraph 5 of the Defence)

Of: "a substantial change in the character of the neighborhood"

Request :

With full particularity the substantial change in character.

The properties in respect of which the said change is alleged, the restrictive covenants in respect of those properties and their road locations within Lance Aux Epines Estate and produce the title deeds containing the said covenants.

c) Request (3): Under Paragraph 6 of the Defence

Of: "the character of Lance Aux Epines was already commercialized residential area ... on properties subject to the aforesaid obsolete restrictive covenants"

Request:

Stating

With full particularity the nature of the commercialization.

The properties in respect of which the said commercialization is alleged, the restrictive covenants in respect of those properties and their road locations within Lance Aux Epines Estate and produce the title deeds containing the said covenants."

[3] By response to the Claimant's request the Defendants' Attorney provided the following responses:

- a) **Answer (1):** The information on properties containing the restrictive covenants are particularly within the possession of the Claimants and their predecessors in title, the original vendors of Lance Aux Epines and therefore the beneficiaries of the covenant.
- b) **Answer (2):** The neighbourhood has changed from primarily a private residential neighbourhood to one of mixed residential and rental properties in some instances, residential properties in other and commercial in others. The information on properties containing the restrictive covenants are particularly within the possession of the Claimants and their predecessors in title, the original vendors of Lance Aux Epines and therefore the beneficiaries of the covenant.
- c) **Answer (3):** The neighbourhood has changed from primarily a private residential neighbourhood to one of mixed residential and rental properties in some instances, residential properties in other and commercial in others. The information on properties containing the restrictive covenants are particularly within the possession of the Claimants and their predecessors in title, the original vendors of Lance Aux Epines and therefore the beneficiaries of the covenant.

[4] The paragraphs of the defence which give rise to the request for information are worthwhile setting out:

- 4. There are several commercialized buildings and residential homes in the vicinity of Lance Aux Epines used as rental premises to accommodate short term and/or long term rentals on properties that still contained the said aforesaid obsolete restrictive covenants which has been occurring for 20 years or more. The Claimant by their acts or omission have allowed all these

commercialized buildings to be constructed and property owners to carry out rental businesses for 20 years or more.

5. The Defendants aver that the Lance Aux Epines Development has become the most centrally used residential area in Grenada that Houses the St. George's University students and foreign non-national. This has become a substantial change in character of the neighborhood and all the proposed developments in Lance Aux Epines can be considered to be a benefit for the community at large.
6. The Defendant avers that since they purchased their property in 1997 the character of Lance Aux Epines was already commercialized residential area in particular for University students on properties subject to the aforesaid obsolete restrictive covenants.”

[5] In the Claimant’s affidavit in support of the application it is deposed that “The Defendant on the 5th day of March 2021 responded to the Request but refused or neglected to provide the requested information.”

[6] In the Defendants affidavit in opposition it is deposed that; the information requested is a matter of evidence, the Defendants have the burden of proving their defence at trial, the information is within the knowledge of the Claimant and the provision of the information will be at a considerable cost to the Defendant.

The pleadings in summary:

[7] The Claimant pleaded that she derived her title and with it the benefit of the covenants which run with the land, to two (2) lots of land which the Defendants have since purchased. She contends that in October 2020 she noticed that the Defendants had converted the existing house on their lots into rental accommodation, a commercial venture in breach of the covenants which attached to their land.

[8] The Defendants do not deny the covenants or that they run with the land. The Defendants' defence is that the covenants are obsolete as the user of the land and character of the neighbourhood has changed since they purchased the lots. The Defendants further contend that the converting of the houses on both their lots took approximately 3 years during which no objection was taken by the Claimant. The Defendants contend that the Claimant impliedly acquiesced in the change of neighbourhood and waived non-compliance with the covenants.

The applicable law:

[9] Part 34 CPR vests in the Court the power to compel a party to reply to a request for information: it states:

Orders compelling reply to request for information

34.2 (1) If a party does not, within a reasonable time, give information which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.

(2) An order may not be made under this rule unless it is **necessary in order to dispose fairly of the claim or to save costs**.

(3) When considering whether to make an order, the court must have regard to –

- (a) the likely benefit which will result if the information is given;
- (b) the likely cost of giving it; and
- (c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.”

[10] The learned authors of **Blackstone Civil Practice 2014 at page 469**, in expounding on the principles to be considered on an application for further information, offers the following guidance:

The doctrine of proportionality and the approach to statements of case generally, should mean that requests for further information are used with some caution. Although they can be used to advantage in some cases, considerable care must be taken in selecting the areas to be investigated by the request, and in formulating the questions to be put. Where the responding party's statement of case is already sufficiently pleaded, request for further information designed for:

- (a) tactical reasons;
- (b) obtaining further explanation of matters clearly put in issue on the existing statement of case;
- (c) an explanation of the responding party's legal arguments; or
- (d) obtaining information that might be useful for bringing separate claims against other persons,

[the authors continue and further posit that...]

are abuses of Part 18 and will not be allowed (Trader Publishing Ltd v Autotrader. Com Inc [2010] EWHC 142 (Ch), LTL 12/2/2010). Before making a request for further information a party should consider the other side's statement of case very carefully, and avoid making request concerning matters that are already adequately particularized or are otherwise unnecessary (Trader Publishing Ltd v Autotrader.Com Inc). The test of necessity and proportionality in PD 18, para 1.2 mean that procedure is more restrictive than the old procedure for further and better particulars. There is no need to make a request for further information on matters of evidence (statements of case should deal with facts, not evidence) or points which are for arguments at trial (these should be in skeleton arguments), or where the information is readily available (Lexi Holdings v Pannone and Partners [2010] EWHC 1416 (Ch) LTL 21/6/2010).

On the other hand, a request for further information may be the proportionate and best way of dealing with a statement of case by an opponent which does not provide full information, rather than the more drastic approach of applying to strike out (Deutsche Morgan Grenfell Group plc v Commissioners of Inland Revenue [2006] UKHL 49, [2007] 1 AC 558, at [148]).”

Resolution of the application:

[11] The defence filed in this matter does not entirely refer to specific paragraphs of the statement of case. Paragraph references in the defence stop at paragraph 11 of the statement of case when said statement of case contains 16 paragraphs. Greater caution ought to be exercised to ensure that pleadings properly set out all the facts relevant to a party's case in compliance with Part 8.7 CPR.

[12] Lord Woolf MR in McPhilemy v. Times Newspapers Ltd [1999] 3 All ER 775 at 792 to 3 stated:

The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. **This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party**. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings **should make clear the general nature of the case of the pleader**. This is true both under the old rules and the new rules.

As well as their expense, excessive particulars can achieve directly the opposite result from that which is intended. They can obscure the issues rather than providing clarification. In addition, after disclosure and the exchange of witness statements pleadings frequently become of only historic interest.

[13] The position in this jurisdiction is substantially the same. Counsel for the Claimant has helpfully set out in her submissions filed on April 30, 2021 reference to the case of **East Caribbean Flour Mills Limited v Ken Boyea and East Caribbean Flour Mills Limited v Hudson Williams - Civil Appeal No. HCVAP 2006/0012** (St. Vincent and the Grenadines).

[14] The test for the granting of the application is; whether the information requested is **necessary** in order to dispose fairly of the claim or to save costs. The Court also has to consider the likely benefit which will result if the information is given, the likely cost of giving it and whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

[15] In the instant application, the Defendants have put no evidence before the Court of the likely costs of giving the information requested. Similarly, they have placed not a scintilla of evidence before the Court of their financial resources to enable the Court to consider whether they can comply with an order to provide the information requested. These evidential shortcomings do not operate in their favour in determining this application.

[16] In determining whether the information requested is necessary, it must be borne in mind that pleadings are not yet closed. It is open to the Claimant to file a reply to the defence.

The first request:

[17] The Claimant seeks two main pieces of information:

- a) The exact properties referred to and their road locations within Lance Aux Epines Estate; and,

b) Produce title deeds containing the said covenants.

[18] The Defendants respond to this request contending that the information on the properties are within the possession of the Claimant the original vendors of the land.

[19] This, in the Court's view, is not sufficient. Whilst the evidential burden is on the Defendants to prove what they have asserted in their defence, the Defendants have to condescend to sufficient particulars of how they claims the user of the land has changed and how the Claimant has waived compliance with the covenants that run with the land. This information must include which properties within they contend the user has changed in breach of the covenant to allow the Claimant to properly meet their defence.

[20] This information is necessary to the Claimant as she is unable to determine which buildings the Defendants are relying on and their location so as to prove a change of user and breach of the covenant at the trial,. Consequently the Claimant would not be able to reply and this can affect the Claimant's ability to lead evidence on this issue at the trial. In the Court's view this information is necessary and will benefit the Claimant and ultimately the trial Court in determining this issue at trial.

[21] In respect of item 2, although the Defendants baldly raised the issue of the costs of providing the information requested, the affidavit evidence on that issue is non-existent as stated above. The Defendant has, for the purpose of Part 8.7 (3) of CPR, identified a class of documents presumably upon which he intends to rely on at trial, i.e. deeds. In this regard, the Defendant will not be ordered to produce these deeds at this stage. This is a matter which may be further explored at a later stage in the proceedings through an application for specific disclosure.

The second request:

[22] This request seeks two pieces of information:

a) Particulars of "a substantial change in the character of the neighborhood"; and

b) Production of certain deeds

[23] In respect of item 1, the Defendants in their response have set out very generally what have been the changes in the use from private residential to one of mixed residential and rental and commercial in others.

[24] In the Court view, the Defendants response to this request is sufficient. Pleadings are simply to mark the parameters of a party's case and are not meant to replace witness statements or provide evidence. At this stage, ordering the Defendants to provide further information would essentially be ordering them to provide evidence at the pleading stage.

[25] In respect of item 2 regarding the production of deeds, again that request is premature and this request is refused.

The third request:

[26] The Claimant thirdly requested:

- a) Item 1 - particulars of the nature of the commercialization
- b) Item 2 - The properties in respect of which the said commercialization is alleged
- c) Item 3 - the restrictive covenants in respect of those properties and their road locations within Lance Aux Epines Estate
- d) Item 4 - produce the title deeds containing the said covenants.

[27] Item 1 is a matter of evidence and is refused.

[28] Item 2 is necessary for the Claimant to know in preparation of her case to answer this allegation. It will also be beneficial to the Claimant and the Court. The Claimant is entitled to this information. The Court will therefore order the Defendants to provide this information.

[29] Items 3 and 4 are premature at this stage as they are matters of evidence and matters which can be traversed through specific disclosure at the appropriate time. The Court declines to make the orders sought on these items.

[30] The Claimant also referred to other authorities for the Court's consideration. Having considered these authorities the Court is of the respectful view that:

- a) **Chatsworth Estates Company v Fewell [1929. C 1805]** – has correctly drawn the Defendants' attention to their evidential burden on their defence, this evidential burden does not arise until trial. This authority is of limited assistance in the application at bar.
- b) **British Gas Trading Ltd. v Oak Cash & Carry Ltd. [2016] 4 All ER 129** – This case was put forward in the context of inviting the Court to make an “unless” order if the information is not provided. This Court was invited to issue an “unless” order in accordance with the principles laid down in **British Gas Trading Ltd.** In the said case however, the “unless” order was made for failure to file a listing questionnaire in circumstances where the matter had already been case managed and fixed for trial. Whilst the Court of Appeal upheld the judge at first instance making an “unless” order the circumstances of this case are far removed.

[31] This claim is at the embryonic stage of pleadings. Again, there is no evidence before the Court of any non-compliance with any order, rule or practice direction. In this regard, the Court is of the view that it would be disproportionate and not in furtherance of the overriding objective to make an “unless” order at this stage.

[32] For the reasons stated above it is hereby ordered that:

- a) The Defendants shall file and serve on or before 4:00 pm on June 30, 2021 a notice providing the following further information of their defence:

- i) The properties referred to and their road locations within Lance Aux Epines Estate referred to in paragraph 4 of his defence; and
 - ii) The properties in respect of which the said commercialization is alleged and their road locations within Lance Aue Epines Estate referred to in paragraph 5 of his defence.
- b) There be no order as to costs.

Alvin Shiva Pariagsingh
Master (Ag.)

By the Court,

**Registrar
Supreme Court**