

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

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2012/0062

BETWEEN:

**THE INCORPORATED TRUSTEES OF THE
SEVENTH DAY ADVENTIST CHURCH**

Claimant

and

**JESTER EMMONS
JERRY EMMONS
GODWIN EMMONS**

Defendants

Appearances:

Mr. James Bristol and Ms. Afi Ventour de Vega for the Claimant
Ms. Karina Johnson for the Applicants

2013: December 12

REASONS IN ORAL RULING

- [1] **MOHAMMED, J.:** The Defendants applied on the 7th May, 2013 to have the persons listed in an attached exhibit to be made Defendants to the action and to have the present Defendants appointed as their agents.
- [2] Their application is based on four grounds, namely: the proposed persons are members/worshippers of the church the subject matter of the action; the listed persons and their families have built, renovated and maintained the church; all the listed members have an interest in the church under the doctrine of proprietary

estoppel; and for a true adjudication all the persons who have a relevant interest should be before the court.

- [3] The Claimant has opposed the application on the following basis -: the claim and counterclaim can be carried on without the addition of the proposed Defendants; and the affidavit in support does not sufficiently set out the proposed Defendants' interest.
- [4] CPR 19.3(2) governs the procedure for adding and substituting parties. Sub rule (2) state "An application for permission to add, substitute or remove a party may be made by (a) an existing party." There is no criteria set out which the court is to take into account when deciding whether to add a new party, but it is not unreasonable to approach such an application taking into account the nature of the pleaded case, the evidence presented in support of the application and the overriding objective of the CPR.
- [5] CPR 19.4 deals with the change of parties (which include addition) after the end of a relevant limitation period. There are two (2) conditions which must be satisfied:
 - (a) the addition or substitution is necessary; and
 - (b) the limitation period is current when the proceedings were started.
- [6] According to the Claimant's pleaded case, and I refer to paragraphs 7, 8,9,10 and 11 of the statement of claim, the Defendants and other members of the Carriacou Congregation committed certain breaches of the church manual such as withholding tithes and offering due to the Conference Treasury collected for the period January 2007 to 5th June, 2011, failing to recognize the authority of the Conference Committee, to read correspondence to the Carriacou Congregation and to send reports to the Conference office. This was the basis for the dissolution of the congregation. The Claimant also alleged that the 1st and 3rd Defendants refused to deliver up possession of the Carriacou Property. The substantive relief sought in the claim are:

- (a) Declaration that the Defendants are not to enter the Carriacou Property
- (b) To stop the Defendants, servants or agents from using the property or hindering the use of the property
- (c) Delivery of the treasurers book
- (d) Delivery of tithes and offering for the period January 2007 to 5th June 2011
- (e) Damages

[7] The Defendants defence is based on proprietary estoppel and irrevocable license which was adequately explained by Ellis J. in her ruling in an application in this matter delivered on 27th May, 2013 at paragraphs 26-29, which I respectively adopt. In particular I refer to paragraphs 11, 12, 13, 14 and 15 of the defence, which refers to the church being built in or about 1903 with the consent of the owners of the land for worship by the congregation, and rebuilt after Hurricane Janet in 1955.

[8] Based on the Defendants defence and counterclaim the pleaded acts of constructions and rebuilding took place approximately 109 years and 55 years ago respectively.

[9] The Claimant relies on the defence of limitation in its defence to the Defendants' counterclaim on the basis that the proprietary estoppel claim did not accrue within 12 years before the filing of the counterclaim.

[10] I therefore agree with the Claimant that the condition for CPR 19.4(2) (b) has not been satisfied.

[11] I agree with the learning in 9 Akins 2nd Ed. at 165 that:

"Clubs are associations of a particular nature they are a society the members of which are perpetually changing -"

However this learning is to be applied to the context of the Defendants' pleaded case and the evidence presented in support of the instant application. There is no

evidence in the instant application of the ages of the potential Defendants; the financial and/or non financial acts where the proposed Defendants and/or their family members acted to their detriment in contributing to the "building, renovation and maintenance of the church." There is also no evidence when they become members of the church. If it is the applicant's contention that they have built, renovated and maintained the subject matter of this action then the aforesaid information is critical to persuade this court that they should be joined as parties. I agree with the Claimant's submission that the affidavit in support is scant and does not sufficiently or at all set out the potential Defendants' interest in connecting with the claimant.

[12] On the other hand the Claimant's affidavit shows that the majority of the potential affidavits were not alive in 1957. The persons who were alive in 1957 were Princess Lewis 14 years, Mavis Mc Intosh 13 years, Pearl Akins 15 years and Celestine Emmons 9 years. With respect to Faithina Guadeloupe and Nella Russell, their membership of the congregation is in dispute.

[13] For the aforesaid reason the application filed 7th May 2013 is dismissed. The applicants to pay the Claimant's costs. Costs of the application is assessed in the sum of \$750.00.

Margaret Y Mohammed
Margaret Y Mohammed
High Court Judge