

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0077

IN THE MATTER OF ALL THAT LOT PIECE OR PARCEL OF LAND SITUATE AT CARRIERE IN THE
PARISH OF CHARLOTTE IN THE STATE OF SAINT VINCENT AND THE GRENADINES BEING ONE
(1) ACRE MORE OR LESS, THE SUBJECT MATTER OF DEED NUMBER 551 OF 1988.

BETWEEN:

ST. VINCENT BUILDING AND LOAN ASSOCIATION

CLAIMANT

AND

KENNETH BROWNE

FIRST DEFENDANT

AND

PAMELA BROWNE

SECOND DEFENDANT

AND

SHANNA BROWNE

THIRD DEFENDANT

Appearances:

Mr. Sten Sargeant for Claimant

Mr. Stanley John Q.C. and Ms. Keisal Peters for Defendants

Ms. Bernadine Nanton representative for St. Vincent Building and Loan Association

2020: 9th July
17th September

JUDGMENT

Byer, J.:

- [1] This is a foreclosure application action brought by way of Fixed Date Claim Form by the claimant against the defendants pursuant to Part 66 of CPR 2000 for *inter alia* the payment of the principal and interest under the terms of Registered Mortgages Numbers, 3673 of 1999, 2958 of 2006 and 2409 of 2007, (collectively called “the Mortgage Deeds”) in the sum of \$951,303.18 due and owing as at 31 December 2018 and continuing, in the alternative, sale with an appointment of a receiver under Part 51 CPR 2000 and possession of the mortgaged property. Upon filing the application, the same was supported on evidence by the claimant’s Loans Officer Mr. Reynold Bailey (hereinafter referred to as the 1st Bailey Affidavit).
- [2] When the said matter first came on for hearing, the defendants did not accept the sum as stated as being owed to the claimants and the court on 20th June 2019 made an order for accounts to be taken. When the matter returned to court in September 2019, the defendants then conceded that they had no issue with the interest as charged on the application and the sum remained uncontested. The matter proceeded to summary trial and the court made an order for Foreclosure Nisi on 26 September, 2019. The defendants were given 6 months in which to redeem the mortgage, namely until 27 March 2020 to pay the sum of \$951,303.18.
- [3] The defendants having failed to pay the sum by the date indicated in the Foreclosure Nisi, the claimants filed notice of application on 28 April, 2020 for an order to make the order for Foreclosure Absolute. This application was supported by a further affidavit of Reynold Bailey (hereinafter referred to as the 2nd Bailey Affidavit) and an affidavit of Beverly Frederick (hereinafter referred to as the Frederick Affidavit).
- [3] The defendants did not file an affidavit in opposition to the application but instead filed an affidavit by Terika Gurley dated 13 May 2020 which exhibited Survey Plan C1907 (“C1907”) which had been produced pursuant to a survey conducted by Mr. McArthur Robertson, Licensed Land Surveyor, approved and lodged on 29 April 2020. The said Plan contained 4 contiguous parcels of land as follows: Lot No.1 – 13,683 square feet; Lot No.2 – 43,797 square feet; Lot No. 3 – 27,752 square feet; and Lot No 4 – 5,445 square feet. In the affidavit exhibiting this plan it was posited that C1907 was to “guide” the Court in determining the square footage of land to be included in the Order Absolute.
- [4] In submissions to the court at the hearing of the application the defendants advanced that only the land demarcated by Lot Number 2 on C1907 was mortgaged. It was submitted by Learned Queen’s Counsel for the defendants that certain statements in the 2nd Bailey Affidavit, together with advertisements for sale of the property by the claimant and statements made in the Valuation Report of Mr. Moulton Mayers all supported the defendants’ contention.

- [5] In response counsel for the claimant at that point submitted that the description of the boundaries in all the mortgage deeds accorded with all the boundaries for the entire lot of land as set out in C1907.
- [6] At that juncture the court recognizing that there were matters raised that required the assistance of experts, ordered that Licensed Land Surveyors Mr. Carlson Jeffers and Mr. Mc Arthur Robertson would be deemed experts for the claimant and the defendants respectively on the issue of the area of land to be included in the Foreclosure Absolute Order. In so doing, the Expert Report of Mr. Carlson Jeffers was filed on 18 June, 2020 on behalf of the claimant and on 2 July, 2020, the defendants filed an affidavit in response by Mr. Mc Arthur Robertson to the findings of Mr. Jeffers.
- [7] The sole issue therefore this court has to determine is not whether the claimant is entitled to the Order Absolute, as the court is satisfied that the claimant has fulfilled the procedural requirements for so doing, but rather in making that order, **what is the exact parcel of land that is to be subject to the Order Absolute.**

Court's Considerations and Analysis

- [8] The court having identified the sole issue is therefore required to construe the contents of the mortgage deeds that created the charge over the defendants' property which the claimant now seeks to enforce and for the court to make the determination as to the extent of the property that was mortgaged to the claimant.
- [9] The description of the parcel of land that is contained in the mortgage deeds is as follows in its entirety:
- “ All that lot piece or parcel of land situate at Carriere in the parish of Charlotte in the state of Saint Vincent and the Grenadines being One (1) Acre more or less and abutted and bounded on the North by lands of Thomas Augustus Browne, on the South by lands of Thomas Augustus Browne, on the East by a Public Road and on the West by lands of Thomas Augustus Browne or howsoever otherwise the same may be butted bounded known distinguished or described TOGETHER with all buildings and erections thereon and all ways waters watercourses rights lights liberties privileges and all other easements and appurtenances thereto belonging or usually held used occupied and enjoyed therewith or reputed to belong or to be appurtenant thereto.”*
- [10] Thus the operative parts of this description are therefore contained in both the size and the boundaries of the parcel.
- [11] Bearing that in mind, it is the claimant's contention that the court must approach this exercise by looking at the natural meaning of the words in the context of the surrounding circumstances that

led to the execution of the mortgage deeds. Thus the claimant's submitted that the court should be guided by the principles laid down in the case of **St Edmundsbury and Ipswich Diocesan Board of Finance and Anr v Clark (No. 2)**¹ and the dicta of Mummery LJ in the case of **Pennock and Pennock v Hodgson**² which both referred and relied on the surrounding circumstances of the execution of the document while looking at the evidence of the "actual and known physical condition of the relevant land at the date of the conveyance..."³

- [12] Therefore in reliance on this approach the claimant's submit that having gleaned from the evidence that was presented that the defendants mortgaged all the land that was encapsulated in C1907 and discounted the evidence of those persons who referred to land as being one acre as these descriptions were not in existence at the time the conveyance was made in 1999.
- [13] In looking at C1907 the claimant made it clear that the boundaries that were stated in the description of the land in the mortgage were in fact represented on C1907 to the extent to include all the lots demarcated there as 1 to 4.
- [14] The claimant therefore submitted that the defendant had in fact mortgaged all the land captured in C1907 and as such the Order Absolute should so reflect.
- [15] The defendants on the other hand, although accepting that the natural meaning of the words in the deed must be interpreted made it clear that those words must be interpreted alongside the intention of the parties at the time of execution.
- [16] For the defendants the natural meaning of the words contained in the schedule to the mortgage was that the defendants intended to mortgage one parcel of land in measurement an acre "more or less".
- [17] In addition the defendants have made it clear that the claimant must be bound by the relief that they sought by way of the Fixed Date Claim Form filed in the matter and the evidence that was filed in support. On the basis of the pleadings the defendants submitted that this evidence relied on clearly referred to a mortgage for one acre of land at Carriere⁴. Further documents that were exhibited to the court for the purpose of offering a value of the same for the purpose of the action for foreclosure referred to the land area occupied being one acre⁵ and that when the house was valued the land stated was one acre⁶.

¹ [1975] 1 WLR 468

²[2010] EWCA Civ 873

³**Pennock case** at paragraph 12

⁴Paragraph 4 2nd Bailey Affidavit

⁵Valuation of Alexander and Alexander dated 1988- Exhibit RB-9 to the 1st Bailey Affidavit

⁶ Valuation by Moulton Mayers dated 2016 – Exhibit RB-10 to the 2nd Bailey Affidavit

- [18] The defendants therefore made it clear that having relied on this evidence the claimant must be bound by their case and they were enjoined from expanding the area claimed to claim the entirety of C1907.
- [19] When this court considers the arguments of both sides, this court finds that portions of both arguments contain some merit. In particular, this court is in agreement that in construing the mortgage deeds that speaks to the parcel of land that was mortgaged by the defendants, the natural and ordinary meaning of the words must first and foremost be considered.
- [20] Indeed according to the learned authors of **Halsbury Laws of England**⁷, “the title deeds of the parties concerned constitute the primary evidence and must be considered first and the boundaries as indicated in the title deeds prevail if they are clear and unambiguous.”
- [21] Therefore once the boundaries are clear, extrinsic evidence is not admissible to contradict or vary clear descriptions of boundaries⁸.
- [22] The first step for this court is to therefore assess the description that is contained in the mortgage deeds. It was indeed of some concern to this court that in that mortgage there was no reference to the root of title of the land that was mortgaged to the claimant. When the implications of this were considered by the court, even though were not relevant to the issue to be determined at present, such a defect in the drafting of this document could have opened even larger more complex issues for the claimant. Be that as it may, when the court assesses the description, it is abundantly clear that at the time of the execution of the mortgage that the land had never been surveyed. Rather, as was widely accepted then and to some extent today, the parties relied on boundaries and what the measurement within those boundaries which would have been captured by estimation.
- [23] It is clear to the court that the boundaries of this parcel were not ambiguous. In fact, as a general rule, “where a deed refers to known physical and natural objects by means of which the boundaries of land are conveyed are described, and also contain a statement of area, the former controls the latter in the case of discrepancy.”⁹
- [24] That being said, it is clear to the court that there was no ambiguity as to what was mortgaged to the claimant. The parcel was clearly defined by the boundaries and it is those boundaries that have defined the area of one acre “more or less”. Therefore in this court’s mind, the interpretation given in the submission on behalf of the defendants that it appeared that the claimant was limiting itself to one acre by the evidence filed in support does a great disservice to the evidence filed by the claimant.

⁷**Boundaries** Vol 4 (2020) paragraph 329

⁸Op Cit paragraph 331

⁹ Op Cit paragraph 329

- [25] In so saying, when one considers the affidavits in support of the fixed date claim form which stated as its sought relief, *inter alia* foreclosure, payment of all sums due under the terms of the *mortgage and possession of the mortgaged property* it is clear to this court that the claimant made clear reference to the parcel of land as was contained in the mortgage deed and that this was the parcel against which they were seeking to foreclose. Although this court accepts that there was an unfortunate use of loose language which seemed to have boxed the claimant into truncating their claim to one acre **only**, on close inspection of the evidence, this court is satisfied that the evidence in support of the claim both to make the order Nisi and the Order Absolute refer to the parcel of land contained in the mortgage. Further, having taken a closer reading of the information relied upon by the defendants from the exhibits attached to the 1st Bailey Affidavit, this court is also satisfied that those exhibits, which referred to the defendant's land as being one acre were not relied upon by the claimants for identifying the area of land that was being claimed.
- [26] The first document which the defendants identified was the valuation undertaken by Sebastian Alexander in 1998 in support of a summons for foreclosure against these defendants in civil suit 475/1993. It was clear that Mr. Alexander indicated that he was giving a valuation for an acre of land. In his valuation he states it thusly under the description of the property that the "*property consists of one (1) acre of a land with a large two (2) storey concrete wall dwelling . The land is un-surveyed, but the area **occupied** is an acre. ...*" (My emphasis added)¹⁰. The 1st Bailey Affidavit clearly stated that the reference to this valuation was for the purpose of indicating that the defendants over the years had engaged in a course of conduct of failing to maintain the property with the intention of depriving the claimants of obtaining an accurate value of the same upon sale.
- [27] The second document raised and relied upon by the defendants to substantiate the argument that the claimant was only entitled to one acre was the valuation by Moulton Mayers prepared in 2016. In his valuation he was only concerned with the building which he was commissioned to value and in which he simply stated that the land upon which the house stood was 43,560 square feet. There is no indication as to where he obtained this information and he made no reference to any documentary support for this finding.
- [28] The third and final document relied on by the defendants were the advertisements published by a third party for the sale of the mortgaged property where reference was also made to an acre of land. However there is no indication as to where this information emanated from and as such any conclusion as to the source of this would be in this court's mind purely supposition.
- [29] Thus the end result of an assessment of this evidence in this court's mind, rather than limit the parcel to which the claimant is entitled to claim, this documentary evidence clearly not only clarified to the court the value of the building of the defendants but further that at the time of the preparation

¹⁰Page 2 of RB-9 of the 1st Bailey Affidavit

of those documents the focus of the claimant had been on the actions of the defendants and the impact on the value of the occupied property as opposed to the parcel which was in fact mortgaged to the claimants.

- [30] Having therefore said this I therefore find that the claimants are not limited to an Order Absolute for one acre of land only however neither am I satisfied on the evidence that the claimant is entitled to the entire parcel depicted on C1907.
- [31] In addressing its mind to C1907, it was imperative for the court to obtain assistance of experts in the field of land surveying and to that end Mr. Mc Arthur Robertson the author of C1907 and Mr. Carlson Jeffers were appointed by the defendants and claimant respectively.
- [32] In considering the reports of both of these men, two issues became clear to the court. Firstly, Mr. Robertson clearly informed the court that his mandate upon his retainer had been to partition the land at Carriere resulting in the eventual demarcation of four distinct parcels. Secondly, Mr. Jeffers in an attempt to assist the court over stepped his duty to the court in many respects in providing information that was outside of his remit to render an opinion on the existing boundaries.
- [33] When this court considers C1907, and what is depicted thereon together with the information provided by the evidence of both experts, I accept the following in relation to the numbered parcels on a balance of probabilities:
a) **Lot 1-13,683 square feet.** When one looks at C1907 this lot of land is north east of the admitted parcel Lot 2 containing the one (1) acre.

In this court's mind this Lot #1 does not fit the description in the mortgage of the northern boundary stated as lands of the father of the first defendant. In fact, Mr. Robertson, the defendants own surveyor agreed that the said parcel of land is not directly referable to the meridian point of north, and that the eastern boundary which is stated as a road in fact runs north east of the property. As such I accept that the public road which is clearly demarcated fixes all the boundaries and becomes the fixed point against which the plan should be read. In the case of **Pennock v Hodgson**¹¹ one of the principles extrapolated from the case law dealing with boundary disputes was that "precise boundaries must be established by other evidence. That includes inferences from evidence of relevant physical features of the land existing and known at the time of the conveyance." This court is therefore in agreement with counsel for the claimant that the one boundary that was existing at the time of the conveyance that was fixed is this public road. Both parties agree that this is the north eastern boundary and I so agree. There being no road to the meridian north boundary, I find rather, that Lot 1 does not fall outside of the parcel that makes up the land mortgaged to the claimant, indeed when one considers that the public road as a boundary

¹¹Op Cit paragraph 9

includes Lot 1, I determine that Lot 1 forms part of the land to which the claimant is entitled upon foreclosure.

b) **Lot #2- 43,797 square feet**. There is no dispute that this is also part of the mortgaged property and I so find.

c) **Lot #3- 27,752 square feet**. On C1907 this lot is to the southern boundary of the mortgaged property. Indeed, when one considers the description of the mortgaged property, it was clear that the southern boundary were lands of the father of the first defendant. If this court were to accept that the southern boundary included this Lot #3, it would mean that the southern boundary or the south western boundary would have instead been the road as identified at present at the survey of C1907. This court finds that the reasons advanced by the expert Mr. Jeffers as to why this should also be included in the mortgaged property is without merit. This court prefers the conclusions advanced for its exclusion as provided by Mr. Robertson. This court accepts that any finding that the defendants may have utilized this lot without more, cannot and does not equate to ownership by the defendants to be in position to mortgage the same. This court must take judicial notice that the person in boundary with the first defendant was his father, not a stranger for which strict boundaries would have been maintained. In the early 20th Century case of **North Eastern Railway Co v Lord Hastings**¹² Lord Halsbury LC stated that “the words of a written instrument must be construed according to their natural meaning and it appears to me that no amount of acting by the parties can alter or qualify words which are plain and unambiguous.” In accepting these words, I accept that the words describing the boundaries does not include Lot #3 and even if the defendants may have at some point utilized the same for their own purposes, there is no evidence upon which this court can make a finding that in 1999 this Lot was to be included in the lands to be charged to the claimant. This lot is therefore excluded.

d) **Lot #4- 5,445 square feet**. This parcel of land has been conceded by the expert Mr. Robertson as being included within the lands mortgaged to the claimant, when one considers his response to the comprehensive findings of Mr. Jeffers who made it clear that Mr. Robertson’s comment to Lot #4 was that it was to “be sold to provide an access road to the owners of Lot #6 on Plan C1016” Mr. Robertson by later affidavit agreed that this Lot #4 did not create an access to Lot #6 as that was already created on an earlier survey plan but that rather Lot#4 provides “...an easier vehicular access” to Lot #6.

The finding of Mr. Robertson that this road “existed” is of no moment to the court if there is no evidence as to the time frame of such usage. When the court considers plan C1016¹³ which depicts the subdivision that created the said Lot #6, it is apparent that Lot #6 was given access by a road surveyed for that proposed development. In this court’s mind the reasoning of

¹²[1900] AC 260 at 263

¹³ Exhibit CJ-7 to the Expert Report of Carlson Jeffers

Mr. Robertson for not including Lot #4 is faulty and without merit. I therefore find that Lot #4 forms part of the mortgaged property.

[34] The court therefore finds that the mortgaged property includes Lots 1, 2 and 4 as demarcated on plan C1907.

[35] In making the Order Absolute and in keeping with the reliefs prayed for and in an overabundance of caution, I also make an order for possession of the foreclosed premises in favour of the claimant¹⁴.

[36] The last outstanding matter is therefore the issue of costs.

Costs

[37] The contention of the claimant on this issue is that the fixed costs regime that usually follows hearings of this nature under Part 66 does not apply in these present proceedings.

[38] The claimant submitted that the fact that the defendant had not only delayed the order Nisi by six months requesting an order for an Account and then the stance taken on the parcel of land that was to be made subject to the Order Absolute, far from exhibiting a position of non-contention, these acts of the defendants morphed the case into a contested matter. These circumstances, in the submission of the claimant, took this matter out of the usual regime of fixed costs and as such the claimant was entitled to prescribed costs.

[39] The defendants on the other hand submitted that this matter fell squarely within the parameters of fixed costs. They maintain that the matter proceeded uncontested in that the defendants always admitted liability before action and “allowed” the judgment to be entered in “default”. In the defendants’ submissions, for this court to make an order for costs on the prescribed basis would be “inconsistent with furthering the overriding objective” by ordering “substantial or punitive costs...”¹⁵

[40] When this court considers this issue it is of import to take careful note of the events that unfolded upon the filing of this action.

[41] This court therefore adopts the chronology identified by the defendants in their submissions with some adaptations although some of the information has already been identified in this judgment. It is important however in this court’s mind to repeat the same in some detail to consider the troublesome issue of costs.

¹⁴Fisher and Lightwood’s Law of Mortgage Chapter 32.60

¹⁵Paragraph 22 of the submissions of the defendants filed on 30 July 2020

Chronology

- i) The Fixed Dated Claim Form was filed on 7 May 2019. By their acknowledgement of service filed on 15 May 2019 the defendants indicated that they admitted **part of the claim** in that they owe the principal and an indeterminate amount of interest. Although each of the defendants also indicated that they intended to defend the claim none of them filed a defence within the period required under the CPR.
- ii) The first hearing of the application was held on 20 June 2019 at which time the court was informed by counsel for the defendants that they did not intend to oppose the application.
- iii) However at that hearing, the defendants through their counsel with agreement from counsel for the claimant indicated that it was necessary to ascertain the amount of the mortgagors' debt and an order was made directing that accounts be taken, together with necessary inquiries.
- iv) Accordingly, agreement was reached and the court was notified that the foreclosure order Nisi would not be proceeded with but rather judgment would be entered for the principal debt and that since the court would soon be going on the long vacation for an account to be taken during August/September in respect of what is due to the claimant for interest and what if anything the claimant has received from the defendants on the loan and if it was to be deducted and the balance due to the claimant was to be certified and the hearing was adjourned to 26 September 2019.
- v) When the matter returned on 26 September 2019 counsel for the defendants informed the court that there was no contest in relation to the interest. The matter then proceeded to summary trial and the Court made a foreclosure Nisi for the defendants to pay the claimant \$951,303.18 on 27 March 2020 to discharge the charge and redeem or be barred and foreclosed of and from all title and equity of redemption in the property.
- vi) The claimant filed its Notice of Application on 28 April 2020 to make the said foreclosure order Nisi Absolute supported by the 1st and 2nd Bailey Affidavits.
- vii) The subject property referred in the Schedule to the said mortgage deeds was not described with reference to a survey. In a purported attempt to assist the court as to the parcel of land that was to be subject to the Order Absolute, the first defendant caused a survey to be conducted in March-April 2020 by Mr. Mc Arthur Robertson, Licensed Land Surveyor and for a plan to be prepared of the property.
- viii) When the application came on to be heard, counsel for the defendants indicated that upon the advice of the land surveyor the parcel of land depicted as Lot No 2 on C1907 was the property which is described in the mortgage deeds, whereupon counsel for the claimants indicated to the court that it is the claimant's position that all of the lands shown on the survey plan should

constitute the property which is to be the subject of the foreclosure Order Absolute and sought an adjournment of the hearing of the application and leave of the court to file expert evidence to support that claim.

- ix) Consequently, the court ordered that the matter be adjourned to 11 June, 2020 for clarification as to what area of land to be made the subject of the foreclosure order.
- x) On 9 June 2020, the claimant filed an application for an adjournment of the hearing on 11 June and applied for an extension of time to file a Report by Licensed Land Surveyor Carlson Jeffers to address the survey plan C1907.
- xi) On 18 June 2020, Mr. Jeffers' Affidavit was filed and at the hearing of the matter on 9 July the court gave directions for written submissions to be filed on behalf of the parties by 23 July 2020 and that its decision will be handed down on 17 September 2020.

[42] It is within this factual matrix that the claimant contends that it was the actions of the defendant which fundamentally took the matter out of the fixed costs regime intended for matters of this nature.

[43] The definition of fixed costs under Part 65.4 CPR 2000 is stated as being those sums that are attributable to a claim for a specified sum of money:
“(a) Which a defendant who does not defend must pay to the claimant in addition to the amount claimed and interest and the court fees paid by the claimant....
(b) Which a claimant is entitled to include as costs in any default judgment under Part 12...”¹⁶

[44] The defendants' submission is that since they conceded the claim and did not take the matter to trial having not filed a defence, that the claimant was only entitled to fixed costs as provided for under Part 65.4.

[45] Indeed the heavy reliance placed on the seminal court of appeal case of **Rochamel Construction Limited v National Insurance Corporation**¹⁷ by the defendants, in their minds, seemed to bolster this position.

[46] However this court is not persuaded by the defendants' argument in this regard.

[47] The court does accept that the strict interpretation of what transpired in this claim was that the claimant obtained a default judgment by way of summary trial in so far as, a default judgment is

¹⁶ Appendix A Part 1

¹⁷ Civ App No 10 of 2003 (St Lucia)

defined strictly as being where no defence has been filed within the requisite time by the defendant¹⁸.

- [48] Nevertheless, even though the strict definition of default judgment may apply in what happened procedurally, this court considers that the defendant's actions first by the request for an account to be taken and then by the insistence that the Order Absolute should not include the entirety of the parcel noted on C1907 created a hybrid circumstance that took the matter outside of the parameters of what could be considered strictly a default judgment.
- [49] In contradistinction to the case of **Rochamel**¹⁹ where it was made clear by the court that the appellant Rochamel not only admitted liability before the action and allowed judgment to be entered but they "**admitted the claim in its entirety**". It was on this basis that the court therein issued the edict that it was "incompletely inconsistent with furthering the overriding objective to order...substantial or punitive costs against a defendant who admitted liability before action and did not defend the claim **in any way**"²⁰. (My emphasis added)
- [50] So in this court's mind the fact that the defendants did not accept the claim in its entirety although they had not filed a defence, must mean that there are costs consequences which must be borne by the defendants.
- [51] Therefore as a general rule, a party is entitled to prescribed costs only if the fixed costs regime does not apply²¹. Having determined that fixed costs do not apply, this court therefore finds that the claimant should be entitled to prescribed costs but it is not persuaded that the claimant is entitled to a sum equivalent to one hundred percent of those costs.
- [52] In looking at this matter therefore in the round I am satisfied that the issues that arose upon the instance of the defendant were not particularly complex issues but they did require the careful preparation of submissions and research skills to provide the court with the requisite assistance along with the appointment of experts who were required to file reports. This action also positively impacted the matter in narrowing the issues for the Court.
- [53] Therefore this court after having considered the factors identified in Part 64.6(5) and 65.7 CPR 2000, determines that even though the matter did not proceed to trial, that the issues raised by the defendant resulted in the matter becoming more contentious than envisioned, as such the claimant is entitled to sixty-five percent (65%) of the prescribed costs that would be due to them. In this court's mind the fact that the claimant has been generally successful on the claim but failed to

¹⁸Halsbury Laws of England Vol 95 para 601

¹⁹ Op Cit at paragraphs 12 and 16

²⁰ Op Cit paragraph 16

²¹**The Attorney General of the Commonwealth of Dominica and anr v Stewco Construction Company Ltd and anr** HCVAP2008/0007 (Commonwealth of Dominica) per Gordon JA at paragraph 6

succeed on all that they sought, translates into the claimant's costs being reduced by thirty-five percent (35%). Therefore, that sixty-five percent (65%) is to be calculated on the value of the claim as identified by the Court of appeal in **Cleveland Donald v The Attorney General**²² as being the sum for which judgment was entered of \$951,303.18.

The order of the court is therefore as follows:

1. The draft order lodged with the application on 28 April 2020 to make the Order Absolute is therefore amended at the recitals of the order as follows:

#2 - "The defendants deliver to the claimant possession of All those lots pieces or parcels of land situate at Carriere in the parish of Charlotte numbered Lots 1, 2 and 4 containing by admeasurement sixty two thousand nine hundred and thirty five square feet (62,935 sq. ft) as the same is delineated and described in the plan or diagram numbered C1907 which was approved and lodged in the Department of Lands and Survey on 29th April 2020 together with all buildings erections thereon ways watercourses rights lights liberties privileges easements and all other appurtenances thereto usually held used and occupied or enjoyed therewith or reputed to belong or appurtenant thereto".

#3 - The defendants shall pay the claimant sixty-five percent (65%) of the costs on the value of the claim in accordance with CPR Part 65 Appendix B.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar

²² Civ App No 32/2003 (GDA) per Saunders JA